

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 23-09

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

Utilizing tax credits against future franchise and excise tax liabilities following a merger.

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

[REDACTED] (the "Taxpayer") is the United States operational headquarters for [REDACTED]. It is a wholly owned subsidiary of [REDACTED], a publicly traded, [COMPANY] headquartered [OUTSIDE OF TENNESSEE]. [REDACTED] and its subsidiaries own and manufacture [REDACTED].

The Taxpayer is a [STATE- NOT TENNESSEE] corporation headquartered in [STATE – NOT TENNESSEE]. The Taxpayer, either directly or through its wholly owned subsidiaries and disregarded entities maintains [FACILITIES – SOME IN TENNESSEE]

The Taxpayer is and was for all periods relevant to this ruling including the periods of investment, taxed as a corporation for U.S. federal income tax purposes. The Taxpayer wholly owns [REDACTED – "SMLLC"]. [SMLLC] operates the [TENNESSEE FACILITY], and [SMLLC] is and was for all periods relevant to this ruling, a single-member LLC that is disregarded for both U.S. federal income tax purposes and Tennessee franchise and excise tax purposes. [REDACTED – SMLLC EMPLOYS PEOPLE AT ITS TENNESSEE FACILITY]

From time to time during the tax years ending [TAX PERIODS], [SMLLC] made capital investments in industrial machinery placed into service at the [TENNESSEE FACILITY] and created new jobs at the [TENNESSEE FACILITY]. As a result of these investments and new jobs, industrial machinery tax credits, job tax credits, and additional annual job tax credits ("super credits") (collectively, the "Credits") totaling [AMOUNT] were claimed pursuant to TENN. CODE ANN. §§ 67-4-2009 and 2109(b) by the Taxpayer on its [TAX PERIODS] Tennessee franchise and excise tax returns. At the close of its [TAX YEAR], the Taxpayer estimates that it will still have [AMOUNT] of the Credits available for purposes of carryforward.

For various business reasons, the Taxpayer is considering creating a single entity by means of merging [SMLLC] into the Taxpayer, with the Taxpayer being the survivor of the merger. Apart from the fact the [TENNESSEE FACILITY] would be owned and operated directly by the Taxpayer (subject to the terms of an agreement with the [REDACTED]), there are no changes anticipated in the [TENNESSEE FACILITY] or its operations. [REDACTED] The assets that gave rise to the Credits will remain with the [TENNESSEE FACILITY]

RULINGS

1. Will the Taxpayer, as the franchise and excise tax filer that reported the activity of [SMLLC] during the years the Credits were generated, continue to be able to utilize the unused carryover Credits against its franchise and excise tax liabilities in future tax periods after the merger of [SMLLC] into the Taxpayer?

Ruling: Yes. [SMLLC] was disregarded into the Taxpayer when it applied for and generated the credits, thus the Taxpayer may continue to utilize the Credits after the merger.

ANALYSIS

Tennessee imposes a franchise tax on the net worth of persons doing business in Tennessee and having substantial nexus in the state.¹ Tennessee also imposes an excise tax on the net earnings of persons doing business in Tennessee and having substantial nexus in the state.² A “person” includes, among other entities, every corporation and limited liability company.³

For purposes of the franchise and excise tax, a business entity is classified as a corporation, partnership, or other type of business entity, consistent with the way the entity is classified for federal income tax purposes.⁴ Tennessee law also provides that despite laws 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 franchise and excise tax purposes.⁵ Accordingly, a single member LLC, whose single member is a person taxed as a corporation for federal income tax purposes is disregarded for franchise and excise tax purposes, and its activities are taxed as though they were performed directly by the corporate owner.

Tennessee provides that a qualified taxpayer may take a credit against its franchise and excise tax liability for purchases or leases of industrial machinery located in Tennessee.⁶ The industrial machinery credit is limited to fifty percent of the combined franchise and excise tax liability, and any credit that cannot be fully applied due to the fifty percent limitation may be carried forward up to twenty-five years.⁷

Tennessee also offers job tax credits and job tax “super credits” to be used against the franchise and excise tax.⁸ Unused job tax credits may be carried forward up to twenty-five years.⁹

Tennessee provides that “in the case of mergers, consolidations, and like transactions, no tax credit incurred by a predecessor taxpayer shall be allowed as a credit on the tax return filed by the successor taxpayer.”¹⁰ The relevant statute also provides that “a credit carryforward may be taken only by the taxpayer that generated it.”¹¹

¹ TENN. CODE ANN. § 67-4-2105(a) (2022).

² TENN. CODE ANN. § 67-4-2007(a) (2022).

³ TENN. CODE ANN. § 67-4-2004(36) (2022).

⁴ TENN. CODE ANN. §§ 67-4-2007(d), -2106(c) (2022).

⁵ *Id.*

⁶ TENN. CODE ANN. § 67-4-2009(3)(A) (2022).

⁷ TENN. CODE ANN. § 67-4-2009(3)(B), (C). The twenty-five-year carryforward period was enacted by Pub. Ch. 377, H.B. 323 (2023 Sess. of the 113th Gen. Assemb.) and applies to credits earned in tax years ending on or after December 31, 2008.

⁸ TENN. CODE ANN. § 67-4-2109(b)(1) provides that a qualified business enterprise that makes the required capital investment and creates a minimum number of new jobs, within an enhancement county, may obtain the standard job tax credit equal to \$4,500 for each qualified job created during the investment period. Additionally, under TENN. CODE ANN. § 67-4-2109(b)(2), qualified business enterprises producing higher levels of investment and job creation are eligible for additional job tax credits, sometimes referred to as job tax “super credits” or “super job tax credits.”

⁹ TENN. CODE ANN. § 67-4-2109(b)(1)(D). The twenty-five-year carryforward period was enacted by Pub. Ch. 377, H.B. 323 (2023 Sess. of the 113th Gen. Assemb.) and applies to credits earned in tax years ending on or after December 31, 2008.

¹⁰ TENN. CODE ANN. § 67-4-2009(6)(A).

¹¹ *Id.*

The Taxpayer is not a successor entity to [SMLLC]. The Taxpayer is the corporate single member of [SMLLC], which was disregarded to the Taxpayer both for federal income tax purposes and for franchise and excise tax purposes when it applied for and earned the Credits. Accordingly, the activities of [SMLLC] are considered the activities of the Taxpayer for franchise and excise tax purposes. Thus, the Credits that are generated by [SMLLC] while it is a disregarded entity are recognized as being generated by the Taxpayer. As such, the Taxpayer may continue to utilize the Credits after the merger with [SMLLC].

APPROVED: David Gerregano
Commissioner of Revenue

DATE: November 3, 2023