

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition

of

JAMAICA TOURIST BOARD

DETERMINATION

for Redetermination of Exempt Organization  
Status under Articles 28 and 29 of the Tax  
Law.

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Petitioner, Jamaica Tourist Board, 866 Second Avenue, New York, New York 10017, filed a petition for redetermination of exempt organization status under Article 28 and 29 of the Tax Law (File No. 74095).

A hearing was held before Arthur S. Bray, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on June 9, 1987 at 10:45 A.M., with all briefs to be submitted by August 25, 1987. Petitioner appeared by Stroock & Stroock & Lavan (Mark S. Wintner, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Mark Volk, Esq., of counsel).

#### ISSUE

Whether petitioner is entitled to exemption from sales and use tax.

#### FINDINGS OF FACT

1. Petitioner, Jamaica Tourist Board, is a corporate body created by the government of Jamaica. It supplies free information and services to the public. Prior to 1985, petitioner, Jamaica Tourist Board, was granted an exemption from sales and use tax pursuant to 20 NYCRR former 529.5(b).

2. In February 1985, the United States Department of State Office of Foreign Missions (OFM), under the authority of the Foreign Missions Act of 1982 (Title 22, U.S. Code § 4301 ~~et~~ seq.), assumed responsibility for granting

exemptions from state sales and use taxes to foreign diplomatic and consular representatives.

3. In August 1985, O M extended its new national diplomatic tax exemption program to New York. As a result, it was necessary for New York to rescind all exemption certificates that had been granted to foreign diplomats and consular personnel and missions.

4. New York's transfer of the diplomat and consular tax exemption program to the Federal government prompted an examination by New York officials of whether non-diplomatic and non-consular officials in New York were entitled to receive an exemption from sales and use tax.

5. In a letter dated September 3, 1986, petitioner was advised that, effective September 23, 1986, its exemption from New York State and local sales and use taxes was terminated. The letter explained the reason for terminating the exemption, in part, as follows:

"Pursuant to the authority of the Foreign Missions Act, Chapter 53 of Title 22 of the United States Code, the Office of Foreign Missions has informed the Department of Taxation and Finance that foreign government owned enterprises and agencies shall be subject to State and local sales and use taxes unless a specific agreement between the United States and a foreign government provides otherwise. Since no such agreement has been entered into by our respective governments, you are therefore required to pay State and local sales and use taxes and to collect and remit such taxes on taxable sales you make **on** and after the date above stated."

6. After the issuance of the foregoing letter, the OFM issued a policy statement which explained that it had assumed responsibility for granting exemptions from sales and use taxes to foreign diplomats and consular representatives. The policy statement further explained that the OFM did not have the authority to act with respect to miscellaneous foreign government offices or their personnel which lacked either diplomatic or consular status. **On** the

basis of the foregoing, the OFM stated that it did not direct or require New York to withdraw tax exemption to non-diplomatic and non-consular individuals.

CONCLUSIONS OF LAW

A. That 20 NYCRR 529.5(m), which became effective September 23, 1986, provides, in part:

"(m) Foreign government-owned enterprises and agencies.

(1) Foreign government-owned enterprises and agencies are not exempt from sales and use taxes or motor fuel and diesel motor fuel taxes unless so determined by the United States Department of State or pursuant to the authority granted to the American Institute in Taiwan. Where foreign government-owned enterprises and agencies are determined exempt from tax, the provisions of this section shall apply as far as such provisions can be made applicable to such foreign government-owned enterprises and agencies and the vendors from whom they make purchases with such modifications as are necessary in order to adapt such language to such enterprises, agencies and vendors.

(2) However, unless otherwise prohibited by the United States Department of State, such enterprises and agencies are entitled to the other exemptions and exclusions generally provided in the Tax Law.

Example 1: A foreign government tourist or travel office which furnishes information, booklets, pamphlets, etc. about its country and/or acts as a full service travel agency (booking reservations on transportation and accommodations) **is** not exempt from sales and use taxes, unless *so* determined by the United States Department of State."

B. That since the United States Department of State has not determined that petitioner is entitled to an exemption from sales and use tax and petitioner has not presented any other authority which would support the granting of an exemption from sales and use tax, it is concluded that the Department of Taxation and Finance correctly decided to terminate petitioner's exemption from sales and use tax (20 NYCRR 529.5(m)). In view of the foregoing, it is of no consequence that the termination of the exemption from sales and use taxes may

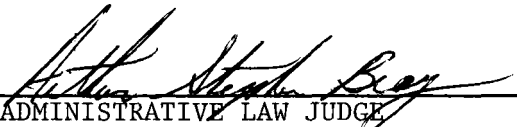
have been based **on** a misunderstanding of the position **of** the Office **of** Foreign Missions.

C. That it **is** irrelevant that petitioner had been granted an exemption from sales and use tax. The Department of Taxation and Finance may reevaluate its position and adopt a new interpretation of the Tax Law prospectively (Matter of National Elevator Industry, Inc. v. New York State Tax Commn., 49 NY2d 538).

D. That the petition of Jamaica Tourist Board is denied.

DATED: Albany, New York

SEP 03 1987

  
ADMINISTRATIVE LAW JUDGE