STATE OF MICHIGAN

COURT OF CLAIMS

KOJAIAN MANAGEMENT CORPORATION AND AFFILIATES,

Plaintiffs,

v

DEPARTMENT OF TREASURY, STATE OF MICHIGAN,

Defendant.

OPINION AND ORDER

Case No. 17-000104-MT

Hon. Colleen A. O'Brien

OPINION

Pending before the Court are the parties' competing motions for summary disposition under MCR 2.116(C)(10). For the reasons stated below, defendant's motion is GRANTED and plaintiffs' motion is DENIED. Because of the thorough and adequate briefing submitted by the parties, the Court will dispense with oral argument. See MCR 2.119(A)(5).

I. PERTINENT BACKGROUND

This case concerns a claim of refund for taxes under the Michigan Business Tax (MBT) Act, MCL 208.1100, *et seq.*,[1] for the tax years starting January 1, 2008 and ending December 31, 2011. Plaintiffs, Kojaian Management Corporation and its affiliates, are members of a unitary

[1] The MBT was repealed effective January 1, 2012. See 2011 PA 39.

business group (UBG or Kojaian UBG).[2] The UBG is engaged in real estate rentals, real estate development, leasing, and property management activities.

Relevant here are 2008 and 2009 interests in partnerships transferred from Lehman Brothers entities to designated Kojaian UBG members as a result of a bankruptcy proceeding and settlement. The transfers, which constituted sales or exchanges by Lehman Brothers, were made pursuant to existing partnership elections under the Internal Revenue Code (IRC) § 754, 26 USC 754, which provides that "[i]f a partnership files an election, . . . the basis of partnership property shall be adjusted, . . . in the case of a transfer of a partnership interest, in the manner provided in section 743."[3] Therefore, pursuant to IRC § 743(b)(1), 26 USC 743(b)(1),[4] each of the Kojaian

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[2] The MBT Act defines "unitary business group" as

> a group of United States persons, other than a foreign operating entity, 1 of which owns or controls, directly or indirectly, more than 50% of the ownership interest with voting rights or ownership interests that confer comparable rights to voting rights of the other United States persons, and that has business activities or operations which result in a flow of value between or among persons included in the unitary business group or has business activities or operations that are integrated with, are dependent upon, or contribute to each other. [MCL 208.1117(6).]

[3] IRC §754 further states, "Such an election shall apply with respect to all distributions of property by the partnership and to all transfers of interests in the partnership during the taxable year with respect to which such election was filed and all subsequent taxable years."

[4] IRC § 743(b)(1) provides:

> In the case of a transfer of an interest in a partnership by sale or exchange or upon the death of a partner, a partnership with respect to which the election provided in section 754 is in effect or which has a substantial built-in loss immediately after such transfer shall--
>
> (1) increase the adjusted basis of the partnership property by the excess of the basis to the transferee partner of his interest in the partnership over his proportionate share of the adjusted basis of the partnership property[.] [26 USC 743(b)(1).]

UBG members increased the adjusted basis of the acquired partnership assets to reflect accrued cost of the partnership interests. This resulted in increases in federal and state depreciation deductions, and corresponding increases in the amounts claimed as investment tax credits (ITCs). Also relevant in this case are certain deductions of materials and supplies recorded on the books and records of UBG members that were deducted from gross receipts for the tax years at issue.

The instant dispute stems from an audit conducted by defendant, Michigan Department of Treasury, of plaintiffs' MBT liability for the tax years at issue. As a result of the audit, the Department made two adjustments to plaintiffs' 2008 through 2011 MBT returns: (1) decreases in the amount of the claimed investment tax credit and (2) reductions in the amount deducted from gross receipts for materials and supplies.[5] After issuing a series of Notices of Intent to Assess for the 2008 though 2011 tax years, the Kojaian UBG requested and attended an informal conference.[6] Following the conference, the Department issued a Decision and Order of Determination, upholding the Department's audit adjustments. Plaintiffs then filed this action.

Federal caselaw interpreting IRC § 743(b) has described a "step-up" in basis as placing "the new partner in the same position as if he had purchased his proportionate share of the partnership property directly and before appreciation, as did the original partners." *Muserlian v CIR*, 932 F2d 109, 114 (CA 2, 1991). "[T]he amount available for the step-up in basis is the price paid by the new partner for his interest in the partnership less his proportionate share of the existing adjusted basis of the partnership property." *Id.*

[5] One of the adjustments the Department made to the claimed ITC pertained to purchases by one member of the UBG from another member of the UBG. These purchases concerned costs incurred by Synergy Group, one of the UBG members. Count II of plaintiffs' complaint contests the Department's decision on this disallowance. During the course of litigation, the Department conceded that these costs qualified under the ITC and issued a refund to plaintiff. Hence, Count II of plaintiffs' complaint is no longer at issue.

