

MILE HIGH AIR, LLC

v.

STATE TAX ASSESSOR

Argued February 12, 2013

Decided March 5, 2013

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD, and GORMAN, JJ.

MEMORANDUM OF DECISION

The State Tax Assessor appeals from a judgment entered in the Business and Consumer Docket (*Humphrey, C.J.*) vacating the assessment of a use tax, *see* 36 M.R.S. § 1861 (2012), on an aircraft owned by Mile High Air, LLC, that was purchased in 2002. Despite the Assessor's urging on appeal, we decline to reconsider our decision in *Blue Yonder, LLC v. State Tax Assessor*, 2011 ME 49, 17 A.3d 667.

Additionally, in analyzing whether the aircraft qualified for a use-tax exemption pursuant to 36 M.R.S.A. § 1760(45)(B) (Supp. 2002), the trial court did not err in applying the substantial-use test that we articulated in *Blue Yonder* to the facts of this case. *See Blue Yonder*, 2011 ME 49, ¶ 22, 17 A.3d 667. Contrary to the Assessor's contention, the trial court did not err in considering the aircraft's out-of-state presence. *See id.* ¶ 24; *see also Victor Bravo Aviation, LLC v. State Tax Assessor*, 2011 ME 50, ¶ 20, 17 A.3d 1237 (considering out-of-state use as including both flight and presence outside Maine). Nor did the court err in analyzing how Mile High Air, LLC, used the aircraft during the first twelve months after purchase, making only brief stops on many of the occasions when the aircraft stopped in Maine, with relatively few overnight stays. *See Victor Bravo*,

2011 ME 50, ¶ 20, 17 A.3d 1237 (considering the frequency of the aircraft's overnight placement in a hangar owned in Maine as part of the analysis).

The entry is:

Judgment affirmed.

On the briefs:

William J. Schneider, Attorney General, and Scott W. Boak, Asst. Atty. Gen., Office of the Attorney General, Augusta, for appellant State Tax Assessor

Jonathan A. Block, Esq., Pierce Atwood LLP, Portland, for appellee Mile High Air, LLC

At oral argument:

Scott W. Boak, Asst. Atty. Gen., for appellant State Tax Assessor

Jonathan A. Block, Esq., for appellee Mile High Air, LLC