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

Air Services Inc,
Petitioner,

v

MTT Docket No. 16-000031

City of Traverse City,
Respondent.

Tribunal Judge Presiding
Valerie Lafferty

FINAL OPINION AND JUDGMENT

The Tribunal issued a Proposed Opinion and Judgment ("POJ") on July 12, 2017. 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)."

Neither party has filed exceptions to the POJ.

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.[1] 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. 28-51-898-459-00 shall be granted an exemption under MCL 211.181(2)(b) for the 2014-2017 tax years; the amount of the exemption is 100%.

The property's TV, as established by the Board of Review for the tax years at issue, is:

Parcel Number: 28-51-898-459-00

Year	TV
2014	$472,400
2015	$458,900
2016	$460,276
2017	$464,418

The property's final TV, as determined by the Tribunal for the tax years at issue, is:

[1] See MCL 205.726.

Parcel Number: 28-51-898-459-00

Year	TV
2014	$0
2015	$0
2016	$0
2017	$0

IT IS SO ORDERED.

IT IS ORDERED that the officer charged with maintaining the assessment rolls for the tax year(s) 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.2 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, 2009, at the rate of 1.23% for calendar year 2010, (ii) after December 31, 2010, at the rate of 1.12% for calendar year 2011, (iii) after December 31, 2011, through June 30, 2012, at the rate of 1.09%, (iv) after June 30, 2012, through June 30, 2016, at the rate of 4.25%, (v) after June 30, 2016, through December 31, 2016, at the rate of 4.40%, (vi) after December 31, 2016, through June 30, 2017, at the rate of 4.50%, and (vii) after June 30, 2017, through December 31, 2017, at the rate of 4.70%.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this 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 required filing fee within 21 days from the

2 See MCL 205.755.

date of entry of the final decision.[3] 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.[4] A copy of the motion must be served 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.[5] Responses to motions for reconsideration are prohibited and there are no oral arguments unless otherwise ordered by the Tribunal.[6]

A claim of appeal must be filed 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."[7] A copy of the claim must be filed with the Tribunal with the filing fee required for certification of the record on appeal.[8] The fee for certification is $100.00 in both the Entire Tribunal and the Small Claims Division, unless no Small Claims fee is required.[9]

By Valerie Lafferty

Entered: August 14, 2017
ejg

[3] See TTR 261 and 257.
[4] See TTR 217 and 267.
[5] See TTR 261 and 225.
[6] See TTR 261 and 257.
[7] See MCL 205.753 and MCR 7.204.
[8] See TTR 213.
[9] See TTR 217 and 267.

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

Air Services, Inc,
Petitioner,

v

MTT Docket No. 16-000031

City of Traverse City,
Respondent.

Administrative Law Judge Presiding
Peter M. Kopke

PROPOSED OPINION AND JUDGMENT

INTRODUCTION

Petitioner appealed the denial of its request by Respondent's 2015 December Board of Review for an exemption from ad valorem property taxes under MCL 211.181(2)(b) for Parcel No. 28-51-898-459-00 for the 2014 and 2015 tax years. Although no motions to amend were filed, the property's assessments for the 2016 and 2017 tax years are "added automatically to the petition" once the assessment for the subsequent tax year is established and the assessments for those tax years have been established.[1] Thomas A. Pezzetti Jr., Attorney, represented Petitioner and Richard J. Figura and Timothy Figura, Attorneys, represented Respondent.

A hearing on this matter was held on May 4, 2017. Petitioner's witness was Roy C. Nichols. Respondent did not call any witnesses.

As established by Respondent's March Board, the true cash value ("TCV"), assessed value ("AV"), and taxable value ("TV") of the subject property for the tax years at issue are as follows:

Parcel Number: 28-51-898-459-00

Year	TCV	AV	TV
2014	$944,800	$472,400	$472,400
2015	$917,800	$458,900	$458,900
2016	$973,000	$486,500	$460,276
2017	$994,400	$497,200	$464,418

Based on the evidence, the case file and applicable law, the Tribunal finds that the property is exempt from ad valorem taxation under MCL 211.181(2)(b) for the tax years at issue

[1] See MCL 205.737(5)(a).

as the hangar was and is operated as a concession at a public airport and, as such, the property's TCV, state equalized value ("SEV"), and TV for those tax years are also as follows:

Parcel Number: 28-51-898-459-00

Year	TCV	SEV	TV
2014	$944,800	$472,400	$0.00
2015	$917,800	$458,900	$0.00
2016	$973,000	$486,500	$0.00
2017	$994,400	$497,200	$0.00

PETITIONER'S CONTENTIONS

Petitioner contends that the evidence presented in this case supports a determination that the subject property is exempt from ad valorem taxation under either MCL 211.7m or 211.181(2)(b). Specifically, Petitioner contends[2] that (i) Petitioner "leases certain real property located at Cherry Capital Airport in Traverse City . . . from the designated airport controller Northwest Regional Airport Commission ('NRAC')," [3] (ii) "the evidence presented at the Hearing clearly demonstrated that Petitioner's property is exempt from taxation for the following reasons: (a) Petitioner's Lease Property and the Hangar located thereon are 'owned' by the NRAC under Michigan Law and thus are exempt under MCL 211.7m; and (b) Petitioner falls under the 'Public Airport Concession' exemption from taxation under MCL 211.181(2)(d)," [4] (iii) "[t]his Tribunal has already confirmed NRAC's exemption under the GTPA in service prior decisions . . . . [f]or example in *Roethlisberger v City of Traverse City* . . . this Tribunal concluded that, '[i]t is . . . undisputed that the leased land upon which the hangar is located is, given the NRAC's ownership of the land, exempt from taxation under MCL 211.7m . . . [a]dditionally, in the *Roethlisberger* case . . . . this Tribunal concluded that '. . . the controlled exercise by the NRAC is sufficient to support a conclusion that the NRAC has the ['majority of

[2] Although Petitioner made an opening statement (see Transcript ("TR.") 4-6), Respondent requested the opportunity for the parties to submit post-hearing briefs and said request was granted (see TR. 70-2). In that regard, Petitioner submitted a post-hearing brief on May 16, 2017, and a response on May 30, 2017. The post-hearing and response brief summarize the facts purportedly established by the testimony provided and exhibits admitted and Petitioner's legal arguments in support of its contention. See also Petitioner's January 12, 2015 petition, the March 8, 2017 Prehearing Summary, and Petitioner's May 1, 2017 Pre-trial brief.

[3] Petitioner also indicates that the "Cherry Capital Airport is owned by Grand Traverse and Leelanau Counties as Tenants in Common, and both counties are defined as political subdivisions of the State of Michigan . . . [and] [i]n 1971 . . . together with the City of Traverse City, formed the NRAC and granted it authority to operate a public airport . . . ."

[4] Petitioner also indicates that "Petitioner is not required to meet both exemptions in order to be considered tax exempt for purposes of this case."

