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

DAH Family, LLC,
Petitioner,

MTT Docket No. 359042

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, DAH Family, LLC, appeals the denial by Respondent, Michigan Department of Treasury, of Petitioner's carryover of unused investment tax credit from DAH Co., Inc.'s 2004 Single Business Tax Return and use thereof to offset its Single Business Tax Liability for 2005 and 2006. The parties dispute whether the relevant facts in this matter meet the requirements of Michigan RAB 1992-3, which allows a transfer of an investment tax credit only when the previous owner of the assets "completely discontinues operations" and is "no longer a taxpayer under the Single Business Tax Act." The Tribunal disagrees with Respondent and determines that Petitioner meets all of the requirements of RAB 92-3 and is, therefore, entitled to reduce its SBT liability for 2005 and 2006 by the amount of the investment tax credit carryover from DAH Co., Inc.'s 2004 Single Business Tax Return.

BACKGROUND

DAH Co., Inc. ("DAH Co."), which was 100% owned by Douglas A. Hardy ("Hardy"), owned 100% of Bloomfield Maple, LLC ("Bloomfield"), which owned real estate that was

extensively renovated in 2003. DAH Co. included all income and expense activity of Bloomfield on its 2003 Single Business Tax and also claimed the investment tax credit generated by the renovation expense. In 2004, Petitioner was formed by Hardy in conjunction with his estate plan and was 100% owned by the Douglas A. Hardy Revocable Trust ("Hardy Trust"). In November, 2004, Bloomfield transferred all of its assets and liabilities to Petitioner in exchange for a 41% ownership interest in Petitioner, thus leaving the Hardy Trust with a 59% ownership interest in Petitioner. Petitioner filed single business tax returns for 2005 and 2006 and claimed an investment tax credit carry forward on the investment tax credit generated by Bloomfield and claimed by DAH Co. in 2003. Respondent denied the investment tax credit carryover claimed by Petitioner because RAB 1992-3 only allows a transfer of the investment tax credit where the transferor "completely discontinues operations" and is no longer an SBT taxpayer. Respondent issued its Final Bill for Taxes Due, Assessment number Q089120, to Petitioner on December 26, 2008 in the amount of $11,204 plus interest.

Petitioner filed this appeal with the Tribunal on January 30, 2009. On October 20, 2010, Petitioner filed a Motion for Summary Disposition. On October 26, 2010, Respondent filed its Motion for Summary Disposition. On November 4, 2010, Respondent filed a Brief in Opposition to Petitioner's Motion for Summary Disposition. On November 8, 2010, Petitioner filed a Brief in Opposition to Respondent's Motion for Summary Disposition.

STIPULATION OF FACTS

The parties have filed a Joint Stipulation of Facts, and the Tribunal accepts as true the following:

1. "At January 1, 2003, DAH Co., Inc. (EIN 38-3376085) owned 100% of Bloomfield Maple, LLC."

2. "DAH Co., Inc. treated Bloomfield Maple as a disregarded entity for tax purposes pursuant to the default classification described in Federal Tax Regulations §301.7701-

3(b)."[1]

3. "All income and expense activity of Bloomfield Maple, LLC was reported on the single business tax return for DAH Co., Inc."**1**

4. "The real estate owned by Bloomfield Maple, LLC was extensively renovated in 2003."

5. "DAH Co., Inc. claimed the investment tax credit on its 2003 form C-8000ITC for the cost of the renovation."

6. "The Michigan Department of Treasury adjusted the investment tax credit carry forward to $19,037 in their notice dated December 6, 2005."

7. "DAH Co., Inc. filed a single business tax return (C-8000) for 2003 and 2004, and had no tax liability."

8. "DAH Co., Inc. carried forward the investment tax credit for use in future years."

9. "On August 16, 2004, DAH Family, LLC was formed by Douglas A. Hardy in furtherance of his estate plan."

10. "DAH Family, LLC was initially owned 100% by Douglas A. Hardy."

11. "On November 12, 2004, Bloomfield Maple, LLC transferred all of its assets and liabilities to DAH Family, LLC in exchange for a 41% ownership interest in DAH Family, LLC."

12. "On November 12, 2004, Quit Claim Deeds were prepared for the transfer of the real estate.

