

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

HTC Global Services Inc,  
Petitioner,

v

MTT Docket No. 16-000048

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
David B. Marmon

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, HTC Global Services Inc, appeals Final Assessment No. TT5305, TV 53331 and TY 22776 levied by Respondent, Michigan Department of Treasury, on December 16, 2015, as revised through February 28, 2017. Final Assessment No. TT5305 established that Petitioner owes tax in the amount of \$78,455.00, plus interest in the amount of \$26,344.97 and penalties in the amount of \$0.00 for tax year 2008. Final Assessment No. TV53331 established that Petitioner originally owed tax in the amount of \$122,372.00, plus interest in the amount of \$27,300.63 and penalties in the amount of \$30,593.00 for tax year 2009. No money is currently owed on that assessment. Final Assessment No. TY22776 established that Petitioner owes tax in the amount of \$51,704.00, plus interest in the amount of \$10,497.23 and penalties in the amount of \$0.00 for tax year 2011.<sup>1</sup> Statutory interest continues to accrue pursuant to the Revenue Act. Thomas J. Kenny and William Thompson, attorneys of Varnum LLP, represented Petitioner, and Emily C. Zillgitt, Assistant Attorney General, represented Respondent. At issue is whether or not Petitioner is a staffing company as defined under SIC Code 736 and entitled to a staffing deduction under the Michigan Business Tax Act, MCL 208.1101 et seq.

---

<sup>1</sup> These figures are per a written memorandum dated February 10, 2017.

A hearing on this matter was held on November 17, 2016. Petitioner's witnesses were Laurie Maria, Vanu Vaishya and Neil Desai. Respondent's witnesses were Danielle Marinas and Lenise Glanton. Based on the evidence, testimony, and case file, the Tribunal AFFIRMS the assessments.

#### PETITIONER'S CONTENTIONS

Petitioner contends that it qualifies as a staffing company under SIC Code 736, and thus is entitled to deduct salaries and benefits paid to persons it leases out to its clients from the tax base used to calculate liability under the Michigan Business Tax ("MBT") for tax years 2008, 2009, and 2011. Specifically, Petitioner contends that Industry Code 736 has three requirements:

- (a) the business is primarily engaged in providing temporary personnel on a contract or fee basis;
- (b) the business employee remains on the payroll of the staffing company;
- (c) the business employee is under the direct or general supervision of the customer.

Petitioner argues that it is uncontested that the first two elements are met. Petitioner further contends that per HTC's contracts with clients, the third element is established, as in each case, HTC's employee is either under the direct or general supervision of HTC's customer.

Petitioner bases its contentions on long established law, holding that any doubt about the meaning of a tax statute must be construed against the government and in favor of the taxpayer.<sup>2</sup> Accordingly, it argues, that Respondent wrongfully added additional requirements as to what qualifies under SIC 736.

---

<sup>2</sup> Petitioner cites and relies upon *In re Dodge Brothers*, 241 Mich 665, 669; 217 NW 77,79 (1942); *Lindsay Anderson Sagar Trust v Dep't of Treasury*, 204 Mich App 128, 130; 514 NW/2d 514 (1994); *Bechtel Power v Dep't of Treasury*, 128 Mich App 324;340 NW2d 297 (1983); *Metzen v Dep't of Revenue*, 310 Mich 622; 17 NW2d 860 (1945).

PETITIONER'S ADMITTED EXHIBITS

- P1 Final Assessment TT5305
- P2 Department of Treasury letter dated February 8, 2013
- P3 MBT Annual Return Notices of Additional Tax Due 2008
- P4 Final Assessment TV 53331 dated 12/16/15
- P5 Corrected Final Assessment TV 53331 also dated 12/16/15
- P6 Intent to Assess TV 53331 dated 6/11/13
- P7 Notice of Additional Tax Due dated 4/10/13 for tax year 2009
- P8 Final Assessment TY 22776 dated 12/16/15
- P9 Corrected Final Assessments for TY 22776 dated 12/16/15
- P10 Intent to Assess TY 22776 dated 9/17/13
- P11 MBT Notice of Additional Tax Due dated May 3, 2013 for 2011 tax year
- P12 MBT Notice of Refund Adjustment dated July 26, 2016 for 2010
- P13 2008 MBT return, (p. 1-2)
- P14 2009 MBT return, (p. 1-3)
- P15 2011 MBT return, (p. 1-3)
- P16 Customer contract, Meijer
- P17 Customer contract, Gale Group
- P18 Customer contract, Auto Owner's Insurance
- P19 Customer contract, Teacher's Insurance
- P21 Customer contract, American Family Mutual Ins
- P22 Customer contract, Aetna Life Ins
- P23 Customer contract, State Farm Ins

- P25 Dept. of Treasury MBT FAQs
- P26 Accounting Software – Industry Classification Codes
- P27 Principal Business Activity Codes – form
- P28 Code 736 Description
- P29 HTC Global website information describing services

#### PETITIONER’S WITNESSES

Petitioner called three witnesses. Its first witness was its Director of Finance, Laurie Maria.<sup>3</sup>

#### Laurie Maria

Maria testified that Petitioner is a staffing company, and that it has over 120 clients.<sup>4</sup> She gave an overview of the type of clients Petitioner serves, including Insurance companies, finance companies, retail, publishing, education, and automotive. She testified that in the relevant time period, HTC has between 700 and 800 employees in the United States. Along with computer related functions, Petitioner also provided “administrative or at that time engineering with the automotive, administrative. It was anything from claims processing to accounting.”<sup>5</sup>

Maria testified that HTC pays each employee a salary with benefits, and charges customers for the employee’s time by the hour. As to supervision, she stated that Petitioner has general supervision.<sup>6</sup> Maria also described how Petitioner has both an onshore model, which sends its employees to clients, as well as an offshore model, where a client does not need employees on site. As to its offshore model, HTC employs over 6,000 employees worldwide.<sup>7</sup>

---

<sup>3</sup> T. p. 14

<sup>4</sup> T. p. 15

<sup>5</sup> T. p. 17

<sup>6</sup> T. p. 17-18

<sup>7</sup> T. p. 18-19

Regarding engineering work performed by HTC, all of it was done offshore, except for automotive engineering.<sup>8</sup>

Maria was asked on direct examination about HTC's contract with Meijer.<sup>9</sup> She was asked to read a section that granted Meijer broad control over the HTC employee. She also testified that the client sets the hourly rate it will pay HTC for the employee.<sup>10</sup> Similarly, she read from contracts between Petitioner and The Gale Group,<sup>11</sup> Auto-Owner's Insurance,<sup>12</sup> American Family Mutual Insurance,<sup>13</sup> and State Farm Insurance.<sup>14</sup> For each of these contracts, she agreed that the client supervises and has control over the employee, while HTC is paid an hourly rate for their work.

