



COLORADO

Department of Revenue

Taxation Division

Office of Tax Policy
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PLR-10-005

August 17, 2010

XXXXXXXXXXXXXXXXXXXXX
Attn: XXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXX

Re: Private Letter Ruling

Dear XXXXXXXX,

Your firm submitted on behalf of XXXXXXXXXXXXXXXXXXXXXXXX (“Church”) a request for a private letter ruling to the Colorado Department of Revenue (“Department”) pursuant to Regulation 24-35-103.5. This letter is the Department’s private letter ruling.

Issue

Does the conversion of the Church from a nonprofit association to a corporation sole¹ pursuant to §7-52-101, et seq. and §7-90-201, C.R.S. create a sales or use tax liability based on tangible personal property owned by the Church?

Conclusion

The conversion of the Church from an unincorporated nonprofit association to a corporation sole does not create sales or use tax liability for the Church based on the tangible personal property owned by the Church.

Background

The Church makes the following representation of facts and law, which we assume for purposes of this ruling, are true, accurate, and complete. The Church is currently an unincorporated nonprofit association organized to operate, and does operate, a church in XXXXXXXXXXXXXXXX Colorado. The Church operates as a tax exempt organization under 26 U.S.C. §501(c)(3) and possesses a sales tax exemption certificate issued by the Department.

¹ A corporation sole is a corporation with a single office and is typically used by religious organizations. See, 7-52-102, C.R.S.

Colorado law allows an unincorporated nonprofit association to convert to a corporation sole. See, §7-52-101, et seq., and §7-90-201(1)(a), C.R.S. The Church will convert its organizational status from an unincorporated nonprofit association to a corporation sole, which will provide the Church with greater operational efficiency and reliance upon a more established and relevant statutory authority.

The Church does not own real property, but does own tangible personal property that it uses exclusively in the conduct of its religious functions and activities. The Church represents that, as a corporation sole, it will meet the requirements of a charitable organization as defined in §39-26-102(2.5), C.R.S. and will use the tangible personal property exclusively in the conduct of its regular religious functions.

Discussion

The Church advances three independent arguments why the conversion does not create a sale or use tax liability: (1) the association and corporation are the same entity and, therefore, there is no transfer (sale) of property,² (2) even if there were a transfer of property from the association to the corporation sole, there is no consideration³ for the transfer and, therefore, there is no taxable sale, and (3) even if there is a sale based on consideration between the association and corporation sole, purchases by the corporation sole are exempt because it is a charitable entity. We find it necessary to address only the charitable exemption issue in order to issue this ruling.⁴

The sale, use, storage or consumption of tangible personal property is exempt from sale and use tax if the purchaser or user is a charitable entity and it uses the property exclusively in the conduct of its regular charitable (religious) functions. See, §§39-26- 718(1)(a) and 713(1)(d), C.R.S. Thus, and assuming for purposes of this discussion that the conversion of the association to a corporation sole is a transfer (sale) of assets and the sale is supported by consideration, such a sale is, nevertheless,

² Colorado excludes from the definition of "sale" transfers of taxable property made pursuant to the formation or dissolution of corporations and pass-through entities, such as corporate "reorganizations" pursuant to §368(a)(1), I.R.C., which includes a mere change in identity or form of a corporation pursuant to §368(a)(1)(F). See, §39-26-102(10)(h), C.R.S. The conversion at issue in this ruling is not a reorganization of an existing corporation but, rather, a conversion of an unincorporated nonprofit association to a corporation. This type of conversion is not expressly included in the list of exclusion under subsection 102(10). The absence of such a provision creates ambiguity regarding whether the change in organization in this case creates an exchange of tangible personal property owned by the Church. On the other hand, there are statutory provisions that suggest that such a conversion does not create a transfer of assets. See, §7-90-202, C.R.S., which expressly states that a conversion is the continuation of the entity. See, also, Florida Technical Assistance Advisement 00A-049, 09/14/2000 (conversion similar to reorganization and, therefore, no sale for sales tax purposes); Arizona Attorney General Opinion I89-005(R87-202).

³ The statutory definition of "sale" requires that the transaction be for consideration. See §39-26- 102(10), C.R.S.

⁴ We do not rule here whether a conversion constitutes a sale for sales tax purposes or whether there is consideration.

exempt if the corporation sole is a charitable entity that uses the property exclusively in the conduct of its regular religious functions and activities.

The Church represents that it is, as an unincorporated nonprofit association, and will be, as a corporation sole, a charitable organization as defined in §39-26-102(2.5), C.R.S.⁵ and that the tangible personal property at issue will be exclusively used by the corporation sole in the conduct of its regular religious functions. Therefore, neither the Church as an association nor the Church as a corporation sole incurs sales or use tax liability as a result of such conversion.

Miscellaneous

This ruling applies only to sales and use taxes administered by the Department. You may wish to consult with local governments which administer their own sales or use taxes about the applicability of those taxes.

This ruling is premised on the assumption that the Church has completely and accurately disclosed all material facts. The department reserves the right, among others, to independently evaluate Church's representations. This ruling is null and void if any such representation is incorrect and has a material bearing on the conclusions reached in this ruling. This ruling is subject to modification or revocation in accordance to Department Regulation 24-35-103.5

Enclosed is a redacted version of this ruling. Enclosed is a redacted version of this ruling. You have previously reviewed and stated you have no comment or objection to the redaction.

Sincerely,

Office of Tax Policy
Colorado Department of Revenue

⁵ We do not determine here whether the Church qualifies as a charitable organization. We assume for purposes of this ruling that it does.