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

Sietsema Farms Feeds, LLC,
Petitioner,

v

MTT Docket No. 355649
Assessment No. P156409

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Cynthia J Knoll

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

SUMMARY

Petitioner, Sietsema Farms Feeds, L.L.C., appeals a use tax assessment issued by Respondent, Michigan Department of Treasury, after being denied an agricultural exemption provided under the use tax statute. Petitioner is engaged in the business of operating a feed mill in which corn and other grains are dried, ground, and mixed with various additives to produce farm animal feed. Petitioner sells a significant part of the milled grains to hog and turkey farms owned in part or in whole by the Sietsema Family and entities affiliated with Petitioner. Respondent conducted a use tax audit and found that certain equipment purchased by Petitioner and used at the feed mill was exempt from use tax under the industrial processing exemption. Respondent further determined that certain other equipment was not exempt from use tax under the more broad exemption for agricultural production. Respondent's position is that Petitioner did not meet the statutory definition set forth in the Use Tax Act and therefore is not entitled to the agricultural production exemption. The Tribunal agrees.

BACKGROUND

Petitioner is appealing a Bill for Taxes Due (Final Assessment) issued by Respondent on June 27, 2008. The assessment was based on a sales and use tax field audit conducted by Respondent for the period September 1, 2002 through April 30, 2006. Respondent determined that certain machinery and equipment purchased by Petitioner was subject to use tax because the assets were not used in industrial processing and Petitioner did not qualify for the agricultural production

exemption promulgated under the Michigan Use Tax Act. Specifically, Respondent assessed Michigan use tax on the purchase price of truck scales, storage/processing tanks, storage tank inventory monitoring equipment, a liquid storage tank, a personnel elevator and other equipment used in the feed mill operation. Respondent issued a Notice of Intent to Assess on July 26, 2007, for a tax deficiency of $19,965.11, 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 January 29, 2008. The Hearing Officer recommended, and Respondent concurred, that the Intent to Assess be upheld. The Decision and Order of Determination was issued on June 19, 2008, establishing that a deficiency for use tax in the amount of $19,965.11, plus statutory interest be assessed to Petitioner. Respondent issued the Bill for Taxes Due, Assessment No. P156409 on June 27, 2008. On July 31, 2008, Petitioner submitted to this Tribunal a Petition requesting a redetermination of Respondent's Bill for Taxes Due.

On March 22, 2010, the parties submitted a Joint Stipulation of Facts upon which they subsequently requested the Tribunal consider cross-motions for summary disposition filed on March 24, 2010, pursuant to MCL 2.116(c)(10). The parties filed responses on April 14, 2010, and on June 29, 2010, oral arguments were held at the Tribunal. On August 2, 2010, the Tribunal issued an Order requiring the parties to stipulate as to the percentage use of the truck scales and monitoring equipment for industrial processing versus receiving and inventory monitoring. The Tribunal further ordered that in the event the parties could not stipulate as to a percentage of industrial processing use, a limited hearing would take place on September 2, 2010. On August 17, 2010, Respondent submitted a letter to the Tribunal indicating that the parties were not able to stipulate. Respondent also submitted an unsigned letter drafted by its auditor explaining Respondent's rationale for why the truck scales and inventory monitoring equipment are not exempt under the industrial processing exemption. Petitioner submitted a Response to the Tribunal's Order Requiring Additional Information on August 17, 2010. On August 25, 2010, Petitioner filed a Motion to Adjourn the Limited Hearing, stating that its representative would be out of the country. On September 2, 2010, the Tribunal issued an Order Adjourning the Limited Hearing, noting that based on the submitted documentation, it was no longer necessary.

