

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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In the Matter of the Petition :  
of :  
**MAVEN TECHNOLOGIES, LLC** : DECISION  
DTA NO. 822709

for Revision of a Determination or for Refund of Sales and :  
Use Taxes under Articles 28 and 29 of the Tax Law for the :  
Period September 1, 2007 through November 30, 2007. :

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Petitioner, Maven Technologies, LLC, filed an exception to the determination of the Administrative Law Judge issued on February 11, 2010. Petitioner appeared by Harris Beach PLLC (Michael J. Townsend, Esq., John A. Mancuso, Esq. and Robert Ryan, Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Michael J. Hall, of counsel).

Petitioner filed a brief in support of its exception. The Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument, at petitioner's request, was heard on December 8, 2010 in Troy, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether petitioner, as an appointed agent of the Monroe County Industrial Development Agency (COMIDA), was entitled to an exemption from sales and use taxes on its purchase of two trucks during the quarter ended November 30, 2007 (the audit period).

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. We have also made an additional finding of fact. The Administrative Law Judge's findings of fact and the additional finding of fact are set forth below.

Maven Technologies, LLC (Maven), a New York limited liability company during the period in issue, was founded in 1998 and is a recycler of computer and technology equipment for businesses. It was appointed an agent of COMIDA on October 16, 2007.

In connection with the agency appointment, COMIDA issued a letter, dated October 16, 2007, which provided that the appointment was to assist Maven in its purchase of two trucks to be used for equipment transportation (the project) at 1144 Lexington Avenue, Rochester, New York, which address, together with the project, was referred to by COMIDA as the facility. The letter stated, in part, as follows:

Pursuant to a resolution duly adopted on October 16, 2007, the County of Monroe Industrial Development Agency ("COMIDA") appointed Maven Technologies, LLC (the "Company") the true and lawful agent of COMIDA to assist in the purchase of two new trucks to be used for equipment transportation (the "Project") located at 1144 Lexington Avenue, Rochester, New York (collectively with the Project, the "Facility").

\* \* \*

This appointment includes, and this letter evidences, authority to purchase on behalf of COMIDA all materials to be incorporated into and made an integral part of the Facility and the following activities as they relate to any construction, erection, and completion of any buildings, whether or not any materials, equipment or supplies described below are incorporated into or become an integral part of such buildings: (i) all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with construction and equipping of the Facility; (ii) all purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with construction and equipping of the Facility; and (iii) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in upon or under the Facility, including all repairs and replacements of such property.

\* \* \*

1. Appointment Letter. In exercising this appointment, the Company, or its assigned agent, must provide the supplier or vendor a copy of this letter to show that the Company, or its agent, is acting as agent for COMIDA. The supplier or vendor should identify the Facility on each bill or invoice and indicate thereon the name of the agent making the purchase. A copy of this appointment letter may be accepted by such vendor or seller as a 'statement and additional documentary evidence of such exemption' as provided by New York Tax Law § 1132(c)(2), thereby relieving such vendor or seller from the obligation to collect sales and use tax with respect to the Facility.

In fact, during the audit period, Maven purchased, in Monroe County, two trucks upon which no sales and use taxes were paid based upon petitioner's agency relationship with COMIDA.

The two trucks were registered and licensed by the New York State Department of Motor Vehicles and were regularly used to transport equipment in Monroe County and occasionally used to transport equipment in counties other than Monroe County.

Mr. Todd Wheaton, vice president and member of petitioner, who was employed by the company during the period in issue, stated in his affidavit that the trucks were garaged at the facility since their purchase, including at all times during the audit period.

The Division of Taxation (Division) conducted a detailed audit of petitioner's sales, capital assets, and expense purchases for the audit period September 1, 2005 through August 31, 2008, which resulted in additional tax of \$9,555.47 plus penalty and interest. Petitioner agreed to the sales and expense portions of the audit results but disagreed with the portion related to capital records, which was based upon the purchase of the two trucks. The trucks represented \$102,026.00 in additional taxable capital or \$8,162.08 in additional tax. Petitioner believed it was entitled to an exemption by virtue of its agency relationship with COMIDA.

