STATE OF WISCONSIN

TAX APPEALS COMMISSION

DAIMLERCHRYSLER SERVICES NORTH AMERICA LLC
27777 Franklin Road
Southfield, MI 48034,

Petitioner,

DOCKET NO. 00-S-169

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE
P.O. Box 8907
Madison, WI 53708-8907,

Respondent.

JENNIFER E. NASHOLD, COMMISSIONER:

This matter comes before the Commission on cross-motions for summary judgment filed by petitioner, DaimlerChrysler Services North America LLC ("Chrysler"), and respondent, Wisconsin Department of Revenue ("Department"). Chrysler is represented by Attorneys David E. Otero and Peter O. Larsen, of Akerman Senterfitt. The Department is represented by Attorney Robert C. Stellick, Jr.[1]

Based upon the submissions of the parties and the record in this matter, the Commission hereby finds, concludes, and orders, as follows:

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[1] Pursuant to the agreement between Chrysler and the Department, Chrysler's case has been selected as the lead case to proceed before the Commission, and the following cases have been stayed pending the outcome of the Commission's decision in Chrysler's case: (1) Arcadia Financial, Ltd. v. Wisconsin Department of Revenue, Docket No. 00-S-170; (2) Cygnet Financial Services, Inc. v. Wisconsin Department of Revenue, Docket No. 00-S-

JURISDICTIONAL FACTS

1. On February 18, 2000, Chrysler filed a claim for refund or a "refund or deduction"[2] ("claim") in the amount of $363,210.65, claiming that under Wis. Stat. § 77.51 Chrysler was a "retailer" who previously paid the sales tax on accounts which were found worthless and charged off for income tax purposes. The claim was for the years 1997, 1998, and 1999 ("period under review").

2. By letter dated April 18, 2000, the Department denied Chrysler's claim, indicating that only a dealer who has previously paid the sales or use tax on the account may claim a bad debt deduction. Chrysler filed a petition for redetermination, which the Department denied by notice dated July 28, 2000.

3. On September 5, 2000, Chrysler filed a petition for review with the Commission, challenging the Department's denial of its petition for redetermination.

UNDISPUTED MATERIAL FACTS[3]

4. During the period under review, Chrysler held Wisconsin seller's permits which were issued by the Department.

5. At the time of each of the sales that are part of Chrysler's claim, purchasers of motor vehicles entered into retail installment contracts with various Wisconsin motor vehicle dealerships ("the dealers"). Pursuant to the contracts, the purchasers agreed to pay the amount financed under the contracts at a stated interest rate over time. The amount financed under each contract consisted of the purchase

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171; (3) Bank of America Corporation v. Wisconsin Department of Revenue, Docket No. 00-S-172; and (4) Greenpoint Credit, LLC v. Wisconsin Department of Revenue, Docket No. 00-S-173.

price of the motor vehicle and the sales tax that was due on the vehicle.

6. At or shortly after the time of sales of the motor vehicles to the purchasers, the dealers sold or assigned the installment contracts to Chrysler by executing the assignment provision on the reverse side of each of the contracts.[4] In exchange for the assignment, Chrysler paid the dealers the full amount financed under the contracts, including the sales tax, which was a specific line item on the contracts.

7. After Chrysler purchased the contracts from the dealers, the vehicle purchasers owed money to Chrysler as a creditor.

8. Chrysler not only financed the sales of motor vehicles to purchasers, but also sold and leased motor vehicles in Wisconsin.

9. Chrysler regularly paid sales tax to the State of Wisconsin and filed sales tax returns with the Department on a monthly basis.

10. Chrysler made no claim for deduction on its sales and use tax returns for any of the claimed bad debt on the contracts at issue here.

11. Chrysler remitted no payments of Wisconsin sales or use tax to the Department with regard to the contracts at issue here. Rather, Chrysler paid the sales

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[2] The parties dispute whether the claim was simply for a refund, as claimed by the Department, or for a "refund or deduction," as argued by Chrysler. The Commission does not determine this issue.

[3] Unless noted otherwise, all facts pertain to the period under review, 1997 through 1999.

