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TAX LAW

I. Parent and Subsidiary Corporations Deemed Separate Entities for Tax Purposes

In *Emerson Electric Co. v. Wasson*[1] the South Carolina Supreme Court considered whether a corporation and its subsidiary, when filing a consolidated state income tax return, should be treated as a single taxpayer for determining the amount of out-of-state sales income of the subsidiary that should be attributed to South Carolina in calculating the taxable consolidated income of the corporations. Reversing a decision by the court of appeals,[2] the supreme court held that income from out-of-state sales of the parent and subsidiary should be determined separately and then combined to reflect the true income of the consolidated entity attributable to South Carolina.

Emerson Electric Company (Emerson) and its wholly owned subsidiary, Therm-O-Disc (TOD), filed a consolidated state income tax return for the fiscal year ending September 30, 1978, as authorized by section 12-7-1570 of the 1976 Code.[3] TOD sought to apportion its sales income not only among those states in which it "did business,"[4]—South Carolina and Ohio—but also

1. 287 S.C. 394, 339 S.E.2d 118 (1986).
2. Emerson Electric Co. v. Wasson, 283 S.C. 257, 322 S.E.2d 671 (Ct. App. 1984).
3. S.C. Code Ann. § 12-7-1570 (Law. Co-op. 1976) provides as follows:

> Any taxpayer capable of exercising, directly or indirectly, substantially the entire control of the business of another taxpayer, either by ownership or control of substantially the entire capital stock (if a corporation) of such other taxpayer or otherwise, may, under regulations prescribed by the Commission, be permitted to make a consolidated return, showing the consolidated net income and such other information as the Commission may require in order to compute the net income properly attributable to the State and to impose the tax upon the taxpayers concerned.
>
> The Commission may also permit the filing of a consolidated return when substantially the entire control of two or more taxpayers liable to taxation under this chapter is exercised by the same interest.

4. Act of September 14, 1959, Pub. L. No. 86-272, 73 Stat. 555 (1959) (codified as 15 U.S.C. § 381(a) (1959) [hereinafter P.L. 86-272], provides that a corporation only "does business" for purposes of state taxation if the activities of that corporation cross a minimum threshold. P.L. 86-272 provides in pertinent part:

> No State, or political subdivision thereof, shall have power to impose, for

among the forty-two states in which Emerson did business that year. Income from sales is one part of a three-part formula[5] used to determine the tax rate applicable to corporate taxpayers doing business in the state. Under South Carolina's "throwback rule,"[6] income from sales in states other than South Carolina and in which the corporation was not doing business, were "thrown back" to South Carolina and included in the sales factor of the apportionment formula.

To illustrate the focus of the supreme court in *Emerson*, an example is helpful. Corporation *A* and its wholly owned subsidiary, *B*, conduct a multi-state business and file a consolidated income tax return in South Carolina. *A* owns property worth $10,000,000 in South Carolina and property worth $50,000,000 in other states. *B*'s property in South Carolina is worth $5,000,000 and its property elsewhere is worth $10,000,000. To calculate the property portion of the statutory three-part formula the following method is used:

> any taxable year ending after September 14, 1959, a net income tax on the income derived within such State by any person from interstate commerce if the only business activities within such State by or on behalf of such person during such taxable year are either, or both, of the following:
>
> (1) the solicitation of orders of such person, or his representative, in such State for sales of tangible personal property, which orders are sent outside of the State for approval or rejection, and, if approved, are filled by shipment or delivery from a point outside the State; and
>
> (2) the solicitation of orders by such person, or his representative, in such State in the name of or for the benefit of a prospective customer of such person, if orders by such customer to such person to enable such customer to fill orders resulting from such solicitation are orders described in paragraph (1).

5. A multi-state corporation's tax rate is determined by calculating the ratio of property outside the state to property in the state, S.C. CODE ANN. § 12-7-1150 (Law. Co-op. 1976); the ratio of payrolls outside the state to payrolls in the state. S.C. CODE ANN. § 12-7-1160 (Law. Co-op. 1976); and the ratio of sales made outside the state to sales made in the state. S.C. CODE ANN. § 12-7-1170 (Law. Co-op. 1976). The three ratios are then averaged to determine the tax rate applicable to the corporation. The sole issue in *Emerson* concerned calculation of the sales ratio.

