

## North Carolina Department of Revenue

Beverly Eaves Perdue Governor David W. Hoyle Secretary

May 24, 2012



Re: Request for a Private Letter Ruling –

Dear

This letter is in response to your letter dated **and the provide**, wherein you requested that the North Carolina Department of Revenue ("Department") provide a ruling that (i) the costs of purchasing and installing fuel cell power generation systems will qualify for the Renewable Energy Tax Credit under G.S. § 105-129.16A(a) and (ii) each purchased and installed system will constitute an "installation of renewable energy property" under G.S. § 105-129.16A(c)(1).

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

| recently constructed  | 1                          |                 |
|---|----------------------------|-----------------|
| (the "Facility"). The Facility has a workforce of approximately |                            |                 |
| employees, and houses   | that ground the Taxpayer's | s service. is a |
| service which allows  |                            |                 |
| (i.e., on loc   | ated at the Facility) for  | , and           |
| •   |                            |                 |

Taxpayer intends to sell the electricity generated from renewable are resources to a utility company. To achieve this goal, the Taxpayer will purchase multiple are the convert fuel into electricity through are will require the consumption of fuel delivered from the from a renewable energy resource which will be upgraded and injected into the pipeline, and nominated for use at the Facility (" The transmitted of the from to a contractual arrangement between the Taxpayer and the producer of the transmitted of the from the purchase a specific quantity of the from the purchase as the specific quantity of the from the purchase as the producer of the from the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the purchase as the producer of the from the purchase as the purchase as the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as the purchase as the producer of the from the purchase as the purchase as the producer of the from the purchase as the purchase as

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, measured in **a second**, that corresponds to the amount of fuel consumed at the Facility. The electricity generated from **a second second** will be sold to a commercial energy provider that will, in turn, provide power to the Facility.

## Rulings Requested:

1. Does the costs incurred to purchase and install the qualify for the Credit under G.S. § 105-129.16A(a)?

Department's Response: Yes. Based on our review and understanding of the information submitted, it is our opinion that the costs incurred to purchase and install at the Facility qualify for the credit provided under G.S. § 105-129.16A because the equipment will be fueled by a "renewable resource." It is important to note, however, that the ' continued eligibility as renewable energy property will depend on whether Taxpayer continues to utilize a "renewable resource" to fuel the over the life of the credit. In order for to qualify as "renewable energy property" as defined in G.S. 105-129.15(6), Taxpayer must use a renewable resource (e.g., ) to fuel and generate electrical power for a business purpose.

Since Taxpayer expects to utilize directed delivered through the pipeline , Taxpayer must, upon audit, provide adequate records (e.g., to fuel invoices, contracts, and purchase receipts from ) to substantiate the acquired and injected into the pipeline for consumption by amount of If the taxpayer utilizes a fuel source other than a renewable in any year in which an installment of the credit is due to resource to fuel be taken, then the taxpayer must reduce that installment for that tax year by the ratio of the amount of conventional fuel used by to the amount of renewable resource used by for that tax year. Furthermore, if Taxpayer resources to fuel fails to utilize any renewable during the tax will be considered to have been taken out of service for vear, then purposes of qualifying for the credit provided under G.S. § 105-129.16A(a), and the taxpayer will forfeit all future installments of the credit. Taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

2. Does the installation of each constitute an "installation of renewable energy property" under G.S. § 105-129 .16A(c)(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 other machinery, equipment, or real property is able to produce usable energy on its own." It is our understanding based on review of information provided, that each individual produces usable energy on its own and the electricity generated by will be

sold to the utility company, but will not directly power the facility. Furthermore, each 's independent electrical output will be aggregated such that a single point of

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connection can be made to the utility grid. In the event any one or more of **sector** is turned off, any of the other **sector** "standing alone" can continue to generate usable electrical power independently of the other **sector**. For these reasons, the installation of each separate **sector** qualifies as an "Installation of renewable energy property" under G.S. 105-129.15(4b). Under G.S. § 105-129.16A(c)(1), renewable energy property serves a business purpose if the useful energy generated by the property is offered for sale or is used on-site for a purpose other than providing energy to a residence. Since the electricity produced by **sector** will be sold to the utility company, a \$2.5M ceiling on the amount of the renewable energy credit will apply to each installation.

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.

Should you have any questions, please contact me.

Very truly yours,

