STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
SUZANNE SONNEBORN
EXECUTIVE DIRECTOR

GRETCHEN WHITMER
GOVERNOR

MARLON I. BROWN, DPA
ACTING DIRECTOR

TTI Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-002481

Michigan Department of Treasury,
Respondent.

Presiding Judge
Joshua M. Wease[1]

ORDER DENYING RESPONDENT'S MOTION FOR DIRECTED VERDICT

FINAL OPINION AND JUDGMENT

I. INTRODUCTION

At issue are five tax assessments levied by the Michigan Department of Treasury (Respondent) under the Corporate Income Tax Act (CIT)[2] against TTI, Inc. (Petitioner) for excluding its wholly owned subsidiary, Mouser Electronics, Inc. (Mouser) as a member of its unitary business group (UBG).[3]

The assessments at issue are:

Assessment Number	Tax Period	Tax	Interest[4]
VA5HP7L	2013	$46,444.00	$16,031.47
VA5HP7M	2014	$82,856.00	$25,078.78
VA5HP7N	2014	$79,576.00	$24,085.97
VA5HR3O	2015	$82,810.00	$21,519.74
VA5HR3P	2016	$119,187.00	$25,741.96

[1] The hearing of this matter was conducted by former Tribunal Judge, Steven Bieda. Judge Bieda is no longer with the Tribunal. As a result, after careful consideration of the transcripts, admitted evidence, briefs, and the case file, this Final Opinion and Judgment (FOJ) is rendered by the above-noted Tribunal Judge. See AC R 792.10106(7).
[2] MCL 206.601 *et seq*.
[3] MCL 206.611(6).
[4] Interest calculated as of April 26, 2021.

Petitioner filed original CIT returns for tax years 2013-2016 that included Mouser, as a member of Petitioner's UBG and included the activity of Mouser in the returns.[5] In September 2018, Petitioner filed amended CIT returns for each of the tax periods at issue.[6] The only reason for filing the amended CIT returns was to exclude Mouser from Petitioner's UBG and remove the activity of Mouser from the amended returns.[7] The removal of Mouser from the amended returns resulted in overpayments of tax for each tax year that Petitioner requested to be refunded.[8] Respondent processed the returns and issued the refund requested by Petitioner for each tax period at issue.[9]

After Petitioner filed its amended CIT returns, on or about October 4, 2018, Respondent initiated an audit of Petitioner's CIT returns for the amended tax years.[10] Respondent determined that Mouser was a member of Petitioner's Michigan UBG and its activity should be included in Petitioner's CIT returns for the tax years at issue.[11] Respondent issued a total of five Bill(s) for Tax Due (Intent to Assess) to Petitioner; one for each of the tax periods at issue as well as a second Bill for Taxes Due for the tax year ended December 31, 2014.[12]

Petitioner timely requested an Informal Conference before Respondent's Hearings Division for each of the Bill(s) for Taxes Due.[13] Respondent granted Petitioner's Informal Conference request, held an informal conference, and on April 16, 2021 issued an Informal Conference Decision and Order of Determination upholding each of the five Bill(s) for Taxes Due.[14] Respondent issued a total of five Final Bill(s) for Taxes Due to Petitioner April 26, 2021.

Petitioner filed a Petition with the Tribunal on June 17, 2021, and Respondent filed an Answer on July 22, 2021. On July 20, 2022, a hearing was held in this matter via video conference. Petitioner was represented by Timothy S. Pratcshler and Eric R. Whitaker. Respondent was represented by Randi M. Merchant and Justin R. Call.

II. PETITIONER'S CONTENTIONS

Based on the pleadings, admitted exhibits, and sworn testimony, Petitioner contends that Respondent's inclusion of Mouser in Petitioner's UBG for the tax periods at issue was erroneous as Petitioner and Mouser do not have business activities or operations which result in a flow of value between them or business activities or operations that are

[5] Tr. at 24.
[6] Petition at ¶12.
[7] Tr. at 27 – 35.
[8] *Id.*
[9] *Id.*
[10] Petition at ¶14.
[11] Petition at ¶18.
[12] Petition at ¶14.
[13] Petition at ¶15.
[14] Petition at ¶16.

integrated with, are dependent upon, or contribute to each other as required by MCL 206.611(6).[15]

Petitioner's Admitted Exhibits:

P-1: Michigan Department of Treasury audit report of findings,
P-2: 2013 CIT amended return,
P-3: 2014 CIT amended return,
P-4: 2015 CIT amended return,
P-5: 2016 CIT amended return,
P-6: Letter from Paul Andrews dated December 15, 1999,
P-7: Michigan corporate income tax unitary questionnaire.[16]

Petitioner's Witness Darrell Jones

Darrell Jones is employed as TTI's tax director and served in that role during the tax periods at issue.[17] Mr. Jones provided testimony regarding both TTI's and Mouser's operations in the context of his role as tax director.[18]

Mr. Jones testified that Petitioner amended Petitioner's returns in eleven other states to remove Mouser from its UBG.[19] Of the state tax returns filed in 35 states that Petitioner filed for the years at issue, Mr. Jones testified that only eleven were amended because they involved a unitary issue with Mouser.[20]

Mr. Jones testified about Exhibit P-7, the Michigan Corporate Income Tax Unitary Questionnaire (questionnaire), which Mr. Jones signed on April 18, 2019.[21] Mr. Jones testified that these factors were considered when making the decision that Mouser was not part of TTI's UBG.[22]

Petitioner's Witness Michael Morton

Mr. Morton serves as TTI's current Chief Executive Officer (CEO). Mr. Morton has been employed by TTI for 44 years.[23] During the 2013-2015 tax years at issue, he served as President of TTI Americas and later in 2015 he served as Global President of TTI.[24] He

[15] Petitioner's Brief, at 6; Tr. 17-18.
[16] Petitioner's Exhibit P-7 are Respondent's Exhibit R-5 is the Michigan Corporate Income Tax (CIT) Unitary Questionnaire except that Petitioner's Exhibit P-7, as submitted in its proposed exhibits, was incomplete and did not include the signature page.
[17] Tr. at 22.
[18] Tr. at 22–81.
[19] Tr. at 26.
[20] Tr. at 44.
[21] Tr. at 42.
[22] Tr. at 42.
[23] Tr. at 83.
[24] Tr. at 84.

provided testimony related to TTI's operations in general and to TTI's business relationship with Mouser.[25]

Mr. Morton distinguished between TTI customers and Mouser customers stating, "[f]rom an operating standpoint there is no joint servicing. It could very well be that Mouser is doing business with an engineer; TTI is doing business with a procurement individual that happen to work for the same company."[26] TTI sells products through a network of "inside and outside salespeople calling on customers."[27] Mr. Morton stated that TTI's customers are manufacturers "in high volume production" who are original equipment manufacturers (OEM) that manufacture products for themselves or other OEM's.[28]

Mr. Morton testified that TTI's electronic products include passive components like resistor capacitors, switches, and relays.[29] He testified that there is a small overlap between TTI's suppliers and Mouser's suppliers.[30] TTI typically has about 60 suppliers whereas he estimated that Mouser had approximately 300 suppliers because their product offerings are broader than TTI's.[31] Where there is overlap in suppliers, TTI and Mouser do not submit joint orders because the two companies have separate systems.[32] Mr. Morton also testified that neither TTI nor Mouser receive discounts from vendors by virtue TTI owning Mouser.[33] From the suppliers' perspective, TTI and Mouser are separate entities with separate distribution agreements, terms, and conditions. The companies have separate invoice and payables.[34]

Mr. Morton testified that his interactions with Mouser were limited to Glenn Smith, Mouser's CEO, based on financial aspects of the business.[35] He had contact with Mr. Smith at least quarterly for financial overviews.[36] He had more frequent contact with Mr. Smith regarding capital expenditure discussions.[37]

Mr. Morton testified that the policy for Mouser to get approval for capital expenditures of more than $1 million was put "in place" around 2021 upon the death of Mr. Andrews, the founder and CEO, at the time.[38] The process of requesting approval was usually an informal verbal request by Mr. Glenn Smith.[39]

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[25] Tr. at 82–145.
[26] Tr. at 88.
[27] Tr. at 86.
[28] Tr. at 86-87.
[29] Tr. at 87.
[30] Tr. at 88.
[31] Tr. at 88-89.
[32] Tr. at 89.
[33] Tr. at 89.
[34] Tr. at 89.
[35] Tr. at 84-85.
[36] Tr. at 90.
[37] Tr. at 90.
[38] Tr. at 91.
[39] Tr. at 92.

