

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

Coulter Building, LLC,  
Petitioner,

v

MTT Docket No. 16-000260

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT’S MOTION FOR COSTS

FINAL OPINION AND JUDGMENT

The Tribunal, having given due consideration to the file in the above-captioned case, finds:

The Tribunal issued a Proposed Order Granting Respondent’s Motion for Summary Disposition (“Proposed Order”) on January 4, 2017. The Proposed Order states that “[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing, if available**, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).”

Neither party has filed exceptions to the Proposed Order.

The Administrative Law Judge (“ALJ”) considered the testimony and evidence submitted and made specific findings of fact and conclusions of law. The ALJ’s determination is supported on the record and by the applicable statutory and case law.

Given the above, the Tribunal adopts the Proposed Order as the Tribunal’s final decision in this case.<sup>1</sup> The Tribunal also incorporates by reference the Conclusions of Law contained in the Proposed Order in this Final Opinion and Judgment. As a result:

The taxes, interest, and penalties, as levied by Respondent, are:

**Assessment Number:** UJ22559

Taxes	Penalties	Interest
\$5,572.00	\$1,298.00	\$1,885.72

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<sup>1</sup> See MCL 205.726.

**Assessment Number: UL93465**

Taxes	Penalties	Interest
\$156.00	\$0	\$37.61

**Assessment Number: UL93466**

Taxes	Penalties	Interest
\$20,928.00	\$0	\$3,277.70

**Assessment Number: UL93467**

Taxes	Penalties	Interest
\$7,145.00	\$174.00	\$1,456.19

The taxes, interest, and penalties, as determined by the Tribunal, are:

**Assessment Number: UJ22559**

Taxes	Penalties	Interest <sup>2</sup>
\$5,572.00	\$1,298.00	\$1,885.72

**Assessment Number: UL93465**

Taxes	Penalties	Interest <sup>3</sup>
\$156.00	\$0	\$37.61

**Assessment Number: UL93466**

Taxes	Penalties	Interest <sup>4</sup>
\$20,928.00	\$0	\$3,277.70

**Assessment Number: UL93467**

Taxes	Penalties	Interest <sup>5</sup>
\$7,145.00	\$174.00	\$1,456.19

IT IS SO ORDERED.

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

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

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect

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<sup>2</sup> Interest continues to accrue per 1941 PA 122. Interest shown above is current as of the date of the assessment.

<sup>3</sup> *Id.*

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

the taxes, interest, and penalties as indicated herein within 20 days of entry of this Final Opinion and Judgment.

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

This Final Opinion and Judgment resolves the last pending claim 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 required filing fee within 21 days from the date of entry of the final decision.<sup>6</sup> Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee.<sup>7</sup> A copy of the motion must be served 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.<sup>8</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>9</sup>

A claim of appeal must be filed with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave."<sup>10</sup> A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.<sup>11</sup> The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.<sup>12</sup>

By Steven H. Lasher

Entered: February 2, 2017  
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<sup>6</sup> See TTR 261 and 257.

<sup>7</sup> See TTR 217 and 267.

<sup>8</sup> See TTR 261 and 225.

<sup>9</sup> See TTR 261 and 257.

<sup>10</sup> See MCL 205.753 and MCR 7.204.

<sup>11</sup> See TTR 213.

<sup>12</sup> See TTR 217 and 267.

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

Coulter Building LLC,  
Petitioner,

v

MTT Docket No. 16-000260

Michigan Department of Treasury,  
Respondent.

