STATE OF MICHIGAN

COURT OF APPEALS

UNILOY MILACRON USA, INC., Plaintiff-Appellee,	UNPUBLISHED January 26, 2012
v	No. 300749 Court of Claims
DEPARTMENT OF TREASURY, Defendant-Appellant.	LC No. 09-000125-MT

Before: BECKERING, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

In this case involving the Single Business Tax Act[1] ("SBTA"), MCL 208.1 *et seq.*, defendant Department of Treasury appeals the Court of Claims's order, granting summary disposition under MCR 2.116(C)(10) in favor of plaintiff Uniloy Milacron USA, Inc. We affirm.

I

Plaintiff manufactures molds used in blow molding machines. Its manufacturing plant is in Tecumseh, Michigan. Plaintiff entered into a distributor agreement with an affiliate corporation: Uniloy Milacron, Inc. ("UMI"). Under the distributor agreement, plaintiff and UMI agreed that UMI would both market plaintiff's products and purchase plaintiff's products for resale. UMI solicited orders from customers for plaintiff's products and sent the orders to plaintiff for approval. Once approved, plaintiff's personnel would package, load, and ship the products directly to the customers. The "vast majority" of the products were shipped to customers outside of Michigan. UMI never obtained possession of the products. Although both plaintiff and defendant agree that title in the products transferred from plaintiff to UMI at some point before the customers acquired the products, the distributor agreement was silent as to the transfer of title.

[1] The SBTA has been repealed. *Tyson Foods, Inc v Dep't of Treasury*, 276 Mich App 678, 679 n 1; 741 NW2d 579 (2007); see also 2006 PA 325.

When it prepared its Michigan Single Business Tax ("SBT") returns for the 2003, 2004, and 2005 tax years, plaintiff sourced its sales for purposes of computing its sales apportionment factor "based on the destination to which its products were shipped or delivered to a customer." When defendant audited plaintiff for these tax years, defendant determined that all of plaintiff's sales were Michigan sales for purposes of the sales apportionment factor and, thus, assessed plaintiff an additional $28,558.67 in SBT taxes and interest. Plaintiff paid the assessment under protest.

Plaintiff sued defendant in the Court of Claims to obtain a refund. Plaintiff moved for partial summary disposition under MCR 2.116(C)(10), and defendant responded, requesting that the court grant summary disposition in defendant's favor under MCR 2.116(I)(2). After a hearing, the court granted plaintiff's motion for summary disposition, denied defendant's motion for summary disposition, and entered judgment for plaintiff in the amount of $28,558.67, plus statutory interest.

II

The sole issue before this Court is whether the Court of Claims erred when it determined that all of plaintiff's sales could not be apportioned to Michigan as a matter of law and, thus, granted summary disposition in favor of plaintiff. We conclude that it did not.

We review de novo a trial court's determination of a motion for summary disposition under MCR 2.116(C)(10). *Ormsby v Capital Welding, Inc*, 471 Mich 45, 52; 684 NW2d 320 (2004). When reviewing a motion brought under MCR 2.116(C)(10), we consider the affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the non-moving party. *Rose v Nat'l Auction Group, Inc*, 466 Mich 453, 461; 646 NW2d 455 (2002). Summary disposition is appropriate "if there is no genuine issue regarding any material fact and the moving party is entitled to judgment as a matter of law." *Id.*

Resolution of this appeal also involves the interpretation of statutory language, which we review de novo. *Ford Motor Co v Dep't of Treasury*, 288 Mich App 491, 494; 794 NW2d 357 (2010). "The primary goal of judicial interpretation of statutes is to ascertain and give effect to the Legislature's intent." *Guardian Photo, Inc v Dep't of Treasury*, 243 Mich App 270, 276; 621 NW2d 233 (2000). The specific language of the statute must be examined to determine the Legislature's intent because the Legislature is presumed to have intended the meaning it plainly expressed. *Id.* at 276-277. "Where the language poses no ambiguity, this Court need not look outside the statute, nor construe the statute, but need only enforce the statute as written." *Ammex, Inc v Dep't of Treasury*, 273 Mich App 623, 648; 732 NW2d 116 (2007). "A provision is ambiguous if it is susceptible to more than a single meaning or if it irreconcilably conflicts with another provision." *TMW v Dep't of Treasury*, 285 Mich App 167, 172; 775 NW2d 342 (2009).

III

Michigan's repealed SBT was a value added tax that "measure[d] the increase in value of goods and services brought about by whatever a business does to them between the time of

purchase and time of sale." *Guardian Photo*, 243 Mich App at 277. Any person engaged in business activity in Michigan was subject to the SBT because the SBT was a tax on economic activity, not an income tax. *TMW*, 285 Mich App at 173. The SBT provided a formula for the apportionment between two taxing states through a calculation involving three ratios: the property factor, the payroll factor, and the sales factor. *Fluor Enterprises, Inc v Dep't of Treasury*, 265 Mich App 711, 717; 697 NW2d 539 (2005), rev'd in part on other grounds 477 Mich 170 (2007); see also MCL 208.45. The apportionment factor is entered into a calculation to determine the adjusted tax base which is used to calculate the SBT liability. *Fluor*, 265 Mich App at 717. Here, the dispute involves how plaintiff's sales factor was calculated based on the amount of sales sourced to Michigan.

