North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

June 26, 2015

[redacted]

Re: Request for Clarification – Private Letter Ruling: [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested, in connection with the Private Letter Ruling dated [redacted], that the North Carolina Department of Revenue ("Department") clarify whether certain costs paid by the Owner Subsidiaries as a development fee are properly includable for purposes of calculating the credit provided under N.C. Gen. Stat. §105-129.16A ("NC Tax Credit").

To clarify the issue, we do not believe that the "development fee" should be included in the calculation of the NC Tax Credit. Although the payment of a fee for various contract review and similar services may be customary in the solar industry and these costs may be capitalized for federal income tax purposes, they are not eligible costs for purposes of computing the NC Tax Credit. Importantly, N.C. Gen. Stat. §105-129.16A provides a credit of 35% of the cost of the renewable energy property. N.C. Gen. Stat. §105-129.15(7) provides that renewable energy property is limited to machinery, equipment, or real property, and provides additional definitions with respect to specific property. The Department has also provided that eligible costs include the associated design, construction costs, and installation costs of this property. Statutorily, the "cost" of the renewable energy property allowed in computing the credit 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. N.C. Gen. Stat. §105-129.15(2).

The Department's response to the third issue addressed in the ruling, which states that "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 the NC Tax Credit," was meant to indicate that Owner Subsidiaries' costs of the associated design (i.e., development) and construction costs should be included in the cost basis. Although additional costs, including various legal and consulting fees, may be capitalized pursuant to section 263A and included in computing a federal tax credit, the North Carolina Statute does not provide that the federal amount is the basis for the credit or that these costs are included in the credit computation.

Rather, the Statute merely provides that the cost basis of the eligible machinery, equipment and land is computed in the manner provided under section 1012 of the Code. Accordingly, it is our opinion that the cost of legal and similar services (e.g., contractual support and review) denoted as "development fees" are not included in the cost basis of the renewable energy property under N.C. Gen. Stat. §105-129.16A.

We apologize for the delay in our response. Should you have any additional questions regarding this matter, please do not hesitate to let us know.

Very truly yours,

[redacted]