

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
DEAN WITTER REYNOLDS, INC. :
DETERMINATION :
DTA NO. 812502
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, 1990 :
through August 31, 1991.

Petitioner, Dean Witter Reynolds, Inc., 101 California Street, San Francisco, California 94111, filed a petition 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, 1990 through August 31, 1991.

A hearing was held before Marilyn Mann Faulkner, Administrative Law Judge, at the offices of the Division of Tax Appeals, Riverfront Professional Tower, 500 Federal Street, Troy, New York, on October 13, 1994 at 1:15 P.M., with all briefs due on January 30, 1995. Petitioner, represented by Edward W. Larkin, Esq., filed a brief on December 8, 1994. The Division of Taxation, represented by William F. Collins, Esq. (Robert Tompkins, Esq., of counsel), filed a brief on January 12, 1995. Petitioner filed its reply brief on January 31, 1995, which date commenced the six-month time period within which to issue this determination.

ISSUES

I. Whether petitioner was entitled to sales tax exemptions

as an agent of the Job Development Authority.

II. Whether the Division of Taxation is estopped from assessing sales tax on purchases made by petitioner when petitioner detrimentally relied on representations by the Job Development Authority that petitioner was eligible as its agent for the sales tax exemptions under Public Authorities Law § 1806.

III. Whether a theory of unjust enrichment bars the Division of Taxation from collecting sales tax.

FINDINGS OF FACT

In 1988, the real estate department of petitioner, Dean Witter Reynolds, Inc. ("Dean Witter"), began an analysis of its leasehold needs and options in anticipation of the expiration of its lease with Five World Trade Center in early 1991. The major function of the real estate department was to control petitioner's occupancy costs, which amounted to 20% of the total cost of petitioner's business.

At that time, Dean Witter employed approximately 4,000 employees who worked at Five World Trade Center and Two World Trade Center. Approximately 1,000 employees were employed at Five World Trade Center. These employees were engaged in the company's operations which included the processing of orders and involved primarily paperwork and computers. Petitioner also employed other employees at three other locations in Manhattan who were involved in the company's operations.

As part of petitioner's analysis of its real estate needs, petitioner did an occupancy cost analysis of several possible

site locations for its operational staff. Petitioner viewed the expiration of the World Trade Center lease as an opportunity to combine the operational staff into one facility at a cost savings.

Petitioner narrowed its cost analysis to two different site locations -- Metrotech in Brooklyn and Newport in Jersey City. Petitioner rejected the World Trade Center and other locations in downtown Manhattan from its consideration because the rental costs were so high. According to the analysis, the location in Jersey City offered many benefits: competitive rents, a short train ride from the World Trade Center, a reduction or forgiveness of real estate taxes for 12 years under a New Jersey law known as the Fox Lance abatement, lower electricity costs, and the location of 1,000 other employees of Dean Witter in Jersey City.

Petitioner continued negotiations over the renewal of the lease concerning Five World Trade Center. The landlord offered a new proposal with more favorable rent terms which were not as favorable as those of the Jersey City location; however, petitioner now felt that the offer was low enough to warrant consideration.

In August of 1988, petitioner met at City Hall in New York City with the Deputy Mayor of Finance and Development concerning the economic advantages of the Jersey City site to Dean Witter. In her effort to encourage Dean Witter to keep its operational staff in New York City, the deputy mayor and the president of the Public Development Corporation ("PDC") described the

economic incentives for Dean Witter to relocate to the Brooklyn site. These incentives included an abatement of real estate taxes for 11 years, occupancy tax abatements for 13 years, employee tax credits for 12 years, and substantial reductions in electricity rates compared to Con Edison rates in Manhattan. Despite these incentives, petitioner determined that the total occupancy cost of a 20-year lease at the Brooklyn site was at least \$38,000,000.00 higher than the Jersey City location. It calculated that the gap between Five World Trade Center and the Jersey City location would be \$2,700,000.00.

