STATE OF MICHIGAN

COURT OF APPEALS

FREE ENTERPRISES, LLC, Petitioner-Appellee,	UNPUBLISHED November 6, 2012
v	No. 306195 Tax Tribunal
DEPARTMENT OF TREASURY, Respondent-Appellant.	LC No. 00-379030

Before: FITZGERALD, P.J., and METER and BOONSTRA, JJ.

PER CURIAM.

Respondent appeals as of right from an order of the Tax Tribunal granting petitioner's motion for summary disposition under MCR 2.116(C)(10). We affirm.

Petitioner was formed on April 11, 2007, as a Montana-based limited liability company whose sole member was Frank Rudlaff. On May 7, 2007, petitioner purchased a 2008 Country Coach recreational vehicle in Florida and took delivery in that state. Petitioner titled the RV in Montana. Petitioner did not pay any sales or use tax on the purchase because Montana does not impose such taxes, and Florida law defers vehicle taxation to the state of registration.

Frank Rudlaff and his wife used the RV for personal purposes, traveling throughout North America. The RV first entered Michigan on May 30, 2008, and was used or stored in Michigan on six separate occasions between May 30, 2008, and September 13, 2010, totaling approximately 300 days. When not in use, the RV was stored in Florida at a self-storage facility.

Frank Rudlaff was a Michigan resident when petitioner was formed, but then became a Florida resident on March 24, 2009. The RV was re-registered in Florida, and Frank Rudlaff has been the sole owner since April 1, 2009.

After observing the RV in the Traverse Bay RV Park in Acme on July 31, 2008, respondent issued a tax bill to petitioner in the amount of $39,253. Petitioner appealed to the Tax Tribunal, which found in petitioner's favor. The tribunal concluded that use tax was improperly assessed because petitioner came under the presumption of exemption in MCL 205.93(1)(b)(*i*) or (*ii*) and respondent did not present evidence sufficient to rebut that presumption. This appeal followed.

Respondent argues that petitioner was not entitled to a use-tax exemption because the transaction was structured to avoid taxes and petitioner intended to, and actually did, use the RV in Michigan.

> In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material and substantial evidence on the whole record. [A]mbiguities in the language of a tax statute are to be resolved in favor of the taxpayer. However, exemptions are to be strictly construed in favor of the taxing authority. [*Czars, Inc v Dep't of Treasury*, 233 Mich App 632, 637; 593 NW2d 209 (1999) (internal quotation marks and citations omitted).]

The General Sales Tax Act (GSTA), MCL 205.51 *et seq.*, imposes a six-percent tax on the "gross proceeds" of a business engaged in "making sales at retail." MCL 205.52(1). The Use Tax Act (UTA), MCL 205.91 *et seq*., in turn imposes a tax on "the privilege of using, storing, or consuming tangible personal property," also at a rate of six percent. MCL 205.93(1). "The sales and use taxes, while imposed in different ways, do not operate in isolation. Rather, provisions of the UTA and the [GSTA] are supplementary and complementary." *Gen Motors Corp v Dep't of Treasury*, 466 Mich 231, 237; 644 NW2d 734 (2002). When sales tax has already been paid upon the retail sale of property to a consumer, that personal property is exempt from use tax. MCL 205.94(1)(a). Similarly, where a consumer has already paid use tax on property, that property is generally exempt from provisions of the GSTA. *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 408; 590 NW2d 293 (1999).

MCL 205.93(1) sets forth the following presumptions:

> (a) That tangible personal property purchased is subject to the tax if brought into this state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.
>
> (b) That tangible personal property used solely for personal, nonbusiness purposes that is purchased outside of this state and that is not an aircraft is exempt from the tax levied under this act if 1 or more of the following conditions are satisfied:
>
> (*i*) The property is purchased by a person who is not a resident of this state at the time of the purchase and is brought into this state more than 90 days after the date of purchase.
>
> (*ii*) The property is purchased by a person who is a resident of this state at the time of purchase and is brought into this state more than 360 days after the date of purchase.

