NO. CV 02 0514699S

DAIMLER CHRYSLER SERVICES NORTH AMERICA LLC	:	SUPERIOR COURT
	:	TAX SESSION
v.	:	JUDICIAL DISTRICT OF NEW BRITAIN :
COMMISSIONER OF REVENUE SERVICES	:	DECEMBER 31, 2003

MEMORANDUM OF DECISION

The plaintiff, Daimler Chrysler Services North America LLC (Daimler Chrysler), moves for partial summary judgment with respect to the liability issue in this case. Daimler Chrysler claims that it is entitled to a refund or credit of the sales tax permitted under General Statutes § 12-408 (2) (B) ("Bad Debt Statute.")

The Bad Debt Statute provides for a refund or credit of sales taxes when an installment purchaser defaults on his or her repayment obligations and the full purchase price and sales tax that was financed at the time of the sale has not been repaid.[1]

[1]General Statutes § 12-408 (2) (A) "Reimbursement for the tax hereby imposed shall be collected by the retailer from the consumer and such tax reimbursement, termed 'tax' in this and the following subsections, shall be paid by the consumer to the retailer and each retailer shall collect from the consumer the full amount of the tax imposed by this chapter or an amount equal as nearly as possible or practicable to the average equivalent thereof. Such tax shall be a debt from the consumer to the retailer, when so added to the original sales price, and shall be recoverable at law in the same manner as other debts except as provided in section 12-432a. The amount of tax reimbursement, when so collected, shall be deemed to be a special fund in trust for the state of Connecticut. (B) Whenever such

tax, payable by the consumer (i) with respect to a charge account or credit sale occurring on or after July 1, 1984, is remitted by the retailer to the commissioner and such sale as an account receivable is determined to be worthless and is actually written off as uncollectible for federal income tax purposes, or (ii) to a retailer who computes taxable income, for purposes of taxation under the Internal Revenue Code of 1986, or any subsequent corresponding internal revenue code of the United States, as from time to time amended, on the cash basis method of accounting with respect to a sale occurring on or after July1, 1989, is remitted by the retailer to the commissioner and such sale as an account receivable is determined to be worthless, the amount of such tax remitted may be credited against the tax due on the sales tax return filed by the retailer for the monthly or quarterly period, whichever is applicable, next following the period in which such amount is actually so written off, but in no event shall such credit be allowed later than three years following the date such tax is remitted. . . .”

Daimler Chrysler Services North America LLC, formerly known as Chrysler Financial Company LLC, alleges that it is a limited liability company and that it provides financing for the purchase of motor vehicles in Connecticut. Daimler Chrysler also alleges that at the time of the sale of the motor vehicles that are the subject of this action, the various purchasers entered into a retail installment contract with various Connecticut motor vehicle dealers that were registered "retailers" under General Statutes § 12-407. Daimler Chrysler further alleges that it provided financing for the purchase of the motor vehicles. The operation of the financing of the sales of motor vehicles is set forth in Exhibit C attached to the plaintiff's complaint of May 7, 2002, as follows:

> "Chrysler finances the sale of motor vehicles (as defined in Conn. Gen. Stat. sec. 14-1(a) (47)) and other tangible personal property. After a consumer selects a motor vehicle for purchase from a motor vehicle dealer but prior to the time of purchase, the consumer signs a credit application, which is sent by the dealer to Chrysler to determine if Chrysler is interested in extending credit. Each of the applications for the consumer purchasers that is relevant to this case was approved.
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> "Shortly thereafter, at the time of each of the sales, the consumer purchasers entered into retail conditional sales contracts, also known as installment contracts, with the various motor vehicle dealerships (the 'Retailers') that provide that the consumers agree to pay the purchase price of the vehicle (including the sales tax) over time and granted the Retailers a security interest in the motor vehicles to secure repayment (the 'Contracts'). Chrysler financed all the sales of motor vehicles to consumers by the Retailers that are the subject of the claim for refund or credit. The Retailers qualify in Connecticut as 'retailers' engaged in the business of making sales at retail as defined in Conn. Gen. Stat. § 12-407 (12).
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> "The Retailers collected and remitted sales tax to the Department as sellers of tangible personal property. Pursuant to Connecticut law, regardless of whether the Retailers or Chrysler ordinarily are accrual or cash basis taxpayers, the entire amount of the sales tax became due to the Department at the moment of the sales. Conn. Gen. Stat. § 12-430(3). This is true even though the consumers were repaying the purchase price and the sales tax over time because the Retailers agreed to include the

> sales tax due from the consumers in the amount financed under the Contracts.
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> "Chrysler had a separate written agreement with each of the Retailers governing the relationship between Chrysler and the Retailers. Generally, these agreements provided that Chrysler will purchase qualifying Contracts from the Retailers in exchange for an assignment of all of the Retailers' rights."

