North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 28, 2013

[redacted]

RE: Request for Private Letter Ruling
[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 clients, [redacted] and [redacted] ("Taxpayers"), addressing issues related to North Carolina's Renewable Energy Tax Credit under N.C. Gen. Stat. §105-129.16A(a).

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

Taxpayers are both single member limited liability companies wholly-owned by [redacted]. [redacted] is an affiliate of [redacted]. [redacted] and its affiliates are [redacted] limited liability companies. Taxpayers are taxed as a disregarded entity for U.S. federal income tax purposes under Treasury Regulation §301.7701-1(c). [redacted] and its affiliated companies develop, own and operate large-scale wind energy, solar energy and natural gas-fueled electric generation assets in North America and Europe.

[redacted] intends to construct a [redacted] megawatt wind energy facility comprising approximately [redacted] wind turbines in [redacted] and [redacted] [redacted] [redacted] will be situated on approximately [redacted] acres of land. The County Boards of Commissioners in both [redacted] and [redacted] have adopted wind energy ordinances in anticipation of construction of wind energy projects. [redacted] anticipates filing applications in each county in [redacted] for special use permits to build and operate [redacted]. [redacted] also intends to file an application in [redacted] with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity for [redacted] and for registration of the facility as a new renewable energy facility.

[redacted] also intends to construct an [redacted] megawatt wind energy facility comprising approximately [redacted] wind turbines in [redacted]. [redacted] will be situated on approximately [redacted] of land. On [redacted], the North Carolina Utilities Commission issued an Order granting a Certificate of Public Convenience and Necessity for [redacted] and accepting registration of [redacted] as a new renewable energy facility. [redacted] does not have a county zoning ordinance, and, therefore, a special use permit will not be necessary to build and operate a wind energy facility in the county. [redacted] and [redacted] are referred to herein collectively as the "Projects."

Investor-owned utilities, electric cooperatives and municipal electric suppliers ("Electric Power Suppliers") demonstrate compliance with Session Law 2007-397 ("Senate Bill 3"), through the purchase of renewable energy certificates ("RECs"). A REC is equivalent to 1 MWh of electricity derived from a renewable energy source, or an equivalent amount of thermal energy in the case of combined heat and power and solar water heating, or [redacted] MWh of electricity avoided through an efficiency measure. [redacted] will provide a significant source of RECs for use by Electric Power Suppliers to demonstrate compliance with Senate Bill 3. The [redacted] are expected to generate approximately [redacted] RECs annually. Taxpayers intend to sell all of the electricity produced by [redacted] to one or more Electric Power Suppliers.

ISSUES:

(i) Whether the costs to construct and install the components of the Projects in North Carolina will qualify for the State's Renewable Energy Tax Credit under N.C. Gen. Stat.§105-129.16A(a)?

(ii) Whether each wind turbine generator in the Projects will constitute an "installation of renewable energy property" under N.C. Gen. Stat. §105-129.l6A(c)(l)?

Department's Response:

Based on our review of the facts and the information provided regarding [redacted], we agree that the costs to construct and install the proposed wind energy facilities in North Carolina will qualify for the State's Renewable Energy Tax Credit under N.C. Gen. Stat. §105-129.16A(a) if [redacted] are installed and fully functional. [redacted] must also conform to all applicable state and local codes and to the requirements of all inspecting jurisdictions.

Under N.C. Gen. Stat. §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. As described in your request, each component of the Projects, including the wind turbine's nacelle, rotor and blades, tower and foundation, and collector lines and substations, qualifies as "renewable energy property" for purposes of the Credit. Importantly, each of these components is either (i) a component of wind equipment required to capture and convert wind energy into electricity or mechanical power or (ii) a related device for converting, conditioning, and storing the electricity produced or relaying the electricity by cable from the turbine motor to the power grid.

As to whether each wind turbine generator in [redacted] will constitute an "installation of renewable energy property," N.C. Gen. Stat. § 105-129.l5(4b) defines an "installation of renewable energy property" as "renewable energy property that, when standing alone or in combination with other machinery, equipment or real property, is able to produce usable energy on its own." As described in your request, usable energy can be generated by each wind turbine generator. The blades cause the rotors to spin, which generates an electrical current through electromagnetic induction. Electricity is produced in each nacelle's generator at approximately 600 volts and is routed to the generator step-up transformer, also located in the nacelle. The step-up transformer affixed to each wind turbine increases, or steps up, the voltage to 34.5 kV, readying the electricity for transmission through the collector lines to the collector substation, the step-up substation and eventually to an interconnect point to be transmitted to the power grid. Based on these facts, we agree that the installation of each wind turbine generator constitutes an "installation of renewable energy property" because it is able to produce usable energy on its own, as required by the aforementioned statute.

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.

Very truly yours,

[redacted]