Strata Oncology Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 20-002555

Michigan Department of Treasury,
Respondent.

Presiding Judge
Patricia L. Halm

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

At issue in this case are four tax assessments levied by the Michigan Department of Treasury (Respondent) under the Use Tax Act[1] (UTA) against Strata Oncology, Inc. (Petitioner), for purchases of certain equipment and supplies. It is Petitioner's position that these purchases are exempt from use tax under the UTA's industrial processing exemption.[2]

The assessments at issue include:

Assessment Number - Tax Year	Tax	Interest[3]
VA4FM3Q - 2015	$490.92	$104.30
VA4FM3R - 2016	$87,252.24	$8,893.14
VA4FM3S - 2017	$30,899.52	$3,765.70
VA4FM3T - 2018	$131,078.88	$14,739.31
Total	**$249,721.56**	**$27,502.45**

[1] See Michigan Compiled Laws (MCL) 205.91 *et seq*.
[2] MCL 205.94o.
[3] Interest computed through May 8, 2020.

On September 27, 2021, Petitioner and Respondent filed Motions for Summary Disposition. Both parties argued that there are no genuine issues as to any material fact and, as such, each party argued that it should be granted summary disposition as a matter of law under Michigan Rules of Court (MCR) 2.116(C)(10). On October 18, 2021, both parties filed responses to the opposing parties' Motion for Summary Disposition. Having reviewed the Motions and the responses, the Tribunal finds that there is no genuine issue of material fact and that Petitioner's Motion for Summary Disposition should be DENIED and Respondent's Motion for Summary Disposition should be GRANTED.

II. APPLICABLE LAW

Section 4o[4] of the UTA provides an exemption for specific types of property sold to industrial processors and used in industrial processing activities. As the activity suggests, this exemption is commonly known as the "industrial processing" exemption. Property eligible for this exemption includes such things as "[m]achinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance."[5] Office equipment used in an industrial processing activity is also eligible for the exemption. Property not eligible for this exemption includes office furniture or office supplies and office equipment used for a nonindustrial processing purpose.[6]

Eligible property is exempt from use tax when sold to the following entities:[7]

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[4] MCL 205.94o.
[5] MCL 205.94o(4)(b).
[6] MCL 205.94o(5)(a).
[7] Certain computer and computer-related equipment sold to a person, whether or not that person is an industrial processor, is also exempt. However, this statutory provision is not at issue in this case and, as such, will not be considered further.

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.[8]

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.[9]

"Industrial processor" is defined as "a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail . . . ."[10] "Industrial processing" is defined as:

> [T]he activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.[11]

There are eleven activities defined as industrial processing activities.[12] In this case, Petitioner claims its activities fall under MCL 205.94o(3)(b), "research or experimental activities." A "research or experimental activity" is defined as an:

> [A]ctivity incident to the development, discovery, or modification of a *product* or a *product* related process. Research or experimental activity also includes activity necessary for a *product* to satisfy a government standard or to receive government approval. Research or experimental activity does not include the following:

[8] This statutory provision is not at issue in this case. Therefore, this provision will not be considered further.
[9] MCL 205.94o(1).
[10] MCL 205.94o(7)(b).
[11] MCL 205.94o(7)(a).
[12] MCL 205.94o(3).

> (i) Ordinary testing or inspection of materials or products for quality control purposes.
> (ii) Efficiency surveys.
> (iii) Management surveys.
> (iv) Market or consumer surveys.
> (v) Advertising or promotions.
> (vi) Research in connection with literacy, historical, or similar projects.[13]

"Product" "includes but is not limited to, a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed."[14]

III. PETITIONER'S MOTION FOR SUMMARY DISPOSITION

In its Motion for Summary Disposition, Petitioner describes itself as a "precision oncology company," established "to partner with pharmaceutical companies to accelerate cancer drug development."[15] Petitioner does this by "creating, growing and leveraging a network of pharmaceutical company partners and health care providers to conduct targeted therapeutic drug trials and to study the association of genetics and cancer treatments."[16] To that end, during the Audit Period,[17] Petitioner operated the "Strata Trial."

> The ultimate objective of the Strata Trial is to prove that a targeted approach to cancer drug development and testing will result in the development and approval of more cancer treatment drugs than under the traditional approach,[18] making molecular profiling the new standard of care in cancer testing, accelerating the U.S. Food and Drug Administration (FDA) approval for many new experimental precision medicine cancer drugs.[19]

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[13] MCL 205.94o(7)(e). [Emphasis added.]
[14] MCL 205.94o(7)(c).
[15] Petitioner's Brief in Support of Its Motion for Summary Disposition (Petitioner's Brief) at 2.
[16] *Id*.
[17] January 2015 through December 2018.
[18] Under the "traditional approach," patients were selected for drug trials based on their type of cancer, *e.g.*, colon cancer.
[19] Petitioner's Brief at 3.

In the Strata Trial, Petitioner partners with health care systems from around the country that are capable of performing therapeutic clinical trials. As explained by Daniel Rhodes, Petitioner's CEO, patients are enrolled in the Strata Trial through these health care systems. Petitioner also partners with pharmaceutical companies and through this partnership the pharmaceutical companies receive "de-identified" information about the patients who match their clinical trials. Petitioner's goal is to "assist our pharmaceutical company partners in enrolling the right genetically defined patients into their clinical trials, which is a prerequisite to test the hypothesis that their drug may be effective in that sub population."[20]

To be eligible to participate in the Strata Trial, a patient must meet a number of criteria. For example, patients must be at least 18 years of age or older and have a histologically documented solid tumor or lymphoma.[21] Once enrolled in the Strata Trial, leftover tissue from a biopsy ordered by the patient's oncologist is sent to Petitioner for genetic sequencing. Petitioner's "primary role in the Strata Trial is to accurately define the molecular state of each patient's tumor so that it can identify a potential therapy for each patient."[22] Once the sequencing is completed, Petitioner provides the patient's treating physician with a report:

> [T]hat contains the details of any DNA or RNA errors found in the sample along with other relevant information. The report also contains, when relevant, references to partnered clinical trials that the patient may be eligible for and contains references to therapies that may be appropriate for the patient.[23]

Once enrolled in the Strata Trial, Petitioner tracks the progress of each patient.

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[20] Petitioner's Exhibit 2 at 28.
[21] Petitioner's Exhibit 5.
[22] Petitioner's Brief at 4.
[23] *Id*. at 4-5.

