



North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

June 6, 2014

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Private Letter Ruling Request on behalf of [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 an expedited ruling on behalf of your client, [REDACTED], a North Carolina limited partnership ("Investor LP"), regarding the application of the Business and Energy Tax Credit for investing in renewable energy property (the "NC Tax Credit") under N.C. Gen. Stat. § 105-129.16A et seq. (the "Statute").

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

The Investor LP is currently in negotiations to invest in one or more renewable energy properties in North Carolina (each such property is referred to herein as a "Project"). Although the Investor LP is considering investments in multiple Projects, the proposed transaction structure for each relevant investment will be the same.

A Project will be constructed and owned by a separate limited liability company that will be operated for the purpose of owning, constructing, and leasing such Project (such separate limited liability company is referred to herein as "Lessor"). Lessor is not affiliated with the Investor LP. Upon completion of construction of a Project, Lessor will lease a Project to a separate limited liability company that will be operated for the purpose of operating, monitoring, and maintaining such Project (such separate limited liability company is referred to herein as a "Lessee") pursuant to a written lease agreement (each such agreement, a "Lease") that should be classified as an operating lease for federal tax purposes. Lessee will then place the Project in service on the effective date of the Lease with respect to such Project. Lessee is not affiliated with the Investor LP.

The Lessor will finance the acquisition of a Project through capital contributions by its partners and by a loan from a banking institution. None of the costs of a Project will be provided by public funds within the meaning of N.C. Gen. Stat. § 105-129.16A(a). Each Project is expected to be placed in service before the end of 2014, and if a Project is not placed in service before the end of 2014, it will be placed in service before the end of 2015. Each Project will constitute renewable energy property within the meaning of N.C. Gen. Stat. § 105-129.16A.

Before the effective date of a Lease with respect to a Project, Investor LP and a renewable energy developer will form a limited liability company (the "Fund") in which the Investor LP will have an approximately 99% interest, and the developer will have an approximately 1% interest. The Fund's only asset will be an approximately 80% membership interest in the Lessor. An unrelated party will own the remaining 20% membership interest in the

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Lessor. Each of the Lessor and the Lessee will elect to be taxed as partnership rather than an association taxable as a corporation.

Lessor will not provide the written certification required by N.C. Gen. Stat. § 105-129.16A(d) to a Project's Lessee that Lessor will not claim the NC Tax Credit generated in connection with the Project. Rather, Lessor will claim such NC Tax Credit. Such NC Tax Credit will be properly allocated (i) as to the Lessor, approximately [REDACTED] to the Fund and [REDACTED] to the other member, (ii) as to the Fund, approximately [REDACTED] to the Investor LP and [REDACTED] to the developer entity, and (iii) as to the Investor LP, pro rata among its partners based on their capital contributions.

Investor LP is a North Carolina limited partnership that will invest in the Fund. The Investor LP currently has two partners, [REDACTED], a North Carolina limited liability company, as general partner (the "GP"), and [REDACTED], an individual, as limited partner. The GP is currently seeking investors for the Investor LP. One or more investors will be admitted as a limited partner of Investor LP from time to time, and certain of such investors may withdraw as limited partners from Investor LP during the five (5) year period that the NC Tax Credit is taken pursuant to N.C. Gen. Stat. § 105-129.16A(a) (the "NC Tax Credit Period"). Some of such investors may be admitted as a limited partner of Investor LP after a Project is placed in service. Investor LP has elected to be taxed as a partnership rather than an association taxable as a corporation.

The GP will serve as the sole general partner of Investor LP during the NC Tax Credit Period. The GP has elected to be taxed as a partnership rather than an association taxable as a corporation.

RULINGS REQUESTED:

1. *Entitlement to NC Tax Credit.* By refraining from providing the written certification required by N.C. Gen. Stat. § 105-129.16A(d) to Lessee, Lessor is the entity entitled to claim the NC Tax Credit.

Department's Response: Lessor is entitled to claim the tax credit provided under N.C. Gen. Stat. § 105-129.16A if it does not provide Lessee with written certification that it will not claim the credit. Pursuant to subsection (d) of the statute, a taxpayer that leases renewable energy property from another taxpayer may not claim the credit allowed for renewable energy property unless the taxpayer obtains the lessor's written certification that the lessor will not claim the renewable credit with respect to the property. Therefore, only if the Lessor gives the lessee a written certification that it will not claim the credit, may the lessee claim the North Carolina Renewable Energy Tax Credit. In this case, because Lessor constructed the Project, which is eligible renewable energy property, and will not provide written certification to Lessee that Lessee may claim the credit, Lessor is the only entity that has the right to allocate the North Carolina Renewable Energy Tax Credit to its partners for North Carolina tax purposes.

2. *Changes in Ownership of Investor LP.* Changes in ownership of the limited partnership interests in Investor LP during the NC Tax Credit Period do not have an effect on (i) Investor LP's continued entitlement to its distributive share of the NC Tax Credit, or (ii) the entitlement of the new limited partner(s) in Investor LP to their distributive share of any remaining unallocated installments of the NC Tax Credit from Investor LP.

Department's Response: Based on our understanding of the facts submitted, a change in the ownership of the membership interests in Investor LP, as described, during the five-year NC Tax Credit Period will not affect Investor LP's continued entitlement to the NC Tax Credit, or the entitlement of the new limited partner(s) in Investor LP to its distributive share of any remaining unallocated installments of the NC Tax Credit. However, if the change of ownership is considered to be a termination of the partnership and/or a disposition of the renewable energy property for federal income tax purposes, then the partner that

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acquires a partnership interest from a former partner after the close of the first taxable year of the five-year tax credit period is not allowed to claim the prior partner's allocable share of future installments of the North Carolina credit. Any unused portion of an installment that accrued during a prior year remains with the former partner.

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. Since the statute references the IRC to determine the distributive share of a credit allocated to each partner, the Department must rely on the federal determination. 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, 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 signature block]