STATE OF MICHIGAN

COURT OF CLAIMS

LGC GLOBAL, INC., also known as
LAKESHORE GLOBAL CORPORATION,
formerly known as LAKESHORE TECH, INC.,

Plaintiff,

v Case No. 24-000149-MT

MICHIGAN DEPARTMENT OF TREASURY, Hon. Michael F. Gadola

Defendant.
_____ /

OPINION AND ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY DISPOSITION AND DENYING PLAINTIFF'S MOTION FOR SUMMARY DISPOSITION

The central issue in this lawsuit involving the Use Tax Act (UTA), MCL 205.91 *et seq*., is whether plaintiff, LGC Global, Inc., used, stored, or consumed tangible personal property (TPP) in Michigan that it procured via a contract with the Great Lakes Water Authority (the GLWA), a tax-exempt entity, during tax years 2018, 2019, and 2020. Both parties have moved for summary disposition under MCR 2.116(C)(10). Judge SWARTZLE, who was previously assigned this matter, heard oral arguments on the motions in November 2025. For the reasons set forth in this opinion and order, the Court GRANTS the motion for summary disposition of defendant, the Department of Treasury, and DENIES plaintiff's motion for summary disposition.

I. BACKGROUND

Plaintiff is a Michigan corporation that contracts with the GLWA, a nonprofit governmental entity providing water and wastewater services in southeastern Michigan. Plaintiff

is engaged in the construction, repair, and replacement of water pipes, meters, valves, and other property for the GLWA. Although plaintiff and the GLWA had several contracts during the relevant timeframe, the main contract for purposes of this lawsuit is CON-285. CON-285, which defined plaintiff as the "Contractor," contained the following integration clause:

> 9.03 This Agreement and all Contract Documents referenced herein contain the entire agreement between the parties and all prior negotiations and agreements are merged into this Agreement. Neither GLWA nor its agents have made any representations except those expressly set forth in this Agreement, and no rights or remedies are, or shall be, acquired by the Contractor by implication or otherwise unless expressly set forth in this Agreement.[1]

CON-285 also clarified the relationship between plaintiff and the GLWA as follows:

> 9.17 Nothing contained in this Agreement shall be construed as to create a relationship of employment, principal and agent, or joint venture between GLWA and the Contractor. It is agreed and understood that the Contractor is an independent contractor with respect to the Work to be performed under this Agreement.

The contracts were amended several times via written addendums, although none of the addendums modified the relevant contract language.

The GLWA provided plaintiff with a Michigan Sales and Use Tax Certificate of Exemption, which claimed an exemption from sales and use tax on the basis that the GLWA is a government entity. Plaintiff presented the exemption certificate to vendors when purchasing items on the GLWA's behalf.

[1] Each of the other contracts between plaintiff and the GLWA contained an integration clause with the same or substantially the same language.

The TPP in question includes valves, sump pumps, and water-flow meters that were ordered by plaintiff. As outlined during the hearing, the TPP falls into three categories:

- Category 1: TPP that plaintiff ordered, took possession of, and left at a GLWA job site as storage in case the GLWA needed spare parts in the future.
- Category 2a: TPP that plaintiff instructed the supplier to deliver directly to a GLWA worksite.
- Category 2b: TPP that the GLWA instructed plaintiff to order and that the GLWA picked up directly from the supplier.

As it relates to Category 1, plaintiff's Chief Operating Officer, Shashidhar Shastri, explained during his deposition as follows:

> [W]e are the general contractor, so the material has to come to us. It would . . . be extremely difficult to manage a process where material starts getting shipped to, you know, five/six different locations or at the customer's warehouse purely from an accounting and a contract administration point of view. So the process is that things come to us and then, you know, we—the customer then picks it up or we hand it over to the customer in case it's not being used as a part of the project.

For Categories 2a and 2b, plaintiff never possessed the TPP itself but purchased the TPP, which was then sent directly to the GLWA. According to Shastri, plaintiff does not control what happens to the TPP in these two Categories after it is passed to the GLWA.

Defendant conducted an audit in relation to tax years 2018, 2019, and 2020, which resulted in an initial determination that plaintiff owed $328,617.00 in use tax. The auditor used a statistical-sampling method to determine the taxes owed on the basis that plaintiff did not provide the entire set of invoices for the audit period. In 2022, defendant issued intents to assess for tax year 2018 (VA9RS3A), 2019 (VA9RS3B), and 2020 (VA9RS3C), which included use tax, a penalty, and interest. Plaintiff requested an informal conference, which occurred in October 2023. Plaintiff acknowledged in its request for an informal conference that there were communication issues

during the audit because the representative of plaintiff working with the auditor had to return to another country unexpectedly. The original auditor also retired before the informal conference, and the audit was reassigned to another employee of defendant, Richard Wright. After working with plaintiff and reviewing additional records, Wright updated the total tax deficiency in advance of the informal conference.

