

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>HOFFMAN CAR WASH, INC.</b>	:	DETERMINATION
	:	DTA NO. 820681
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 December 1, 2000 through	:	
August 31, 2003.	:	

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Petitioner, Hoffman Car Wash, Inc., 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 period December 1, 2000 through August 31, 2003.

A hearing was held before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, 500 Federal Street, Troy, New York, on February 26, 2007 at 10:30 A.M., with all briefs to be submitted by June 29, 2007, which date began the six-month period for issuance of this determination. Petitioner appeared by Hodgson Russ LLP (Timothy P. Noonan, Esq., and Mark S. Klein, Esq., of counsel). The Division of Taxation appeared by Daniel Smirlock, Esq. (James Della Porta, Esq., of counsel).

***ISSUE***

Whether Hoffman Car Wash, Inc.'s receipts from the sale of car washes at its in-bay automatic car wash facilities are exempt from the imposition of sales tax under Tax Law § 1115 (former[t]).

### ***FINDINGS OF FACT***

1. Petitioner, Hoffman Car Wash, Inc., began doing business in New York as a stand-alone car wash facility. The company was started by the parents of the current CEO of petitioner, Thomas J. Hoffman, Jr. Since 1965, petitioner has added car washes in and around the Albany, New York, area every few years. Currently, petitioner operates 18 car wash facilities and employs approximately 550 people.

2. Petitioner provides four types of car wash services at its facilities. One type of car wash service provided by petitioner is described as a “full service wash.” Here, the customer exits the vehicle and petitioner’s employees vacuum it, take it through a conveyORIZED wash process, and dry the vehicle at the end of the process. All this occurs while the customer is out of the vehicle and in petitioner’s waiting area. Payment is made to a cashier inside the facility, and the hours of operation for this service are generally 8:00 A.M. to 8:00 P.M. During busy periods in the wintertime, petitioner has as many as 45 employees servicing its customers’ cars. For this service, customers do not wash their vehicles by means exclusively of coin-operated equipment, and petitioner’s employees do provide assistance.

3. Another type of car wash service provided by petitioner is referred to as an “exterior conveyor” wash. In this situation, the customer drives the vehicle onto a conveyor and it proceeds automatically through the wash process. Petitioner’s employees are present to greet the customer, advise on different wash services, accept payment, and prewash the vehicle prior to the conveyor process. For this service, customers do not wash their vehicles by means exclusively of coin-operated equipment, and petitioner’s employees do assist in the wash process.

4. A third type of car wash service provided by petitioner is described as a “self-service wand” facility. At the wand wash facility, a customer pulls up to a coin selection box, exits the

vehicle, and selects the type of wash from a variety of different categories, including high pressure soap, foam brush, bug remover, wheel-scrubbing brush, etc. Following the selection, the customer inserts coins into a coin box, which initiates the wash process. The customer takes the “wand” out of the holster, aims it at the car, and presses a button to deliver the pressurized hot, soapy water through the hose and out a nozzle. Customers have the option to purchase additional time to wash and rinse their vehicle. This type of facility operates 24 hours a day, 7 days a week, 365 days a year, and customers serve themselves. At these facilities, petitioner’s customers wash their vehicles by means exclusively of coin-operated equipment, and neither petitioner nor any of its employees provides assistance.

5. The final type of car wash service is that which is at issue in this matter, described variously as “self-service in-bay automatic,” “laser wash,” “touch-free automatic” and “roll-over.” For purposes of clarity and consistency, this type of car wash service will be referred to as “in-bay” washes.

At the in-bay wash facilities, the customer pulls the vehicle up to a coin selection box, rolls down the window and selects from three different wash categories: wash package, deluxe wash package and a works package. The “deluxe” and “works” packages include undercarriage cleaning, and the “works” also includes the polish wax. Following the selection, the customer inserts coins into a coin box, which initiates the wash process, and the customer is directed to move forward into the bay by lighted signs. If the customer has selected the deluxe or works package, he needs to drive slowly through the first part of the in-bay wash process in order to thoroughly wash the undercarriage of the vehicle.

