

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 98-007

This document may not be used or cited as precedent. Ala. Code §40-2A-5(a) (1993 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: June 26, 1998

RE: Applicability of Alabama sales and use tax to purchases of building materials and operating equipment by a health care authority and/or supplies necessary for the day-to-day operation of a health care facility purchased by a joint venture owned fifty percent by a health care authority and fifty percent by a for-profit corporation.

ISSUES AND FACTS

The facts as represented by requestor are as follows:

Authority "A", is an "authority" as defined in the Health Care Authorities Act of 1982, codified at Ala. Code §22-21-310 et seq. Authority "A" is in the planning stages of constructing a new assisted living facility in the State of Alabama, and will fund the construction and fully equip the new facility from current appropriations. The project will not require Authority "A" to obtain any outside funding. Once the facility is complete, it will be operated by a joint venture which will be owned fifty percent by Authority "A" and fifty percent by a for-profit corporation. Authority "A" will then lease the newly constructed facility and operating equipment to the joint venture. The joint venture will operate and manage the newly constructed facility.

The issues are as follows:

1. Whether purchases of property made by Authority "A" used in the construction or equipping of a new assisted living facility are exempt from Alabama sales and use tax

under the Health Care Authorities Act of 1982?

2. Whether purchases of building material, operating equipment and operating supplies, where purchased directly by Authority "A" or the joint venture are exempt from Alabama sales and use tax under Ala. Code §40-23-5(m)?

3. Whether supplies or other items necessary for the day-to-day operation of the facility and purchased by the joint venture are exempt from Alabama sales and use taxes under the Health Care Authorities Act of 1982?

LAW AND ANALYSIS

Issue 1:

Ala. Code §22-21-333 provides that purchases of building materials and operating equipment are exempt from sales and use tax when purchased by an authority organized under Article 11 of Title 22, the Health Care Authorities Act of 1982, for use in the construction and equipment of a health care facility. Therefore, purchases made by Authority "A" used in the construction or equipping of a new assisted living facility are exempt from Alabama sales and use tax under the Health Care Authorities Act of 1982.

Issue 2:

Ala. Code §22-21-358(1) allows an authority to participate as a joint venturer in a joint venture. Ala. Code §22-21-333 provides, in pertinent part, the following:

. . .Further the gross proceeds of the sale of any property used in the construction and the equipment of any health care facilities for an authority, regardless of whether such sale is to such authority or any contractor or agent thereof shall be exempt from the sales tax imposed on by Article 1 of Chapter 23 of Title 40. . . .

When Ala. Code §22-21-333 and §22-21-358 are read together, it appears that the joint venture making the purchases at issue is an "agent" of Authority "A" as that term is used in Ala. Code §22-21-333. Therefore, the purchases of building material, operating equipment and operating supplies, whether purchased directly by Authority "A" or the joint venture are exempt from Alabama sales and use tax under the Health Care Authorities Act of 1982.

In addition to the sales and use tax exemption based on the Health Care Authorities Act of 1982, Ala. Code §40-23-5(m) provides an exemption for the following:

Any county public hospital association and any of its branches, agencies, lessees, or successors organized pursuant to Section 10-3A-1, et seq., and which operates or maintains hospitals for counties and 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. . . .

However, as the joint venture would be making the purchases at issue as an "agent" of Authority "A", the exemption in Ala. Code §22-21-333 applies. If the joint venture is not an agent of Authority "A", then these purchases would be exempt under Ala. Code §40-23-5(m).

Issue 3:

In the Administrative Law case of State v. Mercy Medical, Docket No. S. 91-148, Administrative Law Judge Thompson interpreted the words "construction and equipment of such facility" in Ala. Code §11-62-18(d) to mean that the exemption should be construed to include not only the facility itself and the permanent fixtures and machines used in the facility, but also the supplies and other items necessary for the day-to-day operation of the facility. It appears that the Administrative Law Judge's ruling would apply equally to the "construction and equipment of any health care facility" language in Ala. Code §22-21-333. Therefore, supplies or other items necessary for the day-to-day operation of the facility would be exempt from Alabama sales and use tax under the Health Care Authorities Act of 1982, whether purchased by Authority "A" or the joint venture.

HOLDING

Based on the particular facts of this case, purchases of property made by Authority "A" used in the construction or equipping of a new assisted living facility are exempt from Alabama sales and use tax under the Health Care Authorities Act of 1982. These purchases are exempt from sales and use tax whether purchased directly by Authority "A" or the joint venture. Additionally, supplies or other items necessary for the day-to-day operation of the facility and purchased by the joint venture are exempt from the Alabama sales and use tax under the Alabama Health Care Authorities Act of 1982.

H. E. "GENE" MONROE, JR.
Commissioner of Revenue