North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

July 1, 2014

[redacted]

Re: The Application of the Business and Energy Tax Credits to a Solar Photovoltaic Facility in North Carolina

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of your client, [redacted] ("Taxpayer"), that the North Carolina Department of Revenue ("Department") issue a written ruling regarding the application of the Business and Energy Tax Credit for investing in renewable energy property (the "NC Tax Credit"), N.C. Gen. Stat. § 105-129.15 et seq., to a solar photovoltaic electricity generating project to be located in [redacted] (the "PV Facility").

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

[redacted], a North Carolina limited liability company ("Lessee"), is pursuing the development of the PV Facility. The PV Facility will be comprised of several installations of solar photovoltaic electricity generation equipment (each an "Installation").

Each Installation will function independently to produce electricity per the rated output of each such Installation. Each Installation will consist of a number of solar PV modules and inverters and 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 (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 PV Facility will generate electricity to be delivered to a transformer(s) and distribution line owned and operated by a regulated public utility (the "Utility") before being exported to the electric grid. Lessee has entered or 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 with the Utility, pursuant to which the electricity generated by the PV Facility will be sold to the Utility. Accordingly, each Installation comprising the PV Facility will be used for a business purpose.

Taxpayer will establish a statutory trust pursuant to the [redacted] Trust Act (the "Trust") for the sole purpose of purchasing the PV Facility from Lessee and leasing the PV Facility back to Lessee. The Trust will be a grantor trust and wholly-owned by Taxpayer. The 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.

Lessee will (i) develop and cause the construction of the Installations, (ii) sell the PV Facility to Taxpayer and (iii) lease the PV Facility back from Taxpayer. 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.

Lessee is party to an [redacted] Agreement (the '[redacted] Agreement") with [redacted] ('[redacted] Contractor"). Under the [redacted] Agreement, the [redacted] Contractor will construct and install each Installation and the balance of the assets comprising the PV Facility. When construction of each Installation is substantially complete, the [redacted] Contractor will transfer possession and control of each such Installation to Lessee, and Lessee and [redacted] Contractor will jointly conduct and conclude to their satisfaction the critical tests for the various components of each Installation, including synchronizing each Installation into the power grid in conjunction with, and to the satisfaction of, the Utility. Upon the satisfactory conclusion of testing and synchronization, Lessee and [redacted] Contractor will consider the construction and installation of each such Installation to be complete. Lessee will then commence regular operation of each such Installation and each such Installation will be considered placed in service by Lessee. The placement in service date will also be certified by an independent engineer.

Lessee and Taxpayer will enter into a [redacted] agreement (the '[redacted] Agreement"), pursuant to which Lessee will sell, assign, transfer and convey all of its right, title and interest in, under and to the PV Facility to Taxpayer after each Installation comprising the PV Facility is placed in service, but in all events within three (3) months of the date the first such Installation is placed in service, and Taxpayer will become the owner of the PV Facility. The purchase price of the PV Facility will be the sum of the fair market values of each Installation comprising the PV Facility, as supported by an appraisal prepared by an independent appraiser.

Concurrently with the sale to Taxpayer of the PV Facility under the [redacted] Agreement, Lessee and Taxpayer will enter into an [redacted] lease (the '[redacted] Lease"), pursuant to which Taxpayer will lease the PV Facility back to Lessee. The [redacted] Lease will be structured as an operating lease (e.g., a true lease for federal income tax purposes). During the term of the [redacted] Lease, Lessee will use, operate and maintain the PV Facility and the site upon which it is located to generate and sell renewable energy.

Taxpayer and Lessee will enter into documentation in connection with the [redacted] Lease providing that Taxpayer will claim the NC Tax Credit with respect to each Installation comprising the PV Facility and Lessee will not claim the NC Tax Credit. Thus, Lessee will not obtain the certification from Taxpayer required by N.C. Gen. Stat. § 105-129.16A(d) for Lessee to claim the NC Tax Credit.

ISSUE:

In the context of the structure described above in the Statement of Facts, if Lessee places each Installation in service and subsequently sells each such Installation to Taxpayer as part of the PV Facility and Taxpayer leases each such Installation back to Lessee as part of the PV Facility within three (3) months of the original date such Installation was placed in service, will North Carolina: i) apply the federal sale-leaseback rule for qualifying energy property and allow Taxpayer to treat the date each such Installation is first leased to Lessee as part of the PV Facility under the Equipment Lease as the original placed-in-service date of such Installation; and ii) recognize Taxpayer as the proper party entitled to the NC Tax Credit?

Department's Response:

No. North Carolina will not apply the federal sale-leaseback rule for qualifying energy property and will not allow Taxpayer to treat the date each such Installation is first leased to Lessee as part of the PV Facility under the [redacted] Lease as the original placed-in-service date of such Installation. Importantly, North Carolina does not follow the federal definition of "placed in service" for purposes of the NC Tax Credit. Instead, renewable energy property is considered to be placed in service when it is installed and is producing usable energy. In this case, it is Lessee that will begin the regular operation of each Installation and is, therefore, considered to be the party that places each such Installation in service. Since Taxpayer will not be the party that places the qualifying renewable energy property in service as is required by N.C. Gen. Stat. § 105-129.16A, and North Carolina does not follow the federal sale-leaseback rule, Taxpayer will not be recognized as the proper party entitled to the NC Tax Credit.

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]