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

Brian Bonar,
Petitioner,

v

MTT Docket No. 410948

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

FINAL OPINION AND JUDGMENT

On March 6, 2012, Respondent filed its Motion for Summary Disposition pursuant to MCR 2.116(C)(4), contending that Petitioner failed to timely file an appeal of the Final Assessments issued to Petitioner. Petitioner filed a Brief in Opposition to Respondent's Motion for Summary Disposition on March 29, 2012 and requested oral argument. Oral argument was heard on Respondent's Motion on May 4, 2012. The Tribunal finds that Petitioner was properly served with Notices of Final Assessment in September, 2009, and Petitioner failed to timely file an appeal to the Tribunal. Moreover, Petitioner also failed to file an appeal to the Tax Tribunal within 35 days of Respondent's decision on July 1, 2010, to cancel some of the assessments issued to Petitioner and affirm the assessments that are the subject of this appeal. Finally, Petitioner failed to file an appeal within 35 days of receipt of the Final Assessments by Petitioner's authorized representative. Therefore, the Tribunal affirms Assessments O866458, O866459, and P760956.

RESPONDENT'S ARGUMENT

In support of its Motion, Respondent contends that (i) Final Assessments O866458, O866459, and P760956 related to The Solvis Group, Inc. were issued and sent to Petitioner as a responsible corporate officer via certified mail on September 17, 2009, to 2428 Oak Canyon Place, Escondido, California 92025, (ii) the Oak Canyon address was the only address Respondent had on file for Petitioner, (iii) MCL 205.22(1) provides that a taxpayer must appeal an assessment to the Tribunal within 35 days of the date of issuance of the assessment, (iv) no valid Power of Attorney was on file authorizing Treasury to communicate with anyone other than Petitioner, and (v) because Petitioner filed his appeal to the Tribunal on December 6, 2010, more than 35 days after the issuance of these Final Assessments, the Tribunal lacks jurisdiction over the subject assessments (*Kelser v Department of Treasury,* 167 Mich App 18; 421 NW2d 558 (1988)).

Respondent contends that MCL 205.22(1) specifically requires a taxpayer "aggrieved by an assessment, decision or order of the Treasury Department" to file a petition with the Tribunal within 35 days after the assessment, decision, or order. Respondent further recognizes that MCL 205.28(1)(a) requires it to provide such notice "either by personal service or by certified mail addressed to the last known address of the taxpayer." Respondent contends, however, that the Michigan Court of Appeals has held that the statute does not require proof of delivery or actual receipt; instead, personal service or service by certified mail addressed to the last known address of the taxpayer is sufficient. See *PIC Maintenance, Inc v Department of Treasury,* 293 Mich App 403; 809 NW2d 669 (2011). Respondent contends that its service of the Final Assessments on Petitioner was consistent with *PIC Maintenance* because the Final Assessments issued to

Petitioner on September 17, 2009, were sent via certified mail to Petitioner at 2428 Oak Canyon Place, Escondido, California 92025, as evidenced by Secondary Assessment Certified Mail Log for September 17, 2009. The address for Petitioner was consistent with the address he identified as his address on the Power of Attorney filed for Norman Tipton and was the address used to send the Letter of Inquiry and the Notices of Intent to Assess to Petitioner, the receipt of which was confirmed by subsequent correspondence from Mr. Tipton. (Affidavit of Angela Helm, pp. 2, 3; Exhibits B and D; Petitioner's Brief in Opposition to Respondent's Motion for Summary Disposition, Exhibit 5)

Respondent further contends that the Power of Attorney executed by Petitioner authorizing Mr. Tipton to represent Petitioner was deficient because it was incomplete (Petitioner failed to check either the UIA box or the Treasury box) and because the business listed was Delrada Financial rather than The Solvis Group. Respondent further contends that even if the Power of Attorney is determined to be adequate by the Tribunal, there is no statutory requirement of service on the authorized representative. Respondent argues that reliance on MCL 205.8 by the Tribunal[1] is misplaced because unlike the service requirement of MCL 205.28, no such "service" requirement is imposed by MCL 205.8.