[4] The parties dispute whether there is a material distinction in the law between an *assignment* of the installment contract to Chrysler and the *sale* of the contract to Chrysler. Because the Commission concludes that any difference between the two concepts is immaterial to the disposition of this case, it refers to the transaction between the dealers and Chrysler as an assignment, the term preferred by Chrysler. The parties also dispute whether the assignment of the contracts occurred contemporaneously to the contracts between the dealers and sellers, as argued by Chrysler, or shortly thereafter, as asserted by the Department. This issue is also immaterial to the Commission's ruling.

tax to the dealers when Chrysler was assigned the contracts, which tax the dealers then remitted to the Department.

12. All of the contracts that are the subject of Chrysler's claim went into payment default. Shortly after each default, Chrysler attempted to repossess and did repossess many of the vehicles. In the instances where Chrysler repossessed a motor vehicle, Chrysler generally sold the vehicle at auction to third parties. Chrysler applied the proceeds from the auction sales to reduce the balances due from each of the purchasers.

13. Following repossession and sale of the vehicles at auction, an unpaid balance remained on each of the contracts that comprise Chrysler's claim. Thereafter, Chrysler determined that such debts were worthless and uncollectible bad debts, and charged off each of the purchaser's balances for federal and state income tax purposes. The unpaid balances that were written off included a proportional share of the sales tax paid by Chrysler when the contracts were assigned to it by the dealers.

14. When Chrysler subsequently recovered any charged off balance, it re-established the balance on its books, and reported the recovery as income for federal and state income tax purposes. Chrysler also credited the respective purchaser's balance with such recovery amounts.

CONCLUSION OF LAW

1. There is no genuine issue of material fact, and this matter is appropriate for summary judgment as a matter of law.

2. Chrysler has failed to show that it is entitled to a deduction for bad debts because it is not the retailer who previously paid sales tax to the Department. Wis. Stat. §§ 77.51(4)(b)4. and 77.52(6).

3. Chrysler is not entitled, as assignee under the contracts at issue, to claim a deduction that may be available to another.

OPINION

Summary judgment is warranted 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 and that the moving party is entitled to a judgment as a matter of law." Wis. Stat. § 802.08(2). As shown below, the Commission concludes that there is no genuine issue as to any material fact, and that the Department is entitled to judgment as a matter of law.

Chrysler argues that it was entitled to bad debt deductions as a matter of law under two theories. First, Chrysler contends that under the plain language of the bad debt statutes, Wis. Stat. §§ 77.51(4)(b)4. and 77.52(6), it is entitled to a refund or deduction of sales tax that resulted from worthless debts. Second, Chrysler asserts that, as assignee of the selling dealers, it is entitled to a refund or deduction of sales tax under the bad debt statutes. Neither of these theories is persuasive.

Chrysler has failed to demonstrate that its claimed deductions clearly fall within the terms of the bad debt statutes, Wis. Stat. § § 77.51(4)(b)4. and 77.52(6).

Wisconsin Statutes § 77.51(4)(b)4. provides:

> In the case of accounts which are found to be worthless and charged off for income or franchise purposes, a retailer is relieved

> from liability for sales tax. A retailer who has previously paid the sales tax on such accounts may take as a deduction from the measure of the tax the amount found to be worthless and this deduction must be taken from the measure of the tax in the period in which said account is found to be worthless or within a reasonable time thereafter.

Similarly, Wis. Stat. § 77.52(6) states:

> A retailer is relieved from liability for sales tax insofar as the measure of the tax is represented by accounts which have been found to be worthless and charged off for income or franchise tax purposes. If the retailer has previously paid the tax, the retailer may, under rules prescribed by the department, take as a deduction from the measure of the tax the amount found worthless and charged off for income or franchise tax purposes. If any such accounts are thereafter collected in whole or in part by the retailer, the amount as collected shall be included in the first return filed after such collection and the tax paid with the return.

