STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
AMERICAN ROCK SALT COMPANY, LLC	:	DECISION DTA NO. 822280
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 June 1, 2002 through November 30, 2005.	:	

Petitioner, American Rock Salt Company, LLC, filed an exception to the determination of the Administrative Law Judge issued on July 22, 2010. Petitioner appeared by Harris Beach, PLLC (Robert J. Ryan, Esq. and Charles I. Schachter, Esq., of counsel). The Division of Taxation appeared by Mark Volk, Esq. (Robert Maslyn, Esq., 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 May 11, 2011 in Troy, New York.

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

ISSUE

Whether the Division of Taxation properly determined that petitioner, an agent of an industrial development agency, was not entitled to an exemption from sales and use taxes on its purchases and leases of railcars.[1]

[1] The parties stipulated that the sole issue in this matter is whether the Division properly denied petitioner the Industrial Development Agency exemption for its purchases and leases of railcars. Pursuant to the stipulation, the tax assessed under the Notice of Determination at issue is recomputed to $350,933.39, plus applicable interest. Of this amount, petitioner agreed to and paid $39,856.52, plus interest in the amount of $29,513.52. The parties agree that the only disputed tax remaining at issue is $311,076.87, plus applicable interest, which arises from petitioner's purchases and leases of railcars.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact "14," which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Petitioner, American Rock Salt Company, LLC (American Rock Salt), was a corporation located in the Town of Groveland, Livingston County, New York. It engaged in the business of mining, sales and delivery of salt.

On March 25, 1996, the Livingston County Industrial Development Agency (LCIDA) appointed Akzo Nobel Salt, Inc. (Akzo Nobel) as its agent to undertake a project of completing a mine. A 1996 resolution of LCIDA describes the project as consisting of:

> the construction and equipping (on certain land in Groveland, Livingston County) of surface support facilities for a new underground mine with 2 shafts, hoisting, screening, packaging and truck/rail shipping facilities to be used for the production, support, distribution and transportation of rock salt throughout the northeastern part of the United States, including the following as they relate to the acquisition, construction and equipping of such building(s) . . . all purchases, leases, rentals and other uses of tools, machinery and equipment in connection with the acquisition, construction and equipping . . . [the facility].

Petitioner purchased the mine from Akzo Nobel and submitted an amended and restated application to LCIDA, dated October 4, 1997, for financial assistance as successor in interest to Akzo Nobel. The application stated that the project site was 120 acres with 9,000 acres of mineral rights. Further, buildings would be acquired or constructed for "commercial salt mine production with surface support facilities for storage, loading [and] transport." The equipment to be acquired included underground mining equipment, underground and surface material handling equipment, underground processing equipment, hoists for personnel and production and truck and loadout equipment. Petitioner indicated that from the time it received the notice to proceed, it would take two years to complete construction plus an additional three years to reach full

production.

On October 22, 1997, LCIDA adopted a resolution approving the assignment of the project from Akzo Nobel to petitioner, as successor in interest to Akzo Nobel, as its agent for the purpose of acquiring, constructing and equipping the facility. During this meeting, LCIDA's attorney opined that the then recent amendments of the law affecting IDAs were not applicable to petitioner's projects since the law went into effect on October 20, 1997. On the same day, LCIDA and petitioner executed an Inducement Agreement wherein LCIDA acknowledged that petitioner's application, of October 4, 1997, was an amendment and restatement of the application previously submitted by Akzo Nobel and also acknowledged its approval of the assignment of the mine project from Akzo Noble to petitioner. The project to which petitioner was appointed was similar to the original project with Akzo Nobel. However, when petitioner became involved, the project was expanded to include underground improvements.

The project description described in LCIDA's resolution of October 22, 1997 and the Inducement Agreement included:

> (i) all purchases, leases, rentals and other tools, machinery and equipment in connection with the acquisition, construction and equipping, and (ii) purchases, rentals, uses or consumption of supplies, materials and services of every kind and description used in connection with the acquisition, construction and equipping and (iii) all purchases, leases, rentals and uses of equipment, machinery, and other tangible property (including installation costs with respect thereto), installed or placed in, upon or under any surface or underground improvements.

