STATE OF MICHIGAN

COURT OF APPEALS

COMCAST CABLEVISION OF THE SOUTH, INC.,

Plaintiff-Appellee,

v

DEPARTMENT OF TREASURY,

Defendant-Appellant.

UNPUBLISHED
June 9, 2011

No. 293433
Court of Claims
LC No. 07-000106-MT

Before: MARKEY, P.J., and FITZGERALD and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right the order of the court of claims requiring defendant to pay a single business tax refund to plaintiff in the amount of $123,857.98 plus statutory interest. The court of claims granted summary disposition to plaintiff and entered this order on the basis of the court's interpretation and application of the now-repealed Single Business Tax Act (SBTA), MCL 208.1 *et seq.*, explaining that the statute should not be interpreted to require the taxpayer to recapture the unused portion of an asset's capital acquisition deduction where the taxpayer did not receive a capital acquisition deduction. We affirm.

I

This case concerns single business tax for tax years 2001 and 2002. Plaintiff requested a refund of the tax for those tax years. Defendant denied the request, and thereafter plaintiff filed suit in the court of claims seeking to obtain a single business tax refund plus interest. The parties stipulated to the following facts below:

> 1. This case concerns Michigan Single Business Tax ("SBT") imposed on Plaintiff, Comcast Cablevision of the South, Inc ("Comcast"), by Defendant, the Michigan Department of Treasury (the "Department"), for tax years 2001 and 2002 (the "Years in Issue").
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> 2. During all relevant time periods, Comcast was a Colorado corporation with its principal office located in Philadelphia, Pennsylvania.
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> 3. The Department audited Comcast for the Years in Issue and, as a result of that audit, issued to Comcast Bill for Taxes Due (Final Assessment) 0904740

> (the "Final Assessment"), alleging a single business tax liability for the years in Issue of $93,096.00 together with interest in the amount of $27,895.12 for a total purported liability of $120,991.12.
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> 4. Comcast paid the Final Assessment, plus an additional $2,866.86 in interest, in full under protest and brought suit in this case, seeking a refund of single business tax and interest paid under protest in the amount of $123,857.98, plus statutory interest, costs, and attorney fees.
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> 5. In the course of the audit, the Department recalculated the Comcast adjusted tax base by calculating a "recapture" of a capital acquisition deduction ("CAD").
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> 6. The Final Assessment was the result of the Department's "recapture" of a CAD.
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> 7. Prior to 2001, Comcast did not file SBT returns and thus did not take a CAD related to the acquisition of any assets.
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> 8. In 2001 and 2002, Comcast disposed (the "Disposition") of certain assets (the "Assets") located in Michigan and other states.
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> 9. In its audit adjustment, the Department calculated tax claiming a "recapture" of CAD due to the Disposition of the Assets by Comcast.
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> 10. The cost of the assets subject to the Disposition had not been taken as a CAD by Comcast.

Plaintiff moved for summary disposition pursuant to MCR 2.116(C)(10). Plaintiff argued that it is contrary to the intent of both the SBTA and common sense to force plaintiff to "recapture" a deduction that was never taken. In response to the motion, defendant sought summary disposition on the ground that the SBTA does not require that the capital acquisition deduction be taken in order to trigger recapture of the deduction.

Following a hearing on the cross-motions for summary disposition, the trial court issued a written opinion and order granting plaintiff's motion and denying defendant's motion. The court opined in part:

> Under MCL 208.23, a taxpayer was allowed a full deduction for the cost of an asset in the year of that asset's acquisition (a CAD). After taking this deduction in the first year, the taxpayer was expected to make an adjustment to its tax base in subsequent years to reflect the depreciation for that year. MCL 208.9(4)(c). If the asset was transferred before it was fully depreciated, the unused portion of the CAD was required to be recaptured and included in the taxpayer's tax base for the year in which the asset was transferred.
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> At issue here is the question of whether a taxpayer, having not taken a CAD on an asset at the time the asset was acquired, can be compelled under MCL

> 208.23b to recapture the CAD at the time the asset is transferred. No court appears to have considered exactly this question before.
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> Looking at the language of MCL 208.23 and MCL 208.23b side by side, the two statutes parallel one another. MCL 208.23b, which provides for the recapture of a CAD, clearly references MCL 208.23 in identifying those assets for which a CAD must be recaptured. Indeed, while asserting that no connection exists between the two statutes, even Defendant admits that MCL 208.23b references MCL 208.23. Thus, the language of the statutes themselves suggests a legislative intent that a taxpayer be required to recapture a CAD only where the CAD was taken by the taxpayer in the first instance. Such a reading comports with common sense.
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> Moreover, the Court is mindful of the fact that tax statutes are to be liberally construed, that any ambiguities and doubtful language in tax statute are to be construed in favor of the taxpayer, and that tax officials have the burden to identify express language authorizing the tax sought to be imposed. These rules further support a finding in Plaintiff's favor.
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> Furthermore, Defendant has provided no case law that supports its position. In *James River Paper Company, Inc*, [unpublished opinion per curiam of the Court of Appeals, issued June 20, 2000 (Docket No. 214884)], the Court considered the question of whether a taxpayer who was entitled to take a CAD on certain construction-in-progress assets, but did not do so, was nonetheless required to recapture the CAD upon transfer of those assets. The Court explicitly found that a taxpayer in such circumstances was required to recapture the CAD, because nothing in the statutory law linked the two separate provisions together to make them somehow dependent upon another. *In that case, however, the Court explicitly noted that the operation of MCL 208.23b was not before the Court*.

II

The narrow issue presented is whether the capital acquisition deduction is contingent on whether the taxpayer took the CAD for the property at issue. Defendant maintains that the taxpayer must recapture the undepreciated cost of an asset upon disposition of the asset regardless of whether the taxpayer took the capital acquisition deduction with regard to the asset. Plaintiff argues that recapture of the capital acquisition deduction is not required if the deduction was never taken.

This Court reviews questions of statutory interpretation and the proper application of statutes de novo. *Coblentz v City of Novi*, 475 Mich 558, 566; 719 NW2d 73 (2006); *Adams Outdoor Advertising, Inc. v City of Holland*, 463 Mich 675, 681; 625 NW2d 377 (2001). This Court also reviews a trial court's decision to grant or deny a motion for summary disposition de novo. *Coblentz*, 475 Mich at 567; *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998).

The primary goal of statutory interpretation is to give effect to the intent of the Legislature. *Kuznar v Raksha Corp*, 481 Mich 169, 176; 750 NW2d 121 (2008). If the language of the statute is unambiguous, the Legislature is presumed to have intended the meaning plainly expressed, and judicial construction is not permitted. *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 141; 783 NW2d 133 (2010). An unambiguous statute must be enforced as written. *Klida v Braman*, 278 Mich App 60, 64; 748 NW2d 244 (2008). "[A] court may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). When a statute defines a given term, the statutory definition controls. *Kuznar*, 481 Mich at 176.

As this Court has explained,

> The SBTA is a "consumption-type value-added tax" that is subject to certain exemptions, exclusions, and adjustments. *Caterpillar, Inc v Dep't of Treasury*, 440 Mich 400, 408-409; 488 NW2d 182 (1992). Among these adjustments is the CAD. *Id.* at 409. The CAD statute allows taxpayers to reduce their tax base by the amount expended during the tax year to acquire capital assets. *Id.* [*Dana Corp v Dep't of Treasury*, 267 Mich App 690, 691; 706 NW2d 204 (2005).]

Under MCL 208.23(e), a taxpayer was allowed a full deduction for the cost of an asset in the year of acquisition:

> After allocation as provided in section 40 or apportionment as provided in section 41, the tax base shall be adjusted by the following:
>
> (e) Except as provided in subdivisions (g), (h), and (i), for a tax year beginning after December 31, 1996 and before January 1, 2000, deduct the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under internal revenue code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the assets are physically located in this state for use in a business activity in this state and are not mobile tangible assets. This deduction shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3. [MCL 208.23(e).]

After taking this deduction in the first year, the taxpayer was expected to make an adjustment to its tax base in subsequent years to reflect the depreciation for that year. See MCL 208.9(4)(c). If the property was transferred before it was fully depreciated, the unused portion of the capital acquisition deduction had to be "recaptured":

> After allocation as provided in section 40 or other apportionment as provided in section 41, the tax base shall be adjusted by the following:
>
> Except as provided in subdivisions (f) and (g) and if the cost of tangible assets described in section 23(e), (f), or (g) was paid or accrued in a tax year beginning after December 31, 1996 and before January 1, 2000, add the gross

> proceeds or benefit derived from the sale or other disposition of the tangible assets minus the gain and plus the loss from the sale or other disposition reflected in federal taxable income and minus the gain from the sale or other disposition added to the tax base in section 9(6). This addition shall be multiplied by the apportionment factor for the tax year as prescribed in chapter 3. [MCL 208.23b(d).]

As found by the trial court, the language of MCL 208.23b clearly parallels the language of MCL 208.23. Section 23b references § 23 and links the two provisions together, making § 23b dependent upon § 23. The plain language of MCL 208.23b provides that recapture of the capital acquisition deduction is only required upon the disposition of assets "if the cost of the tangible asset described in [statutory subsections allowing the capital acquisition deduction in MCL 208.23" was paid or accrued [during certain time periods]. See MCL 208.23b(c), (d), and (e). The language reveals the legislative intent that recapture of the capital acquisition deduction occur only if the deduction has been taken. The trial court properly found that defendant wrongfully recalculated Comcast's adjusted tax base by calculating a "recapture" of a capital acquisition deduction that was never taken.

Also as noted by the trial court, defendant's reliance on the unpublished decision in *James River Paper Co, Inc*, is misplaced. In that case, the plaintiff requested a refund on single business taxes for the 1985 tax year. In moving for summary disposition, the plaintiff argued, in part, that if it was not entitled to a capital acquisition deduction it should not be required to add back depreciation when calculating its tax base. The Court of Claims agreed with the plaintiff's position that it was not required to add back the depreciation of the assets for which it could not take a capital acquisition deduction to its single business tax base where the plaintiff did not receive the deduction. In that case, however, the issue was whether the plaintiff should be exempted from the depreciation add back requirement of MCL 208.9(4)(c) in arriving at its tax base. This Court concluded that the court of claims erred in holding that the plaintiff was exempt from adding back the depreciation of the assets at issue to its profits to arrive at its tax base. It noted that MCL 208.9(4)(c) states clearly that to the extent deducted in arriving at federal taxable income, a taxpayer must add back the value of depreciation of personal property to its profits in order to arrive at its pre-apportionment tax base. This Court specifically noted that "although plaintiff addresses a subargument to the proper application of § 23b, the 'recapture' section, defendant does not address this section, the judgment does not address this section, and the tax refund ordered does not appear to relate to this section. We therefore conclude that the operation of § 23b is not properly before us." *James River Paper Co*, unpub op at 2.

Affirmed.

/s/ Jane E. Markey
/s/ E. Thomas Fitzgerald
/s/ Douglas B. Shapiro