STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
SANDRA ANN TORQUATO	:	DECISION DTA NO. 816973
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 1998.	:	

Petitioner Sandra Ann Torquato, 24501 Heavenly Court, West Hills, California 91307, filed an exception to the determination of the Administrative Law Judge issued on March 30, 2000. Petitioner appeared *pro se.* The Division of Taxation appeared by Barbara G. Billet, Esq. (Justine Clarke Caplan, Esq., of counsel).

Neither party filed a brief. Oral argument was not requested.

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

ISSUE

Whether the Division of Taxation properly denied petitioner's application for a refund of a portion of the total sales tax paid at the inception of a motor vehicle lease agreement.

FINDINGS OF FACT

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

On April 26, 1997, petitioner, Sandra Ann Torquato, entered into a lease agreement with Toyota Motor Credit Corporation for the lease of a 1997 Toyota Corolla. The lease provided for 36 monthly payments of $189.00 for a total lease amount of $6,804.00. The lessor collected sales tax of $685.02 at the inception of the lease based on petitioner's total payment of $8,059.07.[1]

There is no dispute that petitioner was a resident of New York State at the inception of the lease. Petitioner made eleven lease payments before she relocated to California in February 1998. Thereafter, petitioner's lease payments increased by $15.59 per month. Petitioner inquired and was advised by the lessor that the increase represented California sales tax on each of the remaining 25 lease payments, and that California "would not honor the prepaid state tax already paid to New York."

On March 18, 1998, petitioner filed an Application for Credit or Refund ("Form AU-11") seeking a refund of a portion of the New York sales tax collected at the inception of the lease. Petitioner calculated the amount of refund claimed by dividing the total sales tax paid ($685.02) by the number of lease payments (36) to arrive at the amount of sales tax per month ($19.03). Petitioner multiplied such amount ($19.03) by the number of lease payments she made while in New York (11) to arrive at $209.31. Petitioner then subtracted such amount ($209.31) from the total sales tax paid ($685.02) to result in the amount of claimed refund ($475.71). In sum, petitioner takes the position that although the tax was paid at the inception of the lease, her move to California constituted a change of circumstances which should allow her to apportion the tax

[1] The tax was imposed at the Nassau County rate of 8½% on the $6,804.07 total amount of the lease payments ($189.00/month x 36 months) plus petitioner's down payment amount of $1,255.00.

equally among each of the lease payments, to pay tax only on those payments made while she was living in New York, and to receive a refund of the balance of tax apportioned to those remaining payments made (or to be made) when petitioner was no longer living in New York.

The Division of Taxation ("Division") denied the refund claim by letter dated May 22, 1998 for the following reason:

> When a lease, an option to renew or similar provision, or a combination of these, is entered into on or after June 1, 1990, the amount due under the agreement and for the entire period covered (including renewals and/or options) will be immediately subject to sales tax.
>
> 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 where the lessee relocated to another state where they may also be required to pay tax.

Petitioner challenged this denial by requesting a conciliation conference with the Division's Bureau of Conciliation and Mediation Services. Petitioner opted to have the conference decided upon correspondence and, after submission and review of such correspondence, a Conciliation Order (CMS No. 168676) dated January 15, 1999 was issued sustaining the Division's denial of petitioner's refund request.

Petitioner continued her challenge by filing a petition with the Division of Tax Appeals. Petitioner's position remains that she should be entitled to a refund of part of the sales tax paid, calculated as apportioned to the 25 payments on the lease remaining after she moved to California. Petitioner points out that without such a refund she will have paid the total New York sales tax, plus an additional $389.75 in California sales tax (15.59 x 25 payments =

$389.75), rather than New York sales tax on only those lease payments made while petitioner was living in New York and the California sales tax thereafter.

The Division continues to oppose petitioner's refund claim for the reasons set forth in its May 22, 1998 refund denial letter. The Division's letter brief states that the tax was properly collected in the first instance (Tax Law § 1111[i][A]; 20 NYCRR 527.15), and that there is no provision under which such tax, properly imposed and collected, may be refunded under the circumstances presented (Tax Law §§ 1119, 1139). Finally, the Division points out that petitioner may be entitled to a reciprocity credit from the State of California based on the New York taxes already paid (20 NYCRR 527.15[f]), and it has advised her by letter to contact the State of California in this regard.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

The Administrative Law Judge noted the provision of Tax Law § 1111(i)(A) which provides that, with respect to the lease of a motor vehicle for a period of one year or more, the sales tax is due at the inception of the lease on the total amount of the lease payments for the entire term of the lease (20 NYCRR 527.15[a]). The Administrative Law Judge also noted that Tax Law § 1139 provides that a credit or refund is allowable for any tax which was erroneously, illegally or unconstitutionally collected or paid. However, in this case the Administrative Law Judge found that the lessor collected and the lessee paid the proper amount of sales tax on the transaction as required by Tax Law § 1111(i). Since petitioner made no claim nor submitted any evidence to the Administrative Law Judge that the tax was collected or paid erroneously, illegally or unconstitutionally, he found that there was no provision for the relief sought, despite the fact that the vehicle was relocated to another jurisdiction where it was subjected to further taxation.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that the Administrative Law Judge's determination was issued in bad faith on the basis that despite the fact that there is no provision in the New York Tax Law for a refund of the sales tax in issue, there is also no provision prohibiting the refund of such sales tax. In addition, petitioner contends that the State of New York is not entitled to retain the sales tax collected.

OPINION

We affirm the determination of the Administrative Law Judge based upon the reasoning set forth in his determination. In addition, since the issuance of the determination in this matter, we have issued our decision in ***Matter of Miehle*** (Tax Appeals Tribunal, August 24, 2000) where we came to the same conclusion as the Administrative Law Judge herein.

In ***Miehle***, we reviewed the enactment of the law which accelerated the collection of sales tax on certain leases of motor vehicles with a duration of one year or more (Tax Law § 1111[i]) and provided our rationale for concluding that the Legislature was aware of its failure to provide for a refund of said taxes, citing two instances where bills were introduced to provide for a refund in the case of early termination or non-renewal of a motor vehicle lease and the vehicle's destruction. We also noted the refund provision contained in Tax Law § 1139(f), which the Legislature provided for lessees that received a refund of their purchase price under the New York "lemon law" as further evidence that had a refund provision been intended it would have been specifically stated.

Petitioner concedes the absence of a refund provision in the statute, but argues that the statute does not prohibit the refund she requests. However, this is petitioner's interpretation of

the statute's silence. The Division's regulation at 20 NYCRR 527.15(e), which is consistent with the terms of Tax Law § 1111, specifically provides that no refund will be allowed based upon an argument rooted in the theory that part of the lease payments were unused, as petitioner urges, since Tax Law § 1111(i) deems all the receipts to have been paid.

> To prevail over the administrative construction, petitioner must establish not only that its interpretation of the law is a plausible one but, also, that its interpretation is the only reasonable construction [cite omitted]. Thus, unless the Department of Taxation and Finance's regulation is shown to be irrational and inconsistent with the statute [cite omitted], it should be upheld (***Matter of Blue Spruce Farms v. New York State Tax Commn.***, 99 AD2d 867, 472 NYS2d 744, 745, ***affd*** 64 NY2d 682, 485 NYS2d 526).

Since we have concluded the Division's interpretation is reasonable, petitioner's challenge is rejected.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Sandra Ann Torquato is denied;

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

3. The petition of Sandra Ann Torquato is denied; and

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

DATED: Troy, New York
October 12, 2000

/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