

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING # 11-46**

**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**

The application of the Tennessee franchise and excise taxes to the reorganization of a group of affiliated companies.

**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**

[PARENT] is the parent corporation of a group of affiliated entities that is organized under the laws of a state other than Tennessee.

[PARENT] holds a 100% interest in [LLC A], a limited liability company. [LLC A] in turn owns a 100% interest in a number of single member limited liability companies, including [LLC A1]

and [LLC A2]. [LLC A1] is a 1% general partner, and [LLC A2] is a 99% limited partner, in [LP 1], a limited partnership organized under the laws of a state other than Tennessee. [LLC A], [LLC A1], and [LLC A2] do not have a physical presence in Tennessee; [LP 1] is an operating entity that does business in Tennessee.

[LP 1] owns a 100% interest in a number of limited liability companies, including [LLC A3] and [LLC A4]. [LLC A3] is a 1% general partner, and [LLC A4] is a 99% limited partner, in [LP 2], a limited partnership organized under the laws of a state other than Tennessee. [LLC A3] and [LLC A4] do not have a physical presence in Tennessee; [LP 2] is an operating entity that does business in Tennessee.

For federal income tax purposes, [LLC A], [LLC A1], and [LLC A2] (all limited liability companies) are classified as disregarded entities pursuant to Treas. Reg. § 301.7701-3(b)(1). Because [LP 1]'s two partners are treated as disregarded entities for federal income tax purposes, [LP 1] (a limited partnership) is also disregarded for federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(ii). Similarly, [LLC A3] and [LLC A4] (both limited liability companies) are classified as disregarded entities pursuant to Treas. Reg. § 301.7701-3(b)(1). Because [LP 2]'s two partners are treated as disregarded entities for federal income tax purposes, [LP 2] (a limited partnership) is also disregarded for federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(ii).

All of the entities described above are therefore disregarded for federal income tax purposes to [PARENT].

[PARENT] is considering implementing a plan of reorganization in order to simplify its business structure. The steps involved in the proposed restructuring are as follows:

- 1) [LP 1] would be converted under state law from a limited partnership to a limited liability company called [LLC B].
- 2) [LLC A1] and [LLC A2] would merge into [LLC B].
- 3) [LP 2] would be converted under state law from a limited partnership to a limited liability company called [LLC C].
- 4) [LLC A3] and [LLC A4] would merge into [LLC B].

The final organization structure would consist in relevant part of [PARENT] as the owner of three tiers of single member limited liability companies: [LLC A], [LLC B], and [LLC C].

Following their respective conversions, both [LLC B] and [LLC C] would be classified as disregarded entities for federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1) (note that [LLC A] is already classified as disregarded entity). It is anticipated that the proposed restructuring will be treated as a nontaxable event for federal income tax purposes.

## QUESTIONS

1. Will the net earnings or loss of the limited partnerships described herein that are disregarded for federal income tax purposes (*i.e.*, [LP 1] and [LP 2]) be determined as if they were corporations for Tennessee excise tax purposes?
2. If the answer to Question #1 is affirmative, will such limited partnership determine its Tennessee franchise and excise tax liability by preparing a *pro forma* federal Form 1120 (U.S. Corporation Income Tax Return)?
3. Will a multimember limited liability company that is disregarded for federal income tax purposes be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded single member limited liability companies that are in turn owned by a disregarded single member limited liability company that is itself owned by a single corporation?
4. Will a multimember limited liability company that is disregarded for federal income tax purposes be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded single member limited liability companies that are in turn owned by a disregarded single member limited liability company that is owned by a disregarded single member limited liability company that is itself owned by a single corporation?
5. Will the conversion of [LP 1] to [LLC B] be treated for Tennessee excise tax purposes as a nontaxable deemed liquidation of [LP 1] into [PARENT] under IRC §§ 332 and 337?
6. Will the conversion of [LP 2] to [LLC C] be treated for Tennessee excise tax purposes as a nontaxable deemed liquidation of [LP 2] into [PARENT] under IRC §§ 332 and 337?
7. Will the merger of [LLC A1] and [LLC A2] into [LLC A] be treated as a nontaxable event for Tennessee excise tax purposes?
8. Will the merger of [LLC A3] and [LLC A4] into [LLC B] be treated as a nontaxable event for Tennessee excise tax purposes?
9. Will any modification to the starting point for the computation of net earnings or loss of [PARENT] be required under TENN. CODE ANN. §§ 67-4-2006(b)(1)(J) (Supp. 2010) and/or 67-4-2006(b)(2)(L) (Supp. 2010) that would alter the otherwise nontaxable treatment of the proposed restructuring described herein?

