

Vermont Legislative Joint Fiscal Office

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FISCAL NOTE

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S.127 Sec. 23. Motor Purchase & Use tax trade-in allowance as applied to the Volkswagen diesel class-action settlement

Summary

Sec. 23 allows Vermonters owning diesel vehicles covered by an EPA related class action settlement to claim a trade in allowance against the Motor Vehicle Purchase & Use tax (MV P&U) for the value of their vehicle sold back to the manufacturer without regard to the standard statutory 3 month time limitation subject to certain conditions.

- The impact of the EPA action and any class action settlements is to accelerate the purchase of replacement vehicles which otherwise would occur over a period of years.
- With respect to that portion of the purchase price of a replacement vehicle that is equal to the class action stipulated buy back value, the application of the 3 month rule under current law would deny some owners the ability to claim a trade in allowance and generate additional MV P&U revenue. Such additional revenue, however, would be an unexpected windfall since the consensus revenue forecast projects vehicle sales assuming normal trade in patterns.
- Under both current law and S.127 Sec. 23 the difference between the purchase price of a replacement vehicle and the manufacturers' buy back is subject to the MV P&U tax and the class action settlements will most likely generate revenue above the consensus forecast in FY-18 and perhaps FY-19 but any gains in these fiscal years will be offset by lower than expected revenue in later years. In FY-18 the additional revenue is estimated to be in the range of \$1.9 million.

S.127 Sec. 23

Sec. 23. MOTOR VEHICLE PURCHASE AND USE TAX; EXTENSION OF THREE-MONTH PERIOD TO REDUCE TAXABLE COST

(a) Notwithstanding 32 V.S.A. § 8902(5)(B), the three-month limitation on the period in which to reduce the taxable cost of a motor vehicle by the sale of a previously owned vehicle shall not apply in the case of vehicles sold to the manufacturer pursuant to buyback agreement under a Volkswagen, Audi, or Porsche diesel engine defeat device settlement or judgment, if the vehicle is sold to the manufacturer:

(1) on or before November 10, 2017, in the case of 2.0 liter diesel engine Volkswagens and Audis; or

(2) on or before one year after buybacks commence under the 3.0 liter diesel engine class action settlement for Volkswagens, Audis, and Porsches.

(b) If a person paid a purchase and use tax in excess of the amount that would have been required if this section had been in effect at the time of the tax payment, the Commissioner of Motor Vehicles, upon application, shall issue the person a refund in accordance with this section.

Timeline of VW diesel litigation and buyback program (Helena Gardner,
Legislative Council)

2.0 liter

- On September 3, 2015, Volkswagen admitted to the U.S. Environmental Protection Agency (“EPA”) and the California Air Resources Board (“CARB”) that it had installed defeat devices on its model years 2009 through 2015 Volkswagen and Audi 2.0-liter diesel engine vehicles.
- The public learned of this admission on September 18, 2015, when the EPA issued a notice of violation to Volkswagen AG, Audi AG, and Volkswagen Group of America, Inc. (collectively “Volkswagen”), alleging that use of the defeat devices violated the Clean Air Act.
- Starting in September 2015, owners, lessees, and dealers filed hundreds of lawsuits against Volkswagen in federal courts across the United States, which were consolidated into a multidistrict litigation (MDL) in the United States District Court for the Northern District of California.
 - ❖ The name and number of the consolidated cases is *In re Volkswagen “Clean Diesel” Marketing, Sales Practices, and Products Liability Litigation*, Case 3:15-md-02672-CRB
 - ❖ The case is presided over by Judge Charles Breyer.
 - ❖ The MDL also includes actions brought by federal and state government entities, including the Department of Justice (DOJ) and the Federal Trade Commission (FTC).
- The EPA issued a second notice of violation to Volkswagen, as well as Dr. Ing. h.c. F. Porsche AG and Porsche Cars North America, Inc. which alleged Volkswagen had installed in its 3.0-liter diesel engine vehicles a defeat device similar to the one described in the September 18 notice of violation.
- On July 26, 2016, the Parties reached a Class Action Agreement to settle the claims of certain current and former owners and lessees of certain Volkswagen and Audi branded vehicles with 2.0-liter TDI engines. The Agreement was subject to court approval.
- The July 26, 2016 Class Action Agreement does not apply to vehicles equipped with 3.0-liter engines, which are the subject of continued litigation.
- This Agreement was part of a coordinated effort among the Parties, the FTC, the DOJ, and other government entities. In addition to the Agreement, Volkswagen also entered into a separate Consent Order with the FTC and a separate Consent Decree with the DOJ (acting on behalf of the EPA).
- On October 25, 2016, the Judge Breyer approved the Class Action Agreement and the DOJ’s proposed amended consent decree.
- Under the approved Agreement, Class Members (consumers) who have not opted out have two options: Volkswagen will pay cash (owner restitution) and either:
 - (1) buy the Class Member’s eligible vehicle at its pre-defeat device disclosure value (“the Buyback”), or (2) fix the Class Member’s vehicle when and if EPA and CARB approve an emissions modification.
- Under ¶ 4.1 of Appendix A of the DOJ’s consent decree:
“Beginning no later than fifteen (15) Days after the Effective Date of the Consent Decree, Settling Defendants shall offer, and if accepted provide, each Eligible Owner of an Eligible Vehicle the Buyback....”