[6] See MCL 205.21a ("If a taxpayer serves written notice upon the department within 60 days of the issuance of a credit audit or a refund denial, the taxpayer is entitled to an informal conference on the question in the same manner and under the same procedures provided for under section 21.")

In their complaint, plaintiffs allege that the Department's MBT adjustment was unlawful because it was issued beyond the four-year statute of limitations set forth in MCL 205.27a(2). Plaintiffs also challenge the denial of a portion of the claimed ITC as it concerns their stepped-up basis adjustments made under IRC § 743(b). Finally, plaintiffs allege that the Department's denial of plaintiffs' materials and supplies deduction was improper.

II. DISCUSSION

The parties have filed respective motions for summary disposition under MCR 2.116(C)(10). Summary disposition is appropriate under MCR 2.116(C)(10) if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. "When entertaining a summary disposition motion under Subrule (C)(10), the court must view the evidence in the light most favorable to the nonmoving party, draw all reasonable inferences in favor of the nonmoving party, and refrain from making credibility determinations or weighing the evidence" *Dillard v Schlussel*, 308 Mich App 429, 445; 865 NW2d 648 (2014).

A. THE STATUTE OF LIMITATIONS DOES NOT BAR AN ASSESSMENT

The first issue in this case concerns whether the Department's assessment of tax liability for the 2008 and 2009 tax years was timely. The time for the Department to assess a tax deficiency is stated in MCL 205.27a(2), which provides:

> 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. The taxpayer shall not claim a refund of any amount paid to the department after the expiration of 4 years after the date set for the filing of the original return.

The four-year period is tolled pursuant to MCL 205.27a(3) which provides, in pertinent part:

> The statute of limitations shall be extended for the following if the period exceeds that described in subsection (2):
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> (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.
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> (b) The period for which the taxpayer and the state treasurer have consented to in writing that the period be extended.

Thus, under current law, a federal audit automatically tolls the statute, but a state audit does not unless the taxpayer and the Department have entered into a written agreement to extend the period of limitations.

At the time the audit of Kojaiian UBG began—August 24, 2012—MCL 205.27a(3)(a) tolled or "suspended" the period of limitations during the pendency of an audit conducted by the Department, plus an additional year following the conclusion of the audit. See former MCL 205.27a(3)(a), as amended by 2014 PA 3. However, in 2014 PA 3, which became effective on February 6, 2014, the Legislature amended the statute and eliminated the tolling provision for audits conducted by the Department. Plaintiffs contend that, because no written agreements were in place to extend the ongoing audits, the statute of limitations for the 2008 and 2009 tax years expired once 2014 PA 3 took effect on February 6, 2014. The Department, on the other hand, contends that 2014 PA 3 must be given only prospective effect. According to the Department, this means that so long as the audit began before the effective date of 2014 PA 3, the prior version of MCL 205.27a(3)(a)—which automatically tolled the statute whether or not a written agreement was in place—applies.

Plaintiffs' argument—that the elimination of the tolling provision in the current version of MCL 205.27a(3)(a) removed any potential tolling event applicable to this case—is without merit. The Court of Appeals recently resolved this same issue in the Department's favor in a published decision. *Alticor, Inc v Dep't of Treasury*, __ Mich App __; __ NW2d __ (2018) (Docket Nos. 337404, 337406, and 337463). In short, the Court of Appeals held that in spite of the amendments effectuated by 2014 PA 3, an audit commenced by the Department before September 30, 2014, tolled the four-year period of limitations for the pendency of the audit, plus one year thereafter. *Id.* at pp. 5-6. Here, given that there is no argument as to whether an assessment would be timely if tolling were available, there is no validity to plaintiffs' statute-of-limitations argument, and, accordingly, Count I of the complaint is dismissed under MCR 2.116(C)(10).

