STATE OF MICHIGAN
IN THE SUPREME COURT

Appeal from the Michigan Court of Appeals
Honorable Michael F. Gadola, Presiding

TOMRA OF NORTH AMERICA, INC.,	
Plaintiff-Appellee,	Supreme Court No. 158333
v.	Court of Appeals Docket No. 336871 (consolidated with Docket No. 336663)
DEPARTMENT OF TREASURY, STATE OF MICHIGAN,	Court of Claims Docket Nos. 16-118-MT and 14-91-MT (consolidated with Docket No. 14-185-MT)
Defendant-Appellant.	

The Taxation Section of the State Bar of Michigan's *Amicus Curiae* Brief in Support of Plaintiff-Appellee TOMRA of North America, Inc.

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I. Statement of Interest of the Taxation Section

The Taxation Section is a voluntary membership section of the State Bar of Michigan, comprised of 1171 members. The Section is Michigan's leading organization of legal tax professionals. Section members are attorneys with diverse practices, including attorneys in law firms, corporations, non-profit organizations, and government agencies, as well as judges, legislators, law professors, and law students. Taxation Section members represent individual taxpayers, large and small businesses across a wide range of industries, non-profit organizations, and governmental interests.

At issue in this Michigan sales and use tax case is the industrial processing exemption under MCL 205.54t of the General Sales Tax Act and MCL 205.94o of the General Use Tax Act, an exemption that has been a part of Michigan tax law since the 1930s. Specifically, the parties espouse different interpretations of the industrial processing exemption regarding whether raw material storage is required in order for equipment used in an industrial process to be exempt from Michigan's 6% sales and use tax. As statutes are the fundamental source of tax law in Michigan and the primary tool for resolving state tax controversies, taxpayers and taxing authorities alike rely on the plain meaning of tax statutes; accordingly, as a matter of tax policy, it is important for Michigan courts to interpret tax statutes according to their plain meaning. Indeed, taxpayers creating jobs, products, and services are the life blood of Michigan's economy, and so Michigan (including its courts) has an interest in ensuring taxpayers can rely on the plain meaning of state tax laws as they conduct their business activities.

The Taxation Section's mission is to "serve its members and the public through education and leadership in efforts to achieve an equitable, efficient, and workable tax system." As stated in the Taxation Section's Policies and Procedures Manual, the Section's goals include:

- Serving as Michigan's representative of tax attorneys with regard to state tax systems;
- Improving public understanding of, confidence in, and respect for state tax systems; and
- Providing leadership in simplifying and improving state tax systems.

An important role of the Taxation Section is to represent and protect the interests of the public by filing amicus curiae briefs in cases involving important tax issues in Michigan. In this case, the Department of Treasury's sales and use tax assessments raise serious statutory construction issues related to the plain meaning of the tax laws at issue, along with related issues regarding the legislative intent of the industrial processing exemption, as uniformly recognized and applied by Michigan courts. The issues presented in this appeal are important to the jurisprudence of the State, and their resolution is likely to have a direct and significant impact on Taxation Section members and parties they represent.

The Taxation Section is not the State Bar of Michigan and the position expressed herein is that of the Taxation Section only and not the State Bar of Michigan. To date, the State Bar does not have a position on this item. The Taxation Section has a public policy decision-making body with 14 members. On May 23, 2019, the Section adopted its position after an electronic discussion and vote. 9 members voted in favor of the Section submitting an amicus brief in the case of *TOMRA of North America v. Department of Treasury*, 0 members voted against this position, 2 members abstained, 3 members did not vote.[1]

[1] After reasonable investigation, the Tax Council believes that (a) no Tax Council member who voted either in favor or against preparation of this brief, and no attorney in the law firm or corporation of such a Tax Council member, represents a party to this litigation; (b) no Tax Council member who is a representative of any party to this litigation participated in the authorship of this brief; and (c) no one other than the Taxation Section, or its members who authored this brief and their law firms or employers, made a direct or indirect contribution, financial or otherwise, to the preparation or submission of this brief.

II. Statement of Basis of Jurisdiction, Statement of Questions Presented, Standard of Review, and Statement of Facts

The Taxation Section adopts the Statement of Basis of Jurisdiction, Statement of Questions Presented, Standard of Review, and Statement of Facts from the Brief on Appeal filed by Plaintiff-Appellee TOMRA of North America, Inc.

