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

Denton Farms LLC,
Petitioner,

v

MTT Docket No. 16-000038

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. 28-51-898-459-31 shall be granted an exemption under MCL 211.181(2)(b) for the 2014-2017 tax years; the amount of the exemption is 66.67%.

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

Parcel Number: Parcel No. 28-51-898-459-31

Year	TV
2014	$100,300
2015	$128,600
2016	$143,985
2017	$145,280

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

[1] See MCL 205.726.

Parcel Number: Parcel No. 28-51-898-459-31

Year	TV
2014	$33,430
2015	$42,862
2016	$48,162
2017	$49,962

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

Denton Farms, LLC,
Petitioner,

v

MTT Docket No. 16-000038

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. 28-51-898-459-31 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] H. Wendell Johnson, Attorney, represented Petitioner and Richard J. Figura and Timothy Figura, Attorneys, represented Respondent.

A hearing on this matter was held on May 5, 2017. Petitioner's witnesses were Robert Denton, Eric Nuffer, and Kevin Kline. Respondent did not have 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 are as follows:

Parcel Number: 28-51-898-459-31

Year	TCV	AV	TV
2014	$200,600	$100,300	$100,300
2015	$257,200	$128,600	$128,600
2016	$289,000	$144,500	$143,985
2017	$299,800	$149,900	$145,280

Based on the evidence, the case file and applicable law, the Tribunal finds that the property is 66.67% exempt from ad valorem taxation under MCL 211.181(2)(b) for the tax years

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

at issue as that portion of 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: 28-51-898-459-31

Year	TCV	AV	TV
2014	$200,600	$100,300	$33,430
2015	$257,200	$128,600	$42,862
2016	$289,000	$144,500	$48,162
2017	$299,800	$149,900	$49,962

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 MCL 211.181(2)(b) "for the years 2014 and 2015, and subsequent tax years pursuant to MCL 205.737(5)(a)." Specifically, Petitioner contends[2] that (i) "[t]he fact that the hangar is located on land owned by the City of Traverse City, controlled by the Northwest Regional Airport Commission ('NRAC'), and open to the public, thus making it exempt from taxation pursuant to MCL . . . [211.181(2)(d)), has not been contested,"[3] (ii) "Petitioner operates the hangar under an Amended and Restated Lease dated April 10, 2012, ('Lease') which allows, and restricts, Petitioner's use of the property for:

> . . . operation of a commercial aircraft hangar in connection with aircraft maintenance, limited commercial flight service and flight instruction as may be approved in writing by the Lessor to be located on the leasehold premised described herein. (Exhibit P-1, p. 5 of 28)."

(iii) "[a]t the commencement of the rent, the NRAC prevented Petitioner from stepping into the

---

[2] Although Petitioner made an opening statement (see Transcript ("TR.") 5-7), Respondent requested the opportunity for the parties to submit post-hearing briefs and said request was granted (see TR. 52-3). In that regard, Petitioner submitted a post-hearing brief on May 19, 2017, and a response on May 31, 2017. The post-hearing and response briefs 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 8, 2016 petition, the March 8, 2017 Prehearing Summary, and Petitioner's May 3, 2017 Pre-trial brief.

[3] Petitioner cites *Skybolt Partnership v City of Flint*, 205 Mich App 597, 602; 517 NW2d 838 (1994) in support of this contention. In that regard, Petitioner's contention that neither of the *Skybolt* conditions had been challenged by Respondent in its Prehearing Statement or during the hearing is incorrect. More specifically, Respondent's Prehearing Statement was consistent with its answer to Petitioner's petition and indicated that Respondent lacked sufficient information to determine whether the property at issue was a concession and entitled to an exemption under MCL 211.181(2)(d), "which has the effect of a denial." See MCR 2.111(C)(3). Further, Respondent did not make an opening statement during the hearing. Rather, Respondent requested the opportunity to file post-hearing brief and said request was granted, as indicated above. In that regard, Respondent's post-hearing brief clearly indicates Respondent's "challenge" to the requested exemption.

shoes of the prior noncommercial lessee for the subject hangar . . . . [and] [i]nstead . . . imposed its form of commercial lease, together with a document titled 'Minimum Standards for Aeronautical Activities for the Cherry Capital Airport' ('Minimum Standards'), to provide NRAC overall control of the hangar and assure that commercial operations at the site furthered the public purposes of the NRAC . . . . (Exhibit P-5, p. 7 of 9 and P-8, p. 3 of 7)," (iv) "[s]ublessee Giving Wings Aviation, LLC ('GWA') holding a documented operating relationship with Petitioner at the site, was likewise approved as a commercial operation by the NRAC (Exhibit P-9, p. 4 of 7), and is likewise thoroughly controlled by [the] NRAC . . . . (Trans. P. 45, lines 4-6)," (v) "Petitioner stores two planes of its owner, Mr. Robert Denton[,] in the subject hangar, and leases an additional three planes to GWA, together with unrestricted space in the entire hangar," (vi) "Mr. Eric Nuffer, on behalf of GWA, testified extensively as to the use and scope of operations conducted in the hangar . . . . [and] [t]hose uses include aircraft maintenance, transition training for pilots, after hours recovery of aircraft, flight training, single-engine training, renting aircraft, aerial tours, and flight seeing," (vii) "Mr. Kevin Kline, Director of Cherry Capital Airport, testified about those uses stating:

> They're aeronautical services that are provided that would be what I would consider standard airport services. However, in the case of Cherry Capital Airport, we use private entities to provide those services. (Trans. At p. 45, lines 21-24)."[4]

(viii) "[i]n the course of providing those 'standard airport services,' the Petitioner is subject to nearly total control of its business operations by the NRAC . . . . [and] [i]llustrative of the type of control retained by the Lessor over Petitioner's business through the Lease (Exhibit P-1) and the Minimum Standards (Exhibit P-4) are the following:

- NRAC retains the right to enter upon the premises for the purposes of inspecting any portion or for making changes or alterations to the hangar. (Lease, §7)
- Petitioner is obligated to comply with all required provisions of the Federal Aviation Act of 1958 as it is amended. (Lease, §8)
- Signs advertising Petitioner's business must be approved by [the] NRAC. (Lease, §9A)
- NRAC retains the right to control the demeanor, conduct, and appearance of Petitioner's employees, invitees, and all of those doing business on the lease[d] premises. (Lease, §9D)

---

[4] Petitioner cites *Detroit v Tygard*, 381 Mich 271; 161 NW2d 1 (1968) relative to Mr. Kline's testimony as the Michigan Supreme Court stated on p 276 that "the services offered must bear a reasonable relationship to the purposes of a public airport." Petitioner also cites *Kent County v City of Grand Rapids*, 318 Mich 640, 645; 167 NW2d 287 (1969).

- NRAC holds the unilateral right to further develop the leased premises, regardless of the desires or view of Petitioner. (Lease, §9F)
- Petitioner must maintain strict insurance coverage as dictated by [the] NRAC. (Lease, §9J)
- No equipment can be stored on the premises without the prior written approval of NRAC. (Lease, §9P)
- Petitioner cannot assign the Lease in connection with an attempted sale of its business without approval of [the] NRAC. (Lease, §16)
- Petitioner cannot transfer 50% or more of the ownership in Denton Farms, LLC without the written approval of [the] NRAC. (Lease, §16)
- NRAC has the unilateral right to terminate the Lease at any time, for any reason it chooses. (Lease, §25)
- If the Lease is terminated, NRAC has the unilateral right to pay for the hangar, or not, as it chooses in its sole discretion. (Lease, §25)
- NRAC dictates minimum standards for improvement of the interior of the hangar, to include storage/display space, public lounge, public restroom, and access to a telephone. (Min. Std.)
- Location for parking private automobiles is controlled by [the] NRAC. (Min. Std.)
- Minimum square footage of the business operation is controlled by [the] NRAC. (Min. Std.)
- Minimum hours of operation are dictated by [the] NRAC. (Min. Std.)
- Posting contact information on the premises such as phone numbers are dictated by [the] NRAC. (Min. Std.)
- Petitioner's employee's qualifications are controlled by [the] NRAC. (Min. Std.)

(ix) "the rights and discretion of the Petitioner are strictly limited and the NRAC exerts ultimate control over the hangar . . . . [and] [c]onsidering ownership of the hangar as a bundle of sticks, [the] NRAC effectively holds ownership of the hangar," (x) "[t]he services available at this site are advertised to the general public by signage at the hangar, by maintaining a website and Facebook page, by placing ads in tourist maps distributed to hotels in Traverse City, and all rest areas in Michigan, and by advertisement on radio stations . . . . (Trans. p. 33, lines 3-24)" and by the airport on its website "tvcairport.com" . . . . (Trans. p. 47, lines 10-12)," (xi) "Petitioner's services are offered to the general public on regularly scheduled hours and by appointment, and to the NRAC and the flying public on a 24 hour basis,"[5] (xii) "Petitioner wishes to emphasi[ze] that the extremely structured nature of the Lease and Minimum Standards, and the obvious

[5] Petitioner referenced the testimony of Mr. Kline and Mr. Nuffer relative to Petitioner's "normal" or "actual" hours of operation. See TR. 50 and 33-4. Petitioner also stated that Mr. Kline's "testimony makes clear the NRAC believes the Minimum Requirements create the level of control and oversight needed to assure that appropriate services are available to the public."

business relationship with Petitioner to the public in furtherance of airport activities was information readily available to the Respondent from the initial filing of an Application for Property Tax Exemption . . . . [and] [t]he silent resistance to Petitioner's request for exemption demonstrates the bad faith of Respondent, and entitles Petitioner to an award of attorney's fees," (xxii) "Respondent initially claims . . . that the hangar is owned by the Petitioner . . . [and] is therefore not leased by the airport and is taxable, because the exemption is available only to property owned by the airport . . . . [however,] this argument must fail because it ignores the statutory and common law rule that 'buildings placed upon real property become part of the real property . . . . [f]urthermore, the testimony and exhibits submitted . . . under the 'bundle of sticks' concept of ownership establish that the NRAC exerts ultimate control over the property, thus becoming the owner," (xxiii) "Respondent . . . argues that Petitioner's use did not qualify as a concession because the Lease does not establish minimum hours during which attendant services are offered . . . . [and] Petitioner counters that argument with further discussion from the *Tygart* opinion where the Court acknowledged that offering 'particular services at specified time' is one element for the court to consider, but went on to say[, as indicated above,] '. . . services offered must bear a reasonable relationship to the purpose of a public airport," and (xxiv) "Respondent argues . . . that not all of the subject property is available for use by the general public . . . . [and] [t]his argument is an attempt to show that space inside the hangar is segregated between the Petitioner and the Sub-tenant . . . . [h]owever, testimony of witnesses established that both the Lessee and the Sublessee occupy and use the entire property . . . . [f]urthermore, Respondent's argument ignores the statutory construct of the exemption that it is the use of the property, not the physical space, that qualifies the property for exemption from taxes.