B. THE INVESTMENT TAX CREDIT AND PLAINTIFFS' "STEP-UP IN BASIS" UNDER IRC §§ 743(B) AND 754

The primary issue in this case concerns an interpretation of the ITC under MCL 208.1403(3). "The judiciary's objective when interpreting a statute is to discern and give effect to the intent of the Legislature. Once the intent of the Legislature is discovered, it must prevail regardless of any rule of statutory construction to the contrary." *Menard Inc v Dep't of Treasury*, 302 Mich App 467, 471; 838 NW2d 736 (2013) (citation omitted). The starting point for this inquiry is the plain language of the statute. *Id.* In general, when the Court reviews a tax statute, it is to resolve any ambiguities in favor of the taxpayer, and tax laws should not be extended by implication. *Id.* at 472-473. However, in this case, the Court is tasked with interpreting and applying a statute involving a tax credit. "[T]ax statutes that grant tax credits or exemptions are to be narrowly construed in favor of the taxing authority because such statutes reduce the amount of tax imposed." *Alliance Obstetrics & Gynecology v Dep't of Treasury*, 285 Mich App 284, 286; 776 NW2d 160 (2009). Moreover, plaintiffs, as the party claiming entitlement to a tax credit, bear the burden of proof with regard to the application of the credit. See *Menard, Inc*, 302 Mich App at 473, 479.

MCL 208.1403(3) provides, in pertinent part:

> Subject to the limitation in subsection (1),[7] for the 2008 tax year a taxpayer may claim a credit against the tax imposed by this act equal to 2.32% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c). Subject to the limitation in subsection (1), for the 2009 tax year and each tax year after 2009, a taxpayer may claim a credit against the tax imposed by this act equal to 2.9% multiplied by the result of subtracting the sum of the amounts calculated under subdivisions (d), (e), and (f) from the sum of the amounts calculated under subdivisions (a), (b), and (c):
>
> (a) *Calculate the cost*, including fabrication and installation, *paid or accrued in the taxable year of tangible assets* of a type that are, or under the internal revenue code will become, *eligible for depreciation*, amortization, or accelerated capital cost recovery for federal income tax purposes, provided that the *assets are physically located in this state for use in a business activity in this state* and are not mobile tangible assets. [Emphasis supplied.]

To simplify, this subsection permits a taxpayer to claim a credit for a percentage of: (1) costs (2) paid or accrued (3) of tangible assets (4) that are or will become eligible for depreciation, amortization, or accelerated capital cost recovery for federal income tax purposes (5) provided that the assets are located in Michigan and used for a business activity in Michigan.

Here, the dispute centers on whether plaintiffs are entitled to a credit for a percentage of "costs" that were "paid or accrued."[8] The Department's position is that purchasing partnership interests, as plaintiffs did in 2008 and 2009, does not equate to incurring costs in the purchase and use of tangible assets for purposes of the ITC. The Department contends that whether or not

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[7] The "limitation in subsection (1)" refers to a maximum amount that can be claimed under the various credits set forth in MCL 208.1403. See MCL 208.1403(1). That limit is not at issue in this case.

[8] The parties are in apparent agreement that plaintiffs based their credits on tangible assets that are depreciable for federal tax purposes, located in Michigan, and used for a business activity in the state.

plaintiffs were, for accounting purposes, entitled to a step-up in basis when elections were made under IRC § 754 does not alter the fact that plaintiffs did not acquire or incur costs in assets within the meaning of MCL 208.1403(3)(a). Rather, according to the Department, plaintiffs merely acquired interests in preexisting tangible assets.

Plaintiffs, meanwhile, contend that they met the statutory requirements of MCL 208.1403(3)(a) by virtue of their acquisition of partnership interests in 2008 and 2009, and that they are entitled to the additional ITCs based on the addition of accrued costs as reflected in the increase in adjusted basis of the assets under IRC § 743(b). Plaintiffs reason that nothing in the statute's language requires a taxpayer to acquire a new asset, and that a step-up in basis upon making an election under IRC § 754 must be respected. This is consistent, plaintiffs argue, with the undisputed fact that they are entitled to take both state and federal depreciation deductions based on the "step up" in adjusted basis under IRC § 743(b) as a result of the elections that were made under IRC § 754. Plaintiffs essentially argue that, because the increase in adjusted basis of the assets are respected for depreciation purposes, they must also be respected for purposes of the ITC. In support, plaintiffs cite the Court of Appeals's decision in *Lear Corp v Dep't of Treasury*, 299 Mich App 533; 831 NW2d 255 (2013). The Department disagrees, and takes the position that permitting a stepped-up basis for state and federal depreciation purposes does not equate to incurring a cost for purposes of the ITC.

