

No. A06-1645

STATE OF MINNESOTA
IN SUPREME COURT

Custom Ag Service of Montevideo, Inc.,

Relator,

vs.

Commissioner of Revenue,

Respondent.

**RESPONDENT'S BRIEF
AND APPENDIX**

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LEGAL ISSUE

Whether grain bins used to create grain drying systems are properly subject to tax where “farm machinery” is exempt from tax but grain bins “shall not be considered to be farm machinery?”

The Tax Court held that grain bins are taxable.

Morton Bldgs., Inc. v. Comm’r of Revenue, 488 N.W.2d 254 (Minn. 1992)

Minn. Stat. § 297A.01, subd. 15 (2000)

Minn. Stat. § 297A.14 (2000)

STATEMENT OF THE CASE

By Order dated July 1, 2004, Respondent Commissioner of Revenue (“the Commissioner”) upheld an earlier Order assessing unpaid use tax against Relator Custom Ag Service of Montevideo, Inc., for the years 2000 through 2002. Custom Ag Appendix (“C.A. App.”) at 139. On August 27, 2004, Custom Ag appealed to the Minnesota Tax Court, alleging that the Commissioner erred in imposing use tax on grain bins used to create grain drying systems it sold to farm customers because the bins, having become part of an integral grain drying system, were exempt “farm machinery.” C.A. App. 1. The parties filed a Joint Stipulation of Facts and cross-motions for summary judgment. C.A. App. 137. On August 2, 2006, the Minnesota Tax Court, the Honorable Sheryl A. Ramstad presiding, issued an Order denying Custom Ag’s motion and granting summary

judgment to the Commissioner. C.A. App. 136. Custom Ag filed a timely Petition for Writ of Certiorari with this Court on August 31, 2006. C.A. App. 149-51.

STATEMENT OF FACTS

Custom Ag is a Minnesota company. C.A. App. 127. Custom Ag does not engage in any agricultural production or farming; rather, it sells a “grain drying system” to farmer customers. C.A. App. 127-28. Custom AG installs systems using equipment purchased from its suppliers. *Id.* It sometimes combines new equipment with existing equipment at the farmer’s site. C.A. App. 9, 128.

The “grain drying system” that Custom Ag installs includes a grain bin that functions as a wet holding bin; a grain dryer; a grain bin that functions as a cooling or conditioning bin; and additional equipment (outlined below). C.A. App. 81-82. The grain dryer “is the component between” the two bins. C.A. App. 82. The two bins are outfitted with perforated floors, fans or vents, and conveyors that move corn between the bins and the intervening dryer. C.A. App. 81-82 (describing equipment); C.A. App. 28-36 (listing equipment). A depiction of a grain drying system is contained in an article cited by Custom Ag’s expert. *See* Respondent’s Appendix (“R.A.”) at 1, 3-4.¹

Custom Ag purchased the component parts for the system from Brock Grain Systems/CTB, Inc. (“Brock”). C.A. App. 18. Custom Ag did not pay sales tax to Brock

¹ The article was submitted to the Tax Court as part of the Affidavit of Rita Coyle DeMeules, C.A. App. 106. Custom Ag does not use the “hopper bins” depicted in the system shown on page 3 of this article because “the volume of grain does not make hopper bins economically feasible.” C.A. App. 114. Apart from this distinction, the figure at page 3 accurately depicts the general layout of a grain drying system.

on its equipment purchases. C.A. App. 128. Depending on the equipment already at the farmer's site, Custom Ag may "install just one piece of the grain drying system." C.A. App. 19, 128. Typically, Custom Ag purchased one "farm bin," several vents, one perforated floor, and assorted other equipment (e.g., ladders, supports). See C.A. App. 28-36 (listing equipment and quantity purchases from Brock). Custom Ag sold its customers a "complete bin package" or a "farm bin." C.A. App. 37-46. Sometimes Custom Ag also sold its customer a "grain dryer." C.A. App. 41. Custom Ag added the vents or fans, perforated floors, and other equipment to the existing or newly purchased bins. C.A. App. 18-19, 81.

