

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>GERALD BARTLETT, JR.</b>	:	DETERMINATION
	:	DTA NO. 823114
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, 2008 through May 31, 2008.	:	

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Petitioner, Gerald Bartlett, Jr, 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 March 1, 2008 through May 31, 2008.

On January 22, 2010 and January 26, 2010, respectively, petitioner, appearing pro se, and the Division of Taxation, by Daniel Smirlock, Esq. (Michael J. Hall, of counsel), waived a hearing and agreed to submit this matter for determination based on documents and briefs submitted by May 17, 2010, which date began the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Timothy Alston, Administrative Law Judge, renders the following determination.

***ISSUE***

Whether petitioner has established entitlement to a refund of a portion of sales tax paid in connection with his purchase of a minivan equipped with certain modifications designed to allow him, a disabled person, to operate the vehicle.

***FINDINGS OF FACT***

1. Petitioner, Gerald Bartlett, Jr., is 62 years old and has been confined to a wheelchair for nearly 40 years. In March 2008 petitioner purchased a used 2005 Dodge Grand Caravan minivan, equipped with a mobility conversion system; that is, assistive modifications to allow a wheelchair-bound person to independently access and operate the vehicle. Such modifications included a hydraulic ramp, lowered floor, hand controls and a system to lock the wheelchair behind the steering wheel.<sup>1</sup> Petitioner purchased the vehicle in a private casual sale from a Pennsylvania resident for \$29,000.00.

2. On March 26, 2008, petitioner registered the minivan with the New York State Department of Motor Vehicles (DMV). He paid the DMV a total of \$2,308.25 in tax and fees at that time, which included sales tax on the full purchase price of the vehicle.

3. On August 8, 2008, petitioner filed an Application for Credit or Refund of Sales or Use Tax (Form AU-11) with the Division of Taxation (Division) requesting a refund of \$1,200.00 in connection with his payment of tax on the purchase of the minivan. Petitioner's claim sought a refund of tax paid on the minivan attributable to the assistive modifications installed on the vehicle as noted above.

4. By letter dated October 8, 2008, the Division denied petitioner's claim in full, explaining:

Documentation you submitted with your claim indicates that when you purchased the vehicle, the price included the mobility conversion. The sales tax was based on the total cost of the vehicle and the amount paid was correct.

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<sup>1</sup> The minivan as modified thus had no driver's seat.

5. The prior owner had the modifications installed by the dealer at the time he purchased the vehicle. A detailed invoice of the prior owner's purchase of the vehicle from a dealer, dated May 20, 2006, shows a price of \$16,037.00 for the minivan itself, \$17,500.00 for "lowered floor conversion with standard remote control and power kneeling" and \$1,250.00 for a power door operator.

6. There is no detailed invoice or bill of sale in the record in respect of petitioner's purchase of the minivan. That sale is documented in the record by a certified check dated March 12, 2008 from petitioner to the seller in the amount of \$29,000.00.

7. In agreeing to the selling price of \$29,000.00 for the minivan, petitioner and the seller agreed to an allocation of \$17,000.00 for the assistive modifications described in Findings of Fact 1 and 5 and \$12,000.00 for the vehicle.

8. The prior owner of the minivan purchased it from the dealer for his wife, who passed away not long after the purchase. Consequently, the minivan received little use between the time of its purchase by the prior owner and subsequent sale to petitioner.

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

A. The present matter presents the issue of whether petitioner is entitled to an exemption from sales and use tax. 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 Estate of Lever v. New York State Tax Commn.*, 144 AD2d 751, 535 NYS2d 158 [1988]). "Petitioner has the burden of showing a 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 [1987], *lv denied* 69

NY2d 609, 516 NYS2d 1025 [1987]). Indeed, to prevail petitioner must show that his interpretation of the relevant statute and regulation is the only reasonable construction (*see Matter of F.D.I.C. v. Commr. of Taxation & Finance*, 83 NY2d 44, 607 NYS2d 620 [1993]; *Matter of CBS Corp. v. Tax Appeals Tribunal*, 56 AD3d 908, 867 NYS2d 270 [2008], *lv denied* 12 NY3d 703, 867 NYS2d 704 [2009]). Unless determined to be irrational or erroneous, the Division's regulations have "the force and effect of law" (*see Matter of General Electric Capital Corporation v. Division of Tax Appeals*, 2 NY3d 249, 254, 778 NYS2d 412, 415 [2004]).

