

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MUSASHI AUTO PARTS OF MICHIGAN, INC.  
d/b/a TECHNICAL AUTO PARTS, INC.,

UNPUBLISHED  
December 13, 2012

Plaintiff-Appellee,

v

No. 305268  
Court of Claims  
LC No. 10-000013-MT

DEPARTMENT OF TREASURY,

Defendant-Appellant.

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Before: TALBOT, P.J., AND WILDER AND RIORDAN, JJ.

PER CURIAM.

Defendant, the Department of Treasury (the Department), appeals as of right the trial court's order granting summary disposition to plaintiff, Musashi Auto Parts of Michigan, Inc. (Musashi). We affirm.

**I. FACTUAL BACKGROUND**

The facts of this case are undisputed. Musashi is a Michigan corporation that manufactures automotive parts in Battle Creek, Michigan. Musashi employees wear uniforms rented from Gallagher Uniform Rental Company (Gallagher). The rental contract between Gallagher and Musashi does not mention who is responsible for the payment of use taxes and states that Musashi "shall defend, hold harmless, and indemnify Gallagher from any and all liability and costs of whatever nature, including attorneys fees, arising from any claim by a third party and arising from or relating to the services and items supplied by Gallagher to [Musashi]." When Gallagher sent the invoice for the uniforms to Musashi, there was no charge for use tax.

The Department conducted an audit of Musashi for the taxable period of January 1, 2005, through August 31, 2008. The Department assessed a use tax deficiency of \$121,648,<sup>1</sup> approximately \$86,000 of which was for the uniform rentals from Gallagher. Musashi paid the tax and filed a complaint, arguing that as lessor, Gallagher was responsible for the use tax, not Musashi.

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<sup>1</sup> With statutory interest, the total amount due was \$137,225.

Musashi filed a motion for summary disposition pursuant to MCR 2.116(C)(10), arguing that a lessee of tangible personal property is not liable for the use tax. The Department responded, arguing that it was entitled to judgment pursuant to MCR 2.116(I)(2) because Musashi was required to pay the use tax because Gallagher failed to do so. The trial court granted Musashi's motion for summary disposition, ruling that Gallagher, the lessor, was responsible for the use tax because it was in the position to know whether the sales tax had been paid and the contract does not specify that Musashi was responsible for payment. The Department now appeals.

## II. STANDARD OF REVIEW

A grant or denial of a motion for summary disposition under MCR 2.116(C)(10) is reviewed de novo. *MEEMIC Ins Co v DTE Energy Co*, 292 Mich App 278, 280; 807 NW2d 407 (2011). The motion “tests the factual support for a claim and should be granted if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Id.* “A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ.” *West v General Motors Corp*, 469 Mich 177, 183; 665 NW2d 468 (2003). In reviewing a motion for summary disposition under MCR 2.116(C)(10), a court considers “affidavits, pleadings, depositions, admissions, and other documentary evidence submitted by the parties in the light most favorable to the party opposing the motion.” *Greene v A P Products, Ltd*, 475 Mich 502, 507; 717 NW2d 855 (2006).

## III. ANALYSIS

The Use Tax Act (UTA) imposes a “tax for the privilege of using, storing, or consuming tangible personal property in this state,” at a rate of six percent. MCL 205.93(1).<sup>2</sup> “The use tax is complementary to the sales tax and is designed to cover those transactions not covered by the General Sales Tax Act, M.C.L. § 205.51 *et seq.* . . .” *Kellogg Co v Dep’t of Treasury*, 204 Mich App 489, 492; 516 NW2d 108 (1994). Thus, where the sales tax already has been paid upon the retail sale to a consumer, the property is exempt from the use tax. MCL 205.94(1)(a).<sup>3</sup> The UTA provides that a lessor may either pay a sales or use tax on the full cost of the property at the time of purchase or pay a use tax on receipts from the rental or lease of the tangible personal property. MCL 205.95(4).

