

From: Burau, Dean M. [mailto:DBurau@winston.com]
Sent: Monday, August 21, 2017 2:04 PM
To: Shalley, Nicolle M.
Cc: Birenbaum, Jonathan; Greenberg, Tara; Bielarski, Edward J; Young, Keino
Subject: Sale of GREC Facility - Grant Recapture

Dear City Attorney Shalley,

Further to our discussion, because GREC was the applicant that received the grant from the U.S. Treasury Department under Section 1603 of the American Recovery and Reinvestment Tax Act of 2009, GREC will be obligated to pay the required recapture amount as a result of the sale of the GREC facility to GRU. Moreover, receipt of a grant by GREC did not create a lien on the facility in favor of the United States. Section VII (entitled "Recapture") of the *Payments for Specified Energy Property in Lieu of Tax Credits under the AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009* (referred to as the "Program Guidance") prepared by the U.S. Treasury Department, Office of the Fiscal Assistant Secretary, dated July 2009, and revised March 2010 and April 2011, specifically provides:

"Applicants are not required to post a bond as a condition of receiving payment under the section 1603 program and **receipt of payment does not create a lien on the property in favor of the United States** [emphasis added]. However, funds that must be repaid to the Treasury under these rules are considered debts owed to the United States and if not paid when due, will be collected by all available means **against any assets of the applicant**, [emphasis added] including enforcement by the United States Department of Justice. Debts arising under these rules are not considered tax liabilities."

Regards,

Dean M. Burau

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