During the informal conference, plaintiff presented a July 2020 Procurement Pipeline newsletter that the GLWA provided to its contractors stating, in relevant part, that "all tangible property that GLWA procures directly for its own use is also considered tax-exempt. As such, GLWA vendors may request our Michigan Sales and Use Tax Certificate of Exemption." However, the newsletter then explained that the GLWA's tax-exempt status did not extend to a "contractor or subcontractor who constructs, alters, repairs, or improves real estate for others." Such contractor is "recognized as the user. . . of all goods and materials that [it] purchase[s] for use in providing [its] services." The GLWA explained in the newsletter, "As the user . . . of these purchased goods and materials affixed to and becoming part of GLWA's realty, the contractor or subcontractor cannot claim tax exempt status."

Following the informal conference, the hearing referee recommended that defendant uphold the intents to assess, with the adjustments recommended by Wright. The referee concluded that plaintiff was a contractor, as opposed to a retailer, and was therefore responsible for paying use tax on the TPP when it purchased the materials, regardless of whether it purchased the TPP on the GLWA's behalf or on its own behalf. The referee also concluded that the statistical-sampling method used during the audit was one of defendant's standard audit procedures, and the decision to employ this method was within defendant's discretion. In June 2024, defendant accepted the referee's recommendation in a decision and order of determination. The decision and order of

determination noted that "[a]s the adjusted workpapers . . . contained further adjustments to the 2018 and 2019 tax periods, the Department may issue Intents to Assess with appeal rights for any additional tax liability determined for those periods." Defendant then issued final assessments for 2018 (VA9RS3A),[2] 2019 (VA9RS3B),[3] and 2020 (VA9RS3C).[4]

Plaintiff sued defendant to challenge the final assessments in September 2024. Count I of the original complaint alleged that the statistical-sampling method used during the audit was invalid. In Count II, plaintiff asserted it was not liable for use tax relating to the TPP because it accepted an Exemption Certificate from the GLWA in good faith. Count III asserted that plaintiff purchased the TPP as an agent for the GLWA and therefore did not have to pay use tax. In Count IV, plaintiff alleged it did not store, use, or consume the TPP purchased for or on behalf of the GLWA for purposes of the UTA. And in Count V, plaintiff alleged the assessment of penalties was improper.

In October 2024, defendant issued a subsequent final assessment for tax year 2018 (VB4YP4W), which assessed $63,869.60 in taxes, $6,387.00 in penalties, and $21,285.46 in interest, for a total of $91,542.06. An additional final assessment was issued for tax year 2019 (VB4YL5I). That assessment was later modified on the basis that it erroneously included only the assessed penalty. Thus, in April 2025, defendant issued Final Assessment 1477509, which

[2] The final assessment for tax year 2018 included $67,685.40 in tax due, $6,769.00 in penalties, and $20,670.63 in interest, for a total of $95,125.03.

[3] The final assessment for tax year 2019 included $84,961.98 in tax due, $8,496.00 in penalties, and $20,657.88 in interest, for a total of $114,115.86.

[4] The final assessment for tax year 2020 included $101,297.94 in tax due, $10,130.00 in penalty, and $18,888.10 in interest, for a total of $130,316.04.

assessed $9,315.54 in taxes, $932.00 in penalties, and $2,982.93 in interest, for a total of $13,230.47 due. Defendant represents that the subsequent final assessments incorporate the additional use-tax liability that defendant determined plaintiff owed after a review of plaintiff's documentation.[5]

Plaintiff amended its complaint to challenge the subsequent final assessments, which it refers to as the Late Assessments, on the basis that they were issued after the applicable limitations period expired or that, alternatively, they should replace (rather than supplement) the original final assessments. This claim became Count V of the amended complaint. The challenge to defendant's imposition of penalties became Count VI. The amendment did not affect Counts I through IV of the original complaint.

Both parties now move for summary disposition under MCR 2.116(C)(10). Plaintiff argues in its motion that it did not use the TPP in a taxable manner for purposes of the UTA. Plaintiff argues that, even if the purchases could be considered a taxable use, plaintiff nevertheless relied in good faith on the GLWA's exemption certificate when purchasing the TPP and acted as GLWA's agent when acquiring the TPP such that the GLWA's tax-exempt status should apply equally to plaintiff. Plaintiff further argues that defendant's audit method was improper because it did not include all relevant materials. Plaintiff adds that the subsequent assessments issued while this case was pending are untimely or should supersede the original final assessments and that defendant improperly assessed penalties because plaintiff did not act in a negligent manner.

