

**TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 95-21**

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

Company X (X) is a California corporation which maintains its principal place of business and headquarters in California. It has never obtained a certificate of authority from the Tennessee Secretary of State to transact business or conduct affairs in Tennessee. For periods prior to March 31, 1992, X owned a fifty percent (50%) general partnership interest in P1. In addition, X owned a one percent (1%) limited partnership interest in P2.

P1 was a California general partnership which maintained its principal place of business and headquarters in California. P1 had no operations or nexus in Tennessee and was not otherwise doing business in Tennessee. For periods prior to March 31, 1992, the remaining fifty percent (50%) interest in P1 was owned by an unrelated corporation. P1

in turn owned a forty nine percent (49%) limited partnership interest in P2. P2 is a California limited partnership engaged in the business of manufacturing. P2 maintains its principal place of business in Tennessee. The remaining fifty-percent (50%) interest in P2 was owned by four unrelated corporations, one of which held a general partnership interest. The attached organizational chart labeled "Chart One" shows the ownership structure of X, P1, P2 and the unrelated corporations prior to March 31, 1992.

On March 31, 1992, P1 merged out of existence into P2 and P2 became the surviving partnership. After the merger, X owned a 37.75% limited partnership interest in P2. The remaining 62.25% interest in P2 is held by unrelated corporations, one of which holds a general partnership interest and serves as the general partner of P2. The attached organizational chart labeled "Chart Two" shows the ownership structure of X, P1, P2 and the unrelated corporations after the March 31, 1992 merger.

Both before and after the March 31, 1992 merger, X had no operations in Tennessee and its only contact with Tennessee was through its partnership interests in P1 and P2. For periods prior to March 31, 1992, and subsequent to that date, the rights and powers of X as a limited partner in P1 and P2 were no greater than those granted a limited partner under either California or Tennessee law.

QUESTIONS

- (1) For tax periods ended prior to March 31, 1992, was X doing business in Tennessee so as to be subject to Tennessee corporate franchise, excise taxes?
- (2) For tax periods ended after March 31, 1992, is X doing business in Tennessee so as to be subject to Tennessee corporate franchise, excise taxes?

RULINGS

- (1) No.
- (2) No.

ANALYSIS

A LIMITED PARTNERSHIP INTEREST, IN AND OF ITSELF CREATES NO TENNESSEE NEXUS

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 67-811 require inclusion of the foreign corporation's share of partnership property, payroll and sales in its apportionment formula.

X HAS NO NEXUS IN TENNESSEE

Both before and after the March 31, 1992 merger of P1 into P2, X's only contact with Tennessee was through its limited partnership interests. X had no other Tennessee activities and no general partnership interests in partnerships having Tennessee nexus. As can be seen by the attached "Chart One" and "Chart Two", both before and after the merger, the only general partnership interests in partnerships having Tennessee nexus were owned by corporations unrelated to X.

It is true that, prior to the merger, X had a general partnership interest in P1 and that although P1 itself had no nexus in Tennessee, it did have a limited partnership interest in

P2 which did have Tennessee nexus. However, X had no right to control P2 or to participate in its management. Thus, it did not have sufficient Tennessee nexus to subject it to Tennessee corporate franchise, excise taxes.

X had no Tennessee corporate franchise, excise tax nexus either before or after the March 31, 1992 merger transaction and thus would not be required to file franchise, excise tax returns with this Department.

Arnold B. Clapp, Special Counsel

APPROVED: Ruth E. Johnson

DATE: 6-2-95