

**TENNESSEE DEPARTMENT OF REVENUE  
LETTER RULING #94-09**

**WARNING**

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.**

**SUBJECT**

Whether a multi-purpose building facility to be constructed by [CONTRACTOR] for [CHURCH] qualifies for the contractor's use tax exemption under T.C.A. Section 67-6-209(b).

**SCOPE**

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed.

This letter ruling may be revoked or modified by the Commissioner at any time.

Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

**FACTS**

The [CHURCH] located at [CITY, TENNESSEE] is planning construction of a multi-purpose building facility to be built by [CONTRACTOR], [CITY, TENNESSEE].

The facility will contain offices for the church's ministers, classrooms for the church's Sunday School program, a large fellowship room with a kitchen for church fellowship meals, a gym and track for youth and older members who need a place for exercise and participation in athletic events, rooms for the church's benevolent programs, and a room with showers and laundry appliances for the church's [SHELTER] program during winter months. The planned building will be joined to the church's existing sanctuary by a covered walkway over the driveway that will separate the two buildings. The project is expected to cost 1.4 million dollars.

The gym and track will be used by church members and also as a tool of outreach into the community. No membership status will be required to use the facility and no fees will be charged for its use. The facility will be used to aid the spiritual growth of the church congregation and people in the community who are not members of the church. The planned facility will not be used as a revenue generating source.

The Tax Assessor's Office of [LOCAL GOVERNMENT] has examined plans and intended uses for the building and has stated that although final authority for all property tax exemption rests with the Tennessee State Board of Equalization, the Tax Assessor's Office, in the opinion of the Deputy Assessor, will not pursue real estate taxation of the property. The Deputy Assessor further states that the tax exemption currently enjoyed by the church can reasonably be expected to be applied to the proposed construction.

### **ISSUE**

Will the planned building facility qualify as "church construction" for purposes of the contractor's use tax exemption found in T.C.A. Section 67-6-209(b)?

### **RULING**

Yes.

### **ANALYSIS**

T.C.A. Section 67-6-209(b) set forth below provides an exemption from the Tennessee sales and use tax for tangible personal property used by a contractor in performance of his contract when such property is for "church construction".

"Where a contractor or subcontractor hereinafter defined as a dealer uses tangible personal property in the performance of the contract, or to fulfill contract or subcontract obligations, whether the title to such property be in the contractor, subcontractor, contractee, subcontractee, or any other person, or whether the title holder of such property would be subject to pay the sales or use tax, except where the title holder is a church, private nonprofit

college or university and the tangible personal property is for church, private nonprofit college or university construction, such contractor or subcontractor shall pay a tax at the rate prescribed by Section 67-6-203 measured by the purchase price of such property, unless such property has been previously subjected to a sales or use tax, and the tax due thereon has been paid. The exemption provided for herein for private nonprofit colleges or university shall apply only to the state portion of the sales tax".

The planned multi-purpose building facility will be owned by [CHURCH] and will be utilized for various church functions and purposes. Tangible personal property purchased free of Tennessee sales and use tax by [CHURCH] under the exemption granted churches under T.C.A. Section 67-6-322(a)(1) and used by [CONTRACTOR] or a subcontractor in performance of a contract to construct the building described will be exempt from the use tax imposed by T.C.A. Section 67-6-203 if the building constructed meets all of the following tests:

1. It qualifies for exemption from property taxes.
2. It is not used for commercial purposes.
3. It is used for commonly recognized church functions.

With regard to the first criterion T.C.A. Section 67-5-212(a)(1) exempts from property tax any property used purely for religious purposes as follows:

"There shall be exempt from property taxation the real and personal property, or any part thereof, owned by any religious, . . . institution which is occupied and used by such institution or its officers purely and exclusively for carrying out thereupon one (1) or more of the purposes for which the institution was created or exists . . . provided, however, that no church shall be granted an exemption on more than one (1) parsonage which shall include not more than three (3) acres of land exempt as hereinafter provided; and provided further, that no property shall be totally exempted, nor shall any portion thereof be pro rata exempted unless such property or portion thereof is actually used purely and exclusively for religious, . . . purposes. For the purposes of this section, a church parsonage shall be deemed to be property used purely and exclusively for religious purposes; provided, however, that no church shall be granted an exemption on more than one (1) parsonage".

The proposed building facility appears to be exempt from property tax under T.C.A. Section 67-5-212(a)(1) and in qualifying for the exemption the first of the three criterion listed will be satisfied. After examining plans and intended uses for the building, the [COUNTY, TENNESSEE] Deputy Tax Assessor has issued his written opinion that although final authority for the exemption will rest with the State Board of Equalization, the Tax Assessor's Office will not pursue real estate taxation of the property in question and the church can thus reasonably expect the exemption that they now enjoy to continue under the proposed plan.

As to the second criterion, property owned by a religious institution but used to operate a secular business outside the institution's charter will not be exempted from property taxation. *City of Nashville v. State Board of Equalization, et al.*, 360 S.W.2d 458 at 468 (Tenn. 1962), (religious institution's realty used for operation of commercial parking lots, cafeteria and snack bar in competition with similar tax paying businesses is not exempt from property taxation). The [CHURCH] states that no membership status or fees will be required for use of the purposed building facility and that it will not be used as a revenue generating source. Thus the second criterion listed is met.

The church also states that the proposed building facility is designed to aid the spiritual growth of their congregation and of non-members in the community. All of the uses which the church states are planned for the building facility are within the scope of commonly recognized church functions and appear consistent with purely religious rather than commercial purposes. Accordingly, the third criterion is also met.

[CONTRACTOR] will not have to pay use tax on materials purchased by [CHURCH] and used in the performance of its contract to construct the planned building facility.

Arnold B. Clapp, Special Counsel

APPROVED: Joe Huddleston Commissioner of Revenue

DATE: 5/11/94