

STATE OF MICHIGAN
IN THE SUPREME COURT

BETTEN AUTO CENTER, INC., a Michigan
Corporation,

Supreme Court Nos. 132343 and 132347

Plaintiff/Appellant,

Court of Appeals No. 265976

v

MICHIGAN DEPARTMENT OF TREASURY,

Court of Claims Case No.: 04-95-MT
(Consolidated)

Defendant/Appellee.

BETTEN MOTOR SALES, INC., a Michigan
Corporation, d/b/a TOYOTA OF GRAND
RAPIDS,

Supreme Court Nos. 132344 and 132348

Plaintiff/Appellant,

Court of Appeals No. 265977

v

MICHIGAN DEPARTMENT OF TREASURY,

Court of Claims Case No.: 04-96-MT
(Consolidated)

Defendant/Appellee.

BETTEN - FRIENDLY MOTORS COMPANY, a
Michigan Corporation, d/b/a FAMILY AUTO
CENTER,

Supreme Court Nos. 132345 and 132349

Plaintiff/Appellant,

Court of Appeals No. 265978

v

MICHIGAN DEPARTMENT OF TREASURY,

Court of Claims Case No.: 04-97-MT
(Consolidated)

Defendant/Appellee.

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PLAINTIFF/APPELLANTS' SUPPLEMENTAL BRIEF
TO APPLICATION FOR LEAVE TO APPEAL

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This Brief is filed pursuant to the Order of this Court dated January 26, 2007 directing the parties to address (1) how MCL 205.94(1)(c)'s exemption for use tax for property purchased for resale is best reconciled with the statutory language of MCL 205.93(2) and (2) how MCL 205.94(2) affects this analysis.

I. THE STATUTORY LANGUAGE OF MCL 205.93(2) IS BEST RECONCILED WITH MCL 205.94(1)(c) AS NOT REVOKING OR VOIDING THE PURCHASED FOR RESALE EXEMPTION.

All parties agree that the resale exemption of MCL 205.94(1)(c) (hereinafter Section 4(1)(c)) applies to all of the Plaintiff/Appellants' vehicles. Appendix C Exhibit 32 – Opinion p 4. The question before this Court is whether a vehicle purchased for resale, held in inventory, and resold to a retail customer in a transaction upon which sales tax was collected and remitted to the State of Michigan is subject to use tax while held in inventory by virtue of the enactment of MCL 205.93(2) (hereinafter Section 3(2)). Any use tax could only be imposed beginning March 27, 2002, the effective date of the amendment to Section 3(2). Exhibit 32 p 6.

The use tax complements the sales tax and is designed to cover those transactions not covered by Michigan's General Sales Tax Act. MCL 205.51, *et seq.*¹ *WPGPI, Inc v Dep't of Treasury*, 240 Mich App 414, 416; 612 NW2d 432 (2000). The Use Tax Act, MCL 205.91, *et seq.*, places the ultimate liability on the retail consumer. MCL 205.97; *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 408, 415-416; 590 NW2d 293 (1999). The purchased for resale exemption ensures that the sales and/or use tax is imposed only on the ultimate consumer and not

¹ All references to the provisions of the Sales or Use Tax Act are to the Act as in effect during the years in issue, unless otherwise specified.

upon an intermediary seller.² The Court of Appeals applied these basic principles of taxation and held that the Plaintiff/Appellants were not the “consumers” of the vehicles held in inventory and resold to retail customers by virtue of their salesmen driving the vehicles for marketing purposes. Thus, absent the enactment of Section 3(2), no tax is due on the Plaintiff/Appellants’ vehicle inventory. Accordingly, for use tax to become due beginning March 27, 2002, Section 3(2) must be found to be a tax imposition section that revokes or rescinds the purchased for resale exemption.

