Vidon Plastics Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MTT Docket No. 23-002017

City of Lapeer,
Respondent.

Presiding Judge
Michael R. Bannasch

FINAL OPINION AND JUDGMENT

INTRODUCTION

At issue in this case is a fundamental city income tax question of what gives a business the right to apportion its income. Specifically, when a business has its sole brick-and-mortar location in a Michigan city that imposes an income tax, what level of activities outside the city will allow it to apportion its income?

As fundamental as this question is, and as common as this specific scenario may be, it is a question not yet addressed by this Tribunal or the Michigan courts. While even the Michigan Supreme Court has addressed city income tax apportionment,[1] prior cases have involved situations where the right to apportion was not in question, but rather only the calculation of the apportioned income.

In this case of first impression, Vidon Plastics Inc. (Petitioner) appeals a decision by City of Lapeer (Respondent), dated April 27, 2023, which held that Petitioner "cannot allocate for sales outside the city."

Petitioner timely filed an original 2020 City of Lapeer Corporation Income Tax Return claiming all its property and compensation were in Lapeer, but none of its sales were made in Lapeer, resulting in a 66.666 percent business allocation percentage under MCL 141.624. On August 24, 2021, Respondent notified Petitioner that, pursuant to new city regulations, it was changing Petitioner's 2020 return to allocate Petitioner's sales to Lapeer because "your only location is in the city," resulting in a business allocation percentage of 100 percent.

Petitioner did not immediately challenge Respondent's change to the 2020 return. Rather, Petitioner filed an original 2021 City of Lapeer Corporation Income Tax Return in conformity with Respondent's 2020 determination that apportionment was not allowed and then filed an amended 2021 return utilizing the same apportionment position as its 2020 return. Respondent rejected the amended 2021 return on the same grounds it used to change the 2020 return.

[1] See *Honigman Miller Schwartz and Cohn LLP v City of Detroit*, 505 Mich 284; 952 NW2d 358 (2020).

On March 17, 2023, Petitioner appealed the changes made to its 2020 return and the rejection of its 2021 amended return to Respondent's Income Tax Board of Review. A hearing was held by the board on April 25, 2023, resulting in the April 27, 2023 decision from which Petitioner appeals to this Tribunal.

Petitioner filed its appeal with this Tribunal on June 1, 2023, and Respondent filed an answer on June 21, 2023. Both parties moved for summary disposition on January 8, 2024, claiming there were no genuine issues of material fact and each asserting they were entitled to judgment as a matter of law. Petitioner responded to Respondent's motion on January 29, 2024. The Tribunal considered these motions and denied them on June 12, 2024, holding that there were significant genuine issues of material facts involving Petitioner's business activities. On October 29, 2024, an in-person hearing was held in this matter. Petitioner was represented by John J. Salvia. Respondent was represented by T. Allen Francis.

PETITIONER'S CONTENTIONS

Based on the pleadings, admitted exhibits, and sworn testimony, Petitioner contends that it has the right to apportion its net profit under MCL 141.618 and that all its sales should be sourced outside Lapeer under MCL 141.623. The right to apportion is established by several aspects of its business, which it argues constitute out-of-city business activity. It owns inventory in warehouses in Texas.[2] It has an independent contractor sales representative who exclusively works from his home in Illinois[3] and an employee who primarily works from his home in Ann Arbor.[4] It has sales to customers exclusively outside Lapeer.[5] And it has Lapeer-based employees who travel outside Lapeer to visit customers to make sales and maintain relationships.[6] According to Petitioner, all of these are out-of-city business activities, any one of which standing alone, would establish that it does not have "business activities exclusively within the city." Petitioner argues it, therefore, has the right to apportion its net profit.

The sourcing of sales outside Lapeer is based on all Petitioner's sales being sales of tangible personal property shipped to customers located outside Lapeer.[7]

Petitioner's Admitted Exhibits:

- P-1 – Service Agreement with International Impulse Inc regarding inventory for Federal Mogul held in International Impulse Inc's El Paso, Texas warehouse.
- P-2 – Sample records of shipments to International Impulse Inc's El Paso, Texas warehouse.
- P-3 – Consignment Stock Agreement with Trico Products Corporation (Trico).

[2] Transcript at 10.
[3] *Id*. at 16.
[4] *Id*. at 18.
[5] *Id*. at 18-19.
[6] *Id*. at 20.
[7] *Id*. at 18-19 and 44-47.

- P-4 – Sample records of shipments to Trico.
- P-5 – Sample invoices to Trico.
- P-6 – Sample invoices from International Impulse Inc.
- P-7 – Compensation agreement with James Leone, independent contractor in Illinois providing market and sales development assistance.
- P-8 – Employment letter with Dennis Burke, employee in Ann Arbor with job title of Head of Sales and Marketing.
- P-9 – Expense Reports of Dennis Burke for periods of June 2017 to December 2019.
- P-10 – Expense Reports of Matthew Dube for periods of January 2017 to March 2020.
- P-11 – Sales data by country and state for 2020, 2021, and 2022.

Petitioner's Witness Matthew Dube:

Matthew Dube is employed by Petitioner in a business development role and served in that role during the tax years at issue. Mr. Dube provided testimony regarding Petitioner's business activities.

Petitioner's Witness David Barth:

David Barth is employed by Petitioner as its controller and served in that role during the tax years at issue. Mr. Barth provided testimony regarding Petitioner's business activities and financial records.

RESPONDENT'S CONTENTIONS

Based on the pleadings, admitted exhibits, and sworn testimony, Respondent contends Petitioner does not have the right to apportion its net profit and, therefore, all its sales must be sourced to Lapeer so that 100 percent of its net profit can be taxed by Respondent. Respondent contends there are six reasons Petitioner cannot apportion.

First, Petitioner reported 100 percent of its property and 100 percent of its compensation as being in Lapeer during 2020 and 2021. This indicates it has "no regularly maintained and established out-of-city location and engages in no out-of-city business activity," and means that, per Reg. 18.1, it cannot apportion its net profit even though it "fills orders by shipment to an out-of-city destination." This regulation was approved by the Lapeer City Commission in 2018 upon recommendation by the income tax administrator at the time, after consultation with other Michigan cities that impose an income tax. At least two of these cities – Grand Rapids and Pontiac – are known by Respondent's current income tax administrator to be taking the same approach that apportionment is not allowed if 100 percent of property and 100 percent of compensation are in the city.[8]

[8] *Id*. at 63-74.

