

**New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau**

TSB-A-95 (35)S
Sales Tax
August 18, 1995

STATE OF NEW YORK
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. S950216B

On February 16, 1995 a Petition for Advisory Opinion was received from Smith Barney Inc., 388 Greenwich Street, New York, NY 10013, and Travelers Group Inc., 388 Greenwich Street, New York, NY 10022.

Petitioners, Smith Barney Inc. and Travelers Group Inc., state the issues and facts as follows:

- (1) whether all amounts paid by a Group Agent to make Acquisitions on behalf of TGI, SBI or any other member of Travelers, as agent for the IDA pursuant to the Sales Tax Letter, will be exempt from New York State and New York City Sales and Use Tax (i) whether payments are made directly to vendors by the Group Agent, (ii) even if one Group Agent pays vendors directly and another Group Agent receives reimbursement from IDA Bond proceeds, or (iii) if IDA Bond proceeds are forwarded to the vendors through the Bond Trustee.
- (2) whether or not Debt Service Payments paid to the Agency by a Group Agent and the intercompany reimbursements related thereto will be subject to New York State or New York City Sales and Use Taxes.
- (3) whether or not Payments from Eligible Affiliate Agents to Group Agents in respect of costs allocated to such Eligible Affiliate Agents will be subject to New York State or New York City Sales and Use Taxes.
- (4) whether, at the time an Option is exercised, sales tax will be imposed only on the Option Price.
- (5) whether or not sales tax will be imposed on an Automatic Transfer.
- (6) whether or not if, at any time, a Premature Removal Penalty is imposed on Travelers by the Agency, such Premature Removal Penalty shall be deemed to be consideration for a sale subject to New York State and City Sales and Use Taxes.

This petition for an advisory opinion concerns a proposed transaction (the "TGI Project") between the New York City Industrial Development Agency (the "IDA" or the "Agency"), and Travelers Group Inc. (hereinafter referred to with respect only to its New York City operations "TGI"), Smith Barney, Inc. (hereinafter referred to with respect only to its New York City operations "SBI"), and each of their subsidiaries to the extent such subsidiaries have employees in New York City (collectively, the "Eligible Affiliates"; TGI, SBI and the Eligible Affiliates are collectively referred to as "Travelers") intended to induce TGI and SBI to retain their headquarters in New York City for approximately fifteen (15) years.

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The TGI Project will encompass Travelers' acquisition (by purchase, including by lease or license to use) of certain furniture, machinery and equipment for installation and use by Travelers at approved Travelers' New York City locations (the "Approved Locations") over the term of the transaction.

As part of the proposed transaction, pursuant to the Project Agreement between the Agency, TGI and SBI, the Agency will extend tax benefits to reduce Travelers' costs of acquiring, leasing, subleasing, licensing and sublicensing (as purchaser, lessee, sublessee, licensee or sublicensee, as the case may be) (collectively, "purchases") certain furniture, machinery, equipment, trade fixtures and other eligible tangible personal property, including replacements, enhancements and additions made thereto from time to time over the 15 year Project term (collectively, the "Equipment"). Among these benefits is the arrangement for sales and use tax exemptions for Travelers pursuant to the Project Agreement, the Lease (as hereinafter defined), and the Sales Tax Letter (collectively referred to as the "Agreement").

The Agreement will provide that certain purchases and payments in respect of purchases of property and of certain related contracts made in connection with the TGI Project will be exempt from New York State and New York City Sales and Use Taxes. Such exempt contracts will be for maintenance, service and repair of specific property with a useful life of one year or more (e.g., for copying machines) (the "Maintenance Contracts") but will not include contracts for general services (e.g., janitorial services).

The Agreement contemplates that benefits will be received by Travelers over a period of approximately 15 years up to a stated maximum sales tax benefit plus any additional sales or use tax exemptions which Travelers will be entitled to as a Growth Credit (as defined in Section 4.1(h) of the Project Agreement), and less any reductions in available sales and use tax exemptions as set forth in the Agreement.

In order to create the relationship needed to assure the sales tax exemption, all purchases of tangible personal property and Maintenance Contracts eligible for the exemption in connection with the TGI Project must be made by the Agency. Under the Agreement, TGI and other members of Travelers will be authorized to act as an agent for the Agency (each entity acting in such capacity, an "Agent") in making purchases outright of, or entering into leases of or licenses to use, (together, the "Acquisition Leases") Equipment in connection with the TGI Project as further described in the Agreement (such purchases and Acquisition Leases referred to collectively herein as the "Acquisitions") and purchasing Maintenance Contracts. From time to time, another member of Travelers may designate an Agent to act on its behalf as its agent (an Agent acting on its own behalf as agent of the IDA or acting on behalf of an Eligible Affiliate Agent (as defined below), as Agent of the IDA, is hereinafter referred to as a "Group Agent") in the Agent's capacity as such for the purpose of making Acquisitions and purchasing Maintenance Contracts. Such Acquisitions and Maintenance Contracts will be purchased in all respects in accordance with the Sales Tax Letter and with the procedural requirements of Article III of the Project Agreement [which Project Agreement was not furnished with Petitioner's petition]. The Equipment acquired by the Agency through its Agents' Acquisitions then will be leased to Travelers pursuant to a lease agreement between the Agency and Travelers (the "Lease").

To finance the Acquisitions (exclusive of the Interest Portion of the rental payments due under the Acquisition Leases as hereinafter explained), the Agency will issue bonds from time to time which may be bought by a TGI affiliate and/or unrelated third parties (the "IDA Bonds"). The Lease will require one or more of the Eligible Affiliate Agents (as defined below) to make payments equal to the debt service on the IDA Bonds issued by the Agency to finance the Equipment leased there under to Travelers (the "Debt Service Payments") and certain other costs incurred by the Agency in connection with the TGI Project. Pursuant to the Agreement, Bond proceeds cannot be used to finance: (i) payments under Maintenance Contracts; or (ii) that portion of any payment made under the Acquisition Leases which is not attributable to the deemed "principal portion" of rental payments due under such Acquisition Leases (the "Interest Portion"). It is intended, however, that such payments of the "principal portion" of rent plus the Interest Portion and payments for the Maintenance Contracts will be exempt from New York State and New York City Sales and Use Taxes.

Pursuant to Travelers' internal corporate policies, each member of Travelers is responsible for its own costs. The sharing of costs with respect to the Acquisitions and Maintenance Contracts will be handled as follows: Each Eligible Affiliate will be appointed as an agent of the Agency for the purpose of making Acquisitions and purchasing Maintenance Contracts through TGI, SBI or any other Group Agent, and shall, in such capacity as agent, reimburse the Group Agent for such Eligible Affiliate's pro rata share of the cost (based on pro rata usage) of the Equipment acquired in an Acquisition and of such Maintenance Contracts (an "Eligible Affiliate Agent"). Each such Eligible Agent will be assessed a charge based upon its pro rata share of the cost thereof by the Group Agent that makes an Acquisition or purchases a Maintenance Contract which the Eligible Affiliate Agent uses. This charge will accrue on the books of the Eligible Affiliate Agent, generally on a monthly basis beginning when the Equipment is placed in service. From time to time, the Eligible Affiliate Agent will make a payment to the Group Agent to settle the intercompany charges described above. It is the intention of Travelers and the Agency that such payments to settle such intercompany charges will be exempt from New York State and New York City Sales and Use Taxes.

Except to the extent described above with respect to the Interest Portion, Acquisitions will be financed through the IDA Bonds. It is anticipated that IDA Bonds will be sold periodically. Funds raised through the sale of IDA Bonds will be available either (i) to pay the purchase price of the Acquisitions when such payments are due, or (ii) to reimburse TGI or a Group Agent for the purchase price of Acquisitions previously paid by such entity. Bond proceeds that represent reimbursements of the purchase price for Acquisitions may not necessarily be passed on to the Eligible Affiliate Agent on whose behalf an expenditure was incurred.

Travelers and the Agency intend that each of the following amounts paid to vendors will be eligible to qualify for sales and use tax exemptions: amounts paid to vendors (1) by Group Agents to make Acquisitions, including the Interest Portion which is not being funded through IDA Bonds, as well as amounts paid to vendors for Maintenance Contracts; (2) where Acquisitions are funded through IDA Bonds, whether funded in advance or arrears and whether paid directly by an Eligible Affiliate Agent or by a Group Agent and subsequently settled by an intercompany charge as described above or by a banking institution designated by the Agency to disburse IDA Bond proceeds (the "Bond Trustee").

Pursuant to the Lease, in general, (i) no Equipment purchased outright by any member of Travelers as Agent or Group Agent may be removed from an Approved Location prior to the expiration of three years after the installation or location of such Equipment at an Approved Location, and (ii) no Equipment leased by any member of Travelers as Agent or Group Agent may be removed from an Approved Location until the Lease expires or it is taken out of the name of the Agency (the periods referred to in clauses (i) and (ii) of this sentence are both referred to as the "Retention Period"). After the expiration of the Retention Period with respect to the Equipment purchased outright, title to such Equipment will automatically vest (the "Automatic Transfer") in a member of Travelers for no consideration.

At the end of the TGI Project term (or sooner when the Bonds have been paid in full), Equipment may be purchased outright from the IDA by a member of Travelers who exercises a purchase option (the "Option") under the Lease for an aggregate option price of \$1.00 (the "Option Price").

If Equipment purchased outright is removed from an approved Location prior to the expiration of the Retention Period for a reason other than an allowable reason under the Agreement for such removal (i.e., obsolescence, uselessness, or another good faith reason), Travelers must pay the Agency an amount equal to the net present value, at the time of removal, of the sales or compensating use tax which would have been required to be paid at the time of the original purchase if such item had been purchased by a member of Travelers in its own name on the date of its original purchase, based upon a purchase price equal to its fair market value as of the date of such removal. Such payment will herein be referred to as the "Premature Removal Penalty."

Payments of rent on the Lease (which, as stated above, will equal corresponding Debt Service Payments due on the IDA Bonds) will be made by a Group Agent (1) acting on its own behalf to the extent that it is the user of the Equipment with respect to which the rent is due or (2) acting in its capacity as Group Agent for forwarding rent payment to the IDA to the extent that an Eligible Affiliate Agent uses the Equipment with respect to which the rent is due. Where the Group Agent acts in its capacity to forward rent from an Eligible Affiliate Agent to the IDA, the Group Agent essentially will be acting as a mere conduit that will serve the administrative function of collecting rent owed to the IDA from the Eligible Affiliate Agent.

The Project will not exceed the allowable one-third retail facilities restriction of section 862 of the General Municipal Law.

Applicable Law and Regulations

Section 1101(b)(5) of the Tax Law defines "sale, selling or purchase" as: "[a]ny 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."

Section 1105 of the Tax Law provides, in relevant part:

Imposition of sales tax. - ... there is hereby imposed and there shall be paid a tax of four percent upon:

- (a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article.

* * *

- (c) The receipts from every sale, except for resale, of the following services:

(3) Installing tangible personal property ... or maintaining, servicing or repairing tangible personal property ... not held for sale in the regular course of business, whether or not the services are performed directly ... or by any other means, and whether or not any tangible personal property is transferred in conjunction therewith

...

Section 1107 of the Tax Law provides, in relevant part:

- (a) General. On the first day of the first month following the month in which a municipal assistance corporation is created under article ten of the public authorities law for a city of one million or more, in addition to the taxes imposed by sections eleven hundred five and eleven hundred ten, there is hereby imposed ... within the territorial limits of such city, and there shall be paid, additional taxes, at the rate of four percent, which except as provided in subdivision (b) of this section, shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten.

Such sections and the other sections of this article, including the definition and exemption provisions, shall apply for purposes of the taxes imposed by this section in the same manner and with the same force and effect as if the language of those sections had been incorporated in full into this section and had expressly referred to the taxes imposed by this section.

Section 1109 of the Tax Law provides, in relevant part:

- (a) General. In addition to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article, there is hereby imposed within ... the metropolitan commuter transportation district ... and there shall be paid, additional taxes, at the rate of one-quarter of one percent, which shall be identical to the taxes imposed by sections eleven hundred five and eleven hundred ten of this article

Section 1110 of the Tax Law provides, in relevant part:

Except to the extent that property or services have already been or will be subject to the sales tax under this article, there is hereby imposed on every person a use tax for the use within this state ... (A) of any tangible personal property purchased at retail,

(B) of any tangible personal property manufactured, processed or assembled by the user, (i) if items of the same kind of tangible personal property are offered for sale by him in the regular course of business or (ii) if items are used as such or incorporated into a structure, building or real property by a contractor, subcontractor, or repairman in erecting structures or buildings, or building on, or otherwise adding to, altering, improving, maintaining, servicing, or repairing real property, property or land, as the terms real property, property or land are defined in the real property tax law, if items of the same kind are not offered for sale as such by such contractor, subcontractor or repairman or other user in the regular course of business, (C) of any of the services described in paragraph (1) of subdivision (c) of section eleven hundred five, and (D) of any tangible personal property ... not acquired for purposes of resale, upon which any of the services described under paragraphs (2) and (3) of subdivision (c) of section eleven hundred five have been performed

Section 1116 of the Tax Law provides, in relevant part:

(a) ... any 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

Section 529.2(a) of the New York State Sales and Use Tax Regulations provides, in relevant part:

(2) A public corporation as used in this section means any corporation created by an act of the Legislature for a public purpose ...

Example: ... Industrial Development Agencies are public corporations and may purchase tangible personal property exempt from the sales and use taxes

Section 541.3(a) of the Sales and Use Tax Regulations provides, in relevant part:

" ... When a contractor's customer is a governmental entity described in section 1116 (a) (1) ... of the Tax Law, the contract signed by the government representative and the prime contractor is sufficient proof of the exempt status of purchases made for such contract.

(1) Such governmental entities include:

(i) ... (c) industrial development authorities ..."

Section 862 of the General Municipal Laws provides, in relevant part:

Restrictions on funds of the agency

2.(a) Except as provided in paragraph (b) of this subdivision, no financial assistance of the agency shall be provided in respect of any project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost. For the purposes of this article, retail sales shall mean: (1) sales by a registered vendor under article twenty-eight of the tax law primarily engaged in the retail sale of tangible personal property, as defined in subparagraph (i) of paragraph four of subdivision (b) of section eleven hundred one of the tax law; or (ii) sales of a service to such customers. Except, however, that tourism destination projects and projects operated by not-for-profit corporations shall not be prohibited by this subdivision. For the purpose of this paragraph, "tourism destination" shall mean a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law, in which the project is located.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, financial assistance may, however, be provided to a project where facilities or property that are primarily used in making retail sales of goods or services to customers who personally visit such facilities to obtain such goods or services constitute more than one-third of the total project cost, where (i) the project occupant would, but for the assistance provided by the agency, locate the related jobs outside the state, or (ii) the predominant purpose of the project would be to make available goods or services which would not, but for the project, be reasonably accessible to the residents of the city, town, or village within which the proposed project would be located because of a lack of reasonably accessible retail trade facilities offering such goods or services, or (iii) the project is located in a highly distressed area.

(c) With respect to projects authorized pursuant to paragraph (b) of this subdivision, no project shall be approved unless the agency shall find after the public hearing required by section eight hundred fifty-nine of this chapter that undertaking the project will serve the public purposes of this article by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the state. Where the agency makes such a finding, prior to providing financial assistance to the project by the agency, the chief executive officer of the municipality for whose benefit the agency was created shall confirm the proposed action of the agency.

Section 874 of the General Municipal Law provides, in relevant part:

Tax exemptions

(1) It is hereby determined that the creation of the agency and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state of New York and is a public purpose, and the agency shall be regarded as performing a governmental function in the exercise of the powers conferred upon it by this title

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and 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.

(2) Any bonds or notes issued pursuant to this title, together with the income therefrom, as well as the property of the agency, shall be exempt from taxation, except for transfer and estate taxes.

Section 917-a of the General Municipal Law establishes the New York City Industrial Development Agency as an industrial development agency in general having the powers of industrial development agencies under Article 18-A of the General Municipal Law.

In Wegmans Food Market, Inc. v. The Department of Taxation and Finance of the State of N.Y., (Sup. Ct., Monroe County, Jan. 10, 1992, Galloway, J.) ("Wegmans II") the issues presented concerned the scope and applicability of the section 874 tax exemption of the General Municipal Law and, specifically, whether that tax exemption applied to operational expenses incurred by plaintiff in developing its supermarkets in western New York State. Those markets were constructed and equipped under agreements made with various Industrial Development Agencies ("IDAs") pursuant to Article 18-A of the General Municipal Law. The construction was financed by industrial development bonds ("IDBs") issued by the various IDAs. The respective IDAs held legal title to the projects, as security for the bonds, but were under "lease back" arrangements with the plaintiff. In an earlier action, Wegmans Food Markets v. Department of Tax & Finance of the State of N.Y., 126 Misc. 2d 144, aff'd 115 A.D.2d 962, lv to app den 67 NY2d 606, ("Wegmans I") the section 874 tax exemption was held to be broader than the exemption provided by Section 1116 of the Tax Law.

The court in Wegmans II stated in part:

The IDAs are not authorized to engage in supermarket businesses, or any other businesses per se. Their functions are limited to the acquisition, construction, reconstruction, leasing, improving, maintaining, equipping, and furnishing of projects as security for the repayment of industrial development bonds, in the nature of a mortgage. Although there is a project lease arrangement between an IDA and the private developer it is a financing lease with the "rent" paid thereunder consisting only of amortized costs and expenses related to the project financing and IDBs. The IDAs do not pay the costs of utilities or other operational expenses; nor do the leases suggest that the "rent" has been adjusted so as to account for the developer's payment of operational expenses. The lease is simply a financing tool, designed to secure tax-exempt IDBs, which are part of an overall plan benefitting, financially, the private developer and IDB purchasers. Of course, if IDAs are not authorized to operate a business then it would have no authority to designate agents to do that which they could not do themselves.

Although some of the numerous expenses listed by plaintiff in their complaint may be exempt (such as expenses necessary to preserve or repair equipment), not all of the claimed expense would be exempt. Many of these expenses

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bear no relationship to the purchase, repair or replacement of equipment per se but instead represent costs of supermarket business operations

Because all the expenses involved in this action do not have the same relationship to the IDA's ownership of the project and authorized functions under the financing scheme, the expenses must be individually examined to determine what, if any, relationship each bears to the authorized and lawful functions of an IDA, particularly the "maintenance" function. The exemption shall be applicable only to those expenses properly within such function and authority. In this regard, it should be noted that tax-exempt maintenance would be that needed to maintain the structural integrity of the structures constructed or rehabilitated to house the various supermarkets, or to repair equipment used as part of the project.

The use of utilities and washing of windows and other such operating expenses have nothing to do with the underlying financial scheme and should not be tax-exempt under the law. If one business is able to operate indefinitely without paying taxes on its operating expenses simply because at one time its structures were financed with IDBs, that business would have an apparently unintended, open-ended economic advantage over competitors, thereby flying in the face of the fundamental purpose of the law -- i.e. the development of economically sound commerce.

This decision is not inconsistent with [Wegmans I] (supra), where the tax exemption of section 874 was held applicable to the purchase of tangible personal property acquired and owned by the IDA, as security for the IDBs. Ownership of property, real and personal--as distinguished from operation of the business--was clearly within the express, contemplated function and authority of IDAs under the GML.

Opinion

In accordance with the sections of law and regulations cited above and the decisions in Wegmans Food Markets, Inc. v. The Department of Taxation and Finance (126 Misc. 2d 144, aff'd 115 AD2d 962, lv. to app. den. 67 NY2d 606) and Wegmans Food Markets, Inc. v. The Department of Taxation and Finance of the State of N.Y., (Sup. Ct., Monroe County, Jan. 10, 1992, Galloway, J.) supra, and provided that all the terms and conditions of the relevant documents are complied with, and that such terms and conditions are consistent with Petitioner's description of them as set forth above, in the instant matter, subject to the terms of the Agreement, amounts paid by a Group Agent to make Acquisitions on behalf of itself or other members of Travelers, as agent of the IDA, where the Acquisitions consist of the purchase, lease or sublease of, or license or sublicense to use, furniture, machinery, equipment, trade fixtures and certain other eligible tangible personal property for use at Travelers' facilities within New York City approved by the IDA, all of which comprise a part of the TGI Project purchased by the Group Agent or Agent for and on behalf of the IDA, will be exempt from the sales and use taxes imposed under Sections 1105, 1107, 1109 and 1110 of the Tax Law, provided that the IDA is the owner or lessor of such property.

The method of payment to vendors of the purchase price of such Acquisitions, whether (i) made directly by an Eligible Affiliate Agent or Agent or Group Agent, on its own behalf as agent of the IDA; (ii) made by a Group Agent where an Eligible Affiliate Agent receives reimbursement from IDA Bond proceeds; or (iii) made by the Bond Trustee directly forwarding Bond Proceeds, will not affect the tax exempt status of the transactions involved, so long as all purchase invoices, statements and contracts with vendors provide that the IDA is the purchaser, lessee, sublessee, licensee or sublicensee, as the case may be, and that the Group Agent or Agent effecting the purchase, lease or license is the disclosed agent of the IDA.

Payments made by a Group Agent to vendors for a Maintenance Contract, and payments made to a Group Agent by an Eligible Affiliate Agent, which constitute an allocation of costs for a Maintenance Contract, where the Maintenance Contract provides for the replacement of parts which have a useful life of one year or more, other than parts that contain materials or substances that are consumed in the operation of the equipment (e.g., a toner cartridge) where such parts must be replaced when the part, material or substance is consumed, and repair of or with respect to Equipment, ("Exempt Maintenance Services"), will be exempt from the sales and use taxes imposed under sections 1105, 1107, 1109 and 1110 of the Tax Law, to the extent that such contracts are necessary to maintain and repair the IDA machinery and equipment used as part of the TGI project, in accordance with Wegmans Food Market, Inc. v. The Department of Taxation and Finance of the State of N.Y. (Sup. Ct., Monroe County, Jan. 10, 1992, Galloway, J.) supra.

However, it is noted that in any case where the vendor bills for both taxable maintenance or repair services and Exempt Maintenance Services, the total charge will be subject to the tax imposed under section 1105(c)(3), 1107, 1109 or 1110 of the Tax Law, unless the portion of the charge applicable to the Exempt Maintenance Services is separately stated from the other charges or otherwise reasonably allocated.

Debt Service Payments to the IDA and intercompany reimbursements related thereto, under the circumstances described above, are not subject to the sales and use taxes imposed under Sections 1105, 1107, 1109 and 1110 of the Tax Law.

Payments from Eligible Affiliate Agents to a Group Agent in respect of costs allocated to such Eligible Affiliate Agents, under the circumstances described above, will not be subject to the sales and use taxes imposed under Sections 1105, 1107, 1109 and 1110 of the Tax Law.

In Wegmans Food Markets v Department of Tax & Finance of the State of N.Y.(126 Misc 2d 144, aff'd 115 AD2d 962, iv to app den 67 NY 2d 606) the Court stated, "The Legislature very carefully included all revenues received by the IDA within the purposes of article 18-A. The definition of "revenues" in subdivision (7) of Section 854 of the General Municipal Law is all inclusive: "All rents, revenues, fees, charges and other sources of income derived by the agency from the leasing, sale or other disposition of a project or projects."

Subdivision (4) of Section 854 of the General Municipal Law defines "Project[s]" as "any land, any building[s] or other improvement, and all real and personal properties located within the state of New York ..."

Accordingly, where any member of Travelers elects to remove property from the TGI Project through the exercise of an Option or by Premature Removal subject to a Premature Removal Penalty, under the circumstances described above, the amount paid to the IDA as the Option Price or as the Premature Removal Penalty in these instances will be exempt from the sales and use taxes imposed under sections 1105, 1107, 1109 and 1110 of the Tax Law. Since there is no consideration paid upon an Automatic Transfer of Equipment to a member of Travelers, under the circumstances described above, there is no tax due from such member for such Equipment.

All of the foregoing conclusions depend on compliance with the terms and conditions of the relevant Project documents, subject to any limitations set forth in such documents.

DATED: August 18, 1995

s/PAUL B. COBURN
Deputy Director
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions
are limited to the facts set forth therein.