

STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
THOMAS GALLAGHER	:	DECISION
	:	DTA NO. 819115
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 2001.	:	

Petitioner Thomas Gallagher, 20 Sandhurst Road, Lakewood, New Jersey 08701, filed an exception to the determination of the Administrative Law Judge issued on March 20, 2003.

Petitioner appeared *pro se*. The Division of Taxation appeared by Mark F. Volk, Esq. (Justine Clarke Caplan, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a brief in opposition and petitioner filed a reply brief. Oral argument was not requested.

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

ISSUE

Whether petitioner, the lessee of a new 2000 Lexus automobile, was entitled to a refund of a prorated portion of the sales tax that he paid to New York on the total amount of lease payments due under a car lease of 39 months as a result of his change of residence from New York to New Jersey during the lease period.

FINDINGS OF FACT

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

On August 21, 2000, petitioner, then a resident of Nanuet (Rockland County), New York, leased a 2000 Lexus from the New Jersey new car dealer, Lexus of Englewood. New York sales tax at the rate of 7.25% was paid in the amount of \$1,399.71¹ on the total amount of lease payments due under the lease of \$19,305.00 (39 months multiplied by the monthly lease payment of \$495.00).

After living in New York State for 66 years, during January 2001, petitioner purchased a home in New Jersey, and on May 29, 2001, presumably after actually moving to New Jersey, registered his leased Lexus automobile in his new home state. On registering his vehicle in New Jersey, he was required to pay New Jersey sales tax of \$612.80 for the 30 months remaining on the lease.

Petitioner filed a claim dated May 30, 2001 for refund of sales tax in the amount of \$1,071.00. This amount was computed using the sales tax of \$35.85 per month, based on the monthly payment of \$495.00 and a sales tax rate of 7.25%, multiplied by the 30 months remaining on the 39-month lease after petitioner's registration of the vehicle in New Jersey and his move to this neighboring state.

The Division of Taxation (hereinafter the "Division") denied petitioner's refund claim by letter dated July 16, 2001 for the following reason:

¹ Sales tax at the rate of 7.25% on total lease payments of \$19,305.00 computes to \$1,399.61.

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 refund of sales tax paid on the lease of a vehicle where the lessee relocates to another state where they [sic] may also be required to pay tax.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

Since there were no facts in dispute, the Administrative Law Judge determined that the matter could be resolved by summary determination. Based upon the record, the Administrative Law Judge concluded that petitioner was not entitled to a refund of sales tax paid on his 39-month lease of his automobile despite petitioner's changing his residence from New York to New Jersey nine months into the lease period.

In analyzing the pertinent sections of the Tax Law and regulations along with three Tax Appeals Tribunal decisions on point, the Administrative Law Judge stated that all payments under a car lease for a term exceeding one year were deemed to have been paid and were subject to tax as of the date of the first lease payment. The Administrative Law Judge further reasoned that a refund or credit is only allowed for any sales tax payment that was made erroneously, illegally or unconstitutionally. The Administrative Law Judge determined that since the lessor collected and petitioner paid the proper amount of sales tax, the accelerated payment of sales tax on future payments under a car lease did not qualify as an erroneous, illegal or unconstitutional payment. Thus, the Administrative Law Judge sustained the denial of petitioner's refund claim.

ARGUMENTS ON EXCEPTION

On exception, petitioner argues that our government was founded on the concept of no taxation without representation and, since he was not a resident of New York for 30 months of his 39-month lease period, New York State does not have a right to tax him for those months in which he lived in New Jersey. Furthermore, he questions the basis for the enactment of Tax Law § 1111(i)(A) which results in the payment of sales tax for the entire 39-month lease period as of the date of his first payment under such lease.

In opposition, the Division argues that the Administrative Law Judge's determination should be sustained in its entirety. The Division claims that petitioner has the burden to show that the tax was erroneously paid such that he is entitled to a refund. The Division states that petitioner has not sustained his burden of proof and, thus, it properly denied his refund.

OPINION

We affirm the determination of the Administrative Law Judge.

As stated by the Administrative Law Judge, there are three Tax Appeals Tribunal decisions that are on point with the facts of this case. In *Matter of Torquato* (Tax Appeals Tribunal, October 12, 2000), the taxpayer therein moved to California and registered her automobile there ten months into her 36-month lease period. The taxpayer, like petitioner herein, sought a refund of the sales tax paid for the remaining 26 months of her lease where she no longer resided in New York. We upheld the Division's denial of her refund claim noting that Tax Law § 1111(i) accelerated the collection of sales tax on certain leases of motor vehicles with a duration of one year or more and, thus, the sales tax payment made by the taxpayer was properly collected and paid.

Additionally, we noted that the Division's regulations at 20 NYCRR 527.15(e) specifically provided that no refund would be allowed based upon an argument that the lease payments were unused since Tax Law § 1111(i) deems all receipts to have been paid. Thus, we concluded that the Division's interpretation of the statute was reasonable and we upheld the refund denial (*see also, Matter of Moerdler*, Tax Appeals Tribunal, April 26, 2001, *confirmed Matter of Moerdler v. Tax Appeals Tribunal*, 298 AD2d 778, 750 NYS2d 329; *Matter of Miehle*, Tax Appeals Tribunal, August 24, 2000).

Petitioner has not presented any legal argument which distinguishes his case from the cases cited above. Therefore, we find that, since petitioner did not prove entitlement to a refund for sales tax properly paid and collected, the Division properly denied the refund claim.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Thomas Gallagher is denied;
2. The determination of the Administrative Law Judge is sustained;
3. The petition of Thomas Gallagher is denied; and
4. The refund denial letter issued by the Division of Taxation dated July 16, 2001 is sustained.

DATED: Troy, New York
October 23, 2003

/s/Donald C. DeWitt

Donald C. DeWitt
President

/s/Carroll R. Jenkins

Carroll R. Jenkins
Commissioner