The plaintiff claims two theories as a basis for relief in this action. The first theory is that under the Bad Debt Statute the plaintiff is a retailer. The plaintiff theorizes that the Bad Debt Statute does not mandate that the retailer claiming relief under this statute must be a retailer that made the original sale. The second theory is that the plaintiff is entitled to relief because the dealer assigned its rights under the Bad Debt Statute to the plaintiff.

The position of the defendant commissioner of revenue services (commissioner) is aptly stated in its letter to the plaintiff's attorney dated September 19, 2000: "A bad debt refund may only be obtained by the party (retailer) who made the original sale. In order for Chrysler Financial Company, LLC (Chrysler) to qualify for a bad debt refund, Chrysler must have made the initial sale and also must have remitted the sales tax to the Connecticut Department of Revenue Services (DRS). The fact that Chrysler was not the dealer/retailer or direct remitter of the sales tax in question precludes this department from approving the refund you have requested." (Attachment to plaintiff's memorandum of law in support of its motion for partial summary judgment, dated August 8, 2003.)

There are two basic issues in this case. The first issue is whether the plaintiff is a "retailer" under the Bad Debt Statute. The second issue is whether the rights under the Bad Debt Statute can be assigned to a third party. Both are issues of law and require an interpretation of the Bad Debt Statute. This summary judgment motion is therefore appropriate at this stage of the proceedings.

The plaintiff claims to be a "retailer" under the Bad Debt Statute because "it is in the business of selling and leasing motor vehicles to consumer purchasers in Connecticut." (Plaintiff's Memorandum of Law, dated August 8, 2003, p.10.) The affidavit of Sheryl Flynn, Senior Manager of Sales and Use Taxes of Daimler Chrysler, recites that "Chrysler is currently engaged in the business of making retail sales of motor vehicles to consumers in the State of Connecticut and leasing motor vehicles to consumers in the State of Connecticut." (Affidavit of Sheryl Flynn, dated August 7, 2003, ¶ 9.) In contradiction to the statement that Chrysler is in the business of making retail sales of motor vehicles, Flynn's affidavit recites that "[d]uring the period covered by the Claim, Chrysler financed credit sales of motor vehicles (the 'Contracts') sold to consumer purchasers (the 'Purchasers') in Connecticut by the Dealers." (Flynn Affidavit, ¶ 10) (See also ¶ 3 of Flynn's affidavit that Chrysler's business is to finance retail installment sales contracts and credit sales in Connecticut with Connecticut retail motor vehicle dealers.)

The purchase and financing of a motor vehicle is explained by Flynn as follows: "A Connecticut purchaser purchased a motor vehicle from Callari Auto Groups, Inc., a Connecticut registered motor vehicle dealer, in a credit sale and the purchaser entered into a retail installment transaction with the dealer." (Flynn's Affidavit, p. 4.) From this affidavit, we see that the plaintiff is not involved at the first level where the dealer sells the vehicle to the consumer and enters into an installment sales contract with the consumer. It is only when Daimler Chrysler purchases the installment contract from the dealer that the plaintiff, as the finance company, enters the picture.

The Bad Debt Statute is clear that "retailer" refers to the first level purchase of the motor vehicle that involves financing between the consumer and the dealer. General Statutes § 12-408 (2) (B) is also clear that when a sales tax is paid by the consumer on a

retail credit sale and the sales tax is remitted by the retailer to the commissioner and the credit sale becomes uncollectible, the retailer may back charge that portion of the sales tax that was financed and now uncollectible as a credit to future sales tax payments to be made by the retailer. The plaintiff acknowledges that it did not make the payment of the sales tax to the commissioner but rather "the motor vehicle dealer in the representative transaction (the "Dealer") was required by Conn. Gen. Stat. § 12-408 (2) to remit the tax at the time of the sale." (Plaintiff's Reply to Defendant's Response to Plaintiff's Motion for Partial Summary Judgment, dated September 15, 2003, p. 6.)

In spite of § 12-408 (2) (B) reciting that "retailer" refers to the dealer who sold the vehicle to the purchaser, the plaintiff argues that it was the "retailer," under the Bad Debt Statute, because "Chrysler's payment of the sales tax to the Dealer when Chrysler acquired the Contract by assignment constituted payment of the sales tax to the Commissioner." (Plaintiff's Memorandum of Law in Support of Motion for Partial Summary Judgment, dated August 8, 2003, p. 11.) The plaintiff further argues that the focus of the Bad Debt Statute is not the sale upon which the sales tax attaches, but rather the statute focuses on the bad debt and applies to the "retailer" that charged off the debt. We disagree. First, "(t)here is virtually universal recognition that sales and use taxes are . . . intended to rest on the consumer . . . ." 2 Hellerstein & Hellerstein, State Taxation (3rd Ed.) sec. 17.11 (2). Second, the Bad Debt Statute, as written, identifies the dealer as the retailer, no one else. To interpret this statute otherwise, would require us to rewrite the statute. This we cannot do. "It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the legislature." (Internal quotation marks omitted.) State v. Morrissette, 265 Conn. 658, 668, 830 A.2d 704 (2003). We conclude, therefore, that Daimler Chrysler was not the "retailer" under the Bad Debt Statute.

We find support for our holding that only the dealer is the retailer in Suntrust Bank, Nashville v. Johnson, 46 S.W.3d 216, (Tenn. Ct. App. 2000). In Suntrust, the court construed the right of a bank, that entered into financing agreements with various automobile dealers to provide financing for customers of those dealers seeking to purchase an automobile on credit, to claim bad debt credits for sales tax remitted relative to purchasers who defaulted on those sales contracts. In that case, the court stated: "By the statute's plain terms, the sales tax credit is available only to the 'dealer who has paid the tax imposed by this chapter.' This language is unambiguous and cannot reasonably be construed to include the assignees of dealers who have paid the sales tax." Id., 225. We also find support for our holding in In Re Appeal of Ford Motor Credit Co., 275 Kan. 857, 69 P.3d 612 (2003). In Ford Motor Credit Co. the court stated: "The key question is whether, where the installment sales contract was purchased by a third party, a retailer permitted to reduce its tax liability for a bad debt must be the retailer that remitted sales tax on the defaulted installment sale . . . . Ford Credit is regularly engaged in the business of financing and, as necessary, it repossesses and resells the vehicles it finances. Thus, it may incidentally be a retailer of repossessed vehicles, but it is not a retailer with regard to the sale preceding default and repossession. Strictly construing K.A.R. 92-19-3(b)[2] would permit only the retailer who sells a vehicle and, in this case, remits the sales tax to the State to reduce its tax liability for a bad debt." Id., 869.

[2]K.A.R. 92-19-3 (a) When a retailer makes a credit, conditional, or installment sales, the retailer may pay tax on the total amount of collections made during each reporting period or, if the retailer's books are regularly kept on an accrual basis, on the total amount of sales accrued for each reporting period . . . . (b) If the retailer adopts the accrual basis for reporting taxable sales, the retailer shall account for all periodic adjustments to reported bad debts, including the final adjustment when debts are charged off the retailer's books for federal income tax purposes. If any portion of the bad debts is recovered after the final adjustment, the retailer shall include the recovery and tax in the next sales tax return.

We turn to the second issue which is whether the rights of the dealer under the Bad Debt Statute can be assigned. Daimler Chrysler's argument that these rights can be assigned is based upon the common law right of free assignability citing, National Loan Investors Limited Partnership v. Heritage Square Associates, 54 Conn. App. 67, 733 A.2d 876 (1999). The plaintiff also relies on an Indiana Tax Court case construing the Indiana Bad Debt Statute. The Indiana Tax Court held that the dealer's rights under an installment sales contract could be assigned. Noting that the Indiana Bad Debt Statute did not prohibit a retail merchant from assigning its rights to a deduction, Judge Fisher, in Chrysler Financial v. Dept. of State Revenue, 761 N.E.2d 909, 912, (Ind. Tax Court 2002), cert. denied, 774 N.E.2d 518 (Ind. 2002) concluded that "[w]hen a statute is silent as to the issue before a court, the court may look to the common law for guidance and interpret the statute in conformity to common law principles. . . . Indiana common law recognizes the assignment of contractual rights, statutory rights, and causes of action." (Citations omitted.) Judge Fisher concluded that the Bad Debt Statute "provides tax relief to merchants who have financed the sales tax for installment contract purchases on which consumers later default." Id., 916.

We refer to some but not all of the other authorities cited by Daimler Chrysler for its position that the rights under the Bad Debt Statute are assignable, such as Puget Sound National Bank v. Department of Revenue, 868 P.2d 127 (Wash. 1994); California Board of Equalization: In the Matter of the Claim for Refund Under Sales and Use Tax Laws of WFS Financial, Inc., Case I.D. 56535 (December 14, 2000)(Attached as Exhibit B to Plaintiff's Memorandum of Law) (ruling that the rights under California's former bad debt statute are assignable); Virginia Public Document Ruling 99-37, (March 30, 1999) (ruling that an assignee can claim a credit or refund under Virginia's bad debt statute if the assignee is a registered Virginia dealer.); Slater Corp. v. South Carolina Tax

Commission, 280 S.C. 584, 314 S.E.2d 31, 33 (1984) (recognizing assignability of tax refunds even where statutory language authorizes a refund only for the person making the overpayment on the theory that statutory rights are coextensive with a contract and follow the assignment of the contract.); Laing v. Forest Tp., 139 Mich. 159, 161, 102 N.W. 664 (1905) (holding assignee entitled to sue for tax refund under statute permitting person paying taxes to sue).