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 . . . . [a]s a result, the property was exempt from taxation under MCL 211.7m,"[5] (iv) "the evidence clearly established that the control exercised by the NRAC over the Leased Property and the Hangar (collectively the 'Property') . . . [is] sufficient to support a conclusion that the NRAC has the 'bulk of sticks' (overall control) and is therefore the ultimate owner of the property at issue, and thus the Property is exempt under MCL 211.7m,"[6] (v) the Lease "allowed Petitioner to use the property only for purposes of carrying on an aircraft charter, aviation management, aircraft sales and storage, and maintenance business (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 4, Petitioner's Exhibit 6, First Amendment to Lease, Paragraph 4),"[7] (vi) the Lease "provides that the construction of the Hangar on the Leased Property has to be built to airport specifications, must be completed in the time frame set forth by [the] NRAC, and is subject to continuing review, approval, and inspection (See Petitioner's Exhibit 3, Airport Property Lease, Paragraphs 5, 7, 9, and 26) . . . . [a]dditionally, the Lease provides that Petitioner must comply with the notification review requirements covered in Part 77 of the Federal Aviation Regulations in the event there are any structures planned prior to approval of the building of the Hangar, or in the event of any planned modification or alteration of the Hangar in the future (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 9N)," (vii) the Lease "provides that, upon termination of the Lease, the Hangar shall become the property of the NRAC (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 4)," (viii) the Lease "provides that the airport has the right to retain the Hangar for no charge upon breach of the Lease by Tenant (See Petitioner's Exhibit 3, Airport Property

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[5] The Tribunal concluded hearings and rendered decisions in six other "hangar" cases (i.e., MTT Docket Nos. 16-000007 (Foerster), 16-000053 (Stevenson), 16-000055 (Landes), 16-000102-R (Anderson), 16-000106 (Roethlisberger), and 16-000133 (Kalember)). The underlying issue in those cases related to the exemption of hangars used for private, non-commercial purposes under MCL 211.7m. Further, those cases were pending and resolved in the Tribunal's Small Claims Division and, as a result, the decisions rendered in those cases have no precedential value, as they were not designated a precedent by the Tribunal. See MCL 205.765. In that regard, Petitioner also indicated that "each of those . . . [six] cases were adjudicated . . . so that the hangars were determined to be tax exempt based on the bundle of sticks analysis."

[6] Petitioner cites the decision issued by the Tribunal in *Brasseur v Rutland Charter Township* on February 5, 2004 (MTT Docket No. 292326), which relied on a decision issued by the Wisconsin Supreme Court issued in *Mitchell Aero, Inc v Milwaukee*, 42 Wis 2d 656; 168 NW2d 183 (1969). Petitioner also cites *Skybolt Partnership v City of Flint*, 205 Mich App 597, 600; 517 NW2d 838 (1994), *Golf Concepts v City of Rochester*, 217 Mich App 21, 33; 550 NW2d 803 (1986), and *Air Flite and Serv-A-Plane v Tittabawassee Township*, 134 Mich App 73, 77-8; 350 NW2d 837 (1984) in support of its contentions.

[7] Petitioner also indicated that any change to the "specified aeronautical purposes . . . requires the NRAC's consent."

Lease, Paragraphs 11 and 12) or the insolvency or bankruptcy of Tenant (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 11)," (ix) "[t]he Lease provides that [the] NRAC requires the Petitioner's use of the Hangar be subject to the airport's 'Minimum Standards for Aeronautical Activities for the Cherry Capital Airport,' which standards strictly govern hours of operation, personnel, hangar, construction standards, and required square footage allotments, and public access for all commercial aviation uses (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 8; Petitioner's Exhibit 6, First Amendment to Lease Agreement, Section B; and Petitioner's Exhibit 5, Minimum Standards)," (x) "[t]he Lease provides that Petitioner cannot assign the Leased Property or the Hangar without [the] NRAC's approval (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 16) . . . . [which] also applies to the transfer of corporate control or 50% or more of the outstanding voting stock of Petitioner (*Id.*)," (xi) "[t]he Lease provides that [the] NRAC has the unilateral right to mandate increases in required insurance carried by Petitioner (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph (j)," (xii) "[t]he Lease provides that [the] NRAC has the right to unilaterally mandate increases in rent (increase up to 50%) under certain circumstances (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 10)," (xiii) "[t]he Lease is for twenty (20) years, with no automatic right of Tenant to renew (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 2)," (xiv) "[t]he Lease provides that the Leased Property and Hangar shall not be used for any purpose, which in the sole opinion of the NRAC, may interfere with the proper use of the airport by others (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 4)," (xv) "[t]he Lease provides that the Lessor has the right to inspect the Lease[d] Property and the Hangar at all reasonable times (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 7) . . . . [and] Petitioner's President Roy C. Nichols testified that both the NRAC and the FAA regularly conduct inspections of the Leased Property and the Hangar (Hearing Transcript Pages 25 through 27)," (xvi) "[t]he Lease provides that the Lessor shall have the right to complain to Petitioner as to the demeanor, conduct, and appearance of Petitioner's employees, invitees, and guests, wherein the Petitioner is required to remove the cause of the complaint (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 9d)," (xvii) "[t]he Lease provides that the NRAC reserves the right to further develop and improve the landing areas and/or facilities of the Cherry Capital Airport, including the Leased Property and Hangar, regardless of the desires or views of the Petitioner,

without interference or liability to Petitioner (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 9f)," (xviii) "[t]he Lease reserves to the NRAC, for the use and benefit of the public, the right of flight for the passage of aircraft in the airspace above the Leased Property and Hangar, including the right to cause noise and other nuisances (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 9l)," (xix) "[t]he Lease provides that the NRAC has the unilateral right to acquire the Hangar at any time during the Lease Term at a discounted rate from Petitioner (See Petitioner's Exhibit 3, Airport Property Lease, Paragraph 25)," (xx) "Michigan case law clearly states that the term 'concession' in connection with airport use is interpreted broadly by the courts provided that the use is open to the public, lessee is subject to certain minimum standards imposed by the airport, and the use facilitates the operation of the airport as determined by the airport,"[8] (xxi) "[h]ere, while Petitioner runs an aeronautical business that provides services to the general public through its aircraft charter, aviation management, aircraft sales, storage, and maintenance business . . . . Petitioner also provides medical flights, organ transplant flights, repair and maintenance of other aircraft (including other national air carriers," (xxii) "Petitioner has been certified as an air carrier by the U.S. Department of Transportation Federal Aviation Administration under Federal Aviation Administration Part 135 (which governs unscheduled airline available for public use (See Petitioner's Exhibit 5, FAA Air Carrier Certificate – Unscheduled Airline Available for Public Use)," (xxiii) "[t]aken as a whole . . . the NRAC clearly maintains the majority of [the] 'bundle of sticks' with regard to the Leased Property and the Hangar . . . . operates a for profit business and provides services that are open to the general public through its aircraft charter, aviation, storage, and maintenance business . . . . [and] the NRAC maintains sufficient control over the Petitioner's Leased Property and Hangar so that Petitioner's Leased Property is deemed a 'concession' under Michigan Law," (xxiii) "the Minimum Standards . . . (Petitioner's Exhibit P4), which Petitioner is expressly required to follow pursuant to the Airport Property Lease dated April 4, 2006 (Petitioner's Exhibit P3), and the First Amendment to Airport Lease dated May 26, 2009 (Petitioner's Exhibit P6), govern all aspects of Petitioner's business . . . [which] includes hours of operation,

[8] Petitioner cites *Aero Realty Corp v Clinton County*, 73 Mich App 102; 250 NW2d 559 (1977) and *Kent County v City of Grand Rapids*, 381 Mich 640; 167 NW2d 287 (1969) in support of this contention. Respondent also cites *Detroit v Tygard*, 381 Mich 271; 161 NW2d 1 (1968) and *American Golf of Detroit v City of Huntington Woods*, 225 Mich App 226; 570 NW2d 469 (1997).

