

STATE OF MICHIGAN
IN THE SUPREME COURT

BETTEN AUTO CENTER, INC.,
a Michigan corporation,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

Supreme Court No.132343

Court of Appeals No. 265976

Court of Claims
Docket No. 04-95-MT

BETTEN MOTOR SALES, INC.,
a Michigan corporation,
D/B/A TOYOTA OF GRAND RAPIDS,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

Supreme Court No. 132344

Court of Appeals No. 265977

Court of Claims
Docket No. 04-96-MT
(consolidated)

132343-5
Reply
BETTEN-FRIENDLY MOTORS COMPANY,
D/B/A FAMILY AUTO CENTER,
a Michigan corporation,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

Supreme Court No. 132345

Court of Appeals No. 265978

Court of Claims
Docket No. 04-97-MT
(consolidated)

BRIEF IN REPLY TO BRIEF IN OPPOSITION TO
APPLICATION FOR LEAVE TO APPEAL

FILED

DEC 11 2006

CORBIN R. DAVIS
CLERK
MICHIGAN SUPREME COURT

Michael A. Cox
Attorney General

Thomas L. Casey (P24215)
Solicitor General
Counsel of Record

Heidi L. Johnson-Mehney
Assistant Attorney General
Attorneys for Michigan Department of
Treasury
Defendant/Appellant
525 W. Ottawa St., 2nd Fl.
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203

Dated: December 11, 2006

TABLE OF CONTENTS

	<u>Page</u>
INDEX OF AUTHORITIES.....	2
ARGUMENT.....	3
I. The Court of Appeals erred when it found that Betten was not a consumer of the subject vehicles based on a dictionary definition of "consumer" that is markedly different from the statutory definition.....	3
II. <i>People v Rodriquez</i> and <i>Corporate Flight v Dep't of Treasury</i> pre-date 2002 PA 110, which provided additional legislative guidance regarding use tax exemptions.	4
CONCLUSION.....	6
RELIEF SOUGHT.....	7

INDEX OF AUTHORITIES

	<u>Page</u>
<u>Cases</u>	
<i>Corporate Flight Inc v Dep't of Treasury</i> , 469 Mich 852; 666 NW2d 665 (2003).....	4
<i>Crown Motors of Charlevoix LTD v Dep't of Treasury</i> , unpublished Opinion per curiam of the Court of Appeals, decided November 4, 2003 (Docket No. 240555)	4
<i>People v Rodriquez</i> , 463 Mich 466; 620 NW2d 13 (2000).....	4
<i>WS Butterfield Theatres Inc v Dep't of Revenue</i> , 353 Mich 345, 349-350; 91 NW2d 269 (1958)	3
<u>Statutes</u>	
MCL § 205.92.....	3
MCL § 205.92(g)	3
MCL § 205.97.....	passim
<u>Rules</u>	
MCR 7.302(G)(1)	6

ARGUMENT

I. **The Court of Appeals erred when it found that Betten was not a consumer of the subject vehicles based on a dictionary definition of "consumer" that is markedly different from the statutory definition.**

MCL § 205.97 states that "[e]ach *consumer* storing, using or otherwise consuming in this state tangible personal property or services purchased for *or subsequently converted to* such purpose or purposes shall be liable for the tax imposed by this act" ¹ [Emphasis added.] The Use Tax Act (UTA) contains a legislatively mandated definition of "consumer," that is applicable to all sections of the Act. That definition provides that a consumer is²:

[T]he person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes a person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others.

Instead of applying this statutory definition, the Court of Appeals applied the definition of "consumer" found in Black's Law Dictionary.³ This action was directly contrary to this Court's own precedent and should be reversed in order to avoid conflict with decades of Michigan jurisprudence.⁴

Moreover, the Plaintiff-Appellee's argument that the statutory definition and the dictionary definition the Court of Appeals used are virtually identical is incorrect and untrue. A plain reading of both definitions shows marked differences. The dictionary definition is narrow and restrictive, limiting the label of "consumer" to those who buy goods for personal, family, or

¹ MCL § 205.92.

² MCL § 205.92(g).

³ The definition applied by the Court of Appeals states as follows:

A person who buys goods or services for personal, family or household use, with no intention of resale; a natural person who uses products for personal rather than business purposes.

⁴ *WS Butterfield Theatres Inc v Dep't of Revenue*, 353 Mich 345, 349-350; 91 NW2d 269 (1958).

household use, with no intention of resale. The statutory definition encompasses anyone who buys tangible personal property for storage, use, or consumption in the State of Michigan. The inclusion of a statutory definition in the UTA fully establishes that the Legislature intended the statutory definition to apply. Moreover, it is clear that the Legislature similarly intended that "consumer" would include a broad range of persons, including the Plaintiff-Appellee. Consequently, the Court of Appeals committed error when it improperly applied a dictionary definition that confuses the plain meaning of the statute and will lead to incorrect application of the statute.

II. *People v Rodriquez*⁵ and *Corporate Flight v Dep't of Treasury*⁶ pre-date 2002 PA 110, which provided additional legislative guidance regarding use tax exemptions.