A. The Plain Language Of Section 3(2) Does Not Revoke The Purchased for Resale Exemption.

1. Section 3(2) Must Be Interpreted By Its Plain Language in Favor of the Taxpayer.

One of the “anchoring rule(s) of jurisprudence” is that a court is to effect the intent of the Legislature and, when doing so, must enforce the plain, clear and unambiguous language of a statute as written:

An anchoring rule of jurisprudence, and the foremost rule of statutory construction, is that courts are to effect the intent of the Legislature. *People v Wager*, 460 Mich 118, 123, n. 7; 594 NW2d 487 (1999). To do so, we begin with an examination of the language of the statute. *Wickens v Oakwood Healthcare System*, 465 Mich 53, 60; 631 NW2d 686 (2001). If the statute’s language is clear and unambiguous, then we assume that the Legislature intended its plain meaning and the statute is enforced as written. *People v Stone*, 463 Mich 558; 562; 621 NW2d 702 (2001). A necessary corollary of these principles is that a court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Omne Financial, Inc. v Shacks, Inc.*, 460 Mich 305, 311;

² The resale exemption for sales to wholesalers and retailers is commonly recognized as a necessary tool to prevent pyramiding of taxes and to ensure that tax is imposed on the ultimate consumer. Hellerstein and Hellerstein, *State Taxation*, ¶12.03 pp. 12-42. “Pyramiding occurs when both use and sales taxes are imposed on the production and *sale of retail goods*.” *Elias Brothers Restaurants, Inc v Dep’t of Treasury*, 452 Mich 144; 549 NW2d 837 (1996) (emphasis added).

596 NW2d 591 (1999). [*Halloran v Bhan*, 470 Mich 572, 576-577; 683 NW2d 129 (2004)].

Further, when multiple statutory provisions address the same subject matter, “an attempt should be made to read them harmoniously and give both statutes a reasonable effect.” *Endykiewicz v State Highway Comm’n*, 414 Mich 377, 385; 324 NW2d 755 (1982). Moreover, the Legislature is presumed to have knowledge of existing statutes and to act consonantly with them. *Id.* When the Legislature enacts law, it is presumed to know the rules of statutory construction and, thus, its use or omission of language is presumed to be intentional. *Carson City Hospital v Dep’t of Community Health*, 253 Mich App 444, 447-448; 656 NW2d 366 (2002), citing *People v Ramsdell*, 230 Mich App 386, 393; 585 NW2d 1 (1998). This principle is consistent with the bedrock principle of statutory construction that “nothing should be read into a statute that is not within the manifest intent of the Legislature as evidenced from the act itself.” *People v Disimone*, 251 Mich App 605, 610; 650 NW2d 436 (2002), citing *In re Ramsey*, 229 Mich App 310, 314; 581 NW2d 291 (1998). Tax statutes are interpreted most favorably to the taxpayer and against the government. *In Re Dodge Brothers*, 241 Mich 665; 217 NW 777 (1928). Tax exemption statutes should not be expanded or contracted by implication. *Michigan Bell Telephone Co v Dep’t of Treasury*, 229 Mich App 200; 581 NW2d 770 (1998). Under these rules of statutory construction, Section 3(2) does not impose tax on otherwise exempt transactions and does not revoke the purchased for resale exemption. Thus, under the unambiguous language of the statutes at issue, the Court of Appeals reached the wrong result.

2. By its Plain Terms, Section 3(2) Does Not Apply to Vehicles Held in Inventory and Exempt under Section 4(1)(c).

First and foremost, Section 3(2) does not apply to vehicles that are exempt under Section 4(1)(c). The pertinent part of Section 3(2) provides:

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. [Emphasis added].

The section specifically provides that it does not apply to a new or previously owned vehicle that is exempt under Section 4(1)(c). Section 4(1)(c) states that the “following are exempt from the tax levied under this act:”

Property purchased for [1] resale, [2] demonstration purposes, or [3] lending or leasing to a public or parochial school offering a course in automobile driving except that a vehicle purchased by the school shall be certified for driving education and shall not be reassigned for personal use by the school's administrative personnel. [Emphasis added.]

There are three separate categories of property exempt from use tax under Section 4(1)(c): (1) property purchased for resale; (2) property purchased for demonstration purposes; and (3) property purchased for lending or leasing to a school offering driving courses.

