

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition :
of :
ERIC ZIM : DETERMINATION
DTA NO. 827991
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 2016. :

Petitioner, Eric Zim, 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 2016.

On May 21, 2018, petitioner, appearing pro se, and on May 24, 2018, the Division of Taxation, appearing by Amanda Hiller, Esq. (Lori P. Antolick, Esq., of counsel), waived a hearing and submitted the matter for determination based on documents and briefs to be submitted by October 12, 2018, which date commenced the six-month period for issuance of this determination. After due consideration of the documents and briefs submitted, Donna M. Gardiner, 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 his assumption of a lease of a motor vehicle was erroneous.

FINDINGS OF FACT

1. On July 18, 2015, Joseph Stazzone leased a 2015 Lexus IS 250 for a period of 27 months. At the lease inception, Mr. Stazzone paid \$1,116.57 in sales tax on the motor vehicle to New York State. The financing entity, Toyota Financial Services/Lexus Financial Services,

confirmed that \$1,116.57 in sales tax was paid to New York State at the lease inception. The dealership from which Mr. Stazzone leased the vehicle collected and remitted \$1,116.57 in sales tax to New York State.

2. On May 17, 2016, petitioner assumed the lease of the 2015 Lexus from Mr. Stazzone. When petitioner assumed the lease, there were 18 months of payments remaining on the lease.

3. Petitioner paid \$698.63 in sales tax to New York State upon registering the vehicle with the Department of Motor Vehicles.

4. On July 21, 2016, petitioner submitted an Application for Refund or Credit of Sales or Use Tax Paid on a Casual Sale of Motor Vehicle (DTF-806) to the Division of Taxation (Division) for \$698.63 of sales tax that he paid upon the assumption of the lease. Petitioner argued that the sales tax on the entire lease of the vehicle was paid by Mr. Stazzone, when he originally leased the 2015 Lexus from the dealership.

5. On November 17, 2016, the Division issued to petitioner a refund claim determination notice that denied his refund in full.

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 states, in pertinent part, 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]).

The sales tax regulation at 20 NYCRR 527.15 (a) explained 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.”

There is no dispute that Mr. Stazzone paid the entire sales tax for his 27-month lease at the inception of his lease, in the amount of \$1,116.57 pursuant to Tax Law § 1111 (i) (A). The issue in this matter is whether petitioner is entitled to a refund for the amount of sales tax paid on the remaining 18-month lease payments when he assumed the lease.

C. When the original lease is subsequently assumed by petitioner, it constituted a separate taxable transaction. Therefore, the assumed lease for the 18 months is taxed on the entire 18-month lease payments pursuant to Tax Law § 1111 (i) (A) as set forth above. Petitioner’s argument that he was taxed twice is without merit. Although the original lessee paid the sales tax on the entire 27-month lease, petitioner is required under law to pay sales tax on the assumption of the lease for the remaining 18 payments. Petitioner has only paid sales tax on his subsequent taxable transaction.

D. In essence, petitioner is seeking a credit on behalf of sales taxes paid by the original lessee. The sales tax regulations, at 20 NYCRR 527.15 (e), specifically addresses this issue, in pertinent 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.”

Since the sales tax was deemed paid by the original lessee at the inception of the lease, he is not allowed a partial refund despite transferring possession of the remaining 18 months of the lease. For this same reason, petitioner is not allowed either a credit or a refund of the total amount paid by the original lessee (*see Matter of 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 2002]; *Matter of Miehle*, Tax Appeals Tribunal, August 24, 2000). Accordingly, petitioner’s claim for refund was properly denied.

E. The petition of Eric Zim is denied and the refund claim determination notice, dated November 17, 2016, is sustained.

DATED: Albany, New York
April 4, 2019

/s/ Donna M. Gardiner
ADMINISTRATIVE LAW JUDGE