

Treasury picks up unusual ally in tax case

By Tim Richard
staff writer

The state Treasury Department had an unusual ally — the Michigan Manufacturers Association — as it won a \$200 million tax case.

Losers were Trinova Corp. (formerly Libby-Owens-Ford) and 14 major corporations such as Caterpillar, Amoco, AT&T, Gillette, Lorillard, Shell and Union Oil.

The state Supreme Court ruled Trinova failed to produce "clear and cogent evidence" that the state's single business tax (SBT) was unfairly applied to their Michigan operations.

"OUR THEORY was that for Michigan companies it would have hurt us if Trinova won," said Dwight Vincent, general counsel for the Michigan Manufacturers Association.

"Some \$200 million in revenue — for one year — would have been made up by Michigan manufacturers," he said. A Dearborn Heights resident, Vincent is a former chair of the 15th Congressional District Republican organization.

"They argued that it was not constitutional to tax them because they did not manufacture here — just

sold here. But the court ruled the (SBT) formula meets constitutional muster," the MMA attorney said.

JUSTICE PATRICIA Boyle, writing the 6-1 majority opinion, said multi-state corporations can use an alternate — and less expensive — method of figuring their Michigan SBT, but only if they can prove the Treasury's standard is grossly unfair and unconstitutional.

SBT is a kind of value added tax, applied to the payroll, property and sales of a firm doing business in Michigan. The court viewed it as a

tax on the privilege of doing business here. Adopted in the 1970s, SBT replaced the corporate income tax and seven other state business taxes.

Ingham Circuit Judge Robert Holmes Bell had ruled in favor of Trinova. Bell was reversed by the state Court of Appeals, which was upheld by the Supreme Court.

"The tax is computed by determining the taxpayer's tax base, and then allocating the value earned to the state where the business activity of the taxpayer can be fairly attributed," said the high court.

Trinova can be granted relief only

if apportionment provisions fail to represent the firm's extent of business activity in Michigan, it went on. But the company's evidence must be "clear and cogent" that the state tax formula is "grossly distorted," Boyle wrote.

She was a federal district judge before joining the state Supreme Court.

BOYLE'S OPINION was signed

by Chief Justice Dorothy Comstock Riley and Justices James Brickley, Michael Cavanagh, Dennis Archer and Robert Griffin.

In a separate opinion, Justice Charles Levin said the case should be remanded to the Court of Claims for a hearing on factual issues.

Levin noted that several hundred other cases are pending in the Court of Claims.

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