Second, the inventory in Texas warehouses is not consignment inventory still owned by Petitioner but has already been sold to its customers Federal Mogul and Trico when shipped by Petitioner from Lapeer. The inventory should be considered already sold by the time it reaches Texas because: risk of loss has already passed to Petitioner's customers, the inventory is custom-manufactured by Petitioner for each customer, Petitioner cannot or does not direct the inventory to be shipped to any other customers after it is received in the Texas warehouses, and the customers are effectively committed to purchase all the inventory in the warehouses because returns are minimal and are only based on defective product.[9]

Third, non-Lapeer activities must be attributed back to Lapeer either because the employee is based out of Lapeer and works at least some of the time in Lapeer, with their non-Lapeer work being related to and a continuation of their work done in Lapeer,[10] or because Lapeer is the only profit center for Petitioner.[11] Fourth, business activities are only conducted by employees, not independent contractors.[12] Fifth, it must be shown that out-of-city business activities generated net profit.[13] Sixth, there is some quantitative threshold of out-of-city business activities that must be met before apportionment is allowed.[14]

Respondent's Admitted Exhibits:

- R-A – City of Lapeer Income Tax Ordinance.
- R-B – August 24, 2021 Letter to Petitioner.
- R-C – April 20, 2023 Staff Recommendation to Income Tax Board of Review.
- R-D – April 25, 2023 Board of Review minutes.
- R-E – April 27, 2023 Letter to Petitioner announcing Board of Review decision.
- R-F – September 19, 2024 Bill to Petitioner regarding 2020 tax year.

Respondent's Witness Laura Dorner:

Laura Dorner is employed by Respondent as its income tax administrator and served in that role during the time of, and with regard to, Petitioner's filing of its 2020 and 2021 City of Lapeer Corporation Income Tax Returns, Respondent's changes to and rejection of said returns, and the hearing before the City of Lapeer Income Tax Board of Review.

FINDINGS OF FACT

The Tribunal's Findings of Fact concern only evidence and inferences found to be significantly relevant to the legal issues involved. Tthe Tribunal has not addressed

[9] *Id*. at 23-24, 28-30, 36-37, 48-49, 51-52, and 58-59.
[10] *Id*. at 20 and 32-34.
[11] *Id*. at 22, 31, and 50.
[12] *Id*. at 30.
[13] *Id*. at 54-55.
[14] *Id*. at 25-26 and 35-36.

every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to those findings.

1. Petitioner is a Michigan corporation.
2. Petitioner's manufacturing plant is located at 3171 John Conley Drive in Lapeer, Michigan.
3. Petitioner is subject to City of Lapeer income tax.
4. Petitioner filed 2020 and 2021 City of Lapeer Corporation Income Tax Returns.
5. These returns reported 100 percent of its property and 100 percent of its compensation as being in Lapeer, but zero percent of its sales as being in Lapeer.
6. Petitioner apportioned 66.666 percent of its income for each year to Lapeer.
7. Respondent adjusted Petitioner's tax returns for each year because Petitioner's only location is in Lapeer.
8. Respondent's adjustment disallowed Petitioner's 66.666 percent apportionment, instead taxing 100 percent of Petitioner's income.
9. Petitioner sold products to Federal Mogul and Trico under certain agreements.
10. Those agreements required Petitioner to ship products it manufactured from Lapeer to warehouses in Texas in advance of when those customers would use the products.
11. The customers subsequently withdrew products from the warehouses as they needed them for their production.
12. The customers did not pay for the products until after they were withdrawn from the warehouses.
13. The agreement pertinent to Federal Mogul says the products were shipped free on board (FOB) Lapeer.
14. The agreement with Trico says the products remained the sole and exclusive property of Petitioner until Trico withdrew them from the warehouse.
15. Petitioner's sales were shipped by Petitioner from Lapeer using third-party carriers.
16. Petitioner's employee, Matthew Dube, traveled outside Lapeer to make sales calls on customers.
17. Petitioner had an independent contractor in Illinois.
18. The independent contractor's activities were limited to making sales of products.
19. Petitioner had an employee in Ann Arbor, Michigan.
20. The Ann Arbor employee's activities included making sales of products and helping with strategic planning.
21. Petitioner had no customers in Lapeer.

CONCLUSIONS OF LAW

Introduction

Michigan cities are authorized to impose an income tax under the City Income Tax Act (CITA), found at MCL 141.501 to 141.787. The CITA provides in MCL 141.502 that a city may adopt "the entire uniform city income tax ordinance as hereinafter set forth." Pertinent to the instant case, MCL 141.614 levies this tax "on such part of the taxable net profits as is earned by the corporation as a result of work done, services rendered and other business activities conducted in the city, as determined in accordance with this ordinance."

MCL 141.618 to 141.625 address how to determine "such part of the taxable net profits" earned within the city. At issue in this case is whether Petitioner satisfies the requirement under MCL 141.618 that allows for apportionment of net profit out of the city "[w]hen the entire net profit of a business subject to the tax is not derived from business activities exclusively within the city."[15]

This clause from MCL 141.618 is not difficult to understand as a collection of words, but it does present challenges of statutory interpretation. The Tribunal must determine what "business activities" are and where they are conducted. In addition, questions must be answered of how it is determined whether the business is deriving "net profit" from business activities outside the city, and whether there is a threshold of business activities outside the city that must be crossed before the right to apportion is allowed.

In weighing the parties' evidence in light of these determinations to be made and questions to be answered, the Tribunal is cognizant of the fact that the CITA does not address which party has the burden of proof nor has precedent been established judicially regarding the burden of proof in city income tax cases. Further, outside of cases involving alternative apportionment where the burden to establish the right to deviate from the standard apportionment formula is on the party asserting the need for alternative apportionment and requires a showing by "clear and cogent evidence,"[16] neither statute nor the Michigan courts have addressed the burden of proof for establishing the right to apportion or the sourcing of apportionment factors for state income tax, the Michigan Business Tax, or the Single Business Tax.

