North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

May 29, 2014

[redacted]

Re: [redacted] (FEIN: [redacted])
Request for a Private letter Ruling Regarding the Determination of Credit Utilization for North Carolina Renewable Energy Property Credits Pursuant to G.S. 105-129.16A

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested a written determination for [redacted] by the North Carolina Department of Revenue ("Department") regarding the utilization of renewable energy property credits for solar electric equipment. These credits are available to taxpayers pursuant to N.C.G.S. §105-129.16A.

The statement of facts submitted for the Department's consideration is as follows:

[redacted] is the largest electric power company in [redacted] with [redacted] customers in [redacted]. [redacted] operates in the [redacted] primarily through its direct and indirect wholly owned subsidiaries. As a separate entity, [redacted] has both regulated and non-regulated utility operations. As part of its long-term environmental sustainability initiative, [redacted] owns and maintains [redacted] solar photovoltaic (PV) equipment. All electricity generated by the renewable energy property owned by [redacted] is transferred to the grid and sold to customers. Generally, the solar projects are designed such that each single solar PV installation is separately connected to the main power grid and is independently capable of generating electricity on its own.

[redacted] files the Franchise Tax Return for Electric Companies, Form CD-310, on a quarterly basis. Since the amount paid with the utility franchise tax ("UFT") is greater than what would be paid under the general franchise tax, there is no general franchise tax due. [redacted] has generated North Carolina renewable energy credits from solar installations placed in service in years prior to 2014 which have been claimed against the UFT. The most recent renewable energy credits were generated by [redacted] in 2013. Installments are claimed annually. The initial credit is claimed on the quarterly return in which the property is placed in service. Subsequent installments are taken each year in the same quarter in which the initial installment was taken.

ISSUES:

1. If multiple installations are placed in service during the year, can one installation be claimed against franchise tax while another installation is claimed against income tax?

   Department's Response: Yes. If multiple installations are placed in service during the year, the taxpayer may elect to take the renewable energy credit for a particular installation against franchise or income tax. The election becomes binding when filing the return on which the first installment of the credit is claimed.

2. When are installments of the renewable energy credit taken that would have been taken in the 3rd and 4th quarters of 2014 if not for the repeal of the UFT?

   Department's Response: Since the UFT levied under N.C. Gen. Stat. § 105-116 will not be in existence for the last two quarters of 2014, the 3rd installment of the renewable energy credit previously taken against UFT must be carried forward and taken against [redacted]'s general business franchise tax liability.

   Assuming [redacted] will not be required to file a franchise tax return before the end of the calendar year 2014, [redacted] must take the 3rd installment of the renewable energy credit against the general business franchise tax due with the North Carolina Tax return (Form CD-405) filed by [redacted] for the income tax year ending December 31, 2014. [redacted] may take the 4th installment of the renewable energy credit when [redacted] files its next franchise tax return pursuant to the provisions of N.C. Gen. Stat. § 105-122.

   The general business franchise tax levied under N.C. Gen. Stat. § 105-122 is for the income year of the corporation in which the taxes become due. Since [redacted] will not have a general franchise tax liability in 2014 or a UFT liability in the 3rd or 4th quarters of 2014, the unused installments resulting from the repeal of the UFT must be carried forward to a tax period in which there is a franchise tax liability. In this case, [redacted] must carry forward the unused installments and apply them against [redacted]'s general business franchise tax.

3. When is the renewable energy credit first claimed for eligible property that may be placed in service during the last half of 2014?

   Department's Response: A taxpayer that places renewable energy property in service during the last half of 2014 must take the first installment of the renewable energy property tax credit beginning with the first taxable year that ends after the property is placed in service.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. 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.

Sincerely,

[redacted]