

## ALERTS

### Michigan Continues Close Scrutiny Of Related Party Aircraft Leases

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Michigan Court of Appeals has determined in *FMG Leasing, LLC v. Dep't of Treasury* No. 312448, 2014 WL 2931938 (Mich. Ct. App. June 26, 2014), that a related party lessor did not have the option to remit use tax payments on rental receipts when it leased an aircraft to a related party lessee at a less than fair market value rental rate.

Prior to the *FMG Leasing LLC* case, there was a published Court of Appeals case (*Devonair*) in which the court ruled that a lessor leasing the aircraft to a related party lessee at a low hourly rate (with the aircraft only flying a few hours a month) was not in the business of leasing aircraft and therefore did not have the option to remit use tax payments on rental receipts.

In the *FMG Leasing* case, the lessor purchased a twin-engine Beechcraft Bonanza for \$585,000, which it then leased to related parties for rental rates of \$80.00 per flight hour and \$250.00 per flight hour (less the direct cost of any fuel purchased). The aircraft only flew an average of 11.42 hours per month.

The court in the *FMG Leasing* case cited the *Devonair* case as factually similar. The court ruled "We find that *Devonair* controls the outcome of this case and supports the decision of the Michigan Tax Tribunal." The court also ruled that the facts in the case do not indicate that they were "arm's length transactions."

Since the *Devonair* decision was published, we have had a number of dealings with the State of Michigan concerning fair market value lease rates. The State has consistently either dismissed Tax Tribunal cases or not issued assessments when the client was able to document, among other things, that the lease rate was at a fair market value.

The line of cases, including *Devonair* and *FMG Leasing, LLC*, clearly indicate that the State of Michigan is closely scrutinizing aircraft leases between related parties that seek to take advantage of the election to remit use tax on rental receipts. At a minimum, it is recommended that an independent fair market value lease rate appraisal to establish a fair market value rental rate is obtained.

For more information regarding the issues described in this document, please contact Clifford Maine at (616) 742-3944 or [cmaine@btlaw.com](mailto:cmaine@btlaw.com) or Brian Kersey at (616) 742-3969 or [bkersey@btlaw.com](mailto:bkersey@btlaw.com).

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