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Energy Law

**ALERT**

DECEMBER 2012

## IRS Revokes Ruling Finding Facility-Specific Power Purchase Agreements Are Part of the Facility

The Internal Revenue Service (IRS) recently revoked Private Letter Ruling (PLR) 201214007, which found that facility-specific power purchase agreements (PPAs) are considered part of the underlying wind energy facilities and, therefore, no portion of the purchase price of the wind energy facilities should be allocated to the PPAs. In PLR 201249013, released December 7, 2012, the IRS determined that PLR 201214007 is not in accord with the IRS's current views and that the portion of the purchase price that is attributable to the PPAs must be allocated to the PPAs and not to the wind energy facilities. In the IRS's view, the portion of the purchase price allocated to the PPAs must be amortized over 15 years rather than the five-year depreciation period for the energy facilities.

In PLR 201214007, an electric company acquired all the membership interests in an unrelated entity that owned and operated (or was constructing) wind energy facilities. The entity had entered into PPAs that obligated the energy producer to sell, and the purchaser to buy, all or a specified cap amount of electricity that was produced at that specific facility at a specified price for a specified term of years. In the case of a specified cap amount, some PPAs contained a price adjustment for sales in excess of the cap amount. Under no circumstances could the entity fulfill its obligations under the PPAs from sources other than the specified energy facility. As a result, a transfer of a PPA without a transfer of the related wind energy facility would leave the transferee with no way to satisfy the PPA. The PPAs had significant value because energy rates had fallen since the PPAs' execution.

While private letter rulings may be relied on only by the requesting taxpayer and may not be used or cited as precedent, they generally indicate the IRS's position on particular issues.

If you have any questions, please contact [Alan J. Tarr](mailto:atarr@loeb.com) at [atarr@loeb.com](mailto:atarr@loeb.com) or 212.407.4900.

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