



GRETCHEN WHITMER
GOVERNOR

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
LANSING

ORLENE HAWKS
DIRECTOR

Michiana Recycling & Disposal Services Inc,
Petitioner,

MICHIGAN TAX TRIBUNAL

v

MOAHR Docket No. 21-003440

Michigan Department of Treasury,
Respondent.

Presiding Judge
Jason C. Grinnell

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

This case involves the application of the “rolling stock” exemption from the Michigan Use Tax Act¹, specifically whether Petitioner is an “interstate fleet motor carrier” as defined by MCL 205.94k(6)(d). The Tribunal issued a Scheduling Order on February 2, 2022, indicating that the filing deadlines for motions for summary disposition in the above-captioned case was June 24, 2022. Each party filed a Motion for Summary Disposition on that date, and each party filed a response opposing the other’s Motion on July 22, 2022.

The Tribunal has reviewed the Motions, responses, and the evidence submitted and finds that granting Respondent’s Motion under MCR 2.116(C)(10) and denying Petitioner’s Motion is warranted at this time.

¹ MCL 205.91 *et seq.*

PETITIONER'S CONTENTIONS

In support of its Motion, Petitioner contends that it is entitled to an exemption from use tax because its trucks are “rolling stock used in interstate commerce and purchased, rented, or leased by an interstate fleet motor carrier.”² “‘Rolling stock’ means a qualified truck, a trailer designed to be drawn behind a qualified truck, and parts or other tangible personal property affixed to or to be affixed to and directly used in the operation of either a qualified truck or a trailer designed to be drawn behind a qualified truck.”³ “‘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.”⁴ Petitioner contends it is a licensed for-hire solid waste hauler that transports its customers’ waste not its own waste. Pursuant to Petitioner’s commercial service agreement, effective January 1, 2014, Petitioner did not ever take title to the non-recyclable waste and did not take title to the recyclable waste until after transportation was complete and the recyclables were processed at the recycling facility. Petitioner contends that the contract language controls to prove that it merely transported its customers’ solid waste for delivery to processing and disposal by a landfill. Petitioner’s trucks meet each of the rolling stock statutory requirements for the tax periods at issue, and therefore, are exempt from use tax. Petitioner was licensed as an Interstate Motor Carrier For-Hire by the United States Department of Transportation Federal Motor Carrier Safety Administration.

² MCL 205.94k(4).

³ MCL 205.94k(6)(i).

⁴ MCL 205.94k(6)(d).

RESPONDENT'S RESPONSE TO PETITIONER'S CONTENTIONS

Respondent contends that Petitioner's motion must be denied because it cannot demonstrate that it is an interstate fleet motor carrier. Petitioner is not an interstate fleet motor carrier because the "primary purpose" of its business is not the transportation of persons or property for hire across state lines. Petitioner is also not an interstate fleet motor carrier because the statute requires that the property transported must belong to another, which is not the case here. In addition, Petitioner has failed to account for the portion of the determined deficiency that relates to property that would not meet the definition of rolling stock, requiring a hearing to determine how much of the assessments at issue relate to property that actually meets the definition of rolling stock.

RESPONDENT'S CONTENTIONS

Respondent contends that Petitioner's purchases of trucks, containers, repair parts, and tools are taxable as the use and storage of tangible personal property. Because the property was used and stored within Michigan, the vehicles were subject to use tax. Petitioner does not meet the definition of an interstate fleet motor carrier under the Use Tax Act and therefore, its purchases during the audit period do not qualify for the rolling stock exemption. 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 year.

The Michigan Court of Appeals has interpreted the definition of interstate fleet motor carrier as limiting the rolling stock exemption to those persons whose "primary purpose" of their business is the transportation of persons or property for hire across

state lines.⁵ Even if a taxpayer carries its customers' property, if that is incidental to the primary business purpose, the taxpayer is not eligible to claim the rolling stock exemption.⁶ Respondent contends Petitioner is a garbage collection, garbage disposal, and recycling company providing trash collection services to customers in Michigan and Indiana. Petitioner's customers pay it to get rid of trash, not to transport the property of others across state lines.

Despite its contention that the trash belongs to the customer during transport, Petitioner has previously represented that its operation classification is "private property", meaning it transports its own cargo. Consistent with ownership, Petitioner takes responsibility for the property while hauled. It is responsible for any littering citations received if trash falls off a truck and is subject to environmental regulations on waste hauling. Further, Petitioner owns the property when it picks it up and reclaims it by law of abandonment.

Respondent seeks summary disposition under MCR 2.116(C)(10). Specifically, Respondent contends that there is no genuine issue of material fact bearing on whether the property at issue is subject to use tax and is not exempt rolling stock.

PETITIONER'S RESPONSE TO RESPONDENT'S CONTENTIONS

Petitioner contends that Respondent is arguing a prior case argued before the Tribunal in Docket No. 14-000388. The decision in that case held that Petitioner's rolling stock was exempt only when used to transport solid waste belonging to others. The Tribunal found that certain roll-offs and rolling stock that were used to carry the roll-off

⁵ *Midwest Power Line, Inc v Dep't of Treasury*, 324 Mich App 444; 921 NW2d 543 (2019).

⁶ *Id.*

containers were exempt because Petitioner was transporting the property of others. At that time Petitioner's contracts with its commercial customers contained a boilerplate provision stating that Petitioner took title to the waste, so the Tribunal held that Petitioner's rolling stock was not exempt when transporting waste for commercial customers. The Tribunal also held that Petitioner's residential contracts should be treated the same as the commercial contracts. After this decision Petitioner revised its contracts so that title and ownership on non-recyclable materials remained with the customer until transported, delivered, and accepted by the final disposal facility and title and ownership of the recyclable materials passed from customer after transportation, delivery, and processing at the recycling facility.

Petitioner contends that it does not own a landfill and does not dispose of waste. Rather, its primary business is picking up and transporting its customers' waste from its customers' properties to landfills operated by others. Thus, its primary business is transporting waste owned by others.

Petitioner contends that Respondent's attempt to limit the exemption to common carriers is improper and unlawful. Petitioner also contends that the common law of abandonment, and the law of search and seizure do not apply when there is a specific contractual provision that applies.

STANDARD OF REVIEW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a

decision on such motions.⁷ In this case, Petitioner and Respondent each move for summary disposition under MCR 2.116(C)(10).

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.⁸

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.⁹ The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider.¹⁰ The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists.¹¹ Where the burden of proof at trial on a dispositive issue rests on a non-moving party, the non-moving 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.¹² If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted.¹³

⁷ See TTR 215.

⁸ See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999).

⁹ See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)).

¹⁰ See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994).

¹¹ *Id.*

¹² See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991).

¹³ See *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1993).

CONCLUSIONS OF LAW

The Tribunal has carefully considered the parties' Motions under MCR 2.116 (C)(10) and finds that granting Respondent's Motion and denying Petitioner's Motion is warranted.

The Tribunal finds that there is no genuine issue of material fact that Petitioner is not in the business of carrying property other than their own property for hire across state lines, and therefore, does not meet the definition of interstate fleet motor carrier under the Use Tax Act and its purchases do not qualify for the rolling stock exemption. Under MCL 205.94k(4), rolling stock purchased by an interstate fleet motor carrier is exempt from use tax. An interstate fleet motor carrier is defined as 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.¹⁴ The Court of Appeals in *Midwest Power Line, Inc v Dep't of Treasury* found an interstate fleet motor carrier is "a business that is particularly engaged in providing transportation for hire."¹⁵ There, the Court found the Plaintiff was in the business of providing maintenance services to electrical companies and that transportation was incidental to its primary purpose, therefore, it did not meet the definition of interstate fleet motor carrier. While not directly on-point, the Tribunal finds this case applicable here. It is clear from Petitioner's website and internet search engines that Petitioner's primary purpose is as a garbage dump service or recycling and waste hauler, and that the transportation of garbage is

¹⁴ MCL 205.94k(6)(d).

¹⁵ *Midwest Power Line*, 324 Mich App 444.

incidental to its disposal. While Petitioner's updated contracts now state that the garbage remains the property of the customer until it is disposed of, it is understood that once someone puts garbage in a container for disposal, they are relinquishing their ownership of that property. This is evidenced by the fact that the garbage is comingled with other customers' garbage and the customers typically have no say in where the garbage is taken. In addition, Petitioner maintains the right to sell and profit from the recyclables it collects and does not share those profits with its customers. While Petitioner cites a few examples of instances where customers have asked to retrieve something that was placed in the garbage by accident, these instances are not common, and are exceptions to the presumption that customers generally do not know or care what happens to the garbage after it is picked up by the garbage hauler. Petitioner's customers hire it to haul and dispose of their garbage, not to transport the garbage across state lines.

Similarly, the Appellate Court of Illinois found that a garbage hauler could not claim a rolling stock exemption as it was a "private carrier" and not a "carrier for hire" in *XL Disposal Corporation, Inc. v Zehnder*.¹⁶ While this case is not applying a Michigan statute, the facts and the statute are similar as the Plaintiff is a garbage hauler who was denied a rolling stock deduction because they did not meet the definition of a "carrier for hire". Like Petitioner, the plaintiff used its vehicles and equipment to pick up garbage from its customers, separate out recyclables at one of its transfer stations, and take the garbage to final disposal sites, either recycling facilities or landfills it did not own. The statute at issue in this case is as follows:

¹⁶ *XL Disposal Corporation, Inc. v Zehnder*, 304 Ill App 3d 202 (1999).

“Multistate exemption. To prevent actual or likely multistate taxation, the tax imposed by this Act does not apply to the use of tangible personal property in this State under the following circumstances:

* * *

(c) The use, in this State, by owners, lessors, or shippers of tangible personal property that is utilized by interstate carriers for hire for use as rolling stock moving in interstate commerce as long as so used by the interstate carriers for hire.”

The court in *XL Disposal Inc* found that the plaintiff provided garbage removal for its customers, not garbage shipping and that hauling garbage to landfills or recyclers was part of the company’s business but did not make it a “carrier for hire”. Customers did not contract to have their garbage shipped to a specific location.¹⁷

Lastly, Petitioner argues that a prior Tribunal decision found that certain roll-off containers and rolling stock used to carry the roll-off containers were exempt because Petitioner was transporting the property of others. However, “[a] proceeding before the tribunal is original and independent and is considered de novo.”¹⁸ Although certain roll-off containers transported by Petitioner are owned by their customers, the Tribunal finds transportation of these containers is incidental to Petitioner’s primary business of waste hauling when viewing Petitioner’s business as a whole. Even if a taxpayer carries its customers’ property, if that is incidental to the primary business purpose, the taxpayer is not eligible to claim the rolling stock exemption.¹⁹

¹⁷ *Id.*

¹⁸ MVL 205.735a(2).

¹⁹ *Midwest Power Line* 324 Mich App at 447.

Based on the facts and evidence presented in this case together with the established caselaw, the Tribunal finds that there is no genuine issue of material fact that Petitioner was not engaged in business as an “interstate fleet motor carrier” within the meaning of MCL 205.94k and therefore, is not entitled to the rolling stock exemption for the tax periods at issue.

JUDGMENT

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

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

IT IS FURTHER ORDERED that Assessment Numbers VA2QK8B, VA2QK8C, VA2SK6B, and VA2SK6C are AFFIRMED.

This Final Opinion and Judgment resolves the last pending claim and closes the case.

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.

Entered: January 24, 2023
ssm/jcg

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