



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

MARLON I. BROWN, DPA
DIRECTOR

Stone Depot Landscape Supplies LLC,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 23-003379

Michigan Department of Treasury,
Respondent.

Presiding Judge
Michael R. Bannasch

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(4)

ORDER DENYING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION
UNDER MCR 2.116(C)(10)

FINAL OPINION AND JUDGMENT

INTRODUCTION

On June 21, 2024, Respondent filed a motion requesting the Tribunal enter summary judgment in its favor in this case under MCR 2.116(C)(4) or MCR 2.116(C)(10). Respondent contends that the Tribunal lacks jurisdiction because Petitioner's appeal was untimely¹ or that, even if the Tribunal has jurisdiction, there are no genuine issues of material fact and Respondent is entitled to judgment as a matter of law that it properly applied the statute of limitations of MCL 205.62 to partially deny Petitioner's claim for refund of sales tax paid in error.²

On July 18, 2024, Petitioner filed a response to Respondent's motion, claiming Respondent is "misrepresenting facts and ignoring the exhibits and affidavits provided"³ by Petitioner and that even though "there are glaring question [sic] of fact,"⁴ it "requests that this Tribunal decide this case on the briefs and documents provided without a formal hearing on the matter."⁵

The Tribunal has reviewed the motion, the response, and the evidence submitted and finds that granting Respondent's Motion for Summary Disposition under MCR 2.116(C)(4) is warranted at this time. This case before the Tribunal is dismissed to allow Petitioner's requested informal conference with Respondent, currently held in abeyance, to proceed for a determination of the merits of Petitioner's position.

¹ Respondent's Brief, at 7.

² *Id.* at 10.

³ Petitioner's Response, at 2.

⁴ *Id.* at 2.

⁵ *Id.* at 3.

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(4)

In support of its motion under MCR 2.116(C)(4), Respondent contends that Petitioner's appeal regarding the statute of limitations applied by Respondent to Petitioner's sales tax refund claim should be dismissed as untimely because its petition was filed on August 24, 2023, while Respondent's decision that Petitioner is appealing was issued more than 60 days prior on May 18, 2023.⁶ Respondent says it appears Petitioner is trying to circumvent this jurisdictional deficiency by filing its appeal as if it pertains to sales tax audit assessments issued on July 28, 2023, when, in fact, Petitioner's grievance is not with its sales tax liability as imposed by these assessments.⁷

RESPONDENT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

In support of its motion under MCR 2.116(C)(10), Respondent contends that sales tax refund claims made under MCL 205.62(11) are subject to a strict four-year statutory period. While Petitioner argues that the tolling provision of MCL 205.27a(3)(c), regarding a taxpayer subject to an audit, applies to effectively extend the deadline for requesting sales tax refunds, Respondent contends that it does not apply because MCL 205.27a expresses no intention of modifying the statutory period in MCL 205.62(11)(a), which is a more specific and self-contained statutory provision.⁸ Further, whereas the statute of limitation provisions of MCL 205.27a apply to claims of refunds due to an overpayment of tax to Respondent by a taxpayer, Petitioner is not a taxpayer in regard to sales tax paid by a purchaser to a seller in error. Therefore, MCL 205.27a does not modify the four-year statutory period of MCL 205.62(11) that applies to refund claims made by a purchaser for sales tax paid to a seller in error.⁹

In support of its motions, Respondent submitted the following exhibits:

1. Affidavit of Jeannine Kenney, sales tax auditor, dated June 18, 2024, with exhibits:
 - a. Audit Report of Findings – Sales Tax Audit.
 - b. Audit Workpapers – Sales Tax Audit.
2. Affidavit of David Bowen, reviewer of sales tax refund claim, dated June 12, 2024, with exhibits:
 - a. Copy of sales tax refund claim submitted to Mr. Bowen by Petitioner on April 8, 2022.
 - b. Email from Ed Kisscorni to Mr. Bowen regarding status of refund claim, dated June 29, 2022.
 - c. Letter from Mr. Bowen to Mr. Kisscorni regarding status of refund claim, dated November 10, 2022.

