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

Sovereign Sales, LLC,
Petitioner,

MTT Docket No. 431694
Assessment No. - *Refund Claim*

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
B. D. Copping

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Sovereign Sales, LLC, appeals Respondent's denial of its refund claim and contends that it is entitled to a refund for Single Business Tax ("SBT") paid for tax period ending December, 2007, based on its amended 2007 SBT return. To support this, Petitioner contends that it erroneously included gain recognized from the sale of substantially all of its assets in its SBT return for the tax year ending December, 2007. Upon realizing its error, Petitioner filed an amended SBT return for the tax year ending December, 2007, on or about February 20, 2009, excluding the gain recognized from the sale of substantially all of its assets based on Petitioner's belief that the sale constituted a casual transaction pursuant to MCL 208.4(1).

The Tribunal finds Petitioner is entitled to a refund, plus statutory interest pursuant to 1941 PA 122, based on Petitioner's amended 2007 SBT return, for the tax period ending December, 2007.

BACKGROUND

Petitioner is a Michigan Limited Liability Company formed for the purpose of conducting business as a distributor of fragrances, skin care, and hair color products. Pursuant to an Asset Purchase Agreement ("APA"), dated August 14, 2006, effective August 11, 2006, Petitioner sold all of its assets to an unrelated buyer, Elizabeth Arden. Petitioner filed its 2006 SBT return excluding the gain from the sale of substantially all of its assets on the basis that the sale qualifies as a "casual transaction" pursuant to MCL 208.4(1). Subsequently, Petitioner filed its 2007 SBT return including the gain recognized in 2007 on the sale of substantially all of its assets, which Petitioner contends was in error. On or about February 20, 2009, Petitioner filed an amended 2007 SBT return to exclude the gain because Petitioner contends that the sale qualifies as a "casual transaction." Based on its amended SBT return for the tax period ending December, 2007, Petitioner contends that it is entitled to the following refund, plus statutory interest, for the amount of excess SBT paid for the tax year at issue:

Tax Period	Tax Type	Refund Claim
12/31/2007	SBT	$9,888

Pursuant to a Single Business Tax Annual Return Notice of Adjustment, issued to Petitioner on April 17, 2009, Respondent denied Petitioner's refund request because Respondent did not consider Petitioner's sale of assets to be a casual transaction. Petitioner requested an informal conference on June 15, 2009, for the denial of its refund request. Subsequently, Petitioner's SBT returns for the 2004-2007 tax years were audited by Respondent. Based on this audit, on March 12, 2010, Respondent issued Intent to Assess No. R793106, assessing Petitioner SBT for the tax period ending December, 2007, in the amount of $28,875.01. On March 16, 2010, Respondent then issued Intent to Assess No. R796357, assessing Petitioner SBT for the tax period ending December, 2006, in the amount of $273,482.09. On April 27, 2010, Petitioner requested an informal conference relative to these Intents to Assess. An informal conference was held on August 25, 2010, and a Decision and Order of Determination was entered on November 8, 2011.[1] The Informal Conference Recommendation held that the sale of Petitioner's assets constituted a casual transaction and recommended that the Department grant Petitioner's claim for refund. The Decision and Order of Determination overruled the Informal Conference Recommendation and

[1] The Informal Conference Recommendation and Decision and Order of Determination only addressed Petitioner's refund request. Petitioner's request for an informal conference relative to Intents to Assess Nos. R793106 and R796357 have been held in abeyance pending resolution of the casual transaction issue relating to Petitioner's 2007 claim for refund in this case.

determined that Petitioner's claim for refund should be denied because Petitioner's sale of substantially all of its assets did not qualify as a "casual transaction" as defined in MCL 208.4(1). Petitioner filed its appeal of the Decision and Order of Determination to the Tribunal on December 13, 2011. Respondent filed its Answer to Petitioner's appeal on January 10, 2012. A hearing was held on September 12, 2012, at which Petitioner presented one witness and Respondent presented none.

