

**TENNESSEE DEPARTMENT OF REVENUE  
REVENUE RULING #01-24**

**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**

Tennessee franchise, excise tax treatment of a distribution of assets by a subsidiary corporation to its parent in a transaction for which an election has been made under § 338(h)(10) of the Internal Revenue Code.

**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**

Parent (“Seller”), a company incorporated in [STATE A - NOT TENNESSEE], owns 100 percent of the stock of Target, a [STATE B – NOT TENNESSEE] corporation. Seller proposes to sell 100 percent of Target’s stock to Buyer, an unrelated corporation. Target owns certain assets that Buyer is not interested in acquiring (collectively, the “Unwanted Assets”). Therefore, in connection with the transaction, Buyer and Seller agree that Target will distribute the Unwanted Assets to Seller. Buyer will purchase the stock of Target and Seller and Buyer will join in an election pursuant to IRC § 338(h)(10), whereby the transaction will be treated for federal income tax purposes as if Target had sold its assets to Buyer and distributed the sale proceeds to Seller in complete liquidation.

The proposed transaction will satisfy all of the requirements for an IRC § 338(h)(10) election. A formal plan of liquidation by Target will be adopted. The adoption will occur before the distribution and the Buyer will be required to purchase the stock of Target. The distribution of Unwanted Assets will be made in connection with the IRC § 338(h)(10) transaction.

**QUESTIONS**

For purposes of Tennessee's excise tax, will an actual distribution of assets by a subsidiary corporation to its parent in a transaction for which an election has been made under § 338(h)(10) of the IRC be treated as part of a complete liquidation of the subsidiary into its parent, consistent with the federal income tax treatment?

### **RULING**

Yes.

### **ANALYSIS**

Tennessee excise tax law imposes a tax on all for-profit corporations doing business in Tennessee measured by the "net earnings" of the corporation. Tenn. Code Ann. § 67-4-2007. "Net earnings" is defined as federal taxable income before certain deductions and subject to certain enumerated adjustments. See Tenn. Code Ann. § 67-2-2006. Thus, Tennessee adopts federal taxable income as the starting point for calculating Tennessee taxable income.

Tennessee excise tax law does not provide for a deduction or adjustment that would require the proposed distribution be treated in a manner that is inconsistent with the federal income tax treatment. Therefore, assuming that the proposed transaction will satisfy all of the requirements for a valid IRC § 338(h)(10) election; and assuming the federal income tax treatment of the distribution of unwanted assets by the Target subsidiary to its Parent will be considered part of the complete liquidation, Tennessee will treat the distribution likewise i.e., if the Target's distribution of Unwanted Assets to the Seller qualifies as part of a tax free liquidation plan so that any resulting gain is not recognized, the transaction will be given the same treatment for Tennessee excise tax purposes.

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APPROVED: Ruth E. Johnson

DATE: October 29, 2001