According to Petitioner, a majority of the patients whose tumors are sequenced do not get matched to a drug trial.[24] However, those who do are offered the opportunity to participate in the drug trial.

Petitioner explained that the pharmaceutical companies partner with Petitioner to "maximize the likelihood of obtaining FDA approval for their precision trial drugs."[25] Without this partnership, "pharmaceutical companies would not pursue drugs benefitting only 2 to 5% of patients afflicted with a certain type of cancer, as it would be cost prohibitive to identify those individuals within an appropriate timeframe."[26] "With [Petitioner's] technology and guidance, pharmaceutical partners de-risk their drug trials, minimizing the risk of failure due to the low success rates that typically occur under the traditional method."[27]

Petitioner also explained that it does not charge the patients or the hospital for its services. Instead, Petitioner is primarily funded through its partnerships with the pharmaceutical companies. There are three different ways in which Petitioner receives payments. First, Petitioner receives a fee, referred to as an "enrollment fee," upon successful enrollment of a patient in a drug trial. Second, Petitioner receives a payment upon the successful completion of a trial resulting in FDA approval of a drug, which typically takes three to five years from the start of the drug trial. Finally, Petitioner may receive "sequencing fees" to help defray the cost of sequencing the patients' biopsies.

[24] Exhibit 2 at 58.
[25] *Id*. at 6.
[26] *Id*. at 6.
[27] *Id*. at 7.

Petitioner argues that "[a]s a result of these economic arrangements, [Petitioner] is a true economic partner as well as a technical partner in the cancer research."[28]

Because of these activities, Petitioner asserts that it is entitled to a use tax exemption under MCL 205.94o. Specifically, Petitioner claims the exemption under MCL 205.94o(1)(c), which provides an exemption for purchases of tangible personal property if the person who purchased the property uses it "to perform an industrial processing activity for or on behalf of an industrial processor." In other words, under this provision, the person who purchased the property does not have to be an "industrial processor." Instead, the property must be used by that person in an industrial processing activity performed for or on behalf of an "industrial processor." "Industrial processor" is defined as "a person[29] who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state."[30]

Petitioner argues that its pharmaceutical partners are "industrial processors," as they are engaged in "a manufacturing process requiring the converting and conditioning of the compounds being studied in drug trial and ultimately the drugs themselves, assuming FDA approval is achieved."[31] Petitioner further argues that it performs an industrial processing activity for its pharmaceutical partners, that being "research and

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[28] *Id*. at 6.
[29] MCL 205.92(a) defines "person" as "an individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether or not organized for profit, company, limited liability company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context."
[30] MCL 205.94o(7)(b).
[31] Petitioner's Brief at 11.

experimental activities,"[32] which are defined as activities "incident to the development, discovery, or modification of a product or a product related process," and activities "necessary for a product to satisfy a government standard or to receive government approval."[33]

In its Brief, Petitioner addressed arguments made by Respondent in its Informal Conference Recommendation, which were later adopted by Respondent in its Decision and Order of Determination (Decision). First, in the Decision, Respondent argued that Petitioner "does not make prototypes, suggest changes to a pharmaceutical drug's ingredients or formula, and provides no input regarding the manufacture of a pharmaceutical drug" and that "Petitioner's lab work does not affect changes to a pharmaceutical drug's ingredients, chemistry . . . ."[34] In response, Petitioner asserts that Respondent's "argument is tantamount to its argument in *TOMRA*[35] where it argued that an activity specifically identified as an industrial processing activity in MCL 205.94o(3) . . . must also meet the requirements set out in the general definition of industrial processing [in] MCL 205.94o(7)(a)."[36] However, in *TOMRA*, the Michigan Supreme Court rejected that argument, holding that:

> We have never before addressed this issue, but general guidance can be found in *Detroit Edison Co. v. Dep't of Treasury*. In deciding whether the exemption applied to equipment used in transmitting electricity, we suggested that a taxpayer could claim an exemption either by satisfying the general definition of industrial processing in Subsection (7)(a) or by showing that it was engaged in one or more of the enumerated activities listed in Subsection (3). Most directly, we stated that "the statute also provides that certain specific activities that do not satisfy the general MCL 205.94o(7)(a) definition nonetheless constitute 'industrial processing'

[32] MCL 205.94o(3)(b).
[33] MCL 205.94o(7)(e).
[34] Petitioner's Brief at 12, citing Respondent's May 6, 2020 Decision and Order of Determination.
[35] *TOMRA of North America Inc v Department of Treasury*, 505 Mich 333; 952 NW2d 384 (2020).
[36] Petitioner's Brief at 12.

> activity for purposes of the statute," such as the activity described in MCL 205.94o(3)(h). In other words, we made it clear that Subsection (7)(a) and Subsection (3) are discrete inquiries—Subsection (7)(a) does not establish a threshold requirement for an exemption as long as Subsection (3) applies.[37]

In its Decision, Respondent also argued that the definition of "research or experimental activity" requires that the activities performed by Petitioner be "incident to the development, discovery or modification of a *product* or a *product* related process."[38] However, according to Respondent, Petitioner's "product" is not tangible personal property "intended to be used in a trade or business or to be sold, transferred, leased, or licensed," as required by the definition of product.[39] In response, Petitioner argues that the statute does not require that its "product" be tangible personal property, and by definition "product" includes such things as processes, formulas, inventions, and techniques.[40] Petitioner also argues that Respondent misunderstands what Petitioner's "product" is, which is a "new targeted approach to conducting cancer drug trials based on the biometrics of the tumor tissue of cancer patients."[41] In other words, a "process" or a "technique."

Finally, Respondent argued in its Decision that while the definition of "research or experimental activity" also includes an "activity necessary for a product to satisfy a government standard or to receive government approval,"[42] Petitioner's activities are not "necessary" for its pharmaceutical partners to receive FDA approval. In response,

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[37] *TOMRA* at 347.
[38] MCL 205.94o(7)(e). [Emphasis added.]
[39] MCL 205.94o(7)(c).
[40] *Id*.
[41] Petitioner's Brief at 15.
[42] MCL 205.94o(7)(e).

Petitioner argues that Respondent's interpretation of the term "necessary" is synonymous with "indispensable" and that this interpretation is flawed.