Through Mr. Morton's testimony, Exhibit P-6, a letter announcing TTI's acquisition of Mouser in the year 2000, was admitted.[40] Mr. Morton testified that he assisted in the wording of the announcement.[41] He also testified to the accuracy of the TTI's intent to keep the two companies separate, reading from the announcement:

> Our plans are to keep Mouser Electronics totally separate from TTI. They will have a separate system, separate inventory and separate line card. Their customer base is totally different and I want them to continue to focus on their competitor's business.[42]

Mr. Morton testified regarding the difference between the two companies' products and markets. He testified that TTI is in the high volume, large quantity business for production.[43] Mouser services the engineering community with small quantities. [44] Typically TTI could sell in one package 10,000 pieces, where Mouser would sell a single piece because an engineer only needs one or two pieces to do an evaluation.[45]

Mr. Morton also testified about the costs or cost savings experienced by the companies because of their relationship. While the two companies have a common 401(k) retirement savings plan, it does not result in a cost savings because the more people who participate in the plan demands additional staffing to administer the plan.[46] He also testified that the common worker's compensation insurance plan does not result in any cost savings.[47] Mr. Morton testified that there were no cost savings with the common employee health insurance plan.[48] He testified that the common business insurance policy did not create any cost savings because it is for inventory and property, which creates additional costs for TTI because Mouser has larger inventory that TTI.[49]

Mr. Morton testified about the intercompany sales between TTI and Mouser. He testified that there are "relatively few lines" that the two companies share, however, if Mouser is short on inventory, Mouser can request to acquire the inventory from TTI.[50] The TTI product management team may grant the request if it does not compromise TTI customer service.[51] These intercompany sales represent 1.0% to 1.5% of TTI's revenues for the tax years in question.[52] The income to TTI is zero because the products are "sold" at cost – meaning no income or profitability from those

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[40] Tr. at 93.
[41] Tr. at 93.
[42] Tr. at 94.
[43] Tr. at 94.
[44] Tr. at 94-95.
[45] Tr. at 94-95.
[46] Tr. at 96.
[47] Tr. at 96-97.
[48] Tr. at 97.
[49] Tr. at 97.
[50] Tr. at 98.
[51] Tr. at 98.
[52] Tr. at 98-99.

transactions.[53] Mouser does not have any priority over TTI customers in these transactions and they are by approval only.[54]

Mr. Morton further testified that were TTI short on inventory, the same process of request would be sent to Mouser and subject to Mouser approval.[55] During the tax years at issue, these "sales" amounted to between $1.7 million and $1.9 million. TTI prioritizes buying directly from component manufacturers stating: "we are authorized by a manufacturer as an authorized distributor. We also want to make certain that TTI is viewed by that component manufacturer as a significant partner; and the greater the purchasing, then the greater influence we have or importance to the component manufacturer."[56] Last, Mr. Morton testified that if Mouser did not have the inventory, then TTI would inquire of its competitors.[57]

Petitioner's Witness Glenn Smith

Glenn Smith has served as Mouser's President and CEO since 2004, but during the tax periods at issue held only the title of President while Mr. Andrews served as CEO.[58] Paul Andrews, now deceased, served as both TTI's and Mouser's CEO during the periods at issue.[59] Mr. Smith is responsible for Mouser's day-to-day operations and setting business strategy for the company.[60] Mr. Smith provided testimony related to Mouser's operations in general, as well as Mouser's business relationship with TTI.[61]

With respect to products, Mr. Smith testified that Mouser is focused on the newest product technologies and marketing those products to its customer base.[62] Mr. Smith confirmed that Mouser has a wide variety of customers, which include engineers, procurement departments, production, managers, and students.[63] Mr. Smith testified that Mouser has approximately 800,000 customers.[64] Mr. Smith testified that while they have some overlap of customers with TTI, they do not serve them jointly.[65] Nor does TTI and Mouser place joint orders with common suppliers.[66]

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[53] Tr. at 99.
[54] Tr. at 99.
[55] Tr. at 99-101.
[56] Tr. at 101.
[57] Tr. at 102.
[58] Tr. at 134, 146.
[59] SOF, ¶ 12; Tr. at 134.
[60] Tr. at 147.
[61] Tr. at 146–195.
[62] Tr. at 148.
[63] Tr. at 149.
[64] Tr. at 149.
[65] Tr. at 150.
[66] Tr. at 150.

III. RESPONDENT'S CONTENTIONS

Based on the pleadings, admitted exhibits, and sworn testimony, Respondent contends that that the evidence presented prove that the relationship test has been met under either test. Respondent asserts that the totality of the facts and circumstances show that the relationship between TTI and Mouser led to "some level" of functional integration, centralized management, and economies of scale, which alone would be sufficient to find the Respondent's favor, there is also substantial evidence to support a finding that TTI and Mouser's relationship contributed to each other.[67]

Respondent's Admitted Exhibits:

R-1: Final Assessment,
R-2: Audit Report of Findings (Original),
R-3: Audit Workpapers/Schedules (Original),
R-4: Audit Report of Findings (Supplemental),
R-5: CIT Unitary Questionnaire (Completed by Petitioner),
R-6: Petitioner's Response to Treasury's discovery requests (without attachments),
R-7: Mouser annual shareholder meeting minutes dated March 12, 2014,
R-8: Mouser annual board of directors meeting minutes dated March 12, 2014,
R-9: Mouser annual shareholder meeting minutes dated March 12, 2015,
R-10: Mouser annual board of directors meeting minutes dated February 2, 2016,
R-11: Mouser invoices sample,
R-12: Mouser Quality Manual,
R-13 Petitioner website screenshot,
R-15: Mouser website screenshot.

Respondent's Motion for Directed Verdict

Respondent moved for a directed verdict at the close of Petitioner's case in chief and argued that Petitioner's witness testimony was sufficient to establish that the relationship test was satisfied.[68] The Tribunal does not have a specific rule for motions for directed verdict, so the Michigan Court Rules are applied.[69] When a party moves for a directed verdict in a bench trial, the motion is properly treated as a motion for involuntary dismissal pursuant to MCR 2.504(B)(2).[70] "The involuntary dismissal of an action is appropriate where the trial court, when sitting as the finder of fact, is satisfied at the close of the plaintiff's evidence that 'on the facts and the law the plaintiff has shown no right to relief.'"[71] "Unlike the motion for directed verdict, a motion for involuntary dismissal calls upon the trial judge to exercise his function as trier of fact, weigh the evidence, pass upon the credibility of witnesses and select between

[67] Tr. at 20-21.
[68] Tr. 196-197.
[69] TTR 215.
[70] *Sands Appliance Services Inc v Wilson,* 463 Mich 231, 235 n 2; 615 NW2d 241 (2000); *Samuel D. Begola Services, Inc v Wild Bros,* 210 Mich App 636, 639; 534 NW2d 217, 219 (1995).
[71] *Id*. at 639.

conflicting inferences."[72] Pursuant to MCR 2.504(B)(2), the "court may then determine the facts and render judgment against the plaintiff, or may decline to render judgment until the close of all the evidence." In this case, Petitioner proffered considerable evidence in the form of witness testimony and documents to satisfy its burden of production. The Tribunal declined to render judgment, ordered post-hearing briefs, and proceeded with the hearing.[73]

Respondent's Witness Marie McFarland

Respondent's sole witness, Ms. Marie McFarland, is a Treasury employee with more than ten years of experience as an auditor and audit supervisor.[74] She testified about Treasury's application of the UBG statute in general and with respect to this audit.[75]

Ms. McFarland testified that she is a second line reviewer, who reviews the audit once it is submitted as part of a formal review process.[76] Ms. McFarland confirmed the data that was relied on in deciding on a UBG. First, McFarland testified about the facts that favored a finding of a UBG, namely, the items that Petitioner answered "yes" to on the Unitary Questionnaire. Ms. McFarland then testified as to those factors such as separate bank accounts, inventory management systems, human resources, supply chain, and IT operations do not preclude a finding of a UBG.[77] Ms. McFarland testified that it was her opinion that Petitioner and Mouser were members of the same UBG.[78]

IV. STIPULATED FACTS

The MTT Rules of Practice and Procedure provide that, "[i]f an applicable entire tribunal rule does not exist, the 1995 Michigan Rules of Court, as amended, and sections 71 to 87 of the Administrative Procedures Act (APA), MCL 24.271 to 24.287, and sections 121 to 128 of the APA, MCL 24.321 to 24.328, shall govern."[79] The MTT rules do not specifically address stipulation of facts. The MCR provides that "[t]he parties to a civil action may submit an agreed upon stipulation of facts to the court."[80]

With respect to the weight that the Tribunal should give the stipulation of facts, the Michigan Supreme Court has held that

> [T]he practice of submission of questions to any adjudicating forum, judicial or quasi-judicial on stipulation of fact, is praiseworthy in proper cases. It eliminates costly and time-consuming hearings. It narrows and

[72] *Marderosian v Stroh Brewery Co,* 123 Mich App 719, 724; 333 NW2d 341 (1983).
[73] Tr. at 201.
[74] Tr. at 205.
[75] Tr. at 204–227.
[76] Tr at 205.
[77] Tr. at 217.
[78] Tr. at 217.
[79] 1999 AC, R 792.10215.
[80] MCR 2.116(A)(1); *See, Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 705–06; 714 NW2d 392, 399 (2006).

> delineates issues. But once stipulations have been received and approved they are sacrosanct. Neither a hearing officer nor a judge may thereafter alter them. This holding requires no supporting citation. The necessity of the rule is apparent. A party must be able to rest secure on the premise that the stipulated facts and stipulated ultimate conclusionary facts as accepted will be those upon which adjudication is based. Any deviation therefrom results in a denial of due process for the obvious reason that both parties by accepting the stipulation have been foreclosed from making any testimonial or other evidentiary record.[81]

"In general, when a case is submitted to a governmental agency on stipulated facts …those facts are to be taken as conclusive."[82] "It does not indicate, however, that the record is necessarily limited to the stipulation. Where the parties' stipulation is not contradicted, it is within the discretion of the tribunal to permit or consider additional proofs supplementing the same."[83] However, stipulations that include conclusions of law do not bind the Tribunal.[84]

The parties submitted the following verbatim list of stipulations as their Joint Stipulation of Facts on July 15, 2022.

