

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
IRVING POLLACK	:	DETERMINATION
	:	DTA NO. 827607
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 December 1, 2015	:	
through May 31, 2017.	:	

Petitioner, Irving Pollack, 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 December 1, 2015 through May 31, 2017.

On September 29, 2017 and October 12, 2017, respectively, petitioner, appearing pro se, and the Division of Taxation, appearing by Amanda Hiller, Esq. (Adam L. Roberts, Esq., of counsel), waived a hearing and submitted this matter for determination based on documents and briefs to be submitted by February 13, 2018, which date commenced the six-month period for issuance of this determination. After due consideration of the documents and arguments submitted, Dennis M. Galliher, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner has established that the Division of Taxation's denial of his claim for refund of sales tax paid upon the lease of a motor vehicle was erroneous or improper.

FINDINGS OF FACT

1. In February of 2014, petitioner, Irving Pollack, leased a 2014 Cadillac CTS automobile from a New York automobile dealership for a term of 39 months. At the time of the first payment due under the lease, petitioner paid the full amount of sales tax due on the lease in the amount of \$1,938.54.

2. In the summer of 2015, petitioner relocated to Arizona. Upon “changing the plates” (i.e., registering the Cadillac in Arizona), petitioner was advised by the bank financing the lease that an additional monthly charge, representing the Arizona transaction privilege tax (*see* Arizona Revised Statutes § 42-5061), would be due. This charge increased petitioner’s monthly lease payment by \$34.71, from \$445.00 to \$479.71.

3. On January 11, 2016, the Division of Taxation (Division) received from petitioner a claim for refund (Form AU-11; claim # AM1601014951), requesting a refund of sales tax in the amount of \$894.78.¹

4. On April 13, 2016, the Division issued to petitioner a Refund Claim Determination Notice (Form DTF-160.1), denying petitioner’s claim in full, as follows:

“When a lease, an option to renew a lease 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.

¹ The record does not provide detail as to petitioner’s calculation of the amount of refund sought. However, dividing the amount of tax paid at lease inception (\$1,938.54) by the 39 month term of the lease results in a “monthly sales tax amount” of \$49.71. Subtracting the amount of refund sought (\$894.78) from the amount of tax paid at lease inception (\$1,938.54) equals \$1,043.76. Dividing \$1,043.76 by the \$49.71 monthly amount equals 21 months. Presumably, then, petitioner’s calculation of the amount of refund sought represents the \$49.71 monthly sales tax amount multiplied by the 21 month term of the lease remaining at the time of registration of the vehicle in Arizona.

There is no provision in the New York State sales and use tax law to allow for a refund of sales tax paid on the lease of a vehicle where the lessee relocates to another state where they may also be required to pay tax.”

CONCLUSIONS OF LAW

A. Tax Law § 1105 imposes a tax on the sale of tangible personal property. The word “sale” is defined in Tax Law § 1101 (b) (5) as any transaction in which there is a transfer of title or possession or both of tangible personal property for a consideration. Among the transactions considered a “sale” are leases of tangible personal property (Tax Law § 1101 [b]; 20 NYCRR 527.15 [a]).

B. Prior to 1990, sales tax on leases was charged on each payment and collected when paid. However, Tax Law § 1111 (i), enacted in 1990, provided new rules for the collection of sales and use tax on certain leases of motor vehicles with a duration of one year or more, which stated that:

“all receipts due or consideration given or contracted to be given for such property under and for the entire period of such lease . . . shall be deemed to have been paid or given and shall be subject to tax, and any such tax due shall be collected, as of the date of first payment under such lease” (Tax Law § 1111 [i] [A]).

20 NYCRR 527.15 (a) explains that “[r]ather 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.”

C. 20 NYCRR 527.15 (e) provides, in relevant part, as follows:

“*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 (. . .) since, under section 1111 (i), such receipts are deemed to have been paid.”

D. Petitioner maintains that he should be allowed a partial refund of the tax that was properly imposed and collected at the time of the transfer of title and possession to the vehicle, per Tax Law §§ 1101 (b) (5) and 1111 (i) (A), at lease inception. His claim is based upon his relocation from New York to Arizona, accompanying removal of the vehicle from New York, and its subsequent registration in Arizona (with payment of Arizona tax), partway through the term of the lease (*see* Findings of Fact 2, 3, n. 1). Petitioner maintains that the Division's denial of his claim is patently unfair, and that there is no express provision ruling out a refund based on the "unused," i.e., post-relocation, New York portion of the lease upon which New York tax was paid.

E. The Tax Appeals Tribunal has specifically addressed and rejected the argument raised by petitioner on a number of prior occasions (*see Matter of Thomas Gallagher*, Tax Appeals Tribunal, October 23, 2003, citing *Matter of Torquato* Tax Appeals Tribunal, October 12, 2000; *Matter of Moerdler*, Tax Appeals Tribunal, April 26, 2001, *confirmed Matter of Moerdler v Tax Appeals Trib.*, 298 AD2d 778 [3d Dept 2001]; *Matter of Miehle*, Tax Appeals Tribunal, August 24, 2000). Petitioner has not raised any arguments or cited any authority that would warrant departure from the precedent established by the foregoing matters. Accordingly, petitioner's claim for refund was properly denied by the Division.

F. The petition of Irving Pollack is hereby denied, and the Division's denial of petitioner's claim for refund, dated April 13, 2016, is sustained.

DATED: Albany, New York
August 9, 2018

/s/ Dennis M. Galliher
ADMINISTRATIVE LAW JUDGE