

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
<b>ALEJANDRA CORDOVI</b>	:	SMALL CLAIMS
	:	DETERMINATION
	:	DTA NO. 821400
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 1999.	:	

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Petitioner, Alejandra Cordovi, 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 year 1999.

A small claims hearing was held before James Hoefer, Presiding Officer, at the offices of the Division of Tax Appeals, 400 Oak Street, Garden City, New York, on July 26, 2007, at 10:30 A.M. Petitioner appeared by her spouse, Scott Cordovi. The Division of Taxation appeared by Daniel Smirlock, Esq. (Varughese Thomas).

Since neither party elected to reserve time to file a brief, the three-month period for the issuance of this determination began as of the date the hearing was held.

***ISSUE***

Whether the Division of Taxation properly denied petitioner's application for credit or refund on the basis that the application was filed beyond the applicable statute of limitations for credit or refund as provided for in Tax Law § 1139.

***FINDINGS OF FACT***

1. In 1999, petitioner, Alejandra Cordovi, submitted a request for arbitration against DaimlerChrysler Motors Corporation (“DaimlerChrysler”) pursuant to New York State’s new car Lemon Law. The arbitration proceeding was handled by the National Center for Dispute Settlement located in Dallas, Texas. Petitioner prevailed in her arbitration proceeding, and on December 14, 1999, DaimlerChrysler issued a check to petitioner in the sum of \$28,945.56. Petitioner was apparently not aware of the fact that after she won her arbitration case she was entitled, upon the filing of an Application for Credit or Refund of Sales or Use Tax with the Division of Taxation (“Division”), to a refund of all or some portion of the New York State sales tax that she paid at the time the vehicle was purchased.

2. In 2005, petitioner again prevailed in a second new car Lemon Law arbitration proceeding, this one against General Motors Corporation. The arbitrator’s decision, dated March 21, 2005, indicated that, “In addition, state and local taxes (\$2,048.23) are to be refunded directly to the consumer by the NYS Commissioner of Taxation and Finance. . . . The application form published by the NYS Department of Taxation and Finance, needed to apply for credit or refund of state and local sales taxes, is herewith enclosed for the consumer.” On March 30, 2005, petitioner filed an Application for Credit or Refund of Sales or Use Tax with the Division seeking a refund of the sales taxes paid on the General Motors Corporation vehicle. By letter dated April 6, 2005, the Division advised petitioner that her claim for credit or refund of the sales tax paid on the General Motors Corporation vehicle involved in the 2005 new car Lemon Law arbitration proceeding was allowed in the sum of \$1,781.96.

3. On August 26, 2005, the Division received an Application for Credit or Refund of Sales or Use Tax from petitioner wherein she sought a \$2,388.01 refund of the sales tax paid on the

DaimlerChrysler vehicle involved in the 1999 new car Lemon Law arbitration proceeding. On December 12, 2005, the Division denied petitioner's claim for refund in full stating that, "The Sales and Use Tax Law requires that a refund application be filed within three years from the date the taxes are payable to the Tax Department. Based on the three year statute of limitations, your claim is being denied."

***SUMMARY OF PETITIONER'S POSITION***

4. In the instant matter, petitioner concedes that her August 26, 2005 Application for Credit or Refund of Sales or Use Tax of the sales tax paid on the DaimlerChrysler vehicle involved in the 1999 new car Lemon Law arbitration proceeding was filed beyond the appropriate statute of limitations for credit or refund. The Division does not dispute that petitioner would be entitled to a refund of all or some portion of the sales tax paid on the DaimlerChrysler vehicle involved in the 1999 new car Lemon Law arbitration proceeding if she had filed a timely request for the refund. Petitioner maintains that when she received the favorable decision in the 1999 new car Lemon Law arbitration proceeding, there was no notice or forms advising her of her right to file a claim for refund of the sales tax paid on the DaimlerChrysler vehicle. Petitioner asserts that she first became aware of her right to a refund when she received the second favorable decision in the 2005 new car Lemon Law arbitration proceeding, which not only clearly advised her of her right to a refund of sales tax, but also enclosed the appropriate form to file the claim. It is petitioner's position that the State of New York and the Division were under an obligation to give her notice of her right to a refund of sales tax in the 1999 new car Lemon Law arbitration proceeding and to provide the appropriate forms and that they failed to do so. Since the State of New York and the Division did not give petitioner notice or the proper forms, petitioner believes that it is unfair and inequitable not to

grant the refund as requested, notwithstanding the fact that the Application for Credit or Refund of Sales or Use Tax was filed late.

