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

CCXLS, LLC,
Petitioner,

v MTT Docket No. 358530

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Kimbal R. Smith III

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER OF DISMISSAL

I. INTRODUCTION

Petitioner, CCXLS, LLC, is appealing the Final Assessment Q074786 issued by Respondent on November 28, 2008. An informal conference was conducted by the Department of Treasury on October 30, 2008. The Hearing Referee recommended that a final assessment should be issued against Petitioner for use tax, based on the purchase price of a 2007 Cessna Citation 560XLS aircraft ("Aircraft"), in the amount of $672,272, penalty in the amount of $67,927, and statutory interest. Respondent adopted the Hearing Referee's Recommendation and issued its Decision and Order of Determination on November 20, 2008. On December 24, 2008, Petitioner filed a timely appeal with the Tribunal. On January 22, 2010, Petitioner filed a Motion for Summary Disposition. On January 22, 2010, Respondent filed a Motion for Summary Disposition.

II. PETITIONER'S CONTENTIONS

Petitioner contends that it purchased Aircraft solely for the purposes of leasing it. Petitioner states that it entered into a valid lease agreement with Air Services, Inc. ("ASI") and

properly elected to pay use tax on the rental receipts rather than pay use tax on the purchase price of Aircraft. Petitioner also argues that it timely obtained its use tax registration on November 21, 2007, and paid all use tax of $81,049.63 on rental proceeds of $1,392,120 as received from ASI and as instructed by Respondent. Petitioner notes that ASI is an aircraft charter operator with a valid FAA Air Carrier Certificate and charters the Aircraft to its customers. Petitioner notes that the following part of the Aircraft Lease/Management Agreement (Exhibit 2) supports its position:

> ASI will have exclusion possession of the Aircraft … On all flights, ASI, not the owner, will have operational control … ASI is leasing the Aircraft to use it …
>
> Effective November 1, 2007, CCXLS, LLC agrees to surrender exclusive operational control of the following aircraft to Air Services, Inc.
>
> 2007 Cessna Citation XLS
> N911EK S# 560-5742

Petitioner notes that FAA regulations require ASI to maintain exclusive operational control. Petitioner also states that the management aspects of the aircraft on behalf of Petitioner are incidental and that Petitioner alone cannot charter Aircraft to customers. In support, Petitioner adds:

> Petitioner has not and cannot charter the Aircraft because Petitioner does not possess a FAA Air Carrier Certificate. Pursuant to FAA regulations, Petitioner has not and cannot charter the Aircraft because Petitioner does not maintain sole possession and control of the Aircraft, as required by such regulations. ASI does possess a FAA Air Carrier Certificate and therefore can charter the Aircraft. Pursuant to FAA regulations, ASI has and can charter the Aircraft because ASI does maintain sole possession and control of the Aircraft, as required by such regulations. Petitioner has never utilized the Aircraft. Petitioner does not have a pilot or crew. Petitioner has no knowledge or say in how ASI operates the Aircraft. ASI provides its own pilots to all its operations including its charters. ASI charters and schedules flights to its own customers to wherever it chooses without any direction, communication, or control from Petitioner. ASI has never chartered the Aircraft to Petitioner. ASI has never "bumped" one of its customers

> to favor Petitioner. ASI in fact pays a rental rate of $2,700.00 per flight/hour to Petitioner.

Petitioner cites the test in *Air Cloverdale, Inc v Dept of Treasury*, Docket No. 251006 (MTT, Unpublished, 2001), that whether an arrangement is a charter or lease lies in who retained control of the plane. Petitioner cites Michigan Department of Treasury Letter Rulings 88-17 and 88-41 for the definitions of charters and leases. Petitioner also cites various authorities in its request to the Tribunal to interpret the agreements (Exhibit 2, Exhibit 3) in totality and honor the intent of the parties in contrast to the Hearing Referee's construction of the Aircraft Lease/Management Agreement (Exhibit 2). Petitioner draws attention to "Paragraph 22 Paragraph Headings" of the Aircraft Lease/Management Agreement:

> headings … are solely for convenience and have no substantive effect on the Agreement nor are they to aid in the interpretation of the Agreement.

Petitioner notes that the "Lease Documents" (Exhibit 2, Exhibit 3), together with the actual conduct of the parties, establish a clear meaning resulting in an actual lessor/lessee relationship.

In support of its claim of a valid election of the rental receipts method under MCL 205.95(4), Petitioner also cites *Glieberman Aviation, LLC v Michigan Department of Treasury*, MTT Docket No. 281362 (2005).

III. RESPONDENT'S CONTENTIONS

Respondent contends that the purported lease agreement between Petitioner and ASI is not a true lease, but rather a "management agreement," and that Petitioner should be assessed use tax based on the purchase price of the aircraft. Specifically, Respondent states that the transaction between Petitioner and ASI is not a "lease or rental" as those terms are defined in MCL 205.92b(k)(iii), because "ASI as the operator and manager of the aircraft, is necessary for the equipment [aircraft] to perform as designed." Respondent further adds that the agreement

itself states that it is a "Management Agreement," and "Petitioner desires management services and ASI desires to provide these services." (Exhibit 2). Respondent notes the following sections in the agreement between Petitioner and ASI in support:

> THIS MANAGEMENT AGREEMENT is effective as of September 1, 2007, between [ASI] … and [petitioner] …
>
> WHEREAS, ASI desires to provide management services, and [petitioner] desires to use this service for management operation of an aircraft, specified below …
>
> Rates for pilot services and management services will be negotiated annually …; however, the remainder of this lease shall automatically renew for successive one (1) year renewal terms …
>
> ASI will have exclusive possession of the Aircraft … On all flights, ASI, and not the [petitioner] will have operational control … ASI shall pay to [petitioner] a lease rental rate as disclosed on the attached Rental Rate Agreement.
>
> ASI agrees to have flight crew personnel available to be used as a flight crew for the AIRCRAFT …
>
> [Petitioner] … agrees to pay ASI one hundred fifty thousand ($150,000) dollars annually for pilot services plus 30% for benefits.
>
> [Petitioner] is responsible for all taxes and assessments imposed by a government or municipality due to ownership and operation of the AIRCRAFT …
>
> ASI will pay in advance, on behalf of [petitioner] … incurred pilot expenses (meals, transportation, hotels, etc.) and normal AIRCRAFT operating expenses (fuel, maintenance, etc.) provided by ASI or outside suppliers … Any applicable AIRCRAFT related fixed costs will be billed to [petitioner] in advance of the 15th of each month and will be due before the 1st of the following month …
>
> ASI will secure hull insurance for the AIRCRAFT, at [petitioner's] expense, in the amount of … ($11,900,000.00) . . . At [petitioner's] expense, ASI shall provide a minimum of … ($50,000,000) . . . combined single-limit liability insurance for public liability and property damage, including passengers' liability …
>
> For the services provided in this agreement, [petitioner] shall pay ASI … ($2,500) per month. ASI will at all times attempt to optimize services and minimize costs for [petitioner] …

