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TDM asked the Director to reconsider his decision. On September 3, 1992, the Director denied TDM's request for reconsideration concluding that TDM did not satisfy the statutory definition of manufacturer. It is from this decision that TDM filed the appeal which presently is before the Board.<sup>1</sup>

### FACTS

TDM's Delaware business activities consist of receiving cars and trucks manufactured by General Motors at plants in Delaware and New Jersey under bailment, modifying the automobiles to bring them into compliance with the automobile regulations adopted in various European countries and then shipping the automobiles to Europe. TDM modifies the automobiles in accordance with a Supply Agreement it entered with General Motors. The contract obligates TDM to provide General Motors with "retrofit services for specific components and assemblies in the T10506 model (4-Door Utility Vehicle) required to meet European Homologation Regulations and Certifications." Retrofit services are defined as the "procurement and installation of Custom Options," which, in turn, are listed on an attachment to

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<sup>1</sup> Although filed in 1992, the case was dormant for several years with neither TDM nor the Director taking action to move it forward. After the Board notified TDM that it was considering dismissing the case for failure to prosecute, TDM filed its brief and the matter was presented for argument.

30 Del. C. § 2701(2). Whether or not TDM is engaged in manufacturing is significant because, if TDM is a manufacturer, then it is entitled to a \$600,000 monthly exemption for purposes of calculating its gross receipts tax. 30 Del. C. § 2702(b)(1).<sup>2</sup> If, however, TDM is a member of the service industry, it is entitled only to a much lower gross receipts exemption. 30 Del. C. § 2301(d)(1) (members of service industry entitled to a \$50,000 monthly exemption from gross receipts tax). TDM has paid gross receipts taxes as a member of the service industry and is seeking a refund of the amounts it claims to have overpaid from July 1991 to August 1995. TDM asserts that because it has been denied the larger exemption given to manufacturers it has overpaid its gross receipts taxes by more than \$80,000.

TDM bears the burden of proving it is engaged in manufacturing and, having considered all of the evidence and the arguments presented by the parties, we determine that TDM has not met its burden. Nothing TDM does to the automobiles it receives from General Motors can be characterized as "processing, working, development, change, conditioning, or reconditioning . . . products *into products of a different character* . . ." TDM receives each vehicle from General Motors and, while it does modify each vehicle to comply with certain European laws, its modifications do not change the vehicle into a product of a different character. The product is an automobile when TDM receives it and it is an automobile when it is shipped to Europe. This is the products fundamental character and nothing TDM does alters or modifies that fundamental character.

TDM argues two facts dictate a different result. First, it claims to engage in manufacturing because the vehicles it receives could not be sold legally in Europe without its

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<sup>2</sup> Section 2702(b)(1) was amended while this matter was pending before the Board so that the monthly deduction is now \$1,000,000.

modifications and, therefore, it is changing the character of the vehicle. The fact that TDM's adaptations are legally required is not dispositive of whether TDM has changed the inherent nature of the product. We have taken this fact into account and find that it, either standing alone or together with all of the other facts presented by TDM, does not establish that TDM is a manufacturer.

Second, TDM asserts it is engaged in manufacturing because it engineers, designs and manufactures all of the components it uses to modify the General Motors vehicles. The Director concedes this point, but notes that all of these activities take place outside of Delaware. The Director is taxing TDM based on its activities in Delaware. The fact that TDM is engaged in manufacturing outside the state does not entitle TDM to manufacturer status in this State.

As TDM's activities do not alter the character of the products it receives, modifies and ships to Europe, TDM is not engaged in manufacturing. Milford Fertilizer v. Director of Revenue, Del. T.A.B. Dkt. No. 642 (July 20, 1979), rev'd on other grounds, Del. Super., 80-A-FE-24 (Nov. 6, 1980).<sup>3</sup>

IT IS SO ORDERED this 20th day of April, 2001.

Regina C. Audgera

Paul C. Self

Cynthia L. Hughes

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<sup>3</sup> In its opening brief, TDM argued that it was a "manufacturer" under 30 Del. C. § 2702(5). At oral argument TDM conceded that Section 2702(5) did not provide an independent basis for concluding TDM was engaged in manufacturing.

# **TDM WORLD CONVERSIONS, LTD. v. DIRECTOR OF REVENUE, Respondent.**

## **Case Information:**

**Docket/Court:** 1140, Delaware Tax Appeal Board

**Date Issued:** 04/20/2001

**Tax Type(s):** Sales and Use Tax

**Disposition:** DECISION AND ORDER

## **OPINION**

Petitioner **TDM World Conversions, Inc. ("TDM")** is a Michigan corporation conducting business in New Castle, Delaware. This dispute relates to the proper classification of **TDM** for purposes of Delaware's gross receipts tax. **TDM** contends that its Delaware business activities constitute "manufacturing" for purposes of 30 Del. C. section 2701(2), while the Director contends **TDM** is not a manufacturer but provides services within the meaning of 30 Del. C. 2301(b). For the reasons set forth herein, we conclude that **TDM** is not engaged in manufacturing under Section 2701(2) and that, accordingly, **TDM** is not entitled to the higher monthly exemption and lower tax rate afforded manufacturers.

## **PROCEDURAL BACKGROUND**

For all relevant tax years the Director has classified **TDM** as a member of the "service industry" under 30 Del. C section 2301 for purposes of calculating **TDM's** gross receipts tax. In September 1991, **TDM** objected to its classification as a "service industry." **TDM** argued that it was properly characterized as a manufacturer and sought a refund of all gross receipts tax it purportedly overpaid as a result of its improper classification. On September 30, 1991, the Director denied **TDM's** request for a manufacturing classification ruling **TDM** was properly characterized as a service provider and not entitled to a refund.

