

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)

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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)

ON APPLICATION FOR LEAVE TO APPEAL

SUPPLEMENTAL BRIEF FOR APPELLANT

FILED

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ARGUMENT

I. **MCL § 205.93(2) and MCL § 205.94(2) establish that not all vehicles that are eventually resold are exempt under MCL § 205.94(1)(c).**

The crucial issue in this case is whether all vehicles held by a dealer that are eventually resold are exempt under the resale exemption, regardless of any intervening use to which the dealer puts the vehicle.¹ Three statutes affect the analysis of this question – MCL § 205.94(1)(c), MCL § 205.93(2), and MCL § 205.94(2). When understood according to the applicable rules of statutory construction, these statutes clarify the fact that vehicles are not necessarily wholly exempt merely because they are eventually resold.

A. **Rules of statutory construction require that the Court give effect to the Legislature's intent and avoid rendering statutory provisions surplusage.**

As this Court established in a plethora of cases, it is a cardinal rule of statutory construction that courts must give effect to the Legislature's intent.² Consistent with this rule, the Court has also established that courts cannot render words of a statute surplusage or nugatory.³ In *Reed v Yackell*, this Court explained that "[W]e are bound by oath to give meaning to every word, phrase, and clause in a statute."⁴

This Court has asked the parties to brief the interplay between three statutes – MCL § 205.94(1)(c), MCL § 205.93(2), and MCL § 205.94(2). The first of these three – MCL § 205.94(1)(c) – provides a use tax exemption for resale. The statute reads as follows⁵:

¹ Motor vehicles are the property at issue in this case. Two of the statutory provisions about which this Court has questioned the parties – MCL § 205.94(1)(c) and MCL § 205.94(2) – apply to all tangible personal property. The third, MCL § 205.93(2) applies specifically to motor vehicles.

² *Burton v Reed City Hosp Corp*, 471 Mich 745, 751; 691 NW2d 424 (2005); *Woodard v Custer*, 476 Mich 545, 598; 719 NW2d 842 (2006).

³ *Reed v Yackell*, 473 Mich 520, 537; 703 NW2d 58 (2005).

⁴ *Reed v Yackell*, 473 Mich at 537.

⁵ MCL § 205.94(1)(c).

The following are exempt from the tax levied under this act, subject to subsection (2):

(c) Property purchased for resale, demonstration purposes For a dealer selling a new car or truck, exemption for demonstration purposes shall be determined by the number of new cars and trucks sold during the current calendar year or the immediately preceding year without regard to specific make or style according to the following schedule of 0 to 25, 2 units; 26 to 100, 7 units; 101 to 500, 20 units; 501 or more, 25 units; but not to exceed 25 cars and trucks in 1 calendar year for demonstration purposes.

Therefore, on its face, the resale exemption refers to MCL § 205.94(2). That statutory subsection provides⁶:

The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1). The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

By the statute's own terms, MCL § 205.94(2) limits the application of the exemptions provided for in MCL § 205.94(1)(c), necessarily including the MCL § 205.94(1)(c) resale exemption.

The Legislature similarly showed its intent that the resale exemption should not be applied in a blanket fashion to any vehicle that is eventually resold when it amended MCL § 205.93 in 2002.⁷ As amended, MCL § 205.93 provides, in pertinent part⁸:

The price tax base of a new or previously owned car or truck *held for resale by a dealer and that is not exempt under section 4(1)(c)* is the purchase price of the car or truck multiplied by 2.5% plus \$30.00 per month beginning with the month that the dealer uses the car or truck in a nonexempt manner.

Thus, the Legislature again indicated that a vehicle can be held for resale and still not be exempt from use tax.

The Legislature's intent that not all vehicles that are eventually resold are exempt from use tax is clear from the language of MCL § 205.94(2) and MCL § 205.93(2). Application of the

⁶ MCL § 205.94(2).

⁷ 2002 PA 110.

⁸ MCL § 205.93(2).

resale exemption in a blanket fashion to any vehicle that is eventually resold would render these provisions nugatory and surplusage. Consequently, only a finding that not all resold vehicles are exempt under MCL § 205.94(1)(c) comports with the language of the applicable statutes and well-established rules of statutory construction.

The Department of Treasury's interpretation of the statutes is consistent with both the language of the applicable statutes and rules of statutory construction. The Department agrees that vehicles that are solely held for resale and used for that purpose are exempt, if resold. However, consistent with the statutory language, the Department argues that use tax is due on the use of vehicles that are not exempt under the demonstrator exemption⁹ and are used for purposes other than just being held for resale – such as for the personal benefit of dealership employees. The Department submits that property that was purchased with the intent to resell loses its exempt status at such time as it is used in a manner that is inconsistent with merely holding the property for resale. The language of all of the statutes at issue supports this interpretation.

⁹ The demonstrator exemption is also provided by MCL § 205.94(1)(c) and is subject to statutory limits.

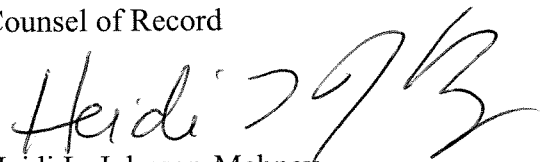
CONCLUSION AND RELIEF SOUGHT

WHEREFORE, the Defendant-Appellant requests this Honorable Court 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.

Respectfully submitted,

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2004013085C/Betten/MSB Brief

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March 15, 2007

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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

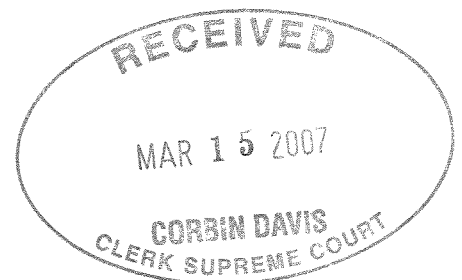
Enclosed for filing are the original and seven copies of Defendant-Appellant's Supplemental Brief in the above matter and our Proof of Service on counsel for Plaintiff-Appellee's.

Very truly yours,

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

Heidi L. Johnson-Mehney
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PROOF OF SERVICE