personnel, hangar construction standards, required square footage allotments, public access for all commercial aviation uses, insurance requirements, operational requirements, subleasing restrictions, licenses, and certification requirements . . . . [a]dditionally, Petitioner's President Roy Nichols testified that the Minimum Standards are extensive and are strictly enforced by the Cherry Capital Airport . . . . [s]ee Hearing Transcript Pages 42 through 45," (xxiv) "the Lease . . . provides that Petitioner is entitled to reimbursement only in the event that the NRAC exercises its unilateral right to prematurely terminate the Lease and acquire the hangar during the Lease Term . . . . [s]ee Petitioner's Exhibit P3, Airport Property Lease, Page 25 . . . . [a]dditionally, the fair market value of the hangar is artificially discounted based on the remaining term of the Lease (as opposed to the estimate life of the hangar building) . . . . [c]onversely, Paragraph 11 of the Lease clearly provides that, upon termination of the Lease, the hangar becomes the property of Lessor NRAC . . . [s]ee Petitioner's Exhibit P3, Airport Property Lease, Paragraph 11 . . . . [s]imilarly, Paragraphs 11 and 12 of the Lease state that the NRAC has the right to retain the hangar for no charge upon breach of the Lease by Petitioner or upon the insolvency or bankruptcy of Petitioner," (xxv) "Petitioner's use of the premises is limited to aeronautical activities, and just because there are different categories of aeronautical activities, does not disqualify Petitioner from being a concession under Michigan Law," (xxvi) "Respondent asserts that the terms of the Airport Property Lease are those that would be 'customary in ground lease . . . . [however,] Respondent has failed to offer any evidence or testimony regarding what obligations would be customary in a ground lease . . . . [and] clearly the present Airport Property Lease, which vastly limits Petitioner to aeronautical activities, provides detailed specifications regarding construction of the hangar, provides for forfeiture of the hangar upon the expiration or termination of the Lease, subjects Petitioner to standards governing hours of operation, personnel, construction standards required square foot allotments, and public access, allows unilateral rights to mandate increases in insurance and rent (as well as other restrictions detailed in Petitioner's Trial Brief at Pages 5 through 8) are not customary under any other lease scenario," (xxviii) "[t]he *County of Kent* case actually two consolidated cases . . . . [and] [t]he Court in that case found both . . . [the restaurant and the air service] were concession[s] exempt from taxation . . . . [even though] the dissent . . . actually stated that while . . . [the restaurant] had to maintain specific operating hours in its . . . Lease, those similar requirements were not in the .

. . [air service] Lease,"[9] (xxix) "[i]n the instant case, Petitioner was required by the NRAC and the Minimum Standards . . . to submit proposed business hours of operation for approval (See Hearing Transcript Page 69) . . . . [a]dditionally, the approval of 'established hours of operation' was only one of the numerous 'sticks' for this Court to review in its determination that the NRAC has the 'bulk of sticks' or, more specifically, the NRAC had control over the Leased Property and Hangar, and thus is the ultimate owner of the property at issue."

As determined by Petitioner, the subject property's TCV, SEV, and TV for the tax years at issue should be as follows:

Parcel Number: 28-51-898-459-00

Year	TCV	SEV	TV
2014	$944,800	$472,400	$0.00
2015	$917,800	$458,900	$0.00
2016	$973,000	$486,500	$0.00
2017	$994,400	$497,200	$0.00

PETITIONER'S ADMITTED EXHIBITS[10]

P-1 Lease/Liber 390, Pages 150-155.
P-2 Amendment to Lease/Liber 869, Page 519.
P-3 Airport Property Lease, Dated April 4, 2006.
P-4 Minimum Standards for Aeronautic Activities for Cherry Capital Airport.
P-5 U.S. DOT, FAA Air Carrier Certificate.

PETITIONER'S WITNESSES

Roy Nichols

Roy Nichols was Petitioner's first only witness. He was not offered or admitted as an expert witness. He did, however, testify that (i) Petitioner is an S corporation and he is the sole owner, director, and officer and an employee,[11] (ii) Petitioner was "started . . . in 1994" and is "[p]rimarily . . . a [non-scheduled] commercial air carrier" that "[t]hrough leases and management agreements . . . obtain[s] access to individually-owned or company-owned aircraft and then lease[s] them out to the public,"[12] (iii) Petitioner has "an [FAA-issued] air carrier

[9] See *Kent County v City of Grand Rapids*, 381 Mich 640, 652-3; 167 NW2d 287 (1969). See also *Kent County* at p 659.
[10] The parties stipulated to both the authentication of certain documents and the admissibility of all documents listed on their exhibit lists and, based on that Stipulation, all listed documents were admitted. See TR. 4.
[11] See TR. 7-8.
[12] See TR. 8-9.

license similar to American Airlines . . . . [o]urs is a non-scheduled and the air carriers are scheduled . . . . [b]ut we're under the same rules, same taxation,"[13] (iv) in response to a question regarding requirements, "we're not allowed to discriminate against anyone and we're open to the public like any airlines would be,"[14] (v) Petitioner owns "two airplanes outright and one through an LLC" and "manage[s] approximately . . . seven" airplanes,[15] (vi) in addition to air carrier services, Petitioner also provides "maintenance for commercial airliners or for other transient jets who may be in a similar business to use, an air carrier business, or even private airplanes that are coming into the field . . . . [w]e have a fairly large facility and a large hangar, so sometimes they need to get in a hangar and change a tire or things,"[16] (vii) the national airlines do not have mechanics at the Airport and "[w]e wouldn't be able to have airline service at Traverse City without someone like ourselves or Cherry Capital to provide maintenance,"[17] (viii) as part of its air carrier service, Petitioner does "quite a bit of transportation of people that are ill and/or in a particular organ transplants, organ recovery, organ delivery" (i.e., "[a]s much as once a week"), (ix) with respect to its "medical" transportation, "it's more scheduled than you would believe . . . [i]t's typical that we would be called in the evening around midnight – or maybe 10:00 or 11:00 for a takeoff around midnight and we would go somewhere and pick up some doctors, take them to where the organ is, and they recover the organ during the night and deliver it to where it's going to be put into someone's body the next morning . . . . [s]o . . . it's usually the jets . . . . [w]e use the fastest airplane we have because they want to the organs to go quickly" (i.e., "[t]ime is of the essence"),[18] (x) the purposes for which Petitioner uses the hangar are 100% aeronautical related (i.e., "[a]bsolutely") and those services are open to the general public (i.e., "[y]es"),[19] (xi) he approached the NRAC about leasing property [i.e., vacant property] and building a hangar

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[13] See TR. 9. See also TR. 55-6.
[14] See TR. 9.
[15] See TR. 9-10. See also TR. 58 (i.e., "[w]e had – not that long ago, we had 11").
[16] See TR. 10.
[17] See TR. 10-1.
[18] See TR. 11-2. Mr. Nichols also testified that:

> "We recently provided hangar and facilities for the Spectrum helicopter that services the Traverse City and Munson Hospital and hospitals in this part of Northern Michigan. They were with us for about a year while they were building a new building. So they had their helicopter and all their equipment and their people in our building."

[19] See TR. 12. See also TR. 48.

and "abandoned the idea in 2002" because he was unable "to get some reasonable terms in . . . [the] lease" to justify the building of the hangar,[20] (xii) he "was approached by a commissioner about four years later . . . . [a]nd they tried to accommodate me, so I could justify spending the money,"[21] (xii) the lease is dated April 4, 2006, and "covers basically everything we had to build . . . . [plus] we were mandated to lease a certain amount of space [i.e., vacant land], as an example,"[22] (xiii) "[t]he building . . . consists of two hangars that are each about 12,000 square feet and some office space, totaling about . . . 30,000 square feet . . . . [and is] about 300 feet long and 90 feet wide,"[23] (xiv) in addition to the land upon which the hangars are built, Petitioner had to lease land to build a 400 by 80 foot 19 inch thick concrete ramp and 50 parking spaces in addition to land to pile the snow it is required to plow on "our own area,"[24] (xv) "there is absolutely no way to move that building,"[25] (xvi) the Lease "really controls everything we do, everything we build . . . . [y]ou know, they control everything we do,"[26] (xvii) the Lease does not have an automatic right to renew, as the NRAC can make changes to the Lease and Petitioner would be required to agree to those changes if it wants to renew,[27] (xviii) the hangars are used for Petitioner's air carrier business and occasional storage of transient aircraft, as "required" by the Lease,[28] (xix) the hangars are inspected four times a year because Petitioner is an air carrier and one of the inspections is unannounced,[29] (xx) his understanding is that the hangars "revert"