As determined by Petitioner, the subject properties' TCV and TV for the tax year at issue should be as follows:

Parcel Number: 28-51-898-459-31

Year	TCV	AV	TV
2014	$200,600	$100,300	$0.00
2015	$257,200	$128,600	$0.00
2016	$289,000	$144,500	$0.00
2017	$299,800	$149,900	$0.00

PETITIONER'S ADMITTED EXHIBITS[6]

P-1 4-10-12 Amended and Restated Airport Property Lease/NRAC and Denton Farms.
P-2 4-1-12 Sublease of Property (Denton Farms and Giving Wings Aviation Sublease)
P-3 4-10-12 Consent of Lessor to Sublease Agreement/NRAC Approved Denton Farms and Giving Wings Aviation Sublease.
P-4 Minimum Standards for Aeronautical Activities for Cherry Capital Airport.
P-5 12-20-11 NRAC Minutes Item 6/Initial Consideration of lease to Denton Farms.
P-6 1-17-12 Multiple Specialized Aviation Service Operator Application from Giving Wings Aviation.
P-7 2-9-12 Application of Giving Wings Aviation to be independent aircraft maintenance provider.
P-8 2-21-12 NRAC Minutes Item 2/Approved Denton Farms lease for commercial activity.
P-9 2-21-12 NRAC Minutes Item 3/Approved Giving Wings Aviation as SASO.
P-10 5-6-12 Request of Giving Wings Aviation amend operating agreement to provide flight instruction services, aircraft rental and flight seeing.
P-11 5-29-12 NRAC Meeting Minutes Item 2/Approved Giving Wings Aviation to provide flight instruction, aircraft rental and filing seeing.
P-12 10-29-12 NRAC Meeting Minutes Item G/Approved Denton Farms request to expand hangar and improve site.
P-13 3-23-15 NRAC Meeting Minutes Item 3/Approved Giving Wings Aviation to provide aircraft maintenance, flight instruction, aerial tours and aircraft rental.
P-14 Denton Farms Hangar Lists of Approved Persons.

PETITIONER'S WITNESSES

Robert Denton

Robert Denton was Petitioner's first witness. He was not offered or admitted as an expert witness. He did, however, testify that (i) he is the sole member and manager of Petitioner,[7] (ii) Petitioner "owns aircraft" and has "a hangar at Cherry Capital Airport,"[8] (iii) Petitioner's activities were "owing the hangar and aircraft" and those activities "commenced" in 2012," (iv) the ground is owned by "Cherry Capital Airport" and the buildings (i.e., hangar) are owned by Petitioner,[9] (v) he entered into the lease with the intent of having the hangar open to the public (i.e., "[y]es"),[10] (vi) the Lease indicates that he can use the hangar for "aircraft maintenance,

[6] 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. 7.
[7] See TR. 9.
[8] See TR. 9.
[9] See TR. 10. Mr. Denton also testified that the NRAC did not approve a transfer of the original lease to Petitioner after he bought the hangar as that lease was a non-commercial lease and the NRAC "wanted a new lease" to reflect the commercial operation of the hangar. See TR. 18-9.
[10] See TR. 11.

instruction, fleet management, [and] hangaring of aircraft,"[11] (vii) any change in the use of the or modification to the hangar requires the approval of the NRAC and both he and his sub-lessee have gone to the NRAC to seek such approval,[12] (viii) "[e]verything we do is controlled by the airport commission . . . . [a]ny changes that we make to the property, any signs that we put up, have to be approved by the commission,"[13] (ix) NRAC approval is required to transfer the lease or for him to transfer 50% of the membership of Petitioner, as the NRAC is "concerned [with] who is on their property,"[14] (x) parking is only allowed "in the areas provided for automotive parking,"[15] (xi) upon termination of the lease, the lease is either "extended" or the NRAC "can take control of the hangar . . . . [as] [i]t reverts back to the airport,"[16] (xii) if the lease is not extended, the hangar "stays . . . on the property . . . . [as] [i]t can't be moved" and it would not be practical to "deconstruct" the "entire building" and remove the cement,"[17] (xiii) the Minimum Standards control "everything that's done on the airport property" and are policed by "airport operations,"[18] (xiv) the hangar is "basically a box, 60 by 100 foot long, with a small office space in front," rest room, and classroom space with "the majority of it being hangar space for our airplanes" (i.e., a "typical hangar"),[19] (xv) Petitioner "owns five planes, two of which are for my personal use . . . . [a]nd they [are] stored in the hangar" with the other three planes, that are also stored in the hangar, "available for rent or lease to Giving Wings Aviation,"[20] (xvi) with respect to inspections, "airport operations can come in and check like for the signage . . . . [and] are by the hangar constantly,"[21] (xvii) the restrictions imposed on Petitioner are done "strictly by the airport,"[22] (xix) he is required to maintain insurance with the airport named as the insured and that Giving Wings "maintains their own insurance,"[23] and (xx) the Lease "controls what we do in