Indeed, the Defendant/Appellee has asked the Court to find that Section 4(1)(c) contains only two exemptions, and that one of them contains three elements: that the vehicle was purchased for resale, was used as a demonstrator, and was within the numerical limitation application to new demonstration vehicles. A court should not construe a statute so as to render sections or provisions thereof meaningless, nugatory or surplusage. *Reed v Yackell*, 473 Mich 520, 536-537; 703 NW2d 1 (2005). The Court of Appeals' Opinion effectively eliminated the

resale exemption.³ By doing so, the Court of Appeals has rendered the resale exemption found within Section 4(1)(c) as nugatory and surplusage. However, the Legislature did not write Section 4(1)(c) that way. Rather, Section 4(1)(c) contains three separate and distinct exemptions from use taxes, one of which is the resale exemption applicable to all of the Plaintiff/Appellants' vehicles. This Court has frequently said that it is "...willing to enforce what the Legislature has enacted." *Cameron v Auto Club Insurance Association*, 476 Mich 55, 57; 718 NW2d 784 (2006). Doing so in this case should lead the Court to uphold three separate exemptions under MCL 205.94(1) and reverse the Court of Appeals' erroneous finding that Section 3(2) of the Use Tax Act revokes the purchase for resale exemption and imposes use tax on vehicles purchased for resale. Section 3(2), by its express language, does not apply to any of the three categories of property exempt under Section 4(1)(c). The vehicles at issue in this case were, as all parties concede, purchased for resale and subject to that exemption. Thus, an automobile dealer's inventory, such as the vehicles at issue in this case, are not subject to Section 3(2).

3. Section 3(2) Does Not Eliminate or Even Constrict the Scope of the Purchased for Resale Exemption.

MCL 205.93(1) provides for the payment of a use tax at a rate of 6 percent of the price of the property. Section 3(2), on the other hand, pertains to the timing of the payment of the use tax (before the transfer of a vehicle or certificate of title) and identifies the governmental bodies (Secretary of State, Department of Consumer and Industry Services, Department of Treasury) that collect the tax depending on the kind of property (vehicle, manufactured housing, and aircraft, for example) at issue.

Section 3(2) provides for the "price tax base" of a nonexempt new or previously owned vehicle held for resale by a dealer. The plain language of the statute at issue defines a new "price

³ There is simply no evidence that the Legislature intended this result.

tax base” that is to be used as the basis for a use tax calculation in place of the “price” that previously appeared in MCL 205.92(f). Nothing in 2002 PA 110 creates a new use tax liability. There is no language in the sentence added by 2002 PA 110 that can be interpreted as imposing tax. There is no language stating that tax is imposed upon certain defined transactions, property, entities or uses.

In addition, Section 3(2) does not “revoke” or “void” the resale exemption. Nothing in 2002 PA 110 revokes the resale exemption that otherwise applies to the Plaintiff/Appellants’ vehicles. There is no language that specifies when or how the resale exemption is lost. Indeed, the inability of the Court of Appeals to point to any statutory language or articulate any standard for the voiding or revoking of the purchased for resale exemption demonstrates the folly of such a strained interpretation. The Court of Appeals found that Plaintiff/Appellants’ vehicles were subject to use tax under Section 3(2) of 2.5 percent plus a fee of \$30 for each month of “non-exempt use.” Yet, the Court was unable to point to any statutory language that defined the so-called “non-exempt use.” Moreover, the Court did not and could not define what constitutes “non-exempt use” of the dealer’s inventory because there is nothing in the language of Section 3(2) that triggers taxation of inventory purchased for resale.