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[20] See TR. 12-3.
[21] See TR. 13.
[22] See TR. 14. See also TR. 18-9 and 26 (i.e., "we ended up renting 83,000 square feet of space on the ground").
[23] See TR. 15-8 and 58-60. Mr. Nichols also testified that floor of the hangars is reinforced concrete that is 9 inches deep and that the concrete walls have to be fireproofed between the hangars "so that the center wall is two layers of brick with a space between them." Mr. Nichols further testified that the hangars are "about 35 feet tall" and the bi-fold doors are "100 feet wide and about 30 feet tall" to allow airplanes to get in the hangars with "fireproof doors and sprinkling in the [two-story, 8,000 square foot] office space only," as the hangars were built "small enough so that it wouldn't require a fire retardant." See also TR. 26-7 (i.e., construction plans and the contractor had to be approved by the NRAC).
[24] See TR. 16.
[25] See TR. 18.
[26] See TR. 19-23. See also TR. 28-9 (i.e., "[t]hey can pretty much do whatever they want to do" (i.e., "signs," etc.), TR. 31-3 (i.e., "[t]here's hardly anything we can do without getting their permission"), TR. 33-34 (i.e., the NRAC as an "additional insured" with unilaterally raises in the amount of insurance coverage), TR. 34-5 (i.e., fly-overs, operations, security, etc.), TR. 37-8 (i.e., assign or transfer), and TR. 40 (i.e., construction requirements).
[27] See TR. 23-4.
[28] See TR. 24-5. Although Petitioner did engage in aircraft sales, Mr. Nichols testified that Petitioner "no longer do[es] that." Mr. Nichols also testified that 'there's a very limited supply [of hangar space] in Traverse City" and that Petitioner is restricted to those activities by the Lease.
[29] See TR. 25-6. Mr. Nichols also testified that he owns several boats and cannot store the boats in the hangars under the terms of the Lease and because the hangars are inspected by the FAA. Mr. Nichols further testified that he

to the airport at the termination of the Lease or that he would have the right to remove that buildings and structures at his question, which is "absolutely impossible,"[30] (xxi) once the hangar is "built the way they want it . . . [the NRAC is] pretty happy with it, unless they want changes, like the doors and the security and so on, and whatever they want to do . . . . [as] [t]hey can pretty much do whatever they want to do,"[31] (xxii) Petitioner is "required to maintain our property and maintain our, you know, yards and everything, keep everything clean and neat and orderly and so on,"[32] (xxiii) the FAA inspects their maintenance, record, security, and airplanes,[33] (xxiv) Petitioner has to "pay a seven-and-a-half percent excise tax on . . . [its] gross commercial sales," a "head tax," and fuel tax,[34] (xxv) the NRAC controls the behavior and dress of Petitioner's employees, as they want everyone "to be polite and dress properly and have, you know, a proper demeanor and conduct on the airport,"[35] (xxvi) if the buildings are purchased by the NRAC, the value would be "determined based on the useful life of the improvements or a term of 20 years, whichever is less,"[36] (xxvii) Petitioner was "often" requested to help "the airlines [and] transient jets with their maintenance and so Petitioner requested the NRAC to add maintenance to its allowed purposes of use and the NRAC approved it and amended the lease because "they saw that as a service to the public and something that was necessary at the airport,"[37] (xxviii) the amended lease resulted in them becoming "subject" to the minimum standards,[38] (xxix) Petitioner has regular business hours and "believes" that it is "required to have them,"[39] and (xxx) all taxes are "currently paid up."[40]

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doesn't "disagree" with the inspections, as "they point things out that we should probably be aware of and we take car[e] of them." See TR. 28-9.

[30] See TR. 27-8. Mr. Nichols also testified that "[i]t would probably cost more to remove everything than maybe to build it . . . . [and] it wouldn't be easy." See also TR. 35-7 (i.e., "[t]hey fully intend never to buy a building").

[31] See TR. 28-9.

[32] See TR. 29.

[33] See TR. 29.

[34] See TR. 29-31.

[35] See TR. 32-3.

[36] See TR. 38-40.

[37] See TR. 41. See also TR. 48.

[38] See TR. 41-3. (i.e., "the minimum requirements we have to have to operate on the field . . . . [including] trained personnel and people on duty," etc.). See also TR. 44-9 (i.e., "special training' to operate vehicles on the airport, escorting of vehicles, certified mechanics, certified and trained pilots, random drug testing for employees who perform critical functions, annual security training, fingerprinting and background checks on all employees, etc.).

[39] See TR 43-4 and 61. Mr. Nichols also testified:

> "Our business hours are basically like 8:00 to 6:00 or so. But we also have people on call 24 hours a day. And then if we get a call, we have multiple people to come in. We have people to come in

On cross-examination, Mr. Nichols testified that (i) in addition to Petitioner conducting activities in the hangars, "[t]here are two other entities that are like a single member LLC, which is our maintenance department [i.e., Air Services Maintenance, LLC], but it's basically Air Services, because it's a single member of the LLC [i.e., 100% owned by Petitioner], strictly done for separation of records for accounting . . . . [a]nd then the other company is . . . named Air Services Brokerage[, LLC,] when we had sales, and it owns a King Air . . . [and he] own[s] 18 percent of [Air Services Brokerage] . . . personally, and then my company owns the rest – Air Services, Incorporated owns the rest of it,"[41] (ii) Air Services Maintenance "is on the premises" (i.e., "co-mingled" premises) and "maintain[s] the airplanes that we manage and airplanes on the field that come in and need help,"[42] (iii) Petitioner owns two planes and Air Services Brokerage owns one plane and those airplanes and the other airplanes Petitioner leases that "operate in Traverse City are all stored at our facility,"[43] (iv) although the Minimum Standards do not say that you must be open these particular hours, "[y]ou can't really run a business if you're not open for business,"[44] and (v) Petitioner is "mandated to abide by Part III [of the Minimum Standards], but only those sections that apply to us."[45]

On re-direct examination, Mr. Nichols testified that (i) he has to file an application with the NRAC that includes proposed hours of operation and that application has to be approved by the NRAC,[46] (ii) the scheduled carriers or national airlines are Part 121 carriers,[47] (iii) the non-

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> to move airplanes. We . . . call in fuelers to fuel the airplanes. We have pilots come in and someone to move the airplanes around, so, you know, we have different people."

[40] See TR. 49-51.

[41] See TR. 52-4. Mr. Nichols also testified:

> "Air Services Brokerage is not really located on the premises other than the fact that I'm sitting in my desk there. But it . . . [has] no purpose other than the ownership of the . . . airplane" and the airplane is "leased to Air Service for commercial operation 100 percent . . . .[which] [w]e use in our air carrier business to provide charter availability to the public, like we do from other individuals that lease their airplanes to use."

See also TR. 56.

[42] See TR. 54.

[43] See TR. 56-8.

[44] See TR. 61-3. See also TR. 65-8. Mr. Nichols also testified that the Minimum Standards say "that, 'Operators who don't post regular business hours shall provide for adequate contact to the operator." Mr. Nichols further testified that "if . . . [he doesn't] post them, it says . . . [he has] to have people available to do all these services on demand with a phone call."

[45] See TR. 64-5.

[46] See TR. 69.

scheduled commercial operations, such as Petitioner, are Part 135 carriers,[48] (iv) the Part 121 carriers flying from Traverse City service "maybe five . . . [or] six" airports of the "over 5,000" airports in the United States,"[49] and (v) the Part 135 carriers (i.e., Petitioner) "can go to pretty much any of the 5,000" and, as such, play an integral role for airports . . . . [plus] they can "go direct . . . [which has its] advantages."[50]

There was no re-cross examination.[51]

RESPONDENT'S CONTENTIONS

Respondent contends that the evidence presented in this case supports a determination that the subject property is lawfully assessed and that the assessment should be affirmed. Specifically, Respondent contends[52] that (i) "Petitioner is the lessee of certain lands within the Cherry Capital Airport from the . . . NRAC,"[53] (ii) "Petitioner is a non-scheduled air carrier that subleases space in . . . [its] hangars to other business entities, which provide aircraft maintenance and aircraft brokerage,"[54] (iii) "Petitioner is the sole member of Air Service Brokerage, LLC, which owns an additional airplane that is used by Petitioner," (iv) "Petitioner is also the sole member of Air Services Maintenance, LLC that provides maintenance for both Petitioner and for other airplanes in the Cherry Capital Airport (Transcript page[s] 53-54)," (v) "Petitioner signed a lease with the NRAC on April 4, 2006 . . . . [and] [t]he lease is subject to certain permitted purposes: aircraft charter, aviation maintenance business, aircraft sales, aircraft storage, and

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[47] See TR. 69

[48] See TR. 69-70. Mr. Nichols also testified that the national airlines service "about 500" of the 5,000 airports.

[49] See TR. 70.

[50] See TR. 70.

[51] See TR. 70.

[52] Respondent did not make an opening statement. Rather, Respondent requested the opportunity for the parties to submit post-hearing briefs and said request was granted. See TR. 70-2. In that regard, Respondent submitted a post-hearing brief on May 18, 2017, and a response brief on June 1, 2017. The post-hearing and response briefs summarize the facts purportedly established by the testimony provided and exhibits admitted and Respondent's legal arguments in support of its contention. See also Respondent's February 22, 2016 answer and the March 8, 2017 Prehearing Summary.

[53] Prior to entering into the lease, Petitioner "leased space from Harbor Air, a large hangar on the airport property . . . [and that] Petitioner eventually outgrew that space and needed its own dedicated space . . . . [s]ee Hearing Transcript Pages 12 and 13."

[54] Contrary to Respondent's contention, Petitioner indicates that it "does not sublease space in its hangars to other business entities . . . . [i]nstead, in addition to its aircraft charter business, Petitioner is engaged in aircraft management, whereby, it will manage aircraft owned by other individuals and entities . . . [s]ee Hearing Transcript Pages 9 and 10 . . . . [a]dditionally, Petitioner also owns two airplanes directly, and a third indirectly through an entity that it wholly owns . . . . [and] [t]hese aircraft are managed by Petitioner . . . . [s]ee Hearing Transcript Pages 9 and 10, and 52 through 57.

other [general aviation activities] as may be approved in writing by [the] NRAC," (vi) "[t]he NRAC did later approve other uses through an amended lease dated May 26, 2009 . . . . [and] [t]his amendment added certain uses, including: '4. Aircraft Fuel: Corporate Fuel (not available to the general public – only applicable to (Air Services Inc.) owned, leased, or managed aircraft, and which is subject to separate written agreement with Lessor and any minimum standards adopted by Lessor' . . . (Exhibit P-6)," (vii) "[t]he Minimum Standards for Aeronautical Activities (Exhibit P-4) lists requirements for different category of business applicable to the airport . . . . [and] generally require that businesses operating on the airport grounds adhere to certain security standards," (viii) "[t]he [M]inimum [S]tandards require that businesses keep their premises open during . . . posted business hours . . . . [and] [i]f a business does not post hours, it must 'provide for an adequate means of contacting the operator to arrange an appointment," (ix) "[b]y its clear terms, MCL 211.181 only pertains to property which is 'exempt for any reason from ad valorem taxation' and which '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' . . . . [and] the hangar and any other improvements on the leased premises are owned by the Petitioner, and not by the Airport,"[55] (x) "[p]ursuant to Section 25 of the lease between Petitioner and the Airport (Exhibit P-3) . . . upon expiration of the Lease, the Petitioner is entitled to be reimbursed for the fair market value of the hangar and other improvements it owns on the leased premises," (xi) alternatively, Petitioner would only qualify for an exemption under MCL 211.181 if it meets "both of two requirements . . . . [f]irst it must establish that the subject property is used as a concession, and second, the property must be available for use by the general public," (xii) "[t]he *Tygard* Court found that the property involved in that case, whether a leasehold or rental agreement, was not a concession because it did not establish minimum hours during which the tenant's services were offered, and did not establish minimum standards of service,"[56] (xiii) "[i]n attempting to establish that it meets the requirements necessary to be

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[55] Respondent also indicated that hangars "cannot be the subject of a lease" between Petitioner and the NRAC since Petitioner owns the hangars and, as such, "MCL 211.181 has no application in this matter."

[56] See *Tygard*, supra at pp 275-6. In that regard, the Michigan Supreme Court actually stated in *Tygard* that:

> ". . . we believe **the concept of specific obligations** on the part of the privileged party **to maintain particular services at specified times is an incident of a concession.** We find no such obligations imposed by the agreement here under consideration. No minimum hours during which the services offered must be made available to the public are required. No standards of service are

considered a concession, the Petitioner cites the terms of its lease . . . (Exhibit P-3) as well as the very detailed Minimum Standards for Aeronautical Activities for Cherry Capital Airport . . . (Exhibit P-4) . . . . [and] [a]n analysis of each of those documents . . . shows that Petitioner has failed to meet its burden of establishing that it is a concession," (xiv) "[t]he Lease . . . lists the various activities for which the Petitioner may use the leased premises, but doesn't require that it use the premises for any one specific purpose . . . . gives the Petitioner the right to construct improvements on the leased premises, which improvements are the property of the Petitioner . . . requires the Petitioner to comply with requirements of certain federally imposed requirements . . . [including] the Federal Aviation Act . . . [but] does not establish the Lessee to be a concessionaire . . . . [as] [t]hese requirements apply to all lessees at the Airport, in general, regardless of whether such lessee is a concessionaire," (xv) the Lease also "sets forth conditions upon the Lessee's use of the premises . . . . [and] [t]he listed conditions are not such as would make the Lessee a concessionaire under *Tygard* or *Golf Concepts* . . . . [as] [t]he conditions set forth . . . are no different than what one would expect to find in any ground lease . . . . [and] [t]he Lease does not require any minimum standards for hours of service or level of service to be provided by the Lessee to the general public,"[57] (xvi) "Petitioner's reliance on *Roethlisberger* . . . is misplaced . . . [as] the property and hangar [in that case] were 'used for storage of [Roethlisberger]'s airplane and not for any commercial purpose' . . . . [and] "the Petitioner's operation has a clear commercial purpose,"[58] (xvii) "Petitioner also relies on *Brasseur* . . . [and that case] involves a hangar used only for storage of airplanes, and not used in connection with a business for profit," and (xviii) "[e]ven if the property is found to be exempt from taxation under

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> mandated. **Of course, the services offered must bear a reasonable relationship to the purposes of a public airport**. That element in part is present here, particularly the storage and servicing of aircraft. We are not furnished any figures as to what percentage of appellants' business is concerned with the storage and servicing of transient aircraft, **certainly one of the most important uses of a public airport**. We would not be understood to mean that we negate as a proper use of a public airport the storage of locally based aircraft." [Emphasis added.]

Respondent also cites *Golf Concepts*, *supra* at p 29 (i.e., "[t]he provisions in the lease contract between the parties do not rise to the level of specific obligations on the part of petitioner, the privileged party, to maintain particular services at specified times").

[57] Respondent also indicated that "[t]he [mandated] Minimum Standards, which are very detailed . . . [and] heavily relied upon by the Petitioner . . . show[] that they are not standards designed to require lessees to meet certain standards or minimum hours of service . . . . [r]ather, they are . . . clearly safety and security standards, not customer standards."

[58] As indicated above, the *Roethlisberger* case was resolved in the Tribunal's Small Claims Division and the decision in that case is not precedential.

MCL 211.7(m), the property may be subject to taxation under MCL 211.181 . . . . [b]ecause the lessee conducts their business for profit . . . . unless . . . [the property] fit[s] into one of the exceptions listed in MCL 211.181(2)."

As determined by Respondent, the subject property's TCV, SEV, and TV for the tax years at issue should be as follows:

Parcel Number: 28-51-898-459-00

Year	TCV	SEV	TV
2014	$944,800	$472,400	$472,400
2015	$917,800	$458,900	$458,900
2016	$973,000	$486,500	$460,276
2017	$994,400	$497,200	$464,418

RESPONDENT'S ADMITTED EXHIBITS[59]

R-1 Docket Information/Assessment Summary.
R-2 Record Cards/Valuation Statements for Years Under Protest, 2014-2017.
R-3 Website Information.
R-4 LARA Documents Re: Air Services.
R5 Miscellaneous Documents as Recorded Through Grand Traverse County Register of Deeds.
R-6 December 2015 Board of Review Documents.

FINDINGS OF FACT

The following facts were proven by a preponderance of the evidence:

1. The subject property is located at 1100 Airport Access Road, Traverse City, MI in Grand Traverse County.
2. The property is classified as commercial real.
3. The property is a hangar located at the Cherry Capital Airport ("Airport"), which is a public airport.
4. The Airport land is owned by the Northwestern Regional Airport Commission ("NRAC") on behalf of Grand Traverse County and Leelanau County ("Counties"), who are its sole members.
5. The Airport is operated by the NRAC on behalf of the Counties.
6. The Airport land underlying the hangar is leased to Petitioner by the NRAC.
7. Petitioner and its controlled sub-tenants use the hangar in connection with businesses conducted for profit.
8. 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.

[59] The parties stipulated to the authentication of certain documents and the admissibility of all documents listed on their respective exhibit lists and, based on that Stipulation, all listed documents were admitted. See TR. 4.

9. Petitioner and its controlled sub-tenants utilize the hangar on a "co-mingled" basis to provide, among other services, non-discriminatory aircraft maintenance services to the general public.
10. Based on the terms of the leases between Petitioner and its controlled sub-tenants and the NRAC and the Minimum Standards applicable under those leases, the hangar is used as a concession.

ISSUES AND CONCLUSIONS OF LAW

The issue in this matter is whether the property at issue (Petitioner's hangar) qualifies for a property tax exemption under MCL 211.7m or 211.181. With respect to the purported applicable statute or statutes, 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. Parks shall be open to the public generally. This exemption shall not apply to property acquired after July 19, 1966, unless a deed or other memorandum of conveyance is recorded in the county where the property is located before December 31 of the year of acquisition, or the local assessing officer is notified by registered mail of the acquisition before December 31 of the year of acquisition. [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 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.]

To be eligible for the requested exemption, Petitioner has the burden of proving membership in the already exempt class by a preponderance of the evidence or beyond a reasonable doubt if Petitioner is attempting to establish a class of exemptions.[60] As for the Tribunal, the Tribunal is required to "strictly construe" the applicable exemption statute or statues "in favor of the taxing authority."[61]

Here, Petitioner is appealing the denial of its request for the correction of a "qualified error" by Respondent's 2015 December Board of Review for the 2014 and 2015 tax years.[62] In that regard, the petition identified the purported "qualified error," as "[a]n error regarding the correct taxable status of the real property being assessed . . . ."[63]

As a starting point, it is undisputed that the underlying land leased to Petitioner is owned by the NRAC whose members consist solely of Grand Traverse and Leelanau Counties, that the NRAC was formed by the Counties to have "jurisdiction and control" over the Cherry Capital Airport, and that the Airport serves a public purpose (i.e., public airport).[64] It is also undisputed that the leased land upon which the subject property (i.e., hangar) is located could be subject to taxation under MCL 211.181(1), but not 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."[65] As such, the only outstanding issues relate to who

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[60] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[61] See *Michigan United Conservation Clubs v Lansing Twp*, 423 Mich 661, 664; 378 NW2d 737 (1985); and *Ladies Literary Club v Grand Rapids*, 409 Mich 748, 753-754; 298 NW2d 422 (1980).
[62] See MCL 211.53b(1) (i.e., "a correction under this subsection may be made for the current year and the immediately preceding year only").
[63] See MCL 211.53b(10)(f).
[64] Although the parties' arguments related to both the land and the hangar, the only property at issue is the hangar.
[65] 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* on p 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 Small Claims 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. Further, the evidence provided indicates that Petitioner's use of the buildings or hangars for maintenance of aircraft provides a service to the airport that is necessary for the airport's public purpose.

owns the hangar, Petitioner or the NRAC, and the commercial use of the hangar, if owned by the NRAC and leased to Petitioner for said commercial use.[66]

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

> For the purposes of taxation, personal property includes all of the following . . . .
>
> (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 . . . .[67]
>
> (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

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[66] Although Petitioner's witness testified that the hangar was owned by Petitioner, said testimony is irrelevant, as indicated herein.

[67] 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."

> 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.]

As such, the hangar is real property and assessable to the owner of the hangar.[68]

The issue of ownership in such situations has been addressed in a variety of tax cases and the courts have focused on who retained the majority of the "bundle of sticks" generally associated with property ownership based on the amount of control exerted over the "building or improvements" (i.e., hangar) under the lease (i.e., "ultimate" or "overall" control).[69] 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*:[70]

> 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.]

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[68] 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 and Serv-A-Plane v Tittabawassee Township*, 134 Mich App 73, 77; 350 NW2d 837 (1984).

[69] In addition to the above-noted case (i.e., *Rockwell*), see *Skybolt*, *supra* at p 600 (i.e., "the city exerted ultimate control over the property and Skybolt's rights as lessee were strictly limited"), *Golf Concepts*, supra at p 33 (i.e., "*Skybolt* is distinguishable . . . because petitioner's rights as a lessee are not strictly limited"), *Air Flite*, *supra* at pp 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").

[70] 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 p 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.]

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.

In the instant case, the April 4, 2006 Airport Property Lease (Exhibit P-3) provides for the leasing of "certain premises at the Cherry Capital Airport for the purpose of carrying on an aircraft charter and aviation management business [which may include **maintenance** of aircraft which are related to Lessee's aviation management business, aircraft sales, aircraft storage, and other aviation activities as may be approved in writing by the Lessor to be located on the leasehold premises described herein], and for the construction of an aviation hangar and office facility, subject to certain rights, licenses and privileges."[71] [Emphasis added.] The April 4, 2006 Lease was amended on May 26, 2009, to "expand the purpose clause . . . **in order to permit certain transient aircraft the ability to receive aircraft maintenance** at Lessee's facility located on the leasehold premises."[72] [Emphasis added.] The "expansion" was also conditioned on the Lessee's compliance "with additional requirements **which may result from the Lessor's establishment of minimum standards**." [Emphasis added.]

The Lease further provides, among other things:

(i) for a lease term of 20 years with an option (i.e., right of renewal) to extend the Lease "upon such terms and conditions as shall be agreed upon between the parties acting in good faith hereto";

(ii) for the payment of annual rent to be **adjusted** by cost-of-living increases every two years during the term of the lease **and revised** to cover the airport's required

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[71] Additionally, the Lease provides, in pertinent part:

> ". . . 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."

Finally, the leased premises could not, as a practical matter, be utilized for the identified purposes without the existence of the constructed hangar.

[72] The Amended Lease specifically provided, in pertinent part, for:

> ". . . the carrying on of a business including aircraft charter, aviation management (which may include maintenance of aircraft which are related to Lessee's aviation management business, as well as maintenance of transient jet and turboprop aircraft **including air carriers servicing the Cherry Capital Airport**), aircraft sales, aircraft storage, and other aviation activities as may be approved in writing by Lessor . . ." [Emphasis added.]

expenditure of additional funds for security, safety equipment, public safety, public health, etc.;[73]

(iii) the Lessee's agreement "to restrict its activities to those indicated herein unless otherwise authorized to do so by the Lessor";

(iv) "[n]o portion of the leased premises shall be used in a manner or for a purpose which, **in the opinion of the Lessor**, may **interfere** with the proper use of the airport by others or which **violates** written rules, regulations and policies of the Lessor or other competent authority or agency";

(v) the Lessee "agrees to furnish service on a fair, equal and not unjustly discriminatory basis to all users therefor and to charge fair, reasonable and not unjustly discriminatory prices for each unit or service";

(vi) "**[n]**o portion of the leased premises **shall be used** in a manner or for a purpose **which, in the opinion of the Lessor, may interfere with** the proper use of the airport by others **or which violates** written rules, regulations, policies, and minimum standards of the Lessor or other competent authority or agency";

(vii) Lessee may, with prior written approval, "improve" the leasehold premises;[74]

(viii) Lessee shall, "at its own expense . . . keep the said premises in a **neat and orderly appearance**";

(ix) Lessor has "the right to **enter** upon" and **inspect** the leasehold premises "at all reasonable times **during business hours** . . . **or** for the purpose of making changes or alterations required by any existing or subsequent law";

(x) Lessee "agrees to comply with all required provisions of the Federal Aviation Act" and "sponsor assurances" (i.e., agreements between the NRAC and the Federal Aviation Administration relating to obligations undertaken by the NRAC resulting from the receipt of federal aid for the development of the airport);[75]

(xi) limitations on the painting, posting, or display of signs and advertising without Lessor's prior consent;

(xii) "[t]he 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**";

(xiii) "[t]he 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,

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[73] 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 p 77.

