STATE OF MINNESOTA

IN SUPREME COURT

A17-0078

Court of Appeals

Anderson, J.
Dissenting, McKeig, Lillehaug, JJ.
Took no part, Chutich, Thissen, JJ.

Phone Recovery Services, LLC, for itself
and on behalf of the State of Minnesota,
Appellant,

vs.

Filed: October 31, 2018
Office of Appellate Courts

Qwest Corporation, a Colorado company, et al.,
Respondents,
Citizens Telecommunications Company of Minnesota, LLC,
a Delaware company, et al.,
Respondents,
Telephone and Data Systems, Inc., et al.,
Respondents,
Pine Island Telephone Company, et al.,
Respondents,
Level 3 Communications, LLC,
a Delaware company, et al.,
Respondents,
Onvoy, LLC, et al.,
Respondents,
Bandwidth.com CLEC, LLC,
a Delaware company, et al.,
Respondents,
MCC Telephony of Minnesota, LLC,
a Delaware company, et al.,
Respondents,
Jaguar Communications, Inc., et al.,
Respondents,
Windstream Holdings, Inc., et al.,
Respondents,
XO Communications, LLC, et al.,
Respondents,
AT&T Corporation, et al.,
Respondents.

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S Y L L A B U S

1. The plain meaning of "[s]tatutes relating to taxation," for purposes of the exclusion provided by Minn. Stat. § 15C.03 (2016), is a statute that relates to, bears upon, or pertains to levying, assessing, or imposing a tax.

2. The statutory fees and charges for 911 services and telecommunications access and telephone assistance programs are "taxes" under the definition provided by Minn. Stat. § 645.44, subd. 19 (2016), and the statutes imposing these fees and charges are thus "[s]tatutes relating to taxation" for purposes of a claim under the Minnesota False Claims Act, Minn. Stat. § 15C.02 (2016).

Affirmed.

O P I N I O N

ANDERSON, Justice.

Appellant Phone Recovery Services, LLC initiated a *qui tam* action under the Minnesota False Claims Act, Minn. Stat. § 15C.02 (2016) (MFCA), alleging that respondents have intentionally failed to pay fees and surcharges due to the State and imposed by statute for 911 services, the Telecommunications Access Minnesota (TAM) program, and the Telephone Assistance Plan (TAP) program. Because the MFCA does not allow *qui tam* actions based on "claims, records, or statements made under portions of Minnesota Statutes relating to taxation," Minn. Stat. § 15C.03 (2016), respondents jointly

moved for dismissal, asserting that the 911, TAM, and TAP charges are all taxes and therefore appellant failed to state a claim as a matter of law. The district court granted respondents' motion and the court of appeals affirmed. *Phone Recovery Servs., LLC ex rel. State v. Qwest Corp.*, 901 N.W.2d 185, 199 (Minn. App. 2017). We affirm.

FACTS

The fees and surcharges that are the subject of this litigation under the MFCA are all creatures of statute. Minnesota Statutes § 403.11 (2016) establishes a "fee" for the State's 911 emergency system. This fee is set, within statutory limits, by the Commissioner of Public Safety. Minn. Stat. § 403.11, subd. 1(c). The TAM charge and the TAP surcharge, also subject to statutory limits, are established by the Public Utilities Commission.[1] Minn. Stat. §§ 237.52, subd. 2(a), .70, subd. 6 (2016). Telecommunications carriers, the respondents in this litigation, are required to collect all three of these surcharges from their customers and turn the proceeds over to the Commissioner of Public Safety.[2] Minn. Stat. § 237.49 (2016). Telecommunications carriers also are required to

[1] The TAM program provides telecommunications devices to eligible persons with communication disabilities and requires the Commissioner of Commerce to contract for telecommunications relay services to serve persons with communication disabilities. Minn. Stat. § 237.51, subd. 1 (2016). The TAP program provides financial assistance to low-income telephone customers. *See* Minn. Stat. § 237.70 (2016).

[2] In this opinion, we refer to the costs for the 911, TAM, and TAP programs using the terms provided in the statutes. *See* Minn. Stat. §§ 237.52 (establishing the TAM "charge"), .70 (establishing the TAP "surcharge"), 403.11 (establishing the 911 "fee") (2016). Likewise, we refer to all three statutory programs collectively as "surcharges" in accordance with Minn. Stat. § 237.49. We are not, however, bound by the Legislature's decision to designate an obligation as a "fee" or "surcharge" when determining, as a matter of law, whether a statutory obligation is a tax. *See* Minn. Stat. § 645.44, subd. 19(b) (2016).

report to the State the number of "access" lines subject to these surcharges. *See* Minn. Stat. § 403.11, subd. 6; Minn. R. 7817.0900, subp. 3 (2017).

Phone Recovery Services, a New Jersey corporation, brought an action in May 2014, alleging that respondents had violated the reverse-false-claims provisions of the MFCA. The reverse-false-claims provisions impose liability for (1) "[having] possession, custody, or control of property or money used, or to be used, by the state or a political subdivision and knowingly deliver[ing] or caus[ing] to be delivered less than all of that money or property," (2) "knowingly mak[ing] or us[ing], or caus[ing] to be made or used, a false record or statement material to an obligation to pay or transmit money or property to the state or a political subdivision," or (3) "knowingly conceal[ing] or knowingly and improperly avoid[ing] or decreas[ing] an obligation to pay or transmit money or property to the state or a political subdivision."[3] Minn. Stat. § 15C.02(a)(4), (7). Specifically, Phone Recovery Services alleged that respondents had knowingly, intentionally, deliberately, or recklessly under-collected the 911, TAM, and TAP surcharges from their customers, and thus underpaid the amounts owed to the State.

Phone Recovery Services filed a complaint, under seal, in Ramsey County District Court. After the Attorney General declined to intervene, the district court unsealed the complaint and ordered Phone Recovery Services to pursue the litigation on behalf of the

[3] The MFCA defines "obligation" as "an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment." Minn. Stat. § 15C.01, subd. 3b (2016).

