



JULIE P. MAGEE
Commissioner

State of Alabama Department of Revenue

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

CYNTHIA UNDERWOOD
Assistant Commissioner

MICHAEL E. MASON
Deputy Commissioner

ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 2011-001

This document may not be used or cited as precedent. Ala. Code § 40-2A-5(a) (2003 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: September 30, 2011

RE: Exemption of the "Authority" from the Payment of All Privilege, License and Excise Taxes Connected to Purchases of Tangible Personal Property for the Taxpayer's Capital Improvement Project

FACTS

The facts as represented by the Requester are as follows¹:

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 a 200 acre Monastery/Retreat Center consisting of various modern and historic multipurpose buildings and facilities located in downtown City "A," Alabama.

Taxpayer intends to acquire and construct capital improvements (collectively the "Project") at its Monastery/Retreat Center. The Project will be completed in three phases. Phase One consists of the renovation of a building, the addition of a new elevator and stairway, the conversion of an unused auditorium into a dining room and gathering area, the addition of a new kitchen, the upgrade of all electrical, plumbing and mechanical systems, the installation of fire alarms and sprinkler systems and the creation of an accessible loading dock. Phase Two consists

¹ This revenue ruling, like all revenue rulings is the Alabama Department of Revenue's interpretation of the law or regulations as applied to the facts and assertions contained in the request for the ruling. If any facts or conclusions asserted by the requestor were misstated or misleading, or if facts that are relevant or material to a proper legal determination of this revenue ruling are omitted by the requestor, this revenue ruling may be void.

of the addition of another new dining room, the addition of five guest rooms with private baths, the addition of laundry and storage facilities, the renovation of an infirmary, the addition of a covered drop-off entrance, the widening of a driveway, the addition of a retaining wall, the addition of new parking, the addition of ramps and sidewalks and the demolition of certain buildings. Phase Three consists of the construction of two new buildings and the demolition of a certain building.

The Project is expected to cost approximately \$8,400,000 and be completed in approximately 24 months. The Taxpayer has requested the City of "A" Downtown Redevelopment Authority (the "Authority") to acquire, construct and finance the Project.

On June 20, 2011, the Board of Directors of the Authority, at a public meeting thereof duly called and held in accordance with law, with all members present, adopted a resolution (the "Authorizing Resolution") whereby the Authority found and determined that (1) the Taxpayer provides significant employment opportunities and charitable activities in central City "A"; (2) the Project is located in the development area of the Authority as approved by a resolution of the City "A" City Council and in accordance with Ala. Code 11-54A-9(b) (The Downtown Redevelopment Authority Act, codified at Chapter 54A of Title 11 of the Code of Alabama 1975, is collectively referred to hereafter as the "Authority Enabling Law"); (3) the Project constitutes a project within the meaning of Section 11-54A-2(13) of the Authority Enabling Law; and (4) the Project, and the use of the Project, would further the public purposes of the Authority Enabling Law.

The Authorizing Resolution further authorized (1) the Authority's acquisition of a sufficient interest in the real property necessary for the Project and the existing facilities thereon; (2) the Authority's acquisition, construction and renovation of the Project; (3) the financing of the Project by the Authority through the issuance of a \$8,400,000 original principal amount Revenue Bond; (4) the appointment of the Taxpayer as agent of the Authority for all purposes of acquiring materials and property for the Project; and (5) 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 Section 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 a reserve clause in substantially the form promulgated by the Alabama Department of Revenue to municipalities and industrial development boards with respect to administrative procedures

pertaining to sale and use tax exemptions available thereto (by Commissioner Eagerton on August 1, 1981; by Commissioner White on July 4, 1984; and by Commissioner Sizemore on July 18, 1990);

- (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 its duly authorized agent;
- (4) each contractor and subcontractor shall provide separate invoices for labor and separate expenses for tangible personal property and each invoice must be in the name of the Authority and may be in care of its agent; and
- (5) payment 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 may be disbursed by an authorized agent of the Authority for the Project.

ISSUES

- (1) Whether all purchases made by the Authority of tangible personal property to be incorporated into, or used in connection with, the Project are 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.
- (2) Whether 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 herein, 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 (the “Authority Enabling Law”) 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. A downtown development 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 from a downtown redevelopment authority, the undertaking must meet the definition of a project under the Authority Enabling Law. 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.

An undertaking that qualifies as a project under the Act, must also 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.

Ala. Code 11-54A-2(13) permits a majority of members of a downtown redevelopment authority to determine, by a resolution duly adopted, that the proposed project and its use would further the public purpose of the act, within the statutory limitations. The Authority has determined that the construction, renovation and refurbishment of the Monastery/Retreat Center qualifies as a project and has adopted its Authorizing Resolution memorializing its findings. Further, the Authority has determined that the site of the proposed project falls within the downtown redevelopment area as defined by the Authority and approved by the City of "A" City Counsel.

A proposed undertaking that qualifies as a project under the Act is entitled to various exemptions from taxation. Ala. Code 11-54A-14 provides:

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 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, in consideration of the facts as presented by the Requester – specifically that the Authority, an exempt entity, has determined that the construction, renovation and refurbishment of certain facilities on the Monastery/Retreat Center qualify as a Project under Ala. Code 11-54A-2(13) and that the Authority has determined that the site of the proposed project falls within the downtown redevelopment area as defined by the Authority and approved by the City of "A" City Counsel pursuant to Ala. Code 11-54A-9(b) – all materials used in the Project that are purchased by the Authority, pursuant to the procedures set forth in the Taxpayer's revenue ruling request, will be exempt from sales and use tax. On the other hand, if purchases are made by the Monastery/Retreat Center, 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

Purchases by the Authority of materials used in the Project are 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 makes the payment, the Project will not qualify for sales and use tax exemption. Furthermore, any purchases made by the Taxpayer and later assigned to the Authority are not exempt and thus 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 reserve clause as provided in Exhibit F and suggests instead that the Requester review this ruling for guidance in determining whether such clause fits the parameters of Ala. Code 11-54A-1, et. seq.

Julie P. Magee, Commissioner
Alabama Department of Revenue