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[15] The determination of the amount of taxable net profits earned within the city, if Petitioner has the right to apportion, is not a matter of dispute in this case. MCL 141.618 provides that this shall be determined under either MCL 141.619 (separate accounting method), MCL 141.620 to 141.624 (business allocation percentage method), or MCL 141.625 (alternative method of accounting). Petitioner used the business allocation percentage method on the tax returns it filed and requested in its motion for summary disposition, at page 5, that it be permitted "to properly apportion its business income using a three-factor apportionment formula." Respondent has not presented any argument that, if Petitioner has the right to apportion, that any method other than the business allocation percentage method should be used. Therefore, this is ultimately not a case about how to apportion income, but rather only whether Petitioner has the right to apportion income.

[16] See e.g. *Vectren Infrastructure Services Corp. v Dep't of Treasury*, 512 Mich 594, 615-616; 999 NW2d 748 (2023).

Because of this lack of binding authority in the realm of income tax apportionment, we look to other tax types for situations where the courts have established the burden of proof in the absence of a statutory provision. In *ProMed Healthcare v Kalamazoo*,[17] the Court of Appeals held in a property tax case that the burden of proving entitlement to a tax exemption is on the petitioner and that the preponderance of evidence standard applies.[18]

Petitioner's attempts to establish the right to apportion its income and to source its sales outside Lapeer are akin to a tax exemption in that these provisions of the city income tax law are used to remove from taxation some amount of income that would otherwise be taxed. As such, it is appropriate to consider in this case that Petitioner has the burden of proof to establish its right to use these apportionment provisions by a preponderance of the evidence. A "preponderance of evidence" is "such evidence as, when weighed with that opposed to it, has more convincing force, and from which it results that the greater probability is in favor of the party upon whom the burden rests."[19] Further, according to the Court of Appeals, "[a] person can present [ ] evidence in the form of testimony or documentary evidence."[20]

Respondent's Reg. 18.1

Respondent attempts to initially cut through all these issues by pointing to its Reg. 18.1 as standing for the proposition that Petitioner is not entitled to apportion its income.[21] In fact, it is this regulation that caused Respondent to adjust Petitioner's 2020 and 2021 tax returns in the first place. The regulation was discussed at hearing, during the examination and cross-examination of Ms. Dorner.[22] The regulation says:

> The fact that a person fills orders by shipment to an out-of-city destination, when such person has no regularly maintained and established out-of-city location and engages in no out-of-city business activity, does not entitle such person to apportion part of his net profit as being earned as a result of work done, services rendered or other business activity conducted out of the City.[23]

Ms. Dorner testified that this regulation was adopted by the Lapeer City Commission based on a recommendation from a former City of Lapeer Income Tax Administrator after learning of this interpretation from other Michigan cities with an income tax.[24] During cross-examination of Ms. Dorner, Respondent's representative

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[17] *ProMed Healthcare v Kalamazoo*, 249 Mich App 490; 644 NW2d 47 (2002).
[18] *Id*. at 494-495.
[19] *Martucci v Ballenger*, 322 Mich 270; 33 NW2d 789 (1948); *Hanna v McClave*, 273 Mich 571; 263 NW 742 (1935); *Hoffman v Loud*, 111 Mich 156; 69 NW 231 (1896).
[20] *Estate of Schubert v Department of Treasury*, 322 Mich App 439, 454; 912 NW2d 569 (2017).
[21] Respondent's Brief at 4-5.
[22] Transcript at 63-74.
[23] Respondent's Exhibit R-A.
[24] Transcript at 63-64 and 71-72.

stipulated that the regulation is not an ordinance[25] and objected to questioning that called for Ms. Dorner to make a legal conclusion as to whether the regulation changes or redefines the meaning of the statute regarding "business activity."[26]

MCL 141.671(1) provides authority to city income tax administrators to "adopt, amend, and repeal rules and regulations relating to the administration and enforcement of this ordinance subject to the approval of the city governing body." The regulation is validly adopted and does not appear to conflict with the provision it interprets, that being MCL 141.618. But the regulation does not mean what Respondent thinks it means.

The regulation says a person shipping orders out of the city cannot apportion "when such person has no regularly maintained and established out-of-city location *and engages in no out-of-city business activity* . . ." (emphasis added). This is a conjunctive requirement. Stated another way, in order for Respondent's regulation to preclude Petitioner from apportioning, Petitioner must both: 1) have its only regularly maintained and established location be in the city, and 2) engage in only in-city business activity. If Petitioner has either a regularly maintained and established out-of-city location *or* engages in out-of-city business activity, it can apportion.

Per Ms. Dorner's testimony, Respondent reads its own regulation as disallowing apportionment based only on Petitioner's lack of an out-of-city location:

> Q: Do you have an understanding of what that regulation provides?
> A: Yes.
> Q: What is your understanding?
> A: Just because you have shipments going out of the city destination, and you do not maintain and establish an out of city location, and cannot allocate those shipments.[27]
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> Q: Based on those discussions, do you have an understanding how other municipalities treat allocations?
> A: The other municipalities if you only have one location you cannot allocate for sales.
> Q: Regardless of where the sales occur?
> A: Correct.
> Q: Similar to the regulation 18.1?
> A: Correct.[28]

This implementation of the regulation by Respondent directly contradicts the regulation by ignoring the possible existence of out-of-city business activity. If Respondent's implementation were upheld, the regulation itself would contradict the CITA because it would improperly change or redefine "business activity" for Petitioner

[25] *Id*. at 73.
[26] *Id*. at 73-74.
[27] *Id*. at 64.
[28] *Id*. at 72.

by saying Petitioner only has business activity outside the city if it has a brick-and-mortar location outside the city. Thus, the regulation would have to be struck down as invalid, as it would effectively amend the ordinance, which is prohibited by MCL 141.503(4) "except as provided by the legislature," and the legislature has only provided for certain deviations from the uniform ordinance, which do not include the ability for a city to change or redefine "business activity."[29] Although Respondent argues that other cities – at least Grand Rapids and Pontiac – have the same regulation and implement it the same way,[30] the apparent lack of challenge of these cities' practices by affected taxpayers does not mean the practice is correct.[31]

Definition of "Business Activities"

Having determined that Respondent's implementation of Reg. 18.1 cannot be sustained, and that we must look to whether Petitioner engages in any out-of-city business activity other than a regularly maintained and established out-of-city location, it is helpful to first confirm the definition of "business activities." This critical term is not defined in the CITA. The Tribunal addressed the parties' arguments about the definition in its Order Denying Petitioner's and Respondent's Motions for Summary Disposition,[32] ruling that business activity is "the enterprise, profession, or undertaking of any nature conducted or ordinarily conducted for profit or gain by any person."[33] The Order further said that this language from MCL 141.603(2) includes "a clear indication that the Legislature intended a very broad and liberal interpretation of business acts that constitute business."[34]

