STATE OF MICHIGAN

IN THE SUPREME COURT

TOMRA NORTH AMERICA, INC.,	
Plaintiff-Appellee,	Supreme Court No. 158333
v	Court of Appeals No. 336871
DEPARTMENT OF TREASURY, STATE OF MICHIGAN,	Court of Claims No. 16-000118-MT
Defendant-Appellant.	
TOMRA NORTH AMERICA, INC.,	
Plaintiff-Appellee,	Supreme Court No. 158335
v	Court of Appeals No. 337663
DEPARTMENT OF TREASURY, STATE OF MICHIGAN,	Court of Claims No. 14-000091-MT
Defendant-Appellant.	

BRIEF OF *AMICUS CURIAE* MICHIGAN RETAILERS ASSOCIATION

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INTEREST OF *AMICUS CURIAE*[1]

Amicus Curiae Michigan Retailers Association (the "MRA"), represents the interests of its nearly 5,000 member businesses, their 15,000 stores and websites that employ over 870,000 Michiganders, and the countless citizens who visit and shop in its members' retail establishments every day.

The MRA is a voluntary nonprofit association of corporate and other business interests that form the voice of Michigan's retail industry. Established in 1940, the MRA provides study, education, and advice to its members in order to promote Michigan's retail and economic climate. To these ends, the MRA engages in representing its members' interests before state and federal legislatures, executive branch agencies, and the courts. Through these advocacy efforts, the MRA seeks to promote the uniform and equitable enforcement of the laws affecting the retail industry, reducing the costs and burdens of administration and compliance to the benefit of both the government and Michigan's retailing environment and the general public.

As retailers, MRA members are significantly and directly affected by the rules governing the sales and use tax laws. These taxes are a direct excise on MRA members' occupation. MCL 205.52(1). MRA members are generally permitted to pass the economic burden of the sales tax through to their countless visitors who shop in member establishments every day. See MCL 205.73. Further, MRA members are responsible, on a daily basis, for the proper administration of the various exemptions under the sales and use tax law. In these and

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[1] This brief is submitted under MCR 7.212(H) on leave granted by this Court on August 8, 2019. Pursuant to MCR 7.212(H)(3), the undersigned counsel for *Amici Curiae* certifies that this brief was not authored in whole or in part by counsel for any of the parties; no party or party's counsel contributed money for the brief; and no one other than amici has contributed money for this brief.

many other respects, MRA members must contend daily with the interpretation and administration of the sales and use tax laws in this State. Nearly all of the MRA members will be affected by the outcome of this case and have a vital interest in its proper disposition.

More central to this case, MRA members who sell beverages in returnable containers are obligated under Michigan's Beverage Containers Act (1976 IL 1, compiled at MCL 445.571 *et seq.*) to both collect a 10¢ deposit for each bottle sold and accept on their premises used returnable beverage containers in exchange for the customer's deposit. MRA members either purchased or leased the container recycling machines and parts sold by TOMRA. It was MRA members who ultimately paid sales or use taxes on these machines, parts, or lease payments. Alternatively, some MRA members claimed the exemption for sales and use taxes for these machines under the industrial processing exemptions of MCL 205.54*t* or MCL 205.94*o*. As a result, all such MRA members have a direct business and economic interest in the outcome of this case.

INTRODUCTION

Michigan is one of only ten states that has a bottle deposit law. Michigan voters passed the Michigan's Beverage Containers Act (1976 IL 1, compiled at MCL 445.571 *et seq.*), commonly known as the "Bottle Bill", in a statewide referendum on November 2, 1976. The Bottle Bill places a 10¢ deposit on all empty bottles of beer, carbonated soft drinks, and seltzer water. Michigan's 10¢ deposit is the highest in the country. And the Bottle Bill is the State's only recycling policy.

As a recycling policy, the Bottle Bill places a heavy burden on MRA members, as they are tasked with the point of purchase administration, accounting and remittance of deposits,

collection of returned containers, and the expense of administering and managing these systems. MRA members spend over $100 million per year on this recycling system.

MRA members are forced to act as middlemen in Michigan's bottle deposit scheme, as they act as a pass-through of the deposit from the consumer to the distributor or bottler and are frequently left holding an empty dirty can under the Bottle Bill. Unclaimed deposits eventually revert to the state and are collected by the Department of Treasury, of which only a fraction is returned to the retailers. Even with this recoupment, the Bottle Bill still represents net unrecoverable expense on retailers. This government mandate puts Michigan employers at a competitive disadvantage to that of other states. Retailers must also accept, on their premises, used returnable beverage containers for recycling and deposit return. MCL 455.572(2).

