# TENNESSEE DEPARTMENT OF REVENUE
# LETTER RULING # 17-03

**Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This ruling is based on the particular facts and circumstances presented, and is an interpretation of the law at a specific point in time. The law may have changed since this ruling was issued, possibly rendering it obsolete. The presentation of this ruling in a redacted form is provided solely for informational purposes, and is not intended as a statement of Departmental policy. Taxpayers should consult with a tax professional before relying on any aspect of this ruling.**

## SUBJECT

The application of the Tennessee recordation tax to faith-based home financing transactions.

## 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

[NONPROFIT CORPORATION] (the "Nonprofit Corporation") is a [STATE] nonprofit corporation that has received a determination of tax-exempt status for federal income tax purposes pursuant to I.R.C. § 501(a) as an organization described in I.R.C. § 501(c)(3). The Nonprofit Corporation provides financing for [HOUSING] across Tennessee and in parts of [STATE]. [REDACTED].

For a growing number of Tennessee residents, including members of certain Christian, Jewish, Islamic, and Buddhist sects, entering into an interest-based transaction would violate sincerely and deeply held religious beliefs. [REDACTED]. Accordingly, the Nonprofit Corporation has developed an alternative structure for home financing transactions that complies with religious prohibitions by avoiding the payment of interest (the "Faith-Based Financing Transaction").

First, an individual wishing to enter into a Faith-Based Financing Transaction (the "Buyer") identifies a residence, located on a single tract or parcel of land that he or she wishes to purchase. The Buyer then negotiates a purchase price with the seller and enters into a contract with the seller for the sale of the residence.

Next, the Buyer enters into deed of trust agreement with the Nonprofit Corporation. Under the terms of this agreement, the Buyer assigns his or her rights under the sales contract to both the Buyer and the Nonprofit Corporation. The Buyer is responsible for paying the seller, from his or her own funds, all earnest money required to reserve the property for purchase in addition to all taxes.

Together, the Buyer and the Nonprofit Corporation then purchase the property from the seller. Immediately thereafter, the Buyer and the Nonprofit Corporation convey the property to the Buyer and execute both a mortgage or deed of trust and an accompanying note. Two deeds are necessary to complete the Faith-Based Financing Transaction (*i.e.*, a deed conveying the property from the seller to the Buyer and the Nonprofit Corporation, and a deed conveying the property from the Buyer and the Nonprofit Corporation to the Buyer). Both of these deeds must be properly recorded to establish a complete chain of title for the property and are recorded simultaneously.

To comply with the Buyer's religious convictions, the Nonprofit Corporation does not charge interest, but because the Nonprofit Corporation momentarily takes an ownership interest in the property, it may charge the Buyer a "profit" instead. Under the terms of the deed of trust agreement, the Buyer agrees to repay the Nonprofit Corporation for all of its costs and expenses incurred in carrying out the Faith-Based Financing Transaction. This includes any sums the Nonprofit Corporation paid to the seller in purchasing the property, plus a fixed amount of "profit," calculated as a set percentage per annum of the Nonprofit Corporation's costs and expenses (collectively, the "Debt"). The Buyer repays the Debt in scheduled monthly payments. In the event that Buyer repays the Nonprofit Corporation in an amount greater than his or her scheduled monthly payment, the Nonprofit Corporation must reduce the total outstanding Debt by the amount of profit that the Nonprofit Corporation would have earned on the overpayment.

## RULING

Is the recordation of each deed created in conjunction with a single Faith-Based Financing Transaction separately subject to the Tennessee recordation tax?

> Ruling: No, the simultaneous recordation of the two deeds created in conjunction with a single Faith-Based Financing Transaction is subject to the Tennessee recordation tax only one time because one person receives the deeds, and the deeds transfer a single tract or

parcel of real estate, and comprise part of the same transfer in accordance with TENN. CODE ANN. § 67-4-409(a)(6)(C) (2013).

## ANALYSIS

TENN. CODE ANN. § 67-4-409(a) imposes the recordation tax "on all transfers of realty, whether by deed, court deed, decree, partition deed, or other instrument evidencing transfer of any interest in real estate." The tax is applied at the rate of $0.37 per $100 "on the consideration for the transfer, or the value of the property, whichever is greater."[1] For real estate transfer tax purposes, "value of the property" means "the amount that the property transferred would command at a fair and voluntary sale, and no other value."[2]

TENN. CODE ANN. § 67-4-409(a)(6) (2013) provides that the "tax shall be paid by the grantee or transferee of the interest in real estate, as shown on the instrument evidencing the transfer of such interest; and it shall be collected by the register of the county in which the instrument is offered for recordation."[3] Furthermore, "[a] person who receives several deeds or other instruments of conveyance for the same transfer of one and the same tract or parcel of real estate shall pay only one (1) state tax with respect to such transfer."[4]

Accordingly, a "person" receiving multiple instruments is only required to remit the Tennessee recordation tax once if the instruments transfer a single tract or parcel of real estate and the instruments are part of the same transfer. The Faith-Based Financing Transaction satisfies these requirements.

First, there must be one person receiving the multiple instruments. In the Faith-Based Financing Transaction, it is the Buyer who receives and records multiple instruments. Although, the Faith-Based Financing Transaction involves two deeds, one deed conveying the property from the seller to the Buyer and the Nonprofit Corporation and a separate deed conveying the property from the Buyer and Nonprofit Corporation to the Buyer, the Buyer is the only person receiving the instruments. The Nonprofit Corporation operates as an assignee rather than the person actually receiving the instrument as it contemporaneously executes the second instrument to the Buyer to complete the Faith-Based Financing Transaction.

Next, each Faith-Based Financing Transaction only involves one tract and parcel containing a residential home. The Buyer negotiates with the seller to purchase the single residential home, and then the Faith-Based Financing Transaction steps take place to complete the sale. At no point are there multiple tracts or parcels involved in the transaction.

Finally, the unique Faith-Based Financing Transaction constitutes the same transfer for purposes of the Tennessee real estate transfer tax. All of the deeds and instruments of transfer executed in association with the Faith-Based Financing Transaction relate to the same single tract or parcel of

---

[1] TENN. CODE ANN. § 67-4-409(a)(1) (2013).

[2] *Id*.

[3] TENN. CODE ANN. § 67-4-409(a)(6).

[4] TENN. CODE ANN. § 67-4-409(a)(6)(C).

real estate. The Buyer, as transferee, executes and records both deeds contemporaneously. Moreover, the Buyer retains his or her interest in the property throughout the entire course of the Faith-Based Financing Transaction. At no point does the Buyer relinquish his or her ownership rights in the property.

Accordingly, because the two deeds are executed for the same transfer of one and the same tract or parcel of real estate, the Faith-Based Financing Transaction is only subject to the Tennessee real estate transfer tax one time in accordance with TENN. CODE ANN. § 67-4-409(a)(6)(C).

Brent C. Mayo
Assistant General Counsel

APPROVED: David Gerregano
Commissioner of Revenue

DATE: 3/28/17