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Ohio: Goodwill Repairs Case Good For Auto Manufacturers

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The use tax implications of manufacturer-funded car repairs is not a new topic in Ohio. But, the Ohio Supreme Court recently broke new ground on goodwill repairs in *DaimlerChrysler Corporation v. Levin*.¹ In that case the Court held that Daimler Chrysler Corporation ("DCC") did not owe use tax in connection with its goodwill repair program.

The court found that DCC was not the consumer of the parts and services provided through the program. Instead, the vehicle owners who enjoyed the benefits of the services and took possession of the parts were the consumers. The Court arrived at these conclusions by drawing a limited but important factual distinction that will prove beneficial to DCC and other car manufacturers that offer goodwill repairs to maintain customer loyalty.

Background

This case involved two use tax assessments for goodwill repairs, which are repairs performed by dealers on DaimlerChrysler vehicles after the warranty has expired. Such repairs are performed at no additional cost to consumers or dealerships, which are reimbursed by DCC. The assessments encompassed both parts and labor because both types of transactions are considered taxable retail sales under Ohio law.

Although DCC funded the goodwill repairs, it did so with its profit goals in mind. When setting sales prices for vehicles, DCC took into account the anticipated cost of goodwill repairs. So, when customers purchased DCC vehicles from dealerships, the dealers collected sales tax based on the total vehicle price, which included a component for goodwill repairs. In short, at the time they purchase their vehicles, consumers not only paid for goodwill repairs but also paid sales tax on the cost of those repairs.

The Court's Decision

Under Ohio's use tax law, a "consumer" is a "person who has purchased tangible personal property or who has been provided a service for storage, use, or other

¹ Slip Opinion No. 2008-Ohio-259, 117 Ohio St. 3d 46 (January 30, 2008).

consumption or benefit” in Ohio.² Based on that definition, DCC concluded that vehicle owners are the consumers of the goods and services offered through its goodwill repair program. The Tax Commissioner, however, concluded that DCC was the consumer based on a previous *General Motors* case.³ There, the Ohio Supreme Court decided that GM was the consumer when it paid for parts and services in connection with its warranty repair program.

The Supreme Court concluded that while *General Motors* may seem to settle the use tax question, the critical fact in that case was that the manufacturer was contractually bound to pay for the warranty repairs. That is important because Ohio sales and use tax law considers a warranty to be intangible property purchased separately from a vehicle. As a result, warranty repairs are independently taxed.

In contrast, goodwill repairs are considered part of the vehicle purchase. When consumers pay for their vehicles, they pay sales tax on both the vehicles themselves and goodwill repairs. In short, vehicle owners are consumers of both their vehicles and parts and service needed for goodwill repairs. Because vehicle owners are the consumers when it comes to goodwill repairs, DCC and other car manufacturers cannot be assessed use tax in connection with such repairs.

A Unique Rule

DaimlerChrysler likely applies in few situations. In most transactions, the person who orders and pays for an item or service is the consumer, even if that item is purchased to benefit another. However, the *DaimlerChrysler* Court recognized that goodwill repairs require a unique rule. As a result, the Court decided that in the limited context of goodwill repairs, car dealers are not the consumers and, therefore, the use tax assessments were reversed.

SPECIAL NOTE: Our colleague Charles Steines in the Cleveland Office was counsel to DaimlerChrysler. With the help of DaimlerChrysler’s tax professionals and witnesses, Charles developed a persuasive argument and got a big win! ■



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² R.C. 5741.01(F).

³ *General Motors v. Wilkins*, 806 N.E.2d 517 (Ohio 2004).