The Tribunal continues to adopt that definition and seeks to provide additional clarity. As Respondent points out, the CITA taxes a corporation "doing business in the city, being levied on such part of the taxable net profits as is earned as a result of work

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[29] See MCL 141.503(4) and MCL 141.701 to 141.787.
[30] Transcript at 74.
[31] While Respondent's implementation of the regulation is improper as applied to Petitioner on the basis of Petitioner's appeal, it is understandable in the context of Respondent's processing of the corporate income tax returns filed by Petitioner. In this case, Respondent received from Petitioner tax returns showing 100 percent property and 100 percent payroll in Lapeer, but zero percent sales in Lapeer. This reporting constitutes statements by Petitioner that it had no activity outside Lapeer in the form of either ownership or rental of property nor in the form of employees spending any time working outside Lapeer. Respondent understandably would, at the least, inquire of such a taxpayer why it is apportioning income or, as it did in this case, deny the right to apportion and recalculate the taxable income and income tax, as the filed return contains no information establishing the right to apportion. While Petitioner's filing method of ignoring its non-Lapeer property and payroll because "[i]t doesn't matter to us" (see Transcript at 45) led to the current appeal, Respondent errs in this case is by persisting in its position, after receipt of evidence through the discovery process, that Petitioner has no out-of-city business activity or that, per Reg 18.1, Petitioner must have a brick-and-mortar location outside Lapeer in order to apportion its income. Although there may be no effective way for Respondent to police taxpayers' right to apportion other than its current system of denying that right upon the filing of a return showing 100 percent property and payroll, that denial must yield in the face of evidence of out-of-city business activity.
[32] For the Tribunal's discussion of this issue, see pages 5-6 of the Order dated June 12, 2024, on the Tribunal's website using the Tax Docket Lookup feature.
[33] *Id*. at 6.
[34] *Id*.

done, services rendered and other business activities conducted in the city, as determined in accordance with this ordinance."[35]

Considering the CITA as a whole and reading MCL 141.618 in context, it must be recognized that a city's right to tax an apportioned amount of the net profits of a corporation that is doing business in the city is one side of a coin, the other side of which is the right of a corporation that is doing business outside the city to apportion some of its net profits out of the city. Further, the CITA explicitly says that "doing business" is "the conduct of any activity with the object of gain or benefit, except that it does not include . . .."[36]

The above analysis supports the definition of "business activity" determined by the Tribunal's Order and the idea that it is intended to be "a very broad and liberal interpretation of business acts . . . ." Within this framework, it becomes possible to determine whether Petitioner conducts business activities outside Lapeer, examining each of Petitioner's purported out-of-city activities in turn, although not in the same order in which they were presented by Petitioner.

Whether Inventory in Texas Constitutes Out-of-City Business Activity

First, we address the issue of the inventory in Texas. This requires a determination of whether, as Petitioner argues, it owns the inventory in the Texas warehouses and, only if so, then whether owning inventory in a warehouse is business activity outside the city.

At hearing, the parties devoted considerable attention to the ownership of the inventory. Petitioner's witnesses generally testified upon direct examination that they own inventory in Texas warehouses because two major customers require them to place the inventory there as a condition of doing business together.[37] The testified basis for Petitioner's view that it owns the inventory in Texas is that it does not record a sale upon shipment of the inventory to the Texas warehouses; rather the sale is recorded only when the customers remove product from the warehouses.[38] This is because each shipment of inventory is not based on a customer purchase order. Instead, the customers provide Petitioner planning forecasts of how much product they will need over a certain period of time. Petitioner produces the inventory and ships it to Texas weeks or months ahead of when the customer will use the inventory.[39]

On cross-examination, Respondent's representative focused on indicia of ownership, eliciting testimony from Mr. Dube and Mr. Barth that: 1) the customers paid

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[35] Respondent's Brief in Support of Motion for Summary Disposition, page 3, citing MCL 141.614.
[36] *Id*., citing MCL 141.605. The exceptions are not indicated by Respondent as being applicable to this case but the Tribunal finds them potentially applicable and discusses the solicitation of orders exception below in the context of Petitioner's various out-of-city activities.
[37] Transcript at 10-15 and 39-42.
[38] *Id*. at 15 and 39-41.
[39] *Id*. at 26 and 40-41.

for the shipping of the product from Lapeer to the warehouses in Texas,[40] 2) the customers assumed all risk for the products once they left Petitioner's facility in Lapeer,[41] 3) the customers or warehouses insured the product stored there,[42] 4) the product was custom-manufactured for the customers and not sold to other customers,[43] 5) returns of product from the customers was very low,[44] and 6) Petitioner could force the customers to purchase obsolete inventory in the warehouses.[45]

The parties' presentation of these factors to determine ownership of the inventory in Texas may be a reflection of the fact there is nothing in the CITA that addresses the issue of ownership. While the ownership of inventory as being owned by either the seller or the customer is determined by when the sale between the parties occurs, the CITA does not even define the term "sale".

In this situation involving transactions in goods and a tax statute that does not define all pertinent terms, it is appropriate to look to Michigan's Uniform Commercial Code (UCC),[46] as the Michigan Supreme Court did in *World Book, Inc. v Dep't of Treasury*[47] in a sales/use tax context, and the Court of Appeals did in *Apex Laboratories International, Inc. v City of Detroit* in a city income tax context.[48] While the parties focus on many ancillary factors – e.g. Petitioner's accounting for the transactions, whether Petitioner bears any risk of loss, etc. – the UCC provides a definition of a "sale" by saying "[a] 'sale' consists in the passing of title from the seller to the buyer for a price (section 2401)."[49] Thus, the only relevant question for determining whether Petitioner owns inventory in Texas is when title passes. Two exhibits presented by Petitioner address the issue of title passage.

The first exhibit, the service agreement with International Impulse regarding inventory for Federal Mogul held in International Impulse's El Paso, Texas warehouse, states "[Petitioner] will ship FOB Lapeer to Impulse El Paso . . ."[50] "FOB" is an acronym for "free on board". As explained in the UCC at MCL 440.2319(1)(a), "when the term is F.O.B. the place of shipment, the seller must at that place ship the goods in the manner provided in this article (section 2504) and bear the expense and risk of putting them into the possession of the carrier." The UCC does not explicitly define that title transfers at the FOB location, but nothing in the service agreement speaks to title transfer, and the

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[40] *Id*. at 29 and 48-49.
[41] *Id*. at 29.
[42] *Id*. at 24 and 36-37.
[43] *Id*. at 26-27 and 53-54.
[44] *Id*. at 24, 52 and 57.
[45] *Id*. at 29 and 57-59.
[46] MCL 440.1101 et seq.
[47] *World Book, Inc. v Dep't of Treasury*, 459 Mich 403, 412; 590 NW2d 293 (1999).
[48] *Apex Laboratories International, Inc. v. City of Detroit*, unpublished per curiam opinion of the Court of Appeals, issued January 4, 2024 (Docket No. 363984), p 8. The Court of Appeals also looked to Michigan's former uniform sales act, the predecessor to the UCC, to determine ownership of goods in a property tax context in *O.M. Scott & Sons Co. v Michigan State Tax Comm*, 4 Mich App 431; 145 NW2d 226 (1966).
[49] MCL 440.2106(1).
[50] Exhibit P-1 at item 3c.

Michigan Supreme Court has indicated that, in a situation of FOB shipping point, which requires seller to merely deliver goods to a carrier at that point, title has transferred to the buyer at that point as well.[51] Petitioner has provided no evidence regarding their relationship with Federal Mogul to show that title transferred anywhere other than at Petitioner's facility in Lapeer. Therefore, it cannot be said that Petitioner owned inventory in Texas in connection with its relationship with Federal Mogul.

The second exhibit, the consignment stock agreement with Trico, presents different facts. In that agreement, Petitioner and Trico say explicitly, in the "TITLE TO PRODUCTS" section: "[t]he Products remain the sole and exclusive property of [Petitioner] until they are withdrawn from the Consignment Stock and purchased by [Trico] in accordance with the terms of this Agreement."[52] The "Consignment Stock" referred to is defined as "the Products held by Buyer at Buyer's Warehouse Site as consignment stock pursuant to this Agreement, such products being consignment stock until withdrawn by Buyer pursuant to paragraph 5 of this Agreement."[53]

But just because parties say something is so, does not necessarily make it so. We look again to the UCC,[54] specifically MCL 440.2401(a),[55] which states:

> Title to goods cannot pass under a contract for sale before their identification to the contract under section 2501, and unless otherwise explicitly agreed the buyer acquires by their identification a special property as limited by this act. Any retention or reservation by the seller of the title (property) in goods shipped or delivered to the buyer is limited in effect to a reservation of a security interest. Subject to these provisions and to the provisions of article 9,[56] title to goods passes from the seller to the buyer in any manner and on any conditions explicitly agreed on by the parties.

Looking only at the last clause of this subsection, it appears that Petitioner and Trico are able to dictate that title does not pass, and thus ownership is not transferred, until Trico withdraws product from inventory in Texas. However, the preceding sentence contains a provision which cannot be ignored, which is that retention of title to goods shipped to a buyer is only a reservation of a security interest.

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[51] *Gulf Vegetable & Fruit Co. v Lane*, 258 Mich 634; 242 NW 792 (1932).
[52] Exhibit P-3 at paragraph 6A.
[53] *Id*. at paragraph 1A.
[54] Although the consignment stock agreement with Trico makes no mention of the UCC nor any mention of whether Michigan law or Texas law applies to these interstate transactions, application of Michigan's UCC is appropriate. First, as this is a question regarding when a sale occurs, Article 2 of the UCC, regarding sales, is applicable, as MCL 440.2102 says "Unless the context otherwise requires, this article applies to transactions in goods[.]" Second, while MCL 440.1301(1) allows parties to agree to which state's laws govern when a transaction bears a reasonable relation to Michigan and another state, subsection (2) provides that when there is no such agreement, "this act applies to transactions bearing an appropriate relation to this state."
[55] MCL 440.2401(a) is applicable because this is a matter where title is material to the resolution of the issue and because no other provisions of Article 2 of the UCC cover this situation.
[56] Article 9 of the UCC addresses secured transactions.

Petitioner has reserved title in the products shipped to Trico until Trico withdraws them from inventory, but the UCC dictates that this is not truly a reservation of title. Instead of still owning the inventory in Texas via this reserved title, Petitioner has only reserved a security interest. MCL 440.1201(2)(ii) defines a "security interest", in pertinent part, as "an interest in personal property or fixtures which secures payment or performance of an obligation." The true nature of this reservation of a security interest is borne out by the practical implementation of the agreement between Petitioner and Trico. Petitioner simply wants to get paid for the product it has shipped; it does not want that product back, especially if its relationship with Trico were to end, since the product was custom-manufactured for Trico. This is evidenced by a provision in the agreement requiring a biannual review of the inventory which results in Trico being invoiced for any product that has been in the warehouse for at least 180 days,[57] which Petitioner testified it enforces, and a provision requiring Trico to purchase all consignment stock upon termination of the agreement.[58]

Because the UCC provides that title has transferred to Trico upon shipment to Trico despite Petitioner's reservation of a security interest, a sale has occurred, and Petitioner does not own the inventory in Trico's Texas warehouse. Combined with the determination that Petitioner has not shown that it owns inventory in Texas in connection with its relationship with Federal Mogul,[59] the Tribunal concludes that Petitioner has not established that it conducts business activity outside Lapeer via ownership of inventory in Texas.

Whether Sales to Out-of-City Customers Constitutes Out-of-City Business Activity

Second, we address Petitioner's argument that its "sale[s] of tangible personal property to customers constitute[] business activity as it is the transfer of legal title to tangible personal property,"[60] and that "[t]he sale of goods to an out of city customer that is delivered to that customer in a location outside the city is business activity that occurs outside the city."[61] Except as it relates to the sales to Federal Mogul and Trico, discussed above, Petitioner has provided no evidence regarding where legal title transfers for these sales, and its legal position is based on the sales sourcing rule of MCL 141.623(1). Petitioner's reliance on the sourcing rule to determine the location of its business activity is misplaced. While a shipment of goods destined outside the city constitutes a sale that does not need to be counted in the Lapeer sales factor apportionment numerator of Petitioner, that does not mean that Petitioner conducted

[57] Exhibit P-3 at paragraph 5B.
[58] *Id*. at paragraph 7D.
[59] It is noted that, based on testimony at page 22 of the hearing transcript, the record before the Tribunal indicates that Federal Mogul does not have an ownership interest in International Impulse, the warehouse in Texas where Petitioner ships product intended for Federal Mogul. Thus, the product was not "shipped or delivered to the buyer" (Federal Mogul) in the sense that a reservation of title by Petitioner would be treated instead as merely a reservation of a security interest. Had that been the case, as with Trico, then even if Petitioner had presented evidence showing a retention of title, it would be considered that ownership had already transferred. But since it was not the case for the Federal Mogul relationship, Petitioner could have, but simply failed to, present any evidence that title had been retained.
[60] Petitioner's Motion for Summary Disposition, page 4.
[61] *Id*.

business activity outside the city related to that sale. Petitioner did not provide evidence that the transfer of legal title occurred outside the city nor that any other activity by Petitioner occurred outside the city in the fulfillment of these sales. In fact, Petitioner turned the goods over to a delivery company at Petitioner's location in the city, thus ending its business activity at that location in the sense of whether it did anything more to those goods. Thus, Petitioner has not established that its mere sale of goods destined outside the city constitutes business activity outside the city.

Whether Employee Travel Constitutes Out-of-City Business Activity

Third, we address Petitioner's argument that its Lapeer-based employees conduct out-of-city business activities when they travel to visit customers to make sales and maintain relationships. This would be business activity in that it is an "undertaking of any nature conducted . . . for profit or gain . . .,"[62] but there is an exception in MCL 141.605(a). That exception is that, in the context of whether a person is doing business in the city such that the city can subject them to tax, "[t]he solicitation of orders by a person or his representative in the city for sales of tangible personal property, which orders are sent outside the city for approval or rejection and, if approved, are filled by shipment or delivery from a point outside the city" does not constitute doing business in the city. As noted above, the other side of the coin needs to be considered, which is that, in the context of whether a person is doing business outside the city such that it has the right to apportion, that person will not be considered to be doing business based on the solicitation of orders outside the city for sales of tangible personal property, which orders are sent inside the city for approval or rejection and, if approved, are filled by shipment or delivery from a point inside the city. Petitioner has provided no evidence that its Lapeer-based employees do anything other than the solicitation of orders of tangible personal property when they travel outside the city[63] and, therefore, has not shown that these employees conduct business activity outside the city that would fall outside the exception of MCL 141.605(a).

Whether Out-of-City Employees or Independent Contractors Constitute Out-of-City Business Activity

Finally, we address Petitioner's arguments that it had an employee in Ann Arbor and an independent contractor in Illinois, both conducting business activities outside the city during the 2020 and 2021 tax years in question. Addressing the independent contractor first, Respondent's representative seems to argue that the contractor's actions cannot constitute business activities outside the city to allow Petitioner to

[62] Respondent has not indicated any disagreement that visiting customers to make sales is something a business does for purposes of profit or gain.

[63] At Transcript p. 17, Mr. Dube says he will be traveling in about two weeks to customers "to keep the relationship going, introduce some new products, and talk about how we can help manufacturing high quality parts in the industries." In addition to the fact this statement is not relevant to the 2020 and 2021 tax years, even taken as a proxy for the type of activities that happened during those years (because Mr. Dube said on page 20 that "[d]uring the time period in question, I definitely traveled to Vegas, Orlando, Chicago suburbs several times to various accounts"), there is no indication here that anything beyond solicitation of sales occurs during these trips.

apportion, regardless of those activities: "Their involvement with any other jurisdiction is essentially they use vendors outside of the city of Lapeer. I don't think that's sufficient under the code, regulations aside, but under the code that puts them in a position to be able to allocate."[64] That is, only the actions of employees can be considered business activities. However, there is no restriction in the law that the undertaking of any nature conducted for profit or gain must be done by employees. As a business with a profit motive, Petitioner felt it could profit or gain by hiring this individual as an independent contractor: "He knows a lot of people and helps us deal with owners and other decision makers at signage component distributors. . . . He was instrumental in getting us set up with some of these large sign component distributors . . .."[65] The nature of the relationship between Petitioner and this individual does not dictate whether business activities were conducted outside the city by this individual; rather the nature of the activities themselves must be considered. Here, like with the Lapeer-based employees traveling on sales calls, Petitioner has not shown that the Illinois-based independent contractor was doing anything other than solicitation of sales,[66] and this individual's activities are considered to fall within the exception of MCL 141.605(a).

The employee in Ann Arbor presents a different situation. Respondent does not dispute that an employee can conduct business activities, so we look directly to the nature of the activities conducted by this employee to determine if they are excluded by the MCL 141.605(a) provisions regarding solicitation of orders. According to Petitioner, and not disputed by Respondent,[67] this employee did things in addition to sales during the tax years in question: "He was responsible for growing business with existing customers and adding new customers and also *help with strategic planning* and things of that nature" (emphasis added).[68] Strategic planning is an activity other than solicitation of orders, as "solicitation," undefined in the CITA, is defined in *Black's Law Dictionary* as "the act or an instance of requesting or seeking to obtain something."[69] The Ann Arbor employee's strategic planning was not within the excluded activities of MCL 141.605(a) and, thus, constitutes business activity.

Respondent points to *Honigman Miller* for the argument that this employee's business activity in Ann Arbor must be sourced to Lapeer for purposes of the MCL 141.618 provision allowing apportionment. Respondent says the Court adopted an "origin test" for services[70] and that any work done by Petitioner's employees outside the city is attributed back to Lapeer because that is where the employee is based out of.[71]

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[64] Transcript at 76-77.
[65] *Id*. at 16-17.
[66] At Transcript p. 16, Mr. Dube says the independent contractor is "assessed with marketing and sales development among the products that we own. . . . [H]is job is basically executive relationship management. . . . He's a sales guy."
[67] See Transcript p. 31-33 for Respondent's cross-examination of Mr. Dube regarding this employee's work timeframe, location, and compensation, but no discussion of his activities.
[68] Transcript at 18.
[69] *Black's Law Dictionary* (12th ed).
[70] Respondent's Brief at 4.
[71] Transcript at 32-34.

Respondent's reliance on *Honigman Miller* is misplaced. *Honigman Miller* was not a case about business activity and the right to apportion; it was a case about how to source sales of services for a taxpayer whose right to apportion was undisputed. The point was that the business activity of doing the legal services took place in Detroit, yet the taxpayer wanted to source the sales to client locations where those activities did not occur. Respondent's interpretation that the "origin test" for sourcing services for the apportionment formula sales factor leads to being able to "source" business activities to a location different from where they actually occurred is simply wrong.

Petitioner has shown that the Ann Arbor employee was conducting out-of-city business activity during tax years 2020 and 2021 that establishes Petitioner's right to apportion its income under MCL 141.618. Respondent counters by presenting two over-arching arguments that Petitioner does not earn net profit from any out-of-city business activities and that there is a non-zero threshold of out-of-city business activities that must be crossed before Petitioner can apportion.

Whether Petitioner Earns Net Profit from Out-of-City Business Activity

Respondent argues that any out-of-city business activities must be attributed back to Lapeer because that is where Petitioner's sole "profit earning center" is located.[72] This argument is similar to its initial argument that Reg. 18.1 disallows apportionment because Petitioner has no regularly maintained and established out-of-city location, but there is nuance in the "profit earning center" argument that requires more discussion.

Respondent's argument stems from the statutory language that allows apportionment "[w]hen the entire net profit . . . is not derived from business activities exclusively within the city."[73] Respondent says Petitioner has not proven that any of the out-of-city sales activities generate profit, because Petitioner does not measure the amount of revenue generated by these activities versus the amount of expenses incurred conducting these activities.[74]

From Respondent's perspective, the meaning of this argument is that, in this case, profit is only derived from manufacturing activities occurring at Petitioner's sole brick-and-mortar location. This means all the other activities conducted by Petitioner – employees from Lapeer traveling to customer sites, the independent contractor in Illinois, the employee in Ann Arbor, and (if the goods were still even owned by Petitioner) the inventory in Texas – are pure cost with no value to Petitioner, or, at the very least, Petitioner has not shown that these activities generate profit. There is a clear logical fallacy in this argument. Petitioner is a for-profit business, and for-profit businesses engage in activities they believe will result in profit or gain to them. In fact,

[72] Respondent's Brief at 5.
[73] MCL 141.618.
[74] Transcript at 54-55.

Petitioner has indicated these activities do benefit them.[75] The definition of "business activities" adopted by this Tribunal, based on the statutory language of the CITA, encompasses the very broad and liberal interpretation that any activities conducted for profit or gain are business activities.

Further, Respondent's argument is too focused on a mathematical calculation of "net profit" as it pertains to the right to apportion. Respondent would have Petitioner separately account for revenue less expenses generated by these out-of-city activities to prove they were profitable. Following that to the end could actually result in an inappropriate windfall to Petitioner, as the calculations may show that, for instance, the Ann Arbor employee has generated much more in sales than his compensation costs the company. In this case, Petitioner would be able to remove from Lapeer an amount of profit that could result in a loss for operations within the city year-in and year-out because of the overhead incurred there.

Respondent ultimately misunderstands the reason for apportionment. As explained by the United States Supreme Court in *Container Corp of America v Franchise Tax Bd*:[76]

> In the case of a more-or-less integrated business enterprise operating in more than one [jurisdiction], however, arriving at precise territorial allocations of "value" is often an elusive goal, both in theory and in practice. . . .
>
> One way of deriving locally taxable income is on the basis of formal geographical or transactional accounting. The problem with this method is that formal accounting is subject to manipulation and imprecision, and often ignores or captures inadequately the many subtle and largely unquantifiable transfers of value that take place among the components of a single enterprise. . . . The unitary business/formula apportionment method is a very different approach to the problem of taxing businesses operating in more than one jurisdiction. It rejects geographical or transactional accounting, and instead calculates the local tax base by first defining the scope of the "unitary business" of which the taxed enterprise's activities in the taxing jurisdiction form one part, and then apportioning the total income of that "unitary business" between the taxing jurisdiction and the rest of the world on the basis of a formula taking into account objective measures of the corporation's activities within and without the jurisdiction. This Court long ago upheld the constitutionality of the unitary business/formula apportionment method . . . ."

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[75] Transcript at 12 and 14, regarding inventory in Texas being required to have Federal Mogul and Trico as customers. Transcript at 16-17, regarding the business generated by the independent contractor in Illinois. Transcript at 18, regarding the growth of the business generated by the employee in Ann Arbor.
[76] *Container Corp of America v Franchise Tax Bd*, 463 US 159, 164-165; 103 S Ct 2933; 77 L Ed 2d 545 (1983).

What the Court is saying is that, when an entity conducts an integrated business enterprise, separate accounting based on either geography or activities cannot accurately capture profit created in either that location or by that activity because the profit is not only created in that location or by that activity. Thus, although it is not perfect, formulary apportionment has become the standard for dividing the entire profit of that integrated business enterprise amongst the jurisdictions in which that entity operates.[77]

The implication of the Court's discussion is that it is not normal, nor even generally feasible, to say that profit was derived from certain discrete activities, much less to precisely quantify that profit to certain locations or activities. In the instant case, just as one could say that there would be no profit but for the products manufactured in Lapeer, one could just as easily say there would be no profit but for the sales of those products, with activities related to at least some of those sales taking place outside Lapeer. In fact, while Respondent reads Petitioner's response to its interrogatories as saying that Petitioner earns its profit in Lapeer because that is where it manufactures its products, Petitioner's verbatim response was: "[Petitioner] derives its' profits solely from the sales of the products it manufactures."[78] The opposing viewpoints are readily apparent, as Respondent reads this statement – in which Petitioner says it makes money by selling things it manufactures – as saying instead that Petitioner makes money manufacturing things it sells.

It is the recognition of these opposing views that make formulary apportionment necessary. The CITA recognizes this fact, making formulary apportionment the standard method of determining the amount of net profit taxed within the city, while allowing separate accounting only by petition of a taxpayer and approval by the city income tax administrator.[79]

Respondent's argument that Petitioner must be able to show net profit from discrete out-of-city business activities in order to apportion its income is not correct. Petitioner earns net profit from the combination of all its activities wherever they occur, and because some of its activities are out-of-city business activities, it inherently earns some of its net profit from out-of-city business activities.

