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

Rouge Steel Company,
Petitioner,
v

MTT Docket No. 315388

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Cynthia J. Knoll

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

SUMMARY

Petitioner is appealing Respondent's denial of the industrial processing exemption provided under the use tax statute. Petitioner contends that a material handling conveyor system is used 100% in its industrial process of steel manufacturing and therefore not taxable. Respondent's position is that a portion of the conveyor system is used before the actual industrial process begins. Respondent believes that the exemption did not apply to 31% of the conveyor because the raw materials were not changed, modified or altered until they reached the weigh hoppers, thus beginning the industrial process. The Tribunal disagrees with Respondent and finds that the industrial processing exemption applies to the entire conveyor system.

I. INTRODUCTION

Petitioner, Rouge Steel Company, is appealing a Decision and Order of Determination, issued by Respondent, Michigan Department of Treasury, on February 11, 2005. Petitioner was audited for sales and use tax for the periods August 1, 1996 through September 30, 2001. Respondent determined that certain machinery and equipment purchased by Petitioner was partially subject to use tax as it did not qualify for the industrial processing exemption applicable

through the Michigan Use Tax Act. Respondent issued a Notice of Intent to Assess on March 13, 2002, for a tax deficiency of $140,037 plus interest. Petitioner's representative requested an informal conference before a Hearing Officer of the Department of Treasury to protest the assessment, which was held on March 24, 2004. The Hearing Officer recommended, and Respondent concurred, that the Intent to Assess be upheld. The Decision and Order of Determination was issued, establishing that a deficiency for use tax in the amount of $140,037 plus statutory interest be assessed on Petitioner. On May 31, 2005, Petitioner submitted to this Tribunal a Petition contesting Respondent's Decision and Order of Determination, claiming it was "erroneous in fact and in law."[1] Petitioner stated that "[b]ased on the facts presented to Respondent's hearing referee, Respondent should have determined that the conveyor system forming the subject matter of this proceeding is 100% exempt as industrial processing property."[2]

On April 6, 2007, the parties submitted a Joint Stipulation of Facts upon which they intended the Tribunal decide subsequent cross-motions for summary disposition, and on May 11, 2007, Petitioner filed a motion requesting the Tribunal grant summary disposition in its favor, pursuant to MCR 2.116(A)(1) and (C)(10). Respondent filed a response in opposition to Petitioner's Motion on May 25, 2007.[3]

II. STIPULATED FINDINGS OF FACT

The parties stipulated to the following findings of fact and the Tribunal finds:

[1] Petitioner's original Petition dated May 31, 2005 p.3
[2] *Id*
[3] Note: Respondent submitted a Motion for Summary Disposition requesting dismissal for lack of jurisdiction pursuant to MCL 205.22 and 205.735, which was denied for lack of good cause.

1. Petitioner, Rouge Steel Company, now in bankruptcy, was at the time of the events giving rise to this case engaged in the manufacture of steel at a facility in Dearborn, Michigan.
2. Respondent completed a sales and use tax audit of Petitioner for the tax period August 1996 through September 2001.
3. As a result of the audit, Respondent assessed Petitioner a use tax deficiency in the amount of $140,037.00 plus interest (Final Assessment No. K999440).
4. The use tax was assessed by Respondent with respect to certain purchases of equipment by Petitioner under the Michigan Use Tax Act as in effect prior to March 31, 1999, MCL 205.94(g)(1). Respondent did not assess Petitioner a deficiency with respect to any expenditures made after March 30, 1999, the effective date of amendments made to the Use Tax Act by 1999 PA 117.
5. Petitioner contends that the purchases in question are entirely exempt from use tax pursuant to the exemption for industrial processing, MCL 205.94(g)(i); 1979 AC, 205.90 [Rule 40]. Respondent's auditor determined, and Respondent contends herein, that 31% of such purchases are subject to use tax.
6. Petitioner was at all relevant times an "industrial processor" for purposes of the Michigan Use Tax Act.
7. The purchases in question relate specifically to a conveyor system used by Petitioner in relation to the production of liquid iron.
8. The process of manufacturing steel begins with the production of liquid iron. Iron is produced in a blast furnace. At the time at issue, Petitioner had two operating blast furnaces, designated "B" and "C."

9. The basic raw materials for the production of liquid iron are iron ore, limestone, and coke. These raw materials, sometimes with the addition of iron or steel scrap, are "charged" into the blast furnace in specified, measured quantities. The charge is then essentially "cooked" in the blast furnace at high temperatures that cause these materials to undergo changes in chemical composition that produce liquid iron and a scrap material called slag.
10. Iron ore pellets are brought to the manufacturing site in massive quantities by self-unloading ore boats. The pellets are then transferred from the boats to storage piles adjacent to the boat basin.
11. When it becomes necessary to charge a blast furnace, pellets are removed downward from the storage piles by a vibrating hopper onto one of four relatively short hopper conveyors . . . and are then in turn discharged onto a long conveyor that runs the length of the pellet storage yard . . . .
12. The long conveyor in turn discharges the pellets onto an inclined conveyor . . . that carries the pellets to the top of a five-story structure known as the stockhouse.
13. Upon reaching the top of the inclined conveyor which is inside the stockhouse, the pellets are discharged onto a reversing (or shuttle) conveyor . . . which feeds the pellets into one of four pellet bins. In passing through the bins, the pellets are screened to remove undesirable materials.
14. Once having been screened, the pellets are deposited from the pellet bins into one of ten weigh hoppers, five for B blast furnace and five for C blast furnace. The weigh hoppers determine on a continuous basis the precise amount of pellets needed to produce the appropriate chemical composition of the resulting liquid iron.

15. After being weighed, the pellets are discharged from the weigh hoppers and transported by a series of additional conveyors . . . to the tops of the respective blast furnaces, where they are then charged into the furnaces.

16. Respondent's auditor determined that the equipment purchases for all elements of the conveyor system up to and including the reversing (shuttle) conveyors were taxable. The auditor determined that the pellet bins and all other elements of the conveyor system subsequently described were exempt as part of industrial processing.

17. Once the process described in Paragraphs 11 through 15 is set in motion by the initial movement of the pellets from the storage piles onto the hopper conveyors, the process of moving the pellets to the blast furnaces is a continuous process that does not stop while the blast furnaces are in operation.

18. Substantially similar but shorter and more direct processes are used to transport coke . . . , scrap . . ., and limestone . . . from their respective storage areas into and through the stockhouse and thereafter to the blast furnaces.

III. PETITIONER'S CONTENTIONS

Petitioner contends that "Respondent's use tax assessment in this case arbitrarily and illogically bifurcates an integrated, continuous conveyor system used to transport raw materials from storage to the blast furnaces."[4] Petitioner questions "how Respondent [can] justify assessing use tax on any portion of an integrated production material handling system on the basis that the expenditures were made prior to March 31, 1999."[5] Petitioner argues that its conveyor system is exempt from use tax under the industrial processing exemption because it begins at the point where the raw materials leave the storage area and begin the journey to

[4] Petitioner's Brief in Support of Motion for Summary Disposition, p. 8
[5] *Id*. p. 4

transformation, alteration, or modification, per stated in repealed MCL 205.94(g)(i). Petitioner further contends that this process is considered production material handling and it is "unquestionable that the industrial processing exemption applies to production material handling…."[6]

Petitioner first looks to the relevant statute, MCL 205.94, promulgating the exemption. Petitioner points out that the legislature granted the exemption to an "industrial processor," which it defined as "one who transforms, alters, or modifies tangible personal property by changing [its] form, composition or character." Petitioner further states that "there is nothing in the statute to suggest that the scope of industrial processing is limited solely to those specific activities. Indeed, the only activities the statute explicitly excludes from industrial processing (relevant to this case) are 'the receipt and storage of raw materials.'" [7]

Petitioner notes that the Legislature amended the law in 1999 after "possibly realizing that the self-referencing definition of the exemption as applying to property 'sold to an industrial processor for use…in industrial processing' was not particularly clear. As clarified, the exemption under MCL 205.94o contains a definition of 'industrial processing' which includes the following:

> (3) Industrial processing includes the following activities:
>
> * * *
>
> (j) Production material handling."[8]

Petitioner further observes that this "definition comports with Respondent's long-standing interpretation of the exemption in Sales and Use Tax Rule 40, 1979 ACR 205.90, which since at least 1979 has contained the following identical illustration:

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[6] *Id.* p. 3
[7] Petitioner's Response Brief, p. 2
[8] Petitioner's Motion for Summary Disposition, p. 3

(5) Industrial processing includes the following activities:

* * *

(g) Production material handling."[9]

Petitioner then appropriately asks "why is the old law not the same as the new law, particularly when Respondent's own Rule 40 interprets the old the same as the new?"[10]

Petitioner contends that the process is a continuous one of uninterrupted transportation of raw materials from storage to the blast furnaces. The entire process is integral and seamless. Nevertheless, Respondent chose to exempt from use tax only that portion of the process that begins with the accumulation of the raw materials in the pellet bins and ends with the deposit of the materials in the blast furnaces. "There is no rational, principled explanation for this arbitrary dividing up of the process."[11]

Petitioner cites *Milford Redi-Mix Company v Department of Treasury,* (Docket No. 149458, 3/17/1994), because it has reasonably comparable facts and on those comparable facts the Tribunal found the petitioner exempt from sales and use tax under the "industrial processing exemption." In *Milford*, Petitioner purchased and installed a conveyor system to move raw materials from one location to another. The Tribunal found that "the 'industrial process' on these facts commences upon delivery of materials to the drive-over hopper, at which point the materials may be required to be 'conditioned' . . . prior to transportation up the conveyor to the staging/collection hopper." Petitioner contends that "[t]he Tribunal correctly recognized . . . that the process of moving the materials has nothing to do with storing them. . . . Rather, the Tribunal

[9] *Id.*
[10] *Id*. p. 4
[11] Petitioner's Motion for Summary Disposition, p. 4

correctly observed the distinction between 'storage' and 'not storage,' holding that the latter constituted part of industrial processing."[12]

Petitioner also cited *White Consolidated Industries, Inc v Department of Treasury,* unpublished opinion per curiam of the Court of Appeals, issued April 15, 2003 (Docket No. 238096). This case involved the issue of whether certain containers used by the taxpayer for transporting parts to and through its plant were taxable under use tax statutes. The Court of Appeals found that the industrial processing exemption applied because the containers were not used solely for receipt and storage. The court found that since the containers were used to transport parts along the assembly line, as well as used for receipt and storage, the ". . . fact that the containers are used for activities that are not subject to the exemption does not keep them from being exempt for other activities."

IV. RESPONDENT'S CONTENTIONS

Respondent contends that the applicable statute does not identify the point at which industrial processing begins or ends. Respondent further contends that prior to the effective date of the amendment to the statute "it was incumbent upon the Department to determine where industrial processing began and ended."[13] Although Respondent concedes that Petitioner is correct that Rule 40 provides examples of activities that do or do not qualify for industrial processing, the rule also provides that the "use sought to be exempted must change the form, composition, quality, combination, or character of the property to fall within the exemption."[14]

Respondent maintains that its auditor determined that the form, composition, quality, combination, or character of the property was not changed, modified, or altered until the property reached the weigh hoppers, where undesirable materials are screened out of the raw materials

[12] *Id.* p. 7
[13] Respondent's Brief in Reply to Petitioner's Motion for Summary Disposition, p. 3
[14] *Id.*

that will continue through the industrial process. Respondent refers to a "Department policy," which the auditor applied "consistent[ly]" when "extend[ing] the exemption back from … where she determined that industrial processing had begun."[15] This resulted in the pellet bins prior to the weigh hopper being exempted and the conveyor system before the weigh hoppers was not exempt from use tax.

Respondent distinguishes *White Consolidated Industries* from the current appeal because in *White Consolidated Industries* the Department of Treasury argued the taxpayer did not qualify for the exemption because the taxpayer was using the property at issue for concurrent taxable and exempt uses. In this case, Respondent agreed that a portion of Petitioner's use of the conveyor system qualifies for the exemption and claims that its determination is consistent with *White Consolidated Industries*.[16]

Respondent looks to *Beckman Production Services Inc v Dep't of Treasury*, 202 Mich App 342; 508 NW2d 178 (1993), in which the Michigan Court of Appeals determined that the taxpayer must prove that a property's use fits within the statutory definition of industrial processing. Prior to the *Beckman* case, the courts held that a taxpayer was entitled to the industrial processing exemption if the use at issue was <u>essential</u> to the industrial process. The *Beckman* Court rejected the old standard, stating:

> [I]t is no longer pertinent that plaintiff can prove that its services are essential to the industrial process of its customers. Rather plaintiff must prove that its services transform, alter, or modify the property so as to place it in a different form, composition, or character. [17]

Based on this, Respondent believes that in order for Petitioner's "conveyor system to be exempt from the use tax under the industrial processing exemption, it must transform, alter, or

[15] Respondent's Trial Brief, p. 6
[16] Respondent's Brief in Reply to Petitioner's Motion for Summary Disposition, p. 4
[17] *Id.*

modify the form, composition, or character of the materials it carries."[18] Respondent's auditor determined that industrial processing began with the screening and weighing of raw materials in the weigh hoppers. "The conveyors at issue do not transform, alter, or modify the form, composition, or character of the raw materials – they merely transport the materials from the stockhouse to the weigh hoppers." [19] Respondent contends that this use does not fall within the industrial processing exemption and consequently, the conveyor system at issue is not 100% exempt.

V. APPLICABLE LAW

Petitioner moves for summary disposition pursuant to MCR 2.116(A)(1). Under subsection (A)(1), "[t]he parties to a civil action may submit an agreed-upon stipulation of facts to the court." MCR 2.116(A)(2) provides that "[i]f the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so."

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10). 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). If it appears to the court that the opposing party, rather than the moving party is entitled to judgment, the court may render judgment in favor of the opposing party. *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000). (citing MCR 2.116(I)(2))

[18] Respondent's Trial Brief, p. 5
[19] *Id*. p. 6

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.[20] 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).

VI. CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(A)(1) and (C)(10), and finds that granting this motion is warranted, based on the pleadings, stipulation of facts and other documentary evidence filed with the Tribunal. Petitioner has proven that there is no genuine issue in respect to any material fact. MCR 2.116(C)(10). The Tribunal finds that the parties have submitted a stipulation of facts sufficient to justify judgment favoring Petitioner.

If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Turner v Auto Club Ins*

[20] *Id.*

Ass'n, 448 Mich 22, 27; 528 NW2d 681 (1995). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v Dep't of Corrections,* 421 Mich 93; 365 NW2d 74 (1984). Here MCL 205.94(g)(i) is the applicable statute for the tax years at question.[21] MCL 205.94(g)(i) states in pertinent part:

> The tax levied does not apply to the following:
>
> ***
>
> (g) Property sold to the following:
>
> (i) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate; office furniture, office supplies, and administrative office equipment; or vehicles licensed and titled for use on public highways other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or jobsite in the concrete manufacturing process. Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, "industrial processor" means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail.

The statute specifically states that industrial processing "does not include receipt and storage of raw materials purchased or extracted by the user or consumer." Equipment used in the receipt and storage of Petitioner's property is not at question in this appeal. Rather, the portion of the conveyor system in question transports raw material pellets from storage piles to a long conveyor that runs the length of the storage yard, up a five-story incline to the stockhouse and ultimately to one of four pellet bins where the pellets are screened to remove undesirable materials. The pellets are then fed into blast furnaces along with other materials in precise amounts, after which the industrial process will produce the liquid iron end-product.

[21] MCL 205.94(g)(i) is applicable prior to March 31, 1999. The provision remained in the statute at MCL 205.94r until it was repealed effective September 1, 2004. The new exemption provision is codified in MCL 205.94o and applies after March 31, 1999.

The statute unambiguously states that an "'industrial processor' means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail." What is ambiguous is whether the use of equipment for "production material handling" falls under the exemption. The Tribunal recognizes that MCL 205.94*o* now contains a definition of industrial processing that clearly includes production material handling. The Tribunal must determine whether the Legislature amended the statute to clarify its intent or to expand the statute to include something not previously intended.

Prior to March 31, 1999, the statute was ambiguous; however, Respondent's own rule 40 was not. Respondent promulgated and applied this rule since 1979. For Respondent to subsequently claim that production material handling equipment is exempt ONLY when the equipment transforms, alters or modifies raw materials is not consistent with its own rule. Specifically, Rule 40 states "Industrial processing includes … [p]roduction material handling." The Legislature amended the statute to be identical to this rule thus apparently intending to clarify the law to reflect exactly how Respondent had been interpreting the statute since 1979.

The parties have stipulated that there is a continuous process and Petitioner contends that the process is not interrupted by the act of screening and weighing of pellets upon reaching the weigh hoppers. Once the raw material pellets are dispersed to the conveyor, movement does not stop until after the material has moved through the entire system, ultimately entering the blast furnace and becoming liquid steel. There is no testimony or evidence to indicate that pellets are left to rest on the conveyor system at the end of a shift or production period. Rather, there is one uninterrupted transportation of materials from storage to blast furnace, integral and seamless.

A finding made by the Hearing Officer in her Informal Conference Recommendation that holds significant relevance is that "[t]he process is a 'just-in-time' process and there is no storage or backlog once the pellet selection is made. The pellet selection is made at the site of the storage, the computer calls for the necessary mixture of pellets, and that same amount is then transported to the stockhouse for mixing at the hopper stage."[22] The Hearing Officer further noted that the "…raw material, iron pellets, is stored in four outdoor storage pits. There are two different types of pellets: there are three pits containing flux pellets and one bunker with acid pellets. These pellets are taken from the pits via a hopper that drops them onto an underground conveyor that transports the pellets above ground and deposits them onto a long conveyor. The amount and mixture from the four pits is computer controlled. The computer directs how many pellets from each of the four bunkers are deposited onto the long conveyor system. The two different pellets are not mixed at that stage, rather mixing occurs at the stockhouse.…"[23] Clearly, a change to the composition of the raw materials commences when the pellet selection is made by a computer that determines the amount of pellets to be moved to the conveyor for a continuous journey through the process of becoming liquid steel.

The Tribunal further finds that its decision in *Milford Redi-Mix Company*, *supra,* supports Petitioner's contention. The facts of *Milford* parallel the facts of this case.[24] Specifically, in *Milford*, the operation at question was the transportation of raw materials on a conveyor system to a drive-over hopper and then on to a staging/collection hopper. The Tribunal determined that this stage of the processing was exempt under the industrial processing

[22] Informal Conference Recommendation, p. 2
[23] *Id.* p. 7
[24] It is curious to note that Respondent did not even attempt to distinguish the facts nor refute the application of *Milford*.

exemption because the conveyor is not part of the storage process, but rather part of the industrial process.

In *Milford,* the respondent argued that pre-industrial process and the industrial process itself must be distinguished. The respondent further argued that the conveyor system was ". . . part of the storage (pre-industrial process) of raw materials and handling activity associated with the storage activity which is not exempt." *Id*. at 9. The petitioner contended that the industrial process began at ". . . the point of dumping raw materials into the grate at the drive-over hopper from which aggregate, etc., is moved up the conveyor to the staging/collection hopper." *Id*. The Tribunal ultimately concluded that ". . . the 'industrial process' on these facts commences upon delivery of materials to the drive-over hopper . . . [and] the drive-over hopper and conveyor are not a part of the recovery or storage bins for raw materials on site, although the drive-over hopper is the receiving point for most of the materials entering the site and on these facts materials being received may not enter storage before being introduced to the industrial process."

