TENNESSEE DEPARTMENT OF REVENUE
REVENUE RULING # 06-27

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

Whether Receivable Inc. will be subject to Tennessee franchise, excise taxes and whether Receivable Inc. and FinanceCo will be required to file a combined franchise, excise tax return, assuming that they both qualify as financial institutions and assuming that one of them is subject to franchise, excise taxes.

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[1]

During the final quarter of 2004, Corporation W formed Receivable LLC as a single member limited liability company. Receivable LLC was formed for the sole purpose of acting as an internal factoring company. Corporation W made a cash contribution to Receivable LLC so that it would have the capital needed to purchase trade account receivables. Receivable LLC is a disregarded entity for federal income tax and Tennessee franchise, excise tax purposes.

Since its inception, Receivable LLC has purchased (i.e., factored) the trade account receivables of Corporation W and one of its operating subsidiaries (the "Originators") at a discount. These receivables are purchased without recourse. Receivable LLC purchases the Originators' right, title and interest in the receivables, including any security interests and rights to collection. Any loss resulting from the default of a trade receivable purchased must be borne by

[1] The facts originally presented were supplemented in a [DATE] telephone conversation between a representative of [THE TAXPAYER'S REPRESENTATIVE] and a representative of the Tennessee Department of Revenue and in an e-mail message dated [DATE] from a representative of [THE TAXPAYER'S REPRESENTATIVE].

Receivable LLC. The Originators cannot be required to pay a factored trade account receivable that Receivable LLC cannot collect.

Receivable LLC does not perform any collection activities and does not compensate any party, including the Originators, to perform any collection activities on its behalf. If Receivable LLC determines that a material number of the accounts that it has purchased are becoming uncollectible, it will charge the Originators a higher discount rate on future purchases of receivables.

In order to obtain the lowest discount rate possible on the future factoring of receivables, the Originators undertake rigorous credit verification and other measures considered necessary to minimize the number of receivables that become uncollectible. Because the Originators have given up all right, title and interest in the trade accounts sold, they have no right to collect such accounts on their own behalf. The Originators do not contract to collect delinquent factored trade accounts on behalf of Receivable LLC.

If a factored account is not paid and is considered significant enough to affect the Originators' future discount rate, the Originators may encourage payment by refusing to do further business with the customer involved until the account is paid. If this does not result in payment of the account, the Originators will engage a collection agency to collect the account. If the collection agency is unable to collect the account, the Originators will engage an attorney for collection action. The attorney is authorized to pursue the matter through the courts if necessary. Receivable LLC has received, and will continue to receive, judgments from Tennessee courts resulting from collection actions.

Receivable LLC used the receivables that it purchased as collateral for a series of loans from an unrelated financial institution and used the proceeds from these loans to purchase additional receivables from the Originators. However, the fact that Receivable LLC uses these receivables as collateral does not change or influence the fact that the Originators are selling, and not loaning, their receivables to Receivable LLC.

The Originators and Receivable LLC participate in an internal cash management account maintained at [BANK X]. As a result, any transactions between these parties do not result in a change in the overall cash management account but are reflected as corresponding increases and decreases to the relevant operating accounts of each of the entities. Receivable LLC's operating account is managed in [BANK X's CITY, STATE – NOT TENNESSEE] branch.

Payments on trade account receivables are made to a lockbox maintained by Receivable LLC at [BANK Y's CITY, STATE – NOT TENNESSEE] branch. All cash transfers between [BANK X and BANK Y] are pre-authorized and do not require the specific consent of an officer or employee of Receivable LLC.

The following example illustrates Receivable LLC's cash flow cycle:

1. The Originators wish to sell a receivable worth $100. The terms of the receivable are that the customer must pay the Originators the full amount of the receivable within one month. This one-month period will vary based on the number of business days in the month and other similar factors.

2. Receivable LLC agrees to purchase the receivable at a discount rate of 5%. Therefore, Receivable LLC transfers $95 (the face value of the receivable less the 5% discount) in cash to the Originators operating account at [BANK X].

3. Within the required 30 day period, the Originators' customer remits the $100 payment to Receivable LLC's lockbox with [BANK Y].