According to Petitioner, "[t]he issue is who should be the person determining if a cost or methodology is necessary. Should it be the state taxing authority or the businessperson incurring the expense?"[43] Petitioner contends that the businessperson/ taxpayer should determine if something is "necessary." Petitioner relies on the U.S. tax code and case law in support of this position, stating that "[c]ase law long ago decided that 'necessary' does not mean 'indispensable,' but instead only means 'helpful and appropriate for the taxpayer's trade or business.'"[44] In addition, the Internal Revenue Service's (IRS) website "confirms that even the IRS agrees that 'necessary' merely means 'helpful and appropriate for your trade or business.'"[45] Petitioner contends that "[e]ven taxing authorities concede that the taxpayer should be the one determining what is necessary to run the business, so long as the expenditures are helpful and appropriate."[46] In this case, Petitioner's "pharmaceutical partners need [Petitioner's] expertise, technology, and guidance to set up and bring their precision trial drugs through the FDA approval process."[47] Moreover, Petitioner's services enable a higher likelihood of FDA approval and are absolutely necessary as the traditional method of testing potential drugs is too cost prohibitive.

In support of its Motion for Summary Disposition, Petitioner submitted the following exhibits:

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[43] Petitioner's Brief at 16.
[44] *Id*., citing *Welch v Helvering*, 290 US 111 (1933).
[45] *Id*., citing Petitioner's Exhibit 10.
[46] *Id*.
[47] *Id*.

1. Exhibit 1: The Bill for Taxes Due, Intent to Assess, issued by Respondent on August 20, 2109, for Assessment Numbers VA4FM3Q, VA4FM3R, VA4FM3S, VA4FM3T.
2. Exhibit 2: The transcript of the testimony of Daniel Rhodes, Petitioner's CEO, dated August 3, 2021.
3. Exhibit 3: NIH, U.S. National Library of Medicine, ClinicalTrials.gov, Trial Record 1 of 1 for: 03061305, Assessing the Clinical Benefit of Molecular Profiling in Patients with Solid Tumors, with Consent Forms.
4. Exhibit 4: The transcript of the testimony Michael Martin, President of The CFO Group, Inc., dated August 3, 2021.
5. Exhibit 5: Strata Oncology, Clinical Protocol Number STR-001-001, "Strata Trial."
6. Exhibit 6: Consent Form for Observational Research Study Participation and Authorization to Disclose Health Information.
7. Exhibit 7: Decision and Order of Determination, dated May 6, 2020; and Informal Conference Recommendation, Docket No. 20192359.
8. Exhibit 8: Page 5 of 7 of Petitioner's audit.
9. Exhibit 9: The Michigan Supreme Court's decision in *TOMRA of North America, Inc v Department of Treasury*,
10. Exhibit 10: Deducting Business Expenses/Internal Revenue Service.

IV. RESPONDENT'S RESPONSE TO PETITIONER'S MOTION

In its response to Petitioner's Motion for Summary Disposition (Respondent's Reply Brief), Respondent argues that Petitioner's activities are not "research or experimental" activities as defined by MCL 205.94o(7)(e). According to Respondent, the Strata Trial is not a "product," as required by the statute, because it is not a "process" or a "technique." In addition, Respondent argued that in this case, the "product" contemplated in MCL 205.94o(7)(e) is the pharmaceutical drug being developed by the pharmaceutical companies (the industrial processor), and not the Strata Trial as Petitioner contends. Moreover, Petitioner's activities are not "incident to the development, discovery, or modification" of the drugs, as required under MCL 205.94o(7)(e). Instead, Petitioner's role is to identify potential candidates for drug trials. Respondent points to Petitioner's CEO, who confirmed that a trial drug is not changed

as a result of Petitioner's genetic testing. According to Petitioner's CEO, "by the time [Petitioner] identifies patients for a specific drug trial, the drug being tested 'has likely already been manufactured' by the pharmaceutical companies."[48] Given this, Respondent argues that Petitioner does not meet the requirements of MCL 205.94o(1)(c), (3)(b), or (7)(e).

Respondent also argues that Petitioner's activities are not performed for or on behalf of an industrial processor as required under MCL 205.94o(1)(c). Respondent cites the *Merriam-Webster Dictionary*, which defines "for" as meaning "in place of" or "on behalf of." In addition, the phrase "on behalf of" means "in the name of, on the part of, as the agent or representative of."[49] However, Petitioner did not submit any documentation of any contractual relationship with an industrial processor, nor has it shown that any part of the Strata Trial was done "for or on behalf of an industrial processor." Instead, Petitioner asserts that the Strata Trial was conducted "in concert" with its pharmaceutical partners.

In its Brief, Petitioner asserts that Respondent acknowledges that Petitioner's services are performed for or on behalf of Petitioner's pharmaceutical partners. Respondent denies this assertion and further contends that the only activity Petitioner was contracted to perform was to identify potential patients, which is not an industrial processing activity. To that end, Respondent relies on Petitioner's contract with Epizyme Inc.,[50] under which the only contracted activity is to identify potential patients for drug trails. Again, this activity does not fit under the definition of "research and

[48] Respondent's Reply Brief at 4, citing Exhibit 2 at 49-51.
[49] Respondent's Reply Brief at 5, citing *Perkovic v Zurich Am Ins Co*, 500 Mich 44, 55 (2017), which cited *Black's Law Dictionary* (10th ed), p 184.
[50] Respondent's Exhibit 12.

experimental activity" because that activity is not "incident to the development, discovery, or modification of a product or a product related process" as required under MCL 205.94o(7)(e).

Respondent also argues that Petitioner does not perform its contractual activities in an agency capacity. "An agency relationship is a "fiduciary relationship that arises when one person (a 'principal') manifests assent to another (an 'agent') that the agent shall act on the principal's behalf and subject to the principal's control . . . ."[51] Moreover, Petitioner's contract with Epizyme Inc. specifically states that "[n]othing in this Agreement shall be construed to create a[n] . . . agency relationship."[52]

Respondent cites Petitioner's Brief, in which Petitioner states that its ultimate objective is to make "molecular profiling the new standard of care in cancer testing . . . ."[53] However, Respondent argues that the Strata Trial was conducted only for Petitioner's benefit, and that Petitioner was not "developing, modifying, or discovering a new standard of care for or on behalf of an industrial processor, as required under Subsections (1)(c), (3)(b), and (7)(e)."[54]