This is a tax case. Specifically a sales tax exemption case involving "industrial processing" under MCL 205.54*t*. "Recycling" is specifically spelled out in section 54*t* as "industrial processing". MCL 205.54*t*(3)(i). Through their forced participation in Michigan's only recycling policy, MRA members perform the first steps in mandatory beverage container recycling. MRA members and their machines (sold by TOMRA) accept recyclable beverage containers and test, sort, crush, puncture and shred those containers for further production by others. In this regard, MRA members and their reverse vending machines perform the functions of an "industrial processor" as those terms are used in MCL 205.54*t*(1)(b), (c) and 7(b). See also MCL 205.94*o*(1)(b), (c) and 7(b) (companion Use Tax provisions). It is without principled dispute that all of these various described activities conducted by MRA members are defined as "industrial processing" under MCL 205.54*t*(3)(d), (e), (i), (j) and (k) and qualify as exempt.

Appellant argues that "strictly construing" the exemption statue requires materials to be process must first come to rest in "raw materials storage" before the exemption can be applied

to the activity. Appellant is wrong. For the reasons and analysis to follow, the Department of Treasury's challenge to the applicability of the industrial processing exemption in this context is inconsistent with the plain statutory language, is yet another unwarranted economic and administrative burden placed on MRA members, and represents bad tax policy. Accordingly, this Court should affirm the decision below.

SUMMARY OF ARGUMENT

Amicus Curiae respectfully requests that this Court affirm the decision of the Court of Appeals because that court properly held that MCL 205.54*t*(3) means exactly what it says – that the listed activities are industrial processing. Further, the second sentence of subsection (7)(a) does not modify the qualifying activities in subsection (3), but simply brings into focus the Legislature's intent in distinguishing between exempt and non-exempt activities. Any other reading of these provisions would completely frustrate the purpose of the exemption. Specifically, it should be noted that:

First, the Court of Appeals correctly focused its analysis on the expressed intent of the statute, as evidenced by the plain language that the Legislature chose. Specifically, that it is the "activity" to which a process, equipment or machinery is employed that dictates its eligibility for the exemption, and not the character of the owner's business.

Second, while Appellant claims that statute requires that an item must first rest in "raw material storage" before an industrial process can begin, this theory is not supported by the language of the statute itself, prior decisions of this Court, or practical considerations that occur in the marketplace. In advancing its claims, Appellant attempts an unsupported contraction of the exemption provision in violation of the basic construction of tax exemption statutes. *Ally*

Financial, Inc v State Treasurer, 502 Mich 484; 918 NW2d 662 (2018) (a strained construction of an exemption, contrary to Legislature's intent, is not permitted).

Third, in a heavy industrial state like Michigan, the industrial processing exemption provides a limited and narrow mechanism to achieve the legislative aim of the sales and use tax statutes, that the burden on the tax is ultimately borne at the end retail level. To this end, the industrial processing exemption aims to avoid taxation on intermediate goods still involved in an industrial process or, commonly referred to as "tax pyramiding." In a retail sales tax regime which, in principle, is applied only on sales to the end consumer, taxation on intermediate goods results in distortion. This distortion or tax pyramiding is the process by which a good is taxed multiple times as it makes its way through the supply chain and is sold from firm to firm through the production process before finally being sold to a consumer and taxed again. As a result, a position such as that espoused by the Court of Claims or the dissenting opinion below, frustrates the legislative goal of the industrial processing exemption specifically, and the sales and use taxes generally.

COUNTER-STATEMENT OF FACTS

Amici Michigan Retailers Association incorporates by reference and relies upon the Counter-Statement of Facts contained in Plaintiff-Appellee TOMRA's brief.

STANDARD OF REVIEW AND CONSTRUCTION OF TAX STATUTES

Amici Michigan Retailers Association incorporates by reference and relies upon the Counter Standard of Review and Construction of Tax Statutes contained in Plaintiff-Appellee TOMRA's brief.

ARGUMENT

A. The Court of Appeals Decision Should be Affirmed, as it Correctly Focused on the Plain Language of the Statute as a Whole

This Court recently emphasized that when considering whether or not 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 v Dep't of Treasury*, 489 Mich 28, 37; 869 NW2d 810 (2015), citing *Elias Bros Restaurants, Inc v Dep't of Treasury*, 452 Mich 144, 157; 549 NW2d 837 (1996).

