STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
MICHAEL GREENFIELD	:	DECISION DTA NO. 827851
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 May 15, 2014 through July 6, 2015.	:	

Petitioner, Michael Greenfield, filed an exception to the determination of the Administrative Law Judge issued on September 27, 2018. Petitioner appeared by Richard E. Rubin, Esq. The Division of Taxation appeared by Amanda Hiller, Esq. (Jessica DiFiore, Esq., of counsel).

Petitioner did not file a brief in support of his exception. The Division of Taxation filed a letter brief in opposition. Petitioner did not file a reply brief. Oral argument was not requested. The six-month period for issuance of this decision began on December 10, 2018, the due date for petitioner's reply brief.

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

ISSUE

Whether petitioner is entitled to a refund of sales tax paid with respect to the lease of a motor vehicle where the lease was subsequently assumed by a third party.

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. Those facts appear below.

1. On May 15, 2014, petitioner, Michael H. Greenfield, a resident of New York State, entered into an agreement for the lease of an automobile with BMW Financial Services. At the time he entered into the lease agreement, petitioner paid sales tax in the amount of $1,604.60.

2. On July 6, 2015, the lease was assumed and transferred to a third party.

3. On or about July 31, 2015, petitioner filed a claim for refund in the amount of $980.58. The application for a refund stated that:

> "I entered into a 36 month closed end lease with BMW Financial Services on May 15, 2014. I paid the entire tax amount ($1604.60) upfront. The lease was assumed on 7/6/15. I want the balance of the tax money prorated and refunded to me."

4. The Division of Taxation (Division) issued a refund claim determination notice (notice), dated December 18, 2015, denying petitioner's refund claim. The notice states:

> "When an individual leases a motor vehicle for a period of one year or more, the amount due under the agreement and for the entire period covered by the lease will immediately be subject to sales tax. This lease is considered a sale, and as such, it would be taxable in a like manner as any other tangible personal property. That is, tax is due when title or possession transfers from the seller to the purchaser for a consideration. There is no provision in the sales tax law that allows for a refund of the sales tax paid be [sic] the lessee even though the agreement may be terminated prematurely.
>
> When the original lease is subsequently assumed by an assignee, this is a separate taxable transaction. As stated above, title or possession of tangible personal property has been transferred for a consideration. In this instance, the consideration is the assumption of the lease payments and tax is due on the remaining payments on this lease as indicated above."

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

As the present matter came before her as a motion for summary determination, the Administrative Law Judge first noted that such a motion is properly granted if, upon review of all papers submitted, there is no material and triable issue of fact presented. The Administrative Law Judge observed that petitioner does not contest the facts, but rather cross-moves for summary determination in his favor. The Administrative Law Judge thus concluded that summary determination was appropriate.

Turning to the merits, the Administrative Law Judge noted that sales tax is imposed on retail sales of tangible personal property and that the statutory definition of sale includes a lease. With respect to leases of motor vehicles for a term of one year or more, the Administrative Law Judge noted that the sales tax specifically provides that all lease payments are deemed to have been made and that all sales tax is payable as of the date of the first payment under the lease. The Administrative Law Judge also noted that the Division's regulations specifically preclude a refund of sales tax when there is an early termination of a vehicle lease. The Administrative Law Judge further noted that this Tribunal has determined that an early termination of such a lease is not equivalent to a canceled contract of sale (a circumstance for which the Tax Law does provide a refund). Finally, the Administrative Law Judge rejected petitioner's contention that the present situation creates the potential for double taxation. The Administrative Law Judge cited a previous decision of this Tribunal, which found that motor vehicles are frequently resold or re-leased throughout their useful lives and that each such transaction is generally properly subject to sales tax. Pursuant to the foregoing, the Administrative Law Judge granted the Division's motion for summary determination and denied the petition.

ARGUMENTS ON EXCEPTION

Petitioner contends that the circumstances that led to the early termination of his lease distinguish his refund claim from previous cases involving early termination of vehicle leases in which this Tribunal denied similar refund claims. As in his arguments below, petitioner does not dispute the facts as determined by the Administrative Law Judge, but argues that such facts indicate that he is entitled to a refund of sales tax attributable to the period following the assumption of the lease by the third-party.

The Division contends that the determination is correct and should be affirmed for the reasons stated therein.

OPINION

As noted, the question presented arises from a motion for summary determination. Such a motion "shall be granted if, upon all the papers and proof submitted, the administrative law judge finds that it has been established sufficiently that no material and triable issue of fact is presented" (20 NYCRR 3000.9 [b] [1]). Summary determination may be granted in favor of the nonmoving party without a cross-motion (20 NYCRR 3000.9 [b] [1]).

