North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 31, 2013

[redacted]

Attn: [redacted]

Re: Request for Expedited Private Letter Ruling N.C. Gen. Stat. § 105-129.16A.
Credit for Investing in Renewable Energy Property

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") provide a Private Letter Ruling confirming that [redacted] is entitled to a tax credit for investing in renewable energy property as described in N.C. Gen. Stat.§ 105-129.16A. The statement of facts submitted for the Department's consideration is summarized as follows:

[redacted] is a [redacted] company producing products for industrial and consumer use through selective [redacted] processes. In a selective [redacted] process a [redacted] material is mixed with specific selected [redacted] and is allowed to [redacted] under controlled conditions for a set period of time to produce the desired product. Typical [redacted] materials are [redacted] products such as [redacted]. The [redacted] is mixed with [redacted] in a large tank or [redacted], and specific [redacted] that produce the [redacted], as a product of their [redacted], are added to the mixture. [redacted] are added to optimize the [redacted] process. The conditions in the [redacted], including [redacted], are carefully controlled to optimize the [redacted] process.

Upon completion of the [redacted] process, the [redacted]s are emptied and the [redacted] product is recovered from the [redacted] contents. The residual solid biomass [redacted] is separated for use as an [redacted] supplement. The [redacted] residual contains a high concentration of [redacted], along with some [redacted], and is currently routed to an [redacted] treatment plant for treatment and [redacted] disposal. On a typical day, this stream contains approximately [redacted] that is suitable for [redacted] with the recovery of the resulting [redacted] as an [redacted].

[redacted] is considering implementing an [redacted] at its [redacted], manufacturing facility ("Facility"). The proposed [redacted] project will capture the [redacted] matter that is currently wasted and process it in an [redacted]. The [redacted] will be captured, scrubbed to remove impurities, and used as the fuel source for a [redacted] boiler. [redacted] will make up approximately [redacted] of the heat input to the boiler. Both the [redacted] flow and the [redacted] flow to the boiler will be measured and recorded continuously to verify the [redacted] use and percentage of heat input to the boiler attributable to the biogas.

The [redacted] boiler, rated at [redacted], will produce steam and hot water for use in the manufacturing process. An [redacted]) in the boiler stack will capture [redacted] to produce [redacted] and improve [redacted] of the process. [redacted] materials from the [redacted]) will be separated and handled in the existing [redacted] handling facilities at the plant. The [redacted], containing much less [redacted] than it originally did, will be routed to the [redacted] treatment plant where it will be treated for [redacted] disposal. The reduction in [redacted] input to the [redacted] will result in a substantial reduction in the energy required to run the existing blowers that are necessary for the [redacted] process to operate properly.

ISSUE:

Whether the costs of the equipment in [redacted]'s proposed energy recovery project at the Facility qualify for the tax credit provided under N.C. Gen. Stat. § 105-129.16A?

RELEVANT STATUTES:

N.C. Gen. Stat. § 105-129.15 (6) reads as follows:

> "Renewable biomass resources - Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes."

N.C. Gen. Stat. § 105-129.15(7) defines "Renewable energy property" as "any of the following machinery and equipment or real property:

a) Biomass equipment that uses renewable biomass resources for biofue1 production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

b) Combined heat and power system property. - Defined in section 48 of the Code."

N.C. Gen. Stat. § 105-129.16A(a) states that:

> "A taxpayer that has constructed, purchased, or leased renewable energy property and places it in service in this State during the taxable year is allowed a credit equal to thirty−five percent (35%) of the cost of the property."

N.C. Gen. Stat. § 105-129.16A(c)(1) provides that:

> "A ceiling of two million five hundred thousand dollars ($2,500,000) per installation applies to renewable energy property placed in service for any purpose other than residential. [N.C. Gen. Stat. § 105-129.16A(c)(1)]

DEPARTMENT'S RESPONSE:

Yes. Since the [redacted] boiler uses [redacted] resources to produce [redacted] for [redacted]'s manufacturing process (i.e., [redacted]), the boiler meets the definition of renewable energy property pursuant to N.C. Gen. Stat. § 105-129.15(7)(b). Furthermore, any ancillary equipment that is deemed to be necessary and integral to collecting, storing, exchanging and converting the [redacted] to energy, such as the [redacted], also qualifies for the credit as a related device. As a result, the costs incurred to purchase and install the equipment in [redacted]'s proposed energy recovery project at the Facility will qualify for the tax credit provided under N.C. Gen. Stat. § 105-129.16A.

Pursuant to N.C. Gen. Stat. § 105-129.15(2), the term "cost" is defined as follows:

> "Cost – In the case of property owned by the taxpayer, cost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to N.C. Gen. Stat. 105‑130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass−through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code."

According to the Treasury Regulations referred to in the above statute, the cost of renewable energy property that is purchased by the taxpayer is the amount paid for the property in cash or other property. For purposes of computing the Tax Credits for renewable energy property, the Guidelines for Determining the Tax Credit for Investing in Renewable Energy Property provide that the eligible costs include the cost of the equipment and associated design, construction costs, and installation costs less any discounts, rebates, advertising, installation assistance credits, name referral allowances, costs provided by public funds, or other similar reductions paid to the owner of the system as an inducement to purchase the renewable energy system. Public funds include federal, State, and local government funds.

Importantly, in order for the [redacted] to continue to qualify as "renewable energy property" as defined in N.C. Gen. Stat. § 105-129.15(6), [redacted] must use a renewable [redacted] resource (e.g., [redacted]) to fuel the boiler and must continue to generate [redacted] for a business purpose. [redacted] must provide, upon audit, adequate records (e.g., invoices, contracts, and purchase receipts from [redacted] suppliers) to substantiate the amount of [redacted] acquired and injected into the [redacted] for consumption by the [redacted] because it expects to utilize a combination of [redacted] to fuel the boiler. If [redacted] utilizes a fuel source other than a renewable [redacted] resource to fuel the boiler in any year in which an installment of the credit is due to be taken, then the company must reduce that installment for that tax year by the ratio of the amount of conventional fuel used by the boiler to the amount of renewable [redacted] resource used by the boiler for that tax year. Furthermore, if [redacted] fails to utilize any renewable [redacted] resources to fuel the boiler during the tax year, then the boiler will be considered to have been taken out of service for purposes of qualifying for the credit provided under N.C. Gen. Stat. § 105-129.16A(a), and [redacted] will forfeit all future installments of the credit. The company may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under N.C. Gen. Stat. § 105‑129.17.

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]