STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
GENERAL ELECTRIC CAPITAL CORP.	:	DECISION DTA NO. 816785
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 March 1, 1990 through December 31, 1996.	:	

Petitioner General Electric Capital Corp., 4315 Metro Parkway, P.O. Box 60500, Fort Meyers, Florida 33916, filed an exception to the determination of the Administrative Law Judge issued on December 21, 2000. Petitioner appeared by Roger Cukras, Esq. The Division of Taxation appeared by Barbara G. Billet, Esq. (Michael B. Infantino, Esq., of counsel).

Petitioner filed a brief in support of its exception and the Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument was not requested.

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

ISSUE

Whether petitioner, which acted as a finance company and then became the assignee of the credit card accounts of unrelated third-party vendors, is entitled to a refund of sales taxes based on sales transactions made by such vendors where the credit card accounts became worthless debts.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact 12 which has been modified. The Administrative Law Judge's findings of fact and the modified finding of fact are set forth below.

Petitioner, General Electric Capital Corporation ("Capital"), and the Division of Taxation ("Division") entered into a stipulation of facts which have been incorporated into these findings of fact. All facts stated here are applicable to the period for which Capital claims a refund of sales taxes, March 1, 1990 through December 31, 1996.

On or about February 6, 1997, Capital filed a claim for refund of State and local sales and use taxes in the amount of $2,940,000.00. On or about April 7, 1998, Capital amended its refund claim seeking a total refund of $3,076,247.00.

By letter dated July 24, 1998, the Division notified Capital that its refund claim was denied in full for the following reasons:

> [Capital] did not make the original sale and is therefore not entitled to file a claim for refund for any bad debts that result from them. The vendor purchased paper and is two steps removed from the sales process that could qualify for a bad debt.

Capital was incorporated in New York State and has its administrative offices in Stamford, Connecticut. Capital was registered as a vendor in New York State, collected State and local sales taxes, filed monthly sales tax returns with the Division and paid the tax shown as due on those returns. Capital does not seek a refund of any of the sales or use taxes which it remitted to the Division.

Capital purchased credit card accounts from various retail establishments which were also registered as New York State vendors (the "Retail Vendors"). Capital was not owned, directly or

indirectly, by the Retail Vendors and had no significant common ownership with the Retail Vendors.

One of the Retail Vendors was Levitz Furniture Corporation ("Levitz"). Levitz's agreements with its own customers and with Capital are representative of agreements entered into by the other Retail Vendors. The Levitz transactions described here may be deemed to apply to all transactions which gave rise to Capital's refund application.

Typically, the Retail Vendors offered a credit card program to their customers. These customers completed a credit card application for a private-label credit card (i.e., a credit card bearing the name of a particular retail vendor). Levitz had its customers complete a "Revolving Consumer Charge Credit Application" (the "credit application"). Paragraph 17 of the credit application provides as follows:

> 17. **Assignment**: We may assign this Account and our rights under this Agreement at any time. It is expected that this Agreement, your Account and purchases made on it will be submitted for approval to General Electric Capital Corporation ("GE Capital"), 570 Lexington Avenue, New York, NY 10022 without further notice to you and, if approved, will be assigned to GE Capital. All of our rights under this Agreement will apply to GE Capital or any assignee or holder of this Agreement.

The Retail Vendors' rights were assigned to Capital under the terms of an Account Purchase Agreement between the vendor and Capital. The Levitz Account Purchase Agreement contains the following term which is pertinent to petitioner's refund application:

> Parent and each Operating Subsidiary [Levitz] agrees to offer to sell, assign, and transfer all Accounts and all Eligible Indebtedness originated from time to time thereon to GE Capital and GE Capital agrees to purchase and acquire from Parent and each Operating Subsidiary all Accounts and all Eligible Indebtedness that are approved by GE Capital as set forth in Section 3.1 hereof.

