

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

American Concrete Institute,  
Petitioner,

v

MTT Docket No. 15-006904

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

**INTRODUCTION**

On October 18, 2016, Respondent filed a motion requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that it is undisputed that at least one of Petitioner’s officer’s salary exceeds the \$180,000 threshold which disqualifies Petitioner from claiming the Small Business Alternative Credit (“SBAC”) under MCL 208.1417(1)(b).

On November 10, 2016, Petitioner filed a response to the Motion. In response, Petitioner contends that compensation related to exempt activity should be excluded from the credit limitation for the Small Business Alternative Credit and Petitioner qualifies for the SBAC.

On December 21, 2016, the Tribunal held Oral Argument on the Motion. The Tribunal has reviewed the Motion, response, and the evidence submitted and finds that granting Respondent’s Motion for Summary Disposition is warranted at this time.

**RESPONDENT’S CONTENTIONS**

In support of its Motion, Respondent contends that the plain language of the SBAC disallows the credit claimed by Petitioner. The statute sets forth income limits and clearly

indicates that a corporation that is not a subchapter S corporation cannot receive the credit if “[c]ompensation and directors’ fees of a shareholder or officer exceed \$180,000.00.”<sup>1</sup>

Respondent further contends that the Michigan Business Tax Act (“MBT”) defines compensation as “all wages, salaries, fee, bonuses, commissions, [and] other payments made in the tax year on behalf of or for the benefit of employees, officers, or directors . . . .”<sup>2</sup>

Respondent argues that under the rules of statutory interpretation, the Tribunal must give effect to the legislative intent and here the statute is clear and must be enforced as written.

Respondent also contends that Petitioner’s attempt to read additional words into the statute is not supported. Specifically, that the Tribunal should reject the contention that it should only consider compensation related to Petitioner’s nonexempt activity. Respondent states that this contention is not supported as it is contrary to the plain language of the statute. Further, the Tribunal must give Respondent’s interpretation respectful consideration and cannot overturn it unless there are cogent reasons to do so.

### **PETITIONER’S CONTENTIONS**

In support of its response, Petitioner contends that while it did have one or more officers and directors whose compensation exceeded \$180,000, “none of this compensation was attributed to the Petitioner’s separate unrelated business taxable income (“UBTI”).”<sup>3</sup> Petitioner contends that the MBT treats the UBTI activity of a tax exempt organization as a separate taxpayer, and thus, the SBAC is ambiguous as it applies to Petitioner. Petitioner contends that the officers with compensation exceeding the \$180,000 threshold are not involved in the separate

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<sup>1</sup> MCL 208.1417(1)(b)(i).

<sup>2</sup> MCL 2308.1107(3).

<sup>3</sup> Response at 6.

UBTI, the credit is proper if read in context of the entire MBT. UBTI activity is also treated as a separate “person” under case law.

Petitioner further argues that “[i]t would be unreasonable for an exempt organization . . . to exclude exempt-function-related revenue from its MBT calculation . . . while deducting or claiming credits for costs incurred in connection with its entire operation.”<sup>4</sup> Petitioner continues and states that “just as an exempt organization should not benefit from utilizing credits attributable to expenses incurred in connection with its exempt activities, compensation paid to officers of an exempt organization . . . cannot factor into the compensation limits for purposes of the SBAC . . . .”<sup>5</sup>

Petitioner also contends that Respondent’s guidelines actually suggest excluding exempt activity from the SBAC determination.

### **STANDARD OF REVIEW**

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions.<sup>6</sup> In this case, Respondent moves for summary disposition under MCR 2.116(C)(8) and (C)(10).

Motions under MCR 2.116(C)(8) are appropriate when “[t]he opposing party has failed to state a claim on which relief can be granted.” Dismissal should be granted when the claim, based solely on the pleadings, is so clearly unenforceable that no factual development could possibly justify a right to recovery.<sup>7</sup> In reviewing a motion under this subsection, the court must accept as

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<sup>4</sup> Response at 12.

<sup>5</sup> Response at 14.

<sup>6</sup> See TTR 215.

