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Danielle Oakley
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Dep't of Taxation v. DaimlerChrysler Svcs. N. Am., LLC,
121 Nev. Adv. Op. 56 (Sept. 15, 2005) (en banc)¹

COMMERCIAL LAW – DEBT RELIEF

Summary

Department of Taxation (“the Department”) appealed from a district court order, which had granted DaimlerChrysler’s petition for judicial review of the Department’s decision denying DaimlerChrysler’s application for a tax refund under Nevada’s bad-debt collection statute.

Disposition/Outcome

The Court reversed the order of the district court and held that DaimlerChrysler was not entitled to bad-debt relief under the statute because the statute “unambiguously precludes a finance company from obtaining tax refunds”²

Facts and Procedural History

The facts and procedural history of the case are set out, succinctly, in the opinion as follows:

Respondent, DaimlerChrysler Services North America, LLC, financed numerous retail motor vehicle purchases within the State of Nevada. Under these arrangements, the purchasers agreed to repay all or part of the purchase price, including a pro rata portion of sales tax incurred, on an installment or credit basis. As part of these sales, the dealers assigned to DaimlerChrysler all of the dealers’ rights associated with the contracts without recourse. In exchange for the assignments, DaimlerChrysler paid the dealers the full amount financed under the contracts, including the full amount of sales tax. From this amount, the dealers remitted the sales tax to the Nevada Department of Taxation (Department). The contracts at issue eventually went into default and, after exhausting collection and repossession efforts, DaimlerChrysler determined that the unpaid balances were uncollectible. It ultimately claimed the unpaid amounts as bad-debt deductions on its federal income tax returns for the years 1997 through 1999.

DaimlerChrysler applied to the Department under NRS 372.365(5) for a sales tax refund proportionate to the unpaid amounts. The Department denied the refund request, and an administrative hearing officer later denied a petition for redetermination. DaimlerChrysler then appealed to the Nevada Tax Commission (Commission), which unanimously upheld the hearing officer’s decision. Subsequently, the district court granted DaimlerChrysler’s petition for judicial review, concluding that DaimlerChrysler was entitled to a sales tax refund. The Department appeal[ed].³

¹ By Danielle Oakley.

² Dep’t of Taxation v. DaimlerChrysler Svcs. N. Am., LLC, 121 Nev. Adv. Op. 56 at 2 (Sept. 15, 2005) (en banc).

³ *Id.* at 2-3.

Discussion

NRS § 372.365(5) provides,

If a retailer:

(a) Is unable to collect all or part of the sales price of a sale, the amount of which was included in the gross receipts reported for a previous reporting period; and

(b) Has taken a deduction on his federal tax return pursuant to 26 U.S.C. § 166(a) for the amount which he is unable to collect, he is entitled to receive a credit for the amount of sales tax paid on account of that uncollected sales price.⁴

NRS § 372.055 defines retailers as “[e]very seller who makes any retail sale or sales of tangible personal property,” and “[e]very person making more than two retail sales of tangible personal property during any 12-month period.”⁵ Furthermore, NRS § 372.040 defines “persons” as, among others, individuals, firms, or assignees.⁶ However, Chapter 372 also contains an anti-assignment statute, which provides:

A judgment may not be rendered in favor of the plaintiff in any action brought against the Department to recover any amount paid when the action is brought by or in the name of an assignee of the person paying the amount or by any person other than the person who paid the amount.⁷

DaimlerChrysler asserted that, as the retailer’s assignee, it was entitled to the tax refunds available under the bad-debt statute. The court disagreed for several reasons.

I. Tax Exemptions Must Be Construed Strictly Against the Party Claiming the Exemption.

DaimlerChrysler urged the Court to follow the Washington Supreme Court’s decision in *Puget Sound Nat’l Bank v. Dep’t of Revenue*,⁸ in which the Court addressed a similar statutory scheme. That Court held that the assignee was entitled to the tax credit because, as here, “assignee” fell within the statute’s definition of “person.”⁹

The Court, however, chose to follow several other State Supreme Courts, which have held that finance company assignees are not entitled to tax exemptions under similar statutes.¹⁰ Those courts found that assignees were not entitled to tax credits because

⁴ NEV. REV. STAT § 372.365(5) (2004).

