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TECHNICAL ADVICE MEMORANDUM #88-13

TO: Mr. C. Norwood Gayle, Jr., Acting Director
Office Services Division

FROM: John Swearingen, Manager
Tax Policy and Procedures Department

DATE: June 1, 1988

SUBJECT: Corporate License Fee

REFERENCE: S.C. Code Ann. Section 12-19-20 (1987)
S.C. Code Ann. Section 12-19-70 (1987)

AUTHORITY: S.C. Code Section 12-3-170
SC Revenue Procedure #87-3

SCOPE: A Technical Advice Memorandum is a temporary document issued to an individual within the Commission, upon request, and it applies only to the specific facts or circumstances related in the request. Technical Advice Memoranda have no precedential value and are not intended for general distribution.

Question:

- (1) Is a non-resident corporation that merges effective the day after the close of its final income year required to file an annual report and pay a corporate license fee with its final return?

Facts:

ABC, Inc. (ABC), a Delaware Corporation merged into XYZ, Inc. (XYZ). The merger was effective July 29, 1985, which was the first day of the fiscal 1986 income year.

ABC filed a fiscal 1985 return for the period that ended July 28, 1985. This return was designated "Final Return" and stated ABC merged into XYZ after the close of fiscal year 1985.

The initial return filed by XYZ covered the period beginning July 29, 1985 and ending August 3, 1986.

The Secretary of State was not notified of the merger until July 21, 1986. Therefore, ABC' authorization to do business in South Carolina did not terminate until the notification on July 21, 1986, as provided in Section 33-12-100.

Discussion/Law:

S.C. Code Section 12-19-20 requiring annual reports to be filed by corporations reads in part:

"Every corporation organized under the laws of this State and every corporation organized to do business under the laws of any other state....and qualified to do business in South Carolina and any other corporation required by Section 12-7-230 to file income tax returns shall...make a report annually to the Tax Commission."

The license fee imposed by Section 12-19-70 is imposed upon every corporation required to file the report by Section 12-19-20. The fee is \$5 plus one mill on each dollar of capital stock and paid in surplus on the first day of the income year next preceding the date of filing the annual report. The minimum fee is \$15.

The corporate license fee has been imposed only on incorporated entities and has been defined as follows:

"The franchise tax is a privilege tax imposed upon the privilege of doing business as a corporation within the state." *United States Rubber Company v. Query*, 19F. Supp. 191, 194. (Emphasis added)

In as much as ABC' existence as a corporation terminated when the merger was effective, it is doubtful the legislature intended to impose the license fee upon Litton after the effective date of the merger. Any doubt must be resolved against the imposition.

"Language of the revenue statute must not be extended beyond its clear import, and taxpayer is entitled to a favorable resolution of any substantial doubt arising therefore." *Deering Milliken, Inc. v. South Carolina Tax Commission*, 257 S.C. 185, 171 S.E. 2d 355.

As evidenced by the agreement of merger and the returns filed by ABC and XYZ, the intent was to end the corporate existence of ABC after the close of business on July 28, 1985, effective July 29, 1985. Therefore, ABC would not be required to file an annual report and pay a license fee for the period beginning July 29, 1985 when its final return is filed.

Conclusion:

A non-resident corporation that merges effective the day after the close of its final income year is not required to file an annual report and pay a corporate license fee with its final return.