EXHIBIT A

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Greenville Hospital System, Petitioner, vs. South Carolina Department of Revenue, Respondent.	Docket No.13-ALJ-17-0523-CC **FINAL ORDER**

Appearances: For Petitioner: Charles M. Sprinkle, III, Esquire
Arthur F. McLean, III, Esquire
For Respondent: Milton G. Kimpson, Esquire

STATEMENT OF THE CASE

This contested case is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Request for Contested Case Hearing filed by Greenville Health System (GHS or Petitioner). GHS contests the October 4, 2013, decision of the South Carolina Department of Revenue (Department or DOR) denying GHS an exemption from sales and use tax pursuant to S.C. Code Ann. § 12-36-2120(41) (2014) (hereafter, § 2120(41)). GHS seeks an exemption for meals sold in its on-site hospital dining facilities on the ground that it is a charitable organization. On May 8, 2017, this Court issued an Order Denying Petitioner's Motion for Partial Summary Judgment and Granting Respondent's Cross Motion for Summary Judgment.

On May 17, 2017, Petitioner filed a Motion to Reconsider, Alter, or Amend, pursuant to Rules 29(D) and 68, SCALC. The Department filed a response on June 5, 2017.[1] Petitioner requests that the Court reconsider its May 8, 2017 order on summary judgment. A motions hearing was held on June 15, 2017 in Columbia, South Carolina to hear from the parties on the issues raised in the Motion for Reconsideration. The Court grants the motion in part, vacates its prior order, and substitutes this order.

LEGAL STANDARD

The Court has jurisdiction to hear this matter pursuant to S.C. Code Ann. § 12-60-460 (2014). Under ALC Rule 68, this Court may apply the South Carolina Rules of Civil Procedure in contested case proceedings where no ALC rule applies and when practicable. Therefore, Rule

[1] With the consent of Petitioner, the Court granted the Department an informal extension of time to the file its response.

56(C), SCRCP, applies in determining whether summary judgment is proper in this case. "Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law." Quality Towing, Inc. v. City of Myrtle Beach, 340 S.C. 29, 33, 530 S.E.2d 369, 371 (2000) (citations omitted); Rule 56(c), SCRCP. "Summary judgment should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts." Ellis v. Davidson, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004) (citation omitted). To determine whether any triable issues of fact exist, the reviewing court must consider the evidence and all reasonable ambiguities and inferences in the light most favorable to the non-moving party. Ferguson v. Charleston Lincoln Mercury, Inc., 349 S.C. 558, 562–563, 564 S.E.2d 94, 96 (2002) (citation omitted). However, when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. Trico Surveying, Inc. v. Godley Auction Co., 314 S.C. 542, 544, 431 S.E.2d 565, 566 (1993) (citation omitted).

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." George v. Fabri, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001) (citation omitted). "A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony; however, summary judgment is completely appropriate when a properly supported motion sets forth facts that remain undisputed or are contested in a deficient manner." David v. McLeod Reg'l Med. Ctr., 367 S.C. 242, 250, 626 S.E.2d 1, 5 (2006).

In this case, there is no material dispute as to the facts relevant to the resolution of the Disputed Legal Issues presented by consent of the parties for a ruling.

RELEVANT BACKGROUND AND FACTS NOT IN DISPUTE

Under South Carolina law, "[a] sales tax, equal to five[2] percent of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail." S.C. Code Ann. § 12-36-910(A) (2014). Tangible personal property, as defined under the South Carolina Sales and Use Act, means "personal property which may be seen, weighted, measured, felt, touched, or which is in any other manner perceptible to the senses." S.C. Code Ann. § 12-36-60 (2014). "It also means services and intangibles . . . the sale or use of which is subject to tax under this chapter . . . ." Id. In pertinent part, the term "gross

[2] S.C. Code Ann. § 12-36-1110 (2014) imposes an additional one percent sales tax beginning on June 1, 2007.

proceeds of sales" is defined as "the value proceeding or accruing from the sale, lease, or rental of tangible personal property . . . ." S.C. Code Ann. § 12-36-90 (2014). The gross proceeds from GHS' sales of tangible personal property, including retail sale of food in cafeterias, are subject to sales tax unless an exemption applies. The burden of proof is on GHS to show that a sale is not subject to tax. S.C. Code Ann. § 12-36-950 (2014); see also TNS Mills, Inc. v. S.C. Dept. of Revenue, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citation omitted) ("The burden is on claimants to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by the statute.") GHS asserts that it is entitled to an exemption from the sales tax under § 2120(41), which provides:

> Exempted from the taxes imposed by this chapter are the gross proceeds of sale or sales price of:
> * * *
> (41) items sold by organizations exempt under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual.

