STATE OF MICHIGAN
IN THE SUPREME COURT
Appeal from the Michigan Court of Appeals
Ronayne Krause, P.J., and Borrello and Riordan, JJ.

FRADCO, INC.,

Plaintiff-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Defendant-Appellant,
/

Supreme Court No. 146333

Court of Appeals No. 306617

Michigan Tax Tribunal No. 0409506

The appeal involves a ruling that a provision of the Constitution, a statute, rule or regulation, or other State governmental action is invalid.

BRIEF ON APPEAL OF APPELLANT MICHIGAN DEPARTMENT OF TREASURY

ORAL ARGUMENT REQUESTED

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel

Scott L. Damich (P74126)
Assistant Attorney General
Attorneys for Respondent–Appellant
Michigan Department of Treasury
Revenue & Collections Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203

Dated: May 22, 2013

TABLE OF CONTENTS

Page

Table of Contents i

Index of Authorities ii

Statement of Jurisdiction iv

Statement of Questions Presented v

Statutes Involved vi

Introduction 1

Statement of Facts 2

Proceedings Below 5

Standard of Review 7

Argument 7

I. An aggrieved taxpayer's appeal clock begins to run when Treasury mails the assessment to the taxpayer's last known address via certified mail 8

II. There is no receipt-based tolling rule in MCL 205.22(1), a reality confirmed by MCL 205.22(4) and (5). 11

Conclusion and Relief Requested 14

INDEX OF AUTHORITIES

Cases

Dow v Michigan,
396 Mich 192; 240 NW2d 450 (1976) 9

Fradco, Inc v Dep't of Treasury,
298 Mich App 292; 826 NW2d 181 (2012) iv

Griffith ex rel Griffith v State Farm Mut Auto Ins Co,
472 Mich 521; 697 NW2d 895 (2005) 10

Klooster v City of Charlevoix,
488 Mich 289; 795 NW2d 578 (2011). 7

Mullane v Cent Hanover Bank & Trust Co,
339 U.S. 306 (1950) 9

PIC Maintenance, Inc v Department of Treasury,
293 Mich App 403; 809 NW2d 669 (2011) 3, 12

Sidun v Wayne Co. Treasurer,
481 Mich 503; 751 NW2d 453 (2008) 10

State Farm Fire & Cas co v Old Republic Ins Co.,
466 Mich 142; 644 NW2d 715 (2002) 11

Statutes

1975 PA 228 vi

MCL 205.8 ..... passim

MCL 205.21(f) 1, 3, 6

MCL 205.22 ..... passim

MCL 205.22(1) ..... passim

MCL 205.22(3) iv

MCL 205.22(4) ..... passim

MCL 205.22(5) ..... passim

MCL 205.27a(2) 3

MCL 205.28 ..... passim

MCL 205.28(1)(a) ..... passim

Other Authorities

Mich Admin Code, R 205.1006 ..... 4, 9

Mich Admin Code, R 205.1011 11

Mich Admin Code, R 205.1011(4) 11

Mich Admin Code, R 205.1011(5) 12

Rules

MCR 7.203 iv

MCR 7.204 iv

MCR 7.301 iv

STATEMENT OF JURISDICTION

The Tribunal denied Respondent-Appellants Michigan Department of Treasury's motion for summary disposition in lieu of response on January 20, 2011. The case proceeded and a hearing on the merits was held on July 25, 2011. After hearing, the Tribunal ruled in Fradco's favor on the merits. The final order was entered on September 26, 2011. Treasury filed a timely claim of appeal on October 17, 2011, under MCL 205.22(3), MCR 7.203 and MCR 7.204. The Court of Appeals issued its opinion affirming the Tribunal's denial of Treasury's summary disposition motion on October 30, 2012. *Fradco, Inc. v Dep't of Treasury*, 298 Mich App 292; 826 NW2d 181 (2012). Treasury filed its timely application for leave to appeal to this Court on December 11, 2012. This Court granted the application on March 27, 2013. Accordingly, the Court has jurisdiction to hear this matter under MCR 7.301.

STATEMENT OF QUESTIONS PRESENTED

1. Whether the 35-day time period in MCL 205.22(1) for an aggrieved taxpayer to file an appeal in the Tax Tribunal from a final assessment is triggered when the Department of Treasury complies with the notice provision of MCL 205.28(1)(a), or whether there is an additional notice requirement under MCL 205.8 when a taxpayer has designated an official representative to receive copies of letters and notices.

