

From: Art Pope, Member of the Board of Directors of NCInnovation, Inc,

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Wed 2/14/2024 11:58 AM

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📎 7 attachments (4 MB)

Art Pope Ltr to State Auditor re NCI dated 02.14.2024.pdf; A) NCInnovation Compliance Certificate dated 12.07.2023.pdf; B) NCI Financial Reports - FYE 6:30:2023 dated August 9, 2023.pdf; C) NCI Financial Reports - Q1 FY2024 dated 11.02.2023.pdf; D) TJT Review Presentaton dated 01.18.24.pdf; E) TJT Financial Report for FYE 6:30:23 dated January 10, 2024.pdf; F) TJT Ltr to DOC & NCI dated Janaury 11, 2024.pdf;

To: The Honorable Jessica N. Holmes
jessica_holmes@ncauditor.net

North Carolina State Auditor
325N. Salisbury Street
Raleigh, NC 27699

Cc: NC General Assembly Joint Legislative Commission on Governmental Operations
Secretary Mabelle Baker Sanders, NC Department of Commerce
Mary Elizabeth Wilson, General Counsel, NC Department of Commerce

From: Art Pope, Member of the Board of Directors of NCInnovation, Inc,

Date: February 14, 2024

Re: Request for an Audit and Examination of NCInnovation, Inc.

I respectfully request the State Auditor to perform an audit and examination of NCInnovation, Inc. for its Fiscal Year Ending June 30, 2023 and its current year to date for its Fiscal Year Ending June 30, 2024, pursuant to the State Auditor's authority granted by N.C. Gen. Stat. §147-7-28(d)(2) and Article 5A of Chapter 147.

In accordance with N.C. Stat. §147-64.6(b) I request the Auditor independently examine into and make findings of fact on whether NCInnovation, Inc. has done or is doing the following:

- (1) Have established adequate operating and administrative procedures and practices; systems of accounting, reporting, and auditing; and other necessary elements of legislative or management control.
- (2) Are providing financial and other reports that disclose fairly, consistently, fully, and promptly all information needed to show the nature and scope of programs and activities and have established bases for evaluating the results of these programs and operations.

(6) Are adhering to statutory requirements that include conditions precedent, classifications, and similar eligibility or qualifying standards to assure that statutory intent is carried out while the requirements are in effect.

As a “condition precedent,” to receiving the transfer of a state appropriation of \$250 Million from the NC Department of Commerce, NCInnovation has to meet the requirements set forth in N.C. Gen. Stat. §143-728(d). N.C. Gen. Stat. §143-728(d)(9) includes the requirement that **“NCInnovation shall maintain records and accounts according to generally accepted accounting principles.”** Emphasis added.

NCInnovation submitted to the NC Department of Commerce a “Compliance Certificate of NCInnovation, Inc.,” dated December 7, 2023 and signed by J. Bennett Waters, President and Chief Executive Officer (“Compliance Certificate”). *See Attachment A.*

The Compliance Certificate, item g., certifies NCInnovation “(III) maintain records and accounts of the Corporation in accordance with generally accepted accounting principles, each as set forth in Section 143-728(d)(9) of the Article.”

On January 25, 2024 NCInnovation received the transfer of state funds in the amount of \$250 Million.

Respectfully, I do not believe that as of December 7, 2023 NCInnovation was maintaining its records, accounts and financial reporting in accordance with generally accepted accounting principles (“GAAP”). NCInnovation’s management had previously submitted two financial statements to its Board of Directors at its November 8, 2023 Board of Directors Meeting. The first report was a statement of financial activity for the Fiscal Year Ending June 30, 2023, dated August 9, 2023 (*See Attachment B*), and a second report was for the Year to Date through September 30, 2023 for FY2024 (*See Attachment C*). Neither report complied with GAAP.

In particular NCInnovation did not have internal controls to determine if claimed multi-year charitable pledges were unconditional promises to pay and should be recorded as revenue and as accounts receivables in assets, in accordance with *FASB 116* and *ASC 958-205, Not-for-Profit Entities – Presentation of Financial Statements*. Furthermore, numerous claimed charitable pledges were not recorded during the fiscal year in which they were claimed to have been made. Finally, on the face of both financial statements, all claimed multi-year charitable pledges were recorded as unrestricted “current assets” rather than being reported in part as time restricted long-term assets. The net effect of the failure to maintain records and accounts according to generally accepted accounting principles was to materially overstate the revenue and assets of NCInnovation in the financial reports dated August 9, 2023 for its FYE June 30, 2023 (“FYE 6/30/23 NCI Report”).

