Circuit Court for Baltimore City
Case No.: 24-C-15-000847

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1645

September Term, 2016

POTOMAC EDISON COMPANY

v.

MARYLAND COMPTROLLER OF THE TREASURY

Meredith,
Arthur,
Eyler, Deborah S.*
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 29, 2019

* Deborah S. Eyler participated in the conference of this case while an active member of this Court; and participated in the adoption of this opinion as a specially assigned member of this Court.

This is an appeal from a decision of the Maryland Tax Court, which denied the request made by Potomac Edison Company ("Potomac Edison"), appellant, for a refund of sales and use taxes it paid between 2003 and 2007 with respect to equipment it had purchased for use in transmitting and delivering electricity to its customers in Maryland. When Potomac Edison petitioned for judicial review in the Circuit Court for Baltimore City, the decision of the Tax Court in favor of the Maryland Comptroller of the Treasury ("the Comptroller"), appellee, was affirmed. Potomac Edison then noted an appeal to this Court, and presents the following question:

> Maryland defines a "production activity" as "assembling, manufacturing, processing, or refining tangible personal property for resale," and further provides that electricity is tangible personal property for purposes of the production activity exemption. Does [Potomac Edison]'s processing of electricity in its transmission and distribution system qualify as a production activity?

For the reasons that follow, we conclude that the Tax Court erred in ruling as a matter of law that the processing of electricity that occurs between the generating power plant and the site of the end users is not a production activity that qualifies for an exemption from Maryland sales and use taxes for certain equipment used in processing electricity for resale. We will remand the case for further proceedings.

FACTS AND PROCEDURAL HISTORY

According to testimony presented to the Tax Court, Potomac Edison is a public utility that "operates and maintains a transmission and distribution system for the purpose of processing and sale of electricity to its customers." It is a subsidiary of FirstEnergy

Corporation, and operates in Maryland, Virginia, and West Virginia.[1] Potomac Edison does not own the power plant at which the electricity it supplies is generated, and that generating station is not located in Maryland, but Potomac Edison owns the equipment by which the electricity travels from the power plant to Potomac Edison's Maryland customers, including conductors, substations, circuit breakers, switches, transformers, capacitors, cables, wires, and related equipment that combine to make up its transmission and distribution system.

Potomac Edison's witnesses explained that the voltage of electricity generated at the power plant is too high to be utilized by a residential or a typical commercial customer. The voltage of the electricity that is usable in the homes of most residential customers is typically 120 or 240 volts. The voltage of the electricity when it leaves a generating power plant and enters Potomac Edison's transmission and distribution system is between 20 to 40 kilovolts. To effectively transmit electric power requires high voltages. Therefore, the voltage of the electricity that leaves the power plant is "stepped up" by a transformer and other equipment to enable it to more efficiently travel over long distances, and subsequently, the voltage is "stepped down" by a transformer and other equipment before it enters a customer's home or place of business.

Potomac Edison's contention is that the electricity a consumer purchases to use is not simply the same product as the electricity generated at the power plant because the

[1] During the years for which the company sought a refund of sales and use taxes, Potomac Edison was a subsidiary of Allegheny Energy, doing business as Allegheny Power.

electricity that leaves the power plant must be continually processed by a variety of equipment in Potomac Edison's transmission and distribution system in order for Potomac Edison to deliver usable electricity to its customers. Potomac Edison argues, therefore, that the equipment in its transmission and distribution system is used directly in a "production activity" which qualifies for an exemption from sales and use taxes.

During the period under consideration in this claim for a refund (and currently), the term "production activity" has been defined in Maryland Code (1988, 2016 Repl. Vol.), Tax-General Article ("TG"), § 11-101(f), as follows:

> (1) **"Production activity" means**:
>
> (i) except for processing food or a beverage by a retail food vendor, assembling, manufacturing, **processing, or refining tangible personal property for resale**; [or]
>
> (ii) generating electricity for sale or for use in another production activity; [or] . . . .
>
> * * *
>
> (2) "Production activity" does not include:
>
> (i) servicing or repairing tangible personal property, except for servicing or repairing production machinery or equipment;
>
> (ii) maintaining tangible personal property other than textile products for rental and production machinery and equipment, except for maintaining tangible personal property in providing the taxable service of commercial cleaning or laundering of textiles for a buyer who is engaged in a business that requires the recurring service of commercial cleaning or laundering of the textiles;
>
> (iii) providing for the comfort or health of employees; or

(iv) providing for quality control.

