THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Deborah Brooks Durden, Administrative Law Judge

Case No. 13-ALJ-17-0523-CC
Appellate Case No. 2017-01548

Greenville Hospital System .....Appellant,

v.

South Carolina Department of Revenue .....Respondent.

AMENDED FINAL BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES:

OTHER AUTHORITIES:

STATEMENT OF ISSUES ON APPEAL

I. Whether the Administrative Law Court correctly held that the sales tax exemption in § 12-36-2120(41) should be narrowly construed against Greenville Hospital System (GHS).

II. Whether the Administrative Law Court correctly held that Greenville Hospital System is not exempt from sales tax under § 12-36-2120(41) because it is a political subdivision and a charitable hospital.

III. Whether the Administrative Law Court correctly held that an entity cannot be both a political subdivision and a charitable organization for purposes of § 12-36-2120(41).

STATEMENT OF THE CASE

This appeal arises from a Final Order in a contested case hearing in the Administrative Law Court (ALC). In 2011, Greenville Hospital System (GHS) applied for a sales tax exemption pursuant to S.C. Code Ann. § 12-36-2120(41). The South Carolina Department of Revenue (Department) issued its final Department Determination in 2013, denying GHS's application for sales tax exemption. GHS then filed a request for a contested case hearing with the ALC.

The parties conducted extensive discovery. On January 18, 2017, upon the parties' joint motion, the ALC entered a Consent Order governing further proceedings in the case. As part of the Consent Order, the parties agreed to brief and submit seven disputed questions of law to the ALC for a ruling. (R. pp. 17-19). The purpose of the Consent Order was to advance the case in an efficient and expeditious manner by clarifying and simplifying the issues in the case.

On February 3, 2017, GHS filed a Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues, arguing that each of the seven key disputed legal issues were ripe for presentation and ruling by the ALC and seeking an order granting partial summary judgment on each issue. (R. pp. 21-64). On March 6, 2017, the Department filed its Memorandum in Opposition to GHS Motion for Partial Summary Judgment. (R. pp. 65-114). In its response, the Department argued that several of the issues addressed in the motion for partial summary judgment—if answered in the Department's favor—were dispositive of the entire case and would result in the denial of the claimed sales and use tax exemption. (R. p. 95).

On June 20, 2017, the ALC entered a Final Order[1] entering judgment in favor of the Department and finding as a matter of law that because GHS as either a political subdivision or

[1]The ALC initially entered an Order in favor of the Department on May 8, 2017. GHS filed a Motion to Reconsider, Alter, or Amend on May 17, 2017, asserting the final order contained improper factual findings and conclusions in violation of the procedure agreed to in the Consent Order. The Department filed a response on June 5, 2017. The ALC held a hearing on the issues

charitable hospitable may not be exempt from sales and use tax under § 12-36-2120(41). (R. pp. 9-16). GHS filed its Notice of Appeal on July 14, 2017.

STATEMENT OF FACTS

GHS is a political subdivision that was established by the General Assembly in 1947 for the purpose of operating Greenville General Hospital. (Brief of Appellant at 4.) GHS is exempt from property tax under S.C. Code Ann. § 12-37-220(A)(1) as a political subdivision. (R. p. 11).

The Internal Revenue Service (IRS) recognized the former Greenville Hospital as an organization exempt from federal income tax pursuant to 26 USC § 501(c)(3) in 1944, prior to the General Assembly's creation of GHS as a political subdivision. Id. In August 2007, the IRS issued a letter to GHS indicating that its § 501(c)(3) status as an exempt organization for federal tax purposes, first granted in 1944, was still effective. Id.

On May 25, 2011, GHS applied for a sales tax exemption pursuant to S.C. Code Ann. § 12-36-2120(41). (R. pp. 203-207).