**TDM** asked the Director to reconsider his decision. On September 3, 1992, the Director denied **TDM's** request for reconsideration concluding that **TDM** did not satisfy the statutory definition of manufacturer. It is from this decision that **TDM** filed the appeal which presently is before the Board. 1

## **FACTS**

**TDM's** Delaware business activities consist of receiving cars and trucks manufactured by General Motors at plants in Delaware and New Jersey under bailment, modifying the automobiles to bring them into compliance with the automobile regulations adopted in various European countries and then shipping the automobiles to Europe. **TDM** modifies the automobiles in accordance with a Supply Agreement it entered with General Motors. The contract obligates **TDM** to provide General Motors with "retrofit services for specific components and assemblies in the T 10506 model (4-Door Utility Vehicle) required to meet European Homologation Regulations and Certifications." Retrofit services are defined as the "procurement and installation of Custom Options," which, in turn, are listed on an attachment to the contract. Absent the modifications, the automobiles **TDM** receives under bailment could not legally be sold in Europe.

**TDM** supplied the Board with videotapes which detail the work performed at its New Castle location. The videotapes demonstrate that, among other things, **TDM** takes the following actions with respect to the General Motors automobiles that come into its possession:

- removal, modification and replacement of the windshield wiper and engine coolant reservoirs;
- removal of the fixed headlight assembly and installation of headlight leveling system required in Europe;
- modification of mirror appliques;
- installation of wheel lip moldings;
- stamping the IN number on the underside frame of each vehicle;

- installation of a secondary spare-tire retention system;
- removal of symbols used to designate various driver controls (e.g., headlights, defroster, etc.) and replacement with symbols used in European countries;
- installation of roof rub strip and hinge covers;
- modification of sliding door;
- sanding of the drip rail molding;
- removal, modification and reinstallation of rear seats to conform to European standards;
- modification and installation of the seat belt assembly; and
- application of undercoating.

**TDM** does all of the engineering, design, and manufacture of the component parts used to modify the General Motors automobiles; however, all of these activities take place outside of Delaware.

## ANALYSIS

Section 2701(2) defines "manufacturing" as: "any processing, working, development, change, conditioning, or reconditioning of raw materials or products into products of a different character, finished or unfinished, or effecting any combination or composition of materials the inherent nature of which is changed but does not include the making, crafting, or painting of art or craft objects by individual artists or craft persons."

30 Del. C. section 2701(2). Whether or not **TDM** is engaged in manufacturing is significant because, if **TDM** is a manufacturer, then it is entitled to a \$600,000 monthly exemption for purposes of calculating its gross receipts tax. 30 Del. C. section 2702(b)(1). 2 If, however, **TDM** is a member of the service industry, it is entitled only to a much lower gross receipts exemption. 30 Del. C. section 2301(d)(1) (members of service industry entitled to a \$50,000 monthly exemption from gross receipts tax). **TDM** has paid gross receipts taxes as a member of the service industry and is seeking a refund of the amounts it claims to have overpaid from July 1991 to August 1995. **TDM** asserts that because it has been denied the larger exemption given to manufacturers it has overpaid its gross receipts taxes by more than \$80,000.

**TDM** bears the burden of proving it is engaged in manufacturing and, having considered all of the evidence and the arguments presented by the parties, we determine that **TDM** has not met its burden. Nothing **TDM** does to the automobiles it receives from General Motors can be characterized as "processing, working, development, change, conditioning, or reconditioning ... products INTO PRODUCTS OF A DIFFERENT CHARACTER ...." **TDM** receives each vehicle from General Motors and, while it does modify each vehicle to comply with certain European laws, its modifications do not change the vehicle into a product of a different character. The product is an automobile when **TDM** receives it and it is an automobile when it is shipped to Europe. This is the products fundamental character and nothing **TDM** does alters or modifies that fundamental character.

**TDM** argues two facts dictate a different result. First, it claims to engage in manufacturing because the vehicles it receives could not be sold legally in Europe without its modifications and, therefore, it is changing the character of the vehicle. The fact that **TDM's** adaptations are legally required is not dispositive of whether **TDM** has changed the inherent nature of the product. We have taken this fact into account and find that it, either standing alone manufacturer.

Second, **TDM** asserts it is engaged in manufacturing because it engineers, designs and concedes this point, but notes that all of these activities take place outside of Delaware. The Director is taxing **TDM** based on its activities in Delaware. The fact that **TDM** is engaged in manufacturing outside the state does not entitle **TDM** to manufacturer status in this State.

As **TDM's** activities do not alter the character of the products it receives, modifies and ships to Europe, **TDM** is not engaged in manufacturing. *Milford Fertilizer v. Director of Revenue*, Del. T.A.B. Dkt. No. 642 (July 20, 1979), rev'd on other grounds, De. Super., 80-A-FE-24 (Nov. 6, 1980). 3

IT IS SO ORDERED this 20th day of April, 2001.

Todd C. Schiltz

Regina Dudzic

## FOOTNOTES

1 Although filed in 1992, the case was dormant for several years with neither **TDM** nor the Director taking action to move it forward. After the Board notified **TDM** that it was considering dismissing the case for failure to prosecute, **TDM** filed its brief and the matter was presented for argument.

2 Section 2702(b)(1) was amended while this matter was pending before the Board so that the monthly deduction is now \$1,000,000.

3 In its opening brief, **TDM** argued that it was a "manufacturer" under 30 Del. C. section 2702(5). At oral argument **TDM** conceded that Section 2702(5) did not provide an independent basis for concluding **TDM** was engaged in manufacturing. END OF FOOTNOTES