



**December 5, 2016**  
**Pennsylvania Sales & Use Tax**  
**No. SUT-16-003**  
**Volkswagen Class Action Settlement Agreement**

ISSUES:

1. May the vehicle value paid under the Buyback or the Owner Restitution Payment be deducted from the purchase price of a new vehicle?
2. Is either the Buyback or the Owner Restitution Payment considered a replacement or refund under Pennsylvania's Automobile Lemon Law?

CONCLUSIONS:

1. Neither the vehicle value paid under the Buyback nor the Owner Restitution Payment may be deducted from the purchase price of a new vehicle.
2. Neither the Buyback nor the Owner Restitution Payment is considered a replacement or refund under Pennsylvania's Automobile Lemon Law.

FACTS:

Volkswagen AG, Audi AG, and Volkswagen Group of America ("Volkswagen") sold TDI "clean diesel" vehicles which were marketed as being environmentally friendly, fuel efficient, and high performing. In 2015, a class action lawsuit was filed alleging that Volkswagen had installed software in nearly 500,000 of these vehicles that was designed to cheat emissions tests and deceive federal and state regulators. The Class Action Settlement Agreement ("Agreement") is the result of that lawsuit brought against Volkswagen by owners and lessees of the affected vehicles.

The Agreement was filed with the U.S. District Court for the Northern District of California on July 29, 2016, and was granted final approval by the court on October 25, 2016. Class members who owned an eligible vehicle on September 18, 2015, or who now own an eligible vehicle, have two options under the Agreement: Volkswagen will 1) buy the vehicle ("the Buyback"); or 2) fix the vehicle when and if an emissions modification is approved ("the Modification"). As set forth in the Agreement, the price Volkswagen will pay for an eligible vehicle under the Buyback is the September 2015 National Automobile Dealers Association Clean Trade-In value of the vehicle adjusted for options and mileage ("vehicle value").

In addition to either the Buyback or the Modification, owners will also receive a cash payment ("Owner Restitution Payment") calculated at twenty percent (20%) of the vehicle value plus \$2,986.73. The Owner Restitution Payment, which is to be paid on top of the vehicle value, will range from \$5,100 to approximately \$10,000. The Agreement does not require class members to

use the vehicle value or the Owner Restitution Payment in any specific way or for a particular purpose.

### DISCUSSION:

Pennsylvania's Tax Reform Code of 1971, as amended, imposes a tax of six percent (6%) of the purchase price on the sale at retail of tangible personal property or certain taxable services within this Commonwealth, including the sale at retail of vehicles. 72 P.S. § 7202(a); 61 Pa. Code § 31.42. Sales tax is computed upon the full amount of the purchase price of a vehicle; however, the purchase price may be deducted by the amount of a trade-in allowed on the purchase if the trade-in occurs at the same time of the sale. 61 Pa. Code § 31.44(a). A separate or independent sale of a vehicle is not considered a trade-in, even if the proceeds of the sale are immediately applied by the seller to a purchase of a vehicle from the person accepting the trade-in. Id.

Under the Buyback, Volkswagen will purchase an eligible vehicle from the owner and pay the vehicle value, which the owner may or may not choose to apply to the purchase of a new vehicle. Moreover, unlike a trade-in, the eligible vehicle is not purchased by the dealership, but by Volkswagen. Therefore, the Buyback is considered a separate or independent sale rather than a trade-in. Accordingly, the purchase price of a new vehicle upon which sales tax is imposed may not be reduced by the vehicle value, even if it is immediately applied by the owner to the purchase of the vehicle.

Similarly, the Owner Restitution Payment is not considered a trade-in. The payment is unrelated to and independent from the owner's sale of an eligible vehicle to, or purchase of a new vehicle from, a dealership. Accordingly, the purchase price of a new vehicle may not be deducted by the Owner Restitution Payment regardless of whether the purchase is made in connection with the Buyback or otherwise.

Under Pennsylvania's Automobile Lemon Law, 73 P.S. §§ 1951 – 1963, if a manufacturer fails to repair or correct a nonconformity after a reasonable number of attempts, then a purchaser may request the manufacturer either to replace the vehicle with a comparable motor vehicle of equal value or to refund the vehicle's full purchase price. 73 P.S. § 1955. A "nonconformity" is a defect or condition which substantially impairs the use, value, or safety of a new motor vehicle and does not conform to the manufacturer's express warranty. Id. § 1952. A nonconformity which substantially impairs the use, value, or safety of the motor vehicle had to have occurred within either: 1) the first year following delivery of the vehicle to the purchaser; 2) the first 12,000 miles of use; or 3) during the term of the warranty, whichever occurs first. Id. § 1954(a).

If the purchaser elects to receive a refund, then the manufacturer must provide the purchaser with the full purchase price, including Pennsylvania Sales Tax, within thirty (30) days of the election. See id.; Daimler Chrysler Corp. v. Commonwealth, 885 A.2d 117, 118, 119 (Pa. Commw. Ct. 2005), aff'd, 927 A.2d 201 (Pa. 2007). The manufacturer would then be able to request from the Department a refund of the Sales Tax that was paid to the Commonwealth. Daimler Chrysler Corp., 885 A.2d at 119.

The Department cannot determine whether the underlying emissions systems issues covered by this Agreement are considered “nonconformities” under Pennsylvania’s Automobile Lemon Law. This letter ruling does not address whether owners of an eligible vehicle may request a refund or replacement from Volkswagen under Pennsylvania’s Automobile Lemon Law. Reference should be made to the Agreement for information on the rights and responsibilities of class members with respect to such claims. Rather, this letter ruling addresses whether the Buyback or the Owner Restitution Payment is considered a replacement or refund under Pennsylvania’s Automobile Lemon Law.

Under the Buyback, Volkswagen agrees to purchase the vehicle from owners and to pay the vehicle value—not to replace the vehicle. The vehicle value is not the purchase price of the vehicle that the owner paid, but is an agreed-upon value as set forth in the Agreement. Similarly, the Owner Restitution Payment is neither the vehicle’s purchase price nor a replacement vehicle. Therefore, neither the Buyback nor Owner Restitution Payment is considered a vehicle replacement or refund under Pennsylvania’s Automobile Lemon Law.