



IMPORTANT NOTICE REGARDING THE DELAYED SUNSET DATE FOR RENEWABLE ENERGY PROJECTS THAT ARE SUBSTANTIALLY COMPLETED ON OR BEFORE JANUARY 1, 2016

Governor McCrory signed into law Session Law 2015-11 (Senate Bill 372) on April 30, 2015. This legislation amended N.C. Gen. Stat. § 105-129.16A to provide a delayed sunset for the credit for investing in renewable energy property for projects that meet certain requirements. As amended, the statute provides a one-year extension of the sunset date for renewable energy projects placed in service before January 1, 2017, that are substantially complete on or before January 1, 2016.¹

This notice provides guidance and general information to prospective applicants by answering frequently asked questions (“FAQs”) concerning the application and eligibility for the delayed sunset. The Department of Revenue (“Department”) will not issue private letter rulings to taxpayers regarding the application of this notice or whether a taxpayer qualifies for the safe harbor.

Eligibility

A renewable energy project is eligible for the delayed sunset if the owner of the project files an application for the extension (Form NC-478EX) on or before October 1, 2015, pays the nonrefundable application fee, and meets both of the following conditions on or before January 1, 2016:

- Incurred at least the minimum percentage of costs of the project, and
- Completed at least the minimum percentage of the physical construction of the project.

For a project with a total size of less than 65 megawatts of direct current capacity, the minimum percentage of incurred costs and partial construction is at least eighty percent (80%). For a project with a total size of 65 megawatts or more of direct current capacity, the minimum percentage of incurred costs and partial construction is at least fifty percent (50%).

Application

The application for extension (Form NC -478EX) and fee must be filed with the Department on or before October 1, 2015. The application must include the location of the project, an estimate of the total cost of the project, the total anticipated credit to be claimed, and the total size in

¹ “Substantially Complete” as used within this notice is defined as follows:

- for a project with a total size of less than 65 megawatts of direct current capacity is at least 80% complete.
- for a project with a total size of 65 megawatts or more of direct current capacity is at least 50% complete.

megawatt capacity of each project. The nonrefundable fee to be paid with the application is one thousand dollars (\$1,000) per megawatt of capacity, with a minimum fee of five thousand dollars (\$5,000).

Pursuant to N.C. Gen. Stat. § 105-263(a), the date the application is considered “filed” is the United States postmark date stamped on the cover in which the application is mailed. Therefore, Form NC-478EX is considered filed when it is mailed, rather than when it is received by the Department.

Written Certification

On or before March 1, 2016, documentation must be provided to the Department verifying that the project for which a timely application for the extended sunset has been filed meets the minimum percentage of incurred costs and partial construction required to be eligible for the delayed sunset. The required documentation is as follows:

- A written certification signed by the taxpayer that, prior to January 1, 2016, at least the minimum percentage of the physical construction of the project was completed and that at least the minimum percentage of the total cost of the project was incurred. (*See Form NC-478EX-1, available from the Department’s website on or before January 1, 2016.*)
- A notarized copy of a written report prepared by an independent engineer duly licensed in the State of North Carolina with expertise in the design and construction of installations of renewable energy property stating that at least the minimum percentage of the project was constructed and installed prior to January 1, 2016. (*See Form NC-478EX-2, available from the Department’s website on or before January 1, 2016.*)
- A notarized copy of a written report prepared by a certified public accountant duly licensed to practice in the State of North Carolina with expertise in accounting for and taxation of renewable energy property and that was prepared in accordance with AT Section 201 of the American Institute of Certified Public Accountants Standards for Agreed-Upon Procedures Engagements stating that the minimum percentage of the total cost of the project was paid or incurred as determined under Section 461 and other relevant sections of the Code prior to January 1, 2016. (*See Form NC-478EX-3, available from the Department’s website on or before January 1, 2016.*)

Frequently Asked Questions:

1. What is a “project” for purposes of Session Law 2015-11?

Department’s Response: The law is silent as to what constitutes a “project.” However, the Department considers a project to consist of one or more installations located on one contiguous land tract or parcels of land used to produce renewable energy.

2. Can taxpayers subdivide large renewable energy projects into smaller renewable energy projects in order to meet the conditions of Session Law 2015-11?

Department's Response: Yes. In order to qualify for the delayed sunset, an application and nonrefundable fee must be timely filed for each project and each project must be substantially completed pursuant to the provisions of N.C. Gen. Stat. § 105-129.16A(f).

3. Session Law 2015-11 and the application for the delayed sunset (Form NC-478EX) refer to the “taxpayer” as the applicant that is eligible for the delayed sunset if certain requirements are met. How do I apply for the sunset if the project is owned by a limited liability company (“LLC”) or partnership that may admit new members/partners after the application deadline of October 1, 2015, but before the close of the LLC’s or partnership’s tax year?

