STATE OF MICHIGAN

COURT OF APPEALS

DAIMLER CHRYSLER SERVICES OF NORTH AMERICA, LLC, a/k/a DAIMLERCHRYSLER SERVICES NORTH AMERICA, LLC, Plaintiff-Appellee,	UNPUBLISHED January 21, 2010
v	No. 288347 Court of Claims
DEPARTMENT OF TREASURY, Defendant-Appellant.	LC No. 04-000113-MT

Before: Cavanagh, P.J., and Fitzgerald and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right the order granting summary disposition pursuant to MCR 2.116(C)(10) in favor of plaintiff. We reverse in part and remand.

This case was previously before this Court with regard to a separate issue. *DaimlerChrysler v Treasury Dep't*, 271 Mich App 625; 723 NW2d 569 (2006). The basic facts are set forth in that opinion:

> The facts in this case are not in dispute. Plaintiff financed consumers' purchases of motor vehicles from its affiliated dealers. If a consumer sought to purchase a motor vehicle, plaintiff determined whether it would finance the purchase. If financing was approved, the consumer purchasing the motor vehicle entered into a retail installment sales contract with the dealer, and a security interest in the vehicle was retained by the dealer. Concomitantly, plaintiff had financing agreements with each of the dealers governing their relationship. The financing agreements provided that plaintiff would purchase qualifying contracts from the dealers in exchange for assignment of all the dealers' rights in the contracts. At or near the time of the sales of the vehicles from the dealers to the consumers, the dealers assigned to plaintiff all rights, titles, and interests in the qualifying contracts, including the dealers' rights as secured parties. At that same time, plaintiff paid the dealers all amounts due under the contracts, including the sales tax on the full purchase price of each motor vehicle. The dealers then remitted the sales tax revenue to defendant. Plaintiff also was assigned the right to repossess the vehicles when consumers defaulted on their contracts. These assignments provided in part: "In return for purchase of this contract, the Dealer

> sells to Assignee ... the entire interest in this contract; and authorizes Assignee to collect and discharge obligations of the Contract and its assignment."
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> Subsequently, purchasers under several of the installment contracts defaulted. Despite plaintiff's efforts to repossess and resell the vehicles at issue, unpaid balances remained due to plaintiff on some of the contracts. Plaintiff determined that all the contracts that are the subject of this case became worthless and uncollectible [sic]. Plaintiff claimed such debts as bad-debt deductions for federal tax purposes. As plaintiff determined that certain contracts assigned to it were uncollectible [sic], it also determined that, because of the bad debt, it had overstated its gross receipts and, therefore, had overpaid state sales taxes in the amounts of $1,263,528.00 and $2,554,729.13 on separate occasions. Consequently, plaintiff sought relief under the bad-debt provision by filing claims with defendant in January 1998 and March 2000, using the informal hearing process, and seeking a refund or deduction on its alleged overpayment.

The hearing referee and the Court of Claims denied plaintiff's requested relief, concluding that plaintiff, as the financing provider, did not constitute a taxpayer for purposes of MCL 205.54i, and an assignee did not achieve the status of a person subject to the act. *Id.* at 628-630. This Court held that plaintiff was a taxpayer under the statute, holding:

> [W]e conclude that plaintiff was a sales finance company that, along with its affiliated dealers, intended to act as one unit to make sales of motor vehicles; that plaintiff was engaged in business in Michigan; and, for those reasons, was a taxpayer under the GSTA. Further, we determine that plaintiff's bad debt was related to sales at retail because the sales themselves were "transactions by which transfer" of tangible property occurred. Plaintiff is entitled to recover from defendant sales tax payments under the bad-debt provision in effect at the times its claim accrued. [*Id.* at 640.]

This Court reversed and remanded for a determination of the amount of refund due.[1]

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[1] MCL 205.54i was amended following this Court's prior opinion in this case to place limitations on the person that may be characterized as a "taxpayer" for purposes of the bad debt provision. The amendment to MCL 205.54i also contains the following enacting provision:

> Enacting section 1. This amendatory act is curative and shall be retroactively applied, expressing the original intent of the legislature that a deduction for a bad debt for a taxpayer under the general sales tax act, 1933 PA 167, MCL 205.51 to 205.78, is available exclusively to those persons with the legal liability to remit the tax on the specific sale at retail or which the bad debt deduction is recognized for federal income tax purposes, and correcting any misinterpretation of the meaning of the term "taxpayer" that may have been caused by the Michigan court of appeals decision in *Daimler Chrysler [sic] Services North America LLC v*

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According to defendant, on remand plaintiff provided defendant with a "large stack of documents, consisting of a list of transactions for which Daimler is claiming that a refund of sales tax is due pursuant to the Court of Appeals decision." According to defendant, it advised plaintiff that the list as provided was meaningless without more information, and the parties commenced working together to try to agree on the amount of the refund due. The list, according to defendant, includes 24,423 transactions, and defendant has estimated that two-thirds of the transactions involve repossessed vehicles. According to plaintiff, in calculating the amount of the claims, plaintiff compiled a list of all the accounts that were charged off as uncollectible on plaintiff's general ledger and that were eligible to be claimed as a deduction pursuant to § 166 of the Internal Revenue Code, 26 USC 166. For each account, plaintiff listed the amount that was not collected from the customer. Plaintiff then deducted any amounts that consisted of interest on the purchase price, sales tax on the purchase, amounts spent attempting to collect the account, and any proceeds obtained from the repossession and sale of the motor vehicle securing the account. None of the accounts listed represented amounts on property that remained in plaintiff's possession until the full purchase price was paid, and none of the accounts were sold to a third party. The inclusion of repossessed vehicles in the refund calculation formed the basis of defendant's opposition on remand to entry of an order granting plaintiff a refund in the full amount requested.

Following a hearing, on September 26, 2008, the Court of Claims granted summary disposition in favor of plaintiff under MCR 2.116(C)(10) and entered a judgment against defendant, finding that transactions involving repossessed vehicles are includible in the calculation of a refund under the bad debt statute, MCL 205.54i.

At issue in this appeal is whether the trial court erred by determining that MCL 205.54i(a) permits a deduction for sales tax paid on property that is repossessed.[2] This Court reviews de novo both a trial court's decision on a motion for summary disposition and questions of statutory interpretation. *Eggleston v Bio-Medical Applications of Detroit, Inc,* 468 Mich 29, 32; 658 NW2d 139 (2003); *Maiden v Rozwood,* 461 Mich 109, 118; 597 NW2d 817 (1999).

Defendant argues that the Court of Claims erred in holding that transactions involving repossessed vehicles are includable in the calculation of a refund of sales tax under MCL 205.54i. This Court's goal in interpreting a statutory provision is to ascertain the Legislature's intent. *Cain v Waste Mgmt, Inc (After Remand),* 472 Mich 236, 245; 697 NW2d 130 (2005). This is accomplished by first looking to the language used. *TMW Enterprises Inc v Dep't of Treasury,* ___ Mich App ___; ___ NW2d ___ (2009). If the language is plain and

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> *Department of Treasury,* No. 264323 [271 Mich App 625, 723 NW2d 569 (2006)]. However, this amendatory act is not intended to affect a refund required by a final order of a court of competent jurisdiction for which all rights of appeal have been exhausted or have expired if the refund is payable without interest and after September 30, 2009, and before November 1, 2009.

[2] The focus of defendant's original motion for summary disposition was defendant's argument that plaintiff did not constitute a taxpayer for purposes of the bad debt statute, and this is the only issue that was raised before and addressed by this Court.

unambiguous, then this Court must apply the statute as written to the facts before it. *PNC Bank Nat'l Ass'n v Dep't of Treasury*,___ Mich App ___; ___ NW2d ___ (2009). In such instances, judicial construction is neither necessary, nor permitted. *Beattie v Mickalich,* 284 Mich App 564, 570; ___ NW2d ___ (2009).