On cross examination, Maria testified that IT staffing employees have at a minimum, a college degree and most of the time, a master's degree depending on their certification levels.<sup>15</sup> Each of the staffing employees is assigned an HTC supervisor or mentor.<sup>16</sup> She also described the employee performance review process, where the employees are sent performance evaluations which they fill out in part, and which the employee then goes over with an HTC manager.<sup>17</sup>

Respondent then examined Maria about the Meijer contract, having her read into the record section 3.2:

HTC in conjunction with its employees, agents and contractors, collectively HTC's personnel, performing services for client hereunder shall determine the

---

<sup>8</sup> T. p. 23

<sup>9</sup> Exhibit P-16

<sup>10</sup> T. p. 26-28

<sup>11</sup> Exhibit P-17, p. 29-31

<sup>12</sup> Exhibit P-18, p. 31-33

<sup>13</sup> Exhibit P-21, p. 33-35

<sup>14</sup> Exhibit P-23, p. 36-37

<sup>15</sup> T. p. 40

<sup>16</sup> T. p. 39

<sup>17</sup> T. p. 41-42

method, details and means of performing the work to be carried out for client. The client shall have no right to and shall not control the manner or determine the method of accomplishing such work.<sup>18</sup>

Maria was also asked about other specific contracts, which specified the need to bolster IT departments.<sup>19</sup> She was also shown a copy of the annual reports that corporate entities are required to file with state of Michigan, and which she electronically authorized.<sup>20</sup> Specifically, the 2008 report describes the activities of the corporation as “Computer consulting, custom software, system integration, digitization, BPO.” Maria explained that this description came from Petitioner’s marketing information. Further, she explained that as a result of this litigation, her understanding of consulting has changed. Her revised understanding of consultants are “ones that go in to companies and tell the company how they should be strategizing and where they should be moving in the future.”<sup>21</sup>

She was then given a copy of an employment offer, which states in part, “[a]s you are aware, the offer is in the role of technical consultant supporting client needs in a variety of capacities.”<sup>22</sup> Maria was then asked how many employees are hired as technical consultant, to which she replied, “[w]e have a high concentration of technical consultants but we also have some administrative – I’m trying to think. I really don’t see each individual offer letter.”<sup>23</sup>

The offer letter also required the offeree to be approved for an H-1B Visa. When asked about how many employees must meet this requirement, Maria answered that the number of offerees who are brought in on an H-1B Visa is almost half.<sup>24</sup>

---

<sup>18</sup> T. p. 42-43

<sup>19</sup> T. p. 50-53

<sup>20</sup> Exhibit R-15

<sup>21</sup> T. p. 55

<sup>22</sup> Exhibit R-20

<sup>23</sup> T. p. 56

<sup>24</sup> T. p. 57

Vanu Vaishya

Petitioner's second witness was its Executive Vice-President for Operations, Vanu Vaishya. Vaishya testified that Petitioner is in the business of IT staffing.<sup>25</sup> When asked to describe his understanding of staffing, Vaishya answered:

Our customers, you know, embark on projects from time to time, so, you know, almost all of them have their own IT staff, in-house IT department. But in order to meet the peaks of some of these projects, then they seek for temporary help. That means they need to augment their technical staff and that's when they come out to companies like HTC Global Services and says, would you be able to help us with these resources for this period of time. So that's what staff augmentation means.<sup>26</sup>

Vaishya described the types of offshore services provided to customers by Petitioner:

Offshore is an extension of onsite -- onshore. The customers may request, you know, for certain projects that we would need, sort of resources, you know, that could be outside of the U.S. They could take advantage of the labor arbitrage or the number of people that they need at any one point in time. So, you know, the activities could be onshore and offshore, could be similar, you know, providing, you know, programming, development, analysis or testing or what have you. And the similar skills could be also, you know, provided from an offshore facility. So it's at the discretion of the customer that they decide on this project we would need so many onsite and then we would need so many offshore.<sup>27</sup>

Vaishya also described how the employees for hire were supervised:

The employees fall under the direct supervision of the customer for their day-to-day activities on what needs to get done. They would direct them on here's the activity that you need to do in the next two weeks or three weeks, what program. They'll give a scope for work that they need to accomplish within a certain period of time, so they would manage on a day-to-day basis. But as HTC general supervision means we want to make sure that these guys are showing up on time and delivering the work to the satisfaction of the customer and also they are complying with the code of ethics at the customer's site. Every customer would have a code of ethics, making sure that they're following that. So that's the general supervision that we can, you know, emphasize to the employees on, but the day-to-day activities of what they do is under the direct supervision of the customer.<sup>28</sup>

---

<sup>25</sup> T. p. 60

<sup>26</sup> T. p. 61-62

<sup>27</sup> T. p. 62-63

<sup>28</sup> T. p. 65

These employees on the customer's site, they don't reach out to, you know, HTC managers to say, you know, what should I do here, you know, for any technical help that they may need, but they have to go back to their manager and say here is what I have done. If they have some questions, clarification they go back to the customer's manager, and that's where the direct supervision from the customer comes in. So they're the one who directs the work.<sup>29</sup>

Vaishya was also asked his opinion as to whether Petitioner's business could be classified underneath the code for industry group 737, specifically, 7379, Computer Services Not Elsewhere Classified. In opining that the code does not apply, Vaishya took issue with the term consulting, stating, "typically the industry looks at consulting from ... an advice ... you're an expert, you're an authority on the subject, so they ask you to come in and they want you to advise on which direction the customer has to take."<sup>30</sup>