In an effort to reduce that gap, the deputy mayor indicated the possibility of the forgiveness of sales tax obligations for all equipment and furnishings that petitioner might purchase during the construction of facilities in Five World Trade Center. To further explore the possibility of this arrangement, she facilitated a meeting with the Urban Development Corporation ("UDC"). This second meeting was attended by petitioner, the UDC and the PDC. The UDC informed petitioner that sales tax exemptions would be available if petitioner were designated as the agent of the UDC in construction of the facilities in Five World Trade Center and if that location were designated a blighted area. When the UDC determined that the location was not a blighted area, a representative of the Public Development Corporation suggested that Dean Witter meet with the Job Development Authority ("JDA").

After meetings with representatives of the JDA, petitioner

outlined in a letter, dated November 14, 1988, signed by Fred J. Carcich, assistant vice president of petitioner's real estate department, and Alan M. DiSciullo, vice president of petitioner's legal department, to Kenneth McGlaughlin, the senior vice president and general counsel of the JDA, the history of its search to relocate its operations group. In that letter, Mr. Carcich and Mr. DiSciullo stated that Dean Witter representatives met with Steven Spinola, the PDC's president, and Alair A. Townsend, the Deputy Mayor of Finance and Economic Development, at which time they described the economic incentives for the firm to relocate to Brooklyn. They stated that despite these incentives, they concluded that the total occupancy cost of a 20-year lease at the Brooklyn location was at least \$38,000,000.00 higher than the New Jersey alternative and \$13,700,000.00 higher on a present value basis. They also noted that the gap between Five World Trade Center and the Jersey City location was only \$2,700,000.00 more expensive than the Jersey City location and \$500,000.00 as expensive on a present value basis if the firm reused furniture at the New York location.

They further stated the following:

"At a subsequent meeting, we discussed efforts to reduce the \$2.7 million gap with Deputy Mayor Townsend. While unable to give us the economic benefits that we would have if we moved to Brooklyn or any other outer borough, she did offer sales tax exemption for the construction and furnishing at our 5 World Trade Center project and the remaining work at 2 World Trade Center.

"Our construction at 2 World Trade Center is still continuing. The approximate cost of the remaining work is approximately \$32.3 million. The leasehold improvements at 5 World Trade Center will begin in

February, 1989. The estimated cost of this work would be \$10.6 million based on the \$35.08 per square foot for 302,617 square feet. As such, the cost of remaining work at 2 and 5 World Trade Center is estimated at \$42.9 million.

"Assuming that half of this cost would be subject to sales tax, the benefit to Dean Witter would be approximately \$1.8 million. This benefit virtually eliminates the financial gap between Newport and 5 World Trade Center. Therefore, we agreed that if we could realize this benefit, we would stay in 5 World Trade Center."

Mr. Carcich and Mr. DiSciullo also discussed the fact that Dean Witter met with representatives of the UDC concerning the possibility of it being designated as the UDC's agent in contracting with suppliers in order to receive the benefits from the UDC's tax-exempt status. They noted that certain statutory restrictions prevented this arrangement and that, therefore, they were "open to any other ideas or suggestions" that the JDA might have in order to make "this proposal work for both of our organizations."

In December of 1988, Kenneth McLaughlin, senior vice president and general counsel of the JDA, sent to Mr. DiSciullo a proposed resolution outlining the JDA's authority to appoint Dean Witter as its agent to allow Dean Witter to claim the State and City sales tax exemptions for purchases relating to the construction of facilities at the World Trade Center. These proposed resolutions included the following statements:

"Whereas, the State of New York has a vital economic interest in programs that develop, foster and retain employment in the State; and

"Whereas, the New York Job Development Authority (JDA) has among its purposes the assistance, promotion, encouragement, development and advancement of the general prosperity and economic welfare of the people

of the State; and

"Whereas, request has been made of JDA by the City of New York (City) to assist in a program or programs to induce certain business enterprises to retain business operations in the State; and

"Whereas, it has been determined that JDA has the capability of giving effect to its stated purposes other than [sic] by direct financial assistance; and

"Whereas, the City has determined that it is economically vital to assure the retention of a major segment of the work force of Dean Witter Reynolds, Inc. (Dean Witter) in the premises located at Two and Five World Trade Center (the Premises); and

"Whereas, the City, through its Public Development Corporation (PDC) has requested JDA to facilitate the acquisition of personal property to be used by Dean Witter in the Premises; and