⁶ Respondent's Brief, at 7.

⁷ *Id.*

⁸ *Id.* at 12.

⁹ *Id.* at 15.

- d. Approved sales tax refund claim workpaper.
 - e. Letter from Mr. Bowen to Mr. Kisscorni indicating decision regarding refund claim, dated May 18, 2023.
 - f. Copy of Form 5713 (Request for Hearing/Informal Conference) and attachments filed by Petitioner on July 6, 2023.
 - g. Acknowledgement of Request for Informal Conference, dated August 4, 2023.
 - h. Notice of Abeyance, dated November 27, 2023.
3. Affidavit of Trisha Berry, manager of post-audit appeals, dated June 11, 2024, with exhibits:
- a. Audit Report of Findings – Sales Tax Audit.
 - b. Informal Conference Recommendation regarding sales tax audit.
 - c. Decision and Order of Determination regarding sales tax audit, dated June 24, 2022.
 - d. Audit Workpapers – Sales Tax Audit.
 - e. Reconciliation of sales tax audit assessments after application of approved refund claim.

PETITIONER'S CONTENTIONS

In support of its response, Petitioner presents a Statement of Facts primarily recapping the dates of actions in 2023 pertinent to the sales tax refund claim and the sales tax audit. Petitioner also contends in the Statement of Facts that if a Tribunal judge were to review its informal conference hearing request and its petition of appeal to the Tribunal, then a decision could be made without a hearing.¹⁰ Petitioner then presents a list of Questions of Fact To Be Decided, which fall into four categories. First, Questions of Fact #9, 12, and 16 contend the auditor, Jeannine Kenney, improperly did not review documentation regarding sales tax paid to vendors in error during her sales tax audit.¹¹ Second, Questions of Fact #10 and 11 contend the refund claim reviewer, David Bowen, improperly denied large amounts of refunds.¹² Third, Questions of Fact #13, 14, 15, and 16 contend Petitioner has made attempts through affidavits and communications with Respondent to resolve this matter without a hearing.¹³ Fourth, Questions of Fact #6, 7, 8, and 10 contend Respondent's interpretations of law are incorrect and its Motions for Summary Disposition should not be granted.¹⁴ Finally, despite its contentions that there are questions of fact, Petitioner requests that the Tribunal decide this case on the briefs and documents provided without a formal hearing.¹⁵

¹⁰ Petitioner's Brief at 2.

¹¹ *Id.*

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ *Id.* at 2.

¹⁵ *Id.* at 3.

In support of its response, Petitioner submitted the following exhibits:

1. Form 5713 (Request for Hearing/Informal Conference) and attachments, dated July 6, 2023.
2. Petition to Michigan Tax Tribunal, dated August 24, 2023, with exhibits:
 - a. Email from Jeannine Kenney to Gwizdala and Associates CPA, dated December 2, 2021.
 - b. Decision and Order of Determination regarding sales tax audit, dated June 24, 2022.
 - c. Payment vouchers from (3) Final Bills for Taxes Due, dated July 28, 2023, and (1) Bill for Taxes Due, dated December 6, 2021.
 - d. Affidavit of John Gwizdala, CPA and attachment, dated August 11, 2023.
 - e. Proof of payment of \$512,949.42, dated August 21, 2023.
 - f. Affidavit of Edward S. Kisscorni and attachments, dated August 15, 2023.
3. Letter from Mr. Bown to Mr. Kisscorni indicating decision regarding refund claim, dated May 18, 2023.
4. *Donald A. Fegert and Barbara A. Fegert v. Department of Treasury*, unpublished per curiam opinion of the Court of Appeals, issued December 19, 2006 (Docket No. 270236).
5. Email from Ms. Kenney to Gwizdala and Associates CPA, dated December 2, 2021.
6. Copy of Affidavit of David Bowen, reviewer of sales tax refund claim.
7. Email from Mr. Gwizdala to Mr. Bowen, dated January 12, 2023.
8. Copy of Affidavit of Jeannine Kenney, sales tax auditor.
9. Letter from Dennis Dubuc, Petitioner's representative, to Sherry Hilpert, hearing officer in Respondent's Hearings Division, dated September 25, 2023.
10. Affidavit of Edward S. Kisscorni, dated July 15, 2024.
11. Affidavit of John Gwizdala, CPA, dated August 11, 2023.
12. Letter from Mr. Gwizdala to Mr. Bowen, dated April 10, 2023.

