North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 26, 2015

[redacted]

RE: The Application of the Business and Tax Credits to Solar Photovoltaic Facilities in [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of entities identified below as "Project Parties" 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 [redacted] (each a "PV Facility").

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

Renewable Energy Project

[redacted] is pursuing the development of two renewable energy projects, each comprised of several installations of solar photovoltaic electricity generation equipment (individually an "Installation" and collectively a "PV Facility") to be located in North Carolina. Each Installation will function independently to produce electricity per the rated output of each such Installation. If any Installation is disconnected, 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 decision to install multiple Installations was driven by engineering design parameters and equipment sizing limitations.

Each PV Facility will generate electricity to be delivered to a transformer(s) and distribution line owned and operated by a North Carolina utility (the "Utility") before being exported to the electric grid. Project 1 and 2 will each enter into an interconnection agreement with the Utility to govern the terms of the interconnection of PV Facility and (ii) a power purchase agreement (the "PPA") with the Utility, pursuant to which the electricity generated by the PV Facility will be sold to the Utility. Accordingly, the PV will be used for a business purpose.

Project Parties

[redacted] ("Project 1") will develop, construct, own and lease a PV Facility. It is expected that Manager will serve as the sole manager of Project 1 during the five-year period during which installments of the NC Tax Credit accrue (the "NC tax Credit Period").

[redacted] ("Project 2") will construct, own and lease a PV Facility. It is expected that Manager will serve as the sole manager of Project 2 during the NC Tax Credit Period.

[redacted] ("Owner") will own all of the issued and outstanding ownership interests of Project 1 and Project 2 (the "Project Companies"; each a "Project Company") which will develop, construct, own and lease each PV Facility. It is expected that Manager will serve as the sole manager of Owner during the NC Tax Credit Period.

[redacted] ("Lessee") will own all of the issued and outstanding membership interests in separate limited liability companies (the "Sub-Lessees"; each a "Sub-Lessee"), each of which will lease and operate each PV Facility pursuant to the Equipment Leases (discussed and defined below). Lessee will also own [redacted] of the issued and outstanding membership interests in Owner. It is expected that Manager will serve as the sole manager or managing member of Lessee during the NC Tax Credit Period.

[redacted] ("NC 2014 D") currently owns [redacted] of the issued and outstanding membership interests in Owner. It is expected that Manager will serve as the sole manager of NC 2014 D during the NC Tax Credit Period.

[redacted] ("Investor") owns [redacted] of the issued and outstanding membership interest in NC 2014 D. It is expected that [redacted] 2014 D Manager ("Manager") will serve as the sole manager of Investor during the NC Tax Credit Period.

Manager currently owns [redacted] of the issued and outstanding membership interests in and is the managing member of Lessee. It is expected that Manager will serve as the sole manager of all Project Parties other than [redacted] during the NC Tax Credit Period.

[redacted] ("Fund") owns [redacted] of the issued and outstanding membership interests in NC 2014 D. It is expected that Manager will serve as the sole manager of Fund during the NC Tax Credit Period.

[redacted] is a North Carolina corporation that is the developer of the project pursuant to a Development Agreement with Owner. [redacted] owns all of the issued and outstanding ownership interests in Fund and Investor. One or more investors will be admitted as a member of Investor from time to time during the five (5) year period that the NC Tax Credit is taken (the "NC Tax Credit Period"). Each such investor's investment return is reasonably anticipated to be derived from both the NC Tax Credit and operating cash flow generated by the Project Companies. Some or all of such investors will be admitted as a member of Investor after the PV Facility is placed in service.

Project 1 and Project 2 will be disregarded for federal and state income tax purposes by Owner, the sole member of both entities. All other Project Parties, with the exception of [redacted], have elected to

be taxed as a partnership for federal income tax purposes rather than an association taxable as a corporation.