RELEVANT STATUTES

The Final Order of the ALC determined several questions of law involving the interpretation of specific statutes governing sales and use tax exemptions and property tax exemptions. For this Court's ease of reference, the full text of the relevant statutory provisions are as follows:

Sales Tax Exemption Statute

- **§ 12-36-2120(41)** – "Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

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raised in the Motion for Reconsideration on June 15, 2017, after which the ALC entered a Final Order on June 20, 2017, granting in part and denying in part GHS's Motion to Reconsider, Alter, or Amend; vacating the May 8, 2017 Order and substituting the June 20, 2017 Final Order in its place; and denying GHS's Motion for Partial Summary Judgment and entering judgement in favor of the Department.

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(41) items sold by organizations exempt under § 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. An organization whose sales are exempted by this item is also exempt from the retail license tax provided in Article 5 of this chapter."

Property Tax Exemption Statute

- **§ 12-37-220(A)(1)–(4)** – "Pursuant to the provisions of § 3, Article X of the State Constitution and subject to the provisions of § 12-4-720, there is exempt from ad valorem taxation:

  (1) all property of the State, counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions, if the property is used exclusively for public purposes, and it shall be the duty of the Department of Revenue and county assessor to determine whether such property is used exclusively for public purposes;

  (2) all property of all schools, colleges, and other institutions of learning and all charitable institutions in the nature of hospitals and institutions caring for the infirmed, the handicapped, the aged, children and indigent persons, except where the profits of such institutions are applied to private use;

  (3) all property of all public libraries, churches, parsonages, and burying grounds,
  but this exemption for real property does not extend beyond the buildings and premises actually occupied by the owners of the real property;

  (4) all property of all charitable trusts and foundations used exclusively for charitable and public purposes, but this exemption for real property does not extend beyond the buildings and premises actually occupied by the owners of the real property . . . ."

- **§ 12-37-220(B)(16)(a)** – "In addition to the exemptions provided in sub§ (A), the following classes of property are exempt from ad valorem taxation subject to the provisions of § 12-4-720:

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  (16)(a) The property of any religious, charitable, eleemosynary, educational, or literary society, corporation, trust, or other association, when the property is used by it primarily for the holding of its meetings and the conduct of the business of the society,

corporation, trust, or association and no profit or benefit there from inures to the benefit of any private stockholder or individual.

ARGUMENTS

This Court should affirm the administrative law court because GHS is not entitled to a sales tax exemption under § 12-36-2120(41).

Section 12-36-2120 of the South Carolina Code grants 82 exemptions from the sales tax. In particular, § 12-36-2120(41) incorporates by reference eleven subsections of S.C. Code Ann. § 12-37-220 (the property tax exemption statute) and extends the sales tax exemption to the eleven types of organizations that are specifically identified in each of those subsections of § 12-37-220. Importantly, § 12-36-2120(41) does *not* include two specific types of organizations that are exempt from property taxes under § 12-37-220: political subdivisions (identified in § 12-37-220(A)(1)) and charitable institutions in the nature of a hospital (identified in § 12-37-220(A)(2)). By omitting § 12-37-220(A)(1) and § 12-37-220(A)(2), the General Assembly expressed its clear intent that political subdivisions and charitable institutions in the nature of hospitals are not entitled to the sales tax exemption provided by § 12-36-2120(41).

There is no dispute in this case that GHS is a political subdivision and a hospital. There is also no dispute that GHS sells tangible personal property and that its sales of tangible personal property are subject to the sales tax unless an exemption applies.[2]

Even though political subdivisions and hospitals are excluded from the enumerated list of exempt organizations under § 12-36-2120(41), GHS argues that for purposes of § 12-36-2120(41)

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[2]Tangible personal property 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. § 12-36-90. "Gross 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.

its federal income tax exempt status as a 26 USC § 501(c)(3) organization allows it to qualify for the sales tax exemption as a charitable trust and foundation (under § 12-37-220(A)(4)) or as a charitable corporation or association (under § 12-37-220(B)(16)).