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 decision on such motions.¹⁶ In this case, Respondent moves for summary disposition under either MCR 2.116(C)(4) or MCR 2.116(C)(10).

Dismissal under MCR 2.116(C)(4) is appropriate when the "court lacks jurisdiction of the subject matter." When presented with a motion pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties.¹⁷ In addition, the evidence offered in support of or in opposition to a party's motion will "only be considered to the extent that the content or substance would be admissible as evidence

¹⁶ See TTR 215.

¹⁷ MCR 2.116(G)(5).

to establish or deny the grounds stated in the motion.”¹⁸ A motion under MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust its administrative remedies.¹⁹

MCR 2.116(C)(10) provides for summary disposition 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.”²⁰ The Michigan Supreme Court, in *Quinto v Cross and Peters Co.*,²¹ 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.²²

¹⁸ MCR 2.116(G)(6).

¹⁹ See *Citizens for Common Sense in Gov't v Attorney Gen*, 243 Mich App 43; 620 NW2d 546 (2000).

²⁰ MCR 2.116(C)(10).

²¹ *Quinto v Cross and Peters Co*, 451 Mich 358 (1996) (citations omitted).

²² *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.”²³ 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.”²⁴ “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.”²⁵

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent’s Motions for Summary Disposition under MCR 2.116(C)(4) and (C)(10) and finds that granting the motion under MCR 2.116(C)(4) is appropriate.

A. Respondent’s Motion under MCR 2.116(C)(4)

Respondent first asks the Tribunal to dismiss the case on the grounds that the Tribunal lacks jurisdiction because of an untimely appeal by Petitioner. While this argument is relatively straightforward – i.e. Respondent issued a decision on Petitioner’s refund claim on May 18, 2023, and Petitioner filed the instant appeal on August 24, 2023, which is 98 days later and past the 60-day timeframe to appeal per MCL 205.22(1) – the convoluted history of this case requires the Tribunal to grant the motion under MCR 2.116(C)(4) for different reasons.

While the timeline and facts in this case are convoluted, they are not in dispute, at least not as it pertains to the Tribunal’s jurisdiction over the appeal.

Date	Action
March 15, 2021	Respondent’s Audit Division began audit of Petitioner’s sales tax for April 1, 2017, to December 31, 2020.
October 21, 2021	Respondent issued Determined Audit Adjustments Letter showing Petitioner owed sales tax on its retail sales of landscaping materials, and providing until November 5, 2021, to provide additional information for examination.
December 2, 2021	Petitioner emailed Respondent’s auditor to request that auditor review documentation regarding sales tax overpaid to vendors on purchases of materials.
December 2, 2021	Respondent’s auditor replied that the audit was complete, and no additional records would be reviewed.
December 6 and 9, 2021	Respondent issued Intent to Assess for the tax, penalty, and interest due from the sales tax audit.

²³ *West v General Motors Corp*, 469 Mich 177 (2003).

²⁴ *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 153 (1994).

²⁵ *Id.*

April 8, 2022	Petitioner filed Forms 5633 (Purchaser Refund Request for a Sales or Use Tax Exemption) with Respondent's Tax Technical Services Division to pursue refunds of the asserted overpayment of sales tax.
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To be clear, as of April 8, 2022, Petitioner had two issues in process with Respondent. The first was the sales tax audit. The second was the refund claim of overpaid sales tax. Although these are economically related, they are legally distinct. They will each proceed along their own path for processing by Respondent and will each provide Petitioner their own appeal rights.