> 1. Petitioner TTI, Inc. (TTI) and Respondent Michigan Department of Treasury (Treasury) are opposing parties in Michigan Tax Tribunal Docket No. 21-002481-TT, which centers on TTI's challenge to Treasury's Final Assessment Nos. VA5HP7L, VA5HP7M, VA5HP7N, VA5HR3O, and VA5HR3P. The chart below identifies the amount of tax and interest imposed for each assessment, although interest has continued to accrue in accordance with the Revenue Act.

Assessment	Tax Period	Tax	Interest[85]	Total
VA5HP7L	2013	$46,444.00	$16,031.47	$62,475.47
VA5HP7M	2014	$82,856.00	$25,078.78	$107,934.78
VA5HP7N	2014	$79,576.00	$24,085.97	$103,661.97
VA5HR3O	2015	$82,810.00	$21,519.74	$104,329.74
VA5HR3P	2016	$119,187.00	$25,741,96	$144,928.96

> 2. TTI is a Delaware corporation identified by Account No. XX-XXXXXXX with its primary headquarters located in Fort Worth, Texas. [redacted]

[81] *Dana Corp v Employment Security Comm*, 371 Mich 107, 110; 123 NW2d 277 (1963).
[82] *Columbia Assoc, LP v Dep't of Treasury,* 250 Mich App 656, 665; 649 NW2d 760 (2002).
[83] *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 705–706; 714 NW2d 392, 399 (2006), citing *Kennedy v Auto–Owners Ins Co,* 87 Mich App 93, 98; 273 NW2d 599 (1978).
[84] *Staff v Johnson,* 242 Mich App 521, 535; 619 NW2d 57 (2000).
[85] Interest calculated as of April 26, 2021.

3. The tax period at issue in this matter is January 1, 2013 through December 31, 2016; unless stated otherwise, the statements below relate to the tax period at issue.
4. During the tax period at issue, TTI was subject to Michigan's Corporate Income Tax (CIT) and filed its CIT annual returns for each tax year (2013 – 2016) as the designated member (DM) of a unitary business group (UBG).
5. The original CIT returns TTI filed for each of the tax years at issue included Mouser Electronics (Mouser) as a member of TTI's UBG.
6. TTI subsequently filed amended returns for each of the tax years at issue that excluded Mouser from TTI's UBG.
7. Thereafter, TTI was the subject of a CIT audit conducted by Treasury covering the period January 1, 2013 through December 31, 2016.
8. As a result of the audit, Treasury determined that Mouser should not have been removed as a member of TTI's UBG for the tax years at issue.
9. The outcome of this case will turn on the determination of whether Treasury properly included Mouser as a member of TTI's UBG, which in turn requires a finding regarding whether both components of the UBG test (control test and relationship test) are met.
10. Because TTI has retained its 100% ownership interest in Mouser since acquiring it in 2000, the parties agree that the control test component has been satisfied.
11. Thus, only the relationship test remains in question for purposes of this litigation.
12. During the tax periods at issue, TTI and Mouser shared two common executives: (1) Paul Andrews served as Chairman and CEO of both companies; and (2) Nick Kypreos served as Secretary and Treasurer of both companies.
13. TTI and Mouser did not share any common employees other than the executives identified in paragraph 12.
14. TTI and Mouser employees were covered by the same health insurance plan, worker's compensation insurance program, and 401k plan.
15. For each of the plans in paragraph 14, TTI and Mouser paid the costs associated with their respective employees.
16. TTI and Mouser were covered under a single business insurance policy.
17. For the insurance policy described in paragraph 16, TTI and Mouser paid the costs associated with their respective coverage.
18. TTI prepared the federal and state income tax returns for Mouser.
19. Mouser was required to make a "shared service" fee payment to TTI each year. The amount of the shared service fee was calculated by estimating the allocation of corporate support provided by TTI to Mouser. The chart below identifies the amount paid for each of the tax years at

issue:

2013	$988,525
2014	$1,119,984
2015	$1,073,172
2016	$1,077,282

20. During the tax years at issue, intercompany sales from TTI to Mouser exceeded $20 million annually. The precise amount for each year is set forth in the chart below:

2013	$22,260,742
2014	$27,961,395
2015	$22,800,561
2016	$29,069,385

21. During the tax years at issue, intercompany sales from Mouser to TTI exceeded $1.5 million annually. The precise amount for each year is set forth in the chart below:

2013	$1,820,656
2014	$1,782,513
2015	$1,745,173
2016	$1,752,766

22. Mouser employees are subject to TTI's Global Code of Conduct and Ethics policy.
23. Mouser's annual meeting of the shareholder and/or meeting of the board of directors were sometimes held at TTI's corporate offices.
24. TTI and Mouser maintain separate facilities, including headquarters locations, sales offices, warehouses, and distribution facilities.
25. TTI and Mouser maintain separate bank accounts.
26. TTI and Mouser have separate inventory management systems.
27. TTI and Mouser maintain separate Human Resources, Supply Chain, and IT operations.
28. TTI and Mouser do not utilize common tangible personal property.

The Tribunal will take these stipulations as conclusory, except for paragraphs 9, 10, and 11, which are conclusions of law that do not bind the Tribunal.[86]

[86] *Staff v Johnson,* 242 Mich App 521, 535; 619 NW2d 57 (2000). See also, *In re Finlay Estate*, 430 Mich 590, 595-596 (1988).

V. FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved. In this case, the findings of fact supplement the stipulations of fact stated above. "Where the parties' stipulation is not contradicted, it is within the discretion of the tribunal to permit or consider additional proofs supplementing the same."[87] This is appropriate when the parties submitted additional exhibits and witness testimony after submitting their Stipulation.[88] The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusion and has rejected evidence contrary to these findings:

1. Petitioner owns a 100% ownership interest in Mouser during the years at issue.[89]
2. Darrell Jones signed the Michigan Corporate Income Tax (CIT) Unitary Questionnaire for the audit review period of January 1, 2013 – December 31, 2016.[90]
3. Petitioner sells electronic components.[91]
4. Petitioner has approximately 20,000 customers.[92]
5. Mouser sells electronic components.[93]
6. Mouser has approximately 800,000 customers.[94]
7. TTI's NAICS code of 423690.[95]
8. Mouser's NAICS code is 423690.[96]
9. TTI sources its products from approximately 60 suppliers.[97]
10. Mouser sources its products from approximately 300 suppliers.[98]
11. Petitioner sells components to large volume production users via sales representatives.[99]
12. Mouser sells its components in small quantities directly to product developers and engineers.[100]
13. Petitioner and Mouser separately secure their own respective contracts with suppliers.[101]
14. Neither company guaranteed, approved, or pledged assets for loans for another entity.[102]

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[87] *Signature Villas, supra*, at 706, citing *Kennedy v Auto–Owners Ins Co,* 87 Mich App 93, 98; 273 NW2d 599 (1978).
[88] See *Signature Villas, supra.*
[89] Tr. at 16.
[90] Exhibit R-5, at 5.
[91] Tr. at 15, 48.
[92] Tr. at 122.
[93] Tr. at 16, 48.
[94] Tr. at 149.
[95] Exhibit P-2, at 2; Tr. at 47.
[96] Tr. at 48
[97] Tr. 88-89.
[98] *Id.*
[99] Tr. at 15.
[100] Tr. 148-149.
[101] Tr. 89.
[102] Exhibit R-5, at 2.

15. Neither company established goals or formulated policies for another entity.[103]
16. Neither company approved or signed contracts for another entity.[104]
17. Neither company participated in management decisions for another entity.[105]
18. Neither company received minutes and or reports of another entity.[106]
19. No officers or directors of more than one entity met in common committees.[107]
20. No officers and/or directors of any entity controlled the amount and/or distribution of the dividends by another entity.[108]
21. Neither company adopted, selected, entered into, or approved any major purchase contracts for another entity.[109]
22. Neither company made purchases for another entity.[110]
23. Neither company obtained discounts or other benefits from volume purchases with another entity.[111]
24. No sales and service personnel of any entity perform the same functions for another entity.[112]
25. Neither company administered personnel policies, procedures, or training program for another entity.[113]
26. Neither company approved promotions, salary increases, or bonuses for another entity.[114]
27. Neither company shared common hiring policies, pre-employment tests, or screening procedures with another entity.[115]
28. Neither company transferred any employees to another entity.[116]
29. Neither company advanced money to another entity by direct loans.[117]
30. The companies recorded intercompany receivables.[118]
31. There were no written agreements regarding loans between entities.[119]
32. Neither company prepared any accounting reports for another entity.[120]
33. No internal auditors of any entity performed the same function for another entity.[121]
34. Neither company provided legal, finance, or accounting services for another entity.[122]

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[103] *Id.*
[104] *Id.*
[105] *Id.*
[106] *Id.*
[107] *Id.*
[108] *Id.*
[109] *Id.*
[110] *Id.*
[111] *Id.*
[112] *Id*.
[113] *Id.* at 3.
[114] *Id.*
[115] *Id.*
[116] *Id.*
[117] *Id.*
[118] Id.
[119] *Id.*
[120] *Id.*
[121] *Id.*
[122] *Id.*

35. Neither company paid dividends, interest, or royalties to another entity.[123]
36. Neither company paid rents or other expenses to another entity.[124]

VI. APPLICABLE LAW

MCL 206.691(1) provides that:

> Except as otherwise provided under section 680(3), a unitary business group shall file a combined return that includes each United States person that is included in the unitary business group. Each United States person included in a unitary business group or included in a combined return shall be treated as a single person, and all transactions between those persons included in the unitary business group shall be eliminated from the corporate income tax base, the apportionment formulas, and for purposes of determining exemptions, credits, and the filing threshold under this part.

"Unitary business group" is defined as:

> [A] group of United States persons that are corporations, insurance companies, or financial institutions, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other members, and that has business activities or operations which result in a flow of value between or among members included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. Unitary business group includes an affiliated group that makes the election to be treated, and to file, as a unitary business group under section 691(2). [MCL 206.611(6)]

The determination of whether a unitary relationship exists requires an examination of the totality of facts and circumstances related to the business activities and operations of the entities at issue.[125]

In *Kostyu v Dep't of Treasury*, the Michigan Court of Appeals held that "the Tax Tribunal has authority to allocate the burden of proof in a manner consistent with the legislative scheme."[126] Although the revenue statute at issue here, MCL 206.611, does not state which party has the burden of proof, "imposing the burden on the taxpayer is consistent with the overall scheme of the tax statutes and the Legislature's intent to give the Department a means of basing an assessment on the best information available to it under the circumstances."[127]

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[123] *Id.*
[124] *Id.*
[125] *Labelle Mgt v Dep't of Treasury*, 315 Mich App 23, 30 (2016).
[126] *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988).
[127] *Id*. at 130. See also *Vomvolakis v Dep't of Treasury*, 145 Mich App 238; 377 NW2d 309 (1985).

VII. CONCLUSIONS OF LAW

The parties are in near agreement of the facts and circumstances that underly the relationship between Petitioner and its wholly owned subsidiary Mouser. However, Petitioner looks at the facts and does not see a UBG, while Respondent looks at the same facts and does see a UBG.

Revenue Administrative Bulletin 2018-12
Respondent issued Revenue Administrative Bulletin 2018-12, Corporate Income Tax Unitary Business Group Control Test and Relationship Tests (RAB), pursuant to its statutory authority.[128] Respondent's RAB interprets the requirements set forth in MCL 206.611(6) that must be met when determining whether a UBG exists. The RAB lacks the force and authority of law.[129] However, it represents Respondent's interpretation of a statute it is responsible to administer. The guidance provided in the RAB is entitled to "respectful consideration" that should not be disregarded absent "cogent reasons."[130] This principle is consistent with the recognition that administrative agencies are created by the legislature to serve as "'repositories of special competence and expertise uniquely equipped to examine the facts and develop public policy within a particular field."[131]

A. Control Test

The control test requires that "one member of the proposed group must own or control more than 50% of the other members [the control test] and there must be a sufficient connection between the members to meet one of two relationship tests."[132] The determination of whether a unitary relationship exists requires an examination of the totality of facts and circumstances related to the business activities and operations of the entities at issue.[133] It is undisputed that Petitioner has owned 100% of Mouser stock since acquiring Mouser in 2000, which includes the tax years 2013-2016 at issue in this case.[134] Considering the facts and circumstances, the Tribunal finds that the control test has been satisfied.

B. Relationship Tests

Consistent with the plain language of the MCL 206.611(6), the RAB acknowledges that the relationship test has two alternate tests to establish a UBG. First, related companies have business activities or operations that result in a flow of value between or among the potential members ("flow of value test"). Second, the companies have business activities or operations that are integrated with, are dependent upon, or contribute to

[128] MCL 205.3(f).
[129] *Catalina Mktg Sales Corp v Dep't of Treasury*, 470 Mich 13, 21; 678 NW2d 619 (2004).
[130] See *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103; 754 NW2d 259, 267 (2008).
[131] *Basic Prop Ins Ass'n v OFIR*, 288 Mich App 552, 560; 808 NW2d 456, 463 (2010).
[132] *D'Agostini Land Co v Dep't of Treasury*, 322 Mich App 545, 551 (2018).
[133] *Labelle Mgt v Dep't of Treasury*, 315 Mich App 23, 30 (2016).
[134] Petitioner's Brief at 6; Respondent's Brief, at 6.

each other ("contribution/dependency test").[135] Both tests require consideration of the total facts and circumstances surrounding the companies' business activities and operations for the tax years at issue. A tool that was used by both parties to support their respective cases was Respondent's Unitary Questionnaire.

Unitary Questionnaire

The Michigan Corporate Income Tax (CIT) Unitary Questionnaire (questionnaire) had a prominent role in this case. The questionnaire was designed by Respondent and answered by Petitioner. Both parties relied on the questionnaire in their respective cases.[136] Petitioner's Witness Jones signed the questionnaire for the audit review period of January 1, 2013 – December 31.[137] Mr. Jones testified that the questionnaire was considered in Petitioner's conclusion that Mouser was not part of the same UBG.[138] Respondent's Witness McFarland testified that the questionnaire was considered in coming to the opposite conclusion that the companies were part of the same UBG.[139] While relevant, the questionnaire has two limitations.

The first limitation is that the questionnaire is not organized based on the relationship test factors. For instance, the flow of value test looks to whether there is integration, centralized management, and economies of scale. Yet the questionnaire's six categories are: general, purchasing, sales of goods and services, human resources, finance and accounting, and shared facilities and operations. Also, there is no reference to the relationship test or the related factors on the questionnaire. It is open to interpretation and analysis as to which questions are relevant to the various parts of the relationship test.

The second, and the more significant limitation, is that the questionnaire appears to be an audit tool that provides the auditor a preliminary guide to explore the relationship between multiple companies. The questionnaire is comprised of 41 "yes/no" questions, however, except for two questions (number 25 and 33), none contain follow up questions to provide relevant details for a proper unitary analysis. For instance, question number 19 asks, "[d]id any entity administer benefit or pension plans for another entity?"[140] If the taxpayer answers "yes," there are no follow up questions as to how many different plans (retirement, dental, vision, health, etc.), how much did the respective plans cost, and what was the cost savings – if any – by administering the shared plans. All relevant questions for considering the UBG relationship tests. While a taxpayer could use the tool to make a UBG determination, since it knows all the necessary details about the companies to fill in the blanks, Respondent would have to conduct a significant audit to reach a meaningful conclusion about UBG. The Tribunal, also, could not reach a conclusion on UBG just from the four corners of the

[135] RAB 2018-12 at 6.
[136] Exhibit P-7 and Exhibit R-5; Tr. at 41-42, 48-50, 53-55, 210-214.
[137] Exhibit R-5.
[138] Tr. at 41-42.
[139] Tr. at 210-214
[140] Exhibit R-5 at 3.

questionnaire. In this case, Petitioner and Respondent extensively developed the details related to the ten questions that Petitioner answered "yes." As more than 200 pages of trial transcript attests, many follow up questions were necessary to supplement the details of Petitioner and Mouser's relationship.

The questionnaire is also unique in that questions to which a taxpayer answers "no" may be just as relevant to analyzing a unitary issue as the questions that a taxpayer answers "yes." A "no" answer may implicate duplication of resources (the antithesis of cost savings), independence, or some other relevant unitary relationship detail (depending on the question). As stated by the RAB, "[t]he relationship tests are subjective, and all factors present must be reviewed and weighed. Whether a unitary relationship exists will be based on the totality of the facts and circumstances."[141] Therefore, the "no" answered questions should be included in this analysis because they are relevant and bare some weight in considering the totality of the facts and circumstances.

It may be tempting to just compare the number of "yes" answers to the number of "no" answers to reach a conclusion on UBG. For instance, in this case, Petitioner only answered "yes" to 25% of the questions. However, this would be a weak analysis. First, there is no evidence that each of these questions should be weighted equally. Without the underlying details, a "yes" answer provides very little support for sound analysis. Second, these questions do not divulge information that is equally relevant to every relationship factor. For instance, one question may implicate contribution or dependence, but have little relevance for economies of scale.

Respondent did not proffer any evidence that any of the 26 questions that Petitioner answered "no" were untruthful or inaccurate. Respondent's witness McFarland testified that having separate inventory management systems ("no" to question number 33), separate human resources ("no" to questions 18, 20, 21, 23, and 24), and separate IT operations ("no" to question 36) does not necessarily preclude a finding of a UBG.[142] However, Respondent failed to address the implications of the additional remaining 19 "no" answers on the relationship test analyses. The questions to which Petitioner answered "no" are the following:

> General Category:
> No. 2 Did any entity guarantee, approve, or pledge assets for loans for another entity?
> No. 3. Did any entity establish goals or formulate policies for another entity?
> No. 4. Did any entity approve/sign contracts for another entity?
> No. 5. Did any entity participate in management decisions for another entity?
> No. 9. Did any entity receive minutes and/or reports of another entity?
> No.10. Did officers or directors of more than one entity meet in common committees?

[141] RAB 2018-12 at 15.
[142] Tr. at 217.

No.11. Did officers and/or directors of any entity control the amount and/or distribution of the dividends by another entity?

Purchasing Category:
No. 12. Did any entity adopt, select, enter into, or approve any major purchase contracts for another entity?
No. 13. Did any entity make purchases for another entity (e.g. raw materials, inventory, supplies, fixed assets, etc.)?
No. 14. Did any entity obtain discounts or other benefits from volume purchases with another entity?

Sales of Goods and Services Category:
No. 17. Did the sales and service personnel of any entity perform the same functions for another entity?

