STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
NAN S. ZAVOSKI	:	DETERMINATION DTA NO. 819119
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Year 2001.	:	

Petitioner, Nan S. Zavoski, 583 Haverstraw Road, Montebello, New York 10901, filed a petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the year 2001.

A hearing was held before Frank W. Barrie, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York on March 19, 2003 at 10:30 A.M., with all briefs to be submitted by July 16, 2003, which date began the six-month period for the issuance of this determination. Petitioner appeared by her spouse, Michael C. Zavoski. The Division of Taxation appeared by Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel).

ISSUE

Whether the entire amount of $23,396.10 invoiced by a new car dealer for a Buick Regal, which included a General Motors rebate to the dealer of $2,000.00 and an amount representing

petitioner's GM Credit Card point earnings of $1,473.39, was subject to the imposition of sales tax so that petitioner's request for a refund of sales tax of $251.82[1] was properly denied.

FINDINGS OF FACT

1. Petitioner, a resident of New York's Rockland County, purchased a new car from a Buick dealer located in Wallingford, Connecticut known as Wallingford Buick-GMC. The "total cash price delivered" for the 2001 Buick Regal LS, as shown on the retail purchase order for motor vehicle signed by petitioner and dated October 24, 2001, was $23,645.10, which included a "dealer conveyance fee" of $249.00.

2. When petitioner registered her new Buick with the New York State Department of Motor Vehicles, she paid sales tax in the amount of $1,696.21 based upon the applicable rate of 7.25% for Rockland County multiplied by $23,396.00, the "total cash price delivered" of $23,645.10 less the "dealer conveyance fee" of $249.00, which the Division agrees was not subject to sales tax.

3. In purchasing her new automobile, petitioner was out-of-pocket only $20,171.71 since the Buick dealer gave her credit for a General Motors manufacturer's rebate of $2,000.00 and point earnings of $1,473.39 from her GM Credit Card against the "total cash price delivered" of $23,645.10.

4. Petitioner filed a refund claim dated November 5, 2001 seeking a refund of $271.40 claiming that the "total consideration paid for vehicle, including money and other property or services" was $19,922.71. This amount represented the "total cash price delivered" of $23,645.10, as indicated on the car dealer's retail purchase order dated October 24, 2001, less (i)

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[1] In her brief, petitioner requested a refund of an overpayment of sales tax in the amount of $271.40. However, at the applicable sales tax rate of 7.25%, the alleged overpayment of sales tax on $3,473.39 (the sum of the rebate of $2,000.00 and point earnings of $1,473.39) is $251.82 not $271.40.

the rebate of $2,000.00, (ii) the point earnings of $1,473.39, and (iii) the dealer conveyance fee of $249.00 (which is not at issue since, as noted above, the Division did not collect sales tax on such amount). Sales tax at the Rockland County rate of 7.25% on $19,922.71 is $1,444.40. As noted in Finding of Fact "2", petitioner paid sales tax when she registered the car in the amount of $1,696.21. This amount of sales tax paid of $1,696.21 less $1,444.40, which petitioner claims was the proper amount to be collected, is $251.81 not $271.40 as stated in her refund claim.

4. By a letter dated February 7, 2002, the Division denied petitioner's refund claim of $271.40 for the following reason:

> Any discount that the *dealer* allows to arrive at the selling price would be excluded from the tax base.
>
> A rebate and a credit card incentive are offered by the *manufacturer*. Neither one affects the price that the *dealer* charges for the vehicle. The *dealer* receives the same amount of money whether a rebate or a credit card incentive is applied or not. Therefore, rebates and credit card incentives are included in the tax base and your claim is denied in full. (Emphasis added.)

SUMMARY OF THE PARTIES' POSITIONS

5. Petitioner argues that only her "out-of-pocket proceeds" used to purchase the car, and not the manufacturer's rebate and GM Credit Card point earnings, were subject to sales tax. Petitioner analogizes to the "use of airline mileage credits where mileage is accrued to reduce or entirely eliminate the cost of an airline ticket during subsequent ticket purchases." Petitioner claims it is inconsistent for the Division to impose sales tax on the rebate and credit card point earnings here and not on value received when airline miles are traded in for free travel or ticket upgrades. Petitioner also argues the Division is inconsistent when it does not include in the amount subject to sales tax an "instant rebate" offered by the Staples retail store. Petitioner maintains: "the price Mrs. Zavoski paid for her car was, in fact, $19,922.71."