On cross examination, Vaishya was asked about the educational requirements of its employees. He answered that most of the time, Petitioner looks for an undergraduate degree or a master's degree, typically in computer science, electrical, or electronics.<sup>31</sup> He was also asked regarding employer control and the requirements for an H-1B visa, to which he agreed that Petitioner was responsible for assigning its employees to a particular client job.<sup>32</sup>

Vaishya was then asked about the company's description on its state annual report filing. He responded as follows:

The reason is when we bring, you know, any employees to HTC they're given a title as a technical consultant, all of them. Whether they're business analysis or developer or programmer, doesn't matter, everybody is known as a consultant. So that's why I think sometimes the consultants and being a real consultant, you know, is misunderstood in the industry. And so that's where I think, you know, they are consultants, you know, from an HTC perspective, but they don't do

---

<sup>29</sup> T. p. 66

<sup>30</sup> T. p. 68

<sup>31</sup> T. p. 73

<sup>32</sup> T. p. 77



consulting to the level of what I described earlier, what the definition of consulting is.

Q. So is it your testimony that technical consultant is a correct description but it's not exactly what they do?

A. It's the [correct one] internally, but they don't do consulting just because they call it technical consultant. You know, they may be doing programming, developers. They may be systems analysts, could be business analysts, could be testers, what have you, but, you know, internally we, you know, categorize them as technical consultants.

Q. All those descriptions you just provided, would you agree that those are all IT services?

A. Yes.

Q. Would you say that most of HTC's employees provide IT services?

A. Most of it, yes, but not all of it.

Q. When we say most, can you give me a ballpark estimate of how much most is?

A. Probably I would say almost 90 percent or around there.<sup>33</sup>

Vaishya was asked about the MEGA tax employment credit that Petitioner had applied for. Specifically, he was confronted with a MEGA tax Agreement entered into with Petitioner and the Michigan Economic Growth Authority, which states: "Eligibility. The Company will create Qualified New Jobs in this state generally classified under SIC Code 7371."<sup>34</sup> When asked if he disagreed with that statement of how the company creates qualified new jobs, he stated:

Well, we in our -- we have been creating new jobs, okay? And then I have to look at 737. You know, they could perhaps fall under that in some category but not necessarily all of it. We've been creating jobs under let's say the skills that I mentioned, you know, the developers, business analyst and things, but we also [are] creating jobs as service desk analyst, service desk analyst, which is not even

---

<sup>33</sup> T. p. 79-80

<sup>34</sup> Exhibit R-24

described here. So, you know, I cannot say that it falls here within the 7379. It is not listed as a service desk, you know, analyst position.<sup>35</sup>

Neil Desai

Petitioner's final witness was its CPA, Neil Desai. Desai stated that the business activity of HTC Global is employment staffing services.<sup>36</sup> He testified that he used Industry Code 561300 for the returns he prepared, which indicates Employment Services.<sup>37</sup> He then testified that the more appropriate code would be 561320, but that this code was not an option under the CPA firm's tax preparation software.<sup>38</sup>

On cross examination, Desai was confronted with the 2007 MBT return, which he prepared, which listed the industry as IT strategy consulting. Desai explained it away, stating that the code was a holdover from a previous accounting firm, and it was not relevant under the SBT. He had a similar answer when confronted with the federal form 1120 S.<sup>39</sup>

Finally, in response to a question from the bench, Desai answered that its revenue from staffing was over 50% of its gross revenue.<sup>40</sup>

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner is not entitled to a staffing deduction from the MBT because it does not fall under former SIC code 736. Rather, it is best classified under SIC industry group code 737. Respondent contends that according to 2007 NAICS code, 561300 is invalid, and notes that on its 2007 federal tax return, it used NAICS code 541511,<sup>41</sup> which is

---

<sup>35</sup> T. p. 82

<sup>36</sup> T. p. 87

<sup>37</sup> T. p. 90-92

<sup>38</sup> T. p. 93

<sup>39</sup> T. p. 101-103

<sup>40</sup> T. p. 104

<sup>41</sup> Exhibit R-4

“Custom computer programming services,”<sup>42</sup> and corresponds to SIC code 7371. Further, Respondent points to employee control requirements for guest workers under the H-1B Visa program as inconsistent with Petitioner’s position that it is merely a staffing company. Finally, Respondent contends that Petitioner’s characterization of itself as a staffing company under SIC Code 736 is directly contradicted by Petitioner’s written agreement for MEGA tax credit, in which Petitioner agreed to create qualified new jobs under SIC Code 7371.

#### RESPONDENT’S ADMITTED EXHIBITS

- R-4 Petitioner’s 2007 SBT return, U.S. income tax return 1120S
- R-5 MBT Notice of Additional Tax Due for 2008, dated 12/17/12
- R-6 MBT Notice of Additional Tax Due for 2009, dated 4/10/13
- R-7 MBT Notice of Additional Tax Due for 2011, dated 5/3/13
- R-8 MBT Notice of Additional Tax Due for 2011, dated 9/13/13
- R-9 Description of NAICS Code 561300 from U.S. Census Bureau
- R-10 OSHA website providing description for Industry Group 7361 Employment Agencies
- R-11 OSHA website providing description for Industry Group 7363 Help Supply Services
- R-12 Spreadsheet showing NAICS Code to corresponding SIC Code
- R-13 OSHA website providing description for Industry Group 7379 Computer related services not elsewhere classified
- R-15 Michigan DLEG, Profit Corporation Information Update, 2008, 2009 and 2011
- R-18 Master Services Agreement between HTC Global and Teacher’s Insurance and Annuity Association of America
- R-20 Confirmation of Employment Offer and Employee Agreement

---

<sup>42</sup> Exhibit R-4, p .000012

R-21 U.S. Citizen and Immigration Services Memorandum dated 1/8/10, determining Employer-Employee Relationship for H-1B petitions, Including Third Party Site Placements.

R-24 MEGA Tax Credit Agreement

#### RESPONDENT'S WITNESSES

##### Danielle Marinas

Respondent's first witness was its Auditor Manager, Danielle Marinas.<sup>43</sup> She testified that in conducting her review of Petitioner's MBT returns to see if it qualified for a staffing deduction, she looked at the NAICS code, the SIC code, who the payroll provider is and who the supervision is under.<sup>44</sup> She testified that the NAICS code used by Petitioner in its 2008 return was invalid, per the U.S. Census Bureau website.<sup>45</sup> She reviewed Petitioner's 2007 MBT return, and noted that it listed its previous Principal Business Activity as "IT Strategy Consulti[ng]."<sup>46</sup> On the federal return for the same year, Petitioner used NAICS Code 541511. Marinas testified that with the repeal of the Single Business Tax in 2007 and the enactment of the MBT in 2008, with a deduction for staffing companies, "it would be beneficial to change at that point."<sup>47</sup> Marinas concluded her direct testimony by affirming that the NAICS code listed by a taxpayer is not conclusive as to whether or not the taxpayer is a staffing company. She agreed that it depends on the facts and circumstances of the particular taxpayer.<sup>48</sup>

On cross examination, she stated as follows as to what Respondent looks at to determine whether or not the staffing company subtraction is appropriate:

---

<sup>43</sup> T. p. 105

<sup>44</sup> T. p. 106

<sup>45</sup> T. p. 107-108

<sup>46</sup> Exhibit R-4, T. p. 111

<sup>47</sup> T. p. 111-112

<sup>48</sup> T. p. 117-119

We would look at who's on the payroll, whether it's the providing company or the receiving company of the employee. We would look, like you said, at who provides the supervision, and then any information that the taxpayer can provide. We also review contracts, any other information.<sup>49</sup>

In answer to a question by the bench, Marinas gave the following summary as to why the staffing company deduction was disallowed:

Initially it was based on a review of just the documentation we had within our department, and we reach out to the taxpayer, give them an opportunity to provide us information to show that they do qualify for it. Once we receive that documentation back we review it. And in this case I determined that they were disallowed because of the information that they provided me. It was only one blanket contract. So I had to assume that that was the contract that they used for all -- for all employee/employer -- not employee/employer, but contracts between the company providing the staff and the company receiving the staff. And that contract had specifically stated that it's consulting services and those consulting services were provided by an expert in that area. And it also stated that the employee was going to be under the supervision of HTC. It specifically stated that in that blank contract they provided me. So with that information provided that does not fit under the Industry Code 736. So with that I had to make the decision to disallow.<sup>50</sup>

#### Lenise Glanton

Respondent's second and final witness was Lenise Glanton, an auditor. The file was transferred to Glanton in 2013, and she also represented Respondent at the informal conference stage of this dispute.<sup>51</sup> She testified that she reviewed the disallowance decision by Marinas and agreed with her, even after looking at additional contracts not provided to Marinas. Regarding the Meijer contract,<sup>52</sup> Glanton stated that the language found in section 3.2, where Petitioner determines the method, the details and the means of performing the work provided to the client, "is more work than what we would typically see" for a staffing company.<sup>53</sup> She also reviewed

---

<sup>49</sup> T. p. 122

<sup>50</sup> T. p. 126-127

<sup>51</sup> T. p. 128

<sup>52</sup> Exhibit P-16

<sup>53</sup> T. p. 130

the Fee Structure and Assumptions attached to the Meijer contract,<sup>54</sup> and concluded that the roles listed would typically be correlated with industry group 737.<sup>55</sup>

Glanton also reviewed Petitioner's contract with Teacher's Insurance and Annuity Association, ("TIAA").<sup>56</sup> What stood out to her was the agreement's statement of purpose, which reads, "TIAA and Supplier are entering into the Agreement for the purpose of having Supplier provide information technology Services, as further defined herein."<sup>57</sup> Glanton also concluded that the roles of employees listed in the agreement were better suited for industry group 737 than 736.<sup>58</sup> Similarly, in reviewing Petitioner's agreement with Aetna,<sup>59</sup> Glanton determined that Petitioner "exercised quite a bit of supervision over the employees that are provided to Aetna."<sup>60</sup> As with the Meijer and TIAA agreements, Glanton determined that Petitioner's agreement with State Farm Mutual Automobile Insurance Co.,<sup>61</sup> the roles of the labor provided are roles that fall within group 737.<sup>62</sup>

Glanton also had the following exchange with the bench regarding whether hiring out computer related employees could qualify for the staffing deduction:

Q. Is it your understanding that somebody leasing out a systems analyst could not qualify as a staffing company?

THE WITNESS: It depends on the services. Based on the Standard Industrial Classification model there are certain services that fall within specific industries. So a taxpayer can provide computer consultants on a contractor fee basis. They can provide computer programmers on a contractor fee basis, and those services

---

<sup>54</sup> Exhibit P-16, p. 016. The Tribunal also notes that per this attachment, Petitioner provides the same services for each of the 15 listed roles at lesser rates if performed "offsite" at Petitioner's Troy headquarters, and cheaper still if performed "offshore" at Petitioner's India location.

<sup>55</sup> T. p. 132

<sup>56</sup> Exhibit P-19

<sup>57</sup> Exhibit P-19, p. 1; T, p. 133

<sup>58</sup> T. p. 134

<sup>59</sup> Exhibit P-22

<sup>60</sup> T. p. 135

<sup>61</sup> Exhibit P-23

<sup>62</sup> T. p. 137

would fall within industry group 737. If there's a specific service that is classified under a specific industry group we'll classify it based on that industry group.

\*\*\*

I see programmers here. I see analysts here, software analysts. Those are services that fall within a completely different industry group. So the provision of those services are specifically stated under a different industry group, and because they're stated under a different industry group they can't be classified under 736 because they're stated elsewhere.<sup>63</sup>

#### FINDINGS OF FACT

1. During the tax years at issue, Petitioner marketed itself as providing Application Services, Testing Services, Enterprise Content Management Services, Business Intelligence Services, and IT Infrastructure Management Services to businesses worldwide, as well as in the State of Michigan.
2. Petitioner for the relevant time period had between 700 and 800 employees in the United States, and 6,000 employees worldwide.
3. Petitioner maintains an office in Troy, Michigan.
4. Per testimony of its vice president for operations, 90% of its employees provide IT related services.
5. Petitioner provides IT services at the location of its clients, as well as at its office in Troy, and its office in India.
6. Petitioner employs educated and trained employees to provide IT and IT related services.
7. Petitioner hires specially trained and educated employees, of which close to half are here under the H-1B Visa program.
8. Petitioner frequently assigns its employees, which it terms "consultants," to its client's work place.

---

<sup>63</sup> T. p. 142-143

9. Petitioner frequently places limitations on client's ability to hire HTC employees. Its contracts with Meijer,<sup>64</sup> Gale Group,<sup>65</sup> Auto Owner's Insurance,<sup>66</sup> and American Family Mutual Insurance<sup>67</sup> prohibit the client from hiring HTC employees until the expiration of 12 months. Its contract with Aetna<sup>68</sup> and State Farm,<sup>69</sup> allow hiring, with restrictions as to numbers and timing.
10. In 2008 Petitioner described its purposes and activities on its Information Update filed with Michigan's Bureau of Commercial Services as "Computer Consulting, Custom Software, System Integration, Digitization, BPO."<sup>70</sup>
11. Petitioner described its Principal Business Activity on its 2007 SBT Return as "IT strategy consulti[ng]."
12. On its 2008,<sup>71</sup> 2009<sup>72</sup> and 2011<sup>73</sup> MBT Returns, Petitioner described its Principal Business Activity as "Professional Staffin[g]."
13. Petitioner entered into an agreement with the Michigan Economic Growth Authority in December 2002, which it amended in 2010, whereby in exchange for certain tax credits, it promised to create "Qualified New Jobs in this state generally classified under SIC Code 7371."<sup>74</sup>

---

<sup>64</sup> Exhibit P-16, p. 007 ¶ 7.2

<sup>65</sup> Exhibit P-17, p. 003 ¶ G

<sup>66</sup> Exhibit P-18, p. 003 ¶ G

<sup>67</sup> Exhibit P-21, p. 004 ¶ P

<sup>68</sup> Exhibit P-22, p. 0011

<sup>69</sup> Exhibit P-23, p. 006

<sup>70</sup> Exhibit R-15

<sup>71</sup> Exhibit R-1

<sup>72</sup> Exhibit R-2

<sup>73</sup> Exhibit R-3

<sup>74</sup> Exhibit R-24 ¶2.2(d)



## CONCLUSIONS OF LAW

The Michigan Business Tax Act provides that a taxpayer upon calculating its Modified Gross Receipts tax base may subtract "purchases from other firms."

(3) The modified gross receipts tax base means a taxpayer's gross receipts subject to the adjustment in subsection (6), if applicable, less purchases from other firms before apportionment under this act. . . .<sup>75</sup>

"Purchases from other firms" is further defined in the Act to include the compensation of personnel supplied to customers by a staffing company,

(6) "Purchases from other firms" means all of the following:

(d) For a staffing company, compensation of personnel supplied to customers of staffing companies.<sup>76</sup>

The term "staffing company," on the other hand, is defined in the Act as a taxpayer whose business activities are included in industry group 736 by the United States Department of Labor.<sup>77</sup>

The first issue raised by Petitioner relates to the construction of these provisions. Petitioner relies upon a line of cases commencing with *In re Dodge Brothers*,<sup>78</sup> for the proposition that tax statutes are to be construed most strongly against the government and in favor of the taxpayer. Petitioner quotes the following:

Tax exactions, property or excise, must rest upon legislative enactment, and collecting officers can only act within express authority conferred by law. Tax collectors must be able to point to such express authority so that it may be read when it is questioned in court. The scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, [sic] is not resolved against the taxpayer.<sup>79</sup>

---

<sup>75</sup> MCL 208.1203.

<sup>76</sup> MCL 208.1113.

<sup>77</sup> MCL 208.1113(6)(d)(ii)

<sup>78</sup> *In re Dodge Brothers* 241 Mich 665; 217 NW2d 77 (1942)

<sup>79</sup> *Id.*, at 669

The Supreme Court’s venerable opinion in *Dodge Brothers* however, was concerned with the issue of situs of intangibles, and whether or not situs of intangibles was controlled by statute or common law.<sup>80</sup> Petitioner’s quote in the context of this case is inapposite to the present case. However, the phrase, “[t]he scope of tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, (sic) is not resolved against the taxpayer,” has taken on a life of its own in the Court of Appeals.<sup>81</sup>

Of greater relevance to the present case is the decision cited by Respondent, but absent from Petitioner’s brief of *Menard Inc v Dep’t of Treasury*.<sup>82</sup> *Menard* reflects the current thinking of the Michigan Court of Appeals. While this decision also quotes much of the same language as in *Dodge Brothers* regarding ambiguities resolved in favor of the taxpayer,<sup>83</sup>

*Menard* has the following to say about tax deductions:

In practice, the rules of construction governing exemptions may be applied to the rules addressing deductions. See *Detroit Edison Co. v. Dep’t of Revenue*, 320 Mich. 506, 514–515, 31 N.W.2d 809 (1948). In *GMAC LLC*, 286 Mich App at 374–375, 781 N.W.2d 310, this Court set forth the following rules regarding tax exemptions:

Moreover, “[a]n exemption will not be inferred from language of a statute if the words admit of any other reasonable construction.” Tax exemptions

---

<sup>80</sup> The paragraph cited above goes on to say:

Credits, by way of deposits in banks, upon accounts receivable, and payments to be received on land contracts, are all intangible assets, and situs thereof is the domicile of the owner, unless fixed elsewhere by some positive tax law. Situs of domicile, with reference to intangibles, is not at all affected by the mere place of business, for the law, short of statute to a different end, does not admit of a so-called business situs changing or interfering with the situs of domicile. *In re Pantlind Hotel Co.*, supra. This is but saying that common-law situs governs unless modified or abrogated by statute.

