North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

June 7, 2021

[redacted]

Re: Private Letter Ruling Request – Proper Sourcing of Receipts under N.C. Gen. Stat. § 105-130.4(*l*)

Dear [redacted]:

This letter is in response to your letter dated February 17, 2021, wherein you requested a private letter ruling on behalf of client, [redacted]. Specifically, you requested that the North Carolina Department of Revenue ("Department") provide guidance as to the proper treatment of: (i) fees from asset management services provided to Private Account individuals, (ii) fees from asset management services provided to Private Account businesses, and (iii) fees from asset management services provided to Pooled Fund businesses under the applicable North Carolina Statute. Your statement of facts, including but not limited to, any tax classification and characterization of the entities and transactions for federal income tax purposes as well as our findings, are subject to audit verification.

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

[redacted] is a wholly-owned subsidiary of [redacted], which is headquartered in [redacted] (collectively [redacted]). [redacted] is a global provider of financial services with core operations in property and casualty insurance, life and health insurance, and investment management and investment advisory services. [redacted] stated in a subsequent information request that they do not meet the definition of a "bank" under N.C. Gen. Stat. § 105-130.7B(b)(2). [redacted] is the primary holding company for the [redacted] operations of [redacted].

Asset management services that are provided are conducted through various pass-through entities controlled by [redacted]. [redacted] owns a majority of the membership interests in [redacted]. [redacted] indirectly owns a majority of the partnership interests in [redacted] and a majority of the partnership interests in [redacted]. Over 95% of the income earned by [redacted] and [redacted] is allocated to [redacted].

The asset management service revenue earned by [redacted] and [redacted] are derived from two categories of customers known as "Private Accounts" and "Pooled Funds." The Private Accounts category of customers includes pension plans, institutional investors, high net-worth individuals, university endowments and retail investors. The Pooled Funds category of customers includes SEC registered and unregistered United States and non-United States Funds and unregistered Private Funds. The asset management service revenue associated with the Private Accounts and Pooled Funds come from providing investment advisory services, supervisory and administrative services and from distribution services to their customers. One or more of the funds exceeds five percent (5%) of [redacted] total sales of services.

RULINGS REQUESTED:

(a) Fees from asset management services provided to Private Account individuals shall be sourced to the individual's state of primary residence, or if that cannot be reasonably identified, billing address.

Department's Response: We agree. Pursuant to the aforementioned statute and the Department's regulation, 17 NCAC 05G.1004, receipts from the sales of professional services delivered to an individual customer shall be assigned to the customer's state of primary residence, or, if the taxpayer cannot reasonably identify the customer's state of primary residence, to the state of the customer's billing address.

However, if [redacted] derives more than five percent (5%) of its receipts from sales of all services from an individual customer, [redacted] must identify the customer's state of primary residence and assign the receipts from the service or services provided to that customer to that state.

Under the "safe harbor," a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year when the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, but does not derive more than five percent (5%) of its receipts from sales of all services from that customer.

(b) Fees from asset management services provided to Private Account businesses shall be sourced to the state where the customer principally manages the contract between [redacted] and the customer.

Department's Response: We agree. Pursuant to the aforementioned statute and the Department's regulation, 17 NCAC 05G.1004, receipts from the sales of professional services delivered to a business customer shall be assigned to the state where the contract of sale is principally managed by the customer; or, if the place of customer management is not reasonably determinable, to the customer's place of order; or, if the customer place of order is not reasonably determinable, to the customer's billing address.

However, if [redacted] derives more than five percent (5%) of its receipts from sales of all services from a business customer, [redacted] must identify the state where the contract of sale is principally managed by the customer.

Under the "safe harbor," a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year when the taxpayer engages in substantially similar

service transactions with more than 250 customers, whether individual or business, but does not derive more than five percent (5%) of its receipts from sales of all services from that customer.

(c) Fees from asset management services provided to Pooled Funds shall be sourced to the location where the customer (i.e., Pooled Fund) principally manages the contract between [redacted] and the customer.

Department's Response: We agree. Pursuant to the aforementioned statute and the Department's regulation, 17 NCAC 05G.1004, receipts from the sales of professional services delivered to a business customer shall be assigned to the state where the contract of sale is principally managed by the customer; or, if the place of customer management is not reasonably determinable, to the customer's place of order; or, if the customer place of order is not reasonably determinable, to the customer's billing address.

However, if [redacted] derives more than five percent (5%) of its receipts from sales of all services from a business customer, [redacted] must identify the state where the contract of sale is principally managed by the customer.

Under the "safe harbor," a taxpayer may assign its receipts from sales to a particular customer based on the customer's billing address in any taxable year when the taxpayer engages in substantially similar service transactions with more than 250 customers, whether individual or business, but does not derive more than five percent (5%) of its receipts from sales of all services from that customer.

This ruling answers the questions presented in the ruling request and does not address any other issues unrelated to the questions. It 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 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]

Ashley R. McGhee, Administration Officer
Corporate Tax Division
Telephone: (919) 814-1163
Fax: (919) 733-1821