North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

March 15, 2013

[redacted]

Re: Private Letter Ruling Request
[redacted]
FEIN#: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested clarification on technical tax matters as relating to the Credit for Investing in Renewable Energy Property under North Carolina Statute §105-129.16A. The matter pertains to whether the taxpayer may claim the North Carolina tax credits when it leases the eligible property under a contractual agreement that is characterized as "capital lease" for federal and/or state tax purposes.

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

[redacted] is a [redacted] owner of [redacted], which is the managing member and tax matters partner of [redacted] (hereinafter "LLC'). LLC is taxable as a partnership for federal income tax purposes and is also classified as a partnership for North Carolina franchise, income and premium tax purposes.

LLC will own [redacted] of [redacted] (a to-be-created entity taxable as a partnership for federal income tax purposes and hereinafter "Lessor). The partners of Lessor each acquired their ownership interests in exchange for cash. Lessor incurred all the costs for the tax credit eligible property, through a combination of partner equity and, in some cases, non-recourse debt of [redacted]. Lessor will own and lease to [redacted] (another to-be-created entity taxable as a partnership for federal income tax purposes and hereinafter "Lessee'), solar property eligible for the tax credit for Renewable Energy Property under North Carolina Statute §105-129.16A, pursuant to a "capital lease".

Lessee will use the leased solar property for the production and sale of electricity in its trade or business. The electricity generated by the solar renewable energy property will be sold to a North Carolina public utility, along with Renewable Energy Certificates (RECs) in some cases.

With respect to the capital lease transactions, for purposes of North Carolina contract law, [redacted] owns and as Lessor, leases the tax credit eligible equipment to [redacted] through a lease agreement that, for state law purposes would be characterized as a "capital lease" and therefore for federal income tax purposes would be treated as a sale and financing, so that for federal income tax purposes, Lessee is treated as owner for general tax purposes and because LLC is characterized as owner, it is thereby entitled to all federal income tax credits and federal tax depreciation deductions with respect to the leased property.

The assumed expected life of the solar assets is [redacted] years, which is the same length of time as each of the solar asset's warranty. Lessee's lease term with Lessor is [redacted] years, thus the lease life is [redacted] of the asset life. Lessee has an option to purchase the solar equipment from Lessor at the end of the capital lease term for [redacted]. The present value of the lease payments, discounted, exceed [redacted] of the fair market value of the solar energy equipment.

Lessee will execute a writing concurrent with the execution of the capital lease agreement wherein it waives and quits claim to any and all right to claim the Credit for Investing in Renewable Energy Property under North Carolina Statute §1 05-129.16A. Therefore, Lessor will not give written certification to Lessee that it will not claim the Credit for Investing in Renewable Energy Property under North Carolina Statute §105-129.16A.

Issue:

Whether the lessor in a capital lease transaction is entitled to claim the Credit for Investing in Renewable Energy Property under N.C. Gen. Stat. § 105-129.16A if it does not provide the lessee with written certification required by N.C. Gen. Stat. § 105-129.16A(d) that it will not claim the credit?

Department's Response: Yes. The lessor in a capital lease transaction is entitled to claim the tax credit provided under N.C. Gen. Stat. § 105-129.16A if it does not provide the lessee with written certification that it will not claim the credit. Pursuant to subsection (d) of the statute, a taxpayer that leases renewable energy property from another taxpayer may not claim the credit allowed for renewable energy property unless the taxpayer obtains the lessor's written certification that the lessor will not claim the renewable credit with respect to the property. Therefore, the lessee may only claim the North Carolina Renewable Energy Tax Credit only if the lessor gives the lessee a written certification that it will not claim the credit. In this case, since the Lessor constructed and/or purchased eligible renewable energy property, and Lessee expressly waived any and all right to claim the tax credit, it is the Lessor and its respective partners that are eligible for the NC tax credit. Here, according to your statement of facts, Lessor will not provide written certification to Lessee that it would not claim the credit; therefore, Lessor is the only entity that has the right to allocate the North Carolina Renewable Energy Tax Credit to its partners for North Carolina tax purposes.

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]