III. Argument

A. Introduction.

Today retail shoppers have unlimited choices of tangible goods to purchase on the market. Take any item purchased through a retail sale as an example, and one can imagine the process by which it was created. Products ultimately sold at retail can be created out of natural resources, synthetic materials, a combination of both, and even recycled or reused materials. Regardless of the type of materials used, retail products first go through several, varying types of processes converting them into something new or combining them with other materials into a product that is ultimately sold at retail.

The possibilities for transformative and creative processes are virtually limitless. Materials can be combined by melting or weaving. Individual parts can be fitted together creating something new. An item can be reshaped, remanufactured, heated or cooled – without adding a second material – transforming it into a new final product for sale. Even the ordering of steps within the varying processes can vary dramatically: the engineering behind a product may be conducted years before the process machinery is built, and the resulting product may be inspected months after it reaches inventory storage; or engineering can be conducted in real-time at the same time the product is being inspected on site as the product moves through its transformative process. The process can begin and end with one machine. Or it can start with one machine and end with another at a different location owned by a different business.

This is the essence of industrial processing: limitless possibilities of creative activities businesses use to make products that will ultimately be sold to consumers at retail. Moreover, with transformative technological changes taking place on a daily basis, it is critical that Michigan law is both settled and flexible enough to provide guidance regarding the activities that comprise industrial processing in Michigan.

At issue in this case is whether Plaintiff-Appellee's recycling machine, which can be found in grocery stores collecting cans and bottles, conducts industrial processing. The recycling machine performs the first steps of converting raw material (i.e., bottles and cans) into recycled production material that can be used in creating new products for retail sale through sorting, inspecting, compacting, puncturing, and shredding the raw material, for example. (A detailed explanation about the activities conducted by the recycling machine can be found in Plaintiff-Appellee's Counter-Statement of Facts at pp. 8-12 of its Brief on Appeal, filed July 17, 2019.)

If sales tax is imposed on raw materials and equipment used in an industrial process, the price imposed on the product sold ultimately at retail will have several layers of sales and/or use tax baked into it. In order to prevent this, the Michigan Legislature created the industrial processing exemption "to avoid 'double-dipping' taxation on both an end product and the transformation of raw (or relatively raw) materials into that end product." *Elias Bros Restaurants v Dep't of Treasury*, 452 Mich 144, 152-53; 549 NW2d 837 (1996).

This Court is tasked with determining whether Plaintiff-Appellee's recycling machine conducts industrial processing: if it does, the Department of Treasury must not impose sales or use tax on it. The critical focus when determining whether the industrial processing exemption[2]

[2] The industrial processing exemption is codified at MCL 205.54t of the General Sales Tax Act and MCL 205.94o of the Use Tax Act. For the sake of simplicity, only the sales tax statute will be referred to below.

applies, is "the *activity* in which the equipment is engaged," not "the *character* of the equipment-owner's business." *Detroit Edison Co v Dep't of Treasury*, 498 Mich 28, 37; 869 NW2d 810 (2015), citing *Elias Bros Restaurants*, 452 Mich at 157 (emphasis added).

The *activity* in which the machine is used is the focus, not *when* the activity is conducted. However, the Department of Treasury reads into the law an additional, temporal requirement that an activity cannot be industrial processing unless it is first preceded by raw materials resting in raw material storage.

This new argument advanced by the Department of Treasury is born out of the second sentence of the industrial processing definition under MCL 205.54t(7)(a), which was added to the statute 20 years ago:

> Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

According to the Department's argument, even if property is used in an activity that converts and changes the character of raw materials, thereby conducting an industrial process, it does not qualify as being used in industrial processing unless the raw materials first sit in raw material storage. However, if the *activity* is the focus, as this Court instructs in *Elias Bros Restaurants*, there is a more plain and clear meaning to the second sentence: the Legislature was simply drawing a line between when a non-exempt activity ends and an exempt activity begins.

The statute clearly provides that equipment used for certain activities is exempt while equipment used for other activities is not (setting aside any issue of apportionment):

- The *activity* of storing raw materials: not exempt. [MCL 205.54t(6)(a)]
- The *activity* of recycling used materials for reuse: exempt. [MCL 205.54t(3)(i); MCL 205.54t(7)(a), first sentence]

- The *activity* of storing finished goods inventory: not exempt. [MCL 205.54t(5)(i)]

But when a process is fluid and one activity blends into another, the second sentence of MCL 205.54t(7)(a) helps to clarify the line between certain exempt and non-exempt activities.

The plain meaning interpretation – that the second sentence draws a line between a non-exempt activity and an exempt activity – prevails over the Department's interpretation – that the second sentence creates a requirement that raw materials must rest in storage before the industrial process begins – if the industrial processing exemption is read hypothetically *without* the second sentence.

Without the second sentence, it would be ambiguous as to whether equipment used for the activity of moving materials from raw material storage to the recycling process is exempt. It would also be ambiguous as to whether equipment used for the activity of moving materials from the recycling process to rest in finished goods inventory storage is exempt. *Without the second sentence*, it is not clear when certain non-exempt activities end and exempt industrial processing activities begin. *Without the second sentence*, litigation would ensue about whether machines used for activities in-between raw material storage and an industrial process and in-between an industrial process and finished goods inventory storage are exempt. The second sentence puts these potential ambiguities to rest.

This Court, interpreting an earlier version of the statute in a 1962 decision, found the language of the industrial processing exemption to be written in simple English, and the Court attributed apparent difficulties in applying the plain statutory language to uncertainty about facts. *Minnaert v Michigan Dep't of Revenue*, 366 Mich 117, 121-2; 113 NW2d 868 (1962). As the Court found in *Minnaert*, the facts tell the story about the nature of the activity. The industrial processing exemption statute then provides a clear answer about whether equipment used for a particular

activity is exempt. As this Court held in *Minnaert*, "in the words of Cardozo, the applicable rule of law has sprouted from the seed and turned its branches toward the light":

> More and more, we lawyers are awaking to a perception of the truth that what divides and distracts us in the solution of a legal problem is not so much uncertainty about the law as uncertainty about the facts-the facts which generate the law. Let the facts be known as they are, and the law will sprout from the seed and turn its branches toward the light.' (Mr. Justice Cardozo, quoted in 'The Act of Advocacy', by Lloyd Paul Stryker, p. 11.-Simon and Schuster-1954.)'

Minnaert, 366 Mich at 122, fn. 2. Here, the focus should remain on the activities Plaintiff-Appellee's recycling machine performs, including sorting, inspecting, compacting, puncturing, and shredding raw material. (See Plaintiff-Appellee's Counter-Statement of Facts at pp. 8-12 of its Brief on Appeal.) And once the activities performed by the machine are fully understood, the statute then provides the answer about whether the activities performed by the machine are industrial processing, therefore qualifying the machine as exempt from sales and use tax.

B. The plain meaning of the industrial processing statute demonstrates that the activity engaged in by the machine governs whether the industrial processing exemption applies.

Although creative processes vary widely, the industrial processing exemption is based on a fundamental principle: as long as something is in the process of being transformed or created for sale at retail, the materials and equipment used in that transformative or creative process are exempt. And given the vast differences among processes, the Legislature focused simply on the different types of activities conducted to define industrial processing: "to determine whether the industrial processing exemption applies, it is necessary to consider the *activity* in which the equipment is engaged and not the *character* of the equipment-owner's business." *Detroit Edison Co*, 498 Mich at 37, citing *Elias Bros Restaurants*, 452 Mich at 157 (emphasis added). Under the statute, certain activities are exempt, and others are not.

The Department of Treasury now asks the Supreme Court to abandon this longstanding way of reading the industrial processing statute and suggests reading in a new requirement that in order to be an industrial process, raw materials must first sit for an unknown amount of time in storage. There is no basis in statutory or case law for creating this new, temporal requirement as a condition precedent to qualifying for the industrial processing exemption. *Elias Bros* and *Detroit Edison Co* require this Court to look at each activity and consider the plain language in MCL 205.54t to determine whether the activity is exempt:

- The *activity* of storing raw materials: not exempt. [MCL 205.54t(6)(a)]
- The *activity* of moving raw materials toward a recycling process: exempt. [MCL 205.54t(7)(a), second sentence; MCL 205.54t(3)(i)]
- The *activity* of recycling used materials for reuse: exempt. [MCL 205.54t(3)(i); MCL 205.54t(7)(a), first sentence]
- The *activity* of handling production material in between processes: exempt. [MCL 205.54t(3)(j)].
- The *activity* of storing production material in between processes: exempt. [MCL 205.54t(3)(k)].
- The *activity* of moving the finished product from the recycling process to inventory storage: exempt. [MCL 205.54t(7)(a), second sentence.]
- The *activity* of inspecting materials "at any time before" finished goods come to rest in inventory storage: exempt. [MCL 205.54t(3)(d)]
- The *activity* of storing finished goods inventory: not exempt. [MCL 205.54t(5)(i)]

Reading in a new requirement that raw material must rest in storage before there can be an industrial process is not consistent with the intent of the statute that the *activity* governs whether the exemption applies. Industrial processing is defined in the first sentence of MCL 205.54t(7)(a) as:

> [T]he activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail.

The Legislature does not mandate that certain types of activities, like raw material storage and finished goods inventory storage, must be conducted in order for there to be an industrial process: instead, the first sentence simply describes industrial processing. But in a fluid process where one activity blends into another, the line could be blurred between a non-exempt and an exempt activity. However, the second sentence of MCL 205.54t(7)(a) clarifies:

> Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

But the Department of Treasury now takes the new position that there is an unwritten condition precedent in the statute: "but for" raw material storage, there is no industrial processing.[3]

The Department's position runs contrary to the Michigan Supreme Court's holding in *Detroit Edison Co*, 498 Mich 28. In *Detroit Edison Co*, the Court considered the impact to the industrial process when finished goods never come to rest in finished goods inventory storage, as was the case with the delivery of electricity. This Court rejected the Department's argument that

[3] When reading the industrial processing exemption, this Court has held: "The primary goal of statutory interpretation is to give effect to the controlling intent of the Legislature. *Lorencz v Ford Motor Co,* 439 Mich 370, 376–377; 483 NW2d 844 (1992). 'When determining legislative intent, statutory language should be given a reasonable construction considering its purpose and the object sought to be accomplished.' *Wills v Iron Co Bd of Canvassers,* 183 Mich App 797, 801; 455 NW2d 405 (1990)." *Nawrocki v Macomb Cty Rd Comm'n*, 463 Mich 143, 188–89; 615 NW2d 702 (2000).

finished goods inventory storage was a condition subsequent to industrial processing and that without it, there was no industrial processing.[4]

The Court held that the activity of storing finished goods inventory is not required for equipment to be used in exempt, industrial processing activities, and similarly, the activity of storing raw material is also not required before equipment can be used in exempt, industrial processing activities.

C. In the Supreme Court's first industrial processing case in 1942, the Court focused on the nature of the activity for which the equipment was used.

In *Michigan Allied Dairy Ass'n v Auditor General*, 302 Mich 643; 5 NW2d 516 (1942), this Court first reviewed the industrial processing exemption. At issue was whether milk cans used at dairy farms were used for industrial processing. "Milk from the cows is poured into cans on the farm." *Id*. at 649. The cans were then used at the farm to store milk in a cool place to preserve milk in a proper condition. *Id*. The milk cans were then picked up and transported from the farm to a creamery for further processing to prepare the milk for retail sale. *Id*.

The cans were used for industrial processing. In other words, the industrial process began as soon as the milk was placed in the cans. The Supreme Court did not discuss the legal import of the fact that prior to the milk being placed in the cans, it was inside dairy cows. Even though the wording of the industrial processing exemption has been expanded since 1942, the Court's holding in its first industrial processing case should not be ignored. *Michigan Allied* was decided before the Legislature clarified that "industrial processing does not include receipt and storage of raw

[4] "[E]lectricity is never a 'finished good' until the voltage has been reduced to a level approximating 120/240 volts for the typical residential consumer and 480 volts for the typical industrial consumer. We conclude as a result that industrial processing of electricity does not become complete until final distribution to the *consumer* because there is simply no point within the electric system at which 'finished goods first come to rest in finished goods inventory storage' before that point." *Detroit Edison Co*, 498 Mich at 41–42.

materials" [see 1987 PA 141, amending MCL 205.94], and before the Legislature clarified where the non-exempt activity ends and the exempt activity begins when it added the second sentence to MCL 205.54t(7)(a) [1999 PA 116, 1999 PA 117]. But *Michigan Allied Dairy Ass'n* demonstrates that the focus has always been on the activity for which the equipment is used, not what happens right before the activity begins. The cans were used in the process of converting milk into a product to be sold at retail: industrial processing.

The 1999 amendments were intended to "clarify and *expand* the industrial processing exemptions." *Rouge Steel Company v Dep't of Treasury*, Michigan Tax Tribunal Docket No. 315388, 2009 WL 6317465 (2009), citing House Legislative Analysis on House Bill 4745, First Analysis (July 16, 1999) (see App 374b to Plaintiff-Appellee's Brief on Appeal, emphasis added). "Industrial processing was clarified to specify that industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing…. [t]he legislature originally intended to include the movement of raw materials to and through the industrial processing activity; however, clarification was needed to give plain meaning to the somewhat ambiguous statute." *Id*.

