

# One Minute Memo<sup>®</sup>



## SolarCity Acknowledges Audits Relating to its 1603 Treasury Grant Application

A recent Securities and Exchange Commission (SEC) filing by SolarCity Corporation has been causing a stir within the solar power development community.

Last month, in the SEC filing for its planned initial public offering, SolarCity disclosed that it has received subpoenas from the U.S. Department of Treasury's Office of the Inspector General (OIG). The subpoenas relate to possible overvaluations of certain solar panels in its application for federal grants and tax credits. SolarCity also disclosed that the Internal Revenue Service was commencing income tax audits for two of its investment funds relating to the same possible overvaluations.

Section 48 of the Internal Revenue Code provides a tax credit equal to 30% of the cost of certain solar energy property with respect to periods before January 1, 2017. In 2009, in order to further support the alternative energy industry in the midst of the financial crisis, Congress passed section 1603 of the American Recovery and Reinvestment Tax Act. Section 1603 provided that, in lieu of the tax credit, applicants may apply for a grant from the Department of Treasury equal to 30% of the cost of certain solar energy property placed in service in 2009 and 2010. The grant program was later extended to certain solar property placed in service in 2011.

The OIG has previously audited numerous other companies relating to the 1603 grant program and has issued several audit reports over the past two years. According to the reports, the audits are part of the OIG's ongoing oversight of the 1603 program. For the most part, the audit reports already issued resulted in either no or only minimal changes to the amount of the awarded grants.

Based on the description in the SolarCity SEC filing, the subpoenas that it and other companies have recently received ask for delivery of certain documents relating to "[its] applications for U.S. Treasury grants or communications with certain other solar development companies or certain firms that appraise solar energy property for U.S. Treasury grant application purposes." In addition, the SEC filing further discloses that OIG is "working with the Civil Division of the U.S. Department of Justice to investigate the administration and implementation of the U.S. Treasury grant program, including possible misrepresentations concerning the fair market value of the solar power systems submitted for grant under that program made in grant applications by companies in the solar industry."

Some news reports have speculated that the impetus for the investigation is related to practices of several solar companies with respect to their leased systems. According to these reports, many of the solar companies under investigation report a higher fair market value for leased systems than the valuation reported for customer-owned solar systems. This practice increases the cash grant received by solar companies in the case of leased installations. The premiums reported by some companies have been as high as 50% of the customer-owned reported values -- large enough, apparently, to raise some eyebrows at the Department of Treasury.

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