Department's Response: The delayed sunset applies to individual projects. Although the application requests information about the taxpayer, the Department recognizes that the applicant may not be the actual taxpayer claiming the tax credit pursuant to the provisions of N.C. Gen. Stat. § 105-129.16A(a). In such case, the qualifying applicant for the delayed sunset should provide copies of the application and the certification documents to the taxpayer claiming the tax credit to be submitted with the taxpayer’s tax returns.

4. A renewable energy project has multiple investors, and each investor will be eligible to claim the renewable energy property tax credit provided under N.C. Gen. Stat. § 105-129.16A. Is an application (Form NC-478EX) required for each taxpayer?

Department's Response: No. An application is only required to be filed for each individual project. See the response to FAQ #3.

5. A renewable energy project has multiple installations of renewable energy property. Must an application and the nonrefundable fee be submitted for each installation?

Department's Response: No. Regardless of the number of installations of renewable energy property that may comprise a single project, only one application is required to be filed for that project. Similarly, the nonrefundable fee applies to the entire project and does not need to be submitted for each separate installation.

6. For purposes of the extension, how should a taxpayer estimate the total cost of a project (Line 1 of Form NC-478EX)?

Department's Response: For the purpose of computing total cost, “cost” should be determined pursuant to the regulations adopted under section 1012 of the Code, subject to the limitations on cost provided in section 179 of the Code. (See N.C. Gen. Stat. § 105-129.15(2)). The total estimated cost of the project is limited to the estimated cost of the eligible “renewable energy property.” For solar energy projects, eligible costs include the cost of equipment to generate electricity from solar energy and related devices for collecting, storing, exchanging, or converting solar energy, including design, construction, and installation costs. These costs generally include the costs of solar PV modules, inverters, wiring, balance of system components (consisting of electrical wire,

connectors, conduit, combiner boxes, disconnect switches, and related equipment), transformers, metering and monitoring equipment, and other ancillary equipment. The costs of these items are normally specified by the contractual agreements for the individual project, e.g., Engineering, Procurement and Construction Contracts (“EPC”).

7. How do I calculate the fraction to determine if a project has met the minimum percentage of cost to qualify for the extended sunset?

Department’s Response: Total estimated cost as determined by the applicant and entered on Line 1 of Form NC-478EX is the denominator for purposes of determining whether or not the minimum percentage of costs has been incurred on or before January 1, 2016. The numerator of the calculation is the amount of expenses actually paid or incurred on or before January 1, 2016.

8. An applicant completes Form NC-478EX, Line 1, based on costs as determined by the contractual agreements of the project. On March 1, 2016, the applicant and the CPA affirm that the project met the minimum cost percentage based on the numerator and denominator (as defined above). What happens if the project incurs additional or unforeseen expenses on or after January 1, 2016? Can the applicant adjust or amend the certification forms such that a project that did not qualify for the safe harbor prior to January 1, 2016 now qualifies for the safe harbor, or vice versa, a project that did qualify for the safe harbor now “loses” the safe harbor?

Department’s Response: No. The determination of whether or not a project qualifies for the safe harbor is determined based on the computation of project costs paid or incurred on or before January 1, 2016. Expenses incurred after January 1, 2016 are not considered in the determination of the safe harbor. Applicants are not allowed to amend or adjust their certification forms.

9. A buyer purchases a new home equipped with renewable energy property (solar energy panels) in anticipation of earning the North Carolina tax credit for investing in renewable energy property. The renewable energy property has been tested and is completely functional. However, the local power utility company will not be able to connect the equipment into the power grid until January 2016. Does the renewable energy property qualify for the tax credit in 2015, or will the homeowner or developer need to file an application for the delayed sunset?

Department’s Response: Pursuant to N.C. Gen. Stat. § 105-129.16A, the renewable energy property must be placed in service before a taxpayer may claim a credit. In the scenario described above, the property will not be placed in service until January 2016 when the local utility company connects the qualified property and to the power grid. Therefore, the taxpayer must file an application for the delayed sunset in order to claim the tax credit in 2016, which is the year the renewable energy property is placed in service.

10. In determining the percentage constructed, how will an independent engineer conclude that the minimum requirements of physical construction occurred prior to January 1, 2016? In other words, what are the metrics for calculating the minimum percentage of the physical construction of the project?

Department's Response: In determining the percentage constructed and installed, the independent engineer should:

- Review the appropriate engineering plans and drawings for the project.
- On or before December 31, 2015, visit the physical location of the project and personally inspect the status of the construction and installation of the various components noted on the project equipment list and discuss with appropriate on-site personnel as needed.
- Compare the actual status of the construction and installation to the plans and drawings.
- Determine whether the minimum percentage of the project has been constructed and installed on or before January 1, 2016.