"Whereas, it has been determined that JDA participation in the program initiated by the City, is appropriate"

Dean Witter entered into an agreement with the JDA on June 5, 1989 wherein the JDA conferred upon Dean Witter its City and State sales tax exemptions up to \$20,463,000.00 through July 31, 1992 on any "real or personal property purchased or services received in connection with any construction, renovation or improvement of the project site for Dean Witter's use" at its offices at Two and Five World Trade Center. In exchange for these tax benefits, Dean Witter entered into an agreement, also dated June 5, 1989, with the New York City Public Development Corporation to keep an employment level of 2,100 full-time employees in Two and Five World Trade Center through December 31, 1994. The two agreements provided that the PDC would monitor Dean Witter's compliance with the agreed-upon employment levels. Dean Witter was to submit annual statements

and \$5,000.00 to PDC to oversee these employment levels.¹

The agreement with the JDA contained the following language:

"WHEREAS, the JDA has adopted a resolution dated December 20, 1988 in which the JDA conferred the benefits of certain exemptions from state and city sales taxes to which the JDA is entitled under Section 1806 of the New York Job Development Authority Act of the Public Authorities (the 'Act'); and,

"WHEREAS, the JDA has appointed and designated Dean Witter as its agent for the expressed and limited purpose of receiving benefits and exemptions for Dean Witter's acquisition of personal property for its construction project at its offices at 2 and 5 World Trade Center (the 'Premises'); and

"WHEREAS, by virtue of this agency, Dean Witter will then be entitled to the same exemptions and benefits as the JDA for the above project at the Premises"

In that agreement, the JDA also made the following representation concerning its authority to enter the agreement:

"The JDA represents that it has the authority under New York State Law to confer such tax exemptions and benefits upon Dean Witter and has the additional authority to appoint Dean Witter as its agent on the project."

The JDA agreement was signed by Robert Dorman, president of the JDA, and Anthony Basile, senior vice president of Dean Witter.

The JDA thereafter provided Dean Witter with a form letter to present to vendors when making purchases in order to secure the sales tax exemptions.

In 1990, the Division of Taxation ("Division"), in an

¹Dean Witter paid the \$5,000.00 to the PDC and complied with the employment levels required during the period in question.

audit, indicated to Dean Witter that it was not entitled to the sales tax exemptions. By letter dated August 9, 1990 to Mr. DiSciullo,

Mr. McGlaughlin opined that Public Authorities Law § 1806 was sufficiently broad to provide authority for the tax exemptions.

The Division issued a Notice of Determination, dated March 12, 1992, to petitioner for sales tax due in the amount of \$196,513.14, plus interest, for the total amount of \$213,048.68. Once notified that the tax exemptions were not available, petitioner ceased construction on the World Trade Center project.

In July of 1992, Mr. McGlaughlin also wrote to the Division expressing the same opinion he had expressed to Mr. DiSciullo in his prior letter. He explained that the JDA was requested to assist the City of New York in offering certain inducements to entities in order to encourage them to remain in the City, and that in response to "these entreaties", the JDA elected to confer sales tax exemptions on Dean Witter, by agreement dated June 5, 1989, as agent of the JDA. He provided all the relevant agreements to the Division and noted that the JDA had made similar arrangements with another company occupying the World Trade Center.

By letter dated May 20, 1993, the Division informed the JDA that it found no authority in the Public Authorities Law ("PAL") for the JDA to confer sales tax exemptions on private persons or "to extend mantle of exemption from such taxes to

others." The Division noted that, under the PAL, the JDA's primary purpose is to make loans and that although the JDA may itself acquire property for its own use, it has no authority to acquire property for another. The Division further opined that:

"The only instance where the JDA is authorized to operate or maintain property (other than, of course, property it acquired for its own use) is where it acquired the property in foreclosure or other sale, and then only for the limited purpose of protecting the JDA's interest in the property. (See Governor Rockefeller's Approval Memorandum of April 11, 1961, regarding Chapter 443 of the Laws of 1961 creating the JDA.) Nowhere is the JDA authorized to operate or maintain a business or business activity, or to use property in a business.

