

STATE OF MICHIGAN
COURT OF APPEALS

CORPORATE FLIGHT, INC.,

Petitioner-Appellant,

V

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

November 22, 2002

No. 233602

Michigan Tax Tribunal

LC No. 00-256113

Before: Griffin, P.J., and Gage and Meter, JJ.

PER CURIAM.

Petitioner appeals as of right an order of the Michigan Tax Tribunal (MTT) upholding a use tax assessment imposed by respondent. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Petitioner is a Michigan corporation that uses leased planes for the purpose of providing executive charter aircraft travel. Petitioner also purchases planes for resale at retail. Petitioner purchased a plane which it advertised for sale and also used in its charter service. Petitioner did not obtain a dealer's registration for this specific plane. Subsequently petitioner sold the plane for \$562,400. Respondent rejected petitioner's determination of the value of the plane and its attendant tax liability, and assessed use tax.

Petitioner sought a re-determination of the assessment of use tax. The MTT upheld the assessment of use tax.¹ The MTT noted the use tax levied pursuant to MCL 205.93(1) did not apply to property purchased for resale, MCL 205.94(1)(c), but found that petitioner did not meet the requirements for holding a plane for resale listed in § 82 of the Aeronautics Code, MCL 259.1 *et seq.*, because it did not obtain a registration for the plane and because it used the plane for purposes other than demonstration, sale, ferrying, or testing. MCL 259.82(6).

We review a decision of the MTT to determine whether the MTT erred as a matter of law or adopted an erroneous legal principle, and accept the MTT's factual findings as final if those findings are supported by competent, material, and substantial evidence. *Skybolt Partnership v Flint*, 205 Mich App 597, 599-600; 517 NW2d 838 (1994).

¹ The MTT's decision also addressed issues concerning the percentage of petitioner's ownership of the plane, and the value of the plane when petitioner purchased it. Petitioner does not challenge these aspects of the MTT's decision.

The Use Tax Act (UTA), MCL 205.91 *et seq.*, levies a tax for the privilege of using, storing, or consuming tangible personal property in Michigan. MCL 205.93(1). The use tax complements the sales tax and was designed to govern transactions not subject to the General Sales Tax Act, MCL 205.51 *et seq.* *WPGPI, Inc v Dep't of Treasury*, 240 Mich App 414, 416; 612 NW2d 432 (2000). The UTA provides that the use tax does not apply to property purchased for resale. MCL 205.94(1)(c). The burden of proving an entitlement to an exemption is on the party claiming the exemption. *Guardian Industries Corp v Dep't of Treasury*, 243 Mich App 244, 249; 621 NW2d 450 (2000).

Petitioner argues the MTT erred by upholding respondent's imposition of a use tax.² Petitioner contends that MCL 205.82(6) is less specific than MCL 205.93(2) because it deals with a licensing scheme, and thus does not preclude reliance on the exemption in MCL 205.94(1)(c). We disagree and affirm the MTT's decision. The undisputed evidence showed that petitioner, a licensed aircraft dealer, purchased the plane at issue but did not obtain a dealer's registration certificate. Respondent did not take the position that petitioner's failure to obtain a certificate as required by MCL 205.82(6) mandated the imposition of use tax, but rather asserted that petitioner's admitted use of the plane in its charter service at the same time that it advertised the plane for sale constituted the type of personal use of a product that requires imposition of use tax. MCL 205.93(1). Respondent is authorized to enact administrative rules to administer the UTA. MCL 205.100(2). Administrative Rule 12(5), 1979 AC, R 205.62(5), provides that a licensed aircraft dealer that uses aircraft solely for demonstration or display purposes is not required to pay use tax on such aircraft. Petitioner acknowledged that it used the plane at issue in its charter service at the same time that it advertised it for sale. We defer to the MTT's interpretation of statutes and rules that it is delegated to administer. See *Lionel Trains, Inc v Chesterfield Twp*, 224 Mich App 350, 355; 568 NW2d 685 (1997).

Petitioner's reliance on *People v Rodriguez*, 463 Mich 466; 620 NW2d 13 (2000), is misplaced. Our Supreme Court's decision in that case turned on the fact that the trial court erred in refusing to give the requested jury instruction. The *Rodriguez* decision does not stand for the proposition that an individual may make unlimited use of property without incurring use tax as long as the ultimate intent is to resell the property. *Id.*, 472-473. Here, the MTT's finding that petitioner used the plane in its charter service while advertising it for sale was supported by the requisite evidence. *Skybolt Partnership, supra*. The MTT's conclusion that petitioner was liable for use tax because it did not hold the plane solely for resale but rather also used it in its charter service was supported by applicable statutory and case law and is entitled to deference. MCL 205.93(1); Rule 12(5); *Guardian Industries Corp, supra*.

Affirmed.

/s/ Richard Allen Griffin
/s/ Hilda R. Gage
/s/ Patrick M. Meter

² Respondent's argument that petitioner did not preserve the issue raised and argued on appeal is without merit. The MTT clearly considered the issue of petitioner's liability for the payment of use tax to be squarely before it.