Human Resources Category:
No. 18. Did any entity administer personnel policies, procedures or training program for another entity?
No. 20. Did any entity approve promotions, salary increases, or bonuses for another entity?
No. 21. Did any entity share common hiring policies, pre-employment tests, or screening procedures with another entity?
No. 23. Did any entity share common labor unions or bargaining units with another entity?
No. 24. Did any entity transfer any employees to another entity?

Finance and Accounting Category:
No. 25. Did any entity advance money to another entity by direct loans or intercompany receivables? “Yes” was checked with “i/c rec” typed in below it. “No” was checked with “loans” written below it.
If so, were there written agreements regarding these loans or receivables? No.
No. 26. Did any entity prepare any accounting reports for another entity?
No. 27. Did the internal auditors of any entity perform the same function for another entity?
No. 29. Did any entity provide legal, finance, or accounting services for another entity?
No. 30. Did any entity pay dividends, interest, or royalties to another entity?
No. 32. Did any entity pay rents or other expenses to another entity?

Of these questions, number 23 is unique because there was no evidence or testimony that labor unions or bargaining units existed at either company. This is one question where the answer was “no,” but a “not applicable” may have been more appropriate. Unfortunately, the form does not provide a “not applicable” response. Since neither party provided any evidence regarding labor unions or bargaining units, the answer to this question is given no weight.

1. Flow of Value Test

The RAB provides a concise explanation of the flow of value test, based on United States Supreme Court case, *Container Corp. of America v Franchise Board*.[143]

> The United States Supreme Court described a unitary business as a functionally integrated enterprise whose parts are mutually interdependent such that there is a flow of value between them. There must exist "some sharing or exchange of value not capable of precise identification or measurement-beyond the mere flow of funds arising out of a passive investment. . . ." In determining whether a flow of value exists, a relevant question in the inquiry is whether **contributions to income** resulted from "functional integration," "centralization of management," **and** "economies of scale." No one fact determines whether functional integration, centralization of management or economies of scale exist. Rather, the statutory test requires that the totality of facts and circumstances surrounding the **business activities and operations be weighed and examined for cumulative effect**. [internal citations omitted][144]

a. Is there functional integration?

The RAB's explanation of functional integration is:

> Functional integration refers to transfers between, or pooling among, business activities that **significantly** affect the operations of the entities. This may include, but is not restricted to, the transfer or pooling of products or services, shared technical information, marketing information, purchasing, distribution systems and intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, or processes. There is no requirement that a specific type of functional integration exist [emphasis added].[145]

The RAB further advises:

> It is irrelevant that the various steps in the process are operated substantially independent of each other. When the component parts are closely connected to each other, the relationship is functionally integrated and inseparable. **When there is functional integration that renders a separation of the different operations unnecessary or impossible, the relationship test is satisfied.**[146] [emphasis added.]

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[143] *Container Corp of Am v Franchise Bd*, 463 US 159 at 178-179 (1983). See *Mobil Oil Corp v Comm'r of Taxes,* 445 US 425, 438 (1980).
[144] RAB 2018-12 at 6.
[145] RAB 2018-12 at 6.
[146] RAB 2018-12 at 7.

Petitioner asserts that, for the tax periods at issue, Petitioner's UBG and Mouser were not functionally integrated, as Mouser maintained autonomy over its general business strategy, operations, personnel, accounting, and financing.[147] It succinctly stated its argument:

> As previously noted, the two companies serve different customers - Petitioner provides components to large volume production users while Mouser sells its components in small quantities to product developers and engineers. Further, the two companies operate separate sales, distribution, and warehousing operations and locations. In doing so, the two companies utilized separate supply chain, accounting, human resources, and IT operations without sharing common employees or tangible personal property.[148]

Respondent asserts that there is functional integration based on intercompany sales, common marketing, and sharing of competitive intelligence.[149] First, Respondent asserts that there were significant intercompany sales based on the total amount of sales from TTI to Mouser exceeded $20 million annually. Respondent put this amount in context by highlighting Mr. Morton's testimony that TTI's total annual number of customers was approximately 20,000 and only 5–10 would have annual purchase amounts exceeding $20 million. In turn, Respondent points to Mouser's approximate $1.75 million annual "sales" to TTI. Again, placing this number in context by highlighting Mr. Smith's testimony that Mouser's total number of customers is annually around 800,000, but the number of customers that would make total annual purchases exceeding $1 million would only number in the hundreds. Respondent also asserts that there is no dispute that these intercompany transactions did not include a markup, even though Mr. Morton acknowledged that one would generally expect an independent distributor to include a markup on a product sale.[150] Respondent then concludes that it is reasonable to infer that these purchases resulted in cost savings, which is another factor that evidences functional integration. Last, Respondent points to Mr. Smith's concession that being able to secure products from TTI when it lacks a particular part in its current inventory that a customer's receive products faster and improves their satisfaction.

Petitioner counters Respondent's argument on intercompany sales as wrong. Respondent relies on the total volume of sales rather than the proportion of intercompany sales compared total sales.[151] The proportion of intercompany sales are very small when compared to the business activities of either Petitioner or Mouser.[152] Petitioner further points to the fact that the companies prefer to acquire inventory directly from component suppliers because it affords each company an opportunity to

[147] Petitioner's Brief at 13-14.
[148] Petitioner's Brief at 13-14.
[149] Respondent's Brief at 7-9.
[150] Petitioner's Brief at 14.
[151] Petitioner's Brief at 13-14.
[152] Petitioner's Brief at 13-14.

be viewed as an important customer. Petitioner also points to the companies' policies to only transfer inventory to each other if they have sufficient inventory to meet the demand of their own customers.[153]

Intercompany Sales

Petitioner is a "specialty distributor of passive, interconnect, electromechanical, and discrete components."[154] Mouser is a "global catalog and online semiconductor and electronic component distributor."[155] Both companies have the same NAICS code of 423690 and therefore part of the same wholesale electronic parts industry.

The Tribunal finds that during the years at issue, Petitioner and Mouser participated in the same industry and market by having products and customers in common. Petitioner distinguished its "customers" from Mouser's. However, while their respective "customers" may have had different purposes for their purchases, Petitioner cannot escape the fact that in some instances, Mouser and TTI "customers" worked for the same company which would have paid for both orders and would have retained ownership of all purchased products – meaning that TTI and Mouser could have the same company as a paying customer for its respective electronic components.

Whether the amount of intercompany sales rises to the level of "significance" requires more than Respondent's reliance on total sales – which paints a skewed picture of the facts and circumstances. The parties stipulated that Petitioner's sales to Mouser was between $22 million and $29 million for the years at issue.[156] But Mr. Morton provided credible and uncontroverted testimony that these sales only represented 1.0% to 1.5% of TTI's revenues for the tax years in question.[157] This is confirmed by TTI's tax returns— which report revenues of approximately $2.0 billion.[158] Respondent's argument does not fare any better in analyzing Mouser's sales to TTI. Mouser's "sales" to TTI was between $1.7 million and $1.9 million for the tax years at issue.[159] Whereas Mouser's global sales in 2016 was approximately $1 billion and domestic sales was approximately $500 million.[160] Mathematically, sales to TTI accounted for approximately 1% of its global sales. This is hardly significant for either company.

Even more telling is Mr. Smith's testimony as to why these sales cannot be reported as income:

> Q Thank you. And on that $1.7 to $1.9 million of sales for the tax periods at issue, approximately what percentage of Mouser's

[153] Petitioner's Brief at 14.
[154] Exhibit R14.
[155] Exhibit R14.
[156] SOF, at 20.
[157] Tr. at 98-99.
[158] Exhibit R-3.
[159] SOF, at 21.
[160] Tr. 152-153.

> income was generated from Mouser's sales to TTI in those given years?
> A Zero.
> Q Is it correct to say that those sales were – those sales were performed at cost?
> A Yes.
> Q Okay. And can you explain to me why Mouser would sell at cost to TTI?
> A Yeah, it's very simple. Because we are not allowed to report intercompany sales of profit between companies. It would be a violation of the general accepted accounting principles, as well as SEC regulations. So we'd be committing fraud if we were to report profit from sales to TTI or vice versa. So not wanting to report fraud, we certainly wouldn't do that.[161]

Respondent's argument that it is "reasonable" to "infer" that there is a cost savings to the "buyer" since there is no markup fails simple logic. First, both companies acquire their inventory from manufacturers and suppliers, which Mr. Morton testified may include a markup to a sale.[162] TTI sources their products from approximately 60 suppliers while Mouser sources there products from approximately 300 suppliers.[163] So, for example, if Mouser gets product A from its supplier for $1 (which includes a markup of 20 cents) and then Mouser transfers that product A to Petitioner for the $1 it cost Mouser (with no additional markup), then TTI has born the same 20 cent markup that Mouser paid and did not receive any cost savings. Further, such a transfer would cost Mouser profits it would have gained selling product A to their other customers at retail.

Respondent then points to the number of customers that each company had that could "buy" at that volume. Respondent pointed to Mr. Morton's testimony that TTI had approximately 20,000 customers and that only 5-10 would have annual purchases exceeding $20 million. Again, in the context of gross revenue of $2 billion, having *one* "customer" to sell $20 million of product at cost is miniscule compared to the other 19,999 customers purchasing approximately $1.98 billion in products. The same is true looking at Mouser through the same lens. Sales to TTI may have amounted to less than $2 million a year. Even if there were only a few "hundred" customers that would exceed $1 million[164] -- there were still well over 799,000 other customers generating revenue. Respondent's arguments are a far cry from situations like *Exxon* or *Mobil* where one company supplies nearly all the output or sales to another related company.