[74] With respect to construction of improvements, the Lease also provides, among other things, "Lessor agrees that at the expiration of this lease or any renewal thereof, Lessee **may** within a reasonable time **remove** any and all buildings, structures, or other improvements placed or erected on said premises by the Lessee during the term thereof or any renewal thereof, **and all expenses connected with such removal shall be borne by Lessee**."[Emphasis added.]

[75] The Lease also provides that "Lessee further **agrees** that all federal, state and local laws **will be observed, including** the rules and regulations of the federal, state and local aeronautical authorities and **the policies, regulations, and minimum standards of the local governing airport commission**" (i.e., the NRAC). [Emphasis added.]

regardless of the desires or views of the Lessee in this regard, without interference or hindrances and free from any liability to the Lessee";

(xiv) Lessee is required to maintain and "furnish evidence" of insurance with the NRAC named as an additional insured and liability limits as determined by the NRAC;

(xv) a reservation of the "right of flight for the passage of aircraft in the airspace above the surface of the premises herein leased";

(xvi) a **limitation** on the storage of "any and all flammable liquids or other hazardous materials" on the leasehold premises;

(xvii) Lessee agrees "that it will **not** make use of the leased premises in any manner which might interfere with the landing and taking off of aircraft from the airport or otherwise constitute a hazard" and that the NRAC has "the right to enter upon the premises" to abate said interference or hazard at the Lessee's expense;

(xviii) a **prohibition** on the storing of equipment outside of any existing structure on the leasehold premises **without** the express written approval of the Lessee";

(xix) "if Lessee has control of an area accessing the air operations or an otherwise restricted area of the airport as designated in the Cherry Capital Security Plan, the Lessee shall be responsible for enforcement of all security measures imposed for said access point";

(xx) **the improvements become the property of the NRAC upon termination, cancellation, or forfeiture of the Lease due to Lessee's default, breach, insolvency, bankruptcy, or receivership**;

(xxi) a prohibition on the assign or transfer of the Lease or subletting any of the premises **without** the written consent and approval of the Lessor;[76]

(xxii) "[n]o rubbish, waste material, garbage or other trash shall be placed or stored on the premises in other than approved containers; and,

(xxiii) Lessor **may terminate** the lease **at any time and acquire** the improvements **by paying** the Lessee the **market value** of the improvements determined under the lease "**with the anticipated commitment of a term of years equal to the then determined useful life of the improvements, or a term of twenty (20) years, whichever is less.**" [Emphasis added.]

Although, the Lease does provide Petitioner with the right to possess the hangars and dispose of them through both sale (i.e., assignment of the lease, transfer of ownership issue, etc.) and removal, said disposal is limited as the sale must be approved by the Lessor or, more specifically, the NRAC and the removal of the hangar is, as indicated by the testimony, impractical and unlikely given the cost associated with such removal.[77] In that regard, the Lease also provides, as indicated above, that the hangar becomes the NRAC's property upon termination of the Lease due to default, breach, and insolvency and that the NRAC can purchase

[76] In that regard, the Lease also provides that "[a]ny transfer of corporate control or of fifty percent (50%) or more of the outstanding voting equity ownership of the Lessee **shall be construed** to be an assignment of this lease." [Emphasis added.]

[77] Sub-leasing is also strictly controlled by the Lease and Minimum Standards.

the hangar upon the Lease's termination for any other reason or expiration.[78] The purchase price, as determined through an appraisal process dictated by the Lease, would, however, be discounted by the hangar's useful life or remaining lease term, whichever is less.[79] As such, Petitioner may have "only one stick in the bundle of ownership sticks."[80]

With respect to the control issue, the items listed above do address control over the hangar by the NRAC. The majority of the control being exercised by the NRAC does, however, appear to relate more to airport operations than ownership of the hangar.[81] 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 for the hangars prior to them being built**. Further, **the lessees do have the full right and authority to**

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[78] See also the Minimum Standards, Section 6 (Construction and Site Development Standards) on p 6.
[79] The purchase price on expiration of the Lease would be $0.00. As for other payments based on the remaining useful life or the remaining lease term, said payments would be "equitable" in nature to "assure that . . . [the NRAC} would not realize a windfall by the early termination of the lease." See *Air Flite, supra* at pp 77-8.
[80] 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'").
[81] The *Mitchell Aero* court provided at p 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.]

> **sub-lease the hangars; 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 more similar to *Air-Flite* than *Brasseur,* both cases indicate that the control 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.[82] As a result, the hangar is, contrary to Respondent's contentions, owned by the NRAC and technically leased to Petitioner requiring a determination as to whether the hangar or, more appropriately, the commercial use of the hangar qualifies as a concession.

With respect to the commercial usage of the hangar, Respondent contends that the hangar is not used as a concession, as neither the Lease nor the Minimum Standards establish minimum standards of service to the public including oversight of those services or minimum hours of operation.[83]

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[82] 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 hangar, Petitioner in this case is also required to "yield and deliver up" the hangar upon the expiration of the lease. Although the Lease in this case, unlike the *Brasseur* case, provides for the purchase of the hangar 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 hangar.

[83] See *Skybolt, supra* at p 602 and *Golf Concepts, supra* at pp 28-9. The Court of Appeals in Golf Concepts also stated on p 28 (citing to *Seymour v Dalton Twp*, 177 Mich App 403, 406; 442 NW2d 655 (1989)):

In addressing those contentions, the first level of review must relate to whether the services provided are "services customarily and needfully required at airports."[84] Clearly, aircraft maintenance, which is a service provided by one of Petitioner's controlled sub-tenants (i.e., Air Services Maintenance, etc.) is not only "customarily" provided by airports, but also essential to the operation of an airport. As for the other services provided by Petitioner and its controlled sub-tenants (i.e., primarily a non-scheduled commercial aircraft carrier including "medical" transportation, etc.),[85] such services are consistent with the "development of aeronautics" and provide "convenience and comfort of air travelers."[86] More importantly, such services, even if determined not to be "customary" or "needful," are "intermingled" with the clearly "customary" and "needful" maintenance services.[87]

As for the standards and oversight applicable to those services, the Lease requires Petitioner to "control" the premises and reserves to the NRAC the right to inspect. Petitioner and its controlled sub-tenants are also required under the leases and the Minimum Standards to "employ trained personnel in such numbers as are required to meet the applicable Minimum Standards set forth herein in an efficient manner for each aeronautical activity or service being performed"; "provide a responsible person to supervise the operations in any leased area and on the Airport, with authorization to represent and act for and on behalf of the Operator during all business hours"; and "provide . . . [the NRAC] with a roster of qualified personnel who are available after normal business hours to respond to emergency situations involving . . . [the hangar's] activities."[88] Petitioner and its controlled sub-tenants are further required to "control the conduct, demeanor, and appearance of its employees"; "train its employees and ensure that they possess such technical qualifications and hold the required certificates, permits, licenses,

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> The Court stated that the concessionaire is required to offer services that have a reasonable relationship to the purposes of the granting entity. If that entity merely privatizes its entire operation, then a tax exemption would be contrary to the broader purpose of the lessee-user tax.

[84] See *Tygard, supra* at pp 276-7. In that regard, the former "exclusivity" requirement for such services was ultimately removed by amendment. See also *Aero Realty Corp v Clinton County*, 73 Mich App 102, 104-6; 250 NW2d 559 (1976) and *Avis Rent-A-Car Sys, Inc v City of Romulus*, 65 Mich App 119; 129-30; 237 NW2d 209 (1975), *aff'd sub nom Avis Rent-A-Car Sys, Inc v Romulus Community Schools*, 400 Mich 337; 254 NW2d 555 (1977).
[85] See Mr. Nichols' testimony at TR 8-9, 11-2, 24-5, 41, 48, 55-6, and 70.
[86] See *Avis Rent-A-Car Sys, Inc, supra* at p 124. See Mr. Nichols' testimony at TR 10-1.
[87] See Mr. Nichols' testimony at TR 54.
[88] See Mr. Nichols' testimony at TR 41-3.

and ratings to conduct . . . [the hangar's] business activities on the Airport"; and "maintain close supervision over its employees to assure a high standard of service to . . . [the hangar's] customers." In that regard, the leases also require Petitioner and its controlled sub-tenants to provide the NRAC "[a]t the commencement of the term of this Lease . . . with written notice of all activities authorized . . . which Lessee conducts upon the Leasehold premises, **and . . . with verification of all necessary certification to conduct such uses**" and reserve to the NRAC the "right to complain" to Petitioner and its controlled sub-tenant "as to the demeanor, conduct and appearance of the Lessee's employees, invitees and those doing business with it, whereupon the Lessee **shall** take all steps **necessary to remove** the cause of the complaint." [Emphasis added.] The Minimum Standards also provide, among other things, that:

(i) "[t]hese Standards shall establish the minimum requirements to be met as a condition for person conducting or proposing to conduct aeronautical activities on the Cherry Capital Airport";

(ii) the NRAC's "goal in adopting these Standards is **to encourage the development of quality aeronautical services and** to **make the airport available for aeronautical activities on fair and reasonable terms without unjust discrimination** in accordance with FAA Grant Assurances";

(iii) an aeronautical activity or service is "any activity which involves, makes possible, or is required for the operation of aircraft, or which contributes to or is required for the safety of such operations";

(iv) "[t]he such right or privilege, however, shall **not** be construed in any manner as affording the Operator any exclusive or continuing right of use of the premises or facilities of the Airport, other than those premises which may be leased exclusively to the Operator for the term of the lease, and then **only to the extent provided in the written agreement**";

(v) the NRAC "reserves the right to lease an existing facility or any portion of an existing facility to a specialized aviation service operator in order to maximize facility use and business opportunities . . . at [the NRAC's] sole discretion . . .";

(vi) the NRAC reserves the right to designate from time to time the specific areas where individual aeronautical services or a combination of aeronautical services may be conducted, **and to determine whether or not there is sufficient, appropriate, or adequate space at the proposed site to meet the minimum requirements established herein**";

(vii) "[w]ith regard to an existing lease or concession agreement, all conditions **not** meeting these Minimum Standards shall be considered nonconforming";

(viii) "[a]ll improvements constructed on the Airport, other than trade fixtures, **shall become part of the land and belong to . . . [the NRAC]** upon expiration, termination, or cancellation of the lease agreement between the Operator and . . . [the NRAC] covering such improvements, **except as otherwise specifically negotiated in lease agreements between Operator and . . . [the NRAC]**";

(ix) "[c]ross-utilization of personnel between aeronautical services **may be permitted to the extent that** personnel qualifications and licensing requirements and the applicable operating hours of these Standards are met";

(x) "Operator shall permit . . . [the NRAC] to enter upon its leased premises at any reasonable time **for any purpose necessary, incidental to, or connected with** the Operator's performance of its obligations **with respect to these Standards** or the terms of any operating agreement . . .";

(xi) "[t]he rates or charges for any and all activities and services of Operator shall be determined by the Operator, and **subject to the further requirement** that all such rates or charges shall be **reasonable and be equally and fairly applied to all** users of the services";

(xii) "Operator **shall adhere** to the highest ethical and aviation service community standards in the conduct of its activities"

(xiii) "each Specialized Aviation Service Operator shall provide and maintain an office located upon the Airport **which shall be available to the public by appointment or during business hours posted** in a prominent place at the Operator's place of business";

(xiv) "[t]he office **must include** a waiting area for the public with appropriate furnishings and rest rooms as required by the State Construction Code or the County Construction Code Office, unless adequate facilities currently exist, **as determined by . . . [the NRAC]**";

(xv) "[o]ffices **shall contain** an adequate amount of interior floor space to appropriately conduct the business it is intended for **and shall be suitably provided with** heating and air conditioning, as appropriate";

(xvi) "[t]he Operator shall conduct its business operations strictly within the areas assigned to it by the . . . [NRAC]";

(xvii) "[t]he Operator **shall lease or construct hangar facilities** for aircraft storage/display space, public lounge, public restrooms, and the provision of access to a telephone . . . . **[and] shall also lease sufficient land** from the Commission in order to locate paved private auto parking; a paved pedestrian walkway . . . ."[89]

(xviii) "Operator **shall provide** sufficient shop space, equipment, supplies, and inventory of aircraft parts . . . . **[and] shall provide** emergency aircraft recovery services and equipment necessary to promptly remove disabled general aviation aircraft of the largest type normally expected to use the Airport from the airfield':

(xix) "Operator shall have its premises open and services available during regular, posted business hours . . . . **[and] shall make** provisions for someone to be in attendance in the office at all times during the posted operating hours";

(xx) "Operators who do **not** post regular business hours **shall provide** for an adequate means of contacting the Operator to arrange an appointment (e.g., cellular phone, answering service, voice mail, pager, etc.) **and must agree** to contact the potential customer no more than 24 hours after the initial service inquiry";

(xxi) "[i]f the Operator is an FAR Part 145 approved Repair Station, Operator **must possess all** of the tools and equipment **necessary to maintain** such certification **and shall provide** evidence of FAA certification to the . . . [NRAC]"; and,

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[89] According to the testimony, the NRAC "dictates" the size of the leasehold premises.

(xxii) "[t]he Operator shall employ, and have on duty during the appropriate business hours, trained personnel in such numbers as are required to meet these Standards in a **safe and efficient manner currently certified** by the FAA **with ratings appropriate to the work being performed** and holding an airframe and power plant (A&P) rating . . . . [and] the Operator **shall also have available or on-call** at least one person who holds an Aircraft Inspector (IA) rating.

As demonstrated herein, the NRAC has through its leases and the applicable Minimum Standards not only established minimum standards for the provision of aircraft maintenance services (i.e., trained certified/licensed employees, employee supervision, demeanor/appearance of employees and customers, office construction, adequate office space, necessary equipment, reasonable fees, non-discriminatory treatment of customers, and safe, efficient services meeting the "highest ethical and aviation service community standards"), but also provided for oversight of those services. With respect to the minimum hours of operation, Petitioner and its controlled sub-tenants do submit to the NRAC and post regular business hours even though the NRAC does not require the posting of regular business hours.[90] Nevertheless, the NRAC requires Petitioner and its controlled sub-tenants to be on call to customers within 24 hours of that customer's initial inquiry and said "on-call" requirement is sufficient to satisfy the minimum hours of operation otherwise necessary for the operation of a concession. As a result, Petitioner and its controlled sub-tenants do provide through their use of the entire hangar space, among other things, non-discriminatory aircraft maintenance services to the general public that are customary and needful for the operation of the Cherry Capital Airport.

Based on the above, the Tribunal concludes that the subject property's exempt status and TCV, SEV, and TV for the tax years at issue are as listed in the Introduction Section of this Proposed Opinion and Judgment (POJ).

PROPOSED JUDGMENT

This is a proposed decision and not a final decision.[91] As such, no action should be taken based on this proposed decision until a final decision is issued by the Tribunal.

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:

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[90] The NRAC may not require the posting of regular business hours. It does, however, "encourage" said posting.
[91] See MCL 205.726.

1. Issue a Final Opinion and Judgment (FOJ) adopting the POJ as the final decision.
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 Administrative Hearings System. The 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). 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 and the opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.[92]

Exceptions and responses filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment.

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

By Peter M. Kopke

Entered: July 12, 2017
pmk

[92] See MCL 205.726 and TTR 289(1) and (2).