

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 02-17**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of state and local taxes to transfers of real property, office supplies and equipment, airplanes, tractors, trailers and other motor vehicles, by a corporation to its wholly owned, single member limited liability company ("LLC").

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the Department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling, and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER], a Tennessee corporation with its headquarters in [NAME OF COUNTY] County Tennessee. The taxpayer manufactures [TYPE OF PRODUCT] products, and has formed a new Tennessee limited liability company known as [NAME OF COMPANY], LLC (hereinafter, the “LLC”). The “LLC” will provide transportation services primarily to the taxpayer. The taxpayer will transfer various personnel and assets to the “LLC”. The “LLC” will employ in excess of [NUMBER] people, the majority of whom will be over-the-road truck drivers who will operate the vehicle fleet.

The taxpayer will convey to the “LLC” the real property. Located on this real property are certain truck garages, offices and other improvements that will be utilized by the “LLC”. In addition to the real estate, the taxpayer will transfer to the “LLC” office supplies and equipment, such as desks, chairs, filing cabinets, computers, and other personal property. Certain tractors, trailers, and other vehicles owned by the taxpayer will be contributed to the “LLC”. However, the vast majority of the tractors and trailers used by the taxpayer are leased from third parties. As part of the establishment of the “LLC”, the taxpayer will assign its interests as lessee under the vehicle leases to the “LLC”.

The taxpayer also owns [NUMBER] airplanes that are used to transport its personnel, agents, and invitees to different locations in furtherance of the company’s business. The taxpayer intends to transfer ownership of these aircraft to the “LLC”. The “LLC” will employ the [NUMBER] pilots currently employed by the taxpayer to fly the airplanes and the [NUMBER] full-time mechanics who maintain the aircraft. The “LLC” will provide aviation and travel services to [NAME OF CORPORATION] and its affiliates, and it will also transport its own personnel as necessary in furtherance of its business activities.

The taxpayer will be the sole owner and the sole member of the “LLC”. The “LLC” has elected to be disregarded as a separate entity for federal income tax purposes. The “LLC” will be treated as a division of the taxpayer for federal income tax purposes, and its operations will be reflected in the taxpayer’s federal income tax returns pursuant to Treas. Reg. § 301.7701-3.

QUESTIONS

1. Since the “LLC” will be disregarded as a separate entity for federal income tax purposes, will it also be disregarded as a separate entity and treated as a division of the taxpayer for all Tennessee state and local tax purposes?
2. Will the transfer of the aircraft, vehicles, and other tangible personal property from the taxpayer to the “LLC” be subject to Tennessee sales or use taxes?
3. Will subsequent transfers of assets between the taxpayer and the “LLC” be subject to the Tennessee sales and use taxes, so long as the “LLC” is treated as a disregarded

entity and a division of the taxpayer for federal income tax purposes?

4. Will the “LLC” be subject to Tennessee franchise and excise taxes?

RULINGS

1. The “LLC” will be disregarded as a separate entity and treated as a division of the Taxpayer for those taxes administered by the Commissioner of Revenue.
2. No. Tennessee does not view the “LLC” to be an entity separate from the Taxpayer for sales or use tax purposes. Therefore, the proposed transfer of tangible personal property from the Taxpayer to the “LLC” would not be recognized as a taxable event for sales or use tax purposes.
3. Subsequent transfers of tangible personal property between the Taxpayer and the “LLC” will not be subject to sales or use taxes absent some change in the Tennessee law.
4. No. Since the “LLC” will be disregarded for federal income tax purposes and is a limited liability company whose single member is a corporation, it will not be subject to Tennessee franchise and excise taxes as a separate entity.

ANALYSIS

Letter rulings are applicable to the individual taxpayer making the request for the ruling. Letter rulings are also binding upon the Department of Revenue. Tenn. Code Ann. §67-1-109(c)(1). It is implicit from the statute that letter rulings only apply to taxes administered by the Department of Revenue. State or local taxes administered by other state or local taxing authorities are not within the scope of a letter ruling issued by the Commissioner of Revenue. Accordingly, the Commissioner’s response to the Taxpayer’s first ruling request concerning “all Tennessee state and local tax purposes” is restricted to those taxes the Department of Revenue administers.

The Tennessee Legislature has generally established the tax treatment of a limited liability company. Tenn. Code Ann. § 48-211-101 provides:

For purposes of all state and local Tennessee taxes, a foreign or domestic LLC shall be treated as a partnership or an association taxable as a corporation as such classification is determined for federal income tax purposes. The members of a foreign LLC treated as a partnership are subject to all state and local Tennessee taxes in the same manner and extent as partners in a foreign partnership. The members of a domestic LLC are subject to all state and local Tennessee taxes in the same manner and extent as partners in a domestic partnership.

