# STATE OF MICHIGAN

# COURT OF CLAIMS

CONTINENTAL RENTAL INC,

Plaintiff,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant.
_____/

**OPINION AND ORDER**

Case No. 23-000133-MT

Hon. Brock A. Swartzle

OPINION AND ORDER GRANTING IN PART/DENYING IN PART DEFENDANT'S MOTION FOR SUMMARY DISPOSITION UNDER MCR 2.116(C)(10)

This lawsuit arose from several tax assessments that defendant, Michigan Department of Treasury (Treasury), initially issued to plaintiff, Continental Rental, Inc. (Continental), regarding the 2014, 2015, and 2016 tax years. Continental timely requested an informal conference on December 9, 2019, and a Decision and Order of Determination in Treasury's favor entered on June 14, 2023.

There are six counts in the first amended complaint. Count V was dismissed per stipulated order issued August 5, 2025 and, therefore, will not be addressed here. For the reasons explained below, the Court GRANTS summary disposition in Treasury's favor on Count IV and DENIES summary disposition in Treasury's favor with respect to Counts I, II, III, and VI. The Court GRANTS summary disposition under MCR 2.116(I)(1) in Continental's favor on Count III because the parties' briefs demonstrate no legal or factual dispute remaining on this claim.

## I. BACKGROUND

Continental Rental, Inc. operates as a Rent-to-Own business regulated by the Michigan Rental-Purchase Agreement Act, MCL 445.951 *et seq.* (RPAA). It leases and sells tangible personal goods to consumers through execution of a rental-purchase agreement that contains the statutorily required provisions identified in section 3 of the RPAA. These provisions include a brief description of the leased property, payment information, notice that the "lessee has the option to purchase the leased property during the term of the rental-purchase agreement and, at what price, formula, or by what method the price is determined," and the "cash price of the property if purchased rather than leased." MCL 445.953.

Treasury audited Continental's Sale and Use Returns for the tax period of May 1, 2013, through December 31, 2016. The field work for this audit was completed in May 2019 and, ultimately, three final assessments were issued: (1) Assessment No. VA3FM80, related to the taxable period ending in December 2014, in the amount of $98,648.31 ($63,782.00 in use tax; $6,378.00 in penalty; and $28,488.31 in interest); (2) Assessment No. VA4RK80, related to the tax period ending in December 2015, and assessed Continental $29,819.25 ($20,350.18 in use tax; $2,035.00 in penalty; and $7,434.07 interest); and (3) Assessment No. VA4RK8P, related to the tax period ending December 31, 2016, in the amount of $94,860.42 ($66,726.96 in use tax; $6,673.00 in penalty; and $21,460.46 in interest). Continental remitted the uncontested portion of these assessments in the amount of $13,657.25 and timely requested an informal conference on December 9, 2019.

Treasury agreed to remove delivery charges from the assessed amounts and, therefore, issued amended assessments on August 22, 2023, as follows: (1) Assessment No. VA3FM80 in

the amount of $57,801.79; (2) Assessment No. VA4RK80 in the amount of $13,642.74; and (3) Assessment No. VA4RK8P in the amount of $76,344.05.

The parties' dispute centers on Continental's calculation and remittance of taxes owed under Michigan's Use Tax Act, MCL 205.91, *et seq.* (UTA), for inventory retained by Continental for purpose of rental, lease, or sale to the public. Our Supreme Court aptly described the use tax and its interaction with the sales tax as follows:

