TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 02-25

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

Availability of and procedure for exemption from Tennessee franchise and excise taxes pursuant to Tennessee Code Annotated § 67-4-2008 (a) (8), for two proposed limited liability companies organized under the laws of Delaware and registered to do business in Tennessee.

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 revocation of the ruling must inure to the taxpayer's detriment.

FACTS

Two proposed limited liability companies, [COMPANY A] and [COMPANY B], will be organized under the laws of Delaware and registered to do business in Tennessee.

Initially, each LLC will have a single member. At a later date, it is contemplated that trusts, entities and/or persons will become additional members of the LLC.

Pursuant to Delaware law, organization of each LLC will commence with filing with the Delaware Secretary of State of a Certificate of Formation (similar to Articles of Organization for a Tennessee LLC). It is proposed that each certificate of Formation will contain the following provision:

> The undersigned Authorized Person, constituting the only current member of this limited liability company, has agreed and does hereby agree that such Authorized Person, as a member, will be personally liable for all of the debts, obligations and liabilities of the Company and each such specifically identified member shall be liable to the same extent as a general partner in a general partnership.

An application will then be filed by each LLC with the Tennessee Secretary of State for a Certificate of Authority to do business in Tennessee, which application will be accompanied by the following Certificates of the Delaware Secretary of State: Certificate of Existence (or equivalent) and copy of the LLC's Delaware Certificate of Formation containing the above-quoted provision as to member liability.

Upon the admission of additional member(s), each LLC proposes to file: (1) an amended Certificate of Formation with the Secretary of State of Delaware amending the above-quoted provision to extend the same personal liability to the new member, which amended Certificate of Formation will be signed by the new member; and (2) within sixty (60) days of said admission an Application for Amended Certificate of Authority with the Tennessee Secretary of State attaching a copy of the amended Certificate of Formation.

QUESTION

Do the actions proposed by the LLC's meet the documents requirements of Tenn. Code Ann. § 67-4-2008 (d) and entitle the LLC's to exemption from Tennessee franchise and excise taxes pursuant to Tenn. Code Ann. § 67-4-2008 (a) (8).

RULING

Yes.

ANALYSIS

Tenn. Code Ann. § 67-4-2008 (a)(8) provides as follows:

> (a) There shall be exempt from the payment of the excise tax levied under this part the following:
>
> (8) Limited Liability Companies, limited partnerships and limited liability partnerships, all of whose members or partners are fully liable for the debts,

> obligations and liabilities of the entity, as provided in subsections (b), (c) and (d), and who have filed appropriate documentation to that effect with the secretary of state on or before the first day of the taxable year; provided, for tax years beginning before January 2, 2000, such documentation shall be filed on or before September 15, 2000; and further provided, that this item (8) shall not apply to any limited liability company, limited partnership or limited liability partnership which is owned, in whole or in part, directly or indirectly, by a corporation other than a not-for-profit corporation. If an additional partner or member is admitted to the entity, such partner or member must file the appropriate documentation with the secretary of state within sixty (60) days of such person's admission. For purposes of this subdivision, partners or members may be "fully liable" even though one (1) or more persons or individuals dealing with the partnership or limited liability company have by contract agreed to limit their claims against one (1) or more partners or members or against the partnership or limited liability company.

Tenn. Code Ann. § 67-4-2008 (a)(8).

Furthermore, with respect to limited liability companies, Tenn. Code Ann. § and 67-4-2008 (d) provides as follows:

> (d) (1) Notwithstanding any provision of law to the contrary, the articles of a limited liability company may provide that one (1) or more specifically identified members, as named in the articles, will be personally liable for all of the debts, obligations and liabilities of the limited liability company and, if so, each such specifically identified member shall be liable to the same extent as a general partner in a general partnership; provided, that:
>
> (A) In order to be effective, each member so identified must sign the articles, or an amendment to the articles containing this provision. The amendment or articles may provide that it is only effective if all members make and maintain such an election. In such case the articles must affirmatively identify each member and state that such persons constitute all of the members of the limited liability company;
>
> (B) Each such member shall continue to be personally liable for all of the debts, obligations and liabilities of the limited liability company to the same extent as a general partner of a general partnership until:
>
> (i) The member withdraws from the limited liability company; or
>
> (ii) The articles are amended to strike such member's name as a member electing joint and several liability or, if the articles provide that all members must elect joint and several personal liability for all of the debts, obligations and liabilities of the limited liability company if any are to be so liable, an amendment striking one (1) member who continues to be a member shall strike all members. Such

> document must be executed by the member desiring to cease being so liable and promptly delivered to any remaining members who are identified in the articles as personally being jointly and severally liable for the debts, obligations and liabilities of the limited liability company.

Tenn. Code Ann. § 67-4-2008 (d).

For limited liability companies, the "appropriate documentation" that Tenn. Code Ann. § 67-4-2008 (a)(8) requires to be filed with the Tennessee secretary of state is the limited liability company's articles of organization. Since the LLC's will organize under the laws of Delaware, they will not be filing Tennessee articles of organization. Instead, the LLC's will be filing Delaware certificates of formation and amended certificates of formation in Delaware. Nevertheless, the Delaware certificates of formation and amended certificates of formation will contain all of the language required by Tenn. Code Ann. § 67-4-2008 (d). Therefore, since copies of the Delaware documents will be filed with the LLC's individual applications for Tennessee certificates of authority to do business in Tennessee, both LLC's will satisfy the documents requirements and be exempt from Tennessee franchise, excise taxes pursuant to Tenn. Code Ann. § 67-4-2008 (a)(8) and 67-4-2008 (d).

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Steven B. McCloud
Tax Counsel

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APPROVED: Ruth E. Johnson
Commissioner

DATE: 8/2/02