

STATE OF ALABAMA
DEPARTMENT OF REVENUE,
DIVISION

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW

v.

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DOCKET NO. S. 94-351

ASHLAND-GOODWATER-LINEVILLE
SOLID WASTE DISPOSAL AUTHORITY
Route 3 Box 27
Ashland, Alabama 36251-9575,

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Taxpayer.

FINAL ORDER

The Revenue Department refused to issue a sales and use tax certificate of exemption to the Ashland-Goodwater-Lineville Solid Waste Disposal Authority ("Authority"). The Authority appealed to the Administrative Law Division and a hearing was conducted on January 9, 1995. James L. Richey represented the Authority. Assistant counsel J. Wade Hope represented the Department.

This is a statutory construction case. The issue in dispute is whether Code of Ala. 1975, §11-89A-16 exempts solid waste disposal authorities from all State taxation, including State sales and use tax.

The facts are undisputed.

The Authority is a public corporation organized in 1993 as a solid waste disposal authority pursuant to Code of Ala. 1975, §11-89A-1 et seq. The Authority applied with the Revenue Department for a sales and use tax certificate of exemption. The Department denied the exemption, and the Authority appealed to the Administrative Law Division.

Section 11-89A-16 exempts solid waste disposal authorities from taxation, as follows:

"The property and income of any authority, all bonds issued by an authority, the income from such bonds, conveyances by or to an authority, and leases, mortgages and deeds of trust or trust indentures by or to an authority shall be exempt from all taxation in the State of Alabama. Any authority shall be exempt from all taxes levied by any county, municipality, or other political subdivision of the state, including, but without limitation to, license and excise taxes imposed in respect of the privilege of engaging in any of the activities in which an authority may engage. An authority shall not be obligated to pay or allow any fees, taxes or costs to the judge of probate of any county in respect of its incorporation, the amendment of its certificate of incorporation, or the recording of any document."

The Department concedes that solid waste disposal authorities are exempt from State ad valorem and income tax, and also from all county and municipal taxes, including county and municipal sales and use taxes. However, the Department argues that §11-89A-16 does not exempt an authority from State sales or use tax. I agree.

A primary rule of statutory construction is that the plain language of the statute must control. Heater v. Tri-State Motor Transit Co., 644 So.2d 25 (Ala.Civ.App. 1994). The language of §11-89A-16 does not exempt a solid waste disposal authority from State sales and use tax. Rather, only the "property and income" of an authority is exempt from all State taxation.

Town of Mulga v. Town of Maytown, 502 So.2d 731 (Ala. 1987) is on point. The issue in Town of Mulga was whether Mulga's waterworks board was exempt from Maytown's business license tax

pursuant to §§11-50-235(c) and 11-50-322. Those sections exempt from all taxation in Alabama the "property and income" of public corporations formed for the purpose of operating water, sewer, gas or electric systems. The Alabama Supreme Court held that the exemptions applied only to the property and income of a public corporation. Consequently, Mulga's waterworks board was not exempt from Maytown's privilege excise tax. See also, Town of Hackleburg v. Northwest Gas District, 170 So.2d 792 (1964); Tillman v. City of Homewood, 374 So.2d 271 (Ala. 1979).

Likewise, §11-89A-16 exempts only the property and income of a solid waste disposal authority from all State taxation. The Alabama sales tax is a "privilege or license tax" (see, §40-23-2), and the Alabama use tax is an "excise tax" (see, §40-23-61). Consequently, as in Town of Mulga, those privilege and excise taxes are not included within the scope of the limited State exemption allowed by §11-89A-16.

The Authority's attorney, in an excellent brief, makes several arguments why the exemption should include State sales and use taxes. Those arguments are addressed in turn below.

First, the Authority argues that the plain meaning of the statute "exempts authorities from all taxation of the State of Alabama". (Authority's brief at page 2). However, as discussed above, §11-89A-16 exempts only the property and income of an authority from all State taxation. The authority itself is not exempted from all State taxation.

The Authority also argues that §11-89A-25 provides that this chapter (89A) shall be liberally construed. However, a liberal construction cannot expand or enlarge the scope of a statute beyond the actual words used in the statute. The intent of the Legislature can only be gleaned from the actual language used in the statute. Ex parte Rodgers, 554 So.2d 1120 (Ala. 1989).

The Authority next claims that §11-89A-16 should be construed to include State sales and use tax the same as other similar exemption statutes have been construed. Specifically, the Authority cites §11-54-96 relating to industrial development boards, §11-56-21 relating to public housing authorities, §41-10-147 relating to historical preservation authorities, and Department Reg. 810-6-3-.40 relating to municipal housing authorities. The above statutes (and regulation) do include an exemption for State sales and use tax. However, they can be distinguished from §11-89A-16.

First, §11-54-96 exempts "the industrial development board and all properties (owned by the board) . . . from all taxation in the State of Alabama". As early as 1968, the Department recognized in Reg. G27-916 (now Reg. 810-6-3-.33) that the above statute exempted IDBs from State sales and use taxes as long as certain procedural steps are followed. See also, State v. Allied Paper, Inc., 325 So.2d 171 (Ala.Civ.App. 1975); State v. Champion International Corp., 405 So.2d 932 (Ala. 1980); State v. Saginaw Steering Gear Division, 435 So.2d 92 (Ala.Civ.App. 1983).

Section 11-54-96 can be distinguished from §11-89A-16 because §11-54-96 exempts the IDB itself from all taxation. As an exempt entity, an IDB can properly purchase tangible personal property free of all sales and use tax.

On the other hand, solid waste disposal authorities are not generally exempted from all tax. Rather, as discussed, only the property and income of an authority is exempt from State tax. As seen in Town of Mulga, that limited exemption language cannot be expanded to include privilege or excise taxes, including State sales and use taxes.

Section 11-56-21 relates to public building authorities and exempts each "project" entered into by such authority. Again, unlike §11-89A-16, the exemption allowed by §11-56-21 is not limited to the property and income of a public building authority.

Each project is generally exempt from all taxes, including State sales and use taxes.

Section 41-10-147 exempts "each (historical preservation) authority formed under this Article, the property and income of the authority. . . from all taxation in the State." Section 41-10-147, like the IDB exemption at §11-54-96, exempts the historic preservation authority itself from all taxation, including all sales and use tax. See, Department Reg. 810-6-3-.32.

The Authority also claims that it is exempt under §40-23-4(11) as an agency of the municipalities in issue, citing Department Reg. 810-6-3-.40, which recognizes that a municipal housing authority is

exempt from sales tax as an agency of a city.

I assume municipal housing authorities are recognized as exempt municipal agencies based on the specific language of the municipal housing authority statutes, specifically §24-1-27(7), which makes an authority a managing agent for a city. At least two Alabama Supreme Court cases also recognize a municipal housing authority as a government entity or agency for certain purposes.

See, Guntersville Housing Authority v. Stephens, 585 So.2d 882 (Ala. 1991); In re Opinions of Justices, 179 So. 535 (1938). On the other hand, the Supreme Court has also held "that a housing authority is not a municipal corporation nor an arm or a subdivision thereof". Rainesville Housing Authority v. Hamrick Construction, 456 So.2d 38, 39 (Ala. 1984).

In any case, I can find no case law or any language in Chapter 89A of Title 11 indicating that a solid waste disposal authority acts as an agent of a county or municipality. Rather, a solid waste disposal authority is a public corporation, which is a separate and distinct entity from the county or municipality under which it is organized. See, East Montgomery Water, Sewer v. Water Works, 474 So.2d 1088 (Ala. 1985); Abell-Howe Company v. Industrial Development Board, 392 So.2d 221 (Ala.Civ.App. 1980). Consequently, the Authority is not exempt under §40-23-4(11) as a municipal agency.

The Authority notes that the Legislature was certainly aware that the above discussed exemption statutes relating to IDBs, etc.

included an exemption for State sales and use taxes, and thus certainly intended that §11-89A-16 would be given the same broad construction. (Authority's brief at page 4).

However, if the Legislature was aware of those exemption statutes, it certainly knew that those statutes exempted the subject authority or board itself (or projects thereof) from all State taxes. Consequently, limiting the State exemption in §11-89A-16 to only the "property and income" of solid waste disposal authorities indicates the Legislature's informed decision not to exempt those authorities from all State taxes, as had been done in the other exemption statutes. In addition, the second sentence of §11-89A-16 exempts an authority generally from all local taxes. If the Legislature had intended to also exempt an authority generally from all State taxes, including State sales and use tax, it could have easily done so by using the same plain language it used relating to local taxes.

Finally, the Authority argues that it would be illogical to exempt solid waste disposal authorities from all county and city sales and use tax, but not from State sales and use tax. That may or may not be true, but exempting an authority from only local sales and use tax and not also from State tax is not "unworkable", as argued by the Authority. Vendors would simply charge and collect State sales and use tax only on sales to an authority.

The above considered, I must uphold the Department's denial of the State sales and use tax exemption certificate claimed by the

Authority. The above holding is reinforced by the general rule that a tax exemption must be strictly construed against the exemption and for the Department. Ex parte Kimberly-Clark Corporation, 502 So.2d 304 (Ala.Civ.App. 1986). A tax exemption should not be allowed "unless the intention to exempt such person or property clearly appears in some statute or constitutional provision". Crim v. Phipps, 601 So.2d 474 (Ala. 1992), quoting Anniston City Land Company v. State, 48 So. 659 (1901). The intent to exempt solid waste disposal authorities from State sales and use tax is not clearly specified in §11-89A-16. Consequently, the exemption cannot be allowed.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered March 30, 1995.

BILL THOMPSON
Chief Administrative Law Judge