STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
NON-PROPERTY TAX APPEAL

Lason Systems, Inc.,
Petitioner,

v

MTT Docket No. 342603

Michigan Department of Treasury.
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

Petitioner filed the petition in this matter on October 24, 2007, appealing a denial of refund from Respondent based upon amended returns for single business taxes paid for tax years 2000, 2001, 2002, and 2003. A prehearing conference in this matter was held on August 4, 2009, at which the parties jointly requested that the hearing in this matter be adjourned and the case be resolved on cross motions for summary disposition. Both parties filed motions requesting extensions of the original filing dates for motions for summary disposition, which the Tribunal granted. The Tribunal determined that Oral Argument would facilitate resolution in this matter, which was held on December 14, 2009. Petitioner was represented by Terry Conley and Mike Alvarez, Grant Thornton LLP. Respondent was represented by Bruce Johnson, Assistant Attorney General.

BACKGROUND

Petitioner is a Delaware incorporated corporation with main offices in Troy, Michigan. Petitioner's business activity is the provision of record management services, document

workflow reports, and imaging systems services. Petitioner identifies customers nationwide and brokers, acquires, and secures contracts with customers for these services. All of Petitioner's executive, or headquarters, staff is located in Troy, Michigan. To fulfill its contractual obligations, Petitioner leased employees from Lason Services, a captive professional employer organization, as well as from other, third party nonaffiliated entities.

Petitioner filed single business tax returns for the 2000 and 2001 tax years. For the 2002 and 2003 tax years, Petitioner merged with Lason Services and together filed a single return. Petitioner filed amended returns for the 2000 through 2003 tax years which Respondent rejected, denying Petitioner's claim of refund. At issue is Petitioner's claim for refund based on amended returns for tax years 2000 and 2001 and refunds claimed based on the resultant business loss carryforward deductions for tax years 2002 and 2003.

PETITIONER'S CONTENTIONS

Petitioner contends that it originally filed its single business tax returns for the tax years at issue using "the so-called 'market sourcing' method, in which sales of its services were sourced to Michigan based upon the location of the customer."[1] Petitioner asserts that the amended returns filed in December, 2005, for all years at issue "adjusted Petitioner's cost of performance pursuant to MCL 208.53(b)."[2] Petitioner asserts that "[t]hese amended returns source 100% of Petitioner's sales to Michigan."[3] Petitioner asserts that it is required to "measure its costs of performance through its payroll."[4] Based on its interpretation of that measure, Petitioner recalculated apportionment for 2000 and 2001 which "resulted in an increase of the business loss

[1] Petitioner's brief, page 3
[2] Petitioner's motion for summary disposition, page 1
[3] Petitioner's brief, page 3
[4] Petitioner's brief, page 1

by approximately $44,000,000, and provided for a refund of approximately $90,000 due to the carryforward of the business losses to the 2002 and 2003 periods."[5] The initially amended[6] returns reflected a sales factor of 21.65% for the 2000 tax year and 14.91% for the 2001 tax year.

Petitioner contends that MCL 208.53(b) provides that for sales other than sales of tangible personal property, the sales are considered within Michigan when "[t]he business activity is performed both in and outside this state and, based on costs of performance, a greater proportion of the business activity is performed in this state than is performed outside this state."[7] Petitioner asserts that its executives, all located in Michigan, are responsible for identifying customer needs, securing contracts, and the performance of the contractual obligations, Petitioner's business activity. Thus, Petitioner asserts that the payroll for its executives is Petitioner's business activity, and the "costs of performing this business activity is incurred 100% in Michigan."[8] Petitioner contends that only these costs, payroll of its executives, are its costs of performance.

Petitioner relies on *Honigman Miller Schwartz and Cohn LLP v Michigan Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided July 30, 2009 (Docket No. 282768). Petitioner asserts that "the *Honigman*[9] decision makes it clear that taxpayers are to look to the location of where the services are performed."[10] Petitioner contends that, unlike the facts in *Honigman*, Petitioner has a written contract with its clients and that

[5] Petitioner's brief, page 3
[6] The parties agree that the original returns were first amended in manner that is not at issue here.
[7] MCL 208.53(b)
[8] Petitioner's brief, page 4
[9] *Honigman Miller Schwartz and Cohn LLP v Michigan Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided July 30, 2009 (Docket No. 282768)
[10] *Supra*, at page 16

