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Q&A on Tax Credits for Sections 25C and 25D

Notice 2013-70

SECTION 1. PURPOSE

This notice provides guidance with respect to the credits for nonbusiness energy property under § 25C of the Internal Revenue Code (Code) and residential energy efficient property under § 25D of the Code. This notice incorporates the changes made to § 25C by section 710 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. No. 111-312, 124 Stat. 3296 (2010) (the 2010 Act) and to § 25C and § 25D by sections 104 and 401 of the American Taxpayer Relief Act of 2012, Pub. L. No. 112-240, 126 Stat. 2313 (2013) (the 2012 Act).

SECTION 2. BACKGROUND

Section 25C allows a credit in an amount equal to the sum of (1) 10 percent of the amount paid or incurred by the taxpayer for qualified energy efficiency improvements installed during the year, and (2) the amount of the residential energy property expenditures paid or incurred by the taxpayer during the year.¹ The credit is allowed for qualifying property placed in service through December 31, 2013.²

Section 25D allows a credit for qualified expenditures made by a taxpayer for residential energy efficient property. Taxpayers may claim the § 25D credit for qualified property placed in service before January 1, 2017.

On May 11, 2009, the Internal Revenue Service (the Service) issued Notice 2009-41, 2009-1 C.B. 933, to provide procedures that manufacturers may follow to certify that

¹ For property placed in service in taxable years beginning in 2009 and 2010, § 25C allowed taxpayers to claim a maximum aggregate credit of \$1,500. However, for years other than taxable years beginning in 2009 and 2010, § 25C limits the credit allowable to any taxpayer to the excess of \$500 over the aggregate credits allowed to that taxpayer under § 25C for all prior taxable years ending after December 31, 2005 (including credits claimed in 2009 and 2010).

The maximum amount of credit allowed for any taxable year is \$50 for any advanced main air circulating fan; \$150 for any qualified natural gas, propane, or oil furnace or hot water boiler; and \$300 for any item of energy-efficient building property. In addition, in the case of amounts paid or incurred for exterior windows, including skylights, § 25C limits the credit allowable to any taxpayer to the excess of \$200 over the aggregate maximum amount of the credits allowed to that taxpayer for exterior windows under § 25C for all prior taxable years ending after December 31, 2005.

² Section 25C expired on December 31, 2011, but was retroactively extended by the 2012 Act.

property satisfies certain conditions of § 25D. The notice defines qualified expenditures for residential energy efficient property based on the definitions in § 25D(d).

On June 22, 2009, the Service issued Notice 2009-53, 2009-1 C.B. 1095, to provide procedures that manufacturers may follow to certify property as being eligible for the credit under § 25C. The notice defines the terms qualified energy efficiency improvements and residential energy property expenditures based on their respective definitions in § 25C(c) and (d) as in effect at that time. The 2010 Act subsequently modified those definitions, however, by updating certain efficiency standards and making other changes. As a result of those modifications, for properties placed in service in 2011, 2012, and 2013, taxpayers must rely on the definitions provided in § 25C(c) and (d) as amended by the 2010 Act.

Both Notice 2009-41 and Notice 2009-53 provide guidance to taxpayers seeking to claim credits under §§ 25C and 25D in reliance on a manufacturer's certification. The notices provide that for either credit, a taxpayer may rely on a manufacturer's certification that property is eligible for the credit so long as the Service has not withdrawn the manufacturer's right to make the certification. The notices further clarify that the Service may determine that a manufacturer's certification is erroneous; in such cases, the Service will withdraw a manufacturer's right to provide a certification on which future purchasers of the component or property may rely, and taxpayers purchasing the component or property after the date on which the Service publishes an announcement of the withdrawal may not rely on the manufacturer's certification.

SECTION 3. QUESTIONS AND ANSWERS RELATED TO BOTH § 25C (NONBUSINESS ENERGY PROPERTY) AND § 25D (RESIDENTIAL ENERGY EFFICIENT PROPERTY)

Q-1: Are the credits refundable or nonrefundable?

A-1: Both the § 25C credit and the § 25D credit are nonrefundable personal tax credits. A taxpayer claiming a nonrefundable credit can only use it to decrease or eliminate a tax liability. A taxpayer will not receive a tax refund for any amount that exceeds the taxpayer's tax liability for the year.