Appellant's answer:	MCL 205.28(1)(a) is the only trigger
Appellee's answer:	MCL 205.8 is an additional trigger
Trial court's answer:	MCL 205.8 is an additional trigger
Court of Appeals' answer:	MCL 205.8 is an additional trigger

2. Whether the tolling rule the Tax Tribunal and Court of Appeals adopted is contrary to the finality language of MCL 205.22(4) and (5).

Appellant's answer:	Yes.
Appellee's answer:	No.
Trial court's answer:	No.
Court of Appeals' answer:	No.

STATUTES INVOLVED

MCL 205.8

If a taxpayer files with the department a written request that copies of letters and notices regarding a dispute with that taxpayer be sent to the taxpayer's official representative, the department shall send the official representative, at the address designated by the taxpayer in the written request, a copy of each letter or notice sent to that taxpayer. A taxpayer shall not designate more than 1 official representative under this section for a single dispute.

MCL 205.22

(1) A taxpayer aggrieved by an assessment, decision, or order of the department may appeal the contested portion of the assessment, decision, or order to the tax tribunal within 35 days, or to the court of claims within 90 days *after the assessment, decision, or order*. The uncontested portion of an assessment, order, or decision shall be paid as a prerequisite to appeal. However, an action shall be commenced in the court of claims within 6 months after payment of the tax or an adverse determination of the taxpayer's claim for refund, whichever is later, if the payment of the tax or adverse determination of the claim for refund occurred under the former single business tax act, 1975 PA 228, and before May 1, 1986.

* * *

(4) The assessment, decision, or order of the department, if not appealed in accordance with this section, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.

(5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment in the manner provided by this section.

MCL 205.28(1)(a)

(1)(a) Notice, if required, shall be given either by personal service or by *certified mail addressed to the last known address of the taxpayer*. Service upon the department may be made in the same manner.

INTRODUCTION

This case involves a straightforward interpretation of Michigan's tax code. When Treasury issues an assessment, decision, or order regarding a tax deficiency, it must notify the taxpayer by personal service or certified mail addressed to the taxpayer's last known address. MCL 205.21(f); MCL 205.28(1)(a). The taxpayer then has 35 days to appeal to the Michigan Tax Tribunal or 90 days to appeal to the Court of Claims. MCL 205.22(1). If not so appealed, the assessment, decision, or order "is final and is not reviewable in any court by mandamus, appeal or other method of direct or collateral attack." MCL 205.22(4). It is undisputed here that the taxpayer, Fradco, failed to timely file an appeal.

To avoid the plain statutory text, Fradco asks the Court to graft two exceptions onto these otherwise clear-cut appeal requirements. First, Fradco argues that the time to appeal does not begin to run until Treasury has served notice on Fradco's designated representative. Fradco relies on MCL 205.8, which requires Treasury to send a courtesy "copy" of key documents to the taxpayer representative. But the appeal statute, MCL 205.22(1), specifically says that the appeal time runs from the assessment, decision, or order; it says nothing about MCL 205.8 or service on a taxpayer's official representative as an alternate appeal-clock trigger.

Second, Fradco claims that the time to appeal does not begin to run until Fradco (and its representative) actually *received* the assessment, decision, or order. But again, the appeal statute does not say that; the appeal-time trigger is the

"assessment, order, or decision" itself. MCL 205.22(1). Accordingly, Treasury respectfully requests that this Court reverse and grant it summary disposition.

STATEMENT OF FACTS

Statutory framework

The primary statute at issue is MCL 205.22, which specifies the appeal periods for a taxpayer "aggrieved by an assessment, decision, or order of the department." MCL 205.22(1). This provision requires such a taxpayer to appeal: "to the tax tribunal within 35 days, or to the court of claims within 90 days *after the assessment, order, or decision.*" *Id.* (emphasis added). To eliminate the possibility of any other triggers or exceptions, the provision adds:

> (4) The assessment, decision, or order of the department, if not appealed *in accordance with this section*, is final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack.
>
> (5) An assessment is final, conclusive, and not subject to further challenge after 90 days after the issuance of the assessment, decision, or order of the department, and a person is not entitled to a refund of any tax, interest, or penalty paid pursuant to an assessment unless the aggrieved person has appealed the assessment *in the manner provided by this section*. [MCL 205.22(4), (5) (emphasis added).]

When Treasury issues an assessment, order, or decision, the "final notice of assessment" must include a statement "advising the person of a right to appeal" as provided in MCL 205.22. MCL 205.21(f); accord MCL 205.27a(2) (tax, penalties, and interest are due and payable only after "notice and hearing"). And Treasury must provide such notice "either by personal service or by certified mail addressed to the last known address of the taxpayer." MCL 205.28(1)(a). To ensure taxpayers

are not inconvenienced by processing/mailing time, Treasury postdates its assessments at least one week *after* sending the certified mail item. *PIC Maintenance, Inc. v Department of Treasury*, 293 Mich App 403, 409-410; 809 NW2d 669 (2011).

An unrelated provision, MCL 205.8, allows a taxpayer to designate an official representative. When a taxpayer so requests, Treasury will send such a representative "a *copy* of each letter or notice sent to that taxpayer" regarding a dispute. MCL 205.8 (emphasis added). Importantly, the appeal statute, MCL 205.22, says nothing about appeal periods being triggered by Treasury's sending of a "copy" of a notice to a representative. (Nor, for that matter, does MCL 205.22 indicate that the appeal-time trigger is receipt rather than Treasury's issuance of the notice by certified mail.) The purpose of MCL 205.8 is to overcome the ordinary rule that Treasury will not disclose confidential taxpayer information to a third party. See generally Mich Admin Code, R 205.1006. The provision allows the designation of only "1" official representative. MCL 205.8.

Treasury's audit of Fradco

Treasury performed a sales tax audit of Fradco's records for the time period between March 1, 2004 thought July 31, 2007. (Audit Report of Findings, p 1, ¶ 1, App. 38a.) As a result of the audit, Treasury made adjustments to Fradco's tax liability and issued Intent to Assess Q179330 against Fradco on July 23, 2008. (App. 44a.)

Fradco signed a power of attorney form on October 19, 2006. The form gave general authorization to the named power of attorney. (POA of Judy Zeppa, App. 45a.) The power-of-attorney form did not designate a specific dispute. (App. 45a.)

Fradco requested an informal conference, and the conference was held on December 4, 2008. (Informal Conference Recommendation, App. 46a.) Judy Zeppa and Tom O'Brien appeared on behalf of Fradco. (Informal Conference Recommendation, p 1, ¶ 1, App. 46a.) Treasury issued an order of determination on January 22, 2009, approving the recommendation of the hearing referee to uphold Intent to Assess Q179330.

Treasury issued its Final Assessment Q179330 dated September 17, 2009. (App. 50a.) Just as MCL 205.28(1)(a) requires, Treasury physically mailed the assessment on September 10, 2009, to Fradco's last known address at 6650 East Fulton, Ada, Michigan 49301 by certified mail number 7008 3230 0000 9225 5099. (App. 51a.) As noted above, Treasury postdates final assessments to allow taxpayers additional time from date of receipt to appeal. Certified mail number 7008 3230 0000 9225 5099 was delivered on September 16, 2009 at 12:23 p.m. to the Ada address. (App. 52a.) The Ada address is the address listed as Fradco's address on its Annual Returns for Sales, Use and Withholding Taxes for years 2004 through 2007. (App. pp 54a, 56a, 58a, 60a, 62a.) Also, a letter was mailed to Fradco's representative by Daniel M. Greenberg on April 21, 2010 indicating that the final assessment was issued on September 17, 2009. (Letter from Daniel Greenberg dated April 21, 2010, App. 53a.)

Fradco's untimely appeal

Fradco physically received by certified mail on September 16, 2009, Treasury's final assessment dated September 17, 2009, printed on Treasury's standard form C-4541F. (App. 50a.) Immediately beneath the title is a capitalized statement: "SEE BACK FOR APPEAL, PHONE AND CORRESPONDENCE INFORMATION." (*Id.*) The back side of the notice contains the statutorily-required statement that Fradco must file its appeal in the Michigan Tax Tribunal within 35 days of the Final Assessment's date. MCL 205.21(f); MCL 205.22. (App. 65a ("you may appeal . . . to the Tax Tribunal within 35 days *of the date on this bill*") (emphasis added).)

