



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

August 16, 2017

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

Re: Request for Private Letter Ruling [REDACTED]

Dear [REDACTED]:

This letter is in response to your letter dated June 30, 2017, wherein you requested on behalf of your clients, [REDACTED] and [REDACTED] and their parent company, [REDACTED], that the North Carolina Department of Revenue ("Department") issue a letter ruling that [REDACTED] and [REDACTED], as sole members in the newly formed limited liability company described below, would be entitled to proportionate shares of the credit under N.C. Gen. Stat. § 105-129.96 for construction of an eligible "railroad intermodal facility."

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

[REDACTED] and [REDACTED], both of which are wholly owned subsidiaries of [REDACTED], propose to create a North Carolina limited liability company (the "LLC") which will construct an intermodal facility. The primary purpose of the intermodal facility will be to transfer freight between a railroad and another mode of transportation.

[REDACTED] will have an [REDACTED]% ownership interest in the LLC and [REDACTED] will have a [REDACTED]% ownership interest in the LLC. [REDACTED] will contribute either land or a term of year's interest in land to the LLC. [REDACTED] may also contribute cash to the LLC. [REDACTED] will contribute cash to the LLC. The LLC will improve the land it receives from [REDACTED] in order to construct an intermodal terminal. The costs of constructing and equipping the intermodal terminal, plus the cost of improving the associated land, will total at least \$130 million, excluding contributions from the State.

Upon completion, the intermodal terminal and equipment and infrastructure within the terminal limits will be leased by the LLC to [REDACTED] and will be operated by [REDACTED]. It is anticipated that the intermodal facility will be placed in service in 2020, but it is possible that the in-service date could be later. At all times, the LLC will be treated as the owner of the intermodal facility for federal and North Carolina income tax purposes. Further, the LLC will elect to be treated as a partnership for federal income tax purposes.

The LLC will request a credit for construction of an "eligible railroad intermodal facility" under N.C. Gen. Stat. § 105-129.96. Under the terms of the LLC's operating agreement, the credit will be allocated to the members, [REDACTED] and [REDACTED], in amounts proportionate to their ownership interests in the LLC. The credit will be allocated [REDACTED]% to [REDACTED] and [REDACTED]% to [REDACTED]. The allocation of the credit will be consistent with the allocation rules of I.R.C. Section 704. The credit claimed by the LLC, and distributed to [REDACTED] and [REDACTED], will not exceed 50% of the costs of construction incurred directly by the LLC.

RULING REQUESTED:

- I. The LLC will be allowed a credit under N.C. Gen. Stat. § 105-129.96 equal to 50% of all amounts payable by it toward the costs of construction of the proposed railroad intermodal facility in the year in which the railroad intermodal facility is placed in service as described above. Any unused portion of the credit may be carried forward to the succeeding 10 years. These costs of construction will include the costs of constructing and equipping the intermodal terminal and the costs of improving the associated land.

Department's Response: We agree. The LLC will be allowed a credit pursuant to N.C. Gen. Stat. § 105-129.96. The statute provides that "[A] taxpayer that constructs or leases an eligible railroad intermodal facility in this State is allowed a tax credit equal to fifty percent (50%) of all amounts payable by the taxpayer toward the costs of construction or under the lease if the facility is placed in service in this State during the taxable year." Since LLC constructed the intermodal terminal, incurred the cost of the equipment and infrastructure within the terminal limits, and will lease the intermodal facility to [REDACTED], LLC will be deemed to have placed the railroad intermodal facility in service if [REDACTED] operates the facility under the leasing agreement.

Based on the submission, the Department cannot rule on the specific costs and computation of amounts that will qualify toward the costs of construction of the proposed railroad intermodal facility.

- II. The credit allowed to the LLC will pass through to [REDACTED] and [REDACTED] in accordance with the terms of the LLC's operating agreement, as described above, and each of such taxpayers will be allowed to claim its respective share of the credit against North Carolina income or franchise tax.

Department's Response: We agree. North Carolina follows the federal check-the-box classification regulations for income tax purposes. If LLC elects to be taxed as a partnership for federal income tax purposes, then the entity will be treated as a partnership in this State for income tax purposes in accordance with its classification for federal income tax purposes.

Under North Carolina law, tax credits claimed by a partnership pass through to the partners of the partnership. N.C. Gen. Stat. § 105-269.15(a). Each partner's distributive share of such tax credit is determined in accordance with I.R.C. §§ 702 and 704. N.C. Gen. Stat. § 105-269.15(c). Under the terms of the operating agreement, the credit allowable to the LLC under N.C. Gen. Stat. § 105-129.96 will be allocated [REDACTED]% to [REDACTED] and [REDACTED]% to [REDACTED]. The Department will respect LLC's distribution of the credit to its members/partners and will allow the pass through of the credit allowed under Gen. Stat. § 105-129.96 to [REDACTED] and [REDACTED] in accordance with the terms of the operating agreement provided that: i) a

termination will not occur under I.R.C. § 708; ii) the transaction will not be treated as a disguised sale under I.R.C. § 707; and iii) the allocation of the credit is consistent with the tax credit allocation rules of I.R.C. §§ 702 and 704 and U.S. Treasury Regulation § 1.704-1(b)(4)(ii).

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, 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]