Petitioner performs the activities contracted for "by utilizing payroll costs that are in Michigan and Property that is within and without Michigan,"[11] and that based on an examination of those costs, "Petitioner's costs of performance are greater within Michigan than without Michigan because 100% of its costs are in Michigan."[12] Petitioner asserts that these costs are the payroll related to its executives located in Michigan and that "amounts paid by Petitioner to its service providers . . . to assist Petitioner in fulfilling its contracts, are not properly includable in Petitioner's costs of performance analysis because"[13] they are includable in the costs of performance of the service providers. Petitioner asserts that "Respondent's position is fundamentally flawed because it leads to a perpetual attribution of another person's costs for any taxpayer's costs of performance measure [and] is unsupported . . . and is illogical."[14]

RESPONDENT'S CONTENTIONS

Respondent asserts that Petitioner's leased employees, located outside Michigan, contribute to Petitioner's direct costs of performance for determining sales for apportionment purposes. Respondent asserts that the compensation paid to executive, or headquarters, staff represents indirect costs which should be excluded from sales. Respondent acknowledges that prior to the issuance of its Internal Policy Directive 2006-8,[15] there was "no written guidance from Treasury regarding the question at issue."[16]

Respondent contends that 208.53(b) provides that if "more than half the business activity relating to the sale is performed in Michigan, the sale is sourced to Michigan; if at least half the business

[11] Petitioner's brief, page 5
[12] Petitioner's brief, page 6
[13] Petitioner's brief, page 6
[14] Petitioner's brief, page 6
[15] Internal Policy Directive 2006-8 was issued after the tax periods at issue but prior to the informal conference in this matter.
[16] Respondent's brief, page 3, n 2

activity is performed outside Michigan, the sale is not sourced to Michigan."[17] Further, the determination of where the greater share of business activity takes place is made "based on cost of performance"[18] of the business activity. Respondent's position is that costs of work performed at client sites by employees leased by Petitioner from Lason Services, Inc. and other third party entities are the direct costs to provide the services contracted for. Respondent considers the supervisory and administrative work performed by Petitioner's executives to be overhead, or indirect costs, and not includable in sales for purposes of determining cost of performance. Respondent contends that the services and business activities which Petitioner offers its customers are "the record management services, document workflow services, and imaging systems and services"[19] it provides and that these services are not performed in Michigan.

Respondent argues that the Court of Appeals in *Honigman*[20] determined that "income is generated and sourced both when and where the service is performed."[21] Respondent asserts that, in this matter, the services are provided to clients outside of Michigan and that income is generated by the work of persons performing services outside Michigan. Respondent asserts that "at least implicit in the *Honigman* ruling,"[22] is the determination that one looks only at work actually directly performed on behalf of the client and not at overhead performed by the law firm in its Michigan offices. Respondent acknowledges that "this part of the ruling is not conclusive – the question of whether such expenses should be included may not have been argued."[23]

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[17] Respondent's brief, page 6
[18] Respondent's brief, page 6
[19] Respondent's brief, page 9
[20] *Honigman Miller Schwartz and Cohn LLP v Michigan Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided July 30, 2009 (Docket No. 282768)
[21] Respondent's brief, page 11
[22] *Honigman Miller Schwartz and Cohn LLP v Michigan Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided July 30, 2009 (Docket No. 282768)
[23] Respondent's brief, page 12

Respondent argues that *Detroit Lions, Inc, v Dep't of Revenue*, 157 Mich App 207; 403 NW2d 812 (1986), cited by the Court in *Honigman*, further supports its position. In that case, the Court looked to "where the business activity of the actual football team that produced the revenue was done." Respondent asserts that the only difference between the *Detroit Lions* case and this case is that while this case involves IT professionals, the *Detroit Lions* case involves professional football players but that in "both cases, the proper thing to look at is where the business activity took place and where the costs were incurred."[24]

Respondent cites *Fluor v Dep't of Treasury*, 477 Mich 170; 730 NW2d 722 (2007), in support of its position. Although Respondent acknowledges that the decision in this case is based on MCL 208.53(c), a provision not applicable to this matter, Respondent contends that the Court's opinion supports its position in that it focused on "where the results of the work are realized."[25]

STANDARD OF REVIEW UNDER MCR 2.116(C)(8) AND MCR 2.116(C)(10)

