

TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 15-03

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.

SUBJECT

The application of the Tennessee franchise and excise taxes to a foreign entity disregarded for federal income tax purposes.

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 ruling herein is binding upon the Department and 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

[PARENT] is a [REDACTED – DESCRIPTION OF ACTIVITIES]. [PARENT], through its wholly owned subsidiary [FIRST SUBSIDIARY] (“[FIRST SUBSIDIARY]”), an Irish private limited company, [REDACTED - DESCRIPTION OF ACTIVITIES]. [FIRST SUBSIDIARY] utilizes its wholly owned subsidiary, [SECOND

SUBSIDIARY] (“[SECOND SUBSIDIARY]”), based in [LOCATION], to [REDACTED - DESCRIPTION OF ACTIVITIES]. [SECOND SUBSIDIARY] is also an Irish private limited company.

[REDACTED]. [SECOND SUBSIDIARY] at times retains title to [TANGIBLE PERSONAL PROPERTY] [REDACTED] located in Tennessee.

[SECOND SUBSIDIARY], [REDACTED], was incorporated with approval of the Ireland Registrar of Companies in [YEAR]. [SECOND SUBSIDIARY], upon formation, was treated as a C corporation for U.S. federal income tax purposes, its default classification. However, [SECOND SUBSIDIARY] plans to file Form 8832 with the Internal Revenue Service (“IRS”) electing to be treated as a disregarded entity for U.S. federal income tax purposes.

RULING

Will [SECOND SUBSIDIARY], an Irish private limited company that elects to be treated as a disregarded entity for U.S. federal income tax purposes, be considered a taxpayer for purposes of the Tennessee franchise and excise taxes?

Ruling: [SECOND SUBSIDIARY] will be considered a separate taxpayer for Tennessee franchise and excise tax purposes. Tennessee law only allows single member limited liability companies whose single member is a corporation to be disregarded for purposes of the Tennessee franchise and excise taxes. As [SECOND SUBSIDIARY] is not properly characterized as a limited liability company for Tennessee franchise and excise tax purposes, it will be required to file on a separate legal entity basis.

ANALYSIS

Tennessee 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.¹ Tennessee also imposes an excise tax at the rate of 6.5% on the net earnings of all persons doing business within Tennessee.² Persons subject to the Tennessee franchise and excise taxes include, but are not limited to, corporations and limited liability companies.³ With certain limited exceptions, each taxpayer is considered a “separate and single business entity” for Tennessee franchise and excise tax purposes and must file its Tennessee franchise, excise tax return on a separate entity basis.⁴

¹ TENN. CODE ANN. §§ 67-4-2105(a) and -2106(a) (2013). Note that, under TENN. CODE ANN. § 67-4-2108(a)(1) (2013), 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.” According to TENN. CODE ANN. § 67-4-2108(a)(3), for purposes of this section, “property” is to be “valued at cost less accumulated depreciation in accordance with generally accepted accounting principles.”

² TENN. CODE ANN. § 67-4-2007(a) (2013).

³ TENN. CODE ANN. § 67-4-2004(38) (2013). As explained in more detail below, an Irish private limited company is generally considered to be a corporation for purposes of Tennessee law.

⁴ TENN. CODE ANN. §§ 67-4-2106(c) and -2007(d) (2013).

TENN. CODE ANN. §§ 67-4-2106(c) and -2007(d) (2013) provide that, for Tennessee franchise and excise tax purposes, respectively, a business entity shall be classified as a corporation, partnership, or other type of business entity, consistent with the way the entity is classified for federal income tax purposes. However, these statutes further provide that “entities that are disregarded for federal income tax purposes, except for limited liability companies whose single member is a corporation, shall not be disregarded” for Tennessee franchise and excise tax purposes.⁵ Thus, to be disregarded for Tennessee franchise and excise tax purposes, an entity must be (1) a single member limited liability company; (2) disregarded for federal income tax purposes; and (3) wholly owned by a corporation.

For purposes of TENN. CODE ANN. §§ 67-4-2106(c) and -2007(d), the Department has interpreted the term “corporation” to include an entity formed as a corporation under state law; a non-corporate entity whose default classification for federal tax purposes is to be treated as a corporation; an entity formed under another country’s laws whose default classification for federal tax purposes is to be treated as a corporation;⁶ and an entity that makes an election on federal Form 8832 (Entity Classification Election) to be classified as a corporation for federal tax purposes.⁷

Under Treas. Reg. § 301.7701-2 Ex. 3, an Irish private limited company has a default classification as a C corporation for U.S. federal income tax purposes. Accordingly, both [SECOND SUBSIDIARY] and [FIRST SUBSIDIARY] are currently treated as C corporations for purposes of the Tennessee franchise and excise taxes. Upon filing Form 8832 with the IRS, [SECOND SUBSIDIARY] will be disregarded for U.S. federal income tax purposes pursuant to Treas. Reg. § 301.7701-3(c)(1). As a result, [SECOND SUBSIDIARY] will be a federally disregarded entity wholly owned by a corporation – meeting two of the three requirements to be disregarded for Tennessee franchise and excise tax purposes.