State.[4] Respondents moved to dismiss. As relevant here, respondents argued that, because the surcharges are taxes, the MFCA tax bar applied, *see* Minn. Stat. § 15C.03 (excluding a claim "made under portions of Minnesota Statutes relating to taxation"), and Phone Recovery Services' complaint must be dismissed for failure to state a claim, *see* Minn. R. Civ. P. 12.02(e) (providing for dismissal for failure to state a claim upon which relief can be granted). The district court agreed, applying the statutory definition of "tax" provided by Minn. Stat. § 645.44, subd. 19 (2016) to the surcharges. Accordingly, the district court concluded that Minn. Stat. §§ 237.52, .70, and 403.11 are "[s]tatutes relating to taxation" for purposes of the tax-bar provision in Minn. Stat. § 15C.03 and dismissed the complaint with prejudice.

The court of appeals agreed that the 911, TAM, and TAP surcharges are taxes by statutory definition and ultimately concluded that the claim brought by Phone Recovery Services was prohibited by the tax bar provided in the MFCA. *Phone Recovery Servs.*, 901 N.W.2d at 198–99. We granted review.

ANALYSIS

We are presented with a question of statutory interpretation; specifically, does the tax bar set out in Minn. Stat. § 15C.03 as part of the MFCA apply to surcharges collected

[4] The MFCA requires a private party initiating a *qui tam* action on behalf of the State to first provide the complaint to the Attorney General. *See* Minn. Stat. § 15C.05(e) (2016); *see also* Minn. Stat. § 15C.01, subd. 7(1) (2016) (defining "prosecuting attorney," for purposes of the Act, as the Attorney General where the claim "involves money, property, or services provided by the state."). If the Attorney General declines to intervene, the private party who initiated the action "has the same rights in conducting the action" as the Attorney General would have. Minn. Stat. § 15C.08(a) (2016).

by telecommunications carriers and remitted to the State? We review the interpretation of statutes de novo. *Cocchiarella v. Driggs*, 884 N.W.2d 621, 624 (Minn. 2016).

I.

We begin our analysis with the MFCA. This Act permits, under certain circumstances, a plaintiff to bring a private cause of action to collect funds due to the State. *See* Minn. Stat. § 15C.05 (2016). If these claims are successfully prosecuted, the plaintiff is allowed to retain some of the proceeds of the litigation and the balance of the recovery is remitted to the State. *See* Minn. Stat. § 15C.13 (2016). A false claims action can be a direct claim in which the allegation is that a defendant wrongfully secured monies *from* the State. Alternatively, as here, in a "reverse" MFCA complaint, the plaintiff alleges that the defendant did not turn over all monies *due to* the State. *See* Minn. Stat. § 15C.02(a)(4), (7).

But not all private causes of action under the MCFA are permitted. The MFCA "tax bar" precludes actions if the defendant's allegedly false claim stems from "portions of Minnesota Statutes relating to taxation." Minn. Stat. § 15C.03. The MFCA does not define the phrase "relating to taxation." *See* Minn. Stat. §§ 15C.01, 15C.03. When a statute does not define a term or phrase, we first consider the plain meaning of that language. *See 500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 290–91 (Minn. 2013) ("*In the absence of statutory definitions*, we give words and phrases their plain and ordinary meanings." (emphasis added)).

We have previously defined "relating to" as "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *Id.*

at 291 (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)). With respect to the term "taxation," the court of appeals looked to several dictionary definitions, including "the levying of tax," "the action of taxing," "the imposition of taxes," "the fact of being taxed," and "[a]n assessed amount of tax." *Phone Recovery Servs.*, 901 N.W.2d at 197 (internal citations omitted) (alteration in original). Based on dictionary definitions of "relating to" and "taxation," the court of appeals concluded that "[a] statute is one 'relating to taxation' . . . if the statute has a connection, relation, or reference to or concerns the imposition of a tax, the amount assessed as tax, or the revenue gained from taxes." *Id.* We agree with the court of appeals that the plain meaning of "portions of Minnesota Statutes relating to taxation" refers to the provisions of Minnesota Statutes that pertain, refer, or stand in some relation to the levying, imposition, assessment, or collection of taxes. *See Shire v. Rosemount*, 875 N.W.2d 289, 292 (Minn. 2016) ("When a word or phrase has a plain meaning, we presume that the plain meaning is consistent with legislative intent and engage in no further statutory construction.").

Phone Recovery Services contends that the court of appeals erred in its interpretation of the statute in at least three ways. First, Phone Recovery Services argues that the court of appeals' interpretation fails to give effect to the Legislature's distinction between statutory fees, which includes "obligation[s] to pay . . . money" to the State and for which a claim can be asserted under the MFCA, and taxes, for which such a claim cannot be asserted. We disagree. Nothing in the plain language of section 15C.03 refers to an "obligation" to "pay money." We must focus on the plain language that excludes claims based on "portions" of statutes "relating to taxation."

Second, Phone Recovery Services argues that the broad structure of the MFCA and its remedial purpose favor a limiting construction of Minn. Stat. § 15C.03 to avoid sweeping "the overwhelming majority of payments made to the State" into the exception. The remedial purpose of section 15C.02 does not change the plain language of section 15C.03, and the plain language of section 15C.03 captures the Legislature's intent, which ends the process of interpretation. *See City of Brainerd v. Brainerd Invs. P'ship*, 827 N.W.2d 752, 755 (Minn. 2013). As the court of appeals stated, the plain language of Minn. Stat. § 15C.03 does not alter the claims that can be asserted under Minn. Stat. § 15C.02; alleged violations that "involve claims, records, or statements that are *not* made under portions of Minnesota Statutes relating to taxation" can still be pursued. *See Phone Recovery Servs.*, 901 N.W.2d at 199.

