STATE OF MICHIGAN

SUPREME COURT

HONIGMAN MILLER SCHWARTZ AND COHN, LLP,

Petitioner-Appellee,

v

CITY OF DETROIT,

Respondent-Appellant.

Supreme Court No. 15752

Court of Appeals No. 336175

Court of Claims No. 16-266-MT

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PETITIONER-APPELLEE'S BRIEF IN OPPOSITION TO APPLICATION FOR LEAVE TO APPEAL

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

1. Where the City Income Tax Act clearly establishes a payroll factor (hereinafter "§ 22") that apportions net profits based on where work is performed, and a sales factor (hereinafter "§ 23") that apportions net profits based on revenue from customers who receive goods and services within the city, was the Court of Appeals correct in finding that an administrative law judge made an error of law in ruling that §23 was ambiguous?

   Petitioner-Appellee answers, "Yes."

   Respondent-Appellant answers, "Yes."

   The Tax Tribunal below answers, "No."

   The Court of Appeals below answers, "Yes."

2. Was the Court of Appeals correct in finding that § 23 unambiguously requires that the sales factor be calculated based on the destination of goods and services based on the clear and plain meaning of the governing statute?

   Petitioner-Appellee answers, "Yes."

   Respondent-Appellant answers, "No."

   The Tax Tribunal below answers, "No."

   The Court of Appeals below answers, "Yes."

I. INTRODUCTION AND ABSENCE OF GROUNDS FOR REVIEW

This case involves the interpretation of § 23, the sales factor, of the City Income Tax Act (the "CITA" or "Act") apportionment formula as specifically authorized by the Michigan legislature. Petitioner-Appellee, Honigman Miller Schwartz and Cohn, LLP ("HMSC" or "Firm") has historically apportioned revenue on a composite basis in remitting income tax to the City of Detroit (the "City"). The Court of Appeals held, based on a plain reading of the applicable statute, that "services rendered" does not have the same meaning as "services performed" and that HMSC's computation of revenue from sales in the City was correct under the Act, when revenue from sales of legal services were designated "in-city" sales based on the client's receipt of legal services in the city.

In its Application for Leave to Appeal the City claims that this case "has significant public interest," poses "a devastating threat to the City's continued progress" under the City's plan of adjustment, "implicates untold millions of dollars both in potential refund claims and in future lost revenues," is "clearly erroneous," "will cause material injustice" and "produces absurd and unworkable results." Nothing is further from the truth. For the reasons stated below, this case does not meet the standards for review set forth under MCR 7.302(B)(2), (3) or (5).

Therefore, this Court should deny the Application for Leave to Appeal and affirm the decision of the Court of Appeals.

II. COUNTER-STATEMENT OF FACTS AND LEGAL BACKGROUND

A. HMSC Prior Filings and the City's Assessments.[1]

[1] The Facts recited herein are primarily supported by Affidavits of Michael A. Indenbaum (hereinafter "Indenbaum Aff") and Robert C. Weigel (hereinafter the "Weigel Aff"), Exhibits A and B to Petitioner-Appellee's Tribunal Brief.

For the Subject Years, the Firm elected to file CITA composite returns on behalf of its individual partners. The CITA returns included a tax base apportioned to Detroit. Indenbaum Aff ¶13-17; Weigel Aff ¶17. As the Firm's business activities are both "in-city" and outside of the City, § 20 of the CITA requires the Firm to apportion its tax base using the mandated three factor formula consisting of three equally weighted factors: payroll, property and sales. MCL 141.620. Each of these three factors captures, and equally weighs, a different aspect of the Firm's business activity.

There is no dispute that the Firm's payroll factor was comprised of "the percentage which the total compensation paid to employees for work done or for services performed within the city is of the total compensation paid to all the taxpayer's employees within and without the city during the period covered by the return." MCL 141.622. [Emphasis added].

