North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

June 21, 2010

[redacted]

REF: Private Letter Ruling Request Pertaining to the Tax Credit for Investing in Renewable Energy Property Determination

[redacted]
FEIN: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested a Private Letter Ruling on the North Carolina Department of Revenue's ("Department's") interpretation of certain credit provisions on behalf of your client, [redacted]. We have summarized the facts presented in your letter as follows:

[redacted] is currently proposing to develop a landfill gas compressor station at [redacted], in [redacted], North Carolina for the purposes of filtering, dewatering, and compressing the raw landfill gas into a usable biofuel. [redacted] is currently bidding on the project, and, if rewarded, the proposed steps to develop the landfill compressor station would be organized as follows:

- [redacted] would be signatory to an agreement with the County for the landfill gas rights, a gas purchase agreement, or gas royalty agreement as desired by the County.
- [redacted] would also execute a site lease agreement to allow for construction of a facility at the landfill and ingress/egress to the site location
- [redacted] would develop, construct, and own the compressor station facility, including the structure as well as the machinery and equipment.
- The project would be financed internally by [redacted].

In order to extract the raw landfill gas from the landfill's decomposing waste, a blower unit pulls the gas through a series of wells and piping placed beneath the landfill. The blower unit acts similar to a vacuum system to extract the raw landfill gas from the wells and piping placed throughout the landfill. Upon extraction, the raw landfill gas is transported from the landfill piping into a common header pipe, which then feeds into the proposed [redacted] compressor station for conversion to a usable, viable, and saleable fuel product.

Upon entering the proposed [redacted] compressor facility, the raw landfill gas composition depends on the landfill waste within the landfill, but typically consists of approximately fifty percent methane, forty percent carbon dioxide, and the remaining ten percent is composed of water, oxygen, nitrogen, trace gases and trace quantities of particulates, depicted as follows:

(50% CH_4) + (40% CO_2)+ (10% of H_2O + O_2 + N_2 + trace gases + particulates)

An inlet separator will be used to remove moisture from the incoming raw landfill gas stream. A rotary vane gas compressor then compresses the landfill gas to the required pressure, approximately 15 psig. The compressed landfill gas then flows through a heat exchanger where the gas is cooled to approximately 40 degrees Fahrenheit through the use of a water chiller, which circulates cold water through the heat exchanger. In this dewatering process, chilling the gas to the dew point causes the water to drop out of the landfill gas, collecting on the walls of the compressor station. The cooled gas is then brought back to temperature and filtered through a filtration media to remove particulate matter and separate potential harmful halogenated compounds so that it can be suitable for sale as a fuel.

After landfill methane is treated at the compressor station, the treated landfill gas typically consists of approximately fifty percent methane, forty percent carbon dioxide, and ten percent oxygen, nitrogen, and trace gases, depicted as follows:

(50% CH_4) + (40% CO_2) + (10% of O_2 + N_2 + trace gases)

The treated landfill gas is a useable biofuel that can be burned to produce energy or heat through several processes such as a gas turbine, a boiler, or an internal combustion engine.

ISSUES:

Is landfill gas considered a biofuel produced from biomass resources and does [redacted]'s proposed landfill compressor station meet the definition of a "renewable energy property" under N.C. Gen. Stat. § 105-129.15, eligible for the Tax Credit for Investing in Renewable Energy Property under N.C. Gen. Stat. § 105-129.16A?

DEPARTMENT'S RESPONSE:

Yes. Based on our review of the facts provided in your letter, we agree that [redacted]'s proposed landfill compressor station meets the definition of a "renewable energy property" under N.C. Gen. Stat. § 105-129.15, and its cost will qualify for North Carolina's Credit for Investing in Renewable Energy Property. Since the raw landfill gas, which is a

biomass resource, is not in a usable state when it is extracted from the landfill, it must be treated or processed in order to convert the gas into a biofuel capable of producing energy or heat. Importantly, the proposed compressor station receives the raw landfill gas from the header pipes and performs a process of conditioning the raw landfill gas through compression, dewatering, and filtration. As a result of the processes occurring in the proposed compressor station, the raw landfill gas is converted to a treated biofuel. Equipment and structures that are used to produce biofuels from biomass resources, as well as processing plant equipment and structures that receive, handle, collect, condition, store, or process biomass materials into fuels, co-products, heat, or electricity, are eligible for the Tax Credit for Investing in Renewable Energy Property provided under N.C. Gen. Stat. § 105-129.16A. Equipment used to collect and transport the raw landfill gas from the ground to the compressor station, such as the wells and collection piping, the blower station, and header pipes, as well as any equipment used to transport the usable gas away from the compressor station, are ineligible equipment. Furthermore, expenditures for equipment, such as shelters to protect qualifying equipment, that are not directly associated with and necessary for the conversion of the landfill gas to useable gas are likewise ineligible expenses.

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,

[redacted]