The Court of Appeals found ambiguity where none exists because the Court confused the phrase “held for resale” with the “purchased for resale” exemption. The Court of Appeals assumed that Section 3(2) applies to vehicles purchased for resale when, in fact, it applies only to vehicles held for resale. If the Legislature had intended the amendment to Section 3(2) to apply to vehicles “purchased for resale,” it would have explicitly so stated. The Legislature’s use of the phrase “held for resale” is presumed to be intentional. *Carson City Hospital, supra* at 447-448. Vehicles may be held for resale without having been purchased for resale. Indeed, any new

vehicle purchased for demonstration purposes is at one point held for resale and receives the lower price tax base if in excess of the statutory maximum. Section 3(2) recognizes that a dealer's excess demonstration vehicles not in inventory, and used as loaners or courtesy vehicles for short periods of time are still held for resale. Rather than paying 6 percent use tax on the full value of the vehicle, the dealer pays tax on a reduced tax base equivalent to the monthly value of the "use." Section 3(2) is a tax basis benefit to dealers that should not be unlawfully converted into a tax on inventory. The vehicles at issue here were purchased for resale, maintained in inventory and, thus, are not subject to Section 3(2).

B. Applying a New Tax, or Otherwise Voiding the Resale Exemption, Requires an Unlawful Imposition of Tax By Implication.

The Court of Appeals erroneously concluded that Plaintiff/Appellants' inventory "beyond the 25 allowable exemptions under the demonstration exemption that were used by Plaintiff/Appellants' employees after March 27, 2002 (the effective date of the amendment to Section 3(2)), would be subject to a 2.5 percent use tax and \$30 monthly charge."⁴ In so holding, the Court implicitly found that all of the Plaintiff/Appellants' inventory at issue was not purchased for resale, but rather was purchased for demonstration purposes.⁵ There is no evidence in the record that such vehicles were purchased for demonstration purposes.⁶ To the contrary, the

⁴ This holding effectively imposes use tax on all of a used car dealer's inventory because used car dealers have no allowable demonstration exemption. The numerical limits upon the "demonstration" exemption pertain to new vehicles. MCL 205.94(1)(c) ["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"] (emphasis added).

⁵ 1979 AC, R 205.54(10) requires a demonstrator vehicle to be titled in the name of a dealer. None of the vehicles at issue were titled in the name of the dealer. Affidavits of Fuerst, Medina and Charles, Appendix A Exhibits 4, 5 & 6. A vehicle titled in the name of the dealer may be depreciated, while inventory may not. Internal Revenue Code §167(1).

⁶ The Plaintiff/Appellants' refund request pertained to their new and used vehicles, all of which had been purchased for resale and sold.

Court below found that all parties agreed that the vehicles were purchased for resale.⁷ Second, the Court held that some undefined use by Plaintiff/Appellants' employees made the vehicles nonexempt, but failed to define what this activity might be.⁸

The Court of Appeals' holding and directive to the trial court is an improper imposition of tax by implication based on invention of Legislative intent.⁹ As this Court explained in *Wexford Medical Group v City of Cadillac*, 474 Mich 192; 713 NW2d 734 (2006), the courts may not impose requirements not contained in the plain language of the law. In *Wexford*, the lower courts improperly defined a "charitable" institution by imposing a monetary threshold relating to a charity care program "that is not only not discernable from the statute, but that would be, by its very nature, quite arbitrary." *Id.* at 213. This Court pointed out the multitude of reasons why "inventing legislative intent in this regard would be ill-advised and most unworkable." First, the "difficulties with formulating a monetary threshold illuminate why setting one is the Legislature's purview, not the courts'." *Id.* at 214. Similarly, the Court of Appeals' decision in this case requires the courts to determine whether and to what extent vehicles exempt under the purchased for resale exemption lose the exemption and are used in a "non-exempt" manner where there are no standards in the statute delineating what uses of the vehicle inventory remain "exempt" and what uses are "non-exempt" for purposes of the purchased for resale exemption. The Defendant/Appellee has asserted that any use of a vehicle

⁷ Exhibit 32.

⁸ Exhibit 32, p 7.