Having considered the parties' positions, the Court agrees with the Department that the ITC does not apply where no purchase or acquisition of assets has been made, notwithstanding that an election is made under IRC § 754 when partnership interests are acquired. When construing a statute, a reviewing court must "read the statute as a whole and in its grammatical context." *Menard, Inc*, 302 Mich App at 471 (quotation marks and citation omitted). Here, plaintiffs are correct that MCL 208.1403(3)(a) does not use the word "acquire" when referring to tangible assets. However, the statute predicates the availability of the ITC on there being a cost "of tangible assets" "paid or accrued"[9] in the taxable year. Paying a cost for an asset implies that the entity claiming the credit has purchased or acquired the asset. Here, as the Department points out, the partnership has not acquired any assets; the step-up in basis concerns the partnership's already-existing assets. Nor has the incoming partner acquired any assets. Rather, the incoming partner acquires a partnership interest and, instead of acquiring an asset that is the subject of the IRC § 754 election, is merely adjusting the basis of an asset. Indeed, the cost that is the subject of a § 754 election is merely an accounting adjustment "with respect to the transferee partner only." This type of accounting adjustment as to an incoming partner does not fit within the plain language of MCL 208.1403(3)(a). As a result, and in light of this Court's obligation to construe tax credits or exemptions narrowly, the Court rejects plaintiffs' attempted use of the ITC in this case. See *Menard, Inc*, 302 Mich App at 473.

Further, plaintiffs' argument under *Lear Corp* is unconvincing. In *Lear Corp*, the Court held that, under the former Single Business Tax (SBT) Act, a taxpayer's "taxable income" was the same as its federal taxable income. *Lear Corp*, 299 Mich App at 537. Hence, the taxpayer's taxable income under the SBT in that case had to reflect "its federal taxable income, including its elections" under federal law regarding research and experimental expenditures. *Id.* This holding—that a taxpayer's taxable income under the SBT must be the same as its federal taxable income—offers no support for plaintiffs' position in this case. Ignoring that *Lear Corp* did

[9] The term "accrue" has been defined to mean a cost that "accumulate[s] periodically." *Black's Law Dictionary* (10th ed). Because the term is not defined by statute, resort to a dictionary is appropriate. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004).

involve the MBT Act, plaintiffs are correct that the starting point for determining their tax liability under the MBT is its federal taxable income. See MCL 208.1105(2). Plaintiffs are also correct that the step-up in basis is eligible for depreciation under the Internal Revenue Code; indeed, the Department has not disputed this. However, this case does not concern the calculation of plaintiffs' business income tax base. Rather, it concerns whether plaintiffs can claim the ITC. As noted, the ITC is dependent upon more than a cost being eligible for depreciation, and plaintiffs do not satisfy all of the necessary conditions. Plaintiffs' efforts to focus solely on eligibility for depreciation under federal tax law do not give credence to the entirety of MCL 208.1403(3)(a).[10]

The Court also notes that its resolution of this matter is supported by the purpose of the ITC. See *Summer v Southfield Bd of Ed*, 310 Mich App 660, 678; 874 NW2d 150 (2015) (explaining that, when a Court construes a statute, it is to remain mindful of the statute's purpose). By all accounts, the ITC, as its name suggests, was a credit meant to incentivize investment in Michigan during the taxable year. See MCL 208.1403(3)(a)-(c) (tying the credit to assets located in Michigan or brought into the state). Plaintiffs seek to claim the credits not for a new investment in assets, but rather for accounting adjustments available to an incoming partner with regard to the partnership's *already existing assets*. Under plaintiffs' theory, a partnership could claim a credit meant to incentivize investment in Michigan based solely on adjusting the

[10] In passing, plaintiffs cite a former credit available under the SBT and Revenue Administrative Bulletin 1992-3, which concerned the former credit and a distinct election regarding the sale of corporate stock under 26 USC 338. The Court finds this brief reference to a different statute, a different credit, and a different federal election to be unavailing.

value of existing assets as to a new partner. This attempted use of the ITC does not comport with the purpose of the statute, which was to incentivize new investment in Michigan.

C. THE DEPARTMENT'S DENIAL OF THE MATERIALS AND SUPPLIES DEDUCTION WAS PROPER

The last issue in this case concerns the Department's adjustment to the amount deducted from plaintiffs' gross receipts for materials and supplies. Under the MBT, a taxpayer's modified gross receipts tax base "means a taxpayer's gross receipts subject to" a number of statutory adjustments, minus "purchases from other firms." MCL 208.1203(3). The phrase "purchases from other firms" is the subject of dispute in this case, and is defined in pertinent part by MCL 208.1113(6) to include: "To the extent not included in inventory or depreciable property, *materials and supplies*, including repair parts and fuel." (Emphasis added).