(Emphasis added.)

In turn, the defined term "production activity" is a key factor in determining whether the purchase of particular personal property used in connection with processing tangible personal property for resale is exempt from Maryland sales and use tax pursuant to TG § 11-210(b), which states:

> **(b) The sales and use tax does not apply to a sale of:**
>
> **(1) tangible personal property used directly and predominantly in a production activity at any stage of operation on the production activity site** from the handling of raw material or components to the movement of the finished product, if the tangible personal property is not installed so that it becomes real property; . . . .

(Emphasis added.)

By statute: "'Tangible personal property' includes: . . . electricity[.]" TG § 11-101(k)(2)(iii). The question presented in this case is whether the activity performed by Potomac Edison with respect to the electricity it receives from the generating plant and then resells and delivers to end users in Maryland meets the statutory definition of a "production activity" such that *the equipment Potomac Edison purchased to perform that activity* is exempt from sales and use tax pursuant to TG § 11-210(b).

On April 1, 2011, Potomac Edison filed, with the Compliance Division of the Office of the Comptroller, a Sales and Use Tax Refund Application ("the refund application"), seeking a refund of sales and use taxes it had paid between August 1, 2003, and July 31, 2007, in the amount of $2,684,680.37. *See* COMAR 03.06.01.32-2G(2),

which states: "The buyer may claim a refund for taxes paid on property that in fact satisfies all the tests and limitations of this regulation [relative to tangible personal property used in a production activity]."

On October 11, 2011, the Comptroller's office notified Potomac Edison that its April 1 refund application was denied. The notice provided the following explanation:

> The above-described application for a refund of sales and use tax has been denied.
>
> This claim requests the Maryland sales and use tax you paid to the State of Maryland on the monthly sales tax returns. The tax was accrued on purchases made from numerous vendors for the period from August 2003 through July 2007. You claim the production exemption on all equipment used to transmit and distribute electricity.
>
> The equipment used to generate electricity at the "power plant" is exempt and is not a part of this claim. However, **the equipment used then to transmit and distribute that electricity to the consumer does not qualify for the production exemption and is denied.**
>
> If you are not in agreement with the decision on your claim for refund, you should request an informal hearing in writing within 30 days from the date of this letter. Failure to do so will result in this decision becoming final.

(Emphasis added.)

Potomac Edison requested a hearing. After the informal hearing, the Comptroller issued a Notice of Final Determination that affirmed the denial of Potomac Edison's refund application. The Notice stated that a hearing had been conducted on January 10, 2012, and that each party had called witnesses, who laid out each party's case as follows:

> [The Comptroller's witness, audit manager William Cole,] stated that the Comptroller's office disagrees with the taxpayer's claim that all equipment from the site of electricity generation to the point of final

delivery to the customer is exempt from sales and use tax. According to Mr. Cole, the Comptroller's office denied that taxpayer's request for refund of sales and use tax paid on items such as conductor cables, transformers, substation equipment, distribution equipment, telephone poles, hardware to connect equipment, and process & quality control equipment.

During the hearing, Mr. Cole stated that **the Comptroller's position is that the output from the initial point of generation is electricity and thus, only the equipment used to generate electricity is exempt from sales and use tax**.

* * *

Mr. Cole also examined the website of Baltimore Gas and Electric (BGE), a subsidiary of Constellation Energy Group. According to BGE's website, BGE distinguishes the supply of electricity from the distribution of electricity. Mr. Cole stated that the electricity is supplied from power plant generators whereas is [sic] electricity is delivered by a network of power lines.

Mr. Cole stated that the taxpayer recently merged into Allegheny Energy. Based on his review of Allegheny Energy's website, [Mr. Cole] located a report entitled "Coal to Kilowatts" that describes how coal is converted into electricity and then transmitted and distributed to customers. According to the report, electricity is fully produced and ready for distribution at the power stations.