Under the terms of the Account Purchase Agreement, Capital acquired all the rights, title, and interest of the Retail Vendors, including, but not limited to, the right to any and all payments with respect to the customer accounts. Accordingly, Capital acquired, under common law, all the rights of the Retail Vendors with respect to the customer accounts.

When the Retail Vendors extended credit to their customers under their credit card programs, the amount financed included the charge for the merchandise purchased plus the applicable State and local sales taxes.

The Retail Vendors were required to remit sales and use taxes to the Division on the next sales and use tax return filed following the sale (Tax Law § 1132[d]; § 1136). The sales tax was calculated on the entire taxable portion of the charge whether that amount was paid at the time of the sale or not. Thus, the Retail Vendors were required to remit sales tax even if the charge for merchandise and the sales tax imposed on that charge had not yet been paid by the consumer (Tax Law § 1101[b][3]).

We modify finding of fact "12" of the Administrative Law Judge's determination to read as follows:

> Under the Account Purchase Agreements, the consideration paid to the Retail Vendors by Capital for the assignment of the Credit Card Accounts was equal to the charge for the merchandise purchased plus the applicable sales and use taxes. Such amounts of sales and use taxes were paid by the Retail Vendors to the Department.[1]

Capital charged off on its books as worthless the amount of bad debt attributable to uncollectible credit card charges purchased from the Retail Vendors. This bad debt amount included sales and use taxes on the charges for taxable merchandise. Capital had already

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[1]We modify finding of fact "12" to more accurately reflect the record.

reimbursed the Retail Vendors for these sales and use taxes. Capital also deducted the amount of bad debt for Federal income tax purposes.

The amount that Capital is seeking as a refund was reimbursed to the Retail Vendors by Capital and was included in amounts deducted by Capital as bad debt for Federal income tax purposes. This is the same amount that was charged off by Capital on its books as worthless. All of it is attributable to the unpaid taxable charges from credit card customers.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

In her determination, the Administrative Law Judge noted that the Commissioner of Taxation and Finance is authorized by Tax Law § 1132(e) to adopt regulations to exclude uncollectible receipts from taxable receipts. Further, where tax has already been paid upon such uncollectible receipts, the Commissioner is authorized to allow a refund or credit of the tax so paid.

The Administrative Law Judge pointed out that the Commissioner has exercised this authority by adopting 20 NYCRR 534.7, which allows for the exclusion of uncollectible receipts from taxable receipts. Pursuant to section 534.7(b)(1), the Commissioner has provided that where a receipt has been ascertained to be uncollectible, the "vendor", as that term is defined by Tax Law § 1101, may apply for a refund or credit of the tax paid on such receipt. Section 534.7(b)(3) further provides that no refund or credit is available for a transaction which is financed by a third party or for a debt which has been assigned to a third party, whether or not such third party has recourse to the vendor on that debt. The Administrative Law Judge concluded that § 534.7 allows only the person that made the sale which gave rise to the bad debt to apply for a refund of the tax paid on the receipt from that sale, with two exceptions: for

property sold by a leased department or concession (20 NYCRR 534.7[b][2]) and for receivables transferred to a captive finance company by its retail vendor (20 NYCRR 537.4[b][4]).

The Administrative Law Judge cited case law which holds that in determining the scope of a statutorily prescribed exemption, exemptions are to be strictly construed and if any ambiguity or uncertainty exists it is to be resolved in favor of the sovereign and against allowing the exemption. Further, refunds and credits have been found to be a form of tax exemption; therefore, a tax refund statute is to be narrowly construed against the taxpayer.

The Administrative Law Judge noted that in general an agency's construction of a statute is entitled to great weight and will not be overturned unless it is clearly erroneous. For the taxpayer to prevail, he must show that the Commissioner's interpretation of the scope of the exemption is irrational or clearly erroneous. The Administrative Law Judge concluded that in this instance, the deference afforded the Commissioner to interpret the scope of a tax statute by regulation is especially broad since the Commissioner has been given the discretion to decide whether a refund or credit will be allowed at all, as well as the authority to determine the scope of the refund or credit.

