STATE OF MICHIGAN

COURT OF APPEALS

FISHER & COMPANY, INC, Plaintiff-Appellee,	FOR PUBLICATION January 29, 2009
v	No. 280476 Court of Claims
DEPARTMENT OF TREASURY, Defendant-Appellant.	LC No. 06-000020-MT
FISHER & COMPANY, INC, Plaintiff-Appellant,	
v	No. 280498 Court of Claims
DEPARTMENT OF TREASURY, Defendant-Appellee.	LC No. 06-000020-MT Advance Sheets Version

Before: Murray, P.J., and O'Connell and Davis, JJ.

MURRAY, P.J. (*concurring in part and dissenting in part*).

I concur in Judge Davis's opinion to the extent it concludes that the transactions at issue primarily constitute a purchase of tangible personal property rather than services. In my view, and as espoused in Judge Davis's opinion, plaintiff Fisher & Company, Inc., purchased an ownership interest in the aircraft and then exercised that right of ownership in signing and agreeing to the terms set forth in the owner's agreement, management agreement, and other related agreements. However, I disagree with Judge Davis's conclusion that the Court of Claims erred in calculating the amount of tax refund to which plaintiff was entitled. Accordingly, I disagree with the part of Judge Davis's opinion where he states that, under MCL 205.94(1)(e), plaintiff was entitled to only deduct the cap of $1,500 under the North Carolina statute from the amount owed to Michigan.

As our courts have repeated since they were established in the 1800s, our focus in interpreting statutes is to discern and give effect to the intent of the Legislature as found in the

statutes' plain language. *Houdek v Centerville Twp*, 276 Mich App 568, 581; 741 NW2d 587 (2007). When, as in this case, a term or phrase is undefined by the Legislature and has a peculiar meaning under the law, we resort to a legal dictionary to help determine its meaning. See *Vodvarka v Grasmeyer*, 259 Mich App 499, 510; 675 NW2d 847 (2003).

As noted in Judge Davis's opinion, MCL 205.94(1)(e) provides that for those sales or uses of property that were already taxed by another state, the Michigan use tax is subject to "a rate measured by the difference between the rate provided in this act and the rate by which the previous tax was computed." The North Carolina sales tax statute to which plaintiff's ownership interest was taxed provides for a "rate of three percent," but also contains a maximum cap of $1,500. NC Gen Stat § 105-164.4(a)(1b) (2008). According to Black's Law Dictionary (7th ed), "tax rate" is defined as "[a] mathematical figure for calculating a tax, usu. expressed as a percentage." Utilizing this definition, the tax rate, i.e. the mathematical figure used for calculating a tax, was three percent under the North Carolina statute. Accordingly, three percent is the "rate by which the previous tax was computed." The fact that the North Carolina legislature included a cap for larger purchases does not change the fact that the "tax rate" utilized in North Carolina is three percent.

Utilization of caps or similar tax schemes is not uncommon and our Legislature could have indicated in the Michigan use tax statute that it would be subject to any cap or that the Michigan liability would be reduced by whatever amount was actually paid by the taxpayer in another state. However, the Legislature was not that specific and instead used the phrase "tax rate," which under the dictionary and common parlance means the percentage used to calculate a tax. As indicated, that was three percent under the North Carolina statute; therefore, three percent of the purchase price should be deducted from plaintiff's Michigan use tax liability.

/s/ Christopher M. Murray