NO. CV 07 4012864

HVT, INC.	:	SUPERIOR COURT
	:	TAX SESSION
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN
PAMELA LAW, COMMISSIONER OF REVENUE SERVICES	:	MAY 27, 2008

MEMORANDUM OF DECISION ON CROSS-MOTIONS FOR SUMMARY JUDGMENT

The plaintiff, HVT, Inc. (HVT) and the defendant, the commissioner of revenue services (commissioner), have filed cross-motions for summary judgment claiming that there are no material facts in dispute and that pursuant to each party's interpretation of the law, each is entitled to judgment as a matter of law.

The issue in this tax appeal is whether motor vehicle registration renewal fees paid by lessees, on behalf of the lessor (the owner of the vehicles), directly to the department of motor vehicles (DMV) constitute gross receipts of the owner, thereby subjecting these fees to sales tax pursuant to General Statutes § 12-408 (1).[1]

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[1] General Statutes § 12-408 (1) provides, in relevant part, as follows: "For the privilege of making any sales, as defined in subdivision (2) of subsection (a) of section 12-407, at retail, in this state for a consideration, a tax is hereby imposed on all retailers at the rate of six per cent of the gross receipts of any retailer from the sale of all tangible personal property sold

HVT is a Delaware corporation and trustee of the Honda Lease Trust (Trust) which is a Delaware business trust. The Trust acquires and holds leases of Honda and Acura motor vehicles originated by various Connecticut Honda and Acura dealerships and their customers (lessees).

Acting under authority from the Trust, each Connecticut dealership registered with the DMV vehicles that were under lease in the name of the Trust.

When a motor vehicle registration is set to expire and requires renewal, § 14-15-2 (a)[2] of the Regulations of Connecticut State Agencies mandates that the DMV send the

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at retail . . . ." See Conn. Agencies Regs. § 12-426-25 (a) where "[t]he rental or leasing of tangible personal property for a consideration . . . is a sale and is subject to the tax. The lessor is a retailer who must register with the Commissioner of Revenue Services for a permit and collect the tax. The tax is imposed on the gross receipts from the rental or leasing of tangible personal property." See also subsection (c) therein that provides "'[g]ross receipts' shall include the total amount of payment, royalties or periodic payments received for the leasing or rental of tangible personal property" where "total amount" includes "all charges including but not limited to maintenance and service contracts, cancellation charges, installation service and transportation charges for delivery to the lessee, whether or not such amounts are separately stated."

[2] Section 14-15-2 (a) of the regulations provides, in relevant part, as follows: "Each person, firm or corporation engaged in the business of leasing motor vehicles for a term of one year or more, and licensed in accordance with section 14-15 of the Connecticut General Statutes shall be required to file with the Commissioner of Motor Vehicles a mailing address for the transmittal by the department of all applications for the renewal of the registrations of motor vehicles owned by such licensee . . . . [T]he department shall, in accordance with the provisions of section 14-22 of the Connecticut General Statutes, mail all such registration renewals to such mailing address designated by such licensee."

registration renewal application to the owner of the motor vehicle, in this instance, the Trust.[3]

The parties have stipulated that "[i]n order to maintain registration, the registration renewal application was signed on behalf of the Trust and forwarded to the Lessee who was leasing the motor vehicle, together with a request that the Lessee return the registration renewal application and remit the registration renewal fee payment to the DMV." (2/14/08 stipulation of facts, ¶ 34.)

As noted by the plaintiff, "[d]uring the Audit Period, each lessee was responsible under the Lease Agreement for renewing the registration of the motor vehicle with, and paying the registration fee to, DMV at the expiration of the initial registration period." (Plaintiff's 2/15/08 memorandum of law, p. 6, citing Exhibits 1-5 of Donald S. Francy's affidavit dated February 11, 2008, and Exhibits 10-31 of the 2/14/08 stipulation of facts.) The lease agreements specifically provide as follows:

> "REGISTRATION: I will register the Vehicle, as required at the state where the Vehicle is garaged and pay for all license, title and registration costs. If I move or change the Vehicle's garaging address, I will notify AHFC immediately and pay for all resulting taxes and title, registration or other fees."

(Plaintiff's 2/15/08 memorandum of law, p. 6.)

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[3] General Statutes § 14-12 (b) recites as follows: "To obtain a motor vehicle registration, except as provided in subsection (c) of this section, the *owner* shall file in the office of the commissioner an application signed by him and containing such information and proof of ownership as the commissioner may require." (Emphasis added).

The commissioner contends that the renewal registration fee paid by the lessee on behalf of the vehicle's owner (the Trust) was part of the total amount of payment or periodic payments received for the rental of the motor vehicle, and therefore, comes within the definition of "gross receipts" as defined in General Statutes § 12-407 (a) (9) (A).[4]

The plaintiff argues that the payments of the renewal registration fee to the DMV by a lessee does not constitute gross receipts of the plaintiff, as that term was interpreted by the Supreme Court in AirKaman, Inc. v. Groppo, 221 Conn. 751, 607 A.2d 410 (1992).

The commissioner relies on Geckle v. Dubno, 2 Conn. App. 303, 478 A.2d 263 (1984), for the proposition that a property tax reimbursement paid by a lessee of a motor vehicle on behalf of the lessor constituted a part of the rental payments included within the term "gross receipts" and was subject to the sales tax.

In Geckle, the lessor, a trust that leases motor vehicles to customers within the state of Connecticut, required the lessees "to pay a monthly rental fee and sales tax based on that amount. The lessees [were] also required to pay other costs incurred in connection with the use of the vehicles during the lease term including but not limited to all taxes . . . on or relating to the vehicles. It [was] the [lessor's] custom to pay ad valorem personal

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[4] General Statutes § 12-407 (a) (9) (A) provides as follows: "'Gross receipts' means the total amount of the sales price from retail sales of tangible personal property by a retailer . . . ."

property taxes directly to the various towns in which the vehicles are located and to bill the lessees for the precise amount of the taxes he pays." Id., 304.

The Geckle court stated that the only issue was "whether the Connecticut sales tax applies to a dollar-for-dollar reimbursement by a lessee to a lessor of ad valorem personal property taxes assessed against and paid by the lessor." Id., 303-04.

Of key importance to the Geckle court was the fact that the lessor was "responsible for listing the personal property with the tax assessor of each town in which the property was located, and for the payment of the taxes imposed thereon. Unlike the other out-of-pocket items for which the leases required reimbursement, such as parking and operating tickets, the [lessor] was statutorily obligated to pay the personal property taxes on the vehicles as an expense integral to his business. We consequently find that the payments by the lessees to the plaintiff under the reimbursement arrangement comprise part of the total amount of payment or periodic payments received for the rental of personal property and thus fall within the definitional language of the Sales and Use Tax Act. We are bound to conclude, therefore, that those payments are subject to the sales tax." (Citations omitted.) Id., 307-08.

Relying on the holding of the court in AirKaman, Inc. v. Groppo, supra, 221 Conn. 751, it is HVT's basic defense to the imposition of sales tax that the renewal registration fees are not part of gross receipts as defined in General Statutes § 12-407 (a) (9) (A).

In addition, HVT argues that the statutory requirement obligating the vehicle's owner to file the registration of the vehicle with the DMV is not an important element in deciding whether the lessee's payment of the motor vehicle renewal registration results in an imposition of a sales tax. The commissioner, on the other hand, argues that ownership of the vehicle is critical in determining an obligation to pay the sales tax.

In AirKaman, the principle issue was the taxability of "management services" as defined in General Statutes § 12-407 (2) (i) (J), and an amount received by AirKaman as reimbursement from Uniroyal for payroll expenses incurred by AirKaman in the performance of its contract to manage the Oxford Airport. Uniroyal had entered into a lease with the state of Connecticut to manage Oxford Airport as the fixed base operator. In turn, Uniroyal sublet its duties as the fixed base operator to AirKaman. AirKaman was to be compensated by a payment of $650 per week plus 40 percent of the net income generated as well as receiving full reimbursement for all costs incurred in connection with the fixed base operation of the airport. AirKaman billed Uniroyal for the weekly fee plus percentage of the net profits and also billed Uniroyal for payroll and payroll expenses it incurred. The Supreme Court agreed with the commissioner of revenue services that "management services" fees were subject to the sales tax but found the payments AirKaman received for payroll reimbursement were not taxable. See id., 754.

Applying the holding in AirKaman to the facts in the present action, HVT argues that a lessee's payment of the motor vehicle registration renewal fee was not part of the consideration for HVT leasing the motor vehicle. Instead, HVT argues that the lessee

made the payment in order to lawfully operate the vehicle. In this regard, HVT claims that the term "gross receipts" does not include a customer's reimbursement of a retailer's expenses because a transfer of expenses between parties cannot be regarded as a sale. HVT further argues that Geckle was implicitly overruled by AirKaman in holding that the reimbursement of expenses was not subject to a tax.

In contrast to the issue in AirKaman dealing with the taxability of "management services" fees and the reimbursement of "payroll expenses", the issue here is whether a motor vehicle lessee's payment of the renewal registration fee on behalf of the lessor is included within the gross receipts received by the lessor for the lease of the vehicle to the lessee.

In this present action, HVT likens the lessee's payment of the renewal registration fees to the payment of payroll expenses as the cost of operation by AirKaman. There is a significant difference, however, between the payment of renewal registration fees by a lessee on behalf of the lessor and the reimbursement of payroll expenses as incurred by AirKaman. The reimbursement to AirKaman for its payment of payroll expenses was not a payment that should have been made by Uniroyal; it was a payment that was incurred by AirKaman as part of its contract to operate the Oxford Airport as a fixed base operator. As such, the expenses incurred by AirKaman were not part of the contract price which benefitted Uniroyal. They were AirKaman's reimbursable costs of doing business.

In a sense, AirKaman and HVT had the same goal: each wanted a bottom line to their return. AirKaman wanted the full contract price from Uniroyal for its management

services without being watered down by expenses incurred in fulfilling its contract with Uniroyal. HVT wanted the full lease price for the rental of its motor vehicles and avoided the price being watered down by operational costs because these costs were passed on to lessees.

When considering the interplay between "sales price" and "gross receipts" in the context of whether motor vehicle registration renewal fees are subject to sales tax, it should be noted that "[t]he amount of sales tax that is required to be paid, however, is not based upon the sales price alone, but rather upon 'gross receipts.'" Plasticrete Block & Supply Corporation v. Commissioner, 216 Conn. 17, 21, 579 A.2d 20 (1990).

In a typical plaintiff trust and servicing agreement, the plaintiff defines sale price in terms of "gross capitalized cost" as follows: "with respect to any Lease and the related Leased Vehicle, the amount agreed to by the Lessee at the time of origination of such Lease as the value of the Leased Vehicle and any items that are capitalized during the term of such Lease, including acquisition fees, taxes, insurance, service agreements and any outstanding balance from a prior motor vehicle loan or lease contract." (2/14/08 stipulation, Exhibit 1.)

In determining the meaning of "gross receipts" regarding the leasing of motor vehicles, it is necessary to review Exhibits 10-31 containing copies of 22 representative leases entered into by Connecticut dealerships in September 2003. See 2/14/08 stipulation, ¶ 32.

For example, the representative lease agreement at Exhibit 10 states a "gross capitalized cost" of $29,910.00. This amount is described as "[t]he agreed upon value of the Vehicle ($29,360.00) and any items I pay for over the Lease Term (such as taxes, fees, service contracts, insurance, and any outstanding prior credit or lease balance)." The itemization of the gross capitalized cost lists an acquisition fee of $550 added to the $29,360.00 vehicle selling price, resulting in the gross capitalized cost of $29,910.00. However, the representative lease further recites that the "'Other Charges' and 'Total Payments' boxes . . . do not reflect amounts collected on behalf of third parties (such as property taxes, fines, fees, etc.) or charges imposed if I fail to abide by or modify the terms of this Lease. I am also responsible for these amounts and will refer to all other terms and conditions of this Lease for a description of charges due."

Also present on the representative lease is the language "Estimated Fees and Taxes During Lease Term" where the lessee agrees "to pay when due or reimburse the Lessor for all title/license/registration/official fees and taxes over the term of my Lease (including any extensions), whether paid at lease signing, included in my monthly payments or assessed otherwise. Lessor estimates this amount to be $1,777. The actual total of fees and taxes may be higher or lower, depending upon whether the garage address of the Vehicle changes, and on the tax rates in effect, or the value of the Vehicle at the time a fee or tax is assessed. Some taxes and fees may come due after the Lease terminates. I agree to pay any such amounts within **10** days of being invoiced. I will be responsible for any fines or penalties if I fail to pay the bill when due." (Emphasis in original.)

From an analysis of the lessee's obligations stated in the representative lease agreement, "gross receipts", as defined in § 12-407 (a) (9) (A), encompasses the gross capitalized cost of the vehicle represented by the $29,910.00 vehicle sale price and "all title/license/registration/official fees and taxes over the term of [the] Lease," which the lessor estimates is $1,777.

Under this analysis, it is clear that at the signing of the lease, each lessee has obligated himself or herself to pay the lessor the capitalized cost for the vehicle as well as any other charges that might become the responsibility of the lessor during the lease term. In effect, HVT, as the lessor, has guaranteed that it receives the full purchase price for the vehicle without it being watered down.

Although it is the commissioner's position that the lessor, as owner of the vehicle, has the obligation to register or to renew the registration of its vehicle and pay the fee for registration, the lease agreement itself, by contract, sets out the obligation of the parties and what is contained within the term of "gross receipts."

It is interesting to note that the commissioner, in her publication related to taxable charges of motor vehicle leases, states: "Charges made by a lessor to a lessee for reimbursement of the lessor's **title and registration** costs are taxable, because it is the lessor as owner of the vehicle, and not the lessee, that is legally responsible for titling and registering the vehicle. Although a motor vehicle owner's actual payment of title and registration fees to the Department of Motor Vehicles is not subject to sales and use taxes, when a lessor chooses to pass on the cost of these fees to a lessee, they become part of the

lease price for purposes of sales and use taxes, whether or not the lessor separately itemizes these fees." (Emphasis in original.) Department of Revenue Services Policy Statement No. 96 (10).

As previously set forth above, it is not the ownership of the vehicle, as claimed by the commissioner, nor the question of whether the motor vehicle renewal registration fee is an expense or not, as claimed by the plaintiff, it is the lease agreement itself that resolves the issue in this case. All of the leases between HVT, as lessor, and the customer as lessee, define the total amount of the sales price in terms of the gross capitalized cost plus any charges incurred for the use of the motor vehicle extended over the full term of the lease. As an example, Exhibit 11 contains the lease agreement for a 2003 Acura with the gross capitalized cost of $39,800.00. According to the terms of the lease, the lessee obligated himself or herself to pay over the life of the forty-eight month lease the following:

48 monthly payments of $586.85		$28,168.80
Initial registration fee		150.00
Acquisition fee		550.00
Tax on acquisition fee, registration fee & document fee		50.34
Document fee		139.00
	Total	$29,058.14

In addition to the disclosure of the total amount to be paid by the end of the lease, the lease also recites that the lessee will be responsible to pay the following items during the lease term:

Sales/use tax	$1,644.90

Title/license/registration/official fees	600.00
Personal property/other taxes	3,463.00
Total estimated fees & taxes	$5,707.90

From the lessee's standpoint at the lease signing, the lessee was informed that the gross cost to lease the Acura for 48 months would amount to $34,766.04 ($29,058.14 + $5,707.90). From HVT's standpoint as lessor, HVT received total lease payments of $28,168.80 and retained the residual value of the vehicle at $18,547.00.[5]

Similar to the holding in Geckle, this court concludes that the motor vehicle renewal registration fees that the lessees paid on behalf of the plaintiff, in accordance with the terms of the lease agreements, are part of the gross receipts attributable to the lease and are therefore subject to the sales tax.[6]

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[5] See Exhibit 11 for the residual calculation showing MSRP of the vehicle at $40,300.00, a residual adjustment and credit for excess mileage.

[6] Although not necessary for the resolution of the issue in this case, the parties have raised the issue of who has the burden of proof in this case and whether the burden of proof is the preponderance of the evidence or the higher standard of clear and convincing evidence. The standard for the burden of proof, when considering the clear and convincing standard, is that the clear and convincing standard lies somewhere between the preponderance of the evidence standard and the standard of beyond a reasonable doubt. See O'Brien v. Superior Ct., Jud. Dist. of Hartford, 105 Conn. App. 774, 784, 939 A.2d 1223 (2008).

Citing Leonard v. Commissioner of Revenue Services, 264 Conn. 286, 302, 823 A.2d 1184 (2003), the commissioner contends that it is the plaintiff's burden of disproving the validity of the assessment issued against it by clear and convincing evidence. See defendant's 3/26/08 reply, p. 19. As the plaintiff properly points out, since the parties have stipulated to the facts in this case and have filed cross-motions for summary judgment, the issue of the applicable standard of the burden of proof is not involved since burden of proof comes into play when there are issues of fact to be determined.

Based upon the foregoing, as to count one, the plaintiff's motion for summary judgment is denied and the defendant's motion for summary judgment is granted, with judgment to enter in favor of the defendant, without costs to either party.

Turning to count two which deals with the 15% penalty the commissioner imposed upon the plaintiff for failure to pay the sales tax, the court notes that the imposition of this penalty was not based upon negligence or intentional disregard for the tax laws of the state of Connecticut, but rather an interpretation of the law. As the issue in the present action was hotly contested, no penalty should be attached to the plaintiff. See, e.g., Sharper Image Corp. v. Miller, Superior Court, judicial district of Hartford, Docket No. CV 94 0536540 (Feb. 1, 1995, *Aronson, J.T.R.*), aff'd, 240 Conn. 531, 692 A.2d 774 (1997). "Where an honest difference of opinion exists between the taxpayer and the commissioner on an interpretation of a tax statute, we cannot say that the difference of opinion rises to the level of negligence or intentional disregard of the tax law." (Internal quotation marks omitted.) Sharper Image Corp. v. Miller, supra, Superior Court decision.

Therefore, as to count two, the plaintiff's motion for summary judgment is granted and the defendant's motion for summary judgment is denied, with judgment to enter in favor of the plaintiff setting aside the penalty, without costs to either party.

Arnold W. Aronson
Judge Trial Referee