## RULINGS

1. Yes. For Tennessee excise tax purposes, the net earnings or loss of the limited partnerships described herein that are disregarded for federal income tax purposes (*i.e.*, [LP 1] and [LP 2]) will be determined as if they were corporations.
2. Yes. Each limited partnership described in Question #1 will determine its Tennessee franchise and excise tax liability by preparing a *pro forma* federal Form 1120 (U.S. Corporation Income Tax Return).

3. Yes. A multimember limited liability company that is disregarded for federal income tax purposes will be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded single member limited liability companies that are in turn owned by a disregarded single member limited liability company that is itself owned by a single corporation.
4. Yes. A multimember limited liability company that is disregarded for federal income tax purposes will be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded single member limited liability companies that are in turn owned by a disregarded single member limited liability company that is owned by a disregarded single member limited liability company that is itself owned by a single corporation.
5. The Tennessee excise tax laws neither recognize nor disallow the treatment of a conversion as a nontaxable deemed liquidation under IRC §§ 332 and 337. Rather, any gain or loss realized from the conversion of [LP 1] to [LLC B] will be included in Tennessee net earnings or loss only if included in the taxpayer's federal taxable income or loss.
6. The Tennessee excise tax laws neither recognize nor disallow the treatment of a conversion as a nontaxable deemed liquidation under IRC §§ 332 and 337. Rather, any gain or loss realized from the conversion of [LP 2] to [LLC C] will be included in Tennessee net earnings or loss only if included in the taxpayer's federal taxable income or loss.
7. The Tennessee excise tax laws neither require nor disallow the inclusion in net earnings or loss of gain or loss deriving from a merger. Rather, any gain or loss realized from the merger of [LLC A1] and [LLC A2] into [LLC A] will be included in Tennessee net earnings or loss only if included in the taxpayer's federal taxable income or loss.
8. The Tennessee excise tax laws neither require nor disallow the inclusion in net earnings or loss of gain or loss deriving from a merger. Rather, any gain or loss realized from the merger of [LLC A3] and [LLC A4] into [LLC B] will be included in Tennessee net earnings or loss only if included in the taxpayer's federal taxable income or loss.
9. No. No modification to the starting point for the computation of net earnings or loss of [PARENT] will be required under TENN. CODE ANN. §§ 67-4-2006(b)(1)(J) (Supp. 2010) or 67-4-2006(b)(2)(L) (Supp. 2010) that would alter the otherwise nontaxable treatment of the proposed restructuring described herein.

## ANALYSIS

Tennessee imposes an excise tax at the rate of 6.5% on all persons, as defined under TENN. CODE ANN. § 67-4-2004(37) (Supp. 2010), doing business within Tennessee. TENN. CODE ANN. § 67-4-2007(a) (Supp. 2010). Tennessee also imposes a franchise tax at the rate of \$0.25 per \$100, or major fraction thereof, on the net worth of a taxpayer doing business in Tennessee, pursuant to TENN. CODE ANN. §§ 67-4-2105(a) (Supp. 2010) and 67-4-2106(a) (Supp. 2010).<sup>1</sup> Thus, to be

---

<sup>1</sup> Note that, under TENN. CODE ANN. § 67-4-2108(a)(1) (Supp. 2010), the franchise tax base “shall in no case be less than the actual value of the real or tangible property owned or used in Tennessee, excluding exempt inventory and exempt required capital investments.” For purposes of this section, “property” is to be “valued at cost less

subject to the franchise and excise taxes, an entity must come within the scope of the definition of the term “person” as set forth in TENN. CODE ANN. § 67-4-2004(37). Among the entities included in this definition are limited partnerships, limited liability companies, and corporations.

