

September 5, 2018

The Honorable David Kautter  
Assistant Secretary of the Treasury for Tax Policy and  
Acting Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20024

**Re: Issuing Proposed Regulations on IRC Section 48 on the Definition of Qualified Property**

Dear Acting Commissioner and Assistant Secretary Kautter—

I write to you to respectfully request that the Department of Treasury move forward expeditiously with proposed regulations on the definition of qualified property for the purposes of the investment tax credit under IRC Section 48. Current ambiguity on the Section 48 property definition, particularly the treatment of integrated energy storage equipment, presents continuing uncertainty for our industry members and their investors.

The Energy Storage Association (ESA) is the national trade association dedicated to energy storage, working toward a more resilient, efficient, sustainable and affordable electricity grid – as is uniquely enabled by energy storage. With more than 160 members, ESA represents a diverse group of companies, including independent power producers, electric utilities, energy service companies, financiers, insurers, law firms, installers, manufacturers, component suppliers and integrators involved in deploying energy storage systems around the globe. Our members have operations in every state, with over 90,000 people employed across our industry and room to grow.

ESA believes that the Department of Treasury has the information and resources it needs to move forward speedily on these Section 48 regulations. Following the issuance of IRS Notice 2015-70 published in October 2015, IRS staff already have reviewed numerous public comments and held meetings with interested parties to inform proposed regulations on the definition of qualified property under Section 48. Additionally, the IRS recently finalized guidance regarding the commencement of construction for Section 48 property in Notice 2018-59 in June 2018, which may have taken priority over work on the proposed regulations pertaining to Section 48.

Alternatively, ESA respectfully requests that the Treasury issue a notice or informal IRS guidance specifically on the Section 48 eligibility of integrated energy storage equipment. If the Treasury considers proposed regulations on the full scope of issues in Notice 2015-70 to require significantly more time and department resources, ESA recommends narrowly issuing any

guidance pertaining to energy storage in the definition of Section 48 qualified property. In PLR 201809003 published in March 2018, the IRS ruled that energy storage equipment retrofitted to qualified residential energy property under Section 25D would be eligible for the Section 25D investment tax credit under certain conditions. ESA is concerned that the IRS will refrain from issuing a similar PLR for Section 48 while proposed regulations are pending, and hence ESA strongly supports a notice or other guidance while the IRS refuses to issue PLRs on Section 48.

Thank you for your consideration. I look forward to working with you and your staff so that the U.S. energy storage industry can invest and hire with greater certainty.

Sincerely,



Jason Burwen  
Vice President of Policy  
Energy Storage Association

cc:

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