STATE OF WASHINGTON
DEPARTMENT OF REVENUE

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Stu Yarfitz
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Registration No.: 601 310 868 - Puget Ridge Cohousing Association 601 310 868

Dear Messrs. Yarfitz and McClay:

Thank you for your emails of September 12 and September 26, 2014, regarding the eligibility of your condo association and its members for the renewable energy system cost recovery incentive payment program under Washington Administrative Code (WAC) 458-20-273 and the sales tax exemption under the Revised Code of Washington (RCW) 82.08.963.

Facts provided

The initial email of September 12th from Mr. McClay stated that the individual members of the Puget Ridge Cohousing Association (PRCA) would own the system on the Common House based on their percentage of ownership in PRCA. The email also stated that each of the 23 unit owners has a specific real property ownership interest in Common Elements. Common Elements are defined as "all portions of the Condominium other than Units, including the Limited Common Elements." It further stated that the electric bill was in the name of PRCA, which has no ownership or interest in the common house or any real property on the parcel.

The original question was whether the individual members would be eligible for the incentive payments from this system up to the individual annual limit of $5,000 as provided in WAC 458-20-273("Rule 273")(502)(a).

We received another email September 26th from Mr. Yarfitz, which stated that after further review of the incentives available, PRCA had decided to do two installations: one on the Common House with one production meter and another on the J Building with four production meters. The PRCA will purchase and own both installations.

The email stated that PRCA is organized as a condominium in Washington State. All units are owned individually by PRCA members, but all buildings are owned by PRCA. The ownership of PRCA is proportional to membership shares as calculated using a Common Expense Liability (CEL) formula described in Schedule C attached to the original email of September 12th. Acting as the agent for the unit owners, PRCA controls the real property.

He further stated that the IRS has recognized that installing a solar array on a roof should be done through contracting with the condominium association as it is the only entity that can contract to make an improvement on the roof. Any one unit owner owns a percentage of the Common Elements, but cannot modify a Common Element except as authorized by PRCA. This applies to all buildings, including J and the Common House.

PRCA files Federal tax returns as a Homeowners Association. Mr. Yarfitz further provides with respect to the solar energy projects that they are planning, PRCA must comply with the IRS code §25D. The instructions on IRS Form 5695 for Residential Energy Efficient Property Credit direct us to pass these Federal Tax Credits through to the members of the association according to the CEL.

Mr. Yarfitz asks that the PRCA be considered a "single-owner" acting on behalf of the individual unit owners and that the Department finds there is unity of ownership because the solar energy systems and buildings where they are located will all be owned by members of the PRCA.

Questions

1. Are members of a cohousing association that have interest in the community house and the individual condo units eligible for incentive payments up to $5,000 each, if the system is owned by the condo association?
2. Does the 100 percent sales tax exemption apply to the equipment and labor since each condo owners' share in the system will be less than 10kW?

Ruling

1. Eligibility for production incentive payment

When the condo association owns the system, the association, not the members, is entitled to receive the incentive payments. The condo association is entitled to the payments regardless of whether the system is on a common building or a unit building when it owns the systems. The annual limit for the condo association is $5,000 for all the systems on the property.

However, if the members purchase and own the system and the system is installed on the roofs of the owners' unit, the members are entitled to receive the incentive payment. Each member could receive up to $5,000. To qualify, only members who live in the units in that building can own the system.

The condo owners are not entitled to an incentive payment for amounts related to the system placed on the common house.

Rule 273(402)(a) states that systems owned by individuals or businesses must be located on property owned by the same person that owns the system – there must be unity of the ownership. Additionally, the system must be owned by the customer receiving the incentive payments. (Rule 273(403).)

The letter stated that the PRCA will be purchasing and owning the system. Thus, it must also be the entity that owns the property on which the system is placed. It is also the entity that would receive the incentive payment.

However, Rule 273(406) states that "in the case of a renewable energy system on a condominium with multiple owners, … only one meter is needed to measure the system's gross generation, and then each owner's share can be calculated by using **each owner's percentage of ownership in the condominium building on which the system is located**." (Emphasis added.)

This language provides that a condo owner, even if he or she does not own the roof, could qualify for the incentive so long as part of the system is located on a roof above his or her unit and the owner must have a fee simple interest in the condo. However, the Department has also stated that if the property is owned by another corporation, the corporation is the only entity that can qualify for the incentive. There is nothing to suggest that a corporation or association would be treated differently as both entities meet the definition of "person" under RCW 82.04.030.

Currently, it appears that the individual members would not qualify for the incentive. The association, as a separate entity and owner of both the property and the system, would be the only person entitled to the incentive. This limits application of Rule 273(406) to situations where:

a. The members directly (not through a condo association) own a percentage of the condo building (very rare) or
b. The condo owners/members place the system on roofs over the owners' dwelling(s) (even though the roof is technically owned by the association).

In the above situations, it appears that the members could each receive a share of the incentive payment. For the systems located on the roofs of each condo building, if the individual members own those systems, those members could qualify to receive the incentive payment under Rule 273 regardless of the fact that they do not technically own the roof on which the system is placed so long as they receive permission from the association.

2. Sales tax exemption on machinery and equipment

The sales tax exemption is based on system output (measured by the system's DC nameplate rating) and is not impacted by proportional interests. If the system is 10kW or smaller, the system owner is entitled to a 100 percent sales tax exemption at the point of sale on the qualified machinery, equipment, and labor charges to install it. If the system is over 10kW in size, the system owner can apply to the Department of Revenue for a refund (remittance) of 75 percent of the sales tax paid on the qualified machinery, equipment, and labor costs associated with installation. (See WAC 458-20-263.)

According to the information provided, the common house system will be 17.55 kW and would qualify for the 75 percent sales tax refund on the purchase of the qualified machinery, equipment, and labor costs associated with the installation.

The information provided did not specify the size of the systems on the individual condo buildings (11 units), but if those systems are 10 kW or smaller, then the system owner would be entitled to a 100 percent sales tax exemption at the point of sale on the qualified machinery, equipment and labor costs associated with the installation.

This ruling is binding only on the matters expressly addressed herein upon both Puget Ridge Cohousing Association and the Department of Revenue under the facts presented. It will remain binding until: the facts change; the law (either by statute or court decision) changes; the applicable rule(s) change; the Department of Revenue publicly announces a change in the policy upon which this ruling is based; or Puget Ridge Cohousing Association is notified in writing that this ruling is not valid.

If you disagree with this ruling, you have the right to appeal to the Department of Revenue's Appeals Division, PO Box 47460, Olympia, WA 98504-7460. You must appeal within 30 days of the date of this letter. WAC 458-20-100 explains the Department's appeal procedures.

Sincerely,

Beth Mills

Beth Mills
Tax Information Specialist
Taxpayer Information & Education

Revised Code of Washington (RCW), Washington Administrative Code (WAC), and other interpretive statements may be found on the Department's web site at www.dor.wa.gov. Click on "Find a law or rule" on the left side of the home page.