[5] Defendant maintains that during discovery, it revised the audit determinations relating to the original final assessments in plaintiff's favor; however, defendant has not issued any revised final assessments because of this pending litigation.

Defendant argues in its motion for summary disposition that because plaintiff was a contractor and not a retailer, it was responsible for use tax for the purchase of the TPP made pursuant to its contracts with the GLWA. Defendant adds that even if plaintiff were not a contractor, it used, stored, or consumed the TPP for purposes of the UTA. Defendant further maintains that plaintiff lacks evidence that it turned over the TPP to the GLWA and argues that plaintiff was not acting as the GLWA's agent when purchasing the TPP. Defendant further argues that it used a valid sampling methodology during the audit, that its imposition of penalties was appropriate, and that the subsequent final assessments were issued timely and represented additional tax liability. The parties have filed response and reply briefs reaffirming the arguments raised in their respective motions for summary disposition.

II. ANALYSIS

A. STANDARD OF REVIEW

Summary disposition is proper under MCR 2.116(C)(10) when no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter of law. *Strata Oncology, Inc v Dep't of Treasury*, 348 Mich App 378, 386; 18 NW3d 367 (2023). The Court must review the affidavits, pleadings, depositions, and other documentary evidence submitted in the light most favorable to the nonmoving party. *Id*. at 387; *By Lo Oil Co v Dep't of Treasury*, 267 Mich App 19, 26; 703 NW2d 822 (2005).

To the extent the Court is required to interpret the UTA, "[w]hen interpreting a statute, the primary goal is to discern and give effect to the intent of the Legislature." *O'Connor v Dep't of Treasury*, 345 Mich App 595, 600; 9 NW3d 351 (2023). A court should consider the provisions of the statute within the context of the whole statute and should give effect to each word, phrase, and clause to avoid a construction that would render any part of the statute surplusage or nugatory.

Id. "When statutory terms are undefined, [the] Court interprets the terms according to their plain and ordinary meaning, considering the context in which the words are used, and may consult dictionary definitions if necessary to accomplish this task." *Id*. at 600-601.

B. UTA APPLICATION

The primary issue in this case is whether plaintiff is liable to pay use tax for the TPP in question. Counts II through IV of the amended complaint encompass a challenge to the legality of assessing use tax on the TPP. Specifically, in Count II, plaintiff claims that use tax was not applicable to this TPP because plaintiff relied in good faith on the GLWA's certificate of exemption. In Count III, plaintiff claims that it purchased the items as an agent of GLWA and, in Count IV, plaintiff claims that the TPP was, by definition, not subject to the use tax because plaintiff did not use, store, or consume the TPP.

The UTA imposes tax on the use, storage, or consumption of TPP in Michigan. MCL 205.93(1). The use tax is designed to govern transactions that are not subject to sales tax. *Podmajersky v Dep't of Treasury*, 302 Mich App 153, 162-163; 838 NW2d 195 (2013). There is no dispute between the parties that the property in question constituted TPP. The term "use" is defined in the UTA as "the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given." MCL 205.92(b).[6] As the Michigan Court of Appeals has explained:

> The UTA does not explain what a right or power incident to ownership of tangible personal property entails. However, this Court has held that the key feature in determining whether a party exercised a right or power over tangible personal property is whether the party had some level of control over that property. [*AAA*

[6] MCL 205.92 has been amended several times in recent years, but the relevant definitions have not been amended since the tax years in question. See MCL 205.92, as amended by 2081 PA 1.

Life Ins Co v Dep't of Treasury, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 365613); slip op at 6 (quotation marks and citation omitted).]

The term "storage" is defined in the UTA as "keeping or retention of property in this state for any purpose after the property loses its interstate character." MCL 205.92(c). A "consumer" is defined to mean, in relevant part, "the person who has purchased tangible personal property or services for storage, use, or other consumption in this state and includes" among other things, "[a] person acquiring tangible personal property if engaged in the business of constructing, altering, repairing, or improving the real estate of others." MCL 205.92(g)(*i*). In the context of sales and use tax, Mich Admin Code, R 205.71 defines the term "contractor" as "only prime, general, and subcontractors directly engaged in the business of constructing, altering, repairing, or improving real estate for others." The language in this definition mirrors, to a significant extent, the definition of a "consumer" under the UTA.