> Concerning the management of the AIRCRAFT, this agreement constitutes the entire agreement between the parties …

Respondent notes that the key terms of the Rental Rate Agreement are as follows:

> ASI agrees to pay to [Petitioner] the sum of … ($2,700) per flight hour, based on Aircraft flight time, for each hour of use by ASI …

Respondent emphasizes reimbursement provisions Petitioner has to pay instead of the lessee: Pilot remuneration, aircraft maintenance, insurance, fuel, and other operating expenses. Respondent also contends that through ASI, Petitioner charters the aircraft, and Revenue Administrative Bulletin (RAB) 1988-39 characterizes a charter as a service, and purchases of tangible personal property by a charter are taxable. Respondent notes that Petitioner's payment of the pilot salary reinforces characterization as a charter service.

Finally, Respondent argues that the "purported lease" between Petitioner and ASI is a "sham transaction." Respondent states:

> if . . . ER-ONE had purchased the aircraft, sales or use tax would have been due, because no applicable tax exemption could be leveraged. But by placing the aircraft within [Petitioner], an entity owned and controlled by ER-ONE's Chairman, and then claiming to lease it to ASI, ER-ONE and its executives … get the benefit and convenience of having a corporate jet, without the burden of paying sales and use tax on the purchase price, all by claiming to rent the aircraft to ASI … If ER-ONE and Sorini as an individual had purchased the aircraft outright, each still would be responsible for the associated costs of operating and maintaining the aircraft. But by structuring the transaction as each has, while each still has to pay those associated costs, the lease payments made to [Petitioner] remain with those who have ownership interests---[Petitioner], and [Petitioner's] owner, Sorini. The lease payment is a nullity.

Respondent also requests that the Tribunal uphold its imposition of penalties on Petitioner.

IV. FINDINGS OF FACT

The parties have stipulated to the following facts:

1. Petitioner is a Limited Liability Company (LLC) registered in Michigan; its address is 350 Huntington Drive, Ann Arbor, MI 48104.
2. Respondent is an administrative department of the State of Michigan, and is charged with the duty of administering the Use Tax Act.
3. Professional Emergency Care/ER-ONE and Cessna Aircraft Company entered into a purchase agreement on September 30, 2005 to purchase a 2007 Cessna Citation 560XLS ("Aircraft") with a delivery date in the 3rd Quarter of 2007.
4. ER-One never took delivery of, or title to, the Aircraft.
5. The Aircraft's FAA Registration Number is N911EK and the serial number is 560-5742.
6. On November 14, 2007, Professional Emergency Care/ER-One and Cessna Aircraft Company amended the purchase agreement. (Exhibit 1, Petitioner Exhibit C)
7. The Aircraft first entered Michigan on November 27, 2007.
8. Petitioner entered into the Aircraft Lease Management Agreement and Rental Rate Agreement with Air Services, Inc. ("ASI") effective September 1, 2007. (Exhibit 2)
9. Petitioner and ASI made the Rental Agreement effective November 27, 2007. (Exhibit 2)
10. Petitioner entered into the Operational Agreement with ASI effective November 1, 2007. (Exhibit 3)
11. ASI holds a Federal Aviation Administration Air Carrier Certificate No. A6YA104Y. (Exhibit 4)
12. According to its website, ASI is a FAR Part 135 Certified Operator based out of Traverse City, Michigan. ASI's President is Roy Nichols. (Exhibit 5)
13. Petitioner obtained a Michigan use tax registration on November 21, 2007. (Exhibit 6)
14. Petitioner's rental income from December 2007 to April 2009 was $1,020,061.00.

15. Petitioner's use tax payments for December 2007 to April 2009 were $61,204.14.
16. On March 2, 2008, Treasury sent to Petitioner a "Letter of Inquiry Concerning Aircraft in Michigan."
17. Petitioner responded to the Letter of Inquiry on March 18, 2008. (Exhibit 7)
18. On April 25, 2008, Treasury sent to Petitioner a "Notice of Use Tax Due – Nonqualified Aircraft."
19. On April 30, 2008, Petitioner responded to the April 25, 2008 Notice. (Exhibit 8)
20. On June 6, 2008, Treasury issued a Bill for Taxes Due to Petitioner. The amount of use tax assessed was $714,000, penalty in the amount of $71,400, and statutory interest.
21. On June 11, 2008, Petitioner requested an Informal Conference, and one was held on October 30, 2008.
22. The Hearing Referee recommended that a Final Assessment should be issued against Petitioner for use tax in the amount of $679,272 ($11,312,000 x 6%), penalty in the amount of $67,927 ($679,272 x 10%), and statutory interest. (Exhibit 9)
23. On November 28, 2008, Final Assessment Q074786 was issued.
24. The Final Assessment issued to Petitioner on November 28, 2008, was based on Aircraft having a retail value of $11,900,000 rather than a purchase price of $11,312,000.
25. As such, the Final Assessment that was issued against Petitioner was for use tax in the amount of $714,000 ($11,900,000 x 6%), penalty in the amount of $178,500 ($714,000 x 25%), and statutory interest.
26. On October 8, 2009, Respondent's counsel was informed by Treasury's Tax Policy Division that a corrected final assessment will be issued to Petitioner based on the lower amount provided in the November 20, 2008, Decision and Order of Determination.