> Michigan's Use Tax Act (UTA) imposes a 6% tax on a consumer's use, storage, and consumption of all tangible personal property in Michigan. The UTA exempts the use of property from imposition of the use tax when "the [sales] tax was due and paid on the retail sale to a consumer." Concurrently, Michigan's General Sales Tax Act (GSTA) imposes a 6% tax on a retailer's gross proceeds, to be remitted by the retailer to the Department of Treasury (the department) . . . .
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> [T]he use and sales taxes are complementary and supplementary[,] . . . their potential applications are not mutually exclusive. The two taxing statutes relate to entirely separate taxable events: the use and the sale of tangible personal property. The UTA imposes a 6% tax on the use, storage, and consumption of all tangible personal property in Michigan [while] . . . the GSTA imposes a 6% tax on the sale of all tangible personal property in Michigan[.] . . . Absent an exception, tangible personal property sold and used in Michigan is subject to *both* use and sales tax. It is plain to see from the text of each taxing statute that they are capable of being levied upon the same property, as long as the respective predicate taxable events (i.e., use and sale) take place.
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> Just as each tax is triggered by a separate taxable event, the legal responsibility for each tax falls upon a separate entity. The legal responsibility for the use tax falls solely on the consumer. By contrast, the legal responsibility for the sales tax falls on the retail seller, with the tax being levied for the privilege of making sales at retail. The retail seller is authorized—but not obligated—to pass the economic burden of the sales tax by collecting the tax at the point of sale from the consumer. But whether the consumer remits sales tax to the retail seller or the seller pays the sales tax from another source, the seller is responsible for remitting the sales tax to the department, which is calculated as a percentage of the seller's gross proceeds in a taxable period. [*Andrie Inc v Dep't of Treasury*, 496 Mich 161, 164-165, 168-169; 853 NW2d 310 (2014).]

Continental claims that its inventory was covered by the "resale exemption" to the use tax, codified in MCL 205.94(1)(c), which exempts "[p]roperty purchased for resale" from the Use Tax

Act. Continental describes the application of the resale exemption to its inventory as the "lessor-consumer method" and claims that not only is this method appropriate, but it is expressly authorized in section 5(4) of the UTA, MCL 205.95(4), which reads in pertinent part as follows:

> A lessor may elect to pay use tax on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property at the time it is acquired . . . .

Treasury does not dispute that Continental qualifies as a "lessor," but it claims that Continental "failed to retain accurate records that it was a reseller (i.e. property purchased from a vendor and then sold to a customer)." Treasury interprets MCL 205.95(4) as authorizing Continental to elect to pay use tax upon receipts from the rental or lease of this property, rather than at the time the property was acquired. This election allows the lessor to either pay the use tax on items that it rents or pass the sales tax on to a customer upon the sale of the item. Treasury claims that Continental elected a third option that Treasury describes as "self-accrual," i.e., paying the use tax on the price that Continental paid the vendor but at the time that Continental rented or sold the property to the customer. Treasury claims that Continental needed its authorization under MCL 205.98 to avail itself of this third option and was required to keep accurate and complete records—neither of which were present as of the date of the audit.

In addition, the parties dispute whether Treasury properly assessed a use tax and penalty against Continental for vehicle wraps, designed by a third-party advertising agency and installed on Continental's company vehicles. Continental claims that the plastic or vinyl used for these wraps constituted less than 9% of their cost, while the remaining 91% was paid for the advertising design and the installation. Treasury maintains that the wraps are a product used by Continental on its vehicles and, therefore, subject to the use tax.

Continental's complaint includes six counts, one of which (Count V) was dismissed via stipulation of the parties and, a second (Count III) involves delivery charges that were incorrectly included in the assessments, by Treasury's own acknowledgment, and are therefore no longer in dispute. Count V will not be addressed. Count III is herein resolved by GRANTING summary disposition in Continental's favor under MCR 2.116(I)(1).

Count I claims that Continental is entitled to claim the resale exemption in MCL 205.95(4). Count II claims that inventory purchased prior to May 1, 2013, which was on hand at the beginning of the audit period, was not subject to the use tax because Continental properly claimed the resale exemption on these items. Continental claims that if those items were subsequently leased, use tax would be paid at the time of conversion, and Treasury erred in relying on the "Performance Reports" to calculate the tax due on inventory. Continental claims that the Performance Report is a "standard report generated by third-party software specifically designed for the Rent-to-Own industry" which is intended for management purposes only. Using this report to determine Continental's inventory is significantly flawed because this report is "subject to change based on run dates and posting of inventory placed in use that occurs later in the following month."

Continental also asserts that the audit workpapers include "new items purchased in 2016" in the use tax calculation, even though the tax on these would have been paid in a later tax year, when they were sold or leased. Treasury did not make any use tax adjustment or credit for items purchased and subsequently sold. Count IV disputes Treasury's determination that plastic or vinyl vehicle wraps installed on Continental's vehicles for the purpose of advertising are subject to the use tax because Continental believes the wraps are akin to car painting and, therefore, are predominantly a service, not a product. Count VI requests a waiver of the 10% penalty that Treasury assessed under MCL 205.23(3). This statute authorizes the imposition of a penalty of

$10.00 or 10% of the total amount of the deficiency, plus interest, if "any part of the deficiency . . . is due to negligence." MCL 205.23(3). Continental requests that this penalty be waived.

## II. ANALYSIS

Treasury seeks summary disposition under MCR 2.116(C)(10). A "motion under MCR 2.116(C)(10) tests the *factual sufficiency* of a claim." *El-Khalil v Oakwood Healthcare Inc*, 504 Mich 152, 159-160; 934 NW2d 665 (2019) (citations omitted). "When reviewing such a motion, 'a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties . . . in the light most favorable to the party opposing the motion' " to determine whether a genuine issue of material fact exists. *Johnson v VanderKooi*, 502 Mich 751, 761; 918 NW2d 785 (2018), quoting *Maiden v Rozwood*, 461 Mich 109, 118, 120; 597 NW2d 817 (1999). Summary disposition is generally "premature if granted before discovery on a disputed issue is complete. . . . However, summary disposition may be proper before discovery is complete where further discovery does not stand a fair chance of uncovering factual support for the position of the party opposing the motion." *Village of Dimondale v Grable*, 240 Mich App 553, 566; 618 NW2d 23 (2000) (cleaned up).

### A. USE TAX–LESSOR EXEMPTION

Counts I and II of the complaint present a legal question and a factual question. The legal question is whether the Use Tax Act, MCL 205.91, *et seq*. (UTA), when read in conjunction with the General Sales Tax Act, MCL 205.51, *et seq*. (GSTA) and the RPAA, allows Continental to remit the use tax or sales tax as of the date that Continental enters into a rental-purchase agreement with the consumer. As explained below, the Court finds that Continental is not required to obtain Treasury's authorization under MCL 205.98 to remit use or sales tax (as applicable) at the time an item in inventory is leased or sold. If Continental decides to wait until execution of the rental-

purchase agreement, however, it then must pay the sales tax or the use tax, as applicable, at the time that it enters the rental-purchase agreement and calculate the amount of such tax based on the rental or sales receipts. The record presents a genuine question of material fact on whether Continental did this during the tax years in question. Treasury's motion for summary disposition on Counts I and II in the complaint is DENIED.

The Court will address the legal question first. As a rent-to-own retailer, Continental offers items of tangible personal property to customers for either outright sale or on lease, at the customer's option, as set forth in the rental-purchase agreement. Every rental-purchase agreement must include "[a] statement that the lessee has the option to purchase the leased property during the term of the rental-purchase agreement and, at what price, formula, or by what method the price is determined" as well as "[t]he cash price of the property if purchased rather than leased." MCL 445.953(1)(j), (k). For those transactions in which Continental serves as the lessor, the UTA authorizes it to pay use tax "on receipts from the rental or lease of the tangible personal property in lieu of payment of sales or use tax on the full cost of the property at the time it is acquired." MCL 205.95(4). For transactions that culminate in a sale, the GSTA requires that sales tax be paid on the retail price of that product and items on which a sales tax are paid are exempt from the use tax. MCL 205.52; MCL 205.94(1)(c)(i). Continental claims, with support in the language of the RPAA, that it does not know whether a transaction will result in a sale or a lease until the rental-purchase agreement is executed because the RPAA requires it to offer this choice to customers in the agreement itself. MCL 445.953(1)(j), (k). Accordingly, Continental's decision to pay either sales tax or a use tax based on the rental receipts at the time the rental-purchase agreement was entered is consistent with the UTA. MCL 205.94; MCL 205.95(4).

