North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 29, 2010

[redacted]

Re: Letter Ruling Request Submitted by [redacted]

Dear [redacted]:

This letter is in response to your request for a ruling dated April 22, 2010 , 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 G.S. § 105-129.16A. The request was made on behalf of [redacted], a [redacted] limited liability company ("Owner"), and a company that will be formed at a later date, [redacted], a [redacted] limited liability company ("Tenant") (collectively, the "Project Parties"). The request is in regard to the application of the Business and Energy Tax Credits, N.C.G.S. §105-129.15 et seq.(the "Statute") to a landfill-gas electricity generating project located in [redacted], North Carolina that will be comprised of [redacted] separate generating systems. This ruling amends and supersedes the private letter ruling dated [redacted].

In our telephone conversation on [redacted], you requested that the Department issue the requested ruling without a response to the issue "*Taken Out of Service*", which is still under consideration by the Department. Therefore, based on our review of the statement of facts presented in your letter and the organizational chart submitted via e-mail on [redacted], the Department's response to the four remaining issues are as follows:

1. *Separate Installation.* Each LFGE System is a separate "installation", within the context of G.S. 105-129.16(A)(c)(1), of a renewable energy property, and each LFGE System is eligible for up to $2.5.million of NC Tax Credits.

   Department's Response: We agree. The credit ceiling established in the statute is based on an installation basis and not on a per transaction basis. In

the scenario described in the statement of facts, each single LFGE system would qualify as a separate "installation" under N.C.G.S. 105-129.16A(c)(1) because the system is able to produce usable renewable energy on its own. Importantly, G.S.105-129.15(4b) defines "installation of renewable energy property" as property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own.

2. *Lessee Entitled to Credit.* The Tenant is the entity entitled to claim the NC Tax Credits generated in connection with each of the LFGE Systems so long as Tenant obtains Owner's written certification that it will not claim such NC Tax Credits. Moreover, as a pass-through entity, the NC Tax Credit will pass through to each of Tenant's members such member's distributive share of the NC Tax Credit. Specifically, NC Tax Credit (i.e., an annual installment) will be passed through to the members of record of Tenant as of the end of each installment year.

   Department's Response: We agree that Tenant will be eligible to claim the NC Tax Credits generated in connection with the LFGE Systems as the lessee of the LFGE Systems under the Operating Leases. Since Owner, as lessor, will provide written certification to Tenant that Owner will not claim the NC Tax Credits generated in connection with the LFGE Systems, Tenant will be the entity entitled to claim the NC Tax Credits generated in connection with the LFGE Systems.

   Importantly, the entire credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service. Therefore, one-fifth of the NC Tax Credit (i.e., an annual installment) will be passed through to Tenant's members of record as of the end of each installment year.

3. *Cost of the LFGE System.* For purposes of calculating Tenant's NC Tax Credit, the "cost" of the renewable energy property is eight times the net annual rental rate, assuming a full year of operations, as determined under G.S. § 105-130.4(j)(2), and such calculation for each LFGE System shall be made on the date that each of the LFGE Systems is first placed in service.

   Department's Response: We agree. Since your e-mail dated [redacted] stated that the Owner is claiming the federal grant and will not pass through the federal grant or federal credit to Tenant, the cost of the renewable energy property is computed as stated in your conclusion above.

4. *Changes in Ownership of Tenant.* Changes in ownership of the membership interests in Tenant during the five-year credit period an effect on (1) Tenant's entitlement to the NC Tax Credit, or (2) the new member(s) in Tenant's entitlement to its distributive share of any remaining unallocated installments of the NC Tax Credits.

   Department's Response: We agree

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]