

Sale of Assets Within 12 Months of Distribution

Introduction

This notice is intended to provide taxpayers and the general public with information concerning the excise tax liability that may result from the distribution of an asset that is subsequently sold within 12 months of such distribution.

Distributed Asset Sold for a Gain

When an entity that is subject to excise tax distributes an asset to an entity or individual that is not subject to excise tax, and the asset is sold within 12 months of the date of distribution, any gain not already included in the taxpayer's net earnings or loss for excise tax purposes must be recognized by the taxpayer making the asset distribution. If the taxpayer making the asset distribution ceases to exist prior to the sale, the gain must be reported and taxes paid by the seller in accordance with Tenn. Code Ann. § 67-4-2007(f) as described below.

A 50% penalty for failure to disclose a transaction may be applied for failure to report this gain by the appropriate entity.

Entity or Individual Subject to Tax on Gain

Tenn. Code Ann. § 67-4-2007(f) requires an entity or individual not otherwise subject to the excise tax to pay tax on the gain from the sale of any asset if any of the following criteria is met:

- The entity or individual received the asset through a distribution from a taxpayer

within the 12-month period immediately prior to the sale, and the taxpayer making the asset distribution ceased to exist prior to the sale.

- The entity or individual received the asset through a merger, liquidation, or any similar transaction involving a taxpayer subject to the excise tax during the 12-month period immediately prior to the sale.
- The entity or individual qualified for the exemption provided in § 67-4-2008(a)(9) during the 12-month period immediately prior to the sale.

Tenn. Code Ann. § 67-4-2007(f) was amended to require an otherwise nontaxable entity or individual to report the gain on the sale of an asset that was owned, during the 12-month period immediately prior to the sale, by an affiliate subject to the Tennessee excise tax. This amendment applies to transactions occurring on or after July 1, 2008.

Partner's Sale of Distributed Asset for a Loss¹

When a taxpayer subject to excise tax, who is treated as a partnership for federal tax purposes or is an S corporation or business trust, distributes an asset to a member, partner, shareholder or certificate holder, and the asset is sold within 12 months of the date of distribution, any loss not already included in the taxpayer's net earnings must be recognized by the taxpayer making the asset distribution. This rule governing loss treatment applies regardless of whether the seller is subject to

¹This section has been updated to clarify loss recognition reporting requirements.

Tennessee excise tax. Thus, if a seller subject to Tennessee excise tax incorrectly includes a loss that should have been reported by the taxpayer under this rule, the seller must amend its return and remove the loss.

Reporting Requirements

Taxable entities are required to report the gain or loss on Schedule J, line 5 (gain) or line 17 (loss) of the franchise and excise tax return².

When an otherwise nontaxable entity or individual is required to report the gain, they must file a franchise and excise tax return, form FAE170, and complete Schedules B and C and Schedule J, line 5. The entity or individual should include on the front page of the tax return its taxable year, FEIN or SSN, name and address, and mark the block "p- Other" with the explanation "67-4-2007." The tax return and payment are due on the 15th day of the 4th month following the close of the entity's or individual's taxable year. The excise tax due is 6.5% of the gain on the sale of the asset.

For More Information

Visit www.tn.gov/revenue. Click on Revenue Help to search for answers or to submit an information request to one of our agents.

References

Tenn. Code Ann. § 67-4-2006(b)(1)(l); Tenn. Code Ann. § 67-4-2006(b)(2)(k); Tenn. Code Ann. § 67-4-2007(f); Tenn. Code Ann. § 67-4-2015; Public Chapter 1106, Sections 37 (2008)

² Line references are correct as of the original date of this notice for the 2015 franchise and excise tax return.