In response to Petitioner's reliance on *TOMRA*, Respondent asserts that *TOMRA* is not helpful to Petitioner and does not change the outcome of this case. In TOMRA, the Michigan Supreme Court held that the temporal limitation in MCL 205.94o(7)(a) does not apply to the activities identified in MCL 205.94o(3). Respondent asserts, however, that the temporal limitation is not at issue in this case. Moreover, "the Supreme Court did not rule in *TOMRA* that a taxpayer is entitled to the industrial

[51] Respondent's Reply Brief at 7, citing Restatement of Agency, 3d, § 1.01, at 1.
[52] Exhibit 7, pp 17–18.
[53] Petitioner's Brief at 3.
[54] Respondent's Reply Brief at 7-8.

processing exemption so long as it is performing an activity identified in Subsection (3)."[55]

Finally, Respondent disagrees with Petitioner's reasoning regarding the definition of "necessary," arguing that the Internal Revenue Code's definition of "necessary" is not relevant in this case. Instead, Respondent asserts that because the Legislature did not define "necessary," it is appropriate to consult a dictionary.[56] Respondent referenced the *Merriam-Webster Dictionary,* which defined "necessary" as "absolutely needed."[57] Respondent argues that because Petitioner is not the sole provider of drug trial candidates to pharmaceutical companies, Petitioner's activities are not absolutely needed by these companies. Respondent also argues that Petitioner does not have a monopoly on screening drug trial candidates. In addition, pharmaceutical companies were able to obtain FDA approval for their drugs in the past based on the traditional, non-targeted method of selecting patients. Moreover, "[t]here is no evidence of Strata providing any guidance or expertise to pharmaceutical companies in the FDA approval process."[58] In short, Petitioner:

> [S]imply provides a convenience service to pharmaceutical manufacturers that may be allowing the manufacturers to more easily identify candidates for drug trials. This activity is not necessary for FDA approval. Therefore, Strata fails to meet its burden—to show "entitlement to the [industrial processing] exemption.[59]

V. RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

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[55] *Id*. at 9.
[56] *Id*. at 10, wherein Respondent cites *Ford Motor Co v Department of Treasury*, 496 Mich 382, 391; 852 NW2d 786 (2014), in support of this argument.
[57] *Id.*
[58] *Id*. at 12.
[59] *Id*., citing *Andrie Inc v Department of Treasury*, 496 Mich 161, 165; 853 NW2d 310 (2014).

In its Motion for Summary Disposition, Respondent argues that Petitioner does not qualify for a use tax exemption under MCL 205.94o(1)(a) as it is not an "industrial processor." "Industrial processor" is defined as "a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state."[60]

Respondent contends that because Petitioner's "work does not change the composition or otherwise relate to any pharmaceutical drugs or products,"[61] it failed to meet the statutory requirements. Respondent further contends that Petitioner does not develop or manufacture drugs, conduct drug trials, test the drugs that are being developed, or provide any technical guidance in the drug development process. In fact, "[b]y the time [Petitioner] identifies patients for a specific drug trial, the drug being tested 'has likely already been manufactured' by the pharmaceutical companies."[62]

Respondent also argues that Petitioner's exemption claim under MCL 205.94o(1)(c) fails because Petitioner did not establish that it uses the tangible personal property it purchased "to perform an industrial processing activity for or on behalf of an industrial processor."[63] Petitioner makes two claims in this regard, the first being that it uses the property at issue for "research and development" purposes, which is defined in part as an "activity incident to the development, discovery, or modification of a product or a product related process."[64] Respondent argues that Petitioner's activities do not

[60] MCL 205.94o(7)(b).
[61] Respondent's Brief in Support of its Motion for Summary Disposition (Respondent's Brief) at 2.
[62] *Id*. at 5, citing the deposition of Daniel Rhodes, at 49-51.
[63] See MCL 205.94o(1)(c).
[64] MCL 205.94o(7)(e).

meet this definition because it's activities do not affect the pharmaceutical companies' final product and the drug being tested has most likely already been manufactured. Moreover, "the formulation of a drug's compound does not change as a result of [Petitioner's] work."[65]

Respondent further argues that Petitioner's activities fail to qualify under the second "research and development" provision, specifically as an "activity *necessary* for a product to satisfy a government standard or to receive government approval,"[66] because Petitioner's role is not *necessary* for pharmaceutical companies to receive FDA approval. Respondent described Petitioner's activities as being a "service" that identifies "potential patients based on a desired cancer mutation for pharmaceutical companies' drug trials – trials that [Petitioner] did not itself conduct."[67] While this service allows the pharmaceutical companies to identify candidates more easily for drug trials, it is not necessary for FDA approval as potential candidates are also identified using traditional, non-targeted methods.

Petitioner's second claim[68] is that it performs industrial processing activities for an industrial processor under MCL 205.94o(3)(d), which is defined as "[i]nspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage." Respondent contends that

[65] Respondent's Brief at 5, citing the deposition of Daniel Rhodes, at 50-51 and 56-57.
[66] MCL 205.94(7)(e). [Emphasis added.]
[67] Respondent's Brief at 15.
[68] Petitioner made this claim in ¶ 17 and ¶ 22 of its Petition. However, Petitioner did not include this claim in its Motion for Summary Disposition. Therefore, this claim is deemed to have been abandoned and will not be further considered.

Petitioner does not perform any of these activities. Instead, these activities are performed by the pharmaceutical companies.

Respondent addressed Petitioner's income tax returns, explaining that Petitioner reports its income when it is earned and not received. For the 2015 and 2016 tax years, Petitioner's income tax returns did not reflect any income. Petitioner's "CFO confirmed that [Petitioner] did not provide any of its services or [do] any work on behalf of pharmaceutical companies or medical centers in 2015 and 2016."[69] In addition, the contracts between Petitioner and the pharmaceutical companies are all dated between 2017 and 2020. Given this, Respondent argues that because Petitioner's equipment "was not used to perform an industrial processing activity for or on behalf of an industrial processor during tax years 2015 and 2016," Petitioner "cannot be eligible for the industrial processing exemption for tax years 2015 and 2016."[70]

Respondent further argues that some of Petitioner's purchases are explicitly excluded from the exemption. Respondent explained that the 2016, 2017, and 2018 assessments were based, in part, on purchases of office furniture and furnishings, computer accessories, shelving, and fixtures, and that these items are explicitly excluded from the exemption under MCL 205.94o(5)(b) and (c).

