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.,

Petitioner-Appellee,

v

MICHIGAN DEPARTMENT OF TREASURY,

Respondent-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 APPPELLEE FRADCO, INC.

ORAL ARGUMENT REQUESTED

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COUNTER-STATEMENT OF JURISDICTION

Respondent-Appellant, Michigan Department of Treasury (hereinafter "**Treasury**") filed its Application for Leave to Appeal on December 11, 2012 in response to the Court of Appeals published Opinion dated October 30, 2012, in *Fradco, Inc v Dep't of Treasury*, 298 Mich App 292, 826 NW2d 181 (October 30, 2012). Petitioner-Appellee, Fradco, Inc., is hereinafter referred to as "**Fradco**", with the Court of Appeals Opinion sometimes referred to as "***Fradco***". Treasury filed a Motion for Reconsideration of the Opinion in the Court of Appeals on November 20, 201, to which Fradco incurred the cost to respond on December 4, 2012. Before the Court of Appeals acted on the Motion for Reconsideration, Treasury filed an Application for Leave to Appeal on December 11, 2012. The Court of Appeals issued an Order dated December 14, 2012 denying Treasury's Motion for Reconsideration. On March 27, 2013, this Court issued an Order granting leave to appeal on two specific legal issues and also granting a partial stay on the "statutory tolling ruling" but specifically denying any stay on the Treasury's compliance with the mandate of MCL 205.8.

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW

WHETHER THE RUNNING OF 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 RESPONDENT DEPARTMENT OF TREASURY COMPLIES WITH THE NOTICE PROVISION OF MCL 205.28(1)(a), OR IS THERE AN ADDITIONAL NOTICE REQUIREMENT UNDER MCL 205.8 WHEN A TAXPAYER HAS FILED A PROPER WRITTEN REQUEST DESIGNATING AN OFFICIAL REPRESENTATIVE TO RECEIVE COPIES OF LETTERS AND NOTICES.

Respondent-Appellant says No.

Petitoner-Appellee says Yes.

The Michigan Tax Tribunal said Yes

The Court of Appeals said Yes.

WHETHER THE FINALITY LANGUAGE OF MCL 205.22(4) AND (5) IS CONSISTENT WITH THE RULING OF THE TAX TRIBUNAL AND COURT OF APPEALS THAT IF A TAXPAYER HAS FILED A PROPER WRITTEN NOTICE THAT DESIGNATES AN OFFICIAL REPRESENTATIVE, TREASURY MUST GIVE NOTICE TO BOTH THE TAXPAYER AND THE TAXPAYER'S REPRESENTATIVE BEFORE THE 35-DAY PERIOD UNDER MCL 205.22(1) BEGINS TO RUN (TOLLS).

Respondent-Appellant says No.

Petitoner-Appellee says Yes.

The Michigan Tax Tribunal said Yes

The Court of Appeals said Yes.

INTRODUCTION

The matters of *Fradco, Inc v Dep't of Treasury*, 298 Mich App 292; 826 NW2d 181 (October 30, 2012), (hereinafter "***Fradco***", and Petitioner-Appellee hereinafter "**Fradco**"), and *SMK, LLC v Dep't of Treasury,* 298 Mich App 302; 826 NW2d 186 (October 30, 2012), (hereinafter "***SMK***") have, at all levels, been addressed as companion cases without any official joining of the cases. The taxpayers in these matters operate similar convenience store businesses, but in entirely different geographic locations (Fradco in Ada servicing Amway employees; SMK in Midland serving Dow employees), and the business owners are unrelated. Each of these taxpayers deserve separate due process with the distinctly different facts in each matter, both reflecting arguably egregious conduct by the Michigan Department of Treasury ("**Treasury**"), requiring separate attention from this Court so it can fully understand the impact of Treasury's complete disregard for the purpose of MCL 205.8, the scope of which is the core issue before this Court.

MCL 205.8, which requires Treasury to send to a taxpayer's Power of Attorney representative copies of Treasury's correspondence and notices, has been labeled by Treasury, with no support cited, as a suggestion by the Legislature that Treasury provide to the Power of Attorney representative a mere "courtesy copy" (see Treasury Appellant Brief beginning at page 1 and repeated throughout), whenever (if ever) Treasury gets around to it, despite the short 35-day appeal period at issue in MCL 205.22(1). This position in Treasury's Brief is very representative of attitude and tax enforcement policies of Treasury that has disregarded legislated due process protections over the last 20 year since MCL 205.8 was enacted. Effectively, small businesses, individuals and many other less sophisticated taxpayers over the last 20 years, that have relied upon official Power of Attorney

representatives to navigate the difficult appeal procedures provided by the Revenue Act (MCL 205.1 *et seq.*), have been denied their statutory appeal rights by Treasury's disregard for its statutory obligations under MCL 205.8.

Treasury has simply ignored its obligation under MCL 205.8 to "send" copies of letters and notices to a taxpayer's Power of Attorney representative. The *Fradco* and *SMK* cases, finally after 20 years, directly raise the issue of whether Treasury must respect a Power of Attorney representative's right to notice, or face the consequence of not running (tolling) the appeal period provided in MCL 205.22(1). Faced with its non-compliance, (Treasury has simply ignored MCL 205.8), it argues that a Power of Attorney representative is not entitled to "receive" notice, a pure smoke screen to avoid the real issue, that the Power of Attorney representative is entitled to notice, be it by sending, receiving or otherwise. The Argument below addresses this issue, but Fradco asks that it not allow Treasury to hide behind it to avoid the basic issues as framed by this Court's Order granting Leave to Appeal – is a taxpayer's Power of Attorney representative entitled to notice of a Final Assessment before the appeal period runs?

Before this Court addresses the legal issues presented, Fradco asks this Court to first fully understand the factual context of both the *Fradco* controversy and the companion matter, *SMK*. The Statement of Facts in this Brief, and the companion *SMK* Brief, reflect the unfair and anti-due process behavior of Treasury under which it has ignored the clearly statutory mandate of MCL 205.8 for 20 years, behavior that will be condoned if Treasury is

handed a "technicality" victory over these bullied small business taxpayers[1] that already cannot afford the complete victory they have achieved in the Michigan Tax Tribunal (hereinafter "**Tax Tribunal**") and Court of Appeals. The Court of Appeals decisions in *Fradco* and *SMK* must be upheld, not only for Fradco and SMK, but for all taxpayers that have been experiencing the assessment/collection power of Treasury, without the complete and informed assistance from Power of Attorney representatives as intended by MCL 205.8. This certainly gives new meaning to Taxpayer Rights Legislation, the title given to the 1993 package of bills (HB 4104 and HB 4160) enacting 1993 PA 13 and 14 including MCL 205.8. See 1993 Taxpayer Rights Legislative History, Appellee's Appendix ("**App**") App 1b - 25b, as discussed in detail below.

The very recent decision (issued while this Brief was being drafted) of *Bonar v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued May 30, 2013 (Docket No. 310707), (hereinafter "**Bonar**", App 62b-70b), reflects the plethora of nuance issues that arise in this area (effect of MCL 205.8) due to the partial stay by this Court of the published decisions in *Fradco* and *SMK*. It is appropriate for this Court to not only uphold *Fradco* and *SMK*, but to do it with a decision not leaving the small business and individual taxpayer that rely heavily on the Power of Attorney representative to timely exercise their due process rights with another 20 years worth of enforcement and litigation before those rights are achieved. *Bonar* addresses some of the core issues in this matter very well (as discussed in detail below), but it also (arguably in dicta discussions caused by the current

[1] Amicus curiae briefs are expected to show that *Fradco* and *SMK* are far from isolated cases of Treasury denying due process to taxpayers that relied upon Power of Attorney representatives who were intentionally denied the basic information needed to protect their taxpayer-client's appeal rights.

uncertainty of the law in this area) raises some of the many nuance issues available to Treasury should it desire to further delay its full and continued compliance with its legislated obligation under MCL 205.8 as specifically continued uninterrupted by this Court's Order dated March 27, 2013. App 51b.

COUNTER-STATEMENT OF FACTS

I. Treasury's Selective "Facts" are Arguments that Cannot Be Reconciled With Actual "Facts" in the Record, Especially Those Omitted Completely.

Fradco will restate below the complete facts as presented in the Court of Appeals and fully referenced to the record below. However, Fradco must first comment on the arguments (some newly raised and not preserved below) presented as "facts" by Treasury.

