STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
GENERAL ELECTRIC CAPITAL CORP.	:	DETERMINATION DTA NO. 816785
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, 1990 through December 31, 1996.	:	

Petitioner, General Electric Capital Corp., 4315 Metro Parkway, P.O. Box 60500, Fort Meyers, Florida 33916, 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, 1990 through December 31, 1996.

On October 5, 1999 and October 8, 1999, respectively, petitioner, by its representative Roger Cukras, Esq., and the Division of Taxation, by Barbara G. Billett, Esq. (Michael B. Infantino, Esq., of counsel), waived a hearing and agreed to submit the matter for determination based on documents and briefs to be submitted by June 23, 2000, which date commenced the six-month period for the issuance of this determination. After review of the evidence and arguments presented, Jean Corigliano, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner, acting as a finance company, is entitled to a refund of sales taxes remitted to the State based on sales transactions made by unrelated third-party vendors where

petitioner became the assignee of the credit card accounts of those vendors, and the credit card accounts then became worthless debts.

FINDINGS OF FACT

1. Petitioner, General Electric Capital Corporation ("Capital"), and the Division of Taxation ("Division") entered into a stipulation of facts which have been incorporated into these findings of fact. All facts stated here are applicable to the period for which Capital claims a refund of sales taxes, March 1, 1990 through December 31, 1996.

2. On or about February 6, 1997, Capital filed a claim for refund of State and local sales and use taxes in the amount of $2,940,000.00. On or about April 7, 1998, Capital amended its refund claim seeking a total refund of $3,076,247.00.

3. By letter dated July 24, 1998, the Division notified Capital that its refund claim was denied in full for the following reasons:

> [Capital] did not make the original sale and is therefore not entitled to file a claim for refund for any bad debts that result from them. The vendor purchased paper and is two steps removed from the sales process that could qualify for a bad debt.

4. Capital was incorporated in New York State and has its administrative offices in Stamford, Connecticut. Capital was registered as a vendor in New York State, collected State and local sales taxes, filed monthly sales tax returns with the Division and paid the tax shown as due on those returns. Capital does not seek a refund of any of the sales or use taxes which it remitted to the Division.

5. Capital purchased credit card accounts from various retail establishments which were also registered as New York State vendors (the "Retail Vendors"). Capital was not owned, directly or indirectly, by the Retail Vendors and had no significant common ownership with the Retail Vendors.

6. One of the Retail Vendors was Levitz Furniture Corporation ("Levitz"). Levitz's agreements with its own customers and with Capital are representative of agreements entered into by the other Retail Vendors. The Levitz transactions described here may be deemed to apply to all transactions which gave rise to Capital's refund application.

7. Typically, the Retail Vendors offered a credit card program to their customers. These customers completed a credit card application for a private-label credit card (i.e., a credit card bearing the name of a particular retail vendor). Levitz had its customers complete a "Revolving Consumer Charge Credit Application" (the "credit application"). Paragraph 17 of the credit application provides as follows:

> 17. **Assignment**: We may assign this Account and our rights under this Agreement at any time. It is expected that this Agreement, your Account and purchases made on it will be submitted for approval to General Electric Capital Corporation ("GE Capital"), 570 Lexington Avenue, New York, NY 10022 without further notice to you and, if approved, will be assigned to GE Capital. All of our rights under this Agreement will apply to GE Capital or any assignee or holder of this Agreement.

8. The Retail Vendors' rights were assigned to Capital under the terms of an Account Purchase Agreement between the vendor and Capital. The Levitz Account Purchase Agreement contains the following term which is pertinent to petitioner's refund application:

> Parent and each Operating Subsidiary [Levitz] agrees to offer to sell, assign, and transfer all Accounts and all Eligible Indebtedness originated from time to time thereon to GE Capital and GE Capital agrees to purchase and acquire from Parent and each Operating Subsidiary all Accounts and all Eligible Indebtedness that are approved by GE Capital as set forth in Section 3.1 hereof.

9. Under the terms of the Account Purchase Agreement, Capital acquired all the rights, title, and interest of the Retail Vendors, including, but not limited to, the right to any and all payments with respect to the customer accounts. Accordingly, Capital acquired, under common law, all the rights of the Retail Vendors with respect to the customer accounts.

10. When the Retail Vendors extended credit to their customers under their credit card programs, the amount financed included the charge for the merchandise purchased plus the applicable State and local sales taxes.

11. The Retail Vendors were required to remit sales and use taxes to the Division on the next sales and use tax return filed following the sale (Tax Law § 1132[d]; § 1136). The sales tax was calculated on the entire taxable portion of the charge whether that amount was paid at the time of the sale or not. Thus, the Retail Vendors were required to remit sales tax even if the charge for merchandise and the sales tax imposed on that charge had not yet been paid by the consumer (Tax Law § 1101[b][3]).

12. Under the Account Purchase Agreements, Capital reimbursed the Retail Vendors the full amount of the credit card accounts, including the amount of New York State and local sales and use taxes financed by the customers.

13. Capital charged off on its books as worthless the amount of bad debt attributable to uncollectible credit card charges purchased from the Retail Vendors. This bad debt amount included sales and use taxes on the charges for taxable merchandise. Capital had already reimbursed the Retail Vendors for these sales and use taxes. Capital also deducted the amount of bad debt for Federal income tax purposes.

14. The amount that Capital is seeking as a refund was reimbursed to the Retail Vendors by Capital and was included in amounts deducted by Capital as bad debt for Federal income tax purposes. This is the same amount that was charged off by Capital on its books as worthless. All of it is attributable to the unpaid taxable charges from credit card customers.

CONCLUSIONS OF LAW

A. As pertinent here, Tax Law § 1132(e) provides as follows:

> The tax commission[er] may provide, by regulation, for the *exclusion from taxable receipts* . . . of amounts representing sales where . . . the receipt, charge or rent has been ascertained to be uncollectible *or, in case the tax has been paid upon such receipt, charge or rent, for refund of or credit for the tax so paid***.** Where the tax commission[er] provides for a credit for the tax so paid, it shall require an application for credit to be filed, but it may also allow the applicant to immediately take the credit on the return which is due coincident with or immediately subsequent to the time the applicant files his application for credit. However, the taking of the credit on the return shall be deemed to be part of the application for credit and shall be subject to the provisions in respect to applications for credit in section eleven hundred thirty-nine as provided in subdivision (e) of such section (emphasis added).

The Commissioner has provided, by regulation, for the exclusion of taxable receipts where the receipt has been ascertained to be uncollectible. Section 534.7 of the Commissioner's regulations provides rules for determining entitlement to refunds and credits attributable to bad debts. Pursuant to section 534.7(b)(1), where a receipt has been ascertained to be uncollectible, the "vendor," as that term is defined by Tax Law § 1101, may apply for a refund or credit of the tax paid on such receipt. As relevant here, a vendor is defined as "A person making sales of tangible personal property or services, the receipts from which are taxed by this article" (Tax Law § 1101[8]). The regulation, then, expresses the rule that only the person making sales of the tangible personal property giving rise to the bad debt may apply for a refund of the tax paid on the receipt from that sale.

Section 534.7(b)(3) reinforces that rule, providing as follows:

> A refund or credit is not available for a transaction which is financed by a third party or for a debt which has been assigned to a third party, whether or not such third party has recourse to the vendor on that debt.

The regulations provide two exceptions to this general rule. Under certain conditions, a vendor will be considered the vendor of the tangible personal property giving rise to the bad debt if the property is sold by a leased department or concession (20 NYCRR 534.7[b][2]). In addition, receivables transferred to a captive finance company by its retail vendor will not be treated as debts assigned to a third party (20 NYCRR 537.4[b][4]). These exceptions will be discussed in more detail later in this determination.

B. The Division correctly interpreted and applied its regulations to Capital's refund application. Capital does not dispute this. Instead, it argues that section 534.7(b) of the regulations is irrational and unreasonable because (1) it is in conflict with the New York State law of assignments; (2) it is inconsistent with Tax Law § 1132(e); (3) it discriminates between third-party assignees and captive finance companies with no rational basis; and (4) it violates the underlying policy of the sales tax law.