* * *

[Potomac Edison's counsel argued that] [t]he taxpayer is engaged in a production activity when it processes electricity for sale to Maryland customers. The taxpayer sells electricity to those customers based on kilowatts. To summarize, kilowatts is calculated by voltage multiplied [by] current over time.

[Potomac Edison's counsel] stated that electricity is initially generated at the power plant. However, the taxpayer also manufactures or processes the electricity into a usable form for customers. Stated otherwise, the conductor cables, transformers, substation equipment, and related items process electricity into a finished product. [Potomac Edison's counsel] agreed that the equipment transports electricity to customers. However, [counsel] believes that the production activity exemption applies to

equipment that both transports and processes electricity for sale to customers.

[Potomac Edison] presented two expert witnesses to testify at the hearing: Paul Ashy and Dr. Ewald Fuchs. . . .

Mr. Ashy and Dr. Fuchs' testimony can be summarized as follows. Electricity has two components, voltage and current. The power generator creates voltage and the conductor cable processes electric current by connecting the voltage generator with the customer's load. The movement of electrons on the conductor cable produces electricity used by Maryland customers.

The taxpayer believes that the production activity exemption applies to substation equipment, conductor cables, transformers, cross arms, poles, and related items for the following reasons. The conductor cables, ground wires, cable connectors, bus bars, [and] clamp connectors are used to process electric current along the taxpayer's T & D [transmission & distribution] system. Without the aforementioned conductor equipment, there is no current. Without current, there is no electricity. As such, electricity is continuously being generated by the conductor equipment.[2]

The taxpayer also believes that the production activity exemption applies to transformers. According to the taxpayer's witnesses, the transformers are used to "step-down" or "step-up" the voltage of the electricity. A step-down or step-up is necessary in order to transport the electricity over long distances or alter the product for use by the customer. As such, the transformers are integrally connected to the electricity conductive process and alter the product. Thus, [the taxpayer argues] transformers should qualify for the production activity.

The taxpayer also employs substations to reduce voltage and process current. The taxpayer purchases conductive equipment, switches, relays, circuit breakers, transformers, and related equipment for use in Maryland substations.

[2] To whatever extent Potomac Edison claimed it qualified for the exemption pursuant to TG § 11-101(f)(1)(ii), applicable to "generating electricity for sale," it has abandoned that claim. Its question presented in this Court raises only the issue of whether its "processing of electricity in its transmission and distribution system qualif[ies] as a production activity."

> The [taxpayer's] witnesses and representatives also stated that the production activity exemption should extend to distribution equipment such as lightning arrestors, insulators, fault indicators, meters, and related items. The distribution items are attached to production activity equipment and protect and support said equipment. Arrestors protect equipment from lightning strikes. Insulators separate the conductor from support structures as to avoid the electricity from going into the ground. Meters measure the voltage and current distributed to customers. As such, the witnesses and representatives stated that all of the distribution equipment is production activity equipment.

The hearing officer denied the refund application, finding that, although "the equipment at issue may change the voltage or current of the electricity, [it] does not produce electricity within the meaning of the Tax-General Article."

Potomac Edison noted an appeal to the Maryland Tax Court. By agreement, the case was bifurcated, and the phase to determine whether any portion the equipment purchased by Potomac Edison was eligible for the production activity exemption was heard first. Potomac Edison presented the same two witnesses who were mentioned in the Comptroller's Notice of Final Determination, *i.e.*, Paul Ashy and Dr. Ewald Fuchs. They both described the processing performed by Potomac Edison between the point at which it receives the electricity from the generating plant and the subsequent delivery of usable electricity to Potomac Edison's customers. The Comptroller's office presented one witness, Deborah Gorman, the assistant director of its compliance division, whose testimony was primarily related to the manner in which the Comptroller's office interpreted the pertinent statutes and regulations.