After the customer pays for service, he has approximately two minutes to move his vehicle inside the wash bay. If the customer does not move the vehicle forward, the automatic wash

process will not activate. Sensors and a set of directional lights guide the driver of the vehicle to the precise location in the bay where the car is washed. If the customer pulls the car too far into the bay, the wash process will not begin or continue. The bay doors automatically close after the car enters the bay. The car wash process automatically starts after the vehicle is in the correct location within the bay. A set of ultrasonic sensors detects the size and location of the car for purposes of directing the car wash equipment. This process saves energy and water because the overhead car wash equipment is directed only to the area covered by the car. A third set of proximity sensors ensure that the car wash equipment remains a certain distance from the vehicle during the wash process. Should the equipment come into contact with the vehicle, the automated car wash process will cease. The doors automatically open after the car wash process is completed. The in-bay car wash facilities operate 24 hours a day, 7 days a week, 365 days a year, and customers serve themselves.

6. Petitioner assumes liability for vehicles damaged by petitioner's equipment during the in-bay automatic car wash process. It does not assume liability for damage to vehicles caused by a customer using the self-service wand equipment.

7. On January 14, 2004 and April 20, 2004, petitioner, by Carole M. Hoffman, vice-president, executed two consents extending period of limitations for assessment of sales and use taxes under Articles 28 and 29 of the Tax Law, which collectively extended the period of limitations for assessment for the period December 1, 2000 through August 31, 2001 to September 20, 2004.

8. Following an audit, the Division of Taxation (Division) issued to petitioner a Notice of Determination, dated September 20, 2004, asserting sales tax due in the amount of \$108,097.88, plus penalty and interest. The amount due is based upon petitioner's failure to collect sales tax

on its receipts from the in-bay car wash services, which it believed were exempt from tax. At the Bureau of Conciliation and Mediation Services (BCMS) conference, penalties were canceled.

9. Petitioner submitted proposed findings of fact numbered “1” through “11”. Proposed findings of fact “1”, “2”, “3”, “5”, “6” and “9” have been accepted in substance and have been made part of the Findings of Fact herein. Proposed findings of fact “7”, “8”, “10” and “11” are rejected as irrelevant. Proposed finding of fact “4” is a conclusion of law and is therefore rejected as fact.

### ***CONCLUSIONS OF LAW***

A. Statutes and regulations authorizing exemptions from taxation are to be strictly and narrowly construed against the taxpayer (*see Matter of International Bar Assn. v. Tax Appeals Tribunal*, 210 AD2d 819, 620 NYS2d 582 [1994], *lv denied* 85 NY2d 806, 627 NYS2d 323 [1995]; *Matter of Lever v. New York State Tax Commn.*, 144 AD2d 751, 535 NYS2d 158 [1988]). “Petitioner has the burden of showing clear entitlement under a provision of the law plainly giving the exemption (citations omitted)” (*Matter of Old Nut Co. v. New York State Tax Commn.*, 126 AD2d 869, 871, 511 NYS2d 161, 163, *lv denied* 69 NY2d 609, 516 NYS2d 1025 [1987]).

B. The statute at issue, Tax Law § 1115(former[t]), provides for an exemption from tax under Article 28 as follows:

Receipts of a car wash facility from every sale, except for resale, of the service of washing, waxing or vacuuming a motor vehicle or other tangible personal property and consideration given or contracted to be given for such service at such a facility, where the purchaser or user of the service washes, waxes or vacuums such person’s motor vehicle or other tangible personal property at such a facility by means exclusively of coin-operated equipment at such facility of the vendor providing the service and neither the vendor nor any employee of the vendor assists the purchaser in washing, waxing or vacuuming the vehicle or other tangible personal property, shall be exempt from tax under this article, to the

extent of the amount of money or value, in money, of tokens deposited in such coin-operated equipment by the purchaser of the service. For purposes of this subdivision, the term "coin-operated" includes coin-operated, currency-operated or token operated and the term "motor vehicle" shall mean a motor vehicle as defined in subdivision (f) of section eleven hundred thirty-two of this article.