"Farm machinery" has been either partially or fully exempt from tax since 1982. See Minn. Stat. § 297A.02, subd. 2 (1982). For example, after 1981, "farm machinery" was taxed at a rate lower than the general rate. See Minn. Stat. § 297A.02, subs. 1, 2 (1984) (general rate six percent, farm machinery rate four percent). Used farm machinery was fully exempt after 1993, while new farm machinery was taxed at a declining rate between July 1, 1991 and June 30, 2000. See Minn. Stat. § 297A.02, subd. 2 (1998); see also Department of Revenue Sales Tax Fact Sheet 106 (rev'd March 2001), R.A. 32. Since July 1, 2000, all farm machinery has been fully exempt from tax. *Id.* Importantly, the definition of "farm machinery" has always *included* "grain dryers," and has always *excluded* "grain bins." Compare Minn. Stat. § 297A.01, subd. 15 (1982), with Minn. Stat. § 297A.01, subd. 15 (2000).

The Commissioner audited Custom Ag in 2003, and assessed use tax and interest on Custom Ag's 2000 through 2002 bin purchases from Brock. C.A. App. 49-62. The

Commissioner advised Custom Ag that grain bins did not qualify as “farm machinery” under Minn. Stat. § 297A.01, subd. 15 (2000). C.A. App. 49. Custom Ag administratively appealed the assessment, alleging it had been told that equipment “used in the processing, drying and/or handling of a grain commodity [] was exempt from sales tax.” C.A. App. 63. In addition, Custom Ag objected because the Commissioner “determined that [its] grain bin structures as storage, [but] Custom Ag had always sold and used them as cooling bins (part of the corn drying process).” *Id.*

The Commissioner denied Custom Ag’s appeal. The Commissioner first noted that the “requirement to accrue and pay use tax is different from collecting sales tax from your customers.” C.A. App. 66. If Custom Ag’s vendors did not collect sales tax, Custom Ag was still “responsible to have accrued and paid use tax on those materials.” *Id.* Second, based on the plain language of Section 297A.01, subd. 15, the Commissioner concluded that attaching “grain coolers/fan units and grain dryers to grain bins does not, however, change grain bins into something other than grain bins.” C.A. App. 67.

SUMMARY OF ARGUMENT

The Minnesota Legislature has long maintained, even through multiple statutory amendments, a clear and unambiguous distinction between taxable “grain bins” and non-taxable “grain dryers.” Given this consistent and unambiguous language, Custom Ag admitted below that “grain bins in their traditional form” are subject to tax. C.A. App. 5. It therefore argues that the “traditional” grain bins it uses should be considered something else: a grain dryer or a grain drying system; production or harvesting equipment; “installations” similar to a grain dryer; or, simply, “machinery.” Each of Custom Ag’s

arguments requires the Court to ignore the language of the statute, which expressly excludes “grain bins” from the category of exempt “farm machinery.” Each of Custom Ag’s arguments requires the Court to assume the Legislature meant something different than it clearly said when it excluded “grain bins” from the category of exempt “farm machinery.” And, in the end, each of Custom Ag’s arguments reflects a disagreement with the Legislature’s decision to extend an exemption to grain *dryers* but not to grain *bins*. None of these arguments provides a legal basis to disregard the Legislature’s express language. Because the undisputed facts and the statutory language are clear and unambiguous, the Tax Court correctly held that Custom Ag’s use of grain bins was taxable.

ARGUMENT

I. STANDARD OF REVIEW

Review of tax court decisions is limited to whether that court had jurisdiction, whether its decision was justified by the evidence and in conformity with the law, or whether it committed any other error of law. *See* Minn. Stat. § 271.10, subd. 1 (2004). This Court should uphold the tax court’s decision “where sufficient evidence exists for the tax court to reasonably reach the conclusion it did.” *Hutchinson Tech., Inc. v. Comm’r of Revenue*, 698 N.W.2d 1, 6 (Minn. 2005) (quoting *Green Giant Co. v. Comm’r of Revenue*, 534 N.W.2d 710, 711 (Minn. 1995)). The tax court’s conclusions of law and interpretation of statutes are reviewed *de novo*. *Id.*; *see also A&H Vending Co. v. Commissioner of Revenue*, 608 N.W.2d 544, 546-47 (Minn. 2000). Custom Ag seeks an exemption from tax: namely, to be relieved of the legislative mandate that “grain bins”

are not “farm machinery” and are therefore taxable. *See* Minn. Stat. §§ 297A.25, subd. 59 (2000) (farm machinery is exempt from tax); 297A.01, subd. 15 (“grain bins . . . shall not be considered to be farm machinery”). As such, Custom Ag bears the burden of proving that an exemption from taxation exists. *A&H Vending Co.*, 608 N.W.2d at 548.²

II. UNDER THE PLAIN AND UNAMBIGUOUS STATUTORY LANGUAGE, GRAIN BINS “SHALL NOT BE CONSIDERED TO BE” EXEMPT FARM MACHINERY. NO FURTHER CONSTRUCTION OF THIS LANGUAGE IS NECESSARY OR PERMISSIBLE.

It was undisputed below that Custom Ag purchased grain bins and additional equipment (vents, flooring, ladders) from its supplier, Brock. *See* C.A. App. 5, 28-36 (“farm bin” entry on invoice). Custom Ag also admitted below that “grain bins in their traditional form” are taxable. C.A. App. 143. Thus, Custom Ag argues that the traditional grain bins it uses become something else as a result of post-purchase modifications -- either grain dryers or a “grain drying system.” Custom Ag Br. at 9-12. This argument fails to appreciate the distinction between the use tax and the sales tax;

² The Tax Court began with the rule that ambiguities are construed in the taxpayer’s favor. *See* Order at 7, C.A. App. 142 (“The Commissioner asserts that the rule of construction is that tax exemptions are to be strictly and narrowly construed. However, when the Court is reviewing a taxing statute as here, we must construe any ambiguities in favor of the taxpayer.”). In *American Express Ry. Co. v. Holm*, 169 Minn. 323, 211 N.W. 467 (1926), this Court recognized that these two rules are not mutually exclusive, but are applied together if necessary: “One who seeks shelter under an exemption must present a clear case, as the law is to be construed in favor of the public. This is because the exemption is in derogation of the general rule, *and in no way infringes upon the rule that*, where a statute is capable of two constructions and the intent of the Legislature is in doubt, such doubt must be resolved in favor of the taxpayer.” *Id.* at 325, 211 N.W. at 467 (citations omitted) (emphasis added).

and, fails to respect the plain and unambiguous statutory language by which the Legislature distinguished between taxable “grain bins” and exempt “grain dryers.” The Tax Court properly recognized these distinctions and correctly respected the plain language. Its ruling should therefore be affirmed.

A. Tax Is Properly Assessed On A Contractor’s Use of Taxable Equipment.

Custom Ag persistently argues that its *customer’s use* of the grain drying system, *after sale and installation*, determines whether the constituent parts Custom Ag used to create that system are exempt from use tax. C.A. Brief at 10. As the Tax Court noted, however, this argument “misses the point.” Order at 8, C.A. App. 143. Use tax was assessed on Custom Ag’s use of grain bins in Minnesota.

The use tax is imposed for “the privilege of using, storing, distributing, or consuming in Minnesota tangible personal property . . . purchased for use, storage, distribution, or consumption in this State.” Minn. Stat. § 297A.14, subd. 1 (2000) (current version at Minn. Stat. § 297A.63, subd. 1 (2004)).³ The use tax complements the sales tax, such that “everything is presumed taxable unless specifically exempted,” and in-state and out-of-state sellers are therefore on equal footing. *See Morton Bldgs., Inc. v. Comm’r of Revenue*, 488 N.W.2d 254, 257-58 (Minn. 1992). Any exercise “of a right or

³ The tax statutes in Chapter 297A were re-numbered as part of the 2000 Legislature’s non-substantive re-codification of that Chapter. *See* 2000 Minn. Laws 796, 798-803. Most of the re-codification was not effective, however, until July 1, 2001. *Id.* Since the audit of Custom Ag’s operations spanned both the original and the re-codified versions, and since the re-codification was not intended to make any substantive changes, the parties and the Tax Court cited to the applicable 2000 statutory sections. The Commissioner continues that practice here, although the current version has also been cited above.

power incidental to ownership” is a taxable use under Section 297A.14. *See Miller v. Comm’r of Revenue*, 359 N.W.2d 620, 621 (Minn.) (citations omitted), *cert. denied*, 471 U.S. 1116 (1985). Further, the taxpayer must overcome the presumption that the purchase of tangible personal property shipped to Minnesota is for use in Minnesota. *See* Minn. Stat. § 297A.23 (2000) (current version at Minn. Stat. § 297A.665 (2004)).