Starting with Category 1 (the TPP that plaintiff ordered, took possession of, and later transferred to the GLWA), the TPP is subject to taxation under the UTA because plaintiff took possession of the TPP before transferring it to the GLWA. Plaintiff argues that the TPP was purchased not incident to its ownership, but rather, as incident to the GLWA's ownership. However, it is undisputed that plaintiff stored this TPP for a period because plaintiff purchased the TPP from a third party that shipped it to plaintiff's warehouse. Plaintiff's conduct constituted, at the very least, storage and consumption of the TPP. There is no dispute that plaintiff kept or retained the TPP for a period in Michigan or that the property lost its interstate character for purposes of the definition of storage under the UTA. See MCL 205.92(c). As far as consumption, plaintiff acquired the TPP as part of its business of constructing, altering, repairing, or improving

the real estate of the GLWA.[7] It therefore fell within the definition of a "contractor," and its activities constituted consumption of TPP under the UTA.

While the UTA includes several tax exemptions, none of those exemptions apply to the TPP. One potentially applicable exemption applies to TPP purchased by

> [a] person engaged in the business of constructing, altering, repairing, or improving real estate for others. . . to the extent that the [TPP] was purchased by that other person and that person is not exempt from the tax levied under the [use tax act] or the general sales tax act. [MCL 205.94ee.]

This exemption does not apply in this context because plaintiff purchased the TPP itself, and the GLWA will not pay use tax or sales tax because of its tax-exempt status.

A similar exemption exist for individuals "engaged in the business of constructing, altering, repairing, or improving real estate" to the extent the TPP is affixed to and made a part of real estate located in another state, MCL 205.94(1)(z), as well as for "property or services sold to a school, hospital, or home for the care and maintenance of children or aged individuals, operated by an entity of government, a regularly organized church, religious organization, or fraternal organization, a veterans' organization, or a [nonprofit] corporation," MCL 205.94(1)(h). However, plaintiff's work on behalf of the GLWA does not qualify under any of these exemptions.

MCL 205.94(1)(w) exempts "[p]roperty or services sold to [a nonprofit organization]" that received a ruling letter issued by defendant before June 13, 1994. This exemption is also inapplicable because the TPP was not sold to the GLWA. Rather, plaintiff purchased the TPP in

[7] Plaintiff places significant emphasis on the idea that it did not "use" the TPP because the GLWA maintained control over the TPP. However, even if plaintiff lacked sufficient control over the TPP to have "used" it, plaintiff's argument overlooks that the UTA applies equally to storage and consumption of TPP. As noted above, both definitions apply to the transactions at issue.

connection with duties delineated in its contract with the GLWA. Thus, none of the exemptions would apply in this case, further supporting that the Legislature intended for transactions of this nature to be taxable under the UTA.

Categories 2a (TPP that plaintiff instructed the supplier to deliver directly to a GLWA worksite) and 2b (TPP that the GLWA instructed plaintiff to order and that the GLWA picked up directly from the supplier) present a closer call, but ultimately plaintiff cannot rely on agency principles to establish that it was covered under the GLWA's use-tax exemption. Plaintiff's purchase of the TPP at the very least amounts to consumption because plaintiff purchased the TPP for the purpose of use, storage, or consumption and as part of its business of constructing, altering, repairing, or improving the GLWA's real estate. See MCL 205.92(g)(*i*).[8] While plaintiff attempts to characterize its relationship with the GLWA as governed by a procurement-only contract, the GLWA's representative, Sonya Collins, denied during her deposition that she saw a "procurement-only contract" with any supplier or vendor when reviewing the GLWA's contracts. Ultimately plaintiff was the purchaser of the TPP. And most critically for each of these two Categories, there is no dispute that plaintiff caused the transfer of the TPP to the GLWA, even though plaintiff did not itself possess the TPP. This satisfies the UTA's definition of "use," that being "the exercise of a right or power over tangible personal property incident to the ownership of that property *including transfer of the property in a transaction where possession is given*." MCL 205.92(b)

[8] Plaintiff argues that Wright testified he was unaware whether plaintiff "used" the TPP. However, plaintiff does not provide legal support for its position that defendant was required to verify independently whether a taxpayer used each item for which it concluded use tax applied via a statistical-sampling method.

(emphasis added). That plaintiff caused the transfer of the TPP to the GLWA subjects these transactions to use tax.

Plaintiff also relies on principles of agency by implication to support its position. However, plaintiff does not cite any provision of the UTA that would exempt it from use-tax liability on the basis that it was an agent of the GLWA. It appears plaintiff's position is that if it were the GLWA's agent then it could not be considered to have used or consumed the TPP. "An agency cannot arise by implication if the alleged principal expressly denies its existence, but it may arise 'from acts and circumstances within [the alleged principal's] control and permitted over a course of time by acquiescence or in recognition thereof.' " *AFP Specialties, Inc v Vereyken*, 303 Mich App 497, 507-508; 844 NW2d 470 (2014) (citation omitted; alteration in original). "[T]he facts and circumstances giving rise to an implied agency must be (1) known to the alleged principal, (2) within the control of the alleged principal, and (3) either explicitly acknowledged or at least acquiesced in by the alleged principal." *Id*. at 507.

