

May 10, 2016

[Taxpayer Representative]
[Address]
[Address]

Re: Formal Ruling 16-06

Dear [Taxpayer Representative]:

This is a formal ruling for [Taxpayer], regarding the applicability of property transfer tax to a purchase of property by a church which is eligible for nonprofit status under Federal tax law. This ruling is based upon representations in your letter dated [Date], and the enclosed materials, received in this office [Date].

FACTS

[Taxpayer] (the Church), purchased land and a building in [Location], which it intends to use as a church edifice. The Church paid the property transfer tax on the transaction, but now seeks a ruling that it is exempt from that tax.

The Church has not filed for Federal nonprofit status under Federal law 26 U.S.C. § 501(c)(3) (“501(c)(3”).

DISCUSSION

A purchaser of real property in Vermont is subject to Vermont’s property transfer tax. 32 V.S.A. §§ 9602, 9604. With certain exceptions not relevant here, the tax is imposed at the rate of one and one-quarter percent of the value of the property transferred. 32 V.S.A. § 9602.

The law provides various exemptions from the tax. 32 V.S.A. § 9603. There is no exemption for churches *per se*. There are several exemptions for organizations which qualify for Federal nonprofit status under 501(c)(3), but these exemptions are limited to purchases of property in order to preserve farmland or open-space land, or to preserve low-income housing, or operate a public television station, or operate a food clearinghouse. 32 V.S.A. § 9603(14)(A), (14)(B), (20), (23). None of these exemptions applies to your situation.

The property tax statutes are clear that there is no exemption for a purchase of property by a church. “When the plain language is clear,” the courts will “enforce the statute according to its terms” and “any change to the existing statute is . . . within the sole province of the Legislature.” Ice Ctr. of Washington W., Inc. v. Town of Waterbury, 2008 VT 37, ¶¶ 7, 9 (2008).

You state that “The Church is a valid non profit operating for the public good and would meet any test for non profit eligibility and 501(c)(3) status” and as a result, “The Church should be exempt from property transfer tax.” However, as noted above, even if the Church qualifies for 501(c)(3) status, the property transfer tax laws do not provide an exemption for the transaction you describe.

Nor is there any constitutional impediment to imposition of the property transfer tax on the Church’s purchase. The First Amendment of the Federal Constitution provides:

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S. Const. amend. I. The correlative section of the Vermont constitution provides:

Article 3. [Freedom in religion; right and duty of religious worship]

That all persons have a natural and unalienable right, to worship Almighty God, according to the dictates of their own consciences and understandings, as in their opinion shall be regulated by the word of God; and that no person ought to, or of right can be compelled to attend any religious worship, or erect or support any place of worship, or maintain any minister, contrary to the dictates of conscience, nor can any person be justly deprived or abridged of any civil right as a citizen, on

account of religious sentiments, or peculia[r] mode of religious worship; and that no authority can, or ought to be vested in, or assumed by, any power whatever, that shall in any case interfere with, or in any manner control the rights of conscience, in the free exercise of religious worship. Nevertheless, every sect or denomination of christians ought to observe the sabbath or Lord's day, and keep up some sort of religious worship, which to them shall seem most agreeable to the revealed will of God.

Vermont Constitution, Chapter I, Article 3.

Applying these provisions to the question of taxation of protected groups, the U.S. Supreme Court has found that a tax may be valid so long as it applies to other citizens similarly, and does not “single out and burden First Amendment interests.” Vermont Society of Association Executives v. Milne, 172 Vt. 375, 382 (2001) (*quoting* Minneapolis Star & Tribune Co. v. Minnesota Comm’r of Revenue, 460 U.S. 575, 592-93 (1983)); *see also* Jimmy Swaggart Ministries v. Board of Equalization of California, 493 U.S. 378 (1990) (requirement that church register for and collect sales tax on its retail sales did not single out or burden the religious organization, and the State was not required to provide a tax exemption for the religious organization). The Vermont Supreme Court has held that a statute “runs afoul of the Establishment Clause if its ‘effect’ is that of either ‘advancing or inhibiting religion.’” Chittenden v. Waterbury Ctr. Cmty. Church, Inc., 168 Vt. 478, 486, (1998) (exclusion of public, pious and charitable property from law of prescriptive easements did not advance or inhibit religion and did not violate the establishment of religion clause).

In your case, the property transfer tax does not single out and burden the Church, but instead, taxes its property transfer in the same manner as applies to the general population. The property transfer tax is neutral with regard to purchases by religious organizations; it neither advances nor inhibits religion. Therefore, under relevant Federal and State case law, the property transfer tax laws do not violate constitutional protections for religion.

As a result, the property transfer tax is properly applicable to a sale of a church building to [Taxpayer].

GENERAL PROVISIONS

Issuance of this ruling is conditioned upon the understanding that neither the taxpayer nor a related taxpayer is currently under audit or involved in an administrative appeal or litigation concerning the subject matters of the ruling. This ruling is issued solely to the taxpayer and is limited to the facts presented, as affected by current statutes and regulations.

Other taxpayers may refer to this ruling, when redacted to protect confidentiality, to see the Department's general approach, but the Department will not be bound by this ruling in the case of any other taxpayer or in the case of any change in the relevant statutes or regulations.

This ruling will be made public after deletion of the parties' names and any information which may identify the parties. A copy of this ruling showing the proposed deletions is attached, and you may request within 30 days that the Commissioner delete any further information that might identify the parties. The final discretion as to deletions rests with the Commissioner.

You have the right to appeal this ruling within 30 days. 3 V.S.A. §§ 808, 815.

Emily Bergquist

Date

Approved:

Mary N. Peterson
Commissioner of Taxes

Date