North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 21, 2015

[redacted]

Re: The Application of the Business and Energy Tax Credits to a Solar Photovoltaic Facility in [redacted] and [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of your clients (identified below) 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] and [redacted], North Carolina (the "PV Facilities").

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

On [redacted] (the "Closing Date), [redacted] ("Owner") acquired [redacted] special purpose entities, the "Owner Subsidiaries," each of which has title to a solar photovoltaic electricity generating project. Each Owner Subsidiary was, prior to the purchase and will continue to be after the purchase, a "disregarded entity" for federal income tax purposes (and none of the Owner Subsidiaries has elected or will elect to be taxed as associations taxable as a corporation). At the time of acquisition of each Owner Subsidiary, Owner paid the purchase price to acquire such Owner Subsidiary from an unrelated party and each Owner Subsidiary will pay a development fee with respect to each Installation to [redacted] ("Holdco") subsequent to the date the Installation is placed in service but in all events on or prior to [redacted]. The purchase price paid by Owner to acquire legal title to each Owner Subsidiary has been allocated to each asset of such Owner Subsidiary pursuant to the purchase agreement in accordance with federal income tax principles. At the time of Owner's acquisition of the Owner Subsidiaries, none of the projects had been placed service.

Each project is comprised of multiple "installations" each of which will function independently to produce electricity (each, an "Installation" and collectively the "PV Facility"). 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. 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.

All of the issued and outstanding membership interests of Owner are owned by Holdco, [redacted], and [redacted], collectively, the "Investors." Pursuant to Owner's Operating Agreement, Holdco has a [redacted] interest in Owner, [redacted] has a [redacted] interest in Owner and [redacted] has a [redacted] interest in Owner (such percentage interest, the "Percentage Interest"). Pursuant to Owner's Operating Agreement, (A) each of the Investors is required to make capital contributions in accordance with its Percentage Interest; (B) all gains and losses are allocated in accordance with the Investors' Percentage Interest and (C) all distributions will be made in accordance with each Investor's Percentage Interest. Finally, under the Owner's Operating Agreement, the NC Tax Credits are allocated in accordance with each member's Percentage Interest.

Each Owner Subsidiary has entered into a Renewable Energy System Equipment Lease Agreement with [redacted] ("Operator") in respect of the Installations owned by such Owner Subsidiary (individually an "Equipment Lease"; collectively the "Equipment Leases"). Each Equipment Lease is structured as a capital lease, and Operator will be considered the owner of each of the PV Facilities for federal income tax purposes. Each Owner Subsidiary will retain legal title to the Installations and will be the owner of each Installation for legal purposes.

Pursuant to the four Equipment Leases, as a means of utilizing the federal tax equity investment in Operator to finance the acquisition of the Installations, Operator will make substantial prepayments of rent to the Owner Subsidiaries during the tax year in which the Installations are placed in service, and Operator will continue to rent to the Owner Subsidiaries through the remaining term of the Equipment Leases. Under each Equipment Lease, Operator enjoys an option to purchase the Installations for a bargain price at the end of the lease term.

Owner, the Owner Subsidiaries, and Operator have entered into an agreement in connection with each Equipment Lease whereby each party agrees that Owner will claim the NC Tax Credit for each Installation and Operator shall not claim the NC Tax Credit for any Installation.

Owner, the Owner Subsidiaries, and Operator will obtain all necessary permits and licenses for the Owner Subsidiaries to own and lease, and Operator to lease and operate, each Installation. Each of the Installations will be placed in service before the end of the calendar year and subsequent to the date Owner acquired the Owner Subsidiaries.

On or prior to the Closing Date, Holdco contributed [redacted] to the Owner, [redacted] contributed [redacted] to the Owner and [redacted] contributed [redacted] to Owner (together, the "Contributions'). On the Closing Date, Owner used the proceeds of the Initial Payment and the proceeds of the Contributions to acquire the Owner Subsidiaries from an unrelated third party and to pay other costs and fees related to the transaction.

During the term of each Equipment Lease, Operator will use, operate and maintain each PV Facility to generate and sell renewable energy. Operator will enter into an Operations and Maintenance Agreement with [redacted] corporation, in connection with its operation of the PV Facilities.

Owner intends to claim the Tax Credit generated in connection with the ownership of each Installation of the PV Facilities by the Owner Subsidiaries. Operator will not claim the NC Tax Credit. Owner (or its members) intends to elect to claim the NC Tax Credit against the gross premiums tax levied in N.C. Gen. Stat. § 105-228.5. As noted above, NC Tax Credits will be allocated to each Investor in accordance with its Percentage Interest in the Owner.

REQUESTED RULINGS:

1. Each Installation, as described above, is a separate "installation" of renewable energy property within the meaning of N.C. Gen. Stat. §§ 105-129.15(4b) and l05-129.16(A)(c)(1), and each such Installation is eligible for up to $2,500,000 of NC Tax Credits.