---

[11] See TR. 12.
[12] See TR. 12-3.
[13] See TR. 13.
[14] See TR. 14.
[15] See TR. 14.
[16] See TR. 14. Mr. Denton also testified that the airport has the "option" to buy the hangar, "but they don't necessarily have to buy it." See TR. 15.
[17] See TR. 15.
[18] See TR. 15-6.
[19] See TR. 16.
[20] See TR. 17. Mr. Denton further testified that the planes cannot be parked outside the hangar "without the airport permission or a fee for overnight parking." See also TR. 20.
[21] See TR. 17.
[22] See TR. 17-8.
[23] See TR. 18.

the building . . . . [and affects the] owning of the hangar," as any new owner would have "to be an airport approved function."

On cross-examination, Mr. Denton testified that (i) his two personal planes are not leased to anyone, while the three other planes are leased to Giving Wings with Petitioner receiving income for leasing planes to Giving Wings,[24] (ii) Petitioner leases space to Giving Wings only, but "allow[s] the Experimental Aircraft Association to use our facilities for their meetings, their events to raise awareness of flying . . . . [and] [t]hey have Young Eagles Flights that allow kids to come in and take their first flight,"[25] (iii) NRAC authorization was required for the events, but not the meetings,[26] (iv) Petitioner uses "a third to maybe a little more" of the hangar space and Giving Wings is "probably using two thirds [of the space] or maybe more . . . . [plus] Giving Wings also maintains the [private] planes that . . . [he] flys,"[27] and (v) Giving Wings has submitted an application to the NRAC listing the hours the hangar is open and the activities intended for the hangar.

In response to questioning from the Tribunal, Mr. Denton testified that (i) he has two airplanes for his private use and three airplanes that Petitioner leases to Giving Wings[28] and (ii) the space utilized by Petitioner relates to Mr. Denton's private planes only.[29]

Eric Nuffer

Eric Nuffer was Petitioner's second witness. He was not offered or admitted as an expert witness. He did, however, testify that (i) "Giving Wings Aviation, LLC is a multiple specialized aviation operator constrained by the NRAC" and he is "the sole member/manager,"[30] (ii) "the goal [of Giving Wings] was to operate . . . [it] under . . . . a relationship with Denton Farms,"[31] (iii) the "Consent of Lessor to Sublease Agreement" is "the NRAC giving permission to Denton Farms to sublease space to Giving Wings Aviation . . . . [a]nd it looks like Denton Farms is still responsible for me basically meeting the standards and meeting the requirements of the

[24] See TR. 21-2. Mr. Denton also testified that Petitioner has a "commercial aspect" through its leasing of planes to Giving Wings.
[25] See TR. 22.
[26] See TR. 22.
[27] See TR. 22-3.
[28] See TR. 20-1.
[29] See TR. 23.
[30] See TR. 25.
[31] See TR. 26-7.

NRAC,"[32] (iv) in order for Giving Wings Aviation aircraft maintenance services to Denton Farms' owned aircraft, Giving Wings had to become "an independent maintenance provider" at the Airport by applying for and receiving permission from the NRAC, as "all activities [at the airport] are controlled by the NRAC,"[33] (v) the NRAC gave its "blessing" to his application to be an independent maintenance provider in 2012 and, as part of the process, he had "had to show proof of insurance . . . . [and] name the NRAC as a party to that insurance,"[34] (vi) Giving Wings offers "aircraft maintenance to customers on the field, transient aircraft . . . recovery services after hours . . . . flight training to the public . . . . aircraft rental . . . . [and] nonstop aerial tours,"[35] (vii) Giving Wings also "facilitate[s] at the Denton Farms location . . . multiple community outreach events,"[36] (vii) Giving Wings' customers "are anybody that walks in off the street,"[37] (viii) with respect to advertising, "we probably get the most traffic from . . . Google searches . . . . [w]e maintain a website . . . . [t]hat talks about our services . . . . we also maintain a Facebook page, put pictures up of successful flights, anything aviation related that might attract interest from our public . . . . [a]nd we . . . have . . . a 2-inch ad on the Discovery map that's placed on all of the rest areas in the State of Michigan, all of the hotels here in Traverse City, various business . . . . [i]t's a colorful animated map and it has our seaplane with our phone number, aerial tours . . . . [plus] email mailers . . . . [and advertising on] AM radio,"[38] (ix) their posted hours of

---

[32] See TR. 27.
[33] See TR. 28.
[34] See TR. 28-9.
[35] See TR. 29-31. With respect to "recovery services," Mr. Nuffer testified:

> ". . . this happens every summer. And it has a lot to do with our runways. But basically airplane lands, skids a tire, blows a tire, is on the runway. The runway gets closed. The Traverse City – or the FAA – ATC, Air Traffic Control tower usually calls me or another provider on the field, but generally calls one of us to see if we're able to go out and recover the airplane. We spring into action, drop what we're doing, go out, recover the aircraft, tow it to where it needs to be towed, jack it up, put a new wheel on if it needs to be done in that manner, and then work with the customer, whether they're a base customer or Joe Blow that flew in, to see, you know, where the maintenance is going to occur, at what shop and so forth.
>
> So that's what I would call aircraft – you know, yeah, that's probably the prime example. We've had a couple that have run off the runway; small, private individual airplanes. We've recovered a couple of those. That's what I would call an aircraft recovery."

