STATE OF NEW YORK

TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
DAIMLERCHRYSLER MOTORS CORPORATION	:	DECISION DTA NO. 819699
for Revision of a Determination or for Refund of Sales and Use Taxes under Articles 28 and 29 of the Tax Law for the Period January 1, 1996 through December 31, 2002.	:	

Petitioner DaimlerChrysler Motors Corporation, 1000 Chrysler Drive, Auburn Hills, Michigan 48326, filed an exception to the determination of the Administrative Law Judge issued on June 16, 2005. Petitioner appeared by The Rose Law Firm, PLLC (G. Christopher Gleason and Keith B. Rose, Esqs., of counsel). The Division of Taxation appeared by Mark F. Volk, Esq. (Jennifer Baldwin, Esq., of counsel).

Petitioner filed a brief in support of its exception and the Division of Taxation filed a brief in opposition. Petitioner filed a reply brief. Oral argument, at petitioner's request, was heard on August 2, 2006 in Troy, New York.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision. Commissioner Nesbitt took no part in the consideration of this decision.

ISSUE

Whether the Division of Taxation properly denied petitioner's claim for refund of sales and use taxes arising in connection with petitioner's provision of replacement vehicles to consumers pursuant to General Business Law § 198-a (also known as New York State's Lemon Law).

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

By letter dated February 5, 2002, DaimlerChrysler Motors Corporation ("petitioner") filed two applications for credit or refund of sales and use tax (forms AU-11) seeking a refund in the amount of $1,635.73 for the period January 1, 1996 through March 31, 1998 and a refund in the amount of $38,210.79 for the period April 1, 1998 through December 31, 2002. The total amount sought by the refund claims was $39,846.52. Each application contained the following explanation:

> DaimlerChrysler requests a refund of sales tax that it refunded to consumers on the repurchase of defective motor vehicles pursuant to the New York Lemon Law, General Business Law Section 198-a. Section 198-a(c)(2) states that lemon law refunds 'shall be accompanied by the proper application for credit or refund of state and local sales taxes as published by the department of taxation and finance and by a notice that the sales tax paid on the purchase price, lease price or portion thereof being refunded is refundable by the commissioner of taxation and finance . . . .' The enclosed schedule represents vehicles that were repurchased by DaimlerChrysler from the consumer, and that were defective and failed to meet the manufacturer's warranty. In each case, the entire amount of the purchase price and sales tax was refunded to the automobile dealership, which in turn refunded these amounts to the consumer by issuing the consumer a new replacement vehicle.

On June 14, 2002, the Division of Taxation ("Division") denied, in full, petitioner's claim for refund stating, in pertinent part, as follows:

> The person who is eligible to claim a refund or credit of New York State Sales and Use Tax is the purchaser of qualifying tangible personal property or services or the vendor of the tangible personal property or services, after reimbursement of the tax to its customer(s). Since you neither paid tax as a purchaser nor remitted tax as a vendor, your refund application is denied.

At the hearing held in this matter, the parties stipulated that the amount of sales tax paid to New York State in each of the 21 transactions referenced in petitioner's refund claim was as follows:

CONSUMER'S NAME	TAX ON ORIGINAL PURCHASE	TAX ON REPLACEMENT VEHICLE
Hershman	$928.73	$1,764.65
Vetrero	$2,024.70	$2,113.31
Casaburi	$2,595.29	$2,487.71
Raab	$1,782.33	$1,782.33
Lopez	-0-	-0-
Simon	$2,241.00	-0-
McAnany	$490.41	-0-
Murphy	$2,165.94	$2,218.57
Tripodi	$969.57	$1,332.45
Magee	$925.26	$925.26
Atena	$2,838.83	$2,793.94
Marco	$3,061.99	$2,702.79
Lisogorsky	$1,265.65	$1,265.65
DeMarco	$1,996.50	$2,240.29
Diaz	$2,603.62	$2,331.45

