Emagine Entertainment, Inc, et al, Petitioners,	MICHIGAN TAX TRIBUNAL
v	MOAHR Docket No. 17-000296
Michigan Department of Treasury, Respondent.	Presiding Judge Preeti P Gadola

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on May 14, 2019. The POJ states, in pertinent part, "[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)."

On June 3, 2019, Petitioners filed exceptions to the POJ. In the exceptions, Petitioners state that (i) signage language is needed to create an agreed-upon allocation of taxes, and the lack of such signage language necessarily means there was no agreement to transfer liability for the tax payment, (ii) the Administrative Law Judge ("ALJ") mis-weighed the applicable evidence to create a distinction without a difference, outweighed by Petitioners' lack of any attempt to collect sales tax from its customers, (iii) the ALJ mischaracterizes the testimony of Petitioners' witness as being distinguishable from the witnesses in the *MJR* cases, and (iv) the ALJ mischaracterizes the intent to which Petitioners' witness should have been familiar with the company's taxation method.

On June 17, 2019, Respondent filed a response to the exceptions. In the response, Respondent states that Petitioners freely admit that it utilized the tax-in-gross method, that all records and testimony support such a conclusion, and that Petitioners fail to cite applicable statute or case law supporting their position.

The Tribunal has considered the exceptions, response, and the case file and finds that the Administrative Law Judge properly considered the testimony and evidence submitted in rendering the POJ. Petitioners bear the burden of proof[1] to prove that

[1] See *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988), citing *Zenith Industrial Corp v Dep't of Treasury*, 130 Mich App 464; 343 NW2d 495 (1983). Specifically, imposing the burden of proof upon the taxpayer is consistent with the overall scheme of the tax statutes and the Legislature's

issuance of a sales tax refund[2] shall not result in unjust enrichment.[3]

Petitioners contends that the POJ errs in relying upon Petitioners' use of the tax in gross method as being determinative, but that contention misconstrues the finding, both in the POJ as well as the *MJR* decisions, that all of the applicable facts and circumstances were considered, not simply the parties' accounting methods. The facts established in this proceeding are similar but somewhat distinguishable from those in *MJR Group LLC v Dep't of Treasury*.[4] In *MJR*, the Tribunal granted summary disposition in favor of Respondent, but the case was then remanded to the Tribunal by the Michigan Court of Appeals, which found that summary disposition had not been appropriate. Upon remand, the Tribunal conducted a hearing and specifically sought to determine whether the petitioner had actually collected sales tax from its customers. The Tribunal found, under *Andrie Inc v Dep't of Treasury*,[5] that a seller is not prohibited from including sales tax in an item's price and placing the obligation upon itself to remit the tax; further, a showing that the petitioner itself remitted the tax, rather than passing along the tax paid by its customers, was required in order to be eligible for the refund. The Tribunal found, and the Michigan Court of Appeals affirmed, that Petitioner was entitled to a refund as it had not included the sales tax in the price of the candy and water at the point of sale, that Petitioner had therefore born the cost of the sales tax itself, and that it was entitled to a refund as a result. In reaching that conclusion, the Tribunal relied primarily upon the testimony of the parties' witnesses. Specifically, the testimony of petitioner's witnesses established that one person was in charge of tax accounting, another was in charge of setting menu prices, and that neither was aware of what the other was doing. With respect to the documentary evidence, the Tribunal found that it was not conclusive as to whether petitioner or its customers paid the sales tax on the prepackaged candy and bottled water. The petitioner's controller testified that she was not able to audit the petitioner's records to review transactional details of who actually paid the tax because the software at issue did not maintain this information. As a result of the lack of documentary evidence, the Tribunal found that the best evidence was the affidavits provided by petitioner's witnesses and unrebutted by the respondent.

The petitioner in *MJR* contended that its records showed that petitioner and not its customers paid sales tax. To reach this conclusion, the petitioner relied upon a report generated by its accounting software labeled as an "Item Sales Summary Report." The report summarized total dollar sales by item and location and was the basis upon which the controller calculated sales taxes due using the "tax in gross" method. For example, the report indicated that the petitioner collected $29,295.00 in total 2007 revenue for bottled water sales at its Adrian location. The controller divided the amount of gross sales by 1.06 and subtracted the product from the gross revenue, resulting in a calculation that $1,658.21 (less a discount) owed in sales tax and actually remitted upon the petitioner's sales tax return by petitioner's outside certified public accountant. It is

[2] MCL 205.30(1) indicates that Respondent shall credit or refund an overpayment of taxes.
[3] See MCL 205.73(4).
[4] *MJR Group LLC v Dep't of Treasury*, unpublished decision per curiam of the Court of Appeals, issued December 29, 2016 (Docket No. 329119).
[5] *Andrie, Inc v Dep't of Treasury*, 496 Mich 161; 853 NW2d 310 (2014).

undisputed that the menu boards at all of petitioner's locations indicated that sales price was included in the stated prices for the items.

However, the above facts are distinguishable from those in this case. Despite both utilizing the tax in gross method, Petitioners' records were not maintained similarly as those of the petitioner in *MJR*. For example, Petitioners' records indicate that a gross sales value collected from its customers includes both the "net" value collected with respect to the candy or bottled water sold, as well as the applicable tax.[6] The amount collected by Petitioners, less the applicable taxes applied to the items at issue, was also listed as the margin on net sales, meaning that Petitioners indicated this amount to be the total revenue less any returns, allowances, or discounts, such as the amount of sales tax Petitioners previously believed was owed on these items. The record-keeping in this case is distinguishable from that in *MJR* and supports a finding that the taxes were paid by Petitioners' customers.

Additionally, Petitioners' reliance upon signage as a basis for establishing the elements of a contract is not recognized by the legal framework under which the Tribunal must determine the accuracy of Petitioners' claims. The Tribunal must look to whether Petitioners actually collected sales tax from its customers.[7] The POJ correctly found that the records and testimony support the conclusion that Petitioners collected the sales tax from its customers.

The Tribunal is also unconvinced that the lack of signage is a distinction without a difference, as characterized by Petitioners. The Tribunal, having looked to all of the facts and circumstances surrounding the transactions at issue, determined that it was the intent of the seller, not the customer, that is determinative in who paid the subject sales tax. Petitioners' own records identify collection of taxes from its customers, and the lack of signage by itself is not determinative in this case.

Petitioners contend that the same market-drive intent relied upon in *MJR* is also present in this case, but the Tribunal cannot rely entirely upon that intent. Instead, it must look to the entirety of the evidence on the record. However, as the POJ indicated, the Tribunal looked at *MJR2* in its determination that it is the intent of the customer, not the retailer, as to whether tax was included. Petitioners' argument is neither dispositive nor pertinent in identifying a new issue that was not considered by the Tribunal in rendering the POJ.

Finally, Petitioners contends that the Tribunal erred in placing weight upon the signature of its CEO upon the tax returns, as Petitioners' CEO manages Petitioners' operations part-time due to another full-time job. This is in contrast to the witnesses in *MJR*, each of whom was a full-time employee of that business. But Petitioners misconstrue or misidentify the meaning of this statement. The POJ indicates that the role of Petitioners' CEO was pertinent in the analysis because of its evidence that sales tax was included in the pricing despite a lack of signage. The POJ also pointed to the lack of evidence

[6] See Respondent's Exhibit 4, at p 2.
[7] See, for example, *MJR Group LLC v Dep't of Treasury*, *supra* at 2.

that the subsequent purported change in Petitioners' policy from the updated signage resulted in any pricing changes for the disputed items.

Given the above, Petitioners have failed to show good cause to justify modifying the POJ or granting a rehearing.[8] As such, the Tribunal adopts the POJ as the Tribunal's final decision in this case.[9] The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment.