4. Receivable LLC transfers the $100 that it received from its lockbox account to its operating account at [BANK X].

Prospectively, Receivable LLC will become a corporation called Receivable Inc. To effect this change of entity, Receivable LLC may convert to a corporation under the civil law of the state of incorporation, or Corporation W may contribute Receivable LLC's operations to a newly formed corporation.

In any event and for purposes of this discussion, Receivable Inc. will operate in the same way as Receivable LLC. Receivable Inc. will be a separate taxable entity for both federal income tax and Tennessee franchise, excise tax purposes and will file as a member of Corporation W's federal consolidated income tax return. Receivable Inc.'s sole location is in State X, that is, Receivable Inc.'s employees reside solely in State X. Receivable Inc. does not solicit the factoring of receivables in Tennessee, does not solicit or receive deposits from customers in Tennessee, and does not own any property in Tennessee. Receivable Inc. will not have any employees, representatives, or independent contractors conducting business in Tennessee.

Corporation W also owns FinanceCo. FinanceCo is headquartered in State X and FinanceCo has not, and will not, do business in Tennessee. Receivable Inc. will share office space with FinanceCo and will use the same business address as FinanceCo. For purposes of this Revenue Ruling, it will be assumed that FinanceCo is a financial institution under Tennessee law.

QUESTIONS PRESENTED

1. Will Receivable Inc. be subject to Tennessee franchise, excise taxes?

2. Assuming that FinanceCo and Receivable Inc. both qualify as financial institutions under Tennessee law and that either one of them becomes

subject to Tennessee franchise, excise taxes, will Receivable Inc. and FinanceCo be required to file combined Tennessee franchise, excise tax returns?

RULINGS

1. Yes.

2. Yes, assuming that FinanceCo and Receivable Inc. are engaged in a unitary business and constitute a unitary group of financial institutions, as the terms "unitary business" and "unitary group" are defined in Tenn. Code Ann. § 67-4-2004(37).

ANALYSIS

QUESTION ONE

Receivable Inc. is a Financial Institution Under Tennessee Law

Tenn. Code Ann. § 67-4-2004(11), set forth in pertinent part below, defines a "financial institution" as follows:

> "Financial Institution" means a holding company, any regulated financial corporation, a subsidiary of a holding company or a regulated financial corporation, an investment entity that is indirectly more than fifty percent (50%) owned by a holding company or a regulated financial corporation, or any other person that is carrying on the business of a financial institution.

As used in Parts 20 and 21 of Title 67, Chapter 4 of the Tennessee Code Annotated, the term "person" is defined by Tenn. Code Ann. § 67-4-2004(29) as follows:

> "Person" or "taxpayer" means every corporation, subchapter S corporation, limited liability company, professional limited liability company, registered limited liability partnership, professional registered limited liability partnership, limited partnership, cooperative, joint-stock association, business trust, regulated investment company, real estate investment trust, state-chartered or national bank, or state chartered- or federally chartered savings and loan association[.]

Corporation W and Receivable Inc. are each a "person," as the term is defined for Tennessee franchise, excise tax purposes.

A "holding company" is defined by Tenn. Code Ann. § 67-4-2004(15) as follows:

> "Holding company" means any corporation defined as a "bank holding company" under 12 U.S.C. § 1841(a) of the Bank Holding Company Act of 1956, as it may be amended from time to time; or any corporation defined as a "savings and loan holding company," "multiple savings and loan holding company" or "diversified savings and loan holding company," under 12 U.S.C. § 1467(a(a)(1), as it may be amended from time to time.

Under Tenn. Code Ann. §§ 67-4-2004(11) and 67-4-2004(15), Receivable Inc. and Corporation W are not holding companies or regulated financial corporations and neither is a subsidiary of a holding company or a regulated financial corporation. Receivable Inc. and Corporation W are not investment entities that are indirectly more than fifty percent owned by a holding company or a regulated financial corporation.

The term "business of a financial institution," as it is used in Tenn. Code Ann § 67-4-2004(11), is defined by Tenn. Code Ann. § 67-4-2004(4) as follows:

> (A) "Business of a Financial Institution" means:
>
> (i) The business that a regulated financial corporation may be authorized to do by the proper regulatory authorities;
>
> (ii) The business that any person organized under the authority of the United States or organized under the laws of any other taxing jurisdiction or country does or has authority to do that is substantially similar to the business that a corporation may be created to do under title 45, or any business that a corporation or its subsidiary is authorized to do by title 45;
>
> (iii) Otherwise making, acquiring, selling or servicing loans or extensions of credit including, but not limited to, the following:
>
> *(a)* Secured or unsecured consumer loans;
> *(b)* Installment loans;
> *(c)* Mortgages or deeds of trust or other secured loans on real or tangible personal property;
> *(d)* Credit card loans;
> *(e)* Secured or unsecured commercial loans of any type;
> *(f)* Letters of credit and acceptance drafts;
> *(g)* The holding of participation loans in which more than one (1) lender is a creditor to a common borrower;
> *(h)* Loans arising in factoring; and
> *(i)* Any other transactions of a comparable economic effect;

(iv) Leasing or acting as an agent, broker or adviser in connection with leasing real and personal property that is the economic equivalent of an extension of credit; or

(v) Operating a credit card business;

(B) Notwithstanding the provisions of this subdivision (4), if the business of a financial institution generates less than fifty percent (50%) of a person's gross income, the person shall not be considered to be a financial institution under subdivision (11). For purposes of this subdivision (4)(B), the computation of gross income of a person does not include income from nonrecurring, extraordinary transactions[.]

Corporation W is not conducting the business of a financial institution and is not a financial institution for Tennessee franchise, excise tax purposes.

Receivable Inc. is in the business of acquiring and servicing loans or extensions of credit arising from factoring. Therefore, Receivable Inc. is carrying on the business of a financial institution as described in Tenn. Code Ann. § 67-4-2004(4)(A)(iii)*(h)* and qualifies as a financial institution under Tenn. Code Ann. § 67-4-2004(11).

Receivable Inc. Has the Requisite Substantial Nexus in Tennessee to be Subjected to Franchise, Excise Taxes

Tenn. Code Ann. §§ 67-4-2104 and 67-4-2005 state that the privilege of doing business in Tennessee is a taxable privilege. Tenn. Code Ann. §§ 67-4-2105 and 67-4-2007 levy the franchise tax and the excise tax on entities that are doing business in Tennessee. In the context of franchise, excise tax law, "doing business in Tennessee" is defined by Tenn. Code Ann. § 67-4-2004(9)(A) as follows:

"Doing 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 States Constitution and the Constitution of Tennessee.

Tenn. Code Ann. § 67-4-2004(9)(B) makes the following provisions regarding the determination of whether a financial institution is doing business in Tennessee:

A financial institution shall be presumed, subject to rebuttal, to be doing business in Tennessee if the sum of its assets and the absolute value of its deposits attributable to sources within this state is five million dollars ($5,000,000) or more. For purposes of this part, tangible assets shall be

attributable to this state if they are located in this state. Intangible assets shall be attributable to sources within this state if the income earned from those assets is attributable to this state pursuant to this part. Deposits shall be attributed to this state if they are deposits made by this state or any of its agencies, instrumentalities or subdivisions or by any resident of this state, regardless of whether the deposits are accepted or maintained at locations in this state. Additionally, a financial institution shall be deemed to be doing business in this state if the 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 that receive the product or service 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

(vii) Regularly solicits and receives deposits from customers in this state[.]

Receivable Inc.'s Tennessee activities of factoring trade account receivables are conducted purposefully and with the object of gain, benefit, or advantage. Receivable Inc. engages in transactions with customers in Tennessee that involve intangible property, including loans, and such transactions result in receipts flowing to Receivable Inc. from within Tennessee. Thus, Receivable Inc. is conducting at least one of the activities enumerated in Tenn. Code Ann. § 67-4-2004(9)(B) as doing business in Tennessee. However, the determination of whether Receivable Inc. has the requisite Tennessee nexus to be subjected to franchise, excise taxes must be made in the light of the United States Constitution's limitations on the taxing power of the states.

