



GRETCHEN WHITMER  
GOVERNOR

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

ORLENE HAWKS  
DIRECTOR

MJM Flying LLC,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-001024

City of Traverse City,  
Respondent.

Presiding Judge  
Patricia L. Halm

### ORDER SETTING ASIDE RESPONDENT'S DEFAULT

#### FINAL OPINION AND JUDGMENT

On March 30, 2023, the Tribunal issued a Proposed Opinion and Judgment (POJ). The POJ states, in pertinent part, “[t]he parties have 20 days from date of entry of this POJ to notify the Tribunal in writing, by mail or by electronic filing, if available, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions).” The POJ also placed Respondent in default pending the filing of a \$50.00 fee related to the Motion to Dismiss submitted on December 16, 2022.

Neither party has filed exceptions to the POJ. However, on April 3, 2023, Respondent paid the \$50.00 motion fee as required by the POJ.

The Tribunal finds that the Administrative Law Judge (ALJ) considered the testimony and evidence and made specific findings of fact and conclusions of law. The ALJ’s determination is supported by the testimony and evidence and applicable statutory and case law.

Given the above, the Tribunal adopts the POJ as the Tribunal’s final decision in this case.<sup>1</sup> The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law contained in the POJ in this Final Opinion and Judgment. As a result, Parcel No. 28-51-898-580-00 is not entitled to a property tax exemption under MCL 211.7m or MCL 211.181, for the 2021 and 2022 tax years. The property’s taxable value (TV), as established by the Board of Review (BOR) for the tax year at issue, is as follows:

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<sup>1</sup> See MCL 205.726.

**Parcel Number:** 28-51-898-580-00

Year	TV
2021	\$60,700
2022	\$62,703

The property's TV, for the tax year at issue, shall be as follows:

**Parcel Number:** 28-51-898-580-00

Year	TV
2021	\$60,700
2022	\$62,703

IT IS SO ORDERED.

IT IS FURTHER ORDERED that Respondent's Default is SET ASIDE.

IT IS FURTHER ORDERED that the officer charged with maintaining the assessment rolls for the tax years at issue shall correct or cause the assessment rolls to be corrected to reflect the property's exemption within 20 days of entry of this Final Opinion and Judgment, subject to the processes of equalization.<sup>2</sup> To the extent that the final level of assessment for a given year has not yet been determined and published, the assessment rolls shall be corrected once the final level is published or becomes known.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund within 28 days of entry of this Final Opinion and Judgment. If a refund is warranted, it shall include a proportionate share of any property tax administration fees paid and penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment, and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 2019, through June 30, 2020, at the rate of 6.40%, (ii) after June 30, 2020, through December 31, 2020, at the rate of 5.63%, (iii) after December 31, 2020, through June 30, 2022, at the rate of 4.25%, (iv) after June 30, 2022, through December 31, 2022, at the rate of 4.27%, (v) after December 31, 2022, through June 30, 2023, at the rate of 5.65%, and (vi) after June 30, 2023, through December 31, 2023, at the rate of 8.25%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

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<sup>2</sup> See MCL 205.755.

### **APPEAL RIGHTS**

If you disagree with the final decision in this case, you may file a motion for reconsideration with the Tribunal or a claim of appeal with the Michigan Court of Appeals.

A motion for reconsideration must be filed with the Tribunal with the required filing fee within 21 days from the date of entry of the final decision. Because the final decision closes the case, the motion cannot be filed through the Tribunal's web-based e-filing system; it must be filed by mail or personal service. The fee for the filing of such motions is \$50.00 in the Entire Tribunal and \$25.00 in the Small Claims Division, unless the Small Claims decision relates to the valuation of property and the property had a principal residence exemption of at least 50% at the time the petition was filed or the decision relates to the grant or denial of a poverty exemption and, if so, there is no filing fee. You are required to serve a copy of the motion on the opposing party by mail or personal service or by email if the opposing party agrees to electronic service, and proof demonstrating that service must be submitted with the motion. Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.

A claim of appeal must be filed with the Michigan Court of Appeals with the appropriate filing fee. If the claim is filed within 21 days of the entry of the final decision, it is an "appeal by right." If the claim is filed more than 21 days after the entry of the final decision, it is an "appeal by leave." You are required to file a copy of the claim of appeal with filing fee with the Tribunal in order to certify the record on appeal. The fee for certification is \$100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.

By Patricia L. Haem

Entered: June 8, 2023  
bw

### **PROOF OF SERVICE**

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS  
LANSING

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MJM Flying, LLC,  
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-001024

City of Traverse City,  
Respondent.

Presiding Judge  
Peter M Kopke

ORDER DENYING RESPONDENT'S MOTION TO DISMISS

ORDER HOLDING RESPONDENT IN DEFAULT

PROPOSED OPINION AND JUDGMENT

**INTRODUCTION**

Petitioner filed this appeal disputing the property tax assessment levied by Respondent against Parcel No. 28-51-898-580-00 for the 2021 and 2022 tax years.<sup>1</sup> A hearing was commenced November 15, 2022. David A. Cvengros, Esq. appeared on behalf of Petitioner. Petitioner's witness was Michael Miller, Petitioner's Sole Member. Stephanie Simon Morita, Esq. appeared on behalf of Respondent. Respondent's witness was Polly Watson Cairns, Assessor.<sup>2</sup>

Based on the evidence (i.e., testimony and admitted exhibits) and the case file,<sup>3</sup> the Tribunal finds that the property is **not** entitled to an exemption from ad valorem taxation under MCL 211.7m or MCL 211.181 for the tax years at issue.

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<sup>1</sup> The Petition claims that the property is exempt from taxation for the 2021 tax year. The property's assessment for the 2022 tax year had, however, been established by Respondent's 2022 March Board of Review prior to the conducting of the hearing and, as such, the property's assessment for the 2022 tax year was "added automatically" pursuant to MCL 205.737(5)(a).

<sup>2</sup> Ms. Cairns was offered and admitted as an expert witness relative to assessing practices. See Transcript ("TR") at 113-116.

<sup>3</sup> Petitioner's Exhibit No. 1 was offered and admitted with objection. See TR at 10-14. Petitioner's Exhibit Nos. 2 and 4 were offered and admitted without objection. See TR at 15-17 and 19-21. Respondent's Rebuttal Exhibit Nos. 1 and 2 and Respondent's Exhibit No. R-3 were offered and admitted with objection. See TR at 123-131 and 139-140. Respondent's Exhibit Nos. R-17d, R-17c, R-16 (pages 3 and 4), R-4, R-5, R-8, R-9, R-11, R-26, R-27, R-29, R-19, R-20, R-13, and R-21 were offered and admitted without objection. See TR at 49-50, 50-51, 51-53, 60-62, 62-64, 64-69, 69-70, 70-72, 79-81, 80-81, 81-82, 117-118, 132-135, and 135-138.

As a result, the property's true cash value (TCV), state equalized value (SEV), and taxable value (TV) for the tax years at issue are as follows:

Parcel Number	Year	TCV	AV	TV
28-51-898-580-00	2021	N/A	N/A	\$60,700
28-51-898-580-00	2022	N/A	N/A	\$62,703

### PETITIONER'S CONTENTIONS

Petitioner's contentions of TCV, SEV, and TV are as follows:

Parcel Number	Year	TCV	SEV	TV
28-51-898-580-00	2021	N/A	N/A	\$0.00
28-51-898-580-00	2022	N/A	N/A	\$0.00

In support of its Petition, Petitioner contends that:

The issue, the way that I see it, is whether Petitioner, MJM Flying LLC, the property at the Cherry Capital Airport qualifies for a property tax exemption under MCL 211.7m and 211.181 as a noncommercial lessee of property owned by the Cherry Capital Airport.

Our intent today is simply to introduce a copy of the Articles of Organization from MJM, a copy of the Lease and Consent to Assignment for the property as well as his flight schedules and introduce some testimony,<sup>4</sup> the testimony of Mr. Miller regarding his use of that property as well as the testimony of Shelly Ashmore, who is the CPA for Dennis, Gart[land] & Niergarth nearby in Traverse City who does Mr. Miller's personal taxes who can testify as to profits and that type of thing for the Petitioner.<sup>5</sup>

Petitioner also contends, in its December 16, 2022 "Closing Argument," that:

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<sup>4</sup> Petitioner **did not**, despite Mr. Miller's testimony, **offer a copy of** Petitioner's Articles of Incorporation for admission. Rather, P-1 consists of a copy of LARA's "Filing Endorsement" dated May 15, 2014, regarding the filing of Petitioner's Articles of Incorporation with LARA's Corporations, Securities & Commercial Licensing Bureau, and a copy of LARA's "Filing Endorsement" dated November 12, 2021, regarding Petitioner's 2022 Annual Statement with LARA's Corporations, Securities & Commercial Licensing Bureau. P-1 also included a copy of a LARA website printout of Petitioner's 2022 Annual Statement dated November 12, 2021, but **not** a copy of Petitioner's Articles of Incorporation. See TR at 10-14. As for the Lease, P-2 consists of a copy of the Consent to Assignment of Lease and Renewal of Lease and Party Wall Agreement between the NRAC, Aero Park One TVC, LLC, and Petitioner dated March 5, 2021; a copy of the Consent to Assignment of Lease and Renewal of Lease and Party Wall Agreement between the NRAC, R.G. Reffitt, Inc., and Aero Park One TVC, LLC dated in 2009; and the 1991 Lease between the NRAC and R.G. Reffitt, Inc. Petitioner's other two exhibits (i.e., P-3 and P-4) consisted of Ms. Cairns Affidavit and the documents attached to that Affidavit and Petitioner's Flight Logs.

<sup>5</sup> See TR at 7.

1. The property is an airplane hangar located on leased land at the Cherry Capital Airport in Traverse City. That property is owned and operated by the Northwestern Regional Airport Commission (NRAC). Petitioner leases the land from NRAC.
2. Real property located at the Cherry Capital Airport, including property leased to tenants (such as Petitioner), is exempt from property taxes unless the property is used in connection with a “business conducted for profit.” MCL [] 211.181(1).
3. Respondent, despite repeated requests, and the Order from the Tribunal to provide an “Explanation,” has not rebutted any of the evidence provided by MJM demonstrating that the ownership of the hangar is not used in connection with a business conducted for profit. **Mr. Miller testified unequivocally that MJM Flying LLC is a single member LLC, that derives no income and does not file any tax return regarding this business.** [Emphasis added.]
4. While Mr. Miller does have other business interests and his son does house his plane in the hangar **there is no evidence that the planes are associated with the hangar owner or any other business.** This Court specifically overruled Respondent’s attempts to enter evidence of the plane’s usage.<sup>6</sup> [Emphasis added.]
5. There is **no** evidence that the use of this hangar generates any income for MJM Flying, LLC. **Taking a broader view would be in error.** The Petitioner is required to establish the properties’ entitlement to the exemption by a preponderance of the evidence . . . . [and] Petitioner has carried its burden. [Emphasis added.]
6. **Mr. Miller clearly and unequivocally testified that MJM is not run for profit and that the use of the property at issue is not part of the generation of any income.**<sup>7</sup> Anticipating Respondent’s argument that Mr. Miller’s son CJ houses his plane at the hangar and that Petitioner failed to generate evidence on that use, that argument must fail. If the Court accepts the position of the Respondent, i.e., that there is insufficient evidence of CJ Miller’s activities, then this Court is imposing an additional requirement/test on this statute. Further, the Respondent’s position expands the term “profit” from money generation into any benefit that inures to a member of the LLC, its members, or its relatives and acquaintances. In that context, saving time could be construed as a profit<sup>8</sup> . . . .

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<sup>6</sup> Petitioner’s statement is puzzling, as the Tribunal admitted Respondent’s Rebuttal Exhibits Nos. 1 and 2, Respondent’s Exhibit No. 3, and Petitioner’s Exhibit No. 4, which relate to the use of several of the airplanes including one of the two airplanes **actually housed** in the hangar during the tax year at issue.

<sup>7</sup> Petitioner cites TR at 24, line 18, which is a part of a question being asked by Mr. Cvengros relating to the filing of tax returns by Petitioner. The more appropriate cite for Petitioner’s purposes would be to line 20, which is Mr. Miller’s answer to the question that “MJM Flying does not file a file a tax return.”

<sup>8</sup> Petitioner also contends that:

Note in this Court’s recent Opinion of *Landes v City of Traverse City*, MOAHR Docket No. 21-003189, **the Petitioner respectfully asserts that the Tax Tribunal was in error** when it found that traveling to a surgical conference somehow equates with conducting business for profit and using the property for the generation of income. [Emphasis added.]

Mr. Miller [also] unequivocally testified that the property is not used for the generation of income by his company, MJM. **Case law is clear that the focus is on MJM[]FLYING, LLC, the tax paying entity**, not someone using the hangar gratis, CJ Miller or any company in which Mr. Miller invests.<sup>9</sup> The use must generate profit for MJM, not a shareholder or benefactor. **Neither Mr. Miller nor MJM derives a profit from the use of this hangar.** Respondent's position, if accepted can and most likely will be taken to absurd lengths such that none of these hangars will ever be tax-exempt. In every instance, someone is saving time by flying such that it allows them more time to work at various businesses in which they have an interest. [Emphasis added.]

7. Semantically MJM's position that it "owns" the lease on the hangar may raise an issue, but Ms. Cairn's and the City's position that this is a "non-existent" parcel or that the underlying parcel is not exempt property is somewhat deliberately obtuse and a red herring.<sup>10</sup>

### RESPONDENT'S CONTENTIONS

The property's TCV, assessed value (AV), and TV as established by Respondent's Board of Review for the tax years at issue are:

Parcel Number	Year	TCV	AV	TV
28-51-898-580-00	2021	\$121,400	\$60,700	\$60,700
28-51-898-580-00	2022	\$131,200	\$65,600	\$62,703

In support of their Answer, Respondent contends that:

1. [T]his matter [] involves a dispute as to the tax[-]exempt status of vertical improvements, an airplane hangar, to real property where the underlying land is owned by a tax exempt governmental unit and then leased to Petitioner; and where the vertical improvements are privately owned and operated to house aircraft owned and used in connection with businesses conducted for profit.
2. The MJM Cessna 180 is clearly owned **by a for-profit entity** in order to protect the owner, Mr. Miller, from personal liability. **And the second plane**, while we

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**Contrary to Petitioner's contention**, the Tribunal found in MOAHR Docket No. 21-003189 that the plane in that case was "admittedly 'used in conjunction with his surgical practice,'" which was a business for profit. The Tribunal did not, however, find that the property at issue in that case was used for the generation of income by the Petitioner.

<sup>9</sup> Petitioner also contends that: "As stated above, Respondent deliberately refused to disclose its position during discovery despite this Court's order, thereby forcing Petitioner to go to trial without knowledge Respondent's argument on this issue."

<sup>10</sup> With respect to Petitioner's "obtuse" and "red herring" contentions or, more specifically, their contention regarding the "non-existent parcel," **Mr. Cvengros failed to properly identify the property at issue in Petitioner's May 11, 2021 Petition.** In that regard, see the Tribunal's April 18, 2022 Order denying Respondent's Motion to Dismiss, based on said failure and granting Petitioner's Motion to Amend to correct said failure.

have had no information received during Petitioner's direct, we have been able to locate and **we [] believe that this airplane is used in connection with the Miller Energy businesses.** [Emphasis added.]