Therefore, the sole dispositive issue in this appeal is whether GHS *qualifies* for the sales tax exemption under § 12-37-220(A)(4) or § 12-37-220(B)(16) even though GHS is *denied* the exemption as a political subdivision under § 12-37-220(A)(1) and as a charitable institution in the nature of a hospital under § 12-37-220(A)(2).

The ALC correctly rejected GHS's argument. The ALC properly interpreted the relevant statutory provisions governing the sales and property tax exemptions and rightly concluded that GHS is not entitled to the sales and use tax exemption because its particular status—for property tax purposes—as a political subdivision or a charitable hospital is specifically excluded from the list of enumerated organizations in § 12-36-2120(41). Therefore, GHS cannot avail itself of the sale tax exemption under a more general property tax exemption for charitable trusts and foundations (§ 12-37-220(A)(4)) or charitable organizations (§ 12-37-220(B)(16)(a)).

I. THE ALC CORRECTLY HELD THAT THE SALES TAX EXEMPTIONS IN § 12-36-2120 SHOULD BE NARROWLY CONSTRUED AGAINST GHS.

As a preliminary matter, the ALC correctly framed its analysis of § 12-36-2120(41) based on the general rule that sales tax exemptions are strictly construed against the taxpayer. GHS asserts that it is a "public body and a body corporate and politic established by the General Assembly," and therefore urges the Court to adopt—for the first time—a rule requiring a liberal construction in favor of granting sales tax exemptions to government entities like GHS. This Court should reject this argument because it ignores established precedent and has no basis in South Carolina law.

A. As a general rule, sales tax exemptions are narrowly construed against the taxpayer seeking the exemption.

It is well settled law that the language of sales tax exemption statutes "must be strictly construed against the claimed exemption." Home Med. Sys., Inc. v. S.C. Dep't of Revenue, 382 S.C. 556, 564 (2009) (construing § 12-36-2120 against the taxpayer and finding sales were not exempt); see also Southeastern–Kusan, Inc. v. South Carolina Tax Comm'n, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981) ("As a general rule, tax exemption statutes are strictly construed against the taxpayer.").

Notably, South Carolina courts have narrowly construed sales tax exemptions in situations where a hospital, like GHS, sought an exemption for certain retail sales. In CareAlliance Health Services. v. S.C. Dep't of Revenue, 416 S.C. 484, 787 S.E.2d 475 (2016), the Supreme Court reversed the ALC's grant of a sales tax exemption, finding that the ALC's broad interpretation of a federal regulation was "fundamentally at odds with . . . the strict construction afforded a tax exemption." Id., 416 S.C. at 491, 787 S.E.2d at 479 (construing § 12-36-2120 strictly against taxpayer and finding hospital not entitled to sales tax exemption). And, in Lexington Cty. Health Servs. Dist. v. S.C. Dep't of Revenue, 384 S.C. 647, 682 S.E.2d 508 (Ct. App. 2009) this Court reversed the ALC's grant of a sales tax refund to an incorporated health services district (similar to GHS), finding that the plain language of the exemption statute (§ 44-7-2120) was clear and affirming the Department's position that the statute should be construed strictly against the hospital. Id., 384 S.C. at 651, 682 S.E.2d at 509.

B. Although courts have liberally construed *property tax* exemption statutes in favor of political subdivisions, no South Carolina court has ever extended this liberal construction to *sales tax* exemptions.

The ALC correctly rejected GHS's argument that § 12-36-2120(41) should be construed liberally in favor of granting the sales tax exemption. GHS relies on selective language from Town

of Myrtle Beach v. Holliday, 203 S.C. 25, 26 S.E.2d 12 (1943) in support of its broad assertion that *all* tax exemption statutes must be liberally construed in favor of a government entity. (Brief of Appellant at 20.) However, the Holliday court's analysis was focused singularly on property tax exemptions, not sales tax exemptions,[3] and GHS has not identified a single South Carolina authority that extends the holding of Holliday to sales tax exemptions.