Beers	$2,385.11	$2,637.95
Constanzo	$2,215.50	$2,389.60
Ciufo	$2,398.55	$2,406.95
Bernard	$1,892.26	$2,133.24
Drayage	$1,420.98	$1,372.88
Davison	$1,015.00	$2,175.60
TOTAL	$37,217.22	$37,074.62

In its brief, the Division asserts that petitioner's original claim for refund was a request for refund of the sales tax paid on the purchases of the original motor vehicles which amounts were paid by the consumers and that it cannot now change the basis of its claim by seeking a refund of the sales tax paid on the replacement vehicles. A review of the petition (with attachments) reveals that petitioner's original claims for refund (***see***, above) apparently sought a refund of sales tax allegedly refunded by petitioner to consumers on its repurchase of defective motor vehicles pursuant to General Business Law § 198-a, also known as the New York State Lemon Law (hereinafter "Lemon Law"). The claims for refund stated that petitioner refunded to its franchised motor vehicle dealers the entire amount of the purchase price along with the sales tax imposed thereon and that the dealers then refunded these amounts to the consumer by issuing the consumer a new replacement vehicle. However, at the hearing and in its briefs submitted in connection therewith, petitioner asserts that it was charged and paid sales tax on the full purchase price of the vehicles which it purchased from its dealers on behalf of the consumers (who had purchased defective motor vehicles) and who had elected, under the Lemon Law, to receive a comparable replacement vehicle in lieu of a refund of the full purchase price.

Attached to the petition filed in this matter is a schedule of each of the customers whose transactions are at issue. This schedule lists, among other things, the sales tax paid on the original vehicles, the sales paid on the replacement vehicles and sales tax on usage. It appears that the original amount sought in the refund claim was the sales tax on the original purchases ($41,472.83) minus sales tax on usage ($1,626.31), or $39,846.52. Whether this was a calculation error is unclear. However, since the parties agreed at the hearing that the issue before the Division of Tax Appeals was whether petitioner is entitled to a refund of sales tax incurred as a result of providing replacement motor vehicles to consumers pursuant to General Business Law § 198-a and since this was the issue addressed by both parties in their briefs, this shall be the issue addressed herein. Accordingly, while there was a reduction for sales tax on usage in the original amount of the refund claimed, this amount shall be disregarded for purposes of this proceeding since it is unclear what this amount represents. Since the parties have agreed as to the amount of sales tax paid on the replacement vehicles, i.e., $37,074.62 (***see***, above), that shall be deemed the amount of the refund claim at issue.

Pursuant to the aforesaid stipulation, the parties agreed that the sales taxes on the original vehicle purchases were paid by the retail consumers listed thereon.

Petitioner is a motor vehicle manufacturer duly authorized to transact business in the State of New York and, as such, provided written limited warranties with respect to the vehicles which it manufactured. Petitioner manufactures the Dodge, Chrysler and Jeep brands.

Petitioner, as a motor vehicle franchisor, sells the vehicles which it manufactures to those who, by contract, are franchised motor vehicle dealers. The franchised motor vehicle dealers then sell the vehicles, at retail, to consumers. At the time of the retail sale, the retail purchaser of

the vehicle remits to the dealer the sales tax imposed upon the sale by the New York State Tax Law.

The Lemon Law provides a remedy for the purchasers/consumers of seriously defective new motor vehicles. The Lemon Law provides that if a motor vehicle manufacturer or its authorized dealer is unable to repair a serious defect in the motor vehicle after a reasonable opportunity to do so, the manufacturer must refund to the consumer the full purchase price of the vehicle which the consumer paid to the dealer in return for receiving possession of the defective vehicle. In the alternative, the consumer may elect to have the manufacturer replace the defective vehicle with a comparable motor vehicle. The Lemon Law requires that in the case of issuance of a refund to the consumer, the manufacturer must include a proper application for credit or refund of state and local sales taxes as published by the New York State Department of Taxation and Finance and a notice that the sales tax paid is refundable by the Commissioner of Taxation and Finance in accordance with Tax Law § 1139(f). The transactions at issue in this proceeding all involve instances where petitioner provided comparable or replacement vehicles to consumers in lieu of a refund of the purchase price.