27. On December 24, 2008, Petitioner filed a timely appeal with the Tribunal.

28. It is Petitioner's position that it purchased the Aircraft for the purpose of leasing and it properly elected to pay use tax on the rental receipts it receives rather than pay use tax on the purchase price of the Aircraft pursuant to MCL 205.95(4).

29. Treasury's position is that the lease agreement between Petitioner and ASI is not a true lease, but rather a "management agreement" and that Petitioner should be assessed use tax based on the purchase price of Aircraft.

In addition to the stipulated facts, Dr. Ernest Sorini, who is an executive of Professional Emergency Care/ER-One and LLC member of Petitioner, has the same address as Petitioner. Despite the stipulation of the parties that refers to the September 30, 2005 Purchase Agreement between Professional Emergency Care/ER-One and Cessna Aircraft Company, it should be noted that on November 14, 2007, several individuals and separate entities assigned the Purchase Agreement to Petitioner after it obtained the required consent of Cessna Aircraft Company. The assignors were: Dr. Sorini, Kelly Sorini, Dr. Sorini MD, P.C., and Oaklawn, Inc. Therefore, this group will be referred to as "Assignors" where relevant. Petitioner's Articles of Organization, filed on June 6, 2007, did not specifically state in Article II of the filing that it was engaged in aircraft leasing (Respondent Exhibit 14).

V. APPLICABLE LAW

A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. Under subsection (C)(10), a motion for summary disposition will be granted if the documentary evidence demonstrates that there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. *Smith v Globe Life*

Insurance, 460 Mich 446, 454-455; 597 NW2d 28 (1999). In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

The Michigan Supreme Court has established that a court must consider affidavits, pleadings, depositions, admissions, and documentary evidence filed by the parties in the light most favorable to the non-moving party. *Quinto v Cross & Peters Co*, 451 Mich 358, 362-63; 547 NW2d 314 (1996) (citing MCR 2.116(G)(5)). The moving party bears the initial burden of supporting his position by presenting his documentary evidence for the court to consider. *Neubacher v Globe Furniture Rentals*, 205 Mich App 418, 420; 522 NW2d 335 (1994). The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. *Id*. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. *McCart v J Walter Thompson*, 437 Mich 109, 115; 469 NW2d 284 (1991). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *McCormic v Auto Club Ins Ass'n*, 202 Mich App 233, 237; 507 NW2d 741 (1992).

The Use Tax Act (UTA) is complementary to the Michigan General Sales Tax Act, MCL 205.51 *et seq.*, and is designed to cover those transactions not subject to sales tax. *Sharper Image Corp v Dep't of Treasury*, 216 Mich App 698, 701; 550 NW2d 596 (1996). This tax is collectable from each taxpayer in Michigan and is assessed "for the privilege of using, storing, or consuming tangible personal property in this state at a rate equal to 6% of the price." MCL 205.93(1). "A sales-use tax scheme is designed to make all tangible personal property, whether

acquired in, or out of, the state subject to a uniform tax burden. Sales and use taxes are mutually exclusive but complementary, and are designed to exact an equal tax based on a percentage of the purchase price of the property in question." *By Lo Oil Co v Dep't of Treasury,* 267 Mich App 19, 52; 703 NW2d 822 (2005), quoting *Catalina Marketing Sales Corp v Dep't of Treasury*, 470 Mich 13, 19 n 3; 678 NW2d 619 (2004), quoting 85 CJS2d, Taxation, § 1990, p 950.

MCL 205.92(b); MSA 7.555(2)(b) defines "use" as "the exercise of a right or power over tangible personal property incident to the ownership of that property including transfer of the property in a transaction where possession is given." When the out-of-state retailer is obligated to deliver the goods to Michigan at the customer's address, Michigan Use Tax is due. LR 1987-27 (1987). Under Rule 85(1), 1979 AC, R 205.135, "The use tax applies on the transfer of vehicles, aircraft, watercraft, and snowmobiles between persons other than for resale by registered dealers . . . The tax due on aircraft shall be paid directly to the revenue division, department of treasury, by the purchaser."

Legal incidence of use tax falls upon the consumer or purchaser. *Combustion Engineering, Inc v Department of Treasury,* 216 Mich App 465; 549 NW2d 364 (1996). Furthermore, use tax is not owed on goods already subjected to certain other sales or use taxes in another state. *World Book, Inc v Department of Treasury*, 459 Mich 403; 590 NW2d 293 (1999).

Under Rule 82, 1979 AC, R 205.132:

> A person engaged in the business of renting or leasing tangible personal property to others shall pay the Michigan sales or use tax at the time he purchases tangible personal property, or he may report and pay use tax on the rental receipts from the rental thereof. A person remitting tax on the purchase price as a purchaser-consumer or remitting tax on rental receipts as a lessor, shall follow 1 or the other methods of remitting for his entire business operation. *A person remitting tax on rental receipts shall be the holder of a sales tax license, or a registration as is provided in the use tax act* (emphasis added). Each month such lessor shall compute and pay use taxes on the total rentals charged.

MCL 205.92(l) defines "lease or rental" as “any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration and may include future options to purchase or extend.” Rule 26 imposes a use tax registration upon both a Michigan consumer buying property from nonregistered sellers and a lessor of tangible personal property when rental receipts are taxable under Act No. 94 of the Public Acts of 1937 as amended. R 205.26(1)(b), 1(c). 1979 AC, R 205.26. Furthermore,

> … (2) An application for a use tax registration shall be obtained from the department of revenue upon a form prescribed by the department …
> (3) A use tax registration is not transferable from 1 ownership to another. For example: if a partner is added or dropped, or if a corporation is formed or dissolved, this constitutes a change in ownership necessitating an application in the name of the new ownership for another registration.
> (4) Registration under the use tax act requires the filing of monthly, quarterly or annual tax returns on forms furnished and pre-identified by the department. Failure to register and file returns can subject the taxpayer to heavy penalties.

MCL 205.93(2); MSA 7.555(3)(2), states that “the tax imposed by this section [Use Tax Act] for the privilege of using and storing, or consuming [an] . . . aircraft . . . *shall be collected before the transfer of the . . . aircraft* [emphasis added].”