During the hearing, Respondent requested the opportunity to file a Post-Hearing Brief. Pursuant to Respondent's request, the Tribunal entered a Post-Hearing Brief Order on September 13, 2012, which allowed Respondent to submit a Post-Hearing Brief up to 21 days after receipt of the transcript from the hearing and allowed Petitioner to submit a response to Respondent's Post-Hearing Brief 14 days after receipt of Respondent's Brief. Respondent filed its Post-Hearing Brief on October 11, 2012, and Petitioner filed its Post-Hearing Reply Brief on October 26, 2012.[2]

---

[2] The transcript was filed on September 19, 2012. On October 11, 2012, Respondent filed Motions for a Five-Day Extension to the Tribunal's September 13, 2012, Order and for Immediate Consideration of its Motion for extension. Although Respondent filed its Motions the day after its post-hearing brief was due, pursuant to the Tribunal's September 13, 2012, Order, the Tribunal failed to address Respondent's Motions prior to Respondent filing its post-hearing brief, which was also filed on October 11, 2012. That being said, had the Tribunal addressed Respondent's Motions, it would have granted Respondent's Motion for Immediate Consideration and found that Respondent showed good cause as to why the Tribunal should grant its Motion for extension. As a result, the Tribunal finds Respondent's post-hearing brief was filed timely. Furthermore, although

PETITIONER'S CONTENTIONS

Petitioner contends that it is entitled to a refund for overpayment of SBT paid for the tax year ending December, 2007. To support its contentions, Petitioner asserts that the sale of substantially all of its assets pursuant to the APA in August of 2006 with Elizabeth Arden, constituted a casual transaction pursuant to MCL 208.4(1) and, as such, the gain recognized is not subject to SBT. More specifically, Petitioner contends that "the sale was a 'once in a life time' transaction for the Petitioner, not one of several 'repeated and successive transactions' or a transaction that the Petitioner conducted in the 'ordinary course' . . . [and] the sale was not 'incidental' to the Petitioner's regular business." (Post-Hearing Reply Brief, pp 2-3) In that regard, Petitioner asserts that its "ordinary course of business does not involve selling the assets that it needs in order to operate its business" and it "was engaged in the business of selling fragrances, not of selling customers and supplier lists. . . . By contrast, the sale was a significant transaction that effectively ended the Petitioner's business." (Post-Hearing Reply Brief, pp 2-3) "As a result of the [sale], . . . Petitioner was effectively a shell of its former self and unable to conduct business as it had prior to the sale to Arden other

---

Petitioner's post-hearing reply brief was filed more than 14 days from receipt of Respondent's post-hearing brief, had the Tribunal granted Respondent's Motions, Petitioner's deadline to file its post-hearing reply brief would have been extended to October 29, 2012. For these reasons, Petitioner's post-hearing reply brief was also filed timely, and as such, the parties' briefs will be taken into consideration in the rendering of this Final Opinion and Judgment.

than to collect payments under the Note, maintain the warehouse through the end of the lease and pursue the instant tax litigation." (Post-Hearing Reply Brief, pp 5-6) That said, Petitioner contends that *Guardian Photo v Dep't of Treasury*, 243 Mich App 270; 621 NW2d 233 (2001) and *Manske v Dep't of Treasury*, 265 Mich App 455; 695 NW2d 92 (2005), are applicable in this case because *Guardian Photo, supra*, stands "for the proposition that the casual transaction exception is available to limited liability companies as its holding only suggests that corporations are precluded from asserting the casual transaction exception" (Post-Hearing Reply Brief, p 2, n 1), and "the facts of this case are similar to those" in *Manske, supra*. (Post-Hearing Reply Brief, p 6) Petitioner further asserts, contrary to Respondent's contentions, that (i) "Petitioner did not receive compensation for business services 'over a year's stretch.' . . . [T]he installment payments under the Note were funds withheld from the Purchase Price – not compensation for Petitioner's 'business services,'" and (ii) "*Manske* [does not] suggest that a 'casual transaction' must be coerced or forced in nature." (Post-Hearing Reply Brief, p 10) (Transcript, pp 4-5, 46-47; Post-Hearing Reply Brief)

PETITIONER'S ADMITTED EXHIBITS

P-1: Decision and Order of Determination Relating to Refund Claim No. 20091080

P-2: Assessment No. R796357

P-3: Assessment No. R793106

P-4: State of Michigan, Department of Treasury, Informal Conference Recommendation from Sherry Hilpert, Referee, Hearings Division

P-5: Transaction Documents Relating to the Sale of Petitioner's Assets

P-6: Petitioner's Michigan Single Business Tax Returns 2006-2007

P-7: State of Michigan Audit Work Papers and Reports

P-8: Petitioner's Pre-Sale and Post-Sale Balance Sheets and Related Financial Information and Work Papers

PETITIONER'S WITNESS

Richard Lewis

Richard Lewis is a member and the CEO of Petitioner and has been both since Petitioner was organized. Mr. Lewis testified that (i) it was his intention "to run [the company] as an operating company and to build the business" when the company started (Transcript, p 11); (ii) the company bought department store fragrances from domestic and overseas manufacturers and "then sold those fragrances to what would be non-conventional retailers, the Walmarts of the world, Sam's Clubs, Costco's, Walgreens, CVS's, and even some booth chains" (Transcript, p 12); (iii) the company started a couple of other businesses between the time it was organized and the time it sold substantially all of its assets to Elizabeth Arden, but those businesses did not work, so Petitioner "closed [them] down" (Transcript, p 13); (iv) he signed the APA and Closing Statement on behalf of Petitioner; (v) Elizabeth Arden approached Petitioner to purchase the company; (vi) a year or two before the sale, Petitioner "just made a major investment in a

new ERP system which was to help us control our inventory and all the components that went into the inventory . . . and it was like a close to $2 million investment in hardware and software (Transcript, p 18); (vii) Elizabeth Arden purchased Petitioner for about $101,000,000; (viii) Elizabeth Arden purchased "inventory and good will, . . . books and records, . . . open purchase orders to vendors for merchandise that were coming in, . . . open sales orders, . . .[and] all [of] our confidential information, as far as trade secrets, as far as sources, as far as customer lists, contacts" (Transcript, p 18-19); (ix) Petitioner signed a non-compete agreement with Elizabeth Arden for three years from the date of closing; (x) the APA included five deferred consideration installment payments between September 15, 2006, and January 15, 2007, because "the sale was done August 11th and that was going into the major Christmas selling season, and they could not have transitioned the inventory into their warehouses in time to successfully ship the Christmas business" (Transcript, p 21); (xi) "[p]art of the transaction included us having to continue to ship on their behalf, to receive on their behalf, to receive on their behalf the merchandise coming in for Christmas, to ship on their behalf, to do a lot of the functions that they would eventually take over completely, and they provided a budget for us to do that that we agreed to, and that we had to perform that function through the end of December [2006]" (Transcript, p 21); (xii) the Promissory Note for $11,000,000 was "to make sure that [Elizabeth Arden was

not] over-paying for something, that for the two years after the sale they had to do a certain amount of business in our product lines at a certain margin in order for us to get those last two payments" (Transcript, p 23); (xiii) Petitioner met the requirements and was paid $11,000,000 in two separate installments in August 2007 and August 2008; (xiv) Elizabeth Arden did not purchase equipment or furniture that it did not need; (xv) items that Elizabeth Arden did not purchase were either sold at auction, junked, or donated to charity; (xvi) Elizabeth Arden "cleaned out the warehouse after the Christmas selling season . . . [and] everything was pretty much moved out of the facility in January [2007]" (Transcript, p 24); (xvii) "we had another three and half years on the lease, which Arden had agreed to pay for half of the cost of that facility" (Transcript, p 25); (xviii) after the sale, Petitioner has continued to operate solely to wind-up its business operations and to handle this tax issue; (xix) after the sale, Petitioner "couldn't reopen because we were restricted from reopening" due to the three year non-compete agreement (Transcript, p 28); (xx) it was his intention to "close [Petitioner] down as soon as we could" after the sale to Elizabeth Arden (Transcript, p 29); (xxi) "[w]e had issues with our customers that were related to the sales we made before the sale of the company, so we kept it open as long as we had to, and unfortunately it is still open because we still have this issue" (Transcript, p 29); (xxii) Petitioner never acquired equipment for the purpose of selling it for a profit; and (xiii) the sale to

Elizabeth Arden was Petitioner's first and only sale of business to anyone.

(Transcript, pp 8-46)

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner is not entitled to a refund. To support its contentions, Respondent argues the transaction at issue in this case is not a casual transaction, as defined by MCL 208.4(1), but is instead income earned in the ordinary course of Petitioner's business operations and as such, is subject to SBT. More specifically, Respondent contends "[t]he installment payment [Petitioner] received in 2007 . . . is business income from a year's worth of business activity, and not from 'a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character.'" (Post-Hearing Brief, pp 11-12) Additionally, Respondent contends that *Guardian Photo, supra*, is not applicable to this case and *Manske, supra*, is distinguishable in that Petitioner here was not forced to sell substantially all of its assets. Consequently, Respondent contends that "going out of business is just as much a part of the natural life cycle of a business as going into business" and as a result, is "incidental to the business itself." (Transcript, p 48) Furthermore, Respondent argues that "if you were to focus solely on the installment payments, basically that is incidental to the sale of inventory." (Transcript, p 48)

(Transcript, pp 5-8, 47-49; Post-Hearing Brief)

RESPONDENT'S ADMITTED EXHIBITS

R-1: Single Business Tax Annual Return Notice of Adjustment (April 17, 2009)

R-2: Hearings Division Documents

R- 3: Single Business Tax Returns

R-4: Michigan Business Tax Returns

R-5: Filings with the Department of Licensing and Regulatory Affairs

FINDINGS OF FACTS

1. Petitioner is a Michigan Limited Liability Company with its principal offices at 6230 Orchard Lake Road, Suite 296, West Bloomfield, Michigan 48322.

2. Petitioner was formed in 1987 for the purpose of conducting business as a distributor of fragrances, skin care, and hair color products.

3. Elizabeth Arden approached Petitioner to acquire Petitioner's business.

4. Pursuant to an APA between Petitioner and Elizabeth Arden, dated August 14, 2006, effective August 11, 2006, Petitioner sold substantially all of its assets to an unrelated buyer, Elizabeth Arden.

5. Elizabeth Arden purchased Petitioner for $101,202,985, which consisted of a portion of the payment due at closing, five deferred consideration payments between September 15, 2006, and January 15, 2007, and an $11,000,000 promissory note which was paid in two installments ($6,000,000 in August, 2007, and $5,000,000 in August, 2008).

6. As part of the APA, Petitioner was precluded from engaging in any business that would compete with the business that had just been sold pursuant to a covenant not to compete entered into between Petitioner and Elizabeth Arden for the period of three years from the date of closing.

7. After the sale, any equipment or furniture that Elizabeth Arden did not purchase pursuant to the APA was sold at auction, junked, or donated to charity.

8. Petitioner filed its 2006 Michigan SBT Return excluding the gain from the sale of substantially all of Petitioner's business on the basis that the sale qualified as a "casual transaction" pursuant to MCL 208.4(1).

9. Petitioner filed its original 2007 Michigan SBT Return reporting the gain recognized in 2007, on the sale of substantially all of its assets.

10. On or about February 20, 2009, Petitioner amended its 2007 Michigan SBT return. An attachment to the amended SBT return states:

> The taxpayer is amending its 2007 Form C-8000 Michigan Single Business Tax Return to exclude the gain from the sale of substantially all of the assets of the taxpayer's business because the sale qualifies as a "casual transaction" pursuant to MCL 208.4(1) and the Michigan Court of Appeals decision in *Manske v. Dept. of Treasury*, 265 Mich App 455, appeal denied, 706 NW2d 740 (2005). This amended return reduces business income by the amount of the gain ($5,434,911) that was improperly included in 2007 business income.

