

OHIO BOARD OF TAX APPEALS

Howard E. Hite,)	
)	CASE NO. 2005-A-288
Appellant,)	
)	(SALES TAX)
vs.)	
)	DECISION AND ORDER
William W. Wilkins, Tax Commissioner)	
of Ohio,)	
)	
Appellee.)	

APPEARANCES:

For the Appellant	-	Howard E. Hite, pro se 315 Teryl Drive Mount Vernon, Ohio 43050
For the Appellee	-	Jim Petro Attorney General of Ohio Russell Johnson Assistant Attorney General 30 East Broad Street, 16 th Floor Columbus, Ohio 43215

Entered September 16, 2005

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

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed by the above-named appellant from a final determination of the Tax Commissioner. In such determination, the commissioner denied appellant's application for refund of sales tax, filed pursuant to R.C. 5739.07, wherein appellant claimed that the tax in question was illegally or erroneously collected and paid to the Treasurer of State.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this board by the Tax Commissioner.

All parties waived their right to appear before the board and present evidence and/or testimony in support of their positions.

In reviewing appellant's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

The facts of the instant matter are set forth in the commissioner's final determination, which indicates:

"This is the final determination of the Tax Commissioner on an application for refund, in the amount of \$350.00 of sales tax filed pursuant to R.C. 5739.07. 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. The claimant had originally requested a hearing when the claim was initially denied, but then waived the request.

"The claimant purchased a new 2004 Toyota Camry from Graham Toyota. The claimant did not trade his old car in to Graham Toyota. Instead, the claimant sold his car to a third party for \$5,000. The claimant was charged tax on a purchase price of \$19,257.00. The claimant maintains that Graham Toyota did not reduce his tax base for the trade in

as required by law and therefore he is entitled to a refund. Pursuant to R.C. 5739.01(H)(2), the purchase price of a new vehicle can be reduced by the value of a trade in. However, in order for the claimant to reduce the tax base, he would actually have to trade his car in to the dealership on the purchase of his new car. In this case, the claimant sold the car to a third party. Therefore, the claimant is not entitled to a reduction of the purchase 'price' of a new vehicle as contemplated in R.C. 5739.01(H)(2). The objection is denied.

“The refund claim is denied.”

Prior to the issuance of the foregoing determination, appellant had indicated the following to the Tax Commissioner:

“I respectfully request a partial refund from the \$1347.99 tax legally paid you by Graham Toyota of Mansfield 4/01/04 which was for the full price of the Toyota and no reduction for a trade-in, since instead I sold it to a friend for more than Graham would pay – see the enclosed title copy which confirms its sale and the \$5,000.00 price. 7% of this is \$350.00, the refund I ask.

“This will result in the amount of tax from me to Ohio being equal to that had Graham met the \$5000.

“I believe this is as the law intends ***.”

Thereafter, in his notice of appeal to this board, Mr. Hite further clarified his position, indicating that he did not believe “Toyota was unlawful nor that their action was the reason for [his] claim.” He claimed that “the law intended to tax car buyers based on the increase of vehicle value ownership, regardless of who got the replaced car.” He went on to state that:

“Line 13 that says used car must go only to the new car dealer to avoid tax is discrimination preventing selling to high bidder (also restraint of trade). The law, as is, provides double tax to Ohio (as in my case). I paid Toyota

\$350.00 extra tax and 10 days later the tax on the replaced car was paid again to ODT by Chris Day on \$5,000 value. ODT have records of this too. The law as is, also discriminates because all used car buyers are taxed higher than (some) new car buyers, as above stated.”

The law in question, R.C. 5739.01(H)(2), provides:

“In the case of a sale of any new motor vehicle by a new motor vehicle dealer *** in which another motor vehicle is accepted by the dealer as part of the consideration received, ‘price’ has the same meaning as in division (H)(1) of this section, reduced by the credit afforded the consumer by the dealer for the motor vehicle received in trade.”

Mr. Hite did not trade in his previous vehicle to the new car dealer upon the purchase of his new car; instead he sold it, on his own, to a third party. For purposes of computing the sales tax due on the purchase of a new vehicle, there is no provision in the law for the adjustment of the price of the new vehicle when a trade-in vehicle is sold to a third party, and not the new car dealer. Accordingly, based upon the facts, appellant has not met his burden, and, as such, this board finds that the Tax Commissioner’s findings were reasonable and lawful. It is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

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