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Taxation

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TAXATION

I. ACCUMULATED EARNINGS TAX

Bahan Textile Machinery Company, Inc. v. United States[1] was an action by the taxpayer to recover federal income and accumulated earnings taxes for the years 1959, 1960, and 1961. The major issue in the case was whether or not large and undistributed accumulations of income by Bahan Textile were reasonably needed for business purposes.

In order for the accumulated earnings tax provided for by Section 531 of the Internal Revenue Code of 1954[2] to be imposed, Section 532(a)[3] requires that the taxpayer must have a tax avoidance motive in maintaining such large accumulations of earnings, and Section 533(a)[4] creates in this regard a presumption that a tax avoidance motive exists where earnings and profits are permitted to accumulate beyond the "reasonable needs of business." To rebut this presumption, the taxpayer must show that it has specific and definite business plans for the use of such accumulations.

The Bahan Textile Machinery Company was founded in 1926 and is in the business of manufacturing replacement parts for textile weaving looms. In spite of the fact that the company was successful and had realized substantial profits, no dividends were declared by the company until 1964. By the end of 1959, the taxpayer had accumulated earnings and profits of $1,700,000 which increased to $2,200,000 by the

1. 453 F.2d 1100 (4th Cir. 1972).
2. INT. REV. CODE of 1954, §531 imposes the accumulated earnings tax.
3. INT. REV. CODE of 1954, §532(a) provides:
   (a) The accumulated earnings tax imposed by section 531 shall apply to every corporation formed or availed of *for the purpose of avoiding the income tax* with respect to its shareholders or the shareholders of any other corporation, *by permitting earnings and profits to accumulate instead of being divided or distributed.* (Emphasis added.)
4. INT. REV. CODE of 1954, §533(a) provides:
   (a) For purposes of section 532, the fact that earnings and profits of a corporation are permitted to accumulate *beyond the reasonable needs of the business shall be determinative of the purpose to avoid the income tax* with respect to its shareholders, unless the corporation by the preponderance of the evidence shall prove to the contrary. (Emphasis added.)

end of 1961. Because of this substantial amount of accumulated earnings and profits, the Commissioner, after an audit of the company's income tax returns, determined that the taxpayer had become subject to the accumulated earnings tax.

The taxpayer, in attempting to overcome the Section 533(a) presumption of a tax avoidance motive, contended that these large accumulations were motivated solely by the day-to-day and *anticipated* future needs of the business. Specifically, the taxpayer claimed that cash reserves had to be set aside for working capital as well as for the implementation of the following plans:

1. Replacement of foundry and machine shop equipment;
2. Modernization of physical plant and office equipment;
3. Pension plan with past-service feature;
4. Maintenance of competitive position.[5]

The recital of these plans was an attempt by the taxpayer to bring itself within the purview of Section 537(a)(1)[6] which defines the phrase "reasonable needs of business" and provides that "the reasonably *anticipated* needs of business" are included within that definition (emphasis added). The regulation[7] under this section,[8] however, qualifies this broad statutory language (reasonably anticipated needs of business) by stipulating that the corporation's plans for the accumulations cannot be "vague or uncertain," and the court utilized this regulation[9] in holding that the district court was correct in finding that the taxpayer's asserted plans lacked the concreteness to justify its accumulations. The court indicated that the taxpayer's accumulations at the end of 1958 were sufficient to meet whatever projected business the corporation might have, and the taxpayer was thus liable for the accumulated earnings tax.

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5. Bahan Textile Machinery Co., Inc. v. United States, 453 F.2d 1100, 1102 (4th Cir. 1972).

6. INT. REV. CODE of 1954, §537(a)(1).

7. Treas. Reg. §1.537 (1959).

8. INT. REV. CODE of 1954, §537.

9. Treas. Reg. §1.537-1(b) (1959) provides in part:
> Where the future needs of business are uncertain or vague, where the plans for future use of an accumulation are not specific, definite and feasible, or where the execution of such a plan is postponed indefinitely, an accumulation cannot be justified on the grounds of reasonably anticipated needs of business.

The taxpayer sought to overcome the argument that his plans lacked specificity by asserting that his corporation was a small, informally operated one whose board of directors was in session every time Edward Bahan sat at his desk. The court found this argument without merit and indicated that the specificity requirements were established in the regulation[10] because of the potential for hoarding of profits by small, loosely run corporations such as Bahan Textile.

