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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 2011-002

This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a).

TO: REQUESTOR

FROM: Julie P. Magee
Commissioner of Revenue

DATE: April 26, 2012

FACTS

For purposes of this ruling, the REQUESTOR informed us and we have assumed¹ without investigation that:

1. The name, address, telephone number and taxpayer identification number of the requestor is as follows:

[REQUESTOR]

[phone]

[TIN]

2. REQUESTOR is an Alabama nonprofit corporation existing under the Alabama Nonprofit Corporation Law, Code of Alabama, 1975, §10A-3-1.01 et. seq.
3. REQUESTOR's core functions are the conducting, maintaining, operating, and carrying out of the following programs, work, principles, objectives and policies:

¹ This revenue ruling, like all revenue rulings is the department's interpretation of the law or regulations as applied to the particular facts and assertions contained in the request for the ruling. Unless otherwise indicated, the department has not undertaken to make a review of the facts and conclusions asserted by the requestor in the request for this ruling or in clarifying documents submitted after the initial request. If any facts or conclusions asserted by the requestor are misstated or are misleading, or if any facts that are relevant or material to a proper legal determination of this revenue ruling were omitted by the requestor, this revenue ruling may be not be relied upon and this revenue ruling should be considered void.

- i.
- ii.
- iii.
- iv.
- v.
- vi.

- 4. REQUESTOR utilizes real and personal property owned by it to provide the aforementioned programs. Some of this property is used by REQUESTOR directly in providing these charitable programs (the "Charitable Property") and other properties are used by REQUESTOR indirectly to further these programs by utilizing the profits or benefits of these properties to provide funding or other support for the programs set forth above or otherwise (the "Investment Property").
- 5. REQUESTOR proposes to form several Alabama limited liability companies as so-called single member limited liability companies that would be owned entirely by REQUESTOR. REQUESTOR would then transfer certain REQUESTOR assets to such limited liability companies.

6. More specifically, REQUESTOR proposes to:

- i. Form REQUESTOR Services, LLC ("REQUESTOR Services") as a single member Alabama limited liability company and to transfer REQUESTOR assets related to programs administered by REQUESTOR to REQUESTOR Services.
- ii. Form REQUESTOR Properties, LLC ("REQUESTOR Properties") as an Alabama single member limited liability company as the sole owner and manager of the three single member limited liability companies listed below to include, REQUESTOR North Alabama, REQUESTOR South Alabama and REQUESTOR West Florida.
- iii. Form REQUESTOR North Alabama, LLC ("REQUESTOR North Alabama") as an Alabama single member limited liability company and to deed real property owned by REQUESTOR and located in north Alabama to REQUESTOR North Alabama.
- iv. Form REQUESTOR South Alabama LLC ("REQUESTOR South Alabama") as an Alabama single member limited liability company and to deed real property owned by REQUESTOR and located in south Alabama to REQUESTOR South Alabama.
- v. Form REQUESTOR West Florida, LLC ("REQUESTOR West Florida") as an Alabama single member limited liability company and to deed real property owned by REQUESTOR and located in Florida to REQUESTOR West Florida.

REQUESTOR Services, REQUESTOR Properties, REQUESTOR North Alabama, REQUESTOR South Alabama and REQUESTOR West Florida are referred to herein collectively as the "Subsidiaries."

- 7. REQUESTOR asserts that properties consisting of both Charitable Properties and Investment

Properties will be transferred to the Subsidiaries in proposed transactions.

8. REQUESTOR asserts that it has consistently paid property tax on investment property which is not used in direct furtherance of the program, work, principles, objectives, and policies of REQUESTOR (other than by providing income for such program, work, principles, objectives, and policies).
9. REQUESTOR acknowledges that it must apply the Unrelated Business Income Tax rules found at Sections 511 *et. seq.* of the Internal Revenue Code for Alabama income tax purposes.

REQUESTED REVENUE RULING

REQUESTOR asserts that as to its Charitable Property², Code of Alabama, 1975, §40-9-12 exempts the property from payment of any and all “state, county, and municipal taxes, licenses, fees, and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof.” REQUESTOR requests that the Department determine that this exemption is applicable to the real and personal property constituting Charitable Property that will be owned by REQUESTOR through wholly owned single member limited liability companies so that the Subsidiaries are exempt from any and all State of Alabama, county and municipal taxes, license, fees and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof in the same way that it would be exempt if owned directly by REQUESTOR.

GENERAL DISCUSSION

Ala. Code, 1975 §40-9-12 provides in pertinent part that:

“The ... REQUESTOR... and of any branch or department of any of same heretofore or hereafter organized and existing in good faith in the State of Alabama, for other than pecuniary gain and not for individual profit, when such real or personal property shall be used by such associations or nonprofit corporations, their branches or departments in and about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives, and policies of such associations or nonprofit corporations, their branches or departments, in any city or county of the State of Alabama, are exempt from the payment of any and all state, county, and municipal taxes, licenses, fees, and charges of any nature whatsoever, including any privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof. ...”

In interpreting statutes such as the statute set forth above, “[W]e must give the words in a statute their plain, ordinary, and commonly understood meaning, and where plain language is used we must interpret it to mean exactly what it says.” Bean Dredging, L.L.C. v. Ala. Dep’t of Revenue, 855 So. 2d 513, 517 (Ala. 2003). Further, “the right of taxation is essential to the existence of all governments, ... and it is never to be presumed that this right is abandoned or surrendered unless it clearly appears that such was the intention” ... “Taxation is the rule; exemption the exception.” State v. Lamson & Sessions Co., 269 Ala. 610, 614, 114 So. 2d 893, 896 (1959).

