North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

September 21, 2015

[redacted]

Re: [redacted] (EIN: [redacted])
Private Letter Ruling Request - Credit for Investing in Renewable Energy Property

Dear [redacted]:

This letter is in response to your letter to [redacted], wherein you requested on behalf of your client, [redacted] (the "State Investor" or the "Taxpayer"), that the North Carolina Department of Revenue ("Department") provide a written ruling with respect to the issues regarding a single transaction involving a capital lease financing of solar photovoltaic energy production facilities in North Carolina that is expected to generate credits for investing in renewable energy property under N.C. Gen. Stat. § 105-129.16A (the "NC Renewable Energy Credit").

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

[redacted] (the "Lessor") is a [redacted] limited liability company that is causing to be constructed and installed several separate solar photovoltaic energy production facilities in North Carolina that will be "renewable energy property" as defined in N.C. Gen. Stat. § 105-129.15(7) (collectively, the "Facilities" and each, a "Facility").

Each Facility will be individually owned by a single-purpose limited liability company, wholly-owned by Lessor (collectively, the "Lessor Subsidiaries" and each, a "Lessor Subsidiary"). Each Lessor Subsidiary will be treated as a disregarded entity for federal income tax purposes.

Each Facility will be individually leased by a single-purpose limited liability company (collectively, the "Lessee Subsidiaries" and each, a "Lessee Subsidiary"). Each Lessee Subsidiary will be wholly-owned by [redacted] (the "Lessee"). Each Lessee Subsidiary will be treated as a disregarded entity for federal income tax purposes.

With respect to each Facility, the applicable Lessor Subsidiary and the applicable Lessee Subsidiary will enter into a renewable energy system equipment lease agreement, pursuant to which the applicable Facility will be leased for a specific term. For federal income tax purposes, each such equipment lease transaction will be treated as a sale and financing, such that the Lessee will be treated as the owner of each Facility for federal income tax purposes and will be entitled to claim the federal investment tax credit and federal tax depreciation deductions with respect to each Facility (each, a "Capital Lease"). Under each Capital Lease, a Lessee Subsidiary will have the option to purchase the respective Facility for a bargain or nominal purchase price.

Each Lessee Subsidiary will place into service its applicable Facility pursuant to its applicable Capital Lease. Each Facility is expected to be placed in service in either late 2015 or early 2016. If Facilities are placed in service in early 2016, the Lessor will be required and expected to comply with the safe harbor for the NC Renewable Energy Credit set forth in N.C. Gen. Stat. § 105-129.16A(f), as amended by Session Law 2015¬11, SB 372, for renewable energy projects substantially completed prior to January 1, 2016. However, no ruling is being requested regarding the provisions of that legislation.

During the term of each Capital Lease, each applicable Lessee Subsidiary will lease a Facility and operate and maintain it in order to generate and sell electricity pursuant to a power purchase agreement with [redacted] or another utility. Each Lessee Subsidiary will use the leased Facility for a business purpose -- specifically, for the production and sale of electricity to a North Carolina utility, which will in turn sell the electricity to its customers.

Each Facility will constitute multiple installations of renewable energy property as determined by a report of an independent engineer and such property will be eligible for (i) the NC Renewable Energy Credit and (ii) certain federal tax benefits.

With respect to each Facility, on the applicable lease commencement date, the Lessor, the applicable Lessor Subsidiary, the Lessee and the applicable Lessee Subsidiary will enter into a project tax credit agreement (a "Project Tax Credit Agreement" and collectively the "Project Tax Credit Agreements") pursuant to which the Lessor, applicable Lessor Subsidiary, Lessee and the applicable Lessee Subsidiary will agree that Lessor will claim, and Lessee will not and will not be permitted to claim, NC Renewable Energy Credits with respect to each Facility.