Chrysler states that, pursuant to these provisions, it is entitled to a refund or deduction of sales tax if "(1) Chrysler is a 'retailer,' (2) the tax was paid to the State, and (3) the debts were determined to be worthless and were charged off for income tax purposes." (Petitioner's Brief in Support of Its Motion for Summary Judgment . . ., at 10.) This characterization does not accurately reflect the language of the statutes, nor does it provide the most reasonable interpretation of them.

We conclude that it is insufficient to merely demonstrate that a party is a "retailer" in general or that the sales tax "was paid" to the state. Rather, the "retailer," as contemplated by the bad debt statutes, is the retailer who paid the taxes directly to the state on the purchases and who made the sales to the purchasers that resulted in the bad debts. The plain language of § 77.51(4)(b)4. and § 77.52(6) supports this interpretation.

Wisconsin Statutes § 77.51(4)(b)4. refers to the "retailer who has previously paid the sales tax." Section 77.52(6) contains similar language. Thus, notwithstanding Chrysler's assertions to the contrary, the statutes require more than that the entity claiming the deduction falls within the definition of "retailer" under Wis. Stat. § 77.51(13) and that the tax "was paid." The plain language of § 77.51(4)(b)4. provides that the retailer who is entitled to the deduction is the retailer who "paid the sales tax." Moreover, the phrase "paid the sales tax" logically refers to a payment made to the state, the most obvious recipient of sales tax, and not to a third party which then remits the payment to the state. In addition, both provisions refer to the conditions under which a "retailer is relieved from liability for sales tax." Thus, the "retailer" entitled to a bad debt deduction is the retailer who has "liability" for sales tax. The most reasonable interpretation of these provisions is that "liability," as used in the bad debt statutes, refers to liability to the *state,* not liability to a third party pursuant to contract law. The dealers, and not Chrysler, were liable to pay sales taxes to the state. Had the dealers failed to pay such taxes, the state, in the form of the Department, would have sought to recover taxes from them, not from Chrysler.

We also agree with the Department that the term "retailer," as used in the bad debt statutes, refers to the retailer who made the sale to the purchaser resulting in the bad debt. It does not simply refer to any retailer licensed as such in this state, even if that retailer pays sales taxes to the state for unrelated transactions, which Chrysler does.

This construction is not only a reasonable interpretation of the bad debt statutes, but is further reinforced by other subsections of the statutory section that contains the bad debt provisions. For example, §§ 77.52(4) and (5) convey that a "retailer" is a direct seller to the consumer, not simply a retailer in general or a retailer who is assigned the sales contract from the direct seller. Section 77.52(4) states:

> It is unlawful for any retailer to advertise or hold out or state to the public or to any customer, directly or indirectly, that the tax or any part thereof will be assumed or absorbed by the retailer or that it will not be added to the selling price of the property sold or that if added it, or any part thereof, will be refunded. . . .

Subsection (5) further provides:

> The department may by rule provide that the amount collected by the retailer from the consumer or user in reimbursement of the retailer's tax be displayed separately from the list price. . . ."

Thus, a retailer is one who has the direct transaction with the consumer.

Furthermore, Wis. Stat. § 77.51(4)(c)3. provides that "gross receipts" includes:

> [t]he entire sales price of credit transactions in the reporting period in which the sale is made without reduction in the amount of tax payable by the retailer by reason of the retailer's transfer at a discount the open account, note, conditional sales contract, lease contract or other evidence of indebtedness. . . .

This provision indicates that the term "retailer" refers to one who has authority to transfer the original account or contract to another party, in this case the dealers. It does not refer to the recipient of such a transfer, as Chrysler is here.

Additionally, Wis. Stat. § 77.52(1) provides that:

> [f]or the privilege of selling, leasing or renting tangible personal property, . . . at retail a tax is imposed upon all retailers at the rate of 5% of the gross receipts from the sale, lease or rental of tangible personal property. . . .

The "retailers" contemplated by § 77.52(1) are those on whom a tax may be "imposed" by the Department; namely, those who have liability to the Department—in this case the dealers, not Chrysler.