The Tax Court recognized that Custom Ag’s grain bin purchases and use of those bins in Minnesota were indistinguishable from the taxpayer’s purchases and use in *Morton Bldgs.*, 488 N.W.2d 254. There, the taxpayer purchased, stored, and fabricated, *outside of Minnesota*, various building components that were later delivered to Minnesota and used in Minnesota to build farm and industrial buildings. *Id.* at 256. Morton sought a refund of all use tax paid “for the cost of the raw materials it used at its [out-of-state] factories to make building components used in Minnesota.” *Id.* A three-factor test was applied to judge whether use tax was properly assessed: (1) the personal property was used, stored, or consumed in Minnesota; (2) the personal property was purchased; and (3) the purchase was for use in Minnesota. *Id.* at 257. Based on these factors, this Court held that Morton properly paid use tax on the raw materials, regardless of any alterations made to those materials while stored outside of Minnesota, because the raw materials were purchased for use in Minnesota and were used in Minnesota. *Id.* at 258 (“Morton clearly exercises a right or power over the raw materials when it constructs the prefabricated building, and thus Morton ‘uses’ the materials in Minnesota.”). In other words, the out-of-state “manufacturing process does not transform the raw materials into something which is not used in Minnesota.” *Id.*

The *Morton Bldgs.* decision demonstrates that Custom Ag's grain bin purchases are properly subject to use tax. First, Custom Ag used the grain bins in Minnesota to construct grain drying systems. Second, the grain bins were purchased from Brock. And third, those bins were delivered to Custom Ag in Minnesota, thus giving rise to a statutory presumption that the bins were to be used in Minnesota. See Minn. Stat. § 297A.23; see also *Morton Bldgs.*, 488 N.W.2d at 259 (noting that taxpayer bears the burden of proof on this issue). Finally, any alteration of the bins (by adding vents, fans, and flooring) is irrelevant to Custom Ag's use tax liability. See *Morton Bldgs.*, 488 N.W.2d at 258 (noting that court "never has required that raw materials be unaltered when used in Minnesota in order to trigger liability for the use tax.").

B. The Plain Language of Subdivision 15 Is Clear: Grain Bins Are Taxable and Grain Dryers Are Not.

Recognizing that all sales are presumed taxable until an exemption is shown, Minn. Stat. § 297A.14, subd. 1, Custom Ag attempts to bring grain *bins* within the grain *dryer* exemption in the "farm machinery" definition. See Minn. Stat. § 297A.01, subd. 15 (2000); see also Minn. Stat. § 297A.25, subd. 59 (2000) (exempting "farm machinery") (current version at Minn. Stat. § 297A.69, subd. 4(1) (2004)). Thus, Custom Ag argues that the grain bins it purchased from Brock and installed at customers' sites became either grain dryers or a "grain drying system." This is so, Custom Ag argues, because the added vents, perforated floors, and other equipment reduce the temperature and moisture content of corn in the bins. C.A. Brief at 9-12.

The Legislature included several specific items within the definition of exempt farm machinery, and expressly excluded several others from that definition. Under Section 297A.01, subdivision 15, exempt “farm machinery” expressly includes “grain dryers.” However, “grain bins . . . *shall not be considered to be farm machinery.*” Minn. Stat. § 297A.01, subd. 15 (2000) (emphasis added) (current version at Minn. Stat. § 297A.61, subd. 12 (a)(2), (b)(2)).

The line between grain dryers and grain bins has always been clear. The Minnesota Legislature enacted a definition for “farm machinery” in 1981. *See* 1981 Minn. Laws 2394-95. From the first, the Legislature explicitly distinguished between “grain dryers” and “grain bins:”

“Farm machinery” shall include machinery for the . . . harvesting and threshing of agricultural products, . . . together with barn cleaners, milking systems, grain dryers, automatic feeding systems and similar installations . . . grain bins . . . shall not be considered to be farm machinery.

Minn. Stat. § 297A.01, subd. 15 (1982). The distinction between exempt “grain dryers” and taxable “grain bins” has remained unchanged since its 1981 enactment.⁴ Moreover, though the Legislature has never altered the taxability of these specific pieces of equipment, it has on multiple occasions since 1981 both added and excluded equipment

⁴ The only change to “grain dryers” has been the rate at which they were taxed *even as farm machinery*. New farm machinery was subject to tax until July 1, 2000, albeit at a rate lower than the general tax rate. *See, e.g.*, Minn. Stat. § 297A.02, subd. 2 (1998) (declining rate between 1998 and 2000). Before 1998, farm machinery was taxed at rates as high as four percent. *See e.g.*, Minn. Stat. § 297A.02, subd. 2 (1984). Thus, even if Custom Ag’s proposed constructions were correct, and they are not, Custom Ag should have been paying tax on all of its “grain drying system” purchases until July 1, 2000.