There is no factual dispute about whether plaintiff was an agent of the GLWA. As outlined earlier, CON-285 expressly disavowed an agency relationship and identified plaintiff as a contractor. The GLWA's own newsletter informed contractors, such as plaintiff, that the GLWA's exemption did not extend to contractors acquiring TPP for use in construction projects. Although the newsletter is dated from mid-2020, the newsletter reaffirmed the GLWA's position on agency that was already stated in its contract with plaintiff. Collins testified that her understanding of the contract was that plaintiff was "in no way" an employee or agent of the GLWA. Because the GLWA expressly disavowed any agency relationship in the contracts, such a relationship was not formed by implication.

In *Brusky v Dep't of Treasury*, 340 Mich App 42, 52-54; 985 NW2d 237 (2022), which involved the General Sales Tax Act (GSTA), MCL 205.51 *et seq*., the Court of Appeals confronted a situation involving a licensed motor carrier transporting aggregate material in bulk quantities for customers in the construction setting. When addressing whether the transactions were taxable under the GSTA, the Court held that "[e]ven assuming that a purchasing agent is not liable for sales tax under the GSTA," the parties' contract and the evidence relating to their respective roles did not demonstrate a genuine question of material fact that the plaintiff acted as a purchasing agent. *Id*. at 52. The Court explained:

> Under the common law of agency, in determining whether an agency has been created, [courts] consider the relations of the parties as they in fact exist under their agreements or acts and note that in its broadest sense agency includes every relation in which one person acts for or represents another by his authority. [*Id.* at 52-53 (quotation marks and citation omitted).]

In *Brusky*, the facts demonstrated that there was "a simple buyer-seller transaction" between the plaintiff and its customers, and nothing in the record supported that the plaintiff's customers had control over the purchase or delivery of the material. *Id*. at 53. Critically, unlike in this case, the plaintiff in *Brusky* did not execute contracts with its customers. *Id*. at 46. Instead, simple purchase orders were created for each customer bid. *Id*.

In contrast, in this case, plaintiff had several contracts with the GLWA. Each contract contained a merger clause like the one outlined earlier for CON-285. While plaintiff attempts to rely on its course of dealing with the GLWA to support that it served as the GLWA's agent contrary to the language of the contracts, the general rule is that "[p]arol evidence of contract negotiations, or of prior or contemporaneous agreements that contradict or vary the written contract, is not admissible to vary the terms of a contract which is clear and unambiguous." *Barclae v Zarb*, 300 Mich App 455, 480; 834 NW2d 100 (2013) (quotation marks and citation omitted). And when, as

in this case, the contract contains an explicit integration clause, parol evidence cannot be admitted to establish whether the contract was, in fact, integrated. *Id*.

Because CON-285 contained an express integration clause and required written amendments, plaintiff cannot rely on evidence of course of dealing or on the GLWA's exemption certificate to establish an agency relationship that contradicts the language of the written agreement.[9] Again, as noted earlier, none of the stated exemptions in the UTA apply to the transactions in this case. Although the Court sympathizes with plaintiff's position that it was merely acting on behalf of the GLWA, its arguments regarding fairness cannot circumvent the plain language of the UTA or general contract principles. Accordingly, summary disposition in defendant's favor is appropriate in relation to Counts II through IV of the amended complaint.

C. AUDIT METHODOLOGY

Plaintiff also challenges the statistical-sampling method that defendant used to complete the audit. Specifically, plaintiff asserts in Count I of its amended complaint that the auditor erred by selecting a sample that was not random, did not represent the population of relevant transactions, and did not comply with the method for conducting an audit via statistical sampling as outlined in Internal Policy Directive (IPD) 2009-2. Plaintiff also argues, more generally, that defendant conducted an incomplete or insufficient investigation during the audit.

[9] Plaintiff also cites MCL 205.62(5), a provision of the GSTA providing that a seller who complies with certain requirements is not liable for sales tax if the purchaser improperly claims an exemption. Plaintiff cites this statute in the context of arguing that it could rely on the GLWA's certificate of exemption. However, there is no dispute plaintiff did not sell the TPP at retail for purposes of the GSTA. Plaintiff provides no legal basis for applying this provision of the GSTA in this case. Moreover, as discussed earlier, plaintiff could not rely on the GLWA's tax exemption under the circumstances of this case.

