North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

December 18, 2012

[redacted]

RE: Request for Private Letter Ruling
[redacted]
FEIN: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested a private letter ruling from the North Carolina Department of Revenue ("Department") on behalf of your client, [redacted] ("Taxpayer"), addressing issues related to North Carolina's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a).

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

Taxpayer is single-member limited liability company organized under [redacted] law. As a single member limited liability company, the Taxpayer is disregarded for federal and state income tax pursuant to Treasury Regulation § 301.7701-I(c). [redacted], an [redacted] limited liability company [redacted], indirectly owns (through an intermediary limited liability company) [redacted] of the Taxpayer's membership interests. In addition, the Taxpayer is affiliated with [redacted], a [redacted] limited liability company, which is also owned indirectly by [redacted] and disregarded for federal income tax purposes. [redacted] develop, own, operate and manage [redacted] solar energy, wind energy and natural gas-fueled electric generation assets in [redacted]. [redacted] plan to expand its solar power presence through the development of a ground-mounted, solar photovoltaic energy facility (the "Project") in [redacted].

The Project will be comprised of [redacted] independently operational [redacted] MWAC installations (each an "Installation" or collectively, the "Installations"). The Installations will be located in [redacted]. An affiliate of the Taxpayer, [redacted], currently has an option to purchase the site from the current landowner, and plans to assign the option agreement to the Taxpayer in the future. The Taxpayer intends to sell all of the electricity produced by each Installation to [redacted] under a long-term power purchase agreement. All appropriate state and local permit applications and certifications will be obtained by the Taxpayer, including a Certificate of Public Convenience and Necessity for the Installations and for registration of the solar photovoltaic energy facility as a new renewable energy facility.

Each [redacted] MW AC solar photovoltaic Installation will consist of (i) solar panels, (ii) racking, (iii) inverters, (iv) transformers, (v) equipment pads, (vi) switchgear, and (vii) electrical wiring. Each Installation will utilize a fixed-tilt racking design. The solar panels will be mounted to the racking supports. Wiring connecting the individual solar panels for each [redacted] MW AC Installation will be mounted to the racking system for connection to the combiner boxes. Combiner boxes will collect the multiple strings of wires into a single circuit. Wiring exiting the combiner boxes will be installed below the ground surface and extend to the inverters, which will be used to convert the direct current (DC) electricity produced by the panels to alternating current (AC) electricity. The inverters will be mounted on concrete pads located near each respective Installation. The AC electricity produced by the inverters for each Installation will be increased to distribution level voltage through a co-located transformer at each inverter station. The output of each Installation will be metered independently and then conveyed via an underground electrical collection system to the switchgear equipment. In addition to combining the electricity produced from each Installation, the switchgear equipment will also incorporate safety disconnects for each independently operated Installation and include protective relaying devices to safely interconnect the Installations from the electrical distribution grid.

Issues:

i) Whether the costs to construct and install [redacted] independently operational [redacted] megawatt ("MW") solar photovoltaic installations described above will qualify for the State's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a); and

ii) Whether each solar photovoltaic installation will constitute an "installation of renewable energy property" for purposes of N.C.G.S. §105-129.16A(c)(1).

Department's Response:

Yes. We agree that the costs to construct and install the solar photovoltaic installations described in your statement of facts will qualify for the State's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a) and (ii) each solar photovoltaic installation will constitute an "installation of renewable energy property" for purposes of N.C.G.S. §105-129.16A(c)(1).

Importantly, N.C.G.S. § 105-129. 15(f) defines "renewable energy property", in part as:

> "Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active space heating and cooling, passive heating, daylighting, generating electricity, distillation, desalination, detoxification, or the production of industrial or commercial process heat. The term also includes related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy."

Since each installation described above will convert solar radiation into electricity and will consist of the components constituting either (i) solar energy equipment that converts solar radiation into electricity or (ii) devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy, the property described in your statement of facts does meet the definition of "renewable energy property" pursuant to the aforementioned statute, and the costs to construct and install the solar photovoltaic installations will qualify for the State's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a).

Under N.C.G.S. § 105-129.16A(a), a taxpayer that constructs, purchases, or leases renewable energy property and places such renewable energy property in service in North Carolina during the taxable year is allowed a credit equal to thirty-five percent (35%) of the cost of the property. For renewable energy property other than property that serves a non-business purpose, the entire Credit may not be taken for the taxable year in which the property is placed in service but must be taken in five equal installments beginning with the taxable year in which the property is placed in service and may not exceed a ceiling of two million, five hundred thousand dollars ($2,500,000.00) per installation.

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 our review of information provided that each individual installation will include several "ground mounted" photovoltaic arrays, as well as system monitoring equipment and a variety of electrical components necessary to deliver AC electricity to the point of interconnection. Furthermore, each installation of photovoltaic arrays will be separately connected into the switchgear, which will provide the transmission capacity necessary for the renewable power to feed into the utility company's grid. In the event any one or more of the installations of photovoltaic arrays is turned off, any of the other installed arrays "standing alone" can continue to generate usable energy independently of the other installations and feed it into the grid. For these reasons, each separate installation of photovoltaic arrays qualifies as an "Installation of renewable energy property." Therefore, the Department will treat each installation of photovoltaic arrays 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).

Please note, however, that the site-wide project costs allocated to each installation and the cost of any equipment, such as ground mounting systems, wiring, and disconnect switches, must be necessary and integral to collecting, storing, exchanging and converting solar energy to electrical power in order to qualify for the credit. Upon audit, the taxpayer must furnish records for inspection that provide the costs and purpose of any equipment included in the costs of the renewable property for which the credit is claimed.

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]