

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

Deborah Meade,  
Petitioner,

v

MTT Docket No. 329900

Department of Bureau of Tax Policy,  
Respondent.

Tribunal Judge Presiding  
Kimbal R. Smith, III

FINAL OPINION AND JUDGMENT

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S CROSS MOTION FOR SUMMARY DISPOSITION

**I. INTRODUCTION**

Petitioner is appealing use tax imposed by Respondent when Petitioner registered five vehicles that were transferred to her pursuant to a Judgment of Divorce. On July 25, 2008, Petitioner filed a motion requesting the Tribunal to dismiss the above-captioned case pursuant to MCR 2.116(C)(10). On August 1, 2008, Respondent filed a Cross Motion for Summary Disposition requesting the Tribunal to dismiss the above-captioned case pursuant to MCR 2.116(C)(10).

**II. FINDINGS OF FACT**

The tax under appeal is use tax that was imposed on Petitioner when five vehicles were transferred to Petitioner pursuant to a Judgment of Divorce. The Judgment of Divorce entered on June 5, 2006, required Petitioner's ex-husband to transfer unencumbered title and possession of five vehicles to Petitioner. Each of the five vehicles that were transferred to Petitioner was titled in the name of Petitioner's ex-husband's automobile dealership company, Meade Group, Inc. Petitioner proceeded to register the vehicles in her name at a Secretary of State's office.

Upon registration, the Secretary of State imposed taxes totaling \$12,651.52 on Petitioner.

Petitioner paid the tax and subsequently requested a refund. Respondent denied Petitioner a refund because the vehicles were not titled to Petitioner's ex-husband at the time of the transfer.

Petitioner then filed the petition in the above-captioned case.

### **III. PETITIONER'S CONTENTIONS**

Petitioner contends that the use tax imposed on the transfer of the vehicles was erroneous because Petitioner qualifies for use tax exemption. Petitioner cites MCL 205.93. Pursuant to MCL 205.93(3), a transaction or a portion of a transaction [is exempt from tax] if the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor. Petitioner argues that the Judgment of Divorce required the transfer of the five vehicles be made directly from Husband to Petitioner and not from any of Husband's business entities to Petitioner. Further, Petitioner contends that because no business entities or automobile dealerships were a party to the Judgment of Divorce, the transfer was made between a husband and wife and is therefore exempt from use tax. *Id.*

Petitioner also cites Revenue Administrative Bulletin (RAB) 1998-4, State of Michigan Department of Treasury. RAB 1998-4 states that "[t]ransfers where the exempt relationship is predicated on a temporary legal relationship that no longer exists are taxable. This includes transfers between divorced couples except where the transfer is in accordance with a final decree of divorce." Petitioner contends the transfers were exempt from use tax and there are no genuine issues of material fact; therefore, the Motion should be granted.

#### **IV. RESPONDENT'S CONTENTIONS**

Respondent contends that the plain language of MCL 205.93(3) provides exceptions only when the transferee and transferor are related in a manner listed in the statute. Petitioner contends that the parties have agreed that Petitioner's ex-husband was not the title owner of any of the subject vehicles when they were transferred to Petitioner and the subject vehicles were titled in the name of Meade Group, Inc. at the time of transfer. Respondent further contends that Petitioner is not exempt from use tax because Petitioner's ex-husband was not the title owner of the vehicles; therefore, the transfer was not between related parties in accordance with a final decree of divorce.

Respondent further contends that Petitioner's reliance on RAB 1998-7 is misguided because our Supreme Court has held that RABs are interpretations of applicable statutes and do not have the force of law. Respondent also argues that a more recent RAB exists, 2002-19, which replaced 1998-7, and does not support any exemption in this case. RAB 2002-19 specifically states "[o]nly those transfers occurring between related persons as specifically enumerated in the UTA [Use Tax Act] are exempt." The UTA sets forth the relationships that exempt Michigan vehicle transfers from tax. MCL 205.93(3):

- (3) The following transfers or purchases are not subject to use tax:
  - (a) When the transferee or purchaser is the spouse, mother, father, brother, sister, child, stepparent, stepchild, stepbrother, stepsister, grandparent, grandchild, legal ward, or a legally appointed guardian with a certified letter of guardianship, of the transferor.

#### **V. APPLICABLE LAW**

Petitioner and Respondent move for summary disposition pursuant to MCR 2.116(C)(10). In *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745 (March 4, 2004), the Tribunal stated "[a] motion for summary disposition under MCR 2.116(C)(10) tests the factual

support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact.” Under subsection (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, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that 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; 469 NW2d 436 (1991). If it appears to the court that the opposing party, rather than the moving party is entitled to judgment, the court may render judgment in favor of the opposing party, MCR 2.116(I)(2) *Washburn v Michailoff*, 240 Mich App 669; 613 NW2d 405 (2000)

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *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).

## **VI. CONCLUSIONS OF LAW**

This Tribunal has carefully considered Petitioner's Motion 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 denying Petitioner's Motion is appropriate. Alternatively, the Tribunal has carefully considered Respondent's Motion 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 granting Respondent's Motion is appropriate. Respondent has proven through affidavits, pleadings, and documentary evidence that there is no genuine issue in respect to any material fact. MCR 2.116(C)(10).

Petitioner argues that since the Judgment of Divorce required the vehicle transfers to be made by and from "husband" to Petitioner, there should not have been any use tax imposed on the transfer. The Tribunal finds that although the Judgment of Divorce specified the transfer was between Petitioner's ex-husband and Petitioner, the transfer was actually between Meade Group, Inc. and Petitioner. Petitioner admits, and the parties agree, that Petitioner's ex-husband was not the title owner of any of the vehicles when they were transferred to Petitioner and all five of the vehicles were titled in the name of Meade Group, Inc. when they were transferred to Petitioner. As such, Respondent has shown there is no genuine issue of material fact. Pursuant to the plain language of MCL 205.93(3), the transferee must be the spouse of the transferor. The Tribunal finds that since Petitioner and Meade Group, Inc. are not spouses, Petitioner does not meet the statutory requirements and is not entitled to the exemption.

Therefore, there is no genuine issue of material fact to be decided in this case, and Respondent is entitled to judgment as a matter of law.

**VII. JUDGMENT**

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

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

IT IS FURTHER ORDERED that this case is DISMISSED.

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

MICHIGAN TAX TRIBUNAL

Entered: September 10, 2008  
sms

By: Kimbal R. Smith III