



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

April 5, 2010

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Request for a Private Letter Ruling Regarding Determination of Eligibility for Certain Solar Power Generating Equipment to Qualify for North Carolina Renewable Energy Credits under G.S. 105-129.16A and a Response to Related Questions

Dear [REDACTED]:

This letter is in response to your letter dated [REDACTED], wherein you requested on behalf of your client, [REDACTED], a written determination by the North Carolina Department of Revenue ("Department") regarding the qualification of certain solar power generating equipment and related devices for the Renewable Energy Property Credits available to taxpayers pursuant to N.C.G.S. §105-129.16A.

Based on our review of the facts submitted in your letter, the Department's response to your questions, conclusions and analysis are as follows:

1. Does all of the solar energy equipment including solar photovoltaic panels, rooftop and ground mounting systems, wiring, conduit, disconnect switches, wire management systems, combiner boxes, inverters, and metering equipment (hereinafter referred to as the "solar power system") described above meet the definition of renewable energy property contained in N.C.G.S. 105-129.15(7)(c)?

Yes. N.C.G.S. 105-129.15(7)(c) defines "renewable energy property" as: Any of the following machinery and equipment or real property: Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy. If the solar photovoltaic panels, rooftop and ground mounting systems, wiring, conduit, disconnect switches, wire management systems, combiner boxes, inverters, and metering equipment are necessary

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and integral to the proper operation of the system's ability to generate, collect, exchange, and convert solar energy to electricity, then the related devices meet the statutory definition of renewable energy property.

Department's Response: The Department does not possess the technical knowledge to conclude that all of the equipment mentioned above will qualify for the credit for investing in renewable energy property available under G.S. §105-129.16A. However, any of the equipment that is deemed to be **necessary and integral** to collecting, storing, exchanging and converting solar energy will qualify for the credit as a related device.

[Emphasis Added]

2. Does all of the solar energy equipment comprising the solar power system described above qualify for the North Carolina Renewable Energy Credit ("NCREC") at a rate of 35% of the cost of the equipment as provided in N.C.G.S. 105-129.16A(a) if it is purchased, installed, owned and operated by ██████████ in North Carolina?

Yes. Provided that all of the equipment described will be placed into service in North Carolina as provided in the North Carolina Utilities Commission ("NCUC") order, the equipment qualifies for the NCREC at a rate of 35% of its cost.

Department's Response: We agree.

3. Does all of the solar energy equipment comprising the solar power system described above qualify for the \$2.5 million cap per installation provided for non-residential property as defined in N.C.G.S. 105-129.16A(c)(1) if it is purchased, installed, owned and operated by ██████████ in North Carolina pursuant to lease agreements on rooftops of commercial buildings, or on land located at commercial locations owned by other individuals or entities where (1) the commercial buildings or land is owned by individuals or entities other than ██████████ or ██████████; and (2) the electricity produced from solar power is transferred directly to ██████████'s main power grid and is not sold directly to or used directly by the owner of the commercial building or the land?

Yes. Because the renewable energy property will be installed on non-residential property for the purpose of generating electrical power that will be sold to ██████████'s customers and not a residential use, the renewable energy property installed at commercial locations qualifies for the \$2.5M cap as provided in N.C.G.S. §105-129.16A(c)(1).

Department's Response: We agree.

4. Does all of the solar energy equipment comprising the solar power system described above qualify for the \$2.5 million cap per installation provided for non-residential

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property as defined in N.C.G.S. 105-129.16A(c)(1) if it is purchased, installed, owned and operated by [REDACTED] in North Carolina pursuant to lease agreements on rooftops of structures that are single family dwellings or on land located at single family locations where (1) the dwellings or land are owned by individuals or entities other than [REDACTED] or [REDACTED]; and (2) the electricity generated from solar power is transferred directly to [REDACTED]'s main power grid and is not directly used by or directly sold to the owner of the single family dwelling or land?

Yes. The solar energy equipment installed on rooftops of residential dwellings or on residential land under the Solar Program is not being used to generate electricity for direct use at the dwelling or any other residential purpose despite the fact that it may be installed on what is considered a residential location. Therefore, the renewable energy property does qualify for the \$2.5M credit limitation per installation provided in N.C.G.S. §105-129.16A(c)(1) because it will be placed into service to generate electrical power that will be sold is used for a non-residential purpose.

Department's Response: We agree.

5. Does the installation of a single solar PV system on a residential or commercial building, where that system is separately connected directly to the main power grid and is individually capable of generating electricity, qualify as a separate "installation" for purposes of computing the NCREC cap pursuant to N.C.G.S. §105-129.16A(c)(1) ?

Yes. The credit ceiling established in the statute is based on an installation basis and not on a per transaction basis. The single solar PV system would qualify as a separate "installation" under N.C.G.S. 105-129.16A(c)(1) only if the system is able to produce usable renewable energy on its own. The Department considers renewable energy property as defined in N.C.G.S. § 105-129.15(7) to be "installed" when the renewable energy property placed in service in North Carolina is able to produce usable renewable energy on its own.

Department's Response: We agree.

6. For purposes of computing the NCREC, what costs of the solar energy equipment qualify as part of the basis upon which the NCREC is computed?

Taxpayers may claim a credit of 35% of the cost of qualified renewable energy property that is constructed, purchased or leased and placed into service in North Carolina. The term "cost" is specifically defined by statute as follows: Cost. - In the case of 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. In the case of property, the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.40)(2). According to the Treasury Regulations referred to in

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the statute, the cost of renewable energy property that is purchased by the taxpayer is the "...amount paid for the property in cash or other property. For purposes of computing the NCREC for renewable energy property, the Guidelines provide that the eligible costs include "...design, construction, and installation costs." Based on these guidelines, the amounts incurred by [REDACTED] for the design, purchase, construction, delivery, installation and testing of the renewable energy property, including the cost of the solar panels, rooftop and ground mounting systems, wiring, conduit, wire management systems, combiner boxes, disconnect switches, inverters and metering equipment should all be eligible costs for computing the NCREC.

Department's Response: We agree.

7. Are the federal cash payments under Section 1603 of the American Reinvestment and Recovery Act of 2009 ("ARRA") in lieu of claiming the IRC §48 investment tax credit for installing renewable energy property properly considered "public funds" as that term is used in N.C.G.S. 105-129.16(A)(b), so that the basis used for computing the NCREC must be reduced by the amount of a Section 1603 grant that is taken in lieu of the federal investment tax credit on the renewable energy property?

No.

Department's Response: We disagree. The statute referenced above states in relevant part, "No credit is allowed under this section to the extent the cost of the renewable energy property was provided by public funds." The term public funds" is not defined in the North Carolina statute. Black's Law Dictionary defines the term as "the revenue or money of a governmental body." As you stated in your letter, a taxpayer must submit an application to the Secretary of the Treasury for the Section 1603 Grant. Treasury will review an application and make payment of the Section 1603 Grant within 60 days from the later of the date of the application or the date the property is placed in service. Grants paid by the U.S. Treasury Department for placing qualifying renewable energy property in service constitute public funds under the law. Therefore, a North Carolina taxpayer must subtract from its qualifying costs the amount of the Section 1603 Grant before computing the North Carolina credit.

8. Is the amount of a federal cash payment received by a taxpayer pursuant to §1603 of the ARRA in lieu of claiming the IRC §48 investment tax credit for the installation of qualified renewable energy property considered part of North Carolina taxable income or otherwise subject to NC income tax?

No. North Carolina corporate taxpayers compute their State net income by starting with federal taxable income as determined under the IRC and then making certain adjustments provided in N.C.G.S. §105-130.5. There is no increase to federal taxable income required

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for an ARRA cash grant received in lieu of a federal tax credit required by N.C.G.S. §105-130.5.

Department's Response: We agree.

9. Can ██████████, as the single corporate member of the disregarded entity, ██████████, claim the NCREC generated by the installation and ownership of renewable energy property by ██████████ assuming the property otherwise qualifies for the NCREC and subject to the other restrictions and amount limitations on claiming the NCREC provided in N.C.G.S. §105-129.17?

Yes. ██████████'s income and expenses and credits will flow through to ██████████ because NCDOR recognizes the IRS "check the box" regulations and ██████████ is a disregarded entity.

Department's Response: We agree for purposes of corporate income tax.

10. Do the elections and limitations on utilization of the NCREC imposed by N.C.G.S. §105-129.17 apply at the ██████████ level or at the ██████████ level?

The elections and limitations on claiming and utilizing NCREC's will be determined at the ██████████ level. ██████████ is the taxpayer in this case because ██████████ is a disregarded entity wholly owned by ██████████.

Department's Response: We agree for purposes of corporate income tax..

11. Can ██████████ apply NCREC's against the utility franchise tax imposed by N.C.G.S §105-116(a)(1)?

Yes. N.C.G.S. § 105-129.17(a) specifically provides that the NCREC can be claimed against "...the franchise tax levied in Article 3 of this Chapter or the income taxes levied in Article 4 of this Chapter." ██████████ is an electric power company engaged in the business of furnishing electricity and is therefore subject to the annual franchise or privilege tax imposed by N.C.G.S. §105-116(a)(1). N.C.G.S. §105-116(a) is part of Article 3 of Chapter 105 of the North Carolina General Statutes. Therefore, the franchise tax imposed on ██████████ by N.C.G.S. §105-116(a)(1) is a tax imposed under Chapter 3 and ██████████ may claim the NCREC's against that tax.

Department's Response: We agree.

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12. Does the fact that the renewable energy property purchased by ██████████ as part of the Solar Program is installed on rooftops or land owned by other unrelated entities pursuant to lease agreements impact the computation or utilization of the NCREC in any manner not addressed in this letter; and if so, what is that impact?

Department's Response: No.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. 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.

Very truly yours,

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