



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

June 10, 2011

[REDACTED]

Re: [REDACTED] and [REDACTED] -- Request for a Letter Ruling

Dear [REDACTED]:

This letter is in response to your letter dated [REDACTED] to Mr. Thomas L. Dixon, Jr., Assistant Secretary for Tax Administration, wherein you requested on behalf of your client, [REDACTED], that North Carolina Department of Revenue ("Department") provide a letter ruling on issues relating to whether your client's proposed project will qualify for the Renewable Energy Tax Credit under N.C.G.S. §105-129.16A. In support of its request for a private letter ruling, [REDACTED] makes the following representations:

[REDACTED] is a single member limited liability company that is wholly-owned and managed by [REDACTED]. [REDACTED] is taxed as a disregarded entity for U.S. federal income tax purposes under Treasury Regulation §301.7701. [REDACTED] intends to construct a [REDACTED] megawatt wind energy facility comprising approximately [REDACTED] wind turbines in [REDACTED] and [REDACTED] counties (the "Project"). Session Law 2007-397 ("Senate Bill 3) requires investor-owned utilities in North Carolina to meet up to 12.5 % of their energy needs through renewable energy resources or energy efficiency measures by 2021. Rural electric suppliers must meet at least 10% of their needs with the Renewable Energy and Energy Efficiency Portfolios Standard ("REPS") by 2018. N.C.G.S. § 62-133 .8(8) defines "wind" as a renewable energy resource.

Investor-owned utilities, electric cooperatives and municipal electric suppliers ("Electric Power Suppliers") demonstrate compliance with Senate Bill 3 through the purchase of renewable energy certificates ("RECs").¹ The Project will provide a significant source of RECs for use by Electric Power Suppliers to demonstrate compliance with Senate Bill 3. This Project is expected

¹ A REC is equivalent to 1 MWh of electricity derived from a renewable energy source, or an equivalent amount of thermal energy in the case of combined heat and power and solar water heating, or 1 MWh of electricity avoided through an efficiency measure.

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to generate approximately [REDACTED] RECs annually. Once [REDACTED] [REDACTED] has obtained the necessary permits for the construction and operation of the Project, and if it is able to negotiate appropriate economic development incentives within the counties, [REDACTED] intends to form a new single-purpose entity in North Carolina to own and operate the Project.

The Project would be situated on approximately [REDACTED] acres located between [REDACTED], [REDACTED] and [REDACTED] (the "Project Area"). The County Board of Commissioners for each of [REDACTED] and [REDACTED] adopted wind ordinances in early [REDACTED] in anticipation of the construction of the Project. [REDACTED] has filed an application with the North Carolina Utilities Commission for a Certificate of Public Convenience and Necessity to construct the Project. Construction on the Project is expected to start in [REDACTED] of [REDACTED], and the Project is expected to be commercially operable by [REDACTED] of [REDACTED].

Issues:

- (i) Whether the costs to construct and install a proposed wind energy facility in North Carolina will qualify for the State's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a)?
- (ii) Whether each wind turbine in the proposed wind energy facility will constitute an "installation of renewable energy property" under N.C.G.S. §105-129.16A(c)(1)?

Department's Response:

Yes. Based on our review of the facts and the information provided regarding the Project, we agree that the costs to construct and install the proposed wind energy facility in North Carolina will qualify for the State's Renewable Energy Tax Credit under N.C.G.S. §105-129.16A(a) when the Project is installed and fully functional. In addition, the Project must conform to all applicable state and local codes and to the requirements of all inspecting jurisdictions.²

Under N.C.G.S. §105-129.16A(a), a taxpayer that constructs, purchases, or leases renewable energy property and places such renewable energy property in service in North Carolina during the taxable year is allowed a credit equal to thirty-five percent (35%) of the cost of the property. As described in your request, each component of the Project, including the wind turbine's nacelle, rotor and blades, tower and foundation, and collector lines and substations, qualifies as "renewable energy property" for purposes of the credit. Importantly, each of these components is either (i) a component of wind equipment required to capture and convert wind energy into electricity or mechanical power or (ii) a related device for converting, conditioning, and storing the electricity produced or relaying the electricity by cable from the turbine motor to the power grid."

² North Carolina's Guidelines for Determining Tax Credit for Investing in Renewable Energy Property (the "Guidelines") clarify that 100% of the costs of equipment required to capture and convert wind energy into electricity or mechanical power and 100% of the costs of related devices for converting, conditioning and storing electricity, including design, construction and installation costs, are eligible for the Credit.

