

490.0512

## Memorandum

To: Aaron Phillips  
Audit Review & Refund Section

Date: May 17, 1994

From: Rachel M. Aragon  
Staff Counsel

Subject: Lemon Law Claims & Refunds

This is in response to your memorandum dated April 13, 1994 in which you ask whether certain settlements qualify for a refund under the Lemon Law. You state, in part:

"We know from previous discussions with legal staff that court awards do not qualify because the amounts received represent damages and not reimbursement for the vehicle.

"[W]e usually receive a request for reimbursement where a lump sum amount was agreed to and paid. There is no breakdown of what is being reimbursed. We require a worksheet with each claim that outlines amounts being reimbursed and do not receive one with these claims. Again, through prior discussions with legal staff, it has been our procedure to presume that the claim qualified if the purchaser was reimbursed in excess of the amount we computed as required reimbursement to qualify. It was also our procedure to assess usage based on the odometer mileage when the vehicle was repurchased. The basis for this presumption was that with no breakdown we did not know what usage was assessed or what the reimbursement was comprised of (e.g. sales price, sales tax, document fee, license, extended service plan, attorney's fees, earned finance charges, damages, etc)."

Since you have not supplied us with any specific information, i.e., copies of settlement agreements or court awards, we can only provide you with the general guidelines in regard to settlements and court awards.

### Discussion

When a manufacturer is unable to service or repair a new motor vehicle, as defined by the Lemon Law, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer must either replace the new motor vehicle or make restitution to the buyer. The buyer may elect restitution in lieu of replacement and in no event is the buyer required to accept a replacement vehicle. (Civ. Code. § 1793.2(d) (2).)

In case of restitution, the manufacturer shall make restitution equal to the actual price paid or payable by the buyer. The amount includes any transportation charges and manufacturer-installed options, any collateral charges such as sales tax (reimbursement), license fees, registration fees and other official fees. The amount also includes any incidental damages to

which the buyer is entitled, including, but not limited to, towing, reasonable repair, car rental costs. The amount excludes nonmanufacturer items installed by a dealer or the buyer. (Civ. Code § 1793.2(d)(2){B}.)

### Settlements

Restitution is not restitution under the Lemon Law if the settlement terms state in any way that the settlement is a compromise of a disputed claim or that payment does not constitute an admission of liability or that the settlement is merely to avoid litigation. In other words, if the parties to restitution agree that it is not a Lemon Law restitution, then it is not a Lemon Law restitution. This is true even under circumstances where the purchaser could have forced the manufacturer to make restitution under the Lemon Law. Furthermore, this is true even if the settlement is to settle litigation or to avoid litigation.

You stated that it has been your understanding that if the amount of the settlement exceeded the amount computed by you as the amount required to qualify as restitution under the Lemon Law you were to presume the restitution qualified under the Lemon Law. As you can see by the analysis above, this is not a correct statement. Although the amount of the settlement is important, it is not determinative. There are several requirements which must be satisfied in order to qualify for a refund of sales tax under the Lemon Law. One is that the restitution actually be pursuant to the Lemon Law. That is, even if the amount of the settlement were the required amount, if there is a provision stating no liability is admitted, or some wording to that effect, it is not Lemon Law restitution. Rather, such a settlement would merely payment in the nature of damages to settle a dispute.

You state that you know from previous discussions with legal staff that court awards do not qualify because the amounts received represent damages and not reimbursement for the vehicle. Generally, this is true. For instance, returnee-merchandise deductions and defective-merchandise deductions are based upon the theory of a voluntary refund, from the seller to the buyer, including sales tax reimbursement (less costs permitted by statute). Amounts returned to a buyer pursuant to a court-ordered decision, judgment or stipulated settlements are not considered voluntary refunds. Instead, they are in the nature of damages which do not differ from any other damages which a buyer might receive from a seller as a result of litigation. (Southern California Edison Company v. State Board of Equalization (1972) 7 Cal.3d 652.) Thus, a court-ordered refund does not qualify for the returned-merchandise or defective-merchandise deduction even where the full sales price including sales tax reimbursement is returned to the buyer.

However, the general rule as stated herein does not apply to the Lemon Law. With regard to the Lemon Law, where there is a court award or a stipulated settlement, if the settlement or court decision refers to the restitution as restitution under the Lemon Law it is restitution under the Lemon Law. Of course the requirements under the Lemon Law would still have to be satisfied and, again, if the judgment (or stipulated judgment) indicated that it was merely resolution of a dispute with no admission of liability, there would be no refund of sales tax under the Lemon Law.

## Proof

The manufacturer must be able to prove that the restitution was restitution that meets all the requirements under the Lemon Law and that the customer was refunded the entire purchase price including sales tax reimbursement (excluding specifically allowed deductions pursuant to section 1793.2). For instance, the manufacturer might supply a copy of a signed settlement agreement, stipulated judgment, or court award which provides all of the necessary information, e.g., a break-down of what the settlement amount constituted, admission of liability, etc., in which case it would be sufficient to prove that restitution was made pursuant to the Lemon Law.

I hope this answers your questions. If you have any other questions please feel free to write again.

RMA/md