For each of the 21 transactions at issue herein (***see***, above), petitioner submitted a sales invoice for the original vehicle purchased by the customer as well as the sales invoice for the replacement vehicle. In both instances, sales tax at the appropriate rate was charged thereon. In addition to the sales invoices for both the original and replacement vehicles and certain other documentation relating to the transactions, petitioner also submitted copies of checks from petitioner to the franchised dealer in payment for the replacement vehicles. The payment by petitioner to the franchised dealer included the sales tax computed at the appropriate rate.

Petitioner, as its manner of compliance with the provisions of the Lemon Law, "purchased" for each consumer a replacement vehicle from one of its franchised dealers and exchanged the replacement vehicle for the defective one. On each such purchase, petitioner was charged and paid sales tax on the full purchase price of the replacement vehicle.

As a part of petitioner's settlement with the consumers whose original vehicle was replaced by a new or replacement vehicle, each consumer was required to sign a Release Agreement which stated, in part, that such consumer would:

> agree to indemnify and hold the above parties harmless from all further claims, costs or expenses relating to this claim. I expressly agree that the only consideration I will receive is listed above and that DaimlerChrysler Corporation had made no other promises to me. I accept the consideration listed above as full satisfaction of this claim.

THE DETERMINATION OF THE ADMINISTRATIVE LAW JUDGE

At the outset, the Administrative Law Judge addressed the State's Lemon Law which provides, in relevant part, that if, within the time period provided by law, the manufacturer, its agents or dealers are unable, after a reasonable number of attempts, to repair any condition that substantially impairs the value of a new motor vehicle to the customer, the manufacturer, at the consumer's option, shall replace the vehicle with a comparable vehicle or the customer shall be permitted to return the vehicle to the manufacturer in return for the full purchase price (General Business Law § 198-a[c][1]).

The Administrative Law Judge noted that this proceeding relates only to transactions where the consumers elected to receive a replacement vehicle in lieu of a refund of the full purchase price of the original motor vehicle. The Administrative Law Judge found that Tax Law § 1139(f) only applies to "[w]here a consumer returns a motor vehicle to and receives a refund of

the full purchase price." The statute, the Administrative Law Judge observed, makes no provision for a refund of sales tax in cases where the consumer opts for a replacement vehicle and, thus, is inapplicable to the transactions at issue in this case.

Next, the Administrative Law Judge addressed Tax Law § 1139(a). Petitioner claimed that its paying the dealership the full price of the replacement vehicle *and the corresponding sales tax* was for the convenience of the consumer. The Administrative Law Judge rejected this argument stating that the statute does not require the consumer to purchase another vehicle and, therefore, the consumer is not obligated to pay sales tax on the replacement vehicle.

Petitioner argued, citing Vehicle and Traffic Law § 463(2)(y), that it, as manufacturer, is prohibited from selling or offering to sell or lease a motor vehicle to anyone other than a franchised motor vehicle dealer in the State. Accordingly, while the Lemon Law requires the manufacturer (petitioner), at the option of the consumer, to replace the defective motor vehicle with a comparable motor vehicle, the Lemon Law does not specify the method by which the manufacturer is to obtain the replacement vehicle. In the instant case, petitioner elected to purchase a replacement vehicle for each consumer from one of its franchised dealers.

The evidence shows that petitioner paid the dealers for the replacement vehicles and the sales tax due thereon. From this, the Administrative Law Judge found it apparent that sales tax was not imposed upon the replacement vehicles twice, i.e., both the consumer and petitioner did not pay the tax. The Administrative Law Judge observed that had the tax in fact been charged to the consumer, it is the consumer who would by law be entitled to a refund of the tax under Tax Law § 1139(a). The Administrative Law Judge found that petitioner did not erroneously pay sales tax when it purchased the replacement vehicle; Tax Law § 1101(b)(4) defines a "retail

sale" as "[a] sale of tangible personal property to any person for any purpose." While the statute provides certain exceptions thereto, none is applicable in this matter.