13. "On December 23, 2004, Warranty Deeds were filed by Bloomfield Maple, LLC, recording the conveyance of all of its real estate to DAH Family, LLC."

14. "After the transfer of property, DAH Co., Inc. and Bloomfield Maple, LLC had no function other than as a holding company for the interest in DAH Family, LLC, and ceased all other business activity."

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[1] Subsequent to the filing by DAH Co. of its Single Business Tax returns for the 2003 and 2004 tax years, the Michigan Court of Appeals affirmed a Michigan Tax Tribunal ruling that a single member limited liability company did not have to comply with a Treasury administrative bulletin in making its tax filing and that entity had to file an SBT return regardless of its classification as a disregarded entity for federal tax purposes. *Kmart Michigan Property Services, LLC v Department of Treasury*, 283 Mich App 647; 770 NW2d 915 (2009). Thus, under the theory of *Kmart*, Bloomfield should have filed a separate Single Business Tax return, which may have resulted in a different outcome with respect to any ITC carry forward. However, the Tribunal will draft its opinion recognizing that DAH Co, did include the income and expense of its wholly owned affiliate Bloomfield in its Single Business Tax returns.

15. "Prior to the transaction, the real property was owned by Bloomfield Maple, LLC, which was owned by DAH Co., Inc., which was owned by Douglas A. Hardy. After the transaction the real estate was owned by DAH Family, LLC, which was owned 59% by the Douglas A. Hardy Revocable Trust and 41% by Bloomfield Maple, LLC (which was owned by DAH Co., Inc. which was owned by Douglas A. Hardy)."

16. "DAH Family, LLC filed single business tax returns for 2005 and 2006."

17. "DAH Family, LLC reported the $19,307 investment tax credit carry forward from Bloomfield Maple LLC, as reported on the DAH Co., Inc. 2004 return, as a credit carryforward on its 2005 Single Business Tax Return."

18. "DAH Family, LLC used the Investment Tax Credit Carryforward to offset its Michigan Single Business Tax liability for the 2005 and 2006 tax years."

19. "Michigan Department of Treasury disallowed the investment tax credit claimed and assessed the tax amounts described above."

PETITIONER'S CONTENTIONS

Petitioner requests that the Tribunal grant Summary Disposition in its favor pursuant to MCR 2.611(C)(10) on the basis that, given the parties' filing of a Joint Stipulation of Facts, "there is no genuine issues (sic) as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." (Petitioner's Brief Supporting Motion for Summary Disposition, page 2) Petitioner contends that Respondent erred in concluding that DAH Co., Inc. does not meet the requirements of RAB 1992-3, Section 3(E) that would allow the carry forward of investment tax credit generated by DAH Co. to Petitioner. Specifically, Petitioner contends that after the transfer by Bloomfield of its assets to Petitioner, DAH Co. (the sole owner of Bloomfield and the taxpayer claiming the investment tax credit at issue) "completely discontinued operations" and was no longer a taxpayer under the Single Business Tax Act, and therefore, Petitioner should be allowed to carry forward the investment tax credit generated by DAH Co.

Petitioner references MCL 208.35, which, beginning on January 1, 2000, allowed taxpayers to take an investment tax credit deduction against their single business tax for the cost of tangible depreciable assets acquired during the year. Taxpayers unable to use all of their investment tax credit in the current year were allowed to carry the credit forward to subsequent tax years. Petitioner contends (Petitioner's Brief Supporting Motion for Summary Disposition, page 3), and Respondent concurs (Respondent's Brief in Support of its Summary Disposition Motion, page 3) that the statute itself does not address the use of the investment tax credit by the transferee of assets, the cost of which was claimed as an investment tax credit by the transferor. Both Petitioner (Brief, page 3) and Respondent (Brief, page 3) acknowledge that the issue at hand is specifically addressed by the Department of Treasury in Section 3(E) of its RAB 1992-3, which states in part:

> Transfers of property through certain tax-free events described in sub-paragraphs (1) through (8) of this section receive the following treatment for SBT purposes; transferor is not required to recapture CAD on such property; transferee is not entitled to CAD on such property; transferee holds the property as if such property was in the hands of the transferor, therefore the transferee must recapture CAD depending on the acquisition date of the property by the transferor; and transferee is entitled to an SBT business loss carryover for any unused business loss of the transferor when transferor completely discontinues operations and is no longer a taxpayer under the Single Business Tax Act (SBTA).
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> (2) Contribution to a partnership. The transfer of property where no gain or loss is recognized under IRC 721.

