STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

VENICE NH, LLC, d/b/a SUNSET
LAKE HEALTH AND REHAB CENTER,

Petitioner,

vs. Case No. 14-0024

AGENCY FOR HEALTH CARE
ADMINISTRATION,

Respondent.
_____/

RECOMMENDED ORDER

On June 6, 2014, the final hearing was held in this case by video teleconference, with sites in Tampa and Tallahassee, before Elizabeth W. McArthur, Administrative Law Judge, Division of Administrative Hearings (DOAH).

APPEARANCES

For Petitioner: Karen A. Brodeen, Esquire
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For Respondent: Peter A. Lewis, Esquire
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STATEMENT OF THE ISSUE

The issue in this case is whether a tax on a warranty deed is an allowable property cost, as claimed in Petitioner's Medicaid cost report.

PRELIMINARY STATEMENT

Following an audit of the initial Medicaid cost report filed by Venice NH LLC d/b/a Sunset Lake Health and Rehab Center (Venice or Petitioner), for the fiscal period ending December 31, 2005, the Agency for Health Care Administration (AHCA or Respondent) issued an audit report with proposed adjustments. Venice timely filed a petition for an administrative hearing involving disputed facts to challenge 17 proposed adjustments. AHCA accepted the petition, and after a protracted period attempting to resolve the dispute, AHCA sent the case to DOAH in January 2014 to conduct the requested hearing.

The hearing was initially set for March 14, 2014, by video teleconference with sites in Tampa and Tallahassee, as requested by the parties. AHCA's unopposed motion for continuance was granted, and the hearing was rescheduled for June 6, 2014.

Prior to hearing, Venice withdrew its challenge to all but one of the proposed adjustments. Remaining in dispute was whether a certain tax paid by Venice when it purchased the nursing facility now known as Sunset Lake Health and Rehab Center (Sunset Lake) is an allowable property cost.

The parties filed a joint prehearing stipulation, in which they stipulated to a number of facts and statements of law, as well as to the expertise of their respective expert witnesses and the admissibility of a number of documents.

At the final hearing, the parties offered Joint Exhibits 1 through 13, which were admitted in evidence. Petitioner presented the testimony of the following witnesses: AHCA employee Steven Diaczyk, stipulated as an expert in Medicaid auditing; and Ronald Swartz, Venice's party representative and chief financial officer of Venice's parent company, stipulated as an expert in health care and Medicaid accounting. Petitioner's Exhibits 1 through 3 were admitted.

Respondent presented the testimony of the following witnesses: Michael Higdon; Petitioner's expert, Ronald Swartz; Roger Beasley; Angela Nicoloso; and AHCA's expert, Steven Diaczyk. Respondent's Exhibits 1 through 3 were admitted.

The one-volume Transcript of the final hearing was filed on June 24, 2014. The filing deadline for proposed recommended orders (PROs) was July 7, 2014. Both parties timely filed PROs, which have been considered in preparing this Recommended Order.

FINDINGS OF FACT

1. Venice operates Sunset Lake, a licensed nursing facility that participates in the Florida Medicaid program as an institutional provider.

2. AHCA is the agency responsible for administering the Florida Medicaid program.

3. On or about June 1, 2005, Venice (or an affiliate, which need not be distinguished from Venice for purposes of this proceeding) purchased the nursing facility that is now known as Sunset Lake from Bon Secours-Venice Healthcare Corporation.

4. Venice filed its initial Medicaid cost report with AHCA for the fiscal period ending December 31, 2005. The initial Medicaid cost report for a nursing facility is used to set the per diem rates at which the Medicaid program will reimburse the facility, both retroactively for the initial period of operations, and prospectively until the next cost report is filed and used to set a new per diem rate.

5. AHCA contracted with an outside auditing firm to audit Venice's initial cost report. The auditing firm produced an audit report, which identified proposed adjustments to Venice's cost report. The audit report was reviewed by AHCA analyst Steven Diaczyk before it was finalized and sent to Venice.

6. Venice initially contested 17 adjustments in the final audit report. Before the final hearing, Venice withdrew its challenge to 16 of the 17 adjustments. The only remaining dispute to be resolved in this proceeding is whether audit adjustment number four, which disallowed $49,540.00 of costs in

the category of "Property Taxes – Real Estate," should be reduced by $12,203.80.

7. The disallowed $12,203.80 represents one-half of the tax assessed pursuant to section 201.02, Florida Statutes (2005),[1/] on the warranty deed conveying the Sunset Lake real property (including the land, land improvements, and the building) to Venice. Venice claimed one-half of the tax on its cost report because that is the amount paid by Venice; the other half was paid by the seller. Venice contends that this tax is an ad valorem tax and/or a property tax,[2/] which is an allowable property cost on the Medicaid cost report. AHCA contends that the tax on the warranty deed is an excise tax, not a property tax, and, therefore, not an allowable property cost.

8. The audit report did not explain the reason for disallowing the $12,203.80 tax, as part of the $49,540.00 adjustment. Instead, the audit report explained the entire $49,540.00 adjustment as necessary to "disallow unsupported costs," suggesting a lack of documentation. However, no non-hearsay evidence was offered at hearing to prove that Venice failed to give the auditors sufficient documentation of the costs disallowed in adjustment number four. At least with respect to the disallowed $12,203.80 item, sufficient documentation was offered at hearing to support the cost as an actual cost incurred

by Venice. The question is whether the documented cost is allowable as an ad valorem tax or property tax, as Venice claims.

9. Documentation for the $12,203.80 tax on the warranty deed is found in the buyer/seller closing statement and on the face of the warranty deed. The closing statement sets forth the total purchase price of $7,500,000.00, which is also the amount of a mortgage loan from Bank of America. The closing statement allocates the total purchase price to the land ($477,000.00), land improvements ($496,500.00), the building ($2,513,250.00), FFE--furniture, fixtures, and equipment ($992,250.00), and personal property ($3,021,000.00).

10. The closing statement also shows a separate category called credits and/or prorations, to appropriately account for items accruing over the calendar year. The first line item in this category is for "Ad Valorem Taxes." If ad valorem taxes were due for calendar year 2005, they would have been prorated. However, the amount is shown to be zero. As confirmed at hearing, no ad valorem taxes were due for the Sunset Lake property in 2005, because as of January 1, 2005, the property was owned by a not-for-profit entity, making the property exempt from ad valorem taxes. The second line item in this category, for "Non-Ad Valorem Assessments," for which there was no exemption, shows a total amount for 2005 of $8,235.29, which was prorated to credit the buyer for $3,270.65. The closing statement proration

had the effect of charging the seller with its share of the assessments for the part of the year prior to closing.[3/]

11. A separate category on the closing statement addresses "Recording Fees." The first line item in this category is for "Transfer Tax-snf [skilled nursing facility]." The taxable amount is shown as $3,486,800.00. The tax of $24,407.60 is split equally between buyer and seller, with $12,203.80 charged to each. The next line is for "Stamp Tax on mtg. [mortgage]." The taxable amount is shown as $7,500,000.00, the amount of the mortgage loan. The tax of $26,250.00 is charged to the buyer. Another line item is shown for "Intangible Tax on mtg." Again, the taxable amount is shown as $7,500,000.00, and the tax of $15,000.00 is charged to the buyer.

12. The top right corner of the warranty deed conveying the Sunset Lake property contains the following printed or stamped text in the space marked "(Space reserved for Clerk of Court):"

RECORDED IN OFFICIAL RECORDS
INSTRUMENT # 2005117710 7 PGS
2005 JUN 01 05:01 PM
KAREN E. RUSHING
CLERK OF THE CIRCUIT COURT
SARASOTA COUNTY, FLORIDA
MMARSH Receipt#635187

Doc Stamp-Deed: 24,407.60

[Bar/Scan Code with instrument number]

13. As Venice's representative confirmed, the reference on the face of the warranty deed to "Doc Stamp-Deed: 24,407.60,"

affixed by the clerk of the court in the official records entry, means that a documentary stamp tax on the deed in the amount of $24,407.60 was paid. Because the tax was split between buyer and seller, Venice actually paid $12,203.80.

