North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

April 2, 2013

[redacted]

Attn: [redacted]

Re: Request for Expedited Private Letter Ruling
[redacted]
FEIN: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") issue an expedited private letter ruling on behalf of your clients regarding the application of the tax credit for investing in renewable energy property (the “NC Tax Credit”), N.C. Gen. Stat. § 105-129.15 et seq.

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

[redacted], a [redacted] limited liability company ("[redacted]") is pursuing the development of a renewable energy project comprised of [redacted] installations of solar photovoltaic electricity generation equipment (individually an "Installation" and collectively the "PV Facility") to be located in [redacted] (the "Site"). Each Installation will have a gross output of approximately [redacted] megawatts ("MW") DC and a net output of approximately [redacted] MW AC.

The PV Facility will be designated as [redacted]. Each Installation will consist of approximately [redacted] solar PV modules, [redacted] inverters, wiring and balance of system components (consisting of electrical wire, connectors, conduit, combiner boxes, disconnect switches and related equipment), transformers, metering and monitoring equipment, and other ancillary equipment. If any Installation is disconnected, each of the other remaining connected Installations will be able to produce usable energy on its own. Each Installation, standing alone or in combination with other machinery, equipment, or real property, will be able to produce usable energy on its own.

The PV Facility will generate electricity to be delivered to a transformer(s) and distribution line owned and operated by a North Carolina utility (the "Utility"). [redacted] ("Taxpayer") will enter into (i) an interconnection agreement with the Utility to govern the terms of the interconnection of the PV Facility and (ii) a power purchase agreement (the "PPA") with the Utility, pursuant to which the electricity generated by the PV Facility will be sold to the Utility. Accordingly, the PV Facility will be used for a business purpose.

Taxpayer will develop, construct, own and lease each Installation to [redacted] ("Lessee"). Lessee will operate each Installation pursuant to the Equipment Leases. All of the membership interests of Taxpayer and Lessee are currently owned by [redacted], a limited liability company ("Fund"). One or more investors will be admitted as a member of Taxpayer from time to time and may withdraw from Taxpayer during the five (5) year period that the NC Tax Credit is taken (the "NC Tax Credit Period"). Some or all of such investors may be admitted as a member of Taxpayer after the PV Facility is placed in service. It is further expected that Fund will serve as the sole manager or managing member of Taxpayer and Lessee during the NC Tax Credit Period. Taxpayer, Lessee and Fund have elected to be taxed as a partnership.

Each Equipment Lease will be structured as a capital lease, and Lessee will be considered the federal income tax owner of the PV Facility for federal income tax purposes. Taxpayer and Lessee will enter into documentation in connection with each Equipment Lease that Taxpayer will claim the NC Tax Credit with respect to the leased property and Lessee shall not make a claim to the NC Tax Credit. Thus, Lessee will not obtain the certification from Taxpayer required by N.C.G.S. § 105-129.16A(d) for Lessee to take the NC Tax Credit.

ISSUES:

1. Whether each Installation comprising a part of the PV Facility is a separate "installation" of a renewable energy property within the context of N.C. Gen. Stat. §§ 105-129.15(4b) and 105-129.16A(c)(1), and whether each such Installation is eligible for up to $2,500,000 of NC Tax Credits?

Department's Response: Yes. 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 the 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 NC Tax Credit under N.C. Gen. Stat. §105-129.16A(a).

The relevant statute, N.C. Gen. Stat. § 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. 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. Gen. Stat. § 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 NC Tax Credit is claimed.

2. By refraining from providing the written certification required by N.C. Gen. Stat. § 105-129.16A(d) to Lessee, is Taxpayer entitled to claim the NC Tax Credit based on the Statement of Facts?

Department's Response: Yes. Taxpayer, 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 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, only if the lessor gives the lessee a written certification that it will not claim the credit, may the lessee claim the North Carolina Renewable Energy Tax Credit. In this case, because Taxpayer constructed and/or purchased eligible renewable energy property and since Taxpayer will not provide written certification to Lessee that Lessee may claim the credit, Taxpayer, as the 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.

3. Whether changes in ownership of the membership interests in Taxpayer during the NC Tax Credit Period affect (i) Taxpayer's continued entitlement to the NC Tax Credit, or (ii) the entitlement of the new member(s) in Taxpayer to its distributive share of any remaining unallocated installments of the NC Tax Credit?

Department's Response: The Department will provide a ruling on this issue at a later date.

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]