



North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

May 24, 2012

[Redacted]

Re: Request for a Private Letter Ruling – [Redacted]

Dear [Redacted]:

This letter is in response to your letter dated [Redacted], wherein you requested that the North Carolina Department of Revenue ("Department") provide a ruling that (i) the costs of purchasing and installing fuel cell power generation systems will qualify for the Renewable Energy Tax Credit under G.S. § 105-129.16A(a) and (ii) each purchased and installed system will constitute an "installation of renewable energy property" under G.S. § 105-129.16A(c)(1).

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

[Redacted] recently constructed a [Redacted] square foot [Redacted] center located on a [Redacted]-acre site in [Redacted] (the "Facility"). The Facility has a workforce of approximately [Redacted] employees, and houses [Redacted] that ground the Taxpayer's [Redacted] service. [Redacted] is a [Redacted] service which allows [Redacted] (i.e., on [Redacted] located at the Facility) for [Redacted], and [Redacted].

Taxpayer intends to sell the electricity generated from renewable [Redacted] resources to a utility company. To achieve this goal, the Taxpayer will purchase multiple [Redacted], which convert fuel into electricity through [Redacted] process. The production of electrical power from [Redacted] will require the consumption of fuel delivered from [Redacted]. To meet its need for fuel, Taxpayer intends to acquire [Redacted] derived from a renewable energy resource which will be upgraded and injected into the pipeline, and nominated for use at the Facility (" [Redacted]"). Pursuant to a contractual arrangement between the Taxpayer and the producer of the [Redacted], Taxpayer will be obligated to purchase a specific quantity of

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██████████, measured in ██████████, that corresponds to the amount of fuel consumed at the Facility. The electricity generated from ██████████ will be sold to a commercial energy provider that will, in turn, provide power to the Facility.

Rulings Requested:

1. Does the costs incurred to purchase and install the ██████████ qualify for the Credit under G.S. § 105-129.16A(a)?

Department's Response: Yes. Based on our review and understanding of the information submitted, it is our opinion that the costs incurred to purchase and install ██████████ at the Facility qualify for the credit provided under G.S. § 105-129.16A because the equipment will be fueled by a “renewable ██████████ resource.” It is important to note, however, that the ██████████' continued eligibility as renewable energy property will depend on whether Taxpayer continues to utilize a “renewable ██████████ resource” to fuel the ██████████ over the life of the credit. In order for ██████████ to qualify as “renewable energy property” as defined in G.S. 105-129.15(6), Taxpayer must use a renewable ██████████ resource (e.g., ██████████) to fuel ██████████ and generate electrical power for a business purpose.

Since Taxpayer expects to utilize directed ██████████ delivered through the ██████████ pipeline to fuel ██████████, Taxpayer must, upon audit, provide adequate records (e.g., invoices, contracts, and purchase receipts from ██████████) to substantiate the amount of ██████████ acquired and injected into the pipeline for consumption by ██████████. If the taxpayer utilizes a fuel source other than a renewable ██████████ resource to fuel ██████████ in any year in which an installment of the credit is due to be taken, then the taxpayer must reduce that installment for that tax year by the ratio of the amount of conventional fuel used by ██████████ to the amount of renewable ██████████ resource used by ██████████ for that tax year. Furthermore, if Taxpayer fails to utilize any renewable ██████████ resources to fuel ██████████ during the tax year, then ██████████ will be considered to have been taken out of service for purposes of qualifying for the credit provided under G.S. § 105-129.16A(a), and the taxpayer will forfeit all future installments of the credit. Taxpayer may, however, take the portion of an installment that accrued in a previous year and was carried forward to the extent permitted under G.S. 105-129.17.

2. Does the installation of each ██████████ constitute an “installation of renewable energy property” under G.S. § 105-129.16A(c)(1)?

Department's Response: Yes, N.C.G.S § 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.” It is our understanding based on review of information provided, that each individual ██████████ produces usable energy on its own and the electricity generated by ██████████ will be sold to the utility company, but will not directly power the facility. Furthermore, each ██████████'s independent electrical output will be aggregated such that a single point of

