# North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 28, 2014

[redacted]

Attn: [redacted]

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

Dear [redacted]:

In response to your letter dated [redacted], the North Carolina Department of Revenue ("Department") issued a partial ruling on [redacted] on issues relating to 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. However, we deferred to a later date our response to the issue as to whether changes in the ownership of the membership interests in [redacted] ("Taxpayer") during the five-year 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. Please accept the information below as our response to the remaining issue.

After consideration of the facts and the relevant statutes and regulations, it is our finding that a change in the ownership of the membership interests in Taxpayer during the five-year NC Tax Credit Period will not affect Taxpayer's continued entitlement to the NC Tax Credit, or the entitlement of the new member(s) in Taxpayer to its distributive share of any remaining unallocated installments of the NC Tax Credit. If the change of ownership is not considered to be a termination of the partnership and/or a disposition of the renewable energy property for federal income tax purposes, then the partner that acquires a partnership interest from a former partner after the close of the first taxable year of the five-year tax credit period is allowed to claim the prior partner's allocable share of future installments of the North Carolina credit. Any unused portion of an installment that accrued during a prior year remains with the former partner.

Importantly, N.C. Gen. Stat. § 105-269.15 provides specific guidance with regard to income tax credits of partnerships. Subsection (c) of 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." IRC section 704 provides guidance with regard to a partner's distributive share of income, gain, loss, deduction, or credit. Since the statute references the IRC to determine the distributive share of a credit allocated to each partner, the Department must rely on the federal determination. If a partner is not entitled to the distributive share of income, gain, loss, deduction, or credit for federal income tax purposes, then the partner would not qualify to receive that distributive share of income, gain, loss, deduction, or credit for North Carolina purposes. For federal income tax purposes, the partnership agreement's allocation of partnership items of income, loss, deduction, and credit among the partners is respected provided the allocation has substantial economic effect or is otherwise consistent with, or is deemed to be consistent with, the partners' interests in the partnership. [Code Sec. 704(a); Reg. §1.704-1(b)(1)(i)]

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]