6. The Division emphasizes the "cash price delivered" for the new car purchased by petitioner included the GM rebate and GM points which were applied by the dealer as cash toward the purchase price of the vehicle. The Division points out that the car dealership did not reduce the sale price of the vehicle "[s]ince the rebate and bonus points were issued by General Motors, the manufacturer . . . ." (Division's brief, p. 4.) In sum, the Division argues that "Rebates and bonus points do not reduce the ultimate price of the vehicle and sales tax is due on the entire purchase price." (Division's brief, p. 8.)

CONCLUSIONS OF LAW

A. The Division contends that documents which petitioner sought to submit after the record had been closed to further evidence may be accorded no weight. As the Tax Appeals Tribunal emphasized in its recent decision in ***Matter of Ronon*** (October 24, 2002):

> We have held that a fair and efficient hearing process must be defined and final, and the acceptance of evidence after the record is closed is not helpful towards that end and does not provide an opportunity for the adversary to question the evidence on the record [citations omitted].

Based on this well-established principle, the Division's contention has merit. The documents, which petitioner sought to submit after the record had been closed to new evidence, consisted of copies of her canceled checks showing payment of a $500.00 deposit and of a remaining balance due of $19,671.71 to establish total out-of-pocket payments on the purchase of her new car of $20,171.71, which are merely background facts. Even if they had been admitted into evidence, they would have been inconsequential.

B. Turning to the merits of petitioner's case, it is necessary to examine the statutory and regulatory definitions of "receipts" subject to sales tax since, pursuant to Tax Law § 1105(a), sales tax is imposed on "[t]he receipts from every retail sale of tangible personal property, except as otherwise provided in this article."

C. Tax Law §1101(b)(3) defines "receipt" as follows:

> The amount of the sale price of any property . . . , valued in money . . . *including any amount for which credit is allowed by the vendor to the purchaser* . . . and excluding the cost of transportation of tangible personal property sold at retail where such cost is separately stated in the written contract, if any, and on the bill rendered to the purchaser. (Emphasis added.)

D. Even without reviewing the Division's regulatory definition of "receipts," its position that the rebate and credit card incentive were properly included in the amount subject to sales tax has support in the plain reading of the above statutory language. In the facts at hand, the vendor, Wallingford Buick-GMC, allowed petitioner a credit for the manufacturer's rebate and her point earnings from a GM Credit Card. The language emphasized in the relevant statutory provision cited above clearly provides that the term "receipts" includes such amounts for which credit was allowed by the car dealer. Simply stated, a natural reading of the statutory provision at issue supports the Division's position. The GM rebate and GM points were amounts for which credit was allowed by the car dealer, i.e., the vendor, to petitioner, i.e., the purchaser, and therefore properly included in the "receipts" subject to tax, as required by the statutory language emphasized (***see***, ***Cooper-Snell Co. v. State of New York***, 230 NY 249, 129 NE 893 [wherein the court noted that statutes are to be read according to the natural and obvious import of their language without resorting to subtle or forced construction]).

E. In addition, in light of the statutory definition of "receipt" as detailed above in Conclusion of Law "C", the cost of transportation of tangible personal property sold at retail is excluded from the receipt subject to sales tax. Such statutory exclusion explains the Division's agreement that the dealer's conveyance fee of $249.00 was not subject to tax.

F. A review of the Division's regulations further supports the conclusion that sales tax was properly imposed on the entire amount of $23,396.10, without regard for the General Motors

rebate to the dealer of $2,000.00 and an amount representing petitioner's GM Credit Card point earnings of $1,473.39. The sales tax regulations at 20 NYCRR 526.5 elaborate on what is included in the sales price of any property, thereby constituting a "receipt" subject to sales tax. Initially, "receipt" is defined in the regulations at 20 NYCRR 526.5(a) as follows:

> Definition. The word 'receipt' means the amount of the *sale price* of any property and the charge for any service taxable under articles 28 and 29 of the Tax Law, valued in money, *whether received in money or otherwise*. (Emphasis added.)

