NCDOR
FEB 20 2014

North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

February 7, 2014

[redacted]

RE: [redacted]

Dear [redacted]

This letter is in response to your letter dated [redacted], wherein you requested on behalf of your client, [redacted] ("Client"), that the North Carolina Department of Revenue (the "Department") authorize Client to file a combined return including all members of the unitary group beginning with the year end December 31, 2012 and going forward.

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. 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.

After careful review of the information provided with your letter, specifically the details regarding the pricing of intercompany transactions and the federal regulations of the taxpayers' intercompany service transactions, it is the finding of the Secretary that a combined filing of the unitary group is warranted in order to arrive at the correct income attributable to the business activity conducted in this State.

The unitary filing for the tax year ended December 31, 2012 shall include the entities identified in [redacted] The methodology and procedures for filing the income and franchise tax return shall be in accordance with the methodology and procedures set out in Sections V and VI of CD-12-01.

[redacted] Please note that although the unitary group is permitted to file a combined income tax return, each legal entity doing business in this State must file a single entity franchise tax return using an apportionment factor computed on a single entity basis.

This reporting methodology shall be used for tax years 2013 and subsequent years unless one of the following occurs:

- The North Carolina General Assembly enacts legislation that repeals the Secretary's authority to enter into voluntary redeterminations;
- The North Carolina General Assembly adopts combined or consolidated reporting;
- There is a final determination by a North Carolina Appellate Court that is not subject to further review that the Secretary does not have the authority to permit a taxpayer to file under the methodology set out in this letter; or
- The parties mutually agree to modify the methodology set out in this letter.

This methodology will be subject to review in the event of the reporting of a material change for income tax purposes.

In the event there is a material change in the operations, ownership or control of any of the entities included in the combined group, Client must notify the Director of the Income Tax Division of the Department of Revenue of the change, including the date and nature of the change, subsequent to the end of the tax period in which the material change occurred but at least 60 days prior to the due date, including any extension, for filing the income tax return for that tax period. A material change includes but is not limited to:

- A party that is not part of the combined group acquires more than 50% of the stock or assets of any entity or entities in the combined group;
- An entity in the combined group acquires an unrelated party with which any entity of the combined group has intercompany transactions;
- A related party is integrated into the unitary business of the combined group;
- Any entity in the combined group ceases intercompany transactions with any other entity in the group;
- Any entity in the combined group ceases to operate as part of the unitary business of the combined group;
- Any entity in the combined group transfers income-producing assets to a related party that is not part of the combined group; or
- Any entity in the combined group transfers to a related party that is not part of the combined group assets that result in deductions for any entity in the combined group.

Upon notification of a material change, the Department and Client will attempt to agree whether Client should continue to use the current methodology or whether a new methodology is appropriate. In the event there is no agreement, this agreement will be void for the tax year in which the material change occurs.

Failure to notify the Department of a material change will void this agreement effective for the tax year in which the material change occurs at the option of the Department. In the event the agreement is voided, all applicable penalties will apply.

Please sign, date and return the enclosed copy of this letter to indicate Client's agreement to the terms of this Redetermination Private Letter Ruling.

Very truly yours,

[redacted]

[redacted]

[redacted]