North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 05, 2015

[redacted]

Re: Private Letter Ruling Request on behalf of [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], and subsequent fax dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") provide an expedited ruling on behalf of your client, [redacted], a North Carolina limited partnership ("Partnership"), regarding the application of the Business and Energy Tax Credit for investing in renewable energy property (the "NC Tax Credit") under N.C. Gen. Stat. § 1 05-129.l6A et seq. (the "Statute").

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

The Partnership has [redacted] partners; [redacted] ("General Partner") and [redacted] investor limited partners ("Partners"). The General Partner is seeking additional Partners for the Partnership. The Partnership and a renewable energy developer will form an LLC ("Master Fund" / "Lessor") in which the Partnership will have approximately [redacted] interest and the renewable energy developer will have approximately [redacted] interest. The only asset of Master Fund will be a [redacted] interest in Project Owner LLC ("Project Owner"). Project Owner will own several renewable energy projects ("Solar Projects") which are comprised of installations of solar photovoltaic electricity generation equipment in North Carolina.

Project Owner will construct and install Solar Projects which will be financed through capital contributions by Master Fund and a loan from a banking institution. None of the costs of Solar Projects will be provided by public funds within the meaning of N.C. Gen. Stat.§105-129.16A(a). The Solar Projects will constitute renewable energy property within the meaning of N.C. Gen. Stat.§105-129.16A and will be placed in service before the end of 2015. The Partnership and the Master Fund will be classified as partnerships for federal and North Carolina income tax purposes. The Project Owner will be disregarded for federal and North Carolina income tax purposes due to it having a single member.

Upon completion of construction, the Project Owner will lease the Solar Projects to a lessee ("Lessee"). The lease will be constructed as a capital lease under which the Lessee will be treated as the owner of the Solar Projects for federal income tax purposes. Additionally, Lessor will not provide the written certification required by N.C. Gen. Stat. § 105-129.l6A(d) to a Project's Lessee that Lessor will not claim the NC Tax Credit generated in connection with the Project. Rather, Lessor will claim such NC Tax Credit.

Ruling requested:

The Lessor will be entitled to claim credits under N.C. Gen. Stat.§105-129.16A where, under a capital lease agreement, the Lessee will begin using the Solar Projects to produce usable energy that is for sale, and the Lessor will not provide to the Lessee a certification that the Lessor will not claim the credits.

> *Entitlement to NC Tax Credit*. By refraining from providing the written certification required by N.C. Gen. Stat. § 105-129.l6A(d) to Lessee, Lessor is the entity entitled to claim the NC Tax Credit.
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> *Department's Response:* Lessor is entitled to claim the tax credit provided under N.C. Gen. Stat. § 105-129.16A if it does not provide Lessee 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 credit with respect to the property. Therefore, only if the Lessor gives the Lessee a written certification that it will not claim the credit, may the Lessee claim the North Carolina Renewable Energy Tax Credit. In this case, because Lessor constructed and placed into service the Solar Projects, which it is assumed is eligible renewable energy property, and will not provide written certification to Lessee that Lessee may claim the tax credit, Lessor is the only entity that has the right to allocate the North Carolina Renewable Energy Tax Credit to its partners for North Carolina tax purposes.

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]