On January 22, 2015, the Tax Court issued a two-page memorandum and order rejecting Potomac Edison's claim for a refund. The opinion explained:

This case arises from a dispute between the Comptroller of the Treasury ("Comptroller") and the Potomac Edison Company ("Potomac Edison") regarding a claim for refund of sales and use tax for machinery and equipment. The appeal was bifurcated for efficiency reasons and the present issue for the Court to decide is whether the transmission of electricity qualifies as a production activity under Md. Code Ann., Tax-General Article [§] 11-210(b)(1):

> "(b) Production generally. – The sales and use tax does not apply to a sale of:
>
> (1) tangible personal property used directly and predominantly in a production activity at any stage of operation on the production activity site. . . "

Potomac Edison contends that certain items it purchased in connection with the transmission of electricity in Maryland should be exempt from sales and use tax. Potomac Edison's expert opined that the transmission [sic] of electricity that takes place in a generation plant continues in the transmission lines that delivers [sic] electricity to customers. The Court disagrees with the Petitioner's expert opinion and finds that the issue to be [sic] primarily one of statutory interpretation in which the facts are undisputed.

Based on the statutory interpretation of the evidence presented, the Court disagrees with Potomac Edison's contention that the "processing" that takes place in the course of transmitting electricity is similar to the "processing" that takes place in the generation of electricity. "Production activity" is defined under Tax-General Article [§] 11-101(f)(1)(i) as "except for processing food or a beverage by a retail food vendor, assembling, manufacturing, processing, or refining tangible [personal] property for resale". **The transmission and distribution of electricity to consumers is not a production or manufacturing activity and thus does not qualify as manufacturing or processing under Tax-General Article 11-210(b).**

A review of the various Maryland tax statutes supports Comptroller's position that generating electricity and processing electricity are separate and distinct. The Court agrees with the Comptroller that the Tax-General Article distinguishes between "processing" and "generating" electricity. Following the deregulation of electricity, there was a concern that the definition of "Taxable price" in

> Tax-General Article [§] 11-101(l)(3)(i)(1) would render changes [sic] for transmission of electricity exempt from tax. To address that concern, legislation was enacted that narrowed the definition of "production activity" in Tax-General Article [§] 11-101(f)(1)(ii) to "generating electricity for sale or for use in another production activity" and expanded the definition of "taxable service" in Tax-General Article [§] 11-101(k)(11) to include "a transportation service for transmission, distribution, or delivery of electricity or natural gas, if the sale or use of the electricity or natural gas is subject to the sales and use tax." **Thus, the transmission of electricity is a taxable service and not a production activity** and the issues remaining due to bifurcation need not be addressed.

(Emphasis added.)

Potomac Edison filed a petition for judicial review in the Circuit Court for Baltimore City. That court affirmed the Tax Court. This appeal followed.

STANDARD OF REVIEW

The standard for appellate review of an appeal from the Tax Court was described as follows by the Court of Appeals in *NIHC, Inc. v. Comptroller of Treasury*, 439 Md. 668, 682-83 (2014):

> As the Tax Court is an adjudicative administrative body of the executive branch, its decisions are subject to the same standards of judicial review as adjudicatory decisions of other administrative agencies. *Gore Enterprise Holdings, Inc. v. Comptroller,* 437 Md. 492, 503, 87 A.3d 1263 (2014); *see* TG § 13-532(a)(1). A reviewing court may uphold a Tax Court decision only on the findings and reasons given by the Tax Court. *Gore Enterprise*, 437 Md. at 503, 87 A.3d 1263. Findings of fact are reviewed on a deferential "substantial evidence" standard — *i.e.*, whether the record contains evidence that reasonably supports the agency's conclusion. *Id.* at 504, 87 A.3d 1263. A reviewing court also accords great weight to the Tax Court's interpretation of the tax laws, but reviews its application of case law without special deference. *Id.* at 504-05, 87 A.3d 1263.