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[77] One should not get sidetracked by the term "unitary business" used by the Court and think the reasoning of the Court is inapplicable to the case at hand or to Michigan's city income tax in general. A "unitary business" is an integrated business enterprise. It does not require multiple legal entities and combined reporting, although it is often conflated with that concept. Therefore, although Petitioner is not conducting its business through multiple legal entities, and although Michigan's city income tax does not allow for combined reporting, Petitioner's status is as a "unitary business" because it is operating one integrated business enterprise across multiple jurisdictions. As explained by the Court in *Mobil Oil Corp v Comm'r of Taxes*, 445 US 425, 439; 100 S Ct 1223; 63 L Ed 2d 510 (1980): "[t]he linchpin of apportionability in the field of sate income taxation is the unitary-business principle."

[78] Respondent's Brief, Exhibit A, Question 2.

[79] MCL 141.619.

Whether a Threshold of Out-of-City Business Activity Must be Crossed before Petitioner can Apportion

Respondent's final argument is that there is a non-zero threshold of quantity of out-of-city business activity that must be met before apportionment is allowed. At hearing, Respondent's representative questioned Mr. Dube about the number of employees working outside Lapeer and their time spent doing so.[80] Respondent's argument here, unlike its argument to attribute activities back to Petitioner's "sole profit earning center," has no basis in the statutory language. In fact, MCL 141.618 allows for apportionment when business activities are not "exclusively within the city." *Black's Law Dictionary* defines "exclusive" as "limited to a particular person, group, entity, or thing."[81] So, in proper context, for Petitioner's business activities to be exclusively within the city, they would have to be limited to the city. This is clearly not a non-zero threshold, as any amount of non-city activity, as Petitioner has, would mean Petitioner's business activities are not limited to the city. Therefore, Respondent's argument fails.

Petitioner Has Out-of-City Business Activity that Provides it the Right to Apportion Its Income

Considering the facts and arguments presented by Petitioner and Respondent, the Tribunal concludes that Petitioner has established the right to apportion its income for 2020 and 2021 based on the location and type of work done by its Ann Arbor employee.

Although it received only passing mention in the hearing,[82] Respondent's point that Petitioner does not pay income tax to any other states or countries merits attention from the Tribunal. Respondent may be concerned that, if Petitioner is allowed to apportion some of its income out of Lapeer, that income will avoid tax completely because Petitioner is not paying tax in other jurisdictions. This potential outcome is irrelevant to Petitioner's right to apportion its income under the CITA. The other jurisdiction(s) to which Petitioner may apportion its out-of-city income may have different standards for what gives them the right to tax a business, or they may have no income tax at all. Under the CITA, MCL 141.618 allows apportionment based on having business activity outside the city. The CITA does not require that Petitioner be subject to tax in any other jurisdiction, whether that be a city, state, or country. If the legislature wanted the CITA to include such a requirement, it could write the statute as such, as evidenced by the apportionment and sales sourcing rules of Part 1 of the Income Tax Act of 1967 governing state-level taxation of individuals, including flow-through entities such as partnerships and S corporations.[83]

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[80] Transcript at 35.
[81] *Black's Law Dictionary* (12th ed).
[82] Transcript at 50.
[83] MCL 206.1 to 206.532. See MCL 206.103 and MCL 206.105 which provides the right to apportion income outside Michigan if the taxpayer is taxable in another state. See also MCL 206.122(b) for a "throwback rule" that sources sales of tangible personal property back to Michigan if they are shipped from Michigan to a customer in a state where the taxpayer is not taxable.

Determination of Petitioner's Sales Factor Business Allocation Percentage for 2020 and 2021

Having concluded that Petitioner has the right to apportion its income for tax years 2020 and 2021, we turn now to the proper sourcing of its sales under MCL 141.623. In pertinent part regarding the sale of goods, subsection (1) says:

> For purposes of this section, "sales made in the city" means all sales where the goods, merchandise or property is received in the city by the purchaser, or a person or firm designated by him. In the case of delivery of goods in the city to a common carrier or private carrier or by other means of transportation, the place at which delivery has been completed is considered as the place at which the goods are received by the purchaser.

Petitioner has presented credible testimony that it had no customers in Lapeer during 2020 and 2021,[84] meaning goods were not received in the city by any purchasers or their designees. While its Sales Apportionment Data exhibit[85] does not show city-level sales data, the approximately 32 percent of Petitioner's sales each year that were in Michigan does not mean any of those sales were in Lapeer. Therefore, the exhibit does not contradict the testimony, and Respondent has presented no rebuttal to the testified location of Petitioner's customers and sales.

Respondent's argument that the sales should be sourced to Lapeer is not based on the actual location of those sales as determined under MCL 141.623, rather it is based on the theory that Petitioner has no right to apportion because it does not have out-of-city business activities under MCL 141.618. This argument has already been rejected above.

Because Petitioner has presented the only evidence regarding the location of its sales, and because this evidence is credible, Petitioner has met its burden of proving by a preponderance of the evidence that it had no sales in the city during 2020 and 2021. Therefore, having established the right to apportion, it is concluded that Petitioner's business allocation percentage sales factor is zero percent for the tax years in question, and that its property and compensation factors are each 100 percent for the tax years in question.[86]

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[84] Transcript at 44-47.
[85] Exhibit P-11.
[86] The instruction to continue to report 100 percent property and 100 percent payroll in Lapeer may appear to contradict footnote 29 and to indicate that Petitioner does not have business activity outside Lapeer. However, this instruction is simply a reflection of the fact Petitioner has admitted that, although it had employees working outside Lapeer and had property outside Lapeer in the form of computer equipment, it did not have records sufficient to track those amounts to create in-city apportionment numerators different than the total apportionment denominators for these two factors.

JUDGMENT

IT IS ORDERED that Petitioner is allowed to apportion income out of Lapeer for tax years 2020 and 2021.

IT IS FURTHER ORDERED that Petitioner's business allocation percentages for 2020 and 2021 are 100 percent for property, 100 percent for compensation, and zero percent for sales.

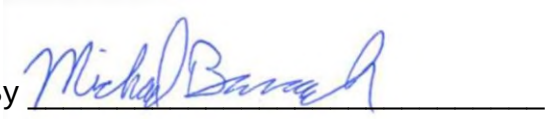
This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

APPEAL RIGHTS

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is $50.00 in the Entire Tribunal and $25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty or disabled veterans exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

Alternatively, you may file a claim of appeal with the Michigan Court of Appeals. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal of right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." A copy of the claim of appeal must be filed with the Tribunal to certify the record on appeal. There is no certification fee.

By 

Entered: April 17, 2025
mrb

PROOF OF SERVICE

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provided by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk