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STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC.,)	
)	
Plaintiff,)	Docket No.
)	14-91-MT
-vs-)	Judge Talbot
)	
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 documents.

2 A. Um-hum.

3 Q. Is it your understanding that the
4 responses thereto are accurate and complete as of
5 today's deposition date?

6 A. Yeah, yes.

7 Q. Again, before we get into the nuts and
8 bolts of your audit here I just want to talk a
9 little bit more about TOMRA. Again, their
10 business is these container recycling machines?

11 A. Correct.

12 Q. And they don't manufacture them, correct?
13 That's your understanding?

14 A. Not TOMRA North America.

15 Q. Okay. For TOMRA North America, the
16 plaintiff in this case, what do they do with these
17 machines?

18 A. They basically sell or lease the machines
19 to various customers.

20 Q. And who are their customers?

21 A. Well, there's a lengthy list.

22 Q. In general?

23 A. There may be Walmart, for example, or
24 Kroger, et cetera, Meijer, Spartan, et cetera.

25 Q. And what do these container recycling

1 machines do?

2 A. They take bottles and cans and crush --
3 and the machines actually crush those bottles and
4 cans, and the -- the remains go into the -- after
5 the initial crushing they go into bins, which
6 TOMRA services and removes the bins and replaces
7 them with empties.

8 Q. With empty bins?

9 A. Empty bins for further collection.

10 Q. Okay. And what does TOMRA do with the
11 full bins?

12 A. Full bins are taken back to TOMRA's own
13 recycling plant where they're further processed,
14 that is, crushed, further crushing, sorting takes
15 place, and eventually they get crushed or whatever
16 happens to them and they use -- the scrap material
17 is then subsequently sold.

18 Q. Do you know who the scrap material is
19 sold to?

20 A. Various customers. That's way beyond the
21 scope of the audit so we really don't care at that
22 point in time.

23 Q. And why don't you care?

24 A. Well, because basically that was the --
25 that had nothing to do with the sales tax portion

1 of this audit.

2 Q. Okay. Were you aware during the course
3 of the audit that TOMRA was claiming that these
4 machines were exempt under the industrial
5 processing exemption?

6 A. They didn't make that whole claim on
7 that, and actually there is no -- let's rephrase
8 that. No, because this -- under the sales tax the
9 only thing I was concerned with, whether or not
10 their customer had any -- a valid exemption
11 certificate, not whether or not IP -- TOMRA was
12 claiming an IP exemption.

13 Q. So during the course of your audit you
14 weren't concerned with whether or not TOMRA itself
15 or the machines themselves qualified for the IP
16 exemption?

17 A. Correct, not in the course of the sales
18 tax audit, which is the one under protest.

19 Q. Why didn't you consider that?

20 A. Because that's beyond the scope of the
21 audit. TOMRA the question -- all we requested is
22 that they provide us with valid exemption
23 certificates that they received from their
24 clients, and they could do none of that during the
25 course of the audit. They had zero.

1 Q. Okay. So just to reiterate, and you may
2 have already answered this before, during the
3 course of your audit you did not consider whether
4 TOMRA was an industrial processor or entitled to
5 the industrial processing --

6 A. That's correct. The scope of this audit,
7 again the sales tax audit.

8 Q. Did you consider the IP exemption in the
9 course of any other audits?

10 A. The question arose in connection with the
11 use tax, which for the most part I did not perform
12 so I can't really give you the specifics on that
13 audit.

14 Q. And who would I ask about the use tax
15 audit?

16 A. Mary Connolly-Pereira was mostly
17 responsible for that.

18 Q. You said that TOMRA sold and leased the
19 container recycling machines?

20 A. That's correct.

21 Q. What type of leases did they use?

22 A. I don't recall.

23 Q. Do you know the difference between a
24 capital lease and an operating lease?

25 A. Yeah.

STATE OF MICHIGAN
DEPARTMENT OF TREASURY

Tomra of North America, Inc.
One Corporate Drive, Suite 710
Shelton, CT 06484-6243

Docket No. 20112068
Sales Tax
Intent to Assess: TH82977
Claimed Overpayment
Audit Period: 10/1/2003-12/31/2008

DECISION AND ORDER OF DETERMINATION

The Department, having reviewed the recommendation of the Referee in the above captioned matter, and having been advised in the premises; and

It appearing that the recommendation is supported by authority and reasoned opinion, and that the same is accepted;

It appearing that the recommendation contemplates adjustment to Intent to Assess TH82977 to allow exemption for sales made to named customers of Tomra of North America, Inc. under exemption certificates;

It appearing that the efforts of the audit staff to determine the dollar amount of exempt sales based on the blanket exemption certificates were unsuccessful due to the lack of records sufficient to support the claimed entitlement;

Accordingly, it is ordered and determined that the proposed deficiency covering the period appearing on Intent to Assess TH82977 shall be assessed as originally determined for tax in the amount of \$516,562.00, penalty in the amount of \$58,502.00 and interest to be computed in accordance with sections 23 and 24 of 1941 PA 122, as amended.

It is further ordered and determined that the Department shall issue a final assessment against you for the tax, penalty and interest due. The tax due on this assessment will be subject to the accrual of additional interest as provided by sections 23 and 24 of 1941 PA 122, as amended. The final assessment will provide your appeal rights with respect to the tax liability.

Docket No. 20112068
Decision and Order of Determination
Page 2 of 2

It is further ordered and determined that your request for a sales tax refund in the amount of \$2,458,452.00 shall remain denied. The statutory appeal periods set forth at MCL 205.22 for any appeal of this refund denial shall be calculated from the date of this Decision and Order of Determination.

If you disagree with all or part of this Decision and Order of Determination as it relates to this refund denial, you may file your written appeal to the Michigan Tax Tribunal at P.O. Box 30232, Lansing, MI 48909 within 35 days, or to the Michigan Court of Claims at any of its district offices, within 90 days of this Decision and Order of Determination as provided at MCL 205.22. Contact information for the Court of Claims District Offices is available on their website at <http://courts.mi.gov/courts/coc>.

DATED: FEB 07 2014



Daniel M. Greenberg, Administrator
Hearings Division
On Behalf of State Treasurer
R. Kevin Clinton

cc: Andrew Koutroumanis, 20112068
KMPG, LLP
One Financial Plaza
755 Main St
Hartford, CT 06103

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

STATE OF MICHIGAN
DEPARTMENT OF TREASURY

Tomra of North America, Inc.
One Corporate Drive, Suite 710
Shelton, CT 06484-6243

Docket No. 20112068
Sales Tax
Intent to Assess: TH82977
Claimed Overpayment
Audit Period: 10/1/2003-12/31/2008

INFORMAL CONFERENCE RECOMMENDATION

An informal conference concerning this matter was held on July 25, 2012. Tomra of North America, Inc. (Petitioner) was represented in person by Rick Hill, Andrew Koutroumanis, and Jeff Matto. Geoff Knotwell participated by telephone on behalf of Petitioner. The Michigan Department of Treasury (the Department) was represented in person by Lynn Boyes. Also representing the Department were Joyce McCain, who appeared by videoconference, as well as Mary Connelly and Ron Kolbig, who participated by telephone.

This docket is related to Docket 20112067, which considers a corresponding use tax audit of Petitioner conducted by the Department. A separate recommendation will be issued in that matter.

FACTS

A sales tax audit of Petitioner was conducted by the Department covering the tax periods from October 1, 2003, through December 31, 2008. The Department determined a sales tax adjustment of \$516,562.00 plus a negligence penalty and statutory, accruing interest was necessary. The primary cause of the adjustment was due to an understatement of sales and denial of all deductions. The negligence penalty was applied because the auditors were unable to review exemptions based on Petitioner's reporting methodology or choose a sample for review because Petitioner was unable to determine which invoices were taxed and which were exempt.

On October 3, 2011, the Department issued Intent to Assess TH82977 to Petitioner for sales tax due of \$516,562.00, penalty due of \$58,502.00 and interest due of \$197,601.50, for a total due of \$772,665.50.

On December 2, 2011, Petitioner appealed Intent to Assess TH82977 in its entirety.

Petitioner also indicated that it was claiming a refund of Michigan sales tax collected from Petitioner's customers and paid during the audit period from October 1, 2003, through December 31, 2008, in the amount of \$2,458,452.00. Petitioner alleged that it erroneously collected sales tax on equipment that qualified for an industrial processing exemption.

Petitioner sells, leases and repairs reverse vending machines (RVMs) that convert deposited used beverage containers into recycled materials, such as plastic, metal, and glass. Petitioner's largest segment of customers includes supermarket and liquor stores in states such as Michigan that have consumer beverage container deposit laws. Repairs generate service revenue both through warranty contracts and time and materials contracts.

Petitioner's Position

Petitioner asserted that its sales and leases of RVMs in Michigan were exempt for industrial processing pursuant to MCL 205.54t. Petitioner contests the \$770,019.00 in sales tax, penalty and interest assessed and claimed a refund of sales tax collected in the amount of \$2,458,452.00 plus applicable interest.

Petitioner explained that its customers use RVMs to collect bottles and cans to begin the process of conversion to reusable retail material. Petitioner's RVMs can receive a can or bottle passed through its sensors. The sensors determine if it contains excess liquid and, if so, it will reject the item. The RVMs can distinguish the color of bottles for glass sorting purposes and separate different colors into different storage bins. Aluminum cans and plastic bottles are not sorted by color, but are sorted into their own separate storage bins by type. The sensors determine if plastic is acceptable polyethylene terephthalate (PET) or high-density polyethylene (HDPE), which is not accepted. Bins internal to the RVMs store accepted bottles and cans until they are collected for transportation to a processing plant.

Petitioner asserts that its RVMs begin the industrial process of recycling when its sensors determine whether items are acceptable and contaminant free. The bottles and cans collected by Petitioner are recycled into new products ultimately sold at retail or for reuse. A common use of PET is in the manufacture of new carpet.

Petitioner contended that the sole purpose of its RVMs is to recycle used plastic, glass and aluminum to produce products for ultimate sale at retail or reuse. Petitioner asserts this fits squarely into the statutory definition of "industrial processing."

Regarding the storage bins sold and leased to customers as part of RVM transactions, Petitioner contends that Examples 13 and 14 from Revenue Administrative Bulletin (RAB) 2000-4 support its position.

On September 14, 2012, Petitioner provided additional information showing that it collected sales tax on sales of RVMs to larger retailers such as Wal-Mart, Kroger and Meijer. Some tax was collected from Spartan Stores, but some machines were sold to Spartan under a resale exemption that Spartan sold to affiliate stores (VGs, Glen's, D & W Fresh Markets and Family Fare Supermarkets).

Subsequent to the informal conference, Petitioner provided the following exemption certificates:

-a blanket Michigan Sales and Use Tax Certificate of Exemption for industrial processing from Wal-Mart Stores, Inc.

-a blanket Michigan Sales and Use Tax Certificate of Exemption for industrial processing from Meijer Inc.

-a resale exemption claim from Spartan Stores Distribution, LLC

The Department's Position

The Department maintains that Intent to Assess TH82977 should be upheld as originally determined and that Petitioner's claim for a refund of \$2,258,229.00 should be denied.

Regarding Petitioner's refund request, the Department asserts that it should be denied because Petitioner provided no evidence of any customer claims of industrial processing, customer requests for refunds, or proof that the sales tax has been refunded to customers.

Regarding the subject sales tax audit, the Department explained that Petitioner was unable to separate taxable from exempt sales based on the gross up of its sales tax liability per its sales tax payable account. The Department requested data from the Petitioner on numerous occasions to determine exempt sales, but Petitioner's representative failed to comply with each request. Petitioner is not reporting gross sales or deductions on either the backup or monthly returns or its Annual Sales, Use and Withholding Tax returns. Furthermore, Petitioner did not file Annual Returns for 2007 or 2008. The Department explained that based on the lack of information received from the taxpayer, it was forced to use the best available information to conduct its audit.

The Department applied a negligence penalty to the audit determination because Petitioner was unable to determine which invoices it was taxing and which ones were exempt.

ANALYSIS AND CONCLUSIONS OF LAW

At issue is whether the Department erred in assessing Intent to Assess TH82977 to Petitioner following an audit. Also at issue is whether Petitioner is entitled to a refund of sales tax in the amount of \$2,458,452.00.

Sales covered by exemption certificates.

Section 12 of the GSTA explains a seller's tax liability when an exemption is claimed by its customer:

(1) If an exemption from the tax under this act is claimed, the seller shall obtain identifying information of the purchaser and the reason for claiming the exemption at the time of the purchase or at a later date. The seller shall obtain the same information for a claimed exemption regardless of the medium in which the transaction occurred.

* * *

(5) A seller who complies with the requirements of this section is not liable for the tax if a purchaser improperly claims an exemption. A purchaser who improperly claims an exemption is liable for the tax due under this act. This subsection does not apply if a seller fraudulently fails to collect the tax, solicits a purchaser to make an improper claim for exemption, or accepts an exemption form when the purchaser claims an entity-based exemption [MCL 205.62(1) and (5).]

The primary goal of statutory construction is to ascertain and give effect to the Legislature's intent as expressed by the language of the statute. *Neal v Wilkes*, 470 Mich 661, 665; 685 NW2d 648 (2004). When determining legislative intent, it is necessary to first look at the language of the statute. *Yaldo v North Pointe Ins Co*, 457 Mich 341, 346; 578 NW2d 274 (1998). If the language is clear and unambiguous, judicial construction is not permitted. *Yaldo*, 457 Mich at 346. The factfinder may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself. *Alvan Motor Freight, Inc v Dep't of Treasury*, 281 Mich App 35, 39; 761 NW2d 269 (2008). It must be presumed that every word is used for a purpose and the factfinder must give effect to every clause and sentence. *Pohutski v Allen Park*, 465 Mich 675, 683-684; 641 NW2d 219 (2002).

By statute, it is clear that, where Petitioner has at any time either (a) collected a fully completed exemption certificate or (b) obtained the required data elements (including only the purchaser's name, address and reason for claiming an exemption), Petitioner is not liable for collection of sales tax on those sales. The audit determination should be adjusted to exclude sales tax liability for sales to Wal-Mart, Meijer and Spartan Stores Distribution by virtue of the Petitioner's provision of fully completed exemption certifications subsequent to the informal conference.

Sales for which no exemption certificate was provided.

Section 2 of the General Sales Tax Act ("GSTA") provides in part:

[T]here is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, by which ownership of tangible personal property is transferred for consideration, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act. [MCL 205.52(1).]

Section 1 of the GSTA defines "sale at retail" as:

[A] sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent. [MCL 205.51(1)(b).]

It is not up to Petitioner to determine what items are taxable or exempt when making sales or leases of tangible personal property. Petitioner's statutory directive in section 2 of the GSTA is to charge sales tax on all sales of tangible personal property transferred for consideration. It is Petitioner's customers duty to claim exemption from sales tax if they believe an exemption to apply. Here, it appears that some of the RVMs sold to Spartan Stores Distribution were sold exempt for resale to Spartan Stores' affiliates. Spartan Stores must have provided Petitioner with a claim for exemption that Petitioner honored by not charging sales tax on certain sales. If other customers wanted to claim an exemption from sales tax, the action of making the claim must rest with the claimant - not with Petitioner. For sales where no exemption certificate was provided, Petitioner should have properly collected the tax due. Where Petitioner cannot show that it properly collected sales tax, the Department's assessment of the same should be upheld.

Industrial processing

Petitioner asserts that its RVMs should be exempt for industrial processing. Section 4t of the GSTA provides an exemption for industrial processing as follows:

- (1) 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:

* * *

- (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.

* * *

- (2) The property under subsection (1) is exempt only to the extent that the property is used for the exempt purpose stated in this section. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the department.

- (3) Industrial processing includes the following activities:

- (g) Remanufacturing.

* * *

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

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

(a) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail.

(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.

* * *

(5) Property that is not eligible for an industrial processing exemption includes the following:

* * *

(e) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer.

* * *

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

(a) Purchasing, receiving, or storage of raw materials.

* * *

(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. [MCL 205.54t.]

The key inquiries in determining whether equipment is exempt for industrial processing are twofold: (1) whether the machine converts or conditions tangible personal property by changing its form, composition, quality, combination, or character; and (2) whether that tangible personal property is ultimately sold at retail. Per MCL 205.54t(7), industrial processing begins when tangible personal property tangible personal property moves from raw materials storage.

Petitioner explains that its RVMs (a) determine if there is excess liquid in a can or bottle and either (b) distinguish the color of glass bottles for sorting or (c) determine the type of plastic

(either PET or HDPE) for sorting. Sorting is not the beginning of industrial processing, according to section 4t(7). The DVD shows that plastic bottles are shredded after passing fraud detection tests, while aluminum cans are crushed. Petitioner then explained that its RVMs feed the glass, aluminum or plastic into internal bins, which store the property until it is collected and transported to a processing plant. The shredding and crushing processes for plastic and aluminum change the form of these types of tangible personal property; thus, appearing to start industrial processing. The RVMs, however, do not seem to change or convert the form of the glass bottles—those are just sorted and spit out of the machines into storage bins. That the bottles may (or may not) break when propelled into a storage bin is not the RVM changing or converting the form or quality of the bottles. It does not seem that RVMs that accept and sort glass are eligible for an industrial processing exemption because these machines do not change the form, composition, quality, combination or character of the glass they accept.

Another requirement of industrial processing is the tangible personal property that is converted or conditioned must be ultimately sold at retail. Here, while Petitioner alleges that some of the plastic collected (PET) is used to manufacture new carpet. However, Petitioner did not detail what products were ultimately manufactured and sold at retail out of recycled aluminum or glass. Furthermore, Petitioner did not provide evidence, such as invoices, that the tangible personal property accepted and converted by its machines was ultimately manufactured into products that were ultimately sold at retail. Thus, Petitioner has not shown by a preponderance of the evidence that its RVMs were entitled to the industrial processing exemption it claimed.

Refund claim.

It is the taxpayer who bears the burden of demonstrating entitlement to a tax refund or credit. See, e.g., *United States v Janis*, 428 US 433, 440; 96 S Ct 3021; 49 L Ed 2d 1046 (1976); see also *E-Z Sew Enterprises, Inc v United States*, 260 F Supp 100 (ED Mich, 1966). Proof by a preponderance of the evidence applies to proceedings before an administrative agency. *Blue Cross and Blue Shield of Michigan v Milliken*, 422 Mich 1, 89; 367 NW2d 1 (1985); *Aquilina v General Motors Corp*, 403 Mich 206, 210-211; 267 NW2d 923 (1978). This standard requires that the fact-finder believe that the evidence supporting the existence of the contested fact outweighs the evidence supporting its nonexistence. *Blue Cross and Blue Shield*, 422 Mich at 89. This burden of persuasion applies to proceedings before an administrative agency. *Blue Cross and Blue Shield*, 422 Mich at 89; *Aquilina*, 403 Mich at 210.

“As [sales tax] is a ‘privilege tax,’ the sales tax is imposed directly on the seller. However, the seller may pass it on to the purchaser and collect it at the point of sale. *Sims v Firestone Tire & Rubber Co*, 397 Mich 469, 245 NW2d 13 (1976); *Detroit & Cleveland Navigation Co v Dep't of Revenue*, 342 Mich 234, 238; 69 NW2d 832 (1955).” *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 408; 590 NW2d 293 (1999).

Regarding Petitioner’s refund request, Petitioner provided no customer requests for refunds or proof that the sales tax has been refunded to customers. Here, the sales tax is a tax that may be passed on to the purchaser, which from all accounts, it appears that Petitioner did. Petitioner may not make itself greater than whole by charging its customers sales tax and requesting a refund for itself. Here, prior to any entitlement to a sales tax refund, Petitioner must show that its customers

Docket No. 20112068

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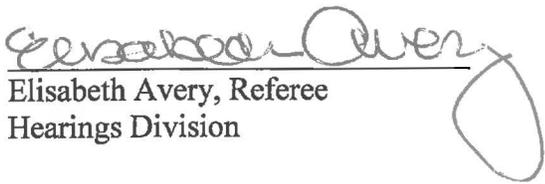
who were charged sales tax have requested a refund from Petitioner and that Petitioner has first refunded sales tax it collected to those customers before being reimbursed by the Department. Thus, Petitioner has not shown entitlement to the sales tax refund requested.

RECOMMENDATION

For the above-stated reasons, it is recommended that the audit determination should be adjusted to remove taxable exceptions for sales and leases of RVs and storage bins to Meijer, Wal-Mart and Spartan Stores Distribution during the audit period. All other sales and leases during the audit period should remain taxable where no exemption certificate was supplied.

It is further recommended that Petitioner's request for a sales tax refund of \$2,458,452.00 should be denied.

Respectfully submitted,


Elisabeth Avery, Referee
Hearings Division

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00001
 1 STATE OF MICHIGAN
 2 COURT OF CLAIMS
 3 -----
)
 4 TOMRA OF NORTH AMERICA, INC.,)
)
 5 Plaintiff,) Docket No.
) 14-91-MT
 6 -vs-) Judge Talbot
)
 7 DEPARTMENT OF TREASURY,)
 STATE OF MICHIGAN,) Consolidated
 8) with Docket
 Defendant.) No. 14-185-MT
 9 -----
 10
 11
 12
 13 DEPOSITION
 14 of LANCE WILKINSON, a witness called by Plaintiff,
 15 taken before Tamara Staley Heckaman, Certified
 16 Shorthand Reporter and Notary Public, at 525 West
 17 Ottawa, Lansing, Michigan, on Wednesday, January
 18 7, 2015, noticed for the hour of 1:00 p.m.
 19

Page 1

00003
 1 Lansing, Michigan
 2 Wednesday, January 7, 2015
 3 1:00 p.m.
 4 LANCE WILKINSON,
 5 having been duly sworn, testified as follows:
 6 EXAMINATION
 7 BY MR. QUINN:
 8 Q. Could you state your name for the record
 9 and spell your last name?
 10 A. Lance Wilkison, W-i-l-k-i-n-s-o-n.
 11 Q. Let the record reflect this is the
 12 deposition of Lance Wilkinson, pursuant to notice,
 13 for any and all purposes under the Michigan Court
 14 Rules.
 15 Mr. Wilkinson, my name is Brian
 16 Quinn. I represent the plaintiff in this case,
 17 TOMRA of North America, Inc., which I'll just
 18 refer to as TOMRA for ease of reference.
 19 A. Okay.
 20 Q. Have you ever had your deposition taken
 21 before?
 22 A. Yes.
 23 Q. So you know the ground rules. I'll just
 24 give you a couple of my little rules that I like
 25 to follow. Obviously it's a question/answer

Page 3

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 1 APPEARANCES:
 HONIGMAN MILLER SCHWARTZ AND COHN LLP
 2 222 North Washington Square
 Suite 400
 3 Lansing, Michigan 48933
 By
 4 BRIAN T. QUINN, J.D.
 5 On behalf of Plaintiff.
 6 MICHIGAN DEPARTMENT OF ATTORNEY GENERAL
 Revenue & Collections Division
 7 P.O. Box 30754
 Lansing, Michigan 48909
 8 By
 SCOTT L. DAMICH, J.D.
 9 -and-
 ADAM SADOWSKI, J.D.
 10
 On behalf of Defendant.
 11
 12 EXAMINATION INDEX
 13 ATTORNEY'S NAME EXAMINATION RE-EXAMINATION
 14 BY MR. QUINN: 3
 15 BY MR. DAMICH:
 16 * * *
 17 INDEX OF EXHIBITS

Page 2

00004
 1 format. Verbal responses are necessary so Tami
 2 can get down your responses. If I ask you a
 3 question and you answer it I'm going to assume
 4 that you understood the question. If at any time
 5 you don't understand my question, which can
 6 happen, just ask me to repeat it or rephrase it
 7 and I'll do my best to make it more clear
 8 We can take a break at any time that
 9 you want. The only caveat to that is if there's a
 10 question on the table I'd ask that you answer it
 11 and then we can take a break for however long you
 12 want.
 13 We used binders this morning for the
 14 exhibits for the deposition of Mr. Kolbig.
 15 There's a couple other depositions in this case so
 16 we're just going to be referring to binders if
 17 that's easy, so if you could, can you flip to tab
 18 C in your binder, which has been marked as
 19 Deposition Exhibit C. If you could can you
 20 identify that document for me?
 21 A. It's a notice for the deposition.
 22 Q. Have you seen that document before?
 23 A. Yes.
 24 Q. On the second page of it it asks you, the
 25 deponent, to produce certain things, those are

Page 4

00005

1 items one, two, and three; do you see that on the
 2 notice?
 3 A. Yes.
 4 Q. Did you bring any of those items with you
 5 today?
 6 A. I did not. These items were produced
 7 during the -- in the request for production. I
 8 had no additional documents.
 9 Q. And did you assist in the request for
 10 production of documents?
 11 A. Yes.
 12 Q. And what was the extent of your
 13 involvement, your assistance?
 14 A. I reviewed the records that were in my
 15 possession to see if I had any documents
 16 responsive to the request. If I did I provided
 17 them to counsel.
 18 Q. Do you know what those documents
 19 entailed?
 20 A. There were some e-mails. That's about
 21 the only thing I recall.
 22 Q. And who were those e-mails between?
 23 A. Me, counsel, and my staff.
 24 Q. And what staff members were those?
 25 A. Pat Calore.

00007

1 A. I'm aware of the case --
 2 Q. Okay.
 3 A. -- yes.
 4 Q. And what's your understanding of the
 5 case?
 6 A. TOMRA is seeking a refund for the sale
 7 of -- for sales or use tax related to reverse
 8 vending machines sold to retailers throughout the
 9 state.
 10 Q. Were you involved in the audit in this
 11 case?
 12 A. No.
 13 Q. Were you involved in the assessment in
 14 this case?
 15 A. No.
 16 Q. Were you involved in the informal
 17 conference process in this case?
 18 A. No.
 19 Q. What are your duties and responsibilities
 20 as administrator of tax policy division?
 21 A. The tax policy division is comprised of
 22 eleven attorneys referred to as administrative law
 23 specialists in the civil service rules. We also
 24 have one specialist and two analysts. Our job is
 25 to -- we work with counsel on lawsuits that

00006

1 Q. Any other staff members?
 2 A. I don't know. I often copy my secretary
 3 but...
 4 Q. So apart from e-mails were there any
 5 other documents or records in your possession?
 6 A. No.
 7 Q. If you could can you flip to tabA, which
 8 has been marked as Deposition ExhibitA. Can you
 9 identify that document for me?
 10 A. It is our witness list.
 11 Q. Okay. Have you seen this document
 12 before?
 13 A. I don't think I have, no.
 14 Q. Do you see your name on this document?
 15 A. I do. I'm number one.
 16 Q. You are the number one witness. Do you
 17 know why you're listed as the number one witness?
 18 A. Typically when there may be need to
 19 testify on department policy I'll be listed due to
 20 my position as administrator with tax policy
 21 division or my designee in the event that there's
 22 someone on my staff that is better suited for the
 23 particular topic at issue.
 24 Q. And are you aware of this case, TOMRA of
 25 North America V Department of Treasury?

00008

1 involve revenue act taxes. We work with our
 2 executive office when they have legal questions
 3 and need recommendations. We work with the
 4 legislature on drafting legislation. We
 5 produce -- we develop and publish guidance
 6 regarding tax laws. We also review upon request
 7 of the administrator of the hearings division
 8 recommendations to determine if those
 9 recommendations are consistent with department
 10 policy.
 11 Q. Does the tax policy division issue
 12 guidance on tax exemptions?
 13 A. We may. We could either provide guidance
 14 on written requests in the form of a letter
 15 ruling. I believe there's also a -- several
 16 RAB's, Rev Administrative Bulletins, that exist
 17 dealing with tax exemptions.
 18 Q. Is tax policy responsible for the
 19 drafting of RABs?
 20 A. Usually.
 21 Q. Would any other division be responsible
 22 for that?
 23 A. We have RABs that detail prepaid sales
 24 tax rates as it relates to gasoline and diesel
 25 fuel, which is produced by our tax processing.

00009
 1 There may be other RABs out there that deal with
 2 rates, interest rates, for example, that tax
 3 policy doesn't necessarily draft.
 4 Q. Is tax policy division responsible for
 5 drafting any guidance or RABs on the industrial
 6 processing exemption?
 7 A. We have produced guidance on the IP
 8 exemptions, yes.
 9 Q. When you say that you produced it, have
 10 you produced it in this case?
 11 A. Not that I'm aware of. Speaking in terms
 12 of general guidance, Revenue Administrative
 13 Bulletins, which provide guidance to the
 14 practitioner and taxpayer community as a whole.
 15 Q. The administrative law specialists, are
 16 they akin to in-house counsel?
 17 A. We view it that way. The governmental
 18 structure and the AG serves as the State's
 19 counsel, but they are used that way in terms of
 20 recommendations when there are questions.
 21 Q. Do you know if the Civil Service
 22 Commission views them as in-house counsel?
 23 A. I don't. I doubt it but I don't know
 24 Q. And how long have you been administrator?
 25 A. I've been administrator for approximately

Page 9

00011
 1 A. Real full-time employment?
 2 Q. Yeah.
 3 A. Yeah. I would go back to before law
 4 school I worked for Intel Corporation in Chandler
 5 Arizona.
 6 Q. What did you do there?
 7 A. I did -- I was a project manager at the
 8 end. Prior to that I was what's known as a
 9 business analyst.
 10 Q. And when did you go to law school?
 11 A. I went to law school -- I graduated law
 12 school 2003.
 13 Q. And from which law school?
 14 A. University of Michigan.
 15 Q. Where did you do your undergrad?
 16 A. Also University of Michigan.
 17 Q. What year did you graduate?
 18 A. I graduated -- I graduated law school in
 19 2003. I graduated undergrad in 1996.
 20 Q. And what was your degree in?
 21 A. Economics.
 22 Q. Any post grad work?
 23 A. No.
 24 Q. Besides law school?
 25 A. No.

Page 11

00010
 1 three years.
 2 Q. And what was your position before that?
 3 A. I was administrative law specialist for
 4 the tax policy division from 2000 -- from the
 5 beginning of 2006 until 2011 at which time I
 6 became administrator.
 7 Q. And prior to being administrative law
 8 specialist where did you work?
 9 A. I worked as an associate attorney at
 10 Warner Norcross & Judd in Grand Rapids, Michigan.
 11 Q. And how long were you there for?
 12 A. I was at Warner Norcross for
 13 two-and-a-half years.
 14 Q. So roughly '03 to '06, sound about right?
 15 A. Yes.
 16 Q. And when you were an attorney at Warner
 17 Norcross did you deal with state tax issues?
 18 A. Yes. Not exclusively but yes.
 19 Q. What department were you in over there?
 20 Litigation?
 21 A. I was in what they refer to as their
 22 business practice group.
 23 Q. And what about prior to being an
 24 associate attorney at Warner Norcross, what was
 25 your employment?

Page 10

00012
 1 Q. And are you a CPA?
 2 A. No.
 3 Q. Do you have any specialized
 4 certifications in accounting or state taxation?
 5 A. No.
 6 Q. When did you first become aware of TOMRA
 7 and their claims for refund as well as challenging
 8 the assessment?
 9 A. I received a refund request from a
 10 taxpayer that I can't disclose that requested
 11 their refund claim to be put on hold until TOMRA's
 12 refund claims were I guess concluded.
 13 Q. So explain to me how that works. I mean,
 14 what's the essence of their refund claim?
 15 A. I don't recall. I just recall that there
 16 was a letter seeking a refund claim related to
 17 reverse vending machines, but the letter
 18 acknowledged that TOMRA had already requested a
 19 refund and that they were requesting that their
 20 claim not be decided upon until TOMRA's was
 21 concluded.
 22 Q. And this is a refund for what type of
 23 tax?
 24 A. Must be sales tax.
 25 Q. And what you call reverse vending

Page 12

00013

1 machines we call container recycle machines, so
 2 for ease of reference I'll use CRM or just
 3 generically machines. What's your understanding
 4 of how these machines work?
 5 A. You insert a recyclable returnable can or
 6 bottle, one that would be subject to the bottle
 7 deposit laws. The machine makes sure that that's
 8 a returnable container, and then depending on what
 9 it is, whether it's glass or can or bottle,
 10 basically deposits it in a bin.
 11 Q. And how did you come across your
 12 understanding of how these machines work?
 13 A. In discussing this case.
 14 Q. And were those discussions with people
 15 from TOMRA?
 16 A. Some of those discussions were with my
 17 staff and my counsel. Others were with TOMRA's
 18 counsel.
 19 Q. Have you reviewed any literature on how
 20 these machines work?
 21 A. Not in the context of this case.
 22 Q. Have you reviewed any DVDs on how these
 23 machines work?
 24 A. I have not.
 25 Q. Is it your understanding that TOMRA's

00015

1 report of findings in this case?
 2 A. No.
 3 Q. Have you reviewed the informal conference
 4 recommendation in this case?
 5 A. Yes, but I don't recall -- I don't recall
 6 the conclusions or the reasoning in the hearing.
 7 I do remember I read it once but...
 8 Q. Do you remember what the disposition as a
 9 result of the informal conference recommendation
 10 was on TOMRA's direct claim for refund?
 11 A. No. I mean, I think it was related to
 12 exemption certificates, but I don't remember what
 13 the ultimate conclusion was.
 14 Q. Do you recall what the informal
 15 conference recommendation's conclusion was with
 16 regard to the industrial processing exemption?
 17 A. I don't.
 18 Q. Do you recall the informal conference
 19 recommendation's conclusion regarding unjust
 20 enrichment with respect to TOMRA's refund claim?
 21 A. No.
 22 Q. What's your understanding of the
 23 statutory provision regarding unjust enrichment?
 24 A. I mean, I can't quote the provision but I
 25 think it says something to the effect of -- that

00014

1 position is that the sale and lease of these
 2 machines are subject to the industrial processing
 3 exemption?
 4 A. I don't think that's their position.
 5 Q. Okay. What do you think their position
 6 is?
 7 A. I think their position is that -- can I
 8 go off the record here for a minute?
 9 Q. If you want, yeah. We'll take a break.
 10 (Discussion off the record.)
 11 THE WITNESS: Could you repeat the
 12 question?
 13 BY MR. QUINN:
 14 Q. I will try.
 15 A. Yes, thank you.
 16 Q. What is your understanding of TOMRA's
 17 position with respect to the industrial processing
 18 exemption?
 19 A. I believe their position is that the use
 20 of these machines by the retailers is exempt as
 21 industrial processing.
 22 Q. Okay. And have you reached a conclusion
 23 whether that position is correct or incorrect?
 24 A. I have not.
 25 Q. Have you had a chance to review the audit

00016

1 sales tax amounts erroneously collected or over
 2 collected must be remitted to the State. A
 3 taxpayer cannot enrich themselves by keeping sales
 4 tax.
 5 Q. So in this particular instance if TOMRA
 6 erroneously collected and remitted sales tax to
 7 the department, the unjust enrichment to TOMRA
 8 would be what?
 9 A. Well, the department's position would be
 10 that we -- the department would refund those
 11 erroneously remitted sales tax amounts to TOMRA so
 12 long as TOMRA had shown that they had refunded the
 13 customers from whom they had erroneously collected
 14 the tax.
 15 Q. So it's the department's position that
 16 TOMRA has to refund first to the customers before
 17 it can seek a refund from the department?
 18 A. Yes.
 19 Q. Do you know what statutory provision
 20 requires that?
 21 A. The statutory support for that position
 22 is the statute that discusses unjust enrichment.
 23 I don't have a cite. I'm sorry, I don't recall
 24 it.
 25 Q. Do you know if that statutory provision

00017

1 provides that refunds must be made to the customer
 2 first?
 3 A. It does not. It doesn't specify the
 4 order in which this occurs.
 5 Q. So the department's position on the order
 6 that -- in which it occurs, where's the authority
 7 for that?
 8 A. The statute and the department's
 9 interpretation of that statute.
 10 Q. If instead the department refunded the
 11 amounts to TOMRA that were erroneously collected
 12 and remitted and TOMRA was to turn those refund
 13 amounts over to its customers, would there still
 14 be unjust enrichment?
 15 A. Perhaps not, although that's not
 16 consistent with the department's policy.
 17 Q. And the policy being refund customer then
 18 seek refund from us?
 19 A. Yes.
 20 Q. Assuming that that's not the department's
 21 policy, if it were to permit a refund to TOMRA
 22 first and TOMRA turns around and refunds the
 23 customers would there be unjust enrichment?
 24 MR. DAMICH: I'm going to object, it
 25 asks for a legal conclusion. You have to answer

00019

1 should clarify something earlier too, it's not
 2 necessarily that it's been erroneously collected.
 3 Q. Right.
 4 A. A party could collect sales tax correctly
 5 but later on an exemption is produced.
 6 Q. Is there any circumstances where the
 7 customer could get a credit, you know for
 8 example, against use tax liability for amounts of
 9 sales tax that it already paid?
 10 A. I don't know of any.
 11 Q. Are you familiar with MCL205.21b?
 12 A. Not by -- it's in the revenue act.
 13 Q. Yeah.
 14 A. Yeah.
 15 Q. But off the top of your head you can't
 16 remember --
 17 A. I couldn't cite it, no. That might be
 18 the use tax offset provision.
 19 Q. Yeah.
 20 A. Yeah. That may answer your question, but
 21 that's something that I think occurs in audit.
 22 That's not a provision that I'm familiar with in
 23 practice.
 24 Q. Do you know sitting here today if that
 25 statutory provision caps the offset amount?

00018

1 though.
 2 THE WITNESS: Okay. Probably not.
 3 BY MR. QUINN:
 4 Q. Are you aware that it's TOMRA's position
 5 at informal conference that it would, in fact,
 6 refund the money to its customers?
 7 A. No.
 8 Q. In a situation like this where TOMRA
 9 erroneously collects sales tax from its customers
 10 and then remits that sales tax to the State, would
 11 the customer have a direct claim for a refund of
 12 sales tax?
 13 A. No.
 14 Q. So TOMRA first has to ask for the refund?
 15 A. That's the department's position, yes.
 16 Q. And that's based upon what?
 17 A. The statute, the identity of the
 18 taxpayer.
 19 Q. So is it fair to say that TOMRA is the
 20 one that has to ask for the refund because it was
 21 TOMRA that remitted the sales tax to the State?
 22 A. TOMRA is the entity, the taxpayer here.
 23 They're the one making a retail sale subject to
 24 sales tax, so as the taxpayer they would be the
 25 one that would have to request the refund. I

00020

1 A. I don't know.
 2 Q. Okay. If I were to tell you that it caps
 3 the offset amount at \$5,000, would you have any
 4 reason not to believe me?
 5 A. No, although that doesn't ring a bell
 6 but...
 7 Q. Yeah.
 8 A. I haven't spent a lot of time with 21b.
 9 Q. Assuming for the sake of argument that it
 10 does cap it at \$5,000 and the customer has way in
 11 excess of that \$5,000 limit, is there any way for
 12 that customer to get the access?
 13 A. I don't know.
 14 Q. In this particular case are you aware if
 15 TOMRA provided any exemption certificates to the
 16 department from its customers?
 17 A. I'm not certain, no.
 18 Q. If you could can you flip to tab R in
 19 your binder, which has been marked as Deposition
 20 Exhibit R. Can you describe what this document is
 21 for me?
 22 A. The title is Michigan sales and use tax
 23 certificate of exemption. The vendor is TOMRA,
 24 the claimant is Meijer, and the claim is for
 25 industrial processing.

00021

1 Q. Have you seen this certificate before?
 2 A. I have not.
 3 Q. Do you know if Meijer is a customer of
 4 TOMRA?
 5 A. This looks like it, yes. This would seem
 6 to indicate that.
 7 Q. So based on the blanket certificate
 8 itself leads you to that conclusion?
 9 A. Yes.
 10 Q. Do you have any independent knowledge of
 11 whether or not Meijer is a customer of TOMRA?
 12 A. No.
 13 Q. And can you tell me the dates that this
 14 certificate applies to?
 15 A. It was signed in October of 2012 and the
 16 certificate -- there's some additional writing in
 17 here that's saying that the certificate extends
 18 back to January 2001.
 19 Q. Is that proper to extend it back like
 20 that?
 21 A. I don't know if it's proper in terms of
 22 what's expected when filling out a form, but I
 23 think the department's general practice is to
 24 honor an exemption certificate whenever received.
 25 It doesn't necessarily have to be produced at the

00023

1 certificate of exemption.
 2 Q. And the claimant is who?
 3 A. Walmart Stores, Inc.
 4 Q. And the vendor or seller?
 5 A. TOMRA, TOMRA processing center/TOMRA of
 6 North America.
 7 Q. And can you give me the dates upon which
 8 this extends back to?
 9 A. It was signed 12-18-2012 and it's --
 10 there's a note in here that says it extends back
 11 to October 1st, 2003.
 12 Q. And, again, it's the department's
 13 practice to honor that request extending it back?
 14 A. I believe so.
 15 Q. If TOMRA had collected sales tax from
 16 Walmart and then remitted that to the department,
 17 could Walmart make a direct claim for that sales
 18 tax collected and remitted?
 19 A. I don't think so. That at least is not
 20 consistent with my understanding of department
 21 policy.
 22 Q. So the only person to collect it is -- or
 23 to make a refund claim would be TOMRA?
 24 A. Yes.
 25 Q. And if the State refunded TOMRA the

00022

1 time of the transaction.
 2 Q. And the department's practice of
 3 accepting these, is it based on statute or..
 4 A. I assume it's consistent with statute. I
 5 can't recall the IP exemption provision off the
 6 top of my head.
 7 Q. If you could can you flip to tab S, which
 8 has been marked as Deposition Exhibit S. Can you
 9 identify this document for me?
 10 A. This appears to be a sales and use tax
 11 certificate of exemption by Spartan Stores.
 12 Q. And the vendor is TOMRA?
 13 A. Yeah, here they're identified as the
 14 seller. This is a homemade exemption certificate.
 15 Q. I know it's not on the department's form
 16 so... The date on that, can you identify the date
 17 for me?
 18 A. It is dated September 1st, 2012.
 19 Q. Have you ever seen this certificate
 20 before?
 21 A. No.
 22 Q. If you could can you flip to tab T for
 23 me, which has been identified as Deposition
 24 Exhibit T. Can you identify this document for me?
 25 A. This is a Michigan sales and use tax

00024

1 amounts and TOMRA then remitted those amounts to
 2 Walmart, would there be unjust enrichment?
 3 A. It goes back to the scenario earlier
 4 that's not department policy.
 5 Q. Um-hum.
 6 A. But assuming the hypothetical as you
 7 asked me to assume earlier, then likely not.
 8 Q. If TOMRA was to present the department
 9 with an agreement between itself and Walmart that
 10 any amounts that it -- that TOMRA received from
 11 the State in connection with sales tax collected
 12 and remitted, would that be sufficient to
 13 alleviate the department's concerns over unjust
 14 enrichment?
 15 A. No.
 16 Q. Why is that?
 17 A. Well, it's a hypothetical. We have -- as
 18 far as I know have not been presented with that
 19 scenario so no decision has actually been made.
 20 However, our policy is to refund the taxpayer upon
 21 demonstrating that the taxpayer has, in fact,
 22 refunded their customers.
 23 Q. But a signed written agreement would not
 24 be sufficient?
 25 A. I guess I don't know I haven't been

00025

1 presented that. I don't know that we've made a
 2 decision on anything like that before.
 3 Q. For example, the -- sticking with the
 4 certificate of exemption at tab T for Walmart, is
 5 TOMRA permitted to rely upon this certificate of
 6 exemption?
 7 A. Generally, yes.
 8 Q. What would be some circumstances where
 9 they would not be able to rely upon the exemption?
 10 A. Evidence of collusion or fraud, which I
 11 don't think are present here.
 12 Q. So apart from the exemption certificate
 13 itself, what would a seller need to provide to the
 14 department to be entitled to the exemption?
 15 A. Could you rephrase the question?
 16 Q. Sure. If TOMRA is presented with a
 17 certificate of exemption, for example, Walmart,
 18 does it need to prove anything else to the
 19 department that the transaction's exempt other
 20 than that they received a certificate of
 21 exemption?
 22 A. If I'm understanding you there's going to
 23 be some conflating here. From TOMRA's perspective
 24 whether they'd be required to pay sales tax on
 25 that, they can rely on the exemption.

00027

1 the containers that they receive?
 2 A. As I understand it, for cans and plastic
 3 there is some crushing.
 4 Q. Um-hum.
 5 A. Whether that constitutes conditioning I
 6 don't know.
 7 Q. So for cans and plastic bottles, in
 8 addition to crushing do they do anything else to
 9 the containers?
 10 A. No. Well, I mean, I think there's a
 11 scanning to make sure that there are eligible
 12 containers.
 13 Q. Would that be characterized as
 14 inspection?
 15 A. I don't know.
 16 Q. Do you know if it would be characterized
 17 as sorting?
 18 A. I don't know.
 19 Q. Do you know if the department has
 20 formulated a policy on that?
 21 A. No, I don't -- no, I don't know if we
 22 have.
 23 Q. Okay.
 24 A. I don't know what it is.
 25 Q. Let me just double-check real quick. Do

00026

1 Q. Um-hum.
 2 A. Whether the exemption is proper would
 3 probably come from an audit of the retailer that
 4 purchased the reverse vending machines or the --
 5 Q. Machines.
 6 A. -- machines, sorry.
 7 Q. Okay. So that would be an issue between
 8 the department and Walmart, not necessarily an
 9 issue between TOMRA and the department?
 10 A. Yes.
 11 Q. Is it the department's policy that
 12 industrial processing involves recycling?
 13 A. I believe that's the statute. I'm not
 14 familiar with any specific departmental policy on
 15 recycling.
 16 Q. So it's your understanding that the
 17 industrial processing statute includes recycling
 18 as an industrial processing activity?
 19 A. As I recall but, again, I don't have the
 20 statute in front of me. That's what would dictate
 21 whether recycling is part of it or not.
 22 Q. And do any of the machines that TOMRA
 23 sells or leases involve recycling?
 24 A. I don't know. That's a good question.
 25 Q. Do you know if they convert or condition

00028

1 you know what the difference between an operating
 2 lease and a capital lease is?
 3 A. In general, generally would never write
 4 a paper on it, but my understanding of capital
 5 leases is that generally it's a financing
 6 mechanism.
 7 Q. How so?
 8 A. This is going to maybe sound stupid on a
 9 transcript, but it's -- it has to do with
 10 you're -- you're almost essentially purchasing the
 11 equipment but you're doing so through a capital
 12 lease. I know for tax purposes, for federal tax
 13 purposes, often you're treated as if you own the
 14 goods.
 15 Q. That was pretty good. Do you know if
 16 TOMRA did operating leases, capital leases, both?
 17 A. I have no idea.
 18 Q. Okay.
 19 A. I don't know.
 20 Q. Do you -- are you aware if the machines
 21 contain bins?
 22 A. Yes, I believe they do.
 23 Q. And how did the bins interact with the
 24 machines?
 25 A. I don't know the design components, but I

00029
 1 believe the cans or bottles get dropped into the
 2 bins.
 3 Q. And then once the containers are dropped
 4 into the bins, then what happens?
 5 A. I don't know exactly.
 6 Q. Okay.
 7 A. I believe somebody I don't know who,
 8 picks up the bins and takes them somewhere or at
 9 least picks up the cans or bottles in the bins and
 10 takes them somewhere.
 11 Q. And do you know where that somewhere
 12 would be?
 13 A. No, I don't.
 14 Q. So not specific to this case but what's
 15 your general understanding of what happens to
 16 used, deposited beverage containers?
 17 A. I believe the bottle deposit law -- I
 18 mean, they're prohibited from going into the
 19 landfill.
 20 Q. Um-hum.
 21 A. So I believe that they are recycled or
 22 used in some way. I don't think bottles are ever
 23 refillable anymore but I think they used to be.
 24 Q. So apart from reuse they could be
 25 recycled into a product available for sale at

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 1 STATE OF MICHIGAN ,
) SS
 2 COUNTY OF CLINTON)
 3
 4 I, Tamara Staley Heckaman, Certified
 5 Shorthand Reporter and Notary Public in and for
 6 the County of Clinton, State of Michigan, do
 7 hereby certify that the foregoing Deposition was
 8 taken before me at the time and place hereinbefore
 9 set forth.
 10 I further certify that said witness was
 11 by me duly sworn in said cause; that the testimony
 12 then given was reported by me stenographically;
 13 subsequently with computer-aided transcription,
 14 produced under my direction and supervision; and
 15 that the foregoing is a full, true, and correct
 16 transcript of my original shorthand notes.
 17 IN WITNESS WHEREOF, I have hereunto set
 18 my hand and seal this 19th day of January, 2015.
 19
 20
 21 _____
 Tamara Staley Heckaman, CSR-3443,
 Certified Shorthand Reporter,
 22 Registered Professional Reporter,

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00030
 1 retail?
 2 A. Yes, they could. I don't know if they
 3 are but they certainly could.
 4 Q. Do you know whether or not that was done
 5 in this case?
 6 A. I don't.
 7 Q. I think that's all I have. Yeah, that's
 8 it.
 9 MR. DAMICH: Give me a second.
 10 Yeah, I'm good. I don't have anything.
 11 MR. QUINN: Okay.
 12 (Whereupon Deposition concluded
 13 at 1:45 p.m.)
 14
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Pages 29-32

STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC.,

Plaintiff,

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

Docket No. 14-91-MT

HON. MICHAEL J. TALBOT

Consolidated with Docket No.
14-185-MT

JUNE SUMMERS HAAS (P59009)
BRIAN T. QUINN (P66272)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiff
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

SCOTT L. DAMICH (P74126)
Assistant Attorney General
Michigan Department of Attorney General
Revenue & Collections Division
Attorneys for Defendant
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
THIRD DISCOVERY REQUESTS TO PLAINTIFF**

NOW COMES Plaintiff, TOMRA of North America ("Plaintiff"), by and through its attorneys, Honigman Miller Schwartz and Cohn LLP, and provides answers to Defendant Department of Treasury, State of Michigan's (the "Department") Third Discovery Requests as follows:

All answers and responses contained herein are made in reference to and solely for the purpose of this action, and the provision of each such response or answer does not in any way restrict or modify Plaintiff's rights to object to the admissibility of the information so provided if presented by or discussed at the time of trial, and Plaintiff hereby reserves all rights to raise any objection allowed by law in an effort to exclude and render inadmissible any of the information provided herein at the time of trial.

Plaintiff has provided its answers and responses to the Department's discovery requests in an effort to expedite discovery, and by providing these answers, which may later prove to be incomplete, Plaintiff does not in any way limit or affect its ability to produce additional information or facts prior to trial, either in response to the Department's discovery attempts or in furtherance of Plaintiff's own discovery or presentation of its claims and defenses.

The following responses are true and correct to the best of Plaintiff's knowledge, information, and belief as of the date of these responses. Plaintiff reserves the right to amend or supplement its responses if it finds that inadvertent omissions have been made or if additional documents or information are discovered at a later date.

To the extent that any interrogatory seeks information protected from disclosure by the attorney-client privilege or the work-product doctrine, Plaintiff objects to such request.

INTERROGATORIES

FIRST INTERROGATORY:

1. You allege in Count I of the Complaint that you are entitled to an industrial processing exemption. Please identify a precise dollar figure that represents the amount of Final Assessment No. TH82977 you allege is unlawfully assessed based on the industrial processing

exemption to which you refer to in Count I, and explain how you calculated the precise dollar figure.

ANSWER:

Plaintiff objects to this interrogatory as vague and ambiguous in that the interrogatory refers to “the Complaint” in this consolidated case in which two separate complaints were filed. Assuming the Department is referring to the Complaint filed in 14-185-MT, claiming a refund of the sales tax assessment issued by the Department, Plaintiff states that the entire amount assessed by the Department under Final Assessment TH82977 was unlawfully assessed. The precise dollar figure of the assessment is the amount stated on the Final Assessment issued by the Department on May 9, 2014 and attached as Exhibit 4 to the Complaint filed in 14-185-MT and paid under protest on June 19, 2014. The precise amount of the assessment was calculated by the Department and, therefore, the methodology of the calculation of the assessment is within the knowledge of the Department. The Final Assessment indicates that the amounts stated therein must be paid within 30 days of receipt of the assessment, and Plaintiff complied.

SECOND INTERROGATORY

2. You allege in Count I of the Complaint that you are entitled to an industrial processing exemption. Please identify and describe each of the items or pieces of equipment you sold or leased during the period at issue that you allege is exempt from sales tax because of the industrial processing exemption.

ANSWER:

Plaintiff objects to this interrogatory as vague and ambiguous in that the interrogatory refers to “the Complaint” in this consolidated case in which two separate

complaints were filed. Assuming the Department is referring to Complaint 14-185-MT, claiming a refund of the sales tax assessment TH82977 issued by the Department, Plaintiff states that it believes it remitted the correct amount of sales tax due to the Department on all Container Recycling Machines and parts thereto that were sold or leased during the tax period at issue of October 1, 2003 through December 31, 2008 (the Tax Period in Issue). However, the Department's auditor became confused about Plaintiff's recordkeeping and remittance of sales tax, particularly as it relates to capital leases. Plaintiff treated capital leases as sales of the Container Recycling Machines at issue and collected tax upon the execution of the lease and immediately remitted such amounts to the Department, even though Plaintiff continued to collect the financed purchase price from the customer. The Department's auditor assumed that additional monthly remittances of financed purchase price payments from capital lease customers were sales without remittance of sales tax and assessed additional amounts thereon. Accordingly, the amount of the assessed tax is unrelated to actual sales but, rather, is an amount calculated by the Department's auditor as purported sales based upon the auditor's misunderstanding of Plaintiff's tax remittance processes. There may have been additional misunderstandings about Plaintiff's tax remittance processes. The amounts assessed by the Department's auditor were purported to be amounts due upon Container Recycling Machines and parts thereto that were sold or leased during the Tax Period in Issue. The Department's auditor utilized an audit sampling method to purport to identify transactions upon which sales tax was assessed in excess of the \$2,458,452 in sales tax remitted by Plaintiff for the Tax Periods in Issue. The Department's identification of the purported transactions for sales or leases of Container Recycling Machines and equipment related thereto are contained within the Department's

sales tax audit workpapers produced to Plaintiff in response to Plaintiff's First Interrogatories and Request for Production of Documents dated December 5, 2014.

Further, assuming the Department is referring to the Complaint filed in 14-91-MT claiming a refund of the sales tax paid to the Department, Plaintiff states that the only products that Plaintiff sold or leased during the Tax Period in Issue were Container Recycling Machines and parts thereto. Thus, to the extent that sales tax was collected upon the sale or lease of Container Recycling Machines and parts thereto, the collection of such tax and remittance to the Department was improper because the machines and any parts thereto are exempt under the industrial processing exemption, MCL 205.54t, and especially (3)(i), classifying recycling of used materials for ultimate sale at retail or reuse as industrial processing, and (4)(b), classifying machinery and equipment used in industrial processing and in their repair as property that is eligible for an industrial processing exemption.

THIRD INTERROGATORY:

3. You allege in Count I of the Complaint that you are entitled to an industrial processing exemption. For each item or piece of equipment you sold during the period at issue that you allege is exempt from sales tax because of the industrial processing exemption, identify how you use the item or equipment for allegedly exempt purposes.

ANSWER:

Plaintiff objects to this interrogatory as vague and ambiguous in that the interrogatory refers to "the Complaint" in this consolidated case in which two separate complaints were filed. Assuming the Department is referring to the Complaint filed in 14-91-MT, claiming a refund of the sales tax paid to the Department, Plaintiff states that the

only products that Plaintiff sold or leased during the years in issue were Container Recycling Machines and parts thereto.

Container Recycling Machines receive, sort, inspect, perform quality control, production material handling, and are otherwise engaged in activities that constitute industrial processing activities. During the tax periods at issue, the Container Recycling Machines in Michigan may accept glass, aluminum or plastic containers, the combination of aluminum and plastic containers or all three container types. The machine then performs inspection, quality control and testing on the container to determine whether the container conforms to specific parameters. The Container Recycling Machine scans the universal product code (UPC) and uses the information from the UPC code and information programed into the machine to determine if the container is an acceptable returnable container in accordance with the Michigan law and the parameters of the TOMRA customer. Under the Michigan law, a TOMRA customer is only required to accept for recycling and deposit refund, those refundable containers that the customers sells. If a container is not an acceptable refundable container or is the incorrect material type, the container is rejected. The Container Recycling Machine also uses the information from the UPC code and the information programed into the machine to determine the material content of the container, the weight of the container and amount of material content along with the color of the content. The Container Recycling Machine then attributes a raw material value to the container as well as a deposit return value. The Container Recycling Machine maintains a count of containers and their raw material value and deposit return value. The containers are further sorted by material content into aluminum, plastic and glass. Aluminum cans are crushed and moved to an in-process bin within the Container Recycling Machine. Plastic bottles are sorted by color, and converted

and conditioned by making waffle punctures and then compacted and moved to an in-process bin. Glass containers are sorted by color and moved to in-process bins. The beverage containers were then transported to a processing plant where the beverage containers were further processed by Schupan Recycling.

Thus, to the extent that sales tax was collected upon the sale or lease of Container Recycling Machines and parts thereto, the collection of such tax and remittance to the Department is improper because the machines and any parts thereto are exempt under the industrial processing exemption, MCL 205.54t and 205.94o and especially (3)(d),(j) and (i), and (4)(b), classifying machinery and equipment used in industrial processing and in their repair parts as property that is eligible for an industrial processing exemption. See also Mich Admin Code R 205.90(4)(b). The Container Recycling Machines perform the industrial processing activity of inspection, quality control, testing, production material handling, and recycling used containers for ultimate sale at retail or reuse. In fact, the purpose of the Michigan's Bottle Bill was to provide for the re-use of returnable containers. Beverage Containers, Initiated Law 1 of 1976, MCL 445.571 et seq. (hereinafter the "Bottle Bill"). The Bottle Bill certifies beverage containers that are reusable and requires Plaintiff's customers to accept returnable containers offered for sale by it. Accordingly, the sale by Plaintiff of this industrial processing equipment is exempt because it is sold to its customer who is a person, whether or not an industrial processor, using the Container Recycling Machine to perform industrial processing either on its own behalf as an industrial processor to the extent that it causes recycling of used container beverages to occur or on behalf of the ultimate processor of the container for reuse or for processing into a product to be ultimately sold at retail. In addition, Plaintiff's two largest clients have

claimed an industrial processing exemption and one has claimed a sale for resale exemption.

Further, assuming the Department is referring to the Complaint filed in 14-185-MT, claiming a refund of the sales tax assessment TH82977 issued by the Department, Plaintiff states that the assessment is a calculated assessment based upon an audit sampling method purporting to identify transactions upon which sales tax due but was not remitted, even though Plaintiff remitted all sales tax on all sales or leases of Container Recycling Machines. This calculated assessment does not represent actual sales or lease transactions and, if it did, all such transactions would be exempt from assessment of sales tax because all sales or leases of Container Recycling Machines and related equipment are, for the reasons stated in the paragraphs above, sales of machinery that conduct industrial processing activities either for the customer as an industrial processor or on its own behalf as an industrial processor to the extent that it causes recycling of used container beverages to occur on or behalf of the ultimate processor of the container for reuse or for processing into a product to be ultimately sold at retail.

FOURTH INTERROGATORY:

4. You allege in Paragraph 52 of the Complaint that you are entitled to an industrial processing exemption because the Container Recycling Machines you sell to your clients are used in an industrial processing activity. Please identify and describe the industrial processing activity you engage in that involves your use of the Container Recycling Machines.

ANSWER:

Plaintiff objects to this interrogatory as vague and ambiguous in that the interrogatory refers to “the Complaint” in this consolidated case in which two separate

complaints were filed. See Response to Interrogatory No 3 above. In addition, see Exhibit 3 to the Complaint filed in 14-91-MT and Exhibit 2 to the Complaint filed in 14-185-MT, in which Hearing Referee Elizabeth Avery discusses the recycling and other industrial processing activities conducted by each machine. See also, Michigan Department of Treasury Revenue Technical Tax Training Manual Sales and Use Taxes Industrial Processing Exemption stating that conveyers, sorting and compressing equipment is exempt industrial processing equipment. Michigan courts have held that recycling activities, production material handling and sorting of raw and production materials constitutes industrial processing. Moreover, Plaintiff is only liable for sales tax which should have been collected if the sales at issue are not exempt. Sales of products that qualify for the industrial processing to a person, whether an industrial processor or not, or qualify for the resale exemption do not subject Plaintiff to liability for failure to collect and remit sales tax.

FIFTH INTERROGATORY:

5. You allege in Paragraph 56 of the Complaint that the Container Recycling Machines you sold or leased are exempt from sales tax because you perform an industrial processing activity for or on behalf of an industrial processor. Please identify and describe the industrial processing activity you perform on behalf of an industrial processor using the Container Recycling Machines.

ANSWER:

See answers to Interrogatories 3 and 4 above.

SIXTH INTERROGATORY:

6. You allege in Paragraph 56 of the Complaint that the Container Recycling Machines you sold or leased are exempt from sales tax because you perform an industrial processing activity for or on behalf of an industrial processor. Please explain the industrial processing activity you perform on behalf of the industrial processor.

ANSWER:

See answers to Interrogatory Nos 3 and 4 above.

SEVENTH INTERROGATORY:

7. You allege in Paragraph 56 of the Complaint that the Container Recycling Machines you sold or leased are exempt from sales tax because you perform an industrial processing activity for or on behalf of an industrial processor. Do you use Container Recycling Machines when you perform the industrial processing activity on behalf of the industrial processor?

ANSWER:

See answers to Interrogatory Nos 3 and 4 above.

EIGHTH INTERROGATORY:

8. If your response to Interrogatory No. 7 is in the affirmative, please explain how you use Container Recycling Machines when you perform the industrial processing activity on behalf of the industrial processor.

ANSWER:

See answers to Interrogatory Nos 3 and 4 above.

NINTH INTERROGATORY:

9. You allege in Paragraph 56 of the Complaint that the Container Recycling Machines you sold or leased are exempt from sales tax because you perform an industrial processing activity for or on behalf of an industrial processor. Please identify the industrial processor for whom you perform an industrial processing activity for or on behalf of.

ANSWER:

Plaintiff objects to this interrogatory as irrelevant because the plain language of the industrial processing statute exempts tangible property, such as the Container Recycling Machines and related parts at issue, that conduct industrial processing activities when sold to a person, whether or not the person is an industrial processor. Moreover, neither the statute nor the Michigan Courts require the identification of an ultimate industrial processor to qualify for the exemption when an industrial processing activity is part of the process of industrial processing in that results in a product for ultimate sale at resale. However, without waiving its objections, Plaintiff states that under the Bottle Bill, the deposit originator has the responsibility to ensure that the deposit is paid and that the returnable container is recycled. In Michigan during the years 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. During the years 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, Veralia and Ardagh 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.

TENTH INTERROGATORY:

10. You allege in Paragraph 11 of the Complaint that Container Recycling Machines receive and inspect glass bottles and then sends glass bottles into bins. Please identify who owns the bottles when they enter the bins.

ANSWER:

Plaintiff objects to this interrogatory as vague and ambiguous in that the interrogatory refers to “the Complaint” in this consolidated case in which two separate complaints were filed. Plaintiff also objects to this Interrogatory as irrelevant because ownership of a container in the process of recycling is irrelevant to the determination of whether the Container Recycling Machines at issue conduct industrial processing and are exempt under the industrial processing exemption. Both the statute and the case law make clear that performing industrial processing activity upon property owned by another which is reused or ultimately sold at retail is exempt. The Michigan Bottle Bill does not specify title ownership of the returnable containers as they proceed through the redemption

recycling process but does impose responsibility for the redemption upon the deposit initiators.

ELEVENTH INTERROGATORY:

11. You allege in Paragraph 11 of the Complaint that Container Recycling Machines receive and inspect glass bottles and then sends glass bottles into bins. Did Plaintiff sell the bins to its customers during the period at issue?

ANSWER:

Plaintiff objects to this interrogatory as vague and ambiguous in that the interrogatory refers to “the Complaint” in this consolidated case in which two separate complaints were filed. It is unclear whether the Department is referring to the Complaint filed in 14-91-MT or 14-185-MT. Without waiving its objections, Plaintiff states that the lease price of Container Recycling Machines includes certain replacement parts, including bins. Thus, the lease cost of Container Recycling Machines includes the cost of replacement bins. Plaintiff collected and remitted sales tax on all leases of Container Recycling Machines and, thus, collected sales tax on the price of bins and replacement bins included therein. See, eg, *General Motors v Dep’t of Treasury*, 466 Mich App 231; 644 NW2d 734 (2002) (holding that no additional tax was due on post-warranty repair parts because the price of these parts were included in the purchase price of the vehicle.)

TWELFTH INTERROGATORY:

12. If your response to Interrogatory No. 11 is in the affirmative, please identify whether or not the bins were billed to customers separate from the Container Recycling Machines.

ANSWER:

See Response to Interrogatory No. 11.

THIRTEENTH INTERROGATORY:

13. You allege in Paragraph 11 of the Complaint that Container Recycling Machines receive and inspect glass bottles and then sends glass bottles into bins. Please explain if and how Container Recycling Machines sort glass bottles.