The sales factor was defined as a fraction with the numerator being the "the total sales of the taxpayer in this state during the tax year" and the denominator being "the total sales of the taxpayer everywhere during the tax year." MCL 208.51. MCL 208.52 addressed when a sale of tangible personal property was sourced to Michigan and stated in pertinent part:

> Sales of tangible personal property are in this state in any of the following circumstances:
>
> * * *
>
> (b) For tax years beginning on and after January 1, 1998, the property is shipped or delivered to any purchaser within this state regardless of the free on board point or other conditions of the sales.

We conclude that MCL 208.52(b) is not ambiguous; therefore, we must enforce it as written. See *Ammex*, 273 Mich App at 648. The SBTA does not define "shipped" or "delivered." MCL 208.2 provided that "terms not defined within the SBTA are to be accorded the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes." *Consumers Power Co v Dep't of Treasury*, 235 Mich App 380, 385; 597 NW2d 274 (1999). However, the Internal Revenue Code lacks a standard definition for "shipped" and "delivered"; thus, for further guidance, this Court may consult a dictionary to obtain their plain and ordinary meaning. See *id.*; see also *TMW*, 285 Mich App at 172 (explaining that if the statute does not define a term, this Court may consult a dictionary to afford a statutory term its plain and ordinary meaning). Random House Webster's College Dictionary defines "deliver" as "to carry and turn over . . . to the intended recipient or recipients," "to give into another's possession or keeping," to "hand over," and to "surrender." *Random House Webster's College Dictionary* (2001). The dictionary defines "ship" as "to send or transport by ship, rail, truck, plane, etc." and "to send away." *Id.*

Accordingly, under MCL 208.52(b), a sale by plaintiff is only sourced to Michigan for purposes of the sales apportionment factor if plaintiff's product was "carried and turned over," "handed over," "surrendered," "sent away," or "transported" to a customer within Michigan. Here, there is no documentary evidence to support defendant's assertion that the products were "shipped" or "delivered" by plaintiff to UMI. Neither UMI nor its employees took possession of the products. And, they were not involved in the packaging, loading, and shipping of the

products. Rather, the undisputed evidence demonstrates that plaintiff's employees loaded the product onto common carriers for delivery to UMI's customers.

Defendant insists that the products were necessarily delivered to UMI, arguing that the products "were made in Michigan and were shipped from Michigan, and were never anywhere else before they were shipped to UMI's customers, [so,] logically, [plaintiff] must have delivered the [products] to UMI in Michigan, however that delivery took place." We reject this argument. Just because plaintiff sold the products to UMI does not necessarily mean that plaintiff delivered the products to UMI, and defendant has not provided this Court with any legal authority to support such a proposition. Plaintiff's sales are not sourced to Michigan merely because plaintiff sold its products to UMI in Michigan for resale. See MCL 208.52(b). Had the Legislature intended a sale of tangible personal property to be sourced on the basis of where the sale occurred, it would have included language in the SBTA to that effect; we will not read words into the plain language of an unambiguous statute. *PIC Maintenance, Inc v Dep't of Treasury*, ___Mich App___; ___NW2d___ (2011), slip op at 4; see also *Kurz v Mich Wheel Corp*, 236 Mich App 508, 512-513; 601 NW2d 130 (1999).

Defendant also argues that the Court of Claims improperly relied on a draft Revenue Administrative Bulletin (RAB) issued by defendant that interpreted the current Michigan Business Tax (MBT). We disagree. A RAB is "issued under MCL 205.3(f), which allows defendant to issue bulletins that index and explain current department interpretations of current state tax laws." *JW Hobbs Corp v Dep't of Treasury*, 268 Mich App 38, 46; 706 NW2d 460 (2005) (internal quotations omitted). In this case, the Court of Claims did discuss RAB 2010-XX—and authority from other jurisdictions regarding similar statutory schemes—and reasoned that the RAB contradicted defendant's position in the instant case. While we acknowledge that a RAB is only an interpretation of a statute and does not have the force of law, *Catalina Mktg Sales Corp v Dep't of Treasury*, 470 Mich 13, 21; 678 NW2d 619 (2004), the Court of Claims did as well, opining that the RAB was merely "persuasive." Moreover, even assuming that the Court of Claims afforded the RAB undue weight, we do not reverse as the court's conclusion in this case was consistent with the plain language of MCL 208.52(b). See *Taylor v Laban*, 241 Mich App 449, 458; 616 NW2d 229 (2000) ("[W]e will not reverse the court's order when the right result was reached for the wrong reason.").

Affirmed.

/s/ Jane M. Beckering
/s/ Donald S. Owens
/s/ Douglas B. Shapiro