STIPULATED FINDINGS OF FACT

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

1. Petitioner is a Michigan Limited Liability Company organized on February 6, 2002.
2. Petitioner's registered office and administrative offices are located at 11304 Edgewater, Ste A, Allendale, Michigan.
3. Petitioner's registered agent is Harley Sietsema.
4. All of Petitioner's other activities are conducted at facilities in Howard City, Pierson Township, Michigan.
5. Petitioner operates from two parcels located in the Reynolds Agricultural Renaissance Zone.
6. Persons conducting business in renaissance zones are entitled to claim certain specific exemptions, deductions, credits, applicable to other specific Michigan taxing statutes as specifically set forth in the Renaissance Zone Act (RZA), MCL 125.2681 *et seq.*, MCL 125.2689.
7. Petitioner is exempt from taxes assessed on real and personal property located in a renaissance zone as set forth under the General Property Tax Act (GPTA), MCL 211.1 *et seq.*, MCL 211.7ff.
8. Petitioner is entitled to claim credits against its single business tax liability pursuant to MCL 125.2689, and the Single Business Tax Act (SBTA), MCL 208.1 *et seq.*, MCL 208.39b.
9. Petitioner operates a feed mill in which corn and other grains are dried, ground, and mixed with various additives to produce farm animal feed.
10. Petitioner's feed mill produces approximately 125,000 tons of finished animal feed each year.
11. Petitioner sells a significant part of the milled grains to hog and turkey farms owned in part or in whole by the Sietsema Family and entities affiliated with Petitioner.
12. Respondent, Michigan Department of Treasury, through its auditor Alin Campbell (now Kuuttila), conducted a Use Tax Act audit of Petitioner for tax years 9/1/2001 through 4/30/2006.
13. Respondent determined that certain equipment purchased by Petitioner and used at the feed mill was exempt from use tax under the industrial processing exemption, Use Tax Act (UTA), MCL 205.91 *et seq.*, MCL 205.94o.
14. Respondent determined that certain equipment purchased by Petitioner and used at the feed mill was not exempt from use tax under the agricultural production exemption, Use Tax Act (UTA), MCL 205.91 *et seq.*, MCL 205.94(1)(f).
15. The specific equipment denied the exemption consisted of truck scales, storage/processing tanks, storage tank inventory monitoring equipment, a liquid storage tank, a personnel elevator and other equipment and is identified in the audit, Schedule B1 and B2.
16. The audit resulted in Respondent assessing use tax in the amount of $20,781.00, with interest.
17. Petitioner paid $4,746.89 of the use tax and interest for items it agreed with in the audit, which reduced the tax liability to $19,965.11.

18. After an informal conference, at which the informal conference referee upheld the assessed use tax, Respondent issued Final Assessment P156409 for use tax in the amount of $19,965.11, and interest in the amount of $2,330.89, calculated to the date the Final Assessment was issued, 06/27/2008. Interest continues to accrue on unpaid assessments.

PETITIONER'S CONTENTIONS

Petitioner filed its motion for summary disposition, pursuant to MCL 2.116(C)(10), based on the stipulated fact that Petitioner operates a feed mill in which corn and other grains are dried, ground and mixed with various additives to produce animal feed and Petitioner sells a significant part of the milled grains to hog and turkey farms owned in part or in whole by the Sietsema Family and entities affiliated with Petitioner. Petitioner contends that it is entitled to the agricultural production exemption provided in the Michigan Use Tax Act (MCL 205.94(1)(f)). Petitioner argues in its Motion for Summary Disposition that the statute "specifies two requirements for the exemption to apply: first, the exemption is only available to a person who is engaged in a **business enterprise**. Second, the property purchased must be used or consumed in **agriculture production**."[1] (Emphasis in original)

Petitioner asserts that it is engaged in a "business enterprise" producing 125,000 tons of finished farm animal feed each year that is sold to farms to be fed to farm animals and poultry. Petitioner cites MCR 205.51(1), arguing that "[t]he processing of corn and other grains into feed for farm animals and poultry is an agricultural activity." (PM p.2, citing Rule 205.51(1)) Petitioner states that equipment it used in the feed mill was used and consumed in the raising or caring for livestock, poultry, or other horticultural products and, as such, was used as an integral part in agricultural production. It further argues that the agricultural production exemption is not limited only to property directly used or consumed in the activities that constitute agricultural production.

Petitioner argues that it is entitled to the agricultural production exemption because of its relationship to and association with farmers. Petitioner contends that "[i]n providing for the agricultural production exemption, the legislature contemplated that certain agricultural production activities would be performed or provided by someone other than the agricultural

[1] Petitioner's Motion for Summary Disposition, (PM) p. 2

producer."[2] Petitioner further argues that "the strict reading of the law provides that the exemption applies to large corporate farming entities when they are engaged in an agricultural production activity." PR, p. 1

Petitioner asserts that Respondent attempts to limit the exemption to a person who actually breeds, raises, or cares for livestock and poultry. Petitioner notes that nowhere does the law state the agricultural production exemption is available only to an agricultural producer; it merely requires the person be engaged in a business enterprise and use the property in an agricultural activity. Petitioner looks to the administrative rules, Rule 1, arguing that the rule defines the activity which is exempt and states that a person engaged in such activity is exempt from tax on property purchased for use in the exempt activity. (1979 Administrative Code: 1979 AC, R 205.51(1)) Petitioner contends it is the activity that is exempt, not the person.

