



G. THOMAS SURTEES
Commissioner

State of Alabama Department of Revenue

(www.revenue.alabama.gov)
50 North Ripley Street
Montgomery, Alabama 36132

CYNTHIA UNDERWOOD
Assistant Commissioner
LEWIS A. EASTERLY
Secretary

ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 05 - 003

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TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: February 15, 2006

RE: Applicability of the Downtown Redevelopment Authority Act, codified at Ala. Code §11-54A-1a seq., to the conversion, renovation, refurbishment, and construction of new church facilities.

FACTS

The facts as represented by the Requestor are as follows:

Taxpayer is a nonprofit corporation under the laws of the State of Alabama and is an organization described in Section 501(c)(3) of the Internal Revenue Code of 1986, as amended, and exempt from federal tax under Section 501(a) thereof. The Taxpayer owns certain properties and facilities in downtown City "A" which consists of The Cathedral and related buildings and facilities. The Cathedral is growing in membership and serves approximately 760 families. The Cathedral is open 7 days a week and conducts worship services at least once a day. The Cathedral provides significant charitable and social services in downtown City "A" and for the benefit of the entire Diocese of City "A" in Alabama.

The Taxpayer intends to acquire, construct and renovate capital improvements ("Project") at such location adjacent to the Cathedral, to be made available for use every day by all persons of all faiths.

The Project will consist of (i) the conversion, renovation and refurbishment of certain facilities formerly used as an elementary school (now closed) for a family life center, (ii) construction of a 60 foot bell tower, (iii) acquisition of eight free swinging bells from a Foundry, (iv) development of a courtyard and lawn, and (v) construction of a 200-

unit columbarium. The project is expected to cost approximately \$4,630,000 and be completed in approximately 24 months. The Taxpayer has requested the City "A" Downtown Redevelopment Authority ("Authority") to acquire, construct, renovate and finance the project.

On October 27, 2005, the Board of Directors of the Authority held a public meeting thereof duly called and held in accordance with law, with all members present, adopted a resolution whereby the Authority:

(a) found and determined that:

- (1) the Cathedral provides significant employment opportunities and charitable and social services in central downtown City "A",
- (2) the Project is located in the "downtown development area" of the Authority in accordance with Ala. Code §11-54A-9(b) of the Authority Enabling Law,
- (3) the financing of the construction, rehabilitation, and renovation of the Project constitutes a "project" pursuant to and within the meaning of the Ala. Code §11-54A-2(13) of the Authority Enabling Law and the Project and use of the Project would further the public purposes of the Authority Enabling Law,

(b) Pursuant to the Authority Enabling Law duly authorized:

- (1) the acquisition by the Authority of a leasehold estate in the real property necessary for the Project and the existing facilities thereon,
- (2) acquisition, construction and renovation of the Project by the Authority,
- (3) the financing of the Project by the Authority by the issuance of a \$5,000,000 original principle amount Revenue Bond ("Bond"),
- (4) the sale of the Bond at par to Bank ("Bondholder"),
- (5) the appointment of the Taxpayer as agent of the Authority for all purposes acquiring materials and property for the Project,
- (6) the lease of the Project to the Taxpayer for use in furtherance of the corporate purposes of the Authority and the Taxpayer.

The proceeds of the Bond shall be advanced by the Bondholder, as funds are needed to pay the costs of the Project, by deposit of such proceeds into an account of the Authority. The Authority shall acquire the Project and lease the Project to the Taxpayer. In order to realize the exemption available to the Authority under Ala. Code §11-54A-14 of the Authority Enabling Law, from payment of privilege license and excise taxes upon

purchase of tangible personal property for the Project, the Authority and the Taxpayer will comply with the following procedures:

- (1) all contracts for the Project shall be assigned to the Authority with performance thereunder guaranteed by the Taxpayer, by assignment.
- (2) each contract or agreement to provide labor and materials for the Project shall contain the "reserve clause" approved by the Department of Revenue.
- (3) all tangible personal property to be provided under any contract or agreement for the project shall be ordered under a proper purchase order by the Authority or duly authorized agent,
- (4) each contractor and subcontractor shall provide separate invoices for labor and separate invoices for tangible personal property and each invoice must be in the name of the Authority and may be in the care of its agent,
- (5) payments of all invoices shall be made directly from funds belonging to the Authority which shall have been provided to the Authority by deposit of such funds, as proceeds of the Bond issued by the Authority, in an account in the name of the Authority; provided such funds be disbursed by the authorized agent of the Authority for the Project.

ISSUES

I. Whether all purchases made by the Authority of tangible personal property to be incorporated into, or used in connection with, the Project shall be exempt from the payment of all privilege, license and excise taxes, (commonly called sales and use taxes) levied by any taxing authority within or without the State of Alabama?

II. The procedures to be employed by the Authority in the purchase of tangible personal property to be incorporated into, or used in connection with, the Project, as outlined, is hereby approved for the realization of exemption from payment of all privilege, license and excise taxes in connection with any purchase of any such personal property.

LAW AND ANALYSIS

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 in 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 in the county wherein that city is located. Ala. Code §11-54A-5. For a particular undertaking to qualify for financing for 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 the undertaking qualifies as a project under 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 the resolution of the governing body of the city.

The Taxpayer is proposing to convert, renovate, refurbish and construct facilities adjacent to its current cathedral facility, which is located in downtown City “A,” Alabama. This proposed site falls within the downtown redevelopment area as defined by the City “A” Downtown Redevelopment Authority and approved by the City “A” City Counsel.

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 propose of this chapter.” Ala. Code §11-54A-2(13).

The case of City of Hamilton Downtown Redevelopment Authority 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 construction of church facilities 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.

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 “A” Downtown Redevelopment Authority, an exempt entity, determines that the construction, renovation and refurbishment of certain facilities qualifies as a “Project” under Ala. Code §11-54A-2(13), and all of the materials used in constructing this church facility are purchased by the Authority, and not the church, then the purchase is made by the Authority and the construction, renovation and refurbishment of the Project will be exempt from sales and use tax. On the other hand, if the purchase is made by the church, Ala. Code §11-54A-14 does not apply and the purchase will be taxable. Furthermore, any purchases of building materials made by any contractor or subcontractor in their own name are taxable and the contractor or subcontractor must pay tax on those purchases.

HOLDING

Based upon the particular facts of this case, if the construction, renovation and refurbishment of new church facilities is determined to be a “Project” by the City “A” Downtown Development Authority, and the Authority purchases the materials used in the Project, the Project would be exempt from sales and use tax in accordance with Ala. Code §11-54A-14. If the Authority defaults and the Taxpayer performs the contract and/or makes payments, the construction, renovation and refurbishment project will not qualify for sales and use tax exemption. Furthermore, any purchases made by the

Taxpayer and later assigned to the Authority are fully taxable, as are purchases of building materials by a contractor or subcontractor in their own name. Finally, the Department declines to give approval to the “blanket” reserve clause as provided in Exhibit H, and suggests instead that the Requestor review this ruling for guidance in determining whether or not such clause fits within the perimeters of Ala. Code §11-54A-1, et. seq.

G. THOMAS SURTEES, Commissioner
Alabama Department of Revenue

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