STATE OF NEW YORK

TAX APPEALS TRIBUNAL

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| In the Matter of the Petition | : | |
| of | : | |
| **CHARLES G. MOERDLER** | : | DECISION<br>DTA NO. 816969 |
| 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 1997. | : | |

Petitioner Charles G. Moerdler, 7 Rivercrest Road, Riverdale, New York 10471, filed an exception to the determination of the Administrative Law Judge issued on July 27, 2000. Petitioner appeared by Stroock & Stroock & Lavan, LLP (Susan R. Friedman and Beth K. Webber, Esqs., of counsel). The Division of Taxation appeared by Barbara G. Billet, Esq. (Robert A. Maslyn, Esq., of counsel).

Petitioner filed a brief in support of his exception and the Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Petitioner's request for oral argument was denied.

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

## *ISSUE*

Whether petitioner is entitled to a refund of sales tax paid with respect to the lease of a motor vehicle for that portion of the sales tax on lease payments that were never paid because of the theft of the motor vehicle.

## *FINDINGS OF FACT*

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

On January 21, 1997 petitioner leased a new 1997 Land Rover Range Rover 4.0SE from Pepe Autos, Ltd. of White Plains, New York. The lease was accomplished through BMW Financial Services.

The lease provided for 36 monthly payments of $743.87 totaling $26,779.32. There was an initial amount due at the inception of the lease which included the first monthly payment of $743.87.

At the inception of the lease petitioner paid $2,209.29 in sales tax on the 36 monthly payments ($743.87 x 36 = $26,779.32; $26,779.32 x 8.25% = $2,209.29).[1]

In addition to the initial payment required at the inception of the lease, petitioner made three more payments of $743.87, for a total of four monthly payments totaling $2,975.48.

Pursuant to the terms of his lease petitioner maintained insurance coverage on the motor vehicle that was payable to BMW Financial Services. Section 15(C) of the lease provided petitioner with GAP or total loss coverage. If the motor vehicle was stolen and not recovered in 30 days, petitioner's termination liability under the lease was to be limited to the proceeds paid by the insurance plus petitioner's deductible, a $250.00 termination fee and any past due amount as of the time the motor vehicle was stolen.

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[1]The parties' assertion that $2,209.32 in sales tax was paid at the time of the lease is a slight miscalculation as shown by the above calculation and the Pepe Autos, Ltd. Vehicle Cash Lease Agreement.

On May 6, 1997 the motor vehicle was stolen. Petitioner reported this to the police, the insurance company and BMW Financial Services.

BMW Financial Services received payment under the insurance policy in the amount of $52,848.57. Petitioner received payment under the insurance policy of $2,206.43 for certain personal property that was in the motor vehicle at the time it was stolen. Neither of these payments included reimbursement for any lease payments made by petitioner or sales tax paid by either BMW Financial Services or petitioner.

In December of 1997 the motor vehicle was recovered out of state and petitioner was notified. Petitioner contacted the insurance company to inquire about continuing the lease at that point. Petitioner was told that the lease had been canceled and terminated upon report of the theft and the payment by the insurance company and that all rights to any recovered vehicle had already been assigned by the insurance company to a third party.

By application dated June 5, 1997, petitioner requested a refund in the amount of $2,326.47. By letter dated July 29, 1997 the Division of Taxation ("Division") denied petitioner's application for a refund stating: "There is no provision in the New York State Sales and Use Tax Law to allow for a refund of sales tax paid on the lease of a vehicle that is terminated prematurely, either by choice, or in the case of the vehicle being stolen."

Petitioner filed a request for a conciliation conference which was held on May 7, 1998. By Conciliation Order dated November 13, 1998 the conferee sustained the Division's disallowance of petitioner's refund claim. A petition was filed with the Division of Tax Appeals on February 10, 1999.

By concessions made at the hearing and in his briefs petitioner agrees that the amount of the refund claim at issue is not $2,326.47 as set forth in the petition, but $1,963.84 (32/36 of $2,209.32).