Petitioner relies on two Michigan Court of Appeals decisions to support its position. Petitioner asserts that the first case, *William Mueller & Sons, Inc v Department of Treasury*, 189 Mich App 570; 473 NW2d 783 (1991), supports its position that the agricultural exemption is available to a person who is not engaged in the business of producing agricultural products. The second case, *Michigan Milk Producers Association v Department of Treasury*, 242 Mich App 486; 618 NW2d 917 (2000), the Court stated that agricultural production exemption is not limited only to property directly used or consumed in the activities that constitute agriculture production. Therefore, Petitioner believes the equipment it uses to process feed grains should qualify as exempt because the feed is used in raising the hogs and turkeys.

In response to the Tribunal's request for additional information, Petitioner submitted its contention that the storage processing tanks, including the tank level inventory monitoring system, qualify as exempt for industrial processing as in-process storage of raw materials.[3] Petitioner asserts that grains, as well as vitamins and minerals essential in the processing of animal feed, are fed into processing on a continuing basis from the storage tanks and therefore the storage of such materials qualifies as "in-process." Petitioner also contends that the "primary

[2] Petitioner's Response to Respondent's Cross Motion for Summary Disposition (PR), p. 1
[3] Petitioner's Response to Order Requiring Additional Information (PAI), p. 2

purpose (90%) for the truck scales is to provide critical data and information on the raw material (corn) for use in production of the corn into animal feed. A secondary purpose (10%) is administrative." *Id.* p. 3 Petitioner asserts that the "truck scales qualify as exempt for industrial processing because the truck scales perform a critical role in 'changing the form, composition, quality, combination, or character of the property' a significant part of which it sold to affiliated entities." (PAI, p.4, citing MCL 205.94o(7)(a))

RESPONDENT'S CONTENTIONS

Respondent also filed a motion for summary disposition pursuant to MCR 2.116(C)(10). Respondent contends that the equipment at issue does not qualify for exemption from use tax. Respondent asserts that Petitioner can only be entitled to the exemption if it is engaged in a business enterprise and uses and consumes the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products. Respondent asserts that Petitioner's business, i.e., the milling of corn and grain into animal feed sold to hog and turkey farms, is not an agricultural production activity.

Respondent rejects Petitioner's alleged premise for claiming the agricultural production exemption based on its association with and sales to farmers of hogs and turkeys. Respondent contends there is no language in the "statute that allows [Petitioner] to be entitled to the [agricultural] exemption because some other separate legal entity with whom [Petitioner] has a contractual relationship and/or familial relationship with engages in a business enterprise for the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products."[4]

Respondent contends that the two cases cited by Petitioner, *Mueller, supra,* and *Michigan Milk, supra,* do not support Petitioner's argument. Respondent states that "[i]n both cases, the Court of Appeals determined that each plaintiff, in their own right, engaged in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products." (RB, p. 2) Respondent notes that the Court did not grant the exemption solely because the plaintiffs had contractual or familial relationships with some other

[4] Respondent's Reply Brief (RB), p. 2

entity that was engaged in a qualifying activity. Respondent further contends that the property at issue in those cases was directly related to the requirements of the exemption: i.e., in the case of *Mueller, supra,* fertilizing equipment was used to apply fertilizer to farmlands; and in the case of *Michigan Milk, supra,* testing equipment was used to ensure the quality of raw milk and to meet legal requirements before the milk could be marketed. *Id.*

Respondent asserts that even if Petitioner is found to be engaged in an agricultural production activity, the tangible personal property at issue was not used in tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products. Respondent argues that a personnel elevator, truck scales, storage tanks and similar types of property may be necessary to operate Petitioner's business but that such property is not used and consumed in a qualifying activity. Respondent also argues that some of the property was used to improve Petitioner's real property and by express statutory language cannot be exempted under MCL 205.94(1)(f), no matter whether Petitioner is engaged in agricultural production or not. *Id.*

In response to the Tribunal's request for additional information regarding the percentage use for industrial processing of the truck scales and inventory monitoring system, Respondent submitted an unsigned letter drafted by its auditor explaining Respondent's rationale for why the property is not exempt under the industrial processing exemption. That letter stated, in part:

> The equipment and supplies the taxpayer used for quality control, including the testing of moisture content, were held exempt for industrial processing during the audit. Those items that were identified as quality control or industrial processing were removed from the taxable exceptions. . . .
>
> The department's understanding of the process, after discussions with the taxpayer and a review of the taxpayer's facility drawings, is that the when [sic] the trucks first come into the facility yard, they are weighed on the receiving scales, unloaded, and then the empty truck is weighed again to determine the weight/volume of the raw materials received for the purchase price. The product is unloaded by one of two ways, a pneumatic receiving system or a truck pit conveyor system. Once the truck is unloaded, the raw materials are then tested for moisture, graded and then moved by the receiving elevator to the roof of the feed mill where it is distributed into a section of the concrete structure by a truck receiving turnhead. This is where it was determined that the industrial process starts. The product is then moved through a section of the structure by gravity. Different corn, grains, vitamins and minerals are weighed and mixed depending

> on what animal stock it is to be fed to. (All purchases for items used in a process in the feed mill, whether crushing, mixing, pelletizing were allowed an industrial processing exemption.) It was determined that the industrial process ends at this point. The finished product is then loaded into a truck through a lorry positioner. The truck is then weighed using the in-ground scales to determine how much to bill the customer.

Respondent's auditor quoted Petitioner by stating, "So you need to weigh it and then you need to put that corn into another meter to tell you how much moisture is within that kernel."[5] Respondent contends that it is not disputing the secondary process of testing the material. It is Respondent's position that the in-ground scales are only used to weigh raw materials, prior to transfer of ownership, to determine volume and price of the product and finished goods when sold to determine selling price. Respondent asserts that the weighing of the product prior to purchase is not related to grading or testing the quality of the product, which happens at a later time. As such, Respondent contends that the truck scales and inventory monitoring system do not qualify for the industrial processing exemption.

STANDARD OF REVIEW

The parties move 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)).

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

[5] Letter drafted by Respondent's auditor

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.[6] 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).

Further, it is well established that a statute granting a tax exemption must be strictly construed against the taxpayer and in favor of the taxing authority.[7] In *Elias Bros Restaurants Inc v Dep't of Treasury,* the Michigan Supreme Court states that "[b]ecause tax exemptions are disfavored, the burden of proving entitlement to an exemption rests on . . . the party asserting the right to the exemption."[8] There is no doubt that the entity claiming a tax exemption has the burden to prove that it is entitled to the exemption, and ". . . if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, and that unless the privilege is limited to the very terms of the statute the favor would be extended beyond what was meant."[9]

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' Motions under MCR 2.116(C)(10), and finds that the parties have proven that there is no genuine issue in respect to any material fact. MCR 2.116(C)(10). The Tribunal finds further that denial of Petitioner's motion is warranted, while

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[6] *Id.*
[7] *Michigan Baptist Home & Development Co v Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976); *Nomads Inc v City of Romulus*, 154 Mich App 46,55; 397 NW2d 210(1986).
[8] *Elias Bros Restaurants Inc v Dep't of Treasury*, 452 Mich 144,150; 549 NW2d 837 (1996) (referencing *Terchek v Dep't of Treasury*, 171 Mich App 508,510-511; 431 NW2d 208 (1988).
[9] *Evanston YMCA Camp v State Tax Comm*, 369 Mich 1, 8; 118 NW2d 818 (1963) [citing *Detroit v Detroit Commercial College*, 322 Mich 142, 148-149; 33 NW2d 737(1948)].

granting of Respondent's motion is appropriate based on the pleadings, stipulation of facts, and other documentary evidence filed with the Tribunal.

The Michigan Use Tax Act, MCL 205.93(1), states "[t]here is levied upon and there shall be collected from every person in this state a specific tax 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 . . . ." Exemptions from the tax are provided under MCL 205.94, which states in pertinent part:

> (1) The following are exempt from the tax levied under this act, subject to subsection (2):
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> * * * *
>
> (f) Property sold to a person engaged in a business enterprise and using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products, including transfers of livestock, poultry, or other horticultural products for further growth. . . . This exemption does not include tangible personal property permanently affixed to and becoming a structural part of real estate.
>
> * * * *
>
> (2) The property or services under subsection (1) are exempt only to the extent that the property or services are used for the exempt purposes if one is stated in subsection (1) . . . . (MCL 205.94)

An exemption from the Use Tax is also extended to an industrial processor for use or consumption in industrial processing. (MCL 205.94o) Such property is exempt only to the extent that the property is used for the exempt purpose (i.e., industrial processing). "The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department." (MCL 205.94o(2))

Property that is not eligible for an industrial processing exemption include the following:

> (a) Tangible personal property permanently affixed and becoming a structural part of real estate including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, . . .
>
> * * * *
>
> (b) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer. (MCL 205.94o(5))

Industrial processing does not include purchasing, receiving or storage of raw materials, or plant security. (MCL 205.94o(6))

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 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).