The taxpayer's tax avoidance motive was shown by the fact that $400,000 had been paid to or on behalf of shareholder relatives during Edward Bahan's tenure as president. No substantial services were rendered by the relatives for these "advances," and they were never repaid. These disbursements, in the opinion of the court, indicated a clear purpose on the part of the taxpayer to distribute profits indirectly, rather than as dividends that would be taxable to the recipients. Thus, the court reached the conclusion that those in control of the corporation were using it as a tax avoidance device.

II. FEDERAL INCOME TAX

In *De Treville v. United States*,[11] the plaintiff-taxpayer, Marie L. De Treville, sought a refund of federal income taxes for the year 1960, and the district court entered a judgment in favor of the taxpayer for about two-thirds of the recovery sought.[12] Neither the Government nor the taxpayer was satisfied with the decision of the district court, and both parties appealed.

The taxpayer was a stockholder in the Forest Land Company, which at the end of 1958 elected to qualify as a "small business corporation" under Subchapter S, Sections 1371-1378 of the Internal Revenue Code of 1954.[13] On December 16, 1960, Forest Land and its shareholders formed the Mount Vernon Life Insurance Company with Forest Land receiving 13,756 shares of Mount Vernon's capital stock in return for

10. *Id.*

11. 445 F.2d 1306 (4th Cir. 1971).

12. DeTreville v. United States, 312 F. Supp. 362 (D.S.C. 1970).

13. INT. REV. CODE of 1954, §§1371-1378. The effect of an election under Subchapter S to qualify as a "small business corporation" is to eliminate the corporation's income tax and to cause the corporation's income to be taxed proportionately to its shareholders regardless of whether the income is distributed to the shareholders or retained by the corporation.

real estate properties. Forest Land had intended to distribute this Mount Vernon capital stock directly to its shareholders, assuming that such a distribution of property (the stock) would be tax free to its shareholders just as distributions of cash are tax free to the shareholders of "small business corporations."[14] After Forest Land acquired the Mount Vernon stock, it discovered that direct property distributions could not be made without tax consequences to the shareholders. This discovery prompted Forest Land to seek some method through which it could get the Mount Vernon stock into the hands of its shareholders without subjecting them to the tax liability that results from a direct property distribution. The plan that was developed provided that Forest Land would make a purportedly tax-free distribution of cash to the shareholders which the shareholders would in turn use to buy the capital stock from Forest Land.

Pursuant to its scheme, Forest Land issued on December 31, 1960, checks totaling $212,868.64 to its shareholders with the taxpayer in this case receiving $17,631.34. At the time of the issuance of these checks, Forest Land's bank balance was only $4,209.56, which necessitated in each case that its distribution check and the shareholder's check for the purchase of the stock be deposited simulanteously in order to create offsetting transactions. On January 6, 1961, the taxpayer, De Treville, used the money that she had received from Forest Land to purchase 784 shares of Mount Vernon stock.

The Government contended and the district court held that the transactions between Forest Land and its shareholders were, in reality, a distribution of property rather than a tax-free distribution of cash as the taxpayer had contended under Section 1375(d). The court of appeals concurred in the finding that what had actually transpired between Forest Land and its shareholders was a distribution of property, with the checks issued by Forest Land to its shareholders amounting to fifty times its bank balance serving only to conceal the true nature of the transaction. The court of appeals cited *Commissioner of Internal Revenue v. Court Holding Com-*

14. INT. REV. CODE of 1954, §1375(d) provides that taxable income retained by the corporation may be distributed tax free by the corporation in subsequent years.

pany[15] *and Gregory v. Helvering*[16] as authority for the application to the Forest Land scheme of the well established tax rule "that issues of taxation are to be governed by the *substance rather than the form* of the underlying transaction"[17] (emphasis added). The form of the transaction was a cash distribution, but the substance of the transaction was, in actuality, one of property distribution.

Although the district court found that the distribution in question was definitely one of property rather than cash, it held that Treasury Regulation Section 1-1375-4(b)[18] which stipulates that only money distributions may be made tax free was invalid on the ground that it violated the intent and purpose of Subchapter S to avoid dual taxation.[19] Thus, under the district court's view of the intent of Subchapter S, both property distributions and cash distributions should be tax free. The primary benefit of Subchapter S is the fact that it provides a means to avoid the taxation of income both to the corporation as a separate entity and again to the stockholders when dividends are distributed. Subchapter S "small business corporations" avoid dual taxation by causing the corporation's income to be taxed proportionately to its shareholders regardless of whether the income is distributed to the shareholders or retained by the corporation. Income retained by the corporation then may be distributed tax free in subsequent years if the distribution is a cash distribution. This favorable tax treatment allows "small business corporations" to be treated almost as if they were partnerships rather than corporations, and it was the position of the district court that preventing tax-free property distributions seriously curtailed the tax benefit intended by the legislation.