<sup>7</sup> See *Transamerica Ins Group v Michigan Catastrophic Claims Ass’n*, 202 Mich App 514, 516; 509 NW2d 540 (1993).

true all factual allegations in support of a claim, as well as all inferences which can fairly be drawn from the facts.<sup>8</sup>

Summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.<sup>9</sup> In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied.<sup>10</sup>

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party.<sup>11</sup> The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.<sup>12</sup> The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.<sup>13</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>14</sup> If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.<sup>15</sup>

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<sup>8</sup> See *Meyerhoff v Turner Construction Co*, 202 Mich App 499, 502; 509 NW2d 847 (1993).

<sup>9</sup> See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

<sup>10</sup> See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

<sup>11</sup> See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

<sup>12</sup> See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

<sup>13</sup> *Id.*

<sup>14</sup> See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

<sup>15</sup> See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

## CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion and finds that granting the Motion is warranted. There is no dispute that one or more of Petitioner's officers received compensation that exceeded \$180,000, and the Tribunal finds, as fully discussed below, that the statute at issue is clear and Petitioner is not entitled to the Small Business Alternative Credit ("SBAC") for the tax years at issue.

MCL 208.1417 sets forth the requirements for the SBAC under the Michigan Business Tax ("MBT"). The parties do not dispute that Petitioner's gross receipts and adjusted business income qualify for the credit. It is also undisputed that one or more of Petitioner's officers received compensation in excess of \$180,000. Respondent contends that the statute is clear and that the Tribunal must interpret the statute giving effect to each word and focus on the plain language. Petitioner, on the other hand, contends that the statute is not clear and is ambiguous. Specifically, Petitioner contends that the SBAC provision must be read in context of the entire MBT and under MBT, UBTI is treated as a separate taxpayer; therefore, the compensation of directors not attributed to the UBTI activity should not be considered for SBAC purposes.

The Michigan Supreme Court has held that:

The primary goal of statutory interpretation is to ascertain the legislative intent that may reasonably be inferred from the statutory language. The first step in that determination is to review the language of the statute itself. Unless statutorily defined, every word or phrase of a statute should be accorded its plain and ordinary meaning, taking into account the context in which the words are used. We may consult dictionary definitions to give words their common and ordinary meaning. When given their common and ordinary meaning, "[t]he words of a statute provide 'the most reliable evidence of its intent...'"<sup>16</sup>

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<sup>16</sup> *Spectrum Health v Farm Bureau*, 492 Mich 503, 515; 821 NW2d 117 (2012) (footnote omitted).

Further, “If the statutory language is unambiguous, the Legislature is presumed to have intended the meaning expressed in the statute.”<sup>17</sup> “When considering the correct interpretation, the statute must be read as a whole. Individual words and phrases, while important, should be read in the context of the entire legislative scheme.”<sup>18</sup>

Thus, the first step is a review of the statute at issue. MCL 208.1417 states, in pertinent part:

(1) The credit provided in this section shall be taken after the credits under sections 403 and 405 and before any other credit under this act and is available to any taxpayer with gross receipts that do not exceed \$20,000,000.00 and with adjusted business income minus the loss adjustment that does not exceed \$1,300,000.00 as adjusted annually for inflation using the Detroit consumer price index and subject to the following:

(a) An individual, a partnership, a limited liability company, or a subchapter S corporation is disqualified if the individual, any 1 partner of the partnership, any 1 member of the limited liability company, or any 1 shareholder of the subchapter S corporation receives more than \$180,000.00 as a distributive share of the adjusted business income minus the loss adjustment of the individual, the partnership, the limited liability company, or the subchapter S corporation.

(b) A corporation other than a subchapter S corporation is disqualified if either of the following occur for the respective tax year:

(i) Compensation and directors' fees of a shareholder or officer exceed \$180,000.00.

Reading the plain language of the statute, the Tribunal finds that Petitioner’s contention that the compensation for its officers and directors not involved in UBTI should not be considered is simply not supported. The statute is clear and does not provide for exceptions or exclusions based on whether that officer or director is involved in nonprofit activity. The Tribunal further

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<sup>17</sup> *Briggs Tax v Detroit Public School*, 485 Mich 69, 76; 780 NW2d 753 (2010) (footnote omitted).