In fact, in all of the cases cited by GHS in its brief, the courts premised their analysis on the general rule that claimed exemptions are strictly construed against the taxpayer. Each of these cases recognizes only one specific exception to the general rule of construing tax exemptions: property tax exemptions for publicly-owned property.[4] But the Supreme Court has limited even this exception and explicitly rejected any suggestion that "Holliday's reach extends beyond

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[3]The language from Holliday that "it has never been the policy of this state to tax its own agencies or instrumentalities of government" makes sense in the context of property taxes, because the publicly-owned property exception is grounded in the constitution. See S.C. Const. art. X, § 3 (exempting the property of the State and its political subdivisions from ad valorem tax). There is no similar constitutional exemption for sales tax. City of Greenville v. Query, 166 S.C. 281, 164 S.E. 844,845 (1931). Further, tax exemptions effect public policy by relieving certain persons or entities from the economic burden of a tax. Thus, because the economic burden of the *property tax* remains fixed statutorily on the taxpayer, a liberal construction of property tax exemptions is understandable in light of the public policy embodied in the constitution to exempt governments and political subdivisions from property taxes. By contrast, the economic burden of the *sales tax* is typically shifted to the customer. See RICHARD D. POMP, STATE & LOCAL TAXATION, Volume I, 6-7 (2015) ("A retail sales tax is intended to be borne by individuals (end users) who acquire goods or services for personal consumption."). Where an entity does not bear the economic burden of a tax, there is little reason to exempt that entity from the tax.

[4]In Holliday, the issue was whether property owned by the Town of Myrtle Beach was exempt from property taxes. In Charleston Cty. Aviation Auth. v. Wasson, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982), the court again noted that "[a]n exception to [the general] rule exists . . . for municipal or publicly-owned property." In State v. City of Columbia, 115 S.C. 108, 104 S.E. 337, 338 (1920), the issue was whether the Columbia Theater was exempt from property taxation. Id. at 108 (finding limited exception for exemption of property owned by municipal corporations).

government entities." Hampton Friends of Arts v. S.C. Dep't of Revenue, 401 S.C. 372, 376, 737 S.E.2d 628, 630 (2013.) No South Carolina court has ever extended Holliday's liberal construction to sales taxes.

Moreover, this Court had an opportunity to extend Holliday's liberal construction to a sales tax exemption sought by a government entity, but declined to do so. In Lexington Cty. Health Services. Dist. v. S.C. Dep't of Revenue, Lexington Medical hospital sought a refund of sales and use taxes under § 44-7-2120. Like GHS, Lexington Medical is a hospital and a political subdivision; it was created by the General Assembly pursuant to statute and is "a body politic and corporate." S.C. Code Ann. § 44-7-2120. In finding that Lexington Medical was not entitled to the exemption, this Court noted, and did not disagree with, the Department's position that exemption statutes should be strictly construed against taxpayers like Lexington Medical.

II. THE ALC CORRECTLY FOUND THAT GHS IS NOT ENTITLED TO A SALES TAX EXEMPTION UNDER § 12-36-2120(41) BECAUSE IT IS A POLITICAL SUBDIVISION AND BECAUSE IT IS A CHARITABLE HOSPITAL.

A. Political subdivisions and hospitals are statutorily required to pay sales tax on the gross proceeds of their retail sales.

The ALC correctly found that political subdivisions and government entities have long paid sales taxes on the gross proceeds of their retail sales. (R. p. 12). South Carolina imposes a sales tax, equal to six percent of the gross proceeds of sales, upon every person in South Carolina engaged in the business of selling tangible personal property at retail. S.C. Code Ann. § 12-36-910(A) and § 12-36-1110(A). For purposes of the South Carolina Sales and Use Tax Act, "taxpayer" is defined as "any person liable for taxes under this [Chapter 36]." S.C. Code Ann. § 12-36-40. The definition of "person" includes "the State, any state agency, any instrumentality, authority, ***political subdivision***, or municipality." S.C. Code Ann. § 12-36-30 (emphasis added). In other words, political subdivisions must pay sales and use tax.

