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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

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SC Court of Appeals

Greenville Hospital System Appellant,

v.

South Carolina Department of Revenue Respondent.

RECORD ON APPEAL

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**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

**ORDER DENYING PETITIONER'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT AND GRANTING
RESPONDENT'S CROSS MOTION FOR
SUMMARY JUDGMENT**

Appearances:

For Petitioner: Charles M. Sprinkle, 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). 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 January 18, 2017, the Court issued a Consent Order Governing Further Proceedings. In accordance with that order, the parties have moved for summary judgment on seven issues of law. Petitioner has also raised an issue related to the standard of review applicable to this case. Petitioner's arguments are presented in its February 3, 2017 Memorandum in Support of Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues and its Reply filed March 21, 2017. Respondent's arguments are set forth in its Memorandum in Opposition to Partial Summary Judgment filed March 6, 2017.

After reviewing the motions, memoranda, exhibits, and statutory and case law, I conclude, as a matter of law, that Petitioner's Motion for Partial Summary Judgment should be denied and Respondent's Motion for Summary Judgment should be granted for the reasons discussed below.

SUMMARY JUDGMENT STANDARD

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 56(C), SCRCP, applies in determining whether summary judgment is proper in this case.

FILED

May 8, 2017

SC ADMIN. LAW COURT

“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). A party may not rest upon the mere allegations or denials of his pleadings. See Rule 56(e), SCRCP. A party opposing summary judgment must come forward with affidavits or other supporting documents demonstrating the existence of a genuine issue for trial. Doe v. Batson, 345 S.C. 316, 320, 548 S.E.2d 854, 856 (2001) (footnote omitted). One may not create a genuine issue of material fact and, thus, avoid summary judgment by asserting that the trier of fact may disbelieve uncontradicted evidence. See Hoard ex rel. Hoard v. Roper Hosp., Inc., 387 S.C. 539, 549, 694 S.E.2d 1, 6 (2010).

In this case, there is no material dispute as to the facts relevant to the legal issues presented by the motions of the parties. Therefore, it is appropriate to resolve those issues by summary judgment.

RELEVANT BACKGROUND AND FACTS NOT IN DISPUTE

Under South Carolina law, “[a] sales tax, equal to five^[1] 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 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).

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.”² 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

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

² GHS agrees that it is exempt as a political subdivision, but argues that it could also be exempt under other charity-related exemption subsections.

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 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 rationale 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)?³

Upon review of the statutory language argued in this matter, I find 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 exemption 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. 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.

GHS first argues that a political subdivision may also fall within the category of a “charitable trust or foundation” exempted under subsection (A)(4). GHS concedes that it is not a trust, but argues that a foundation is not specifically defined in statute and that under a broad definition, may be any type of organizational structure that acts as a charitable fund. GHS points

³ I have combined the discussion of Issues A and B as briefed by the parties.

to Black's Law Dictionary which defines foundation as, "A fund established for charitable educational, religious research, or other benevolent purposes; an endowment." Black's Law Dictionary (10th ed. 2014). It is axiomatic that a political subdivision cannot also be a *fund* established for charitable purposes.

The next question, then, is whether a political subdivision might also qualify as a "charitable . . . society, corporation, trust or other association." GHS argues that whether its organization falls within the meaning of "charitable organization" under the statute is a factual issue for the Court to decide. The first issue to confront in that analysis is whether, as a general principle, a government entity may also qualify as a charitable organization.⁴ The Department argues against that principle. DOR points to the broad power and authority granted to GHS by the General Assembly, including the power of eminent domain, as being incompatible with its claimed status as a charitable association. 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 1985 S.C. Op. Atty. Gen. 345, 1985 WL 166095 at *1. The dictionary gives, among others, the following definition of charity: "an institution (as a hospital, library, or school) founded by a gift and intended for the use of the public." Webster's Third New International Dictionary 378 (1993). It is clear that GHS does not fall within the plain language meaning of a charity or charitable organization by either of those definitions. While GHS' services and facilities may be intended for the public benefit, they have been so dedicated for civic purposes by the State to a government subdivision and not by virtue of a gift. See 2013 S.C. Act 105 § 1 ("For the purpose of operating and at all times maintaining adequate hospital facilities for the residents of Greenville County . . . there is established the Greenville Health System.").

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

⁴ In support of this principle, GHS cites to materials related to the federal § 501(c)(3) exemption. These materials do not control in a case about state property and sales tax, nor are they persuasive to the Court as it pertains to this case.

admissions tax. While Attorney General opinions are not binding upon the Court, the reasoning on which they are based 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 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.

Reading § 2120(41) and § 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, and 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 political subdivision may not be exempt from sales and use tax pursuant to § 2120(41).

Having found 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 find that Petitioner's Motion for Partial Summary Judgement should be denied and Respondent's cross Motion for Summary Judgement should be granted.

ORDER

IT IS THEREFORE ORDERED that Respondent's Motion for Summary Judgment is **GRANTED**.

IT IS ALSO ORDERED that Petitioner's Motion for Partial Summary Judgment is **DENIED**.

AND IT IS SO ORDERED.



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

May 8, 2017
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greenville Hospital System,

Docket No.13-ALJ-17-0523-CC

Petitioner,

vs.

FINAL ORDER

South Carolina Department of Revenue,

Respondent.

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.

FILED

June 20, 2017

SC ADMIN. LAW COURT

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 five² 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

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, Judge
S.C. Administrative Law Court

June 20, 2017
Columbia, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greenville Hospital System,

Docket No. 13-ALJ-17-0523-CC

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

CONSENT ORDER GOVERNING FURTHER PROCEEDINGS

This matter is before the Court on the parties' joint request for entry of a Consent Order governing further proceedings in the above-captioned contested case. Counsel for Petitioner Greenville Hospital System (now known as Greenville Health System) ("Petitioner" or "GHS") and Respondent South Carolina Department of Revenue ("Respondent" or "Department") have conferred and both parties consent to this Order setting forth the scope and terms of further proceedings in this case.

At issue in this case is GHS's application for exemption from sales tax as a charitable organization pursuant to S.C. Code Ann. § 12-36-2120(41). The Department issued a final Department Determination denying GHS's request for the exemption. GHS thereafter initiated this contested case proceeding challenging the Department's final Determination. Due to the range of factual and legal issues involved in this matter, the parties have been required to complete extensive discovery. As reported by the parties to the Court, this discovery has included production of over 50,000 pages of documents and the completion of 15 depositions of fact and expert witnesses. In light of the voluminous factual record in this case and recognizing the need to move this case toward resolution in the most organized, prompt, and efficient manner possible, the parties have conferred and developed a plan whereby the parties will provide

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briefing and oral argument to the Court on several questions of law the parties have identified as having a material impact on the scope of disputed issues and related live testimony, documents, and other evidence that will need to be presented at the final hearing in this matter. The parties' agreement and proposed plan for these further proceedings is set forth in detail below.

The South Carolina Administrative Law Court Rules provide that the Court may "determine the procedure appropriate to the complexity of the issues presented and the types of proof likely to be introduced so that the matter may be fully and fairly presented without unnecessary burden on either the agency or the individuals involved in the hearing." ALC Rule 10. The South Carolina Supreme Court has recognized that it is appropriate for a trial court to bifurcate and separately consider distinct issues in advance when to do so "helps to clarify and simplify the issues." *See, e.g., Durham v. Vinson*, 360 S.C. 639, 644 n. 2, 602 S.E.2d 760, 763 n. 2 (2004). Both parties in this case agree that their joint proposal is intended to advance these objectives. Therefore, the Court hereby approves this joint proposal, finding this procedure will help to expeditiously move this case forward by clarifying and simplifying the issues for final hearing while avoiding unnecessary costs and other burdens on the parties and the Court.

1. **Disputed Legal Issues.** GHS and the Department have conferred and agree that the following legal issues will be briefed and submitted to the Court for a ruling:

- (a) Whether an entity exempt from ad valorem property taxes under S.C. Code Ann. § 12-37-220(A)(1) as a political subdivision is eligible for any of the property tax exemptions listed in §12-36-2120(41)?
- (b) Whether a political subdivision can be exempt from sales and use taxes under S.C. Code Ann. §12-36-2120(41)?
- (c) Does the prohibition against inurement in § 12-36-2120(41) apply only to benefit inuring from the gross proceeds or sales price of the tangible personal property sold by the organization?

- (d) Does the prohibition against inurement in § 12-36-2120(41) and § 12-37-220(B)(16)(a) apply only to benefit that may inure to "insiders" of the organization as that term is defined and applied under federal tax law and IRS interpretations?
- (e) Does inurement prohibited by § 12-36-2120(41) and § 12-37-220(B)(16)(a) automatically occur as a result of the use of revenue based compensation methodologies for physicians regardless of the amount of compensation actually paid to the physician and whether the amount paid is reasonable or fair market value?
- (f) Is the "charitable" component of the requirement under S.C. Code Ann. § 12-37-220(B)(16)(a) and S.C. Code Ann. § 12-37-220(A)(4) that the organization be a "charitable" corporation, trust, foundation, or other association determined according to the "organizational and operational tests" prescribed under IRC Treas. Reg. § 1.501(c)(3)-1?
- (g) If the answer to issue (f) is "yes," does the requirement under IRC Treas. Reg. § 1.501(c)(3)-1 that the organization be operated or used "exclusively" for charitable or public purposes mean that GHS "engages primarily in activities" which accomplish those purposes and that no "more than an insubstantial part of its activities is not in furtherance of an exempt purpose" as provided under IRC Treas. Reg. § 1.501(c)(3)-1(c)(1)?

By identifying these legal issues for consideration by the Court as part of the pre-hearing briefing and argument schedule set forth in this Order, neither party is conceding or representing to the Court that other legal issues not identified here may not need to be raised to and ruled on by the Court prior to or during the final hearing in this matter. By entering into this Consent Order, neither party is waiving or otherwise forgoing any legal or factual argument it may have in support of its position in this case.

2. **Briefing Schedule.** Briefing on the Disputed Legal Issues set forth above shall be completed according to the following schedule:

- (a) On or before **February 3, 2017**, GHS shall file and serve a Motion for Declaration/Ruling and/or Partial Summary Judgment on the Disputed Legal Issues and Supporting Memorandum (with any attachments) providing legal authority and argument in support of its position on the Disputed Legal Issues identified by the parties as set forth in Paragraph 1 above.

- (b) On or before **March 6, 2017**, the Department shall file and serve a Response Memorandum (with any attachments) providing legal authority and argument in support of its position on the Disputed Legal Issues identified by the parties as set forth in Paragraph 1 above.
- (c) On or before **March 21, 2017**, GHS shall file and serve any Reply Memorandum (with any attachments) replying to any matters raised initially in the Department's Response Memorandum or in accompanying supporting documents.

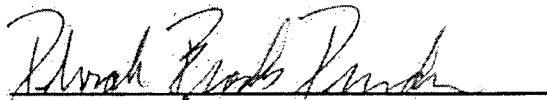
The parties agree that, to the extent any background facts are helpful or germane to the Court's understanding of the legal issues; deposition testimony, affidavits, and documents contained in the record in the above-captioned case may be cited and attached to any memorandum filed and served by the party.

3. **Hearing.** The Court will schedule a hearing on the Disputed Legal Issues at its convenience. The parties agree that, because this hearing is limited to the Court's consideration of the Disputed Legal Issues (unless otherwise ordered by the Court), no live witness testimony will be presented at this hearing.

4. **Stay of Further Proceedings and Deadlines Pending Ruling on Disputed Legal Issues.** All further proceedings and all pre-hearing deadlines and events set forth in this Court's current Consent Amended Scheduling Order shall be stayed and held in abeyance until after a final ruling by the Court on the Disputed Legal Issues.

AND IT IS SO ORDERED.

January 18, 2017
Columbia, South Carolina


Deborah Brooks Durden, Judge
South Carolina Administrative Law Court

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Greenville Hospital System,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 13-ALJ-17-0523-CC

**PETITIONER GREENVILLE HEALTH SYSTEM'S
MOTION FOR PARTIAL SUMMARY JUDGMENT
AND/OR RULING ON DISPUTED LEGAL ISSUES**

In accordance with the procedure set forth in this Court's Consent Order Governing Further Proceedings entered on January 18, 2017, Petitioner Greenville Health System (formerly known as Greenville Hospital System) ("GHS") files the present Motion for Partial Summary Judgment and/or Ruling on the Disputed Legal Issues jointly identified by the parties and set forth in Paragraph 1 of the Consent Order. The specific grounds for this Motion and GHS's argument and citations to authority supporting this Motion are set forth fully in the Supporting Memorandum filed with this Motion. The Motion will be further based on any Reply Memorandum GHS may file and any additional argument and authority GHS may present at or prior to the hearing on this Motion.

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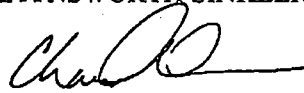
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Respectfully submitted,

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Attorneys for Petitioner

Greenville Health System

February 3, 2017
Greenville, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greenville Hospital System,

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

Docket No. 13-ALJ-17-0523-CC

**PETITIONER GREENVILLE HEALTH SYSTEM'S
MEMORANDUM IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT
AND/OR RULING ON DISPUTED LEGAL ISSUES**

This matter is before the Court pursuant to the procedure set forth in this Court's January 18, 2017 Consent Order Governing Further Proceedings. As set forth in the Consent Order, the parties in this contested tax case, Petitioner Greenville Health System (formerly known as Greenville Hospital System) ("GHS") and Respondent South Carolina Department of Revenue (the "Department"), have conferred and jointly identified several key disputed legal issues that are ripe for presentation to and ruling by the Court prior to the final evidentiary hearing in this matter. In accordance with the procedure outlined in the Consent Order, GHS has filed the present Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues and submits this Memorandum setting forth the legal authority and arguments supporting GHS's position on each of these issues.

I. OVERVIEW

In 2011, GHS applied for the exemption from sales tax as a charitable organization pursuant to S.C. Code Ann. § 12-36-2120(41). As shown in its Application, GHS has long been recognized by the Internal Revenue Service as a nonprofit, charitable 501(c)(3) organization.

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based on its documented record of providing hundreds of millions of dollars of community benefit to the Upstate region of South Carolina in the form of quality healthcare to everyone—regardless of ability of to pay—along with academic medical training, community outreach and education, and specialized medical services essential to the community, but which no other entity (private or governmental) provides. Because the only substantial goods GHS has offered for resale to the public during the relevant time period were the meals sold in its on-site hospital dining facilities, the sales tax exemption sought by GHS directly benefits the patients, visitors, and staff who need access to those dining facilities and who would otherwise be forced to pay more at the register for their meals.

More than two years after GHS submitted its Application, the Department issued a final Determination in late 2013 denying the exemption. GHS then brought this contested case action to challenge the Department's Determination. GHS has produced over 50,000 pages of documents in response to the Department's discovery requests, and the Department has deposed six GHS officers and employees and four GHS expert witnesses.

In its Determination and during the course of fact and expert discovery, the Department has asserted GHS is not entitled to the sales tax exemption based on erroneous interpretations of the tax exemption statutes that are contrary to the plain language of the statutes, the Department's own published advisory opinions, and analogous federal tax law and procedure. As explained in this Memorandum, the positions adopted by the Department on these statutory issues would greatly alter and expand the requirements an organization must meet to be eligible for the sales tax exemption far beyond any conceivable intent of the Legislature. Unmoored from the statutory language and settled law interpreting the statutes' requirements—and even contradicted by the Department's own public guidance—the Department's determination

denying the requested exemption appears to be a matter of the Department's arbitrary, *ad hoc* reasoning rather than the straightforward application of established legal principles.

In brief summary, these erroneous legal positions adopted by the Department include:

- The Department claims that, because GHS is organized as a political subdivision in addition to being a charitable organization, it is not eligible for the sales tax exemption. To reach this conclusion, the Department must infer new requirements wholly absent from and contrary to the plain language of the statutes and the Department's own published Revenue Procedure.
- The Department argues the proscription against "inurement" in the sales tax exemption statute is not limited to benefits inuring from the "gross proceeds" of the sales of tangible personal property as expressly provided under the plain language of the statute and the Department's own Revenue Procedure interpreting the statute.
- The Department argues the proscription against inurement in S.C. Code Ann. §§ 12-36-2120(41) and 12-37-220(B)(16)(a) requires GHS to prove that every transaction between GHS and any third party (including any employee, supplier, vendor, or even patient) did not result in "inurement"—a position contrary to settled law which limits the inurement analysis to "insiders" of the organization who, by virtue of their position, have the power to substantially control the revenue and resources of GHS as a whole.
- Contrary to settled federal law and IRS interpretations, the Department argues prohibited inurement arises automatically when physicians' compensation is based in part on revenue generated by their respective clinical department—regardless of whether the physicians' compensation was unreasonable and in excess of fair market value.
- Contrary to our Legislature's express intent and the Department's own public guidance, the Department in this case ignores the long-established and settled law prescribed under Internal Revenue Code Section 501(c)(3) and Treasury Regulations that is followed by South Carolina and virtually all other jurisdictions when determining whether an organization is "charitable" for tax exemption purposes.

All of these positions taken by the Department and opposed by GHS present questions of statutory interpretation that are pure matters of law for the Court to decide. *See Alltel Communications, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870 (2012) ("The question of statutory interpretation is one of law for the court to decide."). As explained below, GHS is entitled to an order granting it partial summary judgment holding that the

Department is bound by the plain language of the statute, express legislative intent, settled precedent, and the Department's own public guidance interpreting the statute rather than the unsupported, apparently *ad hoc* reasoning the Department now urges this Court adopt.

II. RELEVANT BACKGROUND

At issue in this contested case is whether GHS is entitled to the exemption from sales tax pursuant to S.C. Code Ann. § 12-36-2120(41) due to its status as a nonprofit, charitable organization. The Department of Revenue denied GHS's request for the exemption, and GHS initiated the present contested case proceeding challenging that decision.

GHS is a nonprofit academic health care system created by an act of the South Carolina General Assembly in 1947. It has been continuously recognized by the Internal Revenue Service as a tax-exempt 501(c)(3) charitable organization. The mission of GHS is to "Heal Compassionately. Teach Innovatively. Improve Constantly." GHS fulfills its public service mission through the operation of acute care hospitals and specialty health care facilities serving the 10-county Upstate region of South Carolina. Because it provides care to patients regardless of their ability to pay, GHS is the "safety net" health care provider for this large segment of our State. In fiscal year 2015 alone, GHS provided over \$72 million in free, medically necessary care to patients who could not afford to pay. Outside of the traditional hospital setting, GHS provides care to the most vulnerable members of our population through services such as primary care clinics for the indigent and inpatient and outpatient behavioral health treatment for those suffering with mental illness. In response to the severe shortage of doctors and nurses in our State, GHS has expanded its public education mission through its relationship with the University of South Carolina School of Medicine—Greenville, located on GHS's main campus, and its recently announced partnership with Clemson University for expansion of nursing

education. GHS is now involved in teaching and training the healthcare professionals our population desperately needs. GHS serves the Upstate region and the entire State of South Carolina through these and many other programs and services that would otherwise fall to the government to perform.

Based on its long-recognized status as a charitable organization, GHS submitted an application in May 2011 to the Department of Revenue requesting an exemption from sales tax pursuant to S.C. Code Ann. § 12-36-2120(41). This specific subsection of the statute exempts from sales tax "the gross proceeds of sales, or sales price of":

items sold by organizations exempt under Section 12-37-220(A)(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(41). In the Department's published Revenue Procedure providing public guidance specifically on "whether an organization qualifies for an exemption certificate issued pursuant to Code Section 12-36-2120(41)," the Department states:

In summary, the exemption only applies to sales by organizations which meet three requirements:

- (1) The organization must be eligible for exemption from the property tax under one of the enumerated property tax code sections.
- (2) The net proceeds from the organization's sales must be used for exempt purposes.
- (3) No benefit from the sales may inure to any individual.

SC Rev. Proc. #03-6 (p. 3).

As set forth in its Application, GHS qualifies for the property tax exemption listed under Section 12-37-220(A)(4) (exempting the property of "charitable trusts and foundations") and Section 12-37-220(B)(16)(a) (exempting the property of any "religious, charitable, eleemosynary, educational, or literary society, corporation, trust or other association"). The

provision of health care by a hospital has for many years been recognized as a charitable endeavor. *See, e.g., Harter v. Johnson*, 122 S.C. 96, 115 S.E. 217, 222 (1922) (noting that “[t]he establishment of hospitals is in fact one of the objects enumerated in the statute of charitable uses”); IRS Rev. Rul. 69-545, 1969-2 C.B. 117 (1969) (“In the general law of charity, the promotion of health is considered to be a charitable purpose.”). Because the primary items GHS purchases for resale are food products sold in its on-site hospital dining facilities, the requested exemption will keep the costs as low as possible for the patients, visitors, and staff who need access to those dining options by avoiding an additional charge to these patrons on their bill at the register. The IRS has long recognized that providing on-site cafeterias, coffee shops, and other dining facilities contributes directly to the tax-exempt charitable purposes of a hospital:

The maintenance of the cafeteria and coffee shop on its premises for its employees and medical staff enables the hospital to operate more efficiently and thus contributes importantly to its exempt purpose. Visitation of patients constitutes supportive therapy that assists in patient treatment and encourages their recovery. By permitting visitors to use the hospital cafeteria and coffee shop, the hospital enables them to spend more time with the patients. This also contributes importantly to the hospital's exempt purpose.

IRS Rev. Rul. 69-268, 1969 C.B. 160 (1969). Of course, GHS dining facilities serve individuals from every walk of life, including many for whom dining out is a burdensome expense. Absent the requested exemption, the visitors and staff who use the dining facilities would be required to pay more for food at the hospital, forcing them to go elsewhere or not visit the hospital at all—a result detrimental to the hospital's mission and charitable purpose as recognized by the IRS.

In addition to satisfying the “charitable” component of the applicable property tax exemptions under the statute, Section 12-37-220(B)(16)(a) and Section 12-36-2120(41) also include language requiring that no profit or benefit from certain activities of the organization may “inure” to certain individuals. The concept of private inurement and the rule against it

arises from federal tax law, which states that a charitable organization must operate so that "... no part of the net earnings [of the organization] inures to the benefit of any private shareholder or individual" I.R.C. § 501(c)(3). GHS has no shareholders or owners, and no benefit inures to any individual because no private employee or other person enjoys the proceeds of the sale of the food products or other goods by GHS.

GHS waited more than two and a half years for the Department to issue its Determination on GHS's request for the sales tax exemption. During this time, the Department never requested any additional documents or other information related to GHS's 2011 Application. On October 4, 2013, the Department issued its written Determination denying GHS's request for the sales tax exemption. The Determination, however, contains many factually incorrect statements about GHS and other, separate legal entities affiliated with GHS (which have never applied for or otherwise sought the sales tax exemption). In the Determination, the Department states that GHS has failed to demonstrate that it is a "charitable organization" and has failed to demonstrate the absence of "private inurement" from its activities.

These two fundamental components of the exemption under Section 12-36-2120(41) are at the heart of this contested case, and the parties will ask this Court to resolve the dispute over whether GHS is a charitable organization and whether benefits from GHS's operations improperly inure to a private individual. However, to make this determination, the Court and the parties must resolve critical threshold issues of statutory interpretation and other questions of law pertaining to the appropriate legal standards that govern the analysis of both the "charitable organization" and "private inurement" issues.

III. GOVERNING PRINCIPLES OF STATUTORY CONSTRUCTION

“The construction of a statute is a judicial function and responsibility.” *Anderson v. S.C. Election Comm’n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012). “The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature.” *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). As with all statutes, the statutory provisions at issue in this contested case “should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute.” *Rent-A-Ctr. W. Inc. v. S.C. Dep’t of Revenue*, 418 S.C. 320, 327, 792 S.E.2d 260, 264 (Ct. App. 2016) (*reh’g denied* Jan. 20, 2017). “When interpreting a law, courts must presume a futile act was not intended and that the law intends to accomplish something.” *Bruning v. SCDHEC & Cat Island POA*, Op. No. 5449, 2016 WL 6247005, at *3 (S.C. Ct. App. Oct. 26, 2016).

In this case, the Department asserts that the Court should deviate from the settled principles of statutory construction quoted above and argues instead that the statute under which GHS claims exemption from sales tax “must be strictly construed against the claimed exemption.” (Determination at 18.) However, this rule of strict construction does not apply in the case of an exemption sought by a government entity or other public body. As explained by our Supreme Court:

The general rule is that exemptions of private property are strictly construed, because in such cases taxation is the rule and exemption the exception; but exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. With us municipal corporations are merely agencies of the state for governmental purposes; and *it has never been the policy of this state to tax its own agencies or instrumentalities of government. From which we conclude that the provision should be construed liberally in favor of the exemption claimed.*

Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943) (emphasis added), citing *State v. City of Columbia*, 115 S.C. 108, 112, 104 S.E. 337, 338 (1920). This policy of liberal construction in favor of tax exemptions claimed by public corporate bodies has been consistently upheld and applied by the South Carolina Supreme Court. See *Hampton Friends of Arts v. S.C. Dep't of Revenue*, 401 S.C. 372, 376, 737 S.E.2d 628, 630 (2013) (noting the rule of liberal construction of exemptions claimed by public entities announced in *Holliday* and *State v. City of Columbia*); *Charleston County Aviation Auth. v. Wasson*, 277 S.C. 480, 485, 289 S.E.2d 416, 419 (1982) (citing *Holliday* and *State v. City of Columbia* for holding that “[a]n exception to that rule [of strict construction against claimed exemptions] exists, however, for municipal or publicly-owned property”); see also, e.g., 84 C.J.S. *Taxation* § 268 (noting that “the rule of strict construction has no application in the case of property devoted to certain uses which it has always been the settled custom and policy of the state to abstain from taxing”). Because GHS is a public body and a body corporate and politic established by the South Carolina General Assembly, the Court must construe GHS’s status as a charitable organization under section 12-36-2120(41) *liberally* in favor of granting the sales tax exemption.

Nevertheless, even if, as the Department contends, the general rule requiring strict construction of tax exemption statutes applies here, “this policy does not place a thumb on the scale of the Department [of Revenue].” *Centex Int’l, Inc. v. S.C. Dep’t of Revenue*, 406 S.C. 132, 154, 750 S.E.2d 65, 77 (2013) (Toal, C.J., dissenting). Rather, as our Supreme Court has explained:

This rule of strict construction simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer’s favor. It does not mean that we will search for an interpretation in DOR’s favor where the plain and unambiguous language leaves no room for construction. It is only when the

literal application of the statute produces an absurd result will we consider a different meaning.

CFRE, LLC v. Greenville Cty. Assessor, 395 S.C. 67, 74-75, 716 S.E.2d 877, 881 (2011) (quoting *Southeast Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489-90, 280 S.E.2d 57, 58 (1981) (citations omitted)); see also *Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 140, 750 S.E.2d 65, 69 (2013) (holding same); *Mead v. Beaufort Cty. Assessor*, Op. No. 5460, 2016 WL 7387955, at *8 (S.C. Ct. App. Dec. 21, 2016) (holding same).

Ultimately, regardless of whether strict construction or liberal construction is called for, the language of a tax exemption statute, like all statutes, “must be given its plain, ordinary meaning” in order to effect the intent of the Legislature. *Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009). “In so doing, the Court should not concentrate on isolated phrases within the statute, but rather, read the statute as a whole and in a manner consonant and in harmony with its purpose.” *Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016). “Where the language of [a] statute is plain and unambiguous . . . the court has no right to look for or impose another meaning.” *Clarendon Cty. ex rel. Clarendon Cty. Assessor v. TYKAT, Inc.*, 394 S.C. 21, 25, 714 S.E.2d 305, 307 (2011). “Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.” *Estate of Nicholson ex rel. Nicholson v. S.C. Dep't of Health & Human Servs.*, 377 S.C. 590, 596, 660 S.E.2d 303, 305 (Ct. App. 2008).

IV. DISPUTED LEGAL ISSUES PRESENTED

Pursuant to this Court's Consent Order Governing Further Proceedings dated January 18, 2017, the parties have jointly identified and submitted the following threshold legal issues for ruling by the Court prior to the final hearing in this matter:

- A. Whether an entity exempt from ad valorem property taxes under S.C. Code Ann. § 12-37-220(A)(1) as a political subdivision is eligible for any of the property tax exemptions listed in §12-36-2120(41)?
- B. Whether a political subdivision can be exempt from sales and use taxes under S.C. Code Ann. §12-36-2120(41)?
- C. Does the prohibition against inurement in § 12-36-2120(41) apply only to benefit inuring from the gross proceeds or sales price of the tangible personal property sold by the organization?
- D. Does the prohibition against inurement in § 12-36-2120(41) and § 12-37-220(B)(16)(a) apply only to benefit that may inure to "insiders" of the organization as that term is defined and applied under federal tax law and IRS interpretations?
- E. Does inurement prohibited by § 12-36-2120(41) and § 12-37-220(B)(16)(a) automatically occur as a result of the use of revenue based compensation methodologies for physicians regardless of the amount of compensation actually paid to the physician and whether the amount paid is reasonable or fair market value?
- F. Is the "charitable" component of the requirement under S.C. Code Ann. § 12-37-220(B)(16)(a) and S.C. Code Ann. § 12-37-220(A)(4) that the organization be a "charitable" corporation, trust, foundation, or other association determined according to the "organizational and operational tests" prescribed under IRC Treas. Reg. § 1.501(c)(3)-1?
- G. If the answer to issue (f) is "yes," does the requirement under IRC Treas. Reg. § 1.501(c)(3)-1 that the organization be operated or used "exclusively" for charitable or public purposes mean that GHS "engages primarily in activities" which accomplish those purposes and that no "more than an insubstantial part of its activities is not in furtherance of an exempt purpose" as provided under IRC Treas. Reg. § 1.501(c)(3)-1(c)(1)?

GHS will address separately each issue in turn below.

V. ARGUMENT

ISSUE A: Whether an entity exempt from ad valorem property taxes under S.C. Code Ann. § 12-37-220(A)(1) as a political subdivision is eligible for any of the property tax exemptions listed in § 12-36-2120(41)?

ANSWER: Yes. Section 12-36-2120(41) contains no term or provision requiring that an organization be exempt *exclusively* under the property tax exemptions listed in the statute. Furthermore, the Department's own SC Revenue Procedure # 03-6 expressly recognizes that an organization may be exempt under additional property tax exemption provisions—including those not listed in § 12-36-2120(41)—without losing the right to the exemptions listed in subsection (41).

In order to qualify for the sales tax exemption, Section 12-36-2120(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 12-36-2120(41) lists eleven property tax exemptions by reference to specific subsections of Section 12-37-220:

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

.....
(41) items sold by organizations exempt under Section 12-37-220(A)(3) and (4) and B(5), (6), (7), (8), (12), (16), (19), (22), and (24)

S.C. Code Ann. § 12-36-2120(41) (emphasis added).

GHS is exempt from property taxation under several provisions of Section 12-37-220, including two of the provisions listed in Section 12-36-2120(41):

- Section 12-37-220(A)(4) – exempting the “property of all charitable trusts and foundations”; and
- Section 12-37-220(B)(16)(a) – exempting the “property of any religious, charitable, eleemosynary, educational, or literary society, corporation, trust, or other association.”

Because GHS is a political subdivision of the State of South Carolina, it is also exempt from property taxation pursuant to Section 12-37-220(A)(1), which exempts “all property of the State,

counties, municipalities, school districts, Water and Sewer Authorities and other political subdivisions.” The Department contends that, because GHS is eligible for exemption from property tax as a political subdivision pursuant to Section 12-37-220(A)(1)—which is not listed in Section 12-36-2120(41)—it cannot also be eligible for the property tax exemptions under Section 12-37-220(A)(4) and (B)(16). This position is erroneous for two reasons.

First, the Department’s position is not supported by the language of the sales tax and property tax exemption statutes. No language in Section 12-36-2120(41) limits its application to those organizations exempt from property tax *exclusively* under one of the enumerated property tax provisions. Likewise, there is no language in Section 12-37-220 which provides that an organization can be eligible for the property tax exemption under only one provision of the statute. Had the Legislature intended to limit eligibility for the sales tax exemption to only those organizations exempt exclusively under the property tax exemption provisions listed in Section 12-36-2120(41), it could have plainly said so. *See Buist v. Huggins*, 367 S.C. 268, 277, 625 S.E.2d 636, 640 (2006) (holding that, if the Legislature had intended a certain result in the statute, “it could have plainly said so”); *Tilley v. Pacesetter*, 333 S.C. 33, 40, 508 S.E.2d 16, 20 (1998) (holding same). The Legislature did not include any term or provision suggesting that limitation. Absent such express language from the Legislature, there is no basis for the Department to insert an additional requirement into Section 12-36-2120(41). *See, e.g., Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC*, 409 S.C. 331, 343, 762 S.E.2d 561, 567 (2014) (holding that “[w]e are not at liberty, under the guise of construction, to alter the plain language of a statute by adding words which the Legislature saw fit not to include”).

Second, the Department’s position is contrary to its own public guidance on the application of Section 12-36-2120(41). The Department issued SC Revenue Procedure #03-6

expressly "to provide guidelines for determining whether an organization qualifies for an exemption certificate issued pursuant to Code Section 12-36-2120(41)." The Revenue Procedure states that "[a]n organization is not qualified for an exemption certificate if it is . . . [e]xempt from property tax, but under a code section not listed in Code Section 12-36-2120(41)." However, in the next paragraph of the Revenue Procedure, the Department explains that organizations exempt from property tax under a code section not listed in Section 12-36-2120(41) "may also qualify" for one of the exemptions that is listed in the statute:

Note: Code Section 12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for these organizations are not specifically listed in Code Section 12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in Code Section 12-36-2120(41). For example, a private school may qualify for the property tax exemption under Code Section 12-37-220(B)(16)(a) established for certain religious, charitable, eleemosynary or educational organizations.

SC Rev. Proc. #03-6 (p. 4) (emphasis added). Therefore, the Department, in its own public guidance, recognizes that an organization may be exempt from property taxation under multiple provisions of Section 12-37-220. Accordingly, the fact that GHS may qualify for the property tax exemption as a political subdivision under Section 12-37-220(A)(1) does not render it ineligible for the sales tax exemption. All that the sales tax exemption statute requires is that GHS be eligible for at least one of the property tax exemptions specifically listed in Section 12-36-2120(41).

Therefore, in light of the plain language of the statutes and the Department's own public guidance, there is no basis for the Department's contention that GHS is ineligible for the sales tax exemption because it is exempt from property taxation as a political subdivision under Section 12-37-220(A)(1).

ISSUE B: Whether a political subdivision can be exempt from sales and use taxes under S.C. Code Ann. § 12-36-2120(41)?

ANSWER: Yes. Sections 12-37-220(A)(4) and (B)(16)(a) authorize property tax exemption for a charitable trust or foundation (which may include a charitable political subdivision) and for a charitable society, corporation, trust, or other association (which may include a charitable political subdivision). Accordingly, a political subdivision can also be eligible for exemption under S.C. Code Ann. § 12-36-2120(41).

To some extent this issue is similar to Issue "A" above which addresses the Department's erroneous contention that having a property tax exemption based on being a political subdivision disqualifies GHS from eligibility for one of the other property tax exemptions listed under Section 12-36-2120(41). The Department, however, further asserts that a charitable political subdivision is somehow inherently unable to qualify as an entity which is exempt from collecting and remitting sales tax with respect to its sales to the public under Section 12-36-2120(41) because of the nature of its organizational structure.

As discussed above, Section 12-36-2120(41) exempts from sales tax "the gross proceeds of sales, or sales price of . . . (41) items sold by organizations exempt under Section 12-37-220(A)(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." In order to qualify, an organization must fall within one of these enumerated property tax exemptions. Of these, the exemptions applicable to GHS are 12-37-220(A)(4) ("charitable trusts and foundations") and (B)(16)(a) ("charitable . . . society, corporation, trust, or other association").

There is no statutory language, regulation, case, or evidence of legislative intent suggesting that a political subdivision is ineligible for exemption under either 12-37-220(A)(4) or 12-37-220(B)(16)(a). On the contrary, a political subdivision may plainly qualify under both.

First, a political subdivision may qualify under Section 12-37-220(A)(4)'s exemption of "charitable trusts or foundations." It is well established that a political subdivision can be a "charitable" entity. GHS is a political subdivision and it has long been recognized as tax-exempt under Section 501(c)(3) of the Internal Revenue Code, the tax-exempt status available to charitable organizations.

A political subdivision may also fall within the category of exempt charitable "foundations" under subsection (A)(4). While a "trust" is a specific type of organization with a specific meaning, a "foundation" is not specifically or narrowly defined under the South Carolina Code or under federal tax law. Black's Law Dictionary gives the following:

foundation 1. The basis on which something is supported; esp., evidence or testimony that establishes the admissibility of other evidence <laying the foundation>. 2. A fund established for charitable, educational, religious, research, or other benevolent purposes; an endowment <the Foundation for the Arts>.

- **private foundation** A charitable organization that is funded by a single source, derives its income from investments rather than contributions, and makes grants to other charitable organizations. • A private foundation is generally exempt from taxation. IRC (26 USCA) § 509. — Also termed *private nonoperating foundation*.

- **private nonoperating foundation** See *private foundation*.

- **private operating foundation** (1978) A private foundation that conducts its own charitable program rather than making grants to other charitable organizations. • Most of the foundation's earnings and assets must be used to further its particular charitable purpose.

BLACK'S LAW DICTIONARY (10th ed. 2014). "Foundation" is, therefore, broadly defined as a charitable fund—without limitation on the type of organizational structure the entity chooses.

There is no statutory or general definition that requires a foundation *not* be a political subdivision or that any form of organizational structure is necessary in order to be a "foundation."

Second, a political subdivision may also qualify as a "charitable . . . society, corporation, trust, or other association" under Section 12-37-220(B)(16)(a). Subsumed under the categories of "society, corporation, trust, or other association" listed in this statute is the full range of types and forms of organization. A corporation and a trust have well-known meanings, but an "association" is typically any *unincorporated* group of persons organized for a specific purpose. Accordingly, a "corporation" and an "association" would together include literally every organizational structure in existence—including a "political subdivision."

It is undisputed that GHS is expressly authorized by its enabling legislation (Act 432 of the Acts and Joint Resolutions of the South Carolina General Assembly of 1947, as amended) to adopt a corporate seal and bylaws and thus is a corporation included as one of the forms of organization identified in Section 12-37-220(B)(16)(a). A school district, for example, is a governmental entity and is often referred to as a body politic and corporate. In *Patrick v. Maybank*, 198 S.C. 262, 17 S.E.2d 530 (1941), the court held that "[a] school district is a body politic and corporate under the laws of this State and constitutes one of our most important political subdivisions." Treasury Regulation § 301.7701-2(b)(1) states that, for federal tax purposes, the term "corporation" includes: "[a] business entity organized under a Federal or State statute . . . if the statute describes or refers to the entity as incorporated or as a corporation, body corporate, or body politic." Internal Revenue Code Section 7701 has been adopted by the State of South Carolina pursuant to S.C. Code Ann. §§ 12-6-40 and 12-6-50.

In summary, the forms of organizations which can enjoy exemption under Sections 12-37-220(A)(4) and (B)(16)(a) include a political subdivision as a body politic and corporate—and both statutes include virtually any charitable entity regardless of its form of organizational structure. Either statute allows a charitable political subdivision to qualify as exempt from collecting sales tax on its sales to the public under Section 12-36-2120(41).

ISSUE C: Does the prohibition against inurement in § 12-36-2120(41) apply only to benefit inuring from the gross proceeds or sales price of the tangible personal property sold by the organization?

ANSWER: Yes. Under the plain language of the statute and the Department's public guidance interpreting the statute, Section 12-36-2120(41) prohibits benefit inuring to an individual "from the sales" of the items sold by the organization.

In its Determination, the Department construes the prohibition against inurement in Section 12-36-2120(41) as prohibiting "any benefit to any individual." (Determination at 28 (emphasis in original)). The Department then speculates about possible "benefits" wholly unrelated to any proceeds received from any goods sold by GHS, including irrelevant assertions about "benefits" that may inure to minority stockholders in a corporation (which is a separate legal entity from GHS) in which another corporation (also a separate legal entity from GHS) is shareholder. (*Id.* at 28-29.) This is a fundamental misreading of the plain language of the statute. Under both the statutory language and the Revenue Procedure in which the Department purports to explain the operation of the statute, the requirement in Section 12-36-2120(41) that "no benefit inures to any individual" applies to benefit inuring from "the sale of goods."

First, there is no language in the sales tax exemption statute which defines "benefit" to include any asset, revenue, or other beneficial effect that might flow from the organization to an individual. To construe the statute to have such a broad, all-encompassing meaning requires that

the court read the phrase “no benefit” in isolation without regard to the language of the statute as whole, its context, purpose, and policy. However, it is well settled that “[a] statute should not be construed by concentrating on an isolated phrase.” *S.C. State Ports Auth. v. Jasper Cty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006). “Statutory language cannot be construed in a vacuum. It is a fundamental canon of statutory construction that the words of a statute must be read in their context and with a view to their place in the overall statutory scheme.” *Sturgeon v. Frost*, 136 S. Ct. 1061, 1070, 194 L. Ed. 2d 108 (2016); *see also King v. Burwell*, 759 F.3d 358, 368 (4th Cir. 2014) (holding that “when conducting statutory analysis, a reviewing court should not confine itself to examining a particular statutory provision in isolation. Rather, the meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.”).

Applying this settled principle of statutory construction, the prohibition against inurement applies to the “benefit” from the sales of items sold by the organization. Subsection (41) must be read in conjunction with the first sentence of the statute which clearly limits its application to the “proceeds of sales” or “sales price”:

Exempted from the taxes imposed by this chapter are the *gross proceeds of sales, 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(41) (emphasis added). No other language in this statute limits or otherwise identifies any type or source of “benefit” that may not inure to any individual.

Indeed, the Department’s own official interpretation of Section 12-36-2120(41) confirms that eligibility for the sales tax exemption depends on how the proceeds of the sales are used or distributed rather than whether “any” benefit of any type or source is paid to or received by “any

individual.” For example, in SC Revenue Procedure #03-6, the Department issued “guidelines for determining whether an organization qualifies for an exemption certificate issued pursuant to Code Section 12-36-2120(41).” After directly quoting the text of section 12-36-2120(41), the Department explained:

In summary, the exemption only applies to sales by organizations which meet three requirements:

- (1) The organization must be eligible for exemption from the property tax under one of the enumerated property tax code sections.
- (2) The net proceeds from the organization’s sales must be used for exempt purposes.
- (3) No benefit from the sales may inure to any individual.

SC Rev. Proc. #03-6, pp. 2-3 (emphasis added). As stated on the face of SC Rev. Proc. #03-6, “[t]he purpose of a Revenue Procedure is to provide procedural guidance to the public and Department personnel” and is “binding on agency personnel until superseded or modified by a change in statute regulation, court decision, or advisory opinion.” *Id.* at p. 1. Revenue Procedure #03-6 has not been superseded or modified and is, therefore, binding on the Department.

In SC Revenue Ruling #09-8, the Department issued additional public guidance on the application and interpretation of Section 12-36-2120(41)—specifically addressing the issue of when a nonprofit organization will not be eligible for the sales tax exemption under Section 12-36-2120(41) due to a “benefit” inuring to an individual. This Revenue Ruling again confirms that the Department’s own interpretation of the sales tax exemption statute limits its application to a “benefit” inuring from the sale of items sold by the organization. It outlines three example “scenarios” in which a nonprofit organization will be determined ineligible for the sales tax exemption under section 12-36-2120(41). In all three “scenarios” the Department’s analysis is

limited to whether any benefit from the "sales price" or "sale proceeds" will be received by the individual. As summarized in the "discussion" section of the Revenue Ruling:

Therefore, in considering the three scenarios set forth in the "Questions" section of this advisory opinion, a nonprofit organization of a type that qualifies for the exemption from the sales tax under Code Section 12-36-2120(41) for its sales of tangible personal property will lose that exemption and owe the sales tax with respect to:

(1) sales of artwork by the nonprofit organization in which the artist will receive a percentage of the sales price received by the nonprofit organization;

(2) sales of tangible personal property at a gift shop where a nonprofit organization hires a person to manage and operate the gift shop in return for a percentage of the sale proceeds; and

(3) sales of tangible personal property at a special event for which the nonprofit organization hired a promoter to organize and conduct and for which the promoter will be paid a percentage of the gross proceeds the nonprofit organization receives from the sales of tangible personal property at the special event.

SC Rev. Rul. #09-8, p. 6 (emphasis added). In all three example scenarios, therefore, the qualification for the sales tax exemption turns on whether any benefit from the "sales price" or "sale proceeds" is paid to or received by the individual rather than being used for the organization's exempt purposes. As stated on the face of this Revenue Ruling, its purpose "is to provide guidance to the public and to Department personnel" and "[i]t is the Department's position until superseded or modified by a change in statute, regulation, court decision, or another Departmental advisory opinion." *Id.* at p. 1.

Finally, the Form ST-387 "Application for Sales Tax Exemption Under Code Section 12-36-2120(41)" promulgated by the Department requests no information about whether or to what extent "any benefit" may inure to "any individual," but rather asks only for information regarding how the proceeds of the sales will be used. While the content of the Department's

Form ST-387 is not necessarily binding on the Department (unlike the Revenue Procedure and Revenue Ruling discussed above), it provides further indication that the position adopted by the Department in this case is contrary to its own long-standing interpretation and application of Section 12-36-2120(41).

ISSUE D: Does the prohibition against inurement in § 12-36-2120(41) and § 12-37-220(B)(16)(a) apply only to benefit that may inure to “insiders” of the organization as that term is defined and applied under federal tax law and IRS interpretations?

ANSWER: Yes. The prohibition against inurement is derived from federal income tax law, under which it is well-settled that inurement may arise only in transactions between the organization and a person who, by virtue of his or her position within the organization, has the ability to control the application of the organization’s revenue and other assets. As defined under federal tax law, these “insiders” include founders, officers, directors, substantial contributors and others in positions of significant influence or control.

Both the sales tax exemption statute, Section 12-36-2120(41), and the provision of the property tax exemption statute exempting charitable entities, Section 12-37-220(B)(16)(a), include language prohibiting benefits that “inure” to individuals from the tax exempt activities of the organization. Specifically, Section 12-36-2120(41) exempts the “gross proceeds of sales, or sales price of . . . items sold by organizations” provided that “*no benefit inures* to any individual”; and Section 12-37-220(B)(16)(a) exempts the property of any “charitable” organization provided that “*no profit or benefit there from inures to the benefit* of any private stockholder or individual.” (emphasis added).

Despite the explicit prohibition of inurement, neither of these statutes nor any other provision of the South Carolina Code or the South Carolina Code of Regulations defines what constitutes improper inurement. However, the statutory language quoted above from our State statutes was adopted directly from long-established and settled principles of federal tax law

which our State's courts and the Department have expressly adopted and relied upon in determining when prohibited inurement arises. Internal Revenue Code Section 501(c)(3)—the touchstone law establishing the standard followed by virtually every jurisdiction—provides that a tax-exempt, charitable entity must be organized and operated so that “no part of . . . [its] net earnings . . . inures to the benefit of any private shareholder or individual.” This language prohibiting “inurement” has been part of the Internal Revenue Code and federal tax law for over a century. See Hill & Mancino, TAXATION OF EXEMPT ORGANIZATIONS ¶4.03 (2002 & Supp. 2016-2) (explaining that the statutory language prohibiting inurement was incorporated into the 1913 income tax statute). During this time, the Congress, the courts, and the Internal Revenue Service have interpreted, applied, and refined the standard for determining when improper inurement arises. The resulting Treasury Regulations, judicial case law, and agency interpretations have brought about a settled body of law that the IRS, state taxing authorities, and taxpayers rely upon to govern their actions and ensure compliance with the inurement prohibition.

To be sure, the South Carolina Department of Revenue has said it follows and will apply the concept of inurement as defined under I.R.C. § 501(c)(3). In binding public guidance issued by the Department in SC Revenue Procedure #03-6, the Department states that an organization will be “automatically qualified” for the sales tax exemption under Section 12-36-2120(41) if it is, among other things, “[e]xempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19).” In the next sentence, the Department further explains that “the purpose of this provision is to meet the requirement that the organization’s net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.” No other standard for determining compliance with the prohibition against inurement in Section 12-36-2120(41) is

referenced by the Department in SC Revenue Procedure #03-6 or in any other advisory opinion or guidance issued by the Department.

Additionally, although our State's appellate courts have not interpreted and applied the inurement proscription arising under Sections 12-36-2120(41) and 12-37-220(B)(16)(a), the South Carolina Court of Appeals has addressed identical statutory language under the inurement proscription in Section 12-37-220(B)(12), applicable to the determination of whether a fraternal organization was operating as a charity. In *Hibernian Society v. Thomas*, 282 S.C. 465, 319 S.E.2d 339 (Ct. App. 1984), the Hibernian Society claimed it was entitled to a refund of property taxes pursuant to the exemption for fraternal organizations under Section 12-37-220(B)(12), which exempts:

The property of any fraternal society, corporation or association, when the property is used primarily for the holding of its meetings and the conduct of its business and *no profit or benefit therefrom shall inure to the benefit of any private stockholders or individuals.*

(emphasis added). Although the question regarding application of the inurement provision was different than the issue in the present case (*Hibernian Society* examined whether the inurement proscription prevented benefits that flowed from the organization to the membership as a whole or only to individual members), the only authority cited and relied upon by the South Carolina Court of Appeals was a federal Circuit Court of Appeals opinion, *Harding Hospital v. U.S.*, 505 F.2d 1068 (6th Cir.1974), construing and applying the inurement provision in I.R.C. § 501(c)(3). *Id.* at 471-72, 319 S.E.2d at 343.

The South Carolina Court of Appeals' and the Department's express reliance on and application of federal income tax law for establishing an organization's exempt status under I.R.C. § 501(c)(3) is entirely consistent with the South Carolina Code's provisions requiring

application of the Internal Revenue Code to state tax law. *See* S.C. Code Ann. § 12-6-40 (titled “Application of federal Internal Revenue Code to State tax laws”); § 12-6-50 (titled “Internal Revenue Code sections specifically not adopted by State”).

Despite the express legislative intent, court decision, and the Department’s own published advisory opinion notifying taxpayers that it will use the Section 501(c)(3) standard in determining whether an organization qualifies for the sales tax exemption, the Department, in the present case, has indicated that it will not apply this standard in its determination that GHS does not qualify for the sales tax exemption. Specifically, the Department asserts that South Carolina does not recognize and will not follow the long-established principle recognized by Congress and the Courts under I.R.C. § 501(c)(3) that the scope of prohibited inurement is limited to transactions between the tax-exempt organization and “insiders” of the organization—*i.e.*, those persons in a position to influence or control the actions of the exempt organization, such as directors, officers, and trustees. “The term ‘individual’ in the inurement clause of § 501(c)(3) ‘has been interpreted to mean an insider of the charity.’” *Family Trust of Massachusetts, Inc. v. United States*, 892 F. Supp. 2d 149, 156 (D.D.C. 2012), *aff’d*, 722 F.3d 355 (D.C. Cir. 2013) (citing *United Cancer Council, Inc. v. Comm’r*, 165 F.3d 1173, 1176 (7th Cir. 1999)); *see also*, *e.g.*, *Armenian Assembly of Am., Inc. v. Cafesjian*, 772 F. Supp. 2d 129, 148 (D.D.C. 2011) (“The purpose of the inurement provision is “to prevent the siphoning of charitable receipts to insiders of the charity.”); *Capital Gymnastics Booster Club, Inc. v. Comm’r*, 106 T.C.M. (CCH) 154 (T.C. 2013) (holding that the inurement “prohibition looks to benefits conferred on a ‘private shareholder or individual’, generally understood to mean an insider of the organization (such as a member or an officer)”). This limitation on the scope of inurement is so well established that it is an integral part of Black’s Law Dictionary’s definition of the term “inurement”:

Tax. An inurement consisting in the use by a private shareholder or an individual who has an *insider relationship with a tax-exempt organization* of the organization's earnings or assets for personal gain other than reasonable and adequate compensation.

BLACK'S LAW DICTIONARY (10th ed. 2014) (emphasis added).

The federal courts have rejected the IRS's attempts to disregard the distinction between insiders and outsiders and thereby expand scope of inurement—most notably in the Seventh Circuit's seminal opinion on the subject in *United Cancer Council, Inc. v. Comm'r*, 165 F.3d 1173 (7th Cir. 1999). In that case, the IRS revoked a charitable organization's Section 501(c)(3) exempt status on the ground that a contract with a third party to provide fundraising services resulted in inurement of part of the charity's net earnings to the fundraiser. The IRS argued the terms of the contract were so advantageous to the fundraiser that "the charity must be deemed to have surrendered the control of its operations and earnings to the noncharitable enterprise that it had hired to raise money for it," effectively rendering the fundraiser an "insider" of the organization merely by virtue of the contract. *Id.* at 1175. The Seventh Circuit rejected the IRS's argument, finding no basis to conclude that the fundraiser was an "insider" of the charity such that the arrangement between it and the tax exempt organization would be subject to a finding of inurement. Instead, the Court found the IRS was overreaching its authority:

The [inurement] provision is designed to prevent the siphoning of charitable receipts to insiders of the charity, not to empower the IRS to monitor the terms of arm's length contracts made by charitable organizations with the firms that supply them with essential inputs, whether premises, paper, computers, legal advice, or fundraising services.

....
We can find nothing in the facts to support the IRS's theory and the Tax Court's finding that [the fundraising company] seized control of [the charitable organization] and by doing so became an insider, triggering the inurement provision and destroying the exemption.
....

There was no diversion of charitable revenues to an insider here, nothing that smacks of self-dealing, disloyalty, breach of fiduciary obligation or other misconduct of the type aimed at by a provision of law that forbids a charity to divert its earnings to members of the board or other insiders.

Id. at 1178-79. The Seventh Circuit further criticized the IRS for advocating that “inurement” is simply a case-by-case “facts and circumstances” determination:

We were not reassured when the government’s lawyer, in response to a question from the bench as to what standard he was advocating to guide decision in this area, said that it was the “facts and circumstances” of each case. That is no standard at all, and makes the tax status of charitable organizations and their donors a matter of the whim of the IRS.

Id. at 1179. The IRS has since fully embraced the threshold “insider” requirement that must be met before an organization’s transactions are subject to examination for inurement:

The concept of private inurement contemplates a transaction between the exempt organization and an individual who is an insider. An insider, by virtue of his or her position within the organization, has the ability to influence or control application of the organization’s net earnings. Although the Internal Revenue Code and Treasury Regulations do not specify or define insider relative to inurement, the Service has adopted the viewpoint that the prohibition relates only to insider-controlled benefits. Rev. Rul. 66-259, 1966-2 C.B. 214. The Service found no private inurement where an exempt hospital compensated a hospital-based radiologist on the basis of a fixed percentage of the income of the radiology department. The conclusion was reached, in pertinent part, because the radiologist did not control the organization.

INTERNAL REVENUE MANUAL, Part 4, Chapter 76, 3.11 § 2 (2003); *see also, e.g.*, IRS Priv. Ltr. Rul. 201047033 (Nov. 26, 2010) (“Inurement is any transfer of charitable assets to the organization’s insiders for which the organization does not receive adequate consideration.”); IRS Gen. Counsel Memorandum, GCM 38459 (I.R.S. July 31, 1980) (“The inurement issue, more so than the examination of private benefit, focuses on benefits conferred on an

organization's insiders through the use or distribution of the organization's financial resources."").

Given the range of transactions between GHS and its employees and vendors potentially subject to the inurement prohibition, the Department's rejection of the threshold "insider" requirement has enormous practical implications for the proof GHS must present and that this Court will be called upon to consider at the final hearing in this case. A major area of concern in this regard is compensation paid to physicians employed by GHS and its affiliates. GHS Partners In Health, Inc., a separate nonprofit, 501(c)(3) corporation affiliated with GHS,¹ has employed approximately 800 physicians throughout the relevant time period. The Department contends that it is irrelevant whether any of these physicians were "insiders" of GHS as discussed above. Accordingly, the Department claims GHS must establish that each physician's compensation package was reasonable and consistent with fair market value. However, having an independent third party compensation expert review and opine on each physician's compensation arrangement for each year during the relevant time period would, as a practical matter, be impossible. Volumes of documentary evidence and months of testimony would be required in addition to the enormous preliminary expense associated with preparing and presenting such an analysis.² This Court would then be required to review, analyze, and rule on whether each physician's compensation did or did not result in inurement under the Department's limitless conception of that doctrine.

Of course, inurement in the context of physician compensation arrangements is just one example of the areas of GHS's activities that the Department contends are subject to its all-

¹ GHS does not believe compensation paid to employees of a separate corporation affiliated with GHS is at all relevant to the analysis of whether GHS is a charitable organization.

² The physician compensation agreements alone produced by GHS in response to the Department's discovery requests in this case comprise tens of thousands of pages of documents.

encompassing inurement review. It has asked for and GHS has produced documents concerning property sales or leasing arrangements between GHS and third parties and contracts between GHS and its suppliers and vendors. It is clear that the Department has decided to ignore settled law concerning inurement and instead embark upon exactly the type of overreach into the day-to-day activities of GHS that was rejected by the Seventh Circuit when the IRS tried the same in the *United Cancer Council* case discussed above. If the Department can transgress the clear distinction the law currently draws between insiders and outsiders, the power of the Department over every facet of the activities of tax-exempt organizations will be virtually unlimited. Therefore, GHS respectfully requests that this Court rule that the proscription against inurement found in Section 12-36-2120(41) and Section 12-37-220(B)(16)(a) applies only to benefit that may inure to "insiders" of the organization as that term is defined and applied under federal tax law and IRS interpretations.

ISSUE E: Does inurement prohibited by § 12-36-2120(41) and § 12-37-220(B)(16)(a) automatically occur as a result of the use of revenue based compensation methodologies for physicians regardless of the amount of compensation actually paid to the physician and whether the amount paid is reasonable or fair market value?

ANSWER: No. Revenue-based compensation methodologies—which are commonly used for physician compensation plans—do not result in "automatic" inurement or "per se" inurement. Under settled law construing and applying the inurement proscription, compensation paid to physicians and employees of nonprofit hospitals and other exempt organizations does not result in inurement provided the compensation paid is reasonable and consistent with fair market value.

The payment of *reasonable* compensation by a tax-exempt hospital or healthcare organization to its physicians and other employees for services rendered does not result in inurement of profit or other benefit to private persons. As one court has observed, "[t]he law places no duty on individuals operating charitable organizations to donate their services; they are

entitled to reasonable compensation for their efforts.” *World Family Corp. v. Comm’r of Internal Revenue*, 81 T.C. 958, 969 (1983); *see also Medical Center Hospital of Vermont, Inc. v. City of Burlington*, 566 A.2d 1352, 1357 (Vt. 1989) (“We have found no case, and defendant has directed us to none, requiring employees of not-for-profit institutions to work for less than market rate in order for that institution to be deemed ‘charitable’ for tax purposes.”). Compensation is reasonable if it is “such amount as would ordinarily be paid for like services by like enterprises under like circumstances.” *Treas. Reg. § 1.162-7*; *see also John Marshall Law Sch. v. United States*, No. 27-78, 1981 WL 11168, at *13 (Ct. Cl. June 24, 1981) (noting that “exempt organizations may properly pay reasonable salaries to controlling individuals without running afoul of the inurement of income to individuals prohibition” and that “a significant factor in passing upon the reasonableness of compensation in a tax case is a comparison between the compensation that is under consideration and the prevailing rates of compensation paid to the holders of comparable positions by comparable companies within the same industry”).

In the present case, the Department has asserted that compensation arrangements GHS (or, more specifically, its separate, nonprofit affiliate, GHS Partners In Health, Inc. (“PIH”)), has with its employed physicians result in inurement regardless of whether the compensation amounts paid to the physicians were excessive or unreasonable. Specifically, the Department claims that physicians whose compensation plans included a variable component based on the revenue generated by the physician’s clinical department or practice group cause an impermissible distribution of GHS’s net earnings and, therefore, result in inurement. This “automatic” or “per se” finding of inurement—which necessarily forgoes any consideration of the reasonableness of the compensation paid—is contrary to the plain meaning of the tax

exemption statutes and long-standing IRS interpretation and application of the prohibition against inurement resulting from compensation paid to insiders of the organization.

First, and most fundamentally, there is no statutory basis for applying such a “per se” or “automatic” inurement rule under the South Carolina tax exemption statutes. Neither Section 12-36-2120(41) nor Section 12-37-220(B)(16)(a) defines “inure,” and the term is not defined in any South Carolina regulation or the federal Treasury Regulations. In its common and ordinary usage, the term “inure” means “to pass into use; to take or have effect; to be or become operative; to be applied; to serve to the use or benefit.” WEBSTER’S NEW INTERNATIONAL DICTIONARY 1304 (2d ed. 1953). Therefore, a benefit that “inures” must be a benefit that is actually received, rather than the mere possibility that an excessive or otherwise inuring payment could occur under a particular compensation arrangement.

Additionally, under the generally accepted definition of “inurement” in the tax law context, “inurement” excludes payment of reasonable compensation:

Tax. An inurement consisting in the use by a private shareholder or an individual who has an insider relationship with a tax-exempt organization of the organization’s earnings or assets for personal gain other than reasonable and adequate compensation.

BLACK’S LAW DICTIONARY (10th ed. 2014) (emphasis added). Absent contrary intent from our Legislature, there are no grounds for the Department to deviate from the plain meaning of the statute as shown by both the ordinary and legal definitions of “inure” and “inurement.” *Estate of Nicholson ex rel. Nicholson v. S.C. Dep’t of Health & Human Servs.*, 377 S.C. 590, 596, 660 S.E.2d 303, 305 (Ct. App. 2008) (“Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning.”).

This is entirely consistent with the approach adopted by the IRS under federal tax law when reviewing compensation arrangements for possible inurement. In Revenue Ruling 69-383,

the IRS analyzed whether a radiologist employed by a hospital whose compensation was based, in part, on the revenue generated by the radiology department resulted in prohibited inurement. The arrangement was not held to constitute inurement of net earnings of the hospital for purposes of Section 501(c)(3) because (1) the physician did not control the hospital and was not otherwise an "insider" of the organization; (2) the agreement between the hospital and physician was negotiated at arm's length; and (3) the amount of compensation the physician received was reasonable in terms of the responsibilities and activities he assumed under the contract. IRS Rev. Rul. 69-383, 1969-2 C.B. 113 (1969). The IRS has subsequently confirmed that "a percentage compensation arrangement based on net earnings is not *per se* improper," but instead instructed that prohibited inurement could be found only after consideration of whether "the factors bearing upon the relationship between the parties indicate a conferral of private benefit without a corresponding achievement of an exempt purpose." IRS Gen. Couns. Mem. 38905 (citing Rev. Rul. 69-383).

Following these requirements, to the extent any physician employed by GHS or PIH is determined to be an insider subject to the inurement rule, GHS is prepared to demonstrate that any such physician's compensation is determined and paid in full compliance with each of the factors prescribed under the IRS's long-standing guidance. It is therefore improper for the Department to conclude that inurement has occurred with respect to compensation paid to any physician (or other employee of GHS or PIH) based solely on the fact that the revenue generated by the clinical department or practice group may be a component of some of the physician compensation plans used at GHS or PIH during the relevant time period.

ISSUE F: Is the “charitable” component of the requirement under S.C. Code Ann. § 12-37-220(B)(16)(a) and S.C. Code Ann. § 12-37-220(A)(4) that the organization be a “charitable” corporation, trust, foundation, or other association determined according to the “organizational and operational tests” prescribed under Treas. Reg. § 1.501(c)(3)-1?

ANSWER: Yes. A litany of guidance exists and identifies Internal Revenue Code Section 501(c)(3) as the proper standard for determining whether an organization is charitable, including the Department’s own SC Revenue Procedure #03-6. Treasury Regulation § 1.501(c)(3)-1 is the official standard of the federal government for organizing and operating an entity which is tax-exempt under Internal Revenue Code Section 501(c)(3).

As discussed above, Section 12-36-2120(41) states that, in order to qualify for the sales tax exemption, 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. Two of the qualifying property tax exemptions found in Section 12-37-220 are:

- Section 12-37-220(A)(4) – exempting the “property of all charitable trusts and foundations”; and
- Section 12-37-220(B)(16)(a) – exempting the “property of any religious, charitable, eleemosynary, educational, or literary society, corporation, trust, or other association.”

Accordingly, an organization may qualify for the property tax exemptions and the sales tax exemption if it is “charitable” in nature. Unfortunately, neither the sales tax exemption statute nor the property tax exemption statute states a specific definition of “charitable” for these purposes.

The federal tax laws are found in the Internal Revenue Code and, in particular, in Section 501(c)(3) of the Internal Revenue Code, as well as the related Treasury Regulations and other well-defined and long-established guidance. These federal tax resources serve to define and provide the rules for the organization and operation of charities in the context of an organization

being charitable and thus exempt from income taxation. An organization which meets the standards of Section 501(c)(3) is exempt from income taxation pursuant to Section 501(a).

Section 501(c)(3) exempts:

Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h)), and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office.

Similarly, Section 170(c)(2) of the Internal Revenue Code defines a charitable contribution (a contribution permitting a donor to take an income tax deduction) as one made to a 501(c)(3) organization; it does so by restating the definition found in Section 501(c)(3). Because of the numerous and important tax ramifications of charitable status under the federal tax laws, an entire detailed body of law exists which describes how to properly organize and operate a charity which is tax-exempt under Section 501(c)(3) and which may receive charitable contributions deductible by the donor under Section 170(c)(2).

This detailed federal body of law regarding charities and charitable contributions has also been adopted by most jurisdictions as the proper methodology for defining a charity. Indeed, in South Carolina, S.C. Code Ann. § 12-6-40 (titled "Application of federal Internal Revenue Code to State tax laws") goes to some length to make clear that the terms and provisions of the Internal Revenue Code apply to state tax law. S.C. Code Ann. § 12-6-50 (titled "Internal Revenue Code

sections specifically not adopted by State”) identifies with great specificity any provisions which are not adopted by South Carolina by providing:

For purposes of this title [Title 12 – Taxation, which includes the property and sales tax exemption statutes discussed herein] and all other titles that provide for taxes administered by the department [the South Carolina Department of Revenue], except as otherwise specifically provided, the following Internal Revenue Code Sections are specifically not adopted by this State...

A number of Internal Revenue Code provisions are listed as being not adopted by South Carolina—however, Internal Revenue Code Sections 170 and 501 are *not listed* among those unadopted provisions. Further, to support the use of the charitable definitions found in Sections 501(c)(3) and 170(c)(2), the South Carolina Code refers to Section 170 when it speaks about charitable contributions in S.C. Code Ann. §§ 12-6-1130(12), 12-6-3515(B)(1)(c), and 12-6-5590.

Moreover, elsewhere in the South Carolina Code, Section 501(c)(3) is again the Legislature’s definition of choice for a charitable entity. South Carolina’s Solicitation of Charitable Funds Act (Chapter 56, Title 33) states as one of its three definitions of organizations subject to that Act that a charitable organization is one that is “determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code” (it also includes two additional, even broader, definitions of entities subject to that Act). S.C. Code Section 33-56-170 states that “[f]or purposes of Section 33-56-180 (the charitable organizations which enjoy limited tort liability under the South Carolina Tort Claims Act), a ‘[c]haritable organization’ means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to Section 501(c)(3) or 501(d) [certain religious and apostolic organizations].” S.C. Code Section 33-57-100 *et seq.* deal with nonprofit

organizations having raffles for charitable purposes; Section 33-57-110 defines a charitable purpose to mean:

religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), or for the prevention of cruelty to children or animals within the meaning of Internal Revenue Code Section 170(c)(2)(B). Any interpretation of this statute with respect to charitable purpose shall be guided by the applicable Internal Revenue Code provisions and regulations of the Internal Revenue Service as interpreted by the courts.

S.C. Code Ann. § 33-57-110(1).

The South Carolina Department of Revenue even utilizes Section 501(c)(3) in S.C. Revenue Procedure #03-6, which, as discussed in the previous sections of this Memorandum, was issued for the express purpose of providing "guidelines for determining whether an organization qualifies for an exemption certificate issued pursuant to Code Section 12-36-2120(41)." It states that "[a]n organization is considered to be *"automatically"* qualified for an exemption certificate if it is:

- A. Selling tangible personal property;
- B. Exempt from property tax under one of the property tax code sections listed in Code Section 12-36-2120(41); and,
- C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19)[certain veteran's organizations]. The statute does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision is to meet the requirement that the organization's net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

SC Rev. Proc. #03-6 (p. 3). Although additional language suggests that the Department of Revenue asserts that it has the ability to review whether the organizational and operational

standards are being met by the organization, this verbiage clearly indicates that Section 501(c)(3) is the standard used in order to determine whether an organization exists for “exempt purposes” and that “inurement” is not present. The verbiage cites Section 501(c)(3) recognition and uses Section 501(c)(3) terminology such as “exempt purpose” and “inures.” Although GHS disputes whether the Department is authorized to, or, if authorized, should, second-guess whether an entity—previously determined to be charitable under federal tax laws, which have been adopted by South Carolina—is charitable, the Department should in any event be charged with using the Section 501(c)(3) standard and its related definitions and guidance for determining if an entity is charitable.

Finally, under federal tax law, the Treasury Regulations are the federal government’s official interpretations of the Internal Revenue Code and, as such, carry great weight. Treasury Regulation § 1.501(c)(3)-1 establishes the official organizational and operational tests for being a charitable organization under Section 501(c)(3) of the Internal Revenue Code and such tests are well-established and well-defined and have been so used for decades. The rules contained in Treasury Regulation § 1.501(c)(3)-1 should therefore also be used in determining whether an organization is charitable for purposes of South Carolina’s statutes.

ISSUE G: If the answer to Issue (F) is “yes,” does the requirement under Treas. Reg. § 1.501(c)(3)-1 that the organization be operated or used “exclusively” for charitable or public purposes mean that GHS “engages primarily in activities” which accomplish those purposes and that no “more than an insubstantial part of its activities is not in furtherance of an exempt purpose” as provided under Treas. Reg. § 1.501(c)(3)-1(c)(1)?

ANSWER: Yes. The same guidance that exists and identifies Internal Revenue Code Section 501(c)(3) as the proper standard for determining whether an organization is charitable supports the concept that Treas. Reg. § 1.501(c)(3)-1(c)(1) is the proper standard to define when an organization is operated or used “exclusively” for charitable or public purposes. Further, a literal focus on the word “exclusively” is an impractical standard which is likely to result in an arbitrary and capricious enforcement of the tax law.

Internal Revenue Code Section 501(c)(3) states that such an exempt organization must be “organized and operated exclusively for ... charitable ... purposes....” Although the use of the term “exclusively” on its face may be interpreted by some as literally barring even one scintilla of activities or funds that are not directly charitable, such an extreme viewpoint is not one that is practical with respect to any charitable organization due to the fact that every organization has ancillary activities which are necessary components of operating a charitable organization. For example, activities such as cleaning up the office, tax reporting, and employing personnel (just to name a few) all inherently are not charitable activities themselves but rather are necessary activities in order to operate a charitable organization. Although these activities might be in furtherance of the overall exempt purpose, they are not themselves charitable. Similarly, a strained but literal reading of the statute might be used for the premise that if a nickel falls into a vent and is lost, the charity has not operated exclusively for charitable purposes. Such a premise would, of course, be absurd, but the word “exclusively” arguably affords a tax authority some basis on which to take such a position. A tax authority such as the Department or the IRS, acting under such a premise, could arbitrarily find that an entity that lost that nickel is not charitable—and when the tax authority does not hear of or look for the lost nickel, it might find the entity

charitable. Presumably to avoid that sort of arbitrary and capricious enforcement of the tax laws, the Treasury Regulations have provided for practical applications of the articulated standard which the Internal Revenue Service uses. The Treasury Regulations have adopted a definition which explains and defines what it really means to be organized and operated exclusively for charitable purposes. Treasury Regulation § 1.501(c)(3)-1(c)(1) states that:

an organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Thus, having the appropriate definition makes it clear when a charitable organization is or is not operated in a manner consistent with its charitable status under Section 501(c)(3) of the Internal Revenue Code.

Similarly, the authority and reasoning supporting the position discussed under Issue "F" above that Section 501(c)(3) of the Internal Revenue Code and Treasury Regulation 1.501(c)(3)-1 provide the appropriate standard to be used for determining that an organization is charitable, applies with equal force to justify using the definitions therein of "organized and operated exclusively for ... charitable ... purposes..."—in particular, the adoption of most of the terms and provisions of the Internal Revenue Code (including Section 501) for purposes of state tax law.

Such a finding, that an entity remains "exclusively" charitable if no more than an insubstantial part of its activities is outside of the charitable purpose, is a logical concept that appears in other areas of the law. In other words, a de minimis or insubstantial noncharitable activity will not destroy a charity's tax exemption. In a property tax exemption case, where property had to be used "exclusively" for a public purpose in order to be exempt, the South

Carolina Supreme Court acknowledged and stated that “[i]t is therefore the opinion of this court that property may be used exclusively for a public purpose notwithstanding an incidental private use of the property.” *Charleston County Aviation Authority v. Wasson*, 277 S.C. 480, 487, 289 S.E.2d 416, 420 (1982). “However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature or would defeat the plain legislative intention.” *Kiriakides v. United Artist Commun., Inc.*, 312 S.C. 271, 275, 440 S.E.2d 364, 366 (1994) (quoted in SC Rev. Rul. # 05-18). “If possible, the statute will be construed in a manner that escapes the absurdity and carries the legislative intention into effect.” *Id.*³

The proper standard in this case is found in the body of law under Internal Revenue Code Section 501(c)(3) which provides a logical and well-reasoned approach to the definition and application of the terms “exclusively for charitable or public purposes.” Such standard is that GHS “engages primarily in activities” which accomplish those purposes and that no “more than an insubstantial part of its activities is not in furtherance of an exempt purpose” as provided under Treasury Regulation § 1.501(c)(3)-1(c)(1).

³ Further, although the Department may argue exemption statutes are often strictly construed against the taxpayer, exemptions are construed liberally when a governmental entity such as GHS is concerned. (See discussion and cases cited in Section III of this Memorandum.)

VI. CONCLUSION

For the reasons discussed above, GHS respectfully requests that this Court enter an order granting it partial summary judgment on each of the disputed legal issues identified in this Court's January 18, 2017 Consent Order as follows:

- As to **Issue "A,"** this Court should rule that GHS's status as a political subdivision exempt from property taxation pursuant to Section 12-37-220(A)(1) does not render GHS ineligible for the sales tax exemption under Section 12-36-2120(41) presuming it also qualifies for the tax exemption under Section 12-37-220(A)(4) or (B)(16)(a).
- As to **Issue "B,"** this Court should rule that GHS is not foreclosed from qualifying for the sales tax exemption under Section 12-36-2120(41) merely because it was created and organized as a political subdivision of the State of South Carolina.
- As to **Issue "C,"** this Court should rule that the proscription against inurement in Section 12-36-2120(41) prohibits benefit inuring to an individual "from the sales" of any tangible personal property GHS has sold to the public.
- As to **Issue "D,"** this Court should rule that the prohibition against inurement in § 12-36-2120(41) and § 12-37-220(B)(16)(a) applies only to benefit that may inure to "insiders" of GHS as that term is defined and applied under federal tax law and IRS interpretations.
- As to **Issue "E,"** the Court should rule that compensation arrangements between employed physicians and GHS (or its affiliate, PIH) which base the physicians' compensation on the revenue generated by the individual physician's clinical department or practice group does not "automatically" or "per se" result in private inurement. Rather, the court must determine whether the compensation paid to any insider physician was reasonable.
- As to **Issue "F,"** the Court should rule that the "charitable" component of the requirement under Sections 12-37-220(B)(16)(a) and 12-37-220(A)(4) that the organization be a "charitable" corporation, trust, foundation, or other association is determined according to the "organizational and operational tests" prescribed under Treas. Reg. § 1.501(c)(3)-1.
- As to **Issue "G,"** the Court should rule that the requirement under Treasury Regulation § 1.501(c)(3)-1 that the organization be operated or used "exclusively" for charitable or public purposes means that GHS "engages primarily in activities" which accomplish those purposes and that no "more than an insubstantial part of its activities is not in furtherance of an exempt purpose" as provided under Treasury Regulation § 1.501(c)(3)-1(c)(1).

As discussed above, these requested rulings on the disputed legal issues are consistent with the plain meaning of the South Carolina tax exemption statutes at issue and the long-standing interpretation and application of the requirements for charitable organizations under similar provisions of federal tax law.

Respectfully submitted,

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February 3, 2017
Greenville, South Carolina

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greenville Hospital System, d/b/a GHS)
UMG Carolina Eye Care,)
)
Petitioner,)
v.)
)
South Carolina Department of Revenue)
Respondent.)
_____)

Docket No. 13-ALJ-17-0523-CC

**MEMORANDUM IN OPPOSITION TO
PETITIONER'S MOTION FOR PARTIAL
SUMMARY JUDGMENT**

Respondent, South Carolina Department of Revenue (Department), by and through its undersigned counsel, respectfully submits this Memorandum in Opposition to Petitioner's Motion for Partial Summary Judgment. For the reasons set forth below, the Administrative Law Court (ALC) should affirm the Department's denial of the Petitioner's request for sales tax exemption under S.C. Code Ann. § 12-36-2120(41) as a matter of law.

STATEMENT OF THE CASE

The Petitioner, Greenville Health Systems (GHS or Petitioner), seeks an exemption from sales and use tax pursuant to § 12-36-2120(41). In a Determination dated, October 4, 2013, the Department denied GHS' application. GHS thereafter timely filed for a contested case hearing and the parties have engaged in extensive discovery. Pursuant to this Court's January 18, 2017, Consent Order Governing Further Proceedings, the parties now submit various issues for the Court's consideration on GHS' Motion for Partial Summary judgment. While the Department is filing its memorandum in opposition to GHS' motion, several of the issues, if answered in the Department's favor, will be dispositive of GHS' case.

MATERIAL FACTS NOT IN DISPUTE

1. 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.
2. GHS is exempt from property tax under S.C. Code Ann. § 12-37-220(A)(1) as a "political subdivision." GHS is not exempt from property taxes under any of provision of the South Carolina Code.
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.
4. The GHS organizational chart shows several non-profit and for profit corporations under the GHS "umbrella": Greenville Health Corporation, Endowment Fund of GHS and GHS Partners in Health. Branching from Greenville Health Corporation are Upstate Linen Services, Proaxis Therapy GHS Health Resources and Baptist Easley Hospital. GHS Partners in Health employs physicians and other medical professionals as well as own medical practices. Branching from SHC Health Resources is GHS Research Development Corporation, which owns Greenville Oncology

Therapeutics and Oncolix, Inc.¹ (Exhibit 1) A description of these entities is found in the Department Determination along with a listing of the medical practices.

5. GHS d/b/a University Medical Group Carolina Eye Care filed an application for exemption from sales and use tax with the Department on April 23, 2009. After the Department denied the exemption, a contested case hearing was initiated, Greenville Hospital System, d/b/a GHS UMG Carolina Eye Care v. SC Department of Revenue, Docket No. 10-ALJ-17-0677-CC. The case was ultimately remanded to the Department. GHS thereafter amended its exemption request, which forms the basis of the instant matter.

ANALYSIS

Summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Young v. S.C. Dep't of Disabilities & Special Needs, 374 S.C. 360, 649 S.E.2d 488 (2007); Henderson v. Allied Signal, Inc., 373 S.C. 179, 644 S.E.2d 724 (2007); Pittman v. Grand Strand Entm't, Inc., 363 S.C. 531, 611 S.E.2d 922 (2005); Eagle Container Co., LLC v. County of Newberry, 366 S.C. 611, 622 S.E.2d 733 (Ct. App. 2005); B & B Liquors, Inc. v. O'Neil, 361 S.C. 267, 603 S.E.2d 629 (Ct. App. 2004). In determining whether any genuine issue as to any material fact exists, the evidence and all inferences that can reasonably be drawn therefrom must be viewed in the light most favorable to the non-moving party. Catawba Indian Tribe of S.C. v. State, 372 S.C. 519, 642 S.E.2d 751 (2007); Med. Univ. of S.C. v. Arnaud, 360 S.C. 615, 602 S.E.2d 747 (2004); Moore v. Weinberg,

¹ During discovery, the Department learned that some of these entities may no longer be operational.

373 S.C. 209, 216, 644 S.E.2d 740, 743 (Ct. App. 2007); Rife v. Hitachi Constr. Mach. Co., Ltd., 363 S.C. 209, 609 S.E.2d 565 (Ct. App. 2005). “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). “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). While GHS is not entitled to partial summary judgment on the issues it has raised, the Department believes that the decision on these issues will affirm the Department’s denial of the claimed sales and use tax decision, as a matter of law.