The "bad debt" deduction provided by MCL 205.54i was added to the General Sales Tax Act, MCL 205.51 *et seq.*, through the Public Acts of 1982 and became effective January 1, 1984. Generally, exemptions from tax are not favored and must be construed strictly in favor of the government. *Elias Bros Restaurants, Inc v Dep't of Treasury*, 452 Mich 144, 150; 549 NW2d 838 (1996).

The version of MCL 205.54i(1) in effect at the time the refund claims were filed provided:

> As used in this section, "bad debt" means any portion of a debt that is related to a sale at retail for which gross proceeds are not otherwise deductible or excludable, that has become worthless or uncollectible in the time period between the date when taxes accrue to the state for the taxpayer's preceding sales tax return and the date when taxes accrue to the state for the present return, and that is eligible to be claimed, or could be eligible to be claimed if the taxpayer kept accounts on an accrual basis, as a deduction pursuant to section 166 of the internal revenue code. *A bad debt shall not include any interest or sales tax on the purchase price, uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid, expenses incurred in attempting to collect any account receivable or any portion of the debt recovered, any accounts receivable that have been sold to a third party for collection, and repossessed property*. [Emphasis added.]

The italicized language above sets out exceptions to the general definition of "bad debt" and identifies those items to which the bad debt deduction does not apply. A bad debt does not include:

1) interest or sales tax on the purchase price;

2) uncollectible amounts on property that remains in the possession of the taxpayer until the full purchase price is paid;

3) expenses incurred in attempting to collect any accounts receivable that have been sold to a third party for collection; and

4) repossessed property.

The plain and unambiguous language of the statute provides that for purposes of the exemption from sales tax, a bad debt does not include . . . *repossessed property*.[3]

Defendant has regularly interpreted and applied the bad debt statute consistent with this interpretation. Indeed, a Revenue Administrative Bulletin (RAB) was issued under MCL 205.3(f), which allows defendant to "issue bulletins that index and explain current department interpretations of current state tax laws." See *JW Hobbs Corp v Revenue Div, Dep't of Treasury*, 268 Mich App 38, 46; 706 NW2d 460 (2005). RAB 1989-61, issued October 3, 1989, provides in relevant part:

> The bad debt deduction for sales tax purposes shall not include any amount represented by the following:
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> * * *
>
> 6. Sales tax charged on property that is subsequently repossessed.

While a RAB is only an interpretation of the applicable statute and does not have the force of law, *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 21; 678 NW2d 619 (2004), defendant's interpretation of the statute at issue is entitled to respectful consideration. *Id.* at 654-655. Defendant's longstanding policy with respect to bad debt deductions for repossessed property is consistent with the plain and unambiguous language of the statute and we therefore give it deference.[4]

In sum, we conclude that the Court of Claims erred to the extent that it included transactions involving repossessed property in the calculation of the bad debt deduction.

Reversed in part and remanded to the Court of Claims for a proper calculation of the

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[3] To the extent that plaintiff argues that defendant is precluded from relitigating its liability for plaintiff's bad debt claims by this Court's prior decision in this case, we note that this issue was not previously raised before this Court. The prior appeal involved the Court of Claims' ruling on a motion for summary disposition in which defendant argued that plaintiff did not satisfy the statutory definition of taxpayer. On remand, the Court of Claims held that the issue was properly before the court, and plaintiff has not brought a cross-claim with regard to this ruling. Nonetheless, the Court of Claims properly concluded that the issue of whether repossessed property is includable in calculating the amount of the bad debt deduction was not before this Court in the prior appeal.

[4] Plaintiff's reliance on *Indiana Dep't of Revenue v 1 Stop Auto Sales, Inc*, 810 NE2d 686 (Ind, 2004), and *Phillips v Comptroller of the Treasury, Retail Sales Tax Div*, 224 Md 350; 167 A2d 913 (1961), is misplaced as these cases are both not controlling and not applicable analytically given the different facts and statutes at issue in those cases.

refund due plaintiff. Jurisdiction is not retained.

/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro