

CHAPTER NO. 932**HOUSE BILL NO. 3545****By Representatives McMillan, Maddox****Substituted for: Senate Bill No. 3449****By Senators Crutchfield, Kilby, Cohen**

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4, relative to franchise and excise taxes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-2004, is amended by adding the following new subdivisions:

() “Affiliated group” means (A) a taxpayer that, standing alone, is subject to Tennessee franchise tax, (B) all other domestic persons in which the taxpayer, directly or indirectly, has more than fifty percent (50%) ownership interest, (C) all other domestic persons that, directly or indirectly, have more than fifty percent (50%) ownership interest in the taxpayer, and (D) all other domestic persons in which a person described in subdivision (C), directly or indirectly, have more than fifty percent (50%) ownership interest, regardless of whether such persons do business in Tennessee. For purposes of this subdivision, a non-corporate taxable entity is more than fifty percent (50%) owned if upon liquidation more than fifty percent (50%) of the assets of the non-corporate taxable entity, directly or indirectly, accrue to a member or members of the affiliated group.

() “Domestic person” means any person with more than twenty percent (20%) of the average of its property, payroll and receipts factors, as each factor is calculated for a separate entity under § 67-4-2111, in the United States.

() “Financial institution affiliated group” means any affiliated group in which more than fifty percent (50%) of the group’s aggregate gross income (excluding dividends and receipts resulting from transactions between members) is derived from conducting the business of a financial institution as defined in §67-4-2004(2)(A). For purposes of this subdivision (), the computation of gross income of a member does not include income from nonrecurring, extraordinary transactions.

SECTION 2. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following sentence immediately after the first sentence of subsection (b):

A taxpayer electing to compute its net worth on a consolidated basis shall compute its quarterly estimated franchise and excise tax payments taking into consideration that its net worth will be computed on a consolidated basis.

SECTION 3. Tennessee Code Annotated, Section 67-4-2015, is amended by adding the following sentence immediately after the first sentence and immediately prior to the second sentence of subsection (g):

A taxpayer electing to compute its net worth on a consolidated basis shall make its franchise, excise tax extension request and compute the payment thereon taking into consideration that its net worth will be computed on a consolidated basis.

SECTION 4. Tennessee Code Annotated, Section 67-4-2103, is amended by adding the following new subsections:

(d) Notwithstanding any law to the contrary, for tax years beginning on or after January 1, 2004, a taxpayer that is a member of an affiliated group or a financial institution affiliated group may elect to compute its net worth on a consolidated basis; provided, that upon such election, each member of the group shall be required to compute its net worth on a consolidated basis.

(e) If a taxpayer joins an affiliated group or financial institution affiliated group and the group has elected to compute its net worth on a consolidated basis, the taxpayer joining the group shall be bound by the group's election.

(f) If an affiliated group does not qualify as a financial institution affiliated group but contains a member that is classified as a financial institution based solely on the fact that it generates more than fifty percent (50%) of its gross income from conducting the business of a financial institution then any such member shall calculate its net worth base using the apportionment methodology applicable to the entire group.

(g) A taxpayer electing to compute its net worth on a consolidated basis shall make such election by filing a group registration form with the department and providing such information as may be reasonably required by the commissioner on or before the due date of the tax return for the period for which such election is to take effect. If a member of an affiliated group or a financial institution affiliated group enters or leaves the group at any time during the tax year, the department shall be advised by filing an amended group registration form and providing such information as the commissioner may reasonably require on or before the due date of the tax return for the period during which such event occurs. The election of an affiliated group to compute its net worth on a consolidated basis shall not be terminated solely as a result of the taxpayer's failure to advise the department of members entering or leaving the group.

(h) Once a taxpayer elects to compute its net worth on a consolidated basis, such election shall remain in effect for a minimum of five (5) tax years and thereafter until revoked. The affiliated group may revoke such election after the minimum period by filing a group registration revocation form with the department and providing such information as the commissioner may reasonably require on or before the due date of the tax return for the period during which such election is to be revoked.

