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GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
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Holiday Office Closures

Designated Delivery Services

Recent Case Law of Interest

Holiday Office Closures

The Michigan Tax Tribunal will be closed Monday, January 15, 2024, in observance of the national holiday honoring Dr. Martin Luther King Jr. We will reopen on Tuesday, January 16, 2024. Please note that our e-filing option will not be affected by the holiday office closure.

Designated Delivery Service

MCL 205.735a(7) provides that a petition is considered filed on or before the statutory filing period if: (a) the petition is postmarked by the U.S. Postal Service on or before the expiration of the applicable time period, (b) the petition is delivered in person on or before the expiration of the applicable time period, or (c) the petition is given to a designated delivery service for delivery on or before the applicable time period. MCL 205.735a(11) provides that a "designated delivery service" means a delivery service provided by a trade or business that is designated by the Tribunal. For the 2024 calendar year, the Tribunal designates DHL Express (DHL), Federal Express (FedEx) and the United Parcel Service (UPS) as its designated delivery services.

Recent Case Law of Interest

- *Strata Oncology, Inc v Department of Treasury*, Mich App; NW2d (2023) (Docket No. 362431).

Strata Oncology, Inc. (Petitioner) appealed from the Tribunal's order denying Petitioner's Motion for Summary Disposition and granting Summary Disposition in favor of the Michigan Department of Treasury (Respondent). Petitioner is a "precision oncology company" that partners with pharmaceutical companies for cancer drug development. At issue were Petitioner's capital asset purchases (including lab equipment, computers, shelving, and office furniture) and expenses (lab supplies, equipment, chemicals, and test tubes) for which Petitioner did not pay sales tax. On

appeal, Petitioner argued that these "purchases were eligible for the industrial processing exemption to the use tax under MCL 205.94o(1)(c) and (3)(b) because it performed research or experimental activities for or on behalf of an industrial processor." The Court of Appeals disagreed and affirmed the Tribunal's decision.

As a preliminary matter, the Court addressed the Tribunal's authority over the appeal. The Court rejected Respondent's argument that the Tribunal lacked subject matter jurisdiction because Petitioner failed to pay the uncontested portion of the assessment, in violation of MCL 205.22. The Court stated that Petitioner "sufficiently pleaded its petition to invoke the subject-matter jurisdiction of the Tax Tribunal. [Petitioner] contested the entire tax assessment in its petition" and Respondent did not allege that Petitioner fraudulently pleaded its claim.

In addressing Petitioner's use tax exemption claim under MCL 205.94o(3)(b), the Court considered the definition of research or experimental activities contained within MCL 205.94o(7)(e), and whether Petitioner was engaged in "(1) activity incident to the development, discovery, or modification of a product or a product related process" or (2) "activity necessary for a product to satisfy a government standard or to receive government approval." The Court rejected Petitioner's claim that the product at issue (i.e., the drug trials or the trial drugs) changed depending on which section of MCL 205.94o(7)(e) was considered as Petitioner did not present evidence that the drug trials were "develop[ed], discover[ed], or modifi[ed]" for, or on behalf of, the pharmaceutical companies. MCL 205.94o(7)(e)." The Court noted that, instead, "[Petitioner] performs the Strata Trial for its own benefit as a service provider." Likewise, Petitioner did not establish that "its activity was 'necessary' for the trial drug to 'satisfy a government standard or to receive government approval.'" Additionally, the Court concluded that if the product was the drug trial rather than pharmaceutical drugs, Petitioner's "activity did not contribute to the development, discovery, or modification of the trial drug." Finally, the Court, applying the dictionary definition of the term "necessary," determined that Petitioner did not establish "that its activity was 'necessary' for the trial drug to "satisfy a government standard or to receive government approval" as there was no evidence to suggest that Petitioner's "activity must be absolutely needed or required for its pharmaceutical company partners to obtain FDA approval for their trial drugs."

Given the above, the Court concluded that Petitioner did not meet the requirements for the personal property research or experimental activity; similarly, Petitioner did not establish that it conducted industrial processing for or on behalf of an industrial processor and, as a result, failed to meet its burden to establish that it was entitled to a use tax exemption for industrial processing.

- *Evangelos Gianakos v Independence Township*, unpublished per curiam opinion of the Court of Appeals, issued October 19, 2023 (Docket No. 363619).

At issue in this case was a special assessment established by Independence Township (Respondent) to defray the cost of hiring a contractor to perform winter road clearing and maintenance. The Tribunal held that the special assessment was void because

Respondent did not obtain prior written approval from the Oakland County Board of Road Commissioners (Road Commission) pursuant to MCL 41.722(2). Respondent appealed the Tribunal's decision to the Court of Appeals, asserting that the Tribunal lacked evidence that it failed to obtain written approval from the Road Commission and, as a result, improperly invalidated the special assessment. Respondent further argued that it was Evangelos Gianakos's (Petitioner) obligation to submit proof that Respondent did not have written approval from the Road Commission in order to sustain the challenge to the special assessment. Finally, Respondent argued that the Tribunal ignored the presumption of validity that special assessments enjoy.

On appeal, the Court held that "there is no language in MCL 41.722(2) requiring that proof of the requisite written approval must be submitted to the Tax Tribunal in order to sustain a special assessment against a challenge by an assessed property owner." However, the Court found that Petitioner failed to submit evidence that Respondent lacked approval from the Road Commission, holding that "[w]ithout such evidence, the Tax Tribunal erred as a matter of law by ignoring the application of the presumption of validity and instead invalidating the special assessment on the ground that the Township did not produce evidence that it had obtained the necessary written approval." Additionally, while MCL 41.722(2) may require Respondent to obtain written approval from the Road Commission, there is nothing in the statute "providing an assessed property owner with a right to enforce that obligation through a challenge to the special assessment in the Tax Tribunal." As a result, the Court concluded that the "Tribunal erred as a matter of law by invalidating the special assessment on the ground that the Township did not provide proof of the written approval from the Oakland County Board of Road Commissioners contemplated by MCL 41.722(2) because (1) there is no language in MCL 41.722(2) requiring that proof of the requisite written approval must be submitted to the Tax Tribunal in order to sustain a special assessment and (2) the Tax Tribunal ignored the presumption of validity and evidentiary burdens applicable in this context." For these reasons, the Court reversed the Tribunal's decision and remanded the case for further proceedings.