North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

July 5, 2012

[redacted]

RE: [redacted]
Qualified Energy Conservation Bond's (QECB) Impact on NC Energy Credit.

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 private letter ruling addressing whether the use of the Qualified Energy Conservation Bond (QECB) financing will cause a reduction in the basis of the credit provided under N.C. Gen. Stat. 105-129.16A ("North Carolina Energy Credit").

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

[redacted] commissioned a [redacted] MW solar utility in [redacted] and qualified for the NC Energy Credit for the 2011 tax year. [redacted] wishes to modify its traditional permanent loan on the property held by [redacted] with a QECB from [redacted].

The project has a permanent loan on the property from [redacted] in an amount less than [redacted] of the project costs. To reduce the interest costs on the project's permanent loan, the project applied for and received a QECB allocation from the NC Department of Commerce.

QECBs are federally-subsidized debt instruments that are designed to offer qualified projects more attractive interest rates. Like Build America Bonds, QECBs are taxable bonds and are not categorized as tax-exempt income, meaning the investors must pay federal taxes on QECB interest they receive. Under Section 54A(f), the credit on QECBs provided under section 54A is specifically treated as refunded interest which is included in gross income. In addition, the interest is specifically included in gross income under section 6431(f)(1)(D).

The QECB allocation allows [redacted] to offer a lower interest rate on the permanent loan of the project because the bank (the bond holder) receives a quarterly taxable payment from the US Treasury as outlined under 26 USC §54D for a portion of the interest due from the project. The bank allows the project to pay reduced interest payments in an amount equal to the amount of the taxable subsidy it receives from the Treasury. Additionally, the amount of principal paid by the taxpayer does not change with the QECB allocation. All amounts incurred related to the solar array construction are either paid by the taxpayer or are from loan proceeds that are to be paid back in full by the taxpayer.

ISSUE:

Will the use of QECB financing cause a reduction in the basis of the North Carolina Energy Credit?

Department's Response:

No. QECB financing will not cause a reduction to the North Carolina Energy Tax Credit because a QECB is not "public funds" pursuant to our interpretation of N.C. Gen. Stat. 105-129.16A. Instead, it is a federally-subsidized debt instrument that allows the investor [redacted] to offer a lower interest rate on the repayable loan to the project [redacted] because the investor receives a quarterly taxable payment from the U.S. Treasury for a portion of the interest due from the project. The investor then allows [redacted] to pay reduced interest payments in an amount equal to the amount of the taxable subsidy it receives from the Treasury. Since the amount of principal paid by [redacted] does not change with the QECB allocation, and all amounts incurred related to the solar array construction project are either paid by [redacted] or are from loan proceeds that are to be paid back in full by the taxpayer, the Department will not require [redacted] to reduce the basis of the North Carolina Energy Tax Credit provided under N.C. Gen. Stat. 105-129.16A.

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,

[redacted]