

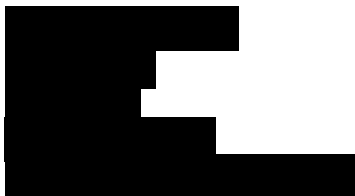


North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

January 26, 2010



Re: Letter Ruling Request Submitted by [REDACTED]

Dear [REDACTED]:

This letter is in response to your request for a ruling dated [REDACTED], which was submitted to the North Carolina Department of Revenue ("Department") in order to clarify certain of the requirements of the tax credit for investing in renewable energy property set forth in G.S. § 105-129.16A. The request was made on behalf of [REDACTED], a [REDACTED] limited liability company ("Operator" or "Lessee"), [REDACTED], a [REDACTED] limited liability company ("Owner"), [REDACTED], a [REDACTED] corporation, [REDACTED], a [REDACTED] limited liability company, and [REDACTED], a [REDACTED] limited liability company.

Based on our review of the statement of facts presented in your letter (copy is attached), the Department's response to the rulings requested are as follows:

1. *Placed in Service.* Renewable energy property which generates electricity is placed in service for purposes of the NC Tax Credit when the property is installed and fully functional. Renewable energy property is installed and fully functional when the owner (or lessee) of the property ceases all testing of the property and sells electricity for the production of income.

Department's Response: We agree.

2. *Lessee Entitled to Credit.* The Operator is the entity entitled to claim the NC Tax Credits generated in connection with the Project so long as the Operator obtains Owner's written certification that it will not claim such NC Tax Credits. Moreover, as a pass-through entity, the NC Tax Credit will pass through to each of Operator's members such member's distributive share of the NC Tax Credit. Specifically, one-fifth of the NC Tax Credit (i.e., an

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annual installment) will be passed through to the members of record of the Operator as of the end of each installment year.

Department's Response: We agree.

3. *Cost of the Project.* For purposes of the calculation of the Operator's NC Tax Credit, the "cost" of the renewable energy property is eight times the net annual rental rate as determined under G.S. § 105-130.4(j)(2), and such calculation shall be made on the date that the Project is first placed in service.

Department's Response: We agree.

4. *Disposition of Project.* The disposition of the Project by Owner during the five-year credit period shall not result in the expiration of the NC Tax Credit so long as the Operating Lease remains in effect and the Operator continues to operate the Project in North Carolina.

Department's Response: We disagree. G.S. 105-129.16A(b) states: "If, in one of the years in which the installment of a credit accrues, the **renewable energy property with respect to which the credit was claimed** is disposed of, taken out of service, or moved out of State, the credit expires and the taxpayer may not take any remaining installment of the credit." **[Emphasis Added]** Based on our literal interpretation of the statute, the disposition of the Project during the five-year credit period will result in the expiration of the NC Tax Credit.

5. *Taken Out of Service.* The temporary suspension of operations of the Project for routine or emergency repairs, maintenance, inspections, or other similar events will not be deemed to have taken the Project out of service. Similarly, if the PPA is terminated during the five-year credit period so long as (a) the Project continues to be installed and fully functional (but for the termination of the PPA) and (b) Owner or Operator of Project is using commercially reasonable efforts to pursue alternative arrangements for the use of the Project, then such Project will not be deemed to have been taken out of service.

Department's Response: We agree.

6. *Changes in Ownership of Operator.* Changes in ownership of the membership interests in the Operator during the five-year credit period do not have an effect on (1) the Operator's entitlement to the NC Tax Credit, or (2) the new member(s) in the Operator's entitlement to its distributive share of any remaining unallocated installments of the NC Tax Credits.

Department's Response: We agree.

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. 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

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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.

Very truly yours,

[REDACTED]

[REDACTED]