On December 4, 2023, as a member of the NCInnovation’s Board of Directors, I had an opportunity to review with NCInnovation’s management what documentation could be assembled to support recording the claimed charitable pledges as revenue and assets. At the conclusion of the review, I advised NCInnovation’s management of the above concerns, and recommended that NCInnovation restate its financial reports in compliance with GAAP, and FASB 116 in particular.

On December 7, 2023 NCInnovation submitted the above Compliance Certificate, without revising its financial reports in compliance with GAAP, and I believe without having adopted internal controls that were necessary to maintain its records and accounts in compliance with GAAP.

NCInnovation did engage the accounting firm of Thomas, Judy & Tucker, P.A. (“TJT”) to conduct a “review” (not an audit) which was completed on January 10, 2024, and for which a summary was prepared dated January 19, 2024.(the “TJT Review”). *See Attachment D.* The TJT Review included a

revised financial report, dated January 10, 2024, for the Fiscal Year Ending June 30, 2023. (“FYE 6/30/23 TJT Report”). *See Attachment E*. The TJT Review indeed made adjustments in accordance with GAAP, with a “net effect” for FYE 6/30/2023 of materially reducing income by \$7,938,224 (partly a timing issue) and reducing assets by \$2,075,304. *See Attachment D* at p. 9.

It should be noted the TJT Review stated that “Based on our review, we are not aware of any material modifications that should be made to the accompanying financial statements in order for them to be in accordance with accounting principles generally accepted in the United States of America.” TJT Review at p. 8. However, the “accompanying statements” were the statements prepared by TJT on January 10, 2024. The TJT Review’s conclusion about being in accordance with GAAP did not refer to FYE 6/30/2023 NCI Report, which was being utilized by NCInnovation’s management at the time of the December 7, 2023 Compliance Certificate submission.

On January 11, 2024, TJT provided a letter to NCInnovation and the NC Department of Commerce. *See Attachment E*. The letter said in part that “we [TJT] are not aware of any material modifications that should be made in order for the records and accounts of NCInnovation to be in accordance with accounting principles generally accepted in the United States of America. . . . as of the date hereof.” Respectfully, this letter is in reference to the FYE 6/30/2023 TJT Report and financial statement, with the date “hereof” being January 10, 2024. It was not in regard to the FYE 6/30/2023 NCI Report dated August 9, 2023 and the records and accounts as they were maintained by NCInnovation as of the December 7, 2023 Compliance Certification.

In short, NCInnovation *may* be in compliance with GAAP with the FYE 6/30/2023 TJT Report as of January 10, 2024. However, I cannot say for certain because I have been denied access to the records, accounts, and supporting documentation. Also, it should be emphasized that TJT was engaged by NCInnovation to conduct a review, not an audit. As TJT properly disclosed a “review is substantially less in scope than an audit” and TJT relied on “making inquiries of entity [NCInnovation] management.” (TJT FYE 6/30/2023 TJT Report at p. 3). Regardless, the FYE 6/30/2023 NCI Report was not compliant with GAAP.

In conclusion, as of December 7, 2023 I do not believe NCInnovation was maintaining its records, accounts and financial reporting in accordance with generally accepted accounting principles. The 6/30/203 TJT Report as of January 10, 2024 was an improvement, but does not change NCInnovation’s failure to be GAAP compliant as of December 7, 2023 when it submitted the Compliance Certificate. I cannot say with certainty whether NCInnovation is GAAP compliant as of today because the management of NCInnovation has denied most all my requests for documents and refused to answer most of my questions in regard to NCInnovation’s accounting, despite the fact that I am a member of the NCInnovation Board of Directors appointed by the NC Carolina House of Representatives.

And again, the TJT engagement was for a review, not an audit. NCInnovation’s being compliant with GAAP was a “condition precedent” for it receiving \$250 Million transfer of state funds. It is for these reasons that I request an independent audit and examination of the NCInnovation by the State Auditor.