6. The "throwback rule" was codified as S.C. CODE ANN. § 12-7-1170 (Law.Co-op. 1976), *amended by* S.C. CODE ANN. § 12-7-1170 (Law. Co-op. Supp. 1986), and provided in part: "Sales are attributable to this State when the property is shipped from within this State and the purchaser is the United States Government or the taxpayer is not taxable in the state of the purchaser." S.C. CODE ANN. § 12-7-1170 (Law. Co-op. Supp. 1986) provides that sales made outside of South Carolina in states where the corporation is not taxable will be attributed to South Carolina at gradually lower levels: 75% in the first fiscal year after December 31, 1984; 50% in the second fiscal year; 25% in the third fiscal year; and none thereafter.

$$\frac{\text{In S. C.: } \$10{,}000{,}000(\text{A}) + 5{,}000{,}000(\text{B})}{\text{In All States: } \$60{,}000{,}000(\text{A}) + 15{,}000{,}000(\text{B})} = \frac{\$15{,}000{,}000}{\$75{,}000{,}000} = 0.2$$

The same method is used to determine the payroll factor of the tax formula for the consolidated tax return. Thus,if *A* has a payroll in South Carolina of $6,000,000 and a payroll elsewhere of $18,000,000; and if *B* has a payroll in South Carolina of $4,000,000 and a payroll in other states totalling $12,000,000, the payroll factor would be calculated as follows:

$$\frac{\text{In S. C.: } \$6{,}000{,}000(\text{A}) + 4{,}000{,}000(\text{B})}{\text{In All States: } \$24{,}000{,}000(\text{A}) + 16{,}000{,}000(\text{B})} = \frac{\$10{,}000{,}000}{\$40{,}000{,}000} = 0.25$$

The mathematics involved in determining the sales portion of the formula are the same as in calculating the payroll and property ratios. Thus, if *A* apportions sales of $12,000,000 to South Carolina and $33,000,000 elsewhere, and *B* apportions sales income of $8,000,000 to South Carolina and $22,000,000 elsewhere, the sales factor of the tax rate formula would be calculated as follows:

$$\frac{\text{In S. C.: } \$12{,}000{,}000(\text{A}) + 8{,}000{,}000(\text{B})}{\text{In All States: } \$45{,}000{,}000(\text{A}) + 30{,}000{,}000(\text{B})} = \frac{\$20{,}000{,}000}{\$75{,}000{,}000} = 0.2666$$

The tax rate for the consolidated entity, then, is calculated by averaging the property, payroll, and sales income ratios of the consolidated entity. The result is as follows:

$$0.2 + 0.25 + 0.2666 = .7166 \div 3 = .2388$$

The *Emerson* problem, however, was confined to the sales income figure used in the numerator of the sales ratio. If, for example, *B* were able to apportion its out-of-state sales income not only among the states in which it did business, but also among the states in which *A* did business, the sales ratio would be lower and the tax rate consequently would be less because the sales "thrown back" to South Carolina would be fewer. Thus, if *B*, because of its consolidation with *A*, is taxable in every state in which *A* is taxable, then the sales thrown back to South Carolina could be decreased from $8,000,000 to $4,000,000. With this change, the sales factor would be calculated as follows:

$$\text{In S. C.: } \frac{\$12{,}000{,}000(A) + 4{,}000{,}000(B)}{\text{In All States: } \$45{,}000{,}000(A) + 30{,}000{,}000(B)} = \frac{\$16{,}000{,}000}{\$75{,}000{,}000} = 0.25$$

By averaging this ratio with the property and sales ratios, the new tax rate would be .2211, significantly lower than .2388.

By spreading the income of TOD over all of the states where only Emerson was taxable, the consolidated entity in *Emerson* realized a tax savings of $28,070.00. The tax commission audited the return, however, and ruled that TOD could apportion its sales only among the states in which TOD did business; the commission refused to allow TOD to apportion sales among those states in which only Emerson did business. The trial court held for the tax commission but the court of appeals reversed the lower court ruling. Writing for a unanimous court, Judge Gardner reasoned that section 12-7-1570 not only allows consolidation of incomes of corporations, but also authorizes the corporations to determine the consolidated income as a single, "homogenized" entity.[7]

The supreme court reversed the court of appeals, however, and focused on different language in section 12-7-1570. The court held that the authorization for consolidation of incomes is to "impose the tax upon the *taxpayers* concerned."[8] Justice Finney concluded that "the use of plural 'taxpayers' instead of 'taxpayer' indicates that corporations filing consolidated returns are not to be considered a single entity."[9] In addition, the court cited *Woolford Realty Co. v. Rose*,[10] a United States Supreme Court decision, for the proposition that corporations filing a consolidated return remain separate and identifiable entities despite

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7. The court of appeals noted:

> At the outset, we hold that the word consolidate means to join together into one whole, or in a general sense to unite into one mass or body. In the writer's mind, the word consolidate can be analogized to the word homogenize and so the writer coins a new definition for the words to consolidate, i.e., "to homogenize."

