

STATE OF MICHIGAN  
COURT OF APPEALS

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STEPHEN M. MORMAN,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

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UNPUBLISHED  
December 4, 2001

No. 222585  
Tax Tribunal  
LC No. 252027

Before: Cavanagh, P.J., and Doctoroff and Jansen, JJ.

PER CURIAM.

Petitioner appeals as of right the Tax Tribunal's denial of his request for a rehearing. Petitioner sought a rehearing of an opinion and judgment finding him liable for use taxes under MCL 205.91 *et seq.*, for the gratuitous transfer of title to a vehicle from petitioner's uncle to petitioner. The tribunal rejected petitioner's argument that the use tax does not apply to a transfer without consideration. We affirm.

Petitioner's first argument on appeal is that the tribunal violated MCL 24.285, under the Administrative Procedures Act, by failing to set forth the authority or reasoned opinion supporting its conclusions of law. Under MCL 24.285, an agency's final decision or order must include conclusions of law. *Butcher v Dep't of Natural Resources*, 158 Mich App 704, 707; 405 NW2d 149 (1987). Each conclusion of law must be supported by authority or reasoned opinion. MCL 24.285; *Nunn v George A Cantrick Co, Inc*, 113 Mich App 486, 491-492; 317 NW2d 331 (1982). This requirement applies to the Tax Tribunal. MCL 205.726; *Almira Twp v Benzie Co Tax Allocation Bd*, 80 Mich App 755, 760-761; 265 NW2d 39 (1978).

The opinion must set forth the support for its conclusions in a manner sufficient to facilitate appellate review. *First City Corp v Lansing*, 153 Mich App 106, 113; 395 NW2d 26 (1986). The reviewing court must be able to determine whether the conclusions were authorized by law and based on competent, material, and substantial evidence. *Butcher, supra* at 707. In the present case, the tribunal's opinion mentioned petitioner's argument and explained that it was unfounded and unsupported. The opinion cited the authority for its decision, the statute authorizing the tax, MCL 205.93. Neither petitioner nor respondent cited any authority outside of the statutory language itself to directly support their interpretation of the statute. While brief, the tribunal's opinion was sufficient to permit appellate review of the decision.

Petitioner's second argument on appeal addresses the substantive legal issue: whether the use tax, MCL 205.91 *et seq.*, applies to gratuitous transfers not specifically exempted under the statute. MCL 205.93(3) exempts transfers between certain relatives but uncles and nephews are not included in the list. MCL 205.93 mandates that a tax be collected from every person in the state "for the privilege of using, storing, or consuming tangible personal property in this state." *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 408; 590 NW2d 293 (1999). "Use" is defined as exercising a right over property incident to ownership. MCL 205.92(b). Petitioner used the vehicle under this definition; therefore, the language supports a finding that he is liable for use tax. The tax is not limited to property brought into Michigan from other states. *Terco, Inc v Dep't of Treasury*, 127 Mich App 220, 229; 339 NW2d 17 (1983).

The use tax, MCL 205.91 *et seq.*, does include several references to transfers for consideration. See 205.92(e),(f), and (g) (defining "price," "purchase," and "consumer"). However, these provisions have other purposes and do not expressly limit the statute's application to transfers for consideration. A more relevant statute is MCL 205.93(2), which states that the tax base for a vehicle must not be less than its "retail dollar value at the time of acquisition." A former version of the statute used the word "purchase" rather than "acquisition." 1962 PA 219. A change in statutory language indicates legislative intent to either change the statute's meaning or to clarify its original meaning. *Ettinger v Lansing*, 215 Mich App 451, 455; 546 NW2d 652 (1996). In this case, it indicates the Legislature's intent to extend the statute's application beyond purchases for consideration. In interpreting a statute, this Court's primary goal must be to determine the Legislature's intent. *Frankenmuth Mut Ins Co v Marlette Homes, Inc*, 456 Mich 511, 515; 573 NW2d 611 (1998).

Another amendment is perhaps even more important. An older version of the use tax did exempt all bona fide gifts. 1959 PA 263. The Legislature amended MCL 205.93 in 1962 to delete the exemption and replace it with an exemption for transfers to certain relatives and to beneficiaries in the administration of estates. 1962 PA 219. The Legislature would not have deleted the exemption if it intended the current version to exempt all gratuitous transfers. Further, this Court has applied the use tax to a vehicle transfer in the absence of consideration, albeit in slightly different circumstances. See *Daguanno v Dep't of Treasury*, 203 Mich App 130, 135; 512 NW2d 32 (1993).

Ambiguous tax provisions must be interpreted in the taxpayer's favor. *Czars, Inc v Dep't of Treasury*, 233 Mich App 632, 637; 593 NW2d 209 (1999). However, the statute's language, its past amendments, and the limited case law all support a finding that the use tax applies to gift transactions not specifically exempted. The tribunal did not err when it held that the use tax applied to petitioner.

Finally, petitioner argues that the tribunal failed to make findings of fact supported by competent, material, and substantial evidence on the whole record regarding the vehicle's value. See MCL 24.285; *First City Corp, supra* at 112. To facilitate appellate review, the tribunal must set forth its findings of fact. MCL 24.285; *Consumers Power Co v Michigan Public Service Comm*, 78 Mich App 581, 585; 261 NW2d 10 (1977). The evidence supporting the decision must be more than a scintilla but may be less than a preponderance, *In re Payne*, 444 Mich 679, 692; 514 NW2d 121 (1994), and this Court should not substitute its discretion for that of the tribunal, *In re Kurzyniec Estate*, 207 Mich App 531, 537; 526 NW2d 191 (1994).

The tax base of a vehicle under the use tax must not be less than its retail value as determined by rules promulgated by the Department of Treasury. MCL 205.93(2). Revenue Administrative Bulletin 1990-4 requires the department to determine the tax base by referring to the National Automobile Dealers Association (N.A.D.A.) Official Used Car Guide. It also permits a taxpayer to submit evidence, including a dealer's estimate, to support a claim that the vehicle is worth less. In the present case, the tribunal explained that it used the N.A.D.A. guide's \$13,700 estimate and then deducted \$2,400 for high mileage. It also recognized that petitioner submitted a dealer's estimate of \$3,500 but said petitioner himself testified that the vehicle was worth at least \$8,500. These findings of fact were sufficient to satisfy MCL 24.285, and the tribunal's decision was based on competent, material, and substantial evidence on the whole record.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Martin M. Doctoroff  
/s/ Kathleen Jansen