⁵ NEV. REV. STAT. § 372.055(1)(A), (C) (2004).

⁶ NEV. REV. STAT § 372.040 (2004).

⁷ NEV. REV. STAT. § 372.700 (2004).

⁸ 868 P.2d 127, 129 (Wash. 1994).

⁹ *Id.* at 132.

¹⁰ *See, e.g.*, *DaimlerChrysler v. Weiss*, No. 04-284, 2004 WL 2904685 (Ark. Dec. 16, 2004); *Weiss v. Am. Honda*, No. 04-617, 2004 WL 2904680 (Ark. Dec. 16, 2004); *Chrysler Fin. Co., L.L.C. v. Wilkins*, 812 N.E.2d 948 (Ohio 2004); *In re Appeal of Ford Motor Credit Co.*, 69 P.3d 612 (Kan. 2003); *DaimlerChrysler v. State Tax Assessor*, 817 A.2d 862 (Me. 2003); *Dep’t of Revenue v. Bank of Am.*, 752 So. 2d 637 (Fla. Dist. Ct. App. 2000); *Gen. Motors Acceptance v. Jackson*, 542 S.E.2d 538 (Ga. Ct. App. 2000); *Suntrust Bank, Nashville v. Johnson*, 46 S.W.3d 216 (Tenn. Ct. App. 2000).

grants of tax exemptions must be “construed strictly against the party claiming the exemption.”¹¹ Applying the rule of strict construction, the Court held that the plain language of NRS § 372.365(5) mandated the same outcome.

Additionally, the Court found the structure of the Act persuasive. The definitions on which DaimlerChrysler relied appear in the beginning of the Act and are not specifically tailored to the bad-debt provisions that appear later in the Act. Furthermore, the Court concluded it would not permit the “bootstrapping of several broad definitions to unreasonably distort the uncontested facts of a case or defeat a clear statutory directive.”¹²

II. DaimlerChrysler Never Paid the Tax.

The Court also found that DaimlerChrysler, a finance company, is not entitled to a tax credit because the finance company is not the entity responsible for paying the tax. The Court held that Nevada’s anti-assignment statute provides relief only for those parties who originally paid the tax. Also persuasive to the Court was the use of the term tax “credit,” as opposed to a tax “refund.” A credit can only be given to parties who have existing sales tax liability. As third-party lenders, such as DaimlerChrysler, never develop tax liability to the Department, the use of the term “credit” suggests that the statute does not apply to finance companies.

III. Legislative History of the Act Buttresses the Court’s Finding.

After reaching its conclusion for the reasons stated above, the Court supported its determination with a brief discussion of the legislative history of NRS § 372.365(5). Specifically, during discussions about the statute before the Assembly Committee of Taxation, the Executive Director of the Retailers Association of Nevada stated that “the retailer would file for a refund if the debt [was] not collectible.”¹³ The Court concluded that the legislative history of the statute supported the Department’s position that the tax credits exist solely for the benefit of retailers, not finance companies.

Conclusion

Because NRS § 372.365(5) did not afford DaimlerChrysler, as a finance company, bad-debt relief, the Court reversed the order of the district court, which had granted DaimlerChrysler’s petition for judicial review.

Dissenting Opinions

¹¹ DaimlerChrysler Svcs. N. Am., LLC, 121 Nev. Adv. Op. 56 at 6 (quoting DaimlerChrysler Svcs. v. CIR, 875 A.2d 28, 30-36 (Conn. 2005)).

¹² *Id.* at 10.

¹³ *Id.* at 11-12 (quoting Hearing on A.B. 535 Before the Assembly Taxation Comm., 69th Leg. (Nev., June 12, 1997)).

Justice Maupin and Justice Hardesty each filed dissenting opinions. Both justices found that DaimlerChrysler meets the statutory definition of retailer and that DaimlerChrysler was the entity that had actually paid the tax.