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

Southkent Veterinary Hospital, PLLC,
Petitioner,

v

MTT Docket No. 448604
Assessment No. TE73138

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On July 8, 2013, Petitioner filed a Motion for Summary Disposition under MCR 2.116(C)(10) stating that there are no genuine issues of material fact and Petitioner is entitled to judgment as a matter of law because Respondent's assessment is in error and has no basis in law, and Petitioner properly relied on and complied with RAB 1990-24. On July 22, 2013, Respondent filed its response to Petitioner's Motion for Summary Disposition.

On July 8, 2013, Respondent filed a Motion for Summary Disposition under MCR 2.116(C)(10), stating that there are no genuine issues of material fact and Respondent is entitled to judgment as a matter of law because the disputed transactions in this case were primarily for tangible personal property and are subject to sales tax. On July 29, 2013, Petitioner filed its response to Respondent's Motion for Summary Disposition.

Oral Argument on the parties' Motions for Summary Disposition was heard on August 9, 2013. Petitioner was represented by Edward S. Kisscorni, CPA. Respondent was represented by Nate Gambill, Assistant Attorney General.

Upon review of the Motions, evidence, and the statements made during Oral Argument, the Tribunal finds that there is no genuine issue of material fact and Petitioner is found to be engaged in the taxable sale of tangible personal property. Therefore, the Tribunal grants Respondent's Motion for Summary Disposition and further modifies the subject assessment based on the revised audit and statements made by the parties' that the total tax in dispute is $25,362, plus statutory interest.

PETITIONER'S CONTENTIONS

Petitioner contends the determining factor is whether it was engaged in single mixed transactions involving both nontaxable services and tangible personal property. It is Petitioner's argument that in *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13; 678 NW2d 619 (2004), the Supreme Court "looked to the structure of the relationship between the seller and the purchaser." Petitioner argues that "*Catalina* mandates that we place the 'focus on the transaction, not the character of the participants' to the transaction or the form and content of the invoices or accounting." Petitioner further argues that if the 6-factor test adopted in *Catalina* is applied to the present case: (i) any tangible personal property purchased would be either ancillary pet supplies or items recommended through the evaluation for treatment; (ii) Petitioner is in the business of providing veterinary services and making sales of medications, pet supplies, and pet food, with all sales of medications and supplies made in conjunction with an examination or consultation; (iii) any tangible personal property transferred in conjunction with an examination or consultation was not made as a retail enterprise with a profit-making motive, and the purchase price was marked up 30% to cover costs, not to generate a profit; (iv) medication and supplies were not available for sale without an accompanying service; (v) the intangible services contributed "greatly" to the provision of tangible personal property because without the service of evaluating the animal Petitioner could not recommend a course of treatment; (vi) for business and regulatory purposes Petitioner tracks all sales of services, medications and supplies by the patient (animal) and not by client (the owner).

Petitioner also contends that is has followed RAB 1990-24, which was promulgated to provide guidance on the application of sales and use tax to veterinary practices. Petitioner states that RAB 1990-24 has not been revised, edited, or rescinded, and it states that a veterinary practice is a service business and that such services are exempt from tax, although any tangible personal property consumed is taxable. "The RAB further states that drugs and supplies for outpatient cases in conjunction with an examination and consultation are likewise taxable to the veterinarian." Petitioner contends that it complies with all requirements of the RAB, stating that "use tax is paid on the purchase price of all tangible personal property used or consumed in providing tax exempt veterinary services. Sales tax is paid on the purchase price of all drugs and supplies provided in conjunction with an examination of an animal or consultation with the owner of an animal." Petitioner further argues that Respondent is barred under the doctrine of equitable estoppel from assessing tax against Petitioner when Petitioner followed RAB 1990-24 and "[t]he retroactive misapplication of RAB 90-24 would prejudice and financially harm petitioner."

Lastly, Petitioner contends that both the Sales Tax Act and Use Tax Act provide a discount for early payment of tax and that Petitioner paid sales tax early or on the due date of the return. Petitioner argues that this discount should not have been disallowed or that the tax paid should have been use tax (which Petitioner asserts is irrelevant as the discount is available for payment of either sales or use tax).

