



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

PPG Industries Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-000034

Michigan Department of Treasury,
Respondent.

Presiding Judge
Patricia L. Halm

SUMMARY OF PREHEARING CONFERENCE

SCHEDULING ORDER

NOTICE OF VIDEO CONFERENCE HEARING

A Prehearing Conference on this matter was held on January 10, 2022. David Yanchik, Tom Darbin, and Tim Hipwell appeared on behalf of Petitioner. Randi Merchant, Asst. Attorney General, appeared on behalf of Respondent. A scheduling order has been established and a video conference hearing, held via Microsoft Teams, has been set for:

HEARING DATE:	March 28, 2022, continuing on March 29, 2022, and March 30, 2022, as necessary.
HEARING TIME:	9:00 a.m.
TEAMS HEARING LINK:	Click here to join the meeting +1 248-509-0316 , 941225601# United States, Pontiac Phone Conference ID: 941 225 601#
PARTICIPANTS' GUIDE:	https://bit.ly/34fBXnN

This is an important legal document. Please have someone translate the document.

Este es un documento legal importante. Por favor, haga traducir este documento.

এটি একটি গুরুত্বপূর্ণ আইনি দলিল, অনুগ্রহ করে কেউ দলিলটিকে অনুবাদ করুন।

هذا هو وثيقة قانونية هامة يرجى لديك شخص تترجم الوثيقة.

Ito ay isang mahalagang legal na dokumento. Mangyari lamang na magkaroon ng isang tao isalin ang dokumento.

MICHIGAN OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
MICHIGAN TAX TRIBUNAL

611 W. OTTAWA ST., LANSING, MI 48933 · P.O. BOX 30232, LANSING, MI 48909 · 517-335-9760

This hearing is open to the public and this notice is provided under the Open Meetings Act. Any participant in the hearing or member of the public wishing to attend this hearing must click on the link above to gain access to the hearing.

PREHEARING CONFERENCE SUMMARY

I. ASSESSMENT INFORMATION:

- A. Type of tax, amount of tax, interest, and penalty for each assessment at issue, as assessed:

The type of tax at issue is Michigan's Corporate Income Tax (CIT). See MCL 206.1. There are no "assessments" in this case, and thus no interest or penalty. Instead, Petitioner is challenging Treasury's denial of its request to calculate its 2014 CIT liability using an alternate apportionment method as provided in MCL 206.667. Therefore, Petitioner's 2014 CIT liability has yet to be resolved. Petitioner's 2014 CIT return is still under audit and the informal conference concerning that return has been placed in abeyance pending the outcome of this appeal.

- B. The parties' contentions of the amount of tax, interest, and penalty for each assessment at issue: Not applicable.

II. TAX INFORMATION:

There is no uncontested portion of an assessment at issue in this case. See 1.A.

III. FACTUAL STATEMENT OF CLAIMS:

- A. The only issue in this case is whether Petitioner should be permitted to utilize an alternative apportionment method in determining its 2014 CIT liability.
- B. Petitioner's claims or counterclaims: Petitioner makes several claims in support of its position that it should be permitted to use an alternative apportionment method. These claims include, among other things, that: (1) "Applying Michigan's statutory apportionment formula to the PPG unitary group including (rather than separately accounting for TOI) results in a 1,133% increase in the total apportioned corporate income tax and a Michigan state tax liability in excess of \$2 million solely attributable to the gain on the sale of TOI, a 51% owned subsidiary with zero Michigan property, zero Michigan sales, and zero Michigan payroll in the year of sale" and (2) "Beginning in 2008, TOI was included in PPG's Michigan unitary group purely for administrative convenience and no unitary analysis was performed. This was TOI's only connection with Michigan as TOI did not have separate Michigan nexus."

C. Respondent's claims or counterclaims: Respondent "maintains that Petitioner is not entitled to use an alternate method to calculate its 2014 CIT liability." Respondent denied Petitioner's request to use an alternative apportionment method under MCL 206.667.

IV. PENDING MOTIONS OR DISCOVERY:

- I. MOTIONS: Petitioner's Motion to Supplement Petition.
- II. DISCOVERY: Discovery is closed unless otherwise stated below.

SCHEDULING ORDER

- I. **March 14, 2022**, is the final date for the parties to submit to the Tribunal a stipulation of facts.
- II. **March 14, 2022**, is the final date for the parties to submit their exhibit lists and exhibits, with the exception of rebuttal exhibits, to the Tribunal by **e-filing or email** and the opposing party or parties by **email**. For the exhibit list, the parties **must use** the form prescribed by the Tribunal. The exhibit list and exhibits **shall be submitted** as provided in the **MOAHR MTT Guide for Participants**. An exhibit will **not** be admitted into evidence unless the exhibit is disclosed and furnished in accordance with this Order (even though admissible) **except** upon a finding of good cause by the Tribunal. The exhibits may be submitted separately or in a single document **provided** that the single document or PDF is **bookmarked** so that each exhibit can be easily accessed.
- III. **March 14, 2022**, is the final date for Petitioner to notify the Tribunal **by e-filing or email** of the name and telephone number of the court reporter retained by the parties to transcribe the hearing, as provided in the **MOAHR MTT Guide for Participants**.

Failure to comply with this Order may result in the dismissal of the case or the conducting of a show cause or default hearing, as provided by TTR 231.¹

By Patricia L. Haem

Date Entered: January 13, 2022

¹ See also MCL 205.732.

HEARING INFORMATION – PLEASE READ IMMEDIATELY

GENERAL INFORMATION: An impartial hearing will be conducted in accordance with the Michigan Administrative Hearing Rules (R 792.10101-R 792.11289) and the Michigan Administrative Procedures Act, MCL 24.201 *et seq.* The Michigan Rules of Evidence and the Michigan Court Rules may be applicable. A party is expected to exercise proper respect and courtesy toward other parties, witnesses, and administrative law judges, which includes attending the hearing on time, silencing cell phones, and dressing in appropriate clothing for in-person hearings.

REPRESENTATION: A party may be represented by an attorney or other authorized representative of the party's own choosing and at the party's own expense. The Michigan Office of Administrative Hearings and Rules does not recommend or appoint attorneys.

WITNESSES: Parties may present witnesses, if any, identified in the Prehearing Statements, to testify under oath or affirmation at the hearing, subject to cross-examination by the opposing party, and questions by the administrative law judge.

EXHIBITS: The parties shall submit exhibits pursuant to the Guide for Participants.

COURT REPORTER: The parties shall not only provide a court reporter to transcribe the hearing but shall also provide an electronic copy of the hearing transcript to the Tribunal by e-mailing it to taxtrib@michigan.gov. The costs attributable to the court reporter shall be shared equally by the parties. If the parties fail to pay the costs of the transcript to the court report prior to the submission of the transcript to the Tribunal, the court reporter may report this to the Tribunal with the submission of the transcript. As a result, the party or parties who failed to pay the costs associated with the transcript may be held in default.²

WITHDRAWAL: If Petitioner no longer wants to continue with the appeal, Petitioner may submit a written request to withdraw the case. Respondent must concur with the withdrawal. The request must be submitted to the Tribunal and served on Respondent at least 14 days before the hearing. Respondent may file a concurrence or objection to the request within 7 days of the service of the request on that party. If Respondent does not timely submit a concurrence or objection to the request will be deemed to be a concurrence to the request. If the request is granted, the case will be dismissed. If a request is not granted or the Tribunal has not notified you that it has been granted, you are required to attend the hearing.

SETTLEMENT: Parties may submit a written agreement settling a case (i.e., stipulation). The stipulation must be on a form made available by the tribunal or shall be in a written form that is in substantial compliance with the tribunal's form and be signed by the parties' attorneys or authorized representatives, if they have attorneys or authorized representatives, or by the parties, if they do not have attorneys or authorized representatives. There is a \$50 fee for the filing of the stipulation. If the stipulation with appropriate filing fee is received by the Tribunal or the parties email a copy of the signed stipulation to the Tribunal by 4:30 p.m. on the business day immediately preceding the day of the scheduled hearing, the hearing may be adjourned. Parties that email a copy of a signed stipulation to the Tribunal for purposes of adjourning a hearing are also required to submit the original signed stipulation with appropriate filing fee. The

² See TTR 321.

stipulation, once submitted, will be reviewed and, if accepted, the Tribunal will issue a consent judgment.

FAILURE TO APPEAR: The failure of a party to timely appear or otherwise participate in a hearing will result in adjournment of the hearing and the holding of that party in default. The defaulted party will be given an opportunity to show good cause for the failure to appear. Failure to respond or show good cause may result in dismissal of the case or the conducting of a default hearing.

REASONABLE ACCOMMODATION: All hearings are conducted in a barrier-free location in compliance with the Americans with Disabilities Act. An individual requiring reasonable accommodation for effective participation in a hearing, including accessible documentation such as braille, large print, electronic or audio reader, should contact the MOAHR by telephone at (517) 335-9760, or complete and submit an accommodation request form at https://www.michigan.gov/documents/lara/Disability_Accommodation_FORM_v1_2_464017_7.d oc within five (5) days of receipt of the Notice of Hearing to ensure availability of accommodation.

Hearing participants and observing members of the public who need assistance with speech or hearing may also participate in a telephonic or virtual hearing by dialing 7-1-1 and using the Michigan Relay service. More information about this service may be found at https://www.michigan.gov/mpsc/0,9535,7-395-93308_93325_93425_94040_94041---,00.html.

PRIVACY OF INFORMATION: In order to conduct a comprehensive and fair hearing, a party's private or confidential information, such as health or financial information, may be disclosed to the Tribunal and other parties and their attorneys or representatives. The MOAHR will use the private information solely for purposes related to the hearings process. A party may file a motion to request that a public hearing be closed in part or file a motion for protective order to deem certain information private and confidential in order to afford that information special protection.

CONTACT INFORMATION:

Michigan Tax Tribunal
Mailing Address: P.O. Box 30232, Lansing, MI 48909
Phone: (517) 335-9760
E-Mail: taxtrib@michigan.gov
Website: www.michigan.gov/taxtrib
E-Filing: <https://eFiling.apps.lara.state.mi.us>
Office Hours: 8:00 a.m. – 5:00 p.m., our office is closed from 12:00 p.m. – 1:00 p.m.