LINDA LINGLE
GOVERNOR

JAMES R. AIONA, JR.
LT. GOVERNOR

STANLEY SHIRAKI
DIRECTOR OF TAXATION

RONALD B. RANDALL
ACTING DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF TAXATION
P.O. BOX 259
HONOLULU, HAWAII 96809
PHONE NO: (808) 587-1510
FAX NO: (808) 587-1540

LETTER RULING NO. 2010-27
[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]
[REDACTED TEXT]

November 4, 2010

RE: RENEWABLE ENERGY TECHNOLOGIES INCOME TAX CREDIT; ANALYSIS OF A SYSTEM AND PROPERTY SERVED

Dear [REDACTED TEXT]:

This responds to your July 15, 2010 ruling request, wherein you requested confirmation regarding application of the Renewable Energy Technologies Income Tax Credit, Section 235-12.5, Hawaii Revised Statutes ("HRS") ("RETITC"), as further discussed below.

QUESTIONS PRESENTED

There are two questions presented in your ruling request, which are as follows:

(1) Whether [REDACTED TEXT] or its affiliates characterized as disregarded entities for tax purposes (collectively, the "Company") has a legitimate, non-tax reason, within the meaning of Tax Information Release ("TIR") 2010-02, for installing multiple photovoltaic systems ("System(s)") at the same project site, which then may be the basis for separate credit claims under the RETITC; and

(2) Whether each System installed and placed in service by the Company is servicing commercial property for purposes of the RETITC.

SHORT ANSWER

Based on the facts set forth in this letter:

(1) The Company has a legitimate non-tax reason for installing multiple systems on the same project site within the meaning of TIR 2010-02. The Company is eligible to claim the REITITC for each System that is installed and placed in service; and

(2) The Company's Systems are each servicing commercial property for purposes of the RETITCs.

FACTS REPRESENTED BY THE COMPANY

The Company will erect photovoltaic Systems located within [REDACTED TEXT], on property leased from [REDACTED TEXT]. The photovoltaic Systems will be placed on a series of abandoned building foundations and open grassy areas between the foundations. The area surrounding the project site is heavily utilized by [REDACTED TEXT]. The [REDACTED TEXT] has historically developed the property and is currently utilizing properties adjacent to project site. The site is crisscrossed with a number of underground utility systems, including sewer systems, potable water systems, and electrical duct systems. In discussions with [REDACTED TEXT], the Company has been informed that access, in the case of an emergency, must be provided to the underground systems in the future. An electrical engineer with [REDACTED TEXT] has evaluated the site and observed the following limiting conditions and operating parameters that will influence the system design and inverter selection, based upon requirements of [REDACTED TEXT]:

(1) Open access should be provided to these utility systems by creating separate PV systems. These systems should be capable of being de-energized as needed to allow access to the utilities and reduce the amount of power loss.

(2) The PV systems should be further separated by the inclusion of open access corridors over the utilities for the Company and [REDACTED TEXT] to have emergent access.

Due to the conditions above, the electrical engineer recommends systems of approximately [REDACTED TEXT], equivalent to [REDACTED TEXT] inverter/circuit breaker size in order to reduce the number of systems required to be de-energized in the event access to the underground utility systems is necessary. The findings of the electrical engineer are set forth in a certification, signed under penalties of perjury as is allowed under TIR 2010-02. *See* Exhibit A.

The Company intends to sell the electricity generated by all the photovoltaic Systems to a private, third party under a power purchase agreement. The electricity generated by the Company will be sold to [REDACTED TEXT] operating at [REDACTED TEXT]. The [REDACTED TEXT] manages [REDACTED TEXT]. A commercial power purchase agreement includes standard commercial terms and conditions between the Company and the third party. The electricity generated will be directly fed into [REDACTED TEXT] electrical distribution system within [REDACTED TEXT]. The [REDACTED TEXT] grid aggregates all electricity from the System and distributes the power to all users, including commercial, residential, and [REDACTED TEXT] facilities on the [REDACTED TEXT] property.

LAW AND ANALYSIS

A RETITC may be claimed for each eligible renewable energy technology system that is

installed and placed in service in the State by a taxpayer during the taxable year. HRS § 235-12.5(a).

A. The Company is Subject to the Credit Cap for Each Separate and Independent System.

The RETITC may be claimed for each eligible renewable energy technology system that is installed and placed into service. HRS § 235-12.5(b), A single renewable energy system exists when all the components necessary for the conversion of insolation into useful electrical energy are present. TIR 2007-02, pg 4. In the photovoltaic context, a single system consists of a photovoltaic array, an inverter, an independent circuit breaker, and associated attachment and connection equipment sufficient to make a connection to the project site's electrical system. *See* TIR 2010-02, pg 5 and TIR 2007-02, pg 4, Ex. 4.

The Department issued TIR 2010-02 providing guidance on the determination of a "system" for purposes of the RETITC. TIR 2010-02 concludes that the determination of a "system" within the meaning of the RETITC is not determined by the number of inverters; but rather the number of separate and independent connections to the site's electrical system. The Department recognized; however, that more than one system may exist at a property site where there is a legitimate, nontax reason for a particular multi-system design. Multiple system designs include separate and independent electrical connections at the project site by means of independent circuit breakers. TIR 2010-2, pg 5. TIR 2010-02 and TIR 2010-03 provide examples of non-tax design motivations, including utility interconnection requirements and inverter efficiency, among others. *See* TIR 2010-02, pg 5; TIR 2010-03, pg 4.

As represented by the Company, each of the Company's Systems is a photovoltaic system within the meaning of TIR 2007-02, which includes the necessary panels or array of panels, inverters, and installation and attachment equipment to connect to the electrical system. Each System installed and placed in service by the Company will have separate solar panel, inverter, and associated connection equipment so that each System will connect to the utility grid separately and independently of any other Systems installed on the same property. The Company represents that the installation on the site has been appropriately divided into multiple systems for legitimate nontax reasons, as determined by a licensed electrical engineer. The reasons for the multi-system design include the [REDACTED TEXT] need for access to underground utilities that exist below the surface upon which the Systems are installed. [REDACTED TEXT] has requested that access to these utilities be taken into consideration by the Company in the design of its Systems. Moreover, independent business needs dictate that, in order to provide access to [REDACTED TEXT], system design should be such that impact on energy production through system de-energizing should be minimized. Additionally, the electrical engineer has signed a letter with a detailed explanation of the design conditions and justifications for the multi-system design, taking into account [REDACTED TEXT] requests. The electrical engineer has included the appropriate penalty-of-perjury declaration, as required by TIR 2010-02. This statement was provided as a way for an electrical engineer to certify that non-tax reasons influenced the creation of the overall project's multi-system design.

B. The Company's Systems are Commercial Systems Entitled to the Commercial Credit Cap.

The amount of the RETITC allowable for each system is subject to a cap, the applicable cap amount of which depends upon the type of property being serviced by each System. HRS § 235-12.5(b). Systems installed for commercial property, for example, enjoy the highest cap for solar-powered systems, which is $500,000 per system. HRS § 235-12.5(b)(2)(C).

If a taxpayer installs and places in service a renewable energy technology system that does not service any particular property, but is entirely directed into the energy grid of the local electricity provider, then the system is servicing a commercial property only. *See* TIR 2007-02, page 11, Example 20. In this case, the Company will sell the electricity generated by all the photovoltaic Systems to a private third party under a commercial power purchase agreement. The power generated by the Systems will be directed to a private utility grid.

The private third party is a company that manages [REDACTED TEXT]. The [REDACTED TEXT] include housing and commercial properties. The third party is not the local utility; however contracts for the delivery of the energy to the [REDACTED TEXT] separate electrical grid system. The electricity will be directed to this private grid, similar to delivery of electricity to the local utility grid. Consumers of the Systems' power through the [REDACTED TEXT] private grid include commercial, residential, and [REDACTED TEXT] facilities located on [REDACTED TEXT]. A commercial power purchase agreement has been executed amongst the parties and includes standard commercial terms and conditions between the Company and the third party. A dedicated metering system will be installed to measure the energy sold to the third party. However, there is no method to determine which type of facility actually consumes the Systems' power. In this case, the Systems' power is considered commercial within the meaning of TIR 2007-02 because the power is being aggregated and fed into a private utility grid and is not serving any particular property. Moreover, the System is solely servicing a third party commercial customer based upon commercial terms. Based upon the foregoing, the Company's Systems are commercial systems entitled to the $500,000 credit cap per system under HRS § 235-12.5(b)(2)(C), as allowed under TIR 2007-02.

CONCLUSIONS

Because the Company will install and place in service Systems that can be separately and independently connected to the utility grid for legitimate non-tax reasons, as determined by an electrical engineer, the Company may claim the RETITC for each System it installs and places into service during the taxable year, regardless of whether multiple Systems are installed on a single property.

Since energy from the Company's Systems is entirely directed to a private energy grid with no method of tracing the end user and because the power is sold to a third party purchaser pursuant to a commercial power purchase agreement, each System is servicing commercial property for purposes of the RETITC.

This ruling is applicable only to the Company and shall not be applied retroactively. It may not be used or cited a precedent by any other taxpayer.

The conclusions reached in this letter are based on our understanding of the facts that you have represented. If it is later determined that our understanding of these facts is not correct, the facts are incomplete, or the facts later change in any material respect, the conclusion in this letter will be modified accordingly.

The Company has reviewed and agreed that the redacted version of this ruling attached as Exhibit B will be available for public inspection.

If you have any further questions regarding this matter, please call me (808) 587-1569. Additional information on Hawaii's taxes is available at the Department's website at www.state.hi.us/tax.

Very truly yours,

JOSEPH B. TICHY
Administrative Rules Specialist

APPROVED BY:

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JOHNNEL NAKAMURA
Rules Officer