The parties have stipulated that Petitioner is engaged in a business enterprise, that being the operation of a feed mill in which corn and other grains are dried, ground, and mixed with various additives to produce farm animal feed. Petitioner's business enterprise produces approximately 125,000 tons of finished animal feed each year, of which Petitioner sells a significant portion to farms owned in part or in whole by related entities. Respondent's auditor concluded that Petitioner is engaged in industrial processing and granted the industrial processing exemption for those purchases she deemed eligible under MCL 205.94o. The remaining purchases, including truck scales, storage/processing tanks, storage tank inventory monitoring equipment, a liquid storage tank, a personnel elevator, lighting, and other equipment were determined to be either real property or not used or consumed in industrial processing.

Petitioner argues that the exemption extended for agricultural production is more broad than the exemption for industrial processing, notwithstanding that the exemption does not include tangible personal property permanently affixed to and becoming a structural part of real estate. Petitioner claims that the truck scales, used for weighing corn upon delivery from farmers, qualify as exempt under the agricultural exemption; whereas for industrial processing, the scales are only partially used for exempt purposes. Similarly, Petitioner asserts that the storage tanks and inventory monitoring system are fully exempt if used in agricultural production and further argues that the equipment is used in industrial processing. Petitioner contends that the personnel elevator and emergency lighting are not real property (despite acknowledging that in a manufacturing plant they

are realty, see Transcript pp. 16, 20) and therefore the agricultural exemption applies as well.

Respondent disagrees, arguing that Petitioner does not qualify for the agricultural exemption because it does not use the property at issue in an agricultural production activity. Respondent also disagrees that certain of the property (i.e., truck scales and inventory monitoring equipment) qualifies for the industrial processing exemption as no portion of its use falls within the definition of industrial processing.

The issue to be resolved, therefore, is whether Petitioner qualifies for the agricultural exemption by "using and consuming the property in the tilling, planting, caring for, or harvesting of the things of the soil or in the breeding, raising, or caring for livestock, poultry, or horticultural products for further growth." (MCL 205.94(1)(f)) Petitioner's representative stated that its "contention is that if this was all one entity, that the purchasing of corn, the processing of corn, and the other grains, there would be no question that this is an agricultural activity and there would be no question that all of the equipment being used to process the corn would be exempt." (Transcript p.29) This is quite possible; however, the Tribunal notes that Petitioner and its customers are not one single entity and the statute does not permit an exemption based on the activities of a different legal entity.

Petitioner attempts to argue that its relationship with other entities that are engaged in these qualifying activities, (i.e., breeding, raising and caring for hogs and turkeys) somehow vicariously extends the exemption to Petitioner. Petitioner states that it "is one of a group of related entities that comprise a unitary business group because of common ownership and inter-company purchases and sales." (PB, p. 2) Petitioner offers the definition of unitary business group as adopted by the legislature in the recently enacted Michigan Business Tax Act. The Tribunal is not persuaded. Regardless of whether Petitioner is unitary with other entities under the MBT, the concept is not relevant to the use tax provisions.

The Michigan Court of Appeals has considered whether a taxpayer can claim an exemption based on the fact that its subsidiary may have been entitled to an exemption. In *Czars Inc v Department of Treasury*, 233 Mich App 632; 593 NW2d 209 (1999), the Court of Appeals affirmed the Tribunal's decision that the petitioner was required to pay use tax on its purchase of an aircraft. The petitioner in that case argued that the aircraft was exempt by virtue of its subsidiary's, Grand Aire, exempt use of the aircraft. The Court applied a "control test" (i.e., the petitioner would have to demonstrate that it was wholly owned and controlled by the entity entitled to the exemption) to determine whether Grand Aire and Czars were one entity for tax purposes. The Court determined that Czars was not entitled to a tax exemption because ". . . a taxpayer who creates multiple corporations to conduct different functions of a business enterprise could avoid tax liability for all of them by structuring just one to benefit from a statutory exemption. Such a ruling would grossly undermine the policy and intent of the tax law." *Id*. at 642.

