

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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DATE: 04/09/08

DEPT. 309 copy

HONORABLE Anthony J. Mohr

JUDGE

M. CERVANTES

DEPUTY CLERK

HONORABLE  
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JUDGE PRO TEM

M. RODRIGUEZ, Courtroom Assistant

ELECTRONIC RECORDING MONITOR

NONE

Deputy Sheriff

NONE

Reporter

JCCP4378

Plaintiff

Counsel

Coordination Proceeding  
Special Title (Rule 1550(b))

Defendant

Counsel

NO APPEARANCES

Automobile Lease Tax Cases

NATURE OF PROCEEDINGS:

RULING ON MATTER TAKEN UNDER SUBMISSION ON  
JANUARY 22, 2008

RECEIVED

APR 15 2008

SEVERSON & WERSON

In this matter heretofore under submission on January 22, 2008, the court now issues its ruling as reflected in its "Order Sustaining Defendants' Demurrers Without Leave to Amend" signed and filed this date.

A copy of the above-entitled order is sent to Counsel for Defendants DaimlerChrysler Financial Services Americas LLP, Wells Fargo Auto Finance, Inc. and Ford Motor Credit Company who is to give notice all parties.

CLERK'S CERTIFICATE OF MAILING/  
NOTICE OF ENTRY OF ORDER

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 04/09/08 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

MINUTES ENTERED  
04/09/08  
COUNTY CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

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Plaintiff

Counsel

Coordination Proceeding  
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Defendant

Counsel

NO APPEARANCES

Automobile Lease Tax Cases

NATURE OF PROCEEDINGS:

Date: April 9, 2008

John A. Clarke, Executive Officer/Clerk

By: \_\_\_\_\_  
M. Cervantes, Deputy Clerk

Donald J. Querio  
Mark Joseph Kenney  
Mark D. Lonergan  
SEVERSON & WERSON  
One Embarcadero Center, Suite 2600  
San Francisco, California 94111

MINUTES ENTERED  
04/09/08  
COUNTY CLERK

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LOS ANGELES  
SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

COORDINATED PROCEEDING SPECIAL	)	Case No.: JCCP No. 4378
TITLE (Rule 1550(c))	)	
	)	
<b>AUTOMOBILE LEASE TAX CASES</b>	)	<b>ORDER SUSTAINING DEFENDANTS'</b>
	)	<b>DEMURRERS WITHOUT LEAVE TO</b>
	)	<b>AMEND</b>

This case came on for hearing on December 5, 2007 in Department 309 of the above-entitled court, the Honorable Anthony J. Mohr, Judge presiding. All parties were represented by counsel. The court having considered all documents, pleadings, oral argument in support and in opposition of the petition, the supplemental briefs the parties filed on December 28, 2007 and January 22, 2008, and in good cause appearing therefore, now issues this order.

The defendants are financial institutions that handle arrangements in connection with car leases. The State Board of Equalization requires them to comply with certain express directions with respect to use taxes that may be due. In this regard, these entities have become involuntary tax collectors for the State of California. *Bank of America N.T.&S.A. v. State Board of Equalization* (1962) 209 Cal.App.2d 780, 792. Although Plaintiffs understand that this court cannot enjoin the collection of a tax, they are asking that these financial institutions "be ordered to change the method in which they calculate their lease agreements so that no excess tax is charged to lessees and to further inform their customers that

1 they were charged an 'excess tax' under their lease agreements and have a right to file for  
2 reimbursement from the SBE." The court declines to order such relief for several reasons.

3 First, essentially what the plaintiffs want is for the court to re-write contracts freely negotiated by  
4 the parties in order for one side to gain a tax advantage. The court is unable to find any authority that  
5 justifies this kind of relief, and the court believes that such a law would run counter to public policy.  
6 Just as there is no requirement for individuals and businesses to structure transactions to avoid payment  
7 of an income tax, the sales and use tax law does not force retailers to conduct their business in such a  
8 way that they must take advantage of every available exemption or exclusion from the sales and use tax.  
9 March 18, 2007 SBE Opinion Letter, at 7.

10 Second, it is simply unfair for the state to expose entities like these defendants to litigation after  
11 drafting them as involuntary tax collection agents. *See Brennan v. Southwest Airlines* (9th Cir. 1998)  
12 134 F.3d 1405, 1411. It strains logic to claim that by complying with the SBE's directions, these entities  
13 are engaging in an unlawful or unfair business practice in violation of either section 17200 of the  
14 Business and Professions Code or any other statute. Collecting taxes is not the defendants' business;  
15 financing automobile sales is.

16 Third, the plaintiffs have used artful pleading to carve an exception to the requirement that  
17 taxpayers "pay first, litigate later." That rule is broadly interpreted to protect the tax collection  
18 mechanism and the public. *Batt v. City and County of San Francisco* (2007) 155 Cal.App.4th 65, 71-  
19 72, 79. Initially plaintiffs claimed damages on the theory that the leases at issue were disguised  
20 installment sales and should be subject to a sales tax as opposed to a use tax. Then they segued into  
21 claims of a failure to exempt certain components of the capitalized cost from the calculation of the use  
22 tax. In the face of an adverse ruling from the SBE, plaintiffs now want defendants to abandon integrated  
23 monthly rental payments and file refund claims on behalf of their lease customers. In other words, the  
24 claims involve the measure of tax defendants collect. That complaint must be directed against the SBE  
25 by way of a claim for refund.

26 Plaintiffs have brought two recent decisions to the court's attention. Neither changes the result.  
27 *County of Los Angeles v Superior Court (Oronoz)* (2008) 159 Cal.App.4th 353, deals with whether  
28 doctrines controlling tax-related claims at the state level (like the case at bar) apply to local utility taxes.

1 (“Woosley held that article XIII, section 32 of the California Constitution compels the conclusion that  
2 tax refund claims must strictly comply with statutes enacted by the Legislature specifically governing  
3 tax refunds. The parties have identified and we are aware of no statute specifically governing the claims  
4 for refund of the utility user taxes at issue here.”) *Oronoz* held they do not, but the ratio decidendi  
5 reinforces the defense arguments. *Dell v. Superior Court* (2008) 159 Cal. App.4th 911, deals with the  
6 taxability of service contract charges in connection with a sale of tangible property. The decision tried  
7 to draw a line between taxable sales of tangible property and nontaxable sales of service or intangibles.  
8 The cases at bar deal with leases, which receive different tax treatment from sales. Moreover, in *Dell*  
9 several consumers sued Dell who in turn cross-complained against the SBE for a refund. The sole issue  
10 at trial was whether the sales of service contracts to plaintiffs were subject to California sales or use tax.  
11 The plaintiffs were not asking for broad equitable relief as plaintiffs are in this litigation.

12 For these reasons, the demurrers are SUSTAINED without leave to amend.

13  
14 DATED: April 9, 2008

15  
16 ANTHONY J. MOHR

17 Anthony J. Mohr

18 Judge of the Los Angeles Superior Court  
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