North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

September 26, 2013

[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 letters dated [redacted] and [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] ("Taxpayer/Lessor"), a North Carolina limited liability company, 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]. Each Installation will have a gross output of approximately [redacted] megawatts ("MW") AC.

The PV Facility will be designated as [redacted]. Each Installation will consist of solar PV modules, 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"). Taxpayer/Lessor 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/Lessor will develop, construct, own, and lease each Installation to [redacted], a [redacted] limited liability company ("Lessee"). Lessee will operate each Installation pursuant to the "Equipment Leases." Currently, [redacted], a [redacted] limited liability company ("[redacted]") owns [redacted] of the outstanding membership interests of Taxpayer/Lessor. It is expected that a state tax equity investor will be admitted as a direct or indirect member of Taxpayer/Lessor and will receive an allocation of the NC Tax Credit proportionate to its interest in the income and loss of Taxpayer/Lessor. On or prior to the date the state tax equity investor is admitted to Taxpayer/Lessor, it is expected that [redacted] will withdraw from Taxpayer/Lessor. [redacted] ("Fund"), a [redacted] limited liability company, will be admitted as a member with not less than a [redacted] membership interest.

Taxpayer/Lessor's operating agreement will provide for adjustments to the members' membership interests following the satisfaction of certain conditions which, if they do occur, are not expected to occur until after the expiration of the NC Tax Credit Period, resulting in membership interests of Fund and the state tax equity investor of [redacted] respectively. Fund currently owns all of the issued and outstanding membership interests in Lessee It is expected that a federal tax equity investor will be admitted as a member of Lessee. Fund will serve as the sole manager or managing member of Taxpayer/Lessor and Lessee during the NC Tax Credit Period. Taxpayer/Lessor, Lessee, and Fund will not elect to be taxed as a corporation.

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 an agreement that Taxpayer will claim the NC Tax Credit with respect to the leased property. 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.

Prior to commercial operation of each Installation, but following the installation of equipment necessary for each Installation to interconnect to the power grid, the Utility will issue a letter to Taxpayer ("Permission to Operate Letter"). The Permission to Operate Letter will inform Taxpayer that it has met all of the Utility's conditions and requirements under the interconnection agreement to ensure proper and safe interconnection of the Installations, and that from the Utility's perspective Taxpayer may transmit electrical energy to the power grid.

It has become the Utility's practice to issue the Permission to Operate Letter earlier in the construction process. At the time The Permission to Operate Letter is expected to be received by Taxpayer, certain construction activities and the installation of certain components of the PV Facility on the PV Facility's side of the interconnection point are inspected to remain outstanding and incomplete and the completion of critical testing of each Installation will not have occurred. Significantly, the inverters that are an integral part of the PV Facility will not be commissioned. The inverters convert unusable DC power produced by the solar panels into usable AC power. All electricity on the power grid is AC power. Prior to commissioning the inverters, no Installation will be capable of producing usable power, as only AC power can be fed into the grid and used by the Utility and its customers.

ISSUES:

I. 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, 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 cost and purpose of any equipment included in the costs of the renewable property for which the NC Tax Credit is claimed.

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

Department's Response: Yes. Taxpayer/Lessor, 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/Lessor constructed and/or purchased eligible renewable energy property and 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.

III. 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: Yes. In the context of the structure described above in the Statement of Facts, if the activities enumerated in (i) through (v) take place, the renewable energy property ("Installation" and "PV Facilities") will be considered to have been placed in service.

IV. For purposes of the North Carolina tax credit in the context of the capital lease structure described in the letter dated July 18, 2013, will the receipt of the Permission to Operate Letter be dispositive in determining the date the Taxpayer/Lessor places the PV Facility in service?

Department's Response: No. Since none of Installations will be in a condition or state of readiness at the time of the receipt of the Permission to Operate Letter because the inverters will not yet be commissioned and functioning to convert unusable DC power to usable AC power to feed into the power grid. Neither the PV Facility, nor any Installation will be operational and producing usable energy for sale. Therefore, the receipt of the Permission to Operate Letter will not be dispositive in determining the date the Taxpayer/Lessor places The PV Facility in service.

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]