At issue is the calculation of the sales factor, § 23, which provides, in pertinent part:

> Third, the taxpayer shall ascertain the percentage which the gross revenue of the taxpayer derived from sales made and services rendered in the city is of the total gross revenue from sales and services wherever made or rendered during the period covered by the return.
>
> (1) For the purposes of this section, "sales made in the city" means all sales where the goods, merchandise or property is received in the city by the purchaser, or a person or firm designated by him. In the case of delivery of goods in the city to a common or private carrier or by other means of transportation, the place at which the delivery has been completed is considered as the place at which the goods are received by the purchaser.
>
> The following examples are not all inclusive but may serve as a guide for determining sales made in the city:
>
> (a) Sales to a customer in the city with shipments to a destination within the city from a location in the city or an out-of-city location are considered sales made in the city.
>
> * * *

> (e) Sales to an out-of-city customer with shipments to an out-of-city destination are considered out-of-city sales.
>
> * * *
>
> (3) In case the business of the taxpayer involves substantial business activities other than sales of goods and services such other method or methods of allocation shall be employed as shall reasonably measure the proportion of gross revenue obtained in the city by such business. [Emphasis added]

Pursuant to § 23, the sales factor is a fraction comprised of a taxpayer's "in-city" gross revenue over a taxpayer's total gross revenue from everywhere for the tax year. MCL 141.623. The "in-city" gross revenue equals the "gross revenue of the taxpayer derived from sales made and services rendered in the city…." *Id.* (Emphasis added). The sales factor can also be illustrated as:

$$\frac{\text{Sum of Gross Revenue From Clients Within Detroit}}{\text{Sum of Gross Revenue From Clients Everywhere}}$$

The Firm calculated its "in-city" gross revenue by summing the gross revenue collected from clients located within the City. Weigel Aff ¶¶18-19; Indenbaum Aff ¶¶16-17. The methodology that the Firm used to calculate the sales factor during the Subject Years was the same methodology the Firm had used previously. Weigel Aff ¶20; Indenbaum Aff ¶18. Previously, the City had accepted the Firm's methodology for calculating its sales factor. Weigel Aff ¶21; Indenbaum Aff ¶19.

In contrast, the City calculated the sales factor using the following ratio:

$$\frac{\text{Sum of: (each billable hour recorded in Detroit x each applicable hourly rate)}}{\text{Sum of: (each billable hour recorded everywhere x each applicable hourly rate)}}$$

This computation relies upon where services were performed, not where the Firm's clients received the legal services. Such interpretation changes the nature of the sales factor to

mirror that of the payroll factor. The City's change to the sales factor, so it accounts for where work is performed, does not take into account where the sales of legal services to clients occur.

B. Tax Tribunal Proceedings.

The Tax Tribunal below issued an Opinion and Order which found: (1) under the facts, Section 23 was "neither clear nor unambiguous… (and) the statute is capable of being understood in two different senses, and its correct application is somewhat uncertain." Order, p 5; (2) "(t)he term 'performed' is used in MCL 141.622 because that section pertains to compensation paid to employees, and services are typically 'performed' for an employer, while in terms of generating revenue, they are 'rendered' to a client" Order, p 5; (3) "services are intangibles, and they cannot be 'delivered' in the same manner as tangible items" *Id*., p 6; and (4) there was no cogent reason to overrule the City's construction. Order, p 4.

The Order did not address the Firm's contention that the City's construction nullified the Legislature's unambiguous language, ignored the mandated apportionment methodology, and effectively morphed the sales factor into a second payroll factor. Nor did the Order address the substantial precedent requiring ambiguous tax statutes be construed in favor of taxpayers.

On November 21, 2016, the Tribunal received the parties' Stipulation, which resolved all issues except for the construction of § 23 and established the amounts the Firm owed under the Order's construction of § 23.[2] On December 1, 2016, the Tribunal entered its final order, which adopted the amounts stated in the parties' Stipulation.

[2] The minor audit issues that did not involve the construction of § 23 were amicably resolved.