14. Although the closing statement shows that the tax at issue was called a transfer tax and categorized as a "recording fee," and not an "ad valorem tax," Venice contends here that the documentary stamp tax on the deed was an ad valorem property tax, because the tax was assessed on the value of the property. As Venice summarized its position:

> That irrespective of whether the transfer tax is called an excise tax, a doc stamp tax or any other type of tax, the fact that it is based solely on the value of the assets makes it an ad valorem tax, which is considered by the state of Florida in all cases under Medicaid cost reporting purposes [sic] as a property tax. (AHCA Exh. 3, p. 14).

15. AHCA disagrees. AHCA contends that the documentary stamp tax on the deed is an excise tax, assessed on the consideration for the property transferred by the deed.

16. The parties do agree that the documentary stamp tax rate, applied to either the value of the property or the consideration for the property, was 70 cents per $100.00.[4/] The parties also agree that the "property" at issue, which was conveyed by the warranty deed, includes the land, land improvements, and the building.

17. That being the case, it appears from the closing statement that the "taxable amount" used to determine the documentary stamp tax on the deed (referred to as the "transfer tax-snf") was the sum of the purchase price allocations for the land ($477,000.00), land improvements ($496,500.00), and the building ($2,513,250.00).[5/] The documentary stamp tax on the warranty deed was based on the consideration for the property stated in the closing statement.[6/]

18. Venice asserts that the documentary stamp tax was based on the "assessed value of the property (land, land improvements and the building) [of] $3,486.750.00[.]" (Venice PRO at ¶ 24, n. 1). However, Venice offered no evidentiary support for this assertion. The amount Venice calls the "assessed value" is actually the amount of the total purchase price allocated in the closing statement to the land, land improvements, and the building. In contrast, the "assessed value" for this property in 2005, according to the Sarasota County Tax Collector's bill, was $3,724,300.00. The documentary stamp tax on the warranty deed was not based on the assessed value of the property.

19. Venice also contends that subsequent action by the Department of Revenue supports Venice's position that the documentary stamp tax on the deed was based on the value of the property and not on the consideration for the property. Venice offered in evidence portions of correspondence between

representatives of Venice's parent company with the Department of Revenue in 2008 that resulted in a determination that Venice owed additional documentary stamp tax on the Sunset Lake warranty deed. According to Venice, "the Department [of Revenue] did not agree with the value of assets that Venice had reported and paid taxes on." (Venice PRO at ¶ 32).

20. Contrary to Venice's characterization, the portions of correspondence with the Department of Revenue in evidence confirm that the documentary stamp tax on the Sunset Lake warranty deed was based on the consideration for the real property (i.e., the land, land improvements, and the building). The Department of Revenue sought additional information from Venice to establish what the consideration was. The Department of Revenue "Official Request for Information" form asked for "Total Consideration (Purchase/Transfer Price)" for the property conveyed by warranty deed. The form completed on Venice's behalf reported that the consideration was $3,486,750.00--the purchase price allocation in the closing statement to the land, land improvements, and the building. Along with the completed form, a letter of explanation on Venice's behalf (with attachments not offered in evidence) went into great detail in an attempt to justify these purchase price allocations, and ended on the following note:

> We are hopeful that the enclosed documentation and the foregoing explanation of the purchase price allocations will

> provide sufficient information for the Department to determine that the correct amount of documentary stamp taxes was paid on each of the deeds, based in each case on the agreed consideration paid for the respective real estate assets.

21. Thus, from the evidence offered by Venice, the focus of the Department of Revenue inquiry, as well as the Venice response to the inquiry, was entirely on the consideration paid for the property. The fact that the Department of Revenue ultimately determined that Venice owed more documentary stamp taxes on the warranty deed than was paid is not evidence that the tax was assessed on the "value" of the real property, as Venice argues. Instead, the material suggests that the Department of Revenue disagreed with what Venice contended was the total consideration and/or with Venice's allocation of the total purchase price to the real property (the land, land improvements, and the building) and to the other assets acquired in the transaction, including furniture, equipment, and personal property.

22. Venice also takes the position that the tax on the warranty deed is an allowable cost pursuant to two provisions in the federal Provider Reimbursement Manual (PRM), which is one of the sources used to determine allowable costs. First, PRM section 2122.1 provides the "general rule" that "taxes assessed against the provider, in accordance with the levying enactments of the several States and lower levels of government and for

which the provider is liable for payment, are allowable costs."