283 S.C. at 258, 322 S.E.2d at 672 (citation omitted). In its brief to the supreme court, Emerson commented: "It is unfortunate that Judge Gardner chose to coin a new phrase, 'homogenize' when there is a perfectly acceptable technical term 'consolidate' which means what he defined. It, however, is a harmless error and he was trying to simplify what has been a confusing and difficult case." Brief of Respondent at 15.

8. 287 S.C. at 397, 339 S.E.2d at 120.

9. *Id.*

10. 286 U.S. 319 (1932).

consolidation of incomes.[11]

Although the South Carolina legislature has approved a phase-out of the throwback rule,[12] *Emerson* remains significant because of its impact upon tax planning of corporations conducting interstate business and obtaining state tax advantages under federal law. Under Public Law 86-272[13] Congress prohibits a state from taxing a corporation deriving income from that state if the corporate activities there do not rise above the level of mere solicitation of orders for sales.[14] This congressional regulation of interstate commerce is intended[15] to protect corporations conducting business in several states from being taxed in violation of due process in those states with which the corporations lack a "substantial nexus."[16]

Emerson should be most important to the practitioner as it relates to P.L. 86-272, even though the court decided the case in the sole context of the South Carolina throwback rule. The reasoning of the supreme court in *Emerson* should aid in determining what effect the activities of parent and subsidiary corporations will have upon the taxability[17] of each other in states where one corporation exceeds the P.L. 86-272 minimum nexus requirement and the other does not. Ironically, the position advocated by the taxpayer in *Emerson*, that a parent and a subsidiary filing a consolidated return should be viewed as a single, consolidated corporation, could have undermined present corporate planning designed to escape taxation in some states under P.L. 86-272.

Assume for illustrative purposes that Emerson was doing business within the P.L. 86-272 definition in forty-two states,

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11. In *Woolford* the issue was whether, under federal tax statutes, the taxpayer could deduct losses of one corporation prior to consolidation. The court disallowed the deduction, noting that "[t]he term 'taxpayer' means any person subject to a tax imposed by this Act. A corporation does not cease to be such a person by affiliating with another." *Id.* at 328 (citations omitted).

12. S.C. CODE ANN. § 12-7-1170 (Law. Co-op. Supp. 1986).

13. P.L. 86-272 (codified as 15 U.S.C. § 381(a) (1959)).

14. *Id.*

15. *See generally* Quirk, *Minimizing State Taxation of Interstate Business*, 64 J. TAX'N 180 (1986). *But see* J. HELLERSTEIN & W. HELLERSTEIN, STATE TAXATION ¶ 9.17[1][b] (Cum. Supp. 1985).

16. For a discussion of the relation between the "substantial nexus" requirement and P.L. 86-272, see QUIRK, *supra* note 15.

17. For the contention that P.L. 86-272 deals with taxability but not with apportionment, see J. HELLERSTEIN, *supra* note 15.

and TOD was conducting business in another two states where Emerson's activity was limited to mere solicitation of orders. If the sales of TOD are to be apportioned among all forty-four states because Emerson and TOD are only one entity for tax purposes, then Emerson should be subject to taxation in the two states where only TOD crosses the P.L. 86-272 threshold. If a subsidiary is held to be "doing business" in states where only the parent corporation exceeds the P.L. 86-272 minimum activities requirement, then the inverse logic seems even more compelling—a parent corporation should be taxable in states where its subsidiary is doing business above the P.L. 86-272 minimum, even if the parent does no more than solicit sales in those states. Whether the result would be a net disadvantage to the taxpayers would depend upon the level of Emerson's sales in the two states where only TOD is doing business and the tax rate applied by those states. The consistent application of such a principle, however, would cause many corporations, which are now escaping state taxation by limiting activity in one business to mere solicitation of orders, and which are conducting a more active separate business through subsidiaries, to rethink their structural options.[18]

