

STATE OF MICHIGAN
COURT OF APPEALS

CROWN MOTORS OF CHARLEVOIX, LTD.,

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY,

Defendant-Appellant.

UNPUBLISHED
November 4, 2003

No. 240555
Tax Tribunal
LC No. 00-273695

Before: Meter, P.J., and Talbot and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right from an order canceling a use tax assessment on certain vehicles that plaintiff, a new and used automobile dealership, purchased for resale, used, and eventually resold. We affirm.

Plaintiff, a new and used car dealership, acquired used vehicles for resale but used the vehicles for various other purposes before reselling them. After conducting a sales and use tax audit of plaintiff, defendant concluded that fifty-eight of those vehicles had been “used” for tax purposes by plaintiff between purchase and resale and that those fifty-eight vehicles were subject to use tax liability. Plaintiff contended that, because the vehicles had been purchased for resale, the vehicles were exempt from tax liability. The parties both agreed that plaintiff purchased the vehicles in question for resale and that the vehicles were indeed eventually resold.

Defendant maintained that although plaintiff had purchased the fifty-eight vehicles for resale and had, in fact, resold them, the interim “use” by plaintiff removed the vehicles’ status as exempt under the Use Tax Act (UTA), MCL 205.91 *et seq.* The Tax Tribunal concluded, on the basis of stipulated facts and written briefs, that use tax did not apply to these vehicles.

Defendant now argues that the Tax Tribunal erred in canceling the tax. “In general, when a case is submitted to a governmental agency on stipulated facts, as occurred here, those facts are to be taken as conclusive.” *Columbia Associates, LP v Dep’t of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). If there is no claim of fraud, “review of a Tax Tribunal decision is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle.” *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002) (internal citation omitted). Moreover, the interpretation and application of statutes are issues of law reviewed de novo on appeal. *Id.* “While statutory interpretation is a question of law that is reviewed de novo, [this Court] generally defer[s] to the Tax Tribunal’s interpretations of the

statutes it administers and enforces.” *Schultz v Denton Twp*, 252 Mich App 528, 529; 652 NW2d 692 (2002).

In general, ambiguities in tax laws are construed against the government. *Michigan Bell Telephone Co v Dep’t of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994). However, tax exemptions are construed in favor of the taxing entity. *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 497; 644 NW2d 47 (2002). In any event, “[t]his Court should not, however, produce a strained construction that is adverse to legislative intent.” *Michigan Milk Producers Ass’n v Dep’t of Treasury*, 242 Mich App 486, 493; 618 NW2d 917 (2000). “When interpreting statutes, our obligation is to discern and give effect to the Legislature’s intent as expressed in the statutory language.” *Gladych v New Family Homes, Inc*, 468 Mich 594, 597; 664 NW2d 705 (2003).

The State of Michigan has a “use tax.” MCL 205.91 *et seq.* The use tax is a complement to the sales tax, and “[e]ach is designed to raise revenue from taxation of the privilege of engaging in certain business transactions.” *McCullagh, Inc v Dep’t of Revenue*, 354 Mich 413, 418; 93 NW2d 252 (1958). Michigan’s use tax is “a specific tax for the privilege of using, storing, or consuming tangible personal property in this state” MCL 205.93(1). “Use” is defined as “the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given.” MCL 205.92(b).

The UTA provides a number of exemptions for classes of property to which the use tax does not apply. One of those exceptions is found in MCL 205.94(1)(c):

(1) The tax levied under this act does not apply to

* * *

(c) *Property purchased for resale*, demonstration purposes, or lending or leasing to a public or parochial school offering a course in automobile driving
[Emphasis added.]

Our Supreme Court has explained that, “[i]n [MCL 205.94(1)(c)], the Legislature provided in clear and unambiguous language an exemption for property purchased for resale.” *People v Rodriguez*, 463 Mich 466, 471; 620 NW2d 13 (2000).

The parties agree that plaintiff’s vehicles were, in fact, “purchased for resale.” Therefore, plaintiff argues, the vehicles should be exempt from use tax. Under the circumstances of the present case, we agree.

In *Rodriguez*, *supra* at 467-468, the defendant purchased vehicles, repaired them, and eventually resold them. At his trial for tax evasion, he requested that the jury be instructed with regard to MCL 205.94(1)(c), arguing that “he acquired the vehicles with the intent to hold them just long enough to do necessary repairs and then to resell them.” *Rodriguez*, *supra* at 468-469. The trial court denied his request, and the Supreme Court reversed, rejecting the Attorney General’s argument that the MCL 205.94(1)(c) “resale” exemption applied only to those with

Michigan dealer licenses and further stating that “the plain meaning of the phrase ‘purchased *for resale*’ conveys a legislative intent inconsistent with purchase for another purpose.” *Rodriguez, supra* at 472 (emphasis in original). The Court stated that “[u]nder [MCL 205.94(1)(c)], the defendant was – if a properly instructed jury were to believe his version of the facts – exempt from the tax.” *Rodriguez, supra* at 472. The Court reached this conclusion in the face of the Attorney General’s argument that a person could circumvent the use tax by “‘arguing that he intended to resell it eventually, perhaps 50,000 or 100,000 miles later.’” *Id.* at 471-472.

Under *Rodriguez*, then, plaintiff is not liable for use tax, because the parties admit that he purchased the vehicles for resale. Although defendant could have taken the position that plaintiff purchased the vehicles to be *used*, defendant did not do so. See, generally, *Corporate Flight, Inc v Dep’t of Treasury*, 469 Mich 852; 666 NW2d 665 (2003). Under *Rodriguez, supra* at 472, property is either purchased for resale or it is not; here, it was indeed purchased for resale.

Moreover, defendant’s purported authorities for its “conversion” argument are unavailing. Defendant first cites MCL 205.97, which states, in part, 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” The primary effect of this section is to establish that the economic burden of the use tax falls on the consumer of the property, *Michigan Bell Telephone Co v Dep’t of Treasury*, 229 Mich App 200, 215; 581 NW2d 770 (1998), and it is part of a legislative scheme imposing tax liability on the seller only if the seller is at fault for failing to collect it. *Id.* at 217. The statute provides no guidance concerning *how* or *when* property can be “converted” from one purpose to another.

Defendant also cites 1979 AC, R 205.9. This rule is purported to explain the circumstances under which property purchased for resale becomes non-exempt property subject to the use tax. It states:

Sales for purposes of resale include sales of tangible personal property not to be used or consumed by the immediate purchaser, but to be resold in the regular course of business by the purchaser; provided that *property purchased for resale purposes which is not resold, but is used or consumed by the purchaser, is taxable* on the delivered cost to the purchaser who shall remit the tax to the state. *Id.* [Emphasis added.]

Defendant contends that the meaning of this rule is that property purchased for resale but subsequently used by the purchaser becomes taxable. However, a plain reading of the language of this rule reveals more complexity: the rule requires that, for taxation to apply, the property must be used or consumed, *but also not resold*. Here, the parties agree that all relevant vehicles in this matter were resold. Logically, the effect of their resale is that defendant may no longer make use of 1979 AC, R 205.9.

Given (1) the language in *Rodriguez*, (2) the stipulation that the vehicles were purchased for resale and were indeed eventually resold, and (3) defendant’s failure to support a “conversion” theory with applicable and binding authority, we uphold the decision of the Tax Tribunal.

Affirmed.

/s/ Patrick M. Meter
/s/ Michael J. Talbot
/s/ Stephen L. Borrello