Petitioner states (Brief, page 5) and Respondent seemingly agrees (Brief, pages 4 and 5), that although the RAB was "not revised or redrafted to apply to the ITC," Michigan Department of Treasury developed a Q & A released in October, 2006 and updated in October, 2009 that stated that the "same treatment will be afforded the ITC under similar circumstances. An ITC

carryforward will be treated like a business loss carryover (i.e., the transferee will be entitled to any unused ITC carryforward)." Thus, Petitioner contends that the parties agree as to the amount of loss carry over available. Petitioner states that the

> sole issue in contention is whether or not DAH Co., Inc. (and its wholly owned LLC, Bloomfield Maple LLC) completely discontinued operations and was no longer a taxpayer under the Single Business Tax Act. If DAH Co., Inc. did not completely discontinue operations and is still a taxpayer under the Single Business Tax Act, RAB 92-3 §3(E) does not apply, and petitioner would not be allowed to offset its Single Business Tax Liability by the amount of the ITC carryforward.

With respect to the issue of whether DAH LLC/Bloomfield, as transferor of the assets to Petitioner, had "completely discontinued operations," Petitioner acknowledges that Bloomfield is a holding company (as it retains a 41% ownership interest in Petitioner), but contends that it has no other purpose than to hold an interest in other companies. On this issue, Petitioner relies on a distinction found in Encyclopedia Britannica between a "pure holding company" (which exists purely to hold stock in other companies) and a "holding-operating company" (which engages in business of its own in addition to owning interests in other companies). (Brief, page 6) Concluding that DAH Co. (note that the Tribunal assumes that Petitioner meant to include Bloomfield as well) is a "pure holding company" because it serves no purpose other than as an investor in other companies, Petitioner contends that because at least one source distinguishes between "pure" holding companies and "operational" holding company, DAH Co./Bloomfield, as a non operational holding company cannot be deemed to be engaged in operations as contemplated by the RAB. (Brief, page 7) Petitioner further contends that Respondent's focus on the word "completely" is misplaced; instead, the focus should be on the word "operations" in any analysis of RAB 1992-3 as applied to the facts in this case. (Reply Brief, page 2) In that

regard, Petitioner contends that "operations" means activity rather than passiveness and inactivity (i.e., a "holding company" as distinguished from an "operations company"). Again, Petitioner distinguishes mere ownership from activity or operation. (Reply Brief, page 2) Petitioner also disputes Respondent's purported attempt to equate "operations" with "existence," contending that "[n]othing in the RAB or in the First Industrial case indicates that the predecessor entity need cease to exist. If that were the case, an individual sole proprietor as transferor in the same situation would be required to die immediately after the transaction in order for this provision of RAB 92-3 to apply . . . ." (Reply Brief, page 2) Finally, Petitioner disputes Respondent's contention that a company has not ceased operations if it can continue to pay dividends, sell stock, purchase new assets or conduct some other future activity. In this regard, Petitioner contends that the Tribunal must look to the facts of this case, where DAH Co./Bloomfield are mere holding companies and are not operational. (Reply Brief, page 3)

With respect to the issue of whether DAH Co. continued to be a "taxpayer under the Single Business Tax Act" after it transferred Bloomfield's assets to Petitioner, Petitioner looks to MCL 208.10(2), which defines a taxpayer as "a person liable for a tax, interest or penalty under the act." Further, Petitioner relies on MCL 208.9, which allows an adjustment to the SBT tax base for income attributable to another entity whose business activities are taxable. Here, Petitioner contends that after the transfer of assets to Petitioner, DAH Co. (and presumably Bloomfield) "has no income that is <u>not</u> attributable to another entity, and therefore has no tax base." (Brief, page 8) Further, after the transfer of assets to Petitioner, Petitioner contends that DAH Co. had no gross receipts and therefore was not required to file a Single Business Tax return.