11. Respondent denied Petitioner's claim for refund for tax period ending December 31, 2007. The notice of denial stated:

> Your amended filing removing the sale of assets gain from the business income is denied. The Department of Treasury does not consider this a casual transaction.

12. On June 15, 2009, Petitioner requested an informal conference regarding the denial of its refund request.

13. Petitioner's SBT returns for tax years 2004-2007 were audited by Respondent.

14. Based on the audit, Respondent issued two separate Intents to Assess dated March 12, 2010, and March 16, 2010.

15. Respondent issued to Petitioner an Intent to Assess for Taxes Due, No. R793106 ("Intent to Assess No. 1"), for the 12/07 tax period, dated March 12, 2010, assessing SBT in the amount of $25,724.00, penalty in the amount of $0.00, and interest in the amount of $3,151.01, for a total assessment of $28,875.01.

16. Respondent issued to Petitioner an Intent to Assess for Taxes Due, No. R796357 ("Intent to Assess No. 2"), for the 12/06 tax period, dated March 16, 2010, assessing SBT in the amount of $226,115.00, penalty in the amount of $0.00, and interest in the amount of $47,367.09, for a total assessment of $273,482.09.

17. Petitioner has paid the uncontested assessments relating to tax years 2004-2007.

18. On April 27, 2010, Petitioner requested an informal conference to contest the deficiencies for tax years 2006 and 2007 stated in the Intents to Assess.

19. The deficiencies for tax years 2006 and 2007 result from Respondent's disagreement with Petitioner's treatment of the sale as a casual transaction.

20. The Informal Conference Recommendation only addressed Petitioner's claim for refund, and recommended that the Department grant Petitioner's request. More specifically, the Informal Conference Recommendation stated:

> [T]he petitioner herein relinquished its property rights upon the sale of assets and business to another entity. Such transaction was not incidental to the petitioner's regular business activity of selling cosmetics and perfumes. The sale was a 'major event' that 'extinguished' the petitioner's interest in its business. Additionally, the sale was a one time transaction that was not in the ordinary course (repeated/successive) of the petitioner's business of selling perfumes and cosmetics. The sale of the petitioner's assets therefore constitutes a casual transaction and, as such, the gain resulting from this sale should be excluded from the petitioner's SBT base.

21. In its Decision and Order of Determination dated November 8, 2011, Respondent overruled the Informal Conference Recommendation and

determined that Petitioner's claim for refund should be denied because Petitioner's sale of substantially all of its assets did not qualify as a "casual transaction" as defined in MCL 208.4(1).

22. Petitioner's request for an informal conference relative to Intents to Assess Nos. R793106 and R796357 has been held in abeyance pending resolution of the casual transaction issue relating to Petitioner's 2007 claim for refund in this case.

23. Petitioner reported the payment from the August, 2008, installment on its 2008 Michigan Business Tax ("MBT") return since there is no casual transaction exclusion under the MBT.

CONCLUSIONS OF LAW

MCL 208.31[3] provides, in pertinent part:

> (3) The tax levied under this section and imposed is upon the privilege of doing business and not upon income.

For purposes of SBT, MCL 208.9(1) defines "tax base" to mean "business income."

For persons other than corporations, MCL 208.3(3) defines "business income" to mean "that part of federal taxable income derived from business activity."

MCL 208.3(2) defines "business activity," in part, as:

> a transfer of legal or equitable title to property, whether real, personal, or mixed, tangible or intangible made or engaged in, or caused to be made or engaged in, within this state, whether in intrastate, interstate, or foreign commerce, with the object of

[3] The SBT was repealed by Public Act 325 of 2006, effective for tax years that begin after December 31, 2007.

> gain, benefit, or advantage, whether direct or indirect, to the taxpayer or to others, *but shall not include a casual transaction*. Although an activity of a taxpayer may be incidental to another or other of his business activities, each activity shall be considered to be business engaged in within the meaning of this act. (Emphasis added.)

MCL 208.4 defines "casual transaction" as:

> a transaction made or engaged in other than in the ordinary course of repeated and successive transactions of a like character, except that a transaction made or engaged in by a person that is incidental to that person's regular business activity is a business activity within the meaning of this act.

