North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 14, 2015

[redacted]

Re: Request for Expedited Private Letter Ruling
[redacted]
FEIN: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of [redacted] ("Taxpayer/Lessee") that the North Carolina Department of Revenue ("Department") provide an expedited Private Letter 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 solar photovoltaic electricity generating projects to be located in North Carolina (each a "PV Facility").

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

[redacted] is the sole owner of [redacted] ("Fund"), which is sole owner of [redacted], which is the sole owner of [redacted] ("Owner").

Owner will wholly own multiple and separate limited liability companies, each of which will own a PV Facility ("Lessors", each a "Lessor") located in North Carolina. Each Lessor will be disregarded for federal income tax purposes. Each Lessor will lease to Taxpayer/Lessee (an entity taxable as a partnership for federal and state income tax purposes) and certain subsidiary limited liability companies [each of which will be wholly owned by Taxpayer/Lessee (each a "Sub-Lessee") and disregarded for federal income tax purposes.] a PV Facility eligible for the NC Tax Credit, pursuant to an "operating lease." Each Sub-Lessee will enter into a power purchase agreement and interconnection agreement for the sale of electricity generated by the solar generating facility. Each PV Facility will have a "business purpose."

[redacted] is the [redacted] owner of [redacted] ("Manager"), which is the member, [redacted] owner and the tax matters partner of Taxpayer/Lessee. A tax equity investor will be the [redacted] owner of Taxpayer/Lessee.

Each Lessor will cause the construction and installation of, and upon completion of construction, lease and deliver to Lessee and Sub-Lessee, a PV Facility eligible for the NC Tax Credit, including all of the solar modules, racking, inverters, transformers and interconnection equipment pursuant to the terms of a separate solar equipment lease for each PV Facility (individually an "Equipment Lease"; collectively the "Equipment Leases"). Each Equipment Lease will be structured as an operating lease.

Lessor and Lessee will enter into documentation in connection with each Equipment Lease that Lessee will claim the NC Tax Credit with respect to the renewable energy property and Lessor will provide the written certification required by N.C. Gen. Stat. § 105-129.16A(d) that it will not make a claim to the NC Tax Credit. The Owner and each of the Lessors, and the Lessee and each of the Sub-Lessees will make a pass-through election of the federal tax credits with respect to each PV Facility being leased to the Lessee and Sub-Lessees pursuant to Treas. Reg. Section 1.48-4(f).

RELEVANT STATUTE AND TREASURY REGULATION

N.C. Gen. Stat. § 105-129.15(2) states:

> "[C]ost is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. In the case of property the taxpayer leases from another, cost is value as determined pursuant to G.S. 105-130.4(j)(2), unless the property is renewable energy property for which the taxpayer claims either a federal energy credit under section 48 of the Code or a federal grant in lieu of that credit and makes a lease pass-through election under the Code. In this circumstance, the cost of the leased renewable energy property is the cost determined under the Code."

Treas. Reg. Section 1.48-4(c)(2) provides that:

> "In the case of property which is not short-term lease property, the lessee is treated as having acquired the entire property for an amount equal to: (i) The fair market value of such property on the date possession is transferred to the lessee, or (ii) If the property is leased by a component member of a controlled group to another component member of the same controlled group (within the meaning of paragraph (f)(4) of § 1.46-1) on the date possession of the property is transferred to the lessee, the basis of the property in the hands of the lessor."

ISSUE:

In the case of a lessee claiming the NC Tax Credit and the federal energy tax credit, by virtue of a federal pass-through election under Treas. Reg. Section 1.48-4(f), will "cost" for purposes of the last sentence of N.C. Gen. Stat. § 105-129.15 be determined in the same manner as it is determined under the Internal Revenue Code and the Treas. Reg. Section 1.48-4(c)(2)?

Department's Response: No. Although Owner and Lessors will make a pass-through election of the federal tax credits with respect to each PV Facility leased to Lessee and Sub-Lessees pursuant to Treas. Reg. Section 1.48-4(f), for purposes of computing the cost of each PV Facility, Taxpayer/Lessee will be treated as having acquired the renewable energy property for an amount equal to the original cost paid by the lessor of such property pursuant to N.C. Gen. Stat. § 105-129.15(2). The Department believes

that it is the legislative intent that the original cost of the renewable energy property be used to compute the NC Tax Credit. Therefore, the original amounts paid by Lessors to develop/construct the renewable energy property should be used by Taxpayer/Lessee as the cost basis for purposes of calculating the amount of 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]