A. Omissions / Unpreserved Arguments.

Treasury admits via omission that it never "sent" the Final Assessment at issue to Fradco's Power of Attorney representative, Judy E. Zeppa. App 45a. Instead, under the guise of "facts", it launches into a new argument (unpreserved at the Michigan Tax Tribunal and Court of Appeals level) about the sufficiency of the general Power of Attorney authorization (on Treasury's Form 151) used to appoint the official representative under MCL 205.8. See Treasury's Brief p 4, attempting to make an issue of the nature of Power of Attorney granted to Fradco's official representative, Judy Zeppa, CPA, a "fact" not considered relevant to the Tribunal's finding that an official representative had been appointed by Fradco. App 17a-18a, with 10a-11a, correcting the name of the CPA listed in

Findings of Fact at 14a.[2] This is not only not a "fact", it cannot be reconciled to the unrebutted Affidavits of Judy E. Zeppa (App 26b–28b), Thomas O'Brien (App 29b – 31b), Ms. Zeppa's Power of Attorney (App 45a) on the Treasury's Form 151, and the controlling facts as found by the Michigan Tax Tribunal in its Order Denying Respondent's Motion for Summary Disposition dated January 11, 2011 (App 8a–19a). Moreover, the Court of Appeals in *Bonar* at App 67b specifically addressed this issue and found that a "general" power of attorney submitted on Treasury's Form 151 (discussed further below) appoints an official representative for purposes of MCL 205.8. The unpublished opinion in *Bonar*, while not precedentially binding, is "instructive and persuasive". *PIC Maintenance, Inc. v Dep't of Treasury*, 293 Mich App 403, 409 n.1; 809 NW2d 669 (2011), citing *Paris Meadows, LLC v City of Kentwood*, 287 Mich App 136, 145n.3; 783 NW2d 133 (2010), and will be addressed in more detail in the Arguments.

B. Treasury Mailed Final Assessment to Store Location.

Fradco does not dispute that the Final Assessment may have been mailed to the taxpayer's address which is a busy retail store location. App 51a. That is precisely why Fradco hired Judy E. Zeppa, a CPA trained in tax controversy, and appointed her its official representative via the Treasury's Form 151 (Power of Attorney Authorization). See App 45a and Affidavit of Judy Zeppa, App 26b-28b. In order to cover procedural details such as the

[2] The Tax Tribunal's jurisdiction decision in *Fradco* (App 8a-19a) erroneously includes at App 14a the Findings of Fact from the parallel *SMK* jurisdiction decision issued the same day (see *SMK* App 8a–19a). Fradco is left to assume the factual finding (that Judy Zeppa, CPA, was the official Power of Attorney representative) repeated in the "Conclusion of Law" at App 17a and 18a would also have been directly stated under the Findings of Fact section (App 14a) of the Tax Tribunal's Order denying Respondent's Motion for Summary Disposition. App 8a–9a.

timely appeal of notices, she was instructed to receive copies as Fradco's official representative.

Because the Final Assessment (App 50a), while it may have been mailed, it was never received by Thomas O'Brien, owner of Fradco, or anyone at the store. Affidavit of Thomas O'Brien App 29b–31b. Fradco therefore had no copy or knowledge of the contents of the Final Assessment and was unable to appeal the Assessment until its Power of Attorney representative received and reviewed it. The appeal delay mentioned so prominently by Treasury's version of the facts (Treasury's Brief p 5) was caused solely by Treasury, whose representatives from several different areas (informal conference, taxing division to collections) refused to provide a copy after repeated requests, with a copy finally acquired by the Power of Attorney representative, only after a call directly to the Administrator of Treasury's Technical Division. Petition ¶ 18, App 37b.

C. Facts of Companion Case, *SMK, LLC v Dep't of Treasury.*

Treasury asks this Court to find that Fradco lacked jurisdiction because it insisted on receiving a copy of the Final Assessment before appealing. Treasury's basis for this conclusion, (Final Assessment need only be sent to taxpayer under MCL 205.28(1)(a), so MCL 205.8 can be ignored) yields the same result in the companion *SMK* matter as the *Fradco* matter. Yet in *SMK* there was not only no delay, but Treasury was contacted by the Power of Attorney representative during the 35-day appeal period specifically inquiring as to when the Final Assessment would be issued. Treasury (through its auditor and the auditor's supervisor) failed to call the Power of Attorney back until two days after the alleged 35-day appeal period expired, suggesting the Treasury representative intentionally delayed any response to the Power of Attorney representative in order to conceal the Final Assessment

while it was appealable. See *SMK's* Tax Tribunal Petition ¶¶ 18-22, *SMK* Appendix 43b. In other words, Treasury's position has turned the legislative purpose of MCL 205.8 on its head in the facts of both *Fradco* and *SMK*, and with respect to any other taxpayer that has lost appeal rights, because a taxpayer representative was not given a copy of an appealable notice as required by MCL 205.8. This point will be much clearer for the Court after it reviews the following complete facts as referenced fully to the record below.

II. Complete Facts Fully Referenced to Record Below as Presented to the Court of Appeals.

Following is the chronological Statement of Facts from Fradco's Brief as filed in the Tax Tribunal and referenced in Fradco's Brief provided in opposition to the Respondent-Appellant's Application for Leave to Appeal. All references are to the record in the Tax Tribunal as transferred to the Court of Appeals and subsequently the Michigan Supreme Court which on the jurisdictional issue was settled by the Tax Tribunal's January 20, 2011 Order Denying Treasury Motion for Summary Disposition (App 8a-19a), decided without a hearing (meaning there is no transcript). Therefore, pleadings and pleading exhibits are the primary record, with the task made much more difficult by the Tax Tribunal's erroneous partial inclusion of SMK facts in the Fradco Order (see footnote 2).

1. Fradco, Inc. ("**Fradco**") is a Michigan corporation incorporated on January 28, 1980. (DLEG ID Number 152598) (Affidavit of Thomas O'Brien, ¶ 2, App 30b)
2. The Resident Agent is Thomas O'Brien and the Registered Office is 6650 Fulton, Ada, MI 49301. (Affidavit of Thomas O'Brien, ¶ 1, App 30b)

3. Fradco operates a grocery store, meat market and delicatessen under an Assumed Name: O'Brien's Market-Deli selling groceries, liquor, beer, wine, meat, deli items, and cigarettes. (Affidavit of Thomas O'Brien, ¶¶ 3-5, App 30b)
4. Fradco, on or about October 20, 2004, retained the services of Judy E. Zeppa, CPA, to handle all accounting and tax matters. (See Affidavit of Thomas O'Brien, ¶ 6, App 30b)
5. Thomas O'Brien is not qualified in matters of accounting and tax reporting. (See Affidavit of Judy Zeppa, CPA, ¶ 8 and ¶ 9, App 27b) (See also Affidavit of Thomas O'Brien, ¶ 7, App 30b)
6. Judy Zeppa was responsible for all accounting and tax matters. (See Affidavit of Judy Zeppa, CPA, ¶ 10, App 27b) (See Affidavit of Thomas O'Brien, ¶ 6-7, App 30b)
7. Thomas O'Brien, on October 19, 2004, executed a Form 151 Power Of Attorney Authorization and provided copies thereof to Respondent Department of Treasury. (See Affidavit of Thomas O'Brien, ¶ 8, App 30b)
8. The Power Of Attorney Authorization directed the Department of Treasury to provide Judy Zeppa "All Treasury billings and payment notices." (See Affidavit of Judy Zeppa, CPA, ¶ 12, App 27b)
9. The Power Of Attorney Authorization allowed Judy Zeppa to "receive information and represent me (Fradco) in all Treasury tax matters." (See Affidavit of Thomas O'Brien, ¶ 8, App 30b and Power of Attorney Authorization App 45a)
10. The Power Of Attorney Authorization was effective October 20, 2004 and continues in effect until revoked in writing. (See Affidavit of Judy Zeppa, CPA, ¶ 11, App 30b)

11. The Power Of Attorney Authorization is and continues to be in effect. It has not and is not revoked. A copy of the Power of Attorney Authorization was provided to the Department of Treasury. January 20, 2011 Tax Tribunal Order, App 10a-11a and 18a. (The Tax Tribunal concluded at App 18a, "Petitioner's power of attorney was filed with the Respondent prior to the dates the Intent to Assess and Final Assessment were issued. This finding is documented and unrebutted.") Note, due to the Tax Tribunal's error, the Court is left to also infer what would have been directly stated in the "Findings of Fact" section at App 14a if the Order had been corrected by the Tax Tribunal to address *Fradco*, not *SMK* facts, because Scot Smith, CPA and Todd Gambrell, attorney, should be read as CPA Judy Zeppa. Scot Smith and Todd Gambrell had no role in *Fradco*, only *SMK*. The Tax Tribunal has never corrected its erroneous inclusion of *SMK* facts in the *Fradco* Order.

