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Tribunal Upholds Tax Department's Denial of Sales Tax Exemption on Hotel Developer's Excess Purchases for IDA Project.

The New York State Tax Appeals Tribunal has affirmed a determination that a hotel developer, acting as a designated agent of a New York State industrial development agency ("IDA"), was not entitled to a sales and use tax exemption for purchases it made to construct a hotel at a cost in excess of the amounts it had estimated in its application for IDA tax benefits. *Matter of Jefferson Hotel Associates LLC*, DTA No. 827618 (N.Y.S. Tax App. Trib., June 27, 2019). The Tribunal's decision makes clear that a developer that incurs costs beyond the estimates in its IDA application must amend its application in order to claim the excess sales tax exemption amounts.

Background. In June 2012, Jefferson Hotel Associates LLC ("Jefferson Associates") applied for financial assistance through an upstate New York IDA to construct a hotel in Monroe County, New York. As is common for IDA projects, the application sought a real property tax abatement, a mortgage recording tax exemption and, as relevant to the dispute, a sales and use tax exemption.

The application required that Jefferson Associates estimate the costs of construction to determine the amount of the anticipated sales tax exemption. Jefferson Associates provided the IDA with an estimated sales tax benefit of approximately \$223,000. The IDA accepted the application, approving the appointment of Jefferson Associates as the IDA's agent for purposes of the hotel project and issuing a letter authorizing Jefferson Associates to make purchases free of sales tax. That letter also stated that the "[t]otal costs of the project cannot exceed the project costs" that Jefferson Associates estimated in its IDA application.

The IDA agent letter was thereafter extended twice (in December 2012 and February 2014), with each extension containing the same \$223,000 estimated sales tax exemption amount. Subsequently, Jefferson Associates filed with the Department of Taxation and Finance reports of IDA sales tax exemptions, but now reported a total sales tax exemption of approximately \$253,000, about \$30,000 more than it had previously estimated.

In February 2015, the IDA issued a Demand Letter to Jefferson Associates seeking repayment of the excess \$30,000 in sales tax. Subsequently, in November 2015, the Department itself issued a Notice and Demand seeking payment of the \$30,000, plus interest. Jefferson Associates paid the amount sought and, following the Department's denial of its refund request, filed a Petition with the Division of Tax Appeals.

Relevant statutory amendments. Directly relevant to the dispute were amendments to the New York General Municipal Law, effective March 28, 2013, that significantly changed the way IDAs could allow sales tax exemption benefits. Under those amendments, IDAs were now required to recapture sales tax exemption benefits "in excess of the amounts authorized" and to remit those amounts to the Department. In addition, the amendments authorized the Department to assess tax, penalties, and interest if the excess amounts were not paid over to the IDA. The new law applied to any amendment of a project made on or after March 28, 2013, that involved "additional funds or

benefits.” Gen. Mun. Law § 875. The developer argued that the new law was inapplicable because there were no amendments of the hotel project after March 28, 2013, and that, even if the new law did apply, it did not limit the sales tax exemption to the estimate in its application.

ALJ determination. An ALJ held that the excess sales tax amount was properly subject to repayment and that the new law applied because the February 2014 project extension was an amendment that conferred additional benefits after the effective date of the new law. The ALJ also concluded that the extensions of the sales tax exemption letter issued by the IDA, made after March 28, 2013, specifically identified the lower \$223,000 exemption amount, which capped the allowable exemption amount.

Tribunal decision. The Tribunal affirmed the ALJ determination in its entirety. It noted that each of the IDA letters stated that the total project costs “cannot exceed” the estimated project costs, and found that it was reasonable to limit the benefit to the estimated sales tax exemption amount. It also concluded that the new law that imposed the limitation was applicable, finding that the extension of the developer’s IDA agency appointment through June 30, 2014, was “an amendment . . . involving additional funds or benefits” to the hotel project under the new law.

ADDITIONAL INSIGHTS

The developer had pointed out that limiting the sales tax exemption was inconsistent with the IDA’s broad authorization for the developer to make all necessary purchases for the project. However, the Tribunal noted that the 2013 amendments to the General Municipal Law were put in place to enable the IDA to control the costs of a project. The Tribunal also stated that the developer’s recourse would have been to “amend the [IDA] project,” which the developer did not do. The Tribunal found that the 2014 extension of the IDA agency was “an amendment . . . involving additional funds or benefits,” with the alleged “benefit” being the extension of the time for the developer to make purchases free of sales tax. The decision does not address whether the legislative history for the General Municipal Law amendments indicated an intent to treat an extension of an IDA project as an “additional benefit” within the meaning of the new law.

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