On or about October 28, 2008, the Division issued to petitioner a Statement of Proposed Audit Change for the period September 1, 2005 through August 31, 2008, which set forth additional sales and use tax due of \$8,162.08 plus penalty and interest. The tax represented tax on the purchase of the two trucks in the quarter ended November 30, 2007. Petitioner indicated disagreement with the findings set forth on the statement and stated that an “[e]xemption was granted through COMIDA.”

The Division issued to petitioner a Notice of Determination, L-031203467-4, dated December 15, 2008, which asserted additional sales and use tax due of \$8,162.08 plus penalty and interest.

We make the following additional finding of fact.

The address of the “Project” and “Facility” as indicated in the October 16, 2007 agency appointment letter, 1144 Lexington Avenue, Rochester, New York, is and was the business address of petitioner during the period at issue.

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge noted that Tax Law § 1105(a) imposes sales tax upon the receipts of every retail sale of tangible personal property unless an exemption is provided. The Administrative Law Judge observed that Tax Law § 1116(a)(1) provides an exemption for government agencies, which would usually include an industrial development agency (IDA). The Administrative Law Judge further noted that the provisions of Article 18-A of the General Municipal Law state the purpose of establishing tax exemptions upon property owned by an IDA, as well as upon property it “controls” or “supervises” and upon “its activities” (General Municipal Law § 874[1]), to assist commercial facilities, thereby creating job opportunities for the welfare of the people of the State of New York. The Administrative Law Judge determined that petitioner’s purchase of vehicles was consistent with this goal. Further, the Administrative

Law Judge found that petitioner's purchase of the trucks in issue falls within the purview of the term "project" as defined in the General Municipal Law.

The Administrative Law Judge rejected the Division's argument that motor vehicles, which may be driven anywhere, cannot be an integral part of a COMIDA project required to be located within Monroe County, finding that the statutory provisions only require that the equipment be deemed necessary, desirable or incidental to land, a building or some other improvement that may or may not be currently in existence.

Nevertheless, the Administrative Law Judge determined that the exemption was properly denied because the trucks had a presence both within and without Monroe County. The Administrative Law Judge reasoned that pursuant to General Municipal Law § 854(4), when a project is partially outside of the municipality for whose benefit the agency was created, the agent must obtain consent from the other governing body where the project is located. Finding that no evidence had been produced of prior consent from any other governing bodies where the project was located, the Administrative Law Judge concluded that the exemption was properly denied.

#### ***ARGUMENTS ON EXCEPTION***

Petitioner maintains that, as a properly appointed agent of COMIDA, it was entitled to purchase the vehicles in question exempt from sales tax. It contends that, since the sales tax was properly payable in the county where the trucks were garaged or primarily used, COMIDA was able to exempt the vehicles from tax without affecting any jurisdiction other than the one in which the vehicles were primarily operated, *i.e.*, Monroe County. Petitioner argues that the Division's interpretation is not supported by the statutory language or legislative history.

Petitioner argues that the plain language of the statute permits COMIDA to exempt from sales tax any project located within Monroe County, and that the acquisition of equipment alone

can constitute a project. Petitioner insists that a brief, transitory use of personal property outside of Monroe County is not fatal to the sales tax exemption granted by COMIDA, and contends that the Administrative Law Judge's determination is inconsistent with the Division's precedent. In support of its argument, petitioner cites the determination of another administrative law judge (*Matter of Elmer W. Davis*, Division of Tax Appeals, September 10, 2009), as well as advisory opinions issued by the Division.

The Division asserts that the purchases of the trucks are subject to sales tax until the contrary has been established by petitioner. The Division further argues that if it is determined that the purchase of the motor vehicles was authorized under the agency granted by COMIDA, the motor vehicles do not qualify for an exemption because they traveled outside of Monroe County without consent of the adjacent jurisdiction and are therefore subject to tax. Additionally, the Division asserts that the vehicles cannot be project property as they are innately moveable, and free to travel outside of the jurisdictional boundaries of the IDA or its contiguous neighbors, and that the purchased vehicles cannot be a "project" as defined in section 854(4) of the General Municipal Law because they are not "land, [a] building, or other improvement."

