STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

In the Matter of ALVAN MOTOR FREIGHT, INC. Petitioner,	MTT Docket No. 0314574
v	
MICHIGAN DEPARTMENT OF TREASURY, Respondent.	Tribunal Judge Presiding Rachel J. Asbury

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

INTRODUCTION

Petitioner, Alvan Motor Freight, appealed Respondent's, Michigan Department of Treasury, ("Department") assessment for use tax owed for the tax period beginning May 1, 1999 and ending April 30, 2002 for which Notice to Assess No. L772757 was issued on June 30, 2003 in the amount of $42,806.00 plus interest in the amount of $8,988.75. The Department did not assess any penalty.

On October 2, 2006, both Petitioner and Respondent filed Motions for Summary Disposition pursuant to MCR 2.116(C)(10). On October 23, 2006 Respondent filed a response to Petitioner Motion for Summary Disposition. Oral argument on these motions was heard on November 15, 2006.

FINDINGS OF FACT

Petitioner is a trucking company and an "interstate fleet motor carrier"[1] of property authorized to conduct interstate motor carrier operations from the Federal Motor Carrier Safety Administration. Petitioner operates principally in the states of Michigan, Ohio, Indiana, and Illinois. (Stipulation of Facts ("SF") pg 2). Petitioner possesses six truck terminals in Michigan, from which locations it conducts its trucking operations. (SF, pg 2) Petitioner also operates several truck terminal facilities in states other than Michigan, including three terminals in Indiana, four terminals in Ohio, and an agency terminal in Illinois. (SF, pg 3) Through Petitioner's network and Petitioner's agency truck terminals, the company has in place a system designed to meet interstate and intrastate transportation needs. (SF, pg 3)

Petitioner conducts its transportation business through the use of rolling stock[2] which it owns (SF, pg 4) and specializes in less-than-truckload shipments, that is, freight loads that take up less volume or weight than could be carried by a full trailer. (SF, pg 2)

Petitioner utilizes a hub-and-spoke system (SF, pgs 4-5) to tie together the network of terminals that it uses to move freight. Truck-trailers are assigned to particular terminals and pick up and deliver over assigned routes. Petitioner's operations consist of truck-trailers departing from each of the Michigan terminals each morning to deliver freight

[1] As defined in MCL 205.94k(6)(c): "Interstate fleet motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.
[2] As defined in MCL 205.94k(6)(i): "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts affixed to either a qualified truck or a trailer designed to be drawn behind a qualified truck.

shipments, some of which originated in this state and some of which originated outside of this state. Some of these freight shipments have ultimate destinations within the State of Michigan and some have ultimate destinations outside of the State of Michigan. (SF, pgs 4-5) These truck-trailers deliver all shipments to specific destinations within this state or to terminals within this state where they are unloaded and reloaded for movement by linehaul trucks for transportation to out-of-state destinations. (SF, pg 5) Although some of the shipments end up in the stream of interstate commerce, the ultimate destinations of all of the truck-trailers at issue are within this state. None of the truck-trailers leave the State of Michigan, while all of the linehaul trucks cross state boundaries in the normal course of their operations. (SF, pg 6)

Respondent determined that Petitioner's pickup and delivery trucks assigned by Petitioner to its Michigan terminals, which do not physically travel outside the State of Michigan, were not entitled to the interstate commerce rolling stock exemption from use tax. (SF, pg 11) The particular rolling stock for which Petitioner was assessed with use tax liability was not used to carry any shipments across state lines during the subject tax period. (SF, pg 12)

PETITIONER'S CONTENTIONS

Petitioner believes that it is entitled to a use tax exemption for the rolling stock at issue because "the Alvan transportation, from start to finish is in interstate commerce . . . . And [i]t is simply wrong for Respondent to dissect the Alvan move into intrastate and interstate commerce." (Petitioner's brief at pg 23)

In support of its position, Petitioner cites *Texas & New Orleans Railroad Co v Sabine Tram Co*, 227 US 111 (1922). In that case, the Court determined that because the freight ultimately moved out of Texas, the part of the transportation route that remained in the State of Texas before the freight left the State of Texas did not change the interstate character of the freight and the proper freight rate to be applied was the higher interstate rate.

Petitioner also cites *Central Freight Lines v Interstate Commerce Comm'n*, 899 F2d 413 (CA 5, 1990) which held that the crucial factor in determining the essential character of a shipment is "the shipper's fixed and persisting intent at the time of shipment." *Id*. at 419-20. Petitioner argues that when a contract for the transportation of freight is entered into, the "shipper" provides Alvan with both the initial origin and ultimate destination of the shipment and that if the shipper's intention is that the freight be shipped to another state, the shipment is in interstate commerce. Petitioner's contention is that a shipper's fixed and persistent intent that the goods move in interstate commerce when the agreement to move the goods is made is dispositive. (Petitioner's brief, pg 23) Petitioner contends that the equipment at issue is being used in interstate commerce because the truck-trailers move the freight to a place from which it may eventually be moved across state lines. The movement of the freight is "through and continuous." And that the essential nature of Petitioner's business activity is the transportation of freight in interstate commerce.

Petitioner asserts because freight is moved in interstate commerce and the “essential character of the shipments” are interstate in nature, the rolling stock used to move the freight exclusively in Michigan become rolling stock used in interstate commerce even though they remain within Michigan’s borders.

RESPONDENT’S CONTENTIONS

Respondent contends that Petitioner’s rolling stock at issue is not used in interstate commerce because the truck-trailers, the purchase of which were assessed a use tax, are used strictly in the State of Michigan and do not cross state lines, as MCL 205.94k requires. The point of reference is the piece of rolling stock itself. Respondent argues that the statute does not refer to “rolling stock used by a business that is in interstate commerce” but “imposes a separate condition that the rolling stock be purchased, rented, or leased by an interstate fleet motor carrier.” (Respondent’s brief, pg 9). And additionally be “used in interstate commerce . . . .”

Respondent concedes that Petitioner is an interstate motor carrier and that the vehicles at issue are rolling stock, thus satisfying two of the prongs of the test for exemption. And the Respondent also concedes that Alvan owns other vehicles that are used in interstate commerce. But, based on the use of the rolling stock only within this state and because those truck-trailers do not cross state lines, the rolling stock at issue here is not used in interstate commerce.

APPLICABLE LAW

SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

Under MCR 2.116(C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life Insurance*, 460 Mich 446, 454-55; 597 NW2d 28 (1999). In *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996), the Michigan Supreme Court set forth the following standards for reviewing motions for summary disposition brought under MCR 2.116(C)(10):

In reviewing a motion for summary disposition under MCR 2.116(C)(10), the trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if affidavits or other documentary evidence show there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992). In the event, however, it is determined an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14, 18; 469 NW2d 436 (1991).

In the instant case, the parties have stipulated to all of the relevant facts. There is no genuine issue of material fact. This Tribunal has considered both Petitioner's and Respondent's Motions for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that consideration of these motions is appropriate under MCR 2.116(C)(10).

STATUTORY INTERPRETATION

In interpreting a statute, a court's primary goal is to discern the intent of the Legislature by focusing on the best indicator of that intent, the language the Legislature adopted in the statute. *Cameron v Auto Club Insurance Ass'n*, 476 Mich 55, 60; 718 NW 2d 784, (2006).

In *Ford Motor Co v Woodhaven,* 475 Mich 192; 716 NW2d 247 (2006), the Supreme Court stated:

> The first step is to review the statute's language… And if the statute is plain and unambiguous, then this Court will apply the statute as written . . . Moreover, this Court is guided by MCL 8.3a, which provides:
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> > All words and phrases should be construed and understood according to the common and approved usage of the language; but technical words and phrases, and such as may have acquired a peculiar and appropriate meaning in the law, shall be construed and understood according to such peculiar and appropriate meaning.

The relevant language of MCL 205.94k at issue is:

> (4) For taxes levied after December 31, 1992, the tax levied under this act does not apply to the storage, use, or consumption of rolling stock used in interstate commerce and purchased, rented, or leased by an interstate fleet motor carrier. A refund for taxes paid before January 1, 1997 shall not be paid under this subsection if the refund claim is made after June 30, 1997.
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> (6) As used in this section:
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> (c) "Interstate fleet motor carrier" means a person engaged in the business of carrying persons or property, other than themselves, their employees, or their own property, for hire across state lines, whose fleet mileage was driven at least 10% outside of this state in the immediately preceding tax year.
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> (d) "Out-of-state usage percentage" is a fraction, the numerator of which is the number of miles driven outside of this state in the immediately preceding tax year by qualified trucks used by the taxpayer and the denominator of which is the total miles driven in the immediately preceding tax year by qualified trucks used by the taxpayer. Miles driven by qualified trucks used solely in intrastate commerce shall not be included in calculating the out-of-state usage percentage.
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> (i) "Rolling stock" means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts affixed to either a qualified truck or a trailer designed to be drawn behind a qualified truck.

The Tribunal takes notice of the fact that the phrase “used in interstate commerce” is not defined and thus the Tribunal must determine the meaning of that phrase as it relates to Petitioner’s truck-trailers.

INTERSTATE COMMERCE DEFINITION

The Tribunal must determine whether the rolling stock purchased by Petitioner is used in interstate commerce. The Use Tax Act, 1937 PA 94, does not define “interstate commerce.” The Tribunal looks to the definition of interstate commerce as presented by *Bob-Lo Co v Michigan Dept. of Treasury*, 112 Mich App 231, 315 NW2d 902 (1982). In *Bob-Lo*, the plaintiff was a Michigan corporation operating two pleasure steamers *(SS St. Clair* and *SS Columbia)* that transported passengers over navigable waters from Detroit to Wyandotte, Michigan, and then to the Island of Bob-Lo, Ontario, Canada. Some voyages originated in Windsor, Canada, and proceeded to Detroit and Wyandotte, and terminated at Bob-Lo Island. *Id*. at 233. Plaintiff in that case argued that “. . . Bob-Lo vessels which traverse the Detroit River going from Detroit to Wyandotte [and then to Ontario] are . . . engaged in interstate commerce and as such are exempt under exemption (k) and Rule 81.” *Id*. at 244.

The holding of the Court pertinent to this matter was that “the limitation in exemption (k) was intended to include vessels plying Michigan waterways which were engaged exclusively in interstate commerce. It was not intended to include vessels, . . , whose operations were intrastate.” *Id*. The court then said that, “[c]onvincing proof that the limitation in exemption (k) would not apply in situations where a ship traveled from

Detroit to Wyandotte is found in Rule 81." That rule was promulgated to explain exemption (k), MCL 205.94(k); MSA 7.555(4)(k). Its relevant language, emphasized below, would not qualify a vessel for exemption unless it traveled from Michigan *to another state*. *Id*. The pertinent portion of Rule 81 states:

> Also nontaxable are sales of bunker and galley fuel, provisions, supplies, maintenance, and repairs for the exclusive use of those vessels of 500 tons or more, if those vessels *travel from a point in Michigan to a destination in another state*. Sales of such items for use of vessels operating in foreign commerce are taxable. 1979 AC, R 205.131(1).

Id.

Interstate commerce, under this analysis, is transportation that starts in one state and ultimately terminates in another. If any doubt exists as to whether the vessel above falls under the category of rolling stock, the Tribunal notes that "rolling stock" includes the transportation vehicles of any kind of [an] interstate transportation company (railroad, bus line, air line, trucking company, etc.). *Burlington Northern Inc v Department of Revenue,* 336 NE2d 170, 174 (Ill App 1975).

Reading MCL 205.94k in conjunction with Rule 81 requires travel from a point in one state, here Michigan, to a destination in another state, to qualify as interstate commerce.

Respondent's Internal Policy Directive ("IPD") 2003-1 provides additional guidance on the determination of whether a particular activity is in interstate commerce. Internal Policy Directives are prepared to provide guidance to Department staff to insure uniformity in tax administration. IPD 2003-1 gives the requirements necessary to be eligible for the exemption under MCL 205.94k. The Department must first evaluate the facts and circumstances and intent of the interstate motor carrier using the rolling stock. Next IPD 2003-1 states that if rolling stock is only used in Michigan during the tax period at issue, it does not meet the interstate commerce exemption requirement. Third, the rolling stock itself must be operated outside of the state to be considered as used in interstate commerce.

In its analysis, IPD 2003-1 provides:

> Because a single trip outside of the state while engaged in the business of carrying persons or property for hire may suggest an intent to use the rolling stock in interstate commerce, a unit of rolling stock should be considered to be used in interstate commerce unless there is evidence showing a different intent. As a practical matter, if an interstate motor carrier uses a particular unit of rolling stock outside of the state even once, it would be unduly burdensome for the department to prove that the rolling stock does not meet the interstate commerce requirement. Consequently, if an interstate motor carrier provides evidence that a particular unit of rolling stock was used to carry persons or property for hire across state lines at least once during the tax period, the burden should shift to the department to show that the unit of rolling stock was not used in interstate commerce.

Finally, Black's Law Dictionary, Seventh Edition, defines "interstate" as "Between two or more states or residents of different states" and "interstate commerce" as "Trade or other business activities between those located in different states."

BURDEN OF PROOF

Because Petitioner is claiming an exemption, it carries the burden of proving entitlement to the exemption. *Betten Auto Ctr, Inc, v Department of Treasury*, 272 Mich App 14; ___ NW2d ____ (2006). It is well established that a statute granting a tax exemption or refund must be strictly construed against the taxpayer and in favor of the taxing authority. *Michigan Baptist Home & Development Co v Ann Arbor,* 396 Mich 660; 242 NW2d 749 (1976). In *Evanston YMCA Camp v State Tax Commission,* 369 Mich 1; 118 NW2d 818 (1963), the Court adopted the following reasoning of 2 Cooley on Taxation (4th Ed):

> Exemptions are never presumed, the burden is on a claimant to establish clearly his right to exemption, and an alleged grant of exemption will be strictly construed and cannot be made out by inference or implication but must be beyond a reasonable doubt. In other words, since taxation is the rule, and exemption the exception, the intention to make an exemption ought to be expressed in clear and unambiguous terms . . . . Moreover, if an exemption is found to exist, it must not be enlarged by construction, since the reasonable presumption is that the State has granted in express terms all it intended to grant at all, ...

CONCLUSION

The Tribunal finds that in accordance with MCL 205.94k, Petitioner's truck-trailers at issue in this case did not travel from a point in Michigan to a destination in another state. There was no actual movement by the trucks between two of more states. Rather, Petitioner's trucks at issue remained within the boundaries of Michigan, and thus do not meet a plain language interpretation of the phrase "used in interstate commerce" under MCL 205.94k. Even though the trucks at issue in this case may play a part in Petitioner's overall business scheme, servicing an artery of interstate commerce is different from the actual transporting of goods through such an artery for purposes of state taxation. *Bean Dredging Corp v Olsen*, 742 SW2d 259, 262 (Tenn 1987).

Based on the facts, stipulated to by both parties, the Tribunal finds that Petitioner is an interstate motor fleet carrier as defined by statute, the rolling stock at issue meets the statutory definition, and that Petitioner is engaged in the transportation of freight in interstate commerce. The Tribunal finds further that truck-trailers, the purchase of which is at issue in this matter, are not used in interstate commerce and are thus not eligible for the exemption from use tax under MCL 205.94k.

This Tribunal has considered Petitioner's Motion for Summary Disposition and Respondent's Motion for Summary Disposition as well as Respondent's Brief in Opposition to Petitioner' Motion under the criteria set forth in MCR 2.116(c)(10) and finds that granting Respondent's Motion and denying Petitioner's Motion are warranted in these circumstances, based on the pleadings and other documentary evidence filed with the Tribunal.

IT IS ORDERED that Petitioner's Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED that Respondent's Motion for Summary Judgment is GRANTED.

This ORDER resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: February 7, 2007 By: Rachel A. Asbury