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***Consideration of the Federal Tax Benefits of Solar Technology  
In your Homes and Rental Properties***

To Our Clients and Friends:

To encourage investment in alternative energy sources, the IRS has provided for a 30% credit for the cost of energy-efficient property such as solar electric property and solar water-heating property. Although many are familiar with these credits for qualifying solar property installed in their homes (called the residential energy credit), they may not realize that the 30% credit is also available for qualifying improvements in rental properties they own.

The residential energy credit is nonrefundable (but if the credit is more than a taxpayer's tax liability, it can be carried forward to next year's tax return) under Internal Revenue Code (IRC) Sec. 25D(c). Taxpayers who take the 30% credit for solar energy property installed in their principal residence or vacation home must also reduce their basis in the property by the amount of the credit.

For *residential energy* credit purposes, qualified solar property includes property that uses solar energy to produce electricity for the home. This can include costs for solar panels or related property that is installed as a roof or portion of a roof.

For the *business energy* credit, solar energy equipment qualifies if it is equipment that uses solar energy to generate electricity, to heat or cool (or provide hot water for use in) a structure, or to provide solar process heat.

There seems to be confusion about whether the 30% solar energy tax credit on the cost of installing solar panels is available when the panels are used in residential rental properties. At least part of the confusion lies with how the law is written in various parts of the IRC.

IRC Sec. 25D provides a solar tax credit to an individual taxpayer when the panels are installed for use in the dwelling used by the taxpayer as their residence. But this section of the Code does not allow a credit when solar panels are installed for use in a *residential rental* property the taxpayer owns. IRC Notice 2013-70 further clarifies that the credit is also available for improvements made to a second home, for example, a vacation home, but not an investment property.

**BUSINESS CREDIT**

While IRC Sec. 25D does not allow a solar tax credit for the cost of installing solar panels for use in residential rental property, another section of the IRC (Sec. 48) is more favorable. IRC Sec. 48 provides for a solar energy tax credit for the installation of solar panels as part of the general business credit under IRC Sec. 38. Property that is eligible for the general business credit is tangible property for which depreciation is allowable. Solar panels installed for use in residential rental property typically meets this requirement.

This is not quite the end of the story, however. Business credits are generally not available for property that is used predominantly to furnish lodging under IRC Sec. 50 of the Code. At first glance, this subsection would appear to prevent solar panels installed for use in residential rental property from being eligible for a business credit. But further reading of IRC Sec. 50(b)(2) indicates that the restriction on the availability of the general business credit for property used to furnish lodging does not apply to “any energy property”, of which solar energy equipment is generally included (except for equipment to heat a swimming pool.)

The result is that solar panels installed on residential rental property the taxpayer owns should generally be eligible for a solar tax credit under IRC Sec. 48, assuming other requirements for the credit are met. This is good news for taxpayers hoping to take advantage of the 30% tax credit for the cost of solar panels installed on residential rental property.

We encourage you to contact us to discuss the potential benefits of the installation of solar technology in your home, vacation home or rental properties.

**MillerSearles LLC**

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