North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

October 29, 2013

[redacted]

Re: N.C. Gen. Stat. 105-129.16D – Credit for constructing renewable fuel facilities
Request for private letter ruling

Dear [redacted]:

This letter is in response to your correspondence of [redacted] wherein you requested that the Department of Revenue issue to you a private letter ruling regarding "the availability of the NC State Alternative Fuels tax credit and the activities that would comply with the statute." You have indicated that the following activities will commence at the site, located at [redacted], in [redacted]:

1. Mobilization of temporary site construction facilities,
2. Surveying & dimension control,
3. Installation of site sign,
4. Installation of construction entrances,
5. Installation of temporary storm water and erosion control measures such as:
    a. Silt fencing
    b. Temporary sediment ponds
    c. Swales and diversion ditches
    d. Riprap and other stone
    e. Temporary seeding and ground cover
6. Clearing and grubbing,
7. Installation of temporary roadways for construction,
8. Stripping topsoil, and
9. Rough grading.

During the 2013 Session of the North Carolina General Assembly, House Bill 112 was enacted. Section 11.3(a) of that bill extends the sunset of N. C. Gen. Stat. 105-129.16D, the credit for constructing renewable fuel facilities, through the end of 2016 for a taxpayer that places a qualifying facility in service on or before December 31, 2016 and satisfies the following conditions:

1. Signs a letter of commitment with the Department of Commerce on or before September 1, 2013, stating the taxpayer's intent to construct and place into service in this State a commercial facility for processing renewable fuel, and
2. Begins construction of the facility on or before December 31, 2013.

[redacted]

You provided with your letter a copy of the letter of commitment with the Department of Commerce signed by you on [redacted], which satisfies the first condition. As to the second condition, it is the position of the Department of Revenue that commencement of the activities identified in your letter and restated above will constitute "beginning construction" for purposes of the credit for constructing renewable fuel facilities. For verification purposes, an auditor from the Examinations Division will need to meet with you or your representative at the construction site prior to January 1, 2014. Please choose a date that is convenient for you. I will be happy to assist in coordinating that meeting.

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.

If you have questions, please contact me.

Very truly yours,

[redacted]

[redacted]