North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 13, 2014

[redacted]

Re: Redetermination Private Letter Ruling
[redacted] and Subsidiaries

Dear [redacted]:

This letter is in response to your letter dated [redacted], wherein you requested on behalf of your client, [redacted] and Subsidiaries ("Client"), that the North Carolina Department of Revenue (the "Department") authorize Client to file a combined return including all members of the federal consolidated group beginning with the year end December 31, 2012. Additionally, you requested similar consideration for redetermination of the franchise tax.

The statute under which you are requesting relief, N.C. Gen. Stat. 105-130.5A(c), is contained in Part 1 of Article 4 of the Chapter 105 and relates to corporate income tax only. There is no similar language permitting redetermination of the franchise tax in Article 3. Therefore, the Department cannot consider your request under this authority.

Under N.C. Gen. Stat. 105-130.5A(c), the Secretary and a corporation may jointly determine and agree to an alternative filing methodology that accurately reports State net income if the Secretary has reason to believe that the corporation's State net income properly attributable to its business carried on in this State is not accurately reported on a separate return because of intercompany transactions. The finding that those transactions lack economic substance or are not at fair market value is not necessary. In order to determine whether intercompany transactions result in inaccurate income being attributed to North Carolina, the Secretary will examine information such as organizational charts, income statements, intercompany transactions, and contracts between the related entities.

Based on the information provided by [redacted] in response to the Department's information request, the Secretary finds no evidence that intercompany transactions result in inaccurate income being reported on a single entity basis. To the contrary, the documentation shows that in the third quarter of 2012, [redacted] conducted an analysis of intercompany loans based on IRS Section 482 regulations and determined that interest rates on three intercompany loans should be

adjusted. [redacted] made modifications to its 2011 tax returns and its books and records to reflect those changes.

The General Assembly has been clear that for the purposes of the corporate income tax, corporations must file as a separate legal entity unless the Secretary finds that by doing so, its State net income is not properly reported. Merely showing that a business enterprise operates as a unitary business is not sufficient grounds to compel the Secretary to require or permit the filing of a combined return. Therefore, based on the documentation provided, [redacted]'s request for permission to file a combined return including all the members of the federal consolidated group beginning with the year ended December 31, 2012 is respectfully denied.

Very truly yours,

[redacted]