***OPINION***

Sales tax is imposed upon the receipts of every retail sale of tangible personal property except as otherwise provided (Tax Law § 1105[a]). Tax Law § 1101(b)(5) defines "Sale, selling or purchase" as:

Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume . . . conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

The record clearly establishes that Tax Law § 1105(a) would apply to petitioner's purchases. Therefore, unless the trucks are exempt from tax, sales and use tax was properly imposed on these purchases.

Petitioner argues that it is entitled to a sales tax exemption granted by COMIDA specifically for the purchase of the two trucks. Section 1116(a)(1) of the Tax Law provides an exemption from state taxes of governmental agencies, which would usually include an IDA. This section provides, in pertinent part, as follows:

[A]ny sale . . . by or to any of the following or any use . . . 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 . . . .

Additionally, General Municipal Law § 874(1) provides that an IDA "shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction or control or supervision or upon its activities." This exemption includes private developers acting as the IDA's agent for project purposes (*see Matter of Wegmans Food Mkts. v. Department of Taxation and Fin.*, 126 Misc2d 144 [1984], *affd* 115 AD2d 962 [4<sup>th</sup> Dept 1985], *lv denied* 67 NY2d 606 [1986]).

We note first that tax exemption statutes are strictly construed against the taxpayer (*Matter of Marriott Family Rests. v. Tax Appeals Trib.*, 174 AD2d 805 [1991], *lv denied* 78 NY2d 863 [1991]) and exemptions must be clearly indicated by the statutory language (*see Matter of Fagliarone v. Tax Appeals Trib.*, 167 AD2d 767 [1990]). However, the interpretation should "not be so narrow and literal as to defeat its settled purpose" (*Matter of Grace v. New York State*

*Tax Commn.*, 37 NY2d 193, 196 [1975]). The taxpayer bears the burden of demonstrating clear and unambiguous entitlement to the statutory exemption (*see Matter of Golub Serv. Sta. v. Tax Appeals Trib.*, 181 AD2d 216 [1992]), and showing that its interpretation of the law is not only plausible, but the only reasonable construction (*see Matter of Federal Deposit Ins. Corp. v. Commissioner of Taxation & Fin.*, 83 NY2d 44 [1993]).

Resolving this matter requires construing statutes within the New York State IDA Act (*see generally* General Municipal Law Article 18-A). The language of a statute should be considered in its entirety and all statutes comprising the same act should be construed together (*see* McKinney’s Cons Laws of NY, Book 1, Statutes §§ 97 and 98). The rules of statutory construction provide that “legislative intent is to be ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction” (McKinney’s Cons Laws of NY, Book 1, Statutes § 94). Where the words in a statute possess a definite and precise meaning, it is not necessary to look elsewhere in search of conjecture so as to restrict or extend that meaning (*see Matter of Erie County Agric. Socy. v. Cluchey*, 40 NY2d 194 [1976]).

IDAs were established to improve economic conditions by upgrading certain types of “facilities” located within their respective jurisdictions. The Legislature made this intent clear within General Municipal Law § 858, which defines the purpose of IDAs, in pertinent part, as:

to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation *facilities* . . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living . . . (General Municipal Law § 858, emphasis added).

While the Legislature specifically enumerates types of facilities to which the IDA Act applies (*e.g.* manufacturing, warehousing), nowhere in the Act is “facility,” standing alone, specifically defined.

We reviewed the New York State IDA Act in prior cases, and based on a complete reading of the Act, determined that the Legislature intended “facility” to refer to either real property or buildings (*see Matter of Conking and Calabrese*, Tax Appeals Tribunal, January 13, 2011; *Matter of Elmer W. Davis*, Tax Appeals Tribunal, August 23, 2010). In those cases, we held that a vehicle, alone, does not constitute a facility (*Matter of Conking and Calabrese, supra*) and stated that “[t]he General Municipal Law provisions, *supra*, clearly contemplate projects involving improvements to real property, ‘facilities’ (e.g., warehousing, industrial or manufacturing) within or partially within Monroe County” (*Matter of Elmer W. Davis, supra*).