APPLICABLE LAW

Under South Carolina law, “[a] sales tax, equal to five² 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, weighed, measured, felt, touched, or which is in any other manner perceptible to the senses. It also means services and intangibles . . . the sale or use of which is subject to tax under this chapter...” S.C. Code Ann. § 12-36-60 (2014). In pertinent part, the term “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.

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

To the extent that GHS is making sales of tangible personal property, the gross proceeds from such sales, absent an exemption, are subject to sales tax. The burden of proof is on the retailer to show that a sale is not subject to tax. See, S.C. Code Ann. § 12-36-950 ("It is presumed that all gross proceeds are subject to the tax until the contrary is established. The burden of proof that the sale of tangible personal property is not a sale at retail is on the seller."). GHS asserts that it seeks exemption under § 12-36-2120(41) to exempt its sales of food in cafeterias to the general public from sales tax. (GHS Memorandum, page 6) Food constitutes tangible personal property, the sale of which, absent an exemption, is subject to sales tax.³

Section 12-36-2120(41) provides a sales tax exemption for certain designated entities as follows:

Exempted from the taxes imposed by this chapter are the gross proceeds of sales or sales price of:

* * *

(41) items sold by organizations exempt under Section 12-37-220(A)(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;

An entity may be exempt from sales and use tax under this section if:

³ GHS' sales of food in its cafeterias to hospital visitors, guests, employees and other persons must be distinguished from its furnishing of food items to its patients in the hospital as part of the services rendered to such patients. When GHS purchases food items for service to its hospital patients, GHS is the end-user/consumer of such items so that the retail sale takes place between the food supplier and GHS. Section 12-36-110(1)(h). GHS then withdraws the food items for its own use (service to patients). The sales transaction between GHS and its food supplier is subject to sales tax; GHS is not seeking an exemption for these sales. When GHS sells food to the public in its cafeterias, it is making retail sales of food items to these customers. GHS is seeking to exempt these sales of food to the public from tax.

- 1) It is exempt from property taxes under Section 12-37-220(A)(3) and (4) and (B)(5), (6), (7), (8), (12), (16), (19), (22), and (24); and
- 2) the net proceeds are used exclusively for exempt purposes; and
- 3) no benefit inures to any individual.

GHS is not exempt from property taxes under any of the exemptions listed in §12-36-2120(41).⁴

Nevertheless, GHS maintains that it is eligible for property tax exemptions under §§ 12-37-220(A)(4) and (B)(16)(a). The Department disagrees.

Subsection (A)(4) of §12-37-220 provides:

(A) Pursuant to the provisions of Section 3, Article X of the State Constitution and subject to the provisions of Section 12-4-720, there is exempt from ad valorem taxation:

* * *

(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;

⁴The only property tax exemption granted to GHS is section 12-27-220(A)(1), which exempts property of government subdivisions:

(A) Pursuant to the provisions of Section 3, Article X of the State Constitution and subject to the provisions of Section 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;

As GHS has noted, however, the Department has recognized that some entities exempt under property tax exemptions not listed in §12-36-2120(41) may nevertheless be granted the sales tax exemption if they qualify for the triggering property tax exemptions.

Subsection (B)(16)(a) of § 12-37-220 provides:

(A) In addition to the exemptions provided in subsection (A), the following classes of property are exempt from ad valorem taxation subject to the provisions of Section 12-4-720:

* * *

(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.

(Emphasis added).

"The language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption". TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998); *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."). Home Medical Systems v. SC Department of Revenue, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009). See also, Carealliance Health Services v. South Carolina Department of Revenue, 416 S.C. 484, 487, 787 S.E.2d 475, 477 (2016) (Ordinarily, tax exemption statutes are strictly construed against the claimed exemption."). GHS asserts, however, that because it is a "public body and a body corporate and politic established by the General Assembly," § 12-36-2120(41) must instead be construed liberally "in favor of granting the exemption." (GHS Memorandum, page 9). GHS cites several property tax exemption cases in support of this proposition. While the Department acknowledges the language GHS excerpts from Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943), this broad language has certain constraints:

The general rule is that exemptions of private property are strictly construed, because in such cases taxation is the rule and exemption the exception; but exemptions of the property of municipal corporations are liberally construed, for exemptions of such property is the rule and taxation the exception. With us municipal corporations are merely agencies of the state for governmental purposes; and it has never been the policy of this state to tax its own agencies or instrumentalities of government. From which we conclude that the provision should be construed liberally in favor of the exemption claimed.

(Emphasis added)

Initially, it must be recognized that the Holliday Court specifically states that “exemptions of the property of municipal corporations are liberally construed.” Id. This is property tax language, not language that can reasonably be extended to sales taxes.⁵

Moreover, the remaining portion of the passage from Holliday narrows the application of this “liberal construction” principle to exclude sales taxes from its purview. The Holliday Court observed “it has never been the policy of this state to tax its own agencies or instrumentalities of government.” Id. 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 [Chapter 36].” S.C. Code Ann. § 12-36-40. “Person” is defined at S.C. Code Ann. § 12-

⁵The Department further asserts that this “liberal construction” principle should not extend to GHS’ quest to qualify for property tax exemptions under §§ 12-37-220(A)(4) and (B)(16)(a). The cases cited by GHS apply the liberal construction principle to public bodies seeking exemptions as public bodies. Here, GHS has already been granted a property tax exemption as a government subdivision under § 12-37-220(A)(1). To the extent GHS seeks other property tax exemptions, it is doing so not as a governmental subdivision but as another type of entity.

36-30, to include "any individual, firm, partnership, limited liability company, association, corporation, receiver, trustee, any group or combination acting as a unit, the State, any state agency, any instrumentality, authority, political subdivision, or municipality." (Emphasis added).

While there may be discrete sales and use tax exemptions for sales of tangible personal property by government subdivisions, ⁶there is no general sales tax exemption for such entities, which would support the Holliday Court's rationale for its "liberal construction" statement.⁷

GHS is exempt from property taxes as a governmental subdivision under § 12-37-220(A)(1). As of the time of its application for sales tax exemption under § 12-36-2120(41), GHS had not applied for, and thus, had not been granted, exemption from property taxes under § 12-37-220(A)(4), § 12-37-220(B)(16)(a) or any of the other code sections enumerated in § 12-36-21230(41) as triggers for eligibility for the sales tax exemption. A plain reading of the sales tax exemption statute, therefore, precludes GHS from receiving the sales tax exemption at issue.

Nevertheless, as GHS has recognized, the Department has issued Revenue Procedure #03-6, Exemption Certificates - Sales by Certain Nonprofit Organizations (Sales and Use Tax), which, in pertinent part, provides as follows:

II. An organization is not qualified for an exemption certificate if it is:

A. Only purchasing tangible personal property for its own use or consumption, and not for resale; or,

⁶ See, SC Code Ann. §§12-36-2120(30) and (61).

⁷Nevertheless, to GHS' credit, it recognizes that the Department's formulation is correct by arguing that even under the strictly construed rationale, it is eligible for exemption under § 12-36-2120(41). The Department does not believe that GHS is eligible for any of the exemptions it claims in this matter.

B. Exempt from property tax, but under a code section not listed in Code Section 12-36-2120(41).

Note: Code Section 12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for these organizations are not specifically listed in Code Section 12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in Code Section 12-36-2120(41). For example, a private school may qualify for the property tax exemption under Code Section 12-37-220(B) (16) (a) established for certain religious, charitable, eleemosynary or educational organizations. [footnote omitted]

(Emphasis added).

This section of Revenue Procedure #03-6 recognizes that some entities exempt from property taxes under statutes other than those enumerated in § 12-36-2120(41) may also qualify for property tax exemptions under the enumerated statutes.⁸ In addition to the question whether the General Assembly ever intended for a governmental subdivision to gain an exemption from sales taxes under § 12-36-2120(41), these issues form the crux of this case – whether GHS, a governmental subdivision, can legally qualify for exemption under § 12-37-220(A)(4) or § 12-37-220(B)(16)(a). As will be explained, the Department respectfully asserts that GHS cannot qualify for any of these exemptions.

SUMMARY OF ARGUMENT

⁸In this regard, it is notable that the only example given of this “dual” qualification is of a private school which could possibly qualify for a property tax exemption under § 12-37-220(B)(16)(a).

The Department asserts that all of the questions posed by GHS for resolution must be answered against granting the claimed exemption. GHS is a government subdivision. The General Assembly did not intend for governmental subdivisions to be eligible for the sales tax exemption under §12-36-2120(41). Contrary to GHS' broad reading of Holliday, it is the norm for government subdivisions to pay sales and use taxes on their gross proceeds generated from retail sales of tangible personal property. Furthermore, GHS, exempt from property taxes under §12-37-220(A)(1), can neither qualify legally nor factually for property tax exemptions under §§12-37-220(A)(4) and (B)(16)(a).

ARGUMENT ON DESIGNATED ISSUES

ISSUE A: Whether an entity exempt from ad valorem property taxes under S.C. Code Ann. § 12-37-220(A)(1) as a political subdivision is eligible for any of the property tax exemptions listed in § 12-36-2120(41)?

ANSWER: No.

GHS acknowledges that it is a political subdivision and is exempt from property taxes under § 12-37-220(A)(1), which exempts "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..." In order to qualify for the sales tax exemption under § 12-36-2120(41), GHS must show eligibility for one of the property tax exemptions enumerated in subsection (41). GHS asserts eligibility under § 12-37-220(A)(4) as a "charitable trust or foundation" and under § 12-27-220(B)(16)(a) as a "charitable...society, corporation, trust, or other association". The Department maintains that the General Assembly does not intend for a political subdivision to be eligible for property tax exemptions under either of these statutes.

GHS asserts that it can qualify as a "charitable trust or foundation" under subsection (A)(4). GHS does not maintain that it is a charitable trust but does claim that it can be a "foundation." (GHS Memorandum page 16] The definitions of "foundation" it supplies, however, belie this assertion. As a matter of law, GHS, as political subdivision, cannot also be a "foundation." GHS' own definition of foundation is "a fund established for charitable, educational, religious, research or other benevolent purposes." (GHS Memorandum, page 16). GHS is a political subdivision established by the General Assembly for the purpose of operating a public hospital.⁹ That it may conduct some charitable activities such as the provision of free or reduced medical care costs, perform research or conduct other community activities does not make it a foundation. As a political subdivision, GHS cannot also be a "fund established for charitable, educational, religious, research or other benevolent purposes."¹⁰

GHS next asserts that a political subdivision can qualify for exemption under § 12-27-220(B)(16)(a) which exempts "property of any religious, charitable, eleemosynary, educational or literary society, corporation, trust or other association." The Department acknowledges that GHS has been designated a § 501(c)(3) organization by the Internal Revenue Service.¹¹ This IRS

⁹ SC Code Ann. 12-37-220(A)(2) exempts, among other entities, "charitable institutions in the nature of hospitals..." It is noteworthy that the General Assembly distinguished between "charitable hospitals" in subsection (A)(2) and "property of the State, counties ...if the property is used exclusively for public purposes" in subsection (A)(1). As a political subdivision, GHS is charged with the responsibility of operating a public hospital. As a public hospital, in providing free or discounted care, GHS is performing a public service on behalf of the government.

¹⁰It is certainly possible that a subdivision of GHS could be a foundation. At some point, an entity called "Greenville Health Systems Foundation" applied for, and was granted, a sales tax exemption under S.C. Code Ann. § 12-35-550(48) the predecessor to § 12-37-220(16)(a).

¹¹GHS was originally designated a 501(c)(3) organization in 1944. The GHS in existence today looks far different from the GHS, which existed in 1944. Nevertheless, in 2007, the IRS recognized that GHS is still a § 501(c)(3) organization.

designation, however, does not decide the question of whether a government subdivision can be a "charitable ...society, corporation, trust or other association" within the meaning of § 12-37-220(B)(16)(a) for the purpose of a property tax exemption.

GHS was established by the South Carolina General Assembly in May 1947 by Act No. 432, 1947 S.C. Acts. (See Exhibit 2) As stated in the Act's preamble, its purpose was to "provide Hospital Facilities for the Residents of Greenville County..." To that end, Act 432 empowered GHS (then Greenville General Hospital"), through its Board of Trustees, to take certain enumerated actions, to include: (1) to adopt and use a corporate seal; (3) to operate the hospital conveyed to it by the City of Greenville and such other hospitals as it may lease, acquire or construct; (4) to acquire by gift, or purchase or otherwise, all kinds and descriptions of real and personal property; (5) to accept gifts, grants, donations, devises and bequests; (14) to operate and maintain a charity ward and free services for residents of the County, who are destitute and unable to pay for needed hospitalization; (23) to exercise the power of eminent domain, in the manner provided by the general laws of the State of South Carolina for procedure by any County, Municipality or authority created by or organized under the laws of this State, or by the State Highway Department, or by railroad corporations. (Emphasis added).

The General Assembly periodically enacted legislation affecting GHS' power and authority. The most recent legislation, Act No. 105 of 2013 S.C. Acts, gave the GHS the following powers:

SECTION 2. Section 5 of Act 432 of 1947, as last amended by Act 1285 of 1966, is further amended to read:
Section2. The Greenville Health System is authorized and empowered to do all things necessary or convenient for the establishment and maintenance of adequate health care facilities for

the communities it serves and, without limiting in any way the generality of the foregoing, is empowered to:

- (1) adopt and use a corporate seal;
- (2) amend its name as determined by the board of trustees after receiving input from the Greenville County Legislative Delegation;
- (3) adopt bylaws, rules, and regulations for the conduct of its business and expenditure of its funds, as it may deem advisable, including establishing committees of the board of trustees, which may include community and professional representatives;
- (4) operate the hospital conveyed to it by the City of Greenville, and such other hospitals, health care facilities, clinics, programs, and services as it may lease, acquire, construct, or develop;
- (5) acquire by gift, purchase, or otherwise, all kinds and descriptions of real and personal property;
- (6) accept gifts, grants, donations, devises, and bequests;
- (7) enlarge and improve any facility that it may acquire or construct;
- (8) adequately staff and equip any health care facility that it may operate;
- (9) provide and operate outpatient departments and services;
- (10) establish and operate clinics deemed necessary by the board of trustees to the health of the residents of Greenville County and the communities served;
- (11) provide teaching and instruction programs and schools for physicians, nurses, allied health professionals, pharmacists, case workers, administrators, and other persons;
- (12) employ personnel as may be necessary for its efficient operation;
- (13) establish and promulgate rates for the use of its services and facilities;
- (14) provide regulations concerning the use of its facilities and access to its programs and services, including rules governing the conduct of physicians, nurses, technicians, allied health professionals, social workers, and others while on duty or practicing their profession in its facilities and patients and visitors using its services and facilities; the determination of whether patients presented to the health system for treatment are subject for charity; and to fix compensation to be paid by patients and others utilizing its services;
- (15) provide free or discounted services for residents of the county and the communities it serves;

(16) contract directly or in conjunction with insurers, employers, and individuals for the provision of health care services on a population risk or episodic basis and to expend the proceeds derived from these activities to support its programs and services;

(17) determine the fiscal year upon which its affairs must be conducted;

(18) expend any funds received in any manner, and the proceeds derived from issuance of bonds, to defray any costs incident to establishing, constructing, equipping, and maintaining its facilities and services;

(19) apply to the federal government and state agencies and any other governmental agencies, industries, and philanthropic programs for a grant of monies to aid in providing any health care facility or program, conducting research, and providing health care services;

(20) dispose of any property, real or personal, that it may possess;

(21) conduct periodic investigations into hospital, medical, and health conditions and needs in Greenville County and the communities it serves;

(22) exercise the power of eminent domain, in the manner provided by the general laws of the State of South Carolina for procedure by any county, municipality, or authority created by or organized under the laws of this State or by the Department of Transportation or by railroad corporations;

(23) borrow money from banking or other lending institutions in such amounts and on such terms as the board may determine is for the best interest to the board for the operation of the hospital or for the acquisition of real or personal property or to enlarge or improve any hospital facilities and to secure such loan or loans by pledge of revenues;

(24) enter into affiliation, cooperation, territorial management, joint operation, and other similar agreements with other providers for the:

(a) sharing, dividing, allocating, or exclusive furnishing of services, referral of patients, management of facilities, and other similar activities; or

(b) reducing or eliminating duplicative services in a market in order to improve quality or reduce cost; and

(25) exercise all powers now or hereinafter granted to regional health service districts pursuant to Articles 15 and 16, Chapter 7, Title 44, Code of Laws of South Carolina, 1976."

(Emphasis added)

Act No. 105, 2013 S.C. Acts also added an additional power to GHS unique to political subdivisions – GHS may now “establish a police department. Section 5, (3) provides that “[a]A Greenville Health System police office has all the powers of municipal and county law enforcement officers to make arrest for both felonies and misdemeanors and possess all of the common law and statutory powers, privileges and immunities of police officers.”

The Department respectfully asserts that GHS’ statutory powers and authority – most notably the power to exercise eminent domain – are fundamentally inconsistent with its claimed status as a charitable corporation or other entity such that its eligibility for such status under § 12-37-220(A)(4) and §12-37-220(B)(16)(a) must be denied.

ISSUE B: Whether a political subdivision can be exempt from sales and use tax under §12-36-2120(41).

ANSWER: No.

GHS asserts that it should be entitled to the sales and use tax exemption under § 12-36-2120(41) if the statutory prerequisites to obtain the exemption are satisfied. To the contrary, even if it could somehow be shown that GHS satisfies the triggers to gain relief under subsection (41), the Department asserts that it is fundamentally inconsistent with the intent of the General Assembly that a government subdivision be exempt from sales taxes. The State and its subdivisions are liable for sales and use taxes on the gross proceeds of sale generated by retail sales of tangible personal property, unless specifically exempted from such taxes. There is no specific exemption that applies to GHS in its quest to exempt sales of food in its cafeterias from sales taxes. Even if GHS could meet the prongs of subsection (41), which the Department asserts

it cannot, because of the nature of GHS as a political subdivision, more is required to exempt GHS' sales than a general exemption statute.

Illustrative of this point is a series of Attorney's General Opinions addressing whether government subdivisions must collect admissions taxes on admissions to various events. Opinion No. 2921, dated June 22, 1970, offered that the University of South Carolina was not exempt from collecting admissions taxes on paid admissions into the Carolina Coliseum:

Since we opened the Coliseum, the University has periodically considered the possibility of promoting events ourselves. Naturally, the reason would be to increase the income to the University and also to have better control over events.'

The opinion is requested of whether charges made by the University for admission to such events would be taxable or exempt from the admission tax that is imposed by Section 65-802. The Section also provides for exemptions from the tax and subparagraph four excludes from the tax.

* * *

... admissions charged by an eleemosynary or nonprofit corporation or organization organized exclusively for religious, charitable, scientific or educational purposes,

* * *

The issue is therefore, whether the University is an eleemosynary or nonprofit corporation or organization.

The South Carolina Constitution, Article 11, Section 8, authorized the General Assembly to provide for the maintenance of the University of South Carolina and in Section 22-104, the Board of Trustees of the University of South Carolina are constituted 'a body corporate and politic, in deed and in law under the name of the University of South Carolina.' The University is thus a public corporation as opposed to a private corporations. York County Fair Association vs. South Carolina Tax Commission, 249 S. C. 337, 154 S. E. 2d 361. Patrick vs. Maybank, 198 S. C. 262, 17 S. E. 2d 530.

Corporations are classified generally as public or private and private corporations may be further classified as business or eleemosynary corporations. 18 Am. Jur. 2d. Corporations, Sections 8 and 10.

An eleemosynary corporation is a private as distinguished from a public corporation. 7 R. C. L. p. 42; Am. Asylum, etc. vs. Phoenix Bank, 4 Conn. 172, 10 Am. Dec. 112. Sandel vs. State, 126 S. C. 1, 119 S. E. 776.

The section that exempts admissions charged by 'eleemosynary or nonprofit corporations or organizations' from the tax is subject to strict construction with doubt therein resolved in favor of the tax. York County Fair Association vs. South Carolina Tax Commission, supra.

The tax would not be imposed upon the University but upon the person that may pay the admission charge. The University would be only the collector and not the taxpayer. Furman University v. Livingston, 244 S. C. 200, 136 S. E. 2d 254.

It is therefore the opinion of this office that if the University made admission charges to such events, the same would be subject to the tax imposed by Section 65-802 in that the University is not an eleemosynary or nonprofit corporation because of its being a body corporate and politic or a public corporation.

(Emphasis added).

It is significant that the Attorney General's Opinion evaluated the University of South Carolina's status as a public corporation compared to an exempt entity as an "eleemosynary or non-profit corporation or organization," ultimately determining that the University cannot attain the latter status. This is the same issue raised here - GHS is a political subdivision. The general sales tax exemption under § 12-36-2120(41), by way of § 12-37-220(B)(16)(a), requires an exempt entity to be a "charitable...society, corporation, trust, or other association." Given its status as a political subdivision, GHS is not a charitable ...society, corporation, trust, or other association." Construing § 12-36-2120(41) according to its plain language, GHS does not qualify for exemption thereunder. See also, Attorney General Opinion No. 3633, dated September 28, 1973 ("We are of

the opinion that the Department of Parks, Recreation and Tourism is not exempt by the provisions of Section 65-802(4) and that admissions it charges are subject to admissions taxes.”).

In Attorney General’s Opinion No. 4200, dated November 24, 1975, the South Carolina Attorney General’s Office addressed not only whether Patriots Point Development Authority, a body politic created by the General Assembly, was exempt from the collection of admissions taxes but also whether its sales of food, beverages, souvenirs and other items to the public at the park and museum were subject to sales tax. After opining that the Development Authority was not exempt from admissions taxes, the Attorney General stated the following:

The second question you have presented relates to the State sales tax. This tax is imposed by the provisions of Chapter 17 of Title 65 of the Code of Laws. Section 65-1356 defines the word ‘person’ as used in the chapter to include the State and any of its agencies, instrumentalities, authorities and political subdivisions. There have been several opinions of this office recognizing that State agencies are not exempt from its provisions. See opinion dated February 14, 1963 and October 16, 1963. In addition, Sales Tax Regulation 102 of the Tax Commission, dated April 28, 1965, provides that sales by a State agency of tangible personal property shall be considered retail sales subject to the tax. This regulation further states the requirement that a State agency is required to be licensed as a retailer under the terms and provisions of the Sales and Use Tax Act.

While Attorney General Opinions are not binding authority, the rationale underpinning the referenced opinions is sound and should be utilized here to find that GHS, given its status as a political subdivision, cannot legally be exempt from sales and use taxes under § 12-36-2120(41).

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¹² Reg. 117-304 is the current regulation providing that “[s]ales of tangible personal property by the State, counties, municipalities and other political subdivisions of the State...are subject to sales tax” unless otherwise exempted.

Moreover, granting a sales tax exemption under subsection (41) here would work an absurdity. GHS is a political subdivision that wields a good bit of economic power in the Greenville area. Given its extraordinary authority to operate health care facilities as outlined in Act No. 105, 2013 SC Acts, GHS arguably has a competitive advantage in undertaking any business venture that may compete against similar businesses in the local community. Inasmuch as GHS has not suggested that its cafeterias are closed to the general public, allowing it to sell prepared food in its cafeterias free from sales tax would magnify its economic advantage over area retailers of similar food items.

Furthermore, if GHS becomes eligible for the sales tax exemption under § 12-36-2120(41), its ability to make retail sales free from sales taxes will not be limited to food items in its cafeterias but instead could legally be extended to any and all tangible personal property sold by GHS. In fact, this is not the first application GHS has submitted under § 12-36-2120(41). In 2009 GHS sought the § 12-36-2120(41) exemption on behalf of Carolina Eye Care and, if granted, would have allowed GHS to sell eyewear free from sales taxes.¹³ Not only does granting such a competitive advantage to a government subdivision result in an absurdity, it cannot be what the General Assembly intended when it enacted § 12-36-2120(41).¹⁴

ISSUE C: Does the prohibition against inurement in § 12-36-2120(41) apply only to benefit inuring from the gross proceeds or sales price of the tangible personal property sold by the organization?

¹³ The Department denied the exemption request and GHS thereafter filed a contested case hearing. That proceeding was later dismissed and the present matter was initiated.

¹⁴ Had the General Assembly intended to exempt government subdivisions from sales and use tax under §12-36-2120(41), it could easily have included §12-37-220(A)(1) is the list of property tax exemptions triggering the exemption. The plain language of §12-36-2120(41) is perhaps the best evidence that the sales and use tax exemption under subsection (41) was not intended to be extended to political subdivisions.

ANSWER: Based on the plain language of § 12-36-2120(41), the Department agrees with GHS' interpretation in this instance.

GHS relies on the plain language of the exemption statute to assert that § 12-36-2120(41)'s requirement that "no benefit inures to any individual" is limited to benefits resulting from an entity's "sales of goods." The Department agrees that the exemption statute must be read as dictated by the plain language used by the General Assembly. In this instance, the Department does not take issue with GHS' interpretation of the inurement requirement of § 12-36-2120(41) – the prohibition on personal inurement extends only to benefits flowing from the gross proceeds of sale.¹⁵ However, there must be strict compliance with this statutory requirement. GHS, with its varied operations under its umbrella, must show that its gross proceeds of sales do not inure to the benefit of any individual.

ISSUE D: Does the prohibition against inurement in § 12-36-2120(41) and § 12-37-220(B)(16)(a) apply only to benefits that may inure to "insiders" of the organization as that term is defined and applied under federal tax law and IRS interpretation?

ANSWER: No, the inurement prohibitions contained in the referenced statutes must be read and applied as the South Carolina General Assembly intended them to be – by strictly construing the statutory language to prohibit any benefit or profit from inuring to any private stockholder or individual.

The plain language of § 12-27-220(B)(16)(a) and § 12-36-2120(41) contain similar language prohibiting inurement:

Section 12-37-220(B)(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

¹⁵ The Department does not, however, agree with GHS to the extent it implies that the term "benefit" may never include any asset, revenue or other beneficial effect that might flow from the organization to an individual."

profit or benefit there from inures to the benefit of any private stockholder or individual. (Emphasis added).

Section 12-36-2120(41) items sold by organizations exempt under Section 12-37-220(A)(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. (Emphasis added).

The plain language of these statutory provisions provide that no benefit may accrue to any individual from the use of an entity's property under (B)(16)(a) and that no part of the gross proceeds of sales may benefit any individual under (41). This language is straightforward and must be applied as set out by the General Assembly.

In Hibernian Society v. Thomas, et al, 282 S.C. 465, 319 S.E.2d 339 (Ct. App. 1984), the South Carolina Court of Appeals considered the meaning of similar language contained in SC Code Ann. 12-37-220(B)(12), which exempted from property tax:

The property of any fraternal society, corporation or association, when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit therefrom shall inure to the benefit of any private stockholders or individuals.

(Emphasis added)

After determining that the applicant was 1) a fraternal organization and 2) that it used the subject property for the conduct of its business, the Court then turned to the language, "no profit or benefit therefrom shall inure to the benefit of any private stockholders or individuals:

The last requirement is that no profit or benefit from the Society's business can inure to the benefit of any individual member. Obviously, no member receives any direct financial benefit from belonging to the Society such as a salary or dividends. We recognize that "profit or benefit" may inure to an individual other than through the distribution of dividends. The City and County are arguing that having a place to socialize to the exclusion of the general public is sufficient "profit or benefit" to deny the exemption. We disagree.

There is bound to be some incidental, non-financial benefit resulting from membership in any type organization. In enacting this particular condition, the legislature intended, we believe, to stop the flow of any direct or indirect commercial benefits to the individual members of the Society, see *Harding Hospital v. U.S.*, 505 F.2d 1068 (6th Cir. 1974), as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a group. Thus, the benefits resulting from membership in the fraternal organization which inure to the Society as a group, such as being able to purchase drinks in the lounge at cost and being able to rent the Hall at a lesser amount than non-members, do not violate this requirement. Since the Society is not a business league and since the Society's members receive no free or reduced insurance benefits, no merchant's discounts or no other form of indirect commercial benefits, the no-profit condition has been met.

Hibernian Society, 282 S.C. at 471-472, 319 S.E.2d at 343. (Emphasis added).

While the Court in Hibernian Society was not interpreting the property tax exemption statutes in this case, its consideration of the anti-inurement provision in § 12-37-220(B)(12) is instructive because the statutory language is identical to that used in § 12-27-220(B)(16)(a): "and no profit or benefit therefrom inures to the benefit of any private stockholder or individual." Significantly, the Hibernian Society Court observed that the General Assembly intended "to stop the flow of any direct or indirect financial benefits to the individual members of the fraternal organization." Id. Key to this inquiry then, was the need to examine whether any financial benefit ran to any private stockholders – in the case of a fraternal organization, its members, -- or to any individual. The Court was satisfied that no financial benefit flowed to any member of the organization which led to its finding that the anti-inurement provision was not violated. Accordingly, the Court granted the sought-after property tax exemption. It is important to note the breadth of the potentially disqualifying benefits – "the Society's members receive no free or

reduced insurance benefits, no merchant's discounts or no other form of indirect commercial benefits." Id.

GHS seeks to qualify the "no profit or benefit therefrom inures to the benefit of any private stockholder or individual" requirement of § 12-37-220(B)(16)(a) by incorporating the IRS "insider" standards into the evaluation of whether inurement exists. GHS asserts that the Treasury Regulations interpreting IRC § 501(c)(3), as well as federal case law, have said that inurement is only disqualifying if benefits flow to corporate insiders – those persons in a position to influence or control the actions of the exempt organization, such as directors, officers, and trustees. (GHS Memorandum, page 25).¹⁶

The Department respectfully asserts that the "insider" provisions of the Treasury Regulations should not be used here for the purposes of determining whether inurement exists within the context of a property tax exemption statute. The Department acknowledges that the General Assembly adopted IRC § 501(c)(3) and that typically, the interpretive Treasury Regulations are used to assist in determining the proper application of the federal law, but it should be recognized that these federal authorities are applicable to income tax issues.¹⁷ IRC § 501(c)(3), to include its interpretative regulations, is used to determine whether an entity qualifies for an income tax exemption. The Department does not challenge GHS' status as an IRC § 501(c)(3) organization – the Department is neither seeking to impose state income taxes on GHS nor is the Department seeking to deny charitable income tax deductions to donors who have contributed

¹⁶To the extent inurement is limited to "insiders," there must be an evaluation of who is an insider. See Issue D, below.

¹⁷ The IRS conformity sections, SC Code Ann. §§12-6-40 and 12-6-50, are contained in the Chapter of the SC Code applying to income taxes.

funds to GHS. The issue here is whether GHS is entitled to a property tax exemption under § 12-37-220(B)(16)(a), a matter which is solely governed by state law. Under this code section, the exemption is only available if "no profit or benefit" flows from the property of the entity to "any private stockholder or individual." IRC §501 (c)(3) and its interpretive regulations have no direct application to state property tax exemptions or state sales tax exemptions. The operative language of the South Carolina exemption statute is not limited so as to prohibit inurement to only corporate insiders. Instead, § 12-37-220(B)(16)(a) broadly prohibits inurement to "any private stockholder or individual." This language is expansive and must be interpreted as intended by the General Assembly. There is no South Carolina statute or regulation that specifically incorporates the IRS "insider" standard for evaluating property tax exemptions.

GHS points to language in Revenue Procedure #03-6 to assert that the Department does rely on IRS standards to determine inurement. While GHS recites some of Revenue Procedure #03-6's language on this issue, it leaves pertinent information out:

I. An organization is considered to be "automatically" qualified for an exemption certificate if it is:

- A. Selling tangible personal property;
- B. Exempt from property tax under one of the property tax code sections listed in Code Section 12-36-2120(41); and
- C. Exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19). The statute does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision is to meet the requirement that the organization's net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.

NOTE: To be considered as "automatically" qualified, an organization must meet all of the above requirements and file Form ST-387. However, it should be noted that this "automatic" qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.

What is significant here is that while § 501(c)(3) standards will be used to "automatically qualify" an entity for the exemption under § 12-36-1220(41) when all of the criteria are met, the caveat is given that the Department will not issue an exemption certificate or will revoke an issued certificate "[i]f it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner...". *Id.* GHS is not eligible for "automatic exemption". In addition to the fact that it is not exempt from property taxes under any of the listed statutory exemptions, various factors regarding its operations have caused the Department to question whether it satisfies the anti-inurement provision which would also disqualify it for the exemption under § 12-37-220(B)(16)(a). Despite any Treasury regulation considered interpretive of inurement under IRC § 501(c)(3), the only South Carolina appellate court to address inurement in a property exemption setting has opined that the South Carolina General Assembly enacted identical language in a similar exemption statute "to stop the flow of any direct or indirect commercial benefits to the individual members of the Society." *Hibernian Society*, 282 S.C. at 471-472, 319 S.E.2d at 343. The *Hibernian Society* Court, in view of the plain and straightforward statutory language, was not concerned with whether the members were directors, officers or otherwise qualified as "insiders." This case remains good law in South Carolina and is unaffected by a "convenience" mechanism contained in a Department policy document. Accordingly, the law on private inurement in South Carolina is not limited to prohibitions on benefits flowing to

insiders. Instead, the statutory language must be given its plain meaning such that "no profit or benefit therefrom [from the use of the entity's property] shall inure to the benefit of any private stockholders or individuals." Where that benefit is found, the entity is disqualified for the property tax exemption under § 12-37-220(B)(16)(a).¹⁸

ISSUE E: Does inurement, prohibited by § 12-36-2120(41) and § 12-37-220(B)(16)(a), automatically occur as a result of the use of revenue based compensation methodologies for physicians regardless of whether the amount of compensation actually paid to the physician and whether the amount paid is reasonable or fair market value?

ANSWER: Revenue based compensation packages are inherently problematic and run afoul of the inurement prohibitions in the South Carolina exemption statutes.

The Department asserts that revenue-based physician compensation packages are inherently problematic and violate the inurement prohibitions under § 12-37-220(B)(16)(a).¹⁹ This statute plainly states, "no profit or benefit there from [use of property] inures to the benefit of any

¹⁸ See also, SC Revenue Ruling #09-8 which discusses inurement for purposes of §12-36-2120(41). There are examples given in the document illustrating scenarios where funds generated by the sale of tangible personal property are paid by non-profits to a third party. In none of the examples is the third party an officer, director or trustee of the organization. For instance, in scenario #3, disqualifying inurement was found:

sales of tangible personal property at a special event for which the nonprofit organization hired a promoter to organize and conduct and for which the promoter will be paid a percentage of the gross proceeds the nonprofit organization receives from the sales of tangible personal property at the special event are subject to the sales tax. These sales do not qualify for the exemption in Code Section 12-36-2120(41) since a benefit from the sales inure to the promoter managing and conducting the special event in return for a percentage of the sale proceeds.

In this example, the promoter would not otherwise qualify as an "insider."

¹⁹The Department agrees that § 12-36-2120(41)'s anti-inurement provision reaches only the gross proceeds of sales generated by sales of tangible personal property. See Issue C, above.

private stockholder or individual.” GHS gives a relatively benign characterization of its physician contracts. What these contacts do is to allow physicians to share in the profits of GHS’ various medical facilities. (Attached hereto as Exhibit 3 are excerpts from the Deposition of Dr. Jerry Youkey who gives a comprehensive description of the types of contracts used to employ physicians at GHS) This per se runs afoul of § 12-37-220(B)(16)(a). It is not necessary to evaluate whether compensation resulting from profit sharing is reasonable or whether the amounts paid are fair market value.²⁰

The Department asserts that the IRS guidance that inurement is only disqualifying if benefits run to “insiders” is not applicable to the evaluation of whether inurement exists for purposes of § 12-37-220(B)(16)(a). Nevertheless, even if this “insider” analysis is pertinent, the evaluation of who is an insider is broader than suggested by GHS and further, physicians may so qualify.

Under the IRS regulations, “private stockholder or individual” in section 501 refers to persons having a “personal and private interest in the activities of the organization.”

A physician can qualify as a person with such an interest. G.C.M. 39498 (January 28, 1986) provided an indication of the IRS’ thinking on that question in commenting on an exempt hospital’s physician recruitment program:

We view the question of subsidies under the hospital’s physician recruitment program to be essentially a question of whether a given compensation arrangement comports with the requirements of

²⁰ The Department agrees with GHS that physicians need not donate their services to a non-profit hospital. The physicians have a right to be compensated for their services. While reasonable salaries may be paid, profit sharing should not be allowed under the anti-inurement rules of the property tax exemption statutes. To the extent the Court were to find that the profit sharing of GHS’ physicians is not per se disqualifying, then an inquiry must be undertaken to evaluate the reasonableness of the compensation.

exemption. Such subsidies or the method of determining the amount of subsidies may result in inurement of the hospital's net earnings to the physicians recruited to the staff of the hospital, or demonstrate that private interest are being served.

In our opinion, the recruited physicians as employees or as individuals with a close professional working relationship with the hospital are persons who have a personal and private interest in the activities of the hospital. Thus, such physicians are subject to the inurement proscription.

As suggested, physicians can certainly influence the amount of revenue simply by scheduling patients for more visits or procedures. Accordingly, even under the "insider" rationale, compensation paid to the physicians could easily violate the prohibition against inurement.²¹

ISSUE F: Is the charitable component of the requirement under § 12-37-220(B)(16)(a) and § 12-37-220(A)(4) that the "organization be a "charitable" corporation, trust, foundation or other association determined according to the "organizational and operation tests" prescribed under Treas. Reg. § 1.501(c)(3)?

ANSWER: While Treas. Reg. § 1.501 (c)(3) may be used to evaluate whether an organization is charitable, the Department is not bound to use any tests under this regulation exclusively and is not bound by any IRS determinations made using this regulation. Furthermore, because GHS is a government subdivision, it cannot qualify as a "charitable organization" within the meaning of § 12-37-220(B)(16)(a) and § 12-37-220(A)(4).

In Issue A, the Department explained that GHS cannot qualify as a charitable organization under South Carolina law because it is a government subdivision. GHS' expansive powers given to it by the General Assembly are inconsistent with its claimed status as a charitable organization.

²¹ A hypothetical may make this point clearer. A physician who is compensated based on income or profit sharing can increase his pay by increasing revenue or by decreasing expenses. Imagine a dermatologist who has a patient with several moles. The doctor is deciding whether to remove the moles or not. Even though the moles are not unusual, he can increase his revenue by performing the procedure to remove them. He has an incentive to perform these types of procedures, and he earns more money per hour doing so than he would otherwise. The amount of compensation need not be excessive to constitute prohibited inurement. The fact that a benefit is flowing to an individual in this position is sufficient.

Nevertheless, for organizations that are not government subdivisions, Treas. Reg. § 1.501(c)(3)-1 may be used to determine whether an organization is charitable.²² Contrary to GHS' assertion, Revenue Procedure #03-6 has not adopted the IRS' "organization and operational tests" as the sole method for determining whether an organization is charitable. Further, the Department is not bound by any determination made by the IRS in this regard.

ISSUE G: If the answer to Issue (F) is "yes," does the requirement under Treas. Reg. §1.501(c)(3)-1 that the organization be operated or used "exclusively" for charitable or public purposes mean that GHS "engages primarily in activities" which accomplish those purposes and that no "more than an insubstantial part of its activities is not in furtherance of an exempt purpose" as provided under Treas. Reg. §1.501(c)(3)-1?

ANSWER: While the IRS standard in Issue (F) may be used to evaluate whether a non-governmental subdivision organization is charitable for the purposes of the property tax exemption statutes at issue, the Department, because it has the latitude to consider other factors, is not bound to accept the "insubstantial part" test.

At issue is whether GHS can qualify for a state sales and use tax exemption under § 12-36-2120(41). Essential to this question is whether GHS can be deemed a "charitable organization" within the meaning of the applicable property tax exemption statutes - § 12-37-220(A)(4) and § 12-37-220(B)(16)(a). As stated earlier, the Department asserts that GHS, as a political subdivision, cannot be a charitable organization within the meaning of these property tax exemption statutes. To the extent any entity is evaluated as a charitable organization, the Department is not bound by

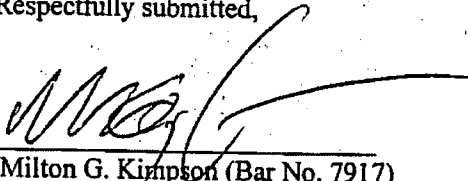
²²It is important to note that Treas. Reg. § 1.501(c)(3)-1(c)(2) states that "[a]n organization is not operated exclusively for one or more exempt purposes if its net earnings inure in whole or in part to the benefit of private stockholders or individuals." The Department rejects the notion of limiting private inurement to "insiders" for purposes of § 12-37-220(B)(16)(a). Given the Department's flexibility in this regard, even under the "operational test" inurement issues must be examined.

Treas. Reg. § 1.501(c)(3)'s "insubstantial part" test.²³ Moreover, the Department is not bound by any decision on these issues made by the IRS.

CONCLUSION

Based on the foregoing, the South Carolina Department of Revenue respectfully requests that the Petitioner's Motion for Partial Summary Judgment be denied in accordance with the positions the Department has outlined herein. The Department further asserts that its positions on Issue A, B, D or E are dispositive of this case and would result in the denial of the claimed sales and use tax exemption.

Respectfully submitted,

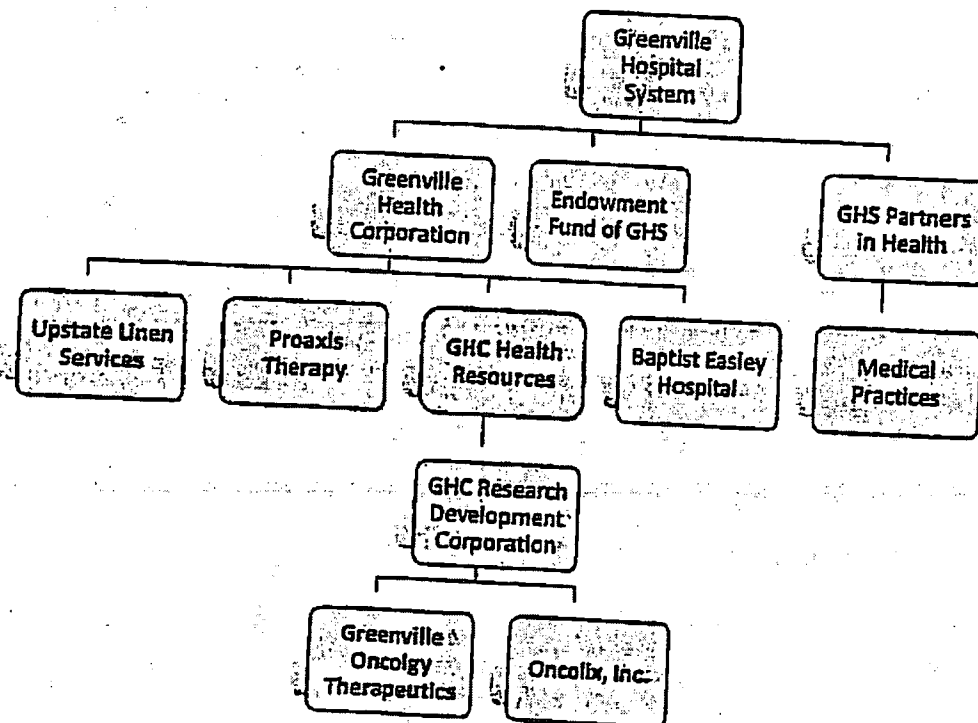


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March 6, 2016

²³ Aside from the question of whether GHS can qualify as a charitable organization, the Department acknowledges that GHS does perform certain activities that can be considered "charitable." As indicated above, however, GHS' legislatively designated function is to operate a public hospital so many of these activities are consistent with it performing as a public entity as opposed to a charitable organization. Nevertheless, for purposes of any evaluation of its charitable activities, GHS' ownership and operation of formerly private doctor's offices and specialty practices must be considered.

Ex. 1



B. Compensation

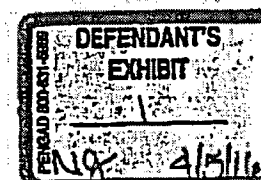
The Department requested, but was not provided, details on compensation paid to employees receiving in excess of \$100,000 of compensation per year.¹⁹ The Department also requested, but was not provided, details on the consulting fees paid to contractors receiving in excess of \$150,000 of compensation per year.²⁰

Significant amounts have been paid to certain influential persons. For example, the Department Determination states that one of the officers of Oncolix, Inc. received wages from GHS in the amount of \$3.4 million, \$1.4 million and \$4.8 million for the years 2008, 2009 and 2010, respectively.²¹ However, the Petitioner's Response to Respondent's First Set of Interrogatories, item 7(c)(ii) says that Oncolix, Inc. has not sold any product and has suspended further operations other than attempts to secure financing.

¹⁹ Petitioner's Response to Respondent's First Set of Interrogatories, item 8.

²⁰ Petitioner's Response to Respondent's First Set of Interrogatories, item 9.

²¹ Department Determination, page 16, footnote 5.



(1916, 1917, 5111)

No. 431

AN ACT To Provide For The Construction And Surface Treatment Of County Roads Within Greenville County During The Fiscal Year Of 1916-1917 And To Appropriate Funds Therefor.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: Improve roads, Greenville County.—The Supervisor of Greenville County is hereby authorized and directed to use the funds hereinafter provided for and appropriated in construction, surface-treating and resurfacing County Roads within Greenville County. The improvements herein authorized shall be equitably distributed throughout Greenville County by the Supervisor, who, in selecting the roads for improvement, shall give first consideration to those which carry the most traffic. No portion of the funds herein provided shall be used in laying out, cutting and constructing streets in new developments on which proposed street no houses have been erected.

SECTION 2: Engineer—employees—materials and machinery.—The Supervisor is hereby authorized to employ a full time, competent engineer out of the funds herein provided, whose duty it shall be to prepare specifications for the construction of the roads to be built hereunder, according to recognized standards, and to supervise the construction and improvements thereof. Further, the Supervisor is hereby authorized to employ such other help and to purchase such materials and machinery as shall be necessary to carry out the provisions of this Act. Further expenditures heretofore made during the present fiscal year for the purposes herein envisioned, and for which no appropriation has been made, shall be charged against the appropriation herein provided.

SECTION 3: Appropriation.—There is hereby appropriated out of the General fund of Greenville County for the purposes hereinabove set forth the sum of One Hundred and Seventy Thousand (\$170,000.00) Dollars. It is intended that this appropriation shall be expended during this fiscal year 1916-1917.

SECTION 4: Repeal.—All Acts or parts of Acts inconsistent herewith are hereby repealed.

SECTION 5: Time effective.—This Act shall take effect upon its approval by the Governor.

Approved the 3 day of April 1917

Ex. 2

(1917, 1918, 5611)

No. 432

AN ACT To Provide Hospital Facilities For The Residents Of Greenville County, To Establish The Greenville General Hospital Board Of Trustees, To Prescribe The Functions And Powers Of Said Board, Including The Right To Issue Revenue Bonds, To Authorize The Corporate Authorities Of The City Of Greenville And The County Board Of Commissioners Of Greenville County To Enter Into A Contract Relative To The Acquisition Of Certain Hospital Properties And Assets Of The City Of Greenville By The Greenville General Hospital Board Of Trustees, To Authorize The Holding Of A Special Election In Greenville County On The Question Of The Issuance By Greenville County Of One Million Five Hundred Thousand (\$1,500,000.00) Dollars Of General Obligations Bonds Of Said County, To Authorize The Issuance Of Said Bonds, To Prescribe The Conditions Under Which Said Bonds May Be Issued, And To Provide For The Payment Of Said Bonds.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: Legislative findings as to hospital facilities, Greenville County.—basis Greenville will convey to Greenville County its hospital facilities.—The General Assembly, after due investigation, has found that there exists in Greenville County a lack of hospital facilities, and that as a result of this condition many persons, and, in particular, those of small income, are being deprived of adequate medical and hospital care. It has been further found that this condition constitutes a menace to the health and welfare of the inhabitants of Greenville County, and the General Assembly has, therefore, determined to remedy the condition. The investigation made shows that there is in existence in the City of Greenville a municipally owned and well run hospital, constructed and paid for by the taxpayers of the City of Greenville, which is adequate to care for the needs of the residents of the City of Greenville alone, but which is too small to care for the needs of the residents of the entire County, and that in understanding efforts on the part of the municipal authorities in charge of the hospital to render service to all persons who are in need of hospital facilities, the scope of the physical plant makes this impossible and the municipal authorities of the City of Greenville are confronted with the

those who are actually residents of the City of Greenville. The General Assembly has found that the most practical and economical solution of the problem would be for the County of Greenville to take over the hospital, to expand its physical facilities and to operate it for the benefit of all residents of Greenville County. The corporate authorities of the City of Greenville desire to cooperate in solving the problem in the most practical and economical manner, but at the same time are mindful of their duty to the taxpayers of the City of Greenville, whose moneys have been expended to construct, operate and maintain the municipal hospital, and their duty to the residents of the City who are entitled to the assurance of the continued operation of the hospital. They are therefore unwilling to convey the present hospital plant and equipment to Greenville County free of charge without some guarantee that its future operation will be on a basis fair and satisfactory to the residents of the City. They are willing, however, to convey the same to an independent Board, free from the control of the corporate authorities of the City or the County and charged with the duty of operating said hospital and its expanded facilities for the benefit of the taxpayers and residents of all Greenville County, upon the following conditions:

- (1) That there be made available to such Board by the County of Greenville, the sum of not less than One Million Five Hundred Thousand (\$1,500,000.00) Dollars, which shall be expended by said Board in enlarging and expanding said hospital and to provide further hospital facilities for the residents of Greenville County.
- (2) That the City of Greenville receive satisfactory assurances that this Act embodying the agreed plan and method for the operation of said hospital and its expanded facilities will not be amended or repealed in any particular without:
 - (a) First obtaining the approval of the corporate authorities of the City of Greenville, evidenced by a majority action at a duly called meeting of the City Council, or
 - (b) The County paying to said City the sum of One Million Five Hundred Thousand (\$1,500,000.00) Dollars which is the agreed present value of its hospital plant, equipment, supplies and cash included in the conveyance to be made to said Board.

Being mindful of these facts and circumstances, and in the exercise of the powers conferred upon it by the Constitution of South Carolina, the General Assembly enacts this Act with the declared purpose of providing hospital facilities for the residents

of all Greenville County but with the further intention of protecting the rights of the taxpayers and inhabitants of the City of Greenville.

SECTION 2: Election on Greenville County issuing bonds for hospital facilities.—In order that the wishes of the qualified electors of Greenville County might be ascertained upon the question of the issuance of bonds of Greenville County in an amount sufficient to meet the requirements of the corporate authorities of the City of Greenville, relative to the expansion and enlargement of the hospital facilities beyond the scope now furnished by the existing municipal hospital in the City of Greenville, and to an extent which will care for the minimum needs of the residents of the County of Greenville, the County Board of Commissioners of Greenville County shall hold an election in Greenville County not later than the second Tuesday in August, 1947. At said election, there shall be submitted to the qualified electors of Greenville County the following question:

"SHALL THE COUNTY BOARD OF COMMISSIONERS OF GREENVILLE COUNTY BE AUTHORIZED AND EMPOWERED TO ISSUE ONE MILLION FIVE HUNDRED THOUSAND (\$1,500,000.00) DOLLARS OF GENERAL OBLIGATION BONDS OF GREENVILLE COUNTY, PAYABLE FROM UNLIMITED AD VALOREM TAXES UPON ALL TAXABLE PROPERTY IN GREENVILLE COUNTY, WHOSE PROCEEDS SHALL BE USED TO PROVIDE HOSPITAL FACILITIES FOR THE RESIDENTS OF GREENVILLE COUNTY."

Said County Board shall, within the limitations of this Section, fix the occasion for the holding of the election, which shall be held at the several polling precincts or voting places in Greenville County, as the same are now established by law. Said Board shall give notice of the election and of the submission of the question by publishing a notice thereof in a newspaper published in Greenville County, which notice shall be published not less than once a week for three (3) successive weeks prior to the occasion on which the election is to be held. The notice shall specify that the several polls shall open at 8:00 A. M., and close at 6:00 P. M. Said Board shall provide a sufficient number of ballots for the said election, whose form shall contain the question set forth herein and shall be followed with the words, "YES" and "NO", printed clearly thereon. The ballots shall contain instructions advising persons voting in the election that those who favor the issuance of the bonds shall strike through or

erase the word, "NO", while those persons who oppose the issuance of bonds shall strike through or erase the word, "YES". The said Board shall appoint managers for said election, who shall make returns of the results of the voting at the several precincts in Greenville County to said Board which shall, upon receipt of the returns, proceed to canvass the election and declare the results thereof. The results of said election, as declared by Resolution of the Board, shall not be open to question except by a suit or proceeding instituted within thirty (30) days from the date when the results are declared. The cost of holding the election and giving notice thereof shall be defrayed from the general funds of Greenville County.

SECTION 3. Greenville contract with Greenville County for conveyance of its hospital facilities if bond election favorable.—If the election required by the provisions of Section 2 of this Act shall have resulted favorably to the issuance of bonds by Greenville County, then the County Board of Commissioners of Greenville County and the corporate authorities of the City of Greenville shall be empowered to enter into a written agreement, which shall obligate the City of Greenville to transfer and convey to the Board of Trustees created by Section 4 of this Act, its existing hospital buildings, the site thereof and all other land acquired for hospital purposes, together with the equipment, appurtenances, supplies, material and all choses in action, and cash, approximating the sum of \$375,000.00 standing to the credit of said Municipal Hospital. Said agreement shall be in the form as may be agreed upon by the City Council of the City of Greenville and the County Board of Commissioners of Greenville County, but shall contain the pledge or covenant on the part of Greenville County:

- (1) That in the event this Act embodying the agreed plan and method for the operation of said hospital and all of its expanded facilities is repealed or amended in any particular without first obtaining the approval of the corporate authorities of the City of Greenville evidenced by a majority action at a duly called meeting of the Greenville City Council; or,
- (2) That in the event Greenville County shall hereafter acquire the property and assets which the City of Greenville shall convey to the said Board of Trustees, created by Section 4 of this Act, as the same may be constituted on the occasion of their acquisition by said Board of Trustees, or as the same may have been unified, transformed, converted or changed, and whether the acquisition become effective by operation of law, by voluntary act, or through

eminent domain, then in either of such events Greenville County shall be obligated to pay to the City of Greenville the sum of One Million Five Hundred Thousand (\$1,500,000.00) Dollars, which obligation shall constitute a lien upon all hospital facilities and equipment located within the corporate limits of said City, insofar only to any lien created in favor of revenue bonds issued prior to the occurrence of such event. This covenant or agreement shall be deemed to be for the benefit of the several residents and taxpayers of the City of Greenville and shall be enforceable at law or in equity at the instance of any one or more of either of them.

SECTION 4. Greenville general hospital board of trustees.—For the purpose of operating and at all times, maintaining adequate hospital facilities for the residents of Greenville County, including those residents of said County who shall reside in the City of Greenville, there is established a Board, to be known as the Greenville General Hospital Board of Trustees. Said Board shall consist of seven (7) members, all of whom shall be qualified electors. Three (3) of said members, designated for convenience as 'City Members', shall reside within the corporate limits of the City of Greenville; three (3) of said members, designated for convenience as 'County Members' shall reside within the corporate limits of Greenville County but without the corporate limits of the City of Greenville; and, the seventh member, designated for convenience as 'Member at Large', shall reside within the County of Greenville, either within or without the corporate limits of the City of Greenville. The initial membership of the Board shall consist of the following persons:

R. S. Huntington, W. H. Ellis, Jr., and Sidney Bruce as City Members; John Ratteree, Allen League and Charles V. Verner as County Members; and Allen Sisley, as Member at Large, each of whom is found to have the qualifications for membership prescribed by the provisions of this Section. Of the initial Board, two (2) shall have a term ending October 1st, 1949, two shall have a term ending October 1st, 1951, and three shall have a term ending October 1st, 1953. Upon being apprised of the favorable result of the election, required by the provisions of Section 2 hereof, said Board shall meet as soon as may be practicable and organize by electing one of their number as Chairman, a second as Vice-Chairman, and a third as Secretary, whereupon, after the organization of said Board, it shall determine by lot and duration of the term of each member, in order that the requirements of this Section shall be complied with. And, upon the

terms of the several members being thus determined, the Secretary of said Board shall certify the same to the Governor of South Carolina, who shall issue commissions to each member for the term required by this Act. A full transcript of the records of the initial organization shall be filed with the Clerk of Court of Greenville County, by the Secretary of said Board, and shall be recorded and indexed by that official. Subsequent terms of office of the members of said Board of Trustees shall be for a term of six (6) years. Vacancies on the Board, either among the initial appointees, or among their successors in office, occurring by reason of death, resignation, refusal to serve or otherwise, shall be for the remainder of the term of the office in which the vacancy shall have occurred. If, upon the expiration of the term of any member of the Board of Trustees, a successor shall not have been appointed, the member whose term has thus expired shall hold over until the appointment and qualification of his successor, but this provision shall not extend the term of the successor beyond the six (6) year period herein provided for. All vacancies shall be filled in the following manner: If the vacancy in office shall be for a "City Member", the remaining members of the Board, or a majority thereof, shall submit a nomination or nominations to the City Council of the City of Greenville for its approval; if the vacancy in office shall be for a "County Member", the remaining members of the Board, or a majority thereof, shall submit a nomination or nominations to the Greenville County Delegation to the General Assembly for its approval; and, if the vacancy in office shall be for the "Member at Large", the remaining members of the Board, or a majority thereof, shall submit a nomination or nominations to the City Council of the City of Greenville and the Greenville County Delegation to the General Assembly for their approval. Upon the approval of a majority of the City Council of the City of Greenville, or a majority of the Greenville County Delegation to the General Assembly, as the case may be, or by both in the event the nomination be for the "Member at Large", then the Clerk of City Council, or the Secretary or Acting Secretary of the County Delegation, or both, as the case may be, shall certify their approval to the Governor of South Carolina, who shall commission the nominee for the term provided by the provisions of this Section. All members of the Board shall serve without compensation. Appointments and acceptances thereof shall be duly filed in the office of the Clerk of Court for Greenville County.

SECTION 5: Trustees—duties and powers.—The Greenville General Hospital Board of Trustees shall be authorized and empowered to do all things necessary or convenient for the establishment and maintenance of adequate hospital facilities for Greenville County and, without limiting in any way the generality of the foregoing, shall be empowered as follows:

- (1). To adopt and use a corporate seal.
- (2). To adopt such by-laws, rules and regulations for the conduct of its business and expenditure of its funds, as it may deem advisable, PROVIDED, that said Board shall afford the Executive Committee of the Medical Staff of any hospital operated by the Board the opportunity to present recommendations upon the request of said Executive Committee;
- (3). To operate the hospital conveyed to it by the City of Greenville, and such other hospitals as it may lease, acquire or construct;
- (4). To acquire by gift, or purchase, or otherwise, all kinds and descriptions of real and personal property;
- (5). To accept gifts, grants, donations, devises and bequests;
- (6). To enlarge and improve any hospital building that it may acquire or construct;
- (7). To adequately staff and equip any hospital that it may operate;
- (8). To provide and operate out patient departments;
- (9). To establish and operate such clinics as the said Board may deem necessary to the health of the residents of Greenville County;
- (10). To provide teaching and instruction programs and schools for nurses, hospital technicians, and physicians during internship and residency;
- (11). To employ such personnel as it may deem necessary for the efficient operation of the several facilities maintained by the said Board;
- (12). To establish and promulgate reasonable rates for the use of the services and facilities afforded by the said Board;
- (13). To provide reasonable regulations concerning the use of the facilities maintained by said Board including reasonable rules governing the conduct of physicians, nurses and technicians while on duty or practicing their profession in the facilities maintained by said Board and the determination of whether patients presented to the hospital for treatment are subject for charity and to fix compensation to be paid by patients other than those unable to assist themselves.

(14). To operate and maintain a charity ward and free services for residents of the County, who are destitute and unable to pay for needed hospitalizations.

(15). To expend the proceeds derived from the charges made for the use of the services and facilities of the hospital for the operation and maintenance thereof;

(16). To determine the fiscal year upon which the affairs of the Board shall be conducted;

(17). To expend any funds received in any manner, and the proceeds derived from the issue of bonds hereinafter authorized, to defray any costs incident to establishing, constructing, equipping and maintaining any hospital;

(18). To apply to the Federal Government and any other governmental agency for a grant of moneys to aid in the construction and equipment of any hospital;

(19). To dispose of any property, real or personal, that it may possess, provided always that it shall not dispose of the hospital building, and the site thereof and the land adjacent thereto, which shall be conveyed to it by the City of Greenville, without the consent of the City Council of the City of Greenville;

(20). To avail itself of the authorizations of the General Statute Law of the State, now codified as Chapters 185, 187 and 188, Volume 4, Code of Laws of South Carolina for 1942, with respect to the issuance of revenue bonds.

If said Board shall avail itself of any of the several authorizations thus granted to it, by the provisions of this subsection, it shall issue revenue bonds in the name of Greenville County, and to adequately secure the same it shall be empowered to make any pledge or covenant authorized by any provision in any of said Chapters, but it shall not be required to make any pledge or covenant in conflict with the provisions of subsection (14) of this Section. But no bonds may be sold pursuant to this subsection except at public sale, after not less than fourteen (14) days' notice of the sale being given by publication at least once in a newspaper of general circulation, published in Greenville County, and in some financial publication published in the City of New York;

(21). To conduct periodic investigations into hospital, medical and health conditions in Greenville County;

(22). To enter into contracts for the construction and repair of hospitals and hospital facilities, and to contract for equipment and supplies for the same;

(23). To exercise the power of eminent domain in the manner provided by the general laws of the State of South Carolina for procedure by any County, Municipality or authority created by or organized under the laws of this State, or by the State Highway Department, or by railroad corporations.

SECTION 6: (1). Trustees—records—audit—hospital facilities for municipalities and districts.—Said board shall at all times keep full and accurate account of its actings and doings and of its receipts and expenditures, and at least once within four (4) months following the close of its fiscal year, a complete audit of its affairs shall be made by a qualified public accountant. Copies of the same shall be filed with the Clerk of Court for Greenville County, the Clerk of the City Council of the City of Greenville, and with the Secretary or Acting Secretary of the Greenville County Delegation to the General Assembly.

(2). Whenever a Petition, containing the authentic signatures of more than ten (10%) per centum of the qualified electors of any incorporated town or any district now in existence or hereafter created, lying wholly within Greenville County or partly within Greenville County and any adjoining county, shall ask the Board to establish additional hospital facilities, to be located in said Town or District, said Board shall promptly investigate the need of additional hospital facilities and if it shall find that such need exists, it shall cause plans and specifications to be made for the type of facilities that the Board shall determine is needed, and if the Town or District shall make available to the Board not less than fifty per centum (50%) of the total of the estimated cost of the construction and equipment of such facilities, it shall cause the same to be promptly constructed, and upon its completion the same shall be operated as a part of its general hospital.

SECTION 7: Issue hospital bonds.—(1). If the election required by the provisions of Section 2 of this Act shall result favorably to the issuance of bonds, and when the agreement authorized by the provisions of Section 3 of this Act shall have been executed, and when the initial organization of the Greenville General Hospital Board of Trustees shall have been perfected, the Board of Trustees shall

sinners of Greenville County shall issue One Million Five Hundred Thousand (\$1,500,000.00) Dollars of general obligation bonds of Greenville County. Said bonds shall be designated as Hospital Bonds. They shall be issued either as a single issue or from time to time in several separate issues. Each issue shall mature in such series or installments, of equal or unequal amounts, as the County Board of Commissioners may by resolution determine, but the first installment of any issue of bonds shall mature not later than three (3) years from the date as of which such bonds shall be issued, and the last installment of any issue shall mature not later than twenty-five (25) years from the date as of which such bonds shall be issued. Such bonds shall be in denomination of One Thousand (\$1,000.00) Dollars each, and shall bear interest at a rate or rates not exceeding four (4%) per centum per annum, payable semiannually. Such bonds may be issued with the privilege of redemption reserved to the County prior to their stated maturities at premiums not in excess of five per centum (5%) of the face of each respective bond. Such bonds shall be payable at such place or places as may be designated by the County Board of Commissioners. All bonds issued pursuant to this Section shall be sold at not less than par and accrued interest to date of delivery at public sale, after not less than fourteen (14) days' notice of the sale being given by publication at least once in a newspaper of general circulation, published in Greenville County, and in some financial publication published in the City of New York.

(2) The bonds provided to be issued by this Section shall be executed in the name of Greenville County by the Chairman of the County Board of Commissioners, and shall be attested by the Treasurer of Greenville County under such seal as the County Board of Commissioners shall adopt for that purpose. Coupons attached to such bonds need not be authenticated otherwise than by the facsimile signatures of said officers.

(3) The bonds provided to be issued herein shall be exempt from all taxation by the State of South Carolina and its political subdivisions except inheritance or estate taxes.

(4) For the payment of the bonds provided to be issued by this Section, both principal and interest, the full faith, credit and resources of said County shall be irrevocably pledged, and the Auditor of Greenville County and the Treasurer of Greenville County shall respectively annually levy and collect an ad valorem tax upon all taxable property in Greenville County sufficient to meet the principal

payment of the principal and interest of said bonds, as the same respectively mature.

(5) The proceeds of such bonds shall be deposited with the County Treasurer and shall be expended upon the warrant of the said Hospital Board. Such proceeds shall be expended, in the discretion of the Board, but solely for the purpose of providing hospital facilities for Greenville County.

SECTION 8: Obligations incontestable.—All bonds, revenues or general obligations, issued pursuant to the provisions of this Act shall, when issued in compliance with the provisions of this Act, be deemed incontestable and valid and binding obligations, according to their tenor and effect, notwithstanding the provisions of other Statutes.

SECTION 9: Time effective.—This Act shall take effect upon its approval by the Governor.

Approved the 19 day of May, 1947.

(RS44, H610, S622)

No. 433

AN ACT To Provide For The City Of Greenville And The County Of Greenville To Convey To The United States Or Any Designated Agency Thereof Lands And Improvements Now Constituting Greenville Army Air Base, In Greenville County, South Carolina.

WHEREAS, the County and City of Greenville South Carolina, own jointly the real property and certain easements, air rights and utilities in Greenville County presently constituting and embracing the Greenville Army Air Base; and

WHEREAS, the said County and City by unanimous vote of the Greenville County Legislative Delegation and the Greenville City Council in duly called and executive sessions have adopted resolutions expressing their desire that the United States continue to maintain said Greenville Army Air Base as an active United States Army installation; and

WHEREAS, in order to accomplish this end, it is necessary that the County and City of Greenville convey to the United States, title to the Greenville Army Air Base;

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1 only thing that we're -- I mean, we'll look at 2 other things, but the only thing we're really 3 trying to do in phase one is to simply make 4 sure that the drug is safe in humans, okay? In 5 phase two it'll be a larger group of patients 6 that, once again, are relatively homogenous. 7 They'll almost all -- well, in fact they all 8 will be in stage disease and it'll be a larger 9 group of people. because then we're looking to 10 see whether the drug actually works, whether 11 it's efficacious or not, in that homogeneous 12 group of patients. In phase three, then you're 13 looking usually at hundreds of patients that 14 are a very diverse population with different 15 stages of disease and so forth. And, again, 16 looking to see if the drug is efficacious in 17 large populations. So, that's the clinical 18 trial course. And, needless to say, when you 19 think about the implications of a few patients 20 versus hundreds of patients and the cost per 21 patient of a clinical trial, the amount of 22 money it takes to actually support all that 23 goes up phase one, phase two, phase three. 24 Q: Again I apologize if you've already answered 25 this. From phase one to phase two, I think you	1 A: I don't know how to answer that. I mean, we 2 can go back to the org chart you had earlier. 3 Part of my responsibility is over the 4 physicians that are in here. 5 Q: Yes, sir. 6 A: So, from that standpoint I have a role in 7 Partners in Health. I also sign every 8 physician contract. And from a physician 9 employment standpoint, I'm the primary one 10 involved with discussing with the chairs 11 employment and the compliance committee and so 12 forth. So, from that standpoint I have a role. 13 Beyond that I guess I don't know what you mean 14 by a role, so. 15 Q: And thank you for -- because I do want to talk 16 about physician contracts. 17 A: Uh-huh. 18 Q: You're not on -- is there a board of Partners 19 in Health? 20 A: Not that I know of. 21 Q: Are there different forms of contractual 22 arrangements with your physicians? 23 A: Tell me what you mean by forms. 24 Q: Are there different modes for -- I have 25 thousands of pages of contracts.
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1 said five years? 2 A: This is purely a guess, because it depends on 3 how the patients respond and so forth. 4 Q: I see. 5 A: I will tell you, from phase one to actually 6 getting into the market is probably in the 7 five-year range. 8 Q: I see. 9 A: Okay? But that's a ballpark. 10 Q: I think I'm through with Oncolix. 11 A: Okay. 12 Q: And I want to go back to Defendant's One. When 13 I spoke with Mr. Riordan, he pretty much 14 explained to me about Baptist Easley Hospital. 15 So, I'd like to ask you about GHS Partners in 16 Health. 17 A: Okay. 18 Q: What is GHS Partners in Health? 19 A: GHS Partners in Health is a corporate entity. 20 And I don't know -- to be honest I don't know 21 the particulars in what is special about it as 22 a corporation compared to others, but it's a 23 corporate entity in which we employ all the 24 physicians at GHS. 25 Q: Do you have any role in GHS Partners in Health?	1 A: I bet you do. 2 Q: But many of them are different. 3 A: Uh-huh. 4 Q: I've seen some standard contracts, then I've 5 seen some contracts that have other incentives. 6 A: Uh-huh. 7 Q: And I guess I want to start from a very high 8 level before getting into the -- there are just 9 different ways than you acquire the services of 10 -- 11 A: So, when you say acquire services, I'm not -- 12 so we employ physicians -- 13 Q: Yes, sir. 14 A: Okay. 15 Q: Yes, sir. 16 A: So, let me -- let's keep this at a high level 17 then for starters. 18 Q: Uh-huh. 19 A: And so, I'm -- can I ask you a couple 20 questions? 21 Q: If Mr. Sprinkle will -- 22 A: All right. Are you looking at contracts over 23 a period of time? 24 Q: If you -- yes. Because, of course, I've got 25 lots of contracts over --

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Ex. 3

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1 A: Okay. No, no. And that's what I need to 2 understand. 3 Q: Yes, sir. I have. 4 A: Okay. Okay. So, let's start with -- gosh, 5 let's start with first of all not every 6 physician does the same job. Okay? Secondly, 7 even when physicians are doing the same job, 8 they're doing it in different specialties. So, 9 what the -- what a family practitioner's job 10 looks like and what a neurosurgeon's job look 11 like are very different from one another. 12 Okay? And I mean, I don't know how lawyers 13 work, but if I were to incite or to encourage 14 behavior of a family practitioner, it probably 15 isn't the same behavior that I'm going to look 16 to and encourage or incite from the 17 neurosurgeon 'cause their practices are so 18 different, right. And so, part of the 19 variation in contracts is determined by the 20 differences in specialties as well as within a 21 specialty the difference in jobs that we're 22 asking a physician to do. So, a physician may 23 be involved in teaching, okay? Or a physician 24 may be one hundred percent involved in clinical 25 practice. And so, those contracts would look	1 anyway, was trying to get things organized. 2 'Cause, as I said, when I got here we had 3 physicians, some of them in Partners in Health, 4 some of them employed by the hospital system. 5 There -- because it was a hospital system, 6 there wasn't a lot of familiarity with managing 7 physicians and even billing and charging for 8 them and so forth. So, the first period of 9 time was really to get things organized to be 10 able to have a cohesive group practice that 11 would work together and serve the patients and 12 so forth. During that time the contracts were 13 pretty much organized as individual physicians 14 with the arrangements being to encourage them, 15 to be, what we would call then, highly 16 productive relative to access or meaning 17 patients getting able to be seen, right. We 18 were involved in education, and not near to the 19 extent that we are now though. And so, on a 20 small amount of the time, of any physician, was 21 in education. Not a lot of physicians were 22 involved in it. So, most of those were 23 structured around you individually having a 24 contract that really encouraged you 25 individually to be productive. And by
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1 differently than another, okay? Some 2 physicians are part time, so those contracts 3 will look different, okay? So, that's the 4 first part of the discussion relative to 5 current contracts. 6 Q: Uh-huh. 7 A: Okay, now, if you're looking at contracts -- 8 and I'm only going to talk about my 17 and a 9 half years there. I don't know what -- before 10 that you'd have to talk to somebody else, okay? 11 In general you would see -- and I don't -- I 12 can't give you timeline is because it's an 13 evaluation. You would see that the physician 14 contracts pretty much fall into overall 15 structure three different eras. Okay? The 16 first era -- and these are constant actually 17 with -- frankly with what's gone on all over 18 the country with the changes in healthcare and 19 so forth, okay? And so we try to structure the 20 contracts around what we need from the 21 physicians to serve the patients. That's the 22 -- at the end of the day our goal is to provide 23 as full services as we can to the communities 24 here. And if you look back then historically, 25 both here and elsewhere, that first era, for me	1 productive, the vast majority of that were 2 meant seeing patients. 3 Q: Uh-huh. 4 A: Okay. So, that -- and I don't know the time 5 lines, but I would tell you probably up until 6 2002ish, somewhere around in there, so the 7 first four or five years that's what most of 8 those contracts would look like. And because 9 I inherited a lot of contracts, we, over time, 10 have tried to standardize them more and more, 11 again, within the limitations of knowing that 12 different physicians have to do different 13 things. That's the first era, okay? And then 14 what, no surprise, as we add more experience, 15 had learned is when I encourage physician or to 16 do his individual work, right, and do it 17 financially, if he's in a group of specialists 18 that are working together, right, but he's 19 individually incentivized, it doesn't lead to a 20 lot of collaboration between the people in that 21 working group, right. And so, I would have 22 situations where I would have a physician who 23 was late to the office, stopped in the 24 emergency room, and had a patient in the OR all 25 at the same time. But because he was

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1 individually incentivized, he wouldn't call his 2 partner who was sitting over in the office 3 having a cup of coffee, right. And so, then we 4 went through a period of time -- and we'd had 5 more teaching, so we started bringing a little 6 more of that into the contracts. But we went 7 through a contract change where we tried to 8 pool some of the money that the physicians 9 would have for compensation to get them to work 10 together within their specialty area. And 11 that's -- that was sort of the second phase of 12 all this. And that worked terrific because it 13 meant the patients got better care, they didn't 14 have to sit waiting in the office, the 15 operating room wasn't calling down, when are 16 you going to get here and so forth. So, it 17 really improved function of the physicians in 18 those individual divisions or groups to work 19 together. 20 Q: Uh-huh. 21 A: Okay? So, that's gone for some period of time. 22 And then -- and, again, I'm going to have 23 trouble with time lines for this. But I would 24 guess, let's just say five years ago to make 25 things easy. The whole environment is changing	1 is going to change the contracts. And so, 2 we're already changing them now. And what we 3 -- what I believe is we'll increasingly go to 4 salary and then a variable piece of money based 5 on the behavior we need from the physicians. 6 And so, that's a very long explanation of why, 7 at a high level, you're probably looking at 8 contracts and saying, well, these are very 9 different from one another. 10 Q: And, now, that's been in very valuable, because 11 the way you have phrased that I believe is 12 going to cut out a good bit of some of this 13 information. Let me ask a question. In our 14 first type of contract, that's probably no 15 longer in use, but we're essentially focusing 16 on the productivity of that individual 17 physician seeing patients -- 18 A: Uh-huh. 19 Q: -- what kind of incentives could those 20 contracts have been -- 21 A: So, at that time most of the contracts were set 22 up as what probably are reflected the 23 contracts, is net revenue contracts. And 24 understand that when -- in that context, when 25 I say net revenue, that means the personally
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1 around us, okay? 2 Q: Uh-huh. 3 A: And so, we're now looking at both the 4 government and the third-party payers wanting 5 to -- us to deliver what we call value-based 6 healthcare, right. And for us that means a 7 number of different things. It means to try to 8 integrate the practices so that the family got 9 -- the family practitioners and the surgeons 10 are actually working together to benefit the 11 patient, right. It means that we're looking to 12 try and provide much more efficient care. And 13 the most important thing probably it means is 14 that we actually are going to transition from 15 just treatment of illness to actually taking 16 care of people to try and keep them healthy. 17 Okay? And those are things that, in my view, 18 are best done in an integrated delivery system 19 where doctors are working with doctors are 20 working with nurses are working with the 21 hospital together to the benefit of the 22 patient, they're actually working on prevention 23 and the wellness and chronic disease 24 management, instead of just waiting for you to 25 come sick to the hospital. Okay? All of that	1 performed services of that physician and the 2 reimbursement that's specifically for those 3 services that individual performed, okay? 4 That's the revenue piece. And then there's the 5 cost of the practice of that physician. So, it 6 might be office space or nurse and so forth. 7 And that's the expense side. And then the net 8 revenue is the difference between the two. And 9 so, those were net revenue contracts and they 10 were set up either as -- typically as 11 collection-based contracts or as RVU-based 12 contracts. And the idea was that you would be 13 rewarded for the activity that you did yourself 14 for taking care of patients. And if you wanted 15 to not work so hard, then you probably wouldn't 16 be making so much, right. And that the cost of 17 the practice to support you at least would be 18 covered by the moneys that you brought in. So, 19 that was -- that was back -- I mean, that was 20 the market standard. Geisinger did the same 21 thing when I was there and so forth. And so 22 that was back 15 years ago. 23 Q: Currently to the best of your knowledge would 24 there be net revenue -- would there be 25 physicians with GHS who are working on net

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1 revenue contracts? 2 A: There may be a few, so I can't -- I'm not going 3 to say there's not 'cause I'm not sure, but I 4 can tell you we phased out the vast majority of 5 -- 6 Q: Tried to move away from -- 7 A: Yeah. Yeah. And the other reason for that too 8 we talked about. And that is we've become a 9 much more complex organization. And so, we're 10 asking more physicians to be involved in 11 teaching of students. Not necessarily all GHS 12 students, residents, but the students of other 13 entities; Clemson students, USC students, and 14 so forth. We get a lot of them involved in 15 quality kinds of activities. We've got them -- 16 I can't imagine you haven't seen the 17 newspapers. We got an Epic install going on 18 right now. And frankly if you're a physician 19 and you're doing all that and there's no 20 remuneration for any of that, you find yourself 21 spending a lot of time -- which is all good. 22 It's all great for patient care. It's all good 23 for the healthcare system. It's actually good 24 for the physician. But there's no remuneration 25 for it, right. And so, the contracts then need	1 others based on the amount of time you have to 2 invest in it, right. That doesn't necessarily 3 mean that it's more beneficial for the 4 community. It's just the nuance of how 5 reimbursement happened. And so, as an example, 6 one of the things that is a huge community 7 benefit is dialysis access, right. And 8 unfortunately it's often with patients that are 9 not very well funded, okay? And if you have 10 three or in our case five surgeons and they're 11 all doing access work, nobody gets really good 12 at it. Okay? If they took one surgeon and had 13 to get really good at it, you know what his 14 compensation looks like relative to the guys 15 that are doing the things that are more highly 16 remunerated and take less time? Not so good, 17 right. And so, what we did then was said, 18 okay, there were two guys that were interested 19 in and really good at dialysis access, one of 20 them more than the other, then we made sure 21 that they were the ones that did the dialysis 22 access. The rest of us at that time, when I 23 was practicing, we pooled the money and it was 24 all split up equally among the individuals. 25 Patients got better care, surgeons got better
Page 70	Page 72
1 to be structured in order to recognize that. 2 And that's what this gets down to. 3 Q: The second form where we have begun to kind of 4 pool and bring in -- I believe you used the 5 term pool. To bring in the collaborations of 6 the other physician's partners. 7 A: Have them work together. Yeah. 8 Q: Yes, sir. How would you incentivize physicians 9 under that type of... 10 A: So, what we did was we carved out some -- so, 11 if we had three physicians and they were being 12 paid on the net-revenue model, right, and they 13 were in, in essence, individually competing 14 with one another, instead of those three 15 physicians having -- they'd have individual 16 contracts, but their moneys would be pooled, 17 just the three of them, and then they would 18 help -- I mean, with my oversight, would decide 19 how to divide up that pool money between the 20 three of them. And that way if one of them -- 21 one of the things it really lead to that was 22 valuable for the patients, and I'll use my own 23 specialty, okay. So, I'm a vascular surgeon, 24 as I said. There are different kinds of 25 operations that are better remunerated than	1 at what they were doing, any of the poorly 2 funded patients was spread across the group, 3 and they all actually worked together. Okay? 4 So, that's the best example I can give you that 5 I have personal knowledge of in the change from 6 the initial compensation arrangements, 7 individual contracts, to pooling revenue. And 8 frankly everybody benefitted. And who 9 benefitted the most was the patients. 10 Q: Excuse me for a second. 11 A: Uh-huh. 12 MR. KIMPSON: Charles, this is something that I -- 13 we kind of came up with after the fact. I 14 don't have copies. 15 MR. SPRINKLE: Oh, okay. 16 MR. KIMPSON: I just really want to ask him a 17 question. And if he can tell me what that is, 18 I may put it in the record. If not -- 19 MR. SPRINKLE: Why don't we do this? Why don't we 20 just take -- because we've been going for a 21 while. 22 MR. KIMPSON: Okay. Okay. 23 MR. SPRINKLE: Maybe just a stretch break -- 24 MR. KIMPSON: That would be fine. 25 MR. SPRINKLE: -- for five minutes.