Next, PRM section 2122.2 provides in pertinent part:

> Certain taxes . . . which are levied on providers are not allowable costs. These taxes are:
>
> * * *
>
> C. Taxes in connection with financing, refinancing, or refunding operations, such as taxes on the issuance of bonds, property transfers, issuance or transfer of stocks, etc. Generally, these costs are either amortized over the life of the securities or depreciated over the life of the asset. They are not, however, recognized as tax expense.

23. Venice contends that the documentary stamp tax paid on the warranty deed must be allowed because it is a tax that meets the general rule in section 2122.1, and it is not an excluded tax under section 2122.2(C).

24. The documentary stamp tax paid by Venice on the warranty deed satisfies the general elements of section 2122.1; AHCA does not contend otherwise. Instead, AHCA contends that the documentary stamp tax must be considered an excluded tax under section 2122.2(C).

25. AHCA is correct that the documentary stamp tax on warranty deeds transferring real property is essentially a transfer tax. However, it is not a tax in connection with financing, refinancing, or refunding operations. An example of such a tax would be the documentary stamp tax that Venice paid on

the mortgage on Sunset Lake, because it was a tax in connection with the financing for the property.

26. Venice correctly points out that, grammatically, section 2122.2(C) suggests that the only taxes excluded under that subsection are taxes in connection with financing, refinancing, or refunding operations. The use of the phrase "such as" suggests that everything that follows that phrase must be considered an example of what precedes the phrase.

27. AHCA acknowledges that consideration of the grammatical structure of section 2122.2(C) alone would support Venice's interpretation. However, AHCA's expert testified, reasonably and without contradiction, that Venice's interpretation would render the phrase "property transfers" meaningless. As AHCA's expert explained, a tax on a property transfer is not a tax on financing, refinancing, or refunding operations. Therefore, despite the grammatical structure, taxes on property transfers must be considered a separate type of excluded tax under section 2122.2(C). As further support for this interpretation, AHCA's expert pointed to the second sentence, providing that the excluded costs referred to in the first sentence "are either amortized over the life of the securities or depreciated over the life of the asset." AHCA's expert explained that taxes on financing, refinancing, or refunding operations would all be amortized, whereas taxes on property transfers would be

depreciated over the life of the depreciable assets transferred (i.e., the land improvements and the building).

28. Venice relies solely on the grammatical structure of section 2122.2(C), offering no response to AHCA's reasoning for interpreting the subsection in a way that is contrary to the meaning suggested only by grammatical structure. Venice did not explain how a tax on property transfers could be considered a tax on financing, refinancing, or refunding operations (so as to give meaning to the phrase "property transfers"), nor did Venice explain when taxes on financing, refinancing, or refunding operations would be depreciated over the life of the asset (so as to give meaning to that phrase in the second sentence).

CONCLUSIONS OF LAW

29. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter of this proceeding. §§ 120.569 and 120.57(1), Fla. Stat. (2013).

30. Petitioner has the burden of proving by a preponderance of the evidence that the $12,203.80 it paid in documentary stamp taxes on the warranty deed conveying the Sunset Lake real property is an allowable property cost, as claimed in its initial Medicaid cost report. See Balino v. Dep't of Health & Rehab. Servs., 348 So. 2d 349, 350 (Fla. 1st DCA 1977) ("[T]he burden of proof, apart from statute, is on the party asserting the

affirmative of an issue before an administrative tribunal.");

§ 120.57(1)(j), Fla. Stat.

31. In Courts v. Agency for Health Care Administration, 965 So. 2d 154, 155-156 (Fla. 1st DCA 2007), the court drew on various sources to provide a concise, useful description of the Medicaid program:

> "The Medicaid Act, Title XIX of the Social Security Act, 42 U.S.C. § 1396, is a cooperative federal-state program designed to allow states to receive matching funds from the federal government to finance necessary services to qualified low-income individuals." Esteban v. Cook, 77 F. Supp. 2d 1256, 1259 (S.D. Fla. 1999); see also Russell v. Agency for Persons with Disabilities, 929 So. 2d 601, 602 (Fla. 1st DCA 2006); Harris v. McRae, 448 U.S. 297, 308-09, 100 S. Ct. 2671, 65 L. Ed. 2d 784 (1980). "[T]he purpose of Congress in enacting Title XIX was to provide federal assistance for all legitimate state expenditures under an approved Medicaid plan." Harris, 448 U.S. at 308-09 (citations omitted). The guidelines for the Medicaid program are set forth in the federal statutes and regulations and are adopted into specific state laws and rules in each state. 42 U.S.C. § 1302. In each state, a "single state agency" is responsible for administering the Medicaid program. 42 C.F.R. § 431.10. In Florida, AHCA is designated as the Florida state agency authorized to make payments to qualified providers for medical assistance and related services on behalf of eligible individuals. *See* § 409.902, Fla. Stat. (2005); see generally, Russell, 929 So. 2d at 602-03.