Accordingly, Fradco has until October 22, 2009 to file its appeal in the Tribunal and until December 16, 2009 to file its appeal in the Court of Claims. Fradco never filed an appeal in the Court of Claims, and Fradco inexplicably did not file its appeal in the Tribunal until July 28, 2010. Thus, in the absence of a different limitations-period trigger or statutory tolling, Fradco's appeal was time barred.

PROCEEDINGS BELOW

Michigan Tax Tribunal

Treasury filed a motion for summary disposition in lieu of response because Fradco's appeal was time barred. But the Tribunal faulted Treasury for not sending a copy of the final assessment to Fradco's representative and excused Fradco for its untimely appeal, even though MCL 205.22 (1) does not use service on a designated representative as a trigger for the strict limitations period. (1/20/11 Order, p 10, 11

App. 17a-18a) The Tribunal ultimately ruled in Fradco's favor on the merits and Treasury appealed.

Michigan Court of Appeals

On Appeal, Treasury argued that it met its notice requirements when it sent a final assessment to the last known address of the taxpayer by certified mail, as MCL 205.28(1)(a) requires. Again, notwithstanding the lack of any relevant language in that provision, the Court of Appeals held that the limitations period for appeal is not triggered until Treasury sends a copy of the final assessment to the taxpayer's representative designated under MCL 205.8: "We conclude that MCL 205.8 must be interpreted in tandem with MCL 205.28 as creating parallel notice requirements. If a taxpayer has filed a proper written notice that appoints an official representative, then respondent must give notice to both the taxpayer and the taxpayer's representative before the 35–day period under MCL 205.22 begins to accrue." (App. 36a.) Without analysis, the Court of Appeals also created a non-statutory tolling provision, such that the "35-day period [for appeal] begins to run only once a copy of the final assessment *has been received.*" (App. 34a (emphasis added).) Again, there is no statutory basis for recognizing such a tolling rule. As a result, the Court of Appeals affirmed the Tribunal's ruling. (App. 36a.) The Court also denied Treasury's motions for clarification and a stay. (App. 37a.)

STANDARD OF REVIEW

Statutory-interpretation issues are questions of law that this Court reviews *de novo*. *Klooster v City of Charlevoix*, 488 Mich 289, 295; 795 NW2d 578 (2011).

ARGUMENT

Once the relevant statutory language is understood, there is very little over which to argue. First, MCL 205.22(1) requires an aggrieved taxpayer to file its appeal with the Michigan Tax Tribunal within 35 days of the assessment, decision, or order challenged. There is no other trigger for the beginning of the 35 days; MCL 205.22(1) says nothing, for example, about notice to a taxpayer's representative and does not even reference MCL 205.8, the provision that allows a taxpayer to designate a single representative to receive copies of letters or notices related to a dispute. Accordingly, Fradco was obligated to file its appeal no later than October 22, 2009, 35 days after the final assessment dated September 17, 2009.

Second, MCL 205.22(1) contains no tolling provision based on when a taxpayer actually receives a final assessment. Indeed, no such tolling is necessary because MCL 205.28(1)(a) requires that the notice be effected by personal service or by certified mail, ensuring the taxpayer will have notice in time to appeal.

With neither a representative-based "trigger" nor receipt-based "tolling," there is no dispute Fradco failed to timely file its appeal to the Michigan Tax Tribunal. Accordingly, Treasury respectfully requests that this Court reverse the Court of Appeals and enter summary disposition in Treasury's favor.

I. An aggrieved taxpayer's appeal clock begins to run when Treasury mails the assessment to the taxpayer's last known address via certified mail.

As noted above, the time period for filing an appeal of an adverse tax assessment is controlled entirely by MCL 205.22. And that provision makes clear that the appeal clock begins to run "after the assessment, decision, or order." MCL 205.22(1). The time period says nothing about notice to a designated representative. Driving this point home is the provision specifying how notice must be given: "by personal service or by certified mail addressed to the last known address *of the taxpayer*." MCL 205.28(1)(a) (emphasis added). If the Legislature desired the limitations trigger to be based on notice to a third party, it would have said so in MCL 205.22 or, at the very least, in MCL 205.28(1)(a). The Legislature did not write the statutes that way, and the courts should not re-interpret the statutes as though the Legislature had done so.