Equipment Leases
Each Project Company will cause the construction and installation of, and upon completion of construction, lease and deliver to Lessee and Sub-Lessees, each a PV Facility, including all of the solar modules, racking, inverters, transformers and interconnection equipment, pursuant to the terms of a separate solar equipment lease for each of the PV Facilities (individually an "Equipment Lease"; collectively the "Equipment Leases"). Each Equipment Lease will be structured as an operating lease, and each Project Company will be considered the federal income tax owner of each PV Facility for federal income tax purposes. During the term of each Equipment Lease, Sub-Lessees will use, operate and maintain each PV Facility to generate and sell renewable energy.

As provided by N.C. Gen. Stat. § 105-129.16A(d), each Project Company intends to claim the NC Tax Credit in connection with its construction and ownership of each Installation of the PV Facility. Each Project Company and Lessee will enter into documentation in connection with each Equipment Lease that each Project Company will claim the NC Tax Credit with respect to the leased property and Lessee shall not make a claim to the NC Tax Credit. The NC Tax Credit will be calculated based on Project Company's cost to develop, construct and install each Installation per the first sentence of N.C. Gen. Stat. § 105-129.15(2). All of the NC Tax Credit will be allocated to Owner, as the sole member of each Project Company, and then allocated to Owner's members in accordance with N.C. Gen. Stat. § 105-129.15.

REQUESTED RULINGS:

1. In the context of the structure described above in the Statement of Facts, will North Carolina treat Owner's allocations of the NC Tax Credit to its members (NC 2014 D and Lessee) and, in turn, to NC 2014 D's members (Investor and Fund) in the same manner as Section 38 credits are allocated to partners under Section 1.46-3(f) of the Treasury Regulations?

   Department's Response: Yes. Provided that all allocations of profits and losses for each of the Project Parties will satisfy Sections 702 and 704 of the Code and will either be made in accordance with the partners' interest in the partnership or will have substantial economic effect as described in the Treasury Regulations, North Carolina will treat Owner's allocations of the NC Tax Credit to its members and to NC 2014 D's members in the same manner as section 38 credits are allocated to partners under Treasury Regulation § 1.46-3(f).

2. Will changes in ownership interests in Investor during the NC Tax Credit Period, which do not result in a termination of the partnership and/or a disposition of the renewable energy property, have an effect on (i) a Project Company's continued entitlement to the NC Tax Credit, (ii) Owner's continued entitlement to allocations of the NC Tax Credit, (iii) NC 2014 D's continued entitlement to allocations of the NC Tax Credit or the entitlement of the new member(s) in Investor to a distributive share of any remaining unallocated installments of the NC Tax Credit?

   Department's Response: No. Provided there is not a technical termination of the Investor partnership under the Code, changes in the ownership of membership interests in Investor during

the NC Tax Credit Period should not affect Project Company's continued entitlement to the NC Tax Credit, Owner's continued entitlement to allocations of the NC Tax Credit, or NC 2014 D's continued entitlement to allocations of the NC Tax Credit. Since the new members will be admitted to Investor, without a sale or exchange among partners, there is not a termination of the partnership pursuant to section 708(b) of the Code and the regulations thereunder even if the original members' interests are diluted below fifty percent (50%). Therefore, in the context of the structure described above in the Statement of Facts, the new member(s) in Investor will be entitled to a distributive share of any remaining unallocated installments of the NC Tax Credit.

3. In the context of the structure described above in the Statement of Facts, if a new member is admitted to Investor after the PV is in service and during the NC Tax Credit Period, will the Department allow such new member to be allocated a share of the installment of the NC Tax Credit if the allocation is based on the percentage by which the members divide profits determined as of the end of each installment year?

   Department's Response: Yes. In the event that new members are admitted to Investor and there is not a termination of the partnership pursuant to section 708(b) of the Code and the regulations thereunder or a disposition of the renewable energy property during the NC Tax Credit Period, the Department will allow Investor's new members to be allocated a distributive share of the current year's installment and future installments of the NC Tax Credit while the member remains a member based on the ratio by which the members divide profits determined at the end of each installment year. A new member is not entitled to carryovers of unused installments allocated to owners in past years.

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]