The amount of the refund claim at issue is hereby further adjusted to $1,963.82 (32 unpaid payments x $743.87 = $23,803.84; $23,803.84 x 8.25% = $1,963.82).

***THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE***

The Administrative Law Judge first noted that Tax Law § 1111(i) authorized the collection of sales tax on lease transactions at the time of the first lease payment in an amount equal to the amount due on all receipts due for the entire period of the lease. The Administrative Law Judge cited legislative history which indicated that the intent behind the section was to place leases on a parity with installment sales and to accelerate the collection of sales tax revenues. Since Tax Law § 1111(i) deems the total amount of all payments to be paid as of the date of the first payment, the tax paid by petitioner was properly paid upon the date of his first payment.

The Administrative Law Judge framed the issue around the propriety of the Commissioner's regulation at 20 NYCRR 527.15(e), which prohibited refunds of the tax paid pursuant to Tax Law § 1111(i) due to early termination of the lease, on the rationale that all receipts were deemed to have been paid at the lease's inception. Noting petitioner's disagreement with the Division's interpretation of the statute, the Administrative Law Judge stated that where petitioner alleges ambiguity in the words of a statute, petitioner must prove that its interpretation of the statute is the only reasonable interpretation. The statute is silent as to the provision for or prohibition of refunds of the taxes imposed by Tax Law § 1111(i). Therefore, the Division's regulation is neither inconsistent with the statute under which it was promulgated nor

with the intention to increase tax revenue. The Administrative Law Judge reasoned that the issue presented was whether the regulation as applied to petitioner's circumstances was invalid.

The Administrative Law Judge noted that the tax was properly paid at the time of the first payment and that no refund was required or allowed under Tax Law § 1139(a) as a tax that was erroneously, illegally or unconstitutionally paid.

In addition, the Administrative Law Judge found that the early termination of the lease because of the theft of the motor vehicle did not amount to a cancellation of the contract because the parties were not returned to their original positions and no relief could be afforded under Tax Law § 1132(e). The Administrative Law Judge contrasted this to the situation of refunds provided under the "lemon law" (General Business Law §§ 198-a, 198-b) and the provisions relating to cancellation of leases found in the Personal Property Law (Personal Property Law §§ 331, 335, 341 and 344), commenting that while petitioner's interpretation of the statute might be plausible, it did not prove that it was the only reasonable interpretation. Using this same rationale, the Administrative Law Judge also rejected petitioner's argument that it was entitled to a refund because the lease transaction was tantamount to an installment or conditional sale.

***ARGUMENTS ON EXCEPTION***

On exception, petitioner argues that Tax Law § 1132(e) and the regulations at 20 NYCRR 534.1 and 534.6 authorize refunds where sales have been canceled and urges that the theft of his motor vehicle constituted cancellation of the sale transaction warranting a refund of the sales tax paid. Petitioner contends that Tax Law § 1139(a) provides for a refund in this matter on the basis that the tax was unconstitutionally, erroneously and/or illegally collected since the tax was collected on sales receipts which never existed, i.e., monthly lease payments ended upon the theft

of the vehicle. Petitioner also argues that the regulation promulgated pursuant to Tax Law § 1111(i) at 20 NYCRR 527.15(e) is not consistent with the statute and improperly interpreted the statute with respect to refunds available in early termination of leases. Finally, petitioner believes that this transaction should be treated the same as an installment sale, where, if the contract is subsequently canceled, the taxpayer may obtain a refund for payments contemplated under the agreement but never actually made. Finally, petitioner urges that the regulation at 20 NYCRR 527.15(e) be declared invalid to promote the intended objectives of Tax Law § 1111(i).

***OPINION***

We affirm the determination of the Administrative Law Judge based upon our decision in ***Matter of Miehle*** (Tax Appeals Tribunal, August 24, 2000), which we believe addresses each and every contention raised by petitioner**.** [2] There is no provision in the law which provides for a refund of the sales tax which is collected pursuant to Tax Law § 1111(i). When that statutory provision was enacted in 1990, it carved a unique niche for leases of motor vehicles with a duration of one year or more which differentiated it from other leases by *deeming paid* all receipts due during the lease term and the total tax due thereon payable. Petitioner's argument that these leases should not be treated differently ignores the Legislature's intent to treat these leases in a different manner, i.e., to treat them like the sales of a motor vehicle, including installment sales. As noted by the Administrative Law Judge, the New York State Senate Memorandum in Support of the legislation stated that it was looking for parity between long-term leases and installment sales and the acceleration of tax revenue (New York State Senate

[2]We note that the ***Miehle*** case was also the basis for our decision in ***Matter of Torquato*** (Tax Appeals Tribunal, October 12, 2000) where that petitioner had applied for a refund from New York State upon her change of residency to California and that jurisdiction's subsequent imposition of sales tax on the same lease.

Memorandum in Support of Legislation, S.5282-B and A-8355-C, Governor's Bill Jacket, L 1992, ch 20).

Petitioner's argument that its lease transaction should be treated as a canceled sale was fully and correctly dealt with by the Administrative Law Judge. In addition, in ***Matter of Miehle*** (***supra***), we specifically rejected this argument with respect to early termination of motor vehicle leases.

Further, petitioner's argument that the Division's interpretation creates the potential for double taxation because the same motor vehicle could be re-leased and re-taxed is without merit. Motor vehicles are frequently resold and re-leased during their useful lives and sales tax is collected on each transaction. This is consistent with the principle that the sales tax is a transactions tax; the liability for the tax occurs at the time of the transaction. "The time or method of payment is generally immaterial, since the tax becomes due at the time of the transfer of title to or possession of . . . the property" (20 NYCRR 525.2[a][2]).

As we pointed out in ***Miehle***, the Legislature was well aware of the statute's failure to provide for a refund by its introduction of bills to provide for such a remedy in 1991 and 1993[3]. In addition, as we mentioned in ***Miehle***, special provision for a refund is not novel, as demonstrated by the Legislature having provided for a refund of sales tax to lessees who had received a refund of their purchase price under the New York "lemon law" (General Business Law §§ 198-a, 396-p[5]) in Tax Law § 1139(f). We believe these provisions underscore the

[3]In 1991, S.5282 proposed an amendment to Tax Law §§ 1132(e) and 1139(a) which would have provided a refund of or credit for sales tax paid but not due by reason of early termination or non-renewal of a motor vehicle lease. In 1993, S.4065 proposed to add a new subdivision (d) to Tax Law § 1119 which would have allowed a refund to long-term lessees of motor vehicles of a prorated portion of the sales tax paid at the inception of the lease if the vehicle was destroyed.

absence of authority for refunding the sales tax collected pursuant to Tax Law § 1111(i), that the Commissioner's regulation at 20 NYCRR 527.15(e) is consistent with the meaning and intent of Tax Law § 1111(i) and that its interpretation is reasonable.

Where a petitioner challenges the Division's interpretation of a statute, it must prove that its interpretation is the only reasonable interpretation, or that the Division's interpretation is unreasonable (***Matter of Grace v. New York State Tax Commn.***, 37 NY2d 193, 371 NYS2d 715, ***lv denied*** 37 NY2d 708, 375 NYS2d 1027; ***Matter of Marriott Family Rests. v. Tax Appeals Tribunal***, 174 AD2d 805, 570 NYS2d 741, ***lv denied*** 78 NY2d 863, 578 NYS2d 877). Since we have determined the Division's interpretation was reasonable, petitioner's challenge must be rejected.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Charles G. Moerdler is denied;

2. The determination of the Administrative Law Judge is sustained;

3. The petition of Charles G. Moerdler is denied; and

4. The Division of Taxation's denial of petitioner's refund application is sustained.

DATED: Troy, New York
April 26, 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