North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

June 30, 2011

[redacted]

Re: Corporate Income Tax Credit for Investing in Renewable Energy Property:
Private Letter Ruling Request for [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") issue a ruling confirming that your client's investment in renewable energy property that is placed in service in North Carolina qualifies for the tax credit against the corporate income and/or franchise tax for investments in qualified renewable energy property pursuant to N.C. Gen. Stat. § 105-129 .16A (the "Energy Credit").

The statement of facts submitted for the Department's consideration is as follows:

Your client, [redacted], is a [redacted] association authorized to do business in North Carolina. [redacted] is entering into an agreement with [redacted], a [redacted] limited liability company and wholly-owned subsidiary of [redacted], an [redacted] corporation with its principal headquarters in [redacted], for the purchase and construction as new of a biomass-fueled combined heat and power boiler system (i.e., a biomass cogeneration facility) which will be used in North Carolina to generate steam for electrical power and industrial heat for business purposes ("Energy Property"). [redacted] will lease the Energy Property to [redacted], a [redacted] limited liability company and wholly-owned subsidiary of [redacted]. [redacted] is engaged in the business of owning and operating boiler facilities which provide steam for sale to industrial users. [redacted] will install and operate the Energy Property at the [redacted] processing facilities of [redacted], in [redacted]. The Energy User will commit to purchase a fixed monthly quantity of industrial steam from [redacted] over an initial [redacted] year term. [redacted]'s purchase and lease of the Energy Property are collectively referred to as the "Transaction."

The Energy Property is a newly constructed biomass cogeneration facility, consisting of [redacted] solid fuel fired [redacted]HP boilers burning biomass fuel, and each generating approximately [redacted]

pounds per hour of high pressure steam (representing a total capacity of [redacted] pounds per hour), which are to be used to generate steam for electric power and industrial heat purposes. The Energy Property will be fueled by forestry and agricultural crops and their harvesting residues. The Energy Property is estimated to displace approximately [redacted] tons of carbon dioxide per year.

[redacted] intends to enter into an agreement to purchase the newly constructed Energy Property from the Manufacturer and lease the Energy Property to [redacted] for a period of up to [redacted] months upon monthly lease payment terms to be provided in the lease agreement that is to be finalized between [redacted] and [redacted]. [redacted] is not claiming the Energy Credit with respect to the Energy Property; however, it is expected that [redacted] will claim a federal grant in lieu of federal tax credits under Code §§ 45 and 48, pursuant to § 1603 of the American Recovery and Reinvestment Act of 2009, and the guidelines issued there under by the U.S. Department of the Treasury, with respect to the Energy Property. [redacted] has agreed to make any elections required to pass-through the Federal Grant to the [redacted].

Ruling Requested:

1. As a combined heat and power biomass cogeneration facility consuming renewable biomass resources, the Energy Property qualifies as "renewable energy property" under N.C. Gen. Stat. §§ 105-129.16A and 105-129.15(7).

   Department's Response: If the Energy Property qualifies as "combined heat and power property" under IRC § 48, then it qualifies as "renewable energy property" under N.C. Gen. Stat. § 105-129.15(7)(b).

2. As purchaser and lessor of the Energy Property, [redacted] is eligible to claim the Energy Credit.

   Department's Response: We agree. Pursuant to N.C. Gen. Stat. § 105-129.16A, a taxpayer that has constructed, purchased or leased "renewable energy property" and places it in service in North Carolina is allowed a tax credit against income, franchise or insurance premiums taxes equal to thirty-five percent (35%) of the cost of the renewable energy property. With respect to leased renewable energy property, a lessee may not claim the Energy Credit for renewable energy property that the lessee leases from another unless the lessee obtains the lessor's written certification that the lessor itself will not claim any credit with respect to the renewable energy property. According to your representation, [redacted] will not provide the lessee with written certification that it will not claim any credit with respect to the renewable energy property. Therefore, [redacted] as purchaser and lessor of the Energy Property is eligible to claim the Energy Credit.

3. The Energy Property is placed in service at the on-site facilities of the Energy User in North Carolina for a business purpose, thereby qualifying the Transaction for the $2,500,000 Energy Credit ceiling under N.C. Gen. Stat. § 105-129.16A(c)(l).

   Department's Response: We agree. If the qualifying Energy Property is placed in service for a purpose other than providing energy to a residence, a ceiling of two million five hundred thousand dollars ($2,500,000) per installation applies to the renewable energy property. N.C. Gen. Stat. § 105¬129.16A(c)(1).

4. Under N.C. Gen. Stat. § 105-129.15(2), the cost of the Energy Property is determined by reference to the Internal Revenue Code of 1986, as amended (the "Code") because the Energy Property qualifies as renewable energy property eligible for the federal energy credit under §§ 45 and 48 of the Code, or a federal grant in lieu of that federal credit, and [redacted] will make a lease pass-through election under the Code with respect to such federal credits or grants, even though the [redacted] will not pass through the Energy Credit allowed under N.C. Gen. Stat. § 105-129.16A.

   Department's Response: We agree. [redacted], as the owner, may claim the Energy Credit. For these reasons, the cost of the Energy Property 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. N.C. Gen. Stat. § 105-129.15(2)

5. The costs to purchase the Energy Property and associated design, construction costs and installation costs in the approximate aggregate amount of [redacted] are eligible costs for purposes of calculating the Energy Credit.

   Department's Response: Eligible costs include the cost to purchase the Energy Property and associated design, construction costs, and installation costs less any discounts, rebates, advertising, installation assistance credits, name referral allowances, costs provided by public funds, or other similar reductions paid to the owner of the system as an inducement to purchase the renewable energy system. Public funds include federal, State, and local government funds, but does not include grants made under section 1603 of the American Recovery and Reinvestment Tax Act of 2009.

6. Based on the above rulings, [redacted]s investment qualifies for the Energy Credit for investing in renewable energy property under N.C. Gen. Stat. § 105-129.16A.

   Department's Response: Based on the above rulings, [redacted]'s investment qualifies for the Energy Credit for investing in renewable energy property under N.C. Gen. Stat. § 105-129.16A.

Please note, as stated below, these rulings are based upon the factual representation provided in your written request for a ruling and are subject to audit verification.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. Your statement of facts and our findings are subject to audit verification. 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]