

STATE OF MICHIGAN
COURT OF APPEALS

DAIMLER CHRYSLER CORPORATION,

Petitioner-Appellant/Cross-
Appellee,

FOR PUBLICATION
September 2, 2003
9:05 a.m.

v

DEPARTMENT OF TREASURY,

Respondent-Appellee/Cross-
Appellant.

No. 239177
Tax Tribunal
LC No. 00-272042

Before: Neff, P.J., Fort Hood and Borrello, JJ.

PER CURIAM.

Petitioner appeals as of right the Tax Tribunal's decision applying a one-year statute of limitations provided for in MCL 207.112(2)^[1] rather than the four-year statute of limitations provided for in MCL 205.27a and MCL 205.30. Respondent cross-appeals the tribunal's grant of interest on a refund of taxes paid. We affirm in part and reverse and remand in part.

I

Petitioner sought refunds from the State of Michigan on taxes paid for fuel left in the fuel tanks of vehicles sold to out-of-state dealers. Respondent refunded taxes paid within one year before petitioner's January 30, 1998 refund request and asserted that a period of limitations barred recovery of earlier taxes. Respondent also declined to pay interest on the taxes it refunded, arguing that the refund request did not constitute a claim-filing sufficient to trigger interest.

In its automobile manufacturing process, petitioner places a certain amount of motor fuel in the fuel tank of each new vehicle. During the periods at issue in this case, petitioner purchased fuel for that purpose and paid state motor fuel taxes. Some of the fuel was consumed during off-highway testing but the rest remained in the fuel tanks. The vehicles were then shipped to retail car dealers both inside and outside the state. Respondent conceded that the fuel shipped outside the state in vehicles did not constitute

^[1] Repealed by 2000 PA 403, which enacted a new motor fuel tax act. The parties agree the amendment does not apply retroactively to petitioner.

consumption or combustion of fuel within the state. Under MCL 207.112(2), a taxpayer may request a refund when the gasoline was “used for a purpose other than the operation of a motor vehicle” on this state’s roads or highways.

II

This Court reviews a decision of the Tax Tribunal to determine whether it was authorized by law and based on competent, material, and substantial evidence. MCL 24.306; *Czars, Inc v Dep’t of Treasury*, 233 Mich App 632, 637; 593 NW2d 209 (1999). We review issues of statutory interpretation de novo as questions of law. *Oakland Co Bd of Rd Comm’rs v Michigan Property & Casualty Guaranty Ass’n*, 456 Mich 590, 610; 575 NW2d 751 (1998).

III

Petitioner argues that its refund is not governed by the fuel tax act, MCL 207.101 *et seq.*, but rather the general tax refund statute, MCL 205.30(2), because it did not use the disputed fuel to power vehicles. We disagree simply because the only reason fuel is placed into a vehicle is to power the vehicle. Additionally, tax is imposed on gasoline at the point of sale, MCL 207.102(1); MCL 207.108a, regardless of its ultimate use, *Ammex, Inc v Dep’t of Treasury*, 237 Mich App 455, 470; 603 NW2d 308 (1999). However, petitioner is not without a tax remedy for the fuel used to power vehicles which are shipped out of state. Under MCL 207.112(2), a purchaser who uses gasoline for purposes other than operation of a motor vehicle in this state may later seek a refund.

Petitioner also argues it is not included in the group entitled to a refund under MCL 207.101 *et seq.* because it did not “use” the fuel. However, the fuel tax act, MCL 207.101 *et seq.*, does not define “use.” When a term is not defined in a statute, we must give the term its plain and ordinary meaning and may consult a dictionary definition. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). The word “use” is defined as “make use of, put to use, operate, employ.” Random House Webster’s College Dictionary (1999). Here, petitioner used the gasoline by removing it from storage and putting it into the vehicles petitioner produced, which were then driven onto a motor vehicle carrier. Therefore, petitioner’s right to a refund is governed by MCL 207.112(2), which states:

[t]he purchaser of gasoline used for a purpose other than the operation of a motor vehicle on the public roads, streets, and highways of this state, a person operating a passenger vehicle of a capacity of 5 or more under a municipal franchise, license, permit, agreement, or grant, respectively, a person operating a passenger vehicle for the transportation of school students under a certificate of authority issued by the state transportation department pursuant to section 5 of article II of the motor carrier act, Act No. 254 of the Public Acts of 1933, being section 476.5 of the Michigan Compiled Laws, and community action agencies as described in former title II of the economic opportunity act of 1964, Public Law 88-452, which are not a part or division of a political subdivision of this state shall be

entitled to a refund of the tax on the gasoline. Community action agencies shall make the refund a state-contributed non-federal share to grants received by such community action agencies from the community services administration under former title II of the economic opportunity act of 1964, by filing a verified claim with the department upon forms prescribed and to be furnished by it, within 1 year after the date of purchase, as shown by the invoice. A claim mailed within the 1-year period, as evidenced by the postmark, when received by the department, shall be considered as filed within the required time. . . . The retail dealer shall furnish the purchaser with an invoice, showing the amount of gasoline purchased, the date of purchase, and the amount of tax on the purchase, and the dealer shall at the request of the department immediately supply the department with a copy of an invoice issued by the dealer during a 1-year period preceding the request.