As a result:

a. Petitioners are not entitled to the refund request.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties, as finally shown in this Final Opinion and Judgment 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.[10] 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.[11] 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.[12] Responses to motions for reconsideration are

[8] See MCL 205.762.
[9] See MCL 205.726.
[10] See TTR 261 and 257.
[11] See TTR 217 and 267.
[12] See TTR 261 and 225.

prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[13]

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."[14] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[15] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[16]

By Preeti Mandale

Entered: August 5, 2019
bw

[13] See TTR 261 and 257.
[14] See MCL 205.753 and MCR 7.204.
[15] See TTR 213.
[16] See TTR 217 and 267.

Emagine Entertainment Inc, et al,
Petitioners,

v

Michigan Department of Treasury,
Respondent.

MICHIGAN TAX TRIBUNAL

MOAHR Docket No. 17-000296

Presiding Judge
Peter M Kopke

ORDER GRANTING PETITIONER'S MOTION TO SUPPLEMENT

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioners filed this appeal disputing the denial of their claim for a refund of sales tax paid on prepackaged candy and bottled beverages ("items") between January and December 2013. Gregory A. Nowak, Attorney, represented Petitioner. Justin R. Call, Assistant Attorney General; Genevieve T. Fishchre, Assistant Attorney General; and, David W. Thompson, Assistant Attorney General represented Respondent.

The parties filed cross-motions for summary disposition on July 19, 2018 and responses on August 9, 2018. After a thorough consideration of the Motions and case file, the Tribunal entered an Order on December 11, 2018, denying Respondent's Motion for Summary Disposition and partially granting Petitioners' Motion for Summary Disposition. In that regard, the Tribunal concluded that the items were not taxable and that there was a genuine issue of material fact relative to whether Petitioners or their customers were entitled to a refund of the excess taxes paid.

Given the above, a hearing was held on March 5, 2019. Petitioner's sole witness was Paul Glantz and Respondent's sole witness was Dirk Kjolhede. Although the parties provided closing arguments prior to the conclusion of the hearing, Petitioner filed a Motion on April 1, 2019, requesting the Tribunal's leave to supplement its closing argument. Respondent filed a response to the Motion on April 22, 2019, and no order was entered prior to the issuance of this decision indicating whether the Motion was

granted or denied. The supplemental information provided was, however, considered in the rendering of this decision and, as such, the Motion is, despite Respondent's objection, granted.

Based on the evidence (i.e., testimony and documentation) and case file, the Tribunal finds that the sales tax remitted by Petitioner was included in the sales prices of the items and paid by Petitioners' customers. As a result, Petitioners are not entitled to the requested refund.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:[1]

1. Petitioners are a group of related entities that operate nine movie theaters in the state of Michigan, all of which contain concession stands. Further, Petitioners' concession stands sold, for the tax periods, at issue prepacked candy and bottled water to its customers.
2. Petitioners utilized marketing boards at its concession stands to advertise the sale of prepackaged candy and bottled water to its customers for the tax periods at issue. The marketing boards did **not** indicate **for those tax periods** that all prices included sales tax. The marketing boards did, however, indicate **for subsequent tax periods** that all prices included sales tax. [Emphasis added.]
3. Petitioners charged "round" prices or whole dollar amounts for prepackaged candy and bottled water to speed up transactions for the tax periods at issue and continued that same practice for subsequent tax periods.
4. Petitioners calculated sales tax using the tax in gross method for the tax periods at issue **and** for subsequent tax periods. [Emphasis added.]
5. Although Petitioners paid sales tax on sales of prepackaged candy and bottled water, said sales tax was included in Petitioners' sales prices for the tax periods at issue and, as such, the sales tax was actually paid by its customers.

ISSUES AND CONCLUSIONS OF LAW

The remaining issue in this matter is:

[1] The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to these findings. As for the exhibits, the parties stipulated to the admission of Petitioner's Exhibit No. 19, pages 16 through 26; and, Respondent's Exhibit Nos. 1 through 99 except for Exhibit Nos. 12, 92, 93, 94, 95, and 96 and those stipulated exhibits were admitted. See Transcript ("TR") at 6-8.

> Whether Petitioners are entitled to a refund of the sales tax paid on nontaxable items pursuant to MCL 205.30(1).

In that regard, MCL 205.30(1) provides, in pertinent part:

> The department **shall credit or refund an overpayment of taxes**; taxes, penalties, and interest erroneously assessed and collected; and taxes, penalties, and interest that are found unjustly assessed, excessive in amount, or wrongfully collected with interest at the rate calculated under section 23 for deficiencies in tax payments. [Emphasis added.]

MCL 205.73(4) does, however, provide, in pertinent part:

> A person other than this state may **not** enrich himself or herself **or gain** any benefit **from the collection or payment of the tax**. [Emphasis added.]

Finally, the Michigan Court of Appeals in *Kostyu v Dep't of Treasury* held that "the Tax Tribunal has authority to allocate the burden of proof in a manner consistent with the legislative scheme."[2] The Court further stated:

> Although the revenue statute at issue . . . 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.[3] [Emphasis added.]

Here, Petitioners claim that taxes were paid on items determined by the Tribunal to be nontaxable and that they, and not their customers, paid the excess taxes and, as such, they would not be unjustly enriched by the receipt of a refund of the excess taxes paid. In support of their claims, Petitioners rely on the Tribunal's decision in *MJR Group LLC v Dep't of Treasury* ("*MJR1*"),[4] which was upheld by the Michigan Court of Appeals

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[2] See *Kostyu v Dep't of Treasury*, 170 Mich App 123, 130; 427 NW2d 566 (1988) citing *Zenith Industrial Corp v Dep't of Treasury,* 130 Mich App 464; 343 NW2d 495 (1983).
[3] See *Kostyu*, supra at 130 citing *Vomvolakis v Dep't of Treasury*, 145 Mich App 238; 377 NW2d 309 (1985), *lv den* 424 Mich 887 (1986).
[4] See the Final and Opinion and Judgment on Remand in *MJR Group LLC v Dep't of Treasury*, MTT Docket No. 441767 (June 18, 2015). See also the Final Opinion and Judgment in *MJR Group*, *supra* issued on September 27, 2012.

("*MJR2*"),[5] and the testimony of Mr. Glantz, co-founder and chairman of Emagine Entertainment, Inc.

In *MJR1*, the Tribunal noted that:

> . . . even though portions of Ms. Kondek's[6] affidavits regarding whether sales tax was collected were contradictory, she testified that she used the tax in gross calculation **because that is how it has been done since she joined the company** and **not** specifically because tax was collected from the customer. [Emphasis added.]

The Tribunal also noted that:

> Mr. Redmer[7] testified that shortly after his arrival with the company he reviewed and set concession [prices]. In doing so, he further testified that sales tax was **not** considered in setting those prices. In fact, Mr. Redmer testified that "sales tax is the cost of doing business. **I never even considered sales tax**." Rather, he considered market conditions when setting prices and any additional costs would "[come] out of the bottom line."

The Tribunal further noted that:

> It was also ascertained at hearing **that neither Mr. Redmer nor Ms. Kondek were involved in the other's roles within the company**. Thus, **whether Ms. Kondek believed sales tax was included in the concession prices is irrelevant as she admitted at hearing that she took no part in setting pricing**. Additionally, in light of Mr. Redmer's testimony, Ms. Kondek's use of the tax in gross calculation is **not** conclusive evidence that tax was included in the concession prices. Accordingly, the Tribunal finds that **even if Ms. Kondek believed sales tax was included** in the sale price of prepackaged candy and bottled water, and calculated the tax returns accordingly, **the prices were set without regard to sales tax**. [Emphasis added.]

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[5] See *MJR Group, LLC v Dep't of Treasury*, unpublished *per curiam* opinion issued by the Michgan Court of Appeals on December 29, 2016 (Docket No. 329119). See also *MJR Group, LLC v Dep't of Treasury*, unpublished opinion *per curiam* issued by the Court of Appeals on February 25, 2014 (Docket No. 312745).

[6] Ms. Kondek was MJR's controller.

[7] Mr. Redmer was MJR's vice president of operations

In upholding the Tribunal's decision, the Court of Appeals in *MJR2* noted the conflicting evidence and held that:

> **A reasonable mind** could accept as true Redmer's statements that he, **as the person who set the menu prices**, did **not** include sales tax in those prices but rather considered tax an eventual cost of doing business. **And a reasonable person could** credit Kondek's later testimony that MJR was the party ultimately responsible for paying taxes on all items sold, particularly when it made more sense in light of MJR's accounting software. Because a reasonable person could conclude that MJR did not, in fact, collect sales tax from its customers, we conclude that competent, material, and substantial evidence supported the Tribunal's decision.

As for the instant appeal, Mr. Glantz similarly testified that sales tax was not considered in setting Petitioners' prices and was a cost of doing business. Specifically, Mr. Glantz testified that Petitioners do not add sales tax to the posted prices and charge it to the customers.[8] He also testified that adding the tax:

> ". . . would require us to account for nickels, dimes, and pennies, which we are adverse to doing, because the unique nature of our business requires us to move along the concession lines."[9]

In further explanation, Mr. Glantz testified that:

> "the critical metric in our business is concessions sales per person, and labor efficiency. And so to deal with nickels, dimes, and pennies would constrain and reduce labor efficiency, thereby extending lines, and thereby deterring sales."[10]

When asked whether he considered the tax paid by the customer, Mr. Glantz testified that:

> "**we never gave much consideration to it**. Candidly, it was just a matter of how do we move the concession lines along."[11]

[8] See TR at 17 (i.e., "[w]e specify a dollar amount, and we round it to the nearest quarter").
[9] See TR at 18.
[10] See TR at 18.
[11] See TR at 18.

Thereafter, the following exchange took place:

> Q. And from that perspective, what was your understanding regarding what party was responsible for the tax and paying the tax?
>
> A. We incurred that, in my opinion, as an operating expense of the business.
>
> Q. Okay. So it was not your opinion that the customers were paying it embedded in the amount that they remitted?
>
> A. That was never my perception. My perception was we set a price, we paid tax on -- as required, but the guests were only asked to pay a certain specified price.
>
> Q. Would your customers have any basis for believing that they were paying the sales tax?
>
> A. I don't believe there would be any perceived contractual agreement between ourselves and our customers about that. I think if anything, guests thought they were getting a good deal, because we weren't adding tax on top.[12]

Mr. Glantz went on to testify that Petitioners are still using the tax in gross method "with the prescribed disclaimer that all prices include sales tax where applicable."[13] In that regard, Mr. Glantz testified that the lack of signage "was the basis for the error."[14] He explained, "[t]here's a recognition now that we're telling consumers the price includes tax where applicable."[15] Mr. Glantz verified that the only thing different today is the signage.[16] This point was reiterated on re-direct:

> Q. Mr. Glantz, you testified that you believe you made an error in using the tax in gross method; is that correct?
>
> A. Yeah, our error was largely due to our failure to disclose the use of the tax in gross method during that period in question.
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> * * *

[12] See TR 18-9.
[13] See TR at 139.
[14] See TR at 140.
[15] See TR at 140.
[16] See TR at 140 (i.e., "[t]hat's correct; the contract between Emagine and its customers").

> Q. Thank you. Did you testify that you believe the tax in gross method requires signage or other contract terms to support it?
>
> A. That's my testimony, yes.
>
> Q. And did you have those, just to be clear?
>
> A. We didn't have it during the period in question, but we have subsequently -- I've subsequently directed our team to ensure that it's there.[17]

Though Petitioners believe that disclosure and/or the understanding and beliefs of their customers are determinative on whether tax is included in their sales prices, *MJR2* makes it clear that it is the intent of the taxpayer that is the relevant consideration. It is notable that in *MJR1*, the Tribunal ultimately concluded that tax was **not** included in the taxpayer's sales prices, notwithstanding that the marketing boards at its concession stands contained the statement: "All Prices Include Sales Tax." [Emphasis added.] And unlike *MJR1* where there was affirmative testimony indicating that sales tax was not considered and the prices were based solely on the market, Mr. Glantz' testimony establishes that there was no specific intent to include or exclude tax in Petitioners' prices, and his beliefs regarding who was paying the tax arose out of erroneous legal assumptions.[18] Also unlike *MJR1*, Mr. Glantz also acknowledged being involved with the financials and accounting,[19] which included, among other things, the signing of prepared tax returns personally or by use of his signature stamp with his permission and authorization.[20] Consequently, while Petitioners' use of the tax in gross calculation is not conclusive, the Tribunal is persuaded that the record taken as a whole supports a conclusion that sales tax was, despite the lack of signage, included in the

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[17] See TR at 151-53.

[18] Though not noted in the Tribunal's final decision, there was also evidence that "MJR had charged its customers sales tax in the past and included that tax as a separate line item on receipts." See *MJR2, supra*. In finding that the Tribunal erred in granting summary disposition in favor of the Department, the Court of Appeals noted that MJR had filed an affidavit executed by its president, Michael Mihalich, which indicated that " '[a]pproximately 12 years ago . . . ' MJR 'changed [its] policy and stopped adding sales tax to the price of the food or beverages as a separate item.' Mihalich decided to discontinue adding sales tax 'to eliminate change problems and to make MJR a better value than [its] competitors.' Mihalich emphasized, 'We are in fact eating the sales tax charge.' As proof of that point, Mihalich noted that MJR's concession prices were considerably lower than its competitors." *Id*.

[19] See TR at 83-4. See also TR at 47 and 56-7.

[20] See TR at 83, 92-3, and 119-20.

concession prices.[21] As such and inasmuch as Petitioners' customers paid the sales tax on the nontaxable items, their claim is barred by MCL 205.73(4); Petitioners would be unjustly enriched by receipt of a refund for the excess paid. Indeed, Mr. Glantz acknowledged on cross-examination that "if we made that error today, and we're very careful to identify those items that are taxable and non-taxable, it would -- we would have collected the tax in error, and we would owe it to the State."[22] Disclosure being the only difference, he further acknowledged that Petitioners wouldn't be eligible for a refund under such circumstances because they'd be unjustly enriched."[23]

Based on the above, the Tribunal concludes that Petitioners' entitlement to refunds requested is as indicated in the Introduction Section of this Proposed Opinion and Judgment (POJ).

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.[24] As such, no action should be taken based on this decision. After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

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

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearings System. 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,** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).

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[21] In addition to Petitioners' specific lack of intent, there was, unlike MJR, no evidence indicating a change in Petitioners' policy regarding the collection of sales taxes or that Petitioners' sale prices were lower than their competitors. Rather, Petitioners' price setting policy and accounting methodology remained the same after the signage was changed to establish the contract purportedly necessary to justify Petitioners' collection of sales taxes from its customers, which a reasonable mind could accept as evidence that Petitioners had intended to and did include sales tax in their sales prices prior to the changed signage.
[22] See TR 148.
[23] See TR at 148.
[24] See MCL 205.726.

Exceptions are **limited** to the evidence submitted prior to or at the hearing 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 that party to file a written response to the exceptions.[25]

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.

Entered: May 14, 2019 By Peter M. Koples

pmk/ejg

[25] See MCL 205.762(2) and TTR 289(1) and (2).