



North Carolina Department of Revenue

Roy Cooper
Governor

Ronald G. Penny
Secretary

January 31, 2020

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Re: Request for Written Determination [REDACTED]

[REDACTED]

This letter is in response to your letter dated September 17, 2019, wherein you requested on behalf of [REDACTED] ("Partnership") that the North Carolina Department of Revenue ("Department") issue a letter ruling regarding the requirement to file a North Carolina Partnership Income Tax Return ("Partnership Return") and pay North Carolina income tax on behalf of nonresident partners.

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

- Partnership is a [REDACTED] Limited Partnership owned by six limited partners.
- Partnership owns real estate in North Carolina.
- One of the partner resides in North Carolina, and all other partners are non-resident of North Carolina.
- Partnership owns real estate in North Carolina, and it recently sold a parcel of the property.
- Partnership intends to distribute the proceeds from the sale to the non-resident limited partners.
- Partnership is not engaged in an on-going business which generates regular reoccurring revenues but has, from time to time, sold off certain assets and minimal nonrecurring items.
- Partnership has had some seasonal rental income which has been used to maintain the property.
- Partnership's profits and losses are passed through to the nonresident partners.

Ruling Requested:

Will the sale of Partnership's real estate property located in North Carolina create an obligation for Partnership to file a North Carolina Partnership Income Tax Return and pay the total tax due, if any, on behalf of the nonresident partners?

Relevant General Statutes and Administrative Rules

North Carolina General Statute ("G.S.") 105-154 states that a partnership doing business in North Carolina ("this State") and required to file a return under the Internal Revenue Code ("Code") shall file an information return with the North Carolina Secretary of Revenue ("Secretary"). The information return

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shall contain all information required by the Secretary. It shall state specifically the items of the partnership's gross income, the deductions allowed under the Code, each partner's distributive share of the partnership's income, and the required adjustments. Furthermore, G.S. 105-154 states that the manager of the business shall pay with the return the tax on each nonresident owner or partner's share of the income computed at the rate levied on individuals under G.S. 105-153.7.

Administrative rule 17 NCAC 06B .3503(a) states that a North Carolina partnership return, Form D-403, shall be filed by every partnership doing business in North Carolina if a federal partnership return was required to be filed. The term "doing business in North Carolina" has the same meaning as in administrative rule 17 NCAC 05C .0102. In part, administrative rule 17 NCAC 05C .0102 states that for income tax purposes, the term "doing business" means the operation of any business enterprise or activity in North Carolina for economic gain, including, but not limited to the owning, renting, or operating of business or income-producing property in North Carolina including, but not limited to, realty.

Administrative rule 17 NCAC 06B .3503(c) states that a partnership whose only activity is as an investment partnership shall not be considered to be doing business in North Carolina. An investment partnership means a partnership that is not a "dealer in securities," as defined in Code section 475(c)(1), and that derives income exclusively from buying, holding, and selling securities for its own account. If any of the partnership's income is from other activities, either within or outside this State, either received directly or flowing through from other pass-through entities, the partnership is not an investment partnership for North Carolina tax purposes. Other activities include providing services or products to customers and *holding real property for appreciation and income* (emphasis added). An investment partnership shall not be required to file an income tax return in North Carolina or pay income tax to North Carolina on behalf of its nonresident partners.

Department's Response

Administrative rule 17 NCAC 06B .3503(c) provides that an *investment partnership* is not required to file a North Carolina partnership return or pay income tax to North Carolina on behalf of its nonresident partners (emphasis added). The administrative rule also states that a partnership that holds real property for appreciation and income is not an investment partnership. Based on our review of the facts from your letter dated September 17, 2019, Partnership is not an investment partnership; therefore, Partnership does not meet the North Carolina partnership return filing exemption afforded to investment partnerships.

Administrative rule 17 NCAC 06B .3503(a) provides that North Carolina partnership return is required to be filed by every partnership doing business in North Carolina if a federal partnership return was required to be filed. For income tax purposes, the term "doing business in North Carolina" has the same meaning as in administrative rule 17 NCAC 05C .0102, and it includes the operation of any activity in North Carolina for economic gain including owning or renting realty. Based on our review of the facts from your letter dated September 17, 2019, Partnership's activities in North Carolina meet the definition of "doing business in North Carolina." This is true even for tax years in which Partnership rents its real estate property in North Carolina on a seasonal basis. Therefore, Partnership is required to file an annual North Carolina partnership return with the Department and pay the tax due on behalf of the nonresident partners. The tax due is calculated on each nonresident partner's distributive share of the income from business in this State.

This ruling is based solely on the facts submitted to the Department for consideration. Your statement of facts 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, 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.

Sincerely,

Administrative Officer
Personal Taxes Division