

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

Orthopaedic Associates of Grand Rapids PC,
Petitioner,

v

MTT Docket No. 383257

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

FINAL OPINION AND JUDGMENT ON REMAND

October 28, 2011, the Tribunal entered a Final Opinion and Judgment in the above-captioned case. The Tribunal concluded that the Continuing Medical Education (“CME”) expenses and Medical Malpractice Insurance (“MMI”) premiums paid by Petitioner, on behalf of various physicians and physician assistants, were not taxable compensation under the Single Business Tax Act (“SBTA”), as defined by MCL 208.4. In a Corrected Final Opinion and Judgment, entered January 9, 2012, the Tribunal noted that while it had partially erred in its original analysis, the error was de minimis in nature and did not change the ultimate outcome of the case. The Tribunal acknowledged that it failed to limit itself to adjudicating whether the CME and MMI payments were compensation, and that its reliance on the existence of the Professional Employment Organizations (“PEOs”) as a separate basis for ruling that the compensation could not be added back to Petitioner’s tax base was improper. Notwithstanding that

failure, the Tribunal concluded that its determination that the CME expenses and MMI premiums paid in 2003 were ordinary and necessary business expenses was supported by the testimony and documentary evidence provided, and was applicable to the 2004, 2005 and 2006 tax years as well.

Respondent appealed the Tribunal's decision to the Michigan Court of Appeals on January 30, 2012, and on February 19, 2013, the Court reversed and remanded the case back to the Tribunal for further proceedings consistent with its opinion. *Orthopaedic Associates of Grand Rapids PC v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 2013 (Docket No. 308319). The Court of Appeals observed that “[t]he SBTA requires generally that in calculating its Single Business Tax (SBT) tax base, a corporation include compensation paid.” *Id.* (citing *Herald Wholesale, Inc v Dep't of Treasury*, 262 Mich App 688, 696; 687 NW2d 172 (2004)). It further observed that “compensation” is defined by MCL 208.4(3) as follows:

Except as otherwise provided in subsection (4), ‘compensation’ means all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year *on behalf of or for the benefit of employees, officers, or directors of the taxpayers*. Compensation includes, *but is not limited to*, payments that are subject to or specifically exempt or excepted from withholding under sections 3401 to 3406 of the internal revenue code. [Emphasis added.]

Petitioner argued, and the Tribunal agreed, that its payment of CME and MMI premiums was for its own benefit, and not that of its employees. Because Petitioner was contractually obligated through agreements with various health care organizations to provide licensed and insured physicians and physicians' assistants, the payments were a necessary business expense, and any benefit to the employees was merely residual in nature. The Court of Appeals noted, however, that while the Professional Services Corporation Act ("PSCA") does provide that a professional corporation, such as petitioner, may not render professional services except through duly licensed officers, employees, and agents, all practicing physicians must be licensed under the Public Health Code, and CME is a prerequisite to license renewal under the Michigan Administrative Code. Accordingly, "[r]egardless of whether petitioner benefited from paying for CME and MMI, those payments benefited the physicians, who would have otherwise had to pay for their own CME for continued licensure and MMI to reduce their exposure to liability and potential personal financial ruin." *Id.* Further, "[t]here is no language in MCL 208.4(3) to support the proposition that payments made must be primarily, substantially, or totally 'on behalf of or for the benefit of' petitioner's employees in order to constitute compensation." *Id.* As such, Petitioner's

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“payment of CME expenses and MMI premiums was on behalf of and for the benefit of the physician’s and physician’s assistants in its employ, and those payments constituted compensation for purposes of Petitioner’s SBT tax base calculation.” *Id.* Consequently, Respondent properly added said payments back into Petitioner’s tax base for the tax years at issue. Therefore,

IT IS ORDERED that Assessment No. R373499 is AFFIRMED in the total amount of tax due of \$38,993.71, with statutory interest calculated under 1941 PA 122.

This Opinion and Judgment on Remand resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

By: Kimbal R. Smith III

Entered: August 09, 2013