⁹ The Court of Appeals hypothesized that the Legislature intended to impose an intermediate level of taxation, rather than all-or-nothing. Exhibit 32 p 32. There is no legislative history to support this hypothesis. Moreover, it is contrary to the long recognized purpose of the Sales and Use Tax Acts to impose tax only on retail sales. *World Book, supra* at 408.

by a sales person invalidates the exemption.¹⁰ If so, no sales person could ever drive a vehicle it was attempting to sell. Can a sales person drive a vehicle if a potential customer is in the vehicle? Does it matter how many times the sales person drives the vehicle? Can a service person drive a vehicle home to try to diagnose a potential defect? If not, why not? If so, how many times? Can a salesperson drive a vehicle around town during high-traffic times to advertise the vehicle for sale? If not, why not? If so, how many times? Just as in *Wexford*, “courts are unequipped to handles these and many other unanswered questions. Simply put, these are matters for the Legislature.” *Id.* at 214.

II. THE PURCHASED FOR RESALE EXEMPTION IS NOT SUBJECT TO APPORTIONMENT.

A. Only Exemptions Based On Use of Property Are Subject to Apportionment.

There are four basic types of exemptions to sales and use taxes: 1) exemptions for sales to certain entities, 2) exemptions for certain types of transactions, 3) exemptions for types of property, and 4) exemptions for use of property. *See* Nagel and Rosen, 1300 TM, *Sales and Use Taxes: General Principles*, at 36. The exemptions under the Michigan Sales and Use Tax Acts follow these four basic classifications. Exemptions for certain entities include, for example, sales to the United States government,¹¹ sales to schools, hospitals and homes for the aged,¹² sales to churches¹³ and sales to industrial laundries.¹⁴ Exemptions for transactions include a casual or

¹⁰ Defendant/Appellee’s policy during the years at issue is ever harsher. Defendant/Appellee presumed that any vehicle in inventory that acquired in excess of 500 miles between purchase for resale and sale to the retail customer was taxable. Exhibit 2 at p 7.

¹¹ MCL 205.94(1)(g).

¹² MCL 205.94(1)(h).

¹³ MCL 205.94(1)(i).

¹⁴ MCL 205.94(1)(bb).

isolated sale,¹⁵ purchase of a business,¹⁶ purchases of property for resale,¹⁷ purchases of property for demonstration¹⁸ and purchases of vehicles for loan or lease to a school driving program.¹⁹ Exemptions for property include exemptions for Michigan sales tax paid property,²⁰ constitutionally exempt property,²¹ temporarily present property imported by a nonresident,²² other state tax paid property,²³ and others. None of these exemptions are apportioned or even apportionable. A transaction either meets the exemption qualification or it does not. The property purchased either falls within the statutory exemption or it does not. An entity is either within the required exempt classification or not.²⁴

B. The Department of Treasury Had Long Sought to Apportion Use Exemptions.

Section 4(2) (MCL 205.94(2)) was enacted to provide for apportionment of exemptions that are based on the use of the property purchased, specifically the exemptions for agricultural use and for use in industrial processing. MCL 205.94(1)(f) and MCL 205.94o. The Michigan courts had held that property used for agricultural and industrial processing was exempt and the Department of Treasury could prorate the exemption when property was also used for

¹⁵ MCL 205.51(g).

¹⁶ MCL 205.94g(1).

¹⁷ MCL 205.94(1)(c).

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ MCL 205.94(1)(a).

²¹ MCL 205.94(1)(b).

²² MCL 205.94(1)(d).

²³ MCL 205.94(1)(e).

²⁴ Some entity exemptions also require use for a specific purpose and are more accurately classified as apportionable use exemptions. For example, under MCL 205.94(1)(z) sales to certain nonprofit charities are exempt only to that the property is used primarily in furtherance of the charitable purposes of the organization.

nonexempt purposes without specific statutory language authorizing the apportionment. In *Michigan Allied Dairy Ass'n v Auditor General*, 302 Mich 643; 5 NW2d 516 (1942), this Court was asked to opine on whether milk bottles and cans sold to creameries and dairies qualified for the industrial processing and agricultural production use exemptions. The Court analyzed the use of the bottles and containers and determined that their use during the refrigeration process constituted industrial processing. However, the bottles and cans were also used as delivery containers, a use that does not constitute industrial processing. The Court found that when property that has more than one use, one or more of which is within the agricultural processing or industrial processing exemption, the property is exempt because the Legislature did not provide for apportionment of the exemption between exempt uses and nonexempt uses. *Id.* at 650.