Third, Phone Recovery Services asserts that the Legislature intended to include within Minn. Stat. § 15C.03 only statutes enacted under the State's taxing power, specifically Minn. Stat. ch. 270–299 (2016).[5] But the plain language of Minn. Stat. § 15C.03 does not invoke the State's taxing power, and it is not confined to chapters 270

[5] In support of this argument, Phone Recovery Services cites to Minn. Stat. § 270.07(e) (2004), which described the authority of the Commissioner of Revenue to abate a penalty or interest assessment "imposed by any law relating to taxation." But this statute was repealed in 2005, *see* Act of June 2, 2005, ch. 151, art. 1, § 117, 2005 Minn. Laws 1352, 1437, four years before the Legislature enacted the MFCA in 2009, *see* Act of May 16, 2009, ch. 101, art. 2, §§ 24–39, 2009 Minn. Laws 1654, 1676–83. Further, the current version of the statute that describes the Commissioner's abatement authority does not use the phrase "relating to taxation." *See* Minn. Stat. § 270C.34, subd. 1 (2016) (authorizing the Commissioner to abate, reduce, or refund a penalty or interest assessment "imposed by a law administered by the commissioner" or by several specific statutes).

through 299 of Minnesota Statutes—it broadly encompasses *any* statutes, unconstrained by specific chapter designations, "relating to taxation." An interpretation that excludes some statutes that plainly impose taxes but are not within Minn. Stat. ch. 270–299, *see, e.g.*, Minn. Stat. §§ 144F.01, subd. 4 (authorizing an "ad valorem tax levy" to support the cost of certain emergency medical services), 240.15, subd. 1(a) (imposing "a tax at the rate of six percent" on pari-mutuel pools) (2016), effectively requires that we add restrictive terms to the plain language and that we cannot do, *see Walsh v. U.S. Bank, N.A.*, 851 N.W.2d 598, 604 (Minn. 2014) (explaining that "we do not add words or phrases to unambiguous statutes" (citation omitted)).

The dissent takes a different approach, asserting that the plain meaning of "relating to taxation" is facially ambiguous.[6] There are multiple problems with the dissent's view of ambiguity. First, the dictionary definitions that interpret "relating to" to mean "about" are not inconsistent with our prior definition. *Compare 500, LLC*, 837 N.W.2d at 291 (defining "relating to" as "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with" (citations omitted) (internal quotation marks omitted)), *with Webster's Third New International Dictionary* 5 (3d ed. 2002) (defining "about" as "with regard to," "concerning," and "on the subject of"), *id.* at

[6] We note that neither Phone Recovery Services nor respondents have asserted that Minn. Stat. § 15C.03 is ambiguous, and having determined that the Legislature's intent is apparent from the plain and unambiguous language, our process of construction is at an end. *Kremer v. Kremer*, 912 N.W.2d 617, 623 (Minn. 2018) ("When the intent of the Legislature is clear from the plain language of the statute, further statutory construction is not necessary." (citations omitted)). For completeness, however, we respond to the dissent's arguments based on ambiguity.

470 (defining "concern" as "to relate or refer to: be about"), *and id.* at 1911 (defining "regard" as "to have relation to or bearing upon: relate to: touch on"). The dissent's definitions provide only consistent synonyms, not a second reasonable interpretation that supports a finding of ambiguity. *500, LLC*, 837 N.W.2d at 290 (requiring "more than one reasonable interpretation" for a finding of ambiguity (citation omitted)).

Second, Minn. Stat. § 15C.03 encompasses "*portions* of Minnesota Statutes relating to taxation." A "portion" is "a part of a whole," *see Webster's Third New International Dictionary* 1768 (3d ed. 2002), "a section or quantity in a larger thing," *see The American Heritage Dictionary of the English Language* 1373 (5th ed. 2011), or "an amount, section, or piece of something," *see The New Oxford American Dictionary* 1330 (2001). Under the plain meaning of the word "portion," a single statute, or even a single subdivision of a statute, can relate to taxation, even if the remainder of the statute or chapter of statutes does not. For example, Minn. Stat. § 403.11, as a "portion" of Minn. Stat. ch. 403 (2016), may be about taxation, even if the rest of chapter 403 is not. Thus, in the context of the MFCA, the phrase "portions" of statutes "relating to taxation" does not suggest a legislative intent to focus only on statutes that make up Minnesota's counterpart to the Internal Revenue Code or that are only "about" taxation, as argued by the dissent.

Third, even assuming that we adopt the dissent's approach and interpret "relating to" to mean "about," it would not produce a different result here. Minnesota Statutes §§ 237.52, subd. 2, .70, subd. 6, and 403.11, subd. 1, each impose a surcharge. *See* Minn. Stat. § 237.49. If these surcharges are taxes, and we conclude today that they are, then these subdivisions, by definition, are statutory provisions that are "about" taxation.

Because the dissent's proposed definition does not render Minn. Stat. § 15C.03 ambiguous in the context of this case, there is no need to turn to the canons of construction. *See, e.g.*, *Sorchaga v. Ride Auto, LLC*, 909 N.W.2d 550, 555 (Minn. 2018) ("The words of a statute are ambiguous only 'if, *as applied to the facts of the particular case*, they are susceptible to more than one reasonable interpretation.' " (emphasis added) (quoting *Staab v. Diocese of St. Cloud*, 813 N.W.2d 68, 73 (Minn. 2012))); *Chanhassen Estates Residents Ass'n v. City of Chanhassen*, 342 N.W.2d 335, 339 (Minn. 1984) ("When the words of a statute or ordinance *in their application to an existing situation* are clear and free from ambiguity, judicial construction is inappropriate." (emphasis added) (footnote omitted)).

The dissent also argues that the phrase "portions of Minnesota Statutes relating to taxation" has a special meaning to the Legislature. For a phrase to have a special meaning, however, " 'courts [must] have ascribed a well-established and long-accepted meaning to [it].' " *Cox v. Mid-Minn. Mut. Ins. Co.*, 909 N.W.2d 540, 543 (Minn. 2018) (alteration in original) (quoting *State v. Nelson*, 842 N.W.2d 433, 445 (Minn. 2014) (Dietzen, J. dissenting)). We have used the precise phrase "statutes relating to taxation" only three times, and then only in passing. *See State v. Nw. Airlines*, 7 N.W.2d 691, 699 (Minn. 1942) (referencing "[t]he provisions of the statutes relating to taxation of personal property"); *State v. New England Furniture & Carpet Co.*, 119 N.W. 427, 427–28 (Minn. 1909) ("A tax remains a tax, whether entered in a judgment or upon the tax rolls, and all rights and liabilities of the taxpayer are fixed and prescribed by the statutes relating to taxation."); *see also State v. Nw. States Portland Cement Co.*, 103 N.W.2d 225, 227 (Minn. 1960) (same). Three passing references, with no analysis or definition, out of over 150 years of case law,

hardly qualifies as a "well-established and long-accepted meaning." *See Cox*, 909 N.W.2d at 543.

Rather, the dissent asks us to draw a special meaning from the preambles to other statutes created by legislative acts relating to taxation. We have previously recognized that the preamble to a statute is not part of the statute. *Twin City Candy & Tobacco Co. v. A. Weisman Co.*, 149 N.W.2d 698, 702 (Minn. 1967). The preamble to a statute may "offer[] valuable aid in construing a statute [that is] ambiguous on its face." *Berg v. Berg*, 275 N.W. 836, 842 (Minn. 1937) (quoting *Martin v. Rothwell*, 95 S.E. 189, 190 (W.Va. 1918)). But *Berg*, which considered whether the preamble to a *contract* was part of the contractual terms, implies that a statute must be facially ambiguous before the preamble of the legislation is used for guidance. *See id*. (also stating that even then, "in no sense will it be the basis of a legal and binding obligation of the parties" (internal quotation marks omitted) (quoting *Martin*, 95. S.E. at 190)). Instead of using the preamble of the legislation enacting Minn. Stat. § 15C.03 to resolve an ambiguity in that statute, however, the dissent relies on the preambles of legislation enacting *other* statutes to interpret section 15C.03 (which we have concluded is not facially ambiguous in the first instance). *Berg* does not support the dissent's attempt to find ambiguity where none exists. And whatever *Berg* might stand for, it certainly does not sanction turning to statutory preambles in distant chapters to resolve a perceived ambiguity in *another* statute, which was separately enacted and codified in an entirely different chapter at an entirely different time.

We have held that facial ambiguity arises only if the plain language of the statute is "susceptible to more than one reasonable interpretation." *500, LLC*, 837 N.W.2d at 290

(citation omitted). Neither Phone Recovery Services nor the dissent have advanced a plausible, reasonable alternative interpretation of the plain language of Minn. Stat. § 15C.03. We therefore conclude that the statute is unambiguous and decline the invitation of the dissent to explore the public policy behind the MFCA. *See Christianson v. Henke*, 831 N.W.2d 532, 537 (Minn. 2013) (holding that if we conclude a statute is unambiguous, our role is not to explore its spirit or purpose (citing *Caldas v. Affordable Granite & Stone, Inc.*, 820 N.W.2d 826, 836 (Minn. 2012))). We further conclude, as stated earlier, that the phrase "portions of Minnesota Statutes relating to taxation" refers to the portions of Minnesota Statutes that pertain, refer, or stand in some relation to the levying, imposition, assessment, or collection of taxes.

II.

We next address whether Minn. Stat. §§ 237.52, .70, and 403.11 are related to taxation and therefore are not subject to claims under the MFCA. The Legislature has given us a definition that resolves this question.

Minnesota Statutes § 645.44 (2016), provides various definitions for common terms "used in Minnesota Statutes or any legislative act." These definitions "shall" apply across all other Minnesota Statutes, "unless another intention clearly appears." Minn. Stat. § 645.44, subd. 1. "Tax" and "fee" are defined in section 645.44 as follows:

> (a) "Tax" means any fee, charge, exaction, or assessment imposed by a governmental entity on an individual, person, entity, transaction, good, service, or other thing. It excludes a price that an individual or entity chooses voluntarily to pay in return for receipt of goods or services provided by the governmental entity. A government good or service does not include access to or the authority to engage in private market transactions with a nongovernmental party, such as licenses to engage in a trade, profession, or

business or to improve private property.

> (b) For purposes of applying the laws of this state, a "fee," "charge," or other similar term that satisfies the functional requirements of paragraph (a) must be treated as a tax for all purposes, regardless of whether the statute or law names or describes it as a tax. The provisions of this subdivision do not exempt a person, corporation, organization, or entity from payment of a validly imposed fee, charge, exaction, or assessment, nor preempt or supersede limitations under law that apply to fees, charges, or assessments.

Minn. Stat. § 645.44, subd. 19. Thus, the Legislature has broadly defined "tax" to include fees or charges imposed by government, regardless of whether the Legislature "name[d] or describe[d]" the charge as a tax (with the exception stated in subdivision 19(a) for prices that persons voluntarily pay "in return for receipt of goods or services"). The district court and the court of appeals concluded that, under these definitions, the 911, TAM, and TAP surcharges are taxes. We agree.

The amount of the statutorily created 911 "fee" is set by the Commissioner of Public Safety. Minn. Stat. § 403.11, subd. 1(c). It is assessed on "each customer access line" or the equivalent, is collected by telecommunications service providers such as respondents, and is transmitted to the State to be deposited in the State's special revenue fund. *Id.*, subd. 1(c)–(d). Similarly, the amounts of the TAM "charge" and TAP "surcharge" are established by the Public Utilities Commission and are assessed on each customer access line. Minn. Stat. §§ 237.52, subd. 2(a), .70, subd. 6. Both of these surcharges are collected by the telecommunications service providers each month and paid to the Commissioner of Public Safety. Minn. Stat. § 237.49. Under the plain language of Minn. Stat. § 645.44, subd. 19, these statutory surcharges—regardless of the actual label used—are taxes.

Further, nothing in these statutorily imposed surcharges allows consumers, service

providers, or the State to tie the amount of the fee to a consumer's level (or lack) of use of the statewide 911 system, TAM services, or TAP services. Each customer pays the same amount per access line, even if the customer never uses any of these three services during the life of the phone service contract. *Cf.* Minn. Stat. § 257.49 (2016) (describing surcharge as "per telephone access line"). Thus, there is no direct connection between paying the 911 fee, the TAM charge, or the TAP surcharge and receiving goods or services from any governmental entity. These surcharges, therefore, do not meet the exclusion provided in Minn. Stat. § 645.44, subd. 19(a), and are taxes.[7] A statute that creates a tax necessarily pertains or refers to the assessment of taxes, and we therefore conclude that Minn. Stat. §§ 237.52, .70, and 403.11 are "statutes relating to taxation" for purposes of Minn. Stat. § 15C.03.[8]

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[7] Because we conclude that the surcharges are taxes for purposes of the exclusion provided by Minn. Stat. § 15C.03, we need not address the parties' arguments regarding common law factors for identifying a tax as opposed to a fee. Moreover, our holding today is consistent with our precedent that generally defines a "tax." *See In re Petition of S.R.A., Inc.*, 7 N.W.2d 484, 487 (Minn. 1942) (defining taxes as "pecuniary charges imposed by the legislative power . . . to raise money for public purposes" (citation omitted)); *see also First Baptist Church of St. Paul v. City of St. Paul*, 884 N.W.2d 355, 361–62 (Minn. 2016) (concluding that city's right-of-way assessment was a tax because it was a broadly assessed revenue measure that benefited the general public, not just those paying the assessment); *Country Joe, Inc. v. City of Eagan*, 560 N.W.2d 681, 686 (Minn. 1997) (holding that a city's road unit connection charge was a tax because the "city's true motivation was to raise revenue" and benefit the public in general). *Cf. Schowalter v. State*, 822 N.W.2d 292, 305 (Minn. 2012) (Page, J., dissenting) (noting that "tax revenues include taxes of 'state wide application on any class of property, income, transaction or privilege' " (quoting Minn. Const. art. XI, § 4)).

[8] The dissent argues that we should look to Minn. Stat. § 271.01 (2016), which governs the tax court's jurisdiction and defines "the tax laws of the state" for purposes of that jurisdiction. *See* Minn. Stat. § 271.01, subd. 5. Because we have concluded that Minn. Stat. § 15C.03 is unambiguous, it is not proper for us to look to other statutes, such as

Phone Recovery Services argues that using the definition of a "tax" in Minn. Stat. § 645.44, subd. 19, effectively converts all fees to taxes, regardless of the contrary intent of the Legislature. We disagree for two reasons.

First, we are required to apply the definitions provided by the Legislature in Minn. Stat. § 645.44 "unless another intention clearly appears." Minn. Stat. § 645.44, subd. 1. We already have concluded that the plain and unambiguous language of Minn. Stat. § 15C.03 cannot be construed to encompass only a restricted subset of tax statutes because nothing in the plain language suggests that intent. The Legislature used no words, such as "limited to" certain tax statutes or tax types, and did not refer to the authority of some, but not other, agencies to administer taxes.

Second, subdivision 19 does not define all fees and charges to be taxes. The definition is narrower, focusing on those legislative enactments that are imposed by a governmental entity, other than a price *voluntarily* paid in return for goods and services provided by the governmental entity. As explained above, the surcharges at issue here do not fall within this exception, and thus they are taxes.

The dissent also contends that the MFCA is a remedial statute and that the tax bar in section 15C.03 should therefore be construed narrowly, rather than turning to the definitions in section 645.44. Our canon of liberally construing remedial statutes does not apply in cases in which, as here, the statute is facially unambiguous. *Larson v. State*, 790 N.W.2d 700, 704 (Minn. 2010). If the Legislature did not intend for the tax bar to be as

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section 271.01, to interpret the tax bar. We are bound by the plain language of the statute. *See Cocchiarella*, 884 N.W.2d at 624.

broad as the plain meaning of Minn. Stat. § 15C.03 provides, that is a matter for the *Legislature*, not for us, to correct. *See Haghighi v. Russian-Am. Broad. Co.*, 577 N.W.2d 927, 930 (Minn. 1998); *see also Feick v. State Farm Mut. Auto. Ins. Co.*, 307 N.W.2d 772, 775 (Minn. 1981) ("It is not for us to rewrite a statute that has no ambiguities . . . ." (citation omitted) (internal quotation marks omitted)). As the statutes at issue are currently written, the 911 fee, TAM charge, and TAP surcharge are taxes, and the MFCA tax bar precludes *qui tam* claims based on records or statements made under Minn. Stat. §§ 237.52, .70, and 403.11.[9]

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

CHUTICH, J., took no part in the consideration or decision of this case.

THISSEN, J., not having been a member of this court at the time of submission, took no part in the consideration or decision of this case.

[9] Because we affirm the court of appeals on the grounds that Minn. Stat. § 15C.03 is unambiguous and the 911, TAM, and TAP surcharges are taxes within the statutory definition of Minn. Stat. § 645.44, subd. 19, we do not address respondents' arguments regarding the MFCA's public-disclosure bar or pleading fraud with particularity as required by Minn. R. Civ. P. 9.02.

D I S S E N T

MCKEIG, Justice (dissenting).

I dissent because I believe that the court's interpretation of the Minnesota False Claims Act's ("MFCA") tax bar is substantially broader than the Legislature intended. Minnesota Statutes § 15C.03 (2016) is modeled on the federal False Claims Act's ("FCA") tax bar, 31 U.S.C. § 3729(d) (2012), which was designed to prevent private citizens from bringing *qui tam* actions to collect taxes on behalf of the government. The case before us today, however, revolves around individual and business fee-payers, and telephone service providers who are serving as fee-collectors. Because the MFCA's tax bar was not intended to preclude *qui tam* actions against private entities who are obligated to collect government-mandated fees, I would hold that the district court erred by dismissing Phone Recovery Services' complaint and would reverse.

I.

The court concludes that Minn. Stat. § 15C.03 is unambiguous. I disagree. Although I agree with the definition of "taxation" adopted by the court, I believe that the phrase "relating to" has another reasonable meaning which better serves the intent behind the MFCA's tax bar.[1] I explain my reasons below.

[1] As the court notes, neither party has argued that the tax bar is ambiguous. But when both parties advance reasonable but conflicting interpretations of a statute, as they have here, that statute must necessarily contain some ambiguity. *See, e.g.*, *Zurich Am. Ins. Co. v. Bjelland*, 710 N.W.2d 64, 68 (Minn. 2006) (noting that both parties asserted the statute was unambiguous but both advanced differing yet "plausible" interpretations of that language). Thus, we are not bound by the parties' assertions that a statute is unambiguous, particularly when both parties claim differing but allegedly unambiguous interpretations.

