



# FRANCHISE & EXCISE TAX EXEMPTIONS

Family Owned Non-Corporate Entity (FONCE)

Updated September 2020

# Qualifications

- ❑ Tenn. Code Ann. §67-4-2008(a)(11)(A)
- ❑ To qualify for the FONCE franchise and excise tax exemption, the entity must meet the following criteria:
  - a) Must be a LP, LLP, or LLC
  - b) At least 95% of the ownership units of the entity are owned by members of the family
  - c) At least sixth-six and sixty-seven hundredths percent of the activity of the entity is either forming or the holding of one or more personal residences where one or more members or partners reside  
OR  
Where substantially all the activity of the entity is either the production of passive investment income or the combination of the production of passive investment income and farming

# Family-Owned

At least 95% of the ownership units of the entity are owned by members of the family, which means:

- ❑ With respect to an individual, only an ancestor of such individual
- ❑ The spouse or former spouse of such individual
- ❑ A lineal descendent of such individual, of such individual's spouse or former spouse, or of a parent of such individual
- ❑ The spouse or former spouse of any lineal descendent
- ❑ Estate or trust of a deceased individual who, while living, was described in any of subdivision (a)(11)(B)(i)(a)-(d)
- ❑ A legally adopted child of an individual shall be treated as the child of such individual by blood (a)11)B(ii)

# Passive Investment Income

Is gross receipts derived from:

- ❑ Royalties
- ❑ Rent from residential property or farm property
- ❑ Dividends
- ❑ Interest
- ❑ Annuities
- ❑ Any gains from sales or exchanges of stock or securities to the extent of any gains therefrom



# Rental Property

- ❑ Effective July 1, 2009, the definition of “rents” relative to passive investment income was revised to include only rental income from residential or farm property
- ❑ Additionally, ownership units held in trust are not treated as owned by members of the family unless the ownership units are property of a trust that is part of the estate of a deceased person described in Tenn. Code Ann. § 67- 4-2008(a)(11)(B)(i)(e)

# Farm & Residential Property

Farm property and residential property have the same meaning ,  
except:

- ❑ Residential property includes only property leased or rented for residential purposes and includes not more than four residential units at any one location. For example, four separately deeded condominium units within a building with over four units would qualify
- ❑ Farm property does not include acreage used for recreational purposes by clubs, including golf course playing hole improvements

# Registration

- ❑ Must file an application for exemption on form FAE 183, Application for Exemption/Annual Exemption Renewal and meet all the qualifications to be exempted
- ❑ If the entity does not meet the exemption requirements in any given year, it is taxable on all activities for that year
- ❑ For any year that an entity does not meet the exemption requirements, a completed franchise and excise tax return (FAE170) must be filed electronically with payment of any taxes due by the 15<sup>th</sup> day of the fourth month following the close of the taxable year

# Renewal

- ❑ Both the initial application and the annual renewal are filed on form FAE 183
  - a) This form with the appropriate sections completed must be submitted by the 15th day of the fourth month following the close of the entity's taxable year
  - b) Entities requesting an extension for federal income tax are automatically granted an extension
  
- ❑ Must submit the FAE 183 renewal each year to be eligible for the exemption



# Resources

- ❑ Application for Exemption/Annual Exemption Renewal – Form FAE 183
- ❑ Franchise and Excise Tax Return, Form 170
- ❑ Tenn. Code Ann. §67-4-2008(a)(11)(A)

## For Additional Assistance

- ❑ Visit [www.TN.gov/revenue](http://www.TN.gov/revenue) and click on Taxes, then Franchise and Excise Taxes
- ❑ Send an email through “Questions” from Revenue’s website
- ❑ Call us at 615/253-0700; hours are 8:00am to 4:30pm, Central time, Monday through Friday, excluding holidays





**THANK YOU**