The Administrative Law Judge noted that pursuant to General Obligations Law § 13-101, any claim or demand can be transferred, except where a transfer thereof is expressly forbidden by a statute of the state, or of the United States, or would contravene public policy. The Administrative Law Judge found no New York State authority forbidding the assignment of claims against the government, including tax refund claims. The Administrative Law Judge observed that several provisions of the Tax Law expressly permitted assignment of credit for overpayment of taxes. The Administrative Law Judge rejected the Division's claim that the

absence of similar provisions in Tax Law Article 28 expresses a legislative intent not to permit an assignment of sales tax refund claims. The Administrative Law Judge found that where the Legislature intended to forbid assignments, it has done so explicitly. The Administrative Law Judge also found no judicial authority which would forbid the transfer of a refund claim. The Administrative Law Judge agreed with petitioner that § 534.7(b)(3) contravened the law of assignment in New York.

The Administrative Law Judge concluded, however, that although New York law favors the free assignment of contractual and statutory rights, the Division's regulation (20 NYCRR 534.7[b]) is a reasonable interpretation of Tax Law § 1132(e). Moreover, the Administrative Law Judge concluded that it was not unreasonable or irrational for the Commissioner to elevate tax statutes over the general rules of assignment. In this regard, the Administrative Law Judge stated:

> It is apparent that the purpose of 20 NYCRR 534.7(b) is to prohibit the assignment of a refund claim where the substance of the transaction between the assignor and assignee is a financing arrangement. Permission to transfer a refund claim to a third party for a transaction financed by a third party or for a debt which has been assigned to a third party would place the obligation of the consumer to pay sales tax in the same position as any other debt. Moreover, it would allow the debt obligation flowing from the imposition of sales tax to be assigned or transferred between third parties with no restrictions. The regulations are clearly intended to prevent this from occurring. The Commissioner reasonably interpreted Tax Law § 1132(e) in such a manner as to make a refund unavailable to third parties who are, in actual fact, providing financing to the vendor.

The Administrative Law Judge rejected petitioner's argument that the Commissioner's regulation is irrational because it extends the benefit of the section 1132(e) refund provisions to leased departments or concessions and to captive finance companies while denying the benefit to third-party assignees such as itself.

The Administrative Law Judge considered the two exceptions to the general rule against assignment of the refund for bad debts contained in 20 NYCRR 534.7(b). Section 534.7(b)(2) provides that a vendor will be considered the vendor of the tangible personal property giving rise to the bad debt if the property or services are sold by a leased department or concession which satisfies certain conditions. If all of these conditions are met, the lessor-vendor is considered to have taken on all of the duties and obligations of a sales tax vendor with respect to the receipts of the leased department or concession and the transaction is not a financing arrangement. The Administrative Law Judge found this distinction between a leased department or concession which meets the conditions of the regulation and a third-party financing arrangement to be reasonable.

Section 534.7(b)(4) provides that receivables transferred to a captive finance company by its retail-vendor will not be treated as debts assigned to a third party provided that two conditions are met. If the conditions of the captive finance provisions are satisfied, the arrangement between the captive finance company and its retail vendor will not result in debt obligations which can be transferred and assigned to other third parties. Moreover, by requiring that the customer make payments directly to the retail-vendor, the regulation is consistent with the scheme of the sales tax law. The Administrative Law Judge concluded that the captive finance provisions operate to insure that the vendor who makes the sale is the same person who applies for the refund under Tax Law § 1132(e). This is not the case with third-party assignees where the vendor makes the sale and the assignee applies for the refund. Moreover, in the case of receivables transferred to a captive-finance company, the Administrative Law Judge noted that the regulation restricts eligibility for a refund to transactions where the captive-finance company

does not earn income from the interest paid on the receivable. The Administrative Law Judge found this distinction between third-party assignees and captive finance companies to be reasonable.