#### 1-2. Determination of net earnings or loss of federally disregarded limited partnerships

For Tennessee excise tax purposes, the net earnings or loss of the limited partnerships described herein that are disregarded for federal income tax purposes (*i.e.*, [LP 1] and [LP 2] will be determined as if they were corporations. Each such entity will determine its Tennessee franchise and excise tax liability by preparing a *pro forma* federal Form 1120 (U.S. Corporation Income Tax Return).

TENN. CODE ANN. §§ 67-4-2007(d) and 67-4-2106(c) provide that, for purposes of Tennessee franchise and excise taxation, a business entity shall be classified as a corporation, partnership, or other type of business entity, consistent with the way the entity is classified for federal income tax purposes. TENN. CODE ANN. §§ 67-4-2007(d) and 67-4-2106(c) further provide, however, that “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 franchise and excise tax purposes. Thus, to be disregarded for Tennessee franchise and excise tax purposes, an entity must be (1) a single member limited liability company; (2) disregarded for federal income tax purposes; and (3) wholly owned by a corporation.

The limited partnerships described above are not single member limited liability companies. As a result, the limited partnerships will not be treated as disregarded entities for Tennessee franchise and excise tax purposes under TENN. CODE ANN. §§ 67-4-2007(d) and 67-4-2106(c), despite their classification as disregarded entities for federal tax purposes. Rather, each limited partnership will be treated as a separate entity for franchise and excise tax purposes, and must file its Tennessee franchise and excise tax return on a separate entity basis.<sup>2</sup>

TENN. CODE ANN. § 67-4-2006(a)(1) (Supp. 2010) provides in pertinent part that for a corporation or “any other taxpayer required to file a federal income tax return on a federal form 1120 or any variation of that form,” the term “‘net earnings’ or ‘net loss’ is defined as federal taxable income or loss before the operating loss deduction and special deductions provided for in 26 U.S.C. §§ 241, 242 [repealed], 243-247” and as adjusted by TENN. CODE ANN. § 67-4-2006(b) and (c). Federal taxable income as described in TENN. CODE ANN. § 67-4-2006(a)(1) is reported on federal Form 1120 (U.S. Corporation Income Tax Return).

[LP 1] and [LP 2] are treated as disregarded entities for federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(b)(1)(ii). Because they are disregarded to [PARENT], a corporation, they are required to report their items of income, loss, deductions, and credits on [PARENT]’s

---

accumulated depreciation in accordance with generally accepted accounting principles.” TENN. CODE ANN. § 67-4-2108(a)(3).

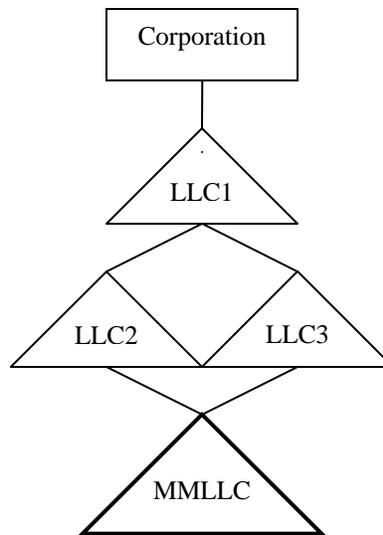
<sup>2</sup> See TENN. CODE ANN. §§ 67-4-2007(e)(1) and 67-4-2106(c). With certain exceptions, each taxpayer shall be considered a separate and single business entity, and shall file its Tennessee franchise and excise tax return “on a separate entity basis reflecting only its own business activities even though it may have filed a consolidated federal income tax return with other members” of its group.

federal Form 1120. Thus, these entities are required to compute their respective Tennessee net earnings or loss in accordance with TENN. CODE ANN. § 67-4-2006(a)(1). Each entity must therefore prepare a *pro forma* federal Form 1120 that states the entity's items of income, loss, deductions, and credits that were reported on [PARENT]'s federal Form 1120.<sup>3</sup>

3. Disregarded entity treatment (four-tier structure)

A multimember limited liability company (“LLC”) that is disregarded for federal income tax purposes will be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded single member LLCs that are in turn owned by a disregarded single member LLC that is itself owned by a single corporation.

