DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

OFFICE OF
CHIEF COUNSEL

March 26, 2012

Mr. John J. Wagner
Kutak Rock LLP
The Omaha Building
1650 Farnam Street
Omaha, Nebraska 68102-2186

Dear Mr. Wagner:

This letter responds to your letter dated January 16, 2012, on behalf of the Alaska Housing Finance Corporation (AHFC), accompanying an Application for its proprietary software, AkWarm software v.2.1.3.2 (AkWarm), to be included on the list of approved software for purposes of the New Energy Efficient Home Credit under section 45L of the Internal Revenue Code.

Notice 2008-35 (Notice) provides the requirements for software programs to be included on a list of approved software that may be used to calculate energy consumption for purposes of § 45L. Section 5.02(4) of the Notice requires that the software developer declare, under penalties of perjury, either:

i. That the software program has satisfied all tests required to conform to the software accreditation process prescribed in Residential Energy Services Network Publication (RESNET) No. 05-01 or No. 06-001 (RESNET Publications), or

ii. That the software program has satisfied all tests necessary to permit a determination that the software program is sufficiently accurate to justify its use in calculating energy consumption for purposes of providing a certification under section 3 of the Notice.

Because the representation submitted was qualified by a discussion of the basis of the representation that had the effect of limiting the representation, the Application was not accepted. Since the § 45L credit only applies to homes acquired before January 1, 2012, we do not anticipate that we will add any additional software to the list of approved software for purposes of § 45L.

The following is provided to you as general information. Section 3.03(3) of the Notice requires calculation of heating and cooling energy consumption in the manner prescribed in section 2.03 of the Notice. Section 2.03 requires that, for purposes of calculating energy savings under section 2.02 of the Notice, heating and cooling energy consumption must be calculated in accordance with the procedures prescribed in

RESNET Publications or in accordance with an equivalent calculation procedure. Under § 4.01(6) of the Notice, an equivalent calculation procedure is a procedure that produces results comparable to the results obtained under the procedures prescribed in RESNET Publications.

The information submitted with your Application on January 16, 2012, does not appear to show that AkWarm meets the requirements of § 5.02(4)(ii) of the Notice. RESNET uses the Home Energy Rating System Building Energy Simulation Test (HERS BESTEST) Tier One to predict building heating and cooling loads. The information submitted indicates that, although heating load results from AkWarm fell within the 90% confidence intervals required by HERS BESTEST standards, only 76% of the cooling load results fell within the 90% confidence intervals required by the HERS standards. Although AkWarm was submitted only for use in Alaska, the requirement that software adequately predict cooling loads applies to all applications for the list of approved software. Thus, because the cooling load results from AkWarm are not comparable to those of used by RESNET, the information submitted does not show AkWarm produces results comparable to the results obtained under the procedures prescribed in RESNET Publications.

In addition, the information submitted for other parts of the RESNET standards, such as RESNET HVAC tests and duct distribution tests only show that other agencies have approved AkWarm for their purposes or standards. The material does not show that AkWarm produces test results that are comparable to the results obtained under the procedures prescribed in RESNET Publications.

I hope this information is helpful to you. If you have any questions, please call me or Jennifer Bernardini at 202-622-3110.

Sincerely,

Charles B. Ramsey
Chief, Branch 6
(Passthroughs & Special Industries)