

1976 WL 30933 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

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*1 The debts owed the merged corporation become those of the surviving corporation and the deductibility of the same for South Carolina income tax purposes is governed by circumstances that relate to the surviving corporation.

Mr. C. H. Brooks
Director
Income Tax Division
South Carolina Tax Commission

QUESTION

Under the provisions of Sections 65-275 and 65-277, is a parent corporation precluded from claiming a deduction for a bad debt or a loss for worthless stock of a subsidiary when an insolvent subsidiary is merged with the parent?

STATUTES INVOLVED

Sections 65-275, 65-277, 12-20.5 and 12-20.6 of the South Carolina Code of Laws and [Section 368 of the Internal Revenue Code](#).

DISCUSSION

Please note that the request relates to the deductibility of a debt owed a subsidiary and of the cost of stock of the subsidiary where there is a merger of the subsidiary into the parent. The opinion in no way treats the question as the same relates to the liquidation of the subsidiary. It is assumed for purposes of this opinion that the merger is pursuant to Section 12-20.6 of our Code and subsection (4) thereof prescribes the effect of the merger.

‘Such surviving or new corporation shall thereupon and thereafter possess all the rights, privileges, immunities, and franchises, as well of a public as of a private nature, of each of the merging or consolidating corporations. All property, real, personal and mixed, and all debts due on whatever account, including subscriptions to shares, and all other choses in action, and all and every other interest, of or belonging to or due to each of the corporations so merged or consolidated, shall be taken and deemed to be transferred to and vested in such single corporation without further act or deed. The title to any real estate, or any interest therein, vested in any of such corporations shall not revert or be in any way impaired by reason of such merger or consolidation.’

It is thus seen that the debts owed the merged corporation become those of the surviving corporation and the deductibility of the same is governed by circumstances that relate to the surviving corporation.

With reference to the stock of the merged corporation, your attention is called to Section 12-20.5(c) that provides: ‘The manner and basis of converting the shares of the subsidiary corporation into shares or other securities or obligations of the parent corporation, or the cash or other consideration to be paid or delivered upon surrender of each share of the subsidiary corporation.’

Before giving further consideration to the question relating to the stock, it will be necessary that you furnish factual information concerning the merger agreement.

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Deputy Attorney General

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