C. Decision of the Court of Appeals.

The Court of Appeals correctly reversed the Tax Tribunal, rejecting the Tribunal's determination that § 23 was unambiguous, and stated that the Tax Tribunal's interpretation equating "rendered" with "performed" to be dubious and unnecessarily convoluted. *Honigman Miller Schwartz and Cohn, LLP v City of Detroit*, __ Mich App __; __ NW2d __ (2018); 2018 WL 472190 (hereinafter "Slip Opinion") (attached hereto as Exhibit 1), at 4. The Court of Appeals, in upholding long standing rules of statutory construction as espoused by this Court, correctly held that "when the Legislature uses different words, the words are generally intended to connote different meanings" and held the plain language of § 23 and § 22 does not mean the same. Slip Opinion p 3, 4. Further, the Court of Appeals opined that the guidance contained in § 23 demonstrates what is relevant is the destination of the services rendered, and "for purposes of 23, where a service is provided to a client outside the city of Detroit it is to be considered an 'out-of-city' service while services provided to a client in the city of Detroit is to be considered an 'in-city service." *Id.* at 5.

III. STANDARD OF REVIEW, RULES OF CONSTRUCTION, AND BURDEN OF PROOF

A. Standard of Review and Legal Standards for a Motion for Summary Disposition.

The Tax Tribunal granted the City's Motion for Summary Disposition pursuant to MCR 2.116(C)(10). Such decisions are reviewed *de novo*. An appellate court "reviews the grant or denial of summary disposition *de novo* to determine if the moving party is entitled to judgment as a matter of law." *Maiden v Rozwood*, 461 Mich 109, 118; 597 NW2d 817 (1999). This case involves a question of statutory construction and questions of statutory construction are questions of law that this Court also reviews *de novo*. *Halloran v Bhan*, 470 Mich 572, 576; 683 NW2d 129 (2004).

In evaluating a motion for summary disposition brought under MCR 2.116(C)(10), a reviewing court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Coblentz v Novi*, 475 Mich 558, 567-568; 719 NW2d 73 (2006). Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Id*.; see also MCR 2.116(C)(10) and MCR 2.116(G)(4).

B. Legal Standard and Rules of Statutory Construction.

Questions of statutory construction are reviewed *de novo*. *Feyz v Mercy Mem Hosp*, 475 Mich 663, 672; 719 NW2d 1 (2006). When the Legislature has unambiguously conveyed its intent in a statute, the statute speaks for itself and judicial construction is not permitted. *Koontz v Ameritech Services, Inc*, 466 Mich 304, 312; 645 NW2d 34 (2002). If an ambiguity exists in a tax statute, such an ambiguity must be resolved in favor of the taxpayer. *Michigan Bell Tel Co v Dep't of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994). In addition: (1) tax statutes are to be liberally construed in favor of the taxpayer; (2) ambiguities and doubtful language are to be construed in favor of the taxpayer; and (3) tax officials have the burden to identify express language authorizing the tax sought to be imposed.[3]

IV. ARGUMENT

A. The Court of Appeals Relied Upon and Followed Longstanding Michigan Supreme Court Precedent Regarding Statutory Interpretation.

[3]*Ford Motor Co v State Tax Comm*, 400 Mich 499, 506; 255 NW2d 608 (1977) (point 1); *Ecorse Screw Machine Prods Co v Michigan Corp & Securities Comm*, 378 Mich 415, 418; 145 NW2d 46 (1966) (point 2); *Garavaglia v Dep't of Revenue*, 338 Mich 467, 470-71; 61 NW2d 612 (1953) (points 1, 2 and 3); *Ready-Power Co v Dearborn*, 336 Mich 519, 525; 58 NW2d 904 (1953) (points 1 and 2); *Standard Oil Co v Michigan*, 283 Mich 85, 88-89; 276 NW 908 (1937) (points 1, 2 & 3); *In re Dodge Bros Inc*, 241 Mich 665, 669; 217 NW 777 (1928) (points 1, 2 & 3); *Detroit v Norman Allan & Co*, 107 Mich App 186, 191; 309 NW2d 198 (1981) (points 1 & 2).

