THE HEALTHCARE AUTHORITY OF THE CITY OF HUNTSVILLE, d/b/a HUNTSVILLE HOSPITAL, THE HEALTHCARE AUTHORITY OF ATHENS & LIMESTONE COUNTY, d/b/a ATHENS-LIMESTONE HOSPITAL, AND THE SYLACAUGA HEALTHCARE AUTHORITY, d/b/a COOSA VALLEY MEDICAL CENTER,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Petitioners,	§	DOCKET NO. S. 10-190
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Healthcare Authority of the City of Huntsville, The Healthcare Authority of Athens & Limestone County, and The Sylacauga Healthcare Authority (together "Petitioners") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a) concerning the Department's refusal to issue them a blanket tax exemption certificate. A hearing was conducted on October 5, 2010. The Petitioners' representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The Petitioners were organized as health care authorities pursuant to the Health Care Authorities Act of 1982, Code of Ala. 1975, §22-21-310, et seq. That Act, at Code of Ala. 1975, §22-21-333, exempts health care authorities from certain taxes. The Petitioners contend that the statute exempts them for all State taxation, including the sales and use taxes levied at Code of Ala. 1975, §40-23-1, et seq., and also the State utilities and mobile telecommunications taxes levied at Code of Ala. 1975, §40-21-1, et seq.

The Department argues that while the Petitioners may be entitled to a limited sales and use tax exemption pursuant to §22-21-333, that statute does not exempt them from the State utility and mobile telecommunications taxes levied in §40-21-1, et seq. I agree.

A long-standing rule of statutory interpretation is that a tax exemption or deduction statute must be strictly construed against the exemption or deduction. The exemption or deduction should be allowed only if the taxpayer is clearly entitled by the language of the statute to the exemption or deduction. *Bean Dredging Corp. v. State of Alabama*, 454 So.2d 1009 (Ala. 1984); *Brundidge Milling Co. v. State*, 228 So.2d 475 (1969). With that statutory rule in mind, §22-21-333 is analyzed below.

The first sentence in §22-21-333 reads as follows:

> All properties of an authority, whether real, personal or mixed, and the income therefrom, all securities issued by an authority and the coupons applicable thereto and the income therefrom, and all leases made pursuant to the provisions of this article and all revenues derived from any such leases, and all deeds and other documents executed by or delivered to an authority shall be exempt from any and all taxation by the state, or 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.

The above sentence exempts (1) all properties of an authority, and the income from the property; (2) all securities issued by an authority, the coupons applicable thereto, the income therefrom, and the indentures and other instruments executed as security therefrom; (3) all leases and the revenue derived therefrom; and (4) all deeds and other documents executed by or delivered to an authority. The statute provides that all of the above "shall be exempt from any and all taxation by the state," and the subdivisions thereof.

The above enumerated exemptions in §22-21-333 do not include exemptions from the sales, use, utility, or mobile telecommunications taxes levied by the State.

The first sentence in §22-21-333 further provides that the exemption shall include "license and excise taxes imposed in respect of the privilege of engaging in any of the activities in which an authority may engage."

The utility gross receipts tax at Code of Ala. 1975, §40-21-80, et seq. and the cellular and mobile telecommunications taxes at Code of Ala. 1975, §40-21-120, et seq., are privilege taxes. They are not license or excise taxes imposed on healthcare authorities for the privilege of engaging in any activity in which a healthcare authority may engage. Rather, they are imposed or levied on the provider of the utility or telecommunication services, not the service customers, i.e., the Petitioners in this case. That is, a healthcare authority does not engage in providing utility and telecommunication services. The exemption for healthcare authorities provided in the first sentence of §22-21-333 thus does not apply to the State utility and telecommunications.

The second sentence in §22-21-333 applies to fees, taxes, or costs paid to a judge of probate, and are thus inapplicable in this case.

The last sentence in §22-21-333 reads as follows:

> Further, the gross proceeds of the sale of any property used in the construction and equipment of any health care facilities for an authority, regardless of whether such sales it to such authority or any contractor or agent thereof, shall be exempt from the sales tax imposed by Article 1 of Chapter 23 of Title 40 and from all other sales and similar excise taxes now or hereafter levied on or with respect to the gross proceeds of any such sale by the state or any county, municipality or other political subdivision or instrumentality of any thereof; and any property used in the construction and equipment of any health care facilities for an authority, regardless of whether such property has been purchase by the authority or any contractor or agent

> thereof, shall be exempt from the use tax imposed by Article 2 of Chapter 23 of Title 40 and all other use and similar excise taxes now or hereafter levied on or with respect to any such property by the state of any county, municipality or other political subdivision or instrumentality of any thereof.

The above clearly provides a limited exemption from sales and use tax for "any property used in the construction and equipment of any healthcare facility for an authority,. . . ." The exemption is thus limited to property purchased for use in building and equipping a healthcare facility. It does not apply to supplies, consumables, and other property not used for the above purposes. It thus does not entitle the Petitioners to a general sales tax exemption certificate.

The Petitioners also cite Code of Ala. 1975, §40-9-23, which specifies that "[a]ll corporations organized for the purpose of establishing regional mental health programs and facilities which are certified or licensed by the State Board of Health under the provisions of Sections 22-50-1 through 22-50-24 shall be exempt from all taxation."

The burden of proving that a taxpayer is entitled to an exemption or deduction is on the taxpayer. *Champion International Corp. v. State*, 405 So.2d 932 (1980). In this case, there is no evidence that the Petitioners were organized for the purpose of establishing regional mental health programs, or that they are licensed by the State Board of Health pursuant to §§22-50-1 through 22-50-24. The Petitioners thus are not entitled to the exemption at §40-9-23.

Finally, the Petitioners argue that they are exempt pursuant to Code of Ala. 1975, §40-23-5(m). That statute provides a sales and use tax exemption for "[a]ny county public hospital association or any Alabama nonprofit membership corporation if one or more of its members is a county public hospital association, and any of its, or their, branches,

agencies, lessees or successors organized pursuant to Section 10-3A-1 et seq., and which operates or maintains hospitals for purposes other than for pecuniary gain and not for individual profit, is hereby exempted from paying any state, county, or municipal sales and use tax of any nature whatsoever." That section also does not apply because there is no evidence that the Petitioners are county public hospital associations or Alabama nonprofit membership corporations with one or more members being a county public hospital organized pursuant to Code of Ala. 1975, §10-3A-1, et seq.

The Petitioners are not entitled to blanket exemption certificates because, as healthcare authorities, they have only a limited sales and use tax exemption, and are not exempt from the State utility or telecommunications taxes. Judgment is entered accordingly.

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

Entered October 13, 2010.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
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