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5-2-2013

### Summary of State, Dep't of Taxation v. Chrysler Grp, 129 Nev. Adv. Op. 29.

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*Nevada Law Journal*

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#### Recommended Citation

Rigdon, David H., "Summary of State, Dep't of Taxation v. Chrysler Grp, 129 Nev. Adv. Op. 29." (2013).  
*Nevada Supreme Court Summaries*. 97.  
<https://scholars.law.unlv.edu/nvscs/97>

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## TAX LAW – SALES TAX REFUNDS

### **Summary**

This is an appeal from a District Court order granting Chrysler's petition for a refund of sales taxes paid on vehicles which Chrysler repurchased from consumers pursuant to N.R.S. 597.630 (the "lemon" law).

### **Disposition/Outcome**

Reversed. Because neither Nevada's "lemon" law nor the tax statutes provide for sales tax refunds to vehicle manufacturers, the Department of Taxation (Department) has no authority to grant them. In addition, the Department did not violate the Administrative Procedures Act when it changed its prior policy of granting such refunds since its prior policy was an erroneous interpretation of the law and the new policy sought only to correctly implement the existing statute.

### **Facts and Procedural History**

On two separate occasions, consumers purchased new vehicles from a Chrysler authorized dealership in Las Vegas, NV. At the time of the sale, the dealership collected and remitted to the state the appropriate amount of sales tax. When the vehicles failed to conform to Chrysler's express warranties, Chrysler repurchased the vehicles from the customers pursuant to the requirements of Nevada's "lemon" law. Included in the monies refunded to the customer was a reimbursement of the sales taxes paid. Subsequently Chrysler submitted sales tax refund requests, in accordance with N.R.S. 597.630(1)(b), with the Department seeking to recover the sales taxes remitted by the dealership. Although the Department had previously granted such refunds in similar cases, it denied the refund requests based on advice from the Nevada Attorney General's Office that there is no statutory authority for such refunds.

Chrysler filed a Petition for Redetermination. The Administrative Law Judge assigned to the case granted Chrysler's petition. Thereafter, the Nevada Tax Commission (NTC) overturned the Administrative Law Judge's decision and issued a Notice of Decision denying Chrysler's requests. Thereafter, Chrysler filed a Petition for Judicial Review with the Eighth Judicial District Court in Las Vegas. The District Court held that as a result of Chrysler's refund of the full purchase price, and all related taxes and fees, the sale contract was rescinded and thus, Chrysler was entitled to a full refund of the remitted sales taxes. The Department appealed.

### **Discussion**

Justice Hardesty delivered the opinion on behalf of a three justice panel.<sup>2</sup>

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<sup>1</sup> By David H. Rigdon.

<sup>2</sup> The case was heard before Hardesty, Parraguirre and Cherry, JJ.

Chrysler asserted that it was entitled to the refund under N.R.S. 597.630 (the “lemon” law), N.R.S. 372.630 (Nevada’s sales and use tax refund statute), and/or N.R.S. 372.025 (Nevada’s statute governing gross receipts of retailers). The Department argued that none of these statutes are applicable as they do not explicitly authorize a refund of sales taxes to a vehicle manufacturer.

With respect to N.R.S. 597.630 (the “lemon” law), the Court concluded that the statute is silent with respect to whether a manufacturer is entitled to a refund for the amount of sales tax it reimburses to a buyer. In addition, the Court found that the legislative intent behind the “lemon” law was to protect buyers who purchase defective vehicles. Refunding a manufacturer for reimbursed sales taxes does not incentivize them to produce non-defective vehicles. Accordingly, the Court held that N.R.S. 597.630 does not entitle a manufacturer to a refund of reimbursed sales taxes.<sup>3</sup>

The Court next considered the application of N.R.S. 372.630, Nevada’s sales and use tax refund statute. N.R.S. 372.630 requires that any “excess amount collected or paid must . . . be refunded to the person [who overpaid the tax].”<sup>4</sup> The Court has previously held that Nevada’s tax refund statutes “permit recovery only where the taxpayer himself has borne the financial burden of the tax” and that “[i]f the taxpayer making the claim has collected the tax from his customers, he has suffered no loss or injury, and is not entitled to a credit or refund.”<sup>5</sup> In this case, Chrysler was not the party who remitted the sales taxes to the Department and thus, it lacked standing to seek a sales tax refund under N.R.S. 372.630.

Finally, the court analyzed Chrysler’s claims with respect to N.R.S. 372.025, Nevada’s statute governing gross receipts of retailers. Since Chrysler, by its own admission, is not a retailer as defined by the statute, the Court concluded that it cannot rely on N.R.S. 372.025 in conjunction with the “lemon” law statute to claim a refund of the sales taxes. Accordingly, the Court concluded that none of the three statutes relied on by Chrysler entitles a manufacturer to claim a refund of sales taxes reimbursed to a customer pursuant to Nevada’s “lemon” law and thus, the District Court erred when it ruled in favor of Chrysler.

Chrysler also argued that the Department violated the Nevada Administrative Procedure Act (APA), N.R.S. Chapter 233B, when it changed its previous policy that allowed the refunding of sales taxes to vehicle manufacturers under these circumstances.

An agency violates the APA if it engages in rulemaking without following the APA’s requirements.<sup>6</sup> Generally, before an agency can engage in rulemaking, it must provide notice to interested parties and give them an opportunity to oppose the proposed rule.<sup>7</sup> However, the Court has previously held that “[t]here is no reason to require the formalities of rulemaking

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<sup>3</sup> The Court also noted that because denial of the sales tax refund is consistent with the remedial purpose of the statute it does not transform the “lemon” law into a punitive statute.

<sup>4</sup> Nev. Rev. Stat. § 372.630(1).

<sup>5</sup> State v. Obexer & Son, 660 P.2d 981, 985 (Nev. 1983).

<sup>6</sup> Labor Comm’r v. Littlefield, 153 P.3d 26, 29 (Nev. 2007).

<sup>7</sup> Nev. Rev. Stat. § 233B.060(1)(a); Nev. Rev. Stat. § 233B.061(1).

whenever an agency undertakes to enforce or implement the requirements of an existing statute.”<sup>8</sup>

Given that the Department’s prior policy of allowing sales tax refunds in these circumstances was an erroneous interpretation of the law, and that the Department sought only to correctly implement the existing statute, the Court held that the Department was not required to undertake formal rulemaking and thus, did not violate the APA.

### **Conclusion**

An automobile manufacturer who, in re-purchasing a vehicle pursuant to Nevada’s “lemon” law, has refunded the sales taxes paid by the customer is not entitled to a refund of those sales taxes from the Nevada Department of Taxation.

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<sup>8</sup> K-Mart Corporation v. SIIS, 693 P.2d 562, 565 (Nev. 1985).