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TO: Whom it May Concern

FROM: Kimberly Potter, Special Deputy Attorney General

DATE: September 25, 2024

RE: Evidence of Nonprofit Exempt Status of State Agencies

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This memorandum is to certify that Appalachian State University is a nonprofit, tax-exempt organization and that no part of its earnings may lawfully benefit any private shareholder or individual.

As a government agency, and State educational agency, Appalachian State University is a nonprofit, tax-exempt organization. Appalachian State University is part of the University of North Carolina, which is a public, multicampus university, and governmental and educational entity established pursuant to Article IX section 8 of the North Carolina State Constitution and Chapter 116 of the North Carolina General Statutes. The University of North Carolina is comprised of constituent institutions and other educational, research, and public service organizations. Appalachian State University's status as a constituent institution is codified in state law, N.C.G.S. § 116-4.

Pursuant to federal tax law, Appalachian State University is considered a political subdivision of the State or an "integral part" of the State and, accordingly, is a tax-exempt organization. See Revenue Ruling 71-131. Further, under IRC section 170(b)(1)(A)(ii), the Appalachian State University is defined as an "educational institution" and under IRC 170(b)(1)(A)(v), Appalachian State University is a "government unit." Under each of these provisions, contributions made to the Appalachian State University are tax deductible. Appalachian State University is a nonprofit, tax exempt organization.

Second, the North Carolina Constitution prohibits Appalachian State University from using or otherwise allocating its earnings for the benefit of any private shareholder or individual. Article I, § 32 of the North Carolina Constitution provides

that "[n]o person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services." "An emolument is defined as "[t]he profit arising from office, employment, or labor; that which is received as a compensation for services, or which is annexed to the possession of office as salary, fees, and perquisites.'" *Crump v. Snead*, 134 N.C. App. 353, 356, 517 S.E.2d 384, 387 (quoting *Black's Law Dictionary* 524 (6th ed. 1990)), *disc. review denied*, 351 N.C. 101, 541 S.E.2d 143 (1999).

As a state agency of the State of North Carolina, Appalachian State University is subject to the constitutional prohibition on exclusive and private emoluments and accordingly no part of their earnings may lawfully benefit any private shareholder.

In sum, I certify that Appalachian State University is a nonprofit, tax-exempt organization and that no part of its earnings may lawfully benefit any private shareholder or individual.

Very truly yours,



Kimberly D. Potter  
Special Deputy Attorney General