Continental may make this election without Treasury's prior authorization. MCL 205.95(4). The authorization to self-accrue described in MCL 205.98 is distinct from this because Continental is not "assum[ing] the obligation of self-accruing and remitting use tax on purchases or leases." Rather, Continental considers all tangible, personal property items as available for resale unless and until a customer enters into an agreement to lease the item. At that point, Continental claims that it pays the use tax. The Court agrees with Continental that the relevant statutes authorize payment of a use tax based on rental receipts, or a sales tax on the full amount of the retail sales, as of the date it enters the rental-purchase agreement with the customer.

This resolution of the legal question, however, does not resolve the ultimate question of whether Continental owes the use tax sought in the three assessments, as amended. Treasury claims that Continental's records are insufficient as a matter of law to disprove its auditor's findings because the general ledger, performance reports, and financial statements do not distinguish between new and leased inventory. It points to deposition testimony from Mr. Thomas Roupe, Continental's general manager, and Mr. Timothy Quast, Continental's certified public accountant, who seem to acknowledge that the retail inventory is comingled with the rental inventory on the general ledger and that the performance reports are not reliable documents for determining inventory totals on a given historic date.

According to Continental, "Treasury is fundamentally confused." Its default procedure, as apparently documented in Continental's records, is to treat all inventory as subject to the resale exemption unless and until a consumer enters into an agreement to lease the property. At that time, Continental pays the use tax. According to Continental, the failure to distinguish between new and rental inventory in its records is not a result of poor recordkeeping practices but, rather, use of a recordkeeping practice that accords with its understanding of the law.

This issue cannot be resolved as a matter of law. To prevail in this litigation, Continental must demonstrate that it kept "accurate and complete" records as well as "all pertinent documents" required by Treasury for evaluation during the audit. MCL 205.104a. It also bears the burden of proof in refuting Treasury's assessments because such assessments are "deemed to be prima facie correct." *Vomvolakis v Dep't of Treasury*, 145 Mich App 238, 245; 377 NW2d 309 (1985). The question before the Court at this juncture, however, is not whether Continental can prevail in the litigation, but whether Treasury has met its initial burden of demonstrating that, considering all admissible evidence in a light most favorable to Continental and giving Continental the benefit of reasonable doubt, there is no factual question upon which reasonable minds may differ with respect to Counts I and II. *Lockwood v Ellington Twp*, 323 Mich App 392, 401; 917 NW2d 413 (2018).

The record, as presented, does not support this finding. The deposition excerpts included in Treasury's brief indicate that retail and rental inventory were not separated, at least prior to the sale or lease. Continental indicates, however, that it did not separate rental and retail inventory because it could not know until the retail-purchase agreement was entered whether the item in inventory would be sold or leased. The deposition excerpts, when read as a whole, do not support a claim that Continental acknowledged its records were insufficient.

This case is distinguishable from *Jim's Auto Body Shop, Inc v Dep't of Treasury*, 328 Mich App 187, 206-207; 937 NW2d 123 (2019), in which the taxpayer was not able to produce invoices or other documentary proof supporting its testimony that, for example, tools and foam sprayers were attached to a realty. To the contrary, Continental is claiming that its inventory ledgers reflected its legal practice of considering all inventory as the same, until it was sold or leased to a consumer. Nor is this case analogous to *Vomolakis*, 145 Mich App at 244-245, in which the Court denied a taxpayer's claim that Treasury erred by relying on supplier invoices rather than the

taxpayer's own records to evaluate his compliance with income tax and sales tax laws. The Court held that "[t]he state's power to tax would be greatly eroded if the respondent could not make assessments on available information in situations where the taxpayers do not maintain proper records." *Id.* at 245. Here, Continental's position is that Treasury is misreading its records in light of the applicable law. Neither parties' briefs demonstrates whether Treasury's assessment of the use tax owed during the relevant time periods is accurate as a matter of law. Treasury's motion for summary disposition as to Counts I and II of the complaint is DENIED.

## B. VINYL WRAPS

Treasury's motion for summary disposition regarding Count IV of the complaint is GRANTED. At issue are vinyl wraps that Continental purchased as advertising for placement on corporate-owned vehicles. The wraps fall squarely within the definition of "tangible personal property" in the UTA, which is defined as "personal property that can be seen, weighed, measured, felt, or touched." MCL 205.92(k).

Continental describes the vehicle wraps as a vinyl or thin plastic material created and designed by Rys, a third-party advertising agency and, then, installed on Continental's vehicles. According to Continental's brief, the material cost is less than 9% of the total cost of the installed wrap; however, in the context of the "incidental to service" test, this is a distinction without a difference.

"The 'incidental to service' test looks objectively at the entire transaction to determine whether the transaction is principally a transfer of tangible personal property or a provision of a service." *Catalina Mktg Sales Corp v Dep't of Treasury*, 470 Mich 13, 24-25; 678 NW2d 619 (2004). Factors relevant to the Court's analysis include what Continental "sought as the object of

the transaction," what the "seller . . . is in the business of doing, whether the good were provided as a retail enterprise with a profit-making motive, whether the tangible goods were available for sale without the service, and the extent to which intangible services have contributed to the value of the physical item that is transferred." *Id.* at 26. The object of the transaction here was a tangible personal product, i.e., the completed vehicle wrap, ready for installation on Continental's vehicle. Continental was not in the business of creating or applying these wraps but, rather, it purchased the wraps, and either installed them or had them installed on its vehicles, much like a company may purchase a sign to be placed in front of its business. While this product may be akin to a paint job, it is distinguishable because the product of paint is simply a raw material–without design or advertising use unless and until it is applied in a artistic way to the vehicles. The vehicle wrap was purchased with the design on it and ready to be affixed to the vehicle. As a matter of law, it constitutes tangible personal property subject to the use tax. Treasury's motion for summary disposition on Count IV is GRANTED.

## C. PENALTY WAIVER

Defendant's motion for summary disposition on Count VI is DENIED. Michigan law mandates the imposition of interests and penalties if a taxpayer has "not satisfied a tax liability" due to negligence. MCL 205.23(1), (3). Here, Treasury determined that Continental's tax deficiency "is due to negligence, but without the intent to defraud," and therefore, "a penalty of $10.00 or 10% of the total amount of the deficiency in the tax, whichever is greater, plus interest as provided in [MCL 205.23(2)]." MCL 205.23(3). This penalty shall be waived if the taxpayer "demonstrates to the satisfaction of [Treasury] that the deficiency . . . was due to reasonable cause." *Id.*

A genuine issue of material fact exists on whether Continental failed to pay the tax liability due to negligence. "Negligence, for purposes of imposing such a penalty, 'is the lack of due care in failing to do what a reasonable and ordinarily prudent person would have done under the particular circumstances.' " *Jim's Body Shop, Inc*, 328 Mich App at 207-208, quoting Mich Admin Code R 205.112. Treasury's position here is that the unpaid tax liability was not due to an "honest difference of opinion" in how to interpret the UTA in the context of this rent-to-own business, but that Continental's tax deficiency was due to poor record keeping and inability to demonstrate its application of the UTA. If the facts at trial establish this, then the negligence penalty is warranted under MCL 205.23(3). See *TOMRA of North America, Inc v Dep't of Treasury*, 342 Mich App 388, 402-404; 994 NW2d 844 (2022). As explained above, however, Continental disputes Treasury's position that its records were inadequate and, instead, claims that Treasury misunderstands its business. Because the Court finds a genuine issue of material fact on whether Continental's records were inaccurate and incomplete, defendant's motion for summary disposition on Count VI is DENIED.

## III. CONCLUSION

For the reasons explained above, defendant's motion for summary disposition under MCR 2.116(C)(10) is GRANTED with respect to Count IV and DENIED with respect to Counts I, II, III, and VI. Summary disposition in Continental's favor is GRANTED under MCR 2.116(I)(1) with respect to Count III because Treasury acknowledges that delivery charges were inaccurately included in the assessment and reports that all such charges were removed from revised assessments. Therefore, there is no genuine issue of material fact regarding this claim.

IT IS SO ORDERED.

This is not a final order and does not resolve the last pending issue in this case.

Date: Oct. 30, 2025

Brock A. Swartzle
Chief Judge, Court of Claims