North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

July 29, 2011

[redacted]

RE: Private Letter Ruling Request for [redacted]

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested that the North Carolina Department of Revenue ("Department") provide a private letter ruling as to whether your client, [redacted] is an excluded corporation under GS 105-130.4(a)(4).

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

[redacted] is a taxable, non-profit, non-stock membership consortium founded to further scientific research and development. [redacted] is incorporated in a state other than North Carolina but conducts some business in North Carolina.

Prior to [redacted], [redacted] was recognized by the Internal Revenue Service as an organization exempt from taxation. In [redacted], [redacted] voluntarily forfeited its tax-exempt status in order to keep the research developed by the consortium available only to its members. In all other ways, [redacted]'s activities, revenue streams, organization, etc., remain unchanged.

[redacted]'s membership is composed primarily of companies that manufacture [redacted] ("manufacturers"). The manufacturers pay a fee to [redacted] to join the consortium. In a given year, approximately [redacted] of [redacted]s income is composed of consortium fees. The fee is based on each manufacturer's sales. Consortium membership encompasses a licensing agreement for each member. The licensing agreement provides the member with a non-exclusive right to use the intellectual property created by university researchers. The intellectual property ("IP") consists of the research results, including discovery of new information that is useful in the development or improvement of semiconductors. In certain cases, the IP will develop into a patent.

The members of the consortium meet and decide what types of [redacted] projects are of interest to them. Then, [redacted] issues "calls for proposals" to universities. Once the proposals are submitted, the consortium decides which submissions will receive research funding. The universities use the funds to carry out their research and report the IP back to the consortium. Once the IP is reported back to [redacted], the manufacturers have a license to use the IP without limit in their production process.

An incentive for joining the consortium is that, in exchange for the membership fee, the manufacturers receive the right to use the IP in their manufacturing processes. Also, the manufacturers determine which issues and ideas the researchers investigate. Companies outside the consortium have to pay a premium in order to either 1) engage their own independent research teams or 2) purchase the right to use the IP from the university directly.

Issue:

Should [redacted] be treated as an excluded corporation for apportionment purposes in the State of North Carolina?

Department's Response:

No. Based on our review of the facts and the relevant statute, it is our finding that [redacted] does not qualify an excluded corporation for North Carolina apportionment purposes because it does not derive more than 50% of its ordinary gross income from the licensing of intangible property.

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.

Sincerely,

[redacted]