

STATE OF CALIFORNIA  
BOARD OF EQUALIZATION

**490.0512.300**

APPEALS SECTION

In the Matter of the Petition  
for Redetermination Under the  
Sales and Use Tax Law of:

DECISION AND RECOMMENDATION

X-----

Petitioner

The Appeals conference in the above-referenced matter was held by Senior Staff Counsel Elizabeth I. Abreu on April 5, 1995 in X-----, California.

Appearing for Claimant: X-----

Appearing for the Sales  
and Use Tax Department: X-----

Type of Business: X-----

Subject of Claim

Claimant seeks a refund of tax for the period April 1, 1992 through June 30, 1992 in the amount of \$1,029.93, which represents the amount of tax reimbursement which petitioner contends was refunded to a consumer under the California Lemon Laws.

Claimant's Contentions

1. Claimant is entitled to a refund of tax reimbursement that it refunded to a consumer under the California Lemon Law.
2. Claimant relied upon oral and written information that it received from the Board.

## Summary

On May 23, 1992, X----- purchased a new 1992 X----- from X----- a X----- dealer. X----- purchased the vehicle for her personal and family. X-----, the claimant, was the distributor of the vehicle and had sold it to the dealer for resale to X-----.<sup>1</sup>

X----- paid \$14,495.93 for the vehicle, which amount consisted of the following:

Cash Price	\$12,260.00
Accessories	189.00
Document Preparation	35.00
Sales Tax	1,029.93
Service Contract	695.00
License	287.00

Ms. X----- and X----- filed a complaint against the dealer and claimant on April 28, 1993, in the Superior Court for the County of X-----.<sup>2</sup> In the complaint, X----- alleged that she began experiencing numerous problems with the vehicle and that the vehicle was defective. The complaint further alleged: (1) breach of implied warranty under the Song Beverly Act, Civil Code § 1792; (2) breach of express warranty under the Song-Beverly Act Lemon Law, Civil Code §§ 1793.2(d) and 1794; (3) breach of obligation imposed by the Song Beverly Act; and (4) against the dealer only--negligence in repair.

The parties entered into a settlement agreement (Exhibit A) on or about August 16, 1993, which provided that X----- and X----- would release any interest that they had in the vehicle and agreed to deliver the vehicle with the current California registration to claimant at the dealer's business and to execute and deliver all such documents as were necessary to effectuate a transfer of clear title. They also agreed to dismiss their complaint and to release claimant and the dealer from any claims, demands, actions, etc. asserted in the lawsuit or otherwise relating to the vehicle. In return, claimant agreed to pay X----- and their attorneys \$17,750.00.

Section 5 of the settlement agreement provided that the agreement was a compromise settlement of a disputed claim and that the execution of the agreement and payment of the consideration would not be deemed to be, nor construed as, an admission of the existence of a nonconformity, an admission of an inability to service or repair the vehicle, an admission of a breach of warranty, or an admission of any other liability to X----- or X----- . Section 6 provided that all parties shall bear their

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<sup>1</sup> X----- filed the claim for reimbursement, but the claim file was opened under X----- name and X----- permit number.

<sup>2</sup> Neither the audit staff nor petitioner know who X----- was. Possibly he was X----- husband or a lienholder.

own costs and attorneys fees. At the Appeals conference, however, claimant asserted that, in fact, claimant did pay X----- attorney's fees.

A check in the amount of \$17,750 dated September 8, 1993, was issued by a New York law firm, payable to "X----- and their attorney's." X----- and X----- attorney filed a request for dismissal on September 14, 1993. X----- executed a Notice of Sale or Transfer of a Vehicle, which transferred the vehicle to claimant. The odometer reading shown on the notice was 34,281 miles.

According to a letter dated October 6, 1994, from claimant's attorney to the Board, the settlement amount should be apportioned as follows:

Full purchase price	
with tax and license	\$14,495.00
(less offset for damage)	(495.00)
DMV second year	260.00
Attorneys' fees and costs	<u>3,240.00</u>
Total:	\$17,500.00

In a memorandum dated April 26, 1995, the audit staff stated that they had contacted the Department of Motor Vehicles (DMV) for verification of "branding" of the title. According to DMV, the title had not been "branded." The vehicle was resold to an out-of-state dealer in X-----, Oregon.

Claimant contends that it did meet the "branding" requirement, i.e., the repair, disclosure, and warranty requirements of Civil Code section 1793.22(f) (1). Claimant states that it made the required repairs (Exhibit B ) and then assigned the vehicle to X----- for auction to independent dealers. At the time it assigned the vehicle, claimant submitted to X----- several disclosure documents (Exhibit C), including a document entitled "Repurchased Vehicle Disclosure," which included a Limited New Vehicle Warranty for 12 months or 12,000 miles, whichever occurred first. The copies of the disclosure documents submitted by claimant contain references to the VIN number of the vehicle in issue but do not contain signatures of the buyer at the auction.

Claimant filed a claim for refund dated September 24, 1993, asserting that pursuant to the provisions of Civil Code section 1793.25, which is part of the California Lemon Law, it was entitled to a refund for its return of the sales tax reimbursement to Ms. X----- in the amount of \$1,029.93.

The audit staff agrees that the sales tax on the original sale of the vehicle was paid by the dealer (as required by the Lemon Law) and that a timely claim for refund and all required documents have been received by the Board. The audit staff also agrees that claimant was a manufacturer as that term is used in the Lemon Law and will accept the above figures to establish the allocation of the settlement. However, the refund was

denied based upon opinions the audit staff received from the Board's Sales and Use Tax Legal Section. These opinions concluded that restitution is not made pursuant to the Lemon Law as required by civil Code section 1793.25 if a settlement agreement between the parties contains a "no admissions" term such as the one contained in the settlement agreement in this case. The audit staff also contends that the refund should be denied because the disclosure and warranty requirements of Section 1793.22(f) (1) were not met.

