

1977 S.C. Op. Atty. Gen. 14 (S.C.A.G.), 1976 S.C. Op. Atty. Gen. No. 77-4, 1977 WL 24347

Office of the Attorney General

State of South Carolina

Opinion No. 77-4

January 3, 1977

\*1 The proper basis on which to compute the corporate license for imposed by Section 65–606 when capital stock is issued on an amount in excess of parts the par value of the stock issued plus the paid-in surplus created.

TO: Mr. C. H. Brooks  
Director  
Income Tax Division

#### QUESTION

You have asked the following question: What is the proper base on which to compute the corporate license fee for a newly formed corporation which issues capital stock having a par value of One Thousand (\$1,000) Dollars for stock in another corporation valued at Twenty Million (\$20,000,000) Dollars?

#### STATUTE

Section 65–606 of the South Carolina Code of Laws.

#### DISCUSSION

The following proposed transaction is contemplated: A South Carolina-based corporation will be formed as a holding company, i. e., a corporation the assets of which consist of stock in other corporations. The holding company will issue stock with a par value of \$1,000 for all of the outstanding stock of another corporation. The value of the stock of this other corporation is \$20,000,000. (Other similar exchanges are contemplated, but for the sake of simplicity, only one need be considered.)

The holding company proposes to ‘carry’ its investment in the other corporation at \$1,000 and to make no credit on its books to any other account. It will therefore show on its books capital stock of \$1,000 and will record no paid-in surplus. Section 65–606 of the Code provides for the computation of an annual license fee of one mill ‘upon each dollar paid to the capital stock and paid-in surplus of (a) corporation as shown by the records of the corporation on the first day of the income year next preceding the date of filing’. However, the Section goes on to give a definition of ‘paid-in surplus’ to mean ‘the entire surplus of a corporation other than earned surplus’. If the Legislature had intended every corporation to determine its tax based on how it recorded the transaction, there would have been no reason to define the tax base in the statute. The license tax base is not, in our opinion, determined by how the taxpayer records the transaction on its books and records. Our Supreme Court has stated that bookkeeping entries are not controlling for tax purposes. [Beard v. South Carolina Tax Commission](#), 230 S. C. 357, 95 S. E. 2d 628, 635.

In [Gulf Oil Corporation v. South Carolina Tax Commission](#), 248 S. C. 267, 149 S. E. 2d 642, our Supreme Court held that paid-in surplus was surplus resulting from sale or exchange of capital stock at amounts in excess of par. Under the facts in question, the holding corporation has exchanged its capital stock with a par value of \$1,000 for property having a value of \$20,000,000. Under the Gulf Oil case, paid-in surplus has been created in the amount of \$19,999,000. The proper base for the license tax is therefore \$20,000,000; i.e., \$1,000 of capital stock and \$19,999,000 of paid-in surplus.

\*2 Section 65–606 was amended after the Gulf Oil decision, however, that amendment merely broadened the definition to include other accounts not in question here.

CONCLUSION

The proper basis on which to compute the corporate license fee is the par value of the capital stock plus the paid-in surplus created when the stock is issued at an amount in excess of par value.

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