In accordance with these statutory definitions and requirements, the Department has promulgated regulations explaining that the "sales of tangible personal property by the State . . . and other ***political subdivisions*** . . . are subject to the sales tax" unless such sales fall within the provisions of Regulation 117-304.1 (which exempts transfers between agencies and between the State and its political subdivisions) or are otherwise exempt under §§ 12-36-2120[5] and 12-36-2130. See S.C. Code Ann. Regs. 117-304 (Supp. 2012) (emphasis added).

Additionally, the Department has promulgated regulations pertaining to the sale of meals and other services by hospitals. Regulation 117-305.2 provides that "[s]ales by a medical institution of meals and other foods, other than those furnished to patients as part of their medical care, are retail sales subject to the sales or the use tax." And, Regulation 117-308.8 provides that "[s]ales of meals, foodstuffs or beverages by hospitals . . . are sales at retail and such institution is required to obtain a retail license for each location and report and remit the sales tax on the gross proceeds of such sales, to include sales for cash, credit, payroll deduction and sales at special event functions. This *includes sales made in institutions, cafeterias*, snack bars, canteens and commissaries." Id. (emphasis added).

B. The plain language of § 12-36-2120(41) and § 12-37-220 demonstrates that the Legislature did not intend for political subdivisions and charitable hospitals to qualify for the sales tax exemption.

The ALC appropriately read §12-36-2120(41) and § 12-37-220 in tandem and correctly concluded that GHS is specifically denied a sales tax exemption by the plain language of these

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[5] GHS identifies only a single example of a state *agency*, not a *political subdivision*, where the Department opined that an exemption under § 12-36-2120 applied. (Brief of Appellant at 22.) (citing S.C. Private Revenue Opinion No. 2002-5.) Section 12-36-2120(28) provides that specific types of medicines, supplies and devices sold for the treatment of certain diseases and conditions are exempt from the sales tax. The Department determined that under these very specific and precisely defined circumstances, DHEC was exempt from the sales tax. S.C. Private Revenue Opinion No. 2002-5 (Dec. 27, 2002), 2002 WL 32996166.

statutes. "When a statute's terms are clear and unambiguous on their face, there is no room for statutory construction and a court must apply the statute according to its literal meaning." Doe v. South Carolina Department of Social Services, 407 S.C. 623, 633-634, 757 S.E.2d 712, 717 (2014). "The legislative language in a statute is considered the best evidence of the legislative intent or will, and courts are bound to implement the legislature's expressed intent." Lexington Cty. Health Services. Dist., 384 S.C. at 651, 682 S.E.2d at 509.

There is no dispute that GHS is a political subdivision exempt from property taxes pursuant to § 12-37-220(A)(1), which exempts "all property of the State . . . and other political subdivisions." There is also no dispute that GHS is a hospital and may be exempt from property tax under 12-37-220(A)(2), which exempts the property of "charitable institutions in the nature of hospitals."[6] Sections 12-37-220(A)(1) and (A)(2), however, are not included in the enumerated exempt organizations listed in § 12-36-2120(41). Under the principal of *expressio unius est exclusio alterius,* to include one thing implies the exclusion of another, GHS is denied a sales tax exemption. Hodges v. Rainey, 341 S.C. 79, 86–87, 533 S.E.2d 578, 582 (2000). Had the General Assembly intended to exempt government subdivisions and charitable institutions in the nature of a hospital from the sales tax it would have done so by including § 12-37-220(A)(1) and (A)(2) in § 12-36-2120(41).

Further, the terms "political subdivision" and "charitable institution in the nature of a hospital" are more specific descriptors, and therefore control over, the terms "charitable corporation" or "charitable foundation." Atlas Food Systems and Services, Inc. v. Crane Nat. Vendors, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). Ignoring this rule leads to the absurd

[6]For simplicity, in this statutory interpretation analysis, the Department assumes that GHS meets the definition of charitable in the phrase "charitable institution in the nature of a hospital" but, the Department does not concede that GHS is a charitable corporation or association or that it is in fact charitable in nature.

result that GHS is denied a sales tax exemption as a charitable institution in the nature of a hospital but that it gets the exemption because it is a charitable organization.

