STATE OF MICHIGAN
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS
MICHIGAN ADMINISTRATIVE HEARING SYSTEM
MICHIGAN TAX TRIBUNAL

Detroit Metro Airport Taxicab,
Petitioner,

v MTT Docket No. 449113

Michigan Department of Treasury,
Respondent.

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

On May 30, 2013, Respondent filed a motion for summary disposition in the above-captioned case under MCR 2.116(C)(4), asserting lack of subject matter jurisdiction. In the Motion, Respondent states:

> On October 28, 2010, Treasury issued Intent to Assess S403326 . . . related to Petitioner's business tax liability for the 2008 calendar year. Treasury did not receive any response from Petitioner . . . [and] [c]onsequently, on January 10, 2011, Treasury issued Final Assessment S403326 . . . . Petitioner filed its petition before this Tribunal on or about November 28, 2012, approximately 687 days after the issuance of the Final Assessment, and well beyond the 35-day period of limitation provided for in MCL 205.22(1).

Petitioner has not filed a response to the Motion.

The Tribunal has considered the Motion and the case file and finds that "[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 . . . ." MCL 205.22(1). Further, an "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." MCL 205.22(4). Respondent contends that Petitioner failed to timely file its petition in accordance with MCL 205.22(1), and as such, the Tribunal lacks subject matter jurisdiction over its appeal of Final Assessment

S403326. The Tribunal notes, however, that subject-matter jurisdiction is defined as "[j]urisdiction over the nature of the case and the type of relief sought . . . ." Black's Law Dictionary (9th ed). As such, the Tribunal would have jurisdiction over the nature of the case and the type of relief sought regardless of whether the petition was timely filed. See *Bonar v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued May 30, 2013 (Docket No. 310707), p 2 n 1, wherein the Court held that "the MTT has subject matter jurisdiction over tax appeals even when that jurisdiction is not properly invoked in a particular case." As such, Respondent's motion would have been more appropriately filed under MCR 2.116(C)(7), and shall be granted under that provision, because this appeal is, for the reasons set forth below, barred by the 35-day statute of limitations. See MCL 205.735a. Alternatively, it could be granted under MCR 2.116(C)(1), which entitles the moving party to summary disposition when the court lacks jurisdiction over the person or property. Although MCR 2.116(D)(1) states that a motion on such grounds must be raised in a party's first motion or in the party's responsive pleading, whichever is filed first, lack of "jurisdiction is so serious a defect in the proceedings that a tribunal is duty-bound to dismiss a plaintiff's claim even if the defendant does not request it." *Electronic Data Systems Corp v Flint Twp*, 253 Mich App 538, 544; 656 NW 2d 215 (2002). Further, jurisdictional issues may be raised at any time under the Tribunal's Rules of Practice and Procedure. See TTR 229.

The Department of Treasury is required to give a taxpayer proper notice of any assessment, decision, or order in accordance with MCL 205.28. This statute provides, in pertinent part, that such notice "shall be given either by personal service or by certified mail addressed to the last known address of the taxpayer." MCL 205.28(1)(a). In *PIC Maintenance, Inc v Dep't of Treasury*, 293 Mich App 403; 809 NW2d 669 (2011), the Court of Appeals noted that neither MCL 205.28 nor due process require proof of delivery or actual receipt. The former requires only "personal service or service by certified mail," while the latter 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.'" *PIC Maintenance, supra* at 414. Further, the Court held that sending notice by certified mail "is reasonably calculated to apprise interested parties of the pendency of the action when the correspondence is not returned to the government as 'unclaimed . . . . [and thus provides] the notice due process requires." *Id*. at 414-415.

The evidence on record establishes that Respondent sent Final Assessment S403326 to Petitioner at its last known address by certified mail on January 3, 2011, as required by MCL 205.28(1)(a), and there is nothing to suggest that it was returned as undeliverable. Notwithstanding proper notice, Petitioner failed to appeal the January 10, 2011 Final Assessment within the statutorily mandated filing period and instead filed on November 28, 2012, following the issuance of a "Notice of State Tax Lien" on November 2, 2012. The November 2, 2012 notice, however, merely evidences Respondent's attempt to secure payment of the taxes, penalties, and interest levied in conjunction with Final Assessment No. S403326 and a second, unrelated assessment. It is not an appealable final "assessment, decision, or order of the department," and Petitioner is precluded from using it to directly or collaterally challenge the Final Assessment under MCL 205.22(4) and MCL 205.22(5). See also *Curis Big Boy, Inc v Dep't of Treasury*, 206 Mich App 139; 520 NW2d 369 (1994). Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED and this case shall be DISMISSED.

EXCEPTIONS

This POJ was prepared by the Michigan Administrative Hearing System. The parties have 20 days from date of entry of this POJ to notify the Tribunal **in writing and by mail** if they do not agree with the POJ and to state in writing why they do not agree with the POJ (i.e., exceptions). There is no fee for filing exceptions.

Exceptions filed by *e-mail or facsimile* will **not** be considered in the rendering of the Final Opinion and Judgment. Exceptions are **limited** to the evidence submitted prior to or at the hearing and any matter addressed in the POJ. A copy of a party's written exceptions **must be sent by mail** to the opposing party and proof must be submitted to the Tribunal that the exceptions were served on the opposing party. The opposing party has 14 days from the date the exceptions were mailed to that party to file a written response to the exceptions.

By: Thomas A. Halick

Entered: July 03, 2013