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## TENNESSEE LEGISLATURE AMENDS EXEMPTION FOR FRANCHISE AND EXCISE TAX

The Tennessee Legislature has amended the exemption statute for Tennessee Franchise Tax and Excise Tax that formerly existed for a family-owned non-corporate entity ("FONCE"). In general, the FONCE exempts an entity from Tennessee Franchise and Excise Tax where substantially all of the activity of the entity is either the production of passive investment income or the combination of the production of passive investment income and farming (TCA §67-4-2008). "Family owned" is defined, in general, as at least 95% of the ownership units of the entity being held by members of the family (which has a reasonably broad definition). "Passive investment income" was defined as gross receipts derived from royalties, rents, dividends, interest, annuities, and sales or exchanges of stock or securities.

The new legislation, called the Department of Revenue Technical Corrections Bill, changed the definition of "rents" for purposes of the FONCE and replaced it with the term "rents from residential property or farm property." In effect, what the new legislation has done is deleted rent from industrial and commercial property from qualifying as passive investment income for purposes of the FONCE exemption.

Also, the new legislation requires every person claiming an exemption from Franchise and Excise taxation to file an Application For Renewal of Exemption every year by the 15<sup>th</sup> day of the fourth month following the close of the person's tax year. Failure to file such application in a timely manner will result in a \$1,000.00 penalty.

Unfortunately, the Legislature and the Governor did not see fit to give much notice. The legislation was signed on June 25, 2009, and the portion dealing with the limitation on the FONCE exemption became effective July 1, 2009. All limited partnerships and limited liability companies that receive rental income from commercial and industrial property that previously qualified for the FONCE exemption will now be subject to Tennessee Franchise and Excise Tax for the rental income from commercial and industrial property.

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This letter is intended to provide you with ideas for consideration in estate planning business. It is not intended to give a general solution applicable to all apparently similar individual problems, since slight changes in facts may require variance in legal advice. Please contact legal counsel with specific questions.