Similarly, in *Michigan Bell Telephone Co, supra*, the Court of Appeals held that telephone equipment used for taxable and nontaxable purposes was exempt because there was no legislative authority to apportion the exemption. In *Michigan Bell*, communications equipment was exempt if used to route calls upon which sales or use tax is paid. The equipment at issue routed tax paid and non-taxed calls. Thus, the parties stipulated that 85 percent of the calls were tax paid and 15 percent were non-taxed. The Department of Treasury argued that Michigan Bell's exemption should be apportioned in relation to the tax exempt and taxable use and the equipment should be only 85 percent exempt. The Court of Appeals disallowed the exemption, noting that when the Legislature has intended to apportion tax on the basis of underlying use, it has clearly and expressly so stated. *Michigan Bell* at 208. The Court noted that there was no language authorizing apportionment as in *Allied Dairy* and that the Supreme Court has admonished courts to neither expand nor contract the scope of a tax exemption by construing it

by implication. *Michigan Bell* at 209. Thus, the Court held that apportionment was improper and the property was wholly exempt.

C. Section 4(2) Was Enacted to Reverse the *Michigan Bell* Case and Apportion Use Based Exemptions.

Section 4(2) was enacted by 1999 PA 117 to allow for apportionment of the industrial processing exemption and to reverse the outcome of *Michigan Bell*. House Legislative Analysis of Enrolled Bills HB 4744, HB 4745 and SB 544, July 16, 1999 (Exhibit 1); Senate Fiscal Agency Bill Analysis of Enrolled Bills SB 544, HB 4744, HB 4475 and HB 4586, July 19, 1999 (Exhibit 2). The Department stated that it had been its longstanding policy to apportion use exemptions.²⁵ *Id.* Under 1999 PA 117, the use type exemptions were all rewritten to be specifically subject to apportionment. The Act amended the following exemptions: use in agricultural production,²⁶ use in qualified business activity,²⁷ industrial processing,²⁸ extractive operations,²⁹ and telecommunications.³⁰ The separate section exemptions for property or transactions were not amended because these exemptions are not subject to apportionment. *See, e.g.,* MCL 205.94d (prescription drugs and food); MCL 205.94g (transfer of a business). In contrast, separate section exemptions for use were amended. *See, e.g.,* MCL 205.94p. Section 1 under MCL 205.94 contains numerous exemptions of differing types including exemptions for use, transactions, type of property and entity. The exemption for use in agricultural production

²⁵ The Defendant/Appellee has not argued in any of its briefs in this case to date, that the purchased for resale exemption should or can be apportioned. The Defendant/Appellee has only ever apportioned exemptions based on use of property.

²⁶ MCL 205.94(1)(f).

²⁷ MCL 205.94h.

²⁸ MCL 205.94o and MCL 205.94r.

²⁹ MCL 205.94p.

³⁰ MCL 205.94q.

that was the subject of *Allied Dairy* case is contained in MCL 205.94. 1999 PA 117 added new subsection 2 to allow for apportionment of the use type exemptions contained within that section but does not require or allow for other types of exemptions to be apportioned.

- D. Under the Plain Language of Section 4(2), a Purchase for Resale is Not Apportionable.

The plain language of the amendment demonstrates that it is only applicable to use exemptions. MCL 205.94 provides, in pertinent part, as follows:

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

...

(c) Property purchased for resale . . .

...

(2) 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. (Emphasis added.)