Although the court rejected the approach advocated by Emerson, the supreme court failed to discuss the policy of promoting interstate business under P.L. 86-272. This matter also was not raised in the briefs of either party. Nonetheless, *Emerson* appears to place South Carolina in accord with the United States Supreme Court[19] and the California State Board of Equalization[20] in the general view that separate but closely linked corporations should be treated as separate businesses for apportioning sales. A Wisconsin case,[21] however, recently rejected, without analysis, the position taken by South Carolina in

18. Application of this principle could dampen interstate commerce as well by discouraging corporations from doing business with certain firms if doing so "would draw the company into the state or put at risk activities that are otherwise exempt." Quirk, *supra* note 14, at 181.

19. Norton Co. v. Department of Revenue, 340 U.S. 537 (1951) (a company conducting business in one state does not forfeit its right to do interstate business with tax immunity); *see also supra* note 11 and accompanying text.

20. *See* Appeal of Joyce, Inc., Cal. S.B.E. (CCH) ¶¶ 203-523 (Nov. 23, 1966).

21. *See* Hammermill Paper Co. v. Wisconsin Dep't of Revenue, Wis. Tx. Rep. (CCH) ¶ 202-731 (Wis. Tx. App. Comm'n June 13, 1986).

Emerson. The Supreme Court of Oregon[22] heard the exact issue addressed in *Emerson*, but decided the case on different grounds.[23]

Although the reasoning followed by the supreme court in *Emerson* was confined narrowly to the facts of the case, the implications of the decision are broad. Perhaps unwittingly, the supreme court has reinforced the ability of multi-state corporations to engage in interstate commerce at lower levels of taxation. Under the *Emerson* analysis, the maintenance of separate formalities by parent and subsidiary corporations requires the sales income of the parent and subsidiary corporations to be apportioned according to the separate activities of the two corporations. This analysis also should allow corporations to engage in separate businesses in one state without fear that either the parent or subsidiary will cause the other to become taxable by exceeding the P.L. 86-272 minimum nexus threshold.

Robert H. Brunson

II. Multi-State Corporation Not Allowed to Deduct Intangible Drilling Costs

In computing federal income tax, multistate corporations involved in the exploration and production of oil and gas wells may deduct or capitalize[24] intangible drilling costs.[25] The South

22. Caterpillar Tractor Co. v. Department of Revenue, 289 Or. 885, 618 P.2d 1261 (1980).

23. The taxpayer claimed that it could file a consolidated return as a matter of right and could therefore obtain the advantage of avoiding throwback sales. The court noted, however, "Because we hold that the Tax Court correctly affirmed the Department's order denying plaintiff's use of a consolidated return, we do not reach plaintiff's ultimate claim regarding tax advantages that may flow from a consolidated return." *Id.* at 899 n.4, 618 P.2d at 1263 n.4.

24. I.R.C. § 263(c) (West 1985) (amended 1986). The relevant portion provided as follows: "Notwithstanding subsection [263](a), regulations shall be prescribed by the secretary corresponding to the regulations which granted the option to deduct as expenses intangible drilling and developmental costs in the case of oil and gas wells . . . ." Subsection 263(a) allowed no deduction for expenditures relating to intangible drilling and development cost.

25. Drilling costs are defined as "any cost incurred that in itself has no salvage value and is 'incident to and necessary for the drilling of wells and the preparation of wells for the production of oil and gas.' These expenses expressly include 'wages, fuel, repairs, hauling, supplies, etc.' that are used." C. Russell & R. Bowhay, Income Taxation of Natural Resources ¶ 14.12 (Supp. Nov. 26, 1986).

Carolina Supreme Court ruled in *Allied Corp. v. South Carolina Tax Commission*[26] that in computing South Carolina income tax, these same multistate corporations may not deduct intangible drilling costs when determining their tax liability. The court held that these costs should be capitalized[27] and depreciated by Allied based on a ten year life.[28] Other states in the Fourth Circuit have not addressed the option to deduct or capitalize intangible drilling costs. These states, however, probably would allow, by operation of their statutory definitions of corporate taxable income, the deduction or capitalization option to the multistate corporation.[29]

During 1977, 1978, and 1979, Allied was involved in the exploration and production of oil and gas wells located outside of South Carolina. In its South Carolina income tax returns for these three years, Allied deducted the intangible drilling costs incurred in the production of its oil and gas wells located in other states as allowed by section 263(c)[30] of the Internal Revenue Code. The South Carolina Tax Commission disallowed these deductions and found a deficiency of $215,968 in income taxes and interest. Allied paid the deficiency under protest and then brought an action to recover the amount. The circuit court affirmed the ruling of the South Carolina Tax Commission.