In the instant case, the operation in question is also the transportation of raw materials on a conveyor system. The parties stipulated that once the transportation of raw materials is set in motion by the initial movement of the pellets from the storage piles onto the hopper conveyors, the process of moving the pellets to the blast furnaces is a continuous process that does not stop while the blast furnaces are in operation. Like *Milford*, the conveyor system is not part of the recovery or storage for raw materials on site. In fact, when the transportation of raw materials (taken from storage) is set in motion by the conveyor system the process is continuous and is part of the industrial process.

Both Petitioner and Respondent rely on the finding in *White Consolidated Industries, supra*. Petitioner argues that containers used to convey parts along an assembly line are exempt

means conveyors used to move materials should likewise be exempt. On the other hand, Respondent argues that its assessment is consistent with the findings in *White Consolidated* because a portion of the conveyor system is treated as tax exempt while the other portion is treated as taxable based on some arbitrary apportionment. The Tribunal finds that the partial use exemption is not relevant because Petitioner does not use the conveyor system in receiving or raw material storage, but rather 100% for industrial processing.

Further, Respondent's own words would leave one to believe that no part of a material handling conveyor system would qualify as industrial processing because the conveyor only moves materials from one place to another along the process and does not actually "transform, alter or modify." Obviously, the Court of Appeals did not agree with this interpretation in its decision in *White Consolidated*. Respondent believes that in order for Petitioner's "conveyor system to be exempt from the use tax under the industrial processing exemption, it must transform, alter, or modify the form, composition, or character of the materials it carries."[25] Respondent's auditor determined that the transformation, alteration or modification does not occur until the screening and weighing of raw materials in the weigh hoppers. "The conveyors at issue do not transform, alter, or modify the form, composition, or character of the raw materials – they merely transport the materials from the stockhouse to the weigh hoppers."[26] Based on this analysis, it would seem that none of the conveyor system is exempt because the conveyor itself does not change or modify materials. It simply moves the materials, despite the fact that the materials are in the industrial process system. It is difficult to reconcile Respondent's statements with its position that some portion of the conveyor system is exempt.

[25] Respondent's Trial Brief, p. 5
[26] *Id.* p 6

The Tribunal further finds that the Legislature intended the original statute to include "production material handling" as an industrial processing activity exempt from use tax. The statute was rewritten in 1999 in order to "clarify and expand the industrial processing exemptions."[27] The legislation "provide[d] a definition of the term 'industrial processing' and added a new definition of 'industrial processor.'" [28] Industrial processing was clarified to specify that industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing. The term "industrial processor" was defined and expanded to include a person, whether or not an industrial processor, if the property was used to perform an industrial processing activity for or on behalf of an industrial processor. This implies that the legislature originally intended to include the movement of raw materials to and through the industrial processing activity; however, clarification was needed to give plain meaning to the somewhat ambiguous statute.

Respondent's reliance on *Beckman Production Services Inc., supra,* is misplaced. The issue in that case is not relevant in the instant case because it relates to the application of the industrial processor exemption to non-industrial processors. It addresses exactly what the Legislature changed in the 1999 amendment – to expand the industrial processing exemption to taxpayers that are performing services for industrial processors.

Based on this analysis, the Tribunal finds that the purchase of the conveyor system, used by Petitioner in relation to the production of liquid iron, is exempt from sales and use tax under the industrial processing exemption, pursuant to [now repealed] MCL 205.94r.

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[27] House Legislative Analysis on House Bill 4745, First Analysis (7-16-99)
[28] *Id.*

VII. JUDGMENT

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

IT IS FURTHER ORDERED that Assessment No. K999440 is CANCELLED.

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

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

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

MICHIGAN TAX TRIBUNAL

Entered: November 30, 2009 By: Cynthia J. Knoll