As noted in Findings of Fact "1" and "2", the "total cash price delivered" for the 2001 Buick Regal as shown on the retail purchase order was $23,645.10 which equates to the "sale price" of the car. In addition, the GM rebate and GM credit card point earnings are items of value to be received by the car dealer from the manufacturer which are clearly encompassed by the regulatory term "otherwise" emphasized above.

G. The Division's regulations go on with much detail concerning items included in the sales price of property. Manufacturer's rebates and credit card rewards are not specifically referenced. However, the regulations discuss the treatment of "coupons" at 20 NYCRR 526.5(c), which has some relevance as a helpful analogy, as follows:

> Coupons. (1) Where a manufacturer issues a coupon entitling a purchaser to a credit on the item purchased, *the tax is due on the full amount of the receipt*. The receipt is composed of the amount paid and the amount of the coupon credit. The coupon credit reflects a payment or reimbursement by another party to the vendor.
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> (2) Where a store issues a coupon, entitling a purchaser to a credit on the item purchased, for which it is reimbursed by a manufacturer or distributor, *the tax is due on the full amount of the receipt*. The receipt is composed of the amount paid and the amount of the coupon credit. The coupon must indicate, by "mfr" or some other code, that reimbursement is made. The reimbursement from the manufacturer or distributor to the store may be made in any form, such as cash or a credit against purchases or in additional merchandise.
>
> (3) Where a store issues a coupon entitling a purchaser to a discounted price on the item purchased, and receives no reimbursement, the tax is due from the purchaser *on only the discounted price*, which is the actual receipt.

> (4) Where a store issues a coupon involving manufacturer's reimbursement, but does not disclose that fact to the purchaser on the coupon or in the advertisement, the vendor will collect from the purchaser *only the tax due on the reduced price*, but will be required to pay the tax on the entire receipt- the amount of the price and the reimbursement received from the manufacturer or distributor. (Emphasis added and examples omitted.)

Petitioner's contention that it was "inconsistent" for the Division to treat an instant rebate offered by Staples as not included in the amount subject to sales tax is meritless. The instant rebate constituted a reduction by the vendor (Staples) of the selling price while in the matter at hand the car dealer did not reduce the selling price but rather *credited* the rebate and credit card points against the selling price. This difference is real and not merely a matter of semantics as contended by petitioner, and this differing treatment is clearly delineated in the above-cited regulatory discussion of manufacturer's coupons as opposed to in-store coupons for which no reimbursement is received by the store from the manufacturer. Further, such regulatory interpretation is clearly in harmony with the statutory provision at issue. Petitioner has simply not met her burden to establish that her interpretation of the law is the only reasonable interpretation, and that the Division's interpretation was unreasonable (***Matter of Miehle***, Tax Appeals Tribunal, August 24, 2000). Moreover, this is an impossible task since the Division's interpretation is a plain and natural reading of the Tax Law provision at issue.

H. Similarly, petitioner's analogy to the trading in of airline mileage credits for free travel or upgraded travel has no persuasive value. The airline, as the *vendor*, is reducing the cost of travel by providing the free travel or upgraded travel.

I. Finally, petitioner's claim that the requirement that she pay sales tax on an amount which included the manufacturer's rebate and credit card point earnings was "discriminatory" is without merit. The Division followed its own regulations in this matter, and there is absolutely no evidence of any selective enforcement by the Division against petitioner.

Moreover, to prove a claim of discriminatory enforcement, petitioner needed to prove selectivity of enforcement and that the selectivity arose from "an intentional invidious plan of discrimination on the part of the Division" (***Matter of Goetz Energy***, Tax Appeals Tribunal, November 18, 1999, quoting ***Matter of Petro Enterprises, Inc.***, Tax Appeals Tribunal, September 19 1991).

J. The petition of Nan S. Zavoski is denied, and the denial of refund dated February 7, 2002 is sustained.

DATED: Troy, New York
September 11, 2003

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE