

STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Gadola, P.J., K.F. Kelly, and Riordan, JJ

TOMRA OF NORTH AMERICA, INC.,

Supreme Court No. 158333

Plaintiff-Appellee,

Court of Appeals No. 336871

v

Court of Claims No. 16-000118-MT

DEPARTMENT OF TREASURY,

Defendant-Appellant.

_____ /

TOMRA OF NORTH AMERICA, INC.,

Supreme Court No. 158335

Plaintiff-Appellee,

Court of Appeals No. 337663

v

Court of Claims No. 14-000091-MT

DEPARTMENT OF TREASURY,

Defendant-Appellant.

_____ /

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other State governmental action is invalid.

APPELLANT'S APPENDIX

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Attorney General

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Counsel of Record

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Dated: June 12, 2019

RECEIVED by MSC 6/12/2019 3:38:23 PM

TABLE OF CONTENTS

	<u>Page</u>
 Docket Entries	
Court of Claims Docket Entries (14-000091-MT)	001a–008a
Court of Claims Docket Entries (14-000185-MT)	009a–010a
Court of Claims Docket Entries (16-000118-MT)	011a–014a
Court of Appeals Docket Entries (337663)	015a–017a
Court of Appeals Docket Entries (336871)	018a–020a
 Opinions/Rulings	
Court of Claims Opinion and Order (14-000091-MT)	021a–028a
Court of Claims Order on Motion for Reconsideration (14-000091-MT)	029a
Court of Claims Opinion and Order (16-000118-MT)	030a–037a
Court of Appeals Majority Opinion	038a–045a
Court of Appeals Dissenting Opinion	046a–048a
 Relevant Portions of the Record	
2003–2006 Annual Returns	049a–055a
Recycling Today – Municipal Recycling Supplement	056a–057a
Notice of Preliminary Audit Determination	058a
Final Audit Determination	059a
KPMG Letter dated 12/02/2011	060a–071a
KPMG Letter dated 12/14/2011	072a–074a
2003–2006 Amended Annual Returns	075a–097a

2007 Annual Return 098a–100a

2007–2008 Monthly Returns 101a–125a

Deposition of Ronald C. Kolbig (relevant pages) 126a–137a

Final Assessment 138a

Audit Report of Findings 139a–158a

Deposition of Chuck Riegler 159a–214a

Deposition of Jeffrey Matto (relevant pages) 215a–217a

Charles W. Riegler, Jr. Affidavit 218a–230a

KPMG Letter dated 04/13/2015 231a–233a

UBCR Website 234a–235a

Reference Materials

House Legislative Analysis, HB 4744 (July 16, 1999) 236a–247a

Michigan Department of Treasury, Tax Compliance Bureau, Audit Division,
Industrial Processing Manual 248a–343a

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000091-MT C/COC/MI	Public 5/13/2019 10:01:01 AM Page: 1 of 8
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CASE

Judicial Officer	Date Filed	Adjudication	Status
O'BRIEN, COLLEEN	5/8/14	SUMMARY DISPOSITION 6/12/15	ADJUDICATED

PARTICIPANTS

PLAINTIFF 1	TOMRA OF NORTH AMERICA, INC. ATTY: JUNE S. HAAS # 59009 PRIMARY RETAINED	FILED: 5/8/14
DEFENDANT 1	DEPARTMENT OF TREASURY ATTY: SCOTT LAWRENCE DAMICH # 74126 PRIMARY RETAINED	FILED: 5/8/14

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 TOMRA OF NORTH AMERICA, INC.	\$280.00	\$280.00	\$0.00
	Assessed	Paid/Adjusted	Balance
DEF 1 DEPARTMENT OF TREASURY	\$60.00	\$60.00	\$0.00

RELATED CASES

Case ID	Entitlement	Primary/Secondary
14-000185-MT	TOMRA OF NORTH AMERICA, INC. V DEPARTMENT OF TREASURY	Primary

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity	User	Entry Date
5/8/14	SUMMONS AND COMPLAINT PTF 1 DEF 1	amd amd	5/8/14 9/5/14
5/8/14	JUDICIAL OFFICER ASSIGNED TO TALBOT, MICHAEL 21245	amd	8/29/18
5/8/14	RECEIVABLE FILING FEE	amd	5/8/14
5/8/14	PAYMENT RECEIPT NUMBER: COC-LAN.0000120 METHOD: CHECK \$150.00	amd	5/8/14
5/14/14	RETURN OF SERVICE - PERSONAL PTF 1	amd amd	5/14/14 9/5/14
5/20/14	APPEARANCE AND NOTICE OF APPEARANCE DEF 1	jms amd	5/21/14 9/5/14
6/9/14	ANSWER, CIVIL TO COMPLAINT DEF 1	jms amd	6/10/14 9/5/14
6/13/14	SCHEDULING CONFERENCE ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1	can amd	6/13/14 9/5/14
6/13/14	SCHEDULING CONFERENCE	CANCELLED 7/14/14 11:00 A can	6/13/14

COC Docket Entries

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000091-MT C/COC/MI	Public 5/13/2019 10:01:01 AM Page: 2 of 8
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Activity Date	Activity	User	Entry Date
	BEFORE: TALBOT, MICHAEL LOC: VIA TELEPHONE		
7/7/14	PROPOSED STIPULATED SCHEDULING ORDER PTF 1 DEF 1	jms amd	7/7/14 9/5/14
7/11/14	SCHEDULING CONFERENCE 7/14/14 11:00 AM CANCELLED OTHER Stipulated scheduling order entered 7/11/14.	bbw	7/11/14
7/11/14	STIPULATED SCHEDULING ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1	can amd	7/11/14 9/5/14
9/5/14	MOTION TO CONSOLIDATE CASES PTF 1 DEF 1	\$20.00 amd amd	9/5/14 9/5/14
9/5/14	RECEIVABLE MOTION FEE	\$20.00 amd	9/5/14
9/5/14	PAYMENT RECEIPT NUMBER: COC-LAN.0000286 METHOD: CHECK \$20.00	\$20.00 amd	9/5/14
9/10/14	ORDER FOR CONSOLIDATION TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	9/10/14
9/10/14	ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1	can mmla	9/10/14 11/8/16
9/18/14	FIRST DISCOVERY REQUESTS TO PLAINTIFF DEF 1	amd amd	9/18/14 9/18/14
10/7/14	MOTION TO AMEND STIPULATED SCHEDULING ORDER PTF 1	\$20.00 amd amd	10/7/14 10/7/14
10/7/14	RECEIVABLE MOTION FEE	\$20.00 amd	10/7/14
10/7/14	PAYMENT RECEIPT NUMBER: COC-LAN.0000340 METHOD: CHECK \$20.00	\$20.00 amd	10/7/14
10/7/14	MOTION FOR IMMEDIATE CONSIDERATION PTF 1	amd	10/7/14
10/10/14	WITNESS LIST (PLAINTIFF) PTF 1	amd amd	10/10/14 10/13/14
10/10/14	WITNESS LIST DEFENDANT	amd	10/13/14

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COC Docket Entries

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000091-MT C/COC/MI	Public 5/13/2019 10:01:01 AM Page: 3 of 8
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Activity Date	Activity	User	Entry Date
	DEF 1		
10/14/14	ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	10/14/14
10/16/14	PROOF OF SERVICE OF A COPY FOR THE PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS PTF 1	amd	10/16/14
10/17/14	PROOF OF SERVICE OF FIRST SET OF INTERROGATORIES AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS PTF 1	amd	10/17/14
11/24/14	SECOND DISCOVERY REQUEST DEF 1	mmla	11/25/14
11/25/14	RESPONSE TO DEFENDANT'S FIRST REQUESTS TO ADMIT PTF 1	mmla	11/25/14
12/5/14	PROOF OF SERVICE OF RESPONSE TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS, FIRST SET OF INTERROGATORIES, AND SECOND REQUEST FOR PRODUCTION OF DOCUMENTS DEF 1	mmla mmla	12/5/14 12/5/14
12/12/14	PROOF OF SERVICE SECOND SET OF INTERROGATORIES AND THIRD REQUEST FOR PRODUCTION OF DOCUMENTS PTF 1	mmla	12/12/14
12/17/14	THIRD DISCOVERY REQUESTS TO PLAINTIFF DEF 1	mmla amd	12/18/14 12/30/15
12/18/14	PROOF OF SERVICE PTF 1	mmla	12/18/14
12/19/14	PROOF OF SERVICE OF DEFENDANT'S NOTICE OF TAKING DEPOSITIONS DEF 1	mmla	12/22/14
12/22/14	RESPONSE TO DEFENDANT'S SECOND REQUESTS TO ADMIT PTF 1	mmla	12/23/14
12/23/14	MOTION FOR ENTRY OF PROTECTIVE ORDER DEF 1	\$20.00 mmla	12/23/14
12/23/14	RECEIVABLE MOTION FEE	\$20.00 mmla	12/23/14
12/23/14	BRIEF FILED IN SUPPORT OF ITS MOTION FOR ENTRY OF A PROTECTIVE ORDER DEF 1	mmla	12/23/14
12/23/14	PROPOSED ORDER GRANTING TREASURY'S MOTION FOR ENTRY OF A PROTECTIVE ORDER DEF 1	mmla	12/23/14
12/26/14	SUA SPONTE ORDER FOR THE FILING OF BRIEFS TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	12/26/14
1/2/15	BRIEF FILED IN RESPONSE TO THE DEPARTMENT'S 12/23/14 MOTION FOR ENTRY OF PROTECTIVE ORDER PTF 1	mmla	1/2/15

RECEIVED by MSC 6/12/2019 3:38:23 PM

COC Docket Entries

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000091-MT C/COC/MI	Public 5/13/2019 10:01:01 AM Page: 4 of 8
---	------------------------------------	--	--

Activity Date	Activity	User	Entry Date
1/5/15	RESPONSE TO PLAINTIFF'S REQUEST TO INSPECT DOCUMENTS REGARDING THE NOTICE OF TAKING DEPOSITION DUCES TECUM OF PATRICIA CALORE DEF 1	mmla	1/5/15
1/5/15	RESPONSE TO PLAINTIFF'S REQUEST TO INSPECT DOCUMENTS REGARDING THE NOTICE OF TAKING DEPOSITION DUCES TECUM OF LANCE WILKINSON DEF 1	mmla mmla	1/5/15 1/5/15
1/5/15	RESPONSE TO PLAINTIFF'S REQUEST TO INSPECT DOCUMENTS REGARDING THE NOTICE OF TAKING DEPOSITION DUCES TECUM OF RONALD L. KOLBIG DEF 1	mmla	1/5/15
1/5/15	RESPONSE TO PLAINTIFF'S REQUEST TO INSPECT DOCUMENTS REGARDING THE NOTICE OF TAKING DEPOSITION DUCES TECUM OF KIMBERLLY F. KNOLL DEF 1	mmla	1/5/15
1/6/15	ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	1/6/15
1/6/15	PROOF OF SERVICE DEFENDANT'S SUPPLEMENTAL RESPONSE TO PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS DEF 1	mmla	1/6/15
1/7/15	PROOF OF SERVICE RESPONSE TO PLAINTIFF'S SECOND SET OF INTERROGATORIES AND THIRD REQUEST FOR DOCUMENTS DEF 1	mmla	1/7/15
1/9/15	PROOF OF SERVICE PLAINTIFF'S RESPONSE TO DEFENDANT'S SECOND DISCOVERY REQUESTS PTF 1	mmla	1/9/15
1/14/15	RESPONSE TO DEFENDANT'S THIRD REQUESTS TO ADMIT PTF 1	mmla	1/15/15
1/16/15	PROOF OF SERVICE PLAINTIFF'S SUPPLEMENTAL RESPONSE TO DEFENDANT'S FIRST AND SECOND DISCOVERY REQUESTS PTF 1	mmla	1/16/15
1/22/15	PROOF OF SERVICE PLAINTIFF'S RESPONSE TO DEFENDANT'S THIRD DISCOVERY REQUESTS PTF 1	mmla	1/22/15
1/23/15	ORDER FOR DISMISSAL	amd	12/30/15
1/28/15	PROOF OF SERVICE FOR BATES-STAPMED DOCUMENT PRODUCTION TOMRA011963-012117 PERTAINING TO LAURA MAILLOUX'S DEPOSITION PTF 1	mmla	1/28/15
1/28/15	PROOF OF SERVICE SUPPLEMENTAL ANSWERS TO PLAINTIFF'S FIRST INTERROGATORIES AND REQUEST FOR PRODUCTION OF DOCUMENTS DEF 1	mmla	1/28/15
2/3/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000541 METHOD: ELECTRONIC FUND TRANSFER \$20.00	\$20.00 mlh	2/3/15
2/10/15	PROOF OF SERVICE OF BATES-STAMPED DOCUMENT PERTAINING TO ANDY HOLLYER'S DEPOSITION PTF 1	mmla	2/10/15

COC Docket Entries

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000091-MT C/COC/MI	Public 5/13/2019 10:01:01 AM Page: 5 of 8
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Activity Date	Activity		User	Entry Date
2/18/15	MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT (ORAL ARGUMENT REQUESTED) PTF 1	\$20.00	mmla mmla	2/18/15 2/19/15
2/18/15	RECEIVABLE MOTION FEE	\$20.00	mmla	2/18/15
2/18/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000568 METHOD: CHECK \$20.00	\$20.00	mmla	2/18/15
2/18/15	UNABRIDGED EXHIBITS TO BRIEF IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION PTF 1		mmla mmla	2/18/15 2/19/15
2/18/15	MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT DEF 1	\$20.00	mmla mmla	2/18/15 2/18/15
2/18/15	RECEIVABLE MOTION FEE	\$20.00	mmla	2/18/15
2/20/15	SUA SPONTE ORDER FOR THE FILING OF BRIEFS TALBOT, MICHAEL 21245 PTF 1 DEF 1		can	2/20/15
2/20/15	SUA SPONTE ORDER FOR THE FILING OF BRIEFS TALBOT, MICHAEL 21245 PTF 1 DEF 1		can	2/20/15
3/13/15	BRIEF FILED IN OPPOSITION TO DEFENDANT'S 2/18/15 MOTION FOR SUMMARY DISPOSITION PTF 1		mmla	3/13/15
3/13/15	RESPONSE TO PLAINTIFF'S 2/18/15 MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT DEF 1		mmla mmla	3/13/15 3/16/15
3/13/15	MOTION FOR SUMMARY DISPOSITION AND BRIEF IN SUPPORT DEF 1	\$20.00	mmla	3/13/15
3/13/15	RECEIVABLE MOTION FEE	\$20.00	mmla	3/13/15
3/19/15	SUA SPONTE ORDER FOR THE FILING OF BREIFS TALBOT, MICHAEL 21245 PTF 1 DEF 1		can	3/19/15
3/20/15	BRIEF FILED IN REPLY TO DEFENDANT'S 3/13/15 BRIEF IN OPPOSITION TO MOTION FOR SUMMARY DISPOSITION PTF 1		mmla	3/20/15
3/20/15	SUPPLEMENT TO DEFENDANT'S 3/13/15 MOTION FOR SUMMARY DISPOSITION DEF 1		mmla	3/20/15
3/20/15	RESPONSE TO PLAINTIFF'S 3/13/15 BRIEF IN OPPOSITION TO DEFENDANT'S 2/18/15 MOTION FOR SUMMARY DISPOSITION DEF 1		mmla	3/20/15
4/7/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000644 METHOD: ELECTRONIC FUND TRANSFER \$20.00	\$20.00	mlh	4/7/15

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COC Docket Entries

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000091-MT C/COC/MI	Public 5/13/2019 10:01:01 AM Page: 6 of 8
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Activity Date	Activity	User	Entry Date
4/9/15	BRIEF FILED IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY DISPOSITION UNDER MCL 2.116(C)(4) (ORAL ARGUMENT REQUESTED) PTF 1	mmla	4/10/15
4/16/15	REPLY TO PLAINTIFF'S 4-9-15 RESPONSE AND BRIEF IN OPPOSITION TO ITS 3/13/15 MOTION FOR SUMMARY DISPOSITION DEF 1	mmla	4/16/15
5/7/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000683 METHOD: ELECTRONIC FUND TRANSFER \$20.00	mlh	5/7/15
6/4/15	REVIEW BEFORE: TALBOT, MICHAEL	bbw	7/11/14
6/12/15	REVIEW 9/4/15 8:00 AM CANCELLED CASE ADJUDICATED	can	6/12/15
6/12/15	OPINION AND ORDER TALBOT, MICHAEL 21245 DEF 1	can	6/12/15
6/12/15	CLOSE CASE STATUS TALBOT, MICHAEL 21245	mmla	6/15/15
7/2/15	MOTION FOR RECONSIDERATION AND BRIEF IN SUPPORT PTF 1	mmla mmla	7/2/15 7/2/15
7/2/15	RECEIVABLE MOTION FEE	mmla	7/2/15
7/2/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000777 METHOD: CHECK \$20.00	mmla	7/2/15
7/8/15	ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	7/8/15
7/28/15	CLAIM OF APPEAL PTF 1	mmla mmla	7/28/15 7/28/15
7/28/15	RECEIVABLE APPEALS FEE	mmla	7/28/15
7/28/15	PAYMENT RECEIPT NUMBER: COC-LAN.0000813 METHOD: CHECK \$25.00	mmla	7/28/15
7/29/15	COPY OF APPEARANCE FILED IN THE COURT OF APPEALS DEF 1	mmla	7/29/15
12/30/15	COMMENT Case prepared and sent to the Court of Appeals electronically.	amd	12/30/15
11/17/16	ORDER OF THE COURT OF APPEALS	amd	11/18/16
1/13/17	ORDER FROM THE COURT OF APPEALS DENYING MOTION FOR RECONSIDERATION	amd	1/18/17
3/2/17	SUA SPONTE ORDER FOR THE FILING OF BRIEFS TALBOT, MICHAEL 21245	can	3/2/17

RECEIVED by MSC 6/12/2019 3:38:23 PM

COC Docket Entries

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000091-MT C/COC/MI	Public 5/13/2019 10:01:01 AM Page: 7 of 8
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Activity Date	Activity	User	Entry Date
	PTF 1 DEF 1		
3/15/17	RETURN OF RECORD TO THE TRIAL COURT OR TRIBUNAL	amd	3/27/17
3/16/17	BRIEF FILED IN RESPONSE TO THE COURT'S 3/2/17 SUA SPONTE ORDER FOR THE FILING OF BRIEFS DEF 1	mmla	3/17/17
3/16/17	BRIEF FILED IN SUPPORT OF MOTION FOR SUMMARY DISPOSITION PTF 1	mmla	3/17/17
3/17/17	ORDER OF DISMISSAL TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	3/17/17
3/29/17	CLAIM OF APPEAL PTF 1	mmla mmla	3/29/17 3/29/17
3/29/17	RECEIVABLE APPEALS FEE	mmla	3/29/17
3/29/17	PAYMENT RECEIPT NUMBER: COC-LAN.0001854 METHOD: CHECK \$25.00	mmla	3/29/17
4/4/17	COPY OF APPEARANCE AND NOTICE OF APPEARANCE IN THE COURT OF APPEALS DEF 1	mmla	4/5/17
7/31/17	COMMENT Notification from Court of Appeals requesting file within 21 days.	amd	8/1/17
8/24/17	COMMENT Notification from the Court of Appeals advising the record for this case is overdue and this Court has 14 days to provide the record to the Court of Appeals.	amd	8/24/17
8/24/17	COMMENT File prepared and sent to the Court of Appeals.	amd	8/24/17
7/17/18	OPINION AND ORDER (FROM APPELLATE COURT) REVERSE AND REMAND	amd	7/17/18
8/29/18	JUDICIAL OFFICER REASSIGNED FROM TALBOT, MICHAEL 21245	amd	8/29/18
8/29/18	OPEN CASE STATUS PTF 1 TOMRA OF NORTH AMERICA, INC. DEF 1 DEPARTMENT OF TREASURY	amd	8/29/18
8/29/18	JUDICIAL OFFICER ASSIGNED TO O'BRIEN, COLLEEN A. 33095	amd	8/29/18
8/30/18	TELEPHONE CONFERENCE - COURT TO INITATE THE CALL	CANCELLED 9/24/18 11:00 A amd	8/30/18
8/30/18	SUA SPONTE ORDER REGARDING STATUS CONFERENCE	amd mmla	8/30/18 12/12/18
9/12/18	COPY OF NOTICE OF FILING AN APPLICATION FOR LEAVE TO APPEAL IN THE MICHIGAN SUPREME COURT	amd	9/14/18
9/17/18	SUA SPONTE ORDER REGARDING CANCELLING STATUS CONFERENCE	mmla	9/17/18
9/17/18	TELEPHONE CONFERENCE 9/24/18 11:00 AM CANCELLED OTHER Sua Sponte Order Regarding Cancelling Status Conference	mmla	9/17/18

RECEIVED by MSC 6/12/2019 3:38:23 PM

COC Docket Entries

<p>STATE OF MICHIGAN COURT OF CLAIMS</p>	<p>REGISTER OF ACTIONS</p>	<p>CASE ID 14-000091-MT C/COC/MI</p>	<p>Public 5/13/2019 10:01:01 AM Page: 8 of 8</p>
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Activity Date	Activity	User	Entry Date
9/17/18	REVIEW FOR OUTCOME OF APPLICATION FOR LEAVE TO APPEAL	SET 5/31/19 8:00 A mmla	9/17/18

RECEIVED by MSC 6/12/2019 3:38:23 PM

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000185-MT C/COC/MI	Public 5/13/2019 10:01:46 AM Page: 1 of 2
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CASE

Judicial Officer	Date Filed	Adjudication	Status
TALBOT, MICHAEL	7/29/14	ORDER ENTERED 9/15/14	CLOSED 9/15/14

PARTICIPANTS

PLAINTIFF 1	TOMRA OF NORTH AMERICA, INC. ATTY: JUNE S. HAAS # 59009 PRIMARY RETAINED	FILED: 7/29/14
DEFENDANT 1	DEPARTMENT OF TREASURY ATTY: SCOTT LAWRENCE DAMICH # 74126 PRIMARY RETAINED	FILED: 7/29/14

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 TOMRA OF NORTH AMERICA, INC.	\$150.00	\$150.00	\$0.00

RELATED CASES

Case ID	Entitlement	Primary/Secondary
14-000091-MT	TOMRA OF NORTH AMERICA, INC. V DEPARTMENT OF TREASURY	Secondary

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity	User	Entry Date
7/29/14	SUMMONS AND COMPLAINT PTF 1 DEF 1	jms jms	7/29/14 7/29/14
7/29/14	JUDICIAL OFFICER ASSIGNED TO TALBOT, MICHAEL 21245	jms	7/29/14
7/29/14	RECEIVABLE FILING FEE	jms	7/29/14
7/29/14	PAYMENT RECEIPT NUMBER: COC-LAN.0000191 METHOD: CHECK \$150.00	jms	7/29/14
8/6/14	RETURN OF SERVICE - PERSONAL DEF 1	jms jms	8/6/14 8/6/14
8/6/14	RETURN OF SERVICE - NONPERSONAL DEF 1	jms	8/6/14
8/6/14	APPEARANCE AND NOTICE OF APPEARANCE DEF 1	jms	8/7/14
9/4/14	ANSWER, CIVIL TO COMPLAINT DEF 1	jms	9/5/14
9/5/14	MOTION TO CONSOLIDATE CASES FILED IN 14-91-MT PTF 1	amd	9/8/14
9/10/14	ORDER FOR CONSOLIDATION PTF 1 DEF 1	can	9/10/14
9/15/14	CLOSE CASE STATUS DEF 1 DEPARTMENT OF TREASURY	amd	10/4/14

COC Docket Entries

STATE OF MICHIGAN COURT OF CLAIMS	REGISTER OF ACTIONS	CASE ID 14-000185-MT C/COC/MI	Public 5/13/2019 10:01:46 AM Page: 2 of 2
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Activity Date	Activity	User	Entry Date
	DISPOSITION: ORDER ENTERED		

RECEIVED by MSC 6/12/2019 3:38:23 PM

<p>STATE OF MICHIGAN COURT OF CLAIMS</p>	<p>REGISTER OF ACTIONS</p>	<p>CASE ID 16-000118-MT C/COC/MI</p>	<p>Public 5/13/2019 10:02:23 AM Page: 1 of 4</p>
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CASE

Judicial Officer	Date Filed	Adjudication	Status
O'BRIEN, COLLEEN	5/25/16	SUMMARY DISPOSITION 1/19/17	ADJUDICATED

PARTICIPANTS

<p>PLAINTIFF 1</p>	<p>TOMRA OF NORTH AMERICA, INC. FILED: 5/25/16 ATTY: JUNE S. HAAS # 59009 PRIMARY RETAINED</p>
<p>DEFENDANT 1</p>	<p>DEPARTMENT OF TREASURY FILED: 5/25/16 ATTY: SCOTT LAWRENCE DAMICH # 74126 PRIMARY RETAINED</p>

RECEIVABLES/PAYMENTS

	Assessed	Paid/Adjusted	Balance
PTF 1 TOMRA OF NORTH AMERICA, INC.	\$220.00	\$220.00	\$0.00

CHRONOLOGICAL LIST OF ACTIVITIES

Activity Date	Activity	User	Entry Date
5/25/16	SUMMONS AND COMPLAINT \$175.00 PTF 1 DEF 1	mmla mmla	5/25/16 5/25/16
5/25/16	JUDICIAL OFFICER ASSIGNED TO TALBOT, MICHAEL 21245	mmla	8/29/18
5/25/16	RECEIVABLE ELECTRONIC FILING SYSTEM FEE \$25.00	mmla	5/25/16
5/25/16	RECEIVABLE FILING FEE \$150.00	mmla	5/25/16
5/25/16	PAYMENT \$175.00 RECEIPT NUMBER: COC-LAN.0001259 METHOD: CHECK \$175.00	mmla	5/25/16
6/1/16	APPEARANCE AND NOTICE OF APPEARANCE DEF 1	mmla	6/1/16
6/8/16	RETURN OF SERVICE - NONPERSONAL DEF 1	mmla	6/9/16
6/16/16	ANSWER, CIVIL TO COMPLAINT DEF 1	mmla	6/16/16
6/17/16	SCHEDULING CONFERENCE CANCELLED 8/1/16 10:30 A BEFORE: TALBOT, MICHAEL LOC: VIA TELEPHONE	can	6/17/16
6/17/16	SCHEDULING CONFERENCE ORDER TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	6/17/16
7/13/16	PROPOSED STIPULATED SCHEDULING ORDER PTF 1 DEF 1	mmla	7/14/16
7/18/16	STIPULATED SCHEDULING ORDER TALBOT, MICHAEL 21245 PTF 1	can	7/18/16

Court of Claims Docket Entries

RECEIVED by MSC 6/12/2019 3:38:23 PM

<p>STATE OF MICHIGAN COURT OF CLAIMS</p>	<p>REGISTER OF ACTIONS</p>	<p>CASE ID 16-000118-MT C/COC/MI</p>	<p>Public 5/13/2019 10:02:23 AM Page: 2 of 4</p>
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Activity Date	Activity	User	Entry Date
	DEF 1		
7/18/16	SCHEDULING CONFERENCE 8/1/16 10:30 AM CANCELLED OTHER Stipulated scheduling order issued.	can	7/18/16
7/18/16	REVIEW BEFORE: TALBOT, MICHAEL	CANCELLED 6/6/17 8:00 A can	7/18/16
7/25/16	PROOF OF SERVICE STIPULATED SCHEDULING ORDER PTF 1	mmla	7/26/16
8/11/16	FIRST DISCOVERY REQUEST TO PLAINTIFF DEF 1	amd	8/11/16
9/8/16	RESPONSE TO REQUESTS FOR ADMISSION CONTAINED IN DEFENDANT MICHIGAN DEPARTMENT OF TREASURY'S FIRST DISCOVERY REQUESTS	amd	9/8/16
9/13/16	CORRECTED PROOF OF SERVICE	amd	9/13/16
9/27/16	PROOF OF SERVICE RESPONSE TO INTERROGATORIES AND REQUESTS FOR PRODUCTION PTF 1	mmla	9/27/16
10/17/16	MOTION FOR PARTIAL SUMMARY DISPOSITION AND DECLARATORY JUDGMENT AND BRIEF IN SUPPORT PTF 1	\$20.00 mmla amd	10/17/16 5/10/17
10/17/16	RECEIVABLE MOTION FEE	\$20.00 mmla	10/17/16
10/17/16	PAYMENT RECEIPT NUMBER: COC-LAN.0001554 METHOD: CHECK \$20.00	\$20.00 mmla	10/17/16
11/7/16	RESPONSE TO PLAINTIFF'S 10/17/16 MOTION FOR SUMMARY DISPOSITION DEF 1	mmla	11/8/16
11/14/16	REPLY TO THE 11/7/16 DEFENDANT MICHIGAN DEPARTMENT OF TREASURY'S RESPONSE TO 10/17/16 PLAINTIFF'S MOTION FOR PARTIAL SUMMARY DISPOSITION AND DECLARATORY JUDGMENT PTF 1	mmla mmla	11/14/16 11/30/16
11/17/16	WITNESS LIST AND EXPERT WITNESS LIST DEF 1	mmla	11/17/16
11/21/16	WITNESS LIST PTF 1	amd	11/21/16
1/13/17	STIPULATION REQUESTING CONFERENCE PTF 1 DEF 1	mmla	1/13/17
1/17/17	STATUS CONFERENCE BEFORE: TALBOT, MICHAEL LOC: VIA TELEPHONE	SET 1/18/17 11:00 A can	1/17/17
1/17/17	NOTICE OF STATUS CONFERENCE TALBOT, MICHAEL 21245 PTF 1 DEF 1	can	1/17/17
1/18/17	STATUS CONFERENCE 1/18/17 11:00 AM TALBOT, MICHAEL 21245 VIA TELEPHONE	can	1/19/17

Court of Claims Docket Entries

RECEIVED by MSC 6/12/2019 3:38:23 PM

<p>STATE OF MICHIGAN COURT OF CLAIMS</p>	<p>REGISTER OF ACTIONS</p>	<p>CASE ID 16-000118-MT C/COC/MI</p>	<p>Public 5/13/2019 10:02:23 AM Page: 3 of 4</p>
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Activity Date	Activity	User	Entry Date
	PTF 1 TOMRA OF NORTH AMERICA, INC. DEF 1 DEPARTMENT OF TREASURY HELD		
1/19/17	OPINION AND ORDER TALBOT, MICHAEL 21245 DEF 1	can	1/19/17
1/19/17	REVIEW 6/6/17 8:00 AM CANCELLED CASE ADJUDICATED	can	1/19/17
1/19/17	CLOSE CASE STATUS	amd	1/24/17
1/19/17	ORDER FOR SUMMARY DISPOSITION TALBOT, MICHAEL 21245 PTF 1 DEF 1	amd	5/10/17
2/8/17	CLAIM OF APPEAL PTF 1	\$25.00 mmla mmla	2/8/17 2/8/17
2/8/17	RECEIVABLE APPEALS FEE	\$25.00 mmla	2/8/17
2/8/17	PAYMENT RECEIPT NUMBER: COC-LAN.0001743 METHOD: CHECK \$25.00	\$25.00 mmla	2/8/17
2/16/17	COPY OF APPEARANCE AND NOTICE OF APPEARANCE IN THE COURT OF APPEALS DEF 1	mmla	2/17/17
5/5/17	COMMENT Notification from the Court of Appeals requesting file within 21 days.	amd	5/9/17
5/10/17	COMMENT File prepared and sent to the Court of Appeals electronically.	amd	5/10/17
7/17/18	OPINION AND ORDER (FROM APPELLATE COURT) REVERSE AND REMAND	amd	7/17/18
8/29/18	JUDICIAL OFFICER REASSIGNED FROM TALBOT, MICHAEL 21245	amd	8/29/18
8/29/18	OPEN CASE STATUS PTF 1 TOMRA OF NORTH AMERICA, INC. DEF 1 DEPARTMENT OF TREASURY	amd	8/29/18
8/29/18	JUDICIAL OFFICER ASSIGNED TO O'BRIEN, COLLEEN A. 33095	amd	8/29/18
8/30/18	TELEPHONE CONFERENCE - COURT TO INITIATE THE CALL	CANCELLED 9/24/18 11:00 A amd	8/30/18
8/30/18	SUA SPONTE ORDER REGARDING STATUS CONFERENCE	amd	8/30/18
9/12/18	NOTICE OF FILING AN APPLICATION FOR LEAVE TO APPEAL IN THE MICHIGAN SUPREME COURT	amd amd	9/14/18 9/20/18
9/17/18	SUA SPONTE ORDER REGARDING CANCELLING STATUS CONFERENCE	mmla	9/17/18
9/17/18	TELEPHONE CONFERENCE 9/24/18 11:00 AM CANCELLED OTHER Sua Sponte Order Regarding Cancelling Status Conference	mmla	9/17/18
9/17/18	REVIEW FOR OUTCOME OF APPLICATION FOR LEAVE TO APPEAL	SET 5/31/19 8:00 A mmla	9/17/18

Court of Claims Docket Entries

<p>STATE OF MICHIGAN COURT OF CLAIMS</p>	<p>REGISTER OF ACTIONS</p>	<p>CASE ID 16-000118-MT C/COC/MI</p>	<p>Public 5/13/2019 10:02:23 AM Page: 4 of 4</p>
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RECEIVED by MSC 6/12/2019 3:38:23 PM

Case Search

Case Docket Number Search Results - 337663

Appellate Docket Sheet

COA Case Number: 337663

MSC Case Number: 158335

TOMRA OF NORTH AMERICA INC V DEPARTMENT OF TREASURY

1	TOMRA OF NORTH AMERICA INC Oral Argument: Y Timely: Y	PL-AT	RET	(59009) HAAS JUNE SUMMERS
2	TREASURY DEPARTMENT OF Oral Argument: Y Timely: Y	DF-AE	AG	(74126) DAMICH SCOTT L

COA Status: Case Concluded; File Open

MSC Status: Pending on Application

Case Flags: Electronic Record

Consolidations:

336871 TOMRA OF NORTH AMERICA INC V DEPARTMENT OF TREASURY (Case Concluded; File Open)

- 03/29/2017 1 Claim of Appeal - Civil
Fee Code: EPAY
Attorney: 59009 - HAAS JUNE SUMMERS
- 03/17/2017 2 Order Appealed From
From: COURT OF CLAIMS
Case Number: 14-000091-MT
Trial Court Judge: 21245 TALBOT MICHAEL J
Nature of Case:
Summary Disposition Granted
- 03/29/2017 3 No Transcript Will Be Filed
Date: 03/29/2017
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
Comments: Per AT's statement, linked to evt #1
- 03/30/2017 4 Docketing Statement MCR 7.204H
For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
Proof of Service Date: 03/30/2017
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
- 04/04/2017 5 Submitted on Administrative Motion Docket
District: L
Item #: 11
- 04/04/2017 6 Appearance - Appellee
Date: 04/04/2017
For Party: 2 TREASURY DEPARTMENT OF DF-AE
Attorney: 74126 - DAMICH SCOTT L
- 04/07/2017 7 Order: Consolidate - Administrative
View document in PDF format
Panel: MFG
Comments: Consl: 336871, 337663
- 05/24/2017 8 Brief: Appellant

015a

- Proof of Service Date: 05/24/2017
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
Comments: Exhib's efiled, not printed for file
- 06/27/2017 9 Stips: Extend Time - AE Brief
Extend Until: 07/28/2017
Filed By Attorney: 74126 - DAMICH SCOTT L
For Party: 2 TREASURY DEPARTMENT OF DF-AE
P/S Date: 06/27/2017
- 07/26/2017 10 Brief: Appellee
Proof of Service Date: 07/26/2017
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 74126 - DAMICH SCOTT L
For Party: 2 TREASURY DEPARTMENT OF DF-AE
Comments: Exhib's efiled, not printed for file
- 07/28/2017 11 Noticed
Record: REQST
Mail Date: 07/31/2017
- 08/16/2017 12 Brief: Reply
Proof of Service Date: 08/16/2017
Oral Argument Requested:
Timely Filed: Y
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
Comments: Filed in 336871
- 08/22/2017 13 Record Request
Mail Date: 08/22/2017
Agency: COURT OF CLAIMS
- 08/28/2017 14 Electronic Record Filed
- 04/04/2018 23 Submitted on Case Call
District: L
Item #: 7
Panel: MFG,KFK,MJR
- 04/04/2018 24 Oral Argument Audio
- 07/17/2018 25 Opinion - Authored - Published
[View document in PDF format](#)
Pages: 8
Panel: MFG,KFK,MJR
Author: MFG
Result: Reversed and Remanded
- 07/17/2018 26 Opinion - Dissent
[View document in PDF format](#)
Pages: 3
Author: KFK
- 08/28/2018 27 SCt: Application for Leave to SCt
Supreme Court No: 158335
Answer Due: 09/25/2018
Fee: AG E-Transfer
For Party: 2

Attorney: 74126 - DAMICH SCOTT L

- 08/29/2018 28 SCt Case Caption
Proof Of Service Date: 08/29/2018
- 03/01/2019 29 Michigan Appeals Reports Publication
325 Mich App 289
- 03/27/2019 30 SCt Order: Application - Grant

[View document in PDF format](#)

Comments: To be argued with MSC No. 158333, Tomra of NA v Dept of Treasury. 20-min OA per side.

Case Listing Complete

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Case Search

Case Docket Number Search Results - 336871

Appellate Docket Sheet

COA Case Number: 336871

MSC Case Number: 158333

TOMRA OF NORTH AMERICA INC V DEPARTMENT OF TREASURY

1	TOMRA OF NORTH AMERICA INC Oral Argument: Y Timely: Y	PL-AT	RET	(59009) HAAS JUNE SUMMERS
2	TREASURY DEPARTMENT OF Oral Argument: Y Timely: Y	DF-AE	AG	(74126) DAMICH SCOTT L

COA Status: Case Concluded; File Open

MSC Status: Pending on Application

Case Flags: Electronic Record

Consolidations:

337663 TOMRA OF NORTH AMERICA INC V DEPARTMENT OF TREASURY (Case Concluded; File Open)

- 02/08/2017 1 Claim of Appeal - Civil
Proof of Service Date: 02/08/2017
Jurisdictional Checklist: Y
Register of Actions: Y
Fee Code: EPAY
Attorney: 59009 - HAAS JUNE SUMMERS
- 01/19/2017 2 Order Appealed From
From: COURT OF CLAIMS
Case Number: 16-000118-MT
Trial Court Judge: 21245 TALBOT MICHAEL J
Nature of Case:
Summary Disposition Granted
- 02/08/2017 3 No Transcript Will Be Filed
Date: 02/08/2017
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
Comments: Per AT's stmt, linked to evt #1
- 02/16/2017 4 Appearance - Appellee
Date: 02/16/2017
For Party: 2 TREASURY DEPARTMENT OF DF-AE
Attorney: 74126 - DAMICH SCOTT L
- 03/08/2017 5 Docketing Statement MCR 7.204H
For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
Proof of Service Date: 03/08/2017
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
- 03/28/2017 6 Stips: Extend Time - AT Brief
Extend Until: 05/03/2017
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
P/S Date: 03/28/2017

- 03/28/2017 7 Correspondence Sent
Date: 03/28/2017
For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
Attorney: 59009 - HAAS JUNE SUMMERS
Comments: Stip letter to parties advising of due date for appellant's brief; stip miscalculated
- 04/04/2017 8 Submitted on Administrative Motion Docket
District: L
Item #: 9
- 04/07/2017 9 Order: Consolidate - Administrative
View document in PDF format
Panel: MFG
Comments: Consl: 336871, 337663
- 05/03/2017 10 Brief: Appellant
Proof of Service Date: 05/03/2014
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 59009 - HAAS JUNE SUMMERS
For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
Comments: Exhib's efiled, not printed for file
- 05/04/2017 11 Noticed
Record: REQST
Mail Date: 05/05/2017
- 05/11/2017 12 Electronic Record Filed
- 06/01/2017 14 Stips: Extend Time - AE Brief
Extend Until: 07/05/2017
Filed By Attorney: 74126 - DAMICH SCOTT L
For Party: 2 TREASURY DEPARTMENT OF DF-AE
P/S Date: 06/01/2017
- 06/29/2017 15 Motion: Extend Time - Appellee
Proof of Service Date: 06/29/2017
Filed By Attorney: 74126 - DAMICH SCOTT L
For Party: 2 TREASURY DEPARTMENT OF DF-AE
Fee Code: STATE
Requested Extension: 07/26/2017
Answer Due: 07/06/2017
- 07/11/2017 16 Submitted on Administrative Motion Docket
Event: 15 Extend Time - Appellee
District: L
Item #: 11
- 07/12/2017 17 Order: Extend Time - Appellee Brief - Grant
View document in PDF format
Event: 15 Extend Time - Appellee
Panel: MFG
Attorney: 74126 - DAMICH SCOTT L
Extension Date: 07/26/2017
- 07/26/2017 18 Brief: Appellee
Proof of Service Date: 07/26/2017
Oral Argument Requested: Y
Timely Filed: Y
Filed By Attorney: 74126 - DAMICH SCOTT L
For Party: 2 TREASURY DEPARTMENT OF DF-AE
Comments: Exhib's efiled, not printed for file

- 08/16/2017 19 Brief: Reply
 Proof of Service Date: 08/16/2017
 Oral Argument Requested:
 Timely Filed: Y
 Filed By Attorney: 59009 - HAAS JUNE SUMMERS
 For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
- 04/04/2018 27 Submitted on Case Call
 District: L
 Item #: 7
 Panel: MFG,KFK,MJR
- 04/04/2018 28 Oral Argument Audio
- 07/17/2018 29 Opinion - Authored - Published
[View document in PDF format](#)
 Pages: 8
 Panel: MFG,KFK,MJR
 Author: MFG
 Result: Reversed and Remanded
- 07/17/2018 30 Opinion - Dissent
[View document in PDF format](#)
 Pages: 3
 Author: KFK
- 08/28/2018 31 SCt: Application for Leave to SCt
 Supreme Court No: 158333
 Answer Due: 09/25/2018
 Fee: AG E-Transfer
 For Party: 2
 Attorney: 74126 - DAMICH SCOTT L
- 08/29/2018 32 SCt Case Caption
 Proof Of Service Date: 08/29/2018
- 09/25/2018 33 SCt: Answer - SCt Application/Complaint
 Filing Date: 09/25/2018
 For Party: 1 TOMRA OF NORTH AMERICA INC PL-AT
 Filed By Attorney: 59009 - HAAS JUNE SUMMERS
 Timely: Y
- 10/16/2018 34 SCt: Reply - SCt Application/Complaint
 Filing Date: 10/16/2018
 For Party: 2 TREASURY DEPARTMENT OF DF-AE
 Filed By Attorney: 74126 - DAMICH SCOTT L
 Timely: Y
- 03/01/2019 35 Michigan Appeals Reports Publication
 325 Mich App 289
- 03/27/2019 36 SCt Order: Application - Grant
[View document in PDF format](#)
 Comments: To be argued with MSC No. 158335, Tomra of NA v Dept of Treasury. 20-min OA per side.

Case Listing Complete

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA v DEPARTMENT OF TREASURY,

Case No. 14-000091-MT

Hon. Michael J. Talbot

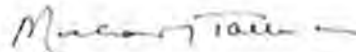
ORDER

At a session of said Court held,
Detroit, Wayne, Michigan, on
June 12, 2015.

Defendant having filed a motion for summary disposition pursuant to MCR 2.116(C)(4);

IT IS HEREBY ORDERED that Defendant's motion for summary disposition is GRANTED, and the matter is DISMISSED for lack of subject-matter jurisdiction. The parties' pending motions for summary disposition pursuant to MCR 2.116(C)(10) are denied as MOOT.

This order resolves the last pending claim and closes the case.



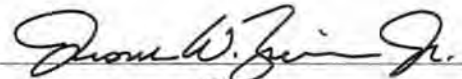
Hon. Michael J. Talbot
Court of Claims Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Clerk, on



JUN 12 2015

Date



Clerk

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA,

Plaintiff,

v

DEPARTMENT OF TREASURY,

Defendant.

OPINION

Case No. 14-000091-MT

Hon. Judge Michael J. Talbot

Before the Court is the Department's motion for summary disposition pursuant to MCR 2.116(C)(4). Because the Court lacks subject matter jurisdiction over Plaintiff's claims, the Department's motion is GRANTED, and the matter is DISMISSED.

The relevant facts are undisputed. The Department audited Plaintiff's payments of sales tax and use tax for the period October 1, 2003, through December 31, 2008. Through this audit, the Department determined that Plaintiff underpaid sales tax and use tax during this period. A bill for unpaid sales tax first issued from the Department on October 3, 2011. Plaintiff requested an informal conference to appeal this bill, and also filed a claim for a refund of over \$2M in sales tax it paid to the Department, but that Plaintiff now believed it was not required to pay. On February 7, 2014, the Department issued a decision upholding the final bill. On May 8, 2014, Plaintiff filed its first complaint in the Court of Claims, which became case number 14-000091-MT. This complaint identified the "tax in controversy" as "Michigan sales tax" for the years at issue.

On May 9, 2014, the Department issued two separate Final Assessments for the period at issue, one for unpaid sales tax and another for unpaid use tax. The sales tax assessment was for \$829,114.15, while the use tax assessment was for \$353,826.28. On June 19, 2014, Plaintiff mailed a letter and check to the Department. The subject line of the letter states that it is in regard to:

Use Tax for Tax Period: October 1, 2003 to December 31, 2008
Final Bill for Taxes Due (Final Assessment)
Issued: May 9, 2014

In the body of the letter, Plaintiff stated, “In connection with the above-referenced Final Bill for Taxes Due (Final Assessment), the Taxpayer is making a payment UNDER PROTEST in the amount of \$829,114.15. **This payment should be applied first to outstanding tax due and then to interest due.**” A check in the amount of \$829,114.15 accompanied the letter. Following the explicit terms of the letter, the Department applied the payment first to the \$353,826.28 due under the use tax assessment. The remainder was applied to the sales tax assessment. This, of course, left over \$350,000 of the sales tax assessment unpaid. On July 29, 2014, Plaintiff filed a second complaint in the Court of Claims. In this complaint, Plaintiff challenged only the sales tax assessment issued on May 9, 2014. This Court subsequently consolidated the two cases into Docket No. 14-000091-MT.

A motion for summary disposition brought under MCR 2.116(C)(4) tests a trial court’s subject matter jurisdiction. “[S]ubject-matter jurisdiction is a court’s right to exercise judicial power over a class of cases.”¹ If a court lacks subject matter jurisdiction over a case, any action

¹ *Harris v Vernier*, 242 Mich App 306, 319; 617 NW2d 764 (2000).

taken by the court, other than to dismiss the case, is void.² The Court must consider both the pleadings and the documentary evidence submitted by the parties when deciding a motion brought under MCR 2.116(C)(4).³

As it pertains to review of the Department's tax determinations, this Court's jurisdiction is conferred by MCL 205.22.⁴ Under this statute, a taxpayer may elect to pursue an appeal either in the tax tribunal or in the Court of Claims.⁵ In either case, "The uncontested portion of an assessment, order, or decision" must be paid "as a prerequisite to appeal."⁶ However, to invoke the jurisdiction of the Court of Claims, the taxpayer must also pay the disputed portion of the assessment, "including any applicable penalties and interest, under protest and claim a refund as part of the appeal."⁷

In both of Plaintiff's complaints, the only tax contested is the sales tax. Thus, to invoke this Court's jurisdiction, Plaintiff was required to pay the full amount of the sales tax assessment and then claim a refund. Although Plaintiff tendered a check to the Department that was for the exact amount of the sales tax assessment, Plaintiff specifically directed the Department to credit this payment to its use tax assessment. The Department followed these directions to the letter,

² *Moody v Home Owners Ins Co*, 304 Mich App 415, 427 n 3; 849 NW2d 31 (2014).

³ MCR 2.116(G)(5). See also *Moody*, 304 Mich App at 426-428 (nothing in the jurisdictional statutes at issue required a court to limit its jurisdictional query to the allegations stated in the pleadings; thus, it was appropriate to consider discovery responses and other evidence to determine whether subject matter jurisdiction existed).

⁴ See *Toaz v Dep't of Treasury*, 280 Mich App 457, 459-460; 760 NW2d 325 (2008).

⁵ MCL 205.22(1).

⁶ MCL 205.22(1).

⁷ MCL 205.22(2).

and applied the remaining portion of the payment to Plaintiff's sales tax liability. The result of Plaintiff's direction to the Department was that the tax assessment Plaintiff now disputes, the sales tax assessment, was only partially paid. A partial payment is insufficient to invoke this Court's jurisdiction.⁸ Accordingly, this Court lacks subject matter jurisdiction over Plaintiff's claims.

Plaintiff first argues that this Court has jurisdiction because Plaintiff paid the entire sales tax assessment, and it was the Department that mistakenly credited the payment to Plaintiff's use tax assessment. However, the mistake here belongs to Plaintiff. Having tendered a check for the exact amount of the sales tax assessment, it would seem fairly obvious that Plaintiff intended to pay the sales tax assessment. This intent, however, went unrealized, due to what is likely a typographical error. Plaintiff's letter specifically directed the Department to apply this payment first to its use tax assessment, and the Department did precisely what Plaintiff asked. Plaintiff offers no authority that would permit this Court to overlook or correct Plaintiff's error.

Plaintiff next argues that the Department was required by MCL 205.24(1) to notify Plaintiff of the outstanding sales tax liability that still existed after the payment was received. Pursuant to MCL 205.24(1), "If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax." The Department did precisely what is called for under the statute, notifying Plaintiff of the unpaid tax amounts in two separate assessments. Nothing in this statute requires the Department to provide

⁸ *Toaz*, 280 Mich App at 462 ("A partial payment does not satisfy the statute . . .").

another notice to Plaintiff after Plaintiff has paid all or part of the assessment provided by the Department.⁹

Plaintiff next argues that the Department should be bound to its answer to Plaintiff's second complaint, which admitted as true Plaintiff's allegation that it had paid the entire sales tax assessment. It is true that, as a general matter, parties are bound by their pleadings.¹⁰ However, "defects in subject-matter jurisdiction cannot be waived . . ."¹¹ Nor may subject-matter jurisdiction "be granted by implied or express stipulation of the litigants."¹² In light of the undisputed facts, holding the Department to its answer would be akin to allowing the parties to stipulate to this Court's jurisdiction. The Court cannot allow the parties to do so.

For similar reasons, the Court rejects Plaintiff's argument that based on its admission, the Department should be equitably estopped from asserting a lack of subject-matter jurisdiction. As Plaintiff acknowledges, "subject-matter jurisdiction cannot be acquired by estoppel."¹³ Plaintiff argues that it is not attempting to invoke estoppel to prevent the Department from arguing a lack of subject-matter jurisdiction, but rather, from arguing the factual matter of whether the sales tax assessment was paid in full. This is a distinction without a difference, as it is the very fact of full payment that confers jurisdiction on this Court.

⁹ It is worth noting that in its letter, Plaintiff asked the Department to acknowledge receipt of the check by signing a copy of the letter and returning it to Plaintiff. There is no evidence, however, that Plaintiff asked for confirmation that the sales tax assessment was paid in full until long after the time period for challenging the assessment had passed.

¹⁰ *Angott v Chubb Group Ins*, 270 Mich App 465, 470; 717 NW2d 341 (2006).

¹¹ *Moody*, 304 Mich App at 439.

¹² *Harris*, 242 Mich App at 316.

¹³ *Bandfield v Wood*, 104 Mich App 279, 282; 304 NW2d 551 (1981).

Plaintiff next argues that an affidavit provided by the Department must be ignored because it contradicts the admission contained in the Department's answer. In the affidavit at issue, Michael A. Eschelbach explains that the Department received Plaintiff's check, followed the instructions in Plaintiff's letter, and applied the payment first to the use tax assessment, and then to the sales tax assessment. The cases relied on by Plaintiff hold that parties may not avoid summary disposition on a motion brought pursuant to MCR 2.116(C)(10) by making factual assertions that contradict prior deposition testimony,¹⁴ a prior affidavit,¹⁵ the party's own prior conduct,¹⁶ or prior testimony.¹⁷ These cases are distinguishable, both because none involves an affidavit that contradicts the pleadings, and because all involve motions brought under MCR 2.116(C)(10), not motions brought under MCR 2.116(C)(4). Nor is this a case where the Department is attempting to contrive a factual issue. There is no dispute that Plaintiff asked the Department to apply its payment to the use tax assessment, and that the Department did precisely that.

Finally, Plaintiff argues that this is not a case of partial payment. Plaintiff's argument is based on its belief that it was the Department that mistakenly applied Plaintiff's payment to the use tax assessment. As has been discussed, it was Plaintiff that directed the Department to apply the payment to the use tax assessment, and the Department dutifully followed that direction.

¹⁴ *Kaufman & Payton, PC v Nikkila*, 200 Mich App 250, 256-257; 503 NW2d 728 (1993).

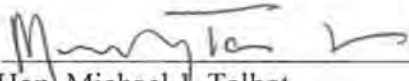
¹⁵ *Progressive Timberlands, Inc v R & R Heavy Haulers, Inc*, 243 Mich App 404, 411; 622 NW2d 533 (2000).

¹⁶ *Bergen v Baker*, 264 Mich App 376, 389; 691 NW2d 770 (2004).

¹⁷ *Palazzola v Karmazin Prods Corp*, 223 Mich App 141, 155; 565 NW2d 868 (1997).

Thus, this *is* a case of partial payment, one which renders this Court without subject matter jurisdiction.

Dated: June 12, 2015



Hon. Michael J. Talbot
Chief Judge, Court of Claims

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC v DEPT OF TREASURY

Case No. 14-000091-MT

Hon. Michael J. Talbot

ORDER

At a session of said Court held in,
Detroit, Wayne, Michigan, on
July 8, 2015.

IT IS HEREBY ORDERED that Plaintiff's Motion for Reconsideration of this Court's June 12, 2015 Opinion and Order is DENIED. "Ordinarily, a trial court has discretion on a motion for reconsideration to decline to consider new legal theories or evidence that could have been presented when the motion was initially decided." *Yoost v Caspari*, 295 Mich App 209, 220; 813 NW2d 783 (2012). The legal theories presented by Plaintiff could have been, but were not, presented by Plaintiff in response to Defendant's motion. The Court also concludes that Plaintiff's new theories lack merit. Because Plaintiff did not fully pay the contested portion of sales tax, penalties, and interest before filing either of its complaints, the Court lacks subject matter jurisdiction over both complaints. MCL 205.22; *Toaz v Dep't of Treasury*, 280 Mich App 457; 760 NW2d 325 (2008).



Michael J. Talbot, Chief Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Clerk, on



JUL - 8 2015

Date


Clerk

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA INC V DEPT OF TREASURY
CASE NO. 16-000118-MT

HON. Michael J. Talbot

ORDER

At a session of said Court held in,
Detroit, Wayne, Michigan, on
January 19, 2017.

Plaintiff having filed a motion for partial summary disposition and declaratory judgment,
and Defendant having filed a response seeking summary judgment pursuant to MCR 2.116(I)(2);

IT IS HEREBY ORDERED that Plaintiff's motion is DENIED. Summary disposition is
GRANTED in favor of Defendant pursuant to MCR 2.116(I)(2).

This order resolves the last pending claim and closes the case.



Michael J. Talbot, Chief Judge



A true copy entered and certified by Jerome W. Zimmer Jr., Clerk, on

JAN 19 2017

Date


Clerk

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC.,

Plaintiff,

v

DEPARTMENT OF TREASURY,

Defendant.

OPINION

Case No. 16-000118-MT

Hon. Michael J. Talbot

Before the Court is Plaintiff's motion for partial summary disposition and declaratory judgment. For the reasons discussed below, Plaintiff's motion is DENIED. Because Plaintiff is not entitled to the exemption at issue in this matter, the Department is entitled to summary disposition pursuant to MCR 2.116(I)(2).

At issue is Plaintiff's tax liability under the General Sales Tax Act (GSTA)¹ and Use Tax Act (UTA)² for the period of March 1, 2011, through December 31, 2011. Plaintiff sells and leases container recycling machines,³ and sells repair parts for the machines, to customers in Michigan.⁴ These machines are commonly used in grocery stores to accept aluminum cans, glass

¹ MCL 205.51 *et seq.*

² MCL 205.91 *et seq.*

³ These machines are also referred to as "reverse vending machines."

⁴ The machines and parts are manufactured by TOMRA Systems ASA, who sells the machines and parts to Plaintiff. Plaintiff also provided repair services to its customers under separate service contracts. The Department asserts that a factual question exists regarding whether

bottles, and plastic bottles for recycling. Some machines accept only one type of container; some accept both plastic and aluminum containers. After reading a can or bottle's universal product code (UPC) to determine whether it may be accepted, the machines sort the cans and bottles by type. Aluminum cans are crushed and placed in a bin for collection. Plastic bottles are sorted by color, punctured, compacted, and moved to a collection bin. Glass bottles are sorted by color and moved to collection bins.

The bottles are then transported to Schupan Recycling (Schupan). Transportation from the site of collection (i.e., the grocery store) to Schupan's facilities is primarily provided by UBCR, LLC, which is a joint venture formed between Plaintiff and Schupan. At Schupan's facilities, the cans and bottles are dumped from collection bins on to conveyor belts. Aluminum cans are compacted into bales, as are plastic bottles; glass bottles are stored. Schupan markets these materials to other companies, who purchase and remanufacture the materials into other products.

For the tax period at issue in this matter, when Plaintiff sold or leased a recycling machine, Plaintiff collected sales tax from the customer. Plaintiff would then remit the collected sales tax to the Department. In total, Plaintiff remitted \$673,511.65 in sales tax to the Department. During this same period, Plaintiff remitted \$24,992.95 in use tax related to parts used to repair the recycling machines sold or leased by Plaintiff. Plaintiff later sought a refund of these amounts, believing that its sales of recycling machines and repair parts were exempt

Plaintiff or UBCR, LLC performed maintenance and repair work on the recycling machines, and that further discovery is necessary to resolve this issue. While the Court agrees that further discovery appears necessary to resolve the question, ultimately, this question is not relevant to resolving the dispute.

from taxation under the GSTA and UTA. After the Department failed to respond to the refund request, Plaintiff filed the instant suit.

As Plaintiff explains in its motion, it “seeks a ruling solely on the legal question, for which the facts are not in dispute, of whether the Container Recycling Machines and repair parts at issue in this case perform or are used in an industrial processing activity under MCL 205.54t and 205.94o.” In relevant part, MCL 205.54t, which creates the GSTA’s industrial processing exemption, provides:

(3) Industrial processing includes the following activities:

* * *

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.

* * *

(g) Remanufacturing.

* * *

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

* * *

(4) Property that is eligible for an industrial processing exemption includes the following:

* * *

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

The statute defines “industrial processing” as:

the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.^{5]}

The UTA contains identical language in MCL 205.94*o*, with the exception that MCL 205.94*o*(1) identifies the UTA, rather than the GSTA, as the tax to which the exemption applies. Thus, whether addressing the GSTA or the UTA, the analysis of the question presented by Plaintiff is the same.

Plaintiff argues that its recycling machines perform activities falling within MCL 205.54t(3)(d), (3)(g), (3)(i), and (3)(j), and the parallel provisions of the UTA's industrial processing exemption, MCL 205.94*o*(3)(d), (3)(g), (3)(i), and (3)(j). The Department contends that Plaintiff's recycling machines are not a part of the industrial process described by MCL 205.54t(7)(a) and MCL 205.94*o*(7)(a), and thus, not entitled to the exemption. In its reply, Plaintiff argues that the Department is attempting to use MCL 205.54t(7)(a) and MCL 205.94*o*(7)(a) to improperly restrict the scope of MCL 205.54t(3) and MCL 205.94*o*(3). Reading the relevant statutory provisions together, the Court concludes that Plaintiff is not entitled to the industrial processing exemption under the GSTA and UTA.

Resolution of the question presented to this Court hinges on a proper understanding of when industrial processing begins and ends. Pursuant to MCL 205.54t(7)(a) and MCL 205.94*o*(7)(a), industrial processing "begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first

⁵ MCL 205.54t(7)(a).

come to rest in finished goods inventory storage.” Further defining the start of the process, MCL 205.54t(6)(a) and MCL 205.94o(6)(a) provide that the “receiving” and “storage of raw materials” are activities not included in the industrial process.⁶ Under the plain language of these statutory provisions, industrial processing begins when stored raw materials begin the process of being altered into a finished good.

Plaintiff’s machines do not take raw materials from storage to begin the journey to becoming a finished good. Rather, Plaintiff’s machines take a finished good and place it into storage. The recycling machines collect cans and bottles from consumers and place them in collection bins. These stored materials are then transferred on to others who transform the cans and bottles into finished goods. At best, the machines are the means of receiving and storing raw materials, an activity that is plainly not part of the industrial process.⁷ Thus, Plaintiff’s recycling machines are not themselves part of the industrial process. Indeed, and as the Department aptly points out, if Plaintiff’s machines were to be considered part of the industrial process, the bottles and cans that these machines collect would have to be in “raw materials storage” *before* the bottles and cans are deposited in Plaintiff’s machines.⁸ For that to be true, this Court would have to conclude that the cans and bottles are in “raw materials storage” when the empty bottles and cans are in the possession of the individual who consumed the beverage formerly found within the can or bottle. Such a result is simply irrational.

⁶ MCL 205.54t(6)(b) and MCL 205.94o(6)(b) state that industrial processing does not include “[s]ales, distribution, warehousing, shipping, or advertising activities[,]” further demarcating the end of the industrial process. However, it is the start of the process, not the end, that is in dispute in this matter.

⁷ MCL 205.54t(6)(a); MCL 205.94o(6)(a).

⁸ MCL 205.54t(7)(a); MCL 205.94o(7)(a).

Plaintiff relies on four specific provisions of MCL 205.54t(3) and MCL 205.94o(3) that identify specific activities that are considered industrial processing. And if one were to read these provisions in isolation, one might conclude that Plaintiff's recycling machines are engaged in industrial processing.⁹ However, statutes must be read as a whole.¹⁰ "Individual words and phrases, while important, should be read in the context of the entire legislative scheme."¹¹ Here, the legislative scheme is clear from a plain reading of the relevant statutes in their entirety. The start and end of the industrial process is defined by the second sentence of MCL 205.54t(7)(a) and MCL 205.94o(7)(a). MCL 205.54t(3) and MCL 205.94o(3) do not alter when the process begins and ends. Rather, these latter statutes enumerate specific activities that, when they occur between the start and end point of the industrial process, are industrial processing activities.¹²

Plaintiff's suggested reading of the relevant statutes also creates a potential conflict among the statutory provisions. If Plaintiff is correct, its machines are engaged in the industrial process at a point before raw materials are placed in storage. This conflicts with the definition of industrial processing stated in MCL 205.54t(7)(a) and MCL 205.94o(7)(a). Plaintiff would also be engaged in industrial processing when it is receiving and storing raw materials, activities that

⁹ See, e.g., MCL 205.54t(3)(d) ("Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage."). At least arguably, Plaintiff's machines inspect the cans and bottles, by scanning UPC codes, to determine whether the can or bottle meets specified parameters.

¹⁰ *Potter v McCleary*, 484 Mich 397, 411; 774 NW2d 1 (2009).

¹¹ *Id.*

¹² See *Detroit Edison Co v Dep't of Treasury*, 498 Mich 28, 39; 869 NW2d 810 (2015) ("Because 'industrial processing' is defined by MCL 205.94o(7)(a), the analysis begins there. If 'industrial processing' activity is not occurring under either MCL 205.94o(7)(a) or MCL 205.94o(3), the latter of which enumerates certain activities that constitute 'industrial processing,' the analysis is complete and the taxpayer is entitled to no exemption.").

are plainly excluded as industrial processing activities by MCL 205.54t(6)(a) and MCL 205.94(6)(b). One of the “most basic principles of statutory construction” is that “provisions of a statute that could be in conflict must, if possible, read harmoniously.”¹³ Harmonizing these provisions is a fairly simple exercise: those activities defined by MCL 205.54t(3) and MCL 205.94o(3) *that occur during the industrial process* – i.e., between the time when “tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage[,]”¹⁴ are part of the industrial process. Thus, regardless of whether Plaintiff’s recycling machines perform tasks that might fit within any specific provision of MCL 205.54t(3) or MCL 205.94o(3), because those activities occur before the industrial process begins, the exemptions found in MCL 205.54t and MCL 205.94o do not apply.

The claims raised in Plaintiff’s complaint all hinge on its ability to utilize the exemptions found in MCL 205.54t and MCL 205.94o. Because these exemptions do not apply, the Department is entitled to summary disposition pursuant to MCR 2.116(I)(2).

Dated: January 19, 2017.



Michael J. Talbot
Court of Claims Judge

¹³ *Nowell v Titan Ins Co*, 466 Mich 478, 482; 648 NW2d 157 (2002).

¹⁴ MCL 205.54t(7)(a); MCL 205.94o(7)(a).

STATE OF MICHIGAN
COURT OF APPEALS

TOMRA OF NORTH AMERICA, INC.,
Plaintiff-Appellant,

FOR PUBLICATION
July 17, 2018
9:10 a.m.

v

DEPARTMENT OF TREASURY,
Defendant-Appellee.

Nos. 336871; 337663
Court of Claims
LC Nos. 16-000118-MT;
14-000091-MT

Advance Sheets Version

Before: GADOLA, P.J., and K. F. KELLY and RIORDAN, JJ.

GADOLA, P.J.

In these consolidated cases, plaintiff, Tomra of North America, Inc., appeals as of right the orders of the Court of Claims granting summary disposition to defendant, the Department of Treasury. In its opinion, the Court of Claims concluded that plaintiff's beverage-container-recycling machines did not qualify for the industrial-processing exemption to tax liability as set forth in the General Sales Tax Act (GSTA), MCL 205.51 *et seq.*, and the Use Tax Act (UTA), MCL 205.91 *et seq.* We reverse and remand.

I. FACTS

The facts relevant to this appeal are largely undisputed. Plaintiff sells and leases the container-recycling machines commonly found in grocery stores and also sells repair parts for those machines. These machines accept aluminum cans, glass bottles, and plastic bottles for recycling. When a can or bottle is placed in the machine, the machine reads the universal product code (UPC) and then sorts the accepted cans and bottles. Aluminum cans are crushed; plastic bottles are sorted by color, punctured, and compacted; and glass bottles are sorted by color. All containers are then moved to collection bins and thereafter transported to a recycling facility. At the recycling facility, the containers are dumped onto conveyor belts. Glass bottles are stored, while aluminum cans and plastic bottles are compacted into bales. The recycling facility sells the cans and bottles to manufacturers who remanufacture the materials into other products.

In this case, the parties dispute plaintiff's obligation to pay sales and use tax with respect to the container-recycling machines for the period of March 1, 2011 through December 31, 2011. During that tax period, plaintiff collected sales tax from customers to whom they sold or leased container-recycling machines, and plaintiff paid the sales tax collected to defendant. Similarly,

during that tax period, plaintiff paid use tax to defendant related to parts used in repairing the container-recycling machines sold or leased by plaintiff.¹

Plaintiff thereafter sought a refund of these amounts on the basis that its sales of recycling machines and repair parts were exempt from taxation under the GSTA and UTA. After defendant failed to respond to the refund request, plaintiff filed this action in the Court of Claims. Plaintiff thereafter moved for summary disposition pursuant to MCR 2.116(C)(10), seeking a ruling on the question whether plaintiff's container-recycling machines and repair parts perform, or are used in, an industrial-processing activity under the GSTA and UTA. The Court of Claims denied plaintiff's motion, and pursuant to MCR 2.116(I)(2), instead granted defendant summary disposition, holding that plaintiff's container-recycling machines and repair parts are not used in an industrial-processing activity under the GSTA and the UTA and that plaintiff therefore is not entitled to exemption from sales and use tax for the sale and lease of the machines and their repair parts. Plaintiff now appeals.

II. DISCUSSION

Plaintiff contends that the Court of Claims erred by holding that plaintiff's container-recycling machines and repair parts are not used in an industrial-processing activity under the GSTA and the UTA, and therefore erred by granting summary disposition to defendant. We agree.

We review de novo a trial court's grant or denial of summary disposition. *Hoffner v Lanctoe*, 492 Mich 450, 459; 821 NW2d 88 (2012). In reviewing a decision on a motion for summary disposition under MCR 2.116(C)(10), we review the record in the same manner as the trial court, considering the pleadings, affidavits, depositions, admissions, and any other evidence in favor of the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). A motion for summary disposition under MCR 2.116(C)(10) tests the factual sufficiency of a claim and is appropriately granted when, except as to the amount of damages, there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Joseph v Auto Club Ins Ass'n*, 491 Mich 200, 206; 815 NW2d 412 (2012). We also review de novo the proper interpretation of statutes such as the GSTA and the UTA. See *Fradco, Inc v Dep't of Treasury*, 495 Mich 104, 112; 845 NW2d 81 (2014); see also *Granger Land Dev Co v Dep't of Treasury*, 286 Mich App 601, 608; 780 NW2d 611 (2009).

Section 4t of the GSTA, MCL 205.54t, sets forth the industrial-processing exemption from the sales tax.² The statute provides, in relevant part:

¹ During this tax period, plaintiff remitted \$673,511.65 in sales tax and \$24,992.95 in use tax to defendant.

² The UTA sets forth parallel provisions in MCL 205.94o such that, as the Court of Claims noted, "whether addressing the GSTA or the UTA, the analysis of the question presented by Plaintiff is the same."

(1) The sale of tangible personal property to the following . . . is exempt from the tax under this act:

(a) An industrial processor for use or consumption in industrial processing.

(b) A person, whether or not the person is an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

(c) A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.

* * *

(3) Industrial processing includes the following activities:

* * *

(d) Inspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage.

* * *

(g) Remanufacturing.

* * *

(i) Recycling of used materials for ultimate sale at retail or reuse.

(j) Production material handling.

(k) Storage of in-process materials.

(4) Property that is eligible for an industrial processing exemption includes the following:

* * *

(b) Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.

* * *

(6) Industrial processing does not include the following activities:

- (a) Purchasing, receiving, or storage of raw materials.
- (b) Sales, distribution, warehousing, shipping, or advertising activities.

* * *

(7) As used in this section:

(a) “Industrial processing” means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.

(b) “Industrial processor” means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

Entitlement to an exemption under the GSTA is determined by what use the customer makes of the product sold by the taxpayer. *Elias Bros Restaurants, Inc v Treasury Dep’t*, 452 Mich 144, 154, 156; 549 NW2d 837 (1996); accord *Detroit Edison Co v Dep’t of Treasury*, 498 Mich 28, 37; 869 NW2d 810 (2015). Tax exemptions are disfavored, and the burden of proving entitlement to a tax exemption is upon the party asserting the right to the exemption. *Elias Bros*, 452 Mich at 150. Further, tax exemptions are strictly construed against the taxpayer and in favor of the taxing unit. *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753; 298 NW2d 422 (1980) (citation omitted).

As set forth under MCL 205.54t(1)(c), the sale of tangible personal property is exempt from sales tax if the tangible personal property is used by the buyer to perform an industrial-processing activity for or on behalf of an industrial processor. Under MCL 205.54t(4)(b), property that is eligible for an industrial-processing exemption includes “[m]achinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance.” In this appeal, the question is whether the container-recycling machines plaintiff sells and leases are machinery used by plaintiff’s customers in an “industrial processing activity” within the meaning of the statute.

An “industrial processing activity” is not defined by the statute, but the statute does define “industrial processing” as “the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail.” MCL 205.54t(7)(a). MCL 205.54t also specifies activities that are considered to be industrial processing, including, under Subsection (3)(d), the “[i]nspection, quality control, or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage”; under Subsection (3)(g), remanufacturing; under Subsection (3)(i), recycling

of used materials for ultimate sale at retail or reuse; under Subsection (3)(j), production material handling; and under Subsection (3)(k), storage of in-process materials. The statute also specifies activities that are not included in industrial processing, including, under Subsection (6)(a), the purchasing, receiving, or storage of raw materials, and under Subsection (6)(b), sales, distribution, warehousing, shipping, or advertising activities.

Subsection (7)(a), in addition to defining industrial processing, also provides that “[i]ndustrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.” In light of this provision, the Court of Claims in this case concluded that plaintiff’s container-recycling machines could not be engaged in an industrial-processing activity because the machines do not perform their task after tangible personal property begins movement from raw-materials storage to begin industrial processing. That is, the tangible personal property in this case that is to be converted or conditioned through industrial processing is the cans and bottles that consumers commonly return to a grocery store. Generally, these cans and bottles are not first placed in “raw materials storage” before the consumer places them in the machines.³ The Court of Claims concluded that because the cans and bottles were not first placed in raw-materials storage before being placed in the machines, whatever function the machines performed could never be considered an industrial-processing activity. The Court of Claims stated:

[R]egardless of whether Plaintiff’s recycling machines perform tasks that might fit within any specific provision of MCL 205.54t(3) or MCL 205.94o(3), because those activities occur before the industrial process begins, the exemptions found in MCL 205.54t and MCL 205.94o do not apply.

The Court of Claims construed this provision as meaning precisely what it says—that industrial processing begins when tangible personal property begins movement from raw-materials storage to begin industrial processing. We agree. However, the Court of Claims also construed this sentence to mean that industrial processing can *never* occur unless, first, tangible personal property begins movement from raw-materials storage.⁴ The statute does not so provide, and we think it unlikely that the Legislature intended that interpretation.

A court’s primary task when interpreting a statute is to discern and give effect to the intent of the Legislature. *Ford Motor Co v Dep’t of Treasury*, 496 Mich 382, 389; 852 NW2d 786 (2014). In doing so, we first consider the statutory language itself; if the language is

³ One can envision exceptions, such as when the cans and bottles are first collected at some other point, such as at a retailer that does not have a container-recycling machine, before being transported to a location that does have a container-recycling machine.

⁴ An apt analogy is the statement “The movie starts at 9:00.” The statement means what it says—that the movie starts at 9:00. But shall we read into the statement the additional meaning that “the movie starts at no other time than 9:00”? There may, perhaps, also be a 7:00 showing, and another at 11:00.

unambiguous, we conclude that the Legislature must have intended the clearly expressed meaning and we enforce the statute as written. *Id.* A statute is not ambiguous merely because a term is undefined or has more than one definition, but ambiguity exists when statutory language “is equally susceptible to more than a single meaning.” *Klida v Braman*, 278 Mich App 60, 65; 748 NW2d 244 (2008); see also *Marcelle v Taubman*, 224 Mich App 215, 219; 568 NW2d 393 (1997).

Moreover, “what is plain and unambiguous often depends on one’s frame of reference,” *US Fidelity & Guaranty Co v Mich Catastrophic Claims Ass’n (On Rehearing)*, 484 Mich 1, 13; 795 NW2d 101 (2009) (quotation marks and citation omitted); to determine that frame of reference, one must consider the context of the passage by reading it “in relation to the statute as a whole and [to] work in mutual agreement” with the remainder of the statute. *Id.* We therefore read a statute “‘as a whole and in its grammatical context, giving each and every word its plain and ordinary meaning unless otherwise defined.’” *Book-Gilbert v Greenleaf*, 302 Mich App 538, 541; 840 NW2d 743 (2013), quoting *In re Receivership of 11910 South Francis Rd*, 492 Mich 208, 222; 821 NW2d 503 (2012). In so doing, we “avoid a construction that would render any part of a statute surplusage or nugatory, and ‘[w]e must consider both the plain meaning of the critical words or phrases as well as their placement and purpose in the statutory scheme.’” *People v Redden*, 290 Mich App 65, 76-77; 799 NW2d 184 (2010) (citation omitted). We also note that, although tax exemptions are construed strictly against the taxpayer, *Ladies Literary Club*, 409 Mich at 753, any ambiguity found in a tax statute is construed in favor of the taxpayer, *Signature Villas, LLC v Ann Arbor*, 269 Mich App 694, 702; 714 NW2d 392 (2006).

As noted, MCL 205.54t provides for an industrial-processing exemption for the tax imposed by the GSTA. The statute therefore focuses, of necessity, on which activities fall within the purview of “industrial processing.” Indeed, the statute is devoted almost entirely to describing the activities that constitute, or do not constitute, industrial processing.

Among the activities that are specified by the statute as falling within the definition of industrial processing are activities that are unlikely to begin with “tangible personal property begin[ning] movement from raw materials storage to begin industrial processing” MCL 205.54t(7)(a). Subsection (3)(e) provides that industrial processing includes “[p]lanning, scheduling, supervision, or control of production or other exempt activities.” Subsection (3)(f) provides that industrial processing includes “[d]esign, construction, or maintenance of production or other exempt machinery, equipment, and tooling.” Clearly, the activities of planning, scheduling, and designing are likely to predate tangible personal property beginning movement from raw-materials storage to begin industrial processing. Nonetheless, our Legislature clearly intended, as evidenced by the language of these statutory provisions, to include these activities within the definition of industrial processing. We will not, therefore, read the language of Subsection (7)(a)—that “[i]ndustrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing”—as a temporal requirement that would render these portions of the statute meaningless. That is, we will not read into the plain language of the statute the stricture that no activity qualifies as industrial processing unless it is predated by tangible personal property leaving raw-materials storage. The statute does not state that industrial processing *must* begin this way but rather states that when tangible personal property begins movement from raw-materials storage to begin industrial processing, one can rest assured that industrial processing has begun.

To discern the intention of the Legislature, statutory provisions should not be read in isolation, which can lead to a distortion of legislative intent. *Robinson v Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010). “A provision that may seem ambiguous in isolation often is clarified by the remainder of the statutory scheme.” *MidAmerican Energy Co v Dep’t of Treasury*, 308 Mich App 362, 370; 863 NW2d 387 (2014) (citation and quotation marks omitted). In this case, we observe that Subsection (6) of the statute specifies activities that are not considered industrial processing. Among the activities not considered to be industrial processing is the “storage of raw materials.” MCL 205.54t(6)(a). Having made clear that the storage of raw materials is not industrial processing, Subsection (7)(a) then makes clear that once “tangible personal property begins movement from raw materials storage to begin industrial processing,” the activity does qualify as industrial processing. Our Legislature thus articulated exactly which activities related to the storage of raw materials are and are not included in industrial processing, thereby providing guidance for determining exactly when in the continuum tangible personal property makes the transition from storage (not exempt) to activities of industrial processing (exempt). This provision does not attempt to foreclose the possibility that industrial processing could occur without the initial step of moving raw materials from storage,⁵ or when tangible items are never in raw-materials storage, and we decline to so expand the provision.

In construing the statute, and in keeping with the statute’s intent, our Supreme Court has emphasized that entitlement to an exemption under the GSTA is determined by what use the customer makes of the product sold by the taxpayer. *Elias Bros*, 452 Mich at 154, 156. In reaching its conclusion in this case, the Court of Claims found determinative not the use to which the container-recycling machines were put, but rather when, and perhaps where,⁶ the equipment

⁵ We note that our Supreme Court in *Detroit Edison Co*, 498 Mich at 42, reached an analogous conclusion that industrial processing had occurred despite the inability to meet the industrial-processing continuum described in MCL 205.54t. In that case, because the property involved was electricity, our Supreme Court determined that industrial processing was complete when the electricity reached the consumer, despite the fact that “there is simply no point within the electric system at which ‘finished goods first come to rest in finished goods inventory storage’ before [reaching the consumer].” *Id.* The failure of electricity to come to rest as a finished good in inventory storage did not disqualify the transmission of electricity to consumers from the exemption. Similarly in this case, because of the nature of deposit-return recycling, there is simply no point at which (other than in the hands of the consumer) the cans and bottles are in raw-materials storage. But as in *Detroit Edison Co*, that fact does not create a statutory barrier to entitlement to the exemption for qualifying activities that happen to take place at the beginning of the process rather than the end.

⁶ If the container-recycling machines were located somewhere less convenient to consumers than grocery stores, such as at a distant recycling facility, the cans and bottles would presumably need to be collected and stored before reaching the machines. Assuming for the sake of argument that the machines are performing tasks that otherwise would be considered an industrial-processing activity, under the Court of Claims’ analysis the location of the machines becomes determinative of whether an exemption is warranted, which is contrary to the Supreme Court’s determination in *Elias Brothers*.

was used in relation to raw-materials storage. In light of our Supreme Court's directive, we remand to the Court of Claims for reconsideration of whether plaintiff is entitled to a tax exemption under the GSTA and UTA.

Reversed and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Michael F. Gadola

/s/ Michael J. Riordan

STATE OF MICHIGAN
COURT OF APPEALS

TOMRA OF NORTH AMERICA, INC.,
Plaintiff-Appellant,

FOR PUBLICATION
July 17, 2018

v

Nos. 336871; 337663
Court of Claims
LC Nos. 16-000118-MT;
14-000091-MT

DEPARTMENT OF TREASURY,
Defendant-Appellee.

Advance Sheets Version

Before: GADOLA, P.J., and K. F. KELLY and RIORDAN, JJ.

K. F. KELLY, J. (*dissenting*).

I respectfully dissent. Because the machines are not involved in “industrial processing” as that term is defined in MCL 205.54t(7)(a), I would affirm the Court of Claims’ well-reasoned decision.

The analysis in this case should begin and end with the statutory definition of “industrial processing” as set forth in Subsection (7)(a), which provides:

“Industrial processing” means the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. *Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.* [Emphasis added.]

“When a statute specifically defines a given term, that definition alone controls.” *Haynes v Neshewat*, 477 Mich 29, 35; 729 NW2d 488 (2007). However, rather than focusing on the Legislature’s definition of “industrial processing” in Subsection (7)(a), the majority mistakenly looks to those activities specifically enumerated in MCL 205.54t(3). Contrary to the majority’s conclusion, Subsection (3) does not *expand* the definition specifically set forth in Subsection (7)(a). Rather, as the Court of Claims aptly noted, Subsection (7)(a) has a temporal requirement that must be met before the activities in Subsection (3) are even considered. That is, only after the definition in Subsection (7)(a) is met do the activities set forth in Subsection (3) have any relevance. Those activities must occur within the statutorily defined period in Subsection (7)(a).

The Court of Claims correctly recognized that the machines perform activities before the industrial process begins. The machines may sort, separate, and compress items and, in that regard, some processing necessarily occurs. However, while some processing may occur, the machines do not perform “*industrial processing*” as statutorily defined. Instead, the machines simply facilitate the collection of raw materials. In order to be exempt, the machines must perform an activity at some point after tangible personal property begins movement from raw-materials storage and before the finished goods first come to rest in inventory. The machines in this case are used *before* the start of the industrial process and, therefore, the equipment is not exempt. Thus, any inspection, quality control, and recycling that the machines perform is irrelevant because those activities take place before the industrial process begins.¹

The majority erroneously concludes that the Court of Claims made its decision contingent on the existence of raw materials. However, it is clear that the Court of Claims made no such finding. Instead, the Court of Claims appropriately recognized that where, as here, there *is* raw material, then the industrial process begins when tangible personal property begins movement from raw-materials storage to begin industrial processing. In so doing, the Court of Claims was faithful to the definition as set forth by our Legislature.

I find plaintiff’s reliance on *Detroit Edison Co v Dep’t of Treasury*, 498 Mich 28; 869 NW2d 810 (2015), unavailing. The focus in the *Detroit Edison* case involved electricity. The issue was not whether there was raw storage, but whether electricity ever “came to rest” in inventory storage. Our Supreme Court concluded that “industrial processing of electricity does not become complete until final distribution to the *consumer* because there is simply no point within the electric system at which ‘finished goods first come to rest in finished goods inventory storage’ before that point.” *Id.* at 42. Our Supreme Court further concluded that “the nonexempt activities in MCL 205.94o(6)(b) are in no way within the scope of MCL 205.94o(7)(a), and the exempt activity in MCL 205.94o(7)(a) is in no way within the scope of MCL 205.94o(6)(b).” *Id.* at 45. Therefore, as applied to the statutes at issue here, once there is industrial processing as defined in Subsection (7)(a), the exclusions set forth in Subsection (6) no longer apply. The only premise that *Detroit Edison* confirmed was that Subsection (6) does not modify the definition in Subsection (7)(a). Again, the Court of Claims did not rely on Subsection (6), which excluded storage of raw materials as an industrial activity; rather, the Court of Claims relied exclusively on the statutory definition of “industrial processing” in Subsection (7)(a).

¹ The record does not reflect whether any of these raw materials are ever, in fact, recycled into a finished product. It is just as likely that they will come to rest in a landfill in the United States or abroad. For example, see Albeck-Ripka, *Your Recycling Gets Recycled, Right? Maybe, or Maybe Not*, New York Times (May 29, 2018), available at <<https://www.nytimes.com/2018/05/29/climate/recycling-landfills-plastic-papers.html>> [<https://perma.cc/28SN-GUTG>]; Watson, *China Has Refused to Recycle The West’s Plastics. What Now?*, NPR (June 28, 2018), available at <<https://www.npr.org/sections/goatsandsoda/2018/06/28/623972937/china-has-refused-to-recycle-the-wests-plastics-what-now>> [<https://perma.cc/37QC-ZVU3>].

Because the machines perform activities that occur before an industrial process begins, I would affirm.

/s/ Kirsten Frank Kelly

Dept. of Treasury, 165, (Rev. 9/03)

Annual Return for Sales, Use and Withholding Taxes

Place Label from Your Coupon Book Here or Enter Taxpayer Name

TOMRA of NORTH AMERICA, INC.
480 LORDSHIP BLVD
STRATFORD, CT 06615

Account Number	
Return Year	Date Due
2003	AMENDED ANNUAL RETURN

File this return
by February 28

Do not use this form to replace a monthly or quarterly return.

Sales and Use Tax

	A. Use Tax: Sales & Rentals		B. Sales Tax	
	6%	4%	6%	4%
1. Gross sales (including sales by out-of-state vendors subject to use tax) 1.			5,683,951	
2. Rentals of tangible property and accommodations 2.				
3. Communication services 3.				
4. Add lines 1, 2, and 3 4. ▶			5,683,951 ▶	
ALLOWABLE DEDUCTIONS				
5a. Resale 5a.				
b. Industrial processing or agricultural producing b.				
c. Interstate commerce c.				
d. Exempt services d.				
e. Sales on which tax was paid to Secretary of State e.				
f. Food for human/home consumption f. ▶				
g. Bad debts g.				
h. Michigan motor fuel or diesel fuel tax h.				
i. Other - Identify: i.				
j. Tax included in gross sales (line 1) j.				
k. Total allowable deductions. Add lines 5a-5j k. ▶				
6. Taxable balance. Subtract line 5k from line 4 6. ▶			5,683,951 ▶	
7. Tax Rate 7.	x .06	x .04	x .06	x .04
8. Gross tax due. Multiply line 6 by line 7 8. ▶			341,037.06 ▶	
9. Tax collected in excess of line 8 9. ▶			0 ▶	
10. Add lines 8 and 9 10.			341,037.06	
11. TOTAL discount allowed (see instructions) 11. ▶				
12. Total tax due. Subtract line 11 from line 10 12.			341,037.06	
13. Tax payments in current year (after discounts) 13. ▶			341,037.08 ▶	

Use Tax on Items Purchased for Business or Personal Use (see back)**

14. Enter your purchases taxable at the 6% rate ▶ 14a. 0	x .06 =	14b. 0
15. Tax payments made in the current year ▶ 15.		65,446.78

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year ▶ 16.		0
17. Number of W-2s enclosed 17.		0
18. Total Michigan income tax withheld per W-2s ▶ 18.		
19. Total Michigan income tax withholding paid during current tax year ▶ 19.		

Summary

20. Total sales, use and withholding taxes due. Add lines 12A and B (both rate columns), 14b and 18 20.		341,037.06
21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19 21.		406,483.86
22. If line 21 is greater than line 20, enter overpayment ▶ 22.		65,446.80
23. Amount of line 22 to be credited to your account. We will notify you when your credit is verified and available ▶ 23.		
24. Amount of line 22 to be refunded to you ▶ 24.		65,446.80
25. If line 21 is less than line 20, enter balance due ▶ 25.		
26. If this return is filed late, enter penalty and interest (See instructions.) ▶ 26.		
27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make checks payable to "State of Michigan." ▶ 27.		

Complete and sign the back of this return.

Type of Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (non-Michigan)		

Signature

I declare, under penalty of perjury, that this return is true and complete to the best of my knowledge.

I authorize Treasury to discuss my return with my preparer. Yes No

I declare, under penalty of perjury, that this return is based on all information of which I have any knowledge.

Preparer's Signature, Address and Phone and ID Number

Taxpayer's Signature
[Signature]

[Signature]
Capossela, Cohen, LLC

Taxpayer's Social Security Number
[REDACTED]

Telephone Number
(203) 455 - 5000

203 254-7000
368 Center Street
Southport, CT 06890

Taxpayer's Title
V. P. FINANCE

Date
AUGUST 3, 2004

If you are enclosing payment with your return:

MAIL TO: Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

If you are not enclosing payment:

MAIL TO: Michigan Department of Treasury
Lansing, MI 48930

*

***Use Tax on Items Purchased for Business or Personal Use**
Use lines 14 and 15 to report purchases made for use in your business or for items removed from your inventory for personal use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Michigan Dept. of Treasury, 165, (Rev. 9-03)

Annual Return for Sales, Use and Withholding Taxes

Place Label from Your Coupon Book Here or Enter Taxpayer Name

Tomra of North America
480 Lordship Boulevard
Stratford, CT 06615

Account Number

Return Year

2004

Date Due

File this return
by February 28.

Do not use this form to replace a monthly or quarterly return.

	A. Use Tax: Sales & Rentals		B. Sales Tax	
	6%	4%	6%	4%
Sales and Use Tax				
1. Gross sales (including sales by out-of-state vendors subject to use tax)	1.		1.	7,998,399 33
2. Rentals of tangible property and accommodations	2.		2.	
3. Communication services	3.		3.	
4. Add lines 1, 2 and 3	4.		4.	7,998,399 33
ALLOWABLE DEDUCTIONS				
5a. Resale	5a.		5a.	
b. Industrial processing or agricultural producing	b.		b.	
c. Interstate commerce	c.		c.	
d. Exempt services	d.		d.	
e. Sales on which tax was paid to Secretary of State	e.		e.	
f. Food for human/home consumption	f.		f.	
g. Bad debts	g.		g.	
h. Michigan motor fuel or diesel fuel tax	h.		h.	
i. Other. Identify:	i.		i.	
j. Tax included in gross sales (line 1)	j.		j.	
k. Total allowable deductions. Add lines 5a - 5j	k.		k.	
6. Taxable balance. Subtract line 5k from line 4	6.		6.	7,998,399 33
7. Tax Rate	7.	x .06	x .04	x .06
8. Gross tax due. Multiply line 6 by line 7	8.		8.	479,903 96
9. Tax collected in excess of line 8	9.		9.	
10. Add lines 8 and 9	10.		10.	479,903 96
11. TOTAL discount allowed (see instructions)	11.		11.	
12. Total tax due. Subtract line 11 from line 10	12.		12.	479,903 96
13. Tax payments in current year (after discounts)	13.		13.	479,903 96

Use Tax on Items Purchased for Business or Personal Use (see back)*

14. Enter your purchases taxable at the 6% rate	14a.	329,299.34	x .06 =	14b.	19,757 96
15. Tax payments made in the current year	15.			15.	44,185 21

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year	16.	
17. Number of W-2s enclosed	17.	
18. Total Michigan income tax withheld per W-2s	18.	
19. Total Michigan income tax withholding paid during current tax year	19.	

Summary

20. Total sales, use and withholding taxes due. Add lines 12A and B (both rate columns), 14b and 18	20.	499,661 92
21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19	21.	524,089 17
22. If line 21 is greater than line 20, enter overpayment	22.	24,427 25
23. Amount of line 22 to be credited to your account. We will notify you when your credit is verified and available	23.	0 00
24. Amount of line 22 to be refunded to you	24.	24,427 25
25. If line 21 is less than line 20, enter balance due	25.	
26. If this return is filed late, enter penalty and interest. (See instructions.)	26.	
27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make checks payable to "State of Michigan."	27.	

Type of Business Ownership (check one only)

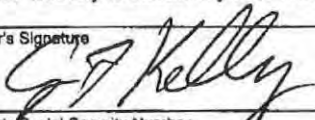
<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date: <input type="text"/>	<input checked="" type="checkbox"/> Non-Mich. Corporation	<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Limited Liability Company		
<input type="checkbox"/> Domestic (Michigan)		
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Signature

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.

I authorize Treasury to discuss my return with my preparer. Yes No

Taxpayer's Signature



Taxpayer's Social Security Number

[REDACTED]

Telephone Number

(203) 455-5000

Taxpayer's Title

V.P. Finance

Date

I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

Preparer's Signature, Address and Phone and ID Number

If you are enclosing payment with your return:

MAIL TO: Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

If you are not enclosing payment:

MAIL TO: Michigan Department of Treasury
Lansing, MI 48930

***Use Tax on Items Purchased for Business or Personal Use**

Use lines 14 and 15 to report purchases made for use in your business or for items removed from your inventory for personal use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Michigan Dept. of Treasury, 165, (Rev. 7-06)

Annual Return for Sales, Use and Withholding Taxes

Place Label From Your Coupon Book Here or Enter Taxpayer Name
TomRA of North America, Inc.
 1 Corporate Drive, Suite 710
 Shelton, CT 06484

Account Number
 [Redacted]
 Return Year: **2005** Date Due

File this return by February 28.

Do not use this form to replace a monthly or quarterly return.

	A. Use Tax: Sales & Rentals		B. Sales Tax	
	6%	4%	6%	4%
Sales and Use Tax				
1. Gross sales (including sales by out-of-state vendors subject to use tax) 1.			1. 7,105,740.00	
2. Rentals of tangible property and accommodations 2.				
3. Communication services 3.				
4. Add lines 1, 2 and 3 4.				
ALLOWABLE DEDUCTIONS				
5a. Resale 5a.				
b. Industrial processing or agricultural producing b.				
c. Interstate commerce c.				
d. Exempt services d.				
e. Sales on which tax was paid to Secretary of State ... e.				
f. Food for human/home consumption f.				
g. Bad debts g.				
h. Michigan motor fuel or diesel fuel tax h.				
i. Other. Identify: i.				
j. Tax included in gross sales (line 1) j.				
k. Total allowable deductions. Add lines 5a - 5j k.				
6. Taxable balance. Subtract line 5k from line 4 6.			7,105,740.00	
7. Tax Rate 7.	x .06	x .04	x .06	x .04
8. Gross tax due. Multiply line 6 by line 7 8.			426,344.40	
9. Tax collected in excess of line 8 9.				
10. Add lines 8 and 9 10.			426,344.40	
11. TOTAL discount allowed (see instructions) 11.				
12. Total tax due. Subtract line 11 from line 10 12.			426,344.40	
13. Tax payments in current year (after discounts) 13.				

Use Tax on Items Purchased for Business or Personal Use (see back)*

14. Enter your purchases taxable at the 6% rate 14a.	252,824.67	x .06 =	14b.	15,169.48
15. Tax payments made in the current year 15.				15,169.48

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year 16.	
17. Number of W-2s, 1099s, and/or MI-NRK1s enclosed 17.	
18. Total Michigan income tax withheld per W-2s, 1099s and MI-NR-K1s 18.	
19. Total Michigan income tax withholding paid during current tax year 19.	

Summary

20. Total sales, use and withholding taxes due. Add lines 12A and B (both rate columns), 14b and 18 20.	441,513.88
21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19 21.	441,513.88
22. If line 21 is greater than line 20, enter overpayment 22.	
23. Amount of line 22 to be credited to your account. We will notify you when your credit is verified and available 23.	
24. Amount of line 22 to be refunded to you 24.	
25. If line 21 is less than line 20, enter balance due 25.	
26. If this return is filed late, enter penalty and interest. (See instructions.) 26.	
27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan." 27.	

Account Name <i>Tomas Michigan</i>	Account Number [REDACTED]
---------------------------------------	------------------------------

Type of Business Ownership (check one only)

- | | | |
|--|---|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Michigan Corporation | <input type="checkbox"/> Trust or Estate (Fiduciary) |
| <input type="checkbox"/> Husband - Wife | <input type="checkbox"/> Subchapter S | <input type="checkbox"/> Joint Stock Club or Investment Company |
| <input type="checkbox"/> Partnership | <input type="checkbox"/> Professional | <input type="checkbox"/> Social Club or Fraternal Organization |
| <input type="checkbox"/> Registered Partnership, Agreement Date: [] | <input checked="" type="checkbox"/> Non-Mich. Corporation | <input type="checkbox"/> Other (Explain) |
| <input type="checkbox"/> Limited Partnership | <input type="checkbox"/> Subchapter S | [REDACTED] |
| <input type="checkbox"/> Limited Liability Company | | |
| <input type="checkbox"/> Domestic (Michigan) | | |
| <input type="checkbox"/> Professional | | |
| <input type="checkbox"/> Foreign (Non-Michigan) | | |

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.

I authorize Treasury to discuss my return with my preparer. Yes No

Taxpayer's Signature
[Handwritten Signature]

I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

Preparer's Signature, Address, Phone and ID Number

Taxpayer's Social Security Number	Telephone Number <i>(203) 447-8738</i>
Taxpayer's Title (Owner/Officer/Member/Manager/Partner)	Date
[REDACTED]	
Print Name of Corporate Officer Responsible for Return <i>Carol Krotz</i>	Telephone Number ()

If this is an amended return, include a letter of explanation and be sure to include your account number in the letter.

If you are enclosing payment with your return:

MAIL TO: Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

If you are not enclosing payment:

MAIL TO: Michigan Department of Treasury
Lansing, MI 48930

***Use Tax on Items Purchased for Business or Personal Use**

Use lines 14 and 15 to report purchases made for use in your business or for items removed from your inventory for personal use. Do not repeat the amounts from Column A, lines 1 - 4 here.

To check your Sales, Use and Withholding transactions and ask questions about your account on-line, visit www.michigan.gov/bustax

NO second page
in packet

Michigan Dept. of Treasury, 165, (Rev. 7-04)

Annual Return for Sales, Use and Withholding Taxes

Place Label from Your Coupon Book Here or Enter Taxpayer Name
Tomra of North America Inc
1 Corporate Drive, Suite 710
Shelton, CT 06484

Account Number
Return Year: 2006
Date Due

File this return
by February 28.

Do not use this form to replace a monthly or quarterly return.

Tomra Michigan

Sales and Use Tax

- 1. Gross sales (including sales by out-of-state vendors subject to use tax)
- 2. Rentals of tangible property and accommodations
- 3. Communication services
- 4. Add lines 1, 2 and 3

ALLOWABLE DEDUCTIONS

- 5a. Resale
- b. Industrial processing or agricultural producing
- c. Interstate commerce
- d. Exempt services
- e. Sales on which tax was paid to Secretary of State
- f. Food for human/home consumption
- g. Bad debts
- h. Michigan motor fuel or diesel fuel tax
- i. Other. Identify:
- j. Tax included in gross sales (line 1)
- k. Total allowable deductions. Add lines 5a - 5j
- 6. Taxable balance. Subtract line 5k from line 4
- 7. Tax Rate
- 8. Gross tax due. Multiply line 6 by line 7
- 9. Tax collected in excess of line 8
- 10. Add lines 8 and 9
- 11. TOTAL discount allowed (see instructions)
- 12. Total tax due. Subtract line 11 from line 10
- 13. Tax payments in current year (after discounts)

A. Use Tax: Sales & Rentals				B. Sales Tax			
6%		4%		6%		4%	
1.				1.	7,231,334.67		
2.				2.			
3.				3.			
4.				4.	7,231,334.67		
5a.				5a.			
b.				b.			
c.				c.			
d.				d.			
e.				e.			
f.				f.			
g.				g.			
h.				h.			
i.				i.			
j.				j.			
k.				k.			
6.				6.	7,231,334.67		
7.	x .06	x .04		7.	x .06	x .04	
8.				8.	433,880.08		
9.				9.			
10.				10.	433,880.08		
11.				11.			
12.				12.	433,880.08		
13.				13.	433,880.08		

Use Tax on Items Purchased for Business or Personal Use (see back)*

- 14. Enter your purchases taxable at the 6% rate 14a. 723,808.50 x .06 = 14b. 43,428.51
- 15. Tax payments made in the current year 15. 43,428.51

Withholding Tax

- 16. Gross Michigan payroll and other taxable compensation for the year 16.
- 17. Number of W-2s and/or 1099s enclosed 17.
- 18. Total Michigan income tax withheld per W-2s 18.
- 19. Total Michigan income tax withholding paid during current tax year 19.

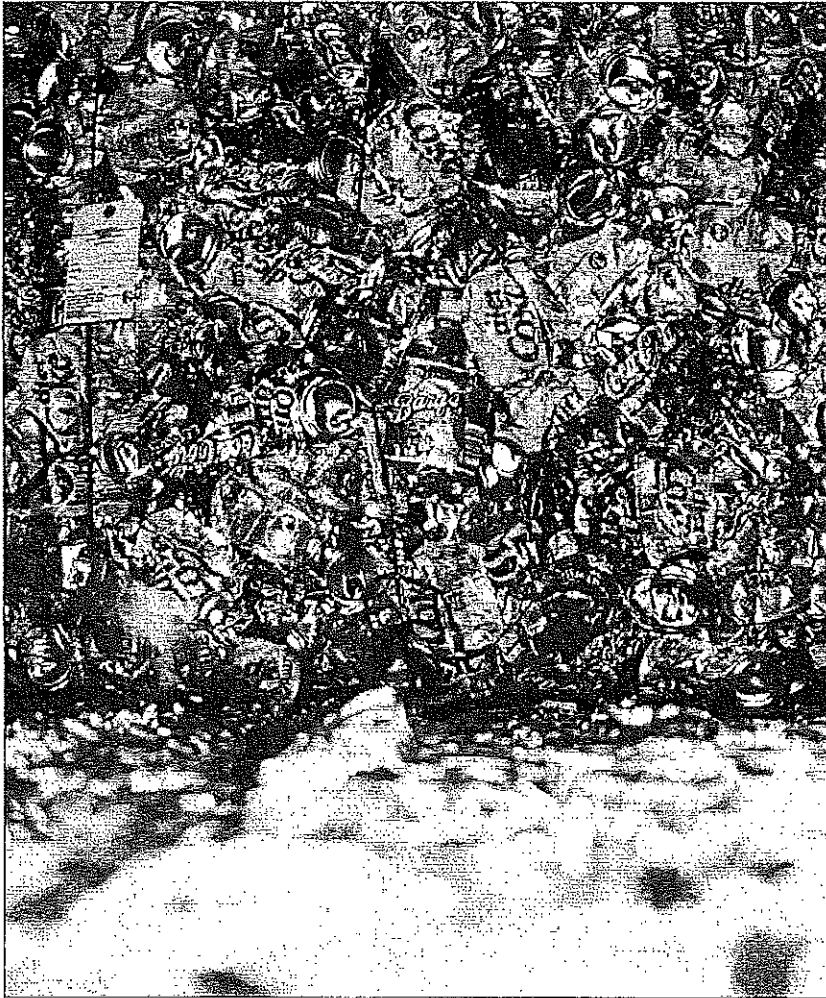
Summary

- 20. Total sales, use and withholding taxes due. Add lines 12A and B (both rate columns), 14b and 18 20. 477,308.59
- 21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19 21. 477,308.59
- 22. If line 21 is greater than line 20, enter overpayment 22. 0
- 23. Amount of line 22 to be credited to your account. We will notify you when your credit is verified and available 23. 0
- 24. Amount of line 22 to be refunded to you 24. 0
- 25. If line 21 is less than line 20, enter balance due 25.
- 26. If this return is filed late, enter penalty and interest. (See instructions.) 26.
- 27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make checks payable to "State of Michigan." 27.

www.michigan.gov/treasury

Complete and sign the back of this return.

RECEIVED by MSC 6/12/2019 3:38:23 PM



OPEN TO CONTAINERS

Scrap recycler Schupan & Sons has established itself as an important part of Michigan's container deposit and return system.

Providing efficient and reliable service can be a management challenge for any recycling company. When that service is being provided to a set of customers that has unwillingly had recycling obligations placed upon it, the challenge can be even more formidable.

In states where beverage container deposit-and-return laws are enacted, soda bottlers and beer distributors often find themselves in the position of being deeply involved in recycling because of a state mandate—not because they have chosen to make it a priority.

Such a situation can easily lead to tension, but Schupan & Sons, Kalamazoo, Mich., has entered what could theoretically be an acrimonious setting and created an opportunity for itself to assist the bottlers and distributors while gaining access to considerable numbers of aluminum, plastic and glass containers.

MANDATED OPPORTUNITY

Beverage distributors, regional bottling firms and retail grocers have all traditionally lobbied against mandatory container deposit and return systems. Their opposition is based on several factors, including that recycling is a far cry from their core business and that their facilities are not designed to act as repositories of unsanitary, potentially pest-attracting materials.

Despite the opposition of these industries, 11 states have enacted systems that require distributors and retailers to be in some way responsible for the return and recycling of aluminum, plastic and glass beverage containers.

In most of these states, traditional recycling firms have found roles to play as collectors, processors or marketers of these containers once they are ready to enter the recycling stream.

Schupan & Sons certainly fits the mold

BY BRIAN TAYLOR

2005 MUNICIPAL RECYCLING SUPPLEMENT

of a traditional recycling firm, with a background providing nonferrous and ferrous scrap recycling services to industrial accounts since 1968.

Dealing in aluminum scrap has been a part of the Schupan & Sons business since its inception, so gaining access to aluminum used beverage containers (UBCs) through the Michigan deposit-and-return system made sense for the company.

Tom Emmerich, president of the Schupan Recycling division of Schupan & Sons, says the Kalamazoo company has been involved with the state's container deposit system since 1985, when the Schupan Recycling division was created.

Twelve years later, Schupan Recycling and aluminum recycler and reverse vending machine manufacturer Tomra of North America created a joint venture business called UBCR (Used Beverage Container Recovery) LLC, based in Howell, Mich.

UBCR, using reverse vending machine placements and a fleet of trucks, has become a dominant collector and processor in the Wolverine State's container recycling system and markets itself as "the exclusive pick-up agent for the Michigan Soft Drink Association and the Michigan Beer and Wine Wholesalers Association."

The UBCR third-party pick-up method has become a preferred way for beverage distributors to manage their role in the deposit-and-return system.

Says Emmerich, "The UBCR venture has been a good source of material for us. Containers are now more than 50 percent of the overall company's business."

Although Schupan & Sons has a metals background, the company has built its depth of knowledge of the plastics and glass markets. "PET markets are now more sophisticated than they were 12 years ago, but the longer you do anything the better you get at it," says Emmerich.

MATTER OF TRUST

It has taken more than market knowledge and good processing operations for Schupan & Sons and its UBCR joint venture to succeed so well.

While each of those qualities helps, Emmerich says that providing market knowledge and reliable and helpful service has been the key.

"We've provided a lot of education to our customers," says Emmerich, who notes

A BETTER WAY

The Schupan Recycling subsidiary of Schupan & Sons, Kalamazoo, Mich., formed the UBCR (Used Beverage Container Recovery) LLC joint venture with Tomra North America, Stratford, Conn., in 1997.

According to the UBCR Web site, the company was formed "to be an industry solution for the collection, transportation and processing of empty beverage containers in the state of Michigan."

The company started with one driver, one tractor and six trailers, handling fewer than 10 million cases of bottles and cans from 13 stores for 10 distributors in its first year.

Now, UBCR has more than 40 drivers, 20 tractors and 140 trailers and handles more than 100 million cases annually, serving some 540 retail locations and 140 distributors or wholesalers.

Acting as the exclusive pick-up agent for the Michigan Soft Drink Association and the Michigan Beer and Wine Wholesalers Association, UBCR has concentrated on keeping backroom storage and collection areas clean and efficiently maintaining reverse vending machines.

On its Web site, UBCR remarks that it "operates around the clock (except Thanksgiving and Christmas Day)." The company's operations are based in Howell and Grand Rapids, Mich.

that the company owns the aluminum, plastic and glass containers after state residents return them. In its role as a third party, UBCR collects, processes and markets the materials.

UBCR has earned the trust of its wholesaling and distribution customers. "The number one key is trust," Emmerich says. "We have done what we said we were going to do and we have earned their trust. Now Schupan & Sons has seen this become a very good business venture."

That trust is necessary because UBCR handles several steps in the process. "They trust that we are going to be able to perform and deliver on what we say we are going to do and that we are not going to steal from them," says Emmerich.

Beyond the trust pertaining to fiscal responsibility, the distributors must also trust that Schupan Recycling, Tomra of North America and their UBCR joint venture will continue to provide reliable collection and processing services.

For UBCR, this means maintaining and servicing a growing number of reverse vending machines and keeping trucks and

drivers on the road.

The processing facilities must also be equipped to handle the relentless stream of containers generated every day at hundreds of collection points, such as grocery stores that are open 24 hours a day. "The containers never stop coming," says Emmerich. "You have to design systems that allow for back-up capacity and that can continue to operate even in the event of an equipment breakdown."

The third-party pick-up and processing system offered by UBCR has helped put in place a deposit-and-return system that minimizes the obligations of the beverage and grocery industries.

For Schupan & Sons, a firm with traditional scrap recycling roots, the involvement in the state system has been a net positive, says Emmerich. "It has been a very successful venture, as we have been able to grow throughout the years and provide a number of different services to bottlers and distributors." ■

The author is editor of Recycling Today and can be contacted at btaylor@gie.net.



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
New York

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

Notice of Preliminary Audit Determination

Taxpayer Name: TOMRA OF NORTH AMERICA INC
Account No.: [REDACTED]
Audit Review Period: 10/01/2003 to 12/31/2008

Notice Date: 8/23/2011
Tax Type: Sales Tax

Tax Amount (Credit Amount)	\$	516,562
Penalty		58,502
Interest		194,955
Total Liability (Net Credit)	\$	<u>770,019</u>
Other Adjustments		0
Balance Due After Adjustments	\$	<u>770,019</u>

This is a preliminary determination of the Sales Tax deficiency (credit) determined during the audit of your company for the audit review period identified above. If not previously provided, copies of the audit work papers and schedules that support the tax deficiency (credit) are also attached.

This determination is subject to final review and approval by the Michigan Department of Treasury. A final audit determination will be issued after the review is completed. The final audit determination also will advise you of your appeal rights if you disagree with the determination.

This audit was conducted by Ronald Kolbig, Auditor, Tax Compliance Bureau, Field Audit Division 2. You may contact the auditor's supervisor, Joyce McCain, at (216) 573-0500 EXT. 211 or the Area Manager, Christopher Potts, at (517) 636-0114 if you have any questions regarding this determination.

As a representative of the above taxpayer, please acknowledge receipt of this audit determination and audit work papers, and indicate whether or not you are in agreement with this determination. Please return a signed copy of this determination within 10 days from the date of this notice.

- Agrees with this preliminary determination
- Does not agree with this preliminary determination

Taxpayer has not responded to this letter. It appears that the taxpayer is not in agreement with audit results.

Signature/Title (Taxpayer Representative)

Date

Signature (Dept. of Treasury Representative)

8/23/2011
Date

3961 (Rev. 01-11)



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

Final Audit Determination Letter

TOMRA OF NORTH AMERICA INC
1 CORPORATE DR STE 710
SHELTON, CT 06484

Tax Type: **Sales Tax**
Account Number: [REDACTED]

Date of Notification and Audit Completion: September 27, 2011

This is not a bill for taxes due. This is the final audit determination letter prepared by the Tax Compliance Bureau in accordance with Section 205.21 of the Revenue Act (P.A. 1941, No. 122).

The audit results are summarized as follows:

Audit Review Period: 10/01/2003 to 12/31/2008

Tax Amount	\$	516,562
Penalty		58,502
Interest		194,955
Total Liability	\$	<u>770,019</u>

Shortly, you will receive Form 168 Notice of Intent to Assess (Bill for Taxes Due) for the liability amount due.

If you disagree with the audit determination, you may contest all or part of the liability amount by requesting an informal conference, after you receive the Notice of Intent to Assess. The uncontested portion must be paid immediately. The Notice of Intent to Assess will explain how to request an Informal Conference by sending a written request to the Office of Hearings, 430 West Allegan Street, Lansing, MI 48922 within 60 days of the date of the Notice of Intent to Assess. If you have any questions regarding the appeal process, you may contact the Office of Hearings at (517) 636-4117.

Kimberly F. Knoll

September 27, 2011

Kimberly F. Knoll, State Administrative Manager
Tax Compliance Bureau
Phone: (517) 636-4200
Fax: (517) 636-4201

Date



KPMG LLP
One Financial Plaza
755 Main Street
Hartford, CT 06103

Telephone +1 860 522 3200
Fax +1 860 297 5555
Internet www.us.kpmg.com

December 2, 2011

Via Certified Mail (7000 0520 0025 2488 2092)

Office of Hearings
Michigan Department of Treasury
Austin Building
Lansing, MI 48922

RE: TOMRA of North America, Inc.
Acct #: [REDACTED]
Audit Review Period: 10/1/2003 - 12-31/2008
Assessments: TH82977 and TH82978
Notice Date: October 3, 2011

Dear Sir or Madam:

The Michigan Department of Treasury ("MDOT") sent two Bills for Taxes Due (Intent to Assess) dated October 3, 2011 to TOMRA of North America, Inc. ("TOMRA"). The first such notice (Assessment Number TH82977) assesses unpaid sales tax, penalty and interest due of \$772,665.50. The second such notice (Assessment Number TH82978) assesses unpaid use tax, penalty and interest due of \$2,245,863.23 (see copies of notices, attached). For reasons set forth below, TOMRA protests both of these assessments in their entirety and hereby requests an informal conference to further explain why the assessments are erroneous as a matter of law and should be expunged.

Further, TOMRA is claiming a refund of all Michigan sales taxes collected from TOMRA'S customers and paid during the audit periods of October 1, 2003 through December 31, 2008 in the amount of \$2,458,452. These taxes were erroneously collected because the equipment sales to TOMRA's customers qualified for the Michigan industrial processing exemption. The basis for TOMRA's refund claims is also explained below. TOMRA understands its duty to return the sales tax refund to its customers.

TOMRA'S BUSINESS OPERATIONS

TOMRA sells and leases "reverse vending machines" that convert de-positated used beverage containers into recycled materials including plastics, metals, and glass. These reverse vending machines convert the consumer-generated raw materials and begin the process that culminates in recycled products reentering the market for consumer reuse. TOMRA's largest customers typically include supermarkets and liquor stores in states that have consumer beverage container deposit laws. In these states, consumers pay a cash deposit on each beverage container purchased full at retail, typically 5 cents or 10 cents. Consumers may recover these deposits by returning



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 2

the empty beverage containers to the retail stores that sell beverages. To facilitate fast, automated empty beverage container refund processes, beverage retailers can purchase reverse vending machines from TOMRA. Consumers may insert empty beverage containers into the reverse vending machines on site at the beverage retailers, and receive a printed receipt from the machines denoting how many refundable containers were deposited and the corresponding amount of cash refund to which the consumer is entitled. The consumer may then redeem this receipt inside the store at which the reverse vending machines are situated.

TOMRA has three primary lines of business: (1) TOMRA sells reverse vending machines to its customers, (2) TOMRA leases reverse vending machines to its customers, and (3) TOMRA earns service revenue repairing the reverse vending machines it has sold or leased. Service revenue is earned according one of two variations: (i) warranty contracts – fixed price periodic contracts for any and all repairs required during the tenure of the contract; and (ii) “time and materials” contracts where TOMRA bills incrementally for the time incurred and materials transferred in servicing the equipment. TOMRA has self assessed use tax for parts consumed in order to fulfill warranty contracts sold to Michigan customers.

TOMRA provides to its customers one of two different types of storage units, depending on the type of reverse vending machine purchased: (1) small storage bins/tubs which hold a small amount of converted beverage container material and (2) large “Gaylord Housing Units” which hold large storage units called “Gaylord Bins”. When a customer purchases a TOMRA reverse vending machine that uses small bins, the customer receives a negotiated number of storage bins as part of the sales contract.¹ These storage bins are sometimes referred to as “tubs.” The storage bins are manufactured to be integrated with the reverse vending machines. Empty storage bins are inserted into the reverse vending machine in the location designed for this purpose. As the machine is operated, the converted beverage container material is processed by the machine and inserted into the storage bin. In the event that these small storage bins wear out or break, Tomra provides additional bins as replacement for the original storage bins. The beverage container material is then transported to materials processing facilities to be recycled.

When TOMRA leases its vending machines to customers, the lease may take the form of either a capital or operating lease.² When TOMRA leases a machine to its customers, it retains title to the bins that are provided with the initial transaction. The lease agreement includes provisions governing the lease of the bins as well as the equipment.

TOMRA purchases all of the reverse vending machines that it sells from a foreign parent corporation. The foreign parent owns 100% of the stock in TOMRA. The storage bins procured by TOMRA for resale to its customers are manufactured and sold by unrelated parties.

¹ See TOMRA Reverse Vending Equipment Master Lease

² For financial accounting purposes, the difference between a capital or operating lease only impacts the accounting treatment of the lease from the lessee’s perspective. See FAS 13.



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 3

The general ledger accounting for TOMRA's machine and storage bin purchases and sales is relevant to a significant portion of the errors in the use tax assessment. When TOMRA purchases reverse vending machines from its foreign parent, it debits machine inventory and credits cash. When TOMRA purchases storage bins from its supplier, it debits tub inventory and credits cash. When TOMRA sells a reverse vending machine and related tubs to a customer, it debits accounts receivable and credits machine revenue. TOMRA also credits machine inventory and tub inventory and debits cost of goods sold ("COGS"). When TOMRA ships replacement tubs for tubs that have worn out through repeated use, TOMRA does not charge its machine sale customers for these tubs. Under TOMRA's agreements with its customers, the customers have the right to receive additional tubs at no incremental cost. Thus, when TOMRA ships replacement tubs, it does not issue an additional invoice or charge the customer more sales tax. The inventory withdrawal increases TOMRA's COGS, but does not increase the sale price of the machines and tubs sold. When a tubs inventory withdrawal is undertaken to replace worn tubs, TOMRA debits COGS and credits tubs inventory. There is no corresponding credit to sales revenue, no sales invoice, no incremental charge to the customer, and no sales tax collected.

The MDOT asserted in the audit workpapers that 445 inventory withdrawals with account descriptions of "COGS-TUB" were untaxed errors included in the overall taxable exception population of \$2,477,712.40.³ The dollar magnitude of these COGS-TUB items was \$473,449.86. Because of errors in compiling the total taxable exceptions, the correct balance of taxable exceptions should have been \$825,217.05 (this error is described more fully below). Thus, the COGS-TUB exceptions comprised more than 57% of the overall asserted taxable exceptions consisted of inventory withdrawals of storage bins.

During the audit period, when TOMRA sold or leased reverse vending machines to its customers, TOMRA collected and remitted sales tax on the total purchase price invoiced to the customer, including the price allocable to the bins which was not separately stated.

TOMRA's customers utilize reverse vending machines to collect used bottles and cans to begin the industrialized process of conversion to reusable retail material. The first step in the overall process of recycling a used aluminum beverage can or glass/plastic bottle begins when the TOMRA machine receives the can or bottle which is passed through its sensors to determine if there is excess liquid remaining in the can or bottle. If there is excess liquid remaining in the can or bottle at its point of entry into the TOMRA machine, the machine will reject the can or bottle. The TOMRA machine further has the capacity to distinguish the color of the bottles (clear, amber, green, etc.) for glass sorting purposes into separate Gaylord storage bins. The aluminum cans and plastic bottles are not sorted by color, however the covered returns are placed in their own separate Gaylord storage bins. Additionally, the TOMRA machine sensors have the capacity to determine the type of plastic that is acceptable in the machine such as polyethylene

³ This amount is net of an immaterial amount of exceptions for promotion items that were separately accounted for by MDOT on the workpapers.



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 4

terephthalate ("PET") or to determine high-density polyethylene (HDPE) which is not acceptable. The sensors fulfill a critical part of the process in that they ensure the quality of the returns and also that they are sorted in the proper bin which determines its use for recycling. Once the bottle or can has been accepted by the TOMRA machine, the machine then converts the bottles and cans as they are inserted into the machine.

When a can or bottle is processed by a TOMRA machine, ownership of the underlying beverage container material transfers at the point of destruction from the consumer to various beverage distributors such as Coke or Pepsi. UBCR, LLC ("UBCR") is responsible for picking up the full Gaylord bins, and then resupplying empty bins. UBCR brings the contents to its recycling distribution center, where the raw materials are sorted and processed further, and where recycling fees are billed to the relevant distributors. UBCR is paid by the distributors for its recycling services. The processed materials are sold to additional industrial consumers for consumption. Ownership of the small bins does not transfer to UBCR. However, UBCR provides empty Gaylord bins from an inventory pool it manages.

In August 2011, the MDOT completed an audit of TOMRA for sales and use tax for periods October 1, 2003 through December 31, 2008. The MDOT provided TOMRA with detailed audit workpapers (see copy attached) to support the assessments noted above in the Billing Notices.

ISSUES

With respect to the taxes assessed in the two Bills for Taxes Due (Intent to Assess), TOMRA protests the assessments for the following reasons:

1. The workpapers provided by the Department contain mathematical errors

The MDOT's use tax workpapers report total taxable adjustments of \$26,178,591 on Schedule B page 2 of 2. Upon applying the 6% tax rate to this sum, tax of \$1,570,716 is computed on Schedule A1. This amount of use tax is subsequently reported on the Final Audit Determination Letter dated September 27, 2011 and assessed on the Bill for Taxes Due (Intent to Assess) dated October 3, 2011.

The single largest component of the use tax assessment is the "Expenses - Projected" amount reported on Schedule B of \$26,119,929. This expense projection comprises 99.8% of the total use tax adjustments claimed by the MDOT.



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 5

The detailed computation of the expense projection is reported by the MDOT on a workpaper entitled "Projected Exceptions." The MDOT tested TOMRA's expenses for proper use tax compliance for six sample months in the sixty-three month audit period. In the six months tested and included in this report, "Total Exceptions" of \$2,487,612 are reported out of a "Test Period Base" of \$3,097,085. By dividing the exceptions by the base, the MDOT determined that 80.3211% of TOMRA's purchases were taxable within the six month test period, as reflected by the 80.3211% "Projection Multiplier."

On the Projected Exceptions workpaper, the total six-month Test Period Base of \$3,097,085 was divided by six to compute a monthly base of \$516,181. For the five full-year tax periods within the audit of 2004 – 2008, this \$516,181 amount was multiplied by twelve to calculate a Projection Base of \$6,194,169 for each of these five years. For the three-month tax period within the audit of October 1, 2003 – December 31, 2003, the \$6,194,169 annual amount was multiplied by $\frac{1}{4}$ to calculate a Projection Base of \$1,546,542. The sum of Projection Bases for the five full years and three-month period was \$32,519,387. By period, these Projection Bases were multiplied by the Projection Multiplier of 80.3211% to produce Projected Exceptions of \$26,119,929 in total.

The MDOT workpapers include a 19 page Microsoft Excel spreadsheet entitled "expense exceptions" to support the computation of the \$3,087,184.66 and \$2,477,712.40 of total test period base and total exceptions for the 6 month sample examined. In the spreadsheet, cells I1726 and J1726 contain the sums that respectively report the \$3,087,184.66 and \$2,477,712.40 of total test period base and exceptions. Cells I1726 and J1726 each contain a formula that sums every line item in the particular column from row 7 through row 1725. In reviewing the composition of the computed exception amounts on the worksheet it is evident that monthly subtotals are being captured in six rows, including rows 218, 305, 431, 761, 1123, and 1470 (this subtotal is labeled "2008 expenses", but appears to subtotal transactions only from September 2008). Also, there is a "Total Expenses" subtotal that sums the subtotals from rows 218, 305, 431, 761, 1123, and 1470 on row 1471. These subtotal amounts are then again included within the columnar total amount in row 1726 in addition to the amounts from each individual line item. Accordingly, the amount of total exceptions and the test period base as reported by MDOT were erroneously overstated by a factor of three due to this triple-counting of items and subtotals.

When the subtotals are deleted from the column totals so that exceptions and base items within the six month test period are each counted only once, then \$1,038,274.47 and \$835,117.05 of total test period base items and total exceptions are computed for the 6 month sample period.⁴

⁴ These sums each include the \$9,900 in promotional expense exceptions included by MDOT in the spreadsheet below the columnar totals.



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 6

If the Projected Exceptions workpaper is recalculated to include test period base items and exception items only once, the total six-month Test Period Base of \$1,038,274.47 would be divided by six to compute a monthly base of \$173,047. For the five full-year tax periods within the audit of 2004 – 2008, this \$173,047 amount would be multiplied by twelve to calculate a Projection Base of \$2,076,548 for each of these five years. For the three-month tax period within the audit of October 1, 2003 – December 31, 2003, the \$2,076,548 annual amount would be multiplied by $\frac{1}{4}$ to calculate a Projection Base of \$519,137. The sum of Projection Bases for the five full years and three-month period would be \$8,825,329. By period, these Projection Bases would be multiplied by the Projection Multiplier of 80.4332% to produce Projected Expense Exceptions of \$7,098,492 in total.

Thus, the MDOT's math errors produced an overstatement of projected expense exceptions of \$19,021,437 (or \$26,119,919 as reported minus the \$7,098,492 properly reported if the triple-counted items are only counted once). Carrying through the corrected expense exception to Schedule B, Total Purchases as reported of \$30,345,664 must be reduced to \$11,324,227. Determined Tax computed on Schedule A1 must be reduced from \$1,820,741 (6% of \$30,345,664) down to \$679,453 (6% of \$11,324,227). Net of the Reported Tax of \$250,024, the corrected Tax Due on Schedule A1 (assuming but not conceding that the identified errors are indeed errors) should be \$429,429 and not the \$1,570,716 erroneously reported by the MDOT. The corrected Penalty on Schedule A1 should be \$42,943 and not the \$157,073 erroneously computed by the MDOT. An estimate of the interest due on schedule A1 should be \$139,436, and not the \$510,027 erroneously computed by the MDOT.

In summary, the MDOT's math error caused an overstatement of use tax, penalty and interest of approximately \$1,626,008 as computed on Schedule A1. Even if TOMRA agreed with 100% of the exceptions noted in the MDOT's expense projection, only \$611,808 would be due and owing with respect to use tax in the audit, and not the \$2,237,816 computed erroneously by the MDOT. The taxpayer protests all portions of the assessment, and associated penalty and interest that resulted from these computational errors. However, for reasons set forth below, TOMRA also protests other elements of the use tax assessment.

2. TOMRA's inventory withdrawals of storage bins does not represent a taxable use of tangible property by TOMRA in Michigan

As described in detail in Section 1 above, the MDOT's audit workpapers include a use tax expense projection of \$26,119,929 reported on Schedule B. Once the triple-counting of items is eliminated, the total expense exceptions for the six month test period would be \$835,117.05, and the test period base would be \$ 1,038,274.47.

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Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 7

Of the total exceptions of \$835,117.05, the single largest component consists of 445 items reported by MDOT as inventory withdrawals having account descriptions of "COGS-TUB" \$473,449.86.

The delivery of the Gaylord housing units and small storage bins to customers in Michigan is a contractual obligation of TOMRA that is part of a fully-taxed transaction. Clearly, the Gaylord housing units, which are shipped in conjunction with the reverse vending machine are an integral part of the machine sale. TOMRA charges a fixed price for an amount of equipment that may vary depending upon each customer's individual circumstances. The additional delivery of small storage bins increases TOMRA's costs to generate machine sale revenue. Since the cost of continued support through provision of these small bins has already been factored into TOMRA's pricing which they have already collected and remitted sales tax, consistent with a Michigan Supreme Court ruling, these transactions are not subject to use tax.⁵

As a result, all transactions related to inventory withdrawals labeled "COGS-TUBS" consist of shipments of tangible personal property that was part of a transaction with a fixed price for which tax had already been collected by TOMRA. The reporting of these inventory withdrawals by the MDOT as taxable uses of this property in Michigan by TOMRA was thus erroneous.

Net of the \$473,449.86 in COGS-TUB exceptions, the remaining expense exceptions in the test period would be \$361,667.19. Recomputing the expense projection across the full sixty-three month audit period, the Projected Expense Exceptions of \$7,098,492 would be reduced to \$3,074,170. This correction would cause a further reduction in tax base of \$4,024,322, and a reduction in tax of \$241,459. The corresponding reduction in penalty would be \$24,146. The corresponding reduction in interest would be \$78,402. The reduction in tax, penalty and interest related to this issue is \$344,007.

Considering the aggregate of the math error in section 1 above and the COGS-TUB error in this section, the remaining use tax assessment of tax, penalty, and interest following the correction of these two items would be \$267,001. However, TOMRA protests other elements of the assessment as set forth below.

3. TOMRA's sales and leases of reverse vending machines in Michigan are exempt pursuant to the industrial processing exemption

The MDOT sales tax workpapers assert a sales tax deficiency on Schedule A1 of \$770,019 (including penalty and interest). This deficiency is based upon audited gross sales of \$52,558,564, less total deductions of \$2,975,007 for a taxable balance of \$49,583,557 across the sixty-three month audit period. The tax computed on this balance is \$2,975,014. The Reported Tax on Schedule A1 is \$2,458,452, resulting in a net tax deficiency of \$516,562. For reasons set forth below, TOMRA not only protests the \$770,019 in sales tax, penalty and interest assessed by the MDOT, but it also claims a refund of the tax collected of \$2,458,452 plus applicable interest.

⁵ See *General Motors Corp. v. Dept. of Treasury*, 644 N.W.2d 734 (Mich. 2002).

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Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 8

TOMRA sells or leases tangible personal property to Michigan customers that is eligible for an industrial processing exemption pursuant to Michigan law.⁶

TOMRA's customers utilize reverse vending machines to collect used bottles and cans to begin the industrialized process of conversion to reusable retail material. The first step in the overall process of recycling a used aluminum beverage can or glass/plastic bottle begins when the TOMRA machine receives the can or bottle which is passed through its sensors to determine if there is excess liquid remaining in the can or bottle. If there is excess liquid remaining in the can or bottle at its point of entry into the TOMRA machine, the machine will reject the can or bottle. The TOMRA machine further has the capacity to distinguish the color of the bottles (clear, amber, green, etc.) for glass sorting purposes into separate Gaylord storage bins. The aluminum cans and plastic bottles are not sorted by color, however the converted returns are placed in their own separate Gaylord storage bins. Additionally, the TOMRA machine sensors have the capacity to determine the type of plastic that is acceptable in the machine such as polyethylene terephthalate ("PET") or to determine high-density polyethylene (HDPE) which is not acceptable. The sensors fulfill a critical part of the process in that they ensure the quality of the returns and also that they are sorted in the proper bin which determines its use for recycling. Once the bottle or can has been accepted by the TOMRA machine, the machine then converts the bottles and cans as they are inserted into the machine. The machine then feeds the converted glass or plastic into internal bins that are an integral part of the machine. The internal bins store the materials within the machine until such time as the materials are collected for transport to a processing plant. This process converts the form, composition, quality, combination, and character of the materials to the point where they are no longer recognizable or functional for their former use. As discussed above, the sensors at the beginning of the process ensure the converted material is contaminant free in accordance with recycling standards in order for it to be of a composition and character suitable for manufacture into new products. The materials collected and converted by TOMRA machines are used for a variety of uses in producing new products ultimately sold at retail or for reuse. For example, one of the most common uses of PET is in the manufacture of new carpet.

According to Michigan statute,

The sale of tangible personal property to the following after March 30, 1999, subject to subsection (2) is exempt from the tax under this act:

An industrial processor for use or consumption in industrial processing [or]

A person, whether or not the person is an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor.⁷

⁶ See Mich. Comp. Laws Ann. § 205.54t, generally.

⁷ See Mich. Comp. Laws Ann. § 205.54t(1), (1)(a) and **067a**



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 9

According to Michigan statute,

Industrial processing includes the following activities: ...Recycling of used materials for ultimate sale at retail or reuse.⁸

There can be no reasonable disagreement with the conclusion that the sole purpose of TOMRA's machines is to recycle used plastic, glass, and aluminum to produce products for ultimate sale at retail or for reuse. Therefore, the act of using a TOMRA machine unquestionably fits the Michigan statutory definition of "industrial processing" activity.

According to Michigan statute, property that is eligible for an industrial processing exemption includes the following:

Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment or other processing equipment used in an industrial processing activity and in their repair and maintenance.⁹

The Legislature thus envisioned a very inclusive and broad definition of equipment qualifying for the industrial processing exemption. Any machinery used in an industrial processing activity qualifies for the exemption. TOMRA's reverse vending machines are clearly machinery used in an industrial processing activity under this provision, and qualify as property eligible for an industrial processing exemption for this reason.

According to the definitional section of the Michigan industrial processing statute,

"Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.¹⁰

A grocery store or a liquor store that has purchased a TOMRA reverse vending machine and uses that machine on its premises very squarely fits within the definition of industrial processor. Operating the machine that converts the glass, aluminum and plastic which is ultimately manufactured into a product to be sold at retail is the predicate act that qualifies the grocery store as an industrial processor. Note that the definition does NOT require that the industrial processor itself be the party that manufactures that product ultimately sold at retail. Nor does the definition require that the industrial processor undertake as its main or primary function the act of industrial processing. It is perfectly consistent with the statutory definition that a taxpayer such as a retail establishment that uses equipment in industrial processing as only a small or tangential part of its operations is nonetheless an industrial processor for those relevant operations.

⁸ Mich. Comp. Laws Ann. § 205.54t(3) and (3)(i).

⁹ Mich. Comp. Laws Ann. § 205.54t(4)(b).

¹⁰ Mich. Comp. Laws Ann. § 205.54t(7)(b).



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 10

Considering the industrial processing statutory provisions together, it does not matter whether the stores that TOMRA sells or leases the reverse vending machines to is or is not an industrial processor, because under subsection § 205.54t(1)(c), *any person* is entitled to the benefit of the exemption so long as they use purchased equipment to engage in an industrial processing activity for or on behalf of an industrial processor.

With respect to storage bins sold and leased as part of the reverse vending machine transactions, TOMRA finds further support for this position in Administrative Bulletin RAB 2000-4, in which the Department enumerates the type of tangible personal property that qualifies for the industrial processing exemption through the application of several examples. *Examples 13 and 14* are the most applicable to the processing of industrial and commercial waste.¹¹ *Example 13* presents a company that collects production waste into small containers and then consolidates those small containers into one large container for ease of collection by a recycling company. Under this hypothetical example, the small collection containers qualify for exemption, but the large container, which is removed from the processing activities and serves only a storage purpose, does not qualify.¹² *Example 14* presents a company that collects and bales production waste into bundles, which are then stored in containers until they are collected by a recycling company. The example provides that the containers and the baling equipment qualify for exemption given that the materials collected do not come to rest until they are bundled in a storage area.¹³ For these reasons, the storage bins sold and leased by TOMRA to its customers also qualify as exempt industrial processing equipment.

In summary, because TOMRA sells and leases reverse vending machines and bins to customers, and because this equipment clearly qualifies for the Michigan industrial processing exemption in the hands of TOMRA's customers, any sales tax collected from Michigan customers during the audit period was collected in error. Accordingly, TOMRA protests the sales tax assessment of \$772,665.50 (inclusive of penalties and interest). Additionally, TOMRA will seek a refund of all of its sales tax collected and remitted during the audit period in the amount of \$2,458,452 plus applicable refund interest. TOMRA understands its obligation to return the refund of sales tax to its customers.

4. The Department has not given TOMRA an adequate opportunity to provide support for workpaper entries described as "no invoice"

TOMRA has not been given a chance by the Department to provide additional information for a significant number of transactions in the use tax "Expense Exceptions" worksheet that are marked as taxable due to "no invoice." Although the ability of the Department to assume a transaction is taxable in the event the taxpayer is unable to produce documentation that provides otherwise is not in question, TOMRA has not been afforded an opportunity to provide invoices to rebut the

¹¹ RAB 2000-4, *supra* note 9, at Examples 13 and 14.

¹² *Id.* at Example 13.

¹³ *Id.* at Example 14.



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 11

Department's presumption. The "no invoice" transactions that are detailed, to the extent that TOMRA is unable to present documentation to demonstrate either that tax was collected and remitted or that the transactions were exempt from taxation, operate to overstate the error ratio asserted by the Department. These items represent approximately a taxable base of \$293,752. TOMRA requests relief of time to respond appropriately to the items that were identified as "no invoice" in the audit workpapers.

5. The Department has not given TOMRA an adequate opportunity to provide support for capital expenditures

TOMRA has not been provided with the opportunity by the Department to provide support for any of its capital expenditures. Although the ability of the Department to assume a transaction is taxable in the event the taxpayer is unable to produce documentation that provides otherwise is not in question, TOMRA has not been afforded an adequate opportunity to provide invoices to rebut the Department's presumption. The "no invoice" transactions that are detailed, to the extent that TOMRA is unable to present documentation to demonstrate either that tax was collected and remitted or that the transactions were exempt from taxation, operate to overstate the tax liability asserted by the Department. These items represent approximately a taxable base of \$788,288. TOMRA requests relief of time to respond appropriately to the items that were identified as "no invoice" in the audit workpapers.

6. The Department has not given TOMRA an opportunity to provide support for workpaper entries described as "National Promo Accounts"

The department has calculated an estimate of taxable advertising by multiplying TOMRA's federal Form 1120 Line 25 amount by the respective Michigan Single Business Tax sales apportionment percentage for each year, resulting in a projected taxable base of \$498,884 in the use tax audit on Schedule B. TOMRA does not perform national advertising. There is no clear ratable amount of federal Line 25 expenses that are taxable in Michigan. Media advertising is exempt pursuant to Mich. Comp.Laws Ann. §205.54d(h). Advertising services are not taxable in Michigan because they are not among the enumerated services found in Mich. Comp. Laws Ann. §205.93a. For these reasons, it is likely that almost no portion of the amount estimated by the auditor is taxable. For this reason, TOMRA protests the assessment of tax of \$29,933 by MDOT asserted as the Michigan portion of national advertising.



Office of Hearings
Michigan Department of Treasury
December 2, 2011
Page 12

In light of the above, TOMRA respectfully requests an informal conference in contesting the Intent to Assess letters issued by the Department. If you have any questions, please feel free to contact me at (860) 297-5033.

Very truly yours,

KPMG LLP

A handwritten signature in black ink that reads 'Andrew Koutroumanis'.

Andrew Koutroumanis
Manager, State & Local Tax

Enclosures

cc: Geoffrey Knotwell
Robin Hettrick
Rick Hill – KPMG
Michael Duffy – KPMG

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KPMG LLP
One Financial Plaza
755 Main Street
Hartford, CT 06103

Telephone +1 860 522 3200
Fax +1 860 297 5555
Internet www.us.kpmg.com

December 14, 2011

VIA CERTIFIED MAIL

Office of Hearings
Michigan Department of Treasury
Austin Building
Lansing, MI 48922

RE: TOMRA of North America, Inc.
Acct #: [REDACTED]
Audit Review Period: 10/1/2003 – 12/31/2008
Request for Claim of Refund

Dear Sir or Madam:

Enclosed are amended returns for sales and use tax on behalf of TOMRA of North America, Inc. ("TOMRA"), in connection with assessments TH82977 and TH82978, and the protest letter sent by TOMRA to the Michigan Department of Treasury ("MDOT"), dated December 2, 2011. A copy of the submitted protest letter has been provided for your convenience. The amended returns cover the audit periods 10/1/2003-12/31/2003, and tax years ended 12/31/2004 -12/31/2008. The amended returns reflect the claim for refund for all Michigan sales tax collected from TOMRA's customers and paid during the relevant periods in the amount of \$2,258,229.¹ These periods remain open pursuant to a waiver of the statute of limitations period signed by TOMRA in connection with a related audit with the MDOT.²

As noted in the December 2, 2011 protest letter filed by KPMG on behalf of TOMRA, the basis for the claim for refund is that sales tax collected from TOMRA's customers during the period was collected in error. TOMRA's equipment sales fall under the exemption that is provided to equipment used in industrial processing. Therefore, TOMRA should not have collected sales tax from its customers. TOMRA understands that all proceeds resulting from the refund claim must be refunded to the relevant customers.

TOMRA's reverse vending machines are used to collect and then crush used beverage bottles and cans and reconstitute them into raw materials that are used by manufacturers to create a variety of recycled products. Sale of these machines are exempt based on the industrial processing exemption. Michigan provides an exemption from sales tax for certain items sold that are used in

¹ Note that refund claims have not been submitted for monthly periods where the taxpayer could not locate copies of the originally filed returns. These periods are April 2004, June 2005, January 2006, September 2007, and January 2008.

² See enclosed copy of the TOMRA's signed Consent to The Suspension of the Running of the Statute of Limitations, dated 3/24/2011.



Office of Hearings
Michigan Department of Treasury
December 14, 2011
Page 2

industrial processing, including machines and equipment used in industrial processing activities,³ where "industrial processing" expressly encompasses the "[r]ecycling of used materials for ultimate sale at retail or reuse."⁴ As described in the previous protest letter, the reverse vending machines sold by TOMRA fit the machinery definition provided in the industrial processing exemption statute squarely, as the machines are used in the recycling of used materials for ultimate sale or reuse. TOMRA's customers additionally fit the "industrial processor"⁵ description, because they convert and condition the cans and bottles placed into their machines for resale to end-line manufacturers producing products from recycled materials.

In addition to the amended returns, we have included copies of the originally filed sales and use tax returns documenting the withholding and remittance of the sales tax at issue for relevant periods. Please note that this refund claim is being filed in duplicate both with the Michigan Department of Treasury Office of Hearings as well as the Michigan Department of Treasury refund section. If you have any questions regarding the content or methodology used in computing the amounts presented on the returns, please call me at (860) 297-5033.

Very truly yours,

KPMG, LLP

Andrew Koutroumanis
Manager, State and Local Tax

AK:emd
Enclosures

cc: Michigan Department of Treasury
Geoffrey Knotwell, TOMRA of North America, Inc.
Robin Hettrick, TOMRA of North America, Inc.
Rick Hill, KPMG LLP
Steve Kralik, KPMG LLP
Michael Duffy, KPMG LLP

³ Mich. Comp. Laws Ann. § 205.54t(4)(b) (where exempt equipment includes "[m]achinery, equipment, tools, dies, patterns, foundations for machinery or equipment or other processing equipment used in an industrial processing activity and in their repair and maintenance).

⁴ Mich. Comp. Laws Ann. § 205.54t(3) and (3)(i).

⁵ Mich. Comp. Laws Ann. § 205.54t(7)(b) ("Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.").

TOMRA of North America, Inc.
Total Refund Due
Years 2003 through 2008

Year	Refund Due
2003	\$ 91,901.88
2004	\$ 454,076.33
2005	\$ 388,165.05
2006	\$ 400,338.07
2007	\$ 545,504.34
2008	\$ 378,243.30

Total Refund Due: \$ 2,258,228.97

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Michigan Department of Treasury
165 (Rev. 08-10)

Annual Return for Sales, Use and Withholding Taxes

Check box if this is an amended return.

Amended Return
Amendment Date
12/7/2011

Taxpayer Name TOMRA of North America, Inc. One Corporate Drive, Suite 710 Sheffield, CT 06484		Account Number [REDACTED]
Return Year 2003	Date Due	

File this return by February 28. Do not use this form to replace a monthly or quarterly return.

Sales and Use Tax

1. Gross sales (including sales by out-of-state vendors subject to use tax) 1.

2. Rentals of tangible property and accommodations 2.

3. Telecommunications services 3.

4. Add lines 1, 2, and 3 4.

ALLOWABLE DEDUCTIONS

5a. Resale 5a.

b. Industrial processing or agricultural producing b.

c. Interstate commerce c.

d. Exempt services d.

e. Sales on which tax was paid to Secretary of State e.

f. Food for human/home consumption f.

g. Bad debts g.

h. Michigan motor fuel or diesel fuel tax h.

i. Other - Identify: i.

j. Tax included in gross sales (line 1) j.

k. Total allowable deductions. Add lines 5a - 5j k.

6. Taxable balance. Subtract line 5k from line 4 6.

7. Tax Rate 7.

8. Gross tax due. Multiply line 6 by line 7 8.

9. Tax deducted in excess of line 8 9.

10. Add lines 8 and 9 10.

11. TOTAL discount allowed (see instructions) 11.

12. Total tax due. Subtract line 11 from line 10 12.

13. Tax payments in current year (after discounts) 13.

A. Use Tax: Sales & Rentals		B. Sales Tax	
6%		6%	
1.		1.	5,683,951.33
2.		2.	
3.		3.	
4.		4.	5,683,951.33
5a.		5a.	
b.		b.	1,531,698.00
c.		c.	
d.		d.	
e.		e.	
f.		f.	
g.		g.	
h.		h.	
i.		i.	
j.		j.	
k.		k.	1,531,698.00
6.		6.	4,152,253.33
7.	x.06	7.	x.06
8.		8.	249,135.20
9.		9.	
10.		10.	249,135.20
11.		11.	
12.		12.	249,135.20
13.		13.	341,037.08

Use Tax on Items Purchased for Business or Personal Use *

14a. Enter your taxable purchases 1,090,779.67 x .06 =

14b. 65,446.78

15. Tax payments made in the current year 65,446.78

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year 16.

17. Number of W-2, 1099, and/or 4119 forms enclosed 17.

18. Total Michigan income tax withheld per W-2, 1099 and 4119 forms 18.

19. Total Michigan income tax withholding paid during current tax year 19.

Summary

20. Total sales, use and withholding taxes due. Add lines 12A, 12B, 14b and 18 314,581.98

21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19 406,483.86

22. If line 21 is greater than line 20, enter overpayment 91,901.88

Amount of line 22 to be credited to your account.

23. We will notify you when your credit is verified and available 23.

24. Amount of line 22 to be refunded to you 91,901.88

25. If line 21 is less than line 20, enter balance due 25.

26. If this return is filed late, enter penalty and interest. (See instructions.) 26.

27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan." 27.

Use Tax on Items Purchased for Business or Personal Use: Use lines 14 and 15 to report purchases made for use in your business or if removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number [REDACTED]
--	------------------------------

Type of Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Reason for amending return. Include your account number (if not listed above) in the explanation.

SEE ATTACHMENT

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.		I declare under penalty of perjury that this return is based on all information of which I have any knowledge.	
I authorize Treasury to discuss my return with my preparer. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Preparer's Signature, Address, Telephone and ID Number	
Taxpayer or Authorized Representative Signature <i>Robin Hettrick</i>		<i>Andrew Koutoumianis</i> KPMG, LLP [REDACTED]	
Taxpayer FEIN or Social Security Number [REDACTED]	Telephone Number 203 447-9738	One Financial Plaza	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner) Asst. Treasurer	Date 12/15/11	755 Main Street	
Name of Corporate Officer Responsible for Return Robin Hettrick	Telephone Number	Hartford, CT 06103	
		860-297-5555	

Aware of Postal Regulations When Mailing Your Tax Return: The U.S. Post Office calculates postage based on the weight, size and thickness of an envelope. Consult with the Post Office before mailing to avoid delays in delivery; items with insufficient postage will be returned to the sender by the Post Office.

Mailing Instructions:

enclosing payment with your Annual Return, mail to:

Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

requesting a Credit to your account (amount on line 23) or a Refund (amount on line 24), mail to:

Michigan Department of Treasury
P.O. Box 30779
Lansing, MI 48909

for other Annual Returns without payment, mail to:

Michigan Department of Treasury
Lansing, MI 48930

Go to www.michigan.gov/taxes to check your Sales, Use and Withholding transactions and ask questions about your account on-line.

TOMRA of North America, Inc.
Refund Calculation Summary
Year Ending 12/31/2003

Month	Sales Tax Originally Remitted	Use Tax Originally Remitted	Total Tax Originally Remitted	Amount Due Per Amended Return	Refund Due
January	\$ 17,865.98	\$ 11,399.28	\$ 29,265.26	\$ 29,265.26	\$ -
February	\$ 19,773.14	\$ 3,993.64	\$ 23,766.78	\$ 23,766.78	\$ -
March	\$ 18,710.06	\$ 10,518.34	\$ 29,228.44	\$ 29,228.44	\$ -
April	\$ 23,778.14	\$ 6,612.29	\$ 30,390.43	\$ 30,390.43	\$ -
May	\$ 27,584.20	\$ 4,011.34	\$ 31,595.54	\$ 31,595.54	\$ -
June	\$ 27,501.15	\$ 6,033.75	\$ 33,534.90	\$ 33,534.90	\$ -
July	\$ 42,051.94	\$ 4,148.28	\$ 46,200.22	\$ 46,200.22	\$ -
August	\$ 31,361.18	\$ 6,947.27	\$ 38,308.45	\$ 38,308.45	\$ -
September	\$ 40,509.41	\$ 3,606.21	\$ 44,115.62	\$ 44,115.62	\$ -
October	\$ 31,754.37	\$ 4,450.27	\$ 36,204.64	\$ 4,450.27	\$ 31,754.37
November	\$ 32,743.92	\$ 2,300.55	\$ 35,044.47	\$ 2,300.55	\$ 32,743.92
December	\$ 27,403.59	\$ 1,425.56	\$ 28,829.15	\$ 1,425.56	\$ 27,403.59

Total Refund Due: \$ 91,901.88

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Michigan Dept. of Treasury - SUW
160, former C- (Rev. 9/00)

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Combined RETURN for Michigan Taxes

Do not make changes on this form.
Use form C-3479 for all changes.

Account Number	Office Use
[REDACTED]	22
Return Period	Due Date
OCTOBER 2003	NOV 15, 2003

Company Name	
TOMRA OF NROTH AMERICA INC	
Taxpayer's Signature	Date
[Signature]	11/13/03
Title	Phone
Accounting Supervisor	540-10367

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	31,754.37	SBT Estimates	07
Sales Tax Discount	02		Voucher Payment*	98
Use Tax (Sales/Rentals)	03	4,450.27	Penalty & Interest	99
Use Tax Discount	04			97
Use Tax (Purchases)	05			97
Michigan Withholding	06			97

RESERVED
RESERVED
RESERVED

*Enter the amount paid with a Discount Voucher. This is not a subtotal line.

Make checks payable to: State of Michigan.

Total Payment 36204.64
22 2 [REDACTED] 9 0310 0 4

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Michigan Dept. of Treasury - SUW
160, former C-3200 (Rev. 9/00)

Combined RETURN for Michigan Taxes

Do not make changes on this form.
Use form C-3479 for all changes.

Account Number	Office Use
[REDACTED]	22
Return Period	Due Date
NOVEMBER 2003	DEC 15, 2003

Company Name	
TOMRA OF NROTH AMERICA INC	
Taxpayer's Signature	Date
<i>Scott Beck</i>	12/11/03
Title	Phone
Accounting Supervisor 625461264	

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Sales Tax	01	32443.92	SBT	07
Sales Tax	02		Estimates	
Discount			Voucher	98
Use Tax	03	2300.55	Payment*	
(Sales/Rentals)			Penalty &	99
Use Tax	04		Interest	
Discount				97
Use Tax	05			
(Purchases)				97
Michigan	06			
Withholding				97

*Enter the amount paid with a Discount
Voucher. This is not a subtotal line.

Make checks payable to: State of Michigan.

Total Payment

35044.47

22 2 [REDACTED] 9 0311 7 4

ACCOUNT NO. RETURN PERIOD

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Form 941 (Rev. 3/05)

Please print your numbers like this. Use blue or black ink. ORIGINAL 1 2 3 4 5 6 7 8 9 0

**Combined RETURN
for Michigan Taxes**
Do not make changes on this form.
Use form C-3479 for all changes.

Account Number	Office Use
[REDACTED]	22
Return Period	Due Date
DECEMBER 2003	JAN 15, 2004

Company Name	
TOMRA OF NROTH AMERICA INC	
Taxpayer's Signature	Date
<i>Steve Beck</i>	1/14/04
Title	Phone
<i>Accounting Supervisor</i>	<i>(313) 540-2367</i>

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48227-0003

Sales Tax	01	27,403.54	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment	98	
Use Tax (Sales/Rentals)	03	1,425.80	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

*Enter the amount paid with a Discount Voucher. This is not a subtotal line.

Make checks payable to: State of Michigan.

Total Payment 28,829.15

22 2 [REDACTED] 9 0312 4 4

JA 09:15 5175528746

TOMRA MICHIGAN

PAGE 02

ORIGINAL

Michigan Dept. of Treasury, 185, (Rev. 9/03)

Annual Return for Sales, Use and Withholding Taxes

Place Label from Your Coupon Book Here or Enter Taxpayer Name
ARA OF NORTH AMERICA INC
480 LORDSHIP BOULEVARD
STRATFORD, CT 06615

Account Number	
Return Year	Date Due
2003	

File this return
by February 28

Do not use this form to replace a monthly or quarterly return.

	A. Use Tax: Sales & Rentals		B. Sales Tax	
	6%	4%	6%	4%
Sales and Use Tax				
1. Gross sales (including sales by out-of-state vendors subject to use tax)			1. 5,683,951.33	
2. Rentals of tangible property and accommodations			2.	
3. Communication services			3.	
4. Add lines 1, 2, and 3	▶	▶	4. 5,683,951.33 ▶	
ALLOWABLE DEDUCTIONS				
5a. Resale			5a.	
b. Industrial processing or agricultural producing			b.	
c. Interstate commerce			c.	
d. Exempt services			d.	
e. Sales on which tax was paid to Secretary of State			e.	
f. Food for human/home consumption	▶	▶	f. ▶	▶
g. Bad debts			g.	
h. Michigan motor fuel or diesel fuel tax			h.	
i. Other - Identify:			i.	
j. Tax included in gross sales (line 1)			j.	
k. Total allowable deductions. Add lines 5a-5j	▶	▶	k. ▶	▶
6. Taxable balance. Subtract line 5k from line 4	▶	▶	6. 5,683,951.33 ▶	
7. Rate	x .06	x .04	7. x .06	x .04
8. Tax due. Multiply line 6 by line 7	▶	▶	8. ▶ 341,037.08 ▶	
9. Tax collected in excess of line 8	▶	▶	9. ▶	▶
10. Add lines 8 and 9			10. 341,037.08	
11. TOTAL discount allowed (see instructions)	▶	▶	11. ▶	▶
12. Total tax due. Subtract line 11 from line 10			12. 341,037.08	
13. Tax payments in current year (after discounts)	▶	▶	13. ▶ 341,037.08 ▶	

Use Tax on Items Purchased for Business or Personal Use (see back)**

14. Enter your purchases taxable at the 6% rate	▶ 14a. 1,090,779.67 x .06 =	14b. 65,446.78
15. Tax payments made in the current year	▶ 15.	65,446.78

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year	▶ 16.	
17. Number of W-2s enclosed	▶ 17.	
18. Total Michigan income tax withheld per W-2s	▶ 18.	
19. Total Michigan income tax withholding paid during current tax year	▶ 19.	

Summary

20. Total sales, use and withholding taxes due. Add lines 12A and B (both rate columns), 14b and 18	20.	406,483.86
21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19	21.	406,483.86
22. If line 21 is greater than line 20, enter overpayment	▶ 22.	.00
23. Amount of line 22 to be credited to your account	▶ 23.	
We will notify you when your credit is verified and available	▶ 23.	
24. Amount of line 22 to be refunded to you	▶ 24.	.00
25. If line 21 is less than line 20, enter balance due	▶ 25.	.00
26. If your return is filed late, enter penalty and interest (See instructions.)	▶ 26.	
27. TOTAL PAYMENT DUE. Add lines 25 and 28. Make checks payable to "State of Michigan."	▶ 27.	.00

Complete and sign the back of this return.

COPY

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Type of Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (non-Michigan)		

Signature

I declare, under penalty of perjury, that this return is true and complete to the best of my knowledge.		I declare, under penalty of perjury, that this return is based on all information of which I have any knowledge.	
Authorize Treasury to discuss my return with my preparer. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Preparer's Signature, Address and Phone and ID Number	
Taxpayer's Signature		Capossela, Cohen, LLC [REDACTED] 203 254-7000 368 Center Street Southport, CT 06890	
Taxpayer's Social Security Number	Telephone Number		
[REDACTED]	(203) 455-5000		
Taxpayer's Title	Date		
V.P. Finance			

If you are enclosing payment with your return:

MAIL TO: Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

COPY

If you are not enclosing payment:

MAIL TO: Michigan Department of Treasury
Lansing, MI 48930

Use Tax on Items Purchased for Business or Personal Use
Use lines 14 and 15 to report purchases made for use in your business or for items removed from your inventory for personal use.
Do not repeat the amounts from Column A, lines 1 - 4 here.

Department of Treasury
Form 1000
Annual Return for Sales, Use and Withholding Taxes

Check box if this is an amended return.

<input checked="" type="checkbox"/>	Amended Return
Amendment Date	
12/7/2011	

Taxpayer Name General North America, Inc. Corporate Drive, Suite 710 Canton, MI 48106-06484		Account Number [REDACTED]
Return Year 2004	Date Due	

File this return by February 28. Do not use this form to replace a monthly or quarterly return.

Land Use Tax

1. Sales (including sales by out-of-state vendors) subject to use tax	1.	
2. Sales of tangible property and accommodations	2.	
3. Communications services	3.	
4. Add lines 1, 2, and 3	4.	

A. Use Tax: Sales & Rentals		B. Sales Tax	
6%		6%	
			7,998,399.33
			7,998,399.33
5a. Resale	5a.		
b. Industrial processing or agricultural producing	b.		7,567,938.83
c. Interstate commerce	c.		
d. Exempt services	d.		
e. Sales on which tax was paid to Secretary of State	e.		
f. Food for human/home consumption	f.		
g. Bad debts	g.		
h. Michigan motor fuel or diesel fuel tax	h.		
i. Other identify	i.		
j. Tax included in gross sales (line 1)	j.		
k. Total allowable deductions. Add lines 5a - 5j	k.		7,567,938.83
6. Taxable balance. Subtract line 5k from line 4	6.		430,460.50
7. Tax Rate	7.	x.06	x.06
8. Gross tax due. Multiply line 6 by line 7	8.		25,827.63
9. Tax collected in excess of line 8	9.		
10. Add lines 8 and 9	10.		25,827.63
11. TOTAL discount allowed (see instructions)	11.		
12. Total tax due. Subtract line 11 from line 10	12.		25,827.63
13. Tax payments in current year (after discounts)	13.		479,903.96

ALLOWABLE DEDUCTIONS

5a. Resale	5a.	
b. Industrial processing or agricultural producing	b.	
c. Interstate commerce	c.	
d. Exempt services	d.	
e. Sales on which tax was paid to Secretary of State	e.	
f. Food for human/home consumption	f.	
g. Bad debts	g.	
h. Michigan motor fuel or diesel fuel tax	h.	
i. Other identify	i.	
j. Tax included in gross sales (line 1)	j.	
k. Total allowable deductions. Add lines 5a - 5j	k.	
6. Taxable balance. Subtract line 5k from line 4	6.	
7. Tax Rate	7.	
8. Gross tax due. Multiply line 6 by line 7	8.	
9. Tax collected in excess of line 8	9.	
10. Add lines 8 and 9	10.	
11. TOTAL discount allowed (see instructions)	11.	
12. Total tax due. Subtract line 11 from line 10	12.	
13. Tax payments in current year (after discounts)	13.	

Use Tax on Items Purchased for Business or Personal Use *

14. Enter your taxable purchases	14a.	329,299.34	x.06 =	14b.	19,757.96
15. Tax payments made in the current year	15.				19,757.96

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year	16.	
17. Number of W-2, 1099, and/or 4119 forms enclosed	17.	
18. Total Michigan income tax withheld per W-2, 1099 and 4119 forms	18.	
19. Total Michigan income tax withholding paid during current tax year	19.	

Summary

20. Total sales, use and withholding taxes due. Add lines 12A, 12B, 14b and 18	20.		45,585.59
21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19	21.		499,661.92
22. If line 21 is greater than line 20, enter overpayment	22.	454,076.33	
23. Amount of line 22 to be credited to your account	23.		
24. Amount of line 22 to be refunded to you	24.	454,076.33	
25. If line 21 is less than line 20, enter balance due	25.		
26. If this return is filed late, enter penalty and interest. (See instructions.)	26.		
27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan."	27.		

Use Tax on Items Purchased for Business or Personal Use: Use lines 14 and 15 to report purchases made for use in your business items removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number [REDACTED]
--	------------------------------

Type of Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Reason for amending return, include your account number (if not listed above) in the explanation.
SEE ATTACHMENT

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.		I declare under penalty of perjury that this return is based on all information of which I have any knowledge.	
I authorize Treasury to discuss my return with my preparer. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Preparer's Signature, Address, Telephone and ID Number	
Taxpayer or Authorized Representative Signature <i>[Signature]</i>		<i>Andrew Aboukaramani</i> KPMG, LLP [REDACTED]	
Taxpayer FEIN or Social Security Number [REDACTED]	Telephone Number 203 447-9738	One Financial Plaza	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner) Asst. Treasurer	Date 12/15/11	755 Main Street	
Print Name of Corporate Officer Responsible for Return Robin Heltrick	Telephone Number	Hartford, CT 06103	
		860-297-5555	

Be Aware of Postal Regulations When Mailing Your Tax Return: The U.S. Post Office calculates postage based on the weight, size and thickness of an envelope. Consult with the Post Office before mailing to avoid delays in delivery; items with insufficient postage will be returned to the sender by the Post Office.

Mailing Instructions:

If enclosing payment with your Annual Return, mail to:

Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

If requesting a Credit to your account (amount on line 23) or a Refund (amount on line 24), mail to:

Michigan Department of Treasury
P.O. Box 30779
Lansing, MI 48909

If other Annual Returns without payment, mail to:

Michigan Department of Treasury
Lansing, MI 48930

Go to www.michigan.gov/taxes to check your Sales, Use and Withholding transactions and ask questions about your account on-line.

TOMRA of North America, Inc.
Refund Calculation Summary
Year Ending 12/31/2004

Month	Sales Tax Originally Remitted	Use Tax Originally Remitted	Total Tax Originally Remitted	Amount Due Per Amended Return	Refund Due
January	\$ 44,675.58	\$ 3,919.76	\$ 48,595.34	\$ 3,919.76	\$ 44,675.58
February	\$ 31,682.13	\$ 2,588.18	\$ 34,270.31	\$ 2,588.18	\$ 31,682.13
March	\$ 96,804.45	\$ 5,731.97	\$ 102,536.42	\$ 5,731.97	\$ 96,804.45
April	\$ 25,827.63	\$ 3,749.77	\$ 29,577.40	\$ 29,577.40	\$ -
May	\$ 32,972.01	\$ 5,034.31	\$ 38,006.32	\$ 5,034.31	\$ 32,972.01
June	\$ 45,741.83	\$ 14,676.42	\$ 60,418.25	\$ 14,676.42	\$ 45,741.83
July	\$ 28,216.83	\$ 1,182.58	\$ 29,399.41	\$ 1,182.58	\$ 28,216.83
August	\$ 44,405.25	\$ 1,882.11	\$ 46,287.36	\$ 1,882.11	\$ 44,405.25
September	\$ 23,734.96	\$ 1,563.46	\$ 25,298.42	\$ 1,563.46	\$ 23,734.96
October	\$ 34,358.87	\$ 1,378.05	\$ 35,736.92	\$ 1,378.05	\$ 34,358.87
November	\$ 43,459.08	\$ 1,456.15	\$ 44,915.23	\$ 1,456.15	\$ 43,459.08
December	\$ 28,025.34	\$ 1,022.45	\$ 29,047.79	\$ 1,022.45	\$ 28,025.34

Total Refund Due: \$454,076.33

ORIGINAL

Michigan Dept. of Treasury, 165, (Rev. 9-03)

Annual Return for Sales, Use and Withholding Taxes

Place Label from Your Coupon Book Here or Enter Taxpayer Name Sigma of North America 480 Lordship Boulevard Stratford, CT 06615	Account Number [REDACTED]
Return Year 2004	Date Due

File this return
by February 28.

Do not use this form to replace a monthly or quarterly return.

	A. Use Tax: Sales & Rentals		B. Sales Tax	
	6%	4%	6%	4%
Sales and Use Tax				
1. Gross sales (including sales by out-of-state vendors subject to use tax) 1.			7,998,399 33	
2. Rentals of tangible property and accommodations 2.				
3. Communication services 3.				
4. Add lines 1, 2 and 3 4.			7,998,399 33	
ALLOWABLE DEDUCTIONS				
5a. Resale 5a.				
b. Industrial processing or agricultural producing b.				
c. Interstate commerce c.				
d. Exempt services d.				
e. Sales on which tax was paid to Secretary of State e.				
f. Food for human/home consumption f.				
g. Bad debts g.				
h. Michigan motor fuel or diesel fuel tax h.				
i. Other. Identify: i.				
j. Tax included in gross sales (line 1) j.				
k. Total allowable deductions. Add lines 5a - 5j k.				
6. Taxable balance. Subtract line 5k from line 4 6.			7,998,399 33	
Tax Rate 7.	x .06	x .04	x .06	x .04
Gross tax due. Multiply line 6 by line 7 8.			479,903 96	
9. Tax collected in excess of line 8 9.				
10. Add lines 8 and 9 10.			479,903 96	
11. TOTAL discount allowed (see instructions) 11.				
12. Total tax due. Subtract line 11 from line 10 12.			479,903 96	
13. Tax payments in current year (after discounts) 13.			479,903 96	

Use Tax on Items Purchased for Business or Personal Use (see back)*

14. Enter your purchases taxable at the 6% rate 14a.	329,299.34	x .06 =	14b.	19,757 96
15. Tax payments made in the current year 15.				44,185 21

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year 16.	
17. Number of W-2s enclosed 17.	
18. Total Michigan income tax withheld per W-2s 18.	
19. Total Michigan income tax withholding paid during current tax year 18.	

Summary

20. Total sales, use and withholding taxes due. Add lines 12A and B (both rate columns), 14b and 18 20.	499,661 92
21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19 21.	624,089 17
22. If line 21 is greater than line 20, enter overpayment 22.	24,427 25
23. Amount of line 22 to be credited to your account. We will notify you when your credit is verified and available 23.	0 00
24. Amount of line 22 to be refunded to you 24.	24,427 25
25. If line 21 is less than line 20, enter balance due 25.	
26. If this return is filed late, enter penalty and interest. (See instructions.) 26.	
27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make checks payable to "State of Michigan." 27.	

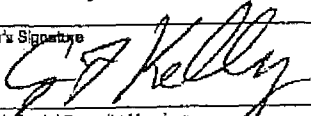
ORIGINAL

185, Page 2

Type of Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date: <input type="text"/>	<input checked="" type="checkbox"/> Non-Mich. Corporation	<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Limited Liability Company		
<input type="checkbox"/> Domestic (Michigan)		
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Signature

<p><i>I declare under penalty of perjury that this return is true and complete to the best of my knowledge.</i></p> <p>I authorize Treasury to discuss my return with my preparer. <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>Taxpayer's Signature </p> <p>Taxpayer's Social Security Number [REDACTED]</p> <p>Taxpayer's Title V.P. Finance</p>	<p><i>I declare under penalty of perjury that this return is based on all information of which I have any knowledge.</i></p> <p>Preparer's Signature, Address and Phone and ID Number</p>
<p>Telephone Number (203) 455-5000</p> <p>Date</p>	

***If you are enclosing payment with your return:**

MAIL TO: Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

If you are not enclosing payment:

MAIL TO: Michigan Department of Treasury
Lansing, MI 48930

***Use Tax on Items Purchased for Business or Personal Use**
Use lines 14 and 15 to report purchases made for use in your business or for items removed from your inventory for personal use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Michigan Department of Treasury
155 (Rev. 08-10)

Annual Return for Sales, Use and Withholding Taxes

Check box if this is an amended return.

Amended Return

Amendment Date

12/7/2011

Taxpayer Name		Account Number	
TOMRA of North America, Inc.		[REDACTED]	
One Corporate Drive, Suite 710		Return Year	Date Due
She 1, CT 06484		2005	

File this return by February 28. Do not use this form to replace a monthly or quarterly return.

Sales and Use Tax

	A. Use Tax: Sales & Rentals		B. Sales Tax	
	6%		6%	
1. Gross sales (including sales by out-of-state vendors subject to use tax)			1.	7,081,395.33
2. Rentals of tangible property and accommodations			2.	
3. Telecommunications services			3.	
4. Add lines 1, 2, and 3	▶		4. ▶	7,081,395.33
ALLOWABLE DEDUCTIONS				
5a. Resale			5a.	
b. Industrial processing or agricultural producing			b.	6,469,417.50
c. Interstate commerce			c.	
d. Exempt services			d.	
e. Sales on which tax was paid to Secretary of State			e.	
f. Food for human/home consumption	▶		f. ▶	
g. Bad debts			g.	
h. Michigan motor fuel or diesel fuel tax			h.	
i. Other - Identify:			i.	
j. Tax included in gross sales (line 1)			j.	
k. Total allowable deductions. Add lines 5a - 5j	▶		k. ▶	6,469,417.50
6. Taxable balance. Subtract line 5k from line 4	▶		6. ▶	611,977.83
7. Tax Rate		x.06	7.	x.06
8. Gross tax due. Multiply line 6 by line 7	▶		8. ▶	36,718.67
9. Tax collected in excess of line 8	▶		9. ▶	
10. Add lines 8 and 9			10.	36,718.67
11. TOTAL discount allowed (see instructions)	▶		11. ▶	
12. Total tax due. Subtract line 11 from line 10			12.	36,718.67
13. Tax payments in current year (after discounts)	▶		13. ▶	424,883.72

Use Tax on Items Purchased for Business or Personal Use *

14a. Enter your taxable purchases	277,169.33	x.06 =	14b.	16,630.16
15. Tax payments made in the current year			15.	16,630.16

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year		▶ 16.	
17. Number of W-2, 1099, and/or 4119 forms enclosed		17.	
18. Total Michigan income tax withheld per W-2, 1099 and 4119 forms		▶ 18.	
19. Total Michigan income tax withholding paid during current tax year		▶ 19.	

Summary

20. Total sales, use and withholding taxes due. Add lines 12A, 12B, 14b and 18		20.	53,348.83
21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19		21.	441,513.88
22. If line 21 is greater than line 20, enter overpayment	▶ 22.	388,165.05	
Amount of line 22 to be credited to your account.			
We will notify you when your credit is verified and available			
23.	▶ 23.		
24. Amount of line 22 to be refunded to you	▶ 24.	388,165.05	
If line 21 is less than line 20, enter balance due			
25.	▶ 25.		
If this return is filed late, enter penalty and interest. (See instructions.)			
26.	▶ 26.		
27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan."	▶ 27.		

Use Tax on Items Purchased for Business or Personal Use: Use lines 14 and 15 to report purchases made for use in your business for removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number [REDACTED]
--	------------------------------

Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Reason for amending return. Include your account number (if not listed above) in the explanation.

SEE ATTACHMENT

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.

Authorize Treasury to discuss my return with my preparer. Yes No

I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

Authorized Representative Signature

Robin Heltrick

Preparer's Signature, Address, Telephone and ID Number

Andrew Kautzmann
KPMG, LLP

Employer FEIN or Social Security Number

[REDACTED]

Telephone Number

203 447-9738

Employer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner)

Asst. Treasurer

Date

12/15/11

Print Name of Corporate Officer Responsible for Return

Robin Heltrick

Telephone Number

One Financial Plaza

755 Main Street

Hartford, CT 06103

860-297-5555

Aware of Postal Regulations When Mailing Your Tax Return: The U.S. Post Office calculates postage based on the weight, size and thickness of an envelope. Consult with the Post Office before mailing to avoid delays in delivery; items with insufficient postage will be returned to the sender by the Post Office.

Mailing Instructions:

Enclosing payment with your Annual Return, mail to:

Michigan Department of Treasury
Department 78172
P.O. Box 78000
Lansing, MI 48278-0172

requesting a Credit to your account (amount on line 23) or a Refund (amount on line 24), mail to:

Michigan Department of Treasury
P.O. Box 30779
Lansing, MI 48909

For other Annual Returns without payment, mail to:

Michigan Department of Treasury
Lansing, MI 48930

Go to www.michigan.gov/taxes to check your Sales, Use and Withholding transactions and ask questions about your account on-line.

TOMRA of North America, Inc.
Refund Calculation Summary
Year Ending 12/31/2005

Month	Sales Tax Originally Remitted	Use Tax Originally Remitted	Total Tax Originally Remitted	Amount Due Per Amended Return	Refund Due
January	\$ 20,225.12	\$ 1,899.04	\$ 22,124.16	\$ 1,899.04	\$ 20,225.12
February	\$ 35,404.11	\$ 1,177.49	\$ 36,581.60	\$ 1,177.49	\$ 35,404.11
March	\$ 57,487.56	\$ 1,460.68	\$ 58,948.24	\$ 1,460.68	\$ 57,487.56
April	\$ 32,892.62	\$ 1,640.32	\$ 34,532.94	\$ 1,640.32	\$ 32,892.62
May	\$ 47,334.08	\$ 1,807.74	\$ 49,141.82	\$ 1,807.74	\$ 47,334.08
June	\$ 36,718.67	\$ -	\$ 36,718.67	\$ 36,718.67	\$ -
July	\$ 28,992.32	\$ 1,944.87	\$ 30,937.19	\$ 1,944.87	\$ 28,992.32
August	\$ 52,016.25	\$ 1,547.05	\$ 53,563.30	\$ 1,547.05	\$ 52,016.25
September	\$ 39,955.02	\$ 1,072.16	\$ 41,027.18	\$ 1,072.16	\$ 39,955.02
October	\$ 20,140.69	\$ 1,505.17	\$ 21,645.86	\$ 1,505.17	\$ 20,140.69
November	\$ 10,045.85	\$ 1,637.52	\$ 11,683.37	\$ 1,637.52	\$ 10,045.85
December	\$ 43,671.43	\$ 938.12	\$ 44,609.55	\$ 938.12	\$ 43,671.43

Total Refund Due: \$388,165.05

Michigan Department of Treasury
155 (Rev. 08-10)

Annual Return for Sales, Use and Withholding Taxes

Check box if this is an amended return.

Taxpayer Name TOMRA of North America, Inc. One Corporate Drive, Suite 710 She 7, CT 06484		Account Number [REDACTED]
Return Year 2005	Date Due	

<input checked="" type="checkbox"/> Amended Return
Amendment Date 12/7/2011

File as return by February 28. Do not use this form to replace a monthly or quarterly return.

Sales and Use Tax

- 1. Gross sales (including sales by out-of-state vendors subject to use tax)
- 2. Rentals of tangible property and accommodations
- 3. Telecommunications services
- 4. Add lines 1, 2, and 3

A. Use Tax: Sales & Rentals B. Sales Tax

A. Use Tax: Sales & Rentals		B. Sales Tax	
6%		6%	
1.		1.	7,081,395.33
2.		2.	
3.		3.	
4.		4.	7,081,395.33
ALLOWABLE DEDUCTIONS			
5a.		5a.	
b.		b.	6,469,417.50
c.		c.	
d.		d.	
e.		e.	
f.		f.	
g.		g.	
h.		h.	
i.		i.	
j.		j.	
k.		k.	6,469,417.50
6.		6.	611,977.83
7.	x .06	7.	x .06
8.		8.	36,718.67
9.		9.	
10.		10.	36,718.67
11.		11.	
12.		12.	36,718.67
13.		13.	424,883.72

- 5a. Resale
- b. Industrial processing or agricultural producing
- c. Interstate commerce
- d. Exempt services
- e. Sales on which tax was paid to Secretary of State
- f. Food for human/home consumption
- g. Bad debts
- h. Michigan motor fuel or diesel fuel tax
- i. Other - Identify:
- j. Tax included in gross sales (line 1)
- k. Total allowable deductions. Add lines 5a - 5j
- 6. Taxable balance. Subtract line 5k from line 4
- 7. Tax Rate
- 8. Gross tax due. Multiply line 6 by line 7
- 9. Tax collected in excess of line 8
- 10. Add lines 8 and 9
- 11. TOTAL discount allowed (see instructions)
- 12. Total tax due. Subtract line 11 from line 10
- 13. Tax payments in current year (after discounts)

Use Tax on Items Purchased for Business or Personal Use *

14a. Enter your taxable purchases 277,169.33 x .06 = 14b. 16,630.16
15. Tax payments made in the current year 16,630.16

Withholding Tax

- 16. Gross Michigan payroll and other taxable compensation for the year
- 17. Number of W-2, 1099, and/or 4119 forms enclosed
- 18. Total Michigan income tax withheld per W-2, 1099 and 4119 forms
- 19. Total Michigan income tax withholding paid during current tax year

Summary

- 20. Total sales, use and withholding taxes due. Add lines 12A, 12B, 14b and 18
- 21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19
- 22. If line 21 is greater than line 20, enter overpayment 388,165.05
- 23. Amount of line 22 to be credited to your account. We will notify you when your credit is verified and available
- 24. Amount of line 22 to be refunded to you 388,165.05
- 25. If line 21 is less than line 20, enter balance due
- 26. If this return is filed late, enter penalty and interest. (See instructions.)
- 27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan."

Use Tax on Items Purchased for Business or Personal Use: Use lines 14 and 15 to report purchases made for use in your business removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number [REDACTED]
--	------------------------------

Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Reason for amending return. Include your account number (if not listed above) in the explanation.

SEE ATTACHMENT

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.

I authorize Treasury to discuss my return with my preparer. Yes No

I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

Preparer's Signature, Address, Telephone and ID Number

Authorized Representative Signature

Robin Heltrick

Andrew Kautzmann
KPMG, LLP

Employer FEIN or Social Security Number

[REDACTED]

Telephone Number

203 447-9738

One Financial Plaza

Preparer or Authorized Representative Title (Preparer/Officer/Member/Manager/Partner)

Asst. Treasurer

Date

12/15/11

755 Main Street

Hartford, CT 06103

Print Name of Corporate Officer Responsible for Return

Robin Heltrick

Telephone Number

860-297-5555

Aware of Postal Regulations When Mailing Your Tax Return: The U.S. Post Office calculates postage based on the weight, size and thickness of an envelope. Consult with the Post Office before mailing to avoid delays in delivery; items with insufficient postage will be returned to the sender by the Post Office.

Mailing Instructions:

If enclosing payment with your Annual Return, mail to:

Michigan Department of Treasury
Department 78172
P.O. Box 78000
Lansing, MI 48278-0172

If requesting a Credit to your account (amount on line 23) or a Refund (amount on line 24), mail to:

Michigan Department of Treasury
P.O. Box 30779
Lansing, MI 48909

If other Annual Returns without payment, mail to:

Michigan Department of Treasury
Lansing, MI 48930

Go to www.michigan.gov/taxes to check your Sales, Use and Withholding transactions and ask questions about your account on-line.

Michigan Department of Treasury
165 (Rev. 08-10)

Annual Return for Sales, Use and Withholding Taxes

Check box if this is an amended return.

Amended Return
Amendment Date
12/7/2011

Taxpayer Name TOMRA of North America, Inc. One Corporate Drive, Suite 710 Shelton, CT 06484		Account Number [REDACTED]
Return Year 2006	Date Due	

File this return by February 28. Do not use this form to replace a monthly or quarterly return.

Sales and Use Tax

1. Gross sales (including sales by out-of-state vendors subject to use tax) 1.

2. Rentals of tangible property and accommodations 2.

3. Telecommunications services 3.

4. Add lines 1, 2, and 3 4.

ALLOWABLE DEDUCTIONS

5a. Resale 5a.

b. Industrial processing or agricultural producing b.

c. Interstate commerce c.

d. Exempt services d.

e. Sales on which tax was paid to Secretary of State e.

f. Food for human/home consumption f.

g. Bad debts g.

h. Michigan motor fuel or diesel fuel tax h.

i. Other - Identify: i.

j. Tax included in gross sales (line 1) j.

k. Total allowable deductions. Add lines 5a - 5j k.

6. Taxable balance. Subtract line 5k from line 4 6.

7. Tax Rate 7.

8. Gross tax due. Multiply line 6 by line 7 8.

9. Tax collected in excess of line 8 9.

10. Add lines 8 and 9 10.

11. TOTAL discount allowed (see instructions) 11.

12. Total tax due. Subtract line 11 from line 10 12.

13. Tax payments in current year (after discounts) 13.

A. Use Tax: Sales & Rentals		B. Sales Tax	
6%		6%	
1.		1.	7,231,334.67
2.		2.	
3.		3.	
4.		4.	7,231,334.67
5a.		5a.	
b.		b.	6,672,301.17
c.		c.	
d.		d.	
e.		e.	
f.		f.	
g.		g.	
h.		h.	
i.		i.	
j.		j.	
k.		k.	6,672,301.17
6.		6.	559,033.50
7.	x.06	7.	x.06
8.		8.	33,542.01
9.		9.	
10.		10.	33,542.01
11.		11.	
12.		12.	33,542.01
13.		13.	433,880.08

Use Tax on Items Purchased for Business or Personal Use *

14a. Enter your taxable purchases 723,808.50 x .06 = 43,428.51

15. Tax payments made in the current year 43,428.51

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year

17. Number of W-2, 1099, and/or 4119 forms enclosed

18. Total Michigan income tax withheld per W-2, 1099 and 4119 forms

19. Total Michigan income tax withholding paid during current tax year

Summary

20. Total sales, use and withholding taxes due. Add lines 12A, 12B, 14b and 18 76,970.52

21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19 477,308.59

22. If line 21 is greater than line 20, enter overpayment 400,338.07

23. Amount of line 22 to be credited to your account

24. We will notify you when your credit is verified and available 400,338.07

25. Amount of line 22 to be refunded to you

26. If line 21 is less than line 20, enter balance due

27. If this return is filed late, enter penalty and interest. (See instructions.)

TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan."

Use the Items Purchased for Business or Personal Use: Use lines 14 and 15 to report purchases made for use in your business for items removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number [REDACTED]
--	------------------------------

Type of Business Ownership (check one only)

<input checked="" type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Reason for amending return. Include your account number (if not listed above) in the explanation.

SEE ATTACHMENT

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.		I declare under penalty of perjury that this return is based on all information of which I have any knowledge.	
I authorize Treasury to discuss my return with my preparer. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Preparer's Signature, Address, Telephone and ID Number	
Taxpayer or Authorized Representative Signature <i>Robin Hettrick</i>		<i>Andrew Koutoumou</i> KPMG, LLP [REDACTED]	
Taxpayer FEIN or Social Security Number [REDACTED]	Telephone Number 203 447-9738	One Financial Plaza	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner) Asst. Treasurer	Date 12/15/11	755 Main Street	
Int Name of Corporate Officer Responsible for Return Robin Hettrick	Telephone Number	Hartford, CT 06103	
		860-297-5555	

Aware of Postal Regulations When Mailing Your Tax Return: The U.S. Post Office calculates postage based on the weight, size, and thickness of an envelope. Consult with the Post Office before mailing to avoid delays in delivery; items with insufficient postage will be returned to the sender by the Post Office.

Mailing Instructions:

Enclosing payment with your Annual Return, mail to:

Michigan Department of Treasury
Department 78172
P.O. Box 78000
Lansing, MI 48278-0172

Requesting a Credit to your account (amount on line 23) or a Refund (amount on line 24), mail to:

Michigan Department of Treasury
P.O. Box 30779
Lansing, MI 48909

Other Annual Returns without payment, mail to:

Michigan Department of Treasury
Lansing, MI 48930

Go to www.michigan.gov/taxes to check your Sales, Use and Withholding transactions and ask questions about your account on-line.

**TOMRA of North America, Inc.
Refund Calculation Summary
Year Ending 12/31/2006**

Month	Sales Tax Originally Remitted	Use Tax Originally Remitted	Total Tax Originally Remitted	Amount Due Per Amended Return	Refund Due
January	\$ 33,542.01	\$ -	\$ 33,542.01	\$ 33,542.01	\$ -
February	\$ 9,988.59	\$ 19,271.45	\$ 29,260.04	\$ 19,271.45	\$ 9,988.59
March	\$ 22,152.18	\$ 1,100.00	\$ 23,252.18	\$ 1,100.00	\$ 22,152.18
April	\$ 25,666.33	\$ 1,895.99	\$ 27,562.32	\$ 1,895.99	\$ 25,666.33
May	\$ 18,146.30	\$ 1,196.72	\$ 19,343.02	\$ 1,196.72	\$ 18,146.30
June	\$ 12,493.85	\$ 1,707.51	\$ 14,201.36	\$ 1,707.51	\$ 12,493.85
July	\$ 92,746.02	\$ 2,170.62	\$ 94,916.64	\$ 2,170.62	\$ 92,746.02
August	\$ 48,803.94	\$ 2,941.74	\$ 51,745.68	\$ 2,941.74	\$ 48,803.94
September	\$ 31,992.34	\$ 2,705.24	\$ 34,697.58	\$ 2,705.24	\$ 31,992.34
October	\$ 43,163.80	\$ 3,521.14	\$ 46,684.94	\$ 3,521.14	\$ 43,163.80
November	\$ 53,895.80	\$ 2,692.80	\$ 56,588.60	\$ 2,692.80	\$ 53,895.80
December	\$ 41,288.92	\$ 4,225.30	\$ 45,514.22	\$ 4,225.30	\$ 41,288.92

Total Refund Due: \$400,338.07

ORIGINAL

Michigan Dept. of Treasury, 165, (Rev. 7-04)

Annual Return for Sales, Use and Withholding Taxes

Place Label from Your Coupon Book Here or Enter Taxpayer Name
TOMRA of North America Inc
1 Corporate Drive, Suite 710
Shelton, CT 06484

Account Number
 [REDACTED]
 Return Year: **2006** Date Due: _____

File this return
by February 28.

Do not use this form to replace a monthly or quarterly return.

TOMRA Michigan

	A. Use Tax: Sales & Rentals		B. Sales Tax	
	6%	4%	6%	4%
Sales and Use Tax				
1. Gross sales (including sales by out-of-state vendors subject to use tax).....			1. 7,231,334.67	
2. Rentals of tangible property and accommodations			2. [REDACTED]	
3. Communication services			3. [REDACTED]	
4. Add lines 1, 2 and 3			4. 7,231,334.67	
ALLOWABLE DEDUCTIONS				
5a. Resale			5a.	
b. Industrial processing or agricultural producing			b.	
c. Interstate commerce			c.	
d. Exempt services			d.	
e. Sales on which tax was paid to Secretary of State ..			e.	
f. Food for human/home consumption			f.	
g. Bad debts			g.	
h. Michigan motor fuel or diesel fuel tax			h.	
i. Other, identify:			i.	
j. Tax included in gross sales (line 1)			j.	
k. Total allowable deductions. Add lines 5a - 5j			k.	
6. Taxable balance. Subtract line 5k from line 4			6. 7,231,334.67	
7. Tax Rate	x .06	x .04	7. x .06	x .04
8. Gross tax due. Multiply line 6 by line 7			8. 433,880.08	
9. Tax collected in excess of line 8			9.	
10. Add lines 8 and 9			10. 433,880.08	
11. TOTAL discount allowed (see instructions)			11.	
12. Total tax due. Subtract line 11 from line 10			12. 433,880.08	
13. Tax payments in current year (after discounts)			13. 433,880.08	

Use Tax on Items Purchased for Business or Personal Use (see back)*

14. Enter your purchases taxable at the 6% rate	14a. 723,808.50	x .06 =	14b. 43,428.51
15. Tax payments made in the current year			15. 43,428.51

Withholding Tax

16. Gross Michigan payroll and other taxable compensation for the year	16.
17. Number of W-2s and/or 1099s enclosed	17.
18. Total Michigan income tax withheld per W-2s	18.
19. Total Michigan income tax withholding paid during current tax year	19.

Summary

20. Total sales, use and withholding taxes due. Add lines 12A and B (both rate columns), 14b and 18	20. 477,308.59
21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19	21. 477,308.59
22. If line 21 is greater than line 20, enter overpayment	22. 0
23. Amount of line 22 to be credited to your account. We will notify you when your credit is verified and available	23. 0
24. Amount of line 22 to be refunded to you	24. 0
25. If line 21 is less than line 20, enter balance due	25.
26. If this return is filed late, enter penalty and interest. (See instructions.)	26.
27. TOTAL PAYMENT DUE. Add lines 25 and 26. Make checks payable to "State of Michigan."	27.

ORIGINAL

165, Page 2

Type of Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date: <input type="text"/>	<input checked="" type="checkbox"/> Non-Mich. Corporation	<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Limited Liability Company		
<input type="checkbox"/> Domestic (Michigan)		
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.

I declare under penalty of perjury that this return is based on all information of which I have any knowledge.

I authorize Treasury to discuss my return with my preparer. Yes No

Preparer's Signature, Address, Phone and ID Number

Taxpayer's Signature

Taxpayer's Social Security Number

Telephone Number

(202) 447-8338

Taxpayer's Title (Owner/Officer/Member/Manager/Partner)

Date

Print Name of Corporate Officer Responsible for Return

Telephone Number

Scott Krotwell

If you are enclosing payment with your return:

MAIL TO: Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

If you are not enclosing payment:

MAIL TO: Michigan Department of Treasury
Lansing, MI 48930

*Use Tax on Items Purchased for Business or Personal Use

Use lines 14 and 15 to report purchases made for use in your business or for items removed from your inventory for personal use. Do not repeat the amounts from Column A, lines 1 - 4 here.

To check your Sales, Use and Withholding transactions and ask questions about your account on-line, visit the Treasury Web site...

www.michigan.gov/treasury

Click on the Business Self-Service button and follow the instructions.

Michigan Department of Treasury
65 (Rev. 08-10)

Annual Return for Sales, Use and Withholding Taxes

Check box if this is an amended return.

<input checked="" type="checkbox"/>	Amended Return
Amendment Date	
12/7/2011	

Taxpayer Name	Account Number
POMRA of North America, Inc.	[REDACTED]
One Corporate Drive, Suite 710	Return Year
Shelton, CT 06484	2007
	Date Due

File this return by February 28. Do not use this form to replace a monthly or quarterly return.

Sales and Use Tax

Gross sales (including sales by out-of-state vendors subject to use tax) 1.

Rentals of tangible property and accommodations 2.

Telecommunications services 3.

Add lines 1, 2, and 3 4. ▶

ALLOWABLE DEDUCTIONS

Resale 5a.

Industrial processing or agricultural producing b.

Interstate commerce c.

Exempt services d.

Sales on which tax was paid to Secretary of State e.

Food for human/home consumption f. ▶

Bad debts g.

Michigan motor fuel or diesel fuel tax h.

Other - Identify: i.

Tax included in gross sales (line 1) j.

Total allowable deductions. Add lines 5a - 5j k. ▶

Taxable balance. Subtract line 5k from line 4 6. ▶

Tax Rate 7. x.06

Gross tax due. Multiply line 6 by line 7 8. ▶

Tax collected in excess of line 8 9. ▶

Add lines 8 and 9 10.

TOTAL discount allowed (see instructions) 11. ▶

Total tax due. Subtract line 11 from line 10 12.

Tax payments in current year (after discounts) 13. ▶

A. Use Tax: Sales & Rentals		B. Sales Tax	
6%		6%	
1.		1.	9,799,366.67
2.		2.	
3.		3.	
4.	▶	4.	9,799,366.67
5a.		5a.	
b.		b.	9,091,739.00
c.		c.	
d.		d.	
e.		e.	
f.	▶	f.	
g.		g.	
h.		h.	
i.		i.	
j.		j.	
k.	▶	k.	9,091,739.00
6.	▶	6.	707,627.67
7.	x.06	7.	x.06
8.	▶	8.	42,457.66
9.	▶	9.	
10.		10.	42,457.66
11.	▶	11.	
12.		12.	42,457.66
13.	▶	13.	587,961.99

Use Tax on Items Purchased for Business or Personal Use *

Enter your taxable purchases 14a. 837,352.00 x .06 = 14b. 50,241.12

Tax payments made in the current year 15. 50,241.12

Withholding Tax

Gross Michigan payroll and other taxable compensation for the year 16. _____

Number of W-2, 1099, and/or 4119 forms enclosed 17. _____

Total Michigan income tax withheld per W-2, 1099 and 4119 forms 18. _____

Total Michigan income tax withholding paid during current tax year 19. _____

Summary

Total sales, use and withholding taxes due. Add lines 12A, 12B, 14b and 18 20. 92,698.78

Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19 21. 638,203.11

If line 21 is greater than line 20, enter overpayment 22. 545,504.33

Amount of line 22 to be credited to your account 23. _____

We will notify you when your credit is verified and available 23. _____

Amount of line 22 to be refunded to you 24. 545,504.33

If line 21 is less than line 20, enter balance due 25. _____

If this return is filed late, enter penalty and interest. (See instructions.) 26. _____

TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan." 27. _____

Use Tax on Items Purchased for Business or Personal Use: Use lines 14 and 15 to report purchases made for use in your business for items removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

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Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number [REDACTED]
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Type of Business Ownership (check one only)

<input type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Reason for amending return. Include your account number (if not listed above) in the explanation.

SEE ATTACHMENT

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.		I declare under penalty of perjury that this return is based on all information of which I have any knowledge.	
I authorize Treasury to discuss my return with my preparer. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Preparer's Signature, Address, Telephone and ID Number	
Taxpayer or Authorized Representative Signature <i>Robin Hettick</i>		<i>Andrew Kautzmanis</i> KPMG, LLP [REDACTED]	
Taxpayer FEIN or Social Security Number [REDACTED]	Telephone Number 203 447-9738	One Financial Plaza 755 Main Street Hartford, CT 06103 860-297-5555	
Taxpayer or Authorized Representative Title Owner/Officer/Member/Manager/Partner Asst Treasurer	Date 12/15/11		
Print Name of Corporate Officer Responsible for Return Robin Hettick	Telephone Number		

Be Aware of Postal Regulations When Mailing Your Tax Return: The U.S. Post Office calculates postage based on the weight, size and thickness of an envelope. Consult with the Post Office before mailing to avoid delays in delivery; items with insufficient postage will be returned to the sender by the Post Office.

Mailing Instructions:

Enclosing payment with your Annual Return, mail to:

Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

Requesting a Credit to your account (amount on line 23) or a Refund (amount on line 24), mail to:

Michigan Department of Treasury
P.O. Box 30779
Lansing, MI 48909

If other Annual Returns without payment, mail to:

Michigan Department of Treasury
Lansing, MI 48930

Go to www.michigan.gov/taxes to check your Sales, Use and Withholding transactions and ask questions about your account on-line.

**TOMRA of North America, Inc.
Refund Calculation Summary
Year Ending 12/31/2007**

Month	Sales Tax Originally Remitted	Use Tax Originally Remitted	Total Tax Originally Remitted	Amount Due Per Amended Return	Refund Due
January	\$ 16,680.86	\$ 4,777.18	\$ 21,458.04	\$ 4,777.18	\$ 16,680.86
February	\$ 50,880.22	\$ 1,918.40	\$ 52,798.62	\$ 1,918.40	\$ 50,880.22
March	\$ 41,974.86	\$ 1,498.51	\$ 43,473.37	\$ 1,498.51	\$ 41,974.86
April	\$ 38,270.97	\$ 1,215.90	\$ 39,486.87	\$ 1,215.90	\$ 38,270.97
May	\$ 33,327.58	\$ 1,105.94	\$ 34,433.52	\$ 1,105.94	\$ 33,327.58
June	\$ 80,674.95	\$ 2,458.65	\$ 83,133.60	\$ 2,458.65	\$ 80,674.95
July	\$ 32,452.97	\$ 1,337.16	\$ 33,790.13	\$ 1,337.16	\$ 32,452.97
August	\$ 64,737.07	\$ 1,337.16	\$ 66,074.23	\$ 1,337.16	\$ 64,737.07
September	\$ 42,457.65	\$ 10,351.17	\$ 52,808.82	\$ 52,808.82	\$ -
October	\$ 40,640.23	\$ 8,856.33	\$ 49,496.56	\$ 8,856.33	\$ 40,640.23
November	\$ 44,732.82	\$ 8,575.12	\$ 53,307.94	\$ 8,575.12	\$ 44,732.82
December	\$ 101,131.81	\$ 6,809.60	\$ 107,941.41	\$ 6,809.60	\$101,131.81

Total Refund Due: \$545,504.34

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ORIGINAL

Michigan Dept. of Treasury
160 (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
Use Form 163 for address changes.

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Account Number	[REDACTED]	Office Use	22
Return Period	JANUARY 2007	Due Date	FEB 20, 2007
Company Name	TOMRA OF NORTH AMERICA INC		
Preparer's Signature	[Signature]	Date	2/16/07
Telephone Number	203-447-8738		

Sales Tax	01	16,680.86	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	4,777.18	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 21,458.04
22 2 [REDACTED] 9 0701 8 2

ORIGINAL

Michigan Dept. of Treasury
60 (Rev. 8-06)

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

**Combined RETURN
or Michigan Taxes**

*Please file this return even if no tax is due.
Use Form 163 for address changes.*

Account Number	[REDACTED]	Office Use	22
Return Period	FEBRUARY 2007	Due Date	MAR 20, 2007
Company Name TOARA OF NORTH AMERICA INC			
Signature	[Signature]	Date	
Title	Account Manager	Telephone Number	203-447-8738

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	50,880.22	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	1,918.40	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment

52,798.62

22 2 [REDACTED] 9 0702 5 2

Michigan Dept. of Treasury
160 (Rev. 8-06)

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
Use Form 163 for address changes.

Account Number	[REDACTED]	Office Use	22
Return Period	MARCH 2007	Due Date	APR 20, 2007

Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	[Signature]	Date	4/17/07
Title	Acting Manager	Telephone Number	203-447-8738

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	41,974.86	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	1,498.51	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment

43,473.37

22 2 [REDACTED] 9 0703 2 2

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ORIGINAL

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Michigan Dept. of Treasury
0 (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
See Form 163 for address changes.

Account Number	[REDACTED]	Office Use	22
Return Period	APRIL 2007	Due Date	MAY 20, 2007
Company Name	TOMRA OF NORTH AMERICA INC		
Preparer's Signature	[Signature]	Date	5/11/07
Title	Accountant	Telephone Number	(203) 447-8720

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	38,270.97	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	1,215.90	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 39,486.87
22 2 [REDACTED] 9 0704 9 2

ORIGINAL

Michigan Dept. of Treasury
Form 105a (Rev. 8-06)

**Combined RETURN
Michigan Taxes**

*this return even if no tax is due.
Form 163 for address changes.*

Account Number [REDACTED]	Office Use 22
Tax Year 2007	Due Date JUN 20, 2007

Company Name OMRA OF NORTH AMERICA INC	
Taxpayer's Signature <i>[Signature]</i>	Date 5/13/07
Telephone Number 203-447-8720	

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Sales Tax	01	33,327.58	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	1,215.90	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 34,433.52

22 2 [REDACTED] 9 0705 6 2

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Michigan Dept. of Treasury
(Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
File Form 63 for address changes.

Account Number [REDACTED]	Office Use 22
Return Period JUNE 2007	Due Date JUL 20, 2007
Company Name TOMRA OF NORTH AMERICA INC	
Taxpayer's Signature [Signature]	Date 7/11/07
Telephone Number Account (463) 447-8720	

Sales Tax	01	80,674.95	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,458.65	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Mail to: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 83,133.60
22 2 [REDACTED] 9 0706 3 2

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ORIGINAL

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Michigan Dept. of Treasury
10 (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
See Form 163 for address changes.

Document Number	[REDACTED]	Office Use	22
Return Period	JULY 2007	Due Date	AUG 20, 2007
Company Name	TOMRA OF NORTH AMERICA INC		
Preparer's Signature	[Signature]	Date	3/10/07
Preparer's Title	Accountant	Telephone Number	(203) 447-7720

Sales Tax	01	32,452.97	SBT Estimates	07	
Sales Tax Discount	02	1,337.16	Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03		Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 33,790.13
22 2 [REDACTED] 9 0707 0 2

Michigan Dept. of Treasury
J (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

*File this return even if no tax is due.
Use Form 153 for address changes.*

Account Number	[REDACTED]	Office Use	22
Return Period	AUGUST 2007	Due Date	SEP 20, 2007
Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	[Signature]	Date	9/18/07
Title	Accounting Manager	Telephone Number	205-447-8738

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Sales Tax	01	64,737.07	SBT Estimates	07
Sales Tax Discount	02		Voucher Payment*	98
Use Tax* (Sales/Rentals)	03	1,337.16	Penalty & Interest	99
Use Tax Discount	04			97
Use Tax (Purchases)	05			97
Michigan Withholding	06			97

RESERVED
RESERVED
RESERVED

* These are not subtotal lines.

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment

66,074.23
22 2 [REDACTED] 9 0708 7 2

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Michigan Dept. of Treasury
(Rev. 8-05)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
See Form 153 for address changes.

Account Number	[REDACTED]	Office Use	22
Return Period	SEPTEMBER 2007	Due Date	OCT 20, 2007
Company Name	TOMRA OF NORTH AMERICA INC		
Preparer's Signature	[Signature]	Date	11/15/07
Preparer's Telephone Number	(203) 447-8720		

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	4 0 , 6 4 0 , 2 3	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	8 8 5 6 3 3	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 4 9 , 4 9 6 , 5 6
22 2 [REDACTED] 9 0709 4 2

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ORIGINAL

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Michigan Dept. of Treasury
(Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

File even if no tax is due.
See Form 163 for address changes.

Account Number	Office Use
[REDACTED]	22
Return Period	Due Date
NOVEMBER 2007	DEC 20, 2007
Company Name	
TOMRA OF NORTH AMERICA INC	
Taxpayer's Signature	Date
[Signature]	12/19/07
Telephone Number	
248-447-8733	

Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	44,732.82	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	8,575.12	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment

53,307.94

22 2 [REDACTED] 9 0711 9 0

ORIGINAL

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Michigan Dept. of Treasury
10 (Rev. 8-05)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
Use Form 163 for address changes.

Account Number [REDACTED]	Office Use 22
Return Period DECEMBER 2007	Due Date JAN 20, 2008
Company Name TOMRA OF NORTH AMERICA INC	
Preparer Signature [Signature]	Date 1/19/08
Telephone Number (203) 447-8726	

Sales Tax	01	101,131.81	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	6,809.60	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 107,941.41
22 2 [REDACTED] 9 0712 6 0

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Michigan Department of Treasury
35 (Rev. 08-10)

Annual Return for Sales, Use and Withholding Taxes

Check box if this is an amended return.

Amended Return

Amendment Date

12/7/2011

Taxpayer Name COMRA of North America, Inc. One Corporate Drive, Suite 710 Middletown, CT 06484		Account Number [REDACTED]
Return Year 2008	Date Due	

File this return by February 28. Do not use this form to replace a monthly or quarterly return.

Sales and Use Tax

Gross sales (including sales by out-of-state vendors subject to use tax) 1.

Rentals of tangible property and accommodations 2.

Telecommunications services 3.

Add lines 1, 2, and 3 4.

ALLOWABLE DEDUCTIONS

Resale 5a.

Industrial processing or agricultural producing b.

Interstate commerce c.

Exempt services d.

Sales on which tax was paid to Secretary of State e.

Food for human/home consumption f.

Bad debts g.

Michigan motor fuel or diesel fuel tax h.

Other - Identify: i.

Tax included in gross sales (line 1) j.

Total allowable deductions. Add lines 5a - 5j k.

Taxable balance. Subtract line 5k from line 4 6.

Tax Rate 7.

Gross tax due. Multiply line 6 by line 7 8.

Tax deducted in excess of line 8 9.

Add lines 8 and 9 10.

TOTAL discount allowed (see instructions) 11.

Total tax due. Subtract line 11 from line 10 12.

Tax payments in current year (after discounts) 13.

A. Use Tax: Sales & Rentals		B. Sales Tax	
6%		6%	
1.		1.	6,968,478.50
2.		2.	
3.		3.	
4.		4.	6,968,478.50
5a.		5a.	
b.		b.	6,304,055.00
c.		c.	
d.		d.	
e.		e.	
f.		f.	
g.		g.	
h.		h.	
i.		i.	
j.		j.	
k.		k.	6,304,055.00
6.		6.	664,423.50
7.	x.06	7.	x.06
8.		8.	39,865.41
9.		9.	
10.		10.	39,865.41
11.		11.	
12.		12.	39,865.41
13.		13.	418,108.71

Use Tax on Items Purchased for Business or Personal Use *

Enter your taxable purchases 14a. 741,811.67 x .06 = 14b. 44,508.70

Tax payments made in the current year 15. 44,508.70

Withholding Tax

Gross Michigan payroll and other taxable compensation for the year 16.

Number of W-2, 1099, and/or 4119 forms enclosed 17.

Total Michigan income tax withheld per W-2, 1099 and 4119 forms 18.

Total Michigan income tax withholding paid during current tax year 19.

Summary

Total sales, use and withholding taxes due. Add lines 12A, 12B, 14b and 18 20. 84,374.11

Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19 21. 462,617.41

If line 21 is greater than line 20, enter overpayment 22. 378,243.30

Amount of line 22 to be credited to your account

We will notify you when your credit is verified and available 23.

Amount of line 22 to be refunded to you 24. 378,243.30

If line 21 is less than line 20, enter balance due 25.

If this return is filed late, enter penalty and interest. (See instructions.) 26.

TOTAL PAYMENT DUE. Add lines 25 and 26. Make check payable to "State of Michigan." 27.