Petitioner next argues that MCL 207.112(2), by its clear language, imposes a period of limitations only on community action agencies. We disagree.

Judicial construction is not permitted if a statute's language is clear and unambiguous. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999); *Devormer v Devormer*, 240 Mich App 601, 605; 618 NW2d 39 (2000). Courts must not speculate beyond the Legislature's words. *Michigan Residential Care Ass'n v Dep't of Social Services*, 207 Mich App 373, 377; 526 NW2d 9 (1994).

Further, language must be read within its grammatical context unless something else was clearly intended. *Sun Valley*, *supra* at 237. We consider punctuation, including the effect of a period. See, e.g., *Mayor of Lansing v Michigan Public Service Comm*, ___ Mich App ___; ___ NW2d ___ (2003) (Docket No. 243182). However, we are not bound by punctuation, where another meaning was clearly intended. In the present case, the period dividing the first and second sentences of MCL 207.112(2) suggests the meaning petitioner asserts. However, the second sentence then makes little sense. A reading without regard to punctuation reveals an entirely different meaning, consistent with the tribunal's interpretation.

Because the language itself creates ambiguity, we may engage in judicial construction. *Sun Valley*, *supra* at 236. We must determine the reasonable construction that best reflects the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998).

Generally, ambiguous tax statutes are strictly construed in the taxpayer's favor, *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994), while qualification for a tax exemption is strictly construed in the government's favor, *Guardian Industries Corp v Dep't of Treasury*, 243 Mich App 244, 249; 621 NW2d 450 (2000). Administrative interpretations are entitled to deference. *Ludington Service Corp v Acting Comm'r of Ins*, 444 Mich 481, 491; 511 NW2d 661 (1994). Under

1979 AC, R 207.11, MCL 207.112(2) is interpreted as imposing a one-year statute of limitations on all gasoline purchasers seeking a gasoline tax refund.

More significantly, before the Legislature enacted 1992 PA 482, the provisions at issue were found in one long sentence, which clearly stated that the period of limitations applied to all persons seeking the refund. See 1980 PA 482. Although amendments are generally construed to change a statute's meaning, they may also be intended only to clarify the meaning. *Ettinger v Lansing*, 215 Mich App 451, 455; 546 NW2d 652 (1996). We find the Legislature inserted a period in MCL 207.112(2) as an attempt only to break up a long sentence into two, more manageable sentences, without proper consideration of the grammatical consequences.

Under the interpretation that best reflects the Legislature's likely intent, MCL 207.112(2) imposes a one-year filing requirement on all persons seeking motor fuel refunds. The tribunal therefore did not err when it denied petitioner's requested refund of taxes paid more than one year before the request was made.

IV

Respondent cross-appeals the tribunal's decision to award petitioner interest on the refund respondent properly paid. The motor fuel tax is administered pursuant to the general revenue act, MCL 205.1 *et seq.* Specifically, the interest provisions in the general revenue act apply to motor fuel refunds. *Elsheick v Dep't of Treasury*, 225 Mich App 575, 577; 571 NW2d 570 (1997). Interest begins accruing forty-five days "after the claim is filed." MCL 205.30(3).

In *Lindsay Anderson Sagar Trust v Dep't of Treasury*, 204 Mich App 128, 131-132; 514 NW2d 514 (1994), we held that under MCL 205.30(3), interest begins accruing when a claim is *filed*, not when the department receives the supporting information necessary to process the claim. We determined further that a claim is filed when the department receives adequate notice of the claim. *Id.* at 132.

Respondent argues that the present case is distinguishable because MCL 207.112(2) imposes specific requirements for the filing of a motor fuel tax refund. However, the interest begins to accrue regardless of information required to process the claim, *Lindsay Anderson Sagar Trust, supra* at 131-132; this includes information required by statute or administrative rule specifically for fuel tax refunds. Respondent's correspondence indicates it considered petitioner's requests to be claims. Further, claim filing requires only adequate notice, *id.* at 132; thus, the specific forms referenced in MCL 207.112(2) were not required to trigger the interest provision.

The tribunal did not err by ordering respondent to pay interest. However, the tribunal erroneously held that the interest began accruing on the entire refund request forty-five days after the initial request. That request could not have provided adequate notice of refunds for different time periods, which were only requested in later correspondence. Thus, the accrual period for each refund requested must be calculated separately. We therefore reverse the tribunal's order regarding interest and remand to the

tribunal to make those calculations and issue an order setting forth the correct accrual dates.

Affirmed in part and reversed and remanded in part. We do not retain jurisdiction.

/s/ Janet T. Neff

/s/ Karen M. Fort Hood

/s/ Stephen L. Borrello