North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

August 31, 2015

[redacted]

Re: Request for Expedited Private Letter Ruling Regarding [redacted]'s Eligibility to Claim State Tax Credits for Investing in Renewable Energy Property

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of your client, [redacted] ("[redacted]" or "Taxpayer") that the North Carolina Department of Revenue ("Department") provide specific written advice regarding the Taxpayer's eligibility to claim a state tax credit under N.C. Gen. Stat § 105¬129.16A for investments in renewable energy property.

The Statement of Facts submitted for the Department's consideration of your request is as follows:

[redacted], through [redacted], owns and operates a renewable energy plant ("the [redacted] renewable energy plant") in [redacted]. The [redacted] renewable energy plant currently consists of [redacted] separate generators which use renewable biomass resources to produce up to [redacted] megawatts ("MW") of electricity. The electricity produced at the [redacted] renewable energy plant is fed into the local electric grid via adjacent [redacted] transmission lines. [redacted] leases the land on which the generators are installed from [redacted]. Because both [redacted] and [redacted] are disregarded entities for income tax purposes, all of this activity is attributable to [redacted].

General Overview of the Taxpayer's Business Operations

[redacted] is primarily engaged in the business of waste collection and disposal. [redacted] works with industry, business, and government to provide these services at all levels of the waste collection and disposal market. This includes residential curbside garbage collection, dumpster rental and hauling for commercial businesses and organizations such as [redacted], and disposal of industrial and construction/demolition waste. To facilitate the disposal of the refuse collected, [redacted] operates multiple landfills across the [redacted].

As a part of the landfill management process, [redacted] must take measures to handle Landfill Gas ("LFG"), an anaerobic biogas that is produced in the sealed waste storage areas as a naturally-occurring byproduct of the decomposing waste. One of the major components of the LFG is methane, which [redacted] utilizes to generate electricity. The electricity generated from the LFG is routed into the power grid through agreements with local utility providers.

The [redacted] Renewable Energy Installations

The [redacted] renewable energy giant is located at the [redacted] Landfill at [redacted]. The facility is located on land leased by [redacted] from [redacted] pursuant to a [redacted] year lease agreement that began on [redacted]. As stated above, the parties to the lease are [redacted], as the lessee, and [redacted], as the lessor, and owner of record of the real property. The lease concerns [redacted] acres of real property ("Leased Acreage") . The Leased Acreage is part of a [redacted] acre tract owned by [redacted] for use as the [redacted] Landfill. It is upon this Leased Acreage that [redacted] operates the [redacted] renewable energy plant.

[redacted] first installed generators at the site in [redacted], along with related systems necessary to capture LFG. [redacted] placed into service in [redacted] [redacted] reciprocating engine-generator sets ("Generators") that produce electric power from methane biogas. Each [redacted] Generator is approximately twenty feet long, eight feet wide, six feet tall, and weighs over 38,000 pounds."

[redacted] also placed [redacted] Generator into service in [redacted], and [redacted] Generator into service in [redacted]. Based upon the Annual Construction Progress report [redacted] provided to the North Carolina Utilities Commission in May 2013, the [redacted] renewable energy plant could accommodate additional installations of biomass-fueled Generators sufficient to produce [redacted] MW of electric power by the year 2025.

The LFG-to-Electric Power Generation Process

LFG is a natural byproduct from the bacterial decomposition of solid waste in the anaerobic environment of a sealed municipal solid waste landfill. LFG is composed primarily of carbon dioxide (C02), and methane (CH4). Because the LFG occurs in the [redacted] Landfill regardless of whether it is used for biogas generated electricity, a system for ventilating the LFG and collecting condensate must be in place within the landfill to prevent excess accumulation. This system consists of pipes running through the buried solid waste cells that collect the gasses, a blower to pull the gas from the cells to a central point, and a condensate collection device to trap water vapor that condenses as the hot gas moves through the pipes. If the LFG is not collected for use in the generation of electricity, it must be vented into the surrounding atmosphere or burned off via a chimney-mounted incinerator device know as a flare.

The apparatus necessary to collect the LFG for generating electricity taps into the existing ventilation system. As the LFG comes through the ventilation pipes, it is captured by gas compression system that incorporates additional blowers, condensation collectors, a recirculation system, and a compressor to separate and compress the methane from the LFG for combustion in one or more generators (“Generators”).

