

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



**FISCAL NOTE**

**HB 1080 - SB 1198**

March 10, 2019

**SUMMARY OF BILL:** Expands the definition of “passive investment income,” to include rents from commercial properties, thereby exempting such rental income from excise tax for any family-owned noncorporate entity (FONCE) which also qualifies as an obligated member entity (OME).

**ESTIMATED FISCAL IMPACT:**

**NOT SIGNIFICANT**

Assumptions:

- Currently, OMEs are exempt from franchise and excise tax, including that which would otherwise be levied against any commercial rent income collected.
- OMEs are, however, liable for all debts of the limited liability company (LLC) or limited partnership (LP), and must carry liability insurance.
- FONCEs are currently exempt from franchise and excise tax if the entity meets the following two criteria:
  - At least 95 percent of the entity’s ownership must be directly held by family members; and
  - Substantially all (66.67%) 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.
- FONCEs are not liable for all debts of the LLC or LP, as applicable, and thus, must not carry liability insurance.
- Currently, the definition of passive investment income, as applied to a FONCE, does not include income from commercial rental property.
- It is assumed that one or more current OMEs, with commercial rental property income, are seeking a FONCE designation to be relieved of the requirement to carry liability insurance.
- In the absence of this legislation, the entity or entities affected by this legislation, namely OMEs, would not pay franchise or excise tax and will only seek a FONCE designation if this legislation passes; therefore, this legislation will result in no decrease in franchise or excise taxes or foregone revenue from franchise and excise taxes.
- Any impact on premium tax revenue is estimated to be not significant.

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**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

Handwritten signature of Krista Lee Carsner in black ink.

Krista Lee Carsner, Executive Director

/jdb