STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
SHIV LAL	:	DETERMINATION DTA NO. 830093
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 Ending March 27, 2019.	:	

Petitioner, Shiv Lal, 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 ending March 27, 2019.

A videoconference hearing via Cisco Webex was held on June 9, 2022, with all briefs to be submitted by October 6, 2022, which date began the six-month period for issuance of this determination. Petitioner appeared by Jaikrishen Lal, petitioner's husband, and the Division of Taxation appeared by Amanda Hiller, Esq. (Brandon Batch, Esq., of counsel). After reviewing the entire record in connection with this matter, Nicholas A. Behuniak, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner has established that the Division of Taxation's denial of her claim for refund of a portion of sales tax paid upon her purchase of a new motor vehicle was erroneous.

FINDINGS OF FACT

1. On October 24, 2015, petitioner, Shiv Lal, purchased a new motor vehicle (vehicle 1) from an automotive dealership for $36,590.00, and paid $3,155.89 in New York State sales tax on that purchase.

2. On March 27, 2019, in a private sale, petitioner sold vehicle 1 for $24,500.00 to an unrelated third-party.

3. On April 2, 2019, petitioner purchased a new motor vehicle (vehicle 2) from an automotive dealership located in New York State for $38,023.26. The State sales tax rate on the applicable bill of sale for vehicle 2 was listed as 8.625%. Petitioner paid $3,279.51 ($38,023.26 x 8.625%) in New York State sales tax on the purchase of vehicle 2.

4. On or about April 8, 2019, petitioner submitted New York State form DTF-806 (application for a refund or credit of sales or use tax paid on a casual sale of motor vehicle) to the Division of Taxation (Division) seeking a refund of $2,113.12 in sales tax paid to the State. Although petitioner's refund request indicates that she sought a refund of sales tax from the October 24, 2015, purchase of vehicle 1 (***see*** finding of fact 1), in fact it appears petitioner seeks a refund of the State sales tax that relates to petitioner's March 27, 2019 sale of vehicle 1 and the April 2, 2019 purchase of vehicle 2 (i.e., $24,500.00 x 8.625% = $2,113.12).

5. The Division issued a refund claim determination notice (notice), dated June 24, 2019, denying petitioner's refund claim.

SUMMARY OF THE PARTIES' POSITIONS

6. Petitioner asserts that if she traded in vehicle 1 to the automobile dealership when she was buying vehicle 2, then the taxable sales price of vehicle 2 would be reduced by the trade-in value of vehicle 1 and she would only be subject to sales tax for the net purchase price of vehicle 2. Petitioner asserts that this principle should apply to her private sale of vehicle 1 and her separate purchase of vehicle 2; that is, the price of vehicle 2 that should be subject to sales tax should be reduced by the amount of the private third-party sales price of vehicle 1.

7. The Division asserts that the Tax Law does not support petitioner's desired application.

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 consideration. Tax Law § 1101 (4) defines a retail sale as "[a] sale of tangible personal property to any person for any purpose".

B. Tax Law § 1105 (a) imposes sales tax upon "the receipts from every retail sale of tangible personal property, except as otherwise provided" (***see Matter of Objet, LLC***, Tax Appeals Tribunal, February 28, 2022). Tax Law § 1101 (b) (3) defines the receipts subject to sales tax as:

> "(i) The amount of the sale price of any property and the charge for any service taxable under this article, including gas and gas service and electricity and electric service of whatever nature, valued in money, whether received in money or otherwise, including any amount for which credit is allowed by the vendor to the purchaser, without any deduction for expenses or early payment discounts and also including any charges by the vendor to the purchaser for shipping or delivery, and, with respect to gas and gas service and electricity and electric service, any charges by the vendor for transportation, transmission or distribution, regardless of whether such charges are separately stated in the written contract, if any, or on the bill rendered to such purchaser and regardless of whether such shipping or delivery or transportation, transmission, or distribution is provided by such vendor or a third party, *but excluding any credit for tangible personal property accepted in part payment and intended for resale*" (emphasis added).

C. Tangible personal property is defined as "[c]orporeal personal property of any nature" (Tax Law § 1101 [b] [6]). A motor vehicle is clearly tangible personal property. As relevant here and noted above, the "receipt" subject to sales tax is the "amount of the sale price of any property" but provides a very limited exclusion for "any credit for tangible personal property accepted in part payment and intended for resale" (Tax Law § 1101 [b] [3]). Tax Law § 1132 (c) (1) sets forth a presumption that all sales receipts for tangible personal property are subject to tax "until the contrary is established," and sets the burden of proving the contrary upon the vendor

(seller) or the customer (***see Wegmans Food Mkts, Inc. v Tax Appeals Trib. of the State of New York***, 33 NY3d 587 [2019]; ***see also*** 20 NYCRR 532.4 [a] [1]; [b] [1]).

In this case, petitioner did not trade in vehicle 1 as part of the consideration paid for vehicle 2 and, therefore, the transaction clearly does not fall under the exclusion from sales tax provided under Tax Law § 1101 (b) (3). Furthermore, the trade-in credit is excluded from the receipts subject to sales tax only if the traded-in asset is intended for resale substantially in the form in which it was purchased, and the party receiving the trade-in vehicle does not intend to make any use of the property, other than holding it in inventory, before it is sold (***see Matter of Mendoza Fur Dyeing Works, Inc. v Taylor***, 272 NY 275 [1936]). Intent is generally determined at the time of the transaction (***see Matter of D.J.H. Construction v Chu***, 145 AD2d 716 (3d Dept 1988). In this case, even if vehicle 1 had been traded in as consideration for the purchase of vehicle 2, petitioner has failed to establish that the subsequent buyer of vehicle 1 purchased such for resale. Accordingly, the Division's rejection of petitioner's refund claim was appropriate.[1]

Petitioner appears to claim that the Tax Law unfairly favors vehicle trade-ins to dealers because the value of the trade-in is not subject to sales tax whereas the private sale of a vehicle is subject to sales tax. However, as noted above, a trade-in to a dealer is only exempt from sales tax if the dealer is taking the trade-in for resale. In most instances, the dealer's subsequent resale of the trade-in would be subject to sales tax. Therefore, the Tax Law avoids multiple levels of

[1] In its post-hearing brief, the Division argues that the refund request was untimely, and that the claim was defective because it did not include a completed copy of form ST-176 (receipt for payment of sales tax) with its refund application. Although petitioner's refund application was worded such that it required some effort to determine what exact transaction petitioner sought a refund of sales tax for, the Division's timeliness claim is rejected as the refund request was filed within two years of when the relevant tax was paid (***see*** findings of fact 2, 3 and 4; Tax Law § 1139 [c]). Likewise, the claim that the request was defective because petitioner did not complete form ST-176 is rejected because there is no factual controversy regarding either the purchase or sale of vehicles 1 and 2. The conclusions found herein also render this argument moot.

taxation on the trade-in of assets that are expected to be subject to sales tax in the very near future (e.g., taxation of the trade-in vehicle rapidly followed by taxation of the resale of the same vehicle). As in other areas of sales taxation, the Tax Law applies sales tax to the final sale of the asset at issue to a user of the asset and not merely to a sale for resale (***see e.g. Matter of Objet, LLC***). Petitioner's argument that the Tax Law should operate differently is more appropriately suited for the legislature rather than the Division of Tax Appeals.

D. The petition of Shiv Lal is denied and the refund claim determination notice, dated June 24, 2019, is sustained.

DATED: Albany, New York
April 6, 2023

/s/ Nicholas A. Behuniak
ADMINISTRATIVE LAW JUDGE