The audit report of findings reflects that the auditor evaluated several categories of TPP, including fixed assets, expenses, and contract jobs. The fixed assets were subject to a "detail review" of plaintiff's depreciation schedules, and the auditor "taxed all fixed assets placed in service with the exclusion of autos and trucks per team manager initial review." However, for the latter two categories, expenses and contract jobs, both were subject to statistical sampling based on electronic records.

"When it is necessary for the Department to use an indirect methodology, it has wide discretion in the selection of the method and the taxpayer has no right to choose the method ultimately applied." *Jim's Body Shop, Inc v Dep't of Treasury*, 328 Mich App 187, 201; 937 NW2d 123 (2019). IPD 2009-2 authorizes statistical sampling "through the use of the Department's statistical sampling software" when, as here, electronic records were available. To apply this method, the auditor must stratify the records by dollar ranges, accounts, locations, time periods, and other factors, depending on the taxpayer's business activities. *Id*. IPD-2009-2 states that the dollar range "should be agreed to by the taxpayer, prior to determining the ranges to be sampled" but the boundaries of this range are to be determined by "[a]uditor judgment." *Id*. Finally, "[a] minimum of 30 sample items is required in each stratified dollar range, except there is no minimum number of sample items required in the high dollar range." *Id*. Wright testified that he used a random sampling method, i.e., he selected "accounts of interest" and defendant's software program "randomly select[ed] invoices for [him] to review." He did not prepare the calculations, however, because those calculations involved a different subdepartment.

Plaintiff does not challenge the size of the sample or the specific dollar ranges. Rather, plaintiff outlines in its motion for summary disposition a "representative example" of items that it argues defendant improperly assessed as three invoices provided in connection with CON-285.

The itemized list of materials on the name-invoices corresponds with a list of materials "handed over" to the GLWA by plaintiff in connection with the contract. Plaintiff claims these items should not have been subject to use tax and critiques the auditor for not interviewing anyone associated with plaintiff or the GLWA to determine if the TPP was purchased for and left with the GLWA.

Plaintiff's arguments miss the point. There is no factual dispute that the TPP was "handed over to" the GLWA either at the construction site or through a separate arrangement or that it was purchased by plaintiff for the purpose of carrying out its duties as a contractor with respect to certain projects. It is because of this work, i.e., because of plaintiff's role as a contractor, that defendant believes the TPP is subject to use tax. Nothing the auditor could have learned through a conversation with plaintiff's or the GLWA's employees would change this. Plaintiff otherwise fails to specify what additional inquiry, review, or substantive analysis it believes that defendant should have undertaken, particularly considering plaintiff's admission during the informal conference that the employee in contact with the auditor abruptly left the country and did not provide additional documentation during the audit at the auditor's request. And as discussed earlier, none of the documentation provided in relation to the summary disposition briefing establishes a genuine issue of material fact whether the TPP was subject to use tax. The use of the statistical-sampling method complies with IPD-2009-2, which authorizes defendant to utilize a statistical sample, as well as the caselaw that permits defendant wide discretion when employing this method. Accordingly, defendant is entitled to summary disposition on Count I of the amended complaint.

D. SUBSEQUENT FINAL ASSESSMENTS

Next, plaintiff argues that the subsequent final assessments for tax years 2018 and 2019 were untimely, and therefore invalid, or that they should supersede the original final assessments

issued for the same tax period. As detailed below, the subsequent assessments were timely, and defendant had discretion to issue subsequent assessments in this circumstance.

MCL 205.27a(2) provides, in relevant part, that "[a] deficiency, interest, or penalty shall not be assessed after the expiration of 4 years after the date set for the filing of the required return or after the date the return was filed, whichever is later." MCL 205.27a(3) provides:

> The statute of limitations shall be extended for the following if the period exceeds that described in subsection (2):
>
> (a) The period pending a final determination of tax through audit, conference, hearing, and litigation of liability for federal income tax and for 1 year after that period.
>
> (b) The period for which the taxpayer and the state treasurer have consented to in writing that the period be extended.
>
> (c) The period described in [MCL 205.21(6) and (7)] or pending the completion of an appeal of a final assessment.
>
> (d) A period of 90 days after a decision and order from an informal conference, or a court order that finally resolves an appeal of a decision of the department in a case in which a final assessment was not issued prior to appeal.

As the Court of Appeals has recognized, the extension in MCL 205.27a(3)(a) refers to federal income tax proceedings. See *Alticor, Inc v Dep't of Treasury*, 324 Mich App 403, 408; 921 NW2d 748 (2018). MCL 205.27a(3)(b) does not apply in this circumstance, either. Nor were the subsequent final assessments issued within 90 days after the decision and order from an informal conference for purposes of MCL 205.27a(3)(d). Thus, defendant relies on MCL 205.27a(3)(c) to support that the limitations period was extended such that the subsequent final assessments were timely.

For purposes of the extension outlined in MCL 205.27a(3)(c), the Legislature has clarified that the extension applies "only as to those items that were the subject of the audit, conference,

hearing, or litigation for federal income tax or tax administered by the department." MCL 205.27a(4). The phrase "items that were the subject of the audit" refers to "items that share a common characteristic that were examined by an auditor even if there was no adjustment to the tax as a result of the examination." *Id*. "Items that share a common characteristic include items that are reported on the same line on a tax return or items that are grouped by ledger, account, or record or by class or type of asset, liability, income, or expense." *Id*.

There is no dispute that the four-year limitations period applies in this case or that the subsequent final assessments were issued more than four years after plaintiff filed its tax returns for 2018 and 2019. The question is whether the four-year limitations period was extended through the period the subsequent final assessments were issued. Plaintiff's 2018 tax return was filed on or before the February 28, 2019 due date, and the 2019 tax return was filed on or before the February 28, 2020 due date. So plaintiff maintains that, under the four-year limitations period, defendant could not assess a deficiency, interest, or penalty in relation to the 2018 tax year after February 28, 2023, or in relation to the 2019 tax year after February 28, 2024. The subsequent final assessments were issued on October 2, 2024, and April 2, 2025, respectively. Thus, absent an extension of the limitations period, the subsequent assessments would be untimely.

Defendant's position, however, is that the limitations period was extended because of the audit process and this litigation. According to defendant, the subsequent final assessments were "the subject of the audit, conference, hearing or litigation" as defined in MCL 205.27a(4) because they concerned use-tax purchases made by plaintiff during 2018 and 2019. Defendant also claims the limitations period was extended by one year because of the audit under MCL 205.21(6) and nine months after that date under MCL 205.21(7). Specifically, this means that the 2018 returns were due February 28, 2019, such that the applicable statutory period ran until February 28, 2023,

and this date was extended one year for the audit (i.e., to February 28, 2024) and nine months for the "final assessment audit extension" (i.e, to November 28, 2024), "plus additional time because Plaintiff requested reconsideration." Utilizing this logic, the period was extended to November 28, 2025 for 2019 tax year. Thus, in defendant's view, both subsequent final assessments were timely.

MCL 205.21(6) and (7) provide:

> (6) For audits commenced after September 30, 2014, the department must complete fieldwork and provide a written preliminary audit determination for any tax period no later than 1 year after the period provided for in section 27a(2) without regard to the extension provided for in section 27a(3). The limitation described in this subsection does not apply to any tax period in which the department and the taxpayer agreed in writing to extend the statute of limitations described in section 27a(2).
>
> (7) For audits commenced after September 30, 2014, unless otherwise agreed to by the department and the taxpayer, the final assessment issued under subsection (2)(g) must be issued within 9 months of the date that the department provided the taxpayer with a written preliminary audit determination unless the taxpayer, for any reason, requests reconsideration of the preliminary audit determination or the taxpayer requests an informal conference under subsection (2)(c). A request for reconsideration by a taxpayer permits, but does not require, the department to delay the issuance of a final assessment under subsection (2)(g).

The Court concludes that the items in the Second Assessment qualify as items that were "the subject of the audit" as defined in MCL 205.27a(4) because they related to the same use taxes and constituted additional alleged tax deficiencies. Additionally, the audit process and issuance of the original final assessments extended the limitations period at least through the date of final assessment issuance in June 2024, as well as through the reconsideration period. However, MCL 205.27a(3)(c) specifies that the four-year limitations period is also extended through the completion of an appeal of a final assessment.[10] Reading these provisions in harmony, because

[10] MCL 205.22 explains that an "appeal" may be taken from a contested portion of a tax assessment, decision, or order in this Court. MCL 205.22(1).

plaintiff filed this lawsuit, which was pending before the subsequent final assessments were issued following plaintiff's disclosure of additional documents, the limitations period was extended at the time the subsequent final assessments were issued. Therefore, they were timely issued.[11]

Another question is whether the subsequent final assessments represented additional tax liability or whether they should supersede the original final assessments. Defendant's position is that the subsequent final assessments represented additional tax liability uncovered during the administrative process. MCL 205.23(1) provides, in relevant part:

> If the department believes, based upon either the examination of a tax return, a payment, or an audit authorized by this act, that a taxpayer has not satisfied a tax liability or that a claim was excessive, the department shall determine the tax liability and notify the taxpayer of that determination.

