

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 00-006

**This document may not be used or cited as precedent. Ala. Code §40-2A-5(a) (1998 Replacement Volume).**

TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: September 1, 2000

RE: Applicability of Ala. Code §40-23-5(m) to a public hospital association not organized under Ala. Code §10-3A-1 et seq., the Alabama Nonprofit Corporation Act.

**FACTS**

The facts as represented by the Requestor are as follows:

1. Corporation "A" was incorporated as a non-profit corporation under Delaware's General Corporation Law, Sections 101, *et seq.* Corporation "B" is a non-profit corporation organized under Delaware's General Corporation Law, Sections 101, *et seq.*

2. The Internal Revenue Service ("IRS") recognizes Corporation "B" as an organization that is exempt from federal income taxes under Internal Revenue Code Section 501(c)(3). Corporation "B" is not classified for federal income tax purposes as a private foundation because it is described under Internal Revenue Code Section 509(a)(2).

3. As its initial capital contribution, Corporation "B" will contribute cash to Corporation "A" in exchange for 100% voting membership interest in Marion;

4. Authority "C" currently owns an Alabama hospital, Hospital "D" and leases it to Corporation "E", who alone operates and maintains the Hospital "D";

5. Authority "C" qualifies as an Alabama county public hospital association as that term is used in Code Subsection 40-23-5(m);

6. Corporation "A" will use Corporation "B's" capital contribution to acquire Corporation "E's" interest in Hospital "D". Corporation "A" will acquire the interest by:

- a. Purchasing Corporation "E's" entire leasehold interest in Hospital "D", with the consent of Authority "C", along with certain other rights and assets that Corporation "E" currently owns and utilizes in connection with operating and maintaining Hospital "D"; or
- b. Purchasing Hospital "D" from Authority "C" outright.

7. Corporation "B" will operate and maintain Hospital "D" through Corporation "A". Hospital "D" is located near the border between State "X" and Alabama. Alabama residents who now must travel to State "X" for treatment at Hospital "F", will be able to easily access the Hospital "D".

8. If Corporation "A" and Authority "C" agree that Corporation "A" will purchase Hospital "D" from Authority "C" outright, Corporation "A" will issue a membership interest to Authority "C";

9. Corporation "A's" revenues will be used solely to further its charitable purposes and the charitable purposes of Corporation "B";

10. Under Corporation "A's" Articles of Incorporation, Corporation "B" will have the right to appoint Corporation "A's" Board of Directors. Corporation "B" will appoint one member to Corporation "A's" Board of Directors as a representative of Authority "C" based upon Authority "C's" nomination. However, if Corporation "A" purchases Hospital "D" outright, Corporation "B" may not appoint a representative of Authority "C" to Corporation "A's" Board;

11. Corporation "A's" Board of Directors will manage its affairs relating to Hospital "D's" operation and maintenance;

12. Corporation "A" has obtained from Alabama's Secretary of State a certificate of authority to conduct affairs in Alabama as Code Section 10-3A-170 requires, and will comply with any other requirements under Alabama state law applicable to a foreign non-profit corporation conducting its affairs in Alabama;

13. Corporation "A" will not engage in any activities in which a non-profit corporation organized under Alabama's Nonprofit Corporation Act could not lawfully engage;

14. Corporation "A" will be organized and operated exclusively to provide medical or hospital care. Corporation "A" will operate and maintain Hospital "D" in a manner that promotes the health of the community. Corporation "A" is filing an application with the Internal Revenue Service to be recognized as an organization

exempt from federal taxes under Internal Revenue Code Section 501 (c)(3) and an organization that is not a private foundation under Internal Revenue Code Sections 509(a)(1) and 170(b)(1)(A)(iii).

### **ISSUE**

Whether Corporation "A" will qualify for the sales and use tax exemption provided by Ala. Code §40-23-5(m)?

### **LAW AND ANALYSIS**

Ala.Code §40-23-5(m) provides, in pertinent part, the following:

Any 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 . . . .

According to the specific wording of Ala. Code §40-23-5(m), in order to qualify for the exemption accorded by this section all public hospital associations organized under Ala. Code §10-3A-1, et seq., the Alabama Non-Profit Corporation Act. Corporation "A", although a nonprofit corporation, was organized under the laws of Delaware, and not pursuant to Ala. Code §10-3A-1 et seq.

The universal rule of construction is that exemptions from taxation, whether statutory or constitutional, are to be strictly construed against the exemption and in favor of the right to tax, and that no person or property is to be exempted unless the intention to exempt such person property clearly appears in some statute or constitutional provision. Brundidge Milling Co. v. State, 45 Ala. App. 208, 228 So.2d 475 (1969).

### **HOLDING**

Ala. Code §40-23-5(m) applies specifically only to all public hospital associations organized under Ala. Code §10-3A-1 et seq., the Alabama Nonprofit Corporation Act. Corporation "A", although a nonprofit corporation, was organized under the laws of

Delaware and not under Ala. Code §10-3A-1 et seq. Consequently, Ala. Code §40-23-5(m) does not apply and thus, Corporation "A" does not qualify for the exemption.

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MICHAEL PATTERSON, Commissioner  
Alabama Department of Revenue

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