

## TAXATION: LICENSE TAXES.

### CONSTITUTION OF VIRGINIA: TAXATION AND FINANCE (EXEMPT PROPERTY).

**Hospital's qualification for local business license tax exemption is based on hospital's form of business organization-gross receipts generated by hospital for types of medical services provided rather than receipts generated at off-site facility. Qualifying hospital does not lose exemption for services provided off-site. Whether off-site facility operated by tax-exempt hospital provides such services is question of fact to be determined by local commissioner of revenue. Exemption for facilities operated by hospital's parent corporation, such as convalescent or retirement center, is not authorized.**

The Honorable Charles D. Crowson Jr.

Commissioner of the Revenue for the City of Newport News

April 19, 1996

You ask whether the exemption from local license taxation in § 58.13703(B)(15) of the *Code of Virginia* is applicable to a hospital's off-site facilities and to facilities operated by the hospital's parent corporation.

You state that a hospital in your jurisdiction operates a number of off-site facilities. These facilities provide various forms of medical testing, treatment and diagnostic services. The hospital indicates that it provides these services off-site, both as a convenience to the community and because of on-site space limitations. The hospital's parent corporation also operates a convalescent center, a retirement center and a laundry facility. You ask which, if any, of these operations is subject to the locality's business license tax.

Section 58.13703(B) prohibits a locality from imposing a business license tax on certain types of businesses and business activities. Section 58.13703(B)(15) prohibits a local business license tax on a hospital if two requirements are met: (1) the hospital is "not organized or conducted for pecuniary profit"; and (2) "by reason of its purposes or activities," the hospital is exempt from federal income tax.

The primary purpose of statutory construction is to discern and give effect to the intent of the legislature.<sup>1</sup> Section 58.13703(B)(15) contains no language suggesting an intent to confine the exemption to the revenues generated at the site of the primary hospital facility.<sup>2</sup> Rather, the requirements to qualify for the exemption are based on the form of business organization of a hospital, suggesting an intent to encompass the gross receipts generated *by* the hospital as an organization rather than the receipts generated *at* a particular facility. Accordingly, it is my opinion that a qualifying hospital does not lose the exemption provided by § 58.13703(B)(15) for services provided off-site.

It is further my opinion, however, that § 58.13703(B)(15) does not exclude from taxation all services provided off-site by a qualifying hospital. Other than the exemption for "hospitals" in § 58.13703(B)(15), § 58.13703(B) contains no exemption for nonprofit, tax-exempt organizations providing medical services. The clear legislative intent is that the exemption is to be confined to the types of medical services provided by a hospital rather than by some other type of medical facility, such as a doctor's office.<sup>3</sup>

Whether an off-site facility operated by a tax-exempt hospital is providing such services is a question of fact to be determined by the local commissioner of the revenue.<sup>4</sup> As to other facilities

operated by the hospital's parent corporation, such as a convalescent or retirement center, no language in § 58.13703(B)(15) suggests an intent to exempt such facilities from a locality's business license tax.<sup>5</sup>

<sup>1</sup>*Turner v. Commonwealth*, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983); Op. Va. Att'y Gen.: 1994 at 114, 116; 1991 at 58, 60.

<sup>2</sup>*Compare* § 58.13703(B)(4) (exempting sales at wholesale of manufacturer only if conducted at place of manufacture).

<sup>3</sup>Exemptions from taxation are to be narrowly construed. VA. CONST. art. X, § 6(f) (1971); *Commonwealth v. Wellmore Coal*, 228 Va. 149, 15354, 320 S.E.2d 509, 511 (1984); 1991 Op. Va. Att'y Gen. 274, 275.

<sup>4</sup>See 1994 Op. Va. Att'y Gen. 99, 104 (noting that Attorneys General historically have declined to render opinions making factual determinations involving application of tax statute to business of particular taxpayer; such determinations must be made on case-by-case basis by commissioner of revenue). While the ultimate determination is to be made by the commissioner of the revenue, based on all available facts, it may be relatively clear in certain instances that the services are the type commonly offered by hospitals on-site, such as dialysis, radiology or certain laboratory services; in other instances, the facility may provide only services commonly provided in a doctor's office, such as routine medical examinations.

<sup>5</sup>See 1986-1987 Op. Va. Att'y Gen. 332 (for purposes of property tax exemption, nursing homes and homes for elderly are not classified as hospitals).