STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
JENNIFER A. MIEHLE **F/K/A JENNIFER A. LALOR**	:	DETERMINATION DTA NO. 816201
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 September 1, 1994 through November 30, 1994.	:	

Petitioner, Jennifer A. Miehle, f/k/a Jennifer A. Lalor, 203 Artesian Drive, Garner, North Carolina 27529, 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 September 1, 1994 through November 30, 1994. On June 30, 1998 and July 6, 1998, respectively, petitioner, Jennifer A. Miehle, and the Division of Taxation by Terrence M. Boyle, Esq. (Dennis A. Fordham, Esq., of counsel) waived a hearing and agreed to submit this case for determination, with all documents and briefs to be submitted by the parties by January 15, 1999, which date began the six-month period for the issuance of this determination. Petitioner appeared *pro se*. The Division of Taxation appeared by Terrence M. Boyle, Esq. (Justine Clarke Caplan, Esq., of counsel). After review of the evidence and arguments presented, Frank W. Barrie, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner, the lessee of a new 1994 Nissan Sentra, was entitled to a refund of a prorated portion (approximately 97%) of the sales tax that was paid on the total amount of lease payments due under a three-year car lease when the leased car was destroyed after only one lease payment had been made and the lease was prematurely terminated with insurance proceeds paid over to the lessor.

FINDINGS OF FACT

1. On September 19, 1994, petitioner, then known as Jennifer A. Lalor, leased a 1994 Nissan Sentra from the Long Island new car dealer, Smithtown Nissan, Inc., of Smithtown (Suffolk County), New York.

2. The lease agreement described the "Total Payments Due On Signing" of the lease as follows:

Initial cash payment	$ 275.00
First monthly payment in advance	202.00
Refundable security deposit	225.00
Title fee/initial registration fee/initial license fee/excise tax	60.00
Sales tax	618.12
Documentation fee	20.00
New York inspection fee	10.00
Cap reduce tax	23.38
Acquisition fee upfront	350.00
Gas fee	5.00
Total payment due on signing	$1,788.50

The lease agreement provided for a term of 36 months, with monthly payments of $202.00, resulting in total monthly payments under the lease agreement of $7,272.00 (36 multiplied by $202.00 equals $7,272.00). The lessor collected and petitioner paid sales tax of $618.12 upon her signing of the lease, which was the amount of sales tax due on the total monthly payments under the three-year lease of $7,272.00. The sales tax rate of 8.5% applied against the total monthly payments under the lease agreement of $7,272.00 equals $618.12.

3. Under the lease agreement, petitioner agreed to be responsible for the following types and amounts of insurance coverage during the lease term:

> a. Comprehensive, including fire and theft insurance . . . with a maximum deductible of $1,500;
> b. Collision insurance with a maximum deductible of $1,500;
> c. Property damage liability of $50,000 per occurence [sic]; and
> d. Bodily injury liability of $100,000 per person and $300,000 per occurrence.

The lessor was named by petitioner as the "loss payee" on coverages described above as "a" and "b" and was provided with "primary coverage as an additional insured" on coverages described above as "c" and "d". The lessor was appointed by petitioner as her "attorney-in-fact to endorse insurance proceeds checks."

4. On October 19, 1994, one month after the date of the lease agreement, the 1994 Nissan Sentra was badly damaged. A photocopy of a handwritten police department complaint, which is difficult to decipher, indicates that petitioner reported that her automobile while parked in her driveway was struck at 6:45 A.M. by an unknown vehicle. Another handwritten police department complaint made later in the day by petitioner's father indicates that a witness saw the second vehicle that left the scene of the accident. This vehicle was later identified by the police after some investigation, and petitioner successfully sued its owner and recovered $500.00 plus

interest and costs in a small claims judgment dated June 27, 1996. The $500.00 represented petitioner's deductible not covered by her insurance.

5. By a letter dated December 21, 1994, petitioner was notified by Nissan Motor Acceptance Corporation, which had been assigned the car lease dated September 19, 1994, that it had received "an insurance check representing the total loss to your lease vehicle." A value of $10,311.38 for the total loss of the 1994 Nissan Sentra is shown on a computer printout dated November 1, 1994 of a total loss valuation, in accordance with 11 NYCRR 216.7(c)(1)(i), by U.S. Capital Insurance Co. of White Plains, New York. This printout also shows an adjusted actual cash value for the car of $9,964.41 plus sales tax of $846.97 for a total value before deductible of $10,811.38. The value of $10,311.38 was calculated after subtracting a $500.00 deductible. Presumably, the insurance check to Nissan Motor Acceptance Corporation was in the amount of $10,311.38. With this check from her insurer, petitioner was released from liability for the remaining 35 monthly payments under the lease agreement which was terminated.

6. Petitioner filed a claim dated October 8, 1996 for refund of sales tax in the amount of $600.95. This amount was computed using the sales tax of $17.17 per month, based on the monthly payment of $202.00 and a sales tax rate of 8.5%, multiplied by the 35 payments remaining on the 36-month lease after the car accident.

