

Income/Franchise:

Tennessee Letter Ruling Addresses NOL and Credit Utilization Following IRC §368(a)(1)(F) Reorganization

Revenue Ruling No. 24-09, Tenn. Dept. of Rev. (11/5/24). A Tennessee Department of Revenue (Department) letter ruling addresses utilizing Tennessee net operating losses (NOLs) and tax credits against future Tennessee franchise and excise tax liabilities following a reorganization under IRC section 368(a)(1)(F), and concludes that based on the provided facts, the taxpayer at issue may be able to use the Tennessee attributes at issue against its applicable future Tennessee franchise and excise tax liabilities pursuant to Tennessee’s “carryover exception” given that it is a successor company that had no income, assets, liabilities, equity or net worth when the underlying operating company merged into the taxpayer and out of existence through the mechanisms of an “F reorganization.” Accordingly, in this case, the taxpayer may utilize the NOLs and tax credits generated by the underlying operating company.

URL: <https://www.tn.gov/content/dam/tn/revenue/documents/rulings/fae/24-09fe.pdf>

Under Tennessee’s “carryover exception,” the letter ruling explains that when a predecessor taxpayer merges out of existence and into a successor taxpayer that has no income, expenses, assets, liabilities, equity, or net worth, the predecessor’s qualified NOLs and Tennessee tax credits generally may be carried over and utilized on the successor’s Tennessee franchise and excise tax return. According to the ruling, by requiring the predecessor to merge into a “shell company,” this exception accounts for the restructuring while also preventing the NOLs and tax credits from merging into an already existing company – thus, “the shell company provision allows for a taxpayer to restructure itself and maintain its NOLs and tax credits while also preventing the taxpayer from working around the requirement that NOLs and tax credits may be utilized only by the taxpayer that generated them.” Please contact us with any questions.

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