Rule 20, 1979 AC, R 205.20, states:

> “For the convenience of the taxpayer these rules and regulations are indexed, usually with reference to particular lines of business. The taxpayer is responsible for obtaining knowledge of all rules and regulations affecting his liability for tax, in order that the proper amount of tax can be ascertained and paid to the state. These rules and regulations must be read and interpreted in their entirety rather than merely acquainting yourself with a rule briefly stated pertaining to your particular type of business.”

“Penalties and interest shall be added to the [use] tax if applicable as provided” under the UTA. MCL 205.93(1). Application of a penalty for failure to pay or file a tax payment is governed by MCL 205.24(1), which states:

> If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

The penalty must be waived if "it is shown to the satisfaction of the [Treasury] department that the failure was due to reasonable cause and not to willful neglect . . ." MCL 205.24(4). The petitioner bears the burden of establishing reasonable cause by clear and convincing evidence. Rule 13, 1999 AC, R 205.1013(4).

The Michigan Limited Liability Company Act (LLCA) defines a limited liability company (LLC) as an unincorporated membership organization that is formed under the act. MCL 450.4102(2)(k). An LLC may be formed for any lawful purpose for which a domestic corporation or a domestic partnership may be formed except as otherwise provided by law. MCL 450.4201.

VI. CONCLUSIONS OF LAW

This Tribunal has carefully considered both Petitioner's Motion for Summary Disposition and Respondent's Motion for Summary Disposition under the criteria for MCR 2.116(C)(10), and based on the pleadings and other documentary evidence filed with the Tribunal, determines that granting Respondent's Motion is appropriate.

Summary Disposition can be granted under MCR 2.116(C)(10) because the parties' documentary evidence demonstrates that there is no genuine issue of material fact.

"Assignors" Liability for Michigan Use Tax

As noted above, MCL 205.92(b); MSA 7.555(2)(b) defines "use" as "the exercise of a right or power over tangible personal property incident to the ownership of that property

including transfer of the property in a transaction where possession is given." As the Michigan Court of Appeals noted in *Fischer*,

> 'use' in the context of the UTA is not limited to physical actions performed directly on the property. It includes any exercise of a right that one has to that property by virtue of having an ownership interest in it. Something need not necessarily be physically present in Michigan for it to be "used" in Michigan. Entering into a contract to give up some of one's rights to possession or control is, itself, an exercise of those rights. *Fisher & Company, Inc v Department of Treasury*, 282 Mich App 207; 769 NW2d 740 (2009).

Black's Law Dictionary defines "transfer" as "[a]ny mode of disposing of or parting with an asset or an interest in an asset, including a gift, the payment of money, release, lease, or creation of a lien or other encumbrance . . . The term embraces every method — direct or indirect, absolute or conditional, voluntary or involuntary — of disposing of or parting with property or with an interest in property. Black's Law Dictionary defines "assignment" as "the transfer of rights or property . . ."

Here, the Purchase Agreement (Exhibit 1, Petitioner Exhibit C) between Cessna Aircraft Company and Professional Emergency Care/ER-One states:

> ASSIGNMENT:
>
> This Agreement, including the rights of Purchaser hereunder, may not be assigned by Purchaser except to a wholly-owned subsidiary, successor in interest by name change or otherwise, or to a financial institution solely for the purpose of providing Purchaser financing or leasing, and then only upon the prior written consent of Seller. (Exhibit 1, Petitioner Exhibit C).

Emergency Resources, Inc. (ER-One), Dr. Ernest Sorini, Kelly Sorini, Dr. Ernest Sorini, MD, P.C., and Oaklawn, Inc. as "Assignors" obtained written consent via "Amendment No. 3 Consent to Assignment" (Exhibit 1, Petitioner Exhibit C) from the seller, Cessna Aircraft Company, Inc. The relevant provisions are:

> Seller consents to the assignment of this Agreement from Ernest & Kelly Sorini, Ernest J. Sorini, MD, P.C., Emergency Resources, Inc. and Oaklawn, Inc. . . . (Assignor) with the understanding that [Petitioner] . . . (Assignee) agrees to assume all rights, liabilities, and obligations of Ernest & Kelly Sorini, Ernest J. Sorini, MD, P.C., Emergency Resources, Inc., and Oaklawn, Inc. ("Assignor") under the Agreement, in accordance with the terms and conditions thereof, and the Agreement is amended such that [Petitioner] is now the Purchaser for all purposes under the Agreement . . . If Assignee does not fully and completely perform all the obligations of the Assignor under the Agreement, then in accordance with the terms and conditions of the Agreement, Assignor and Assignee are both jointly and severally responsible for any and all damages arising from any breach of the Agreement and Seller may pursue both or either party for full satisfaction . . . Per the Purchase Agreement Paragraph 18, Assignee is a wholly-owned subsidiary or successor in interest to the Assignor.

The Purchase Agreement and amendments between Cessna Aircraft Company and "Professional Emergency Care/ER-One," Dr. Ernest Sorini, Kelli Sorini, Dr. Ernest Sorini, MD, PC, and Oaklawn, Inc., treated all of these persons and entities as purchasers of the Aircraft. By assignment of the "rights, liabilities, and obligations" under the Purchase Agreement, all of the above "Assignors" exercised rights consistent with ownership in the subject Aircraft. In addition, all of the above "Assignors" entered into an agreement that gave up present and future rights of possession or control of Aircraft assigning them to Petitioner, a separate legal entity formed under the Michigan Limited Liability Corporation Act.

"Kansas' Retailers Sales Act" exempts from sales tax "aircraft sold and delivered in this state to a bona fide resident of another state . . . which . . . aircraft is not to be registered or based in this state and which . . . aircraft will not remain in this state more than 10 days." KSA 79-3606(k). When the out-of-state retailer is obligated to deliver the goods to Michigan at the customer's address, Michigan Use Tax is due. LR 1987-27 (1987). With respect to delivery of the Aircraft, the Purchase Agreement states:

> Delivery
>
> a. Preliminary Delivery Quarter Fly-Away-Factor (F.A.F.) Wichita, Kansas is 3rd quarter, 2007.
> b. Scheduled Delivery Month will be furnished to Purchaser by Seller six (6) months prior to the last day of the Preliminary Delivery Quarter.

