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Honorable L. Bruce Ables
Counsel, Harvest-Monrovia Water
and Fire Protection Authority, Inc.
315 Franklin Street, S.E.
P.O. Box 165
Huntsville, Alabama 35804-0165

Fire Protection Authority – Taxation –
Gross Receipts Tax – Madison County

Pursuant to section 40-21-81 of the Code
of Alabama, the Harvest-Monrovia Water
and Fire Protection Authority, Inc., is not
exempt from the payment of utility gross
receipts tax.

Dear Mr. Ables:

This opinion of the Attorney General is issued in response to your request
on behalf of the Harvest-Monrovia Water and Fire Protection Authority, Inc.

QUESTION

Does the prior exemption from taxation set forth
in section 11-88-16 of the Code, as amended, exempt
the Harvest-Monrovia Water and Fire Protection
Authority, Inc. (the "Authority"), from the payment of
utility gross receipts tax?

FACTS AND ANALYSIS

The Authority was assessed in the amount of \$217,796.29 by the Alabama Department of Revenue for the period of 1996 through 2002. The Authority has taken the position that it is exempt from taxation in the State of Alabama based on section 11-88-16 of the Code, as amended. The tax was assessed under section 40-21-80, *et seq.*, of the Code, as amended.

Section 40-21-82(a) of the Code of Alabama, as amended, states as follows:

There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against every utility furnishing electricity, domestic water or natural gas in the State of Alabama. The amount of said tax shall be determined by the application of rates against gross sales or gross receipts, as the case may be, from the furnishing of such services in the State of Alabama. . . .

ALA. CODE § 40-21-82(a) (1998).

Section 40-21-81 of the Code of Alabama, as amended, states as follows:

Legislative intent. It is the intention of the Legislature of Alabama that the tax herein levied shall apply to all utilities, as defined herein, in the State of Alabama. With respect to every tax exemption which may be enacted into law subsequent to the enactment of this article, there shall be a presumption that such exemption does not apply to the tax herein levied unless the statute containing such exemption shall make a specific reference to this article and shall clearly show a legislative intention to make such exemption applicable to the tax herein levied.

ALA. CODE § 40-21-81 (1998).

Section 11-88-16 of the Code, as amended, was enacted in 1965 (1965 Ala. Acts No. 107, 132, § 15), prior to the enactment of section 40-21-81 of the Code, as amended, which was enacted in 1969. Section 11-88-16 of the Code, as amended, states as follows:

Exemption from taxation of authority and property, leases, bonds, etc., thereof; payment of fees, taxes or costs to probate judge for incorporation, etc.; imposition of license or excise tax upon authority.

The authority, the property and income of the authority, all bonds issued by the authority, the income from such bonds, conveyances by or to the authority and leases, mortgages and deeds of trust by or to the authority shall be exempt from all taxation in the State of Alabama.

The authority shall not be obligated to pay or allow any fees, taxes or costs to the judge of probate of any county in respect of its incorporation, the amendment of its certificate of incorporation or the recording of any document.

No license or excise tax may be imposed on any authority in respect of the privilege of engaging in any of the activities authorized by this chapter.

ALA. CODE § 11-88-16 (1994).

When section 40-21-81 of the Code of Alabama was originally enacted, it contained a phrase that specifically stated that all prior statutes that contained exemptions for certain utilities from all taxation were repealed. Section 40-21-81 stated as follows:

Legislative intent. It is the intention of the Legislature of Alabama that the tax herein levied shall be supplemental to and complementary with the utility gross receipts tax so as to prevent discrimination in the effect of the utility gross receipts tax upon either intra-state or interstate commerce. *It is the intention of the Legislature of Alabama that the tax herein levied shall apply to purchases of utility services from all utilities in the State of Alabama, notwithstanding the fact that legislation heretofore enacted may have exempted certain utilities from all taxation in the State of Alabama, including excise, privilege or license taxes. It is the intention of the Legislature of*

Alabama by this Act to repeal all prior tax exemptions to the extent said exemptions are inconsistent with this Act. With respect to every tax exemption which may be enacted into law subsequent to the enactment of this article, there shall be a presumption that such exemption does not apply to the tax herein levied unless the statute containing such exemption shall make a specific reference to this article and shall clearly show a legislative intention to make such exemption applicable to the tax herein levied.

ALA. CODE § 40-21-81 (1998).

In a 1992 amendment, however, this phrase was removed. 1992 Ala. Acts No. 92-623, 1466. This phrase was removed, not because these prior statutes containing the aforementioned exemptions were no longer repealed, but because certain exemptions remained valid, i.e., payment of state and local gasoline and motor fuel excise taxes. Opinion to Honorable William L. Nix, Counsel, Huguley Water and Fire Protection Authority, dated August 6, 2001, A.G. No. 2001-247. The 1992 amendment did not reinstate all prior exemptions concerning utility taxes.

The universal rule of construction is that exemptions from taxation, whether statutory or constitutional, are to be strictly construed against the exemption and in favor of the right to tax, and that no person or property is to be exempted unless the intention to exempt such person or property clearly appears in some statute or constitutional provision. *See Ex parte Kimberly-Clark Corp.*, 503 So. 2d 304 (Ala. 1987); *Crim v. Phipps*, 601 So. 2d 474 (Ala. 1992).

It is also a well-settled principle of law that, if there is found to be a conflict between certain statutes, the last expression of the legislative will is the law or, in cases of conflicting provisions in the same statute or in different statutes, the last enacted in point of time prevails. *See Axelroth v. Health Partners of Ala., Inc.*, 720 So. 2d 880 (Ala. 1998), *quoting Williams v. State ex rel. Schwarz*, 197 Ala. 40, 54, 72 So. 330, 336 (1916). Therefore, because section 40-21-81 of the Code of Alabama, as amended, was enacted after section 11-88-16 of the Code, as amended, section 40-21-81 of the Code, as amended, prevails.

CONCLUSION

Thus, the exemption in question within section 11-88-16 of the Code of Alabama, as amended, does not exempt the Authority from utility taxation. The exemption is not specifically mentioned in the taxing statute, section 40-21-82 of the Code, as amended, even though the claimed exemption statute was enacted prior to the taxing statute. The removal of a particular phrase from a statute does not change the intention of the Legislature because the Legislature clearly intended to repeal all prior statutes that were inconsistent with this article (Article 3: Utility Gross Receipts Tax). It is also clear that section 11-88-16 of the Code, as amended, is inconsistent with section 40-21-80, *et seq.*, of the Code, as amended, and the later statute (section 40-21-81 of the Code, as amended) prevails.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Carol Jean Smith of my staff.

Sincerely,

BILL PRYOR
Attorney General
By:



CAROL JEAN SMITH
Chief, Opinions Division