

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 11-26**

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

Application of the Tennessee franchise and excise taxes to a limited partnership formed prior to the enactment of the Tennessee Revised Uniform Limited Partnership Act.

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] was formed as a Tennessee limited partnership pursuant to a Limited Partnership Agreement dated [PRIOR TO 1988]. In [YEAR], the Taxpayer acquired a tract of real property located in Tennessee (the "Real Property"). The Taxpayer recorded a certificate of limited partnership and [NUMBER OF] subsequent amended certificates. On [DATE], the Taxpayer

recorded a final Amended and Restated Certificate of Limited Partnership (the “Amended and Restated Certificate”), which provided that the Taxpayer’s existence was to terminate either in [NUMBER OF] years (*i.e.*, on [TERMINATION DATE] or upon the disposition of the Real Property, whichever occurred earlier.¹ The Taxpayer did not dispose of the Real Property prior to [TERMINATION DATE], and continued to conduct business after that date.

The Taxpayer sold the Real Property in [DATE]. Following the sale, the Taxpayer dissolved and terminated its existence.

QUESTIONS

1. Is the Taxpayer considered a general partnership for Tennessee franchise and excise tax purposes with respect to taxable periods following the [TERMINATION DATE] set forth in the Amended and Restated Certificate?
2. With respect to taxable periods following the [TERMINATION DATE] set forth in the Amended and Restated Certificate, is the Taxpayer subject to the Tennessee franchise and excise taxes?

RULINGS

1. Yes. The Taxpayer is considered a general partnership for Tennessee franchise and excise tax purposes with respect to taxable periods following the [TERMINATION DATE], set forth in the Amended and Restated Certificate.
2. No. With respect to taxable periods following the [TERMINATION DATE], set forth in the Amended and Restated Certificate, the Taxpayer is not subject to the Tennessee franchise and excise taxes.

ANALYSIS

Tennessee imposes an excise tax on all persons, as defined under TENN. CODE ANN. § 67-4-2004(37) (Supp. 2010), doing business within Tennessee. TENN. CODE ANN. § 67-4-2007(a) (Supp. 2010). Tennessee also imposes a franchise tax at the rate of \$0.25 per \$100, or major fraction thereof, on the net worth of a taxpayer doing business in Tennessee, pursuant to TENN. CODE ANN. §§ 67-4-2105(a) (Supp. 2010) and 67-4-2106(a) (2006).² Thus, to be subject to the franchise and excise taxes, an entity must come within the scope of the definition of “person” as set forth in TENN. CODE ANN. § 67-4-2004(37). Among the entities included in this definition are limited partnerships, limited liability companies, and corporations.

¹ The Taxpayer’s Amended and Restated Certificate did not contain an election to become subject to the Tennessee Revised Uniform Limited Partnership Act.

² Note that, under TENN. CODE ANN. § 67-4-2108(a)(1) (Supp. 2010), the franchise tax base “shall in no case be less than the actual value of the real or tangible property owned or used in Tennessee, excluding exempt inventory and exempt required capital investments.” For purposes of this section, “property” is to be “valued at cost less accumulated depreciation in accordance with generally accepted accounting principles.” TENN. CODE ANN. § 67-4-2108(a)(3).

General partnerships, however, are not included in the definition and are therefore not subject to franchise and excise taxation. TENN. CODE ANN. § 67-4-2004(18) defines the term “general partnership” in pertinent part as “a partnership in which all the partners, as defined by state law, are fully liable for the debts of, or the claims against, the partnership.” Thus, for the Taxpayer to be considered a general partnership for franchise and excise tax purposes beginning on [TERMINATION DATE], all of its limited partners must have become fully liable for the debts and obligations of the Taxpayer under Tennessee law on that date.

The Tennessee Uniform Limited Partnership Act (the “ULPA”), governs whether the Taxpayer’s limited partners became fully liable for the debts and obligations of the Taxpayer on [TERMINATION DATE]. The ULPA was enacted in 1919 and remained in force until the enactment in 1988 of the Tennessee Revised Uniform Limited Partnership Act, TENN. CODE ANN. § 61-2-101 *et seq.* (the “RULPA”). Importantly, Section 61-2-1204(c) of the RULPA provides that the ULPA would continue to apply to a limited partnership formed prior to January 1, 1988, unless the partnership filed a certificate of limited partnership expressly stating its election to become subject to the RULPA. The Taxpayer was formed as a limited partnership in [YEAR PRIOR TO 1988] and did not file a certificate of limited partnership electing to become subject to the RULPA. As a result, the Taxpayer continues to be governed by the ULPA.