ANSWER:

See Exhibit 3 to the Complaint filed in 14-91-MT and Exhibit 2 to the Complaint filed in 14-185-MT, in which Hearing Referee Elizabeth Avery discusses the recycling and industrial processing activities conducted by each machine. Glass recycling machines contain a conveyer belt which transports raw materials. The machine then performs inspection, quality control and testing on the container to determine whether the container conforms to specific parameters. The Container Recycling Machine may accept glass, aluminum or plastic containers or any two or all three container types. The Container Recycling Machine scans the universal product code (UPC) and uses the information from the UPC code and information programed into the machine to determine if the container is an acceptable returnable container. It also determines the material content of the container, the weight of the container and amount of material content along with the color of the content. From this the Container Recycling Machine can attribute a raw material

value to the container as well as a deposit return value. The Container Recycling Machine then sorts the containers according to color. Glass containers are sorted by color and separately placed into bins. In addition the Container Recycling Machine counts the number of containers of each color and the raw material amount and value of the containers within each bin.

FOURTEENTH INTERROGATORY:

14. You allege in Paragraph 49 of the Complaint that industrial processing begins when tangible personal property begins movement from raw material storage. Is it your position that the cans and bottles are in raw material storage before they are placed in the Container Recycling Machines?

ANSWER:

The Michigan Legislature has defined when industrial processing begins and ends. MCL 205.54t(7)(a) states: "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 Michigan courts and the Department have acknowledged that placing raw materials onto a conveyer belt to be sorted, inspected, and tested to ensure quality control begins the industrial processing activities. RAB 2000-4; Michigan Department of Treasury Revenue Technical Tax Training Manual Sales and Use Taxes Industrial Processing Exemption. Under the plain language of the statute, as well as under the Department's own interpretation thereof, the movement of glass bottles on conveyer belt for inspection, quality control, and testing to determine whether the bottles conform to specific parameters is the start of industrial

processing, irrespective of whether the containers were in raw material storage prior to the start of the industrial processing activity.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Please produce any documents related to or in support of any of the answers provided to the Third Interrogatory, including but not limited to contracts or leasing agreements, including statements from your clients indicating how you used the item or equipment for allegedly exempt purposes.

RESPONSE:

See documents at Tab A.

2. Please produce any documents related to or in support of any of the answers provided to the Fourth Interrogatory, including but not limited to contracts or leasing agreements, including statement from your clients indicating how you use the Container Recycling Machines during an industrial processing activity.

RESPONSE:

See documents at Tab A.

3. Please produce any documents related to or in support of any of the answer provided to the Sixth Interrogatory, including but not limited to contracts or leasing agreements, including statements form your clients that explains the industrial processing activity that you perform on behalf of an industrial processor.

RESPONSE:

See documents at Tab A.

4. Please produce any documents related to or in support of any of the answers provided to the Seventh Interrogatory and Eight Interrogatory, including but not limited to contracts or leasing agreements, including statements from your clients that explain whether or not you use Container Recycling Machines when performing an industrial processing activity on behalf of an industrial processor.

RESPONSE:

See documents attached at Tab A.

5. Please produce any documents related to or in support of the answer provided to Tenth Interrogatory, including but not limited to any contracts or lease agreements between you and any company that explains who owns the bottles when they enter the bins.

RESPONSE:

N/A

6. Please produce any documents related to or in support of the answer provided to the Eleventh Interrogatory, including but not limited to any contracts, lease agreements, purchase orders, or invoices that shows how Plaintiff billed its customers for bins.

RESPONSE:

See documents previously produced and documents attached at Tab A.

7. If you know of documents that are responsive to any of the Interrogatories, Requests To Admit, or Requests for Production of Documents in The Michigan Department of Treasury's Third Discovery Request, but you do not produce the documents, then you must generate a log that describes what the document is, identifies the Interrogatory, Request to Admit, and/or Requests for Production of Documents to which it pertains, and explain why you are not producing the document.

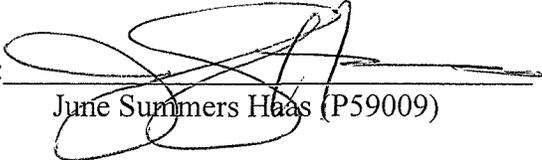
RESPONSE:

None.

Respectfully submitted,

HONIGMAN MILLER SCHWARTZ AND COHN LLP
Attorneys for Plaintiff

Dated: January 20, 2015

By: 
June Summers Haas (P59009)

Plaintiff's Response to Defendant's Third Discovery Requests

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TOMRA of North America, Inc.

By: [Signature]
Jeffrey Matto

Its: Corporate Controller

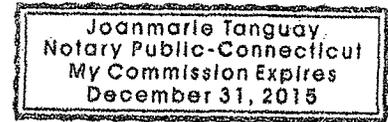
VERIFICATION

STATE OF CONNECTICUT)
) ss.
COUNTY OF FAIRFIELD)

On this 17th day of January, 2015, personally appeared before me Jeffrey Matto, Corporate Controller, for the Plaintiff in the within cause, and stated that he has read the forgoing Plaintiff's Response to Defendant's Third Discovery Requests to Plaintiff and that he believes the contents thereof to be true to the best of his knowledge, information, and belief.

[Signature]
Notary Public
County, Fairfield

My commission expires: 12/31/2015



STATE OF MICHIGAN
COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC.,

Plaintiff,

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

Docket No. 14-91-MT

HON. MICHAEL J. TALBOT

Consolidated with Docket No.
14-185-MT

JUNE SUMMERS HAAS (P59009)
BRIAN T. QUINN (P66272)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiff
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

SCOTT L. DAMICH (P74126)
Assistant Attorney General
Michigan Department of Attorney General
Revenue & Collections Division
Attorneys for Defendant
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

AFFIDAVIT OF ANDREW KOUTROUMANIS

STATE OF CONNETICUT)
)ss.
COUNTY OF Hartford)

I, Andrew Koutroumanis, 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 a Tax Manager with KPMG, LLP, and my main office is located at One Financial Plaza, 755 Main Street, Hartford, Connecticut 06103.

3. I am a duly licensed Certified Public Accountant, and I have worked on State and Local Tax matters for approximately 20 years.

4. I was engaged by TOMRA of North America, Inc. ("TOMRA") in connection with a sales and use tax audit of TOMRA conducted by the Michigan Department of Treasury for the tax periods October 1, 2003 through December 31, 2008 (the "tax periods at issue").

5. I represented TOMRA in the Informal Conference proceedings for the tax periods at issue.

6. In the course of my representation in connection with the sales and use tax audit, I became familiar with TOMRA's practices and procedures for collection and remittance of sales tax to the State of Michigan for the tax periods in issue.

7. In the course of my representation in connection with the sales and use tax audit, I became familiar with TOMRA's practices and procedures for collection and remittance of use tax to the State of Michigan for the tax periods in issue.

8. By letter dated December 14, 2011, I submitted a Claim for Refund for overpaid sales tax in the amount of \$2,258,229, on behalf of TOMRA to the Michigan Department of Treasury Refund Section as well as to the Office of Hearings. The Claim for Refund included amended returns for the tax periods in issue but excluded the monthly periods where the taxpayer could not locate copies of originally filed returns. The Claim for Refund detailed the calculations and bases for the refund claim.

9. On behalf of TOMRA, I calculated the sales tax refund due on sales and leases of Container Recycling Machines and parts thereto by calculating all tax remitted to the Michigan

Department of Treasury for the tax periods October 1, 2003 through December 31, 2008 (the “tax periods at issue”) as the total of all monthly sales tax remittances for the tax periods at issue and any adjustments made on TOMRA’s annual returns.

10. Attached at Tab A (TOMRA011278-011373) is a true and correct copy of TOMRA’s refund claim dated December 14, 2011.

[Remainder of page is intentionally left blank.]

Further, Affiant sayeth not.

Dated: February 12, 2015

Andrew Koutroumanis
Andrew Koutroumanis

Subscribed and sworn to before me
this 12 day of February, 2015

Loye M. Wallenberg

Notary Public

Hartford County, Connecticut
My Commission Expires: May 31, 2017

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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 #: ME0122949
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.

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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.").

TOMRA011279

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TOMRA011280

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**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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TOMRA011282

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2865 (Rev. 01-11)



STATE OF MICHIGAN
DEPARTMENT OF TREASURY
NEW YORK OFFICE

RICK SNYDER
GOVERNOR

ANDY DILLON
STATE TREASURER

TOMRA OF NORTH AMERICA INC
Attn: Geoffrey Knotwell, Tax Audit Manager
One Corporate Drive - Suite 710
Shelton, CT 06484

RE: Statute of Limitations – TOMRA OF NORTH AMERICA INC
#ME-0122949 / 06-1362037

Dear Mr. Knotwell,

Enclosed is are signed copies of the Consent to the Suspension of the Running of the Statute of Limitations for the Michigan taxes and dates listed below:

Tax	Period	Expiration Date
SALES & USE	1/1/2003 – 12/31/2008	12/20/2011

Thank you for your cooperation.

Sincerely,

Chris Potts
Audit Manager

Enclosure

cc: Office Files
Ronald Kolbig, Sr. Auditor

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CONSENT TO THE SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS

Pursuant to Section 27a(3)(b) of PA 122 of 1941, as amended, (MCLA 205.27a(3)(b))

MICHIGAN Use TAX for the period:

From: 10/1/2003 Thru: 12/31/2008

The undersigned Corporation, by its duly authorized officer and/or agent or individual, and the State Treasurer of the State of Michigan mutually consent to suspend the Statute of Limitation for the above tax for the period indicated so that further clarification can be made for the proper tax determination and/or refund, as the case may be.

This waiver expires on: 12/20/2011

Account Number: ME0122949

Name of Corporation: TOMRA OF NORTH AMERICA INC

TAXPAYER INFORMATION

By: [Signature]
(Print) Geoffrey Knotwell

Signed in presence of Auditor 3/16/11

On this ___ day of ___, 20___, before me, a Notary Public for said County, personally appeared ___ to me personally known, who, being duly sworn, did say he/she is ___ of the Corporation named above which executed the within instrument; that if a corporation, the seal affixed to said instrument is the corporation seal of said corporation; that he/she is duly authorized to sign and seal said instrument, and he/she acknowledged said instrument to be the free act and deed of said Corporation.

Notary Public Signature: ___ County of: ___
Acting in the County of: ___
My Commission Expires: ___ State of: ___

INTERNAL TREASURY OFFICE USE ONLY

The above waiver, applicable as a result of an audit conducted by the Michigan Department of Treasury, has been certified by Chris Potts, Area Manager, for Michigan Use Tax for the Audit Period beginning 10/1/2003 and ending 12/31/2008 being audit account number ME0122949.

[Signature]
Area Manager Signature
3/24/2011
Date



For the Treasurer

[Signature: Stan Weber]

Stan Weber, Director, Tax Compliance Bureau

Date: MAR 29 2011

TOMRA011284

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CONSENT TO THE SUSPENSION OF THE RUNNING OF THE STATUTE OF LIMITATIONS

Pursuant to Section 27a(3)(b) of PA 122 of 1941, as amended, (MCLA 205.27a(3)(b))

MICHIGAN Sales TAX for the period:

From: 10/1/2003 Thru: 12/31/2008

The undersigned Corporation, by its duly authorized officer and/or agent or individual, and the State Treasurer of the State of Michigan mutually consent to suspend the Statute of Limitation for the above tax for the period indicated so that further clarification can be made for the proper tax determination and/or refund, as the case may be.

This waiver expires on: 12/20/2011

Account Number: ME0122949

Name of Corporation: TOMRA OF NORTH AMERICA INC

TAXPAYER INFORMATION

By: [Signature]
(Sign) GROFFNEY KNOWELL
(Print)

Signed in presence of Auditor on 3/16/11

On this _____ day of _____, 20____, before me, a Notary Public for said County, personally appeared _____, to me personally known, who, being duly sworn, did say he/she is _____ of the Corporation named above which executed the within instrument; that if a corporation, the seal affixed to said instrument is the corporation seal of said corporation; that he/she is duly authorized to sign and seal said instrument, and he/she acknowledged said instrument to be the free act and deed of said Corporation.

Notary Public Signature: _____ County of: _____
Acting in the County of: _____
My Commission Expires: _____ State of: _____

INTERNAL TREASURY OFFICE USE ONLY

The above waiver, applicable as a result of an audit conducted by the Michigan Department of Treasury, has been certified by Chris Potts, Area Manager, for Michigan Sales Tax for the Audit Period beginning 10/1/2003 and ending 12/31/2008 being audit account number ME0122949.

[Signature]
Area Manager Signature
Date: 3/24/2011



For the Treasurer

[Signature]
Stan Weber, Director, Tax Compliance Bureau

Date: MAR 29 2011

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

Telephone +1 860 522 3200
Fax +1 860 287 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 #: ME0122949
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 deposited 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

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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.

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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 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

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

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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.

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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 ¼ 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.

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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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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 I 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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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 (1)(c).

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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).

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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.

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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.

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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 cursive script 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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Michigan Department of Treasury
188 (Rev. 5-10)

Bill for Taxes Due

(Intent to Assess)

Issued under P.A. 122 of 1941, as amended.

* For monthly PENALTY/INTEREST provisions, correspondence, and informal conference information, see page 2.

Tax Division DISCOVERY-TAX	Tax Division Telephone Number
Assessment Number TH82977	Date Issued 10/03/11
Social Security/Account Number HE-0122949	
Collection Division 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	\$	58,802.00
Interest	\$	197,601.50
Total Due *	\$	772,665.50

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			0.00	2,646.50
INTEREST ONLY			58,802.00	184,955.00
LATE PAYMENT OF TAX				

Reason for Tax Bill

THE DEFICIENCY IS BASED ON AN AUDIT CONDUCTED BY THE MICHIGAN DEPARTMENT OF TREASURY.
10/1/03-12/31/08

188 (Rev. 4-10)

Detach and mail the payment voucher with your payment. Do not staple.

Bill for Taxes Due

Payment due within 30 days (see penalty and interest provisions on page 2). Make your check payable to "State of Michigan-CD." 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

**COLLECTION DIVISION
MICHIGAN DEPARTMENT OF TREASURY
PO BOX 30189
LANSING MI 48909-7699**

Assessment Number TH82977	Date Issued 10/03/11
Taxpayer Name TOMRA OF NORTH AMERICA INC	
Social Security/Account Number HE-0122949	
Write Payment Amount Here <input type="checkbox"/>	

Notify the Collection Division in writing if your address above is incorrect.

DO NOT WRITE IN THIS SPACE

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GENERAL INFORMATION

If you don't understand why you received this bill, call the Tax Division whose telephone number is printed on the front of this form. If you have questions about payment, call the Collection Division telephone number printed in the upper right corner on the front of this form. Any correspondence about original or amended returns or questions about payment should be mailed to Collection Division, Michigan Department of Treasury, P.O. Box 30199, Lansing, MI 48909-7699.

INFORMAL CONFERENCE REQUEST INFORMATION

You may contest all or part of this Bill for Taxes Due by requesting an informal conference. The uncontested portion must be paid immediately. If you want a conference, your written request must be made to the Office of Hearings, Michigan Department of Treasury, Austin Building, Lansing, MI 48922, within 60 days of the date of this bill. When filing your request for a conference, provide a copy of the Bill for Taxes Due or the following information: full name, account number, assessment number and the specific tax involved. Include in your letter a statement of the reason you are requesting a conference.

***PENALTY AND INTEREST CHARGES**

(Effective March 1, 2003 under P.A. 122 of 1941, as amended.)

Penalty and interest will be applied to your account at the beginning of each month. If your payment will not be received by the last day of the month, call Treasury for a current balance. Interest is computed at 1 percent above the prime rate adjusted July 1 and January 1 each year.

REASON FOR BILL	PENALTY CHARGE
Failure to file or pay tax for Notices of Intent to Assess/Assessments issued on or before 2/28/03.	Each month or part of month 5% of tax, to a maximum of 50%. Minimum \$10. Interest applies.*
Failure to file and pay tax for Notices of Intent to Assess/Assessments issued after 2/28/03.	A penalty of 5% of the tax if the failure is for not more than 2 months, with an additional 5% penalty for each additional month to a maximum of 25%. Interest applies.*
Negligence in filing tax.	10% of tax. Minimum \$10. Interest applies.*
Intentional disregard in filing taxes.	25% of tax. Minimum \$10. Interest applies.*
Fraudulent evasion of tax.	100% of tax. Minimum \$10. Interest applies.*
Bad check for Notices of Intent to Assess/Assessments issued on or before 2/28/03.	25% of tax paid by check.
Bad check for Notices of Intent to Assess/Assessments issued after 2/28/03.	\$50 penalty.
Frivolous protest of tax due.	25% of tax.
Failure to file information return or report.	\$10 each day to maximum \$400 each return.
Control or possession of untaxed tobacco products for periods on or before 12/27/04.	100% of tax.
Control or possession of untaxed tobacco products for periods after 12/27/04.	500% of tax.

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Michigan Department of Treasury
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Bill for Taxes Due
(Intent to Assess)

Issued under P.A. 122 of 1941, as amended.
* For monthly PENALTY/INTEREST provisions,
correspondence, and informal conference
information, see page 2.

Tax Division DISCOVERY-TAX	Tax Division Telephone Number
Assessment Number TH82978	Date Issued 10/03/11
Social Security/Account Number ME-0122949	
Collection Division Telephone Number 517-636-5265	

TONRA OF NORTH AMERICA INC
ATTN KATHY LOMBARDO
ONE CORPORATE DR STE 710
SHELTON CT 06484

BILL SUMMARY

Tax Due	\$ 1,570,716.00
Penalty	\$ 157,073.00
Interest	\$ 518,074.23
Total Due*	\$ 2,245,863.23

Detail of Tax Liability

Type of Tax	Taxable Period	Tax Due	Penalty	Interest
USE TAX 10/1/03-12/31/08	12/08	1,570,716.00		
INTEREST ONLY			0.00	8,047.23
LATE PAYMENT OF TAX			157,073.00	510,027.00

Reason for Tax Bill

THE DEFICIENCY IS BASED ON AN AUDIT CONDUCTED BY THE MICHIGAN DEPARTMENT OF TREASURY.
10/1/03-12/31/08

168 (Rev. 4-10)

Detach and mail the payment voucher with your payment. Do not staple.

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Payment due within 30 days (see penalty and interest provisions on page 2). Make your check payable to "State of Michigan-CD." 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

**COLLECTION DIVISION
MICHIGAN DEPARTMENT OF TREASURY
PO BOX 30199
LANSING MI 48909-7699**

Assessment Number TH82978	Date Issued 10/03/11
Taxpayer Name TONRA OF NORTH AMERICA INC	
Social Security/Account Number ME-0122949	
Write Payment Amount Here	<input type="checkbox"/>

Notify the Collection Division in writing if your address above is incorrect.

DO NOT WRITE IN THIS SPACE

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GENERAL INFORMATION

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***PENALTY AND INTEREST CHARGES**

(Effective March 1, 2003 under P.A. 122 of 1941, as amended.)

*Penalty and interest will be applied to your account at the beginning of each month. If your payment will not be received by the last day of the month call Treasury for a correct balance. Interest is computed at 2 percent above the prime rate published July 1 and January 1 each year.

REASON FOR BILL	PENALTY CHARGE
Failure to file or pay tax for Notices of Intent to Assess/Assessments issued on or before 2/28/03.	Each month or part of month 5% of tax, to a maximum of 50%. Minimum \$10. Interest applies.*
Failure to file and pay tax for Notices of Intent to Assess/Assessments issued after 2/28/03.	A penalty of 5% of the tax if the failure is for not more than 2 months, with an additional 5% penalty for each additional month to a maximum of 25%. Interest applies.*
Negligence in filing tax.	10% of tax. Minimum \$10. Interest applies.*
Intentional disregard in filing taxes.	25% of tax. Minimum \$10. Interest applies.*
Fraudulent evasion of tax.	100% of tax. Minimum \$10. Interest applies.*
Bad check for Notices of Intent to Assess/Assessments issued on or before 2/28/03.	25% of tax paid by check.
Bad check for Notices of Intent to Assess/Assessments issued after 2/28/03.	\$50 penalty.
Frivolous protest of tax due.	25% of tax.
Failure to file information return or report.	\$10 each day to maximum \$400 each return.
Control or possession of untaxed tobacco products for periods on or before 12/27/04.	100% of tax.
Control or possession of untaxed tobacco products for periods after 12/27/04.	500% of tax.

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REVERSE VENDING EQUIPMENT MASTER LEASE

This is a REVERSE VENDING EQUIPMENT MASTER LEASE, dated and effective as of September 1, 2002 ("Agreement") by and between TOMRA of North America, Inc. d/b/a TOMRA Michigan with offices at 1044 Durant Drive, Howell, Michigan 48843 ("TOMRA Michigan") and Meijer, Inc., on its own behalf and on behalf of its affiliated store entities operating at the locations listed on the Store Schedule annexed hereto, with principal executive offices at 2929 Walker N.W., Grand Rapids, Michigan 49544 ("Retailer").

1. **EQUIPMENT RENTAL.** TOMRA Michigan shall rent to the Retailer TOMRA Reverse Vending Machines ("Machines") and Gaylord housing units ("Gaylord Units"). Machines and Gaylord Units are collectively referred to herein as the "Equipment." Equipment installed as of the date hereof is set forth on Exhibit 1 annexed to this Agreement. Equipment installed after the date hereof shall be of the number, type and distribution as set forth on the one or more Equipment Schedule(s) to be annexed to this Agreement. From time to time, the parties may agree to add Equipment Schedules to provide for the rental of additional Equipment.

2. **TERM.** This Agreement is effective as of September 1, 2002 ("Effective Date") and shall continue in full force and effect until the latest termination date set forth on either Exhibit 1 or the one or more Equipment Schedules hereinafter annexed to this Agreement. The term for Equipment listed on Exhibit 1 shall be forty-eight (48) months from the Effective Date. The term for Equipment installed after the Effective Date shall be forty-eight (48) months from the date of installation.

3. **RENTAL PAYMENT.** The Retailer shall pay TOMRA Michigan monthly rent for each Machine in the amount of Five Hundred Sixty-Five Dollars and 49/100 (\$565.49) and for each Gaylord Unit in the amount of Forty-Five Dollars and 16/100 (\$45.16). The monthly rent shall be payable on the first day of each month in advance. Any Equipment installed and operational on or before the fifteenth day of any month shall be billed the monthly rent for the entire month without regard to the actual number of days. Any Equipment installed and operational after the fifteenth day of any month shall not be billed monthly rent for the balance of the month of installation. Installation shall be considered complete at such time as the store director executes the installation report acknowledging that the Equipment is operational. The monthly rent shall be exclusive of state and local taxes. Sales tax shall be billed by TOMRA Michigan to Retailer together with monthly rent. Personal property taxes shall be paid directly by Retailer to each taxing jurisdiction.

4. **OPTION TO PURCHASE.** On April 1, 2004 and April 1, 2005, TOMRA Michigan shall inquire of Retailer as to whether Retailer is interested in entertaining an option to purchase all or part of the Equipment as of September 1, 2004 and September 1, 2005, respectively. In the event Retailer is interested in entertaining an offer to purchase, Retailer shall notify TOMRA Michigan of its interest within ten (10) days of the receipt of the inquiry from TOMRA Michigan. In the event Retailer has an interest in entertaining a purchase proposal, TOMRA Michigan shall, within thirty (30) days of Retailer's expression of interest, prepare a

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written proposal to Retailer for the purchase of each item of Equipment as of the upcoming September 1st. In the event Retailer opts to purchase all or part of the Equipment, Retailer and TOMRA Michigan shall negotiate in good faith a definitive agreement. Any such purchases shall be concluded not later than October 1st. All rental charges paid or payable in connection with the month in which the transfer occurs shall be prorated on a per diem basis.

5. INSTALLATION. TOMRA Michigan shall bear all costs and expenses, including transportation, relating to the complete installation of the Equipment, except with respect to Retailer's preparation of the installation site discussed below. Retailer shall select the installation site for each Machine at each Retailer location. All Machine(s) shall be installed inside Retailer's stores. Retailer shall be responsible for adequate preparation of the installation site(s) for each Machine, including, without limitation, proper space, electrical power, construction and ventilation. If, in TOMRA Michigan's reasonable judgment, any installation site is not adequate or adequately prepared, TOMRA Michigan shall promptly advise Retailer of the changes, if any, necessary to render the site adequate.

6. TITLE. Title to the Equipment shall remain with TOMRA Michigan during the lease term. TOMRA Michigan reserves the right, upon notice to Retailer, to file financing statements to evidence its ownership of the Equipment. Retailer agrees during the lease term not to (i) remove or cover up the property tag TOMRA Michigan has placed on the Machine(s) and (ii) put any signs, names or designs on the Machine(s). In the event Retailer exercises its option to purchase the Equipment pursuant to Paragraph 4 of this Agreement, title to the Equipment shall pass to Retailer upon delivery of a bill of sale to Retailer for the Equipment purchased, which shall occur not later than thirty (30) days after payment of the Purchase Price the Equipment.

7. SERVICE. During the lease term, TOMRA Michigan shall service and repair the Equipment without cost to Retailer, except for the cost of repairing any damage caused by the sole negligence of Retailer or its agents, employees, licensees, invitees or customers ("Special Repair Services") shall be paid by Retailer. In the event TOMRA Michigan is unable to repair any Machine within forty-eight (48) hours of the service call, TOMRA Michigan shall notify Retailer as to the anticipated time frame contemplated for completion of the repair. In the event a Machine is not repaired within forty-eight (48) hours following a service call, Retailer may request that the monthly rent be prorated to eliminate rent for any time frame in excess of forty-eight (48) hours following a service call during which a Machine is inoperable. TOMRA Michigan has the right and privilege to inspect, service, repair or replace any Machine during Retailer's regular business hours. Fees and conditions for Special Repair Services shall be, initially, as specified on Exhibit 7 annexed hereto. On or after September 1, 2004, TOMRA Michigan may, from time to time, change the fees and conditions for Special Repair Services upon not less than thirty (30) days notice to Retailer. Any such changes shall be reflective of actual changes in TOMRA Michigan's cost of providing the Special Repair Services and documentation supporting the change in fees or conditions shall accompany any notice of change. Upon review of such documentation, in the event that Retailer reasonably believes that such changes are not supported by the documentation, the parties agree to negotiate in good faith the extent of any actual change. If the parties are unable to agree upon a change in rates following good faith negotiation, the Special Repair Service rates then in effect shall continue.

8. MACHINE OPERATION. Retailer shall supply sufficient personnel to operate

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the Machine(s) at each of the locations which shall include, but not be limited to, changing Machine tapes, emptying the Machine when full, wiping scanner surfaces, clearing jammed beverage containers, and otherwise keeping the Machine(s) clean and in good working order. In the event that repeated maintenance, i.e., Machine jamming, scanning errors, etc., are determined to be design defects or flaws, any such cost or expense relating to said defect or flaw shall be borne by TOMRA Michigan and refunded to Retailer if necessary. TOMRA Michigan, at its own expense, shall initially train Retailer's personnel in the proper operation of the Machine(s) and provide Retailer with such documents, manuals, instructions and/or videos at each location for ongoing training of Retailer's personnel.

9. RISK OF LOSS. Risk of loss or damage to the Machine(s) after installation, including, without limitation, theft or vandalism, shall be borne by Retailer. Retailer shall keep the Machine(s) insured against all risks of loss or damage.

10. INSURANCE. TOMRA Michigan presently has in place insurance coverage with policy limits not less than the following:

	General Liability/Commercial General Liability	
Limits:	General Aggregate	\$ 2,000,000
	Products-Comp/Op Agg.	\$ 2,000,000
	Personal and Adv. Injury	\$ 1,000,000
	Each Occurrence	\$ 1,000,000
	Fire Damage (Any one fire)	\$ 50,000
	Med. Expense (Any one person)	\$ 10,000
	Excess Liability/Umbrella Form	
Limits:	Pers. Injury & Advertising	\$ 5,000,000
	Per Occurrence	\$ 5,000,000
	Aggregate	\$ 5,000,000

TOMRA Michigan shall maintain like insurance throughout the term of this Agreement and shall name Retailer (Meijer, Inc., its subsidiaries and affiliates) as an additional insured thereunder. Retailer shall name TOMRA Michigan (TOMRA of North America, Inc. d/b/a TOMRA Michigan, its subsidiaries and affiliates) as an additional insured as to its obligations under this Agreement. TOMRA Michigan shall provide Retailer, within ten (10) days of execution of this Agreement with a Certificate of Insurance evidencing its coverage and Retailer's additional insured status thereunder. Retailer shall provide TOMRA Michigan upon request, within ten (10) days of execution of this Agreement with a Certificate of Insurance evidencing its coverage and TOMRA Michigan's additional insured status thereunder.

11. INDEMNIFICATION. TOMRA Michigan shall indemnify, defend, protect, save and hold Retailer harmless from any and all losses, damages or injuries to persons or property arising out of or in connection with any negligent act or omissions of TOMRA Michigan, its employees, agents, licensees or invitees while on Retailer's property or any defects in the Machines. The Retailer shall indemnify, defend, protect, save and hold TOMRA Michigan harmless from any and all losses, damages or injuries to persons or property whatsoever arising solely out of Retailer's negligent performance of, or failure to perform the obligations set forth in

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Paragraph 8 of this Agreement.

12. **SUPPLIES.** Retailer agrees to use only those supplies and accessories that are sold or otherwise approved by TOMRA Michigan for use in the Machines, which approval shall not be unreasonably withheld. TOMRA Michigan shall provide Retailer with complete specifications for quoting purposes within forty-five (45) days of execution of this Agreement. In the event changes in operation of the TOMRA Michigan Container Redemption Program results in utilization of additional supplies, TOMRA Michigan shall provide Retailer with complete specifications including drawings, illustrations and schematics, for all supplies for quoting purposes, including applicable price information. TOMRA Michigan shall bill Retailer monthly for all supplies and accessories sold by TOMRA Michigan to Retailer for the Machine(s). All such invoices shall be payable within thirty (30) days of receipt by Retailer.

13. **ASSIGNMENT.** Upon not less than thirty (30) days written notice to Retailer, TOMRA Michigan, at its option, may assign all its right, title and interest in and to the Machine(s), and in and to this Agreement, to one or more lenders as and for security for its debts, provided that TOMRA Michigan shall remain primarily responsible for its performance obligations under this Agreement.

Except for a collateral security assignment of its debts, TOMRA Michigan shall not assign this Agreement without the prior written approval of Retailer, which approval may be withheld in the sole discretion of Retailer; provided, however, that TOMRA Michigan may freely assign all its right, title and interest in and to this Agreement to a business entity in which TOMRA Michigan owns at least a fifty (50%) percent interest.

Retailer shall not assign this Agreement without the prior written approval of TOMRA Michigan, which approval shall not be unreasonably withheld; provided, however, that Retailer may freely assign all its right, title and interest in and to this Agreement to a business entity in which Retailer owns at least fifty-one (51%) percent interest. Retailer shall not allow or cause any person or entity other than Retailer to use or possess any Machines listed on Exhibit 1 or any of the Equipment Schedule(s).

14. **EARLY TERMINATION.** This Agreement may be terminated by Retailer with respect to all or any part of the Equipment on not less than sixty (60) days prior written notice to TOMRA Michigan in the event of the occurrence of any of the following:

a. The repeal or substantial amendment of the Michigan Bottle Refund Bill or its equivalent legislation provided such substantial amendment or repeal makes continued use of the Machines by Retailer either impractical or unnecessary; or

b. If a 'Technological Advancement,' as defined below, which significantly or materially improves the efficiency, functionality or operation of the Machines, is developed or otherwise becomes generally available from TOMRA or a third party during the term of this Agreement, Retailer may, at its sole discretion, request that TOMRA begin using the Technological Advancement in any future Machines leased under this Agreement at the earliest date that is reasonably practical, but not later than six (6) months after the date Retailer makes the request. Additionally, to the extent practical, TOMRA shall incorporate the Technological Advancement in any Machines then

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presently under lease to the Retailer. As to both future leased Machines and Machines then presently under lease within which the Technological Advancements are incorporated, the monthly rent shall be adjusted to reflect the cost of the Technological Advancement. For the purposes of this paragraph, a "Technological Advancement" shall include, but is not limited to, any innovation, upgrade, enhancement or the like that (i) significantly or materially improves the efficiency, functionality or operation of the Machines, or (ii) is necessary for the Machines to remain or become 'State of the Art' based upon the then current standards of the industry or (iii) allows the Machines to be utilized in connection with other technology relating to the business of Retailer, for example, the interface of the Machines and POS systems used by Retailer.

TOMRA acknowledges that other advancements, changes, modifications or upgrades to the Machines may be undertaken, from time to time, that increase the efficiency or reduce costs associated with the operation of the Machines and such advancements shall be incorporated into the Machines by TOMRA as reasonably necessary to meet industry standards.

15. **DEFAULT: NOTICE.** Failure of Retailer to pay any undisputed fee when due or to fulfill or perform any condition of this Agreement for a period of ten (10) days after receipt of written notice from TOMRA Michigan of such failure shall constitute a default hereunder. In the event of a default, TOMRA Michigan may, at its option and expense, terminate this Agreement and recover possession of the Machine(s). TOMRA Michigan's remedies, in the case of Retailer's default, shall be cumulative and TOMRA Michigan may exercise any and all remedies it may have at law or in equity by reason of Retailer's breach of this Agreement.

Failure of TOMRA Michigan to fulfill or perform any condition of this Agreement for a period of ten (10) days after receipt of a written notice from Retailer of such failure shall constitute a default hereunder. In the event of a default by TOMRA Michigan, which is not cured within the ten (10) day period following notice, the Retailer may, at its option, terminate this Agreement. Retailer's remedies, in case of TOMRA Michigan's default, shall be cumulative and Retailer may exercise any and all remedies it may have at law or in equity by reason of TOMRA Michigan's breach.

16. **BANKRUPTCY: INSOLVENCY.** In the event Retailer shall become insolvent, or in the event a petition in bankruptcy is filed either by or against Retailer, or in the event a receiver shall be appointed for an assignment of Retailer's assets for the benefit of its creditors, TOMRA Michigan may immediately terminate this Agreement upon written notice to Retailer; provided, however, that in the event of an involuntary bankruptcy or involuntary appointment of a receiver, Retailer shall have sixty (60) days after receipt of said notice to obtain a dismissal of the proceeding or to make other reasonable disposition of said proceeding to TOMRA Michigan's satisfaction.

In the event TOMRA Michigan shall become insolvent, or in the event a petition in bankruptcy is filed either by or against TOMRA Michigan, or in the event a receiver shall be appointed for an assignment of TOMRA Michigan's assets for the benefit of its creditors, Retailer may immediately terminate this Agreement upon written notice to TOMRA Michigan; provided, however, that in the event of an involuntary bankruptcy or involuntary appointment of

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a receiver, TOMRA Michigan shall have sixty (60) days after receipt of said notice to obtain a dismissal of the proceeding or to make other reasonable disposition of said proceeding to Retailer's satisfaction.

17. RELATIONSHIP BETWEEN TOMRA MICHIGAN AND RETAILER. TOMRA Michigan shall act as an independent contractor and nothing in this Agreement shall create or be deemed to create the relationship of partners, joint venturers, employer-employee, or principal-agent among the parties, nor shall any party to this Agreement have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf of or in the name of any other party or to bind any other party in any manner whatsoever, nor shall any party make any representation, warranty, covenant, agreement, or commitment on behalf of any other party.

18. IDENTIFICATION. TOMRA Michigan agrees that neither it nor any of its employees or agents shall in any way hold themselves out to be in any way related to Retailer, except as an independent contractor retained by Retailer. This prohibition shall include the wearing of lettering, or the like, bearing a close resemblance to Retailer's trademarks or logos.

19. PUBLICITY; USE OF RETAILER TRADEMARKS. Neither Retailer nor TOMRA Michigan shall use the others' name, trademarks, service marks, logos or product designations for any commercial purposes without the other party's prior written consent.

20. GENERAL PROVISIONS.

A. Notices. All notices required or permitted to be given hereunder shall be in writing and may be delivered by hand or by a nationally recognized private courier. Notices shall be deemed given on the first business day following receipt. All notices shall be addressed as follows:

If to Retailer:

Meijer, Inc.
2929 Walker N.W.
Grand Rapids, Michigan 49644
Attn: General Counsel

If to TOMRA Michigan:

TOMRA of North America, Inc. d/b/a TOMRA Michigan
1044 Durant Drive
Howell, Michigan 48843
Attn: Vice President

with a copy to:

TOMRA of North America, Inc. d/b/a TOMRA Michigan
265 Broadway - PO Drawer 1034
Monticello, New York 12701
Attn: Corporate Secretary

B. Waiver. Nothing in this Agreement, whether expressed or implied, is intended to confer any rights or remedies under or by reason of this Agreement on any persons other than

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the parties to it and their respective successors and assigns. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver.

C. Effect of Headings. The headings of each section of this Agreement are included for purposes of convenience only, and shall not affect the construction or interpretation of any provision.

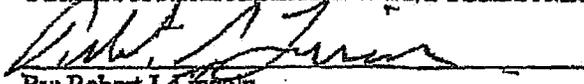
D. Unenforceability. If any portion or portions of this Agreement shall be, for any reason, invalid or unenforceable, the remaining portion or portions shall nevertheless be valid, enforceable and carried into effect, unless to do so would clearly violate the present legal and valid intention of the parties.

E. Waiver of Jury Trial. Each of the parties waives any rights to a jury trial in connection with any suit, action or proceeding seeking enforcement of such party's rights under this Agreement.

F. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Michigan.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals, intending this Agreement to be effective as of the day and year first above written.

TOMRA of North America, Inc. d/b/a TOMRA Michigan



By: Robert J. Lincoln
Title: Executive Vice President Sales and Marketing

Meijer, Inc.



By: Tim Calderone
Title:

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This Exhibit 1 is annexed to and made a part of a Reverse Vending Equipment Master Lease, dated and effective as of September 1, 2002 by and between TOMRA of North America, Inc. d/b/a TOMRA Michigan and Meijer, Inc.

Location: 2425 Alpine Avenue NW, Grand Rapids, Michigan

Equipment Type	Number	Serial Number(s)
EcP Combi Machine	7	1005 1002 1028 1029 1033 1034 1039
Gaylord Unit	4	N/A

Installation Date: June 19, 2002^a

Termination Date: August 31, 2006

^aTest Store Installation

EXHIBIT 1

TOMRA011310

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**TOMRA MICHIGAN
SPECIAL REPAIR SERVICES
INFORMATION- 2002**

• **SERVICE RESPONSE TIME**

We offer to our customers phone support in order to expedite minor repairs in an effort to decrease Machine downtime.

Normal daytime hours	7:30 a.m. - 4:00 p.m. (7 days per week)
Overtime (before & after hours)	
Normal time of response	8 hours for units down or when store has its only glass unit down.

• **LABOR RATES (BILLED @ QUARTER HOUR INTERVALS)**

\$ 60.00 per hour	-	Normal daytime hours
\$ 90.00 per hour	-	Overtime after hours

Overtime hours consist of Monday - Sunday before 7:30 a.m. and after 4:00 p.m.

• **TRAVEL RATES**

\$ 30.00	Zone A	0 - 25 miles
\$50.00	Zone B	26 - 50 miles
\$90.00	Zone C	51 - 75 miles
\$120.00	Zone D	76 - 100 miles

EXHIBIT 7

TOMRA011311

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Store ID	Address	City	Store Status	Zone
M00011	1540 28th St. S.E.	Grand Rapids	Open	A
M00012	3757 Plainfield Ave N.E.	Grand Rapids	Open	A
M00016	2177 W. Columbia Ave.	Battle Creek	Open	A
M00020	2425 Alpine Ave. N.W.	Grand Rapids	Open	A
M00021	5800 Gull Road	Kalamazoo	Open	A
M00022	5121 S. Westnedge Ave.	Kalamazoo	Open	A
M00023	5125 West Saginaw	Lansing	Open	A
M00024	8200 South Pennsylvania	Lansing	Open	A
M00025	2055 W. Grand River	Okemos	Open	A
M00027	3825 Carpenter Road	Ypsilanti	Open	A
M00028	G-4333 W. Pierson Rd.	Flint	Open	A
M00029	G-2333 S. Center Rd	Flint	Open	A
M00030	2777 Airport Rd.	Jackson	Open	A
M00032	45001 Ford Road	Canton	Open	A
M00033	3955 US 31 South	Traverse City	Open	A
M00034	5150 Coolidge Hwy.	Royal Oak	Open	A
M00035	14640 Pardee Rd.	Taylor	Open	A
M00036	5500 Clyde Park Road SW	Wyoming	Open	A
M00042	8400 Gratiot Rd	Saginaw	Open	A
M00043	3360 Tittabawassee Rd.	Saginaw	Open	A
M00044	2474 Hill Road	Flint	Open	A
M00046	8650 W. Grand River	Brighton	Open	A
M00048	2980 E. Wilder Road	Bay City	Open	A
M00050	5531 28th Street S. E.	Grand Rapids	Open	A
M00052	1350 W. Lake Lansing Road	East Lansing	Open	A
M00053	4200 Highland Road	Waterford	Open	A
M00054	20401 Haggerty Road	Northville	Open	A
M00055	86600 Van Dyke Ave.	Sterling Heights	Open	A
M00056	3333 E. Michigan	Jackson	Open	A
M00057	3175 Rochester Road	Rochester	Open	A
M00063	30800 Little Mack	Roseville	Open	A
M00064	3146 Ann Arbor/Saline Rd.	Ann Arbor	Open	A
M00065	15055 Hall Rd.	Utica	Open	A
M00068	37201 Warren Rd.	Westland	Open	A
M00070	22600 Allen Road	Woodhaven	Open	A
M00072	9701 Belleville Rd.	Belleville	Open	A
M00106	27255 23 Mile Rd.	Chesterfield	Open	A
M00108	7300 Eastman Rd.	Midland	Open	A
M00109	1703 Haggerty Rd.	Commerce	Open	A
M00113	2591 East M-21	Corunna	Open	A
M00119	6660 West Main Street	Kalamazoo	Open	A
STORE SCHEDULE				
M00122	49900 Grand River Rd.	Wixom	Open	A

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M00123	18300 Fort Street	Southgate	Open	A
M00140	1555 Demille Road	Lapeer	Open	A
M00145	34835 Utica Rd.	Fraser	Open	A
M00168	1997 E. Bellline Ave. NE	Grand Rapids	Open	A
M00172	3883 E. Grand River Avenue	Howell	Open	A
M00174	550 Hull Road	Mason	Open	A
M00177	8401 26 Mile Rd	Washington Twp	Open	A
M00185	800 Brown Rd	Auburn Hills	Open	A
M00187	595 North Pine	Bay City	Open	A
M00188	13000 Middlebelt Rd	Livonia	Open	A
M00181	1195 M-89	Plainwell	Open	A
M00194	1167 E Clinton Rd	Charlotte	Open	A
M00195	8405 B Drive North	Battle Creek	Open	A
M00196	8850 Shaver Rd.	Portage	Open	A
M00197	900 N. Lapeer	Oxford	Open	A
M00205	11901 Fulton	Lowell	Open	A
M00221	3434 Century Center Dr.	Grandville	Open	A
M00222	1005 13 Mile Rd.	Madison Heights	Open	A
M00003	2750 S. State Rd.	Ionia	Open	B
M00019	700 W. Norton Ave.	Muskegon	Open	B
M00026	0-550 Baldwin St.	Jenison	Open	B
M00041	1920 Pipestone Rd.	Benton Harbor	Open	B
M00045	217 East US 223	Adrian	Open	B
M00047	746 16th Street	Holland	Open	B
M00067	1700 Telegraph Rd.	Monroe	Open	B
M00089	1015 Pickard St.	Mt. Pleasant	Open	B
M00071	1800 Holton Rd.	North Muskegon	Open	B
M00163	4775 24th Street	Port Huron	Open	B
M00171	8373 E. 34 Rd.	Cadillac	Open	B
M00173	5845 Jackson Rd.	Ann Arbor	Open	B
M00175	800 South US131	Three Rivers	Open	B
M00179	1015 East Coldwater	Coldwater	Open	B
M00180	15000 US 31	Grand Haven	Open	B
M00201	606 S. Greenville West Drive	Greenville	Open	B
M00203	15400 Waldron Way	Big Rapids	Open	C
M00193	3900 West US10	Ludington	Open	D

STORE SCHEDULE

TOMRA011313

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Michigan Department of Treasury
185 (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 ME-0122949
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 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.	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 *

- 14. Enter your taxable purchases 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-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. 314,581.98
- 21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19 21. 406,483.86
- 22. If line 21 is greater than line 20, enter overpayment 22. 91,901.88
- 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. 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 for items removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

23
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Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number ME-0122949
--	------------------------------

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>Andrew Koutroumanis</i>	
Taxpayer FEIN or Social Security Number	Telephone Number	KPMG, LLP	
06-1362037	203 447-9738	13-5565207	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner)	Date	One Financial Plaza	
		755 Main Street	
Print Name of Corporate Officer Responsible for Return	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

All 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.

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**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	\$ 10,516.34	\$ 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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ORIGINAL

Michigan Dept. of Treasury - SLW
180, former C-4 (Rev. 9/00)

**Combined RETURN
for Michigan Taxes**

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

Account Number ME-0122949	Office Use 22
Return Period OCTOBER 2003	Due Date NOV 15, 2003

Company Name TOMRA OF NROTH AMERICA INC	
Taxpayer's Signature <i>[Signature]</i>	Date 11/13/03
Title <i>Inventory Supervisor</i>	Phone 540-12367

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	31,454.37	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	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 **36,204.64**

22 2 000122949 9 0310 0 4

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Koutroumanis Affidavit

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TOMRA011318

Michigan Dept. of Treasury - SUW
180, 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.*

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

Account Number	ME-Q122949	Office Use	22
Return Period	NOVEMBER 2003	Due Date	DEC 15, 2003

Company Name	
TOMRA OF NROTH AMERICA INC	
Taxpayer's Signature	Date
<i>Steve Back</i>	12/11/03
Title	Phone
<i>Accounting Supervisor (475)41264</i>	

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

Sales Tax	01	32,443.92	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax (Sales/Rentals)	03	2,300.55	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 35,044.47

22 2 000122949 9 0311 7 4

CONFIDENTIAL

Koutroumanis Affidavit

089b

TOMRA011319

Michigan Dept. of Treasury - SLM
160, former C-3200 (Rev. 3/03)

Combined RETURN for Michigan Taxes

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

Account Number ME-0122949	Office Use 22
Return Period DECEMBER 2003	Due Date JAN 15, 2004

Company Name TOMRA OF NROTH AMERICA INC	
Taxpayer's Signature <i>Greg Buck</i>	Date 1/14/04
Title Assistant Supervisor (57)540-6367	Phone

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48227-6003

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

Sales Tax	01	27,403.54	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax (Sales/Rentals)	03	1,425.26	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 000122949 9 0312 4 4

J4 09:15 5175520748

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TOMRA MICHIGAN

PAGE 02

Koutroumanis Affidavit

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TOMRA011320

090b

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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
TOMRA OF NORTH AMERICA INC
480 LORDSHIP BOULEVARD
STRATFORD, CT 06615

Account Number
ME-0122949
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

Table with columns for A. Use Tax: Sales & Rentals (6%, 4%) and B. Sales Tax (6%, 4%). Rows include Gross sales, Rentals, Communication services, ALLOWABLE DEDUCTIONS (Resale, Industrial processing, etc.), Tax Rate, Gross tax due, and Total tax due.

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 .08 = 14b. 87,262.37
15. Tax payments made in the current year 15. 87,262.37

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. 406,493.86
21. Total sales, use and withholding taxes paid. Add lines 13A and B (both rate columns), 15 and 19. 21. 406,493.86
22. If line 21 is greater than line 20, enter overpayment 22. .00
23. Amount of line 22 to be credited to your account.
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 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. .00

Complete and sign the back of this return.

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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.

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

Preparer's Signature, Address and Phone and ID Number

Taxpayer's Signature

Capossela, Cohen, LLC
06-1415579
203 254-7000
358 Center Street
Southport, CT 06890

Taxpayer's Social Security Number

Telephone Number

06-1362037

(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.

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TOMRA011323

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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

Taxpayer Name		Account Number	
TOMRA of North America, Inc. One Corporate Drive, Suite 710 Shelton, CT 06484		MB-0122949	Date Due
		Return Year	
		2004	

Amendment Date
12/7/2011

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.		1.	7,998,399.33
2.		2.	
3.		3.	
4.		4.	7,998,399.33
ALLOWABLE DEDUCTIONS			
5a.		5a.	
b.		b.	7,567,938.83
c.		c.	
d.		d.	
e.		e.	
f.		f.	
g.		g.	
h.		h.	
i.		i.	
j.		j.	
k.		k.	7,567,938.83
6.		6.	430,460.50
7.	x .06	7.	x .06
8.		8.	25,827.63
9.		9.	
10.		10.	25,827.63
11.		11.	
12.		12.	25,827.63
13.		13.	479,903.96

- 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.

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. _____

We will notify you when your credit is verified and available 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 or for items removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

23
1425DA-2.000

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Form 185, Page 2

Account Name TOMRA of North America, Inc.	Account Number ME-0122949
--	------------------------------

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>Andrew Koutroumanis</i>	
Taxpayer FEIN or Social Security Number		KPMG, LLP	
06-1362037		13-5565207	
Telephone Number		One Financial Plaza	
203 447-9738		755 Main Street	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner)		Hartford, CT 06103	
Date		860-297-5555	
Print Name of Corporate Officer Responsible for Return			
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:

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

All 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.

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**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

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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
Tomra of North America
480 Lordship Boulevard
Stratford, CT 06615

Account Number ME-0122949
Return Year 2004
Date Due

File this return by February 28.

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

Table with columns for A. Use Tax: Sales & Rentals (6%, 4%) and B. Sales Tax (6%, 4%). Rows include Sales and Use Tax items like Gross sales, Rentals, Communication services, and Allowable Deductions (Resale, Industrial processing, etc.).

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

Table for Use Tax on Items Purchased for Business or Personal Use. Line 14: Enter your purchases taxable at the 6% rate. Line 15: Tax payments made in the current year.

Withholding Tax

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

Summary

Summary table with lines 20-27. Line 20: Total sales, use and withholding taxes due. Line 21: Total sales, use and withholding taxes paid. Line 22: If line 21 is greater than line 20, enter overpayment. Line 23: Amount of line 22 to be credited to your account. Line 24: Amount of line 22 to be refunded to you. Line 25: If line 21 is less than line 20, enter balance due. Line 26: If this return is filed late, enter penalty and interest. Line 27: TOTAL PAYMENT DUE.

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ORIGINAL

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Type of Business Ownership (check one only)

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

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

G. J. Kelly

Taxpayer's Social Security Number

06-1362039

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.

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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.

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

Taxpayer Name		Account Number	
TOMRA of North America, Inc. One Corporate Drive, Suite 710 Shelton, CT 06484		ME-0122949	
Return Year	Date Due		
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.		5a.	
b.	Industrial processing or agricultural producing	b.		b.	6,469,417.50
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.	6,469,417.50
6.	Taxable balance. Subtract line 5k from line 4	6.	▶	6.	611,977.83
7.	Tax Rate	7.	x.06	7.	x.06
8.	Gross tax due. Multiply line 6 by line 7	8.	▶	8.	36,718.67
9.	Tax collected in excess of line 8	9.	▶	9.	▶
10.	Add lines 8 and 9	10.		10.	36,718.67
11.	TOTAL discount allowed (see instructions)	11.	▶	11.	▶
12.	Total tax due. Subtract line 11 from line 10	12.		12.	36,718.67
13.	Tax payments in current year (after discounts)	13.	▶	13.	424,883.72

Use Tax on Items Purchased for Business or Personal Use *

14. Enter your taxable purchases ▶ 14a. 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 4118 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

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. 388,165.05

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 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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Account Name TOMRA of North America, Inc.	Account Number ME-0122949
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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>Andrew Koutroumanis</i>	
Taxpayer FEIN or Social Security Number		KPMG, LLP	
06-1362037		13-5565207	
Telephone Number		One Financial Plaza	
203 447-9738		755 Main Street	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner)		Hartford, CT 06103	
Date		860-297-5555	
Print Name of Corporate Officer Responsible for Return			
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:

If enclosing payment with your Annual Return, mail to:

Michigan Department of Treasury
Department 7B172
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

All 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.

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**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

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ORIGINAL

Michigan Dept. of Treasury, 186, (Rev. 7-08)

Annual Return for Sales, Use and Withholding Taxes

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

Account Number
ME-0122949
 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. 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. $\times .06$	$\times .04$
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** $\times .06 =$ 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 15▶ 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. _____

www.michigan.gov/treasury

Complete and sign the back of this return.

TOMRA011333

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Account Name <i>Tomasz Kubigan</i>	Account Number <i>ME-0122949</i>
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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 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. <input type="checkbox"/> Yes <input type="checkbox"/> No		Preparer's Signature, Address, Phone and ID Number	
<i>[Signature]</i>			
Taxpayer's Social Security Number	Telephone Number		
	<i>803 2447-8738</i>		
Taxpayer's Title (Owner/Officer/Member/Manager/Partner)	Date		
<i>00-1362037</i>			
Print Name of Corporate Officer Responsible for Return	Telephone Number		
<i>Griff Koutroumanis</i>			

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

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Michigan Department of Treasury
185 (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 Shelton, CT 06484		Account Number ME-0122949	
Return Year 2006	Date Due	<input checked="" type="checkbox"/> Amended Return Amendment Date 12/7/2011	

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.		7,231,334.67
2. Rentals of tangible property and accommodations	2.		
3. Telecommunications services	3.		
4. Add lines 1, 2, and 3	4. ▶		7,231,334.67
ALLOWABLE DEDUCTIONS			
5a. Resale	5a.		
b. Industrial processing or agricultural producing	b.		6,672,301.17
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. ▶		6,672,301.17
6. Taxable balance. Subtract line 5k from line 4	6. ▶		559,033.50
7. Tax Rate	7.	x.06	x.06
8. Gross tax due. Multiply line 6 by line 7	8. ▶		33,542.01
9. Tax collected in excess of line 8	9. ▶		
10. Add lines 8 and 9	10.		33,542.01
11. TOTAL discount allowed (see Instructions)	11. ▶		
12. Total tax due. Subtract line 11 from line 10	12.		33,542.01
13. Tax payments in current year (after discounts)	13. ▶		433,880.08

Use Tax on Items Purchased for Business or Personal Use *

14. Enter your taxable purchases	▶ 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-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.	76,970.52
21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19	21.	477,308.59
22. If line 21 is greater than line 20, enter overpayment	▶ 22.	400,338.07
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.	400,338.07
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 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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TOMRA011336

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Account Name	Account Number
TOMRA of North America, Inc.	ME-0122949

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>Andrew Koutroumanis</i>	
Taxpayer FEIN or Social Security Number		KPMG, LLP	
Telephone Number		13-5565207	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner)		One Financial Plaza	
Date		755 Main Street	
Print Name of Corporate Officer Responsible for Return		Hartford, CT 06103	
Telephone Number		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

All 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.

CONFIDENTIAL

**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

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TOMRA011338

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ORIGINAL

Michigan Dept. of Treasury, 185, (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
2 Corporate Drive, Suite 710
Shelton, CT 06484

Account Number
ME-0122949
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

Table with columns for Use Tax (Sales & Rentals) and Sales Tax (6% and 4% rates). Rows include Gross sales, allowable deductions, taxable balance, tax rate, gross tax due, and tax payments.

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

14. Enter your purchases taxable at the 6% rate ... 14a. 727,808.50 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 ... 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.

TOMRA011339

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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)		

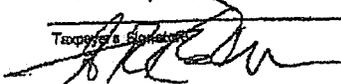
Signature (you are required to complete all information requested below)

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
06-1362037	(202) 447-8338
Taxpayer's Title (Owner/Officer/Member/Manager/Partner)	Date
Scott Koutroumanis	
Print Name of Corporate Officer Responsible for Return	Telephone Number
Scott Koutroumanis	()

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.

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TOMRA011341

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Michigan Department of Treasury
185 (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 ME-0122949
Return Year 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

- 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. x.08
- 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.	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.08	7.	x.08
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 *

14. Enter your taxable purchases ▶ 14a. 837,352.00 x .08 = 14b. 50,241.12
 15. Tax payments made in the current year ▶ 15. 50,241.12

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. 92,698.78
 21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19 21. 638,203.11
 22. If line 21 is greater than line 20, enter overpayment ▶ 22. 545,504.33
 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. 545,504.33
 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 or 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 ME-0122949
--	------------------------------

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>Andrew Koutroumanis</i>	
Taxpayer FEIN or Social Security Number		KPMG, LLP	
Telephone Number		13-5565207	
06-1362037		One Financial Plaza	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner)		755 Main Street	
Date		Hartford, CT 06103	
Print Name of Corporate Officer Responsible for Return		860-297-5555	
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:

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

All 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.

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**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. 8-08)

**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	ME-0122949	Office Use	22
----------------	------------	------------	----

Return Period	JANUARY 2007	Due Date	FEB 20, 2007
---------------	--------------	----------	--------------

Company Name	TOMRA OF NORTH AMERICA INC		
--------------	----------------------------	--	--

Preparer's Signature	Date
<i>[Signature]</i>	2/16/07

Telephone Number	203-447-8738
------------------	--------------

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

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 000122949 9 0701 8 2

TOMRA011345

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ORIGINAL

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

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**

File this return even if no tax is due.
Use Form 1063 for address changes.

Account Number	ME-0122949	Office Use	22
Return Period	FEBRUARY 2007	Due Date	MAR 20, 2007
Company Name	TOMRA OF NORTH AMERICA INC		
Preparer's Signature	Date		
[Signature]		-	
Title	Telephone Number		
Accounting Manager	203-487-8738		

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.

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 52,798.62

22 2 000122949 9 0702 5 2

ORIGINAL

CONFIDENTIAL

Koutroumanis Affidavit

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	ME-0122949	Office Use	22
Return Period	MARCH 2007	Due Date	APR 20, 2007

Company Name	
TOMRA OF NORTH AMERICA INC	
Taxpayer's Signature	Date
<i>[Signature]</i>	4/19/07
Title	Telephone Number
<i>[Signature]</i>	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
Use Tax (Purchases)	05			97
Michigan Withholding	06			97

RESERVED
RESERVED
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 000122949 9 0703 2 2

117b

TOMRA011347

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Michigan Dept. of Treasury
0 (Rev. 8-08)

ORIGINAL

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 1683 for address changes.*

Account Number ME-0122949	Office Use 22
Return Period APRIL 2007	Due Date MAY 20, 2007

Company Name TOMRA OF NORTH AMERICA INC

Taxpayer's Signature <i>[Signature]</i>	Date 5/11/07
--	------------------------

Title Sr. Accountant	Telephone Number (303) 447-8730
--------------------------------	---

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

Sales Tax 01 38,270.97

Sales Tax Discount 02

Use Tax* (Sales/Rentals) 03 1,215.90

Use Tax Discount 04

Use Tax (Purchases) 05

Michigan Withholding 06

SBT Estimates 07

Voucher Payment* 98

Penalty & Interest 99

RESERVED

RESERVED

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 000122949 9 0704 9 2

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Michigan Dept. of Treasury
(Rev. 8-08)

**Combined RETURN
Michigan Taxes**

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

Account Number ME-0122949	Office Use 22
Return Period JAN 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 263-447-8720	

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 000122949 9 0705 6 2

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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. 8-06)

**Combined RETURN
for Michigan Taxes**

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

Account Number ME-0122949	Office Use 22
Return Period JUNE 2007	Due Date JUL 20, 2007
Company Name TOMRA OF NORTH AMERICA INC	
Taxpayer's Signature <i>[Signature]</i>	Date 7/11/07
Home Address [Address]	Telephone Number 447-8720

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

Sales Tax	01	80 674 95	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2458 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.

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

Total Payment 83,133.60

22 2 000122949 9 0706 3 2

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TOMRA011350

CONFIDENTIAL

ORIGINAL

Michigan Dept. of Treasury
10 (Rev. 8-08)

**Combined RETURN
for Michigan Taxes**

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

Account Number ME-0122949	Office Use 22
Return Period JULY 2007	Due Date AUG 20, 2007
Company Name TOMRA OF NORTH AMERICA INC	
Preparer's Signature <i>[Signature]</i>	Date 3/10/07
Title Accountant	Telephone Number (203) 447-2720

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

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	88,444.44		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 000122949 9 0707 0 2

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ORIGINAL

ORIGINAL

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

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**

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

Account Number	ME-0122949	Office Use	22
Return Period	AUGUST 2007	Due Date	SEP 20, 2007

Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	<i>[Signature]</i>		
Date	9/18/07		
Title	Accounting Manager	Telephone Number	203-447-8738

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

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	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

66,074.23

22 2 000122949 9 0708 7 2

CONFIDENTIAL

Koutroumanis Affidavit

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TOMRA011352

122b

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ORIGINAL

Michigan Dept. of Treasury
FD-100 (Rev. 6-08)

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 103 for address changes.*

Account Number Lumber	ME-0122949	Office Use	22
Return Period	SEPTEMBER 2007	Due Date	OCT 20, 2007

Company Name	TOMRA OF NORTH AMERICA INC
--------------	----------------------------

Taxpayer's Signature	Date
<i>[Signature]</i>	11/15/07
Title	Telephone Number
Senior Accountant	(203) 447-8720

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

Sales Tax	01	40,640.23	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	8,856.33	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 49,496.56

22 2 000122949 9 0709 4 2

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ORIGINAL

Michigan Dept. of Treasury
60 (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	ME-0122949	Office Use	22
Return Period	NOVEMBER 2007	Due Date	DEC 20, 2007

Company Name
TOMRA OF NORTH AMERICA INC

Taxpayer's Signature	Date
<i>[Signature]</i>	12/18/07
Title	Telephone Number
<i>[Signature]</i>	248-447-8733

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	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 000122949 9 0711 9 0

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TOMRA011354

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ORIGINAL

Michigan Dept. of Treasury
10 (Rev. 8-08)

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**Combined RETURN
for Michigan Taxes**

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

Account Number ME-0122949	Office Use 22
Return Period DECEMBER 2007	Due Date JAN 20, 2008

Company Name TOMRA OF NORTH AMERICA INC	
Preparer Signature <i>[Signature]</i>	Date 1/19/08
Telephone Number (203) 447-8725	

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

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.

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

Total Payment 107,941.41

22 2 000122949 9 0712 6 0

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Michigan Department of Treasury
185 (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	
TOMRA of North America, Inc. One Corporate Drive, Suite 710 Shelton, CT 06484		ME-0122949	
Return Year		Date Due	
2008			

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.		6,968,478.50
2. Rentals of tangible property and accommodations	2.		
3. Telecommunications services	3.		
4. Add lines 1, 2, and 3	4.		6,968,478.50
ALLOWABLE DEDUCTIONS			
5a. Resale	5a.		
b. Industrial processing or agricultural producing	b.		6,304,055.00
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.		6,304,055.00
6. Taxable balance. Subtract line 5k from line 4	6.		664,423.50
7. Tax Rate	7.	x .06	x .06
8. Gross tax due. Multiply line 6 by line 7	8.		39,865.41
9. Tax collected in excess of line 8	9.		
10. Add lines 8 and 9	10.		39,865.41
11. TOTAL discount allowed (see instructions)	11.		
12. Total tax due. Subtract line 11 from line 10	12.		39,865.41
13. Tax payments in current year (after discounts)	13.		418,108.71

Use Tax on Items Purchased for Business or Personal Use *

14. Enter your taxable purchases 14a. 741,811.67 x .06 = 14b. 44,508.70
 15. Tax payments made in the current year 15. 44,508.70

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. 84,374.11
 21. Total sales, use and withholding taxes paid. Add lines 13A, 13B, 15 and 19 21. 462,617.41
 22. If line 21 is greater than line 20, enter overpayment 22. 378,243.30
 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. 378,243.30
 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 for items removed from your inventory for personal or business use. Do not repeat the amounts from Column A, lines 1 - 4 here.

23
1U25DA 2.000

TOMRA011357

CONFIDENTIAL

Form 165, Page 2

Account Name TOMRA of North America, Inc.	Account Number ME-0122949
--	------------------------------

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>Andrew Koutroumanis</i>	
Taxpayer FEIN or Social Security Number		KPMG, LLP	
Telephone Number		13-5565207	
06-1362037	203 447-9738	One Financial Plaza	
Taxpayer or Authorized Representative Title (Owner/Officer/Member/Manager/Partner)		755 Main Street	
Date		Hartford, CT 06103	
Print Name of Corporate Officer Responsible for Return		860-297-5555	
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:

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

All 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.