This Court's focus on the activity for which the cans were put to use in *Michigan Allied Dairy Ass'n* still rings true today, regardless of amendments to the industrial processing exemption over time.[5]

D. Treasury's published guidance contradicts its current position that the activity of storing raw material is a prerequisite to industrial processing.

The Department of Treasury now argues that raw material storage is a prerequisite to industrial processing, although this new position is inconsistent with the Department's published guidance. Both versions of the Michigan Department of Treasury's Tax Compliance Bureau Audit Division Industrial Processing Manual ("Industrial Processing Manual")[6] submitted to the Court by the parties provide several other examples of exempt activities that are not preceded by raw material storage.[7] All these examples simply draw a line between when non-exempt activities end and exempt activities begin, aligning with the purpose of the second sentence of MCL 205.54t(7)(a).

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[5] This Court recently questioned one aspect of the *Michigan Allied Dairy Ass'n* decision as the milk cans were used for customer deliveries in addition to being used for industrial processing. *Detroit Edison Co*, 498 Mich at 49, fn. 14, and 54, fn. 19. At the time the *Michigan Allied Dairy Ass'n* Opinion was issued, the industrial processing statute did not provide for apportioning the exemption between exempt and non-exempt activities. However, this Court in *Detroit Edison Co* affirmed the holding from *Michigan Allied Dairy Ass'n* that exempt uses and non-exempt uses of the same equipment are not mutually exclusive. Regardless of this Court's recent review of *Michigan Allied Dairy Ass'n* in *Detroit Edison Co*, apportionment between exempt and non-exempt use is not at issue in this case. Rather, the issue is that a machine used for an industrial processing activity is exempt, regardless of whether the activity is preceded by the activity of storing raw materials or followed by the activity of storing finished goods inventory, and this is consistent in *Michigan Allied Dairy Ass'n*, *Detroit Edison Co*, and Plaintiff-Appellee's position in this case.

[6] The Department of Treasury attached the June 2015 version of the Industrial Processing Manual as App 248a to Defendant-Appellant's Brief on Appeal, and TOMRA attached the July 2002 version of the Industrial Processing Manual as App 231b to Plaintiff-Appellee's Brief on Appeal.

[7] The Industrial Processing Manual provides guidance, although it is not binding law. See *Danse Corp v City of Madison Heights*, 466 Mich 175, 181; 644 NW2d 721 (2002) (indicating that agency manuals not promulgated through formal rulemaking are merely guidance).

For example, the Industrial Processing Manual provides a lengthy analysis about "just in time" deliveries. (Appellee App 255b-257b and Appellant App 273a-275a.) The Department acknowledges that it can be difficult to find where the line is drawn between a non-exempt pre-production activity and an exempt production activity when operations are "highly automated." (Appellee App 255b and Appellant App 273a.) When there is no "clear and identifiable raw material storage," the Department provides detailed examples of "just in time" processes that qualify as industrial processing:

> [These] examples demonstrate that the first event that takes place is receipt of the purchased material. The next event ***may*** be to raw material storage, even though this phase may be brief. ***The examples also show that the material may move directly to the production area*** [bypassing raw material storage].

(Appellee App 257b and Appellant App 273a, emphasis added.) Four of the examples of "just in time" processes are scenarios *without* raw material storage in which the Department treats equipment used to move materials toward production and in production as exempt. (Examples 3-6 in Appellee App 256-257b and Appellant App 274-275a.)

The Department's position in the Industrial Processing Manual on grain elevator activities also lends support for the position that non-exempt raw material storage is not a prerequisite to industrial processing. (Appellee App 272b and Appellant App 282a.) Grain is unloaded (non-exempt activity) and then moved to a "wet storage silo air system" where the exempt industrial process begins (the storage system processes grain by "pull[ing] humidity out"). The Department's grain elevator example and diagram does not require raw material storage before the beginning of the industrial process. The guidance instead correctly considers the nature of each activity conducted (unloading, wet storage, etc.) and determines whether each activity is industrial processing.

This guidance is consistent with Supreme Court precedent that the nature of the activity conducted by the equipment governs and that there is no raw material storage prerequisite in the statute. And if this Court adopts the Department's new position, reversing the Court of Appeals, the door will be open to the possibility that these types of activities – now commonly accepted as exempt industrial processing by both the Department and taxpayers – will be subject to new sales and use tax assessments.

E. The industrial processing exemption was not intended to be read more narrowly than its plain language provides.

The Department of Treasury asserts that a recycling machine in a liquor store (Department's Brief on Appeal, pp. 5, 6) fed cans by party goers after "weekend barbeque[s]" (Department's Brief on Appeal, p. 2) is not conducting industrial processing, rhetorically asking whether shopping carts and recycling bins in residential garages will be next. (Department's Brief on Appeal, p. 36.) Along with advocating that the recycling machine does not resemble a traditional industrial process, the Department too narrowly describes industrial processing as "manufacturing." (Department's Brief on Appeal, pp. 23-24.)

However, it is well settled that manufacturing is only one type of industrial process: in MCL 205.54t(7)(a), "industrial processing" is defined as "the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail ***or*** for use in the manufacturing of a product to be ultimately sold at retail."[8] [Emphasis added.] See also *Elias Bros Restaurants*, 452 Mich at 157, fn 27, stating that industrial processing is not synonymous with manufacturing.

[8] In MCL 205.54t(7)(b), an "industrial processor" is also defined as "a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail ***or*** use in the manufacturing of a product to be ultimately sold at retail." [Emphasis added.]

Since 1942, this Court has repeatedly rejected efforts made to narrowly construe industrial processing as only manufacturing. In *Michigan Allied Dairy Ass'n*, 302 Mich at 649, the Attorney General argued that pasteurization of milk does not constitute manufacturing. The Supreme Court held: "Pasteurization followed by prolonged refrigeration manufactures no new article, but frees the milk from bacteria and keeps it free thereof until it reaches the consumer," thereby engaging in an industrial process. *Id.*

The Court determined that cans used for storing milk in a cool place qualified for the industrial processing exemption, because the milk changed character while pasteurized. The industrial processing exemption does not require the manufacturing of a new product.[9]

Examples abound of other non-traditional types of industrial processing in case law:

- Altering the voltage of electricity after it leaves an electrical plant continuously conditions the electricity for ultimate sale at retail and is industrial processing. *Detroit Edison Co*, 498 Mich at 40-41.
- Creating meals can be an industrial process. *Elias Bros Restaurants*, 452 Mich at 157.
- Constructing and maintaining dams and ponds used to manage and reuse water runoff related to copper mining and copper ingot production is industrial processing. *Minnaert*, 366 Mich 117.
- Producing farm animal feed is industrial processing. *Seitsema Farms Feeds, LLC v Dep't of Treasury*, 296 Mich App 232; 818 NW2d 489 (2012).

[9] In *Michigan Allied Dairy Ass'n*, the industrial process continued after the milk sat in the cans at issue at dairy farms when the cans were sold to and transported to creameries and dairies. Accordingly, *Michigan Allied Dairy Ass'n* also demonstrates the industrial process continues despite a change in ownership and a change in location. *Id.* at 651.

- Chipping and grinding woody material removed from trees is industrial processing. *Kappen Tree Service, LLC v Dep't of* Treasury, unpublished opinion per curiam of the Court of Appeals, Docket No. 325984 (April 26, 2016).
- Repairing circuit boards, converting them from a nonfunctional state into a functional state by altering the flow of electricity running through them, is industrial processing. *K & S Industrial Services, Inc v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, Docket No. 305516 (Sept. 27, 2012). The Court of Appeals also recognized that a process as subtle as "purifying or flavoring water" was enough of a change in form, composition, or character to qualify as industrial processing.

The Department of Treasury's Industrial Processing Manual provides another example of a non-traditional, unique type of industrial processing: taxidermy. (Appellant's App 329a.) A hunter delivers an animal carcass to a taxidermist, and the taxidermist then converts and conditions the property into a hunting trophy for ultimate sale at retail, therefore qualifying for the industrial processing exemption. It is not clear from the Department's Manual whether the Department takes the position that the taxidermist must store the animal carcass in raw material storage before beginning the industrial process. But regardless of the position taken by the Department, the answer is clear under the language of the industrial processing exemption as well as case law interpreting it: raw material storage is not necessary in order for a taxidermist to use equipment in industrial processing activities required to create products for sale at retail, qualifying the equipment as exempt from sales and use tax.

IV. Conclusion

The Taxation Section of the State Bar of Michigan respectfully requests that the Supreme Court apply the plain language of the industrial processing exemption statute by holding that raw material storage is not a condition precedent to an industrial process, which requires that the Supreme Court affirm the Michigan Court of Appeals' Opinion below.

Respectfully submitted,

Dated: August 7, 2019

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