The Administrative Law Judge concluded that inasmuch as petitioner was not a vendor with respect to the sales made by the Retail Vendors and was not required to remit tax on those sales, it was not unreasonable or irrational to deny petitioner a right to claim a refund of tax which it did not remit to the Division. The Administrative Law Judge rejected petitioner's reliance on the decision of the Supreme Court of the State of Washington in ***Puget Sound National Bank v. Department of Revenue*** (868 P2d 127) as that case involved policy considerations and statutes which are not relevant here.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that the Commissioner's regulation, 20 NYCRR 534.7(b), violates the provisions of Tax Law § 171-1. Pursuant to that statute, the Commissioner is authorized to make "reasonable rules and regulations not inconsistent with law." Petitioner believes that § 534.7(b)(3) is inconsistent with General Obligations Law § 13-101, which provides for the free transferability of claims except where a transfer is expressly prohibited by statute or would contravene public policy. Petitioner agrees with the Administrative Law Judge's conclusions that no statutory provision expressly prohibits the assignment of a tax refund claim; that there is no public policy against such assignments; and that various provisions of the Tax Law expressly recognize the validity of assigning claims for tax refunds. Further, petitioner agrees with the Administrative Law Judge's conclusion that there is no judicial authority holding

that assigning tax claims would violate public policy. However, there are cases recognizing the validity of the assignment of tax claims.

Petitioner also maintains that the Commissioner's broad exercise of discretion in adopting a regulation in which the Commissioner decides whether refunds will be granted and if so, who will qualify for a refund, violates the due process and equal protection clauses of both the state and federal constitutions. Petitioner relies on case law which hold that a state agency lacks the constitutional authority to determine whether a tax should be levied or at what rate or upon what property. Petitioner asserts that the Commissioner's discretion in the regulation is the equivalent of determining whether a tax should be imposed and by whom the tax should be paid. Further, petitioner believes that the Commissioner has acted beyond the scope of his authority by adopting a regulation which adds requirements that are not contained in the statute. Petitioner argues that Tax Law § 1132 does not provide any legislative guidance to the Commissioner. It does not even contain a requirement that a refund be granted in the event receipts are uncollectible. All the requirements for refund, including the right to a refund, are contained in the regulations, which cannot be regarded as implementing an existing law. Petitioner maintains that the Commissioner's interpretation of Tax Law § 1132(e) is not entitled to deference here since there is no statute to construe.

Petitioner urges that the exceptions contained in the regulation for certain leased departments and concessions and for certain captive finance companies demonstrate that the Commissioner has adopted a comprehensive set of rules without legislative guidance. Through these exceptions, the Commissioner has suspended the application of New York contract, assignment and tax law and has ignored the requirement that transactions between separate

entities be realized and treated as being made with a third party, all in contravention of Tax Law section 171-1.

In opposition, the Division argues that Tax Law § 1139(a) sets out three situations where there can be a refund or credit of sales tax "erroneously, illegally or unconstitutionally paid." The Division states that it is "undisputed" that petitioner did not pay the tax to a person required to collect the tax but that the customers of the unrelated vendor did. Nor, asserts the Division, do the remaining two situations (i.e., tax paid by the applicant to the tax commission or tax paid by the applicant pursuant to Tax Law § 1141[c]) apply. Since there is no other party to which a refund or credit is available, and since the tax was not erroneously, illegally or unconstitutionally paid by the retail vendors or their customers when the subject transactions were completed, petitioner does not qualify to apply for a refund.

Although § 1139(e) explicitly makes § 1139(a) applicable to § 1132(e), the Division claims that only the vendor who had the duty to collect the tax due from the customer, who reported the taxable receipt and, if applicable, who paid the tax due on the receipt may exclude an uncollectible bad debt from taxable receipts. Although customers would normally be eligible to apply for a refund, in this case they are not since the customers have not paid the tax. Therefore, the only party eligible to apply for a refund is the retail vendor who actually collected, reported and remitted the tax. The Division maintains that the regulation is probative of the legislature's intent to limit the availability of sales tax refunds in "bad debt" situations solely to vendors who bear the responsibility of collecting, remitting and reporting these taxes.

The Division argues that although petitioners claim to stand in the shoes of the vendors, at no time did the vendors ever have an uncollectible bad debt to assign. The sales transaction was

completed by the parties. The assignment of the right to collect from the customer was a separate subsequent transaction between the vendor and petitioner.

The Division believes that the regulation is consistent with the Tax Law and reasonable, although inconsistent with General Obligations Law § 13-101. Since Article 28 of the Tax Law was enacted subsequent to General Obligations Law § 13-101, the more recently enacted statute supercedes any inconsistent earlier statute. Here, the legislature has chosen to supercede the concept of free transferability by enacting Tax Law §§ 1132(e), 1139(a) and 1139(e) which authorize sales tax bad debt refunds in only one situation, which does not apply to petitioner. Since the legislature has not authorized finance companies purchasing commercial accounts to be eligible for sales tax refunds, the Division claims that the provisions of the General Obligations Law have no relevance here. Further, the fact that the legislature has specifically authorized the assignment of refunds of some taxes but not sales tax is probative of its intent to exclude such relief from finance companies, including petitioner.

The Division argues that the regulation does not violate the state or federal constitutions. Here, the Commissioner did not exercise unfettered discretion. Rather, the commissioner followed established legislative standards, embodied in Tax Law sections 1132(e), 1139(a) and 1139(e).

The Division asserts that the Commissioner did not add requirements to the regulation that were not contained in the statute. The Division claims that the legislature has dictated that, absent the application of Tax Law § 1141(c), only registered vendors and their customers may obtain sales tax refunds; and since in a bad debt situation the customer has not paid the sales tax

due upon a transaction, the regulation is an accurate interpretation of the statutory scheme, of which section 1132(e) is an integral part.

The Division maintains that the interpretation of statutes by an agency charged with their enforcement is entitled to great weight and deference as long as the interpretation is neither irrational, unreasonable nor inconsistent with the governing statute. Since the commissioner's exercise of discretion in promulgating the regulation was supported by the Tax Law and was wholly reasonable, petitioner was not subjected to an excessive burden of proof to overcome the Division's interpretation.

The Division also argues that Administrative Law Judge correctly refused to find the decision of the Washington Supreme Court in ***Puget Sound National Bank v. Department of Revenue (supra)*** persuasive. The Division pointed out several decisions in other states which it claims are more on point.

In reply, petitioner argues that the Division's position that Article 28 of the Tax Law supercedes General Obligations Law § 13-101 must be rejected. First, the General Obligations Law provides that any claim can be transferred except where a transfer is expressly forbidden by statute. There is no such express prohibition in the statute, as found by the Administrative Law Judge. Second, established case law recognizes that in the absence of an express statutory provision prohibiting assignment, there will be no imputing of legislative intent to restrict the free assignability of claims. The Administrative Law Judge recognized that in the absence of the regulation, petitioner would be entitled to a refund. Petitioner disputes the Division's assertion that § 1139(a) precludes the assignment of claims. Petitioner points out that such section does not deal with assignability. Further, petitioner disagrees with the Division that it is "undisputed"

that petitioner does not satisfy the criteria to apply for a credit or refund set forth in Tax Law § 1139(a). The Division's claim conflicts with the Stipulation and the findings of the Administrative Law Judge. Petitioner argues that the failure to recognize that petitioner paid the tax at issue to the retail vendors undermines the Division's position that the regulation is a reasonable interpretation of the Tax Law and that under § 1139(a), petitioner cannot be a person entitled to apply for a refund. Petitioner claims that under both § 1139(a) and under the law of assignments petitioner is entitled to a refund.