[36] See TR. 31-2
[37] See TR. 31-3.
[38] See TR. 33.

operation are 8:30 to 5:00 Monday through Friday, weekends by appointment,[39] (x) there is also a cell phone number on the door so the public can reach Giving Wings after the posted hours that is also utilized by the Tower and airport operations to reach him,[40] (xi) with respect to the hangar, "[w]e utilize all of it, every square inch of it, as does Denton Farms, 'cause I mean, the two are very similar . . . . [as he] can't have . . . [his] business without . . . [Petitioner's] business and without that location,"[41] (xii) the hangar has "a customer welcome center kind of in the beginning when you walk in the door; coffee, water, a little computer there . . . . [w]e have an office manager in the summer that is there . . . . [y]ou come in, and then basically look out to this beautiful hangar; cabinets and work benches around the outside . . . . [w]e have a new stairwell – well as part of the condition of the commercial lease, we had to redesign the stairs to the minimum standards and to meet the city code, I believe it was . . . . [a]nd so we have stairs up to a mezzanine . . . . [s]o actually we have two levels there . . . . [a]nd that upper level has a conference table for any public meetings that we might want to have . . . . [b]ut then also we have two offices up there; one is occupied by another maintenance provider on the field, and the other is . . . shared by two flight instructors as well,"[42] (xiii) the flight instructors "have to be approved by the FAA, they have to hold and maintain certain certificates . . . . [t]hey have to be drug-tested and so forth, but they also have to be on . . . the Denton Farms master . . . hangar list . . . . [a]nd then they have to be badged accordingly . . . [as required by] [t]he NRAC,"[43] (xiv) Giving Wings owns one plane that is housed in the hangar and leases that plane and the planes that Giving Wings leases from Petitioner,[44] (xv) the hangar is inspected by the fire marshall and airport operations,[45] (xvi) the NRAC dictates signage and placement of those signs,[46] (xvii) Giving Wings has been notified of violations of applicable regulations that can result in additional "airport TSA security training," a withholding of their airport badge for 30 days, or the suspension or revocation of airport privileges,[47] and (xviii) the flight instructors are independent

[39] See TR. 33-4.
[40] See TR. 34.
[41] See TR. 34-5.
[42] See TR. 35.
[43] See TR. 35-6.
[44] See TR. 36.
[45] See TR. 36.
[46] See TR. 36-7.
[47] See TR. 37-8.

contractors and not employees of Giving Wings and the other aircraft maintenance provider [i.e., Bill Birch] "owns a hangar that is not a commercial hangar . . . . [and, as such,] he cannot provide commercial services in the hangar that he owns . . . . [so Giving Wings has worked with him] in a manner such that through the NRAC approval, he is able to utilize our facility, Giving Wings/Denton Farms' facility, to be able to provide maintenance services . . . . [and] we have granted him some space to do that on a trial basis."[48]

There was no cross-examination.

In response to questioning from the Tribunal, Mr. Nuffer testified that the other aircraft maintenance provider "has a longstanding history with the airport . . . . [h]e provides the on-call maintenance services for all the airlines . . . . [h]e has that contract – very important contract . . . . [h]e's also a friend, so to speak; a former colleague and friend . . . . [a]nd so because of his arrangement with the NRAC of his hangar, he's worked under that agreement for quite a few years . . . . [w]e are allowing on a trial basis of, '[h]ey, we've got some extra space up here . . . . [d]o you want to use it . . . [g]reat' . . . . [i]f he wants to help me out . . . now and then on his own accord, great, but there's no compensation being exchanged at this point."[49]

Kevin Kline

Kevin Kline was Petitioner's third and final witness. He was not offered or admitted as an expert witness. He did, however, testify that (i) "[t]he Airport Commission is the governmental entity that operates Cherry Capital Airport on behalf of both Grand Traverse County and Leelanau County, the two owners of the airport,"[50] (ii) the conditions and restrictions in the lease are "for control of the airport" and to meet different legal requirements imposed by State law and FAA grant governances" and "in order to achieve that, the airport files a handbook written by the FAA and those requirements are put into a set of minimum standards," which are used to "develop the framework of our leases and put all of those minimum requirements that our tenants are to achieve to operate their facility,"[51] (iii) the lease rate is negotiable, but the minimum standards are not unless business is going to exceed those standards and then the standards are

[48] See TR. 38-41.
[49] See TR. 39-40.
[50] See TR. 42-3.
[51] See TR. 43-4.

