STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
JENNIFER A. MIEHLE F/K/A JENNIFER A. LALOR	:	DECISION DTA NO. 816201
	:	
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, 1994 through November 30, 1994.	:	

The Division of Taxation filed an exception to the determination of the Administrative Law Judge issued on May 27, 1999 with respect to the petition of Jennifer A. Miehle f/k/a Jennifer A. Lalor, 203 Artesian Drive, Garner, North Carolina 27529. Petitioner appeared *pro se.* The Division of Taxation appeared by Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel).

The Division of Taxation filed a brief in support of its exception. Petitioner filed a brief in opposition and the Division of Taxation filed a reply brief. The Division of Taxation's request for oral argument was withdrawn.

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

ISSUE

Whether the Division of Taxation properly denied petitioner's refund application for sales tax paid at the inception of an automobile lease transaction despite the premature termination of the lease.

FINDINGS OF FACT

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

On September 19, 1994, petitioner, then known as Jennifer A. Lalor, leased a 1994 Nissan Sentra from the Long Island new car dealer, Smithtown Nissan, Inc., of Smithtown (Suffolk County), New York.

The lease agreement described the "Total Payments Due On Signing" of the lease as follows:

Initial cash payment	$ 275.00
First monthly payment in advance	202.00
Refundable security deposit	225.00
Title fee/initial registration fee/initial license fee/excise tax	60.00
Sales tax	618.12
Documentation fee	20.00
New York inspection fee	10.00
Cap reduce tax	23.38
Acquisition fee upfront	350.00
Gas fee	5.00
Total payment due on signing	$1,788.50

The lease agreement provided for a term of 36 months, with monthly payments of $202.00, resulting in total monthly payments under the lease agreement of $7,272.00 (36 multiplied by $202.00 equals $7,272.00). The lessor collected and petitioner paid sales tax of $618.12 upon her signing of the lease, which was the amount of sales tax due on the total monthly payments under the three-year lease of $7,272.00. The sales tax rate of 8.5% applied against the total monthly payments under the lease agreement of $7,272.00 equals $618.12.

Under the lease agreement, petitioner agreed to be responsible for the following types and amounts of insurance coverage during the lease term:

> a. Comprehensive, including fire and theft insurance . . . with a maximum deductible of $1,500;
> b. Collision insurance with a maximum deductible of $1,500;
> c. Property damage liability of $50,000 per occurrence [sic]; and
> d. Bodily injury liability of $100,000 per person and $300,000 per occurrence.

The lessor was named by petitioner as the "loss payee" on coverages described above as "a" and "b" and was provided with "primary coverage as an additional insured" on coverages described above as "c" and "d". The lessor was appointed by petitioner as her "attorney-in-fact to endorse insurance proceeds checks."

On October 19, 1994, one month after the date of the lease agreement, the 1994 Nissan Sentra was badly damaged. A photocopy of a handwritten police department complaint, which is difficult to decipher, indicates that petitioner reported that her automobile while parked in her driveway was struck at 6:45 A.M. by an unknown vehicle. Another handwritten police department complaint made later in the day by petitioner's father indicates that a witness saw the second vehicle that left the scene of the accident. This vehicle was later identified by the police

after some investigation, and petitioner successfully sued its owner and recovered $500.00 plus interest and costs in a small claims judgment dated June 27, 1996. The $500.00 represented petitioner's deductible not covered by her insurance.

By a letter dated December 21, 1994, petitioner was notified by Nissan Motor Acceptance Corporation, which had been assigned the car lease dated September 19, 1994, that it had received "an insurance check representing the total loss to your lease vehicle." A value of $10,311.38 for the total loss of the 1994 Nissan Sentra is shown on a computer printout dated November 1, 1994 of a total loss valuation, in accordance with 11 NYCRR 216.7(c)(1)(i), by U.S. Capital Insurance Co. of White Plains, New York. This printout also shows an adjusted actual cash value for the car of $9,964.41 plus sales tax of $846.97 for a total value before deductible of $10,811.38. The value of $10,311.38 was calculated after subtracting a $500.00 deductible. Presumably, the insurance check to Nissan Motor Acceptance Corporation was in the amount of $10,311.38. With this check from her insurer, petitioner was released from liability for the remaining 35 monthly payments under the lease agreement which was terminated.

Petitioner filed a claim dated October 8, 1996 for refund of sales tax in the amount of $600.95. This amount was computed using the sales tax of $17.17 per month, based on the monthly payment of $202.00 and a sales tax rate of 8.5%, multiplied by the 35 payments remaining on the 36-month lease after the car accident.

The Division of Taxation ("Division") denied petitioner's refund claim by letter dated February 19, 1997 for the following reason:

> When a lease, an option to renew or similar provision, or a combination of these, is entered into on or after June 1, 1990, the amount due under the agreement and for the entire period covered

> (including renewals and/or options) will be immediately subject to sales tax.
>
> There is no provision in the New York State Sales and Use Tax Law to allow for refund of sales tax paid on the lease of a vehicle when the lease is terminated prematurely, either by choice, or in the case of the vehicle being 'totalled.'