3. It is the Respondent's contention that it is the Petitioner who, **as admitted by Mr. Miller**, is the owner of the vertical improvements with little to no interference were the airport under the land lease. [Emphasis added.]
4. **Mr. Miller has testified that the hangar is not open to the public and not operated as a concession.** And Mr. Miller has **not** proven through his testimony that the hangar is **not** utilized in connection with the business conducted for profit. **He**, in fact, **has a personal financial interest in the company that the other user of the hangar works for and has failed to provide verifiable use of the aircraft at issue.** [Emphasis added.]
5. . . . the burden of proving an entitlement to an exemption is on the party claiming the right to the exemption . . . . [and] **Petitioner's sole member has already admitted through his own affidavit statements to the airport and through the filing of property transfer affidavits that he through his LLC is the owner of the vertical improvements.** [Emphasis added.]
6. Under the land lease, the Petitioner has the right to occupy the land, mortgage the improvements, transfer ownership of the improvements, and if the airport wants the improvements the Petitioner has a right to be paid the fair market value of the improvements . . . . Importantly, the lease contemplates that taxes will be assessed against a property, and in paragraph number 28 of the lease states: The lessee shall pay when due all taxes and assessments levied on the leasehold premises during the term of this lease. Petitioner has since purchasing the hangar paid taxes on the hangar.
7. **It's extremely significant that the Petitioner's openly claimed to own the hangar in a sworn-to-under-oath affidavit.** This is an admission by Petitioner that he is not entitled to tax exempt status . . . . In this case, as we believe will be supported not only by the Petitioner's own testimony but that of Ms. Cairns, Petitioner is the owner of the property. [Emphasis added.]
8. Should MTT wish to explore whether Petitioner is entitled to tax exempt status under MCL 211.181 the statute clearly provides in subsection one that exempt lease property used in connection with a business conducted for profit is subject to taxation . . . . [and] Respondent believes based on the testimony of Petitioner's sole member that there is sufficient information supporting use of the aircraft housed in the hangar, R-4, and in conjunction with his other for-profit business activities or for the business activities of his son, which are in reality his own business activities. And while real property at an airport may be exempt from a concession, there's no indication and the Petitioner is not claiming that this is the case here.
9. We expect Ms. Cairns to testify that **she researched the flight history of Petitioner's aircraft and found a business-related purpose for travel to and from location to the Petitioner's business interests . . . .** She will also confirm that the Petitioner has held itself out to be the owner of the property at issue and has been considered by the airport to be the owner. [Emphasis added.]



10. For these reasons and based upon the documentary evidence in the record, Petitioner's claim for exemption should be denied. The property is not owned by a governmental agency as required by MCL 211.7m and is utilized in connection with a business operated for profit and which otherwise is admittedly not a concession open to the general public as necessary to obtain tax exempt status under MCL 211.181.<sup>11</sup>

Respondent also contends, in its December 16, 2022 Closing Statement and Post-Hearing Brief and Motion to Dismiss, that:

1. This matter involves a dispute as to the tax-exempt status for the 2021 and 2022 tax years of vertical improvements (airplane hangar) to real property where the underlying land is owned by a tax-exempt governmental unit and leased to Petitioner, and where the vertical improvements are privately owned and operated to house several aircraft, one (at least) owned by a for-profit entity, for use in conjunction by Petitioner's sole member's other for-profit business activities, and the other owned by Petitioner's sole member's son, and which also appears to be utilized in connection with Petitioner's sole member's business interests. The airplane hangar itself is otherwise not open to the general public and Petitioner does not claim to be a concessionaire at the airport where the hangar is located.
2. Petitioner's own claim that it owns the hangar is an admission that under MCL 211.7m the property does not qualify for tax-exempt status because the property is not "owned" by a governmental entity as required for exempt status to apply under MCL 211.7m.<sup>12</sup>

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<sup>11</sup> See TR 108-113, which also provides that:

MR. CVENGROS: I just want to object to the extent that that was more of a closing statement than an opening statement, but with that said. I wanted that for the record.  
JUDGE KOPKE: The record duly notes that. Thank you.

<sup>12</sup> Respondent also contends that:

Petitioner, through its sole owner, clearly and continuously claims to be the owner of the improvements which are the subject of this appeal (aircraft hangar). As an example, at Tr. at 10, line 18-19, Petitioner's sole owner, Mr. Miller, testified that the assets held by Petitioner are, "[a]n airplane and a hangar". And that Petitioner via Mr. Miller bought the hangar. Tr. at 15, line 9-12, and Tr. at 31, line 18-25. And because this was a purchase, a property transfer affidavit was filed. Tr. at 32, line 1-2. Mr. Miller further testified that he sought permission from the airport to have the ownership of the hangar at issue in this case changed from the prior LLC that he owned to the Petitioner (TR. at 18, line 18-23), and that he purchased the hangar knowing that property taxes were being paid on it. Tr. at 39, line 12-23. And throughout his conversations with the airport authority, he held himself out as the owner of the hangar and the airport authority never contradicted that representation. Tr. at 40, line 2-16. See also Tr. at 41, line 4-8. In fact, Mr. Miller even signed an affidavit stating that he owns the hangar. Tr. at 27, line 11-13, Tr. at 52-53, and Exhibit R-16, pages 3-4. See also Petitioner's Responses to Requests to Admit attached as Exhibit 2 to Respondent's Response in Opposition to Motion for Summary Disposition,

3. The evidence before the tribunal is that the hangar is owned by one for-profit LLC and occupied by an aircraft owned by another for-profit LLC, and is therefore being used in connection with a business conducted for profit.
4. During Mr. Miller's direct testimony, he testified to only own, through Petitioner, the hangar and "[a]n airplane" (Tr. at 10, line 18), a "Beechcraft Baron 58" (Tr. at 19, line 6), and he provided a flight log for this plane claiming its use was purely personal or volunteer flying as verified by a FlightAware flight log. Tr. at p. 19, line 20 through Tr. at 21, line 18. Mr. Miller further claimed to do, "no business flying whatsoever." Tr. at 24, line 11. He also testified that he is employed by Legacy Energy Company, and that he has offices in Traverse City and Kalamazoo. Tr. at 23, line 6-12. He then testified during his direct examination as follows:

Q. Is there anybody else using that hangar other than MJM Flying LLC?

A. No. Tr. at 25, line 15-17.

**A different reality, however, was uncovered during Mr. Miller's cross-examination.** During cross-examination, Mr. Miller testified, that his son CJ Miller, who works for Miller Energy has access to the hangar at issue in this case, and that a Cessna 180 is housed in the hangar. Tr. at p. 26. **Mr. Miller agreed that the goal of both Miller Energy and Legacy Energy is to make a profit.** Tr. at 26, line 20 through Tr. at 27, line 3. **Mr. Miller testified that CJ Miller was in Miller Energy's land department and that CJ had his own pilot's license.** Tr. at 35, line 19-23 . . . **While Mr. Miller testified on direct-examination he only had an interest in one airplane, on cross-examination he admitted he had an interest in two airplanes.** Tr. at 34, line 17 through Tr. at 35, line 10. He then unequivocally testified that there were **no** other airplanes in which he had an interest. Tr. at 35, line 11-12. However, and **upon further examination he testified that he may actually have had an interest in three airplanes, either through the Petitioner or personally, as of December 31, 2020.** TR. at 44, line 15-25. As of December 31, 2021, Mr. Miller testified the Petitioner only had an interest in one aircraft, the Beechcraft, and maybe also the Cessna 180 used by his son, CJ. Tr. at 45. **Under further cross-examination, it was revealed that there was 4th airplane which may be involved.** Tr. at 53, line 23 to Tr. at 54, line 23.

But here's the kicker, **the Beechcraft airplane that Mr. Miller claimed to use for only personal or volunteer purposes**, Mr. Miller admitted under cross-examination, **was not even housed at the hangar which is the subject of this**

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MTT Docket line no. 71. As for the Airport's control over the hangar itself, Mr. Miller testified that the Airport's control over the property was limited to approval of changes to the structure of the hangar and to the issuance of badges to gain access to the hangar. Tr. at 32, line 16-23 and Tr. at 33, line 8-14.

**appeal on either December 31, 2020 or December 31, 2021.** Tr. at 46, Tr. at 89-91, Tr. at 93. **He further admitted that his testimony as to the personal or charitable flying use to which he testified was not for either calendar year 2020 or 2021 [] but was just his present use of the Beechcraft that was not housed at the hangar at issue.** Tr. at 99, line 13-20. What was housed at the hangar on December 31, 2020 was Petitioner's Cessna 180 and CJ Miller's Cessna 180. On December 31, 2021, the only airplane housed at the hangar was CJ's Cessna 180. Tr. at 46. **He, however, contradicted this testimony when he testified that another Cessna 180 owned by Petitioner was housed at the hangar on December 31, 2021.** Tr. at 90, line 8-10. **Mr. Miller admitted that his son, CJ Miller, takes CJ's airplane out without letting him know, and that Mr. Miller cannot state whether the CJ's airplane is used for CJ's work.** Tr. at 92, Tr. at 100 and Tr. at 106. **Mr. Miller also admits that he does not know who pays the fuel expenses for CJ's airplane.** Tr. at 93. What should also be clear from the transcript and the exhibits, is that Petitioner failed to come forward with any testimony as to the use of the aircraft actually housed at the hangar leading up to and on the dates of value. And Mr. Miller admitted this. Tr. at 100, line 20-25, Tr. at 102.

[Emphasis added.]

5. **Mr. Miller also testified that he has been a shareholder of Miller Energy since 2017, the same Miller Energy which employs his son CJ Miller as a land manager.** Tr. at 59. Mr. Miller then admitted to **not** just being an employee of Legacy Energy, **but also an owner.** Tr. at 61. Mr. Miller explained that the original Miller Energy Company transferred its assets to Legacy Energy Company, **so a new Miller Energy Company (the one in which he is a[n] owner and which employs his son CJ)** could use the Miller Energy name. Tr. at 66, Tr. at 76 and Tr. at 81, line 13-20. See also Ex. R-8., R-9, R-11 and R-29. **Mr. Miller further testified that the new Miller Energy Company has oil and gas wells throughout the State of Michigan** that he would expect to find in the "central portion of the state." Tr. at 76, line 24 through Tr. at 77, line 11. Interestingly, Mr. Miller used his Legacy Energy Company email address to correspond with the Airport regarding the land lease. Tr. at 79-80, see also R-26 . . . Mr. Miller also admitted that the hangar at issue is not open to the public and the airport does not require the hangar to be open to the public, that **no income and expense information has been provided for the hangar or himself**, and that **the purpose of placing the hangar in the name of the Petitioner, and LLC, was to protect himself from personal liability.** Tr. at 83, line 24 through Tr. at 84, line 25. [Emphasis added.]
6. The other witness at the hearing was Polly Cairns, Respondent's Assessor. Ms. Cairns was able to locate the FAA registry for the airplane owned by CJ Miller. Tr. at 121. She was also able to obtain the FlightAware flight history for that same airplane. Tr. at 121-126. The FlightAware Records and FAA Registry were

admitted into evidence as Respondent's Rebuttal Exhibits 1 and 2. Tr. at 131. M[s]. Cairns further testified that Petitioner failed to provide the City's Board of Review any documentation proving that the property was not being utilized in connection with a business operated for profit. Tr. at 132-133. Ms. Cairns went on to testify as to Respondent's Exhibit R-21, which is the State of Michigan Miller Energy and Miller Energy II wellhead list, and which list provided wellhead locations in Arenac, Bay, Calhoun, Clare, Genesee, Gladwin, Isabella, Kalkaska, Lake, Mecosta, Midland, Missaukee, Montcalm, Newaygo, Ogemaw, Osceola, Roscommon, Saginaw, St. Clair, Shiawassee and Tuscola counties. Tr. at 135-137. **As for the flight history of Petitioner's Cessna 180** (Exhibit R-3), it showed flights to or near Arenac, Bay, Calhoun, Genesee, Gladwin, Lake, Midland, Montcalm, Newaygo, Saginaw, Shiawassee and Tuscola counties. **As for the flight history of CJ's Cessna 180**, Ms. Cairn's testified this was shown on Respondent's Rebuttal Exhibit R-1. Tr. at 125, line 23 to Tr. at 26, line 2. **The 2020 and 2021 flight history for CJ's Cessna shows there were flights to or near Calhoun, Clare, Isabella, Kalkaska, Lake, Mecosta, Midland, Missaukee, Montcalm, Newaygo, Ogemaw counties.** The Respondent hopes the Tribunal will take judicial notice of the fact that some of these flights were to areas near wellhead locations and occurred during the business week, and according to the times of the flights, the aircraft was only at those airports for a few hours before making the return trip. [Emphasis added.]

7. Respondent believes this case should be dismissed because it was not filed within 35 days of the initial denial of the exemption request. If the Tribunal chooses to go beyond the jurisdictional hurdle, the exemption should be denied where the Petitioner has openly claimed to own the hangar, precluding tax-exempt status under both MCL 211.7m and MCL 211.181, and has used the property in connection with a business operated for profit which also precludes an exemption under MCL 211.181 because Petitioner admits to not operating a concession at the airport.

### PROCEDURAL MATTER

On December 16, 2022, Respondent filed a Motion requesting that the Tribunal dismiss the above-captioned case.<sup>13</sup> Although Respondent failed to pay the fee required for the filing of the Motion and, as a result, the Motion is not properly pending, said failure can

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<sup>13</sup> Respondent filed its Closing Statement on December 16, 2022. The Closing Statement was captioned as "Respondent City of Traverse City's Closing Statement and Pos-Hearing Brief" and "Motion to Dismiss." Further, the Closing Statement specifically stated:

1. ". . . the Tribunal lacks jurisdiction, under the applicable statutes, to hear this case filed more than 35 days after receiving notice of the denial of the exemption. The case should be dismissed."
2. "Respondent believes this case should be dismissed because it was not filed within 35 days of the initial denial of the exemption request. If the Tribunal chooses to go beyond the jurisdictional hurdle . . . ."

be cured by holding Respondent in default.<sup>14</sup> As such, Respondent contends in their Motion that:

The instant matter has an extremely convoluted origin and appeared to begin as a classification appeal as to a non-existent parcel at a non-existent address. After more than one motion to dismiss was filed, the Tribunal through its June 22, 2022, Order determined that this matter should move forward as an exemption matter and specifically to address the issues of who or what owned the property at issue, and whether the property at issue was used in connection with a business conducted for profit.<sup>15</sup> Because of its messy start, whether or not the appeal was timely filed (under MCL 205.735a(3) and MCL 205.735a(6)) with the Tax Tribunal where the matter is an exemption appeal was never addressed head-on.<sup>16</sup> **Petitioner filed the initial Petition on or about May 11, 2022, which is more than 35 days after the March Board of Review made its decision and Petitioner was notified**, and significantly after the January 14, 2021 denial letter was issued by the City.<sup>17</sup>

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<sup>14</sup> See TTR 217(j). See also TTR 225(1) and 231(1).

<sup>15</sup> Respondent references the Tribunal's Order denying Petitioner's Motion for Summary Disposition issued on June 22, 2022.

<sup>16</sup> Respondent references the "March 2021 Board of Review Petition, Ex. A to Petitioner's May 23, 2022 Motion for Summary Disposition[], MTT Docket line no. 69; Ex. 1 hereto, January 14, 2021 Denial Letter and Ex. 2 hereto, 2021 [M]arch Board of Review Decision" and further states that:

Respondent recognizes that MCL 205.735a(3) requires a party challenging exemption status must appear at the Board of Review before the Tribunal can obtain jurisdiction. It appears the first 2021 denial was issued on January 14, 2021, followed by the March 9, 2021 Board of Review Decision. Assuming for discussion, notice of the denial took another two weeks to be issued (March 23, 2021), the May 11, 2021 Petition filing would have been made 49 days after issuance of the notice of denial and 63 days after the denial itself.

<sup>17</sup> Respondent's reliance on MCR 2.116(C)(4) is misplaced, as that rule relates to subject matter jurisdiction and the Tribunal clearly has subject matter jurisdiction over the instant exemption appeal. See MCL 205.731. The Motion also assumes, incorrectly, that the Tribunal "never addressed 'head-on'" whether Petitioner properly invoked the Tribunal's subject matter jurisdiction by timely filing a petition by May 31, 2021. See MCL 205.735a(6). The Tribunal does, however, routinely review petitions, including the instant Petition, to determine whether its jurisdiction had been properly invoked. In that regard, see *Electronic Data Systems Corp v Flint Township*, 253 Mich App 538, 544: 656 NW2d 215 (2002), which provides, by way of example, that:

"Petitioner also highlights the fact that **the Tax Tribunal raised the issue of untimeliness on its own motion** about 3 1/2 months after the petition was received. **There was nothing improper about the Tax Tribunal raising the issue of lack of jurisdiction on its own.** Defects in subject-matter jurisdiction cannot be waived and may be raised at any time. *People v. Erwin*, 212 Mich.App. 55, 64, 536 N.W.2d 818 (1995); *People v. Richards*, 205 Mich.App. 438, 444, 517 N.W.2d 823 (1994).

See also the Tribunal's Order denying Respondent's Motion to Dismiss issued on April 18, 2022.

Petitioner has not filed a Response to the Motion.

The Tribunal has reviewed the Motion and the case file and finds that the Motion is frivolous, as the property is classified as commercial real and the Petition was filed “on or before May 31 of the tax year involved.” Although Respondent states that Petitioner had notice of the denial by virtue of Respondent’s January 14, 2021 letter, Respondent has not provided or otherwise identified any legal support that would indicate why that letter constituted a final decision requiring an appeal within 35 days of the issuance of that “final decision,” particularly given the decision rendered by Respondent’s 2021 March Board of Review denying Petitioner’s exemption request. In that regard, an exemption issue is an “assessment dispute” by the virtue of the plain language of the applicable statute and Petitioner had, given the 2021 March Board decision, until May 31, 2021, to file the instant appeal.<sup>18</sup> As such, Respondent has not shown good cause to justify the granting of the motion.

### FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence (i.e., testimony and admitted exhibits) and concern only the evidence and inferences found to be significantly relevant to the legal issues involved:<sup>19</sup>

1. The subject property (i.e., Parcel No. 28-51-898-580-00) is located at 2702 Aero Park Drive #51, Traverse City, MI in Grand Traverse County, is classified as commercial real, and has a principal residence exemption of 0%.<sup>20</sup>
2. The property consists of a hangar located at the Cherry Capital Airport (“Airport”), which is a public airport.
3. The Airport is operated by the NRAC on behalf of Grand Traverse County and Leelanau County, who are its sole members.
4. The Airport land is owned by the NRAC on behalf of the above-noted counties.
5. The Airport land underlying the hangar is leased to Petitioner, a for-profit company, by the NRAC.
6. Based on the terms of the Lease between Petitioner and the NRAC, the NRAC is the owner of the hangar and, as such, the hangar is also being leased to Petitioner by the NRAC.
7. As of December 31, 2020: (i) Petitioner owned two airplanes, a Beechcraft Baron and a Cessna 180 (“Cessna 1”), (ii) Cessna 1 was housed in the subject hangar, while the Beechcraft Baron was housed in another hangar (i.e., the Vision Air hangar), and (iii) another Cessna 180 (“CJ Cessna”) was also housed in the

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<sup>18</sup> See MCL 205.735a(6) (i.e., “an assessment dispute as to the valuation or exemption of property”) and *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014) (i.e., “[w]hen ascertaining the Legislature’s intent, a reviewing court should focus first on the plain language of the statute in question”). [Emphasis added.]

<sup>19</sup> The Tribunal has not addressed every piece of evidence or every inference that might lead to conflicting conclusions and has rejected evidence contrary to these findings.

<sup>20</sup> See Petitioner’s April 20, 2022 Amended Petition.

subject hangar and that plane was either owned by Mr. Miller and his son, C.J. Miller, or just his son.

8. As of December 31, 2021: (i) Petitioner had sold the Cessna 1 but still owned the Beechcraft Baron, (ii) the Beechcraft Baron was still housed in the Vision Air hangar, and (iii) the CJ Cessna was still housed in the subject hangar and owned by C.J. Miller alone.
9. The Beechcraft Baron was used approximately 15% for personal or pleasure purposes and approximately 85% for volunteer or charitable purposes during 2022. As for the CJ Cessna, Mr. Miller was unaware of whether that airplane was used in connection with a business conducted for profit during 2020 and 2021.
10. The Flight Logs for the CJ Cessna indicate flights by that airplane during 2020 and 2021 to locations corresponding with the business interests of Mr. Miller and his son, C.J. Miller. Further, Mr. Miller had no knowledge as to who paid for the upkeep and fuel of the CJ Cessna.

### CONCLUSIONS OF LAW

The issue in this matter is whether the property at issue (a hangar) qualifies for a property tax exemption under MCL 211.7m or 211.181 for the tax years at issue.<sup>21</sup>

MCL 211.7m and 211.181 are tax exemption statutes and because tax exemptions upset the delicate balance achieved by equal taxation, the Tribunal is required to “strictly construe” those statutes “in favor of the taxing authority.”<sup>22</sup> That does not,

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<sup>21</sup> A proceeding before the Tax Tribunal is original, independent, and de novo and the Tribunal's factual findings must be supported “by competent, material, and substantial evidence.” See MCL 205.735a(2) and *Dow Chemical Co v Dep't of Treasury*, 185 Mich App 458, 462-463; 462 NW2d 765 (1990).

<sup>22</sup> See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664-65; 378 NW2d 737 (1985). See also *TOMRA of North America, Inc v Dep't of Treasury*, 505 Mich 333, 343-344; 952 NW2d 384 (2020), which provides, in pertinent part:

We take this opportunity to clarify that because the canon requiring strict construction of tax exemptions does **not** help reveal the semantic content of a statute, **it is a canon of last resort**. That is, courts should employ it only “when an act’s language, after analysis and subjection to the ordinary rules of interpretation, presents ambiguity.” In the present case, the canon is inapplicable because, as we explain below, the statutes are unambiguous: their ordinary meaning is discernible by reading the text in its immediate context and with the aid of appropriate canons of interpretation. [Emphasis added.]

However, the Michigan Court of Appeals did state in *Nomads, Inc v City of Romulus*, 154 Mich App 46; 397 NW2d 210 (1986) at 54-55 that:

First, when a provision *imposing* a tax is susceptible to two constructions, the uncertainty is resolved in favor of the taxpayer. Sutherland, *Statutory Construction* (4th ed), § 66.01, p ——. In *In re Dodge Brothers*, 241 Mich 665, 669; 217 NW 777 (1928), the Supreme Court stated, “The scope of the tax laws may not be extended by implication or forced construction. Such laws may be made plain, and the language thereof, if dubious, is not resolved against the taxpayer.” See also *Detroit v Norman Allan & Co*, 107 Mich App 186, 191; 309 NW2d 198 (1981) (“[T]ax statutes are strictly construed.”).

however, mean that the Tribunal “should give a strained construction which is adverse to the Legislature’s intent.”<sup>23</sup> In that regard, MCL 211.7m provides:

Property owned by, or being acquired pursuant to, an installment purchase agreement by a county, township, city, village, or school district used for public purposes **and property owned** or being acquired **by an agency, authority**, instrumentality, nonprofit corporation, commission, or other separate legal entity comprised solely of, or which is wholly owned by, or **whose members consist solely of** a political subdivision, **a combination of political subdivisions**, or a combination of political subdivisions and the state **and is used to carry out a public purpose** itself or on behalf of a political subdivision or a combination **is exempt** from taxation under this act . . . . [Emphasis added.]

MCL 211.181 also provides, in pertinent part:

(1) Except as provided in this section, **if real property exempt for any reason** from ad valorem property taxation **is leased**, loaned, or otherwise made available to **and used by** a private individual, association, or **corporation in connection with a business conducted for profit, the lessee or user of the real property is subject to taxation** in the same

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Second, *tax exemptions* are strictly construed against the taxpayer and in favor of the taxing authority. *Michigan Baptist Homes & Development Co v Ann Arbor*, 396 Mich 660, 670; 242 NW2d 749 (1976). Since taxation is the rule and exemption the exception, the intention to make an exemption must be expressed in clear and unambiguous terms. *American Concrete Institute v State Tax Comm*, 12 Mich App 595, 607; 163 NW2d 508 (1968). See also *Mich Christian Campus Ministries, Inc v Mount Pleasant*, 110 Mich App 787, 792; 314 NW2d 482 (1981).

MCL [] 211.181(1) imposes a tax only on a lessee of tax-exempt property used in connection with a “business conducted for profit.” **The qualifying language is not an exemption; rather it defines the taxpayers on whom the lessee-user tax is imposed, i.e., lessees of tax-exempt property used in connection with businesses conducted for profit.** Exemptions to the lessee-user tax are set forth in subsection (2) of the statute, which is not applicable to petitioner. Thus while the exemptions set forth in subsection (2) must be strictly construed in favor of the taxing authority, **the pertinent language set forth in subsection (1), i.e., “business conducted for profit,” must be strictly construed in favor of the petitioner taxpayer.** We conclude that the Tax Tribunal erred in giving the language in question a broad interpretation. We therefore conclude, resolving the uncertainty in the language in favor of petitioner, that petitioner is not subject to the lessee-user tax.

[Emphasis added.]

<sup>23</sup> See *Inter Co-op Council v Dep’t of Treasury*, 257 Mich App 219, 223; 668 NW2d 181 (2003) citing *Cowen v Dep’t of Treasury*, 204 Mich App 428, 431; 516 NW2d 511 (1994), which provides, in pertinent part, “[w]hile tax-exemption statutes are strictly construed in favor of the government, **they are to be interpreted according to ordinary rules of statutory construction.**” [Emphasis added.]



amount and to the same extent as though the lessee or user owned the real property.

(2) Subsection (1) does **not** apply to all of the following . . .

(b) Property that is **used as a concession at a public airport**, park, market, or similar property and that is available for use by the general public . . . .

[Emphasis added.]

Finally, the requested exemption is an established class of exemption and, as a result, Petitioner is required to establish the property's entitlement to the exemption by a preponderance of the evidence.<sup>24</sup>

Here, it is undisputed that: (i) the underlying land leased to Petitioner is owned by the NRAC whose members consist solely of Grand Traverse and Leelanau Counties, (ii) the NRAC was formed by the Counties to have "jurisdiction and control" over the Cherry Capital Airport, and (iii) the Airport serves a public purpose (i.e., public airport).<sup>25</sup> It is also undisputed that the leased land upon which the subject property (i.e., hangar) is located is not subject to taxation under MCL 211.7m given the NRAC's ownership of the land and the public purpose for which the land is utilized. In that regard, the construction and use of a hangar on leased land has also been found to be "merely incidental to the main purpose" of an airport and "in keeping with the general purpose of the airport," as it "tends to increase the value to the public of the facilities thereof."<sup>26</sup> As such, the only outstanding issues relate to who owns the hangar, Petitioner or the NRAC, and the use of the hangar for commercial purposes, if owned by the NRAC.

In that regard, MCL 211.8 provides, in pertinent part:

For the purposes of taxation, personal property includes all of the following

. . . .

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<sup>24</sup> See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).

<sup>25</sup> Although the parties' arguments relate to both the land and the hangar, the only property at issue is the hangar.

<sup>26</sup> See *Rockwell Spring and Axel Company v Romulus Township*, 365 Mich 632, 643; 114 NW2d 166 (1962). The Michigan Supreme Court also stated, in *Rockwell Spring* at 643, "[t]he airport is a unit, and it would scarcely be feasible to separate the space therein contained for purposes of taxation." Although *Detroit Museum of Art*, 187 Mich 432; 153 NW 700 (1915) was cited in prior cases in support of the contention that the use of buildings or hangars on a public airport does not support the public purpose required for the exemption, the public purpose discussion in *Detroit Museum* appears to be contained in the dissent and relates to the formation of a private corporation for the public exhibition of the corporation's collection of works of art. However, the *Rockwell Springs* case relates to hangars and is, given the circumstances of this case, better law.

(d) For taxes levied before January 1, 2003, buildings and improvements located upon leased real property, except if the value of the real property is also assessed to the lessee or owner of those buildings and improvements. **For taxes levied after December 31, 2002, buildings and improvements located upon leased real property**, except buildings and improvements exempt under section 9f or improvements assessable under subdivision (h), **shall be assessed as real property** under section 2 to the owner of the buildings or improvements in the local tax collecting unit in which the buildings or improvements are located if the value of the buildings or improvements is not otherwise included in the assessment of the real property. For taxes levied after December 31, 2001, buildings and improvements exempt under section 9f or improvements assessable under subdivision (h) and located on leased real property shall be assessed as personal property . . . .<sup>27</sup>

(h) During the tenancy of a lessee, leasehold improvements and structures installed and constructed on real property by the lessee, **provided and to the extent** the improvements or structures **add** to the true cash taxable value of the real property notwithstanding that the real property is encumbered by a lease agreement, **and the value added** by the improvements or structures is **not** otherwise included in the assessment of the real property or not otherwise assessable under subdivision (j). The cost of leasehold improvements and structures on real property shall not be the sole indicator of value. **Leasehold improvements and structures assessed under this subdivision shall be assessed to the lessee . . . .**

(j) **To the extent not assessed as real property**, a leasehold estate of a lessee created by the difference between the income that would be received by the lessor from the lessee on the basis of the present economic income of the property as defined and allowed by section 27(5), minus the actual value to the lessor under the lease. This subdivision does not apply to property if subject to a lease entered into before January 1, 1984 for which the terms of the lease governing the rental rate or the tax liability have not been renegotiated after December 31, 1983. This subdivision does not apply to a nonprofit housing cooperative. As used in this subdivision, "nonprofit cooperative housing corporation" means a nonprofit cooperative housing corporation that is engaged in providing housing services to its stockholders and members and that does not pay dividends or interest upon stock or membership investment but that does distribute all earnings to its stockholders or members . . . . [Emphasis added.]

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<sup>27</sup> MCL 211.9(f) has no applicability to the instant case as that statute or subdivision thereof relates to the exemption of new personal property "owned or leased by an eligible business."

As such, the hangar is real property and assessable to the owner of the hangar.<sup>28</sup>

Notwithstanding Petitioner's mistaken affidavit claiming ownership of the hangar or his misguided testimony regarding said purported ownership, the issue of ownership in such situations has been resolved based on who had the majority of the "bundle of sticks" associated with property ownership. More specifically, the courts have focused on the amount of control exerted over a hangar on leased land (i.e., "ultimate" or "overall") and not a party or parties' unsupported claims of ownership.<sup>29</sup> In that regard, the Wisconsin Supreme Court stated in *Mitchell Aero, Inc v City of Milwaukee*, a case cited and distinguished by the Michigan Court of Appeals in *Air Flite*.<sup>30</sup>

Ownership is often referred to in legal philosophy as a bundle of sticks or rights and one or more of the sticks may be separated from the bundle and the bundle will still be considered ownership. **What combination of rights less than the whole bundle will constitute ownership is a question which must be determined in each case in the context of the purpose of the determination.** [Emphasis added.]

Although distinguished, the decision in *Mitchell Aero* correctly indicates that the leases must be reviewed to determine what sticks are held by the lessor and the lessee under each lease.

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<sup>28</sup> Although not raised in this case, a preliminary issue in such cases has been whether such hangars are taxable as personal property and the courts have held that hangars are real property because under "[b]oth common law and by statute, buildings placed upon real property become part of the real property." See *Air Flite, supra* at 77.

<sup>29</sup> In addition to the above-noted case (i.e., *Rockwell*), see *Skybolt, supra* at 600 (i.e., "the city exerted ultimate control over the property and Skybolt's rights as lessee were strictly limited"), *Golf Concepts, supra* at 33 (i.e., "Skybolt is distinguishable . . . because petitioner's rights as a lessee are not strictly limited"), *Air Flite, supra* at 77-78 (i.e., "the lessor was given the bulk of the rights of ownership"), *Service System Associates, supra* (i.e., "the tribunal determined that the clear terms of the agreement demonstrated that the City of Detroit owned the property, including the equipment, buildings and building improvements"), and *Brasseur v Rutland Charter Township*, MTT Docket No. 292326 (February 5, 2004). (i.e., "[t]he interpretation of MCL 211.7m and the applicable case law by the Michigan Courts make it clear that buildings built upon publicly owned property and leased to the builder are tax exempt").

<sup>30</sup> See *Mitchell Aero, Inc v Milwaukee*, 42 Wis 2d 656; 168 NW2d 183 (1969). In distinguishing *Mitchell Aero*, the Court of Appeals stated in *Air Flite, supra* at 78:

Though factually similar in some respects, **the lease terms** there in other respects **were totally different than those in the case before us**. No rent was charged for the space in the hangar which the lessee agreed to build, there was no provision for periodic increases in rent, and **the lease included an amortization formula which assured the lessee of recovery of its investment**. It is not surprising, therefore, that the majority opinion concluded that the arrangement was not a bona fide conveyance of buildings to the airport, but was "a hybrid arrangement, possibly to obtain both a tax exemption and the amortization of the cost of the buildings." 42 Wis2d 665; 168 NW2d 183. Also, the opinion was not unanimous. **A strong dissenting opinion found "only one stick" of the bundle of ownership sticks left with the lessee.** [Emphasis added.]

As for the instant lease, that lease is, for all practical purposes, the same lease, albeit between the NRAC and other parties, that has been considered by the Tribunal in a variety of cases including, but not limited to, MOAHR Docket No. 21-003189, and found to support a determination that the NRAC was the “ultimate” owner of the hangars at issue and not the lessees. Nevertheless, Respondent claims that Petitioner is the owner of the hangar based on Petitioner’s admissions of ownership. Said reliance on Petitioner’s “admissions” is, however, misplaced. More specifically, the lease provides for the leasing of “certain premises which are now part of the Cherry Capital Airport for the purpose of constructing and using a non-commercial hangar building . . . exclusively for the storage of aircraft, subject to certain rights, licenses and privileges, but not limited to, those restrictions related to the Traverse City Airport Industrial Park.”<sup>31</sup> [Emphasis added.] The Lease also provides, among other things:<sup>32</sup>

- i. For a lease term of 30 years beginning April 1, 1991, with an option to renew the lease “for two (2) successive periods of ten (10) years” provided certain identified conditions have been met by Lessee.
- ii. For the payment of annual rent to be adjusted to reflect the cost-of-living increases on April 1, 1992, and each five[-]year anniversary thereafter during the term of this lease, or any extensions thereto as provided in Schedule B.<sup>33</sup>
- iii. Lessee may improve the leased premises providing that prior written approval has been obtained from the Lessor.

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<sup>31</sup> See P-2, which also provides that:

1. Lessee shall have the privilege of using for the term of this Lease, or any extension thereof, in common with others and the public, the Cherry Capital Airport, **subject to** the charges, rules, and regulations governing such airport **issued by** the Federal and State Aeronautical Agencies **and by** the local governing authority, it being expressly understood that this privilege covers the entire period of the Lease and extensions thereof as hereinafter set forth. [Emphasis added.]
2. The premises are to be used by Lessee for the following purposes only, and for no other purpose whatsoever, **unless agreed to in writing by the Lessor**: To construct and occupy a hangar building exclusively for the storage of aircraft, to be located on the hereinafter described premises. **No portion of the leasehold premises shall be used for commercial activity without the prior written consent of the Lessor.** In the event that the Lessor approves commercial activity on the leasehold premises, the parties hereby agree that the rental rate for the leasehold premises shall be modified to increase in accordance with the then existing rental rate for commercial enterprises located at the Cherry Capital Airport, and this Lease shall be further modified so as to include obligations which the Lessor incorporates in its then existing Leases for commercial operations at the Cherry Capital Airport.

<sup>32</sup> Although the hangar was in existence at the time the lease was assigned to Petitioner, the Lease further provides for the construction of a building suitable for the intended use of the property by Lessee subject to the approval of the plans for the building and site by the Lessor prior to the initiation of any construction by the Lessee.

<sup>33</sup> Although the rental increases are automatic, the rental revisions are the result of required expenditures “in excess of available State and Federal funding” and the Lessee has a right to terminate the Lease “after the imposition” of any such revision. See also *Air Flite*, *supra* at 77.

- iv. Lessee agrees that it will, “at its own expense, during the continuance of this lease or any extension thereof, keep the said premises in a neat and attractive appearance, and otherwise safe to the operations of the airport.”
- v. Lessee “agrees that the standards for determining the appropriate appearance and safety of the premises shall be in the sole discretion of the Lessor” and that “failure to comply with the Lessor’s instructions to cure defaults in the then existing conditions of this property shall constitute a material breach and default of this Lease.”
- vi. Lessor has the right to “enter upon the demised premises at all reasonable times for the purpose of inspection of any portion thereof or for the purpose of making changes or alterations required by any existing or subsequent law.”
- vii. Lessee “agrees to comply with all required provisions of the Federal Aviation Act,” as amended (i.e., non-discrimination, etc.).
- viii. Lessee shall not paint, post or display any “signs or advertising matter . . . upon any portion of the leased premises” without the written consent of the Lessor.
- ix. Lessor “shall have the right to complain to the Lessee as to the demeanor, conduct and appearance of the Lessee’s employees, invitees and those doing business with it, whereupon the Lessee will take all steps necessary to remove the cause of the complaint.”
- x. Lessor “reserves the right to further develop and improve the landing are and/or facilities of the Cherry Capital Airport, including the premises herein demised, regardless of the desires or views of the Lessee in this regard, without interference or hindrances and free from any liability to the Lessee.”
- xi. Lessee is required to maintain insurance approved by the Lessor and with the Lessor named as an additional insured and liability limits as determined and approved by the Lessor.
- xii. Lessee is “prohibited from the storage of any and all flammable liquids or other hazardous materials” on the leasehold premises without the consent of the Lessor.
- xiii. “The Lessee shall pay when due all taxes and assessments levied on the leasehold premises during the term of this lease.”
- xiv. Lessee “shall not assign or transfer this lease, nor sublet any of the premises, including the buildings or improvements thereon . . . without the written consent and approval of the Lessor.”
- xv. Lessee shall not place or store “rubbish, waste material, garbage or other trash . . . on the premises in other than approved containers.”
- xvi. Lessor “agrees that the Lessee may place a mortgage upon the building constructed by the Lessee for the purpose of securing a loan or loans, in an amount not to exceed the certified construction costs of the improvement placed thereon.”

Although, the Lease provides Petitioner with the right to possess the hangar and dispose of it through both sale (i.e., re-assignment of the lease or sub-leasing) and removal, said disposal is limited as the re-assignment must be approved by the Lessor or, more specifically, the NRAC and the removal of hangars is, as indicated in prior such

cases, impractical and unlikely given the cost associated with such removal. In that regard, the Lease also provides that the hangars become NRAC's property upon termination of the Lease due to default, breach, and insolvency and that the NRAC can purchase the hangars upon the Lease's termination for any other reason or expiration. The purchase price, as determined through an appraisal process dictated by the Lease, would, however, be discounted by the hangars' useful life or remaining lease term, whichever is less.<sup>34</sup> As such, Petitioner may have "only one stick in the bundle of ownership sticks."<sup>35</sup>

With respect to the control issue, the items listed above do address control over the hangar by the NRAC. The majority of that control does, however, appear to relate more to airport operations than ownership of the hangars.<sup>36</sup> Nevertheless, those items have been found to constitute sticks within the bundle of sticks and must be treated as such. In that regard, the Tribunal in *Brasseur* stated, in pertinent part:

To determine control of the hangars we must look to the terms of the lease. Respondent relies heavily on *Mitchell Aero* as persuasive case law in this dispute and cites several analogous factors in both Petitioner's lease and *Mitchell Aero's* lease. Respondent argues that Petitioner does not pay rent for the use of the hangar, nor is he subject to rent increases, but he is responsible for upkeep and maintenance. Additionally, Respondent argues that the lessor does not control improvements made to the hangars[] or retain the right to increase insurance coverage. Finally, Respondent argues that Petitioner receives payment if the property was condemned, and finally that Petitioner has a full 30 years to recoup his investment for the two hangars, which provides the ability to amortize and recover his investment in the property. Respondent reasons that these factors provide Petitioner with virtually unlimited control over the hangars, and as such, Petitioner should be taxed accordingly.

In contrast, Petitioner argues when the "bundle of sticks" analogy is applied, the ownership of the hangar is vested in the Airport Authority because the lessor retained strict control over the plans and specifications

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<sup>34</sup> See also *Air Flite*, *supra* at 77-78.

<sup>35</sup> See *Eastbrook Homes, Inc v Treasury Dep't*, 296 Mich App 336, 348; 820 NW2d 242 (2012) (i.e., "[t]he union of all elements (as ownership, possession, and custody) constituting the legal right to control and dispose of property....") and *Adams v Cleveland-Cliffs Iron Co*, 237 Mich App 51, 57-59; 602 NW2d 215 (1999) (i.e., "which is usually understood to include '[t]he exclusive right of possessing, enjoying, and disposing of a thing").

<sup>36</sup> The *Mitchell Aero* court provided at 665:

Under this lease arrangement, some of the rights usually associated with ownership are in Aero and others are in the county . . . . Such control the county keeps over these hangars is **not** indicative of true ownership **but concerns the operation of the airport.** [Emphasis added.]

for the hangars prior to them being built. Further, the lessees do not have the full right and authority to sub-lease the hangars, as they may not assign or transfer their lease without the written consent of the lessor. The rent for the hangars was paid to the Airport through the construction costs of the building. Additionally, the lease limits the use of the premises for the construction, maintenance, and operation of airplane hangars and the storage of airplanes. Also, the lessor airport can take any actions it considers necessary to protect aerial approaches of the Airport against obstruction[] and can prevent the hangar lessees from erecting or permitting to be erected any building or other structure on the Airport that would constitute a hazard to the aircraft. Finally, the lease requires the lessees to “yield and deliver up” the hangars at the expiration of the 30-year lease term.

The Michigan Court of Appeals held in *Air-Flite* that **an airplane hangar constructed by a lessee pursuant to a lease was real property owned by the lessor airport commission based on the lessor having the overall right to control** the subject property. *Air-Flite*, 134 Mich App 73. Therefore, **in applying the *Air-Flite* rule to the instant case**, the airplane hangar built by the lessee Petitioner pursuant to a lease agreement with the Airport Authority becomes real property **with ownership ultimately vesting with the Airport Authority**.

[Emphasis added.]

Although the instant case is, as indicated in the prior case, more similar to *Air-Flite* than *Brasseur*, the control exercised or potentially exercised by the NRAC is, as detailed above, sufficient to support a conclusion that the NRAC has the “bulk” of sticks or, more specifically, overall control over the hangar and is the “ultimate” owner of the property at issue and not Petitioner.<sup>37</sup> As a result, the instant hangar is, contrary to Mr. Miller’s affidavit and testimony regarding Petitioner’s purported ownership of the hangar, owned by the NRAC and the hangar, along with the underlying leased land, is exempt from taxation under MCL 211.7m, which is also consistent with the Tribunal’s holding in other cases involving the Cherry Capitol Airport and the same leases, which all provided, in pertinent part:

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<sup>37</sup> **Unlike the *Brasseur* case**, Petitioner in this case pays rent that is subject to increases. Further, the lessor in this case controls improvements and retains the right to increase insurance coverage. As for the disposition of the hangars, Petitioner in this case is also required to “yield and deliver up” the hangars upon the expiration of the lease. Although the Lease in this case, unlike the *Brasseur* case, provides for the purchase of the hangars upon termination of the Lease, the purchase price upon expiration would be \$0.00, as indicated herein, resulting in same “yielding” and “delivery” of the hangars. **With respect to contentions relating to the mortgaging of the hangars and the payment of taxes**, the mortgage or promissory note resulted in a re-assignment of the lease for collateral purposes and the payment of taxes under a long-term lease, with or without an option to buy, is generally responsibility of the lessee and not the lessor.

In reviewing each provision above, **control of the building, its operation, and the operations allowed inside the building are clearly in the hands of the lessor.** As each right to control may be considered metaphorically a stick, **it is obvious that most of the sticks of ownership are clearly in the lessor's pile.** Accordingly, **lessor is the owner of the improvements,** which are exempt under MCL 211.7m, and the property is therefore exempt from ad valorem property tax. [Emphasis added.]

As also indicated in those cases, “[o]ur inquiry . . . does not end with this holding,” as the Tribunal is now required to determine whether the hangar was used as a concession or for commercial purposes. In that regard, both parties agree that the hangar was not used as a concession for the tax years at issue.<sup>38</sup> With respect to the hangar’s use for commercial purposes, the Court of Appeals did state, as indicated above, that: “The qualifying language [in MCL 211.181(1)] is not an exemption; **rather it defines the taxpayers on whom the lessee-user tax is imposed, i.e., lessees of tax-exempt property used in connection with businesses conducted for profit.**”<sup>39</sup> That statement was, however, made in a case that is no longer considered precedential, as the decision was issued in 1986.<sup>40</sup> Nevertheless, the decision in *Nomads* does not support Petitioner’s claim that the sole focus of MCL 211.181(1) is on whether Petitioner, as the tax paying entity, is “a business conducted for profit.” More specifically, the *Nomads* case involved a tax-exempt non-profit corporation that owned an airplane that was used by the members of the corporation for trips to places either not serviced or indirectly serviced by regular commercial flights, which resulted in a cost savings to the members. In the instant case, Petitioner is a for-profit corporation that owned at least two airplanes for the 2021 tax year and one airplane for the 2022 tax year. Further, only one of the two airplanes was actually housed in the hangar at issue for the 2021 tax year (i.e., the Cessna 1), while the other airplane (i.e., the Beechcraft Baron) was housed in another hangar for both the 2021 and 2022 tax years. Although Mr. Miller testified that neither airplane was used in connection with a business for profit, Mr. Miller’s testimony was, unfortunately, highly suspect and, as such, not credible. The testimony was, as indicated by the record, both misleading and conflicting. Nevertheless, the testimony revealed both the existence of a third airplane housed in the hangar at issue (i.e., the CJ Cessna) and that the airplane was, at least initially, owned by Mr. Miller and his son, C.J. Miller and not Petitioner for either tax year at issue.<sup>41</sup> Although Petitioner claims that Respondent, and not Petitioner, was required to demonstrate that the CJ Cessna was used in connection with a business for profit and

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<sup>38</sup> See TR at 36, which provides that:

Q: Are you a concessionaire?  
A: No.

See also TR at 120 and 133-134.

<sup>39</sup> See *Nomads*, *supra* at 55.

<sup>40</sup> See MCR 7.215(J)(1).

<sup>41</sup> Mr. Miller eventually testified that C.J. Miller became, at some point, the sole owner of the CJ Cessna.



that Respondent failed to so demonstrate, the evidence submitted by Respondent was un rebutted and sufficiently reliable to establish that the CJ Cessna was likely used in connection with C.J. Miller's employment with Miller Energy during the 2021 and 2022 tax years.<sup>42</sup> Additionally, Miller Energy was admittedly a for-profit business in which Mr. Miller, the sole member of Petitioner, is an owner, who would in fact directly benefit or, more specifically, profit from the use of the CJ Cessna by C.J. Miller on behalf of Miller Energy whether jointly owned by both Mr. Miller and C.J. Miller or C.J. Miller alone.

Based on the above, the Tribunal concludes that the NRAC owns the hangar, and that the property was used by Petitioner's sole member in connection with a business conducted for profit for the tax years at issue.<sup>43</sup> As a result, the property's exempt status and TV for the tax years at issue are as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

Further, regarding Respondent's Motion to Dismiss:

IT IS ORDERED that Respondent's Motion to Dismiss is DENIED.

IT IS FURTHER ORDERED that Respondent is HELD IN DEFAULT.

IT IS FURTHER ORDERED that Respondent shall, **within 21 days of the entry of this Order**, pay the \$50.00 fee required for the filing of their Motion to Dismiss.

### PROPOSED JUDGMENT

This is a proposed decision and not a final decision.<sup>44</sup> As such, no action should be taken based on this decision.

After the expiration of the time period for the opposing party to file a response to the exceptions, the Tribunal will review the case file, including the POJ and all exceptions and responses, if any, and:

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.

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<sup>42</sup> Mr. Miller testified that CJ Cessna was housed gratis, which is consistent with his admitted partial ownership of that airplane. Mr. Miller did, however, also testify that he had no knowledge as to who paid for the upkeep and fuel of the CJ Cessna and whether the airplane was utilized in connection with C.J. Miller's employment by Miller Energy "in the land department," which is inconsistent with Mr. Miller's role as an owner of Miller Energy and the flight logs for the CJ Cessna given the location of Miller Energy and their various land holdings throughout Michigan.

<sup>43</sup> See *Spartan Stores, Inc v City of Grand Rapids*, 307 Mich App 565, 569; 861 NW2d 347 (2014) citing *Fisher Sand & Gravel Co v Neal A Sweebe, Inc*, 494 Mich 543, 560; 837 NW2d 244 (2013) (i.e., "[w]hen ascertaining the Legislature's intent, a reviewing court should focus first on the plain language of the statute in question").

<sup>44</sup> See MCL 205.726.

2. Issue an FOJ modifying the POJ and adopting the Modified POJ as the final decision.
3. Issue an Order vacating the POJ and ordering a rehearing or such other action as is necessary and appropriate.

### **EXCEPTIONS**

This POJ was prepared by the Michigan Office of Administrative Hearings and Rules. The parties have 20 days from the below "Date Entered by Tribunal" to notify the Tribunal and the opposing party in writing, by mail or by electronic filing, if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). Exceptions are limited to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. There is no fee for filing exceptions.

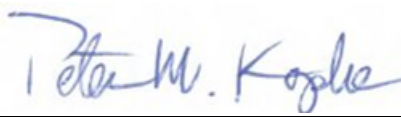
The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.<sup>45</sup>

A copy of a party's written exceptions or response must be sent by mail or electronic service, if agreed upon by the parties, to the opposing party and proof must be submitted to the Tribunal that the exceptions or response were served on the opposing party.

Exceptions and responses filed by *facsimile* will not be considered.

Entered: March 30, 2023

pmk

By 

### **PROOF OF SERVICE**

I certify that a copy of the foregoing was sent on the entry date indicated above to the parties or their attorneys or authorized representatives, if any, utilizing either the mailing or email addresses on file, as provide by those parties, attorneys, or authorized representatives.

By: Tribunal Clerk

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<sup>45</sup> See MCL 205.762(2) and TTR 289(1) and (2).