

# Case Digests

## Tax Exemption for Pollution Control Equipment

*DaimlerChrysler Corp v State Tax Comm'n*, 482 Mich 220, 753 NW2d 605 (2008). Before issuing a certificate allowing for sales of new vehicles, federal law requires the Environmental Protection Agency (EPA) to “test or require to be tested” new motor vehicles or new motor vehicle engines to ensure compliance with emission standards that the EPA promulgates. The EPA has created a testing regime that requires vehicle manufacturers to submit an application with a large amount of supporting data. Petitioners installed test cells that are large buildings that can replicate many temperature conditions and house equipment that allows for many different types of tests and data collection. The test cells are used in the manufacturing process to ensure compliance with the regulations. In addition to its test cell, one petitioner installed a new engine production line to meet federal emissions regulations. All the petitioners sought tax exemptions from the State Tax Commission (STC) under the Natural Resources and Environmental Protection Act (NREPA) for their test cells and the new engine line. NREPA provides real and personal property tax exemptions, as well as sales and use tax exemptions, for certain air pollution control facilities and requires that the STC refer applications to the Department of Environmental Quality (DEQ). The DEQ concluded that none of petitioners’ equipment qualified for an exemption under NREPA because their primary purpose was not to reduce pollution, but to test products for compliance with federal emissions standards and to manufacture engines that comply with those standards. The DEQ also found that all the equipment actually generated some pollution during the testing or manufacturing processes, instead of physically disposing of air pollution or controlling it as the law requires. The STC agreed and denied all the exemptions.

The supreme court held that, for the equipment to be exempt under the plain language of the statute, it must be installed or acquired for the primary purpose of regulating or curbing the spread of pollution in Michigan. Moreover, the equipment must actually and physically limit pollution. None of the equipment that is the subject of this appeal met these tests. Therefore, the court of appeals erred by partially overturning the decision of the DEQ and the STC to that effect, by holding that the petitioners’ test cells qualified for the exemption. Thus, the supreme court reversed the court of appeals in part and restored the DEQ and STC decisions, concluding that none of the equipment qualified for the tax exemption.

## Contracts—Non-retroactive Indemnity Provision

*DaimlerChrysler Corp v Wesco Distrib*, No 276174, 2008 Mich App LEXIS 1882 (Oct. 2, 2008). The defendant distributor has a business relationship with an electrical engineering services company, which provides service and support to

users of the latter’s products and supports factories with warranties and other equipment needs. The electrical engineering company uses distributors like the defendant as intermediaries when performing electrical work for industrial and manufacturing customers. In general, the electrical engineering company prepares a quotation for the work to be performed and submits it to a distributor, which applies a markup and supplies the quotation to a customer. If the distributor and the electrical engineering company are awarded the job, the distributor then receives a purchase order from the customer and sends it to the electrical engineering company, which performs the work. On July 23, 2002, the plaintiff called the electrical engineering company to look at damaged electrical equipment and to prepare a quotation for repair work. In the course of examining the equipment, a testing device exploded, injuring an employee of the electrical engineering company. That employee’s notes were lost or destroyed as a result of the explosion, and a quotation was prepared in early August 2002 that may have used photographs the injured employee had taken before the incident. On August 8, 2002, the plaintiff issued a purchase order to the distributor to pay for repairs that was in the exact amount of the quotation; the purchase order included an indemnification provision that provided that the distributor must indemnify the plaintiff against all loss arising out of or related to the performance of any work in connection with the contract. On September 26, 2002, the distributor issued an invoice for the repairs to the plaintiff, which it paid without objection on October 30, 2002. The injured employee later sued the plaintiff for his injuries, and it sought indemnification from the distributor.

The distributor’s quote of August 2, 2002, and the plaintiff’s purchase order made it clear that a service—repair of the electrical equipment—was the primary purpose of the parties’ contract, and the provision of necessary materials was incidental to the repairs. Therefore, this contract dispute was governed by the common law, rather than the UCC. Applying the common law, the trial court correctly held that the August 8, 2002 purchase order constituted a counteroffer, which the distributor accepted by its performance. However, the trial court erred in ruling that the terms of the indemnity clause of that contract applied to an act and injury occurring before August 8, 2002. In general, a contract cannot be construed to operate retrospectively unless the parties expressly provide that it does in their agreement. The plain and unambiguous language of the contract in this case made clear that indemnification applied only to any loss that was related to work performed in connection with the August 8, 2002 contract. That contract required labor and material to be supplied for repair of the capacitor bank, and all of which was started and completed after August 8, 2002. Obviously, the injury occurred well before the contract was formed (indeed, even before an offer was even made) and was not related to the work performed on the capacitor bank. Consequently, this injury was not covered by the indemnity clause.

