



**Policy Services Private Letter Ruling
Redacted Version
No. 05-015**

**Corporation Income Tax and Corporation Franchise Tax
Liability of Limited Liability Companies for Corporation Franchise Tax
December 28, 2005**

This is in reply to your request for a private letter ruling addressing the liability of a Texas LLC (“T LCC”) to Louisiana for corporation franchise tax.

Factual Scenario

You provided these facts:

Texas corporation (“T Corp 1”) is a corporation with a Louisiana Certificate of Authority and is subject to the corporation franchise tax.

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

Step 2. T Corp 2 will form T LLC, which will be a 100 percent-owned subsidiary of T Corp 2. T Corp 2 will make an election to treat T LCC 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 LCC will be treated as a corporation for both federal income tax purposes and for the corporation income tax. However, T LCC will be formed as a LLC for business organization purposes.

Step 3. Under Texas state law, T Corp 1 will merge into T LCC 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 LCC. T Corp 2 will then be the parent of T LCC and T LCC will be a 100 percent-owned subsidiary of T Corp 2. T LCC will continue to be treated and taxed 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 LCC 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 percent-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 LCC (the Texas LLC formed in Step 2) to D CORP. D CORP will then be the parent of T LCC and T LCC will be a 100 percent-owned subsidiary of D CORP. T LCC will

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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:

T LCC, a to-be-formed LLC, that checks the box to be taxed and treated as a corporation for federal tax purposes, will not be subject to the corporation franchise tax.

Discussion

You also provided this in your analysis:

T LCC will be formed as a LLC and will be treated and taxed as a corporation for both federal income and corporation income tax purposes. However, the Louisiana Department of Revenue (the "Department") has ruled that an election under the federal check-the-box regulations has no effect on the treatment of an entity for corporation franchise tax purposes. Rev. Rul. No. 01-013., La. Dep't Rev. (Oct. 1, 2001).

Instead, Louisiana statutory law treats LLCs as if they are limited partnerships for all tax purposes other than the corporation income tax. La. Rev. Stat. Ann. §12:1368. Specifically, for corporation franchise tax purposes, T LCC will be treated as if it were a limited partnership. Since limited partnerships are not subject to the corporation franchise tax, T LCC will not be subject to the corporation franchise tax. Rev. Rul. No. 02-018., La. Dep't Rev. (Oct. 22, 2002), Rev. Info. Bull. No. 03-015 (Aug. 25, 2003).

Ruling

Based on the facts and analysis that you provided, we agree with your conclusion and rule that T LCC, a to-be-formed LLC, that checks the box to be taxed and treated as a corporation for federal tax purposes, will not be subject to the corporation franchise tax. 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.