The Administrative Law Judge found that petitioner's contention that it *erroneously* paid full sales tax on the vehicles it purchased to consummate the like-kind exchange is without merit. The Lemon Law did not require petitioner to *purchase* the replacement vehicles, however, the Administrative Law Judge found that by its choosing to comply with the statute in this manner, the purchases were subject to tax. Thus, since tax was properly due on each of these purchases, tax was not *erroneously* paid as petitioner claimed.

Petitioner next contended that each of the 21 transactions at issue is an "exchange" for purposes of the Lemon Law and that even if the exchanges were deemed to be sales, the amount of tax due would be the difference between the value of the two vehicles because petitioner received the returned vehicle solely for purposes of resale. Noting the Division's sales tax regulation at 20 NYCRR 534.6(b)(2), the Administrative Law Judge rejected this argument as also without merit.

Finally, petitioner contended that to deny it "vendor" status yet require it to perform the replacement obligations of a vendor without the corresponding benefits violates the Equal Protection Clauses of the New York State and the United States Constitutions. Petitioner asserts that the Tax Law impermissibly discriminates against manufacturers such as DaimlerChrysler by denying a manufacturer who is obligated to perform a like-kind exchange under the Lemon Law the same treatment as an automobile dealer who is obligated to perform like-kind exchanges under General Business Law § 198-b.

The Administrative Law Judge observed that while the Division of Tax Appeals lacks jurisdiction to determine the constitutionality of a statute on its face, it does have jurisdiction to determine the constitutionality of a statute as applied (***Matter of David Hazan, Inc.***, Tax Appeals Tribunal, April 21, 1988, ***confirmed*** 152 AD2d 765, 543 NYS2d 545, ***affd*** 75 NY2d 989, 557 NYS2d 306). Since petitioner claims that the statutes are unconstitutional as applied to automobile manufacturers, the Administrative Law Judge found that the Division of Tax Appeals has jurisdiction.

General Business Law § 198-b relates to the sale or lease of *used* motor vehicles and contains similar[1] Lemon Law provisions with respect to used motor vehicles. The Administrative Law Judge observed that neither the Equal Protection Clauses of the United States Constitution nor the New York State Constitution forbid classifications, but simply prohibit governmental decision makers from treating differently persons who are in all relevant respects alike.

The Administrative Law Judge pointed out that the two statutes at issue, General Business Law §§ 198-a and 198-b, make no mention of payment of sales tax when the manufacturer or dealer, at the option of the consumer, provides a replacement vehicle to the consumer in lieu of a full refund. In the case of a refund on the purchase of a used motor vehicle from a dealer, General Business Law § 198-b(c)(1) requires the dealer to refund the purchase price, plus all sales and use taxes. The Administrative Law Judge found there is a rational basis for the distinction between the two statutes, since it was the terms of the dealer's warranty which the vehicle failed to meet, and it was the dealer who collected the tax from the consumer upon the

[1]Similar to General Business Law § 198-a with respect to replacement of new vehicles.

purchase of the used motor vehicle. In the case of the used motor vehicle, the manufacturer is not a party to the transaction in any way. The Administrative Law Judge noted that the warranty which is the subject of the statute is between the dealer and the consumer (***see***, General Business Law § 198-b[a][4]; [b]). Where the consumer opts for a replacement vehicle, the provisions of 20 NYCRR 534.6(b)(2) would apply and the only sales tax due would be owed by the consumer if, and only if, the cost of the replacement vehicle exceeded the cost of the original vehicle, and then the tax would be due only upon the difference in the cost between the two.

In the case of a new vehicle, the Administrative Law Judge observed, the Lemon Law requires the manufacturer to provide the refund (or the replacement vehicle), since it is the terms of the manufacturer's warranty which the defective vehicle has failed to meet. However, unlike the used vehicle purchase, the party liable under the warranty in a new vehicle purchase (the manufacturer) did not collect the sales tax initially and, therefore, should not have to refund the tax. Thus, the Administrative Law Judge found no unconstitutional classification or treatment of motor vehicle manufacturers in the application of the Lemon Law and the Tax Law.