The court of appeals rejected the view of the district court that Treasury Regulation 1-1375-4(b) was invalid and held that the challenged regulation was reasonable and not inconsistent with the intent of the revenue statutes. The rejection of the district court's view of this regulation was based

15. 324 U.S. 331 (1945).
16. 293 U.S. 465 (1935).
17. DeTreville v. United States, 445 F.2d 1306, 1308 (4th Cir. 1971).
18. Treas. Reg. §1.1375—4 (1959).
19. INT. REV. CODE of 1954, §1375(d) does not contain a specific restriction limiting tax free distributions to money distributions.

primarily on the court's finding that denying tax-free status to property distributions does not have the effect of imposing the dual taxation of corporate income that Subchapter S was intended to avoid. The court of appeals reasoned that when a property distribution is made, the corporation's earnings and profits are reduced under Section 1377,[20] and the basis of the shareholders' stock is increased by Section 1376.[21] In the court's view, Sections 1376 and 1377, not the distribution section, 1375(d), prevent double taxation when a property distribution is made.

During the tax year in question, Forest Land Company earned $158,183.84 of which $73,382.74 was distributed in the form of money. The Government contended that the shareholders owed taxes on the remaining $84,801.10 of the remaining 1960 income under Section 1373, as well as on the entire property distribution of December 31, 1960. The taxpayer argued that the property distribution should first reduce the 1960 undistributed taxable income and then be treated under Section 1375(d) as a tax-free distribution of undistributed taxable income taxed to the shareholders in previous years. The position of the Government was found correct by the court on the basis of Treasury Regulation 1-1375-4(b) which provides for tax-free distributions only when they are cash; and, thus, the taxpayer was denied her refund for the taxes paid on the property distribution.

III. State Sales Tax— Lease and Rental of Tangible Personal Property

In the case of *Edisto Fleets Inc. v. South Carolina Tax Commission*,[22] the primary issue before the court was whether or not the proceeds from the lease or rental of tangible personal property were subject to sales tax under Chapter 17 of Title 65 of the 1962 Code of Laws.[23] Edisto Fleets Inc. was a wholly owned subsidiary of Edisto Farms Dairy and was organized for the sole purpose of purchasing vehicles and leasing them to Edisto Farms Dairy.

20. Int. Rev. Code of 1954, §1377.
21. Int. Rev. Code of 1954, §1376.
22. 256 S.C. 350, 182 S.E.2d 713 (1971).
23. S.C. Code Ann. *Chapter* 17, Title 65 (1962).

The Tax Commission examined Edisto Fleets' records for a six-year period (1959-1965) and, as a result, assessed the corporation a tax in the amount of $11,349.80 for the consideration it had received from Edisto Farms Dairy for the lease and rental of vehicles. The taxpayer paid this assessment but sought to recover the taxes paid by this action.

Prior to 1959 the Tax Commission had administratively interpreted the sales and use tax statutes to exclude from taxation the proceeds of rentals and leases. The Tax Commission, however, changed its position on this question in 1959 as a result of a decree in the Court of Common Pleas of Richland County in August, 1958, in the case of *General Tire and Rubber Co. v. South Carolina Tax Commission*[24] and has since that time held that such lease and rental proceeds were the subject of taxation.

Section 65-1401[25] provides for the imposition of a sales tax upon *every person* in the business of *selling* at retail any tangible personal property at an amount of three percent of the gross proceeds of the *sales* of the business. The court pointed out that the General Assembly in 1955 amended Section 65-1359[26] to include within the definition of the term "retailer" or "seller" those who are engaged in the business of renting and leasing. The General Assembly, however, did not amend the definition of the term "sale" found in Section 65-1360[27] to include rentals or leases, but it did amend the term "purchase" found in Section 65-1357[28] to include consideration from rentals. The court reasoned that these two terms (sale and purchase) were inextricably related and

24. Richland County Ct. of C.P., File Number 46916 (1958).

25. S.C. CODE ANN. §65-1401 (1962) provides:

> Imposition of Tax—In addition to all other licenses, taxes and charges imposed, there is levied for the support of public schools of the state, upon *every person* engaged or continuing within this state *in the business of selling at retail any tangible personal property* whatsoever, including merchandise and commodities of every kind and character, an amount equal to three percent of the gross proceeds of *sales* of the business. (Emphasis added.)

