North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

January 26, 2015

[redacted]

Re: Private Letter Ruling Request on behalf of [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 written clarification on a technical tax matter relating to the Mill Rehabilitation Tax Credit for Income Producing Rehabilitated Mill Property under North Carolina General Statute § 105-129.71 (the "Mill Credits").

The "Statement of Facts" submitted for the Department's consideration is summarized as follows:

The taxpayer is [redacted], the managing member of [redacted] ("Investor").

Investor is a liability company that invests in other limited liability companies (each, a "Project Partnership"). Each owns a former mill building which is a Certified Historic Structure (each, a "Mill Site") that is to be rehabilitated in a manner that qualifies for (a) the investment tax credits under the Internal Code, and (b) Mill Credits.

Investor and each Project Partnership are taxable as partnerships for federal income tax purposes and are classified as partnerships for North Carolina franchise, income and premium tax purposes. Prior to any Mill Site being placed in service, Investor will make a substantial capital contribution to each Project Partnership in exchange for a [redacted] ownership interest in the Project Partnership. In addition, Investor will receive a special allocation of [redacted] of the Mill Credits generated by the Project Partnership in accordance with N.C. Gen. Stat. § 105-129.71(b). Pursuant to the Project Partnership's operating agreement, the Project Partnership will treat Investor's investment as a contribution to capital for federal and state tax purposes. At the end of the taxable year in which the Mill Site is placed in service, the Investor's capital contributed for its ownership interest in the Project Partnership, net of any cash distributions and loss allocations received in the year, will be at least [redacted] of the amount of Mill Credits allocated to the Investor.

For example, in connection with a Mill Site that is expected to generate $2,500,000 of Mill Credits, Investor will make capital contributions to the respective Project Partnership of approximately [redacted], with at least [redacted] being contributed prior to the end of the taxable year in which the Mill Site is placed in service. In exchange for such capital contributions, Investor will receive a [redacted] ownership interest in the profits and losses of the Project Partnership and a special allocation of [redacted] of the Mill Credits.

Each of the Project Partnerships is separately pursuing the redevelopment and rehabilitation of former mill buildings which are Certified Historic Structures, as defined in Section 47 of the Code and N.C. Gen. Stat. § 105-129.70(l), listed on the National Register of Historic Places.

Prior to the commencement of rehabilitation, each Project Partnership will have received an eligibility certification as defined in N.C. Gen. Stat. § 105-129.70(4) from the State Historic Preservation Office that each Mill Site is an eligible site as defined in N.C. Gen. Stat. § 105-129.70(5).

The rehabilitation of each Mill Site is intended to constitute a certified rehabilitation as defined in N.C. Gen. Stat. §105-129.70(2) and will require no less than $3,000,000 of qualified rehabilitation expenditures for each eligible site.

Once the rehabilitation has been completed, each Mill Site will be used for the production of income in the ordinary course of business and is intended to qualify for the ITC under Section 47 of the Code and Mill Credits allowable under N.C. Gen. Stat. § 105-129.71.

ISSUE:

Based on the Statement of Facts, is Investor entitled to its anticipated allocation of Mill Credits if its investment in each Project Partnership at the end of the taxable year in which the Mill Site is placed in service equals at least [redacted] of the amount of Mill Credits allocated to it (net of any cash distributions and loss allocations received in the year the credit is allocated) in accordance with N.C. Gen. Stat. § 105-129.71(b)?

Department's Response: No. N.C. Gen. Stat. § 105-129.71(b) permits a pass-through entity that qualifies for Mill Credits to allocate such Mill Credits among any of its owners in its discretion as long as an owner's adjusted basis (as determined under the Code) in the pass-through entity at the end of the taxable year in which the eligible site is placed in service is at least [redacted] of the amount of Mill Credits allocated to that owner. Based on our understanding of the Statement of Facts and the authorities cited therein, Investor will not meet the required adjusted basis threshold in the Project Partnership pursuant to the allocation provisions of the aforementioned statute because a significant amount of its contributions will be attributable to the purchase price for the Mill Credits rather than a capital contribution to a Project Partnership for federal income tax purposes. Thus, Investor's resulting basis in a Project Partnership for federal and North Carolina income tax purposes would be less than [redacted]. Accordingly, Investor would not be entitled to its anticipated allocation of Mill Credits at the end of the taxable year.

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]