

# Memorandum

Legal Department - MIC:82

**320.0048.050**

To : Robert L. Buntjer  
Supervisor, Refund Section (MIC:39)

Date : October 21, 2002

From : Randy Ferris  
Senior Tax Counsel (MIC:82)

Subject : **Credit Interest on Lemon Law Claims**

Your memorandum to Assistant Chief Counsel Janice Thurston, dated September 16, 2002, has been assigned to me for reply. In your memorandum, you request a legal opinion regarding credit interest. Specifically, you state:

“Attached is a copy of Civil Code Section 1793.25 regarding reimbursement of sales tax to vehicle manufacturers after restitution is made to customers. This section appears to bar payment by the Board of credit interest to the manufacturer.

“During a recent informal discussion, Mr. Warren Astleford of [the Legal staff] seemed to agree with this interpretation. However, we’d appreciate [it] if you would provide us with written confirmation that credit interest should not be paid when Lemon Law claims are granted to vehicle manufacturers.”

## **DISCUSSION**

Subdivision (c) of Civil Code section 1793.25 provides as follows:

“(c) The manufacturer’s claim for reimbursement and the [State Board of Equalization]’s approval or denial of the claim shall be subject to *the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code*, except Sections 6902.1, 6903, 6907, and 6908 thereof, insofar as *those provisions* are not inconsistent with this section.”

(Emphasis supplied.)

While two interpretations of this provision are possible, only one is reasonable. In the first (and reasonable) interpretation, the expressions “the provisions of Article 1 (commencing with Section 6901) of Chapter 7 of Part 1 of Division 2 of the Revenue and Taxation Code” and “those provisions” are synonymous (i.e., “those provisions” do not refer to the excepted sections 6902.1, 6903, 6907 and 6908). In the second (and unreasonable) interpretation, the excepted sections would be synonymous with “those provisions.” This second interpretation would result in subdivision (c) of Civil Code section 1793.25 making the absurd pronouncement that the expressly excepted (general) statutes of the Sales and Use Tax Law pertaining to overpayments and refunds would not apply to the extent that these excepted statutes are consistent with Civil Code section 1793.25 (i.e., the excepted statutes would only apply when they were inconsistent with Civil Code section 1793.25). Whereas the first interpretation is consistent with the Civil Code maxim that “[p]articlar expressions qualify those which are general,” the second interpretation would make a mockery of this maxim. (See Civ. Code, § 3534; see also *Lake v. Reed* (1997) 16 Cal.4th 448, 464 [“a more specific statute controls over a more general one”]). The unreasonable second interpretation would also violate the canon of statutory construction dictating that statutes should be construed to produce reasonable results consistent with legislative intent, not absurd consequences. (*Harris v. Capital Growth Investors XIV* (1991) 52 Cal.3d 1142, 1165-1166.).

Based on the foregoing, Civil Code section 1793.25, subdivision (c), expressly prohibits the Board from applying Revenue and Taxation Code section 6907 to manufacturers’ claims for sales tax reimbursement under Civil Code section 1793.25 (i.e., “Lemon Law claims”). As you know, Revenue and Taxation Code section 6907 is the statute that authorizes the Board to pay credit interest, under certain circumstances, to overpayments of tax amounts. Thus, Civil Code section 1793.25, subdivision (c), expressly prohibits the payment of credit interest when the Board approves manufacturers’ Lemon Law claims for sales tax reimbursement.

I trust that my response suffices to provide the written confirmation you are seeking. If any questions or concerns remain, please do not hesitate to contact me.

RMF:rmf

cc: Mr. Brian Manuel (MIC:39)