RESPONDENT'S CONTENTIONS

Respondent argues that the remaining invoices at issue in this appeal contain only a single transaction for tangible personal property and do not indicate any services involved. Respondent states that the deposition of Dr. Jackson confirms that this single transaction on the invoices indicates that no examination took place at the time of the invoice. It is Respondent's position that *Catalina* would not even apply in this case, because the invoices at issue show a single item of tangible personal property and Petitioner has confirmed that it itemized charges for services separately. Respondent further argues that any application of *Catalina* must conclude that the transactions were principally for the sale of tangible personal property, not services. Respondent states that Petitioner is in the business of making retail sales with a profit-making motive and the transactions at issue were

either for nail trimmers or medication where no consultation took place and the customer came to Petitioner seeking the nail trimmers or medication; there is no indication that a receptionist got a doctor's approval to sell pet supplies such as nail clippers; an authorization did not add any substantive value to the nail clippers or medication because the doctor had already prescribed the medication after examining the pet on a prior visit. Respondent contends that "Petitioner cannot circumscribe the sales tax act by simply establishing a policy requiring doctor approval of any transaction."

Respondent also argues that RAB 1990-24 is only meaningful guidance to the extent it does not conflict with actual laws and that the plain language of the Sales Tax Act and *Catalina* control resolution of this case, not the RAB. Respondent further states that the RAB does support the result that would be reached under *Catalina*. Respondent states that the RAB "clearly spells out that drugs or supplies that are not sold as part of an actual examination are subject to sales tax, and even provides two separate examples." Respondent points to both Example 3 and Example 6 contained in the RAB as supportive of its position in the present case.[1]

Respondent contends that Petitioner did not remit any sales tax during the audit period but that the tax remitted was actually use tax on purchases from out-of-state vendors, and any discounts Petitioner had taken were disallowed "because the discounts are only available for sales tax remittances and seller's use tax remittances on sales and rentals." Respondent argues that Petitioner may have reported the remittances as sales tax but Petitioner was simply remitting tax it had collected from a customer. Further, Respondent states that if Petitioner had been paying sales tax, the person who sold the item to Petitioner would have been the one remitting the tax collected, not Petitioner. Respondent states that the sales tax being assessed to Petitioner is the sales tax that would have been due on the "markup" Petitioner charged to its customers above Petitioner's wholesale purchase price of the item.

[1] Petitioner's response to Respondent's Motion indicates that Petitioner does not agree that either example would apply stating "the examples are not relevant because they involve horses which are quite different from small animals."

STATEMENT OF FACTS[2]

1. Petitioner is a veterinary clinic with offices in Caledonia and Byron Center, Michigan.
2. Respondent performed a sales tax audit for the period of September 1, 2006 to August 31, 2010.
3. The audit was based on electronic invoices for year 2009, for a total sample of 106 invoices.
4. A Final Audit Determination was issued on June 14, 2011, disallowing some of the exempt service deductions Petitioner had claimed and finding that Petitioner was liable for additional sales tax due.
5. An informal conference was held on April 11, 2012, with a Decision and Order of Determination issued on August 9, 2012, upholding the sales tax deficiency as originally assessed by Respondent.
6. Final Assessment No. TE73138 was issued on August 17, 2012, in the amount of $65,030, with interest of $12,257.41.
7. Following the September 20, 2012 petition with the Tribunal, Respondent reviewed the assessment and determined that Petitioner did not owe tax on some of the 106 invoices contained in the audit sample.
8. At issue presently are the 11 remaining invoices in dispute by the parties, totaling an amount of $24,590, plus interest.
9. Also at issue is tax in the amount of $772, which relates to the disallowed sales tax remittance discount.

APPLICABLE LAW

Both parties 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

[2] The "facts" presented in this Order are stated solely for purposes of deciding the motion and are not findings of fact for this case. See MCL 205.751; MCL 24.285; *Jackhill Oil Co v Powell Production, Inc*, 210 Mich App 114, 117; 532 NW2d 866 (1995) (stating that a court may not make findings of fact when deciding a summary disposition motion).

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. See *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. See *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 nonmoving party. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996), citing MCR 2.116(G)(5). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *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. See *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. See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' Motions for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings, affidavits and other documentary evidence filed with the Tribunal, determines that granting Respondent's Motion and modifying the assessment is appropriate. The Tribunal concludes that the pleadings, affidavits and documentary evidence prove there is no genuine issue with respect to any material fact. Here, the Tribunal must determine whether the 11 invoices in dispute reflect taxable sales of tangible personal property or if they are exempt from tax as being part of the sale of a service. During the years at issue, the General Sales Tax Act, MCL 205.51 *et seq*., provided that:

> [T]here is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act. [MCL 205.52(1)]

Sale at retail is defined in MCL 205.51(1)(b) as "a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent." Sales tax applies only to the sale of tangible personal property, not services. MCL 205.51a(q) defines "tangible personal property" as "personal property that can be seen, weighed, measured, felt, or touched or that is in any other manner perceptible to the senses and includes electricity, water, gas, steam, and prewritten computer software."

