

TAXATION

SALES TAX

RELIGIOUS INSTITUTIONS

Missouri Baptist General Association
exempted from provisions of the two
per cent sales tax act.

November 17, 1937

11-22



Mr. E. Godbold
General Superintendent
Missouri Baptist General Ass'n
Kansas City, Missouri

Dear Mr. Godbold:

This office acknowledges receipt of your request dated November 12, 1937, which is as follows:

"I wish you would please give me your opinion as to whether we are subject to the state sales tax in our purchases for the work carried on by the Missouri Baptist General Association. For instance, we have an automobile that belongs to Missouri Baptists that is used in our missionary work. We have several telephones here in our offices and we do considerable business with the Western Union Telegraph Company. We also in our promotion work have some pictures of our missionary work which we show, the material for which we buy for the most part from the Eastman Kodak Company. Should we be subject to sales tax on such purchases? We have a book store in connection with our offices and sell nothing but our own denominational books and every cent that comes to us from these sales goes into our missionary work. Mr. Forrest Smith, the State Auditor, about a year ago, exempted us from charging sales tax on the sales made

in our Book Store. Should we be exempt from paying the tax to others from whom we make purchases?"

Section 46 of the Sales Tax Act, which is as follows:

"In addition to the exemptions under Section 3 of this Act there shall also be exempted from the provisions of this Act 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."

exempts from the provisions of the Act all sales made by or to religious * * * institutions * * * of tangible personal property or services subject to the provisions of the Act in the conduct of the regular religious functions and activities.

It appears from your request that you are particularly anxious for this opinion to cover the question of whether or not your institution should pay the two per cent tax to those from whom you make purchases of tangible personal property or receive services which are subject to the provisions of the Act. That part of the business which you carry on with the Western Union Telegraph Company and with the Eastman Kodak Company, which is outstate, is interstate business and is not taxable, nor are the purchases of gasoline you make taxable. All such purchases are exempt by provisions of Section 3 of the Act, which reads in part as follows:

" * * * and any retail sale which the State of Missouri is prohibited from

taxing under the Constitution or laws of the United States of America, and such retail sales of tangible personal property which the General Assembly of the State of Missouri is prohibited from taxing or further taxing by the Constitution of this state. In order to avoid double taxation under the provisions of this Act, no tax shall be paid or collected under this Act upon the sale at retail of any motor fuel, subject to an excise or sales tax under another law of this state;
* * *

Your request also indicates that you operate a book store in connection with your office, but sell nothing but your denominational books and all receipts from such sales goes into your missionary work.

It is the opinion of this office that so long as you sell only your denominational books in your book store, you are not entering into a commercial enterprise outside the scope of your religious activities. However, if you sell books other than your denominational books, such transactions would not be classed as religious activities, but would be commercial. Judge Gentry of the Supreme Court of Missouri, in the case of State vs. Gaynor, 11 S. W. (2nd) 30, l.c. 35, cited the case of American Sunday School Union vs. City of Philadelphia, 161 Pa. 307 in which that court held as follows:

"The Pennsylvania court held that an institution of purely public charity is not, as such, exempt from taxation on property used by it in carrying on a book store in which are sold, in addition to all its own publications, other standard works, in order to aid it in making its business self-supporting, although the whole profit therefrom was devoted to charity purposes of the institution. Amer. Sunday School Union

v. City of Philadelphia, 161 Pa.
307, 29 A. 26."

Judge Gentry followed the rule of the Pennsylvania court in arriving at his findings in the case of State vs. Gaynor, supra. The court in the same case quoted the following rule, which is the general rule with respect to construction of exemption statutes, at page 34:

"In the construction of laws exempting property from taxation it is a cardinal principle that they must be strictly construed."

Even though the rule of strict construction is applicable in this case, we do not think the association would lose its right to exemption on account of the sales it makes at the book store and hold that such sales are made by religious organizations in the conduct of their regular religious functions and activities. As said Act exempts sales made by or to such organizations, then the purchases of personal property or the receipt of services taxable under the Act used by said Association in the conduct of its regular religious functions or activities would be exempted.

CONCLUSION

It is, therefore, the opinion of this department that sales and purchases by the Missouri Baptist General Association in the conduct of its regular religious functions and activities of tangible personal property and services subject to tax under the two per cent Act are exempt by Section 46 of said Act and that the two per cent tax should not be collected on such transactions.

Respectfully submitted,

TYRE W. BURTON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General