This organizational structure is illustrated as follows:



For purposes of discussion, the entities will be referred to as indicated in the chart above.

TENN. CODE ANN. §§ 67-4-2007(d) and 67-4-2106(c) provide that, for purposes of Tennessee franchise and excise taxation, a business entity shall be classified as a corporation, partnership, or other type of business entity, consistent with the way the entity is classified for federal income tax purposes. TENN. CODE ANN. §§ 67-4-2007(d) and 67-4-2106(c) further provide, however, that “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 franchise and excise tax purposes. Thus, to be disregarded for Tennessee franchise and excise tax

---

<sup>3</sup> Note that [LLC A3] and [LLC A4] will also be treated as separate entities for Tennessee franchise and excise tax purposes. While these entities are single member LLCs, each entity is owned by [LP 1], a limited partnership. Because [LP 1] is not a corporation, [LLC A3] and [LLC A4] do not meet the requirement that they be wholly owned by a corporation. *See* TENN. CODE ANN. §§ 67-4-2007(d) and 67-4-2106(c). As a result, [LLC A3] and [LLC A4] are required to compute their respective Tennessee net earnings or loss on a separate entity basis in accordance with TENN. CODE ANN. § 67-4-2006(a)(1).

purposes, an entity must be (1) a single member limited liability company; (2) disregarded for federal income tax purposes; and (3) wholly owned by a corporation.

LLC1 is a single member limited liability company that is disregarded for federal income tax purposes. LLC1 is wholly owned by a corporation. Therefore, LLC1 is treated as a disregarded entity for Tennessee franchise and excise tax purposes. If a business entity is disregarded, it is treated as a division of its owner. *See* Treas. Reg. § 301.7701-2(a). LLC1 will therefore be treated as a division of the Corporation for franchise and excise tax purposes.

LLC2 is a single member limited liability company that is disregarded for federal income tax purposes. LLC2 is owned by LLC1, a limited liability company. However, because LLC1 is treated as a division of the Corporation, the Corporation is treated as LLC2's direct owner for purposes of Tennessee franchise and excise taxation. Because LLC2 is treated as wholly owned by a corporation, LLC2 is considered to be a disregarded entity for Tennessee franchise and excise tax purposes.

LLC3 is a single member limited liability company that is disregarded for federal income tax purposes. LLC3 is owned by LLC1, a limited liability company. However, because LLC1 is treated as a division of the Corporation, the Corporation is treated as LLC3's direct owner for purposes of Tennessee franchise and excise taxation. Because LLC3 is treated as wholly owned by a corporation, LLC3 is considered to be a disregarded entity for Tennessee franchise and excise tax purposes.

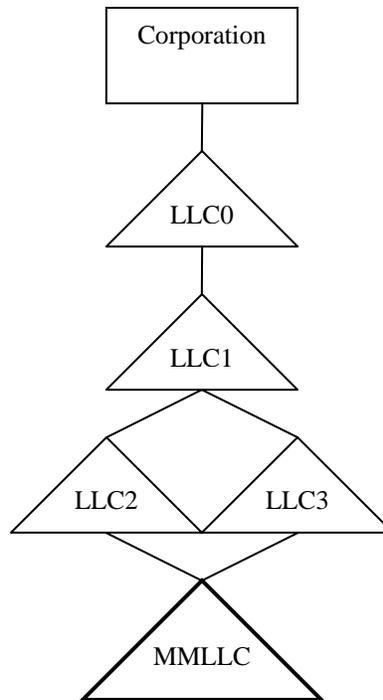
MMLLC is disregarded for federal income tax purposes. MMLLC is owned by LLC2 and LLC3, both limited liability companies. Because LLC2 and LLC3 are treated as being wholly owned by the Corporation, they are treated as divisions of the Corporation. Because LLC2 and LLC3 are treated as divisions of the Corporation, the Corporation is treated as MMLLC's sole direct owner for purposes of Tennessee franchise and excise taxation. MMLLC will therefore be treated as a single member limited liability company that is wholly owned by a corporation. As such, MMLLC is considered to be a disregarded entity for Tennessee franchise and excise tax purposes.

