# North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

June 28, 2019

[redacted]

Re: Request for a Private Letter Ruling on behalf of [redacted]

Dear [redacted]:

This letter is in response to your letter dated May 6, 2019, wherein you requested that the North Carolina Department of Revenue ("Department") provide a ruling on the proper treatment of property owned by a subsidiary, [redacted] in computing on the North Carolina franchise tax bases.

The Statement of Facts submitted for the Department's consideration of your request is as follows:

[redacted] is a limited liability company ("LLC") organized under the laws of [redacted], which has properly elected to be taxed as a real estate investment trust ("REIT") under IRC § 856 for federal and state income tax purposes. REIT LLC files a Form 1120-REIT for federal income tax purposes and Form CD-405 for North Carolina income tax purposes.

REIT LLC has an interest in real property located in [redacted]. The property interest is held through a series of single member LLCs and limited partnerships, all of which are disregarded for federal and North Carolina income tax purposes. *[A copy of the organizational structure was included as Exhibit A.]*

Prior to acquisition by REIT LLC in September of 2018, [redacted] and related subsidiaries operated as a partnership and were taxed as such. The resulting structure was not the product of tax avoidance or tax planning by REIT LLC; rather, REIT LLC inherited the structure by acquisition of an existing limited partnership structure.

*Ruling Requested:*

Is REIT LLC required to include the value of assets held by [redacted], a limited partnership that is disregarded for income tax purposes, when computing the franchise tax bases on Schedule D and Schedule E on the North Carolina Corporate Income and Franchise Tax Return?

*Department's Response:*

Although REIT LLC made an election to disregard [redacted] as an entity separate from its owner for federal income tax purposes, there are no provisions within the North Carolina statutes that would require REIT LLC to include the attributes of the limited partnership in its franchise tax bases. Corporate taxpayers are required to include a proportionate share of assets held by LLCs in which they directly or constructively own a capital interest greater than 50% pursuant to N.C. Gen. Stat. § 105-114.1; however, the attribution rules stipulated by the statute are specifically limited to noncorporate LLCs and are not applicable to other forms of noncorporate entities. As a result, we agree with your conclusion that REIT LLC is not required to include a proportionate share of the net worth, appraised value of assets, or investment in property of [redacted], or any of its subsidiaries that are organized as limited partnerships, in its computation of the North Carolina franchise tax.

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,

Bobby L. Weaver, Jr.

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