North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

August 10, 2011

[redacted]

Re: North Carolina Mill Rehabilitation Tax Credit (N.C.G.S. Section 105-129.71)

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of your client, [redacted], ("Landlord") guidance from the North Carolina Department of Revenue (the "Department") with respect to the ability of a pass-through entity that qualifies for the North Carolina Mill Rehabilitation Credit ("Mill Credit") to pass through the credit to a lessee. You also requested guidance as to the procedural requirements of making a "pass through election" of the Mill Credit.

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

> Landlord will acquire title to and rehabilitate the [redacted] (the "Building") located in [redacted]. The rehabilitation of the Building is expected to qualify for the federal rehabilitation tax credit (the "Federal Historic Credit") under Section 47 of the Internal Revenue Code of 1986, as amended (the "Code"), and the North Carolina mill rehabilitation tax credit (the "Mill Credit") under N.C.G.S. Section 105-129.71(a). Landlord will master lease the Building to [redacted], a North Carolina limited liability company ("Master Tenant"), and Master Tenant, in turn, will master sublease the Building to [redacted], a to be formed North Carolina limited liability company ("Master Subtenant"). The rehabilitation is expected to begin in [redacted] and be completed in [redacted]. Following Landlord's completion of the rehabilitation work, Landlord anticipates making an election under Section 50(d) of the Code to pass through to Master Tenant all of the Federal Historic Credits generated as a result of the rehabilitation of the Building.

RULINGS REQUESTED:

1. If Landlord makes an election under Section 50(d) of the Code to pass through the Federal Historic Credit to Master Tenant, is Landlord also required to pass through the Mill Credit to Master Tenant?

   Desired Ruling: No. Landlord may pass through the Mill Credit to Master Tenant but is not required to do so.

   Department's Response: We disagree. G.S. 105-129.71(a) provides that a taxpayer who is allowed a Federal Historic Credit for making qualified rehabilitation expenditures of at least $3,000,000 with respect to a certified rehabilitation of an eligible site is allowed a Mill Credit equal to a percentage of the expenditures that qualify for the Federal Historic Credit. There are no lease pass-through provisions in the statute. Therefore, if Landlord is a pass-through entity and makes an election to pass-through the federal credit to Master Tenant, Master Tenant becomes the taxpayer that is eligible to claim the Mill Credit. In addition, Master Tenant may allocate the Mill Credit to its owners pursuant to G. S. 105-129.71(b).

2. If Landlord makes an election under Section 50(d) of the Code to pass through the Federal Historic Credit to Master Tenant, may Landlord allocate the Mill Credit among its owners?

   Desired Ruling: Yes. Consistent with the position taken by the Department above, Landlord may allocate the Mill Credit among its owners even if Landlord has made an election to pass through the Federal Historic Credit to Master Tenant.

   Department's Response: We disagree. As stated earlier, Landlord does not qualify to claim the Mill Credits under your scenario. Only the taxpayer claiming the federal credit may claim the Mill Credit. Therefore, if Landlord elects to allow the lessee, Master Tenant, to claim the federal credit, it is Master Tenant and not Landlord who qualifies to claim the Mill Credit or elect to allocate the Mill Credit among its owners pursuant to G. S. 105-129.71(b).

3. If Landlord makes an election under Section 50(d) of the Code to pass through the Federal Historic Credit to Master Tenant and elects to pass through the Mill Credit to Master Tenant, can Master Tenant allocate the Federal Historic Credit among its owners and elect to pass through the Mill Credit to Master Subtenant?

   Desired Ruling: Yes. Master Tenant may pass through the Mill Credit to Master Subtenant even if the owners of Master Tenant are allocated the Federal Historic Credit.

Department's Response: We disagree. Master Subtenant does not qualify to claim the Mill Credit under your scenario. Only the taxpayer claiming the federal credit may claim the Mill Credit. Therefore, if Landlord elects to allow the lessee, Master Tenant, to claim the federal credit, then Master Tenant qualifies for the Mill Credit. Master Tenant may claim the Mill Credit or elect to allocate the Mill Credit to its owners.

4. Regardless of whether Landlord allocates the Federal Historic Credit among its owners or makes an election under Section 50(d) of the Code to pass through the Federal Historic Credit to Master Tenant, may Landlord elect to pass through the Mill Credit directly to Master Subtenant?

   Desired Ruling: Yes. Landlord may elect to pass through the Mill Credit directly to Master Subtenant regardless of which taxpayer actually claims the Federal Historic Credit. For example, if Landlord makes an election under Section 50(d) of the Code to pass through the Federal Historic Credit to Master Tenant, Landlord may elect to pass through the Mill Credit to Master Tenant and Master Tenant may subsequently elect to pass through the Mill Credit to Master Subtenant or, alternatively, Landlord may elect to pass through the Mill Credit directly to Master Subtenant.

   Department's Response: We disagree. See response to Ruling Requested # 1.

5. What are the procedural requirements for making a "pass through election" of the Mill Credit to a lessee?

   Desired Ruling: To make a valid "pass through election" of the Mill Credit to a lessee, the lessee must obtain a written certification from the lessor (i.e., the owner of the property) and, if applicable, any other taxpayer who is entitled to claim the Mill Credit, that the lessor (and, if applicable, such other person) will not claim the Mill Credit with respect to such property.

   Department's Response: We disagree. There are no provisions within the statute that allow a pass-through election of the Mill Credit. If the lessor makes a qualifying election under Section 50(d) of the Code to pass through to the lessee the Federal Historic Credit, then the lessee is allowed a credit equal to a percentage of the expenditures that qualify for the federal credit. [G.S. 105-129.71(a)]

This ruling is based solely on the facts submitted to the Department of Revenue for consideration of the transactions described. Your statement of facts and our findings are subject to audit verification. 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]