

Circuit Court for Anne Arundel County  
Case No. C-02-CV-17-001285

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 563

September Term, 2021

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Comptroller of the Treasury

v.

Leadville Insurance Company

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Berger,  
Reed,  
Shaw,

JJ.

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Opinion by Reed, J.

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Filed: August 29, 2022

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following an audit of Macy’s Retail Holding, Inc. (“MRHI”), the Comptroller of the Treasury (“Appellant”) assessed \$23,831,054.34 in taxes, penalties, and interest from Leadville Insurance Company (“Appellee”), a wholly owned subsidiary of Macy’s, Inc. (“Macy’s”), the parent company for the Macy’s franchise, during the 1996-2003 tax years. Appellant’s assessment was upheld by the Comptroller’s Hearings and Appeals Section and the Tax Court. This Court then remanded the case back to the Tax Court to decide if Title 4 of the Insurance Article provides a corporate tax exemption to unauthorized insurance companies like Appellee. On remand, the Tax Court held that Appellee is exempt from filing a Maryland corporate income tax return or paying Maryland corporate income tax for the years at issue. The circuit court affirmed the Tax Court’s decision on June 11, 2021.

In bringing this appeal, Appellant presents one question for appellate review, which we have rephrased for clarity:<sup>1</sup>

1. Did the Tax Court err as a matter of law in concluding that §4-209 of the Insurance Article also gives rise to a total exemption on income taxes for Appellee’s non-insurance-related income?

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<sup>1</sup> Appellant presents the following question:

Did the Tax Court err as a matter of law in concluding that §4-209 of the Insurance Article, which relates solely to the taxation of an unauthorized insurer’s premium receipts, also gives rise to a total exemption on income taxes for non-insurance-related income, thus relieving [Appellee] of any tax liability on \$2 billion of interest income?

For the following reasons, we affirm the decision of the Circuit Court for Anne Arundel County.

### **FACTUAL & PROCEDURAL BACKGROUND**

Appellee is a Vermont corporation and insurance company that is a wholly owned subsidiary of Macy's. Macy's operates hundreds of department stores across the United States, including Maryland. Appellee is a "captive insurance company"<sup>2</sup> and provides insurance for Macy's subsidiaries and affiliates if they were unable to obtain market coverage for excess earthquake risks. Appellee's premiums were derived from its reinsurance policies. Appellee wrote all insurance policies in Vermont, but insured some risks in Maryland arising from the Macy's retail department stores based in Maryland.

On June 10, 2010, Appellant issued corporate income tax assessments against Appellee for the 1996-2003 tax years, arising from an audit of another Macy's affiliate, MRHI, who claimed tax deductions for interest paid to Appellee. Appellee did not earn Maryland premiums during tax years 1997 through 2003, but had substantial income related to nonpremium related investment income. Appellant noted during the audit that

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<sup>2</sup> Appellee is incorporated in Vermont. Under Vermont law, a "captive insurance company" is defined as:

[A]ny pure captive insurance company, association captive insurance company, sponsored captive insurance company, industrial insured captive insurance company, agency captive insurance company, risk retention group, affiliated reinsurance company, or special purpose financial insurance company formed or licensed under the provisions of this chapter . . .

Vt. Stat. Ann. tit. 8, § 6001(5).

Appellee received more than \$2 billion in interest payments from 1996-2003, but only received \$52 million in insurance premium revenues. Appellee paid premium receipts taxes in Vermont but did not pay premium receipts or corporate income taxes in Maryland. Following the audit, the deductions claimed by MRHI were disallowed. The amount claimed as deductions was added back into MRHI's taxable income and the amount of corporate income received from MRHI was assessed against Appellee. Appellant assessed \$23,831,054.34 in taxes, penalties, and interest against Appellee.

On March 30, 2017, the Tax Court granted Appellee's motion for summary judgment following a series of hearings and appeals, finding that according to "the plain language of the statu[t]e at issue, the [Appellant's] own regulations and other published guidance provided that insurance companies similar to [Appellee] were not subject to the Maryland income tax." Appellant appealed, but the Circuit Court for Anne Arundel County upheld the decision on December 26, 2017.