The Purchase Agreement clearly indicates that Cessna Aircraft Company's obligation to deliver and specify the terms of delivery of the Aircraft occurred many months before the assignment by "Assignors." The Aircraft was sold in Kansas, and the delivery term was F.A.F. Wichita, Kansas. The Purchase Agreement did not state the specific delivery address as the customer's address, but the stipulated facts do indicate that the delivery obligation was to occur in the third quarter of 2007. Given that delivery date was to occur in the third quarter of 2007, Cessna Aircraft Company was obligated to notify, at the latest, in first quarter 2007 of a specific delivery date. The assignment of the Purchase Agreement occurred on November 14, 2007.

In *Vixen Air v Melvin Van Vorst*, 1993 WL 45078 (MichCtCl), the Michigan Court of Claims in interpreting the timing of when "use" tax was due on an airplane purchase stated:

> MCL § 205.93(2); MSA 7.555(3)(2), states that "the tax imposed by this section [Use Tax Act] for the privilege of using and storing, or consuming [an] . . . aircraft . . . *shall be collected before the transfer of the . . . aircraft* " [emphasis added]. This is buttressed by Rule 85, R 205.135 which states "[t]he use tax applies on the transfer of vehicles, aircraft, watercraft, and snowmobiles between persons other than for resale by registered dealers. The tax shall be collected by the Michigan secretary of state before the transfer of any vehicle title or watercraft or snowmobile registration. The tax due on aircraft shall be paid directly to the revenue division . . . The Court finds, however, that M.C.L. § 205.93(2); MSA 7.555(3)(2), makes it clear that such payment of the use tax must be made before the aircraft is transferred. *Id* at 5.

As concluded above, "Assignors" transferred the aircraft to Petitioner. The fact that title or registration was not transferred at the time of the assignment is not relevant to the determination that use tax was due. The terms of the Purchase Agreement fixed certain delivery obligations

prior to the assignment of the Purchase Agreement. Professional Emergency Care/ER-One, Dr. Ernest Sorini, Kelly Sorini, Dr. Ernest Sorini, MD, P.C. and Oaklawn, Inc. entered into the assignment to Petitioner resulting in a transfer of rights, duties, and obligations, which would broadly include the right to possession or control of the Aircraft. As a result of agreement of Cessna Aircraft Company to the assignment, the liability for use tax arose prior to the date of the assignment, November 14, 2007.

It should be noted that there is a presumption that use tax is due when an aircraft arrives in the state within 90 days of purchase from an out-of-state seller. Here, by the terms of the Purchase Agreement, this presumption was no longer operative due to the delivery terms. However, the arrival of Aircraft more than 90 days after purchase, although extinguishing the presumption, would not result in an exemption from use tax. See *Guardian Industries Corp v Department of Treasury*, 243 Mich App 244; 621 NW2d 450 (2000), appeal denied 464 Mich 870; 630 NW2d 620, reconsideration denied 464 Mich 870; 635 NW2d 314. Finally, there was no Kansas sales tax due that would have served as an exemption from use tax.

Aircraft Lease/Management Agreement and Rental Receipts Election

The presumption is that property bought outstate for delivery in Michigan is purchased for storage, use or other consumption in Michigan, and is therefore subject to the use tax. The burden of overcoming the presumption, or of establishing an exemption, rests upon the taxpayer. *Kress v Department of Revenue,* 326 Mich 15; 39 NW2d 235 (1949). Both Petitioner and Respondent have stipulated that Petitioner was responsible for payment of use tax. The only disagreement is over Petitioner's amount due. Petitioner argues that it has made a valid Rule 82 election to calculate its use tax based on the rental rate due to its Aircraft Lease/Management

Agreement with ASI and being in the business of leasing aircraft. Respondent argues that the purchase price of Aircraft is the basis for Petitioner's use tax liability because the Aircraft Lease/Management Agreement is not a true lease, but is in the guise of a management agreement. To determine whether Petitioner's "election" to pay use tax on the receipts from the lease of Aircraft was timely, a review of the applicable sections of the UTA, revenue administration bulletins, and administrative rules is required.

Letter Ruling 1988-17, "LR 1988-17. Charter and a Lease of Tangible Personal Property," cited by Petitioner, states that "[w]hen an individual leases tangible personal property, that person has full control of the property." MCL 205.92(l) requires a transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration." On September 1, 2007, Petitioner and ASI entered into the Aircraft Lease/Management Agreement. Petitioner, as a separate legal entity, did not have an interest in Aircraft, and could not have had control or possession of Aircraft because it was not a party, at that time, to the Purchase Agreement. The Aircraft was listed as the subject of the Aircraft Lease/Management Agreement, but notably absent from the Aircraft Lease/Management Agreement was an after-acquired property clause that would have given Petitioner some interest or future rights in Aircraft. Only by the assignment of the Purchase Agreement, on November 14, 2007, did Petitioner obtain rights in Aircraft. November 14, 2007, was more than two months after the Aircraft Lease/Management Agreement's stipulated date.

The September 1, 2007 Aircraft Lease/Management Agreement could not be a lease because the subject matter of the agreement could not be leased by Petitioner. Petitioner did not have any ownership rights, interests, or control in the Aircraft from September 1, 2007 to November 14, 2007. The Aircraft Lease/Management Agreement did not include any

conditions or circumstances of future acquisition by Petitioner of the Aircraft. This legal conclusion is not changed by Petitioner's representation to ASI that it already had ownership, when in fact, it did not:

> 24. Representations. OWNER REPRESENTS, WARRANTS AND CERTIFIES THAT THERE EXISTS NO CONTRACT, AGREEMENT, LEASE, OR OTHER WRITTEN ARRANGEMENT . . . TO WHICH THE AIRCRAFT IS SUBJECT THAT PREVENTS, LIMITS OR RESTRICTS OWNER FROM TRANSFERRING WITHOUT IMPEDIMENT FULL OPERATIONAL CONTROL OF THE AIRCRAFT TO ASI. (Exhibit 1, Petitioner Exhibit C).

Notably the terms of the Aircraft Lease/Management Agreement indicate Petitioner was "Owner," and Dr. Sorini signed the agreement in his capacity as member of Petitioner. In viewing the facts most favorable to Petitioner, Petitioner had no ownership, possessory rights or interests in Aircraft as this did not occur until November 14, 2007. "Assignors" of the Purchase Agreement, specifically Dr. Sorini, also were on notice from the very terms of the Purchase Agreement that Petitioner could not have any interest in the Aircraft until written consent was obtained from Cessna Aircraft Company. Written consent to enable Petitioner to have any interest in Aircraft was not obtained until November 14, 2007, more than two months after the Aircraft Lease/Management Agreement. Also, because Petitioner had no interest in the Aircraft at the time of the Aircraft Lease/Management Agreement, resort to the agreement is not possible to determine whether Petitioner retained title, relinquished control, or gave exclusive possession of Aircraft to ASI.

Petitioner also argues that the Operational Agreement of November 1, 2007, between itself and ASI evidences relinquishment of its ownership interest in the Aircraft consistent with a lease. However, Petitioner still had no interest in the Aircraft on November 1, 2007. In viewing the facts most favorably to Petitioner, it, as a separate legal entity, did not acquire a possessory or

ownership interest in Aircraft until November 14, 2007. As noted above, "Assignors" of the Purchase Agreement, specifically Dr. Sorini as a member of Petitioner, also were on notice from the very terms of the Purchase Agreement that Petitioner could not have any interest in the Aircraft until written consent was obtained from Cessna Aircraft Company. Written consent to enable Petitioner to have any interest in Aircraft was not obtained until November 14, 2007, approximately two weeks after the execution of the Operational Agreement by ASI and Dr. Sorini, as member of Petitioner.

As to another possibility that the Aircraft Lease/Management Agreement was a lease, the rental rate was not specified on September 1, 2007. The relevant provision that references another agreement is: "Operations. … ASI shall pay to Owner a lease rental rate as disclosed on the attached Rental Rate Agreement." Stipulation of the parties and the facts indicate that the Rental Rate Agreement was not reduced to writing until November 27, 2007, and the Rental Rate Agreement did not specify the rental rate charge until that time.

The complicating factor is that the Rental Rate Agreement refers back to the Aircraft Lease/Management Agreement and, at the time of agreement, Petitioner did not have any rights in Aircraft, but at the time of entry into force of the Rental Rate Agreement, Petitioner owned the Aircraft. The language of the Aircraft Lease/Management Agreement evidences that the Rental Agreement is attached, but it did not get executed until approximately three months later. The interplay between the time when use tax for Aircraft was due, the ownership interest of Petitioner and the terms of the agreements executed at different times when Petitioner had no interest in Aircraft complicate the analysis. In viewing the facts most favorable to Petitioner, it can be concluded that a rental agreement was entered into on November 27, 2007, as the rental rate was specified and Aircraft was finally owned by Petitioner.

The Tribunal concludes though that Petitioner's lack of any interest in Aircraft on September 1, 2007, does not defeat characterization of the Aircraft Lease/Management Agreement as a management agreement because it anticipated services rendered at a future date. The relevant provisions of the Aircraft Lease/Management agreement state:

> WHEREAS, ASI desires to provide management services, and OWNER desires to use this service for management operation of an aircraft, specified below . . .
>
> 1. Aircraft. OWNER does hereby make available on terms herewith set forth, the following described aircraft … Aircraft serial number: 560-5742 . . .
>
> 18. Entire Agreement. Concerning the management of the AIRCRAFT, this Agreement constitutes the entire agreement between the parties . . .
>
> 21. Severability. The invalidity of any portion of this Agreement shall not affect the validity of the remaining portions thereof . . .

The Aircraft Lease/Management agreement indicates that the subject matter is for management services of an aircraft. However, even if it is viewed in the light most favorable to Petitioner, that there was no management agreement and a lease arose on November 27, 2007, Petitioner failed to timely elect to pay use tax on the "rental receipts" method.

Petitioner Failed to Make a Timely Rule 82 Election

In viewing the facts in the most favorable light to Petitioner, Petitioner was substituted as "Purchaser," of Aircraft on November 14, 2007. Petitioner entered into a rental lease agreement for the Aircraft on November 27, 2007, with ASI. Also, assuming on November 27, 2007, no management agreement existed because Petitioner did not have any interest in Aircraft to contract for services at the time of the Aircraft Lease/Management Agreement, Petitioner did not timely make an election to use rental receipts as a basis for its calculation of use tax due. In *Glieberman Aviation, LLC v Michigan Department of Treasury* (2005 WL 756292) MTT Docket

No. 281362, the Tribunal adopted the thorough analysis in *Vixen Air* of Rule 82 and the Department of Treasury's rules, specifically stating that the Court of Claims held that Rule 82:

> indicates an intent that the registration should be obtained before or at the time of purchasing tangible personal property and that an election should be made at that time. The rule states that rents must be calculated and paid each month. These taxes cannot be paid without an election being made or a registration obtained . . . MCL 205.93(2); MSA 7.555(3)(2), makes it clear that such payment of the use tax must be made before the aircraft is transferred. Further, Rule 82, R 205.132 states unequivocally that "[a] person engaged in the business of renting or leasing tangible personal property to others *shall pay the Michigan sales or use tax at the time he purchases tangible personal property, or he may report and pay use tax on the rental receipts from the rental thereof.* The foregoing rules and statutes make it plain that a taxpayer has a duty to pay use tax on the purchase of tangible personal property at the time he purchases said property, or before the transfer of the tangible personal property, if it is a vehicle, ORV, mobile home, snowmobile, watercraft, or, as in this case, an aircraft. This duty still applies even if the taxpayer elects to pay the use tax as a percentage of 205.132, and obtaining of the necessary registration. This duty is not suspended pending the decision as to whether or not the taxpayer qualifies, or finally decides, or discovers he may elect to pay the use tax as a basis of the rental receipts received. The taxpayer has a duty to pay the use tax at the time of purchasing the tangible personal property or at that time, elect to make payments of the use tax as a percentage of the rental receipts received thereof. The Court is of the opinion that pursuant to the above analysis that the time to register and make the election is before or at the time of purchasing tangible personal property. *The Court finds, in reading all of the rules together, this is a reasonable conclusion. The Court is of the opinion that it was not the intent of the Use Tax Act to allow a taxpayer to make an election at any time after the purchase of the tangible personal property. This would not comport with the efficient administration of the tax code* [emphasis added]. *Glieberman, supra* at 14, citing *Vixen Air*.

