North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

July 25, 2011

[redacted]

Re: Request for a Private Letter Ruling Regarding a Determination of Eligibility for Certain Solar Power Generating Equipment and Solar Thermal Equipment for the North Carolina Renewable Energy Credits under G.S.105-129.16A

Dear [redacted]:

This letter is in response to your letters dated [redacted] and [redacted], wherein you requested a written determination from the North Carolina Department of Revenue ("Department") regarding whether certain solar power generating equipment and related devices and certain solar thermal equipment and related devices qualify for the Renewable Energy Property Tax Credits ("NCREC's") available to taxpayers pursuant to N.C.G.S. §105-129.16A. To expedite the Department's response, you modified your original request and asked us to only respond to the issue stated below, which was later clarified in your email of [redacted].

The statement of facts submitted in both letters for the Department's consideration is, in pertinent part, as follows:

[redacted] is a limited liability company headquartered in [redacted], wholly owned by [redacted] individuals who are residents of North Carolina ("Owners"), and taxed as a single member LLC for federal and state income tax purposes. [redacted], as an [redacted] contractor ("[redacted] contractor,") designs, sells, installs, operates and maintains residential and commercial solar photovoltaic and solar thermal systems for its customers and provides [redacted] services to other solar businesses in North Carolina, other states in the [redacted].

[redacted] will design, purchase, install, own, lease, operate and/or maintain the solar photovoltaic (PV) equipment and solar thermal equipment in North Carolina in various transactions under different entity structures. In all instances, the electricity generated by the solar equipment, all related Renewal Energy Certificates ("REC's"), and any other environmental attributes that are created by production of "green power" by the solar PV systems will either be

sold to the appropriate public utility pursuant to written power purchase agreements ("PPA's), or used by some entity for business purposes. Regarding the solar thermal systems, the heated water will be used for business purposes.

In some cases, [redacted], a related entity, or an unrelated entity may own the equipment, or lease it from other owners, or lease it to other unrelated entities. For purposes of this request, it is assumed that either the cash grant provided in Section 1603 of the American Recovery and Reinvestment Act ("ARRA Cash Grant"), or the investment tax credit ("Federal ITC") provided in Section 48 of the Internal Revenue Code (the "Code") that are available for investments in solar property will be claimed in full compliance with all applicable rules and statutes.

The solar systems installed by [redacted] may utilize different photovoltaic technologies from various manufacturers, including single crystalline silicon, multi-crystalline silicon, and thin film technologies. Regardless of the manufacturer, all of the solar panel technologies used will generate Direct Current (DC) electricity from solar radiation. The DC electricity generated from solar power will then be transferred to ground or wall mounted electrical power inverters located at each location using a wire management system consisting of electrical wire, connectors, conduit, combiner boxes, disconnect switches and related equipment. Each inverter will convert the DC electricity produced by the solar panels to usable Alternating Current (AC) electricity. The capacity and size of each inverter will depend upon the projected production output of the solar panels installed at each location, but the process for converting the power is essentially the same for all sized inverters. The AC electricity will then be transferred directly to the utility's power grid via a separate wiring system that also incorporates metering and monitoring equipment to record the AC power output from the solar system or will be used by some entity for a business purpose. The electricity generated from solar energy that is transferred to the utility will be sold to the utility's customers from the power grid along with its other distributed electrical power.

Issue:

Does the installation of one large solar PV ***facility*** owned by one or more entities, on a building or land, where that ***facility*** is divided into more than one individual system ***or array*** by separate disconnection devices, whereby each system ***or array*** can operate independently of the other and can generate usable power when the other system(s) ***or array(s)*** is(are) disconnected and not generating power qualify as a separate "installation" for purposes of determining the $2.5 NCREC cap for solar equipment used for a business purpose pursuant to N.C.G.S. § 105-129.16A(c)(1)?[1]

Department's Response: Yes, 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

[1] In an email dated [redacted] from [redacted]., the words that are ***bolded*** and ***italicized*** in the "Issue" were either added or changed by the requester in his email to provide additional clarity to the Department of Revenue.

other machinery, equipment, or real property is able to produce usable energy on its own." It is our understanding based on our review of information provided that each of the separate arrays will be separately connected to the main grid. Furthermore, in the event any one or more of the arrays is turned off, any of the other separate arrays "standing alone" can continue to generate usable energy independently of the other arrays and feed it into the grid. For these reasons, each separate system or array meets the aforementioned definition and qualifies as an "Installation of renewable energy property" regardless of their ownership. As a result, each system or array will be treated by the Department as a separate installation for purposes of the $2.5M ceiling on the amount of the renewable energy credit under N.C.G.S. § 105-129.16A(c)(1).

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]