B. Tax Law § 1115(a)(4) provides for an exemption from sales and use taxes for purchases of "[p]rosthentic aids . . . and artificial devices and component parts thereof purchased to correct or alleviate physical incapacity in human beings." This exemption includes:

Items installed on motor vehicles to make them adaptable for use by handicapped persons are exempt. Such items may include special controls for paralytics or amputees and automotive lifts designed for the use of handicapped individuals for entry into motor vehicles. (20 NYCRR 528.5[b][1][example 7].)

C. As this example makes clear, the exemption under Tax Law § 1115(a)(4) includes the kind of handicap accessibility equipment installed on the minivan purchased by petitioner. Where, as here, such equipment is added to or attached to nonexempt tangible personal property and sold as a single unit, the Division's regulations provide:

Parts, special attachments, special lettering, etc., that are added to or attached to tangible personal property, such as appliances, so that a handicapped person can use them are exempt. If tangible personal property is sold with special controls, lettering or devices, and the additional charge for the added features is separately stated on the bill for the tangible personal property, that portion of the sales receipts attributable to the added features is exempt. In determining whether the extra amount charged for the special controls, lettering or devices is reasonable, like items exclusive of the added features should be compared with the same item with the added features. (20 NYCRR 528.5[b][2].)

D. Pursuant to the regulation, then, handicap accessibility equipment attached to nonexempt tangible personal property and sold as a single unit is exempt so long as the charge for the exempt equipment is separately stated on the bill of sale and is reasonable in amount. Here, although there is no itemized bill of sale in respect of the private casual sale between petitioner and the seller of the minivan, the record does contain an itemized bill in respect of the seller's purchase of the vehicle from the dealer (*see* Finding of Fact 5). Considering the minimal usage of the vehicle between the time of the prior owner's purchase and its sale to petitioner (*see* Finding of Fact 8), the agreed allocation of \$17,000.00 for exempt equipment (*see* Finding of Fact 7) is consistent with the itemized dealer's bill of sale and is reasonable. Accordingly, under the particular facts of the present matter, petitioner has met the requirements of 20 NYCRR 528.5(b)(2) and has thus established entitlement to an exemption from sales tax in respect of the \$17,000.00 paid for the handicap accessibility equipment described herein.

E. The Division did not, at any point in this matter, contest the reasonableness of petitioner's allocation of \$17,000.00 to the handicap accessibility equipment. Rather, the Division contended that, because the components of the transaction could not be purchased separately, the transaction must be treated as a single sale and that where a single charge includes both taxable and nontaxable elements, the total charge is taxable. While this position accurately describes the general rules enunciated in various cases involving integrated services (*see e.g. Matter of Tonawanda Tank Transport Serv., Inc. v. Tax Appeals Tribunal*, 168 AD2d 748, 563 NYS2d 900 [1990]) and the so-called "cheeseboard rule" in respect of sales of tangible personal property (*see* 20 NYCRR 527.1[b]), it is inconsistent with section 528.5(b)(2) of the Division's own regulations. Pursuant to the foregoing discussion, this provision clearly creates an exception

to these general principles for purposes of Tax Law § 1115(a)(4). Accordingly, the Division's position is rejected.

F. The petition of Gerald Bartlett, Jr., is granted to the extent indicated in Conclusion of Law D; the Division's denial of petitioner's refund claim, dated October 8, 2008, is cancelled; and the Division is directed to compute and refund to petitioner sales tax paid on \$17,000.00 of the total purchase price for the subject vehicle, which amount is attributable to the exempt handicap accessibility equipment as described herein, plus such interest as may be applicable.

DATED: Troy, New York  
November 10, 2010

/s/ Timothy Alston  
ADMINISTRATIVE LAW JUDGE