

**ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 00-008**

This document may not be used or cited as precedent. Ala. Code §40-2A-5(a) (1998 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: November 8, 2000

RE: Applicability of the Downtown Redevelopment Authority Act, codified at Ala. Code § 11-54A-1 et seq., to the construction of a new church facility.

FACTS

The facts as represented by the Requestor are as follows:

Church "A" ("Church") desires to build a new building near its present sanctuary. The new building will be built on land now being used as parking and would be approximately 120,000 square feet in size. The building would be a four story building. The first floor would contain a choir practice room seating about 200 choir members. Also on the first floor would be space to be finished out later as a fellowship hall. The principal portion of the second, third and fourth floors would contain a new sanctuary seating about 1,300 people. Portions of the third and fourth floors would be unfinished in the first phase and finished out as Sunday School classroom space in the future. The Church expects to build a corridor or bridge connecting the new building with its present building.

The estimated cost of the first phase of this construction project is approximately \$16,000,000. Approximately \$6,000,000 of this cost is expected to be borrowed to be repaid over approximately 15 years.

Architectural plans for this construction project have been prepared by an architect. The Church has prequalified four sizable construction companies and is taking bids from those construction companies. The successful bidder will serve as general contractor and will have numerous subcontractors working under it.

Contrary to the experience of substantially all urban, downtown churches, the Church has been able to grow in membership and attendance and is currently required to conduct three Sunday morning worship services in order to accommodate worshippers.

The Church believes that its membership and attendance will plateau, stagnate and then decline if it does not have adequate worship space and other necessary facilities. The Church will also employ additional employees when the new building is complete.

The Church has a membership in excess of 3,000 persons and has in excess of 1,200 persons in attendance for Sunday morning worship and Bible study classes. The Church is open six days a week and operates extensive programs daily for each of those six days. The Church operates an extensive Community Ministries program designed to benefit and assist persons in need in the downtown Montgomery area and areas near downtown. Approximately 300 volunteer members of the Church staff these programs. These programs include year round five day a week GED classes for persons who have been unable to complete a formal high school education; a building open three days each week to give those in need clothing and food assisting approximately 2000 families, including approximately 3,100 adults and approximately 3,500 children each year and distributing approximately 80 thousand pounds of food per year; a preschool learning center for single and other working mothers, primarily working in the downtown area, with enrollment ranging from 90 to 100 children and with costs significantly subsidized by Church resources; a tutoring program for children in a public housing project which occupies every available room in the Church complex one night each week and an office open three days each week which distributes funds for qualified travelers in need of aid, families facing disconnection of utilities, medical emergencies or other basic needs. The Church also sponsors and houses a program which coordinates the efforts of about fifteen predominately white and predominately black churches in City "X" which operate additional programs to help the needy, primarily in public housing projects.

The Church and its various community ministry activities collectively employ approximately 76 persons. Some of its programs also provide disadvantaged persons with skills necessary for employment. The Church operates on an operating budget of about \$3,200,000 much of which contributes to the trade and commerce in the downtown area. If the Church is able to grow, it will increase its trade and commerce in the downtown area and employment. If the Church is not able to grow and prosper and, in fact, goes into decline, the employment opportunities it now provides and the additional employment that will be provided by its expansion, together with its trade and commerce within the downtown area will be reduced or possibly eliminated. The Church is the only sizeable church in City "X" that has committed itself to stay downtown, minister to the needs of persons in the downtown area and maintain trade, commerce and employment in the downtown area.

ISSUES

- I. Whether the construction of a new church facility qualifies as a "project" under the Downtown Redevelopment Authority Act as that term is defined in Ala. Code § 11-54A-2(13)?

- II. If the construction of a new church facility qualifies as “project,” will the project be exempt from sales and use tax under Ala. Code § 11-54A-14?

LAW AND ANALYSIS

ISSUE I:

The Downtown Redevelopment Authority Act (“Act”) permits the organization of downtown redevelopment authorities for the purpose of financing projects to “revitalize and redevelop the central business district of any city in the state.” Ala. Code § 11-54A-1. An authority is organized by the filing of an application with the governing body of the city. Ala. Code § 11-54A-4. Upon the adoption by the city of a resolution authorizing its establishment, the authority can incorporate as a public corporation by filing a certificate of incorporation with the probate court in the county wherein that city is located. Ala. Code § 11-54A-5. For a particular undertaking to qualify for financing from a downtown redevelopment authority, the undertaking must meet the definition of “project” under the Act. Ala. Code § 11-54A-2(13) defines a “project” as:

Interests in land, buildings, structures, facilities or other improvements located within the downtown development area, any fixtures, machinery, equipment, furniture or other property of any nature whatsoever used on, in or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of trade, commerce, industry and employment opportunities in the downtown development area. A project may be for any industrial, commercial, business, office, parking, utility, residential (including without limitation homes, apartments, townhouses, condominiums, hotels and motels) or other use, provided that a majority of the members of the authority determine, by resolution duly adopted, that the project and such use thereof would further the public purpose of this chapter.

If an undertaking qualifies as a project under the Act, it must be located in the downtown development area. Ala. Code § 11-54A-9(b) states the following:

All projects of the authority shall be located wholly within the corporate limits of the city and shall be in the downtown development area, which shall be an area defined by the authority and approved by resolution of the governing body of the city.

The Church is proposing to build its new church facility near its present sanctuary, which is located in downtown City “X”. This proposed site falls within the downtown redevelopment area as defined by the City “X” Downtown Redevelopment Authority and approved by the City “X” City Council.

In addition, in order to qualify as a project under the Act, the proposed undertaking must be for the “essential public purpose of development of trade,

commerce, industry, and employment opportunities in the downtown development area. A project may be for any industrial, commercial, business, office, parking, utility, residential (including without limitation homes, apartments, townhouses, condominiums, hotels and motels) or other use, provided that a majority of the members of the Authority determine, by a resolution duly adopted, that the project and such use thereof would further the public purpose of this chapter.” Ala. Code §11-54A-2 (13).

The case of City of Hamilton Downtown Redevelopment Auth. v. Gravlee, 602 So.2d 390 (Ala. 1992), is the only case in Alabama to interpret the Act. However, City of Hamilton dealt with the issue of whether the City of Hamilton Downtown Redevelopment Authority improperly authorized bonds to finance a shopping center located away from the central downtown business district. It provides no guidance as to whether the building of a church sanctuary would qualify as a project under the Act.

However, according to Ala. Code § 11-54A-2(13), the majority of the members of the authority are to determine, by a resolution duly adopted, that the proposed project and such use would further the public purpose of the Act, within the statutory limitations. See also City of Hamilton at 394.

ISSUE II:

If the proposed undertaking is determined to qualify as a project under the Act, the project would be entitled to various exemptions from taxation.

Ala. Code § 11-54A-14, provides the following:

The authority formed under this chapter, the property and income of the authority (whether used by it or leased to others), all bonds issued by the authority, the income from such bonds or from other sources, the interest and other profits from such bonds enuring to and received by the holders thereof, conveyances by and to the authority and leases, mortgages and deeds of trust by and to the authority shall be exempt from all taxes in the state. The authority should not be obligated to pay any fees, taxes or costs to the judge of probate of any county in connection with its incorporation or with any amendment to its certificate of incorporation or otherwise or to any judge of probate of any county in connection with the recording of any document or otherwise, the authority being hereby exempted from the payment of any such fees, taxes and costs. No license or excise tax may be imposed by any authority with respect to the privilege of engaging in any of the activities authorized by this chapter.

Therefore, if the City “X” Downtown Redevelopment Authority, an exempt entity, determines that the construction of a new church facility qualifies as a “project” under Ala. Code § 11-54A-2(13), and all the materials used in constructing this new church facility are purchased by the Authority, and not the Church, then the purchases made by the Authority in the construction of the new church facility will be exempt from sales and

use tax. On the other hand, if the purchases are made by the Church, Ala. Code §11-54A-14 does not apply and the purchases will be taxable.

HOLDING

Based upon the particular facts of this case, if the construction of a new church facility is determined to be a “project” by the City “X” Downtown Development Authority and the Authority purchases the materials used in the project, the project will be exempt from sales and use tax in accordance with Ala. Code §11-54A-14. If these conditions are not met, the construction of the new church facility will not qualify for a sales and use tax exemption.

MICHAEL PATTERSON, Commissioner
Alabama Department of Revenue

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