In the Assignment (Exhibit 1) from "Assignors," as noted above, Petitioner agreed to assume all rights, liabilities, and obligations of the Purchase Agreement between Professional Emergency Care/ER-One and "Assignors." Thus, on November 14, 2007, Petitioner became substituted as a purchaser of Aircraft. Petitioner stated that it is engaged in the business of renting and leasing aircraft. On November 14, 2007, or before that date, Petitioner was required to register for "use" tax as a prerequisite to the election to pay use tax as a percentage of rental receipts. On

November 21, 2007, Petitioner filed a use tax registration (Exhibit 6) with Respondent. Petitioner's registration and filing was untimely to make the election to pay use tax as a percentage of rental receipts because it was beyond the date of purchase, November 14, 2007. Therefore, Respondent's basis to calculate "use" tax due based on the default method, the purchase price, was reasonable and proper.

The law does not favor a liberal award of use tax exemptions, and requires that the party claiming the benefit of a particular exemption provision clearly establish its applicability, *Edison v Dep't of Revenue*, 362 Mich 158, 162; 106 NW2d 802 (1961). In claiming the Rule 82 exemption, the Tribunal finds that Petitioner's cites to *Air Cloverdale* in distinguishing between a charter and lease is not applicable because Petitioner had no lease until November 27, 2007, when it specified both the rental rate and had an existing ownership interest in Aircraft. The November 27, 2007 Rental Agreement and ratification of the September 1, 2007 Purchase Agreement was after the time for a timely election to use the rental receipts method before or at the time of purchase, November 14, 2007. The character of the agreement as a charter or lease is not determinative.

Additionally, the Tribunal does not find persuasive Petitioner's argument that *Glieberman* is distinguishable as Petitioner argues that the test for timely election is to register for the use tax prior to the commencement of the lease payments. In *Glieberman*, the Tribunal held that the duty to pay the tax was not suspended pending its decision to register with the Department or until such time that it leased the subject aircraft. *Id* at 14. Here, Petitioner purported to lease the subject aircraft before it had any interest in it. Petitioner also did not register with Respondent, the Department, until after the date it became a substitute purchaser of Aircraft. Therefore, Petitioner was required to pay use tax, as a user of tangible personal

property, before the aircraft was transferred, and that the tax is equal to 6 % of the purchase price of Aircraft. In Petitioner's situation, such liability pre-existed the lease term which commenced on November 27, 2007, based on the Tribunal's conclusion the lease of Aircraft had not commenced until Petitioner's acquisition of the subject property and specifying the rental rate.

The Tribunal disagrees that Petitioner's use tax registration was timely under MCL 205.95(4): MCL 205.95(4) states:

> A lessor may elect to pay use tax on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property *at the time it is acquired* [emphasis added]. For tax years that begin after December 31, 2001, in order to make a valid election under this subsection, a lessor of tangible personal property that is an aircraft shall obtain a use tax registration *by the earlier of the date set for the first payment of use tax under the lease or rental agreement* [emphasis added] or 90 days after the lessor first brings the aircraft into this state.

The language "at the time it is acquired" indicates that the "rental receipts" election must be made at the time of acquisition of the tangible personal property. As noted above, November 14, 2007, the date of assignment of the Purchase Agreement, was the date that Petitioner acquired an interest in Aircraft. The Aircraft Maintenance/Lease Agreement only indicated that "ASI shall pay to Owner a lease rental rate as disclosed on the attached Rental Rate Agreement." The Aircraft Maintenance/Lease Agreement only indicated that "ASI will pay all taxes . . . relating to their use or operation of the AIRCRAFT excluding . . . State Use or Sales Tax." There was no Rental Agreement, on November 14, 2007, which specified the amount or payment date of rental or lease payments. Therefore, Petitioner did not make a valid and timely election under MCL 205.95(4).

<u>Penalty Imposed on Petitioner</u>

The Statutes, administrative rules, letter rulings, revenue administrative bulletins, and case law note that the key date to register and make the Rule 82 election is before or at the time of purchase of the tangible personal property—not a date within the purview of a lease. Besides *Vixen Air, Glieberman, supra* at 14, 15, discusses several cases with regard to timely registration for use tax. In *Eastern Michigan University v Michigan Department of Treasury,* 9 MTTR 307 (Docket No. 211031, May 8, 1996), the Tribunal held that "[a] Rule 82 election must be timely and should not allow a taxpayer to wait and, in hindsight, select the lowest taxable amount or defer its tax payment." In *Aerogenesis, Inc v Michigan Department of Treasury,* 10 MTTR 791 (Docket No. 258603, December 22, 1999), the Tribunal briefly discussed Rule 82 and the option to pay use tax based upon the rental receipts method. "This rule provides the option at the time of purchase of tangible personal property." In *Glieberman I,* in *dicta,* the Tribunal noted that "Petitioner was not registered with the State of Michigan at the time of the aircraft purchase, the appropriate time to have elected to remit use tax on the rental proceeds of leased property under Administrative Rule 205.132." *Glieberman Aviation LLC v Michigan Department of Treasury,* MTT Docket No. 266539 (2004). In *Mack, LLC v Michigan Department of Treasury,* 12 MTTR 319 (Docket No. 272776, February 11, 2003) , the Tribunal stated "[A]s MCL 205.96(1) states, Petitioner has until the fifteenth calendar day of the month subsequent to the month of acquisition to file such returns. This would mandate a prior registration, thereby predicating a proper election of the method."

The Tribunal finds that there were significant guidelines existing prior to Petitioner's series of transactions that indicated the steps for a proper election to pay use tax based on the "rental receipts" method. When electing the "rental receipts" method, the law unambiguously

required that use tax registration occur prior to, or contemporaneously with, the acquisition of the aircraft.