Even if the Department's interpretation of the bad debt statutes were not the only reasonable one, this would not mean that Chrysler is entitled to a refund or deduction under the statutes. Tax exemptions, deductions, and privileges are matters of legislative grace and will be strictly construed against the taxpayer. *Fall River Canning Co. v. Dep't of Taxation*, 3 Wis. 2d 632, 637, 89 N.W.2d 203 (1958). A deduction can be granted only if there is clear and unambiguous language providing for the deduction; in cases of doubt, the statute must be strictly construed against granting the deduction. *Madison Gas and Electric Co. v. Dep't of Revenue*, (CCH) Wis. Tax Rptr. ¶ 202-001 (WTAC 1982).

Chrysler has failed to meet its burden of establishing that it falls squarely within the terms of the deductions allowable under the bad debt statutes. Indeed, its position is undermined by the statutory language, which contemplates a nexus between the bad debt deduction entitlement and the retailer making the sale to the consumer and remitting the sales tax to the Department.

Moreover, if there were any ambiguity in the bad debt statutes, that ambiguity is resolved by Wis. Admin. Code § Tax 11.30(2), which further clarifies that

the bad debt statutes do not permit deductions for those in Chrysler's position. This provision states:

> **11.30 Credit sales, bad debts and repossessions.**
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> * * *
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> **(2)** BAD DEBTS.
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> (a) *Deduction from measure of tax*. A retailer is relieved from the liability for sales tax by ss. 77.51(4)(b)4. and 77.52(6), Stats., or from liability to collect and report use tax by s. 77.53(4), Stats., insofar as the measure of the tax is represented by accounts found worthless and charged off for income tax purposes or, if the retailer is not required to file income tax returns, charged off in accordance with generally accepted accounting principles. However, only a retailer who has previously paid sales or use tax *to this state* on the accounts may claim the bad debt deduction. . . . [Emphasis added.]

This rule makes clear what is implicit in the statutes; namely, that the retailer entitled to bad debt deductions is the retailer who pays the sales tax directly "to this state," not simply to a third party pursuant to an agreement or contract.

More significantly, the rule explicitly bars bad debt deductions under the circumstances of this case. Section Tax 11.30(2)(d)1. states:

> A purchaser of receivables is not entitled to a bad debt deduction for the receivables which subsequently become worthless.

Chrysler argues that this provision does not apply here, as it is more than a "purchaser" and the contracts were not "receivables." Instead, Chrysler asserts that it is an assignee of installment contracts. Chrysler's arguments are unpersuasive. There is simply no basis to believe that the rule is not intended to cover the precise situation here. Chrysler contends that the legislature's use of both the terms "receivables" and "contract" in Wis. Stat. 218.0152(1), a provision addressing motor vehicle dealers and sales finance companies, suggests that receivables and contracts are not the same thing.

Chrysler has failed to demonstrate that the use of both of these terms in a single statute conclusively shows the legislature's intent to delineate them as distinct concepts under the law generally or for the specific purpose of applying the bad debt statutes. Moreover, even if the legislature did envision receivables and contracts as distinct concepts, the Department—a different governmental body—was free to use the word "receivables" in a more generic sense to cover a wide range of accounts, including contracts and installment contracts. Finally, assuming an "assignee of an installment contract" is substantively different from a "purchaser of receivables," Chrysler has not demonstrated any principled basis to allow the former to take the bad debt deduction while prohibiting the latter from doing so.

Chrysler also asserts that if the rule is interpreted in such a manner, the rule is invalid, as it either contradicts the bad debt statutes or adds additional requirements not set forth by the statutes themselves. As set forth above, however, § Tax 11.30(2)(d)1., as interpreted in this ruling, does not contradict or expand the requirements of the bad debt statutes; rather, it makes explicit what is implicit in the statutes. Further, in so arguing, Chrysler ignores the following language from Wis. Stat. § 77.52(6):

> If the retailer has previously paid the tax, the retailer may, *under rules prescribed by the department*, take as a deduction from the measure of the tax the amount found worthless and charged off for income or franchise tax purposes. [Emphasis added.]