The Court of Appeals erred by assuming that the MCL 205.28 notice provision had to be interpreted "in parallel" with the representative-designation provision, MCL 205.8. (App. 36a.) This, said the Court of Appeals, was the only way to give "meaning to both statutory sections' plain language." (App. 36a.) But MCL 205.8 has independent meaning. In the absence of a designation, Treasury's operating assumption is that it may disclose confidential tax information only to the taxpayer itself. Mich Admin Code, R 205.1006. That makes MCL 205.8 a "courtesy statute." The Court of Appeals' error was to tie the appeal clock to an *additional* notice requirement that does not appear in MCL 205.22 or MCL 205.28.

There is also no question that the limitations period the Legislature actually created satisfies constitutional notice requirements. The standard for evaluating the constitutional adequacy of notice was established over 60 years ago in *Mullane v Cent Hanover Bank & Trust Co*, 339 U.S. 306, 313 (1950): the "means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it," that is, they must be "reasonably certain to inform those affected." *Id.* at 315. Thus, in *Dow v Michigan*, 396 Mich 192, 211; 240 NW2d 450, 459 (1976), this Court held that due process under both the U.S. and Michigan Constitutions requires mailed notice that is "directed to an address reasonably calculated to reach the person entitled to notice." Proof of delivery or actual receipt of an assessment is not the benchmark of due process. *Sidun v Wayne Co. Treasurer*, 481 Mich 503, 509; 751 NW2d 453 (2008).

Certified mail directed to a taxpayer's last known address easily satisfies the due-process standard. And in the case of Fradco, Treasury can show actual receipt to boot. (App. 52a.) Fradco certainly cannot complain that it lacked notice sufficient to allow it to timely file its appeal as MCL 205.22(1) required.

Fradco argues that the issuance of the final assessment in question is suspect because its representative, Judy Zeppa, did not receive a copy of the final assessment when it was issued. It is difficult to give that argument much credence given that Zeppa's power-of-attorney form was not even a proper MCL 205.8 designation; MCL 205.8 allows a taxpayer to designate one representative for a specific dispute, and the Zeppa form did not identify a specific dispute.

But this Court need not even reach that question, because MCL 205.28(1)(a) is the Revenue Act's only "notice" provision. MCL 205.8 is merely a copy-my-representative provision. And this Court has repeatedly emphasized that "[w]hen the language of a statute is unambiguous, the Legislature's intent is clear and judicial construction is neither necessary nor permitted. Because the role of the judiciary is to interpret rather than write the law, courts lack authority to venture beyond a statute's unambiguous text." *Griffith ex rel Griffith v State Farm Mut Auto Ins Co.*, 472 Mich 521, 526; 697 NW2d 895 (2005) (citations omitted). After all, "[i]t is not the role of the judiciary to second-guess the wisdom of a legislative policy choice; [this Court's] constitutional obligation is to interpret-not to rewrite-the law." *State Farm Fire & Cas Co. v Old Republic Ins Co.*, 466 Mich 142; 644 NW2d 715 (2002).

In its current form, MCL 205.8 would not guarantee constitutionally proper notice even if rewritten as an MCL 205.22 appeal-clock trigger. MCL 205.8 does not discuss the manner in which Treasury is to provide courtesy copies of documents or notices to a taxpayer's authorized representative, so neither personal service nor certified mail is required. If the Legislature had intended MCL 205.8 to be an additional "parallel" notice provision, as the Court of Appeals assumed, the Legislature would have baked similar service protections into the statute. The Legislature did not. This is further evidence that the Legislature never intended the courtesy-copy statute to be a trigger for running the appeal clock.

Significantly, Treasury has already promulgated an administrative rule, Rule 11, which confirms that the right to designate a representative to receive copies of a taxpayer's letters and notices has no legal bearing on whether Treasury's issuance of a final assessment to a taxpayer's last known address starts the 35-day appeal clock. Mich Admin Code, R 205.1011. In fact, Rule 11 draws a clear distinction between the notice Treasury is required to provide when Treasury's issues its *informal* conference recommendations and the notice Treasury is required to provide when Treasury issues a final assessment. Compare R 205.1011(4) (Treasury will send both the taxpayer and its representative a recommendation and decision following an informal conference) with R 205.1011(5) (Treasury will send the final assessment, including "a statement advising the taxpayer of the right to appeal" *only to the taxpayer*).

II. There is no receipt-based tolling rule in MCL 205.22(1), a reality confirmed by MCL 205.22(4) and (5).

Just as MCL 205.22(1) does not contain any language suggesting that courtesy-copy notice to a designated representative is an alternative appeal-clock trigger, the provision also contains no tolling provision that might delay an otherwise initiated clock based on when the taxpayer receives a final assessment. (App. 34a (the Court of Appeals agreed with Fradco that the "35-day [appeal] period begins to run only once a copy of the final assessment *has been received*") (emphasis added).) As a result, there can be no non-statutory (i.e., judicially-created) tolling based on receipt.

Indeed, the Michigan Court of Appeals reached that exact conclusion in a separate decision published in 2011:

> Even if we were to assume that petitioner never received the final assessments, the Tax Tribunal did not err when it granted summary disposition to respondent [Treasury]. *The statute does not require proof of delivery or actual receipt; it requires only personal service or service by certified mail addressed to the last known address of the taxpayer. . .* . The statutory language at issue in this case does not refer to or imply that proof of receipt is necessary, and we will not read words into the plain language of the statute. [*PIC Maintenance, Inc. v Department of Treasury*, 293 Mich App 403, 410-411; 809 NW2d 669 (2011) (emphasis added).]

Any lingering doubts about the Court of Appeals' receipt-based tolling rule (and, for that matter, the representative-based triggering rule) is resolved by the finality language the Legislature contained in MCL 205.22(4) and (5). Subsection (4) makes clear that unless a taxpayer appeals an assessment "in accordance with this section," Treasury's action is "final and is not reviewable in any court by mandamus, appeal, or other method of direct or collateral attack."

Subsection (5) then reiterates—again—when an assessment is "final" and "conclusive": "after 90 days after the *issuance* of the assessment, decision or order." MCL 205.22 (5) (emphasis added). (The 90 days, of course, mirroring the appeal deadline for filing in the Court of Claims. MCL 205.22(1).) This language leaves no room for a receipt-based rule; the provision speaks only in terms of when the assessment issued. And the language also excludes even the possibility that the appeal clock is somehow triggered by Treasury's sending of a courtesy-copy final assessment to a designated representative. The date a final assessment is "issued" is the date on the assessment itself.

In sum, the grammatical structure of MCL 205.22 (5) clarifies that an aggrieved taxpayer's appeal clock begins running on the date appearing on the final assessment—here, September 17, 2009. By basing the appeal-clock trigger on when Treasury "issues" the final assessment, rather than on the taxpayer or taxpayer-representative "receipt" of the assessment, the Legislature intended to limit taxpayer appeals to those filed within 35 days (in the case of the Tax Tribunal) or 90 days (in the case of the Court of Claims) following Treasury's issuance of the assessment. And the personal service/certified mail requirement that MCL 205.28 (1)(a) imposes guarantees constitutionally-effective notice.

If allowed to stand, the Court of Appeals' opinion has the potential to create much mischief in an area the Legislature intended to be clear. Consider the scenario where a taxpayer makes a (proper) MCL 205.8 designation but the designated representative refuses to accept service; the rock-solid 35-day appeal deadline has just been tolled indefinitely.

The rule Fradco urges would be akin to this Court amending the court rules to specify that applications for leave must be filed within 42 days after a party's attorney actually receives a copy of the Court of Appeals opinion. Such a scheme is vague and unworkable, and this Court would not adopt such a rule. There are no gray areas when it comes to appeal periods, and the Legislature did not create one in the context of tax appeals.

CONCLUSION AND RELIEF REQUESTED

The Court of Appeals' erroneous opinion expanded Treasury's notice requirements beyond the plain language of MCL 205.22 (1) and MCL 205.28 (1)(a). This Court should enforce the plain statutory text and hold that a taxpayer must file an appeal to the Michigan Tax Tribunal within 35 days (or to the Court of Claims within 90 days) after the date that appears on Treasury's final assessment.

Accordingly, Treasury respectfully asks that this Court reverse the Court of Appeals opinion and enter summary disposition in favor of Treasury.

Respectfully submitted,

Bill Schuette
Attorney General

John J. Bursch (P57679)
Solicitor General
Counsel of Record

Richard A. Bandstra (P31928)
Chief Legal Counsel

Scott L. Damich (P74126)
Assistant Attorney General
Attorneys for Respondent–Appellant
Michigan Department of Treasury
Revenue & Collections Division
P.O. Box 30754
Lansing, MI 48909
(517) 373-3203

Dated: May 22, 2013