

UNIVERSITY AVENUE CHURCH  
OF CHRIST  
1006 University Boulevard  
Tuscaloosa, Alabama 35401,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

Taxpayer,

DOCKET NO. S. 93-387

§

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

FINAL ORDER  
ON APPLICATION FOR REHEARING

A Final Order was entered in this case on March 27, 1995 holding that the Taxpayer, University Avenue Church of Christ, is not entitled to a general sales and use tax exemption certificate because it is not exempted from tax by Code of Ala. 1975, §40-9-12(a). The Taxpayer timely applied for a rehearing.

The crux of the case is whether a church is a "charitable organization" within the context of §40-9-12(a). That section exempts "united appeal funds, and all charitable, civic and eleemosynary organizations and institutions for whom they solicit funds . . .".

The Church has written two excellent briefs in support of its application for rehearing arguing that a church is a charitable organization under §40-9-12(a). The Taxpayer cites numerous examples showing that a church is considered to be charitable in nature.

Nonetheless, after initially studying the application for rehearing, I was still convinced that churches were not intended to be included as tax-exempt "charitable organizations" under §40-9-12(a). However, after further research, I now must conclude that churches must be recognized as charitable organizations for Alabama tax

purposes. That conclusion is based on the Department's recognition of churches as charitable organizations for income tax purposes.

Code of Ala. 1975, §40-18-15(a)(10) provides an income tax deduction for "charitable contributions to the extent allowed for federal income tax purposes under 26 U.S.C. §170 . . .". 26 U.S.C. §170 allows a charitable deduction for any charitable contribution to "(i) a church or a convention or association of churches,". By adopting §170, the Alabama Legislature has thus recognized a church as a charitable organization for Alabama income tax purposes. I know of no reason why churches should be treated differently for sales tax purposes.

Dept. Reg. 810-3-15-.17(i), which involves the charitable income tax deduction, also defines "public charities" to include "1. Churches, synagogues, or conventions or associates of churches". The above regulation thus adopts the identical definition of charitable organizations as found in 26 U.S.C. §170. As stated, that definition includes churches as charitable organizations.

The exemption was initially denied because if allowed, a church could purchase items tax-free for use for strictly religious purposes, instead of for use in helping the poor or needy. However, money donated to a church can be deducted by the donor for income tax purposes regardless of how the money is used by the church.

I also initially cited the rule of construction that an exemption must be construed against the taxpayer. Ex parte Kimberly-Clark Corp., 503 So.2d 304 (Ala.Civ.App. 1986). However, a deduction relating to charity should be liberally construed in favor of the taxpayer. Threlfall v. U.S., 302 F.Supp. 1114 (D.C.Wis. 1969).

The Department concedes that the Tuscaloosa Christian United Appeal Fund

formed by the Taxpayer is a "united appeal fund". Based on the above, the Taxpayer must also be recognized as a "charitable organization" for Alabama sales tax purposes, in which case the exemption provided at §40-9-12(a) must be allowed. The Final Order is amended accordingly. The Department is directed to issue a general sales and use tax exemption certificate to the Taxpayer. The exemption should be allowed for as long as funds are solicited for the Church by the Tuscaloosa Christian United Appeal Fund.

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

Entered June 8, 1995.

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BILL THOMPSON  
Chief Administrative Law Judge