Last, Respondent's intracompany transactions theory fails based on credible testimony from Mr. Morton and Mr. Smith that TTI and Mouser avoid intercompany transfers as a matter of policy. Mr. Morton testified that if TTI was short on inventory, a request would

[161] Tr. 153-154.
[162] Tr. 103.
[163] Tr. 88-89.
[164] Tr. 185.

be sent to Mouser and be subject to Mouser approval.[165] He testified that there are "relatively few lines" that the two companies share, however, if Mouser is short on inventory, Mouser can request to acquire the item(s) from TTI's inventory.[166] Mouser does not have any priority over TTI customers in these transactions, which are by approval only.[167] The TTI product management team may grant the request if it does not compromise TTI customer service.[168] TTI prioritizes buying directly from component manufacturers stating:

> We are authorized by a manufacturer as an authorized distributor. We also want to make certain that TTI is viewed by that component manufacturer as a significant partner; and the greater the purchasing, then the greater influence we have or importance to the component manufacturer."[169]

Last, Mr. Morton testified that if Mouser did not have the inventory, then TTI would inquire of its competitors.[170]

Respondent points to Mr. Smith's testimony that getting products from TTI is faster than from other vendors is a benefit.[171] However, Mr. Smith testified that it is only faster if a particular part is not available from the manufacturer – as opposed to a situation where one company uses the other as an extended warehouse of parts. Respondent also ignores Mr. Smith's credible and uncontroverted testimony that acquiring products from distributors was the preferred channel because of discounts and other benefits.[172]

Respondent's inferences ignore the credible and uncontroverted testimony by Petitioner's witnesses that these purchases made up a fraction of each organizations' total sales, that the transactions were only initiated if they could not get the parts from their distributors, that the request for the parts were subject to approval and may result in missing out in distributor discounts and other benefits. Such details support the opposite inference that buying from the other company was not an advantage.

Respondent next argues that there are other factors supporting functional integration including, namely, (1) TTI and Mouser advertise as a "family of companies"[173] and (2) the two companies share competitive intelligence[174] as exemplified by RAB.[175] While the RAB provides a list of six different factors, the vast majority are not present in this case.

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[165] Tr. at 99-101.
[166] Tr. at 98.
[167] Tr. at 99.
[168] Tr. at 98.
[169] Tr. at 101.
[170] Tr. at 102.
[171] Tr. 183-184.
[172] Tr. 155.
[173] Tr. at 60.
[174] Tr. at 192.
[175] RAB 2018-12 at 10.

Loans and Intercompany Receivables

A related topics to the intercompany sales are intercompany loans and receivables. Although not addressed by either party on brief, Petitioner answered "no" to question number 25 that there were no direct loans between the company. However, it answered "yes" to the existence of intercompany receivables. At the hearing, Mr. Jones explained intercompany receivables as:

> Intercompany is a -- is a matter of convenience rather than settling in cash. Oftentimes subsidiaries will just note it in the accounting records that, you owe me for this, but we're not going to settle in cash, because later down the road I'm going to do something for you; you'll owe me for that. So, you just keep a running -- very, very common. Subsidiaries keep a running intercompany.[176]

There was no formal decision or agreement on handling these transactions as such, "it's just done."[177] It is reasonable to conclude that these accounting entries are normal for interactions between a parent company and its subsidiary. Given that the intercompany receivables are merely a recording of intercompany transactions (including intercompany sales discussed above), they should not be considered separately from the underlying transactions for purposes of the unitary business group tests.

Common Marketing

The fifth factor in the list that evidence of "common marketing that results in mutual advantage."[178] Considering all the evidence, it is difficult to conclude that there was a mutual advantage when considering how the respective companies made sales and treated their customers.

First, there is an issue of timing with some of the evidence. Respondent's reliance on Mouser's Quality manual,[179] which was dated April 9, 2021, and the pages from Mouser's website that contained a timeline that included the year 2018,[180] are clearly documents created well after the tax years at issue and are given no weight.

Second, Mouser was included in the description of "the TTI family of companies."[181] On its face, this would sound like there is some benefit to be gained for the customer – which would theoretically result in an advantage to the companies. However, the language does not appear to give either company an actual advantage given the companies' separate pricing.

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[176] Tr. at 70.
[177] *Id.*
[178] RAB 2018-12 at 10.
[179] Exhibit R-13.
[180] Exhibit R-15.
[181] Tr. at 60.

Next, Mr. Morton testified the two companies' product pricing are different. TTI sells large volumes of product and gives cash discounts and rebates.[182] Mouser does not provide such discounts or rebates to its customers.[183] Mouser's pricing is "typically three to ten times that of TTI." [184] Mouser did not want customers expecting the same terms, conditions, and discounts that customers received from TTI.[185] Mr. Morton further testified that when customers request discounts from Mouser, they are told that TTI is a separate operating company.[186] This means that the customer does not get any advantage from Mouser being related to TTI. It is difficult to conclude that the companies benefited from a common marketing scheme if their customers did not receive any advantage, discount, or benefit from the companies' relationship.

Last, mentioning and describing each other on a website hardly rises to the level of common marketing that would result in significant cost savings, significant improvement of income, or mutual advantage. Ultimately, no evidence was proffered that the "common marketing" of company descriptions on their respective websites resulted in a mutual advantage. In the context of the facts and circumstances, the minimal evidence of common marketing and limited testimony on sharing competitive intelligence are feathers that cannot outweigh the bricks proffered by Petitioner on separate operations and insignificant intercompany sales.

Competitive Intelligence

While Mr. Smith admitted that the two companies shared competitive intelligence,[187] no evidence was provided as to the amount of this intelligence, its form, frequency, or its financial impact on either company for the tax years at issue. Respondent merely established that it occurred. Such vague details are not enough to give it any weight that it contributed to functional integration for the years in question.

No Functional Integration

The Tribunal finds that considering the facts and circumstances and RAB guidance, there is no functional integration between the two companies. Transfer of products between the companies do not significantly affect the operations of the entities. These transfers do not generate income and as a matter of policy is only done as a last resort when they cannot get the products from their manufacturer. There is little shared in marketing information that created any advantage. The companies have separate purchasing, shared facilities, operations, and distribution systems. There was also no evidence of other shared intangibles such as patents, trademarks, service marks, copyrights, trade secrets, know-how, formulas, or processes.

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[182] Tr. at 94.
[183] Tr. at 94.
[184] Tr. at 95.
[185] Tr. at 94.
[186] Tr. at 94.
[187] Tr. at 192-195.

b. Is there centralized management?

Respondent's RAB 2018-12 provides an explanation of "centralized management" as:

> Centralized management entails involvement and oversight by management in the operational decisions of the entities. Directors, officers and other management personnel making decisions that affect the business activities of the entities and that operate to benefit the operations of the group of entities as a whole indicate a centralized management. Centralized management may flow down from parent to subsidiary, up from subsidiary to parent, from one subsidiary to another, or in any combination. The mere decentralization of day-to-day management responsibility and accountability will not preclude a finding that a centralized management exists. **When an integrated executive force appears to exist that has control over major policy decisions**, this factor is evidence that centralized management exists. … The focus is on the **role of management of an entity or entities in the affairs of its affiliates, whether the management process is grounded in its own operational expertise and whether the process is applied to the other entities** (emphasis added).[188]

On Brief, Petitioner asserts that, for the tax periods at issue, Petitioner and Mouser lacked centralization of management, as Mouser operated as a distinct business enterprise subject only to occasional oversight by Petitioner commensurate with that which any parent would have given its investment in a subsidiary.[189] Mr. Smith, Mouser CEO since 2004, testified that he was responsible for strategic planning and daily operations of Mouser, which he has 49 years of experience working Mouser. He testified that he is "solely responsible for the entire operation [of Mouser]"[190] Petitioner further argues that "[w]hile there were two common officers, the record shows that the role of those officers included only oversight responsibilities such as approval of executive compensation and possibly, although direct witness testimony contradicts it, approval of capital expenditures which are consistent with occasional oversight that any parent gives to an investment in any subsidiary."[191]

On Brief, Respondent counters that there is evidence of common officers and decision making by one entity on behalf of another.[192] Respondent points to: (1) Paul Andrews, who served as Chairman and CEO of both companies, and Nick Kypreos, who served as Secretary and Treasurer of both companies; (2) TTI had authority to make decisions on executive compensation and bonuses for Mouser;[193] (3) Mouser is subject to

[188] RAB 2018-12 at 7.
[189] Petitioner's Brief at 14-15.
[190] Tr. at 146-147.
[191] Petitioner's Brief at 14-15.
[192] Respondent's Brief at 9.
[193] Tr. at 106, 109, and 169.

Petitioner's Global Code of Conduct and Ethics Policy;[194] and (4) Mouser "sometimes" held shareholder meetings at TTI corporate offices.[195]

Last, Respondent also pointed to the requirement that Mouser obtain approval from TTI before making capital expenditures exceeding $1 million.[196] Mr. Smith testified that direct testimony by Glenn Smith indicates that no such policy existed for the tax periods at issue. On cross examination of Mr. Smith, Respondent points to a conflict between Mr. Smith's trial testimony and a response to an interrogatory that was signed by Mr. Jones.[197] The interrogatory in question, with its response, states:

> Interrogatory 18(c): "Please identify what oversight Petitioner had over Mouser during the years 2013, 2014, 2015, and 2016."
>
> Response: "Petitioner approved any proposed capital expenditures of Mouser more than $1,000,000 for 2013, 2014, 2015, and 2016. Otherwise, Petitioner did not provide Mouser any significant managerial oversight."