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Page 73 1 MR. KIMPSON: That would be fine. 2 MR. SPRINKLE: And then we'll just jump right back 3 on. 4 MR. KIMPSON: That'd be fine. Do you want -- 5 MR. SPRINKLE: You just have one copy? 6 MR. KIMPSON: I just have one. And it literally may 7 have back and front. 8 MR. SPRINKLE: Oh, okay. I see. I see that. Okay. 9 MR. KIMPSON: And it'll be one more thing I want to 10 ask him about. 11 MR. SPRINKLE: All right. 12 MR. KIMPSON: And we literally are about through. 13 MR. SPRINKLE: Great. Let's just stretch for five 14 minutes and -- 15 MR. KIMPSON: Okay. That'd be good. 16 MR. SPRINKLE: -- we'll take care of this and... 17 MR. KIMPSON: Okay. 18 (Off the Record) 19 Q: Dr. Youkey, before we took a break you had been 20 talking to me about incentives and the way you 21 incentivize physicians. And one of the things 22 you talked about was kind of a pool. 23 A: Uh-huh. 24 Q: I found a document that referenced physician 25 compensation pool calculation. And I want to	Page 75 1 Q: No, sir. 2 A: Okay. All right. Okay. So, with that then, 3 you know, this is -- 4 MR. SPRINKLE: And which -- just so we're clear, 5 since it's back and front. 6 MR. KIMPSON: Uh-huh. 7 MR. SPRINKLE: You're looking at GHS 25920? 8 MR. YOUKEY: That's the one I've got in front of me. 9 MR. SPRINKLE: I just want to be clear what you're 10 now talking about. 11 MR. KIMPSON: Uh-huh. 12 A: Okay. So, let's talk about that first. And 13 so, this looks like a document pulled out of -- 14 and I don't know whether it's out of a 15 contract. Probably so, okay? And so, with the 16 qualification that I don't know for sure what 17 this is -- it'd sure been nice to have seen the 18 whole document. 19 Q: Yes, sir. 20 A: Okay? This is an example of what we talked 21 about in terms of the pool compensation or the 22 pool dollars. In this case, in Piedmont 23 OB/GYN, which was one of the OB/GYN practices, 24 and they've pooled the dollars and pool the 25 expenses and then there's the amount to be
Page 74 1 show this to you. This is Bates stamp 25920, 2 something GHS produced to us. And if you take 3 a look at this, and I'll mark it in a second, 4 if this is something that you can talk to me 5 about. Is this an example or at least 6 something similar to what you're referring to 7 about the physician compensation pool? 8 A: So, with some qualifications, okay? I don't 9 know what this is pulled from. And this is a 10 -- looks like a -- 11 Q: And in documenting -- 12 A: Are these back to back from the doctor it came 13 from, do you know? 14 Q: Yes, sir. I have a second page. Yes, sir. 15 A: So, I'm asking only because on one side of this 16 it says FY 2000 Budget and on the other side it 17 says 2003 Budget. And so I don't -- I can't 18 imagine that this was -- are these two separate 19 documents, back and front? 20 Q: They are two separate documents back and front. 21 A: Okay. 22 Q: Yes, sir. 23 A: Okay. So, they're not -- I shouldn't look at 24 these two as being sequential in the a 25 document?	Page 76 1 distributed and it's distributed among the 2 physicians that are in that practice. 3 Q: Okay. 4 A: And I don't know, probably can't tell from 5 here, how many physicians that that would be 6 distributed among. But it would be this -- the 7 entire group of Piedmont OB/GYN. 8 Q: And, Dr. Youkey, for the sake of the record, if 9 you would identify that second page two then -- 10 -- 11 A: Sure. 12 Q: -- since you know. And let's go ahead and put 13 it -- make it a part of the record. And let me 14 ask you some -- 15 A: Okay. So, this is Laurens Family -- 16 MR. SPRINKLE: Oh, I was just going to say, you're 17 now looking at GHS 26920. 18 A: Okay? And so, this is Laurens Family practice, 19 which was one of the primary care practices 20 that existed in 2003 when apparently this 21 document was pulled from that contract. And 22 once again, this is an example of the pool 23 calculation and an amount to be distributed 24 among the physicians. And I don't remember how 25 many docs were in Laurens Family Practice at

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1 the time. So, they're very similar examples of 2 the pool distribution model of two different 3 practices that we had at the time. 4 MR. KIMPSON: May I have this marked? And I guess, 5 as Dr. Youkey, pointed out, I've got two 6 different pages. Could you mark — 7 THE WITNESS: And they're actually three years 8 apart, so... 9 MR. KIMPSON: Yes, sir. I apologize. 10 THE WITNESS: That's all right. Just so you know 11 what you're looking at. 12 MR. KIMPSON: If I might ask you to mark 25920 as 13 the next exhibit in line and then 26920 as the 14 very next one. 15 (Respondent's Exhibit Number Seven and Eight were 16 marked for identification purposes.) 17 Q: And before I start using it, Dr. Youkey, is 18 that just another — is the page you have in 19 your hands now, 27752, is that another example? 20 A: It is. Now, the qualifications I'll give you 21 for this one, and I skimmed through it here 22 real quickly, I can't tell from this even what 23 specialty this represents and so — and it's 24 the same concept, but we've worked into this 25 work RVUs and so forth. So, a little bit	1 Q: It is. Thank you. 2 A: And I don't take responsibility for it, okay? 3 All right. 4 Q: If you'll look at the other side of that page 5 for me. Is it just an example of the same 6 thing, as in using RVUs? 7 A: Again, I think so, but once more the 8 unfortunate part, I mean, is it — doesn't 9 identify specially. There's no date on it and 10 so forth. But the construct is either out of 11 one of our contracts or out of a text book 12 somewhere. 13 MR. KIMPSON: If I might — I'm just going to use 14 one page of this. If I might ask you to mark 15 this as Defendant's Nine. And the page that 16 we're marking is 27752. 17 (Respondent's Exhibit Number Nine was marked for 18 identification purposes.) 19 Q: Dr. Youkey, I'm going to be very brief with 20 these. I'm going to ask you about Defendant's 21 Exhibit Seven and Eight. You seem to indicate 22 that these were examples of kind of the 23 physician pool arrangement. And my question 24 is, this would've been the incentive in use 25 where physicians, one, who are employed by GHS.
Page 78	Page 80
1 different approach, but the same concept 2 exactly. 3 Q: What's a work RVU? 4 A: So, many years ago, maybe 20 or 30 years ago 5 the federal government, under the work of a 6 gentleman named Hsio, H-S-I-O, from Harvard, 7 developed a process for defining physician work 8 effort, okay, relative to medicare payments. 9 It's always been controversial as to the 10 accuracy of it, but there's not been a better 11 approach to trying and define a physician's 12 work effort independent of charges, 13 collections, and so forth. And so, every unit 14 of activity that a physician does that is 15 reimbursable will be defined to have so many 16 work RVU units associated with it. So, we, as 17 the industry, not we GHS, will use work RVUs as 18 a way to try to understand a physician's work 19 effort independent of — because, as you know, 20 different insurers will reimburse different 21 amounts for the same operation, but the work 22 RVUs for that operation will be the same from 23 one doctor to another. So, it's a way to try 24 to get some comparison of work effort. Is that 25 reasonably clear?	1 are working at, for lack of a better term, a 2 satellite office somewhere? I know satellite 3 — 4 A: Not so simple. 5 MR. SPRINKLE: Object to the form. 6 Q: Okay. 7 THE WITNESS: Okay? 8 MR. SPRINKLE: You can answer — 9 THE WITNESS: Yeah. No, I — 10 MR. SPRINKLE: — if you understand the question. 11 THE WITNESS: — make sure she heard you. Okay. 12 A: Not so simple. So, let's just use this — 13 Q: Yes, sir. 14 A: — as a real example. 15 Q: And that's Defendant's — 16 A: So, Piedmont OB/GYN — 17 Q: — Seven. 18 A: — was an OB/GYN group that's part of the 19 system, 2000. Probably was part of Partner's 20 in Health corporately at the time. And had an 21 office somewhere away from Memorial, okay? But 22 this is a group that does deliveries and so 23 they likely did, if not all, almost all of 24 their deliveries at Memorial. And so, to say 25 that they worked in their practice, they would

20 (Pages 77 to 80)

Page 81 1 object vehemently to that. 2 Q: Before you go on, when you say they did most of 3 their deliveries at Memorial, is that the GHS 4 campus that -- 5 A: The Greenville Memorial Hospital, yeah. 6 Although we do deliveries at Greer Hospital 7 also -- 8 Q: Yes, sir. 9 A: -- and they may have done deliveries there. 10 I don't know. And these numbers would've 11 reflected, once again, the professional 12 reimbursements for their activities in the 13 office and in the delivery suite. 14 Q: Now, professional reimbursements would be made 15 up of what sources? 16 A: So -- 17 Q: Private insurance? 18 A: Any kind of payment for professional services. 19 Could be medicaid, could be private insurance, 20 not likely to be medicare for deliveries. I 21 guess that's possible, but not -- it'd be 22 pretty unusual. So, yeah. 23 Q: And the physicians' pool -- the compensation 24 pool, that's essentially revenue coming in. 25 A: Uh-huh.	Page 83 1 way that it would be paid, it might be called 2 a salary, but in fact it would be tied back to 3 this number. 4 Q: Thank you. 5 MR. KIMPSON: Again, I apologize. And we'll need to 6 make copies of these, so we can... 7 Q: Defendant's Eight, that seems to be Laurens -- 8 is this a family practice? 9 A: Uh-huh. 10 Q: And Defendant's Eight would be compensation 11 pool based on the same principle we just 12 discussed? 13 A: Should be, yeah. Again, looking at a single 14 page out of the context of contract is not 15 smart to comment on, but, yeah, I think this 16 would represent the same thing. 17 Q: Okay. Finally, Defendant's Nine. And I 18 believe you told me. But this is essentially 19 kind of the example of just using RVUs? 20 A: Yeah. It looks like that. And the only 21 nuances is that this particular one works in 22 the concept of the work RVUs instead of just 23 the collections. So, yes. 24 Q: Now, Dr. Youkey, are these kind of physician 25 compensation pools still in use?
Page 82 1 Q: And this incentive essentially would be a 2 distribution to the doctors from the revenue? 3 A: Less their -- 4 MR. SPRINKLE: Object to the form. 5 A: Less their expenses. 6 Q: Less expenses. Yes, sir. 7 A: Say that again? 8 Q: This -- the pool revenue less the expenses 9 would result in some distribution -- 10 A: Right. 11 Q: -- of the pool revenue to the doctors? 12 A: That's correct. 13 MR. SPRINKLE: Object to the form. 14 Q: Now, these doctors would also get a salary from 15 GHS? 16 A: No. 17 Q: Tell me then how they would be -- and I realize 18 you don't have the specific contract. 19 Everything they would get then would be from 20 this compensation pool? 21 A: So, my belief looking at this -- and, again, 22 this gets back to it sure would be nice to see 23 this in the context of a contract. This 24 probably represents all of the money that's 25 distributed to them. And then, you know, they	Page 84 1 A: In the country, in GHS... 2 Q: In GHS. I'm sorry. 3 A: Oh, okay. So, as I said to you before, I 4 hesitate to say that they've all been phased 5 out, but most of them have been phased out at 6 this point. You know, so compensation, 7 doctors, lawyers, whomever, evolves as the 8 environment changes. And so, I guess, I don't 9 ever look -- the problem with looking at an 10 individual -- certainly a page like this. This 11 is not the context of the contract. Problem 12 even though, looking at this single contract, 13 is it's within the context of a greater 14 compensation plan and arrangement that is 15 evolving over time, so... 16 Q: That's fair. That's fair. Let's talk about 17 what we're doing now. 18 A: Uh-huh. 19 Q: And your lawyers have provided me with plans 20 from the Hay Group and -- tell us about -- a 21 little bit about -- are you familiar with the 22 Hay Group? 23 A: I am. 24 Q: Okay. 25 A: And it has nothing to do with physician

21 (Pages 81 to 84)

Page 85	Page 87
1 compensation that I know of. 2 Q: That's just the executive? Is that -- 3 A: As far as I know. 4 Q: Okay. How do you know go about then 5 determining what's an appropriate level of 6 compensation for a physician? 7 A: So, first of all there's policies and 8 procedures that are created. And those go 9 through a process and ultimately are presented 10 to the board of trustees and approved on a 11 periodic basis. So, that provides the context 12 for physician compensation. Once again, 13 depending on when you want to look at the 14 organization, physician compensation will vary 15 depending on the specialty that they're in, as 16 we talked, how much experience they've had, how 17 much of an FTE they are, in other words whether 18 they're full-time or part-time, okay, what kind 19 of activity we're actually asking them to do. 20 Okay? So, are they full-time clinical practice 21 or are they 50 percent time teaching and 50 22 percent time -- all that. So, all that -- all 23 those are things, probably not an inclusive 24 list, but at least a get-us-started list, of 25 ways that we look at an individual physician.	1 consultant, Navigant I believe it is -- as 2 we've looked to try and figure out how we do 3 this with salaries instead of these kinds of 4 contracts, and with other kinds of activities 5 than teaching that aren't remunerated, so back 6 to the Epic install or quality parameters and 7 creating benchmarks and policy guidelines for 8 patient care, we -- Navigant, and I can't tell 9 you the details of it, but they use even a 10 different blend yet, again with third party 11 data basis from around the country. And so, at 12 a high level there's variation for physician to 13 physician depending on specialty, experience, 14 what we're asking them to do. And then we use 15 third-party benchmarks in order to not overpay 16 or underpay physicians as we go forward. So, 17 that's a general construct of what this looks 18 like. We have a compliance committee that 19 actually -- so, we review physician 20 compensation on a quarterly basis and when we 21 apply specific standards to it -- or not 22 standards, but specific measures of physician 23 productivity and compensation. And the 24 compliance committee looks at that on a 25 quarterly basis to make sure we're compliant
Page 86	Page 88
1 okay? And then we'll look at that physician 2 within the context of his partners, like we 3 talked about. As I go back to -- I like not to 4 create a situation where physicians that are 5 trying to take care of a group of patients are 6 actually competing with each other, okay? Then 7 we use external bench marks in order to ensure 8 both for the physician that they're not being 9 poorly paid, okay, and for the organization 10 that they're not being what we would call 11 overpaid, right. In the past the main 12 benchmark we've used has been MGMA, which is 13 sort of the national standard. It's the same 14 thing we used at Geisinger when I was there. 15 And it's a database basically, a physician 16 compensation productivity and work RVUs. As we 17 got more involved in more teaching activity, we 18 added to that. Then the AAMC, American -- 19 Association of American Medical Colleges 20 database, which is the teaching compensation 21 universities and so forth. And then we would 22 use a blend of those two benchmarks, because, 23 again, some people are teaching more than 24 others and so forth. So, those would go into 25 it. More recently, through a third party	1 with the policies and the procedures. 2 Q: As contracts are currently configured with -- 3 consistent with the policies, consistent with 4 your client's review, other than -- to the best 5 of your knowledge are there distributions of 6 any revenues earned by GHS -- 7 MR. SPRINKLE: Object to -- sorry. Object to the 8 form if you're finished. Sorry. 9 MR. KIMPSON: I am. That's okay. 10 A: So, I don't -- I guess I don't understand. Be 11 more clear with me about what distributions of 12 other revenues mean, but earned by GHS -- 13 Q: And this is in part a throw-back to your 14 employee compensation pool where you've got 15 this pool of revenue created by what's being 16 paid to for care. 17 A: Okay. 18 Q: Now, we have gone much more to a model where a 19 physician gets a salary. 20 A: Uh-huh. 21 Q: In this new model, to the best of your 22 knowledge, are there instances where there are 23 still kind of distributions of revenue's? 24 Whether as part of the physician's contract or 25 as part of some incentive for a physician?

22 (Pages 85 to 88)

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1 A: So — 2 MR. SPRINKLE: Object to the form. 3 A: So, I'm still struggling understanding exactly 4 the question, so let me say this. First of 5 all, as I told you before, we're still an a 6 evolution phase, so I can't sit here and tell 7 you there's not even any contracts like they 8 existed back 10 years ago. There may be a few, 9 but they're being phased out. And, you know, 10 I'd be surprised if there's any, but you may 11 pull one out and I'd say, yeah, okay. So, 12 that's the first thing. The second thing is I 13 have trouble, at least right now, with the 14 concept that there's distribution of revenues. 15 So, let's go back to now, under salary model — 16 — 17 Q: Yes, sir. 18 A: — no different than, you know, the rest of 19 GHS. We have physicians that are doing 20 activities that the organization wants them to, 21 okay? The — some of those activities there's 22 professional reimbursement for, other 23 activities there's not, right. So, teaching, 24 right, there's no money for teaching. So, if 25 you — if I've asked you to teach with 50	1 from back 15 years ago when we looked at the — 2 because physicians mostly just did clinical 3 practice at that point in time. It's a change 4 in approach to how we even think about the 5 funds, so. 6 Q: I have a promissory notes somewhere from, looks 7 like, GHS to a physician. And I've shown this 8 to your lawyers and I have no — 9 MR. KIMPSON: May I have this marked as the next 10 exhibit, please? I think we are at Ten. 11 (Respondent's Exhibit Number Ten was marked for 12 identification purposes.) 13 Q: Dr. Youkey, if you'll just take a look at this 14 for me. And I'm not interested in the details 15 of that particular note. I'm just wondering 16 under what circumstances would a note like that 17 be issued to a physician? 18 A: So, this is something that we do — I've done 19 occasionally. So, first of all, we'll start 20 out with the same thing. And that is, once 21 again, I'm looking at a document pulled from 22 somewhere else. And this one has two 23 signatures on it, one is the — looks like the 24 physician that's on here and the other one is 25 a witness. I have no idea who that is, so I
Page 90	Page 92
1 percent of your time, you're going to have 2 trouble doing that based on your professional 3 earnings, okay? If I asked you to be a quality 4 officer, if I asked you to be the medical 5 director of the ICU, all those kinds of things 6 are activities there's not any professional 7 reimbursement for. So, just as we change the 8 physician contract model, the whole concept 9 that there's different buckets of revenue in 10 order to support the nurses and the doctors and 11 so forth kind of goes by the wayside, right? 12 The way that — so, there's — if we took the 13 approach of now in today's world, the only 14 moneys that any individual gets paid is the 15 money they bring in, then there would be no 16 finance department, because they don't bring in 17 any money with clinical practice. And so, 18 we've really changed the overall philosophy 19 about physician compensation more and more to 20 be an employee of the healthcare system, okay. 21 And the funds of the healthcare system in the 22 whole need to be distributed so that everyone's 23 paid equitably based on third-party benchmarks, 24 whether it's executives or physicians and so 25 forth. And so, it's a change in a approach	1 don't know. And it's a 2011 arrangement. So, 2 having said that — 3 Q: Yes, sir. 4 A: — I don't know what context. I am familiar, 5 however, with the physician. And we will do 6 these kinds of notes under unusual 7 circumstances, when we're looking to bring 8 special talent into the community, and looking 9 to build programs. And so, it's a way that we 10 have of being competitive to bring physicians 11 here, okay? So, you deserve, based on this 12 particular page, to know a little bit about 13 this physician, so you understand the context 14 from this. Okay? 15 Q: Uh-huh. 16 A: So, one of a few big problems that I've had 17 over the years problematically is bringing to 18 this community what I would consider to be 19 modern urological procedure, okay? Even to the 20 point that I will tell you, without names, that 21 over the years I've sent multiple people out of 22 the community for prostatectomy for prostate 23 cancer to Hopkins and to Duke and to Vanderbilt 24 because it wasn't well done in this community, 25 okay? And I decided to take this on some years

23 (Pages 89 to 92)

Page 93	Page 95
1 ago. This is a 2011 promissary note. And so, 2 this is been, in my view, a problem for this 3 community since -- well, since I got here, but 4 I decided to take it on about six or seven 5 years ago and started trying to figure out how 6 to build the urology program. This particular 7 physician is a Duke trained minimally invasive 8 urologist who specializes in minimally invasive 9 prostatectomy. He was in Baton Rouge, 10 Louisiana. We have a mutual friend that put us 11 together and I talked to him about whether he 12 would be interested in coming here to help 13 build a urology program. Okay? So, one of the 14 things about surgeons is you don't have any way 15 to know whether a surgeon's very good or not. 16 You don't. I have a better ability to know 17 that, but not a great deal of ability, okay? 18 The people who know how good surgeons are the 19 most are the nurses in the OR and the vendors 20 that provide prostatectomy scopes and so forth, 21 'cause they actually get to watch people 22 operate. And so, I knew one of the vendors 23 that knew the surgeons practice in Baton Rouge 24 and asked him what he could tell me about 25 Patrick Springhart. And he told me two things.	1 all. 2 A: I wish I weren't. There's two different kinds 3 of malpractice policies. 4 Q: Uh-huh. 5 A: One is called claims made. And so -- and it 6 results in an ongoing financial responsibility 7 for patients that will present afterwards. 8 Okay? And so, when you have a tail, in order 9 to buy the coverage for that group of patients 10 that haven't submitted their claims yet, you 11 have a tail that you have to buy. And needless 12 to say, his group of partners weren't going to 13 do it because they didn't want him to leave. 14 He didn't have the money to do it. And so, for 15 me this was a part of the recruitment package 16 for this surgeon. And it is an unusual thing 17 and I've done it more than once, but 18 specifically for this kind of talent to this 19 community. 20 Q: Given that your physicians are employees of 21 GHS, is there one malpractice company that you 22 go to? Is it a... 23 A: Gosh. So, I think so, but it's not my area. 24 Within finance there's -- I can't remember what 25 we call the folks that handle the malpractice,
Page 94	Page 96
1 He told me, number one, this was the busiest 2 prostatectomy surgeon in the southeast and, 3 number two, that he was the LeBron James of 4 urology, okay? And so, this is a special 5 doctor that agreed to come here to help start 6 a program and, unfortunately because of the 7 practice he was in, had a malpractice policy 8 with a tail on it that he couldn't pay in order 9 to leave. And so, we agreed as part of the 10 recruitment process to provide this promissary 11 note to him so he could pay his tail off in 12 order to come. I actually thought this was a 13 great deal because most of the places I've been 14 around the country the surgeon wouldn't have 15 asked for a promissary note. He would've asked 16 us to just pay it outright, okay? So, we do 17 that sort of thing not frequently but 18 occasionally for this kind of talent in order 19 to bring it to the community, particularly for 20 areas we're missing. 21 Q: Explain just for the record to pay a tail off, 22 to pay some residual that he needed to -- 23 A: No, no, no. There's -- so, you're not familiar 24 with physician malpractice policies then? 25 Q: Fortunately I've not done much of that work at	1 but -- so, I think so. And actually I would 2 distinguish as well, I'm talking specifically 3 about physicians. And nurses have malpractice 4 as well. And so, I don't -- probably the best 5 thing I can tell you most accurately is that 6 you need to talk to somebody about how we do 7 our malpractice coverage. Okay? Maybe the -- 8 and I'd add this to maybe at least answer part 9 of your question. The physicians don't have 10 individual policies, so they're not -- every 11 physician not buying policy, it's through -- as 12 part of their employment agreement. 13 Q: I see. 14 A: Okay. 15 MR. KIMPSON: I'm about through if I can have a five 16 minute break. We probably will be going for 17 five more minutes, but let me just -- I promise 18 you, Doctor, and I just want to -- I'm very 19 appreciative of -- 20 THE WITNESS: Sure. 21 (Off the Record) 22 Q: Dr. Youkey, you -- I think you told me you were 23 not aware of -- shouldn't say it that way. Did 24 you have anything at all to do with the 25 decision to apply for the sales tax exemption?

24 (Pages 93 to 96)

Page 89	Page 91
1 A: So — 2 MR. SPRINKLE: Object to the form. 3 A: So, I'm still struggling understanding exactly 4 the question, so let me say this. First of 5 all, as I told you before, we're still an a 6 evolution phase, so I can't sit here and tell 7 you there's not even any contracts like they 8 existed back 10 years ago. There may be a few, 9 but they're being phased out. And, you know, 10 I'd be surprised if there's any, but you may 11 pull one out and I'd say, yeah, okay. So, 12 that's the first thing. The second thing is I 13 have trouble, at least right now, with the 14 concept that there's distribution of revenues. 15 So, let's go back to now, under salary model — 16 17 Q: Yes, sir. 18 A: — no different than, you know, the rest of 19 GHS. We have physicians that are doing 20 activities that the organization wants them to, 21 okay? The — some of those activities there's 22 professional reimbursement for, other 23 activities there's not, right. So, teaching, 24 right, there's no money for teaching. So, if 25 you — if I've asked you to teach with 50	1 from back 15 years ago when we looked at the — 2 because physicians mostly just did clinical 3 practice at that point in time. It's a change 4 in approach to how we even think about the 5 funds, so. 6 Q: I have a promissory notes somewhere from, looks 7 like, GHS to a physician. And I've shown this 8 to your lawyers and I have no — 9 MR. KIMPSON: May I have this marked as the next 10 exhibit, please? I think we are at Ten. 11 (Respondent's Exhibit Number Ten was marked for 12 identification purposes.) 13 Q: Dr. Youkey, if you'll just take a look at this 14 for me. And I'm not interested in the details 15 of that particular note. I'm just wondering 16 under what circumstances would a note like that 17 be issued to a physician? 18 A: So, this is something that we do — I've done 19 occasionally. So, first of all, we'll start 20 out with the same thing. And that is, once 21 again, I'm looking at a document pulled from 22 somewhere else. And this one has two 23 signatures on it, one is the — looks like the 24 physician that's on here and the other one is 25 a witness. I have no idea who that is, so I
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1 percent of your time, you're going to have 2 trouble doing that based on your professional 3 earnings, okay? If I asked you to be a quality 4 officer, if I asked you to be the medical 5 director of the ICU, all those kinds of things 6 are activities there's not any professional 7 reimbursement for. So, just as we change the 8 physician contract model, the whole concept 9 that there's different buckets of revenue in 10 order to support the nurses and the doctors and 11 so forth kind of goes by the wayside, right? 12 The way that — so, there's — if we took the 13 approach of now in today's world, the only 14 moneys that any individual gets paid is the 15 money they bring in, then there would be no 16 finance department, because they don't bring in 17 any money with clinical practice. And so, 18 we've really changed the overall philosophy 19 about physician compensation more and more to 20 be an employee of the healthcare system, okay. 21 And the funds of the healthcare system in the 22 whole need to be distributed so that everyone's 23 paid equitably based on third-party benchmarks, 24 whether it's executives or physicians and so 25 forth. And so, it's a change in a approach	1 don't know. And it's a 2011 arrangement. So, 2 having said that — 3 Q: Yes, sir. 4 A: — I don't know what context. I am familiar, 5 however, with the physician. And we will do 6 these kinds of notes under unusual 7 circumstances, when we're looking to bring 8 special talent into the community, and looking 9 to build programs. And so, it's a way that we 10 have of being competitive to bring physicians 11 here, okay? So, you deserve, based on this 12 particular page, to know a little bit about 13 this physician, so you understand the context 14 from this. Okay? 15 Q: Uh-huh. 16 A: So, one of a few big problems that I've had 17 over the years problematically is bringing to 18 this community what I would consider to be 19 modern urological procedure, okay? Even to the 20 point that I will tell you, without names, that 21 over the years I've sent multiple people out of 22 the community for prostatectomy for prostate 23 cancer to Hopkins and to Duke and to Vanderbilt 24 because it wasn't well done in this community, 25 okay? And I decided to take this on some years

23 (Pages 89 to 92)

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1 ago. This is a 2011 promissary note. And so, 2 this is been, in my view, a problem for this 3 community since -- well, since I got here, but 4 I decided to take it on about six or seven 5 years ago and started trying to figure out how 6 to build the urology program. This particular 7 physician is a Duke trained minimally invasive 8 urologist who specializes in minimally invasive 9 prostatectomy. He was in Baton Rouge, 10 Louisiana. We have a mutual friend that put us 11 together and I talked to him about whether he 12 would be interested in coming here to help 13 build a urology program. Okay? So, one of the 14 things about surgeons is you don't have any way 15 to know whether a surgeon's very good or not. 16 You don't. I have a better ability to know 17 that, but not a great deal of ability, okay? 18 The people who know how good surgeons are the 19 most are the nurses in the OR and the vendors 20 that provide prostatectomy scopes and so forth, 21 'cause they actually get to watch people 22 operate. And so, I knew one of the vendors 23 that knew the surgeons practice in Baton Rouge 24 and asked him what he could tell me about 25 Patrick Springhart. And he told me two things.	1 all. 2 A: I wish I weren't. There's two different kinds 3 of malpractice policies. 4 Q: Uh-huh. 5 A: One is called claims made. And so -- and it 6 results in an ongoing financial responsibility 7 for patients that will present afterwards. 8 Okay? And so, when you have a tail, in order 9 to buy the coverage for that group of patients 10 that haven't submitted their claims yet, you 11 have a tail that you have to buy. And needless 12 to say, his group of partners weren't going to 13 do it because they didn't want him to leave. 14 He didn't have the money to do it. And so, for 15 me this was a part of the recruitment package 16 for this surgeon. And it is an unusual thing 17 and I've done it more than once, but 18 specifically for this kind of talent to this 19 community. 20 Q: Given that your physicians are employees of 21 GHS, is there one malpractice company that you 22 go to? Is it a... 23 A: Gosh. So, I think so, but it's not my area. 24 Within finance there's -- I can't remember what 25 we call the folks that handle the malpractice,
Page 94	Page 96
1 He told me, number one, this was the busiest 2 prostatectomy surgeon in the southeast and, 3 number two, that he was the LeBron James of 4 urology, okay? And so, this is a special 5 doctor that agreed to come here to help start 6 a program and, unfortunately because of the 7 practice he was in, had a malpractice policy 8 with a tail on it that he couldn't pay in order 9 to leave. And so, we agreed as part of the 10 recruitment process to provide this promissary 11 note to him so he could pay his tail off in 12 order to come. I actually thought this was a 13 great deal because most of the places I've been 14 around the country the surgeon wouldn't have 15 asked for a promissary note. He would've asked 16 us to just pay it outright, okay? So, we do 17 that sort of thing not frequently but 18 occasionally for this kind of talent in order 19 to bring it to the community, particularly for 20 areas we're missing. 21 Q: Explain just for the record to pay a tail off, 22 to pay some residual that he needed to -- 23 A: No, no, no. There's -- so, you're not familiar 24 with physician malpractice policies then? 25 Q: Fortunately I've not done much of that work at	1 but -- so, I think so. And actually I would 2 distinguish as well, I'm talking specifically 3 about physicians. And nurses have malpractice 4 as well. And so, I don't -- probably the best 5 thing I can tell you most accurately is that 6 you need to talk to somebody about how we do 7 our malpractice coverage. Okay? Maybe the -- 8 and I'd add this to maybe at least answer part 9 of your question. The physicians don't have 10 individual policies, so they're not -- every 11 physician not buying policy, it's through -- as 12 part of their employment agreement. 13 Q: I see. 14 A: Okay. 15 MR. KIMPSON: I'm about through if I can have a five 16 minute break. We probably will be going for 17 five more minutes, but let me just -- I promise 18 you, Doctor, and I just want to -- I'm very 19 appreciative of -- 20 THE WITNESS: Sure. 21 (Off the Record) 22 Q: Dr. Youkey, you -- I think you told me you were 23 not aware of -- shouldn't say it that way. Did 24 you have anything at all to do with the 25 decision to apply for the sales tax exemption?

24 (Pages 93 to 96)

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greenville Hospital System,

Docket No. 13-ALJ-17-0523-CC

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

**PETITIONER GREENVILLE HEALTH SYSTEM'S
REPLY IN SUPPORT OF
MOTION FOR PARTIAL SUMMARY JUDGMENT
AND/OR RULING ON DISPUTED LEGAL ISSUES**

Petitioner Greenville Health System (formerly known as Greenville Hospital System) submits this Reply to the South Carolina Department of Revenue's Memorandum in Opposition to GHS's Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues.

I. INTRODUCTION

Pursuant to this Court's January 18, 2017 Consent Order Governing Further Proceedings, the parties jointly submitted seven "Disputed Legal Issues"—all questions of law concerning statutory interpretation—that are ripe for the Court's consideration and ruling. At the heart of these seven Disputed Legal Issues is a single question: *What is the legal standard the Court must apply to determine whether GHS is entitled to the sales tax exemption under South Carolina Code Section 12-36-2120(41)?* Obtaining an answer from the Department of Revenue to this most fundamental question has proven elusive since this dispute first arose. The Department's final written Determination issued in October 2013 is a hodge-podge of various rules, standards, opinions, and commentary from legal and non-legal sources with little clarity on which, if any, of those rules, standards, or opinions the Department was actually applying. Today, the

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Department's position remains equally unclear. In its Opposition Memorandum, the Department purports to address the Disputed Legal Issues—but, as discussed below, the positions it takes are at odds with the intent of our Legislature, unsupported by long-established tax law and other relevant legal authority, and contrary to the Department's own regulations, Revenue Procedures, other published guidance, and even its own final Determination issued in this case. Unfortunately, the Department's answer to the central question "What is the applicable legal standard?" appears to be "Whatever the Department says it is, if and when the Department says what it is." This is not and has never been the law in South Carolina, and it is not how the tax laws of South Carolina should be applied to GHS or any other taxpayer in our State.

II. REPLY ARGUMENT

In Reply, GHS will address: (A) several incorrect or incomplete statements made by the Department in its summary of the "Material Facts"; (B) the Department's erroneous claim that this Court must "strictly construe" the statutory language against granting GHS the sales tax exemption despite South Carolina Supreme Court authority holding otherwise; and (C) the Department's specific assertions and arguments on each of the seven Disputed Legal Issues. To the extent possible, GHS will avoid repeating the general discussion of the points and authorities contained in its Opening Memorandum, and will refer instead to the pages in its earlier briefing when helpful.

A. Reply to the Department's Statement of "Material Facts Not In Dispute"

In its Opposition Memorandum, the Department includes a list of "Material Facts Not In Dispute." (DOR Opposition Mem., pp. 2-3.) Three points raised in this list require correction or clarification:

1. Whether GHS qualifies for the exemption from property tax under provisions of the South Carolina Code other than Section § 12-37-220(A)(1) is a disputed issue.

In numbered paragraph 2 of its statement of "Material Facts Not In Dispute," the Department asserts that "GHS is exempt from property tax under S.C. Code Ann. § 12-37-220(A)(1) as a 'political subdivision'" and that "GHS is not exempt from property taxes under any [other] provision of the South Carolina Code." (DOR Opposition Mem., p. 2.) This last sentence is incorrect. While it is true GHS is exempt from property tax under Section 12-37-220(A)(1), GHS also qualifies for the property tax exemption under other provisions of the exemption statute including, but not limited to, Sections 12-37-220(A)(4) (charitable trusts and foundations) and 12-37-220(B)(16)(a) (charitable organizations). As discussed in GHS's Opening Memorandum (p. 13) and below, there is simply no language in Section 12-37-220 or any other statute which limits eligibility for the property tax exemption to one provision of the statute. GHS can and does satisfy the requirements under multiple provisions of Section 12-37-220.

2. GHS—and no other entity—applied for the requested sales tax exemption.

In numbered paragraph 4 of its statement of "Material Facts Not In Dispute," the Department describes and attaches as "Exhibit 1" a "GHS organizational chart" which the Department claims "shows several nonprofit and for profit corporations under the GHS 'umbrella.'" This "organizational chart," however, was not created or provided by GHS. Rather, the Department's Exhibit 1 is a photocopy of a page from a report created by one of the Department's proposed expert witnesses, Mr. Stephen Kirkland. This chart does not accurately and fully describe the relationship between GHS and its affiliated entities. The three entities identified by the Department as "under the GHS umbrella"—Greenville Health Corporation,

GHS Partners In Health, Inc., and the Endowment Fund of Greenville Hospital System, Inc.—are each separate, private, nonprofit corporations which are each individually recognized by the IRS as tax exempt pursuant to I.R.C. § 501(c)(3). The other entities listed by the Department are likewise separate, private corporations. *None of these corporations have applied for or otherwise sought the exemption from sales tax under Section 12-36-2120(41) that is at issue in this contested case.*¹ Therefore, these corporations are not parties to the present contested case, and it would be legal error for the Court to disregard their separate legal existence from Petitioner GHS. *See, e.g., Drury Dev. Corp. v. Found. Ins. Co.*, 380 S.C. 97, 101, 668 S.E.2d 798, 800 (2008) (“If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears. . . . The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied.”); 1 Fletcher Cyc. Corp. § 26 (explaining that “affiliated corporations are separate and distinct from one another regardless of whether they have common shareholders, directors or officers”); 18 Am. Jur. 2d *Corporations* § 61 (“The law of corporations is founded on the legal principle that each corporation is a separate entity.”).

¹ Additionally, Mr. Kirkland’s statements that appear on Exhibit 1 regarding compensation paid to unidentified “officers of Oncolix, Inc.,” while totally irrelevant to the legal issues presently before the Court, are also wholly incorrect and have been retracted by Mr. Kirkland in his subsequent expert report and during his deposition in this case. (Kirkland Dep. at 123.)

3. This contested case proceeding concerns only the 2011 application for sales tax exemption filed by GHS.

In numbered paragraph 5 of its statement of “Material Facts Not In Dispute,” the Department describes an application for exemption from sales tax filed in April 2009 by “GHS d/b/a University Medical Group—Carolina Eye Care.” The application for exemption submitted by Carolina Eye Care in 2009 is not at issue in this contested case matter. The only application at issue in this case was filed by and for GHS on May 23, 2011, under GHS’s then-current name, “Greenville Hospital System,” and using GHS’s unique Taxpayer Identification Number. The Department issued its final written Determination based on that application on October 4, 2013. The present contested case arises from the 2011 application and the Department’s 2013 denial of the application.²

B. Reply to the Department’s Position on the Applicable Standard of Statutory Construction

The Department does not dispute that “[t]he cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the legislature” and that this rule dictates how every statute is interpreted and applied. *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011).³ However, contrary to the legislative intent identified by the South Carolina Supreme Court in *Town of Myrtle Beach v. Holliday*, 203 S.C. 25, 26 S.E.2d 12 (1943), which held that statutes should be liberally construed in favor of granting tax exemptions to government

² Additionally, the case caption appearing on the first page of the Department’s Opposition Memorandum incorrectly identifies the Petitioner as “Greenville Hospital System, d/b/a GHS UMG Carolina Eye Care.” Counsel for the Department brought this mistake to undersigned counsel’s attention immediately after the Opposition Memorandum was filed and both parties agree that the Petitioner in this contested case is properly identified as “Greenville Health System, formerly known as Greenville Hospital System.”

³ The governing principles of statutory construction are discussed more fully on pages 8 - 10 of GHS’s Opening Memorandum.

entities, the Department argues that the exemption statutes in this case must instead be “strictly construed” against granting the exemption to GHS, a political subdivision of the State of South Carolina.

First, as stated in GHS’s Opening Memorandum, under either a “strict” or “liberal” rule of construction, the intent of our Legislature supports and confirms GHS’s position on each of the statutory questions currently before this Court. Therefore, this Court need not reach the question of whether to apply a “strict” or “liberal” standard.

To the extent the Court sees the need to decide this issue, *Town of Myrtle Beach v. Holliday* mandates liberal construction of the tax exemption statutes in favor of granting the sales tax exemption to GHS. In its Opposition Memorandum, the Department argues the court’s holding in *Holliday* should be limited to statutes which expressly and narrowly grant property tax exemptions to government entities. However, no such limitation is stated in *Holliday* or any subsequent South Carolina appellate court opinion. The Supreme Court’s reasoning in *Holliday* did not rest on the specific type or category of tax exemption at issue (property, sales, income, etc.), but was instead grounded on the principle that “it has never been the policy of this state to tax its own agencies or instrumentalities of government.” *Id.* at 14.

In a prior ruling issued by the Department’s predecessor agency, the South Carolina Tax Commission, the Commission extended the public policy principle identified in *Holliday* to apply the rule of liberal construction to any “charitable institution” as well as government entities:

Further, it is held that, as to charities in general, the law’s good will toward them is not to be changed to a hostile attitude, in passing on a legislative favor for them, that in determining whether a particular charity is within an exempt classification, or how much of its property comes within the exemption, resort to rigorous strictness and a technique of narrowing application does not best

construe the expression of legislative will, that when an exemption of charitable institutions from taxation is granted, a prescribed condition that only such as meet a hard and fast definition are exempt does not accompany it, and that the legislative purpose to encourage charitable institutions is not to be thwarted by a strained, overtechnical, and unnecessary construction.

In Re St. Francis Xavier Hospital, S.C. Tax Comm'n, 1971 WL 18331 (Mar. 23, 1971) (quoting 84 C.J.S. *Taxation* § 282). This ruling by the Tax Commission demonstrates that “strict” or “liberal” construction is not dependent on arbitrary distinctions based on “property tax” versus some other type of tax as the Department now advocates, but is instead determined solely by the legislative intent and the deeply-engrained policy principle not to tax certain organizations and institutions—whether government entities (*Holliday*) or charitable institutions (*St. Francis*).

C. Reply to the Department’s Arguments on the Disputed Legal Issues

As noted above, the purpose of this preliminary motion and briefing on the seven Disputed Legal Issues is to present to the Court and obtain rulings on these narrowly drawn questions of law so that the parties and the Court will have clarity and certainty as to the applicable legal standards prior to the full evidentiary hearing in this contested case. GHS submits that the Department, in answering these questions, has failed to direct the Court to any statutory or other relevant authority to support the positions the Department has taken on the legal standards the Court should apply. GHS replies more particularly to the specific arguments raised by the Department for each issue separately below.

1. **Issue A:** The Department points to no statute, regulation, case, or other authority to support its contention that an entity exempt from property tax under Section 12-37-220(A)(1) cannot also be eligible for the exemption under other provisions of the statute.

In addressing Issue “A” in its Opposition Memorandum, the Department does not dispute that there is no statutory provision, regulation, case, or other authority which holds or in any way suggests that a political subdivision exempt from property tax under Section 12-37-220(A)(1) cannot also qualify for exemption under Sections 12-37-220(A)(4) (charitable foundations) and 12-37-220(B)(16)(a) (charitable organizations). The Department also does not dispute that its own published SC Revenue Procedure #03-6, which provides that it is “binding on agency personnel,” expressly states that qualifying for a property tax exemption under a Code section not listed in Section 12-36-2120(41) is not a bar to qualifying for the sales tax exemption. Instead, the Department makes the bare assertion that “the General Assembly does not intend for a political subdivision to be eligible under either of these statutes [Sections 12-37-220(A)(4) and 12-37-220(B)(16)(a)].” However, as explained in GHS’s Opening Memorandum, this assertion is contrary to the plain language of the statutes and finds no support under any other legal authority or source of legislative intent. (GHS Opening Mem., pp. 13-15.) The Department does not point to any such authority or evidence of legislative intent in its Opposition Memorandum.

Rather than address the narrow legal question presented under Issue “A,” the Department attempts to side step the issue by offering *factual* arguments as to why it believes GHS in particular does not fall within the meaning of “charitable foundation” or “charitable organization.” While GHS strongly disagrees with the Department’s factual allegations and conclusions, these factual issues are not properly before the Court for decision at this time. As stated in this Court’s January 18, 2017 Consent Order Governing Further Proceedings, the purpose of the present motion and briefing is to address and resolve several key disputed *legal*

issues in order to narrow and focus the factual issues for presentation to the Court at the final hearing. (Consent Order, pp. 2-3.)⁴ Whether GHS falls within the meaning of “charitable foundation” or “charitable organization” as those terms are defined under the statutes and applicable tax law is a factual issue for this Court to decide after presentation of competent, admissible evidence at the final hearing.

To the extent the Department may contend that the quoted portions of Act 432 establish as a matter of law the Department’s assertion that “GHS’s statutory powers and authority” granted by the General Assembly “are fundamentally inconsistent with its claimed status as a charitable corporation or other entity,” GHS strongly disagrees. None of the powers granted to GHS under Act 432 (or any subsequent amendment) render GHS ineligible for either exemption or signal the Legislature’s intent that GHS be ineligible for these exemptions. The Department cites no legislative finding or authority suggesting otherwise. To the contrary, in enacting the legislation creating GHS, the General Assembly expressly stated that its aim was to address a pressing charitable need in Greenville County: “The General Assembly, after due investigation, has found that there exists in Greenville County a lack of hospital facilities, and that as a result of this condition many persons, and in particular, those of small income, are being deprived of adequate medical and hospital care.” 1947 S.C. Acts 432, § 1 (attached as Exhibit 2 to DOR Opposition Mem.)⁵ Therefore, to the extent the Department attempts to argue that Act 432 establishes as a matter of law that GHS is not “charitable,” the legislative intent expressed by the General Assembly demonstrates the opposite is true. Again, however, even if such powers and

⁴ See, e.g., *Johnson v. Johnson*, 310 S.C. 44, 46, 425 S.E.2d 46, 48 (Ct. App. 1992) (holding that “a consent order is an agreement of the parties, under the sanction of the court, and is to be interpreted as an agreement”).

⁵ Additionally, the Department does not dispute that GHS has and maintains its status as a charitable organization under I.R.C. § 501(c)(3) since the legislation creating GHS was enacted in 1947. (See DOR Opposition Mem., p. 3.)

authority could be a basis for finding GHS does not qualify for the requested exemption, there is no evidence as to whether GHS has used those powers and, if so, when and for what purpose. Assuming such factual issues are even relevant, they will be ripe for decision upon consideration of admissible evidence at the final hearing in this matter.

2. Issue B: The Department points to no statute, regulation, case, or other authority to support its contention that a political subdivision cannot be exempt from sales tax under Section 12-36-2120(41).

In its response to Issue “B,” the Department argues that a political subdivision (whether GHS or any other government agency or entity) is inherently—by its “nature”—unable to qualify for the sales tax exemption under Section 12-36-2120(41). The Department does not and cannot point to any language in the statute to support this assertion. *See Byrd v. Irmo High Sch.*, 321 S.C. 426, 433, 468 S.E.2d 861, 865 (1996) (“Where a statute expressly enumerates the requirements on which it is to operate, additional requirements are not to be implied.”); *Santee Cooper Resort, Inc. v. South Carolina Pub. Svc. Comm’n*, 298 S.C. 179, 184, 379 S.E.2d 119, 122 (1989) (holding that the courts in South Carolina “[have] no legislative powers; it is [the courts’] province to construe laws, not make them.”); *Scholtec v. Estate of Reeves*, 327 S.C. 551, 559, 490 S.E.2d 603, 607 (Ct. App. 1997) (holding that, if the legislature intended a certain result, “we believe that it would have expressly stated so . . .”). Notably, the Department does not conceal the fact that it takes this position *regardless* of whether the organization actually satisfies the requirements of the statute or not, openly admitting in its Opposition Memorandum:

To the contrary, even if it could somehow be shown that GHS satisfies the triggers to gain relief under subsection (41), the Department asserts that it is fundamentally inconsistent with the intent of the General Assembly that a government subdivision be exempt from sales tax.

(DOR Opposition Mem, p. 16.)

Again, no statutory language, regulation, rule, or case is cited as evidence that it is the "intent of the General Assembly" that a government subdivision cannot be exempt from sales tax. In fact, the Department's statement is belied by its own regulation concerning the application of the sales tax to political subdivisions, wherein the Department states:

Sales of tangible personal property by the State, counties, municipalities and other political subdivisions of the State (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) are subject to the sales tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

S.C. Code Ann. Regs. 117-304 (emphasis added). While the regulation does provide that political subdivisions are subject to sales tax, the qualifying language "**unless such sales . . . are otherwise exempt**" followed by citation to the general sales tax exemption statutes indicates that a political subdivision can qualify for the sales tax exemptions under Section 12-36-2120, including subsection (41). The Department should not be permitted to now disclaim its own regulation. It is well-settled that "[a] state agency is bound to follow its own regulations." *W. Carolina Reg'l Sewer Auth.*, No. 98-ALJ-07-0267-CC, 1999 WL 1016064, at *37 (Sept. 22, 1999); see also *Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision)*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998) ("An administrative board must follow its own rules and regulations.").

Disregarding its own regulation and without any other statutory language or case law supporting its position, the Department relies on several unpublished Attorney General Opinions from the 1970s. As the Department correctly acknowledges, these unpublished Attorney General Opinions are not binding authority upon which this Court can or should base its decision. See, e.g., *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 78, 716 S.E.2d 877, 883 (2011)

(explaining that “we assign no weight to the two Attorney General’s Opinions relied upon by the ALC”); *Eargle v. Horry Cty.*, 344 S.C. 449, 455, 545 S.E.2d 276, 280 (2001) (noting that “this Court is not bound by opinions of the Attorney General”). In any event, these Opinions are clearly inapposite and the Department’s reliance on them is misplaced.

First and fundamentally, none of these Opinions address the sales tax exemption for charitable organizations in Section 12-36-2120(41) or the property tax exemptions in Sections 12-37-220(A)(4) and 12-37-220(B)(16)(a). Indeed, the sales tax exemption for charitable organizations in Section 12-36-2120(41) was not even enacted until 1989. Instead, these Opinions concern whether the University of South Carolina, the Department of Parks, Recreation, and Tourism, and Patriots Point Development Authority—all political subdivisions—might be exempt from the tax levied “upon all paid admissions to all places of amusement” under Section 65-802(4) of the former Code of Laws of South Carolina, 1962. The Attorney General specifically considered whether these entities were properly categorized as “eleemosynary and nonprofit corporations” such that the entities qualified for the exemption from admissions tax under Section 65-802 (Supp. 1975). The Attorney General concluded that this specific statutory language limited the exemption to “private corporations” and found that the applicants did not qualify for the exemptions.⁶

⁶ Although the then-Attorney General limited “eleemosynary” to “private corporations,” the South Carolina Supreme Court has suggested a broader definition applies: “‘Eleemosynary’ has come in the law to be interchangeable with the word ‘charitable.’” *Peden v. Furman Univ.*, 155 S.C. 1, 151 S.E. 907, 914 (1930); *see also Eiserhardt v. State Agr. & Mech. Soc. of S.C.*, 235 S.C. 305, 309, 111 S.E.2d 568, 570 (1959) (“‘Eleemosynary corporations are those created for charitable and benevolent purposes.’ . . . the word ‘eleemosynary’ is not a technical one of art or one which has ‘acquired a rigid meaning by judicial construction.’”); BLACK’S LAW DICTIONARY (10th ed. 2014) (defining “eleemosynary” as: “Of, relating to, or assisted by charity; not-for-profit; an eleemosynary institution”).

However, even assuming the then-Attorney General's interpretation of former Code Section 65-802(4) was correct, it is clear the Legislature intended the exemption statutes at issue in this case cover a much broader group of organizations and entities than just "private corporations": Section 12-36-2120(41) says that it applies to all "organizations"; Section 12-37-220(A)(4) applies to "all charitable trusts and foundations"; and Section 12-37-220(B)(16)(a) applies to "any religious, charitable, eleemosynary, educational, or literary society, corporation, trust, or other association." None of the exemption statutes at issue in this case are limited to only "private corporations." The Department's attempt to analogize to former Code Section 65-802 therefore fails and instead provides further evidence of the Legislature's intent to *not* exclude political subdivisions from the scope of "organizations" that may qualify for exemption under Section 12-36-2120(41). *See, e.g., Cunningham v. Scibana*, 259 F.3d 303, 308 (4th Cir. 2001) ("The use of different terms within related statutes generally implies that different meanings were intended.").

This Court should also reject the Department's assertion that "granting a sales tax exemption under subsection (41) here would work an absurdity" simply because GHS is a large organization. (DOR Opposition Mem., p. 20.) Whether GHS or any other organization is large or small is not identified under the South Carolina Code or the Department's published guidance as a factor in determining whether the organization is charitable and thus entitled to the exemption. Similarly, the Department's assertion that GHS would receive an "economic advantage" if it were to receive the sales tax exemption is another attempt to create out of whole cloth a requirement found nowhere in any statute, regulation, case, or Department guidance. The Department's attempt, as an administrative agency, to engraft new provisions and requirements

into a statute enacted by our General Assembly is a troubling step into the exclusive domain of the Legislature this Court should reject.

Additionally, it appears the Department adds these new non-statutory requirements as a springboard to engage in pure speculation about GHS's activities. With no factual support, the Department suggests that, because GHS's cafeterias are not "closed to the general public," the sales tax exemption "would magnify its economic advantage over area retailers of similar food items." (DOR Opposition Mem., p. 20.) While such a factual allegation is completely beyond the scope of the questions of law presently before the Court and irrelevant and unconnected to any statute or other legal standard, the Department's assertion is purely speculative and baseless. There is absolutely no evidence that GHS's hospital cafeterias have any positive or negative impact on restaurants and other food retailers anywhere in South Carolina.

3. **Issue C: GHS and the Department agree that the plain language of Section 12-36-2120(41) prohibits benefit inuring to an individual "from the sales" of the items sold by the organization.**

In its Opposition Memorandum, the Department states that it "does not take issue with GHS's interpretation of the inurement requirement of § 12-36-2120(41)" and concedes that "the prohibition on personal inurement extends only to benefits flowing from the gross proceeds of sale." (DOR Opposition Mem., p. 21.) Because the parties are now in agreement on this issue, the Court may answer Issue "C" in the affirmative.

4. **Issue D: The Department's limitless conception of the prohibition against private inurement is contrary to South Carolina and federal tax law and the Department's own binding public guidance.**

The Department does not dispute that the language prohibiting inurement in the South Carolina sales tax and property tax exemption statutes at issue in this case is substantively identical to and was adopted from I.R.C. § 501(c)(3). Nor does the Department dispute that,

under the decades of tax law interpreting and applying the prohibition against private inurement set forth in I.R.C. § 501(c)(3), the scope of inurement is limited to benefits improperly flowing to “a private shareholder or an individual who has an *insider relationship* with a tax-exempt organization”—*i.e.*, those individuals who, by virtue of their relationship with the organization, have the power to control and direct how the organization uses its money and other assets. BLACK’S LAW DICTIONARY (10th ed. 2014) (emphasis added). (See generally GHS Opening Mem., pp. 25-29.) Nevertheless, the Department asks this Court to disregard the source, Section 501(c)(3), and the commonly understood and accepted meaning of this statutory language in favor of a hyper-literal reading that does not effectuate the intent of the Legislature and leads to plainly absurd results. As discussed below, this is an invitation to clear legal error. Moreover, contrary to the Department’s assertions, its position is counter to South Carolina case law and the Department’s own binding public guidance.⁷

(a) The Department’s reading of the tax exemption statutes is contrary to the intent of the Legislature.

The Department asks this Court to read the words “no benefit” and “any individual” in Sections 12-36-2120(41) and 12-37-220(B)(16)(a) in an isolated, purely literal manner. First and foremost, the Department’s interpretation manifestly does not and cannot represent the intent of our Legislature in enacting these statutes. The Department merely pays lip service to honoring legislative intent by arguing the “plain language” of the statutes “provide that no benefit may accrue to any individual from the use of the entity’s property under [§ 12-37-220](B)(16)(a) and

⁷ In the “Conclusion” paragraph on page 31 of its Opposition Memorandum, the Department asserts that the Court’s ruling on Issue “D” is “dispositive” of this case. GHS disagrees. If the Court departs from settled law and finds that there is no requirement of an “insider relationship” in order to find inurement, the effect would be that GHS and the Department will potentially litigate the commercial reasonableness and fair market value of every transaction entered into by GHS with any other individual or entity regardless of their relationship with GHS—whether employee, patient, or otherwise.

that no part of the gross proceeds of sales may benefit any individual under [§ 12-36-2120](41).” (DOR Opposition Mem., p. 22.) However, when interpreting statutory terms, it is improper to rely on the “plain, ordinary and popular sense” of the words in the statute when “*it fairly appears from the context that the Legislature intended to use such terms in a technical or peculiar sense.*” *Media Gen. Communications, Inc. v. S.C. Dep’t of Revenue*, 388 S.C. 138, 148, 694 S.E.2d 525, 530 (2010) (emphasis added); *see also Lambries v. Saluda Cty. Council*, 409 S.C. 1, 11, 760 S.E.2d 785, 790 (2014) (holding same). Here, it is undisputed that the language prohibiting inurement in the South Carolina statutes was adopted from and based on the I.R.C. § 501(c)(3) requirement that no part of the net earnings of a tax exempt charitable organization may “inure[] to the benefit of any private shareholder or individual.” Moreover, the Department does not dispute that the General Assembly has expressly adopted I.R.C. § 501(c)(3) through S.C. Code Ann. § 12-6-40 (“Application of federal Internal Revenue Code to State tax laws”) and § 12-6-50 (“Internal Revenue Code sections specifically not adopted by State”). Accordingly, any inquiry into the scope and operation of the inurement language in our state tax exemption statutes must look to the accepted, commonly understood meaning that attaches to these terms as they are used in the “technical or peculiar sense” of the Internal Revenue Code and tax law generally. *See Montgomery v. Spartanburg Cty. Assessor*, 419 S.C. 77, 795 S.E.2d 866, 868 (Ct. App. 2016), *reh’g denied* (Feb. 16, 2017) (holding that “sections which are a part of the same general statutory law must be construed together and each one given effect”).

During the more than one hundred years the inurement prohibition has been part of federal tax law, the IRS, the federal courts, and other state tax authorities have construed and applied this language to mean that benefits from the operation of a tax-exempt organization may not inure to those individuals who have an *insider relationship* with the organization. (See GHS

Opening Memorandum, pp. 25-29.) Indeed, this limitation is so deeply engrained in the general tax law application of “inurement” that it is part of the *Black’s Law Dictionary* definition of that term. (*See id.*, pp. 25-26.)

Additionally, the Department’s reading runs afoul of the precept that, “[i]n construing a statute, this Court will reject an interpretation when such an interpretation leads to an absurd result that could not have been intended by the legislature.” *Doe v. S.C. Dep’t of Soc. Servs.*, 407 S.C. 623, 634, 757 S.E.2d 712, 717 (2014). The Department’s interpretation transforms the prohibition against inurement in Sections 12-36-2120(41) and 12-37-220(B)(16)(a) into sweeping requirements whereby every transaction between a charitable organization and “any individual”—regardless of that individual’s relationship to the organization—may be scrutinized and challenged by the Department to determine whether “inurement” has occurred. For example, in the case of a hospital, *any benefit* flowing to *any employee*—doctor, nurse, orderly, office clerk, janitor, etc.—would constitute improper inurement. Any employee of the hospital deemed by the Department to have been paid just one dollar more than what would be considered “commercially reasonable” or “fair market value” would jeopardize the hospital’s exempt status—regardless of that employee’s ability to control and direct the assets of the hospital toward his own benefit.

Of course, the Department’s expansive reading of “any individual” is not limited to employees or others with a business or commercial relationship with the hospital. Rather, it would encompass any “benefit” flowing to a *patient* treated at the hospital. For example, a patient given an aspirin or Band-Aid at no charge would, under the Department’s reading, be the recipient of improper inurement. While a hospital janitor who is paid one dollar extra or a patient who is given a free aspirin or Band-Aid are extreme examples, these are within the range

of possibilities that follow from the Department's rejection of the commonly understood, tax law definition of inurement. Because the Legislature could not have intended such an absurd result in enacting Sections 12-36-2120(41) and 12-37-220(B)(16)(a), this Court must reject the Department's "plain language" interpretation of these statutes. *Lightner v. Hampton Hall Club, Inc.*, Op. No. 27700 (S.C. Sup. Ct. Feb. 1, 2017) (Shearouse Adv. Sh. No. 5 at 21) (2017 WL 42957) ("This Court will not construe a statute in a way which leads to an absurd result or renders it meaningless."); *Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("If possible, the court will construe the statute so as to escape the absurdity and carry the intention into effect."). Indeed, if the Court disregards decades of settled law interpreting this language as limited to insiders and instead adopts the Department's limitless construction prohibiting any "benefit" to "any individual," no organization of any size could or would even attempt to mount the proof necessary to demonstrate compliance with such an onerous and impractical requirement.

(b) ***Hibernian Society v. Thomas* supports application of the insider requirement.**

The Department erroneously argues that the South Carolina Court of Appeals' opinion in *Hibernian Society v. Thomas*, 282 S.C. 465, 319 S.E.2d 339 (Ct. App. 1984), demonstrates South Carolina has rejected any "insider" prerequisite to inurement. However, a careful reading of *Hibernian Society* shows the opposite is true. Rather than articulating a boundless conception of who may receive a prohibited "benefit" from the operation of the fraternal organization, the Court of Appeals carefully limited its analysis to whether any of the organization's "*members*" received an improper benefit:

In enacting this particular condition, the legislature intended, we believe, to stop the flow of any direct or indirect commercial benefits to the *individual members* of the Society, see *Harding*

Hospital v. U.S., 505 F.2d 1068 (6th Cir. 1974), as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a group.

Id. at 471, 319 S.E.2d at 343 (emphasis in original). Limiting its analysis to the “members” of the Society, the Court of Appeals in no way suggested that employees, vendors, suppliers or other third parties would be swept into the analysis of whether commercial benefits from the operation of the Society improperly inured to anyone. Also notably excluded from the Court of Appeals’ scrutiny were the “guests” who the court noted visited the Society and the “non-members” who the Court noted would occasionally rent the Society’s Hall. *Id.* at 468, 319 S.E.2d at 341. Instead, consistent with the accepted definition of an “insider” under federal tax law, the Court of Appeals explained that the “members” of the Hibernian Society were vested with voting power that allowed them to exercise influence and control over the organization, specifically finding that “[t]he Society is governed in a representative manner with officers being elected annually by the membership.” *Id.* at 468, 319 S.E.2d at 341. Therefore, the members of the Society were similar to stockholders of a private corporation or directors or trustees of a non-profit organization who are vested with power to exercise control and influence over how the organization conducts its affairs and uses its resources—individuals who fall squarely within the accepted definition of “insider.”

However, to the extent any doubt remains as to whether the Court of Appeals intended to apply the settled federal tax law definition of “inurement” in its analysis, that doubt is resolved by the fact that the Court of Appeals cited *federal tax law* as the sole authority supporting its holding. In explaining the Legislature’s intent, the Court of Appeals cited a single federal appeals court ruling, *Harding Hospital, Inc. v. U.S.*, 505 F.2d 1068 (6th Cir. 1974), which specifically interprets and applies the I.R.C. § 501(c)(3) inurement provisions and related federal

regulations. No other statute, regulation, or authority is cited by the Court of Appeals on this point.

Furthermore, *Hibernian Society* contradicts the Department's argument that "IRC § 501(c)(3) and its interpretative regulations have no direct application to state property tax exemptions or state sales tax exemptions" because "these federal authorities are applicable to income tax issues." (DOR Opposition Mem., pp. 24-25.) At issue in *Hibernian Society* was whether the fraternal organization qualified for a *property tax* exemption. In concluding that no benefit from the Society improperly inured to any member, the Court cited and relied upon *Harding Hospital, Inc. v. U.S.*—an *income tax* case construing and applying the inurement prohibition under I.R.C. § 501(c)(3). Accordingly, the Department's argument that this Court should simply ignore the settled law on the scope of prohibited inurement because the statutory language adopted in South Carolina and elsewhere originated under an income tax exemption statute does not hold water. Furthermore, as discussed in GHS's Opening Memorandum, South Carolina law incorporates and relies on I.R.C. § 501(c)(3) as a benchmark standard in a variety of circumstances beyond the narrow category of income tax exemption issues. (See GHS Opening Mem., pp. 35-36.)

- (c) **The Department cannot escape the fact that its own binding public guidance adopts the I.R.C. § 501(c)(3) standard in order "to insure that no benefit inures to any individual."**

The Department does not and cannot dispute that its own published SC Revenue Procedure #03-6 expressly states that an organization seeking the sales tax exemption will be "automatically qualified" for the exemption if it is "[e]xempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19)." The Department further states in the Revenue Procedure that "the purpose of this provision" incorporating the § 501(c)(3) standard is "to insure

that no benefit inures to any individual.” See SC Rev. Proc. #03-6, p. 3. These statements are contained in public guidance issued by the Department that is “binding on agency personnel.” *Id.* at p. 1. Moreover, “[a]n administrative board must follow its own rules and regulations.” *Ogburn-Matthews v. Loblolly Partners*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998).

However, in its Opposition Memorandum, the Department attempts to elide its own binding, published guidance by pointing to another part of Revenue Procedure #03-6 where the Department reserves the right to deny or revoke the exemption “[i]f it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner.” This “caveat,” however, does not alter the earlier statements in the Revenue Procedure in which the Department clearly states that compliance with I.R.C. § 501(c)(3) is the standard the Department will apply “to insure that no benefit inures to any individual.”

5. ISSUE E: The Department can point to no statutory language, regulation, rule or case supporting its “per se” inurement rule.

In its response to Issue “E,” the Department asks this Court to rule that the statutory language in Section 12-37-220(B)(16)(a) providing that “no profit or benefit there from inures to the benefit of any private shareholder or individual” is *automatically* violated *merely* by the fact that a physician’s compensation plan includes a variable component based in part on the revenue generated by the physician’s clinical department or medical practice group within the organization—without regard to the actual amount of compensation paid to the physician, the value of the services provided by the physician in exchange for the compensation paid, or even whether the physician was paid any compensation at all.

The Department claims the justification for this “per se” rule is found in the “plain language” of the statute. However, as explained in GHS’s Opening Memorandum, the operative word in the text of the statute—“inure”—is defined both in its ordinary usage and in its legal

context as a benefit that is actually received, rather than the mere possibility that an excessive or otherwise inuring payment could occur under a particular compensation arrangement. (See GHS Opening Mem., pp. 31-32.) Consistent with this fundamental precept, whether inurement has occurred as a result of compensation paid to an insider (whether a physician or other employee) depends on whether the amount paid was reasonable and did not exceed fair market value. In other words, upon consideration of the quality and quantity of the services provided to the organization and whether those services furthered the organization's exempt purpose, the question is whether the compensation paid to an employee with an insider relationship with the organization resulted in the employee receiving more money (or other consideration) than she was fairly entitled to receive. It is the receipt of "something for nothing" by an insider of the organization that is at the core of prohibited inurement. By definition, therefore, it is not a finding that can be made in the abstract based on a term contained in a physician's or other employee's contract. Indeed, this has been the view taken by the IRS for many decades. (See GHS Opening Mem., p. 32.)

In its Opposition Memorandum, the Department raises the specter that GHS is engaging in some type of sinister misappropriation of its resources through the compensation plans it or its affiliated entity, GHS Partners In Health, Inc., has with employed physicians. Without pointing to any specific testimony or examples of physician contracts (which have all been produced to the Department for its review—comprising tens of thousands of pages), the Department refers the Court to attached excerpts of the deposition of Dr. Jerry Youkey for "a comprehensive description of the types of contracts used to employ physicians at GHS." (DOR Opposition Mem., p. 28.) Jerry R. Youkey, MD, currently serves as GHS Executive Vice President and Chief Academic Officer and Dean of the University of South Carolina School of Medicine—

Greenville. Although these specific factual issues are beyond the scope of the legal question currently before the Court concerning whether the Department's "*per se*" rule legally applies, GHS welcomes and encourages the Court's full review of Dr. Youkey's testimony. Dr. Youkey carefully and thoroughly explained the historical development of physician compensation locally and at integrated healthcare delivery systems nationwide and how those compensation plans have been modified and refined over the years to align physician incentives with improvements in quality of patient care and access to medical care in a healthcare environment that has experienced rapid and constant change over the last decade. These are the fundamental objectives of any charitable, nonprofit healthcare provider.

Finally, although not directly pertinent to the question of whether the Court should adopt the Department's "automatic" or "*per se*" inurement rule, the Department also argues that physicians may qualify as "insiders." (DOR Opposition Mem., p. 28.) While certain physicians with substantial control and influence over the organization can meet the definition of "insider," the IRS has clearly held that an individual does not have an "insider relationship" with the health care provider merely because she is an employed physician. *See, e.g.,* IRS Rev. Rul. 97-21, 1997-1 C.B. 121 (1997) (finding medical staff physicians "do not have substantial influence over the affairs of the hospitals" or "have any personal or private interest in the activities of the [hospitals] that would subject them to the inurement proscription of § 501(c)(3)").

6. **Issues F and G:** The Department's response that it "may" apply the organizational and operational tests under Treasury Regulation § 1.501(c)(3)-1 and that it has the "latitude" to accept or reject the "insubstantial part" component of the tests—despite having applied these tests in its final written Determination—demonstrates the Department's position is arbitrary, capricious, and untethered to any relevant legal authority.

Issues "F" and "G" present specific, yet straightforward, questions as to whether GHS's status as a charitable organization should be determined according to the long-established "organizational and operational tests" promulgated under Treasury Regulation § 1.501(c)(3)-1. The Department's response to these questions throws into sharp relief its unwillingness or inability to explain what legal standard can or should be applied to determine whether GHS is entitled to the requested exemption. At the outset, it should be noted that the Department does not dispute:

- Treasury Regulation § 1.501(c)(3)-1 establishes the official "organizational and operational" tests used to determine compliance with I.R.C. § 501(c)(3);
- The organizational and operational tests under this regulation "are well-established and well-defined and have been so used for decades." (GHS Opening Mem., p. 37); and
- The South Carolina General Assembly has expressly adopted I.R.C. § 501(c)(3) in S.C. Code Ann. § 12-6-40 ("Application of federal Internal Revenue Code to State tax laws") and § 12-6-50 ("Internal Revenue Code sections specifically not adopted by State").

Nevertheless, the Department now claims that "Treas. Reg. § 1.501(c)(3) may be used to evaluate whether an organization is charitable" but that "the Department is not bound to use any tests under this regulation exclusively and is not bound by any IRS determinations made using this regulation." (DOR Opposition Mem., p. 29 (underlining in original)). The Department further asserts that, even if it chooses to apply this test, because the Department "has the latitude

to consider other factors,” it “is not bound to accept the ‘insubstantial part’ test.” (*Id.* at 30.) Therefore, the Department does not merely admit, but proclaims, that the rule or standard that will be applied to make the central determination in this contested case is what the Department—apparently, in its unilateral discretion—decides the standard should be. The Department points to no alternative standard, nor does it provide any guidance or even hint as to when and under what circumstances it “may” deem it appropriate to apply the Treasury Regulation § 1.501(c)(3)-1 organizational and operational tests and when or under what circumstances it will exercise its “latitude” to accept or reject all or part of those tests. Of course, in this contested case proceeding, the Court must “make a *de novo* determination regarding the matters at issue.” *S.C. Dep’t of Revenue v. Sardieh*, 16-ALJ-17-0206-CC, 2016 WL 6921533, at *2 (Nov. 3, 2016). Therefore, this Court—not the Department—must decide whether the organizational and operational test under Treasury Regulation § 1.501(c)(3)-1 is the appropriate standard to apply in order to effectuate the intent of the Legislature. *See Anderson v. S.C. Election Comm’n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) (“The construction of a statute is a judicial function and responsibility.”).

This vacillating response by the Department is all the more confounding in light of the fact that the Department seems to suggest in its written Department Determination *issued in this very case* that the organizational and operational tests under Treasury Regulation § 1.501(c)(3)-1 are the appropriate tests to apply:

No definition exists for the term “charitable organization” in Title 12, except to the extent addressed in the Internal Revenue Code as adopted by the General Assembly, S.C. Code Ann. § 12-6-40 (Supp. 2012). The term is defined for purposes of corporate solicitation of donations in S.C. Code Ann. § 33-56-170(1) (2006) which provides: “[c]haritable organization” means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to § 501(c)(3) or 501(d) of Title

26 of the United States Code, as amended. That said, the “charitable” component of the exemption is two-fold under the IRC. Treas. Reg. § 1.501(c)(3)-1(a)(1) provides:

In order to be exempt as an organization described in § 501(c)(3), an organization **must be both organized and operated exclusively** for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, **it is not exempt**.

(emphasis added). To that end, a tax-exempt “organization” must meet “five criteria as provided in IRC § 501(c)(3)”:

1. It must be organized exclusively for an exempt purpose;
2. It must be operated exclusively for an exempt purpose;
3. It must avoid any private inurement;
4. It must avoid substantial lobbying;
5. It must avoid any political activity.

The organizational **and** operational requirements also require exclusivity, tax exempt purpose, and keeping of various procedural requirements. Courts have added three more criteria: 1. the entity must provide a public benefit; 2. the entity must not violate established public policy; 3. the activities must not be illegal. Darryll K. Jones, et al., The Tax Law of Charities and Other Exempt Organizations.

(DOR Final Determination, p. 20 (emphasis in original)). GHS assumes the Department did not cite and quote Treasury Regulation § 1.501(c)(3)-1 at length in its Determination as a purely academic exercise. However, it now appears that the Department’s own written Determination in this matter—like its regulations, published Revenue Procedures, and Revenue Rulings—cannot be relied upon to determine what legal standards the Department did or did not apply or what legal standards it thinks this Court should or should not apply.

III. CONCLUSION

For the reasons discussed above and in its Opening Memorandum, GHS respectfully requests that this Court enter an order granting it partial summary judgment on each of the Disputed Legal Issues identified in this Court's January 18, 2017 Consent Order.

Respectfully submitted,



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March 21, 2017

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greenville Hospital System,

Docket No. 13-ALJ-17-0523-CC

Petitioner,

v.

South Carolina Department of Revenue,

Respondent.

**PETITIONER GREENVILLE HEALTH SYSTEM'S
MOTION TO RECONSIDER, ALTER, OR AMEND
ORDER ENTERED MAY 8, 2017**

Pursuant to ALC Rule 29.D and Rule 59, SCRCP, Petitioner Greenville Health System (formerly known as Greenville Hospital System) ("GHS") moves this Court to reconsider, alter, or amend its May 8, 2017 "Order Denying Petitioner's Motion for Partial Summary Judgment and Granting Respondent's Motion for Summary Judgment" ("May 8 Order"). Undersigned counsel for GHS received notice of the May 8 Order on May 8, 2017.

I. OVERVIEW

GHS respectfully submits that the Court should reconsider, alter, or amend its May 8 Order for the following reasons:

- (A) The Court's May 8 Order contains findings and conclusions contrary to South Carolina statutes, regulations, case law, public guidance issued by the Department, and the Department's final written Department Determination issued in the underlying dispute in this contested case proceeding;
- (B) The Court's May 8 Order includes factual findings that exceed the parameters of the seven Disputed Legal Issues and the procedure set forth in the Court's January

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18, 2017 Consent Order Governing Further Proceedings and the scope of permitted findings and conclusions under Rule 56, SCRCP; and

- (C) The Court's May 8 Order does not address and rule on all of the issues, arguments, and authorities cited and discussed in GHS's Motion and briefing submitted in support of its positions on each of the Disputed Legal Issues.

This Motion is based on the points and authorities discussed below and in GHS's Supporting Memorandum and GHS's Reply Memorandum, both of which are incorporated herein.

II. BACKGROUND AND PROCEDURAL HISTORY

GHS brought this contested case action seeking review of a final Department Determination issued by the South Carolina Department of Revenue ("Department") in October 2013 denying GHS's request for exemption from sales tax pursuant to S.C. Code Ann. § 12-36-2120(41). After completion of extensive discovery, the parties conferred and agreed to submit seven questions of law to the Court for consideration and ruling prior to the full evidentiary contested case hearing in this matter. The Court approved the parties' proposal, which was memorialized in this Court's January 18, 2017 Consent Order Governing Further Proceedings ("Consent Order").

Pursuant to the Consent Order, GHS and the Department were each required to submit briefing to the Court on seven questions of law which were identified as the "Disputed Legal Issues" and listed in Paragraph No. 1(a)-(g) of the Consent Order. In entering the Consent Order, the Court found that the purpose of presenting the Disputed Legal Issues to the Court for decision was to "help to expeditiously move this case forward by clarifying and simplifying the issues for final hearing while avoiding unnecessary costs and other burdens on the Court." (Consent Order, p. 2.) The matters presented for the Court's consideration were limited to the

narrowly drawn Disputed Legal Issues, with both parties reserving any additional arguments for the final contested case hearing. (*Id.*, ¶ 1.) The Consent Order specifically provided that, “[b]y entering into this Consent Order, neither party is waiving or otherwise forgoing any legal or factual argument it may have in support of its position in this case.” (*Id.*) The Consent Order further provided that, following the submission of written briefs to the Court, the Court would conduct a hearing on the Disputed Legal Issues. (*Id.*, ¶ 3.)

In accordance with the procedure and schedule set forth in the Consent Order, GHS filed its Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues and Supporting Memorandum on February 3, 2017 (“GHS’s Supporting Memorandum”). On March 6, 2017, the Department filed its Memorandum in Opposition to Petitioner GHS’s Motion for Partial Summary Judgment (“DOR’s Opposition Memorandum”). On March 21, 2017, GHS filed its Reply Memorandum in Support of its Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues (“GHS’s Reply Memorandum”). Thereafter, on May 8, 2017, this Court issued its “Order Denying Petitioner’s Motion for Partial Summary Judgment and Granting Respondent’s Cross Motion for Summary Judgment.”¹ The Court entered its May 8 Order without conducting a hearing. GHS timely filed the present Motion requesting that the Court reconsider, alter, or amend the May 8 Order.

¹ The Department did not file a motion for summary judgment in this case. However, GHS agrees that the Court’s ruling on certain of the Disputed Legal Issues set forth in the Consent Order could be legally dispositive of some or all of the issues in the case. GHS reserves and does not waive all arguments set forth in this Motion and GHS’s Supporting Memorandum and GHS’s Reply Memorandum concerning the scope and effect of the Court’s ruling on any of the Disputed Legal Issues in this case.

III. GOVERNING STANDARD FOR MOTIONS TO RECONSIDER UNDER ALC RULE 29.D AND RULE 59, SCRPC

ALC Rule 29.D provides that “[a]ny party may move for reconsideration of a final decision of an administrative law judge in a contested case to alter or amend the final decision, subject to the grounds for relief set forth in Rule 59, SCRPC.” The South Carolina Supreme Court explained the purpose and effect of a motion filed pursuant to Rule 59, SCRPC, seeking reconsideration, alteration, or amendment of a lower court’s final ruling in *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004):

A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.

Id. at 24, 602 S.E.2d at 780. GHS believes both of these objectives are served by the present Motion.

IV. ARGUMENT

A. The Court’s May 8 Order contains findings and conclusions contrary to South Carolina statutes, regulations, case law, public guidance issued by the Department, and the Department’s final written Determination issued in the underlying dispute in this contested case proceeding.

- (1) The rule requiring “strict construction” of statutory exemption provisions does not apply in the case of an exemption sought by a government entity or other public body.

As discussed more fully on pages 8 - 10 of GHS’s Supporting Memorandum and pages 5 - 7 of GHS’s Reply Memorandum, the South Carolina Supreme Court’s decision in *Town of Myrtle Beach v. Holliday*, 203 S.C. 25, 26 S.E.2d 12 (1943), mandates liberal construction of the tax exemption statutes in favor of granting the sales tax exemption to GHS. The holding in *Holliday* is not limited to property tax exemptions or otherwise restricted to any other specific

category or type of tax exemption. As stated in *Holliday*, “it has never been the policy of this state to tax its own agencies or instrumentalities of government.” *Id.* at 14. There is no rationale articulated in *Holliday* to support application of this principle to one type of tax paid by a governmental entity. Any such distinction would be purely arbitrary and cannot have been the intent of the Legislature or our state’s Supreme Court. The Supreme Court’s holding in *Hampton Friends of Arts v. S.C. Dep’t of Revenue*, 401 S.C. 372, 737 S.E.2d 628 (2013), does not proscribe or modify the holding in *Holliday*. On the contrary, the Court reaffirms the rule that exemption statutes should be liberally construed in favor of governmental entities. *Id.* at 375-76, 737 S.E.2d at 630.

