

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

TSB-A-94 (35)S
Sales Tax
August 8, 1994

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S940307A

On March 7, 1994 a Petition for Advisory Opinion was received from Public Employer Risk Management Association, Inc., 24 Aviation Road, Albany, NY 12205.

The issue raised by Petitioner, Public Employer Risk Management Association, Inc., is whether Petitioner's purchases of tangible personal property and services are exempt from State and local sales and use taxes under the provisions of Section 1116(a)(1) or 1116(a)(4) of the Tax Law.

Petitioner was incorporated in 1982 by the New York Conference of Mayors and Other Officials ("NYCOM") as a New York Type-B not-for-profit corporation. Petitioner is recognized by the Internal Revenue Service as exempt from federal income tax under Section 501(a) of the Internal Revenue Code of 1986 (the "Code") as a social welfare organization described in Section 501(c)(4) of the Code.

Petitioner was created pursuant to Section 119-o(1) of the General Municipal Law, which permits municipal corporations to "enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis...."

Petitioner's Board of Trustees consist of officials of cities and villages within New York State.

Petitioner's membership is limited to "public employers", as defined in Section 201(6)(a) of the Civil Service Law that elect and agree to join Petitioner in order to avail themselves of Petitioner's risk management and insurance services, including the provision of workers' compensation insurance.

NYCOM created and manages Petitioner to provide a workers' compensation service program for its public employer-members to reduce the incidence of and the risk of loss from job-related injuries to municipal employees. Petitioner currently provides risk management programs and a municipal group self-insurance program providing workers' compensation coverage for its members.

Petitioner's income is derived from dues and insurance premiums paid by the member political subdivisions.

Petitioner is in the process of forming a municipal safety group through which its members will be able to obtain basic property and liability insurance. Dividends generated by the safety group program will be used to capitalize a municipal reciprocal insurer, as authorized by Article 61 of the New York Insurance Law. Petitioner will offer safety services to group members to assist member municipalities in controlling their losses and obtaining insurance coverage at favorable rates that take account of the members' loss control experiences as a safety group.

Section 1116(a)(1) of Article 28 of the Tax Law grants an exemption from the sales and use taxes imposed thereunder to "[t]he 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".

Petitioner's income is derived from dues and insurance premiums paid by the member political subdivisions.

Section 529.2(a)(3) of the Sales and Use Tax Regulations defines a political subdivision as "a county, town, city, village, school district, fire district,"

Section 529.2(b)(1) of said regulations provides that "New York State, or any of its ... political subdivisions ... are not subject to sales or use tax when they are the purchaser, user or consumer of tangible personal property or services"

Section 5-528 of the Village Law authorizes "[t]he board of trustees of any village ... to annually include in the budget and raise by taxation a sum to meet its proportionate share of the actual and necessary expenses of maintaining and continuing the conference of mayors and other municipal officials of the state of New York and any of its activities in this state for the purpose of devising practical ways and means for obtaining greater economy and efficiency in the government thereof."

Section 13-a of the General City Law authorizes "[t]he common council of any city ... to appropriate and expend annually, from moneys raised by taxation in such city, a sum to meet the actual and necessary expenses of maintaining and continuing the conference of mayors and other city officials of the state of New York and any of its activities, in this state, for the purpose of devising practicable ways and means for obtaining greater economy and efficiency in the government thereof. The moneys thus appropriated shall be raised by tax on the real and personal property liable to taxation in any such city in the same manner as other city expenses."

Under Section 2, Article 1 of the General Municipal Law the term "municipal corporation" is defined to include "only a county, town, city and village."

Sections 6-j.1 and .2 of the General Municipal Law provide, respectively, that "[t]he governing board of any municipal corporation, ... or fire district, which is, or shall hereafter become a self-insurer under the provisions of section fifty, subdivision four of the workmen's compensation

law or section thirty of the volunteer firemen's benefit law may establish a reserve fund to be known as the workmen's compensation reserve fund of such municipal corporation, ... or fire district" and that "[t]here may be paid into any such fund (a) such amounts as may be provided therefor by budgetary appropriations and (b) such other sums as may be legally appropriated."

Section 119-o.1 of the General Municipal Law provides that "[i]n addition to any other general or special powers vested in municipal corporations ... for the performance of their respective functions, powers or duties on an individual, cooperative, joint or contract basis, municipal corporations ... shall have power to enter into, amend, cancel and terminate agreements for the performance among themselves or one for the other of their respective functions, powers and duties on a cooperative or contract basis or for the provision of a joint service...."

Section 50, 3-a, Article 4 of the Workers' Compensation Law states, in part:

Group self-insurance. (1) Definitions. As used in this chapter the term "employers" shall include: (a) employers with related activity in a given industry which shall include municipal corporations as that term is defined in sections two and six-n of the general municipal law, employing persons who perform work in connection with the given industry, (b) an incorporated or unincorporated association or associations consisting exclusively of such employers provided they employ persons who perform related work in the given industry, and (c) a combination of employers as described in subparagraph (a) hereof and an association or associations of employers as described in subparagraph (b) hereof.

In Opinion of Counsel of the Department of Taxation and Finance, May 9, 1969, Counsel stated, in part, as follows:

The New York State Assessor's Association, Inc. is, in effect, an association of local governments and its status as an instrumentality of these local governments in the improvement of assessment administration has been recognized by the Legislature in Section 13-g of the General City Law and Section 359(a) of the Village Law.

Accordingly, the Association is entitled to the same exemption from sales and use taxes with respect to its purchases of property and services as the local governments which are its members.

In Opinion of Counsel of the Department of Taxation and Finance, April 30, 1980, Counsel stated, in part, as follows:

...When such fire districts have formed a domestic, mutual company, whose membership is restricted to fire districts and such insurance corporation is operated solely for the purpose of providing the financial benefits prescribed by the Volunteer Firemen's Benefit Law, this mutual insurance corporation is, in effect, an instrumentality of the State. In this instance, such treatment is accorded as a result

of the similarity of identity, control, management and purpose of the mutual insurance corporation with the member fire districts thereof, and, in addition, such insurance corporation is performing a function public in nature and providing insurance to the member fire districts for benefits that the State has deemed mandatory and appropriate and public in purpose.

In Brookhaven Town Fire District Officers Association, Adv Op Comm T&F, January 5, 1993, TSB-A-93(1)S and in Suffolk County Fire District Officers Association, Adv Op Comm T&F, January 5, 1993, TSB-A-93(2)S, the Commissioner opined that in accordance with Sections 170(1), 174(7) and 178-b of the Town Law and Opinion of Counsel, June 16, 1972, the petitioners were instrumentalities of the State of New York. Accordingly, pursuant to Section 1116(a)(1) of the Tax Law their purchases of tangible personal property and services were exempt from State and local sales and use taxes.

In a letter of September 28, 1965, in which the exempt status of the New York State Conference of Mayors and Other Municipal Officials and the exempt status of The Municipal Training Institute of New York Conference of Mayors (which was provisionally incorporated December 21, 1934 and was granted an "absolute charter" by the Regents of the University of the State of New York February 16, 1940) the Commissioner of Taxation and Finance stated in part, as follows:

The New York State Conference of Mayors and Other Municipal Officials is an association of cities and villages and its status as an instrumentality of these municipalities has been recognized by the Legislature in section 13-a of the General Municipal Law and section 130 of the Village Law. Accordingly, the Conference enjoys the same exemption as the cities and villages from sales and use tax on property or services which it purchases.

...

What I have said above with respect to the tax exempt status of the Conference of Mayors applies equally to the Municipal Training Institute which the Conference operates.

In the instant matter, Section 1116(a)(1) of the Tax Law grants an exemption from the taxes imposed thereunder to "[t]he 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 5-528 of the Village Law authorizes the board of trustees of any village and Section 13-a of the General City Law authorizes the common council of any city to raise by taxation a sum to meet the actual and necessary expenses of maintaining and continuing the Conference of Mayors and Other Municipal Officials of the State of New York and any of its activities in this State for the purpose of devising practical ways and means for obtaining greater economy and efficiency in the government thereof.

Petitioner's board of directors is made up of municipal officials from several municipalities which are part of Petitioner's total membership, all of which consists of representatives from various municipalities throughout New York State.

Section 529.2(a)(3) of the Regulations defines a municipality as a political subdivision of the State. When a group of municipalities forms a not-for-profit corporation, whose membership is restricted to "public employers," as defined in Section 201(6)(a) of the Civil Service Law, and which is operated solely for the purpose of providing its members risk management programs to reduce the incidence of and the risk of loss from job-related injuries to municipal employees and of providing workers' compensation coverage for its members with an end result of obtaining greater economy and efficiency in the government of its members, such corporation is, in effect, an instrumentality of the State. Opinion of Counsel of the Department of Taxation and Finance, April 30, 1980, supra.

In order to determine whether a particular entity is an instrumentality of the State or of one or more of its political subdivisions an examination must be made of the following factors:

- 1) whether the entity is used for a governmental purpose and performs a governmental function;
- 2) whether the performance of its function is on behalf of the State or one or more of its political subdivisions;
- 3) whether there are any private interests involved, or whether the State or its political subdivisions involved have the powers and interests of an owner;
- 4) whether control and supervision of the entity is vested in public authority or authorities;
- 5) whether there is expressed or implied statutory or other authority necessary for the creation and/or use of such entity; and
- 6) whether financial autonomy and the source of operating expenses are provided by the political subdivisions.

A review of these factors in the case of Petitioner indicates that Petitioner was formed and is used to further the governmental function of providing a workers' compensation program for its public employer-members. It serves a central unit in the performance of duties common to each of the political subdivisions that are members. No proprietary interest in Petitioner exists other than those of the political subdivisions themselves. Control and supervision of Petitioner is ultimately vested in the political subdivisions. There is statutory authority for the creation of the Petitioner by the political subdivisions. Petitioner's income is provided by the political subdivisions.

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Since Petitioner is considered to be an instrumentality of the State or its political subdivisions Petitioner is afforded the same exemption from sales and use taxes as granted to NYCOM and to the municipalities which are its members. Letter of Commissioner of Taxation and Finance, September 28, 1965, supra.

Accordingly, Petitioner qualifies for the exemption from sales and use taxes provided under Section 1116(a)(1) of the Tax Law and may make purchases of tangible personal property and services exempt from State and local sales and use tax.

Since Petitioner is considered to be an organization which is exempt from tax under Section 1116(a)(1) of the Tax Law, it is not necessary to address the issue as to whether or not Petitioner is an exempt organization under Section 1116(a)(4) of the Tax Law.

DATED: August 8, 1994

/s/
PAUL B. COBURN
Deputy Director
Taxpayer Services Division

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