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Revised 2/25/21; pg. 11 Additional citation added

ANDREW & LAURA BOTWIN, Plaintiffs, v. DIRECTOR, DIVISION OF TAXATION, Defendant.	TAX COURT OF NEW JERSEY DOCKET NO.: 013411-2019 **Approved for Publication In the New Jersey Tax Court Reports**

Decided: February 23, 2021

Andrew Botwin for plaintiffs (self-represented).

Miles Eckardt for defendant
(Gurbir S. Grewal, Attorney General of New Jersey, attorney).

BIANCO, J.T.C.

This shall serve as the court's formal opinion concerning a motion for summary judgment filed by defendant, Director, Division of Taxation (the "Director") under R. 4:46-2(c), and a subsequent cross-motion entered by plaintiffs, Andrew and Laura Botwin (the "Botwins").

The Botwins seek a New Jersey sales tax refund on a motor vehicle purchase. The Director denied the refund request, and the Botwins timely appealed the Director's final determination to the Tax Court. For the reasons described more fully below, the court concludes that the Director's position is in accord with the plain language of N.J.S.A. 54:32B-2(oo) and N.J.A.C. 18:24-7.4 and therefore, must be affirmed. Accordingly, the Director's motion for summary judgment is granted, and the Botwins' cross-motion is denied.

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PROCEDURAL HISTORY AND FACTS

The Botwins purchased a 2017 Nissan Titan ("Truck 1") from the Ramsey Nissan car dealership ("Car Dealer 1") on July 11, 2017. The purchase price of Truck 1 was $51,978.27 less the value of a trade-in vehicle, valued at $29,000, for a reduced sales price of $22,978.27. The Botwins paid sales tax in the amount of $1,600.32 on the reduced sales price. After complications with Truck 1 surfaced, the Botwins initiated a claim under the Lemon Law, and as a result of a settlement, returned Truck 1 for a full refund of the purchase price (i.e. $51,978.27). This amount included the cash value of the trade-in. The Botwins did not receive the trade-in back, nor was that an option sought under the Lemon Law claim. The settlement also included refund of the sales tax actually paid in the purchase (i.e. $1,600.32).

Following settlement of the Lemon Law claim and receipt of the refund therefrom, the Botwins purchased a 2017 Ford F-150 ("Truck 2") from Quality Automall ("Car Dealer 2") on November 29, 2017 for a purchase price of $67,849.06 plus tax. The Botwins then sought a refund from the Director of sales tax they would have saved based on the value of the trade-in from the prior transaction involving Truck 1. The Director denied the request. The Botwins timely appealed the denial to the Tax Court on October 21, 2019. The Director filed an Answer contesting the Complaint and moved for summary judgment, which plaintiffs opposed. The court subsequently heard oral argument during which the Botwins entered a cross-motion for summary judgment on the record without objection.

SUMMARY JUDGMENT

Summary judgment is appropriate where "the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no

genuine issue as to any material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). "An issue of fact is genuine only if, considering the burden of persuasion at trial, the evidence submitted by the parties on the motion, together with all legitimate inferences therefrom favoring the non-moving party, would require submission of the issue to the trier of fact." Ibid. In the absence of a genuine issue of material fact, the moving party is entitled to judgment as a matter of law. The standard for summary judgment, as established by our State Supreme Court, is:

> [W]hen deciding a motion for summary judgment under R. 4:46-2, the determination whether there exists a genuine issue with respect to a material fact challenged requires the motion judge to consider whether the competent evidential materials presented, when viewed in the light most favorable to the non-moving party in consideration of the applicable evidentiary standard, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party.
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> [Brill v. Guardian Life Ins. Co., 142 N.J. 520, 523 (1995).]

Here, the issue is whether the Botwins qualify for a reduced sales tax on the purchase of a motor vehicle, and more specifically, whether the sales tax benefit from their trade-in vehicle used to purchase Truck 1 can be used in the purchase of Truck 2 following settlement of a Lemon Law claim. The court finds that there is no genuine issue of material fact in the matter. Therefore, a decision in favor of summary judgment is appropriate.

