

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
MICHIGAN TAX TRIBUNAL

Garfield Mart Inc,  
Petitioner,

MTT Docket No. 14-005162-R

v

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Steven H Lasher

FINAL OPINION AND JUDGMENT ON REMAND

The Tribunal, having given due consideration to the file in the above-captioned case, finds that it entered an order on April 13, 2018, requiring Respondent to recalculate Final Assessment No. TR79204 to exclude sales of PINless top-up transactions and the penalty associated with those transactions in accordance with the Court of Appeals decision in this matter,<sup>1</sup> and file documentation evidencing the revised assessment amount, along with the calculations utilized in arriving at the revised assessment amount.

Respondent filed the required documentation on May 24, 2018, indicating a revised tax due amount of \$128,610.00 and revised penalty amount of \$12,861.00. The revised amounts are supported by the accompanying documentation. Therefore,

The taxes, interest, and penalties, as levied by Respondent, are:

**Assessment Number:** TR79204

Taxes	Interest	Penalties
\$178,463.00	\$40,281.25	\$17,847.00

The taxes, interest, and penalties, as determined by the Tribunal, are:

**Assessment Number:** TR79204

Taxes	Interest <sup>2</sup>	Penalties
\$128,610.00	\$52,156.43	\$12,861.00

IT IS SO ORDERED.

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<sup>1</sup> *Garfield Mart, Inc v Dep't of Treasury*, 320 Mich App 628; 907 NW2d 880 (2017), *appeal denied*, 909 N.W.2d 242 (Mich. 2018). The Court of Appeals affirmed the Tribunal's determination that Petitioner's sales of EPIN calling arrangements are taxable under MCL 205.52(2)(b), but reversed its decision with respect to PINless top-up transactions, holding that "PINless top-up sales are not subject to sales tax because they do not involve the sale of a telephone calling card or authorization number for telephone use, nor do they involve the reauthorization of a telephone calling card or authorization number." *Id.* at 647. Further, "because the PINless top-up sales were not taxable under MCL 205.52(2)(b), the negligence penalty must be adjusted to reflect that fact on remand." *Id.* at 651.

<sup>2</sup> Interest continues to accrue per 1941 PA 122. Interest shown above is current as of May 25, 2018.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties as indicated herein within 20 days of entry of this Final Opinion and Judgment on Remand.

IT IS FURTHER ORDERED that Respondent shall collect the affected taxes, interest and penalties or issue a refund as required by this Order within 28 days of entry of this Final Opinion and Judgment on Remand.

This Final Opinion and Judgment on Remand resolves the last pending claim and closes this case.

### APPEAL RIGHTS

If you disagree with the Final Opinion and Judgment on Remand, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A Motion for reconsideration must be filed with the required filing fee within 21 days from the date of entry of the final decision.<sup>3</sup> Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>4</sup> A copy of the motion must be served on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion.<sup>5</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>6</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."<sup>7</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>8</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>9</sup>

By Steven H. Lasher

Entered: May 29, 2018

ejg

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<sup>3</sup> See TTR 261 and 257.

<sup>4</sup> See TTR 217 and 267.

<sup>5</sup> See TTR 261 and 225.

<sup>6</sup> See TTR 261 and 257.

<sup>7</sup> See MCL 205.753 and MCR 7.204.

<sup>8</sup> See TTR 213.

<sup>9</sup> See TTR 217 and 267.