<sup>81</sup> See *Lindsay Anderson Sagar Trust v Dep’t of Treasury*, 204 Mich App 128, 130; 514 N.W.2d 514 (1994); *Bechtel Power v Dep’t of Treasury*, 128 Mich App 324;340 N.W.2d 297 (1983). It was also restated by the Supreme Court in *Metzen v Dep’t of Revenue*, 310 Mich 622, 627;17 N.W.2d 860 (1945) as:

In the interpretation of statutes levying taxes it is the established rule not to extend their provisions, by implication, beyond the clear import of the language used, or to enlarge their operations so as to embrace matters not specifically pointed out. In case of doubt they are construed most strongly against the government, and in favor of the citizen.

*Metzen* dealt with the applicability of the statute of limitations on a refund, as well as the law of the case. Again, the discussion therein is not germane to the present case.

<sup>82</sup> *Menard Inc v Treasury*, 302 Mich App 467; 838 N.W.2d 736 (2013).

<sup>83</sup> *Menard Inc v Treasury* 302 Mich App at 472-473

are disfavored, and the burden of proving an entitlement to an exemption is on the party claiming the right to the exemption. Tax exemptions are in derogation of the principle that all shall bear a proportionate share of the tax burden, and therefore, a tax exemption shall be strictly construed. [Citations omitted in the original.]<sup>84</sup>

Accordingly, tax deductions are now viewed through the same lens as tax exemptions, and the *burden of proving an entitlement to an exemption is on the party claiming the right to the exemption.*

The present case involves the scope of the deduction from the MBT base for staffing. Accordingly, the Tribunal agrees with Respondent that the burden for proving a deduction falls upon Petitioner. Further, the above quoted passage in *Menard* negates Petitioner's argument concerning Respondent's failure to promulgate rules, regulations or guidelines. While administrative clarification describing who qualifies for the staffing deduction would be helpful to taxpayers seeking to avoid unexpected pitfalls, Respondent's inaction in this regard does not amount to extending the scope of tax laws by implication or forced construction.

Per MCL 208.1113(6)(d)(ii), the definition of a staffing company is tied to Standard Industrial Code 736 as compiled by the U.S Department of Labor. Code 736 states as follows:

7363 Help Supply Services:

Establishments primarily engaged in supplying temporary or continuing help on a contract or fee basis. The help supplied is always on the payroll of the supplying establishments, but is under the direct or general supervision of the business to whom the help is furnished. Establishments which provide both management and staff to operate a business are classified according to the type of activity of the business. Establishments primarily engaged in furnishing personnel to perform a range of services in support of the operation of other establishments are classified in Industry 8744, and those supplying farm labor are classified in Agriculture, Industry 0761.

Employee leasing service  
Fashion show model supply service

---

<sup>84</sup> 302 Mich App at 474.

Help supply service  
Labor pools  
Manpower pools  
Modeling service  
Office help supply service  
Temporary help service  
Usher service<sup>85</sup>

From this description, Petitioner distilled qualification criteria under 736 to three requirements:

- (a) the business is primarily engaged in providing temporary personnel on a contract or fee basis;
- (b) the business employee remains on the payroll of the staffing company;
- (c) the business employee is under the direct or general supervision of the customer.

It was uncontested at trial that Petitioner’s business employees, (or “consultants” as they are frequently referred to in the contracts with clients) remain on Petitioner’s payroll. While Respondent argued that the customer failed to directly supervise the employees, and thus failed to meet the qualifications, requirement (c) seems to require only that the customer *either* generally or directly supervise the consultants. While much of the hearing centered on whether the customer’s supervision was direct or general, the Tribunal holds that debate to be basically irrelevant in the present case in determining whether SIC 736 is the correct classification.

The Tribunal has previously ruled upon the applicability of SIC 736. In *Reliable Software Resources v Dep’t of Treasury*,<sup>86</sup> a case with facts strikingly similar to the present case, the Tribunal set forth an analysis of the standard industrial code system, and its replacement by the North American Industrial Code System in 1997. The Tribunal stated:

The standard industrial code (“SIC”) system was replaced by the North American Industrial Code System (“NAICS”) in 1997. Therefore, the MBT return required

---

<sup>85</sup> See Exhibit P-28, OSHA screenshot.

<sup>86</sup> *Reliable Software Resources v Dep’t of Treasury*, 26 MTT 420 (2016)

taxpayers to report the applicable NAICS code and not an SIC code that is no longer in general use. However, in a notice published in the federal register in 1997, the United States Office of Management and Budget (“OMB”) recognized that NAICS and the SIC have been used by governmental agencies for non-statistical purposes, such as administrative, regulatory, and taxation. (See Federal Register, Vol. 62, No. 68, 4/9/97, at 17288.) The OMB further noted that it solicited comments from the public and that approximately 20 percent of formal letters from the public “concerned ambiguities in the titles and definitions of the 1987 SIC industries, and incomplete or out-of-date product lists. More than 40 respondents requested better-defined product detail within existing industries... .” *Id* at 17290.

Also, “NAICS divides the 1987 SIC Services division into eight new sectors. One of the new sectors is the Professional, Scientific and Technical Services sector, which comprises establishments engaged in activities where human capital is the major input. The sector includes such industries as offices of lawyers; engineering services; environmental consulting services; advertising agencies; and translation and interpretation services.” *Id* at 17291. Because SIC 7371 (Computer Programming Services) corresponds to NAICS 541511 (Custom Computer Programming Services) the foregoing description of Industries that are “defined by the expertise and training of the service provider” applies to Petitioner. *Id.* *This indicates that the methodology for placing a business activity (or a business establishment) in the proper code involves consideration of the expertise and training of the service provider. In our case, it is clear that Petitioner’s employees have a high level of training, education, and skill needed to perform complex data analytics services. It is also evident that both under the SIC and NAICS systems, the goal is to categorize businesses according to their primary business activity, based on the type of services provided. The system would be essentially useless for its essential purpose if diverse service providers were all placed in an industry intended for “employment agencies” and “help supply companies”* <sup>87</sup> [Emphasis added.]