Finally, the language the Legislature used in § 12-37-220(A)(2) communicates how broadly it chose to permit a property tax exemption but to deny a sales tax exemption to the organizations referenced therein. *Institution* is a broad term that encompasses both public and private organizations without regard to technical legal form. State v. County Treasurer, 4 S.C. 520, 524 (1873). *In the nature of* a hospital implies that the definition of hospital as it is used here is expansive and probably not limited to those organizations in the traditional sense. Thus, regardless of its legal form, whether as a political subdivision or a charitable corporation or association, GHS remains a charitable institution in the nature of a hospital and as such is denied a sales tax exemption.

III. THE ALC CORRECTLY HELD THAT AN ENTITY CANNOT BE BOTH A POLITICAL SUBDIVISION AND A CHARITABLE ORGANIZATION FOR PURPOSES OF § 12-36-2120(41).

The ALC noted correctly that it is irrelevant whether or not GHS can occupy a "dual status" as both a political subdivision and a charitable organization and was further correct when it never-the-less determined that such duality is not possible.[7] (R. pp. 13-14). Even if GHS could establish that it is a "charitable trust or foundation" under § 12-37-220(A)(4) or a "charitable ... society, corporation, trust, or other association" under § 12-37-220(B)(16)(a), this dual characterization

[7]In its Final Order, the ALC found it "unnecessary to decide the broader issue of whether any political subdivision may also be considered a charitable organization," but went on to conclude state its conclusion that a government entity may not qualify as a charitable organization for purposes of the sales tax exemption. (R. pp. 13-14). The Department agrees that resolution of this broader issue is not required to resolve the issues on appeal, but addresses this issue nonetheless because it was raised by GHS in its initial brief.

could not be used to subvert the clear expression of legislative intent to deny GHS a sales tax exemption.

In support of its contention that it is a charitable organization under either § 12-37-220(A)(4) or § 12-37-220(B)(16(a), GHS points to the fact that was expressly created to "address a pressing charitable need in Greenville County," and that GHS performs a variety of charitable activities in its capacity as a hospital. GHS further argues that it has long been recognized as a tax-exempt charitable organization pursuant to 26 U.S.C. § 501(c)(3). (Brief of Appellant at 4-5.) In other words, GHS asserts that the *charitable functions and services* it provides make it eligible under these two, more general exemptions for certain *charitable organizations*, regardless of its separate status as a political subdivision.

Public corporations, like GHS, are established by the legislature to serve some public function. As quasi-governmental units, public corporations possess statutory powers—for example, the power to exercise eminent domain or to establish a police department—that are fundamentally inconsistent with that of a charitable corporation or association.[8]

Private corporations are formed pursuant to Title 33 of the South Carolina Code relating to corporations, partnerships and associations. Only private corporations—not public corporations—may be further classified as business or eleemosynary corporations. S.C. Attorney General Opinion No. 2921 (June 22, 1970) (citing 18 Am. Jur.2d. Corporations, §§ 8 and 10).

Moreover, South Carolina has a long history of distinguishing between public and private corporations. "A public corporation is an instrumentality of the state, founded and owned in the public interest ... while a private corporation may be one organized by permission of the

[8]The General Assembly periodically enacts legislation affecting GHS's power and authority. The most recent legislation, S.C. Acts, Act No. 105, 2013, gives GHS the authority to "exercise the power of eminent domain" and "establish a police department" with all the powers of municipal and county law enforcement.

legislature...." York County Fair Ass'n v. South Carolina Tax Commission, 249 S.C. 337, 339, 154 S.E2d 361, 361 (1967). "An eleemosynary corporation is a private as distinguished from public corporation." Sandel v. State, 126 S.C. 1, 119 S.E. 776, 777 (1922) (finding that simply performing charitable acts does not convert a public corporation into a charitable corporation); see also S.C. Attorney General Opinion No. 2921 (June 22, 1970) (distinguishing the University of South Carolina's status as a public corporation from an "eleemosynary or non-profit corporation or organization," only the latter of which were determined to be exempt from admissions taxes).