negotiable,[52] (iv) hangar uses "have to be approved by the airport commission as stated for in the lease and they are non-transferrable . . . . [s]o if they were to go to sell their business or change business sign, they could not do that without commission approval,"[53] (v) the uses are "aeronautical services that are provided that would be what . . . [he] would consider standard airport services . . . . [h]owever, in the case of Cherry Capital Airport, we use private entities to provide those services . . . . [s]o, yes they are standard to airport operations,"[54] (vi) Petitioner operation is acceptable as a public outlet" (i.e., "[a]bsolutely"),[55] (vii) "[o]ne of things that we require when you go to our minimum standards for any of those activities – if you go, there's subleasing requirements that explain[] the Denton Farms relationship to the Giving Wings relationship . . . . [t]here are also, as you get into our operating requirements, that we talk about the square footage, we talk about the size of the apron, we talk about requiring that they construct so they have access to the taxiway system, basically what would be our roadway system . . . . [w]e talk about these requirements . . . . [w]e talk about that they must meet the federal requirements in license certificates for their type of business . . . . [s]o they have to present them . . . . [h]ours of operation, they're required to meet hours of operation to be open to the public, and they can do that through various means; posting it on the door, phone call, after-hours contact, websites, different things that – so that the public can access them . . . . [w]e also require that they have personnel to meet the operation of the business . . . . [s]o if they're providing flight instructor business, they're providing certified flight instructors to do that . . . . [i]f they're a mechanic, that they have the right licenses from the FAA . . . . [w]e want to make sure that we just don't have someone that can turn wrenches show up to say that they can fix airplanes . . . . [s]o we require all of that for all activities though, not just for maintenance, but leasing of aircraft, operating a management of aircraft, commuter aircraft, flight training, fueling, repair, so it gets through all the different activities that would normally happen at an airport,"[56] (viii) the NRAC promotes the activities at the hangars and has them listed "on the tvcairport.com website," and (ix) "one of the biggest challenges airports especially in Northern Michigan have is finding mechanics to be able to do that work, provide that service of that concession-type

[52] See TR. 44.
[53] See TR. 45.
[54] See TR. 45.
[55] See TR. 46.
[56] See TR. 46-7.

service that I would call for the public to really have that opportunity to contract out . . . . [s]o we . . . . really have three mechanics that are on the field; Mr. Nuffer, Bill Birch, and Kent Steiner's facility . . . . [a]nd so the public has just those choices . . . . [and] yes, we do promote that . . . . [if] we didn't promote that or if we lost that service, then the airport would be in a situation where we'd try to seek out that service."[57]

On cross-examination, Mr. Kline testified that he was the Airport Director.[58] Finally, in response to questioning from the Tribunal, Mr. Kline testified that (i) in addition to provisions in the lease that address FAA concerns, there "are standards set by the airport commission to ensure that we have a quality tenant that can provide the services to the public" (i.e., the Minimum Standards"),[59] (ii) the provisions relating to the termination of the lease are both FAA and NRAC concerns,[60] (iii) the NRAC talks to its commercial businesses about normal business hours because it wants the businesses "open and accessible to the public," (iv) if a commercial business did not post hours, "[w]e would strongly suggest – yes, we wouldn't – at the end of the day, force him to do that . . . . [a]s long as he could meet the standard outlined in the minimum standards where he could have someone that could be on call and meet the standard and the public could get a hold of him,"[61] and (v) the standards are "defined" as the "minimum" and "we request that they go above and beyond."[62]

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[63] that (i) Petitioner "is the lessee of certain land within the Cherry Capital Airport from the . . . NRAC . . . . [and] [t]he land is improved with an aircraft hangar covering roughly 6000 square feet (Transcript p. 22)," (ii) "Petitioner is a business that

---

[57] See TR. 47.
[58] See TR. 51.
[59] See TR. 48.
[60] See TR. 48-9.
[61] See TR. 50-1.
[62] See TR. 51.
[63] 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. 52-3. In that regard, Respondent submitted a post-hearing brief on May 19, 2017, and a response to Petitioner's post-hearing brief on June 2, 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 9, 2016 answer and the March 8, 2017 Prehearing Summary.

derives income by leasing airplanes (*Id* p. 22) and by subleasing [the entire] space within the hangar [to Giving Wings LLC] (Exhibit P-2) [(Transcript p. 34)]," (iii) "Petitioner owns five airplanes, all of which are stored at this hangar (*Id* p. 20) . . . . [and] [t]hree of the airplanes owned by Petitioner are regularly leased to Giving Wings LLC (*Id* p. 22)," (iv) "Giving Wings LLC owns a single airplane, and leases all other airplanes from Petitioner (*Id* p. 36)," (v) "Giving Wings LLC offers aircraft maintenance, recovery services, flight training, aircraft rentals, and aerial tours (*Id* p. 31)," (vi) "Petitioner signed a lease with the NRAC on April 10, 2012 . . . (Exhibit P-1) . . . . [and] [t]he lease requires compliance with various federal and state laws to which the Cherry Capital Airport is subject," (vii) "[t]he lease is subject to certain permitted uses: operation of a commercial aircraft hangar in conjunction with aircraft maintenance, limited commercial flight services and flight instruction (*Id*, page 5) . . . . [and] [t]he lease has a term of twenty years, with an option to extend," (viii) "[t]he Minimum Standards for Aeronautical Activities (Exhibit P-4) lists requirements for different category[ies] of business applicable to the airport . . . . generally require that businesses operating on the airport grounds adhere to certain security standards . . . . 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 contracting the operator to arrange an appointment," (ix) MCL 211.181 "has no application to this matter," as "[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 (Transcript, p, 10, 11, 15-18) . . . . [and, as such,] cannot be the subject of a lease by the Airport to the Petitioner," (x) 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,"[64] (xi) "[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

[64] Respondent cites *Skybolt*, supra at p 602 in support of this contention.