MCL 205.54*t*(3)(i) states that "recycling" of used materials is an industrial processing activity. See also MCL 205.94*o*(3)(i). Although not defined in the statute, "recycling" is defined in the dictionary[2] as "to process (something, such as liquid body waste, glass, or cans) in order to regain material for human use." *Merriam-Webster's Collegiate Dictionary* (11th ed) <https://www.merriamwebster. com/dictionary/recycling> The statutes also requires that the material or "thing" that is to be put through an "industrial process" must be "tangible personal property" or "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software." MCL 205.51a(r); see also *Detroit Edison*, 498 Mich at 38 (citation omitted). As a result, there can be no reasonable dispute that recovering recyclable materials such as glass, aluminum, PET and HDPE beverage containers constitutes "tangible

[2] "In the absence of contrary direction by the Legislature, words used in a statute are to be given their ordinary meaning." *Kron v Home-Owner Ins Co*, 490 Mich 145, 156; 802 NW2d 281 (2011) ("Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. [Courts] may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, "[t]he words of a statute provide 'the most reliable evidence of its intent....'," (citations omitted).

personal property" for purposes of "recycling" an exempt industrial processing activity. MCL 205.54*t*(1)(b) and (3)(i).[3]

Recycling is a fluid process that occurs in stages.[4] Often, various stages are conducted by separate persons or businesses, but each builds on the other and are necessary to recover and transform valuable resources that would otherwise be discarded as waste into new products for ultimate sale to consumers.[5] See MCL 205.54*t*(7)(a)(using the phrase "for ultimate sale at retail", implying a process with an end outcome). Inspection, sorting and grading the resource stream which occurs as soon as the containers enter the machine is the start of the industrial process of recycling. See MCL 205.54*t*(3) and MCL 205.94*o*(3). Further, crushing, puncturing, and bailing the recovered material is also an industrial processing activity. *Id*.; *see also* Michigan Department of Treasury's Tax Compliance Bureau Audit Division Industrial Processing Manual (March 2019) ("Industrial Processing Manual").[6]

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[3] Under Michigan's former Michigan Business Tax (2007 PA 36, compiled at MCL 208.1101, *et seq*. Repealed by 2011 PA 39), Section 451 (added by 2007 PA 147) extended a bottle deposit administration credit to beverage distributors who originate a bottle deposit to comply with the Bottle Bill. At that time, Appellant recognized in its FAQ C34 that reverse vending machines/container recycling machines operated by retailers (MRA members) are used to crush or shred the returned containers thereby reducing the need and cost to distributors to process the materials collected prior to delivery to the recycling market. This is contrary to statements made in Appellant's brief that the machines are not part of recycling and production of new products. See Appellant's brief p 32.

[4] See, for example, *The Recycling Journey of a Plastic Bottle*, available at <http://www.plasticsmakeitpossible.com/plastic-recycling>, Appendix A. See also, *Merriam-Webster's Collegiate Dictionary* (11th ed) <https://www.merriamwebster.com/dictionary/recycling>, Appendix B.

[5] See, for example *Recycling Basics*, available at <http://www.epa.gov/recycling/recycling-basics>. Appendix C.

[6] The Department of Treasury's Industrial Processing Manual (March 2019) Appendix D.

The machines at issue conduct recycling processing and are entitled to the industrial processing exemption as a matter of law. The Container Recycling Machines begin the process of recycling bottles and cans by conducting the first steps of recycling through not only inspecting and testing an offered bottle or can, but also by quality control, sorting by material, grade and color and crushing or puncturing of accepted containers followed by in-process storage. Material sorting by composition, grade and color is an essential part of recycling so that pure inputs are converted into the new product for ultimate sale at retail.

As discussed previously, the Bottle Bill requires retailers to participate in recyclable container collection, an exempt activity as expressed in the tax exemption statute. The fact that the reverse vending machines are also used for Bottle Bill compliance does not belie their use in the recycling process. If the Legislature had wanted to exclude the reverse vending machines from the industrial processing exemption due to their dual use in Bottle Bill compliance, they could have easily said so. See MCL 205.54*t*(5)(c) (detailing property that is not eligible for the industrial processing exemption. See also MCL 205.94*o*(5) (same for use tax purposes); MCL 205.54*t*(7)(e) (defining those research or experimental activities that do not qualify; and MCL 205.94*o*(same for use tax purposes)).

Finally, while MRA members do not of themselves create a new product through their use of the reverse vending machines at issue, the conclusion that this fact precludes eligibility under the exemption is not supported by the statute, decisional law or administrative guidance. See MCL 205.54*t*(1)(c). The statute does not require MRA members or the reverse vending machines to be the end producer – only that they act as a link in the industrial processing chain. The statute defines an "industrial processor" as those who "perform[ ] the activity of converting or conditioning tangible personal property . . . use[d] in the manufacturing of a product to be

ultimately sold at retail." MCL 205.54*t*(7)(b) and MCL 205.94*o*(7)(b). Where, as here, the retailer purchases or rents a reverse vending machine that starts the recycling process, these machines are exempt from sales and use taxes by operation of subsections (3)(i) and (7)(a) and MCL 205.94o(3)(i) and 7(a). *See also*, MCL 205.54*t*(1)(b) and (c) (each stating that the exemption applies to those who are not of themselves industrial processors, but perform an industrial process on the tangible personal property).[7] These subsections emphasize that the application of the industrial processing exemption depends on the use to which equipment is put." *Elias Bros*, 452 Mich, at 156. An invitation to limit the scope of the exemption in this regard has previously been rejected by this Court on two occasions and should again be declined. *See, Detroit Edison*, 489 Mich 28; 869 NW2d 810 (2015), and *Elias Bros Restaurants, Inc v Dep't of Treasury*, 452 Mich 144; 549 NW2d 837 (1996).

B. This Court Should Reject Appellant's Theory Regarding Material Storage, as it is Not Supported by the Statute Itself, Prior Decisions of this Court, or Practical Considerations in the Marketplace.

[7] In *Elias Bros*, this Court recognized that taxpayers often engage in both taxable and nontaxable transactions. *Elias Bros*, 452 Mich at 158. Specifically, Elias Brothers engaged in both industrial processing and retail sales with respect to its ownership and operation of company-owned restaurants. While Elias Brothers is a single corporate entity, the Commissary function was physically, operationally, and financially distinct and separate from the company's retail restaurant operations. The *Elias Bros* Court stated that "[a]s long as taxpayers operate and substantiate the nontaxable activity in a distinct, identifiable, and clearly severable manner, Michigan courts uphold exemptions for the portion of exempt activity." *Elias Bros*, 452 Mich at 158 (citations omitted). Due to operational separation, this Court found that the Company's commissary's equipment was "actually engaged in the manufacturing of a product for eventual resale". *Elias Bros*, 452 Mich at 158. The same is true in this case, as the reverse vending machines owned and operated by MRA members are stand-alone machines physically separate from the members retail operation (sometimes separated by a physical wall or in a separate room) and financially separate from the retail floor.

The exemption statute lists various activities that are not industrial processing. See MCL 205.54*t*(6) (including "storage of raw materials" in Subsection (a)). However, nothing in the text of either Subsection (6)(a) or MCL 205.54*t*(7)(a) requires materials subject to an industrial process to first sit in "raw material storage," nor does the law suggest who must "own" the materials to be processed. As discussed before, eligible industrial processing is simply "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." MCL 205.54*t*(7)(a) (first sentence). The second sentence of subsection 7(a) merely defines when the exempt activity in the first sentence begins and ends, but does not place a statutory prerequisite or a condition subsequent on eligibility. Appellant's own administrative guidance illustrates this point.

Appellant's Industrial Processing Manual submitted to the Court as Appendix D to this Brief, illustrates several examples in Chapter 8 thereof, of exempt activities that are not preceded by raw material storage.[8] Each of these examples demonstrates that the second sentence of MCL 205.54*t*(7)(a) serves to allocate when an exempt activity begins and ends. Appellant describes in lengthy detail “just in time” deliveries[9] and 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.” (Appendix D at 25) When there is no “clear and identifiable raw material storage,” the Department provides detailed

[8] 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).

[9] *See also*, Appellant's App 273a-275a.

examples of "just in time" processes that qualify as industrial processing and states that following receipt of the material, they

> "*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 the production process and in production as exempt. (Examples 3-6 in Appellant App 274-275a.)

