

Amend Civil Code Section 1793.25 to allow the Board of Equalization (BOE) to reimburse a manufacturer of a new motor vehicle for the use tax the manufacturer refunds to a buyer or lessee when the new motor vehicle is reacquired by the manufacturer pursuant to California's "Lemon Law."

Source: Legal Department

Existing Law

Under existing law, the Song-Beverly Consumer Warranty Act (beginning with Civil Code section 1790) contains provisions that provide warranty protections to purchasers of both new and used consumer goods. This Act includes provisions that allow compensation to California consumers of defective new motor vehicles – provisions colloquially referred to as California's "Lemon Law." These Civil Code provisions specify that if a manufacturer or its representative in this state, such as an authorized dealer, is unable to service or repair a new motor vehicle to meet the terms of an express written warranty after a reasonable number of repair attempts, the manufacturer is required promptly to replace the vehicle or make restitution to the buyer.

Under Section 1793.25 of the Civil Code, in the case of restitution, a manufacturer that has complied with these "Lemon Law" provisions is required to make restitution in an amount equal to the actual price paid or payable by the buyer, including, among other charges, *sales tax*, 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. This section further requires the BOE to reimburse the manufacturer for an amount equal to the *sales tax* included in the restitution. The "Lemon Law" is silent with respect to restitution involving *use tax*.

Under existing Sales and Use Tax Law, a lease of tangible personal property, including a lease of a motor vehicle, is, with exceptions not relevant here, a "sale" and a "purchase" for purposes of that law. For a lease that is a "sale" and a "purchase," the tax is measured by the amount of rental paid. However, the applicable tax is generally *use tax*, not *sales tax*, and the lessor is required to collect the use tax from the lessee at the time the amount of rent is paid.

The cases of *Chrysler LLC v. State Board of Equalization* (Super. Ct. San Francisco County, 2008, No. CGC-07-459702) and *Mercedes Benz USA LLC v. State Board of Equalization* (Super. Ct. San Francisco County, 2008, No. CGC 08-471310) involved the leases of new motor vehicles on which use tax had been paid by the lessees. The vehicles were reacquired by the lessor/manufacturer pursuant to California's "Lemon Law," and the lessor/ manufacturer refunded the use tax to the lessees that they had paid. The lessor/manufacturer then sought reimbursement from the BOE for the use tax it refunded. The BOE denied the claim because Section 1793.25 only authorized the BOE to reimburse the manufacturer for *sales tax* refunded to buyers in "Lemon Law" situations. On December 9, 2008, Judge Patrick J. Mahoney ruled in favor of Chrysler and determined that there was no reason that use taxes should be treated differently from sales taxes in these

situations. The judge ordered the BOE to reimburse the lessor/manufacturee for the use taxes it refunded to lessees of new motor vehicles it repurchased or replaced pursuant to California's "Lemon Law."

This Proposal

In light of this ruling, this proposal would amend California's "Lemon Law" within the Civil Code to authorize the BOE to reimburse a manufacturer of a new motor vehicle for either sales tax or use tax that the manufacturer refunds the buyer or lessee of a new motor vehicle when it provides a replacement vehicle or includes in making restitution to the buyer or lessee pursuant to these Civil Code provisions. This proposal would make other nonsubstantive and conforming changes to these Civil Code provisions and would also add an uncodified provision that specifies that these changes are declaratory of existing law.

Section 1793.2 of the Civil Code is amended to read:

1793.2 (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) (A) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of those warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of the warranties.

(B) As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair work. However, the rates fixed by those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, do not preclude a good faith discount that is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph may not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to Section 1793.5.

(3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(b) Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with

the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility until return of the goods to the buyer shall be at the manufacturer's expense.

(d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

(A) In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount

of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(B) 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 charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales or use tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

(D) Pursuant to Section 1795.4, a buyer of a new motor vehicle shall also include a lessee of a new motor vehicle.

(e) (1) If the goods cannot practicably be serviced or repaired by the manufacturer or its representative to conform to the applicable express warranties because of the method of installation or because the goods have become so affixed to real property as to become a part thereof, the manufacturer shall either replace and install the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, including installation costs, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) With respect to claims arising out of deficiencies in the construction of a new residential dwelling, paragraph (1) shall not apply to either of the following:

(A) A product that is not a manufactured product, as defined in subdivision (g) of Section 896.

(B) A claim against a person or entity that is not the manufacturer that originally made the express warranty for that manufactured product.

Section 1793.25 of the Civil Code is amended to read:

1793.25. (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 or use tax which the manufacturer pays to or for the buyer or lessee when providing a replacement vehicle pursuant to subparagraph (A) of paragraph (2) of subdivision (d) of Section 1793.2 or includes in making restitution to the buyer or lessee 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; or the buyer of the motor vehicle has paid the use tax on the sales price for the storage, use, or other consumption of that motor vehicle in this state; or the lessee of the motor vehicle has paid the use tax on the rentals payable from the lease of that motor vehicle, and the manufacturer provides satisfactory proof that it has complied with subdivision (c) of Section 1793.23. The State Board of Equalization may adopt rules and regulations to carry out, facilitate compliance with, or prevent circumvention or evasion of, this section.

(b) Nothing in this section shall in any way change the application of the sales and use tax to the gross receipts, the rentals payable, and the sales price from the sale, the lease, and the storage, use, or other consumption, in this state ~~of~~ tangible personal property pursuant to Part 1 (commencing with Section 6001) of Division 2 of the Revenue and Taxation Code.

(c) The manufacturer's claim for reimbursement and the ~~board's~~ State Board of Equalization's approval or denial of the claim shall be subject to the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code, except Sections ~~6902.1, 6903, 6907,~~ and 6908 thereof, insofar as those provisions are not inconsistent with this section.

Section 3.

These amendments are declaratory of existing law.