

STATE OF MICHIGAN
DEPARTMENT OF LICENSING AND REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

JF Ventures,
Petitioner,

v

MTT Docket No. 461233

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT’S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

On August 13, 2014, Respondent filed a motion under MCR 2.116(C)(10) requesting that the Tribunal enter summary judgment in its favor in the above-captioned case. More specifically, Respondent contends that use tax is owed on the purchase of the subject yacht because the presumption of taxation under MCL 205.93(1)(a) arose when the yacht entered Michigan less than 90 days from the purchase and that the transaction is not exempt from taxation.

Petitioner did not file a response to the Motion.

The Tribunal has reviewed the Motion and the evidence submitted and finds that granting Respondent’s Motion for Summary Disposition is warranted at this time.

RESPONDENT’S CONTENTIONS

In support of its Motion, Respondent contends that the subject yacht was brought into Michigan within days of its purchase. To support this contention Respondent provided the Sales Contract for the purchase and the service records for the yacht listing the yacht’s delivery date. Respondent contends that the yacht was used “in Michigan during June, July, August, and September of 2005” Motion at 8.

Respondent also contends that Petitioner failed to register the yacht with the Michigan Secretary of State, as required, and at which time the use tax would have been collected. “There is abundant evidence showing that Petitioner . . . used the yacht in Michigan.” Motion at 9. Respondent contends that the presumption of taxation under MCL 205.93(1)(a) applies because the yacht was brought into Michigan within a week of its purchase. Further, it was used, stored, and repaired in Michigan. Respondent cites to *Master Craft Engineering Inc v Dep’t of Treasury*, 141 Mich App 56, 71-72; 366 NW2d 235 (1985) to state that bringing the subject yacht into Michigan for repairs is sufficient to trigger the presumption of taxation.

Respondent further contends that the yacht is not exempt from taxation. First, Respondent states that the use cannot be defined as temporary because “it was used in Michigan for most, if not all, of the next four months Those months . . . comprise nearly 100% of the year when a yacht like this can be actively used in Michigan.” Motion at 9. See also MCL 205.94(1)(d). Further, Respondent contends that Petitioner did not pay any sales or use tax to any state or country so there is no offset or exemption. MCL 205.94(1)(a) and (e). “Petitioner, vaguely and without any factual or legal support, implies that no tax is due because the entity was formed in another country. Michigan’s use tax has no such exemption” Motion at 10.

APPLICABLE LAW

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. See TTR 215. In this case, Respondent moves 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. See *Smith v Globe Life Ins Co*, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under (C)(10) will be denied. See *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

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. See *Quinto v Cross and Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting its position by presenting its documentary evidence for the court to consider. See *Neubacher v Globe Furniture Rentals, Inc*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id.* Where the burden of proof at trial on a dispositive issue rests on a 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. See *McCart v J Walter Thompson USA, Inc*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. 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 Respondent's Motion under MCR 2.116 (C)(10) and finds that granting the Motion is warranted because the subject property, the 2005 Sunseeker

Manhattan yacht, was brought into Michigan within 90 days of purchase thereby subjecting the property to the presumption of taxation. The presumption of taxation has not been rebutted by Petitioner. In addition, Petitioner has not demonstrated that it is entitled to any exemption from taxation, and as such, summary disposition is warranted.

Pursuant to MCL 205.93 tax shall be levied “for the privilege of using, storing, or consuming tangible personal property in this state” ““The use tax complements the sales tax and was designed to govern those transactions not covered by the General Sales Tax Act.””

Podmajersky v Dep’t of Treasury, 302 Mich App 153, 162-63; 838 NW2d 195 (2013), quoting *Guardian Indus Corp v Dep’t of Treasury*, 243 Mich App 244, 249; 621 NW2d 450 (2000).

There is a rebuttable presumption that “tangible personal property is subject to the tax if brought into this state within 90 days of the purchase date and is considered as acquired for storage, use, or other consumption in this state.” MCL 205.93(1)(a). This presumption does not require that Respondent establish Petitioner’s subjective intent to bring the property within the state, only that the property was brought into the state. See *Podmajersky, supra* at 166. There is also a presumption that the property was not purchased for use, storage, or consumption in Michigan if the property is brought to Michigan after a certain number of days (90 days for non-residents and 360 days for residents). MCL 205.93(1)(b). Petitioner contends that the temporary use exemption applies. This exemption states that property is exempt from taxation if it “is brought into this state by a nonresident person for storage, use, or consumption while temporarily within this state, except if the property is used in this state in a nontransitory business activity for a period exceeding 15 days.” MCL 205.94(1)(d).

Presumption of Taxation under MCL 205.93(1)(a)

The Tribunal finds that the presumption of taxation under MCL 205.93(1)(a) arose when the subject yacht entered this state in June 2005. The sales contract for the purchase of the yacht is dated April 15, 2005, and reflects that no sales tax was added to the purchase price.¹ The service records indicate that the yacht was delivered to Jefferson Beach Yacht Sales (“JBYS”) on June 3, 2005. The Michigan Court of Appeals has held that the mere physical presence of property in this state is sufficient to give rise to the presumption of taxation. See *Podmajersky*, *supra* at 166. As such, the Tribunal finds that the presumption of taxation arose when the yacht was delivered to JBYS only 49 days after its purchase. In addition, Petitioner acknowledges that the presumption against taxation does not apply. See Letter dated July 27, 2012.

The service records indicate that the yacht remained in the state until at least September 2005. Petitioner’s attempt to clarify the JBYS service records states that Respondent confuses actual service dates with work order dates. “For instance, the work order created on October 26, 2005 is actually for service performed on August 24, 2005.” Letter dated July 27, 2012 at 1. However, the Tribunal has reviewed the records and finds numerous work orders and service dates ranging from June to September, including many checks for leaks and other various problems which demonstrate usage of the yacht.² Like the Court of Appeals held in *Podmajersky*, *supra*, “the presumption of taxation arose as soon as the [yacht] entered Michigan, which petitioner[] failed to rebut. The record contains competent, material, and substantial evidence that the [yacht] was both used and stored in Michigan Therefore, the [yacht] is subject to use tax unless otherwise exempt.” *Id.* at 167.

¹ Although the address on the sales contract is a Michigan address, Petitioner’s response to Respondent’s inquiry indicates that the yacht was “acquired” in Canadian waters. Letter dated March 19, 2012.

² For example on 8/17/05 a work order was created for “[d]oor stop on master bedroom has snapped off” with work being done on 8/22/05. JBYS Service Records at 8.

Exemption from use tax under MCL 205.94(1)(a) and (e)

“The use tax complements the sales tax and was designed to govern those transactions not covered by the General Sales Tax Act.” *Podmajersky supra*, at 162-63. As such, MCL 205.94(1)(a) and (e) provide exemptions if sales or use tax has been paid on the property to Michigan or another state. “Tax exemptions are disfavored, and the burden of proving an entitlement to an exemption is on the party claiming the right to the exemption.” *Guardian Indus Corp, supra* at 249, citing *Elias Bros Restaurants, Inc v Dep't of Treasury*, 452 Mich 144, 150; 549 NW2d 837 (1996). In this case, Petitioner has presented no evidence that tax of any kind or in any amount has been paid on the purchase of the subject yacht. Rather, the sales contract indicates that no tax was added to the purchase price. As such, the Tribunal finds that the subject is not exempt from taxation under MCL 205.94(1)(a) or (e).

Exemption from use tax under MCL 205.94(1)(d)

In its responses to Respondent, Petitioner contended that the yacht was exempt from taxation under MCL 205.94(d) which states “[p]roperty that is brought into this state by a nonresident person for storage, use, or consumption while temporarily within this state, except if the property is used in this state in a nontransitory business activity for a period exceeding 15 days.” MCL 205.94(d). As indicated above, tax exemptions are generally disfavored and strictly construed in favor of the taxing authority. See *Guardian Indus Corp, supra* at 249.

While it is clear that a corporation organized under the laws of another country would be a “non-resident” there is no evidence that the storage, use, or consumption of the yacht in Michigan was “temporary.” The Tribunal finds that Petitioner has failed to bring any evidence or respond in any way to the discovery requests or Motion at issue in this case to meet its burden of

proving its entitlement to the exemption.³ On the other hand, Respondent has presented reliable evidence demonstrating that the yacht was located and used in Michigan for the majority of the 2005 Michigan boating season. See JBYS Service Records. Although Petitioner contends that the yacht arrived in Florida in September 2005 and did not return to Michigan, Petitioner failed to submit any documentation or evidence to support this contention. Moreover, the Tribunal finds that the service records reliably rebut the contention that the yacht was only temporarily in Michigan waters for the purposes of its voyage to its final destination of Florida. More specifically, and as discussed above, the service records demonstrate service in Michigan on dates ranging from June 2005 to September 2005. This timeframe and usage in Michigan is not temporary in nature. As such, the Tribunal finds that the record contains competent, material, and substantial evidence that the yacht was not “temporarily” in Michigan and is not entitled to an exemption under MCL 205.94(1)(d).

Conclusion

The Tribunal finds Respondent’s Motion under MCR 2.116 (C)(10) shall be granted. Respondent has submitted reliable documentary evidence to demonstrate that the subject property, the 2005 Sunseeker Manhattan yacht, was brought into Michigan within 90 days of purchase raising the presumption of taxation under MCL 205.93(1)(a). The presumption of taxation has not been rebutted by Petitioner. In addition, Petitioner has not demonstrated that it is entitled to any exemption from taxation, and as such, the assessment shall be affirmed.

³ In addition to failing to respond to discovery request and Respondent’s Motion for Summary Disposition, Petitioner has failed to comply with the Tribunal’s Orders in this case. More specifically, on May 30, 2014, respondent filed a Motion to Compel which was granted by the Tribunal on June 3, 2014. Petitioner did not comply with this Order and failed to serve Respondent with its responses to the discovery requests. The Tribunal again Ordered Petitioner to respond to the discovery requests on July 22, 2014, in its Prehearing Summary Order. Petitioner also failed to properly comply with the Tribunal’s June 3, 2014, and July 22, 2014 Orders to file its Prehearing Statement. While Petitioner did submit a copy via facsimile, the Tribunal’s rules do not permit the filing of documents via fax.

JUDGMENT

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

IT IS FURTHER ORDERED that Assessment Number TQ22534 is AFFIRMED.

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

By: Steven H. Lasher

Entered: Oct 23, 2014
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