



# 2016-033

STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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## Hospital Boards – Lease Tax – Exemptions

A lessor may pass on to a lessee tax-exempt hospital board an amount equal to the lease tax.

Dear Mrs. Smithart:

This opinion of the Attorney General is issued in response to your request on behalf of the Bullock County Hospital Board (“Board”).

### QUESTION

Where taxable personal property is leased by a tax-exempt hospital board, and the lease qualifies as a “capital lease” under established accounting principles, is said property substantially owned by the hospital board and therefore exempt from taxation?

### FACTS AND ANALYSIS

Your request states that the Bullock County Hospital Board leases equipment from General Electric Capital Corporation.

Although the Alabama Department of Revenue (“Revenue”) considers capital leases for the purposes of property taxes rather than lease taxes, neither Revenue nor the Code of Alabama distinguishes a “lease” from a “capital lease” for the purposes of the lease tax found in section 40-12-222 of the Code of Alabama. ALA. CODE § 40-12-222 (2011); *see* ALA. ADMIN. CODE r. 810-4-1-.22(2)(a) (2004) (property tax on capital leases assessed to lessee). Therefore,

the distinction between a “lease” and a “capital lease” is immaterial in the context of the lease tax.

This Office has explained that a lease tax levied against the lessor pursuant to section 40-12-222 is not a consumer tax and, thus, may not be collected from the lessee *as a tax*. Opinion to Honorable George M. Barnett, Attorney, Marshall County Health Care Authority, dated July 7, 1994, A.G. No. 94-00217. As a cost of doing business, however, the lessor may pass on to the lessee an amount equal to the lease tax. *Id.*

Section 40-12-222(b) limits the ability of a lessor to pass on the lease tax to the state, a municipality, or a county. A lessor may pass on the lease tax to those entities only if the flat amount collected by the lessor includes both the tax and the leasing fee. ALA. CODE § 40-12-222(b) (2011). This Office has opined that lessors may pass the economic burden of the lease tax on to state, county, and municipal lessees in a rental charge so long as the lessor does not, by any method of invoicing or bookkeeping, make the lessee a taxpayer and the lessor a tax collector. Opinion to Honorable Jay M. Ross, Mobile County Attorney, dated January 18, 2007, A.G. No. 2007-038.

Moreover, the economic burden of the lease tax may be passed on to the state, county, or municipal lessee if the parties agree that the lessee will pay the lease tax. *Id.* In summary, if the flat amount collected by the lessor includes the tax and the leasing fee, then the lessor may pass on the lease tax to the state, county, or municipal lessee that has agreed to pay the lease tax. *Id.*

The Board, however, is a public corporation organized under sections 22-21-70 through 22-21-83 of the Code of Alabama. ALA. CODE §§ 22-21-70 to 22-21-83 (2015). As such, it is not a state, county, or municipality. *Alabama State Florists Ass’n, Inc. v. Lee County Hosp. Bd.*, 479 So. 2d 720, 725 (Ala. 1985) (holding that a similarly created board is a separate entity from the state or any local political subdivision, including the municipality or county in which it is organized). Accordingly, the limitations in section 40-12-222(b) pertaining to state, municipal, and county lessees do not apply to the Board. Thus, a lessor may pass on the lease tax to the Board regardless of whether the flat amount collected by the lessor includes both the tax and the leasing fee, and regardless of whether the Board has expressly agreed to pay the lease tax.

#### CONCLUSION

A lessor may pass on to a lessee tax-exempt hospital board an amount equal to the lease tax.

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I hope this opinion answers your question. If this Office can be of further assistance, please contact Allen P. Mendenhall of my staff.

Sincerely,

LUTHER STRANGE  
Attorney General

By:

A handwritten signature in cursive script that reads "G. Ward Beeson, III". The signature is written in black ink and is positioned above the printed name.

G. WARD BEESON, III  
Chief, Opinions Section

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