North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

March 5, 2010

[redacted]

Re: Request for North Carolina Letter Ruling

Dear [redacted]:

This letter is in response to your request for a ruling dated [redacted], which was submitted to the North Carolina Department of Revenue ("Department") in order to clarify whether real or personal property owned by [redacted] in the State is included in the property factor in the tax year in which the property is permanently idle.

DEPARTMENT'S RESPONSE:

G.S. 105-130.4(j)(1) defines the property factor as "a fraction, the numerator of which is the average value of the corporation's real and tangible personal property owned or rented and **used** in this State during the income year and the denominator of which is the average value of all the corporation's real and tangible personal property owned or rented and used during the income year." **(Emphasis added)**

Similarly, the 2007-2008 North Carolina Department of Revenue's Corporate Income and Franchise Technical Bulletins Section II, I.1.a.ii, states:

> "Property is included in the property factor if it is actually **used** during the income year for the production of apportionable income. Property held as reserves or standby facilities or property held as a reserve source of materials shall be included in the factor. For example, a plant temporarily idle or raw material reserves not currently being processed are includible in the factor. Property that is permanently idle or idle for the entire taxable year generally is not included in the factor computation." **(Emphasis added)**

Thus, property **used** anytime during the income year to produce apportionable income must be included in the computation of the property factor.

Under your particular facts and circumstances, machinery and equipment used at any time during 2008 to produce tobacco products at the [redacted] manufacturing plant must be included in the calculation of the numerator and denominator of the property factor for calendar year 2008. If any of the machinery and equipment becomes idle before January 1, 2009, and is not used in the production of apportionable income at any time during 2009, the property can be excluded from the property factor for 2009. If all manufacturing operations at the [redacted] plant cease during calendar 2009 and the machinery and equipment formerly used at the [redacted] plant is not moved to the [redacted] plant, then the machinery and equipment will become permanently idle and will not be included in the property factor for 2010.

Under the statute, the value of the property is generally determined by averaging the value at the beginning and end of the year. However, the Secretary may require the averaging of monthly or other periodic values. If the taxpayer believes the statutory apportionment factor subjects a greater portion of its income to tax than is attributable to its business in this State, Taxpayer should seek alternative apportionment pursuant to G.S. 130.4(t1).

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. 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.

Very truly yours,

[redacted]