A motion for summary disposition brought under MCR 2.116(C)(8) tests the legal sufficiency of the complaint on the basis of the pleadings alone. The purpose of such a motion is to determine whether the plaintiff has stated a claim upon which relief can be granted. The motion should be granted if no factual development could possibly justify recovery. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). *Beaudrie v Henderson* 465 Mich 124; 631 NW2d 308

[24] Respondent's brief, page 13
[25] Respondent's brief, page 15

Under MCR 2.116(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, 454-55; 597 NW2d 28 (1999). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745, March 4, 2004, the Tribunal stated the standards governing motions for summary dispositions as follows:

> Motions for summary disposition are governed by MCR 2.116. 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. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). *JW Hobbs Corp v Mich Dep't of Treasury*, Court of Claims Docket No. 02-166-MT (January 14, 2004). This particular motion has had a longstanding history in the Tribunal. *Kern v Pontiac Twp, supra*; *Beerbower v Dep't of Treasury*, MTT Docket No. 73736 (November 1, 1985); *Lichnovsky v Mich Dep't of Treasury, supra; Charfoos v Mich Dep't of Treasury*, MTT Docket No. 120510 (May 3, 1989); *Kivela v Mich Dep't of Treasury*, MTT Docket No. 131823.

In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996), the Michigan Supreme Court set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

> In reviewing a motion for summary disposition under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if affidavits or other documentary evidence show there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *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). In the event, however, it is determined 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).

Furthermore, this case presents an issue of statutory interpretation, which is also subject to a de novo review. *Grossman v Brown*, 470 Mich 593, 598; 685 NW2d 198 (2004). As the Supreme Court has explained, the SBTA created a business activity tax. *Fluor Enterprises, Inc v Revenue Div, Dept of Treasury*, 477 Mich 170, 174; 730 NW2d 722 (2007).

> [T]he act by definition encompasses taxation of services that are performed not only within the state . . . but also some that are performed out of state, as long as the reason those services are engaged in has its source within this state. *Id*. at 175. When a business activity occurs partially in Michigan and partially elsewhere, the SBTA provides an apportionment system so that Michigan only taxes the receipts that are properly sourced to this state. *Id*. In order to determine the proper apportionment of taxes, the SBTA provides a formula in which the sales that occurred in Michigan form a numerator of a fraction and the total sales of the party form the denominator. *Id*.; MCL 208.51. When determining whether something is considered a Michigan sale and should be placed in the numerator of the apportionment fraction, MCL 208.53 provides instruction.

FINDINGS OF FACT

The Tribunal finds that Petitioner is an entity, the headquarters of which are located in Troy, Michigan. Petitioner's business activity is the "provision of record management services,

workflow reports, and imaging systems to both private industry clients and state and local government managed operations, both within and without Michigan."[26] Petitioner's executive personnel, from its Troy office, are "responsible for identifying a customer need for services, acquiring the customer contracts, and *performance of the contractual obligations*."[27] (emphasis added) When contracts are entered into to meet clients' identified needs, Petitioner leases employees from its captive professional employer organization, Lason Services, or from a third party professional employer organization to fulfill the contract obligations at clients' sites. Employees are generally leased from professional employer organizations located in the same geographic as the client.

Petitioner timely filed its original single business tax returns for 2000 and 2001, and amended returns to reflect a technical change.[28] Both the original and amended returns sourced sales for apportionment purposes based on an economic market theory. Subsequently, Petitioner filed the second amended returns at issue here in which it apportioned 100% of its sales to Michigan for 2000 and 2001,[29] based on the greater costs of performance method. The effect of sourcing 100% of its sales to Michigan was an increase in Petitioner's business loss carryforward for the 2002 and 2003 tax years.