[SECOND SUBSIDIARY] will not, however, be disregarded for franchise and excise tax purposes because it cannot properly be characterized as a “limited liability company.” The term “limited liability company” is not defined in the Tennessee franchise and excise tax laws, but plainly refers to an entity qualified to do business in this state under the Tennessee Revised Limited Liability Company Act, or its predecessor, the Tennessee Limited Liability Company Act.⁸ Both acts provide means by which a foreign entity may qualify as a “foreign LLC” authorized to conduct business as a

⁵ *Id.*

⁶ See Treas. Reg. § 301.7701-2(b)(8) (West, Westlaw through July 30, 2015) (listing foreign entities that are classified federally as corporations).

⁷ See TENNESSEE DEPARTMENT OF REVENUE, NOTICE 13-16 (Nov. 2013), available at <http://tn.gov/assets/entities/revenue/attachments/13-16fe.pdf> (last visited July 30, 2015).

⁸ See generally TENN. CODE ANN. §§ 48-201-101 to -247-202 (2013); TENN. CODE ANN. § 48-249-101 to -1019 (2013). When a statutory term is left undefined, Tennessee courts may employ certain presumptions to give meaning and effect to the words chosen by the General Assembly. *Lee Med., Inc. v. Beecher*, 312 S.W.3d 515, 526 (Tenn. 2010). For instance, the General Assembly is presumed to have known the “state of the law” and “its own prior enactments” when it ratified the subject legislation. *Id.* Thus, when enacting TENN. CODE ANN. §§ 67-4-2106(c) and -2107(d), it is presumed that the legislature was aware that the term “limited liability company” would be interpreted consistently with the relevant acts governing the formation, qualification, and operation of entities commonly referred to as “limited liability companies,” or “LLCs.”

limited liability company in this state.⁹ However, it is clear under both acts that no incorporated entity may qualify as a limited liability company in this state.¹⁰ By extension, it is evident that no incorporated entity, foreign or domestic, may be properly characterized as a “limited liability company” for purposes of TENN. CODE ANN. §§ 67-4-2106(c) and -2007(d).

As an Irish private limited company, [SECOND SUBSIDIARY] is an incorporated entity under the applicable Irish laws governing its formation and operation.¹¹ The relevant Irish statutory authority provides that any such company is certified as an “incorporated” company receiving a “certificate of incorporation” authorized to act in a “corporate” capacity.¹² Furthermore, as mentioned previously, an Irish private limited company is classified by default as a C corporation for U.S. federal income tax purposes.¹³ Therefore, it is clear that [SECOND SUBSIDIARY] is more akin to and properly treated as a corporation as that term is interpreted for Tennessee franchise and excise tax purposes.¹⁴

As [SECOND SUBSIDIARY] will remain a corporate entity even after electing to be disregarded for federal income tax purposes, [SECOND SUBSIDIARY] may not be disregarded for Tennessee franchise and excise tax purposes. Thus, [SECOND SUBSIDIARY] will be treated as a single and separate business entity for Tennessee franchise and excise tax purposes and will be required to separately register with the Department and file its own separate franchise and excise tax return.

⁹ See TENN. CODE ANN. § 48-202-101(19) (2013) (defining a “foreign LLC” for purposes of the Tennessee Limited Liability Company Act); TENN. CODE ANN. § 48-249-102(12) (2013) (defining a “foreign LLC” for purposes of the Tennessee Revised Limited Liability Company Act). Notably, both acts provide that the laws of the jurisdiction where the foreign LLC was formed govern its formation and internal affairs. TENN. CODE ANN. § 48-246-101; TENN. CODE ANN. § 48-249-901. Similarly, both acts allow a foreign LLC to retain, with certain exception, any name designation allowed by the jurisdiction where it was formed. TENN. CODE ANN. § 48-207-101; TENN. CODE ANN. § 48-249-106. Thus, it naturally follows that a foreign entity could qualify as an LLC even though it is not specifically referred to as an “LLC” or “limited liability company” in its jurisdiction of formation.

¹⁰ The earlier act clearly defines a “foreign LLC,” in part, as an entity that is “not incorporated.” TENN. CODE ANN. § 48-202-101(19). The later act circuitously defines a “foreign LLC” as “a limited liability company formed under the laws of a jurisdiction other than this state.” TENN. CODE ANN. § 48-249-102(12). Thus, while the later act drops the specific requirement that the foreign entity be “not incorporated,” it is no less evident that a limited liability company cannot simultaneously be a corporation. See BLACK’S LAW DICTIONARY (10th ed. 2014) (defining “incorporate” as “to form a legal corporation”); TENN. CODE ANN. § 48-11-201(47) (West 2015) (defining “unincorporated entity” for purposes of the Tennessee Business Corporation Act to include limited liability companies).

¹¹ Companies Act 2014 (Act No. 38/2014) (Ir.), available at <http://www.irishstatutebook.ie/pdf/2014/en.act.2014.0038.pdf>.

¹² *Id.*

¹³ Treas. Reg. § 301.7701-2 Ex. 3.

¹⁴ See TENNESSEE DEPARTMENT OF REVENUE, NOTICE 13-16. Additionally, the Tennessee Business Corporation Act defines a “foreign corporation” as “a corporation for profit incorporated under a law other than the laws of this state.” TENN. CODE ANN. § 48-11-201(19) (West 2015)). Here, [SECOND SUBSIDIARY] was incorporated under the Irish Companies Act [Year], and thus comes within the definition of “foreign corporation” for purposes of Tennessee law, regardless of its federal income tax classification.

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APPROVED:

Richard H. Roberts
Commissioner of Revenue

DATE:

September 23, 2015