### **Income Tax—Payment of Uncontested Taxes as Prerequisite for Appeal to Tax Tribunal**

*Toaz v Department of Treasury*, No 275784, 2008 Mich App LEXIS 1750 (approved for publication August 26, 2008). On March 14, 2006, the Department of Treasury issued a final assessment to petitioner of \$13,536 for income tax owed for tax year 2001. Subsequent penalty and interest charges increased the amount due to \$17,881.60. The petitioner disputed that amount but also acknowledged that she failed to report \$36,080 of gambling income on her 2001 federal income tax return, which affected her Michigan income tax liability. Based on the admitted figure from gambling income, the Department determined the undisputed portion of tax that the petitioner was required to pay was \$1,515.36. The petitioner claimed that she was unable to pay the entire uncontested amount and instead paid \$500 towards the tax liability when she filed her petition for review of the final assessment with the Tax Tribunal. The petitioner also proposed to make five installment payments to pay the remainder of the uncontested amount. The Department moved for summary disposition, arguing that the Tax Tribunal lacked jurisdiction over the matter because the petitioner failed to pay the undisputed portion of the tax under MCL 205.22. The Tax Tribunal agreed with the Department and entered an order granting summary disposition for the Department.

The court of appeals ruled that the Tax Tribunal properly determined that it lacked jurisdiction to consider the petitioner's income tax assessment challenge because she failed to pay the uncontested portion of the assessment as required by MCL 205.22. An aggrieved taxpayer must actually discharge the uncontested tax debt, by full payment, before appealing the contested portion of the tax assessment. The aggrieved taxpayer must pay the uncontested debt and file the written petition required in MCL 205.735 within 35 days to invoke the Tax Tribunal's jurisdiction. A partial payment does not satisfy the statute, even when coupled with an allegation in the petition that the taxpayer lacks the financial resources to pay the full debt. A promise to pay the uncontested balance after the expiration of the 35 days is insufficient to satisfy the statute, and the Tax Tribunal does not have authority to grant a delayed appeal.

### **Use Tax—Exemption for Rolling Stock Used in Interstate Commerce**

*Alvan Motor Freight v. Dep't of Treasury*, No 276511, 276736, 2008 Mich App LEXIS 1870 (2008). In a consolidated appeal, the Tax Tribunal upheld the position of the Department of Treasury that Alvan Motor Freight (AMF) was not entitled to an exemption from taxation under § 4k of the Use Tax Act, MCL 205.91 et seq., because the AMF trucks operated wholly within Michigan were not "used in interstate commerce" within the meaning of the exemption even though carrying freight originating from or destined to locations outside the state. MCL 205.94k(4). In the related appeal, the Department appealed an order of the Court of Claims granting summary disposition to United Parcel Service,

Inc. (UPS) on its claim for a refund of use taxes paid for the years 1998 through 2000 on brown delivery vans purchased outside Michigan but used wholly within the state to carry packages from or destined to other states. Based on United States Supreme Court precedent, the Court of Claims rejected the Department's position that UPS was not entitled to the exemption because its brown delivery vans did not cross state lines.

The common issue in these consolidated appeals was whether the "rolling stock" of AMF and UPS that never leave the state of Michigan but do carry freight originating from or destined to locations outside the state is "used in interstate commerce" so as to qualify for tax exempt status under MCL 205.94k. The court of appeals held that the only reasonable reading of the words "interstate commerce" as used in 1996 PA 477, as amended, is that the Legislature intended them to have the "peculiar and appropriate meaning in the law" that those words have acquired in over a century of judicial decisions applying the Commerce Clause of the United States Constitution. The court ruled that both UPS and AMF qualified for the use tax exemption because their rolling stock, despite not leaving the state, is used in the trade of goods between different states: both the UPS brown vans and the AMF delivery trucks transport freight originating from or destined to locations outside Michigan.

### **Use Tax—Personal Property In Michigan**

*Ameritech Publ'g, Inc v Department of Treasury*, No 276374, 2008 Mich App LEXIS 1874 (Aug 7, 2008). The plaintiff company published and distributed telephone directories to residential and business customers in Michigan. The plaintiff developed the content and sent it in electronic format to a company in Illinois, which printed, bound, and cut the directories at its Illinois printing facility. A contract carrier transported the finished directories from Illinois to distribution centers located throughout Michigan, and another company distributed the directories to local businesses and residences. The plaintiff argued that, because it exercised no rights or powers over the directories while the directories were in the distribution channel, it did not "use" the directories in Michigan. Second, it argued that, even if the distribution of the directories was subject to the use tax, neither the cost of the paper nor the cost of the printing services could be included in determining the "price" of the directories. Third, the plaintiff claimed that, because the directories are a "tie-in" item to the telecommunication services provided by its affiliated companies, the result of allowing defendant to tax its costs of producing the directories would be double taxation.

The court of appeals concluded that a distribution of tangible personal property is a "use" subject to the Use Tax Act because the plaintiff exercised a power over the personal property while it was in Michigan. The court further concluded that the Department of Treasury correctly included the costs of paper and printing services in the price of the directories and that plaintiff's costs in producing the directories were not subject to double taxation.