C. In weighing Capital's arguments, I am guided by the following rules of statutory construction.

In ***Matter of Airlift Intn'l v. State Tax Commn***. (52 AD2d 688, 382 NYS2d 572, 574) the court stated:

> In construing a taxing statute in order to determine what is included within its purview the rule is that the statute is to be strictly construed in favor of the taxpayer and against the taxing authority (***Matter of Nehi Bottling Co. v. Gallman,*** 39 AD2d 256, 333 NYS2d 824***, affd*** 34 NY2d 808, 359 NYS2d 44, 316 NE2d 331***; Matter of American Locker Co. v. Gallman,*** 38 AD2d 105, 327 NYS2d 973***, affd*** 32 NY2d 175, 344 NYS2d 358, 297 NE2d 96). In construing a taxing statute in order to determine the scope of a statutorily prescribed exemption, however, the rule is that the exemptions are to be strictly construed and that if any ambiguity or uncertainty exists it is to be resolved in favor of the sovereign and against exemption (***Matter of Aldrich v. Murphy***, 42 AD2d 385, 348 NYS2d 384).

Refunds and credits are a form of tax exemption; therefore, a tax refund statute is to be narrowly construed against the taxpayer (***see, Matter of Golub Service Station v. Tax Appeals Tribunal***, 181 AD2d 216, 585 NYS2d 864). In general, an agency's construction of a statute is entitled to great weight and will not be overturned unless clearly erroneous (***Matter of Blue Spruce Farms v. New York State Tax Commn***., 99 AD2d 867, 472 NYS2d 744; ***affd for reasons stated below***, 64 NY2d 682, 485 NYS2d 526). In order to prevail, the taxpayer must show that the Commissioner's interpretation of the exemption's scope is irrational or clearly erroneous ***(Matter of Great Lakes Dredge & Dock Co. v. Department of Taxation & Fin.***, 39 NY2d 75, 79, 382 NYS2d 958, ***cert denied***, 429 US 832; ***see also***, ***Matter of Miehle***, Tax Appeals Tribunal, August 24, 2000).

The deference normally afforded the Commissioner to interpret the scope of a tax statute by regulation is especially broad in this instance. Here, the Legislature has provided the Commissioner with the discretion to decide whether a refund or credit will be allowed at all, as well as the authority to determine the scope of the refund or credit.

D. Capital is correct in its contention that section 534.7(b)(3) of the Commissioner's regulations contravenes the law of assignment. It is rather explicit in its intention to do so. Also, I agree with Capital that it would prevail in this proceeding if assignment law were found to govern its eligibility to file refund claims.

An assignment in law is a transfer or setting over of property, or of some right or interest therein, from one person to another. Under New York State law, parties can assign causes of action derived from a contract. "The law favors the free assignability of choses in action, whether conferred by statute or otherwise, unless assignment is

expressly forbidden by the cause of action or by some other statute or unless the nature of the cause of action is such that there are strong reasons in public policy against its transferability." (***Frisch v. Zelart Drug Co.*** 180 Misc 733, 734, 46 NYS2d 44, 45.) This common law principle is codified in General Obligations Law § 13-101 which provides as follows:

> Any claim or demand can be transferred, except in one of the following cases:
>
> 1. Where it is to recover damages for a personal injury;
>
> 2. Where it is founded upon a grant which is void by a statute of the state; or upon a claim to or interest in real property, a grant of which, by the transferrer, would be void by such a statute;
>
> 3. Where a transfer thereof is expressly forbidden by a statute of the state, or of the United States, or would contravene public policy.

I can find no New York State authority forbidding the assignment of claims against the government, including tax refund claims. Several provisions of the Tax Law expressly permit assignment of credit for overpayment of taxes providing evidence that such rights may be assigned in New York (***see***, Tax Law § 1086[e]). The Division's claim that the absence of similar provisions in Article 28 expresses a legislative intent not to permit an assignment of sales tax refund claims is not persuasive. Where the Legislature intended to forbid assignments, it has done so explicitly (***see***, Social Services Law § 137 [forbidding the assignment of moneys granted as public assistance]; Volunteer Firefighters Benefit Law § 23 [forbidding the assignment of voluntary firemen's benefits]; and Workers' Compensation Law § 33 [forbidding the assignment of worker's compensation benefits]). In light of the longstanding policy favoring the free assignment of rights, the absence of a provision explicitly allowing the assignment of sales tax refund claims does not indicate that assignment of such claims is prohibited. Neither is there any

judicial authority which would forbid the transfer of a refund claim. ***People ex rel. Western Union Tel. Co. v. Roberts*** (30 App Div 78, ***affirmed without opinion*** 156 NY 693 [1898]), cited in the Division's brief, does not stand for the proposition that under New York law the assignment of tax refund claims is forbidden. In that case, the court held that a refund of tax could not be assigned because the comptroller did not have the statutory authority to grant a tax refund to the assignor or to allow the assignor to carry forward a credit for overpayment of tax to future years. Since the assignor did not possess the right to a refund, it could not assign a refund claim to another party.[1] In its brief, the Division argues that New York State assignment law forbids the assignment of tax refund claims. If so, it would seem unnecessary to promulgate a regulation which explicitly places the right to claim a refund for bad debt outside the operation of assignment law. The Division did not address this seeming contradiction.

E. The Division claims that the scheme and rationale of the sales tax law, as well as the language of Tax Law § 1132(e), support its position that a refund is not available under Tax Law

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[1] This rather hoary case was decided in accordance with the former corporation franchise tax law, more specifically, chapter 463 of the laws of 1889. Pursuant to that provision, the comptroller was authorized to revise or readjust a corporation's account, settled by himself or a preceding comptroller, to resettle the account and to charge or credit the difference to the *current account* of the corporation. The comptroller did not have the authority to grant a refund of taxes paid or to allow a credit to be carried over to future years. Under these provisions, the Panama Railroad Company applied for resettlement of its account, and, as a result, it was credited with a sum of $94,028.00. It assigned a portion of the total credit to the relator, and the relator demanded that the amount of credit transferred to it be credited to the relator's current account in payment of taxes due. The court upheld the comptroller's refusal to do so on the ground that the transfer of the credit from Panama Company to the relator's account would operate indirectly as a refund of tax. The comptroller had no authority to refund taxes paid into the State treasury directly to the Panama Railroad and could only resettle its account and credit the difference, if any, to the current account of Panama Railroad, which at that time owed taxes of about $400.00. If the comptroller transferred the amount of the credit to the relator's account, the transfer would result in a refund of tax to Panama Company which was then assigned to the relator. Thus, the court's holding is not that New York State law forbids the assignment of tax refunds, but that the comptroller had no authority to grant a refund of tax under the existing tax law. The court also noted that, in effect, the relator was seeking an offset against the State for taxes which might be assessed against it. Based on existing precedent holding that in an action instituted by the State no counterclaim or offset is available to the party sued, the court held that an assignee of a tax refund could not use the amount of the refund to offset other taxes to be assessed against the assignee. Several cases cite the ***Western Union*** opinion as support for the proposition that counterclaims against the State are not allowed in lawsuits instituted by the State (***see, In re Hicka***, 40 NYS2d 267; ***In re Woitasek***, 40 NYS2d 514). There are no New York cases citing ***Western Union*** for the proposition that tax claims against the State are not assignable.

§ 1132(e) where the debt resulting from the sale of tangible personal property is assigned to a third party. A review of that scheme is instructive.

Tax Law § 1101(b)(8) defines the term "vendor" to include "[a] person making sales of tangible personal property or service, the receipts from which are taxed by this article." Although an assignee is included in the definition of a "person" (Tax Law § 1101[a]); that assignee must make sales taxed by article 28 in order to be considered a vendor. Article 28 imposes a series of duties and obligations on persons who are vendors pursuant to the sales tax law. Every person required to collect tax has a duty to collect the tax from the customer when collecting the receipt to which the sales tax applies (Tax Law § 1132[a]). Persons required to collect tax" include "every vendor of tangible personal property" (Tax Law § 1131[1][a]). Every person required to collect the sales tax has personal liability for the tax required to be collected (Tax Law § 1133[a]). Every person required to collect tax is required to register with the Division as a vendor (Tax Law § 1134). Registered vendors having taxable receipts are required to file sales tax returns reporting those receipts (Tax Law § 1136), and to remit the tax due on those taxable receipts (Tax Law § 1137).