"The proponent of a summary [determination] motion must make a prima facie showing of entitlement to judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case (citations omitted)" (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985]). If material facts are in dispute, or if contrary inferences may be drawn reasonably from undisputed facts, then a full trial is warranted and the case should not be decided on a motion (***see Gerard v Inglese***, 11 AD2d 381 [2d Dept 1960]; ***Matter of McNamara***, Tax Appeals Tribunal, January 30, 1997).

As there are no material facts in dispute in the present matter, it was appropriate for the Administrative Law Judge to render a determination on the motion.

Sales tax is imposed on the retail sale of tangible personal property (Tax Law § 1105 [a]). A sale includes a lease (Tax Law § 1101 [b] [5]). With respect to a lease of an automobile for a term of one year or more, the Tax Law expressly provides that all receipts due under the full lease term are deemed to have been paid and are subject to sales tax at the lease's inception (Tax Law § 1111 [i]). Petitioner thus properly paid the total amount of sales tax due under the lease at its inception.

Sales tax may be refunded where it has been "erroneously, illegally or unconstitutionally collected or paid" (Tax Law § 1139 [a]). Petitioner's payment of sales tax in connection with his lease of the vehicle was properly made pursuant to the relevant provisions of the Tax Law as noted above. Accordingly, there is no basis upon which to refund any part of such payment. Indeed, the Division's regulations expressly preclude any credit or refund where lease payments are not actually made, "as in the case of early termination of a lease . . . since, under [Tax Law] section 1111 (i), such receipts are deemed to have been paid" (20 NYCRR 527.15 [e]). We have previously determined that this regulation is "consistent with the meaning and intent of Tax Law § 1111 (i)" (***Matter of Moerdler***, Tax Appeals Tribunal, April 26, 2001 ***confirmed*** 298 AD2d 778 [3rd Dept 2002]). We note also that the early termination of a vehicle lease is not equivalent to the cancellation of a contract and is thus not eligible for refund pursuant to Tax Law § 1132 (e) and 20 NYCRR 534.1 (a) and 534.6 (a) (***see Matter of Miehle***, Tax Appeals Tribunal, August 24, 2000). Clearly, petitioner's rights and obligations under the lease were not canceled but were transferred to a third party. Accordingly, we conclude, as we did in ***Matter of Moerdler***, "[t]here

is no provision in the law which provides for a refund of sales tax which is collected pursuant to Tax Law § 1111 (i)."

Petitioner urges us to consider the circumstances surrounding the termination of his lease. Although not part of the record below, petitioner's exception notes that the early termination of his lease was occasioned by the death of his wife. Petitioner contends that such circumstances distinguish the present matter from previous cases where this Tribunal has denied sales tax refunds with respect to early vehicle lease terminations (***see Matter of Moerdler*** [vehicle stolen four months into the lease period]; ***Matter of Miehle*** [vehicle totaled in collision one month into lease period]; ***Matter of Torquato***, Tax Appeals Tribunal, October 12, 2000 [taxpayer moved to California and registered vehicle there ten months into lease period]; ***Matter of Gallagher***, Tax Appeals Tribunal, October 23, 2003 [taxpayer moved to New Jersey and registered vehicle there nine months into lease period]).

We disagree. While we sympathize with petitioner's circumstances, we find that the Tax Law simply does not provide the remedy he seeks.

Finally, we note our agreement with the Administrative Law Judge's finding that the specter of double taxation raised by petitioner below is a non-issue with respect to the subject lease transactions. As the Administrative Law Judge noted, we previously rejected a similar double taxation argument in ***Matter of Moerdler***. We do so here as well. Both petitioner's initial lease of the vehicle and the subsequent assumption of the lease by the third party were separate and distinct retail sales under Tax Law § 1105 (a). Contrary to petitioner's claim made on exception, he received consideration on the lease assumption in the form of relief from his lease payment obligations.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Michael Greenfield is denied;

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

3. The petition of Michael Greenfield is denied; and

4. The Division of Taxation's refund claim determination notice, dated December 18, 2015, is sustained.

DATED: Albany, New York
June 6, 2019

/s/ Roberta Moseley Nero
Roberta Moseley Nero
President

/s/ Dierdre K. Scozzafava
Dierdre K. Scozzafava
Commissioner

/s/ Anthony Giardina
Anthony Giardina
Commissioner