standards of service,"[65] (xii) the 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," (xiii) the Lease "gives the Petitioner the right to construct improvements on the leased premises, which improvements are the property of the Petitioner," (xiv) the Lease "does not establish the Lessee to be a concessionaire . . . . [as the Lease] requirements apply to lessees at the Airport, in general, regardless of whether the Lessee is a concessionaire,"[66] (xv) the Lease also "provides that the Lessor must compensate the Lessee for the fair market value of the improvements if it terminates the Lease before the expiration of the Lease term . . . . [and, as such,] recognizes the significant property rights the Lessee has in the improvements it placed on the premises,"[67] (xvi) "[t]he 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 service standards," (xvii) "[t]he Minimum Standards do not require minimum hours of service . . . . [r]ather, they leave the determination of hours of service solely up to the Lessee whose only duty in that regard is to advise the Airport of its 'proposed

---

[65] 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 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 v City of Rochester Hills*, 217 Mich App 21, 29; 550 NW2d 803 (1996), *appeal den* 454 Mich 868; 560 NW2d 632 (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").

[66] Respondent also stated that the 2014 Lease "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."

[67] Respondent also stated that "[t]he property is not exempt from taxation under MCL 211.7(m) because the improvements are owned by the Lessee . . . . [as indicated by] §25 of the Lease [which] requires the NRAC, upon lease expiration, to either pay fair market value for the hangar or to pay for its removal."

hours of operation when it submits its application to operate at the Airport,"[68] (xviii) "the Minimum Standards . . . [also] do not require standards for services to the public, or oversight of the Lessee's activities to meet the requirements of a concessionaire . . . . [r]ather, they regulate the provision of those services in a manner designed to protect the public safety and airport security,"[69] (xix) "the business of Petitioner is primarily subleasing its interest in the subject property to Giving Wings, LLC . . . . [with] [t]he result . . . [being] that the Petitioner itself is involved in very little airport activity itself . . . . [as] Giving Wings, an entity in which the Petitioner has no ownership interest, carries nearly all of the activity out,"[70] (xx) "Petitioner is merely a sublessor who sublets much of the premises to another entity which may or may not provide services to the general public, but such services . . . are not provided by Petitioner," and (xxi) "[e]ven if the property is found to be exempt from taxation under 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 properties' TCV and TV for the tax year at issue should be as follows:

Parcel Number: 28-51-898-459-31

Year	TCV	AV	TV
2014	$200,600	$100,300	$100,300
2015	$257,200	$128,600	$128,600
2016	$289,000	$144,500	$143,985
2017	$299,800	$149,900	$145,280

RESPONDENT'S ADMITTED EXHIBITS[71]

R-1 Application for Property Tax Exemption Packet received December 2015.

---

[68] Respondent also stated that this contention was "underscored" by Mr. Kline, "who testified that the Airport would not force the Petitioner to have certain required business hours 'as long as they could have someone who could be on call.'"

[69] Respondent also stated that "Petitioner presents a list of examples of control by the NRAC over the operations of Denton Farms, LLC, many of which are typical of leases generally or refer to security requirements that are not at the discretion of the NRAC . . . . [o]versight of signage, insurance, inspection, development, assignment, and parking are typical of commercial leases and do not impute a requirement to provide a particular service."

[70] In that regard, the *Skybolt* case dealt with a sublessee situation and the Court of Appeals in determining that the sublessee was not entitled to the exemption stated at p 603 that "[u]nlike the hangar space reserved for Skybolt's operation, the Simmons hangar area was not available for use by the public."

[71] 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. 7.

R-2 LARA Documents – Giving Wings/Tenant.
R-3 Record Cards/Valuation Statements for years under protest 2014-2017.
R-4 LARA Documents – Denton Farms, LLC.

FINDINGS OF FACT

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

1. The subject property is located at 1170 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 sub-lessee 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.
9. Petitioner utilizes one-third of hangar for storage of its private planes and its sub-lessee, Giving Wings, utilizes two-thirds of the hangar to provide, among other services, non-discriminatory aircraft maintenance services to the general public.
10. Based on the terms of the leases between Petitioner, Giving Wings, and the NRAC and the Minimum Standards applicable under those leases, two-thirds of 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.[72] As for the Tribunal, the Tribunal is required to "strictly construe" the applicable exemption statute or statutes "in favor of the taxing authority."[73]

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.[74] 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 . . . ."[75]

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

---

[72] See *ProMed Healthcare v Kalamazoo*, 249 Mich App 490, 494-495; 644 NW2d 47 (2002).
[73] 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).
[74] 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").
[75] See MCL 211.53b(10)(f).

Airport, and that the Airport serves a public purpose (i.e., public airport).[76] 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."[77] As such, the only outstanding issues relate to who 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.[78]

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 . . . .[79]

---

[76] Although the parties' arguments related to both the land and the hangar, the only property at issue is the hangar.

[77] 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.

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

[79] 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."

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

As such, the hangar is real property and assessable to the owner of the hangar.[80]

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).[81] In that

---

[80] 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).

[81] 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").

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*:[82]

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

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

In the instant case, the April 10, 2012 Amended and Restated Airport Property Lease (Exhibit P-1) provides for the leasing of "certain premises at the Cherry Capital Airport . . . . subject to certain rights, licenses and privileges . . . . for the following purposes only, and for no other purpose whatsoever, **unless agreed to** in writing **by the Lessor**: the operation of a commercial aircraft hangar in conjunction with **aircraft maintenance**, limited commercial flight services and flight instruction . . . to be located on the leasehold premises described herein."[83] [Emphasis added.] The Lease also provides, among other things:[84]

---

[82] 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.]

[83] 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.

[84] The Lease dictates the form of any sublease and provides, in pertinent part:

(i) for a lease term of 20 years with an option (i.e., right of first refusal) to extend the Lease based "upon the Lessor's decision to lease this property after the initial term

(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 expenditure of additional funds for security, safety equipment, public safety, public health, etc.;[85]

(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, policies, and **minimum standards** 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;[86]

(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);[87]

Any such sublease is an accommodation to Lessee's multiple lease agreements with the NRAC, the combination of which provide Lessee with control over sufficient contiguous premises at the Cherry Capital Airport **in which to conduct multiple aviation related businesses consistent with Minimum Standards** as herein defined. [Emphasis added.]

[85] 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.

[86] 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.]

[87] 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.]

(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, **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;**[88]

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

(xxii) 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 **as adjusted "by an anticipated 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.)

---

[88] A default under the Lease includes, but is not limited to, a failure to pay rent when due; **a failure to perform any of the terms and conditions under the Lease**, other than the payment of rent; and an attempted transfer of the Lease without receiving the NRAC's prior consent. [Emphasis added.] 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.]

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.[89] 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 the hangar upon the Lease's termination for any other reason or expiration.[90] 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.[91] As such, Petitioner may have "only one stick in the bundle of ownership sticks."[92]

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.[93] 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

---

[89] Sub-leasing is, as indicated above, also strictly controlled by the Lease and Minimum Standards.
[90] See also the Minimum Standards, Section 6 (Construction and Site Development Standards) on p 6.
[91] 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.
[92] 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'").
[93] 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.]

> 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 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.[94] 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.

---

[94] 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.

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.[95] Respondent further contends that the hangar is also not available for use by the general public or, more specifically, that Petitioner does not provide services to the general public, as Petitioner is a sub-lessor whose customers or, more appropriately, customer is its sub-lessee and not the general public.

In addressing those contentions, the first level of review must relate to whether the services provided are "services customarily and needfully required at airports."[96] Clearly, aircraft maintenance, which is a service provided by Giving Wings (i.e., an approved sub-lessee), is not only "customarily" provided by airports, but also essential to the operation of an airport.[97] Further, Mr. Nuffer also testified that he or, more appropriately, Giving Wings, is a member of the Airport's Emergency Response Team (i.e., after hours recovery of aircraft), which is also a service "customarily" provided by airports and essential to their operation.[98] As for the other services provided by Petitioner's sub-lessee (i.e., transition training for pilots, flight training, single engine training, renting aircraft, aerial tours, and flight seeing), such services are consistent with the "development of aeronautics" and provide "convenience and comfort of air travelers."[99] More importantly, such services, even if determined not to be "customary" or

---

[95] 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)):

> 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.

[96] 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).

[97] See also Mr. Kline's testimony at TR. 45 and 47 (i.e., "standard services," "biggest challenges," and "seek out that service").

[98] Mr. Nuffer also testified that space has, without the NRAC's approval, been provided to another mechanic, not employed by Petitioner or Giving Wings Aviation, who provides aircraft maintenance services. See also Mr. Kline's testimony relative to the need for such services.

[99] See *Avis Rent-A-Car Sys, Inc*, *supra* at p 124.

"needful," are intermingled with the clearly "customary" and "needful" maintenance and emergency services.

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 Giving Wings 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." Giving Wings is 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, 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 Giving Wings 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 Giving Wings "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 . . . .";[100]

(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,

(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, Giving Wings does, as also demonstrated herein, submit to the NRAC and post regular business hours even though the NRAC does not require the posting of regular business hours.[101] Nevertheless, the NRAC requires Giving Wings to be on call to respond to emergencies, as appropriate, and to other customers within 24 hours of that customer's initial inquiry and said "on-call" requirement is

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

[101] The NRAC may not require the posting of regular business hours. It does, however, "encourage" said posting, as indicated by Mr. Kline's testimony.

sufficient to satisfy the minimum hours of operation otherwise necessary for the operation of a concession. As a result, Giving Wings does provide non-discriminatory aircraft maintenance services to the general public (i.e., the customers of the sub-lessee) that are customary and needful for the operation of the Cherry Capital Airport.

The services provided by Giving Wings are, however, only provided in a portion of the hangar. Although there is conflicting testimony regarding the use of the space, Petitioner clearly stored and stores his private planes in a portion of the hangar that is and "was not available for use by the public."[102] As such, that portion of the hangar would not be entitled to the requested exemption. Further, the best evidence of the delineation of the private commercial versus public commercial space is Mr. Denton's credible testimony regarding the storage of his private planes in "one-third" of the hangar and the provision of public services by Giving Wings in the remaining "two-thirds" of the hangar.[103]

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.[104] 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:

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**

---

[102] See Mr. Denton's testimony at TR. 21-3 and Mr. Nuffer's testimony at TR. 34-5.
[103] As for the commercial aspect of the "private" hangar space, Petitioner sublets the hangar or a portion thereof for commercial purposes and rents his other planes to that sub-lessee (i.e., Giving Wings Aviation). See also Mr. Denton's testimony at TR. 20 and *Skybolt*, *supra* at p 603.
[104] See MCL 205.726.

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.[105]

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

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