Petitioner contends that Respondent is barred under the doctrine of equitable estoppel from assessing tax against Petitioner when Petitioner followed RAB 1990-24, Sales and Use Tax Guidelines for Veterinarians. In *Leavitt v City of Novi*, unpublished opinion per curiam of the Court of Appeals, decided November 18, 2008, (Docket No. 279344), a case in which the petitioner argued estoppel, the Court held:

> Unless expressly authorized by statute, a legislative tribunal does not have equitable jurisdiction. After reviewing the MTT's statutorily authorized powers, this Court has concluded that the MTT does not have the power to grant equitable remedies. Therefore, petitioners' argument that the MTT should have found that equitable estoppel applies lacks merit. (Citations omitted.) *Id*.

In addition, the Tribunal finds that the RAB does not have the force or effect of law and is not binding on the Tribunal.[3] What is binding is the applicable statutes and case law relative to the issues in this appeal. RAB 1990-24, to the extent that it provides useful guidance, is actually supportive of the position taken

[3] An RAB "does not have the force of law . . . [and] merely states the department's interpretation of the statutes." *Catalina* at 21.

by Respondent, not Petitioner. RAB 1990-24 states that veterinarians render nontaxable services and that:

> [A]ny tangible personal property used or consumed by the veterinarian in providing the service is subject to tax and must be paid at the time the items are purchased . . . . Examples of tangible personal property subject to tax *include drugs or supplies the veterinarian provides to a client to administer as the result of a veterinarian's decision or judgment following an examination . . . . Drugs and supplies for outpatient cases in conjunction with examination and consultation are likewise taxable to the veterinarian*. (Emphasis added.)

The RAB further provides that the sale of drugs and supplies not in conjunction with an examination or consultation are considered retail sales, with examples including "the sale of medications and medication refills when no examination or consultation occurs . . . and the sale of other tangible personal property not provided in conjunction with a service." Again, while the language and examples in the RAB tend to support Respondent's position, it is the actual statutes and case law that are controlling.

The 11 invoices in contention do not separately itemize a service; the face of each invoice only reflects information about the patient (pet) and the item of tangible personal property purchased. (Ex. R-9). It is Respondent's position that there is no single mixed transaction based on these invoices that would involve an analysis under *Catalina*. Petitioner takes an "essence of the transaction" approach, and claims that the Supreme Court in *Catalina* looked to the structure of the relationship between the seller and the purchaser. Petitioner further states that 4 of the invoices can be related to a separate invoice for services performed on the same date, and in any event, the medication or nail clippers cannot be purchased without a veterinarian's authorization. Accordingly, the Tribunal finds that a review of *Catalina* and how it is to be applied is necessary.

In *Catalina*, the Michigan Supreme Court adopted an "incidental to service" test when categorizing a business relationship involving both the provision of services and the transfer of tangible personal property. The Court stated that this test "looks objectively at the entire transaction to determine whether the transaction

is principally a transfer of tangible personal property or a provision of a service" and that it must "objectively examine the totality of the transaction in determining whether it is subject to sales tax . . . ." *Id* at 24 – 25. Petitioner contends that a transaction is defined as "a professional engagement where the professional is engaged with the client" and that this goes on into perpetuity as long as the patient stays with the veterinarian. (Transcript, p 14). Petitioner asserts that you look to the "totality of the transaction to determine its taxability." (Transcript, p. 19). Respondent's position is that the analysis is "on a transaction-by-transaction basis" and that you would not "look at the petitioner's business model and consider that business model a transaction." (Transcript, p. 35). Respondent contends that by extending the term transaction so broadly it essentially makes it meaningless since there would never be a circumstance where a business would not define their entire business model as a single transaction. The Tribunal finds that the Supreme Court's analysis related to whether the substance of the specific transaction is for services or tangible personal property. The Supreme Court did not structure its analysis in terms of the overall (and possibly ongoing) relationship between the seller and purchaser. Petitioner's interpretation of a transaction contemplates a business relationship that could extend into perpetuity, resulting in all future purchases becoming non-taxable as somehow related to the prior service. The impracticability of this position was highlighted during oral argument, when Petitioner's representative suggested that where one dog had a 20 year relationship with Petitioner and had a variety of things happen over the course of those 20 years, all of the services and products over 20 years are part of the "totality of the transaction" and the products would be incidental to any services provided. (Transcript, pp 56 – 57). The Supreme Court in *Catalina* did not take such an approach and Petitioner has cited no other authority that would support such a broad interpretation.

The Tribunal finds that the specific transaction taking place at the time of the invoice is what should be analyzed to determine if it was primarily for the provision of services or the purchase of tangible personal property. To that end, the Supreme Court has stated:

> Where the item is the substance of the transaction, and the service or skill provided is merely incidental, the transaction is one for tangible personal property, to which sales tax may be applied. The focus

> belongs on the transaction, not the character of the participants. [68 Am. Jur. 2d, Sales and Use Taxes, § 62 pp. 51–52.] *Id* at 25 – 26.

The Supreme Court then indicated a six-part test that should be applied. The factors to be considered are: 1) what the buyer sought as the object of the transaction, 2) what the seller or service provider is in the business of doing, 3) whether the goods were provided as a retail enterprise with a profit-making motive, 4) whether the tangible goods were available for sale without the service, 5) the extent to which intangible services have contributed to the value of the physical item that is transferred, and any other 6) factors relevant to the particular transaction. Upon review of these six factors and in light of the analysis already provided above, the Tribunal determines that 7 of the disputed invoices clearly reflect the sale of tangible personal property that is subject to being taxed. The buyer was seeking either medication or nail clippers at the time of the transaction; they were not there to see a veterinarian for that particular purpose and did not seek out the benefit of any veterinary services. The affidavit of Brenda Bellmore, Petitioner's office manager, indicates that all sales must have a veterinarian's consent. The possibility that a receptionist checked with a veterinarian before dispensing the medication or nail clippers is not sufficient to be considered the performance of a service, nor would this be the "essence" of the transaction contained in the invoice. The tangible goods reflected on these invoices were available without any actual exam or consultation being performed *at the time* of the purchase of the tangible goods, which was the customer's primary purpose for visiting the office on that occasion. The approval of a veterinarian for the purchase of these items, without speaking to the customer or providing an examination of the pet did not have any significant contribution to the value of the physical item that was transferred. Petitioner's 35% mark-up may have generated some profit, although Petitioner's alleges it was just to cover costs. The fact that the goods may not have been provided with a profit-making motive, standing alone, is not sufficient to overcome a determination based on the remaining factors that the substance of the transaction on these invoices was the tangible personal property, not any services. Accordingly, the Tribunal finds that Petitioner is liable for the tax projected based on these 7 invoices.

Turning to the remaining 4 invoices, Petitioner contends that there are separate, related invoices for services performed on that same date. Petitioner states that if these 4 invoices are excluded as being incidental to the service, the

total tax liability under the assessment would be reduced to $12,506 (without inclusion of the $772 related to the disallowed discounts). The four invoices and related invoices for services can be summarized as follows:

Invoice for tangible personal property	**Related invoice for services**
#267606 2/20/09 purchase of nail trimmers	Vaccine Exam for dog, Jasmine
#268988 3/4/09 purchase of Iverhart for dog, Boone	Heartworm test/vaccine exam for dog, Logger
#274804 4/21/09 purchase of Sentinel for dogs, Lola and Tokin	Vaccine exam for dog, Lola
#303976 12/17/09 purchase of Interceptor-Green for dog, Minnie	Exam for dog, Minnie

In these 4 instances, the owner was seeking services, either an exam or heartworm test, and also purchased tangible personal property during the same visit. This can be distinguished from the other 7 invoices in which no services were performed at the time of the purchase of tangible personal property. In applying the factors set forth in *Catalina* to these 4 invoices, the Tribunal finds that: 1) the owner was seeking services (an exam for a pet) and was also seeking tangible personal property for the pet receiving the exam or for a different pet not present at the time, 2) Petitioner operates a professional veterinary practice, 3) Petitioner applied a mark-up of approximately 35% which was not proven by Petitioner to cover costs only and may have generated a profit, 4) the tangible goods were available without the exam, as the 7 other invoices in dispute establish that these items could be purchased without an exam or consultation at the same time, 5) the intangible services do not contribute to the value of the nail clippers or medications purchased, 6) it is of some relevance that the pet receiving the exam was not necessarily the same pet for which the medication was purchased. Accordingly, the Tribunal finds that the services provided and separately invoiced on the same date are incidental to the purchase of tangible personal property that also occurred at that time. Respondent correctly assessed tax based on these 4 invoices.

Lastly, the Tribunal must determine whether Petitioner is liable for the $772 of the assessment representing the disallowed sales tax discount Petitioner claimed under MCL 205.54, which provides:

> (1) In computing the amount of tax levied under this act for any month, a taxpayer not subject to section 6(2) may deduct the amount provided by subdivision (a) or (b), whichever is greater:
>
> > (a) If the tax that accrued to this state from the sales at retail during the preceding month is remitted to the department on or before the twelfth day of the month in which remittance is due, 0.75% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed $20,000.00 of the tax due for that month. If the tax that accrued to this state from the sales at retail during the preceding month is remitted to the department after the twelfth day and on or before the twentieth day of the month in which remittance is due, 0.50% of the tax due at a rate of 4% for the preceding monthly period, but not to exceed $15,000.00 of the tax due for that month.
> >
> > (b) The tax at a rate of 4% due on $150.00 of taxable gross proceeds for the preceding monthly period, or a prorated portion of $150.00 of the taxable gross proceeds for the preceding month if the taxpayer engaged in business for less than a month.

Petitioner contends that it has provided copies of the sales tax annual returns that clearly show it paid sales tax, although the audit determined Petitioner had paid use tax. Respondent contends that Petitioner remitted use tax that it owed on tangible personal property it purchased from out-of-state vendors, even though Petitioner reported these remittances as sales tax. The audit report states "Taxpayer does not charge or accrue sales tax on any sales. All sales tax remittances are the result of erroneous reporting . . . . Therefore, the discount taken on remittance was incorrect. Discounts are not allowed on Use Tax." (R-4, pp 3, 5). Petitioner has never represented to the Tribunal that it was charging or collecting sales tax at the time tangible personal property was purchased. Respondent is correct that Petitioner was not collecting or remitting sales tax on its returns. Petitioner also argues that had an "option" under RAB 1990-24 to pay either sales or use tax. Petitioner fails to cite what portion of the RAB gives a taxpayer an option to pay either tax. Further, it has previously been stated that the RAB is not law and that the actual statutory provisions must be followed by the Tribunal in making its determination. Petitioner argues that a discount is available for either sales or use tax, and cites to MCL 205.94f, which provides that for use tax:

> (1) In computing the amount of tax payments required for any month of a seller not subject to section 6(2) who collects the tax from the purchaser under the provisions of this act, **the seller who collects the tax from a purchaser may deduct the amount provided by subdivision (a) or (b)**, whichever is greater (Emphasis added):
>
> > (a) If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department on or before the twelfth day of the month in which remittance is due, 0.75% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed $20,000.00 of the tax collected for that month. If the tax that accrued to the state from the purchase of tangible personal property or services during the preceding month is remitted to the department after the twelfth day of the month and on or before the twentieth day of the month in which remittance is due, 0.50% of the tax collected at a rate of 4% for the preceding monthly period, but not to exceed $15,000.00 of the tax collected for that month.
>
> > (b) The tax collected at a rate of 4% on $150.00 of taxable purchase price for the preceding monthly period or a prorated portion of $150.00 of the taxable purchase price for the preceding month if the seller engaged in business for less than a month.

Petitioner is not a seller who was collecting use tax from a purchaser. Petitioner has failed to establish how it would be entitled to a deduction for either sales tax under MCL 205.54 or use tax under MCL 205.94f. Respondent has correctly stated that there is no discount available to Petitioner when they purchased the tangible personal property from someone out-of-state and then remitted the use tax Petitioner owed on that purchase. As such, the Tribunal finds that Petitioner is liable for the $772 of the assessment related to the disallowed sales tax discount.

Given the above, the Tribunal finds there is no genuine issue of material fact with respect to the disputed invoices and disallowed sales tax discount, and Respondent is entitled to summary disposition in its favor. However, Respondent has conducted a revised audit, in the total tax amount of $25,362, plus interest,

based only on the 11 invoices still at issue in this appeal. There is no indication that a revised assessment reflecting this reduced amount has been issued. As such, the Tribunal finds that, based on the statements made by both parties and the revised audit, the assessment at issue should be modified to reflect liability based on the remaining 11 invoices in dispute and the disallowed sales tax discount. This results in a revised assessment of $25,362, plus interest.

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. TE73138 is MODIFIED to reflect tax of $25,362, with statutory interest calculated under 1941 PA 122.

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

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

By: Steven H. Lasher

Entered: August 28, 2013