Administrative Law Judge Presiding  
Peter M. Kopke

PROPOSED ORDER GRANTING  
RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

PROPOSED ORDER DENYING RESPONDENT'S MOTION FOR COSTS

PROPOSED OPINION AND JUDGMENT

On October 25, 2016, Respondent filed a Motion in the above-captioned case requesting that the Tribunal enter summary judgment in its favor "pursuant to MCR 2.116(C)(10)." In support of its Motion, Respondent contends that:

1. Petitioner is "challenging" assessments levied for the 2008, 2009, 2010, and 2011 tax years (i.e., Final Assessment Nos. UJ22559, UL93465, UL93466, and UL93467) issued as a result of a "desk audit" resulting in the disallowance of staffing company deductions claimed by Petitioner "for purposes of calculating its modified gross receipts tax base under the Michigan Business Tax" because "Petitioner's business activity does not fall within the definition of 'staffing company'" or, more specifically, "does not match the description of Help Supply Service provided by the U.S. Department of Labor."<sup>1</sup>
2. "During the tax years at issue, NuHorizon had contractual agreements with its clients, several residential apartment complexes and a mini storage location, to provide property management services . . . . All of NuHorizon's clients were companies at least partially owned by Mike Coulter, who also owned NuHorizon . . . . All of the contracts required NuHorizon to act as the owner's agent 'in managing, operating, leasing and renting the Premises including advertising, screening tenants, enforcing leases and collecting rents and deposits' . . . . The management agreement also set forth NuHorizon's obligations

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<sup>1</sup> The "staff" are employees of NuHorizon Properties, LLC ("NuHorizon") and NuHorizon is both a subsidiary of Petitioner and a disregarded entity. As such, NuHorizon's business activities are reported through Petitioner's returns. See Respondent's Exhibit 6 (deposition of Scott McCallum) at pp 5-6 and MCL 208.1512. Further, Respondent's brief provides, in pertinent part, "[a]s noted in the accompanying motion, Petitioner only alleges it qualifies under SIC code 7363 [i.e., Help Supply Service], rather than 7361 [i.e., Employment Agencies], so it was only necessary to address that section [i.e., Help Supply Service]." In that regard, see also MCL 208.1113(6)(d)(ii) and Respondent's Exhibit No. 3 (United States Department of Labor Occupational Safety and Health Administration Description for 7363: Help Supply Services).

regarding operations and maintenance of the property, which included, among other duties, to maintain and repair the premises, keep records, and contract on behalf of the owner for utility services . . . . The agreement also required NuHorizon to ‘employ, discharge, and pay all service employees, or contractors necessary to be employed in the management and operation of the Premises.’”<sup>2</sup>

3. To qualify as a staffing company under SIC 7363, Help Supply Services, the staff or help must be “under the direct or general supervision of the business to whom the help is furnished . . . . [and] the deposition testimony of David Cutler . . . demonstrates that the employees purportedly supplied are not supervised by the entity to whom they are supplied.” Rather, Mr. Cutler or the “on-site” NuHorizon employee managers oversee or supervise “the other on-site employees.”<sup>3</sup>
4. “Here, the record clearly demonstrates that Petitioner is not merely supplying people to its clients – it is instead providing management and staff to operate a business. The language of the management agreements requiring Petitioner to manage every aspect of the operation of the apartment complexes supports this view. To the extent Petitioner can be described as supply help to its customers, those persons are supplied to perform the work ‘necessary to be employed in the management and operation of the Premises.’”<sup>4</sup>
5. The petition or, more appropriately, Petitioner’s claim is frivolous, as the allegation that “its employees were under the direct management and control of its clients when providing services at the clients’ locations” is not supported or supportable. As such, Respondent is entitled to costs.

On November 11, 2016, Petitioner filed a response to the Motion contending that it is entitled to judgment under MCL 2.116(I)(2). In the Response, Petitioner also contends that:

1. “NuHorizon provides staffing for a number of related entities (properties) based on an hourly rate for the actual hours of service provided. The term ‘property’ refers to one or several of the properties owned or partially owned with other partners by Michael Coulter . . . . The ‘properties’ are residential apartment housing projects. The staffed employees are compensated by NuHorizon and NuHorizon withholds and pays all payroll taxes . . . . Petitioner’s employees are under the direct and general supervision of the property owners while providing services for the property at the property locations . . . .

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<sup>2</sup> See Respondent’s Exhibit No. 5 (deposition of David Cutler) at pp 6, 11, 19-27, and 56 and Exhibit No. 7 (Management Agreement between Rolling Hills Apartments, Inc. and NuHorizon signed by Mike H. Coulter on behalf of both Rolling Hills Apartments, Inc. and NuHorizon), Paragraph Nos. 5 and 6.