The one thing that these authorities have in common is that they are based on the common law right of assignability of choses in action without regard for general tax principles. However, the court in Suntrust, noting the split of authority in this country, considered the reliance on common law principles without consideration for tax principles to be inappropriate. "We understand and approve of the policy favoring the free assignability of commercial instruments. However, in this context, the traditional principles of statutory construction applicable to statutes granting tax credits, deductions, or exemptions, should prevail over general assignment principles . . . . Statutes providing exceptions from taxation should be construed strictly against the taxpayer." (Citations omitted.) Suntrust Bank v. Johnson, supra, 46 S.W.3d 226-27. This same tax principle exists in Connecticut. See SLI International Corp. v. Crystal, 236 Conn. 156, 166, 671 A.2d 813 (1996) (Where the issue is the right of the taxpayer to claim a deduction or exemption from taxation, the applicability of the statutes governing tax deductions or exemptions is upon the taxpayer.) Another tax principle recited in Suntrust is that "actions seeking refunds or credits for credit sales that become bad debts, are a matter of legislative grace." Id., 223. This same principle also applies in Connecticut. See Oxford Tire Supply, Inc. v. Commissioner of Revenue Services, 253 Conn. 683, 690, 755 A.2d 850 (2000) ("statutes that provide exemptions from taxation are a matter of legislative grace that must be strictly construed against the taxpayer.") Our last principle recited in

Suntrust is that "exemptions from taxation must 'positively appear' in the statutes themselves, and no subject of taxation will be excluded if it comes within the 'fair purview' of the statutes." Id., 224. Again, this same principle applies in Connecticut. See Interlude, Inc. v. Skurat, 266 Conn. 130, 140, 831 A.2d 235 (2003) ("The general rule of construction in taxation cases is that provisions granting a tax exemption are to be construed strictly against the party claiming the exemption. . . . Exemptions, no matter how meritorious, are of grace, and must be strictly construed. They embrace only what is strictly within their terms. . . . [Moreover][w]e strictly construe such statutory exemptions because [e]xemption from taxation is the equivalent of an appropriation of public funds, because the burden of the tax is lifted from the back of the potential taxpayer who is exempted and shifted to the backs of [other taxpayers] . . . . Fanny J. Crosby Memorial, Inc. v. Bridgeport, 262 Conn. 213, 220, 811 A.2d 1277 (2002))."

We concur with the Kansas Supreme Court in In Re Appeal of Ford Motor Credit Co., supra, 275 Kan. 871, that found the reasoning in the Tennessee court to be persuasive. The "right to a sales tax refund would be a statutory right . . . not a common-law principle." Id.

"An assignment is a contract between the assignor and the assignee, and is interpreted or construed according to rules of contract construction." Schoonmaker v. Lawrence Brunoli, Inc. 265 Conn. 210, 227, 828 A.2d 64 (2003). However, the subject of the assignment here involves the assignment of a statutory right to reimbursement for a bad debt. "Tax credits are conferred by legislative grace and are not assignable as a contractual right in the absence of either explicit contractual or statutory language." DaimlerChrysler v. State Tax Assessor, 817 A.2d 862, 866 (Me. 2003). In this case we have the dealer who sold the motor vehicle to a consumer under an installment sales contract and the dealer paid the sales tax. The dealer then assigned to the plaintiff finance company the right to collect the installment payments that included the financing of the sales tax. Being the assignee of the installment sales contract, Daimler Chrysler had the right to bring an action to collect the debt from the consumer as a chose in action. Schoonmaker v. Brunoli, supra, 265 Conn. 227. However, as we have previously concluded, Daimler Chrysler, in this action, could not be the retailer. Our Bad Debt Statute gives the right to a statutory refund only to the retailer who made the original sale, not to an assignee of the retailer. Since tax credits are a matter of legislative grace, we cannot infer that tax credits, identified in the Bad Debt Statute, can be assigned to a third party. Oxford Tire Supply, Inc., supra, 253 Conn. 683.

We agree with the statement in DaimlerChrysler, supra, 817 A.2d 866, that "principles governing the interpretation of tax credit . . . statutes should overcome more general assignment law." We see no specific statutory authority contained in the Bad Debt Statute allowing a retailer to assign this statutory credit.

We find that there is no merit to the second prong of the plaintiff's claim that the plaintiff can be an assignee of the retailer's rights under the Bad Debt Statute. We also

find that the plaintiff is not a retailer under the Bad Debt Statute. Therefore, the plaintiff's motion for summary judgment based on liability is denied.

Arnold W. Aronson
Judge Trial Referee