ARGUMENTS ON EXCEPTION

Petitioner, on exception, argues as it did below that:

a. It erroneously was charged and erroneously paid sales tax on replacement vehicles which it provided to its customers pursuant to the Lemon Law;

b. To the extent that Tax Law § 1139(f) is read as giving a consumer who receives a "comparable replacement vehicle" pursuant to the Lemon Law the right to a refund of sales tax paid by the consumer on the sale of the defective vehicle, such right was equitably assigned by

each consumer to petitioner. Therefore, it is petitioner, not the individual consumer, who is entitled to a refund of sales tax;

c. The purchase of a motor vehicle followed by an exchange under the Lemon Law constitutes only a single taxable sale. Since petitioner paid the full amount of sales tax on the replacement vehicle rather than simply the tax based upon the difference in value between the original and the replacement vehicles, petitioner overpaid the tax and is entitled to a refund thereon;

d. To deny petitioner "vendor" status yet require it to perform the replacement obligations of a vendor without its benefits violates the Equal Protection Clauses of the New York and United States Constitutions. To the extent that the Tax Law is construed as denying a manufacturer who is obligated to perform a like-kind exchange under General Business Law § 198-a the same treatment as an automobile dealer who is obligated to perform like-kind exchanges under General Business Law § 198-b, it impermissibly discriminates; and

e. Petitioner claims that the determination of the Administrative Law Judge constitutes an unconstitutional taking of petitioner's property without just compensation in violation of Article 1, § 7 of New York's Constitution.

The Division argues, in response that:

a. Tax Law § 1139(f) does not apply to the transactions at issue; it applies only to situations where the consumer elects a refund of the purchase price;

b. Tax Law § 1139(a) does not afford petitioner the relief that it requests since it is neither a customer nor a vendor;

c. Sales tax is due on the sales of both the original vehicle when purchased by the customer and the replacement vehicles, if purchased by petitioner;

d. Since Tax Law § 1139(f) does not provide a right to a refund of sales tax to a consumer who elects to receive a comparable replacement vehicle in lieu of a refund, so petitioner is not entitled to a refund of sales tax as an assignee. The consumer has nothing to assign and the releases executed by the consumers are silent with regard to any intent to assign refund rights to petitioner; and

e. The Tax Law provisions at issue do not violate the Due Process or Equal Protection Clauses of the New York State or United States Constitutions.

OPINION

We first address petitioner's claim that the determination of the Administrative Law Judge erroneously requires petitioner "to remit sales tax on transactions that have already been taxed once" (Petitioner's brief in support, p. 14). Here, the record reflects that the consumer purchased the original vehicle from the automobile dealer and paid tax and later petitioner purchased a replacement vehicle from the dealer and paid sales tax again. Petitioner argues this is double taxation and constitutes a taking without just compensation, in violation of Article 1, § 7 of the New York State Constitution. This argument is without merit. The record shows that there are two separate transactions involved in each instance here. In the first transaction, we have the consumer and the car dealer. In the second transaction, we have the manufacturer and the consumer. Here, we have two separate transactions and each transaction involves separate parties and each are subject to tax. Accordingly, this argument is not supported by the record.

Petitioner, a manufacturer, also claims that its equal protection rights have been violated because it is being treated differently under the subject statutes than are automobile dealers.

The Fourteenth Amendment to the United States Constitution provides that no state shall "deny to any person within its jurisdiction the equal protection of the laws." Similarly, New York's Constitution provides that "no person shall be denied the equal protection of the laws of this state or any subdivision thereof" (N.Y. Constitution, Art. I, § 11). Petitioner urges that the Lemon Law creates an irrational distinction between motor vehicle manufacturers and motor vehicle dealers, which is not reasonably related to a legitimate state purpose and contrary to the legislative intent of the Tax Law as it is applied to the Lemon Law.

