BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
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GENERAL ELECTRIC CAPITAL CORPORATION, Appellant, vs. ARIZONA DEPARTMENT OF REVENUE, Appellee.	Docket No. 1854-01-S NOTICE OF DECISION: FINDINGS OF FACT AND CONCLUSIONS OF LAW

The State Board of Tax Appeals, having considered all evidence and arguments presented, and having taken the matter under advisement, finds and concludes as follows:

FINDINGS OF FACT

General Electric Capital Corporation ("Appellant") is a wholly owned subsidiary of General Electric Company. Appellant provided financial services including equipment management, specialized financing, specialty insurance, car leasing, home mortgages and credit cards. One of Appellant's primary services was financing consumer receivables (essentially, credit card accounts) purchased from retailers that sold products on a time sales basis. Appellant purchased the accounts on a *nonrecourse* basis, meaning the retailer is not liable to Appellant when a cardholder defaults on their payments. Appellant paid retailers 100% of the face amount for the receivables, which was the balance of the purchase price of merchandise plus all of the applicable State and local tax.

Some of the receivables became uncollectable after Appellant purchased them, and Appellant claimed bad debt deductions on their federal income tax returns. Appellant subsequently filed a claim for refund for the period February, 1990 to February, 1997 of Arizona transaction privilege tax paid by the retailers from which it purchased the receivables. The Arizona Department of Revenue (the "Department") denied the refund claim. After unsuccessfully protesting the refund denial, Appellant now timely appeals to this Board.

DISCUSSION

The issue before the Board is whether Appellant is entitled to the refund claimed.

As the assignee of a retailer on a nonrecourse basis, Appellant argues that it has all the rights, title and interest of the retailer in the credit card account. Accordingly, it argues that it has the right to a refund of the full amount of tax paid on the underlying transaction when the customer defaults.

This specific issue is apparently one of first impression for Arizona; however, other jurisdictions have addressed the issue. The Board is not bound by the decisions of other jurisdictions but notes that most have ruled against Appellant's position. Those cases which hold in favor of bad debt deductions in these circumstances and upon which Appellant relies are distinguishable.

The Arizona transaction privilege tax is a tax imposed on certain activities, including selling at retail, for the privilege of engaging in business in the State. A.R.S. § 42-5061.[1] Both of the cases that Appellant relies on involve *sales* tax, not *transaction privilege* tax. *See*, *Puget Sound Nat. Bank v. Dept of Rev.*, 868 P.2d 127 (Wash. 1994); *Chrylser Financial Co. L.L.C. v. Indiana Dep't of Rev.*, No. 49T10-9903-TA-21 (Indiana Tax Court).[2] Sales tax is imposed on the purchaser, collected by the retailer as agent of the state and held in trust until remitted to the state.

The Washington sales tax statutes governing in *Puget Sound* provide that "[a] seller is entitled to a credit or refund for sales taxes previously paid on debts which are deductible as worthless for federal income tax purposes." RCW 82.08.037. The definition of "seller" includes " every person . . . making sales at retail or retail sales to a buyer or consumer." RCW 82.08.010(2). "*Person*" is defined to include an "assignee." (Emphasis added.) RCW 82.04.030. Therefore, the bank buying account receivables from car dealers in *Puget Sound* qualifies as a "seller" entitled to a bad debt deduction of sales tax under the particular language of Washington's sales tax statutes. There is no language in Arizona's tax scheme under which Appellant could qualify as a retailer.

The Indiana Tax Court in *Chrysler* noted that at issue in that case was "whether the [car] [d]ealers could assign their rights to a sales tax deduction to Chrysler." Slip op at 4. It is unclear whether or not the agreements between the car dealers and Chrysler specifically addressed the sales tax deduction. What is clear is that the painstakingly detailed contracts here between retailers and Appellant did not

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[1] Appellant's financing business is not a business subject to transaction privilege tax.

[2] The sales tax imposed by Indiana is actually identified as a "gross receipts tax."

mention the assignment of a sales tax deduction. Further, the Indiana Tax Court granted Chrysler the sales tax deduction based on the principle that an "assignee stands in the shoes of the assignor."[3] An analysis of the facts in this case indicates that the principle does not apply.

The retailers who sold receivables to Appellant sold them for 100% of their face value and without recourse. By doing so, the retailers were made whole. They suffered no loss and could never experience a bad debt with respect to those receivables. Since the retailers had received full payment and would not have bad debts as to the accounts sold, they could not assign to Appellant a "right" to a nonexistent bad debt deduction.

The fact that Appellant does not step into the shoes of a retailer for transaction privilege tax purposes was substantiated by Appellant at the hearing before this Board. Appellant maintained that had the retailers from which it purchased the receivables underpaid their transaction privilege tax, Appellant would not be liable for any additional tax. Appellant argued that the agreements between it and the retailers governed and that it was liable only for 100% of the face value of the receivables. The Board likewise finds that Appellant is entitled under the agreements to attempt collection on 100% of the face values of those receivables.

Appellant may not go beyond the expressed terms of the agreements. Appellant may not claim a bad debt deduction for transaction privilege tax purposes that the retailers themselves could not claim. Therefore, the Board concludes that Appellant is not entitled to the refund claimed.

CONCLUSIONS OF LAW

Appellant is not entitled to the refund claimed.

ORDER

THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the Department is affirmed.

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[3] *Petit v. Petit*, 626 N.E.2d 444, 447 (Ind. 1993).

This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer, unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

DATED this 19th day of June, 2002.

STATE BOARD OF TAX APPEALS

Janice C. Washington, Chairperson

JCW:ALW

CERTIFIED

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