North Carolina Department of Revenue

Pat McCrory
Governor

Lyons Gray
Secretary

April 30, 2013

[redacted]

Re: [redacted]

Dear [redacted]:

This letter is in response to your correspondence of [redacted] to Secretary Gray wherein you requested permission to file a combined return for the referenced entities for tax years beginning on or after January 1, 2012. After careful consideration of the stated facts, the relevant statutes and other published guidance, your request is respectfully denied.

N.C. Gen. Stat. 105-130.14 prohibits the filing of a consolidated or combined return unless the corporation has been specifically directed by the Secretary to file a consolidated or combined return or the Secretary grants a written request from the corporation to file a consolidated or combined return based on a specified set of facts and circumstances. The guidelines for both scenarios are codified in N.C. Gen. Stat. 105-130.5A. Subsection (c) of that statute permits the Secretary and the corporation to jointly determine and agree to an alternative filing methodology that accurately reports State net income when 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 facts presented in your letter offer no evidence that transactions between the referenced entities lack economic substance or are not at fair market value or that the apportioned income of each separate entity is out of proportion to the business activity carried on in this State. There is no statutory basis to permit a combined return simply because a corporation cannot utilize a tax credit. To do so would effectively permit the transfer of a credit to another corporation.

We very much appreciate your investment in North Carolina. I regret that there is no statutory basis on which to grant your request.

Sincerely,

[redacted]

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