Q-2: Is a taxpayer who is subject to the alternative minimum tax (AMT) eligible to claim the credits?

A-2: Yes. A taxpayer who is subject to the AMT is eligible to claim both the § 25C credit and the § 25D credit and may offset the AMT with those credits.

Q-3: May a taxpayer carry forward unused credits to another tax year?

A-3: A taxpayer may not carry forward the § 25C credit. Thus, if a taxpayer cannot claim all or a portion of the credit in the year in which the related expenditure is treated as made, the unused amount of the credit will expire. However, a taxpayer may carry the § 25D credit forward to future tax years pursuant to § 25D(c).

Q-4: Can a taxpayer claim the credits for expenditures incurred for a newly constructed home?

A-4: A taxpayer can claim the § 25C credit only for qualifying expenditures incurred for an existing home or for an addition or renovation to an existing home, and not for a newly constructed home. In contrast, a taxpayer can claim the § 25D credit for qualifying expenditures incurred for either an existing home or a newly constructed home.

Q-5: May a taxpayer claim the credits in the year of purchase if installation of the qualifying property occurs in a later year?

A-5: No. A taxpayer may not claim the credits until the year the property is installed. The installation must be completed before the end of 2013 for the § 25C credit and before the end of 2016 for the § 25D credit.

In the case of an expenditure incurred in connection with the construction or reconstruction of a structure, a taxpayer cannot claim the credits until the year in which the taxpayer's original use of the constructed or reconstructed structure begins, and the taxpayer's original use of the constructed or reconstructed structure must begin before the end of 2013 for the § 25C credit and before the end of 2016 for the § 25D credit.

Q-6: Are the credits available for improvements made to a second home (for example, a vacation home or an investment property)?

A-6: Improvements made to a second home are not eligible for the credit under § 25C. Section 25C(c) and (d) require qualified energy efficiency improvements and residential energy property to be installed in or on a dwelling unit owned and used by the taxpayer as the taxpayer's principal residence (within the meaning of § 121).

With respect to the credit under § 25D, fuel cell property credits are not available for second homes. Section 25D(d)(3) requires fuel cell property to be installed on or in connection with a dwelling unit that is used as the taxpayer's principal residence (within the meaning of § 121). However, a taxpayer may claim a § 25D credit for other qualifying properties described in § 25D that are not fuel cell properties (solar electric property, solar water heating property, small wind energy property, and geothermal heat pump property) installed in or on a dwelling unit used as a second home or a vacation

home by the taxpayer. But a taxpayer may not claim the § 25D credit for expenditures for improvements made to an investment property, such as rental property, that is not also used as a residence by the taxpayer.

Q-7: May a taxpayer claim a credit if the qualified property is also used for business purposes, such as in a dwelling unit in which the taxpayer also conducts a business?

A-7: For both credits under §§ 25C and 25D, if a taxpayer uses property solely for business purposes, the property will not qualify for the credit. For a taxpayer who otherwise qualifies for the credits, but whose use of the qualified property for business purposes exceeds 20 percent, §§ 25C(e)(1) and 25D(e)(7) provide that the taxpayer, when calculating the amount of credit, may take into account only that portion of the expenditures for the property that are properly allocable to use for nonbusiness purposes. A taxpayer who qualifies for the credits and whose use of the qualified property for business purposes is not more than 20 percent may claim the full credit.

Q-8: May a taxpayer include labor costs when calculating the credits?

A-8: When calculating the § 25C credit, a taxpayer may include the labor costs for the onsite preparation, assembly, or original installation of residential energy property such as qualifying electric heat pumps, qualifying air conditioners, and qualifying biomass stoves. In contrast, a taxpayer may not include the labor costs for qualified energy efficient building envelope components including a qualifying insulation material or system, exterior window, skylight, exterior door, or roof. Thus, for an energy efficient building envelope component for which a taxpayer pays a fixed price, the taxpayer must make a reasonable allocation between the qualifying cost of the property and the nonqualifying labor cost of the installation. When calculating the § 25D credit, a taxpayer may include the expenditures for labor costs properly allocable to the onsite preparation, assembly, or original installation of the qualified property and for piping or wiring to interconnect the qualifying property to the home.