Each generator is capable of burning the methane fuel to drive its electric generator in the production of electricity. The Generator must receive some initial electric power in order to start the generator - either from a connection to the electric grid or from another generator. Once started, one Generator is capable of producing sufficient power to start another generator, provide electricity to the surrounding buildings and systems, or be fed back into the local electric grid under an agreement with the utility company.

The [redacted] Installations

In [redacted], [redacted] began constructing the [redacted] renewable energy plant including [redacted], [redacted], [redacted], a [redacted], and the installation of [redacted] Generators capable of producing up to [redacted] MW of electricity. Based on the [redacted] initial Generator installations, the [redacted] renewable energy plant was able to generate electricity for an initial cost of [redacted] per kilowatt ("kW"). [redacted] Generator installation was placed into service in [redacted].

The [redacted] Installation

In [redacted], [redacted] purchased, installed, and placed into service a [redacted] Generator at the [redacted]. The addition of the [redacted] Generator raised the overall power production capacity of the facility from [redacted] MW to [redacted] MW. The [redacted] Generator was installed in the same area of the facility of the [redacted] previously installed generators. This additional installation involved the placement of the Generator on the Leased Acreage, connecting the Generator to the piping that supplies the biogas from the landfill, connecting the Generator to the electric grid to power initial startup, and filling the Generator with lubricating oil and engine coolant. Once installed and connected, the Generator was immediately able to produce up to its [redacted] MW capability.

As previously described, each Generator is able to convert the methane from LFG into electricity independently of any other generators that may be incorporated into the LFG generating facility. The total cost of placing the biogas Generator into service in [redacted] was approximately [redacted]. Thirty-five percent of this cost is equal to [redacted]. Therefore, the [redacted] yearly installments of credit available for this installation of renewable energy property would be approximately [redacted], claimed in the taxable years 2014 through 2018.

RULING REQUESTED:

Will the generator placed into service at the [redacted] Facility in 2014 qualify as a separate installation of renewable energy property since the generator, standing alone or in combination with other machinery, equipment, or real property, produces usable energy by converting renewable biomass resources (i.e., methane resulting from landfill waste) into electricity?

RELEVANT STATUTES:

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."

N.C. Gen. Stat. § 105-129.15(6) reads as follows:

> "Renewable biomass resources - Organic matter produced by terrestrial and aquatic plants and animals, such as standing vegetation, aquatic crops, forestry and agricultural residues, spent pulping liquor, landfill wastes, and animal wastes."

N.C. Gen. Stat. § 105-129.15(7) defines "Renewable energy property" as any of the following machinery and equipment or real property:

a) Biomass equipment that uses renewable biomass resources for biofue1 production of ethanol, methanol, and biodiesel; anaerobic biogas production of methane utilizing agricultural and animal waste or garbage; or commercial thermal or electrical generation. The term also includes related devices for converting, conditioning, and storing the liquid fuels, gas, and electricity produced with biomass equipment.

N.C. Gen. Stat. § 105-129.16A(a) states that:

> "A taxpayer that has constructed, purchased, or leased renewable energy property and places it in service in this State during the taxable year is allowed a credit equal to thirty−five percent (35%) of the cost of the property."

N.C. Gen. Stat. § 105-129.16A(c)(1) provides that:

> "A ceiling of two million five hundred thousand dollars ($2,500,000) per installation applies to renewable energy property placed in service for any purpose other than residential. [N.C. Gen. Stat. § 105-129.16A(c)(1)]"

DEPARTMENT'S RESPONSE:

Yes. The generator placed into service at the [redacted] Facility in 2014 qualifies as a separate installation of renewable energy property since the generator, standing alone or in combination with other machinery, equipment, or real property, produces usable energy by converting renewable biomass resources (i.e., methane resulting from landfill waste) into electricity. However, in order for the generator and related devices to continue to qualify as "renewable energy property" as defined in N.C. Gen. Stat. § 105-129.15(7), [redacted] must continue to use a renewable biomass resource (e.g., landfill gas or directed biogas) to fuel the generator, and the generator must continue to generate electrical power for a business purpose.

Upon audit, Taxpayer must provide adequate records (e.g., invoices, contracts, and purchase receipts) to substantiate the amount of the NC Renewable Energy Tax Credit claimed.

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, 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]