This Court's decision in *People v Rodriquez* pre-dates 2002 PA 110.⁷ Similarly, *Corporate Flight v Dep't of Treasury* involved tax years prior to the effective date of 2002 PA 110.⁸ 2002 PA 110 provided much-needed guidance regarding the Legislature's intent with regard to exemptions from use tax. Prior to the enactment of 2002 PA 110, the Courts indicated frustration with proper application of the use tax exemptions and their interplay with the conversion language of MCL § 205.97⁹. By way of the Legislature's provision for the tax base of vehicles not exempt under the resale exemption in 2002 PA 110, the Legislature made clear its position that not all tangible personal property that is eventually resold is exempt from use tax. This Legislative mandate supports the Department of Treasury's interpretation of the conversion language in MCL § 205.97.

⁵ *People v Rodriquez*, 463 Mich 466; 620 NW2d 13 (2000).

⁶ *Corporate Flight Inc v Dep't of Treasury*, 469 Mich 852; 666 NW2d 665 (2003).

⁷ *People v Rodriquez*, 463 Mich 466; 620 NW2d 13 (2000).

⁸ *Corporate Flight Inc v Dep't of Treasury*, 469 Mich 852; 666 NW2d 665 (2003).

⁹ *Crown Motors of Charlevoix LTD v Dep't of Treasury*, unpublished Opinion per curiam of the Court of Appeals, decided November 4, 2003 (Docket No. 240555).

If the Legislature intended that all tangible personal property that is eventually resold would be exempt under the resale exemption, then there would be no need for 2002 PA 110. Likewise, there would be no need for the conversion language found in MCL § 205.97. Nor would there be a need for numerous other exemptions that involve tangible personal property that will certainly be resold at some point in the future. It is preposterous to argue that the Legislature intended the language of its own statutes to be meaningless, or to render its own statutes nugatory. Since the earlier decisions to which the Plaintiff-Appellee cites, the Legislature has clarified the law on this issue, and the Legislature's mandate should be given effect.

CONCLUSION

This Court should grant leave to appeal this issue, and give proper weight to the plain meaning of MCL § 205.97 to prevent confusion and misapplication of the Use Tax Act. Furthermore, granting leave to appeal will allow this Court to give proper weight to other statutory exemptions that are rendered nugatory by the Court of Appeals opinion.

Therefore, for the reasons detailed in this Application for Leave to Appeal, this Court should grant the Department leave to appeal the Court of Appeals decision, or issue a peremptory order pursuant to MCR 7.302(G)(1) reversing the decision of the Court of Appeals.

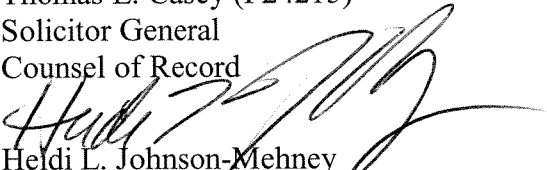
RELIEF SOUGHT

The Defendant-Appellant, Michigan Department of Treasury, requests this Honorable Court grant leave to appeal or, alternatively, peremptorily reverse the Court of Appeals opinion with regard to the effect of MCL § 205.97 on the Plaintiff-Appellee and hold that the Plaintiff-Appellee was a consumer of the subject vehicles and is liable for use tax.

Respectfully submitted,

Michael A. Cox
Attorney General

Thomas L. Casey (P24215)
Solicitor General
Counsel of Record



Heldi L. Johnson-Mehney
Assistant Attorney General
Attorneys for Michigan Dep't of Treasury
525 W. Ottawa St., 2nd Fl.
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203

Dated: December 11, 2006
2004013085C/Betten/Reply Brief

STATE OF MICHIGAN
IN THE SUPREME COURT

BETTEN AUTO CENTER, INC.,
a Michigan corporation,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

Supreme Court No. 132343

Court of Appeals No. 265976

Court of Claims
Docket No. 04-95-MT

BETTEN MOTOR SALES, INC.,
a Michigan corporation,
D/B/A TOYOTA OF GRAND RAPIDS,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

Supreme Court No. 132344

Court of Appeals No. 265977

Court of Claims
Docket No. 04-96-MT
(consolidated)

BETTEN-FRIENDLY MOTORS COMPANY,
D/B/A FAMILY AUTO CENTER,
a Michigan corporation,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant.

Supreme Court No. 132345

Court of Appeals No. 265978

Court of Claims
Docket No. 04-97-MT
(consolidated)

PROOF OF SERVICE

STATE OF MICHIGAN
DEPARTMENT OF ATTORNEY GENERAL



MIKE COX
ATTORNEY GENERAL

P.O. Box 30754
LANSING, MICHIGAN 48909

December 11, 2006

Corbin Davis, Chief Clerk
Michigan Supreme Court
Michigan Hall of Justice – Fourth Floor
P.O. Box 30052
Lansing, MI 48909

Dear Mr. Davis:

Re: *Betten Auto Center, Inc v Michigan Department of Treasury*
Supreme Court No. 132343
Court of Appeals No. 265976
Court of Claims No. 04-95-MT

Enclosed for filing are the original and seven copies of Defendant-Appellant's Brief in Reply to Brief in Opposition to Application for Leave to Appeal in the above matter and our Proof of Service on counsel for Plaintiff-Appellee's.

Very truly yours,

A handwritten signature in black ink, appearing to read "Heidi L. Johnson-Mehney".

Heidi L. Johnson-Mehney
Assistant Attorney General
Revenue & Collections Division
G. Mennen Williams Bldg., 2nd Floor
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203

HJM/ml
Enc.
cc: Michael H. Perry
2004013085C/Betten/Ct Ltr 12 11 06