Use Tax on Items Purchased for Business or Personal Use: Use lines 14 and 15 to report purchases made for use in your business or for items removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

50A-2,000

Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number [REDACTED]
--	------------------------------

Type of Business Ownership (check one only)

<input checked="" type="checkbox"/> Individual	<input type="checkbox"/> Michigan Corporation	<input type="checkbox"/> Trust or Estate (Fiduciary)
<input type="checkbox"/> Husband - Wife	<input type="checkbox"/> Subchapter S	<input type="checkbox"/> Joint Stock Club or Investment Company
<input type="checkbox"/> Partnership	<input type="checkbox"/> Professional	<input type="checkbox"/> Social Club or Fraternal Organization
<input type="checkbox"/> Registered Partnership, Agreement Date:		<input type="checkbox"/> Other (Explain)
<input type="checkbox"/> Limited Partnership		
<input checked="" type="checkbox"/> Limited Liability Company	<input checked="" type="checkbox"/> Non-Mich. Corporation	
<input type="checkbox"/> Domestic (Michigan)	<input type="checkbox"/> Subchapter S	
<input type="checkbox"/> Professional		
<input type="checkbox"/> Foreign (Non-Michigan)		

Reason for amending return. Include your account number (if not listed above) in the explanation.
SEE ATTACHMENT

Signature (you are required to complete all information requested below)

I declare under penalty of perjury that this return is true and complete to the best of my knowledge.		I declare under penalty of perjury that this return is based on all information of which I have any knowledge.	
Taxpayer to discuss my return with my preparer. <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No		Preparer's Signature, Address, Telephone and ID Number	
Taxpayer or Authorized Representative Signature <i>Robin Heston</i>		<i>Andrew Koutammonis</i> KPMG, LLP [REDACTED]	
Taxpayer FEIN or Social Security Number [REDACTED]	Telephone Number 203 447-9738	One Financial Plaza	
Taxpayer or Authorized Representative Title Asst. Treasurer	Date 12/16/11	755 Main Street	
Full Name of Corporate Officer Responsible for Return <i>Robin Heston</i>	Telephone Number	Hartford, CT 06103	
		860-297-5555	

Aware of Postal Regulations When Mailing Your Tax Return: The U.S. Post Office calculates postage based on the weight, size and thickness of an envelope. Consult with the Post Office before mailing to avoid delays in delivery; items with insufficient postage will be returned to the sender by the Post Office.

Mailing Instructions:
If enclosing payment with your Annual Return, mail to:
Michigan Department of Treasury
Department 78172
P.O. Box 78000
Detroit, MI 48278-0172

If requesting a Credit to your account (amount on line 23) or a Refund (amount on line 24), mail to:
Michigan Department of Treasury
P.O. Box 30779
Lansing, MI 48909

If other Annual Returns without payment, mail to:
Michigan Department of Treasury
Lansing, MI 48930

Go to www.michigan.gov/taxes to check your Sales, Use and Withholding transactions and ask questions about your account on-line.

**TOMRA of North America, Inc.
Refund Calculation Summary
Year Ending 12/31/2008**

Month	Sales Tax Originally Remitted	Use Tax Originally Remitted	Total Tax Originally Remitted	Amount Due Per Amended Return	Refund Due
January	\$ 39,865.41	\$ 11,264.30	\$ 51,129.71	\$ 51,129.71	\$ -
February	\$ 8,426.22	\$ 2,933.69	\$ 11,359.91	\$ 2,933.69	\$ 8,426.22
March	\$ 29,718.03	\$ 2,361.87	\$ 32,079.90	\$ 2,361.87	\$ 29,718.03
April	\$ 41,978.10	\$ 2,210.85	\$ 44,188.95	\$ 2,210.85	\$ 41,978.10
May	\$ 40,755.06	\$ 4,246.56	\$ 45,001.62	\$ 4,246.56	\$ 40,755.06
June	\$ 42,268.03	\$ 2,880.96	\$ 45,148.99	\$ 2,880.96	\$ 42,268.03
July	\$ 37,447.26	\$ 3,451.62	\$ 40,898.88	\$ 3,451.62	\$ 37,447.26
August	\$ 30,566.44	\$ 4,085.62	\$ 34,652.06	\$ 4,085.62	\$ 30,566.44
September	\$ 48,170.25	\$ 2,455.85	\$ 50,626.10	\$ 2,455.85	\$ 48,170.25
October	\$ 35,618.63	\$ 1,963.88	\$ 37,582.51	\$ 1,963.88	\$ 35,618.63
November	\$ 23,298.89	\$ 4,642.52	\$ 27,941.41	\$ 4,642.52	\$ 23,298.89
December	\$ 39,996.39	\$ 2,010.98	\$ 42,007.37	\$ 2,010.98	\$ 39,996.39

Total Refund Due: \$378,243.30

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Michigan Dept. of Treasury
30 (Rev. 8-06)

**Combined RETURN
of Michigan Taxes**

File this return even if no tax is due.
See Form 163 for address changes.

Account Number	[REDACTED]	Office Use	22
Return Period	FEBRUARY 2008	Due Date	MAR 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
Preparer's Signature	[Signature]	Date	3/19/08
Telephone Number	(203) 447-8720		

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	8,426.22	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,933.69	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan" and include your account number on your check.

Total Payment 11,359.91
22 2 [REDACTED] 9 0802 8 6

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Michigan Dept. of Treasury
(Rev. 8-06)

Combined RETURN
for Michigan Taxes

File this return even if no tax is due.
Use Form 163 for address changes.

Account Number	[REDACTED]	Office Use
		22
Return Period	2008	Due Date
MARCH		APR 20, 2008

Company Name
TOMRA OF NORTH AMERICA INC

Taxpayer's Signature	Date
[Signature]	4/15/08

Telephone Number
Accountant (313) 447-8720

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	29,718.03	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2361.87	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 32,079.90
22 2 [REDACTED] 9 0803 5 6

ORIGINAL

Michigan Dept. of Treasury
160 (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
Use Form 163 for address changes.

Account Number	[REDACTED]	Office Use	22
Return Period	APRIL 2008	Due Date	MAY 20, 2008
Company Name TOMRA OF NORTH AMERICA INC			
Taxpayer's Signature		Date	
[Signature]		5/15/08	
Title	Telephone Number		
Accounting Mgr	203-447-8773		

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Sales Tax	01	41,978.20	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,210.85	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 44,188.95
22 2 [REDACTED] 9 0804 2 6

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Michigan Dept. of Treasury
(Rev. 8-06)

Combined RETURN
Michigan Taxes

File this return even if no tax is due.
Form 1063 for address changes.

Account Number	Office Use
[REDACTED]	22

Return Period	Due Date
MAY 2008	JUN 20, 2008

Company Name
COMRA OF NORTH AMERICA INC

Payor's Signature	Date
[Signature]	6/12/08

Account Number	Telephone Number
Acc't	203 447-8720

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Sales Tax	01	40,755.06	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	4,246.56	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 45,001.62
22 2 [REDACTED] 9 0805 9 6

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ORIGINAL

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Michigan Dept. of Treasury
30 (Rev. 8-08)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
Use Form 163 for address changes.

Account Number	[REDACTED]	Office Use	22
Return Period	JUNE 2008	Due Date	JUL 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
taxpayer's Signature	[Signature]	Date	7/11/08
File	Account # 203 447-8720		

Mail To: Michigan Dept. of Treasury
Dept. 77009
Detroit, MI 48277-0009

Sales Tax	01	42,268.03	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,880.96	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 45,148.99
22 2 [REDACTED] 9 0806 6 6

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Michigan Dept. of Treasury
160 (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

*File this return even if no tax is due.
Use Form 163 for address changes.*

Account Number	[REDACTED]	Office Use	22
Return Period	JULY 2008	Due Date	AUG 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	Date		
Title	Telephone Number		

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Sales Tax	01	37,447.26	SBT Estimates	07	
Sales Tax Discount	02	3,	Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	3,451.62	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment

40,898.88

22 2 [REDACTED] 9 0807 3 6

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Michigan Dept. of Treasury
160 (Rev. 8-08)

**Combined RETURN
for Michigan Taxes**

*File this return even if no tax is due.
Use Form 163 for address changes.*

Account Number	[REDACTED]	Office Use	22
Return Period	AUGUST 2008	Due Date	SEP 20, 2008
Company Name TOMRA OF NORTH AMERICA INC			
Taxpayer's Signature		Date	
Title	Telephone Number		

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Sales Tax	01	30,566.44	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	4,085.62	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Mall To: Michigan Dept. of Treasury
Dept 77003
Detroit, MI 48277-0003

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment , 34,652.06
22 2 [REDACTED] 9 0808 0 6

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Michigan Dept. of Treasury
180 (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

*File this return even if no tax is due.
Use Form 183 for address changes.*

Account Number	[REDACTED]	Office Use	22
Return Period	SEPTEMBER 2008	Due Date	OCT 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	[Signature]	Date	10/17/08
Title	Accounting Mgr	Telephone Number	203-447-8733

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Sales Tax	01	48,170.25	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,755.85	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment
22 2 [REDACTED] 50,626.10
9 0809 7 6

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ORIGINAL

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Michigan Dept. of Treasury
160 (Rev. 8-08)

**Combined RETURN
or Michigan Taxes**

*File this return even if no tax is due.
Use Form 163 for address changes.*

Account Number	[REDACTED]	Office Use	22
Return Period	OCTOBER 2008	Due Date	NOV 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
Preparer's Signature	Date		
Telephone Number			

Sales Tax	01	35,618.63	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	1,963.88	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0003

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 37,582.51
22 2 [REDACTED] 9 0810 5 4

ORIGINAL

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Michigan Dept. of Treasury
0 (Rev. 8-06)

**Combined RETURN
for Michigan Taxes**

File this return even if no tax is due.
Use Form 163 for address changes.

Account Number	[REDACTED]	Office Use	22
Return Period	NOVEMBER 2008	Due Date	DEC 20, 2008
Company Name EOMRA OF NORTH AMERICA INC			
Payer's Signature		Date	
Telephone Number			

Sales Tax	01	23,298.89	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	4,642.52	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 27,941.41
22 2 [REDACTED] 9 0811 2 4

ORIGINAL

Please print your numbers like this. Use blue or black ink. 1 2 3 4 5 6 7 8 9 0

Michigan Dept. of Treasury
0 (Rev. 8-06)

**Combined RETURN
of Michigan Taxes**

File this return even if no tax is due.
Use Form 163 for address changes.

Account Number [REDACTED]	Office Use 22
Return Period DECEMBER 2008	Due Date JAN 20, 2009
Company Name OMRA OF NORTH AMERICA INC	
Taxpayer's Signature [Signature]	Date 1/14/09
Telephone Number 203-447-8738	

Sales Tax	01	39,996.39	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,010.98	Penalty & Interest	99	
Use Tax Discount	04			97	RESERVED
Use Tax (Purchases)	05			97	RESERVED
Michigan Withholding	06			97	RESERVED

* These are not subtotal lines.

Make check payable to: "State of Michigan"
and include your account number on your check.

Total Payment 42,007.37
22 2 [REDACTED] 9 0812 9 4

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC.,)
)
) Plaintiff,) Docket No.
)) 14-91-MT
) Judge Talbot
))
-vs-)
DEPARTMENT OF TREASURY,)
STATE OF MICHIGAN,) Consolidated
) with Docket
) Defendant.) No. 14-185-MT

D E P O S I T I O N

of RONALD C. KOLBIG, a witness called by
Plaintiff, taken before Tamara Staley Heckaman,
Certified Shorthand Reporter and Notary Public, at
525 West Ottawa, Lansing, Michigan, on Wednesday,
January 7, 2014, noticed for the hour of 9:30 a.m.

HECKAMAN & NARDONE, INC.
Certified Shorthand Reporters
P.O. Box 27603
Lansing, Michigan 48909
(517) 349-0847
theckaman@live.com

1 Q. What's the difference?

2 A. One is basically a financial lease. Some
3 of the -- in one case there's a -- I believe
4 there's a -- at the end of the lease term it's --
5 there's a dollar valuation given and -- usually
6 one dollar and then title passes.

7 Q. In which type of lease arrangement --

8 A. I don't recall the difference -- I can't
9 recall that at this point.

10 Q. Okay. Do you know if TOMRA used both
11 operating leases?

12 A. Don't know that.

13 Q. You don't know? Do you know if TOMRA did
14 capital leases?

15 A. I can't tell which -- they -- basically
16 all I know is they sold and leased their products.

17 Q. Okay.

18 A. That's all I know.

19 Q. So during the course of your audit you
20 never differentiated between the operating lease
21 and the capital lease?

22 A. They couldn't. TOMRA could not
23 differentiate between any sort of -- because of
24 their -- really the records that they maintained.
25 They weren't even able to separate the sales and

1 Q. And for those invoices did you see the
2 tax was --

3 A. Yeah, you saw that there was sales tax.
4 Actually I had Mary check that and she reported to
5 me that she had seen tax on those invoices.

6 Q. Okay.

7 A. I did not see it.

8 Q. So is it a correct statement to say of
9 the invoices you did review --

10 A. Tax was on the invoices, correct.

11 Q. Tax was on the invoices. So explain this
12 to me, when you saw the sales tax on the invoices
13 what does that mean?

14 A. Well, they couldn't produce them during
15 the course of the audit, so that's number one.
16 They only could produce those invoices at a much
17 later period once you went to hearing, so during
18 the course of the audit I saw no -- I saw nothing.
19 Records were extremely poor. We could not
20 differentiate between sales and rentals so -- and
21 we could not -- I can't even tell you beyond that.
22 You're asking about capital versus -- I couldn't
23 answer that question.

Q. So even later, you know --

25 A. Later.

1 again, I don't know the full extent of -- it can
2 include machine -- the answer is it can include
3 machinery.

4 BY MR. QUINN:

5 Q. I am going to refer you to tab J.

6 A. Okay.

7 Q. Can you identify that document for me?

8 A. Yeah, that's the sales tax audit report
9 of findings.

10 Q. And did you author this report?

11 A. Yes, I did.

12 Q. And if you want can you take a look at
13 the pages included in tab J and let me know if
14 this is a complete and accurate copy of your audit
15 report of findings?

16 A. Yeah, it appears to be, yes.

17 Q. And all the accompanying schedules are
18 there?

19 A. Well, let's see what's there. Yup, it
20 looks like it. Table of contents. Yeah, I would
21 assume so.

22 Q. Under the section that's labeled internal
23 controls, do you see that section?

24 A. Yup.

25 Q. The first sentence, can you read that to

1 A. At least if they did they sure as heck
2 did not give any to me.

3 Q. Okay, we'll come back to that. Do you
4 see the section in Exhibit J on the first page
5 where it talks about tax reporting reconciliation?

6 A. Um-hum.

7 Q. Can you read that first sentence for me?
8 Just the first --

9 A. The auditor determined that the tax
10 reporting procedures for the sales tax consisted
11 merely of reporting the amounts collected from the
12 Michigan sales tax liability account. It was not
13 possible for the auditors to tie to the sales tax
14 payable account. Taxpayer was unable to provide
15 the requisite reconciliation.

16 Q. Now, not being an accountant guy, can you
17 explain to me what that means?

18 A. Well, basically what they did was
19 whatever they -- the tax that was collected was
20 remitted to the State, however -- again, they
21 could not -- so basically all I knew is that in
22 any given month they collected X amount of
23 dollars. I did not have necessarily any support
24 that told me beyond who those customers were. All
25 I knew was that they collected X amount of dollars

1 and remitted that amount to the State. That's
2 about what it would be in summation what that's
3 saying.

4 Q. And then did the amount that they
5 purportedly collected and remitted to the State,
6 did that match with their monthly --

7 A. With what they had collected, yeah.
8 That's basically what it...

9 Q. And so what beyond that did you want to
10 see?

11 A. I wanted to see when -- because I
12 could -- they -- I wanted to see whether or not
13 why there were exempt sales, and there obviously
14 were -- the total amounts, the gross sales, are
15 far greater than what was collected so obviously
16 they are exemptions by logical inference from
17 that. And so they did not report on 100 -- they
18 did not pay tax on 100 percent of their sales.

19 Q. And did you bring that -- your concern to
20 TOMRA?

21 A. Oh, yeah.

22 Q. And what was their response?

23 A. That's as best they could do with the
24 records they had.

25 Q. Thank you. If you could can you flip to

1 the gross -- that should have been -- like, if I
2 had that then I would know. And then I would
3 need to -- then if they had exemption certificates
4 those particular customers could have been
5 eliminated in theory from -- you know, from -- and
6 there would have been no -- they would have been
7 allowed -- their sales would have been allowed as
8 deductions.

9 Q. Okay. So if TOMRA had a blanket
10 exemption certificate from Meijer, for example --

11 A. Okay.

12 Q. -- and was able to tie back its sales to
13 Meijer --

14 A. Correct.

15 Q. -- you wouldn't really need to see the
16 invoices, correct?

17 A. No.

18 Q. Just every --

19 A. Because it's -- and they took it in good
20 faith so the answer is, yeah, that's an exempt
21 sale.

22 Q. Okay. So in that situation because we
23 have the blanket exemption certificate from Meijer
24 all sales to Meijer are exempt?

25 A. Yes.

1 anything? I have a couple questions for follow
2 up. Do you need a break or anything?

3 THE WITNESS: Yeah, let me grab
4 something to drink.

5 (A break was taken.)

6 MR. DAMICH: Back on the record.

7 EXAMINATION

8 BY MR. DAMICH:

9 Q. Mr. Kolbig, Mr. Quinn and you had
10 discussed during the course of the -- that during
11 the course of the audit that you had reviewed
12 certain documents and general ledgers of the sort
13 during this audit, correct?

14 A. Correct.

15 Q. And after your review of these documents
16 you determined that the taxpayer had, in fact,
17 reported and recorded exempt sales, correct?

18 A. That's correct.

19 Q. Now, did the taxpayer identify why they
20 believed the sale was exempt?

21 A. No, they did not, no.

22 Q. So they never said this sale is exempt
23 based off of industrial processing?

A. No.

25 Q. Never based off an exemption for sale for

1 resale?

2 A. No.

3 Q. For no type of exemption. It was just
4 listed as exempt sales, correct?

5 A. Right. They actually -- they only give
6 me the gross amount that I can get from the
7 Michigan subledgers and the amount of tax that was
8 collected, which divided -- when you take that
9 amount for any given month, you divide by .06,
10 that backs you into a taxable amount. So now we
11 have a discrepancy between the gross per the
12 ledger and the taxable amount and so there are
13 exemptions because there is this gap, so it's --
14 so exempt sales are backed in -- and this is
15 pretty standard in the industry, they back -- but
16 under -- normally they can tell me what these
17 exemptions are for. They could not.

18 Q. Certainly they couldn't -- so they
19 couldn't tell you what they were for, correct?

20 A. Correct.

21 Q. And they could not tell you for sales to
22 whom they were for, correct?

23 A. That's correct, they could not tell me
24 that either.

25 Q. At that point did they say they were

1 Q. Okay. Now we're going to go back to
2 these exempt sales that you identified during the
3 audit period.

4 A. Correct.

5 Q. Now, you had made mention that there is a
6 six month sample period done, correct?

7 A. Correct.

8 Q. Did the taxpayer agree with that sample
9 period?

10 A. Yes, it was agreed. The taxpayer agreed
11 that we would use a six month.

12 Q. And for this six month sample period what
13 did you ask?

14 A. Well, we asked them basically to provide
15 us with the gross sales, which would be from the
16 Michigan ledgers, subledgers, and we needed -- we
17 asked for any exemption certificates and, of
18 course, none were forthcoming at that time. And
19 it was very difficult to reconcile numbers because
20 basically all I could get was what sales tax was
21 paid from their monthly returns, and, you know, I
22 knew the gross, I knew the sales -- the taxable
23 sales are backing into it. That's all I could
24 tell.

25 Q. Now, you made mention about Michigan

1 second.

2 A. Even here Spartan is -- they're looking
3 for 402 and yet Spartan was 418. I don't know.
4 Even that doesn't match up.

5 Q. Right.

6 A. So I'm having a problem with that.

7 Q. So would the next step be from here to
8 maybe ask for source documentation that would
9 maybe reconcile with their general ledger to just
10 try to fix this issue and the numbers?

11 A. Yeah. I mean, somebody needs to
12 reconcile the general ledger versus the sales tax
13 invoices, why is there a discrepancy.

14 Q. And would looking at specific invoices be
15 a way to fix that discrepancy?

16 A. It might help but I don't know if we're
17 going to come to -- without looking at everybody.

18 Q. Right.

19 A. -- I don't know if we could do that.

20 That's going to take an awful lot of time. I
21 mean, there may be a reason. TOMRA may be aware
22 of why there is this discrepancy, but I can't tell
23 you what the discrepancy is.

24 Q. And was that document given to you during
25 audit, during the actual audit time?

1 Q. That's it for me.

2 A. Okay.

3 MR. DAMICH: Just give me a second
4 real quick.

5 THE WITNESS: Sure.

6 RE-EXAMINATION

7 BY MR. DAMICH:

8 Q. You said that that would -- that this
9 would be fine for this specific month for Walmart
10 and Meijer, right?

11 A. One second.

12 Q. Just yes or no, would it be fine for this
13 specific month?

14 A. No, because I'd need a rec- -- no, I need
15 the reconciliation of the gross. There's
16 discrepancies between the total sales and what's
17 in the ledger.

18 Q. For that specific month?

19 A. There is, yeah.

20 Q. From March 2008?

21 A. Yeah. Right here the amount supposedly
22 in the sales general ledger is a million one
23 one -- let's try that again, 1,169,888. When the
24 KPMG did their listing they came up with a greater
25 amount of 1,248,024. I don't know what that is.

Michigan Department of Treasury
169 (Rev. 04-13)

Final Bill for Taxes Due Final Assessment

Issued under P.A. 122 of 1941, as amended.
* For monthly PENALTY/INTEREST provisions,
correspondence, and appeal information, see page 2.

Final Assessment

Tax Division DISCOVERY-TAX	Tax Division Telephone Number 517-636-4120
Assessment Number TH82977	Date Issued 05/09/14
Social Security/Account Number [REDACTED]	
Office of Collections Telephone Number 517-636-5265	

TOMRA OF NORTH AMERICA INC
ATTN KATHY LOMBARDO
ONE CORPORATE DR STE 710
SHELTON CT 06484

BILL SUMMARY

Tax Due	\$	516,562.00
Penalty	\$	58,502.00
Interest	\$	254,080.15
Total Due *	\$	829,144.15

Detail of Tax Liability

Type of Tax	Taxable Period	Tax Due	Penalty	Interest
SALES TAX	12/08	516,562.00		
10/1/03-12/31/08				
INTEREST ONLY			0.00	59,125.15
LATE PAYMENT OF TAX			58,502.00	194,955.00

Reason for Tax Bill

THE DEFICIENCY IS BASED ON AN AUDIT CONDUCTED BY THE MICHIGAN DEPARTMENT OF TREASURY.
10/1/03-12/31/08

169 (Rev. 04-13)


Detach and mail the payment voucher with your payment. Do not staple.

Final Bill for Taxes Due

Payment due within 35 days (see penalty and interest provisions on page 2). Make your check payable to "State of Michigan-OC." Write your Social Security/Account No. and Assessment No. on all checks and correspondence. Allow up to 14 days for mailing and processing. A return envelope is enclosed for your convenience. Mail payment and this voucher to:

489097699002

MICHIGAN DEPARTMENT OF TREASURY
OFFICE OF COLLECTIONS
PO BOX 30199
LANSING MI 48909-7699

Assessment Number TH82977	Date Issued 05/09/14
Taxpayer Name TOMRA OF NORTH AMERICA INC	
Social Security/Account Number [REDACTED]	
Write Payment Amount Here 	

Notify the Office of Collections in writing if your address above is incorrect.

▼ DO NOT WRITE IN THIS SPACE ▼

138a

000829144151 437829772 000000000009 [REDACTED] 09 8

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Michigan Department of Treasury
TOMRA OF NORTH AMERICA INC / [REDACTED]
Audit Report of Findings

Introduction

A SAL audit was conducted and completed on the above listed taxpayer for the period 10/01/2003 to 12/31/2008. The audit resulted in a determined amount of \$516,562.

Audit Objectives

- Determine any differences between the correct tax and the reported tax liability.
- Affect the collection or refund of those taxes determined reported in error.

Cause of Adjustment

Primary: ST - Other Deductions
Secondary:
Third:

Audit Procedures and Steps Performed

Sales Tax Audit Program

Internal Controls

The taxpayer is a major distributor in the United States, and its general accounting procedures are excellent. Its CPA firm conducts an independent annual financial audit and prepares the Annual Report for the shareholders. The taxpayer employs KPMG, one of the largest CPA firms in the world, to oversee their accounting procedures.

Tax Reporting Reconciliation

The auditor determined that the tax reporting procedures for sales tax consisted merely of reporting the amounts collected from the Michigan sales tax liability account. It was not possible for the auditors to tie to the sales tax payable account. Taxpayer was unable to provide the requisite reconciliation.

Sales Reporting Procedures

The taxpayer does not report any gross sales or deductions. The only amounts that the taxpayer reports are taxable sales which are grossed up per the Michigan sales tax payable account and reported on a monthly basis.

Sales Tax Accrual Procedures

The taxpayer reports the monthly amount in its Michigan sales tax payable subledger account.

Detail Sample Procedure

Originally, the auditor and taxpayer had selected a six month block sample for testing the accuracy of taxpayer's exempt sales. The taxpayer had downloaded its annual and period sales tax Michigan population from the general ledger but is unable to identify specifically which invoices are being taxed. Therefore, the taxpayer is unable to separate taxable from exempt sales. It was determined that the taxpayer is reporting taxable sales based on the gross up of its sales tax liability as determined per its sales tax payable account is not reporting gross sales or deductions on either the backup to the monthly returns or on its Annual Returns for Sales, Use & Withholding Tax. The taxpayer filed Annual Returns for years 2003-2006. It did not file 2007 or 2008 Annual Returns. Thus, since an audit of sample deductions could not be verified, the auditors obtained the amount of gross sales from the gross sales of the Michigan sub-ledger for each audit period and subtracted the amount of the taxable sales as reported by the taxpayer using the gross up of sales tax liability methodology. The auditors then separated the income by income type (installation income, parts income, service income, sales of equipment and products, leased equipment, freight revenue and Canadian income. Thereafter, the auditors separated the income by determined taxable and non-taxable income, allowing installation income, freight income, service income and Canadian income as deductions. Only, parts income, sales of equipment and products and leased income equipment were determined to be taxable income in Michigan. These non-taxable items were subtracted from previously determined gross income to arrive at the balance of the taxable receipts for each audit period. The adjustments to taxable sales in all audit periods were as follows: 2003-\$181,156, 2004-\$1,277,328, 2005-\$849,746, 2006-\$8,027,182, 2007-\$(744,995), and 2008-\$(464,511). Sales Tax Workbook [REDACTED] xls.B Determined Gross Sales \$C\$11

The auditor had requested the data from the taxpayer on numerous occasions to obtain the exempt sales; however, on each occasion the taxpayer's representative, Robin Hettrick, was unable to comply with the request. See the original IDR request dated 5/17/2011, item #5 which was requested and never complied with and in which the auditor stated, "In connection with the sales tax audit I will need the detail of the total sales population from 10/1/2003-12/31/2008 by month. I need the monthly amount of exempt sales for each month during the audit period."

Thus, the auditors were directed to use the best available information, and the methodology in paragraph one was followed.

Verify Gross Sales

The auditor verified the gross sales by obtaining the period Michigan sales per the Michigan sub-ledger accounts for sales. The amount was obtained for each audit period per the information as supplied by the taxpayer.

Deductions of Sales/Rentals

As the taxpayer does not report the amount of gross sales nor deductions on its monthly or annual returns, it was not know what the taxpayer was exempting. On audit, the auditors allowed the following types of income as deductions: installation income, service income, freight revenue and Canadian income.

Verify Inclusion of Proper Figures

The auditors verified the latest transcripts, which were used for the reported amounts. Tax calculations were additionally verified and deemed to be correct.

Compute Interest/Penalty

Interest was computed through August 20, 2011. A negligence penalty is recommended as the taxpayer has no corrected its reporting methodology. The taxpayer is unable to determine which invoices it was taxing and which were exempt. Therefore, Tomra was unable to identify and support any deductions. As a result, the auditors were unable to verify whether the taxpayer is properly reporting its sales tax liability.

Records Examined

Records examined included the following: CRT printouts, Annual Sales, Use & Withholding returns, monthly returns, general ledger sales accounts, and sales tax payable account information,

Primary Cause of Adjustment

The primary cause of the adjustment was due to the understatement of sales and denial of all deductions. The taxpayer reported only the taxable sales as the amount of gross sales by dividing the sales tax reported by the 6% tax rate. Taxpayer was unable to support any deductions other than tax in gross because it does not know which invoices are taxable versus nontaxable.

Closing Conference

A closing conference was held at the Tomra location in Shelton, Connecticut. The meeting was attended by auditors Mary Connolly, Ron Kolbig, Supervisor Joyce McCain and the taxpayer's representative, Robin Hettrick on August 17, 2011.

Contested Issues

To date, it is not known whether the taxpayer will be contesting the audit results or not.

Other Taxes/Special Circumstances

Auditor Ron Kolbig completed an SBT audit in October 2008. Withholding taxes were reviewed and taxes calculated were found to have been paid. A use tax audit accompanies this sales tax audit.

Audit Completion

The auditor completed the notes that were needed to complete the Audit Report of Findings as well as the Auditor Evaluation.

Scanned Documents

Scanned documents include the following: Prior audit report of findings, waiver through 12/20/2011, power of attorney and IDR request dated 5/17/2011.

Conclusion

As this taxpayer is unable to determine what its deductions are since it cannot distinguish between taxable sales and exempt ones, the auditors were forced to use the methodology which entailed constructing the gross receipts from the Michigan sub-ledger for sales. The auditors were able to discern the types of income that comprised the gross amount. Accordingly, various types of income were allowed as deductions, on audit, from gross sales for installation income, service income, freight revenue and Canadian revenue. These types of income were subtracted from the gross revenue to arrive at the audit amount of taxable sales. The taxable sales per the audit were found to be greater than amounts reported by the taxpayer as taxable sales based on grossing up the sales tax payable by 6%. Said period differences are being taxed in this audit. As the reporting procedures are no different from the prior period, the auditors have imposed a negligence penalty of 10% because the auditors are unable to review the exemptions based on the taxpayer's reporting methodology or choose a sample for review. The taxpayer was unable to comply with requests for information regarding its exempt sales in the various verbal and written IDR requests.

Audit Instruction Findings

No specific audit instructions were presented to the auditors for response.

Audit Prepayment

To date no audit prepayments have been made.

Additional Auditors

Auditor Mary Connolly assisted in the review of the audit data as submitted by the taxpayer.

Audit Results

Net Tax Due/(Net Credit)/Other adjustment	\$	516,562
Penalty	\$	58,502
Interest	\$	194,955
Amount Due/(Net Refund or Credit)/Other adjustment	\$	<u>770,019</u>

Primary Auditor: Ronald Kolbig

State Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/2 /11
Account No: [REDACTED]

For the Period

Audit Summary	Ref	10/01/2003 12/31/2003	01/01/2004 12/31/2004	01/01/2005 12/31/2005	01/01/2006 12/31/2006	01/01/2007 12/31/2007	01/01/2008 12/31/2008
Determined Tax Due	A1	10,254	72,302	48,099	454,369	(42,169)	(26,293)
Less Credit Offsets:							
Use Tax Audit		0	0	0	0	0	0
SBT Audit		0	0	0	0	0	0
Other Tax Audits		0	0	0	0	0	0
Prepayments		0	0	0	0	0	0
Total Credit Offsets		0	0	0	0	0	0
Tax After Credits		10,254	72,302	48,099	454,369	(42,169)	(26,293)
Interest Due	A2	2,470	21,830	19,337	181,318	0	0
Penalty Due	A2	1,025	7,230	4,810	45,437	0	0
Net Payment Due		13,749	101,362	72,246	651,124	(42,169)	(26,293)

Audit Report
of Findings

State: Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/ /11
Account No: [REDACTED]

For the Period

Audit Summary	Ref	Total
Determined Tax Due	A1	516,562
Less Credit Offsets:		
Use Tax Audit		0
SBT Audit		0
Other Tax Audits		0
Prepayments		0
Total Credit Offsets		0
Tax After Credits		516,562
Interest Due	A2	194,955
Penalty Due	A2	58,502
Net Payment Due		770,019

Sales Tax

Audit Summary

Schedule A
Page 2 of 2

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State Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/2/11
Account No: [REDACTED]

For the Period

Determination of Deficiency	Ref	10/01/2003	01/01/2004	01/01/2005	01/01/2006	01/01/2007	01/01/2008
		12/31/2003	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008
		5%	6%	6%	6%	6%	6%
Gross Sales	B	1,804,758	9,755,631	8,381,831	15,869,064	9,825,205	6,922,075
Total Deductions	C	102,156	552,204	474,442	898,247	556,143	391,815
Taxable Sales		1,702,602	9,203,427	7,907,389	14,970,817	9,269,062	6,530,260
Taxable Balance		1,702,602	9,203,427	7,907,389	14,970,817	9,269,062	6,530,260
Tax On Balance		102,156	552,206	474,443	898,249	556,144	391,816
Tax In Excess - Total	W	0	0	0	0	0	0
Determined Tax		102,156	552,206	474,443	898,249	556,144	391,816
Reported Tax	X	91,902	479,904	426,344	443,880	598,313	418,109
Tax Due		10,254	72,302	48,099	454,369	(42,169)	(26,293)
Other Adjustments							
Net Tax Due		10,254	72,302	48,099	454,369	(42,169)	(26,293)
License Fee							
Interest	A2	2,470	21,830	19,337	151,318	0	0
Penalty	A2	1,025	7,230	4,810	45,437	0	0
Total Amount Due		13,749	101,362	72,246	651,124	(42,169)	(26,293)

		Explanation of Tax Deficiency				Explanation of Tax Deficiency	
Sales							
Sales Adjustments	B	181,156	1,277,328	849,746	8,027,182	(744,995)	(464,510)
Deduction Exceptions	C	0	0	0	0	0	0
Tax In Gross Adj	C	(10,254)	(72,300)	(48,097)	(454,366)	42,171	26,292
Taxable Adjustments		170,902	1,205,028	801,649	7,572,816	(702,824)	(438,218)
Tax Errors & Adj		10,254	72,302	48,099	454,369	(42,169)	(26,293)
Total		10,254	72,302	48,099	454,369	(42,169)	(26,293)
Tax In Excess-Unreported		0	0	0	0	0	0
Other Adjustments		0	0	0	0	0	0
Net Tax Due		10,254	72,302	48,099	454,369	(42,169)	(26,293)

Sales Tax

Determination

Schedule A1
Page 1 of 2

State Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/2/11
Account No: [REDACTED]

For the Period

Determination of Deficiency	Ref	Total
		6%
Gross Sales	B	52,558,564
Total Deductions	C	2,975,007
Taxable Sales		49,583,557
Taxable Balance		49,683,557
Tax On Balance		2,975,014
Tax in Excess - Total	W	0
Determined Tax		2,975,014
Reported Tax	X	2,458,452
Tax Due		516,562
Other Adjustments		0
Net Tax Due		516,562
License Fee		0
Interest	A2	194,955
Penalty	A2	56,502
Total Amount Due		770,019

Sales		
Sales Adjustments	B	9,125,907
Deduction Exceptions	C	0
Tax In Gross Adj	C	(516,564)
Taxable Adjustments		8,609,353
Tax		516,562
Errors & Adj		0
Total		516,562
Tax in Excess-Unreported		0
Other Adjustments		0
Net Tax Due		516,562

Sales Tax

Determination

Schedule A1
Page 2 of 2

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State of Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/24/2011
Account No: [REDACTED]

For the Period

Penalty & Interest Calculation		10/31/03 to 12/31/03	01/01/04 to 12/31/04	01/01/05 to 12/31/05	01/01/06 to 12/31/06	01/01/07 to 12/31/07	01/01/08				
Due Date		12/15/03	08/03/04	08/05/05	08/06/06	08/05/07	08/05/08				
Tax Before Carryforward or Carryback		10,254	72,302	48,099	454,369	(42,169)	(26,293)				
Less: Credit Carryforward		0	0	0	0	0	0				
Tax Before Carryback		10,254	72,302	48,099	454,369	(42,169)	(26,293)				
Interest	Daily Rate	# of Days	Tax	Interest	Tax	Interest	Tax	Interest	Tax	Interest	Tax
12/15/03	12/31/03	0.01479%	16	24							
01/01/04	08/30/04	0.01366%	182	265							
07/01/04	08/03/04	0.01366%	34	48							
02/04/04	12/31/04	0.01366%	150	210	72,302	1,481					
01/01/05	06/30/05	0.01428%	183	265		1,885					
07/01/05	08/06/05	0.01699%	37	64		455					
08/07/05	12/31/05	0.01699%	147	256	72,302	1,806	48,099	1,201			
01/01/06	06/30/06	0.01873%	183	266		2,582		1,749			
07/01/06	08/08/06	0.02245%	37	85		601		409			
08/07/06	12/31/06	0.02245%	147	338	72,302	2,385	48,099	1,587	454,369	14,995	
01/01/07	06/30/07	0.02493%	181	483		3,263		2,170		20,505	
07/01/07	08/06/07	0.02534%	37	96		878		451		4,260	
08/07/07	12/31/07	0.02534%	147	0	43,862	1,635	48,099	1,792	454,369	16,925	0
01/01/08	06/30/08	0.02514%	182	0		2,008		2,201		20,750	0
07/01/08	08/05/08	0.02151%	37	0		345		378		3,587	0
08/05/08	12/31/08	0.02151%	146	0	17,569	558	48,099	1,528	454,369	14,416	0
01/01/09	06/30/09	0.01844%	181	0		623		1,431		13,520	0
07/01/09	12/31/09	0.01268%	184	0		417		1,140		10,768	0
01/01/10	06/30/10	0.01164%	181	0		371		1,013		9,573	0
07/01/10	12/31/10	0.01164%	184	0		377		1,030		9,731	0
01/01/11	06/30/11	0.01164%	181	0		371		1,013		9,573	0
07/01/11	08/20/11	0.01164%	51	0		164		288		2,897	0
Interest Calculated Thru:		08/20/11	2,470	21,890	19,337	151,318	0				
Tax Subject to Penalty			10,254	72,302	48,099	454,369	-42,169				
Penalty Rate			10%	10%	10%	10%	0%				
Penalty			1,025	7,230	4,810	45,437	0				
Amount Due Before Credit Carryback			13,749	101,562	72,246	651,124	-42,169				
Less: Credit Carryback			13,749	54,719	0	0	-42,169				
Balance after Application of Credit			0	46,843	72,246	651,124	0				
Tax			0	17,569	48,099	454,369	0				
Interest			0	21,890	19,337	151,318	0				
Penalty			0	7,230	4,810	45,437	0				
Total Amount Due			0	46,649	72,246	651,124	0				

State of Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/24/2011
Account No. [REDACTED]

For the Period

Penalty & Interest Calculation					to 12/31/08
Due Date					
Tax Before Carryforward or Carryback					
Less: Credit Carryforward					
Tax Before Carryback					
Interest	Daily Rate	# of Days	Interest		
12/16/03	12/31/03	0.01479%	16		
01/01/04	06/30/04	0.01365%	182		
07/01/04	08/03/04	0.01365%	34		
08/04/04	12/31/04	0.01266%	150		
01/01/05	06/30/05	0.01428%	181		
07/01/05	08/05/05	0.01693%	37		
08/07/05	12/31/05	0.01699%	147		
01/01/06	06/30/06	0.01979%	181		
07/01/06	08/06/06	0.02245%	37		
08/07/06	12/31/06	0.02245%	147		
01/01/07	06/30/07	0.02493%	181		
07/01/07	08/06/07	0.02634%	37		
08/07/07	12/31/07	0.02534%	147		
01/01/08	06/30/08	0.02514%	182		
07/01/08	08/05/08	0.02151%	37		
08/06/08	12/31/08	0.02151%	148	0	
01/01/09	06/30/09	0.01644%	181	0	
07/01/09	12/31/09	0.01288%	184	0	
01/01/10	06/30/10	0.01164%	181	0	
07/01/10	12/31/10	0.01164%	184	0	
01/01/11	06/30/11	0.01164%	181	0	
07/01/11	08/20/11	0.01184%	51	0	
Interest Calculated Thru: 08/20/11					0
Tax Subject to Penalty					-26,293
Penalty Rate					0%
Penalty					0
Amount Due Before Credit Carryback					-26,293
Less Credit Carryback					-26,293
Balance after Application of Credit					0
Tax					0
Interest					0
Penalty					0
Total Amount Due					0

State Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/2/11
Account No: [REDACTED]

For the Period

Sales Tax Gross Sales Summary	Ref	10/01/2003	01/01/2004	01/01/2005	01/01/2006	01/01/2007	01/01/2008
		12/31/2003	12/31/2004	12/31/2005	12/31/2006	12/31/2007	12/31/2008
		6%	6%	6%	6%	6%	6%
Gross Sales		1,623,602	8,478,303	7,532,085	7,841,882	10,570,200	7,386,586
Additional taxable sales-per audit		181,156	1,277,328	849,746	8,027,182	(744,995)	(484,511)
Determined Gross Sales		1,804,758	9,755,631	8,381,831	15,869,064	9,825,205	6,922,075
Contested Gross Sales	BZ	0	0	0	0	0	0
Net Determined Sales		1,804,758	9,755,631	8,381,831	15,869,064	9,825,205	6,922,075
Reported Gross Sales	X	1,623,602	8,478,303	7,532,085	7,841,882	10,570,200	7,386,586
Adjustment		181,156	1,277,328	849,746	8,027,182	(744,995)	(484,511)

Sales Tax

Determined
Gross Sales

Schedule B
Page 1 of 2

Audit Report
of Findings

State Michigan - Department of Treasury
Taxpayer Name: TOMRA OF NORTH AMERICA INC

Date: 8/2/11
Account No: [REDACTED]

For the Period

Sales Tax Gross Sales Summary	Ref	Total 6%	Cite Ref #
Gross Sales		43,432,658	
Additional taxable sales-per audit		9,125,907	1
		0	
		0	
		0	
		0	
		0	
		0	
		0	
Determined Gross Sales		52,558,564	
Contasted Gross Sales	B2	0	
Net Determined Sales		52,558,564	
Reported Gross Sales	X	43,432,658	
Adjustment		9,125,907	

Sales Tax

Determined
Gross Sales

Schedule B
Page 2 of 2

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2003 ADD'L TAXABLE RECEIPTS

	totals	taxable	non taxable
Income Tax	\$60,116.85		\$60,116.85
Installation income	\$98,517,963.32		\$98,517,963.32
Service Income	\$493,093.24	\$493,093.24	
Parts income	\$737,487.81	\$737,487.81	
Sales of Equip & Product	\$574,177.03	\$574,177.03	
Leased equip	\$6,211.50		\$6,211.50
freight revenue	\$392,000.00		\$392,000.00
Canada		\$1,804,758.08	\$98,976,291.67
total income	\$100,781,049.75	(\$1,623,602.00)	
total gross receipts reported on Annual returns		\$181,156.08	
Difference in gross taxable income		6%	
6% Tax rate		\$10,869.36	
Tax Liability			

B.1

2004 ADD'L TAXABLE RECEIPTS

Revenue type	total	taxable	non-taxable
Installation income	367,487.14		367,487.14
Service income	10,159,320.64		10,159,320.64
Parts income	403,678.27	403,678.27	
sales of equip & products	7,174,614.57	7,174,614.57	
Leased equip	2,177,338.22	2,177,338.22	
Freight revenue	30,069.96		30,069.96
Canada	63,435.06		63,435.06
Total income	20,375,943.86	9,755,631.06	10,620,312.80
Reported taxable income on annual return		(8,478,303.00)	
difference in taxable income		<u>1,277,328.06</u>	
tax rate		0.06	
liability		76,639.68	

B. 2

2005 ADD'L TAXABLE RECEIPTS

Income Type	Total	Taxable	non-Taxable
Installation Income	\$140,914.35		\$140,914.35
Service Income	\$5,142,274.19		#####
Parts Income	\$194,147.96	\$194,147.96	
Sales of Equip & Product	\$6,653,489.08	\$6,653,489.08	
Leased equip	\$1,534,194.16	\$1,534,194.16	
Freight Revenue	\$30,329.55		\$30,329.55
Canada	\$0.00		\$0.00
Total Income	\$13,695,349.29	\$8,381,831.20	#####
Reported income on Annual Return		(\$7,532,085.00)	
Difference in reported income		<u>\$849,746.20</u>	
6% Tax rate		6.00%	
Tax Liability		\$50,984.77	

2006 ADD'L TAXABLE RECEIPTS

Income Type	Total	taxable	non taxable
Installation Income	\$251,424.79		\$251,424.79
Service Income	\$5,142,867.95		\$5,142,867.95
Parts Income	\$221,424.86	\$221,424.86	
Sales of equip & Product	\$14,405,235.53	\$14,405,235.53	
Leased Equip	\$1,242,403.66	\$1,242,403.66	
Freight Revenue	\$47,870.14		\$47,870.14
Canada	\$0.00		\$0.00
Total Income	\$21,311,226.93	\$15,869,064.05	\$5,442,162.88
Reported income on Annual Return		(\$7,841,882.00)	
Difference in taxable income		\$8,027,182.05	
	6%	6.00%	
Tax Liability		\$481,630.92	

2007 ADD'L TAXABLE RECEIPTS

Income Type	total	taxable	non taxable
Initiation Income	\$247,135.83		\$247,135.83
Service Income	\$5,153,828.64		\$5,153,828.64
Parts Income	\$269,738.26	\$269,738.26	
Sales of Equip & Product	\$6,627,659.01	\$6,627,659.01	
Leased equip	\$927,808.08	\$927,808.08	
freight revenue	\$67,783.40		\$67,783.40
Canada	\$0.00		\$0.00
total income	\$15,283,934.12	\$9,825,205.35	\$5,468,728.77
total gross receipts reported on Annual returns		(\$10,670,200.00)	
Difference in gross taxable income		\$744,994.65	
6% Tax rate		6%	
Tax Liability		\$415,324.45	

Bas

2008 ADD'L TAXABLE RECEIPTS

Installation Income	\$0.00		\$0.00
Service Income	\$4,483,334.75		\$4,483,334.75
Parts Income	\$352,649.03	\$352,649.03	
Sales of Equip & Product	\$5,840,199.20	\$5,840,199.20	
Leased equip	\$729,226.88	\$729,226.88	
freight revenue	\$90,166.70		\$90,166.70
Canada	\$0.00		\$0.00
total income	\$11,495,576.56	\$6,922,075.11	\$4,573,501.45
total gross receipts reported on Annual returns		(\$7,388,586.00)	
Difference in gross taxable income		(\$464,510.89)	
6% Tax rate		6%	
Tax Liability		(\$27,870.65)	

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

TOMRA OF NORTH AMERICA,)
)
)
Plaintiff,)
)
-vs-) File Nos.
) 14-91-MT
DEPARTMENT OF TREASURY,) 14-185-MT
STATE OF MICHIGAN,) JUDGE TALBOT
)
Defendant.)

D E P O S I T I O N

of CHUCK RIEGLE, a witness called by Defendant,
taken before Melinda S. Nardone, Certified Shorthand
Reporter and Notary Public, at 222 North Washington
Square, Lansing, Michigan, on Wednesday, January 14,
2015, noticed for the hour of 10:00 a.m.

HECKAMAN & NARDONE, INC.
Certified Shorthand Reporters
P.O. Box 27603
Lansing, Michigan 48909
(517) 349-0847
Fax: (517) 244-0805
msnardone5@gmail.com

1 APPEARANCES:

2 HONIGMAN, MILLER, SCHWARTZ and COHN, LLP
3 222 North Washington Square, Suite 400
4 Lansing, Michigan 48933
5 By
6 JUNE SUMMERS HAAS, J.D.

7 On behalf of Plaintiff.

8 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL
9 PEET Division
10 P.O. Box 30736
11 Lansing, Michigan 48909
12 By
13 SCOTT L. DAMICH, J.D.

14 On behalf of Defendant.

15 EXAMINATION INDEX

16	ATTORNEY'S NAME	EXAMINATION	RE-EXAMINATION
17	BY MR. DAMICH:	3	47
18	BY MS. HAAS:	47	

19 * * *

20 INDEX OF EXHIBITS

21 EXHIBIT MARKED

22 No exhibits marked.

23 * * *

24

25

1 Lansing, Michigan
2 Wednesday, January 14, 2015
3 10:00 a.m.

4 R E C O R D

5 CHUCK RIEGLE,

6 having been first duly sworn, testified as follows:

7 EXAMINATION

8 BY MR. DAMICH:

9 Q. Can you please state your name for the record,
10 sir?

11 A. It's Charles William Riegle, Junior.

12 Q. Could you spell your last name?

13 A. R-i-e-g-l-e.

14 Q. The transcript should reflect that this is the
15 discovery deposition of Charles Riegle taken pursuant to
16 a notice and can be used for any and all reasons under
17 the Michigan Court Rules and Michigan Rules of Evidence.

18 Mr. Riegle, my name is Scott Damich, I am an
19 assistant attorney and I represent the State of
20 Michigan. The specific entity or agency that I
21 represent is the Michigan Department of Treasury. And
22 the reason I asked you to come here today is that you
23 were listed as a witness in a case where my client,
24 Michigan Department of Treasury, was sued and you're
25 identified as someone who might have some knowledge

1 about the factual issues in the case so I asked you here
2 for a deposition. Have you ever had your deposition
3 taken before?

4 **A. No.**

5 Q. You have not. Okay, so I'm just going to go over
6 a couple ground rules. First of all, the deposition is
7 simply going to be a conversation between me and you.
8 Of course it's going to be driven by questions from me
9 to you, but the way I look at it is simply a
10 conversation.

11 Now, during this conversation I might ask
12 you some questions that you don't understand, and if you
13 don't understand don't guess that that's what I meant,
14 say, Scott, I don't understand. Also, for purposes of
15 the court reporter we need to do verbal responses. So
16 if I ask you a yes or no question, we can't do a nod of
17 the head yes or no or even an uh-huh, huh-uh, we need to
18 go ahead and verbalize yes or no.

19 Also, there's going to be times where I
20 might ask you questions that your representative here,
21 Ms. June Haas, will object to it, be it for relevancy,
22 be it for privileges. If it's for relevancy objection,
23 I ask that you still answer the request. But if it's
24 for a specific privilege, Michigan Court Rules do not
25 require you to answer and I will not push the issue on

1 that.

2 Also, like any other conversation, if you
3 need to stop and go to the bathroom, please do so.
4 We're not going to try to do -- try to go through a
5 marathon here and see how long you can hold it and all
6 that kind of stuff. If you need to go to the bathroom
7 let me know. The only caveat to that is if I do ask you
8 a question and that question is still on the table and
9 not answered yet just please answer the question.

10 Other than that do you understand all the
11 rules, any questions asked, you answer them, and all
12 that fun stuff. Do you have any questions to me about
13 this process.

14 **A. No, I understand.**

15 Q. Perfect. So like you said before, you were never
16 deposited before, correct?

17 **A. Correct.**

18 Q. Who is your current employer?

19 **A. Tomra North America.**

20 Q. Okay. And how long have you worked for Tomra?

21 **A. Almost 15 years.**

22 Q. Almost 15 years. Before you worked for Tomra of
23 North America did you work for anyone before that?

24 **A. Yup.**

25 Q. Who is that?

1 **A. City of Norwalk, Connecticut.**

2 Q. What did you do for the City of Norwalk?

3 **A. I worked there for about ten years as the city's**
4 **recycling and solid waste manager.**

5 Q. Okay. And before that, before that job, did
6 you --

7 **A. I was in college.**

8 Q. You were in college?

9 **A. Yeah.**

10 Q. Where did you go to college?

11 **A. Vanderbilt University.**

12 Q. Very nice. Did you receive a degree from
13 Vanderbilt?

14 **A. Yes.**

15 Q. What was your degree in?

16 **A. Bachelor of Arts. I majored in history and**
17 **psychology.**

18 Q. Very nice. Did you go on to any further
19 education?

20 **A. Yes.**

21 Q. What did you do?

22 **A. I have a master's in science degree from Southern**
23 **Connecticut State University in environmental science.**

24 Q. Okay.

25 **A. Environmental studies.**

1 Q. Fair enough. And any further education from
2 that?

3 A. No.

4 Q. Okay. Do you have any certifications of any
5 sort?

6 A. Nothing recent.

7 Q. We're going to go back to your current employer,
8 Tomra of North America. Is there -- is Tomra owned by
9 any other entity?

10 A. Well, Tomra North America is a wholly owned
11 subsidiary of Tomra Systems ASA.

12 Q. Okay. And Tomra Systems ASA, where are they
13 located?

14 A. That's headquartered in Asker, A-s-k-e-r, Norway.

15 Q. Did you ever get to go there?

16 A. Yes.

17 Q. Nice?

18 A. Yeah, beautiful country.

19 Q. Now, does Tomra of North America have any brother
20 or sister entities?

21 MS. HAAS: Could I ask you to define what
22 you mean by brother or sister entities, understanding
23 that Mr. Riegle is not an attorney and may not be
24 familiar with those terms?

25 MR. DAMICH: Certainly.

1 BY MR. DAMICH:

2 Q. So you previously had said that Tomra, the Tomra
3 located out of the country, owns Tomra of North America.
4 Does the Tomra located out of the country also own any
5 other entities?

6 A. Tomra North America we have partnerships, yes.
7 Do you want me to list them?

8 Q. Are there a lot of them?

9 A. There are -- I don't know the exact number.

10 Q. Is it more than five?

11 A. I'd say it's about five.

12 Q. So I don't want you to list them off right now,
13 we might get into that a little later into my
14 questioning. Okay, Tomra of North America, where are
15 they located?

16 A. Headquartered in Shelton, Connecticut.

17 Q. And what is your position with Tomra of North
18 America?

19 A. I'm the senior vice-president for government
20 affairs.

21 Q. And do you supervise anybody?

22 A. Not in the employment of Tomra North America. I
23 have -- most of my people that work for me are
24 contractors.

25 Q. Who do you report to?

1 A. The president/CEO Harald Henriksen.

2 Q. What are your job duties?

3 A. I'm responsible for the implementation of the
4 government affairs and state holder relations strategy
5 for Tomra North America in all states and Canadian
6 provinces and Mexico that concern our business.

7 Q. Now, Tomra North America, what do they do?

8 A. So -- all right. We're a -- I'll say, I don't
9 know, we work in the bottle -- or used beverage
10 container recycling space. Predominantly we provide
11 technologies and services that facilitate the recycling
12 of used beverage containers. Our core customer groups
13 are the beverage retailers and the beverage wholesalers,
14 distributors in various markets.

15 Q. Do you have any customers in the State of
16 Michigan?

17 A. Yes.

18 Q. What type of customers do you have in the State
19 of Michigan?

20 A. Those that I mentioned, beverage retailers and
21 beverage wholesalers and distributors.

22 Q. Does Tomra manufacture any product?

23 A. Yes. Tomra manufactures the container recycling
24 machines technology, we invented that technology over 40
25 years ago and have production facilities in Europe.

1 Q. Now, does Tomra of North America make these
2 products or is it another entity that makes these
3 products?

4 A. It's Tomra Systems ASA.

5 Q. So just to clarify, it's not actually Tomra of
6 North America that makes what you have labeled as
7 container recycling machines?

8 A. Correct.

9 Q. Just for clarification purposes, container
10 recycling machines, is it also proper to call them
11 reverse vending machines?

12 A. Yes.

13 Q. Now, what does Tomra of North America do for
14 distribution wholesale -- for beverage wholesalers and
15 distribution companies?

16 A. So in Michigan Tomra has a couple services.
17 First of all, with regards to the machines, recycling
18 machines at the beverage retailers, we coordinate the,
19 I'll say, the registration of their universal product
20 codes. So in easier terms we make sure that their
21 brands are accepted or programmed into the machines and
22 accepted for the purposes of recycling, accounting, et
23 cetera, and there's a billing function that's provided.

24 Tomra also has a joint venture with Schupan
25 Recycling and a company called UBCR, Used Beverage

1 Container Recycling. And those services include
2 the -- or those services are contracted specifically
3 with the Michigan Soft Drink Association and the
4 Michigan Beer and Wine Wholesalers Association to
5 provide pick up and billing services for those parties.

6 Q. Now, you had talked about billing services for
7 your beverage retailers.

8 A. Yup.

9 Q. First of all, could you identify a common
10 beverage retailer?

11 A. Sure. Meijer, Kroger.

12 Q. So supermarkets?

13 A. Yes.

14 Q. Now, you had said that you provide a type of
15 billing service for them; is that correct?

16 A. Well, we're providing a -- the accounting. So as
17 each beverage container is redeemed we're accounting for
18 its transaction at both the point of redemption, the
19 retailer. And at that point we have to assign certain
20 fees and costs that are outlined in the -- or framed in
21 the law so that each party is making its appropriate
22 payment and each party receives its appropriate payment.

23 Q. They would receive the appropriate payment from
24 whom?

25 A. So the way the process works is the -- as a

1 container is accepted by the machine the retailer -- I'm
2 sorry, the consumer is owed the deposit, in this case in
3 Michigan it's ten cents. The retailer is going to pay
4 that transaction at that -- at that property but the
5 retailer is now owed that deposit value. And we need to
6 keep track of how much they are owed as well as who
7 specifically from. So we need -- the machines are
8 recognizing each container by brand and those brands are
9 assigned to a distributor, wholesaler. That dime -- and
10 then when I refer to billing is the retailer has an
11 understanding of how much they are owed through reports
12 and the bottler distributor or deposit initiator is
13 given billing documentation explaining how much they owe
14 to the retailer.

15 Q. Okay. Are you familiar with Michigan's bottle
16 law?

17 A. Yes.

18 Q. Do you know whether or not a supermarket that
19 collected a deposit from a consumer, are they required
20 to refund that deposit to a consumer if the consumer
21 brings the can back?

22 A. Yes.

23 Q. Now, would the retailer -- the supermarket in
24 this example, would they be able to do so without the
25 use of Tomra?

1 A. Yeah. The old system which -- I should say the
2 original system based on -- let's step back. Refundable
3 containers have been in the marketplace for 100 years.
4 And retailers have a history of -- before the technology
5 was invented of manually accepting these containers and
6 then having to do the presorting at that point. The
7 technology allows -- allowed for the -- was an
8 innovation in that process allowing both the
9 retailer -- allowing the process to be hands free or
10 more direct at first by the consumer and taking care of
11 that accounting as well as initiating the recycling
12 process.

13 Q. So Tomra has replaced the manual labor involved
14 with deposit returns?

15 A. Yup.

16 Q. I'm going to walk through -- I think what I'd
17 like to do is do individual cans, glass bottles, and
18 plastic bottles, okay. And we're going to pretend that
19 I'm the consumer, okay, I went -- for example, I go to
20 Meijer's last night and I buy a six pack of Pepsi. When
21 I take that Pepsi to the register at Meijer what happens
22 for deposit purposes?

23 MS. HAAS: Okay, I'm just going to ask for
24 clarification here because this lawsuit deals with 2003
25 to 2008. I assume you're asking for, you know, the time

1 periods at issue, correct?

2 MR. DAMICH: Certainly.

3 MS. HAAS: So that it's relevant.

4 BY MR. DAMICH:

5 Q. Certainly, yes, I'm asking for the time periods
6 at issue and also just the general process of the bottle
7 deposit, bottle return situation.

8 A. Okay.

9 Q. So back to the proposed hypothetical. I buy -- I
10 take a six pack of Pepsi to the register at Meijer.
11 What happens?

12 A. So you'll pay the purchase price plus the deposit
13 value.

14 Q. Okay. At that point who does the deposit go to?

15 A. The retailer had already paid a deposit, been
16 charged a deposit by the deposit initiator or the
17 beverage wholesaler distributor, so the retailer is now
18 made whole.

19 Q. Okay. So the retailer pays a bulk deposit to the
20 person, to the actual wholesaler who buys bulk Pepsi?

21 A. Right. Every time it's delivered, yup.

22 Q. Okay. At that point do I now own that individual
23 can?

24 A. You as an individual?

25 Q. Yes.

1 MS. HAAS: I'm going to object only to the
2 extent that it calls for a legal conclusion because
3 Mr. Riegle is not an attorney. If you'd like to ask for
4 his common understanding he can give that to you.

5 MR. DAMICH: Certainly.

6 THE WITNESS: I'd say you possess it.

7 BY MR. DAMICH:

8 Q. Does Tomra own the can?

9 A. No.

10 Q. Does Meijer own the can?

11 A. No.

12 Q. Does the wholesaler own the can?

13 A. No.

14 Q. So now I take the can home with me. The can's
15 home with me and I manage to drink six Pepsis in one
16 night.

17 A. All right.

18 Q. I wake up the next morning and I want to take
19 that back to Meijer. How do I go about getting my
20 deposit back?

21 A. At the Meijer stores you'd have the option of
22 using the reverse vending machines or the container
23 recycling machines that are located in their bottle
24 rooms. They have designated bottle rooms for this
25 purpose.

1 Q. Okay.

2 A. And you'd simply identify -- well, with the cans
3 that you've got you'd go to the machines that are marked
4 for can or there may be a combination machine of can and
5 plastic bottle machine. And you'd insert the container
6 into the machine and after the process is performed
7 you'll receive a receipt.

8 Q. Okay. You said a can and bottle combined
9 machine -- I'm sorry, a can and plastic bottle combined
10 machine. Is there a separate machine for glass bottles?

11 A. It depends on the customer and it depends on the
12 set up. We have -- in our portfolio we have machines
13 that are capable of handling one, two, or three material
14 types.

15 Q. For the period between 2003 and 2008, is that
16 also true, that you had technology --

17 A. Yes, that technology existed.

18 Q. So there were separate machines?

19 A. It's a design -- it depends on the design and
20 volume. So, for example, if a store has enough -- our
21 salespeople when they lay out the designs in the bottle
22 room with the retailers they consider certain things
23 such as the container types that are sold and,
24 therefore, we expect to be redeemed, the volumes,
25 historical volumes, and, therefore, you know, latest

1 technology, et cetera, so what makes for a convenient
2 redemption process for the consumer.

3 Q. Okay. So for Michigan customers, and by Michigan
4 customers I'm talking about the supermarkets, for the
5 period 2003 to 2008 there were multiple versions of
6 products you could have sold to Michigan customers,
7 right?

8 A. Yup.

9 Q. Okay. Now, back to my six pack of Pepsi.

10 A. Pepsi?

11 Q. Okay, yes. So I take -- I as an individual take
12 the can, right?

13 A. Yup.

14 Q. And put it into the machine. At the moment that
15 the can is in my hand would you consider that a raw
16 material?

17 A. We talked -- we refer to them as used beverage
18 containers. I don't know. We don't -- we don't
19 typically use that term calling it a raw material.

20 Q. Okay. At the moment that it's in my hand as a
21 consumer and the can in its current shape, assuming it's
22 not crushed.

23 A. Right.

24 Q. Could that can in its current form become a
25 component part in another product that Tomra would sell?

1 A. Oh, it would be -- yeah, absolutely, it would
2 become a -- it has the opportunity to become a component
3 part for a new product.

4 Q. So how would a can become -- how would a can be a
5 component part of a new product? I'm not talking about
6 a can that's been processed, I'm talking about a can in
7 its current shape.

8 A. Right. So it has to go through a recycling
9 process to become available or usable by a manufacturer
10 of a new product, a new beverage container.

11 Q. And the can when it's in my hand as a consumer
12 before I put it in the machine, does Tomra own that can?

13 A. No.

14 Q. Do I own that can?

15 MS. HAAS: Again, I'm just going to object
16 to the extent that you're asking for questions about
17 legal title, as Mr. Riegle is not an attorney and is not
18 in charge of interpreting the law. General
19 understanding.

20 THE WITNESS: There's nothing that states
21 that you own it or don't own it. You have control over
22 it.

23 BY MR. DAMICH:

24 Q. What about the wholesalers?

25 A. No.

1 Q. Okay. I put the can into the machine, what
2 happens?

3 A. So you put the can in the machine with the intent
4 of redeeming it and recycling it. And it's -- the
5 machine's going to first look for an identification mark
6 on the can, and that identification mark is going to
7 provide us information that will allow us to do multiple
8 functions. One of them is to identify whether it's an
9 acceptable or non-acceptable container under the
10 Michigan deposit law.

11 Q. Okay. If it's not an acceptable container what
12 happens?

13 A. Then it would be rejected or basically reconveyed
14 out to you.

15 Q. So Tomra would never take possession of it -- or
16 the machine would never accept it and take it to the
17 back side of it?

18 A. Right.

19 Q. It would come back into my possession?

20 A. Right, basically handed back to you. And it
21 could be handed back to you for other reasons such as
22 the inability to read the marking. I'd mentioned before
23 that if the marking is not preprogramed into the machine
24 or the container itself has been destroyed and, again,
25 we can't recognize the mark or another subtle part of

1 not recognizing the mark is that it's another material
2 type, meaning you -- for example, you've put a glass or
3 plastic container into a can machine and because of
4 material quality controls the machines provide for the
5 purpose of recycling that's an essential function.

6 Q. Now, you said material quality control for
7 recycling purposes. Is it also true that it's material
8 control to make sure that the bottle, in fact, can be
9 refunded upon?

10 A. Right, so that's -- that's sort of the other part
11 there. So as we recognize the container to see whether
12 it's covered by the law and has been -- we've been
13 granted authorization by the deposit initiators for it
14 to be included in through the machines, that's what it's
15 doing is determining, in simple terms, whether it's an
16 acceptable container for refund.

17 Q. So it helps modern facilitate its bottle deposit
18 return obligations?

19 A. Yes.

20 Q. Okay. Assuming that the can is accepted, what
21 happens next?

22 A. So now the can is accepted and information is
23 collected from -- because we've recognized, again, the
24 UPC we're able to assign that container, its deposit
25 value, to a deposit initiator.

1 Q. Now, a deposit initiator, what is that?

2 A. Okay. A deposit initiator is another term. It's
3 probably a more specific term referring to the beverage
4 wholesalers, distributors, bottlers that have sold a
5 product, container, a beverage that's mandated by the
6 law. We call them deposit initiators just because in
7 some cases they may be -- the product may be warehoused
8 and may come in from outside the state.

9 Q. So would Coca-Cola be considered a deposit
10 initiator?

11 A. Yes.

12 Q. And Pepsi?

13 A. And Pepsi is a deposit initiator.

14 Q. And all of the energy drinks now?

15 A. Exactly.

16 Q. Beer companies?

17 A. You've got private label as well so if -- Meijer
18 has its own cola.

19 Q. Okay.

20 A. For example, then they would be a deposit
21 initiator as well even though they are selling their own
22 product. So it helps define it. So for the purposes of
23 that billing function we now can assign it. The UPC --
24 the information that's already also preprogrammed when
25 we program the UPC is information relevant to the

1 recycling of the container.

2 Q. How?

3 A. Well, we now register the -- we've also put in
4 information that says, for example, it's a twelve ounce
5 aluminum can. We understand how much an aluminum can
6 weighs on average, so we're able to track commodity
7 weight and value going through the system. And because
8 we've identified that it's an aluminum can in a can
9 machine we're able to now start the recycling process.
10 So we're -- we compact the container, destroy it -- or
11 compact it for the purposes of consolidation.

12 Q. Consolidation for what?

13 A. Well, consolidation to save storage space,
14 consolidation to reduce trucking costs, consolidation
15 for the purposes of material controls as it feeds into
16 the next steps.

17 Q. So is the consolidation, is that the same thing
18 as converting the cans now?

19 MS. HAAS: I'm just going to object to the
20 extent that you're asking him by using the word
21 converting to opine on whether or not it constitutes
22 industrial processing. That's, of course, the legal
23 issue in this case and he is not going to opine
24 necessarily on the legal issues and so you can still
25 answer.

1 THE WITNESS: I think too you've got -- I'm
2 sorry, you asked the question about converting.
3 It's -- we're changing the -- compaction is a part of
4 most recycling processes, it just -- it's part of the
5 ability to more easily transport material from one point
6 to the other. But it's not -- well, I don't know what
7 you mean exactly by conversion so....

8 BY MR. DAMICH:

9 Q. Certainly. Now, at the point that it's compacted
10 could I go back behind the scenes, wherever it's
11 compacted, and pull apart the individual cans still?

12 A. Yeah, they are -- in the Meijer, for example,
13 we're consolidating, I use the word consolidate, we're
14 storing the containers, the compacted beverage
15 containers, in what we call a Michigan Gaylord, which is
16 a large -- in this case a corrugated plastic bin that
17 can store 15,000 containers, compacted containers. Yes,
18 if you went behind the machines you could grab one as a
19 single item.