The Court of Appeals described appellate review of rulings of the Tax Court this way in *Frey v. Comptroller of Treasury*, 422 Md. 111, 136-38, 182-83 (2011):

Moreover, because we are reviewing the decision of an administrative agency, our review looks "through the circuit court's and intermediate appellate court's decisions . . . and evaluates the decision of the agency." *People's Counsel for Baltimore County v. Surina*, 400 Md. 662, 681, 929 A.2d 899, 910 (2007). As mentioned, we may not uphold the final decision of an administrative agency on grounds other than the findings and reasons set forth by the agency. *Evans v. Burruss*, 401 Md. 586, 593, 933 A.2d 872, 876 (2007); *Dep't of Health & Mental Hygiene v. Campbell*, 364 Md. 108, 123, 771 A.2d 1051, 1060 (2001) ("[A]n appellate court will review an adjudicatory agency decision solely on the grounds relied upon by the agency.").

Although we retain the power to review administrative decisions, judicial review of these decisions is narrow. We shall not "substitute [our] judgment for the expertise of those persons who constitute the administrative agency." *People's Counsel for Baltimore County v. Loyola College in Md.*, 406 Md. 54, 66, 956 A.2d 166, 173 (2008) (internal quotation marks omitted) (quoting *United Parcel Serv., Inc. v. People's Counsel for Baltimore County*, 336 Md. 569, 576–77, 650 A.2d 226, 230 (1994)). Accordingly, we review the Tax Court's factual findings and the inferences drawn therefrom under a substantial evidence standard. *Surina*, 400 Md. at 681, 929 A.2d at 910; *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571, 873 A.2d 1145, 1154 (2005) ("A reviewing court should defer to the agency's fact-finding and drawing of inferences if they are supported by the record." (quoting *Bd. of Physician Quality Assurance v. Banks*, 354 Md. 59, 67-69, 729 A.2d 376, 380-81 (1999))). Under this standard, we consider "whether a reasoning mind reasonably could have reached the factual conclusion the agency reached." *State Ins. Comm'r v. Nat'l Bureau of Cas. Underwriters*, 248 Md. 292, 309, 236 A.2d 282, 292 (1967); *see also Surina*, 400 Md. at 681, 929 A.2d at 910 (explaining that under the substantial evidence standard courts examine whether the administrative record contains "such evidence as a reasonable mind might accept as adequate to support a conclusion") (internal quotation marks omitted) (quoting *Mayor and Aldermen of Annapolis v. Annapolis Waterfront Co.*, 284 Md. 383, 398, 396 A.2d 1080, 1089 (1979)).

Just as we defer 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 and the regulations promulgated for that purpose. *Surina*, 400 Md. at 682, 929 A.2d at 911; *Noland*, 386 Md. at 572, 873 A.2d at 1154. This deference, however, "extends only to the application of the statutes or regulations that the

> agency administers." *Loyola College*, 406 Md. at 67, 956 A.2d at 174. When an agency's decision is necessarily premised upon the "application and analysis of caselaw," that decision rests upon "a purely legal issue uniquely within the ken of a reviewing court." *Id.* at 67-68, 956 A.2d at 174.
>
> * * *
>
> Our rules of statutory interpretation are well-settled. **When construing a statute, our primary objective is to ascertain the legislature's intent as conveyed by the plain meaning of the text.** *Kushell v. Dep't of Natural Res.*, 385 Md. 563, 576, 870 A.2d 186, 193 (2005). To accomplish this goal, we assign each word its "ordinary and natural meaning," *O'Connor v. Baltimore County*, 382 Md. 102, 113, 854 A.2d 1191, 1198 (2004), and we read the text "so that no word, clause, sentence or phrase is rendered superfluous or nugatory," *Chow v. State*, 393 Md. 431, 443, 903 A.2d 388, 395 (2006) (internal quotation mark omitted) (quoting *Kushell*, 385 Md. at 577, 870 A.2d at 193). Moreover, we do not interpret the relevant provisions in isolation. "Rather, we analyze the statutory scheme as a whole and attempt to harmonize provisions dealing with the same subject so that each may be given effect." *Id.*, 903 A.2d at 395 (quoting *Kushell*, 385 Md. at 577, 870 A.2d at 193); *accord Smack v. Dep't of Health & Mental Hygiene*, 378 Md. 298, 304–05, 835 A.2d 1175, 1178–79 (2003) (requiring a statute be given a reasonable interpretation when there is no ambiguity in the language). **Where there is no ambiguity and the words of a statute are clear, we "simply apply the statute as it reads.**" *Gillespie v. State*, 370 Md. 219, 222, 804 A.2d 426, 427 (2002); *accord Whiting–Turner Contracting Co. v. Fitzpatrick*, 366 Md. 295, 301, 783 A.2d 667, 670 (2001) (**acknowledging that, when a statute is unambiguous, the court's inquiry ends with the text**).