The power of a state to impose a tax on an entity is limited by the United States Constitution. *Quill Corporation v. North Dakota,* 504 U.S. 298 (1992). Both the Due Process Clause and the Commerce Clause impose limits on the taxing power of a state. *Id.* at 305.

The Due Process Clause of the United States Constitution requires that Receivable Inc. have "minimum contacts" with the taxing state in order for the taxing state to impose its tax. *Id.* at 307. If an entity's contacts with the taxing state make it reasonable, in the context of our federal system of government, to require the entity to defend a lawsuit in the taxing state, the Due Process Clause is satisfied. *Id.* If a potential lawsuit against the taxpayer is reasonably foreseeable in the taxing state, the Due Process Clause is satisfied. *Id.*

If contacts are sufficient to subject an entity to personal jurisdiction in the forum state, then imposition of a tax on the entity's business in the state will be sustained under the Due Process Clause even though the entity has no physical presence in the taxing state. *J.C. Penney National Bank v. Johnson,* 19 S.W.3d 831 at 837 (Tenn.Ct.App. 1999) *appeal denied,* (Tenn. May 8, 2000), *cert. denied, Johnson v. J.C. Penney National Bank,* 531 U.S. 927 (2000). So long as a commercial actor's efforts are purposefully directed toward residents of a state, the absence of physical contacts cannot defeat the personal jurisdiction of such state under the Due Process Clause. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, at 476 (1987).

Receivable Inc. has purposefully directed its efforts toward the residents of Tennessee by purchasing accounts receivable due to the Originators from their customers in Tennessee. Under the facts presented, it appears that subjection of Receivable Inc. to Tennessee franchise, excise taxation would not violate the requirements of the Due Process Clause of the U.S. Constitution. But, in order to subject Receivable Inc. to such taxation, the requirements of the Commerce Clause of the United States Constitution must also be met.

The Commerce Clause of the United States Constitution grants to Congress the power to "regulate Commerce with foreign Nations, and among the several States." U. S. Constitution, Article I, § 8, cl. 3. Although the Commerce Clause does not explicitly limit the power of the states, the United States Supreme Court has held consistently that the Commerce Clause implicitly limits the power of states to interfere with interstate commerce. *Quill Corporation v. North Dakota,* 504 U.S. 298, at 309 (1992). This implicit limitation on the power of states to interfere with interstate commerce is known as the "negative" or "dormant" Commerce Clause. *Id.*

Dormant Commerce Clause jurisprudence in the area of state taxation changed dramatically with the U.S. Supreme Court's decision in *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274 (1977). The *Complete Auto* decision rejected the line of cases that held impermissible the direct taxation of interstate commerce by the states and enunciated a four-part test providing that imposition of a tax will be sustained so long as the tax meets all of the following criteria:

1. The tax must be applied to an activity with a substantial nexus in the taxing state.

2. The tax must be fairly apportioned.

3. The tax must not discriminate against interstate commerce.

4. The tax must be fairly related to the services provided by the taxing state.

The substantial nexus test in the first prong of the *Complete Auto* decision is critical in determining whether Receivable Inc. can be subjected to an income based tax in Tennessee where its debtors reside.

In *J.C. Penney,* 19 S.W.3d 831, the Tennessee Court of Appeals was presented with an opportunity to consider application of the doing business in Tennessee criteria found in Tenn. Code Ann. § 67-4-2004(9)(B) to determine whether J.C. Penney National Bank had the requisite substantial Tennessee nexus to be subjected to franchise, excise taxes. J.C. Penney National Bank had no physical presence of consequence in Tennessee, but was making credit card loans to customers in Tennessee.

The Tennessee Court of Appeals refused to uphold the Department's imposition of franchise, excise taxes on J.C. Penney National Bank. The Court reached this decision because, other than credit cards issued to its customers, which the Court held were "in and of themselves virtually worthless," J.C. Penney National Bank had no Tennessee physical presence and thus did not have the requisite "substantial nexus" in Tennessee to satisfy the first prong of the *Complete Auto* test. However, in *J.C. Penney*, 19 S.W.3d at 842, the Tennessee Court of Appeals stated that it was not their ". . . purpose to decide whether 'physical presence' is required under the commerce clause" to subject a business entity to state taxation.