Issue	Date	Action
Audit	April 15, 2022	Respondent's Hearings Division held an informal conference hearing with Petitioner, who had appealed the Intents to Assess from the sales tax audit, seeking an offset of asserted overpaid sales tax against the tax due from the sales tax audit.
Audit	June 24, 2022	Respondent's Hearings Division issued its Decision and Order of Determination regarding the informal conference, holding that the Intents to Assess were to be upheld and that Respondent shall issue Final Assessments.
Refund Claim	May 18, 2023	Respondent's Tax Technical Services Division issued a decision approving part of the refund of overpaid sales tax claimed by Petitioner. The decision provided Petitioner the right to appeal to the Hearings Division or the Michigan Tax Tribunal within 60 days, or to the Michigan Court of Claims within 90 days.

As of May 18, 2023, Petitioner had a decision from Respondent regarding the refund claim, providing Petitioner the right to appeal that decision via either informal conference or the Tribunal. Petitioner had not yet received from Respondent the Final Assessments regarding the audit, and, therefore, had no pending appeal rights for that issue.

Issue	Date	Action
Refund Claim	July 6, 2023	Petitioner submitted Form 5713 (Request for Hearing/Informal Conference) to Respondent's Hearings Division. While this request says it involves an audit and lists the Intents to Assess issued in December 2021, it did not provide copies of the Intents to Assess but instead stated "[t]he payer appeals the 5-18-23 decision of Mr. David Bowen (attached)" and provided a copy of that decision regarding the refund claim.

Audit	July 28, 2023	Respondent issued Final Assessments for the sales tax audit, which provided Petitioner the right to appeal to the Michigan Tax Tribunal within 60 days or the Michigan Court of Claims within 90 days.
Refund Claim	August 4, 2023	Respondent acknowledged Petitioner's request for an informal conference. In doing so, Respondent referred to a "Claimed Overpayment Tax Period."

This brings us to the filing of the instant appeal by Petitioner on August 24, 2023, and the consideration of whether the Tribunal has jurisdiction over the appeal. In its petition and exhibits, Petitioner makes various ambiguous and contradictory statements that are pertinent to the issue of jurisdiction.

For instance, while the Introduction to the Petition says the Petitioner is appealing Respondent's "final bills for taxes due" dated July 28, 2023, and December 6, 2021 (an apparent reference to the Intents to Assess issued on that date),²⁶ the Issue on Appeal stated in the Petition does not indicate anything about the sales tax owed by Petitioner because of its retail sales, which was the subject matter of the audit and which led to Respondent's issuance of its Final Assessments. Rather, the Issue on Appeal says that, for purposes of Petitioner's refund claim under the Sales Tax Act section 12 (MCL 205.62), Respondent failed to take into consideration that Petitioner was subject to a sales tax audit, which should have extended the statute of limitations for the refund claim.²⁷ Further, affidavits included as exhibits with the Petition reference that "[t]he Statute of Limitations should not apply because it was tolled due to an ongoing state audit"²⁸ and "[t]he only issue in this appeal is the sales tax paid in error which was not included in the refund amount for items purchased and sales tax paid prior to April 8, 2018."²⁹

The Tribunal must determine both what is actually being appealed and whether it has jurisdiction over that appeal. As noted above, while Petitioner states it is appealing the July 28, 2023, assessments that resulted from the audit, every reference to the substance of the appeal addresses the refund claim. There are no indications Petitioner is appealing anything that would have been the substance of the audit – e.g. whether it was selling tangible personal property at retail, exemptions claimed by its customers, etc. As Respondent has indicated in its Acknowledgment of Request for Informal Conference dated August 4, 2023, Petitioner's issue on appeal is a "Claimed Overpayment."³⁰ While the refund claim is economically related to the audit assessments, the true legal nature of Petitioner's appeal to this Tribunal is that it seeks to have the refund claim approved for an amount greater than that decided by Respondent. Then, from an economic perspective, Petitioner wants to have that larger refund amount applied to pay the audit assessments it is not substantively appealing.

²⁶ Petitioner's Petition at 1. Introduction.

²⁷ *Id.* at 4. Issue on Appeal.

²⁸ Petitioner's Petition, Exhibit D, at unnumbered paragraph after paragraph 9.

²⁹ Petitioner's Petition, Exhibit F, at paragraph 11.

³⁰ Respondent's Brief, Exhibit 2 at Exhibit G.

With a determination that Petitioner is, in fact, appealing the May 18, 2023, decision regarding the refund claim,³¹ we are now able to determine whether the Tribunal has jurisdiction over the appeal and, if not, why it does not.

As stated in the first paragraph of this subsection, Respondent would have us dismiss the case based on timeliness. A petition filed on August 24, 2023, regarding a decision issued on May 18, 2023, is beyond the 60-day timeframe to appeal. While Respondent acknowledges Petitioner's request for an informal conference on July 6, 2023, they ultimately deem this irrelevant to the issue of timeliness based on *Montgomery Ward & Co v Dep't of Treasury*.³² But reliance on this case is misplaced, given the extensive revisions to the pertinent sections of statute since the case was decided in 1991.

Stated briefly, the versions of MCL 205.21 and 205.22 applicable at the time of *Montgomery Ward* did not yet contain the assessment procedures currently used by Treasury nor, therefore, the current appeal procedures used by taxpayers. Specifically, at that time, there was no statutory concept of a Notice of Intent to Assess that provides a taxpayer the right to request an informal conference vs. a Final Assessment that provides a taxpayer the right to appeal to the Michigan Tax Tribunal or the Court of Claims. There was simply an assessment by Treasury which was provided to the taxpayer via a notice. Per MCL 205.21(2) at the time, a notice allowed a taxpayer to request an informal conference, and per MCL 205.22(1) at the time, an assessment allowed a taxpayer to appeal to the Tribunal or Court of Claims. Because statute at the time effectively did not differentiate between a notice and an assessment – rather the notice by Treasury was of the assessment they determined – and because of the parallel appeal rights of a notice/assessment at that time, it is understandable the Court of Appeals in *Montgomery Ward* would hold that an optional informal conference should not be a prerequisite to an appeal to the Tribunal or Court of Claims.

But MCL 205.21 and MCL 205.22 were extensively amended by 1993 PA 13, and MCL 205.21a regarding informal conferences for refund denials wasn't enacted until 2006 PA 5. Therefore, a new analysis of the interplay of these sections is

³¹ Even if this Tribunal were to determine Petitioner is actually appealing the final assessments issued on the sales tax audit (which would be a timely appeal), the Tribunal would find that summary disposition for Respondent would then be appropriate under MCR 2.116(C)(10), *as it relates to the sales tax audit*. (This is not a determination that Respondent's motion under MCR 2.116(C)(10) regarding the refund claim is being granted, as is discussed in the subsection below.) Petitioner has stated in the closing paragraph of its petition that it "respectfully requests that this Tax Tribunal... find, after reviewing this petition and exhibits that no actual Tribunal Hearing is necessary." Further, Petitioner states in the penultimate paragraph of its response to Respondent's motion for summary disposition that it "requests that this Tribunal decide the case on the briefs and documents provided without a formal hearing on the matter." With these requests in mind, the Tribunal would find, as already noted above, that Petitioner has not challenged any aspect of the sales tax audit itself. Respondent's application of an overpayment from the refund claim to the balance due from the audit that is less than what Petitioner would like is not an error in the audit assessments themselves. Therefore, there is no issue of fact related to the audit and Respondent would be entitled to judgment as a matter of law.

³² *Montgomery Ward & Co v Dep't of Treasury*, 191 Mich App 674, 681; 478 NW2d 745 (1991).

appropriate, in light of Treasury's current procedures. The remainder of this discussion of Respondent's motion under MCR 2.116(C)(4) provides that analysis.

Petitioner was allowed to request an informal conference pursuant to MCL 205.21a: "If a taxpayer serves written notice upon the department within 60 days of the issuance of a credit audit or a *refund denial*, the taxpayer is entitled to an informal conference on the question in the same manner and under the same procedures provided for under section 21." (Emphasis added.) And as seen in the cited statute, Respondent had no choice but to grant the informal conference, because Petitioner was "entitled to" it since Petitioner timely served written notice upon the department.

Petitioner's exercise of this optional right to an informal conference comes with consequences. MCL 205.22(1) allows "a taxpayer aggrieved by an assessment, decision, or order of the department" to appeal the contested portion to the Tribunal within 60 days, but this section must be read in connection with MCL 205.21 and 21a. Specifically, once Petitioner exercised its right to an informal conference, MCL 205.21 controls, including subdivisions (f) and (g), because MCL 205.21a says an informal conference regarding a refund denial will be conducted "in the same manner and under the same procedures provided for under section 21."

MCL 205.21(f) provides that, for issues not settled in the informal conference, "the department *shall render a decision and order* in writing..." (Emphasis added.) MCL 205.21(g) provides that "[a]n assessment under this subdivision or subdivision (f) is final and subject to appeal as provided in section 22."

Taking all these provisions together, it is determined that Petitioner's exercise of its optional right to an informal conference causes the May 18, 2023, decision by Respondent regarding the refund claim to be effectively converted from a final decision to an interim decision similar to a Notice of Intent to Assess. Once the informal conference was timely requested, Respondent became obligated under MCL 205.21(f) to "render a decision and order in writing." It is this yet-to-be-issued decision and order which is referred to in MCL 205.21(g) that is "final and subject to appeal as provided in section 22."

In other words, although the May 18, 2023, decision provided options of appealing to the Respondent's Hearings Division or to the Michigan Tax Tribunal, the selection of the informal conference option negates the ability to utilize the Tribunal option as it relates to the May 18, 2023, decision. Instead, Petitioner must now wait to receive a decision on its informal conference, which will have its own appeal rights to the Tribunal.

Therefore, Respondent's motion for summary disposition under MCR 2.116(C)(4) is granted because the Tribunal does not have subject matter jurisdiction over a tax matter for which an appealable decision and order has not yet been issued by Respondent.

It is noted that Petitioner's requested informal conference was placed in abeyance by Respondent on November 27, 2023, as a result of Petitioner's instant appeal to the Tribunal. With this dismissal, the informal conference can now proceed to allow Petitioner to address the merits of the refund claim at the informal conference.

B. Respondent's Motion under MCR 2.116(C)(10)

Respondent alternatively argues that, if the Tribunal has jurisdiction, there are no genuine issues of material fact and that, as a matter of law, Petitioner is not entitled to the relief it seeks, said relief being additional refunds for sales tax paid in error³³ and a reduction of the 25% penalty imposed by Respondent.³⁴ Petitioner's response to Respondent's motion alleges "there are glaring question [sic] of fact" and then lists 10 supposed questions of fact³⁵ but concludes by saying it "requests that this Tribunal decide this case on the briefs and documents provided without a formal hearing on the matter."³⁶ This request is a reiteration of a similar request in its Petition that the Tribunal "find, after reviewing this petition and exhibits that no actual Tribunal Hearing is necessary."³⁷

Despite each party's request for the Tribunal to issue a judgment on the merits of the case based only on the briefs and documents provided, for the Tribunal to do so, it first must have jurisdiction over the case. For the reasons discussed above regarding MCR 2.116(C)(4), it is held that the Tribunal does not have jurisdiction, thus it cannot act upon Respondent's motion under MCR 2.116(C)(10). Therefore, Respondent's motion for summary disposition under MCR 2.116(C)(10) is denied as moot.

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(4) is GRANTED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Disposition under MCR 2.116(C)(10) is DENIED.

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.

³³ Respondent's Brief at 10.

³⁴ *Id.* at 16.

³⁵ Petitioner's Response at 2.

³⁶ *Id.* at 3.

³⁷ Petitioner's Petition at 3.

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  _____

Entered: December 19, 2024

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