Q-9: May a taxpayer include sales tax when calculating the amount of expenditures eligible for the credits?

A-9: Generally, yes. Because the sales tax on a qualifying property is part of the amount paid or incurred, a taxpayer may include the amount of sales tax when calculating both the § 25C credit and the § 25D credit. However, because labor costs for qualified energy efficient building envelope components in § 25C are ineligible for the credit as described in A-8, to the extent that sales tax is allocable to these labor costs, the sales tax is similarly ineligible for the credit.

Q-10: Are tenant-stockholders in a cooperative housing corporation and condominium owners eligible to claim the credits?

A-10: Yes. Sections 25C(e)(1) and 25D(e)(5) treat a tenant-stockholder (as defined in § 216) in a cooperative housing corporation (as defined in § 216) as making his or her proportionate share (as defined in § 216(b)(3)) of any expenditures of such corporation. Similarly, §§ 25C(e)(1) and 25D(e)(6) treat a member of a condominium management association as having made the individual's proportionate share of any expenditures of such association.

Q-11: If a government or a public utility provides a subsidy (for example, an incentive, grant, or rebate) to a taxpayer to purchase or install a qualifying property under § 25C or § 25D, is the taxpayer required to reduce the cost basis of the property by the amount of the subsidy received, thereby reducing the amount of the qualified expenditure for which a credit may be claimed?

A-11: The answer depends on the facts that apply to each taxpayer.

.01 Public Utility. Under § 136, if a public utility provides (directly or indirectly) a subsidy to a customer for the purchase or installation of any energy conservation measure, the customer does not include in his or her gross income the value of the subsidy. As a result, the taxpayer may not claim a credit for the amount of the subsidy that is excluded from the taxpayer's gross income. This rule applies whether a third-party contractor receives a subsidy on behalf of the taxpayer or the taxpayer receives the subsidy directly. Not all payments from a public utility fall within the provisions of § 136.

.02 Rebates. Rebates generally represent a reduction in the purchase price or cost of property, and the taxpayer must exclude the amount of the rebate from the amount of the qualified expenditure on which the taxpayer calculates the tax credit. In general, in order for a receipt of funds to be considered a nontaxable rebate, the rebate must be based on or related to the cost of the property; the rebate must be received from someone having a reasonable nexus to the sale of the property, for example, the manufacturer, distributor, or seller/installer; and the rebate must not represent payment or compensation for services.

.03 State Energy-Efficiency Incentives. A state may provide energy-efficiency incentives to encourage taxpayers to purchase qualifying property under § 25C or § 25D. Section 136 does not address these incentives.

Generally, a taxpayer is not required to reduce the purchase price or cost of property acquired with a governmental energy-efficiency incentive that is not a rebate. Many states label their energy-efficiency incentives as rebates, but these incentives may not in fact constitute rebates or purchase-price adjustments for federal income tax purposes.

However, for qualifying property under § 25C placed in service after 2010 that is financed in whole or in part by subsidized energy financing, the amount of expenditures eligible for the § 25C credit does not include any expenditures that are made from subsidized energy financing. Subsidized energy financing means financing provided under a federal, state, or local program a principal purpose of which is to provide subsidized financing for projects designed to conserve or produce energy.

Q-12: If a taxpayer is eligible to claim a state tax credit related to the purchase of qualifying property under § 25C or § 25D, is the taxpayer required to reduce the cost basis of the property by the amount of the state tax credit claimed, thereby reducing the amount of the qualified expenditure for which the § 25C or § 25D credit may be claimed?

A-12: No. The taxpayer does not reduce the amount of the qualified expenditure by the amount of the state tax credit claimed in calculating the credits.

Q-13: If a taxpayer finances the purchase of a qualifying property under § 25C or § 25D through the seller of the property, may the taxpayer calculate the amount of the credit based on the full cost of the property if the taxpayer is contractually obligated to pay that entire amount?

A-13: Yes. If the taxpayer is contractually obligated to pay the full cost of the qualifying property, the taxpayer may claim a tax credit based on that amount.

Q-14: May a taxpayer claim a credit for payments of interest owed through financing or for expenses such as an origination fee or an extended warranty?

