North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

November 9, 2012

[redacted]

RE: Request for Expedited Private Letter Ruling
Taxpayer: [redacted] (the "Taxpayer")
FEIN: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested, on Taxpayer's behalf, an Expedited Private Letter Ruling from the North Carolina Department of Revenue (the "Department") addressing the allocation of the renewable energy tax credits provided under N.C. Gen. Stat. § 105-129.16A.

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

[redacted] is a [redacted] banking corporation. On [redacted], pursuant to a Purchase and Sales Agreement among Taxpayer, [redacted], and [redacted], Taxpayer acquired a [redacted] ownership interest in [redacted] (the "Company"). The Company is a [redacted] limited liability company, which was formed on [redacted], and qualified to do business in North Carolina in [redacted]. Taxpayer is a member of the Company pursuant to a Limited Liability Company Agreement dated [redacted] (the "LLC Agreement"). Pursuant to the Agreement, the Taxpayer is entitled to be allocated [redacted] of all tax credits earned by the Company.

The Company has purchased and installed a [redacted] megawatt DC solar photovoltaic electric generating facility (the "Project") on the rooftop of a building located at [redacted]. The Project was placed into service in [redacted] and before [redacted], the date Taxpayer acquired an interest in the Company. [redacted] has agreed to purchase from the Company, on a long-term basis, all of the net electrical energy to be generated by the Project. The Project is an investment described in N.C. Gen. Stat. § 105-129.15, et seq., and qualifies for the North Carolina tax credits described therein for investing in renewable energy property. The Company has not assigned its rights to claim the North Carolina tax credits to any other party.

Question Presented:

Assuming that (1) the above-described allocation provision in the LLC Agreement governing the allocation of the N.C. renewable energy tax credits is not changed and (2) Taxpayer is a member of the Company from [redacted], will Taxpayer be entitled to N.C. renewable energy tax credits on its North Carolina corporate income tax returns, as a flow-through item from the Company, in an amount equal to [redacted] of the N.C. renewable energy tax credits to which Company is entitled for each of tax years 2012 through 2016?

Department's Response:

We agree with your interpretation and analysis of the applicable statutes. The Project is an investment described in N.C. Gen. Stat. § 105-129.15(7)(c) and qualifies for the North Carolina tax credits for investing in renewable energy property pursuant to N.C. Gen. Stat. § 105-129.16A. Since the Project will be placed into service for a purpose other than residential, the Company is required to take the N.C. renewable energy tax credits in five (5) equal, annual installments.[1]

According to the LLC agreement attached to your letter, the Company will make a federal election to be taxed as a partnership for federal income tax purposes.[2] As a result, the Company will be taxed as a partnership for North Carolina income tax purposes because this State follows the federal check-the-box regulations. Any income, gain, loss, deduction, or credits earned by the Company will flow-through to the interest holders who hold interests in the Company as of the last day of the Company's fiscal year pursuant to N.C. Gen. Stat. § 105-269.15(c). The statute states that:" [A] partner's distributive share of an income tax credit shall be determined in accordance with sections 702 and 704 of the Code." Internal Revenue Code § 704 states that: "[A] partner's distributive share of income, gain, loss, deduction, or credit shall…be determined by the partnership agreement." Thus, Taxpayer, which owns a [redacted] interest in the Company pursuant to the LLC agreement, will be entitled to [redacted] of the N.C. renewable energy tax credits to which Company is entitled for each of tax years 2012 through 2016 if it holds the [redacted] interest in the Company as of the last day of each of the Company's fiscal years.

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.

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[1] N.C. Gen. Stat. 105-129.16A(c)(1)

[2] In a telephone conversation on [redacted], [redacted] confirmed that the Company will make the federal election to be taxed as a partnership.

Should you have any questions, please contact me.

Very truly yours,

[redacted]