STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **MARK TAUBMAN** 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 July 26, 2021.	:	DETERMINATION DTA NO. 850186

Petitioner, Mark Taubman, 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 July 26, 2021.

The Division of Taxation, by its representative, Amanda Hiller, Esq. (Aliza J. Chase, Esq., of counsel), brought a motion on December 12, 2023, seeking summary determination in the above-referenced matter pursuant to sections 3000.5 and 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal. Petitioner, appearing pro se, did not file a response by January 11, 2024, which date commenced the 90-day period for issuance of this determination. Based upon the motion papers and all pleadings and documents submitted in connection with this matter, Jennifer L. Baldwin, Administrative Law Judge, renders the following determination.

ISSUE

Whether petitioner has established that the Division of Taxation's denial of his claim for a refund of sales or use tax paid upon registering a leased motor vehicle in New York State and subsequently relocating to Pennsylvania prior to lease end was erroneous or improper.

FINDINGS OF FACT

1. In August 2020, while living in Pennsylvania, petitioner, Mark Taubman, co-leased a 2020 Dodge Ram truck for a term of 42 months from a Pennsylvania dealership. The lease agreement listed Delta Building Group LLC as the "lessee." The monthly base payment under the lease agreement was $404.99. "Sales/Use Tax" in the amount of $44.55 was added to the monthly base payment for a total monthly payment of $449.54.

2. In the summer of 2021, petitioner moved to New York. On July 26, 2021, petitioner paid sales tax in the amount of $972.00 upon registering the vehicle with the New York State Department of Motor Vehicles (DMV). The receipt from DMV shows a tax rate of 8 percent.

3. In early 2022, petitioner sold his home in New York and moved back to Pennsylvania.

4. On March 24, 2022, petitioner filed an application for refund or credit of sales or use tax paid on a casual sale of motor vehicle, form DTF-806 (refund claim), with the Division of Taxation (Division), requesting a refund of sales tax in the amount of $651.69. The refund claim explained, in part, that:

> "[t]his is a request for a refund of sales taxes paid for the remainder of a vehicle lease. In July 2021 I paid $972.00 for the remaining 21.81 [m]onths of the lease[.] At the DMV they allowed calculation of the remainder of the lease based on ONLY the taxes and not the total monthly payment. As such, we relocated back to [Pennsylvania] and now [are] requesting the unused balance paid as a refund."

Petitioner calculated the "unused balance paid" by subtracting the monthly sales/use tax due under the lease agreement during the time he lived in New York ($44.55 per month multiplied by 7.19 months in New York) from the total sales tax paid ($972.00) for a refund of sales tax in the amount of $651.69.

5. Included with petitioner's refund claim is a copy of a lease statement from Chrysler Capital, dated July 13, 2021. The statement is addressed to Delta Building Group LLC at

petitioner's New York address. The statement shows a monthly base payment of $404.99, sales/use tax of $44.55, and a sales/use tax rate of 11 percent. The statement also shows, as of July 13, 2021, there were 30 payments remaining under the lease agreement.[1]

6. On May 4, 2022, the Division issued a refund claim determination notice, audit case identification number X-190460449, denying petitioner's refund claim in full on the basis that:

> "[t]here 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."

7. Petitioner filed a timely petition in protest of the refund claim determination notice on June 16, 2022. In the petition, petitioner asserts that an employee at the Ulster County DMV office told him that, if he moved out of state, petitioner could request a refund of the tax paid on the unused months of the lease.

8. Petitioner did not file a response to the Division's motion.

CONCLUSIONS OF LAW

A. As noted, the Division brings a motion for summary determination under section 3000.9 (b) of the Rules of Practice and Procedure of the Tax Appeals Tribunal (Rules). A motion for summary determination "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]).

B. Section 3000.9 (c) of the Rules provides that a motion for summary determination is subject to the same provisions as a motion for summary judgment pursuant to CPLR 3212. "The proponent of a summary judgment motion must make a prima facie showing of entitlement to

[1] It is noted that the monthly base payment of $404.99 multiplied by the number of remaining payments due under the lease agreement as of July 13, 2021 (30) is $12,149.70. This amount multiplied by a tax rate of 8 percent is $971.98. On July 26, 2021, petitioner paid $972.00 in sales tax to DMV (***see*** finding of fact 2).

judgment as a matter of law, tendering sufficient evidence to eliminate any material issues of fact from the case" (***Winegrad v New York Univ. Med. Ctr.***, 64 NY2d 851, 853 [1985], citing ***Zuckerman v City of New York***, 49 NY2d 557, 562 [1980]). As summary judgment is the procedural equivalent of a trial, it should be denied if there is any doubt as to the existence of a triable issue or where the material issue of fact is "arguable" (***Glick & Dolleck v Tri-Pac Export Corp.***, 22 NY2d 439, 441 [1968]; ***Museums at Stony Brook v Village of Patchogue Fire Dept.***, 146 AD2d 572, 573 [2d Dept 1989]). 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 (***Gerard v Inglese***, 11 AD2d 381, 382 [2d Dept 1960]). "To defeat a motion for summary judgment, the opponent must . . . produce 'evidentiary proof in admissible form sufficient to require a trial of material questions of fact on which he rests his claim'" (***Whelan v GTE Sylvania***, 182 AD2d 446, 449 [1st Dept 1992], citing ***Zuckerman v City of New York***, 49 NY2d at 562).

C. Tax Law § 1105 (a) imposes a sales tax on the receipts from "every retail sale of tangible personal property." Tax Law § 1110 (a) imposes on all persons a compensating use tax for use in New York "of any tangible personal property purchased at retail," except to the extent that such property has already been or will be subject to sales tax under Tax Law § 1105. "Sale, selling or purchase" 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 and includes leases of tangible personal property (20 NYCRR 526.7 [a] [1]; [2]).

D. Prior to June 1, 1990, sales and use tax on a lease of a motor vehicle was computed on the amount of each lease payment and collected at the time each payment was made. Tax Law § 1111 (i), enacted in 1990, however, 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 . . . or as of the date of registration of such property with the commissioner of motor vehicles, whichever is earlier" (Tax Law § 1111 [i] [A]).

The Division's sales and use tax regulations explain 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" (20 NYCRR 527.15 [a]).

E. With respect to motor vehicles originally leased outside New York and later brought into New York, Tax Law § 1111 (i) provides, in pertinent part, that:

> "for purposes of such a lease . . . originally entered into outside this state, by a lessee . . . (2) who was a nonresident and subsequently becomes a resident and brings the property into this state for use here, any remaining receipts due or consideration to be given after such lessee brings such property into this state shall be subject to tax as if the lessee had entered into or exercised such lease . . . for the first time in this state" (Tax Law § 1111 [i] [A]).

The Division's sales and use tax regulations provide, in part:

> "Use tax. With respect to the lease of a motor vehicle . . . for a period of one year or more, where the lease is entered into outside New York State but the property is subsequently brought by the lessee into New York State, any remaining receipts due or consideration to be given attributable to the use of the property in New York will be subject to tax as if the lease had been entered into for the first time within New York State if . . . (ii) at the time of entering into the lease, the lessee was not a resident of New York State but subsequently becomes a resident and brings the property into the State for use in the State" (20 NYCRR 527.15 [d] [1]).

Example 2 under the above regulation (20 NYCRR 527.15 [d]) provides as follows:

> "Mr. B, an Ohio resident, enters into a 60-month lease of a motor vehicle with an Ohio lessor on June 1, 1990, with payments of $200 due on the first of each month. On November 15, 1990, Mr. B moves to Troy, New York, bringing the

vehicle with him. For sales and use tax purposes, Mr. B becomes a resident of Rensselaer County and New York State on November 15, 1990, and the New York tax applies to his leased vehicle once the vehicle enters the State. The tax due on the remaining lease payments is computed as follows:"

No. of whole months remaining on lease agreement not yet paid for	54
Monthly lease payment	$200
Total of remaining receipts due	$10,800.00
x tax rate (Rensselaer Co.)	.07
New York State and local use tax due	$756.00

F. Petitioner did not respond to the Division's motion. As such, petitioner is deemed to have conceded that no question of fact requiring a hearing exists (***see John William Costello Assoc. v Standard Metals Corp.***, 99 AD2d 227, 229 [1st Dept 1984], ***appeal dismissed*** 62 NY2d 942 [1984]; ***Kuehne & Nagel v Baiden***, 36 NY2d 539, 544 [1975]). Furthermore, as petitioner has presented no evidence to contest the facts alleged in the Division's motion papers, the facts alleged therein are deemed admitted (***see Whelan v GTE Sylvania***, 182 AD2d at 449, citing ***Kuehne & Nagel v Baiden***, 36 NY2d at 544).

G. Petitioner's monthly base payment under the lease agreement was $404.99. At the time he registered the vehicle at DMV he had 30 payments remaining on the lease. Multiplying the lease payment by the remaining number of payments yields $12,149.70. This amount multiplied by the tax rate (8 percent) is $971.98. On July 26, 2021, petitioner paid $972.00 in tax to DMV. Petitioner, thus, properly paid the total amount of tax due upon registering his leased motor vehicle in New York (***see*** Tax Law § 1111 [i] [A]; 20 NYCRR 527.15 [d]).

H. Petitioner does not dispute that he paid the proper amount of tax at the time he registered his leased vehicle in New York. Instead, petitioner claims that he is entitled to a

refund of a portion of that amount on the basis that he moved to Pennsylvania before all payments were made under the lease agreement. On this issue, the Division's sales and use tax regulations provide, in relevant part:

> "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 . . . since under section 1111 (i), such receipts are deemed to have been paid" (20 NYCRR 527.15 [e]).

The Tax Appeals Tribunal has previously determined that this regulation is "consistent with the meaning and intent of Tax Law § 1111 (i)" (***Matter of Greenfield***, Tax Appeals Tribunal, June 6, 2019, ***quoting Matter of Moerdler***, Tax Appeals Tribunal, April 26, 2001, ***confirmed*** 298 AD2d 778 [3d Dept 2002]) and has denied refunds with respect to early vehicle lease terminations on numerous occasions (***see Matter of Greenfield*** [lease assumed by third party]; ***Matter of Gallagher***, Tax Appeals Tribunal, October 23, 2003 [taxpayer moved to New Jersey and registered vehicle there nine months into lease period]; ***Matter of Moerdler*** [vehicle stolen four months 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 Miehle***, Tax Appeals Tribunal, August 24, 2000 [vehicle totaled in collision one month into lease period]). As there is no statutory or regulatory provision that allows for a refund of tax paid if a leased vehicle is later removed from the state, petitioner's refund claim was properly denied by the Division.

I. The Division of Taxation's motion for summary determination is granted, the petition of Mark Taubman is denied, and the refund claim determination notice, dated May 4, 2022, is sustained.

DATED: Albany, New York
April 4, 2024

/s/ Jennifer L. Baldwin
ADMINISTRATIVE LAW JUDGE