In the amended returns at issue, Petitioner based its sales solely on the payroll costs of its executives working in its Troy, Michigan offices. Those executives identify customers and negotiate contracts. Petitioner incurs payroll expenses to compensate its executives for those

[26] Petitioner's brief, page 2
[27] Petitioner's brief, page 4
[28] Transcript page 48, ll 13-15
[29] Joint stipulation of uncontroverted facts, 4

solicitation and negotiation activities. The Tribunal finds that Petitioner's "business activity" is not complete when it finds a client and enters into a contract with that client. The Tribunal finds that Petitioner's business activities include the third prong of its self-identified business activity, which is assuring the performance of the duties contracted for and the performance of services agree upon. Petitioner pays service providers to provide the workers it needs to fulfill services agreed to in its contracts. It leases employees to meet the contract obligations, and invoices clients for the performance of services under existing contracts. The Tribunal finds that Petitioner's business activity is "the acquisition of contracts for its services and the *performance of those services*"[30] (emphasis added) which, by Petitioner's own admission, includes assuring the day-to-day implementation of the contracts negotiated and leasing the "workforce, . . . [to] perform work that resulted in service revenue that went into Petitioner's sales apportionment factor."[31]

The Tribunal does not find persuasive Petitioner's argument that if the costs of performance of its contract obligations are included in its sales factor and the payroll costs of the leased employees are included in the tax base of Lason Services, the compensation would be "counted twice." Including the compensation of the leased employees in Lason Services' tax base, is a separate and distinct calculation for single business tax purposes and not equivalent to including the cost paid by Petitioner to perform its business activities in its sales factor for apportionment purposes.

[30] Petitioner's brief, page 4
[31] Joint stipulation of uncontroverted facts, 7

CONCLUSIONS OF LAW

Respondent and Petitioner have filed motions for summary disposition under MCR 2.116(C)(10). Additionally, Respondent filed a motion for summary disposition under MCR 2.116(C)(8). Petitioner has provided sufficient evidence to support its claim and has stated a claim upon which relief can be granted. Therefore, Respondent's motion for summary disposition under MCR 2.116(C)(8) should be denied.

MCL 208.40 provides that for "a taxpayer whose business activities are confined solely to this state, the entire tax base of the taxpayer shall be allocated to this state except as provided in section 56."

MCL 208.41, provides that "[a] taxpayer whose business activities are taxable both within and without this state, shall apportion his tax base as provided in this chapter."[32]

MCL 208.45a provides the apportionment percentages for the tax years herein at issue:

> Sec. 45a. (1) Except as provided in subsection (4) and for tax years beginning after December 31, 1998 and before January 1, 2006, all of the tax base, other than the tax base derived principally from transportation, financial, or insurance carrier services or specifically allocated, shall be apportioned to this state by multiplying the tax base by a percentage, which is the sum of all of the following percentages:
> (a) The property factor multiplied by 5%.
> (b) The payroll factor multiplied by 5%.
> (c) The sales factor multiplied by 90%.

MCL 208.51(1) provides, "[t]he sales factor is a fraction, the numerator of which is the total sales of the taxpayer in this state during the tax year, and the denominator of which is the total sales of the taxpayer everywhere during the tax year."

[32] Chapter 3 of the single business tax act

MCL 208.53 is the statutory provision used to determine if sales, other than the sale of tangible personal property, are in this state when calculating a taxpayer's sales factor for apportionment purposes:

> Sec. 53. Sales, other than sales of tangible personal property, are in this state if:
> (a) The business activity is performed in this state.
> (b) The business activity is performed both in and outside this state and, based on *costs of performance*, a greater proportion of the business activity is performed in this state than is performed outside this state. (emphasis added)
> (c) Receipts derived from services performed for planning, design, or construction activities within this state shall be deemed Michigan receipts.

MCL 208.3 provides the definition of business activity for purposes of determining sales under section 53 of the single business tax act:. . .

> (2) "Business activity" means a transfer of legal or equitable title to or rental of property, whether real, personal, or mixed, tangible or intangible, or the performance of services, or a combination thereof, made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, but shall not include the services rendered by an employee to his employer, services as a director of a corporation, or a casual transaction. Although an activity of a taxpayer may be incidental to another or other of his business activities, each activity shall be considered to be business engaged in within the meaning of this act.
> (3) "Business income" means federal taxable income, except that for a person other than a corporation it means that part of federal taxable income derived from business activity. For a partnership, business income includes payments and items of income and expense which are attributable to business activity of the partnership and separately reported to the partners.

Sales is defined in MCL 208.7:

> Sec. 7. (1) As used in this act:
> (a) "Sale" or "sales" means the amounts received by the taxpayer as consideration from the following:
> . . . (*ii*) The performance of services, which constitute business activities other than those included in subparagraph (*i*), or from any combination of business activities described in this subparagraph and subparagraph (*i*).