The statute thus sets forth four criteria which must be met in order for the service of washing, waxing or vacuuming a motor vehicle to be exempt from the imposition of sales and use tax. Specifically, the service must be performed at a car wash facility, the purchaser of the service washes, waxes or vacuums the purchaser's vehicle, payment must be made only by coin-operated equipment at the facility and neither the vendor nor any employee may assist the purchaser in washing, waxing or vacuuming the purchaser's vehicle.

In this case, the record is clear that the services were performed at a car wash facility, payment was made exclusively by coin-operated equipment and neither the vendor nor any of its employees assisted the purchasers in washing, waxing or vacuuming their vehicles. Accordingly, the only question to be addressed is whether the purchasers washed, waxed or vacuumed their vehicles when using petitioner's in-bay car wash service.

C. It is petitioner's position that the language of Tax Law § 1115 (former[t]) contains two clear requirements to qualify for the sales tax exemption: the purchaser must wash his vehicle by means exclusively of coin-operated equipment, and neither the vendor nor any of its employees can assist the purchaser. According to petitioner, as customers use its in-bay facilities to wash their vehicles by means exclusively of coin-operated equipment, and neither petitioner nor its employees assist the customers in the wash process, petitioner's receipts from the sale of car washes at its in-bay facilities are exempt from sales tax.

In response, the Division contends that the receipts do not come within the scope of the exemption as the purchasers using the in-bay facilities do not wash the vehicles. The Division

argues that the phrase in the statute, “where the purchaser or user of the service washes” must have some meaning more than just that the car is washed without the assistance of the vendor’s employees. According to the Division, the intended meaning can be derived from the “active” voice used to describe the exempt activity, that is, the customer must “literally” wash the car. Therefore, the Division explains, it is a requirement of the statute that the customer “manually” wash the car. The Division states that its interpretation of the exemption statute has support in the subsequent amendment of the statute to encompass the type of car wash at issue herein.

D. The Division’s reliance on the subsequent amendment (L 2005, ch 528) to Tax Law § 1115(t) to interpret the statute as it previously existed in the years at issue is misplaced. It is beyond the legislative power to enact a law declaring the construction to be given to an earlier statute, so as to bind the courts between the enactment of the two acts (*see* McKinney’s Cons Laws of NY, Book 1, Statutes § 223). The Legislature has no controlling power to retroactively declare that an existing statute shall receive a given construction when such a construction is contrary to that which the statute would ordinarily have received (*see*, McKinney’s Cons Laws of NY, Book 1, Statutes § 75).

Furthermore, the New York State Court of Appeals, in *Roosevelt Raceway, Inc. V. Monaghan* (9 NY2d 293, 213 NYS2d 729 [1960], citing *City of New York v. Village of Lawrence*, 250 NY 429), has rejected this approach where the statute at issue was clear and unambiguous:

We have often held that, if the language of a statute is plain and unambiguous, there is neither need nor warrant to look elsewhere for its meaning. This principle is, of course, no less compelling because “the other means of interpretation” urged is a latter so-called clarifying statute. The Legislature has no power to declare, retroactively, that an existing statute shall receive a given construction when such a construction is contrary to that which the statute would ordinarily have received.

Therefore, it would be inappropriate to look to the later amendment of Tax Law § 1115(t) in an effort to determine the Legislative intent at the time of the statute's original enactment.

E. As previously noted, statutes creating exemptions from tax are to be strictly construed (*see Matter of Grace v. New York State Tax Commn* , 37 NY2d 193, 371 NYS2d 715, *lv denied* 37 NY2d 708, 375 NYS2d 1027 [1975]; *Matter of Blue Spruce Farms v. New York State Tax Commn* , 99 AD2d 867, 472 NYS2d 744 [1984], *affd* 64 NY2d 682, 485 NYS2d 526 [1984]). However, in addition, the statutory language providing the exemption must be construed in a practical fashion with deference to the legislative intent behind the exemption (*see Majewski v. Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 673 NYS2d 966 [1988]; *Matter of Qualex, Inc.*, Tax Appeals Tribunal, February 23, 1995). To determine legislative intent, courts must first look at the literal reading of the act itself (*see McKinney's Cons Laws of NY*, Book 1, Statutes § 92).

Statutory rules of construction provide that “[t]he legislative intent is to be ascertained from the words and language used, and the statutory language is generally construed according to its natural and most obvious sense, without resorting to an artificial or forced construction” (McKinney's Cons Laws of NY, Book 1, Statutes § 94). Where the statute is clear, the courts must follow the plain meaning of its words, and “there is no occasion for examination into extrinsic evidence to discover legislative intent . . .” (McKinney's Cons Laws of NY, Book 1, Statutes § 120; *see Matter of Raritan Dev. Corp. v. Silva*, 91 NY2d 98, 667 NYS2d 327 [1997]; *Matter of Schein*, Tax Appeals Tribunal, November 6, 2003). Courts may look elsewhere to interpret a statute that is not clear. However, a court should not add restrictions or limitations where none exist, nor should it interpret a statute which has no need of interpretation. Where, as here, words of a statute have a definite and precise meaning, it is not necessary to look elsewhere



in search of conjecture so as to restrict or extend that meaning (*Matter of Erie County Agricultural Society v. Cluchey*, 40 NY2d 194, 386 NYS2d 366 [1976]). As the language of the statute is clear, it is appropriate to interpret its phrases in their ordinary, everyday sense (*Matter of Automatique v. Bouchard*, 97 AD2d 183, 470 NYS2d 791 [1983]).

F. The grammatical structure of the statute provides for two clauses, separated by the word “and,” with each clause containing one requirement: the purchaser washes the vehicle and the vendor may not assist the purchaser in washing the vehicle. A plain reading of the statute reveals only two requirements, and the Division’s attempt to add a third requirement is inconsistent with the statute. The statute provides that in order for the sale to be exempt, the customer must wash the car at the facility by means of coin-operated equipment, without the assistance of the vendor. When a purchaser at an in-bay car wash facility pulls his car up to the coin-operated equipment, chooses a wash option, and then positions the automobile in the appropriate position in the bay, he is washing the vehicle. There is no requirement in the statute that the purchaser “literally” or “manually” wash the car. If, as the Division argues, the Legislature intended to create the requirement that the purchaser participate in the physical washing of the vehicle, it could have done so by placing this requirement in the statute. However, it did not. Words should not be expanded to enlarge their meaning to something which the Legislature could easily have expressed but did not, and new language can not be imported into a statute to give it a meaning not otherwise found therein (*see McKinney’s Cons Laws of NY, Book 1, Statutes § 94*). Therefore, it is concluded that petitioner’s customers wash their vehicles when using petitioner’s in-bay facilities.

G. Petitioner’s in-bay car wash facilities meet the requirements of the statute in that the customer washes the vehicle by means of coin-operated equipment at a car wash facility, and the

vendor does not assist the customer in washing the vehicle. Therefore, petitioner's receipts from the sale of car washes at its in-bay automatic car wash facilities are exempt from the imposition of sales tax under Tax Law § 1115 (former[t]).

H. The petition of Hoffman Car Wash, Inc. is granted, and the Notice of Determination dated September 20, 2004 is canceled.

DATED: Troy, New York  
December 20, 2007

/s/ Thomas C. Sacca  
ADMINISTRATIVE LAW JUDGE