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted that sales tax is imposed on the receipts from every sale of tangible personal property, which includes a lease transaction. As of June 1, 1990, all payments under an automobile lease for a term of one year or more were deemed to have been paid and were subject to sales tax as of the date of the first payment. The Administrative Law Judge characterized this acceleration of the sales tax on automobile leases a "legal fiction."

The Administrative Law Judge noted that the Division of Taxation promulgated 20 NYCRR 527.15(a), which reiterated that which appears in Tax Law § 1111(i), to specify that the sales tax with respect to leases of automobiles for more than one year was due at the inception of the lease on the total amount of the lease payments for the entire term of the lease.

However, the Administrative Law Judge did not believe that the Division had the authority to provide, in the same regulation, that no refund would be allowed upon the early termination of the lease since the total amount of the receipts were deemed to have been paid (20 NYCRR 527[e]). Instead, the Administrative Law Judge found that the instant circumstances constituted a canceled sale which entitled petitioner to a refund under Tax Law § 1132(e). The Administrative Law Judge reasoned that the lease agreement could be viewed as a sale, which, because of the accident, was canceled. As a result of these conclusions, the Administrative Law

Judge found that the regulation was inconsistent with a plain reading of Tax Law § 1132(e) and granted the refund.

The Administrative Law Judge opined that allowing a refund of sales tax on lease payments that were never paid is in harmony with the statutory language of Tax Law § 1111(i) and avoids an unreasonable and unfair result, especially in light of the Legislature's resort to a "legal fiction" to accelerate the collection of tax.

ARGUMENTS ON EXCEPTION

The Division argued that the Administrative Law Judge erred in his interpretation of the scope of Tax Law § 1111(i)(A) and 1132(e) in that the legislative intent behind the former section was to equate leases for a term of more than a year with a purchase, upon which sales tax was due, in full, at the time of the first payment. It was not the Division which originated this policy, as stated by the Administrative Law Judge. The Division contends that there is no provision in the Tax Law for a refund of sales tax that was properly paid on an automobile lease for more than one year, despite its loss, destruction or theft.

The Division argues that the lease in issue was not "canceled," as determined by the Administrative Law Judge, rather, it was merely terminated early. Further, the Division of Taxation maintains that the Administrative Law Judge exceeded his authority by invalidating the regulation at 20 NYCRR 527.15(e) on the basis that it is unfair.

The Division also notes that the Legislature introduced legislation in 1991 and 1993 which would have allowed a refund of accelerated sales tax paid pursuant to Tax Law § 1111(i)(A), but both failed to become law. The Division argues that these efforts by the Legislature validate its

position that current provisions of the Tax Law do not provide for a refund of sales tax under the facts of this case.

Petitioner argues that her lease agreement with Nissan was canceled or terminated, adopting the rationale of the Administrative Law Judge. Petitioner also adopts the Administrative Law Judge's interpretation of the "legal fiction" upon which the tax was collected and disputes the Division's authority to deny a refund based upon such a fiction.

OPINION

By way of review, we note that Tax Law § 1105 imposes a tax on the sale of tangible personal property. The word "sale" is defined in Tax Law § 1101(b)(5) as any transaction in which there is a transfer of title or possession or both of tangible personal property for a consideration. Among the transactions considered a "sale" are leases of tangible personal property (Tax Law § 1101[b]; 20 NYCRR 527.15[a]).

Prior to 1990, sales tax on leases was charged on each payment and collected when paid. However, Tax Law § 1111(i), enacted in 1990, provided new rules for the collection of sales and use tax on certain leases of motor vehicles with a duration of one year or more, which stated that:

> "all receipts due or consideration given or contracted to be given for such property under and for the entire period of such lease. . . shall be deemed to have been paid or given and shall be subject to tax, and any such tax due shall be collected, as of the date of first payment under such lease . . . ." (Tax Law § 1111[i]).

The issue presented is not whether the tax was properly imposed and collected but whether petitioner has a right to a refund of any part of that properly imposed, paid and collected tax for that portion of the lease petitioner did not enjoy the use of the vehicle due to its destruction. The Division's regulation at 20 NYCRR 527.15(e) specifically provides that no refund or credit will

be allowed based on the fact that receipts were not actually paid as in the case of early termination of the lease. The rationale for this lies in Tax Law § 1111(i), which provides that all the lease payments are deemed to have been paid and are subject to tax as of the date of the first payment under the lease.

Tax Law § 1139 and the regulation at 20 NYCRR 534.8(a)(1) provide that a refund or credit is allowable for any tax, penalty or interest which was erroneously, illegally or unconstitutionally collected or paid. However, none of these circumstances was present in this matter, where the lessor collected and petitioner paid the proper amount of sales tax in the manner prescribed by the Tax Law § 1111(i). There is no claim or evidence that the tax was erroneously, illegally or unconstitutionally collected or paid, and there is no provision under Tax Law § 1139 for a refund of any portion of the sales tax properly paid at the inception of the lease.

We conclude that the regulation at 20 NYCRR 527.15(e) was a proper interpretation of Tax Law § 1111(i). It appears that the Legislature was not unaware of the statute's failure to provide for a refund of such taxes, given its introduction of bills to provide such a remedy. In 1991, S. 5282 proposed an amendment to Tax Law §§ 1132(e) and 1139(a) which would have provided a refund of or credit for sales tax paid but not due by reason of early termination or non-renewal of a motor vehicle lease. In 1993, S. 4065 proposed to add a new subdivision (d) to Tax Law § 1119 which would have allowed a refund to long-term lessees of motor vehicles of a pro-rated portion of the sales tax paid at the inception of the lease if the vehicle was destroyed.

Special provision for a refund of sales tax paid at the inception of a lease is not novel. In Tax Law § 1139(f), the Legislature provided one for lessees that received a refund of their purchase price under the New York "Lemon Law" (General Business Law §§ 198-a and

396-p[5]). Again, this is further support for our conclusion that Tax Law § 1111(i) does not provide for a refund of the sales taxes collected at the inception of the lease.

Petitioner argues that the regulation at 20 NYCRR 527.15(e) should be held invalid because it is inconsistent with Tax Law § 1132(e), which provides for a refund of sales tax where the contract of sale has been "canceled." However, we do not believe it was "canceled." The Administrative Law Judge's analogy of the lease agreement to a contract of sale is sound, but the conclusion that the contract of sale has been canceled is in error. The vendor transferred possession of the vehicle to petitioner in exchange for certain moneys and a written promise to make payments for a specific period of time. The destruction of the vehicle did not result in the cancellation of this contract between the parties. There is simply no evidence in the record that supports a finding or a conclusion that the parties intended to cancel the contract. Further, neither party was returned to its original position, which would have been the case if the lease agreement had been canceled. Nissan did not receive its vehicle and petitioner had already consumed part of the use she was allocated under the lease. Therefore, it would have been impossible to cancel the original agreement and return both parties to a position which existed prior to entering into the contract. The destruction of the vehicle merely caused the early termination of the lease and the invocation of the insurance provisions contained in the lease. Although the lease did not survive until maturity, it does not follow that the original agreement was canceled.

Tax Law § 1132 is entitled "Collection of tax from customer; proof required for registration of motor vehicles." Any interpretation of the section must recognize that it is directed to vendors. Tax Law § 1132(e) provides for the exclusion from taxable receipts of

amounts representing sales where the contract has been canceled, the property returned or the receipt ascertained to be uncollectible or, where the tax has already been paid, a provision for a refund. This was accomplished by 20 NYCRR 534.1 and 534.6, which provided that if a sale was canceled or property returned within the reporting period in which the sale occurred, the vendor may exclude the sale from his sales tax return for such period. If the sale is canceled and the sales tax refunded to the customer after the vendor has remitted the tax, the vendor may apply for a credit or refund of the tax. There was no showing that Nissan, the vendor, instituted any of the procedures for recovery of the tax based on a canceled sale. Therefore, the Administrative Law Judge's conclusion that the Division had ignored the provisions of Tax Law § 1132(e) and that said section authorized a refund under the facts of this matter was incorrect.

We do not take lightly the authority vested in the Division of Tax Appeals to rule on the validity of the regulations of the Commissioner of Taxation and Finance where they are in issue (Tax Law § 2006[7]). We conclude the Commissioner's regulation at 20 NYCRR 527.15(e) was both consistent with the meaning and intent of Tax Law § 1111(i) and that its interpretation is reasonable. Where a petitioner challenges the Division's interpretation of a statute, it must prove that its interpretation is the only reasonable interpretation, or that the Division's interpretation is unreasonable (***Matter of Grace v. New York State Tax Commn.***, 37 NY2d 193, 371 NYS2d 715, ***lv denied*** 37 NY2d 708, 375 NYS2d 1027; ***Matter of Marriott Family Rests. v. Tax Appeals Tribunal***, 174 AD2d 805, 570 NYS2d 741, ***lv denied*** 78 NY2d 863, 578 NYS2d 877). Since we have determined the Division's interpretation was reasonable, petitioner's challenge must be rejected.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of the Division of Taxation is granted;

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

3. The petition of Jennifer A. Miehle f/k/a Jennifer A. Lalor is denied; and

4. The Division of Taxation's denial of petitioner's refund application is sustained.

DATED: Troy, New York
August 24, 2000

/s/Donald C. DeWitt
Donald C. DeWitt
President

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Joseph W. Pinto, Jr.
Joseph W. Pinto, Jr.
Commissioner