North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 24, 2014

[redacted]

RE: Expedited Private Letter Ruling Request for [redacted]
EIN: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") issue an expedited private letter ruling regarding whether tax credits under N.C. Gen. Stat. § 105-129.16A that are allocated to [redacted]'s partners ("[redacted]") may be applied by [redacted] against their North Carolina tax liability without any limitation resulting from the credits arising from passive activities within the meaning of section 469 of the Internal Revenue Code. Your letter was received by the Department on [redacted].

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

[redacted] is a partnership organized under North Carolina law and currently has two partners, one of which is an LLC that is the general partner and the other of which is an individual who is a limited partner. The [redacted] is seeking investors for the partnership. The investors will acquire limited partnership interests in the partnership.

The [redacted] has negotiated an arrangement with a developer of renewable energy projects that will result in the formation of an LLC ("[redacted]") in which [redacted] will have an interest of approximately [redacted] and [redacted] will have an interest of approximately [redacted]. The [redacted]'s only asset will be an interest of approximately [redacted] in another LLC ("[redacted]"). [redacted] will be owned by [redacted] and an unrelated party that will have an interest of approximately [redacted] in [redacted]. [redacted] will own several renewable energy projects comprised of installations of solar photovoltaic electricity generation equipment in North Carolina ("[redacted]"). The [redacted] will lease the [redacted] to another entity that will operate the facilities and produce electricity.

The [redacted] will finance the acquisition of the [redacted] through capital contributions by its partners and by a loan from a banking institution. None of the costs of the [redacted] will be provided by public funds within the meaning of that term under N.C. Gen. Stat. § 105-129.16A(a).

For purposes of the ruling request, the following facts are presumed:

[redacted], [redacted], and [redacted] will each be classified as a partnership for federal and North Carolina income tax purposes.

The [redacted] will constitute renewable energy property as defined in N.C. Gen. Stat. § 105-129.15(7), will not serve a single-family dwelling, and will have a business purpose within the meaning of N.C. Gen. Stat. § 105-129.16A(c)(1).

Each of the [redacted] will be placed in service before the end of 2015.

The ceiling of $2.5 million that applies to each installation of renewable energy property will not limit the credits.

The [redacted] will be treated as the owner of the [redacted] for federal and North Carolina income tax purposes.

Department's Response:

North Carolina's tax credit for investing in renewable energy property, found in N.C. Gen. Stat. § 105-129.16A, is not contingent on any provision of federal income tax law except in determining cost (see N.C. Gen. Stat. § 105-129.15(2)) or in defining combined heat and power system property (see N.C. Gen. Stat. § 105-129.15(7)b.). North Carolina's tax credit for investing in renewable energy property is not limited or disallowed if the investment is considered a passive activity, either directly by a specific provision in the North Carolina statute or indirectly by a reference to federal law.

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.

Please let us know if you have any additional questions.

Very truly yours,

[redacted]