

STATE OF MICHIGAN
COURT OF APPEALS

TODD DAWSON, RONALD J. HALE, WILBUR
LOEW, MICHAEL MEDORE, and MICHELLE
ZAINEA,

Plaintiffs-Appellants,

v

SECRETARY OF STATE and DEPARTMENT
OF TREASURY,

Defendants-Appellees.

FOR PUBLICATION
March 20, 2007
9:15 a.m.

No. 264103
Court of Claims
LC No. 05-000043-MM

Official Reported Version

Before: Wilder, P.J., and Zahra and Davis, JJ.

ZAHRA, J. (*concurring in part*).

I agree with the conclusion reached by my colleagues that the Michigan driver responsibility law (DRL), MCL 257.732a, does not violate the United States and Michigan constitutions. I also agree with the conclusion reached in Judge Wilder's opinion that the DRL fee is a civil sanction and not a criminal penalty. I write separately because I disagree with Judge Wilder's conclusion that the DRL fee is a tax.

In my view, the DRL "fees" are not taxes because they lack the essential characteristic of an enforced contribution. "Essential characteristics of a tax are that it is not a voluntary payment or donation, but an enforced contribution, exacted pursuant to legislative authority." Black's Law Dictionary (6th ed), p 1457, citing *Employment Security Comm v Patt*, 4 Mich App 228, 233; 144 NW2d 623 (1966). Beyond merely requesting that DRL "fees" be paid, the only method of enforcement provided to the Secretary of State is contained in MCL 257.732a(5), which states that "[i]f payment is not received or an installment plan is not established after the time limit required by the second notice prescribed under subsection (3) expires, the secretary of state shall suspend the driving privileges until the assessment and any other fees prescribed under this act are paid."

The language of the DRL plainly commands the Secretary of State to suspend the driver's license of an offending driver until the DRL "fee" is paid. However, as long as offending drivers

do not seek to restore their driving privileges, they need not pay the DRL "fee."¹ The DRL does not address the collection of the "fees" beyond withholding an offending driver's license to drive. Accordingly, the DRL "fee" is not a tax.

/s/ Brian K. Zahra

¹ In addition, a credible argument can be made that DRL "fees" are not compulsory because commission of the offenses enumerated under the DRL is not compulsory.