On appeal the supreme court refused to accept Allied's argument that the intangible drilling costs were deductible under the South Carolina Code either as an ordinary and necessary

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26. 288 S.C. 197, 341 S.E.2d 139 (1986).

27. Capitalization is the process by which amounts used in the acquisition or development of capital assets are recovered over a period of years, not during the year of "outlay." This recovery is accomplished through depreciation deductions for tangible property or by amortization for intangible property. E. FARIS, ACCOUNTING AND LAW § 5.4, at 48 (1984).

28. 288 S.C. at 205, 341 S.E.2d at 144.

29. *See, e.g.*, MD. CODE ANN. art. 81, § 280A (1957) (defines corporate taxable income as "taxable income of such taxpayer as defined in the laws of the United States"); N.C. GEN. STAT. § 105-130.S (1985) (defines corporate taxable income as " 'taxable income' as defined in the [Internal Revenue Code]"); VA. CODE ANN. § 58.1-402 1984) (defines corporate taxable income as "the federal taxable income and any other income taxable to the corporation under federal law"); W. VA. CODE § 11-24-6 (1983) (defines corporate taxable income as "taxable income as defined for federal income tax purposes").

30. I.R.C. § 263(c) (West 1985) (amended 1986).

business expense,[31] or as an expense deduction for depletion.[32] In refusing to classify the intangible drilling costs as an ordinary and necessary business expense,[33] the court followed the reasoning of *Commissioner v. Lincoln Savings & Loan Association*:[34] intangible drilling costs are classified as capital in nature and, therefore, are not deductible as an ordinary and necessary business expense. The court also determined that the intangible drilling costs were a betterment which increased the value of Allied's property and thus were capital expenditures.[35]

Allied contended that an expense deduction should be allowed for "the cost of the [oil and gas well] development not otherwise deducted."[36] The supreme court, however, determined

31. 288 S.C. at 210, 341 S.E.2d at 141. Allied argued that the intangible drilling costs were deductible under S.C. CODE ANN. § 12-7-700(1) (Law. Co-op. 1976) (repealed 1985). All of S.C. CODE ANN. § 12-7-700 was repealed by South Carolina Income Tax Federal Conforming Amendments of 1985, 1985 S.C. Acts 280, and subsequent citations to this section will note this repeal parenthetically as above.

32. 288 S.C. at 203, 341 S.E.2d at 143. The court held that Allied had misinterpreted S.C. CODE ANN. § 12-7-700(8) (Law. Co-op. 1976) (repealed 1985), which provided a depletion deduction for corporations involved in mining.

33. S.C. CODE ANN. § 12-7-700(1) (Law. Co-op. 1976) (repealed 1985), provided that "[a]ll the ordinary and necessary expenses paid or accrued . . . during the income year in carrying on any trade or business" were deductible in determining taxable income.

34. 403 U.S. 345 (1971). In *Lincoln Sav. & Loan Ass'n*, the Supreme Court defined capital expenditure as a payment that "serves to create or enhance . . . what is essentially a separate and distinct additional asset and that . . . is capital in nature and not an expense, let alone an ordinary expense." *Id.* at 354. Using this reasoning, the Supreme Court of South Carolina determined that the oil and gas wells of Allied were "additional" and "separate" assets. Any expenditures, therefore, were not deductible under § 12-7-700(1). 288 S.C. at 201, 341 S.E.2d at 141.

35. 288 S.C. at 202, 341 S.E.2d at 142. The court held the intangible drilling costs to be "amounts paid out for . . . permanent improvements or betterments made to increase the value of any property," and not to be deductible from taxable income. S.C. CODE ANN. § 12-7-760(2) (Law. Co-op. 1976) (repealed 1985).

36. 288 S.C. at 202, 341 S.E.2d at 142. Allied based this argument on the provisions in § 12-7-700(8) which provided as follows:

> A reasonable allowance for the depreciation and obsolescence of property used in the trade or business or held for investment and, in the case of mines and other natural deposits, a reasonable allowance for depletion, the basis for computing such allowances to be the same as the basis upon acquisition for determining gain or loss plus the cost of any additions and improvements since acquisition, including, in the case of mines and other natural deposits, *the cost of development not otherwise deducted,* less retirements or recoveries of cost, and in the cases of leases the depletion allowance to be equitably apportioned between the lessor and the lessee.