Appellant appealed the circuit court's decision to this Court, which subsequently remanded the case back to the Tax Court to determine whether Title 4 provides an exception for Appellee. *Comptroller of the Treasury v. Leadville Insurance Company*, No. 2184, (Md. Ct. Spec. App. Mar. 26, 2019). This Court clarified that as an insurance company, Appellee does not hold a certificate of authority from the Maryland Insurance Commissioner and is an "unauthorized insurance company" regulated by Title 4 of the Insurance Article. *Id.* The Tax Court failed to contemplate the implications of Title 4 of the Insurance Article on the Appellee. *Id.* This Court remanded the case back to the Tax Court to decide if Title 4 of the Insurance Article provides a corporate tax exemption to

unauthorized insurance companies like Appellee. *Id.*

On July 13, 2020, the Tax Court addressed the remanded Title 4 issue and granted summary judgment to Appellee, holding the Appellee is exempt from filing a Maryland corporate income tax return or paying Maryland corporate income tax for the years at issue under Md. Code Ann., Ins. §4-209. Appellee asserted that §4-209(b) imposes a premium receipts tax on unauthorized insurance companies and §4-209(c) specifies that “the premium receipts tax under this section is instead of all other State taxes.” The Tax Court held that, based on the language of the statute, the only logical interpretation of §4-209(c) is that unauthorized insurance companies are exempt from “all other State taxes” that could be imposed, including the corporate income tax.

The circuit court affirmed the Tax Court’s decision on June 14, 2021, holding that the plain meaning of §4-209(c) is unambiguous. In their memorandum and opinion, the circuit court considered Appellant’s assertion that, if given its plain meaning, §4-209 would create a “tax shelter for unauthorized insurance companies operating in Maryland that do not generate income from premiums.” Ultimately, the circuit court held that the plain meaning of the statute is a reasonable interpretation of the legislative intent of the General Assembly and any unintended consequences of Md. Code Ann., Ins. §4-209 would be for the General Assembly to remediate.

On June 21, 2021, Appellant filed this timely appeal.

#### **STANDARD OF REVIEW**

The Maryland Tax Court is an independent administrative agency with the jurisdiction

to hear appeals from the final decision, final determination, or final order of a property tax assessment appeal board or any other unit of the State government or of a political subdivision of the State that is authorized to make the final decision or determination or issue the final order about any tax issue.

Md. Code Ann., Tax-Gen. §3-103. As an administrative agency, the review of the Tax Court’s decision is subject to the same standard of review as other administrative agencies. See *Gore Enterprise Holdings, Inc. v. Comptroller*, 437 Md. 492, 503 (2014). In this context, our review looks through the circuit court’s decision and evaluates the decision of the agency. *Id.* (citing *Frey v. Comptroller*, 422 Md. 111, 136–37 (2011)).

“Accordingly, we review the Tax Court’s factual findings and inferences under a substantial evidence standard.” *Frey*, 422 Md. at 137 (citing *People’s Couns. for Baltimore Cty. v. Surina*, 400 Md. 662, 681 (2007)). In that regard, substantial evidence is shown when a determination is supported by such evidence that “a reasonable mind might accept as adequate[.]” *Motor Vehicle Admin. v. Pollard*, 466 Md. 531, 537 (2019). The Court cannot uphold the Tax Court’s decision “on grounds other than the findings and reasons set forth by [the Tax Court].” *Gore*, 437 Md. at 503; *Frey*, 422 Md. at 137. Finally, we review the Tax Court’s conclusions of law *de novo* for correctness. *Classics Chicago, Inc. v. Comptroller of Treasury*, 189 Md. App. 695, 706–07 (2010) (citing *Schwartz v. Maryland Dep’t of Natural Res.*, 385 Md. 534, 554 (2005)). “Determining whether an agency’s ‘conclusions of law’ are correct is always, on judicial review, the court’s prerogative, although we ordinarily respect the agency’s expertise and give weight to its interpretation of a statute that it administers.” *Christopher v. Montgomery County Dep’t of Health and Human Services*, 381 Md. 188, 198 (2004).

## ANALYSIS

### I. Premium receipts tax for unauthorized insurers

At issue is whether, Appellee, as an unauthorized insurance company regulated by Title 4 of the Insurance Article,<sup>3</sup> is exempt from Maryland income tax under Md. Code Ann., Ins. §4-209. Appellant contends that the tax exemption is ambiguous, and the rules of statutory construction require this Court to resolve the ambiguities over tax exemptions in its favor. According to Appellant, tax exemptions are to be strictly construed against the taxpayer, unless the law clearly allows the exemption. Appellant would have this Court deny any tax exemption that casts any doubt, citing *State Dep't of Assessments & Taxation v. Belcher*, 315 Md. 111, 117 (1989) (“[T]o doubt an exemption is to deny it.”).

Appellant further asserts that the Tax Court was mistaken in their conclusion that Md. Code Ann., Ins. §4-209(c) exempts Appellee from paying Maryland income tax because it did not “view the provision as part of the larger statutory scheme and discern the legislative intent.” The fundamental error, as contended by Appellant, is that the Tax Court interpreted the phrase “instead of all other State taxes” to create an exemption of all other state taxes imposed on unauthorized insurers and “fail[ed] to view the provision as part of the larger statutory scheme . . .” Instead, Appellant would have us look to statutory context and legislative intent, which Appellant asserts would allow more clarity on the correct meaning and effect of the statute. In doing so, Appellant believes it would lead this Court to conclude that Appellee must pay the corporate income tax.

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<sup>3</sup> Neither party disputes that Appellee is an unauthorized insurance company.

Appellee contends that Title 4 of the Insurance Article is unambiguous. We agree. Appellee asserts Appellant relies on incomplete legislative history and inapplicable Court of Appeals cases because the legislative history clearly carves out the unauthorized premium taxes for insurance companies and later amended the tax code so that the insurance companies would only be taxed once in Maryland. Further, Appellee argues that unauthorized insurers are exempt from Maryland corporate income tax regardless of whether Appellee pays the premium receipts tax. At oral argument on January 1, 2021, Appellee maintained that they have been subjected to taxes under Title 4, which the court has affirmed.

As explained by the Court of Appeals in *Bottini v. Dep't of Finance*, 450 Md. 177 (2016):

The cardinal rule of statutory construction is to ascertain and effectuate the intent of the General Assembly. As this Court has explained, to determine that purpose or policy, we look first to the language of the statute, giving it its natural and ordinary meaning. We do so on the tacit theory that the General Assembly is presumed to have meant what it said and said what it meant. **When the statutory language is clear, we need not look beyond the statutory language to determine the General Assembly's intent.** If the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute as it is written. **In addition, we neither add nor delete words to a clear and unambiguous statute to give it a meaning not reflected by the words that the General Assembly used or engage in forced or subtle interpretation in an attempt to extend or limit the statute's meaning.** If there is no ambiguity in the language, either inherently or by reference to other relevant laws or circumstances, the inquiry as to legislative intent ends. If the language of the statute is ambiguous, however, then courts consider not only the literal or usual meaning of the words, but their meaning and effect in light of the setting, the objectives, and the purpose of the enactment under consideration.

*Id.* at 187-189 (emphasis added). In pertinent part, Md. Code Ann., Ins. §4-209 states:



...

Premium receipts tax for unauthorized insurers

(b)(1) If an unauthorized insurer effects, continues, or renews insurance on a subject resident, located, or to be performed in the State, the unauthorized insurer shall pay to the Commissioner, before March 1 of the next calendar year, a premium receipts tax of 3% of gross premiums charged for the insurance.

...

Premium receipts tax instead of all other State taxes

(c) The premium receipts tax under this section is instead of all other State taxes.

...

Md. Code Ann., Ins. §4-209(b)(1); (c).

First, our Court must examine the Tax Court’s holding and determine *de novo* if the Tax Court recognized and applied the correct legal principles. *Classics Chicago, Inc. v. Comptroller of Treasury*, 189 Md. App. 695, 706–07 (2010) (citing *Schwartz v. Maryland Dep’t. of Natural Res.*, 385 Md. 534, 554 (2005)); *United Parcel Services, Inc. v. Comptroller of the Treasury*, 69 Md. App. 458, 464 (1986). In their July 13<sup>th</sup>, 2020 Memorandum and Order, the Tax Court held that

The fact that [Appellee] paid no income tax on premiums does not alter the language of Title 4 of the Insurance Articles which imposes a premium receipt tax instead of “all other state taxes.” . . . Section 4-209(c) of the Insurance Article clearly suggests that the Legislature intended that unauthorized insurance companies are taxed on premium receipts under Title 4 of the Insurance Article and are exempt from all other State taxes . . . The language “instead of all other state taxes” in Section 4-209(c) of the Insurance Article is intended to preclude the imposition of Maryland corporate income tax by the [Appellant] . . . [T]he only logical interpretation is that the General Assembly understood that corporate income tax was included in the meaning of ‘all other State taxes’ set out in Section 4-209(c) exemption.

We agree with the Tax Court. This Court must look to the language of the statute and if the words of the statute when construed according to their common and everyday meaning are

clear and unambiguous, we shall give effect to the statute as it is written. *Bottini*, 450 Md. 177, 187-189 (2016). Moreover, just as this Court defers to an agency’s factual findings, “we afford great weight to the agency’s legal conclusions when they are premised upon an interpretation of the statutes that the agency administers . . .” *Frey*, 422 Md. at 138.

The natural and ordinary meaning of the language in 4-209(c) states that the premium receipts tax shall be “instead of *all* other state taxes”. Md. Code Ann., Ins. §4-209(c) (emphasis added). The words in Md. Code Ann., Ins. §4-209(c) are clear and unambiguous. Thus, this Court holds that according to the statute, as written, the premium receipts tax is instead of all other Maryland state taxes.<sup>4</sup>

Next, this Court must examine if there was substantial evidence to support the Tax Court’s factual findings and whether a reasoning mind could have reached the conclusion reached by the Tax Court, consistent with a proper application of the controlling legal principles. *United Parcel Services, Inc.*, 69 Md. App. at 464-65. Under the substantial evidence standard, a reviewing court must uphold an agency’s determination if it is rationally supported by the evidence in the record, even if the reviewing court, left to its own judgment, might have reached a different result. *Travers v. Baltimore Police Dep’t*, 115 Md. App. 395, 419 (1997).

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<sup>4</sup> This Court is bound to review this case under a “plain meaning” standard. This Court acknowledges that it is possible that the plain meaning interpretation of Md. Code Ann., Ins. §4-209(c) may not have the practical effects on unauthorized insurers that align with General Assembly’s intended outcome. However, legislative changes to statutes are a power reserved by the Maryland General Assembly and we invite the Maryland General Assembly to amend Md. Code Ann., Ins. §4-209(c) if deemed appropriate.

In its July 13, 2020 Memorandum and Opinion, the Tax Court reviewed language of the statute at issue, the legislative history of the statutes, the judicial history of the case, and the Appellee’s relevant tax history before it. On remand from this Court, the Tax Court held,

Section 4-209(c) of the Insurance Article clearly suggests that the Legislature intended that unauthorized insurance companies are taxed on premium receipts under Title 4 of the Insurance Article and are exempt from all other State taxes.

The Court has also reviewed the legislative history provided by both parties and finds no basis for the [Appellant]’s position that the income of any unauthorized insurer is subject to Maryland corporate income tax. The General Assembly recodified Article 48A into Section 4-202 of the Insurance Article with the intention of providing that the Maryland Insurance Commissioner and not the [Appellant] would have the power to enforce tax statutes applicable to unauthorized insurers. The language “instead of all other state taxes” in Section 4-209(c) of the Insurance Article is intended to preclude the imposition of Maryland corporate income tax by the [Appellant] . . . the only logical interpretation is that the General Assembly understood that corporate income tax was included in the meaning of “all other State taxes” set out in the Section 4-209(c) exemption. The Court is not persuaded by the dismissive interpretation of the plain meaning of Title 4 or Title 6 of the Insurance Article.

In considering the breadth of evidence before it, this Court holds that the Tax Court, based on the evidence presented before it, came to a sound conclusion in which a reasoning mind could have reached that is consistent with a proper application of the applicable legal standard in giving Md. Code Ann., Ins. §4-209(c) its plain meaning.

#### **CONCLUSION**

Accordingly, we affirm the judgment of the Circuit Court for Anne Arundel County.

**JUDGMENT OF THE CIRCUIT COURT  
FOR ANNE ARUNDEL COUNTY  
AFFIRMED; COSTS TO BE PAID BY THE  
APPELLANT.**