<sup>3</sup> See Respondent’s Exhibit No. 4 (Petitioner’s Response to Respondent Michigan Department of Treasury’s First Discovery Requests) Interrogatory No. 7 (“David Cutler, under provisions of the Management Agreement”); Respondent’s Exhibit No. 5 at pp 7-11, 14-15 (i.e., Sean Strong – Regional Manager), 17, 22-29, 31, 34-37, 39-41, 45-46, 48-53, and 62; and Respondent’s Exhibit No. 6 at pp 12-13, 17-21, and 35 (i.e., “third party” involvement).

<sup>4</sup> See Exhibit No. 7, Paragraph No. 6. See also Respondent’s Exhibit No. 5 at pp Respondent’s Exhibit No. 6 at pp 24-25.

Approximately 84% of Petitioner's gross receipts, during the audit period, are derived from staffing activities."<sup>5</sup>

2. "NuHorizon also acts as an 'agent' pursuant to Management Agreements . . . with the owners of the various properties whereby NuHorizon, under the direction of the owners will assist the owners on larger projects."<sup>6</sup>
3. "The key issue in this case is whether NuHorizon's customers provide direct and/or general supervision over the staffed employees provided by NuHorizon. Specifically, does Michael Coulter, the majority owner of NuHorizon's customer entities[,] provide on a full time basis management and control over the activities of the customer entities and does that management and control involve providing direct and/or general supervision of employees provided to the customer entities. Documentation included herein says 'YES'."
4. "The two key management individuals are Michael Coulter and David Cutler."
5. "Michael Coulter is the sole Member of both Coulter Building, Inc. [i.e., Petitioner] and NuHorizon Properties, LLC . . . . However, he is not actively involved or compensated by either entity . . . . Michael Coulter devotes his time on a full time basis to the management of the properties in which he has an ownership interest . . . . Together with the other owners of the properties, Michael Coulter manages and controls the properties including the supervision of the staffed employees."<sup>7</sup>
6. "David Cutler is the Operations Director of NuHorizon where he works under the direct control and supervision of the project owners pursuant to the Management Agreements with each of the project entities . . . . While Michael Coulter devotes a significant amount of his time at the various project locations, David Cutler spends the bulk of his time at the NuHorizon office visiting the project sites about once a month."<sup>8</sup>
7. "During the tax years at issue, NuHorizon had contractual agreements with several residential apartment complexes which were owned wholly or in part by Michael Coulter . . . . The contractual agreements provided that NuHorizon would provide property management services for a fee based on a percentage of revenue. In addition, NuHorizon provided its staffed employees to work at the several residential apartment complexes which were owned wholly or in part by Michael Coulter."<sup>9</sup>

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<sup>5</sup> See the Affidavit of Michael Coulter ("Coulter Affidavit"), Paragraph Nos. 5 and 13. See also Petitioner's Exhibit Nos. 11 (MESC Online Payroll Wage Detail Report) and 18 (Summary Schedule for NuHorizon Receipts and Expenses by Business Category). See also Respondent's Exhibit No. 5 at pp 11-13.

<sup>6</sup> See Coulter Affidavit, Paragraph No. 14. See also Respondent's Exhibit No. 6 at pp 19-20.

<sup>7</sup> See Coulter Affidavit, Paragraph Nos. 3, 4, 8, 9, 10, and 15.

<sup>8</sup> See Respondent's Exhibit No. 5 at p 15.

<sup>9</sup> See Petitioner's Exhibit Nos. 7 (Management Agreements) and 8 (List of Entities NuHorizon Provides Staffed Employees).

8. “Six of the approximately 65 (2008) to 75 (2011) hourly employees perform some sort of supervisory service. Such services are not material. In addition, the performance of these services by NuHorizon employees are necessary and not relevant to the case. Every staffing company has a duty and responsibility to supervise their staffed employees. All of the staffed employees, while on the project site, are under the management and supervision of the owners. Supervision by these six individuals includes scheduling, reviewing time-sheets, minor job direction (more like coordination), occasional performance reviews, and in the case of the seasonal staff, limited hiring and firing.”
9. “The approximately 65/75 hourly employees are supervised on a general basis by David Cutler through NuHorizon. However, they are supervised on a more direct basis by the property owners, specifically Michael Coulter.”
10. “A Real Estate Management Company must be licensed and is regulated by the State of Michigan. An individual performing Real Estate Management Services must also be licensed and is regulated by the State of Michigan. Neither NuHorizon nor any of their employees including David Cutler are licensed by the State of Michigan . . . . The reason NuHorizon is not required to be licensed is because the owners of the projects, specifically Michael Coulter, are hands on and directly involved in the management of the properties and supervision of the staffed employees.”<sup>10</sup>
11. “Michael Coulter is a ‘real estate professional’ as that term is defined by the IRS . . . . He is not a passive investor leaving the management of the property to others . . . . See Michael Coulter – Annual Work Per Site and Periodic Work Required . . . and Mike H. Coulter Annual Totals and Daily Log by Entity for 2008 . . . 2009 . . . 2010 . . . and 2011 . . . .”<sup>11</sup>
12. “. . . the Department of Labor does not require that an entity be exclusively engaged in supplying temporary or continuing help on a contract or fee basis. The entity must only be ‘primarily’ engaged in such activities. Small deviations from the primary activity, providing staffed employees to the customer, will not cause the establishment to lose the SIC Code 7363 designation.”<sup>12</sup>
13. “The Profit and Loss by Class statements clearly disclose that the staffing activity is the ‘primary’ activity for NuHorizon.”<sup>13</sup> Further, “SIC Code 7363 does not absolutely require that the customer provide direct supervision over each and every staffed employee for every hour of work provided by the staffed employee.”

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<sup>10</sup> See Respondent’s Exhibit No. 5 at pp 23-25 and 28-29.

<sup>11</sup> See Coulter Affidavit, Paragraph Nos. 10 and 11. See also Petitioner’s Exhibit Nos. 19-23.

<sup>12</sup> See the U.S. Department of Labor’s “Description for 7363: Help Supply Services, which provides, in pertinent part, “[e]stablishments **primarily engaged** in supplying temporary or continuing help on a contract or fee basis. The help supplied is always on the payroll of the supplying establishments, but is under the **direct or general supervision** of the business to whom the help is furnished.” [Emphasis added.]

<sup>13</sup> See Petitioner’s Exhibit No. 18.

14. The provision in SIC Code 7363 relating to the classification of establishments which provide both management and staff to operate a business according to the type of activity of the business “is not applicable in this case,” as the management functions performed by NuHorizon employees “are small and incidental” and “would not constitute the primary activity of NuHorizon.” Further, “Michael Coulter as the owner of the properties, is solely responsible for the management and control of the properties.” NuHorizon is also “not licensed to perform real estate management services” and “is not required to be licensed . . . because of the extensive involvement of Michael Coulter in the management of the properties.”
15. “Petitioner’s position in this case is not frivolous because the MBTA provides for a staffing company deduction” and Petitioner “is a staffing company.” Further, the petition was not filed with the intent “to harass, embarrass, or injure Respondent.” Rather, “Petitioner had a reasonable basis to believe that the facts underlying its legal position were in fact true, and [that] its legal position . . . [has] merit.”

The Tribunal has reviewed the Motion, the Response, and the case file and finds that there is no specific Tribunal rule governing motions for summary disposition and, as such, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.<sup>14</sup> In the instant case, Respondent indicates that its Motion is being filed under MCR 2.116(C)(10), which tests the factual support for Petitioner’s claim based upon the Tribunal’s consideration of all pleadings, affidavits, depositions, admissions, and any other documentary evidence submitted by the parties “in the light most favorable to the party opposing the motion.”<sup>15</sup> Further, the Tribunal may only grant such motions if the parties’ submissions show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law.<sup>16</sup> If it is, however, determined that an asserted claim can be supported by evidence at trial, the motion under (C)(10) must be denied.<sup>17</sup> The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.<sup>18</sup> Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.<sup>19</sup> If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.<sup>20</sup>

Here, the Tribunal has considered the parties’ pleadings and documentary evidence in a light most favorable to Petitioner and finds that there is no genuine issue of material fact and that the granting of the Motion in favor of Respondent under MCL 2.116(C)(10) is warranted. More

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<sup>14</sup> See TTR 215.