The decision below upholds the three-factor apportionment formula of the Act, which was drafted to include within the formula the measure of a taxpayer's property, payroll and sales in the City. This Court has repeatedly held that judicial interpretation is prohibited unless a statute is ambiguous, (*In re MCI Telecom. Complaint*, 460 Mich 396, 411, 596 NW2d 164 (1999)); there is a presumption is that the Legislature intended the plain meaning expressed (*Roberts v Mecosta*, 466 Mich 57 (2002); *Paris Meadows v Kentwood*, 287 Mich App 136 (2010)); when the Legislature uses different words, the words are intended to connote different meanings (*US Fidelity Sales v MCCA*, 484 Mich 1 (2009); 2A Singer & Singer; Sutherland St. Const.) and tax statutes are liberally construed in favor of the taxpayer (*IBM v Dep't of Treasury*, 220 Mich 83 (1996); *Mich Bell v Treasury*, 445 Mich 470 (1994); *Ford v STC*, 400 Mich 499 (1997); *In Re Dodge*, 220 Mich 83 (1928)),

The Court of Appeals found the relevant consideration for § 23 is where the service is delivered to the client, not where the attorney performs the service. The Court of Appeals' decision does not produce absurd and unworkable results, much less erroneous. The Court of Appeals adheres to this Court's holding that words of a statute are to be read in context, and § 23 explicitly provides a destination test for determining sales within the city and sales outside the city, and that the use of different words is intended to provide a different meaning. ("If the Legislature had intended the same meaning in both statutory provisions, it would have used the same word.") *United States Fidelity & Guaranty Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009).

The Court of Appeals clearly determined that "after considering the Legislature's use of the word 'rendered,' rather than reusing 'performed,' in § 23 and in considering that term in the context of how it treated the sale of tangible goods, . . . where a service is provided to a client

outside the city of Detroit it is to be considered an 'out-of-city' service." Slip Opinion, p. 5. The Court of Appeals' decision is patently correct and supported by longstanding precedent of this Court. Since 2009, this Court has held that the Legislature utilized different words when it intends different meanings.

B. The Court of Appeals Correctly Concluded That the Use of Two Different Terms Must be Given Two Different Meanings.

The unambiguous statutory language distinguishes between "services rendered" and "services performed" in computing the sales factor and the payroll factor. The sales factor ascertains the percentage of "gross revenue derived from sales made and services rendered in the city." In contrast, the payroll factor is based on compensation for "work done or for services performed within the city…." The Legislature unambiguously created factors that each measures a different aspect of business activity:

The Court of Appeals specifically concluded

> We begin by observing that the Legislature used two different terms in drafting the payroll factor under § 22 and the sales factor under § 23. The payroll factor refers to 'services performed' and § 23 refers to 'services rendered.' We agree with petitioner that these must be given two different meanings because when 'the Legislature uses different words, the words are generally intended to connote different meanings.' [Slip Opinion, p 3].

Additionally, the Court of Appeals stated:

> Simply put, 'the use of different terms within similar statutes general implies that different meanings were intended', citing 2A Singer & Singer, Sutherland Statutory Construction, (7th de), § 46:6, p 252. If the Legislature had intended the same meaning in both statutory provisions, it would have used the same word.' Thus, because § 22 looks to where the work is done or performed, then the Legislature likely intended that the term 'services rendered' in § 23 to have a different meaning. [*Id.*].

And lastly, the Court of Appeals concluded:

> In sum, we conclude that, after considering the Legislature's use of the word 'rendered,' rather than reusing 'performed,' in § 23 and in considering that term in the context of how it treated the sale of tangible goods, we conclude that the relevant consideration in § 23 is where the services is delivered to the client, not where the attorney performs the service. [Slip Opinion, p 5].

