

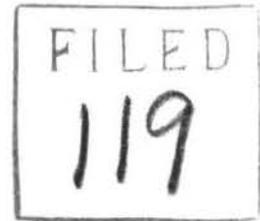
RELIGIOUS ORGANIZATIONS:
TAXATION:
EXEMPTIONS:
SALES AND USE TAXES:

Purchases of construction materials by a religious organization to be turned over to a contractor for use in building a church are purchases made in the conduct of regular religious functions and activities of the organization and are exempt from sales and use taxes under Section 144.040, RSMo 1959.

March 30, 1967

OPINION NO. 119 (1967)
OPINION NO. 562(1966)

Honorable George J. Donegan
State Representative - 143rd District
State of Missouri
Capitol Building
Jefferson City, Missouri



Dear Representative Donegan:

This is in answer to your request for an opinion of this office relating to the liability of the St. Mary's Church or its sole corporate owner, Ignatius J. Stricker Bishop of Springfield - Cape Girardeau, both herein referred to as the "Church" for sales or use taxes on purchases for materials to be used to build a church. In your letter you state that the materials in question are purchased by the Church itself rather than by the contractor and the Church takes direct title to the materials which are then furnished to the contractor for his use in constructing the church.

A tax upon the sale at retail of tangible personal property is imposed by Section 144.020, RSMo Supp. 1965, which reads in part as follows:

"1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state. The rate of tax shall be as follows:

(1) Upon every retail sale in this state of tangible personal property a tax equivalent to three per cent of the purchase price paid or charged, or in case such sale involves the exchange of property, a tax equivalent to three per cent of the consideration paid or charged, including the fair market value of the property exchanged at the time and place of the exchange; except as otherwise provided in section 144.025;"

Honorable George J. Donegan

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Exemptions from this tax for religious and charitable institutions are provided in Section 144.040, RSMo 1959, as follows:

"In addition to the exemptions under section 144.030 there shall also be exempted from the provisions of sections 144.010 to 144.510 all sales made by or to religious, charitable, eleemosynary institutions, penal institutions and industries operated by the department of penal institutions or educational institutions supported by public funds or by religious organizations, in the conduct of the regular religious, charitable, eleemosynary, penal or educational functions and activities, and all sales made by or to a state relief agency in the exercise of relief functions and activities."

(No reference is made to the use tax statutes, as the determination of the sales tax question would apply equally to use taxes; Section 144.615, RSMo Supp. 1965.)

Although the fact that the Church is a religious institution within the meaning of Section 144.040 is not questioned, the Department of Revenue has refused to grant a tax exemption to the Church on the ground that buying building materials to be used by an independent contractor to build a church is not in the "conduct of the regular religious . . . functions and activities" of the church.

A thorough search of the various sales tax decisions in this and other states reveals no case in which this question was raised. The Department of Revenue has consistently, and we think correctly, required that sales or use taxes be paid by a contractor who buys materials to be used in building churches, buildings for charitable institutions, state office buildings and other institutions which may themselves be exempt from payment of such taxes even though the cost of the tax will be transferred to the exempt organization. This is done on the theory that the contractor who buys the materials as the ultimate consumer is liable for such taxes even though the materials are to be used for the benefit of exempt organizations. See *City of St. Louis v. Smith*, Mo. Sup., 114 SW2d 1017.

However, in this case, it is not the contractor but the exempt organization who is buying the materials. It is my understanding that members of the church are buying the materials directly and are not acting through the contractor. In such a case the contractor is not the ultimate consumer but the exempt Church is.

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To say that buying construction materials is not a regular function or activity of the Church is not sufficient to deny its exempt status. It is true that building (or repairing) a church is not one of its usual activities, but when it is necessary, one could not say that building a church is not a part of its religious functions or activities.

To say that a church is not in the construction business is like refusing to exempt a church from paying taxes on furniture for the parsonage or an automobile for the pastor because a church is not in the furniture or automobile business. The materials in each case are used, directly or indirectly, to facilitate the regular religious activities of the church. It is certainly necessary to have a church building to conduct the affairs of the church.

The fact that materials will be purchased to construct a church only once or for repairs only at extended intervals does not detract from the "regularity" of the activity. If the purchase is necessary for carrying on the business of the church, it may be within the conduct of its regular religious functions and activities even though made rarely or at irregular intervals.

Causing a church building to be constructed is part of the regular religious functions of a church and the fact that the church chooses to purchase the construction materials itself rather than allowing the contractor to do so does not cause the church to lose its exempt status in regard to the purchase of such materials.

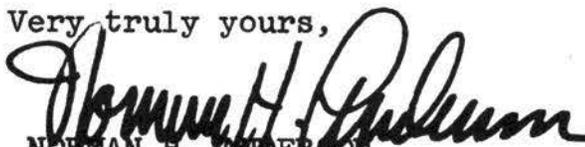
This opinion does not rule upon the question presented when building materials are purchased by a contractor on behalf of an exempt organization under some kind of a contractual agreement whereby title is taken by the exempt organization rather than the contractor.

CONCLUSION

Purchases of construction materials by a religious organization to be turned over to a contractor for use in building a church are purchases made in the conduct of regular religious functions and activities of the organization and are exempt from sales and use taxes under Section 144.040, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John H. Denman.

Very truly yours,



NORMAN H. ANDERSON
Attorney General