North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

Kenneth R. Lay
Secretary

April 29, 2010

[redacted]

Re: Request for a Private Letter Ruling Regarding Determination of Eligibility for Business Incentive Credits under Article 3J.

Dear [redacted]:

This letter is in response to [redacted]'s letter dated [redacted], wherein he requested on behalf of your client, [redacted] FEIN [redacted], a written determination by the North Carolina Department of Revenue ("Department") regarding the confirmation of eligibility for tax credits under Article 3J.

Based on our review of the facts submitted in the letter, the Department's response to the conclusions and analysis are as follows:

Statement of Facts

[redacted] is a new business located in [redacted], North Carolina that began its business operations in [redacted]. Its NAICS code is [redacted]. Its primary activity at this establishment is manufacturing and its revenues are derived predominately from its manufacturing activity.

Department's Response: We agree that this would satisfy the requirement of Eligible Business in N.C.G.S. § 105-129.83(a).

[redacted] is located in [redacted] which is a Tier 1, therefore pursuant to N.C.G.S. § 105-129.83(c), there is no wage standard requirement.

Department's Response: We agree that there would be no wage standard requirement for an establishment located in a Tier 1 county.

[redacted] provides health insurance for the full time jobs at the establishment with respect to which the credit is claimed.

Department's Response: A taxpayer is eligible for a credit under this Article only if the taxpayer provides health insurance for all of the full-time jobs at the establishment with respect to which the credit is claimed when the taxpayer engages in the activity that qualifies for the credit. The taxpayer must pay at least fifty percent of the premiums for health care coverage that equals or exceeds the minimum provisions of the basic health care plan of coverage recommended by the Small Employer Carrier Committee pursuant to N.C.G.S. § 58-50-125.

Each year that a taxpayer claims a credit or carryforward of a credit allowed under Article 3J, the taxpayer shall provide with the tax return the taxpayer's certification that the taxpayer continues to provide health insurance for all the jobs at the establishment with respect to which the credit was claimed. If the taxpayer ceases to provide health insurance for the jobs during a taxable year, the credit expires, and the taxpayer may not take any remaining installment or carryforward of the credit.

[redacted] does not have any environmental violations referenced in N.C.G.S. § 105-129.83(e).

Department's Response: A taxpayer is eligible for a credit allowed under Article 3J only if the taxpayer certifies that, at the time the taxpayer claims the credit, the taxpayer has no pending administrative, civil, or criminal enforcement action based on alleged significant violations of any program implemented by any agency of the Department of Natural Resources within the last five years. A significant violation is a violation or alleged violation that does not satisfy any of the conditions of N.C.G.S. § 143-215.6B(d). The Secretary of Environment and Natural Resources shall notify the Department of Revenue annually of every person that currently has any of these pending actions and every person that has had any of these final determinations within the last five years per N.C.G.S. § 105-129.83(e).

[redacted] does not have any OSHA violations referenced in N C.G.S. § 105-129.83(f).

Department's Response: A taxpayer is eligible for a credit allowed under Article 3J only if the taxpayer certifies that, as of the time the taxpayer claims the credit, at the establishment with respect to which the credit is claimed, the taxpayer has no citations under the Occupational Safety and Health Act that have become a final order within the past three years for willful serious violations or for failing to abate serious violations. For the purposes of this subsection, "serious violation" has the same meaning as in N.C.G.S. § 95-127. The Commissioner of Labor shall notify the Department of Revenue annually of all employers who have had these citations become final orders within the past three years. Per N.C.G.S. § 105-129.83(f).

[redacted] does not have any overdue tax debts as referenced in N.C.G.S. § 105-129.83(g).

Department's Response: This would satisfy the requirement of Eligible Business in N.C.G.S. § 105-129.83(g).

Taxpayer's Conclusion:

[redacted] is an eligible business to create Article 3 J credits.

Department's Response: We agree. Pursuant to the above information, if [redacted] has met all of the qualifications listed in N.C.G.S. § 105-129.83 they would be eligible to qualify for the Article 3J Business Incentive Credits.

In order to create Jobs credits, [redacted] must meet the requirements stated in N.C.G.S. § 105-129.87. Likewise, to create Business Property credits, they must meet the requirements in N.C.G.S. § 105-129.88.

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 Advise 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.

Sincerely,

[redacted]