

# ALSTON & BIRD

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December 15, 2023

Presiding Justice Duarte  
Associate Justice McAdam  
Associate Justice, Renner  
California Court of Appeal  
Third Appellate District  
914 Capitol Mall,  
Sacramento, CA 95814

Re: ***Stettner v. Mercedes-Benz Financial Services USA, LLC, No. C094345***

Dear Presiding Justice and Associate Justices:

On behalf of the American Financial Services Association (“AFSA”), I write to request that the Court order the publication of its opinion in the above-entitled appeal.

## **I. Interest of the Organization Requesting Publication**

Founded in 1916, AFSA is the national trade association for the consumer credit industry, protecting access to credit and consumer choice. AFSA members provide consumers with many kinds of credit, including in traditional installment loans, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

The many AFSA members engaged in vehicle finance in the form of vehicle leasing are required to comply with the California Sales and Use Tax Law (§ 6001, et seq.) and the California Code of Regulations, title 18, section 1660 (Regulation 1660), in connection with vehicle turn-in fees charged at the end of their lease agreements. As such, they have a direct interest in the Court’s correct ruling with respect to the Sales and Use Tax Law and Regulation 1660.

No counsel for a party participated in authoring this letter, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this letter. No person other than AFSA, their members, or their counsel made a monetary contribution to the preparation or submission of this letter.

## II. Reasons for Publication of the Court’s Opinion

A Court of Appeal opinion “should be certified for publication in the Official Records if the opinion,” among other things:

- (1) Modifies, explains, or criticizes with reasons given, an existing rule of law;
- (2) Advances a new interpretation, clarification, criticism, or construction of a provision of a constitution, statute, ordinance, or court rule; or
- (3) Involves a legal issue of continuing public interest.”

(See California Rules of Court, Rule 8.1105(c).

The Court’s opinion in *Stettner v. Mercedes-Benz Financial Services, USA, LLC* does all three. The Court should certify the *Stettner* opinion because it explains the California Supreme Court’s recent holding in *McClain v. Sav-On Drugs*, 6 Cal.5th 951 (Cal. 2019), interprets Regulation 1660, and provides a legal framework for determining when California courts should resolve taxability challenges in the context of vehicle lease agreements, which is a legal issue in several ongoing California cases.

### A. The Opinion Explains the California Supreme Court’s Holding in *McClain*.

In *Stettner*, the Court addresses a “challenge to the taxability of a vehicle turn-in fee . . . charge[d] at the end of [Appellants’] lease agreements.” (Slip Opn., p. 1.) The Court holds that Appellants are “not entitled to a judicially created remedy because there is no prior legal determination resolving the taxability issue.” (Slip Opn., p. 2.) This requires the Court to consider whether to provide what is known as a *Javor* remedy under the standard set forth in *McClain*. And in doing so, the Court explains the holding in *McClain* in a way that no published California appellate opinion has.

Specifically, the Court explains that in *McClain*, the California Supreme Court held that “in order to be eligible for a *Javor* remedy, plaintiffs must show, as a threshold requirement, that a prior legal determination has established their entitlement to a refund.” (Slip Opn., p. 9 (quoting *McClain*, 6 Cal.5th at 958).) The Court further explains that “[t]he *McClain* court declined to ‘express a definitive view on what qualifies as a prior legal determination for purposes of a *Javor* remedy,’” but that in the Court’s view of *McClain*, “whatever the prior legal determination is, it must resolve the taxability issue.” (Slip. Opn., p. 10) (quoting *McClain*, 6 Cal.5th at 960).) Additionally, the Court concludes that Regulation 1660, subdivision (c)(1)(D)’s tax exemption for disposition fees—i.e., “[c]osts incurred in disposing of the leased property at expiration or earlier termination of the lease”—is not a “prior legal determination” as that term was used in *McClain*. (See Slip Opn., p. 10–13.) Rather, a prior legal determination requires a ruling by the California Department of Tax and Fee Administration.

Thus, the Court's *Stettner* opinion expressly "explains . . . an existing rule of law." It explains both the holding from *McClain* and how that holding applies to Regulation 1660. This warrants the opinion's publication.

**B. The Opinion Interprets Regulation 1660.**

Next, in *Stettner*, the Court interprets Regulation 1660. Based on its interpretation, the Court refuses to craft a tax remedy for Appellants because "[u]nlike the *Javor* regulations, Regulation 1660 does not create a mechanism for paying refunds to consumers who, like appellants, have paid taxes on a lease-end vehicle turn-in fee, or otherwise entitle them to a refund of such tax." (Slip Opn., p. 10.)

No other published California appellate opinion has engaged in this type of analysis interpreting Regulation 1660. This too warrants the opinion's publication.

**C. The Opinion Involves a Legal Issue of Continuing Public Interest.**

Finally, the *Stettner* opinion involves a legal issue of continuing public interest. As explained above, the Court addresses a "challenge to the taxability of a vehicle turn-in fee . . . charge[d] at the end of [Appellants'] lease agreements." (Slip Opn., p. 1.) And the Court provides a legal framework for determining when California courts should resolve such taxability challenges, which is a legal issue in several ongoing cases in California. *See, e.g.*, Am. First Compl., *Salazar v. BMW Financial Services NA, LLC*, No. 34-2022-00314532-CV (Cal. Sup. Ct., Sacramento Cnty., Mar. 30, 2022) (challenging taxability of BMW's lease end disposition fee); Compl., *Moshkovitz v. American Honda Finance Corporation*, No. 22STCV12659 (Cal. Sup. Ct., Los Angeles Cnty., Apr. 14, 2022) (challenging taxability of Honda's lease end disposition fee).

**III. Conclusion**

For these reasons, AFSA respectfully requests that the Court certify its *Stettner* opinion for publication.

Sincerely,



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Alston & Bird, LLP  
California Bar No. 149076

Cc: All Counsel of Record (service via TrueFiling)