North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

May 3, 2012

[redacted]

Re: Request for Expedited Private Letter Ruling – [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") provide a ruling clarifying when a lessee of renewable energy property may use the cost of the property as determined under the Internal Revenue Code for calculating the amount of the North Carolina Renewable Energy Credit available pursuant to N.C.G.S. §105-129.16A.

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

[redacted] is a [redacted] limited liability company engaged in the development, aggregation, and financing of commercial photovoltaic solar electricity generation systems (individually, a "Facility" and, collectively, the "Facilities") in the state of [redacted]. In connection with the financing of the Facilities, [redacted] may enter into a sale-leaseback arrangement of the Facilities with a limited liability company (or other tax-transparent entity) that will be beneficially owned by one or more institutional tax equity investor(s) (the "Lessor") who will own the Facilities for federal income tax purposes and claim the Federal Investment Tax Credit that is allowed under Section 48 of the Internal Revenue Code (the "Code") or the federal cash grant in lieu thereof as provided in Section 1603 of the American Recovery and Reinvestment Tax Act ("ARRA") (collectively referred to herein as "ITC") for owning the Facilities, but who will not claim the North Carolina tax credit that is available for owning or leasing renewable energy property in the state ("NCREC").

[redacted] may utilize one of two basic structures for implementing investment in the Facilities. However, in both structures the Lessor will claim the ITC and the lessee entity will claim the NCREC. The Lessor will either: (i) lease the Facilities back to a North Carolina limited liability company ("LLC") consisting of two members, one of which will be a separate North Carolina

limited liability company controlled by a North Carolina taxpayer who will claim [redacted] of the NCREC as provided in the limited liability company's operating agreement, and the other which will be an entity controlled by the project developer(s) that will claim [redacted] of the NCREC as provided in the LLC operating agreement; or (ii) lease the Facilities to a North Carolina limited liability company owned by one or more North Carolina taxpayers who will claim the NCREC and who will, in turn, sublease the Facilities back to a North Carolina LLC which will be owned by the project developer(s). In both structures, the LLC's will elect to be treated either as partnerships or disregarded entities for Federal income tax purposes.

Issue Presented:

Whether a lessee of renewable energy property that claims the NCREC may use the cost of the property as determined under the Code for purposes of calculating the amount of the NCREC, instead of using cost as determined pursuant to N.C.G.S. §105-130.4(j)(2), when the lessee does not also claim the Federal ITC or the ARRA Federal Grant in lieu of the ITC, and no lease pass-through election under the Code is made for the renewable energy property?

Department's Response:

No. The statute does not allow a lessee of renewable energy property who claims the NCREC but does not claim either the Federal ITC or the ARRA Federal Grant in lieu of the ITC and does not make a lease pass-through election under the Code for the property to utilize cost as determined under the Code for purposes of computing the amount of the NCREC. Specifically, G.S. 105-129.15(2) defines the term "Cost" as it applies to the NCREC as follows:

> "In the case of property owned by the taxpayer, cost 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. **In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105‑130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass‑through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code." [Emphasis added]**

Although we acknowledge that the lessee of the renewable energy property cannot make a lease pass-through election under the Code, we interpret the statute to allow the lessee of the renewable energy property to utilize cost as determined under the Code in computing the amount of the NCREC only in those circumstances in which the lessor makes a lease pass-through election, and the lessee claims the ITC or ARRA Federal Grant in lieu of the ITC. Since the lessor will claim the ITC in both of the structures mentioned in the statement of facts, the lessee must compute the cost pursuant to G.S. 105‑130.4(j)(2) in determining the amount of the NCREC provided under G.S. 105-129.16A.

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.

Should you have any questions, please contact me.

Very truly yours,

[redacted]