

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-A-92 (12)S
Sales Tax
February 20, 1992

STATE OF NEW YORK

COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S911125A

On November 25, 1991 a Petition for Advisory Opinion was received from the Downtown Utica Development Association, Inc., 258 Genesee Street, Utica, N.Y. 13502.

The issue raised by Petitioner, the Downtown Utica Development Association, Inc., is whether it is an entity exempt from the imposition of sales and use tax pursuant to Section 1116(a)(1) of the Tax Law.

Petitioner was formed to administer the Downtown Utica Business Improvement District pursuant to the authorization of Article 2-B, Section 24-o of the General City Law. (It is noted that Article 2-B - City Business Improvement District Law, §§24-a to 24r was repealed under the Laws of 1989, c. 282, §4, effective September 5, 1989 and is covered under Article 19-A, Business Improvement Districts, Section 980 to 980-p of the General Municipal Law pursuant to the Laws of 1989, c. 282, §5, effective September 5, 1989.)

Pursuant to Article 2-B, §§24-d and 24-h of the General City Law and pursuant to Local Law No. 1 of 1987, Introductory Local Law No. 1 of 1987, Local Law No. 3 of 1987 and Introductory Local Law No. 2 of 1987, the City of Utica was authorized to and did create the Downtown Utica Business Improvement District, a special assessment district, for the purpose of constructing, improving and providing services within the district. Such construction, improvements and provision of services shall be pursuant to the district plan of the Downtown Utica Business Improvement District.

Petitioner, the Downtown Utica Development Association, Inc., formed a Type C not-for-profit corporation. The Certificate of Incorporation filed by Petitioner states, in part:

3. The specifically designated lawful or quasi public purposes for which this corporation is to be formed are:

(b) To encourage the construction, installation, maintenance and operation of capital improvement or improvements in any Special Assessment District as established by the Common Council of the City of Utica. . .

(c) To enter into a contract or contracts with the City of Utica for the supervision of the operation and maintenance of special district capital improvements situated in such Special Assessment District. . .

(d) To enter into a contract or contracts with the City of Utica to conduct any additional activities within such Special Assessment District for the purpose of carrying out the foregoing purposes or advancement thereof.

(e) To accept, hold and administer any funds paid by the City of Utica to defray the expenses in performing the operation and maintenance functions for such Special Assessment District as provided for in any contract or contracts executed with the City of Utica as set forth above.

Petitioner is responsible for promoting development in the central business district in Utica. Its activities have included hanging the annual Christmas lights, maintaining flowers, cleaning sidewalks, presenting an art show and promoting a streetscape plan. The comptroller of the City of Utica administers funds collected by the City on behalf of Petitioner, the Downtown Utica Development Association, Inc.

Section 1116 of the Tax Law states, in part:

Exempt organizations. - (a) Except as otherwise provided in this section, any sale or amusement charge by or to any of the following or any use or occupancy by any of the following shall not be subject to the sales and compensating use taxes imposed under this article:

(1) The state of New York or any of its agencies, instrumentalities, public corporations. . .or political subdivisions where it is the purchaser, user or consumer, or where it is a vendor of services or property of a kind not ordinarily sold by private persons. . .

Section 529.2 of the New York State Sales and Use Tax Regulations states, in part:

New York State, agencies, instrumentalities, public corporations and political subdivisions thereof. [Tax Law, §1116(a)(1)] (a) Governmental entities.

(1) Agencies and instrumentalities of the State as used in this section means any authority, commission or independent board created by an act of the Legislature for a public purpose.

(2) A public corporation as used in this section means any corporation created by an act of the Legislature for a public purpose or pursuant to an agreement or compact with another state or Canada.

Example: Urban Development Corporations and Industrial Development Agencies are public corporations and may purchase tangible personal property exempt from the sales and use taxes. . . .

Petitioner, a corporation, is not considered to be an agency, instrumentality, public corporation or political subdivision of the State of New York or the City of Utica. Petitioner is not a public corporation since, although authorized by statute, it was not created by statute but was incorporated by the members of the Association as individuals and not as public officers.

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Furthermore, it is not funded by appropriated tax monies. By statute it is funded by special funds collected by the City on behalf of Petitioner for the purpose of Petitioner fulfilling its contractual obligations with the City of Utica. See Opinion of Counsel, January 15, 1979.

Accordingly, as Petitioner is not an agency, instrumentality, public corporation or political subdivision of the State of New York or the City of Utica, Petitioner is not accorded the exemption provided under Section 1116(a)(1) of the Tax Law.

DATED: February 20, 1992

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.