20 Q. So you'd still be able to identify it as a can,
21 correct, as an aluminum can?

22 A. Sure.

23 Q. Now, after the -- now, imagine one of these bins
24 that you've said you didn't know the exact amount, but
25 you said that you could fill it up with cans, what do

1 you do; what happens next with these cans?

2 A. So the cans are -- and like I said, they process
3 through the machines and, like I said, we have some
4 machines that they could be aluminum and some that could
5 be PET, and so once the machine has identified what
6 material type it is and it goes through the appropriate
7 compactor and then sorted into those bins, the -- once
8 the bins are full, the Gaylords are moved into storage
9 and then picked up by either UBCR or the beverage
10 wholesalers.

11 Q. Now, when they are in storage, is that Meijer's
12 storage?

13 A. Yes.

14 Q. When UBCR or the other beverage wholesaler comes
15 to Meijer's, do they pay Meijer for those Gaylord bins
16 of cans?

17 A. No, not in that sense. They pay them -- well,
18 let me think about that. They are not paying them for
19 those cans. The information that's included that we
20 collected at the -- at that initial phase we talked
21 about, the information about one twelve ounce Pepsi can,
22 that information goes to billing and then that is dealt
23 with off site.

24 Q. So they make them whole for the deposit stuff?

25 A. Right.

1 Q. So they don't buy them as a commodity?

2 A. Correct.

3 Q. Does anybody -- does Meijer offer for sale these
4 Gaylord bins to another third party for the sale of a
5 commodity?

6 A. Not in Michigan. And the Michigan law requires
7 the deposit initiator to remove the containers off
8 sight.

9 Q. So now the containers are -- does Tomra ever pick
10 up these containers?

11 A. Well, through our joint venture so Tomra has the
12 joint venture with Schupan Recycling in the form of
13 UBCR, LLC.

14 Q. Now, where do these cans go now?

15 A. So in Michigan there are two primary options.
16 One is Wixom, Michigan, UBCR has a facility -- UBCR and
17 Schupan Recycling have a facility there. Tomra is also
18 located there and there's a facility in Grand Rapids.

19 Q. The facility in Grand Rapids, whose facility is
20 that?

21 A. I want to say I think both properties are
22 actually owned by Schupan, but the UBCR operations are
23 performed there.

24 Q. Are there any locations within Michigan that are
25 wholly owned by Tomra?

1 A. No.

2 Q. What happens at these locations?

3 A. I have to -- I want to make a point.

4 Q. Uh-huh.

5 A. What is the time period we're referring to?

6 MS. HAAS: 2003 through 2008.

7 THE WITNESS: So to be -- on your last
8 question.

9 BY MR. DAMICH:

10 Q. Sure.

11 A. We owned a facility in Howell, Michigan, and it
12 might have been during that time period.

13 Q. Okay. Now, let's focus on that facility in
14 Howell, Michigan.

15 A. The same operations happened in Howell, and then
16 simply we moved out, Schupan bought their own building,
17 we moved the operations there.

18 Q. So the joint venture came into play after --

19 A. The joint venture actually has been in play since
20 the mid '90s.

21 Q. Oh, okay. Now what happens at these facilities?

22 A. So the one example we're going to talk about here
23 with Meijer, Meijer qualifies for third party pick up,
24 that's probably what I'm describing. There are some
25 other activities or ways of doing this but I'll describe

1 the third party example that we've got with Meijer.

2 Q. Sure.

3 A. Tractor-trailers are loaded up at the grocer with
4 the Michigan Gaylords, all the material types sorted
5 into each of the Gaylords. Tractor-trailers deliver the
6 Gaylords to one of those two facilities. Gaylords
7 are -- had been, prior to loading the truck, been marked
8 with a bar code to -- for tracking purposes. So when
9 the tractor-trailer arrives at the UBCR facility that
10 tracking code is read on each Gaylord so we can identify
11 where the containers are coming from. So, again, for
12 the purposes of billing, we're able to have another
13 measurement of validation of the containers that were
14 collected.

15 Q. Now, is this billing for deposit return purposes?

16 A. Deposit return purposes, fraud controls,
17 accounting, basically like that.

18 Q. It sounds like the Sienfield situation where if
19 you're familiar with that episode of Sienfield?

20 A. I am, but not that so much.

21 Q. Not that, okay.

22 A. Those fraud controls are actually performed by
23 the machine at the retailer.

24 Q. Okay. Now while these Gaylord bins are in
25 transit can I still separate the cans out as individual

1 cans?

2 A. Yes.

3 Q. All right. So if you can continue.

4 A. So upon -- I explained what happened upon arrival
5 at the UBCR facility. The Gaylords are then tipped or
6 dumped, the contents are dumped and put on to a conveyor
7 belt and transferred into a -- in the case of cans,
8 transferred into a baler.

9 Q. What is a baler?

10 A. So a baler is going to do the same -- the baler
11 is going to compact material. So you could use a
12 baler -- it's a large compression chamber that is able
13 to take loose material and consolidate it further for
14 the purposes of another step of transportation.

15 Q. Okay. Now, after it's compacted further, do the
16 cans -- does it form like a cube of cans in a sense?

17 A. Yes.

18 Q. And does that cube of cans sit in storage
19 anywhere?

20 A. It will sit in the warehouse or facility until
21 enough of the bales -- we call them bales, are available
22 to load up another tractor-trailer.

23 Q. At that point third parties come in and buy a
24 bale of aluminum cans?

25 A. Not a bale. The way the activity -- not a single

1 bale. Our operations, let's say Schupan Recycling's
2 operations have contracts with beneficiaters or the end
3 users directly for the purpose of using that material in
4 their remanufacturing process. So in the -- with the
5 example of aluminum cans and these contracts, it should
6 be known, are typically -- well, could be spot or they
7 could be long-term agreements, annual agreements. So
8 you've got a major aluminum manufacturer like Novelis or
9 Alcoa and they will buy the bales for the conversion
10 into their rolled sheet or other ingot production?

11 Q. Do they buy these bales from Tomra?

12 A. In Michigan they are buying them from -- in
13 Michigan in this example they are buying them from
14 Schupan Recycling. And Schupan Recycling is acting as
15 the marketing agent for the deposit initiators.

16 Q. Okay.

17 A. So that's clear?

18 Q. Yeah.

19 A. Okay.

20 Q. So correct me if I'm wrong on this, but it sounds
21 like what Tomra does for its Michigan customers is not
22 only facilitates, they refund the bottle deposits to
23 consumers like me, but it also facilitates the
24 transportation of cans to people like Schupan, right?

25 MS. HAAS: Well, I'm going to object because

1 I believe that misstates his testimony because I think
2 you're confusing Tomra with a joint venture and I
3 believe they are different entities, but, Mr. Riegle,
4 you can clarify.

5 THE WITNESS: Right. June makes a good
6 point about the transportation. The reverse or the
7 container recycling machine is -- the beauty of it or
8 the purpose of it is that, and the reason we've been
9 able to place it in the marketplace, is that it actually
10 has value to the beverage retailers and the deposit
11 initiators.

12 So I want to make a note here. Remember
13 this is a -- we have to get authorization from the
14 deposit initiators to put their products -- to register
15 their products into the machines. So for us to be able
16 to do that before you show up with your container we
17 actually have to get their permission.

18 So they've got to see a value in
19 participating in this versus another method of
20 redemption. The value that they receive from it, and,
21 therefore, I think to answer your question more
22 specifically about what Tomra provides through this
23 technology is there's the redemption function but it's
24 initiating the recycling process. To go through quality
25 control, material separation and compaction for those

1 materials on-site reduces costs and ensures 100 percent
2 recyclability through the process.

3 Q. Now, you said that -- you talked about
4 inspection. And you previously testified that it
5 inspects UPC codes to see if there's, in fact, a can
6 that can't be returned.

7 A. Right.

8 Q. Now, imagine that I bring a can that is the same
9 material but does not have a UPC code, it has the same
10 material as a can does, is it true that Tomra won't
11 accept that can because it doesn't have a UPC code
12 despite the fact that it's the same material?

13 A. By law the retailers are not allowed to redeem
14 containers that are not mandated by the law.

15 Q. So Tomra's machine would reject it, right?

16 A. And what I mean by containers I sort of mean
17 little C, it's the brand, so it's not that we really
18 have a choice, first, of identifying it by material
19 type -- or, sorry, as to whether or not it's a deposit
20 container, it has to be a carbonated soft drink or a
21 beer or malt beverage.

22 Q. So kind of the gatekeeper is the UPC code?

23 A. The UPC code is an identifier that's used by the
24 beverage and retail trade for a lot of purposes. We
25 have technology in the machines that can -- it's the

1 same technology you might see at a grocery scanner.

2 Q. Right.

3 A. So linking in on that common feature we use --
4 when we program the UPCs into the machines we're adding
5 additional information, information such like I said of
6 the brand owner and who that is locally, the material
7 type, and the weight of the product. And those last two
8 parts are there strictly for recycling purposes.

9 Q. And the last two being?

10 A. So the depos- -- understanding the brand owner,
11 the deposit initiator clarifies the redemption
12 responsibility fees, it's covered by the program, it's
13 been -- and that there's a -- the deposit initiator will
14 authorize the payment, the exchange of deposit funds for
15 it, but the material type and the weight information is
16 essential to the first part of the recycling process
17 which the machines perform.

18 Q. Okay. The first part of the recycling process
19 the machines perform. Are you saying the crushing of
20 the cans is the recycling process?

21 A. Yeah. What you see and I explained that there
22 are different -- there's a point of collection and
23 there's a point -- that consolidation point at the UBCR
24 facility. With the deposit system the RBMs play the
25 role of -- the reason the RBMs are key to it is not just

1 because of the identification, we're able to help reduce
2 the cost of recycling because that recycling function is
3 actually happening at that point of collection so that
4 the functions of compaction and sorting -- let's reverse
5 that order, sorting of the material and then compaction
6 are key components to any recycling process, and the
7 machines are performing that function at the point of
8 collection.

9 Q. Doesn't the sorting kind of begin from the
10 consumer's end too, though? For example, you identify
11 that there's different machines that accept, for
12 example, cans or glass bottles. So don't I as a
13 consumer begin the sorting process?

14 A. In that case the consumer will identify the
15 container and mark it up -- or line it up with the right
16 machine. With the combination machines they'll
17 identify -- they'll identify the container, like I
18 explained, and compact it and sort it specifically.

19 But the machine when it recognizes the UPC
20 is actually making a determination as to whether it's an
21 acceptable container or not. You don't have that in a
22 blue bin, for example, where you simply throw everything
23 in mixed. The machine is determining what is
24 acceptable, not just from a deposit return function but
25 from a recycling perspective. You put a coffee cup in

1 the machine it's not going to accept it.

2 Q. Now I want to turn over to glass bottles. Say I
3 buy a six pack of bottled beer one night and I drink it
4 that night and I bring the bottles back the next day.
5 When I put the bottles into the machine, in a Tomra
6 machine, what happens?

7 A. So the same process as before. It's going to
8 first focus in on the UPC and identify whether it's an
9 acceptable container for that machine, so it's now said,
10 okay, this is a twelve ounce glass bottle. It's going
11 to determine that the deposit -- that the brand owner,
12 the deposit initiator, has given us permission to
13 further process it.

14 It's also going to identify -- where, as I
15 said before, on the aluminum can, it would say that it's
16 a twelve ounce aluminum can, in this case it's going to
17 say it's a twelve ounce brown glass bottle. You've got
18 green glass, you've got clear glass, you've got blue
19 glass. So once it's identified that color, it will then
20 make a determination on where the bottles are sorted to.

21 Q. Now, sorted to as far as bins on the back end of
22 the machine or sorted after the bins are possibly picked
23 up by --

24 A. Bins at the back of the machine. So there,
25 again, this is essential to the end users as having

1 material not only designated as glass only but sorting
2 it by color because the end users, the bottle
3 manufacturers of which glass in Michigan is being used
4 by, companies like Owens-Illinois or Ardaugh, they
5 can -- their factory or their production facilities can
6 only use color sorted glass. Clear bottles go back into
7 clear bottles, brown bottles go back into brown bottles.

8 Q. That makes sense. Now, do the reverse vending
9 machines, do they crush glass bottles?

10 A. In Michigan, no. We're not -- that service is
11 not being provided.

12 Q. Just by chance sometimes if I put a bottle in the
13 machine, for example, I hear it shatter.

14 A. They can break, right.

15 Q. But that's after it's been sorted into a specific
16 glass colored bin?

17 A. Correct.

18 Q. Now, let's move over to plastic bottles, the
19 Aquafina bottles or bottled water.

20 A. Yeah.

21 Q. What happens if the machine accepts a plastic
22 bottle?

23 A. All right. So I'm going to answer your question
24 and then you'll see why. With an Aquafina bottle the
25 machines would actually reject it because it's not

1 covered by the law, okay. So a Pepsi or Coke bottle.

2 Q. Okay, got you.

3 A. The same process, we're going to identify the bar
4 code for that information as far as acceptable container
5 so the consumer can have the redemption transaction, we
6 can assign the billing for those purposes, and then
7 we're going to look at that as -- plastic uses colors as
8 well. So there could be clear plastic and green is the
9 other popular one, so think of Mountain Dew, 7-Up, those
10 colors need to be separated as well. So the machine
11 will make the determination again of what brand it is
12 and then sort it out into the appropriate Gaylord bin.

13 Q. Okay.

14 A. I think I probably missed a step before
15 the -- once it's identified the container for that
16 purpose it will compact it and then put it into the
17 appropriate bin.

18 Q. For the same reasons as the cans, is it for like
19 efficiency in transportation reasons?

20 A. Yes.

21 Q. Is there any shredding of plastic bottles?

22 A. I don't believe there's shredding in Michigan,
23 not at the point of collection.

24 Q. Do you know if there was shredding in Michigan
25 between the tax years -- tax years, sorry, between 2003

1 and 2008?

2 A. I don't believe there was. The only reason you
3 would need shredding is to facilitate the storage or the
4 compaction of the containers. The machines in Michigan
5 have always been the -- to use a bad phrase, top of the
6 line, we've always had more of the technology. And the
7 focus because of the high volume of containers in
8 Michigan, because of the high deposit, is we've focused
9 a lot on compaction. So the compactors, the ability to
10 flatten the containers the way we have hasn't
11 necessitated shredding.

12 Q. And that's for cost saving reasons, correct, for
13 compacting for storage and transportation?

14 A. Yeah.

15 Q. The same could be said for the cans as well,
16 right?

17 A. Yes. Right. I mean the cost saving reasons are
18 storage compaction, but I was going to say the other
19 part is the fact that we don't need to then do it at
20 another facility.

21 Q. Now, when you say we do it, you say Tomra do it
22 or another company do it?

23 A. Sorry, I meant --

24 Q. That's okay.

25 A. -- the material doesn't require that further

1 sorting, it's ready to go right into a baler for --
2 basically again for consolidation purposes for
3 transportation. In a typical curbside recycling
4 operation you would have those functions performed there
5 because you're delivering mixed material to a curbside
6 facility, it has to be sorted and then consolidated. In
7 this case we're doing all that on-site at the point of
8 collection.

9 Q. Let's go back to the point in the process when we
10 were talking about the balers. And correct me if I'm
11 wrong, the balers receive cans or plastic bottles after
12 the Gaylord bins are dumped, right?

13 A. Right.

14 Q. And then the balers create big aluminum can
15 cubes?

16 A. Yup.

17 Q. Is it at that point that you can sell aluminum as
18 a commodity?

19 A. Well, you could sell aluminum as a commodity
20 hypothetically anywhere, so it's an open ended question.
21 But in that case the material that is prepared for sale.

22 Q. So for purposes of our discussion today --

23 A. Yes.

24 Q. -- and in the entities that not only you work for
25 but also deal with, and be it a joint venture or not, do

1 you know whether or not you sell or the other entities
2 sell aluminum as a commodity when it's in that cube?

3 A. Yes. Once the containers are baled then the
4 deposit initiators want to move those containers out of
5 the market and selling is the preferred option.

6 Q. Who would they -- and selling is the preferred
7 option for the beverage distributors?

8 A. Yes, because they are going to -- right, that's
9 the point when they can now move it on to another
10 interested party.

11 Q. Okay. And then would you say at that point it's
12 raw material?

13 MS. HAAS: I'm going to object to the extent
14 that you're calling for a legal conclusion or an opinion
15 that relates to the definition of industrial processing.

16 THE WITNESS: Yeah, again, we don't use that
17 term raw material so I don't really understand.

18 BY MR. DAMICH:

19 Q. Okay. Is it --

20 A. We started referring to it as a commodity for
21 sale.

22 Q. That's the first point you considered it a
23 commodity for sale?

24 A. Right. That's the first -- typically with any
25 recycling, that's the point where you would -- any

1 recycling process, that's the point where you would
2 consider it available prepared for sale.

3 Q. It's not available for sale while sitting in the
4 Gaylord bins in Meijer?

5 A. No.

6 Q. Let's go back to the glass bottles. Where do
7 they go after the Gay- -- after they are
8 collected -- they are collected by Gaylord bins, right?

9 A. The glass bottles?

10 Q. Yes.

11 A. Yup.

12 Q. And after they are collected what happens next?

13 A. They are brought to -- so a similar process, they
14 are brought to the UBCR facility, the Gaylords
15 are -- have been premarked, bar coded themselves for
16 tracking purposes, they are redeemed, registered, at the
17 UBCR facility the Gaylords are tipped onto a conveyor
18 belt. Because the material is -- the glass bottles are
19 sorted by color, they can -- they are simply conveyed
20 into storage pits.

21 Q. Where are these storage pits located?

22 A. At those facilities.

23 Q. Okay.

24 A. And then they are picked up by the company that
25 has bought the material.

1 Q. Okay. So the company that has bought -- the
2 company that bought the material is a glass commodity?

3 A. I want to give you -- yes.

4 Q. And then what do those companies usually do with
5 that glass?

6 A. Glass requires another step, it's called
7 beneficiating, and that's where the -- we mentioned
8 before where we've got whole bottles or bottles by now
9 which are broken into shards, have to be further reduced
10 to a common size or let's say a consistent size. And
11 then there's another -- another step of including
12 delabeling or removing of caps, and then that material
13 is mill ready and goes right into the furnaces for glass
14 manufacturing -- glass bottle manufacturing.

15 Q. As a consumer where could I go and buy certain
16 units of glass after it's been crushed?

17 A. As a consumer?

18 Q. Yes.

19 A. As a consumer who drank those three bottles of
20 beer?

21 Q. Just a general consumer, I'm interested in buying
22 some shards of glass.

23 A. Shards of glass?

24 Q. Yes.

25 A. I don't know if that exists in Michigan.

1 Q. How about if I'm a consumer interested in buying
2 a certain amount of units of aluminum?

3 A. If you wanted to act like any of the other
4 commodity brokers or buyers, there is a process -- let's
5 say this again. In Michigan Schupan Recycling controls
6 the -- or provides the service of marketing on behalf of
7 deposit initiators, or you could speak directly with the
8 deposit initiators about buying their material.

9 Q. Do you know if deposit initiators carry an
10 inventory of aluminum cans?

11 A. The purpose of the third party system is that
12 they've outsourced that service to Schupan Recycling.

13 Q. Okay.

14 A. So the inventory -- from a practical prospective
15 the inventory is what's currently on a warehouse floor
16 at any time.

17 Q. Does Tomra carry an inventory of aluminum cans?

18 A. In Michigan Tomra doesn't do commodity brokerage.

19 Q. And Tomra doesn't buy aluminum cans either in
20 Michigan, right?

21 A. Correct.

22 Q. And is the same true for glass and glass bottles?

23 A. Correct.

24 Q. And plastic as well?

25 A. Yes.

1 Q. Thank you for explaining that process to me.
2 Anyways, moving on. Are you familiar -- do you know
3 that Tomra has sued the State of Michigan, specifically
4 the Department of Treasury?

5 A. Yes.

6 Q. And do you know why?

7 MS. HAAS: Could we take a five minute
8 break?

9 MR. DAMICH: Certainly.

10 (A recess was taken.)

11 MR. DAMICH: Back on the record.

12 BY MR. DAMICH:

13 Q. I don't anticipate this taking too much longer.
14 Before we took a break I'd asked you whether you were
15 aware that your client has sued my client, the Michigan
16 Department of Treasury; is that true?

17 A. Yes.

18 Q. You also --

19 A. I think it's my employer.

20 Q. Your employer, I said your client, I'm sorry.
21 Are you also aware that you were named as a witness in
22 the lawsuit?

23 A. Yes.

24 Q. Do you know why you were named as a witness?

25 A. Expertise on the subject.

1 Q. Have you reviewed any discovery requests from the
2 Michigan Department of Treasury?

3 A. No.

4 Q. Have you reviewed the Michigan Department of
5 Treasury's responses to any of plaintiff's discovery
6 requests, plaintiff being Tomra of North America?

7 A. No.

8 Q. What's your familiarity with the case?

9 A. I don't know. I was going to say it's probably
10 general in the sense of the discussions I had with June
11 and her team explaining --

12 MS. HAAS: So we'll just stop at this point
13 because any conversations you had with me are
14 attorney-client privileged.

15 THE WITNESS: Okay.

16 MS. HAAS: And so that is an appropriate
17 answer.

18 THE WITNESS: Okay.

19 MR. DAMICH: Got it.

20 BY MR. DAMICH:

21 Q. Outside of your conversations with Ms. Haas and
22 her legal team or any of your legal representation in
23 this case, do you understand the claims that have been
24 made against the Michigan Department of Treasury?

25 A. No.

1 Q. Do you know that there has been a sales tax
2 refund claim made in this case?

3 A. I haven't had any conversations with anyone
4 outside of June or her team.

5 Q. Do you know whether or not your employer, Tomra
6 of North America, collected sales tax for sales made to
7 Michigan customers?

8 A. I don't know.

9 Q. Are you aware that your employer, Tomra of North
10 America, remitted sales tax to the State of Michigan for
11 sales made to Michigan customers?

12 A. I don't know.

13 Q. You don't know?

14 A. I haven't had those discussions.

15 Q. Are you aware that the Michigan Department of
16 Treasury audited Tomra of North America?

17 A. No.

18 Q. Are you familiar at all with an informal
19 conference recommendation in this case; does that sound
20 familiar?

21 A. No.

22 Q. Have you reviewed the complaint filed in this
23 case?

24 A. No.

25 Q. Have you reviewed any pleadings in this case?

1 A. No.

2 Q. Do you know if Tomra has the ability to track
3 each individual sale made to Michigan customers?

4 A. I'm trying to think. I know that when Tomra
5 sells or finances or puts together some transaction
6 instrument with its customers that there is
7 documentation.

8 Q. Do you know whether there would be documentation
9 for how much was charged for each individual sale?

10 A. There would be documentation for each
11 transaction, whether it was a sale, financial lease.

12 Q. Do you know whether there would be documentation
13 to show if, in fact, sales -- Michigan sales tax was
14 charged?

15 A. I don't know.

16 Q. Would you have -- do you know if there would be
17 detail as far as whether Michigan sales tax was
18 collected?

19 A. I don't know.

20 Q. Do you know who would know?

21 A. I'm assuming it's somebody in our finance
22 department.

23 Q. You don't have any specific names?

24 A. No.

25 MR. DAMICH: I don't have any further

1 questions.

2 THE WITNESS: Okay.

3 EXAMINATION

4 BY MS. HAAS:

5 Q. I just had one follow up. You had said Schupan
6 acts as the marketer on behalf of the deposit initiator
7 and you named some end users for aluminum and glass, but
8 what about for plastic, do you know who Schupan sells
9 plastic to?

10 A. Specifically during that time period I don't
11 know, there are any number of users of the material, but
12 I do know the nature of those users is to purchase it
13 for the purpose of use in the remanuf- -- or in the
14 manufacturing of either bottles, carpeting, automotive
15 plastics, higher end uses because of the material
16 quality that's preserved through the process.

17 MS. HAAS: Okay, thank you. No further
18 questions.

19 MR. DAMICH: Give me a second to think about
20 this.

21 RE-EXAMINATION

22 BY MR. DAMICH:

23 Q. Ms. Hass had asked you about the purchasers of
24 plastic. In what form do these purchasers buy the
25 plastic?

1 A. In Michigan they are buying it baled.

2 Q. Baled?

3 A. Yup.

4 Q. When the plastic -- when plastic is baled, can
5 you still separate out individual plastic bottles?

6 A. Yeah. What happens is they -- so we've taken the
7 bottles that are sorted by color and they are just P-E-T
8 plastic bottles, so that's a -- there's at least seven
9 grades of plastics. P-E-T bottle refers to the soft
10 drink bottle that's pretty common. So we're looking at
11 the plastics buyers, in that case we're going to call
12 them reclaimers, will buy the material and they'll
13 convert it into a granule and solid state it.

14 Q. When they are buying --

15 A. When they are buying it, yes, they take the bale
16 and they break the bales apart, so having again the
17 flattened bottles sorted by color is important to their
18 process.

19 Q. So you can still separate out each individual
20 bottle?

21 A. Yes.

22 MR. DAMICH: I have no further questions.

23 MS. HAAS: We're done.

24 (Whereupon Deposition concluded at 10:45 a.m.)

25

A	<p>35:23 44:17 answered 5:9 anticipate 43:13 anybody 8:21 25:3 anyways 43:2 apart 23:11 48:16 appearances 2:1 appropriate 11:21 11:22,23 24:6 36:12,17 44:16 aquafina 35:19,24 ardaugh 35:4 arrival 28:4 arrives 27:9 arts 6:16 asa 7:11,12 10:4 asked 3:22 4:1 5:11 23:2 43:14 47:23 asker 7:14,14 asking 13:25 14:5 18:16 22:20 assign 11:19 20:24 21:23 36:6 assigned 12:9 assistant 3:19 association 11:3,4 assume 13:25 assuming 17:21 20:20 46:21 attorney 2:6 3:19 7:23 15:3 18:17 attorneyclient 44:14 attorneys 2:12 audited 45:16 authorization 20:13 30:13 authorize 32:14 automotive 47:14 available 18:9 28:21 40:2,3 average 22:6 aware 43:15,21 45:9,15</p>	<p>bale 28:24,25 29:1 48:15 baled 39:3 48:1,2,4 baler 28:8,9,10,10 28:12 38:1 balers 38:10,11,14 bales 28:21,21 29:9 29:11 48:16 bar 27:8 36:3 40:15 based 13:2 basically 19:13,20 27:17 38:2 bathroom 5:3,6 beautiful 7:18 beauty 30:7 beer 11:4 21:16 31:21 34:3 41:20 behalf 2:5,9 42:6 47:6 believe 30:1,3 36:22 37:2 belt 28:7 40:18 beneficiaters 29:2 beneficiating 41:7 beverage 9:9,12,13 9:13,20,21 10:14 10:18,25 11:7,10 11:17 14:17 17:17 18:10 21:3,5 23:14 24:9,14 30:10 31:21,24 39:7 big 38:14 billing 10:23 11:5,6 11:15 12:10,13 21:23 24:22 27:12 27:15 36:6 bin 23:16 33:22 35:16 36:12,17 bins 23:23 24:7,8,15 25:4 27:24 34:21 34:22,24 38:12 40:4,8 blue 33:22 34:18 bottle 9:9 12:15 14:6,7 15:23,24 16:5,8,9,21 20:8 20:17 29:22 34:10 34:17 35:2,12,22 35:24 36:1 41:14 48:9,10,20 bottled 34:3 35:19 bottler 12:12 bottlers 21:4</p>	<p>bottles 13:17,18 16:10 33:12 34:2 34:4,5,20 35:6,7,7 35:7,9,18,19 36:21 38:11 40:6 40:9,18 41:8,8,19 42:22 47:14 48:5 48:7,8,17 bought 26:16 40:25 41:1,2 box 1:20 2:7 brand 12:8 31:17 32:6,10 34:11 36:11 brands 10:21 12:8 break 35:14 43:8,14 48:16 bring 31:8 34:4 brings 12:21 broken 41:9 brokerage 42:18 brokers 42:4 brother 7:19,22 brought 40:13,14 brown 34:17 35:7,7 building 26:16 bulk 14:19,20 business 9:6 buy 13:20 14:9 25:1 28:23 29:9,11 34:3 41:15 42:19 47:24 48:12 buyers 42:4 48:11 buying 29:12,13 41:21 42:1,8 48:1 48:14,15 buys 14:20</p>	<p>37:15 38:11 42:10 42:17,19 cant 4:16 19:25 31:6 capable 16:13 caps 41:12 carbonated 31:20 care 13:10 carpeting 47:14 carry 42:9,17 case 3:23 4:1 12:2 22:23 23:16 28:7 33:14 34:16 38:7 38:21 44:8,23 45:2,19,23,25 48:11 cases 21:7 cause 49:9 caveat 5:7 cents 12:3 ceo 9:1 certain 11:19 16:22 41:15 42:2 certainly 7:25 14:2 14:5 15:5 23:9 43:9 certifications 7:4 certified 1:12,20 49:3,19,20 certify 49:5,8 cetera 10:23 17:1 chamber 28:12 chance 35:12 changing 23:3 charge 18:18 charged 14:16 46:9 46:14 charles 3:11,15 choice 31:18 chuck 1:11 3:5 city 6:1,2 citys 6:3 claim 45:2 claims 1:2 44:23 clarification 10:9 13:24 clarifies 32:11 clarify 10:5 30:4 clear 29:17 34:18 35:6,7 36:8 client 3:23 43:15,15 43:20 cocacola 21:9 code 27:8,10 31:9</p>
	B			
	<p>bachelor 6:16 back 7:7 12:21 13:2 14:9 15:19,20 17:9 19:17,19,20 19:21 23:10 34:4 34:21,24 35:6,7 38:9 40:6 43:11 bad 37:5</p>			
		C		
		<p>c 3:4 31:17 call 10:10 21:6 23:15 28:21 48:11 called 1:11 10:25 41:6 calling 17:19 39:14 calls 15:2 canadian 9:5 cans 13:17 15:14 16:2 22:18 23:11 23:25 24:1,2,16 24:19 25:14 27:25 28:1,7,16,16,18 28:24 29:5,24 32:20 33:12 36:18</p>		

<p>31:11,22,23 36:4 coded 40:15 codes 10:20 31:5 coffee 33:25 cohn 2:2 coke 36:1 cola 21:18 collected 12:19 20:23 24:20 27:14 40:8,8,12 45:6 46:18 collection 32:22 33:3,8 36:23 38:8 college 6:7,8,10 color 34:19 35:2,6 40:19 48:7,17 colored 35:16 colors 36:7,10 com 1:22 combination 16:4 33:16 combined 16:8,9 come 3:22 19:19 21:8 28:23 comes 24:14 coming 27:11 commission 49:22 commodity 22:6 25:1,5 38:18,19 39:2,20,23 41:2 42:4,18 common 11:9 15:4 32:3 41:10 48:10 compact 22:10,11 28:11 33:18 36:16 compactd 23:9,11 23:14,17 28:15 compacting 37:13 compaction 23:3 30:25 33:4,5 37:4 37:9,18 compactor 24:7 compactors 37:9 companies 10:15 21:16 35:4 41:4 company 10:25 37:22 40:24 41:1 41:2 complaint 45:22 component 17:25 18:2,5 components 33:6 compression 28:12 computeraided</p>	<p>49:11 concern 9:6 concluded 48:24 conclusion 15:2 39:14 conference 45:19 confusing 30:2 connecticut 6:1,23 8:16 consider 16:22 17:15 40:2 considered 21:9 39:22 consistent 41:10 consolidate 23:13 28:13 consolidated 38:6 consolidating 23:13 consolidation 22:11 22:12,13,14,14,17 32:23 38:2 constitutes 22:21 consumer 12:2,19 12:20,20 13:10,19 17:2,21 18:11 33:13,14 36:5 41:15,17,19,21 42:1 consumers 29:23 33:10 container 9:10,23 10:7,9 11:1,17 12:1,8 15:22 16:5 16:23 18:10 19:9 19:11,24 20:3,11 20:16,24 21:5 22:1,10 30:7,16 31:20 33:15,17,21 34:9 36:4,15 containers 9:12 13:3,5 17:18 23:14,15,17,17 25:7,9,10 27:11 27:13 31:14,16 37:4,7,10 39:3,4 contents 28:6 continue 28:3 contracted 11:2 contractors 8:24 contracts 29:2,5 control 18:21 20:6 20:8 30:25 controls 20:4 22:15 27:16,22 42:5</p>	<p>convenient 17:1 conversation 4:7,10 4:11 5:2 conversations 44:13 44:21 45:3 conversion 23:7 29:9 convert 48:13 converting 22:18,21 23:2 conveyed 40:19 conveyor 28:6 40:17 coordinate 10:18 core 9:12 correct 5:16,17 10:8 11:15 14:1 23:21 25:2 29:20 35:17 37:12 38:10 42:21,23 49:13 corrugated 23:16 cost 33:2 37:12,17 costs 11:20 22:14 31:1 country 7:18 8:3,4 county 49:2,4,21 couple 4:6 10:16 course 4:8 22:22 court 1:2 3:17 4:15 4:24 covered 20:12 32:12 36:1 create 38:14 crush 35:9 crushed 17:22 41:16 crushing 32:19 csr1311 49:18 cube 28:16,18 39:2 cubes 38:15 cup 33:25 curbside 38:3,5 current 5:18 7:7 17:21,24 18:7 currently 42:15 customer 9:12 16:11 customers 9:15,18 17:3,4,6 29:21 45:7,11 46:3,6</p>	<p>3:18 7:25 8:1 14:2 14:4 15:5,7 18:23 23:8 26:9 39:18 43:9,11,12 44:19 44:20 46:25 47:19 47:22 48:22 day 34:4 49:16 deal 38:25 deals 13:24 dealt 24:22 defendant 1:8,11 2:9 define 7:21 21:22 definition 39:15 degree 6:12,15,22 delabeling 41:12 deliver 27:5 delivered 14:21 delivering 38:5 department 1:7 2:6 3:21,24 43:4,16 44:2,4,24 45:15 46:22 depends 16:11,11 16:19 depos 32:10 deposed 5:16 deposit 12:2,5,12,19 12:20 13:14,22 14:7,12,14,15,16 14:16,19 15:20 19:10 20:13,17,24 20:25 21:1,2,6,9 21:13,20 24:24 25:7 27:15,16 29:15 30:10,14 31:19 32:11,13,14 32:24 33:24 34:11 34:12 37:8 39:4 42:7,8,9 47:6 deposition 3:15 4:2 4:2,6 48:24 49:6 deposits 29:22 describe 26:25 describing 26:24 design 16:19,19 designated 15:24 35:1 designs 16:21 despite 31:12 destroy 22:10 destroyed 19:24 detail 46:17 determination</p>	<p>33:20 34:20 36:11 determine 34:11 determining 20:15 33:23 dew 36:9 didnt 23:24 different 30:3 32:22 33:11 dime 12:9 direct 13:10 direction 49:12 directly 29:3 42:7 discovery 3:15 44:1 44:5 discussion 38:22 discussions 44:10 45:14 distribution 10:14 10:15 distributor 12:9,12 14:17 distributors 9:14,21 21:4 39:7 division 2:6 documentation 12:13 46:7,8,10 46:12 doesnt 31:11 33:9 37:25 42:18,19 doing 20:15 26:25 38:7 dont 4:12,13,13,14 8:9,12 9:8 17:18 17:18,18 18:21 23:6 25:1 33:12 33:21 36:22 37:2 37:19 39:16,17 41:25 43:13 44:9 45:8,12,13 46:15 46:19,23,25 47:10 drank 41:19 drink 11:3 15:15 31:20 34:3 48:10 drinks 21:14 driven 4:8 duly 3:6 49:9 dumped 28:6,6 38:12 duties 9:2</p>
<p>D</p>				
<p>d 1:10 2:4,8 3:4 damich 2:8,13 3:8</p>			<p>E</p> <p>e 1:10 3:4 easier 10:20 easily 23:5</p>	

education 6:19 7:1	27:9 28:5,20	28:13,15 34:13	grocer 27:3	I
efficiency 36:19	32:24 37:20 38:6	37:25 41:9 46:25	grocery 32:1	
either 24:9 42:19	40:14,17	47:17 48:22 49:8	ground 4:6	id 8:11 13:16 15:6
47:14	fact 20:8 31:5,12		groups 9:12	19:22 43:14
employer 5:18 7:7	37:19 46:13	G	guess 4:13	identification 19:5
43:19,20 45:5,9	factory 35:5	gatekeeper 31:22		19:6 33:1
employment 8:22	factual 4:1	gay 40:7	H	identified 3:25 22:8
ended 38:20	fair 7:1	gaylord 23:15 24:15	haas 2:4,14 4:21	24:5 34:19 36:15
energy 21:14	familiar 7:24 12:15	25:4 27:10,24	7:21 13:23 14:3	identifier 31:23
ensures 31:1	27:19 43:2 45:18	36:12 38:12 40:4	15:1 18:15 22:19	identify 11:9 16:2
entities 7:20,22 8:5	45:20	40:8	26:6 29:25 39:13	19:8 23:20 27:10
30:3 38:24 39:1	familiarity 44:8	gaylords 24:8 27:4	43:7 44:12,16,21	33:10,14,17,17
entity 3:20 7:9 10:2	far 34:21 36:4	27:5,6,6 28:5	47:4,17 48:23	34:8,14 36:3
environmental 6:23	46:17	40:14,17	hand 17:15,20	identifying 31:18
6:25	fax 1:22	general 2:6 14:6	18:11 49:16	ill 9:8 10:19 26:25
episode 27:19	feature 32:3	18:18 41:21 44:10	handed 19:20,21	im 4:5 8:19 9:3 12:1
essential 20:5 32:16	feeds 22:15	getting 15:19	handling 16:13	13:16,19,23 14:5
34:25	fees 11:20 32:12	give 15:4 41:3 47:19	hands 13:9	15:1 16:9 17:4
et 10:22 17:1	file 1:6	given 12:13 34:12	happened 26:15	18:5,6,15 22:19
europe 9:25	filed 45:22	49:10	28:4	23:1 26:24 29:20
evidence 3:17	fill 23:25	glass 13:17 16:10	happening 33:3	29:25 35:23 38:10
exact 8:9 23:24	finance 46:21	20:2 33:12 34:2	happens 13:21	39:13 41:21 42:1
exactly 21:15 23:7	finances 46:5	34:10,17,18,18,19	14:11 19:2,12	43:20 46:4,21
examination 2:11	financial 46:11	35:1,3,6,9,16 40:6	20:21 24:1 26:2	imagine 23:23 31:8
2:12 3:7 47:3	first 3:6 4:6 10:17	40:9,18 41:2,5,6	26:21 34:6 35:21	implementation 9:3
example 12:24	11:9 13:10 19:5	41:13,14,16,22,23	40:12 48:6	important 48:17
13:19 16:20 20:2	31:18 32:16,18	42:22,22 47:7	harald 9:1	inability 19:22
21:20 22:4 23:12	34:8 39:22,24	gmail 1:22	hasnt 37:10	include 11:1
26:22 27:1 29:5	five 8:10,11 43:7	go 4:5,18 5:3,4,6	hass 47:23	included 20:14
29:13 33:10,12,22	flatten 37:10	6:10,18 7:7,15	havent 45:3,14	24:19
35:13	flattened 48:17	13:19 14:14 15:19	head 4:17	including 41:11
exchange 32:14	floor 42:15	16:3 18:8 23:10	headquartered 7:14	index 2:11,18
exhibit 2:19	focus 26:13 34:8	25:14 30:24 35:6	8:16	individual 13:17
exhibits 2:18,20	37:7	35:7 38:1,9 40:6,7	hear 35:13	14:22,24 17:11
existed 16:17	focused 37:8	41:15	heckaman 1:19	23:11 27:25 46:3
exists 41:25	follow 47:5	goes 24:6,22 41:13	help 33:1	46:9 48:5,19
expect 16:24	follows 3:6	going 4:5,7,8,19 5:4	helps 20:17 21:22	industrial 22:22
expertise 43:25	foregoing 49:6,12	7:7 12:3 13:16,18	henriksen 9:1	39:15
expires 49:22	form 17:24 25:12	13:23 15:1 18:15	hereinbefore 49:7	informal 45:18
explained 28:4	28:16 47:24	19:5,6 22:7,19,23	hereunto 49:15	information 19:7
32:21 33:18	forth 49:7	26:22 28:10,11	high 37:7,8	20:22 21:24,25
explaining 12:13	framed 11:20	29:25 34:1,7,10	higher 47:15	22:4 24:19,21,22
43:1 44:11	fraud 27:16,22	34:14,16 35:23	historical 16:25	32:5,5,15 36:4
extent 15:2 18:16	free 13:9	36:3,7 37:18 39:8	history 6:16 13:4	ingham 49:2,5,21
22:20 39:13	full 24:8 49:13	39:13 44:9 48:11	hold 5:5	ingot 29:10
F	fun 5:12	good 30:5	holder 9:4	initial 24:20
facilitate 9:11 20:17	function 10:23 20:5	government 8:19	home 15:14,15	initiating 13:11
37:3	21:23 30:23 33:2	9:4	honigman 2:2	30:24
facilitates 29:22,23	33:7,24	grab 23:18	hour 1:15	initiator 12:12
facilities 9:25 26:21	functions 19:8 33:4	grades 48:9	howell 26:11,14,15	14:16 20:25 21:1
27:6 35:5 40:22	38:4	grand 25:18,19	huhuh 4:17	21:2,10,13,21
facility 25:16,17,18	funds 32:14	granted 20:13	hypothetical 14:9	25:7 32:11,13
25:19,19 26:11,13	furnaces 41:13	granule 48:13	hypothetically	34:12 47:6
	further 6:18 7:1	green 34:18 36:8	38:20	initiators 20:13
				21:6 29:15 30:11

<p>once 24:5,7 34:19 36:15 39:3 onsite 31:1 38:7 open 38:20 operation 38:4 operations 25:22 26:15,17 29:1,2 opine 22:21,23 opinion 39:14 opportunity 18:2 option 15:21 39:5,7 options 25:15 order 33:5 original 13:2 49:13 ounce 22:4 24:21 34:10,16,17 outlined 11:20 outside 21:8 44:21 45:4 outsourced 42:12 owe 12:13 owed 12:2,5,6,11 owensillinois 35:4 owned 7:8,10 25:22 25:25 26:11 owner 32:6,10 34:11 owns 8:3</p> <hr/> <p style="text-align: center;">P</p> <p>p 1:10,20 2:7 pack 13:20 14:10 17:9 34:3 paid 14:15 part 17:25 18:3,5 19:25 20:10 23:3 23:4 32:16,18 37:19 participating 30:19 parties 11:5 28:23 partnerships 8:6 parts 32:8 party 11:21,22 25:4 26:23 27:1 39:10 42:11 pay 12:3 14:12 24:15,17 paying 24:18 payment 11:22,22 11:23 32:14 pays 14:19 peat 2:6 people 8:23 29:24 pepsi 13:20,21</p>	<p>14:10,20 17:9,10 21:12,13 24:21 36:1 pepsis 15:15 percent 31:1 perfect 5:15 perform 32:17,19 performed 16:6 25:23 27:22 38:4 performing 33:7 period 16:15 17:5 26:5,12 47:10 periods 14:1,5 permission 30:17 34:12 person 14:20 perspective 33:25 pet 24:5 48:7,9 phase 24:20 phrase 37:5 pick 11:5 25:9 26:23 picked 24:9 34:22 40:24 pits 40:20,21 place 30:9 49:7 plaintiff 1:5 2:5 44:6 plaintiffs 44:5 plastic 13:18 16:5,9 20:3 23:16 35:18 35:21 36:7,8,21 38:11 42:24 47:8 47:9,24,25 48:4,4 48:5,8 plastics 47:15 48:9 48:11 play 26:18,19 32:24 pleadings 45:25 please 3:9 5:3,9 plus 14:12 point 11:18,19 13:6 14:14,22 23:5,9 26:3 28:23 30:6 32:22,23,23 33:3 33:7 36:23 38:7,9 38:17 39:9,11,22 39:25 40:1 44:12 popular 36:9 portfolio 16:12 position 8:17 possess 15:6 possession 19:15,19 possibly 34:22</p>	<p>practical 42:14 predominantly 9:10 preferred 39:5,6 premarked 40:15 prepared 38:21 40:2 preprogramed 19:23 preprogrammed 21:24 preserved 47:16 president 9:1 presorting 13:6 pretend 13:18 pretty 48:10 previously 8:2 31:4 price 14:12 primary 25:15 prior 27:7 private 21:17 privilege 4:24 privileged 44:14 privileges 4:22 probably 21:3 26:24 36:14 44:9 process 5:13 11:25 13:8,9,12 14:6 16:6 17:2 18:9 22:9 24:2 29:4 30:24 31:2 32:16 32:18,20 33:6,13 34:7,13 36:3 38:9 40:1,13 42:4 43:1 47:16 48:18 processed 18:6 processes 23:4 processing 22:22 39:15 produced 49:11 product 9:22 10:19 17:25 18:3,5,10 21:5,7,22 32:7 production 9:25 29:10 35:5 products 10:2,3 17:6 30:14,15 professional 49:19 proficient 49:20 program 21:25 32:4 32:12 programmed 10:21 proper 10:10 properties 25:21 property 12:4</p>	<p>proposed 14:9 prospective 42:14 provide 9:10 11:5 11:14 19:7 20:4 provided 10:23 35:11 provides 30:22 42:6 providing 11:16 provinces 9:6 psychology 6:17 public 1:13 49:4,20 pull 23:11 purchase 14:12 47:12 purchasers 47:23 47:24 purpose 15:25 20:5 29:3 30:8 36:16 42:11 47:13 purposes 4:14 10:9 10:22 13:22 20:7 21:22 22:11,15 27:8,12,15,16 28:14 31:24 32:8 36:6 38:2,22 40:16 pursuant 3:15 push 4:25 put 17:14 18:12 19:1,3 20:2 22:3 28:6 30:14 33:25 34:5 35:12 36:16 puts 46:5</p> <hr/> <p style="text-align: center;">Q</p> <p>qualifies 26:23 quality 20:4,6 30:24 47:16 question 4:16 5:8,8 5:9 23:2 26:8 30:21 35:23 38:20 questioning 8:14 questions 4:8,12,20 5:11,12 18:16 47:1,18 48:22</p> <hr/> <p style="text-align: center;">R</p> <p>r 3:4,4 rapids 25:18,19 raw 17:15,19 39:12 39:17 rbms 32:24,25 read 19:22 27:10 ready 38:1 41:13</p>	<p>really 31:17 39:17 reason 3:22 30:8 32:25 37:2 reasons 3:16 19:21 36:18,19 37:12,17 receipt 16:7 receive 6:12 11:23 16:7 30:20 38:11 receives 11:22 recess 43:10 reclaimers 48:12 recognize 19:25 20:11 recognized 20:23 recognizes 33:19 recognizing 12:8 20:1 recommendation 45:19 reconveyed 19:13 record 3:9 43:11 recyclability 31:2 recycling 6:4 9:10 9:11,23 10:7,10 10:17,22,25 11:1 13:11 15:23 18:8 19:4 20:5,7 22:1,9 23:4 25:12,17 29:14,14 30:7,24 32:8,16,18,20 33:2,2,6,25 38:3 39:25 40:1 42:5 42:12 recyclings 29:1 redeem 31:13 redeemed 11:17 16:24 40:16 redeeming 19:4 redemption 11:18 17:2 30:20,23 32:11 36:5 reduce 22:14 33:1 reduced 41:9 reduces 31:1 reexamination 2:12 47:21 refer 12:10 17:17 referring 21:3 26:5 39:20 refers 48:9 reflect 3:14 refund 12:20 20:16 29:22 45:2 refundable 13:2</p>
--	--	---	--	---

30:14 39:4 42:7,8 42:9	labor 13:13	24:3,4 30:15	21:17 23:12 24:15	49:3,18	
innovation 13:8	lansing 1:14,21 2:3 2:7 3:1	31:25 32:4,17,19	25:3 26:23,23	nature 47:12	
insert 16:5	large 23:16 28:12	33:7,11,16 35:9	27:1 40:4	necessarily 22:24	
inspection 31:4	latest 16:25	35:25 37:4	meijers 13:20 24:11 24:15	necessitated 37:11	
inspects 31:5	law 11:21 12:16	major 29:8	melinda 1:12 49:3	need 4:15,17 5:3,6 12:5,7 36:10 37:3 37:19	
instrument 46:6	18:18 19:10 20:12	majored 6:16	49:18	never 5:15 19:15,16	
intent 19:3	21:6 25:6 31:13	making 11:21 33:20	mentioned 9:20 19:22 41:7	new 18:3,5,10,10	
interested 39:10 41:21 42:1	31:14 36:1	malt 31:21	method 30:19	nice 6:12,18 7:17	
interpreting 18:18	lawsuit 13:24 43:22	manage 15:15	mexico 9:6	night 13:20 15:16 34:3,4	
invented 9:24 13:5	lay 16:21	manager 6:4	michigan 1:1,7,14 1:21 2:3,6,7 3:1 3:17,17,20,21,24 4:24 9:16,19	nod 4:16	
inventory 42:10,14 42:15,17	lease 46:11	mandated 21:5 31:14	10:16 11:3,4 12:3 17:3,3,6 19:10 23:15 25:6,6,15 25:16,24 26:11,14 27:4 29:12,13,21 35:3,10 36:22,24 37:4,8 41:25 42:5 42:18,20 43:3,15 44:2,4,24 45:7,10 45:11,15 46:3,13 46:17 48:1 49:1,5 49:21	nonacceptable 19:9	
involved 13:13	legal 15:2 18:17 22:22,24 39:14 44:22,22	manual 13:13	manually 13:5	north 1:4,13 2:2 5:19,23 7:8,10,19 8:3,6,14,17,22 9:5 9:7 10:1,6,13 44:6 45:6,9,16	
issue 4:25 14:1,6 22:23	line 33:15 37:6	manufacture 9:22	manufacturer 18:9 29:8	norwalk 6:1,2	
issues 4:1 22:24	linking 32:3	manufacturers 35:3	manufactures 9:23	norway 7:14	
item 23:19	list 8:7,12	manufacturing 41:14,14 47:14	marketing 29:15 42:6	nos 1:6	
<hr/>	listed 3:23	marathon 5:5	market 19:5,6,25 20:1 33:15	notary 1:13 49:4,20	
J	little 8:13 31:17	mark 19:5,6,25 20:1 33:15	marked 2:19,20 16:3 27:7	note 30:12	
j 2:4,8	llc 25:13	market 39:5	marketer 47:6	notes 49:14	
january 1:14 3:2 49:16	llp 2:2	marketing 29:15 42:6	marketplace 13:3 30:9	notice 3:16	
job 6:5 9:2	load 28:22	markets 9:14	marks 9:14	noticed 1:15	
joint 10:24 25:11,12 26:18,19 30:2 38:25	loaded 27:3	marking 19:22,23	marking 19:22,23	novelis 29:8	
judge 1:7	loading 27:7	masters 6:22	material 16:13 17:16,19 20:1,4,6 20:7 22:15 23:5 24:6 27:4 28:11 28:13 29:3 30:25 31:9,10,12,18 32:6,15 33:5 35:1 37:25 38:5,21 39:12,17 40:18,25 41:2,12 42:8 47:11,15 48:12	number 8:9 47:11	
june 2:4 4:21 30:5 44:10 45:4	locally 32:6	material 16:13 17:16,19 20:1,4,6 20:7 22:15 23:5 24:6 27:4 28:11 28:13 29:3 30:25 31:9,10,12,18 32:6,15 33:5 35:1 37:25 38:5,21 39:12,17 40:18,25 41:2,12 42:8 47:11,15 48:12	mid 26:20	<hr/>	
junior 3:11	located 7:13 8:3,4 8:15 15:23 25:18 40:21	marketing 29:15 42:6	mill 41:13	O	
<hr/>	locations 25:24 26:2	marketplace 13:3 30:9	miller 2:2	o 1:10,10,20 2:7 3:4	
K	long 5:5,20	markets 9:14	minute 43:7	object 4:21 15:1 18:15 22:19 29:25 39:13	
keep 12:6	longer 43:13	marking 19:22,23	missed 36:14	objection 4:22	
key 32:25 33:6	longterm 29:7	masters 6:22	misstates 30:1	obligations 20:18	
kind 5:6 31:22 33:9	look 4:9 19:5 36:7	material 16:13 17:16,19 20:1,4,6 20:7 22:15 23:5 24:6 27:4 28:11 28:13 29:3 30:25 31:9,10,12,18 32:6,15 33:5 35:1 37:25 38:5,21 39:12,17 40:18,25 41:2,12 42:8 47:11,15 48:12	mixed 33:23 38:5	offer 25:3	
know 5:7 8:9 9:9 12:18 13:25 16:25 17:18 23:6,24 36:24 39:1 41:25 42:9 43:2,6,24 44:9 45:1,5,8,12 45:13 46:2,4,8,12 46:15,16,19,20,20 47:8,11,12	loose 28:13	marketing 29:15 42:6	modern 20:17	oh 18:1 26:21	
knowledge 3:25	lot 8:8 31:24 37:9	marketplace 13:3 30:9	moment 17:14,20	okay 4:5 5:20 6:5 6:24 7:4,12 8:14 12:15 13:18,19,23 14:8,14,19,22 16:1,8 17:3,9,11 17:20 19:1,11 20:20 21:2,19 26:13,21 27:21,24 28:15 29:16,19 32:18 34:10 36:1 36:2,13 37:24 39:11,19 40:23 41:1 42:13 44:15 44:18 47:2,17	old 13:1
known 29:6	<hr/>	marketing 29:15 42:6	morning 15:18		
kroger 11:11	M	marketing 29:15 42:6	mountain 36:9		
<hr/>	m 1:15 3:3 48:24	marketing 29:15 42:6	move 35:18 39:4,9		
L	machine 12:1 16:4 16:5,6,9,10,10 17:14 18:12 19:1 19:3,16,23 20:3 22:9 24:5 27:23 30:7 31:15 33:16 33:19,23 34:1,5,6 34:9,22,24 35:13 35:21 36:10	marketing 29:15 42:6	moved 24:8 26:16 26:17		
12:8	machines 9:24 10:7 10:10,11,17,18,21 12:7 15:22,23 16:3,12,18 19:5 20:4,14 23:18	marketing 29:15 42:6	moving 43:2		
label 21:17		marketing 29:15 42:6	msnardone 5 1:22		
labeled 10:6		marketing 29:15 42:6	multiple 17:5 19:7		
		<hr/>	N		
		materials 31:1	n 1:10		
		mean 7:22 23:7 31:16,16 37:17	name 2:12 3:9,12 3:18		
		meaning 20:2	named 43:21,24 47:7		
		meant 4:13 37:23	names 46:23		
		measurement 27:13	nardone 1:12,19		
		meijer 11:11 13:21 14:10 15:10,19,21			

refunded 20:9	45:22,25	separate 16:10,18	southern 6:22	system 13:1,2 22:7
regards 10:17	riegle 1:11 3:5,11	27:25 48:5,19	space 9:10 22:13	32:24 42:11
register 13:21 14:10	3:13,15,18 7:23	separated 36:10	speak 42:7	systems 7:11,12
22:3 30:14	15:3 18:17 30:3	separation 30:25	specific 3:20 4:24	10:4
registered 40:16	right 8:12 9:8 14:21	service 11:15 35:10	21:3 35:15 46:23	
49:19	15:17 17:7,12,23	42:6,12	specifically 11:2	T
registration 10:19	18:8 19:18,20	services 9:11 10:16	12:7 30:22 33:18	t 1:10
reject 31:15 35:25	20:10 24:25 28:3	11:1,2,5,6	43:3 47:10	table 5:8
rejected 19:13	29:24 30:5 31:7	set 16:12 49:7,15	spell 3:12	take 13:21 14:10
relates 39:15	31:15 32:2 33:15	seven 48:8	spot 29:6	15:14,18 17:11,11
relations 9:4	35:14,23 37:16,17	shape 17:21 18:7	square 1:14 2:2	19:15,16 28:13
relevancy 4:21,22	38:1,12,13 39:8	shards 41:9,22,23	ss 49:1	43:7 48:15
relevant 14:3 21:25	39:24 40:8 41:13	shatter 35:13	start 22:9	taken 1:12 3:15 4:3
remanuf 47:13	42:20	sheet 29:10	started 39:20	43:10 48:6 49:6
remanufacturing	role 32:25	shelton 8:16	state 1:1,7 3:9,19	talbot 1:7
29:4	rolled 29:10	shorthand 1:12,20	6:23 9:4,15,18	talk 26:22
remember 30:12	room 16:22	49:3,14,19	21:8 43:3 45:10	talked 11:6 17:17
remitted 45:10	rooms 15:24,24	show 30:16 46:13	48:13 49:1,5,21	24:20 31:3
remove 25:7	rules 3:17,17 4:6,24	shredding 36:21,22	states 9:5 18:20	talking 17:4 18:5,6
removing 41:12	5:11	36:24 37:3,11	stenographically	38:10
replaced 13:13	S	side 19:17	49:10	tax 36:25,25 45:1,6
report 8:25	s 1:10,12	sienfield 27:18,19	step 13:2 28:14	45:10 46:13,17
reported 49:10	sale 25:3,4 38:21	sight 25:8	36:14 41:6,11	team 44:11,22 45:4
reporter 1:13 4:15	39:21,23 40:2,3	similar 40:13	steps 22:16	technologies 9:11
49:4,19,19	46:3,9,11	simple 20:15	stop 5:3 44:12	technology 9:24,24
reporters 1:20	sales 45:1,6,6,10,11	simply 4:7,9 16:2	storage 22:13 24:8	13:4,7 16:16,17
reports 12:11	46:13,13,17	26:16 33:22 40:19	24:11,12 28:18	17:1 30:23 31:25
represent 3:19,21	salespeople 16:21	single 23:19 28:25	37:3,13,18 40:20	32:1 37:6
representation	save 22:13	sir 3:10	40:21	ten 6:3 12:3
44:22	saying 37:12,17	sister 7:20,22	store 16:20 23:17	term 17:19 21:2,3
representative 4:20	saying 32:19	sit 28:18,20	stores 15:21	39:17
request 4:23	says 22:4	site 24:23	storing 23:14	terms 7:24 10:20
requests 44:1,6	scanner 32:1	sitting 40:3	strategy 9:4	20:15
require 4:25 37:25	scenes 23:10	situation 14:7 27:18	strictly 32:8	testified 3:6 31:4
required 12:19	schupan 10:24	six 13:20 14:10	studies 6:25	testimony 30:1 49:9
requires 25:6 41:6	25:12,17,22 26:16	15:15 17:9 34:3	stuff 5:6,12 24:24	thank 43:1 47:17
responses 4:15 44:5	29:1,14,14,24	size 41:10,10	subject 43:25	thats 4:13 7:14
responsibility 32:12	42:5,12 47:5,8	soft 11:3 31:20 48:9	subsequently 49:10	10:23 18:6 20:5
responsible 9:3	schwartz 2:2	sold 16:23 17:6 21:4	subsidiary 7:11	20:10,10,14 21:5
retail 31:24	science 6:22,23	solid 6:4 48:13	subtle 19:25	21:24 22:22 24:19
retailer 11:10,19	scott 2:8 3:18 4:14	somebody 46:21	sue 49:18	26:24 29:17 31:23
12:1,3,5,10,14,23	seal 49:16	sorry 12:2 16:9	sued 3:24 43:3,15	35:15 37:12,24
13:9 14:15,17,19	second 47:19	23:2 31:19 36:25	suite 2:2	39:8,22,24,25
27:23	see 5:5 20:11 30:18	37:23 43:20	summers 2:4	40:1 41:7 47:16
retailers 9:13,20	31:5 32:1,21	sort 7:5 20:10 31:16	supermarket 12:18	48:8,10
10:18 11:7 13:4	35:24	33:18 36:12	12:23	theres 4:19 10:23
16:22 30:10 31:13	sell 17:25 38:17,19	sorted 24:7 27:4	supermarkets 11:12	18:20 25:18 30:23
return 14:7 20:18	39:1,2	34:20,21,22 35:6	17:4	31:5 32:13,22,23
27:15,16 33:24	selling 21:21 39:5,6	35:15 38:6 40:19	supervise 8:21	33:11 36:22 41:11
returned 31:6	sells 46:5 47:8	48:7,17	supervision 49:12	48:8
returns 13:14	senior 8:19	sorting 33:4,5,9,13	sure 10:20 11:11	theyll 33:16,17
reverse 10:11 15:22	sense 24:17 28:16	35:1 38:1	20:8 23:22 26:10	48:12
30:6 33:4 35:8	35:8 44:10	sound 45:19	27:2	theyve 30:18 42:12
reviewed 44:1,4		sounds 27:18 29:20	sworn 3:6 49:9	thing 22:17

RECEIVED by MSC 6/12/2019 3:38:23 PM

things 16:22	treasurys 44:5	30:18,20	15:6 18:20 23:1	2008 13:25 16:15
think 13:16 23:1	truck 27:7	vanderbilt 6:11,13	26:7 30:5 39:16	17:5 26:6 37:1
24:18 25:21 30:1	trucking 22:14	various 9:14	43:21,24 44:15,18	2015 1:15 3:2 49:16
30:21 36:9,14	true 16:16 20:7	vending 10:11	47:2 49:8,15	222 1:13 2:2
43:19 46:4 47:19	31:10 42:22 43:16	15:22 35:8	wixom 25:16	22nd 49:16
third 25:4 26:23	49:13	venture 10:24 25:11	wont 31:10	2440805 1:22
27:1 28:23 42:11	try 5:4,4	25:12 26:18,19	word 22:20 23:13	27603 1:20
three 16:13 41:19	trying 46:4	30:2 38:25	work 5:23 8:23 9:9	
throw 33:22	turn 34:2	verbal 4:15	38:24	<u>3</u>
time 13:25 14:5,21	twelve 22:4 24:21	verbalize 4:18	worked 5:20,22 6:3	3 2:13
26:5,12 42:16	34:10,16,17	versions 17:5	works 11:25	30736 2:7
47:10 49:6	two 16:13 25:15	versus 30:19	wrong 29:20 38:11	3490847 1:21
times 4:19	27:6 32:7,9	vicepresident 8:19		
tipped 28:5 40:17	type 9:18 11:14	volume 16:20 37:7	<u>X</u>	<u>4</u>
title 18:17	20:2 24:6 31:19	volumes 16:24,25		40 9:24
today 3:22 38:22	32:7,15	vs 1:6	<u>Y</u>	400 2:2
tomra 1:4 5:19,20	types 16:14,23 27:4		yeah 6:9 7:18 13:1	45 48:24
5:22 7:8,8,10,11	typical 38:3	<u>W</u>	18:1 23:12 29:18	47 2:13,14
7:12,19 8:2,2,3,4	typically 17:19 29:6	wake 15:18	32:21 35:20 37:14	48909 1:21 2:7
8:6,14,17,22 9:5,7	39:24	walk 13:16	39:16 48:6	48933 2:3
9:22,23 10:1,4,5	<u>U</u>	want 8:7,12 15:18	years 5:21,22 6:3	<u>5</u>
10:13,16,24 12:25	uber 10:25 24:9,14	25:21 26:3 30:12	9:25 13:3 36:25	517 1:21,22
13:13 15:8 17:25	25:13,16,16,22	34:2 39:4 41:3	36:25	<u>6</u>
18:12 19:15 25:9	27:9 28:5 32:23	wanted 42:3	youd 15:3,21 16:2,3	<u>7</u>
25:11,17,25 29:11	40:14,17	warehouse 28:20	16:5 23:20	7up 36:9
29:21 30:2,22	uhhuh 4:17 26:4	42:15	youll 14:12 16:7	<u>8</u>
31:10 34:5 37:21	understand 4:12,13	warehoused 21:7	35:24	<u>9</u>
42:17,18,19 43:3	4:14 5:10,14 22:5	washington 1:13	youre 3:24 13:25	90s 26:20
44:6 45:5,9,16	39:17 44:23	2:2	18:16 22:20 27:19	
46:2,4	understanding 7:22	water 6:4	30:2 38:5 39:14	
tomras 31:15	12:11 15:4 18:19	water 35:19	youve 16:3 20:2	
top 37:5	32:10	way 4:9 11:25 28:25	21:17 23:1,24	
track 12:6 22:6 46:2	units 41:16 42:2	37:10	29:8 34:17,18,18	
tracking 27:8,10	universal 10:19	ways 26:25	yup 5:24 11:8 13:15	
40:16	university 6:11,23	wednesday 1:14 3:2	14:21 17:8,13	
tractortrailer 27:9	upc 20:24 21:23,25	weighs 22:6	38:16 40:11 48:3	
28:22	31:5,9,11,22,23	weight 22:7 32:7,15	<u>Z</u>	
tractortrailers 27:3	33:19 34:8	went 13:19 23:18	<u>0</u>	
27:5	upcs 32:4	weve 20:12,23 22:3	00 1:15 3:3	
trade 31:24	usable 18:9	22:8 27:1 30:8	000 23:17	
transaction 11:18	use 12:25 17:19	37:6,8 41:8 48:6	<u>1</u>	
12:4 36:5 46:5,11	23:13 28:11 32:3	whats 42:15 44:8	10 1:15 3:3 48:24	
transcript 3:14	35:6 37:5 39:16	whereof 49:15	100 13:3 31:1	
49:13	47:13	wholesale 10:14	102418 49:22	
transcription 49:11	users 29:3 34:25	wholesaler 12:9	14 1:14 3:2	
transferred 28:7,8	35:2 47:7,11,12	14:17,20 15:12	14185mt 1:7	
transit 27:25	uses 36:7 47:15	24:14	1491mt 1:6	
transport 23:5	usually 41:4	wholesalers 9:13,21	15 5:21,22 23:17	
transportation	<u>V</u>	10:14 11:4 18:24		
28:14 29:24 30:6	validation 27:13	21:4 24:10	<u>2</u>	
36:19 37:13 38:3	value 12:5 14:13	wholly 7:10 25:25	2003 13:24 16:15	
treasury 1:7 3:21	20:25 22:7 30:10	william 3:11	17:5 26:6 36:25	
3:24 43:4,16 44:2		wine 11:4		
44:24 45:16		witness 1:11 3:23		

STATE OF MICHIGAN
IN THE COURT OF CLAIMS

Docket Nos.: 14-91-MT cons w/14-185-MT

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----- -X
TOMRA OF NORTH AMERICA,      :
      Plaintiff                :
                                :
VS                              :
                                :
DEPARTMENT OF TREASURY,      :
STATE OF MICHIGAN,          :
      Defendant                :
----- -X

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Deposition of JEFFREY MATTO taken at the offices of Tomra of North America, One Corporate Drive, Shelton, Connecticut, before Clifford Edwards, LSR, Connecticut License No. SHR.407, a Professional Shorthand Reporter and Notary Public, in and for the State of Connecticut on January 21, 2015, at 9:02 a.m.

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HARTFORD

NEW HAVEN

STAMFORD

1 dollar value, you know, factor to it that more clear
2 glass is worth more than more colored glass, but in
3 general, weight is going to drive -- you know,
4 aluminum is worth more than PET, but the weight is
5 the unit of measure.

6 Q Okay. And it's usually done by
7 individual cans.

8 Right?

9 A Yeah.

10 Q Or individual plastic bottles?

11 A The individual item that you are putting
12 through the machine.

13 Q Okay. Could you read the last sentence?

14 A "In addition, the container recycling
15 machine counts the number of containers of each
16 color and the raw material amount in value of the
17 containers within each bin."

18 Q Okay. Now, it speaks of a raw material
19 amount, and then it says "and value." What's the
20 difference between raw material amount and the raw
21 material value?

22 A I mean -- yeah -- to me, that's -- the
23 sentence is saying that it's going to give you a
24 count of the containers that went through of each
25 color, and then it's going to tell you the deposit.

1 You know, it will ask you for the deposit value as
2 well of the amount of raw material that would be
3 going through the machine.

4 Q So is it true to say that it's just a
5 tracking device?

6 A It's going to keep track -- yeah -- of
7 the number and weight of when -- what went through
8 the machine.

9 Q Are those numbers important for people
10 like Schupan?

11 A Well, they are also important to -- we
12 have -- for the billing mechanism of the deposit
13 that was paid back to you now has to get billed to
14 the distributor.

15 Q Okay.

16 A And so we need to say, hey, you know, you
17 owe -- Kroeger or Meijer or whoever -- this deposit
18 that they paid to the customers on your behalf.
19 That's got to be tracked, so all that's important
20 for the billing.

21 For the Schupan part or the material
22 processing part, you would -- yeah, to know the --
23 the weight, how much glass did you -- did you
24 take -- did you collect, I mean.

25 Q Okay. Now, before these reverse vending

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC.,

Plaintiff,

Docket No. 14-91-MT

HON. MICHAEL J. TALBOT

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

TOMRA OF NORTH AMERICA, INC.,

Plaintiff,

Docket No. 14-185-MT

HON. MICHAEL J. TALBOT

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

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AFFIDAVIT OF CHARLES W. RIEGLE, JR.

STATE OF VIRGINIA)
)ss.
COUNTY OF ALBEMARLE)

I, Charles W. Riegle, Jr. being duly sworn, depose and make this Affidavit upon personal knowledge of the matters contained herein.

1. If called upon, I can competently testify to the facts of this Affidavit.

2. I am currently employed as the Senior Vice President of Government Affairs for TOMRA of North America (“TOMRA”) and have been in this position since 2005. I have been employed by TOMRA since 2000. I was previously employed as the Director of Business Improvement for TOMRA. My duties and responsibilities include responsibility for government and industry affairs and corporate responsibility. I work on identifying new markets through public policy and stakeholder initiatives. I am a key spokesperson for the company.

3. I was previously employed as Director of Solid Waste & Recycling for the City of Norwalk, CT from 1990 through 2000.

4. In the course of performing my duties and responsibilities, I am familiar with TOMRA’s business activities in the State of Michigan, the system used within Michigan for bottle deposit redemption and container recycling and the companies that are involved in each of these activities. The statements below are true for all of the tax periods in issue October 1, 2003 through December 31, 2008.

5. TOMRA provides technologies and services that facilitate the recycling of used beverage containers.

6. TOMRA sells container recycling machines, also known as reverse vending machines, and parts thereto, to customers in Michigan. TOMRA Systems ASA manufactures the container recycling machines and parts resells those machines and parts to TOMRA and TOMRA sells those machines and parts to customers in Michigan.

7. During the tax periods in issue, the only products that TOMRA sold to its customers in Michigan were container recycling machines and related parts. TOMRA did not sell any other items of tangible personal property.

8. The Container Recycling Machines are the first step in recycling aluminum, plastic and glass containers into new aluminum, plastic and glass containers for reuse and resale.

9. An overview of Michigan beverage container recycling is provided by the video at www.growmirecycling.com.

10. The used beverage container recycling industry has studied the effectiveness and costs of recycling beverage containers and has determined that use of container recycling machines in a deposit system are a highly efficient method of recycling used beverage containers with a net cost of 1.13 cents per container in 1999. If unredeemed bottle deposition revenue is counted as a cost factor, use of container recycling machines shows a net surplus of .28 cents per container. *Understanding Beverage Container Recycling*, Resource Recycling February 2002, a true and correct copy is attached as Exhibit A hereto.

11. Container Recycling Machines receive, sort, inspect, perform quality control, production material handling, and otherwise engage in activities that are steps in the recycling process.

12. During the tax periods at issue, the Container Recycling Machines sold or leased to customers in Michigan accepted glass, aluminum or plastic containers, the combination of

aluminum and plastic containers or all three container types.

13. The Container Recycling Machine inputs the containers performs inspection, quality control and testing on the container to determine whether the container conforms to specific parameters.

14. The process begins by placement of a used beverage container on conveyer belt that moves the container into the machine and triggers the advanced sorting technology to process the containers. The machine rotates the container and scans the universal product code (UPC) triggering material recognition. The machine is preprogramed to read the UPC code and determine if the container is an acceptable returnable container in accordance with the Michigan Bottle Deposit Law and the parameters of the TOMRA customer.

15. The Container Recycling Machines determine acceptability of a container for the deposit system and also for recycling purposes.

16. TOMRA's container recycling machines sold or leased to customers in Michigan are programed to ensure that the containers accepted by the machine are only those allowed and required to be accepted under the Michigan Beverage Containers, Initiated Law 1 of 1976, MCL 445.571 et seq. (hereinafter the "Bottle Bill").

17. In the course of executing my duties and responsibilities I have become familiar with the requirements of the Michigan Bottle Bill and other Michigan law related to bottle deposit and recycling requirements.

18. Under the Michigan law, a TOMRA customer that is a retailer or grocer is only required to accept for recycling and deposit refund, those brands that the customers sells.

19. After the Container Recycling Machine scans the UPC code, if a container is not an acceptable refundable container because the retailer or grocer does not sell that type of

container, the container is rejected.

20. If a container is not an acceptable refundable container because the container is not a refundable container under the Michigan Bottle Bill, the container is rejected.

21. The Container Recycling Machine will also reject and return a container if it is not an acceptable material. For example, steel cans will be rejected by all container recycling machines as steel is not an acceptable material for recycling through the container recycling machine. Containers will also be rejected if they are fed into an incorrect machine. Aluminum cans will be rejected by a glass container recycling machine.

22. The person putting the containers into the machine will receive a receipt indicating the number of containers accepted for processing and a statement of the bottle deposit due to the person.

23. Once the containers have been analyzed and found acceptable, the Container Recycling Machines use the information from the UPC code and the information programed into the machine to determine the material content of the container, the amount of material content, the weight of the container and the color of the container. This information assists in proper sorting of the containers by material and color. In addition, the machine records the information to keep track of the number of containers accepted, the material content of containers, the weight of each material type and to colors of each container type accepted. For example, a Container Recycling Machine that accepts aluminum, glass and plastic will keep a total of the number of each type of container accepted, the material weight and colors.

24. The Container Recycling Machine captures information that enables TOMRA to attribute a raw material value to the container as well as a deposit return.

25. The Container Recycling Machine also processes and maintains UPC information

which is used to identify the deposit originator, typically a beverage wholesaler, distributor or bottler, for each type of container.

26. After the Container Recycling Machine has collected this information, the containers are sorted by material content into aluminum, plastic and glass for machines that accept all three types of containers. If the machine only accepts plastic and aluminum, the containers are separated between these two content types. If the machine only accepts one type of container type, the machine conducts the processing and sorting for that material type as discussed below.

27. Glass containers are separated by glass color into clear, green and amber (brown).

28. Aluminum cans are crushed and moved to an in-process bin within the Container Recycling Machine. The bins are referred to as Gaylord bins. A Gaylord bin can store 15,000 compacted aluminum containers.

29. Plastic bottles are sorted by color, and then punctured in a waffle pattern and compacted.

30. The sorted and compacted materials are then moved to an in-process bin for each type of sorted material.

31. Glass containers are sorted by color and moved to separate Gaylord in-process bins.

32. The sorted and processed containers are then transported by to a processing plant where each type of container is further processed.

33. Under Michigan Bottle Law, the deposit initiator is required to transport the containers from the initial processing retailer site. Transportation is typically provided by UBCR or the deposit initiator.

34. The primary transporter is UBCR, LLC, a joint venture formed in 1997 between Schupan Recycling and TOMRA, as an industry solution for improving container recycling processing and handling. UBCR services all Container Recycling Machine manufacturers in at least 600 Michigan stores.

35. UBCR is Michigan's exclusive third-party pick-up and processing agent for the Michigan Soft Drink Association and the Michigan Beer and Wine Wholesalers Association.

36. UBCR picks up the sorted and processed containers in Gaylord bins and transport and unloads those materials and transfers them to Schupan Recycling.

37. During the tax periods at issue, Schupan Recycling was the largest independent processor and broker of used beverage containers in the U.S. with a brokerage office in Chicago.

38. Schupan Recycling had facilities in Milford, MI and Wyoming, MI where further processing occurred. The Gaylord bins are tipped or dumped onto a conveyor belt. The compacted aluminum cans are transferred into a baler to further compact the aluminum. The baler is a large compression chamber that further compacts the aluminum into a bale.

39. In Michigan during the tax periods in issue, Schupan Recycling acted as the marketer on behalf of the deposit originators for sale of container materials to beneficiators/reclaimers and end users who turned the container materials into remanufactured products.

40. During the tax periods in issue Schupan Recycling had contracts with companies like Novelis, Alcoa and Coca-Cola Recycling for purchase of aluminum from returnable aluminum containers; Glass Recyclers, a glass beneficiator who in-turn sold to Owens Illinois and Veralia for purchase of sorted glass from returnable glass containers and a variety of plastic reclaimers who converted plastics into solid state pellets for use to manufacture bottles,

carpeting, automotive parts, and higher end uses for purchases of plastic by color for returnable plastic containers.

41. Container recycling machines initiate the recycling process by conducting quality control, material separation and compaction. These processing steps reduce subsequent recycling costs and ensure 100% recyclability of the containers through the process. Material sorting is a key component of recycling process that effects the profitability of recycling process and the useability of the resulting materials because it preserves the quality of the material and allows the materials to be used for higher end re-uses.


42. There is national demand for aluminum, glass and plastic that results from used container recycling.

43. The used beverage containers that enter the Container Recycling Machines sold or leased by TOMRA during the tax periods in issue were recycled through a process that ends up with the plastic, aluminum or glass sold to companies that use these materials to produce new containers or other products for sale.

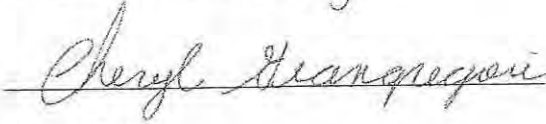
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Further, Affiant sayeth not.

Dated: February 11, 2015


Charles W. Riegle

Subscribed and sworn to before me
this 11 day of February, 2015



Notary Public

Fairfield County, Shelton

My Commission Expires: June 30, 2015

CHERYL L. GIANGREGORIO
NOTARY PUBLIC
MY COMMISSION EXPIRES JUNE 30, 2015

16062258.2

Understanding beverage container recycling

Strenuously debated for 30 years, the effectiveness and costs of recycling beverage containers — in deposit and nondeposit systems — are illuminated in a landmark report,

by Edward Boisson, et al.

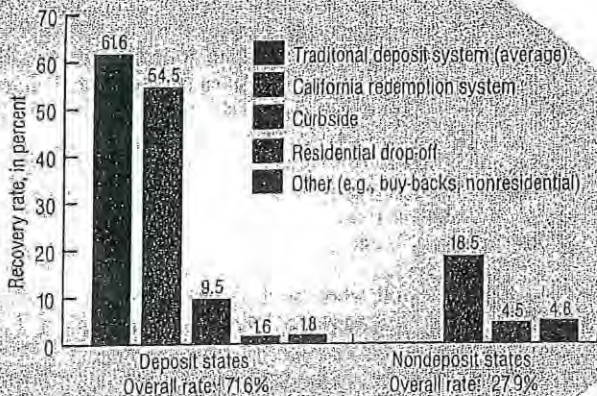


Figure 1 Beverage container overall recovery rates

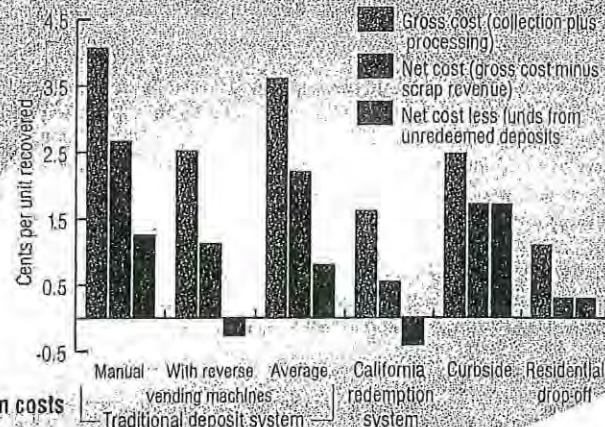


Figure 2 Beverage container recovery program costs

Source: Multi-Stakeholder Recovery Project Consulting Team, based on numerous sources, 2002.

The debate over bottle bills and other beverage container recycling policies is among the oldest and hardest fought in the recycling arena. For more than 30 years, environmentalists and beverage industry representatives have battled in state legislatures and through campaigns designed to influence the public and decision-makers. Since 1971, 10 states and one city have adopted some type of deposit legislation, and each year dozens of bills are introduced to establish new programs or to expand, repeal or adjust existing systems. This debate has become increasingly polarized in recent years as growth in municipal recycling services has stalled, recycling rates have begun to fall and interest in producer responsibility has grown.

From May to December 2001, representatives of 13 organizations representing different sides of this issue worked closely in an effort to agree on the facts and to identify appropriate solutions to the beverage container recycling dilemma. The effort, the Multi-Stakeholder Recovery Project, Stage One, was spearheaded by Businesses and Environmentalists Allied for Recycling (Atlanta), a project of Global Green USA (Santa Monica, California). Although the group has yet to agree on a particular policy, Stage One resulted in a report documenting the costs, benefits and effectiveness of U.S. recovery programs in the study year 1999. This article presents a synopsis of the report findings.

Who participated in the project?

The task force includes 13 companies, environmental organizations and government agencies. Each representative agreed in advance to abide by the project charter, including a set of 11 principles laying

out the project's fact-based approach. Among other things, the principles called on participants to look at the widest possible range of policies and practices in an effort to achieve the project objective — identifying a recovery program that ultimately could double the national beverage container recycling rate. Task force members include: Beaulieu of America (Dalton, Georgia); Coca-Cola North America (Atlanta); Container Recycling Institute (Arlington, Virginia); EvCo Research, LCC (Atlanta); Global Green USA; GrassRoots Recycling Network (Athens, Georgia); Minnesota Office of Environmental Assistance (St. Paul); New Value Partners (Atlanta); PureTech Plastics (East Farmingdale, New York); Southeastern Container, Inc. (Enka, North Carolina); Tomra North America (Stratford, Connecticut); Waste Management, Inc. (Houston); and the Westchester (New York) County Department of Environmental Facilities. A broader 24-member advisory committee also was formed to review interim draft reports and increase awareness of the study approach.

Scope of the report

The study provides a snapshot of U.S. beverage container recovery programs in 1999, documenting generation and recovery trends, envi-

This article was prepared by Edward Boisson, principal, Boisson & Associates (Pittsboro, North Carolina), Chuck McLendon of R.W. Beck (Orlando, Florida), Bill Franklin of Franklin Associates, Ltd. (Prairie Village, Kansas), John Stutz of the Tellus Institute (Boston) and Jeff Morris of Sound Resource Management Group, Inc. (Seattle). The authors may be reached through Boisson at (919) 968-4077 or eboisson@att.net.

ronmental and social benefits of recycling, and recovery program costs and effectiveness. Beverage containers are defined broadly as the primary container types used to package beverages for shipment to consumers. Aluminum, glass, PET and HDPE plastic containers are specifically covered. The report is a first step towards a collaborative understanding of the beverage container recycling issue. It is important to note that, although discussed at length during the project, the report does not recommend any particular program, analyze end-use markets, project the costs and impacts of replicating or expanding existing programs, nor address program implementation concerns. Also, the report focuses on recycling, rather than use of refillables or other strategies.

Generation and recovery trends

The report documents what both industry and environmental sources already have acknowledged — beverage container recycling rates are declining. In 1999, approximately 192 billion beverages were sold in the U.S., with about 78 billion beverage containers recycled, for a 41 percent recycling rate (or about 30 percent measured in tons). Rates for each material type have been slipping in recent years.

Benefits of recycling

Using statistics from the U.S. Environmental Protection Agency (Washington), the team estimated environmental benefits associated with overall beverage container recycling in 1999. For example, recycling saved 147 trillion Btu of energy (equivalent to over 32 million barrels of oil) and avoided over four million metric tons carbon equivalent in greenhouse gas emissions. Reduced air and water emissions also were documented, based on the Municipal Solid Waste Decision Support Tool developed by Research Triangle Institute for EPA. The study also estimated litter reduction (at nearly 800 million containers litter avoided) and noted important economic benefits associated with recycling.

Basis for comparing effectiveness and cost

Much of the report compares recovery programs in terms of costs and effectiveness. Comparing effectiveness is complicated because of significant differences in programs, such as the types of containers accepted, the impact of deposit programs in reducing the number of containers available, participation rates, and the yield loss during collection and intermediate processing. The study accounts for these factors by using a single measure, the overall recovery rate typically achieved by each program. The overall recovery rate, as presented in Figure 1, measures the percentage of all containers generated in a given area that typically are recovered by a program, allowing for apples-to-apples comparisons.

Figure 2 shows three distinct measures for comparing costs, each presented in cents per container recovered. *Gross cost* refers to the total operational costs associated with collecting, processing and shipping containers to market. (Consumers' costs to deliver containers to drop-off or redemption centers are not included.) *Net cost* refers to gross cost minus revenue from material sales, using two-year average values. And, finally, *net cost minus funds from unredeemed deposits* is calculated for deposit systems (using typical deposit amounts and redemption rates representative of existing deposit systems). Transfer payments, such as the handling and processing fees assessed in some deposit states, are discussed in the report but do not affect bottom-line operational costs used to compare programs, since they are a cost to one party and a benefit to another.

Although recovery programs can vary tremendously from one location to another, the consulting team determined the results reported are representative and typical and can reasonably be used to compare programs. It is important to note that participants did not reach consensus on the most appropriate basis for comparing programs. Some argued strongly for or against using gross, net or net-minus-unredeemed-funds in cost comparisons. And, some argued that the most appropriate measure would incorporate the monetary value of social and environmental benefits, or the costs of not recycling, neither of which was calculated in the report.

Traditional deposit systems

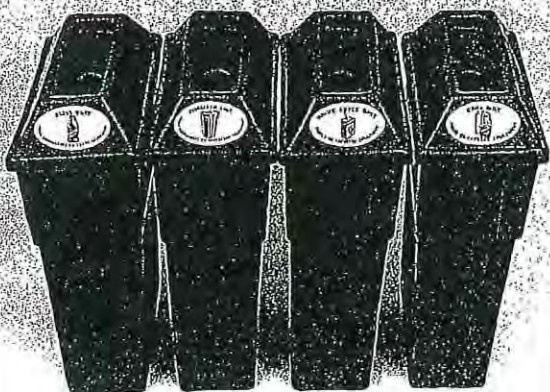
Traditional deposit systems are the "bottle bills" adopted in nine states that rely primarily on return-to-retail and require sorting containers by brand. Traditional deposit systems result in the highest overall recovery rate. In 1999, they typically targeted beer and carbonated soft drinks (about 79 percent of all beverage containers) and achieved an average redemption rate of 78 percent for these container types, resulting in an overall recovery rate of 61.6 percent.

On average, traditional deposit systems have the highest gross and net costs at 3.61 and 2.21 cents per container, respectively. However, in 1999, about 30 percent of all containers redeemed through traditional deposit systems involved use of reverse vending machines, with the remaining 70 percent involving "manual" systems operated by staff at retail stores or redemption centers. Reverse vending machines, with gross costs of 2.53 cents and net costs of 1.13 cents per container, are less expensive than manual systems, with gross and net costs per container of 4.07 and 2.67 cents, respectively.

Some argue that deposit systems should be evaluated based on net costs minus funds from unredeemed containers, since these funds are an inherent by-product of any deposit system. Others argue that this is an unfair comparison since unredeemed deposits represent payments from consumers and are therefore a form of transfer payment. If unredeemed deposit revenue is "counted," the hierarchy of costs changes with traditional deposit systems' cost reduced to 0.80 cents, lower than the net costs for curbside recycling. On average, deposit systems based on reverse vending machines show a net surplus when unredeemed deposit revenue is counted. Deposit systems typically yield the highest material quality, with correspondingly high value.

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Implications of the analysis

The task force discussed the implications of the Value Chain Assessment at length, exploring three types of broadly defined programs: deposit-based systems, especially "modified bottle bills" that seek to improve on the traditional bottle bill model; nondeposit-based systems that use a funding mechanism to provide appropriate incentives to drive recovery and markets; and consensus-based approaches emphasizing cooperative projects designed to incrementally boost recycling while building support for more aggressive, long-term approaches. Task force members did not resolve their differences about these programs, and have yet to agree on a particular program. However, the following conclusions are offered to guide future efforts:

New systems should both strengthen existing programs and support a range of new recovery mechanisms. Existing recovery programs of all types should be strengthened, for example, by optimizing operations or ensuring a sustainable funding source. But the potential to increase recovery rates

solely through existing municipal curbside collection programs, for example, is low because only a limited percentage of households currently are served, and appropriate financial incentives are not in place. New programs are needed that target recovery from a range of locations everywhere beverages are consumed.

Financial incentives should be established to ensure the long-term sustainability of high recovery rates and strong markets. The report indicates at least four distinct areas in which incentives should be explored for improving recycling rates and programs. They include incentives to:

- motivate consumers to participate in recycling programs
- encourage entrepreneurial recycling companies to design new and innovative collection programs
- encourage beverage container producers to design packaging that minimizes recycling costs
- encourage producers and other manufac-

turers to use recovered materials as raw material feedstock.

Although task force members agreed on the importance of financial incentives, consensus was not reached regarding who should pay and how incentives should be structured.

New Initiatives, whether focusing on new or existing programs, should be able to significantly increase beverage container recovery at relatively low per-unit costs.

The report presents a snapshot of U.S. recovery programs in 1999 and does not address implementation concerns, but it does suggest some intriguing possibilities for the future. For example, deposit system costs can be reduced by using reverse-vending machines, by using a central fund to eliminate the need for brand sorting, and by relying to some extent on existing recycling infrastructures (both municipal and private). Further, widespread agreement exists that many municipal curbside collection programs and intermediate processing facilities could operate far more efficiently.

California's redemption system

Adopted in 1986, the California redemption system is a unique deposit program in which return to retail is de-emphasized in favor of existing buy-backs and "convenience zone" recycling centers established near retail stores. Unlike traditional deposit systems, the California program is administered by a state agency and does not require sorting by brand or return to beverage distributors. In 1999, the California program targeted approximately 79 percent of all container types and achieved a redemption rate of 69 percent of these container types, for an overall recovery rate of 54.5 percent. Gross unit costs were 1.62 cents and net costs were 0.55 cents per container recovered. If unredeemed deposit revenue is included, California shows a net surplus of 0.42 cents per container recovered.

Project participants scrutinized the surprisingly low California system costs. Reasons for the low cost include the reliance on so called "old-line recyclers" (buy-back centers that existed prior to the 1987 redemption law) and other independent recycling collectors established since the program's inception. These facilities, presumably profitable before the law, have extremely low operating costs. Furthermore, unlike traditional deposit systems, the program does not require sorting by brand or distributor.


The California cost results indicate some possible avenues for significantly reducing the costs of deposit systems. However, anticipating that some will respond to the reported low California costs by advocating for adopting the California system in other states, critics have cautioned strongly that three important facts about the California system must be considered. First, many businesses in California have voiced concern about the program's complexity and fairness, as reflected in a constant stream of litigation and legislation since the program's founding. Second, some believe no other state has an existing network of buy-back centers as California does (though this is undocumented). Finally, the California system was expanded significantly in 2000 to include virtually all beverage containers, and this has caused a reduction in the percentage of containers redeemed and an increase in unit costs. Since the study year is 1999, these factors are not captured in the report's program comparisons (although they are discussed).

Curbside programs

Curbside programs often accept nearly all beverage container types, but are limited almost entirely to containers generated in residences


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(estimated at 75.7 percent of all containers in this study). The percent of population with access to curbside recycling collection varies from 76 percent in the deposit states to 61 percent in nondeposit states, and the typical participation and capture rate is about 50 percent. Yield loss during intermediate processing is assumed to be 13 percent across the board for beverage containers. In deposit states, on average, 61.6 percent of containers are unavailable to curbside programs because they already have been redeemed. Adjusting for these variables, curbside programs have an overall recovery rate of 9.5 percent in deposit states and 18.5 percent in nondeposit states. Typical curbside programs collecting commingled beverage containers have a gross cost of 2.48 cents, and a net cost of 1.72 cents per container. Curbside costs were calculated for nondeposit states, and the report does not include separate cost estimates indicating the impact of deposit systems on curbside operations.

Drop-off programs

Residential drop-off programs result in the third highest level of recovery, though far less than deposit and curbside programs. Like curbside, drop-off programs typically accept all types of plastics, glass and aluminum beverage containers and are limited almost entirely to containers generated in residences. About 60 percent of the population in deposit states and nearly 65 percent in nondeposit states have access to residential drop-off programs. They recover 5 to 10 percent of the beverage containers generated in targeted residences. The yield loss assumed in this study is 5 percent during intermediate processing. And, in deposit states, approximately 61.6 percent of all containers are unavailable because they already have been redeemed. Adjusting for these factors, drop-off programs achieve overall recovery rates of 1.6 percent in deposit states and 4.5 percent in nondeposit states. Residential drop-off programs typically have the lowest gross cost at 1.10 cents per container, and the net costs including material sales revenue are about 0.3 cents per container. The net cost of drop-off programs is particularly sensitive to the quality of materials, which is extremely variable.

Other types of recovery programs

All other programs not covered above combine to recover slightly more containers than residential drop-off programs. Other programs include nonresidential and buy-backs. Nonresidential is a catchall category for recovery programs operated in commercial businesses, schools, universities, work places and public venues. Buy-back centers typically are privately operated facilities that pass on a portion of a material's market value to those taking materials to their facility. (Many buy-

The challenge of product stewardship in the U.S.

One of the most promising lessons learned in this project is that individuals with strongly opposing views can work cooperatively and agree on much of the data describing recycling. Another important lesson is that getting these individuals and their organizations to agree on how to interpret and act on those facts is extremely challenging. Because their views are firmly established and passionately held, organizations of all political persuasions are reticent to accept language that may compromise their adopted position or that does not expressly lend it support. This is why the sought-after "value shift" breaking the recycling policy logjam must be achieved incrementally. Notwithstanding the recent multi-stakeholder agreement involving carpet recycling (see "Carpet Recycling Afoot" in the issue), this dilemma may haunt other product stewardship efforts in the U.S., such as those targeting electronics, paint and other products.

Following are some additional lessons learned through this project that may be useful in other product stewardship dialogues, as seen by the project manager:

- ◆ **Chart the course and stick to it.** Before initiating the dialogue, ask participants to agree to a project charter defining clear objectives, participation ground rules and

principles. Hold each participant accountable to his or her commitments and adjust the charter as appropriate before each subsequent stage.

- ◆ **Air dirty laundry and move on.** Ask participants to identify their biases and assumptions early on, in terms that everybody can understand. Ask them to consider what they can learn from opposing viewpoints.
- ◆ **Relentlessly keep to the facts.** Ground the discussion firmly on a fact-based foundation. Ask participants to back up controversial positions with data.
- ◆ **Focus all eyes on the ball.** Avoid nonessential debate by structuring multi-stakeholder discussions solely around desired outcomes, relying on an accepted team to research and present facts in an unbiased way.
- ◆ **Keep the door open to new information.** Product stewardship is controversial and complex, and new data are likely to appear even after interim agreements are achieved. Hold firm on research results and interim agreements, but use inevitable disputes over facts as an opportunity to refine the analysis and broaden consensus.

—Edward Bolsson

back centers in California operate as certified redemption centers and are covered in this report under that program.). Due to a lack of data and high variability, these programs could not be compared based on costs or on many of the effectiveness variables.

Observations on deposit and nondeposit-based systems

Many participants noted that recovery programs do not operate in isolation. Rather, they combine to form a system in any given geographic area. The most important distinction in systems is between deposit states and nondeposit states, since deposit systems have a high overall recovery rate that reduces the availability of containers to other recycling programs (see Figure 1). In 1999, deposit states, with about 29 percent of U.S. population, had a combined overall recovery rate of about 71.6 percent, compared to 27.9 percent in nondeposit states, which have 71 percent of U.S. population. Another important observation is that funding responsibility varies significantly. Funding for deposit systems comes largely from industry (through handling fees, processing fees or direct operations), consumers (through unredeemed deposits) or retailers (through operations). Curbside and drop-off program funding is largely from tax assessments, solid waste and

recycling fees, and other local government funding mechanisms.

Next steps — need for continued dialogue

Project participants view the report as an important first step, but not the last step, in the effort to collaboratively identify an "optimal" beverage container recycling policy. Interest in continuing discussions remains strong, and the report can serve as an effective starting point. Future efforts will need to address markets, concerns over implementation and the projected costs and impacts of new or expanded future programs. Perhaps most fundamentally, the question of how to allocate funding and other responsibility must be solved, ensuring that future dialogues will remain lively and vigorous.

The project has shown that if stakeholders agree to work through issues in good faith, they can agree on the facts. The challenge is in converting facts into action, and in overcoming the inertia of 30 years of hard battle.

RR

Understanding Beverage Container Recycling: A Value Chain Assessment Prepared for the Multi-Stakeholder Recovery Project, Stage One, is available on the Global Green USA Web site at www.globalgreen.org/bear.



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April 13, 2015

VIA CERTIFIED MAIL

Customer Contact Division
Michigan Department of Treasury
Lansing, MI 48930

RE: TOMRA of North America, Inc.
Acct #: [REDACTED]
Tax Period: March 2011 – December 2011
Request for Claim of Refund of Michigan Sales and Use Taxes

Dear Sir or Madam:

TOMRA of North America, Inc. ("TOMRA") hereby requests a refund of sales tax paid in the amount of \$673,511.65 and use tax in the amount of \$24,992.95 for a total refund of \$698,504.60 for the periods of March 2011 through December 2011. This refund request includes all sales and use taxes reported and paid to the Michigan Department of the Treasury on TOMRA's monthly return filed for the period of March 2011 through December 2011.

TOMRA Acknowledges Its Duty to Repay Erroneously Collected Sales Tax to Its Customers
As explained comprehensively below, sales tax collected from TOMRA's customers during the period was collected in error because TOMRA's sales of Container Recycling Machines in Michigan are exempt pursuant to the industrial processing exemption. Therefore, TOMRA should not have collected sales tax from its Michigan customers. TOMRA acknowledges that all Michigan sales taxes refunded by the Department must be paid to the relevant customers from whom the tax was collected. TOMRA will provide documentary evidence to the Department within 30 days of receiving the refunds from the Department proving that 100% of the sales tax refund received by TOMRA was in turn refunded to TOMRA's customers.

TOMRA's Container Recycling Machines Are Exempt Under Michigan Tax Law
TOMRA's Container Recycling Machines are used to collect and then crush used beverage bottles and cans and reconstitute them into raw materials that are used by manufacturers to create a variety of recycled products. Sales and leases of these machines in Michigan are exempt based on the industrial processing exemption. Michigan provides an exemption from sales tax for certain items sold that are used in industrial processing, including machines and equipment used in industrial processing activities,¹ where "industrial processing" expressly encompasses the "[r]ecycling of used materials for ultimate sale at retail or reuse."² The Container Recycling Machines sold by TOMRA fit the machinery definition provided in the industrial processing exemption statute squarely, as the

¹ Mich. Comp. Laws Ann. § 205.54t(4)(b) (where exempt equipment includes "[m]achinery, equipment, tools, dies, patterns, foundations for machinery or equipment or other processing equipment used in an industrial processing activity and in their repair and maintenance).

² Mich. Comp. Laws Ann. § 205.54t(3) and (3)(i).



Customer Contact Division
Michigan Department of Treasury
April 13, 2015
Page 2

machines are used in the recycling of used materials for ultimate sale or reuse. TOMRA's customers additionally fit the "industrial processor"³ description, because they convert and condition the cans and bottles placed in their machines into the processed material sold to manufacturers producing new products from the recycled materials. The spare parts on which TOMRA self-assessed and reported use tax in March 2011 through December 2011 are also exempt pursuant to the Michigan industrial processing exemption. These parts are only used for the repair and maintenance of the exempt machines, therefore the use of these parts in Michigan is also exempt.

Enclosed is a copy of each monthly Michigan sales and use tax return for the periods March 2011 through December 2011 along with supporting documentation. Also enclosed are copies of checks in which the remittance was made by TOMRA to the Michigan Department of the Treasury for ten months.

In addition, enclosed are copies of our power of attorney should further discussion be required.

If you have any questions regarding the content or methodology used in computing the amounts presented on the returns, please call me at (860) 297-5033.

Very truly yours,

KPMG, LLP

Andrew Koutroumanis
Manager, State and Local Tax

AK:emd
Enclosures

cc: Andy Hollyer, TOMRA of North America, Inc.
Jeff Matto, TOMRA of North America, Inc.
Rick Hill, KPMG LLP

³ Mich. Comp. Laws Ann. § 205.54(7)(b) ("Industrial processor" means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.").

Tomra North America, Inc.
Michigan Sales and Use Tax Refund Claim
Periods: March - December, 2011

Period	Sales Tax Paid	Use Tax Paid	Sales Tax Refund Claimed	Use Tax Refund Claimed	Refund Amount
March	71,390.14	2,172.16	71,390.14	2,172.16	73,562.30
April	84,640.51	1,849.43	84,640.51	1,849.43	86,489.94
May	54,195.85	2,534.27	54,195.85	2,534.27	56,730.12
June	43,182.56	3,126.43	43,182.56	3,126.43	46,308.99
July	45,440.41	2,897.86	45,440.41	2,897.86	48,338.27
August	151,170.61	3,243.29	151,170.61	3,243.29	154,413.90
September	128,051.01	2,359.44	128,051.01	2,359.44	130,410.45
October	30,196.40	1,482.33	30,196.40	1,482.33	31,678.73
November	30,596.53	2,618.81	30,596.53	2,618.81	33,215.34
December	34,647.63	2,708.93	34,647.63	2,708.93	37,356.56
Total	673,511.65	24,992.95	673,511.65	24,992.95	698,504.60



Driving the Successful Michigan Deposit System

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Video: The UBCR Advantage

See why the UBCR system is the superior method of handling used beverage containers.

[Request parts or service here.](#)

Video: Handling Deposit Containers

The video is intended to help retailers maximize their storage space and handle deposit material in the most efficient way possible.

06:17



Cleaner. Safer. Simpler.

There are many benefits of the Third-party Pickup Program to retailers:

- **Simplify the storage** of used beverage containers in your retail back room by using large-volume, stackable gaylord bins, provided FREE by UBCR.
- **Create a safer work environment** by eliminating glass sorting.
- Regularly scheduled pickup of full gaylords by UBCR trucks means that stores need only devote a **minimum of back room space** for UBC storage.

The program was designed by a collaboration of retailers, wholesalers and recycling processors in the 1980s to improve efficiency of pickup, material processing and accounting. Today, almost 30 years later, the program is working successfully for more than 600 Michigan retailers.

To qualify for the Third-Party pickup program, retail stores must:

1. Have RVM redemption technology capable of providing UPC detail on all containers serviced by the program for downloading into the UBCR accounting and information system.
2. Redeem over 750,000 containers annually.
3. Be located within 200 miles of the UBCR Wixom or Grand Rapids processing facilities.
4. Have secure inside storage space capable of storing a minimum of 20 Gaylord bins.
5. Provide a dock or receiving door access during scheduled pickup times.
6. Provide a dedicated data line (or make arrangements for weekly electronic transfer of necessary data) to the accounting system.
7. Have signed acceptance of these guidelines.

For more information, contact Nick Kronsbein, General Manager at 248-529-2600 or [send Nick an email](#). Thank you.

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4820 Holtz Drive | Wixom MI 48393 | Office: 248-529-2600 | Dispatch & Customer Service: 888-422-7404

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Romney Building, 10th Floor
Lansing, Michigan 48909
Phone: 517/373-6466

BUSINESS TAXES: GOV. 'S PROPOSAL

**House Bills 4744 and 4745 as enrolled
Public Acts 117 and 115 of 1999
Sponsor: Rep. Nancy Cassis**

**Senate Bill 544 as enrolled
Public Act 116 of 1999
Sponsor: Sen. Mike Rogers**

**House Committee: Tax Policy
Senate Committee: Finance
First Analysis (7-16-99)**

THE APPARENT PROBLEM:

Single Business Tax. Governor Engler has proposed a 23-year phase-out of the state's single business tax (SBT), along with a number of related business tax proposals. The SBT, in effect since 1975, is a unique value-added tax based on business activity rather than, say, corporate income (profits) or gross receipts. Reportedly, no other state has a tax like it. (See Background Information.) It brings in about two-and-one-half billion dollars in revenue each year from some 90,000 taxpayers (out of an estimated 250,000 businesses in the state). Critics charge that it is a complicated, confusing, onerous, anticompetitive, burdensome tax that penalizes job creation and discourages economic development. Business representatives are offended that companies must pay taxes even when they do not make a profit; owners of smaller businesses complain that compliance costs, including accounting fees, can outstrip tax liability. Some others, including defenders of the tax, say that the SBT has been amended too often in ways that contradict its underlying theories, in particular by narrowing the base of the tax and reducing the number of businesses with tax liability. Critics also point out that it has been subject to a great deal of litigation -- "a lawsuit magnet", one business spokesman has called it -- and some people fear that the current capital acquisition deduction (CAD) in the SBT act will not stand up to a constitutional challenge. In announcing his proposal to phase out the SBT, Governor Engler said, "This will be a major new incentive for investment. We will make Michigan more competitive and attract thousands of new, high paying jobs to Michigan instead of other states or countries."

Apportionment/Industrial Processing. In Michigan Bell v Department of Treasury, a 1998 Michigan Court of Appeals case, the court ruled that the treasury department had no statutory authority for its practice of apportioning the exemption for telecommunications equipment based on exempt and non-exempt uses of the equipment. It supported the reasoning of the Michigan Tax Tribunal, which had said the equipment should be entirely exempt because "the equipment is used from the very outset and constantly thereafter for exempt purposes and the exempt use is substantial." State tax officials have expressed concern about the effect of this reasoning, especially if it is applied beyond telecommunications equipment to the industrial processing exemption generally. Equipment used in industrial processing is exempt from the sales and use taxes. Some equipment is used for both exempt and non-exempt purposes, and the Department of Treasury's longstanding practice has been to apportion the exemption for that equipment based on its use. The state could be faced not only with a significant loss of future revenue from this decision, but also would have to pay large amounts of refunds immediately for the years covered by the decision. Further, the industrial processing exemption provisions in the two acts are themselves in need of revision.

Bad Debts. The same appeals court decision said that the Use Tax Act should be read to include a bad debt deduction just like the one found in the General Sales Tax Act, which does not require taxes to be paid by businesses when bills are uncollectible. That issue needs to be addressed statutorily.

Business Restructuring. Tax specialists say that businesses that restructure or spin off part of the firm in order to compete more effectively sometimes face higher SBT liabilities as a result. The governor's tax proposal addresses that problem.

Rolling Stock Exemptions. Amendments to both the sales tax and use tax in 1996 provided exemptions to interstate truckers for purchases of "rolling stock" (i.e., large trucks, trailers and parts). The exemptions carried a sunset date of May 1, 1999. Legislation was subsequently introduced to remove that sunset, extending the exemptions indefinitely and expanding them somewhat. A discussion of this issue can be found in the analysis of House Bill 4586 (dated 5-12-99), and an earlier discussion of the same topic can be found in the analysis of House Bill 5506 of the 1995-96 session (dated 2-3-97).

Hospital Construction Exemption. Typically, nonprofit entities enjoy exemptions from the sales and use taxes when making purchases but contractors carrying out construction work for nonprofits have not been exempt since 1970, with the exception of contractors working on nonprofit hospitals and certain nonprofit housing. There was no statutory definition of the term "hospital" for many years, with the department depending on a promulgated rule. This led to disputes, and legislation enacted in 1998 put a definition in statute that only applied for exemptions after 1990 and before 1996. This issue needs to be addressed again to clarify the institutions that qualify for the contractor exemption.

THE CONTENT OF THE BILLS:

House Bill 4745 would amend the Single Business Tax Act (MCL 208.3 et al.) in order to:

** Phase out the SBT by reducing the rate from the current 2.3 percent by one-tenth of one percent per year. The rate would be reduced to 2.2 percent effective January 1, 1999. The rate would reach zero on January 1, 2021 and the act would be repealed. However, the rate reduction would be halted in any year in which the amount in the counter cyclical budget and economic stabilization fund (rainy day fund) was at \$250 million or less.

** Replace the apportioned capital acquisition deduction with an unapportioned investment tax credit, effective after December 31, 1999.

** Beginning on January 1, 2000, apply the SBT to certain "foreign persons" based on business activity in the United States, including sales and services in the country and compensation paid to employees, officers, and directors for services performed in the United States, whether or not the individual or business entity was subject to taxation under the federal Internal Revenue Code.

** Reduce the tax base of "spun off" companies by excluding sales for five or seven years between companies that had been members of an affiliated group until a restructuring, in cases where such a restructuring would otherwise result in an increased tax liability.

House Bill 4744 and Senate Bill 544 would amend the Use Tax Act and the General Sales Tax Act, respectively, to:

** Place into statute the Department of Treasury's practice (following a rule) of apportioning industrial processing exemptions based on exempt and non-exempt uses of equipment, with the provision to apply retroactively. However, such apportionment would be only prospective for certain specified telecommunications equipment.

** Provide an "irrebuttable presumption" that for the abovementioned telecommunications equipment, 90 percent of the total use is provided for exempt purposes. The presumption would be in effect until April 1, 2006, at which time it would be reviewed and redetermined by the Department of Treasury. The department would use non-exempt and exempt user information for the previous 12-month period in making the redetermination, which would be in effect for seven years. The irrebuttable presumption would be reviewed and redetermined every seven years thereafter.

[The telecommunications equipment is that already specified in the act as exempt: machinery and equipment for use or consumption in the rendition of services taxable under the Use Tax Act, but limited to property located on the premises of the subscriber and to central office equipment or wireless equipment, directly used or consumed in transmitting, receiving, or switching, or in the monitoring of switching of a two-way interactive communication. The equipment does not include distribution equipment including cable or wire facilities.]

** Rewrite, in order to clarify and expand, the industrial processing exemptions in each act.

** Allow a bad debt deduction for the use tax parallel to that which exists for the sales tax.

** Rewrite the exemption for property purchased by a person engaged in constructing, altering, repairing, or improving real estate for others when the property was affixed to and made a structural part of a nonprofit hospital.

** Exempt "rolling stock" (certain large trucks, trailers, and parts) from the sales tax when purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce. (A similar use tax provision is found in House Bill 4586.)

The three bills are tie-barred to one another. They are described in more detail separately below.

Single Business Tax (House Bill 4745)

SBT Rate Reduction. The bill would provide that beginning January 1, 1999 and each January 1 thereafter, the SBT tax rate would be reduced by one-tenth of one percent if the comprehensive annual financial report of the state published under the Management and Budget Act reported an ending balance of more than \$250 million in the counter cyclical budget and economic stabilization fund. The Department of Treasury would annualize the rate as necessary. The SBT act would be repealed on the January 1 of the year in which the rate was reduced to zero percent.

Investment Tax Credit/Capital Acquisition Deduction. The bill would provide a new investment tax credit (ITC) against the SBT for tax years beginning after December 31, 1999. The current capital acquisition deduction (CAD) would apply for tax years before January 1, 2000. The bill contains a formula for determining the allowable costs of tangible assets to be used in calculating the credit, and requires that the assets be physically located in the state for use in a business activity in this state. It refers to the cost, including fabrication and installation, paid or accrued in the taxable year of tangible assets of a type that are, or under the federal Internal Revenue Code will become, eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes. (There are separate provisions for mobile tangible assets, which would be subject to

apportionment in the same manner as the tax base; and for assets purchased or acquired for use outside the state and then moved into the state.) Once the costs have been calculated, they would be multiplied by a percentage determined by dividing the tax rate for the tax year in which the credit was being claimed by 2.3 and multiplying that result by 0.85.

If the credit for a tax year and any unused carry forward exceeded the taxpayer's tax liability, the excess would not be refunded but would be carried forward as an offset to tax liability for nine taxable years or until used up, whichever occurred first. The credit would have to be taken before any other credit under the act. For a year in which the amount calculated by using the formula and multiplying by the appropriate percentage was negative, the absolute value of that amount would be added to the taxpayer's liability for the tax year. A taxpayer that used the gross receipts deduction to calculate its tax base could not claim the investment tax credit. A taxpayer that reduced its adjusted tax base using the excess compensation deduction would reduce the investment tax credit by a percentage determined by dividing the SBT rate by the ITC rate.

[The current CAD is a deduction from the tax base and is subject to the same apportionment formula as the SBT tax base; that is, 5 percent payroll, 5 percent property, and 90 percent sales. The new ITC would not be apportioned; it would be a credit subtracted from tax liability.]

Foreign Taxpayers. The bill would provide that for tax years beginning January 1, 2000, the tax base of a "foreign person" would include the sum of business income and certain specified adjustments related to U.S. business activity, whether or not the foreign person was subject to taxation under the federal Internal Revenue Code. (This section would not apply to insurance companies.) A foreign person would have to calculate compensation by reporting total compensation paid to employees, officers, and directors for services performed in the U.S.

The term "foreign person" would mean either 1) an individual who was not a U.S. resident, whether or not the individual was subject to taxation under the federal Internal Revenue Code; or 2) a person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person was subject to taxation under the federal Internal Revenue Code. The term "business income" would refer to gross income attributable to the

taxpayer's U.S. business activity and gross income derived from sources within the U.S. minus the deductions allowed under the federal Internal Revenue Code related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the U.S. and for which title transfers within the U.S.; proceeds from services performed within the U.S.; and a pro rata proportion of the proceeds from services performed both inside and outside the U.S. based on cost of performance. The terms "United States corporation" and "United States person" are found in the federal Internal Revenue Code.

Industrial Restructuring Deduction. The bill would allow certain taxpayers to exclude certain sales when calculating the sales factor that is used to determine the SBT base for either five or seven years. The provision would apply to a "spun off corporation" that had been included in a combined or consolidated return in the immediately preceding tax year; ceased to be included in the combined or consolidated return as a result of a restructuring transaction that occurred after January 1, 1999; and whose SBT liability would otherwise have been increased as a result of the restructuring transaction. Such companies could exclude sales to a purchaser that had been a member of the same affiliated group that had included the seller in the filing of a combined or consolidated annual return but ceased to include the seller as a result of a restructuring transaction. (This means sales by a spun off corporation to an entity that had been a member of the same affiliated group until a restructuring would be excluded from the tax base.)

To qualify for this deduction for five years, the spun off corporation would have to request approval in writing from the state treasurer and commit to an investment of at least \$500 million of capital investment within the state within five years. The five-year period would begin with the first tax year following the tax year in which the restructuring was completed. The deduction would be available for an additional two years if the corporation made a similar request prior to the end of the sixth year following the restructuring committing to invest at least \$200 million of capital investment during the next two years. If a corporation failed to make the required capital investment (in either case), it would be required to file amended returns, regardless of the expiration of the four-year statute of limitations, and pay any additional tax due, plus interest. With each request, the spun off corporation would have to provide the state treasurer with a list of all corporations, limited liability

companies, and any other business entities that the spun off corporation controlled at the time of the restructuring transaction.

The term "spun off corporation" would be defined in the bill as an entity treated as a controlled corporation under Section 355 of the federal Internal Revenue Code. A controlled corporation includes a corporate subsidiary created for the purpose of a restructuring transaction, a limited liability company, or an operational unit or division with business activities that were previously carried out as a part of the distributing corporation. The term "restructuring transaction" would mean a tax free distribution under Section 355, including transactions commonly referred to as spin offs, split ups, split offs, or type D reorganizations.

Sales and Use Taxes
(Senate Bill 544/House Bill 4744)

Apportionment. The bills would specify that property granted an exemption in either the sales tax or the use tax statute is exempt only to the extent that the property was used for exempt purposes. The bills also would specify that they intended to clarify that existing law as originally intended provides a prorated exemption. However, in the case of the exemption for certain telecommunications equipment (that taxed under Section 3a of the Use Tax Act), the provision that property would be exempt only to the extent it was used for exempt purposes would be effective beginning April 1, 1999. Prior to that there would be no apportionment.

Industrial Processing. The industrial processing exemption would be rewritten and expanded for property sold after March 30, 1999. The bills would provide a definition of the term "industrial processing" and a new definition of "industrial processor". Industrial processing would refer to the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. The bill would specify that industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage. The term "industrial processor" would refer to a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the

manufacturing of a product to be ultimately sold at retail.

The bills would exempt sales of tangible personal property not only to an industrial processor but also to a person, whether or not an industrial processor, if the property was intended for ultimate use in and was used in industrial processing by an industrial processor and to a person who used the property to perform an industrial processing activity for or on behalf of an industrial processor.

The bill would specify that industrial processing would include production or assembly; research or experimental activities; engineering related to industrial processing; inspection, quality control, or testing at any time before materials or products first come to rest in finished goods inventory storage; planning, scheduling, supervision, or control of production or other exempt activities; design, construction, or maintenance of production or other exempt machinery, equipment and tooling; remanufacturing (overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail); processing of production scrap and waste up to the point it is stored for removal of the plant of origin; recycling of used materials for ultimate sale at retail or reuse; production material handling; and storage of in-process materials. Research or experimental activities would not include ordinary testing or inspection of materials or products for quality control; efficiency surveys; management surveys; market or consumer surveys; advertising or promotions; and research in connection with literacy, historical, or similar projects.

Also exempt would be a computer used in operating industrial processing equipment; equipment used in a computer-assisted manufacturing system; equipment used in a computer-assisted design or engineering system integral to an industrial process; a subunit or electronic assembly constituting a component in a computer-integrated industrial processing system; computer equipment used in connection with the computer-assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMS, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to exempt nonprofit organizations; and equipment used in the production of computer software that is offered for general sale to the public or software modified or

adapted to the user's needs or equipment by the seller, only if the software is available for sale from a seller of software on an as-is basis or as an end product without modification or adaptation. (Only the last item is not found in current statutes.)

Industrial processing would not include purchasing, receiving, or storage of raw materials; sales, distribution, warehousing, shipping, or advertising activities; administrative, accounting or personnel services; design, engineering, construction, or maintenance of real property and nonprocessing equipment; and plant security, fire prevention, or medical or hospital services.

Property eligible for an industrial processing exemption would include property that becomes an ingredient or component part of the finished product to be sold ultimately at retail; machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance; property consumed or destroyed or that loses its identity in an industrial processing activity; tangible personal property, not permanently affixed and not becoming a structural part of real estate, that becomes part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity; fuel or energy used or consumed for an industrial processing activity; machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production; and office equipment, including data processing equipment used for an industrial processing activity.

Property not eligible for an industrial processing exemption includes tangible personal property permanently affixed and becoming a structural part of real estate including building utility systems such as heating, air conditioning, ventilating, plumbing, lighting, and electrical distribution, to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing; office equipment, including data processing equipment used for nonindustrial processing purposes; office furniture or office supplies; and the industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing; tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user

or consumer; tangible personal property used for receiving or storage of natural resources extracted by the user or consumer; vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways, except for a vehicle bearing a manufacturer's plate or a specially designed vehicle, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process; tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations; tangible personal property used or consumed for the preservation or maintenance of a finished good once it first comes to rest in finished goods inventory storage; returnable shipping containers or materials (with some exceptions); and tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

Extractive Operation Exemption. The bills would provide an exemption for the sale of tangible personal property to an extractive operator for use or consumption in extractive operations. Extractive operations would include the actual production of oil, gas, brine, or other natural resources. Eligible property would include casing pipe or drive pipe; tubing; well-pumping equipment; chemicals; explosives or acids used in fracturing, acidizing, or shooting wells; Christmas trees, derricks, or other wellhead equipment; treatment tanks; piping, valves, or pumps used before movement or transportation of the natural resource from the production area; chemicals or acids used in the treatment of crude oil, gas, brine, or other natural resources; and tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

Property not eligible for an exemption would include tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, and storage and housing facilities; tangible personal property consumed or used in transporting the product from the place of extraction, except for tangible personal property consumed or used in transporting extracted materials from the extraction site to the place where the extracted materials first come to rest in finished goods inventory storage; tangible personal property that is a product the extractive operator produces and that is consumed or used by the extractive operator for a purpose other than the manufacturing or producing of a product for ultimate sale; equipment, materials, and supplies used in exploring, prospecting, or drilling for

oil, gas, brine, or other natural resources; equipment, materials, and supplies used in the storing, withdrawing, or distribution of oil, gas, or brine from a storage facility; and vehicles required to display a vehicle permit or license plate to operate on public highways.

The term "extractive operations" would refer to the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material. An extractive operation begins when contact is made with the actual type of natural raw product being recovered. Extractive operation includes all necessary processing operations before shipment from the place of extraction. Extractive operations includes all necessary processing operations and movement of the natural resource material until the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site.

Rolling Stock. Senate Bill 544 would exempt a sale of rolling stock purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce. Until May 1, 1999, the General Sales Tax Act contained a partial exemption based on the amount of out-of-state usage of the rolling stock. The new exemption would be effective April 30, 1999. The term "rolling stock" refers to a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts affixed to either a qualified truck or a trailer designed to be drawn behind a qualified truck. A "qualified truck" means a commercial motor vehicle power unit that has two axles and a gross vehicle weight rating in excess of 10,000 pounds or a commercial motor vehicle power unit that has three or more axles.

Bad Debt Deduction. House Bill 4744 would place a bad debt deduction into the Use Tax Act similar to that which already exists for the sales tax. (A recent court decision has already put such a bad debt deduction into the statute.) The bad debt deduction would be effective beginning March 30, 1995.

Hospital Property. Both bills would rewrite an exemption for contractors working on nonprofit hospitals for taxes levied after June 30, 1999. A longstanding exemption applies to the sale of tangible personal property to a person directly engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent that the property is affixed to and made a structural part of a nonprofit hospital or a nonprofit housing entity

qualified as exempt under Section 15a of the State Housing Development Authority Act of 1966. The bills provide a new definition of "nonprofit hospital". It would refer to that portion of a building owned or operated by an entity licensed as a hospital under Part 215 of the Public Health Code and exempt under Section 501(c)(3) of the federal Internal Revenue Code; owned or operated by a governmental unit in which medical attention is provided; or owned or operated by an entity or entities exempt under Section 501(c)(2) or 501(c)(3) of the Internal Revenue Code in which medical attention is provided. The term would also apply to that portion of real property necessary and related to a building described above in which medical attention is provided and a county long-term medical care facility built after December 31, 1995. The term "nonprofit hospital" does not include a freestanding building or other real property of a nursing home or skilled nursing facility; a hospice; or a home for the aged. The term "medical attention" means that level of medical care in which a physician provides acute care or active treatment of medical, surgical, obstetrical, psychiatric, chronic, or rehabilitative conditions that require observation, diagnosis, and daily treatment by a physician.

For taxes levied after December 31, 1990 and before July 1, 1999, the sales and use taxes would not apply to a claimed exemption of tangible personal property used in the construction, alteration, repair, or improvement of the real estate for others to the extent the property was affixed to and made a structural part of a building of a nonprofit hospital, provided the facility in question was a portion of a building that was licensed under the health code and exempt under Section 501(c)(3) of the Internal Revenue Code; was owned or operated by a governmental unit and in which medical attention was provided; or was owned or operated by an entity or entities exempt under Section 501(c)(2) or (3) of the Internal Revenue Code and in which medical attention was provided. Other criteria would also have to be met. The claimed exemption would have to have been made in good faith; a binding contract would have to have been entered into for the construction, alteration, repair, or improvement of the real estate or the affixation to the building before July 1, 1999; and a claim for a refund would have to be filed no later than July 15, 1999. Also, the new provisions could not be applied to affect any final decision of a court.

BACKGROUND INFORMATION:

SBT Origins and Theory. The Single Business Tax Act was adopted as Public Act 228 of 1975 and took effect January 1, 1976. The SBT replaced the corporate income tax, the local property tax on business inventory, the corporate franchise tax, and several other smaller taxes, including the business intangibles tax and separate privilege fees on financial institutions, savings and loan companies, and domestic insurance companies. The new tax was proposed and enacted while the state was, according to one observer, "in the throes of one of its periodic fiscal crises, and . . . desperately in need of additional revenue." It was intended to be revenue neutral, except that the transition from the old set of taxes to a new single tax was scheduled so as to produce a one-time \$180 million windfall to the state treasury for 1975-76. The SBT was also expected to be a more stable source of revenue than the corporate income tax. Although intended to be revenue neutral overall, the change to the tax system was expected to distribute the tax burden differently among different kinds of businesses. A November 1975 booklet from what was then the Michigan Department of Commerce said, "Utilities and other capital intensive firms and highly profitable businesses will generally have a lighter tax burden under the new law while professionals, less profitable firms and unincorporated businesses may find their tax burden somewhat increased." In the years since then, however, the tax has been greatly modified, often in response to complaints from those claiming to be disadvantaged or unduly burdened by the SBT.

(It should be noted that Michigan had another form of value-added tax, called the business activities tax or BAT from 1953 to 1967. It was repealed and replaced by the corporate income tax at about the same time the state's personal income tax was adopted.)

The single business tax was designed to be a value-added tax or business activity tax, and its architects described it as a tax paid by businesses for "benefits received" from government services rather than a tax based mainly on "ability to pay" like the corporate income tax. A value-added tax is typically described as a levy on the value a firm adds to goods and services purchased from other firms, with the value added by the handling or processing of the purchases

through the use of labor, machinery, buildings, and capital. A recent Department of Treasury publication notes that value added can be measured in two ways: 1) by measuring the difference between a firm's sales receipts and its purchases of materials and supplies from other firms, called the subtraction method; or 2) by adding together profits, compensation costs, interest paid, and depreciation, including direct taxes levied on these costs, referred to as the addition method. The Michigan SBT uses the second method. The SBT is also typically described as being a consumption-type value-added tax because it permits the cost of capital expenditures to be deducted from the tax base in the year that they are made. It is termed a "modified" consumption tax because it contains many variations from a pure consumption value-added tax, including exemptions, credits, and alternative methods of calculation. Some of these offer eligible firms the ability to pay taxes based on profits or on gross receipts (contrary to the theory of the value-added tax).

According to commentaries at the time and since, advocates emphasized the following advantages of the SBT over the old system: revenue stability, compared with the erratic corporate income tax; the promotion of capital investment and creation of new jobs; the simplification of administration; the fairer, more equal treatment of businesses; and the improved image of the state with multinational corporations. [These "advantages" appear somewhat ironic given that today, critics of the SBT indict the tax for lacking all of these qualities, except revenue stability.]

Computing the Tax. The SBT rate was lowered from the original 2.35 percent to 2.30 percent by Public Act 247 of 1994. The tax rate is applied to a firm's tax base, which generally speaking is composed of labor and other compensation costs, profits, depreciation, and interest paid. For multi-state firms, the tax base is apportioned using a three-factor formula, involving the proportion of payroll in the state to total payroll, the proportion of property in the state to total property, and the proportion of sales in the state to total sales. When the SBT was first enacted, each factor was treated equally. Over time, the sales factor increased to 40 percent for 1991 and 1992; 50 percent for 1993-1996; 80 percent for 1997 and 1998; and sales are currently weighted 90 percent with property and payroll weighted 5 percent each. Obviously, the increased reliance on sales provides an advantage to firms that sell outside of Michigan.

A deduction from the tax base, known as the capital acquisition deduction or CAD, is allowed for 100 percent of capital investments made in Michigan. For multi-state companies, the CAD is apportioned using the same formula (now 5-5-90) used in apportioning

the tax base. Special provisions for certain retailers (notably the Michigan-based Meijer and K-Mart companies) allow them to use the CAD in effect prior to 1996, which permitted the deduction of investments made in any state multiplied by the apportionment factor.

In addition, the Single Business Tax Act has a number of exemptions, exclusions, credits, and alternative calculations. These include the following.

- Farms are exempt from the tax.
- Insurance companies use a tax base that is 25 percent of "adjusted receipts" as that term is defined in the act.
- Firms with adjusted gross receipts below \$250,000 do not have to file a return or pay the tax.
- The statutory exemption permits the deduction of \$45,000 from the tax base with an additional \$12,000 per shareholder available (up to \$48,000). The exemption is reduced by \$2 for each \$1 of modified business income over \$45,000. Modified business income is adjusted business income plus compensation and director fees of shareholders, plus any loss carryovers. (This is also explained as allowing the deduction to any firm whose total of business income and shareholder compensation is below \$67,500.)
- The small business credit is available, up to 100 percent of tax liability, to firms whose gross receipts do not exceed \$10 million and whose adjusted business income does not exceed \$475,000, as long as no officer or owner receives more than \$115,000 as compensation or as a share of business income. Businesses that qualify can use one of two methods of computing their SBT liability: 1) by claiming a credit derived by dividing adjusted business income by 45 percent of the tax base; or 2) by using as their tax liability 2 percent of adjusted business income.
- An excess compensation deduction allows businesses whose compensation or labor costs are a high proportion of their tax base (in excess of 63 percent) reduce their tax base by up to 37 percent. For example, a firm whose compensation costs constituted 80 percent of the SBT base could reduce the base by 17 percent (80 minus 63).
- The gross receipts reduction specifies that the tax base cannot exceed 50 percent of gross receipts. (Firms can calculate their tax based on 1.15 percent of gross receipts.)
- Unincorporated businesses can claim a credit varying from 10 percent to 20 percent of SBT liability based on

business income: 20 percent if business income is \$20,000 or less; 15 percent if business income is between \$20,000 and \$40,000; and 10 percent if business income is over \$40,000.

-- A number of other credits are available, including credits granted by the Michigan Economic Growth Authority (MEGA), credits for firms in enterprise zones and similar programs, as well as credits for certain specified charitable contributions and for historical preservation expenditures.

Tax Payments. SBT revenues for fiscal year 1999-2000 were estimated at \$2.48 billion. (Another \$202 million is anticipated from insurance company retaliatory taxes and those revenues are sometimes added to the SBT, producing a business tax total of \$2.682 billion.) All SBT revenue goes to the general fund. SBT revenues are expected to constitute 11.66 percent of all state taxes and account for about 27.4 percent of general fund revenues. The SBT contributes about 7.5 percent of total state revenues from all sources, including federal aid. (See the booklet State of Michigan Revenue Source and Distribution issued March 1999 by the House Fiscal Agency.) These estimates precede the enactment of the rate cut and other changes.

The Department of Treasury estimates that of the approximately 250,000 businesses in Michigan, fewer than 160,000 must file SBT returns and of those only 90,000 have any SBT liability. Figures from 1994-95 indicate that nearly 90 percent of total revenues came from fewer than 12 percent of taxpayers. In 1996, the largest 200 or so firms in the state paid over 30 percent of total SBT revenues.

Useful sources on the Single Business Tax Act include two booklets analyzing the tax from the Department of Treasury, dated August 1994 and March 1998; the Michigan Taxpayer's Guide, produced by the Legislative Service Bureau; and three papers produced for the Fiscal 101 seminars sponsored by the two legislative fiscal agencies and Wayne State University

by Robert Kleine of Public Sector Consultants; Howard Heideman of the Office of Revenue and Tax Analysis in the Department of Treasury; and James H. Novis of Honigman Miller Schwartz and Cohn. There are also many useful older documents, including a chapter by Robin Barlow and Jack S. Connell, Jr. in Michigan's Fiscal and Economic Structure, edited by Harvey Brazer and published in 1982; a 1978 report by Kleine from the Advisory Commission on Intergovernmental Relations; and 1984 report to the House of Representatives by Douglas Drake.

FISCAL IMPLICATIONS:

According to Department of Treasury estimates of 6-3-99 provided by the House Fiscal Agency, the package of bills would produce in fiscal year 1998-99 a \$49.3 million increase to the general fund and a \$94.1 million increase to the school aid fund. In fiscal year 1999-2000, the bills would result in a reduction in general fund revenue of \$194.6 million and an increase in school aid fund revenues of \$7.4 million. These figures represent the effect the bills would have on the consensus revenue estimates made prior to the tax package being proposed. Those estimates anticipated the state losing revenue as a result of the Michigan Bell case (described earlier). The tax proposal would, in a sense, "fix" the problem resulting from the court decision and offset the anticipated lost revenues. This explains the revenue increases from the package.

The effects of the various tax changes are as follows, according to information from the Office of Revenue and Tax Analysis dated 6-3-99.

- 1998-99 General Fund/General Purpose revenues: A loss of \$87.6 million from the SBT rate cut; a loss of \$1.9 million from the change of treatment of rolling stock in the sale and use taxes; and a gain of \$137.9 million from the so-called Michigan Bell fix (apportionment of the industrial processing exemption).
- 1999-2000 General Fund/General Purpose revenues: A loss of \$213.8 million from the SBT rate cut; a loss of \$13.5 million from the expanded industrial processing exemption in the sales and use tax acts; and a loss of \$2.5 million from the rolling stock exemptions.
- 1998-99 School Aid Fund revenues: A loss of \$3.1 million from rolling stock exemption in the sales tax and a gain of \$97.2 million from the Michigan Bell fix.

- 1999-2000 School Aid Fund revenues: A loss of \$9.5 million from industrial processing changes; a loss of \$7.9 million from rolling stock exemptions; and a gain of \$24.8 million from the Michigan Bell fix.

ARGUMENTS:

For:

The gradual phaseout of the SBT promises businesses their taxes will be reduced year after year. It promises that at least some portion of future state revenue growth will go towards business tax relief. (Just as other recently enacted legislation will ensure that some portion of future revenue growth will go towards reduced personal income tax rates.) This will make Michigan and Michigan businesses more competitive and will maintain and attract high paying jobs. Cutting business taxes means cutting the cost of doing business and providing jobs. Phasing out and eventually eliminating the SBT will reduce a barrier to attracting new investment in the state. Michigan is the only state with this kind of tax. For years, public policy analysts thought other states would follow Michigan's lead and adopt value-added taxes, but they have not. Economic development strategists say the very uniqueness and unfamiliarity of the tax can be an impediment in selling the state to new investors.

The tax has been modified many times since its introduction, typically in response to requests from businesses seeking special treatment due to special circumstances, to complaints from businesses who felt they were being treated unfairly, or to court decisions in cases brought by disgruntled businesses. But changes to the tax have made it more complex. Some would say the tax is becoming evermore incoherent and arbitrary as it departs bit by bit from the original underlying theories. In announcing the SBT phaseout, Governor Engler said, "We will no longer try to fix what can't be fixed." This proposal ends the tinkering with an unpopular, unpalatable tax, a tax under constant threat of litigation, and simply phases it out over time.

The phaseout is a responsible approach that protects the state budget from the sudden shock of instant repeal or the prolonged uncertainty that would accompany continual debate over how to modify or replace the SBT. Further, it contains a safety valve provision that would halt rate decreases during serious budget difficulties.

When businesses are taxed, those taxes either go into the cost of goods and services to consumers, come out of the wage packets of workers, or reduce profits that otherwise could be distributed to shareholders or reinvested, for example in research and development activities. This is what is meant by the claim that "businesses don't pay taxes but just collect them." Cutting taxes for businesses that now face SBT liability will have a positive overall effect on business activity and the state economy. As a result, all will eventually benefit, including consumers, workers, and the smaller non-SBT paying businesses, whose fortunes are often tied to those of larger companies.

Moreover, it is not fair to say the proposal will eliminate business taxes. Besides the fact that the SBT is to be phased out over many years (and not eliminated immediately), businesses in the state pay substantial amounts in real property taxes (not having received cuts under Proposal A as large as individuals received), personal property taxes (which only businesses pay), and sales and use taxes, as well as a wide variety of fees. This will be just one of many tax cuts initiated in the 1990's. Individuals, as opposed to businesses, have been the beneficiaries of over three-quarters of the cumulative tax cuts this decade, according to administration figures.

Response:

If the SBT is such an odious, onerous tax, why leave it in place for 20-plus years? Why not speed up the phaseout and/or find some suitable alternative source of revenue?

For:

In addition to the SBT rate reduction and phaseout, the package contains a number of other beneficial business tax changes. These include the following.

** The capital acquisition deduction has a checkered, litigious history. Under this proposal, it will be replaced by an investment tax credit, similar to the kind of credit found in many other states. The credit will be for investments made in the state. Some tax specialists doubt the current apportioned CAD can withstand a lawsuit on constitutional grounds because of its different treatment of investments inside and outside the state by multistate companies. Rather than face the uncertainty and confusion that accompanies the CAD, it is better to replace it with the more commonplace investment tax credit. This will provide strong incentives for businesses to invest in Michigan and greater certainty in tax planning.

** New provisions will make foreign companies doing business in Michigan subject to the SBT for some of their activities even if they do not file a federal corporate income tax return. The principle behind this is to prevent foreign firms from enjoying an unfair advantage over Michigan-based or out-of-state U.S. firms doing business in the state.

** Equipment used in industrial processing is exempt from the sales and use taxes. Some equipment is used both for industrial processing and for other purposes and the Department of Treasury's longstanding practice has been to apportion the exemption for equipment used for exempt and non-exempt purposes. A recent court decision on the treatment of telecommunications equipment said there was no statutory basis for the practice of apportioning exemptions and prohibited it. Instead, the court allowed a full exemption when equipment was first used for a tax-exempt purpose and continued to be used substantially for tax exempt purposes. The decision has the potential effect, generally speaking, of expanding the industrial processing exemption for all kinds of businesses. This proposal reinstates the practice retroactively, thus relieving the state from having to pay large amounts of sales and use tax refunds and avoiding the loss of future revenue. (The proposal applies only prospectively to telecommunications companies, however.)

** The proposal would clarify and broaden the industrial processing exemption. Proponents of the package say it would re-define when industrial processing begins and ends; extend the exemption to certain third parties working on behalf of industrial processors, including those engaged in research and experimental activities and product quality activities; and expand the kind of waste removal and recycling activities that qualify for the exemption.

** The SBT contains a disincentive now for companies to engage in restructuring or spin-offs because such organizational changes can result in higher taxes. The industrial restructuring deduction provides for a "hold harmless" period of up to seven years for such changes by excluding from the tax base calculation sales by the spun off company to a company it had previously been affiliated with. This deduction will only be available to companies making sizeable future investments in the state.

** A recent court decision said the Use Tax Act should be read as if it contained a bad debt deduction parallel to that which has long existed in the General

Sales Tax Act. House Bill 4744 ratifies that decision and puts such a provision in the statute.

** Two issues that have previously been part of other legislation are incorporated into this package, one that would extend and expand the sales and use tax exemption for large trucks, trailers, parts (known as rolling stock) used in interstate commerce; and one that would clarify the term "hospital" for purpose of administering an existing exemption for contractors doing construction work for nonprofit hospitals.

Against:

This proposal benefits large, wealthy corporations at the expense of the rest of the state's taxpayers. Only about 35 percent of the state's businesses pay the SBT. This means about 65 percent of the state's businesses get no direct relief from this proposal. Critics say that about 75 percent of SBT revenues come from 5 percent of the state's firms. It is this 5 percent that will gain the greatest benefit from this proposal. All businesses pay the personal property tax, another complicated onerous tax. Why not concentrate relief there? Or, why not target relief at small business by increasing the gross receipts threshold to, say, one million dollars, so that more businesses are exempt from taxation altogether? Or, why not remove health care costs from the compensation portion of the SBT tax base as an incentive for companies to provide or retain or expand health care coverage for employees? There are a number of proposals preferable to the straight 23-year phaseout of the SBT. It is unfortunate that the legislature did not take the time to evaluate the various proposals one against another.

Furthermore, it should be noted that the SBT proposal will actually increase the tax liability of some companies over the short run because of the switch from an apportioned capital acquisitions deduction to a non-apportioned investment tax credit. This will work to the disadvantage, generally speaking, of firms that operate entirely or mostly in the state of Michigan. The proposal will also increase taxes for large retailers (notably Meijer and K-Mart) who have only recently begun to enjoy special treatment under the SBT for capital investments. With the switch from a CAD to an ITC, these special provisions will be lost. Telecommunications companies have also complained about their treatment, arguing that their taxes will increase due to the apportionment of exemptions for central office equipment and the replacement of the CAD with the ITC. Reductions in the SBT rate will take several years to offset the increases, they say.

There is also concern about the impact of the provisions taxing foreign companies. The original proposal outraged Canadian manufacturers, particularly auto parts manufacturers, and some critics warned of a trade war. While the provisions relating to foreign companies have been modified as a result, their effects still will bear watching.

Against:

With the large surpluses anticipated for state government, tax relief should be targeted towards individuals not businesses. Michigan's economic development record in recent years appears to be outstanding; the state's tax structure does not appear to be having a negative effect on Michigan's ability to compete with other states for new business and job growth. On the other hand, many of the state's families are financially squeezed. Eliminating the SBT will mean that a disproportionate amount of the tax burden will fall on individual taxpayers. There are many alternative ways of addressing the current budget surpluses. House Democrats, for example, have proposed a \$50 per person rebate, which would benefit all individuals equally. Some people advocate the creation of a state credit to piggyback on the federal earned income tax credit; that would benefit the working poor. But however tax relief is provided, it should be aimed at working families and not at the state's largest and wealthiest corporations.

Against:

Defenders of the SBT would say that the concept of the value-added tax is a good one and that the tax ought to be preserved and reformed. While the tax has become extremely complicated, that is in part because of the many changes made in response to its critics. Many of these changes (and criticisms) were unwarranted and based on a misunderstanding of the theory behind the tax. It is exasperating that attempts to placate SBT critics and improve public perceptions of the tax lead inevitably to complaints that the subsequent modifications have made the tax too complicated. A return to a simpler, widely applied value-added tax with a low rate and few exceptions and exclusions would be preferable to a phaseout and repeal. After all, businesses ought to help pay for the government services from which they, along with others, benefit. Business benefits from spending on transportation, education, and the legal system, among many other services, and ought to contribute to their support.

Against:

Is it wise to project tax cuts so far into the future? What happens when there is an economic downturn, when tax revenues are not so robust? Will the state be able to meet its obligations and the needs of its residents if it forgoes billions of dollars of revenue over the next two decades? Wouldn't it be better to give today's tax cuts a shorter horizon and let future legislatures determine how much revenue is needed based on assessments made at the time? It is difficult to imagine that the state can eliminate one of its major revenue sources, even if gradually, and still be able to fully fund state government operations.

Response:

This proposal, like the earlier income tax cuts, represents a statement of priorities and locks in a policy of returning a portion of future revenue growth to taxpayers. It represents a commitment to ongoing tax relief. Nothing in the proposal prevents future legislatures from taking the actions they determine necessary regarding taxing and spending.

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.

**Michigan Department of Treasury
Tax Compliance Bureau
Audit Division**



**Industrial Processing
Manual**

June 2015

Disclosure

This manual is not intended as a statement of law, Department policy, or of the Treasurer's official position. The information contained in this manual has been prepared as instructional text. The purpose of this manual is to explain key provisions of the General Sales Tax Act and Use Tax Act.

Any references in this manual to Rules, Revenue Administrative Bulletins (RABs), Internal Policy Directives (IPDs) and Letter Rulings are based on the most recent versions available as of the date of this edition. The materials will be reviewed regularly and revised as needed. Where changes in the law supersede and conflict with anything in this document then the new law shall control.

Table of Contents

Chapter 1 – Introduction and Overview	6
Chapter 2 – Activities of Processors that May Not Qualify for Exemption	12
Chapter 3 – Industrial Processing Beginning and End	14
Chapter 4 – Cement Trucks	15
Chapter 5 – Computer Software Manufacturing	16
Chapter 6 – Computer Studies	17
Taxability Chart - Computer Functions for Industrial Processors	19
Chapter 7 – Computers Used in Industrial Processing by Servicers	22
Chapter 8 – Conversion of Tangible Personal Property from an Exempt Use to a Taxable Use	24
Application for all Taxpayer and Business Types	24
Chapter 9 – Delivery – Just in Time	26
Chapter 10 – Direct Pay	29
Chapter 11 – Electrical Distribution Systems	32
Chapter 12 – Grain Elevators	35
Chapter 13 – Inventory Withdrawals/Consumed Goods	36
Michigan Withdrawals	36
Non-Michigan Withdrawals	37
Chapter 14 – Material Handling	40
Chapter 15 – Miscellaneous	43
Chapter 16 – Packaging Equipment	45
Chapter 17 – Packaging Function	47
Chapter 18 – Packaging Materials	48
Dunnage	48
Chapter 19 – Percentage Application	50
Chapter 20 – Policy (Or Goodwill) Adjustment	51
Taxability of Parts Replaced Under Policy Adjustment	51
Chapter 21 – Printers	52
Newspapers and Periodicals Published More Than 14 Times Per Year	52
Personal Use of Manufactured Products	52

Printing Service.....	53
Chapter 22 – Prototypes	54
Chapter 23 – Quality Control / Research or Experimental / Engineering.....	55
Research or Experimental	55
Quality Control.....	56
Engineering	56
Chapter 24 – Real vs. Personal Property.....	57
Annexation to Realty, either Actual or Constructive.....	57
Adaptation or Application to the Use or Purpose to which that Part of the Realty to which it is Connected is Appropriated.....	57
Intention to make the Article a Permanent Accession to the Freehold	58
Taxability Chart – Real vs. Personal Property Tax Status for Industrial Processors..	59
Chapter 25 – Reconditioning / Remanufacturing.....	67
Chapter 26 – Refrigeration & Freezers.....	68
Chapter 27 – Repackaging.....	69
Chapter 28 – Retail Preparation of Food.....	70
Chapter 29 – Retailers and the Industrial Processing Exemption	71
Chapter 30 – Scrap Dealers & Recyclers.....	73
Roll-offs (Dumpsters).....	73
Hoppers	73
Freon Recovery Machines.....	73
Loading and Unloading Equipment.....	74
Sorting Equipment Such as Cranes, Loaders, and Lift Trucks	74
Equipment Used to Cut, Break, and Crush (After Disassembly).....	74
Paper Shredding Equipment.....	74
Banding and Baling Equipment	74
Chapter 31 – Servicers.....	75
Chapter 32 –Storage Tanks and Mixing Tanks	76
Gas Cylinders	76
Chapter 33 – Stores Accounts (Non-Production Inventory).....	77
Taxability of Items – When Used in Exempt Production Areas – No Shipping, Receiving, etc.	78
Chapter 34 – Taxidermists	82

Chapter 35 – Utilities 83
 Heating and Cooling 83
 Idle Time 83
 Taxability of Areas for Utility Studies 86
Chapter 36 – Waste Removal / Pollution Control Facilities 87
 Piping of Waste to another Location 87
 Air and Water Pollution Controls 89
 Environmental Clean Up 90
Index of References 91

Chapter 1 – Introduction and Overview

The State of Michigan allows an industrial processing (IP) exemption from sales and use tax. The industrial processing exemption is limited to specific property and activities.

The General Sales Tax Act defines **industrial processing** as “the activity of converting or conditioning tangible personal property by changing the form, composition, quality, combination, or character of the property for ultimate sale at retail or for use in the manufacturing of a product to be ultimately sold at retail. Industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory storage.” The General Sales Tax Act defines **industrial processor** as “a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.”

The Use Tax Act’s definition of both **industrial processing** and **industrial processor** is more expansive than the General Sales Tax Act definition by including property that is “affixed to and made a structural part of real estate located in another state.”

Additionally, “the consumption or use of the tangible personal property rather than the kind or character of the property sold is the determining factor as to whether or not such a sale is taxable.”

The exemption applies to sales to:

- An industrial processor for use in industrial processing
- A person, even if the person is not an industrial processor, if the tangible personal property is used in industrial processing

Example 1:

Parent Corp. is a California-based distributor of automobiles. It does no actual manufacturing itself as all production is farmed out to Subsidiary Corp., a wholly owned subsidiary located in Detroit, Michigan. Parent Corp. has purchased dies for \$10,000,000 that will be used by Subsidiary Corp. in the actual manufacturing of automobiles. Is Parent Corp. liable for sales or use tax on the purchase of the dies delivered to it in Michigan?

Answer:

No. The dies are exempt because they are used by an industrial processor (Subsidiary Corp.) in an industrial processing activity.

- A person, even if the person is not an industrial processor, if the tangible personal property is used by that person to perform an industrial processing activity for or on behalf of an industrial processor
- A person, even if the person is not an industrial processor, if the tangible personal property is one of the following:
 - A computer used in operating industrial processing equipment
 - Equipment used in a computer assisted manufacturing system
 - Equipment used in a computer assisted design or engineering system integral to an industrial process.
 - A subunit or electronic assembly comprising a component in a computer integrated industrial processing system
 - Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under section 4(1)(w) of the Use Tax Act
 - Equipment used in the production of prewritten computer software

Common and statutory meaning of certain industrial processing terms:

- **Convert or Condition:** To change the form, composition, quality, combination, or character of property
- **Quality:** The essential character of something
- **Combination:** Something resulting from the combining of two or more things
- **Form:** The contour and structure of something as distinguished from its substance

- **Composition:** A putting together of parts or elements to form a whole; a combining; the manner in which such parts are combined or related; constitution or make-up; the result or product of composing or mixture; compound
- **Character:** The combination of qualities or features that distinguishes one thing from another
- **Product:** As used in the context of **research or experimental activity**, means prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a business or to be sold, transferred, leased or licensed
- **Remanufacturing:** The activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail
- **Research or experimental activity:** Activity incident to the development, discovery, or modification of a product or a product related process. Research or experimental activity also includes activity necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does **not** include the following:
 - Ordinary testing or inspection of materials or products for quality control purposes
 - Efficiency surveys
 - Management surveys
 - Market or consumer surveys
 - Advertising or promotions
 - Research in connection with literacy, historical, or similar projects

Industrial processing includes the following activities:

- Production or assembly
- Remanufacturing
- Recycling of used material for ultimate sale at retail
- Research or experimental activities
- Engineering related to industrial processing

- Inspection, quality control or testing to determine whether the materials, products or processes conform to specified parameters at any time before the materials or products first come to rest in finished goods inventory storage
- Planning, scheduling, supervision or control of production or other exempt activities
- Design, construction, or maintenance of production or other exempt machinery, equipment and tooling
- Processing of production scrap and waste up to the point it is stored for removal from the plant of origin
- Production material handling
- Storage of in-process materials

Property that qualifies for the industrial processing exemption includes:

- Property that becomes an ingredient or component part of the finished product that is ultimately sold at retail or affixed to real estate located in another state
- Machinery, equipment, tools, dies, patterns, foundations for machinery or equipment, or other processing equipment used in an industrial processing activity and in their repair and maintenance
- Property that is consumed, destroyed or loses its identity in an industrial processing activity
- Tangible personal property, not permanently affixed and not becoming a structural part of realty that becomes a part of, or is used and consumed in installation and maintenance of systems used for an industrial processing activity
- Fuel or energy used or consumed for an industrial process
- Machinery, equipment and materials used within a plant site or between plant sites (of the same entity) for movement of tangible personal property in the process of production This includes front end loaders, forklifts, pettibone lifts, skidsters, multipurpose loaders, knuckle-boom log loaders, tractors, and log loaders used to unload logs from trucks at a saw mill site for the purpose of processing at the site and to load lumber onto trucks at a saw mill site for purposes of transportation from the site
- Office equipment or data processing equipment used for industrial processing activities

- Vehicles bearing a manufacturer's plate or vehicles specifically designed, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process

The following activities are **not exempt**:

- Purchasing, receiving or storage of raw materials
- Sales, distribution, warehousing, shipping or advertising activities
- Administrative, accounting or personnel services
- Design, engineering, construction or maintenance of real property and non-processing equipment
- Plant security, fire prevention, medical or hospital services

The following types of property **do not qualify** for the industrial processing exemption:

- Tangible personal property permanently affixed and becoming a structural part of real estate including building utility systems to the point of the last transformer, switch, valve, or other device at which point usable power, water, gas, steam, or air is diverted from distribution circuits for use in industrial processing
- Office equipment, including data processing equipment not used for industrial processing purposes
- All office furniture or office supplies, regardless of use
- Inventory withdrawals that the manufacturer uses or consumes for purposes other than industrial processing
- Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer, or natural resources extracted by the user or consumer
- Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways (except for vehicles bearing a manufacturer's plate or vehicles used in the concrete manufacturing process as noted above)
- Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations

- Tangible personal property used for the preservation or maintenance of a finished good once it first comes to rest in finished goods storage. Returnable shipping containers or materials, except those used within a plant site or between plant sites operated by the same entity for movement of in-process materials
- Tangible personal property used in the production of custom software

References pertaining to this information can be found in the index under [Chapter 1](#)

Chapter 2 – Activities of Processors that May Not Qualify for Exemption

A person may be engaged in non-industrial processing activities in addition to its industrial processing activities. Many services, such as engineering, inspection, design, planning, scheduling, material handling, and research, constitute industrial processing. However, if those same services are sold or used separately from the industrial processing activity that portion of the service is subject to tax.

The taxability of selected activities is listed below.

No.	Activity	Taxability
1	A printer prints on stock furnished by the customer. See the “Printers” section of this text for exceptions	Taxable
2	A printer binds books furnished by another printer. See the “Printers” section of this text for exceptions	Exempt
3	A printer binds books furnished by a non-processor. See the “Printers” section of this text for exceptions	Taxable
4	Photographs are returned to a photographer to color or tint the photographs and the coloring or tinting is included in a quoted price.	Taxable
5	A sign manufacturer paints signs owned by an advertising agency	Taxable
6	A tire company purchases old tires and retreads them for sale to others. See the “Reconditioning/ Remanufacturing” section of this text	Exempt
7	A tire company retreads or vulcanizes tires supplied by a trucking company	Taxable (materials sold only, labor charges billed separately are not taxable)
8	A pallet manufacturer repairs pallets owned by a soap manufacturer that used the pallets in their in-process storage area	Exempt
9	A heat-treat company hardens steel to be used by an automobile manufacturer as parts for an automobile	Exempt
10	A heat-treat company heat-treats dies owned by an automobile manufacturer that are used in an industrial processing activity	Exempt

11	<p>A gravel mining and crushing operation has portable equipment that crushes and refines product under four scenarios:</p> <ul style="list-style-type: none"> • For other mining operations • At its own pits (for resale) • For contractors (not for resale) • For county road commissions (not for resale) 	<p>Exempt Exempt Taxable Taxable</p>
12	<p>A company manufactures spiral stairways and handrails. The stairways, etc. are custom made to specific customer requirements and affixed to realty. The company does not maintain an inventory or price list or make sales at retail.</p>	<p>Taxable</p>
13	<p>A company manufactures spiral stairways and handrails. The stairways, etc. are custom made to specific customer requirements and sold at retail.</p>	<p>Exempt</p>
14	<p>A conveyor manufacturer has employees fabricate, assemble and install the conveyor parts at the customer's (an industrial processor's) plant for use in industrial processing</p>	<p>Exempt</p>
15	<p>A window manufacturer maintains a price list. The manufacturer used tools at the job site to install the windows.</p>	<p>Taxable</p>

References pertaining to this information can be found in the index under [Chapter 2](#)

Chapter 3 – Industrial Processing Beginning and End

For determining where the industrial processing exemption begins and ends we need to look at the statute, supporting rules and binding case law.

The language in the General Sales Tax Act and in the Use Tax Act provides that “industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing and ends when finished goods first come to rest in finished goods inventory.”

Therefore, any property used to receive raw materials, prior to being placed in raw materials storage, is subject to tax. Likewise, any property used to move materials after they have come to rest in finished goods inventory is taxable. The movement of raw material from raw materials inventory is exempt whether it goes directly to the production machinery or to a staging area near the production process. The movement of the material is exempt if the production process drives the movement of the material from raw materials storage.

The exemption ends when the manufactured goods come to rest in finished goods inventory. The movement to or from boxing, bagging, shrink-wrapping or other packaging operations is exempt if it is done **before** the finished goods come to rest in finished goods inventory.

References pertaining to this information can be found in the index under [Chapter 3](#)

Chapter 4 – Cement Trucks

A specially designed vehicle used to mix cement and agitate materials is eligible for an industrial processing exemption. The material may be added at a plant or job site. The truck, tires and repair parts attached to the cement delivery truck body or to the mixer are exempt. This exemption is available only for a concrete manufacturer. Consumable supplies such as gasoline, oil, antifreeze, windshield washer solvent, transmission fluid, brake fluid, etc. are subject to tax.

Note: Global Positioning Systems (GPS) and after-market communication equipment are subject to tax.

Note: Boom trucks, conveyors, gravel trains and trailers, and other types of apparatus at the job site owned by a separate company or contractor that do not mix or agitate the product are subject to tax.

If a concrete manufacturer does not make retail sales but instead consumes all the concrete on its own jobs, it would not be entitled to an exemption for its cement trucks, equipment or supplies. If the concrete manufacturer makes retail sales in addition to consuming concrete on its own jobs, the exemption should be apportioned.

Note: Tires and repair parts used on gravel trains, trailers, etc. are not eligible for the industrial processing exemption. A repair facility usually does work on cement trucks, loaders, highway tractors and trailers. Invoices must show that repair parts were attached to a cement mixer or truck.

References pertaining to this information can be found in the index under [Chapter 4](#)

Chapter 5 – Computer Software Manufacturing

The classification of computer software as “prewritten” or “custom” determines whether the act of producing the software qualifies as industrial processing.

Definitions:

1. **Computer software** means a set of coded instructions designed to cause a computer or automatic data processing equipment to perform a task
2. **Prewritten computer software** means computer software, including prewritten upgrades, that is delivered by any means and that is not designed and developed by the author or other creator to the specifications of a specific purchaser [e.g. custom software]
3. **Custom Software** is designed for the exclusive use and special needs of a customer

Prewritten Computer Software: Equipment, supplies, utilities, etc. used to produce prewritten computer software are eligible for the industrial processing exemption.

Equipment, supplies, utilities, etc. used to modify prewritten computer software, whether separately itemized for sales tax purposes or not, are also eligible for the industrial processing exemption.

An industrial processor cannot claim the exemption for equipment used to modify a prewritten accounting software package for its own use because the software will not be used in industrial processing and there is no ultimate sale at retail. However, equipment used in the production of prewritten computer software that is available for ultimate sale at retail on an as-is basis without modification or adaptation qualifies for the industrial processing exemption.

Custom Software: The sale of custom software is a tax-exempt retail sale, but the equipment, supplies, and utilities used are not eligible for the industrial processing exemption.

References pertaining to this information can be found in the index under [Chapter 5](#)

Chapter 6 – Computer Studies

Computers purchased or leased by industrial processors can be used in both taxable and exempt functions. The property is exempt only to the extent that it is used for the purpose stated in the applicable sales or use tax act. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department.

Computers and equipment used in CAD/CAM may not be used only to design or develop products and parts. Care should be taken when reviewing both servicers and industrial processors to determine if the equipment is used in a taxable function.

Example 1:

A computer program used to design real property floor plans is taxable, but the same computer program used to design a floor plan for an industrial processor's exempt machinery is exempt.

Example 2:

A computer program used in a post-production function is not exempt. A post production function is any function performed after the product first comes to rest in finished goods inventory storage.

Prewritten computer software may be taxable at a different percentage than the computer equipment it is used on. If the usage of the software can be specifically identified, tax should be applied on that basis. Otherwise, perform a computer study. It does not matter if the software is purchased, leased, or downloaded.

Computers or computer servers located in Michigan that perform industrial processing functions for both in-state and out-of-state manufacturing divisions are exempt to the extent used in performing industrial processing functions.

Computer cables, servers, printers and monitors used in inter-plant or intra-plant transmissions within the same legal entity are taxed on the determined computer equipment percentages, not as communication devices. Routers, and network hookups, etc. are not just communications devices and thus would not always be 100% taxable. A separate study for routers, switches, and network hookups should be performed if the amounts are material.

In general, the following functions would be considered **taxable**:

- Billing
- Order entry

- Communication including plant to plant (within the same entity), plant to customer; plant to vendor, EDI, e-mail, etc.
- Payroll
- Accounting
- Sales/Marketing
- Shipping
- Raw material receiving and finished goods inventory control

The following computer activities would generally be considered **exempt**:

- Order summary by product (for production scheduling)
- Production control forecasting
- In-process product testing
- Product design
- Production machinery operation

Taxability Chart - Computer Functions for Industrial Processors

No.	Description of Function	Tax Status	Reason
1	Accounts payable	Taxable	Accounting
2	Capital asset system	Taxable	Accounting
3	Computers used to operate exempt machines	Exempt	Machinery used in IP
4	Computers used to operate taxable machines	Taxable	Operates taxable equipment
5	Daily production report for production scheduling	Exempt	Production scheduling
6	Daily production report for raw material ordering	Taxable	Purchasing
7	Daily production report used for cost accounting	Taxable	Accounting
8	Defective work-in-process inventory exception report used to improve process	Exempt	Quality control
9	Design of manufacturing machine layout	Exempt	Production control
10	Design of real property floor plan	Taxable	Administrative
11	Direct computer ordering from mfg. to supplier (EDI ordering)	Taxable	Purchasing
12	Direct labor variance report	Taxable	Accounting
13	EDAP auditing	Taxable	Accounting
14	Financial analysis & forecasting	Taxable	Accounting
15	General ledger	Taxable	Accounting
16	In-state production scheduling for outstate division	Exempt	Production scheduling
17	Inventory exception report for defective raw material used to adjust payment to vendor (if necessary)	Taxable	Administrative
18	Inventory management for finished goods	Taxable	Accounting/ admin.
19	Inventory management for raw material	Taxable	Receiving
20	Inventory management for work in process for cost accounting	Taxable	Accounting
21	Inventory management for work in process for production scheduling	Exempt	Production scheduling

No.	Description of Function	Tax Status	Reason
22	Labels directly placed on the final product or product container before it is placed in finished goods inventory (bar code labels, UPC labels, mailing/shipping labels, advertising labels)	Exempt	Resale
23	Order report printed by product and customer for production scheduling	Exempt	Production scheduling
24	Personnel/admin/payroll	Taxable	Accounting/admin.
25	Printed materials-bills of lading, packing slips, product surveys, advertising brochures, product catalogs, etc.	Taxable	Administrative/ shipping
26	Forecast of orders by product for production scheduling	Exempt	Production scheduling
27	Forecast of potential sales by product	Taxable	Sales
28	Production personnel scheduling-overtime for non-production activities	Taxable	Administrative
29	Production personnel scheduling-overtime -to track overtime hours	Taxable	Administrative
30	Production personnel scheduling-overtime- -to determine manpower requirements for continued production	Exempt	Production scheduling
31	Production personnel scheduling-vacation to track overtime hours	Taxable	Administrative
32	Production personnel scheduling-vacation- -to determine manpower requirements for continued production	Exempt	Production scheduling
33	Production report detailing causes of work stoppages used to improve the production process	Exempt	Production scheduling
34	Production report detailing frequency of defective in-process material used to improve production process	Exempt	Production scheduling/ quality control
35	Production scheduling	Exempt	Prod. Scheduling
36	Purchase order entry	Taxable	Purchasing
37	Purchasing	Taxable	Purchasing
38	Quality control inspection report of raw materials	Taxable	Administrative
39	Quality control of in-process material	Exempt	Inspection/ quality control
40	Raw material usage report	Taxable	Purchasing

No.	Description of Function	Tax Status	Reason
41	Raw materials report used to determine amount to pay vendor or to decide to keep or replace vendor	Taxable	Accounting
42	Rescheduling ongoing production to accommodate installation of production equipment	Exempt	Production scheduling
43	Safety manual	Taxable	Safety and training
44	Sales analysis	Taxable	Sales
45	Sales history report	Taxable	Sales
46	Sales invoice generation	Taxable	Accounting
47	Sales order entry	Taxable	Sales
48	Sales report printed by product & customer	Taxable	Accounting/ sales
49	Scheduling of employees involved in installation of production equipment (not to be misinterpreted as production scheduling)	Taxable	Administrative
50	Scheduling of production machine maintenance or repair	Exempt	Processing machine maintenance
51	Scheduling removal of existing production equipment	Taxable	Production ceased
52	Scrap report	Taxable	Cost accounting
53	Summary of completed orders by product	Taxable	Sales
54	Summary of pending orders for production scheduling	Exempt	Production scheduling
55	Warranty information & administration	Taxable	Administrative

References pertaining to this information can be found in the index under [Chapter 6](#)

Chapter 7 – Computers Used in Industrial Processing by Servicers

A servicer is a person who is regularly and exclusively engaged in the business of repairing, improving, or altering tangible personal property owned by others when the value of the material used is incidental or negligible. Sales of equipment, materials, and supplies to such persons are generally taxable unless the servicer is performing industrial processing services.

Both the General Sales Tax Act and Use Tax Act grant the exemption to servicers who purchase or lease:

1. Computers used in operating industrial processing equipment
2. Equipment used in a computer assisted manufacturing system
3. Equipment used in a computer assisted design or engineering system integral to an industrial process
4. A subunit or electronic assembly comprising a component in a computer integrated industrial processing system
5. Computer equipment used in connection with the computer assisted production, storage, and transmission of data if the equipment would have been exempt had the data transfer been made using tapes, disks, CD-ROMs, or similar media by a company whose business includes publishing doctoral dissertations and information archiving, and that sells the majority of the company's products to nonprofit organizations exempt under MCL 205.94q
6. Equipment used in the production of prewritten computer software

The above exemptions are based on the **use of the equipment** rather than the nature of the purchaser's business.

Computers or computer main frames owned by servicers and located in Michigan that perform any of the above activities for an out-of-state company are exempt or partially exempt from tax, based on the amount of time used in the above activities.

Examples of exemptions are:

- Computers programmed to operate robotics on an assembly line
- Robotics on the assembly line owned by the servicer operating the equipment
- Computers that design the final product and/or any component part of the final manufactured product

- Servicer-owned circuit boards in computers used to operate paint application systems
- Experimental research (R & D)
- Research and development for or on behalf of an industrial processor
- Items used or consumed in the CAD/CAM process that would be exempt for the industrial processor

Examples of **taxable** usage of computers and CAD software:

- Designing buildings by engineering firms
- Designing the layout of a home or kitchen by lumber yard companies or specialized kitchen designers
- Determining the stress loads for floor joists on load-bearing walls by lumber wholesalers or lumber yard companies
- A finished goods inventory retrieval system or stores account
- Engineering design and development not directly related to the manufacturing design process including any post-finished goods inventory storage activities
- Testing products for defects for an industrial processor (exempt if performed prior to the product coming to rest in finished goods inventory storage)

References pertaining to this information can be found in the index under [Chapter 7](#)

Chapter 8 – Conversion of Tangible Personal Property from an Exempt Use to a Taxable Use

Beginning 10/02/2007, the Use Tax Act defines **convert** to mean putting a service or tangible personal property acquired for a use exempt from the tax levied under this act at the time of acquisition to a use that is not exempt from the tax levied under this act, whether the use is in whole or in part, or permanent or not permanent. A motor vehicle purchased for resale by a new vehicle dealer licensed under section 248(8)(a) of the Michigan vehicle code, and not titled in the name of the dealer shall not be considered to be converted prior to sale or lease by that dealer. This act is retroactive and is effective beginning September 20, 2002, and also applies for all tax years (even for periods prior to September 20, 2002) that are open under the Revenue Act's Statute of Limitations.

In addition, the definition of **purchase** under the Use Tax Act includes converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act. The Use Tax Act also states, as part of the definition of **use**, that converting tangible personal property acquired for a use exempt from the tax levied under this act to a use not exempt from the tax levied under this act is a taxable use.

Application for all Taxpayer and Business Types

The following items should be considered in relation to the definition of **convert**:

1. With the exception of certain motor vehicles (discussed below) all tangible personal property and all services can be converted from an exempt use to a taxable use
2. Conversion under the statute is a 1-way scenario and will only result in a tax. No credits or refunds are available when tangible personal property or services are converted from a taxable use to an exempt use
3. With the exception of new vehicle dealers, the act does not specify a different tax base upon which use tax is calculated when property or services are converted; therefore, the tax base is the original purchase price
4. Strict and rigid application of the **conversion** language should not be used for industrial processing
 - a. Items that are obsolete or whose useful life has been exhausted for their intended purpose may have only immaterial or salvage value. Such items are not **converted** when used for other purposes and may be disregarded in the course of an IP audit

- b. Items that are not obsolete but instead have been converted to another use because of a change in business operations should not be disregarded by auditors

References pertaining to this information can be found in the index under [Chapter 8](#)

Chapter 9 – Delivery – Just in Time

The **just in time** delivery system is a highly interactive system of delivering products to the customer based on the customer's production requirements. The system usually involves the exchange of electronic data between the customer and the supplier.

No matter how coordinated the activities of the supplier's production and the customer's manufacturing schedule, the industrial processing activities of the supplier and the customer stand on their own separate merits.

From the delivery standpoint, there is a completed product that needs to be shipped to the customer. There is still a point where the product is complete prior to the shipping activity. The accumulation point or short term holding area would be considered finished goods inventory, therefore the shipping functions are taxable.

From the receiving standpoint, there is still a receiving function even though the product may go to a production staging area or directly into the production area to start the production process. The receiving functions are taxable when the items are received from an **outside** supplier (not part of the same legal entity). The movement of the purchased products to a raw material inventory location is a taxable use of equipment. The exempt uses of automated equipment begin when raw materials are removed from storage.

Automated equipment used for shipping or receiving is often the same equipment used to take the products to, from, or through the production areas.

Several uses for the same automated equipment will create the need to compute taxable and nontaxable percentages for the equipment. This can be accomplished by measuring the time spent on each activity or by counting the taxable and nontaxable movements or using some other method of generating a reasonable taxable percentage.

Industrial processing begins when eligible property is removed from raw materials storage. This is easily identified when there is clear and identifiable raw material storage, but it becomes more difficult to identify receiving from exempt material handling activities when the purchaser's operations are highly automated.

The taxable and nontaxable areas of just in time inventory scheduling can be demonstrated with examples. The following examples assume the customer uses just in time delivery scheduling with its suppliers. The examples start with a low degree of automation and progress to a higher level of automation.

Example 1:

The purchased parts are received at the receiving dock via truck. A forklift unloads the parts and puts them in a raw material inventory to be taken to the production area later. All equipment used to unload and handle raw material is taxable.

Example 2:

The purchased parts are received at the receiving dock via truck. A forklift unloads the parts and puts them in an open area in the receiving department. After the truck is unloaded, the parts are taken to the production area. The equipment used to unload the truck is taxable. The equipment used to move the parts to the production area is exempt.

Example 3:

The purchased parts are received at the receiving dock via truck. A visual inspection and manual inventory count are performed on the truck. The receiving area uses a conveyor to unload the truck. The parts are put in an open area in the receiving department. The parts are immediately taken to the production area by a different conveyor. The equipment used to unload the truck is taxable. The equipment used to move the parts to the production area is exempt.

Example 4:

The purchased parts are received at the receiving dock via truck. On the truck a visual inspection and manual inventory count is performed. The trucks are designed with a track that allows the parts to roll out of the truck. The truck receiving area is designed with a slope toward the building. The parts are unloaded directly onto a conveyor via use of the track and gravity. After leaving the truck, the parts are moved by conveyor to the production area. In this example, there is **no taxable material handling activity** as the movement of the purchased parts is to the production area, being driven by the production process. There is a receiving activity, but no equipment is used for that purpose.

Example 5:

The purchased parts are received at the receiving dock via truck. The trucks are designed with a track that allows the parts to roll out of the truck. The truck receiving area is designed with a slope toward the building. The parts are unloaded directly onto a conveyor via use of the track and gravity. At the midpoint of this conveyor a visual inspection and manual inventory count is performed. The conveyor then moves the parts to the production area. In this example, the conveyor is 50% taxable as a receiving function occurs at the mid-point of the conveyor system.

Example 6:

The purchased parts are received at the receiving dock via truck. The trucks are designed with a track that allows the parts to roll out of the truck. The truck receiving area is designed with a slope toward the building. The parts are unloaded directly onto a conveyor via use of the track and gravity. As parts move on a conveyor through the receiving area, electronic equipment reads UPC bar codes or Radio Frequency Identifications (RFID's) to record the type and amount of items received. The parts continue to move via conveyor to an auxiliary feed line to the production area. The parts will be used in production in 12 hours. In this example, the conveyor is taxable up to the point of the bar code equipment or RFIDs, as this is a taxable receiving function. The fact that the parts will not be used in production for 12 hours does not impact the decision. **The electronic equipment used to read the bar codes or RFIDs are taxable for accounting and inventory control purposes.**

The above examples demonstrate that the first event that takes place is receipt of the purchased material. The next event may be to raw material storage, even though this phase may be brief. The examples also show that the material may move directly to the production area. Review the receiving area carefully in your plant tour to determine if there is a change in activity with a 12 hour delay between the receipt of the purchased material and the movement to the production area.

References pertaining to this information can be found in the index under [Chapter 9](#)

Chapter 10 – Direct Pay

Direct pay is a process whereby the Michigan Department of Treasury authorizes taxpayers to assume the obligation to self-accrue and remit their sales and use tax liability directly to the Department.

Direct pay authorization is limited to the purchase or lease of tangible personal property or services for which the purchaser or lessee cannot practicably determine, at the time of acquisition, the manner in which the property or services will be used. The authorization must also facilitate improved tax compliance. The Department has the authority to determine which items are not eligible for direct pay.

The direct pay authorization does **not** include the following transactions:

- Materials furnished by, or supplied to, construction contractors in the performance of a contract to construct, alter, repair or improve real estate
- Vehicles purchased, leased or rented for highway use and requiring a license and title
- Aircraft
- Watercraft
- Services subject to use tax including communication services and motel rentals
- Petty cash purchases made by company employees on behalf of the company
- Prepayment of sales tax on gasoline
- Tangible personal property consumed by a person performing any service activity for your company

Some contractors have a limited direct pay account. These usually cover specific construction projects. The limited permits pertain only to materials and equipment directly incorporated into the project. They do not include consumable materials and equipment used by the contractor (tools, torches, gases, cleaning solvents, etc.).

For an industrial processor, the direct pay permit or the limited direct pay permit covers the purchases of tangible personal property only, not materials attached to real estate by a contractor.

Corporate purchasing cards, procurement cards, or credit cards are covered under the direct pay permit.

Auditors should review current direct pay listings as taxpayers are added and removed periodically. A copy of a standard direct pay permit is shown on the next page.



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
LANSING

RICK SNYDER
GOVERNOR

Date

Taxpayer Name and Title
Business Name
Address
City, State Zip

Dear Taxpayer:

This is in response to your request for a direct pay letter. The Michigan Department of Treasury ("Department") hereby authorizes "Business Name" to operate under a direct pay permit for Michigan sales and use taxes. Your effective date is "Month/Day/Year".

This letter is your "direct pay" permit. This represents your authority to report sales and use tax liabilities directly to the Department and is limited to purchases of tangible personal property. In addition, the following are excluded from your direct pay authorization:

1. Materials furnished by, or supplied to, construction contractors in the performance of a contract to construct, alter, repair or improve real estate.
2. Vehicles purchased, leased or rented for highway use and requiring a license and title.
3. Aircraft.
4. Watercraft.
5. Services subject to use tax including communication services and hotel rentals.
6. Petty cash purchases made by company employees on behalf of the company.
7. Prepayment of sales tax on gasoline.
8. Tangible personal property consumed by a person performing any service activity for your company.

The purchase of power, steam, gas, etc. and capital appropriation items may be included under your direct pay procedure.

When claiming exemption from sales and use taxes on purchases of tangible personal property, other than those transactions stated above, on Box 10, Other (explain) of form 3372, Michigan Sales and Use Tax Certificate of Exemption, available on the Department's Web site, www.michigan.gov/treasury, you should state this notation: "Authorized to pay sales or use taxes on purchases of tangible personal property directly to the State of Michigan under Account Number "Taxpayer FEIN."

In addition, a copy of this letter must be furnished to the vendor when claiming direct pay authority.

If you have any questions, please contact the Technical Services Section at the address or telephone number below.

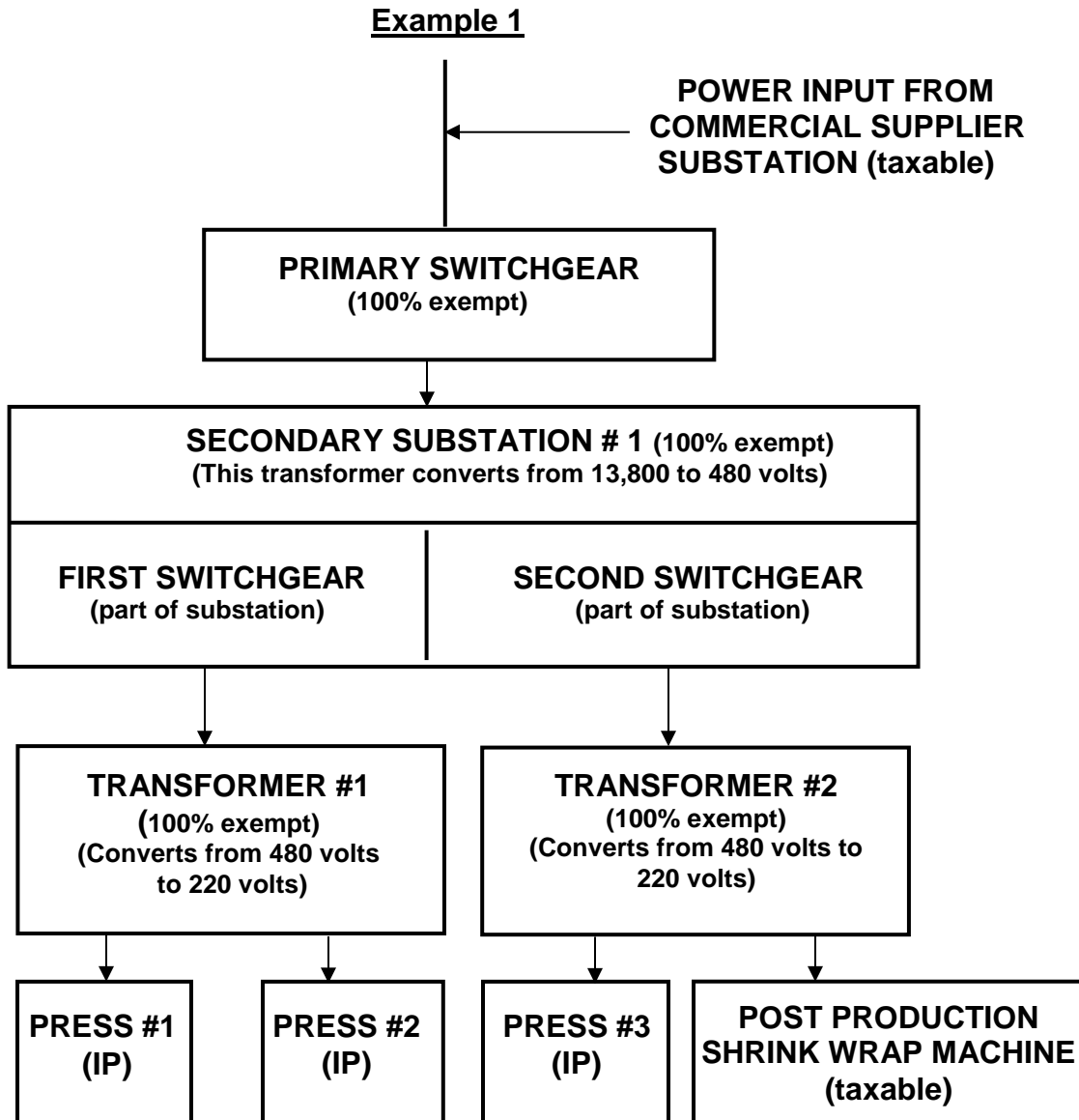
Sincerely,
Tax Policy Division

References pertaining to this information can be found in the index under [Chapter 10](#)

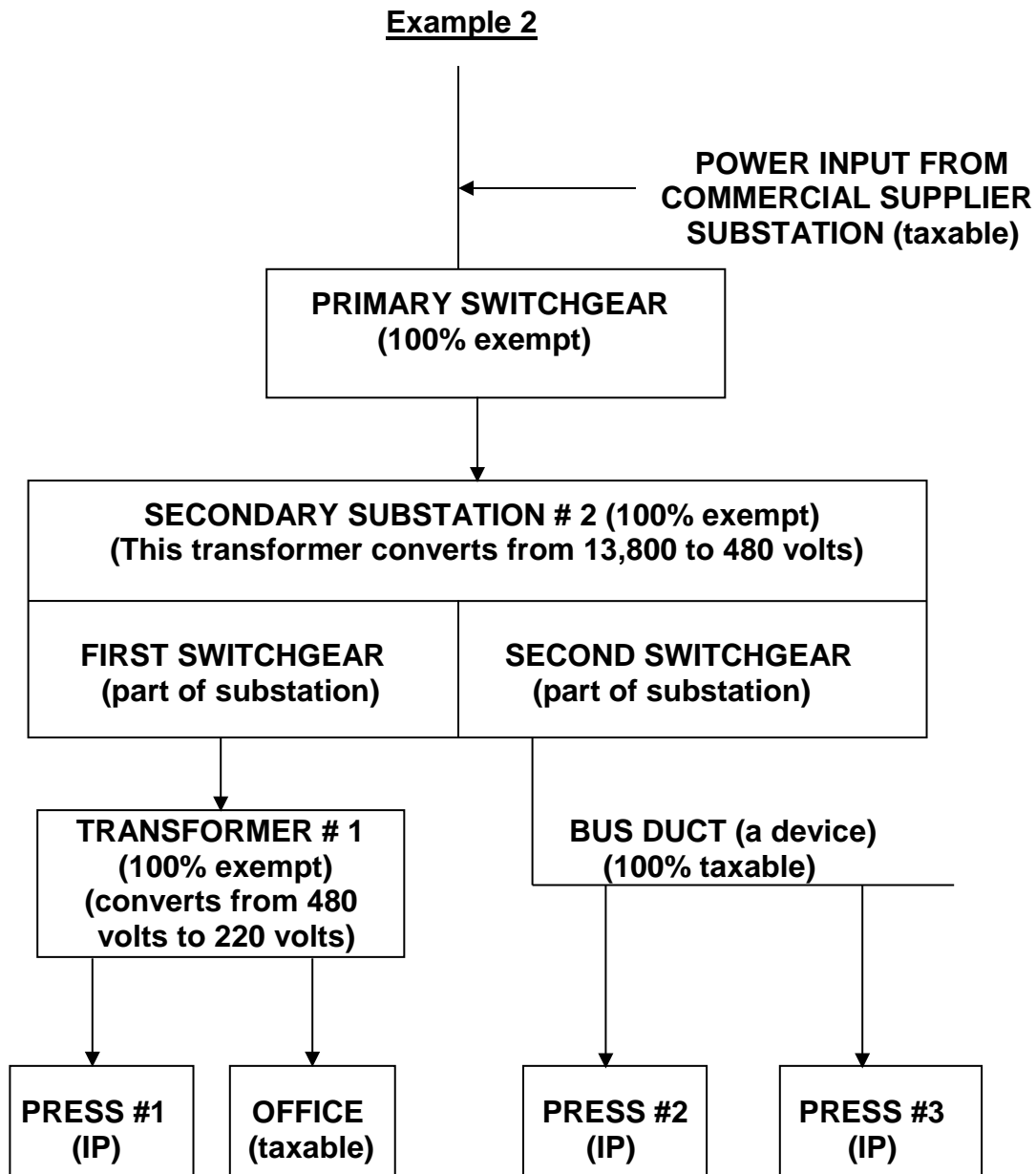
Michigan Department of Treasury
Tax Compliance Bureau
June 2015

Chapter 11 – Electrical Distribution Systems

This section discusses the industrial processing exemption as it applies to tangible personal property used in electrical distribution systems. The following examples are based on the assumption that the property is not permanently affixed to real estate.

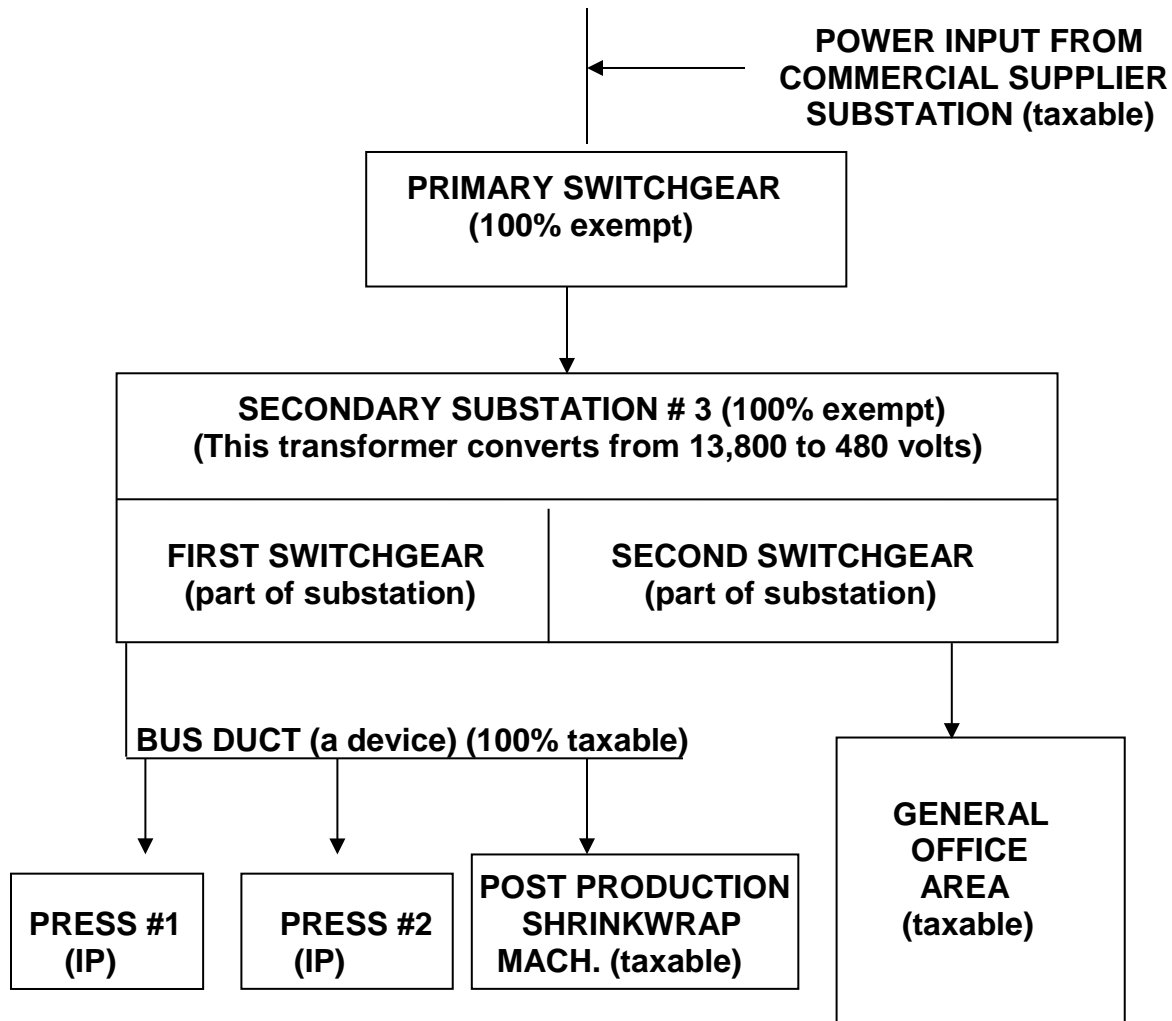


Based on the Court of Appeals holding in *Detroit Edison Co v Dep't of Treasury*, 303 Mich App 612 (2014), equipment not permanently affixed and becoming a structural part of real estate that changes the voltage level of electricity prior to use is exempt under the industrial processing exemption.



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Example 3

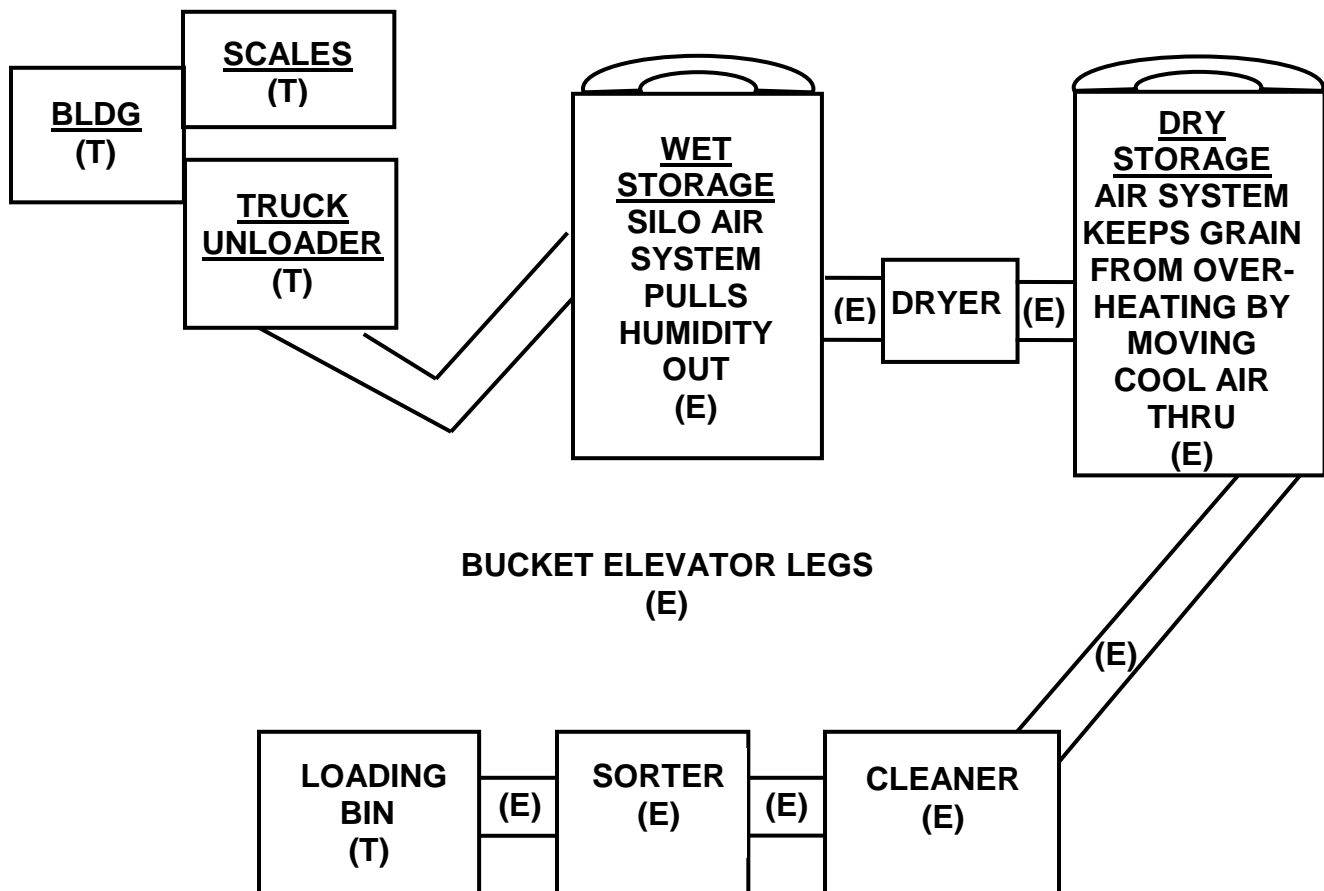


Based on the Court of Appeals holding in *Detroit Edison Co v Dep't of Treasury*, 303 Mich App 612 (2014), equipment not permanently affixed and becoming a structural part of real estate that changes the voltage level of electricity prior to use is exempt under the industrial processing exemption. The bus duct is 100% taxable because it is used for distribution after industrial processing of the electricity has ended according to *Detroit Edison Company*.

References pertaining to this information can be found in the index under [Chapter 11](#)

Chapter 12 – Grain Elevators

Equipment used to dry grain for or by a manufacturer may qualify for an industrial processing exemption. The following drawing shows a typical grain elevator and the areas that are normally taxable (T) or exempt (E).



Notes:

1. The electrical wiring of equipment is personal property and is taxable or exempt depending on where used
2. The actual silo is real property and is taxable
3. IP would not be allowed when drying is performed for farmers, as farmers are not manufacturers
4. Cleaning equipment used to remove clay from grain is exempt industrial processing equipment. This is also true if this equipment is located at a secondary location (not in close proximity to the primary elevator site)

References pertaining to this information can be found in the index under [Chapter 12](#)

Chapter 13 – Inventory Withdrawals/Consumed Goods

The use tax base of self-produced or purchased products placed into an inventory to be withdrawn for internal use or to be given away at no cost to an outside party is material cost. See the “Samples” section of this text.

Michigan Withdrawals

The below items withdrawn from a Michigan inventory are taxable on material cost regardless of where the item is shipped (see exceptions below). The items are considered to be **used or consumed** in Michigan. If the taxpayer erroneously remits tax to another state, a refund must be requested from the other state.

- Items consumed in the performance of optional maintenance contracts or service agreements are considered to be used internally and subject to use tax on material cost
- If an item is given away with a minimal charge that is designated as a shipping charge, tax is due on material cost. A shipping charge on a giveaway is not considered to be a sale at retail
- If an item is sold to a customer for a nominal charge that may be less than cost and does not represent a shipping charge, no use tax is due. The nominal charge is considered to be gross proceeds of a sale at retail with sales tax due

Example 1:

A company purchases a catalog and charges \$5.00 to its customers for the catalog. The \$5.00 charge is less than the cost of a catalog. Any catalogs shipped out-of-state are in interstate commerce and exempt from tax under the Commerce Clause. Sales tax is due on the \$5.00 charge for any catalogs shipped to Michigan customers.

If a company sells 1,000 items of its product to a customer and gives the customer an additional 10 items of the product free, the additional 10 items are not considered taxable giveaway items. There is one gross selling price on the 1,010 items. The gross proceeds would be the amount charged for the 1,000 items.

A **tie-in** sale requires someone to first buy tangible personal property in order to receive a different item free. There is an advertisement that an item will be received free at the time of purchase. The advertised item given away with the tie-in sale is not subject to use tax. A portion of the gross proceeds received from the sale is attributed to the free item.

Example 2:

A gas station advertises in the newspaper or at the pump island that a customer receives a free glass if they purchase 8 gallons of gas. The glass would not be subject to use tax by the gas station owner, since this is an exempt tie-in sale.

If a customer purchases a product and receives a free item without expecting to receive a free item, the person giving away the free item must pay use tax on the material cost of the free item. This is not considered a tie-in sale.

Example 3:

A furniture manufacturer with a retail outlet sells a coffee table. The customer is given a can of furniture polish when they buy the coffee table. There was no advertisement that the furniture polish would be given to the customer. The customer was not expecting to receive anything when purchasing the coffee table. The seller owes use tax on the furniture polish given away on the taxable cost.

Exceptions

- Inventory withdrawals for the fulfillment of a contract affixing to realty by a manufacturer/contractor are taxable on finished goods inventory value
- Items that remain under control or possession of an owner of Michigan inventory, when transferred to out-of-state inventory to give away or for promotional purposes are not taxable because **use** does not occur in Michigan
- Rebate checks issued to promotional program recipients are taxable at cost. The checks do not meet the definition of promotional materials. The envelope used to mail the check would be exempt if mailed to a person out-of-state, since the envelope meets the packaging material definition

Note: Since the tax base of inventory withdrawals is material cost, the percentage of equipment (with materiality considered) used to produce inventory items that are withdrawn would also be taxable.

Non-Michigan Withdrawals

Items withdrawn from an inventory not located in Michigan and shipped into Michigan may be taxable on material cost with an appropriate credit for any sales or use tax, including local taxes, which had been legally due and paid in another state. If the tax paid was less than the tax imposed by Michigan, the difference in the tax is due.

The following conditions must be met for an inventory withdrawal outside of Michigan to be exempt from tax

- The distribution is made by mail or common carrier
- The distribution originated from out-of-state
- The taxpayer has no control in Michigan over the distributed items. Control can be actual physical possession or other control as noted in Examples 2-4 below

This exemption would extend beyond catalogs to include promotional literature, samples, giveaways, etc.

Example 1:

ABC Company gives away brochures to its customers in Michigan. An out-of-state company prints the brochures. The out-of-state printer ships the brochures by mail to ABC Company's customers in Michigan. ABC Company never received physical possession of or title to the brochures nor did it have any control over the brochures in Michigan. The brochures are not subject to tax.

Example 2:

ABC Company gives away brochures to its customers in Michigan. An out-of-state company prints the brochures. The out-of-state printer ships the brochures by mail to ABC Company's customers in Michigan. The mailing package is marked "return to sender." ABC Company never received physical possession of or title to the brochures. Specific mailing instructions, (e.g., "return to sender" or "address correction requested"), do not constitute control over the brochures in Michigan. The brochures are not subject to tax.

Example 3:

ABC Company hires an out-of-state printer to print advertising supplements. The out-of-state printer ships the supplements to a distributor located in Michigan for further distribution based on guidelines or instructions provided by ABC Company (number of inserts to be distributed at any given time, date of distribution, etc.). ABC Company has sufficient control over the supplements in Michigan. Therefore, the supplements are taxable on material cost.

Example 4:

National Corporation, an out-of-state corporation, has nexus in Michigan through various distributors. The distributors give away products of National Corporation as promotional material. National Corporation gives specific instructions to the distributor as to where the product is to be located and what records to maintain relative to the distribution. The distributor has to sign a distribution agreement with National Corporation. National Corporation is subject to use tax on the material cost of the items given away in Michigan since it has sufficient control over the distributed product (this example assumes there is no sale of products between National Corporation and the distributors).

References pertaining to this information can be found in the index under [Chapter 13](#)

Chapter 14 – Material Handling

The **beginning** of the industrial process is when the tangible personal property begins movement from raw material storage to begin the industrial process. The **end** is when the finished goods first come to rest in finished goods inventory.

Material handling equipment used by an industrial processor to move the production material from one process to the next process is exempt, within the same facility or same legal entity. This includes the material handling equipment used in shipping and receiving in-process material to a separate location of the same legal entity for sub-processing. Subsidiaries are considered unrelated entities when evaluating the tax status of material handling equipment. There is also a specific exemption available for front end loaders, forklifts, pettibone lifts, skidsters, multipurpose loaders, knuckle-boom log loaders, tractors, and log loaders used to unload logs from trucks at a saw mill site for the purpose of processing at the site and to load lumber onto trucks at a saw mill site for purposes of transportation from the site. Vehicles required to be licensed and titled for use on public highways are not eligible for the industrial processing exemption.

Receiving departments are taxable areas when receiving **purchased** materials. The shipping and receiving activity for in-process materials would be an exempt activity when conducted within the same legal entity. The in-process materials may come from another plant location or division of the taxpayer. The same shipping and receiving activity conducted with a different legal entity is considered taxable. This dual shipping and receiving activity will require treating the same equipment as partially taxable and partially nontaxable.

The movements from raw material inventory to a staging area or an area adjacent to the processing equipment would be an exempt movement of the material.

Types of material handling equipment and parts:

- Fork lift trucks
- Overhead cranes
- Low boy skid trucks
- Conveyors
- Electronic guided tracking systems
- Pallet jacks
- Tuggers
- Repairs (parts) and maintenance

- Batteries, battery chargers, charger stands
- Utilities

General types of material handling movements:

- Receiving **purchased** raw materials is taxable
- Movement of the **purchased** raw materials to raw materials inventory storage is taxable
- Movement of the raw materials to an area adjacent to the production machinery is exempt
- Movement of the raw materials from an area adjacent to the production machinery, or from inventory, to the production machinery is exempt
- Movement of in-process materials from one machine or production process to another machine or process is exempt
- Movement of the completed product to finished goods inventory is exempt
- Movement of the completed product from finished goods inventory to the shipping area is taxable
- Material handling equipment used in the shipping functions of finished goods is taxable
- Within the same legal entity, the material handling equipment used by a manufacturer in the shipping and receiving functions of in-process materials/goods is exempt when the materials are sent out and returned for sub-processing
- Between different legal entities, subsidiaries or unrelated companies, the material handling equipment used by a manufacturer in the shipping and receiving functions of in-process materials/goods is taxable when the materials are sent out and returned for sub-processing
- The shipping and receiving functions of the different legal entity sub-processor are taxable, as these functions are not considered exempt in-process material handling movements. It is raw material when received by the sub-processor and a finished product of the sub-processor when shipped out

- Material handling equipment used for shipping from one plant (division) to a second manufacturing facility (division) of the same company (legal entity) is considered exempt as long as the product is still going through the process of production and has not reached the completed product that is marketed by the company

Usually, in industrial processing audits the material handling equipment will be used in both the taxable and nontaxable areas. The audit solution is to determine a taxable/nontaxable percentage of use.

Methods that can be employed to determine the taxable/nontaxable percentages:

- Number of taxable movements compared to the total number of movements
- Amount of time used in the taxable movements to the total time for all movements
- Specific allocation - number of pieces of equipment in the taxable areas compared to the total number of pieces of equipment
- Specific identification with a taxable area or department
- Any other reasonable method as discussed

Actual costs associated with taxable and/or exempt areas or activities are quite often available through cost accounting records. If available, the actual costs should be used for audit purposes.

References pertaining to this information can be found in the index under [Chapter 14](#)

Chapter 15 – Miscellaneous

Situations may occur during audits where the availability of an industrial processing exemption may be in question. Below are some examples:

- A road builder entered into a contract to build an asphalt highway. The contractor sets up a batch plant at the job site to manufacture the asphalt. The batch plant is taxable. The form, composition, quality, combination, or character of the tangible personal property is being changed or converted in this instance. However, there is no ultimate sale at retail. The contractor is the consumer of the material.
- A magazine distributor picks up, shreds, and bales unsold magazines. The shredded magazines are sold to a paper mill. There is a sale at retail that takes place here, and the shredding machine is exempt for industrial processing. See “Scrap Dealers and Recyclers” Section of this text.

In the following examples, a **roto mill** is used to break up existing road surface, so it can be removed from the site. The site is then prepared for a new road surface.

- A road contractor is hired to replace a section of a highway. The contractor sells the crushed road surface material to a purchaser who will use it to make new road surface material
- An asphalt manufacturer/contractor uses a roto mill at the job site to crush the asphalt. The crushed asphalt is taken to their manufacturing plant and recycled into new asphalt that is to be used for a future contract job
- An asphalt manufacturer/contractor uses a roto mill at the job site to crush the asphalt. The crushed asphalt is taken to their manufacturing plant and recycled into new asphalt to be resold to a road contractor
- ABC Company is hired by an asphalt manufacturer to remove asphalt from the highway. The asphalt manufacturer provides the company with a roto mill that crushes the asphalt so it can be recycled
- An asphalt manufacturer-contractor removes asphalt from a highway and uses a roto mill at the job site to crush the asphalt. The crushed asphalt is taken to their manufacturing plant and recycled into new asphalt

In the above situations the roto mill is taxable. The companies are using the roto mill to alter real property and the crushing of the asphalt facilitates transportation of the product. The fact that the form, composition, or character is changed is incidental to the service of removing the asphalt from the existing road surface.

An entity can get the IP exemption if the property is intended for and actually used by an industrial processor in industrial processing. This effectively gives an exemption for

those who purchase tooling and other similar property that is subsequently given to another entity for actual use in industrial processing activities.

The following examples illustrate this concept:

Example 1:

ABC Corporation is a book publisher located in Michigan. It performs composition work, artwork, and graphics in conjunction with the books it sells. However, all the actual printing of the books is done by a printer located in Ohio. Is ABC Corp. liable for sales or use tax on equipment or supplies used in performing the artwork, graphics, and composition?

Answer:

No, these items would be exempt for IP. ABC Corp. is an industrial processor as its activities are part of transforming, altering or modifying the form, composition, or character of property that will ultimately be sold at retail.

Example 2:

XYZ Corporation is a distributor of kitchen cabinets located in Michigan. It does no actual manufacturing itself as all production is farmed out to a separate controlled group member, ZYX Corporation, also located in Michigan. XYZ Corp. has employees (engineers) permanently on site at ZYX Corporation performing quality control functions and product inspection. Is XYZ Corp. liable for sales and use tax on the tools and supplies purchased for its engineers?

Answer:

The tools and supplies purchased for this engineering function would be exempt. Any entity is entitled to the industrial processing exemption if the property is used to perform an industrial processing activity for or on behalf of an industrial processor.

References pertaining to this information can be found in the index under [Chapter 15](#)

Chapter 16 – Packaging Equipment

Packaging equipment used before the product first comes to rest in finished goods inventory is exempt. Packaging equipment used after the product comes to rest in finished goods inventory is taxable. The following are examples of packaging equipment:

- Staple guns
- Tape dispensers
- Equipment for boxing completed products
- Shrink wrappers
- Palletizers
- Banding machines

Industrial processing ends “when finished goods first come to rest in finished goods inventory storage.” This means that all the equipment the processor uses for the preservation or maintenance of a finished good before it first comes to rest in finished goods inventory storage will be exempt.

Example 1:

A sale of paper towels to a drug store will involve the packaging of the towels in individual rolls. If the towels are shrink-wrapped and boxed before placement in finished goods storage, the equipment will be exempt.

Any equipment used to further package or move the product after it is placed in finished goods inventory is taxable. If the paper towels are taken from finished goods storage and shrink wrapped or boxed prior to shipment, that equipment is taxable.

Example 2:

A manufacturer of tulip bulbs sells its product in small plastic bags at retail outlets. It is also engaged in mail order sales where it is required that these plastic bags of tulip bulbs be boxed for further shipment. The equipment that moves the plastic bags of tulip bulbs from the finished goods storage to the boxing process would be taxable.

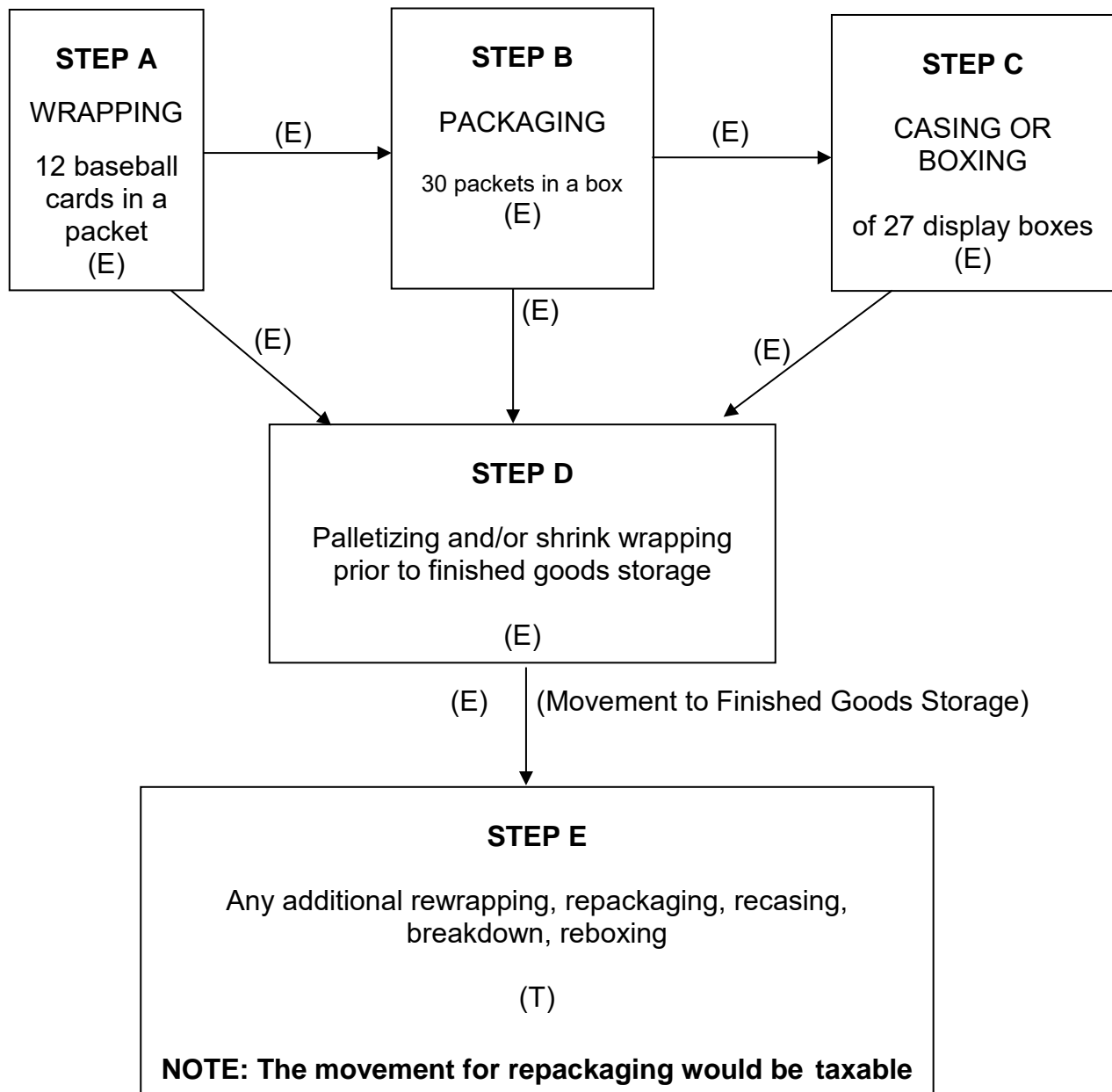
The above examples illustrate that the same equipment may be used in both taxable and exempt packaging operations. Methods to determine taxable/nontaxable percentages of use are discussed in the “Materials Handling” and “Percentage Application” sections of this text and can also be applied to determine the taxable portion of packaging equipment.

The packaging function is illustrated in the “Packaging Function” section of this text.

References pertaining to this information can be found in the index under [Chapter 16](#)

Chapter 17 – Packaging Function

Depending on when packaging occurs, an industrial processor's packaging activities may be taxable or may qualify for exemption as part of the industrial process. This example uses a baseball card manufacturer and outlines the activities that are normally taxable (T) or exempt (E), but the general principles would be applicable to any manufacturer.



References pertaining to this information can be found in the index under [Chapter 17](#)

Chapter 18 – Packaging Materials

Non-returnable containers used to ship and deliver manufactured products are exempt. One-time-use shipping containers, packaging materials, shrink wrap, bags, tags, labels, tape, staples, steel banding and similar shipping materials are exempt from tax for resale, as they accompany the item manufactured and sold. However, any shipping products used after the property has come to rest in finished goods inventory is taxable.

Returnable containers are taxable unless they are used for:

- In-process storage
- In-process movement within the plant
- In-process movement between divisions (of the same legal entity)

Non-returnable containers and other shipping supplies used to ship and deliver products to a sub-processor that is a separate legal entity are taxable. Machinery and equipment used for this function are also taxable.

Non-returnable containers and other shipping supplies used to ship and deliver products to a sub-processor that is the same legal entity (e.g. division) are nontaxable because they are in-process material handling. Machinery and equipment used for this function are also exempt.

If the same containers are used in both taxable and exempt movements, an evaluation should be made based on any of the methods described in the “Materials Handling” and “Percentage Application” sections of this text.

Dunnage

Materials used to aid the shipping or transportation function are taxable. Any materials used to prevent containers from slipping or shifting during transportation such as bracing, padding or wedges (also known as dunnage) which are thrown away when the containers reach their destination are taxable. Dunnage is normally used in railcars and the trucking industry.

The word **dunnage** is also used to describe shipping containers and racks in the automotive industry. These would only be exempt for movement within the same legal entity.

Dunnage is taxable if used **exclusively** on trucks or railcars transporting in-process materials to a sub-processor that is a separate legal entity. Dunnage is exempt if used for in-process storage or movement within or between plants operated by the same legal entity.

Caution: One time use of packaging material (e.g., popcorn, Styrofoam, peanuts) is not considered dunnage.

See the “Packaging Equipment” section of this text for taxability of packaging equipment.

References pertaining to this information can be found in the index under [Chapter 18](#)

Chapter 19 – Percentage Application

There are many instances where an industrial processor uses equipment, fuel, repair parts or utilities in both a taxable and non-taxable manner.

The industrial processing exemption is only available to the extent that the property is used for the exempt purpose stated in the exemption. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

Some of the areas that are commonly apportioned between taxable and exempt consumption are:

- Material Handling - Forklifts, Cranes, Pallet Jacks, Conveyors, etc., including Propane and Repair Parts
- Utilities – Gas, Electricity, Steam and Propane
- Computer Usage – Administrative, CAM, Design, Engineering, Communication, etc.

Methods that can be employed to determine the taxable/nontaxable percentages:

- Number of taxable movements compared to the total number of movements
- Amount of time used in the taxable movements to the total time for all movements
- Specific allocation - number of pieces of equipment in the taxable areas compared to the total number of pieces of equipment
- Specific identification with a taxable area or department. If specific use can be determined, it would not be allocated
- Square/Cubic footage – Taxable area to total area. Applicable to Heat (Propane, Gas, Steam)
- Head count – Taxable users to total users
- Any other reasonable method as discussed and approved by the Department

References pertaining to this information can be found in the index under [Chapter 19](#)

Chapter 20 – Policy (Or Goodwill) Adjustment

A policy (or goodwill) adjustment is usually performed by a manufacturer to maintain customer satisfaction and market share. These adjustments may also be known as **goodwill service** or a **secret warranty**.

Description

A policy adjustment occurs when a manufacturer (or its third party representative) repairs or replaces tangible personal property for a customer under the following conditions:

- The repair is free of charge to the customer
- The repair is made after the original manufacturer warranty period has expired

Taxability of Parts Replaced Under Policy Adjustment

This type of adjustment is part of the original selling price of the vehicle and its original warranty. Therefore, parts provided to customers under a policy (or goodwill) adjustment are not subject to additional sales or use tax.

References pertaining to this information can be found in the index under [Chapter 20](#)

Chapter 21 – Printers

A printer qualifies as an industrial processor when printing most products sold (books, advertising supplements, business cards, invitations, brochures, etc.). However, there are exceptions to this general rule listed below.

Newspapers and Periodicals Published More Than 14 Times Per Year

The production of a newspaper or periodical that is published more than 14 times per year is an activity that does not qualify for the industrial processing exemption. For a printer of newspapers and periodicals published more than 14 times per year, items that become a component part of the newspaper or periodical are exempt, but the capital assets, utilities, and other consumable supplies used to produce the newspapers or periodicals are taxable.

Example:

A printer printing a daily newspaper or a weekly magazine

Exempt:

- Paper
- Ink
- Tangible personal property becoming a component part of the newspaper or periodical

Taxable:

- Capital assets
- Utilities
- Other consumable supplies
- Tangible personal property not becoming a component part of the newspaper or periodical

Personal Use of Manufactured Products

Many printers print letterhead, envelopes, business cards, calendars, promotional materials, etc., for their own use. The use tax base for these items is raw material cost. No industrial processing exemption would exist for utilities, capital assets, etc., used to manufacture these self-consumed items.

See the “Inventory Withdrawals/Consumed Goods” section of this text for further discussion.

Printing Service

When a customer provides their own paper/stock, the printer is providing a service. Thus, the industrial processing exemption is not available to the printer. When “a customer furnishes his own printing stock which was acquired from another source and the printer imprints thereon the name, address and telephone number, this constitutes the rendition of a service.” Therefore, there is no ultimate sale at retail and the purchase of ink, paper, capital assets, utilities, consumable supplies, and any other items used by the printer to provide the service are taxable.

References pertaining to this information can be found in the index under [Chapter 21](#)

Chapter 22 – Prototypes

A prototype is an original model on which something is patterned. **Product** as defined in the industrial processing exemption, when referring to research and experimental activities, “includes, but... is not limited to a prototype, pilot model, process, formula, invention, technique, patent, or similar property, whether intended to be used in a trade or business or to be sold, transferred, leased, or licensed.”

The development, design and manufacture of a prototype by an industrial processor is exempt. For example, if one of the automotive companies developed their own auto-related prototype, this activity would be industrial processing.

This exemption also applies to a person who will use the property to perform an industrial processing activity for or on behalf of an industrial processor. For example, a servicer builds a prototype for a manufacturer, who will use the prototype to test, design and develop his or her own product.

References pertaining to this information can be found in the index under [Chapter 22](#)

Chapter 23 – Quality Control / Research or Experimental / Engineering

Industrial processing includes the following activities:

- Research or experimental activities
- Engineering related to industrial processing
- Inspection, quality control or testing to determine whether particular units of materials or products or processes conform to specified parameters at any time before materials or products first come to rest in finished goods inventory storage

If the taxpayer is an industrial processor engaged in industrial processing, as those terms are statutorily defined, equipment and supplies used directly for any of the above activities are exempt.

Example 1:

An industrial processor receives notice from its customers that unacceptable levels of its finished goods inventory have burrs on them that prevent the inventory from being used in the machinery being built for resale. The taxpayer hires an outside firm to come in and sort through the inventory in **finished goods storage**. This outside servicer would not qualify as an industrial processor in this instance and any equipment or supplies they use to do the sorting would be taxable.

If this same servicer were to sort all of the inventory that are in **in-process storage** they would qualify as an industrial processor, as they are performing quality control work, and all of their equipment and supplies used in this sorting would be exempt.

Research or Experimental

Research or experimental activities are defined, for purposes of the industrial processing exemption, as “activity incident to the development, discovery, or modification of a product or a product related process.” It also includes activity necessary for a product to satisfy a government standard or receive governmental approval.

Some examples of activities that are **not** research or experimental activities:

- Efficiency surveys
- Ordinary testing or inspection of materials or products for quality control purposes

- Management surveys
- Market or consumer surveys
- Advertising or promotions
- Research in connection with literacy, historical, or similar projects
- Supplies and equipment used in research and development not by or for an industrial processor (may be prorated if at least one of the customers is an industrial processor).
- Qualification for ISO9000 Certification is not exempt as Research and Experimental Activity

Quality Control

All equipment and supplies used in the testing of raw materials and the inspection of the product or the process at any point are exempt up to the time the product is put into finished goods inventory storage, whether the testing or inspection is done by the processor or a third party servicer. Once the product is placed in finished goods storage any quality control testing functions are taxable. By definition, industrial processing begins when tangible personal property begins movement from raw materials storage, and ends when the tangible personal property is placed in finished goods inventory storage.

Storage facilities are taxable if used to store raw materials or finished goods inventory; they are exempt if used for in-process storage. Racks used to store test tubes, dies or any other equipment/material would be taxable unless it is in-process storage. Refrigerators in the quality control department used to store raw material testing compounds are taxable, but not if they are in-process storage.

Engineering

Engineering activities related to industrial processing are exempt.

CAUTION: Not all engineering costs are related to industrial processing; for example, building maintenance, receiving, equipment removal, etc., are not eligible for the exemption.

Blueprint storage cabinets (file cabinets or on-line storage cabinets) are taxable.

References pertaining to this information can be found in the index under [Chapter 23](#)

Chapter 24 – Real vs. Personal Property

Real property is generally not eligible for the industrial processing exemption. To determine whether property remains tangible or is made a structural part of realty, we look to three general tests:

- Annexation to realty, either actual or constructive
- Adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated
- Intention to make the article a permanent accession to the freehold

Annexation to Realty, either Actual or Constructive

If property is actually or constructively annexed to the realty it is real property. If the item is attached in such a manner that its removal would destroy the building, do substantial injury to the building or impairs the property's value or the value of the realty, the item is usually held to be real property.

The doctrine of constructive annexation has frequently been applied in the case of property which is not itself actually or directly annexed to the realty, but is part of, or accessory to, property which is annexed. The property, if removed, would leave the property to which it is annexed unfit for use and the part or accessory is not capable of general use elsewhere.

Certain equipment remains personal property even though it may appear to be part of real property. Since some items can have the appearance of being real property, it is important to ascertain all the facts before making a final decision.

If the object is not attached to the land or to some structure or appliance which is attached to the land, it will retain its character or personality even though intended for permanent use on the premises.

Generally, if property depends on a building's utility for operation and use, and it is connected to a building's utilities (e.g., gas, electric, plumbing), it would be deemed to be affixed to realty.

Adaptation or Application to the Use or Purpose to which that Part of the Realty to which it is Connected is Appropriated

If property functions as part of a particular building, or if it carries out part of a function of the real property, that item is likely real property. An example of this type of real property would be screens which are built to fit the windows of a particular building.

Another indicator property is real property is that it cannot be used unless affixed to the building or land.

In simple terms, if the tangible personal property serves a function of realty or the building and it is attached and permanently affixed to realty, it is likely that it is real property.

Intention to make the Article a Permanent Accession to the Freehold

Objective visible facts are used to determine whether intention to make the property a permanent accession to the realty exists.

The permanence required is not equated with perpetuity. It is sufficient if the item is intended to remain where affixed until worn out, until the purpose to which the realty is devoted is accomplished, or until the item is superseded by another item more suitable for the purpose.

Intent may be inferred from the nature of the article affixed, the purpose for which it was affixed, and the manner of annexation. Whatever is affixed to a building by an owner in complement, to facilitate its use and occupation in general, becomes a part of realty, though capable of removal without injury to the building.

Taxability Chart – Real vs. Personal Property Tax Status for Industrial Processors

No.	Description	Real or Personal for Sales/Use	Sales & Use Tax Status for IP
1	Acoustical ceilings: <ul style="list-style-type: none"> • Building ceiling construction • IP equipment sound attenuation 	Real Personal	Taxable Exempt
2	Air compressor: <ul style="list-style-type: none"> • For specific IP machinery • Part of central system 	Personal Real	Exempt % Based on Use
3	Air conditioning systems for general building	Real	Taxable
4	Air conditioning units: <ul style="list-style-type: none"> • Window type units • Floor or cabinet type – no ductwork • Process – central system • Evaporators 	Personal Personal Real Real	T or E * T or E * Taxable Taxable
5	Air makeup unit: <ul style="list-style-type: none"> • For specific IP function • For general building 	Personal Real	Exempt Taxable
6	Alarm/security systems: <ul style="list-style-type: none"> • Built-in components • Free-standing or wall-mounted components 	Real Personal	Taxable Taxable
7	Annealing furnaces (small furnace to heat up parts)	Personal	Exempt
8	Awnings – canopies/marquees	Real	Taxable
9	Berms	Real	Taxable
10	Bins: <ul style="list-style-type: none"> • Portable • Built-in 	Personal Real	T or E * T or E *
11	Boilers: <ul style="list-style-type: none"> • One boiler (bldg function) • Replacement boiler (bldg function) • Boiler for specific IP machine • Multiple boilers 	Real Real Personal R or P*	Taxable Taxable Exempt % Based on Use
12	Booths: <ul style="list-style-type: none"> • IP equipment type • Building type - room like 	Personal Real	Exempt Taxable
13	Bridges: <ul style="list-style-type: none"> • Specific to IP equipment • Specific to building 	Personal Real	Exempt Taxable

No.	Description	Real or Personal for Sales/Use	Sales & Use Tax Status for IP
14	Bunkers and silos	Real	Taxable
15	Bus ducts (also see "electrical distribution systems" section of this text): <ul style="list-style-type: none"> For general electrical distribution For specific IP equipment 	Real Personal	Taxable Taxable
16	Catwalks: <ul style="list-style-type: none"> Attached to IP equipment Attached to building 	Personal Real	Exempt Taxable
17	Central control systems: <ul style="list-style-type: none"> Direct control for specific IP equip General control power wiring Control building 	Personal Real Real	Exempt Taxable Taxable
18	Clocks: <ul style="list-style-type: none"> Payroll and watchman clocks 	Personal	Taxable
19	Communications systems -- permanent: <ul style="list-style-type: none"> Phone Pneumatic tubes 	Personal Personal	Taxable Taxable
20	Compressor for general building air conditioners	Real	Taxable
21	Conveyor or carrier enclosures (see enclosures below)	Personal	Exempt
22	Conveyors	Personal	% Based on Use
23	Cooling towers	Real	Taxable
24	Crane tracking or rails (craneways)	Personal	% Based on Use (1)
25	Cranes	Personal	% Based on Use (1)
26	Decks and drains (process)	Real	Taxable
27	Dehumidifiers: <ul style="list-style-type: none"> Portable Part of heating/air conditioning 	Personal Real	% Based on Use Taxable
28	Dikes or levees: <ul style="list-style-type: none"> Surrounding storage tanks River or lake control 	Real Real	Taxable Taxable
29	Dock bumpers and seals	Real	Taxable
30	Dock levelers	Real	Taxable
31	Docks, ramps (built-in)	Real	Taxable
32	Door operators	Real	Taxable

No.	Description	Real or Personal for Sales/Use	Sales & Use Tax Status for IP
33	Doors (garage and pass doors) (plastic strips that separate rooms, though not real property, would be taxable.)	Real	Taxable
34	Dryers - processing	Personal	Exempt
35	Ductwork: <ul style="list-style-type: none"> • Building • For IP equipment 	Real Personal	Taxable Exempt
36	Dumbwaiters	Real	Taxable
37	Dust collectors	Personal	T or E *
38	Dust or spray collection equipment for specific IP machines	Personal	Exempt
39	Dynamometer testing cells (bldg function)	Real	Taxable
40	Electrical distribution materials & equipment: <ul style="list-style-type: none"> • Up to last transformer & up to the secondary substation (this does not apply to a manufacturer of electricity.) • Electrical distribution materials & equipment installed after usable power is provided to be used for IP functions 	Real Personal	Taxable (2) Exempt (2)
41	Electrical substation enclosures	Real	Taxable
42	Elevators	Real	Taxable
43	Emergency lights	Real	Taxable
44	Enclosures: <ul style="list-style-type: none"> • Building • Freestanding for IP equipment 	Real Personal	Taxable Exempt
45	Energy monitors: <ul style="list-style-type: none"> • General building • For specific IP equipment 	Real Personal	Taxable Exempt
46	Escalators – building	Real	Taxable
47	Exhaust systems: <ul style="list-style-type: none"> • Ducted from IP equipment • Building ventilation 	Personal Real	Exempt Taxable
48	Fans: <ul style="list-style-type: none"> • Freestanding, for employee comfort in IP area • Building ventilation - built-in 	Personal Real	Taxable Taxable
49	Fencing	Real	Taxable

No.	Description	Real or Personal for Sales/Use	Sales & Use Tax Status for IP
50	Fire protection systems: <ul style="list-style-type: none"> • Building sprinklers • Building CO₂, halon, hi-ex foam systems • CO₂, halon, hi-ex foam system for equipment only • Supplemental water system to assist bldg. • Supplemental water system for equipment only • Fire extinguisher cabinets, reels, valves • Fire extinguishers (canister or tanks) • Fire escapes 	Real Real Personal Real Personal Real Personal Real	Taxable Taxable Taxable Taxable Taxable Taxable Taxable Taxable
51	Flag poles, in-ground or on building	Real	Taxable
52	Floor finishes: <ul style="list-style-type: none"> • Special coverings (wood block, steel tile) • Standard coverings (carpet, linoleum, tile) 	Real Real	Taxable Taxable
53	Floor grates: <ul style="list-style-type: none"> • Not adjacent to machinery • Adjacent to machinery (both are a function of realty) 	Real Real	Taxable Taxable
54	Flooring, raised or computer room	Personal	Taxable
55	Foundations for specific IP equipment	Personal	Exempt
56	Freezers: <ul style="list-style-type: none"> • Building type construction-walk-in • Portable – freestanding 	Real Personal	Taxable % Based on Use (e.g., In Process Storage)
57	Furnaces: <ul style="list-style-type: none"> • One – new • One – replacement • For IP use – replacement • Multiple 	Real Real Personal R or P*	Taxable Taxable Exempt % Based on Use
58	Gas distributions systems: <ul style="list-style-type: none"> • Gas lines to process system • Gas lines to building systems 	Personal Real	Exempt (2) Taxable

No.	Description	Real or Personal for Sales/Use	Sales & Use Tax Status for IP
59	Gate operators: <ul style="list-style-type: none"> Part of fence - land improvements 	Real	Taxable
60	Generator: <ul style="list-style-type: none"> One which services the facility (bldg function) Used for specific IP machine 	Real Personal	Taxable Exempt
61	Guard rails and posts: <ul style="list-style-type: none"> Protect IP equipment (attached to building) Protect IP equipment (attached to equipment) Protect inventory Roads, parking, building 	Real Personal Real Real	Taxable Exempt Taxable Taxable
62	Heaters: <ul style="list-style-type: none"> Unit heaters - hanging Manufacturing process Portable (employee comfort) 	Real Personal Personal	Taxable Exempt Taxable
63	Heating & venting systems (general building type)	Real	Taxable
64	Hoists: <ul style="list-style-type: none"> Built-in Portable 	Real Personal	Taxable % Based on Use
65	Humidifiers: <ul style="list-style-type: none"> Portable, IP functions Built-in 	Personal Real	Exempt Taxable
66	Incinerators	Real	Taxable
67	Insulation & piping in wall for refrigerated rooms	Real	Taxable
68	Kilns, ceramic and lumber: <ul style="list-style-type: none"> Freestanding, for IP functions Built-in 	Personal Real	Exempt Taxable
69	Landfill cells - layers of waste separated from land by an impermeable barrier: <ul style="list-style-type: none"> Piping/horizontal wells (in landfill cells) Tire chips (over piping in landfill cells) 	Personal Personal	Exempt (3) Exempt (3)

No.	Description	Real or Personal for Sales/Use	Sales & Use Tax Status for IP
70	Lighting - electrical: <ul style="list-style-type: none"> • General building • Land improvements • Supplemental – building system (fixtures extended down from general building) • Supplemental - equipment (fixtures hard-wired and extended down to a specific IP machine) 	Real Real Real Personal	Taxable Taxable Taxable Exempt
71	Lightning arresters	Real	Taxable
72	Loading dock	Real	Taxable
73	Locker room facilities: <ul style="list-style-type: none"> • Plumbing fixtures - showers • Permanent partitions • Toilet partitions • Lockers, freestanding • Lockers, recessed into wall 	Real Real Real Personal Real	Taxable Taxable Taxable Taxable Taxable
74	Office – portable foreman's	Personal	Taxable
75	Operators, doors & windows	Real	Taxable
76	Parking control systems	Real	Taxable
77	Partitions: <ul style="list-style-type: none"> • Portable, in manufacturing area (bldg function) • Permanently attached 	Personal Real	Taxable Taxable
78	Pipe rack supports	Real	Taxable
79	Piping: <ul style="list-style-type: none"> • From wall to specific IP machinery • Utility piping, gas, water, etc. 	Personal Real	Exempt Taxable
80	Plastic door strips (air guard strips) to separate areas (general building)	Real	Taxable
81	Plumbing: <ul style="list-style-type: none"> • General building • To specific IP equipment 	Real Personal	Taxable Exempt
82	Press pit (machine foundation)	Personal	Exempt
83	Pump houses	Real	Taxable
84	Ramps: <ul style="list-style-type: none"> • Portable • Built-in 	Personal Real	Taxable Taxable

No.	Description	Real or Personal for Sales/Use	Sales & Use Tax Status for IP
85	Rooms within a plant, not a structural part of realty and used for IP functions (includes clean rooms and quality labs, but does not include a foreman's office)	Personal	Exempt (4)
86	Scale houses	Real	Taxable
87	Scales: <ul style="list-style-type: none"> • Portable • Built-in • Truck, built-in 	Personal Real Real	T or E * Taxable Taxable
88	Sheds: <ul style="list-style-type: none"> • Bolted to concrete slab • Portable for storage 	Real Personal	Taxable (5) Taxable
89	Signs: <ul style="list-style-type: none"> • Affixed to building/real property • Integral part of IP equipment • Non-equipment related 	Real Personal Personal	Taxable Exempt Taxable
90	Silo – raw material storage	Real	Taxable (5)
91	Spray booths: <ul style="list-style-type: none"> • Permanently attached to building • Freestanding, for welding, painting, etc. 	Real Personal	Taxable Exempt
92	Stainless steel wall panels for food industry	Real	Taxable
93	Tanks: <ul style="list-style-type: none"> • Portable – in-process storage • Portable – mixing IP material • Portable – raw material storage • Built-in (attached to a building or foundation), raw material and in-process storage 	Personal Personal Personal Real	Exempt Exempt Taxable Taxable
94	Telephone wiring in wall	Real	Taxable
95	Toilet facilities: <ul style="list-style-type: none"> • Plumbing fixtures, showers • Partitions • Portable 	Real Real Personal	Taxable Taxable Taxable
96	Vats for mixing (manufacturing process)	Personal	Exempt
97	Wash fountains and drinking fountains	Real	Taxable
98	Welding booth - portable	Personal	Exempt
99	Wood blocking for floor in press room	Real	Taxable (6)

***Depending on Use**

1. Considered personal property for sales/use tax purposes
2. Per 1979, AC, R 205.90 (Rule 40), *Industrial Processing* and RAB 2000-4, *Sales and Use Tax - Industrial Processing*
3. In *Granger Land Development Company and Granger Waste Management Company v Dep't of Treasury*, 286 Mich App 601 (2009), the court determined that property situated on real estate is not necessarily considered attached to land. In this case, the equipment and materials within the impermeable barrier (cell) were separated from the underlying real property. Therefore, the landfill cell and its contents were not considered to be affixed to the land. Additionally, the court found that the landfill cells were not erected to facilitate the use of the land. Rather, the land was adapted to facilitate the erection of the landfill cells. The lone fact that an article may remain in place indefinitely and beyond its commercial life is not adequate evidence that it is intended to be a permanent accession to the real estate.
4. Rooms within a plant usually represent rooms assembled by portable partitions (panels). The partitions can extend from floor to ceiling and, in most instances, are not bolted to the floor or attached in any other way. The partitions do not support any part of the realty, nor are they weight bearing. The partitions are for interior wall use within the facility. The rooms are used for sanitation purposes or other similar functions related to the processing function.
5. RAB 1990-2, *Sales and Use Taxes - Storage Facilities*
6. Wood blocking usually covers a large area. It absorbs oil and provides a non-slippery surface.

References pertaining to this information can be found in the index under [Chapter 24](#)

Chapter 25 – Reconditioning / Remanufacturing

A reconditioner/remanufacturer is a company that purchases used products (e.g., engines, carburetors, batteries, furniture), reconditions the product by repairing, re-machining, or reshaping it and sells the reconditioned product.

Remanufacturing is an exempt activity under the industrial processing exemption. It is defined as “overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.”

Disassembly, inspecting, sorting, cleaning and reassembly are exempt. Disassembly and subsequent reassembly merely to clean are not exempt.

The following examples illustrate this concept:

Example 1:

A company purchases used car hoods, doors and fenders to be sold to automobile body shops. The company **only** cleans these used car parts and then sells them. Would the equipment and supplies consumed in the cleaning of these used car parts qualify for the industrial processing exemption?

Answer:

No. Cleaning of purchased inventory without modifying or repairing does not meet the definition of industrial processing.

Example 2:

A company purchases used car hoods, doors and fenders to be sold to automobile body shops. Not only are the used car parts cleaned, but they are also disassembled, repaired, painted and reassembled. Would the company qualify for industrial processing on all of the equipment and supplies used to restore the used car parts?

Answer:

Yes. All of the equipment and supplies would be exempt for IP. Remanufacturing includes the activities of disassembly and reassembly as well as repairing and painting. IP starts when property is removed from raw material storage to begin processing. Therefore, the washing equipment and supplies would be exempt.

Equipment can be partially taxable depending on its taxable and exempt uses.

References pertaining to this information can be found in the index under [Chapter 25](#)

Chapter 26 – Refrigeration & Freezers

Product preservation and storage do not qualify for the industrial processing exemption if they are functions of raw materials or finished goods inventory storage. In-process product preservation and storage are exempt.

Tangible personal property acquired for storing and delivery of ice is taxable.

References pertaining to this information can be found in the index under [Chapter 26](#)

Chapter 27 – Repackaging

The following examples illustrate the concept of repackaging and the industrial processing treatment of the packaging equipment.

Example 1:

A nail manufacturer places nails in a 2-pound box prior to placing the product in finished goods inventory; the product will ultimately be sold at retail or affixed to real estate located in another state. The product is ultimately purchased at the retail level in this same 2-pound box.

Answer:

The packaging operation of putting the nails in the 2-pound boxes is exempt.

Example 2:

The same nail manufacturer contracts with a separate company to package certain types of nails in 2-pound boxes before they are placed in finished goods inventory. Again, the product is purchased at the retail level in the same 2-pound box.

Answer:

This packaging servicer would be entitled to the IP exemption, even if the nail manufacturer provided the 2-pound boxes.

Example 3:

A wholesale distributor of nails inserts the nails into 2-pound boxes prior to placing the product in finished goods inventory; the product will ultimately be sold at retail or affixed to real estate located in another state.

Answer:

The wholesaler would be entitled to the IP exemption on the packaging equipment.

References pertaining to this information can be found in the index under [Chapter 27](#)

Chapter 28 – Retail Preparation of Food

The industrial processing exemption excludes tangible personal property used for the preparation of food and beverages by a retailer for ultimate sale at retail through its own locations.

Therefore, kitchen equipment used in restaurants and similar facilities is not exempt as industrial processing.

Equipment may be taxable or exempt as illustrated in the following examples.

- A wholesale distributor of produce has a banana ripening room that hastens the ripening of bananas. The banana room and equipment, if not considered real property, would qualify for the industrial processing exemption.
- A chain of grocery stores has a produce warehouse used only for distribution to its own stores. The warehouse has a banana ripening room. The banana ripening room and equipment would not qualify for the industrial processing exemption because it is a retailer that is preparing food for ultimate sale through its own retail locations.
- A bakery sells its products to wholesalers in addition to making retail sales at its own location. Property and equipment used to prepare products for sale to the wholesaler are exempt; the property and equipment used to prepare products for sale at its own retail location are taxable. Equipment used for both purposes would have to be allocated.

References pertaining to this information can be found in the index under [Chapter 28](#)

Chapter 29 – Retailers and the Industrial Processing Exemption

Occasionally, industrial processing may take place in a retail setting.

Examples of **exempt** activities:

- The local hardware store sells duplicate keys. The key grinder would qualify for the exemption.
- The local auto parts store sells custom hoses that are produced by buying bulk rubber hose and using on-site equipment to pressure fit metal ends onto the rubber hose. The equipment and supplies would qualify for the industrial processing exemption.
- A local jewelry store makes custom jewelry it sells at retail in its own store. The equipment/tools/supplies used would qualify for the industrial processing exemption.
- The local optician buys eyeglass frames and uncut lenses. The lenses are ground to fit the frames and are ultimately sold at retail. The equipment/tools/supplies used to grind the lens and insert them into the frames qualify for the industrial processing exemption.
- The local paint or hardware store customizes paint colors for its customers. The paint mixing machines would qualify for the industrial processing exemption.
- The local trophy store uses engraving machines to engrave trophies prior to the time of sale. The machines used to engrave the trophies would qualify for the industrial processing exemption.
- Used vehicle/heavy equipment dealers recondition the vehicles/heavy equipment prior to selling their products. The tools, equipment and utilities used for this portion of their business operation are exempt to the extent the items are used to repair and recondition the items prior to sale. This includes automobiles, farm equipment, snowmobiles, ATVs and boats.
- A prosthetic clinic uses equipment to make artificial limbs; the equipment qualifies for the industrial processing exemption.

Examples of some **taxable** activities:

- A lumberyard cuts a sheet of plywood to a size requested by its customer. No exemption is allowed for the cutting equipment because the lumberyard is cutting the plywood to size for its customer. If the customer is charged for this service, it would be part of the gross proceeds subject to sales tax. If the lumberyard was cutting plywood on a repeated basis and putting it into inventory for subsequent sale, the lumberyard would be entitled to the IP exemption for the saw on a percentage basis.
- A steel wholesaler used a saw to cut a special order for a specific customer. No other processing functions were done to the steel such as boring or grooving. The saw is 100% taxable. Banding the cut steel would not make the saw exempt. If the saw was used to cut inventory to stockpile for future sales in addition to special orders, the exemption would be prorated.
- Machines used to collect and sort glass bottles returned to a supermarket or other retail establishment on which a deposit was originally collected
- Tools, supplies and equipment used by dental labs to make dentures prescribed by a dentist
- Coin operated coffee and soft drink vending machines

References pertaining to this information can be found in the index under [Chapter 29](#)

Chapter 30 – Scrap Dealers & Recyclers

A variety of factors determine whether equipment used for managing or processing scrap material is exempt for industrial processing. The following equipment (or areas when conducting a utility study) is generally treated as outlined below.

Roll-offs (Dumpsters)

- A scrap dealer places its roll-offs on the site of an industrial processor. The industrial processor stores its production waste in these containers for removal by the scrap dealer.

Tax Treatment: These containers are taxable to the scrap dealer. The purpose for the scrap dealer is receiving, collection, and transportation of raw materials prior to be placed in raw materials storage. It is taxable to the industrial processor because processing of scrap is not exempt after it has come to rest in storage for removal from the plant of origin.

- A recycler has roll-offs at its location to receive recyclable materials (plastic bottles, aluminum cans, newspapers, etc.). Individuals trying to conserve resources place their recyclable materials into these containers.

Tax Treatment: These containers are taxable to the recycler. The purpose for the recycler is receipt and storage of raw materials.

Hoppers

- A scrap dealer provides self-dumping portable hoppers to an industrial processor to aid in its movement of production scrap. Scrap from the line is put into these hoppers and subsequently transported to the dumpsters for removal from the plant site.

Tax Treatment: Containers used to accumulate production waste are exempt if they are not the final container used to store production waste for removal from the plant. Use of the container in processing (not ownership) determines the exemption.

Freon Recovery Machines

- These machines extract cooling gases from air conditioners, freezers, etc., before the actual shredding of the appliance. These gases are then usually sold.

Tax Treatment: The recovery equipment is exempt as industrial processing. Recycling of used materials for ultimate sale at retail is a valid industrial processing activity.

Loading and Unloading Equipment

Tax Treatment: Loading and unloading equipment is exempt if it is moving in-process materials within a plant site or between plant sites operated by the same legal entity.

Sorting Equipment Such as Cranes, Loaders, and Lift Trucks

Tax Treatment: Sorting equipment is exempt if it is removing materials from raw material storage, or at any point after processing has begun. For example, the trash heap located at the recycler's site is considered the recycler's raw materials; therefore its sorting equipment is exempt. However, sorting equipment used after the materials have come to rest in finished goods inventory is taxable on an apportioned basis if it is also used for an exempt purpose.

Equipment Used to Cut, Break, and Crush (After Disassembly)

Tax Treatment: Recycling equipment used in industrial processing is exempt if the recycled materials will eventually be sold at retail. Conveyers connected to this type of machinery are also exempt unless they are used to receive raw materials.

Paper Shredding Equipment

Tax Treatment: This type of equipment is exempt for IP if the shredded property is eventually sold at retail.

Banding and Baling Equipment

Tax Treatment: If the banding and baling process takes place prior to the product coming to rest in finished goods inventory storage, the equipment is exempt. However, if this process takes place after removal from finished goods inventories it is taxable.

References pertaining to this information can be found in the index under [Chapter 30](#)

Chapter 31 – Servicers

There are two basic types of servicers; those that act as industrial processors and those that do not. The servicers that act as industrial processors (heat treating, plating, machinery repair, engineering and design, CAD/CAM, etc.) are allowed the industrial processing exemption as it pertains to their operations. Servicers that do not act as an industrial processor (landscapers, exterminators, security guards, etc.) do not qualify for the industrial processing exemption.

Servicers are eligible for the industrial processing exemption for equipment, tools and supplies used in a repair or service activity when providing the service or repair to an industrial processor if the property being repaired or serviced qualifies for the industrial processing exemption.

This exemption would include tools, equipment and supplies used by a repair company on exempt machinery or equipment used by a manufacturer.

Example 1:

An electrical contractor repairing controls or wiring of a piece of industrial processing equipment is eligible for the exemption for tangible personal property used in making the repair. Material consumed by the same contractor in repairing the shipping office air conditioning unit would be taxable.

Example 2:

A mechanical contractor repairing the chillers for an injection molding machine can claim an industrial processing exemption on the material it consumes in making the repair. Material consumed by that same repairer in servicing the HVAC unit for the plant would be taxable.

References pertaining to this information can be found in the index under [Chapter 31](#)

Chapter 32 –Storage Tanks and Mixing Tanks

All storage is taxable except for in-process storage. If a storage tank or mixing tank is determined to be real property rather than tangible personal property, it is taxable to the contractor and not subject to any type of industrial processing exemption. Buried or built-in tanks are real property. See the “Real vs. Personal Property” section of this text.

Storage tanks that store in-process materials are exempt. Storage tanks that store raw materials or finished products are taxable.

Grain bins are usually exempt under industrial processing or agricultural producing. This is covered under the “Grain Elevators” section of this text.

Gas Cylinders

Steel cylinders used only to distribute gas (there is no mixing system inside the tank) are taxable because no industrial processing occurs inside the tanks. However, the tanks can be purchased tax-free for leasing purposes if the tanks are rented and the lessor elects to pay use tax on its rental stream rather than sales tax upon the initial purchase. An industrial processor can make a claim of exemption for IP on the rental charge gas, but the charge for the cylinder is taxable.

Tanks with a mixing system inside used to mix different gases uniformly and remix the gas when released are exempt as industrial processing.

Portable tanks to store gas used to repair exempt equipment are exempt.

Mixing silos and bins where actual mixing occurs are eligible for the industrial processing exemption.

References pertaining to this information can be found in the index under [Chapter 32](#)

Chapter 33 – Stores Accounts (Non-Production Inventory)

Some companies purchase non-production inventory or non-inventory items tax free that have an account classification as **stores** or **general supplies**. The end use of these items usually is not known until the item is withdrawn from “stores.” The taxpayer incurs use tax on taxable items at the time of withdrawal.

Items that may be included in a stores account include small tools, screws/fasteners, belts, maintenance supplies, janitorial supplies, etc. The taxability of these items is determined when they are withdrawn from stores (requisitioned). At that point the expense is booked to an expense account within a specific department or cost center. It is at this point that use tax would be due based on the use of the item.

The area where these items are stored is taxable. It is not considered in-process storage. Utilities, shelving, equipment (including automatic retrieval systems) and supplies used in this area are taxable regardless of the tax status of items withdrawn from **stores**.

Some manufacturers have outsourced the stores activity to a third party. This does not change the taxability of the items or of any storage of the items on the manufacturer’s premises. Use tax would be due on the cost of withdrawals used in a taxable manner. The area used for storage at any site (manufacturer or outsourced suppliers location) does not qualify for exemption on the storage or utilities used.

Taxability of Items – When Used in Exempt Production Areas – No Shipping, Receiving, etc.

Item	Description of Item	Tax Status
1	Air make-up unit: <ul style="list-style-type: none"> • One unit for general heating/cooling/ventilation purposes • To exhaust production fumes 	Taxable Exempt
2	Aspirin or salt tablets	Taxable
3	Automatic spooling devices, even though they help eliminate carpal tunnel	Exempt
4	Ballast for overhead lighting fixtures	Taxable
5	Bins used to collect raw materials packaging scrap next to production line	Exempt
6	Blueprint storage cabinet	Taxable
7	Books or manuals: <ul style="list-style-type: none"> • Containing data detailing formulas, etc. for specific production requirements • Containing general engineering, quality control, etc. information for engineering, production, & quality control 	Exempt Taxable
8	Brochures and posters – OSHA mandated “safety in the workplace” brochures and posters	Taxable
9	Broom and mops for cleaning floors	Taxable
10	Cameras & film: <ul style="list-style-type: none"> • Used in R&D to film product or on production line to film parts • For security or personnel use 	Exempt Taxable
11	Catwalks or platforms around IP machines (attached to machine or bolted to floor)	Exempt
12	Cleaners and degreasers used to clean IP equipment	Exempt
13	Cleaning tissue for safety glasses	Taxable
14	Computer used to monitor production control	Exempt
15	Computer and software used in engineering department for administrative purposes	Taxable
16	Containers for the storage of work-in-process materials	Exempt
17	Copy machine: <ul style="list-style-type: none"> • Used in engineering for development of product • Used to exclusively reproduce drafting documents 	Exempt Exempt
18	Coveralls, uniforms, aprons, etc.: <ul style="list-style-type: none"> • For general attire purposes • To protect employee clothing • For sanitation purposes in food processing plants • Protective clothing that enables an employee to perform a specific exempt job (welding) 	Taxable Taxable Exempt Exempt
19	Desk, chair, modular furniture: <ul style="list-style-type: none"> • In engineering department • Holding a computer used for IP 	Taxable Taxable

Item	Description of Item	Tax Status
20	Dust or fume respirator used in paint booth or for machine repair	Exempt
21	E-mail/internet software for communications between production departments or between supplier or customer and manufacturer	Taxable
22	Ear plugs, hearing protection devices	Exempt
23	Emergency back-up generator: <ul style="list-style-type: none"> • For general building • For specific IP machinery 	Taxable Exempt
24	Eye wash and hand washing stations	Taxable
25	Fans: <ul style="list-style-type: none"> • Portable units • Ceiling 	Taxable Taxable
26	Fax machine used to transmit production run documents between areas	Taxable
27	Finger tip pads	Exempt
28	Fire extinguishers and fire hoses: <ul style="list-style-type: none"> • Attached to the wall or portable • Attached to production machine 	Taxable Exempt
29	First aid and plant hospital supplies and equipment (bandages, ointments, defibrillators, etc.),	Taxable
30	Flashlights used by production equipment service workers	Exempt
31	Floor markings (paint or tape)	Taxable
32	Floor oil absorbent (oil dry): <ul style="list-style-type: none"> • For cleaning floors • For spills on floor around specific IP machines • Placed in a container on or under a machine to catch oil that spills from the machine 	Taxable Taxable Exempt
33	Floor sweeper to clean around machines, clean aisle ways and building	Taxable
34	Foreman's desk, chair, file cabinet, etc.	Taxable
35	Forms: <ul style="list-style-type: none"> • For scheduling employees' hours • For cost control purposes • For scheduling production runs 	Taxable Taxable Exempt
36	Clothing, gloves, boots, etc.: <ul style="list-style-type: none"> • Used by truck drivers • Warehouse and administrative personnel 	Taxable Taxable
37	Golf cart (used as a personnel carrier)	Taxable
38	Guard rail: <ul style="list-style-type: none"> • Around IP machine • Attached to IP machine as part of the original purchase 	Taxable Exempt
39	Hair nets (for sanitation purposes) in food processing plants	Exempt
40	Hand soap or cream	Taxable

Item	Description of Item	Tax Status
41	Hard hat or helmets: <ul style="list-style-type: none"> Worn by assembly line workers Worn by warehouse and construction personnel 	Exempt Taxable
42	Headbands or sweatbands: <ul style="list-style-type: none"> Worn by assembly line workers (product integrity not in jeopardy), non-food industry Worn by assembly line workers – food industry 	Taxable Exempt
43	Height - adjustable platforms	Exempt
44	Lab coats worn by quality control lab technicians (protects clothes)	Taxable
45	Ladder for production machinery repair	Exempt
46	Light fixtures attached to the ceiling	Taxable
47	Lights (fluorescent lamps) for ceiling fixtures for specific IP functions (not affixed to real estate)	Exempt
48	Literature (promotional) and parts order forms that go with the product	Taxable
49	Loudspeaker systems	Taxable
50	Manuals for operating the taxpayer's new press (purchased separately, not replacement manuals)	Taxable
51	Printed material - installation or assembly instructions that go with the product, including parts list, operating manuals and safety brochures	Exempt
52	Printed materials-bills of lading, packing slips, product surveys, advertising brochures, product catalogs, etc. whether they accompany the product or not	Taxable
53	Rags (cloth or paper towel): <ul style="list-style-type: none"> For removing oil from production machinery To rid oil from workers' hands (product integrity not in jeopardy) 	Exempt Taxable
54	Safety glasses purchased by the industrial processor: <ul style="list-style-type: none"> Nonprescription for production employees Nonprescription for visitors 	Exempt Taxable
55	Safety shoes: <ul style="list-style-type: none"> Only worn in IP area (provided by employer) 	Exempt
56	Shelving: <ul style="list-style-type: none"> For the tool crib or stores location In quality control department to store raw materials 	Taxable Taxable
57	Shrink wrap material (used before goods come to rest in finished goods inventory)	Exempt
58	Signs: <ul style="list-style-type: none"> OSHA-required signs attached to production machinery when not part of the original purchase OSHA-required signs, posters, etc., attached to the wall 	Taxable Taxable
59	Space heaters, fans, portable air conditioners	Taxable
60	Stool (for the employee to sit at while operating production equipment)	Taxable
61	Table next to machine to hold tools for making machine adjustments	Exempt

Item	Description of item	Tax Status
62	Tags: <ul style="list-style-type: none"> • (ok to use) in quality control • To indicate the performance of a quality control function • To check off production steps in the plant • For raw material or finished goods inventory purposes 	Exempt Exempt Exempt Taxable
63	Tanks: <ul style="list-style-type: none"> • Soft drink mix canisters • Cylinders to distribute gases • Propane with a mixing system to mix gases 	Taxable Taxable Exempt
64	Telephones and 2-way radios: <ul style="list-style-type: none"> • At printing facility, used solely to instruct personnel of machinery to immediately start or stop production • Used for communication between various production departments 	Taxable Taxable
65	Tool and die racks: <ul style="list-style-type: none"> • Attached to a machine • In a separate storage area • Mounted on a wall • Next to a machine 	Exempt Taxable Taxable Taxable
66	Portable tool boxes/pouches (for production machine repair workers)	Exempt
67	Tools <ul style="list-style-type: none"> • Purchased by the manufacturer to perform IP functions • Purchased by employees to perform IP functions for or on behalf of an industrial processor 	Exempt Exempt
68	Trade books or reference material - for engineering or other production departments	Taxable
69	Training materials whether printed, computer software downloaded, textbooks, classroom supplies	Taxable
70	TV, VCR, VCR tapes, cameras, software, film, DVD's, etc.: <ul style="list-style-type: none"> • Used for security or training, audio visual equipment and supplies • Used to view product design, R&D 	Taxable Exempt
71	Warranty statements that go with the manufactured product	Exempt
72	Warranty registration certificate to be returned to the manufacturer	Taxable
73	Waste bins: <ul style="list-style-type: none"> • For production scrap • For collection of paper to be shredded/recycled, owned by manufacturer 	Exempt Taxable
74	Wrist brace: <ul style="list-style-type: none"> • To assist in lifting heavy production materials • To prevent carpal tunnel 	Exempt Taxable

References pertaining to this information can be found in the index under [Chapter 33](#)

Chapter 34 – Taxidermists

Taxidermists mount or reproduce dead animals for display (e.g., as hunting trophies) or study. A taxidermist removes the skin to be tanned and treated for later use. A mannequin is molded from plaster or clay using the remaining muscle fibers and bones, measured and posed, or purchased in stock form. Glass eyes are added, along with artificial teeth, feet, etc. depending on the subject's original condition. The remaining carcass is discarded.

A taxidermist converts or conditions tangible personal property for ultimate sale at retail and therefore qualifies for exemption as an industrial processor on purchases of tangible personal property used or consumed in the process of mounting or reproducing their product.

Sales of a taxidermist's finished products are retail sales and subject to sales tax, unless specifically exempted.

References pertaining to this information can be found in the index under [Chapter 34](#)

Chapter 35 – Utilities

Manufacturers primarily use the following types of utilities:

- Electricity
- Gas
- Steam
- Propane

Electricity, gas, steam and propane used in non-industrial processing functions are taxable. Electricity, gas, steam, and propane used in industrial processing functions or to operate industrial processing equipment/machinery are exempt. A lessor may claim partial exemption from the utility company for the portion of the utilities used by a lessee industrial processor to perform industrial processing functions.

Heating and Cooling

Electricity, gas, steam, or propane used for heating and cooling is generally taxable; however, utilities used to heat or light areas while industrial processing is occurring are exempt. Consumption of a by-product of an industrial processing function (e.g., excess heat from an exempt IP operation that is used to heat office space) is not taxable. However, if tangible personal property (e.g., steam tunnels, heat ducts, blowers, etc.) is used to facilitate the use of the by-product, such materials would be taxable.

Idle Time

The industrial processing exemption for eligible property is limited to the extent that the property is used for a valid industrial processing activity. Utilities consumed by industrial processing machinery and equipment are only exempt when the machinery and equipment are performing functions that meet the industrial processing exemption. Similarly, general lighting and heating of processing areas is only exempt when industrial processing is occurring. Sometimes a manufacturer will reduce operating hours or have shifts that the plant is not operating, resulting in idle time. “Idle” as defined by the Merriam-Webster Dictionary means “not working, active, or being used.”

In contrast, maintenance and repairs of machinery and equipment used for exempt IP purposes are exempt functions. RAB 2000-4(v) states that materials used in the repairs and maintenance of exempt machinery and equipment qualify for the industrial processing exemption. Therefore, utilities consumed in the repairs and maintenance of exempt equipment and machinery and utilities used to heat and light the area while repairs are in progress are exempt.

Example 1:

ABC Inc. manufactures widgets. When demand for widgets decreases, ABC cuts one of its shifts. The plant is idle at all times during the cut shift.

Answer:

Utilities consumed by the exempt equipment and machinery during idle time are taxable because they are not being used in industrial processing. Utilities used in heating/cooling and lighting the production area are also taxable when industrial processing activity is not occurring.

Example 2:

ABC Inc. manufactures custom boats. ABC's manufacturing facility has the capacity to manufacture 4 boats at one time. However, business slows and ABC is only producing 2 boats at a time, leaving two bays of its facility unused for any purpose.

Answer:

The utilities used for heating/cooling and lighting the vacant bays are not eligible for the industrial processing exemption because these bays are no longer used for industrial processing.

Example 3:

ABC Inc. manufactures automobile parts and operates several production lines. Periodically, ABC will shut one line down to conduct routine maintenance on the machinery. These temporary shut-downs generally last for about one week.

Answer:

Utilities consumed by the exempt equipment and machinery that is part of the line undergoing maintenance are still exempt. The utilities used to heat/cool and light the area where the line is located will be exempt while maintenance and repair activities are occurring, as repair of equipment and machinery qualifies as industrial processing.

Example 4:

ABC Inc. manufactures a variety of very popular widgets and must increase its manufacturing capacity. To accomplish this, production is reduced to a single line for two weeks while new machinery is installed, old machinery is replaced, and lines are re-configured throughout the production area.

Answer:

The utilities consumed by the exempt equipment and machinery remain exempt during the installation, replacement, and re-configuration process. Similarly, the utilities used to heat/cool and light the production area are exempt while these activities take place because installing and moving exempt machinery and equipment qualifies as industrial processing.

Example 5:

ABC Inc. manufactures custom boats. Since business tends to be slow during the winter and the employees want to enjoy the holidays, the manufacturing facility is closed for two weeks at the end of December.

Answer:

Utilities consumed by equipment and machinery and for heating/cooling and lighting during the plant closure will be taxable. During this time, industrial processing is not occurring. Therefore, no exemption is available.

Example 6:

XYZ Manufacturing is an aluminum extrusion company that uses natural gas in its process. The company utilizes residual heat in its production areas and does not have HVAC ductwork in the facility. The extrusion equipment remains on at all times unless maintenance or repair requires that it be shut down. The extrusion equipment must maintain a production-ready temperature including when no production activity is taking place.

Answer:

Utilities consumed by manufacturing equipment and machinery are exempt while the equipment and machinery are being used for exempt purposes. Utilities used to heat/cool and light the area where the machinery is located are also exempt during the time in which the machines are engaged in an exempt function. Maintenance of industrial processing equipment qualifies as an exempt function. The necessity of sustaining a production ready temperature constitutes maintenance of the equipment and qualifies as industrial processing. Therefore, utilities used to sustain this temperature are exempt. Residual heat generated as a by-product of this exempt use would be exempt as well.

Taxability of Areas for Utility Studies

No.	Description Of Area	Tax Status
1	Administrative Areas	Taxable
2	Aisles: <ul style="list-style-type: none"> • Between a Taxable Area and an Exempt Area • Between Exempt Areas • Between Taxable Areas 	50% T Exempt Taxable
3	Boiler Room Areas <ul style="list-style-type: none"> • One Boiler • Multiple Boilers (Referring to Area) 	% Based on Use
4	Die Storage Areas	Taxable
5	Engineering Areas	Exempt
6	Foreman's Office	Taxable
7	Inspection Supervisor's Office	Taxable
8	Machine Shop Repair Area (Exempt Machines)	Exempt
9	Market Research Areas	Taxable
10	Production Areas During Periods of New Machine Installation or Machine Repair	Exempt
11	Production Areas: <ul style="list-style-type: none"> • During Reconfiguration of Production Lines • During Plant Vacation Closure Periods • During Machine Removal for Conversion to Non-Production Use 	Exempt Taxable Taxable
12	Production Areas During Production Period	Exempt
13	Production Areas During Shifts with No Production	Taxable
14	Purchasing Department Areas	Taxable
15	Quality Control Areas: <ul style="list-style-type: none"> • In Production Area • In Receiving Area 	Exempt Taxable
16	Receiving Areas for Raw Materials	Taxable
17	Research and Development Areas	Exempt
18	Restrooms	Taxable
19	Shipping Areas	Taxable
20	"Stores" Areas	Taxable
21	Tool Crib Areas	Taxable
22	Vending Areas, Breakrooms, Lunchrooms	Taxable
23	Warehouse Areas/Non-Production	Taxable

References pertaining to this information can be found in the index under [Chapter 35](#)

Chapter 36 – Waste Removal / Pollution Control Facilities

Industrial processing includes the processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

The plant of origin includes a contiguous manufacturing complex. It does not include facilities in separate locations. For example, an entire manufacturing complex, including numerous buildings on the same site, is a plant of origin, but separate buildings located on different sites are separate locations, even though they are part of the same company and/or division.

Piping of Waste to another Location

The same analysis described above would apply to production waste which may be piped to another location. If the waste is piped to a different location or industrial complex for treatment or removal, the exemption would not apply to the piping after it has left the plant of origin. However, if it is piped to another location for further processing prior to being placed in finished goods inventory it is exempt. Piping to a contiguous location (such as across the street) would meet the plant of origin exemption requirement.

Production scrap and/or waste can include:

- Material spoilage
- Damaged material
- Chips
- Shavings
- Sludge
- Residue
- Dust
- Sand
- Grit
- Fly
- Ash

- Slag
- It would also include the containers (e.g., cardboard boxes, plastic bags, drums) that held processing materials.

Examples of production waste include:

- Cardboard boxes discarded after the removal of production parts in the raw materials inventory area
- Cardboard boxes discarded after the removal of production parts in the production area
- Materials that are scrapped because they do not pass final inspection, as long as they have not already been placed in finished goods inventory

The exemption would be allowable for machinery, equipment and parts used to collect and move the production waste to where it is stored for final removal from the plant of origin. This includes:

- The initial collection point
- Any movement to the final resting point prior to removal
- Any processing for further use
- Any processing for sale to another if performed by a servicer or industrial processor

Example:

The cardboard boxes discarded after the removal of production parts either in the raw materials inventory area or the production area are collected in a bin. A forklift moves the bin to the back of the plant. The collection bin is dumped into a cardboard compactor and compacted. The exemption is allowed up to the point that the compacted cardboard is stored for removal from the plant. This would include an exemption for the compactor.

Shipping costs to dispose of production waste materials off site would not qualify for the exemption whether incurred by the industrial processor or servicer.

The exemption would not be available to a servicer providing the waste disposal service for the industrial processor, when their activity is hauling the waste. See the "Servicers" section of this text.

Some items may be considered by-products of the industrial process. When by-products are sold, equipment and supplies used during shipment is taxable.

Disposal of non-production scrap and waste is not eligible for the exemption. Non-production waste would include the disposal of accounting or sales records, old production reports, and general housekeeping.

The cost of the equipment, materials, supplies and utilities used to neutralize or treat waste materials and/or water prior to their disposal are exempt up to the point it is stored for removal from the plant of origin. If the waste is not removed from the plant of origin, but disposed of on site, the exemption extends to that point of disposal. Some examples are:

- A heat treat company purchases chemicals to neutralize water contaminated in the heat treating process. The cost of the equipment, supplies and utilities qualify for the industrial processing exemption.
- A metal plating company neutralizes production chemicals and scrap at the plant of origin prior to disposal **off site**. The cost of equipment and supplies to analyze and neutralize the liquid and solid waste is not subject to tax up to the point it is stored for removal from the plant site. This activity (to analyze and neutralize) is also exempt for a servicer if performed at the manufacturer's plant of origin.
- A metal plating company neutralizes production chemicals and scrap at the plant of origin prior to disposal **on site**. The cost to process the liquid and solid waste is not subject to tax. This activity is also exempt for a servicer if performed at the manufacturer's plant of origin.

If, in the above metal plating example, the analyzing and neutralizing is not done at the plant of origin, the cost of the equipment and supplies used would be taxable to whoever performs the service at the offsite location because they have been removed from the plant of origin.

Air and Water Pollution Controls

Pollution problems have resulted in the acquisition of elaborate facilities to dispose of various wastes. The General Sales Tax and Use Tax Acts have been amended to exempt anything that becomes part of a qualifying air or water pollution control facility, regardless of whether it is tangible personal property that may be exempt for industrial processing or real property. These facilities are exempt if the taxpayer obtains the proper pollution control certificate through the State Tax Commission.

CAUTION: The air and water pollution control certificates issued by the State Tax Commission have an itemization of applicable equipment and a stated dollar amount being exempted. The final cost of material in the pollution control facility may exceed this amount. Amounts exceeding this limitation are subject to tax. Replacement equipment and repair parts acquired in subsequent years may be taxable items if their additional costs would cause the project to exceed the stated exempt value in the original exemption certificate. The utility costs associated with the operation of these facilities **do not** qualify for the exemption given to the facilities and would be included as taxable usage for utility studies.

Environmental Clean Up

Tangible personal property purchased by or sold to an industrial processor and used to clean up toxic spills or other environmental contaminants may qualify for exemption under the waste removal provisions of MCL 205.54t(3)(h). If the clean-up is required due to contamination by in-process materials or supplies, then the exemption would apply. The exemption would not apply if the contamination is caused by raw materials or finished goods generating the need for the environmental clean-up.

Many items are purchased by industry to protect the environment from potential environmental hazards. Purchases used for this purpose are taxable. For example, a pit liner used for a containment area by an oil producing company to protect ground water in the event of an oil spill would be taxable.

The exemption would not apply to equipment used by a servicer doing the environmental clean-up for the industrial processor.

References pertaining to this information can be found in the index under [Chapter 36](#)

Index of References

Chapter 1 – Introduction and Overview:

- MCL 205.54t
- MCL 205.54y
- MCL 205.94o
- MCL 205.94(1)(o)
- MCL 205.54r
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*
- 1979 AC R 205.90 (Rule 40), *Industrial Processing*

Chapter 2 – Activities of Processors that May Not Qualify for Exemption:

- MCL 205.94o(6)(c)
- MCL 205.93a(1)(f) and (g)
- 1979 AC R 205.109 (Rule 59), *Photographers and Photo Finishers*
- 1979 AC R 205.119 (Rule 69), *Sign Painting*
- 1979 AC R 205.130 (Rule 80), *Tire Retreading and Vulcanizing*
- RAB 1993-05, *Use Tax Base of Tangible Personal Property Affixed to Real Estate by a Manufacturer/Contractor*

Chapter 3 – Industrial Processing Beginning and End:

- MCL 205.54t(7)(a)
- MCL 205.94o(7)(a)
- 1979 AC R 205.90 (Rule 40), *Industrial Processing*

Chapter 4 – Cement Trucks:

- MCL 205.54t(5)(g)
- MCL 205.94o(5)(g)

Chapter 5 – Computer Software Manufacturing:

- MCL 205.54t(1)(d)(vi)
- MCL 205.94o(1)(d)(vi)
- MCL 205.54t(5)(k)
- MCL 205.94o(5)(k)
- MCL 205.54d(g)
- RAB 1999-5, *Sales and Use Taxation of Computer Software*
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*, Conclusion VII (6)

Chapter 6 – Computer Studies:

- See “Computers Used in Industrial Processing by Servicers” section of this text

Chapter 7 – Computers Used in Industrial Processing by Servicers:

- MCL 205.54t(1)(d)
- MCL 205.94o(1)(d)
- 1979 AC R 205.90 (Rule 40), *Industrial Processing*
- 1979 AC R 205.117 (Rule 67), *Repairs and Servicers*
- RAB 1999-5, *Sales and Use Taxation of Computer Software*
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*

Chapter 8 – Conversion of Tangible Personal Property from an Exempt Use to a Taxable Use:

- None

Chapter 9 – Delivery – Just in Time:

- None

Chapter 10 – Direct Pay:

- MCL 205.54a(1)(n)
- MCL 205.98
- RAB 2000-3, *Sales and Use Tax Direct Payment Requirements*

Chapter 11 – Electrical Distribution Systems:

- MCL 205.54t(5)(a)
- RAB 2000-4, *Sales and Use Tax – Industrial Processing, VI (1) Examples 26 & 27*
- 1979 AC R 205.90(3)(a) (Rule 40), *Industrial Processing*
- *Detroit Edison Co v Dep’t of Treasury*, 303 Mich App 612 (2014)

Chapter 12 – Grain Elevators:

- LR 86-10, *Refund Claim- Exempt Fuel Energy Purchases*

Chapter 13 – Inventory Withdrawals/Consumed Goods:

- MCL 205.94
- 1979 AC R 205.90 (Rule 40), *Industrial Processing*
- 1979 AC R 205.112 (Rule 62), *Premiums and Gifts*
- LR 73-7, Reciprocity

Chapter 14 – Material Handling:

- MCL 205.54t(3)(j)
- MCL 205.94(y)(vi)
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*

Chapter 15 – Miscellaneous:

- None

Chapter 16 – Packaging Equipment:

- MCL 205.54t(7)(a)
- MCL 205.94o(7)(a)
- 1979 AC R 205.90(6)(b) (Rule 40), *Industrial Processing*

Chapter 17 – Packaging Function:

- None

Chapter 18 – Packaging Materials:

- 1979 AC R 205.68 (Rule 18), *Containers, Cartons, and Wrapping Materials*
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*, Conclusion VI (10)
- LR 86-13, *Returnable Drum Containers*
- LR 82-3, *Shipping Containers*

Chapter 19 – Percentage Application:

- MCL 205.54t(2)
- MCL 205.94o(2)
- 1979 AC R 205.90 (Rule 40), *Industrial Processing*
- RAB 2000-4, *Sales and Use Tax – Industrial Processing*

Chapter 20 – Policy (or Goodwill) Adjustment:

- None

Chapter 21 – Printers:

- MCL 205.54a(1)(f)
- MCL 205.54t
- MCL 205.94(1)(l)
- MCL 205.94o
- 1979 AC R 205.113 (Rule 63), *Printers, Lithographers, Photostaters, Typographers, and Blueprinters*
- 1979 AC R 205.90(3)(b) (Rule 40), *Industrial Processing*
- RAB 1988-33, *Sales and Use Tax - Newspaper Supplements*
- LR 80-6, *Newspapers, Magazines, & Other Publications*

Chapter 22 – Prototypes:

- MCL 205.54t(7)(c)
- MCL 205.94o(7)(c)
- RAB 2000-4, *Sales and Use Tax - Industrial Processing, Conclusion III (2)*

Chapter 23 – Quality Control/Research or Experimental/Engineering:

- MCL 205.54t(3)(b-d)
- MCL 205.94o(3)(b-d)
- 1979 AC R 205.90(5)(b) (Rule 40), *Industrial Processing*

Chapter 24 – Real vs Personal Property:

- None

Chapter 25 – Reconditioning/Remanufacturing:

- MCL 205.54t(3)(g) & (7)(d)
- MCL 205.94o(3)(g) & (7)(d)
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*

Chapter 26 – Refrigeration & Freezers:

- MCL 205.54t
- MCL 205.94o
- 1979 AC R 205.89 (Rule 39), *Ice Producing*

Chapter 27 – Repackaging:

- None

Chapter 28 – Retail Preparation of Food:

- MCL 205.54t(5)(h)
- MCL 205.94o(5)(h)
- MCL 205.54t(2)
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*

Chapter 29 – Retailers and the Industrial Processing Exemption:

- 1979 AC R 205.104 (Rule 54), *Optometrists, Ophthalmologists, Opticians, and Optical Supply Houses.*
- LR 85-20, *Sale of Dental Ceramics*
- LR 87-52, *Medical Equipment and Supplies*

Chapter 30 – Scrap Dealers & Recyclers:

- MCL 205.54t(3)(h)
- MCL 205.54t(3)(i)
- MCL 205.54t(4)(f)
- MCL 205.94o(3)(h)
- MCL 205.94o(3)(i)
- MCL 205.94o(4)(f)
- MCL 205.92(1)
- LR 86-25, *Processing and Sales of Shredded Paper*

Chapter 31 – Servicers:

- None

Chapter 32 – Storage – Storage Tanks and Mixing Tanks:

- MCL 205.54t
- MCL 205.94o
- LR 88-16, *Rental of Gas Cylinders*

Chapter 33 – Store Accounts (Non-Production Inventory):

- MCL 205.54t
- MCL 205.94o
- 1979 AC R 205.90 (Rule 40), *Industrial Processing*
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*

Chapter 34 – Taxidermists:

- MCL 205.54t
- MCL 205.94o
- 1979 AC R 205.90 (Rule 40), *Industrial Processing*

Chapter 35 – Utilities:

- MCL 205.54t(4)(e) and (5)(a)
- MCL 205.94o(4)(e) and (5)(a)
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*
- 1979 AC R 205.90(3)(a) (Rule 40), *Industrial Processing*
- LR 87-53, *Utility Service Charge*
- LR 90-16, *Refund on Utilities Used for Industrial Processing*

Chapter 36 – Waste Removal/Pollution Control Facilities:

- MCL 205.54t(3)(h)
- MCL 205.94o(3)(h)
- MCL 205.54a(1)(l)
- MCL 205.94(1)(s)
- 1979 AC R 205.90(5)(e) (Rule 40), *Industrial Processing*
- 1979 AC R 205.137 (Rule 87), *Air and Water Pollution*
- RAB 1990-2, *Sales and Use Taxes - Storage Facilities*
- RAB 2000-4, *Sales and Use Tax - Industrial Processing*, Examples 12 & 15