In determining how the UTA applies, we are mindful that the “primary goal” of statutory interpretation “is to discern the intent of the Legislature by first examining the plain language of the statute.” *Driver v Naini*, 490 Mich 239, 246-247; 802 NW2d 311 (2011). When the language is clear and unambiguous, “no further judicial construction is required or permitted,

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<sup>2</sup> Under the UTA, “use” is defined as “the exercise of a right or power over tangible property incident to the ownership of that property including transfer of the property in a transaction where possession is given.” MCL 205.92(b).

<sup>3</sup> The General Sales Tax Act (GSTA), MCL 205.51 *et seq.*, imposes a six percent tax on the “gross proceeds” of a business engaged in “making sales at retail.” MCL 205.52(1).

and the statute must be enforced as written.” *Pohutski v City of Allen Park*, 465 Mich 675, 683; 641 NW2d 219 (2002) (internal citations and quotations omitted). A statutory provision must be read in the context of the entire act, and “every word or phrase of a statute should be accorded its plain and ordinary meaning.” *Krohn v Home-Owners Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011). The Legislature’s intent is expressed in the words of a statute. *Pohutski*, 465 Mich at 683.

The UTA specifically references the obligation of a lessor to pay the use tax. MCL 205.95(4) states that “[a] lessor may elect to pay use tax on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property at the time it is acquired.” In addition, the Michigan Administrative Code,<sup>4</sup> which is a compilation of the official agency rules, considers the application MCL 205.94(4). In 1972, the Department promulgated Rule 82 of the Michigan Administrative Code, which states: “[a] person engaged in the business of renting or leasing tangible personal property to others *shall* pay the Michigan sales or use tax at the time he purchases tangible personal property, or he may report and pay use tax on the rental receipts from the rental thereof.” Mich Admin Code R 205.132 (emphasis added). Generally, the Michigan Administrative Code’s “interpretative rules are invalid when they conflict with the governing statute, extend or modify the statute, or have no reasonable relationship to a statutory purpose.” *Guardian Indus Corp v Dep’t of Treasury*, 243 Mich App 244, 254; 621 NW2d 450 (2000). This Court recently determined that Rule 82 is consistent with the statutory language of MCL 205.95(4) and that “Rule 82 ... neither imposes additional requirements, nor limits or modifies the application of MCL 205.95(4)” and is not in conflict with the statute. *Devonair Enterprises, LLC v Dep’t of Treasury*, \_\_Mich App\_\_; \_\_NW2d\_\_ (Docket No. 303785, issued May 8, 2012) (slip op at 4).<sup>5</sup> Thus, as the word “shall” designates a mandatory provision, *Old Kent Bank v Kal Kustom, Enterprises*, 255 Mich App 524, 532; 660 NW2d 384(2003), pursuant to Rule 82, promulgated in accordance with MCL 205.95(4), lessors are obligated to pay the use tax, without any type of corresponding responsibility belonging to lessees.

Therefore, the obligation to pay the use tax falls upon the lessor only. In this case, Musashi, the lessee, is not responsible for payment under the UTA for uniforms leased from Gallagher.

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<sup>4</sup> The Michigan Administrative Code is enacted pursuant to the Michigan Administrative Procedures Act of 1969 (APA), MCL 24.201 *et seq.* In addition to MCL 205.94(4), the Michigan Administrative Code considers other sections of the UTA and GSTA.

<sup>5</sup> Furthermore, “[l]ong-standing administrative interpretations by those charged with administering a statute are entitled to considerable weight.” *Herald Wholesale, Inc v Dep’t of Treasury*, 262 Mich App 688, 693; 687 NW2d 172 (2004) (internal citation omitted).

#### IV. CONCLUSION

Summary disposition was properly granted because there is no genuine issue of material fact regarding Musashi's liability under the UTA. We affirm.

/s/ Michael J. Talbot

/s/ Michael J. Riordan

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WILDER, J., (*concurring*).

I concur in the result.

/s/ Kurtis T. Wilder