The Division argues that it is reasonable to confine the tax refund provided for in Tax Law § 1132(e) to the person who has a duty to collect the tax, to account to the Division for all taxable receipts and the tax due thereon, to remit the tax due to the Division and to maintain the books and records of sales, i.e., the vendor of the tangible personal property. The Division points to two factors as evidence that the Legislature did not intend to allow the assignment of the refund claim for bad debts. First, although the section of the law in dispute, section 1132(e), provides for a refund of tax in the case where tax has been paid on receipts later determined to be uncollectible, this section is not placed with the other refund provisions of article 28, which

are in Tax Law § 1139. Instead, the disputed provision is placed in section 1132 which contains statutory rules governing the collection of tax from the customer. It provides for "an exclusion from taxable receipts . . . where the receipt . . . has been ascertained to be uncollectible." As the Division interprets this language, the exclusion from receipts, or a refund of tax paid on those excluded receipts, is only available to the vendor who had the duty to collect the tax from the customer, who reported the taxable receipt and, if applicable, who paid the tax due on that receipt – in this case, the Retail Vendors.

F. Although New York law favors the free assignment of contract and statutory rights, I agree with the Division that 20 NYCRR 534.7(b) is a reasonable interpretation of Tax Law § 1132(e). Moreover, it is not unreasonable or irrational for the Commissioner to elevate the tax statutes over the general rules of assignment.

It is apparent that the purpose of 20 NYCRR 534.7(b) is to prohibit the assignment of a refund claim where the substance of the transaction between the assignor and assignee is a financing arrangement. Permission to transfer a refund claim to a third party for a transaction financed by a third party or for a debt which has been assigned to a third party would place the obligation of the consumer to pay sales tax in the same position as any other debt. Moreover, it would allow the debt obligation flowing from the imposition of sales tax to be assigned or transferred between third parties with no restrictions. The regulations are clearly intended to prevent this from occurring. The Commissioner reasonably interpreted Tax Law § 1132(e) in such a manner as to make a refund unavailable to third parties who are, in actual fact, providing financing to the vendor.

G. Capital claims that the Commissioner's regulation is irrational because it extends the benefit of the section 1132(e) refund provisions to leased departments or concessions and to

captive finance companies while denying the benefit to third-party assignees such as itself. I disagree for the following reasons.

There are two provisions in 20 NYCRR 534.7(b) which provide exceptions to the general rule against assignment of the refund for bad debts. Section 534.7(b)(2) provides that a vendor will be considered the vendor of the tangible personal property giving rise to the bad debt if the property or services are sold by a leased department or concession which satisfies three conditions: (1) the leased department or concession pays all of its receipts to the lessor-vendor; (2) the lessor-vendor reports all of the receipts and pays the tax due to the Division; and (3) the transfer of "receivables from the leased department or concession to the lessor-vendor is made without any discount for any credit transactions which involve the lessor-vendor's receivables and without recourse to the leased department or concession." If all of these conditions are met, the lessor-vendor has taken on all of the duties and obligations of a sales tax vendor with respect to the receipts of the leased department or concession. Moreover, if all of the conditions are met, the transaction is not a financing arrangement. It is reasonable for the Commissioner to distinguish between a leased department or concession which meets the conditions of the regulation and a third-party financing arrangement.

The second exception is found in section 534.7(b)(4). It provides that receivables transferred to a captive finance company by its retail-vendor will not be treated as debts assigned to a third party provided that two conditions are met: (1) the captive finance company has recourse on all bad debts to the transferor retail-vendor and (2) not more than 10% annually of the receivables of the retail-vendor are incurred by credit purchasers on purchases from any vendor other than the retail-vendor or a leased department or concession. There is no credit allowed to such retail-vendors with respect to receivables from sales of other vendors. For

purposes of section 534.7(b)(4), a captive-finance company is defined as a company that satisfies all of the following conditions:

> (i) it is wholly owned by the retail-vendor or is wholly owned by a company which is related to such retail-vendor through an unbroken chain of wholly owned companies;
>
> (ii) it does not finance receivables of any vendor other than its retail-vendor or any company related to such retail-vendor by an unbroken chain of wholly owned companies;
>
> (iii) it does not extend credit to anyone other than in the form of the purchase of receivables created as a result of extension of credit by the retail-vendor, except that the requirement of this subparagraph shall not be violated by the investment of excess cash funds in the short or long-term financial markets or by advancing funds to its retail-vendor or a company which is related to such retail-vendor by an unbroken chain of wholly owned companies;
>
> (iv) it does not sell receivables to a third party other than a transfer of a receivable to its retail-vendor; and
>
> (v) it does not receive payments on the receivable directly from the account-obligors. Instead, the foregoing payments, including interest, on the receivables must be made by the account-obligor directly to the retail-vendor, and must be reported as income by the retail-vendor, for income and franchise tax purposes.
>
> (20 NYCRR 534.7[a][5].)