Additionally, the Department’s predecessor agency, the South Carolina Tax Commission, applied the rule of liberal construction to charitable organizations as well as government entities. See *In Re St. Francis Xavier Hospital*, S.C. Tax Comm’n, 1971 WL 18331 (Mar. 23, 1971). This ruling further demonstrates that “strict” or “liberal” construction is not dependent on arbitrary distinctions based on “property tax” versus some other type of tax, but is instead determined solely by the legislative intent and the deeply-engrained policy principle not to tax certain organizations and institutions—whether government entities (*Holliday*) or charitable organizations (*St. Francis*). This legislative intent and policy applies with equal force to sales tax and charitable organizations.

- (2) **The Court’s holding that a political subdivision cannot also be eligible for exemption from property taxation as a charitable foundation under S.C. Code Ann. § 12-37-220(A)(4) is without support under South Carolina law.**

In its May 8 Order, the Court holds that a political subdivision cannot also be a charitable foundation. (See May 8 Order, pp. 5-6.) However, this holding is contrary to the plain meaning of “foundation” as discussed on pages 16 - 17 of GHS’s Supporting Memorandum. A

“foundation” is not limited to any specific type of organizational structure. No statute, case, regulation or other authority prevents a political subdivision from also qualifying as a charitable foundation for purposes of S.C. Code Ann. § 12-37-220(A)(4). The Court’s conclusion otherwise is not supported under South Carolina law.

(3) The Court’s conclusion that a political subdivision cannot be eligible for exemption as a charitable organization under S.C. Code Ann. § 12-37-220(B)(16)(a) is in error.

(a) The Court applied an erroneous definition of “charity” or “charitable organization” not advocated by either the Department or GHS. The Court’s definition of these terms is contrary to South Carolina law, the Department’s own public advisory opinions, and the Department’s Final written Determination issued in this case.

In its May 8 Order, the Court cites and quotes definitions of the term “charity” used by the Supreme Court of Massachusetts in *Jackson v. Phillips*, 96 Mass. 539, 540 (1867) and *Webster’s Third New International Dictionary* (1993). Both of the definitions quoted by the Court from these sources define a “charity” as an entity that is founded or created by virtue of a “gift.” Applying this definition of a “charity,” the Court concluded that GHS cannot be a charity or charitable organization because it was not founded or created “by virtue of a gift.” (May 8 Order, p. 6.) Neither GHS nor the Department have suggested that such a definition or standard can or should govern the determination of whether a taxpayer is a “charity” or “charitable organization” under South Carolina tax law. The definition of “charity” and “charitable organization” contained in the Court’s May 8 Order is erroneous as a matter of law for at least three reasons:

First, no South Carolina statute, regulation, case, rule, or other authority has employed this Court’s definition of “charity” or “charitable organization” in determining whether a corporation, trust, or other association qualifies as a charity or charitable organization under any

provision of Title 12 of the South Carolina Code. Neither *Jackson v. Phillips* nor the definition quoted by the Court from *Webster's Dictionary* define "charity" or "charitable organization" under South Carolina law or involve the definition of those terms under tax law generally that has been settled for many decades.

Second, the Court errs by not applying the definition of charitable organization required under the South Carolina Code. As discussed on pages 33 - 37 of GHS's Supporting Memorandum, a detailed body of federal law under Section 501(c)(3) of the federal Internal Revenue Code and the related Treasury Regulations define the organization and operation of tax-exempt, charitable organizations. This definition has been adopted and applied by federal and state tax authorities in virtually every jurisdiction around the country—including South Carolina. The South Carolina General Assembly has expressly legislated that the terms and provisions of the Internal Revenue Code apply to state tax law. *See* S.C. Code Ann. §§ 12-6-40, -50. A number of provisions of the South Carolina Code even refer to I.R.C. § 501(c)(3) for purposes of determining whether an entity is a "charitable organization." *See, e.g.,* S.C. Code § 33-56-170; § 33-57-110.

Third, the Court's definition of charitable organization is contrary to the definition adopted and applied by the Department to the public generally and to GHS in this specific case. Consistent with and in express reliance on the provisions of the South Carolina Code cited above, the Department has adopted and applied the definition of charitable organizations used under federal tax law. Specifically, in the Department's Revenue Procedure # 03-6 setting forth the guidelines for determining whether an organization qualifies for the sales tax exemption under S.C. Code Ann. § 12-36-2120(41), the Department expressly adopts I.R.C. § 501(c)(3) as the standard for determining whether an organization qualifies for the sales tax exemption. This

public advisory opinion is binding on the Department. *See* SC Rev. Proc. # 03-6, p. 1 (noting that the advisory opinion is “binding on agency personnel”). Indeed, the Department applied the definition of charitable organization under I.R.C. § 501(c)(3) and Treasury Regulation § 1.501(c)(3)-1 in its own written Final Department Determination issued to GHS in this case. The Department’s Final Determination states:

No definition exists for the term “charitable organization” in Title 12, except to the extent addressed in the Internal Revenue Code as adopted by the General Assembly, S.C. Code Ann. § 12-6-40 (Supp. 2012). The term is defined for purposes of corporate solicitation of donations in S.C. Code Ann. § 33-56-170(1) (2006) which provides: “[c]haritable organization” means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to § 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended. That said, the “charitable” component of the exemption is two-fold under the IRC. Treas. Reg. § 1.501(c)(3)-1(a)(1) provides:

In order to be exempt as an organization described in § 501(c)(3), an organization **must be both organized and operated exclusively** for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operational test, **it is not exempt**.

(emphasis added). To that end, a tax-exempt “organization” must meet “five criteria as provided in IRC § 501(c)(3)”:

1. It must be organized exclusively for an exempt purpose;
2. It must be operated exclusively for an exempt purpose;
3. It must avoid any private inurement;
4. It must avoid substantial lobbying;
5. It must avoid any political activity.

The organizational **and** operational requirements also require exclusivity, tax exempt purpose, and keeping of various procedural requirements. Courts have added three more criteria: 1. the entity must provide a public benefit; 2. the entity must not violate established public policy; 3. the activities must not be illegal.

Darryll K. Jones, et al., The Tax Law of Charities and Other Exempt Organizations.

(DOR Final Determination, p. 20 (emphasis in original)).

For these reasons and as discussed more fully in GHS's Supporting Memorandum and GHS's Reply Memorandum, the Court should apply the definition of "charity" or "charitable organization" required under the South Carolina Code, the Department's own public guidance, and the Department's Final Department Determination in this case.

(b) The South Carolina Attorney General Opinions cited by the Department are inapposite.

The Court's May 8 Order states that it finds the reasoning of the three Attorney General Opinions cited in the DOR's Opposition Memorandum persuasive. The Court's reliance on the rationale and reasoning of these Attorney General Opinions constitutes legal error for at least three reasons.

First, these unpublished opinions are not binding or precedential authority upon which this Court can base its decision. See *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 78, 716 S.E.2d 877, 883 (2011); *Eargle v. Horry Cty.*, 344 S.C. 449, 455, 545 S.E.2d 276, 280 (2001).

Second, none of these Attorney General Opinions—all of which date from the 1970s—address the sales tax exemption for charitable organizations in Section 12-36-2120(41) or the property tax exemptions in Sections 12-37-220(A)(4) and 12-37-220(B)(16)(a). Indeed, the sales tax exemption for charitable organizations in Section 12-36-2120(41) was not even enacted until 1989. Instead, these Opinions construe and apply different statutory language pertaining to a tax unrelated to the sales tax at issue in the present case and under the old—now superseded—Code of Laws of South Carolina, 1962.

Third, even if it were possible to draw an analogy to the reasoning of these Opinions construing an inapposite provision of the 1962 Code, that reasoning is in error when applied to the present case. As discussed more fully in GHS's Reply Memorandum, the then-Attorney General's reason for finding the University of South Carolina was not exempt from collecting admissions taxes was that the University was a "public" corporation rather than a "eleemosynary" or "private" corporation. However, our Supreme Court has defined the statutory term "eleemosynary" much more broadly than did the then-Attorney General. *See, e.g., Eiserhardt v. State Agr. & Mech. Soc. of S.C.*, 235 S.C. 305, 309, 111 S.E.2d 568, 570 (1959) ("Eleemosynary corporations are those created for charitable and benevolent purposes.' . . . the word 'eleemosynary' is not a technical one of art or one which has 'acquired a rigid meaning by judicial construction.'"); *Peden v. Furman Univ.*, 155 S.C. 1, 151 S.E. 907, 914 (1930) ("Eleemosynary' has come in the law to be interchangeable with the word 'charitable.'").

For these reasons and as discussed more fully in GHS's Reply Memorandum, the Attorney General Opinions cited by the Department are inapposite and do not support the Court's legal conclusions on the Disputed Legal Issues.

- (c) **The Court's interpretation of S.C. Code Ann. § 12-36-2120(41) and § 12-37-220 is inconsistent with the plain language of the statutes and the Department's own regulations and binding advisory opinions providing public guidance on the construction and application of these statutory provisions.**

In its analysis of the text of the sales tax exemption provision in Section 12-36-2120(41) and the related provisions of Section 12-37-220, the Court concluded that the absence of the property tax exemption for political subdivisions under Section 12-37-220(A)(1) and the property tax exemption for "charitable institutions in the nature of hospitals" under Section 12-37-220(A)(2) from Section 12-36-2120(41), indicated that the Legislature intended that political

subdivisions and hospitals could not qualify for the sales tax exemption. However, no language in Section 12-36-2120(41) limits its application to those organizations exempt from property tax *exclusively* under one of the enumerated property tax provisions. Likewise, there is no language in Section 12-37-220 which provides that an organization can be eligible for the property tax exemption under only one provision of the statute. Had the Legislature intended to limit eligibility for the sales tax exemption to only those organizations exempt exclusively under the property tax exemption provisions listed in Section 12-36-2120(41), it could have plainly said so. See *Buist v. Huggins*, 367 S.C. 268, 277, 625 S.E.2d 636, 640 (2006) (holding that, if the Legislature had intended a certain result in the statute, “it could have plainly said so”); *Tilley v. Pacesetter*, 333 S.C. 33, 40, 508 S.E.2d 16, 20 (1998) (holding same). The Legislature did not include any term or provision suggesting that limitation. Absent such express language from the Legislature, there is no basis for insertion of an additional requirement into Section 12-36-2120(41). See, e.g., *Ferguson Fire & Fabrication, Inc. v. Preferred Fire Prot., LLC*, 409 S.C. 331, 343, 762 S.E.2d 561, 567 (2014) (holding that “[w]e are not at liberty, under the guise of construction, to alter the plain language of a statute by adding words which the Legislature saw fit not to include”).

Indeed, the interpretation of these statutes now advocated by the Department in this contested case is contrary to the Department’s own regulations and binding advisory opinions on the application of Section 12-36-2120(41). As discussed on page 11 of GHS’s Reply Memorandum, the Department has formally promulgated and adopted a regulation concerning the application of the sales tax to political subdivisions, which provides:

Sales of tangible personal property by the State, counties, municipalities and other political subdivisions of the State (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) are subject to the sales tax, unless such sales fall within

the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

S.C. Code Ann. Regs. 117-304 (emphasis added). While the regulation does provide that political subdivisions are subject to sales tax, the qualifying language “**unless such sales . . . are otherwise exempt**” followed by citation to the general sales tax exemption statutes indicates that a political subdivision can qualify for the sales tax exemptions under Section 12-36-2120, including subsection (41). It is a long established principle that “[a] state agency is bound to follow its own regulations.” *W. Carolina Reg'l Sewer Auth.*, No. 98-ALJ-07-0267-CC, 1999 WL 1016064, at *37 (Sept. 22, 1999); *see also Ogburn-Matthews v. Loblolly Partners (Ricefields Subdivision)*, 332 S.C. 551, 562, 505 S.E.2d 598, 603 (Ct. App. 1998) (“An administrative board must follow its own rules and regulations.”).

Additionally, the Department issued SC Revenue Procedure #03-6 expressly “to provide guidelines for determining whether an organization qualifies for an exemption certificate issued pursuant to Code Section 12-36-2120(41).” The Revenue Procedure states that “[a]n organization is not qualified for an exemption certificate if it is . . . [e]xempt from property tax, but under a code section not listed in Code Section 12-36-2120(41).” However, in the next paragraph of the Revenue Procedure, the Department explains that organizations exempt from property tax under a code section not listed in Section 12-36-2120(41) “may also qualify” for one of the exemptions that is listed in the statute:

Note: Code Section 12-37-220 provides specific property tax exemptions for the State of South Carolina, its counties, municipalities, school districts, and other political authorities or subdivisions; private schools, colleges and other institutions of learning; nonprofit hospitals and nonprofit institutions which care for the infirmed, the handicapped, the aged, children or indigent persons; and nonprofit museums. The property tax exemptions for

these organizations are not specifically listed in Code Section 12-36-2120(41).

However, some of these organizations may also qualify for a property tax exemption listed in Code Section 12-36-2120(41). For example, a private school may qualify for the property tax exemption under Code Section 12-37-220(B)(16)(a) established for certain religious, charitable, eleemosynary or educational organizations.

SC Rev. Proc. #03-6 (p. 4) (emphasis added). Therefore, the Court's ruling in its May 8 Order is contrary to the Department's own formal regulation and published advisory opinions—both of which are binding on the Department—and upon which the taxpayers of South Carolina, including GHS, have justifiably relied for more than a decade and which remain in effect today.

For these reasons, and as discussed more fully in GHS's Supporting Memorandum and GHS's Reply Memorandum, the plain language of Sections 12-36-2120(41) and 12-37-220 requires finding that a political subdivision can qualify for the sales tax exemption.

B. The Court's May 8 Order renders findings of fact not permitted under the procedure set forth in the January 18 Consent Order Governing Further Proceedings and the procedure for ruling on motions for summary judgment under Rule 56, SCRPC.

In its May 8 Order, the Court stated that "there is no material dispute as to the facts relevant to the legal issues presented by the motions of the parties." (May 8 Order, p. 2). GHS respectfully disagrees with this statement. There are many factual issues that are disputed by GHS and the Department. However, the procedure agreed upon by the parties and approved by the Court in its Consent Order contemplated setting aside the disputed factual issues to address the narrowly drawn Disputed Legal Issues. As described in the Consent Order, the Court's ruling on these Disputed Legal Issues would serve to guide the Court and the parties on the nature and extent of factual issues that would be presented to the Court at the final evidentiary hearing.

The Court's May 8 Order, however, is not limited to findings and conclusions on the Disputed Legal Issues, but also contains factual findings on disputed issues of fact. As discussed in Section IV.A.(3) above, the Court's May 8 Order quotes definitions of "charity" and "charitable organizations" articulated by a Massachusetts court and in *Webster's Dictionary*. The Court then made the factual finding that "[i]t is clear that GHS does not fall within the plain language meaning of a charity or charitable organization by either of those definitions." The Court appears to base this factual finding on the Department's argument that the legislation creating GHS as a political subdivision granted GHS certain powers and obligations. GHS strongly objected to the Department's attempt to insert factual issues into the consideration of the Disputed Legal Issues:

Rather than address the narrow legal question presented under Issue "A," the Department attempts to side step the issue by offering *factual* arguments as to why it believes GHS in particular does not fall within the meaning of "charitable foundation" or "charitable organization." While GHS strongly disagrees with the Department's factual allegations and conclusions, these factual issues are not properly before the Court for decision at this time. As stated in this Court's January 18, 2017 Consent Order Governing Further Proceedings, the purpose of the present motion and briefing is to address and resolve several key disputed *legal* issues in order to narrow and focus the factual issues for presentation to the Court at the final hearing. (Consent Order, pp. 2-3.) Whether GHS falls within the meaning of "charitable foundation" or "charitable organization" as those terms are defined under the statutes and applicable tax law is a factual issue for this Court to decide after presentation of competent, admissible evidence at the final hearing.

(GHS's Reply Mem. at 9 (footnote omitted)). GHS reiterates this objection. As further stated in GHS's Reply Memorandum, "even if such powers and authority could be a basis for finding GHS does not qualify for the requested exemption, there is no evidence as to whether GHS has used those powers and, if so, when and for what purpose. Assuming such factual issues are even

relevant, they will be ripe for decision upon consideration of admissible evidence at the final hearing in this matter.” (*Id.* at 9-10.)

Additionally, the Court’s May 8 Order made the finding that “[a]gencies, political subdivisions, and other instrumentalities of South Carolina government have long paid taxes on gross proceeds of sales derived from retail sales made by the government entity.” (May 8 Order, p. 4.) While GHS would expect that some government agencies or political subdivisions are required to pay sales taxes (*i.e.*, those that do not meet the requirements for charitable organizations under Section 12-36-2120(41)), there is no evidence in the record in this case regarding the facts or circumstances pertaining to whether or to what extent any other governmental entity in South Carolina does or does not pay sales taxes.

By exceeding the parameters of the Disputed Legal Issues presented in the Court’s January 18 Consent Order and making factual findings, GHS is denied the opportunity to present admissible evidence at the final hearing on these issues. Likewise, the factual findings contained in the Court’s May 8 Order exceed the scope of findings permitted under the procedure for summary judgment prescribed under Rule 56, SCRPC. *See, e.g., USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 653, 661 S.E.2d 791, 796 (2008) (“Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied.”). As noted above, the Department did not file a motion for summary judgment on any issue in this case. The only matters presented to the Court were the Disputed Legal Issues to be decided in accordance with the procedure set forth in this Court’s Consent Order. GHS renews its objection to consideration of any disputed factual issues and objects to the conversion of the procedure set forth in the

Court's Consent Order into general cross motions for summary judgment. *See, e.g., Outlaw v. Barnes*, 118 S.C. 189, 110 S.E.2d 124 (1919) (holding that a consent order cannot be materially or substantially changed without the consent of all parties); *Johnson v. Johnson*, 310 S.C. 44, 425 S.E.2d 46, 48 (Ct. App. 1992) (holding that a consent order cannot "be set aside in part so that one party is absolved from the duty imposed by it, while the same party retains the benefit it confers). GHS respectfully submits that the Court should reconsider, alter, or amend its May 8 Order to remove any findings or conclusions beyond the scope of the Disputed Legal Issues set forth in the Court's Consent Order.

C. The Court's May 8 Order does not address and rule on all of the issues, arguments, and authorities cited and discussed in GHS's Motion and briefing submitted in support of its positions on each of the Disputed Legal Issues.

In accordance with the procedure required under ALC Rule 29.D and Rule 59, SCRCP, GHS requests that the Court rule on all of the issues, arguments, and legal authorities presented in its Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues, GHS's Supporting Memorandum, and GHS's Reply Memorandum. The Court's May 8 Order indicates that the Court's ruling was limited to Disputed Legal Issues "A" and "B" and that, based on its conclusions as to those issues, "the remaining questions presented by the parties need not be reached." (May 8 Order, p. 8).

First, in the discussion and analysis of Disputed Legal Issues "A" and "B" contained in the Court's May 8 Order, the Court did not address and rule on all of the issues and arguments raised in GHS's Supporting Memorandum and GHS's Reply Memorandum, including, but not limited to:

- GHS's specific arguments and authorities concerning the interpretation and application of S.C. Code § 12-36-2120(41) and § 12-37-220 under the controlling principles of statutory interpretation in South Carolina;
- GHS's arguments regarding the application and effect of the Department's regulations, binding public advisory opinions, and final written Department Determination interpreting and applying the statutory provisions at issue in this case, including, but not limited to, S.C. Code Ann. Regs. 117-304, SC Rev. Proc. # 03-6;
- GHS's arguments regarding the application and effect of the South Carolina General Assembly's and the Department's adoption, use, and incorporation of the relevant provisions of the federal Internal Revenue Code and related Treasury Regulations, including, but not limited to, S.C. Code Ann. §§ 12-6-40, -50; § 33-56-170; § 33-57-110; SC Rev. Proc. # 03-6.

GHS respectfully requests that the Court consider and address all of the issues and arguments raised by GHS in GHS's Supporting Memorandum and in GHS's Reply Memorandum as they pertain to the Disputed Legal Issues expressly ruled upon by the Court.

Second, because GHS submits it is entitled to a ruling in its favor on Disputed Legal Issues "A" and "B," GHS further requests that the Court address and rule on each of the other Disputed Legal Issues set forth in the Court's Consent Order and briefed by the parties. For the reasons set forth in GHS's Supporting Memorandum and GHS's Reply Memorandum, GHS respectfully requests that the Court reconsider, alter, or amend its May 8 Order to rule in GHS's favor on each of the Disputed Legal Issues as follows:

- As to **Issue “A,”** this Court should rule that GHS’s status as a political subdivision exempt from property taxation pursuant to Section 12-37-220(A)(1) does not render GHS ineligible for the sales tax exemption under Section 12-36-2120(41) presuming it also qualifies for the tax exemption under Section 12-37-220(A)(4) or (B)(16)(a).
- As to **Issue “B,”** this Court should rule that GHS is not foreclosed from qualifying for the sales tax exemption under Section 12-36-2120(41) merely because it was created and organized as a political subdivision of the State of South Carolina.
- As to **Issue “C,”** this Court should rule that the proscription against inurement in Section 12-36-2120(41) prohibits benefit inuring to an individual “from the sales” of any tangible personal property GHS has sold to the public.
- As to **Issue “D,”** this Court should rule that the prohibition against inurement in § 12-36-2120(41) and § 12-37-220(B)(16)(a) applies only to benefit that may inure to “insiders” of GHS as that term is defined and applied under federal tax law and IRS interpretations.
- As to **Issue “E,”** the Court should rule that compensation arrangements between employed physicians and GHS (or its affiliate, PIH) which base the physicians’ compensation on the revenue generated by the individual physician’s clinical department or practice group does not “automatically” or “per se” result in private inurement. Rather, the court must determine whether the compensation paid to any insider physician was reasonable.
- As to **Issue “F,”** the Court should rule that the “charitable” component of the requirement under Sections 12-37-220(B)(16)(a) and 12-37-220(A)(4) that the organization be a “charitable” corporation, trust, foundation, or other association is determined according to the “organizational and operational tests” prescribed under Treas. Reg. § 1.501(c)(3)-1.
- As to **Issue “G,”** the Court should rule that the requirement under Treasury Regulation § 1.501(c)(3)-1 that the organization be operated or used “exclusively” for charitable or public purposes means that GHS “engages primarily in activities” which accomplish those purposes and that no “more than an insubstantial part of its activities is not in furtherance of an exempt purpose” as provided under Treasury Regulation § 1.501(c)(3)-1(c)(1).

V. CONCLUSION

For all of the foregoing reasons, and for the reasons and grounds set forth in GHS’s Memorandum in Support of Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues (filed February 3, 2017) and GHS’s Reply Memorandum in Support of Motion for Partial Summary Judgment and/or Ruling on Disputed Legal Issues (filed March 21, 2017), both

of which are incorporated herein, it is respectfully requested that this Court issue an amended order finding in favor of GHS on each of the Disputed Legal Issues set forth in this Court's January 18, 2017 Consent Order Governing Further Proceedings.

Respectfully submitted,

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May 17, 2017
Greenville, South Carolina

Greenville Hospital System, Inc.,
Petitioner,
v.
South Carolina Department of Revenue
Respondent.

**MEMORANDUM IN OPPOSITION TO
PETITIONER'S MOTION FOR
RECONSIDERATION**

STATEMENT OF THE CASE

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opposition to GHS' motion, several of the issues, if answered in the Department's favor, will be dispositive of GHS' case." (Memorandum, page 1) Further, the Memorandum concluded with the following: "The Department further asserts that its positions on Issue A, B, D or E are dispositive of this case and would result in the denial of the claimed sales and use tax exemption." (Memorandum, page 31) On May 8, 2017, this Court issued its Order finding against GHS on Issue A - whether GHS, an entity exempt from ad valorem property taxes under S.C. Code Ann. § 12-37-220(A)(1) as a political subdivision is eligible for any of the property tax exemptions listed in § 12-36-2120(41)? Because of its ruling on this issue, other issues raised by the parties became moot and judgment was rendered against GHS. GHS now requests that this Court reconsider this decision. The Department asserts the no such reconsideration is required under the law.

RESPONSE to GHS' ARGUMENTS

I. The Rule Of Strict Construction Of Sales Tax Exemption Statutes Applies To GHS' Application For Exemption.

The Petitioner first challenges the Court's rejection of its argument that the sales tax exemption statute at issue should be construed liberally because GHS is a political subdivision. ("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.")(Order, page 4) Sales tax exemption statutes are strictly construed against the exemption. See, TNS Mills, Inc. v. South Carolina Dep't of Revenue, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998). GHS relies on Town of Myrtle Beach v. Holliday, 203 S.C. 25, 30, 26 S.E.2d 12, 14 (1943), which recognized that property tax exemptions for governmental subdivisions may be construed liberally, to argue that the normal rule of strict construction for sales tax exemptions should be relaxed for GHS. As the Department expressed in its

Memorandum, however, Holliday is distinguishable from the instant case because at issue here are sales taxes and not property taxes. (Memorandum, pages 7-9). The Department believes that the Court's decision not to apply Holliday here is correct and relies on the Court's rationale as well as the arguments it put forward in its Memorandum. ¹ More importantly, the Petitioner overlooks the Court's additional observation:

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. [citations omitted]

¹GHS cites *In Re: St. Francis Xavier Hospital*, S.C. Tax Comm'n, 1971 WL 18331 for its assertion that "strict or liberal construction is not dependent on arbitrary distinctions based on property tax versus some other type of tax, but is instead determined solely by the legislative intent and the deeply-ingrained policy principle not to tax certain organizations and institutions – whether governmental entities (Holliday) or charitable organizations (St. Francis). This legislative intent and policy applies with equal force to sales tax and charitable organizations." (GHS Motion for Reconsideration, p. 5). While the Department does not believe that distinctions between property tax exemptions, sales tax exemptions or any other kind of tax should be characterized as "arbitrary", there is agreement on the general principle, as found by this Court here, that legislative intent must control the application of exemption statutes. It should be noted that the issue in *St. Francis* was whether the hospital was exempt from property taxes on real and personal property. The Tax Commission examined the General Assembly's intent with regard to the statutes at issue and determined that it was proper to exempt St. Francis' real and personal property from property tax. Contrary to the Petitioner's suggestion, however, this same legislative intent does not extend to exemptions from sales taxes for governmental subdivisions. It must be further noted that the same St. Francis Hospital (or some related iteration thereof) was one of the taxpayers seeking a sales tax exemption for medical devices in CareAlliance Health Services, d/b/a St. Francis Roper Alliance v. South Carolina Dept. of Revenue, 416 S.C. 484, 787 S.E.2d 475 (2016). In denying the sought after exemption, the Supreme Court cited TNS Mills v. S.C. Dep't of Revenue for the proposition that "tax exemption statutes are strictly construed against the claimed exemption. 416 S.E.2d at 487.

Order, pages 4-5. (Emphasis added). The result here, that the Petitioner, as a government subdivision, is not entitled to exemption under § 12-36-2120(41) is clear inasmuch as GHS does not qualify for the exemption on the face of the statute itself. (In listing the entities that qualify for the sales tax exemption [§ 12-36-2120(41)] 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.”) (Order, p.7)

II. The Court’s Conclusion That A Political Subdivision Cannot Be Exempt From Property Taxation As A Charitable Foundation Under S.C. Code Ann. § 12-37-220(A)(4) Is Correct.

GHS complains that the Court offers no citation of authority for its determination that a political subdivision cannot also be a “foundation” or “fund” established for charitable purposes. The only support the Petitioner offered for its proposition that a government subdivision could be a “foundation” consists of legal definitions. As the Department pointed out in its Memorandum, the definition of “foundation” cited by GHS -- “a fund established for charitable, educational, religious, research or other benevolent purposes” – undercuts its assertion that GHS is a charitable foundation. GHS is not a “fund” but instead is a political subdivision established by the General Assembly for the purpose of operating a public hospital. (Memorandum, p.12) Even a cursory examination of the statutes creating GHS and outlining its authority and powers reveals that the General Assembly did not intend to establish a fund of any kind when it created GHS.

(Memorandum pages 13 – 16).² As a matter of law, therefore, GHS cannot be a charitable foundation within the meaning of § 12-37-220(A)(4).

III. The Court's Conclusion That A Political Subdivision Cannot Be Eligible For An Exemption As A Charitable Organization Under S.C. Code Ann. § 12-37-220(B)(16)(A) Is Correct.

A. GHS' complaint that the Court used an incorrect definition of "charity" or "charitable organization" is misplaced.

GHS maintains that the Court erred when it used definitions for the terms "charity" or "charitable organizations" not advanced by the parties or used in the Department Determination or Department policy documents. GHS also asserts that the definitions of these terms used by the Court are contrary to South Carolina law. The Petitioner's criticism is misplaced as the Court committed no error of law.

The ALC hears cases from administrative agencies de novo, meaning that it is not bound by the determination of the administrative agency on any legal or factual issues. Similarly, the ALC is not bound by the legal arguments advanced by a taxpayer requesting the contested case hearing. Furthermore, the Court here is free to rely upon persuasive authority from other jurisdictions as it deems fit.³

²GHS curiously included the definition of "private operating foundation" – "a private foundation that conducts its own charitable program rather than making grants to other charitable organizations" in its Memorandum in Support of its Motion for Summary Judgment (GHS Memorandum in Support of Motion for Partial Summary Judgment, page 16). Neither GHS nor any other governmental subdivision is a private operating foundation or a private foundation within the meaning of the offered terms.

³The Department strenuously objects to Petitioner's assertion that the definitions of "charitable" used by the Court are erroneous as a matter of law. In fact, the definition used in Jackson v. Phillips, 96 Mass. 539, 556 (1867) has been cited by courts of this State. See, Harter v. Johnson, 122 S.C. 96 (1922). More important, however, is the language this Court emphasized in the excerpt from Jackson – "A charity, in the legal sense, may be more fully defined as a gift,

Nevertheless, the Petitioner contends the Court erred when it did not use a definition of the term "charitable organization" as specified under 26 U.S.C. 501(c)(3). This argument is without merit. The issue in this case is not whether GHS is a charitable organization under § 501(c)(3). In fact, the Department, in its Memorandum, acknowledged that GHS had been recognized as a § 501(c)(3) tax exempt organization by the Internal Revenue Service. (Memorandum, p. 12) Instead the issue is whether its § 501(c)(3) status affirmatively answers the question whether a government subdivision can be a "charitable ...society, corporation, trust or other association" within the meaning of § 12-37-220(B)(16)(a) for the purpose of a property tax exemption under South Carolina State law. As found by this Court, and explained by the Department in its Memorandum, this question must be answered in the negative. (Order, p. 6, fn. 4; Memorandum, pp. 12-13) As a matter of law, the General Assembly has given no suggestion that it intended to allow a government subdivision to be a charitable organization for the purposes of the property tax exemption under § 12-37-220(B)(16)(a).

The Department outlined the powers and authority afforded to GHS as a government subdivision by the General Assembly and contended that the wide ranging grant of authority, to include the power of eminent domain and police power, was patently inconsistent with GHS being recognized as a charitable organization for the purposes of § 12-37-220(B)(16)(a).⁴ Put more

to be applied consistently with existing laws, for the benefit of an indefinite number of persons...or *otherwise lessening the burden of government.*" (Order, page 6) This passage makes clear the fallacy of the Petitioner's argument: GHS, by virtue of its legislative creation and grant of authority, is an arm of the government so its functions, by definition, do not "lessen the burden of government." While some of GHS' activities may be characterized as "charitable," its status as a government subdivision is antithetical to its sought-after status as a charitable organization.

⁴GHS' criticisms of the Department's references to its authority as set out in legislative acts of this State are unfounded. More importantly, GHS offers no substantive rebuttal to the

directly, charitable organizations, no matter the definition, do not have the power and authority to condemn property for public purposes or the power and authority to arrest citizens for violating the law. Moreover, there is no explicit power or authority vested in GHS by the General Assembly from which the ability to be a charitable organization for the purposes of § 12-27-220(B)(16)(a) can reasonably be inferred. (Memorandum, pages 13-16) There is no question that GHS performs beneficial services to the public, however, it does so as a government entity and not as a charitable organization. As recounted by the Court, "While GHS' services and facilities may be intended for the public benefit, they have been so dedicated for civic purposes by the State to a government subdivision and not by virtue of a gift. See 2013 S.C. Act 105 § 1 ("For the purpose of operating and at all times maintaining adequate hospital facilities for the residents of Greenville County . . . there is established the Greenville Health System."). (Order, page 6) Whatever the "charitable" work or services being performed by GHS, GHS is carrying out these activities as a government subdivision created to operate a hospital. ⁵

B. The Court's Use of S.C. Attorney General's Opinions Was Proper.

The Petitioner next challenges the Court's reference to various Attorney General's Opinions cited by the Department. This argument, too, must fail. In observing that the Attorney

proposition that its expansive grant of power and authority are inconsistent with the claimed status of being a charitable organization. See also, footnote 7, below.

⁵The Petitioner goes to great length to quote from the Department Determination and Rev. Proc. #03-6 regarding the Department's use of § 501(c)(3) to determine whether an organization can be classified as a "charitable organization." Implicit in the Department's employment of this test is the prerequisite that the entity under consideration can be eligible to become a § 501(c)(3) organization for the purposes its status is being evaluated. Here, for the purposes of the property tax exemption under § 12-37-220(B)(16)(a), GHS is not eligible to become a charitable organization. It is thus not necessary to employ the §501(c)(3) calculus because GHS has not satisfied a necessary prerequisite.

General Opinions are persuasive, the Court clearly acknowledges their limitations by recognizing that they are “not binding on this Court.” (Order, page 7) The Court is correct that the rationale of the Attorney General’s Opinions that the University of South Carolina cannot be exempted from admissions taxes and that Patriot’s Point cannot be exempted from sales taxes – is applicable here. (Order, page 7; Memorandum, pages 17 – 10) The Petitioner counters that the term “eleemosynary” has been defined more broadly than did the Attorney General in the opinions and cites Eiserhardt v. State Agr. & Mech. Soc. of S.C., 235 S.C. 305, 309, 111 S.E.2d 568, 570 (1959) for the proposition that “[e]leemosynary corporations are those created for charitable and benevolent purposes...the word “eleemosynary” is not a technical one of art or one which has “acquired a rigid meaning by judicial construction.” (Motion, pages 9-10) This does not help the Petitioner because no matter the validity of this proposition, GHS is still a government subdivision expressly created to operate a public hospital. While this purpose is certainly “benevolent,” there is nothing in the laws creating GHS or enumerating its powers and authority to suggest the General Assembly intended GHS to be an eleemosynary or charitable corporation with the meaning of § 12-37-220(B)(16)(a). This point is particularly important given that in Eiserhardt, the General Assembly specifically declared the State Agr. & Mech. Soc. of S.C. to be an eleemosynary corporation: “Appellant was incorporated by Act No. 277 of the 1941 Acts of the General Assembly, 42 Stat. at L. p. 551. It was declared to be “an eleemosynary corporation,’ whose function shall be to promote the material, educational, agricultural and industrial interests of the State.” 111 S.E.2d at 570 The General Assembly, which certainly knew how to make this designation, did not similarly declare GHS to be an “eleemosynary corporation” at its creation in 1947.

C. The Court's interpretation of § 12-36-2120(41) and § 12-37-220 is consistent with the governing statutes, regulations and Department policy guidance.

The Petitioner next argues that the Court's ruling is not consistent with the plain language of § 12-36-2120(41) and § 12-37-220:

"However, no language in Section 12-36-2120(41) limits its application to those organizations exempt from property tax exclusively under one of the enumerated property tax provisions. Likewise there is no language in Section 12-37-220 which provides that an organization can be eligible for the property tax exemption under only one provision of the statute. Had the General Assembly intended to limit eligibility for the sales tax exemption to only those organizations exempt exclusively under the property tax exemption provisions listed in 12-36-2120(41) it could have plainly said so.

Motion for Reconsideration, p. 11 (emphasis added). GHS' argument is without merit.

By its literal terms, only those organizations that are exempt from property taxes under one of the enumerated property tax exemptions are potentially exempt from sales tax under § 12-36-2120(41). GHS, a government subdivision operating a public hospital, is exempt from property taxes under § 12-37-220(A) (1). Section 12-37-220(A) (1) is not one of the qualifying property tax exemptions listed in § 12-36-2120(41). As such, GHS does not qualify for sales tax exemption under § 12-36-2120(41). The plain language of the governing statutes compels this conclusion. There can be no clearer indication of legislative intent: The General Assembly has dictated that an organization exempt from sales taxes under § 12-36-2120(41) be exempt from property tax under one of the listed property tax exemptions – GHS' property tax exemption statute, § 12-37-220(A)(1), is not among the listed exemptions; thus, GHS does not qualify. Even without the rule that sales tax exemption statutes are to be strictly construed, the plain language of § 12-36-2120(41) cannot support a contrary result. Given this context, GHS' statement "[h]ad the General

Assembly intended to limit eligibility for the sales tax exemption to only those organizations exempt exclusively under the property tax exemption provisions listed in § 12-36-2120(41) it could have plainly said so” is remarkable. The exemption statute is plain - an entity not exempt under one of the enumerated property tax provisions cannot legally qualify for the sales tax exemption. While GHS complains about the Court’s construction of this list as “exclusive,” this is the statutory framework given by the General Assembly and that language must be followed.

GHS’ case is premised on the supposition that it can qualify for property tax exemptions under § 12-37-220(A)(4) and § 12-37-220(B)(16)(a) which are among qualifying property tax exemption statutes listed in § 12-36-2120(41). The Court duly evaluated GHS’ reasoning and explained why GHS cannot so qualify. (Order, pages 5-6) The Department agrees with this Court’s conclusions and its rationale. The Department further relies on the reasons given its Memorandum at pages 11-16 why GHS does not qualify for property tax exemption under § 12-37-220(A)(4) or § 12-37-220(B)(16)(a).

GHS next cites to Reg. 117-304 to argue that the Department has abandoned its fidelity to its regulatory framework. There is nothing about the Department’s position in this case or the Court’s Order which is inconsistent with Reg. 117-304 or any other regulation. Reg. 117-304 provides in pertinent part:

Sales of tangible personal property by the State, counties, municipalities and other political subdivisions of the State (e.g. schools, sheriff offices, municipal housing authorities, welfare agencies) are subject to the sales tax, unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)

Coupled with its "exclusivity argument," GHS points to the language "unless such sales fall within Regulation 110-304.1 or are otherwise exempt" to argue the Court erred its conclusion that GHS, as a political subdivision, is not exempt from sales taxes under § 12-36-2120(41). However, the Court fully considered GHS' arguments that it was exempt from property taxes under § 12-37-220(A)(4) and § 12-37-220(B)(16)(a) and found, as a matter of law, that GHS cannot qualify for these exemptions. It was only after reaching these conclusions that the Court ruled GHS was not exempt from sales taxes under § 12-36-2120(41). Similarly, in its Memorandum, the Department painstakingly analyzed GHS' claims that it was exempt under other property tax exemptions.⁶

For similar reasons, the Department urges rejection of GHS' argument that the Department has abandoned its policy document, S.C. Rev. Proc. #03-6. (Memorandum, pages 9- 10)

IV. The Court Did Not Make Impermissible Findings Of Fact.

GHS next argues that this Court's Order renders certain "findings of fact on disputed issues of fact." The examples GHS offered of this supposed fact finding, however, do not support this assertion. GHS first complains that the Court made the "factual" finding that GHS does not fall within the definition of "charity" and 'charitable organization' articulated by a

⁶The Department would respectfully point out that GHS' reliance on Reg. 117-304 serves to underscore the difference between this case and Holliday. The liberal construction for property tax exemptions in Holliday was premised on the idea that government subdivisions did not generally pay property taxes. Reg. 117-304 plainly states that government subdivisions routinely pay sales taxes, thus providing additional support for application of the rule of "strict construction" of sales tax exemptions here. Moreover, as pointed out by the Court in its Order, the governing statutes impose the liability to pay sales and use taxes on state government and its political subdivisions. (Order, page 4).

Massachusetts court and in Webster's Dictionary" and offers that this Court "appears to base this factual finding on the Department's argument that the legislation creating GHS as a political subdivision granted GHS certain powers and obligations." (Motion, page 14).⁷ The Court did not need to rely on any disputed facts to make the determination that GHS is not a "charitable organization" within the meaning of the cited definitions. Rebutting GHS' argument here is best done by reference to the Court's language:

The next question, then, is whether a political subdivision might also qualify as a "charitable . . . society, corporation, trust or other association." GHS argues that whether its organization falls within the meaning of "charitable organization" under the statute is a factual issue for the Court to decide. The first issue to confront in that analysis is whether, as a general principle, a government entity may also qualify as a charitable organization.⁴ The Department argues against that principle. DOR points to the broad power and authority granted to GHS by the General Assembly, including the power of eminent domain, as being incompatible with its claimed status as a charitable association. 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.*

⁷GHS apparently believes the Department introduced factual matters into its arguments on summary judgment by reciting the legislation creating GHS and listing the powers and authority granted to GHS by the General Assembly. This is without merit inasmuch as the creation of GHS and its legislative grant of power is a matter of statute. Further, it makes no difference whether GHS has ever exercised the power of eminent domain or whether it has ever used its police power. Instead, what is important is that the General Assembly has imbued GHS with these powers as a government subdivision; these wide-ranging powers are patently inconsistent with its claimed status as a "foundation" within the meaning of § 12-37-220(A)(4) or a "charitable organization" within the meaning of § 12-37-220(B)(16)(a).

Jackson v. Phillips, 96 Mass. 539, 556 (1867) (emphasis added); see also 1985 S.C. Op. Atty. Gen. 345, 1985 WL 166095 at *1.

The dictionary gives, among others, the following definition of charity: “an institution (as a hospital, library, or school) founded by a gift and intended for the use of the public.” Webster’s Third New International Dictionary 378 (1993). It is clear that GHS does not fall within the plain language meaning of a charity or charitable organization by either of those definitions. While GHS’ services and facilities may be intended for the public benefit, they have been so dedicated for civic purposes by the State to a government subdivision and not by virtue of a gift. See 2013 S.C. Act 105 § 1 (“For the purpose of operating and at all times maintaining adequate hospital facilities for the residents of Greenville County . . . there is established the Greenville Health System.”).

Order, page 6 (emphasis added).

Finally, in this regard, GHS complains that the Court improperly made the factual finding that “[a]gencies, political subdivisions and other instrumentalities of South Carolina have long paid taxes on gross proceeds of sales derived from retail sales made by the government entity.” Reg. 117-304 itself, cited and relied upon by GHS, effectively undercuts this argument. That regulation, which became effective in 2002 and was amended in 2008, recognized that “[s]ales of tangible personal property made by the State, municipalities and other political subdivisions of the State are subject to the sales and use tax unless such sales fall within the provisions of Regulation 117-304.1 (transfers by State agencies to other agencies, counties or municipalities at cost) or are otherwise exempt. (See Code Sections 12-36-2120 and 12-36-2130 for the exemptions.)” Even a cursory review of § 12-36-2120 and § 12-36-2130 reveal that these statutes afford no broad sales tax exemption to government subdivisions. Instead, these statutes generally may exempt discrete sales transactions in which government

subdivisions may engage. Furthermore, a government subdivision exempt from property tax under § 12-37-220(A)(1) is not eligible for the sales tax exemption under § 12-36-212-0(41).

V. Because Of The Court's Rulings On The Dispositive Issues, The Remainder Of GHS' Arguments Have Become Moot.

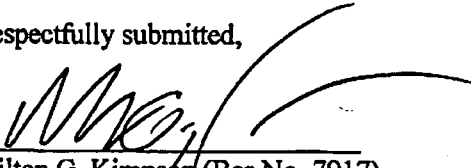
GHS next argues that the Court should rule on the remaining issues. The Court's rulings on Issue A has disposed of this case. As such, there is no need for the Court to rule on any remaining issues. Nevertheless, the Department respectfully relies upon its arguments contained in its Memorandum to answer the Petitioner's allegations regarding these issues.

(Memorandum, pages 20 – 31).

CONCLUSION

Based on the foregoing, the South Carolina Department of Revenue respectfully requests that the Petitioner's Motion for Reconsideration be denied.

Respectfully submitted,



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Columbia, South Carolina
June 2, 2017

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT DIVISION
Docket No. 13-ALJ-17-0523-CC

Greenville Hospital System,)
)
 Petitioner,)
)
v.)
)
South Carolina Department of)
Revenue,)
)
 Respondent.)
-----)

ADMINISTRATIVE HEARING

Thursday, June 15, 2017
10:01 a.m. - 10:37 a.m.

The hearing before the Honorable Deborah Brooks Durden, was taken at the Edgar A. Brown Building, 1205 Pendleton Street, Suite 224, Columbia, South Carolina, on the 15th day of June, 2017 before M. Sean Cary, Court Reporter and Notary Public in and for the State of South Carolina.



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 Marcus D. Antley, III, Attorney at Law

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EXHIBITS

(No exhibits were marked during this hearing.)

STIPULATIONS

It is stipulated and agreed that this hearing is being taken pursuant to the rules of the Administrative Law Court and the South Carolina Rules of Civil Procedure.



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1 **THE COURT:** Okay. We're here this morning for an
2 oral argument on the Petitioner's Motion for
3 Reconsideration in Greenville Hospital System,
4 Petitioner versus South Carolina Department of
5 Revenue, Respondent. It's Docket Number 13-ALJ
6 -- ALJ-170523. Mr. McLean, I appreciated you
7 being here. I'm sorry, I know this was not a
8 convenient day for your law firm, but it didn't
9 seem like we ---

10 **MR. McLEAN:** No ---

11 **THE COURT:** --- find a convenient day, but we ---

12 **MR. McLEAN:** Thank you for the opportunity, Your
13 Honor. And one of the advantages in being in
14 a law firm with several lawyers is there's
15 always a fourth stringer like me who can come
16 and ---

17 **THE COURT:** Fourth stringer, I think that might be a
18 very modest description of your position here,
19 but I will try not to -- I know you're not the
20 attorney that's the most familiar with, but I
21 don't think that the matters that I really want
22 to discuss today are going to -- to handicap
23 you too much in pinch hitting today.

24 **MR. McLEAN:** Certainly.

25 **THE COURT:** So, Mr. Kimpson, it's good to see you



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1 today.

2 **MR. KIMPSON:** Good morning, how are you?

3 **THE COURT:** Good. I just thought I would begin by
4 telling you sort of where I am in my thinking
5 so that y'all can sort of address the
6 questions about that I have in my mind. As you
7 know, in response to the legal issues that were
8 presented to me for a decision by a consent of
9 the parties I ruled that an entity that was
10 exempt under 12-37-220(A)(1), it's a political
11 subdivision, is not eligible for property tax
12 exemption under 12-36-2120(41). Now I spent a
13 lot of time carefully considering and
14 researching that decision, and I don't expect
15 to change that in response to the Motion for
16 Reconsideration. So, what I do really want to
17 talk about are some other issues that were
18 raised in the Motion for Reconsideration.
19 First of all, Greenville Hospital System has
20 objected to my Order in that stating that it
21 converts the procedure set forth in the January
22 Consent Order into general Motions for Summary
23 Judgement, and that is true. The Department of
24 Revenue never explicitly made a Motion for
25 Summary Judgement, but they did, in addition to



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1 the parties, consent that I rule on those
2 issues. The department stated that it was
3 dispositive if I ruled in the department's
4 favor on the issue that I ruled on. So my
5 question is, Mr. McLean, for you especially,
6 what is your position on the proper procedural
7 path forward? I mean I kind of sort of
8 finessed all that in my Order saying that there
9 were cross Motions for Summary Judgement,
10 realizing that those words had never been
11 specifically used; but if there's a better way
12 to deal with that I'd like to know what your
13 position is on that in light of the fact that
14 the issue that I ruled on is dispositive.
15 Secondly, another issue that was raised in the
16 Motion for Reconsideration is basically an
17 objection to not going forward and having a
18 hearing, and so I was interested to know what
19 disputed facts would be left -- you believe
20 would be left to be explored at a hearing. And
21 then finally, Greenville Hospital System
22 objects to the fact that I didn't hold an oral
23 argument prior to ruling on the disputed legal
24 issues; and I did just wanna explain that
25 normally it's not my practice to hold an oral

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1 argument unless I have questions after I look
2 at the briefs. I really wasn't trying to
3 slight anyone, but I did want to give you an
4 opportunity today that if you believe that your
5 client was prejudiced in some way by my failure
6 to hold an oral argument or if you think there
7 are things that, you know, that -- that we need
8 to talk about in addition to the two questions
9 that I've raised -- specific questions that
10 I've raised, I want you to have an opportunity
11 to do that. So whenever you've had a chance to
12 gather your thoughts in response to my
13 questions, you can -- you can begin.

14 **MR. McLEAN:** Okay. Thank you, Your Honor. I'll go
15 ahead, and if I end up pausing or need to
16 think, I request the Court's indulgence.

17 **THE COURT:** Certainly, and we can take a break if
18 you need to ---

19 **MR. McLEAN:** Certainly.

20 **THE COURT:** --- look through -- I realize that
21 you're not as familiar with this probably.

22 **MR. McLEAN:** Certainly.

23 **THE COURT:** If you'd like to take a break and look
24 though your file or ---

25 **MR. McLEAN:** I think I can go forward.



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1 **THE COURT:** Okay.

2 **MR. McLEAN:** So, may it please that Court, I'm going
3 to introduce myself. I'm Author McLean, I go
4 by Mac McLean, and my client is Greenville
5 Health System. In all the documents you'll see
6 them referred to as Greenville Hospital System
7 because that was its name when ---

8 **THE COURT:** Oh, I thought maybe I just had it wrong;
9 you changed it on me.

10 **MR. McLEAN:** Yeah, when the -- the legal actually
11 began it was Greenville Hospital System, and in
12 around 2013 the name legally changed to
13 Greenville Health System.

14 **THE COURT:** Okay.

15 **MR. McLEAN:** And although this is a fact that's been
16 bounced back and forth, the taxpayer we're
17 applying for is the hospital entity and not any
18 related entity to -- that might be part of the
19 family that some people refer to as part of,
20 quote, a system, but it's the one legal entity
21 that's does hospital operations. And I'm going
22 to just use the term GHS if I refer to them
23 because that makes it easy to keep from
24 tripping over an old name and a new name.

25 **THE COURT:** Okay.



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PETITIONER'S ARGUMENT

1
2 **MR. McLEAN:** I found that to be the best approach.

3 And before I respond to some of your questions

4 I wanted to kind of say as a matter of

5 formality that GHS expressly reserves and does

6 not waive any issues or arguments we may have

7 raised in out Motion for Partial Summary

8 Judgement, our Motion for Reconsideration in

9 any memorandum or reply which we're in support

10 of those. So, that having been said, I'll try

11 to -- I thank you for the opportunity to talk

12 and I'll try to address some of the issues you

13 raised. The first one is the issue about our

14 objection that this has been converted to a

15 Summary Judgement in favor of the Department

16 when they didn't ask for one. And procedurally

17 I don't know of any way to fix it, candidly, I

18 -- you know, you -- the Court's already ruled

19 and the Court's indicated it doesn't expect to

20 change it's ruling, but I -- I don't know how

21 you fix the -- that issue at this point

22 procedurally here other than if you were to

23 miraculously change your -- your thoughts on

24 some of the legal issues. Also, I'm not sure

25 -- and again maybe I'm splitting hairs, but I



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1 -- I don't think it's -- I mean it's
2 dispositive, the fact that typically
3 governments don't qualify as charities. Our
4 tax payer is a truly unusual tax payer, GHS is.
5 And this is the thing I think that really
6 hasn't come out, I think, in all of this, is
7 that GHS has an unusual legal status. It's --
8 we often refer to it as a dual status. It's
9 both governmental and has a 501(c)(3) letter,
10 it's charitable. And it just does even though
11 everybody kind of weird's out when they here
12 that, but that is a -- a status that exists.
13 You see references to it in Internal Revenue
14 Code Section 501® and in numerous Federal tax
15 rulings that some governmental political
16 subdivisions can get 501(c)(3) status, and that
17 they typically are county or city hospitals.
18 In other words, it can -- it's very clear that
19 you can have a dual status, but it is really
20 uncommon, okay? We might be the only tax payer
21 in the State of South Carolina that is a
22 political subdivision with a 501(c)(3) letter,
23 because most political subdivisions can not get
24 a 501(c)(3) letter because they're not
25 charitable enough or they have too many other

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1 activities that are non-charitable in nature.
2 I would dare say that if we're not the only tax
3 payer in South Carolina that is a dual status
4 tax payer, there's got to be less than a half
5 dozen, and the only ones that might have that
6 dual status would be a city or county hospital
7 somewhere else in the state. But they do
8 exist, and so inherently it's -- it's hard for
9 me to get around -- just as it's hard, I think,
10 for the department to get around the concept
11 that there might be a governmental entity that
12 is a charity, I find it hard to get my mind
13 around the fact that -- that our state might
14 not recognize our dual status. Particularly
15 where we've got all these Federal tax laws that
16 -- that recognize that dual status. We've got
17 South Carolina Code Sections 12-6-40 and 12-6-
18 50 that expressly state that Internal Revenue
19 Code Section 501 is part of our tax -- our
20 taxes in South Carolina. 12-6-40 and 12-6-50
21 are the tax statutes of our state, and they
22 make expressed -- they expressly include 501 in
23 that. And the Department of Revenue's own
24 rulings seem to s- -- at least with respect to
25 private schools and those things, they say, oh,



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1 yeah we know that if you've got a -- your
2 property tax exemption for a private schools is
3 as a school but you also qualify as a charity,
4 then we'll give you the sales tax exemption for
5 being a charity. It seems to me completely
6 analogous that you would read Revenue rule 03-6
7 to -- to say that if this governmental entity
8 is also a charity that we could get the sales
9 tax exemption under 41 as a charity. It
10 strikes me that once you get past that point
11 it's very easy to say what's the standard for
12 being a charity in South Carolina. And -- and
13 it's just -- you don't have to go your -- all
14 the way around your elbow to get to your finger
15 by looking at Massachusetts cases from the
16 civil war or looking at attorney general
17 opinions from before the South Carolina code
18 was rewritten in the '70s to see what the
19 definition of a charity is, and -- because it's
20 well established in Federal and I think in
21 State tax law that a charity is under 501(c)(3)
22 and its related treasury regulations and
23 rulings. So again -- so, with respect to your
24 first topic, I -- I don't know how you fix it
25 at this point, but I -- but I also believe that

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1 it's pretty clear that the case law should
2 acknowledge our dual status and our charitable
3 existence and our -- and our charitable status,
4 that we should qualify for this exemption.
5 Your second topic you asked me to reply to our
6 -- what disputed facts would be left to
7 explore. And the -- the one that jumps to my
8 mind is you ruled in your Order that as a
9 matter of some sort of fact, that when you
10 establish your -- your charitable definition of
11 -- when you said it was axiomatic that a
12 political subdivision can't be a charitable
13 trust or foundation, when you ruled that
14 charities are defined under that Massachusetts
15 case from 1867, you ruled that we didn't meet
16 the standard. And I believe that if we had a
17 chance to argue this in Court that it would be
18 very easy to show that we meet both of those
19 standards because our entity is charitable, our
20 entity gives, you know, \$72,000,000 of
21 charitable care to poor people, in 2015 alone.
22 Our entity is a fund which is a foundation
23 which does good for others and lessens the
24 burdens of other governments. That we are a
25 charity with a 501(c)(3) letter. And -- but



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1 even if we use the Massachusetts status or --
2 or your definition of a charitable foundation,
3 we believe we meet them because that's what we
4 are. But those facts have yet been explored,
5 and those facts -- the one fact we did agree
6 on, I think, is that we have 501(c)(3) letter
7 but we did -- haven't agreed on all these other
8 facts. And I think if -- if we showed those
9 [sic] factual proof that we do charitable work,
10 that we have a fund, we do all those things, we
11 would meet any definition of charity you throw
12 up there whether it's a Massachusetts case or
13 501(c)(3) and its rules of organization and
14 operation; we believe it's just an easy one we
15 can meet if we showed our facts. The third
16 topic was we object to the fact there wasn't
17 oral argument. And I -- and I do believe we
18 were prejudiced because, you know, now we're at
19 a point where I think we would have liked to
20 have made the Court clear that a ruling for us
21 in this case, that our unusual dual status
22 gives us charitable status and thus gives us
23 sales tax exemption, it wouldn't upset the
24 apple cart in South Carolina. It wouldn't
25 cause some litany of governmental entities to

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1 all of a sudden come running in the door and
2 asking if they can get the sales tax exemption
3 because these other governmental entities don't
4 have a 501(c)(3) letter. Again, I think there
5 are very few of them, but I do think that's the
6 kind of thing Courts worry about when they
7 review these things and we would've shared
8 that. Again, as much as I appreciate the
9 opportunity to say some of this here and to
10 speak our opinions here. I just don't think
11 this -- this forum necessarily gives us the
12 same kind of opportunities to explore the facts
13 and to -- and the law that -- that the
14 traditional hearing would have done. So those
15 would be my responses, and I would just
16 reiterate that, you know, the Department of
17 Revenue -- when we said we felt like we were
18 charitable and we asked for rulings, the
19 501(c)(3) and its definition by inurement and
20 all those things applied to our state law
21 definition of charity for tax purposes, I think
22 the Department of Revenue and -- referred to
23 501(c)(3) and it's determination -- department
24 determination, it referred to it in Revenue
25 Procedure 036, it referred to it in its

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1 memoranda although they've been careful to say
2 -- they -- they seem to say that they would
3 like to use 501(c)(3) as the definition of a
4 charity when appropriate and perhaps some other
5 definitions when not, but they haven't really
6 articulated what other standards or rules there
7 would be in addition to that. So, I just feel
8 like it's -- it's inherent that 501(c)(3)
9 should be the status, and that since we have
10 it, we -- we should be pr- -- as 03 -- Revenue
11 Procedure 036 says, we are presumptively
12 entitled to this exemption by virtue of having
13 a 501(c)(3) letter. And -- and, you know, much
14 to my amazement throughout this process, we
15 can't seem to get there. So, those would be my
16 responses, Your Honor, and I thank you for the
17 opportunity to share them with you. I very
18 much appreciate it.

19 **THE COURT:** All right.

20 **RESPONDENT'S ARGUMENT**

21 **MR. KIMPSON:** Thank you, Your Honor. May it please
22 the Court, Milton Kimpson on behalf of the
23 Department of Revenue. Your Honor, of course
24 the Department believes the Order of May 2017
25 is correct, such that the Petitioner's Motion



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1 for Reconsideration should be denied. As you
2 pointed out, in our memorandum in opposition to
3 Summary Judgement we specified that certain of
4 these rulings, the legal conclusions that were
5 submitted to the Court, would be dispositive of
6 the Petitioner's case. And I don't know how
7 you get around that once the Court has decided
8 that an entity exempt under -- as (A)(1), a
9 political subdivision, I don't know how you get
10 around saying that if that entity is not
11 eligible to be exempt under 12-36-2120(41), I
12 don't know what they have left. And I don't
13 know -- as matter of law it's not eligible.
14 And I don't know how any additional facts can
15 help us get to that determination. As the
16 Court indicated, 12-36-2120(41), eligibility
17 for that sales tax exemption, is certainly
18 triggered by entities that are exempt under the
19 enumerated property tax sections. Greenville
20 Health Systems does not have the property tax
21 exemption under (A)(1) -- 220(A)(1), doesn't
22 have the exemption under 220(A)(4), and doesn't
23 have the exemption 220(B) subsection 16. We
24 don't believe that our General Assembly, based
25 on everything we've seen in these statutes,

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1 ever intended for governmental subdivisions to
2 be charitable organizations within the meaning
3 of the property tax statutes. Now, we realize
4 and we've acknowledged that they have a
5 501(c)(3) tax exempt designation from the
6 Internal Revenue Service, but that doesn't
7 translate into being a charitable organization
8 under 2 -- under 12-37-220(B)(16). So we think
9 that once the Court made the decision that GHS
10 was -- as a government subdivision was
11 ineligible to become tax exempt -- or -- or
12 excuse me, exempt from sales taxes under
13 12-36-2120(41), that that was dispositive of
14 this entire matter and there was no need for
15 further proceedings and we would ask the Court
16 to uphold that. Now we do recognize
17 Petitioner's arguments about the 501(c)(3), but
18 I would point the Court to the Department's
19 policy document, Revenue Procedure 03-6. And
20 clearly the revenue procedure says that an
21 entity would be considered to be automatically
22 qualified if it meets all of the requirements,
23 and all of the requirements would be, A -- and
24 -- and Your Honor, for the purposes of the
25 record this is Revenue Procedure 03-6 and on

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1 page 3. An organization is considered to be
2 automatically qualified for an exemption
3 certificate under the sales tax exemption if it
4 is, one, selling tangible personal property; B,
5 exempt from property tax under one of the tax
6 code sections listed in Code Section
7 12-36-2120(41); and C, exempt under 501(c)(3)
8 of the Internal Revenue Code. Well, of course
9 they don't meet one of those three criteria
10 because they're not exempt under one of the
11 property tax statutes listed in the -- in 12-
12 21(41). So, they don't automatically meet
13 anything. But what's particularly important
14 about our -- our language in the policy
15 document, and we would point to the Court, this
16 automatic qualification is not without
17 condition. To the extent that we become aware
18 of anything that causes us to pause and not
19 grant exemption, we're certainly able to do
20 that. So although we may have listed 501(c)(3)
21 as one of the criteria in the policy document,
22 this automatic exemption is conditional; and
23 it's always conditioned upon the Department
24 examining particular tax payer's business
25 operations, examining their legal entity. And

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1 we go back to the earlier -- to -- to the
2 point, the example that we that we gave -- and
3 then of course we get to this idea that well,
4 perhaps a entity can also meet -- even if it's
5 not exempt -- property tax exempt under one of
6 the listed statutes, to the extent it qualifies
7 for another property tax exemption it could
8 potentially meet 2120(41). That's the rub
9 here, we've determined, and based on the
10 Court's order, that GHS despite it's 501(c)(3)
11 income tax recognition can not qualify under
12 220(A)(4) or 220(B)(16). So, we think that
13 what has happened here is certainly consistent
14 with the policy document, but even if it's not
15 consistent with the policy document this Court
16 has looked at the statute, looked at the plain
17 language of the statute and made a
18 determination. And of course the General
19 Assembly's intent, as expressed by the
20 language, must always control. So we would
21 simply say, Your Honor, that as to the very
22 first point, that nothing has come out today
23 that should affect your Order. Your Honor, I
24 -- I don't know what additional facts there
25 could be. And I certainly appreciate the

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1 argument about the -- the level of charity
2 care, what they've done and we -- we appreciate
3 it and I'm sure the citizens of Greenville
4 appreciate that, but they are -- they are
5 certainly conducting these activities pursuant
6 to the direction of the General Assembly in the
7 statutes that created Greenville Health Systems
8 to say they are to operate a hospital system
9 providing care to the citizens of Greenville.
10 So whatever they're doing, whereas it might be
11 beneficial, it might have some charitable
12 function, they're doing so as a government
13 entity; and to that extent they are following
14 the guidelines of the General Assembly and what
15 it was charged to do under the governing
16 statutes. Now in our motion for -- in our memo
17 in opposition to reconsideration we of course
18 have set out some of other concerns: that
19 charitable organizations simply don't have the
20 power of eminent domain, they don't have the
21 power to conduct their own police force. But
22 Mr. McLean does talk about this dual status.
23 But even with the dual status, Your Honor, we
24 do not believe it's our General Assembly's
25 intent to allow 501(c)(3) to be determinative

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1 of whether or not a property tax exemption is
2 available to GHS. We just don't believe that
3 is in keeping with the General Assembly's
4 intent. We would respectfully ask that the
5 Motion for Reconsideration be denied without
6 further proceedings. There's no need to try
7 this case, there's no need to have any further
8 hearings. As a matter of law, this Court has
9 already determined that GHS is not eligible
10 under 12-36-2120(41). And, Your Honor, we
11 believe that that is completely dispositive of
12 this case. Thank you, Your Honor.

13 **THE COURT:** Okay. All right.

14 **MR. McLEAN:** Your Honor, may I have just a moment
15 for reply? I'll be very brief.

16 **THE COURT:** Certainly.

17 **PETITIONER'S REPLY**

18 **MR. McLEAN:** Thank you, Your Honor. I did want to
19 reply to a couple of thing Mr. Kimpson stated.
20 He talks about 03-6 and that we don't qualify
21 beca- -- about a -- becau- -- about a property
22 tax exemption, but literally every pri- --
23 charitable private school, every charitable
24 museum, would qualify under multiple property
25 tax exemptions and could get either. Oh, we're



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1 a museum; oh, we're the general charity; we're,
2 you know -- so all of them have multiples. For
3 some reason, the Department of Revenue -- the
4 Department of Revenue doesn't seem to grasp
5 that -- that we too might be -- even though
6 we're eligible perhaps as a hospital or a
7 governmental entity for property tax exemption,
8 that we might also be eligible as a charity.
9 I -- I don't know why we're different from
10 those other entities. So, I wanted to mention
11 that. Second one was ---

12 **THE COURT:** One minute. Go back. Now I want to
13 understand ---

14 **MR. McLEAN:** Sure.

15 **THE COURT:** --- in your earlier argument you were
16 talking about how your situation was unique ---

17 **MR. McLEAN:** Well, we -- we -- well, our ---

18 **THE COURT:** --- so ---

19 **MR. McLEAN:** --- our status is unique.

20 **THE COURT:** I want to make sure I'm following the
21 difference between that argument and what
22 you're saying now.

23 **MR. McLEAN:** Well, in 03-6, the revenue procedure
24 seems to acknowledge that private schools for
25 example might get a property tax exemption



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1 because they're a school and because they're a
2 charity, and that just because if they're a
3 school they can't get the sales tax exemption
4 but if they're a charity they can get the sales
5 tax exemption, and 03-6 specifically says,
6 well, because you're either/or, because you are
7 a charity, you get the sales tax exemption.
8 But here they seem to be hung up on the fact
9 that if I make the same argument, we're both
10 the government which doesn't get sales tax
11 exemption but does get a property tax
12 exemption, and we're a charity which get's
13 both, why can't we get the sales tax exemption
14 too, you know?

15 **THE COURT:** My decision really hung on the language
16 of the statute rather than that policy
17 statement, right?

18 **MR. McLEAN:** I understand, but the statute, I think,
19 is just as clear that the charity language and
20 the sales tax statute and the property tax
21 statute does not expressly exclude however
22 you're organized whether it's as a political
23 subdivision or a association or a -- a
24 corporation or a trust, all those things seem
25 to get brought in in the charities. So, I feel



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1 like that needs to be clear. The other thing
2 I wanted to mention is the Court seems to be
3 bothered by the fact that in the sales tax
4 exemption they don't say government, school,
5 church -- or government, school, museum, okay,
6 and that that's some sort of indicia that they
7 wanted to leave them out; but I don't think so,
8 I think what they intentionally did not bring
9 over, entities like schools or museum, because
10 if they did, the way the sta- -- the property
11 tax statute is written it might have brought in
12 for-profit schools or museums. Rather, I think
13 what they did was they saw they had the
14 exemption for charitable trust and foundations
15 and the catch-all sales tax exemption for
16 charities, and they said we don't even need to
17 bring over schools, museums and others
18 expressly in the sales tax statute because they
19 already brought them in in the general catch-
20 all charitable thing. I think you can just as
21 easily, if not more easily, read the statute to
22 mean that, and I feel like that's what the
23 Court needs to here. The last topic I'll
24 mention in my reply is Mr. Kimpson said --
25 seems to say the 03-6, which the Department's

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1 supposed to live by, is -- as part of it saying
2 -- it says well, you know, 501(c)(3), you're
3 presumptively qualified but we do reserve the
4 right to -- for things that give us pause. And
5 one of the reasons we were asking for these
6 eight legal rulings is I still don't know that
7 we've figured out, number one, what it is that
8 gives them pause about us. I guess except the
9 fact that we're a government. And -- and that
10 they've never really articulated what the
11 standard is. And when you don't have a
12 standard there is no standard, it becomes
13 arbitrary and discretionary. And so, we ---

14 **THE COURT:** I want to make sure I understand that
15 argument now.

16 **MR. McLEAN:** Sure.

17 **THE COURT:** In what way are you saying that they
18 don't have a standard?

19 **MR. McLEAN:** Well, we've asked ---

20 **THE COURT:** I need to understand exactly what you
21 mean.

22 **MR. McLEAN:** So, they've said that 501(c)(3)
23 entities are presumptively qualified, but then
24 they back off of it a little bit and say if
25 something gives us pause we've got the right



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1 not to recognize you as a -- as exempt under
2 sales tax; but yet they don't really say what
3 it is legally would even be examples of things
4 that give them pause or what the standard is or
5 how -- you know, because I feel like if
6 something's giving them pause they ought to
7 have, like every other tax policy, a set of
8 rules that they go by. And it might be, you
9 know, that they just go by 501(c)(3), but --
10 but we don't really know what that is. And
11 that was one of the legal rulings we wanted was
12 -- we said when you say something's charitable,
13 you know, what are some -- we're trying to
14 flesh out what it is that gives them pause.
15 We're asking about inurement in our rulings,
16 we're asking them about organization and
17 operation, and what is it -- that -- that's
18 kind of what we were doing I think when we were
19 -- because if there is no standard then it
20 becomes arbitrary for them to say well, you
21 know what, we approve you but we don't approve
22 you because something about it gives us pause;
23 and so it becomes somewhat arbitrary. And so
24 that was one of the things that we were
25 concerned about. I think that's my reply.

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1 Thank you, Your Honor; and if I can answer any
2 other questions feel free to ask.

3 **THE COURT:** All right. Thank you. Mr. Kimpson, did
4 you wanna respond to that in any way?

5 **MR. KIMPSON:** Your Honor, the only thing I would say
6 is here, what gives us pause is the fact that
7 they are a governmental subdivision.
8 Governments can not be the charitable
9 organizations for the property tax statute --
10 property tax exemption. Furthermore,
11 government can not be the charitable foundation
12 under (A0(4)). So the statute, their failure to
13 meet the statute is what gives us pause here.

14 **THE COURT:** All right.

15 **MR. KIMPSON:** Thank you, Your Honor.

16 **THE COURT:** All right. Well I think y'all have
17 cleared that up for me, and I will -- I will be
18 issuing an Order on reconsideration to clarify
19 some things about my original Order that were
20 -- were maybe not clear. And you can expect
21 that within come a week or two. All right.
22 Thank you very much.

23 **MR. McLEAN:** Thank you, Your Honor.

24 **MR. KIMPSON:** Thank you, Your Honor.

25 **(There being nothing further, the hearing concluded**



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at 10:37 a.m.)

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STATE OF SOUTH CAROLINA
DEPARTMENT OF REVENUE
APPLICATION FOR SALES TAX EXEMPTION UNDER CODE SECTION
12-36-2120(41) "EXEMPT ORGANIZATIONS"
Mail to: SC Department of Revenue, License and Registration,
Columbia, South Carolina 29214-0140

ST-387
(Rev. 7/21/08)
5061

Certain nonprofit organizations in South Carolina are exempt from sales and use tax on items sold by the organizations for charitable purposes. The exemption applies only to items purchased for resale and does not apply to items purchased by an organization for its own use.

Office Use Only

SID#

Name of Organization: Greenville Hospital SystemLocation Address (Street Address): 701 Grove Road (also other locations in Greenville County)City Greenville State SC County Greenville Zip 29605Mailing Address: (Street or PO Box) 701 Grove RoadCity Greenville State SC County Greenville Zip 29605Phone Number: 864 797-7611 FEI Number: 57-6007863

Please check the appropriate box:

Type of ownership: ☒ Corporation ☐ Unincorporated Association ☐ Other _____

See attached

1. Has your organization applied for, and been granted, an exemption from the property tax?
☒ YES (Attach copy of property tax exempt letter.) ☐ NO

2. If you answered NO to Question #1, please check the appropriate line:

- _____ Applied for property tax exemption and was denied.
_____ Organization owns property in S.C., but never applied for property tax exemption.
_____ Organization owns no property in S.C.

3. Does your organization have a letter from the I.R.S. granting an exemption from federal income tax?
☒ YES (Attach copy) ☐ NO4. Briefly, explain the purpose of your organization. see attached5. Briefly, describe the items your organization purchases, or will purchase, FOR RESALE. see attached6. Briefly, explain how net proceed from such sales are, or will be, used. see attached7. What other retail sales does your organization make other than those described on line 5? see attached8. What is your South Carolina retail license number? see attached9. What is your liquor license number? N/A

When signing this form, it is important that the information contained in your report be correct and complete. To wilfully furnish a false or fraudulent statement to the Department is a crime.

[Signature] General Counsel 5/23/11
SIGNATURE TITLE DATE

50611029

GHS-000021

IMPORTANT NOTICE

If your organization is granted an exemption under S.C. Code Section 12-36-2120(41), then your organization may buy and sell items tax-free, only if:

1. Your organization purchases the items for resale;
2. The net proceeds from the sales of such items are used exclusively for the exempt purposes of your organization; and
3. No benefit inures to any individual.

PURCHASES OF ITEMS FOR USE BY YOUR ORGANIZATION (i.e., FURNITURE, EQUIPMENT, AND SUPPLIES) MAY NOT BE PURCHASED TAX-FREE.

PURPOSE OF FORM AND INSTRUCTIONS

PURPOSE: This form is required for those organizations wishing to obtain an exemption from the sales tax under S.C. Code Section 12-36-2120(41).

INSTRUCTIONS:

- A. This form must be completed in its entirety for your organization to be considered for the above exemption.
- B. Please attach a copy of the following documents to this form:

NOTE: Failure to attach this information will cause a delay in processing your application.

1. Internal Revenue Service exemption letter.
2. Organization's charter and bylaws.
3. Most recent income statement and balance sheet.
4. Any other documents or statements deemed appropriate and/or necessary.

50612027

Type of ownership:

This attachment serves as further explanation of the type of ownership of this entity.

Greenville Hospital System was created by Act 432 of the South Carolina General Assembly in 1947. That Act has been amended a number of times over the years – most recently in 2008, by Act 379. The Greenville Hospital System is a body “politic” and “corporate,” and was granted by such Act the power to adopt a corporate seal. This means that it is both a political subdivision of the State of South Carolina and is a body corporate, being a term generally applied to corporations, public and private, having powers and duties of government.

This entity has a dual tax status in the eyes of the law; it is both a political subdivision and it has been recognized as a charity which is tax-exempt under Section 501(c)(3) of the Internal Revenue Code. It is requesting this sales tax exemption under Section 12-36-2120(41) based on its status as a charity.

It is well-established under the law that an entity which conducts hospital and health care operations in a manner consistent with IRS rulings on the topic qualifies to be recognized as being a charity, and that its activities are thereby charitable in nature.

Question 1. Has your organization applied for, and been granted, an exemption from the property tax? YES

Greenville Hospital System qualifies for property tax exemption under several statutes, in part due to its unique dual tax status. Because the Greenville Hospital System is a Section 501(c)(3) charity, it is entitled to property tax exemption under Section 12-37-220(A)(4) and Section 12-37-220(B)(16)(a). As a political subdivision, it also qualifies for property tax exemption under Section 12-37-220(A)(1). As a hospital, it also qualifies for property tax exemption under Section 12-37-220(A)(2).

Because the Greenville Hospital System is not required to apply for property tax exemption under Section 12-37-220(A)(1) as a prerequisite to being exempt (see Section 12-4-720(A)(3)), most of the Greenville Hospital System’s property tax exemptions were granted without the need for application, and were granted based on that Section of the South Carolina Code. It also follows that, without the need to apply for an exemption, there are very few letters from the SC Department of Revenue confirming Greenville Hospital System’s property tax exemption. We did, however, find one dated October 16, 1990, and do attach a copy of it. Although this particular property tax exemption cites Section 12-37-220(A)(1), we would submit that the exemption could just as easily have been granted on the basis of Section 12-37-220(A)(4) or 12-37-220(B)(16)(a) or 12-37-220(A)(2).

South Carolina Revenue Procedure #03-6 makes it clear that entities which enjoy property tax exemptions for multiple reasons are entitled to the sales tax exemption under Section 12-36-2120(41) so long as they are entitled to property tax exemption under Section 12-37-220(A)(4) or Section 12-37-220(B)(16)(a) as one of the multiple reasons.

Further, for additional clarification, after a meeting in September of 2009 where Greenville Hospital System indicated that it would be transferring title to some of its property to another unrelated entity which is a "for profit" entity as part of a sale/lease-back financing transaction, the Department of Revenue confirmed in 2010 that GHS would lose the property tax exemption for property which it no longer owns and keep the exemption for property which it continues to own.

Question 3. Does your organization have a letter from the I.R.S. granting an exemption from federal income tax? YES

A copy of the letter confirming that the Greenville Hospital System is tax-exempt under Section 501(c)(3) of the Internal Revenue Code is attached hereto.

Question 4. Briefly, explain the purpose of your organization.

Its purpose is to conduct the operations of hospitals for the benefit of the residents of Greenville County and to do so in a manner consistent with its charitable status. This includes teaching and educational activities and other related ancillary activities. It is well-established that an entity which conducts hospital and health care operations in a manner consistent with IRS rulings on the topic qualifies as a charity, and that its activities are thereby charitable in nature.

Question 5. Briefly, describe the items your organization purchases, or will purchase, FOR RESALE.

The primary items that the Greenville Hospital System purchases FOR RESALE are food products which are then sold to the public at several locales on several hospital campuses. (Some food is purchased in order that Greenville Hospital System can provide food in hospital rooms; that food is consumed by Greenville Hospital System and Greenville Hospital System does now and would continue to pay sales/use tax on those items. Greenville Hospital System currently has a Direct Pay Certificate and remits sales/use tax accordingly.)

Although food is the primary item purchased for resale, Greenville Hospital System also purchases and resells some other items. For example, in 2009 GHS purchased products in order to make and sell eyeglasses to the public (the eyeglasses were made by opticians) as an activity at 515 West Butler Road in Mauldin, in an office which also provided ophthalmology services by Greenville Hospital System; Greenville Hospital System has since, however, discontinued this eyeglass sale activity. Greenville Hospital System also purchases and resells nonprescription items (such as aspirin or acetaminophen) that one might expect to pay for as a part of a hospital bill.

Question 6. Briefly, explain how net proceeds from such sales are, or will be, used.

All net proceeds will be used exclusively for charitable hospital purposes.

Question 7. What other retail sales does your organization make other than those described on line 5?

No other sales are known at this time. There are other entities related to the Greenville Hospital System which are South Carolina nonprofit corporations which are tax-exempt under Section 501(c)(3) and which may purchase and resell items, but their activities and sales are not relevant to this application.

Question 8. What is your South Carolina retail license number?

When Greenville Hospital System purchased the assets of an ophthalmology practice in February of 2009, it began to operate at that location as the Greenville Hospital System but was using a "doing business as" name of GHS UMG Carolina Eye Care – a simple trade name for an activity of Greenville Hospital System, not the name of a separate legal entity – and on or about February of 2009, the SC Department of Revenue issued a retail sales license under that name. That license number is 023 05282 0 and it stated underneath that number another number – 00023457. In conjunction with previous discussions with the South Carolina Department of Revenue and attempts to clarify Greenville Hospital System's right to a sales tax exemption under Section 12-36-2120(41), that license was hand-delivered to Craig McMillan in the Greenville office of the SC Department of Revenue on or about January 14, 2010, at his request, with the idea that the aforementioned retail sales license would be cancelled upon the granting of the sales tax exemption under Section 12-36-2120(41).

Additionally, Greenville Hospital System believes that it previously applied for and received this sales tax exemption in or around 1989 when Section 12-36-2120(41) (then Section 12-35-550(11)) was first enacted, but cannot find a copy of its certificate.



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

October 16, 1990

Mr. Arthur F. McLean, III
Attorney At Law
Post Office Box 2048
Greenville, South Carolina 29602

Re: Greenville Hospital System

Dear Mr. McLean:

Your firm has requested a ruling as to whether or not certain properties located in Greenville would qualify for an exemption from the ad valorem tax.

The facts, as we understand them, are as follows:

1. The Greenville Hospital System, a political subdivision, intends to construct an office building on a site located adjacent to the main building of Greenville Memorial Drive on Grove Road.
2. The building will be occupied by Medical Education Faculty members assisting in the training of residents seeking certification in the medical profession. These faculty members are compensated for their services by the Hospital System.
3. The building will be leased to and utilized by Medical Education Faculty members and other physicians for the purpose of treating their patients.
4. The Faculty members and physicians will receive no share of the profits derived from the ownership and leasing of the building. Any profits generated by the subject property will be channeled exclusively to the Greenville Hospital System.
5. Ownership of and title to the subject property and all improvements located on the subject property will remain with the Greenville Hospital System.