While we find that a vehicle, alone, does not constitute a facility, and the purchase of a vehicle alone, without a designated facility, does not constitute a “project” (*Id.*), we note that a purchase of tangible personal property may constitute a “project” if such property is installed or used upon a facility (*see Matter of Wegmans Food Mkts. v. Department of Taxation and Fin., supra*). A “project” is defined, in relevant part, by General Municipal Law § 854(4), as in effect during the period at issue, as follows:

“Project” - shall mean any land, any building or other improvement, and all real and personal properties located within the state of New York and within or partially within and partially outside the municipality for whose benefit the agency was created, including, but not limited to, machinery, equipment and other facilities deemed necessary or desirable in connection therewith, or incidental thereto, whether or not now in existence or under construction, which shall be suitable for manufacturing, warehousing, research, civic, commercial or industrial purposes or other economically sound purposes . . . .

We reject the Division's argument that the unique mobility of a motor vehicle precludes any sales tax exemption as part of an IDA project under General Municipal Law § 854(4). As we stated in *Davis*, "it is not the mobility of the vehicle, but whether the trucks and rolling stock have been *shown* by evidence to have been used for the purposes intended and within the statutory parameters set forth in the statute" (*Matter of Elmer W. Davis, supra*). To meet its burden of proof, petitioner must show that the subject vehicles were used for work on a COMIDA project or became an "integral part" of a COMIDA project (*Id.*). As we stated previously, "A 'project' is not simply the purchase and garaging of an asset in Monroe County, but also the use of that asset in a specified manner" (*Id.*). The only project and facility identified in the record refer to petitioner's business address in Rochester (Monroe County), yet the evidence shows that the trucks were frequently used outside of Monroe County, *i.e.* the municipality for whose benefit COMIDA was created and the only county where COMIDA has authority to act (*see Matter of Elmer W. Davis, supra; see also Matter of Upstate Roofing*, Tax Appeals Tribunal, January 13, 2011).

The language of General Municipal Law § 854(4) clearly states, in part, that

no agency shall provide financial assistance in respect of any project partially outside the municipality for whose benefit the agency was created without the prior consent thereto by the governing body or bodies of all the other municipalities in which any part of the project is, or is to be, located. Where a project is located partially within and partially outside the municipality for whose benefit the agency was created, the portion of the project outside the municipality must be contiguous with the portion of the project inside the municipality.

It was established that the trucks were used partially in other jurisdictions (*i.e.*, outside the municipality for whose benefit COMIDA was created) and no evidence was produced that prior consent had been obtained from the governing body of any other municipality, or that the requirement that prior consent be obtained was inapplicable in these circumstances. Therefore, it

is concluded that the exemption was properly denied since, as conceded by petitioner, the trucks had a presence both within and without Monroe County.

We reject petitioner's argument that an IDA sales tax exemption on its vehicles would only require the consent of jurisdictions that must forego any tax revenue by the operation of petitioner's project. We rejected this same argument in previous cases involving analogous facts and issues, noting that "petitioner imposes a condition on the consent requirement of General Municipal Law § 854(4) that does not exist in statute" (*Matter of Elmer W. Davis, supra; see also Matter of Conking and Calabrese, supra*).

We further note that petitioner cites numerous administrative law judge determinations and advisory opinions, claiming that they are precedent which support its argument. Tax Law § 2010(5) states that determinations "shall not be cited, shall not be considered as precedent nor be given any force or effect in any other proceedings conducted pursuant to the authority of the division or in any judicial proceedings conducted in this state." Additionally, Tax Law § 171(24) provides that advisory opinions are not binding on the Division except with respect to the person to whom the opinion is rendered. As such, we find petitioner's argument citing these determinations and advisory opinions to be without merit.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Maven Technologies, LLC is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Maven Technologies, LLC is denied; and

4. The Notice of Determination dated December 15, 2008 is sustained.

DATED: Troy, New York  
May 26, 2011

/s/ James H. Tully, Jr.  
James H. Tully, Jr.  
President

/s/ Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

/s/ Charles H. Nesbitt  
Charles H. Nesbitt  
Commissioner