1994 Pub. Acts 868, § 1.

(Emphasis mine) While this provision infers that LLCs will have more than one member¹, it also clearly states that the federal tax treatment of an LLC as a corporation or partnership is controlling for state and local tax purposes. The Taxpayer, a corporation, has stated the “LLC” will be disregarded for federal tax purposes and treated as a division of the Taxpayer. Applicable federal regulations support the Taxpayer’s contention the “LLC” would be treated as a division of the Taxpayer for federal income tax purposes.

(a)... A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch, or division of the owner.

...
(c) Other business entities. For federal tax purposes--

...
(2) Wholly owned entities--(i) In general. A business entity that has a single owner and is not a corporation under paragraph (b) of this section is disregarded as an entity separate from its owner.

26 C.F.R. § 301.7701-2.

Since the “LLC” falls within the terms of Tenn. Code Ann. § 48-211-101, it will be treated “for purposes of all state and local Tennessee taxes” administered by the Department of Revenue as it is treated for federal income tax purposes. The taxpayer has stated that the “LLC” will be disregarded and treated as a division of the corporate taxpayer for federal income tax purposes. Accordingly, the “LLC” will also be disregarded and treated as a division of the corporate taxpayer for those taxes administered by the Department of Revenue. However, not all LLC’s disregarded for federal purposes will be disregarded for purposes of all taxes administered by the Department of Revenue. This becomes apparent as the taxes specifically addressed by the ruling request are considered.

There are currently no provisions of the Tennessee Sales and Use Tax Law that would conflict with the mandate of Tenn. Code Ann. § 48-211-101. The elements necessary to constitute a sale in Tennessee are (1) transfer of title or possession, or both of (2) tangible personal property, for a (3) consideration. *Volunteer Val-Pak v. Celauro*, 67 S.W.2d 635, 636 (Tenn. 1989); Tenn. Code Ann. § 67-6-102(25)(A). It is axiomatic that there can be no transfer of title or possession for sales and use tax purposes without two separate entities, both a buyer and a seller. In this case, applicable federal law incorporated by Tenn. Code Ann. § 48-211-101 treats the Taxpayer and its single member LLC as one. Therefore, the proposed transfer of any tangible property from the Taxpayer to the “LLC” would not be recognized as a taxable event for sales or use tax purposes.

¹ This statute was enacted before 1999 Tenn. Pub. Acts 346 extended Tennessee’s recognition of LLCs to single member LLCs.

Unlike the sales tax law, there have been amendments² to the franchise and excise tax law since the enactment of Tenn. Code Ann. § 48-211-101 that specifically address the tax treatment of entities disregarded for federal income tax purposes. These specific and later enactments of the Legislature were intended to supercede portions of Tenn. Code Ann. § 48-211-101. Tenn. Code Ann. § 67-4-2007(d) provides:

(d) For purposes of the excise tax levied by this part, a business entity shall be classified as a corporation, partnership, or other type business entity, consistent with the way the entity is classified for federal income tax purposes, and subject to tax in accordance with this part. *Notwithstanding any provision of law to the contrary, entities that are disregarded for federal income tax purposes, except for limited liability companies whose single member is a corporation, shall not be disregarded for Tennessee excise tax purposes.*

(Emphasis mine). This later enactment is specific to excise taxes and generally states that entities disregarded for federal income tax purposes will not be disregarded for excise tax purposes. Of course, this is apparently contrary to the application of the language of Tenn. Code Ann. § 48-211-101. The franchise tax law contains virtually the same language in regard to the franchise tax. Tenn. Code Ann. §67-4-2106(c). Notably, one exception is made in these franchise and excise tax statutes. A limited liability company disregarded for federal income tax purposes whose single member is a corporation will also be disregarded for franchise and excise tax purposes. Based on the facts presented, the “LLC” will be a limited liability company whose single member is a corporate taxpayer. Since the “LLC” comes within the terms of the exception to the general rule established for classification of disregarded entities by the Franchise and Excise Tax Law, it will also be disregarded for Tennessee franchise and excise tax purposes. The operations of the LLC will be included in the franchise, excise tax return filed by the taxpayer just as though it were a division of the taxpayer.

Charles T. Moore
Special Tax Counsel

APPROVED: Ruth Johnson
Commissioner

DATE: 6/7/02

² 2000 Tenn. Pub. Acts 982 § 60(a).