* * *

"Just as an industrial development authority or agency (IDA) is not authorized under the General Municipal Law (GML) or PAL to operate a business, the JDA is not authorized under the PAL to operate a business or to appoint an agent to operate a business for private purposes or to purchase property or services for the private person's own use and benefit which the JDA is not itself authorized to purchase. (See Wegmans Food Markets, Inc. v. Department of Taxation and Finance, Supreme Court, Monroe County, January 10, 1992, Galloway, J. ('Wegmans II').) In other words, a principal cannot lawfully appoint an agent to perform acts for the principal where the principal cannot itself lawfully perform such acts."

The Division further noted that although Tax Law § 1116(a)(1) provides sales tax exemptions to New York State and its agencies, including the JDA, such exemptions are only allowed when that agency is the purchaser and uses the purchased property for its own beneficial use. The Division concluded that the purchases of the JDA's so-called agents are not purchases of the JDA in the absence of legislative authority and, therefore, are not entitled to the sales tax exemptions.

Dean Witter requested a conciliation conference. After

the conference, the conferee issued a Conciliation Order, dated October 15, 1993, sustaining the statutory notice.

Dean Witter filed a petition, dated December 22, 1993, alleging that it was designated by the JDA to be its agent in connection with certain purchases and that the JDA is exempt from sales tax on those purchases under PAL § 1806.

The Division filed an answer, dated March 1, 1994, affirmatively stating, inter alia, that the JDA's tax exemption under PAL § 1806 applies only to the property, income and operations of the JDA; that there is no statutory authority for the JDA to appoint Dean Witter as agent for the purpose of the sales tax exemption; that the purchases were not made for or by the JDA, but instead were owned and used by petitioner; and that the Division is not bound by the erroneous interpretation of the Tax Law by another State agency.

SUMMARY OF THE PARTIES' POSITIONS

Petitioner argues that the State is estopped from denying the sales tax exemptions because it used the exemptions to induce petitioner to keep its operations unit in the World Trade Center. Petitioner asserts that it relied on the representations of the City of New York, the PDC and the JDA in its decision to keep its workforce in New York City; that the JDA repeatedly represented that it had the authority to confer the tax benefits upon petitioner and petitioner reasonably relied on those representations; and that even if the Division could show that the JDA exceeded its authority in entering into the agreement with petitioner, the agreement should be enforced

because the State was unjustly enriched by petitioner upholding its commitments under that agreement.

Petitioner further argues that the JDA has the statutory power of the Public Authorities Law to confer these tax exemptions on petitioner; that substantial deference should be given to the JDA's interpretation of its own statutory authority; and that PAL § 1830 requires all State agencies, including the Division, to "cooperate with and assist the authority in the fulfillment of" the JDA's purpose. Petitioner concluded in its closing argument at hearing that it has been caught in a turf battle or bureaucratic crossfire between two State agencies which makes a "mockery of the principle of good government." Petitioner requests that the notice of determination be cancelled and the time period for claiming the exemptions under the agreement be extended for three years.²

The Division argues that the JDA cannot pass its sales tax exemption to petitioner as its "deemed agent" for property purchased, owned and used only by petitioner; that the JDA's interpretation of the Tax Law constitutes ultra vires actions on the part of the JDA; that the cooperation provision of PAL § 1830 does not apply to the facts of this case; that the Division is not estopped in its administration of the Tax Law by actions or representations of employees of the JDA; that petitioner could have, but did not, request an Advisory Opinion

²Once the Division informed petitioner that it was not entitled to the tax exemptions, petitioner ceased further construction on the project. Under the agreement, petitioner would have been entitled to \$1,600,000.00 in further sales tax exemptions if the project had continued.

from the Division as to whether petitioner would be entitled to the sales tax exemptions; that because petitioner did not seek guidance from the Division but simply relied on the JDA's representations, such reliance was not reasonable for purposes of an estoppel claim; and that the Division of Tax Appeals does not have the authority to extend the sales tax exemption period promised by the JDA under the agreement.