Thus, there is no basis to overturn the well-reasoned decision of the Court of Appeals based on the unambiguous language of the Act which "neatly illustrates the principle that the Legislature utilizes different words when it intends different meanings." *Id.*

C. The Decision Below Has Limited Application and Correctly Applies the Plain Language of the Act.

This case involves the sales factor of the City Income Tax Act's apportionment formula. Although the Act has been in effect since 1964, this issue has never arise prior to the City's "revamping" of its audit function in a quest to obtain additional revenue. See, Crain's Detroit Business, April 13, 2017 available at www.crainsdetroit.com. Composite returns are only available to certain partnerships. The partnerships that file a composite return in the City are a small and limited group. Clearly, MCR 7.305(B)(3)'s standard is not present herein. The Court of Appeals decision correctly held, based on the standards of statutory interpretation clearly elucidate by this Court, that "services rendered" does not have the same meaning as "services performed" under the Act. Thus, application of the Court of Appeals decision is limited to the computation of § 23, which the Court of Appeals noted only accounts for one-third of the final attribution of the City's apportionment formula for sales of services by partnerships which file a composite return. Slip Opinion, p. 2, fn 9.

D. The City's Motion Does Not Meet the Standard for Granting Leave.

The Court of Appeals decision is plainly correct and does not meet the standard of review under MCR 7.305(B)(5). The City's Motion does not meet this standard because it merely reargues the arguments made at the Court of Appeals, including in its Motion for

Reconsideration. The City reasserts its argument that "services rendered" should be interpreted as "services performed" as it argued in its Appellee Brief (pp 13-18). To bolster the repetition of its arguments, the City provides a myriad of hypotheticals which are merely that – hypotheticals. The City offers no new evidence other than its own assertions without reference to facts or evidence.[4] To complete its application, the City concludes with a self-created doomsday scenario lacking any evidentiary support.

The Court of Appeals rejected the City's position that that the language "services performed" contained in §21, the payroll factor, should have the same meaning as the language "services rendered" contained in § 23, the sales factor. The Court of Appeals properly found that the Firm had met its burden of substantiating that the relevant consideration is where the client receives the services.

The City claims, however, that this case "has significant public interest" by posing "a devastating threat to the City's continued progress." The City's assertion rings hollow and is simply wrong. For instance, the language of the Act has not changed for decades, few law firms file on a composite basis, and there are no other pending cases on this issue pending at the Tax Tribunal. The Court of Appeals correctly affirmed the computation of § 23 as plainly written in the statute. The decision merely applies the language enacted in 1964 and previously acknowledged by the City. ("The City has previously acquiesced in the Firm's filings and never challenged the Firm's previously allocation.")(Weigel Aff ¶20; Indenbaum Aff ¶18). The City's Application fails to meet the standards of MCR 7.305(B)(3) and should be denied.

Further, the City claims that this case "will cause material injustice" by impeding the City's financial condition and feasibility of improvement under its plan of adjustment approved

[4] Additionally, even if taken at face value, the hypotheticals fail to note that time worked in the

by the bankruptcy court. There is no evidence to support the City's claims. The courts of this state have consistently recognized that questions of Michigan tax policy are determined by the Legislature, not courts. *Caterpillar, Inc. v Dep't of Treasury*, 440 Mich 400, 414, 488 NW2d 182 (1992) ("[T]he judicial tribunals of the State have no concern with the policy of State taxation …"). The "material injustice" that would be created upon a reversal of this decision would be departure from the rule of law that this Court has adhered to as its foundational principle. If the decision is overturned, well established precedence and rules of statutory interpretation would be ignored, which is against public policy and flies in the face of the standard set by this Court. This Court has recognized that the stature are to be interpreted by the "plainly expressed meaning of the statute as contained in the words utilized by the Legislature." *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 NW2d 223 (2013).

The decision below correctly applies the plain language of § 23 and the City's Application fails to meet the standard set forth by MCR 7.305(B)(5), thus requiring denial of the Application for Leave to Appeal and affirmance of the Court of Appeals' decision.

City would be captured in Appellant's payroll factor.