S.C. Code Ann. § 12-36-2120 (2014). Section 12-37-220 defines exemptions from property taxes.

GHS is a political subdivision, established by the South Carolina General Assembly in Act No. 432, 1947 S.C. Acts, for the purpose of operating Greenville General Hospital. Prior to that legislative enactment, the hospital was known as Greenville Hospital, and was owned and operated by the City of Greenville, South Carolina. GHS is exempt from property tax under S.C. Code Ann. § 12-37-220(A)(1) as a "political subdivision.[3]" The Internal Revenue Service (IRS) recognized the former Greenville Hospital as an organization exempt from income tax pursuant to 26 USC § 501(c)(3) in 1944, prior to the General Assembly's creation of GHS as a government subdivision. In August 2007, the IRS issued a letter to GHS indicating that its § 501(c)(3) status as an exempt organization, first granted in 1944, was still effective.

DISCUSSION

I. Is the statutory exemption from sales tax strictly construed against the taxpayer or liberally construed in favor of GHS as a public body?

GHS argues that the sales tax exemption in S.C. Code Ann. § 12-36-2120(41) must be liberally construed in favor of granting the sales tax exemption. In support of its argument, Petitioner cites a line of cases holding that an exception to the general rule of strict construction

[3] GHS agrees that it is exempt from property tax as a political subdivision, but argues that it could also be exempt under other charity-related exemption subsections.

against claimed exemptions exists for property owned by a public body. See Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943); State v. City of Columbia, 115 S.C. 108, 112, 104 S.E. 337, 338 (1920). These cases deal with exemptions from property tax on real property owned by municipalities. The law concerning sales taxes is fundamentally different from that concerning property taxes. Notably, the Holliday court observed, "it has never been the policy of this state to tax its own agencies or instrumentalities of government" in the property tax scheme. This is simply not the case for sales and use taxes. Agencies, political subdivisions, and other instrumentalities of South Carolina government have long paid sales taxes on gross proceeds of sales derived from retail sales made by the government entity. The term "taxpayer" for purposes of sales and use tax is defined as "any person liable for taxes under this chapter." S.C. Code Ann. § 12-36-40 (2014). "Person" is defined at S.C. Code Ann. § 12-36-30 (2014) to include, "the State, any state agency, any instrumentality, authority, political subdivision, or municipality." There is no general sales tax exemption for governmental subdivisions that would support extending the Holliday court's rational for applying liberal construction to a sales tax exemption. In Hampton Friends of Arts v. South Carolina Department of Revenue, 401 S.C. 372, 376, 737 S.E.2d 628, 630 (2013), the South Carolina Supreme Court declined to extend the Holliday doctrine of liberal construction in a case much more analogous to the facts of Holliday than those in this case, instead relying on the plain meaning of the relevant controlling statutes to decide the case. I, therefore, find no precedent or persuasive argument to justify extending the liberal construction of exemptions from property tax related to real estate owned by government agencies to a sales tax issue. It is worth noting, that "strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74–75, 716 S.E.2d 877, 881 (2011) (citation omitted). However, when a statute is plain and unambiguous upon its face, it is unnecessary to search for a different meaning or to use rules of construction. See id.; see also Mead v. Beaufort Cty. Assessor, 419 S.C. 125, 140, 796 S.E.2d 165, 173 (Ct. App. 2016), reh'g denied (Feb. 23, 2017) (citing Centex Int'l, Inc. v. S.C. Dept. of Revenue, 406 S.C. 132, 140, 750 S.E.2d 65, 69 (2013)).

II. Is an entity exempt from ad valorem property taxes under § 12-37-220(A)(1) as a political subdivision eligible for property tax exemptions listed in § 12-36-2120(41)?[4]

Upon review of the statutory language argued in this matter, I conclude that it is plain and unambiguous. "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 87, 533 S.E.2d 578, 581 (2000) (citation omitted). In order to qualify for the sales tax exemption, § 2120(41) requires that the organization must also be eligible for exemption from ad valorem property taxation under certain provisions of the property tax exemption statute, Section 12-37-220. Section 2120(41) allows sales and use tax exemptions for some organizations exempt from property tax by incorporating eleven property tax exemptions by reference to specific subsections of § 220.

> Exempted from the taxes imposed by this chapter are the gross proceeds of sale or sales price of:
> * * *
> (41) items sold by organizations exempt under Section 12-37-220A(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24), if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual.

S.C. Code Ann. § 12-36-2120 (2014). GHS claims that in addition to being exempt from property taxation as a government entity, it is exempt from property taxation under two of the provisions listed in § 2120(41): § 12-37-220(A)(4) exempting property of charitable trusts and foundations, and § 12-37-220(B)(16)(a) exempting the property of religious, charitable, eleemosynary, education, or literary organizations. GHS points to the fact that the IRS recognizes its status as a 501(c)(3) entity and seeks an evidentiary hearing to demonstrate the bona fides of its charitable endeavors. GHS argues that it is both a governmental entity and a charitable organization and should be recognized as a charitable organization for purposes of Section 2120(41). The Department argues that, as a matter of law, GHS cannot be classified as both a political subdivision and a charitable trust or foundation or organization; that the nature of the entity must be classified as one or the other.

I find it unnecessary to decide the broader issue of whether any political subdivision may also be considered a charitable organization. The plain language of the statute defining the sales tax exemption unambiguously excludes GHS from the exemption. Reading § 2120(41) and

[4] I have combined the discussion of Issues A and B as briefed by the parties.

§ 12-37-220 together, as required by § 2120(41), demonstrates that the legislature did not intend for the sales tax exemption for charitable organizations to apply to governmental entities, schools, colleges, or hospitals. Section 2120(41) exempts items sold by certain organizations that are listed in § 12-37-220. The list includes § 220 (A) (3) and (4), but does not include subsections (1) and (2). Notably, those latter two sections provide:

> (1) All property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions . . .;
> (2) All property of all schools, colleges, and other institutions of learning and all *charitable institutions in the nature of hospitals* . . . .

S.C. Code Ann. § 12-37-220(A) (2014) (emphasis added). Thus, the intent of the legislature is clear from the plain language of the statute. In listing the entities that qualify for the sales tax exemption they expressly omitted governmental entities and "charitable institutions in the nature of hospitals." To ignore the intentional omission of this language from the exemption while stretching to classify GHS as a charitable organization under a different subsection would subvert the clear expression of legislative intent. The cardinal rule of statutory interpretation requires the trier of fact to ascertain the intent of the legislature. State v. Scott, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citation omitted). In doing so, the court must give a reasonable and practical construction to the statute that is consistent with the purpose and policy expressed in the statute. Davis v. NationsCredit Fin. Servs. Corp., 326 S.C. 83, 86, 484 S.E.2d 471, 472 (1997) (citation omitted). Therefore, I must conclude that a GHS as either a political subdivision or charitable hospital may not be exempt from sales and use tax pursuant to § 2120(41).

Moreover, if it were necessary to reach the issue of whether, as a general principle, a government entity may also qualify as a charitable organization for purposes of the sales tax exemption, I conclude that it does not. GHS cites federal recognition of its § 501(c)(3) status as evidence that it is a charitable organization as well as a government entity. However, the fact that GHS has been designated a 501(c)(3) entity by the IRS is neither controlling nor persuasive to the Court as it pertains to this case. GHS argues that the language of the statute does not specifically exclude a government entity from also being defined as a charitable organization under § 2120(41) and Section 12-37-220.[5] However, I find no precedent in South Carolina law for recognizing the

[5] S.C. Revenue Procedure #03-6 suggests that certain political subdivisions may qualify for the sales tax exemption through their status as exempt from property tax exemption as a religious, charitable, eleemosynary or educational organization. GHS argues that by that language the Department recognizes that dual status may be recognized. Because my decision rests on the language of the statute and the controlling caselaw relevant to government hospitals

type of dual status urged by the Petitioner. On the contrary, there is a long history of jurisprudence in this state distinguishing government entities ("public corporations") from private entities that engage in charitable work, despite the fact that the two types of entities may perform similar duties. York Cty. Fair Ass'n v. S.C. Tax Comm'n, 249 S.C. 337, 340, 154 S.E.2d 361, 362 (1967) (recognizing a distinction between a "public corporation" as an instrumentality of the state, and a "private corporation," although the private corporation is engaged in charitable work or performs duties similar to those of public corporations); Sandel v. State, 126 S.C. 1, 119 S.E. 776, 778 (1922) (holding that a state entity engaged in projects for the promotion of the public health did not thereby assume the legal character of an eleemosynary corporation); State v. Heyward, 37 S.C.L. 389, 408 (S.C. App. L. & Eq. 1832) (holding statute incorporating the Medical College of South Carolina as a body corporate and politic was unconstitutional and void where the College was founded as a private corporation). In 1867, the Supreme Judicial Court of Massachusetts gave the following oft-cited definition of charity:

> A charity, in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or *otherwise lessening the burdens of government.*

Jackson v. Phillips, 96 Mass. 539, 556 (1867) (emphasis added); see also Harter v. Johnson, 122 S.C. 96, 115 S.E. 217, 220–21 (1922) (referencing, in a special referee report adopted by the Court, the above definition and noting that a "public charity" for trusts purposes is one which discharges a duty of the state to its citizens—i.e. exists to benefit the public—but is not owned by the public); 1985 S.C. Op. Atty. Gen. 345, 1985 WL 166095 at *1.

DOR cites a series of S.C. Attorney's General Opinions opining that government subdivisions cannot be considered eleemosynary or nonprofit organizations for purposes of the admissions tax. While Attorney General opinions are not binding upon the Court, the reasoning in these opinions is persuasive. In Opinion No. 2921, dated June 22, 1970, the Attorney General opined that the University of South Carolina was not an eleemosynary or nonprofit organization

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as charities, I have not addressed the agency's policy document. Brown v. S.C. Dept. of Health & Envtl. Control, 348 S.C. 507, 515, 560 S.E.2d 410, 415 (2002) (rejecting agency's statutory construction where plain meaning of statute provided compelling reason to reject agency's interpretation).

exempt from collecting admissions taxes. The rationale underlying the decision is that corporations or organizations are generally classified as public or private and only private corporations or organizations may be further classified as business or eleemosynary corporations. As a "body corporate and politic," the university could not be classified as an eleemosynary or nonprofit corporation or organization. Apparently, this opinion and rationale has been adopted and implemented by the Department and has been acquiesced in by the legislature for over forty years. Gilstrap v. S.C. Budget & Control Bd., 310 S.C. 210, 215, 423 S.E.2d 101, 104 (1992) (holding that where an administrative agency has consistently applied a statute in a particular manner, its construction should not be overturned absent cogent reasons).

Having reached the dispositive conclusion that GHS cannot avail itself of the sales and use tax exemption of § 2120(41), the remaining questions presented by the parties need not be reached. Accordingly, I conclude that Petitioner's Motion for Partial Summary Judgment should be denied and judgment should be entered for Respondent. The remainder of the issues raised in Petitioner's Motion for Reconsideration are denied on the grounds that they merely reiterate the arguments made in its Motion for Partial Summary Judgment and Reply in Support of Partial Summary Judgment, which were already carefully considered and ruled upon by the Court.

ORDER

IT IS THEREFORE ORDERED that Petitioner's Motion to Reconsider, Alter, or Amend is **GRANTED** in part and **DENIED** in part.

IT IS FURTHER ORDERED that this Court's order of May 8, 2017 is **VACATED** and this order substituted in its place.

IT IS ALSO ORDERED that Petitioner's Motion for Partial Summary Judgment is **DENIED** and **JUDGMENT IS ENTERED FOR RESPONDENT**.

AND IT IS SO ORDERED.

Deborah Brooks Durden

Deborah Brooks Durden, Judge
S.C. Administrative Law Court

June 20, 2017
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Robin E. Coleman, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Robin E. Coleman
Judicial Aide to Deborah Brooks Durden

June 20, 2017
Columbia, South Carolina