(Emphasis added.)

DISCUSSION

As the opinion of the Tax Court explains, the denial of the refund application in this case was based primarily upon statutory interpretation, with particular emphasis on the statutes' use of the terms "production activity," "processing," "generating electricity," and "transmission." The Tax Court relied most heavily upon the Comptroller's historical

distinction between the generation of electricity and the transmission of electricity to end users. In doing so, the Tax Court appears to have disregarded plain language of the applicable statutory provisions.

The Comptroller agrees with Potomac Edison that there is an exemption from sales and use taxes for purchases of "tangible personal property used directly and predominantly in a production activity at any stage of operation on the production activity site from the handling of raw material or components to the movement of the finished product, if the tangible personal property is not installed so that it becomes real property[.]" TG § 11-210(b)(1). That much is beyond dispute. The parties disagree, however, as to whether the operations performed by Potomac Edison that are necessary for it to resell the electricity it purchases from the generating entity fall within the statutory definition of being "a production activity."[3]

As noted above, for purposes of this exemption from sales and use tax, a "production activity" is defined in TG § 11-101(f)(1) as follows:

(f)(1) **"Production activity" means**:

[3] COMAR 03.06.01.32-2.C.(1) provides a definition of the production activity exemption similar to the wording of TG § 11-210(b)(1); the regulation states:

> The sales and use tax does not apply to a sale or lease of:
>
> (1) Tangible personal property used directly and predominantly in a production activity at any stage of operation on the production activity site, from the handling of raw material components to the movement of finished product, if the tangible personal property is not installed so that it becomes real property; . . . .

(i) except for processing food or a beverage by a retail food vendor, assembling, manufacturing, **processing, or refining tangible personal property for resale**;

(ii) generating electricity for sale or for use in another production activity . . . .

* * *

(2) "Production activity" does not include:

(i) servicing or repairing tangible personal property, except for servicing or repairing production machinery or equipment;

(ii) maintaining tangible personal property other than textile products for rental and production machinery and equipment, except for maintaining tangible personal property in providing the taxable service of commercial cleaning or laundering of textiles for a buyer who is engaged in a business that requires the recurring service of commercial cleaning or laundering of the textiles;

(iii) providing for the comfort or health of employees; or

(iv) providing for quality control.

(Emphasis added.)

Electricity is defined as "tangible personal property" in Maryland. TG § 11-101(k)(2)(iii). It appears to us that, if the text of TG § 11-101(f)(1)(i) is given its plain meaning, the activity performed by Potomac Edison falls squarely within the definition of "production activity" (which "means . . . processing or refining tangible personal property [in this case, electricity] for resale").[4]

[4] COMAR 03.06.01.32-2B.(1) provides an essentially identical definition of "production activity," stating:

(a) "Production activity" means:

(continued …)

Although there is a statutory definition of the term "production activity," the Tax-General Article contains no statutory definition of the term "processing" as used in TG § 11-101(f)(1)(i). WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY OF THE ENGLISH LANGUAGE UNABRIDGED 1808 (1976) provides the following definition of the verb "process" which seems to apply in the context of TG § 11-101(f)(1)(i):

> **2 :** to subject to a particular method, system, or technique of preparation, handling, or other treatment designed to effect a particular result **:** put through a special process: as **a** (1) **:** to prepare for market, manufacture, or other commercial use by subjecting to some process . . . (2) **:** to make usable by special treatment . . . .

The parties disagree about the nature and extent of "processing" that takes place between the point at which the electricity leaves the generating plant and its delivery by Potomac Edison to the meter of an end user, but there appears to be no genuine dispute of the fact that, within the transmission and delivery network, the voltage of the electricity is stepped up and stepped down, as needed, to ensure that it travels long distances and is made available to Potomac Edison's customers at a voltage that is appropriate for the intended residential or commercial use. We fail to discern a rational basis for the Tax Court to rule as a matter of law that this processing activity does not fall within the statutory definition of a "production activity."

