North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

August 7, 2013

[redacted]

Attn: [redacted]

Re: The Application of the Business and Energy Tax Credits to a Solar Photovoltaic Facility in [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 is pursuing the development of a series of renewable energy projects (each a "PV Facility" and together the "PV Facilities"). Each PV Facility will be comprised of [redacted] installations of solar photovoltaic electricity generation equipment (individually an "Installation"). [redacted] is party to an [redacted] Agreement (the "[redacted] Agreement") with [redacted] (the "[redacted] Contractor"). Under the [redacted] Agreement, the [redacted] Contractor agreed to construct and install the Installations and the PV Facilities.

Each Installation will include a number of solar PV modules, inverters, wiring, 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 (i.e., turned off), 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 decision to install multiple Installations was driven by engineering design parameters and equipment sizing limitations.

Each PV Facility will generate electricity to be delivered to a transformer(s) and distribution line owned and operated by [redacted] (the "Utility") before being exported to the electric grid. For each PV Facility, [redacted] ("Taxpayer") has entered or will enter into (i) an interconnection agreement with the Utility to govern the terms of the interconnection of such PV Facility and (ii) a power purchase agreement (the "PPA") with the Utility, pursuant to which the electricity generated by such PV Facility will be sold to the Utility. Accordingly, each PV Facility will be used for a business purpose.

Taxpayer will establish a [redacted] ("Trust") which will be a grantor trust, and wholly-owned by Taxpayer. Trust will not elect to be taxed as an association taxable as a corporation, and will be a disregarded entity for federal income tax purposes. Trust will purchase the PV Facilities individually from [redacted] (hereinafter referred to as the "Lessee") and will lease each PV Facility to the Lessee. All of the issued and outstanding membership interests of Lessee are currently owned by [redacted]. Lessee has not elected to be taxed as an association taxable as a corporation.

Prior to completion of any of the Installations with respect to a PV Facility, the Lessee and the Taxpayer will enter into a purchase and sale agreement, pursuant to which the Lessee will sell, assign, transfer and convey all of its right, title and interest in, under and to the PV Facility, the Installations, the [redacted] Agreement, and the assets being delivered there under to the Taxpayer, subject to any liens in favor of the [redacted] Contractor or any construction lender. At the time the agreement is entered into and title is transferred to the Taxpayer, none of the Installations subject to the agreement will have been placed in service for North Carolina and federal tax purposes. The purchase price will be paid in [redacted] installments: the [redacted], will be paid on the date that the parties enter into the [redacted] Agreement (the "Purchase Date") and the [redacted] will be made on the Lease Date (as defined below).

At a later date, Lessee and the Taxpayer will enter into a solar system lease, pursuant to which the Lessee will lease the Installations and the PV Facility from the Taxpayer for a term of [redacted] years. During the term of the lease, Lessee will use, operate and maintain the Installations and the PV Facility to generate and sell renewable energy. Taxpayer and Lessee will enter into documentation in connection with the lease providing 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. Gen. Stat. § l05-l29.l6A(d) for Lessee to claim the NC Tax Credit.

ISSUES:

I. Will Taxpayer, as the owner of each Installation comprising each respective PV Facility, be the party entitled to claim the NC Tax Credit, on the respective Purchase Date when it takes title to each such Installation as described above in the Statement of Facts?

Department's Response: No. Taxpayer, as owner of each Installation, will not be entitled to claim the NC Tax Credit until each Installation is placed into service on or after the Lease Date.

II. In the context of the structure described above in the Statement of Facts, will each Installation and PV Facility be deemed to be placed in service in conformity with the Statute for the NC Tax Credit when all of the following have been satisfied: (i) all necessary permits and licenses have been obtained; (ii) construction, installation and testing of the Installation has been completed, such that the Installation is ready and capable of being used for its intended purpose, (iii) possession of the Installation is delivered or made available to Lessee under the Equipment Lease to which it is subject, (iv) daily or regular operation of the Installation has commenced and (v) electricity, other than test energy, is sold for the production of income?

Department's Response: No. For purposes of claiming the NC Tax Credit, each Installation must be operational and producing usable energy.

III. Is each Installation comprising a part of the PV Facility, as described above, a separate "installation" of a renewable energy property within the context of N.C. Gen. Stat. §§ 105-129.15(4b) and 105-129.16(A)(c)(1), and 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, which when standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own.” Based on our review of the information provided, it is our understanding 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.

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]