26. S.C. CODE ANN. §65-1359(5) (1962) provides that the term seller or retailer includes every person engaged in the business of leasing or renting any tangible personal property for a consideration.

27. S.C. CODE ANN. §65-1360 (1962).

28. S.C. CODE ANN. §65-1357 (1962).

bound together, leading to the conclusion that proceeds of the rental or leasing of tangible personal property are subject to the sales tax, and in the words of the court:

> This conclusion is fortified by the failure of the General Assembly in 1955 to amend the definition of the term "sale" to specifically include the words "lease or rental of tangible personal property." *It would be unreasonable for this court to conclude that the General Assembly amended the statute in 1955 to define as a retailer a person that leases or rents tangible personal property and at the same time intend that such person be exempt from the tax because the lease or rental was not a sale of tangible personal property*[29] (emphasis added).

Justices Bussey and Brailsford dissented vigorously in this case. The dissent argued, as did the taxpayer, that it was the intent of the legislature to impose the sales tax on the proceeds of the rental and leasing of tangible personal property, not on all persons renting and leasing, but only upon manufacturers who lease or rent their manufactured goods.

IV. State Corporation Tax—Reinsurance Premiums

The case of *Carolina National Insurance Co. v. South Carolina Tax Commission*[30] represented an action by the taxpayers to recover a two percent tax levied on reinsurance premiums and paid under protest. It was the contention of the Tax Commission that the taxpayers were liable for this tax pursuant to Section 37-130.2 of the 1962 Code.[31] While the taxpayers' action to recover the taxes paid was pending before the Fifth Circuit Court, the Supreme Court of South Carolina decided the case of *Southeastern Fire Insurance Co. v. South Carolina Tax Commission*,[32] which held that premiums collected for reinsuring another insurer's contracts were not taxable under Section 37-130.2.

The result in the *Southeastern* Case required the Tax Commission to admit that the taxpayers owed no taxes under Section 37-130.2, but it concluded that the taxpayers were still liable for taxation under Section 65-222,[33] which is the

29. Edisto Fleets, Inc. v. S. C. Tax Comm'n., 256 S.C. 350, 355, 182 S.E.2d 713, 715, (1971).

30. 256 S.C. 466, 182 S.E.2d 878 (1971).

31. S.C. Code Ann. §37-130.2 (1962) provides for a two percent graded license fee on domestic life insurance companies.

32. 253 S.C. 407, 171 S.E.2d 355 (1965).

33. S.C. Code Ann. §65-222 (1962).

South Carolina tax on corporations. An exemption from the tax imposed by Section 65-222 is granted to insurance companies by Section 65-226.[34] It was the position of the Tax Commission that the exemption granted to insurance companies by Section 65-226(2)[35] did not apply to the taxpayers because they were engaged solely in the business of issuing reinsurance contracts.

The court recognized that there were differences between insurance and reinsurance but concluded that such differences were not a basis for holding that the taxpayers were not insurance companies within the intent and meaning of Section 65-226. The court reasoned that it would be illogical to hold that the taxpayers in this case were not insurance companies in that they were organized as insurance companies under the laws of South Carolina, duly licensed to engage in the business of insurance by the South Carolina Insurance Department, required to conform to all of the statutory requirements imposed upon insurance companies, and authorized, under their charter, to issue fire and casualty insurance policies and to insure against only loss or damage not prohibited by law.

V. BUSINESS LICENSE TAX

In the case of *United States Fidelity and Guaranty Corp. v. the City of Newberry*,[36] the taxpayer was seeking to recover a business license tax paid under protest. The taxpayer was engaged in the business of writing fire and casualty insurance in the city of Newberry and was required to pay, as were all companies writing fire and casualty insurance in that city, a business license tax which was seven to twenty times greater than that charged all other categories of businesses. Thus, the major issue for decision was whether or not the city had a rational basis for such a gross disparity and differentiation between the rate charged property insurers such as the taxpayer and the rate charged other businesses.