Chapter 12 of the Department's Industrial Processing Manual describes a fact pattern that is most akin to the present case. That example discussed the industrial processing activities of a grain elevator. The grain is delivered to the elevator in the farmer's truck (or trucks hired by the farmer). Delivery of the grain to the first point of process is, without dispute, a non-exempt activity. In the same vein, delivery of beer cans in shopping carts by MRA member customers after a "weekend barbeque" (Appellant's Brief on Appeal, p. 2) is likewise a non-exempt activity.

The grain is immediately carried by conveyer or auger mechanism to a "wet storage silo air system" to begin "pulling the humidity out" of the grain.[10] In the present case, immediately after the MRA member's customers place their bottles and cans through the machine's acceptance slot, the items are moved by a conveyor belt where the machine is pre-programmed to perform inspection, quality control and testing on the container to determine whether the container conforms to specific parameters, including whether any liquid is within the container. Appellee's Brief on appeal at 10.

[10] In the wine, distilling and fruit juice processing industries, grapes, fruit and grains are also subject to immediate processing on delivery.

The Department's position in example Chapter 12 of its Industrial Processing Manual is consistent with this Court's opinions in *Detroit Edison* and *Elias Bros*, that it is the nature and function of the activity conducted by the equipment that governs eligibility for the industrial processing exemption. See, also *Michigan Allied Dairy Ass'n v Auditor General*, 302 Mich 643; 5 NW2d 516 (1942) (although this opinion has been later questioned, the Court concluded that milk cans used to collect milk directly from cows for further processing and pasteurization and ultimate sale at retail were used in industrial processing.).[11] Neither the statute nor the Department's own administrative position support a raw material storage prerequisite to eligibility under the exemption statute.[12]

Further, the limitation Appellant now advances is not supported by the legislative intent of 1999 PA 116. In 2009, the Tax Tribunal, examining the amendments added by 1999 PA 116, explained that the legislative intent underlying those changes to the industrial processing exemption was 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

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[11] Assuming for argument's sake that under the current version of the statute the industrial process began as soon as the milk leaves the cow's utter, then the milk cans would qualify under statute as storing in-process material. See MCL 205.54t(3)(k). Further, modern milking machines that are connected directly to the cow's utter qualify for the exemption.

[12] In addition, in Revenue Admin Bulletin 2000-4, *Sales and Use Tax – Industrial Processing* (June 13, 2000), the Department described the application of the Industrial processing exemption following the passage of 1999 PA 116 which added the second sentence to MCL 205.54t(7)(a). Nowhere in that administrative pronouncement does the Department advise, discuss or require a raw materials storage prerequisite to eligibility under the exemption statue. The explanations and examples on pages 3 through 7 and examples 3 through 19 apply the activities of subsection (3). Nowhere is a requirement that raw material storage be specifically identified as occurring prior to the exempt industrial processing activity.

(2009), citing House Legislative Analysis of 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*. As a result, the second sentence of subsection (7)(a), did not add a precondition to the exemption, merely clarification as to the allocation between exempt and non-exempt activities. Accordingly, any attempt to limit the exemption statute by a strained construction of a raw material storage prerequisite should be rejected.

C. The Exemption Aims to Avoid Tax Distortion; Adoption of the Decision of the Court of Claims and/or the Dissent Below Frustrates the Legislative Purpose of the Exemption

Although by no means perfect, Michigan's sales tax is a tax on the final consumption by Michigan households. *See* MCL 205.51(1)(b) (defining a "sale at retail"). In practice, the sales tax falls short of taxing total Michigan household consumption, while falling heavily on many Michigan businesses. Specifically, about 32.1% of the sales tax burden is borne by Michigan businesses. As has been made evident by this case, the under-taxation of household consumption and over-taxation of business inputs leads to economic distortions in the forms of hidden and unrecognized higher consumer prices and/or reduced state economic development. Denial of the industrial processing exception on the reverse vending machines at issue leads to

higher compliance costs under the Bottle Bill and generally higher consumer retail prices for covered packaged goods.

This distortion, called "pyramiding" in a tax system, refers to the imposition of a tax on a tax. See *Detroit Edison*, 498 Mich, at 37, quoting *Elias Bros*, 452 Mich, at 152. It typically happens with taxes that are imposed on goods or services such as a sales tax. Pyramiding causes a tax to violate several principles of good tax policy, including transparency, efficiency, equity and neutrality.

According to the EPA, approximately 53% of container packaging is from recycled content. Further, the largest expense in the production of beer and soda is the packaging itself, accounting for over half of the total cost of production. As a result, sales taxation on equipment used to recover recycled content or built into the container packaging itself is highly susceptible to pyramiding.

For example, in Michigan, most food and beverages sold as grocery items in an MRA member retail outlet is exempt from sales tax (sales of alcohol are taxable). The retail price that a customer pays for an item, however, includes any sales tax paid by all businesses in the production and distribution chain (such as sales tax on the reverse vending machines used to recover and begin recycling some of this packaging content). When an MRA member pays a tax, it is one of many costs that is factored into its operations that either goes into the price charged for the item or reduces profits if it cannot be recovered otherwise.[13] This phenomenon makes sales tax fail the tax policy principle of transparency in that when a Michigan customer

[13] Recovery in the form of a price adjustment is not always achievable as the retail industry is highly competitive and prices for goods are highly elastic.

buys an item (whether tax exempt or not), the true amount of the sales tax burden is hidden from Michigan consumers due to this pyramiding.

Michigan, like many of its sister states, curbs the effect of pyramiding through the use of various sale tax exemptions, the most common of which is the exemption for purchases for resale. See MCL 205.51(1)(b). When an MRA member purchases inventory, such as food and beverages, it does not pay sales tax. That said, it has paid sales tax on all of its equipment and tangible personal property used in the store.

The industrial processing exemption is another tool enacted by the Legislature to reduce the effects of pyramiding. See *Elias Bros*, 452 Mich, at 152-53 (1996). As discussed previously, the industrial processing exemption exempts certain activities used in the production of an item for ultimate sale at retail. The statute does not require the actual sale of the good by the industrial processor[14] to be at retail, just that the finished product is destine for "ultimate" sale in the retail market. See, MCL 54*t*(1)(b), (7)(a), and (7)(b) (all using the term "ultimate). The statue does not define "ultimate" but its ordinary meaning is defines as "happening at the end of a process" or "best achievable or imaginable of its kind" according to *Merriam-Webster's Collegiate Dictionary* (11th ed.).[15] Nor should this Court fall for the linguistic slight-of-hand, equating "industrial processing" to manufacturing. The concept of "industrial processing" is much broader than manufacturing. *See* MCL 205.54*t*(7)(a)(defining industrial processing as including "manufacturing"); *See also*, MCL 205.54*t*(3)(b) – (k)(describing adjunct activities).

[14] Or the work being performed on behalf of an industrial processor. See MCL 205.54*t*(1)(b) and (c).

[15] For example, in the automobile industry, automobile manufacturers do not sell their vehicle output at retail. Yet there is no dispute in that context that the output is destined for the retail market.

The language of the statute evidences the Legislature's recognition of the many business functions and inputs into the industrial process. All of these processes build on one another to eventually produce a saleable product at retail. Thus, the concept of "industrial processing" being broader than mere manufacturing or assembly was a necessary choice by the Legislature to achieve its anti-tax pyramiding goal.

The exemption, its purposes, and its limits are plainly expressed in the language of the statute itself and this Court's prior interpretations. Appellant's narrow read and forced construction of the statute is strained and unsupported, and cannot stand. *Ally Financial, Inc v State Treasurer*, 502 Mich 484, 492; 918 NW2d 662 (2018) (explaining that while a narrow construction of an exemption statute is appropriate, a strained construction of an exemption, contrary to Legislature's intent, is not permitted). Accordingly, this Court should uphold the decision of the Court of Appeals that the reverse vending machines at issue qualify for the industrial processing exemption due to their use and role in Michigan's recycling activity.

CONCLUSION

This case seems to be largely a problem of Appellant's own making for which the statue already provides a solution. The parties largely agree that TOMRA's reverse vending machines perform recycling functions and meet the definition of "industrial processing" under the first sentence Subsection (7)(a). Further, it also appears that there is little disagreement that "recycling," is specifically listed as a qualifying "industrial processing" activity in MCL 205.54*t*(3)(i). Appellant asserts, however, the because the "industrial processing" was not first preceded by the materials resting in "raw materials storage" under the second sentence of MCL 205.54*t*(7)(a), no "industrial processing" occurred. As discussed, there is no textual support in the statue for this interpretation.

For the reasons stated herein, and in Plaintiff-Appellee TOMRA North America's brief, and those of *Amici Curiae*, Michigan Manufacturing Association and the Taxation Section of the State Bar of Michigan, this Court should affirm the decision of the Court of Appeals below.

Respectfully submitted,

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