The UTA defines "person" to include limited liability companies such as petitioner. MCL 205.92(a).

We conclude that, given the evidentiary record and the language of the statutory provisions at issue, the Tax Tribunal did not commit any error requiring reversal in concluding that respondent failed to overcome the presumption that petitioner was exempt from use-tax liability.

Respondent argues at length that petitioner should be disregarded as an entity with its own identity for purposes of use-tax liability and that use tax should be assessed against its sole member, Frank Rudlaff, on the grounds that petitioner lacked economic substance, was Frank Rudlaff's alter-ego for tax-avoidance purposes, and was not maintained separately from Frank Rudlaff. However, as the Tax Tribunal noted, whether petitioner or Frank Rudlaff himself is classified as the "user" potentially subject to use tax is of little import. The RV was not brought into Michigan until 389 days after it was purchased by petitioner. If petitioner were the "user" of the RV for purposes of the UTA, then a presumption of exemption would apply because petitioner was a non-resident and the RV was brought into Michigan more than ninety days after its purchase. MCL 205.93(1)(b)(*i*). Similarly, if Frank Rudlaff himself were the user of the RV, he would still be entitled to a presumption of exemption, because, pursuant to MCL 205.93(1)(b)(*ii*), the RV did not enter Michigan until more than 360 days after its purchase.

Accordingly, it is largely irrelevant for purposes of determining the applicability of the exemption whether petitioner or Frank Rudlaff is deemed the "user" of the RV. Consequently, the proper focus of inquiry is whether the Tax Tribunal erred in concluding that respondent did not present facts sufficient to overcome the presumption of petitioner's exemption from use-tax liability.

Respondent argues that petitioner was formed solely for tax-avoidance purposes, that petitioner always intended to use and store the RV in Michigan, that petitioner did actually use and store the RV in Michigan, and that, therefore, the presumption of exemption in MCL 205.93(1)(b) has been rebutted and petitioner was properly assessed use tax.

However, whether petitioner was formed for the purpose of legally avoiding taxes is irrelevant; as stated in MCL 205.93(1), the exemptions at issue in this case were included in the UTA "[f]or the purpose of the proper administration of this act and to prevent the *evasion* of the tax" (emphasis added). "Tax evasion" is defined as "[t]he willful attempt to defeat or circumvent the tax law in order to *illegally* reduce one's tax liability." Black's Law Dictionary (9th ed, 2009) (emphasis added). "Tax avoidance," in contrast, is "taking advantage of *legally* available tax-planning opportunities in order to minimize one's tax liability." *Id*. (emphasis added). Frank Rudlaff may have created petitioner in order to minimize his tax liability, but there is no evidence that he failed to pay any required taxes or fees in Florida or Montana, the other two states involved in the transaction, or otherwise did anything illegal in this matter. Thus, while there seems to be little doubt that the purchase of the RV was structured for tax avoidance, there is no evidence that anything about the transaction was undertaken illegally or could otherwise constitute "tax evasion." Consequently, allowing the exemption in this case does not contravene the purpose of preventing evasion of use tax. See MCL 205.93(1).

The Rudlaffs used the RV throughout the United States and Canada, keeping a detailed log of their travels. According to the stipulated facts, the RV was in Michigan for only temporary periods during summers, and the Rudlaffs spent more time in other areas of North

America, especially Florida. Frank Rudlaff became a resident of Florida after the purchase of the RV, and the Rudlaffs maintained a residence there. Given that the RV was not brought into Michigan on a permanent basis until 389 days after its purchase, that it was kept in Michigan during only the summer months, and that the Rudlaffs resided in Florida, we hold that the Tax Tribunal did not err in concluding that respondent failed to overcome the presumption of exemption from use tax.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Patrick M. Meter
/s/ Mark T. Boonstra