STATE OF MICHIGAN

COURT OF APPEALS

GLIEBERMAN AVIATION, LLC, Petitioner-Appellant,	UNPUBLISHED February 19, 2004
v	No. 242532 Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellee.	LC No. 00-266539

Before: Neff, P.J., and Wilder and Kelly, JJ.

PER CURIAM.

Petitioner appeals as of right a judgment of the Michigan Tax Tribunal (MTT) upholding a use tax assessment of $35,550, a penalty of $8,937.66, and interest arising from petitioner's purchase of an aircraft. We affirm.

Petitioner argues that the MTT erred in determining that it used the aircraft for purposes of the Use Tax Act (UTA), MCL 205.91 *et seq.*, because the aircraft was leased to Corporate Air Management (CAM). We disagree.

"The use tax under the UTA complements the sales tax and is designed to cover those transactions not covered by Michigan's General Sales Tax Act." *WPGP1, Inc v Dep't of Treasury*, 240 Mich App 414, 416; 612 NW2d 432 (2000). The UTA imposes a "specific tax for the privilege of using, storing, or consuming tangible personal property in this state . . . ." MCL 205.93(1). "Use" is defined in MCL 205.92(b):

> "Use" means the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given.

Pursuant to MCL 205.93(1), if tangible personal property is brought into the state within ninety days after the purchase date, it is presumed that the property is subject to the tax and "is considered as acquired for storage, use, or other consumption in this state." See also *Czars, Inc v Dep't of Treasury*, 233 Mich App 632, 638; 593 NW2d 209 (1999). In the present case, the MTT found that the aircraft was brought into Michigan within ninety days after it was purchased

in Florida and, accordingly, held that the presumption of MCL 205.93(1) applied. Petitioner does not challenge the MTT's factual finding or legal conclusion in this regard. Therefore, petitioner had the burden of rebutting the presumption.[1]

Petitioner primarily relies on two cases in which this Court discussed the application of the UTA to aircraft purchased for lease to other businesses.

In *WPGP1, Inc, supra* at 414, this Court held that the plaintiff was not liable for use tax where the plaintiff purchased aircraft that were subject to existing leases with Southwest Airlines. The defendant argued that the plaintiff used the planes by owning them, leasing them, and allowing Southwest to land them in Michigan. This Court rejected this position and explained that the plaintiff "at no time used, stored, or consumed the property in Michigan," because the leases gave exclusive authority over use, storage and consumption of the planes to Southwest. "Southwest completely controlled the flight schedules and routine maintenance of the airplanes" and was responsible for "ensuring that the aircraft remained registered with the FAA . . . ." *Id*. at 417. In addition, the plaintiff "did not direct Southwest's routes or otherwise exercise dominion over Southwest's use of the planes." *Id*. at 419.

In *M & M Aerotech, Inc v Dep't of Treasury,* unpublished opinion per curiam of the Court of Appeals, issued November 23, 1999 (Docket No. 211460), this Court held that the plaintiff did not use aircraft that it leased to Merit Services. The plaintiff, a Michigan corporation engaged in the business of aircraft leasing, did not operate any airplanes. The defendant argued that the plaintiff used an aircraft in Michigan by holding legal title to it and leasing it to Merit, a corporation with some of the same officers as the plaintiff. According to the defendant, "the lease only relinquished 'operational control' and did not prevent plaintiff or its officers from renting the aircraft . . . ." However, this Court concluded that the plaintiff "intended to and did relinquish total control of the aircraft to Merit for the lease term." *Id*., slip op at 4. This Court noted that there was no indication that the plaintiff used, hangared, or registered the aircraft in Michigan. *Id*.

The MTT reasoned that the present case was unlike these cases because petitioner reserved and exercised the right to use the aircraft. The MTT stated:

> Petitioner's reliance on the decisions of *M & M Aerotech, Inc, supra, & WPGP1, Inc, supra,* are misplaced. In both cases, the Court found that the taxpayers did not physically use the aircraft for their own purposes. In the instant case, Petitioner, incident to its ownership, reserved the right to use the aircraft in the lease, and in fact did exercise those rights. While Petitioner maintains that its use of the aircraft was subject to the prior approval of Corporate Air Management, this Tribunal is unconvinced that this demonstrated a total lack of control of Petitioner. Petitioner did, in fact, schedule usage for its own business purposes of related companies, and billed those companies for its use by them. This Tribunal finds that while Petitioner did lease the aircraft to Corporate Air Management, it also reserved and subsequently exercised its right to use it.

---

[1] Petitioner does not rely on any exemption from use tax.

> Petitioner's contention that the majority of actual usage was by Corporate Air Management is unpersuasive. Any use by petitioner demonstrates to this Tribunal that Petitioner in fact did not relinquish total control of the subject property. Additionally, the fact that 80% of the revenues generated by the aircraft were from Corporate Air Management is also unimpressive. Petitioner only had to reimburse costs, and was not charged the standard hourly rate, pursuant to the Dry Lease Agreement.

The MTT's finding that petitioner did not relinquish total control of the aircraft is supported by competent, material and substantial evidence. *Danse Corp v City of Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). Petitioner's lease agreement with CAM required CAM to pay an hourly rate for operation of the aircraft, but excepted use by "Bernie Glieberman and related companies when chartered by them."[2] This reserved petitioner's right to use the aircraft during the lease term, not merely as a paying client of CAM, but as the owner of the aircraft. Although Glieberman testified that he subordinated his use of the aircraft to CAM's charters, he explained that he did so because "if I would have usurped it, the [CAM] customer that was using that plane and getting used to it, may not use it anymore and that was a primary concern of mine." This testimony indicates that Glieberman believed he retained the primary right to use the aircraft, but chose not to exercise it. In addition, petitioner's actual usage of the aircraft during the twelve-month lease (144.34 hours) as compared to CAM's usage (214.59 hours), supports the MTT's finding that petitioner exercised its right to use the aircraft.

The MTT's legal analysis is correct. The cases cited by petitioner establish that ownership of an aircraft leased to another entity is not "use" under the UTA. They do not apply here because petitioner reserved and exercised the right to use the aircraft. This was "use," i.e., "the exercise of a right or power over tangible personal property incident to the ownership of that property . . . ." MCL 205.92(b). The MTT did not err in applying the law or adopt a wrong legal principle. *Danse Corp, supra.*

Petitioner also argues that the MTT should have abated the penalty assessment because the application of the use tax to aircraft purchased for leasing is confusing and petitioner was inexperienced in this type of transaction. However, petitioner has inadequately briefed this issue. Petitioner does not cite any authority addressing the MTT's authority to abate a penalty.

> [A] mere statement without authority is insufficient to bring an issue before this Court. It is not sufficient for a party "simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." Accordingly, we need not address this issue, and therefore, decline to do so. [*Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998), quoting *Mitcham v Detroit*, 355 Mich 182, 203; 94 NW2d 388 (1959).]

---

[2] Bernard Glieberman and his wife owned petitioner. Petitioner does not differentiate use of the aircraft by Glieberman and his companies from use by petitioner.

In addition, petitioner does not address the basis for the MTT's ruling. The MTT analyzed petitioner's request for waiver of the penalty under MCL 205.24(4) and held that respondent had not abused its discretion by not waiving the penalty. Petitioner does not mention the MTT's reasoning or MCL 205.24(4). Petitioner's failure to address the basis for the MTT's decision precludes appellate relief. *Roberts & Son Contracting, Inc v North Oakland Development Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987).

Affirmed.

/s/ Janet T. Neff
/s/ Kurtis T. Wilder
/s/ Kirsten Frank Kelly