The Department, after auditing plaintiffs' tax returns for the tax years in issue, determined that plaintiffs' materials and supplies deductions included amounts related to services. In light of the parties' arguments, there are two issues in this case as it concerns the disallowed materials and supplies deduction: (1) whether the term "materials and supplies" includes the cost of services; and (2) whether plaintiffs' claimed materials and supplies deduction included the cost of services. The Court concludes that both of these questions should be answered in the affirmative, and that the Department's adjustment was not error.

As to the first question, the phrase "materials and supplies" is not defined in the statute. Generally under the MBT Act, "[a] term used in this act and not defined differently shall have the same meaning as when used in comparable context in the laws of the United States relating to federal income taxes in effect for the tax year unless a different meaning is clearly required." MCL 208.1103. See also *Int'l Bus Machines Corp v Dep't of Treasury*, 496 Mich 642, 666; 852

NW2d 865 (2014). However, during the tax years at issue, "materials and supplies" was also undefined for federal incomes taxes.[11] Because "materials and supplies" is not defined in the MBT and the laws relating to federal income taxes, this Court resorts to a dictionary to define those terms. *Halloran v Bhan*, 470 Mich 572, 578; 683 NW2d 129 (2004). The word "materials" is defined as "the elements, constituents, or substances of which something is composed or can be made," "something . . . that may be worked into a more finished form." *Merriam-Webster's Collegiate Dictionary* (11th ed). "Supplies," meanwhile, is defined as "the quantity or amount . . . needed or available for use," or "provisions" or "stores." *Merriam-Webster's Collegiate Dictionary* (11th ed).

It is apparent from the foregoing definitions that "materials" and "supplies" refer to something tangible that is held for use, either as a finished product or as something that can be

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[11] Pursuant to 26 USC 162(a), a taxpayer was permitted to deduct the cost of materials and supplies consumed in the operation of his or her business during the taxable year. See *Hillsboro Nat Bank v CIR*, 460 US 370, 395; 103 S Ct 1134; 75 L Ed 2d 130 (1983); 26 CFR 1.162-3 (effective until Jan. 1, 2012). However, "materials and supplies" was not actually addressed in 26 USC 162(a); rather it was referenced in a rule promulgated under that statute, which, during the tax years at issue, stated:

> Taxpayers carrying materials and supplies on hand should include in expenses the charges for materials and supplies only in the amount that they are actually consumed and used in operation during the taxable year for which the return is made, provided that the costs of such materials and supplies have not been deducted in determining the net income or loss or taxable income for any previous year. If a taxpayer carries incidental materials or supplies on hand for which no record of consumption is kept or of which physical inventories at the beginning and end of the year are not taken, it will be permissible for the taxpayer to include in his expenses and to deduct from gross income the total cost of such supplies and materials as were purchased during the taxable year for which the return is made, provided the taxable income is clearly reflected by this method. [26 CFR 1.162-3 (effective until Jan. 1, 2012).]

The current version of 26 CFR 1.162-3(c) does define "materials and supplies," but this version was not in effect in 2008 and 2009.

incorporated into another product.[12] The terms plainly do not refer to labor, service, or work provided by a third party to the taxpayer. Rather, they refer to a tangible "thing" or commodity. This position is strengthened by considering the illustrative example provided in MCL 208.1113(6)(c), which states that materials and supplies includes "repair parts and fuel." The use of the word "including" can signal that the items that follow are "meant to be illustrative" of the items that make up the list. *City of Coldwater v Consumers Energy Co*, 500 Mich 158, 160 n 3; 895 NW2d 154 (2017). Here, "repair parts" and "fuel" are tangible commodities, rather than services or labor. These illustrative examples provide additional support for the conclusion that "materials and supplies" are intended to be tangible items.