Thus, the legislature has explicitly charged the Department with determining the manner in which sales tax deductions are taken under the bad debt statutes. Pursuant

to § Tax 11.30(2)(d)1., deductions may not be taken where a contract is purchased or assigned to a third party which is not a party to the original sale.

Wisconsin Statutes § 227.11(2)(a) permits an agency to "promulgate rules interpreting the provisions of any statute enforced or administered by it, if the agency considers it necessary to effectuate the purpose of the statute." Administrative rules enacted pursuant to statutory rule-making authority have the force and effect of law. *Kranzush v. Badger State Mut. Cas. Co.*, 103 Wis. 2d 56, 307 N.W.2d 256 (1981). Section Tax 11.30(2), which is consistent with the bad debt statutes, has the force and effect of law, and we are bound to follow it.

Chrysler further states that to interpret the bad debt statutes in the manner suggested by the Department results in a windfall to the Department, because neither Chrysler, the dealers, nor the purchasers are eligible for the deduction under the circumstances presented here, and the state would be receiving sales tax on purchases which were never paid. To the extent that any such "windfall" actually exists,[5] it may be avoided by the terms of the agreement between Chrysler and the dealers. Section Tax 11.30(2)(d)2. states:

> A retailer who sells its receivables and agrees to bear any bad debt loss on them is entitled to a bad debt deduction to the same extent as if the accounts were not sold. However, a bad debt deduction is not allowable when receivables are sold outright at a discount.

Thus, the remedy lies in the terms of the agreement between Chrysler and the dealer itself, not in an over-expansive interpretation of the statutes and administrative rules which stretches their plain meaning and intent.

Based on the foregoing, we conclude that Chrysler has not shown that it is entitled to a refund or deduction under the plain meaning of the bad debt statutes.[6]

Chrysler has failed to show that assignment of the installment contracts entitles Chrysler to bad debt deductions provided by statute.

Chrysler's second theory under which it claims entitlement to bad debt deductions is that, as assignee of the installment contracts, it stepped into the shoes of the dealers and may assert any statutory deductions that the dealers themselves could assert. This theory is without merit.

As a preliminary matter, we question Chrysler's characterization that it "stepped into the shoes" of the dealers, in view of the fact that Chrysler had no obligation under state statutes to collect the sales tax from the purchasers and remit the sales tax to the Department.

More significantly, however, as stated above, it is well-established by precedent that tax deductions are a matter of legislative grace and are to be narrowly construed against the taxpayer. Thus, tax rights are governed by statute, not contract law. Chrysler has failed to set forth any authority from this jurisdiction establishing that an assignee of a contract is entitled to all of the statutory tax deductions that the

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[5] As noted by the Department, the purchaser may have the right to a refund under Wis. Stat. § 77.59(4)(c).

[6] In its reply brief in opposition to the Department's responsive briefing, Chrysler appears to argue that it is also entitled to a refund under Wisconsin's general refund statute Wis. Stat. § 77.59(4)(a). However, this statute provides that a person is permitted to file with the department "a claim for refund of taxes *paid to the department by that person*." [Emphasis added.] Thus, like the bad debt statutes, this statute allows only those who made the tax payments to the Department to claim such refunds. Indeed, Chrysler later concedes in its same reply brief that "Wisconsin courts have interpreted the general refund statute to apply only to the person who remitted the tax to the Department." (Petitioner's Reply Brief, p. 5.) As Chrysler is not the party who remitted the tax to the Department with regard to the purchases at issue here, it is not entitled to a refund under this provision. Moreover, the refund would be available only if Chrysler had overpaid taxes to the state. Chrysler would have overpaid taxes only if it is entitled to a bad debt deduction, which, as decided herein, it is not.

assignor possessed, had no such assignment occurred. We conclude that whether Chrysler is entitled to a deduction is determined by the terms of the applicable statutes, not by the terms of the contract between Chrysler and the dealers, and, as set forth above, those statutes do not provide for a deduction by Chrysler under the circumstances presented here.