from the farm machinery definition. *See, e.g.*, 1984 Minn. Laws 555 (adding “logging equipment” but excluding “chain saws” from the definition); 1987 Minn. Laws 1187-88 (adding machinery for preparation, harvesting, and mowing of sod, but excluding “lawn mowers” unless used in production of sod for sale); 1990 Minn. Laws 2573 (amending “chainsaws” description to those used for “commercial logging”).

In 2000, the first year covered in Custom Ag’s audit, the “farm machinery” definition read much the same as it did in 1981 with respect to bins and dryers, though other equipment had been added by then, and the structure of the subdivision had been re-organized:

Farm machinery means new or used machinery, equipment, implements, accessories, and contrivances used directly and principally in the production for sale, but not including the processing, of . . . forage, grains and bees and apiary products. Farm machinery includes: . . .

(2) barn cleaners, milking systems, grain dryers, automatic feeding systems and similar installations, whether or not the equipment is installed by the seller and becomes part of the real property; . . .

Tools, shop equipment, grain bins, feed bunks, fencing material except fencing material covered by clause (5), communication equipment and other farm supplies shall not be considered to be farm machinery.

Minn. Stat. § 297A.01, subd. 15 (2000). The periodic, item-specific revisions to the “farm machinery” definition confirm that the Legislature has been aware of the equipment choices it has made. Critically, the Legislature has left its choices with grain dryers and grain bins undisturbed for twenty-five years.⁵

⁵ The Commissioner has also maintained this distinction in official publications. *See* R.A. 30 (“grain bins” subject to tax, “grain dryers” are exempt). The Commissioner has upheld this distinction because “certain items . . . don’t meet the definition of farm machinery either because they aren’t used directly or principally in agricultural production, or *because they are specifically excluded from the definition by law*. The items listed below . . . are taxable. . . . grain storage bins.” *See* R.A. 35 (emphasis added).

This Court has, on several occasions, directed the Tax Court to apply the plain and unambiguous statutory language without adding words or terms to the Legislature's chosen language. Most recently, in *Hutchinson Tech., Inc.*, this Court stated that effect "must be given to the plain meaning of statutory text when it is clear and unambiguous." 698 N.W.2d at 8. "No room for judicial construction exists when the statute speaks for itself." *Commissioner of Revenue v. Richardson*, 302 N.W.2d 23, 26 (Minn. 1981). The Tax Court correctly relied on these instructions, looked to the plain language of subdivision 15, and concluded that the "grain bins" Custom Ag used were not "farm machinery" and were therefore not exempt from tax.

Custom Ag argues that because all three components -- a grain dryer and two bins -- "are required for the drying system" C.A. Brief at 10, this equipment is collectively a system for drying grain and therefore an exempt "grain dryer." *Id.* at 11. But this argument fails for several reasons.

First, and most obviously, Custom Ag's "system" argument rests on this critical term, which is absent from the statutory definition. Nothing in the statutory term "grain dryers" suggests that the Legislature intended to encompass a "system," as opposed to the single piece of equipment. To the contrary, the language of the entire definition confirms that the Legislature explicitly referred to a "system" when it intended to encompass more than a single piece of equipment. For example, the Legislature either named the system ("automatic feeding systems"), or it listed the specific items that were included within the exempt system ("irrigation equipment . . . including pumps, pipe fittings, valves, sprinklers and other equipment necessary to the operation of an irrigation system"). *See*

Minn. Stat. § 297A.01, subd. 15 (2), (3). The absence of any “system” reference with respect to grain dryers, particularly in the light of the directive that grain bins “*shall not be considered to be farm machinery*” confirms that the Legislature did not intend to exempt grain bins, *even if* part of a grain drying system.

Second, if grain bins could be moved from the taxable category to the non-taxable category merely by designating them as part of a “grain drying system,” the Legislature would have acknowledged this possibility on one of the many occasions it amended the “farm machinery” definition.⁶ But nothing in the language of the definition suggests that the unambiguous term “grain bins” should be interpreted to mean “grain bins unless part of a grain drying system.” In fact, the Legislature’s choice to maintain a clear distinction between grain dryers and grain bins is strong evidence that the unambiguous term “grain bins” cannot be read to include any qualifying language. *See Green Giant Co.*, 534 N.W.2d at 712 (where statutory language “speaks plainly,” court will not supply “that which the Legislature purposefully omits or inadvertently overlooks”).