Finally, Respondent argues, in the alternative, that if any of the property at issue is determined to be eligible for the exemption, the property must be apportioned under MCL 205.94o(2), which provides that the property "is exempt only to the extent that the property is used for the exempt purpose stated in this section." According to

[69] Respondent's Brief at 7, citing the deposition of Michael Martin, at 33.
[70] *Id*.

Respondent, "the Tribunal must determine the percentage of use for patients who do not get enrolled in trials and use for services provided to nonindustrial processors."[71]

In support of its Motion for Summary Disposition, Respondent submitted the following exhibits:

1. Exhibit 1: Audit Report of Findings.
2. Exhibit 2: Daniel Rhodes Deposition Transcript.
3. Exhibit 3: U.S. National Library of Medicine, Assessing the Clinical Benefit of Molecular Profiling in Patients with Solid Tumors.
4. Exhibit 4: MidAtlantic Sample Contract.
5. Exhibit 5: Health Systems Contract List.
6. Exhibit 6: Michael Martin Deposition Transcript.
7. Exhibit 7: Epizyme Sample Contract.
8. Exhibit 8: Pharmaceutical Contract List.
9. Exhibit 9: Research Partners List.
10. Exhibit 10: 2018 Revenue Breakdown.
11. Exhibit 11: 2015 U.S. Corporation Income Tax Return.
12. Exhibit 12: 2016 U.S. Corporation Income Tax Return.
13. Exhibit 13: Workpapers.
14. Exhibit 14: Petitioner's Answers to Respondent's Second Discovery Requests.
15. Exhibit 15: Intent to Assess Nos. VA4FM3Q, VA4FM3R, VA4FM3S, and VA4FM3T.
16. Exhibit 16: Informal Conference Recommendation.
17. Exhibit 17: Decision and Order of Determination.
18. Exhibit 18: Final Assessment Nos. VA4FM3Q, VA4FM3R, VA4FM3S, and VA4FM3T.

VI. PETITIONER'S RESPONSE TO RESPONDENT'S MOTION

In its Response to Respondent's Motion for Summary Disposition (Petitioner's Reply Brief), Petitioner states that there are two issues in this case: (1) whether Petitioner's activities qualify as "research or experimental activities; and (2) whether Petitioner performs these activities on behalf of an industrial processor. In addition, Petitioner asserts that Respondent's Motion for Summary Disposition sets forth three

[71] *Id*. at 18.

additional arguments. Specifically, that: (1) if the property at issue is determined to be exempt, the exemption must be apportioned pursuant to its exempt and non-exempt uses; (2) Petitioner's 2015 and 2016 purchases are not eligible for the exemption because they were not used in Petitioner's research activities during those years; and (3) certain purchases of office furniture and furnishings are not exempt under MCL 205.94o(5)(b) and (c).

Concerning the first issue, Petitioner argues that the definition of "research or experimental activity" does not require Petitioner's activities to result in a change to the compound of the drug being tested. As it argued in its Brief, Petitioner contends that this appears to be the same argument Respondent made in its Decision. Relying on *TOMRA*, Petitioner asserts that it does not need to meet the definition of "industrial processing" found in MCL 205.94o(7)(a) because it meets the definition of "industrial processing" activity found in MCL 205.94o(3)(b), specifically "research or experimental activities." Petitioner contends that its "new targeted approach to conducting cancer drug trials based on the experimental molecular profiling of the tumor tissue of cancer patients"[72] is a "process" or "technique" "that is being 'used in the trade or business' of [Petitioner] and its pharmaceutical company partners . . . ."[73]

Petitioner asserts that its activities also qualify as "research or experimental" activities as these activities are "necessary for a product to satisfy a government standard or to receive government approval."[74] In response to Respondent's position regarding the definition of "necessary," Petitioner asserts that Respondent's proposed

[72] Petitioner's Reply Brief at 6.
[73] *Id*. at 6
[74] MCL 205.94o(7)(e).

definition of "necessary" "would wreak havoc if applied universally."[75] Moreover, Petitioner asserts that Respondent itself does not use the definition it proposes in other contexts, such as in installment agreements with delinquent taxpayers. Petitioner also cites Revenue Administrative Bulletin 2016-24, dealing with the "Use Tax Base of Tangible Personal Property Affixed to Real Estate by a Manufacturer/Contractor or Other Contractor." Finally, Petitioner reiterated its position that precision drug trials are absolutely "necessary" and would not occur "without the ability to accurately target the trial population based on a matching of the patients' molecular profile to the compound hypothesized to be effective against that specific profile."[76]

Next, Petitioner addressed Respondent's argument that its 2015 and 2016 purchases are not eligible for the exemption because they were not used in Petitioner's research activities during those years. Petitioner argued that Respondent is attempting to re-write the statute to add a temporal requirement that a taxpayer must use the property for an exempt purpose in the year it was acquired. However, Respondent provided no authority for this argument and "[t]here is nothing in the statute, case law, or published guidance to suggest that there is a current year 'placed in service' requirement to qualify for the industrial processing exemption."[77]

As for Respondent's argument that Petitioner's purchases of office furniture and furnishings are not exempt under MCL 205.94o(5)(b) and (c), Petitioner concedes that a portion of the items identified as office furniture and furnishings are ineligible for the exemption. However, certain items, such as shelving and fixtures, are used in its

[75] Petitioner's Reply Brief at 7.
[76] *Id*. at 9.
[77] *Id*. at 10.

laboratory and qualify for the exemption. Petitioner contends that the non-exempt items represent less than 1% of the total amount at issue and that "the parties can easily resolve [this issue] after the Tribunal decides if [Petitioner] qualifies for the industrial processing exemption."[78]

Finally, in response to Respondent's apportionment argument, Petitioner states that it is not clear why Respondent believes the exemption should be apportioned based upon the percentage of patients that are actually enrolled in a clinical drug trial. Petitioner explained that all patients are enrolled in the Strata Trial, but that only a certain percentage of them are matched to a clinical drug trial. Petitioner tests every patient that is enrolled in the Strata Trial; it does not use its equipment only to the extent it results in a successful drug trail match.

In support of its Response to Respondent's Motion, Petitioner submitted the following exhibits:

1. Exhibit 1: § 1862 of the Social Security Act: "Exclusions from Coverage and Medicare as Secondary Payer."
2. Exhibit 2: Michigan Department of Treasury: "Collection Financial Standards for Individuals."
3. Exhibit 3: Michigan Department of Treasury's Revenue Administrative Bulletin 2016-24.
4. Exhibit 4: Pages from Petitioner's audit, listing Petitioner's capital asset purchases and exceptions, beginning April 1, 2016, through December 14, 2018.

VII. STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a

[78] *Id*. at 11.

decision on such motions.[79] In this case, both parties moved for summary disposition under MCR 2.116(C)(10). Under MCR 2.116(C)(10) summary disposition is granted when "there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law." In *Quinto v Cross and Peters Co*,[80] the Michigan Supreme Court provided the following explanation of MCR 2.116(C)(10):

> MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.
>
> First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law.
>
> In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).
>
> In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. 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. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.[81]

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[79] See TTR 215.
[80] *Quinto v Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996). [Citations omitted.]
[81] *Id*. at 361-363. [Citations omitted.]

"A genuine issue of material fact exists when the record, giving the benefit of reasonable doubt to the opposing party, leaves open an issue upon which reasonable minds might differ."[82] In evaluating whether a factual dispute exists to warrant trial, "the court is not permitted to assess credibility or to determine facts on a motion for summary judgment."[83] "Instead, the court's task is to review the record evidence, and all reasonable inferences therefrom, and decide whether a genuine issue of any material fact exists to warrant a trial."[84]

VIII. CONCLUSIONS OF LAW

As explained by Michigan's Supreme Court, "[t]he [General Sales Tax Act] imposes taxes on the sale of goods, and the UTA imposes taxes on goods purchased outside the state for use in the state."[85] Pursuant to Section 93 of the UTA[86], a 6% use tax is assessed "for the privilege of using, storing, or consuming" the property in this state. However, "to avoid the double taxation of a product that would result from exacting both use and sales taxes, the Legislature exempted certain property used or consumed in industrial processing from the taxes in each act."[87]

Under MCL 205.104a(4), a use tax "assessment is considered prima facie correct for the purpose of this act and the burden of proof of refuting the assessment is upon the taxpayer." Petitioner's burden of proof is by a preponderance of the

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[82] *West v General Motors Corp*, 469 Mich 177; 665 NW2d 468 (2003).
[83] *Cline v Allstate Ins Co*, unpublished per curiam opinion of the Court of Appeals, issued June 21, 2018 (Docket No. 336299) citing *Skinner v Square D Co*, 445 Mich 1; 516 NW2d 475 (1994).
[84] *Id.*
[85] *TOMRA* at 344. [Citation omitted.]
[86] MCL 205.93(1).
[87] *TOMRA* at 344. [Citation omitted.]

evidence.[88]

In this case, Petitioner does not dispute that the property at issue was used, stored, or consumed in Michigan and would otherwise be subject to use tax. Instead, Petitioner contends that the property is exempt under MCL 205.94o, the industrial processing exemption.

To qualify for an industrial processing exemption, the tangible personal property must have been sold to: (1) an industrial processor for use or consumption in industrial processing;[89] or (2) a person who may not be an industrial processor, if the tangible personal property is used either (i) by an industrial processor for an industrial processing purpose,[90] or (ii) used by that person to perform an industrial processing activity for or on behalf of an industrial processor.[91] [92] "Industrial processor" is defined as "a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state."[93]

Petitioner does not assert that it is an industrial processor. Instead, Petitioner asserts that it qualifies for an industrial processing exemption because it uses the tangible personal property it purchased to perform "an industrial processing activity for or on behalf of an industrial processor."[94]

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[88] *ProMed Healthcare v City of Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[89] MCL 205.94o(1)(a).
[90] MCL 205.94o(1)(b).
[91] MCL 205.94o(1)(c).
[92] MCL 205.94o(1)(d) also provides an exemption for certain computer equipment. However, since that is not an issue in this case, this exemption will not be discussed further.
[93] MCL 205.94o(7)(b).
[94] MCL 205.94o(1)(c).

In cases such as this:

> It is only logical . . . to first determine whether "industrial processing" has occurred. Because "industrial processing" is defined by MCL 205.94o(7)(a), the analysis begins there. If "industrial processing" activity is not occurring under either MCL 205.94o(7)(a) or MCL 205.94o(3), the latter of which specifically enumerates certain activities that constitute "industrial processing," the analysis is complete and the taxpayer is entitled to no exemption. On the other hand, if "industrial processing" activity is occurring, it is then necessary to analyze the remaining provisions of MCL 205.94o, including but not limited to Subsection (2), to determine the measure of the exemption.[95]

In *TOMRA*, the Court described "industrial processing" activities as *general* activities (MCL 205.94o(7)(a), or Subsection (7)(a)) and *specific* activities (MCL 205.94o(3), or Subsection (3)). G*eneral* industrial processing activities are defined as:

> [T]he activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail or affixed to and made a structural part of real estate located in another state. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

Specific industrial processing activities are defined as:

> (a) Production or assembly.
> (b) Research or experimental activities.
> (c) Engineering related to industrial processing.
> (d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.
> (e) Planning, scheduling, supervision, or control of production or other exempt activities.
> (f) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.
> (g) Remanufacturing.
> (h) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

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[95] *Detroit Edison Co v Department of Treasury*, 498 Mich 28, 39; 869 NW2d 810 (2015).

(i) Recycling of used materials for ultimate sale at retail or reuse.
(j) Production material handling.
(k) Storage of in-process materials.

In this case, Petitioner asserts that it performs "research or experimental activities" that are *specifically* exempt under Subsection (3)(b) for its pharmaceutical partners, who are "industrial processors." Citing *TOMRA*, Petitioner argues that its activities do not need to also meet the requirements of the *general* definition of industrial processing under Subsection (7)(a), namely that it convert or condition "tangible personal property by changing the form, composition, quality, combination, or character of the property."[96]

In response to Petitioner's reliance on *TOMRA,* Respondent argued that *TOMRA* does not change the outcome of this case because the Court "did not rule . . . that a taxpayer is entitled to the industrial processing exemption so long as it is performing an activity identified in Subsection (3)."[97] It is true that the *TOMRA* Court did not make that explicit ruling. Instead, the question presented to the *TOMRA* Court was "whether the *temporal* limitation specified in the *general* statutory definition of "industrial processing," MCL 205.54t(7)(a); MCL 205.94o(7)(a), applies to the enumerated list of "industrial processing" activities in MCL 205.54t(3) and MCL 205.94o(3), respectively."[98] As the Court described it, the second sentence of the *general* statutory definition, Subsection (7)(a), establishes "a temporal period during which industrial processing must occur, spanning from when the property begins movement from raw-materials storage into processing until the finished goods enter inventory storage."[99] Because the plaintiff's

[96] Petitioner's Brief at 12.
[97] Respondent's Reply Brief at 8-9.
[98] *TOMRA* at 336. [Emphasis added.]
[99] *Id.* at 345.

activities fell outside of this temporal period, the Department of Treasury argued that *TOMRA* was precluded from claiming an exemption under the *specific* statutory definition, Subsection (3).

In its decision, the Court opined that holding as the Department of Treasury argued would result in a conflict between Subsection (3) and the second sentence of Subsection (7)(a) and "lay waste to large swaths of Subsection (3)."[100] The Court held that:

> There is no reason to wreak such havoc upon the statutes here. Another contextual canon harmonizes the provisions and illuminates their ordinary meaning: "[W]here a statute contains a general provision and a specific provision, the specific provision controls."[37] This principle is tailor-made for cases like this one, in which statutory provisions would otherwise conflict.[38] The conflict is dissipated by interpreting "the specific provision ... as an exception to the general one."
>
> In this case, interpreting Subsection (3) as the more specific provision resolves the conflict and accords the statutes their most natural and ordinary meanings. Subsection (3) lists specific activities that constitute industrial processing, whereas the second sentence of Subsection (7)(a) provides a temporal limitation on the general types of activities described in the first sentence of that subsection.[101]

Because the only issue before the Court was the conflict between Subsection (3) and the second sentence of Subsection (7)(a), the *TOMRA* Court did not consider whether there was a conflict between Subsection (3) and the first sentence of Subsection (7)(a). However, in that regard, the Court referenced its decision in *Detroit Edison,* wherein it:

> [S]uggested that a taxpayer could claim an exemption either by satisfying the general definition of industrial processing in Subsection (7)(a) or by showing that it was engaged in one or more of the enumerated activities listed in Subsection (3). Most directly, we stated that "the statute also

[100] *Id*. at 349.
[101] *Id.* at 350-351. [Citations omitted.]

> provides that certain specific activities that do not satisfy the general MCL 205.94o(7)(a) definition nonetheless constitute 'industrial processing' activity for purposes of the statute," such as the activity described in MCL 205.94o(3)(h). In other words, we made it clear that Subsection (7)(a) and Subsection (3) are discrete inquiries - Subsection (7)(a) does not establish a threshold requirement for an exemption as long as Subsection (3) applies.[102]

Given this, the Tribunal finds that industrial processing activities, as specifically defined in Subsection (3), do not have to meet the general requirements of the first sentence of Subsection (7)(a).

In addition, it should be noted that "research or experimental activities" is a phrase defined in MCL 205.94o(7)(e) and, pursuant to the definition, these activities have their own requirements. Specifically, these activities must be either: (1) "incident to the development, discovery, or modification of a *product* or a *product* related process"; or (2) "necessary for a *product* to satisfy a government standard or to receive government approval."[103] As it relates to research or experimental activities, "product" is defined as including "a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed."[104]

Petitioner argues that, under this definition, the "product" does not have to be tangible personal property. The Tribunal agrees. Clearly, formulae, techniques and patents are not tangible personal property. However, the question remains, what is the product at issue in this case?

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[102] *Id.* at 347. [Citations omitted.]
[103] MCL 205.94o(7)(e). [Emphasis added.]
[104] MCL 205.94o(7)(c).

When arguing that it performs the first type of research or experimental activity, specifically an activity "incident to the development, discovery, or modification of a *product* or a *product* related process," Petitioner's contention is that the "product" is Petitioner's Strata Trial. For example, Petitioner argues that "[i]t is the development of this new cancer drug discovery *process* which makes the essence of [Petitioner's] services 'experimental.'"[105] Also, in its Brief, Petitioner provided the following explanation:

> Respondent . . . misunderstands the "product" of Strata's research. The Strata Trial is ultimately aimed at developing and proving out this new targeted approach to conducting cancer drug trials based on the biometrics of the tumor tissue of cancer patients. This *process* is still unproven so that during the Audit Period government and private health insurance would not cover the cost of [Petitioner's] testing to determine the genetic makeup of the cancerous tumors. [Petitioner], in concert with its pharmaceutical company partners, is conducting the Strata Trial to help validate and develop this approach to cancer drug testing. Obviously, this approach to cancer research is a "process" or "technique" that is being "used in the trade or business" of [Petitioner] and its pharmaceutical company partners . . . .[106]

However, when arguing that it performs the second type of research or experimental activity, specifically an activity "necessary for a *product* to satisfy a government standard or to receive government approval," Petitioner recognizes that it is the drug being developed by the pharmaceutical companies that needs government approval, not the Strata Trial. This recognition is evident in Petitioner's statement that "[p]harmaceutical companies would not consider conducting this type of research using

[105] Petitioner's Response Brief at 3. [Emphasis added.]
[106] Petitioner's Brief at 15. [Emphasis in original.]

traditional untargeted methods because it would be impossible to meet the FDA approval thresholds without a well-matched cancer patient trial population."[107]

Respondent, on the other hand, argues that the "product" at issue in both types of "research or experimental" activities is that of the industrial processor; in other words, the drugs developed by the pharmaceutical companies.[108] The Tribunal agrees.

A simple method of determining whether the "product" is the Strata Trial, or the drug being developed by the pharmaceutical companies is to replace the word "product" in the statute with each of those terms. In other words, the first type of "research or experimental activity" becomes an "activity incident to the development, discovery, or modification of [the Strata Trial] or a [Strata Trial] related process." With this, it is evident that if the product is the Strata Trial, Petitioner's activities are performed for Petitioner itself, to develop Petitioner's own trade or business, and not for or on behalf of the actual industrial processor, the pharmaceutical companies. On the other hand, when the word "product" is replaced by "drugs," "research or experimental activity" becomes an "activity incident to the development, discovery, or modification of [a drug] or a [drug] related process." Clearly, this activity would be performed for or on behalf of the industrial processor.

A similar result, albeit more obvious, is obtained by replacing the word "product" with "Strata Trial" in the description of the second type of "research or experimental" activity. With that, "research or experimental activity" becomes an activity necessary for [the Strata Trial] to satisfy a government standard or to receive government approval."

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[107] *Id*. at 17.
[108] Respondent's Response Brief at 2.

