

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING #97-58**

WARNING

Revenue rulings are not binding on the Department. This presentation of the ruling in a redacted form is information only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Departmental policy.

SUBJECT

Whether a foreign corporation, whose only activity in Tennessee and only connection with Tennessee is its limited partnership interest in a partnership doing business in Tennessee, has sufficient nexus in Tennessee to subject it to Tennessee corporate franchise, excise taxes.

SCOPE

Revenue Rulings are statements regarding the substantive application of law and statements of procedure that affect the rights and duties of taxpayers and other members of the public. Revenue Rulings are advisory in nature and are not binding on the Department.

FACTS

The taxpayer is a foreign corporation (Taxpayer) qualified to do business in Tennessee. The Taxpayer is not a financial institution. It is currently doing business in Tennessee as well as a number of other states. It is contemplating isolating various states' activities into separate entities. For business reasons, as discussed below, the Taxpayer and/or another corporation or corporations plan to transfer operations and/or cash or notes to a newly formed limited partnership (Partnership A) in exchange for a limited partnership interest(s). The general partnership interest will be held by a corporation (Corporation 1). The limited partner(s) and the general partner will be related entities (i.e. parent-subsubsidiary or subsidiaries of a common parent).

The Taxpayer intends to enter into the proposed transactions for several business reasons. For example, the Taxpayer does business in a regulated industry which requires state regulatory approval prior to changing the company's capital structure (e.g. issuing debt). As the Taxpayer conducts business in several jurisdictions, obtaining such regulatory approval in each state before a capital change will be permitted poses undue business constraints. Thus, by limiting the activities of the new entity exclusively to one state, or a

small group of specific states, the Taxpayer will need to obtain regulatory approval in only one state or in the few specific states in which the entity does business, thereby expediting the ability to raise capital. As such, the implementation of the limited partnership structure will enable the Taxpayer to facilitate relationships with outside investors and to pursue joint ventures if necessary.

Partnership A will be doing business in Tennessee but may also do business in other states. Subsequent to the transfer of its operations to the partnership, the Taxpayer's only connection with Tennessee will be the qualification of its foreign charter with the Tennessee Secretary of State and its investment as a limited partner in Partnership A. Neither the Taxpayer nor any other corporate limited partner will directly own or lease any property nor will they engage any employees or representatives in Tennessee. After all transactions related to the formation of Partnership A are complete, neither the Taxpayer nor any other corporate limited partner will do any business in Tennessee and, aside from the Taxpayer's qualification of its foreign charter and the limited partnership interests that the Taxpayer and other corporate limited partners will have in Partnership A, none of Partnership A's limited corporate partners will have any other connection with Tennessee.

If the Tennessee Department of Revenue rules that the Taxpayer's qualification of its foreign charter with the Tennessee Secretary of State subjects it to more than the \$10.00 minimum franchise tax, such qualification will be withdrawn.

QUESTIONS PRESENTED

1. Will the ownership interest as a limited partner in Partnership A create sufficient nexus in Tennessee to subject the Taxpayer or any other corporate limited partner to Tennessee franchise, excise taxes?
2. Will the state in which Partnership A is organized have any determinative effect on the Tennessee franchise, excise tax liability of any of its corporate limited partners?

RULINGS

1. No.
2. No.

ANALYSIS

1. **PARTNERSHIP A'S CORPORATE LIMITED PARTNERS
ARE NOT SUBJECT TO FRANCHISE, EXCISE TAXES IN TENNESSEE
BUT THE TAXPAYER WILL BE SUBJECT TO THE MINIMUM \$10.00
TENNESSEE FRANCHISE TAX**

For many years the Tennessee Department of Revenue has taken the position that a foreign corporate limited partner is not doing business in Tennessee so as to be subject to Tennessee corporate franchise, excise taxes if its activities are limited as follows:

- (1) The corporate limited partner's only business activity in Tennessee is the holding of a limited partnership interest in a partnership(s) with nexus in Tennessee; and
- (2) The corporate limited partner exercises no power, management or control over the partnership(s) except such powers or capacities outlined in T.C.A. § 61-2-302 which limited partners may exercise without participating in the management or control of a partnership.

A foreign corporate limited partner's involvement in a partnership doing business in Tennessee appears to be similar to the interest of a foreign corporation whose only Tennessee activity is that of a stockholder in a corporation doing business in Tennessee. Neither the limited partner nor the stockholder have the right to participate in the management or control of the partnership, or corporation, as the case may be, and thus neither are said to be "doing business" in Tennessee so as to be subject to corporate franchise, excise taxes imposed by T.C.A. §§ 67-4-901 et seq. and 67-4-801 et seq.

The Department's policy with regard to this matter considers a foreign corporate limited partner in a partnership having nexus in Tennessee as having only a passive investment in Tennessee just as does a foreign corporate stockholder in a corporation having nexus in Tennessee. Such a passive investment would not create sufficient tax nexus for Tennessee to impose corporate franchise, excise taxes.

It would be possible for a foreign corporate limited partner in a partnership having nexus in Tennessee to engage in other transactions in Tennessee, either with the limited partnership itself, or with other parties, which would result in sufficient Tennessee minimum contacts to subject it to corporate franchise, excise taxes. For example, such a foreign corporate limited partner which also has a general partnership interest in a partnership with Tennessee nexus, or which has Tennessee activities which are not protected by Title 15 U.S.C.A. §§ 381-384, would be subject to Tennessee franchise, excise taxes. When a foreign corporate limited partner has nexus in Tennessee due to activities other than its limited partnership interest, T.C.A. §§ 67-4-910 and 67-4-811 require inclusion of the foreign corporation's share of partnership property, payroll and sales in its apportionment formula.

T.C.A. § 67-4-907 provides that the minimum franchise tax payable shall be \$10.00 and TENN. COMP. R. & REGS. 1320-6-1-.02(1) provides that the fact that a corporation is inactive in Tennessee does not relieve it from filing a franchise, excise tax return each year and paying at least the \$10.00 minimum franchise tax. For many years, the Tennessee Department of Revenue has required inactive foreign corporations who have

qualified their charters in Tennessee and inactive Tennessee chartered corporations to pay at least the \$10.00 minimum franchise tax.

After all transactions related to the formation of Partnership A and the transfer of its operations to Partnership A, the Taxpayer will be subject to only the minimum franchise tax of \$10.00. In the event that the Taxpayer withdraws the qualification of its foreign charter with the Tennessee Secretary of State, it will not be subject to any Tennessee franchise, excise taxes as long as it meets the criteria discussed above. None of Partnership A's limited corporate partners will be subject to Tennessee franchise, excise taxes under the facts given.

2. PARTNERSHIP A'S STATE OF ORGANIZATION WILL HAVE NO
DETERMINATIVE EFFECT ON THE FRANCHISE, EXCISE TAX LIABILITY
OF ITS LIMITED PARTNERS

As is discussed above, the question of whether any of Partnership A's limited partners will be subject to Tennessee franchise, excise taxes turns on their activities in Tennessee aside from their limited partnership interests in Partnership A. The state in which Partnership A is organized makes no difference in the determination of the franchise, excise tax liability of its limited corporate partners.

Arnold B. Clapp, Senior Tax Counsel

APPROVED: _____
Ruth E. Johnson, Commissioner

DATE: 12-23-97