The court indicated that the taxpayer had met its burden of proving the tax palpably unreasonable. The court in reaching its conclusion recognized that the municipality had the

34. S.C. CODE ANN. §65-226 (1962).
35. S.C. CODE ANN. §65-226(2) (1962).
36. 186 S.E.2d 239 (S.C. 1972).

power under the state constitution[37] and under statutory law[38] to classify various businesses for the purpose of license taxes and to impose reasonable amounts upon the respective classes. The court also took into consideration the well established rule that the fact that one class must pay proportionately more than other classes does not in and of itself make the license fee unreasonable. The court, however, agreed with the lower court that in the case at hand no rational basis existed for a classification that taxed the plaintiff-taxpayer at a rate twenty times greater than that applied to other businesses and that the City of Newberry had abused its discretion.

The supreme court, however, refused to affirm or reverse the summary judgment of the lower court, even though it agreed with the decision rendered. The court instead remanded the case in order that the City of Newberry could be accorded a trial which would allow both parties to fully develop the issues. The court took this approach because the issue here was of grave public importance since approximately seventy other municipalities in South Carolina impose comparable license taxes.

VI. Tax Exemption for Major Industrial Expansion in York County

The case of *Bowaters Carolina Corp. v. Smith* and *Catawba Newsprint Co. v. Smith*[39] was an action to recover property taxes which were paid to York County under protest. The taxpayers contended that they were exempted from the taxes in question because of Section 65-1572 of the 1962 Code of Laws[40] as amended by Act No. 2 of the 1967 Acts of the General Assembly.[41] This section of the Code provides that

37. S.C. Const. art. VIII, §6.

38. S.C. Code Ann. §47-271 (1962).

39. 186 S.E.2d 761 (S.C. 1972).

40. S.C. Code Ann. §65-1572 (1962).

41. 55 S.C. Stats. at Large 2 (1967) provides in part:

> (2) If the actual cost of construction of such manufacturing facilities, including building, machinery, and equipment but excluding the costs of land, *is more than ten million dollars,* and not less than seventy-five thousand dollars for each new employee to be added as a result of the capital expenditure, such construction, extension or addition *shall be exempt for a period of five years* from the date such facilities are placed in service, *from all county and township taxes.* (Emphasis added.)

persons who undertake major industrial expansions or establish new manufacturing plants in York County shall be granted certain tax exemptions.

The taxpayers argued that under the provisions of Section 65-1572 they were to be exempted from county and township taxes, as well as from school district taxes, as both had undertaken major industrial expansion. The lower court agreed with the taxpayers that they were entitled to these exemptions. On appeal the county conceded that the taxpayers should have been exempted from certain taxes levied upon them for county bond purposes but asserted that the taxpayers were not entitled to an exemption from the school district taxes levied upon them.

The controversy in this case centers around the language used in subsections (2) through (5) of Section 65-1572. Subsection (2) provides a tax exemption *"from all county and township taxes"* for five years if the cost of the industrial expansion is ten million dollars or more (emphasis added). Subsections (3) through (5), however, which grant additional years of exemption for expenditures beyond ten million dollars, provide that the exemption shall be "from all county and township taxes, *except for school purposes.*" (Emphasis added.)

The industrial expansions of the taxpayers in this case definitely qualified them for tax exemptions under subsection (2) of Section 65-1572, and it was their position that since the words "except for school purposes" were omitted from subsection (2), an exemption from school district taxes was intended. The major issue in this case was, therefore, whether or not school district taxes were exempted under subsection (2) of Section 65-1572.

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(3) *In addition to the exemption provided in subsection (2)* of this section, if the actual cost of construction, extension or addition of such manufacturing facilities including buildings, machinery and equipment but excluding the cost of land, *is more than twelve million five hundred thousand dollars but not more than fifteen million dollars,* and not less than one hundred thousand dollars for each new employee to be added as a result of the capital expenditure, *such facilities shall be exempt from all county and township taxes, except taxes for school purposes, for a period of five additional years from the date of full exemption from all county and township taxes granted in subsection (2) of this section expires.* (Emphasis added.)