Under Section 61-2-102(a)(2)³ of the ULPA, a limited partnership was formed upon the recording of a certificate of limited partnership in the office of the county register. Among other things, Section 61-2-102(a)(1)(E) of the ULPA provided that the certificate of limited partnership could set forth the term for which the partnership was to exist. In the event the partners wished to change the partnership’s term of existence, Section 61-2-124(b)(8) of the ULPA required that the partners record an amended certificate setting forth the new termination date. Unlike the RULPA, the ULPA did not contain specific requirements regarding the termination of the limited partnership. Rather, Section 61-2-124(a) of the ULPA simply provided that the certificate of limited partnership “shall be cancelled when the partnership is dissolved” or when the partnership no longer had limited partners.

Under the ULPA, a limited partnership dissolved at the conclusion of the express term of existence set forth in the certificate of limited partnership. In *Bank of Commerce & Trust Co. v. North*, 1929 WL 1704, 6 (Tenn. Ct. App. 1929) (applying the ULPA), the Tennessee Court of Appeals held that a limited partnership “terminated by express limitation” on the date set forth in the partnership agreement. Thus, the Taxpayer dissolved on [TERMINATION DATE], in accordance with the express terms set forth in the Amended and Restated Certificate. As a result of the Taxpayer’s dissolution, the Taxpayer’s certificate was also cancelled on that date under Section 61-2-124(a) of the ULPA.

Importantly, the Tennessee Court of Appeals has also held that, under the ULPA, the limited partners become liable as general partners with respect to the creditors of the partnership upon the termination by express limitation of a limited partnership. *Bank of Commerce & Trust Co.*, 1929 WL 1704 at 6 (holding that a limited partner became a general partner following the express date of termination of the limited partnership). Thus, in the Taxpayer’s case, the limited

³ All citations to the ULPA are to the version in effect in 1987, immediately prior to the enactment of the RULPA.

partners of the Taxpayer became fully liable for the debts and obligations of the Taxpayer under Tennessee law on [TERMINATION DATE].

As noted above, TENN. CODE ANN. § 67-4-2004(18) defines the term “general partnership” in pertinent part as “a partnership in which all the partners, as defined by state law, are fully liable for the debts of, or the claims against, the partnership.” Because all of the partners of the Taxpayer became fully liable for the debts and obligations of the Taxpayer under Tennessee law on [TERMINATION DATE], the Taxpayer is properly considered a general partnership for Tennessee franchise and excise tax purposes beginning on that date.

Note that TENN. CODE ANN. §§ 67-4-2007(b) and 67-4-2105(c) provide that a taxpayer doing business in Tennessee while its charter or other registration is “forfeited, revoked or suspended” is not relieved from the obligation of a filing and return and paying any franchise and excise taxes due. However, in the Taxpayer’s case, the Amended and Restated Certificate was not forfeited, revoked or suspended on [TERMINATION DATE]; rather, the Taxpayer’s certificate of limited partnership was cancelled on such date. Accordingly, TENN. CODE ANN. §§ 67-4-2007(b) and 67-4-2105(c) do not operate to subject the Taxpayer to the franchise and excise taxes during the periods following the [TERMINATION DATE], cancellation of the certificate of limited partnership.⁴

Accordingly, with respect to taxable periods following the [TERMINATION DATE], set forth in the Amended and Restated Certificate, the Taxpayer is not subject to the Tennessee franchise and excise taxes.⁵

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: 06/16/11

⁴ Note as well that TENN. COMP. R. & REGS. 1320-6-1-.11(1) (1977) requires corporations to file an Intent to Dissolve in order to terminate a corporate charter. Obviously, this rule does not apply in the case of the Taxpayer, a limited partnership.

⁵ Note that the outcome would be different if the RULPA applied to the Taxpayer. The RULPA requires the recording of a certificate of cancellation in order for a limited partnership’s termination to become effective. TENN. CODE ANN. § 61-2-801(b) (2002).