It is curious that Respondent chose to "impeach" Mr. Morton on these responses going so far as asking Mr. Morton to verify Mr. Jones' signature.[198] However, Mr. Jones was available and testified earlier that day at the hearing about the discovery responses and his own signature, although counsel did not ask him about capital expenditures.[199] In addition, Mr. Morton provided credible testimony that the policy for TTI to give approval for capital expenditures of more than $1 million was put "in place" around 2021 upon the death of Mr. Andrews, the founder and CEO, at the time.[200] He further testified that the process of requesting approval was usually an informal verbal request by Mr. Smith.[201] There was no testimony as to the form that authorizations took. The Minutes of Annual Meetings of the Shareholder for 2013-2016 did not contain any authorizations for capital expenditures reported as "significant transactions" in any of the meeting minutes.[202] The Tribunal is persuaded by the testimony of Mr. Smith and Mr. Morton that TTI did not have a formal authorization process for capital expenditures exceeding $1 million during the tax years at issue.

Two cases that are instructive on the analysis of centralized management are *F.W. Woolworth v Taxation and Revenue Dep't* and *Exxon Corp v. Wisconsin Dep't of Revenue*.[203] In *Exxon*, the U.S. Supreme Court found centralized management where:

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[194] SOF at 22.
[195] SOF at 23.
[196] Exhibit R6 at 21; Tr. at 160.
[197] Exhibit R6 at 46.
[198] Tr. at 134-135.
[199] Tr. at 57.
[200] Tr. at 90-91.
[201] Tr. at 91-92.
[202] Exhibits R7, R8, R9, and R10.
[203] *Woolworth Co. v. Taxation Dept*., 458 U.S. 354, 369 (1982); *Exxon Corp v Wisconsin Dep't of Revenue*, 447 U.S. 207, 211 (1980).

> [L]ong-range planning for the company, maximization of overall company operations, development of financial policy and procedures, financing of corporate activities, maintenance of the accounting system, legal advice, public relations, labor relations, purchase and sale of raw crude oil and raw materials, and coordination between the refining and other operating functions "so as to obtain an optimum short range operating program."[204]

The *Woolworth* Court found the following facts in analyzing centralized management:

> **In this case the parent company's operations are not interrelated with those of its subsidiaries so that one's "stable" operation is important to the other's "full utilization" of capacity.** The Woolworth parent did not provide "many essential corporate services" for the subsidiaries, and there was no "centralized purchasing office ... whose obvious purpose was to increase overall corporate profits through bulk purchases and efficient allocation of supplies among retailers." And it was not the case that "sales were facilitated through the use of a uniform credit card system, uniform packaging, brand names, and promotional displays, all run from the national headquarters" [emphasis added] [internal citations omitted].[205]

The *Woolworth* Court held that there was no centralized management as compared to the facts of *Exxon*:

> Except for the type of occasional oversight—with respect to *capital structure*, major debt, and dividends—that any parent gives to an investment in a subsidiary, there is little or no integration of the business activities or centralization of the management of these five corporations."[206]

By comparison, the facts in this case are far more like *Woolworth* than *Exxon*. One distinction in facts from *Woolworth* is that Woolworth did not review the subsidiaries' tax returns or consult with them about decisions affecting taxes,[207] whereas here, Petitioner prepared the tax returns for Mouser.[208] However, on the whole, the evidence does not demonstrate that TTI and Mouser operations are so interrelated that "one's stable operation is important to the other's 'full utilization' of capacity."

Respondent's collection of five discrete factors is insufficient to rise to the level of centralized management. Mouser "sometimes" had annual meetings at TTI's headquarters), however, this cannot outweigh the heft of Petitioner's evidence regarding the independence of operations and management and are "not interrelated with those of

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[204] *Woolworth, supra* at 269 citing Exxon, 447 U.S., at 211,
[205] *Woolworth*, at 370.
[206] *Woolworth, supra* at 269.
[207] *Woolworth*, at 367-368.
[208] SOF at ¶ 18; Respondent's Brief at 10-11.

its subsidiaries so that one's "stable" operation is important to the other's 'full utilization' of capacity."[209]

Last, the dozens of critical business functions that were duplicated as attested to in the Unitary Questionnaire[210] in human resources, finance & accounting, purchasing and shared facilities and operations support the conclusion that the two companies are nearly devoid of centralized management.

c. Are there economies of scale?

The RAB interprets "economies of scale" as: "a relationship between business activities that results in a *significant* decrease in the cost of operations or administrative functions for the entities due to an increase in operational size." (emphasis added).[211]

Petitioner asserts that, for the tax periods at issue, Petitioner's UBG and Mouser did not achieve, or otherwise benefit from, economies of scale given Petitioner and Mouser's disparate business models. On brief, Petitioner points to the following separate functions: (1) separate facilities, headquarter locations, sales offices, warehouses, and distribution facilities; (2) separate bank accounts, inventory management systems, no common tangible property; and (3) separate human resource, supply chain, and IT operations.[212] Petitioner argues:

> This is clear evidence that these companies choose to duplicate costs rather than consolidate their business operations to generate economies of scale. To that end, the totality of the facts supports Petitioner's contention that economies of scale did not exist between the two entities for the tax periods at issue.[213]

On brief, Respondent summarized the key factors, all stipulated to by Petitioner, that it argues creates an economy of scale. First, Mouser employees were covered by the same health insurance plan, worker's compensation insurance program, and 401k plan.[214] Second, TTI and Mouser were covered under a single business insurance policy.[215] However, Respondent ignored the stipulated fact that the parties paid the costs associated with their respective coverage.[216] Third, TTI prepared Mouser's federal and state tax filings.[217] Respondent, however, acknowledged that Mouser was required to make a "shared service" fee payment to TTI annually, which was calculated by estimating the allocation of "corporate support" provided by TTI to Mouser.[218]

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[209] *Woolworth*, at 370.
[210] Exhibit R-5.
[211] RAB 2018-12 at 7.
[212] Petitioner's Brief at 15.
[213] Petitioner's Brief at 15.
[214] SOF at ¶ 14.
[215] SOF at ¶ 16.
[216] SOF at ¶ 17.
[217] SOF at ¶ 19; Respondent's Brief at 10-11.
[218] SOF at ¶ 19.

Petitioner counters with uncontroverted testimony by Mr. Morton, who testified that there were no cost savings achieved by the shared benefits. While he later acknowledged that he had conceded there would be some savings during his discovery deposition, there was no specific amount discussed to determine if these savings were significant under the circumstances.[219]

Mr. Jones acknowledged that TTI calculates the management fee and has the authority to require Mouser to pay it, whether they want to or not.[220] However, it was not shown if this was a reimbursement to TTI for an expense it would not otherwise have but for Mouser. Nor was there any testimony if this fee amounted to a value for Mouser in receiving benefits that would have possibly cost it more money.

Mr. Morton also testified about the costs or cost savings experienced by the companies because of their relationship.[221] While the two companies have a common 401(k) retirement savings plan, it does not result in a cost savings because the more people who participate in the plan demands additional staffing to administer the plan.[222] He also testified that the common worker's compensation insurance plan does not result in any cost savings.[223] Mr. Morton testified that there were no cost savings with the common employee health insurance plan.[224] He testified that the common business insurance policy did not create any cost savings because it is for inventory and property, which creates additional costs for TTI because Mouser has larger inventory that TTI.[225]

Again, just as in the last factor, the dozens of critical business functions that were duplicated as attested to in the Unitary Questionnaire (as "no" answers)[226] in human resources, finance & accounting, purchasing and shared facilities and operations support the conclusion that the two companies are nearly devoid of economy of scale. The companies' operations and a few shared benefits do not rise to the level of "significant decrease in the costs of operation or administrative functions" described by the RAB guidance. Therefore, the Tribunal finds that there are no economies of scale.

d. Flow of Value test is not satisfied

Considering the facts and circumstances and guidance from the RAB, the Tribunal finds that Petitioner has met its burden of proof and that the flow of value test has not been satisfied. There is insignificant functional integration, centralized management, and economy of scale.

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[219] Tr. at 191.
[220] Tr. at 66–67.
[221] Tr. at 155-157.
[222] Tr. at 96.
[223] Tr. at 96-97.
[224] Tr. at 97.
[225] Tr. at 97.
[226] Exhibit R-5.

2. Alternate “contribution/dependency” relationship test

Under MCL 206.611(6), the alternate “contribution/dependency” relationship test is met if the potential UBG members have business activities or operations that are characterized as “integrated with, are dependent upon, or contribute to each other.”[227] On brief, Respondent focuses on the word “or” in the statutory language to argue that the three characterizations are distinct and independent, so that a company could lack one of the factors yet satisfy the relationship test if they can be characterized as one or more of the other two factors.[228] This argument is in line with a plain reading of the statutory language. The RAB further explains:

> [T]his alternate relationship test is also commonly satisfied when one entity contributes to the financing of operations of another or when intercompany transactions exist, including operational financing. Intercompany financing and loan guarantees may evidence dependency or contribution. Intercompany sales are indicative of market dependency and the contribution of a market source by one entity to another. Contribution or dependency can also exist through executive policymaking, personnel training, research and other functions.[229]

Therefore, an analysis of the facts and circumstances surrounding Mouser and Petitioner’s business activities and operations to determine whether the companies’ relationship satisfies one or more of these three characterizations is necessary.

a. Are the companies integrated with each other?

The parties disagree on the quantification of integration in this part of the relationship test. Petitioner argues that this test fails because the two companies could easily be separated without harm to either company.[230] Respondent counters that there is nothing in the statutory language that demands that companies be so intwined that they could not function if they were separated.[231] The RAB provides several examples with varying amounts of integration,[232] suggesting that integration is a continuum that ranges from no integration at one end to complete integration at the other end. The RAB states: “[w]hen there is integration that renders a separation of the different operations unnecessary or impossible, the relationship test is satisfied.”[233] This is a reasonable conclusion about instances when companies’ have complete integration at the one end of the continuum. The *Exxon* and *Mobil* cases would be a good example of this level of integration. However, even in cases where there is no integration (and the companies could be easily separated), there could be enough dependency or contribution that satisfy the relationship test. Therefore, Petitioner’s argument that the relationship test necessarily

[227] MCL 206.611(6).
[228] Respondent’s Brief at 13.
[229] RAB 2018-12 at 11.
[230] Petitioner’s Brief, at 15.
[231] Respondent’s Brief at 13.
[232] RAB 2018-12 at 11-15.
[233] RAB 2018-12 at 7.

fails when the two companies can be easily separated without harm (insignificant integration) lacks merit.

With that said, factors involving the relationship of the companies can overlap with the previous flow of value analysis.[234] There is nothing in the statute, caselaw, or RAB that indicates the integration analysis for purposes of the flow of value test is any different than under the alternate relationship test. This case represents the end of the continuum where there is little or no integration as discussed extensively above in the flow of value analysis. Considering the facts and circumstances and guidance from the RAB, the Tribunal finds that there is insignificant integration between the companies for the tax years at issue for this test either.

b. Are the companies dependent upon each other?

Petitioner argues that "Respondent points to every exception that it can identify where some limited interaction occurs, none of which have been shown to represent any significant or material evidence of a unitary relationship."[235] Ironically, Respondent, who argued that the relationship test could be satisfied by satisfying one of the three factors, fails to specifically articulate how dependency is established between the two entities. It appears from its brief that most of the argument involves the contribution factor. "Dependent" is not defined in the statute or by the RAB. While none of the examples in the RAB are like the instant case, Example 6 provides some context for the dependency factor, stating:

> The substantial flow of products between the entities also demonstrates a dependency upon each other for mutual economic well-being. The subsidiaries provide the parent with a steady source of inventory and, in return, are assured of a market for their products. These factors also indicate that an integrated enterprise exists.[236]

The flow of products and intracompany sales was discussed above. If this were the only definition, TTI and Mouser would not be dependent on each other. The RAB and caselaw instead look to the role of one entity in making major policy decisions for another entity or the level of independence that one entity has in operations and making major policy or financial decisions.

Common definitions of "dependent" are defined by the dictionary as: (1) "a person who relies on another for support" and (2) "subordinate."[237]

Analysis of the dependent relationship based on the dictionary's second definition of "subordinate" must be considered carefully. As far as corporate ownership is concerned, a wholly owned subsidiary like Mouser is subordinate to its owner parent company.

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[234] RAB 2018-12 at 11.
[235] Petitioner's Brief at 16.
[236] RAB 2018-12 at 12.
[237] *Merriam-Webster's Dictionary*, 11th ed., at 334.

However, to find that such a relationship alone satisfies the dependency factor here would completely negate the schema of determining a UBG in the first place. As Petitioner points out the holding by the Supreme Court in *Asarco Inc v Idaho State Tax Comm'n.*[238]

> The business of a corporation requires that it earn money to continue operations and to provide a return on its invested capital. Consequently all of its operations, including any investment made, in some sense can be said to be "for purposes related to or contributing to the [corporation's] business." When pressed to its logical limit, this conception of the "unitary business" limitation becomes no limitation at all.

Last, the dozens of critical business functions that were duplicated as attested to in the Unitary Questionnaire[239] in human resources, finance & accounting, purchasing and shared facilities and operations support the conclusion that the two companies are nearly devoid of dependency. Considering the facts and circumstances and guidance from the RAB, the Tribunal finds that there is no dependency between the two companies for the tax years at issue.

c. Do the companies contribute to each other?

The question of contribution is described by the RAB as "whether the activity of one entity contributes to the activity or operations of another entity."[240] While the RAB provides seven examples, none of them have any similarity with the facts in this case.

On brief, Petitioner argues that Petitioner and Mouser have completely separated business model and operate separately.[241] Petitioner again points to the "distinct nature of the two businesses," with separate headquarters, sales, warehouses, and distribution.[242]

On brief, Respondent points to several factors. First, there are significant intercompany transactions, which demonstrate a market for both entities.[243] The important question here is what constitutes "significant" given these companies' size and the nature of the transactions.

Respondent states in its brief, "Mouser's goal is to provide its customers the ability to fulfill their small or large custom parts orders from a single supplier and to provide customers with quick delivery of their orders." [244] However, Mr. Morton's uncontroverted and credible testimony established that when either company is short on inventory, they

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[238] *Asarco Inc v Idaho State Tax Comm'n*, 458 U.S. 307, 326 (1982).
[239] Exhibit R-5.
[240] RAB 2018-12 at 7-8.
[241] Petitioner's Brief at 16.
[242] *Id.*
[243] Respondent's Brief at 11.
[244] Respondent's Brief at 12.

must use a formal request and approval process for inventory from the other company.[245] He also testified that there is an important business purpose for this formal approval process and that TTI prioritizes buying directly from component manufacturers to preserve their relationship with their manufacturers.[246] Mr. Morton also testified that if Mouser did not have the inventory, then TTI would inquire of its competitors.[247]

Respondent again tries to rely on intercompany transactions to demonstrate contribution with respect to cost savings borne by the other company.[248] The argument is lacking given Respondent's illogical and unsupported conclusion that it generates cost savings as a benefit. As discussed above, the intercompany transactions were not persuasive to prove integration in the flow of value test and they are not persuasive to prove dependency or contribution here either.

Next, Respondent relies on an internal company memo from the late Paul Andrews that was sent to TTI employees in 2000 about its acquisition of Mouser.[249] However, there is a critical issue with this evidence – timing. As the RAB states:

> The acquired or newly formed entity must still meet the control test and either of the two relationship tests to be included in the CIT UBG. **There is no specific time requirement that dictates when a person becomes a member of a UBG.** Whenever both the control test and one of the two relationship tests are met, that person must file as a member of the UBG, and **it remains a member of that group so long as the control test and one of the two relationship tests continue to be met**. [emphasis added][250]

This means that the companies' status as a UBG is not automatic, and even when established, can change over time depending on whether the control and relationship tests are met at any given time. While the details from the 2000 memo may have been evidence of whether they were part of a UBG in 2000, Respondent failed to adequately explain how the memo is relevant over a decade later for tax years 2013-2016. Respondent tried to rehabilitate this weakness in the cross-examination of Mr. Jones, who testified that there has not been any major changes in the relationship and operations between TTI and Mouser since its 2000 acquisition.[251] However, when the nature of the relationship and operations is closely examined, this testimony only strengthens the idea that the two companies may not have been a part of the same UBG from the very beginning. The 2000 memo is given no weight.

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[245] Tr. at 99-101.
[246] Tr. at 101.
[247] Tr. at 102.
[248] Respondent's Brief at 12.
[249] Exhibit P-6; Respondent's Brief at 12.
[250] RAB 2018-12 at 9.
[251] Tr. at 58-59.

Last, Respondent again argues that TTI provides financial resources to Mouser including approval of significant capital expenditures and providing working capital. Respondent points to Mr. Morton's testimony that decisions regarding employee benefits for both companies are ultimately decided by TTI's CEO, even though Mouser's executives may weigh in. However, these arguments were dispensed above and do not support a finding of contribution in the relationship test.

Considering the facts and circumstances and guidance from the RAB, the Tribunal finds that there is insignificant contribution between the two companies for the tax years at issue.

d. The "contribution/dependency" relationship test is not satisfied.

Considering the facts and circumstances, evidence, briefs, and guidance from the RAB, the Tribunal finds that Petitioner has met its burden of proof and further finds that there was no UBG based on the contribution/dependency relationship test.

JUDGMENT

IT IS ORDERED that Assessment Numbers VA5HP7L, VA5HP7M, VA5HP7N, VA5HR3O, and VA5HR3P are CANCELED.

IT IS FURTHER ORDERED that Respondent's Motion for Directed Verdict is DENIED.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties as finally shown in the Summary of Judgment section of this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment.

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

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

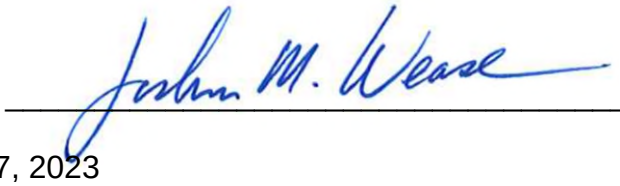
APPEAL RIGHTS

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 or disabled veterans 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.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By 

Date Entered by Tribunal: October 17, 2023

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