<sup>15</sup> See *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 187 (1999) and *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

<sup>16</sup> See *Smith v Globe Life Insurance Co*, 460 Mich 446, 454-5; 597 NW2d 28 (1999) and *Quinto, supra* at 362.

<sup>17</sup> See *Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991).

<sup>18</sup> See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

<sup>19</sup> See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

<sup>20</sup> See *McCormic v Auto Club Ins Ass’n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

specifically, Petitioner claims that it is entitled to the staffing company deduction because (i) it is primarily engaged in staffing activities, (ii) the staff provided to its customers are under the direct or general supervision of those customers, specifically Mr. Coulter, (iii) the management activities performed by NuHorizon are “small and incidental” and not the “primary” activity of NuHorizon, and (iv) neither Mr. Cutler nor NuHorizon are licensed to perform management services. Petitioner does not, however, meet the definition of a “staffing company” under MCL 208.1113(6)(ii), as its business activities are not included “in industry group 736 under the standard industrial classification code as compiled by the United States department of labor.” Although Petitioner or, more appropriately, NuHorizon indicates that it is primarily engaged in staffing activities, NuHorizon is also admittedly engaged in management activities for its customers, which requires NuHorizon to be classified according to the type of activity of its customers.<sup>21</sup> In that regard, the fact that those activities may be “small and incidental” from a revenue perspective does not change the fact that NuHorizon is engaged in **both** management and staffing. [Emphasis added.] As for the issue of licensing, the fact that neither Mr. Cutler nor NuHorizon is licensed to perform property management activities or services is a regulatory issue that is not determinative of NuHorizon’s “classification,” as the evidence provided clearly demonstrates that NuHorizon engaged in such activities or services. Additionally, Mr. Coulter is a licensed real estate professional and the sole member and “owner” of NuHorizon.<sup>22</sup>

With respect to the supervision of employees provided by NuHorizon to its customers, the evidence provided also clearly demonstrates that NuHorizon is responsible for the direct and general supervision of their employees on-site. Although Mr. Coulter does provide some periodic direct supervision (i.e., yearly, project specific, etc.), it is arguable that he is providing that supervision as the sole member and owner of NuHorizon and not a customer, as he is the licensed real estate professional and ultimately responsible for the fulfillment of NuHorizon’s management agreements. As for NuHorizon, Mr. Cutler’s status as the owners’ “exclusive agent” under the management agreements does not, contrary to Petitioner’s contention, satisfy the direct or general supervision required by the owners or, as indicated by Mr. McCallum, a “third party,” given Petitioner’s “provision and coordination” of staff to carry out its responsibilities under the agreements or the owner’s periodic orders.<sup>23</sup>

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<sup>21</sup> See the U.S. Department of Labor’s “Description for 7363: Help Supply Services, which also provides, in pertinent part, “[e]stablishments which provide **both** management and staff to operate a business **are classified according to the type of activity of the business.**” [Emphasis added.] In that regard, the description does not indicate that establishments providing both management and staff to operate a business are not required to be classified according to the type of activity of the business if the establishment is primarily engaged in supplying temporary or continuing help on a contract or fee basis (i.e., staff). Rather, the plain language of the description merely states establishments which provide “both . . . are classified according to the type of activity of the business.”

<sup>22</sup> See Respondent’s Exhibit No. 5 at pp 56-58.

