Circuit Court for Montgomery County
Case No. 413285-V

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2626

September Term, 2016

MONTGOMERY COUNTY, MARYLAND

v.

GENON MID-ATLANTIC, LLC

Eyler, Deborah S.,
Kehoe,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Battaglia, J.

Filed: April 24, 2018

*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.

Since the 1970's, appellant, Montgomery County, has levied a Fuel-Energy Tax "on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquified petroleum gas" in the County, with the rates applied to the "quantities measured at the point of delivery for final consumption in the County." Mont. Cnty. Code, § 52-14(a) (2007). Appellee, GenOn Mid-Atlantic, LLC, is the current owner and operator of a power plant located in Dickerson, a community in the northwestern portion of Montgomery County near the Potomac River, which has been in operation, under various owners, since 1959. The entire net output of the Dickerson plant is distributed to an interstate electrical distribution grid operated by a "Regional Transmission Organization," PJM Interconnection, LLC. None of that net output is subject to the Fuel-Energy Tax, as it is exclusively for wholesale distribution, which is exempt and, in any event, subject to pre-emptive federal regulation.[1]

[1] Section 52-14 originally provided that the "tax shall not apply to the transmission or distribution of electricity, gas, steam, coal, fuel oil or liquified petroleum gas in interstate commerce through the county, which are excluded from the taxing power of the county, under the Constitution of the United States." Mont. Cnty. Code (1972), § 52-14(a). As subsequently amended, Section 52-14 now provides that the "tax does not apply to the transmission or distribution of electricity, gas, steam, coal, fuel oil, or liquified petroleum gas in interstate commerce through the County if the tax would exceed the taxing power of the County under the United States Constitution." Mont. Cnty. Code (2014), § 52-14(a)(3); Mont. Cnty. Code, § 52-14(a) (2007).

In *Hughes v. Talen Energy Marketing, LLC*, 578 U.S. __, 136 S. Ct. 1288 (2016), the Supreme Court iterated that, under the Federal Power Act, 16 U.S.C. § 791a *et seq.*, the Federal Energy Regulatory Commission ("FERC") "has exclusive authority to regulate 'the sale of electric energy at wholesale in interstate commerce.'" *Id.* at 1292 (quoting 16 U.S.C. § 824(b)(1)). "But the law places beyond FERC's power, and leaves to the States alone, the regulation of 'any other sale'—most notably, any retail sale—of

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The Dickerson plant also consumes a certain amount of its output for plant operation. That locally consumed output, known as "station power," had never been taxed by the County under the Fuel-Energy Tax until 2013, when the County retroactively sought to impose the tax on the Dickerson plant's "station power,"[2] beginning in 2010, claiming that GenOn had been, in effect, delivering electricity to itself.

After the County, through its Department of Finance, in 2013 presented GenOn with a bill for more than $14 million dollars in back taxes and penalties, beginning in 2010, GenOn filed a petition of appeal in the Maryland Tax Court, challenging the County's new interpretation of Section 52-14. In December of 2015, the Tax Court ruled in favor of GenOn, ordering that the County's assessment be "reversed."[3] The County,

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electricity." *FERC v. Electric Power Supply Ass'n*, 577 U.S. __, 136 S. Ct. 760, 766 (2016) (quoting 16 U.S.C. § 824(b)(1)).

[2] To be more precise, power is the rate of energy production or consumption. The Fuel-Energy Tax, as its name implies, is levied on energy, not power. Thus, the tax would be assessed on the product of average "station power" and the duration of the billing cycle, which is the total energy consumed in plant operation during that period. *See*, *e.g.*, *GCSE Bitesize: Power and energy* (available at http://www.bbc.co.uk/schools/gcsebitesize/science/edexcel/generation_transmission_electricity/electrical_quantitiesrev3.shtml) (last visited Apr. 6, 2018).

[3] The Tax Court has broad power to dispose of cases. *See* Md. Code (1988, 2016 Repl. Vol.), Tax-General Article, § 13-528(a)(1) (providing that "[t]he Tax Court shall have full power to hear, try, determine, or remand any matter before it"); *id.* § 13-528(a)(2) (authorizing the Tax Court to "reassess or reclassify, abate, modify, change or alter any valuation, assessment, classification, tax or final order appealed to" it). Regardless of the nomenclature used in this case, it is clear that the Tax Court disallowed the assessment.

thereafter, filed a petition for judicial review in the Circuit Court for Montgomery County, seeking to overturn the decision of the Tax Court. The circuit court, however, upheld the Tax Court's ruling that Section 52-14 does not authorize the County to levy a tax on "station power." The County then noted this appeal. We shall affirm.

BACKGROUND

The Fuel-Energy Tax was first enacted by the Montgomery County Council in 1971. 1971 L.M.C., ch. 52, § 1. In its original form, Section 52-14 "imposed a tax upon every person transmitting, distributing, manufacturing, producing or supplying electricity, gas, steam, coal, fuel oil or liquefied petroleum gas in the county." Mont. Cnty. Code (1972), § 52-14(a). The tax expressly did not apply, however, "to the transmission or distribution of electricity, gas, steam, coal, fuel oil or liquefied petroleum gas in interstate commerce through the county, which are excluded from the taxing power of the county, under the Constitution of the United States." *Id.* The proscription was further limited by the provisos that the "tax shall not be imposed when the fuels or energies are used to convert to another form of energy which will become subject to tax" and that the "tax shall not be imposed at more than one point in the transmission, distribution, manufacture, production or supply system." *Id.* And, most pertinent for our purposes, Section 52-14(a) provided: "The rates of tax shall be applied to the quantities measured at the point of delivery for final consumption within the county."

Section 52-14 underwent minor revisions over the years so that, in 2010, it provided as follows:

(a) A tax is levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.

The County Council must set the rates for various forms of fuel and energy by resolution adopted according to the requirements of Section 52-17(c). The Council may, from time to time, revise, amend, increase, or decrease the rates, **including establishing different rates for fuel or energy delivered for different categories of final consumption, such as residential or agricultural use.** The rates must be based on a weight or other unit of measure regularly used by such persons in the conduct of their business. The rate for each form of fuel or energy should impose an equal or substantially equal tax on the equivalent energy content of each form of fuel or energy for a particular category of use. The tax does not apply to the transmission or distribution of electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in interstate commerce through the County if the tax would exceed the taxing power of the County under the United States Constitution. The tax does not apply to fuel or energy converted to another form of energy that will be subject to a tax under this Section. The tax must not be imposed at more than one point in the transmission, distribution, manufacture, production, or supply system. **The rates of tax apply to the quantities measured at the point of delivery for final consumption in the County.**

* * *

(c) Every person who transmits, distributes, manufactures, produces, or supplies fuel or energy in the County must pay the tax and report any information required by the Director of Finance for each calendar month on or before the fifteenth day of the following month. With the written permission of the Director of Finance, a person who regularly owes taxes under this Section may pay the tax and make reports on a quarterly basis, on or before the fifteenth day of April, July, October, and January in each year for the preceding 3 months.

* * *

> (f) It shall be the duty of every person liable for the payment to the county of any tax imposed herein to keep and preserve, for a period of two (2) years, such suitable records as may be necessary to determine the amount of such tax as he may have been liable for the county, which records the director of finance shall have the right to inspect at all reasonable times.

* * *

Mont. Cnty. Code (2007), § 52-14 (emphasis added). From 1971 until 2013, the County never imposed on GenOn, or any of the previous owners of the Dickerson plant, the Fuel-Energy Tax under Section 52-14 for "station power," which is consumed on premises and not delivered to another party.

In 2010, Montgomery County Councilmember Roger Berliner introduced a bill to impose a "Carbon Tax" of $5 per ton of carbon dioxide on "any carbon emitter [doing business in Montgomery County] who pollutes over one million tons of carbon dioxide in a calendar year." The bill's stated purpose was "to reduce [the County's] greenhouse gas inventories and shrink its carbon footprint." Councilmember Berliner explained in his proposal to the Council that the Dickerson plant "emits over 3 million tons of carbon dioxide a year," which is "by far the largest single source of greenhouse gas emissions in the County," and that the proposed tax would "generate more than $15 million a year for the County and create an additional economic incentive" for GenOn to reduce emissions. The councilmember further advised that the proposed Carbon Tax would have "**NO DISCERNABLE** impact on PEPCO[4] ratepayers according to [PEPCO] officials who

[4] Potomac Electric Power Company, commonly known as "PEPCO," is "a public utility owned by Exelon Corporation" and provides "energy to more than 842,000 electric (continued)

have analyzed the proposed tax" because GenOn sells its power at a competitive auction and "does not have enough 'market power' to raise the price of power unilaterally." The County Council enacted his proposal, Expedited Bill[5] 29-10, in May of 2010.

In response, GenOn sought an injunction in the United States District Court for the District of Maryland to prevent the enforcement of Bill 29-10 because, it contended, that enactment violated the United States and Maryland Constitutions. *GenOn Mid-Atlantic, LLC, v. Montgomery Cnty., Md.* ("*GenOn I*"), 650 F.3d 1021, 1023 (4th Cir. 2011). "The district court noted that the charge had some indicia of a regulatory fee, but ultimately concluded that it was more like a tax for purposes of the Tax Injunction Act,"[6] and it "dismissed GenOn's suit." *Id.* GenOn noted an appeal to the United States Court of Appeals for the Fourth Circuit.

The Fourth Circuit Court of Appeals recognized that the "only issue" before it was whether Bill 29-10 imposed "a tax that lies outside [its] jurisdiction" or "a fee that lies

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delivery customers in Maryland and the District of Columbia." "About Us," available at https://www.pepco.com/AboutUs/Pages/Default.aspx (last visited Apr. 5, 2018).

[5] An expedited bill "takes effect on the date when it becomes law." Expedited Bill 29-10, Sec. 2 (available online as an attachment to a memorandum, dated May 18, 2010, from Senior Legislative Attorney Michael Faden to the Montgomery County Council) (http://www.montgomerycountymd.gov/council/resources/files/agenda/col/2010/100518/20100518_17.pdf) (last visited Apr. 6, 2018).

[6] The Tax Injunction Act, 28 U.S.C. § 1341, provides that "[t]he district courts shall not enjoin, suspend or restrain the assessment, levy or collection of any tax under State law where a plain, speedy and efficient remedy may be had in the courts of such State."

within it." *Id.* Accordingly, the federal appellate court explained that its focus was on "whether the charge is levied primarily for revenue raising purposes, making it a 'tax,' or whether it is assessed primarily for regulatory or punitive purposes, making it a 'fee.'" *Id.* (citation and quotation omitted). It had no difficulty in concluding that the purported "tax" imposed under Bill 29-10 was actually a "punitive fee" because its "burden [fell] on GenOn alone," as the County Council was "well aware" at the time of enactment.[7] *Id.* at 1024. Moreover, the Fourth Circuit concluded, the Carbon Tax had a "plainly regulatory purpose," namely, "to advance [the County's] program of reducing greenhouse gas emissions." *Id.* at 1025. One week after the Fourth Circuit reversed the District Court and remanded the case, the Montgomery County Council enacted Expedited Bill 24-11, repealing Expedited Bill 29-10, and the County moved to dismiss the federal case.

Having been rebuffed in its attempt to impose a Carbon Tax on GenOn, the Montgomery County Department of Finance, in June of 2013, notified GenOn that it would begin assessing the Fuel-Energy Tax on the "station power" generated and consumed at the Dickerson plant. The Department further announced that the Tax was due retroactively back to 2010, and it sought interest and penalties of 16 per cent per annum. In December of 2013, the Department then sent GenOn a tax bill for

[7] Not only was GenOn "the only entity in Montgomery County expected to exceed" the threshold for exposure to Carbon Tax liability, but the County Council also "determined that GenOn would not be able to pass the cost of the carbon charge on to its Montgomery County customers because its power is sold via competitive auction." *GenOn Mid-Atlantic, LLC, v. Montgomery Cnty., Md.* ("*GenOn I*"), 650 F.3d 1021, 1022-23 (4th Cir. 2011).

$14,640,669.55 for the tax it claimed was due from 2010 through 2013, including interest and penalties.

In January of 2014, GenOn filed a Petition of Appeal in the Maryland Tax Court, challenging the County's assessment of the Fuel-Energy Tax on "station power," as well as its attempt to retroactively impose that levy. In July of 2014, during the pendency of this case in the Tax Court, the County Council, recognizing that the County's new interpretation of Section 52-14 would also apply to those generating electricity for their own use through renewable sources, enacted Bill 22-13, effective August 5, 2014, which amended Section 52-14 to exempt those favored entities from the Fuel-Energy Tax. 2014 L.M.C., ch. 24, § 1. Section 52-14 now provides as follows:

> (a)(1) A tax is levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.
>
> (2) The County Council must set the rates for various forms of fuel and energy by a resolution adopted under Section 52-17(c). The Council may, from time to time, revise, amend, increase, or decrease the rates, **including setting different rates for fuel or energy delivered for different categories of final consumption, such as residential or agricultural use.** Each rate must be based on a weight or other unit of measure regularly used in the conduct of business. The rate for each form of fuel or energy should impose an equal or substantially equal tax on the equivalent energy content of each form of fuel or energy for a particular category of use.
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> (3) The tax does not apply to the transmission or distribution of electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in interstate commerce through the County if the tax would exceed the taxing power of the County under the United States Constitution. The tax does not apply to fuel or

> energy converted to another form of energy that will be subject to a tax under this Section. The tax must not be imposed at more than one point in the transmission, distribution, manufacture, production, or supply system. **The rates of tax apply to the quantities measured at the point of delivery for final consumption in the County.** For an electric company (as defined in state law), the rates of tax apply to the net consumption that is used to calculate each consumer bill.
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> **(4) The tax does not apply to energy that is generated from a renewable source in the County and either used on the site where it is generated or subject to a net energy metering agreement (as defined in state law) with a public utility. Renewable source means a "Tier I renewable source" as defined in Section 7-701(1) of the Public Utilities Article of the Maryland Code or any successor provision.**

* * *

Mont. Cnty. Code (2014), § 52-14 (emphasis added). In November of 2014, just before the scheduled hearing of this case in the Tax Court, the Department sent GenOn a revised bill for $21,664,725.43, reflecting updated "station power" figures in the previous bill as well as an assessment into 2015, along with interest and penalties.

Following a hearing, in December 2015, Judge Walter C. Martz, of the Maryland Tax Court, issued a memorandum and order reversing the original assessment[8] by the

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[8] The Tax Court was aware of the revised assessment; indeed, the November 2014 letter from the County's Department of Finance to GenOn was included among the exhibits in the Tax Court proceeding. At the outset of the December 2014 hearing, GenOn's counsel informed the Judge that "it [had] been agreed with the County that . . . the argument . . . would be on the legality and the application of the tax to [GenOn]" and that the "issue of the amount of the tax" would be addressed in "further proceedings depending on how the Court rules." Because we are affirming the Tax Court's decision

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Department of the Fuel-Energy Tax against GenOn's "station power." The Tax Court found that Montgomery County, in enacting the 2014 amendment to Section 52-14, had "attempted to subject only one taxpayer to the 40[-]year[-]old Energy Tax," namely, GenOn, "the owner of the Dickerson facility." Although the County "acknowledged," in the Tax Court, that it had not "historically" taxed "station power," it claimed to the Tax Court "that its failure for not taxing station power was an omission and not a policy change or new interpretation of the Energy Tax."

Then, turning to the 2013 version of Section 52-14, the Tax Court concluded that "the language of the statute indicates that the Energy Tax is designed to tax only net production of energy and not energy used to produce energy." The Court continued: "An examination of the statute as a whole with specific reference to the fuel or energy 'delivered for different categories of final consumption' suggest[s] that the legislature only intended to tax energy sold to consumers in Montgomery County." Moreover, concluded the Tax Court, the "language of the statute does not provide that the Energy Tax was a tax on gross production," and furthermore, the "legislative history of the statute indicates that Montgomery County never considered 'station power' and it could not have been the County's intent to tax self-supplied station power."

The County then filed a petition for judicial review in the Circuit Court for Montgomery County to challenge the Tax Court's ruling. Following a hearing, Judge

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that the Fuel-Energy Tax cannot be assessed against "station power," the revised assessment is also of no legal force.

David A. Boynton of the Circuit Court for Montgomery County issued a memorandum opinion, affirming the decision of the Tax Court, which prompted the County to note this appeal.

DISCUSSION

The Parties' Contentions

The County contends before us that the Tax Court erred in interpreting Section 52-14 because the provision must be read "as a whole," such that it is "evident," says the County, that the Fuel-Energy Tax is imposed "on every person transmitting, distributing, manufacturing, producing or supplying electricity, gas, steam, coal, fuel oil, or liquified petroleum gas" in Montgomery County, and the rate imposed shall "apply to the quantities measured at the point of delivery for final consumption in the County." From this text, tying the tax to "delivery for final consumption," the County then takes the logical leap that GenOn, in effect, *delivers* "station power" *to itself* and that it therefore may be taxed on it. Moreover, claims the County, the 2014 enactment, by the County Council, of Bill 22-13, which exempts from taxation on-site, self-generated energy from renewable sources, buttresses its argument that the Fuel-Energy Tax may be assessed against GenOn for the "station power" consumed at its Dickerson plant.

According to the County, the Tax Court committed two crucial errors, initially, by having "focused almost exclusively upon the term 'production,'" which led it to conclude, mistakenly, that the Fuel-Energy Tax "is measured based upon the amount of electricity produced (not delivered for final consumption) and that the County sought to tax all the electricity produced at the Dickerson plant." And then, asserts the County, the

Tax Court erroneously "concluded that GenOn was not a 'consumer' of electricity within the meaning of" Section 52-14.

GenOn counters that the County's forced interpretation of Section 52-14 "ignores the plain meaning of the word 'deliver'" and that the 2014 enactment of Bill 22-13 is "irrelevant" to this dispute. It further maintains that the County's purported assignments of error in the Tax Court's decision rest upon its "misrepresent[ations]" of the Tax Court's analysis and that, in any event, the County "entirely fails to justify the retroactive application of the tax to 2010." As for the County's assertion that the Tax Court erred in determining that the Fuel-Energy Tax is based upon the amount of energy produced, GenOn responds that the Tax Court was merely responding to arguments the County had made before that tribunal. Thus, according to GenOn, the Tax Court "understood perfectly well" that the County sought to tax only "station power" at the Dickerson plant and that the levy applied to "'delivered' electricity, not merely produced energy."

Standard of review

"The Maryland Tax Court is an adjudicatory administrative agency," and therefore, its decisions are reviewed in the same manner as those of other administrative agencies. *Gore Enterprise Holdings, Inc. v. Comptroller*, 437 Md. 492, 503 (2014) (citations and quotations omitted). Accordingly, a "final order of the Tax Court is subject to judicial review as provided for contested cases in §§ 10-222 and 10-223 of the State Government Article." Md. Code (1988, 2016 Repl. Vol.), Tax-General Article, § 13-532(a)(1). Thus, "a party who is aggrieved by the final decision" of the Tax Court in a contested case may file an action for judicial review in "the circuit court for the

county where any party resides or has a principal place of business," and a "party who is aggrieved by a final judgment of a circuit court" in an action for judicial review "may appeal to the Court of Special Appeals in the manner that law provides for appeal of civil cases." Md. Code (1984, 2014 Repl. Vol.), State Government Article, § 10-222(a)(1), (c); § 10-223(b)(1).

In reviewing a circuit court's final judgment in an action for judicial review, an appellate court looks through the circuit court's decision "and evaluates the decision of the agency." *Gore*, 437 Md. at 503 (quoting *Frey v. Comptroller*, 422 Md. 111, 136-37 (2011), *cert. denied*, 566 U.S. 905 (2012)). The scope of our review is "narrow," and we may not substitute our judgment for that of the agency. *Id.* at 503-04 (citation omitted).

"Judicial review of administrative action differs," in one crucial respect, "from appellate review of a trial court judgment." *Walker v. Dep't of Hous. & Cmty. Dev.*, 422 Md. 80, 107 (2011) (quoting *United Steelworkers of Am. AFL-CIO, Local 2610 v. Bethlehem Steel Corp.*, 298 Md. 665, 679 (1984)). In reviewing the judgment of a trial court, an "appellate court will search the record for evidence to support the judgment and will sustain the judgment for a reason plainly appearing on the record whether or not the reason was expressly relied upon by the trial court." *Id.* In contrast, in reviewing the final decision of an administrative agency, we "may not uphold the agency order unless it is sustainable on the agency's findings and for the reasons stated by the agency." *Id.* *Accord Frey*, 422 Md. at 137 (noting that "we may not uphold the final decision of an administrative agency on grounds other than the findings and reasons set forth by the agency") (citation omitted).

Our review of the final decision of an administrative agency, thus, generally is more deferential than our review of the final judgment of a trial court. "We review the Tax Court's findings of fact to determine whether there is substantial evidence in the record as a whole to support its findings." *Comptroller v. Jalali*, 235 Md. App. 369, 178 A.3d 542, 547 (2018) (citing *Gore*, 437 Md. at 504). If "a reasoning mind reasonably could have reached the factual conclusion that the agency reached," *Frey*, 422 Md. at 137 (citation and quotation omitted), then we are constrained to uphold such a factual conclusion. *Jalali*, 178 A.3d at 547. Our review of the Tax Court's legal conclusions is less deferential. *Comptroller v. Johns Hopkins Univ.*, 186 Md. App. 169, 181 (2009). But even though we review the Tax Court's legal rulings de novo, *Jalali*, 178 A.3d at 547, we often accord its "interpretation and application of the statute" it administers "considerable weight." *Townsend Baltimore Garage, LLC v. Supervisor of Assessments of Baltimore City*, 215 Md. App. 133, 140 (2013) (quoting *Johns Hopkins*, 186 Md. App. at 182).

Analysis

The instant appeal turns on a question of statutory interpretation. We begin with the observation that "[o]ur review of local laws and ordinances is governed by the same principles as our review of State statutes." *F.D.R. Srour P'ship v. Montgomery Cnty.*, 407 Md. 233, 245 (2009) ("*Srour*") (citations omitted). In applying those principles, we are guided by the "cardinal rule" of statutory interpretation, which is "to ascertain and effectuate the actual intent of those who enacted or adopted the law or ordinance." *Id.* (citation omitted). Our analysis begins "by first looking to the normal, plain meaning of

the language" of the ordinance, reading it "as a whole to ensure that no word, clause, sentence or phrase is rendered surplusage, superfluous, meaningless or nugatory." *Barbre v. Pope*, 402 Md. 157, 172 (2007) (citations and quotations omitted). If that language is "clear and unambiguous, we need not look beyond the [ordinance's] provisions and our analysis ends." *Id.* at 173 (citation omitted). If, however, that language is ambiguous, that is, it is susceptible of "two or more reasonable interpretations," *Stachowski v. Sysco Food Servs. of Balt., Inc.*, 402 Md. 506, 517 (2007) (citation omitted), "we resolve that ambiguity by looking to the [ordinance's] legislative history, case law, and . . . purpose." *Barbre*, 402 Md. at 173 (citations omitted).

Section 52-14 begins with a broad stroke:

> A tax is levied and imposed on every person transmitting, distributing, manufacturing, producing, or supplying electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in the County.

The County Council retains authority to set the tax rates for each type of fuel or energy:

> The Council may, from time to time, revise, amend, increase, or decrease the rates, **including establishing different rates for fuel or energy delivered for different categories of final consumption, such as residential or agricultural use.**

(Emphasis added.) A subsequent part of that statute, however, contains limiting language[9]:

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[9] Other limitations in Section 52-14, such as its inapplicability to either "the transmission or distribution of electricity, gas, steam, coal, fuel oil, or liquefied petroleum gas in interstate commerce through the County if the tax would exceed the taxing power of the County under the United States Constitution" or "fuel or energy converted to another form of energy that will be subject to a tax under this Section," as well as that the (continued)

> **The rates of tax apply to the quantities measured at the point of delivery for final consumption in the County.**

(Emphasis added.)

The language of Section 52-14 clearly predicates the Fuel-Energy Tax upon the "delivery for final consumption" of energy. Section 52-14 does not define the term "delivery" or its parent term, "deliver." We therefore give those terms their "ordinary and natural meaning." *Srour*, 407 Md. at 245 (quoting *Md.-Nat'l Capital Park & Planning Comm'n v. State Dep't of Assessments & Taxation*, 110 Md. App. 677, 689 (1996)).

To "deliver" is defined as "to bring or transport to the proper place or recipient; distribute," as in to "deliver groceries" or to "deliver the mail." *The American Heritage Dictionary of the English Language* 481 (4th ed. 2006). It is further defined as "to hand over, transfer, commit to another's possession or keeping." *The Oxford English Dictionary* 422 (2d ed. 1989). "Delivery" is likewise defined as "[t]he formal act of voluntarily transferring something; esp., the act of bringing goods, letters, etc. to a particular person or place." *Black's Law Dictionary* 521 (10th ed. 2014). And "transfer" is defined as a "conveyance of property or title from one person to another." *Id.* at 1727.

None of these definitions supports the County's interpretation of the terms "delivered" and "delivery" in Section 52-14, according to which GenOn, oxymoronically, would be taxed "based upon the amount of electricity it delivers to itself for final

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tax "not be imposed at more than one point in the transmission, distribution, manufacture, production, or supply system," are not at issue in this appeal.

consumption." Rather, the definitions of "deliver" and "delivery" in standard dictionaries consistently suggest that a thing is delivered from one person to another person. Seemingly in accord with that commonly understood meaning, the County refrained, for more than forty years, from assessing the Fuel-Energy Tax against "station power," which is not delivered to another person.

The County posits, however, that the 2014 Amendment to Section 52-14 sheds light on the meaning of a statute enacted in 1971, but fails to cite any canon of statutory construction, nor are we aware of any, supporting such a notion. Indeed, the idea that the 2014 County Council's actions had any influence upon what its predecessors thought or did more than forty years previously defies credulity. The Tax Court found, in fact, that the County, in enacting the 2014 amendment to Section 52-14, had "attempted to subject only one taxpayer to the 40[-]year[-]old Energy Tax," namely, GenOn; that finding was not clearly erroneous, was entirely consistent with the previous "Carbon Tax" debacle, and further illuminated the punitive motivation underlying the County's actions throughout this dispute, as a result of its loss in the Fourth Circuit.[10]

The Tax Court also did not clearly err in concluding that the legislative history of Section 52-14 does not support the County's strained argument that it had somehow

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[10] We need not address whether the County's retroactive assessment against GenOn was a violation of due process, but we cannot help but observe that, in levying that retroactive assessment, the County reached back further in time than the record-keeping requirements expressly set forth in Section 52-14, *see* Mont. Cnty. Code (2007), § 52-14(f), which is yet additional evidence of the illogic of the County's position.

intended all along to tax the Dickerson plant's "station power" but that it had failed to do so through its own oversight. Moreover, there was undisputed evidence that, throughout the entire period from the 1970's until the present, the only means available for measuring the amount of energy subject to the Fuel-Energy Tax was via the electric grid that connects the public to the output from public utility companies.[11] That evidence comports with the Tax Court's conclusion that "the legislature only intended to tax energy sold to consumers in Montgomery County."

As for the County's assertion that the Tax Court erred in focusing in its decision upon "production" of energy, the County itself raised the issue of "production" in its legal arguments and pleadings before that tribunal. Indeed, it was the County's position

[11] Indeed, during the County Council's deliberations over Expedited Bill 22-13, which expressly exempted from the Fuel-Energy Tax those entities generating electricity for their own use through renewable sources, Stan Edwards, the Chief of the County Division of Environmental Policy & Compliance of the Department of Environmental Protection, testified:

> Under current law, the fuel-energy tax applies to all electricity that is delivered for final consumption in the County, and the tax is imposed on persons who distribute, produce, transmit, manufacture or supply electricity in the County. When the tax was adopted in 1971, electricity subject to taxation was generated by large, fossil fuel-based power plants and distributed to users in the County by regulated public utilities. To a large extent, this remains true today. However, with the advent of new technologies and financing mechanisms for solar photovoltaic systems, a number of homes and businesses in the County are now generating electricity on-site, supplementing the power delivered by their utilities. Because this on-site power does not come through the utility grid, it has not historically been taxed.

that GenOn should be liable for the "tax on the electricity it produces and consumes at the Dickerson Plant" and that its tax liability should be computed by comparing its gross production to its net production to derive its station power, which is "subject to the [Fuel-Energy Tax]."[12] The Tax Court did not err in responding to the County's own arguments.

Because the Tax Court's factual findings were not clearly erroneous, and its legal conclusions were correct, we affirm the judgment of the circuit court, upholding the ruling of the Tax Court.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY MONTGOMERY COUNTY.

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[12] During the hearing before the Tax Court, the County's Attorney stated:

> The net production is their gross production minus their station power. So the station power never gets taxed because it's reduced, it reduces the gross production. So the net amount is subject to the county's fuel energy tax because Dickerson's wholesale buyers resell the electricity at retail. So it's picked up at that point.
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> In this case GenOn has said it never leaves the plant so it can't get picked up at another point in the system. The station power never gets taxed anywhere, it's there, it's used, it's consumed, it's produced and it never leaves the plant so it escapes the tax.