Defendant relies on *Tyson Foods, Inc v Dep't of Treasury*, 276 Mich App 678; 741 NW2d 579 (2007), to support that MCL 205.23(1) authorized it to issue the subsequent final assessments because plaintiff was subject to additional taxes for the tax period at issue. In *Tyson Foods*, the Michigan Court of Appeals clarified that

> reading MCL 205.23(1) in harmony with MCL 205.27a(2), which renders a taxpayer who fails to file a tax return liable for all taxes due for the entire tax period, the Legislature plainly intended to permit defendant to issue a second tax assessment to a taxpayer for the same tax period if necessary for defendant to collect the entire amount of taxes lawfully due from a taxpayer for the tax period at issue. [*Id*. at 689.]

[11] Plaintiff alleges in its amended complaint that MCL 205.8 required defendant to send copies of letters and notices regarding a dispute, which it failed to do despite that plaintiff's official representatives were identified in the original complaint. However, there is no indication in the record that plaintiff filed a written request for copies of letters and notices regarding the dispute and, even if it had, the failure to follow this procedure does not affect the limitations period relating to the tax assessment. Rather, the procedure outlined MCL 205.8 triggers the time within which the taxpayer must appeal. *Fradco, Inc v Dep't of Treasury*, 495 Mich 104, 117-118; 845 NW2d 81 (2014).

Contrary to plaintiff's argument, the Court of Appeals did not limit its explanation in *Tyson Foods* to situations in which the taxpayer has not yet submitted its tax return. Nor is there language in the statute that would limit the application in the manner plaintiff suggests. In fact, the statute suggests just the opposite—that defendant may rely on a tax return, a payment, or an audit to determine that the taxpayer has not satisfied its tax liability. MCL 205.23(1). In this case, defendant believed, on the basis of additional information obtained in relation to the informal conference, that plaintiff did not satisfy its tax liability and that additional amounts were owed. Plaintiff does not dispute that it provided additional information in the context of the informal conference, which was used to determine that additional taxes were due. Thus, MCL 205.23(1) permitted defendant to issue a subsequent assessment for the same tax period, and defendant is entitled to summary disposition of Count V. See *Tyson Foods*, 276 Mich App at 689.

E. PENALTIES

In Count VI of the amended complaint, plaintiff challenges defendant's imposition of penalties under MCL 205.23(3). Michigan law mandates the imposition of interest and penalties if a taxpayer has "not satisfied a tax liability" due to negligence. MCL 205.23(1) and (3). Defendant determined that plaintiff's failure to pay the use tax here was "due to negligence, but without the intent to defraud," and therefore assessed "a penalty of $10.00 or 10% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in [MCL 205.23(2)]." MCL 205.23(3). Defendant must waive the penalty if the taxpayer "demonstrates to the satisfaction of [defendant] that the deficiency . . . was due to reasonable cause." *Id.* Mich Admin Code, R 205.1012(1) provides:

> Negligence is the lack of due care in failing to do what a reasonable and ordinarily prudent person would have done under the particular circumstances. The standard for determining negligence is whether the taxpayer exercised ordinary care

> and prudence in preparing and filing a return and paying the applicable tax in accordance with the statute. The facts and circumstances of each case will be considered.

Defendant has the burden to establish facts supporting a negligence finding, and the taxpayer bears the burden to establish facts that will negate a negligence finding. Rule 1012(2). The rule provides the following example of negligence: "The taxpayer has been assessed a tax deficiency. There is a subsequent audit of the taxpayer that results in a similar deficiency for a subsequent tax period resulting from the taxpayer's failure to correct internal controls and reporting procedures that contributed to the original assessment." Rule 1012(3).

Here, defendant notes that the audit report of findings refers to the fact that plaintiff made a similar mistake in a previous audit because of its failure to correct internal controls and reporting procedures. Defendant's conclusion that the similar deficiency was due to plaintiff's failure to correct internal controls and reporting procedures was reasonable. As noted earlier, the GLWA's own newsletter informed contractors that they would be responsible for paying taxes on goods and materials purchased for use in providing services to the GLWA, even when the TPP was for use on the GLWA's projects. So plaintiff's alleged reliance on the GLWA's exemption certificate was not reasonable. The facts and circumstances as outlined earlier demonstrate that plaintiff did not exercise ordinary care and prudence in preparing and filing the tax return. Therefore, defendant's imposition of penalties was appropriate for purposes of Count VI of the amended complaint.

III. CONCLUSION

For the reasons stated in this Opinion and Order,

IT IS ORDERED that defendant's motion for summary disposition is GRANTED.

IT IS FURTHER ORDERED that plaintiff's motion for summary disposition is DENIED.

IT IS SO ORDERED. This is a final order that resolves the last pending claim and closes the case.

Dated: March 18, 2026

Hon. Michael F. Gadola
Chief Judge, Court of Claims