OPINION

Pursuant to Tax Law § 1132(e), the Legislature has empowered the Commissioner of Taxation and Finance to adopt regulations which allow:

> for the *exclusion from taxable receipts* . . . of amounts representing sales where . . . the receipt, charge or rent has been ascertained to be uncollectible *or, in case the tax has been paid upon such receipt, charge or rent, for refund of or credit for the tax so paid***.** Where the tax commission[er] provides for a credit for the tax so paid, it shall require an application for credit to be filed, but it may also allow the applicant to immediately take the credit on the return which is due coincident with or immediately subsequent to the time the applicant files his application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in section eleven hundred thirty-nine as provided in subdivision (e) of such section (emphasis added).

Tax Law § 1101(b)(3), in effect for the period at issue herein, defined a "receipt" as the "[A]mount of the sale price of any property and the charge for any service taxable under this article, valued in money, whether received in money or otherwise, *including any amount for which credit is allowed by the vendor to the purchaser*. . . (emphasis added)." In this matter, the Retail Vendors offered a credit card program to their customers. Thus, the credit extended by the

Retail Vendors to their customers constituted a measure of the value of the receipts within the scope of Tax Law § 1101(b)(3).

Section 534.7 of the Commissioner's regulations provides rules for determining entitlement to refunds and credits attributable to receipts which have been ascertained to be uncollectible. Relevant to the present situation, that regulation allows only a "vendor" to apply for a refund or credit where a receipt has been ascertained to be uncollectible (534.7[b][1]). A "vendor" is described in Tax Law § 1101(8) as "A person making sales of tangible personal property or services, the receipts from which are taxed by this article." By definition, petitioner was not the "vendor" vis-a-vis the transactions herein which gave rise to the uncollectible receipts. Under the Commissioner's regulation, only the person making sales of the tangible personal property giving rise to the uncollectible receipt may apply for a refund of the tax paid on the receipt from that sale.[2]

This is made abundantly clear by section 534.7(b)(3), which provides that:

> A refund or credit is not available for a transaction which is financed by a third party or for a debt which has been assigned to a third party, whether or not such third party has recourse to the vendor on that debt.

As set forth above, the Administrative Law Judge that 20 NYCRR 534.7(b)(3) was at odds with the provisions of General Obligations Law § 13-101. That section provides that:

> Any claim or demand can be transferred, except in one of the following cases:
>
> 1. Where it is to recover damages for a personal injury;

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[2] Although the regulations provide exceptions to this rule for property sold by a leased department or concession (20 NYCRR 534.7[b][2]) and for receivables transferred to a captive finance company by its retail vendor (20 NYCRR 537.4[b][4]), neither of these exceptions apply to petitioner.

> 2. Where it is founded upon a grant which is void by a statute of the state; or upon a claim to or interest in real property, a grant of which, by the transferrer, would be void by such a statute;
>
> 3. Where a transfer thereof is expressly forbidden by a statute of the state, or of the United States, or would contravene public policy.

While we agree with the Administrative Law Judge's conclusion, we find that the provisions of General Obligations Law § 13-101 have no impact on the resolution of the issues presented herein.

As a result of the retail sales transactions which generated the sales tax at issue herein, the Retail Vendor was in a trustee relationship with the Department and had an obligation to collect and remit the applicable sales and use taxes. Petitioner, however, had no such trust relationship and no obligation to do so either contractually as a result of its agreement with the Retail Vendor or under any provision of the Tax Law. The Retail Vendor could not avoid its liability to collect and remit taxes by attempting to assign its obligation to petitioner. At the time that the Retail Vendor assigned its rights in and to the credit accounts to petitioner, it assigned "all Accounts and all Eligible Indebtedness." However, at no time did the Retail Vendor assign a right to apply for a refund premised on the existence of an uncollectible receipt on which sales and use tax had already been paid, because none existed at the time of the assignment. Nor, as a result of the financing arrangement, could the Retail Vendor ever have an uncollectible receipt which would give rise to the right to apply for a refund which might have been assigned to petitioner. On remittance of the tax, the Retail Vendor discharged its obligation as trustee arising from its collection of the sales from its customers. In addition, it received payment in full for the receipts from its sales of tangible personal property. Therefore, once the Retail Vendor assigned the

credit account to petitioner and received payment therefor, the Retail Vendor had no basis for claiming a refund based on an uncollectible receipt.

We think it is important to note that any right to apply for a refund of sales tax arises, if at all, from the Tax Law and is based on the relationship of the refund applicant to the underlying transaction and the obligation for collection/payment of tax.

Thus, petitioner did not obtain the right to apply for a credit or refund pursuant to Tax Law § 1132(e) as the result of the assignment of the account by the Retail Vendor. Petitioner, in order to be eligible to apply for a refund, must have qualified as an applicant in its own right.

The Division makes the argument that since the provisions of § 1132 in general refer only to vendors, that it must be presumed that such is the restricted scope of § 1132(e). However, that argument flies in the face of the express provisions of Tax Law § 1139(e). That section specifically makes § 1139(a) applicable to refund claims filed pursuant to § 1132(e). Section 1139(a) contains three classes of applicants who may apply for a refund or credit of sales tax. Thus, these same three classes of applicants may be eligible to apply for a credit or refund pursuant to § 1132(e).

Petitioner was not a purchaser in a bulk sale transaction (§ 1139[a][iii]) nor did petitioner remit the subject sales and use tax directly to the Division (§ 1139[a][ii]). Thus, in order to meet the applicant eligibility criteria of § 1139(a), petitioner must have been a member of the remaining category of applicants: one who paid the tax to a person required to collect such tax; i.e., the Retail Vendor (§ 1139[a][i]). As set forth below, petitioner was not a member of that class of applicants.

Petitioner, pursuant to its agreement, "reimbursed the Retail Vendors the full *amount* of the credit card accounts, including the amount of New York State and local sales and use taxes financed by the customers" (emphasis added). However, petitioner did not pay any tax on the underlying sales of tangible personal property represented by the debt it purchased from the Retail Vendors. We think it is implicit in § 1139(a)(i) that since the applicant for a credit or refund must have paid the tax *to* a person responsible to collect such tax, the applicant must be a person *liable for* the payment of such tax in the transaction. Stated conversely, tax would only be collected by a person responsible therefor from a party who was obligated to pay the tax in the first instance.

Tax Law § 1132(a)(1) provides that "[E]very person required to collect the tax shall collect the tax from the customer." Liability for sales and use tax is imposed on the person required to collect such tax and on the customer (which includes every purchaser of tangible personal property or services) by Tax Law § 1133. Further, the tax is paid to the person required to collect it "as trustee for and on account of the state." The Retail Vendor's trust obligation to collect and pay over the tax on the sale was discharged when it remitted the tax to the Division. The reimbursement by petitioner did not represent a payment of a purchase price for goods and the tax thereon but a lump sum reimbursement for assignment of the underlying debt. When petitioner reimbursed the Retail Vendor for the amounts due on the assigned accounts, the Retail Vendor did not receive such amounts as a trustee for and on account of the State. We note that there is an explicit connection between the applicant and the payment of tax in the classes of applicants described in §§ 1139(a)(ii) and (iii). Absent this connection between an applicant, the person responsible for collecting the tax and the underlying transaction, the field of potential

refund or credit applicants pursuant to § 1139(a)(i) would be virtually limitless and the orderly administration of the sales tax rendered unworkable, at best[3].

As a result of the foregoing, we conclude that the Division's regulation is consistent with the purpose and intent of the statute and we affirm the determination of the Administrative Law Judge.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of General Electric Capital Corp. is denied;

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

3. The petition of General Electric Capital Corp. is denied and the denial of its refund claim is sustained.

DATED: Troy, New York
December 27, 2001

/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

[3]We note that the language in the "Revolving Consumer Charge Credit Application" in finding of fact '7' anticipated further assignments of the agreements.