A-14: No. Interest expense is not part of the expenditure for qualifying property under § 25C or § 25D. Other miscellaneous costs such as an origination fee or an amount paid for an extended warranty are also ineligible for the credits.

Q-15: May a taxpayer claim a credit for property that the taxpayer leases rather than purchases?

A-15: No. A taxpayer must purchase the qualifying property to claim the credits under §§ 25C and 25D.

Q-16: May a taxpayer claim the credits when the taxpayer does not have a manufacturer's certification that the property is eligible for the credit?

A-16: Yes. A taxpayer may qualify for the credits under §§ 25C and 25D without a manufacturer's certification statement if the taxpayer can show that the property meets

the required efficiency standards. A taxpayer should retain documentation sufficient to establish the entitlement to, and amount of, any credit.

SECTION 4. QUESTIONS AND ANSWERS RELATING TO § 25C (NONBUSINESS ENERGY PROPERTY)

Q-17: If a taxpayer claimed a § 25C credit in the amount of \$1,000 in 2009, is the taxpayer eligible to claim additional credits for qualifying § 25C property expenditures made in 2013?

A-17: No. Prior law allowed taxpayers to claim an aggregate credit of \$1,500 under § 25C for the 2009 and 2010 tax years. However, the 2010 Act amended § 25C(b) to provide a lifetime limitation of \$500 of which no more than \$200 may be attributable to expenditures on windows. Thus, a taxpayer who has claimed less than \$500 in total for all previous years is eligible for the § 25C credit in 2013. For example, a taxpayer who claimed a § 25C credit in the amount of \$100 in 2006 and \$50 in 2007 for non-window expenditures and claimed no § 25C credit in 2009, 2010, 2011, and 2012 is eligible to claim up to \$350 as a § 25C credit for 2013 (of which no more than \$200 may be attributable to expenditures on windows).

Q-18: Is a sealant such as caulk or weather stripping an insulation material or system eligible for the credit?

A-18: Section 25C(c) defines a building envelope component as any insulation material or system that is specifically and primarily designed to reduce the heat loss or gain of a dwelling unit when installed in or on such dwelling unit and meets the prescriptive criteria for such material or system established by the 2009 International Energy Conservation Code (IECC), including supplements, as in effect on February 17, 2009.

Section 402.4 of the 2009 IECC addresses components to reduce air leakage. Section 402.4.1 provides, in part, that the building thermal envelope must be durably sealed to limit infiltration. The following must be caulked, gasketed, weatherstripped or otherwise sealed with an air barrier material, suitable film, or solid material:

1. All joints, seams, and penetrations.
2. Site-built windows, doors and skylights.
3. Openings between window and door assemblies and their respective jambs and framing.
4. Utility penetrations.
5. Dropped ceilings or chases adjacent to the thermal envelope.
6. Knee walls.
7. Walls and ceilings separating a garage from conditioned spaces.
8. Behind tubs and showers on exterior walls.

9. Common walls between dwelling units.
10. Attic access openings.
11. Rim joist junction.
12. Other sources of infiltration.³

Thus, if a taxpayer uses an air barrier material, suitable film, or solid material such as caulk or weatherstripping to seal the areas of a principal residence listed above, the taxpayer may claim the § 25C credit with respect to amounts paid for such sealant as long as the taxpayer satisfies the other requirements of § 25C.

Q-19: The manufacturer of a radiant barrier would like to certify that its product is eligible for the § 25C credit. Can the manufacturer refer to the U-factor as an alternative to the R-value when determining if the requirements of the 2009 IECC are satisfied?

A-19: Yes. Section 25C requires that an insulation material or system meet the prescriptive criteria for such material or system, established by the 2009 IECC, as in effect on February 17, 2009. The 2009 IECC established criteria for insulating materials to reach certain minimum R-values, which measures the material's ability to stop heat transfer. Instead of the R-value, section 402.1.3 of the 2009 IECC allows taxpayers to use the U-factor, which measures the amount of heat transmitted through a given assembly, as an alternative criterion. Thus, a manufacturer of a radiant barrier can use the U-factor instead of the R-value if measured in compliance with the provisions of section 402.1.3 of the 2009 IECC, as in effect on February 17, 2009.