With respect to the penalty imposed on Petitioner, "Penalties and interest shall be added to the [use] tax if applicable as provided" under the UTA. MCL 205.93(1). Application of a penalty for failure to pay or file a tax payment is governed by MCL 205.24(1), which states:

> If a taxpayer fails or refuses to file a return or pay a tax administered under this act within the time specified, the department, as soon as possible, shall assess the tax against the taxpayer and notify the taxpayer of the amount of the tax. A liability for a tax administered under this act is subject to the interest and penalties prescribed in subsections (2) to (5).

The penalty must be waived if "it is shown to the satisfaction of the [treasury] department that the failure was due to reasonable cause and not to willful neglect . . ." MCL 205.24(4). The petitioner bears the burden of establishing reasonable cause by clear and convincing evidence. Rule 13, 1999 AC, R 205.1013(4). Reasonable cause that excuses penalties includes:

- Failure to file or pay is caused by the death or serious illness of the taxpayer responsible for filing;
- Failure to file or pay is caused by the destruction by fire or other casualty of the taxpayer's records or the taxpayer's business;
- Failure to file or pay is caused by the prolonged unavoidable absence of the taxpayer responsible for filing and the taxpayer is precluded due to circumstances beyond the taxpayer's control, from making alternate arrangements for filing or paying;
- A showing that the completed return or payment was timely mailed, that is, the United States postmark stamped on the envelope is dated on or before the due date set for filing the return, including extensions;
- A showing that the delay or failure is caused by erroneous written information that has been prepared contemporaneously and given to the taxpayer by an employee of the department.

The Tribunal finds that Petitioner has not met its burden of showing "reasonable cause." None of the situations in the preceding list are applicable. The Tribunal finds the business expertise

expected of the President in *Vixen Air*, applicable to the similar transactions of Petitioner's member. The Court of Claims noted:

> Anthony Sulfaro, the President of Plaintiff, Vixen Air, is not an average citizen. He is a businessman who is the president of two companies, and negotiated a transaction for an expensive aircraft to be purchased and subsequently leased between these two entities. This evidences an expertise, or at least a working knowledge of the business world, of which taxes are a major part. The court finds the purchase of an aircraft, for the purposes of renting said aircraft, should put the taxpayer on notice of possible tax liabilities. *Vixen Air, supra* at 6.

Dr. Sorini is a physician and business executive of several companies and signed as the purchaser of an expensive aircraft. He also signed for the Assignment of the Purchase Agreement to Petitioner. He also entered into an agreement to lease and manage the aircraft even though Petitioner did not have any interest in the Aircraft at the time. Although Petitioner's Articles of Organization did not state that it was formed for the purpose of aircraft leasing, Petitioner indicated that it is in the business of leasing and renting aircraft. Such status should put Petitioner and any of its members on notice of possible tax liabilities.

Rule 20, 1979 AC, R 205.20, states:

> For the convenience of the taxpayer these rules and regulations are indexed, usually with reference to particular lines of business. The taxpayer is responsible for obtaining knowledge of all rules and regulations affecting his liability for tax, in order that the proper amount of tax can be ascertained and paid to the state. These rules and regulations must be read and interpreted in their entirety rather than merely acquainting yourself with a rule briefly stated pertaining to your particular type of business.

The Tribunal also finds that Petitioner did not meet its burden of proof by clear and convincing evidence that the penalty should be avoided because its Member, Dr. Sorini, did not respect its separate legal existence for purposes of renting and leasing that is a key consideration in making a Rule 82 election—an interest in tangible property in order to rent or lease. The

Tribunal rejects Respondent's argument that the Aircraft Lease/Management agreement was a "sham" transaction and acknowledges that transfer of aircraft into another entity has a legitimate business purpose. See *Air Cloverdale, supra.* However, the Tribunal finds it unpersuasive that Petitioner took the position it was a lessor of Aircraft before the date of its purchase of Aircraft. The Tribunal acknowledges Petitioner's detailed discussion about the Aircraft Lease/Management Agreement provisions and FAA regulations requiring ceding operational control to ASI, but Petitioner simply did not have an interest that it could have rented or leased to ASI. Petitioner's disregard of the Purchase Agreement's requirement of approval by Cessna Aircraft Company and entering into another agreement to lease out the Aircraft when it had no interest, and its attempt to cede operational control when it had no interest, is contrary to how a lessor of tangible personal property would reasonably operate its business and plan for subsequent tax liabilities.

Glieberman also stands for the proposition that in cases of ambiguity, taxpayers liable for use tax based on the rental receipt return should contact the Department for clarification.

> [i]f there was indeed an ambiguity as to how to properly file a use tax registration and return, as well as properly elect the rental receipts option, Petitioner should not have hesitated to contact Respondent for clarification … The Tribunal finds that, in not clarifying the manner as to when use tax registration and the election of the rental receipts option is to be elected, Petitioner was negligent in its actions and obligations. *Glieberman, supra* at 15, citing *Mack, LLC.*

As detailed above, the series of transactions were not simple. The assignment to Petitioner (Exhibit 1) was subject to the out-of-state seller's approval, was close to the delivery date of Aircraft, and was between Petitioner and individuals, a medical practice, and other businesses. Petitioner's conduct in entering into a lease for Aircraft in which it did not have an interest certainly raised questions about Petitioner's use tax liability, "Assignors'" use tax liability, and

any allocation of liability between them with possible credits and exemptions that would apply differently between the individuals and separate business entities. The pre-existing guidelines are consistent that the "rental receipts" method for paying use tax must be elected at or before the time of purchase of an aircraft, and if Petitioner had any ambiguity, it had an obligation to contact Respondent on how to properly file a use tax registration and elect the rental receipts option.

In conclusion, Petitioner has not established that genuine issues of material fact exist.

VII. JUDGMENT

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

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

IT IS FURTHER ORDERED that Final Assessment Q074786 is affirmed.

IT IS FURTHER ORDERED that Respondent's assessment of penalties is affirmed.

IT IS FURTHER ORDERED that the amount of use tax that Petitioner has paid to date shall be credited against the assessment.

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties as indicated herein within 20 days of entry of this Final Opinion and Judgment.

IT IS FURTHER ORDERED that Respondent shall collect the affected taxes, interest and penalties or issue a refund as required by this Order within 28 days of entry of this Final Opinion and Judgment.

MICHIGAN TAX TRIBUNAL

Entered: April 15, 2010
jpm

By: Kimbal R. Smith III