

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Thomas S. Monaghan,
Petitioner,

v

MTT Docket No. 329175

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Cynthia J Knoll

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

Petitioner, Thomas M. Monaghan, appeals Michigan use tax assessment No. K082690, assessed for the period of December 1999. On August 1, 2007, Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(10). Respondent, Department of Treasury, responded to Petitioner's Motion on August 14, 2007. On August 2, 2007, Respondent made a separate Motion for Summary Disposition pursuant to MCR 2.116(C)(10). Petitioner answered Respondent's Motion on August 15, 2007. On January 24, 2008, the Tribunal heard oral arguments on the Motions.

The Tribunal determines that granting Petitioner's Motion is appropriate. As such, Respondent's Motion will be denied. Petitioner has requested the Tribunal grant such other relief as the Tribunal may deem appropriate, inclusive of an award of costs and attorney fees. Petitioner's request is denied and judgment shall be rendered in favor of Petitioner.

II. PETITIONER'S CONTENTIONS

Petitioner contends that this case should be dismissed under MCR 2.116(C)(10) because no genuine issue of material fact exists concerning Petitioner's liability for payment of the use tax mandated by MCL 205.93(1) and that Petitioner is entitled to judgment as a matter of law.

Petitioner maintains that he is not liable for the six percent use tax because he qualifies for an exemption to the general rule of MCL 205.93(1). Petitioner's brief, p 8. Petitioner avers that no taxes are due because he purchased the painting on behalf of the LLC with the intent that it be resold as part of the gallery's retail business. *Id.*, p 9. Petitioner characterizes the purchase of the painting as a capital contribution to the LLC and not a donation. Transcript of Oral Argument, pp 15-16; Petitioner's response, p 2. Petitioner writes: "[T]he facts unmistakably disclose that Petitioner acquired the Renoir painting as the owner of the LLC with the intent that the LLC would resell it at retail." Petitioner's brief, p 9. In support of his contentions, Petitioner submits that he acted on behalf of the LLC and purchased the painting to be used as a "flagship" work to assist in generating interest in the newly opened gallery. Transcript of Oral Argument, p 24.

Petitioner attributes Respondent's assessment of the use tax to an erroneous interpretation of those portions of the Michigan Sales Tax Act related to when retailers must register for a sales tax license to be exempt from paying use tax. Petitioner's brief, p 9. Petitioner maintains that Respondent assessed Petitioner with the use tax because Respondent believes Petitioner did not qualify as a retailer because neither he nor the LLC had yet applied for the sales tax license when Petitioner purchased the Renoir painting in November 1999. *Id.* The LLC registered for Michigan taxes on February 15, 2000. *Monaghan Aff*, ¶ 9. Petitioner argues that Respondent has applied a narrow interpretation to MCL 205.53(1), which specifies when retailers must obtain a sales tax license from the Department of Treasury. Petitioner's brief, p 10. Petitioner provides that the statute merely requires that the retailer must register for a sales tax license in the "current tax year." *Id.* Petitioner states:

While it is reasonable that a new business must register for a license before it opens its doors and begins collecting Michigan sales tax, there is no indication from the statute that the retailer must have the license in hand while it is acquiring its initial stock but is not yet ready to open its doors to the public, to sell tangible personal property, or to collect sales tax. Petitioner's brief, pp. 10-11.

Petitioner maintains that the unique character of the Renoir painting and its limited availability for purchase made time of the essence and did not allow Petitioner enough time to obtain a Michigan sales tax license before acquiring the painting. *Id.*, p 12.

Petitioner also argues that Respondent has misidentified the taxpayer. Petitioner argues that the proper taxpayer here is the LLC and not Petitioner. *Id.*, pp 12-13. The LLC “has its own taxpayer identification number” and “is a separate taxpaying entity from Petitioner.” *Id.*, p 13. Petitioner asserts that he is not the proper taxpayer because he purchased the painting on behalf of the LLC. *Id.* In response to anticipated arguments from Respondent concerning payment for the painting, Petitioner maintains that state law does not require that payments for goods purchased for retail be purchased by the taxpayer. *Id.*, p 14. In particular, Petitioner maintains that “[t]here is no requirement that Mr. Monaghan has to deposit those funds into the LLC’s bank account, and that the LLC then must pay for the painting out of its own account.” *Id.*

Regardless of which taxpayer Respondent pursues, Petitioner next argues that summary disposition is appropriate because Petitioner’s intent at the time of the purchase of the Renoir demands that it be exempted from use tax because his intent was to see the painting resold as part of the gallery’s collection. *Id.* Indeed, Petitioner states that the “purchaser’s intent at the time of the purchase is controlling for purposes of determining whether the UTA’s exemption for property purchased for resale has been met.” *Id.*, p 15. Petitioner emphasizes again that the mere absence of a sales tax license cannot be construed as subjecting the taxpayer to the use tax or disproving Petitioner’s intent to resell the property. *Id.*

Petitioner also argues that he should not be subjected to the 10 percent negligence penalty. *Id.*, p 16. The negligence penalty is not warranted because “Petitioner exercised ordinary care and prudence in evaluating the facts concerning his acquisition and subsequent contribution of the Renoir painting to the LLC. . . .” *Id.*

Lastly, Petitioner argues that he is entitled to a complete or partial waiver of interest because Respondent caused significant delays in conducting its informal conference. *Id.*, p 18. Specifically, Petitioner states that interest is subject to waiver in situations where the Department of Treasury has “unnecessarily delayed consideration and determination of a matter.” *Id.* Petitioner contends that Respondent acted dilatorily because the informal conference to protest the bill for taxes did not convene until November 22, 2006, more than five years after issuance of the Intent to Assess. *Id.* Because of the delay, Petitioner requests that interest be partially if not wholly waived. *Id.*, p 19.

In response to Respondent's Motion for Summary Disposition, Petitioner disputes Respondent's assertion that the painting was donated to the LLC in February and contends instead that the LLC held title to the painting as part of its inventory as soon as November 1999, following acquisition. Petitioner's response, p 3. Petitioner characterizes the transfer as a contribution to capital and not a donation. *Id.* p 3.

Petitioner suggests that Respondent mischaracterizes his relationship with the LLC. *Id.* Petitioner maintains that he enjoys a separate and distinct identity from that of the LLC. *Id.* Petitioner states: "Mr. Monaghan is not hiding behind some corporate veil. Mr. Monaghan created the entity before buying the painting. He bought the painting as a contribution to the Gallery by its single member owner. The Gallery had a sales tax license before it opened for business and sold any paintings. The Gallery has since sold the painting. Mr. Monaghan has **NEVER** claimed personal ownership of this painting." [Emphasis in original.] *Id.* Petitioner also contends that his conduct ranging from the original purchase to shipment to Michigan, display and market, and final sale as illustrative of his intent to sell. *Id.*, p 4.

Petitioner's response also addresses Respondent's contentions regarding the length of time it took to actually sell the painting as being emblematic of Petitioner's intent to use the painting for personal use. *Id.* The painting sold at retail on June 11, 2007, for \$350,000. *Id.* Petitioner adds: "There is nothing unusual about a fine artwork taking a number of years to sell because the sale depends on taste, expense, and other market factors." *Id.*

Also in the response, Petitioner argues that he cannot be held negligent for failing to comply with a vague and ambiguous statute. *Id.*, p 5. Petitioner cites the statute's silence on the questions of when the sales tax license must be obtained to avoid use tax and what representatives of the business must make the purchase in the case of a single member LLC. *Id.* Petitioner criticizes Respondent's reading of the statute as "impractical, unreasonable, and burdensome" because "business owners would not be able to contribute property to the business without it being attributed to the taxpayer personally rather than the business." *Id.*, p 6.

III. RESPONDENT'S CONTENTIONS

Respondent contends that summary disposition is warranted because no genuine issue of material fact exists regarding Petitioner's liability for the 6 percent use tax and that Respondent is entitled to judgment as a matter of law.

Respondent sees the determinative issue in this matter as being whether Petitioner is exempted from paying use tax on the purchase of a Renoir painting when he did not have sales tax registration to make retail sales and when he later donated the painting to an LLC. Respondent's brief, p 1. Respondent asserts that Petitioner does not qualify for the exemption because the facts do not support Petitioner's claim that he bought the painting for resale and that he does not qualify as a retail seller. *Id.*, p 2. As to interest, Respondent states that the question of supposed fault as to why "ultimate payment is delayed is irrelevant to Treasury's entitlement to the interest." *Id.*, p 2.

Respondent contends that Petitioner does not qualify for the exemption because he did not resell the painting to the LLC but instead donated the painting to the LLC on February 29, 2000. *Id.*, p 3. Respondent argues that even viewed in the light most favorable to Petitioner, the facts do not support Petitioner's argument that he purchased the painting for resale. *Id.*, p 6.

Respondent states that exemptions are "strictly construed against the taxpayer because exemptions represent the antithesis of tax equality." *Id.* Respondent maintains that Petitioner is not entitled to the exemption because he cannot withstand the strict scrutiny to which claims for tax exemptions are subjected. *Id.* To this end, Respondent argues that Petitioner is denied the exemption because he disposed of the painting by donation and not resale. *Id.* Respondent writes: "Monaghan's decision to buy a valuable work of art as a way to endow an institution to help charity was generous and admirable, but it is not the basis for a resale exemption for the purchase." *Id.*, pp 6-7. Respondent reasons that for a sale to occur there must first be a purchase. *Id.*, p 7. No purchase occurred, Respondent argues, because the LLC did not give Petitioner any consideration for the painting. *Id.* As to Petitioner's argument that he and the LLC are one and the same because of his position as the LLC's single member owner, Respondent asserts that "the business entity is treated as a legal person distinct from its owner or owners, and the rights and liabilities of each are distinct." *Id.* Petitioner and the LLC have a "separate legal existence." *Id.*

In response to Petitioner's reliance on the subsequent sale of the painting as evidencing his true intent to sell the painting at retail, Respondent contends that this is of no import as MCL 205.92(d) defines seller as "the person from whom a purchase is made" *Id.*, p 8. Since Petitioner and the LLC represent different entities, when the LLC finally sold the painting in

2007 it has no impact on Petitioner because Petitioner does not qualify as a seller under MCL 205.92(d). *Id.*

As to Petitioner's arguments concerning waiver or abatement of interest, Respondent maintains that the imposition of interest is not a penalty or punishment. *Id.*, p 9. "[I]t simply reflects the fact that whoever has possession of money is able to make money from it by investing it or accruing interest on it." *Id.*

Whoever has money can make more money with it. Whoever is entitled to it and does not have it, loses the chance to do so. Regardless of why he got to keep the money he owed to the Government in taxes for so long, Monaghan had the use of the money for all that time, and is presumed to have been able to invest or accrue interest on it. *Id.*

There is nothing unfair about Monaghan having to pay interest on money he was able to keep, even if the Government itself is to 'blame' that he was able to keep it for an inordinately long time." *Id.*, p 10.

Respondent also filed a brief in opposition to Petitioner's Motion for Summary Disposition. In its response, Respondent notes that the subsequent sale of the painting in 2007 is of no consequence. Respondent's response, p 2. "Monaghan gave the painting to Ave Maria long ago. He never sold it. He had no intent to sell it, when he bought it." *Id.*, p 2,

As to Petitioner's arguments concerning Petitioner's qualification as a seller under MCL 205.93, Respondent maintains that this is also of no import as "Monaghan and Ave Maria simply are not the same person, period." *Id.* Respondent stands firm in its characterization of the transfer of the painting from Petitioner to LLC as a donation rather than a sale or contribution to capital. *Id.* As to Petitioner's arguments that Respondent has assessed the incorrect taxpayer, Respondent asserts that no facts support this argument. *Id.* Respondent points out that by making this argument Petitioner essentially is making the case that he has no standing and if he has no standing to bring suit then the Tribunal would be without jurisdiction in this matter. *Id.*, p 3.

IV. FINDINGS OF FACT

At the time the events occurred that give rise to this tax controversy, Petitioner was a resident of Michigan and a single member owner of Ave Maria Fine Art Gallery, LLC, a limited liability company created in 1999, for the purpose of exhibiting works of art and offering them

for sale to the public. Petitioner's brief, p 4. The LLC's articles of organization were filed with the State of Michigan on October 25, 1999. *Id.* The LLC is located in Ann Arbor, Michigan. *Id.*, Exhibit 2. The LLC on February 15, 2000, became licensed to collect Michigan sales tax for sales made in connection with the operation of the gallery. *Id.*, Exhibit 8.

Shortly after formation, Petitioner began the process of filling the gallery with art by purchasing *Vase de Roses*, a still life painting by French artist and leading painter in the Impressionist style, Pierre-Auguste Renoir. Petitioner's brief, pp 4-5. Petitioner bought the painting as a flagship piece for the newly founded gallery from Sotheby's, Inc., in New York. Petitioner's brief, p 4; Affidavit of Thomas S. Monaghan, ¶¶ 4-5. An invoice from Sotheby's shows that Petitioner paid \$277,500 for the painting and that no sales tax was charged because it was delivered to an address outside the state of New York. Petitioner's brief, Exhibit 2. The invoice lists the sale date as November 11, 1999, and names Petitioner as the client/purchaser. *Id.* Bank of Ann Arbor confirmed a wire transfer of funds from Petitioner's account to The Chase Manhattan Bank in the amount of \$277,500 on November 16, 1999. Petitioner's brief, Exhibit 3. As a newly established entity, the LLC did not have the assets or credit to acquire the painting when Sotheby's offered it for sale. Petitioner's brief, pp 4-5. Title to the painting passed to Petitioner acting on behalf of the LLC on November 16, 1999. Petitioner's brief, p 5. Petitioner contracted to have the painting shipped directly to the gallery's offices at Domino's Farms in Ann Arbor, Michigan to be held until the gallery opened. Petitioner's brief, p 5. At the time of purchase, Petitioner was not registered as a retailer for sales tax payment purposes with the Michigan Department of Treasury. *Id.* The LLC sold the painting on June 11, 2007, for \$350,000 to Schiller & Bodo European Paintings. Petitioner's response, p 4.

Respondent's initial bill for taxes due was issued on June 29, 2000. Petitioner's brief, Exhibit 9. In the assessment, Respondent assessed Petitioner for use taxes owed on the purchase of the painting. Respondent's brief, p 3. Respondent's assessment totaled \$19,650 with \$16,650 constituting taxes owed, \$1,335 representing interest owed, and \$1,665 representing a 10 percent penalty for negligence. Petitioner's brief, Exhibit 9. Petitioner requested an informal conference, which was held on November 22, 2005. Petitioner's brief, p 6. Following the conference, the hearing referee recommended that the originally assessed tax and penalty charges be sustained, but recommended that interest be partially abated because of Respondent's delay in

conducting the informal conference. Petitioner's brief, Exhibit 11. In the recommendation, the referee attributed the delay to erroneously placing the case in abeyance based on the misunderstanding that a single business tax appeal would affect the outcome. Petitioner's brief, Exhibit 11. Respondent declined to follow the hearing referee's recommendation and on August 28, 2006 issued a Final Bill for Taxes Due. Petitioner's brief, Exhibits 12-14. The Final Bill reflected Respondent's determination that Petitioner was liable for use tax for the period in issue totaling \$26,744.71. Petitioner's brief, Exhibit 14. Of that amount, \$16,650 represented tax, \$1,665 represented a 10 percent negligence penalty, and \$8,429.71 represented interest computed to the date of the final assessment. *Id.*

Following the final assessment, Petitioner filed a protest with the Tribunal seeking cancellation of the bill in its entirety along with costs and attorney fees incurred as a result of prosecuting the litigation. Both parties argue that summary disposition is warranted because no genuine issue of material fact exists regarding Petitioner's liability for payment of the use tax as codified in MCL 205.93(1). Additionally, both parties claim they are entitled to judgment as a matter of law.

V. APPLICABLE LAW

The parties move for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated “[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact.” Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of

supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

Michigan imposes both a sales and use tax for the privilege of engaging in certain business transactions. MCL 205.52; MCL 205.93. The General Sales Tax Act (STA) levies a tax equal to 6 percent of the gross proceeds of the business on persons making sales at retail where tangible personal property is transferred for consideration. MCL 205.52(1). A sale at retail is defined as a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent. MCL 205.51(1)(b). Similarly, the Use Tax Act (UTA) imposes a tax on persons in Michigan for the “privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price of the property or services” MCL 205.93(1). The statute excludes from the UTA “property purchased for resale. . . .” MCL 205.94(1)(c). The taxes are not meant to be duplicative. Indeed, the UTA applies in situations where the purchase is not subjected to sales tax. MCL 205.94(1)(a). In other words, the UTA exists to collect the amount of tax that would otherwise be collectible under the STA. The UTA subjects tangible personal property to the 6% tax if it is brought into the State of Michigan “within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.” MCL 205.93(1)(a).

Sale means “a transaction by which tangible personal property or services are purchased or rented for storage, use, or other consumption in this state.” MCL 205.93(p). The term “use” is defined as “[t]he exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given.” MCL 205.92(b). Case law indicates that the purchaser’s intent at the time of the

purchase is controlling for purposes of determining whether the exemption for resale has been met. *Elias Bros Restaurants, Inc v Treasury Department of Treasury*, 452 Mich 144, 150; 549 NW2d 837 (1996) (concluding that under the above exemption, the defendant would have been exempt from use tax, and therefore, not guilty of tax evasion, if the jury had believed that he acquired the vehicles in question with the intent of holding them just long enough to do necessary repairs and selling them); *Betten Auto Ctr, Inc, v Department of Treasury*, 272 Mich App 14, 20-21; 723 NW2d 914 (2006) (concluding that the dealerships that had purchased vehicles as inventory for ultimate resale were exempt from use tax under the above exemption).

VI. CONCLUSIONS OF LAW

The Tribunal has carefully considered the Motions for Summary Disposition under the criteria for MCR 2.116(C)(10) filed by both Petitioner and Respondent. Additionally, the Tribunal has carefully considered responses filed by each party to the Motions for Summary Disposition. Based on the pleadings and other documentary evidence filed with the Tribunal, the Tribunal determines that granting Petitioner's Motion is appropriate because Petitioner's Motion proves that no genuine issue of material fact exists relating to Petitioner's liability for payment of use tax on the purchase of the subject painting.

Tax exemptions are the antithesis of tax equality. *ADVO-Systems, Inc v Department of Treasury*, 186 Mich App 419, 423; 465 NW2d 349, 352 (1990). As such, exemptions are strictly construed against the taxpayer. *ADVO-Systems*, p 419 citing *Town & Country Dodge, Inc v Department of Treasury*, 420 Mich 226, 243; 362 NW2d 618 (1984); *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754; 298 NW2d 422 (1980). Nevertheless, exemption statutes are interpreted according to ordinary rules of statutory construction. *Ass'n of Little Friends, Inc v Escanaba*, 138 Mich App 302, 307; 360 NW2d 602 (1984).

Petitioner seems to be presenting two opposing arguments. First, he argues that he purchased the painting on behalf of the LLC, as the sole owner and agent for the gallery. On the other hand, he argues that he purchased the painting and contributed it to the LLC as a capital contribution. It must be one or the other, but not both. A contribution to capital is "cash, property, or services contributed by partners to a partnership." Blacks Law Dictionary (8th ed.). The Michigan Limited Liability Company Act provides that "the contribution of a member to a

limited liability company may consist of any tangible or intangible property or benefit to the company, including cash, property, services performed, promissory notes, contracts for services to be performed, or other binding obligation to contribute cash or property or to perform services.” MCL 450.4301(1). Notwithstanding that Petitioner failed to prove under which method the gallery came to own the painting, the Tribunal finds this fact irrelevant.

Although not argued by Petitioner, the Tribunal has considered whether or not Petitioner actually “used, stored, or consumed” the painting in Michigan within the meaning of MCL 205.92(b). The painting was purchased in New York, as proven by an invoice from Sotheby’s dated November 12, 1999. Payment for the painting was made on November 16, 1999, by way of wire transfer. In an affidavit signed by Joan Sintic, Assistant to Petitioner, the statement was made that “[t]he painting was shipped by Thomas Sullivan Transportation Management, Inc., from New York directly to the offices of Domino’s Farms in Ann Arbor, Michigan.” Petitioner submitted a document dated November 15, 1999, showing a shipping estimate from New York to Ann Arbor, Michigan. In an affidavit signed by George Forrest, III,^[1] i) the painting was recorded on the gallery’s inventory as of November 12, 1999; ii) the painting remained at the Domino’s Farm’s offices until the opening of the gallery in 2000; iii) the painting was never transported, transferred or displayed in Mr. Monaghan’s personal residence [or] on the premises of any other real property that Mr. Monaghan personally owned. Based on these facts, Petitioner did not own the subject painting when it entered or any time after it came to rest in the state of Michigan; therefore, he could not have used, stored or consumed it such that it would be subject to use tax.

The Tribunal finds that Petitioner has met his burden of proof. Standing alone, the brochures and affidavits provide a clear indication of Petitioner’s intent; that being the painting was to be owned and held for sale by the gallery. Despite the fact that the invoice and evidence of wire transfer from Petitioner’s personal account point to Petitioner as purchaser, his explanation that he purchased the painting in his personal capacity on behalf of the LLC is plausible. The facts show that the painting was immediately contributed to the LLC and such contribution occurred in New York. Additionally, the subsequent sale of the painting in 2007

^[1] Affidavit states that Mr. Forrest “assisted in the formation of the Ave Maria Fine Art Gallery, LLC...” and his “role in assisting in the formation of the LLC was supervised [sic] the finance and accounting of the Gallery and worked with attorneys in forming the LLC.”

bolsters Petitioner's claims of intent that he purchased the painting on behalf of the gallery for subsequent sale.

Respondent has not established that a genuine issue of material fact exists regarding Petitioner's liability for payment of use tax on the painting. Petitioner is not subject to the use tax. Because the Tribunal has determined that no tax is due and owing, Petitioner's request for waiver of interest and penalties is moot and will not be considered by the Tribunal.

Petitioner requests this Tribunal grant such other relief as the Tribunal may deem appropriate, inclusive of an award of costs and attorney fees. The Tribunal finds that under the circumstances of this case, an award of costs and attorneys fees is not appropriate.

VII. JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Final Assessment No. K082690 is CANCELLED.

MICHIGAN TAX TRIBUNAL

Entered: March 18, 2011

By: Cynthia J Knoll