Q-20: Is a window sash replacement kit considered an exterior window under § 25C(c)(2)(B) that is eligible for the § 25C credit?

A-20: Yes. Although window sash replacement kits are generally comprised of only the sashes, glazing, and adjacent parts and are not whole windows, the Service considers the kit an exterior window for purposes of the credit. To be eligible for the credit, pursuant to § 25C(c)(1), the window sash replacement kit must meet the requirements of the Energy Star program.

SECTION 5. QUESTIONS AND ANSWERS RELATING TO § 25D (RESIDENTIAL ENERGY EFFICIENT PROPERTY)

.01 General Questions.

Q-21: A taxpayer may claim a § 25D credit if a qualifying property is installed in or on an existing home or a newly constructed home. In the case of a newly constructed

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home, how does the taxpayer determine the cost of the qualifying property under § 25D?

A-21: The taxpayer may request that the homebuilder make a reasonable allocation or the taxpayer may use any other reasonable method to determine the cost of the property that is eligible for the § 25D credit. See Q&A 8 for information concerning labor costs.

Q-22: A homebuilder constructed a house in which qualifying § 25D property was installed in year 1. The house was not sold and used as a residence until year 2. May a taxpayer that buys the home for use as a residence in year 2 claim the § 25D credit?

A-22: Yes. As long as the taxpayer begins to use the house as a residence before 2017, the taxpayer may claim the § 25D credit in year 2. Section 25D(e)(8) treats an expenditure in connection with the construction or reconstruction of a structure as made when the taxpayer begins to originally use the constructed or reconstructed structure as a residence.

Q-23: Same facts as Q-22, but the house was a model home, and the qualifying property was used during the time it was marketed for sale. May a taxpayer claim the § 25D credit in year 2?

A-23: Yes. The expenditure is treated as made when the use of the structure as a residence begins.

Q-24: In 2010, Taxpayer A purchases and moves into a newly constructed home that contains qualifying § 25D property. Taxpayer A claims the § 25D credit in 2010. In 2013, Taxpayer A sells the home to Taxpayer B. Is Taxpayer B eligible for a credit on the same § 25D property?

A-24: No. Section 25D(e)(8) generally treats an expenditure as made when the original installation of the qualifying property is completed. In the case of an expenditure incurred in connection with the construction or reconstruction of a structure, the expenditure is treated as made when the original use of the constructed or reconstructed structure as a residence by the taxpayer begins. Thus, only the taxpayer who begins the original use of the constructed or reconstructed structure as a residence or the taxpayer using the home as a residence when the property was originally installed is eligible for the tax credit.

.02 Solar Electric Property

Q-25: If a taxpayer installs solar electric property other than directly on the taxpayer's home, may the taxpayer claim the § 25D credit?

A-25: Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit that is used as a residence by the taxpayer. Therefore, if solar panels that are not directly located on the taxpayer's home use solar energy to generate electricity directly for the taxpayer's home the taxpayer may claim the § 25D credit.

Q-26: A taxpayer purchases solar panels that are placed on an off-site solar array and connected to the local public utility's electrical grid that supplies electricity to the taxpayer's residence. The taxpayer enters into a direct contractual arrangement with the local public utility that supplies electricity to the taxpayer's residence to allow the taxpayer to provide electricity to the grid using a net metering system that measures the amount of electricity produced by the taxpayer's solar panels and transmitted to the grid and the amount of electricity used by the taxpayer's residence and drawn from the grid. The contract states that the taxpayer owns the energy transmitted by the solar panels to the utility grid until drawn from the grid at his residence. Absent unusual circumstances, the panels will not generate electricity for a specified period in excess of the amount expected to be consumed at the taxpayer's residence during that specified period. Can the taxpayer claim the § 25D credit?

A-26: Yes. Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit used as a residence by the taxpayer. The taxpayer's expenditure for off-site solar panels under this type of contractual arrangement with a local public utility that supplies electricity to the taxpayer's residence meets the definition of qualified solar electric property expenditure.