The issue in this case is, based on Petitioner's costs of performance and where business activity is performed, whether Petitioner's sales should be sourced to Michigan or outside of Michigan.

The single business tax act does not provide a definition of "costs of performance" as used in section 53(b) and there is no formal interpretation by Respondent in rule or Revenue Administrative Bulletin defining the term for the tax years at issue. While it is true that in 2006, Respondent issued Internal Policy Directive 2006-8, that document was issued subsequent to the tax years here at issue and, as an Internal Policy Directive, is not a "binding interpretation of a statute."[33] Although Respondent asserts that this document "happens to embody a correct interpretation of the statute," Respondent must support its position independently of that document.

Respondent cites *Detroit Lions, Inc v Dep't of Revenue*, 157 Mich App 207; 403 NW3d 812 (1968), in support of its positions. In that case, the Detroit Lions franchise was given a portion of post season revenues, as were all members of the National Football League, even though the Lions did not engage in any post-season play. The Court addressed the allocation of that revenue. The Lions were entitled to a share of the revenue simply by virtue of being an NFL team. The Court ruled that the post-season revenues were subject to taxation under the single business tax "[b]ecause the majority of the Lion's business activities associated with its NFL membership occurred in Michigan,"[34] even though they did not participate in the activity that generated the specific revenue. The Tribunal finds Respondent's analogy between the Lions case and this matter unconvincing. To apply a simplistic statement that the Court in the *Lions* case "looked at

[33] Respondent's brief, page 2
[34] *Honigman Miller Schwartz and Cohn LLP v Michigan Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided July 30, 2009 (Docket No. 282768) at 6

where the business activity of the actual football team that produced the revenue was done"[35] does not take into account the fundamental factual differences between the two cases. In this case, there are agreements which Petitioner negotiated and Petitioner assures the performance of the work involved. No income is attributable based on Petitioner's status alone or membership in a larger entity. Rather, Petitioner was required to fulfill an obligation by performing or causing the performance of services at its clients' sites. Although the *Lions* case dealt with apportionment, the facts are so different as to make it inapplicable here.

Both parties argue that the *Honigman*[36] case offers support for their respective positions. Petitioner asserts that "the *Honigman* decision makes it clear that taxpayers are to look to the location of where the services are performed."[37] Respondent asserts that the Court of Appeals in *Honigman*[38] determined that "the income is generated and sourced both when and where the service is performed."[39] The Tribunal finds that both parties are correct in their summary of the Court's ruling.

However, the Tribunal finds that the salient facts and circumstances in this matter are different from the facts and circumstances in that case. The Court in *Honigman* found that plaintiffs provided legal services to clients in Michigan and in other states, and did not, in all cases, enter into formal contracts, but performed services "as those services are requested or become necessary."[40] Services were billed in 15 minute increments. The Court found that the petitioner

[35] Respondent's brief, page 13
[36] *Honigman Miller Schwartz and Cohn LLP v Michigan Department of Treasury, supra*
[37] *Supra,* at 16
[38] *Honigman Miller Schwartz and Cohn LLP v Michigan Department of Treasury, supra*
[39] Respondent's brief, page 11
[40] *Supra*, at page 2

had correctly apportioned "every 15-minute interval that was billed outside of Michigan . . . to the state the service was performed in."[41] In this case, Petitioner had formal contracts with each customer, a plan for services to be provided, and Petitioner leased the employees from Lason Services or from a local professional employer organization and placed those employees at customer's sites to deliver the services Petitioner had agreed to provide. Petitioner sent regular invoices to the customer based on the work performed pursuant to the contract and Petitioner was responsible for monitoring that ongoing work.

Notwithstanding the differences in facts, the Court's analysis in *Honigman* is instructive. The Court relied on "analytical guidance"[42] from the Multistate Tax Commission Model Uniform Regulation IV.17.(4B)(c) (2004). Petitioner asserts that the Court interpreted the Regulation to require that "if an overarching contract governs the business activity, then the sale is sourced to the state in which the contract was entered or executed. If . . . the business activity is performed on an 'as needed' basis, then . . . the sale is sourced to the state where the service was performed." The Court in *Honigman* was distinguishing the facts in that case from a circumstance in which there was an annual retainer contract under which the total payment for the contract was generated when the contract was created. Even if the Court was setting a standard for an annual retainer contract, that is not the circumstance in this matter. In this case, Petitioner entered into contracts and, as stated in its briefs, periodically invoiced for the services provided. Petitioner further stated that it was responsible for assuring the services were satisfactorily implemented onsite. Petitioner did not aver nor did it present any evidence that clients paid for the contract and all of the costs of its implementation, in full, at the time the

[41] *Supra*, at page 2
[42] *Supra*, at page 6

contract was created and signed. Further, the work done at the worksite was regular and ongoing for the duration of the contract.

Respondent also cites *Fluor v Dep't of Treasury*, 477 Mich 170, 730 NW2d 722 (2007), cert den 128 S Ct 391 (2007). That case deals with MCL 208.53(c), and was specifically related to construction activities. Regardless, the Supreme Court's holding is instructive:

> Although plaintiff attempts to describe what it did as performing design and planning *activities*, and that those activities took place in California, this ignores language in the statute that indicates receipts are paid for *services*, and services are engaged in *for activities*. . . . .Plaintiff's attempt to construe its services as 'planning or design activities' fails to recognize that plaintiff performed its services for 'constructions activities.'[43] (emphasis in original)

In this case, Petitioner asserts that its business activity is the making of calls and signing of contracts. The Tribunal concludes that while these activities support Petitioner's business activity, the actual services performed, and giving rise to its sales revenues, are those record management services, document workflow reports, and imaging systems and services performed at client sites. Petitioner's costs of performance is based on the costs paid for the services required to fulfill the obligations agreed to in the contracts negotiated. Petitioner chose to utilize a professional employer organization, Lason Services or a third party professional employer organization, to supply the employees. Petitioner determined the workforce necessary and directed the placement of those workers at client sites. Petitioner invoiced clients for the services provided by these employees. The sourcing of sales for determining Petitioner's costs of performance is based on where the services are provided. In this case, the actual services are provided by Petitioner at client sites, and those sites are not 100% in Michigan.

[43] Respondent's brief, page 15, n 29

As to Petitioner's argument that if the payroll of leased employees is included in its costs of performance for sales factor apportionment purposes, and the payroll costs of the leased employees are included in the tax base of Lason Services, the compensation would be "counted twice." The Tribunal concludes that including the compensation of the leased employees in Lason Services' tax base, is a separate and distinct calculation for single business tax purposes from using those costs for determining where Petitioner's business activities are performed. The compensation paid those employees is includable in Petitioner's costs of performance of its business activities for determining its sales factor for apportionment purposes. Further, Lason Services is not a party to this action. Whether or not Lason Services correctly calculated its tax liability is not before the Tribunal.[44] The Tribunal cannot determine Petitioner's liability based on Petitioner's assertion of a different taxpayer's single business tax liability.

The Tribunal concludes, after thoroughly reviewing the file, evidence, and testimony, that while Petitioner may solicit clients from a Michigan location and Petitioner's executives may negotiate contracts from Michigan, the services Petitioner provides, based upon those contractual agreements, are performed outside of Michigan and those costs are a cost of performance that must be included in Petitioner's sales for apportionment purposes.

The Tribunal has considered the case file, affidavits, pleadings, stipulations, and documentary and testimony evidence filed by the parties, pursuant to MCR 2.116(G)(5). The Tribunal concludes that there is no genuine issue with respect to any material fact and further that Respondent is entitled to judgment as a matter of law. Petitioner failed to convince the Tribunal

[44] Petitioner in its brief, page 4 footnote 8, asserts that it submitted Lason Services, Inc 2000 and 2001 MI Form C-8000X on September 2, 2009. The Tribunal finds that the only submission by Petitioner on that date was copies of Petitioner's 2000 and 2001 MI Form C-8000 and other tax documents of Petitioner.

that 100% of its costs of performance are attributable to Michigan. Petitioner has failed to convince the Tribunal that its interpretation of the applicable statutory provisions is correct. Thus, Respondent's rejection of Petitioner's amended return and denial of Petitioner's claim of refund should be affirmed.

JUDGMENT

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

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

IT IS FURTHER ORDERED that Respondent's denial of Petitioner's claim for refund of single business taxes paid for the 2000, 2001, 2002, and 2003 tax years is AFFIRMED.

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

MICHIGAN TAX TRIBUNAL

Entered: April 15, 2010 By: Rachel Asbury