

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
LONG ISLAND RAIL ROAD CO.	:	DECISION
for Redetermination of a Deficiency or for	:	DTA No. 811989
Refund of Special Assessments on the Generation	:	
of Hazardous Waste under Article 27 of the	:	
Environmental Conservation Law for the Period	:	
Ended September 30, 1991.	:	

Petitioner Long Island Rail Road Co., Jamaica Station, Jamaica, New York 11435, filed an exception to the determination of the Administrative Law Judge issued on October 20, 1994. Petitioner appeared by Roberta E. Bender, Esq., Acting General Counsel (Ellen M. Levanti, Esq., of counsel). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (Robert Tompkins, Esq., of counsel).

Petitioner filed a brief on exception. The Division of Taxation filed a brief in opposition. Petitioner's reply brief was received on March 27, 1995, which date began the six-month period for issuance of this decision. Oral argument was not requested.

Commissioner DeWitt delivered the decision of the Tax Appeals Tribunal. Commissioners Dugan and Koenig concur.

ISSUE

Whether petitioner may properly be held subject to the hazardous waste special assessment imposed under Environmental Conservation Law § 27-0923 notwithstanding the tax-exempt status granted to petitioner pursuant to Public Authorities Law § 1275.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

The facts in this case are limited and not in dispute. On March 18, 1993, the Division of Taxation ("Division") issued to petitioner, Long Island Rail Road Co. ("LIRR"), a Notice of Deficiency asserting a Special Assessment on Generation, Treatment or Disposal of Hazardous Waste in New York State (the "Hazardous Waste Special Assessment or "HWSA") for the period ended September 30, 1991. This Notice of Deficiency asserts tax due in the amount of \$1,313.50, plus interest and additional charge (penalty), for a total asserted deficiency of \$1,956.09.¹

Petitioner is a public benefit subsidiary corporation wholly owned by the Metropolitan Transportation Authority ("MTA"). In its operation of the transportation system known as the Long Island Rail Road, petitioner generates and is required to treat and dispose of certain hazardous wastes (the types of hazardous wastes involved include nickel cadmium batteries required to operate petitioner's fleet of electric trains, high pH alkaline solutions used for pre-maintenance cleaning purposes, and certain lighting ballasts containing PCBs). There appears to be no dispute as to the amount of such hazardous wastes involved, or as to the dollar amount of the HWSA as calculated pursuant to the Environmental Conservation Law ("ECL"). In fact, the only issue presented is whether petitioner, which enjoys tax exemption pursuant to the provisions of Public Authorities Law ("PAL") § 1275, may be subjected to the HWSA imposed pursuant to ECL 27-0923.

OPINION

Environmental Conservation Law § 27-0923, effective July 27, 1982 (L 1982, ch 857, § 23), imposes an assessment upon every "person" generating hazardous waste within New York State with the amount of such assessment based on rates which vary depending upon the

¹The only notice at issue in this proceeding is that described above (i.e., carrying assessment number H921123098W and seeking in total \$1,956.09, which amount and notice number are referenced in like amount and notice number on the petition filed in this matter). While petitioner's brief discusses an HWSA refund request and denial for a prior period, the same is not a part of this case and no opinion is rendered with respect to such particular request or denial.

manner of waste disposal utilized. The term "person" is defined in ECL § 27-0901(7) as follows:

"[p]erson' means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, state, federal government and any agency thereof, municipality, commission, political subdivision of a state, or any interstate body."

Petitioner is a public benefit corporation and is a wholly-owned subsidiary of the MTA. As such, petitioner enjoys all the powers, privileges and exemptions of its parent, including MTA's exemption from taxes, fees and assessments pursuant to PAL § 1275. That section provides, in pertinent part, as follows:

"[i]t is hereby found, determined and declared that the creation of the authority and the carrying out of its purposes is in all respects for the benefit of the people of the state of New York and for the improvement of their

health, welfare and prosperity and is a public purpose, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this title. Without limiting the generality of the following provisions of this section, property owned by the authority, property leased by the authority and used for transportation purposes, and property used for transportation purposes by or for the benefit of the authority exclusively pursuant to the provisions of a joint service arrangement or of a joint facilities agreement or trackage rights agreement shall all be exempt from taxation and special ad valorem levies. The authority shall be required to pay no fees, taxes or assessments, whether state or local, including but not limited to fees, taxes or assessments on real estate, franchise taxes, sales taxes or other excise taxes, upon any of its property, or upon the use thereof, or upon its activities in the operation and maintenance of its facilities or on any fares, tolls, rentals, rates, charges or other fees, revenues or other income received by the authority and the bonds of the authority and the income therefrom shall at all times be exempt from taxation, except for gift and estate taxes and taxes on transfers" (emphasis added).

As the Administrative Law Judge determined:

"[t]he narrowed question presented in this case is which of the two legislative acts takes precedence: the later-imposed HWSA, constituting a tax imposed by its terms upon all hazardous waste generators in the State, or the earlier-granted exemption from taxes carried by the MTA and its subsidiaries, including petitioner" (Determination, conclusion of law "D").

The Administrative Law Judge reasoned that:

"[f]irst, the extremely broad drafting of ECL 27-0901 overrides the tax exemption granted to petitioner as a public benefit subsidiary corporation by PAL § 1275. In this regard, it is difficult to envision a broader or more inclusive definition of the term "person" than that contained in ECL 27-

0901 Furthermore, the MTA's tax exemption pursuant to PAL § 1275 provides, specifically, that the MTA (and its subsidiaries) is carrying out an 'essential governmental function.' In this regard, the MTA is acting in the State's interest and, accordingly, enjoys exemption much like the State. Since the State itself is included in the definition of 'person(s)' specifically subject to the HWSA under ECL 27-0901, it is difficult to comprehend how a legislatively created authority and its public benefit subsidiary corporations, which are carrying out an essential State governmental function, should not likewise be subject to the assessment imposed by the ECL" (Determination, conclusion of law "D").

The Administrative Law Judge determined that the two statutes were in irreconcilable conflict:

"[i]n simplest analysis, it appears clear that both statutes cannot operate at the same time. That is, if both apply, petitioner is required to pay a tax under the ECL which it is not required to pay under PAL § 1275. In turn, resolution of this conflict may be had by accepting the later-enacted statute as overriding the former. Such a result is consistent with the very broad definition of persons subject to the HWSA and is more reasonable than the very strained reading offered by petitioner as a means of reconciling the conflict" (Determination, conclusion of law "F").

The Administrative Law Judge found that the Legislature indicated no intention to exempt petitioner from the HWSA:

"[t]he purposes behind the enactment of the HWSA are clear. In basic terms, the aim of the legislation is to discourage hazardous waste production and landfill disposal thereof by imposing a fee on hazardous waste generators, weighted in favor of recycling (zero fee) or on-site incineration disposal (a lower fee) as opposed to off-site landfill disposal (the highest fee). In turn, the fees generated by the HWSA are used to defray the costs of cleaning up existing hazardous waste dump sites [footnote omitted]. Nowhere in this legislation, and specifically noting its broad definition of "persons" as described, is there any indication that any hazardous waste producer was to be allowed to escape imposition of the fees (save for the rare situation of a waste generator who could recover and recycle all of its wastes, in which case the generator, while remaining subject to the legislation, would have no disposal waste tonnage against which the fees would be measured).

* * *

"[T]he Legislature has created over 80 public authorities to carry out essential governmental ends for the public's benefit. Each carries some form of tax-exempt status and petitioner, while enjoying one of the broadest grants of exemption, has not shown why or how its function and purpose and its grant of exemption is so significantly different from the others as to conclude that petitioner, as opposed to any other public authority, should not be subject to the HWSA. In this regard, there is some sense in concluding that the Legislature's use of an all-inclusive definition of person, as opposed to some other drafting technique whereby some particular

'persons' (e.g., specific public authorities) were excused from the HWSA, means simply what it indicates -- all are included" (Determination, conclusions of law "G" and "I").

As a result, the Administrative Law Judge concluded:

"[i]n turn, after review of the legislative aims and purposes behind the two enactments, the existing conflict between these enactments, and the very broad language defining 'person' in ECL 27-0901 it is concluded that the HWSA may properly be imposed against petitioner notwithstanding petitioner's tax-exempt status" (Determination, conclusion of law "D").

On exception, petitioner argues that: a) the Legislature, in enacting ECL § 27-0901, never intended to diminish the specific exemption granted to it by PAL § 1275; b) the language of ECL § 27-0901 creates doubt as to its applicability to petitioner, which doubt must be resolved in favor of petitioner; c) petitioner is entitled to a comprehensive tax privilege unless a tax is clearly and unambiguously imposed on it by statute; d) PAL § 1275 and ECL § 27-0901 are not in irreconcilable conflict; and e) the Legislature's failure to include the HWSA as an additional exception to petitioner's comprehensive tax immunity set forth in PAL § 1275 was intentional.

The Division, in opposition, argues that: a) ECL § 27-0901 was specific and clear enough to impose the HWSA on petitioner, and the Legislature clearly intended the HWSA to apply to all generators of hazardous waste; b) prefatory language providing that the provisions of ECL § 27-0901 supersede any general or special law to the contrary is unnecessary given the broad definition of persons covered by that Act and the obvious legislative intent behind it; c) the clear and unambiguous intent of the Legislature was to impose incentives and disincentives on all hazardous waste generators to direct the disposal of hazardous waste; d) PAL § 1275 and ECL § 27-0901 are in irreconcilable conflict and the later-enacted general statute must apply; and e) the failure to amend PAL § 1275 to specifically except the HWSA from the tax exemption provision is not significant.

Each of the arguments raised by petitioner on exception has been completely and accurately addressed by the Administrative Law Judge in his determination. No new issues or

arguments have been advanced by either party on exception. Therefore, we affirm the Administrative Law Judge's determination for the reasons stated therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Long Island Rail Road Co. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Long Island Rail Road Co. is denied; and
4. The Notice of Deficiency dated March 18, 1993, together with penalty and interest, is sustained.

DATED: Troy, New York
August 3, 1995

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Donald C. DeWitt
Donald C. DeWitt
Commissioner