North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

November 20, 2019

[redacted]

Re: Request for Private Letter Ruling Regarding [redacted] Eligibility to Claim State Individual Income Tax Deductions for Depreciation after Sale of Partnership Interest

Dear Mr. and Mrs. [redacted]

This letter is in response to your letter dated July 17, 2019, wherein you requested that the North Carolina Department of Revenue ("Department") issue a private letter ruling. Specifically, you requested a ruling on whether [redacted] ("Taxpayers"), in tax years following the expected sale of their interest in [redacted] ("Company"), will be allowed deductions on their North Carolina individual income tax returns for the amounts of special accelerated depreciation added back to adjusted gross income in the tax years they owned an interest in Company.

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

Since tax year 2011, [redacted] ("Taxpayer 1") and his wife, [redacted] ("Taxpayer 2"), (collectively "Taxpayers"), have been North Carolina residents. For tax years 2011 through 2018, Taxpayers filed a joint North Carolina individual income tax return ("N.C. Tax Returns"). [redacted] Company is a limited liability company organized in North Carolina and is taxed as a partnership for federal income tax purposes. Since 2011, Taxpayer 1 has held an ownership interest in Company.

Since tax year 2011, Taxpayer 1 has received a federal schedule K-1 and a state form NC K-1 from Company. With the exception of tax year 2012, Company took a special accelerated depreciation deduction pursuant to Code section 168(k) ("bonus depreciation") for tax years 2011 through 2018. As a result, on their N.C. Tax Returns, Taxpayers reported additions to and deductions from federal adjusted gross income associated with bonus depreciation as required by N.C. Gen. Stat. § 105-153.6(a), N.C. Gen. Stat. § 105-153.5(c)(5), and N.C. Gen. Stat. § 105-153.5(b)(8). Taxpayer 1 expects to sell his entire interest in Company [redacted].

Ruling Requested:

In the tax years following the expected sale of Taxpayer 1's interest in Company, will Taxpayers be allowed deductions from adjusted gross income on their North Carolina individual income tax returns for the amount of bonus depreciation previously added back to Taxpayers' adjusted gross income?

Department's Response

Based on review of the facts from your letter dated July 17, 2019, Taxpayers may continue to claim the remaining bonus depreciation deductions for amounts previously added back to Taxpayers' federal adjusted gross income under N.C. Gen. Stat. § 105-153.6(a). Taxpayers may only claim the twenty percent bonus depreciation deduction in each of the five tax years beginning after the year Taxpayers added the bonus depreciation to federal adjusted gross income on their North Carolina individual income tax return.

As noted in *Bodford v. N.C. Dep't of Revenue*, 2013 NCBC 19, ¶ 41 (N.C. Super. Apr. 10, 2013), the individual owner of a pass-through entity generally qualifies for the add-back deduction if that individual owner added back the bonus depreciation amounts on his or her individual income tax return. The "taxpayer [is allowed] to deduct the same amount of depreciation at the state level as is deducted at the federal level but spread out over a five-year period…Taxpayers who can show that they added back accelerated depreciation are entitled to take the deduction, whereas those taxpayers who have not added back accelerated depreciation are not entitled to take the deduction." *Id.*

Importantly, Taxpayers may not deduct any remaining bonus depreciation deductions if the sale of Company meets the criteria of N.C. Gen. Stat. § 105-153.6(e) and Taxpayer 1 makes the certification described therein. Moreover, the Department has not verified that the amounts reported by Taxpayers as additions and deductions for Code section 168(k) deprecation are correct.

This ruling is based solely on the facts submitted to the Department for consideration. 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.

Sincerely,

[redacted] Administrative Officer
Personal Taxes Division
[redacted]

[redacted]