

SMLLC Subsidiaries of REITs

Notice #14-12

Franchise and Excise Tax

June 2014

**Highlights**

➤ See Notice #13-16 for additional information on when an SMLLC is disregarded for franchise and excise tax purposes.

➤ Tennessee disregards federally disregarded SMLLCs whose single member is a REIT.

INTRODUCTION

This notice provides clarification on the Tennessee franchise and excise tax classification of a single member limited liability company (SMLLC) whose single member is a real estate investment trust (REIT).

DISCUSSION

Tennessee imposes the franchise and excise taxes on certain types of business entities doing business in the state, including limited liability companies. With certain exceptions, a taxpayer is generally required to report its Tennessee franchise and excise taxes on a separate entity basis. However, a SMLLC will be disregarded for franchise and excise tax purposes if 1) the SMLLC is disregarded for federal income tax purposes and 2) the SMLLC is wholly owned by a corporation or by an entity that is classified as a corporation for federal income tax purposes.

To qualify as a REIT under federal law, an entity must make an election under I.R.C. § 856(c)(1) to be taxed as a REIT. An entity that has made the election under I.R.C. § 856(c)(1) is deemed to have elected to be classified for federal income tax purposes as a corporation. Therefore, all REITs are classified as corporations for federal income tax purposes.

Since REITs are treated as corporations for federal income tax purposes, an SMLLC that is disregarded for federal income tax purposes and whose single member is a REIT will also be disregarded for Tennessee franchise and excise tax purposes.

Note that the Department formerly posted on its website an frequently asked question (FAQ) that stated that a federally disregarded SMLLC wholly owned by a REIT would be treated as a separate entity for franchise and excise tax purposes. However, this FAQ addressed prior law that was repealed in 2006. Because the FAQ is no longer applicable to any open tax periods, the Department has removed the information from its website.

**References:**

T.C.A. § 67-4-2007(d)
T.C.A. § 67-4-2106(c)
I.R.C. § 856
Treas. Reg.
§ 301.7701-3

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