While not necessarily bound by a prior Tribunal decision, we find the analysis above to be persuasive, and adopt its reasoning in the present case. The discussion and holding in *Reliable Software* applies equally to the facts before us today. In the present case, the type of services provided by Petitioner are in the area of information technology. Petitioner described its activities in its 2008 Information update as “Computer Consulting, Custom Software, System

---

<sup>87</sup> *Reliable Software*, 26 MTT at 433.

Integration, Digitization, BPO (Business Processing Outsourcing).”<sup>88</sup> While its Director of Finance who prepared this update testified that in the context of the present litigation, her idea of what constitutes “computer consulting” has changed, the Tribunal finds that the potential tax liability was decisive in changing her mind. The same reason also helped persuade Mr. Desai, Petitioner’s accountant, who revised the Principal Business Activity of “IT Strategy Consulti[ng]” found on its 2007 SBT Return,<sup>89</sup> to a NAICS Code vaguely corresponding to help supply services, or an employment agency for 2008 , 2009 and 2011. The Tribunal is not persuaded that “consulting” is limited to players such as large accounting firms, or those giving strategic advice regarding the best software packages to use. While that definition may or may not be how the term “consulting” is used in industry parlance, the Tribunal finds that its general usage is much broader.

While neither Maria’s description on a state report, nor Desai’s change of code on tax returns are decisive in determining whether or not Petitioner fits under SIC 736, they are emblematic of other evidence that also points to the inappropriateness of this industry code. Maria testified that she originally relied on marketing information. As to marketing information, Petitioner provided screen shots of its website,<sup>90</sup> in which it tells the world what it does, presumably to find customers. The following passages generally describe their activities:

We specialize in mapping value chains, eliminating waste and redundancy, and implementing systems that increase efficiencies, enabling us to provide the right solution to you. ...Our solutions combine our customizable products and pre-built and tested software components with certified and experienced IT professionals to deliver solutions and services that are unmatched in speed and cost.

---

<sup>88</sup> Exhibit R-15

<sup>89</sup> Exhibit R-4

<sup>90</sup> Exhibit P-29

Under this manifesto, (which never mentions staffing), there are five columns titled: IT Services, IT Solutions, BPO (Business Process Outsourcing), Industries and Engineering Services. None of the entries under these headings, which are repeated on all five screenshot pages mention staffing. Rather, the following services are listed as hyperlinks:

<b>IT Services</b>	<b>IT Solutions</b>	<b>BPO</b>	<b>Industries</b>	<b>Engineering Services</b>
• Application Services	• Grants Management	• Content Digitization	• Automotive and Manufacturing	• Aerospace
• Testing Services	• eBAP Suite of Products	• eBook Conversion	• Banking and Financial	• Automotive
• Enterprise Content Management	• Campus Management	• Cataloging Services	• Government	• Product Engineering
• Business Intelligence	• Public Employee Retirement System	• Data Analysis and Design Services	• Insurance	
• IT Infrastructure Management	• Kualu	• Back Offices	• Media and Publishing	
• Enterprise Solutions	• docuSTACK		• Healthcare	
• Mobile Application Development	• PPMA		• Retail	

Of course, as every informed consumer knows, marketing does not necessarily describe a product in accurate fashion. In the present case, the Tribunal received the testimony of Petitioner’s Vice President of Operations to describe what Petitioner does. Vaishya testified that Petitioner is in the business of IT staffing.<sup>91</sup> He explained that Petitioner sends IT personnel to augment their customer’s technical staff. However, Vaishya indicated that the on-sight work performed by its employees was also provided to customers offshore by its offshore employees:

Offshore is an extension of onsite -- onshore. The customers may request, you know, for certain projects that we would need, sort of resources, you know, that could be outside of the U.S. They could take advantage of the labor arbitrage or the number of people that they need at any one point in time. So, you know, the activities could be onshore and offshore, could be similar, you know, providing, you know, programming, development, analysis or testing or what have you. And the similar skills could be also, you know, provided from an offshore facility. So

---

<sup>91</sup> T. p. 60

it's at the discretion of the customer that they decide on this project we would need so many onsite and then we would need so many offshore.<sup>92</sup>

Vaishya's testimony as to this point is underscored by its agreement with Meijer. Exhibit D to the Meijer agreement has the following table, reproduced in part:<sup>93</sup>

Roles	Total IT Experience	Hourly rates		
		Onsite Meijer Grand Rapids location	Offsite HTC Troy location	Offshore HTC/India location
1. Analyst/Coordinator	> 5 years	\$ xx.xx	\$yy.yy	\$zz.zz
2. .NET Developer	>3 years	\$ xx.xx	\$yy.yy	\$zz.zz
3. Cobol. Developer	> 5 years	\$ xx.xx	\$yy.yy	\$zz.zz
4. Project Manager	> 5 years	\$ xx.xx	\$yy.yy	\$zz.zz
5. Programmer Analyst	> 3 years	\$ xx.xx	\$yy.yy	\$zz.zz
6. Senior Programmer Analyst	>5 years	\$ xx.xx	\$yy.yy	\$zz.zz
7. Database Admin	> 3 years	\$ xx.xx	\$yy.yy	\$zz.zz
8. Senior Database Admin	>5 years	\$ xx.xx	\$yy.yy	\$zz.zz
9. System Administrator	>3 years	\$ xx.xx	\$yy.yy	\$zz.zz
10. Sr. System Administrator	> 5 years	\$ xx.xx	\$yy.yy	\$zz.zz
11. Quality Lead	> 3 years	\$ xx.xx	\$yy.yy	\$zz.zz
12. Test. Lead	> 3 years	\$ xx.xx	\$yy.yy	\$zz.zz
13. Test Engineer	> 5 years	\$ xx.xx	\$yy.yy	\$zz.zz
14. Training/Documentation	> 3 years	\$ xx.xx	\$yy.yy	\$zz.zz
15. Subject Matter Expert ...	> 5 years	\$ xx.xx	\$yy.yy	\$zz.zz

As this table clearly shows, the same services were made available by Petitioner to Meijer on site, as well as at HTC's Michigan location, and HTC's location in India. Clearly, the product Petitioner is selling is its computer and IT expertise, rather than merely providing a group of technical workers. Further, Petitioner is providing highly trained or experienced workers to assist in computer and IT related tasks. This is not a case where Petitioner's employees are stocking shelves, selling groceries, or welcoming customers at the door. A similar role table can also be found in Petitioner's contract with Aetna Life Insurance. For work performed in India,

<sup>92</sup> T. p. 62-63

<sup>93</sup> Exhibit P-16 p. 000048. Hourly rates not reproduced here because of confidentiality concerns.



