North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

December 18, 2015

[redacted]

Re: [redacted] - Request for Expedited Private Letter Ruling - Credit for Investing in Renewable Energy Property - N.C. Gen. Stat. § 105-129 .16A

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of your client, [redacted] (the "Partnership"), that the North Carolina Department of Revenue ("Department") provide a private letter ruling regarding credits for investing in renewable energy property pursuant to N.C. Gen. Stat. § 105¬129.l6A.

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

[redacted] is a partnership organized under North Carolina law. The Partnership currently has two partners: [redacted] as general partner (the "General Partner") and [redacted] as a limited partner. The General Partner is seeking investors for the Partnership. It expects investors (the "Partners") to acquire limited partnership interests in the Partnership late in 2015.

The General Partner negotiated with a developer of renewable energy projects to form an LLC (the "Master Fund") in which the Partnership will later acquire an approximately 99% interest, and the developer will have an approximately 1% interest. The Master Fund's only asset will be an approximately 90% interest in the Lessor. The Lessor's only asset will be a 100% interest in an LLC or 100% interests in several LLCs (the "Project Owner").

The Project Owner will own several renewable energy projects comprised of installations of solar photovoltaic electricity generation equipment in North Carolina (the "Solar Projects"). The Project Owner will finance the acquisition of the Solar Projects through capital contributions by the Master Fund and the Lessee and by a loan from a banking institution. None of the costs of the Solar Projects will be provided by public funds within the meaning of N.C. Gen. Stat. § 105-129.16A(a). The Solar Projects will be placed in service before the end of 2015 or will satisfy the requirements of the delayed sunset in N.C. Gen. Stat. § 105-129.16A(f). The Solar Projects will constitute renewable energy property within the meaning of N.C. Gen. Stat. § 105-129.16A.

The Project Owner will construct and install the Solar Projects. Upon completion of construction, the Project Owner will lease the Solar Projects to a lessee (the "Lessee"). The leased property will include all of the solar modules, racking, inverters, transformers, and interconnection equipment. The lease will be structured as an operating lease under which the Lessor will be treated as the owner of the Solar Projects for income tax purposes.

Each of the Partnership, the Master Fund, and the Lessor will be classified as a partnership for federal and North Carolina income tax purposes. The Project Owner will be disregarded for federal and North Carolina income tax purposes due to its having a single member.

In late 2015 the Partnership will acquire a 99% interest in the Master Fund that will not result in an actual or deemed sale or exchange of 50% or more of the total interest in the Lessor's capital and profits so that there will not be a technical termination of the Lessor pursuant to IRC § 708(b). There will also not be any technical termination of the Master Fund pursuant to Section 708(b) because before the Partnership's acquisition of an interest, the Master Fund will have only one member and will therefore be disregarded for income tax purposes. After the Partnership acquires an interest in the Master Fund, the partnership agreement of the Master Fund will provide that 99% of the tax credits for each year will be allocated to the Partnership.

The Lessor/Project Owner will not provide to the Lessee a certification that the Lessor/Project Owner will not claim the credits. After the Partnership acquires an interest in the Master Fund, all items of income, loss, and credit (including credits under N.C. Gen. Stat. § 105-129.l6A) will be properly allocated. The Lessor will allocate 90% of the credit to the Master Fund and 10% to the Lessee. In turn, the Master Fund will allocate 99% of its share of the credit to the Partnership and 1% to the developer entity. The Partnership's cash flow will be distributed to its partners pro rata based on their capital contributions, and its items of income, deduction, and credits (including credits under N.C. Gen. Stat. § 105-129.16A) will be allocated among the Partners based on their capital contributions.

ISSUE:

Notwithstanding the Partnership's acquiring its interest in the Master Fund during the year rather than on January 1st or the date the Master Fund is formed, will the Partnership be entitled to a full year's share (i.e., 99%) of tax credits that are properly allocated to the Master Fund in 2015 (or any other year in which the Partnership acquires an interest in the Master Fund)?

Department's Response: Yes. If the Partnership acquires an interest in the Master Fund at any point during the tax year and is properly classified as a "partner" of record for federal income tax purposes at the close of the tax year or any later year in which the renewable energy property is placed in service, then the Partnership is entitled to a distributive share of the tax credit provided under N.C. Gen. Stat. § 105-129.16A, unless the partnership agreement stipulates otherwise.

Importantly, N.C. Gen. Stat. § 105-269.15 provides specific guidance with regard to income tax credits of partnerships. Subsection (c) of the statute states that: "[a] partner's distributive share of an income tax credit shall be determined in accordance with sections 702 and 704 of the Code." IRC section 704 provides guidance with regard to a partner's distributive share of income, gain, loss, deduction, or credit. If a partner is not entitled to the distributive share of income, gain, loss, deduction, or credit for federal

income tax purposes, then the partner would not qualify to receive that distributive share of income, gain, loss, deduction, or credit for North Carolina purposes. For federal income tax purposes, the partnership agreement's allocation of partnership items of income, loss, deduction, and credit among the partners is respected provided the allocation has substantial economic effect or is otherwise consistent with, or is deemed to be consistent with, the partners' interests in the partnership. [Code Sec. 704(a); Reg. §1.704-1(b)(1)(i)]

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]