



## North Carolina Department of Revenue

Pat McCrory  
Governor

Lyons Gray  
Secretary

July 28, 2014

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

Re: Revenue Ruling Request  
[REDACTED] Article 3C Tax Credits

Dear [REDACTED]:

This letter is in response to your letter dated [REDACTED], wherein you requested that the North Carolina Department of Revenue ("Department") issue a private letter ruling as to whether either or both of two scenarios will suffice to qualify [REDACTED] for the tax credits pursuant to Article 3C of Chapter 105 of the North Carolina General Statutes.

The scenarios submitted for the Department's consideration are as follows:

1. If it is established that within four years from the end of the year of the start of construction of the Facility in the County [REDACTED] has invested in excess of \$300 million in the Facility; within four years from the end of the year of the start of construction [REDACTED] has created in excess of 250 full time jobs in the Facility, at the required average wage level; the County was an enterprise tier one area when construction began; and the Facility is otherwise a major recycling facility, will [REDACTED] qualify for the Tax Credits even though the land on which the Facility is located was owned for a period of time by [REDACTED] and then transferred to [REDACTED], and a portion of the employees at the Facility were originally hired by [REDACTED], but then hired by [REDACTED]?
2. If it is established that within four years from the end of the year of the start of construction of the Facility in the County [REDACTED] has invested in excess of \$300 million in the Facility, but has transferred all assets in the Facility and the land on which the Facility is located to [REDACTED]; within four years from the end of the year of the start of construction [REDACTED] has hired in excess of 250 full time jobs in the Facility, at the required average wage level; the County was an enterprise tier one area when construction began; and the Facility is otherwise a major recycling facility, will [REDACTED] qualify for the Tax Credits if [REDACTED] is converted to a single member limited liability company and for federal and state tax purposes is designated as a disregarded entity?

[REDACTED]  
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It is our opinion that the second scenario is the better of the two options and will cause the corporation less potential issues on audit. The second option will make [REDACTED] a division of [REDACTED] and all qualifying activities performed by [REDACTED] will be considered to have been done by [REDACTED] for income tax purposes. Therefore, provided that [REDACTED] meets all eligibility requirements as set out in Article 3C of Chapter 105, whether directly or through its LLC which is disregarded for income tax purposes, [REDACTED] will qualify for the credit set out in that Article.

Our reservation about the first scenario involves the definition of “new job.” The term is not defined in Article 3C. When a term is not defined in one section of the law, the Department looks to other revenue statutes for guidance. “New job,” for purposes of Article 3J tax credits, is defined as follows: “A full-time job that represents a net increase in the number of the taxpayer’s employees statewide. A new employee is an employee who holds a new job. The term does not include a job currently located in this State that is transferred to the business from a related member of the business.” Based on the last provision in the definition of “new job,” it is our recommendation that [REDACTED] proceed with scenario #2.

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