Thus, a multimember LLC that is disregarded for federal income tax purposes will be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded single member LLCs that are in turn owned by a disregarded single member LLC that is itself owned by a single corporation.

#### 4. Disregarded entity treatment (five-tier structure)

A multimember limited liability company ("LLC") that is disregarded for federal income tax purposes will be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded single member LLCs that are in turn owned by a disregarded single member LLC that is owned by a disregarded single member LLC that is itself owned by a single corporation.

This organizational structure is illustrated as follows:



For purposes of discussion, the entities will be referred to as indicated in the chart above.

In this scenario, the analysis is essentially the same as in the response to Question #3. LLC0 is a single member limited liability company that is disregarded for federal income tax purposes. LLC0 is wholly owned by a corporation. Therefore, LLC0 is treated as a disregarded entity for Tennessee franchise and excise tax purposes. If a business entity is disregarded, it is treated as a division of its owner. *See* Treas. Reg. § 301.7701-2(a). LLC0 will therefore be treated as a division of the Corporation for franchise and excise tax purposes.

For the reasons set forth in the response to Question #3, LLC1, LLC2, and LLC3 will each be treated as wholly owned directly by the Corporation. Because each of these entities is a single member limited liability company that is disregarded for federal income tax purposes, LLC1, LLC2, and LLC3 will each be treated as a disregarded entity for franchise and excise tax purposes.

MMLLC is disregarded for federal income tax purposes. MMLLC is owned by LLC2 and LLC3, both limited liability companies. Because LLC2 and LLC3 are treated as being wholly owned by the Corporation, they are treated as divisions of the Corporation. Because LLC2 and LLC3 are treated as divisions of the Corporation, the Corporation is treated as MMLLC's sole direct owner for purposes of Tennessee franchise and excise taxation. MMLLC will therefore be treated as a single member limited liability company that is wholly owned by a corporation. As such, MMLLC is considered to be a disregarded entity for Tennessee franchise and excise tax purposes.

Thus, a multimember LLC that is disregarded for federal income tax purposes will be disregarded for Tennessee franchise and excise tax purposes if its owners are two disregarded

single member LLCs that are in turn owned by a disregarded single member LLC that is owned by a disregarded single member LLC that is itself owned by a single corporation.

#### 5-6. Treatment of a conversion as a nontaxable deemed liquidation under IRC §§ 332 and 337

The Tennessee excise tax laws neither recognize nor disallow the treatment of a conversion as a nontaxable deemed liquidation under IRC §§ 332 and 337. Rather, any gain or loss realized from the conversion of [LP 1] to [LLC B] (or of [LP 2] to [LLC C])<sup>4</sup> will be included in Tennessee net earnings or loss only if it is included in the federal taxable income or loss of one of the entities involved in the conversion.

Under IRC § 332(a), for federal income tax purposes, no gain or loss is recognized when a corporation receives property distributed in complete liquidation of another corporation if the requirements of IRC § 332(b) are satisfied.<sup>5</sup> IRC § 337(a) provides that, for federal income tax purposes, no gain or loss on the distribution shall be recognized to the liquidating corporation in a complete liquidation to which IRC § 332 applies.<sup>6</sup> Thus, provided that the statutory requirements are met, no gain or loss will be recognized for federal income tax purposes by the liquidating entity or the distributee entity resulting from the conversion of [LP 1] to [LLC B], or of [LP 2] to [LLC C].