² REQUESTOR’s Investment Property that is being transferred to the Subsidiaries does not fall within the Ala. Code, 1975 §40-9-12 exclusion from taxation because it is not “property [that is] ... used by [REQUESTOR] ... in and about the conducting, maintaining, operating and carrying out of the program, work, principles, objectives, and policies of [REQUESTOR or its branches or departments] in Alabama.

REQUESTOR contemplates conveying the title to the both the Charitable Property and the Investment Property for non-tax purposes to certain single-member³ Limited Liability Companies of which REQUESTOR is the sole owner. It is readily apparent, from a reading of Ala. Code, 1975 §40-9-12 that the scope of the exemption from this section was intended to apply to more than just REQUESTOR, but also to “branches and departments” of REQUESTOR that directly furthers the programs, work, principles, objectives, and policies of REQUESTOR. The question is thus whether even though the single member Limited Liability Companies are separate entities from REQUESTOR for purposes of ownership, they will nonetheless be considered “branches and departments” of REQUESTOR for purposes of tax exemption under Ala. Code, 1975 §40-9-12.

For federal income-tax purposes, the Subsidiaries, as single-member LLCs, will be disregarded as entities separate from their sole owner, REQUESTOR. That is, the single-member LLCs, as “disregarded entities,” are treated in the same manner as a “branch or division of the taxpayer” for federal income-tax purposes. *See*, 26 C.F.R. §301-7701-2(a). Under somewhat corresponding state law, Ala. Code, 1975 §10A-5-1.06, the Subsidiaries, as single-member LLCs, are disregarded entities for purposes of taxation, other than pursuant to Ala. Code, 1975 §40-14A-1 et. seq., which is irrelevant⁴ to this matter. Based on the above, the Subsidiaries of REQUESTOR, to the extent that they will receive and hold the Charitable Property⁵ of REQUESTOR in their current form as a single-member limited liability companies owned entirely by REQUESTOR would be such a “branch or department” of REQUESTOR. Indeed, much of the work of REQUESTOR will be accomplished through the proposed Subsidiaries.

The recording of the conveyances of the property from REQUESTOR to the Subsidiaries as disregarded entities of REQUESTOR would be subject to the recording tax of Ala. Code, 1975 §40-22-1. *See*, Sustainable Forests, LLC v. Ala. Dep’t of Rev., 80 So. 3d 270 (Ala. Civ. App. 2011) However, under the specific exemption of Ala. Code, 1975 § 40-9-12, the recording of the transfer of real property from REQUESTOR to the Subsidiaries is not subject to tax. Likewise, the transfer of Charitable Property from the Subsidiaries to lenders by mortgage or by deed will also be exempt from tax, not because the Subsidiaries are not considered separate entities from REQUESTOR (they are), but rather because the Subsidiaries are considered “branches or departments” of REQUESTOR, those conveyances, if the conveyance is of Charitable Property, will likewise be exempt from the recording tax of Ala. Code, 1975 §40-22-1 et. seq. through Ala. Code, 1975 § 40-9-12. Likewise, because the Subsidiaries are branches or departments of REQUESTOR within the meaning of Ala. Code, 1975 § 40-9-12 the Charitable Property owned by the Subsidiaries will remain exempt from ad valorem⁶ taxation while the Investment Properties will remain subject to ad valorem taxation just like it is when owned directly of REQUESTOR.

³ Each of the Subsidiaries we are told will be formed as single member limited liability companies. REQUESTOR must remain the sole owner of the Subsidiaries to retain the benefits of this ruling and the Subsidiaries shall not elect under the federal check-the-box regulations to be taxed as Subchapter C corporations.

⁴ Because the Subsidiaries, as single-member LLCs will be owned “solely by” REQUESTOR which is “an entity organized and operated exclusively for religious purposes,” the Subsidiaries will be exempt from the privilege tax through Ala. Code, 1975 §40-14A-43.

⁵ To be clear, REQUESTOR asserted in its request that although the Investment Property will be transferred to the Subsidiaries, REQUESTOR is not seeking to apply the exemption in Ala. Code, 1975 §40-9-12 to that Investment Property or to the Subsidiary as to that Investment Property.

⁶ A disregarded entity cannot claim a tax benefit based upon the status of its owner except through a specific exemption statute such as Ala. Code, 1975 §40-9-12 and even then its benefits are limited by the specifics of that statute. For example, a single-member limited liability company not electing to be treated as a corporation under the check-the-box federal regulation cannot claim the homestead exemption of its owner.

For sales and use tax purposes, the Subsidiaries will be exempt from the tax only when the purchase or use of the tangible personal property is exclusively for the conducting, maintaining, operating and carrying out of the program, work, principles, objectives, and policies of REQUESTOR which is done through the Subsidiary. Likewise, for income tax purposes, Ala. Code, 1975 §40-9-12 exempts the Subsidiaries from income tax only when the profits are the result of conducting, maintaining, operating and carrying out of the program, work, principles, objectives, and policies of REQUESTOR which are done through the Subsidiary.⁷ As a result, the distinctions between the Charitable Properties and Investment Properties are a useful guide for both sales and income taxes. Purchases for and income produced from the Charitable Properties are exempt from taxation while purchases for and income produced from Investment Properties are not exempted from taxation through Ala. Code, 1975 §40-9-12.⁸

CONCLUSION

The Commissioner of the Department of Revenue grants the Taxpayer's requested ruling as set forth above.

Julie P. Magee
Commissioner of Revenue

⁷ REQUESTOR acknowledges that the Unrelated Business Income Tax rules found at Sections 511 *et seq.* of the Internal Revenue Code must be applied for Alabama income tax purposes. Under those rules, certain types of passive income is excluded from taxation, including dividends, interest, royalties, certain rents, and capital gains. IRC 512(b). For income from the Investment Property of REQUESTOR, the Unrelated Business Income Tax will continue to be applied.

⁸ But see footnote 7.