

1974 S.C. Op. Atty. Gen. 142 (S.C.A.G.), 1974 S.C. Op. Atty. Gen. No. 3767, 1974 WL 21281

Office of the Attorney General

State of South Carolina

Opinion No. 3767

May 3, 1974

***1 No credit is allowable against income computed under Section 65–256 when the income so computed is less than the income of the corporation when computed as an ordinary business corporation.**

Members

S. C. Tax Commission

This is in reply to your request for the opinion of this office on the proper application of Section 65–256.1 of the Code which provides for a credit against the income tax of public service corporations. Public service corporations, for the years in question, were taxed under the special provisions of Section 65–256 of the Code. The credit was enacted as Act No. 886, 1966 Acts and Joint Resolutions at 2224. The preamble to the Act states that its purpose is ‘to eliminate, over a seven year period, the special taxation of Public Service Corporations * * *.’

The specific question asked is whether, for the years in question, a taxpayer is entitled to the credit when the amount of its income tax computed as a public service corporation is less than the amount of its income computed as an ordinary corporation. It is the opinion of this office that no credit should be allowed unless the amount of the tax computed as a public service corporation is greater than the tax computed as an ordinary corporation.

The question has arisen because of the language of Section 65–256.1 which provides as follows:

‘The credit shall be an amount equal to the difference between the tax based on net taxable income computed in accordance with Section 65–256 * * * and the tax based on net taxable income computed as if such corporation were not a public service corporation multiplied by the following percentages * * *.’

The literal wording of this sentence is that the credit shall be the difference between two amounts; however, to allow the credit when the public service corporation tax is less than the tax as an ordinary corporation would defeat both the purpose of the statute and intention of the General Assembly as shown in other parts of the Act, and in the legislative history surrounding the statute. As stated in *73 Am. Jur. 2d, Statutes, Section 207*, it is a general rule of construction that the manifest intent of the Legislature will prevail over the literal import of the words.

It is, however, not necessary to depend on this rule in the instant case because the Act, when read as a whole, creates an ambiguity and, therefore, is subject to construction. See *73 Am. Jur. 2d, Statutes, Section 195*. The Act provides for the credit to increase each year, i.e., 14% in 1967, 28% in 1968, 42% in 1969, 57% in 1970, 71% in 1971 and 85% in 1972. For 1973 and later years, public service corporations are taxed as ordinary corporations. The effect of this is to gradually bring public service corporations in line with ordinary corporations. If the contention of the taxpayer was followed, the result, for the years of the credit, would be to create an increasing disparity between the tax imposed on public service corporations and that imposed on ordinary corporations. Also, the Act provides that where the net income computed as an ordinary corporation results in a loss, the credit percentage is to be based on the income computed as a public service corporation under Section 65–256. There is no corresponding provision for the treatment of a loss when the income is computed under Section 65–256. This indicates that in enacting the statute, the Legislature considered the credit to apply only when the corporation's income is less computed as an ordinary corporation than it is when computed under Section 65–256.

*2 The purpose of the credit is to eliminate special taxation of public service corporations, but to do so in a gradual manner over a seven year period. This purpose is expressed in the preamble to the Act, in the application of the increasing credit percentages of the Act, and in the legislative history of the Act. In the Seventh Annual Report of the South Carolina Tax Study Commission made to the 1966 General Assembly (published in a pamphlet dated February 1966), the Commissioners recommended that Section 65-256 be repealed, but that the revenue impact from such repeal would be lessened by effecting such change over a number of years 'via the instituting of a special credit'. The revenue loss for a single year if the repeal had not been spread was estimated by the South Carolina Tax Commission at \$2,155,800. This revenue loss was calculated by the Tax Commission pursuant to a Concurrent Resolution of the General Assembly (Calendar No. S. 367) which noted that Section 65-256 imposed an 'unjust tax' on public service corporations by preventing the deduction of rents and interest. The legislative history shows (1) that the General Assembly recognized that the taxable income of public service corporations was generally higher than that of ordinary corporations, (2) that the credit was passed to eliminate the special provisions taxing public service corporations and, (3) that the credit was enacted in order to lessen the impact of the revenue loss to the State. The legislative history of the statute shows conclusively that the credit was never intended to apply when a corporation's income computed under Section 65-256 is less than its income when computed as an ordinary corporation.

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