<sup>18</sup> *Michigan Prop, LLC v. Meridian Twp*, 491 Mich 518, 528; 817 NW2d 548 (2012) (internal citations omitted.)

finds that the statute itself provides the best meaning and it is clear that the legislature did not intend for any exceptions such as that set forth by Petitioner.

Nevertheless, Petitioner contends that the statute is ambiguous and must be read in context of the entire MBT. While the Tribunal agrees that statutes must be read in context of the legislative scheme, Petitioner's contentions are overreaching to imply an exclusion which simply does not exist. Petitioner specifically looks to MCL 208.1207(1)(b)(iii) to state that only the "tax base" of an exempt organization is considered under MBT and that the two should be treated as separate "persons" under the law. The statute relied upon lists numerous exemptions to MBT and with regard to a "person" exempt from federal income tax set forth 3 exclusions to that exemption. Thus, MCL 208.1207 clearly sets forth an exemption and exclusion with respect to a 501(c)(3) organization. The Tribunal finds that a similar provision would have been included by the legislature with respect to the SBAC if a similar exclusion was intended to be applied. Moreover, as quoted above, MCL 208.1417 is very clearly drafted specifically enumerating the organizations it applies to. Under subsection (1)(a) the organizations are limited while (1)(b) is intentionally drafted broader to include all corporations, save for subchapter S corporations – which were included in subsection (1)(a). Given the specificity in drafting both MCL 208.1207 and 208.1417, the Tribunal finds that, when reading the statutes in context of the legislative scheme, both are drafted with such specificity that the legislature specifically considered exclusions and exemptions and if such an exclusion was intended to be applied to the SBAC, it would have been drafted as such.<sup>19</sup>

Given the above, the Tribunal finds that there is no ambiguity and Petitioner's contention that the computation of the SBAC based upon its activities as a whole, including exempt activity,

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<sup>19</sup> See *Benedict v Dep't of Treasury*, 236 Mich App 559; 601 NW2d 151 (1999).

leads to absurd results need not be fully addressed. More specifically, as properly stated by Petitioner, “Michigan law requires that unclear statutory language should be construed so as to avoid absurd results, injustice, and prejudice to the public interest.”<sup>20</sup> Here, the statutory language is not unclear and this principle does not apply. This finding is consistent with the Court of Appeals ruling in *Andersons Albion Ethanol, LLC v Dep’t of Treasury*.<sup>21</sup>

In addition, the Tribunal finds that case law indicates that “agency interpretations of statutes are entitled to respectful consideration and should not be overruled without cogent reasons . . . .”<sup>22</sup> As indicated above, the Tribunal finds that the statute is clear and unambiguous and Respondent’s interpretation is consistent with the plain meaning of the statute; thus, no cogent reasons exist to overturn Respondent’s interpretation.

The Tribunal finds that Respondent’s Motion for summary disposition shall be granted and the assessments at issue are affirmed.

### **JUDGMENT**

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

IT IS FURTHER ORDERED that Assessment Nos. UC11754, UC11755, UC11756, and UC11757 are AFFIRMED.

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

### **APPEAL RIGHTS**

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

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<sup>20</sup> Petitioner’s response at 11.

<sup>21</sup> *Andersons Albion Ethanol, LLC v Dep’t of Treasury*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (2016).

<sup>22</sup> *In re Complaint of Rovas Against SBC Mich.*, 482 Mich. 90, 103, 108–109, 754 N.W.2d 259 (2008).

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>23</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>24</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>25</sup> Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.<sup>26</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>27</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>28</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>29</sup>

By Steven H. Lasher

Entered: March 2, 2017  
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<sup>23</sup> See TTR 261 and 257.

<sup>24</sup> See TTR 217 and 267.

<sup>25</sup> See TTR 261 and 225.

<sup>26</sup> See TTR 261 and 257.

<sup>27</sup> See MCL 205.753 and MCR 7.204.

<sup>28</sup> See TTR 213.

<sup>29</sup> See TTR 217 and 267.