12. Respondent completed a Sales Tax Audit which covered the period March 1, 2004 through July 31, 2007. Field work on the audit was completed in May of 2008. (App 38a)

13. The audit determination resulted in a disallowed food deduction. (App 40a)

14. Fradco appealed the audit determination at an Informal Conference. See Informal Conference Recommendation. (App 46a–48a)

15. Fradco was represented at Informal Conference by Judy E. Zeppa, CPA. The Power of Attorney Authorization was provided to the Hearing Referee. (Affidavit of Judy Zeppa, CPA, ¶ 16, App 28b)

16. Judy E. Zeppa protested the Bill for Taxes Due (Intent to Assess). (See Affidavit of Judy Zeppa, CPA, ¶ 15, App 27b)

17. The Hearing Referee agreed to adjustments based on information provided by Judy Zeppa. (See Informal Conference Recommendation, App 46a)

18. Respondent issued a Decision and Order of Determination dated January 22, 2009, a copy of which was mailed to Judy Zeppa. (App 49a)

19. The Decision and Order of Determination stated that the adjusted Final Assessment would be issued in 30 days. (See Affidavit of Thomas O'Brien, ¶ 13, App 30b, and Affidavit of Judy Zeppa, CPA, ¶ 17, App 28b)

20. Judy E. Zeppa contacted the Hearings Division in the summer of 2009 to inquire as to the whereabouts of the adjusted Final Assessment. Judy Zeppa was told the adjusted Final Assessment had not been issued. (See Affidavit of Thomas O'Brien, ¶ 14, App 31b, and Affidavit of Judy Zeppa, CPA, ¶ 18, App 28b)

21. Representative for the Petitioner, Edward S. Kisscorni, sent a letter dated April 19, 2010 to the Administrator of the Hearings Division, Daniel M. Greenberg, inquiring about the location of the adjusted Final Assessment which neither the Petitioner nor Judy E. Zeppa had received. (Affidavit of Judy Zeppa, CPA, ¶ 19, App 28b)

22. Daniel M. Greenberg, Administrator of the Hearings Division, responded by letter dated April 21, 2010 (App 53a) that "a Final Assessment was issued September 17, 2009." The letter stated "No appeal was made with respect to this Final Assessment as provided by statute and the matter is now shown as subject to collection." The letter did not provide a copy of the Final Assessment or include any detail as to the amount of the Final Assessment and the adjustments made at the informal conference. (Affidavit of Judy Zeppa, CPA, ¶ 20, App 28b)

23. Petitioner, through the Representative for the Petitioner, made several attempts to obtain a copy of the Final Assessment from the Treasury's Hearing Division, Collections Division, Sales Tax Division and finally on July 20, 2010 a copy of the Final Assessment was received after a call to the Administrator of Treasury's Technical Services Division. (Petition ¶ 18, App 37b and receipt-dated Final Assessment App 39b)

24. Meanwhile, the Respondent Collections Division commenced collection efforts against Fradco and seized funds from the company bank account. Eventually, all of the tax, penalty and interest were paid in full. (Petition ¶ 19, App 37b)

25. Petitioner could not appeal the adjusted Final Assessment until the adjusted Final Assessment was received on July 20, 2010. (See Affidavit of Thomas O'Brien, ¶ 18, App 31b).

STANDARD OF REVIEW

Respondent-Appellant's Application cites to *Klooster v. City of Charlevoix*, 488 Mich 289, 295-296; 795 NW2d 578 (2007), and only states one of the two relevant standards of review addressed by the Court as follows:

> Issues of statutory interpretation are questions of law that are reviewed de novo. *Brown v Detroit Mayor*, 478 Mich 589, 593; 734 NW2d 514 (2007).

Klooster at 295, further states that:

> In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong legal principle; its factual findings are conclusive if supported by competent, material and substantial evidence on the whole record. *Michigan Bell Tel Co. v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994)

In the Statement of Facts, Fradco addresses Treasury's attempts to raise as new legal issues questions of fact settled by the ruling of the Tax Tribunal based on its consideration of competent, material and substantial evidence, meaning these issues, including the holding that Fradco designated an official Power of Attorney representative triggering Treasury's obligation under MCL 205.8, are not before this Court. App 10a with reference to 11a for the correct name.

ARGUMENT

I. Whether the Running of 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 Treasury Complies with the Notice Provision of MCL 205.28(1)(a), or is there an Additional Notice Requirement under MCL 205.8, when a Taxpayer has Filed a Proper Written Request Designating an Official Power of Attorney Representative to Receive Copies of Letters and Notices.

The Court of Appeals has correctly applied the clear language of the statute, as supported by legislative history and the basic requirement of due process notice, to rule that there are two parallel notice requirements in the Revenue Act under MCL 205.28 and MCL 205.8, if the taxpayer has appointed an official Power of Attorney representative.

A. The Language of MCL 205.28, 205.8 and 205.22.

As stated by the Court of Appeals, *Fradco*, 298 Mich App at 297: "Because the sections at issue – MCL 205.8, 205.22 and 205.28 – are part of that act [Revenue Act MCL 205.1 *et seq.*], the plain language of MCL 205.59 indicates respondent is required to follow all of these sections . . ." The relevant portions of these statutes are as follows:

MCL 205.28(1) provides in part that:

> Sec. 28. (1) The following conditions apply to all taxes administered under this act unless otherwise provided for in the specific tax statute:

(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.

and MCL 205.8 provides:

Sec. 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.

and MCL 205.22(1), (4) and (5), to be addressed in the next argument provide:

Sec. 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.

B. The Court of Appeals Properly Applied the Plain Language of the Statute which is Clear Without any Reference in MCL 205.8 to MCL 205.28.

1. Consistent with Statute as a Whole.

The Court of Appeals correctly observed in *Fradco*, 298 Mich App at 299 that it is applying the plain language of the statute, consistent with rules of statutory construction without any statutory cross-reference:

> Respondent argues that the Legislature would have specifically referred to MCL 205.28 in MCL 205.8 if it had intended to elevate the level of notice required. Respondent's interpretation would require us to undermine the plain language of a statute on the basis of an impermissible guess at the Legislature's intent. Statutory interpretation requires an holistic approach. *Robinson v City of Lansing*, 486 Mich 1, 15; 782 NW2d 171 (2010). A provision that may seem ambiguous in isolation often is clarified by the remainder of the statutory scheme. *Id.* It is a tenet of statutory interpretation that "[c]onflicting provisions of a statute must be read together to produce an harmonious whole and to reconcile any inconsistencies wherever possible." *World Book, Inc v Dep't of Treasury*, 459 Mich 403, 416; 590 NW2d 293 (1999). In reading the provisions of MCL 205.8 and MCL 205.28(1) together, it is clear that these sections should be interpreted as imposing parallel notice requirements whenever a taxpayer has a valid written request on file for respondent to send copies to an official representative. This interpretation gives meaning to both statutory sections' plain language and produces "an harmonious whole." *World Book*, 459 Mich at 416. Thus, the 35-day period of MCL 205.22(1) does not begin to run until notice has been given under both MCL 205.8 and MCL 205.28(1).

The Court of Appeals statutory construction conclusion is strongly supported by case law in addition to that cited in the quote above by *Fradco*. See *King v State of Michigan*, 488 Mich 208; 793 NW2d 673 (2010), and *Gillie v Genesee County Treasurer*, 277 Mich App 333; 745 NW2d 137 (2007) applying the same basic concept that a provision must be read as consistent with the statute as a whole. Moreover, MCL 205.8 was added to the

existing Revenue Act, already including MCL 205.22 and MCL 205.28, therefore the Legislature must be assumed to have intended to enact MCL 205.8 as an independent provision not amending, and therefore, not referencing MCL 205.28, which is exactly how the Court of Appeals applied MCL 205.8 above, as a parallel notice requirement.

2. Lack of Reference to MCL 205.28 in MCL 205.8 is Wholly Consistent with the Clear Language and Purpose of the Statute as Applied by the Court of Appeals.

Note, MCL 205.28(1)(a) has no reference to MCL 205.22, or vice versa, yet MCL 205.28 is understood to be giving instructions on how to give notice to a taxpayer of a Final Assessment issued under MCL 205.22. It is wholly consistent for this same statute to add, by amendment, a later provision providing instructions how to give notice to a taxpayer's official representative also without cross-referencing MCL 205.22 and MCL 205.28. It simply is not only not required, but could make MCL 205.8 a specific provision applying only to Final Assessments (one of many types of notices issued by Treasury), when MCL 205.8 clearly, as worded, applies to all notices and correspondence issued by Treasury to the taxpayer, including a Final Assessment. In other words, Treasury argues exactly the opposite of the intended statutory structure, because to cross-reference MCL 205.8 to MCL 205.28 could restrict the scope of MCL 205.8 to less than the purpose the Legislature intended to address. The Court of Appeals has correctly recognized that MCL 205.8 was correctly drafted to accomplish exactly what its clear language says – copies of all notices and correspondence must be sent to the Power of Attorney representative and when the notice is a final (appealable) notice, then that notice must be provided to the official representative before the assessment is considered "issued" for purposes of the MCL 205.22 appeal period.

As discussed fully in Argument II addressing the finality language of MCL 205.22(5), MCL 205.22(1) requires an appeal "within 35 days . . . after the assessment, decision or order." This begs the question, "After what?" which is answered by MCL 205.22(5) establishing finality "after 90 days after the issuance of the assessment decision or order . . ." (emphasis added).

3. *PIC Maintenance*, the Primary Case Cited by Treasury, Fully Supports the Court of Appeals' Conclusion that an Assessment is Not Issued Until Notice is Fulfilled.