V. CONCLUSION

For the reasons set forth above, the Court of Appeals properly held that HMSC was entitled to judgment as a matter of law. The City's Application for Leave to Appeal should be denied.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Petitioner-Appellee

By: /s/ John D. Pirich
John D. Pirich (P23204)

Dated: May 8, 2018

STATE OF MICHIGAN

SUPREME COURT

HONIGMAN MILLER SCHWARTZ AND COHN, LLP, Petitioner-Appellee, v CITY OF DETROIT, Respondent-Appellant.	Supreme Court No. 15752 Court of Appeals No. 336175 Court of Claims No. 16-266-MT

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PROOF OF SERVICE

I hereby certify that on May 8, 2018, I electronically filed and served ***Petitioner-Appellee's Brief in Opposition to Application for Leave to Appeal*** with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

/s/Lynn A. Gandhi
Attorney for Petitioner-Appellee

EXHIBIT 1

STATE OF MICHIGAN

COURT OF APPEALS

HONIGMAN MILLER SCHWARTZ AND COHN LLP,

Petitioner-Appellant,

v

CITY OF DETROIT,

Respondent-Appellee.

FOR PUBLICATION
January 18, 2018
9:05 a.m.

No. 336175
Tax Tribunal
LC No. 16-000202

Before: MURPHY, P.J., and SAWYER and BECKERING, JJ.

SAWYER, J.

We are asked in this case to determine whether services performed by an attorney in Detroit on behalf of a client located outside the city while that attorney is physically located in his or her office in the city is to be considered in-city or out-of-city income for purpose of § 23 of the City Income Tax Act (CITA).[1] Petitioner maintains that the relevant consideration is where the client receives the services, while respondent and the Tax Tribunal maintain that the relevant consideration is where the work is performed. We agree with petitioner and reverse the Tax Tribunal and remand.

Petitioner is a law firm with a primary office in the city of Detroit, but with additional offices located elsewhere. Petitioner represents clients both within Detroit and outside Detroit. Under § 18 of CITA[2], petitioner must determine what percentage of its business income is attributable to Detroit. Petitioner utilizes §§ 20 through 24[3] in making this determination. This method requires the taxpayer to calculate the percentage attributable under three different methods and then average the three.[4] The three factors are: (1) the property factor under § 21, considers what percentage of the business' tangible personal and real property is located within

[1] MCL 141.623.

[2] MCL 141.618.

[3] MCL 141.620 through MCL 141.624.

[4] MCL 141.624.

the city,[5] (2) the payroll factor under § 22, considers what percentage of the payroll is attributable to "work done or services performed within the city,"[6] and (3) the sales factor under § 23, considers the gross revenue "derived from sales made and services rendered in the city"[7] compared to all gross revenue.

This case involves tax years 2010-2014 (the "subject years"). The parties agreed upon the computation of the first two factors (the property factor and the payroll factor), but disagree as to the computation of the sales factor. As noted above, the dispute involves whether to consider "services rendered" as being where the client receives the services (petitioner's interpretation) or where the work is performed (respondent's interpretation). Specifically, petitioner states that it calculated its "in-city" gross revenue by summing the gross revenue collected from clients located within the city of Detroit. According to petitioner, it had been utilizing this methodology in the past, but it is not until the subject years that the city objected and calculated the sales factor based on the billable hours recorded for work performed within the city, regardless of the location of the client. The difference is not insignificant.[8] For the subject years, under the city's methodology, slightly over 51% of petitioner's gross revenue would be considered in-city, while under petitioner's methodology, it would be slightly less than 11%.[9]

In the Tax Tribunal, the parties filed cross-motions for summary disposition. The hearing officer determined that § 23 was ambiguous and unclear. The hearing officer concluded that because services are intangible, they cannot be delivered in the same manner as tangible property and that there was no reason to overrule the city's construction of the statute. Initially, we note that both parties agree that the tribunal erred in determining that § 23 is ambiguous.[10] Of course, they offer differing interpretations of the statute. But, as an initial matter, we agree that the statute is unambiguous. Accordingly, we must interpret the plainly expressed meaning of the statute as contained in the words utilized by the Legislature.[11] And we conclude that that plainly expressed meaning does not support respondent's position nor the conclusion of the tribunal.

We begin by observing that the Legislature used two different terms in drafting the payroll factor under § 22 and the sales factor under § 23. The payroll factor refers to "services

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[5] MCL 141.621.

[6] MCL 141.622.

[7] MCL 141.623.

[8] For the subject years, the back taxes, plus interest and penalty, exceeds $1 million.

[9] Of course, this only accounts for one-third of the final attribution.

[10] This would seem to be a necessity for respondent as otherwise it would have to deal with a principle of law that the tribunal overlooked. Namely, that "ambiguities in the language of a tax statute are to be resolved in favor of the taxpayer." *Michigan Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 477; 518 NW2d 808 (1994).

[11] *Whitman v City of Burton*, 493 Mich 303, 311-312; 831 NW2d 223 (2013).

performed" and § 23 refers to "services rendered." We agree with petitioner that these must be given two different meanings because when "the Legislature uses different words, the words are generally intended to connote different meanings. Simply put, 'the use of different terms within similar statutes generally implies that different meanings were intended.' 2A Singer & Singer, Sutherland Statutory Construction, (7th ed), § 46:6, p 252. If the Legislature had intended the same meaning in both statutory provisions, it would have used the same word."[12] Thus, because § 22 looks to where the work is done or performed, then the Legislature likely intended that the term "services rendered" in § 23 to have a different meaning.

The tribunal deals with this issue by also noting the directive of the Supreme Court in *GC Timmis & Co v Guardian Alarm Co*[13] that statutory

> language does not stand alone, and thus it cannot be read in a vacuum. Instead, "[i]t exists and must be read in context with the entire act, and the words and phrases used there must be assigned such meanings as are in harmony with the whole of the statute . . . ." *Arrowhead Dev Co v Livingston Co Rd Comm,* 413 Mich 505, 516; 322 NW2d 702 (1982). "[W]ords in a statute should not be construed in the void, but should be read together to harmonize the meaning, giving effect to the act as a whole." *Gen Motors Corp v Erves (On Reh),* 399 Mich 241, 255; 249 NW2d 41 (1976) (opinion by COLEMAN, J.). Although a phrase or a statement may mean one thing when read in isolation, it may mean something substantially different when read in context. *McCarthy v Bronson,* 500 US 136, 139; 111 S Ct 1737; 114 L Ed 2d 194 (1991); *Hagen v Dep't of Ed,* 431 Mich 118, 130–131; 427 NW2d 879 (1988). "In seeking meaning, words and clauses will not be divorced from those which precede and those which follow." *People v Vasquez,* 465 Mich 83, 89; 631 NW2d 711 (2001), quoting *Sanchick v State Bd of Optometry,* 342 Mich 555, 559; 70 NW2d 757 (1955). "It is a familiar principle of statutory construction that words grouped in a list should be given related meaning." *Third Nat'l Bank in Nashville v Impac Ltd, Inc,* 432 US 312, 322; 97 S Ct 2307; 53 L Ed 2d 368 (1977); see also *Beecham v United States,* 511 US 368, 371; 114 S Ct 1669; 128 L Ed 2d 383 (1994).

In our view, however, this strengthens, rather than weakens, petitioner's interpretation. While the Legislature does not give much direct guidance in § 23 to the meaning of "services rendered" it does give explicit guidance to "sales made in the city." MCL 141.23(1) provides as follows:

> For the purposes of this section, "sales made in the city" means all sales where the goods, merchandise or property is received in the city by the purchaser, or a person or firm designated by him. In the case of delivery of goods in the city to a common or private carrier or by other means of transportation, the place at

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[12] *United States Fidelity & Guaranty Co v Michigan Catastrophic Claims Ass'n*, 484 Mich 1, 14; 795 NW2d 101 (2009).

[13] 468 Mich 416, 421-422; 662 NW2d 710 (2003).

> which the delivery has been completed is considered as the place at which the goods are received by the purchaser.
>
> The following examples are not all inclusive but may serve as a guide for determining sales made in the city:
>
> (a) Sales to a customer in the city with shipments to a destination within the city from a location in the city or an out-of-city location are considered sales made in the city.
>
> (b) Sales to a customer in the city with shipments to a destination within the city directly from the taxpayer's in-city supplier or out-of-city supplier are considered sales made in the city.
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> (c) Sales to a customer in the city with shipments directly to the customer at his regularly maintained and established out-of-city location are considered out-of-city sales.
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> (d) Sales to an out-of-city customer with shipments or deliveries to the customer's location within the city are considered sales made in the city.
>
> (e) Sales to an out-of-city customer with shipments to an out-of-city destination are considered out-of-city sales.

There is a very obvious common thread here: what is relevant is not the location of the taxpayer (or even the customer), but the destination of the goods. If the destination is within the city, then it is a sale made in the city. If the destination is outside the city, then it is not a sale within the city. This utilizes a "destination test" for the sales factor.[14]

Returning to the meaning of the word "render," petitioner supplies a contemporary definition of the word from the 1969 edition of Webster's Third New International Dictionary,[15] wherein the relevant definition of "render" is "to transmit to another: DELIVER." This is in contrast to the tribunal's opinion which looks to another definition of "render" as "to do (a service) for another". It then equates "do" with "perform" to reach the conclusion that "render" is "synonymous with perform." We find this conclusion to be dubious and unnecessarily convoluted.[16] Why would the Legislature utilize "render" to mean "perform" by way of the verb

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[14] See Hellerstein and Hellerstein, *State and Local Taxation*, Thomson West (8th ed), p 658 (2005).

[15] Section 23 was part of 1964 PA 284.

[16] Respondent pursues the same reasoning by citing a number of sources to suggest an equivalency between "render" and "perform". But only two examples come close to equating the two: Thesaurus.com gives "performed" as a synonym of "rendered" and Black's Law Dictionary gives a definition of "render" to mean "perform . . . services", though respondent

"to do", when it would have been much simpler and clearer to simply reuse the word "perform"? This neatly illustrates the principle that the Legislature utilizes different words when it intends different meanings.

The tribunal's opinion finds a need for its strained conclusion because, it observes, that services "cannot be 'delivered' in the same manner as tangible items." It then invokes an irrelevant quotation typically attributed to Abraham Lincoln that "A lawyer's time and advice is his stock in trade." It is true that services are different than tangible items. But that does not mean that services cannot be delivered. And, with all due respect to President Lincoln, a lawyer's time and advice can result in a tangible item. For example, a lawyer's time and advice may well result in the drafting of a will, a complaint, a contract, a brief, etc. And those items may well be delivered to the client in a different location than where the lawyer performs the drafting. Moreover, even the advice itself may be delivered to a different location. For example, a lawyer in Detroit may have a telephone conversation with a client located in Ann Arbor. The lawyer's advice during that conversation is delivered to the client in Ann Arbor.

In sum, we conclude that, after considering the Legislature's use of the word "rendered," rather than reusing "performed," in § 23 and in considering that term in the context of how it treated the sale of tangible goods, we conclude that the relevant consideration in § 23 is where the service is delivered to the client, not where the attorney performs the service. Thus, for purposes of § 23, where a service is provided to a client outside the city of Detroit it is to be considered an "out-of-city" service while services provided to a client in the city of Detroit is to be considered an "in-city" service.

The Tax Tribunal's grant of summary disposition in favor of respondent is reversed and the matter is remanded to the Tax Tribunal for further proceedings consistent with this opinion. We do not retain jurisdiction. Petitioner may tax costs.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Jane M. Beckering

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leaves out a semi-colon and intervening words to reach that definition in Black's. The other examples involve some variation of doing or providing a service.