Because the applicability of the exemption is “subject to” or dependent upon³¹ Subsection 2, each exemption must be checked for applicability of Subsection 2. The language of Subsection 2 provides for apportionment only “if [a specific exempt use] is stated in subsection (1).” Logically, if no exempt use is stated under Subsection (1), apportionment does not apply. Not all of the exemptions under Subsection (1) are to be apportioned. For example, the exemption for sales to the United States government is not based on use and is not apportioned or apportionable. MCL 205.94(1)(g). How could such an exemption be apportioned? Property sold to the United States government is exempt, but suddenly becomes taxable if the property is

³¹ *Lansing Mayor v PSC*, 470 Mich 154, 160; 669 NW2d 840 (2004) (holding that the phrase “subject to” means dependent upon).

touched, used or provided to a citizen? It simply makes no sense. Similarly, the purchased for resale exemption is based on the nature of the transaction. There is no exempt use of the property that is required and, thus, one cannot apportion based on use. Property is either purchased for resale or it is not. Had the Legislature intended to condition the purchase for resale exemption on subsequent use of the transaction, it would have so specified.

Moreover, this Court's prior decisions support the conclusion that the purchase for resale exemption is nonapportionable. In *People v Rodriguez*, 463 Mich 466, 472; 620 NW2d 13 (2000), this Court held that, "the plain meaning of the phrase 'purchased for resale' conveys a legislative intent inconsistent with purchase for another purpose." In essence, this Court has recognized that when property is exempt under the "purchased for resale exemption," another taxable use is not possible. If another taxable use were contemplated, then the resale exemption would not apply. The resale exemption is an all or nothing exemption.

Finally, this Court has admonished courts not to contract or expand the scope of a tax exemption by construing it according to implication. *Michigan Allied Dairy* at 650; *see also Michigan Bell* at 209. To apportion the resale exemption would compel this Court to violate that principle by imputing a requirement that property purchased for resale, and in this case maintained in inventory, used in a certain manner after the sale become taxable. In essence, the Court would be imputing a taxable use of inventory based on the marketing methods of the dealers.³² If this Court holds that certain types of marketing activity by the retailer constitute a taxable use by the retailer, this will open the floodgates to assessment of all retailers on inventory purchased and held for sale without any known or knowable standards for when marketing

³² In this case, all of the vehicles at issue were purchased for resale, maintained in inventory, put on the lots for sale, advertised for sale and, in fact, resold to retail customers. The vehicles are not "used" in the taxable sense by the dealership at all.

endeavors create taxability. If the Legislature had meant for some types or amounts of marketing activities to repeal or void the purchased for resale exemption for inventory, the Legislature would have written statutory language stating that. It makes no sense to tax a licensed retailer on its inventory based on some alleged taxable use resulting from marketing efforts. To find a nontaxable use for inventory held by a licensed automobile dealer that is marketed and sold to a retail customer would be to contract the scope of the resale exemption by implication. The apportionment provision of Section 4(2) simply does not apply to the purchase for resale exemption.

III. CONCLUSION AND RELIEF REQUESTED.

MCL 205.94(1)(c) contains a separate, distinct, enforceable and factually supported resale exemption from use taxes in the instant case. The March 27, 2002 amendment to Section 3(2) does not apply to property exempt under the purchased for resale exemption under the plain language and the legislative intent of the statute. Section 4(2) applies to and apportions only exemptions based on use. Thus, neither of these two sections repeals, revokes or modifies the purchased for resale exemption. The Court of Appeals unnecessarily and erroneously engaged in an exercise of judicial legislation, the effect of which was to judicially revoke the purchased for resale exemption based on unknown and undefined standards that make Plaintiff/Appellants' inventory taxable while held in inventory and again upon sale to the retail customer, contrary to the clear and unambiguous terms of Sections 4(1)(c) and (3)(1) of the Use Tax Act. For that reason, the Court should grant the instant Application for Leave to Appeal, reverse the Court of Appeals' erroneous decision, and order the Defendant/Appellee to refund to the Plaintiff/Appellants all of the use taxes which they paid. Alternatively, the Plaintiff/Appellants

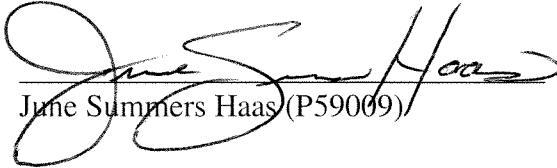
request the Court to issue a peremptory order granting them that relief. MCR 7.302(G)(1).

Respectfully Submitted,

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Dated: March 16, 2007

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