Petitioner charges roughly one third of its rate for the same employee role performed on site.<sup>94</sup>

Work performed for the Gale Group was also provided in part, off-shore.<sup>95</sup>

Also of interest is the contract provided by Petitioner between itself and TIAA.<sup>96</sup> In the Statement of Work attached to this contract, one statement is particularly telling:

**Project Overview/Background:** TIAA has roughly 120 applications utilizing unique technology stacks. Which are running on outdated hardware and software platforms. Supplier [Petitioner] will assist TIAA migrate and test applications running in older versions of WebLogic to current versions of system software. Supplier will also assist TIAA with examining and modifying components to ensure the applications can perform in a High-Availability environment.<sup>97</sup>

Again, the product sold by Petitioner is expertise and assistance for a specific computer or IT related project. Petitioner's employees are not helping TIAA provide insurance or annuities, invest funds, or adjust claims. Petitioner's customers contract with Petitioner to receive its services in IT, programming, and other computer related endeavors. Often, Petitioner satisfies this need by sending them employees to work in the customer's IT department. However, this is not a case where a customer seeks out Petitioner to fill out its staffing. It is also worth noting that out of 120 customers to choose from, the contracts presented into evidence were hand-picked by Petitioner, rather than Respondent.

As held by the Tribunal in *Reliable Software*, and quoted above, assignment of a business to a proper code involves in part, consideration of the expertise and training of the service provider. Maria testified regarding the education and training of its employees sent out as "consultants" to various clients. She stated regarding those candidates applying for a IT position with Petitioner have, "[a]t a minimum, a college degree and most of the time a master's

---

<sup>94</sup> Exhibit P-22, p. 013.

<sup>95</sup> T. p. 47

<sup>96</sup> Exhibit P-19

<sup>97</sup> Exhibit P-19 at p. 019-027

depending on their higher certification levels.”<sup>98</sup> Per Vaishya’s testimony, an estimated 90 percent of its “consultants” are in the IT field. Further, per Vaishya, “close to half” of its consultants are here on H-1B Visas.<sup>99</sup> To be eligible, an employee must meet requirements to perform services in a specialty occupation.<sup>100</sup> Additionally, per the addendum table to the Meijer contract quoted above, various years of experience are also required for each of the staffer’s roles. All of this is consistent with a business coded under SIC 737, rather 736. Code 7379 Computer Related Services, Not Elsewhere Classified lists the following types of employees and services:

- Computer consultants
- Data base developers
- Data processing consultants
- Disk and diskette conversion services
- Disk and diskette recertification services
- Requirements analysis, computer hardware
- Tape recertification service.

While some of these services appear to be obsolete as computer technology has rapidly evolved, these examples are close to the types of services offered and employees hired by Petitioner which it sends to various work places.

In contrast, the description for 7363, provided by Petitioner,<sup>101</sup> lists nine examples of services that fall under Help Supply Services, a sub-category of staffing:

- Employee leasing service
- Fashion show model supply service
- Help supply service
- Labor pools
- Manpower pools
- Modeling service

---

<sup>98</sup> T. p. 40

<sup>99</sup> T. p. 57

<sup>100</sup> Exhibit R-21 p. 000001

<sup>101</sup> Exhibit P-28

- Office help supply service
- Temporary help service
- Usher service

The differences in skills and training between the two groups listed in these categories is obvious. While mixing computer consultants with fashion models might provide an amusing premise for a television show,<sup>102</sup> the Tribunal holds that the education and training required for Petitioner's employees is appropriate under SIC 7379, (Industry Group 737), rather than SIC 7363, (Industry Group 736). Nor is SIC 7361 (Industry Group 736) Employment Agencies appropriate, as Petitioner, per the contracts it submitted into evidence, almost always restricts clients from hiring STC employees.

Finally, Petitioner entered into an agreement with the Michigan Economic Growth Authority, (MEGA) in 2002, which it amended in 2010, where it agreed to "create Qualified New Jobs in this state generally classified under SIC Code 7371."<sup>103</sup> The Tribunal holds that a company in the business of creating new jobs for computer programmers is inconsistent with an industry classification of staffing. To hold otherwise is to ignore the purpose of SIC classification, and by extension, its incorporation into the MBT. Further, to allow Petitioner to take advantage of a deduction by classifying itself as a staffing company for MBT purposes, and at the same time, calling itself a computer / IT company to qualify for MEGA tax credit purposes is neither consistent, nor credible. The Tribunal therefore holds that Petitioner failed to meet its burden of proof that it qualifies for the staffing deduction.

---

<sup>102</sup> For instance, The Big Bang Theory

<sup>103</sup> Exhibit R-24, p. 5; SIC Code 7371 is titled Computer Programming Services, per Exhibit R-12 p. 000001.

## JUDGMENT

IT IS ORDERED that Final Assessments TT5305, TV 53331 and TY 22776 are AFFIRMED as set forth in the Introduction section of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties, as finally shown in the Proposed Opinion and Judgment within 20 days of entry of this Final Opinion and Judgment.

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.

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

## APPEAL RIGHTS

If you disagree with the final decision in this case, 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>104</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>105</sup> A copy of the motion must be served on the opposing party by mail or

---

<sup>104</sup> See TTR 261 and 257.

<sup>105</sup> See TTR 217 and 267.

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>106</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>107</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>108</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>109</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>110</sup>

By David B Marmon

Entered: March 17, 2017

---

<sup>106</sup> See TTR 261 and 225.

<sup>107</sup> See TTR 261 and 257.

<sup>108</sup> See MCL 205.753 and MCR 7.204.

<sup>109</sup> See TTR 213.

<sup>110</sup> See TTR 217 and 267.