The New York State Department of Environmental Conservation approved the transfer of the permits previously held by Akzo Nobel to petitioner.

On June 5, 1998, LCIDA adopted a resolution authorizing, among other things, the execution of a lease agreement, payment in lieu of tax agreement, mortgage and security agreement relating to the project. On or about October 26, 1998, LCIDA and petitioner executed

a Lease Agreement, dated as of September 1, 1998. Section 4.1 of the Lease Agreement stated:

> The Agency hereby appoints [petitioner] its true and lawful agent, and [petitioner] hereby accepts such agency (i) to acquire, construct and equip the Facility in accordance with the Plans and Specifications, (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions with any other Persons, and in general to do all things with may be requisite or proper, all for constructing the Improvements and acquiring and installing the Equipment with the same powers and with the same validity as the Agency could do as if acting on its own behalf.

Petitioner commenced the completion of the project and LCIDA issued a sales tax exemption letter, dated October 26, 1998, enabling petitioner to make purchases for the project exempt from tax. The sales tax exemption letter stated:

> This appointment includes, and this letter evidences, to purchase on behalf of the Agency 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: (1) all purchases, leases, rentals, and other uses of tools, machinery and equipment in connection with construction and equipping, (2) all purchases, rentals, uses or consumption of supplies, materials, utilities and services of every kind and description used in connection with construction and equipping and (3) all purchases, leases, rentals and uses of equipment, machinery and other tangible personal property (including installation costs), installed or placed in upon or under such building or facility, including all repairs and replacements of such property.

On October 26, 1998, LCIDA also sent a letter to petitioner stating, in part, that pursuant to a resolution of LCIDA adopted on October 22, 1997, LCIDA appointed petitioner as the lawful agent of LCIDA:

> to acquire, construct and equip surface support facilities for a new underground salt mine with two shafts, hoisting, screening, packing and truck/rail shipping facilities to be used for the production, support, distribution and transportation of rock salt throughout the northeastern part of the United States . . . .

The forgoing letter further explained that the agency was limited to the facility and would expire upon the completion date of the facility as defined by the Lease Agreement dated

September 1, 1998. Section 4.3, in turn, of the Lease Agreement, stated:

> To establish the Completion Date, [petitioner] shall deliver to [LCIDA] and the Lenders a certificate signed by an Authorized Representative of [petitioner] (i) stating that acquisition, construction and equipping of the Facility has been completed in accordance with the Plans and Specifications therefore; (ii) stating that the payment of all labor, services, materials and supplies used in acquisition has been made or provided for; and (iii) such certificates as may be satisfactory to the Lenders, including without limitation, a final certificate of occupancy, if applicable. The Company agrees to complete the acquisition, construction and equipping of the Facility on or before December 31, 2001.

A certificate establishing a completion date was never delivered during the audit period.

On August 30, 2000, LCIDA and petitioner entered into an Amendment to Lease Agreement that broadened petitioner's agency appointment to include the acquisition of "600 Rail Cars manufactured by Trinity Industries, which is the subject of a lease agreement between Railcar Amrock Trust, and the Company as agent for the Agency." Shortly before the hearing in this matter, petitioner found a copy of a signed form ST-60 for the expanded project and believes that it filed this form with the Division.

In connection with the August 2000 amendment to the Lease Agreement, LCIDA issued an additional sales tax exemption letter, dated August 30, 2000, which stated, in part:

> The Company desires to enter into a certain lease with Railcar Amrock Trust (the "Trust") as agent for the Agency (the "Railcar Lease") with respect to 600 rail cars manufactured by Trinity Industries, Inc. (The "Rail Cars"). The Railcar Lease contains an option to acquire the Rail Cars at the end of the lease term. The lease option extends beyond the termination date of the Sales Tax Exemption Letter. In order to provide a sales and compensating use tax exemption to the Company with respect to the leasing and/or acquisition of the Rail Cars, the Agency has issued this letter to supplement the Sales Tax Exemption Letter.

We have modified finding of fact "14" of the Administrative Law Judge's determination to read as follows:

> The railcars[2] are used to transport the salt products to stockpile locations throughout the United States. When they are not in use, they are stored at the Hampton Corners facility or the Retsof facility in Livingston County. The railcars are tracked and are not stored in other locations.[3]

The lease of the railcars expires in 2015. Without the amendment in 2000, including the exemption letter in 2000, the existing sales tax exemption letter would not have been sufficient to provide an exemption of the railcars past the completion date of the mine because the completion date of the project was 2005 and the lease of the railcars continued for 10 more years.

On December 17, 2001, the Town of Groveland issued certificates of compliance for the service shaft, production shaft, pump house, electric control building, production head frame, service head frame and pump house. It also issued certificates of occupancy for the additive building and an electric fan house. As of this date, there were additional portions of the facility contemplated by LCIDA's resolution of October 22, 1997 and the Lease Agreement that were not completed, such as the dry house, the administration building where the production workers would go to prepare themselves to work underground and the truck loadout facility. There was also no reference to the machinery needed below-ground to bring up the salt. Thus, the certificates of completion and the certificates of compliance did not apply to the entire project.

As of December 2001, the mine yards and other areas that are necessary to maintain a sustainable level of tonnage that meets the company's costs had not been completed. Other areas that are needed to produce salt include a production bin to bring up the salt, a surge bin where the conveyers merge and the salt would be gathered for processing and a gallery where the salt is processed. In addition, each yard needs substantial equipment including two very large loaders,

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[2] As used herein, the term "railcar" refers to both railroad cars and engines.

[3] We have modified this fact to more accurately reflect the record.

known as LHDs, as well as a road header, a cutter, a drill, a cleanup loader and a feeder breaker.[4] In 2001, petitioner would have just started its first yard. Sustainable production was reached in 2005 when the fifth yard was completed. The completion of the fifth mine permitted the mine to engage in continuous operation.

On May 1, 2006, LCIDA issued a sales tax exemption letter, expiring May 1, 2007, in order to effectuate an extension of LCIDA's original appointment of petitioner as its agent on March 25, 1996. This letter was necessary because once the project was completed in November 2005, the original sales tax exemption provided by LCIDA was no longer applicable. Therefore, a new sales tax exemption letter was needed.

On February 17, 2005, the Division sent a letter to petitioner scheduling a field audit of petitioner's sales and use tax records on March 21, 2005 for the period June 1, 2002 through February 28, 2005. The letter explained that "[a]ll books and records pertaining to the sales and use tax liability for the audit period, must be available on the appointment date." On the basis of the audit, the Division concluded that the following adjustments were warranted:

a. Pursuant to a test period agreement, there was a test of sales and as a result, the Division concluded that additional tax was due in the amount of $163.26 because sales tax was not paid on the storage fees on salt. The Division regarded this portion of the assessment as unsubstantiated exempt sales.

b. Capital acquisitions were reviewed in detail for the entire audit period. The Division found a number of items, such as servers, computers, time clocks, a generator and printers, that were purchased without the payment of tax. The Division concluded that additional sales and use tax was due in the amount of $31,579.22.

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[4] After large rocks of salt are broken away from the face, they are placed in a feeder breaker.

c. The Division reviewed expense purchases for the period January 1, 2005 through September 20, 2005 and concluded that tax was due in the following areas:

i. The Division's review of general office supplies and equipment for the test period led the Division to conclude that there was additional liability of $37,169.39, which, when projected over the audit period, resulted in tax due of $154,847.79.

ii. The Division reviewed electrical parts and repairs invoices and found that additional tax was due during the test period in the amount of $2,007.61. This amount was projected over the audit period resulting in tax due of $8,426.71.

iii. The Division reviewed miscellaneous expense purchases for parts and found that tax was due for the audit period in the amount of $24,587.78.

iv. The Division reviewed an area described in the audit report as "2005 railroad." This category included expenses incurred for the leasing of railcars, as well as numerous types of purchases, such as repair and maintenance. The Division reviewed invoices that did not separately charge material cost and labor and therefore imposed tax on the entire charge. It also assessed tax on the software component of a "RailConnect" system that petitioner used to help track the location of railcars. The total amount of tax assessed in this area was $413,572.01.

v. The Division reviewed invoices pertaining to car and truck parts to determine if there was a production or manufacturing exemption. In certain instances, the Division agreed that an exemption was appropriate. The tax due on this item for the entire audit period was $5,939.74.

vi. The Division reviewed utility purchases for the period January 1, 2004 through May 31, 2005 because this period was viewed as representative of petitioner's business activity. The Division concluded that there were additional taxable purchases of $590,790.18 for electricity and gas that were not used in production, resulting in additional tax due of $48,740.19.

During the audit, the Division concluded that the Industrial Development Agency (IDA) appointment had expired on December 31, 2001, which was prior to the audit period. The Division found support for this position after it reviewed certificates of compliance and certificates of occupancy from the Town of Groveland. The Division believed that the Lease Agreement also supported its position. The Division recognized that the agency had been extended on August 30, 2000, but this was only for the lease of railroad rolling stock, and the Division did not consider this extension effective because it did not believe that the agency exemption applied to rolling stock. The Division began assessing tax on rolling stock, such as railroad cars or motor vehicles, in 2005 or 2006. In the course of reviewing documents, the auditor did not see any invoices where the invoice listed petitioner as an agent for LCIDA.

Through a series of documents, petitioner consented to an extension of time in which the Division could assess tax for the period June 1, 2002 through November 30, 2003 to December 20, 2006.

The Division issued a Notice of Determination (Assessment# L-027967526), dated November 27, 2006, which assessed sales and use taxes in the amount of $687,856.16, plus interest, for a balance due of $844,773.76 for the period June 1, 2002 through November 30, 2005. At a conciliation conference before the Bureau of Conciliation and Mediation Services, petitioner submitted information or documentation that resulted in adjustments to the notice. Additional adjustments were made to the notice after the conference. At the time of the hearing, the final amount of tax in issue was $451,492.34.[5]

[5] The Division agrees that petitioner is due a refund in the amount of $39,782.47. However, this claim pertains to a subsequent audit, which is currently on hold pending the resolution of the audit in this matter.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge reviewed the case law and statutes relevant to the IDA exemption. The Administrative Law Judge concluded that the Division improperly denied the exemption for mining equipment, but properly denied the exemption to petitioner's leasing of railcars. The Administrative Law Judge found that the railcars were used outside of Livingston County and, thus, located beyond the jurisdiction of LCIDA and its authority to provide financial assistance. As petitioner adduced no evidence to the contrary, the Administrative Law Judge determined that petitioner failed to carry its burden of proving entitlement to the IDA exemption for the railcars.

ARGUMENTS ON EXCEPTION

As previously noted, the parties stipulated to the amount in controversy and the sole issue on exception is whether the Division properly denied petitioner the IDA exemption for its purchases and leases of railcars (***see*** Footnote "1").

Petitioner raises the same arguments as those presented before the Administrative Law Judge. To wit, petitioner maintains that, as a properly appointed agent of LCIDA, its purchases and leases of railcars are exempt. Petitioner contends that this Tribunal's interpretation of the IDA scheme in ***Matter of Elmer W. Davis*** (Tax Appeals Tribunal, August 23, 2010) is incorrect. Petitioner claims that the extensive use of the railcars outside of LCIDA jurisdiction does not violate the statutory scheme of the IDA exemptions. Rather, petitioner argues that its purchase and leases of railcars are entitled to the exemption because the rolling stock was utilized in conjunction with the Livingston County facility, which was properly designated as a project.

Petitioner also contends that the use of the railcars outside of Livingston County does not remove the exemptions because sales tax is implemented at the point-of-sale and, as the railcars

were purchased or leased in Livingston County, no other jurisdiction would be affected. Petitioner further argues that the Division's interpretation of the IDA statute is illogical and unsupported by either the statutory language or legislative history.

The Division argues that mere purchasing of vehicles cannot be a project under General Municipal Law § 854 and that this Tribunal's decision in ***Matter of Elmer W. Davis*** (***supra***) was correct. It contends that petitioner is not entitled to the exemption because it took the railcars outside of Livingston County, which is both outside the jurisdiction of LCIDA and counter to the limitations provided in the sales tax letter. The Division contends that, in order for petitioner to have retained the exemption, it would have needed to acquire the consent of the jurisdictions in which the railcars traveled. The Division also argues that petitioner's interpretation of the IDA statue lacks a foundation in either the statutory language or the legislative history.

OPINION

We affirm the determination of the Administrative Law Judge. In reviewing the record, we find the instant matter to be legally indistinguishable from prior cases addressing the IDA exemption and rolling stock (***see e.g. Matter of Om P. Popli***, Tax Appeals Tribunal, August 4, 2011; ***Matter of American Fruit & Vegetable Co.***, Tax Appeals Tribunal, August 4, 2011).

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) applies to petitioner's purchases and leases

of railcars. Therefore, unless the railcars at issue 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 LCIDA by the broad language authorizing the purchase of the railcars. Section 1116(a) of the Tax Law provides an exemption from state taxes to 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 [4th Dept 1985], ***lv denied*** 67 NY2d 606 [1986]).

Again, we note 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 the 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 Maven Technologies***, Tax Appeals Tribunal, May 26, 2011; ***Matter of Conking and Calabrese***, Tax Appeals Tribunal, January 13, 2011; ***Matter of Elmer W. Davis, supra***). In those cases, we held that a vehicle, alone, does not constitute a facility (***see Matter of Midtown Tire***, Tax Appeals Tribunal, May 26, 2011; ***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 [the IDA jurisdiction]" (***Matter of Elmer W. Davis, 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 . . . .

As we stated previously, "[a] 'project' is not simply the purchase and garaging of an asset in [the IDA jurisdiction], but also the use of that asset in a specified manner" (***Matter of Elmer W. Davis, supra***).

Contrary to petitioner's assertions, the record in this matter does not contain clear and convincing evidence showing entitlement to the IDA exemption. As we stated in ***Elmer W. Davis***, "it is not the mobility of the vehicle, but whether the trucks . . . 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 railcars were used for work on a LCIDA project such that they became an "integral part" of the LCIDA project (***Id.***). The only project and facility identified in the record refer to petitioner's address in Livingston County, and petitioner conceded that the railcars were used extensively to deliver materials to points that were both off the project property and outside the jurisdiction of LCIDA. Accordingly, we find that petitioner failed to meet its burden because the record contains no evidence proving that the railcars were used in a manner integrating them into the project (***see Matter of Elmer W. Davis, supra***; ***see also Matter of Upstate Roofing***, Tax Appeals Tribunal, January 13, 2011).

We also find that petitioner is not entitled to the exemption because the railcars were used outside of the IDA jurisdiction. 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.

Put alternatively, an IDA may not grant financial assistance to a project or project-related item located outside of its jurisdiction without consent. Petitioner has conceded that the subject railcars were used in jurisdictions outside the municipality for whose benefit LCIDA was created. Petitioner produced no evidence that prior consent had been obtained from the governing body of any other municipality. Therefore, we conclude that the exemptions were properly denied because the railcars were located outside of the jurisdiction of LCIDA without the consent of the required jurisdictions.

We reject petitioner's argument that an IDA sales tax exemption on its railcars 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 have considered petitioner's remaining arguments and find them lacking in merit.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of American Rock Salt, LLC, is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of American Rock Salt, LLC is granted to the extent indicated in conclusion of law "O" of the Administrative Law Judge's determination, but is otherwise denied; and

4. The Notice of Determination, dated November 27, 2006, is modified as indicated in footnote "1" above, but is otherwise sustained.

DATED: Troy, New York
November 3, 2011

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

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