In *America Online, Inc. v. Johnson,* WL 1751434 at 2 (Tenn.Ct.App. 2002), the Tennessee Court of Appeals observes that the U.S. Supreme Court has rejected state taxes on interstate commerce where no activities are carried on in the taxing state on the taxpayer's behalf. Citing *Tyler Pipe Industries v. Washington,* 483 U.S. 232 (1987) and *Scripto v. Carson,* 362 U.S. 207 (1960), the Court further comments that "[i]n other cases where the out-of-state taxpayer did not actually have offices or employees in the taxing state, the [U.S. Supreme Court], nevertheless, found a substantial nexus based on in-state activities carried on by affiliates or independent contractors on the taxpayer's behalf." *Id.* at 2. In any case, "[t]he activity taxed must have substantial nexus with the state." *Id.* at 2.

"We know that a substantial nexus may be established by activities carried on within the state by affiliates and independent contractors." *Id.* at 3. "Where . . . activities are 'being conducted in the taxing state that substantially contribute to the taxpayer's ability to maintain operations in the taxing state,' a substantial nexus does exist." *Id.* at 3, citing *J.C. Penney*, 19 S.W.2d at 841 (referencing

Tyler Pipe, 483 U.S. 232 and *Scripto,* 362 U.S. 207). The crucial factor governing nexus is whether the activities preformed in [the] state on behalf of the taxpayer are significantly associated with the taxpayer's ability to establish and maintain a market in this state . . .[.]" *Tyler Pipe,* 483 U.S. 232 at 250.

Although Receivable Inc. has no physical presence in Tennessee and performs no collection activities, the following collection activities are taking place with regard to the accounts receivable purchased from the Originators by Receivable Inc.:

1. The Originators may refuse to do business with customers that do not pay accounts receivable purchased from the Originators by Receivable Inc.

2. The Originators may engage a collection agency to collect delinquent accounts purchased from the Originators by Receivable Inc.

3. The Originators may engage an attorney and authorize him to take legal action in the courts to collect delinquent accounts purchased from the Originators by Receivable Inc.

4. Receivable Inc. receives judgments from Tennessee courts as a result of collection actions filed with regard to delinquent accounts purchased from the Originators by Receivable Inc.

The Originators claim that the above collection activities are undertaken on their own behalf in order to ensure collection of the maximum number of accounts purchased from the Originators by Receivable Inc. and thus keep the discount rate charged by Receivable Inc. as low as possible. However, it is axiomatic that these collection efforts result in Receivable Inc. being able to collect accounts that it would not otherwise be able to collect and that Receivable Inc. directly benefits from such collection activities. Although the Originators may also indirectly benefit from the collection activities in Tennessee, the direct benefits that inure to Receivable Inc. cannot be ignored.

The Originators have sold all of their right, title and interest in the accounts receivable that have been purchased by Receivable Inc., including any security interests and rights to collection. Receivable Inc. has purchased such accounts without recourse. Under these terms and circumstances, any collection actions would legally have to be conducted on behalf of Receivable Inc., the only party having right, title and interest in the factored accounts and the only party having the legal right to collect such accounts. The collection agency engaged by the Originators would have to collect the accounts on behalf of Receivable Inc. and the attorney engaged by the Originators would have to file suit in the name of Receivable Inc. to collect the accounts.

Despite the indirect benefits that the Originators receive from the collection activities being conducted in Tennessee, under the facts presented it appears that such collection activities are being conducted on behalf of Receivable Inc.

The Multistate Tax Commission ("MTC") offers guidance as to whether collection activities establish tax nexus in a taxing jurisdiction. The MTC has issued a statement entitled "Statement of Information Concerning Practices of Multistate Tax Commission and Signatory States Under Public Law 86-272." (P.L. 86-272 is the name under which Title 15 U.S.C.A. § 381 is commonly known.) This statement has been adopted in whole or in part by states that are members of the Multistate Tax Compact and it has identified activities considered directly related to solicitation of sales in interstate Commerce in the light of *Wisconsin Department of Revenue v. William Wrigley, Jr., Co.* 505 U.S. 214 (1992). J. Healy and M. Schadewald, *Multistate Corporate Tax Guide,* I-48 (2006). Although Tennessee is not a full member of the Multistate Tax Compact, it is an associate member and has adopted rules and regulations similar to the Compact's Uniform Division of Income for Tax Purposes Act (UDITPA) rules.

The Multistate Tax Commission statement lists activities that are considered to be entirely ancillary to the solicitation of orders (protected activities) and activities that are considered to serve an independent business function (unprotected activities). Among the activities considered to serve an independent business function and thus create tax nexus in the state where they are conducted is the following activity:

> Collecting current or delinquent accounts, whether directly or by third parties, through assignment or otherwise.

Substantial collection activities conducted in Tennessee by an out-of-state business entity, or on its behalf by an affiliate or an independent contractor, would contribute to the entity's ability to maintain operations in Tennessee and would result in the entity having the requisite substantial nexus to be subjected to Tennessee franchise, excise taxes.

Under the facts presented, Receivable Inc. will be subject to Tennessee franchise, excise taxation.

QUESTION TWO

Receivable Inc. and FinanceCo are Required to File a Combined Franchise, Excise Tax Return if Either Is Doing Business in Tennessee

For purposes of this Revenue Ruling, it is assumed that FinanceCo is a "financial institution," as the term is defined in Tenn. Code Ann. § 67-4-2004(11). Under the

analysis set forth above in response to the first question presented, Receivable Inc. is a financial institution for franchise, excise tax purposes.

Tenn. Code Ann. § 67-4-2114(c) makes the following provisions concerning the filing of combined franchise tax returns by unitary groups of financial institutions:

> Financial institutions subject to tax in this state that are members of a unitary group, as defined in § 67-4-2004, shall file a combined return, and pay the tax imposed by this part, after apportionment, based on all operations of the unitary business. This report shall include the information set out in subsections (a) and (b), for every member of the unitary group, even if some of the members would not otherwise be subject to taxation under this part. Dividends, receipts and expenses resulting from transactions between members of a unitary group shall be excluded from the return, for purposes of apportionment under § 67-4-2118. The members shall designate one (1) member that would otherwise be subject to tax on a separate entity basis to file the combined return. Each member subject to tax in this state shall be jointly and severally liable for the tax imposed by this part.

With regard to combined excise tax returns required for financial institutions, Tenn. Code Ann. § 67-4-2006(a)(3) makes the following provisions:

> For financial institutions that form a unitary business, as defined in § 67-4-2004, "net earnings" or "net loss" is defined as the combined net earnings or net loss, as defined in subdivision (a)(1), for all members of the unitary group, with all dividends, receipts and expenses resulting from transactions between members of the unitary group excluded when computing combined net earnings, and subject to the adjustments in subsections (b) and (c) on a combined basis, even if some of the members would not be subject to taxation under this part, if considered apart from their unitary group.

A "unitary business" or "unitary group" is defined by Tenn. Code Ann. § 67-4-2004(37) as follows:

> "Unitary business" or "unitary group" means business activities or operations of financial institutions that are of mutual benefit, dependent upon, or contributory to one another, individually or as a group, in transacting the business of a financial institution. "Unitary business" may be applied within a single legal entity or between multiple entities. "Unitary business" or "unitary group" includes those entities that are engaged in a unitary business transacted wholly in, or in and out of, the state of Tennessee, even if some of the entities would not be subject to tax in this state, if considered apart from their unitary group.

The facts presented do not contain sufficient information to determine whether FinanceCo and Receivable Inc., as financial institutions, are engaged in a unitary business and constitute a unitary group of financial institutions.

Under Tennessee law, it is likely that FinanceCo and Receivable Inc. are engaged in a unitary business and constitute a unitary group of financial institutions. Assuming this to be the case, Tennessee law clearly requires them to file a combined franchise, excise tax return if one of them is subject to franchise, excise taxes even though the other would not be subject to such taxation if considered apart from the unitary group.

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APPROVED: Loren L. Chumley, Commissioner

DATE: 7-20-06