CONCLUSIONS OF LAW

A. PAL § 1803 sets forth the purposes of the New York JDA. Under the statute, the JDA is "[t]o assist, promote, encourage, develop and advance the general prosperity and economic welfare of the people of the state . . ." and "[t]o improve employment opportunities" by assisting in the financing of project costs "by means of loans". Section 1804 sets forth the general powers and duties of the JDA. Among those powers are the powers of the JDA to make loans and loan guarantees (PAL § 1804[5]), "[t]o purchase, receive, lease or otherwise acquire, and hold in the name of the state or otherwise" and "to sell, convey, mortgage, lease, pledge or otherwise dispose of, upon such terms and conditions as the authority may deem advisable, real and personal property" (PAL § 1804[7]). Thus, it would appear that the JDA has broad powers to assist local businesses and that such assistance includes more than making loans or loan guarantees. The JDA may purchase property and hold it in the name of the State "or otherwise".

PAL § 1806 provides that "[t]he property of the authority

and its income and operations shall be exempt from taxation." The question here is whether the JDA can designate Dean Witter its agent for the purpose of any sales tax exemption available to the JDA in the acquisition of property by Dean Witter in Dean Witter's name. Although there is no case law on this issue, there is case law with respect to the Industrial Development Agency ("IDA") that is instructive. In Wegmans Food Markets v. Dept. of Taxation & Fin. of the State of N.Y. (126 Misc 2d 144, 481 NYS2d 298, affd 115 AD2d 962, 497 NYS2d 790, lv denied 67 NY2d 606, 501 NYS2d 1025), the issues were whether the IDA was exempt from sales tax on personal property used in a project financed by industrial development bonds, and whether Wegmans, a retail merchant who occupied the project premises, was also exempt from State sales tax on purchases, which were made with the occupant's own funds, of personal property used in the project. The court held in favor of the taxpayer stating that, under General Municipal Law § 874, all property of the IDA is exempt from tax. The court emphasized the fact that the IDA owned the personal property and that the property was an integral part of the project financed by the IDA and occupied by Wegmans.

In Matter of Faqliarone, Grimaldi & Assoc. v. Tax Appeals Tribunal (167 AD2d 767, 563 NYS2d 324), however, the court took a different view in holding that a private developer of an industrial development bond-financed project was not exempt from sales tax on expenses incurred to operate property of the Syracuse Industrial Development Agency ("SIDA"). The private

developer received an industrial development bond issued by the SIDA to finance the costs of renovating property into modern commercial office space. In a sale-leaseback arrangement, the private developer transferred title of the property to the SIDA, which in turn leased the premises back to the developer. The court distinguished this situation from that in Wegmans noting that, unlike the circumstances presented in Wegmans:

"where equipment purchased and installed in the projects became the property of the industrial development agency, here the purchases -- the bulk of them being for utility services -- by their very nature are such that they are incapable of becoming SIDA's tangible property" (id., 563 NYS2d at 326).

Similarly, PAL § 1806, like General Municipal Law § 874 with respect to the IDAs, grants to the JDA tax exemptions on property of that authority. Inasmuch as title to the property in question is held by Dean Witter, its purchases are not exempt from sales tax (cf., Wegmans Food Markets v. Dept. of Taxation & Fin. of the State of N.Y., supra). Thus, there is no authority for the JDA to designate Dean Witter as its agent for purposes of the sales tax exemption in the circumstances of this case.

In addition, these purchases are not exempt under Tax Law § 1116(a)(1) which exempts from tax sales by or to an exempt organization "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." The JDA, although an exempt organization, is not the purchaser, consumer or user in these circumstances (cf., Wegmans Food Markets v. Dept. of Taxation & Fin. of the State of N.Y., supra [taxpayer not taxable because Article 18-A of the General Municipal Law

supersedes Article 28 of the Tax Law]).

B. Petitioner claims that the Division should be estopped from denying the tax exemptions inasmuch as it reasonably and detrimentally relied on the representations of the JDA. In general, the doctrine of estoppel is applied to a governmental subdivision to prevent it from asserting a right or defense:

"where [that] governmental subdivision acts or comports itself wrongfully or negligently, inducing reliance by a party who is entitled to rely and who changes his position to his detriment or prejudice" (Bender v. New York City Health and Hospital Corp., 38 NY2d 662, 382 NYS2d 18, 20-21).

