North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

December 31, 2020

[redacted]

Re: Petition for Voluntary Redetermination
[redacted] and [redacted]
Corporate Income Tax

Dear [redacted]:

The Department has received your request to allow [redacted] and [redacted] to compute their North Carolina corporate income tax on a combined basis for all years beginning on or after January 1, 2020.

N.C. Gen. Stat 105-130.5A(c) allows the Secretary discretionary authority to allow an alternative filing methodology "if the Secretary has reason to believe that any corporation's State net income properly attributable to its business carried on in this State is not accurately reported on a separate return…because of intercompany transactions(.)"

The mere fact that a combined return would result in a lower State income tax liability than separately filed State income tax returns does not establish that net income is not properly attributable to the State. The United States Supreme Court has stated that "[W]hile a taxpayer is free to organize his affairs as he chooses, nevertheless, once having done so, he must accept the tax consequences of his choice, whether contemplated or not, and may not enjoy the benefit of some other route he might have chosen to follow but did not." *Commissioner v. Nat'l Alfalfa Dehydrating and Milling Co.*, 417 U.S. 134, 149 (1974).

Furthermore, the bulk of the discussion and examples put forth in the June 17, 2020 letter appear to focus on the potential results of applying the statutory apportionment methodologies under N.C. Gen. Stat. § 105-130.4, not from a lack of economic substance or intercompany transaction pricing. Additional responses indicate that [redacted] is seeking combination as a means to establish the right to apportion receipts, but would not file in another separate income tax filing state. Therefore, we believe a request for relief under these contemplated circumstances is not appropriate under N.C. Gen. Stat. § 105-130.5A.

Sincerely,

[redacted]

Anthony Edwards, Assistant Secretary
Tax Administration

cc: Ronald Penny, Secretary of Revenue
Andrew Kasper, General Counsel

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