North Carolina Department of Revenue

Beverly Eaves Perdue
Governor

David W. Hoyle
Secretary

April 19, 2012

[redacted]

RE: Private Letter Ruling Request – N.C. G.S. § 105-130.47 – North Carolina Tax Credit for Qualifying Expenses of a Production Company

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested a private letter ruling under G.S. § 105-264(b). This request provided additional information and requested the Department re-evaluate its position expressed in a private letter ruling dated [redacted]. The request was made on behalf of the companies, [redacted] ("Production Company") and [redacted], ("Company I") in order to clarify certain tax consequences under the North Carolina Production Credit Statute (N.C. G.S. § 105-130.47).

The statement of facts submitted for the North Carolina Department of Revenue's ("Department") consideration is a follows:

Production Company intends to produce several episodes of production for theatrical, commercial and/or educational purposes, all of which will be shown in one season and treated as one production (the "Production"). The Production will not be a feature film, political advertising, a television production of a news program or live sporting event, a radio production or a production with material that is obscene (as defined in N.C.G.S. 14-190.1).

In your original letter dated [redacted], you stated that Production Company intends to acquire an historic building (the "Property") through purchase, contribution, lease or otherwise and to document the rehabilitation of the Property in accordance

with the rules of the National Park Service so as to qualify for federal and North Carolina historic tax credits. Based on this representation, the Department found that Production Company would not satisfy the definition of a production company for purposes of G.S. 105-130.47 and G.S. 105-151.29 because the Department determined that production activities were ancillary to Production Company's real estate development activities and, therefore, Production Company was not engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes.

In your letter dated [redacted], you stated that Production Company and Company I have engaged in no business other than making the Productions since their formation. In conversations with Department staff on [redacted], you indicated that Production Company and Company I would have no ownership interest in the underlying real estate to be rehabilitated and that it was not anticipated that Production Company or Company I would be reimbursed by the property owner or another for those rehabilitation expenses.

Production Company has already incurred pre-production expenses and intends to incur additional expenses, including finance charges (as defined below) in connection with the Production for (a) goods, general services and development services (as each such term is defined below), (b) compensation and wages for services provided in North Carolina and on which withholding payments will be remitted to the North Carolina Department of Revenue ("NC DOR"), (c) production-related insurance coverage obtained on the Production from a third party located in the State of North Carolina, (d) employee fringe benefits for work performed in North Carolina, and (e) per diems, stipends, and living allowances for work performed in North Carolina (collectively, the "NC Expenses"). Production Company will incur in excess of [redacted] of NC Expenses in connection with the Production.

Production Company has notified the North Carolina Division of Tourism, Film, and Sports Development in the Department of Commerce (the "North Carolina Film Office") of its intent to claim production tax credits (the "Credits") under the NC Production Credit Statute, as required by Subsection (j) of the NC Production Credit Statute. The Production is scheduled to begin filming once a private letter ruling is obtained. The credits of the Production will acknowledge both the North Carolina Film Office and the regional film office responsible for the geographical area in which the filming of the Production will occur. The taxpayers will maintain and make available for inspection any

information or records required by the Secretary of Revenue in order to prove eligibility for the Credits and the amount of the Credits, as required by Subsection (g) of the NC Production Credit Statute.

Ruling Requested:

1. Given that the taxpayers have engaged in no business since their formation other than the business of making an original, episodic television show entitled [redacted] for commercial and educational purposes (including selecting set locations, casting, soliciting quotes from production services companies, coordinating with the North Carolina Film Office, structuring the financing of the Production and incurring various preproduction expenses), are the taxpayer's "production companies" as defined under the NC Production Credit Statute?

Department's Response: Given that the taxpayers are: 1) engaged in the business of making original motion picture, television, or radio images for theatrical, commercial, advertising, or educational purposes, 2) neither have nor anticipate obtaining an ownership interest in the underlying property to be redeveloped either directly or through a related entity, and 3) do not expect to receive any reimbursement from the owners of the property for expenses incurred in the rehabilitation of the property, the Department would find Production Company to be a production company as defined in G.S. 105-130.47 and G.S. 105-151.29.

2. Is the Production a "production" with respect to which credits are allowed against taxes under the NC Production Credit Statute?

Department's Response. Yes. The Production would be a production under G.S. 105-130.47 and G.S. 105-151.29.

3. Production Company, through Company I and other wholly-owned, single-purpose entities, intends to lease or purchase the following goods, among others, in connection with the Production from persons with a physical location in North Carolina; building materials, camera equipment, appliances, tools and equipment, furniture, decorations, permit fees, rental vehicles and fuel (collectively, the "Goods"). Are amounts spent for the Goods "qualifying expenses" as defined in N.C.G.S. §105-130.47(a)(4) with respect to which credits are allowed under the NC Production Credit Statute?

Department's Response: G.S. 105-130.47 and G.S. 105-151.29 provide that qualifying expenses include certain amounts "spent in this State by a production company in connection with a production." With one exception, expenses incurred for all of the items included in the definition of "Goods" above would be included in the definition of qualifying expenses. Permit fees are not a good.

4. Production Company, through Company I and other wholly-owned, single-purpose entities, intends to utilize the following services, among others, in connection with the Production, all of which are to be performed in North Carolina: location scouting; script writing; casting (including extras); acting and talent development services; production and director services (executive, supervisory, field and assistant field production services); camera operations; jib operations; musical score development; editorial services (film, musical, script, online and offline); supervisory services (film and musical); digitizing services; set development services, including architectural, engineering, and interior design services, general contractor services and subcontractor services; accounting and legal services; and marketing services (collectively, the "Services"). Are amounts spent on the Services "qualifying expenses" as defined in N.C.G.S. § 105-130.47(a)(4) with respect to which credits are allowed under the NC Production Credit Statute?

Department's Response: G.S. 105-130.47 and G.S. 105-151.29 provide that qualifying expenses include certain amounts "spent in this State by a production company in connection with a production." Amounts incurred for items included in the definition of "Services" above would be included in the definition of qualifying expenses to the extent that these services are used in connection with a production.

5. Will an accrual basis taxpayer, such as Production Company, be considered to have "spent" amounts on the NC Expenses for the Production when such costs are incurred so that all incurred NC Expenses will be "qualifying expenses" as defined under the NC Production Credit Statute?

Department's Response. The Department concurs with your conclusion. Note, for purposes of the North Carolina Production Credit, a credit is claimed for the taxable year in which the production activities are completed, but includes all of the taxpayer's qualifying expenses incurred with respect to the production, including qualifying expenses incurred in earlier years. In the case of an episodic television series, an entire season of episodes is one production.

6. Since Company I will be disregarded for tax purposes and the Production Company will be a pass-through entity, is the amount of allowed credits under the NC Production Credit Statute refundable to the Production Company?

Department's Response. Notwithstanding the provisions of N.C. G.S. §105-131.8 and N.C. G.S. §105-269.15, a pass-through entity that qualifies for the North Carolina Production Credit does not allocate the credit among any of its owners. Instead, the pass-through entity is considered the taxpayer for purposes of claiming this credit. If the credit allowed exceeds the amount of income tax for the taxable year reduced by the sum of all credits allowable, the excess is refundable to the taxpayer.

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.

Very truly yours,

[redacted]

[redacted]