GHS-000026

Mr. Arthur D. McLean
Page Two

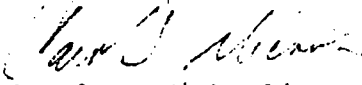
The request was considered under Section 12-37-200 A(1), which provides for the exemption of "all property of the State, counties, municipalities, school districts, Water and Sewer Authorities, and other political subdivisions, if the property is used exclusively for public purposes." The Section requires the Tax Commission and the county assessor to agree as to whether the property is used exclusively for a public purpose. The Division is of the opinion that if items 1 - 5, as enumerated, are representative of the subject property, then the requirements of 12-37-220 A(1) will have been met and exemption from the ad valorem tax will be extended to the subject property. I have contacted Debbie Adkins, Greenville County Assessor, and she fully agrees, based on the facts as presented, that exemption will be granted to the subject property for ad valorem tax purposes. Copies of our correspondence are attached for your reference.

Deana West, of the Policy and Procedures Division, asked that I relay to you the terms of exemption relative to the length an exemption is in effect. Section 12-3-145 requires the Commission to review exemptions on an annual basis. Exemptions are granted based on factual evidence, any change in status, use or supporting evidence should be reported to the Commission for review.

I trust this information will be helpful, but if you have any further questions, please do not hesitate to contact this office.

Sincerely,

SOUTH CAROLINA TAX COMMISSION
PROPERTY DIVISION


Carol S. Michaelis,
Tax Supervisor

/csm

Encl(s).

cc: William Heizer, Greenville Hospital System
701 Grove Road
Greenville, South Carolina 29605

Deana West, South Carolina Tax Commission
Policy and Procedures Division

GHS-000027



County of Greenville

Real Property Services
(803) 240-7500

October 11, 1990

Ms. Carol S. Michaelis
South Carolina Tax Commission
Property Division
301 Gervais Street, P.O. Box 125
Columbia, SC 29214

Dear Carol:

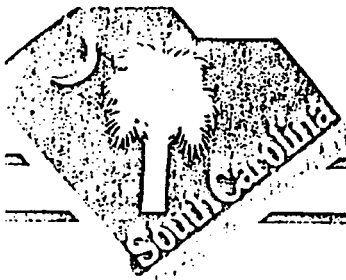
I must concur with your synopsis of the situation concerning the Greenville Hospital System, and agree that exemption should be granted.

If any additional information is needed, please do not hesitate to contact me.

Sincerely,

Debbie H. Adkins
Director Real Property Services

DHA:rs



301 Gervais Street, P.O. Box 125, Columbia, South Carolina 29214

October 1, 1990

Debbie Adkins
Greenville County Assessor
Greenville County Square
1 University Ridge
Suite 1000
Greenville, South Carolina 29601

Dear Debbie:

The South Carolina Tax Commission has been contacted on behalf of the Greenville Hospital System and requested to render a decision as to whether or not certain property located in Greenville County would be considered as exempt from ad valorem taxes.

The situation, as we interpret, is as follows:

1. The Greenville Hospital System, a political subdivision, intends to construct an office building on a site located adjacent to the main building of Greenville Memorial Hospital on Grove Road.
2. The building will be occupied by Medical Education Faculty members assisting in the training of residents seeking certification in the medical profession. These faculty members are compensated for their services by the Hospital System.
3. Additionally, the building will be leased to and utilized by Medical Education Faculty members and other physicians for the purpose of treating their patients.
4. The faculty members and the physicians will receive no share of the profits derived from the ownership and leasing of the building. Any profits generated by the building itself will be channeled exclusively to the Greenville Hospital System.
5. Ownership of and title to the subject property and all improvements located on the subject property will remain with the Greenville Hospital System.

The Greenville Hospital System was created by Act 432 of 1947 for the purpose of establishing and maintaining hospital facilities for the benefit of the residents of Greenville County. Therefore, the request was considered under Section 12-37-220 A(1). This Section provides for the exemption of "all property of the State, counties, municipalities, school districts, Water and Sewer Authorities, and other political subdivisions,

GHS-000029

Adkins
October 1, 1990
Page 2

if the property is used exclusively for public purposes, and it shall be the duty of the Tax Commission and the county assessor to determine whether such property issued exclusively for public purposes;"

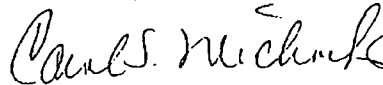
It is the opinion of the Property Division, based on the information presented and enumerated above, that the subject property and improvements meet the requirements of 12-37-220 A(1) and should be exempt from the property tax.

We have been requested to provide our determination to the Hospital System in writing; therefore, as the county assessor must be in agreement with our determination of "public purposes," I respectfully request you respond, in writing, as soon as possible, as to whether you agree with our opinion that the property will be exempt if the above conditions exist.

If you desire additional clarification, please contact me.

Sincerely,

SOUTH CAROLINA TAX COMMISSION
PROPERTY DIVISION



Carol S. Michaelis
Tax Supervisor
(803) 737-4482

CSM/as

FAX - 737-4685

Internal Revenue Service

Date: August 2, 2007

GREENVILLE HOSPITAL SYSTEMS ATTN
PAYROLL DEPT
701 GROVE ROAD
GREENVILLE SC 29605-5611 997

Department of the Treasury
P. O. Box 2508
Cincinnati, OH 45201

Person to Contact:
Ms. Edwards 31-07427
Customer Service Representative
Toll Free Telephone Number:
877-829-5500
Federal Identification Number:
57-6007863

Dear Sir or Madam:

This is in response to your request of August 2, 2007, regarding your organization's tax-exempt status.

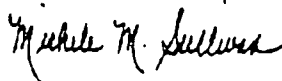
In September 1944 we issued a determination letter that recognized your organization as exempt from federal income tax. Our records indicate that your organization is currently exempt under section 501(c)(3) of the Internal Revenue Code.

Our records indicate that your organization is also classified as a hospital under sections 509(a)(1) and 170(b)(1)(A)(iii) of the Internal Revenue Code.

Our records indicate that contributions to your organization are deductible under section 170 of the Code, and that you are qualified to receive tax deductible bequests, devises, transfers or gifts under section 2055, 2106 or 2522 of the Internal Revenue Code.

If you have any questions, please call us at the telephone number shown in the heading of this letter.

Sincerely,



Michele M. Sullivan, Oper. Mgr.
Accounts Management Operations 1

GHS-000031

(R162, H176, S143)

No. 431

AN ACT To Provide For The Construction And Surface Treatment Of County Roads Within Greenville County During The Fiscal Year Of 1946-1947 And To appropriate Funds Therefor.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: Improve roads, Greenville County.—The Supervisor of Greenville County is hereby authorized and directed to use the funds hereinafter provided for and appropriated in construction, surface-treating and resurfacing County Roads within Greenville County. The improvements herein authorized shall be equitably distributed throughout Greenville County by the Supervisor, who, in selecting the roads for improvement, shall give first consideration to those which carry the most traffic. No portion of the funds herein provided shall be used in laying out, cutting and constructing streets in new developments on which proposed street no houses have been erected.

SECTION 2: Engineer—employees—materials and machinery.—The Supervisor is hereby authorized to employ a full time, competent engineer out of the funds herein provided, whose duty it shall be to prepare specifications for the construction of the roads to be built hereunder, according to recognized standards, and to supervise the construction and improvements thereof. Further, the Supervisor is hereby authorized to employ such other help and to purchase such materials and machinery as shall be necessary to carry out the provisions of this Act. Further expenditures heretofore made during the present fiscal year for the purposes herein envisioned, and for which no appropriation has been made, shall be charged against the appropriation herein provided.

SECTION 3: Appropriation.—There is hereby appropriated out of the General fund of Greenville County for the purposes hereinabove set forth the sum of One Hundred and Seventy Thousand (\$170,000.00) Dollars. It is intended that this appropriation shall be expended during this fiscal year 1946-1947.

SECTION 4: Repeal.—All Acts or parts of Acts inconsistent herewith are hereby repealed.

SECTION 5: Time effective.—This Act shall take effect upon its approval by the Governor.

Approved the 3 day of April, 1947.

(R557, H678, S633)

No. 432

AN ACT To Provide Hospital Facilities For The Residents Of Greenville County, To Establish The Greenville General Hospital Board Of Trustees, To Prescribe The Functions And Powers Of Said Board, Including The Right To Issue Revenue Bonds, To Authorize The Corporate Authorities Of The City Of Greenville And The County Board Of Commissioners Of Greenville County To Enter Into A Contract Relative To The Acquisition Of Certain Hospital Properties And Assets Of The City Of Greenville By The Greenville General Hospital Board Of Trustees, To Authorize The Holding Of A Special Election In Greenville County On The Question Of The Issuance By Greenville County Of One Million Five Hundred Thousand (\$1,500,000.00) Dollars Of General Obligations Bonds Of Said County, To Authorize The Issuance Of Said Bonds, To Prescribe The Conditions Under Which Said Bonds May Be Issued, And To Provide For The Payment Of Said Bonds.

BE IT ENACTED by the General Assembly of the State of South Carolina:

SECTION 1: Legislative findings as to hospital facilities, Greenville County—basis Greenville will convey to Greenville County its hospital facilities.—The General Assembly, after due investigation, has found that there exists in Greenville County a lack of hospital facilities, and that as a result of this condition many persons, and, in particular, those of small income, are being deprived of adequate medical and hospital care. It has been further found that this condition constitutes a menace to the health and welfare of the inhabitants of Greenville County, and the General Assembly has, therefore, determined to remedy the condition. The investigation made shows that there is in existence in the City of Greenville a municipally owned and well-run hospital, constructed and paid for by the taxpayers of the City of Greenville, which is adequate to care for the needs of the residents of the City of Greenville alone, but which is too small to care for the needs of the residents of the entire County, and that notwithstanding efforts on the part of the municipal authorities in charge of the hospital to render service to all persons who are in need of hospital facilities, the scope of the physical plant makes this impossible and the municipal authorities of the City of Greenville are confronted with the necessity of denying access to the hospital to persons other than

those who are actually residents of the City of Greenville. The General Assembly has found that the most practical and economical solution of the problem would be for the County of Greenville to take over the hospital, to expand its physical facilities and to operate it for the benefit of all residents of Greenville County. The corporate authorities of the City of Greenville desire to cooperate in solving the problem in the most practical and economical manner, but, at the same time, are mindful of their duty to the taxpayers of the City of Greenville, whose moneys have been expended to construct, operate and maintain the municipal hospital, and their duty to the residents of the City who are entitled to the assurance of the continued operation of the hospital. They are therefore unwilling to convey the present hospital plant and equipment to Greenville County free of charge without some guarantee that its future operation will be on a basis fair and satisfactory to the residents of the City. They are willing, however, to convey the same to an independent Board, free from the control of the corporate authorities of the City or the County and charged with the duty of operating said hospital and its expanded facilities for the benefit of the taxpayers and residents of all Greenville County, upon the following conditions:

- (1) That there be made available to such Board by the County of Greenville, the sum of not less than One Million Five Hundred Thousand (\$1,500,000.00) Dollars, which shall be expended by said Board in enlarging and expanding said hospital and to provide further hospital facilities for the residents of Greenville County.
- (2) That the City of Greenville receive satisfactory assurances that this Act embodying the agreed plan and method for the operation of said hospital and its expanded facilities will not be amended or repealed in any particular without:
 - (a) First obtaining the approval of the corporate authorities of the City of Greenville, evidenced by a majority action at a duly called meeting of the City Council, or
 - (b) The County paying to said City the sum of One Million Five Hundred Thousand (\$1,500,000.00) Dollars which is the agreed present value of its hospital plant, equipment, supplies and cash included in the conveyance to be made to said Board.

Being mindful of these facts and circumstances, and in the exercise of the powers conferred upon it by the Constitution of South Carolina, the General Assembly enacts this Act with the declared purpose of providing hospital facilities for the residents

of all Greenville County but with the further intention of protecting the rights of the taxpayers and inhabitants of the City of Greenville.

SECTION 2: Election on Greenville County issuing bonds for hospital facilities.—In order that the wishes of the qualified electors of Greenville County might be ascertained upon the question of the issuance of bonds of Greenville County in an amount sufficient to meet the requirements of the corporate authorities of the City of Greenville, relative to the expansion and enlargement of the hospital facilities beyond the scope now furnished by the existing municipal hospital in the City of Greenville, and to an extent which will care for the minimum needs of the residents of the County of Greenville, the County Board of Commissioners of Greenville County shall hold an election in Greenville County not later than the second Tuesday in August, 1947. At said election, there shall be submitted to the qualified electors of Greenville County the following question:

"SHALL THE COUNTY BOARD OF COMMISSIONERS OF GREENVILLE COUNTY BE AUTHORIZED AND EMPOWERED TO ISSUE ONE MILLION FIVE HUNDRED THOUSAND (\$1,500,000.00) DOLLARS OF GENERAL OBLIGATION BONDS OF GREENVILLE COUNTY, PAYABLE FROM UNLIMITED AD VALOREM TAXES UPON ALL TAXABLE PROPERTY IN GREENVILLE COUNTY, WHOSE PROCEEDS SHALL BE USED TO PROVIDE HOSPITAL FACILITIES FOR THE RESIDENTS OF GREENVILLE COUNTY?"

Said County Board shall, within the limitations of this Section, fix the occasion for the holding of the election, which shall be held at the several polling precincts or voting places in Greenville County, as the same are now established by law. Said Board shall give notice of the election and of the submission of the question by publishing a notice thereof in a newspaper published in Greenville County, which notice shall be published not less than once a week for three (3) successive weeks prior to the occasion on which the election is to be held. The notice shall specify that the several polls shall open at 8:00 A. M., and close at 6:00 P. M. Said Board shall provide a sufficient number of ballots for the said election, whose form shall contain the question set forth herein and shall be followed with the words, "YES" and "NO", printed clearly thereon. The ballots shall contain instructions advising persons voting in the election that those who favor the issuance of the bonds shall strike through or

erase the word, "NO", while those persons who oppose the issuance of bonds shall strike through or erase the word, "YES". The said Board shall appoint managers for said election, who shall make returns of the results of the voting at the several precincts in Greenville County to said Board which shall, upon receipt of the returns, proceed to canvass the election and declare the results thereof. The results of said election, as declared by Resolution of the Board, shall not be open to question except by a suit or proceeding instituted within thirty (30) days from the date when the results are declared. The cost of holding the election and giving notice thereof shall be defrayed from the general funds of Greenville County.

SECTION 3: Greenville contract with Greenville County for conveyance of its hospital facilities if bond election favorable.— If the election required by the provisions of Section 2 of this Act shall have resulted favorably to the issuance of bonds by Greenville County, then the County Board of Commissioners of Greenville County and the corporate authorities of the City of Greenville shall be empowered to enter into a written agreement, which shall obligate the City of Greenville to transfer and convey to the Board of Trustees created by Section 4 of this Act, its existing hospital buildings, the site thereof and all other land acquired for hospital purposes, together with the equipment, appurtenances, supplies, material and all choses in action, and cash, approximating the sum of \$375,000.00 standing to the credit of said Municipal Hospital. Said agreement shall be in the form as may be agreed upon by the City Council of the City of Greenville and the County Board of Commissioners of Greenville County, but shall contain the pledge or covenant on the part of Greenville County:

- (1) That in the event this Act embodying the agreed plan and method for the operation of said hospital and all of its expanded facilities is repealed or amended in any particular without first obtaining the approval of the corporate authorities of the City of Greenville evidenced by a majority action at a duly called meeting of the Greenville City Council; or,
- (2) That in the event Greenville County shall hereafter acquire the property and assets which the City of Greenville shall convey to the said Board of Trustees, created by Section 4 of this Act, as the same may be constituted on the occasion of their acquisition by said Board of Trustees, or as the same may have been modified, transformed, converted or changed, and whether the acquisition become effective by operation of law, by voluntary act, or through

eminent domain, then in either of such events Greenville County shall be obligated to pay to the City of Greenville the sum of One Million Five Hundred Thousand (\$1,500,000.00) Dollars which obligation shall constitute a lien upon all hospital facilities and equipment located within the corporate limits of said City, inferior only to any lien created in favor of revenue bonds issued prior to the occurrence of such event. This covenant or agreement shall be deemed to be for the benefit of the several residents and taxpayers of the City of Greenville and shall be enforceable at law or in equity at the instance of any one or more or either of them.

SECTION 4. Greenville general hospital board of trustees.—For the purpose of operating and at all times maintaining adequate hospital facilities for the residents of Greenville County, including those residents of said County who shall reside in the City of Greenville, there is established a Board, to be known as the Greenville General Hospital Board of Trustees. Said Board shall consist of seven (7) members, all of whom shall be qualified electors. Three (3) of said members, designated for convenience as 'City Members', shall reside within the corporate limits of the City of Greenville; three (3) of said members, designated for convenience as 'County Members' shall reside within the corporate limits of Greenville County but without the corporate limits of the City of Greenville; and, the seventh member, designated for convenience as 'Member at Large', shall reside within the County of Greenville, either within or without the corporate limits of the City of Greenville. The initial membership of the Board shall consist of the following persons:

R. S. Huntington, W. B. Ellis, Jr., and Sidney Bruce as City Members; John Ratteree, Allen League and Charles V. Verner as County Members; and Allen Sibley, as Member at Large, each of whom is found to have the qualifications for membership prescribed by the provisions of this Section. Of the initial Board, two (2) shall have a term ending October 1st, 1949, two shall have a term ending October 1st, 1951, and three shall have a term ending October 1st, 1953. Upon being apprised of the favorable result of the election, required by the provisions of Section 2 hereof, said Board shall meet as soon as may be practicable and organize by electing one of their number as Chairman, a second as Vice-Chairman, and a third as Secretary, whereupon, after the organization of said Board, it shall determine by lot and duration of the term of each member, in order that the requirements of this Section shall be complied with. And, upon the

terms of the several members being thus determined, the Secretary of said Board shall certify the same to the Governor of South Carolina, who shall issue commissions to each member for the term required by this Act. A full transcript of the records of the initial organization shall be filed with the Clerk of Court of Greenville County, by the Secretary of said Board, and shall be recorded and indexed by that official. Subsequent terms of office of the members of said Board of Trustees shall be for a term of six (6) years. Vacancies on the Board, either among the initial appointees, or among their successors in office, occurring by reason of death, resignation, refusal to serve or otherwise, shall be for the remainder of the term of the office in which the vacancy shall have occurred. If, upon the expiration of the term of any member of the Board of Trustees, a successor shall not have been appointed, the member whose term has thus expired shall hold over until the appointment and qualification of his successor, but this provision shall not extend the term of the successor beyond the six (6) year period herein provided for. All vacancies shall be filled in the following manner: If the vacancy in office shall be for a "City Member", the remaining members of the Board, or a majority thereof, shall submit a nomination or nominations to the City Council of the City of Greenville for its approval; if the vacancy in office shall be for a "County Member", the remaining members of the Board, or a majority thereof, shall submit a nomination or nominations to the Greenville County Delegation to the General Assembly for its approval; and, if the vacancy in office shall be for the "Member at Large", the remaining members of the Board, or a majority thereof, shall submit a nomination or nominations to the City Council of the City of Greenville and the Greenville County Delegation to the General Assembly for their approval. Upon the approval of a majority of the City Council of the City of Greenville, or a majority of the Greenville County Delegation to the General Assembly, as the case may be, or by both in the event the nomination be for the "Member at Large", then the Clerk of City Council, or the Secretary or Acting Secretary of the County Delegation, or both, as the case may be, shall certify their approval to the Governor of South Carolina, who shall commission the nominee for the term provided, by the provisions of this Section. All members of the Board shall serve without compensation. Appointments and acceptances thereof shall be duly filed in the office of the Clerk of Court for Greenville County.

SECTION 5: Trustees—duties and powers.—The Greenville General Hospital Board of Trustees shall be authorized and empowered to do all things necessary or convenient for the establishment and maintenance of adequate hospital facilities for Greenville County and, without limiting in any way the generality of the foregoing, shall be empowered as follows:

- (1). To adopt and use a corporate seal.
- (2). To adopt such by-laws, rules and regulations for the conduct of its business and expenditure of its funds, as it may deem advisable. **PROVIDED**, that said Board shall afford the Executive Committee of the Medical Staff of any hospital operated by the Board the opportunity to present recommendations upon the request of said Executive Committee;
- (3). To operate the hospital conveyed to it by the City of Greenville, and such other hospitals as it may lease, acquire or construct;
- (4). To acquire by gift, or purchase, or otherwise, all kinds and descriptions of real and personal property;
- (5). To accept gifts, grants, donations, devises and bequests;
- (6). To enlarge and improve any hospital building that it may acquire or construct;
- (7). To adequately staff and equip any hospital that it may operate;
- (8). To provide and operate out patient departments;
- (9). To establish and operate such clinics as the said Board may deem necessary to the health of the residents of Greenville County;
- (10). To provide teaching and instruction programs and schools for nurses, hospital technicians, and physicians during internship and residency;
- (11). To employ such personnel as it may deem necessary for the efficient operation of the several facilities maintained by the said Board;
- (12). To establish and promulgate reasonable rates for the use of the services and facilities afforded by the said Board;
- (13). To provide reasonable regulations concerning the use of the facilities maintained by said Board including reasonable rules governing the conduct of physicians, nurses and technicians while on duty or practicing their profession in the facilities maintained by said Board and the determination of whether patients presented to the hospital for treatment are subject for charity and to fix compensation to be paid by patients other than those unable to assist themselves;

(14). To operate and maintain a charity ward and free services for residents of the County, who are destitute and unable to pay for needed hospitalization;

(15). To expend the proceeds derived from the charges made for the use of the services and facilities of the hospital for the operation and maintenance thereof;

(16). To determine the fiscal year upon which the affairs of the Board shall be conducted;

(17). To expend any funds received in any manner, and the proceeds derived from the issue of bonds hereinafter authorized, to defray any costs incident to establishing, constructing, equipping and maintaining any hospital;

(18). To apply to the Federal Government and any other governmental agency for a grant of moneys to aid in the construction and equipment of any hospital;

(19). To dispose of any property, real or personal, that it may possess, provided always that it shall not dispose of the hospital building, and the site thereof and the land adjacent thereto, which shall be conveyed to it by the City of Greenville, without the consent of the City Council of the City of Greenville;

(20). To avail itself of the authorizations of the General Statute Law of the State, now codified as Chapters 185, 187 and 188, Volume 4, Code of Laws of South Carolina for 1942, with respect to the issuance of revenue bonds.

If said Board shall avail itself of any of the several authorizations thus granted to it, by the provisions of this subsection, it shall issue revenue bonds in the name of Greenville County, and to adequately secure the same it shall be empowered to make any pledge or covenant authorized by any provision in any of said Chapters, but it shall not be required to make any pledge or covenant in conflict with the provisions of subsection (14) of this Section. But no bonds may be sold pursuant to this subsection except at public sale, after not less than fourteen (14) days' notice of the sale being given by publication at least once in a newspaper of general circulation, published in Greenville County, and in some financial publication published in the City of New York;

(21). To conduct periodic investigations into hospital, medical and health conditions in Greenville County;

(22). To enter into contracts for the construction and repair of hospitals and hospital facilities and to contract for equipment and supplies for the same;

(23). To exercise the power of eminent domain, in the manner provided by the general laws of the State of South Carolina for procedure by any County, Municipality or authority created by or organized under the laws of this State, or by the State Highway Department, or by railroad corporations.

SECTION 6: (1). Trustees—records—audit—hospital facilities for municipalities and districts.—Said board shall at all times keep full and accurate account of its actings and doings and of its receipts and expenditures, and at least once within four (4) months following the close of its fiscal year, a complete audit of its affairs shall be made by a qualified public accountant. Copies of the same shall be filed with the Clerk of Court for Greenville County, the Clerk of the City Council of the City of Greenville, and with the Secretary or Acting Secretary of the Greenville County Delegation to the General Assembly.

(2). Whenever a Petition, containing the authentic signatures of more than ten (10%) per centum of the qualified electors of any incorporated town or any district now in existence or hereafter created, lying wholly within Greenville County or partly within Greenville County and any adjoining county, shall ask the Board to establish additional hospital facilities, to be located in said Town or District, said Board shall promptly investigate the need of additional hospital facilities and if it shall find that such need exists, it shall cause plans and specifications to be made for the type of facilities that the Board shall determine is needed, and if the Town or District shall make available to the Board not less than fifty per centum (50%) of the total of the estimated cost of the construction and equipment of such facilities, it shall cause the same to be promptly constructed, and upon its completion the same shall be operated as a part of its general hospital.

SECTION 7: Issue hospital bonds.—(1). If the election required by the provisions of Section 2 of this Act shall result favorably to the issuance of bonds, and when the agreement authorized by the provisions of Section 3 of this Act shall have been executed, and when the initial organization of the Greenville General Hospital Board of Trustees shall have been perfected, the County Board of Commis-

sioners of Greenville County shall issue One Million Five Hundred Thousand (\$1,500,000.00) Dollars of general obligation bonds of Greenville County. Said bonds shall be designated as Hospital Bonds. They shall be issued either as a single issue or from time to time in several separate issues. Each issue shall mature in such series or installments, of equal or unequal amounts, as the County Board of Commissioners may by resolution determine, but the first installment of any issue of bonds shall mature not later than three (3) years from the date as of which such bonds shall be issued, and the last installment of any issue shall mature not later than twenty-five (25) years from the date as of which such bonds shall be issued. Such bonds shall be in denomination of One Thousand (\$1,000.00) Dollars each, and shall bear interest at a rate or rates not exceeding four (4%) per centum per annum, payable semiannually. Such bonds may be issued with the privilege of redemption reserved to the County prior to their stated maturities at premiums not in excess of five per centum (5%) of the face of each respective bond. Such bonds shall be payable at such place or places as may be designated by the County Board of Commissioners. All bonds issued pursuant to this Section shall be sold at not less than par and accrued interest to date of delivery at public sale, after not less than fourteen (14) days' notice of the sale being given by publication at least once in a newspaper of general circulation, published in Greenville County, and in some financial publication published in the City of New York.

(2). The bonds provided to be issued by this Section shall be executed in the name of Greenville County by the Chairman of the County Board of Commissioners, and shall be attested by the Treasurer of Greenville County under such seal as the County Board of Commissioners shall adopt for that purpose. Coupons attached to such bonds need not be authenticated otherwise than by the facsimile signatures of said officers.

(3). The bonds provided to be issued herein shall be exempt from all taxation by the State of South Carolina and its political subdivisions except inheritance or estate taxes.

(4). For the payment of the bonds provided to be issued by this Section, both principal and interest, the full faith, credit and resources of said County shall be irrevocably pledged, and the Auditor of Greenville County and the Treasurer of Greenville County shall respectively annually levy and collect an ad valorem tax upon all taxable property in Greenville County sufficient to meet the punctual

payment of the principal and interest of said bonds, as the same respectively mature.

(5). The proceeds of such bonds shall be deposited with the County Treasurer and shall be expended upon the warrant of the said Hospital Board. Such proceeds shall be expended, in the discretion of the Board, but solely for the purpose of providing hospital facilities for Greenville County.

SECTION 8: Obligations incontestable.—All bonds, revenues or general obligations, issued pursuant to the provisions of this Act shall, when issued in compliance with the provisions of this Act, be deemed incontestable and valid and binding obligations, according to their tenor and effect, notwithstanding the provisions of other Statutes.

SECTION 9: Time effective.—This Act shall take effect upon its approval by the Governor.

Approved the 19 day of May, 1947.

(RS44, H650, S622)

No. 433

AN ACT To Provide For The City Of Greenville And The County Of Greenville To Convey To The United States Or Any Designated Agency Thereof Lands And Improvements Now Constituting Greenville Army Air Base, In Greenville County, South Carolina.

WHEREAS, the County and City of Greenville South Carolina, own jointly the real property and certain easements, air rights and utilities in Greenville County presently constituting and embracing the Greenville Army Air Base; and

WHEREAS, the said County and City by unanimous vote of the Greenville County Legislative Delegation and the Greenville City Council in duly called and executive sessions have adopted resolutions expressing their desire that the United States continue to maintain said Greenville Army Air Base as an active United States Army installation; and

WHEREAS, in order to accomplish this end, it is necessary that the County and City of Greenville convey to the United States, title to the Greenville Army Air Base by fee simple deed, free of encum-

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SECTION 5. Redemption.—Any bonds issued pursuant to this act may be issued with a provision for their redemption prior to their stated maturity at par and accrued interest, plus such redemption premium as may be prescribed by the Board, but no bonds shall be redeemable before maturity unless it contains a statement to that effect. If bonds are made subject to redemption, provision shall be made in the proceedings authorizing the issuance of the bonds, specifying the manner of call and the notice thereof that must be given.

SECTION 6. Form.—The bonds shall be in the form of negotiable coupon bonds, payable to bearer, but may be issued with the privilege to any holder of having them registered as to principal on the books of the Treasurer of Greenville County, upon such conditions as the Board may prescribe. Except when so registered, all bonds issued pursuant to this act shall have all attributes of negotiable instruments under the law merchant and the negotiable instruments law.

SECTION 7. Where payable.—The bonds issued pursuant to this act shall be made payable at such places, within or without the State, as the Board shall provide.

SECTION 8. Interest.—Bonds issued pursuant to this act shall bear interest at rates determined by the Board.

SECTION 9. Execution.—The bonds, and the coupons to be attached, shall be executed in such manner as the Board shall by resolution prescribe.

SECTION 10. Sale.—Bonds issued pursuant to this act shall be sold at a price of not less than par and accrued interest to the date of their respective deliveries. They shall be sold after public advertisement of their sale in a newspaper of general circulation in South Carolina. The published notice shall appear not less than ten days prior to the occasion set for opening bids.

SECTION 11. Payment.—For the payment of the principal and interest of all bonds issued pursuant to this act, as they respectively mature, and for the creation of such sinking fund as may be necessary therefor, the full faith, credit and taxing power of Greenville County shall be irrevocably pledged, and there shall be levied annually by the auditor and collected by the treasurer of the county, in the same manner as other county taxes are levied and collected, a tax without limit, on all taxable property in the county sufficient to

pay the principal and interest of such bonds as they respectively mature and to create such sinking fund as may be necessary therefor.

SECTION 12. Exempt from taxes.—The principal and interest of bonds issued pursuant to this act shall have the tax exempt status prescribed by Section 65-4.1 of the 1962 Code.

SECTION 13. Proceeds.—The proceeds derived from the sale of the bonds issued pursuant to this act shall be paid to the Treasurer of Greenville County, shall be deposited in a bond account fund and shall be expended and made use of as follows:

(a) Any accrued interest shall be applied to the payment of the first installment of interest to become due on such bonds.

(b) Any premium shall be applied to the payment of the first installment of principal of such bonds.

(c) The remaining proceeds shall be expended, on the warrant of the Commission, to defray the cost of issuing the bonds authorized hereby, and to pay the costs incurred for all or any of the purposes set forth in Section 2.

(d) If any balance remain, it shall be held by the Treasurer of Greenville County in a special fund and used to effect the retirement of bonds authorized hereby.

SECTION 14. Powers to be additional.—The powers and authorizations hereby conferred upon the Board shall be in addition to all other powers and authorizations previously vested in the Board and may be exercised at any special or regular meeting.

SECTION 15. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 18th day of March, 1966.

(1966, 177110)

No. 1286

An Act To Change The Name Of The Greenville General Hospital Board Of Trustees To The Greenville Hospital System Board Of Trustees; And To Amend Section 6 Of Act No. 433 Of 1947, As Amended, Relating To Powers And Duties Of The Trustees, So As To Further Provide Therefor.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Name of Greenville Hospital Board of Trustees changed.—The name of the Greenville General Hospital Board of Trustees, as created by Act No. 432 of 1947, is hereby changed to the Greenville Hospital System Board of Trustees.

SECTION 2. Section 5 of Act 432 of 1947 further amended—powers and duties of trustees.—Section 5 of Act No. 432 of 1947, as amended, is further amended on line two by striking the word "General" at the beginning of the line and by inserting the word "System" between the words "Hospital" and "Board", on line two of Item (2) by changing the comma at the end thereof to a semicolon and striking "PROVIDED, that said Board shall afford the Executive Committee of the Medical Staff of any hospital operated by the Board the opportunity to present recommendations upon the request of said Executive Committee"; on line one of Item (4) by striking the word "or" between the words "gift," and "purchase" and inserting the word "lease" between the words "purchase," and "or", on line one of Item (9) by striking the word "said" between the words "the" and "Board", on line two of Item (10) by inserting "hospital employees, medical students" between the words "technicians," and "and", on line two of Item (11) by striking the word "said" at the end of the line, on line two of Item (12) by striking the word "said" between the words "the" and "Board", on line two of Item (13) by striking the word "said" between the words "by" and "Board", on line 5 of Item (13) by striking the word "said" at the beginning of the line and by inserting a semicolon after the word "Board" and striking "and the determination of whether patients presented to the hospital for treatment are subject for charity and to fix compensation to be paid by patients other than those unable to assist themselves"; on lines one, two and three of Item (14) by striking "To operate and maintain a charity ward and free services for residents of the County, who are destitute and unable to pay for needed hospitalization;" and inserting "To define eligibility requirements for patients for charity services, to operate and maintain necessary services for such patients, to contract with third parties for reimbursement for services rendered to such patients, and to collect partial payment from patients unable to pay the rates established by the Board";, by striking the following:

"(20) To avail itself of the authorizations of the General Statute Law of the State, now codified as Chapters 185, 187 and 188, Volume 4, Code of Laws of South Carolina for 1942, with respect to the issuance of revenue bonds.

If said Board shall avail itself of any of the several authorizations thus granted to it, by the provisions of this subsection, it shall issue revenue bonds in the name of Greenville County, and to adequately secure the same it shall be empowered to make any pledge or covenant authorized by any provision in any of said Chapters, but it shall not be required to make any pledge or covenant in conflict with the provisions of subsection (14) of this Section. But no bonds may be sold pursuant to this subsection except at public sale, after not less than fourteen (14) days' notice of the sale being given by publication at least once in a newspaper of general circulation, published in Greenville County, and in some financial publication published in the City of New York;" and inserting in lieu thereof the following:

"(20) To enter into contracts for the construction and repair of hospitals and hospital facilities and to contract for equipment and supplies for such hospitals";, by striking the following:

"(21) To conduct periodic investigations into hospital, medical and health conditions in Greenville County;" and inserting in lieu thereof the following:

"(21) To exercise the power of eminent domain for the purpose of acquiring property for purposes of expansion, and to that end it may avail itself of the procedure prescribed for the exercise of eminent domain by any county, municipality or authority created by or organized under the laws of this State, or by the State Highway Department, or by railroad corporations; and", by striking the following:

"(22) To enter into contracts for the construction and repair of hospitals and hospital facilities and to contract for equipment and supplies for the same;" and inserting in lieu thereof the following:

"(22) To borrow money from banking or other lending institutions in such amounts and on such terms as the Board may determine is for the best interest to the Board for the operation of the hospital or for the acquisition of real or personal property, or to enlarge or improve any hospital facilities and to secure such loan or loans by pledge of revenues;" and by striking the following:

"(23) To exercise the power of eminent domain, in the manner provided by the general laws of the State of South Carolina for purchase by any County, Municipality or authority created by or organized under the laws of this State, or by the State Highway Department, or by railroad corporations.

"(24) To borrow money from national banks in such amounts and on such terms as the Board of Trustees shall determine in their discretion is for the best interest of the hospital for the acquisition of additional real or personal property, including equipment, as may be deemed necessary or desirable by the Board, or to enlarge and improve any hospital building or buildings that it now has or may acquire or construct, or for defraying any costs incurred thereabout. *Provided*, that at no time shall the aggregate of such outstanding loans exceed two hundred fifty thousand dollars and *provided*, further, that the Board of Trustees is authorized and empowered to pledge the revenues of the hospital from any source other than the income derived from charges made to patients for the repayment of such loans." The section when amended shall read as follows:

"Section 5. The Greenville Hospital System Board of Trustees shall be authorized and empowered to do all things necessary or convenient for the establishment and maintenance of adequate hospital facilities for Greenville County and, without limiting in any way the generality of the foregoing, shall be empowered as follows:

- (1) To adopt and use a corporate seal;
- (2) To adopt such by-laws, rules and regulations for the conduct of its business and expenditure of its funds, as it may deem advisable;
- (3) To operate the hospital conveyed to it by the City of Greenville, and such other hospitals as it may lease, acquire or construct;
- (4) To acquire by gift, purchase, lease or otherwise, all kinds and descriptions of real and personal property;
- (5) To accept gifts, grants, donations, devises and bequests;
- (6) To enlarge and improve any hospital building that it may acquire or construct;
- (7) To adequately staff and equip any hospital that it may operate;
- (8) To provide and operate out patient departments;
- (9) To establish and operate such clinics as the Board may deem necessary to the health of the residents of Greenville County;
- (10) To provide teaching and instruction programs and schools for nurses, hospital technicians, hospital employees, medical students and physicians during internship and residency;
- (11) To employ such personnel as it may deem necessary for the efficient operation of the several facilities maintained by the Board;
- (12) To establish and promulgate reasonable rates for the use of the services and facilities afforded by the Board;

(13) To provide reasonable regulations concerning the use of the facilities maintained by the Board including reasonable rules governing the conduct of physicians, nurses and technicians while on duty or practicing their profession in the facilities maintained by the Board;

(14) To define eligibility requirements for patients for charity services, to operate and maintain necessary services for such patients, to contract with third parties for reimbursement for services rendered to such patients, and to collect partial payment from patients unable to pay the rates established by the Board;

(15) To expend the proceeds derived from the charges made for the use of the services and facilities of the hospital for the operation and maintenance thereof;

(16) To determine the fiscal year upon which the affairs of the Board shall be conducted;

(17) To expend any funds received in any manner, and the proceeds derived from the issue of bonds hereinafter authorized, to defray any costs incident to establishing, constructing, equipping and maintaining any hospital;

(18) To apply to the Federal Government and any other governmental agency for a grant of moneys to aid in the construction and equipment of any hospital;

(19) To dispose of any property, real or personal, that it may possess, provided always that it shall not dispose of the hospital building, and the site thereof and the land adjacent thereto, which shall be conveyed to it by the City of Greenville, without the consent of the City Council of the City of Greenville;

(20) To enter into contracts for the construction and repair of hospitals and hospital facilities and to contract for equipment and supplies for such hospitals;

(21) To exercise the power of eminent domain for the purpose of acquiring property for purposes of expansion, and to that end it may avail itself of the procedure prescribed for the exercise of eminent domain by any county, municipality or authority created by or organized under the laws of this State, or by the State Highway Department, or by railroad corporation; and

(22) To borrow money from banking or other lending institutions in such amounts and on such terms as the Board may determine is for the best interest to the Board for the operation of the hospital or for the acquisition of real or personal property, or to en-

large or improve any hospital facilities and to secure such loan or loans by pledge of revenues."

SECTION 3. Time effective.—This act shall take effect upon approval by the Governor.

Approved the 7th day of April, 1966.

(R1064, H12-196)

No. 1286

An Act To Empower The County Board Of Commissioners Of Greenville County To Issue Not Exceeding Three Million Dollars Of General Obligation Bonds Of Greenville County To Provide Additional Hospital Facilities In Greenville County; To Prescribe The Terms And Conditions Under Which The Bonds May Be Issued And The Manner In Which Their Proceeds May Be Expended And To Make Provision For The Payment Thereof; And To Repeal Act No. 626 Of 1965 Creating The Greenville Hospital District.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Findings of General Assembly.—As an incident to the enactment of this act, the General Assembly has made the following findings of fact:

(1) By Act No. 432 of 1947 (Act of 1947) Greenville County assumed the function of providing public hospital facilities in Greenville County for the benefit of the residents thereof. Such facilities are operated by a public agency known as the Greenville General Hospital System Board of Trustees (the Hospital Board).

(2) Acting pursuant to the Act of 1947 the Hospital Board acquired from the City of Greenville certain hospital properties.

(3) The scheme of the Act of 1947 and the method of acquiring from the City of Greenville the hospital properties above referred to were upheld as valid in a decision of the Supreme Court of South Carolina in a cause entitled *Bradley v. City Council of the City of Greenville*, 212 S. C. 389; 46 S. E. 2d 291.

(4) The hospital facilities so acquired have been expanded through gifts and grants and with the proceeds of general obligation bonds issued by Greenville County.

(5) In 1965 the General Assembly found that the growth of Greenville County required a tremendous expansion of facilities

then existing and, after considering the problem, it undertook by Act No. 626 of 1965 (Act of 1965) to create a hospital district coextensive with Greenville County and to commit to such district the function of providing public hospital facilities for the residents of Greenville County.

(6) The plan contemplated, among other things, the acquisition from the Hospital Board of all existing public hospital facilities in the county and the expansion thereof. The district was empowered to issue bonds to the extent of eight per cent of the assessed value of all taxable property therein. Following the enactment of Act No. 626 of 1965, litigation was instituted challenging the validity thereof and contending, among other things, that in exercising the power to issue bonds, due regard must be given to the fifteen per cent debt limitation set forth in Section 5 of Article X of the Constitution of this State.

(7) The litigation has proceeded through the Court of Common Pleas. While handing down a decision validating the creation of the district and the plan whereby it would acquire from the Hospital Board existing public hospital facilities in Greenville County, the court held that in exercising the right given to the district to issue bonds, it must observe the fifteen per cent debt limitation set forth in Section 5 of Article X. Following the rendition of the decision by the Court of Common Pleas, notice of intention to appeal to the Supreme Court has been filed, but the appeal has not been perfected.

(8) The General Assembly has given further consideration to the problem and finds that if the district is to be permitted to issue bonds, a constitutional amendment similar to that referred to in the case of *McLure vs. McIlwain*, 211 S. C. 106; 44 S. E. 2d 104, (relating to the Hospital Board of Union County) must be proposed and adopted. It has noted that the provisions of Section 5 of Article X, as judicially construed, permit Greenville County to issue bonds up to the eight per cent limitation prescribed by Section 5 of Article X and that, under applicable decisions, the county is not required to take into consideration the fifteen per cent debt limitation set forth in Section 5 of Article X, which the district must observe. It takes further note of the fact that the district was not authorized to function until "the effective date of the conveyance by the Hospital Board to the district of the hospital properties of the Hospital Board" (Section 4). No such conveyance has been made and, as a consequence, the Hospital Board is still performing the functions com-

South Carolina General Assembly
117th Session, 2007-2008

A379, R196, H4514

STATUS INFORMATION

General Bill

Sponsors: Reps. Shoopman, Loftis, G.R. Smith, Cato, Bedingfield, Haskins, Hamilton, Rice, Allen, F.N. Smith, Taylor, Bannister and Leach

Document Path: I:\council\bill\117\1948ac08.doc

Companion/Similar bill(s): 1002

Introduced in the House on January 17, 2008

Introduced in the Senate on January 24, 2008

Last Amended on February 5, 2008

Passed by the General Assembly on February 7, 2008

Governor's Action: February 15, 2008, Signed

Summary: Greenville Hospital

HISTORY OF LEGISLATIVE ACTIONS

Date	Body	Action Description with journal page number
1/17/2008	House	Introduced, read first time, placed on calendar without reference <u>HJ-6</u>
1/18/2008		Scrivener's error corrected
1/22/2008	House	Amended <u>HJ-22</u>
1/22/2008	House	Debate adjourned until Wednesday, January 23, 2008 <u>HJ-24</u>
1/23/2008	House	Read second time <u>HJ-29</u>
1/24/2008	House	Read third time and sent to Senate <u>HJ-13</u>
1/24/2008	Senate	Introduced, read first time, placed on local & uncontested calendar <u>SJ-5</u>
1/31/2008	Senate	Amended <u>SJ-24</u>
2/1/2008		Scrivener's error corrected
2/5/2008	Senate	Amended <u>SJ-30</u>
2/5/2008	Senate	Read second time <u>SJ-30</u>
2/6/2008		Scrivener's error corrected
2/6/2008	Senate	Read third time and returned to House with amendments <u>SJ-24</u>
2/7/2008	House	Concurred in Senate amendment and enrolled <u>HJ-16</u>
2/13/2008		Ratified R 196
2/15/2008		Signed By Governor
2/21/2008		Copies available
2/21/2008		Effective date 02/15/08
8/6/2008		Act No. 379

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VERSIONS OF THIS BILL

1/17/2008

1/17/2008-A

1/18/2008

1/22/2008

GHS-000042

1/23/2008
1/24/2008
1/31/2008
2/1/2008
2/5/2008
2/6/2008

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(A379, R196, H4514)

AN ACT TO AMEND ACT 432 OF 1947, AS AMENDED, RELATING TO THE GREENVILLE HOSPITAL SYSTEM, ITS CREATION, BOARD, POWERS, AND DUTIES, SO AS TO INCREASE THE BOARD FROM SEVEN TO TWELVE MEMBERS, TO REVISE THE DISTRICTS FROM WHICH THE MEMBERS MUST BE APPOINTED, TO REVISE THE NOMINATING PROCEDURES, AND TO PROVIDE TRANSITIONAL PROCEDURES; AND TO REPEAL SECTION 1 OF ACT 432 OF 1947 RELATING TO THE LEGISLATIVE FINDINGS CONCERNING THE NEED FOR GREENVILLE COUNTY TO TAKE OVER THE HOSPITAL OPERATED BY THE CITY OF GREENVILLE IN ORDER TO SERVE ALL THE RESIDENTS OF GREENVILLE COUNTY AND TO PROVIDE FOR THE ASSURANCES NECESSARY TO EFFECT THIS PLAN.

Be it enacted by the General Assembly of the State of South Carolina:

Greenville Hospital System Board of Trustees revised

SECTION 1. Section 4 of Act 432 of 1947, as last amended by Act 546 of 1951, is further amended to read:

"Section 4. (A) For the purpose of operating and at all times maintaining adequate hospital facilities for the residents of Greenville County, including those residents in the City of Greenville and as otherwise provided by law, there is established the Greenville Hospital System Board of Trustees.

(B)(1) The board of trustees shall consist of twelve members to be appointed by the Greenville County Legislative Delegation pursuant to this section. All members must be qualified electors. Members filling house district residency seats, as provided for in this subsection, shall, at the time of their appointment and throughout their term of office, reside in a house district, which constitutes part of the specific house

district residency seat. Six of the twelve members must be considered as filling house district residency seats, with one seat being filled by a person residing in House District 17 or 18, one residing in House District 19 or 26, one residing in House District 20 or 21, one residing in House District 22 or 24, one residing in House District 23 or 25, and one residing in House District 16, 27, or 28. Six of the twelve members must be at large, at least four of whom must reside in Greenville County, and two of whom may reside within or without Greenville County. Two of the members serving at large and residing in Greenville County must reside in the City of Greenville, but no more than three of the twelve members may reside in the city limits of a single municipality; provided, however, that four members may reside in the city limits of a single municipality during the period ending October 1, 2011, in which the members specified in subsection (D) shall continue to serve. Appointment of at-large members who are residents of the City of Greenville must be submitted for review by the City of Greenville as provided in subsection (B)(3)(a). Members shall represent all communities served by the Greenville Hospital System regardless of residency and shall make decisions in the best interests of the Greenville Hospital System as a whole and all those it serves.

(2) Members shall serve terms of six years, which expire on October first of the appropriate year, and until their successors are appointed and qualify; however, under no circumstance may a member continue to serve longer than six months after the expiration of his term. Members may not serve more than one six-year term, except that a member who fills a partial term of less than three years or the term provided for in subsection (E)(3) may be reappointed to serve one six-year term. If the Greenville County Legislative Delegation has not filled a seat within six months of the expiration of the term, the member serving in that seat shall cease serving and the seat is vacant until filled in accordance with this section. Vacancies must be filled in the manner of the original appointment for the unexpired portion of the term. Appointments must be filed in the office of the Clerk of Court for Greenville County, who shall certify their appointment to the Governor of South Carolina, who shall commission the member for the term provided.

(3)(a) The board of trustees shall publicize vacancies, and recommendations may be made to the board from any individual, organization, or group. The board shall submit at least two nominees for each vacancy to the Greenville County Legislative Delegation, except as provided for in subsection (B)(3)(b). The board shall provide the legislative delegation with biographical information on the nominees and must be available to discuss the recommendations and

shall make the nominees available, if requested by the legislative delegation, to meet with the delegation. The legislative delegation with a quorum present and by majority-weighted vote shall select one nominee from the nominees submitted for each vacancy. However, if after the board has submitted its initial nominees, the delegation requests additional nominees, the board has one hundred twenty days to submit the additional nominees. If the board does not submit additional nominees within one hundred twenty days of the request, the legislative delegation has sixty days to appoint qualified members to fill the vacancy without considering nominations from the board. If the board does submit one additional set of nominees within the one hundred twenty days and the delegation does not select one of the nominees, the delegation has sixty days to appoint qualified members to fill the vacancy without considering the nominations from the board. An individual selected by the delegation to fill the seat of an at-large member who is a resident of the City of Greenville must be submitted by the legislative delegation to the City Council of the City of Greenville for concurrence, and the city council shall act timely on the request for concurrence. If the city council does not concur in the appointment, the board must submit two nominees to the legislative delegation to fill the seat and the legislative delegation shall select from the nominees another individual and submit that nominee to the City of Greenville for concurrence. All recommendations, nominations, and appointments to the board shall take into account race, gender, expertise, and other qualifications as may be pertinent to service on the board so that such members are mindful, to the greatest extent possible, of the needs of all segments of the population of Greenville County and those served by the Greenville Hospital System.

(b) Notwithstanding the provisions of subsection (B)(3)(a) requiring the board to submit two nominees to the Greenville County Legislative Delegation for each vacancy, when the term expires of a member serving an unexpired portion of a term of less than three years, the board may elect to nominate only that member to fill the vacancy occurring at the expiration of the member's partial term.

(C)(1) The board shall elect from among its members a chairman, vice chairman, and secretary.

(2) Members shall serve on the board of trustees without compensation.

(D) Members serving on this act's effective date shall continue to serve until their terms expire and until their successors are appointed and qualify. The House District Residency Seat for House District 20 or 21 initially must be filled by Mr. Frank Landgraff, a currently serving member whose term will expire October 1, 2009. The House

District Residency Seat for House District 22 or 24 initially must be filled by Mr. Harry Chapman, a currently serving member whose term will expire October 1, 2011. An at-large seat initially must be filled by Ms. Frances Ellison, a currently serving member whose term will expire October 1, 2011. An at-large seat initially must be filled by Mr. Jack Shaw, a currently serving member whose term will expire October 1, 2009. An at-large seat must be filled by Ms. Rita McKinney, who had been approved by the City of Greenville but who had not been commissioned by the Governor, for a term to expire October 1, 2011. On the expiration of these members' terms, new members must be appointed in accordance with this section for one six-year term to fill the vacancies created by the expiration of these terms.

(E)(1) In addition to the members provided for in subsection (D), these new members must be appointed in 2008:

- (a) new members whose terms expire October 1, 2013:
 - (i) the member residing in House District 17 or 18;
 - (ii) the member residing in House District 19 or 26;
 - (iii) the member residing in House District 23 or 25; and
 - (iv) the member residing in House District 16, 27, or 28;
- (b) one new at-large member whose term expires October 1, 2011;
- (c) two new at-large members whose terms expire October 1, 2009.

(2) On the expiration of the members' terms appointed pursuant to item (a) or (b) of subsection (E)(1), new members must be appointed in accordance with this section for one six-year term to fill the vacancies created by the expiration of these terms.

(3) Of the members appointed pursuant to subsection (E)(1), only the two members appointed pursuant to item (c) of subsection (E)(1) may be reappointed to serve one six-year term. If the board wishes to reappoint the member appointed pursuant to item (c) of subsection (E)(1), the board may elect to nominate only that one person to fill the vacancy in that at-large seat for one six-year term."

Repeal

SECTION 2. Section 1 of Act 432 of 1947 is repealed.

Time effective

SECTION 3. This act takes effect upon approval by the Governor.

Ratified the 13th day of February, 2008.

Approved the 15th day of February, 2008.

AMENDED AND RESTATED
BYLAWS
OF
GREENVILLE HOSPITAL SYSTEM
BOARD OF TRUSTEES

October 7, 2008

DEFINITIONS

1. "ACT 432" means Act No. 432, enacted by the South Carolina General Assembly and approved May 19, 1947, as the same has been and in the future may be amended.
2. "BOARD OF TRUSTEES" or "BOARD" means the governing body of the System.
3. "CHAIRMAN OF THE BOARD" or "CHAIRMAN" means the individual elected by the Board of Trustees to be its Chairman.
4. "CHIEF EXECUTIVE OFFICER" means the individual appointed by the Board to act on its behalf in the overall administrative management of the System. (See Section 4.1-1.)
5. "CLINICAL PRIVILEGES" or "PRIVILEGES" means the permission granted to a Practitioner to render specific diagnostic, therapeutic, medical, surgical, dental, podiatric or oral surgical services.
6. "EX OFFICIO" means service as a member of a body by virtue of an office or position held and, unless otherwise expressly provided, means with voting rights.
7. "FREEDOM OF INFORMATION ACT" means Title 30, Chapter 4 of the S.C. Code of Laws, as amended from time to time.
8. "INDEPENDENT" when used in connection with a Trustee, physician, employee or other person means an individual who is independent of management and the System. A person is considered independent as long as neither the individual nor an immediate member of individual's family is an employee of the System or its affiliates, receives any compensation or payment for services rendered from the System or its affiliates unless consistent with the requirements of the State Ethics Act, has admitting privileges to any facility of the System, or is otherwise determined by the Trustees to not qualify as independent.
9. "MEDICAL STAFF" or "STAFF" means the formal organization of all licensed physicians, oral surgeons and dentists, podiatrists, allied health, and other professionals who are privileged to attend patients of the System.
10. "MEDICAL STAFF MEMBERSHIP STATUS" or "MEMBERSHIP STATUS" means all matters relating to Medical Staff appointments and reappointments, to department affiliations, and to staff category assignments.

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11. "PHYSICIAN" means an individual licensed to practice medicine and credentialed by the System.

12. "PRACTITIONER" means, unless otherwise expressly limited, any licensed physician, oral surgeon and dentist, podiatrist, allied health, and other professionals applying for or exercising clinical privileges within the System.

13. "PRESIDENT" means the official title of the Chief Executive Officer. (See Section 4.1-1)

14. "SYSTEM" means the Greenville Hospital System.

15. "TRUSTEE" means a member of the Board of Trustees.

ARTICLE I. OFFICES, PURPOSES AND POWERS

1.1 OFFICES

The principal office of the Greenville Hospital System shall be located in the County of Greenville, State of South Carolina. The System may have such other offices as the Board may determine from time to time.

1.2 PURPOSES AND POWERS

The System shall have such purposes and shall have and exercise such powers in furtherance of its purposes as are set forth in Act 432 and any purposes and powers provided by law, including the authority to operate facilities, programs and services in any location where such facilities, programs, or services support the System or provide services to residents in the area.

ARTICLE II. BOARD OF TRUSTEES

2.1 NUMBER AND QUALIFICATION

Act 432 establishes a Board of Trustees to govern the System on behalf of the peoples served. The Board shall consist of twelve (12) members appointed by the Greenville County Legislative Delegation as provided in Act 432. All members shall be qualified electors. One of the twelve members, at the time of appointment and throughout the member's term of office, shall reside within each of the following coupled South Carolina House Districts:

- 1) House Districts 17 and 18
- 2) House Districts 19 and 26
- 3) House Districts 20 and 21
- 4) House Districts 22 and 24
- 5) House Districts 23 and 25
- 6) House Districts 16, 27 and 28

Each of the foregoing six members is sometimes hereafter referred to as a "Resident Member" and collectively as the "Resident Members." If a Resident Member moves his or her residency during the term to a House District other than the two coupled districts in which the Trustee resided at the time of appointment, that Resident Member will be deemed to have resigned from the Board and the seat shall be vacant.

Each of the six members who are not Resident Members are sometimes hereafter referred to as a "Member at Large" and collectively as "Members At Large." Four of the Members At Large shall reside within Greenville County and of these four, two shall reside within the City of Greenville. No geographic residency requirements shall apply to two Members At Large. For ease of reference, the member seats filled by the Members At Large shall be designated as seats 1 through 6.

In no event shall more than three members reside within the city limits of a single municipality; provided, however, that four members may reside in the city limits of a single municipality until October 1, 2011.

The members shall represent all communities served by the System regardless of residency and shall make decisions in the best interests of the System as a whole and all those it serves.

2.2 TERMS OF OFFICE

Subject to the transitional terms set forth below, the terms of office for the members of the Board shall be for a period of six (6) years. All terms of office shall commence and

end on October 1 of odd numbered years. Terms of office shall be staggered so that the terms of office of four (4) members shall expire in the same year.

In order to effect the staggering of terms, the following terms have been established and the following individuals have been duly appointed to serve during the transitional terms:

Member	Term Expires October 1

Resident Members (and applicable House District)

R. Dennis Hennett (17 and 18)	2013
Benjamin L. Allen, Jr. (19 and 26)	2013
Frank A. Landgraff (20 and 21)	2009
Harry A. Chapman, Jr. (22 and 24)	2011
Jerry E. Dempsey (23 and 25)	2013
S. Hunter Howard, Jr. (16, 27 and 28)	2013

Members At Large (and Numerical Seat Designation)

Jack E. Shaw (1)	2009
James C. Morton (2)	2009
Benjamin B. Waters, III (3)	2009
Frances D. Ellison (4)	2011
Thomas E. Simmons (5)	2011
Rita McKinney (6)	2011

In the event that at the end of term a new member has not been duly appointed and commissioned, the currently serving member shall continue to serve until the new member is appointed and commissioned but not to exceed six months following the end of the term.

2.3 SUCCESSIVE TERMS

Members may not serve more than one term; provided however, that in the event that a member has been appointed (x) either (i) during the transition period or (ii) to fill a vacancy arising during a term and (y) such appointment is for a term of less than three (3) years (a "Partial Term"), the member is eligible to serve an additional six year term following completion of the Partial Term.

2.4 FILLING VACANCIES - NOMINATION, APPROVAL, APPOINTMENT

2.4-1 The Board shall provide public notice of vacancies and recommendations may be made to the Board from any individual, organization or group. As provided in

Section 3.1-2 hereof, the Governance Committee of the Board shall be responsible for developing the criteria and processes to be followed in identifying potential persons to serve on the Board. Such considerations shall take into account race, gender, expertise, and other qualifications as may be pertinent to service on the Board so that the members are mindful, to the greatest extent possible, of the needs of all segments of the population of Greenville County and those served by the System.

2.4-2 The Board shall submit two (2) nominations for each vacancy to the Greenville County Legislative Delegation for its approval. Voting by the Delegation, with a quorum present, shall be by majority-weighted vote. Upon the approval of a nominee by the Delegation, the appointment will be forwarded:

- (1) If the appointment is for a Member At Large who resides within the city limits of the City of Greenville, to the City Council of the City of Greenville for concurrence. If the City Council does not concur in the appointment, the process shall be repeated with the Board submitting two new nominations for that appointment to the Delegation for its approval and the nominee selected being forwarded to the City Council of the City of Greenville for concurrence. Upon concurrence by the City Council of the City of Greenville, the appointment will be forwarded to Clerk of the Court of Greenville County who shall file such appointment and who shall certify the appointment to the Governor of South Carolina, who shall commission the nominee for the term provided; and
- (2) If the appointment is for a Resident Member or a Member at Large who does not reside within the city limits of the City of Greenville, the appointment will be forwarded to the Clerk of Court for Greenville County who will certify the appointment to the Governor of South Carolina, who shall commission the member for the term provided.

Notwithstanding the foregoing, in the event that a member has been duly appointed to fill a seat for a term of less than three years, the Board may submit only that individual to fill the vacancy created at the end of the Partial Term.

2.4-3 The Delegation shall have the right to request that the Board submit nominations in addition to the nominees submitted by the Board. If so requested, the Board shall submit such nominations within one hundred twenty (120) days of the request. If either (1) the Board does not submit additional nominees for consideration, or (2) the Board does submit additional nominees and the Delegation does not proceed with the appointment of any of the nominees submitted, the Delegation shall have sixty (60) days to appoint a qualified member to fill such vacancy without consideration of nominations from the Board.

2.5 COMPENSATION

All members of the Board shall serve without compensation.

2.6 AUTHORITY AND POWERS; AFFILIATED ENTITIES

2.6-1 AUTHORITY AND POWERS

As provided in Act 432, Section 5, and as may be otherwise provided by law, the Greenville Hospital System Board of Trustees shall be authorized and empowered to do all things necessary or convenient for the establishment and maintenance of adequate hospital facilities for Greenville County and as otherwise provided by law and, without limiting in any way the generality of the foregoing, shall be empowered as follows:

- (a) To adopt and use a corporate seal.
- (b) To adopt such bylaws, rules and regulations for the conduct of its business and expenditure of its funds, as it may deem advisable.
- (c) To operate the hospital conveyed to it by the City of Greenville, and such other hospitals as it may lease, acquire or construct.
- (d) To acquire by gift, purchase, lease or otherwise, all kinds and descriptions of real and personal property.
- (e) To accept gifts, grants, donations, devises and bequests.
- (f) To enlarge and improve any hospital building that it may lease, acquire or construct.
- (g) To adequately staff and equip any hospital that it may operate.
- (h) To provide and operate outpatient departments.
- (i) To establish and operate such clinics as the Board may deem necessary to the health of the residents of Greenville County and those served by the System.
- (j) To provide teaching and instruction programs and schools for nurses, hospital technicians, hospital employees, medical students and physicians during internship and residency.
- (k) To employ such personnel as it may deem necessary for the efficient operation of the several facilities maintained by the Board.

- (l) To establish and promulgate reasonable rates for the use of the services and facilities afforded by the Board.
- (m) To provide reasonable regulations concerning the use of the facilities maintained by the Board including reasonable rules governing the conduct of physicians, nurses and technicians while on duty or practicing their profession in the facilities maintained by the Board.
- (n) To define eligibility requirements for patients for charity services, to operate and maintain necessary services for such patients, to contract with third parties for reimbursement for services rendered to such patients, and to collect partial payment from patients unable to pay the rates established by the Board.
- (o) To expend the proceeds derived from the charges made for the use of the services and facilities of the hospital for the operation and maintenance thereof.
- (p) To determine the fiscal year upon which the affairs of the Board shall be conducted.
- (q) To expend any funds received in any manner, and the proceeds derived from the issue of bonds hereinafter authorized, to defray any costs incident to establishing, constructing, equipping and maintaining any hospital.
- (r) To apply to the Federal Government and any other governmental agency for a grant of monies to aid in the construction and equipment of any hospital.
- (s) To dispose of any property, real or personal, that it may possess.
- (t) To enter into contracts for the construction and repair of hospitals and System facilities and to contract for equipment and supplies for such hospitals.
- (u) To exercise the power of eminent domain for the purpose of acquiring property for purposes of expansion, and to that end it may avail itself of the procedure prescribed for the exercise of eminent domain by any county, municipality or authority created by or organized under the laws of this State, or by the State Highway Department, or by railroad corporation.
- (v) To borrow money from banking or other lending institutions in such amounts and on such terms as the Board may determine is for the best interest to the Board for the operation of the System or for the acquisition

of real or personal property, or to enlarge or improve any System facilities and to secure such loan or loans by pledge of revenues.

2.6-2 AFFILIATED ENTITIES

The Board shall approve the creation and form of governance of any entity affiliated with the System to assure that the operations of the entity are consistent with the mission of the System. The Board periodically, and at least annually, shall review the operations and objectives of each such entity. When the activities of the affiliated entity may impact the financial condition of the System or its programs, the Board, in fulfilling its fiduciary duties, shall require the affiliated entity to seek approvals from the System to assure consistency of its strategic direction with the objectives of the System and the levels of expenditures to fulfill its strategic direction. These approvals include nominees for board-level governance positions, annual review of the business plan, review of the appointment and performance of management of the affiliated entity and any change in mission or strategic direction of the affiliated entity.

2.7 OFFICERS; TERMS; DUTIES

2.7-1. OFFICERS-TERMS OF OFFICE

The Board, on the recommendation of the Governance Committee, in September of each even numbered year, shall elect from among its number one member as Chairman, a second as Vice Chairman, and a third as Secretary. Terms of office shall be for a period of two (2) years, or until their successors have been duly elected and qualified. Terms of office shall be effective as of October 1 of each even numbered year, beginning October 1, 2008. No Chairman shall be eligible to succeed to another term as Chairman. Vacancies for any unexpired terms of office shall be promptly filled by the Board upon recommendation of the Governance Committee.

2.7-2 DUTIES

(a) Chairman:

The Chairman shall from time to time counsel with other members of the Board, with the President, and with such other persons, entities or agencies as may be interested in adequate health care facilities and practices impacting the System and its mission, and the Chairman shall, unless otherwise directed by the Board, see that all orders and resolutions of the Board are carried into effect. and shall perform such other duties as from time to time may be assigned by the Board, as contained in these Bylaws, or as may be within the scope of the Chairman's authority under the provisions of Act 432. The Chairman shall:

- (1) Preside at all meetings of the Board;
 - (2) Appoint members and the chairs of the standing committees of the Board;
 - (3) Be an ex-officio member of all standing committees of the Board without power to vote except as otherwise provided herein;
 - (4) Chair the Governance Committee of the Board;
 - (5) Be the official spokesperson of the Board;
 - (6) Execute all contracts and agreements authorized by the Board of Trustees to be so executed by the Chairman; and
 - (7) Perform such other duties as may, from time to time, be prescribed by the Board and these Bylaws, or as may be within the scope of the Chairman's authority under the provisions of Act 432.
- (b) Vice-Chairman: In the absence or disability of the Chairman, the Vice Chairman shall have all the powers and shall perform all the duties of the Chairman until such time as the Chairman can resume his duties or a successor Chairman is elected. The Vice-Chairman shall be eligible to succeed himself for not more than one additional, consecutive term.
- (c) Secretary: The Secretary shall keep or cause to be kept the minutes of all the meetings and proceedings of the Board in a book or books provided for that purpose. The Secretary shall give or cause to be given all notices provided for by these Bylaws, by Act 432, and by law. The Secretary shall have custody of the seal of the System and shall affix the same to all deeds, notes and obligating instruments under the seal of the Board when required. The Secretary shall keep an accurate list of the members of the Board and the dates of their respective terms and the expirations thereof. In general, the Secretary shall perform all such acts as may be prescribed by the Board or the Chairman and as are usually incident to the office of Secretary. The Secretary shall be eligible to succeed himself for not more than one additional, consecutive term. The System shall provide the Secretary with such assistance as may be necessary to accomplish the ministerial functions incidental to the office of Secretary. The Board, upon the recommendation of the Governance Committee, may elect one or more assistant secretaries who are not members of the Board, with such powers as may be delegated by the Secretary.

2.8 MEETINGS OF TRUSTEES

2.8-1 REGULAR MEETINGS

Regular meetings of the Board shall be held at such places and times as the Board shall provide by resolution. The Chairman shall have the authority to cancel or reschedule any regular meeting of the Board.

2.8-2 SPECIAL MEETINGS

Special meetings of the Board may be called by or at the direction of the Chairman or any three (3) Trustees. No business shall be conducted at a special meeting other than that stated in the notice of the meeting.

2.8-3 EMERGENCY MEETINGS

Emergency meetings of the Board may be called by or at the direction of the Chairman or any three (3) Trustees when immediate action by the Board is deemed necessary. No matters other than those matters requiring immediate attention may be acted upon at such emergency meetings.

2.8-4 PLACE OF MEETINGS

All meetings of the Board shall be held at the principal office of the System or at such other place as the Chairman shall designate.

2.8-5 NOTICE TO TRUSTEES

Notice of the time and place of each regular or special meeting of the Board shall be sent to each Trustee by mail, e-mail or facsimile addressed to the Trustee at the person's address as it appears on the records of the System or telephoned or delivered to the Trustee personally at least twenty-four (24) hours before the meeting is to be held. In the case of a special meeting or when required by law, the notice shall also state the purpose for which the meeting is called. In the case of an emergency meeting, all notice requirements will be deemed to have been met when a reasonable effort has been made to reach each Trustee by telephone or otherwise to advise of the time, place and purpose of such meeting.

2.8-6 PUBLIC NOTICE

- (a) Regular Meetings: The Board shall give written public notice of its regular meetings at the beginning of each calendar year, which notice shall include the dates, times and places of such meetings. Notice of each regular meeting shall be posted on a bulletin board in the principal office of the System as soon as practicable but not later than twenty-four (24) hours before the meeting. Agendas, if any, for regular meetings shall be

posted on such bulletin board at least twenty-four (24) hours prior to such meetings.

- (b) Special and Rescheduled Meetings: The Board shall post on a bulletin board in the principal office of the System written notice for any special or rescheduled meetings. Such notice shall be posted as early as is practicable but not later than twenty-four (24) hours before the meeting. The notice shall include the date, time and place of the meeting. Agendas, if any, for special meetings shall be posted on such bulletin board at least twenty-four (24) hours prior to such meetings.
- (c) Emergency Meetings: Public notice and posted agendas shall not be required for emergency meetings.
- (d) Notice To Interested Persons and Local News Media: The Board shall make an effort to notify interested persons or organizations, local news media, or such other news media as may have requested notification of the times, dates, places and agendas of all meetings, whether regular, special or rescheduled. Efforts made to comply with this requirement shall be noted in the minutes of the meeting.

2.8-7 MEETINGS CLOSED TO THE PUBLIC

All meetings of the Board shall be open to the public unless closed as provided herein. The Board may hold a meeting closed to the public for one or more of the reasons set forth in the Freedom of Information Act. Prior to closing the meeting, the Board shall vote on the question in public. The presiding officer of the meeting shall state the specific purpose of the closed session prior to the beginning of the session. No action shall be taken in the closed session other than to adjourn or return to public session. The presiding officer of the meeting shall determine who, if any, other persons would further the matters to be discussed in closed session and should participate. All information and discussions held in closed sessions shall be held in confidence by those participating in the meeting, and the Board may adopt policies and procedures regarding the confidentiality of any discussions and the keeping of written minutes of the discussions held in closed session.

2.8-8 ADDRESSING THE BOARD

The Board may adopt policies and procedures to be followed by members of the public wishing to address the Board.

2.8-9 QUORUM AND REQUIRED VOTE

A majority of the total number of Trustees then in office shall be necessary at any regular, special or emergency meeting to constitute a quorum for the transaction

of business but a smaller number may adjourn the meeting to a subsequent day and hour. Trustees may participate in a meeting by means of conference telephone or other communication equipment by which all persons participating in the meeting can hear each other, and so participating in a meeting shall constitute presence in person at such meeting. The vote of a majority of the Trustees present at a meeting at which a quorum is present shall be the act of the Board notwithstanding the withdrawal of enough Trustees to leave less than a quorum. For purposes of determining a quorum, any Trustee who is excused from a meeting pursuant to Article VI hereof shall be counted in establishing a quorum.

2.8-10 VOTING

Each Trustee shall be entitled to one (1) vote on any matter before the Board. Voting by proxy shall not be permitted.

2.8-11 MINUTES OF MEETINGS

The Board shall keep written minutes of all of its public meetings. Such minutes shall include but not be limited to:

- (a) The date, time, and place of meeting.
- (b) The Trustees recorded as either present or absent.
- (c) The substance of all matters proposed, discussed or decided and, at the request of any Trustee, a record, by individual Trustee, of any votes taken.
- (d) Any other information that any Trustee requests be included or reflected in the minutes.

2.8-12 PRESUMPTION OF ASSENT

A Trustee who is present at a meeting of the Board at which action on any matter is authorized or taken shall be presumed to have assented to the action taken unless the Trustee's contrary vote shall be entered in the minutes of the meeting or unless the Trustee's written dissent to such action shall be filed either during the meeting or within a reasonable time after the adjournment thereof, with the person acting as Secretary of the meeting or with the Secretary of the Board. Such right of dissent shall not be available to a Trustee who voted in favor of such action.

ARTICLE III. BOARD COMMITTEES

3.1 STANDING COMMITTEES

To facilitate consideration of the business and management of the Board, standing committees are established as hereinafter set forth. Any matters appropriate for consideration by a standing committee shall be referred thereto first unless the Board, acting as a whole, shall determine otherwise. In the event that any matter is referred to and considered by a standing committee, but no recommendation or report is made to the Board on the matter, any member of the Board may bring the matter to the Board for its consideration.

The Board of Trustees shall have the following standing committees (listed in alphabetical order):

- (a) Audit Committee
- (b) Governance Committee
- (c) Planning and Finance Committee
- (d) Quality and Academics Committee

All standing committee assignments shall be made by the Chairman within 30 days following the election of the Chairman or from time to time to fill any vacancy in a Committee. Committee assignments shall be for two years except in instances in which the remaining term of member of the Board is less than two years or the Chairman of the Board determines that a different term is appropriate. The Chairman of the Board shall designate one of the members of the Board (including the Chairman) serving on the committee to act as chair of the committee. All committee members, unless otherwise designated herein, shall have voice and vote at the committee meetings.

These standing committees shall have such duties and powers as may be prescribed in these Bylaws with such other duties and powers as may be delegated to the standing committee from time to time by action of the Board. These powers and duties may specifically delegate the authority to act to the standing committee, in which case the action of the standing committee shall constitute the action of the Board on the matters. In all other instances, the powers and duties of the standing committee shall be to make recommendations to the Board for action or for ratification. The following items shall be submitted to the Board for action:

- (a) Approval of Board nominees to be submitted to the Greenville County Legislative Delegation;
- (b) Election of officers of the Board;

- (c) Selection of the President of the System;
- (d) Amendments to these Bylaws;
- (e) Approval of the mission, vision and values for the System;
- (f) Approval of the strategic plan for the System;
- (g) Approval of the annual operating and capital budgets for the System;
- (h) Approval of annual clinical effectiveness plan for the System;
- (i) Approval of annual organizational goals for the System;
- (j) Asset transfers, mergers, consolidations, acquisitions, dissolutions and joint ventures which would have a material impact on the services provided by the System or result in a material change in the strategic direction or anticipated financial position of the System;
- (k) Policies and actions required by law or by governmental and regulatory authorities to be undertaken by the Board acting as a whole; and
- (l) Evaluation of the System's diversity initiatives.

The standing committees shall keep minutes of their meetings which shall be forwarded to all Trustees for their information.

3.1-1 AUDIT COMMITTEE:

- (a) Composition: The Audit Committee shall be composed of three (3) Independent Trustees. One (1) of the Trustees shall be designated as chair of the committee.
- (b) Powers and Functions: The Audit Committee shall:
 - (1) Oversee the financial reporting processes of the System.
 - (2) Select the independent auditors of the System, review with the independent auditors the scope of engagement, resolve any disagreements between management and the independent auditor, and approve policies establishing services to be provided by the independent auditors to the System.
 - (3) Oversee the internal audit process.
 - (4) Meet periodically with independent auditors, internal auditors, management, and System counsel, collectively and independently, to review the effectiveness of internal controls, the integrity of the System's financial statements, the performance of the independent auditors and internal audit, the System's compliance with legal and ethical requirements applicable to the financial reports and operations of the System, and critical audit policies and procedures.

- (5) Assure that the corporate compliance program of the System establishes and implements procedures which adequately address issues regarding accounting, internal controls or audit matters.
- (6) Review not less than quarterly with management, and as needed with the independent auditors, the financial disclosures of the System, including the annual audit.
- (7) Engage such resources on behalf of the System to advise with respect to the financial reports and the financial reporting process of the System.
- (8) Adopt such policies, procedures, codes and charters as are necessary or appropriate to insure the financial integrity of the System.

3.1-2 GOVERNANCE COMMITTEE

- (a) Election and Composition: The Governance Committee shall be composed of:
 - (1) The Chairman of the Board, who shall be a voting member of the committee;
 - (2) Two (2) Trustees appointed by the Chairman; and
 - (3) The President.
- (b) Powers and Functions: The Governance Committee shall:
 - a) Practices and Policies
 - (1) Keep the Board informed of current best practices in public body and corporate governance.
 - (2) Review governance trends for applicability to the System.
 - (3) Update the System's governance principles and practices.
 - (4) Review the System's Code of Ethics and written policies regarding conflicts of interest.
 - (5) Oversee the implementation and effectiveness of the Bylaws and other governance documents and recommend modifications as needed.

- (6) Conduct at least biannually a self-evaluation of the effectiveness of the Board and its committees and recommend amendments, if any, to these Bylaws. The committee will report its findings to the full Board which will take appropriate action to correct any failure in accountability.
- (7) In conjunction with senior management and leadership of the Medical Staff, review and evaluate the System's mission, vision and goals, and make recommendations to the Board regarding same.
- (8) Insure that new Trustees, senior management and leaders of the Medical Staff receive orientation on the System's mission, vision and values; safety and quality goals; and the System's structure and decision-making processes.
- (9) Address matters not otherwise under the purview of a standing committee.

b) Nominating

- (1) Oversee the nominating process for prospective Trustees.
- (2) Encourage public input in the nominating process.
- (3) Adopt policies and procedures relating to the nominating process.
- (4) Recommend to the Board for its consideration the individuals for nomination as Trustees.

c) Board Officers

- (1) Recommend to the Board for its consideration Trustees to serve as the Board Officers

d) Compensation and Succession

- (1) Develop and approve the executive compensation philosophy for the System, including benefits. The committee will determine the compensation and benefits of the President and review and approve the recommendations of the President for the compensation criteria which will be used in establishing the compensation and benefits of other members of management of the System. For this purpose, management shall include the President and such other individuals as the committee shall

determine are members of senior management, utilizing the concepts applicable to not-for-profit entities under Section 4958 of the Internal Revenue Code. The committee shall obtain appropriate comparability data, engage advisors as it deems appropriate to fulfill its responsibilities, and shall document the basis for its determinations. The committee will communicate annually to the entire Board the process utilized in making such determinations and the results thereof.

- (2) Establish and direct succession planning for the President as appropriate.

e) Governmental Affairs

- (1) Represent the System with the Greenville County Legislative Delegation, the City Council of the City of Greenville, and other federal, state and local political bodies.
- (2) Review engagements and interactions with governmental and regulatory bodies to assure compliance with applicable laws and regulations.

3.1-3 PLANNING and FINANCE COMMITTEE

- (a) Election and Composition: The Planning and Finance Committee shall be composed of:

- (1) Three (3) Trustees appointed by the Chairman;
- (2) The President; and
- (3) The members of senior management primarily responsible for strategic planning, hospital operations and finance.

The committee may also include:

- (1) No more than two (2) physicians who are members of the Medical Staff who are recommended by the President and the Chair of the Committee and appointed by the Chairman of the Board. Such physicians shall serve at the pleasure of the Chairman of the Board; and
- (2) No more than two (2) persons who are Independent who have expertise in matters under the purview of committee, including specifically individuals with a regional or national perspective on matters related to strategic issues facing the System. Such persons

are to be recommended by the President and the Chair of the Committee and appointed by the Chairman of the Board for a term of two (2) years. Such individuals shall serve at the pleasure of the Chairman of the Board.

(b) Powers and Functions: The committee shall:

- (1) Assure the development of planning and financial goals for the System, evaluate programs for achieving the goals and review achievement of the goals.
- (2) Oversee the development of and make recommendations to the Board regarding operating and capital plans for the System, including both annual and long-term budgets and forecasts and the accessing of capital by the System through debt, leasing or otherwise.
- (3) Oversee planning and performance of the System's role in meeting identified health needs of the community.
- (4) Review and evaluate opportunities for implementation or termination of programs or services.
- (5) Monitor the financial status of the System through review of operating financial statements.
- (6) Encourage open planning communications between the System and other community health providers.
- (7) Develop and implement appropriate policies relative to the conduct of planning, construction, banking and investment functions of the System.
- (8) Ensure that program, service and facility development is in accordance with local, state and federal regulations and act on behalf of the Board in connection with certificate of need, licensure, and other regulated authorizations, licenses and permits.

3.1-4 QUALITY AND ACADEMICS COMMITTEE

(a) Election and Composition: The Quality and Academics Committee shall be composed of:

- (1) Three (3) Trustees appointed by the Chairman;
- (2) The President; and

- (3) The members of senior management primarily responsible for academic and medical services, hospital operations, nursing, and quality and clinical effectiveness; and
- (4) The President of the Medical Staff;

The Committee may also include:

- (1) No more than two (2) Physicians who are members of the Medical Staff, recommended by the President and the Chair of the Committee and appointed by the Chairman of the Board. Such Physicians shall serve at the pleasure of the Chairman of the Board; and
- (2) No more than two (2) persons who are Independent and who have special expertise in matters within the purview of the committee, including specifically representatives of academic institutions which are closely aligned with the System. Such persons are to be recommended by the President and the Chair of the Committee and appointed by the Chairman of the Board for a term of two (2) years. Such individuals shall serve at the pleasure of the Chairman of the Board.