(i) The commissioner is authorized to accept a late election, a late revocation of an election, or to permit an early revocation of an election to compute net worth on a consolidated basis if the commissioner determines that there is a good and reasonable cause for such action. For tax returns filed for periods beginning January 1, 2004 and ending on or before December 31, 2006, an affiliated group shall be allowed to compute its net worth on a consolidated basis by filing an amended return along with a group registration form and such information as may be reasonably required by the commissioner.

SECTION 5. Tennessee Code Annotated, Section 67-4-2106, is amended by adding the following sentence at the end of subsection (b):

For a taxpayer electing to compute its net worth on a consolidated basis, net worth is defined as the difference between the total assets less the total liabilities of the affiliated group at the close of business on the last day of the tax year as shown by a pro forma consolidated balance sheet including all members of the group. The pro forma consolidated balance sheet shall be prepared in accordance with generally accepted accounting principles wherein transactions and holdings between members of the group and holdings in non-domestic persons have been eliminated.

SECTION 6. Tennessee Code Annotated, Section 67-4-2107, is amended by deleting subsection (b) in its entirety and relettering the remaining subsections accordingly.

SECTION 7. Tennessee Code Annotated, Section 67-4-2111(b), is amended by adding the following new subdivisions (2) and (3) and renumbering the remaining subdivisions accordingly:

(2) For a taxpayer electing to compute its net worth on a consolidated basis, the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property, excluding exempt inventory as defined in § 67-4-2108(a)(6)(B), owned or rented and used in this state during the tax period, and the denominator of which is the average value of the group's real and tangible personal property, excluding exempt inventory, owned or rented and used during the tax period. Exempt inventory shall be determined on a per member basis. Property owned by the taxpayer is valued at its original cost. Property rented by the taxpayer is valued at eight (8) times the net annual rental rate. The property factor shall be determined based on a pro forma consolidated balance sheet prepared in accordance with generally accepted accounting principles wherein transactions and holdings between members of the group and holdings in non-domestic persons have been eliminated.

(3) If a member of an affiliated group apportions its income in accordance with §67-4-2013(a), then for purposes of computing its net worth on a consolidated basis, the member shall compute the numerator of its property factor as follows:

(A) The numerator shall include the average value of the taxpayer's real and tangible personal property, excluding exempt inventory as defined in §67-4-2108(a)(6)(B), owned or rented and used in this state during the tax period.

(i) In determining the average value of mobile property to be included in the numerator, the value of such property shall be multiplied by a fraction the numerator of which is the total in-state miles of similarly classified mobile property and the denominator of which is the total everywhere miles of similarly classified mobile property.

(ii) For purpose of computing the fraction in part (i) above, in-state miles and everywhere miles shall be calculated in accordance with the appropriate provisions of § 67-4-2013(a). For purposes of determining whether mobile property is similarly classified, the classification groupings enumerated in §67-4-2013(a)(1)-(6) shall be used.

SECTION 8. Tennessee Code Annotated, Section 67-4-2111(e), is amended by adding the following new subdivisions (2) and (3) and renumbering the remaining subdivisions accordingly:

(2) For a taxpayer electing to compute its net worth on a consolidated basis, the payroll factor is a fraction, the numerator of which is the total amount paid in this state during the tax period by the taxpayer for compensation, and the denominator of which is the total compensation of the group paid everywhere during the tax period. The payroll factor shall be determined at the close of business on the last day of the tax year as shown by a pro forma consolidated income statement prepared in accordance with generally accepted accounting principles wherein transactions and holdings between members of the group and holdings in non-domestic persons have been eliminated.

(3) If a member of an affiliated group apportions its income in accordance with §67-4-2013(a), then for purposes of computing its net worth on a consolidated basis, the member shall compute the numerator of its payroll factor as follows:

(A) The numerator shall include the total amount paid in this state during the tax period by the taxpayer for compensation.

(i) In determining the portion of compensation to be included in the numerator for personnel performing interstate services, the total compensation for such personnel shall be multiplied by a fraction the numerator of which is the total in-state miles traveled by personnel operating similarly classified mobile property and the denominator of which is the total everywhere miles traveled by personnel operating similarly classified mobile property.