GHS concedes that it would be a rare exception to the rule for a public entity to also qualify as a private charity. GHS relies on its federal income tax exempt status under 26 USC § 501(c)(3) as evidence that it is a charitable organization, but it admits that it is highly uncommon for a governmental entity or political subdivision to qualify as a charitable organization with the IRS. In fact, GHS acknowledges that the only political subdivisions that typically have this dual status are county or city *hospitals*. (R. p. 183, lines 20-22) (stating that GHS may be the only tax payer in the State that is a political subdivision with a 26 USC § 501(c)(3) letter).[9]

Even assuming that it were possible for a political subdivision to have a "dual status" allowing it to also qualify as a charitable organization for purposes of property tax exemptions under § 12-37-220, the specific type of charitable services performed by GHS are expressly

[9]GHS incorrectly implies that federal tax exempt status is synonymous with charitable for all purposes of South Carolina law. (Brief of Appellant at 14.) Because the Legislature has adopted this definition in only select sections of the code, it indicates that some other meaning of the term is intended where this guidance is lacking such as in the sales and property tax exemption statutes. Relatedly, GHS incorrectly states that Revenue Procedure #03-6 "expressly adopts 26 U.S.C. § 501(c)(3) as the standard for determining whether an organization qualifies for the sales tax exemption." (Brief of Appellant at 16.) It does not. Rather, that designation is used in the "automatic qualification" analysis for the purpose of showing that an organization meets the requirements that its net proceeds are used for an exempt purpose and that no benefit inures to any individual.

excluded from the sales tax exemptions in § 12-36-2120(41). GHS may perform charitable services, but it does so as a charitable institution in the nature of a hospital as defined in § 12-37-220(A)(2) —not as a general charitable foundation or a charitable organization. GHS's "dual status" argument overlooks the fact that § 12-37-220(A)(2) is not included as one of the eleven organizations listed in § 12-36-2120(41).

Thus, the plain language of § 12-37-220(A)(2 evidences the legislature's intent not to extend the sales tax exemption to hospitals—even if those hospitals are "charitable institutions." TNS Mills, Inc. v. S.C. Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476, 1998 WL 411394 (1998) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.").

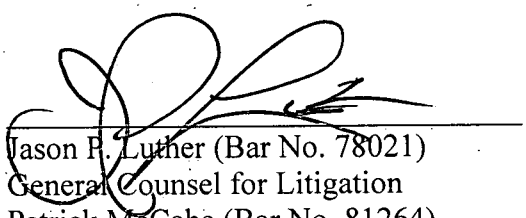
In short, GHS asks the Court to ignore the clear, express intent of the General Assembly *not* to exempt political subdivisions or charitable institutions in the nature of a hospital from sales tax. This construction of § 12-36-2120(41) ignores the language of the statute as a whole and fails to give effect the intent of the General Assembly. Higgins v. State, 307 S.C. 446, 415 S.E.2d 799 §(1992) ("In construing statutory language, the statute must be read as a whole, and sections which are part of the same general statutory law must be construed together and each one given effect.").

CONCLUSION

The General Assembly chose to exempt political subdivisions and charitable institutions in the nature of a hospital from property tax but, has denied them an exemption from the sales tax. It is undisputed that GHS is a political subdivision and a charitable institution in the nature of a hospital. Accordingly, the ALC correctly determined that GHS is denied a sales tax exemption by the omission from § 12-36-2120(41) of two separate and independent statutory provisions,

§ 12-37-220(A)(1) and § 12-37-220(A)(2). The Department asks the Court to uphold that decision.

Respectfully submitted,



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CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Final Brief complies with Rule 211(b), SCACR.

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