32. AHCA reimburses Medicaid providers "in accordance with state and federal law, according to methodologies set forth in

the rules of the agency and in policy manuals and handbooks incorporated by reference therein." § 409.918, Fla. Stat.

33. Section 409.908(2)(b) requires AHCA to establish and implement a Florida Title XIX Long-Term Care Reimbursement Plan (Plan) for nursing home care in order to provide care and services in conformance with applicable state and federal laws, rules, regulations, and quality and safety standards.

34. AHCA adopted and periodically has amended the required Plan, which is incorporated by reference in Florida Administrative Code Rule 59G-6.010. The Plan in effect at the time the cost report at issue was filed was not offered in evidence; the version that is incorporated by reference in the current rule took effect on July 1, 2012. The current version of the Plan provides that cost reports are to be prepared

> in accordance with generally accepted accounting principles as established by the American Institute of Certified Public Accountants (AICPA) as incorporated by reference in Rule 61H1-20.007, F.A.C., the methods of reimbursement in accordance with Medicare (Title XVIII) Principles of Reimbursement, the Provider Reimbursement Manual (CMS-PUB.15-1) incorporated herein by reference except as modified by the Florida Title XIX Long Term Care Reimbursement Plan and State of Florida Administrative Rules.

Plan, Section I.C.

35. The experts testifying in this case were in agreement that the hierarchy of legal authorities applied to cost reports

is generally as follows: at the top of the hierarchy is the Plan, followed by the PRM (CMS-PUB.15-1), followed by generally accepted accounting principles (GAAP).

36. The PRM is called a "guide" that contains explanations and annotations interpreting federal regulations. Accordingly, the parties agree that the PRM must be interpreted in a manner that is consistent with the federal regulations themselves.

37. Starting with the top of the hierarchy, Venice asserts that the applicable Plan specifically identifies "property taxes" as allowable property costs. Venice also points to the federal regulations that include as an allowable cost "[t]axes on land or depreciable assets used for patient care." 42 C.F.R. § 413.130(a)(2). The corollary is that the following taxes are excluded from allowable costs: "Taxes other than those assessed on the basis of some valuation of land or depreciable assets used for patient care." 42 C.F.R. § 413.130(i)(5).

38. From these authorities, Venice argues that the tax paid on the warranty deed qualifies as an allowable property cost because it was a tax on land and depreciable assets used for patient care, and it was assessed on the basis of some valuation of land and depreciable assets used for patient care.

39. Venice failed to meet its burden of proving that the tax it paid was a tax on land and depreciable assets; instead, the evidence established that the tax at issue was a tax on a

document, the warranty deed. Venice also failed to meet its burden of proving that the tax it paid was assessed on the basis of some valuation of land and depreciable assets; instead, the evidence established that the tax at issue was assessed on the basis of the consideration for the property transferred by the warranty deed.

40. In addition, Venice's attempt to categorize the documentary stamp tax it paid on the warranty deed as an ad valorem property tax must be rejected because it is contrary to the law authorizing the tax, as recognized in decisional law interpreting the law.

41. As a starting place, the nature of documentary stamp taxes is suggested by the title of Chapter 201, Florida Statutes: "Excise Tax on Documents." As explained in Dominion Land and Title Corp. v. Department of Revenue, 320 So. 2d 815, 817 (Fla. 1975): "The purpose of Chapter 201, Florida Statutes, is to raise additional revenue for the State by placing a tax on certain types of documents commonly recorded in the public records in the various counties throughout Florida." See also Choctawhatchee Electric Cooperative, Inc. v. Green, 132 So. 2d 556, 558 (Fla. 1961) (holding that the documentary stamp tax "is not a property tax. It is an excise tax.").