The Lessee is expected to be owned 99% by a financial institution (the "Federal Investor") and 1% by [redacted] ("HoldCo"), at the time each Facility is placed in service. The Lessor is currently owned 100% by HoldCo, but prior to the time each Facility is placed in service, the Lessor will be owned 1% by HoldCo and 99% by the State Investor. The Operating Agreement of Lessor will provide that, except for any special allocations that may be required by certain regulations promulgated under § 704 of the Internal Revenue Code of 1986, as amended (the "Code"), all items of income, gain, loss and deduction will be allocated to its members in accordance with their respective ownership interests (i.e., 99% to the State Investor and 1% to HoldCo; the "Lessor General Profit Sharing Percentages"). It is expected that such allocations of income, gain, loss and deduction will have substantial economic effect and will be

respected for federal income tax purposes. The Operating Agreement of the Lessor will also provide that all installments of the NC Renewable Energy Credit will be allocated by the Lessor to its members based on the Lessor General Profit Sharing Percentages (regardless of whether the Lessor actually has taxable income or loss for any such taxable year).

Initially, all classes of membership units of the State Investor will be [redacted] owned by [redacted], a [redacted] LLC [redacted]"), but some or all of the classes of membership units in the State Investor that are held by [redacted] may be sold to various financial institutions, insurance companies, and/or other corporations or individuals (the "NC Investors"). Each NC Investor will elect on its own North Carolina tax return whether to apply the NC Renewable Energy Credit allocated to it against the franchise tax, income tax, or gross premiums tax as allowed by N.C. Gen. Stat. § 105-129.17(a).

Some of those membership units in the State Investor may be sold prior to the time each Facility is placed in service, but some are expected to be sold after one or more of the Facilities is placed in service. The subsequent sales of membership units to various NC Investors will be timed in a manner so that such sales will not be expected to cause a termination of the State Investor or the Lessor for federal income tax purposes under § 708(b) of the Code.

The Operating Agreement of the State Investor will provide that, except for any special allocations that may be required by certain regulations promulgated under § 704 of the Code, all items of income, gain, deduction and loss will be allocated as follows:

- The holders of the Class A membership units will be allocated 95% of such items for the first calendar taxable year (i.e., the year that the Facilities are placed in service, which will be either 2015 or 2016) and 1% of such items for all other taxable years;

- The holders of the Class B membership units will be allocated 95% of such items for the second calendar taxable year and 1% of such items for all other taxable years;

- The holders of the Class C membership units will be allocated 95% of such items for the third calendar taxable year and 1% of such items for all other taxable years;

- The holders of the Class D membership units will be allocated 95% of such items for the fourth calendar taxable year and 1% of such items for all other taxable years;

- The holders of the Class E membership units will be allocated 95% of such items for the fifth calendar taxable year and 1% of such items for all other taxable years; and

- The holders of the Class F membership units, which will be held by [Limited Liability Company Five] as managing member or a successor managing member, will be allocated 1% of such items for the first through fifth calendar taxable years and 95% of such items

for all other taxable years; (collectively, the "State Investor General Profit Sharing Percentages").

It is expected that such allocations of income, gain, loss and deduction will have substantial economic effect and will be respected for federal income tax purposes. We note that it is possible that the percentage interests for the holders of the Class A through Class E units for the first through fifth taxable years, respectively, may be in the 95% to 96% range (rather than exactly 95%), and that the percentage interests for the holders of the Class F units for the first through fifth taxable years may be in the 0% to 1% range (rather than exactly 1%), but we think that any such minor change would not be relevant to the tax issues presented in this ruling request. The Operating Agreement of the State Investor will also provide that all installments of the NC Renewable Energy Credit will be allocated by the State Investor to its members based on the State Investor General Profit Sharing Percentages (regardless of whether the State Investor actually has taxable income or loss for any such taxable year).

All such items of income, gain, deduction, loss and credit (including the NC Renewable Energy Credit) for a taxable year allocated to holders of a particular class of units of the State Investor will be further allocated among the holders of that class pro rata based on the number of units of that class held as a percentage of all outstanding units of that class.

The membership units will be offered for sale to NC Investors in the various classes as indicated above, because it is anticipated that some investors may not have enough North Carolina tax liability to utilize installments of NC Renewable Energy Credits for all five taxable years in substantial amounts and may be more interested in an investment that allocates the NC Renewable Energy Credit primarily for only one or more taxable years, but less than the five taxable years for which installments of the NC Renewable Energy Credit may be taken. For example, a potential NC Investor may be interested in receiving substantial NC Renewable Energy Credits primarily for only for first and second taxable years, but not for later taxable years, in which case such an investor would look to acquire only Class A units and Class B units.

Also, [redacted], which will own all of the classes of membership interests initially, may not be able to sell all of the Class A, B, C, D and E membership units to NC Investors prior to the date the Facilities are placed in service. Structuring the class units in this way will provide [redacted] more flexibility and time to sell such membership units after the Facilities have been placed in service. As mentioned above, the subsequent sales of membership units to various NC Investors will be timed in a manner so that such sales will not be expected to cause a termination of the State Investor or the Lessor for federal income tax purposes under § 708(b) of the Code.

It is expected that each of the Lessor and the State Investor will be treated as a partnership for federal income tax purposes, that each member of the Lessor and the State Investor will be treated as a partner in such partnership for federal income tax purposes, and that the allocations set forth in the Operating Agreement for each of the Lessor and the State Investor will be respected for federal income tax purposes.

RULINGS REQUESTED:

1. Will the Lessor under each Capital Lease transaction as described in this ruling request be entitled to claim the NC Renewable Energy Credit, provided that under the leasing agreement the Lessee (through each applicable Lessee Subsidiary) begins using the property to produce usable energy that is for sale or for another business purpose and that neither the Lessor nor any Lessor Subsidiary provides to the Lessee or any Lessee Subsidiary a written certification that the Lessor or any Lessor Subsidiary will not claim the credit?

   Department's Response: Yes. Pursuant to N.C. Gen. Stat. § 105-129.16A(d), the lessor in a lease transaction is entitled to claim the NC Renewable Energy Tax Credit if the lessor does not provide the lessee with written certification that it will not claim the credit. Because Lessor, as described in the Statement of Facts, qualifies for the NC Renewable Energy Tax Credit and will not provide written certification to Lessee (or any Lessee Subsidiary) expressly waiving all rights to claim such credit, Lessor will be entitled to claim the credit provided that Lessee begins using the property to produce usable energy that is for sale or for another business purpose.

2. Will the allocations of installments of the NC Renewable Energy Credit by the Lessor and the State Investor, which will be (i) based on the ratio in which general profits are to be allocated to their respective members under their respective LLC Operating Agreements (regardless of whether the LLC actually has taxable income or loss) and (ii) in the case of the State Investor, in accordance with the varying general profit sharing percentages in different taxable years based on those members holding particular classes of units in the LLC as described in more detail in this ruling request, be respected for North Carolina tax purposes, such that the respective members of the Lessor and the State Investor will be entitled to claim the NC Renewable Energy Credits allocated to them?

   Department's Response: Yes. Provided that: i) the members of Lessor and State Investor are classified as partners for federal income tax purposes and are entitled to the claim distributive share of income, gain, loss, deduction, or credit for federal tax purposes; and ii) the allocations of general profits by the Lessor to the State Investor and the allocations of general profits by the State Investor to the NC Investors and [redacted] have substantial economic effect under the Treasury Regulations promulgated under § 704(b) of the Code, then the allocations of installments of the NC Renewable Energy Credit by the Lessor and State Investor to their respective members will be treated as consistent with N.C. Gen. Stat. § 105-269.15(c) and respected for North Carolina tax purposes. As a result, the respective members of the Lessor and the State Investor will be entitled to claim their distributive share of an installment of the NC Renewable Energy Credit allocated to them.

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]