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IRS Rules Solar Energy-Storage Upgrade Is Eligible for Tax Credit: Ballard Spahr

In a new letter ruling (PLR 201809003) issued on March 2, the IRS ruled that a residential behind-the-meter solar energy storage device—a battery—meets the definition of "qualified solar electric property expenditure" under section 25D(d)(2) of the Internal Revenue Code of 1986 (the Code), as amended, if 100% of the energy used by the battery is derived "from the sun," therefore allowing the 30% tax credit for the energy-storage device. The new policy could lead to an increase in the amount of upgrades and retrofits to existing residential solar energy systems.

In a 2013 letter ruling (PLR 201308005), the IRS had ruled that a commercial, behind-the-meter battery included in the original installation of a solar system will be considered part of the "energy property" within the meaning of section 48(a)(3)(A)(i) of the Code, and, therefore, an investment tax credit could be claimed on its full cost. The 2013 ruling also provided, however, that the battery's eligibility as energy property is subject to a "cliff" that eliminates all investment credit for the device if less than 75% of the energy stored in the device during an annual measuring period is from the solar energy source, and to a "haircut" that may reduce the investment tax credit pro-rata, if less than 100% (yet more than 75%) of the energy stored in the device during an annual measuring period derives from the solar energy source. See Treasury Regulation § 1.48-9(d)(6).

This more recent IRS letter ruling is of interest in the following respects:

- The new ruling allows the tax credit for an energy storage device that was installed *one year after* the installation of the original solar system, while the 2013 ruling was applicable to an energy storage device *installed as part of the original solar system*. Although the 2018 ruling addresses a residential behind-the-meter energy storage application, the holding in that ruling suggests that it would be possible to have commercial after-installed storage devices qualify for the 30% investment tax credit as well.
- The later ruling makes clear that a residential behind-the-meter storage device has a solar energy storage "cliff" of 100%, unlike a commercial solar-connected energy storage device, which, by regulation, is subject to the 75% cliff rule described in the 2013 ruling.
- The use of the term "derived from the sun" in the 2018 ruling regarding a residential solar system, as opposed to a reference to the on-site solar system as a source for battery charging, prompts the question whether a behind-the-meter energy storage device (residential or commercial) could qualify for the 30% tax credit, if the solar energy stored in the battery was generated remotely, e.g., in a community solar project or contracted through a corporate power purchase agreement, assuming the subscriber/offtaker receives the renewable energy certificates from its subscription or offtake from the remotely-installed solar system.

Like all IRS private-letter rulings, the 2018 ruling is binding only on the taxpayer who received it and may not be used or cited as a precedent. It may provide guidance, however, as to the thinking of the IRS on the issues presented, and may indicate the likelihood that a proposed letter ruling involving similar facts will be approved. It will be interesting to watch the evolution of this topic in future IRS letter rulings and other IRS guidance.

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by the Energy & Project Finance, Public Finance, and Tax Credits Groups

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