The project construction weightings in percentages of the total project (“metrics”) are:

<i>Phases of Construction</i>	<i>Percentage of Project</i>
Design, Engineering & Site Preparation	5%
Posts Installed	20%
Rack Mounted on Posts	15%
Panels Mounted	20%
Inverters/Transformers Set	30%
Underground cables, DC & Med. Voltage	5%
Combiner Boxes and String Wiring	5%
Total	100%

Example:

On December 31, 2015, an engineer visits the physical location of the XYZ Project and personally inspects the status of the construction and installation of the various components noted on the equipment list and discovers the following phases of completion:

- 100% of the design, engineering & site preparation
- 100% of the posts are set
- 50% of the racks are mounted
- 25% of the panels are mounted
- 33% of the inverters/transformers are set
- 100% of the underground cable is done

<i>Phases of Construction</i>	<i>Percentage of Project</i>	<i>Weighted Percentage²</i>
Design, engineering & Site Preparation	5%	5%
Posts Installed	20%	20%
Rack Mounted on Posts	15%	7.5%
Panels Mounted	20%	5%
Inverters/Transformers Set	30%	10%
Underground cables, DC & Med. Voltage	5%	5%
Combiner Boxes and String Wiring	5%	0%
Total	100%	52.5%

In the example, the engineer can, by use of the metrics listed, determine and certify that XYZ Project is 52.5% complete.

11. With regard to the safe harbor legislation, will the Department promulgate rules that will follow federal regulations concerning the beginning of project construction for purposes of federal energy tax credits?

Department's Response: No. For purposes of determining whether a project qualifies for the safe harbor, the requirements of Session Law 2015-11 must be met. The date that construction of the project begins is not included as one of those requirements.

12. Is the application fee based on direct current ("DC") or alternating current ("AC") megawatt capacity?

Department's Response: The nonrefundable application fee is based on direct current megawatts. Importantly, the minimum percentages of incurred costs and partial construction for a project are determined by the project's capacity of direct current megawatts pursuant to the new legislation.

13. If the total size of the project in megawatt capacity is estimated to be, for example, 32.5, should the taxpayer "round up" to 33 and pay the fee based on 33 megawatts or are exact numbers necessary?

Department's Response: Yes. If the total size of the project in megawatt capacity is expected to be a fraction of a whole number, then the taxpayer must round up or down to the nearest whole number.

² The weighted percentage of a phase of construction is the phase's "percentage of the project" multiplied by the phase's "percentage of completion."

14. For accrual basis taxpayers, if the costs are accrued prior to January 1, 2016, is there a requirement that the costs actually be paid within a certain time?

Department's Response: No. If a taxpayer uses accrual basis accounting, then the costs accrued prior to January 1, 2016 are to be included in the numerator of the safe harbor test. See *Treasury Regulation 1.446-1*.

15. What types of items are included in eligible costs under the categories of associated design, construction costs and installation costs as set forth in the October 2014 guidelines?

Are payments for the following considered to be eligible costs?

- building permits;
- testing and commissioning;
- mobilization and demobilization;
- performance guarantees;
- taxes;
- contractor overhead and profit;
- insurance;
- project management fees

Department's Response: N.C. Gen. Stat. §105-129.15(7) provides that renewable energy property is limited to machinery, equipment, or real property, and provides additional definitions with respect to specific property. The Department has provided that eligible costs include the associated design, construction costs, and installation costs of this property. Statutorily, the “cost” of the renewable energy property allowed in computing the credit is determined pursuant to regulations adopted under section 1012 of the Code, subject to the limitation on cost provided in section 179 of the Code. N.C. Gen. Stat. §105-129.15(2). Additional costs (e.g., various legal and consulting fees, performance guarantees, and project management fees) may be capitalized pursuant to section 263A and included in computing a federal tax credit; however, the North Carolina Statute only provides that the cost basis of the eligible machinery, equipment and land is computed in the manner provided under section 1012 of the Code.

16. What does “installed” mean?

Department's Response: For purposes of application for delayed sunset, “installed” means that the renewable energy property has been attached to its base or permanent location at the project.

17. What types of activities are included in the physical construction of a project?

Department's Response: For solar energy projects, the physical construction of the project includes, but is not limited to, the following activities:

- Design engineering, and site preparation
- Installing the posts
- Mounting the rack on posts
- Mounting the solar panels
- Installing and testing the inverter/transformers set
- Laying the underground cables, DC & med. Voltage
- Installing and testing the combiner boxes and string wiring

18. When is the physical construction of a project 100% complete? Is a project required to be functionally or actually operational in order to be 100% complete?

Department's Response: For purposes of application for delayed sunset, the physical construction of a project is considered to be 100% complete when the project is fully functional even though the project may not yet be “placed in service” for purposes of qualifying for the renewable energy property tax credit.

If you have any questions regarding the safe harbor for renewable energy projects, you may contact the Department toll free at 1-877-252-3052.