(b) Powers and Functions: The Quality and Academics Committee shall:

- (1) Assure the development of a System-wide program which undertakes initiatives designed to improve the quality of service and patient care through identifying actual and potential medical and non-medical factors, implementing performance excellence initiatives and monitoring the effectiveness of the initiatives. The committee shall work with the Medical Staff on activities that contribute to the preservation and improvement of the quality of patient care, patient safety and efficient patient flow, including the reporting of patient care practices.
- (2) On a regular basis, review and evaluate the System-wide performance excellence, education and research programs and initiatives undertaken in accordance with that program.
- (3) Develop policies and oversee matters affecting the quality, character, extent and relative standards of the academic programs of the System.
- (4) Develop policies and oversee matters relating to the development, promotion and stimulation of research efforts and intellectual

property and conflicts of interest relating to intellectual property of the System.

- (5) Interact with leadership and the boards and board committees of institutions and organizations with which the System collaborates in quality, education and research initiatives.
- (6) Receive reports of the Medical Staff and act on behalf of the Board in matters relating to the affairs of the Medical Staff, including the privileging and credentialing of the Medical Staff and allied health professionals practicing at the System. The Committee will bring to the full Board Medical Staff reports and issues.

3.1-5 ADDITIONAL BOARD COMMITTEES

The Board, by resolution adopted by a majority of its members then in office, may create one or more additional Board committees. The resolution creating any such additional Board committee shall designate the composition of the members who shall serve thereon, including whether non-Trustee members shall serve and whether such members shall be voting or non-voting members; the functions the committee shall discharge; and the authority of the Board which is being delegated to the committee. The Chairman of the Board shall appoint the committee members and a chair of each committee unless otherwise provided in the resolution.

3.1-6 MEETINGS AND NOTICE

- (a) Meetings: Meetings of a Board committee may be called by the Chairman of the Board, the chair of the committee, or a majority of the committee members. Each committee shall meet as often as necessary to perform its duties.
- (b) Notice to Committee Members: Notice of the time and place of any regular, special or rescheduled meeting of a Board committee shall be given at least twenty-four (24) hours prior to meeting. Notice need not be given of regular meetings held at times fixed by resolution of the committee. Notice of a committee meeting need not be given to any member who signs a waiver of notice, either before or after the meeting, and attendance of a member at a meeting shall of itself constitute a waiver of notice of such meeting except when a member states, at the beginning of the meeting, any objection or objections to the action. Unless otherwise required by law or these Bylaws, neither the business to be transacted at, nor the purpose of, any regular or special meeting of a committee need be specified in either the notice or the waiver of notice.

(c) Public Notice:

- (1) Regular Meetings: The committee shall give written public notice of its regular meetings at the beginning of each calendar year which shall include the dates, times and places of such meetings. Notice of each regular meeting shall be posted on a bulletin board in the principal office of the System. Agendas, if any, for regular meetings shall be posted on such bulletin board at least twenty-four (24) hours prior to such meetings.
- (2) Special and Rescheduled Meetings: The committee shall post on a bulletin board in the principal office of the System written notice for any special or rescheduled meetings. Such notice shall be posted as early as is practicable but not later than twenty-four (24) hours before the meeting. The notice shall include the, date, time and place of the meeting. Agendas, if any, shall be posted on such bulletin board at least twenty-four (24) hours prior to such meeting.
- (3) Emergency Meetings: Public notice and posted agendas shall not be required for emergency meetings.
- (4) Notice to Interested Parties and Local News Media: The committee shall make an effort to notify interested persons or organizations, local news media, or such other news media as may have requested notification of the times, dates, places and agendas of all meetings, whether regular, special or rescheduled. Efforts made to comply with this requirement shall be noted in the minutes of the meeting.
- (5) Meetings for which Public Notice is Not Requested: The public notice provisions of this subsection shall not be applicable with respect to any committee or any meeting of a committee to which the public notice provisions of the Freedom of Information Act of South Carolina are not applicable.

3.1-7 QUORUM

A majority of the voting members of a Board committee, at least two (2) of whom must be Trustees, shall constitute a quorum for the transaction of business at any meeting of such committee but a smaller number may adjourn the meeting to a subsequent day and hour. Members may participate in a meeting by means of conference telephone or other communication equipment by which all persons participating in the meeting can hear each other, and so participating in a meeting shall constitute presence in person at such meeting. The vote of a majority of the members present at a committee meeting at which a quorum is present shall be the

act of that committee provided that all of the Trustees in attendance vote with the majority and notwithstanding the withdrawal of enough members to leave less than a quorum. Voting by proxy is not permitted.

3.1-8 MINUTES OF COMMITTEE MEETINGS

Each Board committee shall keep minutes of its public meetings which shall be forwarded to all Trustees for their information and shall report periodically to the Board. The vote on all actions and recommendations of the committee shall be recorded in the minutes of the committee meeting.

3.1-9 PRESUMPTION OF ASSENT

A member who is present at a Board committee meeting at which action on any matter is authorized or taken, shall be presumed to have assented to the action taken unless the member's contrary vote shall be entered in the minutes of the meeting or unless the member's written dissent to such action shall be filed either during the meeting or within a reasonable time after the adjournment thereof, with the person acting as Secretary of the meeting. Such right to dissent shall not apply to a member who voted in favor of such action.

3.1-10 VACANCIES

A vacancy on any Board committee shall be filled for the remaining term by the same process as the original appointment to the vacated position.

3.1-11 MEETINGS CLOSED TO THE PUBLIC

All meetings of the Board committees shall be open to the public unless closed as provided here. Any Board committee may hold a meeting closed to the public for one or more of the reasons set forth in the Freedom of Information Act. Prior to closing the meeting, the committee shall vote on the question in public. The presiding officer of the committee meeting shall state the specific purposes of the closed session prior to the beginning of the session. No action shall be taken in the closed session other than to adjourn or return to public session. The presiding officer of the meeting shall determine who, if any, other persons would further the matters to be discussed in closed session and should participate. All information and discussions held in closed session shall be held in confidence by those participating in the meeting, and the Board committee may adopt policies and procedures regarding the keeping of written minutes of discussions held in closed session.

ARTICLE IV.
ADMINISTRATIVE OFFICERS

4.1 CHIEF EXECUTIVE OFFICER

4.1-1 AUTHORITY

The Board shall select and appoint a President who shall be the chief executive officer of the System. The President shall have the necessary authority and be responsible for the management of the System, subject to such policies as may be adopted and actions taken by the Board and its committees. Annually, on recommendation of the Governance Committee, the Board shall establish goals for the President which shall be designed to further the strategic plan of the System. The President shall act as the duly authorized representative of the Board in all matters in which the Board has not formally designated some other person to act. In addition, the authority and duties of the President shall include, but be limited to, the following:

- (a) To support and assist the System in mission service activities, consistent with the established philosophy and mission of the System and Act 432.
- (b) To assure the overall satisfactory functioning of the System.
- (c) To serve as direct representative of the Board in formulating and administering all major corporate procedures and programs and in implementing the general policies of the Board.
- (d) To initiate and direct corporate and fiscal planning on a short and long term basis to meet the health needs of the community and those served by the System.
- (e) To report to and inform the Board regarding healthcare trends and health related issues.
- (f) To represent the System in developing and enhancing its market and support base.
- (g) To establish liaison among the Board, the Medical Staff, the System's management, the Physician leadership of the System, and the employees of the System to the end that the mission of the System is achieved.
- (h) To plan, develop and maintain programs that achieve the goals and objectives established by the Board.

- (i) To serve as a leader in the community and to participate in local, state and national professional and institutional associations dedicated to improving personal and institutional competence.
- (j) To organize the functions of the System by appropriate departmentalization and delegation of duties.
- (k) To supervise all affiliates and to have the power to act for the System in such capacity.

4.1-2 REPORTING

The President shall report directly to the Chairman of the Board. The performance of the President shall be reviewed annually by the Governance Committee.

4.1-3 ELECTION AND TENURE

The Board, by not less than a two-thirds (2/3) vote of the Trustees then in office, shall elect or appoint the President. The term of office of the President shall be as determined by the Board.

4.1-4 REMOVAL

The President may be removed at any time by a majority vote of the Trustees then in office.

4.2 OTHER ADMINISTRATIVE OFFICERS

The President, after consultation with the Governance Committee, may appoint such other administrative officers for the System and its affiliates with such titles and to perform such duties and exercise such authority as the President from time to time may determine. No such delegation of duties and authorities to any subordinate administrative officer shall be in contravention of these Bylaws.

ARTICLE V. MEDICAL STAFF

5.1 ORGANIZATION

The Board shall cause to be created a medical staff organization, to be known as the "Medical Staff of the Greenville Hospital System," whose membership shall be comprised of all Practitioners who are privileged to attend patients of the System.

Membership in this Medical Staff shall be a prerequisite to the exercise of clinical privileges within the System, except as otherwise specifically provided in the Medical Staff Bylaws. The Medical Staff shall be a component of the System and not a separate legal entity from the System.

5.2 MEDICAL STAFF BYLAWS, RULES AND REGULATIONS

5.2-1 PURPOSE

The Medical Staff shall propose and adopt by vote Bylaws and Policies and Procedures for its internal governance which shall be effective when approved by the Quality and Academics Committee of the Board. The Medical Staff Bylaws shall create an effective administrative unit to discharge the functions and responsibilities assigned to the Medical Staff by the System. The Bylaws and Policies and Procedures shall state the purposes, functions and organization of the Medical Staff and shall set forth the policies by which the Medical Staff exercises and accounts for its delegated authority and responsibilities, including specifically processes to address potential conflicts of interest which could affect safety and quality of patient care. The Medical Staff Bylaws will comply with all applicable accrediting body requirements, Medicare and Medicaid Conditions of Participation and federal and state requirements and shall be subject to periodic review by the Quality and Academics Committee. One or more representatives of the Medical Staff shall be afforded the opportunity to attend and participate in meetings of the Board as provided herein and as may be determined by the Chairman of the Board.

5.2-2 PROCEDURE

The Medical Staff shall have the initial responsibility to formulate, adopt, and recommend Medical Staff Bylaws and Policies and Procedures and amendments thereto which shall be effective when approved by the Quality and Academics Committee. If the Medical Staff fails to exercise this responsibility in good faith and in a reasonable, timely and responsible manner, and after written notice from the Quality and Academics Committee to such effect including a reasonable period of time for response, the Board may resort to its own initiative in formulating or amending the Medical Staff Bylaws and Policies and Procedures. In such event, Medical Staff recommendations and views shall be carefully considered by the Board during its deliberations and in its actions.

5.3 MEDICAL STAFF MEMBERSHIP AND CLINICAL PRIVILEGES

5.3-1 DELEGATION TO THE MEDICAL STAFF

The Board shall delegate to the Medical Staff the responsibility and authority to investigate and evaluate all matters relating to Medical Staff membership status, clinical privileges and corrective action, and shall require that the Medical Staff develop and forward to it specific written recommendations with appropriate supporting documentation that will allow the Board, acting directly or through the Quality and Academics Committee, to take informed action. The Medical Staff will work with senior management to annually evaluate the System's performance on matters of delegation to the Medical Staff. The Board shall ultimately be accountable for the safety and quality of care, treatment and services of the System.

5.3-2 ACTION BY THE BOARD

Final action on all matters relating to Medical Staff membership status, clinical privilege, scope of services and corrective action shall be taken by the Board, acting directly or through the delegation of authority to the Quality and Academics Committee, after considering the Medical Staff recommendations, provided that the Board shall act in any event if the Medical Staff fails to adopt and submit any such recommendation within any time periods set forth in the Medical Staff Bylaws. Such Board action without a Medical Staff recommendation shall be based on the same kind of documented investigation and evaluation of current ability, judgment, and character as is required for Medical Staff recommendations.

5.3-3 CRITERIA FOR BOARD ACTION

In acting on matters of Medical Staff membership status, the Board, acting directly and through the Quality and Academics Committee, shall consider the Medical Staff's recommendations, the System's and the community's needs, and such additional criteria as are set forth in the Medical Staff Bylaws. No aspect of membership status nor specific clinical privileges shall be limited or denied to a practitioner on the basis of sex, race, creed, color, national origin or disability, or on the basis of any other criterion unrelated to good patient care within the System, to professional qualifications, to the System's purposes, needs and capabilities, or to community needs.

5.3-4 TERMS AND CONDITIONS OF STAFF MEMBERSHIP AND CLINICAL PRIVILEGES

The terms and conditions of membership status in the Medical Staff, and of the exercise of clinical privileges, shall be as specified in the Medical Staff Bylaws or as more specifically defined in the notice of individual appointment. If a

Practitioner has a contract with the System, the terms of the contract will supersede any contrary terms in the Medical Staff Bylaws regarding termination of the contract or the effect of such termination on Medical Staff membership status and clinical privileges.

5.4 FAIR HEARING PLAN

The Board shall require that any adverse recommendation made by the Medical Executive Committee of the Medical Staff or any adverse action taken by the Board, acting directly or through delegation of authority to the Quality and Academics Committee, with respect to a practitioner's staff appointment, reappointment, clinical sections affiliation, Medical Staff category, admitting prerogatives or clinical privileges, shall, except under circumstances for which specific provision is made in the Medical Staff Bylaws, be accomplished in accordance with the Board-approved Fair Hearing Plan then in effect. Such Plan shall provide for procedures to assure fair treatment and afford opportunity for the presentation of all pertinent information. For the purposes of this Section, an "adverse recommendation" of the Medical Executive Committee and an "adverse action" of the Board shall be as defined in the Fair Hearing Plan.

5.5 TRANSMITTAL OF REPORTS

Reports and other information that these Bylaws require the Medical Staff to transmit to the Board shall be deemed so transmitted when delivered, unless otherwise specified, to the President.

ARTICLE VI GENERAL PROVISIONS

6.1 ANNUAL AUDIT

6.1-1 RECORDS AND AUDIT

An accurate system of books and records shall be maintained under the general supervision of the President showing in detail the receipts and expenditures in all accounts by or for the System or in connection with its operations. Within four (4) months following the close of its fiscal year, a complete audit of its affairs shall be made by a qualified public accountant.

6.1-2 FILING

Copies of the annual audit shall be filed with the Clerk of Court for Greenville County, the Clerk of the City Council of Greenville and with the Secretary or acting Secretary of the Greenville County Delegation to the General Assembly.

6.2 FISCAL YEAR

The fiscal year shall include 365 (366) days and end at 11:59 p.m. on September 30th of each year.

6.3 SEAL

The Board shall provide for an official seal in such form and with such inscription as it shall determine.

6.4 DEPOSITS

The cash monies of the System shall be deposited in banks and financial institutions selected pursuant to banking policies adopted by the Planning and Finance Committee of the Board.

6.5 EXECUTION OF DOCUMENTS

The Board shall establish policies regarding the authority to enter into any contracts, negotiable instruments, deeds, leases or other written documents. Any such document shall be binding on the System when executed in accordance with such policies or when executed by such other officer or officers as the Board shall designate by resolution.

6.6 VOTING SECURITIES HELD BY SYSTEM

Unless otherwise ordered by the Board, the President or his designee shall have full authority and power on behalf of the System to attend, to act and to vote in person or by proxy at any meeting of the members or security holders of entities in which the System may hold an interest and at any such meeting shall possess and may exercise any and all rights and powers incident to the ownership of such interest.

6.7 CONFLICTS OF INTEREST

6.7-1 DEFINITIONS

- (a) An "AFFILIATED ENTITY" is an entity affiliated with or controlled by the System.
- (b) "COMPENSATION" includes direct and indirect remuneration as well as gifts or favors that are substantial in nature.
- (c) A person has a "FINANCIAL INTEREST" if the person, a member of his or her Immediate Family, an individual with whom he or she is associated, or a business with which he or she is associated, has, directly or indirectly:
 - an actual or potential ownership or investment interest in any entity with which the System has or is negotiating a transaction or arrangement, or
 - an actual or potential compensation arrangement with the System or with any entity or individual with which the System has or is negotiating a transaction or arrangement.
- (d) "IMMEDIATE FAMILY" means a spouse, a child residing in the Interested Person's household, and any person claimed by the Interested Person or his or her spouse as a dependent for income tax purposes.
- (e) Any Trustee, member of senior management, or member of any Board committee established in accordance with Article 3 who has a direct or indirect Financial Interest, as defined below, is an "INTERESTED PERSON."

6.7-2 DUTY TO DISCLOSE

An Interested Person must submit a written statement describing the matter requiring action or decisions and the nature of any actual or potential Financial Interest to the Chairman of the Board or to the committee considering the proposed transaction or arrangement. If a Trustee, a member of senior management, or a Board committee member believes a Financial Interest exists which has not been disclosed to the Board or committee, that individual should make a report to the Chairman or Vice Chairman of the Board or the chair of the committee.

In addition, if an Interested Person has an actual or potential Financial Interest in any transaction or arrangement proposed by an Affiliated Entity, then the Interested Person shall submit a written statement describing the matter requiring

action or decisions and the nature of the actual or potential Financial Interest to the Affiliated Entity.

6.7-3 DETERMINING WHETHER A CONFLICT OF INTEREST EXISTS

After disclosure of the potential Financial Interest and an opportunity to respond to any questions of the Board or committee, the Interested Person shall leave the Board or committee meeting while the potential Financial Interest is discussed and voted upon. The remaining Board or committee members shall decide if an actual Financial Interest exists.

- (a) If the Board or committee finds that no Financial Interest exists, the Trustee, member of senior management, or Board committee member may participate in deliberations and voting in accordance with these Bylaws.
- (b) If a Financial Interest which meets the description set forth in S.C. Code § 8-13-775 exists and if the Interested Person is authorized to perform an official function related to the Financial Interest as described in § 8-13-775, then the System may not participate in the proposed transaction or arrangement.
- (c) If a Financial Interest exists but § 8-13-775 does not apply, then the Interested Person shall not participate in or be present for deliberations, voting, or other action related to the Financial Interest and the Board or committee shall follow the procedure set forth in subsection 6.7-4 below.

6.7-4 PROCEDURES FOR ADDRESSING THE CONFLICT OF INTEREST

- (a) The Chairman of the Board or chair of a committee shall, if appropriate, appoint a disinterested person or committee to investigate alternatives to the proposed transaction or arrangement.
- (b) After exercising due diligence, the Board or chair of a committee shall determine whether the System can obtain a more advantageous transaction or arrangement from a person or entity that would not give rise to a conflict of interest.
- (c) If a more advantageous transaction or arrangement is not reasonably attainable under circumstances that would not give rise to a conflict of interest, the Board or committee shall determine by a majority vote of the disinterested members whether the transaction or arrangement is in the System's best interest and for its own benefit and whether the transaction is fair and reasonable to the System and shall make its decision as to whether to enter into the transaction or arrangement in conformity with such determination.

6.7-5 RECORDKEEPING

The minutes of the Board and all Board committees shall contain:

- (a) The names of the person with the actual or potential Financial Interest, the Interested Person's written statement regarding the Financial Interest, any investigation undertaken, and the Board's or committee's decision as to whether a Financial Interest in fact existed, and
- (b) The names of the persons who were present for discussions and votes relating to the transaction or arrangement, the content of the discussion, including any alternatives to the proposed transaction or arrangement, and a record of any votes taken in connection therewith.

6.7-6 ANNUAL STATEMENTS

All Trustees, members of senior management, and Board committee members shall annually sign a statement which affirms that such person:

- (a) Has received a copy of this conflict of interest policy and the ethics brochure prepared by the State Ethics Commission pursuant to S.C. Code § 8-13-350.
- (b) Has read and understands the policy.
- (c) Has agreed to comply with the policy.
- (d) Understands that the System is a charitable organization and that in order to maintain its federal tax exemption it must engage primarily in activities which accomplish one or more of its tax-exempt purposes.

All Trustees, members of senior management, and Board committee members shall also disclose on that annual statement his or her interest, if any, as an owner, operator, partner, shareholder, consultant, agent, independent contractor, Board member or employee in any entity which markets services also provided by the System.

6.7-7 TRANSACTIONS WITH AFFILIATED ENTITIES

If a member of the Board or senior management of an Affiliated Entity has an actual or potential Financial Interest (as defined above) which is disclosed to the Board by any person, the Board shall follow the same procedures set forth in subsection 6.7-4 above.

6.7-8 STATE ETHICS ACT

This Conflicts of Interest policy is intended to supplement the provisions of the South Carolina Ethics, Governmental Accountability, and Campaign Reform Act, S.C. Code § 8-13-100 et seq. (the "Ethics Act"). The Board shall abide by all provisions of the Ethics Act and any amendments to that Act whether or not addressed herein.

6.8 PROCEDURE

The Board and any of its Committees may adopt rules of procedure which shall not be inconsistent with these Bylaws. Any such rules of procedure shall be submitted to the Governance Committee for its review and input.

6.9 CONSTRUCTION OF TERMS AND HEADINGS

Words used in these Bylaws shall be read as the masculine or feminine gender and as the singular or plural, as the context requires. The captions or headings in these Bylaws are for convenience only and are not intended to limit or define the scope or effect of any provision of these Bylaws.

ARTICLE VII. REVIEW OF AND AMENDMENT TO BYLAWS

7.1 REVIEW

For the purpose of making any necessary or desirable changes hereto, the Trustees shall cause these Bylaws to be reviewed no less frequently than every other year.

7.2 AMENDMENT

These Bylaws may be amended or repealed and new Bylaws adopted by a two-thirds (2/3) majority vote of the Trustees then in office at any regular or special meeting, if at least fourteen (14) days written notice is given of the intention to take such action.

SECRETARY'S CERTIFICATE

THIS IS TO CERTIFY THAT the foregoing Amended and Restated Bylaws of Greenville Hospital System Board of Trustees were duly adopted by said Board and became effective on.

Secretary

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Greenville Hospital System and Affiliates

Combined Financial Statements as of and for the
Years Ended September 30, 2010 and 2009, and
Independent Auditors' Report

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

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INDEPENDENT AUDITORS' REPORT

To the Board of Trustees of
Greenville Hospital System
Greenville, South Carolina

We have audited the accompanying combined financial statements of the business-type activities and the aggregate remaining fund information (pension trust fund) of the Greenville Hospital System and Affiliates (the "Hospital System") as of and for the years ended September 30, 2010 and 2009 (August 31, 2010 and 2009, as it relates to the pension trust fund), which collectively comprise the Hospital System's basic financial statements as listed in the table of contents. These financial statements are the responsibility of the Hospital System's management. Our responsibility is to express an opinion on these financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes consideration of internal control over financial reporting as a basis for designing audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Hospital System's internal control over financial reporting. Accordingly, we express no such opinion. An audit also includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements, assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, based on our audits, the financial statements referred to above present fairly, in all material respects, the respective financial position of the business-type activities and the aggregate remaining fund (pension trust fund) of the Hospital System as of September 30, 2010 and 2009 (August 31, 2010 and 2009, as it relates to the pension trust fund) and the respective changes in financial position and respective cash flows, where applicable, thereof for the years then ended in conformity with accounting principles generally accepted in the United States of America.

The Management's Discussion and Analysis on pages 2 through 11, which is the responsibility of the Hospital System's management, is not a required part of the basic financial statements, but is supplementary information required by the Governmental Accounting Standards Board. We have applied certain limited procedures, which consisted principally of inquiries of management regarding the methods of measurement and presentation of the supplementary information. However, we did not audit such information and we do not express an opinion on it.

Deloitte & Touche LLP

February 15, 2011

Member of
Deloitte Touche Tohmatsu Limited

GHS-000087

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

MANAGEMENT'S DISCUSSION AND ANALYSIS AS OF AND FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009

This section of Greenville Hospital System and Affiliates (the "Hospital System") financial statements presents management's analysis of the Hospital System's financial performance during the years ended September 30, 2010 and 2009. This analysis includes the accounts of the Greenville Hospital System (the "Parent"), as well as GHS Partners in Health, Inc., the Endowment Fund of the Greenville Hospital System, Inc., and the Greenville Health Corporation (collectively, the "affiliates"). Please read it in conjunction with the financial statements and accompanying notes, which follow this section.

Financial Highlights

The Hospital System's financial position improved as a result of operations in Fiscal Years 2010 and 2009. Some highlights include:

Fiscal Year 2010

- Net assets increased \$60 million or 7%.
- Total revenues increased \$108 million or 9%.
- Total operating expenses increased \$83 million or 7%.
- Operating income was \$31 million (or margin of 2.3%).
- Pension trust fund net assets increased \$30 million to \$294 million.

Fiscal Year 2009

- Net assets increased \$34 million or 4%.
- Total revenues increased \$129 million or 11%.
- Total operating expenses increased \$145 million or 13%.
- Operating income was \$6 million (or margin of 0.5%) which included an impairment loss for the Allen Bennett Memorial Hospital and Roger Huntington Nursing Center facilities of \$5 million (or margin of -0.4%).
- Real Estate Monetization transaction provided \$163 million in cash proceeds.
- Pension trust fund net assets decreased \$17 million to \$265 million.

Overview of the Financial Statements

The Financial Statements consist of two parts: Management's Discussion and Analysis (this section) and the Required Basic Financial Statements. The Required Basic Financial Statements also include notes that explain in more detail some of the information in the Financial Statements.

Required Basic Financial Statements

The Hospital System uses accounting methods similar to those used by private sector companies. These statements offer short-term and long-term financial information about its activities. The Balance Sheet includes all of the Hospital System's assets and liabilities and provides information about the nature and amounts of investments in resources (assets) and the obligations to Hospital System creditors (liabilities). The assets and liabilities are presented in a classified format, which distinguishes between current and long-term assets and liabilities. These statements also provide the basis for computing rate of return, evaluating the capital structure of the Hospital System and assessing the liquidity and financial flexibility of the Hospital System.

All of the current year's revenues and expenses are accounted for in the Statements of Revenues and Expenses and Changes in Net Assets. These statements measure the performance of the Hospital System's operations over the past year.

The final required statement is the Statement of Cash Flows. The primary purpose of this statement is to provide information about the Hospital System's cash receipts and cash payments during the reporting period. The statement reports cash receipts, cash payments, and net changes in cash resulting from operating, investing, noncapital financing and financing activities and information concerning sources and uses of cash.

Financial Analysis for Fiscal Year 2010 Compared to Fiscal Year 2009

Table A-1

Condensed Balance Sheets (In millions of dollars):

	Fiscal Year 2010	Fiscal Year 2009	Dollar Increase (Decrease)	Percentage Increase (Decrease)
Current assets	\$ 435	\$ 425	\$ 10	2 %
Capital assets — net	708	707	1	0
Other long-term assets	<u>546</u>	<u>476</u>	<u>70</u>	<u>15</u>
Total assets	<u>\$ 1,689</u>	<u>\$ 1,608</u>	<u>\$ 81</u>	<u>5 %</u>
Current liabilities	\$ 193	\$ 166	\$ 27	16 %
Long-term liabilities and deferred credits	<u>612</u>	<u>618</u>	<u>(6)</u>	<u>(1)</u>
Total liabilities	<u>805</u>	<u>784</u>	<u>21</u>	<u>3 %</u>
Net Assets:				
Invested in capital assets	181	170	11	6 %
Restricted	23	20	3	15
Unrestricted	<u>680</u>	<u>634</u>	<u>46</u>	<u>7</u>
Total net assets	<u>884</u>	<u>824</u>	<u>60</u>	<u>7</u>
Total liabilities and net assets	<u>\$ 1,689</u>	<u>\$ 1,608</u>	<u>\$ 81</u>	<u>5 %</u>

As can be seen in Table A-1, net assets increased from \$824 million to \$884 million in Fiscal Year 2010. The increase in the net asset position was primarily a result of revenues over expenses from operating and nonoperating activities. Current assets increased \$10 million primarily due to an increase in accounts receivable and increases in the current portion of assets with limited use. Other long-term assets increased \$70 million primarily due to the joint venture with Baptist Easley Hospital, as well as an increase in Board Designated Assets as a result of decreased capital spending. The Greenville Health Corporation (the "Corporation") purchased a 50% ownership interest in Baptist Easley Hospital in a joint venture with Palmetto Health. The increase in current liabilities is primarily due to an increase in accrued salaries and wages. In addition, there was an increase in accounts payable for board designated funds due to the timing of payments for capital expenditures.

Financial Analysis for Fiscal Year 2009 Compared to Fiscal Year 2008

Table A-2

Condensed Balance Sheets (In millions of dollars):

	Fiscal Year 2009	Fiscal Year 2008	Dollar Increase (Decrease)	Percentage Increase (Decrease)
Current assets	\$ 425	\$ 420	\$ 5	1 %
Capital assets — net	707	821	(114)	(14)
Other long-term assets	<u>476</u>	<u>280</u>	<u>196</u>	<u>70</u>
Total assets	<u>\$ 1,608</u>	<u>\$ 1,521</u>	<u>\$ 87</u>	<u>6 %</u>
Current liabilities	\$ 166	\$ 171	\$ (5)	(3)%
Long-term liabilities and deferred credits	<u>618</u>	<u>560</u>	<u>58</u>	<u>10</u>
Total liabilities	<u>784</u>	<u>731</u>	<u>53</u>	<u>7 %</u>
Net Assets:				
Invested in capital assets	170	248	(78)	(31)%
Restricted	20	12	8	67
Unrestricted	<u>634</u>	<u>530</u>	<u>104</u>	<u>20</u>
Total net assets	<u>824</u>	<u>790</u>	<u>34</u>	<u>4</u>
Total liabilities and net assets	<u>\$ 1,608</u>	<u>\$ 1,521</u>	<u>\$ 87</u>	<u>6 %</u>

As can be seen in Table A-1, net assets increased from \$790 million to \$824 million in Fiscal Year 2009. The increase in the net asset position was primarily due to revenues over expenses from operating and nonoperating activities, including the sale of certain buildings in a real estate monetization transaction. Capital assets decreased \$114 million due to the sale of medical and administrative office buildings to a single third party in a real estate monetization transaction. The Hospital System sold 16 office buildings for \$163 million to a single third party and contemporaneously leased back certain office space in those buildings. Other long-term assets increased \$196 million primarily due to an increase in Board Designated Assets as a result of the proceeds of the real estate monetization. Long-term liabilities and deferred credits increased \$58 million primarily due to the deferred gain recognized as part of the real estate monetization transaction.

Financial Analysis for Fiscal Year 2010 Compared to Fiscal Year 2009

Table A-3

Condensed Statements of Revenues, Expenses and Changes in Net Assets (In millions of dollars):

	Fiscal Year 2010	Fiscal Year 2009	Dollar Increase (Decrease)	Percentage Increase (Decrease)
Net Patient Service Revenues	\$ 1,317	\$ 1,214	\$ 103	8 %
Other Revenue	<u>51</u>	<u>46</u>	<u>5</u>	<u>11</u>
Total Revenues	1,368	1,260	108	9
Salaries, Wages, Benefits and Contracted Labor	770	697	73	10
Supplies and Other Costs	470	453	17	4
Other Expenses	<u>97</u>	<u>104</u>	<u>(7)</u>	<u>(7)</u>
Total Operating Expenses	<u>1,337</u>	<u>1,254</u>	<u>83</u>	<u>7</u>
Operating Income	31	6	25	417
Investment Income	33	26	7	27
Other	<u>-</u>	<u>3</u>	<u>(3)</u>	<u>(100)</u>
Excess of Revenues Over Expenses	<u>64</u>	<u>35</u>	<u>29</u>	<u>83</u>
Capital Contributions	-	1	(1)	(100)
Restricted funds, sundry receipts, and disbursements, net	(4)	(2)	(2)	100
Change in Net Assets	<u>60</u>	<u>34</u>	<u>26</u>	<u>76</u>
Beginning Net Assets	<u>824</u>	<u>790</u>	<u>34</u>	<u>4</u>
Ending Net Assets	<u>\$ 884</u>	<u>\$ 824</u>	<u>\$ 60</u>	<u>7 %</u>

The increase in net patient revenues was primarily due to an increase in ancillary and room charges and an increase in outpatient and physician office visit volume. The increase in salaries, wages, benefits, and contract labor was due to additional employees, particularly physicians and their practice based staffs. Management continues to focus on recruitment and retention efforts in order to provide professional and highly qualified staff to serve the Hospital System's patients. Supplies and other costs increased \$17 million primarily due to an increase in purchased services, as well as the additional rental and operating expenses associated with the real estate monetization transaction in Fiscal Year 2009. Other expenses decreased \$7 million primarily due to decreased depreciation expense as a result of the monetization transaction in Fiscal Year 2009, as well as reduced capital spending. Nonoperating gains and losses were positive in the Hospital System's investment portfolio.

Financial Analysis for Fiscal Year 2009 Compared to Fiscal Year 2008

Table A-4

Condensed Statements of Revenues, Expenses and Changes in Net Assets (In millions of dollars):

	Fiscal Year 2009	Fiscal Year 2008	Dollar Increase (Decrease)	Percentage Increase (Decrease)
Net Patient Service Revenues	\$ 1,214	\$ 1,089	\$ 125	11 %
Other Revenue	<u>46</u>	<u>42</u>	<u>4</u>	<u>10</u>
Total Revenues	1,260	1,131	129	11
Salaries, Wages, Benefits and Contracted Labor	697	613	84	14
Supplies and Other Costs	453	406	47	12
Other Expenses	<u>104</u>	<u>90</u>	<u>14</u>	<u>16</u>
Total Operating Expenses	<u>1,254</u>	<u>1,109</u>	<u>145</u>	<u>13</u>
Operating Income	6	22	(16)	(73)
Investment Income	26	(1)	27	100
Other	<u>3</u>	<u>2</u>	<u>1</u>	<u>(50)</u>
Excess of Revenues Over Expenses	<u>35</u>	<u>23</u>	<u>12</u>	<u>52</u>
Capital Contributions	1	1	-	-
Restricted funds, sundry receipts, and disbursements, net	(2)	-	(2)	(100)
Change in Net Assets	<u>34</u>	<u>24</u>	<u>10</u>	<u>42</u>
Beginning Net Assets	<u>790</u>	<u>766</u>	<u>24</u>	<u>3</u>
Ending Net Assets	<u>\$ 824</u>	<u>\$ 790</u>	<u>\$ 34</u>	<u>4 %</u>

The increase in total revenues was primarily due to an increase in ancillary and room charges and an increase in outpatient and physician office visit volume. The increase in salaries, wages, benefits and contracted labor was due to additional employees, particularly physicians and their practice based staffs, and wage increases in order to remain market competitive. Management continues to focus on recruitment and retention efforts in order to provide professional and highly qualified staff to serve the Hospital System's patients. Supplies and other costs increased \$47 million primarily due to an increase in the cost of supplies, purchased services, medical specialist fees, and the write-off resulting from the impairment of the Allen Bennett Memorial Hospital and Roger Huntington Nursing Center facilities of \$5 million. Other expenses increased \$14 million primarily due to an increase in depreciation on capital assets. Nonoperating gains and losses were positive in the Hospital System's investment portfolio and include \$3 million of gains recognized on the real estate monetization project.

Liquidity (for Fiscal Years 2010 and 2009)

Cash and Cash Equivalents

Cash and cash equivalents, including those assets held in assets with limited use, increased from \$206 million at September 30, 2009 to \$235 million at September 30, 2010. The increase is primarily the result of revenues over expenses from operating activities.

Capital Assets

Management continues to focus on providing state-of-the-art facilities and equipment to meet the needs of the community, the Hospital System's patients, and its medical staff physicians. As of September 30, 2010, the Hospital System had \$708 million invested in capital assets, as reflected in Table A-5.

Table A-5

Capital Assets (in millions of dollars):

	Fiscal Year 2010	Fiscal Year 2009
Land and land improvements	\$ 69	\$ 68
Buildings	559	533
Equipment	745	725
Projects in progress	<u>37</u>	<u>28</u>
Total capital assets	1,410	1,354
Accumulated depreciation	<u>(702)</u>	<u>(647)</u>
Net capital assets	<u>\$ 708</u>	<u>\$ 707</u>

Long-Term Debt

As of September 30, 2010, the Hospital System had \$527 million in outstanding long-term debt and as of September 30, 2009, the Hospital System had \$538 million in outstanding long-term debt. This represents a net decrease of \$11 million from the prior fiscal year, which is primarily due to the principal repayment of the Series 2003A, Series 2008A, Series 2008D, and Series 2008E bonds offset by bond discount and deferred amounts on refunding amortization.

For more detailed information regarding the System's capital assets and long-term debt, please refer to the notes to the Financial Statements.

Liquidity (for Fiscal Years 2009 and 2008)

Cash and Cash Equivalents

Cash and cash equivalents, including those assets held in assets with limited use, decreased from \$238 million at September 30, 2008 to \$206 million at September 30, 2009. The decrease is primarily the result of the proceeds from the real estate monetization project being used to purchase investments with longer maturities. Subsequent to September 30, 2009 the Hospital System also purchased a 50% ownership interest in Baptist Easley Hospital for \$42 million.

Capital Assets

Management continues to focus on providing state-of-the-art facilities and equipment to meet the needs of the community, the Hospital System's patients, and its medical staff physicians. As of September 30, 2009, the Hospital System had \$707 million invested in capital assets, as reflected in Table A-5, which represents a net decrease (additions, deletions and depreciation) of \$114 million or 14% from the end of last year. The decrease in net capital assets is due primarily to the real estate monetization transaction. More detailed information about the System's capital assets is presented in Note 4 of the Notes to the Financial Statements.

Table A-6

Capital Assets (in millions of dollars):

	Fiscal Year 2009	Fiscal Year 2008
Land and land improvements	\$ 68	\$ 71
Buildings	533	554
Equipment	725	744
Projects in progress	<u>28</u>	<u>98</u>
Total capital assets	1,354	1,467
Accumulated depreciation	<u>(647)</u>	<u>(646)</u>
Net capital assets	<u>\$ 707</u>	<u>\$ 821</u>

Long-Term Debt

As of September 30, 2009, the Hospital System had \$538 million in outstanding long-term debt and as of September 30, 2008, the Hospital System had \$548 million in outstanding long-term debt. This represents a net decrease of \$10 million from the prior fiscal year, which is primarily due to the principal repayment of the Series 2003B, Series 2008A, Series 2008D, and Series 2008E bonds offset by bond discount and deferred amounts on refunding amortization.

Future Outlook

The Board of Trustees and management continue to have a positive outlook about the future of the Hospital System. The Hospital System expects to continue to expand its services in the community through affiliations with physician groups and the expansion of current programs.

Due to recent volatility in the financial markets, the Hospital System has also experienced some volatility in its investment portfolio. However, the Hospital System's investment portfolio is exclusively invested in fixed income and other principal protected securities which meet the requirements of the State of South Carolina for a political subdivision of the State. The assets of the Hospital System's pension trust plan are significantly invested in equities. However, the Hospital System believes that its current portfolio of investments is appropriate and is well positioned for long-term security. Due to a recent opinion of the South Carolina Supreme Court, the Hospital System has adopted an updated investment strategy of its pension funds which will eliminate over time the continued investment of the Hospital System's pension plan directly in the equity market. Effective August 31, 2010, the Hospital System eliminated future benefit accruals under its pension fund and, in the future, will make additional contributions to its defined contribution plans. Given the recent volatility in these funds and actuarial assumptions which will be used in determining future required contributions to the frozen defined benefit plan, management will be evaluating investment options for its employee retirement plans to minimize market fluctuations while maintaining an appropriate investment portfolio. Management will continue to monitor its investment portfolio and react accordingly in order to balance the maximization of returns in its investments with investments appropriate for a governmental body.

The Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010. In addition, the Health Care and Education Affordability Reconciliation Act, which contains a number of amendments to PPACA, was signed into law on March 30, 2010. These health care bills (collectively, the "Reform Legislation") seek to increase the number of persons with access to health insurance in the United States by requiring substantially all U.S. citizens to maintain medical insurance coverage. The Reform Legislation makes a number of other changes to Medicare and Medicaid, such as reductions to the annual market basket update for federal fiscal years 2010 through 2019, a productivity offset to the market basket update beginning October 1, 2011, and a reduction to the disproportionate share payments. The various provisions in the Reform Legislation that directly or indirectly affect reimbursement are scheduled to take effect over a number of years.

Also included in the Reform Legislation are provisions aimed at reducing fraud, waste and abuse in the health care industry. These provisions allocate significant additional resources to federal enforcement agencies and expand the use of private contractors to recover potentially inappropriate Medicare and Medicaid payments. The Reform Legislation amends several existing federal laws, including the Medicare Anti-Kickback Statute and False Claims Act, making it easier for government agencies and private plaintiffs to prevail in lawsuits brought against health care providers. These amendments also make it easier for potentially severe fines and penalties to be imposed on health care providers accused of violating applicable laws and regulations.

Management cannot predict the impact the Reform Legislation may have on the Hospital System's combined financial position, results of operations, or cash flows.

University of South Carolina School of Medicine

During the year ended September 30, 2010, the Board of Trustees of the Hospital System along with the Board of Trustees of the University of South Carolina ("USC") approved a plan to expand the USC School of Medicine to Greenville, South Carolina. An expanded medical education program will increase the supply of physicians, improve health care, and enhance the environment for innovation. The University of South Carolina is currently pursuing accreditation and other third party approvals for the medical school expansion. Once approved, the Hospital System has agreed to fund annual budgeted losses and cash flow needs of the USC School of Medicine - Greenville, anticipated to be material over the next ten years. At that time, it is anticipated that tuition will cover the costs.

Requests for Information

This financial report is designed to provide a general overview of the Hospital System's finances for all those with an interest in the Hospital System's finances. Questions concerning any of the information provided in this report or requests for additional information should be addressed to the Hospital System. The Parent's and each affiliate's financial statements may be obtained upon request from the Hospital System.

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

COMBINED BALANCE SHEETS — ENTERPRISE FUND AS OF SEPTEMBER 30, 2010 AND 2009 (In thousands)

	2010	2009
ASSETS		
CURRENT ASSETS:		
Cash and cash equivalents	\$ 160,973	\$ 162,375
Patient accounts (less allowance for uncollectible accounts of \$69,885 and \$58,843 in 2010 and 2009, respectively)	194,756	187,245
Inventories of drugs and supplies	19,747	19,370
Other current assets	21,007	24,482
Estimated third-party settlements	6,582	5,584
Current portion of assets with limited use	32,393	25,460
Total current assets	435,458	424,516
ASSETS WITH LIMITED USE	519,746	486,408
LESS CURRENT PORTION	(32,393)	(25,460)
Assets with limited use — less current portion	487,353	460,948
PROPERTY, PLANT, AND EQUIPMENT	707,636	706,979
INVESTMENTS IN JOINT VENTURES	46,546	3,171
OTHER ASSETS	12,226	12,319
TOTAL	\$ 1,689,219	\$ 1,607,933
LIABILITIES AND NET ASSETS		
CURRENT LIABILITIES:		
Accounts payable	\$ 48,550	\$ 38,051
Accrued liabilities	131,607	115,780
Current portion of obligations under capital lease	113	-
Current portion of long-term debt	12,785	12,435
Total current liabilities	193,055	166,266
LONG-TERM DEBT — Less current portion	514,617	525,775
OBLIGATIONS UNDER CAPITAL LEASE — Less current portion	3,749	-
OTHER LONG-TERM LIABILITIES AND DEFERRED CREDITS	93,555	91,898
NET ASSETS:		
Unrestricted	679,855	634,306
Invested in capital assets — net of related financing	181,241	169,777
Restricted	23,147	19,911
Total net assets	884,243	823,994
TOTAL	\$ 1,689,219	\$ 1,607,933

See notes to financial statements.

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

COMBINED STATEMENTS OF REVENUES AND EXPENSES AND CHANGES IN NET ASSETS — ENTERPRISE FUND FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009 (In thousands)

	2010	2009
NET PATIENT SERVICE REVENUES	\$ 1,317,026	\$ 1,214,414
OTHER REVENUE	<u>50,928</u>	<u>45,889</u>
TOTAL REVENUES	<u>1,367,954</u>	<u>1,260,303</u>
EXPENSES:		
Salaries, wages, benefits, and contracted labor	770,284	696,921
Supplies and other costs	470,221	453,673
Depreciation	78,437	83,795
Interest	<u>17,676</u>	<u>19,506</u>
Total expenses	<u>1,336,618</u>	<u>1,253,895</u>
OPERATING INCOME	<u>31,336</u>	<u>6,408</u>
NONOPERATING ACTIVITIES:		
Investment income	31,897	24,063
Equity in income of joint ventures	1,441	1,472
Other	<u>(514)</u>	<u>3,091</u>
Total nonoperating activities	<u>32,824</u>	<u>28,626</u>
EXCESS OF REVENUES OVER EXPENSES	64,160	35,034
CAPITAL CONTRIBUTIONS	391	663
RESTRICTED FUNDS, SUNDRY RECEIPTS, AND DISBURSEMENTS — Net	(4,302)	(1,649)
NET ASSETS — Beginning of year	<u>823,994</u>	<u>789,946</u>
NET ASSETS — End of year	<u>\$ 884,243</u>	<u>\$ 823,994</u>

See notes to financial statements.

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

COMBINED STATEMENTS OF CASH FLOWS — ENTERPRISE FUND FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009

(In thousands)

	2010	2009
CASH FLOWS FROM OPERATING ACTIVITIES:		
Cash receipts from patients	\$ 1,332,612	\$ 1,195,365
Other operating revenue	33,299	25,309
Cash payments to vendors	(463,985)	(527,529)
Cash payments for salaries and benefits	(758,092)	(620,466)
Net cash provided by operating activities	<u>143,834</u>	<u>72,679</u>
CASH FLOWS FROM NONCAPITAL FINANCING ACTIVITIES — Other	<u>(4,302)</u>	<u>(1,649)</u>
CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES:		
Capital contributions	391	663
Principal payments on long-term debt	(12,435)	(13,110)
Interest payments on long-term debt	(15,783)	(17,620)
Payment for property, plant, and equipment	(70,665)	(72,722)
Proceeds from sale of property, plant, and equipment	400	162,835
Payments on obligations under capital lease	(87)	-
Financing cost of revenue bonds	-	1,829
Net cash (used in) provided by capital and related financing activities	<u>(98,179)</u>	<u>61,875</u>
CASH FLOWS FROM INVESTING ACTIVITIES:		
Investment income realized	23,471	13,963
Purchases of investments	(665,231)	(616,342)
Sales of investments	671,348	436,130
Investment in joint ventures	(42,000)	-
Charitable contributions	(560)	-
Distributions received from investments in joint ventures	479	1,211
Net cash used in investing activities	<u>(12,493)</u>	<u>(165,038)</u>
NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS	28,860	(32,133)
CASH AND CASH EQUIVALENTS:		
Beginning of year	<u>205,874</u>	<u>238,007</u>
End of year	<u>\$ 234,734</u>	<u>\$ 205,874</u>

(Continued)

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

COMBINED STATEMENTS OF CASH FLOWS — ENTERPRISE FUND FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009

(In thousands)

	2010	2009
RECONCILIATION OF CASH AND CASH EQUIVALENTS:		
Cash and cash equivalents in current assets	\$ 160,973	\$ 162,375
Cash and cash equivalents in assets with limited use	<u>73,761</u>	<u>43,499</u>
 TOTAL CASH AND CASH EQUIVALENTS	 <u>\$ 234,734</u>	 <u>\$ 205,874</u>
RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED BY OPERATING ACTIVITIES:		
Operating income	\$ 31,336	\$ 6,408
Interest paid considered capital and related financing activity	15,783	17,620
Adjustments to reconcile operating income to net cash provided by operating activities:		
Provision for bad debts	156,646	109,078
Depreciation	78,437	83,795
Amortization	2,433	2,523
Loss on disposal of property, plant, and equipment	1,703	5,267
Amortization of deferred gain on monetization	(4,772)	-
Changes in operating assets and liabilities:		
Patient accounts receivable	(164,157)	(135,298)
Inventories of drugs and supplies	(377)	(1,132)
Other assets	1,749	(9,666)
Accounts payable	3,916	(6,197)
Estimated third-party settlements	(998)	(13,456)
Due to affiliates	(121)	-
Accrued and other liabilities	<u>22,256</u>	<u>13,737</u>
 NET CASH PROVIDED BY OPERATING ACTIVITIES	 <u>\$ 143,834</u>	 <u>\$ 72,679</u>

See notes to financial statements.

(Concluded)

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

BALANCE SHEETS — PENSION TRUST FUND AS OF AUGUST 31, 2010 AND 2009 (In thousands)

	2010	2009
ASSETS		
CASH AND CASH EQUIVALENTS	\$ 42,159	\$ 12,224
INVESTMENTS	251,562	252,738
ACCRUED INCOME RECEIVABLE	<u>785</u>	<u>-</u>
TOTAL	<u>\$ 294,506</u>	<u>\$ 264,962</u>
 LIABILITIES AND NET ASSETS		
DUE TO BROKER	\$ 54	\$ 309
TOTAL PLAN NET ASSETS RESERVED FOR EMPLOYEES' PENSION BENEFITS	<u>294,452</u>	<u>264,653</u>
TOTAL	<u>\$ 294,506</u>	<u>\$ 264,962</u>

See notes to financial statements.

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

STATEMENTS OF CHANGES IN NET ASSETS — PENSION TRUST FUND FOR THE YEARS ENDED AUGUST 31, 2010 AND 2009 (In thousands)

	2010	2009
NET ASSETS RESERVED FOR EMPLOYEES' PENSION BENEFITS — Net assets at beginning of year	<u>\$ 264,653</u>	<u>\$ 281,623</u>
ADDITIONS:		
Interest and dividends	6,483	7,705
Net realized gains (losses) and unrealized appreciation (depreciation) in fair value of investments	12,403	(31,436)
EMPLOYER CONTRIBUTIONS	20,877	15,760
DEDUCTIONS:		
Benefit payments	(9,610)	(8,696)
Administrative expenses	<u>(354)</u>	<u>(303)</u>
NET INCREASE (DECREASE)	<u>29,799</u>	<u>(16,970)</u>
NET ASSETS — End of year	<u>\$ 294,452</u>	<u>\$ 264,653</u>

See notes to financial statements.

GREENVILLE HOSPITAL SYSTEM AND AFFILIATES

NOTES TO BASIC FINANCIAL STATEMENTS AS OF AND FOR THE YEARS ENDED SEPTEMBER 30, 2010 AND 2009

1. REPORTING ENTITY

The Greenville Hospital System (the "Parent" or "Hospital System") owns and operates acute care hospitals and related specialty health care facilities. The Hospital System was established by The General Assembly of South Carolina in 1947 to meet the medical and health care needs of the citizens of Greenville County. The Hospital System is exempt from federal income tax as an organization described in Section 115 and Section 501(c)(3) of the Internal Revenue Code of 1986, as amended.

The combined financial statements of the Hospital System include the accounts of the Parent and the statements of the following entities: GHS Partners in Health, Inc. ("Partners"), the Endowment Fund of the Greenville Hospital System, Inc. (the "Endowment"), and the Greenville Health Corporation (the "Corporation"). Partners operate physician practices. The purpose of the Endowment is to encourage and promote the provision of health care services in furtherance of the Parent's mission.

The Corporation operates pharmacy services, a durable medical equipment business, and an ambulance service. The Corporation owns GHC Health Resources, Inc. ("Health Resources"), a for-profit entity formed for the purpose of developing health care delivery systems, which integrate and align the interests of patients, hospitals, physicians, and payors. The Corporation also owns GHC Research Development Corporation (RDC). RDC was organized to support the Hospital System and the Corporation in expanding the scope of medical research and development. RDC owns 100% of the preferred stock and 61% of the common stock in Greenville Oncology Therapeutics (GOT). GOT was organized to operate as an independent, for-profit business corporation to engage in the commercial development of intellectual property developed by the Hospital System/Corporation. RDC owns 79% of the common stock in Oncolix, Inc. (ONC). ONC operates as an independent, autonomous, for-profit business corporation to engage in the commercial development of certain intellectual property developed by the Hospital System. During the year ended September 30, 2010, the Corporation purchased a 50% interest in Baptist Easley Hospital in a joint venture with Palmetto Health. The joint venture was established to further the charitable missions of the Corporation and Palmetto Health by improving the health and well-being of the citizens of Pickens County and the surrounding communities through the provision of a complete, coordinated continuum of cost-effective, quality healthcare services.

The Parent appoints the boards of directors and is the sole beneficiary for each of these units. Health Resources' board of directors is appointed by the Corporation. Each affiliate's financial statements may be obtained upon request from the Parent. In conformity with accounting principles generally accepted in the United States of America ("generally accepted accounting principles"), these affiliated organizations are reported as blended component units of the Parent, the primary government.

The Parent also sponsors the Greenville Hospital System Pension Trust Plan (the "Plan"). The Plan is used to account for assets held in trust by Wachovia Bank, N.A. for the benefit of the employees of the Parent. The Plan is governed by the Board of Trustees of the Hospital System. The Plan's investments are reserved for the Hospital System employees' pension benefits. In conformity with generally accepted accounting principles, the Plan is reported as a fiduciary fund of the Parent, the primary government.

The Parent and the affiliated entities are collectively referred to hereinafter as the "Hospital System."

2. SIGNIFICANT ACCOUNTING POLICIES

Accounting Standards and Methods — The Hospital System follows the provisions of the American Institute of Certified Public Accountants Audit and Accounting Guide, *Health Care Organizations* (the "Guide"). Under the provisions of the Guide, the Hospital System qualifies as a governmental organization and is subject to the pronouncements of the Governmental Accounting Standards Board (GASB). The Hospital System is operated as an enterprise fund under GASB pronouncements. Significant intercompany accounts and transactions have been eliminated in the combination. The proprietary fund method of accounting is used for the enterprise funds whereby revenue and expenses are recognized on the accrual basis.

The financial statements of the pension trust fund are prepared using the accrual basis of accounting. Employer contributions to the Plan are recognized when due. Benefits are recognized when due and payable in accordance with the terms of the Plan. The accounts of the pension trust fund are presented on a year-end of August 31, corresponding with the year-end of the Plan, which differs from the year-end of the Hospital System.

Pursuant to GASB Statement No. 20, *Accounting and Financial Reporting for Proprietary Funds and Other Governmental Entities That Use Proprietary Fund Accounting*. The Hospital System has elected to apply the provisions of all relevant pronouncements for the Financial Accounting Standards Board (FASB) that do not conflict with or contradict GASB pronouncements, including those issued after November 30, 1989.

Net Assets — The Hospital System classifies its net assets for accounting and reporting purposes as unrestricted, restricted, or invested in capital assets, net of related financing:

Unrestricted — Resources of the Hospital System which bear no external restrictions as to use or purpose. These resources include amounts generated from operations and undesignated gifts.

Invested in Capital Assets — Net of Related Financing — Resources of the Hospital System invested in property, plant, and equipment.

Restricted — Resources which are designated as to use by donors, grantors, or contractual requirements for capital improvements and certain Hospital System programs.

Revenues — Activities associated with the provision of health care services constitute the ongoing, major, and central operations of the Hospital System. Revenues related to these activities are reported as operating. Net patient service revenues are reported at estimated net realizable amounts from patients, third-party payors, and others for services rendered and include estimated retroactive revenue adjustments due to future audits, reviews, and investigations, as well as an estimate of uncollectible accounts. Retroactive adjustments are considered in the recognition of revenue on an estimated basis in the period the related services are rendered, and such amounts are adjusted in future periods as adjustments become known or as years are no longer subject to such audits, reviews, and investigations.

Under the Medicare and Medicaid programs, the Hospital System's payments are based on either predetermined rates or the cost of services, which are generally less than the Hospital System's customary charges. Medicare and Medicaid net patient revenues were approximately 42% and 44% of total Hospital System's net patient service revenues for the years ended September 30, 2010 and 2009, respectively. Laws and regulations governing the Medicare and Medicaid programs are complex and subject to interpretations. As a result, there is at least a reasonable possibility that recorded estimates will change by a material amount in the near term. The Hospital System believes that it is in compliance

with all applicable laws and regulations and it has recorded adequate provisions for any inquiries and reviews. Compliance with such laws and regulations can be subject to future government review and interpretation, as well as significant regulatory action, including fines, penalties, and exclusion from the Medicare and Medicaid programs. A provision (contractual adjustment) is deducted each year from the gross patient service charges to reflect the net patient service revenues earned under the Medicare and Medicaid programs. Final determination of amounts earned is computed using annual reports submitted by the Hospital System and is subject to review and adjustment by the program intermediary. Changes from final determination are reflected as changes in estimates, generally in the year of determination. At September 30, 2010 and 2009, Medicare cost reports subsequent to 2008 have not been audited for certain facilities. In the opinion of management, adequate provisions have been made for adjustments, if any, that may result from such reviews. Net patient service revenue increased approximately \$3.8 million and \$5.2 million for the years ended September 30, 2010 and 2009, respectively, due to prior-year retroactive adjustments in excess of amounts previously estimated.

During the year ended September 30, 2007, the Hospital System received a Notice of Program Reimbursement on the 1996 Cost Report from the Fiscal Intermediary reflecting an adjustment in the number of full-time equivalent residents that can be counted in determining the amount paid for indirect medical education by eliminating time spent in didactic activities. As a result of this adjustment, the 1996 cost report and certain subsequent cost reports can or have been adjusted, and therefore, the Hospital System recorded during the year ended September 30, 2007, an accrual for any potential adjustments related to these adjustments. The Hospital System believes the position of the intermediary and the Center for Medicare and Medicaid Services is incorrect and that the Intermediary will not ultimately prevail for a number of reasons. Regardless of whether the Hospital System or Center for Medicare and Medicaid Services is correct, Section 5505 of the Patient Protection and Affordable Care Act (PPACA) effectively moots the action. This section provides that classroom time and didactic activities in the hospital are to be counted in determining the number of full-time equivalent residents used in calculating indirect medical education. The section is effective for cost reporting years after 1982. The Hospital System and the government are in the process of negotiating a potential settlement of the action based on the PPACA provision.

In the state of South Carolina (the "State"), providers are assessed a quarterly tax and receive periodic Medicaid disproportionate share and upper payment limit funds from the State. The tax assessment was \$25,938,000 and \$26,370,000 for the years ended September 30, 2010 and 2009, respectively, and is recorded as an operating expense in the accompanying statements of revenues and expenses and changes in net assets. The Hospital System received approximately \$48,697,000 and \$54,375,000 of disproportionate share funds from the State in the fiscal years ended September 30, 2010 and 2009, respectively, and recorded the funds as net patient service revenue in the accompanying statements of revenues and expenses and changes in net assets. The State did not make separate upper limit payments in fiscal years 2010 and 2009, primarily as a result of the improved Medicaid base rates. Effective January 1, 2003, funds received under the upper payment limit program may be subject to a retroactive settlement process. Management continues to evaluate the settlement process related to the upper payment limit program and has recorded adequate provisions as of September 30, 2010 and 2009, in estimated third-party settlements in the accompanying combined balance sheets. Future receipts of the Medicaid disproportionate share and supplemental payment program reimbursements are not guaranteed.

Operating and Nonoperating Activities — Activities directly related to the delivery of health care services, including grant, research, and contribution revenue of \$9,874,000 and \$11,640,000 in 2010 and 2009, respectively, are reported as operating items. Activities not directly related to the provision of health care services, such as investment income, equity in income of joint ventures, and contributions made, are reported as nonoperating items.

Charitable Activities — The Hospital System accepts patients regardless of their ability to pay. A patient is classified as a charity patient by reference to certain established policies of the Hospital System. Because the Hospital System does not pursue collection of amounts determined to qualify as charity care, they are not reported as revenue. The cost of charity care under these policies for the years ended September 30, 2010 and 2009, was approximately \$65,348,000 and \$71,790,000, respectively, as determined using the cost-to-charge ratio method prescribed by Catholic Health Association and other relevant industry guidelines. In assessing a patient's inability to pay, the Hospital System utilizes a sliding scale in regard to generally recognized poverty income levels, but also includes cases where incurred charges are significant when compared to income.

Cash and Cash Equivalents — Cash and cash equivalents include investments in overnight repurchase agreements and investments in U.S. government obligations with maturities of three months or less when purchased. Also included in cash and cash equivalents is the Hospital System's investment in the South Carolina Local Government Investment Pool (LGIP).

Bank deposits are insured by the Federal Deposit Insurance Corporation (FDIC). Bank deposits in excess of the FDIC limit are collateralized with U.S. Treasury or agency securities held by the pledging financial institution in the Hospital System's name.

Investments and Investment Income — The Hospital System's cash and cash equivalents and investments are reported at fair value in accordance with GASB Statement No. 31, *Accounting and Financial Reporting for Certain Investments and for External Investment Pools*.

The change in fair value resulting from realized and unrealized gains and losses on the Hospital System's investments is reported within investment income in the statements of revenues and expenses and changes in net assets. The realized and unrealized gains and losses on the Pension Fund's investments are separately reported on the Pension Trust Fund's statement of operations.

Investment income on proceeds of borrowings that are held by a trustee is reported as other revenue. Investment income from all other investments is reported as nonoperating activities.

Inventories of Drugs and Supplies — Inventories are stated at the lower of cost, which is determined by the last-in, first-out method or market.

Assets with Limited Use — These assets represent assets set aside by the Board of Trustees and Board of Directors for future renovation, replacement, and expansion of the facilities; funds held by trustee; donor-restricted investments held by the Corporation; as well as all of the assets of the Endowment. Assets with limited use consist principally of investments in U.S. government obligations and agencies thereof, mutual funds, corporate obligations, equity-linked securities, and cash and cash equivalents. The current portion of assets with limited use represents the funds necessary to meet current debt service requirements and amounts included in accounts payable related to construction projects.

Amortization — Bond issuance costs, included in other assets, are amortized by the effective interest method over the shorter of the lives of the bonds or the repayment period under the respective liquidity facility, if applicable. Unamortized bond issuance costs at September 30, 2010 and 2009, are approximately \$6,829,000 and \$7,405,000, respectively. In accordance with GASB Statement No. 23, *Accounting and Financial Reporting for Refundings of Debt Reported by Proprietary Activities*, the difference between the reacquisition price and the net carrying amount of the refunded bonds is deferred and amortized as a component of interest expense over the shorter of the remaining scheduled life of old or new debt, or the repayment period under the respective liquidity facility, if applicable. The unamortized value of the deferred amount is reported as a reduction of long-term debt.

Property, Plant, and Equipment — Property, plant, and equipment are stated at cost or, if contributed, at market value at date of contribution. It is the Hospital System's policy not to capitalize any property, plant, and equipment addition that costs less than \$2,500. Effective October 1, 2009, the capitalization policy was revised to increase the threshold for capitalization from \$1,000 to \$2,500. Depreciation is provided over the estimated useful life of each class of depreciable asset (ranging from 3 to 40 years) and is computed using the straight-line method. Routine maintenance, repairs, and replacements are charged to expenses. Expenditures that materially increase values, change capacities, or extend useful lives are capitalized.

When properties are retired or otherwise disposed of, the cost of the assets and related allowances for depreciation are removed from the accounts, and any resulting gain or loss is recognized in the statements of revenues and expenses and changes in net assets.

Real property leased under capital leases is amortized over the terms of the respective leases or their economic useful lives, whichever is shorter.

The Hospital System evaluates property, plant, and equipment for impairment when events or changes in circumstances denote the presence of impairment indicators. For the year ended September 30, 2009, the Hospital System recognized an impairment loss of approximately \$5.2 million on the Allen Bennett Memorial Hospital and Roger Huntington Nursing Center facilities recorded as a component of operating expenses. The Hospital System determined that there was no further impairment of property, plant, and equipment as of or during the year ended September 30, 2010.

Leases — The Hospital System leases equipment and buildings under various operating and capital leases. Leases are classified as capital leases or operating leases based upon the criteria established by generally accepted accounting principles. For leases determined to be capital leases, an asset and liability are recognized at the lower of the fair value of the leased asset or the present value of the minimum lease payments during the lease term. Such assets are amortized using the straight-line method over the shorter of the lease term or the estimated useful life of the assets taking into account the residual value, with amortization included in depreciation and amortization expense. Leases that do not qualify as capital leases are classified as operating leases, and the related rental payments are expensed on a straight-line basis (taking into account rent escalation clauses) over the lease term. For purposes of expensing rental payments, the lease term commences when the Hospital System becomes obligated under the terms of the lease agreement, and includes option renewal periods where failure to exercise such options would result in an economic penalty such that renewal appears, at the inception of the lease, to be reasonably assured.

Pension Plan — The Hospital System's standards of accounting and financial reporting for pension expense and related pension liabilities, pension assets, note disclosures, and required supplementary information are presented in accordance with GASB Statement No. 27, *Accounting for Pensions by State and Local Governmental Employers*. It is the Hospital System's policy to fund pension costs accrued under its pension plan. Past service costs are amortized over a 30-year closed period originating in 2005. The fair value of the pension plan assets are based on quoted market prices. During the year ended September 30, 2010, the Board of Trustees of the Hospital System approved a plan to freeze the Hospital System's accrual of benefits to the pension plan effective August 31, 2010. Benefits will remain at the August 31, 2010 amounts and participants will retain any benefits earned through this time.

Retirement Savings Plan — The Hospital System offers a 403(b) retirement savings plan that covers substantially all of its employees. Depending on the number of years of service, the Hospital System matched a specified portion of the employees' contribution. Participants are fully vested in all funds within the plan.

For the year ended September 30, 2010, the Hospital System suspended matching employees' contributions to the retirement savings plan. Effective September 30, 2011, the Hospital System will make an automatic contribution on behalf of each employee equal to 3% of eligible earnings during the previous 13 months. The contribution will be slightly higher for employees who are at least age 50 with 10 years of service as of September 1, 2010. For full-time employees, the amount of the contribution will be at least \$1,050 annually. Participants will be vested in the automatic employer contribution after three consecutive years of employment.

The Hospital System also offers a 457(b) deferred compensation plan that covers all of its employees. The Hospital System does not make any matching contributions to this plan.

Stock-Based Compensation — GOT and ONC use the fair value method to account for stock-based compensation.

Health Care Reform — The Patient Protection and Affordable Care Act (PPACA) was signed into law on March 23, 2010. In addition, the Health Care and Education Affordability Reconciliation Act, which contains a number of amendments to PPACA, was signed into law on March 30, 2010. These health care bills (collectively, the "Reform Legislation") seek to increase the number of persons with access to health insurance in the United States by requiring substantially all U.S. citizens to maintain medical insurance coverage. The Reform Legislation makes a number of other changes to Medicare and Medicaid, such as reductions to the annual market basket update for federal fiscal years 2010 through 2019, a productivity offset to the market basket update beginning October 1, 2011, and a reduction to the disproportionate share payments. The various provisions in the Reform Legislation that directly or indirectly affect reimbursement are scheduled to take effect over a number of years.

Also included in the Reform Legislation are provisions aimed at reducing fraud, waste, and abuse in the health care industry. These provisions allocate significant additional resources to federal enforcement agencies and expand the use of private contractors to recover potentially inappropriate Medicare and Medicaid payments. The Reform Legislation amends several existing federal laws, including the Medicare Anti-Kickback Statute and False Claims Act, making it easier for government agencies and private plaintiffs to prevail in lawsuits brought against health care providers. These amendments also make it easier for potentially severe fines and penalties to be imposed on health care providers accused of violating applicable laws and regulations.

Management cannot predict the impact the Reform Legislation may have on the Hospital System's combined financial position, results of operations, or cash flows.

Use of Estimates — The preparation of the Hospital System's combined financial statements in conformity with generally accepted accounting principles requires management to make estimates and assumptions that affect the amounts reported in the combined financial statements and accompanying notes. Actual results could differ from those estimates.

Risk Management — The Hospital System is exposed to various risks of loss from torts; theft of, damage to, and destruction of assets; business interruption; errors and omissions; employee injuries and illnesses; and natural disasters. Commercial insurance coverage is purchased for claims arising from such matters. Excess coverage is provided by an umbrella and an excess umbrella insurance policy. The Hospital System is self-insured for amounts up to a specified level for health and medical coverages for its employees, as well as for professional and general liability. The estimated liability is the total estimated amount to be paid for all known claims or incidents and an accrual for incurred but not reported claims. Settled claims have not exceeded commercial insurance coverage in any of the three preceding years.

Overnight Repurchase Agreements — During the year ended September 30, 2009, the Hospital System invested in overnight repurchase agreements for which the depository bank pledged securities held by the bank, but not in the Hospital System's name. However, the Hospital System did not invest in overnight repurchase agreements during the year ended September 30, 2010. At September 30, 2010 and 2009, the Hospital System did not have any investments in overnight repurchase agreements.

Investments in Joint Ventures — The Corporation's investments in joint ventures are accounted for under the equity method (see Note 5).

Income Taxes — The Parent, the Corporation, Partners, RDC, and the Endowment are exempt from federal income tax as organizations described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended. Health Resources, GOT, and ONC are not exempt from federal income taxes.

Subsequent Events — The Hospital System evaluated subsequent events through February 15, 2011, the date at which the combined financial statements were available to be issued. No subsequent events requiring recognition in or disclosure to the combined financial statements as of September 30, 2010 were identified by management.

New Accounting Pronouncements — In June 2007, the GASB issued GASB Statement No. 51, *Accounting and Financial Reporting for Intangible Assets*. GASB Statement No. 51 establishes accounting and financial reporting requirements for intangible assets to reduce inconsistencies in the accounting and financial reporting of intangible assets among state and local governments, thereby enhancing the comparability of such assets among state and local governments. The requirements of GASB Statement No. 51 are effective for financial statement periods beginning after June 15, 2009. The adoption of GASB No. 51 did not have a material impact on the Corporation's consolidated financial statements.

In June 2008, the GASB issued GASB Statement No. 53, *Accounting and Financial Reporting for Derivative Instruments*. GASB Statement No. 53 addresses the recognition, measurement, and disclosure of information regarding derivative instruments entered into by state and local governments. The requirements of GASB Statement No. 53 are effective for financial statement periods beginning after June 15, 2009. The adoption of GASB Statement No. 53 did not have a material effect on the Hospital System's combined financial position, statement of net assets, or cash flows.

In February 2009, the GASB issued GASB Statement No. 54, *Fund Balance Reporting and Governmental Fund Type Definitions*. GASB Statement No. 54 establishes accounting and financial reporting standards for all governments that report governmental funds by establishing criteria for classifying fund balances into specifically defined classifications and clarifying definitions for governmental fund types. GASB Statement No. 54 is effective for financial statement periods beginning after June 15, 2010. Management is evaluating the impact the adoption of GASB Statement No. 54 will have on its combined financial statements.

In June 2010, the GASB issued GASB Statement No. 59, *Financial Instruments Omnibus*. GASB Statement No. 59 updates and improves existing standards regarding financial reporting and disclosure requirements of certain financial instruments and external investment pools. The requirements of GASB Statement No. 59 are effective for financial statement periods beginning after June 15, 2010. Management is evaluating the impact the adoption of GASB Statement No. 59 will have on its combined financial statements.

In July 2006, the FASB issued FASB Interpretation (FIN) No. 48, *Accounting for Uncertainty in Income Taxes* (now FASB Accounting Standards Codification (ASC) 740, *Accounting for Uncertainty in Income Taxes*), which prescribes a recognition threshold and measurement attribute for the financial statement recognition and measurement of a tax position taken or expected to be taken in a tax return. For benefits to be realized, a tax position must be more likely than not to be sustained upon examination. The amount recognized is measured as the largest amount of benefit that is greater than 50% likely of being realized upon settlement. On December 30, 2008, the FASB issued FASB Staff Position (FSP) FIN 48-3, *Effective Date of FASB Interpretation No. 48 for Certain Nonpublic Enterprises*, which delayed the effective date of FIN No. 48 (now ASC 740) for certain nonpublic entities to fiscal years beginning after December 15, 2008. Therefore, ASC 740 became effective for the Corporation during the year ended September 30, 2010. The adoption of ASC 740 did not have a material effect on the Corporation's consolidated financial statements.

3. INVESTMENTS AND ASSETS WITH LIMITED USE

In accordance with GASB Statement No. 40, *Deposit and Investment Risk Disclosures — an amendment of GASB Statement No. 3*, the Hospital System's investments, including those classified as assets with limited use, are categorized by investment type. All of the Hospital System's investments presented below are included in Category I. Category I includes investments that are insured or registered in the name of the Hospital System or securities that are held by the Hospital System itself or by its agent in the Hospital System's name.

Investments and other assets with limited use are composed of the following (in thousands):

2010 Investment Type	Investment Maturities (in Years)				
	Fair Value	Less Than 1	1-5	6-10	More Than 10
Internally designated by the board:					
Cash and cash equivalents	\$ 72,754	\$ 72,754	\$ -	\$ -	\$ -
U.S. Treasury and agency obligations	223,345	33,599	83,756	76,057	29,933
Mortgage-backed securities	111,981	9,845	55,329	8,335	38,472
Corporate obligations	21,181	1,371	10,091	9,719	-
Equity-linked notes	80,282	-	45,488	34,794	-
Mutual funds	6,048	6,048	-	-	-
Other assets	3,148	3,148	-	-	-
	518,739	126,765	194,664	128,905	68,405
Funds held by external trustee — cash and cash equivalents	1,007	1,007	-	-	-
Total assets with limited use	<u>\$ 519,746</u>	<u>\$ 127,772</u>	<u>\$ 194,664</u>	<u>\$ 128,905</u>	<u>\$ 68,405</u>

2009

Investment Type	Investment Maturities (in Years)				
	Fair Value	Less Than 1	1-5	6-10	More Than 10
Internally designated by the board:					
Cash and cash equivalents	\$ 42,491	\$42,491	\$ -	\$ -	\$ -
U.S. Treasury and agency obligations	169,941	11,629	109,182	49,130	-
Mortgage-backed securities	197,453	1,822	76,288	29,278	90,065
Corporate obligations	1,706	-	1,706	-	-
Equity-linked notes	67,999	-	55,400	12,599	-
Mutual funds	2,782	2,782	-	-	-
Other assets	3,028	3,028	-	-	-
	<u>485,400</u>	<u>61,752</u>	<u>242,576</u>	<u>91,007</u>	<u>90,065</u>
Funds held by external trustee — cash and cash equivalents	<u>1,008</u>	<u>1,008</u>	<u>-</u>	<u>-</u>	<u>-</u>
Total assets with limited use	<u>\$486,408</u>	<u>\$62,760</u>	<u>\$242,576</u>	<u>\$91,007</u>	<u>\$90,065</u>

The Hospital System invests in principal protected investments, including equity-linked securities, in order to maximize returns, protect principal, and diversify its investments. Each of these securities is 100% principal protected at maturity subject to the underlying credit of the issuer and provides the opportunity for an additional variable return based upon the appreciation, if any, of any underlying index or indices. Management estimates fair value of equity-linked securities based on quotations from available financial sources. However, estimated values may differ from the values that would have been used had a public market for such investments existed. At September 30, 2010 and 2009, these equity-linked securities were valued by the Hospital System at \$80,282,000 and \$67,999,000, respectively.

Investment in equity-linked securities in 2010 and 2009 are composed of the following:

Issuer	Type	Initial Investment	Effective Date	Maturity Date
Deutsche Bank AG London	Equity-linked note	\$ 15,000,000	02/03/2005	02/03/2012
Morgan Stanley	Equity-linked note	16,000,000	12/11/2006	12/11/2013
Citigroup Funding Inc.	Equity-linked note	15,000,000	10/10/2007	10/10/2014
Goldman Sachs Group, Inc.	Equity-linked note	15,000,000	10/09/2007	10/13/2015
Barclays Bank PLC	Equity-linked note	10,000,000	06/24/2010	06/26/2018
Rabobank Nederland	Equity-linked note	10,000,000	07/02/2010	07/03/2017
		<u>\$81,000,000</u>		

The fair value of the Pension Trust Fund investments was approximately \$251,562,000 and \$252,738,000 at September 30, 2010 and 2009, respectively. These amounts were composed of cash equivalents, mutual fund investments, and fixed income securities.

Investment Pool — In addition to the above-listed investments, the Hospital System participates in the South Carolina LGIP through the State Treasurer, which is included in cash and cash equivalents.

Monies deposited into the LGIP are used to purchase investment securities of the U.S. government or agencies thereof, as well as repurchase agreements, investment-grade corporate bonds, asset-backed securities, and commercial paper. The fair value of the investment approximates carrying value, which equates to the cash invested, plus interest earned. At September 30, 2010 and 2009, the fair value of the funds invested in the LGIP was approximately \$107,329,000 and \$122,486,000, respectively.

Interest Rate Risk — The Hospital System has a formal investment policy that manages its exposure to fair value losses arising from increasing interest rates by following strategic investment guidelines and segregating its investments designated as assets with limited use between short-term, intermediate-term Treasury inflation protected (TIPS) investments, and equity-linked securities. Short-term investments have an average maturity of one year or less. Investment managers of the intermediate-term investments are expected to approximate the average maturity, return, and other portfolio characteristics of the Barclay's Capital Intermediate Government Bond Index. Investment managers of the agency mortgage bonds are expected to approximate the average maturity, return, and other portfolio characteristics of the Barclay's Capital Mortgage-Backed Securities Index. Investment managers of the TIPS investments are expected to approximate the average maturity, return, and other portfolio characteristics of the Barclay's Capital US TIPS Bond Index. For Hospital System investments, target asset allocations are 10% to short-term investments, 30% to intermediate government investments, 30% to agency mortgage-backed investments, and 30% to TIPS investments. For Endowment investments, target asset allocations are 35% to agency mortgage-backed investments, 23% to intermediate government investments, 12% to corporate debt, and 30% to equity-linked investments. At September 30, 2010, the average maturity of the Barclay's Capital Intermediate Government Bond Index and the Barclay's Capital Mortgage-Backed Securities Index was 4.16 and 4.46 years, respectively. At September 30, 2009, the average maturity of the Barclay's Capital Intermediate Government Bond Index and the Barclay's Capital Mortgage-Backed Securities Index was 4.07 and 5.11 years, respectively. During 2010 and 2009, the Endowment continued to under-weigh its actual versus target allocation to equity-linked securities due to adverse credit market conditions.

Credit Risk — The Hospital System is authorized to invest funds in eligible securities that have been authorized under laws governing the Hospital System. Those eligible securities include (i) obligations of the United States and its agencies thereof, the principal and interest of which is fully guaranteed by the United States; (ii) obligations issued by the Federal Financing Bank, Federal Farm Credit Bank, the Bank of Cooperatives, the Federal Intermediate Credit Bank, the Federal Land Banks, the Federal Home Loan Banks, the Federal Home Loan Mortgage Association, the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Housing Administration, and the Farmers Home Administration; (iii) general obligations of the State and any of its political units; (iv) savings and Loan Associations to the extent that the same are insured by an agency of the federal government; (v) certificates of deposit collateralized by securities as described in (i) and (ii) above; (vi) repurchase agreements fully collateralized by securities as described in (i) and (ii) above; (vii) no-load open-end or closed-end management type investment companies or investment trusts registered under the Investment Company Act of 1940, as amended, where the investment is made by a bank or trust company or savings and loan association or other financial institution when acting as trustee or agent for a bond or other debt issue of that local government unit, political subdivision, or county treasurer if the particular portfolio of the investment company or investment trust in which the investment is made (a) is limited to obligations described in items (i), (ii), (iii), and (vi) of this subsection and (b) has among its objectives the attempt to maintain a constant net asset value of one dollar a share and to the end, value its assets by the amortized cost method; and (viii) principal protected investments in the form of notes, bonds, guaranteed investment contracts, debentures, or other contracts issued by a bank chartered in the United States or agency of a bank if chartered in the United States, financial institution, insurance company, or other entity which provides for full principal payment at the end of the contract term; and (ix) the South Carolina Pooled Investment Fund.

All funds belonging to the Corporation or other funds for which the Board of Directors is accountable or responsible are managed in such a way that the maximum safe return is realized on such funds with reasonable and prudent levels of risk and that all applicable laws and regulations pertaining to such funds are adhered to. Funds are invested in accordance with the following criteria: (1) safety of the funds has the highest priority, (2) maturity to meet authorized obligations when due has second priority, (3) yield on the investment has third priority. In accordance with a donor's wishes, the investment objectives of restricted funds may differ with unrestricted funds and as such may not apply. The President of the Corporation, the Secretary/Treasurer of the Corporation, and the Treasurer of the Hospital System, or their designees, are jointly or severally authorized to invest funds in eligible securities that have been authorized by the Board of Directors.

The President of the Corporation, the Secretary/Treasurer of the Corporation, and the Treasurer of the Hospital System, or their designees, are also, jointly or severally, authorized to sell or redeem any stocks, bonds, certificates of deposit, savings accounts, treasury obligations, or any other securities registered in the name of the Corporation, affiliated entities, or any other name to which the Corporation may be entitled to the underlying funds. Those eligible securities include (1) debt obligations of the United States and agencies thereof, including mortgage-backed securities and fully collateralized mortgage obligations; (2) general obligations of the State or any of its political units; (3) the South Carolina LGIP; (4) repurchase agreements; (5) certificates of deposit; (6) commercial paper rated P1/A1/F1 or better; (7) corporate bonds rated Baa/BBB or better; (8) domestic and international equities as more fully described below; (9) unit and collective trusts and mutual funds provided they hold only eligible securities described in (1)-(8) above. All stocks or bonds received by the Corporation shall be sold immediately upon receipt, unless the donor instructs otherwise. Domestic and international securities shall be restricted to high quality, readily marketable securities of corporations that are actively traded on the major U.S. exchanges, including NASDAQ or major exchanges of developed countries. Fixed-income investments shall be high quality, marketable securities that may include, but not necessarily be limited to, U.S. Treasury, federal agencies and U.S. government guaranteed obligations, and investment-grade corporate issues, including convertibles and asset-backed securities. All fixed-income securities, at the time of purchase, must have a minimum credit rating of "BBB/Baa" as measured by either Moody's or Standard & Poor's rating systems.

