North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 23, 2010

[redacted]

RE: Private Letter Ruling Request - G.S. § 105-129.16A - Tax Credit for Investing in Renewable Energy Property

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested a private letter ruling under G.S. § 105-264(b). The request was made on behalf of the companies, [redacted], a [redacted] limited liability company ("[redacted]"), and [redacted], a [redacted] limited liability company ("[redacted]") in order to clarify certain of the requirements of the NC Tax Credit for Investing in Renewable Energy Property set forth in G.S. § 105-129.16A (such credits are referred to herein as "NC Tax Credits").

The statement of fact submitted for the North Carolina Department of Revenue's ("Department") consideration is as follows:

> [redacted] and [redacted] are currently in negotiations to invest in a renewable energy property (the "Project") in North Carolina that is being developed by [redacted] (together with its affiliates, "Developer").
>
> The Project will be constructed and owned by a limited liability company that will be operated for the purpose of constructing, and leasing such Project (such limited liability company is referred to herein as "Lessor"). The amount of NC Tax Credits generated in connection with the Project will be based on the construction costs expended by Lessor constructing the Project. Although the sources of financing for the Project have not been finalized, it is anticipated that the Project will be financed with proceeds of [redacted]s investment, bank financing, and Developer financing. Upon completion of construction of the Project, Lessor will lease the Project to a limited liability company that will be operated for the purpose of operating, monitoring, and maintaining such Project (such limited liability company is referred to herein as

"Lessee") pursuant to a written lease agreement ("Lease") that should be classified as a capital lease for federal tax purposes. Lessee will then place the Project in service on the effective date of the Lease with respect to such Project. After the Project is placed in service, Lessee will apply to receive a federal grant in the amount of 30% of the cost of such Project pursuant to Section 1603 of the American Recovery and Reinvestment Act of 2009.

Prior to the date that [redacted] is admitted as a member of Lessor, Lessor will be owned by Developer. [redacted] will be admitted as the sole member of Lessor on or before the effective date of the Lease with respect to the Project (and Developer will withdraw as a member of Lessor). From and after the date that [redacted] is admitted as the sole member of Lessor, Lessor will be treated as a disregarded entity for federal tax purposes. Lessor will not provide the written certification contemplated by G.S. § 105-129.16A(d) to the Project's Lessee that Lessor will not claim the NC Tax Credits generated in connection with the Project. Rather, Lessor will claim such NC Tax Credits, and all of such NC Tax Credits will be allocated to [redacted] as the sole member of Lessor.

ISSUE:

Whether Lessor is entitled to the NC Tax Credits that will be generated in connection with the Project?

DEPARTMENT'S RESPONSE:

Based on our review of information submitted in the "Statement of Facts," Lessor is entitled to the NC Tax Credits that will be generated in connection with the Project. G.S. §105-129.16A(a) states "[i]f a taxpayer that has constructed, purchased, or leased renewable energy property places it in service in this State during the taxable year, the taxpayer is allowed a credit equal to thirty-five percent (35%) of the cost of the property." Subsection (d) further states "[a] taxpayer may not take the credit allowed in this section for renewable energy property the taxpayer leases from another unless the taxpayer obtains the lessor's written certification that the lessor will not claim a credit under this Chapter with respect to the property." Under the facts of this Ruling Request, Lessor, as the owner, will not provide the written certification contemplated by subsection (d) to Lessee that Lessor will not claim the NC Tax Credits generated in connection with the Project. Rather Lessor will claim such NC Tax Credits. For these reasons, Lessor will be the entity entitled to claim the NC Tax Credits generated in connection with the Project.

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]