> (i) **Assembling**, manufacturing, **processing**, or refining **tangible personal property for sale or resale**, except for processing food or beverages by a food vendor; . . . .

(Emphasis added.)

One argument offered by the Comptroller, and accepted by the Tax Court, is that a separate subsection, namely, TG § 11-101(f)(1)(ii), specifically includes the act of "generating electricity" within the definition of "production activity." This is the apparent basis for the Tax Court stating in its opinion: "The Court agrees with the Comptroller that the Tax-General Article distinguishes between 'processing' and 'generating' electricity." Continuing this analysis, the Tax Court also observes that the General Assembly expressly provides in TG § 11-101(k)(11) that "a transportation service for transmission, distribution, or delivery of electricity" is a "taxable service." But this is neither disputed nor useful information; Potomac Edison is not claiming that *its services* are exempt from sales tax. Its claim is that the processing of electricity it performs in order to transmit, distribute, and deliver electricity meets the statutory definition of a "production activity," and therefore, the equipment it must purchase to perform that production activity should be exempt from sales and use tax.

But the Tax Court focused upon the fact that Potomac Edison's services were a "taxable service" within the definition of TG § 11-101(k)(11) to support the conclusion at the end of its opinion, stating: "**Thus, the transmission of electricity is a taxable service and not a production activity** and the issues remaining due to bifurcation need not be addressed." (Emphasis added.) The conclusion does not follow from the premises. The fact that an activity may be taxable as a service does not negate the possibility that there are production activities that must be performed in order to provide the service.

We recognize that the Tax Court is entitled to deference with respect to its interpretations of the tax statutes it administers. *Frey, supra*, 422 Md. at 138. We are "mindful that tax-exemption statutes are to be strictly construed." *Comptroller of Treasury v. Disclosure, Inc*., 340 Md. 675, 683 (1995). And, "we remain mindful that if any real doubt exists as to the propriety of [a tax] exemption that doubt must be resolved in favor of the State." *Green v. Church of Jesus Christ of Latter-Day Saints*, 430 Md. 119, 135 (2013) (internal quotation marks and citations omitted).

At the same time, we are being asked to interpret statutory language that appears plain and unambiguous. As noted above, when the words of a statute are clear, "the court's inquiry ends with the text." *Frey, supra*, 422 Md. at 183.

There is no dispute that electricity is defined to be a type of tangible personal property. TG § 11-101(k)(2)(iii). There is no dispute that equipment that is purchased for use directly and predominantly in a "production activity" is exempt from sales and use tax. TG § 11-210)b)(1). There is no dispute that the term "production activity" is defined to "mean": "**processing, or refining tangible personal property for resale**." TG § 11-101(f)(1)(i) (emphasis added). *Accord* COMAR 03.06.01.32-2.C(1). And, although the Comptroller may have viable arguments that not *all* of the equipment as to which Potomac Edison claimed a refund was used "directly and predominantly" in "processing" the electricity it was selling, we perceive no genuine dispute that some degree of processing was required between the point at which Potomac Edison received the

electricity from the generating plant and the point of delivery to its residential and commercial customers.

The Tax Court erred as a matter of law in ruling that, based upon its interpretation of the pertinent statutes, *none* of the equipment Potomac Edison had purchased was entitled to the sales tax exemption applicable to personal property used in "processing" tangible personal property [*viz*., electricity] for resale. "To construe these provisions otherwise would be 'contrary to the plain language of a statute' and tantamount to 'judicially insert[ing] language to impose exceptions, limitations or restrictions not set forth by the legislature,' a practice strictly prohibited under our rules of statutory construction." *Frey*, *supra*, 422 Md. at 185.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED; CASE REMANDED TO THAT COURT WITH INSTRUCTIONS TO REMAND THE CASE TO THE MARYLAND TAX COURT FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY THE COMPTROLLER.