Rule 205.51(1) defines agricultural producing as "the commercial production, for sale, of crops, livestock, poultry and other products . . . ." The Court of Appeals held that "the exemption contained in § 4(f) does not require that the taxpayer be engaged in the actual production of horticultural or agricultural products." *Mueller, supra.* Petitioner is entitled to the agricultural exemption if milling corn into animal feed is part of agricultural production and Petitioner uses and consumes the equipment at issue in agricultural production.

Petitioner argues that the mixing of corn and other grains is a necessary part of the raising, or caring for livestock or poultry. "Without the food (grains) the livestock or poultry will not grow." (PB, p. 11) The Tribunal agrees that feeding is part of raising and caring for farm animals; however, Petitioner does not use its equipment for feeding or caring for animals. Its equipment is used in the storage, mixing and processing of grains for sale to farmers who feed the livestock and poultry. Unlike the fertilizer spreader used in *Mueller* to actually distribute the fertilizer to the fields, Petitioner does not use the subject equipment to feed livestock and poultry. It simply uses it in its business operations of industrial processing and wholesale sales of feed product to farmers.

Petitioner relies on the Court of Appeal's decision in *Michigan Milk Producers, supra,* in its argument that the equipment at issue is not required to be directly used or consumed in agricultural production to qualify for the exemption. "In Michigan Milk Producers, the Court referencing the Tax Tribunal opinion stated: 'The tribunal concluded that the petitioner's testing of the milk was a direct part of the agricultural production process and, thus, the equipment petitioner used in connection with the testing was exempt from the use tax.' [Emphasis Added]" (PB, p. 12, citing *Michigan Milk Producers, supra*) Petitioner argues that the use of the word "direct" was in reference to testing activity and did not mean the testing equipment had to be directly used or consumed in the agricultural production process. (*Id.* at p. 13) Petitioner argues in this case that "the mixing of grain was a direct part of the raising or caring for livestock, poultry, or horticultural products. The mixing of grain is the exempt activity." (PB, p. 13)

The Tribunal disagrees with Petitioner. The mixing of grain for wholesale is not a direct part of raising or caring for livestock or poultry. If it were so, many other activities could arguably be a direct part of raising or caring for animals such as the manufacture of pharmaceuticals for farm animals or the provision of veterinary services. It is not conceivable that the Legislature intended the agricultural exemption be extended to every business activity that supports agriculture.

Based on the above, the Tribunal finds that Petitioner is not entitled to the agricultural production exemption. However, during oral arguments, Petitioner's owner, Mr. Rick Sietsema, provided information to indicate that the truck scales and inventory monitoring equipment might be used to some degree in industrial processing as well as for receiving and storage. Specifically, Mr. Sietsema stated that the purpose of the truck scales and inventory monitoring equipment is "two-fold." In addition to using the equipment to determine the price to pay a farmer/vendor, he stated:

> . . . each farmer will deliver different test weight corn and quality, . . . and that's why every load has got to go across the scale and [be] checked and monitored and tested for test weight. . . . So you need to weigh it and then you need to put that corn into another meter to tell you how much moisture is within that kernel of corn. . . . So it's all about grading. You've got to grade it; you've got to yield it;

> you've got to weigh it. It's all part of the whole process . . . . We'll segregate it into different bins . . . . [T]his bin we know has a higher test weight that's important for sows and gestation times . . . . we have to fortify the diet differently, based on this is a poorer quality of corn, we need to fortify it with additional vitamins and minerals to complement that corn to get another balance diet so that the livestock will be healthy. (T pp. 47 – 49)

The Tribunal requested additional information be submitted to determine whether and to what extent the truck scales and inventory monitoring system are used in industrial processing. Petitioner responded with its contention that the inventory monitoring system, along with the liquid storage tanks, qualifies as exempt for industrial processing because it is used for "in-process storage." (PAI, p.2) Petitioner also stated that the truck scales are used primarily (90%) to "provide critical data and information on the raw material (corn) for use in production of the corn into animal feed." Petitioner failed to support either of these statements with evidence.

Respondent, on the other hand, provided a reasonable explanation as to why its auditor did not consider the truck scales and inventory monitoring equipment as part of industrial processing. Because the burden of proof is on Petitioner, which Petitioner failed to carry, the Tribunal finds that truck scales and inventory monitoring equipment do not qualify in any part for the industrial processing exemption and Respondent's assessment is affirmed. Therefore,

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 Assessment No P156409 is AFFIRMED.

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 and interest 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: September 21, 2010 By: Cynthia J Knoll