In this case, there is no doubt that the JDA induced petitioner to rely on its representations that the JDA could designate petitioner as the JDA's agent for purposes of receiving the sales tax exemptions, and that petitioner detrimentally relied on those representations. The question remains whether petitioner was "entitled" to rely on the JDA's representations and whether the representations of the JDA bind the Division from collecting sales tax from petitioner.

Petitioner asserts that the doctrine of estoppel was designed precisely for cases such as this one, where:

"a private party, who reasonably relies on the representations of one authority, is 'placed in an extremely dubious position' by the 'bureaucratic confusion' created when another authority claims it is not bound [by] the first authority's representations" (Petitioner's reply brief, p. 8; citations omitted).

In support of its position, petitioner cites case law where the doctrine of estoppel was successfully invoked against a governmental entity. In Eden v. Board of Trustees of the State University of New York (49 AD2d 277, 374 NYS2d 686), cited by

petitioner, the State University of New York at Stony Brook ("SUNY") accepted applicants to a newly-established School of Podiatric Medicine ("SPM") in its Health Sciences Center. However, prior to the beginning of the school year, the Division of Budget of the State of New York informed SUNY that the scheduled opening of the SPM had been "deferred". The entering students brought a lawsuit alleging that SUNY was estopped from deferring the program inasmuch as they detrimentally relied on their acceptance into the SPM. The court noted that although estoppel against the State is to be applied only in truly exceptional cases, the injustice to the entering students outweighed the minor effect upon public interest or policy that might result from invoking the doctrine of estoppel. It also noted that "the precedent set by allowing estoppel is narrow in that it depends upon a considerable combination of governmental actions not likely to recur." In Landmark Colony at Oyster Bay v. Board of Supervisors (113 AD2d 741, 493 NYS2d 340), also cited by petitioner, the court applied the estoppel doctrine in the situation where the taxpayer was penalized under an ordinance requiring approval of the Nassau County Planning Commission prior to commencing the construction of condominium units. The court concluded that because the taxpayer had commenced the approval process and received building permits prior to the enactment of the ordinance, estoppel should apply to prevent a manifest injustice. The court noted the following:

"Although plaintiff may not have exercised sufficient diligence in pursuit of approval for its project at the various levels of government, we agree with the trial court's conclusion that 'plaintiff was

more a victim of bureaucratic confusion and deficiencies than the perpetrator of an inexcusable violation'" (id., 493 NYS2d at 343).

Both these cases and others cited by petitioner are distinguishable from the present facts and do not provide strong authority for estopping the Division from collecting State sales tax. In Eden v. Board of Trustees of the State University of New York (supra), there was no question that SUNY had the authority to accept students into the program in the first instance and, thus, the students were entitled to rely on the acceptances. In this case, the JDA did not have the authority to grant sales tax exemptions to Dean Witter. Although it is understandable that Dean Witter relied on the JDA's representations that it had the authority to appoint petitioner as its agent, whether the JDA itself was entitled to the tax exemptions under those circumstances was a more questionable issue. Unfortunately, it is only with hindsight that one can state that it would have been wiser for Dean Witter to have requested an Advisory Opinion from the Division, as well, before proceeding with the renovation of the World Trade Center facilities.³ As in Landmark Colony at Oyster Bay v. Board of Supervisors (supra), the fact that petitioner did not exercise more diligence is not, in itself, grounds to deny an estoppel request. However, this case is not similar to the situation in

³Similarly, with respect to petitioner's claim that PAL § 1830 requires all State agencies to "cooperate with and assist" the JDA, the record does not disclose whether the Division's cooperation or assistance was requested by the JDA or petitioner prior to the ill-fated agreement. Providing cooperation and assistance does not imply that an agency must condone the JDA's actions or disregard its own statutory requirements after the deed has been accomplished.

Landmark Colony, where the issuance of building permits conflicted with a newly-enacted ordinance. In this case, there were no timing problems that would have led to confusion concerning the authority of two competing governmental entities. Thus, in contrast to these two cases, petitioner has not established that it was entitled to rely on the JDA's representations that petitioner did not have to pay State sales tax on certain purchases.