Department's Response: We agree. N.C. Gen. Stat. § 105-129.15(4b) defines “installation of renewable energy property” as “renewable energy property that, standing alone or in combination with other machinery, equipment, or real property, is able to produce usable energy on its own.” It is our understanding, based on our review of information provided, that each Installation will consist of a number of solar PV modules and inverters and wiring and balance of system components, and other ancillary equipment necessary to deliver AC electricity to the point of interconnection. Furthermore, each Installation will be separately connected into the switchgear, which will provide the transmission capacity necessary for the renewable power to feed into the utility company’s grid. In the event any one or more of the Installations is turned off, any of the other Installations "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 qualifies as an “installation of renewable energy property" for purposes of the $2,500,000 ceiling on the amount of the renewable energy credit under N.C. Gen. Stat. § 105-129.16A(c)(1).

2. Based on the statement of facts above, by refraining from providing the written certification required by N.C. Gen. Stat. § 129.16A(d) to Operator, Owner is the entity entitled to claim the NC Tax Credit in your respect of each Installation.

Department's Response: We agree. Since Owner Subsidiaries are the lessors pursuant to the four Equipment Leases described above, and Owner Subsidiaries are disregarded by Owner for federal income tax purposes, Owner is entitled to claim the tax credit provided under N.C. Gen. Stat. § 105-129.16A if, under the leasing agreement, Operator (“the lessee”) begins using the property to produce

usable energy that is for sale or is used for another business purpose and the Owner Subsidiaries do not provide Operator 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 energy tax credit with respect to the property. In this case, by virtue of disregarding Owner Subsidiaries, Owner may claim the NC Tax Credit.

3. For purposes of calculating the amount of the NC Tax Credits, (A) Owner's acquisition of the Owner Subsidiaries will be treated as an acquisition by Owner of the assets of the Owner Subsidiaries, (B) the amount paid to acquire legal title to each Owner Subsidiary will be allocated to each asset of such Owner Subsidiary (in the manner described in the Statement of Facts) and such amount will be treated as an amount paid by Owner for such asset, and (C) Owner's "cost" (within the meaning of N.C. Gen. Stat. § 105-129.16A(a) and § 105.129.15(2) each asset will include amount paid for such asset as aforesaid.

Department's Response: With respect to item (A), North Carolina generally follows the federal "check the box" regulations with regard to entity classification. However, as discussed below, solely for purposes of computing the amount of potential state tax credit, the amount allocated to qualifying property as a result of the "deemed purchase" of the assets of such entities for federal income tax and state tax credit purposes tax purposes may differ. Accordingly, in this case, we disagree with items (B) and (C). N.C. Gen. Stat. § 105-129.15(2) provides that "in the case of property owned by the taxpayer, cost 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." Department of Treasury Regulations section 1.1012-1(a) provides that "cost is the amount paid for such property in cash or other property." In this case, Owner Subsidiaries incurred the cost to develop/construct the PV Facilities and no additional value has been added to the assets prior to their transfer. Therefore, the actual amounts paid by Owner Subsidiaries to develop/construct the renewable energy property must be used by Owner as the cost basis for purposes of calculating the amount of NC Tax Credit.

4. Both [redacted] and [redacted] will be entitled to use such partner's distributive share of the NC Tax Credits against the Gross Premiums Tax levied by N.C. Stat. § 105-228.5.

Department's Response: We agree. Pursuant to N.C. Gen. Stat. § 129.17, the credit allowed in G.S. 105-129.16A is allowed against the franchise tax levied in Article 3 of this Chapter, the income taxes levied in Article 4 of this Chapter, or the gross premiums tax levied in Article 8B of this Chapter. Since Owner is entitled to the NC Tax Credit, and [redacted] and [redacted] have a [redacted] interest in Owner, respectively, pursuant to the Owner's Operating Agreement, [redacted] and [redacted] are entitled to claim their distributive share of the NC Tax Credits against the Gross Premiums Tax.

5. Pursuant to N.C. Gen. Stat. § 105-269.15 and the Statement of Facts above, each of the Investors will be entitled to its Percentage Interest of the NC Tax Credits generated by Owner and such NC Tax Credits will be available against the Gross Premiums Tax.

Department's Response: We agree. N.C. Gen. Stat. § 105-269.15 provides specific guidance with regard to income tax credits of partnerships. Subsection (c) of the statute states that "a partner's distributive share of an income tax credit shall be determined in accordance with sections 702 and 704 of the Code." IRC section 704 provides guidance with regard to a partner's distributive share of income, gain, loss, deduction, or credit.

As stated in our response to Question # 4, since Owner is entitled to the NC Tax Credit, and [redacted] and [redacted] have a [redacted] interest in Owner, respectively, pursuant to the Owner's Operating Agreement, [redacted] and [redacted] are entitled to claim their distributive share of the NC Tax Credits against the Gross Premiums Tax.

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]