- Fifteen days after the Oct. 25 effective date of the DOJ consent decree was Nov. 10, 2016.

3.0 liter

- A settlement involving 3.0 liter vehicles was reached in January 2017; it received preliminary court approval on February 14 and final approval hearing is scheduled for May 11, 2017. Until final approval is granted, however, the exact timing of a 3.0 buy back program is unknown.

Fiscal Analysis

After the class action settlement went into effect a considerable time lag developed between the filing and payment of claims. As a consequence an unknown number of Vermont claimants, having been induced by the settlement to replace their defective vehicle, were unable to obtain proof of the manufacturer's purchase of their vehicle within the 3 month time period required in 32 V.S.A. § 8902(5) to secure a trade-in allowance. Eligible owners who have not yet filed a claim apparently face the same problem.

The EPA's action against diesel engine vehicle manufacturers has the effect of accelerating a significant number of vehicle purchases which otherwise would have occurred over a longer period of years.¹ To the extent the purchase of replacement vehicles is concentrated within a shorter time frame, vehicle sales will be higher than otherwise but in the out years will be lower, i.e. there is no reason to believe the EPA's action will affect overall vehicle sales over a multi-year period.

With respect to the impact of the EPA's action and the class action settlement on Vermont's Motor Vehicle Purchase & Use Tax revenue, there are two groups of claimants to consider:

Group 1 – Individuals who bought a replacement vehicle but missed (or will miss) the 3 month time window to secure a trade-in allowance. Under current law, these individuals are liable for MV P&U tax on 100% of the purchase price of their replacement vehicle with no trade-in allowance. Under the proposed derogation in S.127 as passed by the House Transportation Committee, these individuals' tax liability would be limited to the difference between the purchase price of their replacement vehicle and the buy back value of their diesel vehicle under the class action settlement.

Group 2 – Individuals who bought a replacement vehicle and secured a buy back from the manufacturer within the statutory 3 month time period. The proposed change in law has no effect on this group but their accelerated purchases do impact MV P&U revenue.

The rationale for the proposed change in law is that the 3 month trade in rule never contemplated, nor was intended to apply, to the exceptional circumstances involved here. The 3 month rule provides a reasonable, easy to administer basis for legally presuming a close connection between an owner's purchase of one vehicle and sale of another – namely that the owner is replacing his or her car. In this situation, whatever the time frame involved, the

¹ According to the Automotive News the average age of light vehicles on the road in the U.S. was 11.6 years in 2016 ([Auto News](#)). Since the VW lawsuit involved model year vehicles 2009-2015, any average value near that cited means a substantial number of these vehicles, absent the lawsuit, would have been held well into the 2020s.

documentation itself establishes that connection since the owner is seeking a trade in allowance for a vehicle sanctioned by the EPA and subject to a class action settlement.

If current law is left unchanged individuals with direct evidence they are replacing one vehicle with another would be denied a trade in allowance. Besides the fiscal impact of vehicle purchases being accelerated, MV P&U revenue would be increased by the taxation of that portion of the purchase price of the replacement vehicle which is equal to the class action buy back value of the diesel engine vehicle. Since the oldest cars involved in the class action are from model year 2009 and the buy back value is the vehicle's "pre-defeat device disclosure value" that taxable amount is likely to be quite substantial.² By not changing current law, MV P&U tax revenue would get a boost from this impact but the gain would be in the nature of an unexpected windfall since the consensus revenue forecast is based on a projection of vehicle sales assuming an historical normal pattern of allowed trade ins. In terms of the consensus forecast, therefore, the proposed change in current law would have no negative fiscal impact.

That leaves for consideration the revenue impact of taxing the difference between the purchase price of a class action claimant's replacement vehicle and the buy back value they receive from the manufacturer. This amount is taxable under both current law and the proposed change in law but the revenue impact is solely attributable to the acceleration in vehicle purchases caused by the EPA action and the resulting class action settlement. As noted above, these purchases do not reflect any new demand but just the re-distribution of the timing of demand. Any increased revenue in FY-18 will thus be offset by lower revenue in later years.

According to DMV, in early April there were 3,021 vehicles covered by the class action settlement registered in Vermont. Again, whether or not the current law is changed, the difference between the purchase price of a replacement vehicle and the class action buy back value is taxable in Vermont. If all these vehicles are replaced in FY-18 we estimate the additional temporary revenue above the consensus forecast would be in the range of \$1.9 million.

² According to news reports the VW class action settlement set aside \$10 billion for buy back and other owner compensation for 475,000 vehicles. On that basis the average buy back would be \$21,000 less the "owner compensation" unrelated to the buy back. [Legal Newsline VW Settlement](#)