STATE OF MICHIGAN

COURT OF APPEALS

ZANTOP INTERNATIONAL AIRLINES, INC., Petitioner-Appellee/Cross-Appellant,	UNPUBLISHED August 3, 2004
v	No. 249548 Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellant/Cross-Appellee.	LC No. 00-117375

Before: Bandstra, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Respondent appeals, and petitioner cross-appeals, from an order of the Tax Tribunal granting partial summary disposition in favor of petitioner and partial summary disposition in favor of respondent regarding petitioner's use tax liability. We affirm.

The Tax Tribunal decided the case based solely on stipulated facts; therefore, purely legal issues are raised on appeal. Petitioner, Zantop International Airlines, Inc., is a Michigan corporation operating a fleet of aircraft in an airfreight delivery business, and is headquartered in Ypsilanti, Michigan. Petitioner also operates an aircraft repair and maintenance facility in Macon, Georgia. In 1988, pursuant to an audit, respondent imposed Michigan use tax liability on petitioner for the period from April 1, 1983, through March 31, 1986 in the principal amount of $623,346.41, and the interest amount of $198,989.11, for a total alleged liability of $822,335.52. Of this assessment, petitioner disputed $612,388.65.[1] Petitioner brought suit against respondent, alleging: (1) audit errors; (2) non-taxable use; (3) lack of taxable moment; (4) an equal protection challenge; and (5) 42 USC 1983 violations.

[1] $33,115.93 of the disputed amount pertains to parts delivered to Macon, Georgia. $12,622.08 pertains to actual purchases of aircraft, rather than parts for aircraft repair. $566,650.64 pertains to aircraft parts for repair delivered to Ypsilanti for installation.

Respondent moved for partial summary disposition pursuant to MCR 2.116(C)(7) and (8). Respondent argued that summary disposition as to counts 2, 3, and 4 was appropriate pursuant to MCR 2.116(C)(7), because those counts contained legal issues which had previously been litigated, and were therefore barred because of prior judgment. Respondent argued that summary disposition as to count 5 was appropriate pursuant to MCR 2.116(C)(8) because where it had already been determined that no constitutional violations had occurred as alleged in counts 2, 3, and 4, count 5 failed to state a claim upon which relief could be granted. Petitioner moved for partial summary disposition pursuant to MCR 2.116(C)(10), alleging that regardless of whether audit errors occurred as it had alleged in count 1 of its complaint, no genuine issue of material fact existed because MCL 205.94k(1) exempted it from the use tax.

The Tax Tribunal granted partial summary disposition in favor of respondent on the basis that counts 2, 3, and 4 of petitioner's complaint were barred by res judicata and collateral estoppel. Additionally, the Tax Tribunal determined that count 5 of petitioner's complaint failed to state a claim upon which relief could be granted. The Tax Tribunal granted partial summary disposition in favor of petitioner on the basis that aside from $12,622.08 of the assessment, because MCL 205.94k(1)(a) contains specific language exempting from the use tax aircraft parts installed on certain aircraft before December 31, 1996, the plain language of the statute precludes any use tax liability attributable to petitioner arising from the installation of these parts.

On appeal, respondent argues that the Tax Tribunal's holding was erroneous, because neither the statutory amendment containing this provision nor its legislative history explicitly state that the change is "retroactive," and because MCL 205.94k did not become effective until February 27, 1992, after the end of the tax period in dispute.

We review de novo decisions on motions for summary disposition. *Spiek v Dep't of Transportation*, 456 Mich 331, 337; 572 NW2d 201 (1998). Additionally, we review de novo the interpretation and application of a statute as a question of law. *Eggleston v Bio-Medical Applications of Detroit, Inc*, 468 Mich 29, 32; 658 NW2d 139 (2003).

Our primary task in construing a statute is to discern and give effect to the intent of the Legislature. *Sun Valley Foods Co v Ward*, 460 Mich 230, 236; 596 NW2d 119 (1999). "If the language of the statute is unambiguous, the Legislature must have intended the meaning clearly expressed, and the statute must be enforced as written. No further judicial construction is required or permitted." *Id*. MCL 205.94k provides in pertinent part:

> (1) The tax levied under this act does not apply to parts and materials, excluding shop equipment or fuel, affixed to or to be affixed to an aircraft owned or used by a domestic air carrier that is any of the following:
>
> > (a) An aircraft for use solely in the transport of air cargo or a combination of air cargo and passengers that has a maximum certificated takeoff weight of at least 12,500 pounds for taxes levied before January 1, 1997 and at least 6,000 pounds for taxes levied after December 31, 1996.

Because the language of MCL 205.94k(1)(a) is plain and unambiguous, it must be applied as written.[2] Given the plain statutory reference to the use tax not applying to liability that otherwise would have accrued before December 31, 1996, any further explicit reference to "retroactivity" would have been unnecessary and redundant. As to respondent's argument that MCL 205.94k did not come into effect until February 27, 1992, the law that governs is the law as it was written at the time the case was decided, not the law as it was written at the time the events in controversy occurred. See *Franks v White Pine Copper Div*, 422 Mich 636, 651; 375 NW2d 715 (1985).[3] The Tax Tribunal did not err in granting partial summary disposition to petitioner on this issue.

In its cross-appeal, petitioner argues that as applied to it, the Michigan use tax violates the Commerce Clause of the United States Constitution, US Const, art I, § 8.[4] However, Michigan follows a broad application of res judicata which bars claims actually litigated in a prior action. *Sprague v Buhagiar*, 213 Mich App 310, 313-314; 539 NW2d 587 (1995). Further, "[c]ollateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment, and the issue was actually and necessarily litigated." *Hawkins v Murphy*, 222 Mich App 664, 671-672; 565 NW2d 674 (1997). Because petitioner's argument was previously presented to the Tax Tribunal in another case between petitioner and respondent, and was rejected, petitioner's position is thus barred under the principles of res judicata and collateral estoppel.[5]

---

[2] During the period at issue, all of petitioner's aircraft were used in air cargo transport, and had a maximum certificated takeoff weight of at least 12,500 pounds.

[3] Although the Legislature explicitly overruled the holding in *Franks* as to the proper method for coordinating worker's compensation benefits with other benefits, it did so in a manner that buttressed rather than undermined our Supreme Court's holding regarding application of the law as it exists when a case is decided, not as it was during an earlier period in which the fact pattern emerged. The Legislature set out a different method for coordinating benefits than the one our Supreme Court found applicable in *Franks*, and, in language similar to that used in MCL 205.94k, applied the new rule to "personal injuries occurring before March 31, 1982," well before the 1987 date of the amendment's passage.

[4] The Tax Tribunal's ruling left in place $12,622.08 of petitioner's use tax assessment for the relevant period. The portion of the assessment that was affirmed was the portion attributable to the purchase of aircraft rather than the installation of aircraft parts.

[5] The Tax Tribunal's decision rejecting this argument was affirmed by this Court. See Michigan Court of Claims, File No. 91-13365-CM; *Zantop Int'l Airlines, Inc v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued April 24, 2001 (Docket No. 217513). Petitioner sought leave to appeal to the Michigan Supreme Court, which was denied. *Zantop Int'l Airlines, Inc v Dep't of Treasury*, unpublished order of the Supreme Court, entered November 30, 2001 (Docket No. 119238). Finally, petitioner applied for a writ of certiorari to the United States Supreme Court, which was also denied. *Zantop Int'l Airlines, Inc v Michigan Dep't of Treasury, Revenue Div*, order of the United States Supreme Court, entered May 13, 2002 (Docket No. 01-1284).

Finally, petitioner argues that no use tax can be assessed on parts installed on petitioner's aircrafts that were in the State of Georgia when the installation took place. Respondent agrees with petitioner on this issue, and the Tax Tribunal did not find petitioner liable for use tax on any parts installed in Georgia. Therefore, given our affirmance of the Tax Tribunal's decision, this issue is moot.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra