

QUALITY OF LIFE HEALTH SERV., INC. §
1411 PIEDMONT CUTOFF
GADSDEN, AL 35903-2708, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. S. 09-1089

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Quality of Life Health Services, Inc. ("Taxpayer") for State sales and use tax and local tax for 4/1/2005 through 6/30/2008. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on February 4, 2010. Cleophus Thomas represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer was formed as a nonprofit corporation in 1977 under the name Etowah Quality of Life Council, Inc. It subsequently changed its name to its present name, Quality of Life Health Services, Inc., in 1995. It currently operates 14 clinics in 6 counties in Alabama at which it provides medical and dental care to needy individuals.

The Taxpayer applied to the Department in March 1984 for a sales tax exemption certificate for prescription drugs it sold through its in-house pharmacy. The Taxpayer's application letter, Dept. Ex. 3, reads as follows:

Our Facility is a primary care clinic federally funded to provide medical care to the indigent population of Gadsden. We have recently opened a pharmacy within the clinic to provide medications on a sliding scale basis to our patients only. Our pharmacy is registered with the Alabama State Board of Pharmacy. All items dispensed are from a written prescription from our in-house physicians (this applies to all medications which in some cases are considered over-the-counter). Therefore, since all items are treated as prescription items, there is no sales tax involved.

We request that you consider our application for sales tax exemption on the basis that we are a non-profit organization and that all items sold in the pharmacy are by prescription only.

The Department granted the request and issued the Taxpayer an exemption certificate. The certificate included the following – “Kind of Business Engaged in by Purchaser: Primary Care Clinic – Prescription Drugs.”¹ The Department’s cover letter accompanying the certificate also specified that “the enclosed certificate will not be valid for your purchases of consumable supplies.” Dept. Ex. 4. The Department reissued the certificate to the Taxpayer on several occasions. A renewed certificate dated March 24, 1998 was submitted into evidence at the February 4 hearing. That certificate also included the “Primary Care Clinic – Prescription Drugs” language, and the Department’s cover letter sent with the 1998 certificate also indicated, as did the 1984 cover letter, that the certificate was not valid for the purchase of consumable supplies. Dept. Ex. 5.

The Medical Clinic Board for the City of Gadsden – Etowah Quality of Life, was formed in 1985. The Medical Clinic Board is exempt from Alabama sales and use tax pursuant to Code of Ala. 1975, §11-58-1, et seq. Some of the same individuals are involved in both the Medical Clinic Board and the Taxpayer.

Also in 1985, the Medical Clinic Board requested co-application status with the Taxpayer for federal funding to operate community health centers in Etowah County, Alabama, Project Number 04-001526-08-0. The application was granted. The Department of Health and Human Services also approved the Taxpayer’s request in June 1995 that the Medical Clinic Board be made co-applicant with the Taxpayer for organization of a Rural

¹ Prescription drugs prescribed by a physician and filled by a licensed pharmacist are statutorily exempt from Alabama sales tax. Code of Ala. 1975, §40-23-4.1.

Health Initiation Grant.

The Department audited the Taxpayer for sales and use tax for the period in issue and determined that the Taxpayer had improperly purchased supplies and other taxable items tax-free during the audit period using its prescription drug exemption certificate.²

The Department examiner determined that the Taxpayer was a separate entity from the exempt Medical Clinic Board, and thus not generally exempt from sales or use tax. She thus concluded that the Taxpayer owed sales or use tax on all tangible personal property (other than exempt prescription drugs) it had purchased tax-free during the audit period.

The examiner's audit report reads in part as follows:

Quality of Life Health Services, Inc. is a nonprofit corporation that provides medical and dental care. They have fourteen clinics in six counties with the majority being in the Gadsden area. The main clinic and the administrative offices are located at 1411 Piedmont Cutoff in the city limits of Gadsden.

The corporation was originally formed under the name Etowah Quality of Life Council, Inc. in 1977. The name was changed to Quality of Life Health Services, Inc. in 1995. In 1984, they requested a certificate of exemption for the purchase and sale of prescription drugs in their in-house pharmacy. The certificate was issued and later renewed under the new name. It has since been determined that Quality of Life Health Services, Inc. started using the certificate to purchase everything tax exempt.

Part of the confusion in what is tax exempt and what is not tax exempt is due to the corporate and d/b/a name being similar to the local medical clinic board formed by some of the same individuals that are involved in this corporation. The medical clinic board is totally exempt by law under Chapter 58 of Title 11, Code of Alabama 1975. The medical clinic board was formed in 1985 under the name The Medical Clinic Board for the City of Gadsden - Etowah Quality of Life. Both corporations are commonly referred to as "Quality of Life" and have administrative offices at the same location. Most people, including examiners in our Gadsden Taxpayer Service Center, were not

² A copy of the Department-issued prescription drug exemption certificate provided by the Taxpayer to one of its vendors indicates that the Taxpayer had handwritten on the certificate that it was for "tangible personal property utilized to provide primary healthcare." Dept. Ex. 1.

aware that there were actually two corporations and had thought the entire complex was under the medical clinic board.

Quality of Life Health Services, Inc. also produced a letter from the Department of Health & Human Services addressed to Etowah Quality of Life Council, Inc. (their previous name) and dated June 10, 1995 which approved Etowah Quality of Life Council, Inc.'s request that the Medical Clinic Board be made a co-applicant organization for a Rural Health Initiative Grant. Quality of Life Health Services, Inc. stated that as co-applicants the medical clinic board's sales tax exemption would pass onto them.

We do not know when the confusion with the certificate of exemption started or how long Quality of Life Health Services, Inc. has been purchasing without paying tax to their vendors. We have only conducted our examination for the basic three year statute period, bringing it current from the original start date. We did not pursue previous periods of tax because we did not know how far back the tax problem existed and if records would have been available. In addition, Quality of Life Health Services, Inc. has made the necessary adjustments in their accounting and remitting procedures to ensure that tax is paid correctly to their vendors.

The Department examiner further testified at the February 4, 2010 hearing that while the offices of the Taxpayer and the Medical Clinic Board are in the same facility in Gadsden, the entities are otherwise separate. Specifically, the Taxpayer and the Medical Clinic Board have separate accounting systems, bank accounts, and checks. The Taxpayer files its own insurance claims, receives co-pays, and has its own federal ID number. Property purchased by the Taxpayer was also purchased or invoiced in the Taxpayer's name. The only money exchanged between the two entities was when the Taxpayer paid money to the Medical Clinic Board which the Board used to make scheduled bond payments.

The Taxpayer argues that it correctly purchased all tangible property tax-free during the audit period because it was a duly designated purchasing agent of the Medical Clinic Board. That claim is based on the fact that the Taxpayer was co-applicant with the Medical

Clinic Board in 1985 concerning a project for operating community health centers in Etowah County, and also in 1995 for the organization of a Rural Health Initiation Grant. The Taxpayer also submitted a document attached to an April 11, 1985 letter from the Taxpayer's Chief Executive Officer to the U.S. Department of Health and Human Services concerning the relationship between the Taxpayer and the Medical Clinic Board. The document is signed by the Chairman of the Medical Clinic Board, and includes the following statement – "This Board appoints Etowah Quality of Life Council, Incorporated as its agent for purchasing and personnel administration."

The above document from the Medical Clinic Board Chairman requested co-applicant status between the Taxpayer and the Board to operate community health centers in Etowah County, Alabama, Project Number 04-001526-08-0. The document does appoint the Taxpayer as purchasing agent, but it must be assumed that the appointment only relates to the specific project mentioned in the document. That is, the appointment was limited, and there is no indication that the Medical Clinic Board otherwise appointed the Taxpayer as its purchasing agent for all purposes in perpetuity.

In any case, even if the Taxpayer had been the Clinic's duly appointed purchasing agent during the period in issue, for the Taxpayer to have properly purchased items tax-free as the Clinic's purchasing agent, it was required to strictly comply with the requirements in Dept. Reg. 810-6-3-69.02. That regulation reads in pertinent part as follows:

- (1) The United States Government, the State of Alabama, counties and incorporated municipalities of the state, and various other entities within the state are specifically exempt from paying sales and use tax on their purchases of tangible personal property. These exempt entities may appoint purchasing agents to act on their behalf for making tax-exempt purchases. In such situations the department will recognize that a agency relationship exists, provided that a written contract between the owner and the contractor-

agent has been entered which clearly establishes that: (i) the appointment was made prior to the purchase of materials; (ii) the purchasing agent has the authority to bind the exempt entity contractually for the purchase of tangible personal property necessary to carry out the entity's contractual obligations; (iii) title to all materials and supplies purchased pursuant to such appointment shall immediately vest in the exempt entity at the point of delivery; and (iv) the agent is required to notify all vendors and suppliers of the agency relationship and make it clear to such vendors and suppliers that the obligation for payment is that of the exempt entity and not the contractor-agent. All purchase orders and remittance devices furnished to the vendors shall clearly reflect the agency relationship. The tax-exempt entity may enjoy its tax-exempt status when utilizing a purchasing agent, provided that the purchase is paid for by the tax-exempt entity with funds belonging to the tax-exempt entity and the proper documentation as listed above exists to confirm the agency relationship.

The Taxpayer clearly failed to satisfy requirement (iv) of the regulation. To begin, there is no evidence the Taxpayer notified the sellers that it was purchasing the property as agent for the exempt Medical Clinic Board. Rather, the Taxpayer simply submitted to the sellers a copy of its prescription drug exemption certificate, which is in the Taxpayer's name and makes no reference to either the Medical Clinic Board or the Taxpayer's purported agency status with the Board. The Taxpayer also ordered or purchased the property in its own name, without reference to the Board. Finally, the Taxpayer paid for the property with checks drawn on its own account. The items were thus not paid for with funds belonging to the Board, as required by the regulation. See generally, *Ex parte: State of Alabama; Re: Champion International Corporation v. State of Alabama*, 405 So.2d 932 (1980); *Jim Boothe Contracting & Supply Co., Inc. v. State of Alabama*, S. 08-922 (Admin. Law Div. 7/8/2010).

The exemption certificate issued by the Department was also by its terms limited to only prescription drugs, and thus was improperly used by the Taxpayer to purchase supplies and other non-exempt items tax-free.

Finally, the fact that the Taxpayer was co-applicant with the exempt Medical Clinic Board on certain projects did not transfer the Board's tax-exempt status to the Taxpayer. As discussed, the Taxpayer could have purchased property tax-free as the Board's designated purchasing agent during the audit period, but only if the requirements of Reg. 810-6-3-.69.02 had been followed. They were not.

The Taxpayer performs a worthwhile service by providing medial care to indigent people in Alabama. But it is not generally exempt from Alabama sales or use tax. Nor did it purchase the property in issue as purchasing agent on behalf of the Medical Clinic Board. Consequently, the Department correctly assessed the Taxpayer for the tax in issue.

The final assessments are affirmed. Judgment is entered against the Taxpayer for State sales tax and interest of \$53,505.22; consumers use tax and interest of \$119,513.30; and local tax and interest of \$7,899.73. Additional interest is also due from the date the final assessments were entered, September 24, 2009 for the local tax assessment, and September 25, 2009 for the State sales tax and use tax assessments.

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

Entered July 8, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Cleophus Thomas, Jr., Esq.
Joe Cowen
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