

DIVISION OF REVENUE

TECHNICAL INFORMATION MEMORANDUM 2004-4

DATE: DECEMBER 15, 2004

SUBJECT: HEADQUARTERS MANAGEMENT CORPORATION

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BACKGROUND

House Bill 403 of the 142nd General Assembly creates a new Chapter 64 of Title 30 of the **Delaware Code**. This new chapter relates to the formation, powers and taxation of a new corporate entity known as a Delaware Headquarters Management Corporation (HMC). The purpose of this legislation and the creation of the HMC is to allow for the opportunity to attract investment management activities and headquarter support operations to the State of Delaware to create new employment within the State.

QUALIFICATION AND ELECTION

Any corporation may elect to be classified as an HMC if the corporation limits its activities in Delaware to investment activities and/or providing headquarters management services to itself and to members of its affiliated group. The election to become an HMC may be made anytime before the last day of the end of the first taxable year commencing after December 31, 2003. An election shall remain in effect until terminated by revocation by the taxpayer or the taxpayer's failing to limit its activities in this State to headquarters services or investment activities.

DEFINITIONS

Section 6401(c) of 30 **Del. C.** defines “**investment activities**” as: the maintenance and management by an HMC of its intangible investments and the collection and distribution of the income from such investments or from tangible property physically located outside this State. Section 6401(b) of 30 **Del. C.** defines “**headquarters management services**” as: accounts receivable and payable, employee benefit plan, insurance, legal, payroll, data processing, purchasing, and tax, financial and securities accounting, reporting and compliance services provided by an HMC to itself and members of its affiliated group, and the maintenance and management of the intangible investments of other members of its affiliated group.

TAXATION

An HMC will pay an annual tax that is the greater of the sum of 8.7% of its HMC taxable income derived from headquarters services activities, not including investment income; and 4% of its HMC taxable income derived from its investment activities or \$5,000. An HMC shall be credited with the amount of tax the income upon which tax was also paid, with respect to the taxable year, to any other state of the United States or the District of Columbia.

ALTERNATIVE CALCULATION OF TAXABLE INCOME

House Bill 403 of the 142nd General Assembly also creates a new Subchapter VII to Chapter 20, 30 Del. C. that offers an alternative calculation of Delaware taxable income of the HMC and also offers employment tax credits. Section 2061(a), 30 Del. C. contains an alternative method for a newly formed HMC. Section 2061(b), 30 Del. C. contains an alternative method for an HMC that previously conducted business in Delaware prior to its HMC election.

REDUCTIONS IN TAXABLE FOR EMPLOYMENT AND/INVESTMENT

Section 2061(a) provides a 20% tax reduction in taxable income for each qualified employee of the HMC and/or a 2% tax reduction for each expenditure (not including wages/salaries/benefits) by the HMC in Delaware of \$7,500 in excess of 100% of the HMC's operating expenses for the most recent tax year ending before the effective date of its original license.

Section 2061(b) provides a 20% tax reduction for each qualified employee of the HMC that is 25% or more greater than the number of individuals employed within this state before the effective date of its original license and/or a 2% tax reduction for each expenditure (not including wages/salaries/benefits) by the HMC in Delaware of \$7,500 in excess of 125% of the HMC's operating expenses for the most recent tax year ending before the effective date of its original license.

The alternative Delaware taxable income calculations Section 2061 is available during each of the ten years commencing with the first taxable year beginning on the effective date of the HMC's original license. The maximum amount of tax reduction is 99%. The maximum amount of tax reduction can not exceed a minimum annual HMC income tax of \$5,000.

TAX CREDITS FOR NEW EMPLOYMENT

In addition to the reduction in taxable income, section 2063 provides that any qualified HMC, during any 12 month taxable year, that employs 5 or more qualified employees is entitled to a \$400/employee income tax credit. The amount of the credit allowable for each taxable year shall not exceed 50% of the amount of tax imposed by this Chapter upon the HMC that is in excess of the \$5,000 minimum tax nor shall the employment tax credit reduce the tax imposed upon the HMC below the \$5,000 minimum tax. The employment tax credit and any carryover of the unused tax credit are limited to a 5 year life.

FILING REQUIREMENTS

A qualified HMC will be required to file an annual income tax return and pay a tax in lieu of the taxes imposed under Chapter 19 of Title 30 of the Delaware Code. Such return shall be due on the first day of the fourth month immediately following the end of the taxable year. The HMC's Delaware taxable income for any year means the amount of its federal taxable income as computed for federal income tax purposes and subject to the specific allocation and apportionment provisions contained in Section 6403(a) and Section 6403(b), 30 Del. C.

A tentative tax return, covering estimated income tax liability for the current taxable year, shall be filed with the Division of Revenue on or before the first day of the fourth month of the current taxable year. For calendar year corporations, 25% of the estimated tax liability for the current taxable year shall each be paid with the tentative return required to be filed on or before April 1 of the current taxable year, the 15th day of June of the current taxable year, the 15th day of September of the current taxable year and the 15th day of January of the immediately following taxable year. For fiscal year corporations, 25% of the estimated tax liability for the current taxable year shall each be paid with the tentative return required to be filed on or before the 1st day of the 4th month of the current taxable year, the 15th day of the 6th month of the current taxable year, the 15th day of the 9th month of the current taxable year and the 15th day of the 1st month of the immediately following taxable year. Tentative tax declarations and payments are not required for returns for taxable periods of less than 92 calendar days and any additional tax as computed in the final return shall be paid with the final return.

ANNUAL LICENSE FEE

An HMC is required to obtain an occupational business license pursuant to 30 **Del. C.**, § 2301(27). The annual license fee is \$5,000. Affiliates of the HMC are subject to an annual license fee of \$500 for each affiliate electing to be a Headquarters Management Company. An HMC is exempt from sections (b) and (d) of Section 2301 relating a General Service license and the payment of gross receipts tax.

Form 6401-HMC, APPLICATION AND ELECTION FOR A HEADQUARTERS MANAGEMENT CORPORATION BUSINESS LICENSE must be completed and submitted with the appropriate license fee to the Director of Revenue.

Please contact Ron Kaminski, 302-577-8448, or by email at ronald.kaminski@state.de.us if you have any questions regarding this notice.

Patrick T. Carter

Director of Revenue