

PUBLICATION

Spotlight on Tennessee: DOR Clarifies Franchise and Excise Tax Classification of SMLLCs and Series LLCs

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In November, the Tennessee Department of Revenue (Department) issued two notices to help clarify Franchise and Excise Tax classification of single member LLCs (SMLLCs) and series LLCs.

For Franchise and Excise Tax purposes, Tennessee generally does not conform to the federal tax treatment of single member SMLLCs. That is, even if a SMLLC has not elected to be taxed as a corporation for federal tax purposes, Tennessee will still treat the SMLLC as a separate taxable entity for Franchise and Excise Tax purposes. The exception is an SMLLC that is owned by a corporation. If an SMLLC owned by a corporation is a disregarded entity for federal tax purposes, such SMLLC will likewise be a disregarded entity for Tennessee Franchise and Excise Tax purposes.

A footnote in Letter Ruling No. 11-46 (Sept. 12, 2011) suggested that an SMLLC would not be treated as a disregarded entity for Franchise and Excise Tax purposes even if it is disregarded for federal purposes, if the SMLLC is owned by a multiple member LLC or limited partnership that had elected to be taxed as a corporation for federal tax purposes. However, in Notice #13-16 (November 2013), the Department has clarified that a federally disregarded SMLLC that is owned by a limited partnership, multiple member LLC or other entity that has elected to be taxed as a corporation for federal purposes will also be disregarded as a separate taxable entity for Tennessee Franchise and Excise Tax purposes.

Separately, Notice #13-15 (November 2013) addresses the Department's treatment of a series LLC. A series LLC statute allows the separate assets, liabilities and businesses of an LLC to be placed in separate LLCs, or a "series," that is ultimately owned by a "master LLC." For federal tax purposes, each individual LLC or series is separately classified. Thus, a master LLC that is a multiple member LLC could elect to be taxed as a corporation or could default to partnership tax classification. Likewise, each series of LLCs under the master LLC that are SMLLCs could elect to be taxed as a corporation or default to disregarded entity tax treatment. In Notice #13-15, the Department clarifies that each series will be treated as a separate entity for purposes of determining its tax treatment for Tennessee Franchise and Excise Tax purposes. As a result, if the master LLC elects to be taxed as a corporation for federal tax purposes, then each series that is a SMLLC and treated as a disregarded entity for federal tax purposes would also be a disregarded entity for Tennessee Franchise and Excise Tax purposes. Conversely, if the master LLC defaulted to federal partnership tax treatment, then each series would be treated as a separate taxable entity for Tennessee Franchise and Excise Tax purposes. Notice #13-15 also provides guidance on registration, tax return filing, tax exemptions and terminations of a series LLC and the component members.

If you have questions regarding either of the above notices or would like to discuss other issues concerning the Tennessee tax treatment of LLCs, please contact one of the attorneys in the Firm's Tax Group.