STATE OF ALABAMA,	§	STATE OF ALABAMA
V.	§	DEPARTMENT OF REVENUE
CORNERSTONE MINISTRY P. 0. Box 43189 Birmingham, AL 35234,	§	ADMINISTRATIVE LAW DIVISION DOCKET NO. R.85-127
Taxpayer.	§	

FINAL ORDER

This case involves a contested refund petition concerning rental tax paid by the Taxpayer during the period January, 1982 through February, 1985. A hearing was conducted as required by the Alabama Administrative Procedure Act, Code of Alabama 1975, §41-22-1, et seq. on July 31, 1985. The parties were represented at said hearing by attorneys Neil Clay, for the Taxpayer, and assistant counsel J. Wade Hope, for the Department. Based on the evidence submitted at the hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The relevant facts are not in dispute. The Taxpayer operates a film library from which it rents to various religious organizations and the public in general. The gross receipts derived from said rental activity during the period January, 1982 through February, 1985 are the basis for the tax in issue.

The Taxpayer was founded in 1968 with the stated goal of teaching and promoting Christian life and beliefs. Toward that goal, the Taxpayer initially operated by printing and thereafter distributing free of charge various Christian publications. In 1974 or 1975, the

Taxpayer began producing and renting short slide shows. In 1976 or 1977, the Taxpayer began obtaining Christian films from independent producers and thereafter renting said films to churches and other religious organizations and the public at large. The Taxpayer charges a rental fee for the films, of which approximately one-third Is retained by the Taxpayer and approximately two-thirds is remitted to the producer as reimbursement for the use of the film. The rental fees charged by the Taxpayer vary, but are usually $1.00 - $1.25 per viewing minute, or $50.00 - $75.00 per showing.

The Taxpayer conducts business in a rental outlet in Birmingham, which is open to the public and operated by several paid employees. There is evidence to indicate that the profit derived by the Taxpayer from the film rentals in issue is insufficient to meet operating expenses (labor, mailing costs, utilities, etc.). The deficiency is made up by contributions, with some small amount coming from the sale of films. There is no dispute that the Taxpayer has been recognized by the Internal Revenue Service as a charitable organization under the provisions of §501(c)(3) of the Internal Revenue Code, and is therefore exempt from federal income tax.

The Taxpayer's argument, as stated in the petition for refund, is as follows:

> Under section 40-12-220 (1) code of Alabama 1975 definitions, the term "business" is defined in such a way as to not include Cornerstone, Inc., a non-profit corporation. The activities of the Cornerstone, Inc., are

> entirely without the object of gain, profit, benefit or advantage, either direct or Indirect to Cornerstone, Inc., but are a community service. Cornerstone is a nonprofit corporation chartered by [t]he state of Alabama for the purposes of service and not profit making activities. It is evident that this tax has been imposed on Cornerstone Inc. completely in error or mistake and has been paid in error or mistake.

CONCLUSIONS OF LAW

The single issue presented in this case is whether the Taxpayer's operation comes within the definition of "business" as set out in Code of Alabama 1975, §40-12-220(l). That section reads as follows:

> (1)BUSINESS. All activities engaged in, or caused to be engaged in, by any person with the object of gain, profit, benefit or advantage, either direct or indirect to such person.

The lease tax definition of "business" set out above is in substance identical to the sales tax definition found at Code of Alabama 1975, §40-23-1(a)(11). For purposes relative to the present case, the scope of the above definitional statutes has been determined by the Alabama Court of Civil Appeals in Fraternal Order of Eagles v. White, 447 So.2d 783 (1984). In that case, the taxpayer, a charitable organization, argued that its bingo operation was not a business because the gross receipts derived therefrom were subsequently donated for charitable or educational purposes. The Court held that the charitable, non-profit nature of the taxpayer's business did not exclude it from the sales tax definition set out at §40-23-1(1)(11). For emphasis, the relevant portion of the Court's decision is set out below:

> Through most able counsel, the plaintiffs argue that their bingo activities do not constitute business inasmuch as they do not have as their object any "gain, profit, benefit or advantage, either direct or indirect" as the word "business" is defined in § 40-23-1(a)(11) of the Code of 1975. They contend that they are required by amendment 387 to channel all bingo net revenues either to charity or to education, which they each do, and hence, the plaintiffs do not obtain any gain, profit, benefit or advantage from the money raised by the games which they operate; and, consequently, they are not operating a business, with the result that their gross receipts may not be taxed. We disagree.
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> The plaintiffs sought profit or gain from the bingo games which they operated. Net profits from bingo games were their object in order that they might support the worthy causes of charity or education. Their eleemosynary endeavors were benefited and occasioned by the net profits from their bingo operations. The mere fact that their entire bingo net income was required to be donated to or used for benevolent purposes does not alter the nature of the income source. The prof its were derived from the business of conducting or operating a place of amusement or entertainment. As the learned trial court so aptly stated in the final judgment in this case, "The tax imposed under § 40-23-2(2) is placed upon the privilege of operating a place of amusement or entertainment, without regard to the purpose for which the proceeds are accumulated,"

The Court's reasoning set out above is equally applicable to the facts of the present case. The Taxpayer sought "benefit or advantage", either direct or indirect, from its rental activities in that said activities were entered into for the furtherance of their Christian goals and beliefs. In addition, considering only ,the rental activity, which is the taxable event, the Taxpayer did realize a profit. Approximately one-third of the rental fee was retained as profit by the Taxpayer. The fact that operating expenses more than offset the rental profits does not change that

"gain, profit, benefit or advantage" was derived from the rentals. The lease tax is on rental gross proceeds, and the overall profitability of the Taxpayer's operation is of no relevance for purposes of determining the applicability of said tax.

Based on the above, it is determined that the Taxpayer's activity does constitute a "business" as defined at §40-12-220(l). Accordingly, the tax previously paid by the Taxpayer was properly paid, and the petition for refund is hereby denied.

Done this 30th day of September, 1985.

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BILL THOMPSON
Chief Administrative Law Judge