

Excise Tax Advisory

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ETA 3197.2015

Issue Date: August 25, 2015

Renewable Energy System Cost Recovery Incentive and Condominiums

Purpose

The renewable energy system cost recovery program set forth in RCW 82.16.110 to .130 and WAC 458-20-273 ("Rule 273") establishes an investment cost recovery incentive for individuals, households, businesses, and local governmental entities for each kilowatt-hour produced from a customer-generated electricity renewable energy system.

Rule 273(402) generally provides the following property and system ownership requirement, known as the unity of ownership requirement:

Single-owned systems, meaning systems owned by individuals, businesses, and a local governmental entity that is not in the light and power business, must be located on property owned by the same person that owns the system. Thus, single-owned systems must have a unity of ownership between the owned property on which the system is located and the owned system.

This ETA addresses how a condominium unit owner can meet the unity of ownership requirement under Rule 273.

Establishing the Unity of Ownership for Condo Owners

Condominium unit owners applying for the renewable energy system cost recovery program must certify that they own the system and that they own the property on which that system is situated.

Condo unit owners typically own:

1. the space within their unit and any limited common element attached or associated with the owner's space; and
2. an undivided fractional interest in the common elements of the

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condominium's other real property that is outside the unit space and the unit's limited common elements.

The condo owner can qualify for the incentive program so long as the owner owns or shares in ownership of the renewable energy system and the limited common element or common element on which it is installed.

**Ownership of
the System**

Single Ownership

Condo unit owners may wish to purchase a renewable energy system such as solar panels and install them on the roof or other common element. They may also wish to install them on a limited common element. If an owner individually purchases the system to benefit the owner's unit, the owner meets the unity of ownership requirement if the owner establishes that it owns an undivided fractional interest in the common element or the limited common element on which the system is installed. See discussion below regarding proof of ownership.

After establishing the unity of ownership requirement, the owner is eligible for the incentive up to the \$5,000 cap, assuming other program requirements are met.

Group Ownership

Condo unit owners may also wish to pool their resources to purchase a renewable energy system to benefit the condo units they own, installing the system on a common element or joint limited common element. This is permissible so long as the unit owners, and not the condominium association, own the system and unit owners can establish proof of ownership in the space upon which the system is installed as provided below.

After establishing the unity of ownership requirement, each owner is eligible for the incentive up to the \$5,000 cap, assuming other program requirements are met.

Association Ownership

If the condominium association owns the system, and not the unit owners, the association could not meet the unity of ownership requirement if the association installed the system on a common element or joint limited common element, assuming the association does not have ownership in the common elements or limited common elements.

If the association owns the system and space on which the system is installed, then it would meet the unity of ownership requirement, but only the association – and not the individual condo owners – would be eligible for the incentive limited to a single \$5,000 cap, assuming other program requirements are met.

**Proof of
Ownership –
Documentation**

The unit owner(s) must prove ownership of an interest in a limited common element or undivided fractional interest in the common elements by providing the Department with a copy of the condo association's declaration (and any amendments or addenda thereto) establishing ownership of the system and ownership of the space on which the system is installed, along with the certification application.

Examples

The following examples identify a number of facts and then state a conclusion. The examples should be used only as a general guide. The tax results of other situations must be determined after a review of all of the facts and circumstances.

**Example 1:
Condominium
Owners in
Multi-Building
Condominium**

Assume a condominium consists of four buildings. One of the buildings is a common element with a pool, recreational center, and reception area for group events (the "common building"). The condominium owners in the other three buildings wish to collectively purchase and install a renewable energy system on the roof of the common building. Each owner of the condominium units will own a portion of the system and can establish through their declaration that they are each entitled to an undivided fractional interest in the common elements, which includes the common building. Because each owner also owns an undivided fractional interest in the common building (the location where the system is installed), the owners are able to establish a unity of ownership.

**Example 2:
Fewer than all
Condo Owners
Owning System**

Assume the multi-building condominium in Example 1 consists of 50 units. 25 of the unit owners decide they want to collectively purchase and install solar panels, while the other 25 do not. With permission from the condominium association, the 25 unit owners are allowed to place the renewable energy system on the common building. The 25 unit owners applying for certification establish that they each own an undivided fractional ownership interest in the common building. Because each owner also owns an undivided fractional interest in the common building, the owners are able to establish a unity of ownership.

**Example 3:
Condo Owners
in a Single
Building with
System on
Common
Element**

Assume a condominium consists of a single building. Whether all the owners own the system (as in Example 1) or only a few of the owners own the system (as in Example 2), the owners of a single-building condominium that install the system on the roof or other common element must establish that they own both the system and an undivided fractional interest in the common elements, as in Example 1 and 2.