The nonrecognition of gain or loss arising from a corporate conversion is a rule set forth under the federal income tax laws and regulations. The Tennessee Court of Appeals has generally held, however, that federal tax laws and interpretations of those laws “are not binding on Tennessee courts when they are called upon to interpret Tennessee tax laws.” *Little Six Corp. v. Johnson*, 1999 WL 336308 at 3 (Tenn. Ct. App. May 28, 1999); *See also Tidwell v. Berke*, 532 S.W.2d 254, 261 (Tenn. 1975) (finding that the revision of a federal tax law does not precipitate a revised interpretation of a corresponding but unaltered state tax law). Therefore, federal income tax laws and regulations are not applicable with respect to the determination of net earnings or loss for Tennessee franchise and excise tax purposes.

The Tennessee excise tax laws do not provide for the nonrecognition of gain or loss arising from a corporate conversion. Additionally, Tennessee has not adopted IRC §§ 332 and 337 and the accompanying federal regulations for purposes of Tennessee tax law.

---

<sup>4</sup> As described in the Facts section, above, [LP 1] and [LP 2] are limited partnerships that for federal income tax purposes are treated as disregarded entities under Treas. Reg. § 301.7701-3(b)(1)(ii). Each entity is disregarded to [PARENT], a corporation.

<sup>5</sup> This letter ruling will not discuss these requirements, as they are irrelevant to the question being addressed.

<sup>6</sup> The proposed conversions in question are that of [LP 1] to [LLC B] and of [LP 2] to [LLC C]. In each case, a limited partnership will convert to a limited liability company; all the entities involved are disregarded for federal income tax purposes to [PARENT], a corporation. IRC §§ 332 and 337 by their terms are applicable only to liquidations involving corporations. These provisions apply to the conversions in question because [LP 1] and [LP 2] are treated for federal income tax purposes as entities disregarded to a corporation, and are therefore considered to be corporations for purposes of IRC §§ 332 and 337. Similarly, [LLC B] and [LLC C] will be treated for federal income tax purposes as entities disregarded to a corporation. Therefore, the liquidating companies and the distributee companies will each be treated as a corporation for purposes of IRC §§ 332 and 337.

Rather, each entity involved in the conversion that is required to file a Tennessee franchise and excise tax return (or the entity to which the particular taxpayer entity is disregarded for franchise and excise tax purposes) will determine its Tennessee net earnings or loss in accordance with TENN. CODE ANN. § 67-4-2006(a)(1). TENN. CODE ANN. § 67-4-2006(a)(1) provides in pertinent part that for a corporation or “any other taxpayer required to file a federal income tax return on a federal form 1120 or any variation of that form,” the term “‘net earnings’ or ‘net loss’ is defined as federal taxable income or loss before the operating loss deduction and special deductions provided for in 26 U.S.C. §§ 241, 242 [repealed], 243-247” and as adjusted by TENN. CODE ANN. § 67-4-2006(b) and (c).

Thus, if gain or loss arising from a corporate conversion is excluded from the taxpayer entity’s federal taxable income or loss in accordance with IRC §§ 332 or 337, then such gain or loss will not be included in the entity’s Tennessee net earnings or loss.<sup>7</sup>

#### 7-8. Treatment of merger as nontaxable event

The Tennessee excise tax laws neither require nor disallow the inclusion in net earnings or loss of gain or loss deriving from a merger. Rather, any gain or loss realized from the merger of [LLC A1] and [LLC A2] into [LLC A] (or of [LLC A3] and [LLC A4] into [LLC B]) will be included in Tennessee net earnings or loss only if included in the taxpayer entity’s federal taxable income or loss.

Each entity involved in the merger that is required to file a separate Tennessee franchise and excise tax return (or the entity to which the particular merging entity is disregarded for franchise and excise tax purposes) will determine its Tennessee net earnings or loss in accordance with TENN. CODE ANN. § 67-4-2006(a)(1). TENN. CODE ANN. § 67-4-2006(a)(1) provides in pertinent part that for a corporation or “any other taxpayer required to file a federal income tax return on a federal form 1120 or any variation of that form,” the term “‘net earnings’ or ‘net loss’ is defined as federal taxable income or loss before the operating loss deduction and special deductions provided for in 26 U.S.C. §§ 241, 242 [repealed], 243-247” and as adjusted by TENN. CODE ANN. § 67-4-2006(b) and (c).

