



An Exception to an Exemption: Michigan's Lessee-User Tax

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Under various statutes, certain types of property, owned by certain entities, and used for certain purposes, are exempt from paying property taxes in Michigan. But there is an exception to this exemption meant to address situations where the property is exempt based on ownership, but is leased to a non-exempt entity.

In order to deal with this scenario, the Michigan legislature created the "Lessee-User Tax" under MCL 211.181. The Lessee-User Tax provides:

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.

For example, if an exempt hospital or medical facility leases space to for-profit doctors, it's likely that the leased real property owned by the exempt hospital/medical facility is taxable to the lessee. However, there is an exception to the Lessee-User Tax (you might call it an exception to the exception on exemption - quite the tongue twister): it does not apply to 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.

The issue of what constitutes a "concession" has been the subject of considerable litigation over the years. One of the more recent appellate decisions dealing with the issue is the 2005 case of *Services System Assoc v City of Royal Oak*, also known as "The Detroit Zoo" case.

The case involved a for-profit company providing food and catering services to the public at the Detroit Zoo (an exempt non-profit). Royal Oak sought to tax the company for its equipment, buildings, and other improvements, and the company claimed to be a concession. It was undisputed that the zoo was a "public park" open to the public, so the

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court looked to the agreement at issue between the zoo and the company, and found that the zoo retained control over the company's operations - a fact that weighs in favor of a concession.

Ultimately, the court found that the company was a concession, in light of its agreement that "imposes standards of service, minimum hours of operation, and oversight of petitioner's concession stand at the Detroit Zoological Institute" and "infringes on the control of petitioner's rights, the hours that can be worked, the foods that can be sold, and provides for unilateral termination by the Detroit Zoo."

Property tax exemptions are an important issue for both those claiming exemptions, as well as municipalities and their assessing departments who rely on property tax revenue to fund community operations and services. Therefore, understanding the nuances of the statutory framework - such as when the Lessee-User Tax applies - that gives rise to these exemptions is critical.

If you have any questions about Michigan's property tax exemption framework, please contact Laura Genovich at 616.726.2238 or at lgenovich@fosterswift.com.