However, petitioner has established that it was entitled to rely on the JDA's representations with respect to City sales tax given the Deputy Mayor's involvement in facilitating the sales tax exemptions through the JDA. This factor, along with the fact that the City directly reaped the benefit it sought from the JDA's agreement -- the continued presence of Dean Witter employees --, warrants the application of the estoppel doctrine to prevent the Division from collecting City sales tax on behalf of the City. (See, Onondaga County Water Auth. v. City of Syracuse, 74 AD2d 733, 425 NYS2d 699; Matter of 1555 Boston Road Corp. v. Finance Administrator of the City of New York, 61 AD2d 187, 401 NYS2d 536). Thus, the amount of tax owed should be reduced by the 4.25% that was attributable to the City sales tax calculation.

Inasmuch as the State of New York, as represented by the Division of Taxation, was not in any way involved in the negotiations with Dean Witter, the representations of the JDA do not estop the Division from exercising its statutory

responsibility to collect State sales tax (see, Matter of Parkview Assoc. v. City of New York, 71 NY2d 274, 525 NYS2d 176, cert denied 488 US 801, 102 L Ed 2d 9; Parsa v. State of New York, 64 NY2d 143, 485 NYS2d 27; Wortendyke v. Borg, 138 AD2d 695, 526 NYS2d 508). In examining the nature and extent of the identity of the JDA with the State for jurisdictional purposes, the Appellate Division has held that although the JDA performs an essential governmental function, its functions are not of such an economic and financial nature, nor so closely allied with the State itself, to restrict jurisdiction over the JDA to the Court of Claims (Story House Corporation v. State of New York Job Development Authority, 37 AD2d 345, 325 NYS2d 659, affd 31 NY2d 942, 340 NYS2d 929). Thus, the responsibilities of these two separate agencies are distinct and the Division may not be estopped in performing its statutory responsibilities due to the wrongful or negligent conduct of the JDA.

C. Furthermore, it has been held that:

"the State's acceptance of benefits furnished under a contract made without authority does not estop it from challenging the validity of the contract or from denying liability pursuant to it" (Parsa v. State of New York, supra, 485 NYS2d at 29 [and cases cited therein]).

In the present case, although the State of New York may have benefitted by petitioner's agreement to keep its workforce in New York City, this benefit or "unjust enrichment", however compelling in this case, does not estop the Division, which, in contrast to the City of New York, was not in any way involved with the JDA agreement, from enforcing its statutory responsibility to collect State sales tax.

The cases cited by petitioner (Bradkin v. Leverton, 26 NY2d 192, 309 NYS2d 192; Lindlots Realty Corp. v. Suffolk County, 278 NY 45; Vrooman v. Village of Middleville, 91 AD2d 833, 458 NYS2d 424, lv denied 58 NY2d 610, 462 NYS2d 1028; Onondaga County Water Authority v. City of Syracuse, supra) in support of its "unjust enrichment" claim are not persuasive with respect to the State sales tax inasmuch as those cases involve damage claims against the parties responsible for entering into an implied or unenforceable contract, or who were directly enriched by misrepresentations that induced the claimant's conduct.

In conclusion, although petitioner has been placed in an unfortunate situation,⁴ the Division of Taxation was not the culprit in inducing

petitioner's detrimental reliance on the agreement with the JDA and, therefore, cannot be prevented from exercising its statutory authority to collect State sales tax.

D. Petitioner's request that the Division of Tax Appeals extend the time period for claiming the exemptions under the agreement for three years is denied. The Division of Tax Appeals has no authority to enforce or extend an agreement between petitioner and the JDA (see, Tax Law § 2006[4]).

E. The petition of Dean Witter Reynolds, Inc. is denied, except as indicated in Conclusion of Law "B", and the Notice of Determination, dated March 12, 1992, is modified in accordance

⁴It is also unfortunate that the various governmental agencies and petitioner could not have mediated a more equitable solution to the situation prior to this case proceeding to litigation.

with Conclusion of Law "B" and is otherwise denied.

DATED: Troy, New York
July 6, 1995

/s/ Marilyn Mann Faulkner

ADMINISTRATIVE LAW JUDGE