The court found nothing in the language of subsection (2) to indicate that the legislature intended an exemption from school district taxes, and they interpreted subsection (2) to grant an exemption from only county and township taxes. In reaching this conclusion, the court held that the legislature's failure to specifically list school district taxes as exemptible showed a clear intent to exclude such taxes from exemption. In support of this holding, the court pointed to the fact that the constitution of this state recognizes counties, townships, and school districts as separate and distinct political subdivisions, each of which is authorized to levy taxes for educational purposes; and because of this unmistakable distinction, the court holds that the failure to include school district taxes in the language of subsection (2) clearly indicates that such taxes were not intended to be within the exemptions granted. The court further explained that the words "except for school purposes" found in subsections (3) through (5) and not found in subsection (2) qualified the preceding phrase "all county and township taxes" and was thus intended to grant exemption from county township taxes levied for school purposes and not from "school district taxes."

A secondary issue in this case involved whether or not the taxpayers were entitled to interest on the amount of property taxes paid under protest and subsequently refunded to them as a result of the lower court's decision. The lower court held that Section 65-2656[42] afforded a statutory basis for the recovery of interest, and the supreme court agreed. In order for Section 65-2656 to apply, the taxes had to be administered by the South Carolina Tax Commission; the taxes in question were property taxes collected by York County. As to whether or not the taxes were in fact administered by the South Carolina Tax Commission, even though collected by York County, the court stated:

> The general supervisory power conferred by the statutes upon the Tax Commission with respect to assessment of property taxation brings such taxes within the classification of those administered by the Commission, within the meaning of Section 65-2656, supra, and renders the county liable for interest on the amount of taxes recovered in this action.[43]

42. S.C. CODE ANN. §65-2656 (Supp. 1971).
43. 186 S.E.2d 761, 765 (1972).

The final issue in the case involved whether or not the lower court had erred in holding that the taxpayers were entitled to further tax exemptions under the statute for subsequent years. The supreme court held that the lower court was without jurisdiction to decide this issue since only one tax year (1969) was before the court.

VII. CORPORATE LICENSE TAX

The controversy arose in the case of *Deering Milliken, Inc. v. South Carolina Tax Commission*[44] after the Cotwool Manufacturing Corp. merged with Deering Milliken & Co., Inc., in 1960 with the surviving corporation changing its name to Deering Milliken, Inc., the taxpayer in this case. The issue in question was the amount of tax liability of the taxpayer for the years 1961, 1962, and 1963 under Section 65-606 of the 1962 Code of the Laws,[45] which imposes upon every corporation "an annual license fee of one mill upon each dollar paid to capital stock."

Before the 1960 merger the combined capital stock of the original corporations had a par value of $13,750,000. Upon merger the stock of the original corporations was exchanged for stock in the merged corporation of a par value of $102,176,000. The taxpayer contended that its tax liability was based on $13,750,000 which represented the sum of the paid-in capital of the merging corporations. The Tax Commission, however, argued that the tax liability should be based on $102,176,000, which included retained earnings transferred to the capital account in order to balance new shares aggregating $102,176,000 in par value, issued to shareholders in accordance with a formula contained in the merger agreement.

The problem here centers around whether or not these retained earnings transferred to the capital account constitute funds paid to capital stock under Section 65-606. The supreme court's majority opinion agreed with the decision of the circuit court in holding for the taxpayer that the transfer of retained

44. 257 S.C. 185, 184 S.E.2d 711 (1971).

45. S.C. CODE ANN. §65-606 (Supp. 1971) provides in part:

> In addition to any and all other license taxes or fee or taxes of whatever kind every corporation . . . shall pay to the Commission . . . *an annual license fee of one mill upon each dollar paid to capital stock and paid in as surplus of said corporation* . . . (Emphasis added.)

earnings from surplus accounts to the capital account was not the equivalent to dollars paid to the capital stock. The court's majority explained this transfer as not really being a transfer of assets in the true sense, but merely changes in book entries in that the assets of the corporation remained exactly the same.

Chief Justice Moss and Justice Lewis dissented, arguing that the transfers of retained earnings from surplus accounts to the capital account constituted funds paid to capital stock under Section 65-606. The dissent rejected the view of the taxpayer which was adopted by the majority that only those funds paid to the corporation by the shareholders in exchange for stock constitute funds paid to capital stock. Justice Lewis, writing for the dissenters, would have held that transfers made to the capital stock account from within the corporation also constitute funds paid to capital stock. Justice Lewis states the conclusion of the dissent by saying:

> The transfer of the assets in this case to the capital stock account constituted funds "paid to capital stock" within the meaning of Section 65-606 and were properly considered in determining tax liability.[46]

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46. Deering Milliken, Inc. v. S.C. Tax Comm'n., 257 S.C. 185, 192, 184 S.E.2d 711, 714 (1971).