All Corporation operating fund investments should be short-term in nature and invested in eligible securities as listed above with maturities of 365 days or less.

The credit quality ratings for the Hospital System's applicable securities, which are not fully guaranteed by the U.S. government as of September 30, 2010 and 2009, are listed below:

September 30, 2010	Credit Ratings	Portfolio Concentration
U.S. Treasury notes	AAA	51.13 %
Mortgage-backed securities and agency obligations	AAA	25.64
Corporate and municipal obligations	AAA	0.22
Corporate and municipal obligations	AA+	0.43
Corporate and municipal obligations	AA	0.52
Corporate and municipal obligations	AA-	0.47
Corporate and municipal obligations	A+	0.65
Corporate and municipal obligations	A	2.03
Corporate and municipal obligations	A-	0.43
Corporate and municipal obligations	BBB	0.10
Equity-linked securities	AAA	2.39
Equity-linked securities	AA-	2.46
Equity-linked securities	A+	3.73
Equity-linked securities	A	9.80

September 30, 2009	Credit Ratings	Portfolio Concentration
U.S. Treasury notes	AAA	38.88 %
Mortgage-backed securities and agency obligations	AAA	45.17
Corporate and municipal obligations	AAA	0.27
Corporate and municipal obligations	AA+	0.12
Equity-linked securities	A+	3.63
Equity-linked securities	A	8.66
Equity-linked securities	A-	3.27

Investment income of the enterprise fund, including income from funds held by external trustee, for the years ended September 30, 2010 and 2009, consisted of the following (in thousands):

	2010	2009
Interest and dividends — net of fees	\$ 24,440	\$ 15,732
Net increase in the fair value of investments and other assets	<u>7,916</u>	<u>9,250</u>
Total investment income	<u>\$ 32,356</u>	<u>\$ 24,982</u>

Investment income from the pension trust fund for the years ended August 31, 2010 and 2009, consisted of the following (in thousands):

	2010	2009
Interest and dividends — net of fees	\$ 6,483	\$ 7,705
Net increase (decrease) in the fair value of investments	<u>12,403</u>	<u>(31,436)</u>
Total investment gain (loss)	<u>\$ 18,886</u>	<u>\$ (23,731)</u>

The net increase (decrease) in the fair value of the pension trust fund's investments includes net realized gains (losses) of \$3,844,000 and \$(3,262,000) in 2010 and 2009, respectively.

4. PROPERTY, PLANT, AND EQUIPMENT

Property, plant, and equipment and the related accumulated depreciation are summarized as follows (in thousands):

	Balance October 1, 2009	Additions	Transfers	Deletions	Balance September 30, 2010
Land	\$ 35,325	\$ -	\$ 991	\$ (159)	\$ 36,157
Land improvements	32,794	-	102	-	32,896
Buildings and building fixtures	533,420	-	25,585	-	559,005
Fixed equipment	252,131	-	3,659	(114)	255,676
Major movable equipment	469,879	44	41,358	(24,732)	486,549
Transportation equipment	2,486	-	479	(58)	2,907
Projects in progress	28,032	81,156	(72,174)	-	37,014
	1,354,067	81,200	-	(25,063)	1,410,204
Accumulated depreciation	(647,088)	(78,437)	-	22,957	(702,568)
Net fixed assets	<u>\$ 706,979</u>	<u>\$ 2,763</u>	<u>\$ -</u>	<u>\$ (2,106)</u>	<u>\$ 707,636</u>

	Balance October 1, 2008	Additions	Transfers	Deletions	Balance September 30, 2009
Land	\$ 36,973	\$ -	\$ -	\$ (1,648)	\$ 35,325
Land improvements	33,696	-	471	(1,373)	32,794
Buildings and building fixtures	553,982	-	92,541	(113,103)	533,420
Fixed equipment	303,166	-	6,184	(57,219)	252,131
Major movable equipment	439,458	123	35,271	(4,973)	469,879
Transportation equipment	2,133	-	525	(172)	2,486
Projects in progress	97,599	65,430	(134,997)	-	28,032
	1,467,007	65,553	(5)	(178,488)	1,354,067
Accumulated depreciation	(646,054)	(83,795)	5	82,756	(647,088)
Net fixed assets	<u>\$ 820,953</u>	<u>\$ (18,242)</u>	<u>\$ -</u>	<u>\$ (95,732)</u>	<u>\$ 706,979</u>

Additions include \$349,000 and \$849,000 of capitalized interest for the years ended September 30, 2010 and 2009, respectively. Projects in progress include the expansion of hospital facilities and other capital projects that were under construction or are in the planning stages at September 30, 2010 and 2009. Estimated costs to complete these projects were approximately \$26,831,000 and \$56,233,000 at September 30, 2010 and 2009, respectively. Buildings and building fixtures include buildings under capital leases, net of accumulated amortization, of \$3,719,000.

5. INVESTMENTS IN JOINT VENTURES

The Corporation's investments in joint ventures consist of a 50% interest in Baptist Easley Hospital, a 50% interest in Upstate Linen Services, LLC, and a 20% interest in Greenville Proaxis Therapy, LLC (GPT). Effective March 31, 2009, the Corporation redeemed its 100,000 shares of nontransferable

common stock of Premier, Inc. ("Premier") and limited partnership interest in Premier Purchasing Partners, L.P. ("Purchasing Partners"). The Corporation's investment in Premier will be distributed to the Corporation in monthly installments of \$17,826 through July 2014. The investment in Purchasing Partners will be distributed in a lump sum of \$1,869,876 on March 31, 2014. Each joint venture prepares separate financial statements that may be obtained upon request.

On October 1, 2009, the Corporation purchased a 50% interest in Baptist Easley Hospital in a joint venture with Palmetto Health. The joint venture was established to further the charitable missions of the Corporation and Palmetto Health by improving the health and well-being of the citizens of Pickens County and the surrounding communities through the provision of a complete, coordinated continuum of cost-effective, quality healthcare services. The carrying value of the Corporation's investment in Baptist Easley Hospital is \$43,166,000 as of September 30, 2010.

The components of the Corporation's investment in Baptist Easley Hospital as of September 30, 2010 are as follows (in thousands):

GHC's underlying equity in Baptist Easley Hospital's net assets at October 1, 2009	\$ 21,621
Step-up basis of Baptist Easley Hospital assets *	15,889
Equity method goodwill	<u>4,490</u>
Price paid for investment in Baptist Easley Hospital	<u>\$ 42,000</u>
Equity in income of Baptist Easley Hospital	\$ 1,696
Depreciation of step-up basis	<u>(530)</u>
Carrying value at September 30, 2010	<u>\$ 43,166</u>

* Step up basis is calculated based on the appraised value of the identifiable assets of Baptist Easley Hospital

The Corporation also made charitable contributions of \$560,000 to the Baptist Easley Foundation during the year ended September 30, 2010. In the Joint Venture Agreement, the Corporation agreed to match payments made by the Baptist Easley Foundation, up to \$4,800,000, for the next ten years.

Upstate Linen Services, LLC was formed to provide laundry and linen services in conjunction with affiliates of Spartanburg County Health Services District, Inc. and Anderson Area Medical Center.

The joint venture with Proaxis Greenville, LLC was formed to provide physical and occupational therapy services through GPT. Greenville Health Corporation holds a 20% interest in GPT.

The Corporation has a call option to purchase sufficient membership interest in GPT to own a percentage equal to that of Proaxis Greenville, LLC. This call option is exercisable through June 1, 2012, at fair market value of the membership interest to be transferred. Proaxis Greenville, LLC has a put option to cause the Corporation to purchase sufficient membership interest in GPT to own a percentage equal to that of Proaxis Greenville, LLC. This put option is exercisable for the same term and at the same price as the call option. As of September 30, 2010, neither the call option nor the put option has been exercised.

Carrying values of investments in joint ventures as of September 30, 2010 and 2009 are as follows (in thousands):

	2010	2009
Baptist Easley Hospital	\$ 43,166	\$ -
Upstate Linen Services, LLC	2,747	2,635
Greenville Proaxis Therapy, LLC	633	536
	<u>\$ 46,546</u>	<u>\$ 3,171</u>

Summarized financial information for the joint ventures as of and for the year ended September 30, 2010, is as follows (in thousands):

	Baptist Easley Hospital	Upstate Linen Services, LLC	Greenville Proaxis Therapy, LLC (Unaudited)
Total assets	\$ 58,522	\$ 5,544	\$ 3,583
Total liabilities	11,077	51	415
Revenues	126,973	359	10,510
Net income	3,394	225	846

6. ACCRUED LIABILITIES

Accrued liabilities as of September 30, 2010 and 2009, are summarized as follows (in thousands):

	2010	2009
Salaries and wages	\$ 46,849	\$ 34,773
Compensated absences	29,845	28,603
Payroll taxes and deductions	9,648	12,421
Self-insurance medical plan	7,178	6,800
Accrued interest	5,773	5,965
Current portion of malpractice liability	4,517	4,136
Other	27,797	23,081
	<u>\$ 131,607</u>	<u>\$ 115,779</u>

7. EMPLOYEES' PENSION PLANS

Plan Description — The Hospital System has a noncontributory pension plan (the "Plan") for employees meeting certain eligibility requirements. The Hospital System reserves the right to amend the Plan at any time. The Plan is a single-employer defined-benefit pension plan administered by the Hospital System. The Plan provides for retirement and death benefits to Plan participants and beneficiaries. If the Plan is terminated, the Plan assets will be distributed among the Plan participants based upon a priority allocation procedure. The Hospital System shall be liable for any unfunded vested benefits to the extent required by law.

During the year ended September 30, 2010, the Board of Trustees of the Hospital System approved a plan to freeze the Hospital System's accrual of benefits under the Plan effective August 31, 2010. Participants will retain any benefits earned through this time.

Funding Policy — The entire cost of the Plan is borne by the Hospital System. Therefore, active Plan members are not required to contribute to the Plan. The Hospital System is required to contribute at an actuarially determined rate. A contribution of \$20,877,000 and \$15,760,000 was required in accordance with the funding policy for the Plan years ended September 1, 2010 and 2009, respectively.

The annual required contribution for the current year was determined as part of the September 1, 2010, actuarial valuation using the Projected United Credit cost method. The actuarial assumptions included a 7% investment rate of return, which includes an assumed inflation rate of 3%. This investment rate of return was reduced from 7.25% used in the prior valuation on September 1, 2009. The assumption for increases in salary no longer applies in the current year due to the benefits freeze. The projected salary increase assumption was 4% in the prior valuation on September 1, 2009. The assumptions did not include postretirement benefit increases, which are funded by the Hospital System when granted. The fair value is used to determine the actuarial value of assets as part of the funding method. The unfunded actuarial accrued liability is amortized as a level dollar on a closed basis. The remaining amortization period at September 1, 2010 was 25 years.

Annual Pension Cost and Net Pension Obligation — The Hospital System's annual pension cost and contributions made to the Plan for the years ended September 30, 2010 and 2009, are as follows (in thousands):

	2010	2009
Annual required contribution	\$ 20,877	\$ 15,760
Interest on net pension obligation	-	-
Adjustment to annual required contribution	-	-
Annual pension cost	20,877	15,760
Contributions made	(20,877)	(15,760)
Decrease in net pension obligation	-	-
Net pension obligation — beginning of year	-	-
Net pension obligation — end of year	\$ -	\$ -

Schedule of Employer Contributions
(In thousands)

Fiscal Year Ending	Annual Pension Cost (APC)	Percentage of APC Contributed	Net Pension Obligation
September 30, 2005	\$ 15,769	102.0 %	\$ 54
September 30, 2006	15,573	100.3	-
September 30, 2007	15,568	100.0	-
September 30, 2008	14,670	100.0	-
September 30, 2009	15,760	100.0	-
September 30, 2010	20,877	100.0	-

Schedule of Funding Progress
(In thousands)

Valuation Date	Actuarial/ Valuation Plan Assets	Actuarial Accrued Liability (AAL)	Total Unfunded AAL (Funding Excess)	Funded Ratio	Annual Covered Payroll	Unfunded AAL as a Percentage of Covered Payroll
September 1, 2005	\$ 212,776	\$ 224,925	\$ 12,149	94.6 %	\$ 287,598	4.2 %
September 1, 2006	244,383	256,370	11,986	95.3	300,421	4.0
September 1, 2007	281,449	293,320	11,871	96.0	319,327	3.7
September 1, 2008	303,535	315,281	11,746	96.3	342,442	3.4
September 1, 2009	309,031	369,214	60,183	83.7	412,702	14.6
September 1, 2010	310,716	350,230	39,514	88.7	439,621	9.0

The actuarial cost method was changed to the Projected Unit Credit Cost Method on September 1, 2009. Prior to that, the Frozen Entry Age actuarial cost method was used.

Plan assets are invested in cash, fixed-income securities, and equities. The Hospital System's asset valuation method is the 7% yield method. The Hospital System offers a 403(b) retirement savings plan that covers substantially all of its employees. Depending on the number of years of service, the Hospital System matched a specified portion of the employees' contributions. Participants are fully vested in all funds within the plan. The Hospital System recognized expense for matching contributions to the plan of approximately \$1,498,000 and \$6,518,000 for the years ended September 30, 2010 and 2009, respectively.

For the year ended September 30, 2010, the Hospital System suspended matching employees' contributions to the retirement savings plan. Effective September 30, 2011, the Hospital System will make an automatic contribution on behalf of each employee equal to 3% of eligible earnings during the previous 13 months. The contribution will be slightly higher for employees who are at least age 50 with 10 years of service as of September 1, 2010. For full-time employees, the amount of the contribution will be at least \$1,050 annually. Participants will be vested in the automatic employer contribution after three consecutive years of employment. For the year ended September 30, 2010, the Hospital System has approximately \$1,933,000 accrued for the September 2010 portion of this matching contribution.

Additional contributions of up to 3% of salary in the form of a match of participants' contributions to their 403(b) accounts may be made at the discretion of the Hospital System.

The Hospital System offers a 457(b) deferred compensation plan that covers all of its employees. The Hospital System does not make any matching contributions to this plan.

8. LONG-TERM DEBT

Long-term debt as of September 30, 2010 and 2009, consists of the following (in thousands):

	2010	2009
Hospital Revenue Bonds — Series 2008A — Serial Bonds, 3.0% to 5.25% fixed rate interest, maturing 2009 to 2023	\$ 94,320	\$ 102,210
Hospital Revenue Bonds — Series 2008B — Variable Rate Demand Bonds, variable rate interest, maturing 2021 to 2033	60,595	60,595
Hospital Revenue Bonds — Series 2008C — Variable Rate Demand Bonds, variable rate interest, maturing 2021 to 2033	61,195	61,195
Hospital Revenue Bonds — Series 2008D — Variable Rate Demand Bonds, variable rate interest, maturing 2009 to 2035	57,465	58,375
Hospital Revenue Bonds — Series 2008E — Variable Rate Demand Bonds, variable rate interest, maturing 2009 to 2035	87,755	88,730
Hospital Revenue Bonds — Series 2003A: Serial bonds, 2.0% to 5.25% interest, maturing 2005 to 2022	42,125	44,785
Term bonds, 4.75% fixed rate interest, maturing 2025	6,725	6,725
Term bonds, 5.0% fixed rate interest, maturing 2025	8,000	8,000
Hospital Revenue Bonds — Series 2001A — Term bonds, 5.5% fixed rate interest, maturing 2026	38,800	38,800
Hospital Revenue Bonds — Series 2001B — Term bonds, 5.0% fixed rate interest, maturing 2031	62,275	62,275
Hospital Facilities Revenue Bonds — Series 1990 — Term bonds, 6.0% fixed rate interest, maturing 2020	<u>15,675</u>	<u>15,675</u>
	534,930	547,365
Less unamortized loss on current refunding of Hospital Facilities Revenue Bonds — Series 1993C	(548)	(774)
Less unamortized loss on current refunding of Hospital Facilities Revenue Bonds — Series 1996	(3,827)	(4,440)
Less unamortized loss on current refunding of Hospital Facilities Revenue Bonds — Series 2003B	(1,071)	(1,309)
Less unamortized loss on current refunding of Hospital Facilities Revenue Bonds — Series 2003C	(1,070)	(1,308)
Less unamortized loss on current refunding of Hospital Facilities Revenue Bonds — Series 2005A	(770)	(941)
Less unamortized loss on current refunding of Hospital Facilities Revenue Bonds — Series 2005B/C	(1,233)	(1,507)
Less unamortized loss on current refunding of Hospital Facilities Revenue Bonds — Series 2006A/B	(1,496)	(1,615)
Plus unamortized debt premium	<u>2,487</u>	<u>2,739</u>
	527,402	538,210
Less current portion	<u>12,785</u>	<u>12,435</u>
	<u>\$ 514,617</u>	<u>\$ 525,775</u>

On July 1, 2008, the Hospital System Board of Trustees issued \$110,355,000 of Hospital Revenue Bonds, Series 2008A. The net proceeds of the 2008A Bonds (after payment of approximately \$919,000 in bond issuance costs, including underwriting, legal, accounting, and rating agency fees) were used to pay the current refunding of the Series 2006A and 2006B Hospital Revenue Bonds. The Series 2006A and 2006B Bonds were refunded due to the volatility in the auction rate securities market. Principal and interest requirements of the Hospital System range from \$4,399,000 to \$12,816,000 annually over the remaining term of the bonds.

On August 19, 2008, the Hospital System Board of Trustees issued \$60,595,000 of Hospital Revenue Bonds, Series 2008B. The net proceeds of the 2008B Bonds (after payment of approximately \$328,000 in bond issuance costs, including underwriting, legal, accounting, and rating agency fees) were used to pay the current refunding of the Series 2003B Revenue Bonds. The Series 2003B Bonds were refunded due to the volatility in the auction rate securities market. Principal and interest requirements of the Hospital System range from \$1,725,000 to \$12,940,000 annually over the remaining term of the bonds.

On August 19, 2008, the Hospital System Board of Trustees issued \$61,195,000 of Hospital Revenue Bonds, Series 2008C. The net proceeds of the 2008C Bonds (after payment of approximately \$298,000 in bond issuance costs, including underwriting, legal, accounting, and rating agency fees) were used to pay the current refunding of the Series 2003C Revenue Bonds. The Series 2003C Bonds were refunded due to the volatility in the auction rate securities market. Principal and interest requirements of the Hospital System range from \$1,742,000 to \$12,945,000 annually over the remaining term of the bonds.

On August 19, 2008, the Hospital System Board of Trustees issued \$59,500,000 of Hospital Revenue Bonds, Series 2008D. The net proceeds of the 2008D Bonds (after payment of approximately \$318,000 in bond issuance costs, including underwriting, legal, accounting, and rating agency fees) were used to pay the current refunding of the Series 2005A Revenue Bonds. The Series 2005A Bonds were refunded due to the volatility in the variable rate securities market. Principal and interest requirements of the Hospital System range from \$1,154,000 to \$16,004,000 annually over the remaining term of the bonds.

On August 19, 2008, the Hospital System Board of Trustees issued \$89,915,000 of Hospital Revenue Bonds, Series 2008E. The net proceeds of the 2008E Bonds (after payment of approximately \$391,000 in bond issuance costs, including underwriting, legal, accounting, and rating agency fees) were used to pay the current refunding of the Series 2005B and 2005C Revenue Bonds. The Series 2005B and 2005C Bonds were refunded due to the volatility in the variable rate securities market. Principal and interest requirements of the Hospital System range from \$3,568,000 to \$31,791,000 annually over the remaining term of the bonds.

In accordance with GASB Statement No. 23, the difference between the reacquisition price and the net carrying amount of the old debt is being deferred and amortized as a component of interest expense over the shorter of the remaining scheduled life of the old or new debt or the repayment period under the respective liquidity facility, if applicable. The unamortized value of the deferred amount is reported as a reduction of long-term debt. The differences between the reacquisition price and the net carrying amount of the old debt for each of the Series 2008 Bonds are as follows (in thousands):

Series 2008A	\$ 1,764
Series 2008B	1,605
Series 2008C	1,606
Series 2008D	1,155
Series 2008E	<u>1,849</u>
Total	<u>\$ 7,979</u>

Hospital Revenue Bonds, Series 1990 totaling \$72,105,000 were issued by the Hospital System Board of Trustees on July 18, 1990, to pay the cost of certain improvements to, and the acquisition of capital equipment for the facilities of the Hospital System. The term bonds have mandatory redemption requirements payable in years 2018 through 2020 and range from \$4,925,000 to \$5,530,000. Certain of the bonds may be redeemed at a premium prior to the mandatory redemption dates. Principal and interest requirements of the Hospital System range from \$941,000 to \$5.866,000 annually over the remaining term of the bonds.

All of the outstanding bonds are secured by the Hospital System's pledge of gross revenues. A Trust Agreement names a bank as Trustee to receive, transfer, and disburse all monies related to the bonds. In addition, the payments of the principal and interest on the Series 2001, 2003, and 2008 Bonds are guaranteed by the Endowment.

Under the terms of the Master Trust Indenture dated as of March 1, 1996, as amended and supplemented by various supplemental indentures governing outstanding bonds and the Credit Facilities, the Hospital System is required to maintain certain financial ratios, maintain minimum credit ratings, and limit future borrowings. In addition, the covenants impose limitations on the selling, leasing, or conveying substantial properties, security interest, pledge, or lien against any assets without the permission of the lenders.

The Hospital System must establish various funds with the trustee as defined by the Trust Agreement. Funds held by the trustee as of September 30, 2010 and 2009, is as follows (in thousands):

	2010	2009
Series 1990 — Bond interest fund	\$ 235	\$ 235
Series 2008A, 2008B, 2008C, 2008D, and 2008E — Bond principal fund	<u>772</u>	<u>773</u>
	<u>\$ 1,007</u>	<u>\$ 1,008</u>

A summary of interest paid, interest expense, and interest income, net of amounts capitalized for the years ended September 30, 2010 and 2009, is as follows (in thousands):

	2010	2009
Interest paid	<u>\$ 15,784</u>	<u>\$ 17,620</u>
Total interest incurred	\$ 18,025	\$ 20,355
Less amounts capitalized	<u>(349)</u>	<u>(849)</u>
Interest expense	<u>\$ 17,676</u>	<u>\$ 19,506</u>
Interest income on funds held by external trustee, included in other revenue	<u>\$ -</u>	<u>\$ 250</u>

Interest paid and incurred above includes \$269 and \$0 in 2010 and 2009, respectively, for interest on capital leases.

Future principal and interest payments, excluding unamortized debt discount, under the Hospital System's long-term debt agreements are as follows (in thousands):

Years Ending September 30	Principal Payments	Interest Payments	Total Debt Service
2011	\$ 12,785	\$ 14,438	\$ 27,223
2012	13,145	13,937	27,082
2013	13,645	13,396	27,041
2014	14,105	12,848	26,953
2015	14,690	12,221	26,911
2016-2020	83,630	51,972	135,602
2021-2025	105,065	33,635	138,700
2026-2030	126,155	15,717	141,872
2031-2035	<u>151,710</u>	<u>1,936</u>	<u>153,646</u>
Total	<u>\$ 534,930</u>	<u>\$ 170,100</u>	<u>\$ 705,030</u>

In accordance with GASB Statement No. 38, *Certain Financial Statement Note Disclosures*, the variable interest included in the schedule detailed above is based on the rate in effect at the financial statement date, which ranged from 0.27% to 0.59%. If these future interest payments were based on a rate similar to the 10-year Securities Industry and Financial Markets Association average of 2.85%, such interest payments would be increased. Future principal and interest payments, excluding unamortized debt discount, under the Hospital System's long-term debt agreements based on this rate are as follows (in thousands):

Years Ending September 30	Principal Payments	Interest Payments	Total Debt Service
2011	\$ 12,785	\$ 21,640	\$ 34,425
2012	13,145	21,088	34,233
2013	13,645	20,474	34,119
2014	14,105	19,876	33,981
2015	14,690	19,185	33,875
2016-2020	83,630	85,432	169,062
2021-2025	105,065	63,626	168,691
2026-2030	126,155	39,180	165,335
2031-2035	<u>151,710</u>	<u>13,281</u>	<u>164,991</u>
	<u>\$ 534,930</u>	<u>\$ 303,782</u>	<u>\$ 838,712</u>

Activity related to long-term debt is summarized for the years ended September 30, 2010 and 2009, as follows (in thousands):

	2010	2009
Beginning balance	\$ 538,210	\$ 547,588
Discount/premium amortization	588	658
Repayments	(12,435)	(13,110)
Deferred amount on refunding	<u>1,039</u>	<u>3,074</u>
Ending balance	<u>\$ 527,402</u>	<u>\$ 538,210</u>

9. INTEREST RATE SWAP

In July 2005, the Hospital System entered into a \$30 million interest rate swap agreement that will terminate on May 1, 2015 for its variable rate Series 2005C Revenue Bonds. The notional amount for the interest rate swap was equal to the aggregate outstanding principal amount of the Series 2005C Bonds. The agreement required the Hospital System to pay the counterparty payments based upon the respective notional amount and a fixed interest rate of 3.087%. In return, the counterparty paid the Hospital System a variable interest rate based on the LIBOR. During the year ended September 30, 2008, the Series 2005C Revenue Bonds were refunded.

As of September 30, 2010 and 2009, the swap had a fair value liability of \$2,683,000 and \$1,668,000, respectively, estimated using the zero-coupon method. This method calculated the future net settlement payments required by the swaps, assuming that the current forward rates implied by the yield curve correctly anticipate future spot interest rates. These payments were then discounted using the spot rate implied by the current yield curve for hypothetical zero-coupon bonds, due on the date of each future net settlement on the swaps.

The Hospital System recognizes interest expense based upon the fixed rates paid under the swaps, while the change in fair value of the swaps is recorded as nonoperating income/expense within investment income in the accompanying combined statements of revenues and expenses and changes in net assets and as an adjustment to the derivative asset in the combined balance sheets. For the years ended September 30, 2010 and 2009, the Hospital System has recorded a loss of \$1,016,000 and \$1,354,000, respectively, for the change in fair value of the swaps.

10. NET PATIENT SERVICE REVENUES

Net patient service revenues for the years ended September 30, 2010 and 2009, consisted of the following (in thousands):

	2010	2009
Gross patient charges at established rates, including charges foregone for charity care	\$3,464,831	\$3,143,439
Deductions:		
Contractual adjustments	1,799,111	1,613,702
Charity care provided at established billing rates and provision for bad debts	<u>348,694</u>	<u>315,323</u>
Net patient service revenues	<u>\$1,317,026</u>	<u>\$1,214,414</u>

11. CONCENTRATIONS OF CREDIT RISK

Financial instruments that potentially subject the Hospital System to a concentration of credit risk consist principally of cash, investments, and accounts receivable from patients and third-party payors. The Hospital System places its cash and investments with high credit quality financial institutions. Concentration of credit risk with respect to patient accounts receivable is managed in-house. The Hospital System generally does not require collateral. Third-party payors are primarily Medicare and Medicaid which provide reimbursement on patient accounts on a regular basis. Managed care receivables are distributed among various primary payors. The creditworthiness of all managed care payors is considered by the Hospital System prior to entering into an agreement with the payor.

The mix of receivables from patients and third-party payors at September 30, 2010 and 2009, was as follows:

	2010	2009
Medicare	29 %	28 %
Medicaid	14	15
Managed care payors	25	24
Other	<u>32</u>	<u>33</u>
	<u>100 %</u>	<u>100 %</u>

12. FAIR VALUES OF FINANCIAL INSTRUMENTS

The following methods and assumptions were used by the Hospital System in estimating the fair value disclosures for financial instruments:

Cash and Cash Equivalents and Accounts Receivable — The carrying amount reported in the combined balance sheets for cash and cash equivalents and accounts receivable approximates its fair value due to the short-term nature of these instruments.

Long-Term Debt — The fair value of long-term debt is based on quoted market prices. The carrying amount of long-term debt at September 30, 2010 and 2009, was \$534,930,000 and \$547,365,000, respectively. The fair value at September 30, 2010 and 2009, was approximately \$546,199,000 and \$530,639,000, respectively.

Assets with Limited Use — The fair values for the assets with limited use investments are based on quoted market prices for all investments with the exception of equity-linked securities, which are based on indicative price estimates from the originating broker-dealer.

Current operating activities of the Hospital System will be funded through operating cash flows and the use of cash and cash equivalents.

13. GREENVILLE ONCOLOGY THERAPEUTICS

Redeemable Preferred Stock — GOT is authorized to issue 1,000,000 shares of preferred stock. The preferred stock has no voting rights and is redeemable by GOT for \$1,000 per share. At September 30, 2010 and 2009, GOT has issued and outstanding 20,496.39 shares, respectively, to RDC.

No distribution can be made on any of the common stock until all of the preferred stock has been redeemed. Until all of the preferred stock has been redeemed, GOT will be required to make a quarterly payment to RDC of an amount equal to 50% of any revenues received by GOT. All distributions will be considered a redemption of preferred stock except that any distribution of licensed intellectual property will not result in the redemption of any shares of preferred stock.

If RDC chooses to contribute additional funds or property to GOT, it will receive additional shares of GOT preferred stock. If the Hospital System or GHC incurs additional research and development costs with respect to research requested by GOT, GOT will issue additional shares of preferred stock to RDC. Additional shares of GOT will be issued on at least a calendar-quarter basis as such expenditures are incurred.

Common Stock — GOT is authorized to issue 1,000,000 shares of common stock. Each share is entitled to one vote per share. At such time as all of the outstanding preferred stock is redeemed, the common stock will be entitled to pro rata interim and liquidating distributions if declared by the Board of Directors. At September 30, 2010 and 2009, GOT has issued and outstanding 100,000 shares, of which 61,000 shares have been issued to RDC.

Restricted Common Stock — During the year ended September 30, 2004, GOT's Board of Directors adopted the Restricted Stock Plan. Under this plan, GOT's Board of Directors determines the eligible service providers, as defined in the plan, that will be granted shares of restricted stock. In November 2003, the Board of Directors approved and issued 4,000 shares of restricted common stock to eligible service providers. Each share will be held in escrow until the restricted stock vests or is canceled, in accordance with the Restricted Stock Plan. The stock vests when the following two events occur: (1) one year after the date of the grant and (2) either the redemption by GOT of all of the preferred stock or the receipt of a qualifying offer for the purchase of all of the outstanding preferred stock, and common stock of GOT by a third party or the receipt of a stock purchase offer meeting certain criteria defined in the Restricted Stock Plan.

Stock Options — During the year ended September 30, 2004, the Board of Directors approved and adopted the Stock Option Plan. The Stock Option Plan provides for the grant of nonqualified stock options and is administered by GOT's Board of Directors. Awards are made to eligible service providers as determined by the Board of Directors. The options vest when the following two events occur: (1) one year after the date of the grant and (2) either the redemption by GOT of all of the preferred stock or the receipt of a qualifying offer for the purchase of all of the outstanding preferred stock, and common stock of GOT by a third party or the receipt of a stock purchase offer meeting certain criteria defined in the Stock Option Plan. The Board of Directors determines the exercise price for each option granted at the time of the grant. In November 2003, GOT issued 4,000 stock options to eligible service providers in accordance with the Stock Option Plan. The exercise price and the fair value of these shares were determined to be \$0. Accordingly, no compensation expense has been recognized in the years ended September 30, 2010 or 2009.

Deferred Compensation Plan — The Deferred Compensation Plan was approved by the Board of Directors during the year ended September 30, 2004, and provides either restricted common stock or an award of contingent cash compensation to the participant. The Deferred Compensation Plan is administered by the Board of Directors, and awards are granted to eligible service providers as determined by the Board of Directors. The awards under this plan shall vest only after the occurrence of both of the following events: (1) the date that is three years after the date of the grant of the award and (2) either the redemption by GOT of all of the preferred stock or the receipt of a qualifying offer for the purchase of all of the outstanding preferred stock, and common stock of GOT by a third party or the receipt of a stock purchase offer meeting certain criteria defined in the Deferred Compensation Plan. At September 30, 2010 and 2009, the plan participants had all elected to receive shares of restricted common stock totaling 35,000. These shares were determined to have no value at the time of election. Accordingly, no compensation expense has been recognized in the years ended September 30, 2010 or 2009.

14. ONCOLIX, INC.

Common Stock — ONC is authorized to issue 5,000,000 shares of common stock. Each share is entitled to one vote per share. The common stock will be entitled to pro rata interim and liquidating distributions if declared by the Board of Directors. At September 30, 2010, ONC has issued and outstanding 3,029,998 shares, of which 2,400,000 shares have been issued to RDC.

Restricted Common Stock — During the year ended September 30, 2007, ONC's Board of Directors adopted the Restricted Stock Plan. Under this plan, ONC's Board of Directors determines the eligible service providers, as defined in the plan, that will be granted shares of restricted stock. In January 2007, the Board of Directors approved and issued 600,000 shares of restricted common stock to eligible service providers. Each share will be held in escrow until the restricted stock is no longer subject to the Rights of Repurchase as provided.

Stock Options — During the year ended September 30, 2007, the Board of Directors approved and adopted the Stock Option Plan. The Stock Option Plan provides for the grant of incentive or nonqualified stock options and is administered by ONC's Board of Directors. Awards are made to key employees, consultants, and independent directors of ONC as determined by the Board of Directors. The Board of Directors determines the exercise price for each option granted at the time of the grant. As of September 30, 2010, 144,000 stock options have been issued. The options and any shares issued on exercise of an option are subject to the Right of Repurchase. The repurchase rights terminate over time. For the 20,000 stock options issued in 2007, the repurchase rights terminate as follows: (a) 25% on the date of the Agreement, (b) 25% 12 months from the date of the grant, (c) 25% 24 months from the date of the grant, and (d) 25% 36 months from the date of the grant. The exercise price and the fair value of the shares were determined to be \$0.01 and \$0, respectively. In March 2009, the Board of Directors approved an additional grant of 124,000 stock options to certain key employees of ONC. The repurchase rights terminate as follows: (a) one-third 12 months from the date of grant, (b) one-third 24 months from the date of the grant, and (c) one-third 36 months from the date of grant. The exercise price and the fair value of the shares were determined to be \$0.10 and \$0, respectively. Accordingly, no compensation expense has been recognized in the years ended September 30, 2010 or 2009.

15. COMMITMENTS AND CONTINGENCIES

Leases — The Hospital System has commitments for periodic payments under cancelable and noncancelable operating leases for buildings, data processing and other equipment, equipment maintenance agreements, and other service contracts. Total rental expense charged to operations for the years ended September 30, 2010 and 2009, was approximately \$43,105,000 and \$25,090,000, respectively.

Future minimum payments under noncancelable operating leases with initial or remaining terms of one year or more and capital leases as of September 30, 2010, consisted of the following (in thousands):

Years Ending September 30	Operating Leases	Capital Leases	Total Leases
2011	\$ 31,500	\$ 428	\$ 31,928
2012	27,619	428	28,047
2013	22,742	428	23,170
2014	19,755	427	20,182
2015	19,370	463	19,833
2016-2020	94,410	2,390	96,800
2021-2025	67,791	2,155	69,946
2026-2030	4,737	-	4,737
Total	<u>\$ 287,924</u>	6,719	<u>\$ 294,643</u>
Less amount representing interest		(2,857)	
Present value of future minimum rentals		3,862	
Less current portion of obligations under capital leases		(113)	
Obligations under capital leases, long-term portion		<u>\$ 3,749</u>	

Litigation — Many hospitals in the United States, including the Hospital System, have been served with lawsuits challenging the prices these hospitals and the Hospital System allegedly charge insured and uninsured patients. The Hospital System is vigorously contesting these lawsuits. Management, after consultation with its legal counsel, does not believe that liability, if any, incurred on final adjudication of these cases will have a material adverse effect on the Hospital System's future combined financial position, results of operations, or cash flows.

In the ordinary course of its business, the Hospital System is also the defendant in certain other litigation. Management believes that the sovereign immunity limits applicable to the Hospital System and its employed physicians and professional and general liability insurance coverage provide adequate protection for this litigation in process.

Professional and General Liability Insurance — The Hospital System maintains excess professional and general liability insurance coverage through excess and umbrella liability policies on a claims-made basis, subject to a per-occurrence self-insured retention. Prior to October 1, 2007, the Hospital System also maintained coverage through a primary policy on a retrospectively rated basis whereby the initial "pay-in premium" is adjusted based upon actual losses. The ultimate premium is subject to fixed minimum and maximum dollar amounts. However, management does not believe that additional premiums will be significantly above the minimum premium. The Hospital System has recorded an accrual for known claims within applicable self-insurance retention levels and for claims incurred but not reported as of September 30, 2010 and 2009. The Hospital System uses a 4% average annual discount rate in its analysis to determine this liability.

Workers' Compensation Insurance — The Hospital System is a member of a South Carolina health care group self-insurance pool for workers' compensation insurance. Coverage is maintained in a variable-cost, high-deductible program. The self-insurance pool is responsible for funding all losses within and above the deductible. The policy is retrospectively rated whereby the initial "deposit premium" is adjusted based upon actual losses. The ultimate premium is based upon a fixed and variable cost formula and is also subject to a maximum fixed dollar amount. The Hospital System is also eligible for refunds based upon a financial performance of the self-insurance pool. The Hospital System has recorded an accrual for expected future premium adjustments as of September 30, 2010 and 2009.

Health Insurance Plan — The Hospital System's health insurance plan is a self-insured medical plan (the "Medical Plan") that provides certain benefits for covered employees. The employees pay a monthly premium and the Medical Plan will pay for certain medical expenses, as defined in the Medical Plan document. The Medical Plan has a lifetime coverage maximum of \$1,000,000 per covered participant. The Hospital System maintains individual stop-loss insurance coverage for a covered participant's annual claims in excess of \$300,000.

Changes in the balances of the claims liability for the years ended September 30, 2010 and 2009, were as follows (in thousands):

	2010	2009
Beginning balance	\$ 6,800	\$ 5,590
Claims and changes in estimates	75,419	73,549
Claim payments	<u>(75,041)</u>	<u>(72,339)</u>
Ending balance	<u>\$ 7,178</u>	<u>\$ 6,800</u>

Real Estate Monetization — In 2009, the Hospital System sold 16 medical and administrative office buildings for \$162,820,000 to a single third party and contemporaneously leased back certain space in those buildings for various lease terms of 15 years or less. This transaction resulted in a net gain of approximately \$72,355,000, of which \$2,858,000 was recognized as nonoperating income during the year ended September 30, 2009. The remaining \$69,497,000 was recorded as a deferred gain and will be amortized as a component of rent expense in proportion to the lease payments over the terms of the leases. Based upon applicable accounting guidance, the transaction qualified for treatment as a sale and the building leases meet the definition of an operating lease. As such, the Hospital System is accounting for these leases as noncancelable operating leases, which are included in the table above. During the year ended September 30, 2010, the Hospital System amortized \$4,772,000 of the deferred gain from monetization as a component of rent expense. The unamortized deferred gain as of September 30, 2010 is \$64,724,000.

Impairment Expense — During the year ended September 30, 2008, the Hospital System opened its new medical campus in the city of Greer and, during the year ended September 30, 2009, discontinued the majority of its operations at the Allen Bennett Memorial Hospital and Roger Huntington Nursing facilities. In September 2009, the Board of Trustees committed to donate both facilities and the associated land to the City of Greer and the assets were, therefore, deemed impaired. The Hospital System, therefore, fully impaired the carrying value of approximately \$5,238,000 to loss on disposals, which is included in operating expenses, at September 30, 2009. During the year ended September 30, 2010, both facilities were donated to the City of Greer.

University of South Carolina School of Medicine — During the year ended September 30, 2010, the Board of Trustees of the Hospital System along with the Board of Trustees of the University of South Carolina (USC) approved a plan to expand the USC School of Medicine to Greenville, South Carolina. The USC is currently pursuing accreditation and other third-party approvals for the medical school expansion. Once approved, the Hospital System has agreed to fund annual budgeted losses and cash flow needs of the USC School of Medicine – Greenville, anticipated to be material over the next ten years. At that time, it is anticipated that tuition will cover the costs.

Health Sciences Collaborative — The Hospital System entered into a Master Cooperative Agreement (“Agreement”) with the USC, the Medical University of South Carolina, Clemson University, Spartanburg Regional Healthcare System, and Palmetto Health Alliance in January 2005. This Agreement outlines each entity’s intent to fund future endowed chair programs under the South Carolina Research Centers of Economic Excellence Act.

During 2005, the Endowment committed \$500,000 per year for 10 years to support a clinical teaching program for pharmacology students of the schools of pharmacy of the USC and the Medical University of South Carolina. The timing of the payments is made at the discretion of the Endowment. At September 30, 2010, the Hospital System has paid \$2,000,000 toward this commitment.

During 2005, the Hospital System entered into a Master Agreement with Steadman Hawkins Clinic of the Carolinas to develop a musculoskeletal program. Through this agreement, the Hospital System, through the Endowment, committed \$500,000 per year for three years to the Orthopedic Research Foundation to support research and education initiatives. In 2008, the Master Agreement was revised. Under the new agreement, the Hospital System has the option to fund \$500,000 per year through 2013; however, this funding is not required by the agreement. Therefore, at September 30, 2010 and 2009, the Hospital System has not recorded a liability. The Endowment paid \$500,000 in each of the years ended September 30, 2010 and 2009.

* * * * *

DEPARTMENT DETERMINATION

Taxpayer:

Greenville Hospital System
701 Grove Road
Greenville, SC 29605

Period Involved:

Sales Tax for Period ended June 2009

Matter in Dispute:

Is Greenville Hospital System eligible for an exemption from sales tax pursuant to § 12-36-2120(41)?

Tax	\$500.00
*Penalty (Failure to File and Pay)	\$637.50
*Interest	\$7.34
Amount Due	\$1,144.84

*Interest and penalties have been calculated through September 15, 2013 and will continue to accrue until the matter is settled. The tax is based on an estimate, as the taxpayer failed to file a return.

Determination:

The taxpayer is not eligible for an exemption from sales tax pursuant to § 12-36-2120(41). As a result, the taxpayer owes the additional tax, penalties, and interest set forth above.

Facts:

1. The Greenville Hospital System (GHS), a political subdivision, was established by the General Assembly of South Carolina in 1947.¹ Prior to that, it was known as the Greenville Hospital (which was owned by the municipality, the City of Greenville).
2. GHS includes both for profit and not-for-profit entities. It also includes educational programs to include the Medical University of South Carolina,

¹Act No. 432, 1947 S.C. Acts.

Greenville Campus.²

3. Certain property of GHS is exempt from property tax pursuant to S.C. Code Ann. § 12-37-220(A)(1) (Supp. 2009) as a "political subdivision."
4. The Internal Revenue Service (IRS) granted the former, Greenville Hospital, exemption from income tax pursuant to 26 USCA § 501(c)(3) in 1944 (prior to the South Carolina General Assembly's providing for it as a political subdivision, and prior to its current formation as an "umbrella" organization for joint ventures, profit and not-for-profit entities). GHS is not a trust. GHS is not a foundation.
5. GHS no longer resembles the entity to which the IRS granted exemption from tax in 1944. Rather, GHS includes the not-for-profit entity, Endowment Fund (Fund) for the Greenville Hospital System, Inc. and many other entities as more fully discussed below. The Department of Revenue (Department) granted the Fund's predecessor entity, Greenville Hospital Foundation, exemption from sales tax pursuant to § 12-36-2120(41).³
6. GHS further includes GHS Partners in Health, Inc. (a for profit South Carolina corporation), Greenville Health Corporation (not-for-profit South Carolina corporation), the GHS Pension Trust Plan and various joint ventures.
7. The for profit corporation, GHS Partners in Health, consists of various physician practices, some of which include:

INTERNAL MEDICINE

Allergy/Immunology

²GHS revenues provide insight into its mammoth operations. For example, the 2009-2010 GHS Financial Statements report Net Patient Service Revenue of \$1,317,026,000 and Other Operating Revenue of \$50,928,000 for the year ended September 30, 2010. This latter amount includes \$9,874,000 of revenues from grant, research, and unrestricted contributions. These figures indicate that the vast majority of revenue is from the fees charged for services rather than contributions. Contributions comprise a mere .7% of total operating revenue for the September 30, 2010 period (.9% for the period ending September 30, 2009).

³In 1990, the Department granted the Greenville Hospital System Foundation a sales tax exemption under the predecessor provision to § 12-36-2120(41), S.C. Code Ann. § 12-35-550(48) (Supp. 2009). This latter section provided: "[t]he gross proceeds of sales or purchases for resale by organizations exempt under § 12-37-220 (A) (3) and (4) and (B) (5), (6), (7), (12), (16), (19), (22) and (24) if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual."

200 Patewood Dr., Ste. B120, 29615
2 Physicians or other licensed professionals

Cardiology

Carolina Cardiology Consultants
877-B W. Faris Rd., 29605
315 Medical Pkwy., Ste. 200, Greer, 29650
719A S.E. Main St., Simpsonville, 29681
100 Healthy Way, Ste. 1250, Anderson, 29621
40 Physicians or other licensed professionals

Congestive Heart Failure Clinic

701 Grove Rd., 29605
2 Physicians or other licensed professionals

Dermatology

Carolina Dermatology of Greenville
920 Woodruff Rd., 29607
6 Physicians or other licensed professionals

Endocrinology

877 W. Faris Rd., Ste. D, 29605
8 Physicians or other licensed professionals

Internal Medicine Associates of Greenville

1025 Verdae Blvd., Ste. A, 29607
1 Physician or other licensed professional

Gastroenterology

Carolina Gastroenterology Assoc.
11 Doctors Park Dr., Ste. 240, Spartanburg, 29307
6 Physicians or other licensed professionals

Gastroenterology Consultants of Internal Medicine Associates of Greenville

1025 Verdae Blvd., Ste. A, 29607
3308 Brushy Creek Rd., Greer, 29651
8 Physicians or other licensed professionals

Geriatrics/Center for Success in Aging

255 Enterprise Blvd., Ste. 101, 29615
10 Physicians or other licensed professionals

Hospitalist Services

701 Grove Rd., 5th Floor, 29605
36 Physicians or other licensed professionals

Infectious Diseases
890 W. Faris Rd., Ste. 520, 29605
8 Physicians or other licensed professionals

Neuroscience Associates
200 Patewood Dr., Ste. B350, 29615
8 Physicians or other licensed professionals

Palliative Care
701 Grove Rd., 6th Floor, 29605
4 Physicians or other licensed professionals

Physical Medicine & Rehabilitation
Roger C. Peace Hospital-Rehabilitation
701 Grove Rd., 29605
4 Physicians or other licensed professionals

Pulmonary Disease, Critical Care & Sleep Medicine/Lung Center
200 Patewood Dr., Ste. B300, 29615
890 W. Faris Rd., Ste. 580, 29605
19 Physicians or other licensed professionals

Rheumatology
255 Enterprise Blvd., Ste. 100, 29615
2 Physicians or other licensed professionals

Internal Medicine Associates of Greenville
1025 Verdae Blvd., Ste. A, 29607
1 Physician or other licensed professional

FAMILY MEDICINE

Center for Family Medicine
877 W. Faris Rd., 29605
5 Physicians or other licensed professionals

Family Medicine-Pelham Pointe
81 Pointe Cir., 29615
2 Physicians or other licensed professionals

Family Medicine-Powdersville
207 Three Bridges Rd., 29611
2 Physicians or other licensed professionals

Greenville Family Practice
2-A Cleveland Ct., 29607
2 Physicians or other licensed professionals

Greer Family Medicine
1107 W. Poinsett St., Greer, 29651
3 Physicians or other licensed professionals

Laurens Family Practice
106 Parkview Dr., Laurens, 29360
9100 Hwy. 14, Gray Court, 29645
9 Physicians or other licensed professionals

Mountain View Family Practice-Memorial Drive
406 Memorial Dr. Ext., Greer, 29650
7 Physicians or other licensed professionals

Palmetto Medical Associates
210 Freeman Farm Rd., Duncan, 29334
3 Physicians or other licensed professionals

Riverside Family Practice-Eastside
215 Halton Rd., 29607
5 Physicians or other licensed professionals

Riverside Family Practice-Maxwell Pointe
3909 S. Hwy. 14, 29615
4 Physicians or other licensed professionals

Travelers Rest Family Practice
9 McElhaney Rd., Travelers Rest, 29690
5 Physicians or other licensed professionals

West Butler Family Medicine
503 W. Butler Rd., 29607
(In November, this practice renames and moves:
Keystone Family Medicine
1409 W. Georgia Rd., Ste. B, Simpsonville, 29680)
5 Physicians or other licensed professionals

INTERNAL MEDICINE

Cross Creek Internal Medicine
109 Doctors Dr., 29605
6 Physicians or other licensed professionals

Cypress Internal Medicine-Greer
315 Medical Pkwy., Ste. 200, Greer, 29650
3 Physicians or other licensed professionals

Cypress Internal Medicine-Hillcrest
727 S.E. Main St., Ste. 320, Simpsonville, 29681
(In November, this practice renames and moves:
Cypress Internal Medicine-Simpsonville
1409 W. Georgia Rd., Ste. D, Simpsonville, 29680)
3 Physicians or other licensed professionals

Cypress Internal Medicine-Maxwell Pointe
3907 S. Hwy. 14, 29615
3 Physicians or other licensed professionals

Cypress Internal Medicine-Patewood
200 Patewood Dr., Ste. B460, 29615
4 Physicians or other licensed professionals

Heritage Pediatrics & Internal Medicine
727 S.E. Main St., Ste. 320, Simpsonville, 29681
3 Physicians or other licensed professionals

Internal Medicine Associates of Greenville
1025 Verdae Blvd., Ste. A, 29607
3308 Brushy Creek Rd., Greer, 29651
26 Physicians or other licensed professionals

NEUROSURGERY

Procedural Pain Management
200 Patewood Dr., Ste. C100, 29615
1 Physician or other licensed professional

Southeastern Neurosurgical & Spine Institute
111 Doctors Dr., 29605
3 Physicians or other licensed professionals

105 Doctors Dr., 29605
3 Physicians or other licensed professionals

Seneca
3 Physicians or other licensed professionals

Upstate Medical Rehabilitation
111 Doctors Dr., 29605
10 Physicians or other licensed professionals

OBSTETRICS & GYNECOLOGY

Center for Vulvar Medicine
101 Halton Village Circle, 29607
1 Physician or other licensed professional

Female Pelvic Medicine & Reconstructive Surgery
890 W. Faris Rd., Ste. 510, 29605
2000 E. Greenville St., Ste. 4600, Anderson, 29621
3 Physicians or other licensed professionals

Gynecology Specialists
890 W. Faris Rd., Ste. 510, 29605
101 Halton Village Circle, 29607
11 Physicians or other licensed professionals

Maternal-Fetal Medicine
890 W. Faris Rd., Ste. 470, 29605
2000 E. Greenville St., Ste. 4600, Anderson, 29621
9 Physicians or other licensed professionals

Pediatric & Adolescent Gynecology
890 W. Faris Rd., Ste. 510, 29605
1 Physician or other licensed professional

Reproductive Endocrinology & Infertility/Fertility Center of the Carolinas
890 W. Faris Rd., Ste. 470, 29605
101 Halton Village Circle, 29607

One Doctors Park Dr., Spartanburg, 29307
2000 E. Greenville St., Ste. 4600, Anderson, 29621
6 Physicians or other licensed professionals

Greenville Ob Gyn Associates
2 Memorial Medical Dr., 29605
1025 Verdae Blvd., Ste. F, 29607
727 S.E. Main St., Ste. 120, Simpsonville, 29681
9 Physicians or other licensed professionals

Greer OB/GYN
325 Medical Pkwy., Ste. 100, Greer, 29650
3 Physicians or other licensed professionals

Piedmont OB/GYN
890 W. Faris Rd., Ste. 330, 29605
3917 S. Hwy. 14, 29615
9 Physicians or other licensed professionals

Premier Women's Care
209 Three Bridges Rd., 29611
4 Physicians or other licensed professionals

ONCOLOGY

Cancer Center
900 W. Faris Rd.
1 Physician or other licensed professional

Oncology Multidisciplinary Centers
890 W. Faris Rd., Ste. 320, 29605

Breast Multidisciplinary Center (MDC)
4 Physicians or other licensed professionals

Ear, Nose & Throat MDC
2 Physicians or other licensed professionals

Gastrointestinal MDC
2 Physicians or other licensed professionals

Melanoma/Sarcoma MDC
2 Physicians or other licensed professionals

Neurology MDC
3 Physicians or other licensed professionals

Thoracic MDC
2 Physicians or other licensed professionals

MDC Medical Oncologists
9 Physicians or other licensed professionals

MDC Radiation Oncologists
5 Physicians or other licensed professionals

MDC Nurse Navigators
6 Physicians or other licensed professionals

ORTHOPAEDICS

Steadman Hawkins Clinic of the Carolinas

200 Patewood Dr., Ste. C100, 29615
9 Physicians or other licensed professionals

111 Doctors Dr., 29605
3 Physicians or other licensed professionals

105 Doctors Dr., 29605
4 Physicians or other licensed professionals

207 Three Bridges Rd., 29611
1 Physician or other licensed professional

315 Medical Pkwy., Ste. 100, Greer, 29650
4 Physicians or other licensed professionals

727 S.E. Main St., Ste. 220, Simpsonville, 29681
4 Physicians or other licensed professionals

333 S. Pine St., Spartanburg, 29302
5 Physicians or other licensed professionals

UMG Orthopaedics
105 Doctors Dr., 29605
3 Physicians or other licensed professionals

PEDIATRICS

Adolescent Bariatric Surgery
2104 Woodruff Rd., 29607
1 Physician or other licensed professional

Adolescent Medicine

20 Medical Ridge Dr., 29605

2 Physicians or other licensed professionals

Pediatric & Adolescent Gynecology

890 W. Faris Rd., Ste. 470, 29605

1 Physician or other licensed professional

Pediatric Cardiology

200 Patewood Dr., Ste. A200, 29615

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

2000 E. Greenville St., Ste. 3500, Anderson, 29621

155 Academy St., Greenwood, 29646

4 Physicians or other licensed professionals

Child Abuse/Neglect/Forensic Peds

2905 White Horse Rd., 29611

2 Physicians or other licensed professionals

Developmental-Behavioral Pediatrics/Gardner Center for Developing Minds

200 Patewood Dr., Ste. A200, 29615

29 N. Academy St., 29601

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

17 Physicians or other licensed professionals

Pediatric Endocrinology

200 Patewood Dr., Ste. A320, 29615

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

6 Physicians or other licensed professionals

Pediatric Gastroenterology

200 Patewood Dr., Ste. A140, 29615

6 Physicians or other licensed professionals

Pediatric Hematology/Oncology/BI-LO Charities Children's Cancer Center

900 W. Faris Rd., 2nd Floor, 29605

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

2000 E. Greenville St., Ste. 3500, Anderson, 29621

6 Physicians or other licensed professionals

Pediatric Infectious Disease

200 Patewood Dr., Ste. A200, 29615

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

3 Physicians or other licensed professionals

General Inpatient Pediatrics

701 Grove Rd., 29605

13 Physicians or other licensed professionals

Pediatric Intensive Care

701 Grove Rd., 5th Floor, 29605

4 Physicians or other licensed professionals

Pediatric Nephrology & Hypertension

200 Patewood Dr., Ste. A115, 29615

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

2000 E. Greenville St., Ste. 3500, Anderson, 29621

2 Physicians or other licensed professionals

Pediatric Neurology

200 Patewood Dr., Ste. A350, 29615

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

200 Booker Dr., Walhalla, 29691

5 Physicians or other licensed professionals

Pediatric Neurosurgery

105 Doctors Dr., 29605

2 Physicians or other licensed professionals

Newborn Pediatrics

701 Grove Rd., 6th Floor, 29605

1 Physician or other licensed professional

Pediatric Pulmonology

200 Patewood Dr., Ste. A300, 29615

1 Physician or other licensed professional

Pediatric Sleep Medicine/Center for Pediatric Sleep Disorders

200 Patewood Dr., Ste. A200, 29615

2 Physicians or other licensed professionals

Pediatric Surgery

890 W. Faris Rd., Ste. 440, 29605

4 Physicians or other licensed professionals

Pediatric Urology

200 Patewood Dr., Ste. A115, 29615

3 Physicians or other licensed professionals

Carolina Pediatrics of Greenville
200 Patewood Dr., Ste. A120, 29615
7 Physicians or other licensed professionals

Center for Pediatric Medicine
20 Medical Ridge Dr., 29605
11 Physicians or other licensed professionals

Pediatric Rapid Access
57 Cross Park Ct., 29605
4 Physicians or other licensed professionals

The Children's Clinic
1350 Cleveland St., 29607
727 S.E. Main St., Ste. 100, Simpsonville, 29681
325 Medical Pkwy., Ste. 150, Greer, 29650
9 Physicians or other licensed professionals

Christie Pediatric Group
9 Mills Ave., 29605
3911 S. Hwy. 14, 29615
(In November, a new location opens at:
1409 W. Georgia Rd., Ste. A, Simpsonville, 29680)
10 Physicians or other licensed professionals

Heritage Pediatrics & Internal Medicine
727 S.E. Main St., Ste. 320, Simpsonville, 29681
3 Physicians or other licensed professionals

Pediatric Associates-Easley
800 N. A St., Easley, 29640
10 Physicians or other licensed professionals

Pediatric Associates-Greer
554-C Memorial Dr. Ext., Greer, 29651
3 Physicians or other licensed professionals

Pediatric Associates-Spartanburg
1686 Skylyn Dr., Ste. 201, Spartanburg, 29307
9 Physicians or other licensed professionals

PSYCHIATRY & BEHAVIORAL MEDICINE

The Brownell Center
701 Grove Rd., 29605
12 Physicians or other licensed professionals

RADIOLOGY

1210 W. Faris Rd., 29605
40 Physicians or other licensed professionals

SURGERY

Bariatric Surgery (adolescent & adult)
2104 Woodruff Rd., 29607
4 Physicians or other licensed professionals

Breast Health Center
200 Patewood Dr., Ste. 14A, 29615
9 Physicians or other licensed professionals

Cardiothoracic Surgery
890 W. Faris Rd., Ste. 550, 29605
7 Physicians or other licensed professionals

Colon & Rectal Surgery
60 Bear Dr., 29605
5 Physicians or other licensed professionals

1690 Skylyn Dr., Ste. 140, Spartanburg, 29307
2 Physicians or other licensed professionals

Endocrine Surgery
200 Patewood Dr., Ste. B260, 29615
2 Physicians or other licensed professionals

General Surgery
35 Medical Ridge Dr. (Cross Creek), 29605
325 Medical Pkwy. Ste. 250, Greer, 29650
200 Patewood Dr., Ste. B260, 29615
727 S.E. Main St., Ste. 130, Simpsonville, 29681
1690 Skylyn Dr., Ste. 140, Spartanburg, 29307
17 Physicians or other licensed professionals

The Hernia Center
2104 Woodruff Rd., 29607
2 Physicians or other licensed professionals

Minimal Access Surgery
2104 Woodruff Rd., 29607
4 Physicians or other licensed professionals

Oncology and Thoracic Surgery
890 W. Faris Rd., Ste. 320, 29605
4 Physicians or other licensed professionals

890 W. Faris Rd., Ste. 510, 29605
1 Physician or other licensed professional

OPHTHALMOLOGY

Carolina's Eye Care
515 A W. Butler Rd., Mauldin, 29607
1 Physician or other licensed professional

OTOLARYNGOLOGY

Greenville Ear, Nose & Throat
200 Patewood Dr., Ste. B400, 29615
11 Physicians or other licensed professionals

Plastic & Reconstructive Surgery
31 Medical Ridge Dr., 29605
3 Physicians or other licensed professionals

Urgent Surgical Evaluation Center

Cardiovascular Risk Reduction
200 Patewood Dr., Ste. C300, 29615
1 Physician or other licensed professional

Endovascular Surgery
200 Patewood Dr., Ste. C300, 29615
7 Physicians or other licensed professionals
Vascular Medicine
200 Patewood Dr., Ste. C300, 29615
4 Physicians or other licensed professionals

Vascular Surgery
200 Patewood Dr., Ste. C300, 29615
Mary Black Hospital Vascular Health Alliance
1690 Skylyn Dr., Ste. 140, Spartanburg, 29307
12 Physicians or other licensed professionals

Vein Center
200 Patewood Dr., Ste. C300, 29615
2 Physicians or other licensed professionals

Wound Care Center
200 Patewood Dr., Ste. C300, 29615
5 Physicians or other licensed professionals

RESIDENCY PROGRAM FACILITIES

Medical Center Clinics (Greenville):
Family Medicine, 877 W. Faris Rd.
Internal Medicine, 701 Grove Rd.
OB/GYN, 1120 Grove Rd., Ste. B
Orthopaedics, 13 Edgewood Dr.
Pediatrics, 20 Medical Ridge Dr.
Plastic Surgery, 700 W. Faris Rd.
Surgery, 13 Edgewood Dr.
Vascular, 13 Edgewood Dr.

Center for Health and Occupational Services
1020 Grove Rd., 29605
2 Physicians or other licensed professionals

EMPLOYEE CARE CENTERS

Greer Memorial Hospital
Hillcrest Memorial Hospital
Patewood Center, Ste. 102
Roger C. Peace Hospital
4 Physicians or other licensed professionals

MD360 Urgent Care
300 Scuffletown Rd., Simpsonville, 29681
5 Physicians or other licensed professionals

8. GHS encompasses locations at:
Greenville Memorial Medical Campus, Greenville
Greer Medical Campus, Greer
North Greenville Medical Campus, Greenville
Patewood Medical Campus
Simpsonville Medical Campus, Simpsonville
Hillcrest Medical Office Buildings, Simpsonville
Hillcrest Memorial Hospital, Simpsonville
University Medical Group Department of Bariatric Surgery, Simpsonville
Baptist Easley Hospital, Easley
- Emergency Centers
MD360 Urgent Care
Life Center
9. GHS provides the following educational programs:
Medical Students – Greenville Campus of the University of S.C. Medical School
Resident Physicians
Residency Programs
Fellowship Programs
Regional/National Presentations
10. The Greenville Health Corporation component of GHS is a not-for-profit South Carolina corporation (GHC Corp.). GHC Corp. owns GHC Health Resources, Inc., a for profit corporation, GHC Development Corporation (GHD), a not-for-profit corporation, and is in joint ventures with other businesses.⁴
11. GHD owns 79% of the common stock of Oncolix, Inc. (ONC),⁵ a private for profit Delaware company.⁶ GHD also owns the for profit South Carolina corporation,

⁴For example, GHS has a 50% interest in a joint venture, Palmetto Alliance – by way of the purchase of Baptist Easley Hospital.

⁵One of the officers of ONC received wages from GHS in the amount of \$3.4 million, \$1.4 million, and \$4.8 million for the years 2008, 2009, and 2010, respectively.

⁶ONC, of which GHS owns a 79% controlling interest, appears to operate in Houston, Texas, as well. Texas has no state individual or corporate income tax requirements. During the period 2006 through the current date, it appears that this company used the physical plant, technology, and employees of the State of South Carolina, through both Clemson University and GHS to develop and test the drug “Prolanta” (a drug developed for the cure of ovarian and breast cancer). The formula was created by Chen Wen, a Professor at Clemson University. In September 2009, Biovectra, Inc., a Canadian Company invested in ONC to develop and market Prolanta – subsequently, Biovectra was purchased by Questcor, Inc. who continues the

Oncology Therapeutics, Inc. (referred to as "GOT"; GHD owns 61% common stock, 100% preferred stock).

12. ONC and GOT provide stock based compensation to employees including awards of restricted stock and stock options.
13. GHS d/b/a GHS, d/b/a UMG Carolina Eye Care (UMG is referenced as "University Medical Group" on the GHS website) (Eye Care) GHS Eye Care, filed an application for exemption from sales tax pursuant to § 12-36-2120(41) with the Department on April 23, 2009.
14. The Department denied this 2009 application for exemption by letter dated May 24, 2009, and subsequently reiterated such denial by Department Determination dated August 12, 2010. Eye Care appealed to the Administrative Law Court (ALC). Prior to a hearing, the parties filed a Motion for Remand, which was granted by the ALC. On remand GHS, or GHS, d/b/a Carolina Eye Care, was to file another application for exemption clarifying the "taxpayer" for whom the sales tax exemption at issue was sought, as well as the tangible personal property sought to be exempted, pursuant to § 12-36-2120(41).
15. On remand, GHS filed an Application for Sales Tax Exemption pursuant to § 12-36-2120(41), "Exempt Organizations," with the Department on May 25, 2011. GHS appears to seek the exemption for all of the entities/affiliates within the "Greenville Hospital System."⁷ The request further notes that such exemption is requested for "food items."
16. The Department denied the requested exemption.
17. GHS timely protested such denial.

Analysis:

GHS applied for an exemption pursuant to § 12-36-2120(41). This subsection exempts from sales tax "items sold by organizations exempt under § 12-37-220(A)(3) and (4) and commercialization of Prolanta.

⁷GHS's exemption request provides in part: "[t]here are other entities related to Greenville Hospital System which are South Carolina nonprofits that are tax exempt . . . their activities and sales are not relevant to this application." However, given the composition of GHS (i.e., that it is comprised of multiple affiliates, both for profit and not for profit entities), this Determination addresses the information which the Department has available to date regarding its structure. The Department will address any amendments regarding corporate structure that GHS may make in the future, to the extent the request for exemption is amplified or narrowed with regard to the entities requesting same.

(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" (emphasis added). Here, the taxpayer specifically asserts that it is entitled to an exemption under § 12-37-220(A)(4) and (B)(16)(a).⁸

"The language of a tax exemption must be strictly construed against the claimed exemption. TNS Mills v. S.C. Dep't of Revenue [internal citations omitted]." Home Medical Systems, Inc. v. S.C. Dep't of Revenue, 382 S.C. 556, 677 S.E.2d 582, 565 (2009). "The burden is on claimants to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by statute. York County Fair Assoc. v. South Carolina Tax Comm'n, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)." TNS Mills v. S.C. Dep't of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998).

Here, as is more fully explained below, GHS has not obtained from the Department, nor is it eligible for, a property tax exemption pursuant to § 12-37-220(A)(4) and (B)(16)(a). Further, a review of the facts indicates GHS has not shown for sales tax purposes that the "net proceeds are used exclusively for exempt purposes," and that "no benefit inures to any individual."

I. GHS is not entitled to the property tax exemptions.

a. GHS is not a trust or foundation, § 12-37-220(A)(4).

Section 12-37-220(A)(4) provides a property tax exemption for: "... 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...."

Here, the taxpayer is a "political subdivision" not a "trust" or "foundation." Further, the related entity that is a "foundation," Endowment Fund for the Greenville Hospital System, Inc. (formerly, GHS Foundation Inc.), has held an exemption pursuant to § 12-36-2120(41) (granted under predecessor statute, § 12-35-550(48)) since 1990.⁹

b. GHS is not entitled to the property tax exemption provided by § 12-37-220(B)(16)(a).

In the instant case, the taxpayer seeks an exemption for sales/use tax pursuant to § 12-36-2120(41) by asserting that even though it has not received a property tax exemption for its real property pursuant to § 12-37-220(B)(16)(a), it nevertheless qualifies for same, and accordingly is entitled to the § 12-36-2120(41) exemption. A review of § 12-37-

⁸GHS holds a property tax exemption pursuant to § 12-37-220(A)(1) as a political subdivision. The organizations listed in this subsection are not listed among the types of exempt organizations exempt from sales tax by the provisions of § 12-36-2120(41).

⁹See Fn. 3.

220(B)(16)(a) and South Carolina case law applying the same yield a contrary result.

Section 12-37-220(B)(16) (a) provides:

(B) In addition to the exemptions provided in subsection (A), the following classes of property are exempt from ad valorem taxation subject to the provisions of § 12-4-720:

(16)(a) The property of any religious, charitable, eleemosynary, educational, or literary society, corporation, 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, or association and no profit or benefit therefrom inures to the benefit of any private stockholder or individual.

(emphasis added). Similar language in § 12-37-220(B)(12) has been addressed by the South Carolina Court of Appeals.¹⁰ In Hibernian Society v. Thomas, 282 S.C. 465, 319 S.E.2d 339 (Ct. App., July 16, 1984), the Court of Appeals outlined the criteria for the parameters of this exemption as follows:

- (1) That it is a fraternal [here GHS must show that it is a "charitable"] organization.
- (2) That the Hall [here, yet unnamed, undesignated GHS properties] is used primarily for the holding of the Society's [GHS] meetings and the conduct of its business.
- (3) That no profit or benefit from such business shall inure to the benefit of any private stockholder or individual.

Id. at 342. The taxpayer here has not met each of the criteria required and accordingly is not eligible for the §12-37-220(B)(16)(a) property tax exemption.¹¹

¹⁰Section 12-37-220(B)(12) provides an exemption from ad valorem property tax as follows:

The property of any fraternal society, corporation or association, when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit therefrom shall inure to the benefit of any private stockholders or individual.

¹¹To the extent that the GHS exemption request at issue includes the prior request for exemption as to Eye Care, it too is denied as set forth above. The basis for denial, as set forth in the Department Determination dated August 12, 2010, is incorporated as if set forth herein verbatim.

i. Is the taxpayer a charitable corporation?

"South Carolina law does not provide a precise definition of [charitable.] However, the object and effect of any charitable gift or activity must be that it confers a public benefit, and that it not be for private profit." 5 S.C. Jur. Charities § 6 (2008) citing Medical Soc. of S.C. v. S.C. Nat'l Bank, 197 S.C. 96, 107, 14 S.E.2d 577, 581 (1941); Smith v. Heyward, 115 S.C. 145, 105 S.E. 275 (1920).

GHS has not shown that it is a charitable organization. Although it is true that it holds a tax-exempt status granted by the IRS,¹² such does not bestow an automatic sales tax

¹²No definition exists for the term "charitable organization" in Title 12, except to the extent addressed in the Internal Revenue Code as adopted by the General Assembly, S.C. Code Ann. § 12-6-40 (Supp. 2012). The term is defined for purposes of corporate solicitation of donations in S.C. Code Ann. § 33-56-170(1) (2006) which provides: "[c]haritable organization" means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to § 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended. That said, the "charitable" component of the exemption is two-fold under the IRC. Treas. Reg. § 1.501(c)(3)-1(a)(1) provides:

In order to be exempt as an organization described in § 501(c)(3) an organization **must be both organized and operated exclusively** for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operation test, **it is not exempt.**

(emphasis added). To that end, a tax-exempt "organization" must meet "five criteria as provided in IRC § 501(c)(3)":

1. It must be organized exclusively for an exempt purpose;
2. It must be operated exclusively for an exempt purpose;
3. It must avoid any private inurement;
4. It must avoid substantial lobbying;
5. It must avoid any political activity.

The organizational and operational requirements also require exclusivity, tax exempt purpose, and keeping of various procedural requirements. Courts have added three more criteria: 1. the entity must provide public benefit; 2. the entity must not violate established public policy; 3. the activities must not be illegal. Darryll K. Jones, et al., The Tax Law of Charities and Other Exempt Organizations, et. seq.

Here, given the substantial and intricate composition of GHS, at this time it has not shown that it is a "tax exempt" organization.

exemption on GHS.¹³ Rather, where, as here, the taxpayer received such exemption almost 70 years ago, prior to its acquisition of a multitude of other businesses – both for profit and not for profit, including the research, development, and testing of various drugs and procedures that are then sold in conjunction with private for profit companies, further scrutiny of the activities of each of these is warranted. Such information has not been provided to date. Based on the information received to date, GHS, as a whole cannot be said to meet the definition of “charitable” as provided in § 12-37-220(B)(16)(a).¹⁴

¹³To be considered as “automatically” qualified [for the sales tax exemption], an organization must meet all of the above requirements and file Form ST-387. **However, it should be noted that this “automatic” qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.**

(bold in the original) – S.C. Rev. Proc. # 03-6.

¹⁴Instructive on the characteristics of a tax-exempt healthcare organization is the article, “Fact Sheet: Attributes of Tax-Exempt Healthcare Organizations,” originally published by the Healthcare Financial Management Association (HFMA) in March, 2006. See also the update in 2012, at www.hfma.org – “Final Report: Tax-Exempt Status of Institutional Healthcare Providers.” This Fact Sheet provides ten component parts/attributes of a “charitable” healthcare organization which are as follows:

1. **Mission to provide Community Benefit:** Mission is a cornerstone of granting tax-exemption. According to federal law, the tax-exempt provider must have a clearly defined mission statement committing the institution to charitable endeavors. Both the institution’s historical background and the community’s needs are important in determining the mission statement.
2. **Use of Financial Surpluses.** No individual may receive any portion of a tax-exempt institution’s financial surpluses as a result of ownership. Both federal and state laws require that all financial surpluses must go toward furthering the organization’s charitable purpose. Compensation arrangements must be carefully constructed to reflect fair market value for services rendered.
3. **Accountability.** The organization’s board of trustees must hold itself answerable to its community for

-
- maximizing the entity's contribution to the community.
4. **Goodwill.** Goodwill is an intangible attribute that characterizes exempt hospitals that have successfully provided care and met their community responsibilities over a long period of time. Such organizations usually have stable ownership and governance structures and regularly receive significant philanthropic and volunteer support.
 5. **Provision of Charity Care.** Free or discounted care is an important component of many hospitals tax-exempt missions, but is not the only function that hospitals perform to merit tax-exempt status. Organizations that provide charity care must establish and communicate a clear charity care policy based on community needs and input. The policy should include easy-to-understand, written eligibility criteria.
 6. **Reduction of Government Burden.** Many tax-exempt hospitals provide services that government otherwise would have to provide. Services especially demanded from tax-exempt healthcare providers include high-technology, high-intensity services, emergency care, chronic care, long-term care, and unprofitable services.
 7. **Provision of Essential Healthcare Services.** Tax-exempt healthcare providers are often the sole providers of healthcare services that are so essential to community health that tax-exempt status is warranted. Examples of essential services include emergency rooms and outpatient clinics serving low-income patients.
 8. **Provision of Unprofitable Services.** The provision of unprofitable services is commonly a provider charitable response to a community need. Unprofitable services in this sense lose money because of high costs combined with low volume or inadequate payment rather than inefficient operations. Common examples of unprofitable services include burn, neonatal, and trauma centers and community mental health centers.
 9. **Public Education.** Teaching institutions are exempt because of their role in the advancement of education and science. Most exempt healthcare providers, however, also provide many educational programs to enhance public health, such as public health education, wellness programs, and the sponsorship of educational activities.
 10. **Serving Other Unmet Human Needs.** Some exempt

hospitals provide important services that are tangential to health care but that are not met by any other entity in the service area. Examples include senior citizen educational and outreach programs, care for "boarder" babies, or "meals on wheels" programs.

Other jurisdictions have used a similar rubric to determine, on a case by case basis, whether a hospital/healthcare organization is "charitable". For example, in Provena Covenant Medical Center v. Illinois Dept. of Revenue, 236 Ill.2d 368, 925 N.E.2d 1131 (March 10, 2010), the court denied Provena a property tax exemption based on the application of a statute with language similar to that in this case (35 Ill. C.S. 200/1-1 (West 2002)) on 43 parcels owned by Provena. The court stated "with very limited exception, the property was devoted to the care and treatment of patients in exchange for compensation through private insurance, Medicare and Medicaid, or direct payment from the patient or patients' family." Id. at 397. The court applied the following criteria to make this determination:

1. The organization has no capital, capital stock or shareholders,
2. The organization has no earnings, profits or dividends, rather, it derives its funds mainly from private and public charity and holds them in trust for the purpose expressed in the charter,
3. The organization dispenses charity to all who apply for it and need it;
4. The organization does not provide gain or profit in the private sense to any person connected with it; and
5. The organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefit it dispenses.

Id. at 390, 391. The court found factors 2, 4, and 5 lacking in Provena's case. The court found that a mere 3.4% of Provena's funds came from private and public charity. Applying that factor to GHS would yield a similar result. Here, GHS derives less than .7% of its operating revenues from unrestricted contributions, Infra at Fn. 2.

See also Franciscan Communities, Inc. v. Hamer, 2012 Ill. App. 2d 110431 (Aug. 28, 2012), where the court affirmed the administrative law judge's decision denying the Franciscans a "charitable" property tax exemption because they derived their funds mainly from fees charged with a "view to profit." ("Salaries were not commensurate with other nonprofits and management fees paid."), Id. at 724.

For denials of a property tax exemption on similar grounds see also, Central Vermont Hosp. Inc., et al. v. Town of Berlin, 164 Vt. 956, 672 A.2d 474 (December 15, 1995) (Nonprofit home for long-term care denied a property tax exemption even though it was affiliated with a hospital it was not an integral part of the hospital and not entitled to the exemption.), Id. at 478; AHS Hospital v. Town of Morristown, 25 N.J. 374 (Tax Court,

ii. Is GHS real property “used primarily for the holding of its meetings and the conduct of its business”?

The taxpayer also fails to meet the second criterion required for this exemption. Such requires that the taxpayer use the property primarily to “hold its meetings and the conduct of its business.”¹⁵ “The word ‘primarily’ means ‘of first importance’ or ‘principally.’” Malat v. Riddell, 383 U.S. 569 (1966); Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm., 273 S.C. 782, 260 S.E.2d 452 (1979). The Hibernian Society, 319 S.E.2d at 342-343. Here, there is no evidence that GHS uses the property for “its” meetings and for the “conduct of its business,” because to date all real property and locations owned by GHS have not been disclosed to the Department. Further, there may be no limitation on the use of the property if such is leased out to the third parties (that the property is used for charitable purpose, charitable mission of GHS),¹⁶ thus the

May 14, 2010) (Hospital’s property leased to a café conducted for profit not eligible for property tax exemption; conducted for profit as evidenced by the contract between the hospital and café owner splitting profits on a 60/40 basis. Exemption also denied based on the fact that property was leased to private physician practices as the latter were conducted for profit).

Applying both the HFMA factors and those enumerated in the above cases to GHS yields many unanswered questions. For example, the surpluses generated by GHS, to include the for-profit entities, are they strictly/exclusively used for the GHS charitable mission? Here, too, the derivation of such funds appears to be wholly from fees charged for services – contributions are a mere .7% of the operating revenue. Also, are the various compensation packages for the many professionals employed by GHS reflective of their true fair market value? Does GHS reduce the government’s burden? Do all GHS component parts reduce the burden? The professionals compensated with stock of the for-profit entities – is the compensation at fair market value? Clearly, the minority holders of the for-profit entities receive a benefit that inures to those stockholders such that the requirements of this subsection are not met. These, as well as many other questions, remain unanswered due to the lack of information detailing the operations of the various GHS entities provided to date.

¹⁵It should be noted that in determining whether a taxpayer is entitled to the sales tax exemption under Section 12-36-2120(41), where the taxpayer owns no property (and thus would not apply for the applicable property tax exemption, here § 12-37-220(B)(16)(a)) the relevant inquiry for the property tax prong is whether, if the taxpayer did own real property, would it (the taxpayer) be able to show that it would qualify for such property tax exemption. See S.C. S.C. Rev. Proc. 03-6.

¹⁶Another way to view the phrase “conduct of its business” in the context of a “charitable” corporation is by looking at the “unrelated” business income rules for tax-exempt organizations. See 26 U.S.C.A. §§ 511-514 (as adopted by South Carolina pursuant to § 12-6-40).

Income is unrelated to a tax-exempt purpose where (1) there is a trade or business; (2) such trade or business is regularly carried on, and (3) the trade or business is not "substantially related" to the tax-exempt primary purpose. U.S. v. American Bar Endowment, 477 U.S. 105 (1986). As provided in the regulations, the "substantially related" prong focuses on the conduct of such trade or business which does not "contribute importantly" to the tax exempt's purpose. Id.; Treas. Reg. § 1.513-4.

Tax-exempt organizations, in the context of this case, not-for-profit hospitals, are granted exemption by the government because such exempt organizations alleviate the government of the burden of providing their particularized services and products to the general public.

Congress adopted the unrelated business income tax primarily because of its concern with "unfair" competition between tax exempt organizations and taxable business. . . . As the activity moves further from the [tax exempt's] function and involves products which in general are amply supplied by the private sector . . . sales of these products may only displace taxable businesses in an area where private markets are working effectively.

(Emphasis added).

Excerpts from "Statement of O. Donaldson Chapoton Deputy Assistant Secretary (Tax Policy) Before the Subcommittee on Oversight of the Committee on Ways and Means, U.S. House of Representatives" as cited in The Tax Law of Charities and Other Tax Exempt Organizations, at pp. 716-717. Moreover, taken to the farthest extreme, unrelated business may so overtake an organization's primary purpose such that "the unrelated business could supplant the organization's exempt function as its primary purpose" thus resulting in the organization's loss of its tax exempt status. Id. at 723 (addressing I.R.C. § 501(c)(3)'s requirement that an organization may operate a business where "it is a substantial part of its activities so long as the operation of the business is in furtherance of the organization's exempt purpose and the organization is not organized or operated for the primary purpose of carrying on an unrelated business." Id. at 722).

In the instant case, many of the activities engaged in by GHS may well be "unrelated." As provided in Internal Revenue Service Publication 598, the following examples are noted as "unrelated," however, this list is not exhaustive:

Pg. 7 Laboratory testing performed by a non-teaching hospital on referred specimens from private office patients of staff physicians is an unrelated trade or business if these services are otherwise available in the community.

An exempt scientific organization enjoys an excellent

limitation required by this criteria may not be met at this time. See, 1972 S.C. Op. Atty. Gen. No. 3344: "[T]he overall use of the property must be reviewed including specifically whether the same is limited as provided in the statute." (emphasis added).

iii. Does profit or benefit inure to the benefit of any individual or stockholder?

The derivation of this requirement was also addressed in The Hibernian Society. The Court stated:

In enacting this particular condition ["no profit or benefit therefrom inures to the benefit of any private stockholder or individual"], the legislature intended, we believe, to stop the flow of any direct or indirect commercial benefits to the *individual members* ["private stockholder or individual"] of the Society, see Harding Hospital v. United States, 505 F.2d 1068 (6th Cir.1974), as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a group.

(emphasis in original).

Here, there is no question but that commercial benefit, direct or otherwise, generated by

reputation in the field of biological research. It exploits this reputation regularly by selling endorsements of laboratory equipment to manufacturers. Endorsing laboratory equipment does not contribute importantly to the accomplishment of any purpose for which exemption is granted to the organization. Accordingly, the sale of endorsements is an unrelated trade or business.

Additionally, although it is true that research income, as a general rule, is excluded from the definition of "unrelated business income," "research, for this purpose, does not include activities of a type normally conducted as an incident to commercial or industrial operations, such as testing or inspecting materials or products, or designing or constructing equipment, buildings, etc." In addition, the term "fundamental research" does not include research conducted for the primary purpose of commercial or industrial application." Id. at p. 10.

GHS has laboratories, laundries and conducts research and testing, among others "Prolanta" by ONC in particular. Do these activities "contribute importantly" to GHS's exempt purpose removing such income from "unrelated business income" category? More importantly, however, is the question of whether the activities of GHS are substantially related to its exempt purpose such that it retains its exempt tax status under I.R.C. § 501(c)(3).

the activities of the GHS controlled for-profit entities, ONC and Oncology Therapeutics, (perhaps others), provide benefits that inure to private stockholders, Biovectra, Questcor, and employees compensated with the stock of such corporations.

Based on the foregoing, GHS is not eligible for the property tax exemption at § 12-37-220(B)(16)(1), accordingly GHS is not eligible for the sales/use tax exemption requested by GHS pursuant to § 12-36-2120(41).

II. GHS is not entitled to the sales tax exemption provided by § 12-36-2120(41).

Even assuming *arguendo* that GHS is eligible for such property tax exemption, its request for sales tax exemption must be denied because it fails to meet the requirements of the sales tax exemption statute, § 12-36-2120(41). Here, GHS has not shown that the “net proceeds are used exclusively for exempt purposes” and that no benefit inures to any individual.

The sales tax exemption at issue here, § 12-36-2120(41), at first glance, appears quite broad for “organizations” that meet the requirements for the enumerated property tax exemptions noted therein. However, this provision has two very limiting criteria. First, the net proceeds must be “used exclusively for exempt purposes.” Secondly, no benefit may inure to any individual. GHS does not meet either of these criteria.

a. The net proceeds must be used exclusively for exempt purposes.

To date, GHS has offered no evidence that its “future” sales will be used exclusively for exempt purposes. For example, given GHS’s controlling interest in for-profit private companies, as well as not-for-profit companies owning both for-profit and not-for-profit companies, the exclusivity criteria has not been met. See Provena, *Infra*.¹⁷

¹⁷As the Provena court noted:

[W]hen the law says property must be exclusively used for charitable or beneficent purposes, it means that charitable or beneficent purposes are the primary ones for which the property is utilized, secondary or incidental charitable benefits will not suffice **nor will it be enough that the institution professes a charitable purpose or aspires to using its property to confer charity on others.**

Provena at 394 (emphasis added).

The court also stated:

[S]tatements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes will not

b. **Benefit inures to an individual.**

As noted *infra*, the phrase “inure to the benefit” has been addressed by the South Carolina Court of Appeals. In Hibernian, the Court noted:

In enacting this particular condition [“no profit or benefit therefrom inures to the benefit of any private stockholder or individual” (B)(16)(a) specifically states “any individual”], the legislature intended, we believe, to stop the flow of any **direct or indirect commercial benefits to the individual members** [“private stockholder or individual”] of the Society, see Harding, as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a group.

(emphasis added).

The Hibernian Court focused on the plain language of the exemption provision (§ 12-37-220(b)(12)) “inure to the benefit of any private stockholder or individuals” by stating that this provision was to stop the flow of any direct or indirect commercial benefits to individual members. Here the relevant inquiry is as provided by the language “**no benefit inures to any individual** [§ 12-36-2120(41)]” whatsoever, which has not been met in this case. On its face, and absolutely, this tax exemption provision forbids any benefit to any individual as opposed to the smaller subset of “private stockholder or individual.” Under the Hibernian inquiry, GHS benefits inure to the employees compensated with the stock of the for-profit entities, GOT and ONC.¹⁸ Furthermore, the minority stockholders of these entities receive the benefits of these companies or may

relieve such institution of the burden of proving that its property is actually and factually is so used.”

Id. at 395.

¹⁸An organization is not organized or operated exclusively for ... [an exempt purpose]... unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly by such private interests.

I.R.C. § 501(c)(3)(1)(d)(1)(ii). See United Cancer Council v. Comm’r., 65 F.3d 1173 (7th Cir. 1999), finding no diversion of the tax-exempt revenues to “members of the board or other insiders.” However, the language in South Carolina’s sales tax exemption provision, § 12-36-2120(41), is broader than I.R.C. § 501(c)(3) prohibiting private benefit to “any individual” at all.

receive the benefits in the future through dividends, sales, other commercialization of the intellectual, or other property developed.

Conclusion:

Exemption statutes are construed narrowly and the taxpayer bears the burden of bringing itself squarely within the parameters of the authorizing exemption statute. In this case, GHS has failed to carry that burden, accordingly, the requested sales/use tax exemption is denied.

October 4, 2013

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

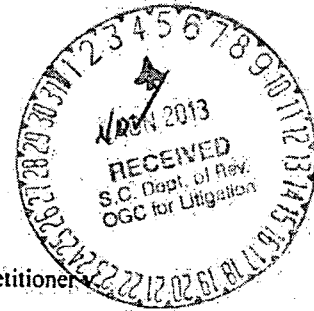
1201 MAIN STREET, 22ND FLOOR (29201-3225)
POST OFFICE BOX 11889 (29211-1889)
COLUMBIA, SOUTH CAROLINA
TELEPHONE 803.779.3080
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FRANK W. CURETON
DIRECT DIAL NUMBER 803.540.7824
EMAIL fcureton@hsblawfirm.com

November 1, 2013

Via Hand Delivery

The Honorable Jana E. Shealy
Clerk of Court
South Carolina Administrative Law Court
1205 Pendleton Street, Suite 224
Edgar A. Brown Building
Columbia, South Carolina 29201



Re: Greenville Hospital System (now known as Greenville Health System), Petitioner
South Carolina Department of Revenue, Agency

Dear Ms. Shealy:

We enclose for filing in your office a Notice of Request For Contested Case Hearing in the above-captioned matter along with a Certificate of Service. We are also enclosing our check for the filing fee in the amount of \$150.00.

We would appreciate your date-stamping the enclosed additional copy of the Notice of Request For Contested Case Hearing and returning it to our courier.

For your information, a Request for Contested Case Hearing was originally filed for this matter on or about September 10, 2010, and that case was assigned Docket No. 10-ALJ-17-0677-CC. The case was remanded to the Department of Revenue pursuant to the Respondent's Consent Motion for Remand approved by Judge McLeod on April 26, 2011. The Department Determination attached to the enclosed Notice of Request For Contested Case Hearing is the result of that remand.

If you have any questions, please do not hesitate to contact me.

Yours truly,

Frank W. Cureton

FWC:nsb
Enclosures

cc: Carol I. McMahan, South Carolina Department of Revenue
Joseph J. Blake, Esq.

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW JUDGE DIVISION

Greenville Hospital System)
(now known as Greenville Health)
System))

Petitioner,)

v.)

South Carolina Department)
of Revenue,)

Agency.)
_____)

NOTICE OF REQUEST FOR CONTESTED
CASE HEARING

Docket No. 2013-ALJ-_____

Notice is hereby given that Greenville Hospital System does hereby file this Notice of Request for a Contested Case Hearing pursuant to S.C. Code Ann. § 12-60-460:

1. Greenville Hospital System¹ is the party requesting the contested case hearing. Its address is 701 Grove Road, Greenville, South Carolina 29605. Greenville Hospital System is represented by undersigned counsel.

2. The issue for which the hearing is requested is whether Greenville Hospital System is entitled to a sales tax exemption pursuant to S.C. Code Ann. § 12-36-2120(41).

3. The determination by the Department of Revenue of the exemption application by Greenville Hospital System was dated October 4, 2013, and was received by Greenville Hospital System on October 7, 2013 (copy attached hereto as Exhibit A).

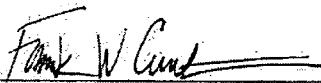
¹ The General Assembly changed the name of Greenville Hospital System to Greenville Health System by 2013 S.C. Act No. 105 (approved June 13, 2013).

4. Greenville Hospital System requests that the Administrative Law Court declare that Greenville Hospital System is entitled to a sales tax exemption pursuant to S.C. Code Ann. § 12-36-2120(41) and grant such other and further relief as the Court may deem appropriate.

5. Greenville Hospital System does not desire that this matter be heard as a small claims case pursuant to S.C. Code Ann. § 12-60-520.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Frank W. Cureton
fcureton@hsblawfirm.com
P.O. Box 11889
Columbia, SC 29211-1889
(803) 779-3080

Arthur F. McLean III
mmclea@hsblawfirm.com
P.O. Box 2048
Greenville, SC 29602-2048
(864) 240-3200

Date: November 1, 2013

Attorneys for Petitioner Greenville Hospital
System

Exhibit A

See attached 32 pages

State of South Carolina
Department of Revenue
Office of General Counsel for Litigation
300A Outlet Point Blvd., (29210); P.O. Box 12265, Columbia, South Carolina 29211
Telephone (803) 898-5130 Telecopier (803) 896-0171

October 4, 2013

Frank W. Cureton, Esq.
Haynesworth Sinkler Boyd, PA
PO Box 11889
Columbia, SC 29211

Arthur F. Mclean, III, Esq.
Haynesworth Sinkler Boyd, PA
PO Box 2048
Greenville, SC 29602

Re: Department Determination – Greenville Hospital System

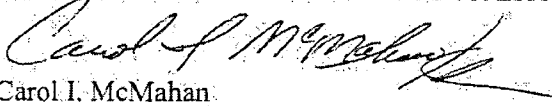
Dear Mr. Cureton and Mr. Mclean:

Enclosed is the South Carolina Department of Revenue's Determination in the above-referenced matter. If you disagree with the Determination, you may request a contested case hearing before an Administrative Law Judge. If you choose to pursue such remedy, you must do so within thirty (30) days of the date of this letter. If you fail to respond within this time limitation, you will lose your right to appeal the Department Determination and your protest will be ended. Should you desire a contested case hearing, you must complete the enclosed request form and mail it, along with a \$150.00 filing fee, to the Administrative Law Court at the address stated on the form's instruction sheet.

The Administrative Law Court rules require that you also send me a copy of your request. My address is as follows: PO Box 12265, Columbia, SC 29211.

If you would like to pay your liability, please mail your payment to my attention at the Office of General Counsel for Litigation, PO Box 12265, Columbia, SC 29211

OFFICE OF GENERAL COUNSEL FOR LITIGATION


Carol I. McMahan
Counsel for Litigation

CIM/acc

Enclosures

**South Carolina Administrative Law Court (SC ALC)
Request for Contested Case Hearing FORM**

Last Name:		First:	Middle:	☐ Mr. ☐ Mrs.	☐ Miss ☐ Ms.	Docket No. (To Be Completed by ALC)
Mailing Address:			City:		State and Zip:	
Home Number:		Work Number:		Cell Number:		*E-Mail Address:
*By providing your e-mail address, you consent to receive court orders and notices via electronic transmission						
REPRESENTATION						
Are you representing yourself? ☐ Yes ☐ No			If No, please complete the following:			
Are you represented by an Attorney? ☐ Yes ☐ No			Are you represented by a CPA? ☐ Yes ☐ No			
Name of Attorney:			Name of CPA:			
Mailing Address:			Mailing Address:			
City, State and Zip:			City, State and Zip:			
Work Number, Cell Number and E-mail Address:			Work Number, Cell Number and E-mail Address:			
CASE INFORMATION						
Name of the Agency that issued the decision: (Example – Dept. of Revenue, Dept. of Insurance, DHEC)						
In order to have your case processed, you must attach the agency decision. Is it attached?: ☐ Yes ☐ No			If no, please explain:			
Date the decision was issued:			Date the decision was received:			
Please provide a brief statement regarding why the hearing is being requested and the relief sought:						
Payment via ☐ Check ☐ Money Order ☐ Cash for \$ submitted today to the Administrative Law Court via (applicable filing fee pursuant to ALC Rule 71) is being ☐ U.S. Postal Service ☐ Hand-delivery						
_____ X Your Signature or Signature of Attorney/CPA			_____ Date			

CERTIFICATE OF SERVICE (MUST BE COMPLETED)			
Your Name:		Date:	City: State:
I hereby certify that on the date and place listed above, I served a copy of the foregoing Request for Contested Case Hearing <u>on all other parties</u> to this matter by depositing the same in the United States Mail, postage paid, and addressed as follows (use the reverse side for any additional names):			
Name and/or Agency	Address	City, State and Zip	
Name and/or Agency	Address	City, State and Zip	
_____ X Your Signature or Signature of Attorney/CPA		_____ Date	

Filing and Assignment of a Contested Case with the Administrative Law Court

Complete the Request for Contested Case Hearing and Certificate of Service form in its entirety. File the original by mailing it or hand-delivering it to the Administrative Law Court, along with a copy of the decision from the agency and the appropriate filing fee. Be sure to serve a copy of the Request on the agency which you are appealing as well as any other known parties or protestants. Your case will be deemed filed with Administrative Law Court upon receipt of your request and filing fee, and will normally be assigned to an administrative law judge within a week of filing. You should receive a Notice of Assignment within a few days of your case being assigned. The Notice of Assignment will have the case caption, docket number, date of filing and the name of the administrative law judge assigned to your case. Once your case has been assigned, all filings and questions regarding your case should be directed to the assigned judge.

Clerk's Office
South Carolina Administrative Law Court
1205 Pendelton St., Ste. 224
Columbia, SC 29201

South Carolina Department of Revenue
Office of General Counsel for Litigation
PO Box 12265
Columbia, SC 29211

DEPARTMENT DETERMINATION

Taxpayer:

Greenville Hospital System
701 Grove Road
Greenville, SC 29605

Period Involved:

Sales Tax for Period ended June 2009

Matter in Dispute:

Is Greenville Hospital System eligible for an exemption from sales tax pursuant to § 12-36-2120(41)?

Tax	\$500.00
*Penalty (Failure to File and Pay)	\$637.50
*Interest	\$7.34
Amount Due	\$1,144.84

*Interest and penalties have been calculated through September 15, 2013 and will continue to accrue until the matter is settled. The tax is based on an estimate, as the taxpayer failed to file a return.

Determination:

The taxpayer is not eligible for an exemption from sales tax pursuant to § 12-36-2120(41). As a result, the taxpayer owes the additional tax, penalties, and interest set forth above.

Facts:

1. The Greenville Hospital System (GHS), a political subdivision, was established by the General Assembly of South Carolina in 1947.¹ Prior to that, it was known as the Greenville Hospital (which was owned by the municipality, the City of Greenville).
2. GHS includes both for profit and not-for-profit entities. It also includes educational programs to include the Medical University of South Carolina,

¹Act No. 432, 1947 S.C. Acts.

Greenville Campus.²

3. Certain property of GHS is exempt from property tax pursuant to S.C. Code Ann. § 12-37-220(A)(1) (Supp. 2009) as a "political subdivision."
4. The Internal Revenue Service (IRS) granted the former, Greenville Hospital, exemption from income tax pursuant to 26 USCA § 501(c)(3) in 1944 (prior to the South Carolina General Assembly's providing for it as a political subdivision, and prior to its current formation as an "umbrella" organization for joint ventures, profit and not-for-profit entities). GHS is not a trust. GHS is not a foundation.
5. GHS no longer resembles the entity to which the IRS granted exemption from tax in 1944. Rather, GHS includes the not-for-profit entity, Endowment Fund (Fund) for the Greenville Hospital System, Inc. and many other entities as more fully discussed below. The Department of Revenue (Department) granted the Fund's predecessor entity, Greenville Hospital Foundation, exemption from sales tax pursuant to § 12-36-2120(41).³
6. GHS further includes GHS Partners in Health, Inc. (a for profit South Carolina corporation), Greenville Health Corporation (not-for-profit South Carolina corporation), the GHS Pension Trust Plan and various joint ventures.
7. The for profit corporation, GHS Partners in Health, consists of various physician practices, some of which include:

INTERNAL MEDICINE

Allergy/Immunology

²GHS revenues provide insight into its mammoth operations. For example, the 2009-2010 GHS Financial Statements report Net Patient Service Revenue of \$1,317,026,000 and Other Operating Revenue of \$50,928,000 for the year ended September 30, 2010. This latter amount includes \$9,874,000 of revenues from grant, research, and unrestricted contributions. These figures indicate that the vast majority of revenue is from the fees charged for services rather than contributions. Contributions comprise a mere .7% of total operating revenue for the September 30, 2010 period (.9% for the period ending September 30, 2009).

³In 1990, the Department granted the Greenville Hospital System Foundation a sales tax exemption under the predecessor provision to § 12-36-2120(41), S.C. Code Ann. § 12-35-550(48) (Supp. 2009). This latter section provided: "[t]he gross proceeds of sales or purchases for resale by organizations exempt under § 12-37-220 (A) (3) and (4) and (B) (5), (6), (7), (12), (16), (19), (22) and (24) if the net proceeds are used exclusively for exempt purposes and no benefit inures to any individual."

200 Patewood Dr., Ste. B120, 29615
2 Physicians or other licensed professionals

Cardiology

Carolina Cardiology Consultants

877-B W. Faris Rd., 29605

315 Medical Pkwy., Ste. 200, Greer, 29650

719A S.E. Main St., Simpsonville, 29681

100 Healthy Way, Ste. 1250, Anderson, 29621

40 Physicians or other licensed professionals

Congestive Heart Failure Clinic

701 Grove Rd., 29605

2 Physicians or other licensed professionals

Dermatology

Carolina Dermatology of Greenville

920 Woodruff Rd., 29607

6 Physicians or other licensed professionals

Endocrinology

877 W. Faris Rd., Ste. D, 29605

8 Physicians or other licensed professionals

Internal Medicine Associates of Greenville

1025 Verdae Blvd., Ste. A, 29607

1 Physician or other licensed professional

Gastroenterology

Carolina Gastroenterology Assoc.

11 Doctors Park Dr., Ste. 240, Spartanburg, 29307

6 Physicians or other licensed professionals

Gastroenterology Consultants of Internal Medicine Associates of Greenville

1025 Verdae Blvd., Ste. A, 29607

3308 Brushy Creek Rd., Greer, 29651

8 Physicians or other licensed professionals

Geriatrics/Center for Success in Aging

255 Enterprise Blvd., Ste. 101, 29615

10 Physicians or other licensed professionals

Hospitalist Services

701 Grove Rd., 5th Floor, 29605

36 Physicians or other licensed professionals

Infectious Diseases

890 W. Faris Rd., Ste. 520, 29605

8 Physicians or other licensed professionals

Neuroscience Associates

200 Patewood Dr., Ste. B350, 29615

8 Physicians or other licensed professionals

Palliative Care

701 Grove Rd., 6th Floor, 29605

4 Physicians or other licensed professionals

Physical Medicine & Rehabilitation

Roger C. Peace Hospital-Rehabilitation

701 Grove Rd., 29605

4 Physicians or other licensed professionals

Pulmonary Disease, Critical Care & Sleep Medicine/Lung Center

200 Patewood Dr., Ste. B300, 29615

890 W. Faris Rd., Ste. 580, 29605

19 Physicians or other licensed professionals

Rheumatology

255 Enterprise Blvd., Ste. 100, 29615

2 Physicians or other licensed professionals

Internal Medicine Associates of Greenville

1025 Verdae Blvd., Ste. A, 29607

1 Physician or other licensed professional

FAMILY MEDICINE

Center for Family Medicine

877 W. Faris Rd., 29605

5 Physicians or other licensed professionals

Family Medicine-Pelham Pointe

81 Pointe Cir., 29615

2 Physicians or other licensed professionals

Family Medicine-Powdersville
207 Three Bridges Rd., 29611
2 Physicians or other licensed professionals

Greenville Family Practice
2-A Cleveland Ct., 29607
2 Physicians or other licensed professionals

Greer Family Medicine
1107 W. Poinsett St., Greer, 29651
3 Physicians or other licensed professionals

Laurens Family Practice
106 Parkview Dr., Laurens, 29360
9100 Hwy. 14, Gray Court, 29645
9 Physicians or other licensed professionals

Mountain View Family Practice-Memorial Drive
406 Memorial Dr. Ext., Greer, 29650
7 Physicians or other licensed professionals

Palmetto Medical Associates
210 Freeman Farm Rd., Duncan, 29334
3 Physicians or other licensed professionals

Riverside Family Practice-Eastside
215 Halton Rd., 29607
5 Physicians or other licensed professionals

Riverside Family Practice-Maxwell Pointe
3909 S. Hwy. 14, 29615
4 Physicians or other licensed professionals

Travelers Rest Family Practice
9 McElhaney Rd., Travelers Rest, 29690
5 Physicians or other licensed professionals

West Butler Family Medicine
503 W. Butler Rd., 29607
(In November, this practice renames and moves:
Keystone Family Medicine
1409 W. Georgia Rd., Ste. B, Simpsonville, 29680)
5 Physicians or other licensed professionals

INTERNAL MEDICINE

Cross Creek Internal Medicine
109 Doctors Dr., 29605
6 Physicians or other licensed professionals

Cypress Internal Medicine-Greer
315 Medical Pkwy., Ste. 200, Greer, 29650
3 Physicians or other licensed professionals

Cypress Internal Medicine-Hillcrest
727 S.E. Main St., Ste. 320, Simpsonville, 29681
(In November, this practice renames and moves:
Cypress Internal Medicine-Simpsonville
1409 W. Georgia Rd., Ste. D, Simpsonville, 29680)
3 Physicians or other licensed professionals

Cypress Internal Medicine-Maxwell Pointe
3907 S. Hwy. 14, 29615
3 Physicians or other licensed professionals

Cypress Internal Medicine-Patewood
200 Patewood Dr., Ste. B460, 29615
4 Physicians or other licensed professionals

Heritage Pediatrics & Internal Medicine
727 S.E. Main St., Ste. 320, Simpsonville, 29681
3 Physicians or other licensed professionals

Internal Medicine Associates of Greenville
1025 Verdae Blvd., Ste. A, 29607
3308 Brushy Creek Rd., Greer, 29651
26 Physicians or other licensed professionals

NEUROSURGERY

Procedural Pain Management
200 Patewood Dr., Ste. C100, 29615
1 Physician or other licensed professional

Southeastern Neurosurgical & Spine Institute
111 Doctors Dr., 29605
3 Physicians or other licensed professionals

105 Doctors Dr., 29605
3 Physicians or other licensed professionals

Seneca
3 Physicians or other licensed professionals

Upstate Medical Rehabilitation
111 Doctors Dr., 29605
10 Physicians or other licensed professionals

OBSTETRICS & GYNECOLOGY

Center for Vulvar Medicine
101 Halton Village Circle, 29607
1 Physician or other licensed professional

Female Pelvic Medicine & Reconstructive Surgery
890 W. Faris Rd., Ste. 510, 29605
2000 E. Greenville St., Ste. 4600, Anderson, 29621
3 Physicians or other licensed professionals

Gynecology Specialists
890 W. Faris Rd., Ste. 510, 29605
101 Halton Village Circle, 29607
11 Physicians or other licensed professionals

Maternal-Fetal Medicine
890 W. Faris Rd., Ste. 470, 29605
2000 E. Greenville St., Ste. 4600, Anderson, 29621
9 Physicians or other licensed professionals

Pediatric & Adolescent Gynecology
890 W. Faris Rd., Ste. 510, 29605
1 Physician or other licensed professional

Reproductive Endocrinology & Infertility/Fertility Center of the Carolinas
890 W. Faris Rd., Ste. 470, 29605
101 Halton Village Circle, 29607

One Doctors Park Dr., Spartanburg, 29307
2000 E. Greenville St., Ste. 4600, Anderson, 29621
6 Physicians or other licensed professionals

Greenville Ob Gyn Associates
2 Memorial Medical Dr., 29605
1025 Verdae Blvd., Ste. F, 29607
727 S.E. Main St., Ste. 120, Simpsonville, 29681
9 Physicians or other licensed professionals

Greer OB/GYN
325 Medical Pkwy., Ste. 100, Greer, 29650
3 Physicians or other licensed professionals

Piedmont OB/GYN
890 W. Faris Rd., Ste. 330, 29605
3917 S. Hwy. 14, 29615
9 Physicians or other licensed professionals

Premier Women's Care
209 Three Bridges Rd., 29611
4 Physicians or other licensed professionals

ONCOLOGY

Cancer Center
900 W. Faris Rd.
1 Physician or other licensed professional

Oncology Multidisciplinary Centers
890 W. Faris Rd., Ste. 320, 29605

Breast Multidisciplinary Center (MDC)
4 Physicians or other licensed professionals

Ear, Nose & Throat MDC
2 Physicians or other licensed professionals

Gastrointestinal MDC
2 Physicians or other licensed professionals

Melanoma/Sarcoma MDC
2 Physicians or other licensed professionals

Neurology MDC
3 Physicians or other licensed professionals

Thoracic MDC
2 Physicians or other licensed professionals

MDC Medical Oncologists
9 Physicians or other licensed professionals

MDC Radiation Oncologists
5 Physicians or other licensed professionals

MDC Nurse Navigators
6 Physicians or other licensed professionals

ORTHOPAEDICS

Steadman Hawkins Clinic of the Carolinas

200 Patewood Dr., Ste. C100, 29615
9 Physicians or other licensed professionals

111 Doctors Dr., 29605
3 Physicians or other licensed professionals

105 Doctors Dr., 29605
4 Physicians or other licensed professionals

207 Three Bridges Rd., 29611
1 Physician or other licensed professional

315 Medical Pkwy., Ste. 100, Greer, 29650
4 Physicians or other licensed professionals

727 S.E. Main St., Ste. 220, Simpsonville, 29681
4 Physicians or other licensed professionals

333 S. Pine St., Spartanburg, 29302
5 Physicians or other licensed professionals

UMG Orthopaedics
105 Doctors Dr., 29605
3 Physicians or other licensed professionals

PEDIATRICS

Adolescent Bariatric Surgery
2104 Woodruff Rd., 29607
1 Physician or other licensed professional

Adolescent Medicine
20 Medical Ridge Dr., 29605
2 Physicians or other licensed professionals

Pediatric & Adolescent Gynecology
890 W. Faris Rd., Ste. 470, 29605
1 Physician or other licensed professional

Pediatric Cardiology
200 Patewood Dr., Ste. A200, 29615
11 Doctors Park Dr., Ste. 200, Spartanburg, 29307
2000 E. Greenville St., Ste. 3500, Anderson, 29621
155 Academy St., Greenwood, 29646
4 Physicians or other licensed professionals

Child Abuse/Neglect/Forensic Peds
2905 White Horse Rd., 29611
2 Physicians or other licensed professionals

Developmental-Behavioral Pediatrics/Gardner Center for Developing Minds
200 Patewood Dr., Ste. A200, 29615
29 N. Academy St., 29601
11 Doctors Park Dr., Ste. 200, Spartanburg, 29307
17 Physicians or other licensed professionals

Pediatric Endocrinology
200 Patewood Dr., Ste. A320, 29615
11 Doctors Park Dr., Ste. 200, Spartanburg, 29307
6 Physicians or other licensed professionals

Pediatric Gastroenterology
200 Patewood Dr., Ste. A140, 29615
6 Physicians or other licensed professionals

Pediatric Hematology/Oncology/BI-LO Charities Children's Cancer Center
900 W. Faris Rd., 2nd Floor, 29605
11 Doctors Park Dr., Ste. 200, Spartanburg, 29307
2000 E. Greenville St., Ste. 3500, Anderson, 29621
6 Physicians or other licensed professionals

Pediatric Infectious Disease
200 Patewood Dr., Ste. A200, 29615
11 Doctors Park Dr., Ste. 200, Spartanburg, 29307
3 Physicians or other licensed professionals

General Inpatient Pediatrics

701 Grove Rd., 29605

13 Physicians or other licensed professionals

Pediatric Intensive Care

701 Grove Rd., 5th Floor, 29605

4 Physicians or other licensed professionals

Pediatric Nephrology & Hypertension

200 Patewood Dr., Ste. A115, 29615

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

2000 E. Greenville St., Ste. 3500, Anderson, 29621

2 Physicians or other licensed professionals

Pediatric Neurology

200 Patewood Dr., Ste. A350, 29615

11 Doctors Park Dr., Ste. 200, Spartanburg, 29307

200 Booker Dr., Walhalla, 29691

5 Physicians or other licensed professionals

Pediatric Neurosurgery

105 Doctors Dr., 29605

2 Physicians or other licensed professionals

Newborn Pediatrics

701 Grove Rd., 6th Floor, 29605

1 Physician or other licensed professional

Pediatric Pulmonology

200 Patewood Dr., Ste. A300, 29615

1 Physician or other licensed professional

Pediatric Sleep Medicine/Center for Pediatric Sleep Disorders

200 Patewood Dr., Ste. A200, 29615

2 Physicians or other licensed professionals

Pediatric Surgery

890 W. Faris Rd., Ste. 440, 29605

4 Physicians or other licensed professionals

Pediatric Urology

200 Patewood Dr., Ste. A115, 29615

3 Physicians or other licensed professionals

Carolina Pediatrics of Greenville
200 Patewood Dr., Ste. A120, 29615
7 Physicians or other licensed professionals

Center for Pediatric Medicine
20 Medical Ridge Dr., 29605
11 Physicians or other licensed professionals

Pediatric Rapid Access
57 Cross Park Ct., 29605
4 Physicians or other licensed professionals

The Children's Clinic
1350 Cleveland St., 29607
727 S.E. Main St., Ste. 100, Simpsonville, 29681
325 Medical Pkwy., Ste. 150, Greer, 29650
9 Physicians or other licensed professionals

Christie Pediatric Group
9 Mills Ave., 29605
3911 S. Hwy. 14, 29615
(In November, a new location opens at:
1409 W. Georgia Rd., Ste. A, Simpsonville, 29680)
10 Physicians or other licensed professionals

Heritage Pediatrics & Internal Medicine
727 S.E. Main St., Ste. 320, Simpsonville, 29681
3 Physicians or other licensed professionals

Pediatric Associates-Easley
800 N. A St., Easley, 29640
10 Physicians or other licensed professionals

Pediatric Associates-Greer
554-C Memorial Dr. Ext., Greer, 29651
3 Physicians or other licensed professionals

Pediatric Associates-Spartanburg
1686 Skylyn Dr., Ste. 201, Spartanburg, 29307
9 Physicians or other licensed professionals

PSYCHIATRY & BEHAVIORAL MEDICINE

The Brownell Center
701 Grove Rd., 29605
12 Physicians or other licensed professionals

RADIOLOGY

1210 W. Faris Rd., 29605
40 Physicians or other licensed professionals

SURGERY

Bariatric Surgery (adolescent & adult)
2104 Woodruff Rd., 29607
4 Physicians or other licensed professionals

Breast Health Center
200 Patewood Dr., Ste. 14A, 29615
9 Physicians or other licensed professionals

Cardiothoracic Surgery
890 W. Faris Rd., Ste. 550, 29605
7 Physicians or other licensed professionals

Colon & Rectal Surgery
60 Bear Dr., 29605
5 Physicians or other licensed professionals

1690 Skylyn Dr., Ste. 140, Spartanburg, 29307
2 Physicians or other licensed professionals

Endocrine Surgery
200 Patewood Dr., Ste. B260, 29615
2 Physicians or other licensed professionals

General Surgery
35 Medical Ridge Dr. (Cross Creek), 29605
325 Medical Pkwy. Ste. 250, Greer, 29650
200 Patewood Dr., Ste. B260, 29615
727 S.E. Main St., Ste. 130, Simpsonville, 29681
1690 Skylyn Dr., Ste. 140, Spartanburg, 29307
17 Physicians or other licensed professionals

The Hernia Center
2104 Woodruff Rd., 29607
2 Physicians or other licensed professionals

Minimal Access Surgery
2104 Woodruff Rd., 29607
4 Physicians or other licensed professionals

Oncology and Thoracic Surgery
890 W. Faris Rd., Ste. 320, 29605
4 Physicians or other licensed professionals

890 W. Faris Rd., Ste. 510, 29605
1 Physician or other licensed professional

OPHTHALMOLOGY

Carolina's Eye Care
515 A W. Butler Rd., Mauldin, 29607
1 Physician or other licensed professional

OTOLARYNGOLOGY

Greenville Ear, Nose & Throat
200 Patewood Dr., Ste. B400, 29615
11 Physicians or other licensed professionals

Plastic & Reconstructive Surgery
31 Medical Ridge Dr., 29605
3 Physicians or other licensed professionals

Urgent Surgical Evaluation Center

Cardiovascular Risk Reduction
200 Patewood Dr., Ste. C300, 29615
1 Physician or other licensed professional

Endovascular Surgery
200 Patewood Dr., Ste. C300, 29615
7 Physicians or other licensed professionals
Vascular Medicine
200 Patewood Dr., Ste. C300, 29615
4 Physicians or other licensed professionals

Vascular Surgery
200 Patewood Dr., Ste. C300, 29615
Mary Black Hospital Vascular Health Alliance
1690 Skylyn Dr., Ste. 140, Spartanburg, 29307
12 Physicians or other licensed professionals

Vein Center
200 Patewood Dr., Ste. C300, 29615
2 Physicians or other licensed professionals

Wound Care Center
200 Patewood Dr., Ste. C300, 29615
5 Physicians or other licensed professionals

RESIDENCY PROGRAM FACILITIES

Medical Center Clinics (Greenville):
Family Medicine, 877 W. Faris Rd.
Internal Medicine, 701 Grove Rd.
OB/GYN, 1120 Grove Rd., Ste. B
Orthopaedics, 13 Edgewood Dr.
Pediatrics, 20 Medical Ridge Dr.
Plastic Surgery, 700 W. Faris Rd.
Surgery, 13 Edgewood Dr.
Vascular, 13 Edgewood Dr.

Center for Health and Occupational Services
1020 Grove Rd., 29605
2 Physicians or other licensed professionals

EMPLOYEE CARE CENTERS

Greer Memorial Hospital
Hillcrest Memorial Hospital
Patewood Center, Ste. 102
Roger C. Peace Hospital
4 Physicians or other licensed professionals

MD360 Urgent Care
300 Scuffletown Rd., Simpsonville, 29681
5 Physicians or other licensed professionals

8. GHS encompasses locations at:
Greenville Memorial Medical Campus, Greenville
Greer Medical Campus, Greer
North Greenville Medical Campus, Greenville
Patewood Medical Campus
Simpsonville Medical Campus, Simpsonville
Hillcrest Medical Office Buildings, Simpsonville
Hillcrest Memorial Hospital, Simpsonville
University Medical Group Department of Bariatric Surgery, Simpsonville
Baptist Easley Hospital, Easley
- Emergency Centers
MD360 Urgent Care
Life Center
9. GHS provides the following educational programs:
Medical Students – Greenville Campus of the University of S.C. Medical School
Resident Physicians
Residency Programs
Fellowship Programs
Regional/National Presentations
10. The Greenville Health Corporation component of GHS is a not-for-profit South Carolina corporation (GHC Corp.). GHC Corp. owns GHC Health Resources, Inc., a for profit corporation, GHC Development Corporation (GHD), a not-for-profit corporation, and is in joint ventures with other businesses.⁴
11. GHD owns 79% of the common stock of Oncolix, Inc. (ONC),⁵ a private for profit Delaware company.⁶ GHD also owns the for profit South Carolina corporation,

⁴For example, GHS has a 50% interest in a joint venture, Palmetto Alliance – by way of the purchase of Baptist Easley Hospital.

⁵One of the officers of ONC received wages from GHS in the amount of \$3.4 million, \$1.4 million, and \$4.8 million for the years 2008, 2009, and 2010, respectively.

⁶ONC, of which GHS owns a 79% controlling interest, appears to operate in Houston, Texas, as well. Texas has no state individual or corporate income tax requirements. During the period 2006 through the current date, it appears that this company used the physical plant, technology, and employees of the State of South Carolina, through both Clemson University and GHS to develop and test the drug "Prolanta" (a drug developed for the cure of ovarian and breast cancer). The formula was created by Chen Wen, a Professor at Clemson University. In September 2009, Biovectra, Inc., a Canadian Company invested in ONC to develop and market Prolanta – subsequently, Biovectra was purchased by Questcor, Inc. who continues the

Oncology Therapeutics, Inc. (referred to as "GOT"; GHD owns 61% common stock, 100% preferred stock).

12. ONC and GOT provide stock based compensation to employees including awards of restricted stock and stock options.
13. GHS d/b/a GHS, d/b/a UMG Carolina Eye Care (UMG is referenced as "University Medical Group" on the GHS website) (Eye Care) GHS Eye Care, filed an application for exemption from sales tax pursuant to § 12-36-2120(41) with the Department on April 23, 2009.
14. The Department denied this 2009 application for exemption by letter dated May 24, 2009, and subsequently reiterated such denial by Department Determination dated August 12, 2010. Eye Care appealed to the Administrative Law Court (ALC). Prior to a hearing, the parties filed a Motion for Remand, which was granted by the ALC. On remand GHS, or GHS, d/b/a Carolina Eye Care, was to file another application for exemption clarifying the "taxpayer" for whom the sales tax exemption at issue was sought, as well as the tangible personal property sought to be exempted, pursuant to § 12-36-2120(41).
15. On remand, GHS filed an Application for Sales Tax Exemption pursuant to § 12-36-2120(41), "Exempt Organizations," with the Department on May 25, 2011. GHS appears to seek the exemption for all of the entities/affiliates within the "Greenville Hospital System."⁷ The request further notes that such exemption is requested for "food items."
16. The Department denied the requested exemption.
17. GHS timely protested such denial.

Analysis:

GHS applied for an exemption pursuant to § 12-36-2120(41). This subsection exempts from sales tax “items sold by organizations exempt under § 12-37-220(A)(3) and (4) and

commercialization of Prolanta.

⁷GHS's exemption request provides in part: "[t]here are other entities related to Greenville Hospital System which are South Carolina nonprofits that are tax exempt . . . their activities and sales are not relevant to this application." However, given the composition of GHS (i.e., that it is comprised of multiple affiliates, both for profit and not for profit entities), this Determination addresses the information which the Department has available to date regarding its structure. The Department will address any amendments regarding corporate structure that GHS may make in the future, to the extent the request for exemption is amplified or narrowed with regard to the entities requesting same.

(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” (emphasis added). Here, the taxpayer specifically asserts that it is entitled to an exemption under § 12-37-220(A)(4) and (B)(16)(a).⁸

“The language of a tax exemption must be strictly construed against the claimed exemption. TNS Mills v. S.C. Dep’t of Revenue [internal citations omitted].” Home Medical Systems, Inc. v. S.C. Dep’t of Revenue, 382 S.C. 556, 677 S.E.2d 582, 565 (2009). “The burden is on claimants to prove their rights to an exemption by bringing themselves clearly within the conditions imposed by statute. York County Fair Assoc. v. South Carolina Tax Comm’n, 249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967).” TNS Mills v. S.C. Dep’t of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998).

Here, as is more fully explained below, GHS has not obtained from the Department, nor is it eligible for, a property tax exemption pursuant to § 12-37-220(A)(4) and (B)(16)(a). Further, a review of the facts indicates GHS has not shown for sales tax purposes that the “net proceeds are used exclusively for exempt purposes,” and that “no benefit inures to any individual.”

I. GHS is not entitled to the property tax exemptions.

a. GHS is not a trust or foundation. § 12-37-220(A)(4).

Section 12-37-220(A)(4) provides a property tax exemption for: “. . . 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....”

Here, the taxpayer is a “political subdivision” not a “trust” or “foundation.” Further, the related entity that is a “foundation,” Endowment Fund for the Greenville Hospital System, Inc. (formerly, GHS Foundation Inc.), has held an exemption pursuant to § 12-36-2120(41) (granted under predecessor statute, § 12-35-550(48)) since 1990.⁹

b. GHS is not entitled to the property tax exemption provided by § 12-37-220(B)(16)(a).

In the instant case, the taxpayer seeks an exemption for sales/use tax pursuant to § 12-36-2120(41) by asserting that even though it has not received a property tax exemption for its real property pursuant to § 12-37-220(B)(16)(a), it nevertheless qualifies for same, and accordingly is entitled to the § 12-36-2120(41) exemption. A review of § 12-37-

⁸GHS holds a property tax exemption pursuant to § 12-37-220(A)(1) as a political subdivision. The organizations listed in this subsection are not listed among the types of exempt organizations exempt from sales tax by the provisions of § 12-36-2120(41).

⁹See Fn. 3.

220(B)(16)(a) and South Carolina case law applying the same yield a contrary result.

Section 12-37-220(B)(16) (a) provides:

(B) In addition to the exemptions provided in subsection (A), the following classes of property are exempt from ad valorem taxation subject to the provisions of § 12-4-720:

(16)(a) The property of any religious, charitable, eleemosynary, educational, or literary society, corporation, 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, or association and no profit or benefit therefrom inures to the benefit of any private stockholder or individual.

(emphasis added). Similar language in § 12-37-220(B)(12) has been addressed by the South Carolina Court of Appeals.¹⁰ In Hibernian Society v. Thomas, 282 S.C. 465, 319 S.E.2d 339 (Ct. App., July 16, 1984), the Court of Appeals outlined the criteria for the parameters of this exemption as follows:

- (1) That it is a fraternal [here GHS must show that it is a "charitable"] organization.
- (2) That the Hall [here, yet unnamed, undesignated GHS properties] is used primarily for the holding of the Society's [GHS] meetings and the conduct of its business.
- (3) That no profit or benefit from such business shall inure to the benefit of any private stockholder or individual.

Id. at 342. The taxpayer here has not met each of the criteria required and accordingly is not eligible for the §12-37-220(B)(16)(a) property tax exemption.¹¹

¹⁰Section 12-37-220(B)(12) provides an exemption from ad valorem property tax as follows:

The property of any fraternal society, corporation or association, when the property is used primarily for the holding of its meetings and the conduct of its business and no profit or benefit therefrom shall inure to the benefit of any private stockholders or individual.

¹¹To the extent that the GHS exemption request at issue includes the prior request for exemption as to Eye Care, it too is denied as set forth above. The basis for denial, as set forth in the Department Determination dated August 12, 2010, is incorporated as if set forth herein verbatim.

i. Is the taxpayer a charitable corporation?

"South Carolina law does not provide a precise definition of [charitable.] However, the object and effect of any charitable gift or activity must be that it confers a public benefit, and that it not be for private profit." 5 S.C. Jur. Charities § 6 (2008) citing Medical Soc. of S.C. v. S.C. Nat'l Bank, 197 S.C. 96, 107, 14 S.E.2d 577, 581 (1941); Smith v. Heyward, 115 S.C. 145, 105 S.E. 275 (1920).

GHS has not shown that it is a charitable organization. Although it is true that it holds a tax-exempt status granted by the IRS,¹² such does not bestow an automatic sales tax

¹²No definition exists for the term "charitable organization" in Title 12, except to the extent addressed in the Internal Revenue Code as adopted by the General Assembly, S.C. Code Ann. § 12-6-40 (Supp. 2012). The term is defined for purposes of corporate solicitation of donations in S.C. Code Ann. § 33-56-170(1) (2006) which provides: "[c]haritable organization" means any organization, institution, association, society, or corporation which is exempt from taxation pursuant to § 501(c)(3) or 501(d) of Title 26 of the United States Code, as amended. That said, the "charitable" component of the exemption is two-fold under the IRC. Treas. Reg. § 1.501(c)(3)-1(a)(1) provides:

In order to be exempt as an organization described in § 501(c)(3) an organization **must be both organized and operated exclusively** for one or more of the purposes specified in such section. If an organization fails to meet either the organizational test or the operation test, it is **not exempt**.

(emphasis added). To that end, a tax-exempt "organization" must meet "five criteria as provided in IRC § 501(c)(3)":

1. It must be organized exclusively for an exempt purpose;
2. It must be operated exclusively for an exempt purpose;
3. It must avoid any private inurement;
4. It must avoid substantial lobbying;
5. It must avoid any political activity.

The organizational **and** operational requirements also require exclusivity, tax exempt purpose, and keeping of various procedural requirements. Courts have added three more criteria: 1. the entity must provide public benefit; 2. the entity must not violate established public policy; 3. the activities must not be illegal. Darryll K. Jones, et al., The Tax Law of Charities and Other Exempt Organizations, et. seq.

Here, given the substantial and intricate composition of GHS, at this time it has not shown that it is a "tax exempt" organization.

exemption on GHS.¹³ Rather, where, as here, the taxpayer received such exemption almost 70 years ago, prior to its acquisition of a multitude of other businesses – both for profit and not for profit, including the research, development, and testing of various drugs and procedures that are then sold in conjunction with private for profit companies, further scrutiny of the activities of each of these is warranted. Such information has not been provided to date. Based on the information received to date, GHS, as a whole cannot be said to meet the definition of “charitable” as provided in § 12-37-220(B)(16)(a).¹⁴

¹³To be considered as “automatically” qualified [for the sales tax exemption], an organization must meet all of the above requirements and file Form ST-387. **However, it should be noted that this “automatic” qualification has been established to simplify the issuance of a certificate. If it is determined that an organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, then the certificate will not be issued or will be revoked if previously issued.**

(bold in the original) – S.C. Rev. Proc. # 03-6.

¹⁴Instructive on the characteristics of a tax-exempt healthcare organization is the article, “Fact Sheet: Attributes of Tax-Exempt Healthcare Organizations,” originally published by the Healthcare Financial Management Association (HFMA) in March, 2006. See also the update in 2012, at www.hfma.org – “Final Report: Tax-Exempt Status of Institutional Healthcare Providers.” This Fact Sheet provides ten component parts/attributes of a “charitable” healthcare organization which are as follows:

1. **Mission to provide Community Benefit:** Mission is a cornerstone of granting tax-exemption. According to federal law, the tax-exempt provider must have a clearly defined mission statement committing the institution to charitable endeavors. Both the institution’s historical background and the community’s needs are important in determining the mission statement.
2. **Use of Financial Surpluses.** No individual may receive any portion of a tax-exempt institution’s financial surpluses as a result of ownership. Both federal and state laws require that all financial surpluses must go toward furthering the organization’s charitable purpose. Compensation arrangements must be carefully constructed to reflect fair market value for services rendered.
3. **Accountability.** The organization’s board of trustees must hold itself answerable to its community for

-
- maximizing the entity's contribution to the community.
4. **Goodwill.** Goodwill is an intangible attribute that characterizes exempt hospitals that have successfully provided care and met their community responsibilities over a long period of time. Such organizations usually have stable ownership and governance structures and regularly receive significant philanthropic and volunteer support.
 5. **Provision of Charity Care.** Free or discounted care is an important component of many hospitals tax-exempt missions, but is not the only function that hospitals perform to merit tax-exempt status. Organizations that provide charity care must establish and communicate a clear charity care policy based on community needs and input. The policy should include easy-to-understand, written eligibility criteria.
 6. **Reduction of Government Burden.** Many tax-exempt hospitals provide services that government otherwise would have to provide. Services especially demanded from tax-exempt healthcare providers include high-technology, high-intensity services, emergency care, chronic care, long-term care, and unprofitable services.
 7. **Provision of Essential Healthcare Services.** Tax-exempt healthcare providers are often the sole providers of healthcare services that are so essential to community health that tax-exempt status is warranted. Examples of essential services include emergency rooms and outpatient clinics serving low-income patients.
 8. **Provision of Unprofitable Services.** The provision of unprofitable services is commonly a provider charitable response to a community need. Unprofitable services in this sense lose money because of high costs combined with low volume or inadequate payment rather than inefficient operations. Common examples of unprofitable services include burn, neonatal, and trauma centers and community mental health centers.
 9. **Public Education.** Teaching institutions are exempt because of their role in the advancement of education and science. Most exempt healthcare providers, however, also provide many educational programs to enhance public health, such as public health education, wellness programs, and the sponsorship of educational activities.
 10. **Serving Other Unmet Human Needs.** Some exempt

hospitals provide important services that are tangential to health care but that are not met by any other entity in the service area. Examples include senior citizen educational and outreach programs, care for “boarder” babies, or “meals on wheels” programs.

Other jurisdictions have used a similar rubric to determine, on a case by case basis, whether a hospital/healthcare organization is “charitable”. For example, in Provena Covenant Medical Center v. Illinois Dept. of Revenue, 236 Ill.2d 368, 925 N.E.2d 1131 (March 10, 2010), the court denied Provena a property tax exemption based on the application of a statute with language similar to that in this case (35 Il. C.S. 200/1-1 (West 2002)) on 43 parcels owned by Provena. The court stated “with very limited exception, the property was devoted to the care and treatment of patients in exchange for compensation through private insurance, Medicare and Medicaid, or direct payment from the patient or patients’ family.” Id. at 397. The court applied the following criteria to make this determination:

1. The organization has no capital, capital stock or shareholders,
2. The organization has no earnings, profits or dividends, rather, it derives its funds mainly from private and public charity and holds them in trust for the purpose expressed in the charter;
3. The organization dispenses charity to all who apply for it and need it;
4. The organization does not provide gain or profit in the private sense to any person connected with it; and
5. The organization does not appear to place any obstacles in the way of those who need and would avail themselves of the charitable benefit it dispenses.

Id. at 390, 391. The court found factors 2, 4, and 5 lacking in Provena’s case. The court found that a mere 3.4% of Provena’s funds came from private and public charity. Applying that factor to GHS would yield a similar result. Here, GHS derives less than .7% of its operating revenues from unrestricted contributions, Infra at Fn. 2.

See also Franciscan Communities, Inc. v. Hamer, 2012 Ill. App. 2d 110431 (Aug. 28, 2012), where the court affirmed the administrative law judge’s decision denying the Franciscans a “charitable” property tax exemption because they derived their funds mainly from fees charged with a “view to profit.” (“Salaries were not commensurate with other nonprofits and management fees paid.”), Id. at 724.

For denials of a property tax exemption on similar grounds see also, Central Vermont Hosp. Inc., et al. v. Town of Berlin, 164 Vt. 956, 672 A.2d 474 (December 15, 1995) (Nonprofit home for long-term care denied a property tax exemption even though it was affiliated with a hospital it was not an integral part of the hospital and not entitled to the exemption.), Id. at 478; AHS Hospital v. Town of Morristown, 25 N.J. 374 (Tax Court,

ii. Is GHS real property “used primarily for the holding of its meetings and the conduct of its business”?

The taxpayer also fails to meet the second criterion required for this exemption. Such requires that the taxpayer use the property primarily to “hold its meetings and the conduct of its business.”¹⁵ “The word ‘primarily’ means ‘of first importance’ or ‘principally.’” Malat v. Riddell, 383 U.S. 569 (1966); Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm., 273 S.C. 782, 260 S.E.2d 452 (1979). The Hibernian Society, 319 S.E.2d at 342-343. Here, there is no evidence that GHS uses the property for “its” meetings and for the “conduct of its business,” because to date all real property and locations owned by GHS have not been disclosed to the Department. Further, there may be no limitation on the use of the property if such is leased out to the third parties (that the property is used for charitable purpose, charitable mission of GHS),¹⁶ thus the

May 14, 2010) (Hospital’s property leased to a café conducted for profit not eligible for property tax exemption; conducted for profit as evidenced by the contract between the hospital and café owner splitting profits on a 60/40 basis. Exemption also denied based on the fact that property was leased to private physician practices as the latter were conducted for profit).

Applying both the HFMA factors and those enumerated in the above cases to GHS yields many unanswered questions. For example, the surpluses generated by GHS, to include the for-profit entities; are they strictly/exclusively used for the GHS charitable mission? Here, too, the derivation of such funds appears to be wholly from fees charged for services – contributions are a mere .7% of the operating revenue. Also, are the various compensation packages for the many professionals employed by GHS reflective of their true fair market value? Does GHS reduce the government’s burden? Do all GHS component parts reduce the burden? The professionals compensated with stock of the for-profit entities – is the compensation at fair market value? Clearly, the minority holders of the for-profit entities receive a benefit that inures to those stockholders such that the requirements of this subsection are not met. These, as well as many other questions, remain unanswered due to the lack of information detailing the operations of the various GHS entities provided to date.

¹⁵It should be noted that in determining whether a taxpayer is entitled to the sales tax exemption under Section 12-36-2120(41), where the taxpayer owns no property (and thus would not apply for the applicable property tax exemption, here § 12-37-220(B)(16)(a)) the relevant inquiry for the property tax prong is whether, if the taxpayer did own real property, would it (the taxpayer) be able to show that it would qualify for such property tax exemption. See S.C. S.C. Rev. Proc. 03-6.

¹⁶Another way to view the phrase “conduct of its business” in the context of a “charitable” corporation is by looking at the “unrelated” business income rules for tax-exempt organizations. See 26 U.S.C.A. §§ 511-514 (as adopted by South Carolina pursuant to § 12-6-40).

Income is unrelated to a tax-exempt purpose where (1) there is a trade or business; (2) such trade or business is regularly carried on, and (3) the trade or business is not "substantially related" to the tax-exempt primary purpose. U.S. v. American Bar Endowment, 477 U.S. 105 (1986). As provided in the regulations, the "substantially related" prong focuses on the conduct of such trade or business which does not "contribute importantly" to the tax exempt's purpose. Id.; Treas. Reg. § 1.513-4.

Tax-exempt organizations, in the context of this case, not-for-profit hospitals, are granted exemption by the government because such exempt organizations alleviate the government of the burden of providing their particularized services and products to the general public.

Congress adopted the unrelated business income tax primarily because of its concern with "unfair" competition between tax exempt organizations and taxable business. . . .

As the activity moves further from the [tax exempt's] function and involves products which in general are amply supplied by the private sector . . . sales of these products may only displace taxable businesses in an area where private markets are working effectively.

(Emphasis added).

Excerpts from "Statement of O. Donaldson Chapoton Deputy Assistant Secretary (Tax Policy) Before the Subcommittee on Oversight of the Committee on Ways and Means, U.S. House of Representatives" as cited in The Tax Law of Charities and Other Tax Exempt Organizations, at pp. 716-717. Moreover, taken to the farthest extreme, unrelated business may so overtake an organization's primary purpose such that "the unrelated business could supplant the organization's exempt function as its primary purpose" thus resulting in the organization's loss of its tax exempt status. Id. at 723 (addressing I.R.C. § 501(c)(3)'s requirement that an organization may operate a business where "it is a substantial part of its activities so long as the operation of the business is in furtherance of the organization's exempt purpose and the organization is not organized or operated for the primary purpose of carrying on an unrelated business." Id. at 722).

In the instant case, many of the activities engaged in by GHS may well be "unrelated." As provided in Internal Revenue Service Publication 598, the following examples are noted as "unrelated," however, this list is not exhaustive:

Pg. 7 Laboratory testing performed by a non-teaching hospital on referred specimens from private office patients of staff physicians is an unrelated trade or business if these services are otherwise available in the community.

An exempt scientific organization enjoys an excellent

limitation required by this criteria may not be met at this time. See 1972 S.C. Op. Atty. Gen. No. 3344: "[T]he overall use of the property must be reviewed including specifically whether the same is limited as provided in the statute." (emphasis added).

iii. Does profit or benefit inure to the benefit of any individual or stockholder?

The derivation of this requirement was also addressed in The Hibernian Society. The Court stated:

In enacting this particular condition ["no profit or benefit therefrom inures to the benefit of any private stockholder or individual"], the legislature intended, we believe, to stop the flow of any direct or indirect commercial benefits to the *individual members* ["private stockholder or individual"] of the Society, see Harding Hospital v. United States, 505 F.2d 1068 (6th Cir.1974), as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a group.

(emphasis in original).

Here, there is no question but that commercial benefit, direct or otherwise, generated by

reputation in the field of biological research. It exploits this reputation regularly by selling endorsements of laboratory equipment to manufacturers. Endorsing laboratory equipment does not contribute importantly to the accomplishment of any purpose for which exemption is granted to the organization. Accordingly, the sale of endorsements is an unrelated trade or business.

Additionally, although it is true that research income, as a general rule, is excluded from the definition of "unrelated business income," "research, for this purpose, does not include activities of a type normally conducted as an incident to commercial or industrial operations, such as testing or inspecting materials or products, or designing or constructing equipment, buildings, etc." In addition, the term "fundamental research" does not include research conducted for the primary purpose of commercial or industrial application." Id. at p. 10.

GHS has laboratories, laundries and conducts research and testing, among others "Prolanta" by ONC in particular. Do these activities "contribute importantly" to GHS's exempt purpose removing such income from "unrelated business income" category? More importantly, however, is the question of whether the activities of GHS are substantially related to its exempt purpose such that it retains its exempt tax status under I.R.C. § 501(c)(3).

the activities of the GHS controlled for-profit entities, ONC and Oncology Therapeutics, (perhaps others), provide benefits that inure to private stockholders, Biovectra, Questcor, and employees compensated with the stock of such corporations.

Based on the foregoing, GHS is not eligible for the property tax exemption at § 12-37-220(B)(16)(1), accordingly GHS is not eligible for the sales/use tax exemption requested by GHS pursuant to § 12-36-2120(41).

II. GHS is not entitled to the sales tax exemption provided by § 12-36-2120(41).

Even assuming *arguendo* that GHS is eligible for such property tax exemption, its request for sales tax exemption must be denied because it fails to meet the requirements of the sales tax exemption statute, § 12-36-2120(41). Here, GHS has not shown that the “net proceeds are used exclusively for exempt purposes” and that no benefit inures to any individual.

The sales tax exemption at issue here, § 12-36-2120(41), at first glance, appears quite broad for “organizations” that meet the requirements for the enumerated property tax exemptions noted therein. However, this provision has two very limiting criteria. First, the net proceeds must be “used exclusively for exempt purposes.” Secondly, no benefit may inure to any individual. GHS does not meet either of these criteria.

a. The net proceeds must be used exclusively for exempt purposes.

To date, GHS has offered no evidence that its “future” sales will be used exclusively for exempt purposes. For example, given GHS’s controlling interest in for-profit private companies, as well as not-for-profit companies owning both for-profit and not-for-profit companies, the exclusivity criteria has not been met. See Provena, *Infra*.¹⁷

¹⁷ As the Provena court noted:

[W]hen the law says property must be exclusively used for charitable or beneficent purposes, it means that charitable or beneficent purposes are the primary ones for which the property is utilized, secondary or incidental charitable benefits will not suffice nor will it be enough that the institution professes a charitable purpose or aspires to using its property to confer charity on others.

Provena at 394 (emphasis added).

The court also stated:

[S]tatements of the agents of an institution and the wording of its governing legal documents evidencing an intention to use its property exclusively for charitable purposes will not

b. Benefit inures to an individual.

As noted *infra*, the phrase “inure to the benefit” has been addressed by the South Carolina Court of Appeals. In Hibernian, the Court noted:

In enacting this particular condition [“no profit or benefit therefrom inures to the benefit of any private stockholder or individual” (B)(16)(a) specifically states “**any individual**”], the legislature intended, we believe, to stop the flow of any **direct or indirect commercial benefits to the individual members** [“**private stockholder or individual**”] of the Society, see Harding, as opposed to the benefits which inherently and customarily flow to the members of a fraternal organization as a group.

(emphasis added).

The Hibernian Court focused on the plain language of the exemption provision (§ 12-37-220(b)(12)) “inure to the benefit of any private stockholder or individuals” by stating that this provision was to stop the flow of any direct or indirect commercial benefits to individual members. Here the relevant inquiry is as provided by the language “**no benefit inures to any individual** [§ 12-36-2120(41)]” whatsoever, which has not been met in this case. On its face, and absolutely, this tax exemption provision forbids **any** benefit to **any** individual as opposed to the smaller subset of “private stockholder or individual.” Under the Hibernian inquiry, GHS benefits inure to the employees compensated with the stock of the for-profit entities, GOT and ONC.¹⁸ Furthermore, the minority stockholders of these entities receive the benefits of these companies or may

relieve such institution of the burden of proving that its property is actually and factually is so used.”

Id. at 395.

¹⁸ An organization is not organized or operated exclusively for ... [an exempt purpose]...unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized or operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly by such private interests.

I.R.C. § 501(c)(3)(1)(d)(1)(ii). See United Cancer Council v. Comm’r., 65 F.3d 1173 (7th Cir. 1999), finding no diversion of the tax-exempt revenues to “members of the board or other insiders.” However, the language in South Carolina’s sales tax exemption provision, § 12-36-2120(41), is broader than I.R.C. § 501(c)(3) prohibiting private benefit to “any individual” at all.

receive the benefits in the future through dividends, sales, other commercialization of the intellectual, or other property developed.

Conclusion:

Exemption statutes are construed narrowly and the taxpayer bears the burden of bringing itself squarely within the parameters of the authorizing exemption statute. In this case, GHS has failed to carry that burden, accordingly, the requested sales/use tax exemption is denied.

October 4, 2013

CERTIFICATE OF SERVICE

I hereby certify that I, Frank W. Cureton, on the 1st day of November, 2013, in Columbia, South Carolina, served a copy of the foregoing Notice of Request For Contested Case Hearing on all parties to this matter by depositing the same in the United States mail, first class postage paid, and addressed as follows:

Carol I. McMahan, Esq.
Counsel for Litigation
South Carolina Department of Revenue
Post Office Box 12265
Columbia, South Carolina 29211

Date: November 1, 2013



Frank W. Cureton

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Greenville Hospital System,	)	Docket No. 13-ALJ-17-0523-CC
	)	
Petitioner,	)	PETITIONER'S
vs.	)	SUPPLEMENTAL
	)	PRE-HEARING STATEMENT
South Carolina Department of Revenue,	)	
	)	
Respondent.	)	

1. The nature of this proceeding:

This is a state tax case. The Petitioner is appealing from a final agency determination by the South Carolina Department of Revenue. A stand-alone activity of the Petitioner (the provision of services by an ophthalmologist and an optician and related sales of eye glasses) had received notices that it should be collecting and remitting sales tax. The Petitioner believed it qualified for the sales tax exemption and, to confirm same, applied for the sales tax exemption found in S.C. Code Ann. § 12-36-2120(41) which provides for a sales tax exemption on items sold by organizations exempt from property tax under any one or more of the following sections of the South Carolina Code Ann. §§ 12-37-220(A)(3) and (4) and (B)(5), (6), (7), (8), (12), (16), (19), (22), and (24). The initial application was filed and indicated that "Greenville Hospital System d/b/a GHS UMG Carolina Eye Care" was the applicant. The application was denied and appeal was made to the Administrative law Court in 10-ALJ-17-0677-CC. The parties agreed to remand in order to clarify that the Petitioner, Greenville Hospital System, is the organization which believed itself qualified for the sales tax exemption (as opposed to a lone activity) and, further, to allow the Respondent to review the application in that light. The Respondent then denied the exemption and the Petitioner is appealing from that final agency determination.

For further information, the Petitioner changed its name on June 13, 2013 to Greenville Health System, but for consistency will be referred to herein using its previous name.

The simple matter before the Court is that the Petitioner is appealing the Respondent's final agency determination because the Petitioner qualifies for the sales tax exemption found in S.C. Code Ann. § 12-36-2120(41).

2. The statutory provision(s) conferring subject matter jurisdiction to the Administrative Law Court and other applicable statutes and regulations:

The Petitioner is contesting the final agency determination of Respondent. Petitioner has exhausted its other remedies. Respondent notified the Petitioner that, if the Petitioner disagreed

with the Respondent's decision, the Petitioner had the right to request a contested case hearing in the Administrative Law Court. Applicable code sections include S.C. Code Ann. §§ 12-60-460 and 1-23-310 et seq. This is a hearing regarding a "contested case" as defined in S.C. Code Ann. § 1-23-505. S.C. Code Ann. § 1-23-600 provides that the Administrative Law Court will preside over contested cases.

3. The issues to be presented for determination, including any claims or defenses expected to be raised:

The Petitioner is entitled to the sales tax exemption found in S.C. Code Ann. § 12-36-2120(41) because the Petitioner is an organization which is entitled to exemption from property taxation under Section 12-37-220(A)(4) and (B)(16)(a). The granting of the exemption may allow for very small refunds of sales tax assessed by the Respondent and collected by the Respondent from the Petitioner.

In the original action before this Court (10-ALJ-17-0677-CC), as a peripheral issue, the Respondent seemed to assert issues related to sales of eye glasses by ophthalmologist, as well as by an optician. The taxpayer agrees that if an *ophthalmologist* furnished, replaced, or repaired eye glasses or other ophthalmic materials in connection with his services, the regulations at 27 S.C. Code Regs. 117-308.7 state that the taxpayer should pay sales tax to its supplier for consuming the materials so used. (Similar services provided by an *optician*, however, would not have this result.) In any event, eye glasses are no longer being sold by Petitioner, and the parties apparently agree on the applicable law as to who is the seller of eye glasses, rendering those issues irrelevant. The substantive issue remains whether or not the taxpayer is entitled to the sales tax exemption found in S.C. Code Ann. § 12-36-2120(41) which exempts from the imposition of sales tax any sales made by the taxpayer to the general public.

4. A brief summary of the facts to be presented at the hearing:

The Greenville Hospital System has a dual tax status in the eyes of the law: it is both a governmental entity and a charitable organization exempt from income tax under Internal Revenue Code § 501(c)(3). The Greenville Hospital System was created by an act of the South Carolina General Assembly. In addition, the Greenville Hospital System has also been recognized by the Internal Revenue Service as a tax-exempt charity under Section 501(c)(3) of the Internal Revenue Code. The Greenville Hospital System may be one of only a few taxpayers in the State of South Carolina with this "dual" income tax status. Most governmental entities are exempt from income taxation under Internal Revenue Code Section 115 (the exemption for governments) but a few state political subdivisions or agencies, most often hospitals, are also able to qualify for tax-exempt status as a charity under Section 501(c)(3) of the Internal Revenue Code. The Greenville Hospital System is both governmental and a 501(c)(3) charity.

Because the Greenville Hospital System is a Section 501(c)(3) charity, it is not only entitled to property tax exemption as a political subdivision under Section 12-37-220(A)(1) or as a hospital under 12-37-220(A)(2), but it is also expressly entitled to property tax exemption under Section 12-37-220(A)(4) and Section 12-37-220(B)(16)(a) – the property tax exemptions for charitable organizations.

By qualifying for the property tax exemption under either Section 12-37-220(A)(4) and Section 12-37-220(B)(16)(a), the Greenville Hospital System is therefore entitled to the sales tax exemption under Section 12-36-2120(41).

In order to meet the standard of Section 12-37-220(A)(4), the taxpayer must simply be a charitable trust or foundation. In order to meet the standard of Section 12-37-220(B)(16)(a), the taxpayer must simply be a religious, charitable, eleemosynary, educational, or literary society, corporation, or other association. The Greenville Hospital System meets both. With respect to Section 12-37-220(A)(4), the taxpayer is clearly a charitable and eleemosynary organization – as is evidenced by its 501(c)(3) letter. The term “foundation” does not have a specific legal definition, but rather is typically used as a generic term to describe a charitable entity. Because the Petitioner is a charitable entity, it is included under Section 12-37-220(A)(4). With regard to Section 12-37-220(B)(16)(a), the Petitioner is again charitable and must be a “society, corporation, or other association.” “Society” does not have a specific legal definition, but the terms “corporation” and “association” would essentially include any organization or entity since a corporation is an organization which is formally “incorporated” and an association is an unincorporated organization. In this case, the Petitioner is expressly authorized to adopt a corporate seal and bylaws, thus having corporate existence. IRS Treasury Regulation Section 301.7701-2(b)(1) states that such an entity is, for tax purposes, a corporation. Of course, the Petitioner has been granted tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

The provision of health care by a hospital has for many years been recognized as a charitable endeavor. See, e.g., Harter v. Johnson, 112 S.C. 96, 115 S.E.217 (1922). The Petitioner easily meets whatever standard is used in determining that it is charitable. As a practical matter, the only test that the Respondent uses in order to determine whether an organization is “charitable” for purposes of Section 12-37-220(A)(4) or 12-37-220(B)(16)(a) is whether or not the organization has a 501(c)(3) letter from the Internal Revenue Service. Having such a letter is de facto proof that the entity is charitable.

Section 12-36-2120(41) also requires that the net proceeds of sales be used exclusively for exempt purposes and that no benefit inures to any individual. The Petitioner, by virtue of the fact that it has no shareholders or owners, inherently uses the proceeds of its sales only to serve the exempt purposes of the organization. No benefit inures to any individual because no private employee or other person enjoys the proceeds of these sales. In addition, possession of a 501(c)(3) letter constitutes prima facie proof that an organization uses its assets exclusively for exempt purposes and that no benefit inures to any individual, because those elements are required in order to maintain the organization’s status as tax-exempt under Section 501(c)(3) of the Internal Revenue Code. The concept that an organization’s assets are deemed to be exclusively used for exempt purposes and that no benefit inures to any individual, if one holds a 501(c)(3) letter, is found in SC Revenue Procedure #03-6, where it states that “[S.C. Code Ann 12-36-2120(41)] does not require that an organization be exempt from Federal income tax under Internal Revenue Code Section 501(c)(3) or (19); however, the purpose of this provision [being exempt under Section 501(c)(3) or (19)] is to meet the requirement that the organization’s net proceeds must be used for an exempt purpose and to insure that no benefit inures to any individual.”

The Respondent, in its final determination, also appears to impute the actions of other entities to the Petitioner. The Petitioner is a hospital and its primary activities are those that would be conducted by a hospital. It operates hospital facilities such as "Greenville Memorial Hospital," "Patewood Memorial Hospital," "Hillcrest Memorial Hospital," "Greer Memorial Hospital," "North Greenville Hospital" and "Laurens County Memorial Hospital." There are a number of other South Carolina nonprofit corporations which are tax-exempt under Section 501(c)(3) of the Internal Revenue Code; these other entities conduct activities which may be ancillary to those of a hospital. For example, one of these is GHS Partners in Health, Inc., which was inaccurately described in the department determination as a "for profit" corporation. GHS Partners in Health, Inc., a separately-incorporated legal entity which is a charity which is tax-exempt under 501(c)(3), operates physician offices described on page 3 to 15 of the department determination. It is the employer of physicians in the overall delivery of medical care. Greenville Health Corporation, also a charitable nonprofit corporation, conducts activities such as "Equipped For Life" and "Upstate Medical Pharmacies" and "Mobile Care Ambulances Services" and the "Lifeline" program. The Endowment Fund of the Greenville Hospital System, Inc. is also a nonprofit corporation, with a 501(c)(3) letter, and it holds and administers the endowment funds which support the mission of the Petitioner. A final example of a somewhat related entity is the GHC Research Development Corporation, which too is a nonprofit corporation, with a 501(c)(3) letter, and this entity holds and develops intellectual property and supports medical research activities. There are three "for profit" entities. GHC Health Resources, Inc., owned by Greenville Health Corporation, owns certain properties and leases them. Oncolix, Inc. is a Delaware "for profit" corporation – GHC Research Development Corporation holds controlling interest – and it commercially utilizes intellectual property and provides related services. Last is Greenville Oncology Therapeutics, Inc. – GHC Research Development Corporation holds controlling interest – and this entity also commercially utilizes intellectual property and provides related services. The activities of these separate corporations are not the activities of the Petitioner.

5. The action requested of the Court and a detailed statement of the law which supports the requested action, including statutory and/or case citations:

Petitioner respectfully submits that the Court should rule that the Petitioner is entitled to the sales tax exemption under Section 12-36-2120(41).

The Petitioner is qualified to receive the property tax exemption under either or both of Sections 12-37-220(A)(4) and Section 12-37-220(B)(16)(a) and its therefore also entitled to the sales tax exemption under Section 12-36-2120(41).

In its final determination, the Respondent suggests that because the Petitioner is "primarily" a government entity (which is exempt from property under S.C. Code Ann. § 12-37-220(A)(1), a provision not referenced by S.C. Code Ann. § 12-36-2120(41)), the Petitioner cannot qualify for a sales tax exemption, even though the Petitioner is also a charitable organization that would qualify for a property tax exemption under S.C. Code Ann. § 12-37-220(A)(4) and (B)(16)(a). The Department, however, has expressly recognized that entities which enjoy property tax exemption for multiple reasons, including reasons that do not also qualify for sales tax exemption, are entitled to sales tax exemption under S.C. Code Ann. § 12-36-2120(41) so long as they are also

entitled to property tax exemption under Section 12-37-220(A)(4) or 12-37-220(B)(16)(a) as one of the multiple reasons. See SC Revenue Procedure #03-6. A specific example cited by the Respondent in SC Revenue Procedure #03-6 is the example of private schools. Private schools, along with governments, hospitals, and museums, all are categories of organizations which enjoy a specific property tax exemption under Section 12-37-220 but those specific categories are not listed in Section 12-36-2120(41), the sales tax exemption statute. SC Revenue Procedure #03-6 expressly states, however, that:

some of these organizations may also qualify for a property tax exemption [which is] listed in 12-36-2120(41). For example, a private school may also qualify for the property tax exemption under S.C. Code Ann. § 12-37-220(B)(16)(a) established for certain religious, charitable, eleemosynary or educational organizations.

SC Revenue Procedure #03-6 states clearly, as an example of how the statute is to be read, that a private school which is also a charitable organization (meaning that it has a 501(c)(3) letter) would be entitled to the sales tax exemption for charitable organizations even though the sales tax exemption statute omits the specific exemption for private schools.

The law and the Respondent's own policies support this finding because the only standard used by the South Carolina Department of Revenue in determining whether or not an organization is charitable is whether or not it has a 501(c)(3) letter from the IRS. See SC Revenue Procedure #03-6, which states that an organization is "automatically eligible" for the sales tax exemption certificate if it is "selling tangible personal property; exempt from property tax under one of the property tax code sections listed in [S.C. Code Ann. §] 12-36-2120(41); and ... [e]xempt from Federal income tax under Section 501(c)(3)." (The ruling does go on to state that the automatic qualification was established to simplify the approval process but if it is determined that the organization does not meet the requirements of the statute or is not otherwise operating in an exempt manner, the certificate will not be issued; such should not apply to this Petitioner.) In this case, the Petitioner is organized and operating in a manner which qualifies it as a tax-exempt charity.

Although the South Carolina income tax code, at S.C. Code Ann Section 12-6-40, states that the federal Internal Revenue Code, including Section 501(c)(3), is to be followed by South Carolina (unless a code section is specifically not adopted), the Respondent seems to be challenging the charitable status of the Petitioner by its own independent review of what the Respondent perceives should be determined to be charitable activities, or, alternatively, the Respondent is challenging whether the Petitioner's funds are used for charitable purposes. No hospital and few charities would qualify as "charitable" if the Respondent imposes a prohibition on charging some fee for providing services or admissions. Most charities would go out of business if they did not consider ways to make money. Hospital services cannot be rendered by a hospital except through paid medical personnel. Similarly, the Respondent seems to be suggesting that money must be given away in order for the taxpayer to be determined charitable; most charities do not give away money but rather conduct the charitable activities and operations themselves. Many non-hospital charities earn revenues from their charitable operations (YMCAs, museums, any entity with a large dues base or with a large admissions base) – and deriving revenues from the

provision of charitable services or activities is expressly permitted (and even encouraged) by the Internal Revenue Code provisions relating to charities.

6. A summary of any motions expected to be raised at the hearing and the appropriate authority underlying the motion:

None expected.

7. A list of proposed witnesses and exhibits:

- (1) Kevin Hodge, Director of Financial Operations, Greenville Health System
- (2) David Demary, Supervisor, SC Department of Revenue

Petitioner reserves the right to add witnesses and exhibits to this list in the future.

Exhibits include the Petitioner's 501(c)(3) letter (previously submitted to the Respondent), copies of correspondence between the Petitioner and the Respondent, documents produced by either party in discovery either in this action or in the previous action captioned 10-ALJ-17-0677-CC (which was remanded and which resulted in the determination from which this appeal is taken), and copies of notices of assessment issued by Respondent.

8. A statement regarding the necessity for discovery, if any:

The Petitioner intends to request discovery with regard to information about sales tax exemptions granted to other charitable taxpayers which qualify for property tax exemptions under multiple categories (such as private schools, governments, hospitals, and museums). The Petitioner will likely utilize Interrogatories and Requests to Produce in order to obtain discovery from the Respondent. The Petitioner will likely depose one or more witnesses identified by the Respondent.

9. Whether the party deems it necessary by the undersigned Judge to conduct a Pre-Hearing Scheduling Conference or issue an order regarding motions, discovery, etc.:

Neither a Pre-Hearing Scheduling Conference nor an order regarding motions and discovery is requested at this time, except as follows:

The Petitioner would like a Pre-Hearing order regarding certain discovery issues. In the previous action captioned 10-ALJ-17-0677-CC (which was remanded and which resulted in the determination from which this appeal is taken), at the time of remand the Petitioner was about to move the Court to compel the Respondent to respond to certain discovery requests. In its responses, Respondent failed to provide full and complete responses to Interrogatory No. 4 and Request for Admissions Nos. 1 and 6. Respondent also failed to produce documents responsive to Request for Production No. 10. In addition, Respondent produced a curriculum vitae for Maribeth Collier, Ph.D. in response to our Request for Production, but a portion of the first page was "blacked out" or redacted.

10. The estimated time required for the hearing:

One day.

11. A range of proposed hearing dates for which all of the parties are available for a hearing on the merits in this case:

Allowing for discovery, the Petitioner anticipates that a hearing could be scheduled in September of 2014 or later. For the month of September of 2014, the Petitioner would be available for a hearing on the merits on any day except for federal holidays during that period.

12. An e-mail address that the Court can use for e-mail correspondence:

FCureton@hsblawfirm.com

MMcLean@hsblawfirm.com

December 20, 2013

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Arthur F. McLean III, Esq. (SC Bar No. 11794)
Frank W. Cureton, Esq. (SC Bar No. 10087)
P.O. Box 11889
Columbia, SC 29211-1889
(803) 779-3080

CERTIFICATE OF SERVICE

I hereby certify that I, Arthur F. McLean, III, on the 20th day of December, 2013, in Columbia, South Carolina, served a copy of the foregoing Petitioner's Pre-Hearing Statement in the matter captioned Greenville Hospital System v. South Carolina Department of Revenue, Docket No. 13-ALJ-17-0523-CC, on all parties to this matter by depositing the same in the United States mail, postage paid, and addressed as follows:

**Carol I. McMahan, Esq.
South Carolina Department of Revenue
Office of General Counsel for Litigation
301 Gervais Street
P.O. Box 12265
Columbia, South Carolina 29211**



Arthur F. McLean, III

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

RECEIVED
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SC Court of Appeals

Greenville Hospital System Appellant,

v.

South Carolina Department of Revenue Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material
proposed to be included by any of the parties and not any other material.



Arthur F. McLean, III, S.C. Bar No. 11794
Frank W. Cureton, S.C. Bar No. 10087
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*Attorneys for Appellant
Greenville Hospital System*

March 5, 2018