42. The documentary stamp tax at issue here was imposed pursuant to the authority in section 201.02, Florida Statutes,

which authorizes a tax "on deeds and other instruments relating to real property or interests in real property" at the rate of 70 cents "on each $100 of the consideration therefor[.]" § 201.02(1), Fla. Stat.

43. Venice does not effectively refute the fact that the tax at issue is a documentary stamp tax imposed pursuant to section 201.02, and indeed, acknowledges that the tax was imposed pursuant to section 201.02.[7/] Instead, Venice argues only that the "label" of a tax is not controlling, and so it does not matter that it may be called a documentary stamp tax, or that it was called a "transfer tax" in the closing statement. However, it is more than a matter of labeling to recognize the nature of a tax by reference to the authority pursuant to which the tax is imposed. See, e.g., Nicolai v. Federal Housing Fin. Ag., 928 F. Supp. 2d 1331 (M.D. Fla. 2013) (using the term "transfer tax" as a descriptive reference for the tax on warranty deeds imposed by section 201.02, and describing the tax as an excise tax, not a tax on the real property conveyed by deed).

44. Indeed, as AHCA correctly notes, under Florida law it would be unconstitutional for the Legislature to impose a state ad valorem tax on real property. Art. VII, § 1(a), Fla. Const. ("No state ad valorem taxes shall be levied upon real estate or tangible personal property."). In Florida, an "ad valorem tax" is defined as "a tax based upon the assessed value of property."

§ 192.001(1), Fla. Stat. (also providing that the term "property tax" may be used interchangeably with "ad valorem tax"). The documentary stamp tax paid by Venice on the warranty deed was not an ad valorem tax or a property tax as those terms are used in Florida law.[8/]

45. AHCA's interpretation of its governing statutes and rules, including the PRM, which is incorporated by reference into the Plan that is promulgated as a rule, is entitled to deference and great weight, unless clearly erroneous. See Suddah Van Lines v. Dep't of Envtl. Prot., 668 So. 2d 209, 213 (Fla. 1st DCA 1996); Pan American World Airways, Inc. v. Fla. Public Serv. Comm'n, 427 So. 2d 716, 719 (Fla. 1983). While Venice's contrary interpretation of the PRM is supported by rules of grammar, AHCA's interpretation, which sacrifices grammar rules to salvage meaning of phrases that would otherwise be rendered meaningless, was not shown to be clearly erroneous.

46. Indeed, AHCA's interpretation of the PRM provisions on taxes is the only interpretation that is consistent with the applicable federal regulation discussed above, as required by Medicaid laws and rules. See, e.g., Fla. Admin. Code R. 59G-1.001 (providing that "[a]ll rules in Chapter 59G, F.A.C., must be read in conjunction with statutes, federal regulations, and all other rules and regulations pertaining to the Medicaid program."). Ultimately, then, as Venice recognizes, the tax at

issue could only be an allowable property cost as claimed on the Medicaid cost report if it were shown to be an ad valorem tax, or property tax. This Venice failed to do.

RECOMMENDATION

Based on the foregoing Findings of Fact and Conclusions of Law, it is RECOMMENDED that the Agency for Health Care Administration enter a Final Order disallowing $12,203.80 claimed as a property tax expense in Venice's initial Medicaid cost report.

DONE AND ENTERED this 25th day of July, 2014, in Tallahassee, Leon County, Florida.

ELIZABETH W. MCARTHUR
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 25th day of July, 2014.

ENDNOTES

[1/] References to statutes and rules are to the 2005 codifications in effect when the cost report at issue was prepared, unless otherwise indicated. With regard to section 201.02, Florida Statutes, the 2005 version in evidence as a joint exhibit was, in

all material respects, the same law in effect earlier in 2005 when the tax on the warranty deed at issue was assessed and paid.

[2/] Venice's PRO offers the following proposed findings: that the $12,203.80 tax paid was a "property tax" (¶¶ 10, 13); that "ad valorem taxes are included in the property tax section of the Chart of Accounts and Cost Report as property taxes" (¶ 26); that because the tax at issue was "based upon the value of the real property, the tax is an ad valorem tax" (¶ 33); and that the tax paid by Venice in dispute "is a property tax which is calculated as an ad valorem tax." (¶ 34).

[3/] The Sarasota County Tax Collector billed Venice for the 2005 non-ad valorem assessments for the Sunset Lake property. The total assessment amount was $8,235.29 if paid by March 31, 2006. AHCA allowed Venice's share of this cost in the category for Property Taxes–Real Estate, except that AHCA reduced the amount to $4,612.00, which represents Venice's share of the discounted assessment due if paid by November 30, 2005. Venice does not dispute AHCA's treatment of this cost.

[4/] Venice's expert misspoke when he testified that the tax rate was 70 cents per $1,000. He apparently was confusing the documentary stamp tax rate in section 201.02 with millage rates, which are expressed as dollars and cents per $1,000 of assessed property value. See § 200.001(6), Fla. Stat. Without referring to the error or citing the erroneous testimony, Venice corrected the error in its PRO, by acknowledging that the tax rate is 70 cents per $100. (Venice PRO, ¶ 11 and ¶ 24, n. 1).

[5/] The closing statement's allocations of the total purchase price to the land, land improvements, and the building add up to $3,486,750.00; the taxable amount used to determine the "transfer tax-snf," according to the closing statement, was $3,486,800.00, a difference of $50.00 that was not explained in the record. Venice ignores the $50.00 difference and acknowledges that the tax on the warranty deed was based on the amount of $3,486,750.00. See, e.g., Venice PRO, ¶ 24, n. 1. As described in Finding of Fact 20 below, in defending the amount of documentary stamp tax paid on the warranty deed to the Department of Revenue, Venice identified this amount ($3,486,750.00) as the purchase price for the property conveyed by the warranty deed.

[6/] The undersigned is not persuaded by Venice's argument that the documentary stamp tax on the warranty deed could not have been based on the consideration for the property, because if it had been based on the consideration, "the tax would have been based

upon the purchase price for the facility which was established as $7,500,000.00." (Venice PRO ¶ 24). Venice acknowledged that the "property" at issue for purposes of the tax on the deed includes only the land, land improvements, and the building. Therefore, the documentary stamp tax was based on the consideration for the property conveyed by the deed, as shown by the purchase price allocated to those three components. The $7.5 million total purchase price for the "facility" included amounts allocated to furniture, equipment, and personal property, none of which were part of the "property" conveyed by the warranty deed.

[7/] Venice acknowledges that a separate documentary stamp tax on the mortgage securing the loan for the Sunset Lake acquisition, authorized by section 201.07, was properly disallowed as an excise tax on the mortgage document based on the amount of indebtedness. Both sections 201.02 and 201.07 authorize documentary stamp taxes on documents that are properly categorized as excise taxes, not property taxes, even though they may be related to real property transactions.

[8/] The undersigned is not persuaded by Venice's argument that the tax at issue must be considered an "ad valorem tax" under AHCA's "Chart of Accounts," which assigns account numbers to various cost categories for use in preparing Medicaid cost reports. Account number 930920 is assigned to "Property Taxes-Real Estate," which is described as the "[c]ost of ad valorem taxes imposed by a city, county, or other governmental unit on real property." Venice seizes on testimony by AHCA's expert loosely describing ad valorem taxes as taxes on property levied by the county tax collector's office based on the assessed value by the county property appraiser. Since the AHCA Chart of Accounts recognizes that ad valorem taxes are imposed by other units of government besides the county, Venice's argument is that ad valorem tax is a very broad term that can apply to the state tax on deeds authorized by section 201.02. However, as an examination of Florida law makes clear, ad valorem taxes are not as broad as Venice suggests, although not strictly a county-levied tax as characterized by AHCA's witness. This form of taxation is restricted by the Florida Constitution and subject to many chapters of Florida Statutes that detail the role of the county property appraiser's office and county tax collector's office to assess property, bill for, and collect property taxes on behalf of the levying taxing authorities. See, e.g., ch. 197, Fla. Stat.; § 200.069, Fla. Stat. Ad valorem taxes are levied by a myriad of governmental units, such as community development districts (§ 190.021, Fla. Stat.), and independent special fire control districts (§ 191.009, Fla. Stat.), just to name two.

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Tallahassee, Florida 32308

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.