Petitioner acknowledges Respondent's reliance on *First Industrial, LP v Department of*

Treasury, 486 Mich 962; 782 NW2d 774 (2010), where the Michigan Supreme Court agreed with the Court of Claims disallowance of the ITC claimed by First Industrial "because the transferor in that case did not cease operations." (Brief, page 9) However, Petitioner distinguishes *First Industrial* because the party in that case ceased operations in Michigan, but did not completely cease operations. Further, Petitioner argues that Respondent focuses on the meaning of the word "completely" and essentially ignores the term "operations" in its analysis of the phrase "completely discontinues operations." As such, Petitioner contends that it is equally important that "operations" be defined as it is being modified by the word "completely." Petitioner states that ". . . the term 'operations' implies activity; the term 'holding,' as in 'holding company,' in contrast, implies passiveness and inactivity." (Petitioner's Brief in Opposition to [Respondent's] Motion for Summary Disposition, page 2) Petitioner states that ". . . [the holding company] has completely ceased operations, and is not conducting business activity, as defined in the statute, anywhere." (Petitioner's Brief in Opposition to [Respondent's] Motion for Summary Disposition, page 2, emphasis in original)

RESPONDENT'S CONTENTIONS

Respondent requests, without discussion, that the Tribunal grant summary disposition in its favor pursuant to MCR 2.116(C)(8) or, in the alternative, pursuant to MCR 2.116(C)(10).

Respondent contends that Petitioner may not utilize the investment credit carry forward from DAH Co. because DAH Co. "remains in business as a holding company, even if it does not pursue other business operations" and has, therefore, not "completely discontinued operations" pursuant to RAB 1992-3. (Brief, page 2) Respondent agrees with Petitioner that because the relevant statute is silent regarding the transfer or carryover of the Investment Tax Credit (Brief, page 3), the central issue in this dispute is what is meant by the phrase "completely discontinued

operations" contained in RAB 1992-3. Respondent argues that tax exemptions must be "strictly construed against the taxpayer and in favor of the taxing authority" (*Nomads, Inc v Romulus,* 154 Mich App 46, 55; 397 NW2d 210 (1986)). (Brief, page 3) Further, Respondent contends that this rule of construction is applied to tax credits (*Auto-Owners Ins Co v Dep't of Treasury,* 266 Mich App 190, 201; 699 NW2d 707 (2005); *DeKoning v Dep't of Treasury,* 211 Mich App 359, 361-362; 536 NW2d 231 (1995)) and to deductions (*ADR Pipeline Co (sic) v Dep't of Treasury,* 266 Mich App 190, 201; 699 NW2d 707 (2005)). (Brief, page 3). Further, although an "RAB does not normally have the force of law" (*Catalina Marketing Sales Corp v Dep't of Treasury,* 470 Mich 13, 21; 678 NW2d 619 (2004)), Respondent points to the Michigan Supreme Court's reliance on RAB 1992-3 in affirming the Court of Claims' conclusion regarding the meaning of the phrase "completely discontinued operations." (*First Industrial, supra*) (Brief, page 4) Relying on the Court's decision in *First Industrial,* Respondent contends that the Court clearly concluded that any analysis of the phrase "completely discontinued operations" included in RAB 1992-3 *must* focus on the word "completely" rather than on the word "operations." Specifically, Respondent states that the Court of Claims "answered the question by looking at the dictionary definition of the word 'complete,' which it quoted; noting that the definition included the requirement '[a]bsolute, total'" finding that there must be "an absolute and total discontinuation of operations" for the requirement under the RAB to be met. (Brief, page 5) Respondent contends that a holding company cannot, by definition, claim a complete discontinuance of operations, since it may pay or receive dividends, it can purchase and sell assets, and it can be sold. (Brief, page 6) Respondent further contends that both the RAB and *First Industrial* "require that an end to business operations be definitive, in every sense of the word, for a credit to be transferred. For a company to 'all but' cease business operations is not enough." (Reply

Brief, page 2)

STANDARD OF REVIEW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(8). Motions for summary disposition under MCR 2.116(C)(8) are appropriate when the opposing party has failed to state a claim on which relief can be granted. Summary disposition should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery. *Transamerica Ins Group v Michigan Catastrophic Claims Ass'n*, 202 Mich App 514, 516; 509 NW2d 540 (1993). In reviewing a motion for summary disposition under this subsection, the court must accept as true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts. *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

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

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' Motions for Summary Disposition under the criteria for MCR 2.116(C)(8) and (C)(10), and based on the pleadings, affidavits and other documentary evidence filed with the Tribunal, determines that granting Petitioner's Motion and denying Respondent's Motion is appropriate. The Tribunal concludes that the pleadings, affidavits and documentary evidence prove there is no genuine issue with respect to any material fact.

