

## COA Opinion: Retroactive effect of amendment to Use Tax Act is constitutional

1. November 2010 By Sarah Lindsey

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In *General Motors Corp. v. Dep't of Treasury*, No. 291947 (published Oct. 28, 2010), the Michigan Court of Appeals held that 2007 PA 103, which amended the Use Tax Act, MCL 205.91 *et seq.*, was not improperly enacted special legislation, and its retroactive application did not violate GM's constitutional right to due process.

2007 PA 103 was enacted to amend the Use Tax Act to obviate the holding of *Betten Auto Center, Inc. v. Dep't of Treasury*, 272 Mich. App. 14 (2006), *aff'd in part, vacated in part*, 478 Mich. 864 (2007). The use tax imposes a tax on the use, storage or consumption of certain tangible personal property that is exempt from sales tax. The Use Tax Act exempts property that is purchased for resale purposes. In *Betten*, the Michigan Supreme Court held that this exemption applied car dealerships, which purchased new and used cars for resale, but allowed their employees to use them in the interim. Based on the Court of Appeals' holding in *Betten*, GM filed two claims for refund of use taxes paid on its employees' use of program vehicles, seeking refund of more than \$116 million paid from 1996 through 2007. The Treasury Department held GM's claim in abeyance pending an appeal to the Michigan Supreme Court. Less than two weeks after the Supreme Court decision, the Michigan House of Representatives introduced a bill that later became 2007 PA 103, intended to clarify the Use Tax Act in light of the *Betten* holding. It specified any use of tangible personal property purchased for resale other than passive inventory converted the property such that the use was taxable. 2007 PA 103 applied retroactively.

The Court of Appeals held that the retroactive application of 2007 PA 103 did not violate the Due Process Clause, because it was rationally related to a legitimate legislative purpose. First, the Act was intended to confirm a tax that was assessed by Treasury and paid by taxpayers for years. Second, GM did not act in reliance on the expectation that its activity would not be taxed; in fact, GM had paid the tax for years. Third, the Legislature acted promptly after *Betten* to clarify the law. Finally, the five-year retroactive period was consistent with the statute of limitations, and comparable to other retroactive legislation, and therefore, it was within the "modesty" limits of the Due Process Clause.

The Court of Appeals also rejected GM's argument that 2007 PA 103 violated the Michigan constitutional provision restricting special legislation. The court noted that no language in the Act limited its application to only GM. In fact, GM conceded that the legislation was applicable to all taxpayers. The court concluded that the statute was general and had broad application.