Q-27: A taxpayer purchases and installs solar electric property to generate electricity for the taxpayer's own home and to allow the taxpayer to sell excess electricity to a utility. Unlike the taxpayer in Q-26, this taxpayer generates more than a minimal amount of excess electricity. Does this taxpayer qualify for the § 25D credit on the full amount of the solar electric property?

A-27: No. Under these facts, the taxpayer may not claim the § 25D credit for the full amount of the solar electric property expenditure because the property not only generates electricity for use in the taxpayer's home, but it also generates electricity for sale by the taxpayer. The taxpayer may only claim the § 25D credit for the portion of the solar electric property expenditure that relates to the electricity generated for use in the taxpayer's home. In addition, the taxpayer may be able to claim the § 48 credit for a portion of the solar electric property expenditure if the requirements of § 48 are satisfied.

Q-28: Is an expenditure for a solar air heater eligible for the § 25D credit?

A-28: No. Section 25D(d)(2) defines a qualified solar electric property expenditure, in part, as an expenditure for property that uses solar energy to generate electricity for use in a dwelling unit. Section 25D(d)(1) defines a qualified solar water heating property expenditure, in part, as an expenditure for property to heat water for use in a dwelling unit if at least half of the energy used by such property for such purpose is derived from the sun. A solar air heater that warms air and does not generate electricity or heat water is not eligible for the § 25D credit.

Q-29: Is an expenditure for a solar powered exhaust fan eligible for the § 25D credit?

A-29: Only the component part of a property that actually generates electricity for the dwelling unit is eligible for the § 25D credit. If a solar panel on a fan generates electricity to power the fan for use in the dwelling unit, the cost of the panel component may be eligible for the § 25D credit if all the requirements of § 25D are met; however, the entire cost of the fan is not eligible. Additionally, § 25D(e)(1) specifically allows certain labor costs to be taken into account when calculating the credit. Under this provision, a taxpayer may take into account only the labor costs allocable to the qualifying component when calculating the credit.

.03 Small Wind Energy Property.

Q-30: May a taxpayer claim the § 25D credit for the purchase of small wind energy property made from remanufactured wind turbines?

A-30: Yes. Section 25D does not require that the original use of the qualified property or parts of the property begin with the taxpayer.

.04 Geothermal Heat Pump Property.

Q-31: A taxpayer contacts a seller to inquire about the installation of a geothermal heat pump to heat his home. The seller/installer informs the taxpayer that the following items must be installed in addition to the geothermal heat pump: heat exchange equipment in the ground outside of the house, a distribution system for the home, and a back-up emergency heating or cooling system. Which of these costs, if any, are eligible for the § 25D credit?

A-31: Only the cost of the heat exchange equipment in the ground outside the house can be eligible for the § 25D credit. The costs for the distribution system for the home and a back-up emergency heating or cooling system are not eligible for the credit because they are not incurred for qualified geothermal heat pump property. Section 25D(d)(5)(B) defines qualified geothermal heat pump property as any equipment that (1) uses the ground or ground water as a thermal energy source to heat the dwelling unit or

as a thermal energy sink to cool such dwelling unit, and (2) meets the requirements of the Energy Star program in effect at the time that the expenditure for such equipment is made. Section 25D(e)(1) provides that expenditures for piping and wiring to interconnect qualified property to a dwelling unit are eligible for the § 25D credit. However, nothing in § 25D extends the credit to other auxiliary equipment such as distribution systems within the dwelling unit or backup emergency heating and cooling systems.

Q-32: Is a manufacturer of geothermal heat pump property that provides a certification pursuant to Notice 2009-41 required to become an Energy Star partner?

A-32: No. A manufacturer of geothermal heat pump property is not required to become an Energy Star partner to provide a certification pursuant to Notice 2009-41. However, the geothermal heat pump property must meet the requirements of the Energy Star program in effect at the time the taxpayer purchases the property. Furthermore, any manufacturer that provides a certification must retain in its records documentation establishing that the property meets those requirements and, upon request, make such documentation available for inspection by the Service.

SECTION 6. EFFECT ON OTHER DOCUMENTS

This notice clarifies and amplifies Notice 2009-53 and Notice 2009-41.

SECTION 7. DRAFTING INFORMATION

The principal author of this notice is Martha M. Garcia of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice contact Ms. Garcia on (202) 622-3110 (not a toll-free call).