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# Lessor of aircraft denied Michigan use tax exemption because aircraft was not leased to the general public in an arm's length transaction

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In *FMG Leasing, LLC v. Dep't of Treasury*, FMG Leasing was a limited liability company formed to hold title to an aircraft. No. 312448, 2014 WL 2931938 (Mich. Ct. App. June 26, 2014) (no reported citation available). FMG leased the aircraft to a concrete company that was one of FMG's forming partners, and to the company's president. FMG then sought to take advantage of a statutory exception under Michigan law that permits a lessor of tangible personal property to pay use tax on receipts from the rental of the property, instead of paying a sales or use tax on the full cost of the property at the time of purchase.

The Department of Treasury disallowed the leasing election and assessed the use tax due on the purchase price of the aircraft, plus a penalty. FMG appealed to the Michigan Tax Tribunal (MTT), which upheld the use tax assessment and the penalty. A Michigan Court of Appeals affirmed the MTT's decision, reasoning that the aircraft was leased only to the concrete company and its president, and not to the general public. The Court of Appeals also reasoned that the terms of the lease, which were very favorable, did not indicate an arm's length business transaction, and that the aircraft's lease could not have possibly resulted in a profit to FMG due the minimum number of hours the aircraft was used.

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