Petitioner noted that a classification is impermissible when people who are alike in all relevant respects are treated differently. Petitioner argued, citing ***Nordlinger v. Hahn*** (505 US 1, 120 L Ed 2d 1) and ***Board of Education v. Nyquist*** (94 Misc 2d 466, 408 NYS2d 606) that neither the Equal Protection Clause of the State nor Federal Constitutions forbid classifications, but simply prohibit governmental decision makers from treating differently persons *who are in all relevant respects alike*. In other words, the government is required to treat similarly situated persons similarly. In this regard, we do not view a manufacturer of automobiles as similarly situated to an automobile dealer (***cf., Matter of Barclays Group (USA) & Affiliates***, Tax Appeals Tribunal, January 27, 2005). The Administrative Law Judge's analysis of petitioner's constitutional claim clearly shows that to the extent petitioner, a manufacturer, is treated differently from a car dealer by the subject statutes, it is because it is different. Where a car dealer has direct contact with retail consumers, collects and remits sales tax arising from car sales, etc., petitioner does not. The fact that the subject statutes treat a manufacturer of

automobiles differently from an automobile dealer is merely a reasonable recognition of those differences. Petitioner has not alleged or proven that it is being treated differently than other similarly situated manufacturers of automobiles. Petitioner has not shown that the subject statutes are unreasonable or arbitrary in their classifications or application. For these reasons, we do not find petitioner's equal protection argument persuasive. Petitioner has not shown any unconstitutional classification or treatment of motor vehicle manufacturers in the application of the Lemon Law or the Tax Law.

To the extent that petitioner has suffered a loss here, it appears to be a self inflicted wound. The Lemon Law simply requires that "the manufacturer, at the option of the consumer, shall replace the motor vehicle with a comparable motor vehicle" (General Business Law § 198-a[c][1]). The manner or form of providing the replacement vehicle is left to the particular manufacturer. Petitioner elected to purchase the vehicles from its franchised dealers rather than simply to provide comparable vehicles to the consumers by means of a direct gift, e.g., from inventory with or without the assistance of its franchised dealers. Petitioner voluntarily chose to structure the transactions herein in this manner. "A taxpayer is bound by the form it invokes when structuring its transactions" (***Matter of Landmark Dining Sys. v. Tax Appeals Tribunal***, 224 AD2d 785, 637 NYS2d 524, 525; ***see also***: ***Matter of Arbor Hill Assocs.***, Tax Appeals Tribunal, June 26, 1997). Since it has been determined that the form chosen by petitioner, i.e., the purchase of the cars from its franchised dealers, falls within the statute and is taxable as a separate retail sale, petitioner is bound by that choice. "The choice of form did not rest with the tax authorities but with the taxpayer. If he unfortunately chose a form which was taxable instead of an equally available form which was non-taxable, he must bear the consequences" (***Sverdlow***

v. Bates, 283 App Div 487, 129 NYS2d 88, 91-92; ***see also***, ***Matter of North Shore Cadillac v. Tax Appeals Tribunal***, 13 AD3d 994, 787 NYS2d 463, ***lv denied*** 5 NY3d 704, 801 NYS2d 1). In ***Matter of Tops, Inc***. (Tax Appeals Tribunal, November 22, 1989), we held, citing ***Matter of 107 Delaware Assocs. v. State Tax Commn.*** (99 AD2d 29, 472 NYS2d 467, ***revd on dissent below*** 64 NY2d 935, 488 NYS2d 634), that for purposes of sales tax liability a taxpayer is bound by the form it has chosen.[2] Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated therein.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of DaimlerChrysler Motors Corporation is denied;

2. The determination of the Administrative Law Judge is affirmed;

3. The petition of DaimlerChrysler Motors Corporation is denied; and

4. The letter dated June 14, 2002 denying petitioner's claim for refund is sustained.

DATED: Troy, New York
February 1, 2007

/s/Carroll R. Jenkins
Carroll R. Jenkins
Commissioner

/s/Robert J. McDermott
Robert J. McDermott
Commissioner

[2]To the extent that the law does not now make allowance for a refund of sales tax to a manufacturer who elects to supply a replacement vehicle to a customer by way of first purchasing it from an automobile dealer, it is a matter for the Legislature to address.