Having determined that "materials and supplies" refers to tangible objects, the next question becomes whether the Department erred when it concluded that plaintiffs' claimed materials and supplies included expenses for labor and services. According to the Department's documentary evidence, the Department, while conducting its audit, asked plaintiffs for documentation to support their materials and supplies deduction. The documentation returned by plaintiffs listed items such as "Outside Contractors, Landscaping, Snow Removal" and "Parking Lot Maintenance." The Department's documentary evidence shows—and plaintiffs have not rebutted the same—that the documentation lacked detail for plaintiffs' materials and supplies deduction, and that, in lieu of such detail, plaintiffs "used a formula to determine the materials

[12] This conclusion is supported by 26 CFR 1.162-3 in effect for the tax years at issue, which applied to "[t]axpayers carrying materials and supplies *on hand*," and required that the materials and supplies "are actually *consumed and used in operation*." (Emphasis added). Moreover, the Court's conclusion is bolstered by the current version of 26 CFR 1.162-3, which explicitly provides that "materials and supplies means *tangible property* . . . ." 26 CFR 1.162-3(c) (emphasis added).

and supplies deduction" that "contained disqualifying expenses" such as labor and services. Given the lack of information, the Department used the "best information available" to estimate a figure—exclusive of labor and service costs—for plaintiffs' materials and supplies.[13]

Plaintiffs have not expressly contested the Department's conclusion that some of the items claimed as materials and supplies were labor and/or service expenses. In fact, plaintiffs have largely not responded to the Department's contentions or documentary evidence in this regard. The only argument plaintiffs make in this respect is to contend—with no explanation or documentary evidence offered in support—that all of the expenses deducted as materials and supplies were classified as "materials and supplies" on plaintiffs' "books and records" and were deducted as "IRC § 162 expenses" on plaintiffs' federal tax returns.

The Court rejects plaintiffs' arguments. As to plaintiffs' contention that its "books and records" list the expenses as "materials and supplies," plaintiffs have offered no documentary evidence in support of that claim, nor have they produced documentary evidence in response to the Department's evidence indicating that plaintiffs' own records included labor and service expenses as "materials and supplies." Plaintiffs' unsupported assertions do not satisfy its obligation of responding to the Department's properly supported motion for summary

[13] The Department has statutory authority to examine the records, books, and papers of a taxpayer, MCL 205.3(a), and it has promulgated rules that require taxpayers to maintain adequate records, Mich Admin Code, R 205.4103(1). The Department also has authority to gather information not supplied by a taxpayer. See MCL 205.21(1). In addition, caselaw has held that the Department has authority, in the absence of adequate information supplied by a taxpayer, to make estimates best on the best information available. See *Vomvolakis v Dep't of Treasury*, 145 Mich App 238, 244; 377 NW2d 309 (1985). In this case, plaintiffs have neither challenged the Department's authority to make adjustments based on the "best information available," nor have plaintiffs put forth any meaningful challenge to the Department's calculations.

disposition. See *Bronson Methodist Hosp v Auto-Owners Ins Co*, 295 Mich App 431, 440-441; 814 NW2d 670 (2012). Moreover, plaintiffs' conclusory assertions do not satisfy a taxpayer's burden of demonstrating entitlement to a deduction. See *Menard, Inc*, 302 Mich App at 473, 479.

Plaintiffs' invocation of IRC § 162 does not change the analysis. IRC § 162, which is set forth in 26 USC 162, permits a deduction from a business's taxable income for "all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business." 26 USC 162(a). The deductions permitted under IRC § 162(a) include, among other matters, "a reasonable allowance for salaries or other compensation for *personal services* actually rendered," as well as "traveling expenses" and rent payments. Therefore, while IRC § 162(a) allows deductions for tangible "materials and supplies," see 26 CFR 1.162-3(a)-(c), it permits deductions beyond the tangible "materials and supplies" deduction allowed under MCL 208.1113(6)(c). Plaintiffs' briefing does not acknowledge or attempt to evaluate the discrepancy between what IRC § 162 and MCL 208.1113(6)(c) allow. Nor, as the Department notes, have plaintiffs provided any documentary evidence to substantiate its claims that the expenses claimed as "materials and supplies" fit within the plain meaning of the deduction set forth in MCL 208.1113(6)(c). Accordingly, plaintiffs have not satisfied their burden of proof with respect to the claimed deduction, and the Court grants summary disposition in favor of the Department with respect to the disallowed materials and supplies deduction. See *Menard, Inc*, 302 Mich App at 473, 479.

III. CONCLUSION

IT IS HEREBY ORDERED that the Department's motion for summary disposition is GRANTED pursuant to MCR 2.116(C)(10) and that plaintiffs' motion for the same is DENIED.

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

Dated: June 28, 2018

Colleen A. O'Brien

Colleen A. O'Brien, Judge
Court of Claims