North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

August 5, 2013

[redacted]

Attn: [redacted]

Re: Private Letter Ruling Request
Taxpayer: [redacted]
FEIN: [redacted]

Dear [redacted]:

This letter is in response to a letter from [redacted] dated [redacted], wherein he requested a private letter ruling from the North Carolina Department of Revenue ("Department") on behalf of your client, [redacted] ("Taxpayer"). Specifically, he requested that the Department clarify four technical matters related to the North Carolina Tax Credit for Investing in Renewable Energy Property provided under N.C. Gen. Stat. § 105-129.1 6A.

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

The taxpayer is [redacted] owner of [redacted], which is the managing member and tax matters partner of [redacted], (hereinafter "LLC'). LLC is taxable as a partnership for federal income tax purposes and is classified as a partnership for North Carolina franchise, income and premium tax purposes. LLC will own [redacted] of ProjectCo, LLC[1] which will own, and use in its trade or business, renewable energy equipment eligible for the North Carolina renewable energy property tax credit.

The renewable energy being generated by the renewable energy property is being sold to a North Carolina public utility, along with the Renewable Energy Certificates (RECs) in some cases. As part of its regular business, the LLC from time to time will experience changes in its ownership for tax purposes, whereby at various times within the five-year renewable energy property tax credit period, one or more partners will leave, and other new, and unrelated partners may join the LLC, either by purchasing a partnership interest, or by being admitted as a member to the LLC in exchange for a contribution of capital.

[1] ProjectCo, LLC will be created as an entity taxable as a partnership for federal income tax purposes.

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Specifically, ProjectCo, LLC will lease the project equipment to Lessee, LLC[2] under a [redacted] lease agreement. Lessee, LLC will make lease payments to ProjectCo, LLC. The ultimate purchase of the power will be a utility. Lessee, LLC will obtain ProjectCo, LLC's written certification that the ProjectCo, LLC will not claim the renewable credit with respect to the property and therefore, Lessee, LLC will be eligible to claim the North Carolina state energy tax credits. LLC will own [redacted] of Lessee, LLC. As such, LLC will receive their distributive share of the North Carolina state energy tax credits [redacted] from Lessee LLC.

Third party investors will invest into [redacted], which will invest in LLC to receive the historic and energy tax credits allocable to the third party investors. In 2013, a new entity taxable as a partnership will be created, [redacted] which will invest in LLC to receive the North Carolina energy credits allocable to persons taxable as partners for 2013. In 2014, another new fund, [redacted] will invest in LLC to receive the North Carolina energy credits allocable to persons taxable as partners in 2014. This pattern of investment activity will continue for at least five (5) taxable years, with partners in prior funds either selling their interests or redeeming out. Possible avenues for acquiring a partnership interest:

- Old partner to new partner sale and purchases of interest
- Partner contribution of capital in exchange for an interest
- Redemption and retirement of interest by partnership
- Having an entity taxable as a partnership other than LLC purchase interests from retiring or withdrawing partners of LLC and re-sell such purchased interests to new, unrelated partners.

Rulinqs Requested:

1. That a partner[3] who acquired their partnership interest after the close of the first taxable year of the five-year tax credit period (via purchase from a prior partner) is allowed to claim the prior partner's post initial year allocable share of the North Carolina credit, because the sale of the prior partner's interest to another person is not considered to be a disposition of the underlying renewable energy tax credit property by either the partnership or any partner and because North Carolina tax law does not otherwise prohibit such a replacement partner from claiming the tax credit in this manner.

   Department's Response: If the transaction is not considered to be a disposition of the property for federal income tax purposes and the partnership agreement allows for such allocation, then the partner that acquires a partnership interest from a former partner after the close of the first taxable year of the five-year tax credit period is allowed to claim the prior partner's allocable share of the North Carolina credit. [N.C. Gen. Stat. § 105-269.15(c)]

   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)]

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[2] Lessee LLC will be created as an entity taxable as a partnership for federal income tax purposes.
[3] For purposes of this Ruling Request, the term "partner" means the owner of an LLC interest taxable as a partner for North Carolina tax purposes, and the term "partnership" means an entity taxable as a partnership for North Carolina tax purposes.

2. Where a partner is redeemed in whole or in part**,** and surrenders any interest in LLC to LLC, and a new, replacement partner acquires a partnership interest directly from LLC after the first taxable year but within the five year credit period as a result of having made a capital contribution in lieu of purchasing an interest from any partner, the newly entering partner is entitled to their respective share of the North Carolina credit for that otherwise eligible year, because the redemption of a prior partner's interest is not considered the disposition of the underlying tax credit eligible property and because North Carolina tax law does not otherwise prohibit a newly admitted partner from claiming the proper allocable share of such tax credit.

   Department's Response: As stated in our response to *Issue # 1*, if the sale or surrender of an interest in a partnership to another person or to the partnership is not considered to be a disposition of the underlying renewable energy tax credit property by either the partnership or any partner for federal income tax purposes, then the newly entering partner would be entitled to their allocable share of the North Carolina credit for any year in which the partnership is eligible to allocate installments of the credit.

3. The addition or exit of a partner during the five year credit period does not, require the partnership to update the renewable energy property's Certificate of Compliance nor is it required to obtain any similar inspector-issued documentation attesting to the property remaining in service in cases where the underlying renewable energy property eligible for the credit remains in trade or business use at all times by the partnership.

   Department's Response: The Department cannot make this determination. As stated in our "Guidelines for Determining Tax Credit for Investing in Renewable Energy Property," all systems must be inspected and approved by the local building inspections department. Please contact your local authorities for information regarding this issue.

4. A federal determination that a person is not classified as a partner for federal income tax purposes does not impact the determination of whether that same person is classified as partner for North Carolina income, franchise or premium tax credit purposes absent a separate, independent, and express ruling by a court or state jurisdiction in the state of North Carolina.

   Department's Response: We disagree. North Carolina General Statutes reference the Internal Revenue Code which means the federal determination of a "partner" is applicable for North Carolina income tax purposes except when there is a North Carolina General Statute that specifically addresses the topic. In such case, the North Carolina statute would supersede the Internal Revenue Code.

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. Since the statute references the IRC to determine the distributive share of a credit allocated to each partner, North Carolina must rely on the federal determination. If a person is not classified as a partner for federal income tax purposes and not entitled to claim distributive share of income, gain, loss, deduction, or credit for federal purposes, then they would not qualify to receive distributive share of income, gain, loss, deduction, or credit for North Carolina purposes.

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]