Thus, if gain or loss arising from a merger is excluded from the taxpayer entity’s federal taxable income or loss, then such gain or loss will not be included in the entity’s Tennessee net earnings or loss.<sup>8</sup>

#### 9. Modifications to [PARENT]’s net earnings or loss

No modification to the starting point for the computation of net earnings or loss of [PARENT] will be required under TENN. CODE ANN. §§ 67-4-2006(b)(1)(J) (Supp. 2010) or 67-4-2006(b)(2)(L) (Supp. 2010) that would alter the otherwise nontaxable treatment of the proposed

---

<sup>7</sup> As generally discussed in the response to Question #9, below, there is no specific adjustment to net earnings or loss under TENN. CODE ANN. § 67-4-2006(b) or (c) that would cause gain or loss from a corporate conversion to be included in net earnings or loss if excluded from the taxpayer’s federal taxable income.

<sup>8</sup> See fn5, supra.

restructuring described herein, provided that proposed restructuring does not give rise to gain or loss that is included in [PARENT]'s federal taxable income or loss.

TENN. CODE ANN. § 67-4-2006(a)(1) provides in pertinent part that for a corporation such as [PARENT], the term “‘net earnings’ or ‘net loss’ is defined as federal taxable income or loss before the operating loss deduction and special deductions provided for in 26 U.S.C. §§ 241, 242 [repealed], 243-247” and as adjusted by TENN. CODE ANN. § 67-4-2006(b) and (c).

TENN. CODE ANN. § 67-4-2006(b)(1)(J) states that there shall be added to a taxpayer's net earnings or loss “[a]ny net loss or any item of expense or loss that meets all of the following criteria: (i) *Is included in the determination of the taxpayer's net earnings or loss*; (ii) *Is from a pass-through entity that is subject to and files a return for the tax imposed by this part*; and (iii) *Is allocated to a partner, shareholder, beneficiary or other owner of such pass-through entity.*” (Emphasis added.) Similarly, TENN. CODE ANN. § 67-4-2006(b)(2)(L) requires the subtraction from a taxpayer's net earnings or loss of any net gain or any item of income that meets all of these same criteria.

Thus, before any addition or subtraction can be made under TENN. CODE ANN. §§ 67-4-2006(b)(1)(J) or 67-4-2006(b)(2)(L), [PARENT] must have included the gain or loss at issue in the determination of its Tennessee net earnings or loss. As noted in the Facts section, above, however, it is anticipated that the proposed restructuring will be treated as a nontaxable event for federal income tax purposes. In that case, [PARENT]'s federal taxable income or loss will not include any gain or loss resulting from the proposed restructuring.<sup>9</sup>

Assuming that the proposed restructuring described herein in fact does not give rise to gain or loss that is included in [PARENT]'s federal taxable income or loss, then no additions to or subtractions from [PARENT]'s Tennessee net earnings or loss will be required under TENN. CODE ANN. §§ 67-4-2006(b)(1)(J) or 67-4-2006(b)(2)(L).

Kristin Husat  
Senior Tax Counsel

APPROVED: Richard H. Roberts  
Commissioner of Revenue

DATE: 9/12/2011

---

<sup>9</sup> As explained in the responses to Questions #5-6, if gain or loss arising from a corporate conversion is excluded from the taxpayer entity's federal taxable income or loss in accordance with IRC §§ 332 or 337, then such gain or loss will not be included in the entity's Tennessee net earnings or loss. As explained in the responses to Questions #7-8, if gain or loss arising from a merger is excluded from the taxpayer entity's federal taxable income or loss, then such gain or loss will not be included in the entity's Tennessee net earnings or loss.

