North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

March 23, 2012

[redacted]

Re: Request for Corporate Private Letter Ruling
[redacted]
FEIN: [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 written ruling to your client, [redacted], advising them of the proper sourcing methodology for income derived from the services provided as a result of the usage of a [redacted] test kit.

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

[redacted], a domestic subsidiary of foreign parent, [redacted], has introduced [redacted] test for assessing [redacted] in the [redacted]. The [redacted] test is a [redacted] test panel that examines a [redacted] sample to detect the absence or presence of certain [redacted] variations. The test is designed to help physicians assess [redacted] from these [redacted], plus factors from [redacted] assessment based on [redacted]. The cost of the test kit (defined below) is nominal and they are freely distributed to [redacted] within the state.

[redacted]'s U.S. office is located in [redacted]. [redacted] also has a sales representative within the state of [redacted] that will be providing the test kits to [redacted]. [redacted] maintains an obvious physical presence within the state.

[redacted] will use the "test kit" as part of their service provided to [redacted]. The test kit itself is a [redacted] which contains [redacted], [redacted] and [redacted] for processing. Each test kit costs approximately [redacted] and is purchased directly from [redacted]'s foreign

parent. Once at the [redacted] office, the [redacted] is received, documented and then sent to its [redacted] in [redacted] for test processing and results preparation. Once complete, the report is uploaded to a computer server and retrieved by the [redacted] a office. The [redacted] office then forwards the report to the [redacted] [redacted].

Upon completion of test cycle, a third party [redacted] service located in [redacted] [redacted] processes an invoice and follows up with [redacted] [redacted] for payment.

ISSUES:

1. Are receipts from sales of the test from sources within North Carolina apportionable to North Carolina?

2. Are receipts from sales of the test from sources outside North Carolina not otherwise apportioned to another state apportionable to North Carolina?

DEPARTMENT'S RESPONSE:

Yes. Regardless of the location of the customer, the receipts from the sales of the test are, in part, apportionable to North Carolina. The Department does not agree with your conclusion that [redacted]'s taxable income and franchise tax base should be apportioned to this State based on property and payroll factors only. North Carolina Revenue Law, G.S. 105-130.4(l)(3)(c), requires that the receipts from the performance of services within and outside North Carolina be sourced to the numerator of the sales factor if the "income producing activities" are performed in this State. We do agree that your client is entitled to source a portion of its receipts outside of this State under the provisions of the aforementioned statute; however, since the facts clearly establish that a part of [redacted]'s [redacted] (income producing activities) is performed in North Carolina at [redacted]'s [redacted] location, a commensurate percentage of the receipts derived from these activities are attributable to North Carolina and must be sourced to the numerator of the sales factor.

Currently, neither the statutes nor regulations prescribe a specific methodology or percentage of allocation for those receipts derived from services within and without this State. However, the Department has historically required that any allocation methodology utilized to source receipts from services rendered within and outside North Carolina bear a relationship to the time spent in North Carolina in performance of the service. Since you have provided information that establishes that at least part of [redacted]'s income producing activities are conducted outside North Carolina, the Department must allow your client to source part of the fees received from its customers outside of this State for purposes of apportioning income to the State of North Carolina.

In conclusion, [redacted] is required to file, and apportion its income and franchise tax base to this State based on its property, payroll, and sales factors. Should you have any questions regarding this matter, please contact us.

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]