If the conditions of the captive finance provisions are satisfied, the arrangement between the captive finance company and its retail vendor will not result in debt obligations which can be transferred and assigned to other third parties. Moreover, by requiring that the customer make payments directly to the retail-vendor, the regulation is consistent with the scheme of the sales tax law described above. The retail-vendor receives payment for the taxable receipt and the sales tax due on that receipt. Payment of the sales tax is made by the retail-vendor. If the receipt is ascertained to be uncollectible by the retail-vendor who made the sale, that vendor may exclude the amount not paid from taxable receipts, or if the tax has already been paid, may seek a refund. The receivables may not be traded among third parties. In sum, the captive finance provisions operate to insure that the vendor who makes the sale is the same person who applies for the refund under Tax Law § 1132(e). This is not the case with third-party assignees where the

vendor makes the sale and the assignee applies for the refund. Moreover, in the case of receivables transferred to a captive-finance company, the regulation restricts eligibility for a refund to transactions where the captive-finance company does not earn income from the interest paid on the receivable. It is reasonable for the Commissioner to treat third-party assignees differently from captive finance companies since the two operate in a totally different fashion.

H. Section 534.7(b)(3) does not violate the underlying policy of the sales tax. Based upon two cases, ***Matter of Abraham & Strauss and Co. v. Tully*** (47 NY2d 207, 417 NYS2d 881) and ***Matter of Yonkers Plumbing & Heating Supply Corp. v. Tully*** (62 AD2d 18, 403 NYS2d 792), Capital argues that the underlying policy of the sales tax is having the amount of sales tax retained by the State most closely reflect the tax due on moneys actually received on sales of personal property. Capital claims that the denial of the right to a refund to a third-party assignee violates this policy.

The facts of both these cases are similar. The vendor filed sales tax returns reporting as taxable receipts amounts that included sales made on credit. The vendor paid the tax on the full amount of the reported taxable receipts. When a portion of those credit sales became uncollectible, the vendor claimed a credit against current taxes based on the full amount of the sales tax paid on the uncollectible taxable receipts. For example, if the purchase price of an item subject to an 8% tax was $100.00 but the store collected only $50.00 on the sale, it would have claimed a credit of $4.00. The State Tax Commission, interpreting a former regulation which closely tracked the wording of Tax Law § 1132(e), mandated that 100% of the tax must be collected before a vendor could receive any refund. In the example above, the vendor would have received no refund unless the amount paid by the customer was less than $8.00. If the customer paid $8.00, the entire amount of the sales tax would be payable, although the vendor

received no payment for the item sold. Both the Appellate Division, Third Department and the Court of Appeals found the Division's interpretation of its own regulation to be both irrational and unreasonable. The Court of Appeals noted that it was within the discretion of the State Tax Commission whether to provide a refund for uncollectible debts, but having provided for such a refund by the adoption of a regulation it was required to give the regulation a reasonable interpretation (***Matter of Abraham & Strauss and Co. v. Tully***, ***supra***). The Court also stated:

> The statute and the regulation obviously intend that a vendor shall be relieved of sales tax liability to the extent that the receipt from a sale proves uncollectible, so that the taxes which the vendor is required to remit will most closely reflect the tax due on moneys actually received on sales of personal property. (***Matter of Abraham & Strauss and Co. v. Tully***, ***supra***, 417 NYS 2d, at 883).

This statement of policy is not in conflict with regulation 534.7(b). Inasmuch as Capital is not a vendor with respect to the sales of the Retail Vendors and was not required to remit tax on those sales, it is not unreasonable or irrational to deny Capital a right to claim a refund of tax which it did not remit to the Division.

I. These conclusions are in conflict with the decision of the Supreme Court of the State of Washington in ***Puget Sound National Bank v. Department of Revenue*** (868 P2d 127). In arriving at its decision, the Washington court addressed policy considerations and statutes which are not relevant here. I do not find its reasoning to be persuasive in the context of Article 28 of the Tax Law.

J. The petition of General Electric Capital Corp. is denied, and the denial of its refund claim is sustained.

DATED: Troy, New York
December 21, 2000

/s/ Jean Corigliano
ADMINISTRATIVE LAW JUDGE