APPLICABLE LAW

I. Presumption of Validity

The court's analysis is influenced by the presumptive validity of the Director's determinations. "Courts have recognized the Director's expertise in the highly specialized and technical area of taxation." Simon v. Dir., Div. of Taxation, 24 N.J. Tax 509, 521 (Tax 2009) (quoting Aetna Burglar & Fire Alarm Co. v. Dir., Div. of Taxation, 16 N.J. Tax 584, 589 (Tax

1997). Moreover, the New Jersey Supreme Court has directed the courts to accord "great respect" to the Director's application of tax statutes, "so long as it is not plainly unreasonable." Metromedia, Inc. v. Dir., Div. of Taxation, 97 N.J. 313, 327 (1984). However, "courts remain the final authority with respect to statutory construction and have no obligation to summarily approve of the Director's administrative interpretations." Gray v. Dir., Div. of Taxation, 28 N.J. Tax 28, 35 (Tax 2014).

II. Sales Tax on Motor Vehicles

The sales tax is imposed on the receipt from every retail sale of tangible personal property. N.J.S.A. 54:32B-3(a). Motor vehicles are tangible personal property, and transactions involving motor vehicles are subject to sales tax. N.J.S.A. 54:32B-2(v) (defining motor vehicles); N.J.A.C. 18:24-7.2. "'Sales price' is the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise." N.J.S.A. 54:32B-2(oo)(1). Sales price under the definition of the statute does not include: "[c]redit for any trade-in of property of the same kind accepted in part payment and intended for resale if the amount is separately stated on the invoice." N.J.S.A. 54:32B-2(oo)(2)(E); see also N.J.A.C. 18:24-1.2 (same).

N.J.A.C. 18:24-7.4 further defines how to compute the sales tax on the purchase price of a motor vehicle when a trade-in vehicle is involved. It applies to "any person engaged in the business of selling motor vehicles at retail." N.J.A.C. 18:24-7.4(a). The sales tax on a motor vehicle is "computed upon the full amount of the purchase price of a motor vehicle less any deduction for the trade-in of property of a like kind." N.J.A.C. 18:24-7.4(b). Accordingly, if one motor vehicle is used as a trade-in when purchasing another motor vehicle, the sales tax may be reduced. See

N.J.A.C. 18:24-36.2(i) and examples thereunder on deducting the trade-in amount from the sales price, and computing sales tax at the reduced sales price.

Furthermore, the regulation specifically provides that:

> A deduction from the purchase price, equal to the amount of a trade-in actually allowed on the purchase, will be permitted, provided that: 1) The purchase and trade-in occur at the same time. A separate or independent sale of a motor vehicle is not considered a trade-in even if the proceeds of the sale are immediately applied by the seller to a purchase of a motor vehicle from the buyer; 2) The trade-in consists of property of the same kind as that purchased and that is accepted as partial payment. "Property of the same kind" means any other motor vehicle ; 3) The trade-in is acquired by a dealer of motor vehicles who is registered as such with the Motor Vehicle Commission and the New Jersey Division of Taxation; and 4) The dealer obtains certificate of title of the traded in vehicle and retains a copy of it as part of the record of the sale transaction.
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> [N.J.A.C. 18:24-7.4(c)(1)-(4).]

This regulation limits the ability to deduct the purchase price of a motor vehicle with a trade-in and is the crux of the issue in this matter.

III. The New Jersey Lemon Law

The New Jersey Lemon Law is also intertwined with the critical issues of this case. The Lemon Law requires manufacturers to correct a defect in a motor vehicle within a specified time period. If the manufacturer fails to correct the defect within that period of time:

> [T]he manufacturer shall provide the consumer with a full refund of the purchase price of the original motor vehicle including any stated credit or allowance for the consumer's used motor vehicle . . . and any other charges or fees <u>including, but not limited to, sales tax</u>, license and registration fees, finance charges, reimbursement for towing and reimbursement for actual expenses incurred by the consumer for the rental of a motor vehicle equivalent to the consumer's motor vehicle and limited to the period during which the consumer's motor vehicle was out of service due to the nonconformity, less a reasonable allowance for vehicle use.
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> [N.J.SA. 56:12-32(a)(1) (emphasis added).]

Furthermore, the manufacturer is not precluded "from making an offer to replace the vehicle in lieu of a refund; except that the consumer may, in any case, reject an offer of replacement and demand a refund." N.J.S.A. 56:12-32(a)(3). The statute does not contemplate a trade-in ever being returned, and only provides a refund or a replacement vehicle from the manufacturer as a remedy to the consumer in the event of a Lemon Law claim.

ANALYSIS

The Director's main argument is that, under the plain language of the law, the Botwins did not trade-in a vehicle when they purchased Truck 2 and are therefore not entitled to a sales tax reduction under N.J.S.A. 54:32B-2(oo)(2)(E). The Botwins claim that they were the innocent victims of the purchase of a defective vehicle (i.e. Truck 1) and invoked their rights under the Lemon Law. They contend that the trade-in they used for the purchase of Truck 1 is part of the *same transaction* that resulted in the purchase of Truck 2. Accordingly, the Botwins argue, the trade-in credit that resulted in the lower sales tax obligation for the purchase of Truck 1 should be applied to the purchase of Truck 2.

This is a matter of first impression to the Tax Court. The court is satisfied that there are no material facts in dispute. Based on a plain reading of the statutes and regulation, granting summary judgment for the Director is appropriate.

I. N.J.S.A. 54:32B-2(oo)

"Construction of any statute necessarily begins with consideration of its plain language." Merin v. Maglaki, 126 N.J. 430, 434 (1992). "A statute should be interpreted in accordance with its plain meaning if it is clear and unambiguous on its face and admits of only one interpretation." Board of Educ. v. Neptune Twp. Educ. Ass'n, 144 N.J. 16, 25 (1996). "The duty of the Director, and this court, is to give meaning to the wording of the statute and, where the words used are

unambiguous, apply its plain meaning in the absence of a legislative intent to the contrary." Sutkowski v. Dir., Div. of Taxation, 312 N.J. Super. 465, 475 (App. Div.1998) (citation omitted).

N.J.S.A. 54:32B-2(oo)(2)(E) specifically excludes from the definition of "sales price," a "[c]redit for any trade-in of property of the same kind accepted in part payment and intended for resale if the amount is separately stated on the invoice, bill of sale, or similar document given to the purchaser." In other words, the sales tax is computed on the price after deducting trade-in allowances. The Director argues that because the Botwins did not trade-in any vehicle to purchase Truck 2, and because the Botwins purchased Truck 1 and Truck 2 from two different dealers, there was no trade-in involved in the second transaction. According to the Director, the lack of the existence of the trade-in in the second purchase strikes the use of N.J.S.A. 54:32B-2(oo)(2)(E) entirely and prohibits the Botwins from taking advantage of a trade-in credit under the statute.

The Botwins argue that the second purchase would not exist but for the first purchase. They argue this makes the transactions inseparable, and thereby, entitles the Botwins to the trade-in credit. This court is satisfied, however, that a plain reading of N.J.S.A. 54:32B-2(oo)(2)(E) combined with a plain reading of N.J.A.C. 18:24-7.4(c)(1) makes it clear that the Legislature intended for the trade-in credit to apply only when the trade-in and sale occur "at the same time," with the same dealer.

II. N.J.A.C. 18:24-7.4

N.J.A.C. 18:24-7.4 provides the clearest explanation why summary judgment in favor of the Director is appropriate. Under a traditional set of facts in which an individual purchases a motor vehicle and uses a trade-in to reduce the purchase price, the sales tax on that purchase will also be reduced. However, N.J.A.C. 18:24-7.4 is very specific that:

> 1) The purchase and trade-in occur at the same time . . . ; 2) The trade-in consists of property of the same kind as that purchased and

> that is accepted as partial payment . . . ; 3) The trade-in is acquired by a dealer of motor vehicles who is registered as such with the Motor Vehicle Commission and the New Jersey Division of Taxation; and 4) The dealer obtains certificate of title of the traded in vehicle and retains a copy of it as part of the record of the sale transaction.
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> [N.J.A.C. 18:24-7.4(c) (emphasis added).]

Here, the main issue is with the first part of this test: whether or not the purchase and the trade-in occurred *at the same time*.

The Director argues that the transactions for Truck 1 and Truck 2 should be viewed as entirely separate occurrences, and that each sale should be viewed in isolation when determining whether each sale is taxable or not. This argument is persuasive because the regulation clearly states that the purchase and the trade-in must occur *at the same time*, and not merely within the *same transaction*, for the trade-in credit to be available. See ibid. Assuming, *arguendo,* the Botwins' claim that their purchases of Truck 1 and Truck 2 were in fact part of the *same transaction*, those purchases clearly did not occur *at the same time* pursuant to N.J.A.C. 18:24-7.4(c)(1). This is a crucial distinction. If the requirement was only that the transactions needed to be the same, the Botwins would likely qualify for the trade-in credit. However, because the regulation specifically states that the trade-in and the purchase must occur at the "same time," the court find the Botwins' argument unconvincing. The facts are clear that the trade-in and the transaction for Truck 2 did not occur at the *same time*, even if they arguably were part of a related transaction.

After a thorough search for further interpretation of the regulation, this court is satisfied that the phrase "at the same time" as used in N.J.A.C. 18:24-7.4(c)(1), and the phrase "same transaction" as argued by the Botwins, are not interchangeable and do not have the same meaning. The phrase "at the same time" as contemplated within N.J.A.C. 18:24-7.4(c)(1) is unambiguous,

and therefore, this court must follow the plain language of the regulation. See e.g. Simon, 24 N.J. Tax at 526 ("The Legislature defined in unambiguous terms the circumstances in which a trade-in credit is applicable. The court lacks authority to depart from that language in order to apply the credit to transactions outside the statutorily defined parameters").

The Director's publication, uses similar language to N.J.A.C. 18:24-7.4, reinforcing the argument that the trade-in and purchase were meant to occur *at the same time*. When answering whether the purchaser of a motor vehicle is allowed a credit against the sales price for the value of a trade-in, the publication states:

> A trade-in credit is permitted only when: the vehicle the purchaser trades in is a motor vehicle as defined in the Sales and Use Tax Act; the purchaser trades in a motor vehicle to a registered motor vehicle dealership that takes the trade-in for resale; and the contract for purchase of the motor vehicle and the trade-in are executed at the same time.
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> [New Jersey Division of Taxation, New Jersey Tax Guide: Motor Vehicle Purchases/Leases, 10, available at https://www.nj.gov/treasury/taxation/documents/pdf/guides/New-Jersey-Consumer-Automotive-Tax-Guide.pdf (last visited Jan. 27, 2021) (emphasis added) (hereinafter the "Tax Guide").]

The Tax Guide intentionally uses the same language as the regulation. This consistency illustrates the fact that the measure for whether the purchaser is allowed a credit against the sales price for the value of a trade-in is the timing of the trade-in with the purchase of the motor vehicle, not just whether multiple transactions are the same or connected. Accordingly, the court finds the Director's decision that the Botwins do not qualify for a trade-in credit because they did not have a trade-in vehicle when they purchased Truck 2 is correct because the trade-in and purchase must occur at the same time. Furthermore, this court rejects the Botwins' contention that the transactions are intertwined and cannot be separated, because what matters for the purposes of

obtaining a credit against the sales price for the value of a trade-in is the contemporaneous timing of the trade-in with the purchase, not merely whether the transactions are the same or related.

III. Remedies Under the Lemon Law

Generally, there are two options provided as relief to consumers under the Lemon Law – a refund or a replacement vehicle.[1] In the event a manufacturer fails to correct a defect with a motor vehicle within the specified period of time, "the manufacturer shall provide the consumer with a full refund of the purchase price of the original motor vehicle . . . and any other charges or fees including, but not limited to, sales tax . . . ." N.J.S.A. 56:12-32(a)(1). However, the manufacturer is not precluded "from making an offer to replace the vehicle in lieu of a refund; except that the consumer may, in any case, reject an offer of replacement and demand a refund." N.J.S.A. 56:12-32(a)(3). No additional sales tax is due if the purchaser accepts the replacement motor vehicle in lieu of a cash refund from the manufacturer. "An exchange of this type is not considered to be a retail sale transaction under the Sales and Use Tax Act." New Jersey Division of Taxation, Tax Guide, 15, available at https://www.nj.gov/treasury/taxation/documents/pdf/guides/New-Jersey-Consumer-Automotive-Tax-Guide.pdf (last visited Jan. 27, 2021). However, "[i]f the purchaser receives a cash refund for the original vehicle and then purchases a new motor vehicle, sales tax is due on the sales price of the new motor vehicle because it is a separate transaction." Ibid.

The Director argues under the Lemon Law that the Botwins could have chosen a replacement vehicle as their remedy which would have enabled them to receive the full tax benefit attributable to the trade-in. For this conclusion, the Director relies on the concept that "although taxpayers are free to organize their affairs as they see fit, they remain bound by the tax consequence

[1] The court observes, however, that the relief provided under the Lemon Law does not "limit rights or remedies available to a consumer under any other law." N.J.S.A. 56:12-84(a).

of their business decisions." Estate of Warshaw v. Dir., Div. of Taxation, 27 N.J. Tax 287, 291 (App. Div. 2013) (quoting UPS v. Dir., Div. of Taxation, 430 N.J. Super. 1, 8 (App. Div. 2013)); see also Gen. Trading Co. v. Dir., Div. of Taxation, 83 N.J. 122, 136-37 (1980). Clearly the Botwins are bound by the tax consequences of their decisions. Under the Lemon Law they had the option to take a replacement vehicle from the dealer as their remedy in which case no additional sales tax would be due. New Jersey Division of Taxation, Tax Guide, 15, available at https://www.nj.gov/treasury/taxation/documents/pdf/guides/New-Jersey-Consumer-Automotive-Tax-Guide.pdf (last visited Jan. 27, 2021).

It is not surprising that the Botwins did not want a replacement vehicle from the same dealership and manufacturer that supplied them with a defective vehicle. They elected to accept the refund instead of a replacement vehicle and went to a different dealership which sold a different brand of motor vehicle where they purchased Truck 2, thus losing their trade-in credit. The Lemon Law does not contemplate that the return of a previous trade-in would ever be available to a consumer as relief, and that does not appear to have ever been an option under the present facts. Accordingly, the Botwins did not have a vehicle to trade-in when they purchased Truck 2. To accept the Botwins' proffer that the trade-in value on the purchase of Truck 1 should be transferred to the purchase of Truck 2 would presume that trade-in values are constant to every dealer, instead of specific to each dealer. No evidence is before the court to support such a proffer under the Lemon Law or tax law. The court is therefore bound to the plain language of the law and can come to no other conclusion but that the Botwins should be denied the trade-in credit.

IV. Double Taxation

The Botwins also argue that they were double taxed. The court finds this argument untenable. Double taxation "exists only when there is imposition of the same tax, during the same

taxing period, by the same sovereign, upon the same subject matter." Aetna Burglar & Fire Alarm Co., 16 N.J. Tax at 590. In this case, there were two separate, taxable events by law. See N.J.S.A. 54:32B-3(a). The Botwins were taxed for the purchase of Truck 1, subject to the trade-in credit, and then taxed on the purchase of Truck 2, for which no trade-in was made. The Botwins' refund received as a result of their Lemon Law claim constituted all expenses paid plus the cash value of the trade-in and any taxes paid. Therefore, there was no impermissible double taxation under N.J.S.A 54:32B-3.

CONCLUSION

For all of the foregoing reasons, the Director's motion for summary judgment is granted. The Botwins are not entitled to receive a credit for their trade-in vehicle to Car Dealer 1 under N.J.S.A. 54:32B-2(oo) for the purchase of Truck 2 from Car Dealer 2, as said purchase and the trade-in did not occur *at the same time* as contemplated by the law. The trade-in was used to purchase Truck 1, and when the Botwins accepted a refund as their relief under the Lemon Law as opposed to a replacement vehicle, they surrendered their trade-in credit. The court's order and final judgment granting the Director's motion shall be uploaded to eCourts.