The language of subdivision 15 is plain and unambiguous in the line drawn between “grain dryers” and “grain bins.” The Tax Court correctly recognized that this language could not be clearer, and therefore applied that plain language without modification to determine that Custom Ag’s grain bins were subject to use tax.

⁶ This is particularly true given that grain drying systems of the type described by Custom Ag pre-date the 1981 “farm machinery” definition. *See* C.A. App. 82 (citing 1983 article on grain drying process); R.A. at 2 (noting that first information on process was released “in January 1964”). Thus, even assuming the particular system Custom Ag installs is unique, the Court would have to conclude that the Legislature was aware that a grain drying process using grain dryers and bins was and has been available since before the Legislature adopted a distinction between those two pieces of equipment.

C. None of Custom Ag's Remaining Arguments Can Change the Unambiguous Statutory Language.

Faced with a clear and unambiguous distinction between the two principal pieces of equipment it uses, Custom Ag seeks access to an exemption by elevating equipment functions over equipment designations; and by re-labeling the grain bins as some other equipment within the farm machinery definition. C.A. Brief at 12-20. These arguments fail because they attempt to evade the unambiguous language excluding "grain bins" from the farm machinery definition, and because they cannot be reconciled with that unambiguous statutory exclusion. The clarity of the Legislature's directive to exclude grain bins means that this Court need not -- indeed, should not -- reach Custom Ag's proposed alternative constructions. *See Reiter v. Kiffmeyer*, 721 N.W.2d 908, 910 (Minn. 2006) (where court can apply plain and unambiguous language, no further construction of statutory language is required).⁷

First, Custom Ag resorts to the function of the grain bins: they are "wet holding" or "conditioning" bins, but they do not "store grain." C.A. Brief at 13-14. These are artificial distinctions invoked to urge the Court to re-write the statutory language so that function prevails over the Legislature's chosen equipment designations. The Court should reject this invitation. "No room for judicial construction exists when the statute

⁷ If its proposed constructions are not acceptable, then Custom Ag argues that at "the very least, there is a fact issue" as to whether the grain bins fall within those constructions. C.A. Brief at 12, 13. However, Custom Ag argued before the Tax Court that it was entitled to summary judgment because there were no factual disputes. C.A. App. at 136. It cannot now retreat to alleged factual disputes simply because it lost below. In any event, there is no factual dispute that the "grain bins" Custom Ag used are in fact grain bins.

speaks for itself.” *Richardson*, 302 N.W.2d at 26; *see also Hutchinson Tech., Inc.*, 698 N.W.2d at 8 (rejecting argument that invited court to “add requirements to the statute beyond those specified by the legislature”).

The statutory language prevails over Custom Ag’s functional arguments because nothing in subdivision 15 indicates that the Legislature intended “grain bins” to vary or receive different treatment depending on function or type. Rather, the Legislature chose the far simpler route of taxing all “grain bins,” *regardless* of the function or type of bin. And, this is a reasonable choice given the administrative burdens that Custom Ag’s proposed functional constructions would impose. Neither the Commissioner nor the taxpayer would know whether any particular grain bin was subject to tax until a determination had been made as to its function.⁸

Second, Custom Ag offers several options for re-naming the grain bins as some other type of equipment within the farm machinery definition. Thus, Custom Ag characterizes the grain bins as agricultural harvesting or production equipment; as active, mechanically, and electrically operated machines; or as a “similar installation.” Initially, it is apparent that each re-characterization simply recycles the functional approach discussed previously, which fails because the Court would have to ignore — to read out

⁸ The burden would be particularly onerous in the context of the “storage” limitation, as Custom Ag’s proposal suggests the Commissioner and the taxpayer would have to make a timing (length of storage) determination. Further, the record does not support Custom Ag’s claim that the bins do not store grain. Custom Ag’s common definition for a bin does not limit the storage period. The record shows that grain remains in the wet holding bin for at least the time reflected by the “rate of drying,” and in the conditioning bin for at least 6 to 12 hours for steeping. C.A. App. 81. Either of these time frames represents “storage.”

of the statute — the express directive to exclude grain bins from the farm machinery category. This is most apparent from Custom Ag’s suggestion that the role the equipment plays -- active or not -- determines whether equipment is taxable or exempt. *See* C.A. Brief at 15. Nothing in the statutory language imposes the “active” requirement that Custom Ag offers, and to incorporate it into that language would re-write the statute to eliminate the express exclusion of “grain bins.” That approach cannot be the correct construction. *See* Minn. Stat. § 645.17(2) (2004) (legislature intends entire statute to be effective).