23

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TOMRA011358

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**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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TOMRA011359

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Michigan Dept. of Treasury
30 (Rev. 8-08)

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**Combined RETURN
of Michigan Taxes**

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

Account Number	ME-0122949	Office Use	22
Return Period	FEBRUARY 2008	Due Date	MAR 20, 2008

Company Name	TOMRA OF NORTH AMERICA INC		
Employer's Signature	Date	3/19/08	
Title	Telephone Number	Senior Accountant (202) 447-8720	

Mail To: Michigan Dept. of Treasury
Dept. 77003
Detroit, MI 48277-0903

Sales Tax	01	8,426.22	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,933.64	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 000122949 9 0802 8 6

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TOMRA011360

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ORIGINAL

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

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**Combined RETURN
or Michigan Taxes**

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

Account Number	ME-0122949	Office Use	22
Return Period	MARCH 2008	Due Date	APR 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
taxpayer's Signature	Date		
<i>[Signature]</i>	4/15/08		
Title	Telephone Number		
<i>Sr Accountant</i>	(203) 447-8736		

Sales Tax	01	29,718.53	SBT Estimates	07	
Sales Tax Discount	02		Voucher Payment*	98	
Use Tax* (Sales/Rentals)	03	2,361.97	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 32,079.90
22 2 000122949 9 0803 5 6

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TOMRA011361

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Michigan Dept. of Treasury
160 (Rev. 8-08)

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Combined RETURN for Michigan Taxes

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

Account Number	ME-0122949	Office Use	22
Return Period	APRIL 2008	Due Date	MAY 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	Date 5/15/08		
Title	Telephone Number 203-447-8273		

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.

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 , 44,188.95

22 2 000122949 9 0804 2 6

Koutroumanis Affidavit

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TOMRA011362

132b

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Michigan Dept. of Treasury
30 (Rev. 8-08)

**Combined RETURN
or Michigan Taxes**

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

Account Number	ME-0122949	Office Use	22
Return Period	MAY 2008	Due Date	JUN 20, 2008

Company Name	TOMRA OF NORTH AMERICA INC		
--------------	----------------------------	--	--

Preparer's Signature	Date
<i>[Signature]</i>	6/12/08

Title	Telephone Number
Sp. Acct	203 447-8730

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 000122949 9 0805 9 6

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Michigan Dept. of Treasury
30 (Rev. 8-08)

**Combined RETURN
of Michigan Taxes**

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

Account Number ME-0122949	Office Use 22
Return Period JUNE 2008	Due Date JUL 20, 2008
Company Name TOMRA OF NORTH AMERICA INC	
Preparer's Signature <i>[Signature]</i>	Date 7/16/08
Title Sr. Accountant	Telephone Number 203 447-8720

Sales Tax 01 **42,268.03**

Sales Tax Discount 02

Use Tax * (Sales/Rentals) 03 **2,880.96**

Use Tax Discount 04

Use Tax (Purchases) 05

Michigan Withholding 06

SBT Estimates 07

Voucher Payment* 98

Penalty & Interest 99

97 RESERVED

97 RESERVED

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 **45,148.99**

22 2 000122949 9 0806 6 6

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Michigan Dept. of Treasury
180 (Rev. 8-08)

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Combined RETURN for Michigan Taxes

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

Account Number	ME-0122949	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		

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 000122949 9 0807 3 6

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Koutroumanis Affidavit

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TOMRA011365

135b

ORIGINAL

Michigan Dept. of Treasury
100 (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	ME-0122949	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		

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.

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 , 34,652.06

22 2 000122949 9 0808 0 6

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TOMRA011366

136b

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ORIGINAL

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	ME-0122949	Office Use	22
Return Period	SEPTEMBER 2008	Due Date	OCT 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	Date		
<i>[Signature]</i>	10/17/08		
Address	Telephone Number		
<i>[Address]</i>	208-447-8733		

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.

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 , 50,626.10
22 2 000122949 9 0809 7 6

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Michigan Dept. of Treasury
150 (Rev. 8-08)

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	ME-0122949	Office Use	22
Return Period	OCTOBER 2008	Due Date	NOV 20, 2008
Company Name TOMRA OF NORTH AMERICA INC			
Taxpayer's Signature		Date	
Title	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 000122949 9 0810 5 4

TOMRA011368

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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	ME-0122949	Office Use	22
Return Period	NOVEMBER 2008	Due Date	DEC 20, 2008
Company Name	TOMRA OF NORTH AMERICA INC		
Taxpayer's Signature	Date		
Title	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.

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

27,941.41

22 2 000122949 9 0811 2 4

TOMRA011369

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Michigan Dept. of Treasury
'80 (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	ME-0122949	Office Use	22
Return Period	DECEMBER 2008	Due Date	JAN 20, 2009

Company Name	
TOMRA OF NORTH AMERICA INC	
Authorized Signature	Date
<i>[Signature]</i>	1/14/09
Telephone Number	
203-447-8738	

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

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 000122949 9 0812 9 4

TOMRA011370

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Michigan Department of Treasury
Form 3372 (Rev. 11-09)

Michigan Sales and Use Tax Certificate of Exemption

DO NOT send to the Department of Treasury. Certificate must be retained in the Seller's Records. This certificate is invalid unless all four sections are completed by the purchaser.

SECTION 1: TYPE OF PURCHASE

- One-time purchase.
Order or Invoice Number: _____
- Blanket certificate.
Expiration Date (maximum of four years): _____

Blanket Certificate. Recurring business relationship

EXTENDING BACK TO JANUARY 2001 & ALL SUBSEQUENT YEAR:

The purchaser hereby claims exemption on the purchase of tangible personal property and selected services made from the vendor listed below. This certifies that this claim is based upon the purchaser's proposed use of the items or services, OR the status of the purchaser.

Vendor's Name and Address
TOMRA PROCESSING CENTER / TOMRA OF NORTH AMERICA INC. SHELTON, CT

SECTION 2: ITEMS COVERED BY THIS CERTIFICATE

Check one of the following:

1. All items purchased
2. Limited to the following items: _____

SECTION 3: BASIS FOR EXEMPTION CLAIM

Check one of the following:

1. For Resale at Retail. Enter Sales Tax License Number: _____
2. For Lease. Enter Use Tax Registration Number: _____

The following exemptions DO NOT require the purchaser to provide a number:

3. For Resale at wholesale
4. Agricultural Production. Enter percentage: _____%
5. Industrial Processing. Enter percentage: 100%
6. Church, Government Entity, Nonprofit School, or Nonprofit Hospital (Circle type of organization)
7. Nonprofit Internal Revenue Code Section 501(c)(3) or 501(c)(4) Exempt Organization (must provide IRS authorized letter with this form)
8. Nonprofit Organization with an authorized letter issued by the Michigan Department of Treasury prior to June 1994 (must provide copy of letter with this form)
9. Rolling Stock purchased by an Interstate Motor Carrier
10. Other (explain): _____

SECTION 4: CERTIFICATION

I declare, under penalty of perjury, that the information on this certificate is true, that I have consulted the statutes, administrative rules and other sources of law applicable to my exemption, and that I have exercised reasonable care in assuring that my claim of exemption is valid under Michigan law. In the event this claim is disallowed, I accept full responsibility for the payment of tax, penalty and any accrued interest, including, if necessary, reimbursement to the vendor for tax and accrued interest.

Type of Business (see codes on page 2) <u>07- RETAIL</u>	Business Name <u>MEIJER INC.</u>
Business Address <u>2929 WALKER AVE NW</u>	City, State, ZIP Code <u>GRAND RAPIDS MI 49544</u>
Business Telephone Number (include area code) <u>616-791-5990</u>	Name (Print or Type) <u>THEA L. BAIRD</u>
Signature and Title <u>Thea L Baird</u>	Date Signed <u>10/18/2012</u>

TOMRA011371

CONFIDENTIAL



SALES AND USE TAX
CERTIFICATE OF EXEMPTION

I, the undersigned, hereby certify that we are engaged in the business of grocery and general merchandise wholesaler and that the tangible personal property described herein which we should purchase lease or rent from:

SELLER:

Tomra Collection Solutions

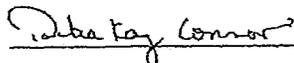
The product's purchased, inventory items from this seller are for resale or internal use as needed. We request that a blanket certificate be used. This certificate continues in force until cancelled by the purchaser. If the purchaser uses the property described herein for other than resale and subsequently, with the intent to evade the tax, fails to file a sales or use tax return declaring the taxable use of such property, the purchaser will be subject to the full penalty of the law.

I further certify that if any property so purchased tax free is used or consumed by the firm as to make it subject to a sales or use tax, we will pay the tax directly to the proper taxing authority when state law so provides or inform the seller for added tax billing. This certificate shall be part of each order, which we may hereafter give you, unless otherwise specified, and shall be valid until cancelled by us in writing or revoked by the city or state.

PURCHASER

Spartan Stores Distribution, L.L.C.
d/b/a Spartan Stores, Inc.
850 76th Street SW
PO Box 8700
Grand Rapids, MI 49518-8700

State of Indiana – 0114128081 001
State of Ohio – 99-043467
State of Michigan – 75-2997653



Signature of Authorized Purchaser
Debra Kay Connor
616-878-8426

Executive Assistant
Title

September 1, 2012
Date

TOMRA011372

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Michigan Department of Treasury
Form 3372 (Rev. 08-12)

Michigan Sales and Use Tax Certificate of Exemption

DO NOT send to the Department of Treasury. Certificate must be retained in the seller's records. This certificate is invalid unless all four sections are completed by the purchaser.

SECTION 1: TYPE OF PURCHASE

- A. One-Time Purchase
Order or Invoice Number: _____
- C. Blanket Certificate
Expiration Date (maximum of four years): _____
- B. Blanket Certificate, Recurring Business Relationship
Extending back to October 1, 2003 and all subsequent years.

The purchaser hereby claims exemption on the purchase of tangible personal property and selected services made from the vendor listed below. This certifies that this claim is based upon the purchaser's proposed use of the items or services, OR the status of the purchaser.

Vendor's Name and Address
Tomra Processing Center / Tomra of North America, Inc., Shelton, CT

SECTION 2: ITEMS COVERED BY THIS CERTIFICATE

Check one of the following:

1. All items purchased.
2. Limited to the following items: _____

SECTION 3: BASIS FOR EXEMPTION CLAIM

Check one of the following:

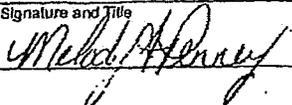
1. For Resale at Retail. Enter Sales Tax License Number: _____
2. For Lease. Enter Use Tax Registration Number: _____

The following exemptions DO NOT require the purchaser to provide a number:

3. For Resale at Wholesale.
4. Agricultural Production. Enter percentage: _____%
5. Industrial Processing. Enter percentage: 100 %
6. Church, Government Entity, Nonprofit School, or Nonprofit Hospital (Circle type of organization).
7. Nonprofit Internal Revenue Code Section 501(c)(3) or 501(c)(4) Exempt Organization (must provide IRS authorized letter with this form).
8. Nonprofit Organization with an authorized letter issued by the Michigan Department of Treasury prior to June 1994 (must provide copy of letter with this form).
9. Rolling Stock purchased by an Interstate Motor Carrier.
10. Other (explain): _____

SECTION 4: CERTIFICATION

I declare, under penalty of perjury, that the information on this certificate is true, that I have consulted the statutes, administrative rules and other sources of law applicable to my exemption, and that I have exercised reasonable care in assuring that my claim of exemption is valid under Michigan law. In the event this claim is disallowed, I accept full responsibility for the payment of tax, penalty and any accrued interest, including, if necessary, reimbursement to the vendor for tax and accrued interest.

Business Name Wal-Mart Stores, Inc.		Type of Business (see codes on page 2) 07 - Retail
Business Address 702 SW 8th St.		City, State, ZIP Code Bentonville, AR 72716-0555
Business Telephone Number (include area code)		Name (Print or Type) Melody A. Penney
Signature and Title 		Date Signed 12/18/12

TOMRA011373

WORK 2-18

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STATE OF MICHIGAN
IN THE COURT OF CLAIMS

TOMRA OF NORTH AMERICA,

Plaintiff,

v

Docket No.'s: 14-91-MT cons w/ 14-185-MT
Hon. Michael J. Talbot

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

June Summers Haas (P59009)
Brian T. Quinn (P66272)
Honigman Miller Schwartz and Cohn, LLP
Attorneys for Plaintiff
222 N. Washington Sq., Ste. 400
Lansing, MI 48933
(517) 377-0734

Scott L. Damich (P74126)
Assistant Attorney General
Michigan Dep't of Attorney General
Revenue & Collections Division
Attorney for Defendant
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203
DamichS@michigan.gov

**THE MICHIGAN DEPARTMENT OF TREASURY'S FEBRUARY 18, 2015
MOTION FOR SUMMARY DISPOSITION WITH BRIEF IN SUPPORT**

The Michigan Department of Treasury, through its counsel Attorney General Bill Schuette and Assistant Attorney General Scott L. Damich, moves this court under MCR 2.116(C)(10) to summarily resolve the above captioned case in the Department's favor. The Department states the following in support of its motion:

INTRODUCTION

Under Michigan's self-reporting tax system, the taxpayer's word is taken most of the time. Even though taxpayers do not generally submit source documentation with their tax return, Michigan law still requires taxpayers to *maintain* the source documentation. Occasionally, the Department audits a taxpayer to ensure that the taxpayer actually does have the source documentation necessary

to substantiate its reported tax liability and any claimed exemptions or deductions. If the taxpayer cannot produce the source documentation to support the amounts listed on its returns, the Department is left with no choice but to adjust the taxpayers liability based on the best information made available to the Department.

Here, the Department audited TOMRA's 2003 through 2008 sales tax liability and determined that TOMRA failed to report accurate amounts when completing its Michigan Annual Sales, Use, and Withholding Returns. TOMRA underreported its Michigan gross sales. Because TOMRA's returns were inaccurate the Auditor used the best information made available to him to recreate TOMRA's sales tax liability – TOMRA's own internal records. TOMRA disagreed with audit, challenged the intent to assess, submitted amended returns, and claimed entitlement to a \$2,258,229 refund of sales tax that TOMRA allegedly collected from its Michigan customers and remitted to Michigan for the October 2003 through December 2008 tax periods. TOMRA claims that all sales made to Michigan customers are exempt under the industrial processing exemption. They are not.

But this Court does not need to reach the merits of TOMRA's industrial processing claim for two reasons. First, TOMRA cannot substantiate the refund amount listed in the Verified Complaint. And second, TOMRA would be enriched with its customers' money if this Court were to rule in its favor. The Sales Tax Act prohibits a taxpayer from enriching itself or gaining any benefit from the collection or payment of the tax and thus prohibits this Court from granting TOMRA's refund request. MCL 205.73(4).

TOMRA bears a heavy burden to refute Treasury's assessment and establish a claim for exemption from taxes and must do so with documentary evidence. TOMRA could not substantiate the amount of sales that were exempt during audit and it has failed to do so during litigation. According to TOMRA's record retention policy, TOMRA no longer has the documentation necessary to substantiate its reported tax liability and the refund listed in its Verified Complaint. Because

TOMRA cannot prove the actual amount it is entitled to recover with documentary evidence, TOMRA has failed to carry its burden and the Department is entitled to judgment as a matter of law.

STANDARD OF REVIEW

The Court must dismiss a complaint under MCR 2.116(C)(10) when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. The Department must specifically identify the issues as to which there is no genuine issue of material fact. MCR 2.116(G)(4). And the Court must consider the documentary evidence attached to this brief. MCR 2.116(G)(5). In its response, the Plaintiff cannot simply rely on the allegations or denials in its Complaint; it must submit admissible evidence showing that there is a genuine issue of material fact. MCR 2.116(G)(4) and (G)(6). Otherwise, the Court must dismiss the Complaint. MCR 2.116(G)(4).

STATEMENT OF FACTS

TOMRA of North America is a Connecticut company that sells reverse vending machines to supermarkets and liquor stores in States that require consumers to pay a deposit on recyclable beverage containers. (Complaint ¶; Ex A, Dep Tr C. Reigle, pp 12-13.)

Reverse vending machines facilitate the collection of returnable beverage containers from consumers and the stores obligation to refund the previously paid deposit to the consumer upon return. (Ex A, pp 11-12, 20; Ex B, Dep Tr. J. Matto, p 70.) The reverse vending machines read a UPC code on the beverage container to determine whether or not the container is returnable and subject to a deposit refund. (Ex A, p 31.) The machines reject the beverage container if a deposit was not previously paid, the barcode on the beverage container is not readable, or the beverage container contains waste. (Ex A, pp 20, 31.)

TOMRA sells reverse vending machines specifically for aluminum cans, plastic bottles, and glass bottles. (Ex A, p 16.) If a machine designed for aluminum cans accepts a deposited aluminum can, the machine will crush the can and drop the can into a storage bin. (Ex A, p 35.) The machine

crushes the can for storage and efficiency purposes. (Ex A, pp 22, 37.) The machines designed for plastic bottles do not shred plastic bottles. (Ex A, p 36.) The machines designed for glass bottles do not crush glass bottles. (Ex A, p 35.) But those machines do sort glass bottles by color and plastic bottles by plastic grade. (Ex A, p 36.)

The machines provide the consumer returning the beverage container with a coupon indicating the deposit refund amount the consumer is entitled to. (Ex A, p 16.) The machines also count the amount of cans and bottles collected. (Ex B, Dep Tr J. Matto, p 68.) This information is useful for companies that process and sell aluminum, plastic, and glass on the commodity market. (Ex B, p 69.) The bins that collect used beverage containers are stored at the supermarket or liquor store. (Ex A, p 24.) A third party loads the bins onto trucks and takes the bins to a third party location. (Ex A, p 25.) The aluminum cans and plastic bottles are then dumped into a hopper at a third-party location. (Ex A, p 28.) The hopper combines the cans into an aluminum cube. (Ex A, p 28.) The same is true for plastic bottles. (Ex A, p 48.) When glass bottles arrive at the third-party location, they are placed on a conveyer that drops the bottles to a storage pit where they wait for further processing. (Ex A, p 41.) Third-parties then sell the aluminum and plastic cubes and glass. (Ex A, pp 28, 39) The aluminum, plastic, or glass is then further processed by another third-party to become a product that can become a material part of a finished good. (Ex A, pp 28, 35).

TOMRA filed Annual Returns for Sales, Use, and Withholding Taxes for the 2003, 2004, 2005, and 2006 tax years. (Ex C, 2003, 2004, 2005, and 2006 Annual Returns.) Those returns reported Gross Sales but they but they did not claim any deductions. **See Ln1 and Ln 5.** TOMRA did not file annual returns for the 2007 and 2008 tax years. (Ex D, Audit Report of Findings, p 2.)

The Department performed a Sales Tax audit of TOMRA's records for the period October 1, 2003 through December 31, 2008 (audit period). (Ex D, p 1.)¹ The purpose of the audit was to verify

¹ TOMRA was also under a Michigan Use Tax audit with the Department at the same time.

whether TOMRA had the records to substantiate its reported Sales Tax liability. (Ex D, p 1.) The Department's Auditor compared TOMRA's sales tax returns with TOMRA's internal records and found that the gross sales TOMRA reported on line 1 of its annual returns did not match up with TOMRA's Michigan sales sub-ledger. (Ex D, pp 2-3; Ex. E, Dep Tr, R. Kolbig, pp 48, 78.) Instead, the only sales that TOMRA reported in its gross sales amount were the sales TOMRA treated as taxable sales. *Id.*

Take for example the 2007 tax year. Per TOMRA's monthly returns, TOMRA remitted a total of \$587,961.99 in sales tax for the January 2007 through December 2007 tax periods. (Ex F, January through December Form 160's; see also, Ex G "Sales Tax Originally Remitted" column of TOMRA of North America, Inc. Refund Calculation Summary Year Ending 12/31/2007.) TOMRA then divided the \$587,961.99 by 6% to arrive at the amount of sales associated with the amount of tax remitted. $\$587,961.99 / 6\% = \$9,799,366$. This is the same number TOMRA lists as its Michigan gross sales on its Original 2007 Annual Sales, Use, and Withholding Return. (Ex H, 2007 Return at ln 1.) TOMRA used the same process on all of its original and amended returns for each of the tax years at issue. Stated another way, TOMRA treated certain sales as exempt, but never reported to Michigan the amount of those exempt sales. As a consequence, TOMRA's gross sales were understated because excluded from the gross sales amount were transactions that TOMRA did not charge tax.

The Department's Auditor recreated TOMRA's sales tax liability for the 2003 through 2008 tax years because TOMRA's returns underreported gross sales and did not list any exemptions. The Department's Auditor computed gross sales by pulling amounts from TOMRA's Michigan sub-ledger for sales. (Ex D.) The amounts treated as gross sales were "parts income," "Sales of Equip & Product income," and "Leased Equipment." (Ex D, Schedule B1 through B6.) He did not include "installation income", "service income," "freight revenue" and "Canadian revenue" as gross sales.

(*Id.*) The gross sales amount as determined by the Auditor was greater than the gross sales amounts reported by TOMRA. (Ex D; Ex E p 49.)

The Department's auditor attempted to reconcile the difference between TOMRA's own internal accounting records with the amounts TOMRA reported on its returns as gross sales. (Ex D.) TOMRA's representatives could not produce any documents to support the exempt transactions. (Ex E, pp 49, 72, 73, 94.) Because TOMRA was unable to verify what transactions it excluded from its gross sales calculation, the auditor assessed 6% tax on the difference between TOMRA's as reported taxable amount and the taxable amount as determined by the auditor. (Ex D.) As a result of the audit, the Department made adjustment to TOMRA's reported Sales Tax liability for the years 2003-2008 that resulted in an additional \$516,562.00 tax due, plus penalty and interest. (Ex J, Notice of Preliminary Audit Determination; Ex K, Final Audit Determination.)

By letter dated December 2, 2011, TOMRA requested an informal conference to dispute the Department's determinations regarding the unsubstantiated exempt sales, the underreported gross sales, and the resulting intent to assess. (Ex L, December 2, 2011 letter.) In the same letter, TOMRA requested a \$2,458,452 refund from Treasury. According to the letter, TOMRA charged and collected \$2,458,452 in sales tax from its Michigan customers for the periods of October 1, 2003 through December 31, 2008. "[T]hese taxes were erroneously collected because the equipment sales to TOMRA's customers qualified for the Michigan industrial processing exemption." TOMRA also recognized that it must return the sales tax refund to its customers.

On December 14, 2011, TOMRA filed amended Annual Returns for Sales, Use, and Withholding Taxes for the 2003 through 2008 tax years. TOMRA did not file original 2007 and 2008 Annual Returns. (Ex M, December 14, 2011 letter; Ex N, TOMRA's 2003 through 2008 amended returns.) According to the cover letter, the 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.” (Ex M.) This is \$200,223 less than the refund amount listed in the December 2, 2011 letter. The amended returns, like the original returns, did not use gross Michigan sales. (Ex N.) The 2003 through 2006 amended returns reported the same amount of gross sales as the original returns. (Ex N, **See Ln 1.**) Again, it was discovered during audit that that those amounts do not match TOMRA’s internal records. (Ex D.) The Amended returns, unlike the original returns, listed specific deductions from gross sales for industrial processing. (Ex N, **See Ln 5.**) TOMRA reduced its reported gross sales by the specific deductions to arrive at the amount it claimed to overpay to Michigan.

By letter dated October 11, 2012, TOMRA informed Treasury’s Hearing Referee that it is in the process of obtaining exemption certificates from Meijer, Wal-Mart, Kroger, and Spartan Stores. (Ex O, October 11, 2012 letter.) On October 26, 2012, TOMRA provided an exemption certified to Treasury’s Hearing Referee that was signed by Meijer on October 18, 2012. (Ex P.) On December 20, 2012, TOMRA provide Treasury’s Hearing Referee an exemption certificate that was signed by Wal-Mart on December 18, 2012. (Ex Q.) The Meijer and Wal-Mart exemption certificates both claimed the industrial processing exemption.

TOMRA provided exemption certificate from Spartan Stores on November 21, 2012. (Ex R) Inconsistent with TOMRA’s October 11, 2012 letter, and TOMRA’s own refund claim, the Spartan Stores Exemption Certificate claimed the sale for resale exemption². (Ex R.) The hearings referee gave TOMRA an additional 7 months after the hearing to produce exemption certificates for TOMRA’s other Michigan customers. (Ex S, February 13, 2013 letter.) TOMRA has yet to provide an exemption certificate for Kroger or any other of its Michigan customers.

² The line associated with the sale for resale exemption is blank on all of TOMRA’s amended returns. (Ex N.)

The hearings referee reviewed the documents, and recommended that Treasury adjust the assessment so as to exclude the amount of tax associated with sales made to Meijer, Wal-Mart, and Spartan Stores. (Ex T, Informal Conference Recommendation.)

The hearings referee rejected TOMRA's refund claim because TOMRA was not able to substantiate its refund request. (Ex T.) The hearings referee also determined that granting the claimed refund requests would enrich TOMRA at the expense of its Michigan customers in violation of MCL 205.73(4). (Ex T.)

The Department adopted the hearings referee recommendation to deny the claimed refund. (Ex U, Final Order and Determination.) But the Department rejected the recommendation to adjust Intent to Assess TH82977 to allow exemptions for sales made to customers who provided exemption certificates because TOMRA lacked the records necessary to support how much tax TOMRA actually charged, collected, and remitted from sales made to those customers. (Ex U; Ex V, DC Audit Report of Findings.) The Department then issued Final Assessment TH82977 against TOMRA for \$516,562.00 in tax, \$58,502 penalty, and interest. (Ex W, Final Assessment.)

TOMRA then filed the Verified Complaint at issue. The Verified Complaint contains three counts: first, regarding the industrial processing exemption; second, regarding exemption certificates; and third, TOMRA's allegation that the Department denial of its requested \$2,458,452 refund was unlawful.

ARGUMENT

I. The Court must dismiss TOMRA's challenge to Final Assessment TH82977 because TOMRA cannot muster the evidence necessary to refute the assessment.

TOMRA challenges the final assessment resulting from the Department's audit. TOMRA also challenges the Department's denial of the \$2.4 million refund request TOMRA filed after audit but before informal conference. Both challenges rely on exemption claims which are strictly

construed against TOMRA. However, the challenges must be analyzed separately. This is because the Department's assessment, by statute, is considered prima facie correct.

A. Final Assessment TH82977 is presumed valid and TOMRA bears the burden of proof to refute the assessment.

This Court's key factual finding as it relates to the Final Assessment is to determine whether TOMRA's 2003 through 2008 returns were accurate and whether TOMRA maintained accurate and complete records to substantiate its reported tax liability. If TOMRA's returns were inaccurate as filed, then the Department may assess the amount of the tax due from TOMRA based on information that is or may become available to the Department. MCL 205.68(4); *Vomvolakis v Dep't of Treasury*, 145 Mich App 238, 245; 377 NW2d 309 (1985). And any assessment the Department issues as a result of the audit is presumed valid. MCL 205.68(4). The taxpayer bears the burden to refute the assessment. *Id.*

As indicated above, when the Department arrived to check and see if TOMRA accurately reported its tax liabilities, the Department's auditor compared TOMRA's sales tax filings with TOMRA's internal record and discovered that TOMRA gross sales were underreported. The auditor determined that TOMRA excluded amounts listed in its Michigan sub-ledger from its reported gross sales. This was wrong because gross sales are a measure of overall sales, regardless if the sale is exempt from tax. In an attempt to substantiate the type and amount of transactions TOMRA excluded from its Michigan gross sales, the auditor requested TOMRA produce source documentation. But despite various verbal and written requests, TOMRA failed to produce records of or even identify the transactions it considered exempt.

TOMRA, like all Michigan taxpayers, has a standing obligation to "keep accurate and complete records necessary for the proper determination of tax liability as required by law or rule of the department." MCL 205.28(3). The rule the Department promulgated by the authority of §28(3) reads as follows: "Pursuant to section 28(3) of the revenue act, MCL 205.28(3), a taxpayer shall

maintain all records that are necessary for the proper determination of the taxpayer's tax liability.” 2013 AC, R 205.4103. The Sales Tax Act specifically requires TOMRA, like all Michigan taxpayers subject to the Sales Tax, to maintain a proper record of all exempt transactions and provide the records if requested by Treasury. MCL 205.62(4).

B. TOMRA must be able to substantiate its tax reporting with documentation.

TOMRA violated its obligation to maintain the documentation necessary to back up its tax reporting. In a self-reporting tax system, the entire purpose of an audit is for the auditor to “examine the books, records, and papers touching the matter at issue of any person or taxpayer subject to any tax” in order to compare the documentation with what the taxpayer reported on its tax returns. MCL 205.3(a). TOMRA could not produce the documentation necessary to show that it could lawfully exclude transactions from its Michigan gross sales. TOMRA could not even distinguish between what it considered taxable and non-taxable sales. Therefore, the auditor taxed the difference between TOMRA’s reported taxable sales and the taxable sales as determined by him. It is that simple.

TOMRA bears the burden of refuting Final Assessment TH82977. MCL 205.68(4). To the extent TOMRA cannot locate the source documentation to support the sales it exempted from its Michigan gross sales, TOMRA would have to rely on testimony to substantiate its challenge to the assessment. But under Michigan law, tax liability must be supported by records and tax exemptions must be substantiated with documentary evidence. MCL 205.3; MCL 205.28(3); MCL 205.68(4); 2013 AC, R 205.4103. There is no indication that the TOMRA has maintained sufficient records to refute the Department’s audit. (Ex. X, TOMRA’s record retention policy.) And unless TOMRA submits “legally admissible evidence” in response to this Motion that shows it can refute the Department’s audit, the Court must dismiss TOMRA’s challenge to the Final Assessment. *By Lo Oil Co v Dep’t of Treasury*, 267 Mich App 19, 26–27; 703 NW2d 822 (2005); MCR 2.116(G)(4) and (6).

II. The Court must dismiss TOMRA's refund request because TOMRA cannot substantiate the refund amount.

In its Verified Complaint, TOMRA alleges that it is entitled to a \$2,458,452 sales tax refund. Complaint ¶30. The United States Supreme Court has held that a taxpayer bears the burden of proving that it overpaid its taxes. To meet this burden, the taxpayer must prove "the amount he is entitled to recover[.]" *United States v. Janis*, 428 U.S. 433, 440, 49 L. Ed. 2d 1046, 96 S. Ct. 3021 (1976). TOMRA has yet to produce any specific evidence that verifies its claimed refund.

A. TOMRA has yet to produce any specific evidence to support how it arrived at the claimed \$2,458,452 refund.

Jeff Matto, TOMRA's Controller who signed TOMRA's Verified Complaint could not explain how the refund was calculated.

Q : Did you compute that amount?

A : No.

Q : Did you verify that amount?

A : I did not, myself, verify that.

Q : Did you see any calculations on how this 2.4 million-dollar refund was made?

A : No.

(Ex B, Matto Dep Tr, pp 13-15.)

TOMRA's CFO also could not verify how the refund listed in the Verified Complaint was calculated.

(Ex I, Hollyer Dep Tr p 17.)

During the course of discovery, the Department requested that TOMRA identify and provide a record of all exempt transactions between itself and Meijer, Wal-Mart, and Spartan Stores. (Ex Y, TOMRA's response to Treasury's First Discovery Requests, Nos. 4, 7, 10.) The Department requested this information in an attempt to quantify how much of the claimed refund is dedicated to sales made to Meijer, Wal-Mart, and Spartan Stores. TOMRA did not provide the requested information, indicating that "the discovery response requests a compilation of tax information for the

periods October 1, 2003 to December 31, 2008 in a manner that is not normally maintained in Plaintiff's books and records or the usual course of Plaintiff's business. *Id.* This response is consistent with TOMRA's record retention policy which indicates that TOMRA keeps tax supporting documentation for 4 years. (Ex X, TOMRA's record retention policy.) But again, the response is inconsistent with MCL 205.62(4) which requires TOMRA "maintain a proper record of all exempt transactions and shall provide the record if requested by the department."

When asked during deposition whether TOMRA identified how much sales tax it collected from Kroger, Wal-Mart, Spartan Stores or any of its Michigan customers, Mr. Matto testified that:

Q : But you've yet to identify what amount you collected from Michigan customers. Right?

A : Right.

[Ex B, Matto Dep Tr, pp 118-119.]

TOMRA did produce documentation provided to it from Meijer that, according to Meijer, identifies how much sales tax it paid TOMRA during the tax periods at issue. (Ex Z, Plaintiff's Supplemental Resp to Defendant's First and Second Disc Req to Plaintiff, dated January 16, 2015.) But this information came after TOMRA calculated the refund amount listed in the Verified Complaint. And TOMRA did not verify the claimed amount with its own internal records. (Ex B, Matto Dep, p 117 "I know Meijer has put together . . . some stuff, but I don't know that we verified everything to our internal records here.")

As discussed above, under Michigan law, TOMRA must be able to substantiate its tax reporting with documentation. For example, many individuals claim the home mortgage interest deduction on their federal income tax returns. They report the amount of interest they paid on their mortgage and that amount is deducted from their taxable income. If that individual is audited by the IRS, the IRS will ask the individual to produce the documentation from its mortgage servicer that shows how much interest the individuals paid and in what amount. If the individual cannot produce the documentation, the IRS will not allow the deduction. It would not be enough for the individual to

simply say “I promise that I paid interest on a home mortgage in the amount I reported on my tax return.” Similarly, if the individual challenged the IRS’s determination in court, it would not be enough for the individual to simply repeat the promise to the court – individuals must present the documentation that supports the deduction they seek or they cannot take the deduction. Otherwise, anyone with the means to pursue litigation can avoid his or her obligation to maintain reliable documentation by simply promising a court that they really can take the exemptions or deductions they reported on their tax returns.

B. TOMRA’s Amended returns do not support TOMRA’s refund request.

After audit but before Informal Conference, TOMRA submitted Amended Returns for the 2003 through 2008 tax years wherein TOMRA insisted that the returns “reflects 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.” (Ex M, December 14, 2011 letter.) In its Verified Complaint, TOMRA alleges that it is entitled to a \$2,458,452 sales tax refund. Complaint ¶ 30. This is \$200,223 more than the refund amount listed in the verified complaint. TOMRA’s Chief Financial Officer could not explain the \$200,000 disparity between the refund identified in the December 14, 2011 letter and the Verified Complaint. (Ex I, Dep Tr A. Hollyer, p 17.)

Even assuming that the \$200,000 disparity was a clerical error, TOMRA’s amended returns still fail to support the claimed refund. This is because the amended returns, like the original returns, understate gross sales. As a matter of fact, the 2003, 2004, and 2006 amended returns report the same exact amount of Michigan gross sales as the original 2003, 2004, and 2006 returns. Those numbers do not match TOMRA’s actual gross sales as confirmed by TOMRA’s internal records. Instead, those numbers reflect the amount of taxable sales TOMRA reported on its monthly Form

160s. TOMRA then further deducted from gross sales additional amounts for industrial processing³. See Ln 5.

Because TOMRA has yet to identify which transactions it excluded from its gross sales calculation and now lists specific deductions for industrial processing, it is highly probably that TOMRA requests Treasury to refund sales tax on transactions that TOMRA never remitted to the State of Michigan. This situation is exactly why TOMRA, like all Michigan taxpayers, has a standing obligation to “keep accurate and complete records necessary for the proper determination of tax liability as required by law or rule of the department” and “maintain a proper record of all exempt transactions and provide the records if requested by Treasury.” MCL 205.28(3); MCL 205.62(4)

TOMRA could not substantiate which transactions it treated as exempt during audit, during informal conference, and it has failed to do so during litigation. Per TOMRA’s record retention policy, it is more than likely that TOMRA no longer has the documentation necessary to distinguish between transactions that TOMRA remitted 6% sales tax to the State of Michigan. Because TOMRA cannot support its tax liability or prove the actual amount it is entitled to recover with documentary evidence, the Court must dismiss TOMRA’s refund claim.

III. Even if TOMRA met its burden to show it is entitled to a tax exemption, TOMRA has no right to receive the refund because the Sales Tax Act prohibits TOMRA from enriching itself from the collection of sales tax from Michigan customers.

TOMRA’s refund is easily denied in Treasury’s favor for another reason. Because even assuming that TOMRA’s sales to Michigan customers were exempt (which they are not for reasons discussed *infra*) and that TOMRA’s refund request is accurate (which it is not for reasons discussed

³ TOMRA alleges that it sold to Spartan Stores under Michigan’s sale for resale exemption. Complaint ¶22. But the amended returns do not include an amount associated with the specific sale for resale exemption - See ln. 5a - which further supports the conclusion that TOMRA did not identify how much sales tax it collected from Spartan Stores before it calculated the refund amount.

supra) TOMRA asks that this Court issue a refund, with interest, of sales tax TOMRA collected from customers – with no obligation to pay the amounts back to its customers. Granting this relief would enrich TOMRA with its customers’ money, and thus violate MCL 205.73(4).

MCL 205.73(4) provides that “[a] person other than this state may not enrich himself or herself or gain any benefit from the collection or payment of the tax.” TOMRA would be enriched with money that it admits is not its own if this Court granted the requested refund.

The only lawful remedy would be to require TOMRA first show that it refunded the collected sales tax to its Michigan and then Treasury will refund an equal amount to TOMRA if, in fact, TOMRA’s sales were exempt. This approach would avoid unjust enrichment which is prohibited by MCL 205.73(3). The Michigan Tax Tribunal agrees. See *Al Serra Chevrolet, Inc v Department of Treasury*, MTT Docket No. 315295, at p 23, Ex BB, (“to avoid unjust enrichment, [the taxpayer] must first show that unlawfully collected sales tax was refunded to its customers prior to a claim for refund with [the Department].” The Court of Appeals has suggested the same. *MJR Group, LLC v Dep’t of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued February 25, 2014 (Docket No. 312745), Ex CC. Other state appellate courts have as well. *Milwaukee Safeguard Ins Co v Selcke*, 324 Ill. App 3d 344, 352, 754 N.E.2d 349, 357, 2001 Ill. App LEXIS 564, 19, 257 Ill. Dec. 691, 699 (Ill. App Ct 1st Dist 2001) (only those who have borne the economic burden of a tax may seek a refund). And so has the United States Supreme Court. *United States v Jefferson Electric Manufacturing Co.*, 291 US 386, 402; 78 L.Ed 2d 200, 104 S.Ct. 3049 (1984); *Anniston Mfg Co v Davis*, 301 U.S. 337, 348 (1937) (“While the taxpayer was undoubtedly hurt when he paid the tax, if he has obtained relief through the shifting of its burden, he is no longer in a position to claim an actual injury and the refusal of a refund”) TOMRA’s own employees agree that this approach would be fair. (Ex DD, Dep Tr H. Spragg, p 28; Ex AA, Dep Tr L. Mailloux, p 37.) However, TOMRA has not paid a single refund to any of its customers. (Ex I, Dep Tr A. Hollyer, p 35; Ex AA,

Dep Tr L. Mailloux, p 35.) TOMRA also is not under any contracts to refund the collected tax to its customers. (Ex B, Matto Dep Tr, p 116.)

MCL 205.62(4) requires TOMRA to “maintain a proper record of all exempt transactions” and TOMRA knew as early as December 2011 that would be obligated to refund the collected sales tax to its customers if Treasury issue the requested refund. (Ex M, December 14, 2011 Letter, (“TOMRA understands that all proceeds resulting from the refund claim must be refunded to the relevant customers.”)) But now, 3 years later, and despite repeated requests, TOMRA has not identified how much each customer would be entitled if this Court were to rule in its favor. (Ex B, Matto Dep, pp 118-119; Ex AA, Mailloux Dep, p 22.) TOMRA has no procedure in place to deal with a \$2.4 million refund. (Ex AA, p 37; Ex DD, Spragg Dep at p 32.) And again, as indicated above, it is more than likely that TOMRA no longer has the documentation necessary to identify how much sales tax it collected from each individual Michigan customer. (Ex. X, Record Retention Policy.)

TOMRA now asks this Court to trust TOMRA with \$2.4 million, plus interest, of its customer’s money. TOMRA’s promise that it will takes the necessary steps in the future to refund money is insufficient to overcome a complete lack of documentary evidence. See *Maiden v Rozwood*, 461 Mich 109, 121; 597 NW2d 817, 824 (1999) (“A reviewing court may not employ a standard citing the mere possibility that the claim might be supported by evidence produced at trial. A mere promise is insufficient under our court rules.”). TOMRA has had ample opportunity to try and substantiate the amount of sales tax it collected from each of its Michigan customers and remitted to Michigan, but has failed to do so. Accordingly, this Court should deny TOMRA’s refund request.

IV. The Court must dismiss TOMRA's refund request because TOMRA cannot carry its burden to show that the industrial processing exemption exempts all of its sales to Michigan customers from Michigan sales tax.

TOMRA has claimed that its sales of reverse vending machines to Michigan customers are exempt under the industrial processing exemption because the reverse vending machines are used in an industrial processing activity. This is incorrect and based on an expansive application of the industrial processing exemption.

A. TOMRA has the burden of proving an entitlement to the industrial processing exemption.

Tax exemptions are disfavored, and the burden of proving an entitlement to an exemption is on the party claiming the right to the exemption. *Andrie Inc v Dep't of Treasury*, 496 Mich 161, 165; 853 NW2d 310 (2014). According to the Supreme Court, the rules governing the interpretation of tax exemptions are that "[e]xemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond reasonable doubt." *Menard Inc v Dept of Treasury*, 302 Mich App 467 (2013) quoting *City of Detroit v Detroit Commercial Coll*, 322 Mich 142, 149; 33 NW2d 737 (1948). Thus, the industrial processing exemption only applies to the reverse vending machine sales if each amount TOMRA wishes to exempt satisfies the specific, plainly expressed requirements in MCL 205.54t "beyond a reasonable doubt." *City of Detroit*, 32 Mich at 149.

B. The plain language of MCL 205.54t dictates that collecting and sorting beverage cans and bottles from consumers is not an exempt industrial process.

The industrial processing exemption exempts from the imposition of sales tax "property sold to the following . . . (a) an industrial processor for use or consumption in industrial processing."

MCL 205.54t(1). The 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 or affixed to and made a structural part of real estate located in another state. 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.” MCL 205.54t(7)(a).

And an “industrial processor” is one “who performs the activity” described in that definition. MCL 205.54t(7)(b).

But the definition of “industrial processing” does not stop there. Rather, in subsections (3), (4), (5), and (6) of the statute, the Legislature identified and adopted 34 specific modifiers identifying the activities and property that either do or do not qualify for the exemption. These modifiers demarcate the contours of “industrial processing”—regardless of whether the activity satisfies the definition of 54t(7)(a).

The language of MCL 205.94o must be read in context and as a harmonious whole. *McCahan v Brennan*, 492 Mich 730, 739-740; 822 NW2d 747 (2012). And when a general definition in a statute conflicts with a specific modifier to that definition, the specific modifier trumps the general definition. *Evanston YMCA Camp v State Tax Comm’n*, 369 Mich 1, 8; 118 NW2d 818 (1962). Therefore, as the Court of Appeals has recognized, even if an activity is “industrial processing” under that definition, when a specified “exclusion” applies, it will take the activity outside of the exemption. *Granger Land Dev Co v Dep’t of Treasury*, 286 Mich App 601, 608-610; 780 NW2d 611 (2009)

Accordingly, meeting the definition of “industrial processing” is only the beginning of the analysis. The analysis is not complete until the Court determines whether any of the exclusions apply. And if an exclusion applies, then the activity is not “industrial processing.”

MCL 205.54t(6)(a) provides one of the many modifiers identifying the contours of “industrial processing.” The subsection states concisely that “[i]ndustrial processing does not include the following activities: . . . (a) Purchasing, *receiving*, or *storage* of raw materials.” (Emphasis supplied.)

A plain reading of this section dictates that “receiving” and “storage” together create raw material storage. This is consistent with the definition of “industrial processing” as the beginning of industrial processing, anything before raw material storage is created is not part of the industrial process. MCL 205.54t(7)(a).

The reverse vending machines that collect returnable beverage cans and bottle from consumers are the means by which raw materials are received and then stored. Therefore, the reverse vending machines TOMRA sold to its Michigan customers who use that property to receive and store raw materials do not qualify for the exemption.

TOMRA has relied on a different modifier MCL 205.54t(3)(i), to assert that its customer’s engage in “recycling” when those customers use the reverse vending machines to receive and store used beverage containers collected from consumers. MCL 205.54t(3)(i) states that “industrial processing includes the following activities: . . . (i) Recycling of used materials for ultimate sale at retail or reuse.” The “recycling” alleged to be engaged in by TOMRA’s customers is the collection of used beverage cans and bottles from consumers. TOMRA will argue that this fits within the plain language of §205.54t(3)(i) and, as such, is industrial processing. But, as indicated above, the collection and any sorting of used beverage containers happens during the receipt and before the storage of raw material. Thus, for TOMRA to prevail on that argument, the Court would have to render the general definition of industrial processing nugatory because, again, “industrial processing” begins after there is raw material storage to remove tangible personal property from. MCL 205.54t(7)(a).

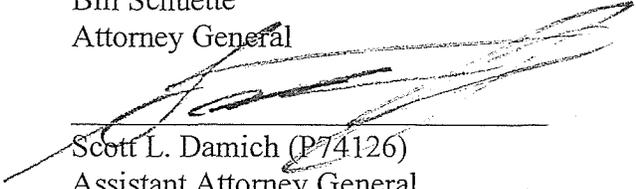
CONCLUSION AND RELIEF REQUESTED

The Court must dismiss the Complaint because TOMRA cannot carry its burden to refute the assessment nor prove that it is entitled to a \$2,458,452 sales tax refund. TOMRA has had ample opportunity during the audit, during the informal conference, and during discovery to show carry its

burden with documentary evidence – and has failed to do so. There is no reason to proceed to a trial. And the Department is entitled to judgment as a matter of law. Accordingly, the Department requests that the Court dismiss the Complaint in its entirety, with prejudice. The Department also requests that the Court grant any other relief that it deems equitable.

Respectfully submitted,

Bill Schuette
Attorney General



Scott L. Damich (P74126)
Assistant Attorney General
Attorney for Defendant
Revenue & Collections Division
P.O. Box 30754
Lansing, Michigan 48909

Dated: February 18, 2015

STATE OF MICHIGAN

COURT OF CLAIMS

TOMRA OF NORTH AMERICA, INC.,

Plaintiff,

Docket No. 16-118-MT

HON. MICHAEL J. TALBOT

v

DEPARTMENT OF TREASURY,
STATE OF MICHIGAN,

Defendant.

JUNE SUMMERS HAAS (P59009)
DANIEL L. STANLEY (P57052)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiff
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

SCOTT L. DAMICH (P74126)
Assistant Attorney General
Michigan Department of Attorney General
Revenue & Collections Division
Attorneys for Defendant
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

AFFIDAVIT OF LAURA MAILLOUX

STATE OF CONNECTICUT)
)ss.
COUNTY OF MILFORD)

I, Laura Mailloux 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 the Director of Shared Financial Services for TOMRA of North America, Inc. (“TOMRA”).
3. As Director of Shared Financial Services, I am responsible for accounts payable, accounts receivable, and billing. In the course of performing my duties and responsibilities for TOMRA, I am familiar with the business activities of TOMRA in Michigan from March 1, 2011 through December 31, 2011 tax (“tax periods in issue”). All of the statements below are true and correct during the tax periods at issue.
4. On February 14, 2015 I made and executed an Affidavit (the “February 2015 Affidavit”) in support of TOMRA in the Court of Claims case captioned *TOMRA of North America, Inc v Dep’t of Treasury*, Docket No. 14-91-MT, and consolidated with *TOMRA of North America, Inc v Dep’t of Treasury*, Docket No. 14-185-MT. The February 2015 Affidavit is attached hereto as Exhibit A.
5. The February 2015 Affidavit contained factual statements that were true for all tax periods in issue in those lawsuits, October 1, 2003 through December 31, 2008.
6. The facts attested to in the February 2015 Affidavit relating to imposition, collection and remittance of Michigan sales tax in paragraphs 6 through 16 are also true and correct for the tax period at issue in the instant matter, March 1, 2011 through December 31, 2011.
7. The examples and discussion of transaction processing set forth in paragraph 17 through 58 also apply to similar transactions in 2011.
8. TOMRA continues to charge its customers sales tax on sales of Container Recycling Machines and parts thereto.

Further, Affiant sayeth not.

Dated: 10 | 3 _____, 2016

Laura Mailloux
Laura Mailloux

Subscribed and sworn to before me
this 3 day of October, 2016

Cheryl Giangregorio

Notary Public
Fairfield County, Shelton
My Commission Expires: _____

CHERYL L. GIANGREGORIO
Notary Public, State of Connecticut
My Commission Expires June 30, 2020

A

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.

Consolidated with Docket No.
14-185-MT

JUNE SUMMERS HAAS (P59009)
BRIAN T. QUINN (P66272)
Honigman Miller Schwartz and Cohn LLP
Attorneys for Plaintiff
222 North Washington Square, Suite 400
Lansing, Michigan 48933
(517) 377-0734

SCOTT L. DAMICH (P74126)
Assistant Attorney General
Michigan Department of Attorney General
Revenue & Collections Division
Attorneys for Defendant
P.O. Box 30754
Lansing, Michigan 48909
(517) 373-3203

AFFIDAVIT OF LAURA MAILLOUX

STATE OF CONNETICUT)
)ss.
COUNTY OF MILFORD)

I, Laura Mailloux, 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 received my degree in accounting from San Diego State University.

3. I have worked for TOMRA of North America, Inc. ("TOMRA") for approximately 15 years.

4. I am currently the Director of Shared Financial Services for TOMRA.

5. As Director of Shared Financial Services, I am responsible for accounts payable, accounts receivable, and billing. In the course of performing my duties and responsibilities for TOMRA, I am familiar with the business activities of TOMRA in Michigan from October 1, 2003 through December 31, 2008 tax ("tax periods in issue"). All of the statements below are true and correct during the tax periods at issue.

6. TOMRA sells and leases Container Recycling Machines, also known as reverse vending machines.

7. TOMRA also sells parts and supplies for Contained Recycling Machines.

8. The only items of tangible personal property TOMRA sold or leased in Michigan during the tax periods in issue were Container Recycling Machines and parts thereto.

9. TOMRA also provides service and sells maintenance contracts to its customers separate from the sale or lease of Container Recycling Machines.

10. Under the maintenance contracts, TOMRA will repair a Container Recycling Machine if it is not working properly.

11. During the tax periods in issue, TOMRA charged its Michigan customers

Michigan sales tax on the sale or lease of Container Recycling Machines, and TOMRA would remit the collected sales tax to Michigan.

12. For the tax periods in issue, invoices sent to Michigan customers listed not only the purchase price of the Container Recycling Machines or parts, or the lease amount, but also listed the Michigan sales tax charged to TOMRA's Michigan customers.

13. During the tax periods in issue, when TOMRA sold a Container Recycling Machine, I or my staff would generate an invoice for that sale. The invoice would charge the customer the full price of the machine and Michigan sales tax. In generating the invoice for the sale of a Container Recycling Machine, I or my staff would, in turn, make an entry to the Machine Sales Account in TOMRA's general ledger for the purchase price exclusive of sales tax and an entry to the Sales Tax Payable Account in TOMRA's general ledger for the sales tax on the transaction that was charged to TOMRA's customer.

14. During the tax periods in issue, when TOMRA leased a Container Recycling Machine through an operating lease, I or my staff would generate monthly installment payment invoices for during the term of the lease. The monthly invoice would charge the monthly lease amount for the machine and the Michigan sales tax. In generating a monthly invoice for an operating lease of a Container Recycling Machine, I or my staff would, in turn, make an entry to the Machine Lease Account in TOMRA's general ledger for the monthly lease payment exclusive of sales tax and an entry to the Sales Tax Payable Account in TOMRA's general ledger for the sales tax on the transaction that was charged to TOMRA's customer.

15. During the tax periods in issue, when TOMRA leased a Container Recycling Machine through a capital lease, I or my staff would treat the capital lease like a financed sale of a Container Recycling Machine. My staff or I would generate a monthly invoice that would

charge the customer the monthly amortized amount of the total of purchase price and Michigan sales tax on the full price. For the capital lease of a Container Recycling Machine, I or my staff would, in turn, make an entry to the Capital Lease Account in TOMRA's general ledger for the monthly lease payment amount, exclusive of sales tax. My staff or I would also make an entry to the Sales Tax Payable Account in TOMRA's general ledger for the entire amount of sales tax on the entire capital lease. Thus, in the case of a capital lease, all sales tax was recorded and then remitted upfront, even though the customer made monthly payments.

16. Gross sales tax from the Sales Tax Payable Account was then paid to Michigan every month during the tax periods in issue.

17. For example, Wal-Mart was one of TOMRA's customers during the tax periods in issue.

18. Attached at Tab A (INV0056703 at TOMRA011964) is a correct printout or reprint of an invoice TOMRA generated and provided to Wal-Mart in connection with the sale of Container Recycling Machine to a Wal-Mart store located in Comstock, Michigan with an invoice date of March 31, 2008.

19. As shown on Tab A, the total amount before tax that TOMRA charged to Wal-Mart in connection with the sale of Container Recycling Machine was \$176,400.

20. For this transaction between TOMRA and Wal-Mart, \$176,400 was booked in TOMRA's general ledger to the Accounts Receivable Machine Sales Account.

21. As shown on Tab A, the total amount of Michigan sales tax TOMRA charged to Wal-Mart was \$10,404, which is 6% of the total invoice amount (\$176,400) less the amount of service installation charges (\$3,000).

22. For this transaction between TOMRA and Wal-Mart, \$10,404 was booked in

TOMRA's general ledger to the appropriate Sales Tax Payable Account.

23. As shown on Tab A, and for this transaction between TOMRA and Wal-Mart, the net total amount TOMRA charged to Wal-Mart for the sale of Container Recycling Machine was \$186,804 (\$176,400 invoice amount plus \$10,404 in Michigan sales tax).

24. Each month during the tax periods in issue, TOMRA would remit to the Department the amount shown in TOMRA's Sales Tax Payable Account.

25. During the tax periods in issue, TOMRA followed this process for each sale or lease of a Container Recycling Machine.

26. During the tax periods in issue, TOMRA would also sell parts and supplies to its customers, as well as provide services. When TOMRA sold a Container Recycling Machine part, I or my staff would generate an invoice for that sale. The invoice would charge the customer the full price of the part and Michigan sales tax. In generating the invoice for the sale of a Container Recycling Machine part, I or my staff would, in turn, make an entry to the Machine Supply Sales Account in TOMRA's general ledger for the purchase price exclusive of sales tax and an entry to the Sales Tax Payable Account in TOMRA's general ledger for the sales tax on the transaction that was charged to TOMRA's customer.

27. For example, Kroger was one of TOMRA's customers during the tax periods in issue.

28. Attached at Tab B (INV0056163 at TOMRA012114) is a correct printout or reprint of an invoice TOMRA generated and provided to Kroger in connection with the sale of a supply (new lock keys) for a Container Recycling Machine to a Kroger store located in Shelby Township, Michigan with an invoice date of March 12, 2008.

29. As shown on Tab B, the total amount before tax that TOMRA charged to Kroger

in connection with the supply sale was \$22, of which \$12 was for supplies and \$10 was for service freight.

30. For this transaction between TOMRA and Kroger, \$22 was booked in TOMRA's general ledger to the Accounts Receivable Supply Sales Account.

31. As shown on Tab B, the total amount of Michigan sales tax TOMRA charged to Kroger was \$.72, which is 6% of the total invoice amount (\$22) less the service freight (\$10).

32. For this transaction between TOMRA and Kroger, \$.72 was booked in TOMRA's general ledger to the appropriate Sales Tax Payable Account.

33. As shown on Tab B, and for this transaction between TOMRA and Kroger, the net total amount TOMRA charged to Kroger for the supply sale was \$22.72 (\$22 invoice amount plus \$.72 in Michigan sales tax).

34. Each month during the tax periods in issue, TOMRA would remit to the Department the amount shown in TOMRA's Sales Tax Payable Account.

35. During the tax periods in issue, TOMRA followed this process for each part sale.

36. Attached at Tab C (INV0056505 at TOMRA012115) is a correct printout or reprint of an invoice TOMRA generated and provided to Kroger in connection with the sale of a part (tipper) for a Container Recycling Machine to a Kroger store located in Imlay City, Michigan with an invoice date of March 24, 2008.

37. As shown on Tab C, the total amount before tax that TOMRA charged to Kroger in connection with the part sale was \$370.75, of which \$360.75 was for the part and \$10 was for service freight.

38. For this transaction between TOMRA and Kroger, \$360.75 was booked in TOMRA's general ledger to the Accounts Receivable Part Sales Account and \$10 was booked in

TOMRA's general ledger to the Accounts Receivable Supply Sales Account.

39. As shown on Tab C, the total amount of Michigan sales tax TOMRA charged to Kroger was \$21.65, which is 6% of the total invoice amount (\$370.75) less the service freight (\$10).

40. For this transaction between TOMRA and Kroger, \$21.65 was booked in TOMRA's general ledger to the appropriate Sales Tax Payable Account.

41. As shown on Tab C, and for this transaction between TOMRA and Kroger, the net total amount TOMRA charged to Kroger for the part sale was \$392.40 (\$370.75 invoice amount plus \$21.65 in Michigan sales tax).

42. Each month during the tax periods in issue, TOMRA would remit to the Department the amount shown in TOMRA's Sales Tax Payable Account.

43. During the tax periods in issue, TOMRA followed this process for each part sale.

44. Attached at Tab D (INV0056375 at TOMRA012116) is a correct printout or reprint of an invoice TOMRA generated and provided to Kroger in connection with the provision of service for a Container Recycling Machine to a Kroger store located in Port Huron, Michigan with an invoice date of March 17, 2008.

45. As shown on Tab D, the total amount TOMRA charged to Kroger in connection with the provision of service was \$155.75.

46. For this transaction between TOMRA and Kroger, \$155.75 was booked in TOMRA's general ledger to the Service Income Account.

47. As shown on Tab D, TOMRA did not charge Kroger Michigan sales tax for the provision of service.

48. During the tax periods in issue, TOMRA followed this process for provision of

service.

49. Meijer was one of TOMRA's customers during the tax periods in issue.

50. Attached at Tab E (INV0055995) is a correct printout or reprint of an invoice TOMRA generated and provided to Meijer in connection with the capital lease of Container Recycling Machine to Meijer with an invoice date of March 7, 2008.

51. As shown on Tab E, the total amount before tax that TOMRA charged to Meijer was \$398,759.90, of which \$292,435.32 was for the monthly capital lease, \$35,656.50 was for maintenance agreement per the capital lease, and \$70,668.08 was for the provision of service maintenance.

52. For this transaction between TOMRA and Meijer, \$328,091.82 (\$292,435.32 plus \$35,656.50) was booked in TOMRA's general ledger to the Capital Lease Account and \$70,688.08 was booked in TOMRA's general ledger to the Service Income Account.

53. As shown on Tab E, the total amount of Michigan sales tax TOMRA charged to Meijer was \$17,546.12, which is 6% of the total invoice amount (\$398,759.90) less the amount of service maintenance charges (\$70,668.08).

54. For this transaction between TOMRA and Meijer, \$17,546.12 was booked in TOMRA's general ledger to the appropriate Sales Tax Payable Account.

55. As shown on Tab E, and for this transaction between TOMRA and Meijer, the net total amount TOMRA charged to Meijer for the lease of Container Recycling Machine and service maintenance charges was \$416,306.02 (\$398,759.90 invoice amount plus \$17,546.12 in Michigan sales tax).

56. Attached at Tab F (TOMRA006856-62) is the corresponding spreadsheet for Invoice 55995, which breaks down the lease amount and sales tax amount on a per-Meijer store

basis.

57. Each month during the tax periods in issue, TOMRA would remit to the Department the amount shown in TOMRA's Sales Tax Payable Account.

58. During the tax periods in issue, TOMRA followed this process for each sale or lease of a Container Recycling Machine.

Further, Affiant sayeth not.

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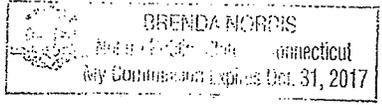
Dated: 2/14 2015

Laura Mailloux
Laura Mailloux

Subscribed and sworn to before me
this 14 day of February 2015

Brenda Morris

Notary Public
Milford County, New Haven
My Commission Expires:



16062289.2

A

TOMRA
 PO Box .00192
 Pittsburgh, PA 15251-0192

CONFIDENTIAL

INV0056703

INV0056703

WALMART

3/31/2008

P.O. #3726915

1

\$186,804.00

Wal-Mart Stores, Inc
 Attn: Dept 8056
 1301 SE 10th Street
 Bentonville, AR 72716

Wal-Mart Store #5064
 6065 Gull Road
 Comstock, MI 49048

3/31/2008	5/30/2008	P.O. #3726915	Net 60 Days	PLACE OF ORIGIN
No Sales Person				
T-83 HCp Combi RVM	2	ea	6.0000	\$23,000.00
			0.0000	\$0.00
			6.0000	\$138,000.00
T-83 HCp Glass RVM		ea.	1.0000	\$18,500.00
			0.0000	\$0.00
			1.0000	\$18,500.00
T-83 HCp Pallet Frames			1.0000	\$14,400.00
			0.0000	\$0.00
			1.0000	\$14,400.00
Accounting System			1.0000	\$2,500.00
			0.0000	\$0.00
			1.0000	\$2,500.00
Installation Charges			1.0000	\$3,000.00
			0.0000	\$0.00
			1.0000	\$3,000.00

\$176,400.00	\$0.00	\$186,804.00
\$0.00	\$10,404.00	\$0.00
INV0056703	INV0056703	\$186,804.00
		TOMRA011964

B

TOMRA
PO Box 200192
Pittsburgh, PA 15251-0192

CONFIDENTIAL

INV0056163 INV0056163
KROGER

3/12/2008 8006213
1 \$22.72

KROGER MICHIGAN
4111 EXECUTIVE PKY
WESTERVILLE, OH 43081

KROGER #654 SHELBY TWP
8260 23 MILE ROAD
SHELBY TWP, MI 48316

KROGER #654 SHELBY TWP

3/12/2008	4/11/2008	8006213	Net 30 Days	
DEBBIE HALL				PLACE OF ORIGIN
			6.0000	\$2.00
NEW LOCK KEYS			0.0000	\$0.00
			6.0000	\$12.00
			1.0000	\$10.00
FREIGHT			0.0000	\$0.00
			1.0000	\$10.00

\$22.00	\$0.00	\$22.72
\$0.00	\$0.72	\$0.00

INV0056163

INV0056163

\$22.72

TOMRA012114

C

TOMRA
 PO Box 200192
 Pittsburgh, PA 15251-0192

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INV0056505

INV0056505

KROGER

3/24/2008

8006414

1

\$392.40

KROGER MICHIGAN
 4111 EXECUTIVE PKY
 WESTERVILLE, OH 43081

KROGER 465
 1821 S CEDAR
 IMLAY CITY, MI 48444

3/24/2008 4/23/2008 8006414
 DEBBIE HALL

Net 30 Days

PLACE OF ORIGIN

TIPPER	1.0000		\$360.75
	0.0000		\$0.00
	1.0000		\$360.75
FREIGHT	1.0000		\$10.00
	0.0000		\$0.00
	1.0000		\$10.00

\$370.75

\$0.00

\$392.40

\$0.00

\$21.65

\$0.00

INV0056505

INV0056505

\$392.40

TOMRA012115

D

TOMRA
PO Box 200192
Pittsburgh, PA 15251-0192

CONFIDENTIAL

INV0056375

INV0056375

KROGER

3/17/2008

1262289 2/13/08

1

\$155.75

KROGER MICHIGAN
4111 EXECUTIVE PKY
WESTERVILLE, OH 43081

KROGER #715
1215 24TH STREET
PORT HURON, MI 48060

3/17/2008 4/16/2008 1262289 2/13/08

Net 30 Days

DEBBIE HALL

PLACE OF ORIGIN

	0.7500	\$101.80
SVCLAB @ 101.80 /HR	0.0000	\$0.00
	0.7500	\$76.35
	1.0000	\$79.40
ZONE B MILES (FEB NUISANCE CALL)	0.0000	\$0.00
	1.0000	\$79.40

\$155.75	\$0.00	\$155.75
\$0.00	\$0.00	\$0.00

INV0056375

INV0056375

\$155.75

TOMRA012116

E

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TOMRA
 PO Box 200192
 Pittsburgh, PA 15251-0192

INV0055995

INV0055995

MEIJER

3/7/2008

P.O. #E552579

1

\$416,306.02

MEIJER INC.
 ATTN: ACCOUNTS PAYABLE
 P O BOX 1610
 GRAND RAPIDS, MI 49501-

3/7/2008	4/6/2008	P.O. #E552579	Net 30 Days	PLACE OF ORIGIN
DEBBIE HALL				
MONTHLY CAP LEASE			1.0000	\$292,435.32
			0.0000	\$0.00
			1.0000	\$292,435.32
MAINTENANCE TO 1620			1.0000	\$35,656.50
			0.0000	\$0.00
			1.0000	\$35,656.50
MAINTENANCE TO 4670			1.0000	\$70,668.08
			0.0000	\$0.00
			1.0000	\$70,668.08

\$398,759.90	\$0.00	\$416,306.02
\$0.00	\$17,546.12	\$0.00
INV0055995	INV0055995	\$416,306.02

F

MONTHLY CAPITAL LEASE INVOICE MARCH 2008

INV 55995

Bill To: Meijer Inc.
Attn: Accounts Payable
P.O. Box 1610
Grand Rapids, MI 49501

Terms: 30 Days

Remit To: TOMRA Processing Center P.O. Box 8500-7200 Philadelphia, PA 19178-7200

Store #:	Location:	Rental Begin Date:	Rental End Date:	Rental Amount:	Tax:	Monthly Total:	Store Total:
11	Grand Rapids	4/1/2006	3/1/2011	1,049.56	42.97	1,092.53	
11	Grand Rapids	11/1/2006	10/1/2011	3,163.35	139.80	3,303.15	4,395.68
12	Grand Rapids	3/1/2006	2/1/2011	544.04	22.64	566.68	
12	Grand Rapids	12/1/2007	11/30/2012	505.67	20.34	526.01	
12	Grand Rapids	11/1/2006	10/1/2011	3,796.02	167.76	3,963.78	5,056.47
16	Battle Creek	3/1/2006	2/1/2011	544.04	22.64	566.68	
16	Battle Creek	12/1/2006	11/1/2011	3,163.35	139.80	3,303.15	3,869.83
19	Muskegon	2/1/2006	1/1/2011	544.04	22.64	566.68	
19	Muskegon	12/1/2006	11/1/2011	4,428.69	195.72	4,624.41	5,191.09
20	Grand Rapids	8/1/2006	7/1/2011	1,049.56	42.97	1,092.53	
20	Grand Rapids	8/1/2006	7/1/2011	4,428.69	195.72	4,624.41	5,716.94
21	Kalamazoo	3/1/2006	2/1/2011	1,049.56	42.97	1,092.53	
21	Kalamazoo	9/1/2006	8/1/2011	3,796.02	167.76	3,963.78	5,056.31
22	Kalamazoo	9/1/2006	8/1/2011	934.00	36.04	970.04	
22	Kalamazoo	9/1/2006	8/1/2011	3,796.02	167.76	3,963.78	4,933.82
23	Lansing	4/1/2006	3/1/2011	1,049.56	42.97	1,092.53	
23	Lansing	1/1/2007	12/1/2011	3,163.35	139.80	3,303.15	4,395.68
24	Lansing	4/1/2006	3/1/2011	1,049.56	42.97	1,092.53	
24	Lansing	10/1/2006	9/1/2011	3,163.35	139.80	3,303.15	4,395.68
25	Okemos	2/1/2006	1/1/2011	544.04	22.64	566.68	
25	Okemos	10/1/2006	9/1/2011	467.00	18.02	485.02	
25	Okemos	10/1/2006	9/1/2011	4,428.69	195.72	4,624.41	5,676.11

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26	Jenison	5/1/2006	4/1/2011	1,049.56	42.97	1,092.53	
26	Jenison	9/1/2006	8/1/2011	3,163.35	139.80	3,303.15	4,395.68
27	Ypsilanti	3/1/2006	2/1/2011	1,049.56	42.97	1,092.53	
27	Ypsilanti	12/1/2006	11/1/2011	3,163.35	139.80	3,303.15	4,395.68
28	Flint	1/1/2006	12/1/2010	519.45	22.64	542.09	
28	Flint	11/1/2006	10/1/2011	3,796.02	167.76	3,963.78	4,505.87
29	Flint	1/1/2006	12/31/2010	544.04	22.64	566.68	
29	Flint	11/1/2006	10/31/2011	3,163.35	139.80	3,303.15	3,869.83
30	Jackson	2/1/2006	1/31/2011	544.04	22.64	566.68	
30	Jackson	1/1/2008	12/31/2012	505.67	20.34	526.01	
30	Jackson	9/1/2006	8/31/2011	3,796.02	167.76	3,963.78	5,056.47
32	Canton	3/1/2006	2/28/2011	544.04	22.64	566.68	
32	Canton	1/1/2008	12/31/2012	505.67	20.34	526.01	
32	Canton	9/1/2006	8/31/2011	3,796.02	167.76	3,963.78	5,056.47
33	Traverse City	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
33	Traverse City	10/1/2006	9/30/2011	4,428.69	195.72	4,624.41	5,716.94
34	Royal Oak	4/1/2006	3/31/2011	1,049.56	42.97	1,092.53	
34	Royal Oak	1/1/2007	12/31/2011	3,163.35	139.80	3,303.15	4,395.68
35	Taylor	3/1/2006	2/28/2011	544.04	22.64	566.68	
35	Taylor	10/1/2007	9/30/2012	572.66	24.36	597.02	
35	Taylor	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	5,127.48
36	Wyoming	2/1/2006	1/31/2011	544.04	22.64	566.68	
36	Wyoming	12/1/2007	11/30/2012	505.67	20.34	526.01	
36	Wyoming	9/1/2006	8/31/2011	4,428.69	195.72	4,624.41	5,717.10
41	Benton Harbor	3/1/2006	2/28/2011	544.04	22.64	566.68	
41	Benton Harbor	12/1/2007	11/30/2012	505.67	20.34	526.01	
41	Benton Harbor	12/1/2006	11/30/2011	3,163.35	139.80	3,303.15	4,395.84
42	Saginaw	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
42	Saginaw	8/1/2006	7/31/2011	3,163.35	139.80	3,303.15	4,395.68
43	Saginaw	3/1/2006	2/28/2011	544.04	22.64	566.68	
43	Saginaw	8/1/2006	7/31/2011	3,796.02	167.76	3,963.78	4,530.46
44	Flint	1/1/2006	12/31/2010	544.04	22.64	566.68	
44	Flint	1/1/2008	12/31/2012	505.67	20.34	526.01	
44	Flint	10/1/2006	9/30/2011	3,796.02	167.76	3,963.78	5,056.47
45	Adrian	12/1/2005	11/30/2010	544.04	22.64	566.68	
45	Adrian	12/1/2006	11/30/2011	3,796.02	167.76	3,963.78	4,530.46
46	Brighton	1/1/2006	12/31/2010	544.04	22.64	566.68	

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46	Brighton	11/1/2007	10/31/2012	515.34	20.92	536.26	
46	Brighton	1/1/2007	12/1/2011	3,796.02	167.76	3,963.78	5,066.72
47	Holland	4/1/2006	3/31/2011	1,049.56	42.97	1,092.53	
47	Holland	11/1/2006	10/31/2011	3,796.02	167.76	3,963.78	5,056.31
48	Bay City	7/1/2005	6/30/2009	558.71	25.00	583.71	
48	Bay City	11/1/2006	10/31/2011	3,796.02	167.76	3,963.78	4,547.49
50	Grand Rapids	4/1/2006	3/31/2011	1,049.56	42.97	1,092.53	
50	Grand Rapids	9/1/2006	8/31/2011	3,163.35	139.80	3,303.15	4,395.68
52	East Lansing	2/1/2006	1/31/2011	544.04	22.64	566.68	
52	East Lansing	7/1/2006	6/30/2011	3,767.75	166.06	3,933.81	4,500.50
53	Waterford	1/1/2006	12/31/2010	544.04	22.64	566.68	
53	Waterford	11/1/2007	10/31/2012	515.34	20.92	536.26	
53	Waterford	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	5,066.72
54	Northville	1/1/2006	12/31/2010	544.04	22.64	566.68	
54	Northville	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	4,530.46
55	Sterling Heights	3/1/2006	2/28/2011	544.04	22.64	566.68	
55	Sterling Heights	1/1/2008	12/31/2012	505.67	20.34	526.01	
55	Sterling Heights	8/1/2006	7/1/2011	3,796.02	167.76	3,963.78	5,056.47
56	Jackson	2/1/2006	1/31/2011	544.04	22.64	566.68	
56	Jackson	11/1/2007	10/31/2012	515.34	20.92	536.26	
56	Jackson	12/1/2006	11/30/2011	4,428.69	195.72	4,624.41	5,727.35
57	Rochester	4/1/2006	3/31/2011	1,049.56	42.97	1,092.53	
57	Rochester	1/1/2007	12/31/2011	3,163.35	139.80	3,303.15	4,395.68
63	Roseville	3/1/2006	2/28/2011	544.04	22.64	566.68	
63	Roseville	10/1/2007	9/30/2012	572.66	24.36	597.02	
63	Roseville	12/1/2006	11/30/2011	3,796.02	167.76	3,963.78	5,127.48
64	Ann Arbor	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
64	Ann Arbor	1/1/2007	12/31/2011	3,163.35	139.80	3,303.15	4,395.68
65	Utica	3/1/2006	2/28/2011	544.04	22.64	566.68	
65	Utica	10/1/2007	9/30/2012	572.66	24.36	597.02	
65	Utica	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	5,127.48
67	Monroe	3/1/2006	2/28/2011	544.04	22.64	566.68	
67	Monroe	8/1/2006	7/31/2011	3,630.35	157.82	3,788.17	
67	Monroe	9/1/2006	8/31/2011	1,265.34	55.92	1,321.26	5,676.11
68	Westland	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
68	Westland	11/1/2007	10/31/2012	643.17	28.59	671.76	
68	Westland	10/1/2006	9/30/2011	3,163.35	139.80	3,303.15	5,067.44

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69	Mt. Pleasant	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
69	Mt. Pleasant	8/1/2006	7/31/2011	4,428.69	195.72	4,624.41	5,716.94
70	Woodhaven	3/1/2006	2/28/2011	544.04	22.64	566.68	
70	Woodhaven	12/1/2007	11/30/2012	505.67	20.34	526.01	
70	Woodhaven	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	5,056.47
71	Muskegon	3/1/2006	2/28/2011	544.04	22.64	566.68	
71	Muskegon	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	4,530.46
72	Belleville	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
72	Belleville	12/1/2006	11/30/2011	3,796.02	167.76	3,963.78	5,056.31
105	Chesterfield	3/1/2006	2/28/2011	1,049.56	45.46	1,095.02	
105	Chesterfield	1/1/2007	12/31/2011	3,163.35	139.80	3,303.15	4,398.17
108	Midland	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
108	Midland	10/1/2006	9/30/2011	3,163.35	139.80	3,303.15	4,395.68
109	Commerce	1/1/2006	12/31/2010	544.04	22.64	566.68	
109	Commerce	12/1/2006	11/30/2011	3,796.02	167.76	3,963.78	4,530.46
113	Corunna	1/1/2006	12/31/2010	544.04	22.64	566.68	
113	Corunna	9/1/2007	8/31/2012	659.66	29.58	689.24	
113	Corunna	11/1/2006	10/31/2011	3,796.02	167.76	3,963.78	5,219.70
119	Kalamazoo	11/1/2006	10/31/2011	1,050.01	43.00	1,093.01	
119	Kalamazoo	9/1/2006	8/31/2011	3,796.02	167.76	3,963.78	5,056.79
122	Wixom	1/1/2006	12/31/2010	544.04	22.64	566.68	
122	Wixom	10/1/2006	9/30/2011	3,163.35	139.80	3,303.15	3,869.83
123	Southgate	6/1/2005	5/31/2009	3,709.06	171.39	3,880.45	
123	Southgate	3/1/2006	2/28/2011	544.04	22.64	566.68	4,447.13
140	Lapeer	11/1/2006	10/31/2011	544.04	22.64	566.68	
140	Lapeer	11/1/2006	10/31/2011	3,796.02	167.76	3,963.78	
140	Lapeer	3/1/2007	2/28/2012	602.34	26.14	628.48	5,158.94
145	Fraser	3/1/2006	2/28/2011	544.04	22.64	566.68	
145	Fraser	10/1/2006	9/30/2011	3,796.02	167.76	3,963.78	4,530.46
158	Grand Rapids	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
158	Grand Rapids	11/1/2007	10/31/2012	653.30	29.20	682.50	
158	Grand Rapids	9/1/2006	8/31/2011	3,163.35	139.80	3,303.15	5,078.18
163	Port Huron	3/1/2006	2/28/2011	544.04	22.64	566.68	
163	Port Huron	11/1/2006	10/31/2011	3,796.02	167.76	3,963.78	4,530.46
171	Cadillac	3/1/2006	2/28/2011	544.04	22.64	566.68	
171	Cadillac	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	4,530.46
172	Howell	1/1/2006	12/31/2010	544.04	22.64	566.68	

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172	Howell	11/1/2007	10/31/2012	515.34	20.92	536.26	
172	Howell	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	5,066.72
173	Ann Arbor	1/1/2006	12/31/2010	2,592.03	115.52	2,707.55	
173	Ann Arbor	1/1/2006	12/31/2010	544.04	22.64	566.68	3,274.23
174	Mason	3/1/2006	2/28/2011	1,049.56	42.97	1,092.53	
174	Mason	10/1/2006	9/30/2011	3,163.35	139.80	3,303.15	4,395.68
175	Three Rivers	10/1/2004	9/1/3008	3,709.06	171.39	3,880.45	
175	Three Rivers	4/1/2006	3/31/2011	1,049.56	42.97	1,092.53	4,972.99
177	Washington TWP	1/1/2006	12/31/2010	3,868.71	172.12	4,040.83	
177	Washington TWP	12/1/2007	11/30/2012	505.67	20.34	526.01	
177	Washington TWP	1/1/2006	12/31/2010	544.04	22.64	566.68	5,133.52
179	Coldwater	3/1/2006	2/28/2011	544.04	22.64	566.68	
179	Coldwater	3/1/2006	2/28/2011	1,953.69	87.22	2,040.91	2,607.59
180	Grand Haven	3/1/2006	2/28/2011	544.04	22.64	566.68	
180	Grand Haven	1/1/2007	12/31/2011	3,796.02	167.76	3,963.78	4,530.46
185	Auburn Hills	1/1/2006	12/31/2010	3,230.37	143.82	3,374.19	
185	Auburn Hills	11/1/2007	10/31/2012	515.34	20.92	536.26	
185	Auburn Hills	1/1/2006	12/31/2010	544.04	22.64	566.68	4,477.13
187	Bay City	3/1/2006	2/28/2011	2,592.03	115.52	2,707.55	
187	Bay City	3/1/2006	2/28/2011	544.04	22.64	566.68	3,274.23
188	Livonia	1/1/2006	12/31/2010	544.04	22.64	566.68	
188	Livonia	1/1/2006	12/31/2010	2,592.03	115.52	2,707.55	3,274.23
191	Plainwell	3/1/2006	2/28/2011	544.04	22.64	566.68	
191	Plainwell	3/1/2006	2/28/2011	1,953.69	87.22	2,040.91	2,607.59
193	Ludington	3/1/2006	2/28/2011	544.04	22.64	566.68	
193	Ludington	3/1/2006	2/28/2011	1,953.69	87.22	2,040.91	2,607.59
194	Charlotte	10/1/2004	9/30/2008	2,532.92	117.88	2,650.80	
194	Charlotte	4/1/2006	3/31/2011	544.04	22.64	566.68	3,217.48
195	Battle Creek	2/1/2006	1/31/2011	544.04	22.64	566.68	
195	Battle Creek	2/1/2006	1/31/2011	3,230.37	143.82	3,374.19	3,940.87
196	Portage	11/1/2005	10/31/2010	544.04	22.64	566.68	
196	Portage	11/1/2005	10/31/2010	3,230.37	143.82	3,374.19	3,940.87
197	Oxford	1/1/2006	12/31/2010	544.04	22.64	566.68	
197	Oxford	11/1/2007	10/31/2012	515.34	20.92	536.26	
197	Oxford	1/1/2006	12/31/2010	2,592.03	115.52	2,707.55	3,810.49
199	Caledonia	2/1/2005	1/31/2009	558.71	25.00	583.71	
199	Caledonia	2/1/2005	1/31/2009	3,098.40	143.28	3,241.68	3,825.39

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201	Greenville	11/1/2005	10/31/2010	471.67	28.30	499.97	
201	Greenville	11/1/2005	10/31/2010	544.04	22.64	566.68	
201	Greenville	12/1/2006	11/30/2011	2,697.35	111.84	2,809.19	3,875.84
203	Big Rapids	2/1/2006	1/31/2011	544.04	22.64	566.68	
203	Big Rapids	2/1/2006	1/31/2011	2,592.03	115.52	2,707.55	3,274.23
205	Lowell	2/1/2006	1/31/2011	544.04	22.64	566.68	
205	Lowell	2/1/2006	1/31/2011	2,592.03	115.52	2,707.55	3,274.23
208	Lincoln Park	9/1/2004	8/31/2008	1,035.48	45.08	1,080.56	
208	Lincoln Park	9/1/2004	8/31/2008	3,098.40	143.28	3,241.68	4,322.24
209	DeWitt	2/1/2007	1/31/2012	776.36	36.58	812.94	
209	DeWitt	2/1/2007	1/31/2012	3,236.10	144.17	3,380.27	4,193.21
210	Grand Ledge	2/1/2006	1/31/2011	544.04	22.64	566.68	
210	Grand Ledge	2/1/2006	1/31/2011	3,702.04	172.12	3,874.16	4,440.84
216	Walker	2/1/2005	1/31/2009	558.71	25.00	583.71	
216	Walker	2/1/2005	1/31/2009	3,098.40	143.28	3,241.68	
216	Walker	11/1/2006	10/31/2011	544.04	22.64	566.68	4,392.07
217	Holland	2/1/2005	1/31/2009	558.71	25.00	583.71	
217	Holland	2/1/2005	1/31/2009	3,098.40	143.28	3,241.68	3,825.39
221	Grandville	11/1/2005	10/31/2010	544.04	22.64	566.68	
221	Grandville	11/1/2005	10/31/2010	3,230.37	143.82	3,374.19	3,940.87
222	Madison Heights	2/1/2006	1/31/2010	544.04	22.64	566.68	
222	Madison Heights	2/1/2006	1/31/2010	3,868.71	167.37	4,036.08	4,602.76
226	Rockford	7/1/2004	6/30/2008	869.32	35.11	904.43	
226	Rockford	7/1/2004	6/30/2008	3,663.90	168.69	3,832.59	4,737.01
227	White Lake	2/1/2005	1/31/2009	558.71	25.60	584.31	
227	White Lake	2/1/2005	1/31/2009	3,098.84	143.28	3,242.12	3,826.43
229	Marysville	3/1/2005	2/28/2009	558.71	25.60	584.31	
229	Marysville	3/1/2005	2/28/2009	3,098.40	143.28	3,241.68	3,825.99
231	Southfield	3/1/2005	2/28/2009	558.71	25.60	584.31	
231	Southfield	3/1/2005	2/28/2009	3,098.40	143.28	3,241.68	3,825.99
232	Fruitport	2/1/2006	1/31/2011	544.04	22.64	566.68	
232	Fruitport	2/1/2006	1/31/2011	3,230.37	143.82	3,374.19	3,940.87
233	Allen Park	2/1/2007	1/31/2012	776.36	36.58	812.94	
233	Allen Park	2/1/2007	1/31/2012	3,236.10	144.17	3,380.27	4,193.21
237	Warren	12/1/2006	11/30/2011	776.36	36.58	812.94	
237	Warren	12/1/2006	11/30/2011	3,163.35	139.80	3,303.15	4,116.09
242	New Haven	7/1/2007	6/30/2012	4,102.31	189.79	4,292.10	4,292.10

Mailoux Affidavit

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303	Ionia	6/1/2005	5/31/2009	558.71	25.60	584.31	
303	Ionia	6/1/2005	5/31/2009	3,098.40	143.28	3,241.68	3,825.99
312	Grand Rapids	2/1/2008	1/31/2013	4,735.34	210.47	4,945.81	4,945.81
Total:				<u>398,759.90</u>	<u>17,546.12</u>	<u>416,306.02</u>	<u>416,306.02</u>



1999 WL 284148 (Mich. Tax Tribunal)

Michigan Tax Tribunal

State of Michigan

LOUIS PADNOS IRON & METAL COMPANY, PETITIONER

v.

MICHIGAN DEPARTMENT OF TREASURY, RESPONDENT

MTT Docket No. 240432

March 31, 1999

OPINION AND JUDGMENT

*1 Petitioner, Louis Padnos Iron & Metal Company, appeals a use tax assessment issued by Respondent, Michigan Department of Treasury. Petitioner contests the disallowance of a use tax exemption on certain equipment used by Petitioner in its recycling operation. Kevin Dougherty, Attorney at Law, appeared on behalf of Petitioner. Ross Bishop, Assistant Attorney General, appeared on behalf of Respondent. The hearing was March 12, 1998.

This case requires the Tax Tribunal to decide whether hoppers and rolloffs, radiation detection equipment, Freon extracting equipment and cranes are equipment used in industrial processing. If the equipment is used in industrial processing, it is exempt from use tax.

Respondent considers recycling industrial processing. So the Tribunal must determine when Petitioner's recycling operation begins. Then any equipment used from that point forward, until production ends, is exempt from use tax. Conversely, any equipment used before the beginning point is not exempt.

The Tribunal concludes that the Freon extracting equipment and the cranes are exempt, since they are used after or when processing begins. But the hoppers and rolloffs, and the radiation detection equipment are not exempt, since they are used before processing begins.

The Tribunal will have a separate findings of facts and conclusions of law for each category of equipment.

Background

This proceeding is an appeal of final assessment H710196 issued on October 18, 1996 by Respondent for the tax period of January 1, 1991 to December 31, 1994.

Petitioner contends that the subject equipment is exempt from use tax under the industrial processing exemption of the Michigan Use Tax Act. [MCL 205.94](#); MSA 7.555(4):

Sec. 4 The tax levied does not apply to the following:

...

(g) **Industrial processing.** Property sold to the following: (i) An industrial processor for use or consumption in industrial processing.... Industrial processing does not include *receipt* and *storage* of raw materials purchased.... “[I]ndustrial processor” means a person who transforms, alters, or modifies tangible personal property by *changing the form, composition or character of the property*.... (emphasis added).

Respondent contends that, although recycling qualifies Petitioner as an industrial processor, the subject equipment is not involved in industrial processing as defined by the statute.

Petitioner is a recycler with several centers in Michigan. Petitioner collects obsolete equipment and production scrap, and then recycles them. They are separated by type and grade. These materials are then sold to Petitioner's customers.

The controversy revolves around several pieces of equipment that Petitioner uses in its recycling operation:

1. Hoppers and rollofts. Hoppers and rollofts are large containers which are placed at Petitioner's suppliers' locations. The hoppers and rollofts are filled by Petitioner's suppliers. The hoppers are generally located within a supplier's plant and, when filled by the supplier, are taken out to the rollofts. The supplier then dumps the hoppers' contents into the rollofts. When the rollofts are full, Petitioner picks them up and takes them to his plant. Once there, the contents of the rollofts are dumped on the ground in a pile, and the rollofts are again taken, empty, to the supplier's location, to be filled again.

*2 2. Radiation detection equipment. Before any raw material enters Petitioner's plants, Petitioner screens all loads for radiation contamination. If a load is contaminated, it is not accepted, and Petitioner notifies the appropriate governmental agency.

3. Freon extraction equipment. This equipment is used to recover Freon from various obsolete equipment like refrigerators and air conditioners.

4. Cranes. Cranes have two functions: (1) to separate and sort out piles of material received from suppliers, and (2) to load the piles into shredders, crushers and other machines, which further separate the piles according to type or grade. (Respondent has granted a partial exemption for the second function).

HOPPERS and ROLLOFFS

Petitioner's Contentions

Petitioner makes two arguments for exempting the rollofts and hoppers from use tax. First, Petitioner contends that the rollofts and hoppers are used by the supplier to sort industrial waste, which is a form of processing. Second, Petitioner contends that the hoppers and rollofts are exempt under 1979 AC, 205.90(5), which exempts equipment used for quality control and for the disposal of industrial scrap:

Industrial processing includes the following activities:

...

(b) ... quality control.

...

(e) Disposal of production scrap and waste.

Under Rule 205.90, industrial processing includes both quality control and the disposal of production scrap and waste. Petitioner contends that the rolloffs and hoppers control quality by minimizing the mixing of different types of waste and that the suppliers use the hoppers and rolloffs to dispose of production scrap and waste.

Respondent's Contentions

“ ... Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer” MCL 205.94(g); MSA 7.555(4)(g). Further 1979 AC, R 205.90 states, in relevant part:

(3) ... The industrial processing exemption does not include:

(d) Tangible personal property used for receiving and storage of materials, supplies, parts and components purchased by the user or consumer.

Respondent contends the rolloffs and hoppers are used exclusively in the receipt and storage of raw materials and, as a result, are not eligible for the exemption. Respondent also states that Mr. Padnos testified that the hoppers and rolloffs were used in a materials acquisition function. Respondent then explains how the hoppers and rolloffs are used and why their use is not part of industrial processing.

The hoppers are located at the suppliers' locations where they are filled with the raw materials Petitioner uses. The hoppers are then emptied into the rolloffs, which are then brought to Petitioner's facility and emptied. The rolloffs are then taken back to the supplier's location. This activity does not constitute “industrial processing,” as it does not involve “transform[ing], alter[ing], or modify[ing] the tangible personal property by changing the form, character or composition” of the product ultimately sold at retail. It involves only the receipt of a raw material, a function expressly excluded from the industrial processing exemption.

FREON EXTRACTION

Petitioner's Contentions

*3 Freon extraction changes the character of the property. Before refrigerators or air conditioners are shredded or crushed, any remaining Freon gas must be removed under federal law. Petitioner uses specialized equipment to extract and store different types of Freon gas, which is also resold as a raw material. So Petitioner contends that the Freon extraction equipment is entitled to the exemption.

Respondent's Contentions

Freon extracting equipment is not exempt. It does not transform, alter, or modify the Freon. Likewise, the item from which the Freon was removed, the air conditioner or refrigerator, is not changed. The Freon removal equipment does not transform, alter or modify the air conditioner or refrigerator by changing its form, composition or character.

RADIATION DETECTION EQUIPMENT

Petitioner's Contentions

Radiation detection equipment is exempt because it is used for quality control under Rule 205.90(5)(b). Petitioner uses radiation detectors in a quality control function to ensure that no radioactive material contaminates any other materials in the plant. Petitioner could hypothetically test its products for radiation at the end of the process, in which case Mr.

McDonald, Treasury's witness, said the Department would allow an exemption. Petitioner contends that performing this quality control function at the end of the process instead of the beginning would be "inefficient, costly, and stupid."

Respondent's Contentions

Radiation detection equipment is not exempt. Mr. Padnos clearly testified that the radiation detection equipment is used only in the receiving portion of his facility. Mr. Padnos indicated that loads of raw material are scanned for radioactivity, and if found, the entire load of raw material is rejected. If no radioactivity is detected, Petitioner accepts the load. So Respondent contends that the radiation detection equipment does not transform, alter, or modify the raw material scanned. The raw material accepted is the same as it was when it entered Petitioner's facility. The same can be said for the rejected material. It does not change either. An examination of a raw material to see if it meets the purchaser's qualification is a receipt function, not an industrial processing one.

CRANES

Petitioner uses cranes for two purposes. First, cranes are used to spread out, sort, and separate different types and grades of materials. Second, cranes are used to pick up automobiles and other heavy items and load them into the shredders and crushing equipment. The Department agrees that the second purpose is exempt, but not the first purpose.

Petitioner's Contentions

Petitioner's customers do not simply purchase steel, iron or aluminum. Petitioner's customers purchase materials by ordering specific types and grades of materials. The types and grades of materials are defined by guidelines used in the recycling industry. Scrap material does not arrive at Petitioner's facilities in consistently separated lots, and separating the various types and grades of the scrap material Petitioner purchases is a fundamental step in Petitioner's process of making a quality product for its customers.

*4 Petitioner views Respondent's position that sorting is not industrial processing as contrary to the statutory and administrative definition of "industrial processing." [MCL 205.94\(g\)](#); [MSA 7.555\(4\)\(g\)](#) requires that the form, composition or character of tangible property must be changed to qualify for industrial processing. The Department's definition of processing is more expansive, defining industrial processing as "... changing the form, composition, quality, combination or character of [tangible] property...." [Rule 205.90\(2\)](#).

Petitioner contends that the cranes are used to change the character, composition, or, at the very least, to change the combination of a worthless pile of junk into valuable, salable raw material that can be sold to manufacturing industries. Specifically, cranes are used to sort the industrial waste before it is put in crushers and shredders.

Petitioner also argues that any equipment used partially in industrial processing is entitled to a full exemption. [Michigan Allied Dairy Ass'n v State Board of Tax Admin](#), 302 Mich 643; 5 NW2d 516 (1942); [Michigan Bell Telephone Co v Dep't of Treasury](#), ___ Mich App ___, ___NW2d ___ (1998).

Respondent's Contentions

Respondent argues that sorting is not consistent with the statutory definition of industrial processing, and neither the Tax Tribunal nor the courts have the authority to expand an exemption beyond that intended by the legislature. Respondent also argues that Petitioner's use of the cranes in sorting just places raw materials in separate piles so that when Petitioner does begin its industrial processing, only the material which Petitioner wants to process is actually processed. So Respondent concludes that the crane use which has been denied an exemption is the crane's use in the receipt and storage of raw materials, which is expressly non-exempt under the statute.

Respondent also views Petitioner's position on partial exemption status as contrary to the Tribunal's findings in *Prof. Guidance Systems v Dep't of Treasury*, 7 MTTR 317 (Docket No. 111890, May 11, 1992), where the notion that partial use of equipment in an exempt matter results in a complete exemption was rejected. The Tribunal was affirmed by the Court of Appeals in an unpublished opinion. *Professional Guidance Systems v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided August 29, 1995 (Docket No. 152883).

FINDINGS OF FACT

The Tribunal finds that:

1. Recycling is industrial processing.
2. Petitioner's business has two functions: 1) a collection function where Petitioner collects and transports its suppliers' production waste and scrap, and 2) a processing function which recycles scrap and obsolete items.
3. Petitioner's suppliers' production waste and scrap are Petitioner's raw materials.

CONCLUSIONS OF LAW

Equipment used in industrial processing is exempt from use tax. The pertinent parts of [MCL 205.94](#); [MSA 7.555\(4\)](#) are:
*5 Sec. 4. The tax levied does not apply to the following:

...

(g) Property sold to the following: (i) An industrial processor for use or consumption in industrial processing.... Industrial processing does not include *receipt* and *storage* of raw materials purchased.... “[I]ndustrial processor” means a person who transforms, alters, or modifies tangible personal property by changing the form, *composition* or character of the property.... (emphasis added).

The Tribunal also notes that tax “exemption provisions must be strictly construed in favor of the taxing agency.” *Evanston YMCA v State Tax Commission*, 369 Mich 1, 7; 118 NW2d 818 (1962). Similarly, the Supreme Court *In re Smith Estate*, 343 Mich 291, 297; 72 NW2d 287 (1955), indicated that:

[I]t is well to observe that our point of departure in the interpretation of any taxing act is the consideration that a preference in or an exemption from taxation must be clearly defined and without ambiguity. Taxation, like rain, falls on all alike. True, there are, in any taxing act, certain exceptions, certain favored classes, who escape the yoke. But one claiming the unique and favored position must establish his right thereto beyond doubt or cavil.

Since Respondent admits that Petitioner is an industrial processor, all of its equipment could qualify for the exemption. In other words, Respondent considers recycling industrial processing. So the Tribunal must determine when Petitioner's recycling operation begins. Then any equipment used from that point forward, until production ends, is exempt from use tax. Conversely, any equipment used prior to the beginning point is not exempt.

HOPPERS and ROLLOFFS

Petitioner uses the hoppers and rolloffs before processing begins; i.e., in the receipt and storage of raw materials. MCL 205.94 specifically precludes exemption for property used in the receipt and storage of raw materials. So the hoppers and rolloffs are not exempt.

Petitioner argues that processing begins before raw materials are even delivered to Petitioner's plant. This argument is specious. The record shows that Petitioners' hoppers collect industrial waste that Petitioner's suppliers' machines discard during the *supplier's* industrial process. In short, the hoppers are bins merely used to collect waste at the tail-end of the suppliers' industrial process. The supplier also does all the labor; i.e., putting the waste into the hopper and then emptying the hopper into the rolloff.

The Tribunal notes that Petitioner presented no documentation of any contractual relationship that exists between itself and its suppliers of raw materials showing that their industrial processes are integrated. So the Tribunal has no reason to view the hoppers and rolloffs as anything other than containers used to receive, store and transport raw materials.

The Tribunal also notes that Petitioner has not even screened the raw material/scrap for radioactivity, which means Petitioner has not even accepted the material yet So Petitioner cannot claim an exemption for equipment that is used to deliver raw materials to its facility, especially when Petitioner has not even decided to accept the raw material, much less process it.

*6 Petitioner's first alternative argument is that it is entitled to the exemption under Rule 205.90: ... (5) "Industrial processing includes ... (e) disposal of production scrap and waste." This argument is also specious because it is the *supplier* who is disposing of production scrap at the end of its industrial process, not Petitioner. However, Rule 205.90 also states that: ... (6) "Industrial processing does not include ... (a) ... receiving and storage of raw materials." If we interpret the rule the way Petitioner reads it, the rule would be self-contradictory because it would be exempting from tax and taxing the same property. It would also clearly be contrary to the statute it is meant to interpret because the statute specifically denies the exemption to property used in the receipt and storage of raw materials. A common sense reading of the rule requires that it be read from the perspective of an individual processor. An individual processor cannot exempt property used in the receipt and storage of his raw materials (Rule 205.90(6)(a)), but can exempt property used at the end of *his/her own* process to dispose of scrap and waste (Rule 205.90(5)(e)). So the scrap and waste are by-products of the same raw materials that produce finished goods, and were also the same raw materials whose receipt and storage were specifically excluded. In other words, the rule only makes sense applied to one process where the same manufacturer both buys the raw materials and disposes of its own scrap.¹

Petitioner's reading of Rule 205.90 would also contradict the statute which it interprets. MCL 205.94 specifically prohibits in plain language equipment used in "*receipt and storage* of raw materials." (emphasis added).

The Tribunal also finds no merit in Petitioner's other argument that the rolloffs and hoppers are exempt under Rule 205.90(5)(b) because they are used in quality control. Again, Petitioner's industrial process has not even begun and Petitioner is claiming to be engaged in quality control. Petitioner presented no documentation that it is involved in its suppliers' quality control.

The Tribunal has concluded that the hoppers and rolloffs are used exclusively in the receipt and storage of raw materials and thus, are not exempt. So there is no need to address Petitioner's alternative argument that the equipment, since it is used partially in industrial processing, is entitled to a full exemption.

FREON EXTRACTION EQUIPMENT

The Freon extraction equipment is used after processing begins because an obsolete refrigerator, for example, has already been delivered to the plant, checked for radiation, and segregated from other raw materials. Further, the recycling of obsolete refrigerators requires Petitioner to first extract the Freon.

Freon extraction is a fundamental step in recycling. The Tribunal notes that if one were manufacturing refrigerators, installing Freon would clearly be one of the steps in industrial processing. So, logically, deconstructing a refrigerator in a recycling process would entail removing the Freon as one of the steps. So Freon extraction is part of industrial processing because it occurs after processing begins, and because it is an obvious step in the recycling process. Therefore, the Freon extraction equipment is exempt.

RADIATION DETECTION EQUIPMENT

*7 Petitioner's radiation detection equipment is not used in industrial processing. It is used before processing begins to inspect raw materials being delivered to Petitioner's plant for radiation contamination. Petitioner contends that the equipment is used in quality control, but confuses production quality control with the inspection of raw materials. The Tribunal will not establish a bright-line rule as to where quality of the production process is best tested, but will clearly not extend it to a raw materials inspection that occurs before industrial processing has even begun. So Petitioner is correct that detecting for radiation at the end of the process would be "inefficient, costly and stupid." However, this does not make raw material inspections part of production quality control.

CRANES

The cranes are exempt since they are used exclusively in Petitioner's industrial processing. The cranes are used in the first step of Petitioner's recycling, since they are used to change the physical composition of raw materials by sorting them.

This holding is consistent with MCL205.94: "[I]ndustrial processor" means a person who transforms, alters, or modifies tangible personal property by changing the form, *composition* or character of the property..." (emphasis added). Composition is not defined in the statute. "Where the legislator does not define a word, the ordinary meaning of the word applies and reference to a dictionary is appropriate to ascertain what the ordinary meaning of the word is." *International Place Apartments v Ypsilanti Township*, 216 Mich App 104, 108; 548 NW2d 668 (1996). Composition is "[t]he result or product of composing; a mixture or compound." *The American Heritage College Dictionary: Third Edition* (1993). The Tribunal notes that compounds are distinguished from mixtures by the way they are separated. A mixture can be separated by physical means, whereas a compound can be separated only by chemical means. So Petitioner's processing begins when decomposition begins.² In other words, processing begins when the various raw materials are sorted by the cranes into homogenous piles because their composition has been physically changed. Respondent contends that there is no change to the raw material separated by Petitioner in this regard. Respondent is incorrect. There is no chemical change in the pile's composition because it is not a compound, but there is a physical change in the pile's composition because it is a mixture. Therefore, we hold that separating heterogenous piles of raw materials into homogenous piles changes the heterogenous pile's physical composition and is the first step in Petitioner's industrial process. So the cranes are exempt under MCL205.94(g) because they are used in industrial processing.

Since the Tribunal has concluded that the cranes are used exclusively in industrial processing, there is no need to address Petitioner's alternative argument that the cranes are also exempt under *Michigan Bell*.

JUDGMENT

*8 IT IS ORDERED that the assessment is affirmed for the hoppers and rollofs, and the radiation detection equipment.

IT IS FURTHER ORDERED that the assessment is canceled for the Freon extraction equipment, and the cranes.

Charles C. Fuller
Tribunal Judge Presiding

Footnotes

- 1 The Tribunal is not stating there would never be circumstances where two firms might have a contractual arrangement where their manufacturing processes might be legally integrated and thus, constitute one process. However, there is no such contractual arrangement in this case.
- 2 The reverse is true for a traditional manufacturer. Processing begins when composition begins.

1999 WL 284148 (Mich. Tax Tribunal)

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P. O. Box 30036
Lansing, Michigan 48909-7536

SFA



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Telephone: (517) 373-5383
Fax: (517) 373-1986
TDD: (517) 373-0543

Senate Bill 544 (as enrolled)
House Bill 4744 (as enrolled)
House Bill 4745 (as enrolled)
House Bill 4586 (as enrolled)
Sponsor: Senator Mike Rogers (Senate Bill 544)
Representative Nancy Cassis (House Bill 4744 & 4745)
Representative Rick Johnson (House Bill 4586)
Senate Committee: Finance
House Committee: Tax Policy

PUBLIC ACT 116 of 1999
PUBLIC ACT 117 of 1999
PUBLIC ACT 115 of 1999
PUBLIC ACT 70 of 1999

Date Completed: 7-19-99

RATIONALE

The State's primary tax on business is prescribed in the Single Business Tax (SBT) Act, which has been in effect since 1976. The tax replaced seven business taxes that were in effect at the time. It was, and has remained, unique among the states in terms of its approach toward business taxation. The SBT is considered a value-added tax because it imposes tax on value added to products at each step of production and distribution; that is, it attempts to measure a firm's business activity, and tax that activity, rather than simply tax a firm's profits or receipts as is common in other states.

Even though the SBT has been modified substantially over the years, since its inception it has generated widespread complaints from members of the business community. Many have long contended that it is unfair to tax a business on activity rather than profit, and that including such expenses as health care, other benefits, and wages in a business's tax base discourages hiring new employees. Others have complained that the tax causes a high tax burden for Michigan businesses compared with the taxation of businesses in other states. Some people believe that further modifications to the SBT Act would never completely remove the problems that it has caused for business, and the tax therefore should be entirely phased out.

Further, although the Act's capital acquisition deduction (CAD) was designed to provide tax relief to business, it too has been subject to challenges and changes. Prior to 1995, the CAD allowed a business to calculate the total cost of all its purchases of tangible assets, both in and out of Michigan during the tax year, and then apportion this amount between Michigan and elsewhere using the same factors used to apportion its tax base (property, payroll, and sales). The apportioned amount was then subtracted from the firm's Michigan tax base to arrive at its adjusted tax base. Under this provision, it was

possible for a multistate company not to make any new purchases of tangible assets in Michigan but still receive a CAD. It was also possible for a multistate business that made substantial new physical investments in Michigan to receive a CAD that was less than its total investments in Michigan. To provide an incentive for investment in the State, the Act was amended to make the CAD available only for capital investments made in Michigan. The CAD has been the subject of several court challenges through the years by out-of-State firms that claimed that the SBT unfairly burdened them compared with in-State firms, and thus violated the Commerce Clause of the U.S. Constitution. Reportedly, the new CAD has generated new challenges in court. It has been suggested that the CAD be eliminated in favor of an investment tax credit that is used in several other states.

In another matter involving business taxation, the Michigan Supreme Court recently let stand a Michigan Court of Appeals decision (*Michigan Bell Telephone v Department of Treasury*, 229 Mich App229 (1998)) that concluded that the Use Tax Act did not require a taxpayer to apportion the use of equipment or other purchases between exempt and nonexempt uses. The Court of Appeals ruled that Michigan Bell was entitled to a full use tax exemption for purchases of equipment, even though a portion of the equipment was used for nonexempt purposes. For many years, the Department has required businesses remitting use taxes and sales taxes to apportion the applicable tax between exempt and nonexempt uses. It has been suggested that the sales and use tax statutes be amended to authorize apportionment and thus codify what has been the Department's long-standing policy.

CONTENT

House Bill 4745 amended the Single Business

Tax Act to reduce the tax rate by .1% per year under certain conditions; repeal the tax if the tax rate is reduced to 0.0%; replace the capital acquisition deduction with an investment tax credit; prescribe the tax base of a foreign person; and allow a corporation that restructured after 1998, and no longer is a member of an affiliated group, to calculate its apportionment sales factor for five years under certain circumstances. Senate Bill 544 amended the General Sales Tax Act and House Bill 4744 amended the Use Tax Act to specify that exemptions allowed under the Acts are to be apportioned based upon exempt use versus total use; revise and expand the industrial processing exemption; prescribe the application of the taxes to telecommunications equipment; revise the sales and use tax exemption for nonprofit hospitals; create an extracting operations exemption; create a bad debt deduction; provide for the direct payment of the use tax to the Department of Treasury; and expand and extend the sales tax exemption for rolling stock. House Bill 4586 amended the Use Tax Act to reinstate the use tax exemption for rolling stock.

The bills were tie-barred to each other.

House Bill 4745

SBT Reduction

Currently, the SBT rate is 2.3% of the adjusted tax base of every person with business activity in the State. The bill provides that beginning January 1, 1999, the tax rate will be reduced by .1% each January 1 if the Comprehensive Annual Financial Report for a State fiscal year (published pursuant to the Management and Budget Act) reports an ending balance of more than \$250 million in the Countercyclical Budget and Economic Stabilization Fund for that fiscal year. The Department of Treasury must annualize the rate as necessary, and the applicable annualized rate will be imposed.

Investment Tax Credit

Currently, the CAD generally allows a taxpayer, after allocation or apportionment, to deduct the amount paid or accrued in a taxable year for tangible assets that are (or under the Internal Revenue Code will become) eligible for depreciation for Federal income tax purposes, provided that the assets are located in Michigan for use in a business activity in this State. Under the bill, the current provisions apply to tax years beginning before January 1, 2000; for tax years after 1999, a taxpayer may claim an investment tax credit (ITC) for a percentage of the costs paid or accrued in a taxable year for tangible assets physically located in Michigan.

The bill contains language that prescribes the calculation of the investment tax credit. Essentially the credit will equal a percentage of the amount a firm invests in tangible assets in Michigan, for a tax year beginning after December 31, 1999; for subsequent tax years the percentage will be reduced each year the tax rate is reduced. The ITC will be calculated as follows:

$$\frac{(\text{Current Year Tax Rate} \times .85\%) \times ((A+B+C) - [D+E+F])}{2.3\%}$$

Under the formula, A, B, and C represent the costs paid or accrued in a taxable year for tangible assets and mobile tangible assets as provided in the bill; D, E, and F represent the gross proceeds of the sale or other disposition of assets A, B, and C, and the transfer out of State of those assets that are not mobile tangible assets.

If the ITC for a tax year is determined to be negative, the absolute value of the amount must be added to the taxpayer's tax liability. If the credit for a tax year and any unused carryforward of the credit exceed the tax liability of the taxpayer for the tax year, the excess may not be refunded, but may be carried forward as an offset to the tax liability in nine subsequent tax years or until the excess credit is used up, whichever occurs first. The ITC must be taken before any other credit under the Act. The credits under other provisions of the Act must be calculated using the tax liability after the calculation of the investment tax credit and, to the extent provided by law, after the calculation of credits under other provisions of the Act.

Under the Act, if a taxpayer's adjusted tax base is greater than 50% of gross receipts plus adjustments, the adjusted tax base may be reduced by the excess, at the option of the taxpayer. The bill provides that a taxpayer who chooses this option may not claim the investment tax credit.

Further, the Act allows a taxpayer to compute the percentage of tax base attributable to compensation; if the percentage exceeds 63%, the taxpayer may reduce the adjusted tax base by the amount that exceeds 63%. The bill provides that if a taxpayer makes this reduction, then the taxpayer's investment tax credit must be reduced by a percentage, determined by multiplying the percentage reduction to the adjusted tax base claimed by the taxpayer by the result of the following equation:

$$\frac{A}{(A/2.3\%) \times .85\%}$$

where A = current year tax rate

The Act provides penalties for underpayment of estimated SBT liability. The bill provides that a penalty may not be assessed for a taxpayer's first tax year after 1999 if the taxpayer claims an investment tax credit for the first time on the annual return, and

a penalty would not have applied if the taxpayer had claimed a CAD on that return.

Foreign Entities

The bill specifies that for tax years beginning after 1999, the tax base of a foreign person (except an insurer) includes the sum of "business income" and the adjustments allowed under the Act that are related to United States business activity, whether or not the foreign person is subject to taxation under the Internal Revenue Code (IRC). The bill defines "foreign person" as either an individual who is not a United States resident, whether or not the individual is subject to taxation under the IRC; or a person formed under the laws of a foreign country or a political subdivision of a foreign country, whether or not the person is subject to taxation under the IRC. "Business income", for a foreign person, means gross income attributable to the taxpayer's U.S. business activity and gross income derived from sources within the United States, minus the deductions allowed under the IRC that are related to that gross income. Gross income includes the proceeds from sales shipped or delivered to any purchaser within the United States and for which title transfers within the United States; proceeds from services performed within the United States; and a pro rata proportion of the proceeds from services performed both inside and outside the United States, based on cost of performance. "Compensation" means, for a foreign person, the daily compensation paid to each employee, officer, and director of the foreign person multiplied by the number of days that the employee, officer, or director has physical contact with the United States in the tax year.

The bill requires a foreign person to calculate business income under the bill's provisions. The tax base of a foreign person is subject to all adjustments and other provisions under the SBT Act, unless otherwise provided. A foreign person must calculate compensation by reporting total compensation paid to employees, officers, and directors for services performed in the United States.

The SBT Act requires a multistate firm doing business in Michigan, whether or not headquartered here, to apportion its tax base by determining how much of its business activity is attributable to Michigan. This requires the firm to calculate the ratio of its property, payroll, and sales in Michigan to its entire property, payroll, and sales, and apply this ratio to its nationwide tax base, resulting in its apportioned tax base. The Act prescribes the method that must be used to calculate the property, sales, and payroll factors. The bill provides that for a foreign person, the property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented in Michigan during the tax year by the taxpayer, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned

or rented in the United States during the tax year. The payroll factor is a fraction, the numerator of which is the total wages paid for services performed in Michigan during the tax year by the taxpayer, and the denominator of which is the total wages paid for services performed in the United States during the tax year by the taxpayer. The sales factor is a fraction, the numerator of which is the total sales of the taxpayer in Michigan during the tax year, and the denominator of which is the total sales of the taxpayer in the United States during the year.

Restructuring

The bill allows a "spun off corporation" to elect to calculate its sales factor for a period of five years under conditions specified in the bill, including the corporation's commitment to the State that it will make a capital investment in the State of at least \$500 million within five years. A two-year extension may be obtained for an additional commitment of \$200 million in the following two years. (Essentially, this allows a parent corporation, and another corporation that split off from it, to be held harmless for sales between the entities.)

The bill defines "spun off corporation" as an entity treated as a controlled corporation under Section 355 of the IRC. 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. "Restructuring transaction" means a tax free distribution under Section 355 of the IRC, and includes tax free transactions that are commonly referred to as spin offs, split ups, split offs, or type D reorganizations.

The bill provides that a qualified and approved spun off corporation calculates its apportioned sales factor as provided under the SBT Act, except that total sales do not include sales to a purchaser that was a member of a Michigan affiliated group that had included the seller in the filing of a combined or consolidated annual SBT return but, as a result of the restructuring transaction, ceased to include the seller. Further, a purchaser in Michigan does not include a person who purchases from a seller that was included in the purchaser's combined or consolidated annual SBT return but, as a result of a restructuring transaction, ceased to be included in the purchaser's combined or consolidated annual return. (Under the Act, sales of tangible personal property are considered to be sales in this State if the property is shipped or delivered to any purchaser within Michigan.)

At the end of the fifth year following a restructuring transaction, if a spun off corporation that elected to calculate its sales factor under the bill has failed to pay or accrue the \$500 million capital investment, the spun off corporation must file amended annual

returns for each of the years the corporation calculated its sales factor under the bill regardless of the applicable statute of limitations under the revenue Act, and pay any additional tax plus interest based on the sales factor as calculated under the Act. Interest must be calculated from the due date of the original return. At the end of the seventh tax year following the restructuring transaction, if the corporation has failed to pay or accrue the additional \$200 million capital investment, it must file amended annual returns for the sixth and seventh tax years and pay any additional tax plus interest, calculated from the due date of the original return.

A spun off corporation may elect to calculate its sales factor for five years under the bill's provisions if the following criteria are met:

- The spun off corporation was included in a combined or consolidated SBT return for the tax year immediately preceding the restructuring transaction.
- As a result of the restructuring transaction that occurred on or after January 1, 1999, the spun off corporation ceased to be included in the combined or consolidated annual return and, without regard to the bill, would have had an increased SBT liability for the tax year in which the election is made.

In addition, by the due date for filing its first annual return following the restructuring transaction, the spun off corporation must request, in writing, approval from the State Treasurer for the election. The State Treasurer must approve the request. The request must include a statement that the spun off corporation qualifies for the election; 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; and a commitment by the spun off corporation to invest at least \$500 million of capital investment in Michigan within five years, beginning with the first tax year following the tax year in which the restructuring transaction was completed.

Before the end of the sixth year following the restructuring transaction, and if the spun off corporation is not required to file amended returns, the spun off corporation must request, in writing, approval from the State Treasurer for the election to be extended for two years. The State Treasurer must approve the request. The request must include a commitment by the spun off corporation to invest at least \$200 million of capital investment in Michigan within the next two years, beginning with the sixth tax year following the tax year in which the restructuring transaction was completed.

Senate Bill 544 and House Bill 4744

Apportionment

The bills specify that the property or services that are exempt under the General Sales Tax Act or the Use Tax Act are exempt only to the extent that the property or services are used for the exempt purpose, if one is stated in the 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.

Each bill states the following: "This amendatory act clarifies that existing law as originally intended provides for a prorated exemption. This amendatory act takes effect for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations provided in section 27a of 1941 PA 122" (the revenue Act). With the exception of telecommunications equipment taxed under the Use Tax Act, neither the sales tax nor the use tax applies to the sale of tangible personal property or to the price of property or services, to the extent the property or services is used, stored, or consumed for exempt purposes. For telecommunications equipment, the bills provide, "This amendatory act clarifies that for periods before April 1, 1999, the tax shall not be apportioned and for periods beginning April 1, 1999, the tax shall be apportioned".

Industrial Processing Exemption

The Acts contain an exemption for personal property sold to an industrial processor for use or consumption in industrial processing. The bills provide that for property sold to an industrial processor after March 30, 1995, and before March 31, 1999, the property is exempt only to the extent that it is used for the exempt purposes stated in the 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.

The bills provide for a revised and expanded industrial processing exemption for personal property sold after March 30, 1999. The tax does not apply to property sold to an industrial processor for use or consumption in industrial processing; 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; 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; or a person, whether or not the person is 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 its products to certain tax-exempt nonprofit organizations.
 - 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.

Under the industrial processing exemption, property is exempt only to the extent that it is used for the exempt purpose stated in the bills. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department.

The bills 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. 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 inventory storage.

Industrial processing includes the following activities:

- Production or assembly.
- 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.
- 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.
- Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.
- Recycling of used materials for ultimate sale at retail or reuse.

- Production material handling.
- Storage of in-process materials.

Industrial processing also includes "research or experimental activities", that is, activities incident to the development, discovery, or modification of a product or a product related process, including activity necessary for a product to satisfy a government standard or to receive government approval. Research or experimental activity does not include ordinary testing or inspection of materials or products for quality control purposes; efficiency surveys; management surveys; market or consumer surveys; advertising or promotions; or research in connection with literacy, historical, or similar projects.

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

- 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 the repair and maintenance of the machinery, equipment, etc.
- Property that is 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 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 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.
- Office equipment, including data processing equipment, used for an industrial processing activity.

Property that is not be eligible for an industrial processing exemption includes the following:

- 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.
 - An 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 storing materials, supplies, parts, or components purchased by the user or consumer.
 - Tangible personal property used for receiving or storing 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.
 - Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.
 - Returnable shipping containers or materials, except those 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.

Industrial processing does not include purchasing, receiving, or storing 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; or plant security, fire prevention, or medical or hospital services.

Telecommunications Equipment

Both the General Sales Tax Act and the Use Tax Act exempt the purchase of certain machinery and equipment for use or consumption in the rendering of services involving intrastate telephone services, telegraph, leased wire, or other similar communications. The bills provide that, beginning April 1, 1999, the property is exempt only to the extent that it is used for the exempt purposes stated in the bills. Further, the bills provide that there is an irrebuttable presumption that 90% of total use is for exempt purposes. This presumption will be in effect until April 1, 2006, at which time the Department

must review and redetermine the presumption using nonexempt and exempt user information for the previous 12-month period. That redetermined irrebuttable presumption will be in effect for the following seven years. The presumption must be reviewed and redetermined every seven years after April 1, 2006, and applied to the following seven years.

Extractive Exemption

The bills exempt from the sales and use taxes property sold to an extractive operator for use or consumption in "extractive operations". The property is exempt only to the extent that it is used for the exempt purposes stated in the bills. The exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department.

The bills provide that an extractive operator is a person who, either directly or by contract, performs extractive operations. The bills define "extractive operations" as 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 operations include all necessary processing operations before shipment from the place of extraction; and 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.

Further, extractive operations include the actual production of oil, gas, brine, or other natural resources. Property eligible for the exemption includes 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; tangible personal property used or consumed in depositing tailings from hard rock mining processing; and tangible personal property used or consumed in extracting the lithologic units necessary to process iron ore.

The extractive operations exemption does not include the following:

- Tangible personal property consumed or used in the construction, alteration, improvement, or repair of buildings, storage tanks, or storage and housing facilities.
- Tangible personal property consumed or used

in transporting the product from the place of extraction, except for the property consumed or used in transporting extracted materials from the extraction site to the place where the 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 operator for a purpose other than the manufacturing or producing of a product for ultimate sale. The extractor must account for and remit the tax to the State based upon the product's fair market value.
- Equipment, materials, and supplies used in exploring, prospecting, or drilling for oil, gas, brine, or other natural resources, or used in storing, withdrawing, or distributing oil, gas, or brine from a storage facility.
- Vehicles, including special bodies or attachments, required to display a vehicle permit or license plate to operate on public highways.

Nonprofit Hospital Exemption

The bills revised the existing exemption for property used in the construction or alteration of a "nonprofit hospital" or nonprofit housing entity. Under the Acts, an exemption is allowed for property purchased by a person engaged in the business of constructing, altering, repairing, or improving real estate for others to the extent the property is affixed to and made a structural part of the real estate of a nonprofit hospital or a nonprofit housing entity (qualified as exempt pursuant to the State Housing Development Authority Act).

Previously, the Acts specified that a nonprofit hospital or nonprofit housing included only the property of a nonprofit hospital or the homes or dwelling places constructed by a nonprofit housing entity, whose income or property did not inure to the benefit of an individual, private stockholder, or other private person. For taxes assessed after December 31, 1990, and before January 1, 1996, "hospital" included an entity that: was a separately organized entity, or a group of entities sufficiently related to be considered a single employer for purposes of the IRC, whose primary purpose was to provide medical, obstetrical, psychiatric, or surgical care or nursing, including care provided by skilled nurses in a long-term care facility; and, before January 1, 1996, initiated an appeal of taxes on tangible personal property used to construct a facility after 1990.

The bills retain the exemption, but specify that an exemption may not be granted for any portion of property that otherwise qualifies for an exemption under the bills, if income or a benefit inures directly or indirectly to an individual, private stockholder, or other private person from the independent or

nonessential operation of that portion of property. The bills define "nonprofit hospital" as one of the following:

- That portion of a building that 1) is owned or operated by an entity exempt under Section 501(c)(3) of the IRC, that is licensed as a hospital under the Public Health Code; 2) is owned or operated by a governmental unit in which "medical attention" is provided; or 3) is owned or operated by an entity or entities exempt under Section 501(c)(2) or (3) of the IRC, in which medical attention is provided.
- That portion of real property necessary and related to a building (described above) in which medical attention is provided.
- A county long-term care facility built after 1995.

A nonprofit hospital does not include a freestanding building or other real property of a licensed nursing home, skilled nursing facility, hospice, or home for the aged.

Under the bills, "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 the observation, diagnosis, and daily treatment by a physician.

In addition, the bills provide that for taxes levied after 1990 and before July 1, 1999, the taxes do not apply to a claimed exemption of tangible personal property used in the construction, alteration, repair, or improvement of the real estate or affixed to and made a structural part of a building of a nonprofit hospital provided the following criteria have been met:

- A binding contract had been entered into for the construction, alteration, repair, or improvement of the real estate or the affixation to the building before July 1, 1999.
- The claimed exemption was made in good faith.
- The property is a licensed hospital building owned or operated by an entity exempt under Section 501(c)(3) of the IRC; a building owned or operated by a governmental unit in which medical attention is provided; or a building owned or operated by an entity or entities exempt under 501(c)(2) or (3) of the IRC, in which medical attention is provided.

A claim for a refund for an exemption under these provisions had to be filed before July 16, 1999. Approved refunds will be paid without interest. The provisions of this exemption may not be applied to affect any final decision of a court.

Direct Remittance

House Bill 4744 allows the Revenue Commissioner, at his or her discretion, to authorize a person to assume the obligation of self-accruing and remitting use tax due on purchases or leases directly to the Department under a direct payment authorization, if the following conditions are met:

- The authorization is to be used for the purchase or lease of tangible personal property or services.
- The authorization is necessary because it is impractical at the time of acquisition to determine the manner in which the property or services will be used, or it will facilitate improved compliance with the State's tax laws.
- The person requesting authorization for direct payment maintains accurate and complete records of all purchases or leases and uses of tangible personal property or services purchased pursuant to the authorization, in a form acceptable to the Department.

The Commissioner also has the authority to identify items that are not eligible for a direct payment authorization.

Bad Debt Deduction

Under House Bill 4744, beginning March 30, 1995, in computing the amount of use tax levied for any month, a seller may deduct the amount of bad debts from his or her gross sales, rentals, or services used for the computation of the tax. The amount of gross sales, rentals, or services deducted must be charged off as uncollectible on the books of the seller. If the business consists of taxable and nontaxable transactions, the deduction equals the full amount of the bad debt if the bad debt is documented as a taxable transaction in the seller's records. If documentation is not available, the maximum deduction from gross sales, rentals, or services for any bad debt equals the amount of the bad debt multiplied by the quotient resulting from dividing the sales, rentals, or services taxed during the preceding calendar year by all sales, rentals, or services during that year, whether or not taxed. If a consumer or other person pays all or part of a bad debt with respect to which a seller claimed a deduction, the seller will be liable for the amount of taxes deducted in connection with that portion of the debt for which payment is received, and must remit these taxes in his or her next payment to the Department.

Any claim for a bad debt deduction must be supported by evidence required by the Department. The Department must review any change in the rate of taxation applicable to any taxable sales, rentals, or services by a seller claiming a deduction, and ensure that the deduction on any bad debt does not result in the seller's recovering any more or less than the taxes imposed on the sale, rental, or service that constitutes the bad debt.

Under the bill, "bad debt" means any portion of a debt resulting from a seller's collection of the use tax on the purchase of tangible personal property or services that is not otherwise deductible or excludable, that has become worthless or uncollectible, and that is eligible to be claimed, or could be eligible to be claimed if the seller kept accounts on an accrual basis, as a deduction pursuant to the IRC. A bad debt does not include any of the following:

- Interest or use tax on the purchase price.
- Uncollectible amounts on property that remains in the seller's possession until the full purchase price is paid.
- Expenses incurred in attempting to collect any account receivable or any portion of the debt recovered.
- Any accounts receivable that have been sold to a third party for collection.
- Repossessed property.

Rolling Stock Exemption

Senate Bill 544 exempts from the sales tax, for taxes levied after April 30, 1999, sales of "rolling stock" purchased by an interstate motor carrier or for rental or lease to an interstate motor carrier and used in interstate commerce. Under the bill, "rolling stock" means a qualified truck (a commercial motor vehicle power unit, with dimensions as specified in the Act), a trailer designed to be drawn behind a qualified truck, and parts affixed to either the truck or the trailer.

The General Sales Tax Act defines "interstate motor carrier" as a person in the business of transporting persons or property, other than themselves, their employees, or their own property, for hire across state lines; total fleet mileage must include at least 10% driven outside the State in the preceding tax year.

House Bill 4586

The bill amended the Use Tax Act to provide that after April 30, 1999, the tax does not apply to the storage, use, or consumption of rolling stock used in interstate commerce and purchased, rented, or leased by an interstate motor carrier. Previously, the Act contained the exemption; however, it expired May 1, 1999.

MCL 205.51 et al. (S.B. 544)
205.94k (H.B. 4586)
205.93 et al. (H.B. 4744)
208.3 et al. (H.B. 4745)

ARGUMENTS

(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate

Fiscal Agency neither supports nor opposes legislation.)

Supporting Argument

Since its beginning, the SBT has been a detriment to business in the State and a disincentive for employers to locate here. The tax has been the source of continual complaints from business about its unfair nature. The fact that the tax is applied to business activity, rather than profits, has been particularly vexing to business because it has often required a business to pay significant taxes in a tax year even though the business made no profit that year. Further, taxing business activity means that the costs for wages, health care, other benefits, and other business expenses must be included in a firm's tax base, subject to tax after certain adjustments. This is a clear disincentive for a business to hire new employees. Not only must the business absorb the costs inherent in paying an employee's wages and benefits, it must at the end of the year pay taxes on those amounts it paid, thus inflicting upon itself a penalty for providing a job. It is no wonder that many have contended through the years that the SBT is a tax on job creation.

In addition, even the strongest proponents of the tax agree that calculating the tax liability of a business is enormously complicated, especially for a small firm that can't afford a full-time tax accountant. This often has resulted in an absurd situation in which a firm finds that its tax liability is less than the cost of paying someone to determine the liability. Thus, the tax has never been accepted by the taxpayers. By phasing the tax out of existence, House Bill 4745 will rid the business community of this continual frustration and burden.

Supporting Argument

The SBT places a heavy burden on business, in terms of both the level of the tax and the administrative tasks that it requires. When the costs of doing business are higher than they should be, both the business community and consumers suffer the effects. The gradual elimination of the tax over two decades, while not perfect, is an excellent solution to the problems found with the SBT. The State will not be made to deal with enormous revenue reductions each year, but will have time to adapt spending and taxing policies to adjust to the annual reductions. On the other hand businesses, while not completely relieved of the burdens of the SBT, will see yearly improvements in their tax status with the full knowledge that future years will bring further improvements. By cutting the costs of doing business, House Bill 4745 will create a competitive tax environment in the State, make Michigan more competitive in relation to other states. The bill creates major incentives for firms around the world to consider investing in a State where, at a set time in the future, there will be no specific tax on business. This will lock in a process that will keep Michigan's economy growing, and help to ensure the attraction of new high-paying jobs.

Response: Elimination of the SBT over 23 years does little or nothing for small businesses that need relief today. The tax is burdensome, and should be eliminated much sooner than outlined in House Bill 4745. Under the bill's schedule, businesses won't be competitive with other states for several years.

Supporting Argument

Eliminating the SBT, even over 23 years, will be great news for Michigan's job providers, and, in turn, Michigan consumers. High business tax burdens, in the end, only punish the consumer, because businesses pass on the cost of doing business (including taxes) to customers and clients. In effect, businesses don't pay taxes, they just collect them for the State.

Response: The contention that businesses don't pay taxes is misguided. A business must charge more than its costs to produce a product, in order to ensure a profit; however, it is also true that often businesses will charge whatever consumers will pay, thus generating profits far in excess of costs of production. In these cases, taxes may simply reduce the profit margin somewhat rather than being passed on to the consumer. That said, the claim that all taxes are passed on to the consumer is actually an argument in favor of the SBT. The State's largest manufacturers, especially auto producers, have always paid the bulk of the tax. Most of the products built by those manufacturers are sold outside the State. This means that, if taxes are paid by consumers, then the bulk of the SBT is being paid by consumers outside the State, and the tax burden has been exported.

Supporting Argument

Through a variety of methods, Michigan trucking firms have for many years received a partial exemption from sales and use taxes for purchases or leases of equipment, used in interstate commerce, from in-State businesses. Further, since 1993, equipment purchased or leased outside the State by Michigan firms engaged in interstate trucking has been exempt from the use tax. Because trucking equipment is very expensive, the exemptions have provided vital tax relief for purchasers. The expiration of the exemptions could have had serious consequences for Michigan interstate trucking firms. Even before the partial exemptions expired, Michigan trucking companies were at a competitive disadvantage because, reportedly, the majority of states including those adjacent to Michigan do not tax sales of trucks and trucking equipment. This meant, then, that while both in-State and out-of-State trucking firms competed for the same freight, Michigan companies had to pay more for their equipment purchases, if they got their equipment in the State. If they purchased or leased their equipment from a firm in another state, they avoided the use tax; however, this put Michigan equipment distributors at a competitive disadvantage to those in other states. By providing a full exemption for rolling

stock, Senate Bill 544 and House Bill 4586 removed a disincentive for Michigan interstate trucking companies to purchase new equipment, and standardized the exemption under each Act, so that there will be no disadvantage to purchasing or leasing equipment from a Michigan firm.

Supporting Argument

Both the General Sales Tax Act and the Use Tax Act contain exemptions for the sale or use of certain property or services. For many years, the Department of Treasury has required businesses that claim these exemptions to apportion the exemptions between exempt and nonexempt uses; that is, a business must determine the extent to which a product or service was used for an exempt purpose versus a nonexempt purpose and claim the exemption accordingly. The *Michigan Bell* opinion concluded that the Use Tax Act contained no provisions requiring a taxpayer to apportion taxes between exempt and nonexempt uses, meaning that if a product or service was used for an exempt purpose, regardless of its additional use for nonexempt purposes, the product or service was tax exempt. This could have had a substantial, negative impact on both sales and use tax revenue. Senate Bill 544 and House Bill 4744 eliminate this problem by specifying that exemptions must be apportioned, and thus codify the Department's long-time practice.

Supporting Argument

By creating a bad debt deduction under the Use Tax Act, House Bill 4744 addresses an issue that recently was before the Michigan Supreme Court (*World Book, Inc. v Department of Treasury*, 459 Mich 403 (1999)). In that case, the Supreme Court was asked to determine whether the absence of a bad debt deduction in the Act violated the Commerce Clause of the U.S. Constitution. The Court did not decide this question, however, because it found that the seller was not required to pay its customers' use taxes where the seller used reasonable business care in trying to collect them. According to the Court, "...before the seller is subjected to either tax liability... or criminal penalties..., the Use Tax Act requires intent or fault by the seller in its inability to collect the tax from its customers."

The bad debt deduction created by the House bill fills the gap in the Use Tax Act, and makes the Act consistent with the General Sales Tax Act, which allows bad debts to be deducted from the gross proceeds used to calculate sales tax liability.

Opposing Argument

The State already has cut taxes, including business taxes, several times in recent years. The bills will have a major impact on SBT revenues. These cuts, combined with earlier cuts to the income tax, will result in significant reductions in State revenue. This, in turn, might jeopardize the stability of school funding, since, for the most part, schools can no

longer raise money on their own from property taxes but must rely heavily on State funding. This, then, may put tremendous pressure on all the other State budgets.

The SBT recently was changed in several ways to favor business; for instance, the gross receipts filing threshold was raised and the alternative tax rate was reduced; Social Security, unemployment compensation, and workers' compensation were removed from the tax base; and the apportionment formula was changed to increase the sales factor and decrease the payroll and property factors. The full impact of these changes should be measured first, before the drastic step of eliminating the tax is taken. If the State experiences an economic downturn in the future and finds itself short of revenue, the changes made by the bills will exacerbate the revenue problem. If such a situation develops, and the State needs to raise funds, some will argue that it would be unacceptable to reverse the gains that businesses have made. This will leave the State with few options, other than to raise taxes on individuals.

Response: The revenue implications will not be as severe as expressed. Simply saying that House Bill 4745 will reduce revenue fails to account for increased economic activity and thus greater application of existing taxes to a more vigorous economy fueled by more and better jobs.

Opposing Argument

The SBT replaced seven other taxes on business in 1976, providing stability to the State's tax revenue and simplifying the tax burden for firms. At that time it was deemed that the State's up-and-down economy caused fluctuations in State revenue that were difficult to deal with, and the SBT solved that problem in regard to business taxation. Despite the complications the SBT presents in calculating tax liability, the value added nature of the tax is the fairest way to tax business. Businesses use public infrastructure and State services, and they should pay something for that consumption. Measuring a business's activity in the State, and taxing that activity, is a fair way to measure how much a business should pay in taxes. Just like citizens, businesses have a social responsibility to support society's structures and institutions. Under House Bill 4745, while business will continue to demand their share of services and support from State and local governments, they will pay less and less each year. This simply is not sound tax policy.

Opposing Argument

By eventually eliminating the State's primary business tax, House Bill 4745 will place a greater onus on families and individual taxpayers to carry the tax burden; in fact, the bill will slowly but inexorably shift the overall responsibility for tax revenue to individuals. It has been pointed out that the State has cut taxes in many ways in recent years, and that

most of the cuts have been directed at individual taxpayers. While this might be true, individuals pay a far greater share than businesses do in terms of total State taxes. Therefore, it is logical that the cuts thus far should have favored individuals.

Legislative Analyst: G. Towne

FISCAL IMPACT

This package of bills will generate a net increase in revenue of \$144 million in FY 1998-99, but will result in a net tax reduction in subsequent fiscal years including an estimated \$184 million tax decrease in FY 1999-2000. The fiscal impact of these bills fall into two distinct groups; 1) tax reductions, and 2) a tax change to fix a sales and use tax problem identified in the Michigan Bell court case.

Tax Cuts. The tax cuts include the phased reduction of the single business tax rate, expansion of the sales and use tax industrial processing exemption, and the extension and expansion of the sales and use tax exemption for rolling stock. The size of the tax cuts will grow over time primarily due to the lowering of the single business tax rate by 0.1 percentage point each year from 1999 to 2021. The tax cuts will total an estimated \$91 million in FY 1998-99 and \$244 million in FY 1999-2000.

Michigan Bell Fix. In the *Michigan Bell v Department of Treasury* court ruling, it became apparent the Department had no authority to apportion the industrial processing exemption, which it had been doing for many years. As a result, businesses eligible for the industrial processing exemption had not been receiving the entire exemption to which they were entitled, and had therefore been overpaying the sales and use taxes. In order to provide an accurate assessment of State government revenues, the consensus revenue estimates adopted at the May 1999 Consensus

Revenue Estimating Conference included the loss in revenue that would result from refunding past sales and use tax overpayments to these taxpayers, as well as the reduction in sales and use tax collections that would occur in future years. These bills, however, fix the court-identified problem by specifically allowing the industrial processing exemption to be apportioned between exempt and nonexempt purposes, based on how the equipment is used, which is exactly what the Department of Treasury had been doing for many years. Therefore, the revenue losses that would have resulted due to the court ruling and were reflected in the consensus revenue estimates, which total an estimated \$235 million in FY 1998-99 and \$60 million in FY 1999-2000, are completely offset by the provisions in these bills and therefore must be added back into the revenue estimates.

Estimated Fiscal Impact. The following table provides a summary of the estimated fiscal impact of this package of bills. The estimated fiscal impact is broken down for each of the major tax cuts, as well as the Michigan Bell fix. In addition, since the tax changes included in these bills will primarily affect the revenue going to the General Fund/General Purpose (GF/GP) budget and the School Aid Fund (SAF), estimates are also provided on how each of the major tax changes will affect the revenue going to each of these key budget areas.

Estimated Fiscal Impact of Business Tax Package: FY 1998-99 and FY 1999-2000 (dollars in millions)							
Tax/Major Proposed Changes:	Bills	FY 1998-99			FY 1999-2000		
		GF/GP	SAF	Total	GF/GP	SAF	Total
Tax Cuts:							
<u>Single Business Tax]</u>	H.B. 4745						
Reduce tax rate 0.1 percentage point/year.		\$(86.8)	\$0.0	\$(86.8)	\$(210.9)	\$0.0	\$(210.9)
Replace CAD with ITC.		0.0	0.0	0.0	0.0	0.0	0.0
Tax on Foreign Businesses		0.0	0.0	0.0	0.0	0.0	0.0
Corporate Restructuring, Tax Holdharmless		0.0	0.0	0.0	0.0	0.0	0.0
Subtotal Single Business Tax Cut		\$(86.8)	\$0.0	\$(86.8)	\$(210.9)	\$0.0	\$(210.9)
Sales & Use Taxes							
Expand Industrial Processing Exemption	H.B. 4744, S.B. 544	0.0	0.0	0.0	(13.5)	(9.5)	(23.0)
Expand & Extend Rolling Stock Exemption	H.B. 4586, S.B. 544	(1.0)	(3.1)	(4.1)	(2.5)	(7.9)	(10.4)
Subtotal Sales & Use Tax Cut		(1.0)	(3.1)	(4.1)	(16.0)	(17.4)	(33.4)
Total Tax Cuts		\$(87.8)	\$(3.1)	\$(90.9)	\$(226.9)	\$(17.4)	\$(244.3)
Michigan Bell Fix*							
Apportioning Industrial Processing Exemption -	H.B. 4744, S.B. 544	137.9	97.2	235.1	35.2	24.8	60.0
Net Fiscal Impact Total Package		\$50.1	\$94.1	\$144.2	\$(191.7)	\$7.4	\$(184.3)
* Consensus revenue estimates for FY 99 and FY 2000 included estimates of the tax loss that would result from the Michigan Bell court case. These legislative changes fix the court-identified problem and therefore, the revenue losses currently in the consensus revenue estimates are entirely offset by the provisions in these bills.							

Fiscal Analyst: J. Wortley

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.

STATE OF MICHIGAN



JOHN ENGLER, Governor

DEPARTMENT OF TREASURY

TREASURY BUILDING, LANSING, MICHIGAN 48922

MARK A. MURRAY, State Treasurer

REVENUE ADMINISTRATIVE BULLETIN 2000 - 4**Approved:** June 13, 2000**SALES AND USE TAX -- INDUSTRIAL PROCESSING**

RAB-2000 - 4. This Revenue Administrative Bulletin (RAB) describes the industrial processing exemption allowed under the Sales and Use Tax Acts. This RAB replaces RAB 1988-14 for periods after March 30, 1999. RAB 1988-14 remains in effect for periods prior to March 31, 1999.

1999 PA 116 and 1999 PA 117 ("the Acts") clarified and expanded the industrial processing exemptions in Michigan's sales and use tax acts. The Acts were based on Michigan Administrative Code Specific Sales and Use Tax Rule 40 (1979 AC, R 205.90) and significantly expanded the exemption. This RAB discusses industrial processing activities and describes the tangible personal property that is exempt from when used or consumed in industrial processing.

The Acts expanded and clarified the industrial processing exemption on a prospective basis beginning March 31, 1999. However, the Acts statutorily implemented apportionment effective for all periods beginning March 31, 1995 and all tax years that are open under the statute of limitations. This statutory change does not affect taxpayer liability for persons claiming an industrial processing exemption for previous tax years, as the industrial processing exemption had been apportioned pursuant to Rule 40 for prior periods.

For periods prior to March 31, 1999, refer to RAB 1988-14, Rule 40 (1979 AC, R 205.90), MCL 205.54y; MSA 7.525(25) (Sales Tax Act), and MCL 205.94r; MSA 7.555(4r) (Use Tax Act). For questions related to this RAB or periods prior to March 31, 1999, please call the Sales, Use and Withholding Taxes Division at (517) 373-3190 or write to them at Treasury Building, Lansing, Michigan 48922.

ISSUES

- I. What is industrial processing and who qualifies as an industrial processor?
- II. If property is used in both an exempt industrial processing function and also in a taxable manner, is the exemption prorated?
- III. What activities constitute industrial processing?
- IV. What activities do **not** constitute industrial processing?
- V. What property is eligible for an industrial processing exemption?

- VI. What property is **not** eligible for an industrial processing exemption?
- VII. Can sales of tangible personal property to persons other than industrial processors qualify for an industrial processing exemption?

CONCLUSIONS

- I. Industrial processing "[M]eans 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." [MCL 205.54t(7)(a); MSA 7.525(20)(7)(a) and MCL 205.94o(7)(a); MSA 7.555(4o)(7)(a)].

An industrial processor "[M]eans 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." [MCL 205.54t(7)(b); MSA 7.525(20)(7)(b) and MCL 205.94o(7)(b); MSA 7.555(4o)(7)(b)].

A person is defined in the General Sales Tax Act [MCL 205.51(1)(a); MSA 7.521] and the Use Tax Act [MCL 205.92(a); MSA 7.555(2)] as:

[A]n individual, firm, partnership, joint venture, association, social club, fraternal organization, municipal or private corporation whether organized for profit or not, company, estate, trust, receiver, trustee, syndicate, the United States, this state, county, or any other group or combination acting as a unit, and includes the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

- II. For all property, the industrial processing exemption is limited to the percentage of exempt use to total use determined by a reasonable formula or method approved by the Department. This RAB discusses numerous instances in which property is used in industrial processing and the property qualifies for an industrial processing exemption. Although the property qualifies for an industrial processing exemption, the exemption is limited to the percentage of exempt use to total use. The formula or method used in determining the industrial processing exemption does not have to be pre-approved by the Department. However, the formula or method used does have to reasonably reflect the percentage of exempt use to total use. The following examples demonstrate exempt use based upon time used in an exempt activity; other methods which would reasonably reflect the exempt activity are also allowable.

Example 1

An industrial processor uses a forklift truck 60% of the time in its plant moving in-process parts from one press to another press; this usage is exempt under industrial processing. The forklift truck is used the remaining 40% of the time in taxable activities such as shipping and receiving. The forklift truck would qualify for a 60% industrial processing exemption on the cost of the truck.

Example 2

An industrial processor makes castings of steel bolts at one of its plant sites. These bolts are taken by a forklift truck to another building at its plant site for hardening. In this example, if the forklift truck was used 30% of the time in moving bolts from one building to another building, and 70% of the time in non-industrial processing activities, the forklift truck would qualify for a 30% industrial processing exemption.

III. Industrial processing includes the following activities:

- 1) Production or assembly.
- 2) Research or experimental activities. Any person may qualify for an exemption under industrial processing for research or experimental activities if specific criteria are met. The General Sales Tax Act [MCL 205.54t(7)(e); MSA 7.525(20)(7)(e)] and the Use Tax Act [205.94o(7)(e); MSA 7.555 (4o)(7)(e)] define research or experimental activity:

[A]ctivity 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:

- (i) Ordinary testing or inspection of materials or products for quality control purposes.
- (ii) Efficiency surveys.
- (iii) Management surveys.
- (iv) Market or consumer surveys.
- (v) Advertising or promotions.
- (vi) Research in connection with literacy, historical, or similar projects.

As used under "research and experimental activity", the General Sales Tax Act [MCL 205.54t(7)(c); MSA 7.525(20)(7)(c)] and the Use Tax Act [MCL 205.94o(7)(c); MSA 7.555 (4o)(7)(c)] define product as:

[I]ncludes 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.

Example 3

The research division of an automobile manufacturer designs a new prototype of an engine. The equipment and supplies consumed in the development of the prototype would qualify under research and development. The manufacturer qualifies for an industrial processing exemption because the "**tangible personal property**" is used

by that person to perform an industrial processing activity." [MCL 205.54t(1)(c); MSA 7.525(20)(1)(c) and MCL 205.94o(1)(c); MSA 7.555(4o)(1)(c)].

Example 4

A manufacturer of plastics develops several new plastics. The manufacturer then hires an independent research company to test the fire retardant capabilities of the new plastics. The independent research company also conducts its own private research of the tensile strength of several new steel alloys. The research company does not manufacture any product nor does it actually sell the steel alloys. Instead, the research company is seeking to develop a new patent on the steel alloys and sell or license the patent. Approximately 20% of the research company's equipment and supplies are consumed in the research that it conducts for the plastics manufacturer with the remaining 80% of the equipment and supplies being consumed in its own private research of the tensile strength of the new steel alloys.

Even though the research company is not an industrial processor, the research company would qualify for a 20% industrial processing exemption because the "tangible personal property is used by that person to perform an industrial processing activity **for or on behalf** of an industrial processor." [MCL 205.54t(1)(c); MSA 7.525(20)(1)(c) and MCL 205.94o(1)(c); MSA 7.555(4o)(1)(c)]. However, the research company would not qualify for an industrial processing exemption on the remaining 80% of the equipment and supplies because the research company is not an industrial processor nor is it consuming "tangible personal property [which] is used by that person to perform an industrial processing activity for or on behalf of an industrial processor." The research company does not meet the definition of an industrial processor which 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." [MCL 205.54t(7)(b); MSA 7.525(20)(7)(b) and MCL 205.94o(7)(b); MSA 7.555(4o)].

- 3) Engineering related to industrial processing.
- 4) 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.

Example 5

An industrial processor performs tests on its raw materials. The equipment and supplies used or consumed by an industrial processor in this testing and quality control function are exempt.

Example 6

Testing and quality control activities are taxable once finished goods have come to rest and are placed in finished goods inventory storage. An industrial processor manufactures a product and the completed product is placed in finished goods inventory storage. Before shipment of the product to its customers, the industrial processor performs testing and quality control activities on the product to insure that proper standards are being met. Equipment and supplies used or consumed by an

industrial processor in a quality control function in testing finished goods which have come to rest are taxable. These testing and quality control activities would not qualify under industrial processing inasmuch as industrial processing ends once the goods have been placed "in finished goods inventory storage."

- 5) Planning, scheduling, supervision, or control of production or other exempt activities.

Example 7

A computer used by an industrial processor to schedule maintenance on exempt equipment is exempt.

Example 8

A computer used by an industrial processor to schedule employees' overtime equalization in the plant is taxable as an administrative function. The computer is taxable regardless of whether the employees are working with exempt industrial processing equipment or in a taxable administrative function.

- 6) Design, construction, or maintenance of production or other exempt machinery, equipment, and tooling.

Example 9

An industrial processor uses drafting equipment 40% of the time to draft plans for exempt equipment and 60% of the time for drafting plans for building expansion. The drafting equipment would qualify for a 40% industrial processing exemption.

- 7) Remanufacturing.

The General Sales Tax Act [MCL 205.54t(7)(d); MSA 7.525(20)(7)(d)] and the Use Tax Act [MCL 205.94o(7)(d); MSA 7.555 (4o)(7)(d)] define remanufacturing as:

[T]he activity of overhauling, retrofitting, fabricating, or repairing a product or its component parts for ultimate sale at retail.

Example 10

A company purchases used carburetors and other parts and refurbishes the carburetors by installing new gaskets on the carburetors. The company then resells the carburetors. The company would qualify for industrial processing on the equipment and supplies used or consumed in restoring the carburetors. Remanufacturing includes the activities of disassembly, sorting, and reassembly of parts when that activity accompanies overhauling.

Example 11

A company purchases used driveshafts to be sold to automobile parts retailers. The company **only** cleans the driveshafts and then resells the driveshafts to the automobile parts retailers. The equipment and supplies consumed in the cleaning of the driveshafts would not qualify for industrial processing. The activity of merely

cleaning the driveshafts would not qualify under remanufacturing and therefore the equipment and supplies would not qualify under industrial processing.

- 8) Processing of production scrap and waste up to the point it is stored for removal from the plant of origin.

Example 12

A heat treating company uses chemicals in performing its processing functions. These chemicals must be disposed of after being used. The taxpayer purchases equipment and supplies to treat the used chemicals before the chemicals are shipped to a landfill. The equipment and supplies used to treat the chemicals are exempt for industrial processing because they are used to treat production waste up to the point it is stored for removal from the plant of origin.

Example 13

An industrial processor collects its own production waste from several small containers near the industrial processing equipment and stores this waste in a large container for pickup by a waste removal company or a recycler. The waste removal company or recycling company dumps the waste from the large container into its own trucks. The small containers located near the industrial processing equipment are exempt and the large container is taxable.

Example 14

An industrial processor collects its own production waste from several small containers near the industrial processing equipment and stores this waste in a large container. The industrial processor then bales the production waste into bundles and places these bundles in a storage area to be picked up by a recycling company. The equipment and supplies used or consumed in the baling of the production waste qualifies for exemption under industrial processing. As in the prior example, the small containers located near the industrial processing equipment are exempt. In this example however, the large container is also exempt because the scrap has not come to rest until it is placed in bundles and put in a storage area.

- 9) Recycling of used materials for ultimate sale at retail or reuse.

Example 15

A plastics manufacturing company grinds up production scrap to be reused for two purposes, first as a raw material in its own process, and second, as a raw material to be sold to other industrial processors. The grinding equipment used in these processes would qualify for the industrial processing exemption.

- 10) Production material handling.

Example 16

An industrial processor manufactures steel bolt castings at one of its plants. These castings are taken by a forklift truck to another building at its plant site for grinding. The forklift truck would be exempt under industrial processing. Production material

handling includes in-process movement of production materials and interplant movement of in-process materials within the same legal entity.

Example 17

An industrial processor manufactures steel bolt castings at one of its plants. These castings are taken by a forklift truck to a nearby plant of one of its subsidiary corporations for grinding. The forklift truck would not qualify for industrial processing because the bolts are not shipped within the same legal entity.

Example 18

An industrial processor manufactures steel bolt castings at its primary plant. These castings are shipped by truck to one of its own divisions located several miles away. The division performs grinding operations on the castings and then returns the castings to the primary plant for further processing. In-process shipping and receiving within the same legal entity is exempt. Therefore, any equipment or supplies consumed by either the primary plant or the division is shipping and receiving of in-process parts and is exempt. The truck would not qualify for an industrial processing exemption, regardless of whether it is owned by the company or a third party, inasmuch as it is a licensed highway vehicle.

11) Storage of in-process materials.

Example 19

An industrial processor manufactures automobiles. One of its divisions manufactures plastic handles which are then shipped to its primary assembly plant. The handles are received at the assembly plant and placed into in-process storage utilizing an automated storage/retrieval system that consists of a computer system, bins, portable storage racks, and material handling equipment. The handles are retrieved as needed and sent to the production line using an automatic guided vehicle system. The computer system, bins, portable storage racks, material handling equipment, and automatic guided vehicle system are exempt.

IV. Industrial processing does not include the following activities:

1) Purchasing, receiving, or storage of raw materials.

Example 20

A chrome plating company receives parts from another industrial processor. The chrome plating company applies chrome finish to the industrial processor's parts and then ships the parts back to the industrial processor. The receiving and shipping activities of the chrome plating company are taxable activities inasmuch as the company is receiving raw material.

[Note: The receiving and shipping activities of the industrial processor are also taxable activities because the in-process movement of materials is not within the same legal entity. If the plating company and the industrial processor were separate divisions or plants of the same legal entity, the receiving and shipping activities of the separate divisions or plants would be exempt.]

- 2) Sales, distribution, warehousing, shipping, or advertising activities.
- 3) Administrative, accounting, or personnel services.
- 4) Design, engineering, construction, or maintenance of real property and nonprocessing equipment.
- 5) Plant security, fire prevention, or medical or hospital services.

Example 21

An industrial processor has a fire protection sprinkler system installed in the ceiling in their plant. The sprinkler system is excluded from the industrial processing exemption as realty. The fact that the sprinkler system serves to protect the industrial processing area does not exempt the sprinkler system under industrial processing.

V. Property that is eligible for an industrial processing exemption includes the following:

- 1) Property that becomes an ingredient or component part of the finished product to be sold ultimately at retail.
- 2) 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.
- 3) Property that is consumed or destroyed or that loses its identity in an industrial processing activity.

Example 22

An industrial processor uses lubricating oils in the processing equipment. The lubricating oils are exempt under industrial processing.

- 4) Tangible personal property, not permanently affixed and not becoming a structural part of real estate, that becomes a part of, or is used and consumed in installation and maintenance of, systems used for an industrial processing activity.
- 5) Fuel or energy used or consumed for an industrial processing activity. This includes energy such as natural gas, coal, electricity, or fuel oil to operate industrial processing equipment or to heat, cool, and illuminate the industrial processing areas.

Example 23

An industrial processor consumes electricity in its industrial processing activities as well as taxable non-industrial processing activities. The industrial processor is billed a lump sum for the electricity, transmission, and distribution of the electricity. If the industrial processor consumes 30% of the electricity in an industrial processing function, 30% of the total amount for electricity, transmission, and distribution would be exempt for industrial processing.

- 6) 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.

Example 24

Portable racks that are used in shipping in-process materials between plant sites operated by the same person are exempt. The racks may be used for shipment of in-process materials and placed on licensed highway vehicles to other plants of the same person; the racks would still be exempt under industrial processing. However, racks that are only used when attached to licensed highway vehicles are taxable because the racks are part of the vehicle and are excluded from the exemption.

- 7) Office equipment, including data processing equipment, used for an industrial processing activity.

Example 25

An engineer for an industrial processor uses a hand-held calculator in the plant to verify tolerances on in-process parts. The calculator would be exempt under industrial processing.

VI. Property that is not eligible for an industrial processing exemption includes the following:

- 1) 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.

Example 26

An industrial processor purchases an electrical transformer which converts electricity to usable voltage. This transformer then feeds a press used for industrial processing and also feeds the general lighting system of the office area. This transformer is real property inasmuch as it services real property, i.e., the general lighting system. As real property, the transformer is not eligible for an industrial processing exemption and cannot be apportioned.

Example 27

This same industrial processor purchases a second transformer which converts electricity to usable voltage. Forty percent of the energy from this transformer feeds exempt industrial processing equipment and the remaining sixty percent feeds taxable equipment used in the shipping department. This transformer is not real property and is subject to apportionment. Therefore, this transformer is 40% exempt for industrial processing and 60% taxable.

- 2) Office equipment, including data processing equipment, used for nonindustrial processing purposes.
- 3) Office furniture or office supplies.

Example 28

A plant foreman's desk is taxable as office furniture.

- 4) An industrial processor's own product or finished good that it uses or consumes for purposes other than industrial processing.

Example 29

A printing company uses its printing equipment 10% of the time to produce promotional brochures and office supplies which are used internally. These promotional brochures and office supplies would be taxable on the cost of raw materials. Also, 10% of the taxpayer's printing equipment would not be entitled to the industrial processing exemption. Similarly, 10% of the consumables, utilities, and other consumed supplies would not be entitled to the industrial processing exemption.

- 5) Tangible personal property used for receiving and storage of materials, supplies, parts, or components purchased by the user or consumer.
- 6) Tangible personal property used for receiving or storage of natural resources extracted by the user or consumer.
- 7) 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.

Example 30

Vehicles bearing a manufacturer's plate are eligible for an exemption if used in a qualifying activity. A vehicle bearing a manufacturer's plate being used by an engineer for testing and analytical purposes would qualify for an industrial processing exemption. The exemption should be supported by records such as daily logs, analytical reports, etc.

Example 31

Vehicles being used by officers or other key executives of a manufacturer and simply bearing a manufacturer's plate would not qualify for an industrial processing exemption. In addition, vehicles bearing manufacturer's plates used by dignitaries at sporting or other events would not qualify for an industrial processing exemption. The vehicles in these instances would not qualify for an industrial exemption because the vehicle is not being used in a qualifying activity.

Example 32

A cement mixer at a plant or job site in the concrete manufacturing process is exempt under industrial processing. Tires and repair parts attached to the concrete mixing truck or to the mixer are exempt. Supplies used or consumed in the concrete mixing truck such as gasoline, oil, antifreeze, windshield washer solvent, transmission, brake fluid, etc., are subject to tax.

- 8) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations.

Example 33

A corporation has a central commissary where it prepares much of the food which will be sold through its several restaurant locations. The restaurants are separate divisions of the corporation and each division maintains its own records. The central commissary ships the prepared food to the various restaurant locations. The corporation does not qualify for an industrial processing exemption because the food is sold through its own locations.

- 9) 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.

Example 34

A manufacturer shrinkwraps its product before the product is placed in finished goods inventory (inventory has come to rest). This shrinkwrap equipment is exempt for industrial processing.

Example 35

The same manufacturer takes its inventory from finished goods storage prior to shipping its product to its customers. Once the manufacturer receives an order from a customer, it then shrinkwraps the appropriate amount of product for shipment to its customer. This shrinkwrap equipment is taxable.

- 10) Returnable shipping containers or materials, except when 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.

The definition for containers is found in Departmental rules and means:

[T]he article and devices in which tangible personal property is placed for shipment and delivery, such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, tote boxes, pallets, racks, bottles, drums, carboys, cartons, sacks, and materials from which such containers are manufactured.

Example 36

An industrial processor uses containers for shipment of in-process parts from one of its plant sites to another of its plant sites. These containers, when used in in-process storage, or movement within or between plant sites operated by the same person, are exempt under industrial processing. This includes "dunnage" which is defined in Departmental rules as being ". . . for a single use only, of bracing, blocking, skidding, shoring, and other materials, . . ." However, dunnage, when used in shipment of a product to a customer, is taxable.

Example 37

Containers such as pallets and barrels which are used to ship a product and then returned to the industrial processor for reuse are taxable. An industrial processor uses pallets 40% of the time in the plant in movement of in-process materials. The remaining 60% of the time the pallets are used in shipping the finished product to its customers. The pallets would qualify for a 40% industrial processing exemption.

- 11) Tangible personal property used in the production of computer software originally designed for the exclusive use and special needs of the purchaser.

Example 38

Production of customized software is considered a service and therefore the industrial processing exemption is not allowable on the equipment or supplies used in the production of custom software. Also, as a service, the equipment, supplies, and direct material costs are taxable.

- VII. Sales to a person, whether or not the person is an industrial processor, are exempt if the tangible personal property is 1 or more of the following:
- 1) A computer 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. Examples of computer-related equipment include cabling used to enable computers to communicate, provided such equipment is dedicated to computers used for industrial processing.

Examples of computers qualifying for industrial processing**Example 39**

Computers programmed to operate robotics on an assembly line.

Example 40

Robotics on the assembly line used by the servicer operating the equipment.

Example 41

Computers used in the design of the final product and/or any component part of the final manufactured product.

Example 42

"Servicer owned" circuit boards in computers used to operate paint application systems.

Examples of computers NOT qualifying for industrial processing**Example 43**

CAD computers used by an engineering firm to design a building for an industrial processor.

Example 44

Computers used by lumber wholesalers or lumberyards to determine the stress loads for floor joists on load bearing walls.

Example 45

Computers programmed to manage a finished goods inventory after the inventory has come to rest.

- 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 section 4q of the Sales Tax Act and 4(1)(x) of the Use Tax Act.
- 6) 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.
- 7) The tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor.

Example 46

ABC Corporation is a holding company for several manufacturing entities. ABC Corporation is not an industrial processor but purchases a press to be used at no cost by one of its subsidiary corporations. The purchase of the press would qualify for an industrial processing exemption after March 30, 1999. However, it would not qualify for an industrial processing exemption prior to March 31, 1999.

- 8) The tangible personal property is used by a person to perform an industrial processing activity for or on behalf of an industrial processor.

Examples qualifying for industrial processing exemption**Example 47**

An industrial processor hires a company that installs and repairs exempt industrial processing equipment such as in-process assembly lines. The company's equipment and supplies used or consumed in this repair work qualify under industrial processing.

Example 48

An inspection firm is hired by an industrial processor to inspect items of an industrial processor that are "in process". The equipment and supplies used or consumed in this inspection by the inspection firm are exempt under industrial processing.

Example 49

An outside company is hired by an industrial processor to conduct in-process product testing and provide on-going production engineering for the industrial processor. The equipment and supplies used or consumed in the product testing and on-going production engineering by the outside company are exempt under industrial processing.

Example 50

A die repair company is hired by an industrial processor to repair dies that are being used in exempt industrial processing functions. The equipment and supplies used or consumed by the die repair company are exempt under industrial processing. Consumed supplies would include supplies used directly in the repair work as well as other indirect supplies such as natural gas and electricity consumed in the repair work. The equipment and supplies are exempt whether the actual repair work is done at the repair company's own facilities, or at the industrial processor's location.

Examples NOT qualifying for industrial processing exemption**Example 51**

A waste removal company is hired to remove waste or scrap from an industrial processor after the waste and scrap have come to rest in storage. The equipment and supplies which are used or consumed are taxable.

Example 52

A die repair company repairs equipment for a residential home builder and equipment of a municipality. The equipment and supplies which are used or consumed are taxable.

Example 53

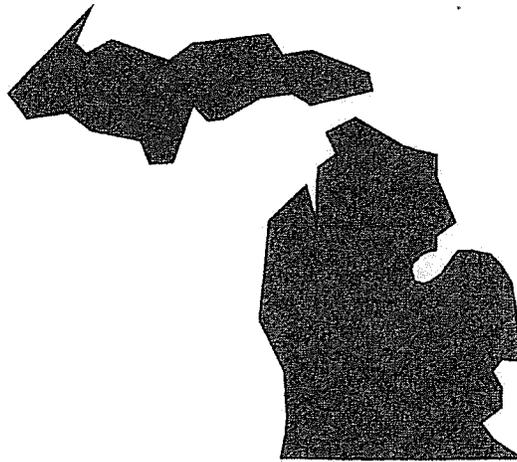
An inventory service company is hired to take a finished goods inventory of an industrial processor. The equipment and supplies which are used or consumed are taxable.

Example 54

A public relations firm does a market and consumer survey for an industrial processor to forecast future consumer demand for its products and the survey is used by the industrial processor in its production scheduling. The equipment and supplies which are used or consumed are taxable.

Michigan Department of Treasury

Revenue Technical Tax Training



Sales and Use Taxes

Industrial Processing Exemption
July 2002

Michigan Department of Treasury – Revenue Technical Tax Training
Sales and Use Tax: The Industrial Processing Exemption
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**STATE OF MICHIGAN
DEPARTMENT OF TREASURY
Revenue Training Manual
Sales and Use Taxes**

Industrial Processing Exemption

This manual was prepared as an instructional text to be used in conjunction with classroom training on Michigan's Sales and Use Taxes - Industrial Processing Exemption. The purpose of the manual is to explain the various provisions of the Sales and Use Tax Acts, the Department's policies and practices in administering the Acts and the applicable Revenue Administrative Bulletins, Rules and Regulations. It is not intended as a statement of law, Department policy or any official position independent of existing law and the Department's official administrative statements.

Rules and Regulations, Revenue Administrative Bulletins and Letter Rulings referenced herein are the most recent versions available as of the date of printing. Users may need to update this manual in the future when law changes, court cases or corrections affect the substance of the Acts or when policies and procedures that affect the administration of the Acts are revised.

This manual is intended only for training purposes and does not take the place of the law. This manual may not be distributed to the public without the express permission of the State Treasurer. Questions about the content of this manual may be directed to the Constituent Education Division.

Industrial Processing Exemption

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INTRODUCTION and OVERVIEW

Pre 3/31/99:

The State of Michigan allows an exemption from sales and use tax for persons engaged in the manufacturing process. This industrial processing exemption is allowed for equipment, supplies and materials used or consumed in the activity of transforming, altering or modifying tangible personal property by changing the form, composition, quality or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail.

In simple terms, industrial processing begins with the first processing activity or machine and ends with the activity that produces the recognizable unit or product for retail sale or sale to another industrial processor to be further processed for ultimate sale at retail. The details of what constitutes the beginning and ending of the industrial processing exemption will be covered later.

The theory behind the exemption is that if the end product is taxed, the components used or consumed in its production are not taxed so that the product is not subject to double taxation.

Among the definitions used in the explanation of industrial processing are:

Transform = to change the form or appearance of; to change the nature, function or condition of; to convert

Alter = to change or make a difference

Modify = to change in form or character, alter

Form = The contour and structure of something as distinguished from its substance. The essence of something as distinguished from its matter.

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, make-up. The result or product of composing, mixture, compound.

Character = The combination of qualities or features that distinguishes one thing from another.

The manufacturing exemption **includes**, but is not necessarily limited to, the following activities or tangible personal property when performed by and purchased by an industrial processor:

- Production
- Patent, experimental, development, engineering, inspection by the industrial processor and not for a subsidiary or other entity
 - Quality control
- Research and development for a product the industrial processor will produce

- Planning, scheduling and production control
- Design, construction and maintenance of factory machinery
- Disposal of production scrap and waste
- Production supervision
- Production material handling
- Property which becomes an ingredient/component part of the finished product
 - Machinery, tools, dies, patterns - including repair and maintenance
- Machinery and equipment foundations - including repair and maintenance
- Property which is consumed, destroyed or loses its identity in a manufacturing or other production process
- Tangible personal property not permanently affixed and becoming a structural part of real estate used for manufacturing purposes
 - Fuel or energy used or consumed in industrial processing
- Machinery, equipment and materials used within a plant site for movement of tangible personal property in process of production
- Certain data processing equipment used directly for industrial processing
- Certain computer equipment used by servicers who perform specific industrial processing functions for industrial processors (see the "Computers Used in Industrial Processing by Servicers" section of this text)

After 3/31/95, industrial processing also includes 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 products to nonprofit organizations exempt under MCL 205.54q.

The **industrial processing exemption does not include** the following activities or tangible personal property:

- Purchasing, receiving and storage of raw materials
- Sales, distribution, warehousing
- Shipping
- Advertising
- Administrative, accounting and personnel
- Design, construction and maintenance of real property and nonmanufacturing equipment
- Plant security, fire prevention and hospitals or first aid
- Tangible personal property permanently affixed and becoming a structural part of real estate
- Office equipment used for nonmanufacturing purposes

- Office furniture and office supplies wherever and however used
- Tangible personal property used for receiving and storage of materials
- Vehicles licensed and titled for use on public highways (except cement trucks used for manufacturing)
- Tangible personal property for preparation of food and beverage by a retailer for retail sale (See the "Retailers and the Industrial Processing Exemption" section of this text)
- Tangible personal property used or consumed for preserving or maintaining of a nonfood product in the form and condition in which it is to be sold
- Services performed on the property of others if the services do not transform, alter or modify the property to place it in a different form, composition or character

Post 3/30/99:

Public Acts 116 and 117, passed July 14, 1999, modified and expanded the industrial processing exemption.

The Sales and Use Tax Acts include a definition of 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".

The definition of an industrial processor is "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 exemption applies to sales to:

- 1) An industrial processor for use in industrial processing
- 2) A person, even if the person is not an industrial processor, if the tangible personal property is intended for ultimate use in and is used in industrial processing by an industrial processor
- 3) 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
- 4) A person, even if the person is not an industrial processor, if the equipment is used in the production of canned or modified software

NOTE: Items (2-4) above were added in the new amendments.

The amendments also define the beginning and end of the industrial processing exemption. The beginning of industrial processing is the movement from raw materials storage to when industrial processing starts and ends when finished goods first come to rest in finished goods inventory storage. See the "Begin and End" section of this text.

Activities previously listed as exempt activities in Rule 40 have now been included in the Sales and Use Tax Acts. These activities either meet the definition of industrial processing or are exempt because they have specific exemption in the Acts.

The following **exempt** activities, now listed in the Acts, meet the definition of industrial processing, since the activities change the form, composition or character of the property:

- Production or assembly
- Remanufacturing
- Processing of production scrap and waste up to the point it is stored for removal from the plant of origin, if for ultimate sale at retail
- Recycling of used material for ultimate sale at retail
- Production material handling (conveyors or material handling that is part of a machine meets definition)

The following activities do not change the form, composition or character of property; however, the activities are **exempt** because they are specifically listed in the Acts as an industrial processing activity:

- 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
- 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 (forklift & other movements)
- Storage of in-process materials

As in Rule 40, the Acts list the following activities that are **not exempt**:

- Purchasing, receiving or storage of raw materials
- Sales, distribution, warehousing, shipping or advertising
- Administrative, accounting or personnel services
- Design, engineering, construction or maintenance of real property and nonprocessing equipment
- Plant security, fire prevention, medical or hospital services

The Acts now list the following property that **may qualify** for an industrial processing exemption:

- Property that becomes an ingredient or component part of the finished product

- Machinery, tools, dies, patterns, machinery foundations or other equipment used in an industrial processing activity – including 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, used for installation or maintenance of systems used for an industrial processing activity
- Fuel or energy used or consumed in industrial processing
- 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
- Office equipment or data processing equipment used for industrial processing activities
- Vehicles bearing a manufacturer's plate and vehicles specifically designed, together with parts, used to mix and agitate materials at a plant or job site in the concrete manufacturing process

The Acts now list the following property that **does not qualify** for an industrial processing exemption:

- Tangible personal property permanently affixed and becoming a structural part of real estate
- Office equipment or data processing equipment not used for industrial processing purposes
- Office furniture or supplies, wherever and however used
- Inventory withdrawals that the manufacturer uses or consumes for purposes other than industrial processing
- Tangible personal property used for receiving and storage of purchased materials or natural resources extracted by the user
- Vehicles, including special bodies or attachments, licensed and titled for use on public highways
- 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. This changes pre 3/31/99 guidelines that related only to food products.
- 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

The amendments also provide a definition of "product". Product includes 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.

The industrial processing exemption involves more than a simple list of what is included and what is not. This exemption has evolved over a number of years; some of the more complicated areas will be discussed in this text.

References: MCL 205.54t and y
MCL 205.94o and r
RAB 2000-4

R 205.90

ACTIVITIES OF PROCESSORS THAT MAY NOT QUALIFY FOR EXEMPTION

A manufacturer may be engaged in nonprocessing operations in addition to its industrial processing activities.

Pre-3/31/99:

If a manufacturer works on the property of others and does not change the form, composition or character of the property, the manufacturer is performing a service and those activities are taxable.

NOTE: Subprocessors may appear to be servicers working on the property of others. However, subprocessors qualify for the exemption when they are changing the form, composition, or character of tangible personal property for sales at retail or for sale to another processor. Examples of subprocessors are plating companies and heat-treating companies.

Post-3/30/99:

If a manufacturer is performing a service, the service activity qualifies for the industrial processing exemption if the tangible personal property is used to perform an industrial processing activity for or on the behalf on an industrial processor.

See the "Servicer" section of this text.

During the preliminary discussions with the taxpayer's representative, determine all aspects of the taxpayer's activities to determine possible tax issues. Tools, supplies, and equipment may be used for both exempt processing purposes and for taxable activities. Analysis should be made to determine the materiality of any possible adjustments before extensive review is conducted.

ITEM	ACTIVITY	PRE-3/31/99	POST-3/30/99
1.	A MANUFACTURER OF AIRPLANE ENGINE PARTS HAS A SERVICE DEPARTMENT THAT REPAIRS AND OVERHAULS ENGINE PARTS (NOT ORIGINAL WARRANTY REPAIRS) ON PROPERTY OWNED BY AIRLINE COMPANIES. (EXCEPTION: INTERSTATE COMMERCE CARRIER AIRCRAFT, MCL 205.54x AND 205.94k)	T	T
2.	A PRINTER PRINTS ON STOCK FURNISHED BY THE CUSTOMER. SEE THE "PRINTERS" SECTION OF THIS TEXT FOR EXCEPTIONS.	T	T
3.	A PRINTER BINDS BOOKS FURNISHED BY ANOTHER PRINTER.	E	E

ITEM	ACTIVITY	PRE-3/31/99	POST-3/30/99
	SEE THE "PRINTERS" SECTION OF THIS TEXT FOR EXCEPTIONS.		
4.	A PRINTER BINDS BOOKS FURNISHED BY A NONPROCESSOR. SEE THE "PRINTERS" SECTION OF THIS TEXT FOR EXCEPTIONS.	T	T
5.	PHOTOGRAPHS ARE RETURNED TO A PHOTOGRAPHER TO COLOR OR TINT THE PHOTOGRAPHS. THE PHOTOGRAPHER IS PERFORMING A SERVICE. R 205.109	T	T
6.	A SIGN MANUFACTURER PAINTS SIGNS OWNED BY AN ADVERTISING AGENCY. R 205.119	T	T
7.	A SIGN MANUFACTURER PERFORMS A SERVICE BY PAINTING A SIGN ON A PRESS.	T	E
8.	A TIRE COMPANY PURCHASES OLD TIRES AND RETREADS THEM FOR SALE TO OTHERS. SEE THE "RECONDITIONING/REMANUFACTURING" SECTION OF THIS TEXT. R 205.130	E	E
9.	A TIRE COMPANY RETREADS OR VULCANIZES TIRES SUPPLIED BY A TRUCKING COMPANY. R 250.130 (EXCEPTION: TIRES FOR "ROLLING STOCK", MCL 205.54r AND MCL 205.94k)	T	T
10.	A PALLET MANUFACTURER REPAIRS PALLETS OWNED BY A SOAP MANUFACTURER THAT USED THE PALLETS IN THEIR IN-PROCESS STORAGE AREA.	T	E
11.	A HEAT-TREAT COMPANY HARDENS STEEL TO BE USED BY AN AUTOMOBILE MANUFACTURER AS PARTS FOR AN AUTOMOBILE.	E	E
12.	A HEAT-TREAT COMPANY HEAT-TREATS DIES OWNED BY AN AUTOMOBILE MANUFACTURER.	T	E
13.	A GRAVEL MINING AND CRUSHING OPERATION HAS PORTABLE EQUIPMENT THAT CRUSHES AND REFINES PRODUCT UNDER FOUR SCENARIOS: <ul style="list-style-type: none"> • FOR OTHER MINING OPERATIONS • AT ITS OWN PITS • FOR CONTRACTORS • FOR COUNTY ROAD COMMISSIONS 	E E T T	E E T T
14.	A COMPANY MANUFACTURES SPIRAL STAIRWAYS AND HANDRAILS. THE STAIRWAYS, ETC. ARE CUSTOM MADE TO SPECIFIC CUSTOMER REQUIREMENTS AND AFFIXED TO	T	T

ITEM	ACTIVITY	PRE- 3/31/9 9	POST- 3/30/9 9
15.	<p>REALTY. THE COMPANY DOES NOT MAINTAIN AN INVENTORY OR PRICE LIST. SEE THE "MANUFACTURER/CONTRACTOR" SECTION OF THIS TEXT.</p> <p>A COMPANY MANUFACTURES SPIRAL STAIRWAYS AND HANDRAILS. THE STAIRWAYS, ETC. ARE CUSTOM MADE TO SPECIFIC CUSTOMER REQUIREMENTS AND SOLD AT RETAIL.</p>	E	E
16.	<p>A CONVEYOR MANUFACTURER HAS EMPLOYEES FABRICATE, ASSEMBLE AND INSTALL THE CONVEYOR PARTS AT THE CUSTOMER'S PLANT</p>	E	E
17.	<p>IF THE SAME TOOLS USED IN # 16 ABOVE ARE USED TO INSTALL A CONVEYOR USED FOR AN EXEMPT ACTIVITY, THE PERCENTAGE OF USE TO INSTALL IS TAXABLE PRIOR TO 3/31/99 AND EXEMPT AFTER 3/30/99. NOTE: IF ASSEMBLY AND INSTALLATION USAGE IS INSEPARABLE, CONSIDER THE ASSEMBLY AND INSTALLATION USAGE TAXABLE PRIOR TO 3/31/99 AND EXEMPT AFTER 3/30/99</p>	T on %	E
18.	<p>A WINDOW MANUFACTURER MAINTAINS A PRICE LIST. THE MANUFACTURER INSTALLS THE WINDOWS. THE TOOLS USED AT THE JOB SITE TO INSTALL THE WINDOWS ARE TAXABLE.</p>	T	T
19.	<p>A SOFT DRINK BOTTLER SELLS 5% OF ITS PRODUCED PRODUCT THROUGH ITS OWN VENDING MACHINES. ALL NORMALLY EXEMPT EQUIPMENT WOULD BE TAXABLE AT 5%. THE IP EXEMPTION DOES NOT EXTEND TO THE PREPARATION OF FOOD SOLD AT RETAIL. SEE THE "RETAIL PREPARATION OF FOOD" AND "STORAGE TANK" SECTIONS OF THIS TEXT.</p>	T	T

INDUSTRIAL PROCESSING BEGIN AND END
--

Post 3/30/99:

For determining where the industrial processing exemption begins and ends we need to look at the statute, supporting rules and binding litigation.

The statutory language in the Sales Tax Act at 205.54(o)(7)(a) and in the Use Tax Act at 205.94(s)(7)(a) is identical. "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."

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: MCL 205.54

MCL 205.94

R 205.90

CEMENT TRUCKS

A specially designed vehicle used to mix and agitate materials, which are added at a plant or job site in the concrete manufacturing business is exempt. The truck and any repair parts are exempt. Tires and repair parts attached to the truck 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. would be subject to tax.

If a cement manufacturer does not make retail sales but consumes all of the product on their own jobs, they would not be entitled to the exemption on the cement trucks. They would not be entitled to an industrial processing exemption on any of their equipment or supplies. See the "Manufacturer/Contractor" section of this manual.

If the manufacturer of cement is not able to deliver a load of cement immediately, a separate charge is made for "wait time". Wait time at the plant or job site for the manufacturer/contractor of cement is considered part of the tax base for sales tax.

References: MCL 205.94r(1)(a)
MCL 205.54t

COMPUTER SOFTWARE MANUFACTURING

Definitions:

- Canned Software – offered to the general public on an “as is” basis with or without modification.
- Custom Software – software designed for the exclusive use and special needs of a customer.

Pre-3/31/99 and Post-3/30/99:

Equipment, supplies, utilities, etc. used to produce canned software are exempt for industrial processing. Equipment, supplies, utilities, etc. used to develop custom software are taxable as a service activity. Equipment supplies, utilities, etc. used to modify canned software, whether separately itemized for sales tax purposes or not, are exempt for industrial processing.

An industrial processor could not claim exemption for equipment used to modify a canned accounting software package for their own use. The software will not be used in industrial processing and there is no ultimate sale at retail.

See RAB 99-5 for the sales tax treatment of computer software.

References: MCL 205.51(1)(e)
MCL 205.54t(d)(vi)
MCL 205.94o(d)(vi)
RAB 99-5
RAB 2000-4 VII (6)

COMPUTER STUDIES

MCL 205.54t states:

(5) Property that is not eligible for an industrial processing exemption includes the following:

(b) Office equipment, including data processing equipment, used for nonindustrial processing purposes.

Computers used for industrial processing purposes, including those purchased for use in the first four areas described in MCL 205.54t(1)(d) and MCL 205.94o(1)(d) (See the "Computers Used in Industrial Processing by Servicers" section of this text) can be used in both taxable and exempt functions. If this is the case, a study should be made determining the amount of computer time spent on taxable functions compared to the total computer usage time. This can be based on a week, a month, or any reasonable amount of time that reflects normal usage. These figures are normally available from the Information Systems Department as the hours are usually billed back to the department utilizing the computer service. If no time usage analysis is available, a breakdown based on functional usage should be made. The actual functions by department should be analyzed, because both taxable and exempt usage can be found in almost every department. We cannot assume by the names of departments the tax status of the functions that are actually performed there.

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. For example:

- 1) To provide a service to their customers (e.g., designing real property floor plans)
 - **Pre-3/31/99:** Equipment used by a servicer to design a floor plan for an industrial processor's exempt machinery would have been taxable.
 - **Post-3/30/99:** Equipment used by a servicer to design a floor plan for an industrial processor's exempt machinery is exempt.
- 2) In a post production function
 - **Pre-3/31/99:** Post production was defined as any function performed after the product is complete and the first movement away from the production line has been made.

- **Post-3/30/99:** Post production functions are now defined as any function performed after the product first comes to rest in finished goods inventory storage.

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 use a study as described above.

Computers or computer main frames 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 (personal property), CRT's, modems, printers and monitors used in inter- or intra-plant transmissions are taxed on the determined computer equipment percentages, not as communication devices. Routers, servers, network hookups, etc. are not just communications devices and thus would not always be 100% taxable. A separate study for servers and routers should be performed if the amounts are material.

Laptop computers are considered taxable unless the processor or servicer has definite proof of the percentage of time the laptop was used in exempt activities.

In general, the following functions would be considered taxable:

- Billing
- Order entry
- Payroll
- Accounting
- Sales/Marketing
- Shipping
- Raw material receiving and 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

References: See the "Computers Used in Industrial Processing by Processors" and the "Computers Used in Industrial Processing by Servicers" sections of this text.

**TAXABILITY OF COMPUTER FUNCTIONS
FOR INDUSTRIAL PROCESSORS**

	DESCRIPTION OF FUNCTION	TAX STATUS	REASON
1)	ACCOUNTS PAYABLE	T	ACCOUNTING
2)	CAPITAL ASSET SYSTEM	T	ACCOUNTING
3)	COMPUTERS USED TO OPERATE EXEMPT MACHINES	E	MACHINERY USED IN IP
4)	COMPUTERS USED TO OPERATE TAXABLE MACHINES	T	OPERATES TAXABLE EQUIPMENT
5)	DAILY PRODUCTION REPORT FOR PRODUCTION SCHEDULING	E	PRODUCTION SCHEDULING
6)	DAILY PRODUCTION REPORT FOR RAW MATERIAL ORDERING	T	PURCHASING
7)	DAILY PRODUCTION REPORT USED FOR COST ACCOUNTING	T	ACCOUNTING
8)	DEFECTIVE WORK-IN-PROCESS INVENTORY EXCEPTION REPORT USED TO IMPROVE PROCESS	E	QUALITY CONTROL
9)	DESIGN OF MANUFACTURING MACHINE LAYOUT	E	PRODUCTION CONTROL
10)	DESIGN OF REAL PROPERTY FLOOR PLAN	T	ADMINISTRATIVE
11)	DIRECT COMPUTER ORDERING FROM MFG. TO SUPPLIER (EDI ORDERING)	T	PURCHASING
12)	DIRECT LABOR VARIANCE REPORT	T	ACCOUNTING
13)	EDAP AUDITING	T	ACCOUNTING
14)	FINANCIAL ANALYSIS & FORECASTING	T	ACCOUNTING
15)	GENERAL LEDGER	T	ACCOUNTING
16)	INSTATE PRODUCTION SCHEDULING FOR OUTSTATE DIVISION	E	PRODUCTION SCHEDULING
17)	INVENTORY EXCEPTION REPORT FOR DEFECTIVE RAW MATERIAL USED TO ADJUST PAYMENT TO VENDOR (IF NECESSARY)	T	ADMINISTRATIVE

	DESCRIPTION OF FUNCTION	TAX STATUS	REASON
18)	INVENTORY MANAGEMENT FOR FINISHED GOODS	T	ACCOUNTING/ADMIN.
19)	INVENTORY MANAGEMENT FOR RAW MATERIAL	T	RECEIVING
20)	INVENTORY MANAGEMENT FOR WORK IN PROCESS FOR COST ACCOUNTING	T	ACCOUNTING
21)	INVENTORY MANAGEMENT FOR WORK IN PROCESS FOR PRODUCTION SCHEDULING	E	PRODUCTION SCHEDULING
22)	ORDER REPORT PRINTED BY PRODUCT AND CUSTOMER FOR PRODUCTION SCHEDULING	E	PRODUCTION SCHEDULING
23)	PERSONNEL/ADMIN/PAYROLL	T	ACCOUNTING/ADMIN.
24)	PRINT FORECAST OF ORDERS BY PRODUCT FOR PRODUCTION SCHEDULING	E	PRODUCTION SCHEDULING
25)	PRINT FORECAST OF POTENTIAL SALES BY PRODUCT	T	SALES
26)	PRODUCTION PERSONNEL SCHEDULING-OVERTIME	T	ADMINISTRATIVE
27)	PRODUCTION PERSONNEL SCHEDULING-OVERTIME--FOR FAIR ROTATION OF UNION EMPLOYEES	T	ADMINISTRATIVE
28)	PRODUCTION PERSONNEL SCHEDULING-OVERTIME--TO DETERMINE MANPOWER REQUIREMENTS FOR CONTINUED PRODUCTION	E	PRODUCTION SCHEDULING
29)	PRODUCTION PERSONNEL SCHEDULING-VACATION	T	ADMINISTRATIVE
30)	PRODUCTION PERSONNEL SCHEDULING-VACATION--TO DETERMINE MANPOWER REQUIREMENTS FOR CONTINUED PRODUCTION	E	PRODUCTION SCHEDULING
31)	PRODUCTION REPORT DETAILING CAUSES OF WORK STOPPAGES USED TO IMPROVE THE PRODUCTION PROCESS	E	PRODUCTION SCHEDULING
32)	PRODUCTION REPORT DETAILING FREQUENCY OF DEFECTIVE IN-PROCESS MATERIAL USED TO IMPROVE PRODUCTION PROCESS	E	PRODUCTION SCHEDULING/QUALITY CONTROL
33)	PRODUCTION SCHEDULING	E	PROD. SCHEDULING

	DESCRIPTION OF FUNCTION	TAX STATUS	REASON
34)	PURCHASE ORDER ENTRY	T	PURCHASING
35)	PURCHASING	T	PURCHASING
36)	QUALITY CONTROL INSPECTION REPORT OF RAW MATERIALS	T	ADMINISTRATIVE
37)	QUALITY CONTROL OF IN-PROCESS MATERIAL	E	INSPECTION/QUALITY CONTROL
38)	RAW MATERIAL USAGE REPORT	T	PURCHASING
39)	RAW MATERIALS PROPERTIES REPORT USED TO: A) DETERMINE AMOUNT TO PAY VENDOR OR TO DECIDE TO KEEP OR REPLACE VENDOR	T	ACCOUNTING
	B) DETERMINE QUALITY OF RAW MATERIALS TO DECIDE WHETHER PRODUCT WILL BE GENERIC OR NAME BRAND	E	PRODUCTION
40)	RESCHEDULING ONGOING PRODUCTION TO ACCOMMODATE INSTALLATION OF PRODUCTION EQUIPMENT	E	PRODUCTION SCHEDULING
41)	SALES ANALYSIS	T	SALES
42)	SALES HISTORY REPORT	T	SALES
43)	SALES INVOICE GENERATION	T	ACCOUNTING
44)	SALES ORDER ENTRY	T	SALES
45)	SALES REPORT PRINTED BY PRODUCT & CUSTOMER	T	ACCOUNTING/SALES
46)	SCHEDULING OF EMPLOYEES INVOLVED IN INSTALLATION OF PRODUCTION EQUIPMENT	T	ADMINISTRATIVE
47)	SCHEDULING OF PRODUCTION MACHINE MAINTENANCE OR REPAIR	E	PROCESSING MACHINE MAINTENANCE
48)	SCHEDULING REMOVAL OF EXISTING PRODUCTION EQUIPMENT	T	PRODUCTION CEASED
49)	SCRAP REPORT	T	COST ACCOUNTING

	DESCRIPTION OF FUNCTION	TAX STATUS	REASON
50)	SHIPPING DOCUMENTS	T	SHIPPING
51)	SUMMARY OF COMPLETED ORDERS BY PRODUCT	T	SALES
52)	SUMMARY OF PENDING ORDERS FOR PRODUCTION SCHEDULING	E	PRODUCTION SCHEDULING
53)	WARRANTY INFORMATION & ADMINISTRATION	T	ADMINISTRATIVE

COMPUTERS USED IN INDUSTRIAL PROCESSING BY SERVICERS

MCL 205.54t(1)(d) and MCL 205.94o(1)(d) grant 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.

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 the above 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

Examples of taxable usage of computers:

- CAD computers used by engineering firms to design buildings
- Lumber yards or specialized kitchen designers to design the layout of a home or kitchen
- Lumber wholesalers or lumber yards to determine the stress loads for floor joists on load bearing walls
- Computers programmed to operate a finished goods inventory retrieval system or stores account
- CAD equipment used for engineering design and development not directly related to the manufacturing design process

Pre-3/31/99: This would include any post production activities.

Post-3/30/99: This would include any post-finished goods inventory storage activities.

- Experimental research (R & D) performed for an industrial processor

Post-3/30/99: this activity is exempt.

- Computers and equipment used to test products for defects for an industrial processor

Post-3/30/99: this activity is exempt if performed prior to the product coming to rest in finished goods inventory storage.

Pre-3/31/99:

Research and development are not exempt activities for servicers as there is no transforming, altering or modifying of a product for ultimate sale at retail. This exemption is available only to industrial processors.

Post-3/30/99:

Research and development are exempt if performed by a servicer for or on behalf of an industrial processor.

Pre-3/31/99:

Paper, supplies, electricity and other items consumed in the CAD/CAM process while performing a service for a manufacturer are taxable. CAD/CAM equipment for servicers includes canned software only if it is capitalized and either depreciated or amortized. If it is expensed, it is not considered to be equipment. Custom software is always exempt.

Post-3/30/99:

Any items used or consumed in the CAD/CAM process that would be exempt for the industrial processor are now exempt for servicers performing the same function for or on behalf of the industrial processor.

References: MCL 205.54t(1)(d)
MCL 205.94o(1)(d)
R 205.90
RAB 99-5
RAB 00-4

DELIVERY - JUST IN TIME

Pre 3/31/99:

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 purchaser and the supplier.

No matter how coordinated the activities of the supplier's production and the purchaser'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 may not be a finished goods inventory. 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. The shipping functions are still 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. 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 with the move immediately before production.

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 or 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.

Post 3/30/99:

The tax status of the purchaser and supplier still remains dependent on their own facts and activity. What has changed is the Sales and Use Tax Acts now allow the industrial processing exemption for material handling movement of purchased materials removed from raw materials inventory. This is easily identified when there is clear and identifiable raw material storage and 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 purchaser 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. As the truck is being unloaded, the parts are 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 midpoint 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 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 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 is taxable, since it is 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 the material may move directly to the production area. Review the receiving area carefully in your plant tour to determine if there is a break between the receipt of the purchased material and the movement to the production area.

DIRECT PAY

Direct pay is a process whereby the Michigan Department of Treasury authorizes a taxpayer to report their sales and use tax liability directly to the Department. After June 1999 direct pay provisions are provided by statutory provisions in the Sales Tax Act, MCL 205.54a(l)(o), and the Use Tax Act, MCL 205.98.

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.

A few contractors also have a limited direct pay account. These usually cover 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.

Attached is a copy of a standard direct pay permit.

Refer to RAB 2000-3 for the requirements to receive direct pay authorization and obligations of a taxpayer receiving direct pay status.

References: MCL 205.54a(l)(o)
MCL 205.94
RAB 2000-3



STATE OF MICHIGAN
DEPARTMENT OF TREASURY

TREASURY BUILDING
LANSING, MICHIGAN 48922

Dear: Taxpayer

In response to your correspondence of _____, the Revenue Division of the Michigan Department of Treasury hereby authorizes _____ to operate under a direct pay permit for Michigan sales and use taxes. This becomes effective _____.

This letter is your "direct pay" permit. This represents your authority to report sales and use tax liabilities directly to the Department of Treasury, and is limited to purchases of tangible personal property. In addition, the following are excluded from your direct pay authorization.

- 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 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.

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, you should state on your purchase orders to vendors this notation: "Authorized to pay sales or use taxes on purchases of tangible personal property directly to the State of Michigan under Account Number _____".

You may furnish a copy of this letter to any vendor who questions your direct pay authority.

If you have any questions, please write or call this office at (517) 636-4230.

Sincerely,

Dale P. Vettel, Administrator
Technical Services Division

EXTRACTIVE OPERATIONS

Prior to Public Acts 116 and 117 of 1999, the extractive operation exemption was only addressed in the promulgated rules. The 1999 amendments explained later in this section are effective retroactively to March 31, 1995.

The extractive operator included a person who, from his own land or from the land of another, either directly or by contract, took or extracted for resale:

- Ore
- Oil
- Gas
- Coal
- Timber
- Stone
- Gravel
- Clay
 - Minerals
 - Sand
 - Gypsum
 - Salt
 - Other natural resource material

The exemption began for the extractive operator when contact was made with the actual type of natural raw material being recovered. No exemption was allowed prior to the contact with the natural raw material.

The following are examples of taxable use of equipment:

- Removal of top soil before contact with gravel
- Removal of trees before contact with gravel
- Snow removal
- Road grading

If the same equipment were used for both the removal of the topsoil and the removal of gravel, a percentage exemption would be allowed. However, if the topsoil was also sold, all equipment used to extract the topsoil and gravel would be exempt for processing.

Another example of dual usage would be a land stripper that may also be used in the "mixing" of various sizes of gravel which qualifies for the industrial processing exemption on a percentage basis.

Processing included all necessary processing operations before shipment from the place of extraction.

The processing exemption did not include tangible personal property consumed or used in the transportation of the material or the construction, alteration, improvement or repair of buildings, storage tanks or storage and housing facilities.

OIL AND GAS

The drilling or prospecting for oil and gas did not constitute industrial processing. The exemption only began when contact was made with the natural resource.

To determine the taxability of a well we should visualize it in three stages:

- 1) **DRILLING**-including through the cementing of production casing:
TAXABLE
- 2) **COMPLETION**-starts with the perforation and tubing installation:
EXEMPT
- 3) **PRODUCTION**-actual extraction and production: **EXEMPT**

Post-3/31/95:

Extractive operations are no longer associated with the industrial processing exemption. The current exemption covers a sale of tangible personal property to an extractive operator for use or consumption in an extractive operation.

The description of "extractive operations" has not changed. Its definition was merely put into the statute. It is defined as "the activity of taking or extracting for resale ore, oil, gas, coal, timber, stone, gravel, clay, minerals, or other natural resource material".

The extractive exemption begins when contact is made with the desired product being recovered. It continues through all necessary operations and movements and ends when the natural raw product first comes to rest in finished goods inventory storage at the extraction site.

The extractive exemption is available if a servicer is performing an extractive operation. The natural resource still has to be sold but it does not have to be sold by the servicer.

The Acts specifically exempt tangible personal property used in depositing tailings from hard rock mining and in extracting lithologic units necessary to produce iron ore. The Department has interpreted this to include movement of tailings to the final resting point.

Casing pipe or drive pipe without specific measurements is also specifically mentioned in the statute as eligible for the extractive exemption. Rule 49 exempted case and drive pipe commonly known as 8-inch or under if used in production. Casing pipe or drive pipe used in production was and still is exempt. Pipe, even if 8-inch or under, was and is taxable if not used in production such as being abandoned in a dry hole. The use of this pipe rather than its dimensions determines the exemption.

The following examples reinforce or expand on the exemption given to an extractive operator.

Example 1: S S G Corporation extracted gravel from a site or pit that it owned. The gravel was ideal for use in building roads. The gravel was loaded into non-highway trucks, moved over a company owned road to locations about one half mile from the pit and stored in piles until it was removed for sale. The pit and the finished goods inventory storage location were both located on one parcel of land. Would the equipment used to move the gravel to the storage area be taxable, partially taxable, or exempt?

Post 3/31/95 Answer: Extractive operations are exempt. An extractive operation includes the movement of the natural resource material to the point at which the natural raw product being recovered first comes to rest in finished goods inventory storage at the extraction site. In this example, the first resting place of the gravel in a finished goods inventory state is in the pile located one half mile from the pit. We would consider the pit and the surrounding area as the extraction site and exempt all of the transportation equipment.

Example 2: We have the same facts as in example one but the pile of raw material/finished goods inventory is located five miles down the highway and the vehicles transporting the gravel are licensed for highway use. Would the transportation equipment and fuel in this example be exempt from tax, partially exempt or taxable.

Post 3/31/95 Answer: In this example it is not necessary to decide whether the five mile journey down the highway is a taxable or exempt movement. Since the trucks are licensed to operate on the public highways, by statute they are subject to tax. We would not, however, consider the inventory location as part of the extraction site.

Example 3: We have the same facts as in example number one but the extractor crushes some of the gravel so that it can be used in the manufacture of cement for ultimate sale at retail. The crushing operation is done next to the pile of raw material/finished goods inventory storage. Is this crushing operation a necessary extractive operation?

Post 3/31/95 Answer: The crushing operation is not an extracting operation. The extracting operations ended when the gravel was placed in the pile of raw material/finished goods inventory. The crushing operation would qualify as an industrial processing operation.

Example 4: XYZ Corporation extracted sand from a site or dune that it owned. The sand was stored at the extraction site. Half of the sand was sold at retail and the other half was consumed in their road building contracts. What portion of the sand extraction equipment is exempt from tax and what would be the tax base for the consumed sand?

Post 3/31/95 Answer: The corporation is an extractive operator who consumes part of its product. Its tax base on consumed goods is wholesale fair market value. Since the extracted product is available for sale, 100% exemption applies to the extractive equipment even if the extractive operator consumes the product by attaching it to the real estate of others.

Example 5: XYZ Corporation extracted sand from a site or dune that it owned. The sand was stored at the extraction site. All of the sand was consumed in their road building contracts. What portion of the extraction equipment is exempt from tax and what would be the tax base for the consumed sand?

Post 3/31/95 Answer: The extraction equipment is taxable and the tax base for the sand is zero. The corporation is not defined as an extractive operator because the requirement that the product be sold was not met.

The extracting or assembly costs do not meet the definitions of manufacture or fabricate when determining the price of materials attached to real estate by a construction contractor.

Example 6: Oil is extracted and stored near the well. It is later moved through pipes several miles to be refined. Is the compressor used to move the oil to the refinery taxable or exempt?

Post 3/31/95 Answer: The compressor is taxable. The extractive operation exemption does not include property used in transporting the product from the place of extraction after it has come to rest in finished goods inventory storage. In this example, the first finished goods inventory storage was located near the well.

Example 7: Three producing oil wells are located on one tract of land owned by the extractor. The wells are one mile apart. The production from the wells is moved through pipes and first comes to rest in central storage tanks located between the wells. Are the piping and pumps used to move the oil from the wells to the central storage tanks exempt?

Post 3/31/95 Answer: The piping and pumps are exempt. Equipment used before transport of the natural resource from the production area is eligible for the extractive operation exemption. The wells and the storage tanks are all located at the extraction site.

Example 8: Three producing oil wells are located on three separate tracts of land owned by the extractor. The wells are four miles apart. The oil from each well is transported through pipes to the same central storage tank located four miles from each well. The central storage tank is the place where the oil first comes to rest in finished goods inventory storage. Most of the piping runs through land owned by others. Are the piping and pumps used to move the oil from the wells to the central storage tanks exempt?

Post 3/31/95 Answer: The piping and pumps are exempt. Extractive operations includes all necessary movement of the natural resource material until it comes to rest in finished goods inventory storage at the extraction site. The wells and the storage tanks are all located at the extraction site.

Example 9: A paper manufacturer owns 160 acres of trees. It contracts for certain trees to be harvested for pulp. The trees are cut at the base, delimbed, cut to length, put into an iron mule and dragged to a staging area. Trucks equipped with loading arms load the attached flat bed trailers and trailing pups. The trucks pull the logs five miles over the access road to the public highway and on to the paper mill. Is the travel on the access road a taxable or exempt movement of extracted materials?

Post 3/31/95 Answer: Extractive operations include movement of natural resource material until it first comes to rest in finished goods inventory at the extraction site. In this example, finished goods inventory first comes to rest at the staging site. Subsequent movement from the place of extraction is a taxable operation.

Example 10: A paper manufacturer owns 160 acres of trees. It contracts for certain trees to be harvested for pulp. The paper manufacturer maintains the logging roads or two ruts by installing culverts, adding stone, and grading with its bulldozer. The logging road is entirely within the extracting site. Does the extractive operation exemption include the maintenance of the logging road?

Post 3/31/95 Answer: The paper company is repairing or improving real estate when it repairs the roads. The extractive operations exemption does not include this activity.

Example 11: Mike's Equipment Repair maintains and repairs the equipment used by an iron mining company in their extractive operation.. The mining company sells the iron. Do the tools used by Mike's Equipment Company qualify for exemption?

Post 3/31/95 Answer: Servicicers qualify for the exemption given to the extractive operator when they perform an extractive operation. Repair of equipment used in the extractive operation qualifies as an extractive operation and their tools would be exempt from tax.

Example 12: An iron mining company removes tailings from its ore at its processing plant near the mine. The tailings are transported one mile by huge earthmoving trucks to a tailings basin on the company's property. The road is owned and maintained by the mining company. Are the trucks used to transport the tailings taxable? Is the equipment used to maintain the road taxable?

Post 3/31/95 Answer: Property eligible for the extractive operation exemption includes personal property used in depositing tailings from hard rock mining processing. The Department has interpreted this to include movement of the tailings to their final resting place. In this example, movement does not require the use of licensed vehicles so the transportation equipment is exempt.

The road is real property. Equipment and supplies used to maintain real property are subject to tax no matter where it is located.

MANUFACTURER/CONTRACTORS (EXTRACTORS/CONTRACTORS) RAB 93-5:

An extractor is also subject to the manufacturer/contractor rules as defined in RAB 93-5 when the natural raw product being recovered is further processed after first coming to rest in finished goods inventory storage at the extraction site.

NOTE: A contractor who only extracts natural resources for its own use is not an extractive operator as defined in the Act. To qualify for this exemption, the extractor has to sell part of the resources being extracted. (See example 5 above to calculate the tax base of extracted materials used by contractors who only extract for their own use.)

There are two types of manufacturer/contractors as defined in RAB 93-5. See the "Manufacturer/Contractor" section of this text for a detailed discussion.

Type 1:

- Maintains inventory for sale to others
- or
- Makes tangible personal property available for sale to others through a publication or a price list

Type 2:

- No inventory maintained for sale to others
- No publication or price list available

The first example below is a Type 2 manufacturer/contractor. The second example is a Type 1 manufacturer/contractor.

Example 1: ABC company extracts gravel from its own pit. It is crushed so it can be used in road bases. The contractor uses half of the gravel to construct a road and half is sold. What is the tax base of the crushed gravel used in the road contract?

Post 3/31/95 Answer: The tax base of the consumed gravel is the material cost of the raw gravel (fair market value) plus the labor costs to manufacture or crush. The statute states that the consumed or used portion of an extractive operator's product, other than the manufacturing a product for ultimate sale, is taxed at its fair market value.

Example 2: XYZ Asphalt Company extracts gravel and sand from parcels that it owns. Both resources are maintained in an inventory for sale to others. The company also manufactures asphalt that is available for sale to others through a price list. Sand and gravel is consumed by the company through its asphalt contracts. It is used in making the asphalt and in the preparation of the real estate to receive the asphalt. What is the tax base of the consumed sand and gravel?

Post 3/31/95 Answer: The tax base for the sand and gravel used to prepare the real estate to receive the asphalt is fair market value of the extracted resources per statute. The tax base of the consumed asphalt, which includes the sand and

gravel, is its finished goods inventory value. It makes no difference whether the sand and gravel was extracted from the taxpayer's dune or pit or from the property of another.

There is a difference between a manufacturer/contractor and an extractor/contractor. For the extractor/contractor, the tax base for self use materials will always be "fair market value" regardless if an inventory or price list is maintained.

References: MCL 205.54u

MCL 205.94p

R 205.90

R 205.99

RAB 89-56

RAB 93-5

LR 77-4

LR 80-5

LR 81-1

LR 86-2

LR 88-26

“FARMING OUT” OF INDUSTRIAL PROCESSING FUNCTIONS

Will the IP exemption apply for an entity that purchases equipment, tools, and supplies to be used in industrial processing, but who is not an industrial processor?

PRE-3/31/99: The IP exemption would not be available if the entity did not transform, alter, or modify tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail. However, if the entity did qualify as an industrial processor, even if in an unrelated activity, the exemption would be available.

POST-3/30/99: 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 Manufacturing Corporation is a California based distributor of automobiles. They do no actual manufacturing themselves as all production is farmed out to DEF Corporation, a wholly owned subsidiary located in Detroit, Michigan. ABC Corp. has purchased dies for \$10,000,000 that will be used by DEF Corp. in the actual manufacturing of automobiles. Is ABC Corp. liable for sales or use tax on the purchase of the dies if delivered to them in Michigan?

Pre-3/31/99 Answer: Yes, ABC Manufacturing Corp. would owe sales or use tax on the dies, as they are not an industrial processor.

Post-3/30/99 Answer: The dies would be exempt, as they are used by an industrial processor in an industrial processing activity.

Example 2: Same situation as in example # 1 above, except that ABC Manufacturing Corp. also manufactures paper clips at a small plant in Davenport, Iowa. Is ABC Corp. liable for sales or use tax on the purchase of the dies delivered to them in Michigan?

Pre-3/31/99 and Post-3/30/99 Answer: No, the dies would be exempt for IP. ABC Manufacturing Corp. does qualify as an industrial processor in the unrelated activity of manufacturing paper clips. Also, the dies are used by an industrial processor in an industrial processing activity.

Example 3: GHI Corporation is a book publisher located in Flint, Michigan. They perform composition work, artwork, and graphics in conjunction with the books they sell. However, all the actual printing of the books is done by a printer located in Toledo, Ohio. Is GHI Corp. liable for sales or use tax on equipment or supplies used in performing the artwork, graphics, and composition?

Pre-3/31/99 and Post-3/30/99 Answer: No, these items would be exempt for IP. GHI Corp. is an industrial processor as their activities are part of transforming, altering or modifying the form, composition, or character of property that will ultimately be sold at retail.

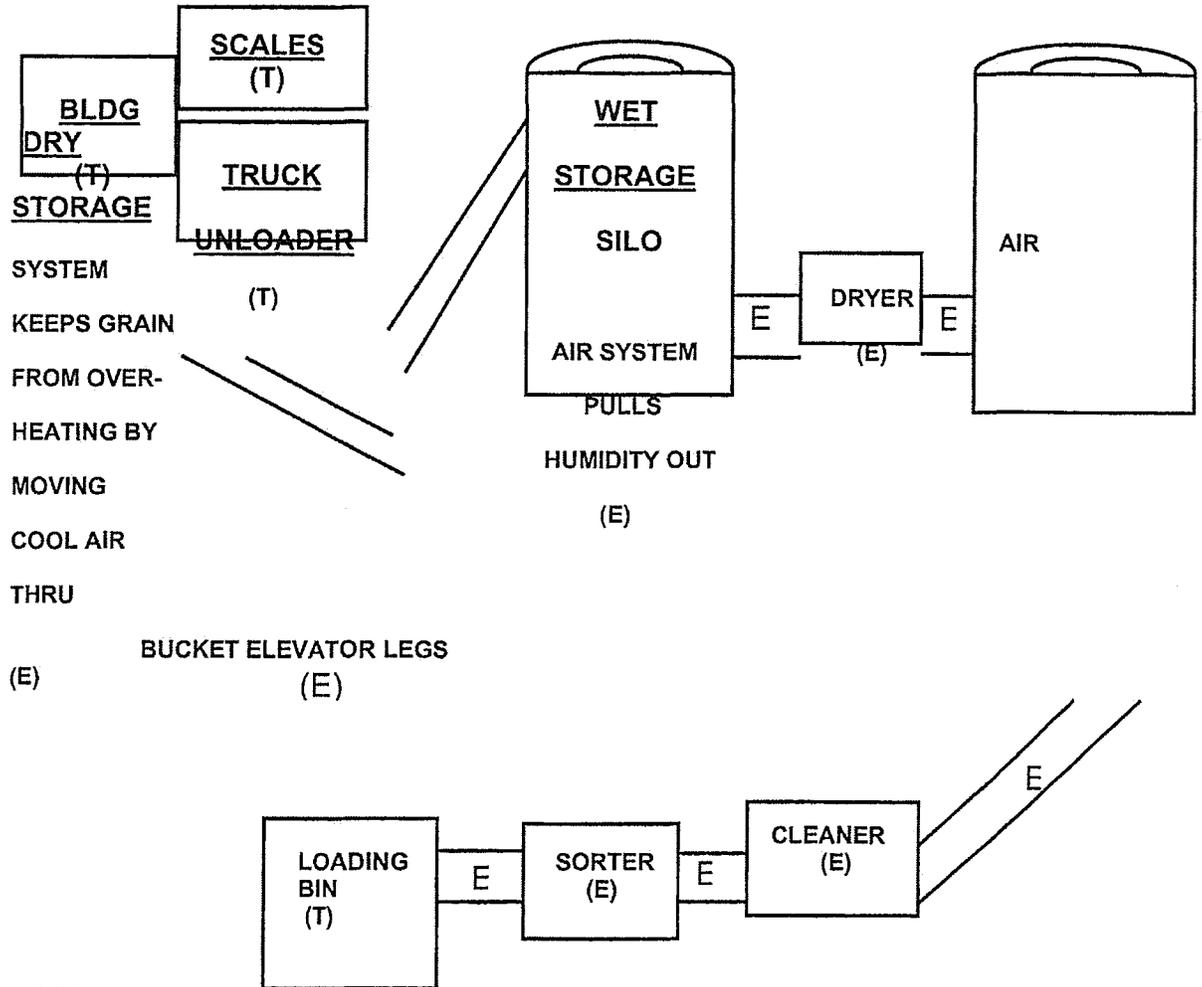
Example 4: JKL Corporation is a distributor of kitchen cabinets located in Ann Arbor, Michigan. They do no actual manufacturing themselves as all production is farmed out to a separate controlled group member, MNO Corporation, located in Grand Rapids, Michigan. JKL Corp. has employees (engineers) permanently on site at MNO Corporation performing quality control functions and product inspection. Is JKL Corp. liable for sales and use tax on the tools and supplies purchased for their engineers?

Pre-3/31/99 Answer: Yes, JKL Corp. would owe sales or use tax on these tools and supplies, as the activities of the engineers would not make them an industrial processor.

Post-3/30/99 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.

GRAIN ELEVATORS

The following drawing shows a typical grain elevator and the areas that would normally be considered 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. Per statutory changes as of December 17, 1998, the above service would qualify for the Agricultural Production exemption as well as the utilities used in this activity.

- 4) Cleaning equipment used to remove clay from grain would be exempt for industrial processing. This is also true if this equipment is located at a secondary location (not in close proximity to the primary elevator site).

References: LR 86-10

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" and "Inventory Withdrawals/Demonstration" sections of this text.

MICHIGAN WITHDRAWALS:

The above 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 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:

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 would be exempt for interstate commerce. Sales tax would be 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:

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:

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 furniture polish given away is taxable on cost.

EXCEPTIONS:

- Inventory withdrawals for the fulfillment of a contract affixing to realty by a manufacturer/contractor are taxable on finished goods inventory value (see the "Manufacturer/Contractor" section of this text).
- Items donated by a manufacturer, wholesaler or retailer to a qualified exempt entity are not taxable. A qualified exempt entity is a nonprofit school, nonprofit hospital, nonprofit home for the care of the aged or children (operated by certain types of organizations), parent cooperative preschool, or church.
- Food items given away are not taxable. This includes prepared food, except for employee meals. Employee meals were considered retail sales subject to sales tax until September 30, 2001. Effective October 1, 2001 employee meals provided during work hours are no longer taxable whether given away or sold to the employee.
- Promotional or packaging material transferred for use in fulfilling a redemption offer (box tops, labels, rebates) **to a person located outside this state are exempt** for resale even if a servicer fulfills the redemption.
- 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.

- Prescription drug samples given away by a manufacturer of prescription drugs to health professionals are exempt. All packaging materials are taxable at material cost and any packaging or material handling equipment may need to be prorated, depending on any other uses of the equipment. See the “**Other Deductions**” manual.
- Prescription drug samples given away by a wholesale distributor to health professionals are exempt.

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.

EXCEPTION: The Michigan Court of Appeals *Sharper Image* case involved catalog mailings from out-of-state sources. The court ruled that the Michigan use tax statute lacks specific language to tax the activity of “distribution”. The court also ruled that Sharper Image did not exercise sufficient control over the catalogs inside Michigan to meet the definition of “use”.

Based on the *Sharper Image* court case, the following conditions must be met for the 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.

See the “Inventory Withdrawals” flow chart in this text for assistance in determining the use tax base of tangible personal property withdrawn from inventory.

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: MCL 205.94c, e, and t

R 205.90

R 205.112

RAB 93-5

LR 73-7

IBM vs. Michigan Department of Treasury

Michigan Department of Treasury – Revenue Technical Tax Training

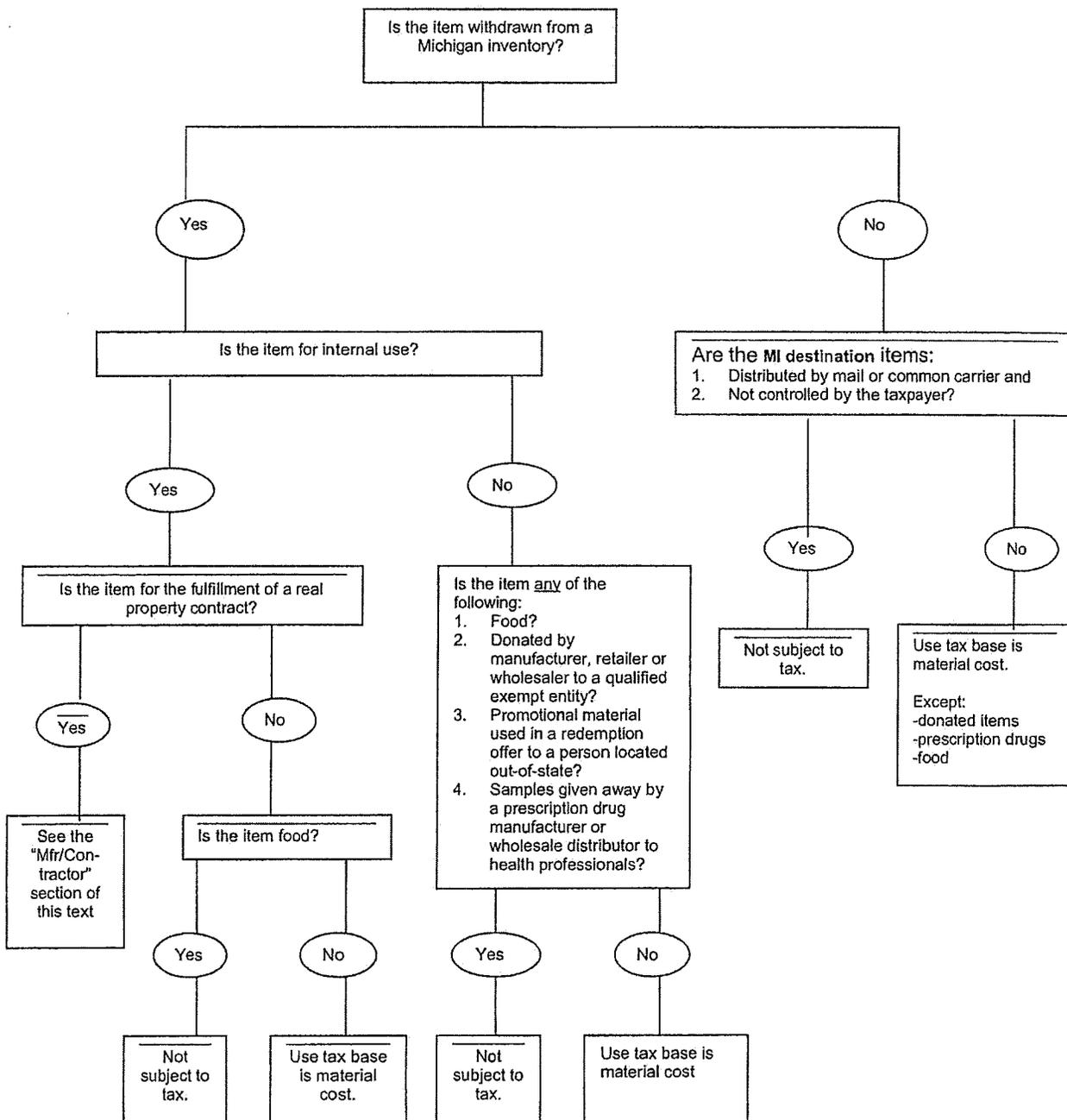
Sales and Use Tax: The Industrial Processing Exemption

July 2002

TREAS000668

Sharper Image vs. Michigan Department of Treasury
Wilson Sporting Goods vs. Michigan Department of Treasury

**USE TAX BASE OF TANGIBLE PERSONAL PROPERTY
WITHDRAWN FROM INVENTORY**



INVENTORY WITHDRAWALS/DEMONSTRATION

The following discussion applies to manufacturers who self-produce or purchase items exempt for demonstration purposes. This also applies to retailers who purchase inventory type items for demonstration.

Demonstration is the display or operation of a product in order to entice a customer to buy the product.

ALL of the following guidelines must be met to qualify for demonstration purposes:

- 1) The product is being used for bona fide demonstration purposes.
- 2) The sole use of the product is for demonstration.
- 3) The item is not a sample. Title and possession is transferred when samples are given away. (See the "Samples" section of this text).
- 4) The taxpayer is in the business of selling the demo type property.
- 5) **Title is retained by the company using the product for demonstration.**

Some demonstration activities consist of:

- Product display.
- Salesman using the product to show the use or features of the product.
- Customer using the product in the store to see how the product operates.

Some activities that do not constitute demonstration are:

- Advertising of the product.
- Company personnel using the product for their own personal use.

If **all** of the above guidelines are not met, see the "Inventory Withdrawals/Consumed Goods" and "Samples" sections of this text for further guidance.

If a company retains title to the property and the above criteria are met, the item can qualify as demo type property even if independent representatives make the demonstration.

Any shelving, equipment, software, electricity, etc. used in displaying or demonstrating the demo type property is taxable, since those items are not sold in the ordinary course of business.

Any subsequent sale of the item used for demonstration is subject to sales tax on the retail selling price. If the items used for demonstration are eventually given

away, tax is due on material cost unless qualifying for exemption (e.g., a qualified exempt entity).

Examples:

EXEMPT:

- A furniture manufacturer withdraws furniture from inventory. The furniture is used in company showrooms in Michigan and throughout the country. The furniture is used for display purposes only and not used for the manufacturer's own general use at any time. The furniture is eventually sold.
- A chain saw manufacturer has its own salespersons demonstrate chain saws to prospective customers.

TAXABLE:

- A manufacturer and retailer of computers uses inventory items for display and "after market" training purposes.
- A manufacturer of snowmobiles uses the same snowmobile for display and racing purposes.
- Swatch books used by furniture salespersons to display colors and types and grades of fabrics that can be used on a chair (the salespersons are not in the business of selling fabric).
- Carpet samples used by carpet retailers to display color choices, styles and grades.

References: MCL 205.51(b)
MCL 205.94(c)

MANUFACTURER / CONTRACTOR

A **MANUFACTURER/CONTRACTOR** manufactures tangible personal property that they affix to realty or may sell to others. There are two types of manufacturer/contractors as defined in RAB 93-5.

Type 1

- 1) Maintains inventory for sale to others, **OR**
- 2) Makes tangible personal property available for sale to others through a publication or a price list.

Tax Status:

- 1) *Retail sales are subject to sales tax on full selling price.*
- 2) *Use tax base for material withdrawn from inventory and affixed to realty on construction projects is "**FINISHED GOODS INVENTORY VALUE**".*
- 3) *Equipment and supplies qualify for manufacturing exemption if used in the manufacturing process. Tools used at the construction site do not qualify for exemption unless used to mix, blend, etc.*

"Finished Goods Inventory Value" is given the same interpretation as that given inventory valuation in U.S. Treasury Regulation 1.471-11. (Full absorption method of inventory valuation for manufacturers.)

Type 2

- 1) Inventory not maintained for sale to others, **AND**
- 2) No publication or price list.

Tax Status:

- 1) *Retail sales are subject to sales tax on full selling price.*
- 2) *Use tax base for material affixed to realty is the direct cost of material and direct cost of labor to fabricate and assemble property.*
- 3) *The cost of a subprocess activity by an outside party would be a part of the cost of material for determining the base subject to tax. It does not matter if the subprocess occurs before or after the transfer of ownership to or possession by the manufacturer/contractor.*
- 4) *Equipment and supplies do not qualify for manufacturing exemption.*

Cost of direct materials includes, but is not limited to:

- 1) Raw materials
- 2) Supplies entering into the product
- 3) Supplies consumed in connection with the product
- 4) Freight-In shipping or any costs in getting the material to the point of manufacturing
- 5) Amounts paid for processing by a second party

Cost of direct labor includes, but is not limited to costs incurred in the shop:

- 1) Wages (basic and overtime)
- 2) Vacation and Holiday pay
- 3) Sick leave pay
- 4) Shift differential
- 5) Fringe benefits
- 6) Bonuses
- 7) Commissions
- 8) Health insurance
- 9) Workers' compensation
- 10) Pension and retirement
- 11) Profit sharing
- 12) Payroll taxes
- 13) Payments to a supplemental unemployment benefit plan
- 14) Any other payment incurred on behalf of employees directly engaged in production
- 15) Mixing, combining or blending at the job site prior to affixation
- 16) Includes only the production staff such as hands-on fabrication
- 17) Operation of fabricating machines
- 18) In-process material handling

Costs of direct labor **do not** include:

- 1) Labor used in shipping and receiving
- 2) The direct labor to cut, bend, assemble or install at the job site
- 3) Shop supervision
- 4) Machine maintenance
- 5) Machine repair
- 6) Building maintenance and repair
- 7) Other indirect labor

Finished Goods Inventory Value includes:

- 1) Direct Materials, as defined above
- 2) Direct Labor, as defined above
- 3) Includable Indirect Production Costs:

- Repairs and maintenance costs
- Utility costs
- Rent and taxes on buildings and machinery necessary for production
- Indirect labor and production supervisory wages (components are same as outlined in direct labor)
- Miscellaneous indirect costs including:
 - (a) Indirect materials and supplies
 - (b) Expensed tools and equipment
 - (c) Costs of quality control and inspection
 - (d) Depreciation and depletion incident to production or manufacturing operations or processes
 - (e) Employee benefits
 - (f) Cost attributable to strikes
 - (g) Rework Labor
 - (h) Scrap and spoilage
 - (i) Administrative costs of production
 - (j) Officers' salaries incident to production
 - (k) Insurance costs incident to production

NOTE: The indirect production costs are to be included only to the extent that such costs are incident to and necessary for production or manufacturing operations or processes.

The following costs should not be included in finished goods inventory:

- 1) Marketing, advertising, or selling expenses
- 2) Other distribution expenses
- 3) Interest
- 4) Research and experimental expenses including engineering and product development
- 5) General and administrative expenses incident to and necessary for the taxpayer's activities taken as a whole rather than to production or manufacturing operations or processes
- 6) Salaries paid to officers attributable to the performance of services which are incident to and necessary for the taxpayer's activities taken as a whole rather than to production or manufacturing operations or processes.

The same exemption applies to manufacturer/contractors that applies to regular contractors when tangible personal property is affixed to realty in contracts for:

- 1) Nonprofit hospitals
- 2) Nonprofit housing
- 3) Qualified pollution control facilities
- 4) Church sanctuaries (for purchases made on or after July 22, 1998)

The following definitions will help in determining the type of manufacturer/contractor by deciding if they make their product available for sale to others through a publication or price list.

Price List: A numerical or alphabetical enumeration of goods, wares, merchandise items or services, quoting wholesale and/or retail prices and printed on cards or sheets, presented in loose-leaf form--stapled, stitched or bound.

Publication: Includes, among other things, a catalog, sales pamphlet and sales handbill.

Catalog: A bound, stitched, sewed or stapled book or pamphlet, containing a list and description of goods, wares, merchandise or services, with specific information, with or without a price.

Sales Pamphlet: A printed work concerning goods, wares, merchandise or services, consisting of two or more sheets, stapled, sewed or stitched, with or without price.

Sales Handbill: A printed single sheet (sometimes called a circular or dodger) intended to be circulated and concerning goods, wares, merchandise or services.

Examples of Manufacturer/Contractor:

Asphalt Manufacturer/Contractor (Type 1)

Some asphalt companies manufacture asphalt that is both sold at retail and consumed in contracts. When the company consumes this asphalt, use tax is due on the inventory value. No distinction is made between "special blends" not sold at retail and regular blends. Use tax is due on the inventory value of both.

For asphalt manufacturers, determination has been made that cold patch and hot patch are two distinct products. This distinction is important when determining the tax base when the manufacturer acts as a contractor. For example, having an inventory of cold patch does not constitute having an inventory for hot patch. The tax base for the manufacturer, when acting as a contractor, would depend on which type of manufacturer/contractor they are, based on the criteria set forth in RAB 93-5.

In this example, if the manufacturer maintained an inventory of cold patch for sale to others, the tax base when the manufacturer used the cold patch in a contract would be "finished goods inventory value" (Type 1).

This same manufacturer could produce hot patch for their own use and not make it available for sale to others. The tax base for the hot patch would be the direct cost of labor to manufacture and the direct cost of material (Type 2). Maintaining

the cold patch inventory for sale to others did not make this manufacturer a Type 1 manufacturer/contractor for the hot patch.

A business can be engaged in more than one distinct business activity and the tax base for the manufacturer/contractor would depend on the circumstances for that particular part of the business. For example Company ZYX is a manufacturer, a retailer and a contractor:

Situation 1 - Company ZYX purchases kitchen cabinets for retail sale and may also act as the contractor when installing the cabinets. The tax base when acting as the contractor is the material cost.

Situation 2 - Company ZYX also manufactures a custom cabinet for the bathroom and maintains an inventory of their manufactured cabinet. If they need additional cabinets, they may purchase a standard cabinet for installation from an outside source. Their cost, when acting as a contractor, would be "finished goods inventory value" on the cabinets that they manufactured and material cost on the cabinets that they purchased (Type 1).

Situation 3 - By word of mouth, some customers have discovered that Company ZYX has the equipment to manufacture hardwood flooring. This specialty flooring is not available for sale through a publication or price list. Each floor is custom made to the customer's specifications. The tax base when Company ZYX affixes the flooring to realty is the direct cost of material and the direct cost of labor to manufacture. The inventory of the wood products, including the standard cabinets that they either manufactured or purchased, in Situation 2 does not constitute inventory for the flooring when determining the tax base for the company when they affix the flooring to realty (Type 2).

When we examine the above three situations to ascertain the availability of the industrial processing exemption on equipment and utilities consider:

Situation 1 - In this situation Company ZYX is acting as a retailer and is not entitled to the processing exemption.

Situation 2 - Company ZYX is entitled to the processing exemption on the cabinets manufactured for retail sale or used in contracts (Type 1).

Situation 3 - Company ZYX would not be entitled to the processing exemption if they install all the custom hardwood flooring that they manufacture. However, if they make retail sales of the custom flooring, they would be entitled to the exemption based on a percentage determined by comparing the retail sales to the contract sales.

If a company bills "time and material" but has a subcontractor do the actual affixation to realty, the company still qualifies as a manufacturer/contractor. The subcontractor is never billed for the material; therefore, the manufacturer/contractor remains liable for any tax due following the guidelines in RAB 93-5.

If in the above illustration, materials are billed to the subcontractor, then the manufacturer is making a retail sale and does not qualify as a manufacturer/contractor. But the manufacturer/retailer would still qualify for industrial processing.

Examples of costs to be included for manufacturer/contractors:

Some asphalt manufacturer/contractors will use the asphalt removed from the current road bed in the production of the new asphalt since the disposal of this recycled (used) asphalt is very costly. The cost of transporting this recycled asphalt product to the asphalt plant should be included in the computation of the direct material cost as freight in. Included in this computation would be depreciation, oil, gas and maintenance of the roto mill. Also the labor costs of the roto mill operator would be included. These costs would be included for both Type 1 and Type 2 manufacturer/contractors.

Engineering/detailing costs that are related to manufacturing should be included in direct material costs for a manufacturer/contractor that fabricates and installs steel beams but makes no retail sales. This would include the cost of blue prints, certification tests and architectural design costs, whether done in house or by an outside company. These costs would be part of the direct material costs because they are necessary to determine what material to purchase for the job (what strength or grade of steel). These costs would be included for both Type 1 and Type 2 manufacturer/contractors.

The following are examples that demonstrate the difference between contractors, manufacturer/contractors and extractors:

- 1) The tax base for contractors who withdrew from their own pit for use in a contract and not for resale would be zero. The labor to extract would not be included. This taxpayer would be considered a contractor not an extractor.
- 2) If they withdrew from the pit of another, for use in a contract, their cost for tax purposes would be the amount paid to the pit owner for the material. The labor to extract would not be included. In this case the taxpayer would be considered a contractor not an extractor.
- 3) If a contractor bought a sand hill, the tax base would be the cost of the material. This taxpayer is a contractor not an extractor.
- 4) If an extractor/manufacturer/contractor maintained a standard inventory of aggregate for sale to others, their tax base, when using aggregate in performance of a contract, would be the inventory value – whether or not they extracted from their own pit or the pit of another.

PERSONAL USE OF MANUFACTURED PRODUCTS

If a manufacturer/contractor fabricates steel beams and then installs the beams in their own facility, the tax base of the beams would be:

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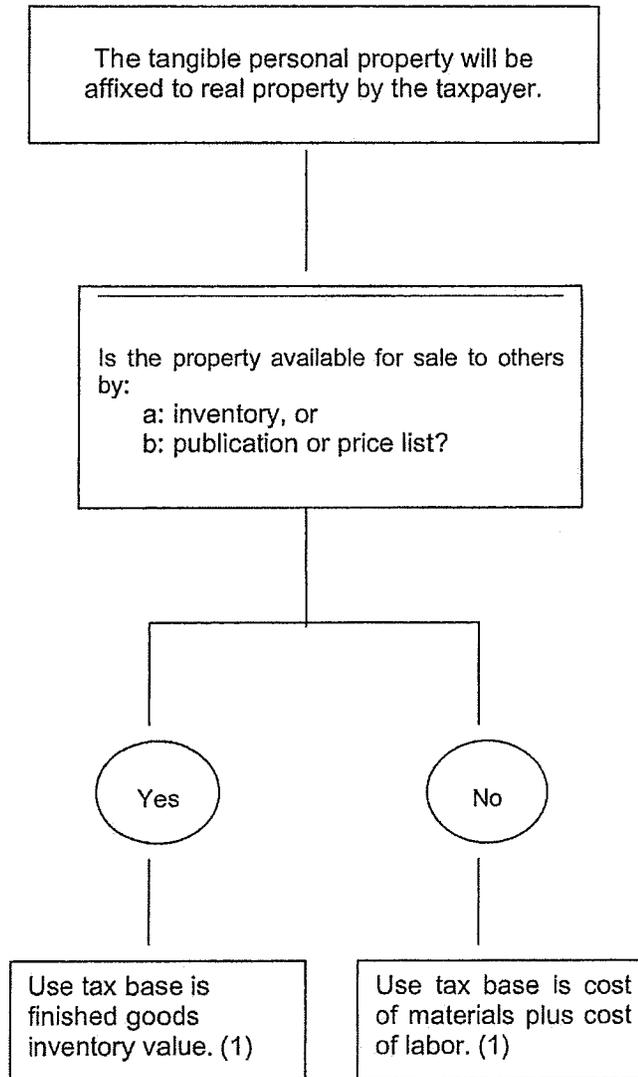
- Type 1: Finished goods inventory value
- Type 2: Material cost and direct cost of labor to manufacture

Refer to RAB 93-5 for additional examples of the two types of manufacturer/contractors.

See the following flowchart for help in determining the use tax base of tangible personal property (that will be affixed to realty) manufactured, fabricated or assembled by or for a taxpayer.

References: MCL 205.92(f)
RAB 93-5

**USE TAX BASE OF TANGIBLE PERSONAL PROPERTY
MANUFACTURED, FABRICATED, OR ASSEMBLED
BY OR FOR A TAXPAYER**



MATERIAL HANDLING

Pre-3/31/99 material handling was covered by limited statutory language and application of Rule 40.

MCL 205.94 (g) **Industrial processing.** Property sold to the following:

(i)... Industrial processing does not include receipt and storage of raw materials **purchased** or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale.

Rule 205.90:

(3) The industrial processing exemption does not include:

(d) Tangible personal property used for receiving and storage of materials, supplies, parts and components purchased by the user or consumer.

(4) The following examples of nontaxable sales illustrate the application of the industrial processing exemption:

(f) Machinery, equipment and materials used within a plant site for movement of tangible personal property in process of production.

(5) Industrial processing includes the following activities:

(g) Production material handling.

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

(a) Purchasing, receiving and storage of raw materials.

(b) Sales, distribution, warehousing, shipping and advertising departments.

The **BEGINNING** of the industrial process has been described as the "point at which the materials enter the first transformation, alteration or modification." The **END** has been described as "the point where the recognizable unit or product exists in a form as seen by the ultimate consumer or an additional processor."

Material handling equipment used by a manufacturer 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 subprocessing. Subsidiaries are considered unrelated entities when evaluating the tax status of material handling equipment. Vehicles 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 taxable and nontaxable.

The movements from raw material inventory to a staging area or an area adjacent to the processing equipment would be a taxable movement of the material. The exempt activity would not start until the raw material has entered the first step (move) prior to the first step of transformation, alteration or modification.

Post-3/30/99 periods are covered by statutory language that defines the beginning and ending of the industrial processing exemption. Some items that were taxable before 3/31/99 may be exempt after 3/30/99. The primary change is establishing the beginning and ending of the industrial processing exemption. Keep in mind that the exemption begins once the items are removed from raw material inventory and ends when the products first comes to rest in finished goods inventory.

Types of material handling equipment:

- Fork lift trucks
- Overhead cranes
- Low boy skid trucks
- Conveyors
- Electronic guided tracking systems

General types of material handling movements :

- Material handling equipment used in the receiving of **purchased** materials is taxable. **Pre- and Post 3/31/99.**
- Movement of the **purchased** material to raw materials inventory is taxable. **Pre- and Post 3/31/99.**
- Movement of the raw materials to an area adjacent to the production machinery is taxable **Pre-3/31/99. Post-3/30/99 EXEMPT.**
- Movement of the material from an area adjacent to the production machinery, or from inventory, to the production machinery is exempt. This is the first step (move) before production. **Pre- and Post 3/31/99.**
- Movement of in-process materials from one machine or production process to another machine or process is exempt. **Pre- and Post 3/31/99.**
- Movement of the completed product to finished goods inventory is generally taxable **Pre-3/31/99. Post-3/30/99 EXEMPT.**

- Movement of the completed product from finished goods inventory to the shipping area is taxable. **Pre- and Post 3/31/99.**
- Material handling equipment used in the shipping functions of finished goods is taxable. **Pre- and Post 3/31/99.**
- 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 subprocessing. **Pre- and Post 3/31/99.** See RAB 2000-4.
- Between different legal entities, subsidiary or unrelated company, 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 subprocessing. **Pre and Post 3/31/99.** See RAB 2000-4.
- The shipping and receiving functions of the different legal entity subprocessor are taxable, as these functions are not considered exempt in-process material handling movements. It is raw material when received by the subprocessor and a finished product of the subprocessor when shipped out. **Pre- and Post 3/31/99.**
- Material handling equipment used for shipping from one plant (division) to a second manufacturing facility (division) of the same company 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. **Pre- and Post 3/31/99.**

Usually, in the 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

Actual costs associated with taxable and/or exempt areas or activities are quite often available through cost accounting records.

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.
- A magazine distributor picks up, shreds, and bales unsold magazines. The shredded magazines are sold to a paper mill. The shredding machine is exempt for industrial processing. LR 86-25

Pre-3/31/99 - The baler is taxable, since the sole purpose is to facilitate shipment. If the purchaser required the product be baled and banded, the equipment would be exempt.

Post-3/30/99 – The baler is exempt, because the baling and banding process occurs prior to the product coming to rest in finished goods inventory storage.

In the following scenarios, 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.

PACKAGING EQUIPMENT

Pre-3/31/99:

NONFOOD INDUSTRY

For all nonfood processors, industrial processing ends at the “point where the recognizable unit or product exists in a form as seen by the ultimate consumer or an additional processor”. Depending upon the customer that the product is sold to, this will be different.

For instance, a retailer who sells items in bulk will require different packaging than the retailer who sells in individual units. A drug store will want paper towels in individual rolls, while a warehouse club will want those same paper towels packaged in groups of eight individual rolls. For the drug store product, industrial processing ends when the single roll of paper towels is wrapped. For the warehouse club, industrial processing ends when the eight individually wrapped rolls are packaged together as one unit. Another example is a car manufacturer purchasing oil filters that requires the product to be individually bagged and shipped in bulk containers, while the auto parts store will want the oil filters boxed for individual sale. For the car manufacturer, processing ends when the oil filter is bagged and for the auto parts store, processing ends when the oil filter is placed in the individual box.

Any equipment used to further package or move the completed product is taxable “one step beyond” the end of the industrial process. See the “Material Handling” section of this text. How do we determine “one step beyond”? It is not necessarily where there is a definite or visual break in production, such as the end of a conveyor, but it is **one step (move) after “the point where the recognizable unit or product exists in a form seen by the ultimate consumer or an additional processor”**. In our example above, “one step beyond” occurs when the individually wrapped paper towel rolls are **moved** from the wrapping machine. This move can be made by a short conveyor ride, by a forklift or another piece of equipment. Any machinery used to further package, palletize or ship the carton of individual paper towel rolls is taxable packaging equipment.

For the manufacturer who sells their product via mail, the equipment that **moves** normally separate items into a larger shipping container will be the final step in the exempt process. For example, 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 to the boxing process would be the last operation to qualify for the IP exemption.

The following are examples of taxable packaging equipment for nonfood processors:

- Staple guns
 - Tape dispensers
 - Equipment for boxing completed products
 - Shrink wrappers
 - Palletizers
 - Banding machines

The same equipment may be used in both taxable and exempt packaging operations. The shrink wrap machine that wraps the unit of eight rolls of paper towels for the warehouse club may also shrink wrap twelve units of eight rolls to facilitate the shipping of those packages. Barcode/UPC machines may also be used in both taxable and exempt operations. If it is required that the recognizable unit in the form seen by the ultimate consumer or additional processor has a barcode, the barcode/UPC machine would be exempt for industrial processing. If the barcode is placed on a shipping container, the barcode machine is taxable. Methods to determine taxable/nontaxable percentages of use are discussed in various sections of this text and can also be applied to determine the taxable portion of packaging equipment.

FOOD PROCESSORS

The *Kellogg's* case has established that manufacturers of food for human consumption are allowed an exemption for all packaging equipment because the functions of casing, palletizing and shrink wrapping are "necessary to preserve the marketability of the product".

Post-3/30/99:

For all processors, food and nonfood, 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.

For instance, 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. For the drug store, when the paper towels

are taken from finished goods storage and shrink wrapped or boxed prior to shipment, the equipment is taxable.

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 same equipment may be used in both taxable and exempt packaging operations.

Barcode/UPC machines may also be used in both taxable and exempt operations. Methods to determine taxable/nontaxable percentages of use are discussed in various sections of this text and can also be applied to determine the taxable portion of packaging equipment.

The packaging function is illustrated for processors on the following chart.

References: MCL 205.54f(7)(a)

MCL 205.94o(7)(a)

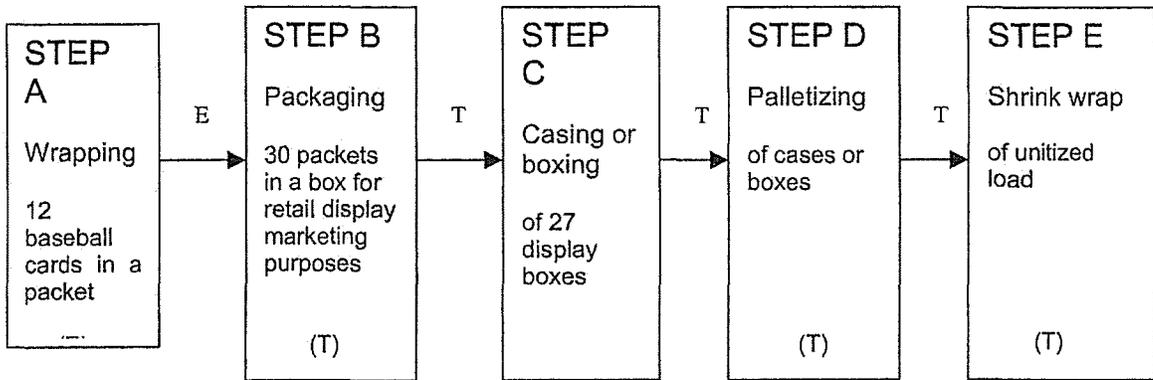
R 205.90(6)(b)

PACKAGING FUNCTION

Pre-3/31/99:

I. THE TAXABILITY OF THE PACKAGING FUNCTION FOR A NONFOOD MANUFACTURER

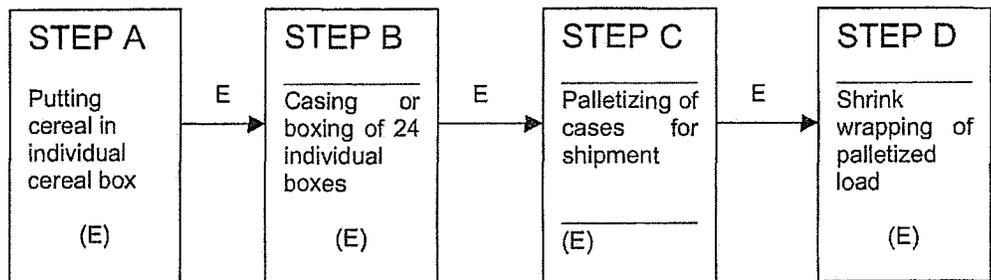
This example uses a baseball card manufacturer, but would be applicable to any manufacturer of a nonfood item.



NOTE: A finished product exists after step A (a marketable product as it will appear on the retail shelf). All subsequent packaging operations are taxable.

II. THE TAXABILITY OF THE PACKAGING FUNCTION FOR THE FOOD INDUSTRY

This example uses a cereal manufacturer, but would be applicable to any manufacturer of food for human consumption exempt by statute.

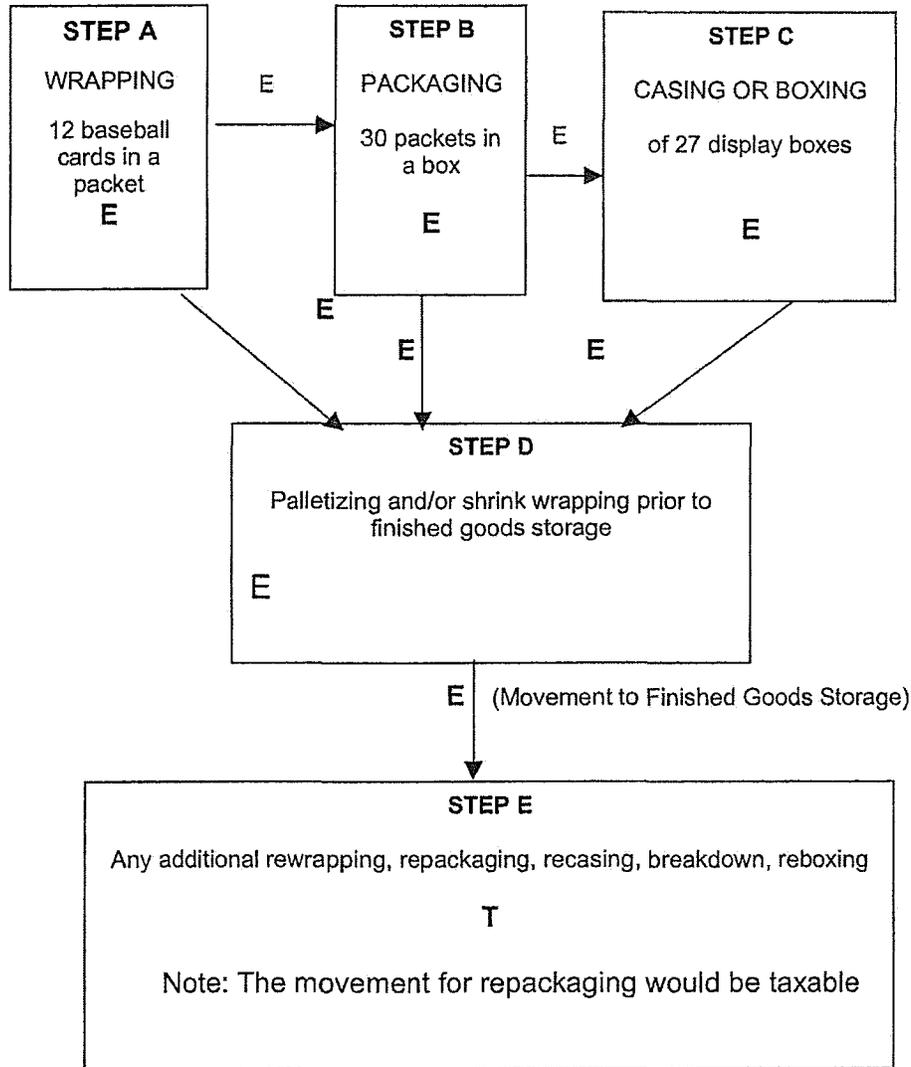


NOTE: All packaging functions for the food industry would be exempt per the *Kellogg* case to preserve the marketability of the product including the nonalcoholic beverage bottling industry.

Post-3/30/99:

THE TAXABILITY OF THE PACKAGING FUNCTION FOR A MANUFACTURER

This example uses a baseball card manufacturer, but would be applicable to any manufacturer.



PACKAGING MATERIALS

Pre-3/31/99 and Post-3/30/99

Letter Ruling 82-3 states that **nonreturnable** containers used to ship and deliver manufactured products are exempt. One time use shipping containers, packaging materials, shrink wrap, bags, tags, tape, staples, steel banding and similar shipping materials are exempt from tax for resale, as they accompany the item manufactured and sold.

Returnable containers are taxable unless they are used for:

- In-process storage
- In-process movement within the plant
- In-process movement between divisions

Nonreturnable containers and other shipping supplies used to ship and deliver products to a subprocessor that is a separate legal entity are taxable. Machinery and equipment used for this function are also taxable.

Nonreturnable containers and other shipping supplies used to ship and deliver products to a subprocessor 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 "Material Handling" section 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.

Dunnage is taxable if used **exclusively** on trucks or railcars transporting in-process materials to a subprocessor 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.

See the "Packaging Equipment" section of this text for taxability of packaging equipment.

References: R 205.68 LR 82-3
 RAB 2000-4 VI(10)

Michigan Department of Treasury – Revenue Technical Tax Training
Sales and Use Tax: The Industrial Processing Exemption
July 2002

TREAS000695

LR 86-13

PERCENTAGE APPLICATION

Pre-3/31/99 & Post-3/30/99

Public Acts 116 and 117 amended the Sales and Use Tax Acts, retroactive to 3/31/95, to allow apportioning the tax base to the extent the property is used for industrial processing purposes. The percentage of taxability will be determined based on a reasonable formula or method approved by the department.

Prior to Public Acts 116 and 117 the percentage allocation was based on Rule 40 "Industrial Processing". The Rule states "where the same tangible personal property can be used or consumed in the industrial processing area and 1 or more other areas, the tax will apply to such property unless it can be determined and substantiated to the satisfaction of the Revenue Division, Department of Treasury that a percentage or other apportionment thereof is equitable and practical".

References: MCL 205.54t(2) and y(2)
MCL 205.94o(2) and r(2)
R 205.90

POLICY (OR GOODWILL) ADJUSTMENT

DESCRIPTION: Policy adjustment occurs when a manufacturer (or their 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.

Policy adjustment may also be known as "goodwill service" or "secret warranty." It is performed to keep customers happy and maintain market share.

TAXABILITY OF PARTS REPLACED UNDER POLICY ADJUSTMENT: It is our position that parts provided free of charge to customers, and not covered by the original manufacturer's warranty, would be subject to sales or use tax. The tax base would be:

- Cost of the part if the manufacturer performs the repair.
- The price billed to the manufacturer for parts if a dealer or other third party representative performs the repair.

NOTE: Do not confuse policy (goodwill) adjustments with parts supplied by a manufacturer under the original manufacturer's warranty, federally mandated recalls, or company initiated recalls. Parts provided by a manufacturer under any of these three programs would not be subject to sales or use tax.

References: *General Motors Corporation vs. Michigan Department of Treasury*

PRINTED MATERIAL SOLD WITH OR FOR MANUFACTURED PRODUCTS
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Pre-3/31/99 and Post-3/30/99:**EXEMPT:**

Printed material that is a **necessary accompaniment** to a sale and **for the benefit of the customer** (e.g., installation instructions, assembly instructions, parts list, operating manuals, safety brochures, list of service centers, service manuals) is exempt for resale by the manufacturer.

A warranty statement is a nonreturnable item and considered to be an exempt necessary accompaniment of the product.

All labels that are directly placed on the final product or final product containers are exempt for resale (e.g., bar code labels, UPC labels, mailing/shipping labels, advertising labels).

TAXABLE:

Printed material serving as an **administrative** or **sales promotion** is taxable (e.g., warranty registration certificate, product survey, accessories parts catalog, advertising brochures, product catalogs). Printed material used for the **manufacturer's benefit** is taxable.

A warranty registration certificate is a returnable item and is taxable.

Bills of lading and packing lists are taxable whether they accompany the product or not, since they serve an administrative and shipping function.

PARTIALLY EXEMPT:

When the warranty statement and warranty registration certificate are combined, apply a reasonable percentage of taxability for the returnable warranty registration certificate.

References: R 205.94
LR 86-16

PRINTERS

SALES TAX:

The sales of the following items are exempt from sales tax:

- 1) A newspaper or periodical admitted under federal postal laws and regulations effective September 1, 1985 as second-class mail matter or
- 2) A controlled circulation publication or qualified to accept legal notices for publication in this state, as defined by law, or
- 3) Any other newspaper or periodical of general circulation, if: (a) established not less than 2 years, and (b) published not less than once a week.
- 4) Supplements delivered directly to the newspaper or periodical to be distributed as part of the newspaper or periodical.
- 5) Service sales where the printer is merely printing on stock furnished by the customer. The customer must provide the paper as well as the layout, composition, etc. For example, if the aforementioned criteria are met, the printing of business cards on customer furnished stock would be exempt.

NOTE: the federal postal laws and regulations were amended in 1996. Due to reform changes within the postal service, "second class" has been renamed "periodical". "Periodical" is designated for newspapers and other publications. All "second class" *categories* remain the same. These regulations became effective July 1, 1996.

Also, due to these same postal law and regulation changes, "controlled circulation publications" are now classified as "requestor publications".

Due to these changes, until such time as the sales and use tax acts are amended, see your supervisor if you have questions regarding the taxability of certain publications.

USE TAX:

A printer qualifies as an industrial processor when printing most products sold.

EXEMPT NEWSPAPERS AND PUBLICATIONS

A printer does not qualify for industrial processing when printing the exempt newspapers and publications mentioned in items 1) through 3) above under

sales tax. However, the paper and ink, which become a component part of the exempt publication, would not be subject to sales or use tax on cost. This would include the cost of paper and ink used to produce the newspaper advertising supplements.

The following items used to produce exempt publications would be taxable to the printer at cost:

- 1) Fixed Assets
- 2) Utilities
- 3) Other consumable supplies, etc.

These items would normally be taxed based on a percentage of exempt publication sales divided by total sales (or some other equitable method).

The full IP exemption would apply for the manufacture of newspaper or magazine advertising supplements.

NOTE: PA 490 and 491 of 1998 amended the laws after December 1993 to exempt tangible personal property used or consumed in producing a newspaper or periodical that is published **14 times or less per year**. Therefore, the paper, ink, machinery, equipment, power, etc. used in creating a newspaper or periodical, such as alumni magazines, that is published 14 times or less per year are exempt.

PERSONAL USE OF MANUFACTURED PRODUCTS

Most printers print letterhead, envelopes, business cards, calendars, promotional materials, etc. for their own use. The recent *IBM* case in the Court of Appeals indicated that the proper use tax base for these items is raw material cost. No industrial processing exemption would exist for utilities, fixed assets, etc. used to manufacture these self consumed items.

See the "Inventory Withdrawals/Consumed Goods" section of this text for further discussion.

References: MCL 205.54a(f)
MCL 205.94(l) and o(v)
R 205.113
RAB 88-33
LR 80-6
LR 86-28
LR 87-36

PROTOTYPES

Pre-3/31/99:

The development, design and manufacture of a prototype by the industrial processor are exempt activities pursuant to Rule 40 (MAC R205.90). For example, if one of the automotive companies developed their own auto-related prototype, this activity would be industrial processing.

The automotive companies define **PROTOTYPE** as any part or unit that is not in production.

Prototypes are also an issue for servicers who are not manufacturers of the part or unit for which the prototype is being developed. The sales and use tax statutes provide that a servicer must be acting as an "industrial processor" to obtain the industrial processing exemption. "Industrial processor" is defined in the statutes to be "a person who transforms, alters or modifies tangible personal property by changing its form, composition or character for ultimate sale at retail or sale to another industrial processor for further processing and ultimate sale at retail".

Critical analysis must be given to whether or not there is an ultimate sale at retail. A common scenario is where a manufacturer takes designs or prints to a servicer and contracts for the building of a prototype. In these scenarios, the prototype is a custom made item which is sold at retail to the manufacturer. In other words, the manufacturer is seeking the tangible prototype as the **real object** of the transaction. As a result, the servicer is entitled to industrial processing exemption on its purchases to manufacture the prototype.

In contrast, a second common scenario is where a manufacturer does not take designs or prints to the servicer, but instead asks the servicer to provide an engineering or design solution to a problem. The servicer frequently will build one or more prototypes, which become the property of the manufacturer and are often used to test the design or engineering solution. In these scenarios, the prototype is nothing more than a manifestation of the service of engineering or designing a solution to the manufacturer's problem. In other words, the manufacturer is seeking the service of an engineering or design solution as the **real object** of the transaction. As a result the servicer is not entitled to an industrial processing exemption on its purchases to make the prototypes.

Two Michigan Tax Tribunal cases of prototype nature have been decided. Each case has special facts and circumstances that contribute to the rulings issued. We would look for the existence of these same special facts and circumstances before following the rulings of the Tribunal for another taxpayer.

The first case is *Specialized Vehicles, Inc. vs. Michigan Department of Treasury*. The important fact/circumstance in this case is that Specialized Vehicles built its prototype largely by modifying a vehicle owned by its customer. The Tribunal ruled that Specialized Vehicles, Inc. was not entitled to the industrial processing exemption.

The second case is *Creative Industries Group, Inc. vs. Michigan Department of Treasury*. The important fact/circumstance in this case is that Creative Industries' customer originally issued a purchase order for design/engineering services, and later placed an addendum to the purchase order for building the prototype from the design created earlier. The Tribunal ruled that Creative Industries was entitled to the industrial processing exemption. The addendum is treated as a separate transaction from the engineering/design purchase order. It is for custom building of an item for which the customer provided the design.

Post-3/30/99:

Prototypes used to be an issue for servicers who were not manufacturers of the part or unit for which the prototype was being developed. After 3/30/1999 the definition of an industrial processor was expanded to include "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".

Prototypes developed by servicers for industrial processors are now exempt as research or experimental activity. Research or experimental activity is defined as "activity incident to the development, discovery, or modification of a product or a product related process". (See Quality Control/Research or Experimental/Engineering section of this text.)

"Product" as defined in the General Sales Tax Act MCL 205.54t(7)(c) and Use Tax Act MCL 205.94o(7)(c) 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.

QUESTIONS & ANSWERS

- 1) **Question:** I do research and design for a company. I provide the company with my design information, but do not provide any tangible personal property to the company. Is there any sales tax due on this service?

If I purchase parts and/or equipment that I use as part of my research and development, can I claim exemption from sales tax for these parts and/or equipment? If so, what is the exemption?

Answer:

Pre-3/31/99:

When operating in this manner you are operating as a servicer. You would not collect sales tax as you are not making a retail sale. However, as a servicer, you are responsible to pay tax on whatever materials, equipment and supplies are purchased to perform your service. Refer to the "Computers Used in Industrial Processing" section of this text for the CAD/CAM exemption for servicers.

Post-3/30/99:

As a servicer working on behalf of an industrial processor you would not pay tax on any materials, equipment and supplies. Refer to the "Computers Used in Industrial Processing" section of this text for the CAD/CAM exemption for servicers.

- 2) **Question:** I do research, design and build a product for a company based on their requirements. I purchase parts and build a product for a company based on their requirements. I purchase and build the product using my design. I then provide the product to the company.

Is sales tax required on the cost of the materials or the total charge for developing the product?

Can the company claim sales tax exemption if the product is a prototype for a product that they will be producing (e.g., I make a circuit board which they are going to manufacture and sell)?

Can the company claim sales tax exemption if the product is used as equipment in their production process (e.g., I make a piece of equipment which they use to test their product before they sell it)?

Can the company claim sales tax exemption for the product if not directly used in manufacturing (e.g., I make a computer that is used in their engineering lab)?

Answer:

Pre-3/31/99:

When you take an order from a manufacturer to design and build a product to their specifications and purchase materials needed to build the product, you are operating as an industrial processor if you sell that product to the final consumer. You are required to have a sales tax license, report retail sales made, and remit sales tax due on those sales on the gross proceeds, unless a valid exemption applies.

The Michigan Sales Tax Act, MCL 205.54a(g), provides exemption from tax of tangible personal property used or consumed in industrial processing. An industrial processor is defined as a person who transforms, alters or modifies tangible personal property by changing the form, composition or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail.

When making purchases that are to be used or consumed in industrial processing, you must claim that exemption by providing your supplier with a signed statement indicating that the tangible personal property purchased will be used or consumed in industrial processing. Likewise, when you sell to an industrial processor, your customer must supply you with an exemption claim. Items that are used in a manufacturer's production process and computers used for design and research in a manufacturer's engineering lab would qualify for the industrial processing exemption.

If you take an order from a manufacturer to design a product and make a prototype to illustrate your design and engineering service, you are acting as a servicer and your tax treatment is described in the response to the first question.

Post-3/30/99:

When you take an order from a manufacturer to design and build a product to their specifications and purchase materials needed to build the product, you are operating as an industrial processor. You are required to have a sales tax license, report retail sales made, and remit sales tax due on those sales, unless a valid exemption applies.

The Michigan Sales Tax Act, MCL 205.54a(g), provides exemption from tax of tangible personal property used or consumed in industrial processing.

When making purchases that are to be used or consumed in industrial processing, you must claim that exemption by providing your supplier with a signed statement indicating that the tangible personal property purchased will be used or consumed in industrial processing. Likewise, when you sell to an industrial processor, your customer must supply you with an exemption claim. Items that are used in a manufacturer's production process and computers used for design and research in a manufacturer's engineering lab would qualify for the industrial processing exemption.

If you take an order from a manufacturer to design a product and make a prototype to illustrate your design and engineering service, you are acting as a servicer working on behalf of a processor and your tax treatment is described in the response to the first question.

- 3) **Question:** I do research, design and build a product for a company based on their requirement. The company I work for supplies the components (e.g., they are a manufacturing company and have the components). Is sales tax involved? If so, on what portion?

Same question as number two regarding exemption from sales tax.

Answer:
Pre-3/31/99:

When designing and working on your customer's property you are performing a service, not making a retail sale of the finished product, so no collection of sales tax is involved. As a servicer, you are liable for tax as explained in the answer for question number one.

Post-3/30/99:

When designing and working on your customer's property you are performing a service, not making a retail sale of the finished product, so no collection of sales tax is involved. As a servicer acting on the behalf of an industrial processor, you are not liable for tax as explained in the answer for question number one.

- 4) **Question:** I do research and design for a company. They provide me with a sample of their existing product and I make design changes and add parts to that product. Is sales tax involved? If so, on what portion?

Answer:
Pre-3/31/99:

Same as the answer to question three. However, because you are working on property owned by another, you may separately itemize charges for parts, and tax only the parts unless your customer makes a valid claim of exemption.

Post-3/30/99:

Same as the answer to question three.

References: MCL 205.54t(7)(c)
MCL 205.94o(7)(c)
RAB 2000-4 III (2)

QUALITY CONTROL / RESEARCH OR EXPERIMENTAL / ENGINEERING

Pre-3/31/99:

The Sales and Use Tax Acts do not mention that quality control or research, development, and engineering are part of the industrial processing exemption. This exemption has always been allowed for industrial processors and included in the Administrative Rules.

The Michigan Administrative Code (MAC), Rule R 205.90 states that industrial processing includes the following activities:

- Patent
- Experiment
- Development
- Engineering Inspection
- Quality Control

An industrial processor is defined in the statute to be "a person who transforms, alters or modifies tangible personal property by changing its form, composition or character for ultimate sale at retail or sale to another industrial processor for further processing and ultimate sale at retail".

If the taxpayer qualifies as an industrial processor, equipment and supplies directly used in quality control, research, development, and engineering would be exempt.

If the taxpayer does not qualify as an industrial processor, they would be considered a servicer and all supplies and equipment would be taxable. Refer to the "Servicer" section of this text.

The above exemptions would not include the following:

- Quality control of **purchased** material cannot be in the receiving area. This would be inspection of raw material and considered receiving. **This would be exempt Post-3/30/99.**
- Storage facilities would be taxable. Racks used to store test tubes, dies or any other equipment/material would be taxable. **These would also be taxable Post-3/30/99.**
- Blueprint storage cabinets are taxable. **These would also be taxable Post-3/30/99.**

Post-3/30/99:**Research or experimental**

After 3/30/1999 the research and experimental exemption for industrial processing was expanded to include third party servicers acting for the processor.

Research or experimental activity as defined by the statute means "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 qualified** for research or experimental exemption:

- Efficiency surveys
- Management surveys
- Market or consumer surveys
- Advertising or promotions
- Research for literacy, historical, or similar projects.

Quality Control

All equipment and supplies used in the testing of raw material and the inspection of the product or the process at any point, including in receiving, 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 stops once the product is placed in finished goods inventory storage.

Engineering

The statute states that engineering related to industrial processing is exempt.

CAUTION: Not all engineering costs are related to industrial processing, for example, building maintenance, receiving, equipment removal, etc.

See the "Utilities" section of this text.

References: MCL 205.54t(3)(b-d)
MCL 205.94o(3)(b-d)
R 205.90(5)(b)

REAL vs. PERSONAL PROPERTY

Tangible personal property that becomes a structural part of realty is taxable except for nonprofit housing, nonprofit hospitals and qualified pollution control facilities. This becomes an issue for the industrial processor if the tangible personal property would be eligible for the industrial processing exemption. Generally, if it is considered real property, it is taxable.

To determine whether property remains tangible or is made a structural part of realty, we look to the following test which is cited primarily in the Michigan Supreme Court decision in *Sequest v Fabiano*, 274 Mich. 643: 265 NW 488 (1936) and other documentation including the State Tax Commission Assessor Manual:

1) The property must be attached to the realty.

Annexation to the realty, either actual or constructive. This test has to do with the manner in which an item is attached to the real property. If the item is attached in such a permanent manner that its removal would destroy the building or do substantial injury to the building, the item is usually held to be real property.

This test looks for the permanence of the affixation (e.g., bolted to the floor or wall). Leaving a void is not the only test for determining real property.

2) Its function must benefit the realty.

Adaptation or application to the use or purpose to which that part of the realty to which it is connected is appropriated. This test suggests that if an item was intended (built or purchased specifically) to function as part of the particular building or if it carries out part of the function of the real property, that item is probably 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 example would be theater seats in a theater generally bolted to the floor and an essential part of the function of the building.

3) It is intended to be a permanent part of realty.

Intention to make the article a permanent accession to the freehold. This test has usually been found to be the most important. It asks whether the item in question is intended to become part of the real estate.

In simple terms, if the tangible personal property serves a function of realty or the building and if it is attached to realty and permanently affixed to realty, it would usually be considered real property.

Various opinions of the State Board of Tax Appeals, as well as Administrative Rulings, have determined that certain equipment remains personal property even though it may appear to be part of real property in the form of building equipment, such as air make-up units, electrical distribution equipment, etc. Since some items can have the appearance of being real property, it is important to ascertain all the facts before making a final decision.

The chart that follows gives several examples of both real and personal property and the possible tax consequences for sales and use taxes for industrial processors.

Real property is taxable for sales and use tax purposes. However, the courts or the Department have determined that sometimes tangible personal property that appears to be affixed to realty actually maintains the properties of tangible personal property for sales and use tax purposes.

**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: BUILDING CEILING CONSTRUCTION IP EQUIPMENT SOUND ATTENUATION	REAL PERSONAL	TAXABLE EXEMPT
2.	AIR COMPRESSOR FOR SPECIFIC IP MACHINERY	PERSONAL	EXEMPT
3.	AIR COMPRESSORS (PART OF CENTRAL SYSTEM)	REAL	TAXABLE
4.	AIR CONDITIONING SYSTEMS FOR GENERAL BUILDING	REAL	TAXABLE
5.	AIR CONDITIONING UNITS: WINDOW TYPE UNITS FLOOR OR CABINET TYPE - NO DUCTWORK PROCESS - CENTRAL SYSTEM EVAPORATORS	PERSONAL PERSONAL REAL REAL	T or E depending on use T or E depending on use TAXABLE TAXABLE
6.	AIR MAKEUP UNIT FOR SPECIFIC IP FUNCTION	PERSONAL	EXEMPT (1)
7.	ALARM SYSTEMS	PERSONAL	TAXABLE (7)
8.	ANNEALING FURNACES (small furnace to heat up parts)	PERSONAL	EXEMPT
9.	AWNINGS - CANOPIES/MARQUEES	REAL	TAXABLE
10.	BERMS	REAL	TAXABLE
11.	BINS: PORTABLE BUILT-IN	PERSONAL REAL	T or E (10) TAXABLE
12.	BOILER (ONE BOILER) - NEW	REAL	TAXABLE, building function
13.	BOILER (ONE BOILER) - REPLACEMENT	REAL	TAXABLE
14.	BOILER FOR IP USE - REPLACEMENT	PERSONAL	EXEMPT (2)
15.	BOILERS (MULTIPLE)	R or P DEPENDING ON USE	% BASED ON USE
16.	BOOTHES: IP EQUIPMENT TYPE BUILDING TYPE -- ROOM LIKE	PERSONAL REAL	EXEMPT TAXABLE

NO.	DESCRIPTION	REAL or PERSONAL FOR SALES/USE	SALES & USE TAX STATUS FOR IP
17.	BRIDGES: SPECIFIC TO IP EQUIPMENT SPECIFIC TO BUILDING	PERSONAL REAL	EXEMPT TAXABLE
18.	BUNKERS AND SILOS	REAL	TAXABLE
19.	BUS DUCT FOR GENERAL ELECTRICAL DISTRIBUTION (See "Utilities" Section of this text)	REAL	TAXABLE
20.	BUS DUCT FOR IP EQUIPMENT (See "Utilities" section of this text)	PERSONAL	EXEMPT
21.	CATWALKS: ATTACHED TO IP EQUIPMENT ATTACHED TO BUILDING	PERSONAL REAL	EXEMPT TAXABLE
22.	CENTRAL CONTROL SYSTEMS: DIRECT CONTROL SPECIFIC IP EQUIP. GENERAL CONTROL POWER WIRING CONTROL BUILDING	PERSONAL REAL REAL	EXEMPT TAXABLE TAXABLE
23.	CLOCKS: PAYROLL AND WATCHMAN CLOCKS	PERSONAL	TAXABLE
24.	COMMUNICATIONS SYSTEMS -- PERMANENT: PHONE PUBLIC ADDRESS PNEUMATIC TUBES TELEVISION (PART OF SECURITY SYSTEM) TELEVISION (PART OF SPECIFIC M & E)	PERSONAL PERSONAL PERSONAL PERSONAL PERSONAL	TAXABLE (7) TAXABLE (7) TAXABLE (7) TAXABLE (7) TAXABLE (7)
25.	COMPRESSOR FOR GENERAL BUILDING AIR CONDITIONERS	REAL	TAXABLE
26.	CONVEYOR OR CARRIER ENCLOSURES (SEE ENCLOSURES)		
27.	CONVEYORS	PERSONAL	% BASED ON USE
28.	COOLING TOWERS	REAL	TAXABLE
29.	CRANE TRACKING OR RAILS (CRANEWAYS)	PERSONAL	% BASED ON USE (4)
30.	CRANES	PERSONAL	% BASED ON USE (4)
31.	DECKS AND DRAINS (PROCESS)	REAL	TAXABLE
32.	DEHUMIDIFIERS: PORTABLE PART OF HEATING AIR CONDITIONING	PERSONAL REAL	% BASED ON USE TAXABLE

NO.	DESCRIPTION	REAL or PERSONAL FOR SALES/USE	SALES & USE TAX STATUS FOR IP
33.	DIKES OR LEVEES: SURROUNDING STORAGE TANKS RIVER OR LAKE CONTROL	REAL REAL	TAXABLE TAXABLE
34.	DOCK BUMPERS AND SEALS	REAL	TAXABLE
35.	DOCK LEVELERS	REAL	TAXABLE
36.	DOCKS, RAMPS (BUILT-IN)	REAL	TAXABLE
37.	DOOR OPERATORS	REAL	TAXABLE
38.	DOORS (GARAGE AND PASS DOORS)	REAL	TAXABLE
39.	DRYERS, PROCESSING	PERSONAL	EXEMPT
40.	DUCTWORK: BUILDING FOR IP EQUIPMENT	REAL PERSONAL	TAXABLE EXEMPT
41.	DUMBWAITERS	REAL	TAXABLE
42.	DUST COLLECTORS	PERSONAL	EXEMPT
43.	DUST OR SPRAY COLLECTION EQUIPMENT FOR SPECIFIC IP MACHINES	PERSONAL	EXEMPT
44.	DYNAMOMETER TESTING CELLS	REAL	TAXABLE, building function
45.	ELECTRICAL DISTRIBUTION MATERIALS & EQUIPMENT UP TO LAST TRANSFORMER & UP TO THE SECONDARY SUBSTATION	REAL	TAXABLE (5)
46.	ELECTRICAL DISTRIBUTION MATERIALS & EQUIPMENT INSTALLED AFTER USABLE POWER IS PROVIDED TO BE USED FOR IP FUNCTIONS	PERSONAL	EXEMPT (5)
47.	ELECTRICAL SUBSTATION ENCLOSURES	REAL	TAXABLE
48.	ELEVATORS	REAL	TAXABLE
49.	EMERGENCY LIGHTS	REAL	TAXABLE
50.	ENCLOSURES: BUILDING FREESTANDING FOR IP EQUIPMENT	REAL PERSONAL	TAXABLE EXEMPT
51.	ENERGY MONITORS:		

NO.	DESCRIPTION	REAL or PERSONAL FOR SALES/USE	SALES & USE TAX STATUS FOR IP
	GENERAL BUILDING FOR SPECIFIC IP EQUIPMENT	REAL PERSONAL	TAXABLE EXEMPT
52.	ESCALATORS – BUILDING	REAL	TAXABLE
53.	EXHAUST SYSTEMS: DUCTED FROM IP EQUIPMENT BUILDING VENTILATION	PERSONAL REAL	EXEMPT TAXABLE
54.	FANS: FREESTANDING FOR IP AREA BUILDING VENTILATION, BUILT-IN	PERSONAL REAL	TAXABLE, employee comfort TAXABLE
55.	FENCING	REAL	TAXABLE
56.	FIRE PROTECTION SYSTEMS: BUILDING SPRINKLERS BUILDING CO ₂ , HALON, H1-X FOAM FOR IP M & E, CO ₂ , HALON, H1-X FOAM SUPPLEMENTAL WATER SYSTEM TO ASSIST BLDG. SUPPLEMENTAL WATER SYSTEM FOR M & E 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
57.	FLAG POLES, IN GROUND OR ON BUILDING	REAL	TAXABLE
58.	FLOOR FINISHES: SPECIAL COVERINGS (WOOD BLOCK, STEEL TILE) STANDARD COVERINGS (CARPET, LINOLEUM, TILE)	REAL REAL	TAXABLE TAXABLE
59.	FLOOR GRATES – NOT ADJACENT TO MACHINERY	REAL	TAXABLE, function of realty
60.	FLOOR GRATES ADJACENT TO MACHINERY	REAL	TAXABLE, function of realty
61.	FLOORING, RAISED OR COMPUTER ROOM	PERSONAL	TAXABLE
62.	FOUNDATIONS FOR SPECIFIC IP EQUIPMENT	PERSONAL	EXEMPT
63.	FREEZERS: BUILDING TYPE CONSTRUCTION, WALK-IN PORTABLE – FREESTANDING	REAL PERSONAL	TAXABLE % BASED ON USE

NO.	DESCRIPTION	REAL or PERSONAL FOR SALES/USE	SALES & USE TAX STATUS FOR IP
64.	FURNACES: ONE – NEW ONE – REPLACEMENT FOR IP USE – REPLACEMENT MULTIPLE	REAL REAL PERSONAL R or P DEPENDING ON USE	TAXABLE TAXABLE EXEMPT % BASED ON USE
65.	GAS DISTRIBUTIONS SYSTEMS: GAS LINES TO PROCESS SYSTEM GAS LINES TO BUILDING SYSTEMS	PERSONAL REAL	EXEMPT (5) TAXABLE
66.	GATE OPERATORS: PART OF FENCE -- LAND IMPROVEMENTS	REAL	TAXABLE
67.	GENERATOR – ONE WHICH SERVICES THE FACILITY	REAL	TAXABLE, building function
68.	GENERATOR USED FOR SPECIFIC IP MACHINE	PERSONAL	EXEMPT
69.	GUARD RAILS AND POSTS: PROTECT IP EQUIP. (NOT ATTACHED TO EQUIP.) PROTECT IP EQUIPMENT (ATTACHED TO EQUIP.) PROTECT INVENTORY ROADS, PARKING, BUILDING	REAL PERSONAL REAL REAL	TAXABLE EXEMPT TAXABLE TAXABLE
70.	HEATERS: UNIT HEATERS, HANGING MANUFACTURING PROCESS PORTABLE	REAL PERSONAL PERSONAL	TAXABLE EXEMPT TAXABLE, employee comfort
71.	HEATING & VENTING SYSTEMS (GENERAL BUILDING TYPE)	REAL	TAXABLE
72.	HOISTS: BUILT-IN PORTABLE	REAL PERSONAL	TAXABLE % BASED ON USE
73.	HUMIDIFIERS: PORTABLE, IP FUNCTIONS BUILT-IN	PERSONAL REAL	EXEMPT TAXABLE
74.	INCINERATORS	REAL	TAXABLE

NO.	DESCRIPTION	REAL or PERSONAL FOR SALES/USE	SALES & USE TAX STATUS FOR IP
75.	INSULATION & PIPING IN WALL FOR REFRIGERATED ROOMS	REAL	TAXABLE
76.	KILNS, CERAMIC AND LUMBER FOR IP FUNCTIONS: FREESTANDING BUILT-IN	PERSONAL REAL	EXEMPT TAXABLE
77.	LIGHTING, ELECTRICAL: GENERAL BUILDING LAND IMPROVEMENTS SUPPLEMENTAL -- BUILDING SYSTEM (Fixtures extended down from general building. Wiring to a specific IP machine.) SUPPLEMENTAL -- M & E (Fixtures, plugged into an outlet, that are extended down to a specific IP machine)	REAL REAL REAL PERSONAL	TAXABLE TAXABLE TAXABLE EXEMPT
78.	LIGHTNING ARRESTERS	REAL	TAXABLE
79.	LOADING DOCK	REAL	TAXABLE
80.	LOCKER ROOM FACILITIES: PLUMBING FIXTURES, SHOWERS PERMANENT PARTITIONS TOILET PARTITIONS LOCKERS, FREESTANDING LOCKERS, RECESSED INTO WALL	REAL REAL REAL PERSONAL REAL	TAXABLE TAXABLE TAXABLE TAXABLE TAXABLE
81.	OFFICE – PORTABLE FOREMAN'S	PERSONAL	TAXABLE
82.	OPERATORS, DOORS & WINDOWS	REAL	TAXABLE
83.	PARKING CONTROL SYSTEMS	REAL	TAXABLE
84.	PARTITIONS: PORTABLE IN MANUFACTURING AREA PERMANENTLY ATTACHED	PERSONAL REAL	TAXABLE, building function TAXABLE
85.	PIPE RACK SUPPORTS	REAL	TAXABLE
86.	PIPING: FROM WALL TO SPECIFIC IP MACHINERY UTILITY PIPING, GAS, WATER, ETC.	PERSONAL REAL	EXEMPT TAXABLE
87.	PLASTIC DOOR STRIPS (AIR GUARD STRIPS) TO SEPARATE AREAS	REAL	TAXABLE – general building

NO.	DESCRIPTION	REAL or PERSONAL FOR SALES/USE	SALES & USE TAX STATUS FOR IP
88.	PLUMBING, GENERAL BUILDING	REAL	TAXABLE
89.	PLUMBING, TO SPECIFIC IP EQUIPMENT	PERSONAL	EXEMPT
90.	PRESS PIT	PERSONAL	EXEMPT – machine foundation
91.	PUMP HOUSES	REAL	TAXABLE
92.	RAMPS: PORTABLE BUILT-IN	PERSONAL REAL	TAXABLE TAXABLE
93.	ROOMS WITHIN A PLANT, NOT A STRUCTURAL PART OF REALTY USED FOR IP FUNCTIONS	PERSONAL	EXEMPT (6)
94.	SCALE HOUSES	REAL	TAXABLE
95.	SCALES: PORTABLE BUILT-IN TRUCK, BUILT-IN	PERSONAL REAL REAL	T or E depending on use TAXABLE TAXABLE
96.	SECURITY SYSTEMS	PERSONAL	TAXABLE (7)
97.	SHED – BOLTED TO CONCRETE SLAB	REAL	TAXABLE (8)
98.	SHED – PORTABLE FOR STORAGE	PERSONAL	TAXABLE
99.	SIGNS: ATTACHED TO BUILDING INTEGRAL PART OF IP EQUIPMENT NONEQUIPMENT RELATED	REAL PERSONAL PERSONAL	TAXABLE EXEMPT TAXABLE
100.	SILO – RAW MATERIAL STORAGE	REAL	TAXABLE (8)
101.	SPRAY BOOTHS, PERMANENTLY ATTACHED	REAL	TAXABLE
102.	STAINLESS STEEL WALL PANELS FOR FOOD INDUSTRY	REAL	TAXABLE
103.	TANKS: 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 REAL REAL	EXEMPT EXEMPT TAXABLE TAXABLE
104.	TELEPHONE WIRING IN WALL	REAL	TAXABLE
105.	TOILET FACILITIES:		

NO.	DESCRIPTION	REAL or PERSONAL FOR SALES/USE	SALES & USE TAX STATUS FOR IP
106.	PLUMBING FIXTURES, SHOWERS PARTITIONS PORTABLE VATS FOR MIXING (MANUFACTURING PROCESS)	REAL REAL PERSONAL PERSONAL	TAXABLE TAXABLE TAXABLE EXEMPT
107.	WASH FOUNTAINS	REAL	TAXABLE
108.	WELDING BOOTH, PORTABLE	PERSONAL	EXEMPT
109.	WOOD BLOCKING FOR FLOOR IN PRESS ROOM	REAL	TAXABLE (9)

- 1) AIR MAKE-UP UNITS FOR SPECIFIC MACHINERY HAVE BEEN DETERMINED TO BE PERSONAL PROPERTY BY THE COURTS. (E.W. ENSROTH & CO., MILLER PLATING, INC. VAN DYKEN HEATING, INC.)
- 2) BOILERS FOR SPECIFIC MACHINERY HAVE BEEN DETERMINED TO BE PERSONAL PROPERTY (KELVINATOR, INC.)
- 3) CONSIDERED PERSONAL PROPERTY FOR SALES/USE PURPOSES
- 4) PER RULE 40 AND RAB 2000-4
- 5) 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.
- 6) PERSONAL PROPERTY PER LR 88-53. THE WIRING IN THE WALLS WOULD BE REAL PROPERTY; HOWEVER, IN THE PAST THE PERCENTAGE OF TAXABLE MATERIAL IN THE WALLS WAS IMMATERIAL; THEREFORE, THE ENTIRE JOB WAS TREATED AS A RETAIL SALE OF PERSONAL PROPERTY. CHECK FOR MATERIALITY.
- 7) RAB 90-2
- 8) WOOD BLOCKING USUALLY COVERS A LARGE AREA. IT ABSORBS OIL AND PROVIDES A NON-SLIPPERY SURFACE.
- 9) SEE "WASTE REMOVAL" SECTION OF THIS MANUAL

RECONDITIONING/REMANUFACTURING

Pre 3/31/99:

A reconditioner/remanufacturer is a company that purchases used products (engines, carburetors, batteries, furniture, etc.), reconditions the product by repairing, remachining or reshaping and sells the reconditioned product.

Raw materials are considered to be salvaged component parts obtained from the "used" products, as well as any new parts used in the process. Cleaning, inspection and disassembly are receiving functions and taxable. Reshaping and remachining are determined to be exempt industrial processes.

Post 3/30/99:

Remanufacturing is exempt per statute. 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 would now be exempt. Disassembly and subsequent reassembly merely to clean is 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?

Pre 3/31/99 and Post 3/30/99 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 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?

Pre 3/31/99 Answer: The washing equipment and supplies as well as the disassembly operations would be taxable as they are receiving functions. The equipment and supplies used to repair, paint and reassemble the hoods, doors, and fenders would qualify for the industrial processing exemption.

Post 3/30/99 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. This would exempt the washing equipment and supplies.

Equipment can be partially taxable depending on their taxable and exempt uses. Many exempt percentages have increased, however, due to the Act's definition of the beginning and end of the industrial process.

Refer to the RAB 2000-4 on industrial processing for additional clarification of the remanufacturing exemption.

References: MCL 205.54t(3)(g) & (7)(d)
MCL 205.94o(3)(g) & (7)(d)
RAB 2000-4

REFRIGERATION & FREEZERS

Pre-3/31/99 and Post-3/30/99:

Equipment and electricity consumed to bring a product to a frozen or refrigerated state is exempt from sales tax for the reason of industrial processing. Product preservation and storage do not qualify for the industrial processing exemption.

Tangible personal property acquired for storing and delivery of ice is taxable (see Rule 39).

References: R 205.89

REPACKAGING

The following examples illustrate the concept of repackaging and the industrial processing treatment of the packaging equipment.

Situation 1: A nail manufacturer places nails in a 2-pound box for ultimate sale at retail. The product is ultimately purchased at the retail level in this same 2-pound box.

Pre-3/31/99 and Post-3/30/99 Determination: The packaging operation to put the nails in 2-pound boxes is exempt for IP.

Situation 2: This same nail manufacturer also contracts with a separate company to package certain types of nails in 2-pound boxes. Again, the product is purchased at the retail level in the same 2-pound box.

Pre-3/31/99 and Post-3/30/99 Determination: This packaging servicer would be entitled to the IP exemption, even if the nail manufacturer provided the 2-pound boxes.

Situation 3: Same circumstances as situation 2 above with one additional fact. In certain instances the outside packager may have to repackage nails if the boxes become damp, yellowed, or otherwise unsuitable for retail sale.

Pre-3/31/99 Determination: This second time packaging function would also be exempt for industrial processing. However, any equipment, areas, etc., used in the disassembly of the first packaged product would be taxable.

Post-3/30/99 Determination: All equipment and areas would now be exempt. The industrial processing RAB states that the activity of disassembly is now exempt for a remanufacturer.

Situation 4: A wholesale distributor of nails now inserts the nails into 2-pound boxes for ultimate sale at retail.

Pre-3/31/99 and Post-3/30/99 Determination: The wholesaler would be entitled to the IP exemption on the packaging equipment.

Situation 5: A large retail store purchases the same nails in bulk quantities. They then repackage the nails in 2-pound boxes and place them on their shelves for retail sale.

Pre-3/31/99 and Post-3/30/99 Determination: The retailer would be entitled to IP exemption for the packaging equipment.

RETAIL PREPARATION OF FOOD

Pre-3/31/99:

Both the Sales and Use Tax Acts remove from the industrial processing exemption **the preparation of food and beverages by a retailer for retail sales.**

This provision in both Acts eliminates from the exemption kitchen equipment used in restaurants and similar facilities. The Department's position for the activity where the items are sold and/or transferred to themselves (company owned restaurants/stores) is that no industrial processing exemption is allowable. 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 would be considered to be preparation of food by a retailer for retail sale.
- A bakery produces products that it sells to wholesalers and also sells in its own retail store. The preparation of the items for the retail store would not qualify for the industrial processing exemption.

The Michigan Supreme Court ruled in the *Elias Brothers* case that equipment and supplies are exempt if the taxpayer meets all of the following facts:

- 1) The taxpayer is a food processor, food distributor and owns retail outlets.
- 2) The taxpayer operates as a wholesaler/retailer and the processed food is "sold", not merely transferred. The food is "sold" at the same price to owned and noncompany owned outlets.
- 3) The food processing activity is a distinct, identifiable and clearly severable activity from the retail outlets, with separate billing records, income statements and asset listings for the commissary.
- 4) Food processing activities are treated as a separate and distinct operation by the taxpayer. Separate profit centers are maintained.

- 5) Food products are prepared similarly for both company owned and noncompany owned outlets. Accounting records and other procedures for the sale of processed food is identical for company owned and noncompany owned outlets, including ordering, processing, handling, delivery, invoicing, billing and sales procedures.
- 6) Food processing equipment is of a nature not found in a retail restaurant.

Post-3/30/99:

The treatment for kitchen equipment used in restaurants has not changed. The equipment and operating supplies are taxable.

The statute does provide at 205.54t(5)(h) and 205.94o(5)(h) the following language: (5)"Property that is not eligible for an industrial processing exemption includes the following: (h) Tangible personal property used for the preparation of food or beverages by a retailer for ultimate sale at retail through its own locations."

Ref: 205.54t(5)(h)
205.94o(5)(h)

RETAILERS and the INDUSTRIAL PROCESSING EXEMPTION

The tax status for the situations presented below do not change for the **Pre-3/31/99 and Post-3/30/99** periods.

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.
- Company A purchases large quantities of nails, screws or other items in large containers and repackages the nails, screws or other items into smaller quantities. The equipment/supplies/utilities used for this purpose would qualify for the industrial processing exemption.
- A local jewelry store makes custom jewelry it sells at retail in their own store. The equipment/tools/supplies used would qualify for the industrial processing exemption.
- The local optician buys eyeglass frames and uncut lens. The lenses are ground to fit the frames. The equipment/tools/supplies used to grind the lens and insert them into the frames would 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 and equipment used for this portion of their business operation is exempt to the extent the items are used to repair and recondition the items prior to sale.

- Prosthetic clinics would be afforded the IP exemption for tools and equipment used to make artificial limbs (the same treatment as the optician).
- All retailers or service providers making repairs covered under an original manufacturers warranty are entitled to the industrial processing exemption for equipment/tools/supplies used for this activity.

Examples of some taxable activities:

- The local lumberyard cuts a sheet of plywood down to requested size. No exemption is allowed as they are merely cutting to size. If the customer is charged for this service, it would be part of the gross proceeds subject to sales tax.
- Can and plastic bottle crushers at the local grocery store.
- Tools and equipment used by dental labs to make dentures would not be exempt because they are providing a service.
- Coin operated coffee and soft drink vending machines.

References: LR 85-20
LR 87-52

SAMPLES

Samples are items where title and possession are transferred to another without consideration. Samples are usually used to give a prospective customer an opportunity to test a product prior to purchasing the product.

Samples sometimes represent a small component of an entire product (e.g., small pieces of wallpaper, one seat of auditorium seating, swatches of fabric).

Samples withdrawn from inventory and given away without charge are taxable. The tax base is computed as follows:

- Samples that are manufactured products are taxable on material cost.
- Samples that are not complete manufactured products are taxable on material cost (e.g., high-pressure laminate chips, a.k.a. Formica chips).
- Samples that are purchased are taxable on cost.

Sometimes manufacturers produce a product for trial marketing purposes and give the product away to other industrial processors with the intent of making future sales. Samples given away for trial marketing purposes are taxable on material cost.

EXCEPTIONS:

- Prescription drug samples given away by manufacturers of prescription drugs to health professionals are exempt. However, all packaging materials and packaging equipment would be taxable.
- Prescription drug samples given away by a wholesale distributor to health professionals are exempt.
- Samples donated by a manufacturer, wholesaler or retailer to a qualified exempt entity are not taxable. A qualified exempt entity is a nonprofit school, nonprofit hospital, nonprofit home for the care of the aged or children (operated by certain types of organizations), parent cooperative preschool, or church.
- Samples of food items are exempt, including prepared food.

NOTE: Since the tax base of inventory withdrawals is material cost, the percentage of equipment (with materiality considered) used to produce inventory withdrawals would also be taxable.

Items withdrawn from a Michigan inventory and given away at no cost to the recipient for promotional purposes are taxable, regardless of where the item is shipped. Items withdrawn from a non-Michigan inventory and shipped into Michigan may be taxable with an appropriate credit for any sales or use tax that had been legally due and paid in another state at the time of acquisition. If the tax paid was less than the tax imposed by Michigan, tax is due on the difference.

EXCEPTION: Due to the *Sharper Image Corporation* court case, samples shipped from an out-of-state source may be exempt. The following must be met for exemption of samples shipped from an out-of-state source:

- The distribution is made by mail or by common carrier
- The distribution originated from out-of-state
- The consumer/purchaser of the sample has no control in Michigan over the distributed items. See the "Inventory Withdrawals/Consumed Goods" section of this text for further clarification.

References: MCL 205.92(b)
MCL 205.94t
R 205.112
RAB 93-5
Honeywell, Inc. vs. Michigan Department of Treasury
IBM Corp. vs. Michigan Department of Treasury
Sharper Image Corporation vs. Michigan Department of Treasury
Syntex Laboratories, Inc. vs. Michigan Department of Treasury
Wilson Sporting Goods vs. Michigan Department of Treasury

SCRAP DEALERS & RECYCLERS

The following equipment (or areas when talking about utility studies) are treated accordingly for industrial processing purposes:

1) ROLLOFFS (DUMPSTERS):

- A. A scrap dealer places his rolloffs on the site of an industrial processor. The processor stores his production waste in these containers for removal by the scrap dealer.

Pre-3/31/99 and Post-3/30/99 Tax Treatment: These containers are taxable. Their purpose for the scrap dealer is receiving, collection and transportation. The purpose for the processor is the storage of production scrap for removal from its plant.

- B. A recycler has rolloffs 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.

Pre-3/31/99 and Post-3/30/99 Tax Treatment: These containers are taxable. Their purpose for the recycler is receiving and raw material storage.

2) 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.

Pre-3/31/99 Tax Treatment: The industrial processing exemption for waste accumulation is only available to the industrial processor. Since these hoppers were owned by the scrap dealer, the industrial processing exemption is not allowable.

Post-3/30/99 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 and not ownership determines the exemption.

3) RADIATION MONITORS:

Detects amounts of radiation contained in delivered scrap metal and are usually located near the scales for incoming scrap.

Pre-3/31/99 Tax Treatment: These monitors would be taxable as part of receiving.

Post-3/30/99 Tax Treatment: The statute exempts raw material testing. Therefore, these radiation monitors would be exempt from tax.

NOTE: Do not exempt the area where these monitors are located in your utility studies, as industrial processing has not started.

4) 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.

Pre-3/31/99 Tax Treatment: These machines would be exempt. The form composition, quality, combination or character of the material is changed for ultimate sale at retail.

Post-3/30/99 Tax Treatment: The recovery equipment is exempt for industrial processing. The exemption is based on the statute that classifies recycling of used materials for ultimate sale at retail as an industrial process.

5) EQUIPMENT USED FOR THE DISASSEMBLY OF VARIOUS MIXED SCRAP PARTS:

Pre-3/31/99 Tax Treatment: This activity and items used for this purpose are taxable. This is considered a receiving function.

Post-3/30/99 Tax Treatment: The disassembly equipment is exempt. Industrial processing begins when tangible personal property begins movement from raw material storage.

6) LOADING AND UNLOADING EQUIPMENT:

Pre-3/31/99 and Post-3/30/99 Tax Treatment: This equipment is taxable if the transfer of materials is to or from a separate legal entity. Loading and unloading equipment used to handle in-process materials within the same legal entity is exempt.

7) SORTING EQUIPMENT SUCH AS CRANES, LOADERS, AND LIFT TRUCKS:

Pre-3/31/99 Tax Treatment: Sorting is an exempt function if the combination or composition of the materials is changed for ultimate sale at retail.

Post-3/30/99 Tax Treatment: The trash heap is considered the recycler's raw materials. Sorting will be exempt.

8) **EQUIPMENT USED TO CUT, BREAK, AND CRUSH (AFTER DISASSEMBLY):**

Pre-3/31/99 and Post-3/30/99 Tax Treatment: This recycling equipment is exempt as this activity meets the definition of industrial processing. We would also exempt conveyers connected to this type of machinery.

9) **PAPER SHREDDING EQUIPMENT:**

Pre-3/31/99 and Post-3/30/99 Tax Treatment: This equipment used by scrap dealers and recyclers would be exempt for IP if the property is sold.

10) **COMPRESSING EQUIPMENT:**

Pre-3/31/99 Tax Treatment: This equipment would be taxable if the compressing was performed to facilitate the transportation and shipment of the scrap to the purchaser. This is normally the situation with equipment used to compress newspaper scrap. Compressing equipment could be exempt if the purchaser requires the product be delivered in a compressed state.

Post-3/30/99 Tax Treatment: The compressing equipment would be exempt as the compressing is an industrial process that occurs after the move out of the raw material storage area and prior to the product coming to rest in finished goods inventory storage.

11) **BANDING AND BALING EQUIPMENT:**

Pre-3/31/99 Tax Treatment: This equipment is taxable if its sole purpose was to facilitate the transportation and shipment of the scrap to the purchaser. If the purchaser required that the product be baled and banded, the equipment would be exempt.

Post-3/30/99 Tax Treatment: If the banding and baling process took place prior to the product coming to rest in finished goods inventory storage, the equipment would be exempt.

References: MCL 205.54t(3)(i)
MCL 205.94o(3)(i)
LR 86-25

SERVICERS

Pre 3-31-99:

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, etc.) are allowed the industrial processing exemption as it pertains to their operations. Servicers that do not act as an industrial processor do not qualify for the industrial processing exemption.

A person providing a service for an industrial processor that does not transform, alter or modify tangible personal property by changing the form, composition or character of the property for ultimate sale at retail or sale to another industrial processor for further processing for ultimate sale at retail is not an industrial processor. Tangible personal property used or consumed in performing services upon property owned by others, where the services did not transform, alter or modify the property, does not qualify for the industrial processing exemption.

For example, an industrial processor may contract with a waste disposal company to remove waste from the premises of the manufacturing plant. The waste disposal company, no matter how important its activities are to the manufacturing plant, does not meet the definition of an industrial processor. Thus, purchases of any equipment, material and other items used by the waste disposal company in performing the waste removal service for the industrial processor are not eligible for an industrial processing exemption.

The exception to this provision is where the person performing the service for the industrial processor has purchased computers and computer equipment to be used in industrial processing in one of the following four ways:

- 1) A computer 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

See the "Computers Used in Industrial Processing" section of this text for CAD/CAM exemption for servicers.

The Michigan Court of Appeals (*Beckman Production Services*) has held that a person performing a service on the property of an industrial processor, where that service does not transform, alter or modify the property, is not entitled to the industrial processing exemption.

The Michigan Court of Appeals also ruled that testing services did not qualify the company as an industrial processor. There was no change in form, composition or character nor was there an ultimate sale at retail.

Some companies manufacture products and also perform service activities. The service department is sometimes called "SRO" (service/repair/overhaul). Repairing, overhauling or rebuilding property owned by others is a service activity. The equipment, tools or supplies used in the performance of the service are taxable. If the servicer manufactures repair parts, the equipment to produce the repair parts qualifies for the industrial processing exemption. A percentage of taxability would apply to any equipment, tools or supplies used for both the manufacturing activity and service activity.

Subprocessors work on the property of others; however, they are treated as industrial processors because they change the form, composition, or character of tangible personal property for ultimate sale at retail. Examples of subprocessors are plating companies, steel slitters and heat-treating companies.

Post 3-30-99:

Servicers can receive an 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. The equipment used in the service or repair activity qualify for the exemption if tangible personal property is used by the servicer to perform an industrial processing activity for or on the behalf of an industrial processor. The servicer or repairer can qualify for the exemption if the service or repair work is being made to exempt equipment of the customer. An example would be the exemption for tools used by a repair company to repair a stamping press of a steel parts manufacturer. Keep in mind the same tools used to repair the loading dock or office equipment will remain a taxable use. Apportioning the taxable and nontaxable usage of the servicer's equipment will now be allowable.

There has been no statutory change in the area covered above on the computer service providers.

STORAGE TANKS & MIXING TANKS

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.

The Michigan Sales Tax Act provides exemption from tax of tangible personal property used or consumed in industrial processing. The Use Tax Act provides a similar exemption. An industrial processor transforms, alters or modifies tangible personal property by changing the form composition, or character of the property, for ultimate sale at retail or sale to another industrial processor for further processing and ultimate sale at retail.

Storage tanks do not fall under the industrial processing guidelines and are taxable as a storage function. The storage of a product that will be consumed or altered in industrial processing is not an exempt function. The storage of a finished product is not an exempt function.

A mixing tank that is a component part of the industrial process is exempt as processing equipment. An exception to this rule is a soft drink bottling company's mixing or transfer tanks, which are lightweight stainless steel canisters capable of holding five gallons of pre- or post mix. They are not within the scope of the industrial processing exemption. The Michigan Tax Tribunal ruled that no mixing of product components occurred within the tanks, although they were designated "mixing tanks" (*Pepsi-Cola Metropolitan Bottling vs. Department of Treasury*). The tanks were used to store and deliver the product.

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 is going on within the tanks. However, the tanks can be purchased tax free for leasing purposes if the tanks are rented. An industrial processor can make a claim of exemption for IP on the rental charge of the cylinder (LR 88-16).

Tanks with a mixing system inside used to mix different gases uniformly and remix the gas when released are exempt for industrial processing.

Portable tanks used to store gas, etc. to repair exempt equipment or used in an exempt area would be exempt if consumption occurred in the processing area from the same tank.

References: LR 88-16

STORES ACCOUNTS (NONPRODUCTION INVENTORY)

Some companies purchase nonproduction inventory or noninventory 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 may be accruing tax on some of these items at the time of withdrawal.

Items that may be included in these accounts include small tools, screws/fasteners, belts, gloves, maintenance supplies, etc.

The "stores" area is taxable. It is not considered in-process storage. It is nonprocess storage. Utilities, shelving, equipment (including automatic retrieval systems) and supplies used in this area are taxable regardless of tax status of items withdrawn from "stores".

**TAXABILITY OF ITEMS
WHEN USED IN EXEMPT PRODUCTION AREAS – NO SHIPPING, RECEIVING, ETC.**

ITEM	DESCRIPTION OF ITEM	TAX STATUS	REASON
1.	AIR MAKE-UP UNIT (ONE) FOR GENERAL HEATING/COOLING/VENTILATION PURPOSES	T	NONPROCESSING – GENERAL AIR CIRCULATION. REAL PROPERTY
2.	AIR MAKE-UP UNIT TO EXHAUST PRODUCTION FUMES	E	PERSONAL PROPERTY – REMOVES CONTAMINATED AIR
3.	ASPIRIN OR SALT TABLETS	T	FIRST AID, SAFETY
4.	AUTOMATIC SPOOLING DEVICES, EVEN THOUGH THEY HELP ELIMINATE CARPAL TUNNEL	E	PART OF THE MACHINERY, ENABLES CONTINUED PRODUCTION
5.	BALLAST FOR OVERHEAD LIGHTING FIXTURES	T	REAL PROPERTY
6.	BINS USED TO COLLECT RM PACKAGING SCRAP NEXT TO PRODUCTION LINE	E	SCRAP REMOVAL EXEMPT BY STATUTE
7.	BLUEPRINT STORAGE CABINET	T	NONPRODUCTION STORAGE
8.	BOOKS OR MANUALS THAT CONTAIN DATA DETAILING FORMULAS, ETC. FOR SPECIFIC PRODUCTION REQUIREMENTS	E	INDUSTRIAL PROCESSING
9.	BOOKS OR MANUALS THAT CONTAIN GENERAL ENGINEERING, QC, ETC. INFORMATION FOR ENGINEERING, PRODUCTION, & QC STAFF	T	TRAINING RELATED
10.	BROCHURES – OSHA MANDATED "SAFETY IN THE WORKPLACE" BROCHURES	T	SAFETY AND TRAINING RELATED
11.	BROOM AND MOPS FOR CLEANING THE FLOORS	T	REAL PROPERTY MAINTENANCE
12.	CAMERAS & FILM USED IN R & D TO FILM PRODUCT	E	R & D EXEMPT BY STATUTE
13.	CAMERAS FOR SECURITY OR PERSONNEL USE	T	PLANT SECURITY, PERSONNEL
14.	CATWALKS OR PLATFORMS AROUND IP MACHINES (ATTACHED TO MACHINE OR BOLTED TO FLOOR)	E	PERSONAL PROPERTY, MACHINE MAINTENANCE, NECESSARY FOR CONTINUED PRODUCTION
15.	CLEANERS AND DEGREASERS USED TO CLEAN IP EQUIPMENT	E	MACHINE MAINTENANCE

ITEM	DESCRIPTION OF ITEM	TAX STATUS	REASON
16.	CLEANING TISSUE FOR SAFETY GLASSES	T	EMPLOYEE CONVENIENCE
17.	COMPUTER USED TO MONITOR PRODUCTION CONTROL	E	PRODUCTION CONTROL, SCHEDULING EXEMPT PER STATUTE
18.	COMPUTER USED IN ENGINEERING DEPT. FOR ADMINISTRATIVE PURPOSES	T	ADMINISTRATIVE, OFFICE EQUIPMENT
19.	CONTAINERS FOR THE STORAGE OF WORK-IN-PROCESS MATERIALS	E	IN-PROCESS STORAGE EXEMPT PER STATUTE
20.	COPY MACHINE USED IN ENGINEERING FOR DEVELOPMENT OF PRODUCT	E	DEVELOPMENT, ENGINEERING EXEMPT PER STATUTE
21.	COPY MACHINE USED TO EXCLUSIVELY REPRODUCE DRAFTING DOCUMENTS	E	EQUIPMENT USED FOR PRODUCTION DESIGN
22.	COVERALLS, UNIFORMS, APRONS, ETC. FOR GENERAL ATTIRE PURPOSES	T	EMPLOYEE CONVENIENCE
23.	COVERALLS, UNIFORMS, APRONS, ETC. FOR SANITATION PURPOSES IN FOOD PROCESSING PLANTS	E	PRODUCT PROTECTION
24.	COVERALLS, UNIFORMS, APRONS, ETC. TO PROTECT EMPLOYEE CLOTHING	T	EMPLOYEE CONVENIENCE
25.	COVERALLS, UNIFORMS, APRONS, ETC. TO PROTECT THE BODY	E	INDUSTRIAL PROCESSING
26.	DESK & CHAIR IN ENGINEERING DEPT.	T	OFFICE FURNITURE
27.	DESK OR MODULAR FURNITURE USED TO HOLD COMPUTER THAT IS USED FOR IP	T	OFFICE FURNITURE
28.	DRAFTING TABLE & CHAIR IN ENGINEERING	E	INDUSTRIAL PROCESSING
29.	DUST OR FUME RESPIRATOR	E	INDUSTRIAL PROCESSING
30.	E-MAIL/INTERNET SOFTWARE FOR COMMUNICATIONS BETWEEN PRODUCTION DEPARTMENTS	T	COMMUNICATION
31.	EAR PLUGS	E	INDUSTRIAL PROCESSING
32.	EMERGENCY BACK-UP GENERATOR FOR GENERAL BUILDING	T	REAL PROPERTY – FUNCTION OF THE BUILDING
33.	EMERGENCY BACK-UP GENERATOR FOR	E	INDUSTRIAL PROCESSING

ITEM	DESCRIPTION OF ITEM	TAX STATUS	REASON
	SPECIFIC IP MACHINERY		
34.	EYE WASH AND HAND WASHING STATIONS	T	REAL PROPERTY – FIRST AID
35.	FANS – PORTABLE UNITS	T	EMPLOYEE COMFORT
36.	FAX MACHINE USED TO TRANSMIT PRODUCTION RUN DOCUMENTS BETWEEN AREAS	T	COMMUNICATION DEVICE, LR 86-12
37.	FINGER TIP PADS	E	INDUSTRIAL PROCESSING
38.	FIRE EXTINGUISHERS AND FIRE HOSES ATTACHED TO THE WALL	T	GENERAL BUILDING – SAFETY
39.	FIRE EXTINGUISHERS AND FIRE HOSES ATTACHED TO A PRODUCTION MACHINE	E	PART OF IP EQUIPMENT
40.	FIRST AID SUPPLIES (BANDAGES, OINTMENTS, ETC.), PLANT HOSPITAL SUPPLIES & EQUIPMENT	T	FIRST AID, HOSPITAL PER STATUTE
41.	FLASHLIGHTS USED BY PRODUCTION EQUIPMENT SERVICE WORKERS	E	EXEMPT MACHINE MAINTENANCE
42.	FLOOR MARKINGS (PAINT OR TAPE)	T	SAFETY – REAL PROPERTY MAINTENANCE
43.	FLOOR MATS (TO STAND ON WHEN WORKING AT A MACHINE) FOR WORKER COMFORT	T	EMPLOYEE COMFORT
44.	FLOOR MATS (TO STAND ON WHEN WORKING) TO AVOID ELECTROCUTION	E	INDUSTRIAL PROCESSING
45.	FLOOR OIL ABSORBENT (OIL DRY) FOR CLEANING FLOORS	T	BUILDING MAINTENANCE
46.	FLOOR OIL ABSORBENT (OIL DRY) FOR SPILLS ON FLOOR AROUND SPECIFIC IP MACHINES	T	BUILDING MAINTENANCE
47.	FLOOR OIL ABSORBENT (OIL DRY) PLACED IN A CONTAINER ON OR UNDER A MACHINE TO CATCH OIL THAT SPILLS FROM THE MACHINE	E	WASTE REMOVAL, LR 87-43
48.	FLOOR SWEEPER TO CLEAN UP AROUND MACHINES	T	BUILDING MAINTENANCE
49.	FOREMAN'S DESK, CHAIR, FILE CABINET,	T	GENERAL OFFICE FURNITURE

ITEM	DESCRIPTION OF ITEM	TAX STATUS	REASON
	ETC.		
50.	FORMS FOR SCHEDULING EMPLOYEES WORK HOURS	T	ADMINISTRATIVE FUNCTION
51.	FORMS FOR SCHEDULING PRODUCTION "RUNS"	E	PRODUCTION SCHEDULING
52.	FORMS USED FOR COST CONTROL PURPOSES	T	ADMINISTRATIVE & ACCOUNTING
53.	GLOVES (COTTON, CANVAS, OR RUBBER)	E	PRODUCT AND/OR EMPLOYEE PROTECTION, LR 88-18
54.	GOLF CART (USED AS A PERSONNEL CARRIER)	T	EMPLOYEE COMFORT
55.	GUARD RAIL AROUND IP MACHINE	T	SAFETY
56.	GUARD RAIL ATTACHED TO IP MACHINE	E	PART OF IP EQUIPMENT
57.	HAIR NETS (FOR SANITATION PURPOSES) IN FOOD PROCESSING PLANTS	E	PRODUCT PROTECTION
58.	HAND SOAP OR CREAM	T	EMPLOYEE CONVENIENCE
59.	HARD HAT OR HELMETS WORN BY ASSEMBLY LINE WORKERS	E	INDUSTRIAL PROCESSING
60.	HEADBANDS OR SWEATBANDS WORN BY ASSEMBLY LINE WORKERS (PRODUCT INTEGRITY NOT IN JEOPARDY)	T	EMPLOYEE COMFORT
61.	HEIGHT-ADJUSTABLE PLATFORMS	E	INDUSTRIAL PROCESSING
62.	LAB COATS WORN BY QUALITY CONTROL LAB TECHNICIANS (PROTECTS CLOTHES)	T	EMPLOYEE CONVENIENCE
63.	LADDER FOR PRODUCTION MACHINERY REPAIR	E	MAINTENANCE OF EXEMPT MACHINERY
64.	LIGHT FIXTURES ATTACHED TO THE CEILING	T	REAL PROPERTY
65.	LIGHTS (FLUORESCENT LAMPS) FOR CEILING FIXTURES	E	LAMPS & ELECTRICITY EXEMPT IN IP AREAS
66.	LITERATURE (PROMOTIONAL) AND PARTS ORDER FORMS THAT GO WITH THE PRODUCT	T	SERVES A MARKETING OR PROMOTIONAL PURPOSE
67.	LOUD SPEAKER SYSTEMS	T	ADMINISTRATIVE & PERSONNEL

ITEM	DESCRIPTION OF ITEM	TAX STATUS	REASON
68.	MANUALS FOR OPERATING THE TAXPAYER'S NEW PRESS (PURCHASED SEPARATELY, NOT REPLACEMENT MANUALS)	T	TRAINING MATERIAL
69.	MANUALS OR INSTRUCTION – INSTALLATION OR ASSEMBLY INSTRUCTION THAT GO WITH THE PRODUCT	E	FOR RESALE, REQUIRED PART OF PRODUCT SOLD
70.	RAGS FOR REMOVING OIL FROM PRODUCTION MACHINERY	E	MACHINE MAINTENANCE
71.	RAGS TO RID OIL FROM WORKER'S HANDS (PRODUCT INTEGRITY NOT IN JEOPARDY)	T	EMPLOYEE CONVENIENCE
72.	REFRIGERATORS IN QC DEPARTMENT TO STORE RM TESTING COMPOUNDS	T	NONPROCESS STORAGE
73.	SAFETY GLASSES – NONPRESCRIPTION	E	EMPLOYEE PROTECTION
74.	SAFETY GLASSES – PRESCRIPTION	E	EXEMPT BY STATUTE
75.	SAFETY SHOES ONLY WORN IN IP AREA (PROVIDED FREE BY EMPLOYER)	E	EMPLOYEE PROTECTION
76.	SAFETY SHOES WORN IN IP AREA TO PERFORM IP FUNCTIONS FOR OR ON BEHALF OF AN INDUSTRIAL PROCESSOR PRIOR TO 3/31/99, PURCHASED BY EMPLOYEE	T	EMPLOYEE IS NOT AN INDUSTRIAL PROCESSOR
77.	SAFETY SHOES WORN IN IP AREA TO PERFORM IP FUNCTIONS FOR OR ON BEHALF OF AN INDUSTRIAL PROCESSOR AFTER 3/30/99, PURCHASED BY EMPLOYEE	E	PER STATUTE, SINCE THEY ARE PERFORMING IP FUNCTIONS FOR AN INDUSTRIAL PROCESSOR
78.	SHELVING FOR THE TOOL CRIB	T	NONPROCESS STORAGE
79.	SHELVING IN QUALITY CONTROL DEPARTMENT TO STORE RAW MATERIALS	T	NONPROCESS STORAGE
80.	SHRINK WRAP MATERIAL	E	RESALE PER RULE 18
81.	SIGNS – OSHA REQUIRED SIGNS ATTACHED TO PRODUCTION MACHINERY	T	SAFETY, NOT A TRUE PART OF EXEMPT MACHINERY
82.	SIGNS -- OSHA REQUIRED SIGNS ATTACHED TO THE WALL	T	SAFETY, NONPRODUCTION

ITEM	DESCRIPTION OF ITEM	TAX STATUS	REASON
83.	SPACE HEATERS	T	EMPLOYEE COMFORT
84.	STOOL (FOR THE EMPLOYEE TO SIT AT WHILE OPERATING PRODUCTION EQUIPMENT)	T	EMPLOYEE COMFORT
85.	TABLE NEXT TO MACHINE TO HOLD TOOLS FOR MAKING MACHINE ADJUSTMENTS	E	MACHINE MAINTENANCE
86.	TAGS (OK TO USE) IN QUALITY CONTROL	E	QUALITY CONTROL EXEMPT BY STATUTE
87.	TAGS USED FOR RAW MATERIAL OR FINISHED GOODS INVENTORY PURPOSES	T	SHIPPING & RECEIVING TAXABLE BY STATUTE
88.	TAGS USED TO INDICATE THE PERFORMANCE OF A QUALITY CONTROL FUNCTION	E	QUALITY CONTROL EXEMPT BY STATUTE
89.	TANKS (SOFT DRINK MIX CANISTERS)	T	NONPROCESS STORAGE
90.	TELEPHONES AT PRINTING FACILITY USED SOLELY TO INSTRUCT PERSONNEL OF MACHINERY TO IMMEDIATELY START OR STOP PRODUCTION	T	COMMUNICATION DEVICE
91.	TELEPHONES USED FOR COMMUNICATION BETWEEN VARIOUS PRODUCTION DEPTS.	T	COMMUNICATION DEVICE
92.	TOOL AND DIE RACKS ATTACHED TO A MACHINE	E	PART OF MACHINE
93.	TOOL AND DIE RACKS IN A SEPARATE STORAGE AREA	T	STORAGE FUNCTION
94.	TOOL AND DIE RACKS MOUNTED ON A WALL	T	STORAGE FUNCTION
95.	TOOL AND DIE RACKS NEXT TO A MACHINE	T	STORAGE FUNCTION
96.	TOOL BOXES (THE PORTABLE TYPE FOR PRODUCTION MACHINE REPAIR WORKERS)	E	MACHINE MAINTENANCE FOR IP EQUIPMENT
97.	TOOL POUCHES FOR MACHINE REPAIR WORKERS	E	MACHINE MAINTENANCE FOR IP EQUIPMENT
98.	TOOLS PURCHASED BY EMPLOYEES TO PERFORM IP FUNCTIONS FOR OR ON BEHALF OF AN INDUSTRIAL PROCESSOR PRIOR TO 3/31/99	T	EMPLOYEES ARE NOT AN INDUSTRIAL PROCESSOR

ITEM	DESCRIPTION OF ITEM	TAX STATUS	REASON
99.	TOOLS PURCHASED BY EMPLOYEES TO PERFORM IP FUNCTIONS FOR OR ON BEHALF OF AN INDUSTRIAL PROCESSOR AFTER 3/30/99	E	PER STATUTE, SINCE THEY ARE PERFORMING IP FUNCTIONS FOR AN INDUSTRIAL PROCESSOR
100.	TRADE BOOKS OR MAGAZINES FOR ENGINEERING OR OTHER PRODUCTION DEPARTMENTS	T	TRAINING MATERIAL (MAY QUALIFY FOR EXEMPTION UNDER RULE 53)
101.	TRAINING MATERIALS	T	MATERIALS DO NOT CHANGE THE FORM, COMPOSITION, CHARACTER, ETC. LR 87-30
102.	TV, VCR, VCR TAPES USED FOR SECURITY OR TRAINING	T	TRAINING, PERSONNEL, PLANT SECURITY
103.	TV, VCR, VCR TAPES USED TO VIEW PRODUCT DESIGN, R & D	E	EXPERIMENTAL, DEVELOPMENT, DESIGN, ETC.
104.	WARRANTY CERTIFICATES THAT GO WITH THE MANUFACTURED PRODUCT	E	REQUIRED PART OF PRODUCT SOLD
105.	WARRANTY REGISTRATION CARD TO BE RETURNED TO THE MANUFACTURER	T	ADMINISTRATIVE FUNCTION
106.	WASTE BINS FOR PRODUCTION SCRAP	E	SCRAP REMOVAL EXEMPT BY STATUTE
107.	WRIST BRACE TO ASSIST IN LIFTING HEAVY PRODUCTION MATERIALS	E	EMPLOYEE PROTECTION
108.	WRIST BRACE TO PREVENT CARPAL TUNNEL SYNDROME	T	EMPLOYEE COMFORT, SAFETY

References: MCL 205.54r
MCL 205.94o
R 205.90
RAB 2000-4

TRANSFERS OF FIXED ASSETS BETWEEN RELATED ENTITIES

Transfers from parent to subsidiary, subsidiary to parent, or subsidiary to subsidiary:

- Since two different entities exist, a transfer to a Michigan based manufacturing firm could be taxable (if not exempt for industrial processing or any other valid reason). If the transferor is licensed or required to be licensed for Michigan sales tax, the transferor is responsible for collecting and remitting sales tax. If the transferor is not licensed or required to be licensed for Michigan sales tax, the transferee is responsible for remitting use tax.
- The tax base would be selling price on the date of transfer. This is the value or price recorded in the purchaser's books, often times representing the net book value at the time of transfer.
- No credit would be allowed for tax paid by the transferring entity.
- Tax would not be due on the transfer of a business. See Section 205.94g of the Use Tax Act for a discussion of what constitutes a "transfer of a business" and for exceptions to the definition.

Exceptions to the above: If the item being transferred is a motor vehicle, ORV, mobile home, aircraft, snowmobile, or watercraft, tax is due on the higher of the transfer selling price or retail market value per the Use Tax Act [205.93(2)]. A vehicle could be exempt if transferred in connection with the organization, reorganization, dissolution, or partial liquidation of a business and the beneficial ownership is not changed and Michigan tax has been previously paid.

Transfers between divisions of the same legal entity:

- As no sale has taken place, the tax base would be the original cost (not net book value) of any fixed asset transferred from out of state to Michigan.
- Credit would be given for any sales or use tax paid to another state or other local jurisdiction, if proof can be shown.
- Tax would generally not be due on transfers between Michigan based divisions.
- The date of transfer to a Michigan division would determine whether the transaction was within the 4-year statutory audit period, not the purchase date.

Transfers between plants or locations of the same division:

- As no sale has taken place, the tax base would be the original cost of any fixed asset transferred from an out of state location to a Michigan location.
- Credit would be given for any sales or use tax paid to another state or other local jurisdiction, if proof can be shown.
- Tax would generally not be due on transfers from one Michigan location to another Michigan location.
- The date of transfer from an out of state location to a Michigan location would determine whether the transaction was within the 4-year statutory audit period, not the purchase date.

NOTE: Transfers between divisions or within divisions are generally not supported by invoices or other documentation. It may be necessary to review journal entries, asset location records, property apportionment worksheets, etc. when auditing taxpayers with substantial intra-corporate transfers from out of state to Michigan.

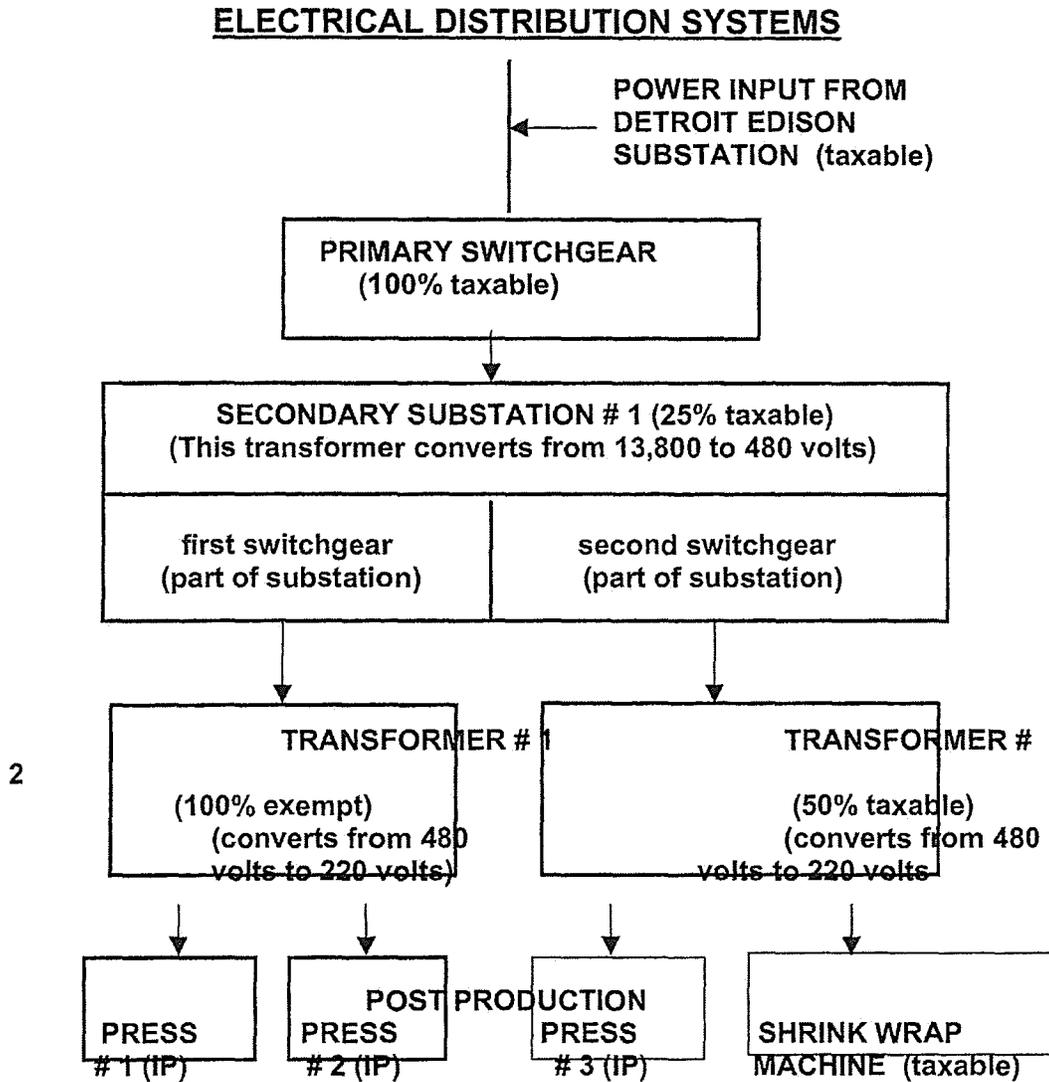
References: MCL 205.51(g)
Terco, Inc. vs. Michigan Department of Treasury

UTILITIES

Manufacturers primarily use the following types of utilities:

- Electricity
- Gas
- Steam

Electricity, gas and steam used in nonprocessing areas are taxable. Electricity, gas and steam used in processing functions and/or areas are exempt (see the "Taxability of Utility Areas" chart in this text for examples of taxable and nontaxable areas).

