FRANCHISE & EXCISE TAX EXEMPTIONS

Obligated Member Entities

Updated September 2020
Qualifications

- Tenn. Code Ann. § 67-4-2008(a)(9)
- Entity is an LLC, LP, or LLP
- All members or partners are fully liable for the debts, obligations, and liabilities of the entity
- Have filed appropriate documentation with the office of the Secretary of State prior to the first day of the taxable year for which a return is filed
Secondary Level

- In some instances, a secondary level of limited liability entities may be formed between the initial limited liability entity and the individual owners to avoid the franchise and excise taxes while still providing limited liability to the individual owners or partners.
Election

- Members or partners of a limited liability entity may make an election for the entity to be treated as an exempt “obligated entity”
  - If limited liability is retained for a portion of the ownership membership, the tax is owed on the corresponding portion of the income

- The members or partners making this election must file the required documentation with the Secretary of State to become fully liable for the debts, obligations, and liabilities of the entity and are referred to as “obligated members”
  - For tax years beginning after October 1st, 2009, documentation must be filed with the Secretary of State on or before the first day of the taxable year for which a return is filed
  - See TCA 67-4-2008(a)(9) for due dates prior to October 1st, 2009
Limited Liability Protection

- If any obligated member or any owner of an obligated member, whether such ownership is in whole, in part, direct, or indirect, provides limited liability protection, the obligated member entity is liable for franchise and excise taxes on the portion of income and equity attributable to such obligated member.
Registration

- Must file an application for exemption on form FAE 183, Application for Exemption/Annual Exemption Renewal, and meet all qualifications in order to receive the exemption.

- Must attach required documentation that has been filed with the Tennessee Secretary of State.

- 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 payment of any taxes due by the 15th 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
  - 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

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

- The taxpayer must certify annually to be eligible for the exemption on or before the first day of the taxable year for which a return is filed
Annual Certification

- **Limited Partnership**
  - In order to be effective, each limited partner must sign the certificate of limited partnership, or an amendment to the certificate of limited partnership containing this provision and must be notarized.

- **Limited Liability Partnership**
  - In order to be effective, each partner must sign the application of registered limited liability partnership, or an amendment to the application of registered limited liability partnership containing this provision and must be notarized.

- **LLC**
  - In order to be effective, each member so identified must sign the articles, or an amendment to the articles containing this provision. The amendment or articles may provide that it is only effective if all members make and maintain such an election.
  - In such case, the articles must affirmatively identify each member and state that such persons constitute all the members of the limited liability company.
Penalties

- If the application or renewal for exemption is received late, a $200 penalty may be assessed.

- Any person who claims an exemption but fails to meet the qualifications shall be subject to all tax, penalty, and interest as applicable under the law.
Resources

- Application for Exemption/Annual Exemption Renewal
- Franchise and Excise Tax Return, Form 170
- Tenn. Code Ann. § 67-4-2008(a)(9)
For Additional Assistance

- Visit 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