Tax statutes, and exceptions thereto, are generally construed against the government, see *Manske, supra*, citing *DeKoning v Dept of Treasury*, 211 Mich App 359; 536 NW2d 231 (1995), whereas statutory exemptions are strictly construed against the taxpayer, see *ANR Pipeline Co v Dept of Treasury*, 266 Mich App 190; 699 NW2d 707 (2005). As stated in *Manske, supra*, and reproduced below, since a casual transaction is not an exemption, but rather is an exception, we must determine whether Respondent has satisfied its burden to establish that Petitioner's sale of substantially all of its assets, pursuant to the APA with Elizabeth Arden, constituted business activity. In *Manske, supra*, p 458, the Court of Appeals specifically stated:

> We will not review MCL 208.4(1) as an exemption statute because it does not reduce the amount of the SBT imposed. See *DeKoning, supra* at 362, 536 NW2d 231. Rather, by definition it prevents certain transactions from being included in the amount of the taxpayer's SBT

> base in the first place. If the transaction is not initially taxed, then it cannot be said that the exclusion of the transaction from consideration reduces the amount of the tax. Thus, MCL 208.4(1) will be construed against the government. *DeKoning, supra* at 361, 536 NW2d 231.

Respondent argues that Petitioner was in the business of selling fragrances and continued to sell fragrances pursuant to the APA; however, Respondent fails to focus "on the characteristics of this specific transaction." *Manske, supra*, p 460. The specific transaction in this case is the sale of Petitioner's business to Elizabeth Arden, not the sale of individual goods.

Purchasing a company's assets is a form of acquisition. In order to be construed as "all or substantially all" of the corporate assets, a sale must be of assets quantitatively *vital to the operation* of the corporation and the sale *must strike at the heart of corporate existence and purpose*. See *Whittaker Corp v Edgar*, 535 F Supp 933 (ND Ill 1982). In this case, but for some equipment and furniture, Elizabeth Arden purchased all of Petitioner's assets. Without its inventory, Petitioner was unable to continue the purpose for which the company was formed – to distribute fragrances, skin care, and hair color products. Furthermore, Petitioner was precluded from continuing this business purpose pursuant to a non-compete agreement it agreed to pursuant to the APA for three years from the date of closing. Not only was the selling of its assets, particularly its inventory, "vital" to the operation and "a fundamental cornerstone" of

Petitioner's business, but the sale essentially removed the heart of Petitioner's business as of the date of closing and for at least three years thereafter.

That being said, Mr. Lewis testified that this was the only sale of its business that occurred from the time Petitioner was formed until the date of the APA. Although Mr. Lewis testified that the company dabbled in a couple of other business ventures, Mr. Lewis further testified that those businesses did not work out and thus, Petitioner "closed [them] down." (Transcript, p 13) As such, the sale of its business (i.e., the sale of substantially all of its assets) was Petitioner's only sale of selling a business.

And while Respondent contends that installment payments were the result of business activity, the staggered payments were the result of negotiations when Petitioner entered into the APA with Elizabeth Arden as part of financing discussions to ensure that Elizabeth Arden did not overpay for Petitioner's business. The installment payments were agreed to as part of the APA, entered into on August 14, 2006, effective August 11, 2006, and were not payment for purported "business activity" on behalf of Petitioner in 2007, but instead were a vital and necessary part of the cessation and winding down of the business.

Respondent also contends that going out of business is "incidental to the business itself" (Transcript, p 48). The Tribunal, however, is not persuaded that the sale of substantially all of Petitioner's assets was a "minor concomitant

circumstance, event, item, or expense" or "subordinate to something of greater importance; having a minor role," considering that the sale "extinguished [Petitioner's] business." *Manske, supra,* p 461.