### ***CONCLUSIONS OF LAW***

A. A taxpayer, pursuant to Tax Law § 1139(f), is entitled to a refund of all or some portion of the sales tax paid on a vehicle which is returned to the vehicle manufacturer pursuant to New York State's new car Lemon Law. With respect to the time period that a taxpayer has to file a claim for refund, Tax Law § 1139(f) specifically provides "that a request for a refund under this subdivision shall be timely made if such request for a refund is made within three years of the date the refund from the manufacturer is received by a consumer. . . ."

B. There is no dispute in the instant matter that petitioner's claim for refund of the sales tax paid on the DaimlerChrysler vehicle was required to be filed on or before December 14, 2002, which date is three years from the date she received the refund from DaimlerChrysler. There is also no question that petitioner's Application for Credit or Refund of Sales or Use Tax received by the Division on August 26, 2005 was filed after the statute of limitations for refund had expired. Thus, the only issue to address is whether extenuating circumstances exist which permit me to grant petitioner the refund she seeks even though her claim for refund was filed late.

C. While it may appear harsh that Tax Law § 1139(f) places a three-year statute of limitations on taxpayers to claim a refund, it must be noted that the Division generally has a like three-year period to issue a Notice of Determination to a taxpayer asserting that additional taxes are due. Therefore, it cannot be found that the statutory scheme is unfair since it provides both parties with the same three-year time frame. Both the Tax Appeals Tribunal, in *Matter of Nierinstein*, Tax Appeals Tribunal, April 21, 1988 and the Appellate Division, in *Matter of Sheppard-*

*Pollack v. Tully* (64 AD2d 296, 409 NYS2d 847) have upheld the validity of applying a three-year statute of limitations for refund. By establishing time frames for the issuance of notices of determination and the filing of claims for refund, the Tax Law provides both the State of New York and its taxpayers with the financial stability and security that comes from knowing that a specific tax year or period is closed. In *Matter of Nierenstein* (Tax Appeals Tribunal, April 21, 1988), the Tribunal opined that:

There is no authority for the Division of Taxation to approve the claim in a manner inconsistent with the Tax Law. Statutes of limitations are matters of law, enacted by the State Legislature for the purpose of guiding all persons who are, or may become parties to a legal proceeding, with respect to the timely filing of the various documents necessary to the particular program or proceeding involved.

The statute of limitations here is three years. Its purpose is to allow a reasonable time for taxpayers who have erroneously filed or paid taxes to realize their error and make application for refund. The State is thus put on notice that there is this three year period during which it may be liable for such claims. At the end of the period, the matter is settled. Anything less than this degree of certainty would make the financial operation of government difficult, if not impossible. In short, the statute of limitations at issue here is a balance between the needs of the State with regard to the protection of its financial resources and the rights of taxpayers to correct their errors.

The rationale set forth in *Nierenstein* is equally applicable to the case at hand.

Accordingly, the Division is correct in its assertion that regardless of the merits of petitioner's claim for refund, it must be denied as not timely filed.

D. Petitioner's argument that the Division was required to inform her of the fact that she was entitled to claim a refund with respect to the sales tax paid on the DaimlerChrysler vehicle and to supply her with the appropriate forms is rejected. Petitioner has not cited to any statutory or regulatory authority which places such a burden on the Division, nor am I aware of any provisions in the Tax Law which impose this duty on the Division. Furthermore, petitioner has

presented very limited documentary evidence with respect to the DaimlerChrysler arbitration proceeding, and therefore it is not known what information, if any, was given to petitioner with respect to her right to claim a refund of the sales tax paid on this vehicle. While I sympathize with petitioner, it must be noted that the Tax Law and case law are clear on this issue and therefore I do not believe that the principles of fairness and equity mandate a determination in her favor.

E. The petition of Alejandra Cordovi is denied and the Division's letter dated December 12, 2005 denying petitioner's claim for refund in full is sustained.

DATED: Troy, New York  
October 25, 2007

/s/ James Hoefer  
PRESIDING OFFICER