Clearly, it is not the Strata Trial that needs to satisfy a government standard or to receive government approval, it is the drug. For these reasons, the Tribunal finds that the product at issue is the drug produced by the pharmaceutical company, the industrial processor, and not the Strata Trial.

Having reached this conclusion, the next question is whether Petitioner's activities meet either of the two types of "research or experimental" activities specified in Subsection (7)(e). As to the first type, Respondent argues that Petitioner's activities are not incident to the drugs' development, discovery, or modification as they do not impact the pharmaceutical companies' final product. In fact, Petitioner's CEO confirmed that the drug compounds do not change as a result of the Strata Trial. Moreover, "by the time [Petitioner] identifies patients for a specific drug trial, the drug being tested 'has likely already been manufactured' by the pharmaceutical companies."[109]

While Petitioner does not dispute that its activities do not result in a change to a drug compound, it failed to explain how its activities meet the requirements of the first activity defined in Subsection (7)(e). Instead of addressing this issue head-on, Petitioner attempted to mingle these Subsection (7)(e) requirements with the requirements of Subsection (7)(a). Specifically, Petitioner argues that Respondent has provided no authority for its position that Petitioner's activities must result in a change to the drug compound. Clearly, a *change* or *modification* in the drug compound is not required, as this is only one of the three possible ways in which a product or a product related process may be impacted. However, Petitioner failed to provide any evidence that its activities meet either of the other two requirements, i.e., that its activities are incident to

[109] Respondent's Brief at 15, citing Respondent's Exhibit 2: the transcript of Daniel Rhodes.

either the "development" or "discovery" of a drug or a drug related process. Given this, Petitioner failed to meet its burden of proof in establishing that it met the first type of "research or experimental" activity defined in Subsection (7)(e).

The remaining question is whether Petitioner's activities meet the second type of "research or experimental" activity defined in Subsection (7)(e), specifically whether its activities are "necessary for a [drug] to satisfy a government standard or to receive government approval." As explained, the parties do not disagree that the activity necessary for government approval is the drug test itself. Nor do they disagree that the pharmaceutical companies perform the actual clinical trials, or drug trials, and not Petitioner.[110] Instead, the issue is whether Petitioner's activities, namely the Strata Trial, are *necessary* for the drug to satisfy a government standard or to receive government approval. In other words, the focus of the parties' disagreement is on the legislature's use of the word "necessary."

Respondent asserts that because the Legislature did not define the word "necessary," it is appropriated to consult and utilize a dictionary definition. Respondent cites the *Merriam-Webster Dictionary*, which defines "necessary" as "absolutely needed."[111] Petitioner, on the other hand, contends that it is the taxpayer who should determine whether a cost or methodology is necessary. In support of this argument, Petitioner relied upon interpretations of the word by various units of government, including an Internal Revenue Code section that allows a deduction for "ordinary and

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[110] See Respondent's Brief, exhibit 7 at 1, which states: "each clinical study sponsor that executes an agreement in a form similar in concept to this Agreement…will be solely responsible for conducting its own clinical trial to evaluation, *inter alia*, the various responses to treatment…."
[111] Respondent's Response Brief at 10, citing *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/necessary (accessed October 2, 2021).

necessary expenses," the Internal Revenue Service's guidance concerning that provision, and a 1933 United States Supreme Court decision interpreting that phrase.[112]

As discussed in *Ford Motor*, when words are not defined in the statute, "we presume that the Legislature intended for the words to have their ordinary meaning.[113] To assist in determining the ordinary meaning of the relevant words, we may consult a dictionary."[114] While Petitioner's argument is interesting, Petitioner has not provided any authority for deviating from this long-held principal, numerous Michigan Supreme Court decisions, and a 1959 statute. Therefore, the Tribunal will apply the following dictionary definition of "necessary," to wit: "absolutely needed: required."[115]

Given this, the question is simple: what activity is necessary, or absolutely needed, for a drug to satisfy a government standard or to receive government approval? Clearly, the answer is a drug trial. Because Petitioner's activities, *i.e.*, the Strata Trial, is not a drug trial, it cannot be said that these activities are necessary to satisfy a government standard or to receive government approval. Given this, Petitioner's activities do not meet the requirements of a "research or experimental" activity.

However, Petitioner has also taken the position that its pharmaceutical partners would not conduct their targeted, precision drug trials without Petitioner's expertise in testing, profiling, and matching. According to Petitioner, it would be impossible to meet FDA approval thresholds without a well-matched cancer patient trial population.[116] While

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[112] *Welch*, supra.
[113] While the Court's citation to MCL 8.3a is omitted from this citation, it is useful to note that this statute provides that "[a]ll words and phrases shall be construed and understood according to the common and approved usage of the language . . . ."
[114] *Ford Motor* at 391. [Citation omitted.] See also *Detroit Edison* at 40.
[115] *Merriam-Webster Dictionary*, https://www.merriam-webster.com/dictionary/necessary (accessed June 30, 2022).
[116] Petitioner's Brief at 17.

the Strata Trial may enhance the likelihood of a drug trial's success, the Strata Trial is not the activity at issue. And while a pharmaceutical company may be reluctant to perform a drug trial without genetic testing, this, too, is not the issue. Instead, the activity at issue remains the drug trial and whether the drug trial is necessary, or absolutely needed, for the drug to satisfy a government standard or receive government approval.

In conclusion, the Tribunal finds that there are no genuine issues of material fact. The Tribunal further finds that Petitioner failed to meet its burden of proof in establishing that it used the tangible personal property for which it was assessed use tax under Assessment Numbers VA4FM3Q, VA4FM3R, VA4FM3S, and VA4FM3T, to perform an industrial processing activity for or on behalf of an industrial processor. As a result, Respondent is entitled to judgment as a matter of law. Petitioner's exemption request is denied, and the Assessments are affirmed.

Given this, the remaining issues raised by Respondent, specifically whether the property at issue had to be used by Petitioner in the year it was purchased, whether its purchase of office furniture was subject to tax, and whether the assessed use tax should be apportioned between property that is exempt and not exempt, will not be addressed as these issues are now moot.

JUDGMENT

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

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

IT IS FURTHER ORDERED that Assessment Numbers VA4FM3Q, VA4FM3R, VA4FM3S, and VA4FM3T are AFFIRMED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal

with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is $100.00.

By Patricia L. Haehn

Entered: July 14, 2022
plh

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk