

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

Great Lakes West, LLC,  
Petitioner,

v

MTT Docket No. 418353

Michigan Department of Treasury  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

ORDER REMOVING CASE FROM ABEYANCE

ORDER GRANTING RESPONDENT'S MOTION FOR RECONSIDERATION

CORRECTED FINAL OPINION AND JUDGMENT

On July 24, 2014, Respondent filed a letter in the above-captioned case. In its letter, Respondent states:

On January 11, 2013, the Tribunal issued an order placing this matter in abeyance pending the final decision of the Michigan Supreme Court in *Andrie, Inc. v Dep't of Treasury*. The order directs the parties to notify the Tribunal in writing as to the need for further proceedings in this case following the resolution of *Andrie*. Please be advised that the Michigan Supreme Court issued the attached opinion on June 23, 2014.

At the time this case was placed in abeyance, Treasury had filed a motion seeking "reconsideration of one specific holding set forth in the Final Opinion and Judgment." In the motion, Treasury requested that the Tribunal reconsider the portion of its opinion that relied on the Court of Appeals' decision in *Andrie*. . . .

The Michigan Supreme Court reversed the published Court of Appeals opinion relied upon by the Tax Tribunal and in doing so expressly rejected the argument that a retail purchaser is entitled to a presumption that sales tax is paid on retail transactions in Michigan[, which] . . . necessitates the removal and reliance on the reversed opinion of the Court of Appeals from the Tribunal's Final Opinion and Judgment.

Accordingly, Treasury respectfully requests that the Tribunal grant its motion for reconsideration and reverse its previous finding that there is a presumption that purchases from Michigan vendors are not subject to use tax and issue a new opinion that recalculates the taxability of 'component 4' miscellaneous purchases.

The \$2,419.43 in purchases from Michigan vendors must be added back to the total exceptions for a revised amount of \$5,057.53, resulting in a monthly average of \$421.46. In accordance with Treasury's audit method, this amount is projected over the audit period for a total of \$18,122.78 in taxable purchases for [a] use tax liability of \$1,087.37. The parties stipulated that Petitioner is entitled to a credit of \$2,274 for an overpayment of Single Business Tax, which results in a net refund of \$1,186.63 (instead of \$1,720.00).

The Tribunal, having considered the letter and the case file, finds that it entered a Final Opinion and Judgment, adopting the Proposed Opinion and Judgment as the Tribunal's final decision in this case, on December 10, 2012.

On December 28, 2012, Respondent filed a Motion requesting that the Tribunal reconsider its Final Opinion and Judgment. In its Motion, Respondent states that it "requests that the Tribunal reconsider only that part of the Opinion in which it applied *Andrie v Dep't of Treasury*, 296 Mich App 355; 819 NW2d 920 (2012) [since] . . . the *Andrie* decision ceased being binding precedent on lower courts and the Tribunal on December 5, 2012." Respondent's Motion at 2. While Respondent acknowledges, in its Motion, that the Tribunal could still find *Andrie* persuasive and uphold its decision in the Final Opinion and Judgment in this case, Respondent states that it "seeks the Tribunal's independent analysis [on this matter and argues that] . . . *paid* as used in the Use Tax Act exemption requires the Michigan purchaser to prove that it paid the tax to the retailer." Respondent's Motion at 3, 5. In support of the preceding argument, Respondent states that "[t]here is no language in MCL 205.94(1)(a) stating such presumption that a Michigan purchaser is entitled to rely on a seller complying with the Sales Tax Act to obtain the use tax exemption." Respondent's Motion at 6. Respondent further states that "the language in MCL 205.21b(1) combined with the exemption language in MCL 205.94(1)(a) and (e) requires the Michigan purchaser, consumer, user, to maintain books and records that prove that it *paid* the tax to the vendor in order to be exempt from Use Tax." Respondent's Motion at 7.

On January 11, 2013, the Tribunal subsequently entered an Order placing this case in abeyance finding that "certain issues of fact and law presented in this case are similar to those presented by *Andrie* . . .," and "the resolution of *Andrie* at the Supreme Court will have a direct bearing on the outcome of this case."

In *Andrie Inc v Dep't of Treasury*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (2014), the Michigan Supreme Court held that a taxpayer seeking a use tax exemption under MCL 205.94, for the sale of tangible personal property, is required to prove that sales tax was due and paid. In that regard, the Court stated, "At the very least, a purchaser-taxpayer must show that it paid tax to the retail seller[ ] or that the seller remitted the sales tax to the department." *Andrie, supra* at \_\_\_. By way of example and to satisfy the foregoing requirement, the Court stated that "at the point of sale the consumer can bargain for a receipt that shows the inclusion of sales tax in the purchase price[, or a]lternatively, it may request an affidavit from the retail seller averring that sales tax was included in the sale price or remitted to the department." *Andrie, supra* at \_\_\_.

In applying the aforementioned holding from the Michigan Supreme Court in *Andrie* to the facts of this case, the Tribunal finds that Respondent has demonstrated a palpable error relative to the December 28, 2012 Final Opinion and Judgment that misled the Tribunal and the parties and that would have resulted in a different disposition if the error was corrected. See MCR 2.119. Specifically, since the presumption by the Michigan Court of Appeals in *Andrie* has since been reversed, the Tribunal's reliance on the same in rendering its decision in this case must follow suit. Therefore, since Petitioner, based on *Andrie*, is liable for use tax for the purchases it made with vendors located in Michigan where Petitioner could not prove that sales tax was due and paid, \$2,419.43 shall be added back to Petitioner's tax liability in this case. See P-31.12. The foregoing thus, when added back in to Petitioner's tax liability, results in a monthly average of \$421.46 in taxable purchases, which corresponds to a total of \$18,122.78 in taxable purchases over the course of the 43-month audit period and a total use tax due for such purchases in the amount of \$1,087.37. In sum, subtracting Petitioner's use tax liability (i.e., \$1,087.37) from the amount of the credit the parties stipulated that Petitioner was entitled to for an overpayment of single business tax (i.e., \$2,274) results in a net refund total to Petitioner in the amount of \$1,186.63.

Given the above, the Tribunal modifies the Final Opinion and Judgment and adopts this Corrected Final Opinion and Judgment as the Tribunal's final decision in this case. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the Proposed Opinion and Judgment, as modified herein, in this Corrected Final Opinion and Judgment. Therefore,

IT IS ORDERED that this case shall be REMOVED from abeyance.

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

IT IS FURTHER ORDERED that Assessment No. R431353 shall remain modified as follows:

Assessment No.	Tax	Penalty	Interest
R431353	\$554.00	\$0.00	*

\*Interest to be determined pursuant to 1941 PA 122.

IT IS FURTHER ORDERED that Petitioner is entitled to a refund of \$1,186.63.

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 Corrected Final Opinion and Judgment within 20 days of the entry of this Corrected Final Opinion and Judgment.

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

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This Corrected Final Opinion and Judgment resolves the last pending claim and closes this case.

By: Steven H. Lasher

Entered: Sept 23, 2014  
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