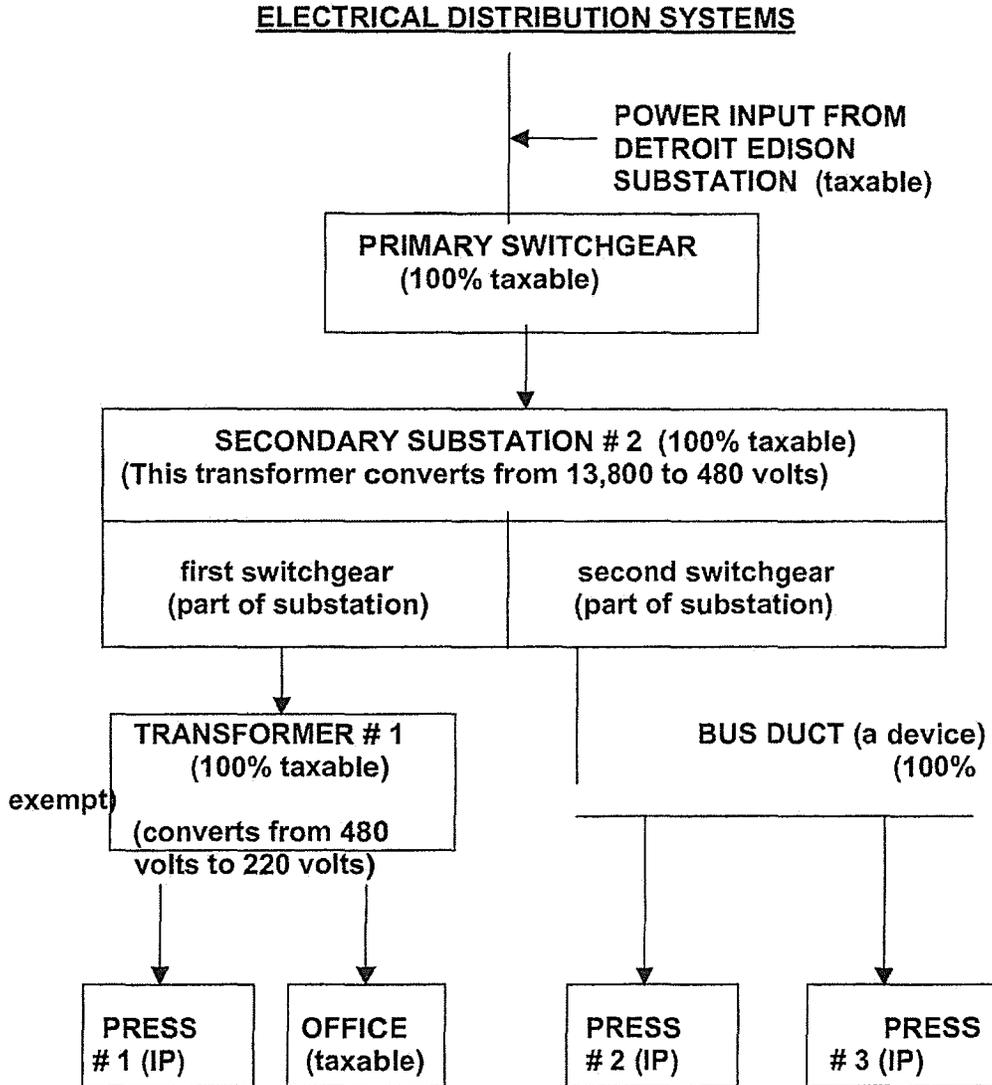


NOTE: Assuming equal usage of all four machines, the secondary substation is 25% taxable.

The secondary substation and transformers can get full or partial exemption, as they do not service the building's general utility system.

Transformer #1 is 100% exempt, since it services industrial processing equipment.

Transformer # 2 is 50% taxable, since it services both an exempt industrial processing machine and a taxable machine.

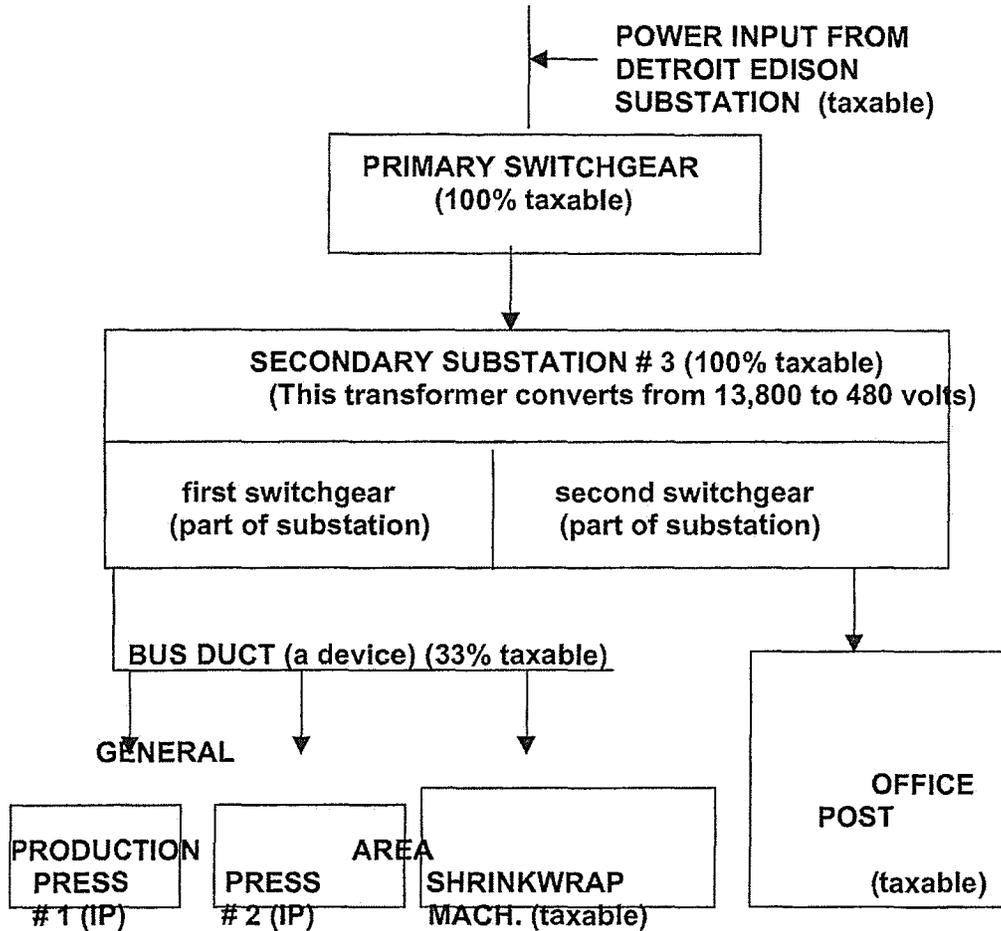


NOTE: The secondary substation and transformer are 100% taxable as they are directly or indirectly connected with the building's general utility system.

The bus duct is not connected with the building's general utility system and services exempt equipment; therefore, it is 100% exempt for industrial processing purposes.

Equal electrical usage by the three presses and office area is assumed.

ELECTRICAL DISTRIBUTION SYSTEMS



NOTE: The secondary substation is 100% taxable as it services the building's general utility system.

Equal usage by the two presses and the shrink wrap machine is assumed. Therefore, the bus duct is 33-1/3% taxable. The bus duct does not service any of the building's general utility system; therefore, a percentage of taxability may be applied.

Gas:

Gas can be used for heating and to operate equipment or machinery.

Gas used for heating of processing areas is exempt. Heating of nonprocessing areas is taxable.

We do not tax the consumption of a by-product of an industrial processing function (e.g., excess heat from an exempt IP operation that is used to heat taxable office space). If tangible personal property (e.g., steam tunnels, heat ducts, blowers, etc.) is used to accommodate the use of the heat in the office, such materials would be taxable.

Heating studies can be conducted on a square footage basis. Summer and winter months are compared to determine gas used for heating purposes versus processing usage and then a percentage is computed according to the taxable exempt usage areas.

Pre-3/31/99:

If the lessor does not separately bill out the utilities to the lessee, the purchase of the gas or electric from the supplier is taxable, since the lessor is not an industrial processor.

Post-3/30/99:

The lessor may claim partial exemption from the utility company for the portion of the utilities used by the lessee industrial processor to perform industrial processing functions.

References: MCL 205.54t(4)(e) and (5)(a)
MCL 205.94o(4)(e) and (5)(a)
RAB 2000-4
R 205.90 (3)(a)
LR 87-53
LR 90-16

TAXABILITY OF AREAS FOR UTILITY STUDIES

ITEM	DESCRIPTION OF AREA	TAX STATUS
1.	AISLES BETWEEN A TAXABLE AREA AND AN EXEMPT AREA	50% T
2.	AISLES BETWEEN EXEMPT AREAS	EXEMPT
3.	AISLES BETWEEN TAXABLE AREAS	TAXABLE
4.	BOILER ROOM AREAS a. One boiler b. Multiple boilers	TAXABLE % based on use
5.	DIE STORAGE AREAS	TAXABLE
6.	ENGINEERING AREAS Note: If there is a separate building for engineering, care must be taken to properly tax areas within the facility that do not qualify for the industrial processing exemption (e.g., administrative areas, payroll areas, receiving areas, etc.)	EXEMPT
7.	FOREMAN'S OFFICE	TAXABLE
8.	INSPECTION SUPERVISOR'S OFFICE	TAXABLE
9.	MACHINE SHOP REPAIR AREA (EXEMPT MACHINES)	EXEMPT
10.	MARKET RESEARCH AREAS	TAXABLE
11.	PRODUCTION AREAS DURING PERIODS OF NEW MACHINE INSTALLATION OR MACHINE REPAIR	EXEMPT
12.	PRODUCTION AREAS DURING PERIODS WHEN EXISTING MACHINES ARE BEING REMOVED	TAXABLE
13.	PRODUCTION AREAS DURING PLANT VACATION CLOSURE PERIODS	TAXABLE
14.	PRODUCTION AREAS DURING PRODUCTION PERIOD	EXEMPT
15.	PRODUCTION AREAS DURING SHIFTS WITH NO PRODUCTION	TAXABLE
16.	PRODUCTION AREAS IDLED BY DOWNSIZING, LOST PRODUCTION, ETC.	TAXABLE

ITEM	DESCRIPTION OF AREA	TAX STATUS
17.	PURCHASING DEPARTMENT AREAS	TAXABLE
18.	QUALITY CONTROL AREAS a. Not in receiving area b. In receiving area	EXEMPT TAXABLE
19.	RECEIVING AREAS FOR PURCHASED PRODUCT Note: For scrap dealers & recyclers, tax the area where radiation monitors are located, since industrial processing has not started. See the "Scrap Dealers & Recyclers" section of this text.	TAXABLE
20.	RESEARCH AND DEVELOPMENT AREAS Note: If there is a separate building for engineering, care must be taken to properly tax areas within the facility that do not qualify for the industrial processing exemption (e.g., administrative areas, payroll areas, receiving areas, etc.)	EXEMPT
21.	RESTROOMS	TAXABLE
22.	SHIPPING AREAS	TAXABLE
23.	"STORES" AREAS	TAXABLE
24.	VENDING AREAS, BREAKROOMS, LUNCHROOMS	TAXABLE
25.	WAREHOUSE AREAS	TAXABLE

WASTE REMOVAL

Pre-3/31/99:

R 205.90(5) Industrial processing includes the following activities:
(e) Disposal of production scrap and waste.

The disposal of production scrap and waste is exempt as an industrial processing activity. Equipment used for this activity is exempt.

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. It does not matter at what point in the process the waste is generated.

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.
- Raw materials scrapped that have never left the raw materials inventory.
- Materials that are scrapped because they do not pass final inspection.

This exemption would only be allowable to the industrial processor. The exemption would be allowable for machinery, equipment and parts used to collect the production waste. Generally, material handling and shipping costs to dispose of production waste materials would not qualify for the exemption. Some examples are:

- The cardboard boxes mentioned above are collected in a bin. A forklift moves the bin to the back of the plant. The cardboard in the collection bin is dumped into a cardboard compactor and compacted. The only item qualifying for the industrial processing exemption is the first collection bin. Any movement of the bin after the initial collection is taxable.
- Metal shavings from a machine process fall through a floor grate and onto a conveyor belt that moves the shavings to a collection hopper at the end of the production line. The conveyor belt and hopper would qualify for the industrial processing exemption, as the items are used to collect the production waste.

The exemption would not be available to a servicer providing the waste disposal service for the industrial processor. See the "Servicers" section of this text.

Some items may be considered by-products of the industrial process. When by-products are sold, equipment used during shipment is taxable.

Disposal of nonproduction scrap and waste would not qualify for tax exemption. Non-production waste would include the disposal of accounting or sales records or old production reports.

Some industries are required to neutralize or treat waste materials and/or water for environmental or regulatory purposes prior to their disposal. The cost of the equipment, materials, supplies and utilities used for this purpose are taxable. For example:

- A heat treat company purchases chemicals to neutralize water contaminated in the heat treating process. The cost of the equipment, supplies and utilities do not qualify for the industrial processing exemption.
- A metal plating company neutralizes production chemicals and scrap prior to disposal at a solid waste landfill. The cost of equipment and supplies to analyze and neutralize the liquid and solid waste is taxable. However, equipment and supplies used for these functions are exempt if materials are treated and/or disposed of on-site.

Post-3/30/99:

MCL 205.54t(3):

Industrial processing includes the following activities:

- (h) 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, the entire Rouge Complex is a plant of origin, but the Wayne and Wixom complexes are separate locations, even though they are part of the same company and/or division.

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
- 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

For 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.

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 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 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.

Pre and Post 3/31/99

Pollution problems have resulted in the acquisition of elaborate facilities to dispose of various wastes. The Sales and Use Tax Acts have been amended to exempt anything that becomes a part of an air or water pollution control facility, 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.

Real property construction contracts involving municipally owned waste water treatment plants are taxable to the contractor. Governmental units are not able to obtain water or air pollution control certificates, this exemption is for private industry only. However, tangible personal property used in municipally owned waste water treatment plants would qualify for the governmental exemption.

ENVIRONMENTAL CLEAN UP

Tangible personal property purchased by or sold to an industrial processor 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: MCL 205.54t(3)(h)
MCL 205.94s
R 205.137
RAB 90-2
RAB 2000-4, Examples 12 & 15

2009 WL 6317465 (Mich. Tax Tribunal)

Michigan Tax Tribunal

State of Michigan

ROUGE STEEL COMPANY, PETITIONER

v.

MICHIGAN DEPARTMENT OF TREASURY, RESPONDENT

MTT Docket No. 315388

November 30, 2009

ORDER GRANTING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

SUMMARY

*1 Petitioner is appealing Respondent's denial of the industrial processing exemption provided under the use tax statute. Petitioner contends that a material handling conveyor system is used 100% in its industrial process of steel manufacturing and therefore not taxable. Respondent's position is that a portion of the conveyor system is used before the actual industrial process begins. Respondent believes that the exemption did not apply to 31% of the conveyor because the raw materials were not changed, modified or altered until they reached the weigh hoppers, thus beginning the industrial process. The Tribunal disagrees with Respondent and finds that the industrial processing exemption applies to the entire conveyor system.

I. INTRODUCTION

Petitioner, Rouge Steel Company, is appealing a Decision and Order of Determination, issued by Respondent, Michigan Department of Treasury, on February 11, 2005. Petitioner was audited for sales and use tax for the periods August 1, 1996 through September 30, 2001. Respondent determined that certain machinery and equipment purchased by Petitioner was partially subject to use tax as it did not qualify for the industrial processing exemption applicable through the Michigan Use Tax Act. Respondent issued a Notice of Intent to Assess on March 13, 2002, for a tax deficiency of \$140,037 plus interest. Petitioner's representative requested an informal conference before a Hearing Officer of the Department of Treasury to protest the assessment, which was held on March 24, 2004. The Hearing Officer recommended, and Respondent concurred, that the Intent to Assess be upheld. The Decision and Order of Determination was issued, establishing that a deficiency for use tax in the amount of \$140,037 plus statutory interest be assessed on Petitioner. On May 31, 2005, Petitioner submitted to this Tribunal a Petition contesting Respondent's Decision and Order of Determination, claiming it was "erroneous in fact and in law."¹ Petitioner stated that "[b]ased on the facts presented to Respondent's hearing referee, Respondent should have determined that the conveyor system forming the subject matter of this proceeding is 100% exempt as industrial processing property."²

On April 6, 2007, the parties submitted a Joint Stipulation of Facts upon which they intended the Tribunal decide subsequent cross-motions for summary disposition, and on May 11, 2007, Petitioner filed a motion requesting the Tribunal grant summary disposition in its favor, pursuant to MCR 2.116(A)(1) and (C)(10). Respondent filed a response in opposition to Petitioner's Motion on May 25, 2007.³

II. STIPULATED FINDINGS OF FACT

The parties stipulated to the following findings of fact and the Tribunal finds:

1. Petitioner, Rouge Steel Company, now in bankruptcy, was at the time of the events giving rise to this case engaged in the manufacture of steel at a facility in Dearborn, Michigan.

*2 2. Respondent completed a sales and use tax audit of Petitioner for the tax period August 1996 through September 2001.

3. As a result of the audit, Respondent assessed Petitioner a use tax deficiency in the amount of \$140,037.00 plus interest (Final Assessment No. K999440).

4. The use tax was assessed by Respondent with respect to certain purchases of equipment by Petitioner under the Michigan Use Tax Act as in effect prior to March 31, 1999, MCL 205.94(g)(1). Respondent did not assess Petitioner a deficiency with respect to any expenditures made after March 30, 1999, the effective date of amendments made to the Use Tax Act by 1999 PA 117.

5. Petitioner contends that the purchases in question are entirely exempt from use tax pursuant to the exemption for industrial processing, MCL 205.94(g)(i); 1979 AC, 205.90 [Rule 40]. Respondent's auditor determined, and Respondent contends herein, that 31% of such purchases are subject to use tax.

6. Petitioner was at all relevant times an "industrial processor" for purposes of the Michigan Use Tax Act.

7. The purchases in question relate specifically to a conveyor system used by Petitioner in relation to the production of liquid iron.

8. The process of manufacturing steel begins with the production of liquid iron. Iron is produced in a blast furnace. At the time at issue, Petitioner had two operating blast furnaces, designated "B" and "C."

9. The basic raw materials for the production of liquid iron are iron ore, limestone, and coke. These raw materials, sometimes with the addition of iron or steel scrap, are "charged" into the blast furnace in specified, measured quantities. The charge is then essentially "cooked" in the blast furnace at high temperatures that cause these materials to undergo changes in chemical composition that produce liquid iron and a scrap material called slag.

10. Iron ore pellets are brought to the manufacturing site in massive quantities by self-unloading ore boats. The pellets are then transferred from the boats to storage piles adjacent to the boat basin.

11. When it becomes necessary to charge a blast furnace, pellets are removed downward from the storage piles by a vibrating hopper onto one of four relatively short hopper conveyors ... and are then in turn discharged onto a long conveyor that runs the length of the pellet storage yard

12. The long conveyor in turn discharges the pellets onto an inclined conveyor ... that carries the pellets to the top of a five-story structure known as the stockhouse.

13. Upon reaching the top of the inclined conveyor which is inside the stockhouse, the pellets are discharged onto a reversing (or shuttle) conveyor ... which feeds the pellets into one of four pellet bins. In passing through the bins, the pellets are screened to remove undesirable materials.

14. Once having been screened, the pellets are deposited from the pellet bins into one of ten weigh hoppers, five for B blast furnace and five for C blast furnace. The weigh hoppers determine on a continuous basis the precise amount of pellets needed to produce the appropriate chemical composition of the resulting liquid iron.

*3 15. After being weighed, the pellets are discharged from the weigh hoppers and transported by a series of additional conveyors ... to the tops of the respective blast furnaces, where they are then charged into the furnaces.

16. Respondent's auditor determined that the equipment purchases for all elements of the conveyor system up to and including the reversing (shuttle) conveyors were taxable. The auditor determined that the pellet bins and all other elements of the conveyor system subsequently described were exempt as part of industrial processing.

17. Once the process described in Paragraphs 11 through 15 is set in motion by the initial movement of the pellets from the storage piles onto the hopper conveyors, the process of moving the pellets to the blast furnaces is a continuous process that does not stop while the blast furnaces are in operation.

18. Substantially similar but shorter and more direct processes are used to transport coke ..., scrap ..., and limestone ... from their respective storage areas into and through the stockhouse and thereafter to the blast furnaces.

III. PETITIONER'S CONTENTIONS

Petitioner contends that “Respondent's use tax assessment in this case arbitrarily and illogically bifurcates an integrated, continuous conveyor system used to transport raw materials from storage to the blast furnaces.”⁴ Petitioner questions “how Respondent [can] justify assessing use tax on any portion of an integrated production material handling system on the basis that the expenditures were made prior to March 31, 1999.”⁵ Petitioner argues that its conveyor system is exempt from use tax under the industrial processing exemption because it begins at the point where the raw materials leave the storage area and begin the journey to transformation, alteration, or modification, per stated in repealed MCL 205.94(g) (i). Petitioner further contends that this process is considered production material handling and it is “unquestionable that the industrial processing exemption applies to production material handling”⁶

Petitioner first looks to the relevant statute, MCL 205.94, promulgating the exemption. Petitioner points out that the legislature granted the exemption to an “industrial processor,” which it defined as “one who transforms, alters, or modifies tangible personal property by changing [its] form, composition or character.” Petitioner further states that “there is nothing in the statute to suggest that the scope of industrial processing is limited solely to those specific activities. Indeed, the only activities the statute explicitly excludes from industrial processing (relevant to this case) are ‘the receipt and storage of raw materials.’”⁷

Petitioner notes that the Legislature amended the law in 1999 after “possibly realizing that the self-referencing definition of the exemption as applying to property ‘sold to an industrial processor for use ... in industrial processing’ was not particularly clear. As clarified, the exemption under MCL 205.94~~o~~ contains a definition of ‘industrial processing’ which includes the following:

*4 (3) Industrial processing includes the following activities:

* * *

(j) Production material handling.”⁸

Petitioner further observes that this “definition comports with Respondent's long-standing interpretation of the exemption in Sales and Use Tax Rule 40, 1979 ACR 205.90, which since at least 1979 has contained the following identical illustration:

(5) Industrial processing includes the following activities:

* * *

(g) Production material handling.”⁹

Petitioner then appropriately asks “why is the old law not the same as the new law, particularly when Respondent's own Rule 40 interprets the old the same as the new?”¹⁰

Petitioner contends that the process is a continuous one of uninterrupted transportation of raw materials from storage to the blast furnaces. The entire process is integral and seamless. Nevertheless, Respondent chose to exempt from use tax only that portion of the process that begins with the accumulation of the raw materials in the pellet bins and ends with the deposit of the materials in the blast furnaces. “There is no rational, principled explanation for this arbitrary dividing up of the process.”¹¹

Petitioner cites *Milford Redi-Mix Company v Department of Treasury*, (Docket No. 149458, 3/17/1994), because it has reasonably comparable facts and on those comparable facts the Tribunal found the petitioner exempt from sales and use tax under the “industrial processing exemption.” In *Milford*, Petitioner purchased and installed a conveyor system to move raw materials from one location to another. The Tribunal found that “the ‘industrial process’ on these facts commences upon delivery of materials to the drive-over hopper, at which point the materials may be required to be ‘conditioned’ ... prior to transportation up the conveyor to the staging/collection hopper.” Petitioner contends that “[t]he Tribunal correctly recognized ... that the process of moving the materials has nothing to do with storing them Rather, the Tribunal correctly observed the distinction between ‘storage’ and ‘not storage,’ holding that the latter constituted part of industrial processing.”¹²

Petitioner also cited *White Consolidated Industries, Inc v Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued April 15, 2003 (Docket No. 238096). This case involved the issue of whether certain containers used by the taxpayer for transporting parts to and through its plant were taxable under use tax statutes. The Court of Appeals found that the industrial processing exemption applied because the containers were not used solely for receipt and storage. The court found that since the containers were used to transport parts along the assembly line, as well as used for receipt and storage, the “... fact that the containers are used for activities that are not subject to the exemption does not keep them from being exempt for other activities.”

IV. RESPONDENT'S CONTENTIONS

*5 Respondent contends that the applicable statute does not identify the point at which industrial processing begins or ends. Respondent further contends that prior to the effective date of the amendment to the statute “it was incumbent upon the Department to determine where industrial processing began and ended.”¹³ Although Respondent concedes that Petitioner is correct that Rule 40 provides examples of activities that do or do not qualify for industrial processing, the rule also provides that the “use sought to be exempted must change the form, composition, quality, combination, or character of the property to fall within the exemption.”¹⁴

Respondent maintains that its auditor determined that the form, composition, quality, combination, or character of the property was not changed, modified, or altered until the property reached the weigh hoppers, where undesirable materials are screened out of the raw materials that will continue through the industrial process. Respondent refers to a “Department policy,” which the auditor applied “consistent[ly]” when “extend[ing] the exemption back from ... where she determined that industrial processing had begun.”¹⁵ This resulted in the pellet bins prior to the weigh hopper being exempted and the conveyor system before the weigh hoppers was not exempt from use tax.

Respondent distinguishes *White Consolidated Industries* from the current appeal because in *White Consolidated Industries* the Department of Treasury argued the taxpayer did not qualify for the exemption because the taxpayer was using the property at issue for concurrent taxable and exempt uses. In this case, Respondent agreed that a portion of Petitioner's use of the conveyor system qualifies for the exemption and claims that its determination is consistent with *White Consolidated Industries*.¹⁶

Respondent looks to *Beckman Production Services Inc v Dep't of Treasury*, 202 Mich App 342; 508 NW2d 178 (1993), in which the Michigan Court of Appeals determined that the taxpayer must prove that a property's use fits within the statutory definition of industrial processing. Prior to the *Beckman* case, the courts held that a taxpayer was entitled to the industrial processing exemption if the use at issue was essential to the industrial process. The *Beckman* Court rejected the old standard, stating:

[I]t is no longer pertinent that plaintiff can prove that its services are essential to the industrial process of its customers. Rather plaintiff must prove that its services transform, alter, or modify the property so as to place it in a different form, composition, or character.¹⁷

Based on this, Respondent believes that in order for Petitioner's “conveyor system to be exempt from the use tax under the industrial processing exemption, it must transform, alter, or modify the form, composition, or character of the materials it carries.”¹⁸ Respondent's auditor determined that industrial processing began with the screening and weighing of raw materials in the weigh hoppers. “The conveyors at issue do not transform, alter, or modify the form, composition, or character of the raw materials — they merely transport the materials from the stockhouse to the weigh hoppers.”¹⁹ Respondent contends that this use does not fall within the industrial processing exemption and consequently, the conveyor system at issue is not 100% exempt.

V. APPLICABLE LAW

*6 Petitioner moves for summary disposition pursuant to MCR 2.116(A)(1). Under subsection (A)(1), “[t]he parties to a civil action may submit an agreed-upon stipulation of facts to the court.” MCR 2.116(A)(2) provides that “[i]f the parties have stipulated to facts sufficient to enable the court to render judgment in the action, the court shall do so.”

Petitioner moves for summary disposition pursuant to MCR 2.116(C)(10). Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material

fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991). If it appears to the court that the opposing party, rather than the moving party is entitled to judgment, the court may render judgment in favor of the opposing party. *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000). (citing MCR 2.116(I)(2))

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.²⁰ Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

VI. CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's Motion under MCR 2.116(A)(1) and (C)(10), and finds that granting this motion is warranted, based on the pleadings, stipulation of facts and other documentary evidence filed with the Tribunal. Petitioner has proven that there is no genuine issue in respect to any material fact. MCR 2.116(C)(10). The Tribunal finds that the parties have submitted a stipulation of facts sufficient to justify judgment favoring Petitioner.

*7 If the language of a statute is clear and unambiguous, the plain meaning of the statute reflects the legislative intent and judicial construction is not permitted. *Turner v Auto Club Ins Ass'n*, 448 Mich 22, 27; 528 NW2d 681 (1995). Only where the statutory language is ambiguous may a court properly go beyond the words of the statute to ascertain legislative intent. *Luttrell v Dep't of Corrections*, 421 Mich 93; 365 NW2d 74 (1984). Here MCL 205.94(g)(i) is the applicable statute for the tax years at question.²¹ MCL 205.94(g)(i) states in pertinent part:

The tax levied does not apply to the following:

(g) Property sold to the following:

(i) An industrial processor for use or consumption in industrial processing. Property used or consumed in industrial processing does not include tangible personal property permanently affixed and becoming a structural part of real estate; office furniture, office supplies, and administrative office equipment; or vehicles licensed and titled for use on public highways other than a specially designed vehicle, together with parts, used to mix and agitate materials added at a plant or jobsite in the concrete manufacturing process. Industrial processing does not include receipt and storage of raw materials purchased or extracted by the user or consumer, or the preparation of food and beverages by a retailer for retail sale. As used in this subdivision, ““industrial processor” means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail.

The statute specifically states that industrial processing “does not include receipt and storage of raw materials purchased or extracted by the user or consumer.” Equipment used in the receipt and storage of Petitioner's property is not at question in this appeal. Rather, the portion of the conveyor system in question transports raw material pellets from storage piles to a long conveyor that runs the length of the storage yard, up a five-story incline to the stockhouse and ultimately to one of four pellet bins where the pellets are screened to remove undesirable materials. The pellets are then fed into blast furnaces along with other materials in precise amounts, after which the industrial process will produce the liquid iron end-product.

The statute unambiguously states that an “‘industrial processor’ means a person who transforms, alters, or modifies tangible personal property by changing the form, composition, or character of the property for ultimate sale at retail or sale to another industrial processor to be further processed for ultimate sale at retail.” What is ambiguous is whether the use of equipment for “production material handling” falls under the exemption. The Tribunal recognizes that MCL 205.94o now contains a definition of industrial processing that clearly includes production material handling. The Tribunal must determine whether the Legislature amended the statute to clarify its intent or to expand the statute to include something not previously intended.

*8 Prior to March 31, 1999, the statute was ambiguous; however, Respondent's own rule 40 was not. Respondent promulgated and applied this rule since 1979. For Respondent to subsequently claim that production material handling equipment is exempt ONLY when the equipment transforms, alters or modifies raw materials is not consistent with its own rule. Specifically, Rule 40 states “Industrial processing includes ... [p]roduction material handling.” The Legislature amended the statute to be identical to this rule thus apparently intending to clarify the law to reflect exactly how Respondent had been interpreting the statute since 1979.

The parties have stipulated that there is a continuous process and Petitioner contends that the process is not interrupted by the act of screening and weighing of pellets upon reaching the weigh hoppers. Once the raw material pellets are dispersed to the conveyor, movement does not stop until after the material has moved through the entire system, ultimately entering the blast furnace and becoming liquid steel. There is no testimony or evidence to indicate that pellets are left to rest on the conveyor system at the end of a shift or production period. Rather, there is one uninterrupted transportation of materials from storage to blast furnace, integral and seamless.

A finding made by the Hearing Officer in her Informal Conference Recommendation that holds significant relevance is that “[t]he process is a ‘just-in-time’ process and there is no storage or backlog once the pellet selection is made. The pellet selection is made at the site of the storage, the computer calls for the necessary mixture of pellets, and that same amount is then transported to the stockhouse for mixing at the hopper stage.”²² The Hearing Officer further noted that the “... raw material, iron pellets, is stored in four outdoor storage pits. There are two different types of pellets: there are three pits containing flux pellets and one bunker with acid pellets. These pellets are taken from the pits via a hopper that drops them onto an underground conveyor that transports the pellets above ground and deposits them onto a long conveyor. The amount and mixture from the four pits is computer controlled. The computer directs how many pellets from each of the four bunkers are deposited onto the long conveyor system. The two different pellets are not mixed at that stage, rather mixing occurs at the stockhouse”²³ Clearly, a change to the composition of the raw materials commences when the pellet selection is made by a computer that determines the amount of pellets to be moved to the conveyor for a continuous journey through the process of becoming liquid steel.

The Tribunal further finds that its decision in *Milford Redi-Mix Company, supra*, supports Petitioner's contention. The facts of *Milford* parallel the facts of this case.²⁴ Specifically, in *Milford*, the operation at question was the transportation of raw materials on a conveyor system to a drive-over hopper and then on to a staging/collection hopper. The Tribunal

determined that this stage of the processing was exempt under the industrial processing exemption because the conveyor is not part of the storage process, but rather part of the industrial process.

*9 In *Milford*, the respondent argued that pre-industrial process and the industrial process itself must be distinguished. The respondent further argued that the conveyor system was "... part of the storage (pre-industrial process) of raw materials and handling activity associated with the storage activity which is not exempt." *Id.* at 9. The petitioner contended that the industrial process began at "... the point of dumping raw materials into the grate at the drive-over hopper from which aggregate, etc., is moved up the conveyor to the staging/collection hopper." *Id.* The Tribunal ultimately concluded that "... the 'industrial process' on these facts commences upon delivery of materials to the drive-over hopper ... [and] the drive-over hopper and conveyor are not a part of the recovery or storage bins for raw materials on site, although the drive-over hopper is the receiving point for most of the materials entering the site and on these facts materials being received may not enter storage before being introduced to the industrial process."

In the instant case, the operation in question is also the transportation of raw materials on a conveyor system. The parties stipulated that once the transportation of raw materials is set in motion by the initial movement of the pellets from the storage piles onto the hopper conveyors, the process of moving the pellets to the blast furnaces is a continuous process that does not stop while the blast furnaces are in operation. Like *Milford*, the conveyor system is not part of the recovery or storage for raw materials on site. In fact, when the transportation of raw materials (taken from storage) is set in motion by the conveyor system the process is continuous and is part of the industrial process.

Both Petitioner and Respondent rely on the finding in *White Consolidated Industries, supra*. Petitioner argues that containers used to convey parts along an assembly line are exempt means conveyors used to move materials should likewise be exempt. On the other hand, Respondent argues that its assessment is consistent with the findings in *White Consolidated* because a portion of the conveyor system is treated as tax exempt while the other portion is treated as taxable based on some arbitrary apportionment. The Tribunal finds that the partial use exemption is not relevant because Petitioner does not use the conveyor system in receiving or raw material storage, but rather 100% for industrial processing.

Further, Respondent's own words would leave one to believe that no part of a material handling conveyor system would qualify as industrial processing because the conveyor only moves materials from one place to another along the process and does not actually "transform, alter or modify." Obviously, the Court of Appeals did not agree with this interpretation in its decision in *White Consolidated*. Respondent believes that in order for Petitioner's "conveyor system to be exempt from the use tax under the industrial processing exemption, it must transform, alter, or modify the form, composition, or character of the materials it carries."²⁵ Respondent's auditor determined that the transformation, alteration or modification does not occur until the screening and weighing of raw materials in the weigh hoppers. "The conveyors at issue do not transform, alter, or modify the form, composition, or character of the raw materials -they merely transport the materials from the stockhouse to the weigh hoppers."²⁶ Based on this analysis, it would seem that none of the conveyor system is exempt because the conveyor itself does not change or modify materials. It simply moves the materials, despite the fact that the materials are in the industrial process system. It is difficult to reconcile Respondent's statements with its position that some portion of the conveyor system is exempt.

*10 The Tribunal further finds that the Legislature intended the original statute to include "production material handling" as an industrial processing activity exempt from use tax. The statute was rewritten in 1999 in order to "clarify and expand the industrial processing exemptions."²⁷ The legislation "provide[d] a definition of the term 'industrial processing' and added a new definition of 'industrial processor.'"²⁸ Industrial processing was clarified to specify that industrial processing begins when tangible personal property begins movement from raw materials storage to begin industrial processing. The term "industrial processor" was defined and expanded to include a person, whether or not an industrial processor, if the property was used to perform an industrial processing activity for or on behalf of an industrial

processor. This implies that the legislature originally intended to include the movement of raw materials to and through the industrial processing activity; however, clarification was needed to give plain meaning to the somewhat ambiguous statute.

Respondent's reliance on *Beckman Production Services Inc., supra*, is misplaced. The issue in that case is not relevant in the instant case because it relates to the application of the industrial processor exemption to non-industrial processors. It addresses exactly what the Legislature changed in the 1999 amendment — to expand the industrial processing exemption to taxpayers that are performing services for industrial processors.

Based on this analysis, the Tribunal finds that the purchase of the conveyor system, used by Petitioner in relation to the production of liquid iron, is exempt from sales and use tax under the industrial processing exemption, pursuant to [now repealed] MCL 205.94r.

VII. JUDGMENT

IT IS ORDERED that Petitioner's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Assessment No. K999440 is CANCELLED.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties as finally shown in this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment.

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

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

Cynthia J. Knoll
Tribunal Judge Presiding

Footnotes

- 1 Petitioner's original Petition dated May 31, 2005 p.3
- 2 *Id.*
- 3 Note: Respondent submitted a Motion for Summary Disposition requesting dismissal for lack of jurisdiction pursuant to MCL 205.22 and 205.735, which was denied for lack of good cause.
- 4 Petitioner's Brief in Support of Motion for Summary Disposition, p. 8
- 5 *Id.* p. 4
- 6 *Id.* p. 3
- 7 Petitioner's Response Brief, p. 2
- 8 Petitioner's Motion for Summary Disposition, p. 3
- 9 *Id.*
- 10 *Id.* p. 4
- 11 Petitioner's Motion for Summary Disposition, p. 4
- 12 *Id.* p. 7
- 13 Respondent's Brief in Reply to Petitioner's Motion for Summary Disposition, p. 3
- 14 *Id.*

- 15 Respondent's Trial Brief, p. 6
16 Respondent's Brief in Reply to Petitioner's Motion for Summary Disposition, p. 4
17 *Id.*
18 Respondent's Trial Brief, p. 5
19 *Id.* p. 6
20 *Id.*
21 MCL 205.94(g)(i) is applicable prior to March 31, 1999. The provision remained in the statute at MCL 205.94r until it was repealed effective September 1, 2004. The new exemption provision is codified in MCL 205.94o and applies after March 31, 1999.
22 Informal Conference Recommendation, p. 2
23 *Id.* p. 7
24 It is curious to note that Respondent did not even attempt to distinguish the facts nor refute the application of *Milford*.
25 Respondent's Trial Brief, p. 5
26 *Id.* p 6
27 House Legislative Analysis on House Bill 4745, First Analysis (7-16-99)
28 *Id.*

2009 WL 6317465 (Mich. Tax Tribunal)

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The "Just-In-Time Method"

by Janet Hunt



The "just-in-time method" is an inventory strategy where materials are only ordered and received as they are needed in the production process. The goal of this method is to reduce costs by saving money on overhead inventory expenses. The company must be able to accurately forecast demand for goods and services for the just-in-time method to be effective.

Method

The just-in-time inventory method is considered a "pull" approach in manufacturing. When sales activities warrant more production, inventory is "pulled" and more manufacturing supplies are ordered. The result is a smooth flow of production and reduced inventory costs. This method relies on signals given at different points in the production process that tell the manufacturer when to make the next part. Stock depletion signals the ordering of new parts. The just-in-time method is used by major auto manufacturers, such as Toyota, who take advantage of synchronized assembly line systems.

Advantages

One major advantage of the just-in-time inventory management system is that funds that were tied up in inventory costs can be used elsewhere. Likewise, areas devoted to storing inventory are now free to be used in production or for other needs within the company. Less waste and lower inventory costs result in increased profits for the organization.



Disadvantages

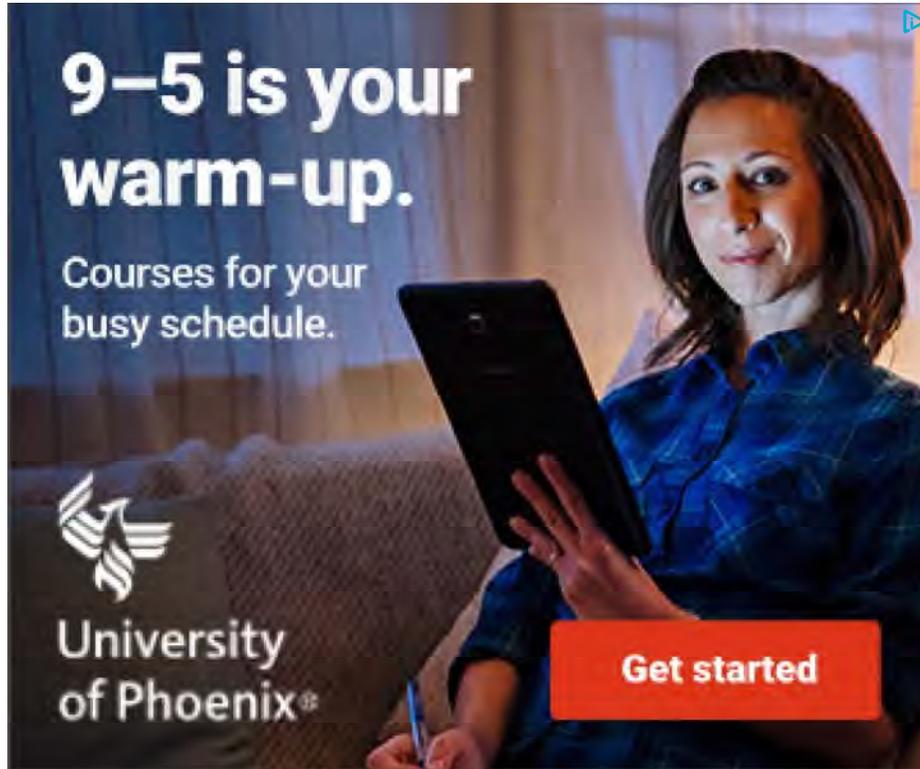
The just-in-time method does not work for all companies. Not every supplier or manufacturer has the luxury of ordering only the materials they need to complete a specific order. A company must consider potential variables in the manufacturing process -- such as inclement weather delaying receipt of inventory materials, labor strikes or supply shortages -- before deciding if this inventory method is right for their organization.

Alternatives

Hunt, The "Just-In-Time Method"

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An alternative to the just-in-time inventory management method is the MRP, or "materials requirements planning" system. In contrast to just-in-time, MRP is a "push" system of inventory. The concept of "push" in inventory involves having goods on hand to "push" to the next level in the production process based upon forecasts of sales. A company that can accurately forecast product demand may prefer the MRP system over just-in-time inventory management.

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- [Emory University: Expect Just-In-Time Inventory Management to Thrive in New Security-Conscious World](#)
- [University of Florida: Production Smoothing in Just-In-Time Manufacturing Systems](#)

Resources (1)

- [Harvard Business School: Dell Manages Profitability, Not Inventory](#)

About the Author

Hunt, The "Just-In-Time Method"

Janet Hunt has worked in the insurance industry for more than 15 years. Now serving in online marketing, she also has expertise in business and finance topics. Hunt received her Bachelor of Business Administration from the University of Phoenix. Hunt has also worked as a food services manager for a high school cafeteria and received her school nutrition certification in 2002.

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recycled; recycling; recycles



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Definition of *recycle*

(Entry 1 of 2)

[transitive verb](#)

- 1 : to pass again through a series of changes or treatments: such as
- a : to process (something, such as liquid body waste, glass, or cans) in order to regain material for human use
- b : [recover sense 6](#)
- c : to reuse or make (a substance) available for reuse for biological activities through natural processes of biochemical degradation or modification green plants *recycling* the residue of forest firesrecycle ADP back to ATP
- 2 : to adapt to a new use : [alter](#)
- 3 : to bring back : [reuse](#) recycles a number of good anecdotes— Larry McMurtry
- 4 : to make ready for reuse a plan to recycle vacant tenements
- 5 : to reuse (money) by investing especially in an area or enterprise that will allow the investment to return as new profits recycle petrodollars

[intransitive verb](#)

- 1 : to return to an earlier point in a countdown
- 2 : to return to an original condition so that operation can begin again —used of an electronic device
- 3 : to process materials or substances (such as liquid body waste, glass, or cans) in order to regain material for human use As a rule, Welch does not recycle. Its roadsides are littered with paper bags from the town's half-dozen fast-food outlets.

recycle

[noun](#)

Definition of *recycle* (Entry 2 of 2)

: the process of [recycling](#)

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- recyclable \ ri-' sī-k(ə-)lə-bəl  \ adjective or noun
- recycler \ ri-' sī-k(ə-)lər  \ noun



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Synonyms: Verb

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English Language Learners Definition of *recycle*

- : to make something new from (something that has been used before)
- : to send (used newspapers, bottles, cans, etc.) to a place where they are made into something new
- : to use (something) again

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recycle

[verb](#)

re·cy·cle | \ ,rē-'sī-kəl \ 
recycled; recycling

Kids Definition of *recycle*

- : to process (as paper, glass, or cans) in order to regain or reuse materials

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Aluminum Recycling

Aluminum recycling is the process through which scrap aluminum is reprocessed to be used in products after its initial production.

Aluminum producers and recyclers in the aluminum industry work with individuals, businesses, and communities to enable both curbside and industrial recycling programs. For most aluminum products, the metal is not consumed during the products lifetime, but it is simply used making it easy to recycle without losing its intrinsic properties. Used beverage container (UBC) recycling is the most recognized of the aluminum recycling programs. However, end of life recycling of certain products like building parts and cars allows for the production of recycled materials like window frames, wire, tubing and electronic parts.



Process of Aluminum Recycling

The following is step by step process of aluminum recycling:

1. Collection of Scrap Aluminum

Drinks cans, aluminum foil trays, and aerosol cans are collected from homes, streets and garbage collection centres by hired individuals or business people who major in aluminum collection. They are sometimes mixed with steel cans. The scrap aluminum is then collected together and then it is transported to the treatment plant.

2. Sorting

The mixed metals (aluminum and steel cans) are taken to a materials recovery facility where they are cleaned, sorted into different metal streams and later compressed into bales. This step is very important in ensuring that the aluminum is separated from other metals. It is important to point out that drink cans and certain food cans are made out of steel.

3. Shredding

The aluminum blocks bales are later transported to a processing plant. The blocks are then put onto a conveyor that transports them to the shredder. The shredder then cuts the cans into tiny pieces. This is done to make it easier to get rid of all the paintings and coatings that are used for decoration and protection purposes. Additionally, it makes it easier for the metal to melt quickly in the furnace.

4. The Shredded Cans are Passed Beneath a Powerful Magnet

This process aims at completely eliminating traces of steel. Since steel is magnetic, it is easy to separate it from aluminum once it is passed

under a magnet. This ensures that the recycled aluminum contains no steel and meets the quality standards set.

5. De-coating

The aluminum shreds then are taken by the conveyor system into a specialized decoater. This is where all the decorations are detached from the shredded pieces. The decoater then blows very hot air through the tiny pieces of shreds and the coatings, paintings and inks vaporize. The hot gases are then removed and cleaned.

6. The Decoated Shreds Are Then Fed Into the Furnace

Traditionally, the furnace is heated up to 7000C; this is the lowest melting point for certain metals. During this process of melting, certain chemicals are added into the molten aluminum to make it have the correct composition. All the impurities will then float to the top surface of the hot aluminum. This forms a layer called dross. The dross is then removed using a specialized scraping tool.

7. The Holding Furnace

The holding furnace is basically where the molten aluminum is transferred to. It is also known as the holding furnace. This is where the aluminum waits to be turned into ingots. From time to time, the holding furnace tilts to pour the molten aluminum into moulds. Each ingot or block contains approximately 1.6 million drink cans.

8. Transportation of the Ingots

The finished ingots are then lifted by an overhead careen from the casting pit. The ingots are then loaded onto queue waiting track to be transported and dispatched to the rolling mill. The ingots are then rolled out making thin sheets of aluminum. This gives the metal greater

strength and flexibility. The sheets of metal are then collected and used by the packaging factories to make drink cans, foils and other useful products. Then the process begins once again. In a span of as a little as six weeks, the recycled aluminum products are sent back to the shelves in the shops and supermarkets ready for usage.

Advantages of Aluminum Recycling

Aluminum recycling is a common practice that has been around since the early 1900s. It is a very important process because of the numerous advantages as can be seen below:

1. Saves Energy

Used beverage containers are among the largest components of aluminum scrap. Most of the scrap metal is recycled back into cans. The other largest user of the recycled aluminum is the automotive industry. According to the Aluminum Association President, Mr. Steve Larkin, recycling of old aluminum cans into new ones requires less energy (95%) than producing new ones from the scratch. He states that the recycling process also produces 95% reduced greenhouse gas emissions than entirely making new cans.

2. Prevents Depletion of a Valuable Commodity

Aluminum is a metal that is mined from the earth's crust as Bauxite ore. This therefore means that, recycling prevents continuous mining and depletion of this valuable commodity. Each year, recycling prevents approximately five percent of the total Bauxite ore mining in the world.

3. Reduction of the Carbon Footprint

Increased environmental awareness and the need for social responsibility have led to the increased aluminum recycling among many countries and companies today. Did you know that recycling aluminum helps in preventing more than approximately 90,000,000 tons of toxic carbon dioxide from being let free into the air every year? Yes, recycling a single drink can made of aluminum prevents carbon dioxide emission that equals a single mile car ride and it saves adequate energy to power a typical television set for about two to three hours. Today, every country has the responsibility to do whatever it can to reduce carbon emission. This means that if all countries focus on the reduction of carbon dioxide emissions there will be little concern about global warming.

4. Helps in Satisfying the Increasing Demand

As the population increases so does the need for aluminum products. Today, aluminum has more uses and applications other metals. This means that there should be a continuous production of this metal so as to meet the increasing demand. Mining alone is not sufficient enough to meet this demand. Recycling therefore comes in to bridge the gap. In fact half of the aluminum cans are recycled. Manufacturers today use approximately 35 percent of the recycled aluminum and approximately

65 percent of the natural aluminum to meet up their manufacturing needs. Therefore, it is necessary to recycle aluminum.

5. It Never Wears Out

Aluminum is infinitely recyclable. This means that it can be recycled over and over without necessarily losing its natural qualities. It is because of this fact that most manufacturing companies are resorting to use aluminum in most of their products. The metal is light weight, versatile and can be used in a number of applications.

6. Reduction of Landfill

Waste management is becoming a big problem in today's economies. Solid waste management is in fact one of the biggest problems facing many countries in the world today. Most countries dig up huge holes in the ground for burying waste. By recycling aluminum, the space that would be needed for burying the aluminum waste is saved and can be used for other purposes.

In summary, aluminum recycling is important to the environment and the people all over the world. It is essential for all world economies to embrace recycling of solid waste and reduce carbon dioxide emission.

Image credit: [Mojave Desert](#)

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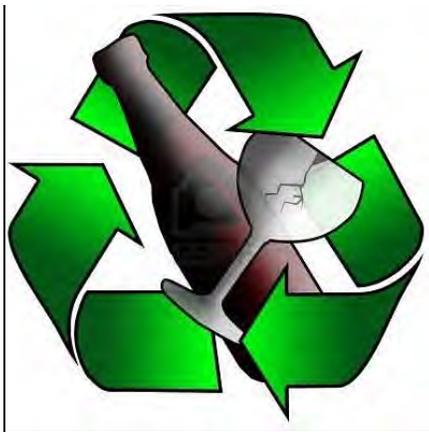
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Glass recycling

Glass is a very important inorganic material which is one of the largest productions of industries. It can be made into a variety of different products used for man's daily living. It is an amorphous solid which can have different compositions of semiconductors but most importantly are made of molten silica along with limestone and soda ash. Glass can be of blue, brown, green color or may be clear. Glass is used in making crockery, windows, doors, mirrors, disposable bottles and many other household items.



The necessity for glass recycling

It is a non-biodegradable waste and comprises a lot of the landfills. Glass cannot be decomposed naturally, although it darkens in color but still remains glass in composition. So its recycling is very necessary. It is not harmful for human health, but it gives a dirty look to the land.

The process of glass recycling

The collection

The collection of glass from all the household items, glass bottles and broken glass of windows, doors etc. is the first major step. There should be proper bins for the collection of glass so that the work of collecting it from landfills is reduced and glass can reach the recycling sites that are industries easily. There are proper containers for their collection and we can also employ the use of urban green igloos or clean points.

Separation into colors

As different colors of glass are not chemically compatible for each other so, different colors of glass like clear, green, amber etc. are separated from each other.

Formation of cullet



The glass is then crushed and processed in mills in its powdered form until finally it is called cullet. It is separated from many contaminating materials like rocks and ceramics. Flint cullet is the most desirable form of scrap for recycling.

Heating and melting

The cullet is then put into specially designed large furnace where it is heated giving a specific range of temperature and melting it. It does not

have a sharp melting point. The heat resistance of glass plays an important role in determining the process to be used.

Shaping the glass

The last step in glass recycling is shaping. The melted cullet can be shaped into various forms depending upon your requirement. Usually it is super cooled to turn into different shapes. It is an important quality of glass.

Use of conveyors

The next step which is taken after collection, sorting, melting of glass is to be processed in conveyors to reach their final state. They are actually made up of different parts of the process and give us the finished product. Their aim is to move a bulk of material through the process at an efficient rate.

Each system is specifically made for a particular function. The amount of space available is the important factor which should be kept in mind. For glass trough or covered belts would be the best conveyor belts. It provides safety to the process.

So the recycling of glass is not a very difficult process unless you know the right way. Glass can be recycled continuously. It saves energy and money. So there should be a proper container system for the collection of glass scrap and technical improvements in glass recycling should be made.

References:

<http://earth911.com/recycling/glass/facts-about-glass-recycling/>

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The Glass Recycle Process

The glass recycle process basically involves the [generic recycling process](#) of collecting the recyclables, sorting them by their types, processing them into raw materials and manufacturing new products using these recycled raw materials.

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Nevertheless, there are some variations from the process of recycling other materials.

Below are more facts about the glass recycling process after the waste glass is collected.

Sorting

The unwanted glass needs to be sorted by their colors. This is because different chemicals need to be added to different colored waste glass to produce recycled glass of the desired color.

Processing: Producing glass cullet

After the sorting stage, the next stage in the glass recycle process involves crushing and grinding the waste glass into tiny pieces. This finely crushed glass pieces are referred to as cullet.

Processing: Removing contaminants

The next stage in the glass recycle process involves the removal of contaminants from the glass cullet.

The glass cullet is passed through a magnetic field, where metal contaminants like metal bottle caps are removed from the glass. Other contaminants like paper and plastic are picked up manually or through an automated process.

Ceramic contaminants are removed from the glass cullet via a process known as fine sizing. The finely ground glass cullet is passed through various screens, leaving behind ceramic residues.

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Glass Recycling Process

If, however, ceramic contaminants do pass through the various screens together with the glass cullet, the quality of the recycled glass will be affected. Ceramic contaminants in glass can lead to structural defects.

Processing: Making recycled glass

The cullet is then melted.

This glass cullet can then be used in manufacturing recycled glass products like new glass containers, bottles etc.

Processing: Decolorizing and dyeing

To produce recycled glass of the desired glass, the recycled glass has to undergo glass decolorizing in the glass recycle process, followed by dyeing.

The first step in the decolorizing process includes oxidizing the melted glass cullet.

For green glass, the oxidation process turns the deep dark green color to yellow-green color. A chemical known as manganese oxide is then mixed with the glass cullet to it grey. The grey base is usually used as the primary color to which various other coloring dyes or agents are added to develop glass of various colors.

For brown or amber-colored glass, zinc oxide is added instead to oxidize the brown glass cullet to blue or green cullet, depending on the quantity of zinc oxide added and the richness of the brown or amber-colored glass being recycled.

If the clear recycled glass is required, erbium oxide and manganese oxide are added to the glass cullet to help clear all the colors from the glass cullet.

Some of the most commonly used coloring agents for dyeing of recycled glass include borax, potassium permanganate, zinc oxide, erbium oxide, cobalt carbonate, neodymium oxide, and titanium dioxide.

Processing: Making recycled glass products

In the last stage of the glass recycling process, the recycled glass, colored or clear, is then molded into the various products and sold in the markets.

Who recycles glass

Check out the [recycling collection centres](#) that take in unwanted glass.

Other facts about recycling glass

An interesting point about the glass recycling process is that glass can be recycled as many times as required, without any deterioration in quality.

What makes glass recycling even more important is that glass never decomposes. If disposed of in the landfills and incinerators, they will contribute substantially to pollution. Hence, it is particularly to send your unwanted glass ware for recycling.

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The Ultimate Guide to Plastic Recycling

Plastic is among the most popular and important materials used in the modern world. However, its popularity is part of the huge problem and reason why plastics should be recycled. Instead of throwing them away polluting the land and our water bodies, we can optimize the lifespan of plastics by recycling and reusing them.

Plastic recycling refers to the process of recovering waste or scrap plastic and reprocessing it into useful product. Due to the fact that plastic is non-biodegradable, it is essential that it is recycled as part of the global efforts to reducing plastic and other solid waste in the environment.



Process of Plastic Recycling

The following is a step by step process of plastic recycling:

1. Collection

Plastics are available in a number of forms for example plastic containers, jars, bottles, plastic bags, packaging plastic, big industrial plastics just to mention but a few. Due to their nature and availability, there are plastic collection centres and some business people have ventured into plastic collecting business as a source of income. Tons and tons of scrap plastic are collected and sent to a collecting yard where they are then packed and transported to plastic processing plants. Unfortunately, not all countries have the capacity to recycle plastic. Very few developing countries can actually recycle plastic. This means that, plastic waste is still a major problem to some countries in the world.

2. Sorting

The actual plastic recycling process starts with sorting of the different plastic items by their resin content and color. This process is also done to ensure all contaminants are eliminated. There are specially designed machines that help in sorting of the plastics according to their resin content. Then the recycling mill sorts the scrap plastic by symbols at the bottom of the plastics.

3. Shredding

After sorting the plastics, the next step is to cut the plastics into tiny chunks or pieces. The plastic bottles and containers are then ground and cut into tiny pieces or flakes. The heavier and lighter plastic flakes are separated using a specially designed machine. The separation process helps in ensuring that the different plastics are not put together or mixed up in the final product. Remember that different plastics are used to make different items.

4. Cleaning

After a complete separation, the flakes or chunks are then washed with detergents to remove the remaining contamination. Once the cleaning process is complete, the clean flakes are passed through specialized equipment that further separates the plastic resin types. The plastic flakes are then subjected to moderate heat to dry.

5. Melting

The dry flakes are melted down. They can be melted down and molded into a new shape or they are melted down and processed into granules. The melting process is done under regulated temperatures. There is specialized equipment designed to melt down plastic without destroying them.

6. Making of pellets

After the melting process, the plastic pieces are then compressed into tiny pellets known as nurdles. In this state, the plastic pellets are ready for reuse or be redesigned into new plastic products. It is important to point out that recycled plastic is hardly used to make identical plastic item or its previous form. It is in this pellet form that plastics are transported to plastic manufacturing companies to be redesigned and be used in making other useful plastic products.

What are the Common Recycled Plastics?

There are numerous and common types of recycled plastics as can be seen below:

1. Polyethylene Terephthalate

This type of recycled plastic is tough, has excellent clarity, is strong and has barrier to moisture and gas. It is used in the manufacture of water, soft drinks, peanut butter and salad dressing bottles and jars.

2. High Density Polyethylene

This recycled plastic is known for its excellent stiffness, resistance to moisture, strength, versatility, toughness and reduced permeability to gas. It is used in the manufacture of water, juice and milk bottles. It is also used to make retail and trash bags for households and business people.

3. Polyvinyl Chloride

Abbreviated as PVC, polyvinyl chloride has a number of applications. It is versatile, can be bended easily, it is tough and strong. This recycled plastic is commonly used in the manufacture of juice bottles, PVC piping and cling films.

4. Low Density Polyethylene

This is the most common type of recycled plastic. It has exceptional ease of processing; it is strong, flexible, tough, and resistant to moisture and it's easy to seal. This plastic is usually used in making frozen food bags, flexible container lids, freezable bottles just to mention but a few.

Advantages of Recycling Plastics

Plastics should be recycled because of a number of reasons as can be seen below:

1. Provision of a Sustainable Source of Raw Materials

Recycling plastics provides a sustainable source of raw materials to the manufacturing industry. Once the plastics are recycled, they are sent to

manufacturing industries to be redesigned and converted into new shapes and used in different appliances.

2. Reduces Environmental Problems

Since plastics are non-biodegradable, they pose a high risk to the people and the environment as a whole. They can block sewer lines, drainages and other waterways leading to blockages and unwanted pileups. When plastics are eliminated through recycling, the environment looks clean and inhabitable.

3. Reduces Landfill Problems

Recycling plastics minimizes the amount of plastic being taken to the ever diminishing landfill sites. Most countries have designated areas specifically meant for burying plastics. When they are recycled, these sites will receive little plastic garbage. The remaining areas can be used for other purposes instead of dumping plastics that do not rot. These areas can be used for agriculture or for human settlement. It should be understood that human population is growing each day and land is

becoming a problem. Instead of misusing the land for garbage disposal it can be used for settlement and other important economic activities.

4. **Consumes Less Energy**

Recycling of materials including plastics requires less energy as compared to making the plastic from scratch. This saves energy and that energy can be diverted to other important things in the economy. It is therefore important to encourage plastic recycling in the manufacturing industry as it will save the economy billions of money. The process of manufacturing plastic using natural raw materials is expensive and time consuming compared to the recycling process.

5. **Encourages a Sustainable Lifestyle among People**

Individuals who have ventured into plastic collection and recycling business will experience improved lifestyles as they will get their daily income from the business. This will in the long run improve the economy and boost the living standards of the people. So do not just sit there doing nothing, embrace plastic recycling activities and improve your economic standards.

In summary, any sort of effort aimed at saving the environment is very important and matters a lot. Since its inception during the environmental revolution in the late 1960s, plastic recycling is one of the most encouraged solid waste management programs in the world. Prior to the push to use of plastic containers by manufacturers, products were packaged in glass, metal and paper. Therefore, in order to keep our environment clean, reduce landfills, provide a sustainable supply of plastics to manufacturers, it is important to recycle plastics.

References:

Earth911

Image credit: Hans

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State Beverage Container Deposit Laws

3/14/2018 Jennifer Schultz

Beverage container deposit laws, or bottle bills, are designed to reduce litter and capture bottles, cans, and other containers for recycling. Ten states and Guam have a deposit-refund system for beverage containers. The chart below contains a citation and summary of each state law. Deposit amounts vary from two cents to 15 cents, depending on the type of beverage and volume of the container.

How Do Bottle Bills Work?

When a retailer buys beverages from a distributor, a deposit is paid to the distributor for each container purchased. The consumer pays the deposit to the retailer when buying the beverage, and receives a refund when the empty container is returned to a supermarket or other redemption center. The distributor then reimburses the retailer or redemption center the deposit amount for each container, plus an additional handling fee in most states. Unredeemed deposits are either returned to the state, retained by distributors, or used for program administration.

Please see the Energy and Environment Legislation Tracking Database for more information.

State Container Deposit Laws

State	Statute	Year	Summary			
			Deposit Amount	Beverages Covered	Containers Covered	Unredeemed Deposits

State Bottle Deposit Laws

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State	Statute	Year			Summary	
California	Cal. Public Resources Code §§14501 - 14599	1986	5¢ (<24 oz.) 10¢ (≥24oz.)	Beer, malt, wine and distilled spirit coolers; all non-alcoholic beverages, except milk. Excludes vegetable juices over 16 oz.	Any container composed of aluminum, glass, plastic, or bi-metal; Exempts refillables	Property of program; Used for program administration
Connecticut	Conn. Gen. Stat. §§22a-243 - 22a-246	1978	5¢	Beer, malt, carbonated soft drinks, bottled water	Any sealed bottle, can, jar, or carton composed of glass, metal or plastic; Excludes containers over three liters containing non-carbonated beverages, and HDPE containers	Returned to the state
Hawaii	Hawaii Rev. Stat. §§342G-101 - 342G-122	2002	5¢	Beer, malt, mixed spirits and wine; all non-alcoholic drinks, except dairy products	Any container up to 68 oz. composed of aluminum, bi-metal, glass, or plastic	Property of state; Used for program administration
Iowa	Iowa Code §455C.1 - 455C.17	1978	5¢	Beer, wine coolers, wine, liquor, carbonated soft drinks, mineral water	Any sealed bottle, can, jar, or carton composed of glass, metal or plastic	Retained by distributor and bottlers

State Bottle Deposit Laws

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State	Statute	Year			Summary	
Maine	Me. Rev. Stat. Ann. tit. 38, §§3101 - 3118	1976	15¢ (wine/liquor) 5¢ (all others)	All beverages except dairy products and unprocessed cider	Any sealed container of four liters or less composed of glass, metal or plastic	Property of state
Massachusetts	Mass. Gen. Laws Ann. ch. 94, §§321 - 327	1981	5¢	Beer, malt, carbonated soft drinks, mineral water	Any sealable bottle, can, jar, or carton composed of glass, metal, plastic, or a combination; Excludes biodegradables	Property of state general fund
Michigan	Mich. Comp. Laws §§445.571 - 445.576	1976	10¢	Beer, wine coolers, canned cocktails, soft drinks, carbonated and mineral water	Any airtight container under one gallon composed of metal, glass, paper, or plastic	75% to state for environmental programs; 25% to retailers
New York	N.Y. Environmental Conservation Law §§27-1001 - 27-1019 (Amended 2013 SB 2608)	1982	5¢	Beer, malt, wine products, carbonated soft drinks, soda water, and water not containing sugar	Any sealed bottle, can, or jar less than one gallon composed of glass, metal, aluminum, steel, or plastic	80% to the state general fund; 20% retained by distributor

State Bottle Deposit Laws

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State	Statute	Year		Summary	
Oregon	Or. Rev. Stat. §§459A.700 – 459A.740	1971	10¢ 2¢ (standard refillable)	Beer, malt, carbonated soft drinks, bottled water (will cover all beverages except wine, distilled liquor, milk, milk substitutes and infant formula by 2018).	Any sealed bottle, can, or jar composed of glass, metal or plastic Retained by distributor and bottlers
Vermont	Vt. Stat. Ann. tit. 10, §§1521 - 1529	1972	15¢ (liquor) 5¢ (all others)	Beer, malt, mixed wine, liquor, carbonated soft drinks.	Any bottle, can, jar, or carton composed of glass, metal, paper, plastic, or a combination; Excludes biodegradables Retained by distributor and bottlers
Guam	Guam Code tit. 10, §§44101 - 44119	2010	5¢	Beer, ale, malt, mixed spirits, mixed wine, and all non-alcoholic beverages. Excludes milk, supplements, medicines	Any sealed glass, metal, or plastic container up to 64 oz. Retained by EPA

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