

THE TUSCALOOSA PRESBYTERIAN
UNITED APPEAL FUND,

Taxpayer,

FIRST PRESBYTERIAN CHURCH
OF TUSCALOOSA,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 97-443

DOCKET NO. S. 98-372

FINAL ORDER

The Tuscaloosa Presbyterian United Appeal Fund (AUnited Appeal Fund@) and the First Presbyterian Church of Tuscaloosa (AChurch@) applied to the Revenue Department for sales tax exemption certificates. The Department denied the applications. The United Appeal Fund and the Church appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-8(a). The appeals were consolidated and heard on September 30, 1998. Barton Adcox represented the United Appeal Fund and the Church. Assistant Counsel Wade Hope represented the Department.

Code of Ala. 1975, § 40-9-12(a) exempts from sales tax all Aunited appeal funds, and all charitable, civic, and eleemosynary organizations and institutions for whom they solicit funds...@ The issue in this case is whether the United Appeal Fund and the Church are exempt from sales tax pursuant to the above statute.

The Church is an established Presbyterian Church in Tuscaloosa, Alabama. The Church has historically engaged in and contributed to numerous charitable organizations and activities in the Tuscaloosa area. Approximately 20-25% of the Church's annual operating budget is spent for charitable purposes.

The Church and the five other Presbyterian churches in the Tuscaloosa area incorporated the United Appeal Fund in September 1997. The United Appeal Fund was created to establish a single entity through

which the six churches could coordinate their charitable activities. The six churches intend to contribute a portion of their annual budgets to the United Appeal Fund. The United Appeal Fund also intends to solicit contributions from other sources. The United Appeal Fund will then distribute the money, or items purchased with the money, to the various charitable organizations and activities supported by the churches.

The United Appeal Fund has conducted monthly meetings since becoming incorporated. However, it has not begun soliciting funds, nor does it have any employees or offices. Dr. Charles Durham, the Pastor of the Church and the President of the United Appeal Fund's Board of Directors, testified that the United Appeal Fund is waiting to begin activities pending the outcome of this appeal.

The United Appeal Fund applied to the Department for a sales tax exemption certificate. The United Appeal Fund's position is that as a united appeal fund, it is exempt from sales tax pursuant to § 40-9-12(a). The Department denied the exemption, claiming that the United Appeal Fund is not a united appeal fund as contemplated by § 40-9-12(a).

The Church also applied for a sales tax exemption certificate. The Church argues it is exempt as a charitable organization for whom the United Appeal Fund solicits funds. The Department also denied that exemption, arguing that the Church is not a charitable organization within the purview of the statute.

Is the United Appeal Fund a united appeal fund within the context of ' 40-9-12(a)? In my opinion, it is.

The commonly understood meaning of a **united appeal fund** is a fund or agency that solicits or receives contributions and then distributes the funds to various charitable organizations, activities, or endeavors. The United Appeal Fund is intended to perform that exact function.

The United Appeal Fund will solicit and receive contributions from the member churches and from other entities and individuals. It will then contribute to or expend those funds to various charitable organizations and activities in the Tuscaloosa area. The United Appeal Fund is clearly a united appeal fund in the context of ' 40-9-12(a). Accordingly, it should be issued an exemption certificate by the Department.

The Church argues it should also be issued an exemption certificate because it is a charitable organization for whom the United Appeal Fund solicits funds. I disagree.

Both parties filed long briefs addressing the issue of whether the Church was a charitable organization in the context of the exemption statute. However, that issue need not be addressed.

The ' 40-9-12(a) exemption applies only to a charitable organization **for whom** (a united appeal fund) solicits funds. In this case, the United Appeal Fund will solicit funds for the benefit of various charitable organizations and activities in the Tuscaloosa area. It will solicit and receive funds from the Church for that purpose, but it will not solicit funds for the Church. The United Appeal Fund will not donate or otherwise give money to the Church. Consequently, even if the Church is a charitable organization in the context of the statute, it is not exempt from sales tax because the United Appeal Fund will not solicit funds for the Church.¹

¹This case can be distinguished factually from The University Avenue Church of Christ v. State, S. 93-387 (Final Order On Application For Rehearing 6/8/95). In that case, The University Avenue Church of Christ and another Tuscaloosa church formed a united appeal fund. The united appeal fund solicited funds and then distributed the funds to the two member churches. The Administrative Law Division held that the Church was a charitable organization for which the united appeal fund solicited funds. As indicated above, the United

The Department thus correctly denied the Church's application for an exemption certificate.

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

Entered December 2, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: J. Wade Hope, Esq.
C. Barton Adcox, Esq.
James Browder

Appeal Fund established in this case is not intended to solicit funds for the Church, but rather only for area charities.