North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

October 22, 2013

[redacted]

Attn: [redacted]

Re: Request for Expedited Private Letter Ruling for [redacted], EIN: [redacted]

Dear [redacted]:

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

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

[redacted] is a global diversified manufacturing company serving a broad range of markets, including commercial roofing, energy, agriculture, lawn and garden, mining and construction equipment, aerospace and electronics, dining and food delivery, and healthcare. [redacted], a multi-state taxpayer headquartered in [redacted], is the wholly-owned subsidiary of [redacted]. [redacted] owns the entire direct and indirect interest in a number of corporations and disregarded limited liability companies (collectively referred to as "the Operating Companies") operating in [redacted] distinct lines of business, including construction materials, transportation products, brake & friction, interconnect technologies, and food service products. [redacted] also owns and rents real property located outside of North Carolina.

In an effort to increase liquidity as well as reduce [redacted]'s interest costs and credit risk, [redacted]'s Treasury Department is currently evaluating the opportunity to enter into a bank-sponsored accounts receivable securitization program ("the Securitization Program").

Under the proposal, [redacted] will form a [redacted] limited liability company (referred to herein as [redacted]). [redacted] will be treated as a disregarded limited liability company for federal income tax purposes and will be treated as a division of [redacted]. On a monthly basis, [redacted] will purchase the customer accounts receivables from the Operating Entities throughout [redacted] on a nonrecourse basis. By isolating the receivables from other risks associated with the Operating Companies, [redacted] should obtain a higher credit rating than other members within the affiliated group. [redacted] will service all of the receivables purchased by [redacted], its disregarded limited liability company, and will retain all excess collections made.

Following the purchase of the customer accounts receivables, [redacted] will convey a first priority perfected security interest in the customer accounts receivables on a nonrecourse basis to a third-party conduit purchaser, [redacted] sponsored by an [redacted] in exchange for cash. [redacted] will fund [redacted] with cash based on the available amount of eligible customer accounts receivables, using proceeds from the issuance of short-term, asset-backed securities to investors.

[redacted] will receive dividend income from its subsidiaries, income from a subsidiary for the rental of commercial real property located outside North Carolina as well as all the receipts derived from the purchase and collection of trade receivables through [redacted], a disregarded LLC, which will consist of the overwhelming majority of [redacted]'s gross receipts, exceeding [redacted] of [redacted]'s gross income. [redacted] currently files separately in seven states and is included in numerous combined returns as a member of [redacted]'s unitary group.

ISSUE:

How should [redacted] apportion the income arising from Securitization transactions for North Carolina apportionment purposes?

TAXPAYER CONCLUSION:

[redacted] should be deemed an excluded corporation, and it should apportion its North Carolina taxable income utilizing a single sales factor apportionment formula, sourcing the receipts generated from the sale of account receivables under the Securitization transactions to the commercial domicile of [redacted]'s "customer," who is deemed to be the payor of the outstanding account receivable.

DEPARTMENT'S RESPONSE:

Based on our review of the facts and the relevant statute, it is our finding that [redacted] does not qualify as an excluded corporation for North Carolina apportionment purposes because it does not receive more than 50% of its ordinary gross income from intangible property. Since [redacted] does not qualify as an excluded corporation, it is required to apportion to this State

all apportionable income using a four factor formula consisting of the property factor, payroll factor and twice the sales factor as provided in N.C. Gen. Stat. § 105-130.4.

The relevant statute, N.C. Gen. Stat. § 105-130.4(a)(4), defines "excluded corporation" as "any corporation engaged in business as a building or construction contractor, a securities dealer, or a loan company or a corporation that receives more than fifty percent (50%) of its ordinary gross income from intangible property." Based on the facts stated above [redacted], and not [redacted], is the owner of the trade receivables. By agreement, [redacted] will service all of the receivables purchased by [redacted] from [redacted]. Therefore, any receipts derived from the collection of those trade receivables by [redacted] are considered receipts from services and not receipts from intangible property.

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.

Should you have any questions, please contact me.

Very truly yours,

[redacted]