

UNIVERSITY AVENUE CHURCH§  
OF CHRIST  
1006 University Blvd.  
Tuscaloosa, AL 35401,

Taxpayer,

vs.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
§ ADMINISTRATIVE LAW DIVISION

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DOCKET NO. S.93-387

### FINAL ORDER

The Revenue Department refused to issue a sales tax exemption certificate to the University Avenue Church of Christ of Tuscaloosa, Alabama ("University Avenue Church of Christ" or "Church"). The Church appealed to the Administrative Law Division and a hearing was conducted on November 28, 1994. Jay F. Guin and J. Marland Hayes represented the Church. Assistant counsel Wade Hope represented the Department.

The issue in this case is whether the Church is exempt from sales, use and other taxes pursuant to Code of Ala. 1975, §40-9-12(a). That section exempts from all taxes "united appeal funds, and all charitable, civic and eleemosynary organizations and institutions for whom they solicit funds." The specific issue in dispute is whether the Church is a "charitable organization" within the context of §40-9-12(a).

The facts are undisputed.

The University Avenue Church of Christ together with the Central Church of Christ formed the Tuscaloosa Christian United Appeal Fund ("United Appeal Fund") in November 1992. The United Appeal Fund was established to raise money for charitable purposes. The money raised by the United Appeal Fund is distributed to the two member churches

on a pro-rata membership basis. To date, the United Appeal Fund has raised and donated to the two member churches a total of approximately \$2,200.

The money distributed by the United Appeal Fund to the University Avenue Church of Christ is deposited in the Church's benevolent fund, which is separate and apart from the Church's general fund. The benevolent fund also receives a monthly budgeted amount (\$580) from the Church's general fund, as well as specific donations from various Church members and businesses. The benevolent fund is used to feed and clothe needy individuals as identified by various social service agencies in the Tuscaloosa area. See, Taxpayer's Exhibits 2 and 3.

The Church's attorney requested an opinion from the Revenue Department in November 1992 as to whether the Tuscaloosa Christian United Appeal Fund qualified as a "united appeal fund" within the context of §40-9-12(a). The Department issued an opinion in December 1992 confirming that the United Appeal Fund qualified as a united appeal fund pursuant to the above statute. The Church thereafter applied for a sales tax certificate of exemption with the Department as a "charitable organization" for whom the united appeal fund solicits funds. The Department denied the exemption, and the Church subsequently appealed to the Administrative Law Division.

I agree that the Tuscaloosa Christian United Appeal Fund is a "united appeal fund", and also that the Church's benevolent fund is used for charitable purposes. However, I disagree that the Church is a "charitable organization" within the context of §40-9-12(a).

While a church may conduct specific charitable activities and may in a general sense be charitable in nature (see cases in Church's brief), a church is not a "charitable

organization" within the context of §40-9-12(a). Rather, a church is a religious organization organized to conduct and advance religion. Black's Law Dictionary (revised 4th Edition) defines "church" as "a religious society founded and established by Jesus Christ, to receive, preserve, and propagate his doctrines and ordinances."

Churches and religious organizations are not generally exempt from Alabama sales or use tax. See, State v. Toolen, 167 So.2d 546 (1964), and Department Reg. 810-6-5-.16. Religious organizations along with educational and charitable organizations are specifically exempted from ad valorem tax at §40-9-1(1). Certain specific religious organizations (Jewish Community Centers, Catholic Maritime Club of Mobile, Inc., etc.) are also exempted from all tax pursuant to §40-9-12(a). If the Legislature had intended to exempt all churches or religious organizations generally from all sales, use and other taxes, it could have easily done so. However, religious organizations are not mentioned in §40-9-12(a), which shows that they were not intended to be exempt under that section. Use of the separate terms "religious or charitable institution" in §40-9-1(1) relating to the ad valorem tax exemption further indicates the Legislature's understanding that the two terms are not synonymous.

The purpose for exempting united appeal funds and all charitable organizations for whom they solicit funds is so the money raised can be used to purchase items tax-free that will be used for purely charitable purposes, i.e. to help the poor and needy. However, if the exemption is allowed in this case, the Church will be allowed to purchase all items tax-free, including supplies, food, vehicles and all other materials used by the Church and its members for strictly religious purposes. That was not the intent of the Legislature. The Church cannot be allowed an indirect blanket exemption from all tax that the Legislature

has refused to allow directly.

The benevolent fund operated by the University Avenue Church of Christ is a worthwhile and commendable activity. The food and clothing distributed by the fund could be purchased tax-free, but only if purchased directly by the exempt United Appeal Fund and then donated to the benevolent fund. However, that is apparently not allowed by Church doctrine (R. 45).

Finally, and importantly, an exemption from taxation must be strictly construed against the exemption and for the Department. Ex parte Kimberly-Clark Corporation, 503 So.2d 304(Civ. App. 1986). A tax exemption should not be allowed "unless the intention to exempt such person or property clearly appears in some statute or constitutional provision". Crim vs. Phipps, 601 So.2d. 474 (Ala. 1992), quoting Anniston City Land Company v. State, 48 So. 659 (1901). The intent to treat churches as exempt charitable organizations or to otherwise exempt them from tax is clearly not specified in §40-9-12(a). Consequently, the general certificate of exemption claimed by the Church must be denied.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on March 27, 1995.

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BILL THOMPSON  
Chief Administrative Law Judge