Private Letter Ruling
Redacted Version
No. 05-014

Corporation Income Tax and Corporation Franchise Tax
The Availability of the Louisiana Net Operating Loss
Subsequent to a Corporate Reorganization
December 28, 2005

This is in reply to your request for a private letter ruling concerning the availability of a Louisiana net operating loss subsequent to corporate reorganization where by a Texas corporation ("T Corp 1"), would merge into a Texas LLC ("T LLC"), with T LLC as the surviving entity.

Factual Scenario
You provided these facts:

T Corp 1, a Texas corporation, holds a Louisiana Certificate of Authority and is subject to corporation income tax. Its operations have generated a Louisiana net operating loss for Louisiana corporation income tax purposes.

Step 1. T Corp 1 will form, another Texas corporation, ("T Corp 2") as a 100%-owned subsidiary. T Corp 1 will then be the parent of T Corp 2, and T Corp 2 will be a 100%-owned subsidiary of T Corp 1.

Step 2. T Corp 2 will form T LLC, a Texas limited liability company, as a 100%-owned subsidiary. T Corp 2 will make an election under federal income tax regulations to treat T LLC as an association taxable as a corporation. Under the entity classification rules of the Internal Revenue Service (the so-called "check-the-box" rules), T LLC will be treated as a corporation for both federal income tax and corporation income tax purposes. However, T LLC will be a limited liability company ("LLC") for business organization purposes.

Step 3. Under Texas state law, T Corp 1 will merge into T LLC on or before December 31, 2005. T Corp 1 will, therefore, cease to exist, and by operation of law its assets and liabilities will be owned by T LLC. T Corp 2 will then be the parent of T LLC, and T LLC will be a 100%-owned subsidiary of T Corp 2. T LLC will continue to be treated as a corporation for both federal income and corporation income tax purposes.

As a result of this merger, T Corp 2 will effectively be the parent of the group and T Corp 2 will own T LLC directly.

Step 4. T Corp 2 will form a Delaware corporation ("D Corp"). T Corp 2 will then be the parent of D CORP, and D CORP will be a 100%-owned subsidiary of T Corp 2.

Step 5. Immediately after the formation of D CORP, T Corp 2 will contribute the membership interests of T LLC (the Texas LLC formed in Step 2) to D CORP. D CORP will then be the parent of T LLC, and T LLC will be a 100%-owned subsidiary of D CORP. T LLC will continue to be treated and taxed as a corporation for both federal income and corporation income tax purposes.

Ruling Request

You have asked for a ruling on the following:

The net operating loss currently carried forward for Louisiana corporation income tax purposes by T Corp 1 before its merger into T LLC will be preserved and available for use by T LLC to offset Louisiana taxable income generated subsequent to the merger. The net operating loss will be subject to the same limitations on utilization as would have applied to T Corp 1.

Discussion

In your analysis, you stated:

T LLC will succeed to the net operating loss carried forward by T Corp 1 prior to T Corp 1's merger into T LLC (Step 3 above), and subject to the same limitations on utilization as would have applied to T Corp 1.

The general rule under the corporation income tax is that corporations in corporate reorganizations inherit the net operating losses of their transferor corporations. The corporation income tax statute states in part as follows:

> I. Net operating loss carryovers.
>
> (1) Notwithstanding any other provisions of this Chapter to the contrary, the acquiring corporation shall succeed to and take into account, as of the close of the day of distribution or transfer, the aggregate net operating loss carryovers of the distributors or transferor corporation as determined under this Section, subject to federal law and the limitations provided thereunder. LA. REV. STAT. ANN. §47:287.86(I)(1).

In the corporate reorganization proposed by T Corp 1 (please see Step 3 of the discussion of the proposal in Section II above), T Corp 1, a Texas corporation, would merge into T LLC, a Texas LLC, with T LLC as the survivor. The merger would take place under Texas law, which specifically allows the merger of corporations into LLCs.

Under Texas law, "A domestic corporation may adopt a plan of merger and one or more domestic corporations may merge with one or more domestic or foreign corporations or other entities … ." TEX. BUS. CORP. ACT ART. 5.01(A). The statute defines "merger" as "the combination of one or more domestic corporations with one or more domestic or foreign corporations or other entities resulting in (i) one or more surviving domestic or foreign corporations or other entities … ." TEX. BUS. CORP. ACT ART. 1.02(A)(18). LLCs are within the purview of the term "other entity" under Texas law: "Other entity' means any entity, whetheorganized for profit or not, that is a … limited liability company … or other legal entity organized pursuant to the laws of this state or any other state or country." TEX. BUS. CORP. ACT ART. 1.02(A)(20).

T Corp 1's business assets and operations have generated Louisiana net operating losses that are available against Louisiana corporation income tax, subject to the limitations of federal and Louisiana law. The merger of T Corp 1 into T LLC will by operation of law transfer these net operating losses and the operating assets that created the net operating losses to T LLC. The Merger Agreement between T Corp 1 and T LLC will provide that T LLC will be the successor entity to T Corp 1 pursuant to state law.

T LLC will be a LLC that will be 100%-owned by T Corp 2, and will make a "check-the-box" election to be treated and taxed as a corporation for federal and Louisiana income tax purposes. Louisiana corporation income tax law conforms to the federal income tax treatment of unincorporated entities under the check-the-box rules. T LLC, as a corporation for federal tax purposes, will succeed to the T Corp 1's net operating loss pursuant to Internal Revenue Code § 381(a)(2) and Treasury Regulation 1.381(c)(1)-1(a)(1). T LLC will be treated as a corporation for federal tax purposes pursuant to Internal Revenue Code §7701 and Treasury Regulation 301.7701-3(a) on or before the date of the merger.

Louisiana statutory law makes it clear that for corporation income tax purposes, LLCs are treated and taxed in the same manner as they are treated for federal income tax purposes. Revenue Information Bulletin No. 03-015, LA. REV. STAT. ANN. §12:1368. T LLC will therefore be treated as a corporation for federal income and corporation income tax purposes. Pursuant to LA. REV. STAT. ANN. §47:287.86(I)(1), T LLC shall succeed to and take into account, as of the close of the day of distribution or transfer, the aggregate net operating loss carryovers of T Corp 1, subject to federal law and the limitations provided thereunder.

Ruling

Based on the facts and analysis that you provided, we agree with your conclusion and rule that T LLC will succeed to the net operating loss carried forward by T Corp 1 prior to T Corp 1's merger into T LLC and will be subject to the same limitations on utilization that applied to T Corp 1.

If you have any questions or need additional information, please call Michael Pearson, Senior Policy Consultant or Nina S. Hunter, Attorney, Policy Services Division, at 219-2780.

Sincerely,
Cynthia Bridges
Secretary

By:
Nina S. Hunter, Attorney
Policy Services

This correspondence constitutes a private letter ruling (PLR) by the Louisiana Department of Revenue, as provided for by section 61:III.101 of the Louisiana Administrative Code. A PLR provides guidance to a specific taxpayer at the taxpayer's request. It is a written statement that applies principles of law to a specific set of facts or a particular tax situation. A PLR does not have the force and effect of law, and is not binding on the person who requested it or on any other taxpayer. This PLR is binding on the department only as to the taxpayer to whom it is addressed, and only if the facts presented were truthful and complete and the transaction was carried out as proposed. It continues as authority for the department's position unless a subsequent declaratory ruling, rule, court case, or statute supersedes it.