North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 21, 2014

[redacted]

RE: [redacted] Private Ruling Letter
EIN: [redacted]

Dear [redacted]:

This letter is in response to your letter to Mr. Lennie Collins dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") issue a private letter ruling clarifying whether the Taxpayer can use the original third-party verified taxable basis of the Renewable Energy Property ("Asset") when determining the basis for calculating the North Carolina Renewable Energy Tax Credit ("NC Energy Credit") provided in N.C. Gen. Stat. § 105-129.16A.

The statement of facts submitted in your letter submitted for the Department's consideration is summarized as follows:

[redacted] has partnered with an investor ("Investor A") and formed multiple North Carolina Limited Liability Company Affiliates ("Taxpayer"). The Taxpayer intends to construct and commission solar utility property in North Carolina. The equipment will qualify as Renewable Energy Property as defined under N.C. Gen. Stat. § 105-129-15(7)(c) and is expected to be eligible for the NC Energy Credit in the 2014 tax year. Taxpayer wishes to finance the operations of the Asset with a capital lease structure. The Taxpayer will construct the Asset by means of the construction financing from an institutional lender and Taxpayer's capital.

At commissioning, the Taxpayer will lease the Asset to a third party which would become the Lessee ("Lessee"). The Lessee (Investor B) will commit to a prepaid lease payment (rent) to the Taxpayer to satisfy the debt of the construction loan and other construction obligations within three months of the commissioning of the Asset. The lease would be deemed a Capital Lease ("Capital Lease"). The legal title of the Asset and all contracts and income agreements would remain with the Taxpayer but the Lessee would be responsible for all federal tax obligations of the Asset during the lease term. The Lessee would lease the Asset for a fixed term of five years.

The lease meets the following characterizations of a capital lease: a) the option to purchase is less than fair market value; and b) the Net Present Value of the lease exceeds ninety percent (90%) of the Fair Market Value ("FMV") of the leased property. Once the obligations of the Capital Lease have been fulfilled and the Lessee exercises the buyout, the title of the Asset will then be conveyed to the Lessee.

ISSUE:

Can the Taxpayer use the original third-party verified taxable basis of the Asset when determining the basis for calculating the NC Energy Credit?

Department's Response:

Yes. Taxpayer qualifies to utilize the original cost of asset when determining the NC Energy Credit. According to the statement of facts, the Asset is constructed by the Taxpayer. The title, contracts and income agreements remain with the Taxpayer until the obligations of the lease have been fulfilled and the purchase agreement executed in year six of the lease. The statute indicates that Taxpayer, the lessor in a capital lease transaction, is entitled to claim the credit provided under N.C. Gen. Stat. § 105-129.16A because Taxpayer constructed and placed in service the renewable energy and will not provide written certification to Lessee that Lessee may claim the credit.

For purposes of computing the amount of the NC Energy Credit for property owned by the taxpayer, *"Cost"* is determined "pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code." [N.C. Gen. Stat. § 105-129.115(2)] According to IRC § 1012, the basis of property shall be "the cost of such property." Since the Cost associated with the Asset construction was incurred by the Taxpayer and paid to third party suppliers and contractors and will be certified in a report prepared by an independent accountant, Taxpayer must use the original third-party verified taxable basis of the Asset when determining the basis for calculating the NC Energy Credit.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. Your statement of facts and our findings are subject to audit verification. If the facts and circumstances given are not accurate, or if there are other facts that were not disclosed that might cause the Department to reach a different conclusion, then the taxpayer requesting this ruling may not rely on it. A letter ruling is not equivalent to a Technical Advice Directive that generally affects a large number of taxpayers. If a taxpayer relies on this ruling and the Department discovers, upon examination, that the fact situation of the taxpayer is different in any material aspect from the facts and circumstances given in this ruling, then the ruling will not afford the taxpayer any protection. It should be noted that this document is not to be cited as precedent and that a change in statute, a regulation, or case law could void this ruling.

Should you have any questions, please contact me.

Very truly yours,

[redacted]