Additionally, contrary to Respondent's assertion, the Tribunal is not persuaded that the distinction between the type of sale, forced versus voluntary, distinguishes the holding in *Manske* from this case. The Court of Appeal's decision in *Manske* did not state that a forced sale amounts to a casual transaction. Specifically, in determining that the sale in *Manske* constituted a casual transaction, the Court of Appeals stated, "Indeed, [granting a deed in lieu of foreclosure] is the antithesis of establishing and operating a hotel. The trial court erred when it reasoned that the 'subsequent relinquishment of rights in property . . . was as much a part of Plaintiff's business venture as the initial acquisition.'" *Manske, supra,* p 461. Here, Petitioner's sale of substantially all of its assets is the exact opposite of distributing fragrances, skin care, and hair color products because without its assets (i.e., inventory), Petitioner is unable to continue its business purpose. As a result, whether or not Petitioner's sale of substantially all of its assets was forced or voluntary would have no effect on the Tribunal's decision that the sale constitutes a casual transaction, since Petitioner was not in the business of selling businesses or substantially all of its assets.

Also worth mentioning, Internal Policy Directive 2006-4 ("IPD 2006-4") provides guidance to Respondent's departmental personnel on the issue of casual transactions for noncorporate entities, such as Petitioner. In IPD 2006-4, consistent with *Manske*, one of the policy determinations state:

> A transaction will be deemed incidental to a person's regular business activity if the transaction happens as a result of or in connection with a regular business activity that is more important; if the transaction is subordinate to a regular business activity of greater value or; *the transaction has a minor role in the regular business activity*. (Emphasis added.)

Further, IPD 2006-4 provides five examples. One of those examples states:

> A retailer finalizes the sale of one widget during the tax year. It is the only widget he has ever sold, but he finalizes thousands of sales of other types of merchandise. The retailer is engaging in a transaction (selling a widget) of a like character to other transactions (selling other types of merchandise) that has occurred more than once and is uninterrupted and consecutive. The sale of the widget is not a casual transaction.

First, addressing the policy determination above, Petitioner's sale of its business (i.e., selling substantially all of its assets) is not a minor role in Petitioner's regular business activity. Again, this sale extinguished Petitioner's business activity and, as a result, was anything but minor with regard to Petitioner's regular business activity. Moreover, the sale in this case was not merely the sale of one widget. The sale in this case was the sale of Petitioner's

entire business. Respondent mistakenly focuses on the contents of the sale, not the characteristics of the sale, that the transaction is the sale of substantially all of Petitioner's assets in order for Elizabeth Arden to *acquire* Petitioner's business. By way of example, incorporating Respondent's own example, the Tribunal provides the following:

> [Petitioner] finalizes the sale of [its business by selling substantially all of its assets] during the [2006, 2007, and 2008] tax year[s]. It is the only [sale of a business that Petitioner] has ever sold, but [Petitioner] finalize[d] thousands of sales of other types of merchandise [(i.e., distributing fragrances, skin care, and hair color products) in prior tax years]. [Petitioner] is [not] engaging in a transaction (selling its business) of a like character to other transactions (distributing fragrances, skin care, and hair color products) that has occurred more than once and is uninterrupted and consecutive. The sale of [its business by selling substantially all of its assets] is [therefore] a casual transaction [for purposes of SBT for the 2006 and 2007 tax years].

To reiterate, the Tribunal finds that Petitioner's sale of its business was not incidental to its business activities, nor was it in the ordinary course of repeated and successive transactions of a like character.

Having reviewed applicable statutes and case law, as well as the evidence and testimony presented by the parties, the Tribunal concludes that Petitioner's sale of its business (i.e., the sale of substantially all of its assets) constitutes a casual transaction, and as such, the income recognized from the sale during the 2007 tax year shall not be subject to SBT.

JUDGMENT

IT IS ORDERED that Petitioner's refund claim, plus statutory interest pursuant to 1941 PA 122, based on Petitioner's amended 2007 SBT return, for tax period ending December, 2007 is GRANTED.

IT IS FURTHER ORDERED that Respondent shall issue a refund as required by this Order within 28 days of entry of this Final Opinion and Judgment.

MICHIGAN TAX TRIBUNAL

By: B.D. Copping

Entered: November 28, 2012