In *PIC Maintenance, Inc. v Dep't of Treasury*, 293 Mich App 403; 809 NW2d 669 (2011), a published Court of Appeals decision, addressed the MCL 205.22 appeal of a withholding tax assessment filed in the Tax Tribunal more than 35 days after the date of (date written) the final assessment. There was no Power of Attorney representative involved, and MCL 205.8 was not at issue. The Court of Appeals in *Fradco* 298 Mich App at 297 (footnote 1) rejected the relevance of *Altman Mgt Co. v Dep't of Treasury* unpublished opinion per curiam of the Court of Appeals, issued April 10, 2001 (Docket No. 216912), for the same reason. However, the broader application of the due process notice standard in *PIC Maintenance* is very relevant to the *Fradco / SMK* facts (both MCL 205.8 and 205.28 at issue), directly supporting the conclusion reached by the Court of Appeals in *Fradco* that an assessment is not issued under MCL 205.22 to start the 35-day appeal period until it is sent.[3]

PIC Maintenance addresses when the 35-day period starts, albeit with only the MCL 205.28(1)(a) notice-to-taxpayer at issue, because there was no Power of Attorney representative appointed by the taxpayer. The Final Assessment was mailed April 21, 2008

[3] The further issue of whether receipt of the assessment was required by the Court of Appeals decision in *Fradco* is addressed below as effectively irrelevant. It is not, per this discussion, required for due process.

as proven by certified mail logs found to be competent, material and substantial evidence relied upon by the Tax Tribunal. However, the Final Assessment was post-dated as April 28, 2008 causing the Court to conclude in *PIC Maintenance* 293 Mich App at 403:

> The assessments were sent by certified mail on April 22, 2008, but were "issued" on April 28, 2008, because the department postdates its assessments in order to allow processing time. (emphasis added)

In other words, the assessment would have been "issued" when sent, but for the post-date being a later date. In the *Fradco* facts, Treasury is subject to obligations under both MCL 205.28 and 205.8 to issue Final Assessments. Therefore, the Final Assessment would be "issued" when both the taxpayer (sent same certified mail notice as *PIC Maintenance* taxpayer) and the Power of Attorney representative (never sent a copy of the Final Assessment even after repeated requests) are issued (sent) notice. A timely appeal therefore occurred in *Fradco* under this *PIC Maintenance* "issuance" rule, because the appeal was filed within 35 days after a copy of the Final Assessment was finally sent to (and received with no meaningful change to the 35-day appeal period) the CPA representative, albeit 98 days after the "date" printed on the Final Assessment. The *Bonar* discussion below, though an unpublished opinion, further clarifies this point.

Treasury wrongly points to the language of only MCL 205.22(1) stating that an aggrieved taxpayer may appeal the "assessment, decision or order of the Tax Tribunal within 35 days . . . after the assessment decision or order." Treasury Brief p 8. With absolutely no cited authority other than the language alone (which does not say after the "date" of the assessment) and concludes this language clearly requires an appeal within 35 days after the date of the assessment, a clear administrative amendment to the statute. See *Danse*

Corporation v City of Madison Heights, 466 Mich 175; 644 NW2d 721 (2002) reh den 466 Mich 1222 (2002) and *Catalina Mktg Sales Corp v Dep't of Treasury,* 470 Mich 13; 678 NW2d 619 (2004) for this Court's refusal to allow Treasury to legislate through rules, Revenue Administrative Bulletins or otherwise.

The finality language of MCL 205.22(5) (as discussed more fully below) controls the finality (running) of the 35-day appeal period based on the "issuance" of the assessment. *PIC Maintenance* correctly concluded that the assessment was not issued until it was sent, with the date of the assessment controlling, only because it was post-dated to a date later than the proven date the assessment was sent.

Applying this rule to the MCL 205.8 notice to the Power of Attorney representative required in *Fradco*, the later of the date of the assessment, or the date the assessment was sent to the Power of Attorney representative, was correctly determined by the Tax Tribunal to be the date Treasury finally sent the Final Assessment to the Power of Attorney representative (July 20, 2010) (App 17a) with a timely appeal/petition filed eight days later on July 28, 2010.

This conclusion is also supported by the due process discussion in *PIC Maintenance* 293 Mich App at 414 which states the due process notice standard as:

> However, we note that due process itself does not require proof of actual receipt; rather, due process requires " 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.' " *Sidun v Wayne Co. Treasurer*, 481 Mich 503, 509, 751 NW2d 453 (2008), quoting *Mullane v Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314, 70 S.Ct. 652, 94 L.Ed. 865 (1950).
> US Supreme Court 1950

Applying this standard to the facts of *Fradco* (and even more so to the facts of *SMK*), Treasury's intentional refusal (and in *SMK*, apparent concealment) to send the Final Assessment to the Power of Attorney representative as statutorily required by MCL 205.8 fails the basic due process standard, because clearly Treasury not only was not "acting to apprise interested parties" of their appeal rights, but rather actively concealing those rights from the Power of Attorney representative knowing that such conduct effectively denied all appeal rights to the taxpayer represented by the Power of Attorney. In other words, irrespective of how the statutory issues are decided under MCL 205.22(4) and (5), factually Treasury has failed to accord basic due process notice to both Fradco and SMK.

4. In *Bonar*, the Court of Appeals Very Recently Analyzed MCL 205.22(1) and Concluded that Issuance of the Final Assessment via Actual Notice/Sending of the Assessment Triggers (Starts) the 35-Day Appeal Period.

Consistent with the above discussion of *PIC Maintenance*, the Court of Appeals very recently issued its decision in *Bonar v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued May 30, 2013 (Docket No. 310707). Although the opinion is unpublished, it is very instructive[4] because the Court of Appeals felt obligated to address all of the MCL 205.8 and MCL 205.22(1), (4) and (5) issues currently before this Court because of the March 27, 2013 partial-stay Order issued to *SMK* (*Fradco* was ignored by *Bonar*) staying the "statutory tolling ruling". App 51b. Therefore, the arguments below addressing MCL 205.22(4) and (5) finality issues, will also address *Bonar* in even more detail, though *Bonar* is not only unpublished, it also likely addressed some of the key issues as dicta. However, under the core issue of what is notice, Fradco believes the *Bonar* discussion is not

[4] See earlier discussions of *PIC Maintenance* and *Paris Meadows LLC* opinions recognizing that unpublished opinions, while not precedentially binding, can be instructive and persuasive.

only entirely consistent with the published standards applied in *PIC Maintenance*, it is also clear in its statutory reasoning.

Bonar involved an officer liability case due to taxpayer position with the Solvis Group, Inc. A Power of Attorney representative was retained with the power of attorney dated 8/5/2009, but the taxpayer was listed as Dalrada Financial, not Solvis Group, Inc. Therefore, much like *Altman Management* (App 61a), the unpublished opinion cited by Treasury, the power of attorney was defective so there was no direct MCL 205.8 issue. The power of attorney was never delivered to Treasury in *Altman*. In *Bonar*, it was delivered, but with the wrong taxpayer name. However in *Bonar*, after rejecting the power of attorney and need for any notice to the representative, it still analyzed in detail the scope of notice required to the taxpayer under MCL 205.28 to start the running of the MCL 205.22(1) 35-day appeal period (much like *PIC Maintenance*). The Court of Appeals in *Bonar* at App 68b, after concluding that powers of attorney are to be strictly construed and that the taxpayer's power of attorney to Tipton was defective, stated:

> Respondent therefore was not required to send additional authorizations to Tipton under MCL 205.8. The 35-day period for filing an appeal of petitioner's Final Assessments, MCL 205.22, therefore began to run when the assessments were issued, on September 17, 2009 [date of mailing, with post-date of September 24, 2009]. Petitioner did not file his appeal until December 7, 2010, and therefore failed to properly invoke the jurisdiction of the Michigan Tax Tribunal [with the 7 day post-date gap not relevant and not discussed]. (emphasis added)

This correct focus on when the Final Assessment is sent to persons requiring notice (whether it is only the taxpayer under MCL 205.28(1)(a) or also to the Power of Attorney representative under MCL 205.8), that "notice" (a due process concept) is achieved by actually sending a copy of the Final Assessment to that person. See *Fradco* at 300 (App 36a)

where the Court of Appeals stated that "issuance" requires the assessment to actually be sent because notice of notice is not "notice."

This simple analysis is wholly consistent with the longstanding language of MCL 205.22(1), (4) and (5) (App 54b when enacted as 205.22(2) and (3)) and is neutral to the MCL 205.8 and MCL 205.28 role of defining who must receive such notice. This statutory scheme is brought into even better focus by *Hatherly Assoc., Inc v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued June 29, 2010 (Docket No. 291100), (hereinafter "**Hatherly**", App 71b-73b) another unpublished Court of Appeals opinion that *PIC Maintenance* referenced in its analysis of when an assessment is "issued" for purposes of MCL 205.22.

In *Hatherly*, the taxpayer was assessed use tax on the purchase of a motor home bought out of state and brought into Michigan. The Final Assessment was allegedly sent/mailed certified mail on 2-29-2008 to the taxpayer's last known address, but was not received. There was no Power of Attorney involved, so the MCL 205.8 notice requirement was not at issue, only MCL 205.28(1)(a). Despite certified mail log evidence of mailing by the Treasury on 2-22-2008, the taxpayer rebutted this evidence with: (i) testimony it had not received the assessment; (ii) evidence of conflicting postal tracking numbers; and, (iii) the fact that the assessment had a printed date of 2-29-2008 proved it could not have been mailed on 2-22-2008. The Tax Tribunal allowed the "late" appeal based on a best evidence date of notice of 4-26-2008, referred to as the "issue date" found by the Tribunal. On Motion for Reconsideration, Treasury explained its post-dating practice to allow for processing time, and the Tax Tribunal reversed itself finding notice was provided to the taxpayer. The Court of Appeals affirmed, focusing only on when the assessment was "sent" for notice purposes

(no discussion of the 7-day gap between date sent and post-date printed on assessment, because that period made no difference in the timeliness of the appeal), and, for due process purposes, the notice was adequate because it was sent to a correct address and was not returned undeliverable. This case is distinguishable, but instructive.

C. The Legislative History of the 1993 Taxpayer Bill of Rights Including MCL 205.8 Fully Supports the Court of Appeals Application of the Revenue Act AND Completely Rejects Treasury's Wholly Unsupported Labeling of MCL 205.8 as Providing a "courtesy copy" of Letters and Notices to a Taxpayer's Power of Attorney Representative.

1. 1993 Taxpayer Bills – HB 4104 and HB 4160 Resulting in 1993 PA 13 and 14.

The 1993 Taxpayer Bill of Rights encompassed HB 4104 and HB 4160 resulting in 1993 PA 13 and 14 (App 1b-9b), with HB 4160/1993 PA 14 including MCL 205.8. App 6b. The legislative purpose and intent of MCL 205.8 is best understood by first understanding the overall purpose of the 1993 Taxpayer Rights legislation.

2. General Legislative History of the 1993 Taxpayer Rights Bills as a Whole.

Fradco's prior Briefs in the Court of Appeals and Fradco's Brief filed in Opposition to Leave to Appeal have already provided the House Legislature Analysis Section ("**HLAS**") Report titled "Taxpayer Rights" on HB 4104 and HB 4160; First Analysis (9-10-93) (App 22b–25b), which is included chronologically (last) in *Fradco's* Appellee Appendix with all of the other HLAS Reports and Senate Fiscal Agency ("**SFA**") Reports on the Taxpayer Rights Bills that Fradco was able to acquire from the Library of Michigan (App 10b–25b), (hereinafter the legislative history of the 1993 Taxpayer Rights Bills at App 1b-25b).

Fradco leads with the HLAS Report, Second Analysis, dated 9-10-93 (App 22b-25b) because it (like the SFA Report dated 3-10-93, App 16b) summarizes both the overall purpose of the Taxpayer Rights Bills and the purpose of MCL 205.8, both reflecting major reform of not only Treasury's procedure, but also its basic attitude toward taxpayers, and is certainly NOT intended to be a mere suggestion by the Legislature that Treasury provide a "courtesy copy" of letters and notices to taxpayer's official representatives. See Treasury's Brief p 1 and throughout. First, the HLAS Report dated 9-10-93 (same in earlier 2-23-93 HLAS Report at App 13b) acknowledges the "Taxpayers' Rights" and/or "Taxpayer Bill of Rights" label(s) as "aimed at protecting citizens from unreasonable, overbearing, and intimidating enforcement of the tax law" like recent federal level tax administrations legislation (1998). App 22b, see also App 13b. In the 1993 legislative history, the HLAS Report 9-10-93 at 1, (App 22b, see also App 13b) goes on to specifically describe the fundamental nature of fairness to the overall tax system as follows:

> Proponents of such law ["Taxpayer Bill of Rights"] argue that a system that depends on voluntary compliance requires that taxpayers have respect for and confidence in the tax system. Taxpayers need to perceive their treatment by tax collectors as fair and need to believe that they are on 'a level playing field' when involved in disputes with government over tax liabilities . . . . As a former state tax commissioner has said, "Under the best of circumstances, revenue departments are viewed all too often as bureaucratic black holes, populated with Gestapo-like enforcers of laws few people understand and even fewer respect." Tax administrators need to treat the public consistently, fairly, courteously, and competently. And they must provide the public with the information needed to cooperate with the tax system. (emphasis added)
> HLAS Report p 1, App 13b

This general statement of the Legislature's purpose and intent of the Taxpayer Bill of Rights as applied to the MCL 205.8 piece is clearly a legislative demand that Treasury fairly

treat taxpayers that have hired professionals (Power of Attorney representatives) to deal with a tax controversy, by timely providing the Power of Attorney representative with the information needed to assert the taxpayer's rights, including the right to appeal an "assessment decision or order" of Treasury under MCL 205.22.

3. Legislative History Specific to MCL 205.8 Also Supports the Court of Appeals Decision.

This above general legislative purpose conclusion is also required by the HLAS Report discussion at App 24b (see also App 14b) of the provision that would become MCL 205.8 as part of 1993 PA 14 (App 6b), as follows (one point in a multi-point list of provisions in HB 4160):

> • Require that copies of letters and notices regarding a department–taxpayer dispute be sent to a taxpayer's official representative (in addition to the taxpayer) by the department upon the request of the taxpayer. (emphasis added)

Stated more directly, the emphasized language "in addition to the taxpayer" being a reference to MCL 205.28(1)(a) notice to the taxpayer shows that the Legislature:

(i) viewed MCL 205.8 as imposing a notice obligation in addition to MCL 205.28(1)(a), thus a parallel requirement equal to the MCL 205.28(1)(a) notice to the taxpayer; and,

(ii) understood that MCL 205.28(1)(a) only provided notice to the taxpayer with notice being incomplete until the official representative hired by the taxpayer is also given notice and is provided the opportunity to do its job of timely representing the taxpayer.

4. Treasury's Rule 11 is an Admission by Treasury that It Understood (and Tried to Circumvent) the Legislative Purpose and Intent of MCL 205.8.

If MCL 205.8 were merely a suggestion by the Legislature that Treasury send a "courtesy copy" of letters and notices to a taxpayer's Power of Attorney representative (as

stated, without any cited support, by Treasury Brief p 1 and throughout), then Treasury's Rule 11 (1996 AACS R 205.1011) (App 50b) effective August 28, 1996, would have been without purpose. Instead, both the Tax Tribunal and the Court of Appeals appear to have found Rule 11 to be unsupported by the clear language of MCL 205.8. Stated another way, the Rule's purpose was to circumvent the language of MCL 205.8. Rule 11(4) provides that after an informal conference on an intent to assess issued by Treasury, "If a taxpayer is represented in the informal conference, the department shall send, by certified mail, to the taxpayer representative, a copy of the recommendation, the decision and order; and, if applicable, the rebuttal explanation." The Rule effectively requires that the Power of Attorney representative is to be sent everything but the appealable Final Assessment. Rule 11(5) then states, "After the decision and order have been issued, a notice of final assessment shall be sent to the taxpayer. The notice of final assessment shall include a statement advising the taxpayer of the right to appeal." Treasury by its own admission through the language of Rule 11(4) recognizes the requirement of MCL 205.8 to send copies of pre-assessment notices to the Power of Attorney representative, but then guts the very purpose of MCL 205.8 compared to MCL 205.28(1)(a) by legislating an invalid exception to MCL 205.8 for the most important notice, the appealable Final Assessment. This is an admission by Treasury that without the Final Assessment exception for Rule 11, MCL 205.8 requires notice to the Power of Attorney representative, simultaneous with and equal to the taxpayer notice under MCL 205.28(1)(a).

The Tax Tribunal and Court of Appeals appear to overrule the Rule 11 exception to MCL 205.8 because it cannot be reconciled with the clear language of MCL 205.8, as applied by the Tax Tribunal and Court of Appeals decision. App 8a–19a and 33a–36a.

Therefore, Treasury's Rule 11, as corrected to eliminate the Final Assessment exception, admits that the Court of Appeals decision correctly applied MCL 205.8 as parallel to MCL 205.28, just not in the same way as Treasury did in the overruled (over-reaching) Rule 11.

II. Whether the Tolling Ruling Adopted by the Tax Tribunal and the Court of Appeals is Contrary to the Finality Language of MCL 205.22(4) and (5).

A. The "Tolling Ruling" of the Tax Tribunal and Court of Appeals – Clarification of Scope of Issues to be Addressed by Fradco.

The above heading II quotes this Court's statement of the second issue from its Order dated March 27, 2013 (App 51b). However, the issue as worded is not entirely clear to Fradco or to the courts (see discussion in *Bonar*, App 62b-70b), and therefore, Fradco will first clarify its understanding (scope) of the issue before arguing it.

1. The Court of Appeals Clarified and Adopted in part the Tax Tribunal Holding – There is No "singular" Tolling Ruling of the Tax Tribunal and the Court of Appeals.

The Tax Tribunal's Order Denying Respondent's Motion for Summary Disposition dated January 20, 2011 (App 8a–19a) reaches two conclusions at App 18a, only one[5] of which, quoted as follows, was adopted by the Court of Appeals with expanded statutory construction analysis supporting it:

> Second, although not explicitly stated, MCL 205.8 cannot allow Respondent to send copies at its leisure or after the running of the statute of limitations for filing an appeal of the decision or determination. Respondent's statutory requirement under MCL 205.8, if taxpayer appointment of a representative is to be given any effect, must require that correspondence be sent to the representative, and the taxpayer, pursuant to MCL 205.22 and 205.28, simultaneously. Any other reading renders Petitioner's election to be represented by a more qualified individual, the

[5] The Tax Tribunal's first conclusion focused on the "more specific requirement" language in MCL 205.28(1). See App 35a. This analysis was rejected in the Court of Appeals which then adopted, with expanded analysis, the Tax Tribunal's second holding. See App 35a – 36a.

