FRANCHISE & EXCISE TAX EXEMPTIONS

Farming/Personal Residence in LLCs or LPs

Qualifications

- Tenn. Code Ann. § 67-4-2008 (a)(6)(i)(ii)(iii)
- Internal Revenue Code 26 U.S. Code § 280A (d)(2)
- Entity is an LLC, LP, or LLP
- At least sixty-six and sixty-seven hundredths percent (66.67%) of the activity of the entity is either farming or holding one or more personal residences, including acreage contiguous to the dwelling, where one or more of the members or partners reside

Ownership

- At least ninety-five (95%) of the voting rights, capital interest or profits for the entity are owned either by natural persons who are relatives of one another or by trusts for their benefit

- Natural person shall be considered "relatives" if, by blood or adoption, they are descended from a common ancestor and their relationship with each other is that of a first cousin or closer than that of a first cousin, or if they are spouses of one another

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Farming

- The growing of crops, nursery products, timber or fibers, such as cotton, for human or animal use or consumption; the keeping of horses, cattle, sheep, goats, chickens or other animals for human or animal use or consumption; the keeping of animals that produce products, such as milk, eggs, wool or hides for human or animal use or consumption; or the leasing of the land to be used for the purposes described in subdivision (a)(6)(A)

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Personal Residence

- Any entity that qualifies for franchise tax exemption under subdivision (a)(6), because of farming activity or because the property has been used as a personal residence for at least five (5) years, shall remain exempt for one year from the end of the calendar year in which it ceases to qualify for the exemption, but only with regard to property and transactions related to property that it held at the time that it last qualified for the exemption

- To qualify as a personal residence, the dwelling unit must be occupied for personal use by partners or members of the entity for more days than it is rented to others who are not partners or members of the entity

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Registration

- Must file an application for exemption on form FAE 183 Application for Exemption/Annual Exemption Renewal and meet all the requirements to be exempted.
  a) The entity must meet the requirements each year
  b) Any entity that fails to timely file an application for exemption or renewal may be charged a $200.00 penalty

- If the entity does not meet the exemption requirements in any given year, it is taxable on all activities for that year
  - A completed franchise and excise tax return (FAE170) must be filed electronically with a minimum $100 payment of any taxes due by the 15th day of the fourth month following the close of the taxable year

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Renewal

- Both the initial application and the annual renewal are filed on form FAE 183
  - 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
  - Must submit the FAE 183 renewal each year to be eligible for the exemption

- Entities requesting an extension for federal income tax are automatically granted an extension

- If a taxpayer files a 170 return for two consecutive years, they must reapply for the exemption (on the 183 form as a new exemption)

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Resources

- Application for Exemption/Annual Exemption Renewal
- Franchise and Excise Tax Return, Form 170
- Tenn. Code Ann. § 67-4-2008
- Internal Revenue Code 26 U.S. Code § 280A

TN Department of Revenue

THANK YOU