It is true that we have previously defined "relating to" as "to stand in some relation; to have bearing or concern; to pertain; refer; to bring into association with or connection with." *500, LLC v. City of Minneapolis*, 837 N.W.2d 287, 291 (Minn. 2013) (quoting *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 383 (1992)). The court seizes upon this precedent to conclude that "relating to taxation" can encompass any statute that has a connection with taxation. However, in the context of this case, I believe that an equally reasonable interpretation of "relating to" would be "about." *See The New Roget's Thesaurus in Dictionary Form* 397–98 (1978) (listing synonyms of "relationship," including "relate to," "about," "concerning," and "in the matter of"); *accord The American Heritage Dictionary of the English Language* 4 (New College ed. 1982) (defining "about" as "[i]n reference to; *relating to*" (emphasis added)).

The court asserts that there is no substantive difference between my proposed definition and the definition offered by *500, LLC*. I disagree. By describing the plain meaning of "relating to" as "about," which is defined as "with regard to," "concerning," or "on the subject of," the statute would retain a narrow focus. *See Webster's Third New International Dictionary* 5 (3d ed. 2002). By contrast, the court today holds that "relating to" means "[to] pertain, refer, or stand in some relation to." *Supra* at pg. 8. "Standing in some relation to" or "referring to" a statutory topic is expansive, and requires a lesser degree of logical relation to that topic than being "about" that topic.

For example, Minn. Stat. § 290.0131 (2016) details what amounts individuals, estates, and trusts must add to their federal taxable income when calculating the income taxes they owe the State. Subdivision 3 of section 290.0131 mentions the amount of motor

vehicle sales taxes paid in the taxable year. Section 290.0131 thus both refers and stands in some relation to motor vehicle sales. But section 290.0131 is undoubtedly *about* taxes, and also stands in some relation and refers to taxes. Put more generally, a statute that is about taxation will both stand in relation to and refer to taxation, but a statute that stands in relation or refers to taxation may not necessarily be *about* taxation. I therefore respectfully disagree with the court's contention that "about" is merely a consistent synonym for the terms it has used to give meaning to the tax bar.

My interpretation is also more consistent with the plain meaning of the word "relate," which means "to establish a logical or causal connection" between two things. *Webster's Third New International Dictionary* 1916 (3d ed. 2002). My definition is a reasonable one, though it is narrower than the court's. I therefore conclude that the tax-bar clause in Minn. Stat. § 15C.03 is ambiguous.

II.

Because the MFCA's tax bar is ambiguous, our duty is "to determine what meaning the Legislature intended to ascribe" to the phrase "portions of Minnesota Statutes relating to taxation." *Nordling v. Ford Motor Co.*, 42 N.W.2d 576, 582 (Minn. 1950). In determining the meaning of the statute, we may consider prior versions of the law, the law's object or purpose, and other laws on the same subject. Minn. Stat. § 645.16(4)–(5) (2016). All three considerations support a narrow interpretation of the MFCA tax bar.

The MFCA prohibits "knowingly mak[ing] or us[ing] . . . a false record or statement material to an obligation to pay or transmit money or property to the state" or "knowingly conceal[ing] or knowingly and improperly avoid[ing] or decreas[ing] an obligation to pay

or transmit money to the state." Minn. Stat. § 15C.02(a)(7) (2016). "Obligation" is statutorily defined as "an established duty, whether or not fixed, arising from an express or implied contractual, grantor-grantee, or licensor-licensee relationship from a fee-based or similar relationship, from statute or regulation, or from the retention of any overpayment." Minn. Stat. § 15C.01, subd. 3b. This definition was added in 2013, *see* Act of Apr. 22, 2013, ch. 16, § 1, 2013 Minn. Laws 95, 96, four years after the tax bar was enacted in 2009, *see* Act of May 16, 2009, ch. 101, art. 2, § 26, 2009 Minn. Laws 1654, 1678. The Legislature, aware of the tax bar, amended the MFCA by adopting a broad definition of the "obligation" to pay or transmit "money" to the state, thus ensuring that false statements or records related to fees were still actionable under the statute, which in turn demonstrates its intent that the tax bar be read narrowly.

Additionally, the purpose behind the federal FCA's tax bar supports my limited reading. We have previously considered persuasive federal case law when construing analogous state statutes. *See, e.g.*, *LaMont v. Indep. Sch. Dist. No. 728*, 814 N.W.2d 14, 21 (Minn. 2012) (supporting Minnesota Human Rights Act interpretation with federal case law regarding similar provisions of Title VII); *Anderson v. Comm'r of Revenue*, 93 N.W.2d 523, 532–33 (Minn. 1958) (deeming federal tax law cases persuasive if we have no decisions to the contrary and the federal and state statutes are substantially similar). In the FCA, the tax bar is limited to "claims, records, or statements made under the Internal Revenue Code of 1986." 31 U.S.C. § 3729(d) (2012). The purpose of the FCA tax bar is "to prevent private litigants from interfering with the IRS's efforts to enforce the tax laws." *United States ex rel. Lissack v. Sakura Global Capital Mkts., Inc.*, 377 F.3d 145, 156 (2d.

Cir. 2004).

Because the MFCA was modeled on the FCA, we can reasonably presume that the Legislature similarly intended to prevent private litigants from interfering with the Department of Revenue's effort to enforce the State's tax laws as well. *See* Minn. Stat. § 270C.03, subd. 1(1) (2016) (granting the Commissioner of Revenue the power to "administer and enforce the assessment and collection of taxes"). Therefore, I read "portions of Minnesota Statutes relating to taxation" to mean the statutes that make up Minnesota's counterpart to the Internal Revenue Code.

Minnesota's counterpart to the Internal Revenue Code is best described by Minn. Stat. § 271.01, subd. 5 (2016), which grants the Tax Court the "sole, exclusive, and final authority for the hearing and determination of all questions of law and fact arising under the tax laws of the state, as defined by [subdivision 5]." Subdivision 5 defines "the tax laws of this state" as including "[l]aws governing taxes, aids, and related matters administered by the commissioner of revenue, laws dealing with property valuation, assessment or taxation of property for property tax purposes, and any other laws that contain provisions authorizing review of taxes, aids, and related matters by the Tax Court." *Id.* *Cf.* Minn. Stat. § 270C.01, subd. 10 (2016) (defining a "tax" as a "tax or fee imposed by a law administered by the commissioner [of revenue]"). The statutes at issue in this case do not meet this definition.

None of the fees that Phone Recovery Services claims respondents underreported are collected by, paid to, or administered by the Commissioner of Revenue; rather, they are paid to the Commissioner of Public Safety, as required by Minn. Stat. § 237.49 (2016).

None of the fees relate to property taxes. *See* Minn. Stat. §§ 237.52, .70, 403.11 (2016). And none of the statutes creating these fees contain provisions that authorize review by the Tax Court. *See id.* The statutes at issue in this case are clearly not part of "the tax laws of this state," *see* Minn. Stat. § 271.01, subd. 5, and are therefore not analogous to the Internal Revenue Code.

Moreover, the FCA is a remedial statute. *See, e.g.*, *Hudson v. United States*, 522 U.S. 93, 100 (1997) (detailing remedies provided by the FCA). It thus logically follows that the MFCA is also remedial. *See Hartwig v. Loyal Order of Moose, Brainerd Lodge No. 1246*, 91 N.W.2d 794, 803 (Minn. 1958) (characterizing the Civil Damage Act as remedial because it provided a remedy of compensation for damages); *cf. Statute*, *Black's Law Dictionary* (10th ed. 2014) (defining a remedial statute as "a law providing a means to enforce rights or redress injuries"). Remedial statutes are to be construed liberally. *S.M. Hentges & Sons, Inc. v. Mensing*, 777 N.W.2d 228, 232 (Minn. 2010). Exceptions to remedial statutes, conversely, are construed narrowly. *Current Tech. Concepts, Inc. v. Irie Enters., Inc.*, 530 N.W.2d 539, 544 (Minn. 1995) (citation omitted).

Construing "relating to" to mean "about" instead of "having a connection with" narrows the application of the tax bar, which better reflects the intent of the Legislature. I would therefore resolve the tax bar's ambiguity in favor of my proposed interpretation.

III.

Having concluded that "portions of Minnesota Statutes relating to taxation" means "portions of Minnesota Statutes *that are about* taxation," I next consider whether the statutes at issue in this case are about taxation.

The phrase "statutes relating to taxation" is not defined in our jurisprudence, and we have used this precise phrase only three times. *See State v. Nw. Airlines*, 7 N.W.2d 691, 699 (Minn. 1942) (referencing "[t]he provisions of the statutes relating to taxation of personal property"); *State v. New England Furniture & Carpet Co.*, 119 N.W. 427, 427–28 (Minn. 1909) (referencing, but not defining, "the statutes relating to taxation"); *see also State v. Nw. States Portland Cement Co.*, 103 N.W.2d 225, 227 (Minn. 1960) (same). Language similar to "statutes relating to taxation" also appears in the text of two statutes, but neither defines the term, neither has been interpreted, and both refer to the taxation of specific items. *See* Minn. Stat. §§ 347.21 (referring to "all laws relating to taxation of dogs"), 469.164, subd. 2 (referring to "laws and regulations relating to taxation and valuation of telephone company property") (2016).

To resolve whether or not a statute is "about" taxation, we should look to the preamble of the session law creating that statute. *See Berg v. Berg*, 275 N.W. 836, 842 (Minn. 1937) (noting that statutory preambles "ordinarily declare[] the mischief which it is the intention of the Legislature to correct" (citation omitted) (internal quotation marks omitted)). The Legislature has used the phrase "relating to taxation" many times in the preambles of bills that enact or amend tax statutes. *See, e.g.*, Act of Mar. 9, 2010, ch. 187, 2010 Minn. Laws 34, 34 ("An act relating to taxation . . . ."); Act of Apr. 6, 2009, ch. 14, 2009 Minn. Laws 38, 38 (same); Act of Jan. 30, 2007, ch. 1, 2007 Minn. Laws 3, 3 (same). The phrase "relating to taxation," therefore, has a special meaning for the Legislature: it denotes that the law is about taxation.

In the case before us today, not one of the session laws that initially created the

statutes at issue was about taxation or concerned taxation. Minnesota Statutes § 403.11 was part of "[a]n act relating to public safety; telephone companies; providing for local emergency telephone service; appropriating money." Act of May 27, 1977, ch. 311, § 11, 1977 Minn. Laws 627, 631. Minnesota Statutes § 237.52 was part of "[a]n act relating to utilities; establishing program to provide communication-impaired people with devices enabling their use of telephones; creating advisory committee and requiring report; providing for payment of costs of program." Act of May 28, 1987, ch. 308, § 3, 1987 Minn. Laws 1840, 1843–44. And Minnesota Statutes § 237.70 was part of "[a]n act relating to public utilities; providing for the reduced regulation of certain competitive telephone services, with limitations and procedures; requiring persons providing private shared tenant service to grant certain access; requiring a study and report on universal service assistance; providing for a telephone assistance plan . . ." Act of June 1, 1987, ch. 340, § 14, 1987 Minn. Laws 2157, 2169–71. These statutes were not enacted as part of acts relating to taxation. None of these statutes is about taxation, nor do the statutes have a substantial relationship to taxation; indeed, the Legislature did not mention taxation in the text of these statutes. I cannot, therefore, agree with the majority that these constitute "statutes relating to taxation."

The court rejects my analysis, arguing that we can only look to preambles when a statute is ambiguous, and that we cannot use the preambles of session laws that created other statutes to resolve the ambiguity in Minn. Stat. § 15C.03. Both contentions misapprehend my point. First, as discussed, Minn. Stat. § 15C.03 is facially ambiguous. Second, when a statute is ambiguous, we may consider other laws "upon the same or

similar subjects." Minn. Stat. § 645.16(5). This canon, necessarily, requires us to first determine the subjects of those other laws, to see whether or not they are "the same or similar." My analysis logically uses the preambles of the legislative acts enacting Minn. Stat. §§ 237.52, .70, and 403.11 to evaluate whether those statutes concern the "same or similar subject" as Minn. Stat. § 15C.03, namely, taxation.

The holding I propose has two components: (1) Minn. Stat. § 15C.03 is facially ambiguous, and (2) this ambiguity should be resolved in favor of the narrower definition, "about." Under the court's holding, any statute that makes even a passing reference to a "tax" or functions like a tax, as defined by Minn. Stat. § 645.44, subd. 19, cannot form the basis of an MFCA *qui tam* action. Because the Legislature did not intend to bar MFCA claims as broadly as the court bars them today, I would reverse the district court and remand this case for further proceedings.

The court cites *Haghighi v. Russian-American Broadcasting Co.*, 577 N.W.2d 927, 930 (Minn. 1998), for the proposition that, if it has erred today, the Legislature can amend the MFCA to correct this error. But that proposition cuts both ways. If the court adopted a narrow construction of the tax bar, as I propose, and the Legislature had actually intended a broad construction, then it would be just as easy for the Legislature to amend the MFCA to correct *that* hypothetical error. The court's holding today does not fulfill our duty to give effect to the intent of the Legislature, and I therefore respectfully dissent.

IV.

In their motion to dismiss and arguments on appeal, respondents present two alternate theories for dismissal: the MFCA's public-disclosure bar, and the requirement to

plead fraud with particularity under Minn. R. Civ. P. 9.02. Because these arguments were preserved and fully briefed, I would reach and reject them.

A.

The MFCA's public-disclosure bar requires the dismissal of complaints "if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed . . . by the news media." Minn. Stat. § 15C.05(f)(3) (2016). We have not previously interpreted this provision, which is nearly identical to the FCA's public-disclosure bar. *Compare* Minn. Stat. § 15C.05(f), *with* 31 U.S.C. § 3730(e)(4)(A) (2012). *See also U.S. ex rel. Colquitt v. Abbott Labs.*, 864 F.Supp.2d 499, 537 (N.D. Tex. 2012) (stating that the MFCA's public-disclosure bar is "substantively identical" to the FCA's). Again, I would look to federal case law interpreting the FCA for guidance in interpreting the MFCA. *See, e.g.*, *LaMont*, 814 N.W.2d at 21; *Anderson*, 93 N.W.2d at 532–33.

Like the MFCA, the FCA bars actions where "substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed . . . from the news media." 31 U.S.C. § 3730(e)(4)(A)(iii). The Eighth Circuit recently held that the federal public-disclosure bar is only triggered if the defendant is specifically named or if the public disclosures "provide enough information about the participants in the scheme such that the defendant is identifiable." *United States v. CSL Behring, L.L.C.*, 855 F.3d 935, 944 (8th Cir. 2017) (citation omitted) (emphasis omitted). I would hold that this test is the correct construction of Minnesota's public-disclosure bar.

Here, respondents rely on various news articles, spanning from 2005 to 2012 that assert other telecommunications providers around the country engaged in similar schemes.

The articles are from Tennessee, Missouri, Alabama, Indiana, and West Virginia. Every article deals exclusively with local 911 fees, and makes no mention of TAM or TAP fees, or analogous fees assessed by any other states. Of all the articles, only respondent AT&T is named, in a single 2012 article from Tennessee. This single reference to one respondent out of the dozens of telephone companies Phone Recovery Services has named in this lawsuit does not satisfy *CSL Behring*'s requirement that the public disclosures "must set the government squarely on the trail of a specific and identifiable defendant's participation in the fraud." 855 F.3d at 944 (citation omitted) (internal quotation marks omitted). Interpreting the MFCA consistently with federal case law that has interpreted virtually identical language in a statute with virtually the same purpose as the MFCA, I therefore conclude that the MFCA's public-disclosure bar has no application to these facts.

B.

The Minnesota Rules of Civil Procedure require that, "[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity. Malice, intent, knowledge, and other condition of mind of a person may be averred generally." Minn. R. Civ. P. 9.02. Pleading "with particularity" requires a plaintiff "to plead the ultimate facts or the facts constituting fraud." *Hardin Cty. Sav. Bank v. Hous. & Redevelopment Auth. of City of Brainerd*, 821 N.W.2d 184, 191 (Minn. 2012) (citations omitted) (internal quotation marks omitted). The "ultimate facts" of a fraud claim are the facts that underlie each element of the claim. *Id.* (citation omitted).

A fraud claim has five elements:

(1) a false representation by [the defendant] of a past or existing material fact

> susceptible of knowledge; (2) made with knowledge of the falsity of the representation or made without knowing whether it was true or false; (3) with the intention to induce [the plaintiff] to act in reliance thereon; (4) that the representation caused [the plaintiff] to act in reliance thereon; and (5) that [the plaintiff] suffered pecuniary damages as a result of the reliance.

Valspar Refinish, Inc. v. Gaylord's, Inc., 764 N.W.2d 359, 368 (Minn. 2009). In its amended complaint, Phone Recovery Services alleged that: (1) respondents falsely represented to the State that they had remitted the appropriate amount of fees and had reported the correct number of access lines; (2) respondents "[u]pon information and belief . . . knowingly, intentionally, deliberately, and/or recklessly undercharge[ed] customers" for the 911, TAM, and TAP fees, and thus remitted an improper amount of the fees to the State; (3) the Minnesota Department of Public Safety could not verify that respondents' fee remittance forms were accurate without conducting an audit of respondents' assigned telephone lines; (4) neither the State nor the Department of Public Safety conducted such an audit; and (5) as a result, the State was underpaid by over $44 million.

Although Phone Recovery Services did not specifically allege that respondents intended to induce the State to act in reliance on their fee remittance forms, it can be reasonably inferred from the complaint that respondents intended to under-collect and underpay the 911, TAM, and TAP fees and to have the State rely on their artificially reduced number of reported telephone lines. And, as the non-moving party, Phone Recovery Services is entitled to all reasonable inferences in its favor. *Radke v. County of Freeborn*, 694 N.W.2d 788, 793 (Minn. 2005). Because Phone Recovery Services is entitled to reasonable inferences in its favor, may generally aver intent, and specifically pled all other elements of a fraud claim, I conclude that Phone Recovery Services' amended

complaint satisfied Minn. R. Civ. P. 9.02.

V.

For the foregoing reasons, I respectfully dissent.

LILLEHAUG, Justice (dissenting).

I join in the dissent of Justice McKeig.