7. The Division of Taxation ("Division") denied petitioner's refund claim by letter dated February 19, 1997 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 refund of sales tax paid on the lease of a vehicle when the lease is terminated prematurely, either by choice, or in the case of the vehicle being 'totalled.'

SUMMARY OF THE PARTIES' POSITIONS

8. The Division maintains that Tax Law § 1111(i)(A) deems that all consideration contracted to be given on a lease for a motor vehicle for a term of one year or more is subject to sales tax on the date of the first payment under the lease. Citing an advisory opinion in ***Matter of Norstar Auto Lease, Inc.*** (April 29, 1991), the Division contends that the destruction of a leased motor vehicle does not give rise to a refund claim for sales tax paid on the remaining lease payments. The Division argues there is no statutory provision in the Tax Law that authorizes the refund of sales tax properly paid on an automobile lease for one year or more even though the leased property subsequently was lost, stolen or destroyed. According to the Division, Tax Law §§ 1119 and 1139, which authorize the refund of sales tax under certain circumstances, are not applicable to petitioner's situation. Further, the Division argues that petitioner's insurer "covered the value of the car, including the 35 monthly installment payments remaining on the lease" (Division's letter brief). The Division also analogizes to the situation where "an outright purchaser pays sales tax on a vehicle's purchase and the vehicle is stolen or destroyed thereafter," pointing out that the Tax Law does not provide a refund for the outright purchaser either (Division's letter brief).

9. Petitioner contends that she made "payment of sales tax up front for transactions that did not occur" (Petitioner's letter brief). According to petitioner, the insurance company's settlement released her from liability for the remaining 35 payments under the car lease and "negates the imposition of sales tax due on the lease payments" (Petitioner's letter brief). Petitioner points out that the insurer paid sales tax on its insurance settlement payment which

included the remaining 35 lease payments as noted by the Division. Petitioner argues that "[t]he bottom line is that I did not make those thirty-five payments, and therefore, I am due a $600.95 sales tax refund" (Petitioner's reply letter brief). According to petitioner, who emphasizes that the leased car was destroyed through no fault on her part, the failure to refund sales tax paid on the remaining 35 lease payments is unjust.

CONCLUSIONS OF LAW

A. Pursuant to Tax Law § 1105(a), sales tax is imposed on "[t]he receipts from every retail *sale* of tangible personal property, except as otherwise provided in this article" [emphasis added].

B. The terminology "sale, selling or purchase" is defined expansively in the Tax Law at § 1101(b)(5) to mean any transaction in which there is a transfer of title or possession or both of tangible personal property for a consideration including the "exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever."

C. Prior to June 1, 1990, monthly car lease payments were subject to the imposition of sales tax as they were made. Effective June 1, 1990, Tax Law § 1111(i)(A) (as added by L 1990, ch 190), all payments under a car lease for a term of one year or more, were "deemed to have been paid or given and shall be subject to tax, and any such tax shall be collected, as of the date of first payment under such lease." The Governor's Executive Chamber Memorandum accompanying the legislation implementing Laws of 1990 (ch 190, § 181), which added subdivision (i) to Tax Law § 1111, noted that the legal fiction of deeming all payments under a car lease to have been paid as of the date of the first payment under the lease represented "the acceleration of tax imposed on long-term leases of certain motor vehicles." Along with several other provisions (relating to the special hotel occupancy tax and the imposition of sales tax on parking, protective and detective services, interior decorating and design services, interior

cleaning and maintenance for a period of 30 days or more), the addition of subdivision (i) to Tax Law § 1111 was "projected to increase State sales tax receipts by $130 million . . . in 1990-91, revenue necessary to implement the 1990-91 State Budget." Consequently "notwithstanding any contrary provisions of [Article 28 of the Tax Law]",[1] sales tax was authorized to be paid and collected on the basis of a legal fiction that all lease payments were made as of the date of the first payment under the lease in order to increase State tax revenues.

D. The Division adopted a tax regulation on June 1, 1994 at 20 NYCRR 527.15 concerning this special rule for the payment of sales tax on all payments due under a car lease. The regulation, in harmony with the statutory language of Tax Law § 1111(i), noted that:

> Rather than the tax being due upon each periodic lease payment, the Tax Law provides that with respect to the leases described in this section the 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]).

However, the regulation, unlike the statutory language, went further and noted the following limitations on refunds and credits:

> No refund or credit shall be allowed based upon the fact that receipts are not actually paid as in the case of early termination of a lease, failure to exercise an option to renew a lease or bad debt (see section 534.7 of this Title) since, under section 1111(i), such receipts are deemed to have [sic] paid.

E. Application of the above regulatory limitation on refunds to petitioner is the crux of this matter. Initially, it is observed that the Division of Tax Appeals has the authority to rule on the validity of this regulatory limitation (***see, Matter of Lake City Manufactured Housing, Inc.***, Tax Appeals Tribunal, November 14, 1991, ***annulled on other grounds***, 184 AD2d 33, 590

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[1] Tax Law § 1105(a), which authorizes the imposition of sales tax on *receipts*, necessitated the Legislature's creation of this legal fiction *deeming* all payments under the car lease to have been paid as of the date of first payment under the lease. Without such legal fiction, sales tax could be imposed only on the receipts from the monthly payments as they were made. Consequently, the newly added subdivision (i) to Tax Law § 1111 utilized the legal fiction of *deeming* "[n]otwithstanding any contrary provisions of this article."

NYS2d 325 [wherein the Tribunal noted that the Division of Tax Appeals is specifically authorized to rule on the validity of the Division's regulations]). Furthermore, the opinion of the Division articulated in its advisory opinion in ***Matter of Norstar Auto Lease, Inc.*** (April 29, 1991) is not binding on the Division of Tax Appeals.

F. According to the Division, Tax Law § 1139 provides the statutory basis for limiting petitioner's right to a refund of sales tax prepaid on monthly lease payments which, in fact, will never be made because the car lease has been terminated. This statutory provision authorizes the refund of sales tax which has been "erroneously, illegally or unconstitutionally collected or paid." The Division maintains that since Tax Law § 1111(i) deems all payments under a car lease for a term of one year or more to have been paid as of the date of first payment under the lease and subject to sales tax at that time, the sales tax at issue was not erroneously, illegally or unconstitutionally collected or paid. However, the Division's position ignores Tax Law § 1132(e) which authorizes the refund of sales tax paid upon a receipt "where the contract of sale has been canceled." Under the broad definition of "sale, selling or purchase" noted in Conclusion of Law "B", the lease agreement at issue may be viewed as a contract of "sale" since the term "lease" is included in the statutory definition of "sale, selling or purchase." In the matter at hand, the lease agreement has been canceled as a result of the accident which totaled petitioner's newly leased car, and Tax Law § 1132(e) therefore provides authority for allowing petitioner's refund claim. In short, the regulatory limitation on refunds and credits noted in Conclusion of Law "D" is inconsistent with a plain reading of Tax Law § 1132(e) (***cf.***, ***Debevoise & Plimpton v. State Department of Taxation and Finance***, 80 NY2d 657, 593 NYS2d 974, 976 [wherein the Court of Appeals noted that in construing statutory language, the Tax Department's interpretation is not binding if it is not in harmony with the "plain import" of the statutory

language at issue]). Further, Tax Law §1132(e) provides a basis for distinguishing the Division's analogy to an outright purchaser who pays sales tax on a vehicle which is then destroyed and who cannot claim a refund of sales tax paid on the vehicle's purchase. Unlike petitioner's lease agreement, the outright purchaser's original purchase agreement has not been canceled.

G. Prior to the enactment of Tax Law § 1111(i)(A) in 1990, sales tax was paid on lease payments as made. If a lease payment was not made, sales tax was not collected. Allowing a refund of sales tax on lease payments that will not, in fact, be made is in harmony with the statutory language at issue while also avoiding an unreasonable and unfair result (***see, Le Drugstore Etats Unis v. New York State Board of Pharmacy***, 33 NY2d 298, 352 NYS2d 188; McKinney's Cons Laws of NY, Book 1, Statutes § 143; 56 NY Jur, Statutes § 211[2]). Moreover, deeming facts is a legal fiction which "should be sparingly employed" (***In re Morris' Estate***, 175 Misc 773, 25 NYS2d 48, ***affd*** 261 App Div 950, 27 NYS2d 188, ***affd*** 287 NY 624). The addition of subdivision (i) to Tax Law § 1111 in 1990, which deemed all car lease payments to have been paid as of the date of first payment under the car lease, was a fiction of law resorted to by the Legislature solely to accelerate the payment of sales tax and should not be interpreted as transforming something unreal into real so as to bar an appropriate refund of sales tax based upon Tax Law § 1132(e). In sum, although Tax Law § 1111(i)(A) deems that all consideration contracted to be given on a car lease for a term of one year or more is subject to sales tax on the

[2] The cited entry in this encyclopedia of New York law notes that "It is to be presumed, with respect to a statute, that the legislature intended to enact only that which is reasonable and just, and that no unreasonable or unjust result was intended by the legislature" [footnotes and citations omitted]. The Division's interpretation of Tax Law § 1111(i)(A) leads to an unjust result. Prior to the effective date of June 1, 1990 of the statutory provision at issue, a taxpayer was not faced with paying sales tax on lease payments which were never, in fact, made. Rather, sales tax was due as monthly payments were made. Therefore, it is reasonable to presume that the legislature did not intend to bar a consumer from obtaining a refund of sales tax on lease payments which had been "deemed" made at the start of a lease when, in fact, these payments were never made because of the termination of the lease.

date of the first payment under the lease, such language should not be interpreted to bar petitioner's refund claim.

H. The petition of Jennifer A. Miehle, f/k/a Jennifer A. Lalor, is granted, and her refund claim dated October 8, 1996 is granted.

DATED: Troy, New York
May 27, 1999

/s/ Frank W. Barrie
ADMINISTRATIVE LAW JUDGE