

Ruling 2002-01

Vermont Department of Taxes

Dated: January 4, 2002

Written By: George Phillips, Policy Analyst

Approved By: Janet Ancel, Commissioner of Taxes

You have requested a ruling on the question of [company] status as an investment and holding company described in 32 V.S.A. § 5837. This ruling relies on information provided in your letters of October 12, 2001 and December 15, 2000.

Factual Background

[company], [company], [company], and [company] are affiliated corporations with [company] being the indirect parent. [company] and [company] are wholly owned subsidiaries of [company].

At all times during 2001, [company] has limited its activities to maintaining and managing its intangible investments and the collection and distribution of income from such investments. Its principal asset consists of intercompany loans to [company]. To the extent that [company] has cash that has not been loaned to [company], such cash is in checking and money market accounts with a Vermont branch of [bank] or is invested in short-term obligations through an investment account with the [bank].

A has entered into a loan agreement with [company] whereby [company] has agreed to extend credit in amounts approved from time to time for periods not to exceed sixty days. Each loan bears interest at the "CDOR Rate" plus a "market spread". The CDOR Rate is average rate for Canadian dollar denominated bankers acceptances for an equivalent term. To the extent [company] has funds not loaned to [company] the funds are invested in portfolio investments. A has one full-time employee, its president, who facilitates the intercompany loans and manages the portfolio investments. A also has one part-time employee who is responsible for these functions when the president is unavailable and one part-time clerk.

The parties contemplate a merger of [company] into [company] and the resulting company continuing the above activity. The activities may also be expanded to include holding loans of other affiliates and the acquisition of certain trademarks, tradenames and similar intellectual property from [company] or other affiliates of [company]. A would license this intellectual property in consideration for the licensees' promise to pay royalties based on sales or other indicia of the licensee's use.

Discussion

Section 5837 of title 32, titled "Investment and holding companies", provides as follows:

The tax imposed by this subchapter [corporation income tax] as it applies to corporations whose activities are confined to the maintenance and management of their intangible investments and the collection and distribution of income from such investments or from tangible property physically located outside this state shall not exceed the \$150.00 minimum tax provided by section 5832 of this title. For the purpose of this section "intangible investments" shall include without limitation investments in stocks, bonds, notes and other debt obligations (including obligations of affiliated corporations), patents, patent applications, copyrights, trademarks, trade names and similar types of intangible assets.

None of the activities of [company] or [company], as described above, are outside the activities allowed in § 5837. The statute contemplates the management of passive investments (rather than active business operations). In determining whether a corporation's activities are within the scope of § 5837, the Department considers the presence of an investment intent, the lack of non-investment activity (such as marketing), and whether the investment is effectively a diversion of operating income of an affiliate. In the context of the entire operation, the intercompany loans qualify as investments.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of the ruling showing the proposed deletions is attached, and you may request, within 30 days, that the Commissioner delete any further information which might tend to identify interested parties. The final discretion as to deletions, however, remains with the Commissioner.

This ruling is issued solely to your business and is limited to the facts presented as affected by current statutes and regulations. Other taxpayers may refer to this ruling to determine the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statute or regulations.

3 V.S.A. § 808 provides that this ruling will have the same status as an agency decision or order in a contested case. You have the right to appeal this ruling within thirty (30) days.