North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

January 11, 2011

[redacted]

Dear [redacted]:

This letter is in response to your request for a private letter ruling on the following two questions:

1. Does [redacted] qualify as an excluded corporation under G.S. 105-130.4?
2. How is the sales factor determined for [redacted] for the purposes of income apportionment?

Based on our understanding of your business operations and the information provided by you in written and verbal communications, the Department finds that [redacted] is an excluded corporation and that the sales factor for corporate income apportionment purposes is determined as provided in G.S. 105-130.4(1).

The following information is submitted as a summary of the rationale behind this ruling:

[redacted] is [redacted] that sells [redacted] through [redacted]. The [redacted] provide [redacted] with access to [redacted]. Although [redacted] may be generally available free of charge, the value of [redacted] is substantially predicated on the underlying [redacted]. In addition, [redacted] provide access to [redacted] before it is readily available in [redacted] such as [redacted] with [redacted] and [redacted] and [redacted] that are not generally available without [redacted].

Under our past and current policy, royalties, fees and other similar income earned from the [redacted] may be considered income from intangibles. While there are differences between the business models for [redacted], the Department finds that the proceeds [redacted] derives from [redacted] constitute income from intangibles.

G.S. 105-130.4 includes in the definition of an excluded corporation a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property. Therefore, in any taxable period in which more than fifty percent (50%) of [redacted]'s ordinary gross income is received from subscription agreements or other intangibles, [redacted] qualifies as an excluded corporation.

Under G.S. 105-130.4(r), all apportionable income of an excluded corporation is apportioned by multiplying the income by the sales factor. The sales factor is determined under G.S. 105-130.4(l). In accordance with G.S. 105-130.4(l)(3)b, receipts from intangible property are considered to be in this State and included in the numerator if the receipts are received from sources in this State. Because the receipts received from [redacted] are income from intangibles, sales [redacted] are in this State if the receipts are received from sources within this State as evidenced by the customer location.

If there is additional clarification or specific issues that you feel need to be addressed, please do not hesitate to contact us. If we may be of any further assistance, please let us know.

Sincerely,

[redacted]