The Michigan Single Business Tax was enacted into law in 1975 and was replaced by the Michigan Business Tax, effective in 2008. The facts of this case are not in dispute. The parties

agree (Joint Stipulation of Facts filed by the parties on September 20, 2010) that for the 2003 tax year, DAH Co. (owned by Douglas A. Hardy, an individual) claimed an Investment Tax Credit on its Michigan SBT return for the cost of assets purchased by its wholly owned subsidiary, Bloomfield. The amount of ITC available to DAH Co. is not in dispute. Because DAH Co. did not have an SBT tax liability for the 2003 and 2004 tax years, the ITC was "carried forward" for use in future years pursuant to MCL 208.23b(h). In 2004, Mr. Hardy formed DAH Family, LLC ("Petitioner") for estate planning purposes. Also in 2004, Bloomfield transferred all of its assets and liabilities to Petitioner in exchange for a 41% ownership interest in Petitioner. Petitioner reported the ITC carry forward as a credit against its SBT liability for the 2005 and 2006 tax years. The sole issue for the Tribunal to consider is whether Respondent was correct to disallow the carry over to Petitioner of the ITC initially claimed by DAH Co.

As noted by the parties, the Michigan Single Business Tax Act is silent with respect to the issue presented here. However, as recognized by the parties, RAB 1992-3 issued by the Department of Treasury addresses the issue of transfer of the capital acquisition deduction, which the parties also agree, and the Tribunal concurs, applies to the ITC pursuant to a Michigan Department of Treasury Q & A released in October 2006 and updated in October 2009 that stated that the "same treatment will be afforded the ITC under similar circumstances. An ITC carryforward will be treated like a business loss carryover (i.e., the transferee will be entitled to any unused ITC carryforward." As discussed above, RAB 1992-3 3.E. provides that a "transferee is entitled to an SBT business loss carryover for any unused business loss of the transferor when transferor *completely discontinues operations and is no longer a taxpayer under the Single Business Tax Act . . . .*" (Emphasis added)

Thus, the Tribunal must first determine whether DAH Co., Inc. was a taxpayer under the

Single Business Tax Act after its wholly owned subsidiary transferred all of its assets and liabilities to Petitioner. MCL 208.10(2) defines "taxpayer" as "a person liable for a tax, interest or penalty under this act." MCL 208.6 defines "person" as "an individual, firm, bank, financial institution, limited partnership, copartnership, partnership, joint venture, association, corporation, receiver, estate, trust, or any other group or combination acting as a unit." In *Kmart, supra*, the Court of Appeals confirmed the Tax Tribunal's determination that, although not specifically identified in MCL 208.6, an LLC "fits within the statutory definition of 'person' whether it has one or more members." Further, MCL 208.31(1) provides that "there is levied and imposed a specific tax upon the adjusted tax base of every person *with business* activity in this state . . . ." (Emphasis added) In other words, was DAH Co., whose sole business purpose was to own 100% of the membership interest in Bloomfield, "liable" for single business tax. Here, Petitioner contends that after the transfer of assets to Petitioner, DAH Co. "has no income that is <u>not</u> attributable to another entity, and therefore has no tax base." (Brief, page 8) Further, after the transfer of assets to Petitioner, DAH Co. had no gross receipts and therefore was not required to file a Single Business Tax return. Thus, the real issue here seems to be whether an entity located in Michigan with no gross receipts and no tax base, that is simply a holding company with 100% ownership of a limited liability company (also with no gross receipts and no tax base), is deemed to "no longer be a taxpayer under the Single Business Tax Act."

MCL 208.31(2) states that

> . . . there is levied and imposed a specific tax upon the adjusted tax base of every person with business activity . . . . "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.

MCL 208.3(2). As interpreted by *Fluor Enterprises, Inc v Department of Treasury*, 477 Mich 170; 730 NW2d 722 (2007), ". . . the act by definition encompasses taxation of services that are performed not only within the state ("engaged in . . . within this 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 ("caused to be . . . engaged in[] within this state")." The Tribunal determines that DAH Co., Inc. does not transfer legal or equitable title, rent property, or perform services with the object of gain, benefit, or advantage. As such, DAH Co., Inc. does not perform any business activities and is, therefore, not a taxpayer under the Single Business Tax Act.

The next issue is whether DAH Co., Inc., as the transferor of the property that generated the ITC for Bloomfield, "completely discontinued operations" for purposes of RAB 1992-3. Here, the Tribunal looks to the Court of Claims' opinion in *First Industrial* (reversed by the Court of Appeals, but affirmed by the Supreme Court), where the Court determined that the operative word in the phrase is "completely" and further concluding that the word "completely" means "absolute and total." Thus, the RAB would require the absolute and total discontinuation of operations. However, the Tribunal finds the facts of *First Industrial* distinguishable from the current facts. Specifically, the petitioner in *First Industrial* argued that RAB 92-3 actually means "completely discontinues operations in Michigan" and therefore, the issue was whether *First Industrial completely* discontinued its operations. As such, the *First Industrial* Court properly focused its analysis on the importance of the word "completely." However, in the above-captioned appeal, the issues are whether DAH Co., Inc., as a holding company, was engaged in operations and, if so, whether those operations were completely discontinued. The Tribunal finds that utilization of the *First Industrial* analysis is inappropriate as DAH Co., Inc. was not engaged in "operations."

Although the word "operations" is not defined in the RAB, undefined statutory words and phrases are construed according to their common and approved usage, unless such a construction would be inconsistent with the Legislature's manifest intent. *ADVO-Systems, Inc v Dep't of Treasury*, 186 Mich App 419, 424; 465 NW2d 349 (1990). The Tribunal looks to *The American Heritage College Dictionary* definition of "operations," which defines "operations" as, "[t]he division of an organization that carries out the major planning and operating functions." *The American Heritage College Dictionary* (2002), at 974. The Tribunal finds that reliance on this dictionary definition to ascertain the plain meaning of the term "operations" is appropriate. DAH Co., Inc. does not carry out any planning functions as the parties have stipulated to the fact that DAH Co., Inc. has no function other than as a holding company for the interest in DAH Family, LLC, and has ceased all other business activity. The Tribunal finds that DAH Co., Inc. is a passive company that holds an ownership interest in Petitioner.

Petitioner looks to Encyclopedia Britannica to define "holding company." Specifically, Petitioner asserts that Encyclopedia Britannica makes a distinction between a "pure holding company" and a "holding-operating company." The Encyclopedia Britannica states that a:

> holding company**,** a corporation that owns enough voting stock in one or more other companies to exercise control over them. A corporation that exists solely for this purpose is called a pure holding company, while one that also engages in a business of its own is called a holding-operating company.

The Encyclopedia Britannica's definition supports the Tribunal's conclusion that DAH Co., Inc. is a passive company that merely holds an interest in Petitioner without engaging in its own operations. Moreover, after the transfer by DAH Co., Inc. to Petitioner, DAH Co., Inc. completely discontinued all active business operations and was no longer a taxpayer under the Single Business Tax Act. By definition, DAH Co., Inc. is a pure holding company that does not

engage in business activities or operations. As such, the facts of this case show that Petitioner meets the requirements of RAB 92-3.

The Tribunal disagrees with Respondent that a holding company cannot, by definition, claim a complete discontinuance of operations, since it may pay or receive dividends, it can purchase and sell assets, and it can be sold. The Tribunal does not find that these activities constitute operations. As argued by Petitioner, if Respondent's interpretation of the phrase "completely discontinued operations" were correct, then such state could essentially be achieved only by dissolution of the transferor company. However, the RAB does not impose this requirement on the transferor. Instead, the Tribunal finds that a passive transferor, acting solely as a holding company, satisfies the intent of the RAB. Therefore, Petitioner shall be allowed to carry forward the unused portion of the Investment Tax Credit and cancellation of the Final Assessment at issue is proper.

JUDGMENT

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

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

IT IS FURTHER ORDERED that Respondent's Final Assessment Q089120, issued December 26, 2008, is CANCELLED.

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

MICHIGAN TAX TRIBUNAL

Entered: March 11, 2011 By: Steven H. Lasher