Claimant stated that nothing in the Board's original rules stated that a settlement agreement had to be executed in a certain manner in order for a manufacturer to receive a refund. In late 1993 claimant sent in claims for refund under the Lemon Law, which were routinely processed and allowed by the Board. However, the Board began denying refunds for these types of transactions at the beginning of July, 1994 because of the "no admissions" terms in the settlement agreements.

Claimant contends that it tried to follow the rules of the Board and that if it had known of the Board's "no admissions" rule, claimant would have drafted its settlements differently. Claimant's attorney stated that in August, 1993, he orally requested copies of any rules and regulations adopted pursuant to Civil Code section 1793.25. In response, he was sent Operations Memo No. 907. (Exhibit D). He also asserts that he had many telephone conversations with the staff. Neither the Operations Memo, nor the staff, indicated that a claim would be denied if a settlement agreement included a "no admissions" term. Because the Board had previously allowed claimant's claims for refund, claimant feels that the rules have changed in the middle of the game.

Claimant contends that there is no basis in law for denying a refund because of a "no admissions" term. Claimant investigates a claim after a lawsuit is brought and attempts to settle it as expeditiously as possible. All that is required under the Lemon Law is restitution, not penalties which were being sought by the plaintiff. The purpose of the "no admissions" term was to protect claimant from penalties and incidental, consequential, and compensatory damages sought by plaintiff.

Finally, claimant contends that the disclosure, repair, and warranty provisions of Civil Code section 1793.22(f) (1) are not requirements for a refund, but that, in any event, claimant complied with this section.

The audit staff stated that it allowed the prior claims because they were not aware of the legal staff's view regarding settlement agreements at the time. The legal staff had written opinions on the Lemon Law, but the Audit Review and Refund Section was not sent copies of the opinions. The prior refunds were erroneous refunds, but the audit staff decided not to make erroneous refund assessments.

### Analysis and Conclusions

Civil Code section 1793.2 (d) (2), sometimes referred to as the Lemon Law, provides that if a manufacturer or its representative is unable to service or repair a new motor vehicle to conform to the applicable express warranties after a reasonable number

of attempts, the manufacturer shall either promptly replace the new motor vehicle or make restitution. In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any collateral charges such as sales tax. (Civ. Code § 1793.2 (d) (2) (B) .) Certain reductions may be made for use of the vehicle by the buyer. (Civ. Code § 1793.2(d) (2) (C).) Civil Code section 1794 (e) (1) provides a buyer the right to recover damages, attorney's fees, and penalties for violations of section 1793.2 (d) (2).

Civil Code section 1793.22(f) (1) prohibits a person from selling, leasing, or transferring a vehicle returned under the Lemon Law unless (1) the nature of the nonconformity experienced by the original buyer or lessee is clearly and conspicuously disclosed to the prospective buyer, lessee, or transferee; (2) the nonconformity is corrected; and (3) the manufacturer warrants in writing for a period of one year the motor vehicle is free of that nonconformity.

Civil Code section 1793.25(a) reads:

"(a) Notwithstanding Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code, the State Board of Equalization shall reimburse the manufacturer of a new motor vehicle for an amount equal to the sales tax which the manufacturer includes in making restitution to the buyer pursuant to subparagraph (B) of paragraph (2) of subdivision (d) of Section 1793.2, when satisfactory proof is provided that the retailer of the motor vehicle for which the manufacturer is making restitution has reported and paid the sales tax on the gross receipts from the sale of that motor vehicle. The State Board of Equalization may adopt rules and regulations to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section."

The procedures for claiming the reimbursement are the same as the procedures for claiming a refund of taxes. (Civ. Code § 1793.25(c).)

We do not agree with the audit staff that a manufacturer is never entitled to a refund under Civil Code section 1793.25(a) if its settlement agreement contains a "no admissions" term. If we can infer from other facts that the settlement was made pursuant to a Lemon Law claim or action, then the claim should be allowed if all other requirements of the restitution provisions of section 1793.2 (d) (2) (B) are met.

Nor do we agree that a manufacturer may never receive a refund under section 1793.25(a) if the manufacturer fails to comply with the repair, disclosure, or warranty requirements of civil Code section 1793.22(f) (1). Section 1793.25(a) only requires that the manufacturer make restitution under section 1793.2 (d) (2) (B). There is no requirement that the manufacturer comply with section 1793.22 (f) (1).

In this case we conclude that there are sufficient facts to support a finding that the payment made by claimant to X----- was restitution under section 1793.2(d) (2) (B). First, the amount of the payment was sufficient to meet the requirements of this

statute. Second, X----- complaint alleged that she was entitled to restitution under this section and listed all of her attempts to have the vehicle repaired. Finally, after the settlement, claimant had the vehicle repaired and gave a new limited warranty. Although we note that the disclosure statements submitted by claimant did not contain the signature of the dealer who purchased the vehicle at auction, it appears that claimant at least attempted to comply with the disclosure requirements of section 1793.22 (f) (1).<sup>3</sup>

Since we had concluded that claimant is entitled to a refund under section 1793.25, we need not address its issue regarding inadequate information from the Board.

#### RECOMMENDATION

Grant the claim.

Elizabeth I. Abreu  
Senior Staff Counsel

Date: October 13, 1995

Exhibits A - D

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<sup>3</sup> Our analysis only applies to cases involving restitution. We may consider more stringent rules where a vehicle is replaced because of the potential for abuse in replacement transactions.