S.C. CODE ANN. § 12-7-700(8) (Law. Co-op. 1976) (repealed 1985) (emphasis added).

that section 12-7-700(8)[37] allowed the intangible drilling costs to be included in determining the basis for capitalization of expenditures, but the statute did not allow the cost to be treated as a deduction.[38] Allied also argued that section 12-7-700(8) allowed a taxpayer either to deduct or to capitalize the expenditures. The supreme court rejected this claim, holding that such an interpretation would bring section 12-7-700(8) in direct conflict with section 12-7-760(2).[39] Finally, Allied claimed that under section 12-7-700(8), South Carolina adopted the Internal Revenue Code provision that specifically allowed the election to deduct or capitalize.[40] The court determined that the depletion deduction allowed under section 12-7-700(8) was the same allowed under Internal Revenue Code section 611[41] (allowance for deduction for depletion), section 612[42] (basis for cost depletion), section 613[43] (percentage depletion), and the applicable regulations in the Internal Revenue Code.[44] These sections and regulations do not include the provision that allows the option to deduct or capitalize intangible drilling costs.[45]

The supreme court held that the election sought by Allied was not then available in South Carolina.[46] In 1985, however, the General Assembly adopted the provision allowing the election sought by Allied.[47] Effective May 21, 1985, the statute allowed multistate corporations in South Carolina the option to deduct intangible drilling costs as expenses or to capitalize them.[48]

After *Allied*, the South Carolina Income Tax Conforming Amendments are not retroactive. Multistate corporations, there-

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37. S.C. CODE ANN. § 12-7-700(8) (Law. Co-op. 1976) (repealed 1985).

38. 288 S.C. at 203, 341 S.E.2d at 143.

39. *Id.* at 203-04, 341 S.E.2d at 143. If these costs, capital in nature, were deductible under § 12-7-700(8), then conflict would have existed with S.C. CODE ANN. § 12-7-760(2) (Law Co-op. 1976) (repealed 1985) which clearly denied a deduction for capital expenditures.

40. 288 S.C. at 204, 341 S.E.2d at 143.

41. I.R.C. § 611 (West 1985).

42. I.R.C. § 612 (West 1985).

43. I.R.C. § 613 (West 1985) (amended 1986).

44. 288 S.C. at 204, 341 S.E.2d at 143.

45. I.R.C. § 263(c) (West 1985) (amended 1986); Treas. Reg. § 1.612-4 (1985).

46. 288 S.C. at 204, 341 S.E.2d at 143. The court stated specifically, "This section has not been adopted by the General Assembly and is thus not South Carolina law." *Id.*

47. South Carolina Income Tax Conforming Amendments of 1985, 1985 S.C. Acts 280.

48. *Id.*

fore, are still liable for amounts deducted under section 263(c) prior to May 21, 1985. Barring any exceptions,[49] the liability for returns filed prior to May 21, 1985, will expire after three years.[50]

The Internal Revenue Code provisions applicable under the South Carolina Income Tax Federal Conforming Amendments of 1985 were amended through December 31, 1986.[51] This will include the drastic changes made in federal tax laws during 1986.[52] Under section 263(i) of the Tax Reform Act of 1986 the election under Internal Revenue Code Section 263(c) does not apply to intangible drilling and development cost paid or incurred outside the United States.[53] Therefore, multistate corporations conducting business in South Carolina will at least be able to deduct or capitalize the costs incurred within the United States. The South Carolina General Assembly modified these amendments to maintain consistency with the federal provision.

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49. I.R.C. § 6501(c) (West 1985).

50. I.R.C. § 6501(a) (West 1985).

51. S.C. CODE ANN. § 12-7-20(11) (Law. Co-op. 1976 & Supp. 1986), *amended by* Act of June 11, 1987, Part II, § 25.

52. I.R.C. §§ 1-7828 (West 1986).

53. I.R.C. § 263(i) (West 1986) provides in pertinent part: "In the case of intangible drilling and development cost paid or incurred with respect to an oil, gas, or geothermal well located outside the United States . . . subsection [263](c) shall not apply . . . ."