(ii) For purposes of computing the fraction in part (i) above, in-state miles and everywhere miles shall be calculated in accordance with the appropriate provisions of §67-4-2013(a). For purposes of determining whether mobile property is similarly classified, the classification groupings enumerated in §67-4-2013(a)(1)-(6) shall be used..

SECTION 9. Tennessee Code Annotated, Section 67-4-2111(g), is amended by adding the following new subdivisions (2) and (3) and renumbering the remaining subdivisions accordingly:

(2) For a taxpayer electing to compute its net worth on a consolidated basis, the receipts factor is a fraction, the numerator of which is the taxpayer's total receipts in this state during the tax period, and the denominator of which is the group's total receipts during the tax period. The receipts factor shall be determined for the group at the close of business on the last day of the tax year as shown by a pro forma consolidated income statement prepared in accordance with generally accepted accounting principles wherein transactions and holdings between members of the group and holdings in non-domestic persons have been eliminated.

(3) If a member of an affiliated group apportions its income in accordance with §67-4-2013(a), then for purposes of computing its net worth on a consolidated basis, the

member shall compute the numerator of the receipts factor in accordance with the appropriate provisions of §67-4-2013(a).

SECTION 10. Tennessee Code Annotated, Section 67-4-2118, is amended by adding the following new subsection:

(e) A financial institution affiliated group electing to compute its net worth on a consolidated basis shall compute its tax in the following manner:

(1) The financial institution affiliated group shall prepare a pro forma consolidated balance sheet in accordance with generally accepted accounting principles wherein transactions and holdings between members of the group and holdings in non-domestic persons have been eliminated.

(2) The consolidated net worth for the financial institution affiliated group shall be the difference between total assets less the sum of (A) total liabilities shown on the consolidated balance sheet prepared pursuant to subdivision (1) above and (B) twenty-five percent (25%) of the financial institution affiliated group's securities classified as held to maturity or available for sale as shown on the group's accounting statements prepared in accordance with generally accepted accounting principles at the close of business on the last day of the tax year as shown by a pro forma consolidated balance sheet.

(3) Each member of the group shall apportion its net worth to Tennessee by multiplying the net worth of the entire financial institution affiliated group as computed under subdivision (2) by a fraction, the numerator of which is the total gross receipts of the member attributable to Tennessee during the tax period, and the denominator of which is the aggregate gross receipts of all members of the group during the tax period. For purposes of § 67-4-2118(e)(3), receipts shall be determined as follows:

(A) Dividends and receipts resulting from transactions between members of the group shall be excluded from both the numerator and denominator;

(B) If the member is a financial institution, then for purposes of calculating the member's numerator, receipts shall be attributed to Tennessee in a manner consistent with the provisions of subsection (d);


(C) If a member is not a financial institution, then for purposes of calculating the member's numerator, receipts shall be attributed to Tennessee in a manner consistent with § 67-4-2111(h) through (k);

(D) The denominator shall consist of the total gross receipts of all members of the group during the tax period and shall be determined by adding the unitary group's total gross receipts derived from the activities enumerated in § 67-4-2118(d)(1)-(10) and the total gross receipts of all non-unitary group members as determined in accordance with § 67-4-2111(g)(1) and (2) during the tax period.

(4) The unitary members of the financial institution affiliated group shall report and pay the franchise tax computed under this section on a combined return. As such, the unitary group shall pay franchise tax on the greater of the unitary group's combined apportioned equity or the unitary group's combined minimum tax base calculated in accordance with § 67-4-2108. The non-unitary members of the financial institution affiliated group shall report and pay the franchise tax computed under this section on a separate entity basis. As such, the non-unitary members shall pay franchise tax on the greater of apportioned net worth as calculated on a consolidated basis or the non-unitary member's minimum tax base as determined in accordance with § 67-4-2108.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it, and shall apply to all tax years beginning on or after January 1, 2004, the public welfare requiring it.

PASSED: May 20, 2004


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES


JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 7th day of June 2004


PHIL BREDESEN, GOVERNOR