

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 00-22**

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

Applicability of Tennessee's financial institution statutes to determine whether certain banks are "doing 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 retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[TAXPAYER], a [CITY], Tennessee based bank holding company, is the parent corporation of [BANKS OF STATE OTHER THAN TENNESSEE]. Currently, in accordance with Tennessee filing requirements for financial institutions, the [BANKS OF STATE OTHER THAN TENNESSEE] are included in [TAXPAYER]'s combined

Tennessee Franchise and Excise Tax Return and the [BANKS OF STATE OTHER THAN TENNESSEE] apportion receipts from Tennessee customers to the state.

The [BANKS OF STATE OTHER THAN TENNESSEE] provide loans to Tennessee residents, both unsecured and secured by property located within and outside of Tennessee. In soliciting, investigating and servicing these loans, loan officers from the [BANKS OF STATE OTHER THAN TENNESSEE] will, as necessary, travel to Tennessee to meet with customers and inspect collateral, among other things. In addition to loan activities, each [BANK OF STATE OTHER THAN TENNESSEE] has an officer located at the [TAXPAYER]'s corporate offices in Tennessee. The officer is vested with the authority to act on behalf of the [BANKS OF STATE OTHER THAN TENNESSEE] in the performance of the investment management function with [TAXPAYER]'s investment management division, located in [CITY], Tennessee. The officers and delegates have the responsibility and authority to administer the [BANKS OF STATE OTHER THAN TENNESSEE]'s entire investment portfolios.

QUESTION

Are the [BANKS OF STATE OTHER THAN TENNESSEE] doing business in Tennessee such as to subject them to Tennessee's franchise and excise taxes?

RULING

Yes.

ANALYSIS

Doing business in Tennessee is a taxable privilege. T.C.A. §§ 67-4-2005 and 67-4-2104. T.C.A. § 67-4-2004(7)(A) defines the term "doing business" as follows:

"[d]oing business in Tennessee" or "doing business within this state" means any activity purposefully engaged in, within Tennessee, by a person with the object of gain, benefit, or advantage, consistent with the intent of the general assembly to subject such persons to the Tennessee franchise/excise tax to the extent permitted by the United State Constitution and the Constitution of Tennessee.

T.C.A. § 67-4-2004(7)(A).

With respect to financial institutions,¹ T.C.A. §§ 67-4-2004(7)(B) and 67-4-2105(d)(1) sets forth certain activities which, if conducted in Tennessee, will subject a financial institution to Tennessee franchise, excise taxes. Specifically, the statutes provide that a financial institution shall deemed to be doing business in Tennessee if the institution:

¹ As a bank holding company, [TAXPAYER] is a financial institution for Tennessee franchise, excise tax purposes. See, T.C.A. § 67-4-2004(8) (which defines a financial institution to be "a holding company, or any regulated financial corporation, a subsidiary of a holding company or a regulated financial corporation, or any other person that is carrying on the business of a financial institution....")

- (i) Maintains an office in this state;
- (ii) Has an employee, representative or independent contractor conducting business in this state;
- (iii) Regularly sells products or services of any kind or nature to customers in this state;
- (iv) Regularly solicits business from potential customers in this state;
- (v) Regularly performs services outside this state which are consumed in this state;
- (vi) Regularly engages in transactions with customers in this state that involve intangible property, including loans, and result in receipts flowing to the taxpayer from within this state;
- (vii) Owns or leases property located in this state; or
- (viii) Regularly solicits and receives deposits from customers in this state.

T.C.A. §§ 67-4-2004(7)(B) and 67-4-2105(d)(1).

Under the facts provided, the [BANKS OF STATE OTHER THAN TENNESSEE] are doing business in Tennessee by virtue of the loans to Tennessee residents, some of which are secured by property located within Tennessee; the soliciting, investigating and servicing of the loans; the [BANKS OF STATE OTHER THAN TENNESSEE]'s loan officers traveling to Tennessee to meet with customers and inspect collateral, among other things; and the presence in Tennessee of the [BANKS OF STATE OTHER THAN TENNESSEE]'s loan officers who have the responsibility and authority to administer the [BANKS OF STATE OTHER THAN TENNESSEE]'s entire investment portfolios.² All of these activities fall within the parameters of T.C.A. §§ 67-4-2004(7)(B) and 67-4-2105(d)(1) to subject the [BANKS OF STATE OTHER THAN TENNESSEE] to Tennessee franchise, excise taxation.

Steven B. McCloud
Tax Counsel

APPROVED: Ruth E. Johnson
Commissioner

DATE: 7/24/00

² The [BANKS OF STATE OTHER THAN TENNESSEE]'s activities are not limited to the mere solicitation of sales of tangible personal property and as such Public Law 86-272 (Title 15 U.S.C.A. §§381 through 384) is not applicable.