

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 12-17**

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

The availability of a Tennessee job tax credit carryforward under TENN. CODE ANN. § 67-4-2109 (2011).

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] (the "Taxpayer"), a corporation [REDACTED], owns [REDACTED] single member limited liability companies that are disregarded for Tennessee franchise and excise tax purposes.

One of these disregarded entities (the "SMLLC") operates a [REDACTED] business in Tennessee. In [YEAR], the SMLLC filed a business plan setting forth its anticipated capital investment and job creation in the state. A \$[DOLLAR AMOUNT] job tax credit was generated

in [YEAR 1]. A portion of this credit (totaling \$[DOLLAR AMOUNT]) was utilized on the Taxpayer's franchise and excise tax returns for the tax years [YEAR 1] and [YEAR 2], leaving as a remainder a \$[DOLLAR AMOUNT] job tax credit carryforward (the "Job Tax Credit Carryforward"). In [YEAR 3], the Taxpayer sold the SMLLC to an unrelated party.

RULING

May the Taxpayer utilize the Job Tax Credit Carryforward on its Tennessee franchise and excise tax returns for tax years after the sale of the SMLLC?

Ruling: Yes. The Taxpayer may utilize the Job Tax Credit Carryforward on its Tennessee franchise and excise tax returns for tax years following the sale of the SMLLC to an unrelated party.

ANALYSIS

Tennessee imposes an excise tax at the rate of 6.5% on the net earnings of all persons, as defined under TENN. CODE ANN. § 67-4-2004(37) (2011), doing business within Tennessee. TENN. CODE ANN. § 67-4-2007(a) (2011). Tennessee also imposes a franchise tax at the rate of \$0.25 per \$100, or major fraction thereof, on the net worth of a person doing business in Tennessee, pursuant to TENN. CODE ANN. §§ 67-4-2105(a), -2106(a) (2011).¹ Persons subject to the Tennessee franchise and excise taxes include, but are not limited to, corporations and limited liability companies. TENN. CODE ANN. § 67-4-2004(37).

TENN. CODE ANN. § 67-4-2109(b) (2011) generally provides that, if certain statutory requirements are met, a taxpayer may take a job tax credit against its Tennessee franchise and excise tax liability for each net new full-time employee job created.² Any unused job tax credit may be carried forward in any tax period until the credit is taken; however, the credit may not be carried forward for more than fifteen years. TENN. CODE ANN. § 67-4-2109(b)(1)(D). Importantly, TENN. CODE ANN. § 67-4-2109(e)(1) provides that each taxpayer is considered a separate entity and that "a credit carryforward may be taken only by the taxpayer that generated it."³

¹ Note that, under TENN. CODE ANN. § 67-4-2108(a)(1) (2011), 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).

² Generally, the job tax credit, together with any credit carryforward, taken on any franchise and excise tax return may not exceed 50% of the combined franchise and excise tax liability shown on the return before any credit is taken. TENN. CODE ANN. § 67-4-2109(b)(1)(D).

³ Note that TENN. CODE ANN. § 67-4-2109(e)(1) provides that "in the case of mergers, consolidations, and like transactions, no tax credit incurred by the predecessor taxpayer shall be allowed as a deduction on the tax return filed by the successor taxpayer." However, TENN. CODE ANN. § 67-4-2109(e)(2) provides that "when a taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity or net worth, any qualified Tennessee credit carryover of the predecessor that merged out of existence shall be available for carryover on the return of the surviving successor; provided, that the time limitations for the carryover have not expired." See, e.g., *Dana Corp. v. Chumley*, 2010 WL 2176096 at *4 (Tenn. Ct. App. May 28, 2010) (holding that

Accordingly, the Taxpayer may utilize the Job Tax Credit Carryforward on its Tennessee franchise and excise tax returns for tax years following the sale of the SMLLC only if the Taxpayer is the “taxpayer” that generated the credit carryforward.

In this case, the Taxpayer is properly considered the taxpayer that generated the Job Tax Credit Carryforward. Generally, each taxpayer is considered a “separate and single business entity” for Tennessee franchise and excise tax purposes, and must file a return on a separate entity basis reflecting only its own business activities. TENN. CODE ANN. §§ 67-4-2007(e)(1), -2106(c). One of the limited exceptions to this rule applies to a limited liability company that is disregarded for federal income tax purposes and whose single member is a corporation. TENN. CODE ANN. §§ 67-4-2007(d), -2106(c). A limited liability company that comes within this exception is disregarded for Tennessee franchise and excise tax purposes, and is treated as a division of the parent corporation. The parent corporation will accordingly include the operational results of the disregarded entity on its franchise and excise tax return.

The facts indicate that, at the time the Job Tax Credit Carryforward was created, the SMLLC was disregarded to the Taxpayer for Tennessee franchise and excise tax purposes. Because the SMLLC was treated as a division of the Taxpayer at the time the Job Tax Credit Carryforward was created, the Taxpayer is considered to be the entity that generated the credit carryforward.

In accordance with TENN. CODE ANN. § 67-4-2109(e)(1), the Taxpayer may therefore utilize the Job Tax Credit Carryforward on its Tennessee franchise and excise tax returns for tax years following the sale of the SMLLC to an unrelated party.

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APPROVED: Richard H. Roberts
Commissioner of Revenue

DATE: October 10, 2012

successor entity was prohibited from claiming remaining job tax credits as a successor to the entity that generated the credits).