

INFIRMARY HEALTH HOSPITALS, INC. §
P.O. BOX 2226
MOBILE, AL 36652, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner, §

DOCKET NO. INC. 06-1253

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department denied a sales tax exemption certificate requested by Infirmary Health Hospitals, Inc. ("Petitioner"). The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on October 10, 2007. Greg Watts and Watson Smith represented the Petitioner. Assistant Counsel Duncan Crow represented the Department.

ISSUE

The Petitioner is leasing a hospital from the University of South Alabama ("USA"), and is currently operating the facility. The issue is whether the Petitioner is exempt from Alabama sales and use tax, and thus entitled to an exemption certificate. The Petitioner is exempt (1) if it is operating the hospital as an exempt agent of the State, or (2) if the hospital is an exempt "educational institution."

FACTS

Before April 2006, USA owned and operated Knollwood Hospital in Mobile, Alabama. Knollwood included an acute care facility and a separate long-term care facility.

The USA medical school provided a wide range of educational programs at the facilities, including physician and nurse training, residency and fellowship programs, and physical, occupational, and speech therapy training, among other programs. Under the

direction of USA physicians, USA medical residents provided medical care and received training at the facilities. USA nursing students also trained at the facilities under the tutelage of USA nurses and other personnel.

The Petitioner is an Alabama nonprofit corporation organized pursuant to Code of Ala. 1975, §10-3A-1 et seq. The Petitioner leased the hospital building from USA and began operating the facilities in April 2006. USA has continued, however, to provide and perform the same educational and training activities at the facilities as before.

The Petitioner also assists the medical school in providing the educational and training activities at the hospital. From five to seven of its upper-level employees are involved in coordinating the medical training and other educational programs conducted at the facilities. The Petitioner employs a clinical coordinator that coordinates the clinical programs and on-site classroom instruction at the facilities. It also leases some of the USA employees, who continue to work and perform educational functions at the facilities.

ANALYSIS

Issue (1). Is the Petitioner an exempt agent of the State?

USA is a State entity, and as such is exempt from Alabama sales and use tax. Code of Ala. 1975, §§40-23-4(11) and 40-23-62(13). The Petitioner argues that it is operating the hospital as USA's agent, and consequently, that it is also exempt as an agent of the State. I disagree.

The Petitioner leases the physical hospital building from USA. It also allows the USA medical school to continue using the hospital facilities for training and other educational purposes. As discussed, some of the Petitioner's employees also coordinate and otherwise assist the USA personnel and students in their training and educational

functions at the facilities. The extent to which the Petitioner is required to do so, however, is unclear. When asked at the October 6 hearing if the Petitioner was required by the lease with USA to coordinate and/or provide educational services at the facilities, the Petitioner's representatives replied – "I don't think it's part of the lease agreement. By other contracts, you know, by which they, you know, provide different educational functions." R. at 12. Unfortunately, the "other contracts" alluded to were not submitted into evidence. In any case, the fact that the Petitioner may have been contractually required to assist USA in its educational activities at the hospital does not make the Petitioner an agent of USA. The Petitioner otherwise does not claim that it has been expressly appointed as USA's agent in writing.

Alabama law provides that in addition to an express agency relationship, parties may also have an implied or apparent principal/agent relationship. See generally, *Lawler Mobile Homes, Inc. v. Tarver*, 492 So.2d 297 (Ala. 1986); see also, *Southern Banknote Co., Inc. v. State of Alabama*, S. 04-423 (Admin. Law Div. O.P.O. 9/20/2005), and cases cited therein. But the evidence in this case does not establish that the Petitioner is acting or operating the hospital as an implied or apparent agent of USA. There is no evidence that the Petitioner buys tangible property in USA's name, or that the Petitioner can obligate USA to pay for such property, or that USA owns or obtains title to any of the tangible property purchased by the Petitioner. Rather, the Petitioner purchases the tangible property for its own use in operating the facilities, not for use by USA or USA personnel. The fact that USA continues to conduct its educational activities at the facilities, and that the Petitioner coordinates and otherwise assists USA in those activities, does not establish the Petitioner as USA's agent.

Issue (2). Is the hospital an exempt “educational institution” within the purview of Code of Ala. 1975, §§40-23-4(a)(15) and 40-23-62(16)?

Section 40-23-4(a)(15) exempts from Alabama sales tax all “county and city school boards, independent school boards and all educational institutions and agencies of the State of Alabama, the counties within the state, or any incorporated municipalities of the State of Alabama.” Section 40-23-62(16) also exempts from Alabama use tax all tangible property stored, used, or consumed in Alabama by the above entities. The Petitioner argues that it operates the hospital as an exempt educational institution the same way the hospital was operated by USA, and consequently, that it should also be exempt from sales and use tax. I again disagree.

To begin, the fact that the hospital had been tax-exempt when operated by USA, which is an exempt education institution, does not establish that the hospital itself is an exempt educational institution. That is, the hospital was previously exempt only because it was being operated by an exempt State educational institution, not because the hospital itself was an exempt educational institution.

“Educational institution” is not defined by Alabama law for sales and use tax purposes. “State educational institutions” are, however, defined at Code of Ala. 1975, §16-17-1(17) as “every college, university, graduate school, professional school, junior college, trade school, elementary school, secondary school, and every institution for education and training of the deaf, blind or mentally retarded, heretofore or hereafter established or acquired under statutory authorization of the Legislature of Alabama and existing as public institutions of learning supported in substantial part by state appropriations, or by revenues derived from taxation.”

The Petitioner is not an educational institution, nor is the hospital facility operated by the Petitioner an “educational institution . . . of the State of Alabama,” within the purview of the exemptions at §§40-23-4(a)(15) and 40-23-62(13). The fact that USA, which is a State educational institution, continues to conduct educational and training programs at the facility does not make the facility itself an exempt educational institution.

To be exempt, an educational institution must be State-sponsored – “educational institutions . . . of the State of Alabama.” Sections 40-23-4(a)(15) and 40-23-62(13). As indicated, §16-17-1(17) defines a State educational institution as a college, school, etc. established by the State Legislature and supported in substantial part by State appropriations or State tax revenues. There is no evidence that the Petitioner receives substantial (or any) State monies to operate the hospital. It thus is not a State educational institution as defined by Alabama law.

An exemption must be strictly construed against the one claiming the exemption, and in case of doubt must be denied. *Bean Dredging Corp. v. State of Alabama*, 454 So.2d 1009 (Ala. 1984). Because the Petitioner is not operating the hospital as an agent of the State, and because neither the Petitioner nor the hospital itself is a State educational institution, as defined by Alabama law, the Petitioner is not exempt from sales or use tax, and thus is not entitled to an exemption certificate. The Department’s refusal to issue the Petitioner a certificate is affirmed.

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

Entered March 4, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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