Chrysler's brief in support of its motion for summary judgment contains only one case in support of its pronouncement that "statutory rights are assignable," *Norton v. The Supervisors of Rock County*, 13 Wis. 684 (1861). That case, nearly 150 years old, involved an action to recover from Rock County the amount of certain tax certificates, the sales on which they were issued having been void. To the extent that *Norton* is still good law or that its facts are analogous to those here—both of which suppositions we question—that case is distinguishable as it involved a statute which "expressly provide[d] that in all such cases the county treasurer shall refund the money, with interest, to the purchaser *or his assigns*." [Emphasis added.] *Id.*, at 686. The court specifically stated:

> [H]owever [the questions] might be answered without the statute, we have come to the conclusion that in view of its provisions, an assignment of such a certificate must be held to transfer to the assignee the right to recover back the money paid by the purchaser, in case the sale was void. The law expressly says that the money shall be refunded to the purchaser or his assigns.

Id., at 687-688.

We have also reviewed the cases set forth in Chrysler's petition for redetermination filed with the Department and find them equally unpersuasive. In

short, Chrysler has failed to provide any authority, nor is this Commission aware of any, holding that a person may bring himself within the statutory terms allowing for tax deductions by virtue of contracting with a third party.

Finally, while tax deductions are specifically governed by state statutes, making authority from other jurisdictions of minimal persuasive value, we nonetheless note that our decision is not only consistent with Wisconsin's statutes but is also in conformity with a number of states which have determined that a party who has been assigned the right to collect on an installment contract is not the proper party to receive any refund or deduction arising from an uncollectible debt. *Wells Fargo Financial Ala., Inc, et. al. v. State of Alabama Dept. of Revenue,* Al. Tax Rptr. (CCH) ¶200-876 (Sept. 17, 2002); *Dept. of Revenue v. Bank of America, N.A., et al.,* 752 So. 2d 637 (Fla. 2000); *General Motors Acceptance Corp. v. Jackson*, 542 S.E.2d 538 (Ga. Ct. App. 2000); *In re. Appeal of Ford Motor Credit Company from a Denial of Refund of Kansas Retailers' Sales Tax*, 69 P.3d 612 (Kan. 2003); *Daimlerchrysler Services North America, LLC v. State Tax Assessor,* 817 A.2d 862 (Me. 2003); *Conseco Finance Servicing Corp. v. Director of Revenue*, Mo. Tax Rptr. (CCH) ¶ 202-416 (March 27, 2002); *General Electric Capital Corporation v. New York State Division of Tax Appeals, Tax Appeals Tribunal,* 2 N.Y.3d 249, ___ N.E.2d ___, ___ N.Y.S.2d ___, (April 1, 2004); *Chesapeake Indus. Leasing Co., Inc. v. Comptroller of the Treasury*, 628 A.2d 234 (Me. 1993); *Chrysler Financial Co., L.L.C. v. Zaino, Tax Commissioner,* Oh. Tax Rptr. (CCH) ¶ 403-189 (Jan. 3, 2003); *Suntrust Bank, Nashville v. Ruth Johnson*, 46 S.W.3d 216 (Tenn. 2000); *but see Chrysler Financial Co. v. Indiana Dept. of State Revenue*, 761 N.E.2d 909 (Ind. 2002); *Puget Sound Natl. Bank v. Dept. of Revenue*, 868 P.2d 127 (Wash. 1994).

Accordingly, we reject Chrysler's assertion that it is entitled to bad debt deductions under state statutes as assignee of the installment contracts between the dealers and purchasers.

ORDERS[7]

Chrysler's motion for summary judgment is denied.

The Department's motion for summary judgment is granted, and its action on Chrysler's petition for redetermination is affirmed.[8]

Dated at Madison, Wisconsin, this 7th day of September, 2004.

WISCONSIN TAX APPEALS COMMISSION

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Jennifer E. Nashold, Commissioner

ATTACHMENT: "**NOTICE OF APPEAL INFORMATION**"

[7] This Ruling and Order is issued by a single commissioner under the authority provided by Wis. Stat. § 73.01(4)(em)2. as created by 2003 Wisconsin Act 33, § 1614d.

[8] In view of the Commission's determinations in this case, we need not address any of the other issues raised by the parties.