STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
ROBERT L. BETHEL	:	DETERMINATION DTA NO. 819161
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 2002.	:	

Petitioner, Robert L. Bethel, 7083 Suzanne Lane, Schenectady, New York 12303, filed a petition for revision of a determination or for refund of New York State sales and use taxes under Articles 28 and 29 of the Tax Law for the year 2002.

On January 6, 2003, the Division of Taxation filed a motion for an order dismissing the petition and granting summary determination to the Division of Taxation on the ground that there are no material issues of fact and that the facts mandate a determination in favor of the Division of Taxation. On January 21, 2003, petitioner filed a response which started the 90-day period for issuing this determination. The Division of Taxation appeared by Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel). Petitioner appeared *pro se*. Based upon the motion papers, Arthur S. Bray, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner is entitled to a refund of sales tax which was paid with respect to the lease of a motor vehicle when a portion of the lease payments was never paid because of a premature termination of the lease.

FINDINGS OF FACT

1. On March 2, 2001, petitioner, Robert L. Bethel, a resident of New York State, entered into an agreement for the lease of an automobile with New Country Ford Inc., d/b/a New Country Subaru. At the time he entered into the lease agreement, petitioner paid sales tax in the amount of $1,312.93.

2. After eleven months, petitioner decided to purchase the automobile. On February 4, 2002, petitioner entered into a contract to purchase the automobile for $20,341.91 plus sales tax of $1,525.64 and a registration or title fee of $20.00, for a total selling price of $21,887.55.

3. On or about February 7, 2002, petitioner filed a claim for refund in the amount of $854.78. The application for a refund stated that when he entered into the lease agreement on March 2, 2001 he paid sales tax of $1,312.93 on the total amount of the monthly lease payments. Petitioner explained, through a series of examples, that if he had continued to make payments pursuant to the lease and then purchased the automobile at the end of the lease term, he would have paid $854.78 less in sales tax than what he was required to pay because he terminated the lease early and purchased the automobile. He was obligated to make a higher payment because the initial payment of sales tax on March 2, 2001 was based, in part, upon 25 months of lease payments which never occurred. On the basis of the foregoing, petitioner concluded that he was being penalized $854.78 for paying sales tax more than two years early.

4. In a letter dated March 21, 2002, petitioner was advised by the Division of Taxation ("Division") that his claim for refund was denied. The Division explained that when a lease is entered into the entire amount due under the lease is immediately subject to sales tax. The Division also stated that, except for a return of a motor vehicle under the Lemon Law, there is no provision for a refund of sales tax on the lease of a vehicle that is terminated prematurely.

SUMMARY OF THE PARTIES' POSITIONS

5. In support of its motion, the Division presented the affirmation of Justine Clarke Caplan, a copy of petitioner's claim for refund and a copy of the letter denying the refund. The Division's affirmation argues that a lease, for a term of one year or more, of a motor vehicle is subject to tax and is payable as of the date of the first payment under the lease. The Division further submits that a credit or refund is not allowable on the basis that the receipts were not actually paid. According to the Division, the initial lease and the subsequent buy out were separate transactions and sales tax was separately imposed on each transaction.

6. In response to the motion to dismiss, petitioner submitted a letter which reviewed the history of this transaction and then pointed out that even though the automobile had an initial cost of $25,768.79,[1] he has been charged sales tax of $2,838.57 ($1,312.93 on the lease and $1,525.64 on the subsequent purchase). This is tantamount to the imposition of sales tax at a rate of seven and one-half percent on a vehicle which cost $37,847.60. Petitioner submits that the imposition of tax in this amount is not fair.

CONCLUSIONS OF LAW

A. To obtain summary determination, the moving party must submit documents showing that there is no material issue of fact and that the facts mandate a determination in the moving party's favor (20 NYCRR 3000.9[b][1]). Inasmuch as summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is "arguable" (***Glick & Dolleck, Inc. v. Tri-Pac Export Corp.***, 22 NY2d 439, 293 NYS2d 93, 94; ***Museums at Stony Brook v. Village of Patchogue Fire Dept.***,

[1] The amount used here was taken from the Motor Vehicle Lease Agreement. It appears that petitioner's letter brief has a small typographical error.

146 AD2d 572, 536 NYS2d 177, 179). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (***see***, ***Gerard v. Inglese***, 11 AD2d 381, 206 NYS2d 879, 881).

B. Tax Law § 1105 imposes a tax on the sale of tangible personal property in New York State. Pursuant to Tax Law § 1101(b)(5), a lease is considered a sale. Until 1990, a long-term lease of a motor vehicle was subject to sales tax at the time each individual payment was made under the lease. In 1990, Tax Law § 1111(i) was adopted[2] which provided in relevant part:

> (A) Notwithstanding any contrary provisions of this article or other law, with respect to any lease for a term of one year or more of (1) a motor vehicle . . . 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 . . . or as of the date of registration of such property with the commissioner of motor vehicles, whichever is earlier.

C. In this case, petitioner objects to the total amount of sales tax he had to pay as a result of the lease and subsequent purchase of an automobile. Petitioner does not argue that sales tax was improperly imposed in the first instance when he entered into the lease or that sales tax should not have been imposed upon the sale of a vehicle.

D. Petitioner's claim is rejected. Specifically, the Division's regulation at 20 NYCRR 527.15(e) provides that a refund or credit will not be allowed because the receipts were not actually paid such as when there is an early termination of a lease. The basis for this provision is that Tax Law § 1111(i) states that all lease payments are deemed to have been paid and are subject to tax as of the time of the first payment under the lease (***see, Matter of Miehle***, Tax Appeals Tribunal, August 24, 2000; ***see also, Matter of Moerdler v. Tax Appeals Tribunal,*** 298

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[2] L 1990, ch 190, §181.

AD2d 778, 750 NYS2d 329). The subsequent purchase of the automobile was a discrete transaction which was also subject to tax (Tax Law § 1101[b][5]).

In ***Miehle*** the Tax Appeals Tribunal concluded that a refund was not authorized by the premature termination of a lease. In reaching this conclusion, the Tribunal noted that the Legislature was cognizant of the fact that the Tax Law does not provide for a refund in an instance such as this. It found further support for its position by the fact that the Legislature specifically provided for a refund in the "Lemon Law" and not under the circumstances presented here. Lastly, the Tribunal pointed out that the premature termination of a lease is not a situation where a contract of sale has been "canceled."

In view of the foregoing, petitioner's claim of unfairness, while understandable, does not provide a basis for granting the refund requested.

E. The motion of the Division of Taxation for summary determination is granted and the petition of Robert L. Bethel is denied.

DATED: Troy, New York
April 3, 2003

/s/ Arthur S. Bray
ADMINISTRATIVE LAW JUDGE