North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

September 1, 2010

[redacted]

Attention: [redacted]

Re: Letter Ruling Request Submitted by [redacted]

Dear [redacted]:

This letter is in response to your request for a ruling dated [redacted], which was submitted to the North Carolina Department of Revenue ("Department") in order to clarify certain definitions of the tax credit for investing in renewable energy property set forth in N.C.G.S. § 105-129.16A. The request was made on behalf of [redacted] ("[redacted]" or "Taxpayer") and regards the application of the Business and Energy Tax Credits, N.C.G.S. § 105-129.15 et seq. (the "Statute") to a solar photovoltaic electric generating facility at a single site in [redacted], North Carolina.

According to the facts submitted in your letter (copy is attached) and in the additional information received on [redacted], [redacted] is a nationally chartered bank that is indirectly wholly owned by [redacted]. [redacted] is the sole member of [redacted], a [redacted] limited liability company that is treated as a disregarded entity for federal and North Carolina income tax purposes [redacted]. [redacted] is the sole member of [redacted], a [redacted] limited liability company that is treated as a disregarded entity for federal and North Carolina income tax purposes [redacted]. [redacted] is the sole beneficiary of [redacted], a statutory trust established pursuant to the [redacted] Trust Act, that is treated as either a grantor trust or disregarded entity for federal and North Carolina income tax purposes ("[Trust]" or the "Lessor"). [redacted], [redacted] and its affiliates file a unitary combined return for North Carolina.

[redacted] desires to enter into the sale leaseback transaction described herein with [redacted], a [redacted] limited liability [redacted] the "Lessee"). [redacted] is in the process of developing and constructing solar photovoltaic electric generating facilities at a single site in [redacted], North Carolina, (collectively, the "Facilities"). [redacted] is wholly owned by [redacted], which is wholly owned by [redacted]. [redacted] is in the business of financing, installing and operating solar photovoltaic energy systems and selling electricity generated by those systems to end users under long-term power purchase agreements.

The Facilities currently are designed to consist of up to [redacted] separate approximately [redacted]kW capacity photovoltaic systems or installations (each, a "Facility"), many of which are in close geographical proximity. Each Facility would be separately wired and have its own solar inverter and meter. Thus, each Facility would be installed so as to operate functionally independent of the other Facilities. [redacted] has entered into a separate Renewable Energy Power Purchase Agreement ("REPPA") with [redacted] [redacted] for each Facility, pursuant to which [redacted] will sell to [redacted] electric energy and capacity from the respective Facility.

[redacted] has accepted a lease financing proposal from [redacted] pursuant to which [redacted] will sell to [redacted] a certain number of the Facilities and simultaneously lease them back, with the sale leaseback to be consummated prior to the date of commencement of commercial operations of such Facilities. The sale leaseback will be treated for federal and state income tax purposes as a true sale of such Facilities by [redacted] to [redacted] (as the owner of the disregarded entities [redacted] and [redacted]) followed by a true lease from [redacted] to [redacted]. Thus, [redacted] will be treated as the owner for federal and state income tax purposes of the Facilities it purchases, and will place such Facilities in service, and will be entitled to claim federal and state depreciation deductions and applicable state tax credits in connection with its investment in such Facilities.

Rulings Requested:

1. Each Facility to be purchased by the Taxpayer (via sale leaseback) in the [redacted] solar project described above will be treated as a separate installation for purposes of the ceiling on the amount of the renewable energy credit under N.C. Gen. Stat. § 105-129.16A(c)(1), as long as each such Facility is able to produce usable renewable energy on its own.

   Department's Response: We agree. N.C.G.S § 105-129.15 (4b) defines "Installation of renewable energy property" as "Renewable energy property that standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own", [House Bill 1829] As long as the "Facility" meets the definition as stated in the aforementioned statute, it

will be treated as a separate installation for purposes of the ceiling on the amount of the renewable energy credit under N.C. Gen. Stat. § 105-129.16A(c)(1)

2. This remains the same regardless of whether all of the Facilities are owned or leased to the same legal entity or separate affiliated legal entities.

   Department's Response: We agree. Regardless of whether all of the Facilities are owned or leased to the same legal entity or separate affiliated legal entities, each facility will be treated as a separate installation for purposes of the ceiling on the amount of the renewable energy credit under N.C. Gen. Stat. § 105-129.16A(c)(1) as long as such Facility is able to produce usable renewable energy on its own. Importantly, although the ownership of the Facilities has no effect on the ability of a Facility to produce usable energy on its own, it is the owner, which places the Facility in service that is entitled to claim the NC Tax Credits generated in connection with each of the Facility. In the scenario described above, [redacted] and [redacted] are disregarded entities for federal income tax purposes. Therefore, their income and expenses and credits will flow through to their respective member because NCDOR recognizes the IRS "check the box" regulations.

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.

Sincerely,

[redacted]