

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 08-14**

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

Whether a business trust and its wholly-owned limited liability companies will be disregarded for Tennessee franchise and excise tax purposes, where each of these entities is disregarded for federal income tax purposes as an entity separate from its ultimate corporate parent.

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 his detriment.

FACTS

[PARENT CORPORATION], owns and operates radio broadcasting stations throughout the United States. The actual operations and Federal Communications Commission licenses are held in a number of Delaware single member limited liability companies. Two of these companies, [TN LLC 1, TN LLC 2 AND TN LLC 3] (collectively, the "TENNESSEE LLCs"), have operations in Tennessee. The [TENNESSEE LLCs] are wholly owned by [INTERMEDIATE

LLC], a Delaware limited liability company, and are disregarded for federal income tax purposes. Intermediate LLC is in turn wholly owned by Parent Corporation, and is disregarded for federal income tax purposes.

Parent Corporation is considering transferring the interests held by Intermediate LLC in the [TENNESSEE LLCs] to the [BUSINESS TRUST], an existing unincorporated [STATE-NOT TENNESSEE] business trust that was formed in [YEAR]. A [STATE-NOT TENNESSEE] business trust is a trust with transferable shares, formed pursuant to a Declaration of Trust filed with the [STATE-NOT TENNESSEE'S] Secretary of State's office. The Business Trust is wholly owned by Intermediate LLC, and is disregarded for federal income tax purposes. As part of the contemplated transfer, Parent Corporation would make a tax-free contribution of the interests in the [TENNESSEE LLCs] to the Business Trust.

Both before and after the transaction contemplated above, the [TENNESSEE LLCs] are the only entities that have Tennessee operations and, consequently, direct nexus with Tennessee. None of the other limited liability companies owned by Intermediate LLC, which were established to segregate the operations by radio market, FCC license and by state, carry on business activities in Tennessee. Additionally, Parent Corporation maintains operations in [STATE – NOT TENNESSEE] and is considered to have nexus for state income tax purposes in all states in which its subsidiary limited liability companies operate, including Tennessee. Intermediate LLC and the Business Trust merely hold or will hold the investment in the [TENNESSEE LLCs], and do not carry on any activities that would create direct nexus in Tennessee or any other jurisdiction.

Parent Corporation currently files a Tennessee franchise and excise tax return. The current and post-transaction Tennessee franchise and excise tax liability of Parent Corporation is estimated to remain relatively unchanged.

QUESTIONS

Under the given facts, and after the contemplated transfer of the interests in the [TENNESSEE LLCs] to the Business Trust, a disregarded entity for federal tax purposes:

1. Will the Business Trust be treated as a disregarded entity or as a separate entity for Tennessee franchise and excise tax purposes?
2. Will the [TENNESSEE LLCs] be treated as disregarded entities for Tennessee franchise and excise tax purposes?
3. If the answer to Question #2 is affirmative, will the [TENNESSEE LLCs'] items of income, expense, balance sheets and state apportionment factors flow up to the Business Trust and be included and reported on the Business Trust's Tennessee franchise and excise tax return?

RULINGS

1. The Business Trust will be treated as a separate entity for Tennessee franchise and excise tax purposes.

2. No. The [TENNESSEE LLCs] will be treated as separate entities for Tennessee franchise and excise tax purposes.
3. N/A.

ANALYSIS

Tennessee imposes an excise tax at the rate of 6.5 percent on the net earnings of all persons doing business within Tennessee. Tenn. Code Ann. § 67-4-2007(a) (2007). Additionally, Tennessee imposes a franchise tax on all persons doing business within Tennessee, at the rate of \$0.25 per \$100, or major fraction thereof, of a taxpayer's net worth. Tenn. Code Ann. §§ 67-4-2105(a) and 67-4-2106(a) (2007). Persons subject to the franchise and excise taxes include, but are not limited to, corporations, business trusts and limited liability companies. Tenn. Code Ann. § 67-4-2004(30) (2007).

1. The Business Trust

The Business Trust is treated as a separate entity for Tennessee franchise and excise tax purposes.

Tenn. Code Ann. §§ 67-4-2007(d) (2007) and 67-4-2106(c) (2007) 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 Business Trust is a business trust, not a single member limited liability company. As a result, the Business Trust will not be treated as a disregarded entity for Tennessee franchise and excise tax purposes under Tenn. Code Ann. §§ 67-4-2007(d) and 67-4-2106(c), despite its classification as a disregarded entity for federal tax purposes. Rather, the Business Trust will be treated as a separate entity for Tennessee franchise and excise tax purposes, and must file its Tennessee franchise and excise tax return on a separate entity basis.¹

2. The [TENNESSEE LLCs]

The [TENNESSEE LLCs] are treated as separate entities for purposes of Tennessee franchise and excise taxation.

As noted 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,

¹ See Tenn. Code Ann. §§ 67-4-2007(e)(1) (2007) and 67-4-2106(c) (2007). 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.

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 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 [TENNESSEE LLCs] are single member limited liability companies that are disregarded for federal income tax purposes. However, the [TENNESSEE LLCs] are owned by a business trust, not by a corporation. Because they do not satisfy the third requirement of Tenn. Code Ann. §§ 67-4-2007(d) and 67-4-2106(c), the [TENNESSEE LLCs] are not disregarded for Tennessee franchise and excise tax purposes even though they are classified as disregarded entities for federal tax purposes. Rather, the [TENNESSEE LLCs] are treated as separate entities for Tennessee franchise and excise tax purposes, and each must file its respective Tennessee franchise and excise tax return on a separate entity basis.

Conclusion

The Business Trust and the [TENNESSEE LLCs] will each be treated as a separate entity for Tennessee franchise and excise tax purposes.

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APPROVED: Reagan Farr
Commissioner of Revenue

DATE: 2/22/08