Custom Ag’s alternative designation options also fail because they depend upon unnatural constructions of otherwise plain statutory language. For example, Custom Ag relies on clauses that exempt machinery used “in the production for sale” of certain products, and machinery used in the “harvesting” of agricultural products. Minn. Stat. § 297A.01, subd. 15 (1). But Custom Ag does not use any machinery in the “production for sale” of any of the described commodities, nor does it engage in any harvesting activities. Rather, Custom Ag sells and installs equipment at customer sites. C.A. App. 127-28.⁹

Nor can Custom Ag succeed in fitting grain bins into the “similar installations” language. Designating grain bins as a “similar installation” to a “grain dryer” depends

⁹ Custom Ag’s reliance on the “production for sale” exemption also fails because it does not explain how the Court could adopt that proposed construction given the exclusion, from the exemption, of machinery and equipment used in that production. *See* Minn. R. 8130.5500, subp. 8 (2001) (“exemption . . . does not include machinery, equipment . . . used in production . . .”). The grain bins are either machinery or equipment.

upon Custom Ag's argument that the "totality of the system" is part of the statutory language. *See* C.A. Brief at 19. And, even though Custom Ag argues that nothing "in the statute suggests that the systems are broken down into individual component parts," *id.*, this is exactly what the statute does, by separately naming grain dryers and grain bins. Indeed, the clause that includes a "similar installation" within the farm machinery definition refers only to the specific "grain dryers." Custom Ag does not explain how the general reference to "similar installations" can both expand "grain dryers" to a "grain drying system" while also effectively erasing the specific, statutorily excluded "grain bins." In fact, rules of statutory construction prevent this from happening. *See* Minn. Stat. § 645.26, subd. 1 (2004) (specific prevails over general).

The fundamental identity of the equipment is grain bins. Indeed, the relevant invoices expressly designate this equipment as "bins," and Custom Ag admits that these bins "look like grains bins." C.A. Brief at 13; *see also* C.A. App. 28-46. Subdivision 15 makes no distinctions, by function or type, in excluding grain bins from the "farm machinery" definition. Further, neither this legislative choice nor the Tax Court's application of that plain language limits farmers "on how they can dry their grain." C.A. Brief at 21. And, this Court could not ignore the Legislature's mandatory language even if it did operate as such a limitation; that claim, even if it existed (and there was no evidence before the Tax Court on this claim) must be addressed by the Legislature. For that reason, all of Custom Ag's unrelated examples -- the dichotomy between the appearance and nature of a wiernmobile, or the use of plastic tubing in a milking system, or steel in a tractor -- are irrelevant to the question of whether this statute excludes "grain

bins” from exempt farm machinery. The Legislature answered that question with undeniable clarity.

There is nothing in the Legislature’s broad, yet plain and clear “grain bins” language that leaves any ambiguity for construction. And in the absence of ambiguity, this Court’s statutory construction begins and ends with the plain language.

Equally well established is the rule that ‘Construction lies wholly in the domain of ambiguity. If the language of a statute is plain and unambiguous, there is no room for construction. A statute is to be enforced literally as it reads, if its language embodies a definite meaning which involves no absurdity or contradiction. In such a case the statute is its own best expositor.’

Hall Hardware Co. v. Gage, 197 Minn. 619, 622-23, 268 N.W. 202, 204 (1936) (citation omitted).

CONCLUSION

All of Custom Ag’s arguments reflect the single-minded purpose to read the statutory term “grain bin” in a fashion that excludes the grain bins that Custom Ag uses in Minnesota, thereby rendering them exempt from taxation. This enterprise has no support in the statutory language, and at bottom, reflects only a disagreement with the Legislature’s longstanding division between taxable grain bins and exempt grain dryers.

This Court cannot properly ignore the clear and unambiguous statutory language, Respondent respectfully requests that the Court affirm the decision of the Tax Court in all respects.

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2) (with amendments effective July 1, 2007).