> filing of a power of attorney and the requirements of MCL 205.8 meaningless. App 18a

The Tax Tribunal's conclusion reflects not only an application of legislative intent and statutory construction (plain language), but also an element of basic due process that was also addressed by the Court of Appeals and will be more specifically addressed below. The Court of Appeals, after rejecting the Tax Tribunal's "more specific requirement" (MCL 205.28(1) language) conclusion states in *Fradco* at 299 (App 35a):

> Nevertheless, as noted, the Tax Tribunal correctly held MCL 205.8 was applicable and binding, and MCL 205.28 must be interpreted in parallel with MCL 205.8 whenever a taxpayer files a written notice designated an official representative.

The Court of Appeals, after rejecting all of Treasury's arguments, then concluded, *Fradco* 298 Mich App at 301 (App 36a):

> We conclude that MCL 205.8 must be interpreted in tandem with MCL 205.28(1) as creating parallel notice requirements. If a taxpayer has filed a proper written notice that designates 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(1) begins to run. Because petitioner filed its appeal within 35 days after its representative received notice from respondent, the Tax Tribunal had jurisdiction to hear petitioner's appeal. Therefore, we affirm.

2. The "Tolling Ruling" to be Addressed – the 35-day Appeal Period under MCL 205.22(1) - Starts (Begins to Toll) After Both MCL 205.28 and MCL 205.8 Notice of the Final Assessment is Provided.

Neither the Tax Tribunal nor the Court of Appeals ruling above use the word "tolling" in their holding. Moreover, "tolling" has multiple opposite meanings apparently used to reflect when a statutory period starts to run by this Court's March 27, 2013 Order, but compare the Court of Appeals decision in *Curis Big Boy v Dep't of Treasury*, 206 Mich App 139, 520 NW2d 369 (1994) where tolling addressed the pausing of the same appeal period

(then 30 days) under MCL 205.22(1). Fradco understands this Court's reference to a tolling ruling to be the ruling as to when the 35-day appeal period starts to run. Both the Tax Tribunal and the Court of Appeals ruled that MCL 205.8 operates as notice of an appealable communication (Final Assessment, etc.) to the official representative provision operating parallel to the MCL 205.28(1)(a) (notice to the taxpayer), with neither suggesting the MCL 205.8 requirement tolled (paused) the MCL 205.28 requirement.

This discussion is included as an introduction to clarify the scope of the MCL 205.22(4) and (5) issues to be argued. The need for this clarification is exemplified by the Court of Appeals recent attempt to address these very issues in *Bonar* at App 69b which, within a short two-paragraph discussion, used "tolling" to mean both the starting and the pausing of the 35-day appeal period under MCL 205.22(1) as follows:

> Consequently this Court's holding in SMK (as to the 35-day period not beginning to run until additional notice is sent under MCL 205.8) currently has no precedential effect [cites omitted].
>
> Regardless, however, we find petitioner's appeal was untimely. If the 35-day period was not tolled [paused], then it expires 35 days after issuance of the Final Assessment on September 17, 2009. [date mailed with September 24, 2009 post-date] If the 35-day period was tolled [paused], then it would have commenced running at such time as respondent provided the Final Assessments to petitioner's authorized representative. . . .
>
> Consequently, even assuming that the 35-day period had been tolled [paused] until that time [when a second Power of Attorney was retained], it commenced running no later than August 12, 2010. (emphasis added)

After correctly stating the "tolling ruling" to be that the 35-day appeal period never commences until both the taxpayer and Power of Attorney representative are sent the notice of the assessment, the Court of Appeals goes on to discuss the issue as if MCL 205.8

pauses/tolls a 35-day period started by MCL 205.28(1)(a) notice. That begs the real question of what "issuance" in MCL 205.22(5) means, if the Final Assessment is not issued in a matter involving a Power of Attorney representative until the Final Assessment is sent to both the Power of Attorney representative and taxpayer, then there is no need to "pause" the 35-day period. It simply never started by operation of law.

In other words, the Court of Appeals held MCL 205.8 and MCL 205.28 were equal requisite notice requirements if the taxpayer has executed a Power of Attorney appointing an official representative. If both notice provisions apply (a Power of Attorney exists), both must be met with respect to the Final Assessment of other appealable notices before the 35-day appeal period under MCL 205.22 starts to run. As already explained, this independent equality of MCL 205.8 and MCL 205.28 further reflects why it is fully consistent with legislative intent for MCL 205.8 not to reference MCL 205.28 and vise versa. This portion of the Brief, therefore, addresses the "tolling ruling" issue as a question of whether starting the MCL 205.22(1) 35-day appeal period, only after both notice provisions under MCL 205.8 and MCL 205.28 are met, violates the finality language of MCL 205.22(4) and (5).

B. The "Finality" Language of MCL 205.22(4) and (5) Addresses the "Issuance" of the Appealable "assessment decision or order" – a Basic Due Process Concept.

1. Language of MCL 205.22(4) and (5) in Context.

The language of MCL 205.22 as quoted in Argument I reflects MCL 205.22(4) and (5) as added to the statute in 1986 as MCL 205.22(2) and (3). App 54b. Fradco's Appendix pp 52b-61b provides the 1986 legislative history of current MCL 205.22(4) and (5), including HB 4706 as enrolled as 1986 PA 58 (adding in part MCL 205.22(2) and (3)) with

HLAS Report dated 3-12-86. In 1993, when the 30-day appeal period at MCL 205.22(1) was increased to 35 days, the amendment also moved MCL 205.22(2) and (3) to MCL 205.22(4) and (5), primarily due to a cosmetic reorganization of MCL 205.22(1) into MCL 205.22(1), (2) and (3). See 1993 Taxpayer Rights Legislative History, App 1b-25b.

Based on the language of MCL 205.22 as a whole, and in particular the language of MCL 205.22(4) and (5), finality requires an appeal within the 35-day/90-day period after the "issuance" of the assessment, decision or order being appealed, as that term is used in MCL 205.22(5). The Court of Appeals decision in *Fradco* in addressing the fact that Treasury never sent a copy of the Final Assessment to the Power of Attorney representative and after inquiry by the Power of Attorney representative, notes that Treasury sent a letter dated April 21, 2010 to the representative stating that a Final Assessment had been sent to the taxpayer, but without providing a copy of the assessment (or any details about the assessment) with the letter. The Court of Appeals (*Fradco*, 298 Mich App at 300-301, App 36a) recognized as follows that "notice of issuance" is not the same as issuance by actually sending a copy of the assessment directly to the official representative:

> The letter itself was not the final assessment, and the plain language of MCL 205.8 requires respondent to send "a copy of" the notice, i.e., the final assessment, not just notice of it. Or, put another way, notice of the notice is not itself the "notice" contemplated by the statute. Thus, the letter did not satisfy the requirements under MCL 205.8.

The Court of Appeals makes it clear that issuance occurs only after "notice" of the appealable act (the actual sending of the Final Assessment to the official representative under MCL 205.8), not just notice that the assessment has been sent to the taxpayer under MCL 205.28, with no attempt to send the assessment to the Power of Attorney representative.

Notice of partial notice is not actual complete notice, both under the statute and basic requirements of due process. See *PIC Maintenance, Inc v Dep't of Treasury,* 293 Mich App 403; 809 NW2d 669 (2011) as discussed below in detail.

2. MCL 205.22 Does Not Reference MCL 205.28 or MCL 205.8.

MCL 205.22 requires issuance of notice in accordance with the Revenue Act (MCL 205.1 *et seq.*) without any reference to a specific provision. Therefore, before 1993 PA 14 added MCL 205.8, MCL 205.28(1)(a) was the only notice requirement (and it remains so if a taxpayer has not appointed an official representative). After MCL 205.8 was added by the 1993 Taxpayer Rights Legislation as a parallel notice provision, MCL 205.22 issuance (of an assessment or other appealable communication) by notice automatically became a requirement to provide to both the taxpayer and official representative notice (a copy) of the assessment under both MCL 205.8 and MCL 205.28, without any need to amend any language in MCL 205.22.

The Court of Appeals in *Fradco* specifically rejects a back-door version of the same argument by finding that the fact MCL 205.8 (as an added notice requirement) does not reference MCL 205.28 (the existing notice requirement) does not change the clear language, intent and purpose of MCL 205.8 as already addressed fully in Argument I. Moreover, the legislative history of MCL 205.22 does nothing to dispute the Court of Appeals decision and its application of MCL 205.8 as a parallel notice requirement.

3. MCL 205.22(4) and (5) were Added to Prevent Collateral Attacks on Finality Especially Through the Application of Equitable-Type Relief, None of Which are at Issue in this Matter.

The current MCL 205.22(4) and (5) began as MCL 205.22(2) and (3) as added to the Revenue Act in 1986 by HB 4706 (App 52b–59b) enacted as 1986 PA 58. The wholly

administrative changes to MCL 205.22 received no attention in the legislative history of HB 4706 because its primary impetus was the addition of the original tax amnesty plan under the Revenue Act as MCL 205.31. Appendix 60b–61b is the House Legislative Analysis Section Report on HB 4706 available at the State Library, dated March 12, 1986, and addresses the Bill as enrolled. This legislative history fails to even mention the changes in the same Bill to MCL 205.22 to add MCL 205.22(2) and (3), since moved to MCL 205.22(4) and (5).

The Court of Appeals in *Curis Big Boy v Dep't of Treasury*, 206 Mich App 139, 520 NW2d 369 (1994) applied MCL 205.22(2) and (3) (before redesignation as 22(4) and (5) by the 1993 Taxpayer Bill of Rights changes to MCL 205.22) as intended to overrule decisions like *Campbell v Dep't of Treasury*, 77 Mich App 435; 258 NW2d 508 (1977) in which a delayed appeal was allowed on equity-like grounds.[6]

Fradco is not collaterally attacking finality achieved by operation of law through MCL 205.28(1)(a) notice alone. Rather, the Revenue Act added the second parallel notice requirement under MCL 205.8 rendering the assessment not issued (the 35-day appeal not running) until both notice requirements were met. Again the 35-day period has never started. There is no attempt to achieve a pause of an already running or expired appeal period based

[6] In *Campbell* a jeopardy assessment was executed against a person suspected of criminal activity with large amounts of cash seized and applied to taxes assessed against the criminal enterprise. The search and seizure was later found to be illegal and an informal conference was granted by Treasury on the jeopardy assessment, which delayed the taxpayer's obligation to appeal the assessment to the Board of Review. The Attorney General ruled there was no statutory jurisdiction for an informal conference on a jeopardy assessment and Treasury dismissed the hearing, allowing 30 days for taxpayer to appeal to the Board of Appeals. The Attorney General then moved to dismiss the appeal because it was not filed within 30 days of the date of the assessment because the appeal was delayed in reliance on grant of the informal conference.

on equity or otherwise. Fradco asks only for a correct application of the statutory notice requirements in the Revenue Act as a whole after the addition of MCL 205.8.

The Court of Appeals decision in *Fradco*, because it does not collaterally attack (attempt to reset-restart the appeal period that has already run) or apply equity-like relief principles, is fully consistent with the legislative purpose for which MCL 205.22(4) and (5) were enacted and must be upheld.

4. The Finality Requirement of MCL 205.22(5) requiring Timely Appeal is Circular Unless the Notice Triggering Finality Actually Provides a Copy of the Assessment.

A sub-point needs to be made about the language of MCL 205.22(5). For it to be consistent with the language of MCL 205.22 as a whole and the Revenue Act as a whole[7], the timely appeal requirement makes no legislative sense unless the required timely notice includes providing a copy of the notice (Final Assessment, etc.) to the Power of Attorney representative. Otherwise, how can the Power of Attorney and his client-taxpayer have enough information to timely appeal? This is exactly the point made in the *Fradco* facts as it repeatedly requested a copy of the assessment from Treasury, but was refused. Petition ¶ 18, App 37b.

Stated another way, the language of MCL 205.22(5) is entirely consistent with MCL 205.22(4) being applied (as argued above) to require a copy of the appealable communication (assessment, etc.) be sent to (not just described to) the Power of Attorney representative.

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[7] See the rules of statutory construction applied by the Court of Appeals decision at App 35a-36a; *Fradco* at 299-300.

C. The Statutory Construction/Interpretation of the Notice and Finality in the Revenue Act are Both Consistent With and Required by Basic Due Process Standards.

1. The *PIC Maintenance* Decision of the Court of Appeals as Relied Upon Heavily by Treasury, Fully Supports Not Only Issuance Requiring Completed Notice, But Also that Notice Must Fulfill Basic Due Process Standards.

PIC Maintenance, Inc v Dep't of Treasury, 293 Mich App 403; 809 NW2d 669 (2011) was fully discussed above concerning the MCL 205.22(5) requirement of "issuance" of the assessment being equated with fulfilling/completing all statutory notice requirements, meaning both MCL 205.8 and MCL 205.28 must be fulfilled by sending the Final Assessment to both the taxpayer and, if one exists (which it did not under the *PIC Maintenance* facts), the Power of Attorney (official) representative. The Court of Appeals in *PIC Maintenance* also addressed the previously quoted standard from *Mullane* 339 US at 319 as requiring, "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."

The Court of Appeals concluded, based on this standard, that sending MCL 205.22 notice by certified mail is reasonably calculated to apprise interested parties of the pendency of an action when the correspondence is not returned to the government "unclaimed". There was no Power of Attorney representative in *PIC Maintenance*, so the standard was only applied to the MCL 205.28(1)(a) notice requirement and found adequate because the Final Assessment was sent by certified mail to the taxpayer and not returned. Fradco, however, was held by the Tax Tribunal to have an official representative (App 10a–11a and App 18a read as correcting App 14a, referencing Judy Zeppa, the CPA involved in *Fradco*, not *SMK*).

Therefore, applying the same standard to the MCL 205.8 requirement, basic due process fails because Treasury made no attempt to send the Final Assessment to the Power of Attorney representative. Treasury knows that many taxpayers, especially unsophisticated individuals and small businesses (as will be addressed by amicus curiae briefs from the MSU Clinical Law program and the Michigan Association of Certified Public Accountants) hire professional representatives like a CPA to deal with a tax controversy matter and rely completely on the professional Power of Attorney representatives to handle the appeal. In such a case, failure to provide notice to the Power of Attorney representative is effectively the complete denial of all appeal rights (i.e., complete denial of basic due process).[8]

This conclusion is also supported by the Court of Appeals decision in *Bickler v Dep't of Treasury*, 180 Mich App 205; 446 NW2d 644 (1989), as cited by *PIC Maintenance* at 403 for the point that actual receipt of notice is not required for due process. In *Bickler*, a company's unpaid use tax liability was imposed personally on an officer of the company. After an informal conference, the Decision and Order was sent to the last known address in the officer liability file. The officer–taxpayer had however moved a year earlier and had filed a Michigan income tax return reflecting his new address. Treasury did not search its files for this new address and was found not to meet the due process standard by mailing the Final Assessment to the old address, with the mailing returned undeliverable. The Court of Appeals in *Bickler* at 210 – 211 cited to the following expanded statement of the due process notice standard from *Dow v Michigan*, 306 Mich 192, 205-206; 240 NW2d 450 (1976):

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[8] A due process claim was made by Fradco in the Tax Tribunal as reflected in Petitioner's Response and Opposition to Respondent's Motion for Summary Disposition in Lieu of Response and Petitioner's Brief in support of the same.

> "'The fundamental requisite of due process of [Page 211] law is the opportunity to be heard.' *Grannis v Ordean*, 234 US 385, 394 [34 S Ct 779; 58 L Ed 1363] (1914). The hearing must be 'at a meaningful time and in a meaningful manner.' *Armstrong v Manzo*, 380 US 545, 552 [85 S Ct 1187, 14 L Ed 2d 62] (1965)." *Goldberg v Kelly*, 397 US 254, 267; 90 S Ct 1011; 25 L Ed 2d 287 (1970).
>
> The "opportunity to be heard" includes the right to notice of that opportunity. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."
> *Mullane v Central Hanover Bank & Trust Co* [339 US at 314]

Given the clear legislative mandate of MCL 205.8 to send a copy of all letters and notices to the Power of Attorney representative, and Treasury's blatant disregard for its obligation to provide notice to the Power of Attorney representative (including the promulgation of Rule 11 (App 50b) to wrongfully exempt from the MCL 205.8 notice requirement the Final Assessment arising from an informal conference decision), Treasury has unequivocally (probably per se, due to its apparently invalid Rule 11 position) violated the due process rights of all taxpayers that have hired a Power of Attorney representative.

Even without a holding that MCL 205.8 and 205.28 are parallel notice requirements, Treasury's complete disregard for its obligation under MCL 205.8 amounts to a denial of due process, especially considering that: (i) in *SMK*, Treasury was asked repeatedly by the Power of Attorney for a copy of the Final Assessment during the 35-day MCL 205.22(1) appeal period, with Treasury not returning the Power of Attorney's call until day 37 (*SMK* Appendix 43b); and, (ii) in *Fradco*, Treasury refused to provide the Power of Attorney representative with a copy of the Final Assessment notice, despite repeated requests (App 37b), making it impossible for Fradco to complete a Tax Tribunal Petition (App 31b).

2. Property Tax Foreclosure Case Law Further Confirms Treasury's Due Process Transgressions.

The Court of Appeals in *PIC Maintenance* at 414 cited to *Sidun v Wayne County Treasurer,*[9] 481 Mich 503; 751 NW2d 453 (2008) which has its roots in the U.S. Supreme Court decision in *Jones v Flowers,* 547 US 220; 126 S Ct 1708; 164 L Ed 2d 415 (2006) which addressed due process notice in a tax sale context, when the government was aware before the sale that notice attempts had failed. The Supreme Court (*Jones* 547 US at 238) affirmed the *Mullane* rule *supra* as follows:

> As for *Mullane*, it directs that "when notice is a person's due .... {t}he means employed must be such as one desires of actually informing the absentee might reasonably adapt to accomplish it."

Again, under the facts of both *Fradco* and *SMK*, Treasury clearly designed its notice methodology (including intentional defiance of MCL 205.8 mandate with respect to Final Assessments) to keep the Final Assessment away from the Power of Attorney representative with full knowledge that this conduct greatly increased the likelihood appeal rights would be lost in the case of the less sophisticate taxpayer that rely completely on their Power of Attorney representatives.

III. Other Issues Addressed by Treasury's Brief Beyond the Scope of the Order Granting Leave to Appeal.

A. The Purpose of MCL 205.8 has Nothing to Do with Protecting Treasury's Confidentiality Obligations.

Treasury's Brief at 3 makes the unsupported and self-serving claim that, "The purpose of MCL 205.8 is to overcome the ordinary rule that Treasury will not disclose

[9] See also *Republic Bank v Genesee County Treasurer*, 471 Mich 732; 690 NW2d 917 (2005) (a case addressing the consistent application of multiple notice provisions in the same statute).

confidential information to a third party." The only "support" cited is Treasury's "Mich Admin Code, R 205.1006" that merely repeats the MCL 205.8 criteria (with no direct reference to MCL 205.8) that there can be only one official representative which clearly is not the "taxpayer rights" purpose described in the legislative history of MCL 205.8 (App 1b-25b). See in particular the HLAS Report at App 14b specifically recognizing that HB 4160 is adding by reference to the future MCL 205.8 a requirement that copies of letters and notices regarding a tax dispute be sent to a taxpayer official representative, "in addition to the taxpayer." This was not added to protect Treasury by limiting taxpayers to one power of attorney designation. Rather, it is protecting the taxpayers' right to have an informed representative.

In 1996 (three years after MCL 205.8 was enacted), Treasury promulgated Rule 205.1005 (Representation Before Department) and Rule 205.1006 (Written Authorization for Disclosure of Confidential Information to Third Parties or Taxpayer Representatives; Use of Facsimile Equipment.). 1996 AACS R 205.1005 and R 205.1006, as promulgated at 1996 MR 9, Eff. August 28, 1996. Neither of these Rules acknowledges nor directly mentions the MCR 205.8 obligation to an "official representative" and therefore, has not imposed any special or additional criteria for a representative appointed for MCL 205.8 purposes. The Court of Appeals in *Bonar* (App 66b-67b) addressed and summarily dismissed this issue when it found overall that a Power of Attorney representative appointed on any form (Federal Form 2848, Treasury Form C-1029, and combined Treasury and UIA Form 151) also appoints an official representative for MCL 205.8 purposes. The Court of Appeals mentioned the Rule 205.1006 confidentiality point as a non-issue because any appointment on the appropriate Power of Attorney Authorization Form sufficient to comply with

Rule 205.1006 also fulfills MCL 205.8. The Power of Attorney appointments in both *Fradco* and *SMK* were sufficient under these Rules, but this is not an issue preserved for appeal before this Court.

B. The Sufficiency of the Power of Attorney Designations at Issue are Not Before this Court and Clearly Invoke the MCL 205.8 Notice Requirement.

The Fradco Power of Attorney granted a general authorization to Ms. Zeppa to represent Fradco in multiple matters. App 45a. The SMK Power of Attorney granted specific authority to Mr. Kisscorni, limited to the sales tax audit and related assessments at issue. SMK Appendix 47a.

Treasury made this argument for the first time at the Court of Appeals level and only in *Fradco* in its Motion for Reconsideration of the October 30, 2012 Opinion at issue that the general power of attorney granted to Fradco's CPA, Ms. Zeppa, was insufficient to invoke the MCL 205.8 notice requirement. A Motion for Reconsideration was not filed in the Court of Appeals by *SMK*. Therefore, as a legal issue, the sufficiency of the power of attorney designation was raised late and only in the Fradco matter. Moreover, the Tax Tribunal had already factually determined that Ms. Zeppa was the official representative for MCL 205.8 purposes.

The Court of Appeals in *Bonar* (App 65b-68b) also does an excellent job of summarily dismissing the entire barrage of excuses raised by Treasury about a power of attorney designation being insufficient because a taxpayer: (i) used the wrong form; (ii) was not sufficiently specific about the issues; (iii) granted only a "General Authorization"; (iv) failed to check the Treasury's box on a joint Treasury/UIA Form 151; or, (v) designated more than one representative (which would, without instruction by taxpayer, automatically

cancel the prior representative designation). None of these issues prevent a Power of Attorney designation on one of Treasury's forms from being sufficient to invoke MCL 205.8.

The sufficiency of Fradco's Power of Attorney designation to invoke MCL 205.8 is not at issue. However were it at issue, the Power of Attorney designation at App 45a ends this issue as factually accepted by the Tax Tribunal as invoking MCL 205.8. App 18a. See the Standard of Review section of this Brief establishing that the Tax Tribunal's findings of fact control if supported by competent, material and substantial evidence on the record as a whole.

CONCLUSION AND REQUEST FOR RELIEF

The Court of Appeals Opinions in *Fradco* and *SMK* correctly identify MCL 205.8 as a notice requirement distinct from, and operating parallel to, MCL 205.28(1)(a), when the taxpayer has appointed an official representative. Factually it was established at the Tax Tribunal (and is not an issue before this Court) that: (i) Treasury, despite the clear language of MCL 205.8, made no attempt to send the Final Assessment of sales/use taxes to these official representatives. Therefore, the Fradco and SMK Final Assessments were not issued until they were sent to the Power of Attorney representatives, meaning the Tax Tribunal correctly granted jurisdiction because the appeals were timely (Tax Tribunal Petitions filed within 35 days after the assessment was sent to the official representative). This is exactly how the Revenue Act notice and appeal mechanism was designed to operate as reflected in consistent legislative history and the rules of statutory construction.

Treasury, in part, argues that the Court of Appeals reference to Fradco and SMK's "receiving" the assessment invalidates the decision. However, under the facts of *Fradco* and *SMK*, it was reasonable for the Court of Appeals to require receipt due to Treasury's

unreasonable conduct. The due process standard discussed above and applied by the Court of Appeals decisions, make it clear that actual receipt of notice is not required as long as the notices were sent with the intent to "actually inform" the taxpayers of their appeal rights. Moreover, the clear language of MCL 205.8 required Treasury to "send" copies of letters and notices to the Power of Attorney representative. Therefore, it would be reasonable for this Court to adjust/clarify the Court of Appeals ruling to require notice be sent, a clarification having no impact on the results to Fradco and SMK, because both filed Tax Tribunal Petitions within 35 days of being sent (issued) an actual copy of the assessment. The date of receipt was irrelevant, just as it was in *Bonar* and *Hatherly* (post-dated assessments), with the appeals filed within 35 days of both the date the Final Assessment was received or sent.

The Tax Tribunal has already ruled Treasury's assessments against Fradco and SMK to be meritless and cancelled, due to Treasury's failure to carry its burden of proving a tax deficiency. These rulings should stand based on the Tax Tribunal's correct acceptance of jurisdiction in these matters to hear timely appeals by Fradco and SMK within 35 days of the issuance of the Final Assessments. Fradco therefore asks this Court to: (i) uphold the Court of Appeals decision dated October 30, 2012, that the appeal to the Tribunal was timely and within the 35-day period established by MCL 205.22(1); (ii) in the alternative, uphold the Court of Appeals decision dated October 30, 2012 as to result, but adjust MCL 205.8 notice to the Power of Attorney representative as occurring when the Final Assessment (or other appealable notice) is sent by Treasury to the representative, not when the representative actually receives the notice; (iii) in the further alternative irrespective of the finding on statutory construction issues, uphold the decision of the Court of Appeals on due process grounds, because under the facts as found by the Tax Tribunal, Fradco had not been afforded

due process notice of the Final Assessment until it was sent to Fradco's Power of Attorney representative; (iv) grant to Fradco costs and fees associated with this appeal; and, (v) grant to Fradco such other relief this Court deems appropriate.

This is not only a statutorily required result, but one that is fair to not only Fradco and SMK, but all other taxpayers that have lost appeal rights due to Treasury's failure to inform Power of Attorney representatives. Treasury has argued it cannot "afford" this result, however, it causes no loss of tax dollars that Treasury is entitled to collect based on the law, but rather relies upon unfairly missed appeal rights. Moreover, taxpayers have been unjustly bearing the cost of Treasury's refusal to respect Powers of Attorney appointed by taxpayers for the 20 years since MCL 205.8 was enacted. It is time the cost of Treasury's failure (refusal) to improve its system to allow the tracking of Power of Attorney representatives be shifted to Treasury from taxpayers like Fradco and SMK that have had to incur tremendous appellate costs to enforce their basic due process rights, as statutorily legislated into the Revenue Act through MCL 205.8

Respectfully submitted,

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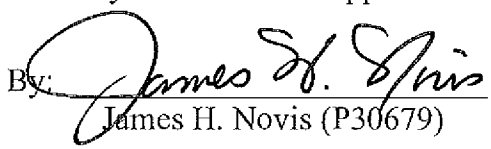
Dated: June 26, 2013

By: 
James H. Novis (P30679)