<sup>23</sup> According to Mr. Cutler’s deposition, not all projects require orders. Rather, there are “standard” projects that are routinely performed by NuHorizon’s on-site employees with no supervision by Mr. Coulter or any other customer. Rather, the on-site employees are “coordinated” (i.e., supervised) by Mr. Cutler, Sean Strong, or NuHorizon’s community managers only. As for orders by Mr. Coulter or his exercise of supervision over the on-site employees, said orders are, as indicated above, problematic, given his responsibilities as the sole member and owner of NuHorizon (i.e., direct supervision of Mr. Cutler, etc.) and admitted receipt of fees for the managing NuHorizon’s customers. See also Respondent’s Exhibit No. 5 at pp 7-9, 61, 63-65.

Finally, Respondent argues that Petitioner's claim is frivolous and that it is entitled to cost as that claim is not, given Petitioner's discovery responses and deposition testimony, well-grounded in fact. In support of this argument, Respondent cites to the Revised Judicature Act ("RJA"), MCL 600.2591. The RJA relates, however, to the powers and duties of the State courts and, as such, it has no applicability to the Tribunal, as the Tribunal is an administrative agency, albeit quasi-judicial in nature, and not a State court. Nevertheless, the Tribunal has its own rule relating to the awarding of costs.<sup>24</sup> While the Michigan Court Rules provide some guidance in determining whether an award of costs and fees are appropriate,<sup>25</sup> such awards are solely within the discretion of the Tribunal.<sup>26</sup> An award of costs and attorney fees is not, however, justified under either TTR 209 or MCR 2.114(E). Although Petitioner's claim is not supported by the facts established by the submitted documentation, Petitioner, in reliance on professional advice,<sup>27</sup> reasonably believed that it qualified for the staffing company deduction under the facts alleged. Therefore,

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

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

IT IS FURTHER ORDERED that the assessments at issue are AFFIRMED.

### **JUDGMENT**

This is a proposed decision ("POJ") prepared by the Michigan Administrative Hearings System. It is not a final decision. As such, no action should be taken based on this decision. In that regard, the Tribunal will, after the expiration of the time period for the opposing party to file a response to exceptions, will review the case file, including the POJ and all exceptions and responses, if any, and:<sup>28</sup>

- a. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
- b. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
- c. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

### **EXCEPTIONS**

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<sup>24</sup> The Tribunal's rules were amended in 2015. The current rule (i.e., TTR 209) is a restatement of the former rule (i.e., TTR 145), albeit slightly revised so as to no longer limit the award of costs to a prevailing party. In that regard, the Michigan Court of Appeals considered the former rule and held that its language was unambiguous and that its plain language did not indicate that a showing of good cause or a frivolous defense is necessary. See the unpublished opinion *per curiam* issued by the Court of Appeals in *Aberdeen of Brighton, LLC v City of Brighton* on October 16, 2012 (Docket No. 301826).

<sup>25</sup> See TTR 215, MCR 2.114(D) and (E) and 2.625(A)(2). Although the Michigan Administrative Procedures Act ("MAPA") also provides some guidance in determining whether an award of costs is appropriate, said guidance relates to an award against an agency (see MCL 24.323 ) and Petitioner is not an agency (see MCL 24.203).

<sup>26</sup> MCL 205.752(1) provides, in pertinent part, "[c]osts may be awarded in the discretion of the tribunal."  
[Emphasis added.]

<sup>27</sup> See Respondent's Exhibit No. 6 at pp 6-8.

<sup>28</sup> See MCL 205.726.

The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing, by mail or by electronic filing**, if available, that they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are **limited** to the evidence submitted with the Motion, the Response, and any matter addressed in the POJ. There is no fee for filing exceptions and the opposing party has 14 days from the date the exceptions were mailed to or electronically served on that party (i.e., email), **if** the parties agree to service by email, to file a written response to the exceptions.<sup>29</sup>

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

A copy of a party's written exceptions or response **must** be sent to the opposing party **by mail or email, if** email service is agreed upon by the parties, and proof **must** be submitted to the Tribunal demonstrating that the exceptions or response were served on the opposing party.

By Peter M. Kopke

Entered: January 4, 2017  
pmk

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<sup>29</sup> See MCL 205.762(2) and TTR 289(1) and (2).