

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING #97-01**

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

Whether [THE TAXPAYER] is subject to Tennessee franchise, excise taxes as a foreign corporation doing business in Tennessee when organized pursuant to IRC § 501(c)(2) and formed for the purpose of holding property and paying the income therefrom, less expenses, to its sole shareholder, which is a pension plan subject to the provisions of the Employee Retirement Income Security Act (ERISA).

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 his detriment.

FACTS

The Taxpayer is a [STATE A - NOT TENNESSEE] corporation organized and existing under the laws of the [STATE A]. The Taxpayer has filed for and received a Tennessee Certificate of Authority as a corporation for profit. The Taxpayer's office is [STATE B ADDRESS - NOT TENNESSEE]. The Taxpayer's federal employer identification number is [NUMBER]. A copy of The Taxpayer's Certificate of Incorporation is attached hereto as Exhibit 1 and a copy of The Taxpayer's Certificate of Authority is attached hereto as Exhibit 2.

The sole stockholder of The Taxpayer is the [COMPANY 1] Pension Trust - Plan #[NUMBER] (The Trust). The Trust is an organization subject to the provisions of the ERISA as set forth in 29 U.S.C. §§1001-1461. The address of The Trust is [STATE C ADDRESS - NOT TENNESSEE] and the employer identification number is [NUMBER]. A copy of the most recent I.R.S. Determination Letter for The Trust is attached hereto as Exhibit 3.

The Taxpayer has submitted an application to the Internal Revenue Service on Form 1024 for exemption from federal income tax under I.R.C. § 501(c)(2) as a corporation organized for the exclusive purpose of holding title to property, collecting income therefrom, and turning over the entire amount thereof, less expenses, to an organization which itself is a tax-exempt entity (i.e., The Trust). The sole purpose of The Taxpayer is to own, operate and hold, either directly or indirectly through a limited liability company (LLC), an interest in certain [BUSINESSES] located in Tennessee (The Property), on behalf of and for the sole benefit of The Trust.

It is anticipated that The Property will be acquired towards the end of [MONTH AND YEAR]. If the Tennessee Department of Revenue issues a favorable ruling in this matter, The Property will be acquired directly by The Taxpayer. In the event it is necessary to acquire title to The Property before a letter ruling is received, then (i) The Property will be acquired by a [STATE A] limited liability company of which The Taxpayer is a 1% member and The Trust is a 99% member and (ii) upon the subsequent receipt of a favorable Letter Ruling, The Trust would assign its membership interest in the LLC to The Taxpayer and the LLC would then, under [STATE A] law, merge into The Taxpayer. These transactions would result in The Taxpayer owning The Property directly.

ISSUE

Will The Taxpayer be subject to Tennessee corporate franchise, excise taxes?

RULING

No.

ANALYSIS

ERISA PREEMPTS ALL STATE TAX LAWS

Title 29 U.S.C. § 1144(a) and (c)(1) of the ERISA makes the following provisions:

(a) Except as provided in (b) of this section, the provisions of this title and Title IV shall supersede any and all state laws insofar as they may now or hereafter relate to any employee benefit plan described in § 4(a) (29 U.S.C.S. § 1003(a)) and not

exempt under § 4(b) (29 U.S.C.S. § 1003(b)). This section shall take effect on January 1, 1975.

(c)(1) The term 'State Law' includes all laws, decisions, rules, regulations, or other State action having the effect of law, of any State

It has been held that all state tax laws are preempted by ERISA, even those that are neutral laws of general application, unless the effect of a state law is merely tenuous, remote or peripheral. Even state tax laws of general application, representing a traditional exercise of state authority, may be preempted when they "relate" to ERISA plans. *Morgan Guaranty Trust Co. v. Tax Appeals Tribunal of New York State Dept. of Taxation and Finance*, 587 N.Y.S.2d 252 (Ct. App. 1992).

The Taxpayer will be created by The Trust, which is a pension plan subject to ERISA and which will own 100% of The Taxpayer's outstanding stock. All The Taxpayer's income, less necessary expenses, is passed through to the qualified pension plan. It appears that any Tennessee corporate franchise, excise taxes that would otherwise be applied to The Taxpayer are preempted by Title 29 U.S.C. 1144(a). Such taxes "relate" to the ERISA employee benefit plan of The Trust. If franchise, excise taxes were applied to The Taxpayer, funds that would be available to plan beneficiaries would be depleted. Structure and administration of the plan and the plan's investment strategy would also be affected. This would defeat the purpose of Congress in enacting ERISA Legislation. *Id.* at 256.

Under the facts presented, The Taxpayer will not be subject to Tennessee franchise, excise taxes.

Arnold B. Clapp, Senior Tax Counsel

APPROVED: _____
Ruth E. Johnson, Commissioner

DATE: 1-22-97