

OHIO BOARD OF TAX APPEALS

Craig A. Williams,)
)
 Appellant,) (SALES TAX)
)
 vs.) DECISION AND ORDER
)
 Thomas M. Zaino,)
 Tax Commissioner of Ohio,)
)
 Appellee.)

APPEARANCES:

- For the Appellant - Craig A. Williams, pro se
P.O. Box 10
Ostrander, Ohio 43061

- For the Appellee - Jim Petro
Attorney General of Ohio
Duane M. White
Assistant Attorney General
State Office Tower, 16th Floor
30 East Broad Street
Columbus, Ohio 43215

Entered February 25, 2005

Ms. Jackson, Ms. Margulies, and Mr. Eberhart concur.

This matter is before the Board of Tax Appeals upon a notice of appeal filed herein by the above-named appellant. Appellant appeals a final determination of the Tax Commissioner in which said official denied appellant's application for refund of sales and use tax in the amount of \$388.

The final determination of the Tax Commissioner reads in part as follows:

“This is the final determination of the Tax Commissioner on an application for refund, in the amount of \$388.00 of sales and use tax filed pursuant to R.C. 5739.07 and 5741.10. The claimant contends that the tax was illegally or erroneously collected and paid to the Treasurer of State. Upon initial review, the claim was disallowed. The claimant disagreed and requested reconsideration of the matter. A telephone hearing was held on this matter on November 7, 2003.

“The claimant seeks refund of tax paid upon the purchase of an automobile from Dan Tobin Buick. The claimant contends that discounts for employee status and for hail damage to the vehicle were taken at the time of sale and thus are not part of the tax base on the vehicle.

“The facts of the case indicate otherwise. The discounts were treated as rebates, as the sale took place on April 30, 2003, according to the sale paperwork provided by the claimant, and the discounts were provided in the form of a check issued May 7, 2003. Neither the statute nor case law supports the petitioner’s claim that this is a discount offered at the time of the sale. *Unishops of Clarkins v. Limbach* (July 5, 1984), BTA Case No. 83-D-707 involved a situation where employee discounts were not allowed at the time of sale, even though both parties knew that a discount was to be allowed. Rather, the employer recorded the transaction and at a later time issued a voucher for the discount. When it applied the discount to the sales tax, however, it acted incorrectly as the discount was allowed after the sale and, under R.C. 5739.01(I), was not deductible. The similarity of the situation here dictates that no refund may be made.

“Accordingly, the claim is denied.” S.T. at 1.

Appellant’s notice of appeal states in part, as follows:

“Reasons and basis for the appeal are as follows:

“1- Determination stated check issued on May 7, 2003 was for discounts for employment status and hail damage to the vehicle. This is simply not true. A ‘Delivery Report’ (due

bill) dated, (sic) April 30, 2003 was included with the filing. It says, at the time of the sale the customer is due a check for \$6,800. This is not to be treated as a rebate it was a condition of the sale. (sic)

“2- BTA Case No. 83-D-707 cited is not relevant to this case. The check for \$6,800 was not, or ever construed to be a situation of employee discounts. Facts submitted show this was not an employee discount.

“3- No ruling or determination was made on the issue brought by the Buyer regarding ‘issue of fraud in the transaction.’

4- Edward H. Lau, Esquire and I discussed the case on 11-6-03 and was (sic) primarily concerned about the check marked ‘Lease Return,’ where this was not the case.”

The matter was submitted to the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this board by the Tax Commissioner (“S.T.”), and the testimony and evidence submitted at the hearing before this board (“H.R.”).

First, the board notes that the findings of the Tax Commissioner are presumptively valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. In addition, the taxpayer has the affirmative duty to come forward and prove the Tax Commissioner’s findings are unreasonable, unlawful, or erroneous. *Manfredi Motor Transit Co. v. Limbach* (Aug. 17, 1990), BTA No. 1987-F-279, unreported. When no competent and probative evidence is presented by the appellant to show that the commissioner’s findings are incorrect, then the Board of Tax Appeals must affirm the Tax Commissioner’s findings. *Hatchadorian v. Lindley* (1986), 21 Ohio St.3d 66; *Averill v. Limbach* (Aug. 23, 1991), BTA No. 1990-C-1647, unreported.

The appellant testified regarding the circumstances of his purchase of an automobile from Dan Tobin Buick. He turned in his truck for service and informed the dealer that he needed a car with a rack for a good price. He wanted to get a loan for more than he paid for the car so that he could pay off the truck. The appellant testified that he was loaned \$6,800 more than the price of the car so that he could pay off his truck. This agreement was made at the time he bought the car. H.R. at 6-7.

The car was purchased under the General Motors Family Purchase Plan. The appellant qualified for the GM Family Discount Program through his brother-in-law who works for GM. He purchased the car for \$3,000 less than the sticker price. Then the dealer deducted \$2,040 for hail damage. The appellant requested a loan at zero percent interest to pay off his truck. The dealer agreed. This transaction took place at approximately 9:30 p.m. He took possession of the car that evening.

The next morning when the appellant returned to sign the paperwork, the price of the car included the amount needed to pay off his truck, and sales tax was charged on the entire amount. Subsequent to purchasing the car, the dealer issued the appellant a check in the amount of \$6,800. Appellant claims that the \$6,800 should not have been taxed as part of the purchase price.

R.C. 5739.01(H)(1) defines price as “*** the aggregate value in money of anything paid or delivered, or promised to be paid or delivered, in the complete performance of a retail sale, *without any deduction on account of* the property sold, cost of materials used, labor or service cost, interest, *discount paid or allowed after the sale is consummated*, or any other expense.” (Emphasis added.)

In the present case, the record supports the Tax Commissioner's determination that the refund claim must be denied. The purchase contract signed by the appellant is dated April 30, 2003. S.T. at 13. Although the appellant refers to the "Delivery Report" dated April 30, 2003, which references a check to the customer in the amount of \$6,800 to support his position, we find the opposite. The delivery report states that *any equipment or services to the vehicle* not provided at the time of delivery should be listed. S.T. at 14. Indeed mud flaps are referenced. The reference to the check does not change the price set forth in the contract, which the appellant testified that he voluntarily signed. Further, appellant's Ex. 1 refers to the GM incentive program relative to the price paid for the car, which is reflected in the contract. The side deal between Dan Tobin Buick and the appellant for the "loan" to pay off his truck is not a part of the contract. We also note that line 1 of Ex. 1 asking for the invoice price is left blank. The approval date on Ex. 1 is May 7, 2003. The check in the amount of \$6,800 is dated May 7, 2003. S.T. at 22. This clearly shows that the payment to the appellant was made only after he signed a document subsequent to the contract, which evidenced he qualified for the plan. See *Unishops of Clarkins v. Limbach* (July 5, 1984), BTA No. 1983-D-707, unreported. See, also, *Dawson v. Zaino* (Nov. 1, 2002), BTA No. 2002-N-784, unreported.

Giving consideration to the record, statutes, and case law, it is the decision and order of the Board of Tax Appeals that the final determination of the Tax Commissioner must be, and hereby is, affirmed.