At oral argument, Respondent reiterated its contention that service of the subject Final Assessments was made on Petitioner by certified mail at Petitioner's last known address as is required by statute. Respondent further argued that it did not have an obligation to serve the assessments issued against Petitioner on his authorized representative because (i) neither MCL 205.28 nor MCL 205.8 require such service on a taxpayer's representative and (ii) even if

[1] See *Eric Gaer v Department of Treasury*, Michigan Tax Tribunal Docket No. 410947, slip opinion, pp. 12-13.

Respondent was required to serve the final assessments on Petitioner's authorized representative, the power of attorney was not properly completed. Respondent further contends that its due process obligations were satisfied by its mailing of the Final Assessments to Petitioner at his last known address by certified mail. Further, Respondent contends that even if the date of service of the assessments on Petitioner is not the controlling date that begins the 35-day period of appeal under MCL 205.28, and even if the Tribunal concludes that the July 1, 2010, correspondence from Treasury to Petitioner and its authorized representative canceling some assessments and affirming others constitutes a "decision" pursuant to MCL 205.22, Petitioner also failed to file its appeal to the Tribunal within 35 days of the date of that correspondence. Finally, Respondent contends that its denial of Petitioner's request for informal conference in August 2010 does not constitute a "decision" as is contemplated by statute regarding the assessments issued against Petitioner; instead, the decision that can be appealed is limited to Respondent's denial of an informal conference. (Transcript, pp. 4 – 25)

PETITIONER'S ARGUMENT

Petitioner acknowledges that his appeal to the Tribunal was filed more than 35 days after Respondent mailed the Final Assessments to Petitioner on September 17, 2009. Petitioner also acknowledges that he did not file an appeal to the Tribunal within 35 days of Respondent's denial of Petitioner's request for an informal conference, but contends that said denial did not begin a new 35-day period within which to file an appeal. (Petitioner's Brief in Opposition, p. 8) Petitioner further contends, however, that his appeal to the Tribunal on December 7, 2010, was proper because Respondent failed to provide copies of the Final Assessments to Petitioner's authorized representative.

In this regard, Petitioner contends that Respondent was fully aware that Mr. Tipton was Petitioner's agent even prior to the filing of the Power of Attorney. Specifically, Mr. Tipton's correspondence to Respondent after Petitioner's presumed receipt of the Letter of Inquiry dated June 1, 2009, and the Notices of Intent to Assess dated July 8, 2009, constituted sufficient notice to Respondent that Mr. Tipton was acting as Petitioner's "official representative" pursuant to MCL 205.8, and was entitled to receive copies of all letters and notices issued to Petitioner. Further, because the Power of Attorney granting general representation powers to Mr. Tipton was submitted by Petitioner on August 5, 2009, Petitioner contends that copies of the Final Assessments mailed to Petitioner on September 17, 2009, should have also been sent to Mr. Tipton.

In response to Respondent's contention that the Tipton Power of Attorney was "insufficient" or "inadequate," Petitioner argues that MCL 205.8 does not specifically mandate the form or specific content of the Power of Attorney. For example, Petitioner relies on Respondent's "Taxpayer Rights Handbook," which provides that a taxpayer "may" complete a "Power of Authorization" form "or its equivalent signed release." (Petitioner's Brief in Opposition, p. 13) At oral argument, Petitioner relied on Department of Treasury Rules 205.1005 and 205.1006, which allow a taxpayer to be represented before the department so long as Petitioner provides written authorization to include (i) the taxpayer's name, address, and account number, (ii) the time period for which the authorization is effective, (iii) the name, address, and telephone number of the taxpayer representative, (iv) the type of return, tax type, and period to be disclosed, and (v) the taxpayer's signature and date of signature. Petitioner contends that the Power of Attorney provided to Respondent authorizing Mr. Tipton to represent him with respect

to the subject assessments[2] satisfied the requirements of MCL 205.8 and Treasury Rules 205.1005 and 205.1006. Petitioner further contends that, given the communications between Mr. Tipton and Respondent prior to Respondent's issuance of the Final Assessments that reference Petitioner and The Solvis Group, Respondent should have recognized Mr. Tipton as Petitioner's authorized representative under Rule 205.1006. Further, Rule 205.1006(7) specifically provides that if Respondent determines that the Power of Attorney is incomplete, it can request Petitioner to supply missing or clarifying information.

Petitioner further contends that Respondent failed to provide notice to Petitioner's Authorized Representative and/or deprived Petitioner of his constitutional right to due process by failing to serve copies of all assessments on Petitioner's representative. Relying on MCL 205.28(1)(a), Petitioner repeatedly argues that Mr. Tipton (and, subsequently, the Fraser Trebilcock law firm) was communicating regularly with Respondent regarding outstanding tax liabilities of Petitioner. Citing *Johnson v Commissioner of Internal Revenue,* 611 F2d 1015 (CA 5, 1980), Petitioner contends that Respondent was obligated to send all notices, forms, and billings to his authorized representative once Respondent was in receipt of the Powers of Attorney. (Petitioner's Response Brief, pp. 14 - 16) Petitioner further contends that because Respondent mailed notices only to Petitioner, Respondent's "inadequate notice has resulted in a deprivation of Mr. Bonar's rights to due process." (Petitioner's Response Brief, pp. 16 – 20) *Sidun v Wayne County Treasurer,* 481 Mich 503; 751 NW2d 453 (2008).

Citing *Winget v Michigan Department of Treasury,* Tax Tribunal Docket No. 319852, (2007), Petitioner also argues that the assessment notices issued by Respondent to Petitioner are

[2] The Power of Attorney filed by Petitioner authorizing Mr. Tipton to represent him did not specifically identify the Final Assessments issued to Petitioner.

constitutionally deficient because they do not state the reason for the assessment or the basis for concluding that Petitioner was personally liable. (Petitioner's Response Brief, pp. 20 – 22)

At oral argument, Petitioner contended that Respondent's failure to provide copies of the Final Assessments to Petitioner's authorized representative violates Michigan statute and constitutes so egregious an error that Petitioner is then afforded an infinite period of time in which to file an appeal of those assessments to the Tribunal. Petitioner further contended at oral argument that the date of issuance of the final assessments against Petitioner was the critical date and that the failure of Petitioner to appeal within 35 days of Respondent's July 1, 2010, letter or Respondent's denial of Petitioner's request for informal conference was irrelevant. (Transcript, pp. 26 – 53)

FINDINGS OF FACT

Although the parties did not submit a Joint Stipulation of Facts, the Tribunal has reviewed the briefs filed by the parties and the case file and finds the following facts:

1. A Letter of Inquiry-Notice of Corporate Officer Liability was mailed to Petitioner on June 1, 2009, requesting information regarding Single Business Tax for Solvis Group for the December 2005 and December 2006 tax periods and for withholding tax for the periods October 2006 through August 2007, October 2007, and February 2008. The Letter of Inquiry was mailed to Petitioner at 2428 Oak Canyon Pl, Escondido, CA 92025.

2. On June 8, 2009, Petitioner's representative, Norman Tipton, responded to the June 1, 2009, Letter of Inquiry.

3. On July 8, 2009, Notices of Intent to Assess (Assessments O866458, O866459 and P760956) were mailed to Petitioner by certified mail to 2428 Oak Canyon Place, Escondido, CA 92025 (Affidavit of Angela Helm).

4. On July 24, 2009, as Petitioner's representative, Mr. Tipton responded to the Notices of Intent to Assess Petitioner.

5. On August 5, 2009, Petitioner executed a Power of Attorney Authorization identifying Norman Tipton as his authorized representative. Petitioner stated that his address was 2428 Oak Canyon, Escondido, CA 92025, and further included his social security number on the Power of Attorney. Petitioner also identified Dalrada Financial as the "business" associated with the Power of Attorney.

6. On September 9, 2009, Respondent, through its agent, Angela Hodges, notified Petitioner that "the documentation you provided is not sufficient to release you as an officer responsible for this liability."

7. On September 17, 2009, Respondent mailed by certified mail the following Final Assessments against Petitioner as a responsible corporate officer of Solvis Group, Inc. for unpaid withholding taxes and Single Business Tax, plus penalties and interest: O866458 (SUW, 10/31/2006), O866459 (SUW, 11/30/2006) and P760956 (SBT 12/31/2005).

8. The Final Assessments were mailed to Petitioner at 2428 Oak Canyon Place, Escondido, CA 92025.

9. On September 18, 2009, Petitioner's representative, Mr. Tipton, responded to Respondent's September 9, 2009, correspondence.

10. On January 8, 2010, Petitioner executed a Limited Authorization Power of Attorney authorizing Fraser Trebilcock Davis & Dunlap, P.C. (Edward J. Castellani) to represent Petitioner for all tax issues during the period 2005 through 2008.

11. On February 1, 2010, Petitioner, through Mr. Castellani, submitted to Treasury a detailed explanation of Petitioner's involvement with The Solvis Group and related companies.

12. On July 1, 2010, Respondent's representative, Angela Hodges, informed Petitioner and copied Mr. Castellani, that after receipt of Petitioner's explanation of his involvement with The Solvis Group, Respondent was "canceling the assessments issued against you for the December 2006 tax period and forward, your documentation was sufficient to show you are not the officer responsible for these assessments. However, your documentation is not sufficient to show that you are not the officer responsible for the Single Business Tax 12/05, Withholding 10/06 & 11/06 tax periods."

13. On August 12, 2010, Mr. Castellani, Petitioner's authorized representative, corresponded with Respondent (i) stating that because Petitioner did not receive copies of Intents to Assess or Final Assessments from the State of Michigan, Petitioner did not have an opportunity to appeal the assessments, (ii) confirming that

he had requested and received from Treasury copies of the Bills for Taxes Due (Intent to Assess)[3], and (iii) requesting an informal conference with Respondent.

14. On August 26, 2010, Respondent issued its Denial of Request for Informal Conference to Petitioner's Authorized Representative Mr. Castellani. Respondent's Denial of Request for Informal Conference included notice that "[a]n appeal of a final assessment may be made to the Michigan Tax Tribunal with 35 days after the final assessment is issued . . . ."

15. Petitioner filed his appeal in this matter on December 7, 2010.

STANDARD OF REVIEW

Respondent moves for summary disposition pursuant to MCR 2.116(C)(4). This Court Rule states that a Motion for Summary Disposition is appropriate where the ". . . court lacks jurisdiction of the subject matter." MCR 2.116(C)(4). When presented with a Motion for Summary Disposition pursuant to MCR 2.116(C)(4), the Tribunal must consider any and all affidavits, pleadings, depositions, admissions, and documentary evidence submitted by the parties. MCR 2.116(G)(5). In addition, the evidence offered in support of or in opposition to a party's motion will only be considered to the extent that the content or substance would be admissible as evidence to establish or deny the grounds stated in the motion. MCR 2.116(G)(6). A Motion for Summary Disposition pursuant to MCR 2.116(C)(4) is appropriate where the plaintiff has failed to exhaust administrative remedies. *Citizens for Common Sense in Government v Attorney General*, 243 Mich App 43; 620 NW2d 546 (2000). Furthermore:

> A motion under MCR 2.116(C)(4), alleging that the court lacks subject matter jurisdiction, raises an issue of law. The issue of subject matter jurisdiction may be raised at any time, even for the first time on appeal. *McCleese v Todd*, 232 Mich App 623, 627; 591 NW2d 375 (1998) ("Lack of subject matter jurisdiction may be raised at any time."); *Phinney v Perlmutter*, 222 Mich App 513, 521; 564

[3] Mr. Castellani incorrectly identified these documents as "Bills for Taxes Due (Intent to Assess)." The documents attached to his correspondence dated August 12, 2010 were "Final Bill for Taxes Due (Final Assessment)."

> NW2d 532 (1997) ("Although the jurisdictional issue here was never resolved by the trial court, a challenge to subject-matter jurisdiction may be raised at any time, even for the first time on appeal."). When a court lacks jurisdiction over the subject matter, any action it takes, other than to dismiss the case, is absolutely void. *McCleese*, 232 Mich App at 628; 591 NW2d at 377. The trial court's determination will be reviewed de novo by the appellate court to determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law, or whether affidavits and other proofs show that there was no genuine issue of material fact. See *Cork v Applebee's of Michigan, Inc*, 239 Mich App 311; 608 NW2d 62 (2000) ("When reviewing a motion for summary disposition under MCR 2.116(C)(4), we must determine whether the pleadings demonstrate that the defendant was entitled to judgment as a matter of law or whether the affidavits and other proofs show that there was no genuine issue of material fact."); *Walker v Johnson & Johnson Vision Products, Inc*, 217 Mich App 705; 552 NW2d 679 (1996); *Faulkner v Flowers*, 206 Mich App 562; 522 NW2d 700 (1994); *Department of Natural Resources v Holloway Construction Co*, 191 Mich App 704; 478 NW2d 677 (1991). 1 Longhofer, Michigan Court Rules Practice § 2116.12, p 246A.

CONCLUSIONS OF LAW

The Tribunal has carefully considered Respondent's Motion for Summary Disposition under MCR 2.116(C)(4). The Tribunal finds that Respondent's Motion for Summary Disposition under MCR 2.116(C)(4) is supported by the facts of this case and applicable statutes and case law.

MCL 205.21 details the process by which Treasury can examine the books, records, and papers of a taxpayer and can audit the accounts of a taxpayer: (i) if Treasury determines that additional information is required in reviewing a taxpayer's return or payment, it first sends the taxpayer a letter of inquiry, (ii) if the dispute is not resolved within 30 days of the letter of inquiry, Treasury can issue a Notice of Intent to Assess to the taxpayer, (iii) if the taxpayer objects to the Notice of Intent to Assess, the taxpayer can request an informal conference with Treasury within 60 days of the Notice of Intent to Assess, (iv) after the informal conference,

Treasury shall issue a written decision and order, and (v) if the taxpayer does not protest the notice of intent to assess, Treasury may issue a final assessment.

MCL 205.22(1) provides 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 . . . ." Further, MCL 205.735 similarly provides that "[i]n all other matters, the jurisdiction of the tribunal is invoked by a party in interest, as petitioner, filing a written petition within 35 days after the final decision, ruling, determination, or order that the petitioner seeks to review. . . ."[4]

Petitioner acknowledges that he did not file his appeal to the Tribunal until December 7, 2010, well beyond the 35-day appeal period from the date of the Final Assessments required by MCL 205.22(1). Petitioner contends, however, that neither he nor Mr. Tipton, his authorized representative, received the Notices of Final Assessment that provide the basis for filing an appeal with the Tribunal. Contrary to contentions included in Mr. Castellani's[5] August 12, 2010, correspondence with Respondent, and in Petitioner's petition to the Tribunal, the facts of this case clearly confirm that Petitioner received correspondence from Respondent (the Letter of Inquiry, the Notices of Intent to Assess, and the September, 2009, letter from Angela Hodges) at his 2428 Oak Canyon, Escondido, California address.[6] Petitioner contends, however, that all correspondence and notices prior to Respondent's issuance of the Final Assessments are

[4] A taxpayer can appeal to the Tribunal from either a Notice of Intent to Assess or a Final Notice of Assessment within 35 days of the issuance of either notice; simply because a taxpayer may request an informal conference does not render such request for an informal conference a prerequisite to an appeal. *Montgomery Ward & Co, Inc v Department of Treasury,* 191 Mich App 674; 478 NW2d 745 (1991).
[5] Mr. Castellani is Petitioner's second authorized representative in this case, by virtue of the Power of Attorney filed with Respondent on January 8, 2010.
[6] In each case, Petitioner's representative Tipton responded to the notices and correspondence even though he was not provided a copy of these notices and correspondence.

irrelevant and, if said Final Assessments are not properly served on him and his authorized representative, then no restrictions or limitations are imposed under either MCL 205.22 or MCL 205.735 regarding when the taxpayer can appeal the Final Assessments to the Tribunal.

MCL 205.28(1) provides that "[n]otice, if required, shall be given either by personal service or by certified mail addressed to the last known address of the taxpayer." The Michigan Court of Appeals has held that Treasury's certified mail log showing the mailing of a Final Assessment to the taxpayer at the taxpayer's last known address is sufficient notice establishing the final assessment date. Further, the Court held that Petitioner's claim that it did not receive the assessments "does not change the outcome." *PIC Maintenance, supra*.

In this regard, the Tribunal finds that Petitioner was properly served Notices of Intent to Assess (Assessments O866458, O866459 and P760956) by certified mail dated July 8, 2009, and Final Assessments by certified mail dated September 17, 2009, at the last known address for Petitioner (the 2428 Oak Canyon Place, Escondido, CA 92025, address identified as Petitioner's address on, for example, the Power of Attorney filed for Mr. Tipton). Petitioner's claim that the Final Notices of Assessment were not properly served on Petitioner is not supported by applicable statute and case law. Clearly, the Affidavit provided by Angela Helm and the certified mail logs provided by Respondent establish that these final assessments were properly noticed and served on Petitioner. As was held in *PIC Maintenance, supra,* Petitioner's contention that he did not receive the final assessments is irrelevant. Further, it is clear from the record that Petitioner did receive at least three certified mailings from Respondent (the Letter of Inquiry, the Notices of Intent to Assess, and the September 9, 2009, correspondence from Angela Hodges) because each was responded to by Petitioner's representative.

Irrespective of whether the Final Assessments were properly served on Petitioner, Petitioner contends that Respondent's failure to serve copies of the subject final assessments on Petitioner's Authorized Representative precludes Respondent from succeeding in its attempt to dismiss Petitioner's appeal to the Tribunal as not timely filed. Petitioner relies on MCL 205.8, which provides taxpayers of the State of Michigan with legal rights to contest their tax assessments. One of those rights is to engage an official representative that is also provided with all copies of letters and notices regarding a taxpayer dispute. Petitioner further relies on Treasury Rules 205.1005 and 205.1006, which establish the criteria pursuant to which Treasury may disclose confidential information to a third party. Simply, Petitioner contends that he filed a Power of Attorney on August 5, 2009, authorizing Mr. Tipton to represent him with respect to the Final Assessments at issue consistent with Treasury's own rules, and, as a result, MCL 205.8 specifically required Respondent to furnish copies of the Final Assessments to Mr. Tipton. Petitioner contends that Respondent's failure to do so allows Petitioner to file his appeal with the Tribunal after the 35-day appeal period.

The Tribunal previously addressed the issue regarding whether Respondent is required to serve both Petitioner and his or her authorized representative with copies of Final Assessments in *Gaer, supra*, concluding that Respondent must serve Petitioner's authorized representative if Petitioner has provided a valid Power of Attorney to Respondent. Here, the Tribunal finds that the Power of Attorney filed by Petitioner was deficient. Although Petitioner contends that the Power of Attorney designating Mr. Tipton as his authorized representative is consistent with the requirements of Treasury Rule 205.1006, the Tribunal finds the Power of Attorney filed by Petitioner was deficient primarily because it authorized Respondent to disclose information with

respect to "Dalrada Financial" rather than The Solvis Group. Powers of attorney are strictly construed and cannot be enlarged by construction. *Park v Appeal Bd of Mich Employment Sec Commission,* 355 Mich 103; 94 NW2d 407 (1959); *Bergman v Dykhouse,* 316 Mich 315; 25 NW2d 210 (1946); *Crane v Kangas,* 53 Mich App 653; 220 NW2d 172 (1974). The scope of his or her powers should be determined from a proper construction of the instrument. *Kouw v Coburn,* 265 Mich 521; 251 NW 545 (1933). At oral argument (Transcript, p. 9), Respondent argued that:

> Powers of Attorney have to be viewed hand-in-hand with the criminal violation that occurs with an improper disclosure. So he's authorized us to disclose information having to do with Dalrada Financial Company, but he has not, in any way, clearly authorized us to provide information with respect to Solvis Group. And if Angela Helm then takes this Power of Attorney and provides information with respect to Solvis Group, she has committed a criminal violation; that's the way these things work.

The Tribunal agrees with Respondent that pursuant to MCL 205.28(2) and Treasury Rule 205.1006(10),[7] Respondent must not disclose taxpayer information to a third party without appropriate authorization, and may be subject to criminal penalty if it does so. The Tribunal finds that the Power of Attorney submitted by Petitioner authorizing Mr. Tipton to represent him with respect to matters involving Dalrada Financial does not constitute the "appropriate authorization" contemplated by the statute and the rules promulgated by Treasury to allow or require Treasury to provide copies of Final Assessments to Mr. Tipton that were issued to Petitioner in connection with his involvement with The Solvis Group. Finally, the Tribunal notes

[7] Treasury Rule 205.1006(10) states that the department may accept tax information that is voluntarily offered by third parties, but, in the absence of appropriate authorization, may not disclose information to the third party. Therefore, Petitioner's argument that "Respondent was fully aware that Mr. Tipton was Petitioner's agent even prior to the filing of the Power of Attorney" is immaterial as Treasury could accept tax information from Mr. Tipton, but could not disclose any information as Petitioner's August 5, 2009, Power of Attorney authorizing Mr. Tipton to represent him was deficient.

that Treasury consistently corresponded only with Petitioner even after receiving correspondence from Mr. Tipton, which is consistent with Respondent's position that Petitioner had failed to file a valid Power of Attorney for Mr. Tipton.

If Petitioner's Power of Attorney for Mr. Tipton was determined to be valid, the Tribunal finds that, unlike its findings in *Gaer,* the facts in this case do not support Petitioner's contention that Respondent's failure to serve copies of the Final Assessments on Petitioner's authorized representative essentially tolls the appeal filing period indefinitely, effectively allowing Petitioner to file his appeal with the Tribunal after the 35-day appeal period has concluded. Specifically, although Respondent mailed the Letter of Inquiry, the Notices of Intent to Assess, and other correspondence to Petitioner, each of these notices and correspondence was responded to by Mr. Tipton. Thus, both Petitioner and Mr. Tipton were clearly aware of Respondent's intent to assess Petitioner. As Petitioner's authorized representative (again assuming the Power of Attorney filed by Petitioner for Mr. Tipton was valid), Mr. Tipton must assume some responsibility for understanding the assessment process in Michigan. At oral argument, Respondent clarified its position with respect to serving notices on authorized representatives, concluding that it recognizes that MCL 205.8 does impose a requirement on Treasury to provide copies of letters or notices to the taxpayer's authorized representative, but unlike MCL 205.22, there is no service requirement included in the statute, and therefore, the taxpayer's due process rights have not been violated where the taxpayer, such as in this case, has been properly served. Respondent's position is consistent with its Rules 205.1011(4) and (5), which require Treasury to send a copy of the informal conference recommendation and the decision and order to Petitioner's authorized representative, if any, by certified mail, but only require that the notice of

final assessment be sent to the taxpayer. (See *Altman Management Company v Department of Treasury*, opinion per curiam of the Court of Appeals, issued April 10, 2001 (Docket No. 216912). Although the Tribunal continues to believe that Respondent's position with respect to providing service to authorized representatives can effectively reduce the Taxpayer Bill of Rights provisions of MCL 205.8 to a nullity, the Tribunal finds that in this case, Petitioner was properly served with the Final Assessments.

Contrary to the argument of both Petitioner and Respondent that the events occurring in 2010 are irrelevant to the Tribunal's decision in this matter, the Tribunal would be remiss if it failed to discuss Petitioner's further failure to timely file an appeal of the Final Assessments with the Tribunal in 2010 after either (i) the receipt by Petitioner and Mr. Castellani of correspondence from Angela Hodges dated July 1, 2010[8], or (ii) the receipt by Mr. Castellani of the Final Assessments as early as August 12, 2010, as he acknowledged in his correspondence to Respondent dated on that date.

With respect to Respondent's July 1, 2010, correspondence, the Tribunal finds that this correspondence references information received from Petitioner or Petitioner's authorized representative sufficient to result in the cancellation of certain assessments, but not sufficient to cancel the assessments that are the subject of this appeal. Thus, the Tribunal concludes that Respondent seemingly reviewed new information submitted by Petitioner and reached a decision to cancel some assessments and not others. The Tribunal finds that this correspondence constitutes "the contested portion of the assessment" or decision commencing the 35-day appeal period to the Tribunal. See *Trostel v Department of Treasury*, 269 Mich App 433; 713 NW2d

[8] This correspondence informed Petitioner that Treasury was canceling assessments levied against Petitioner for the December 2006 period and forward, but was not canceling the Final Assessments that are the subject of this appeal.

279 (2006), which held that correspondence from Treasury to a taxpayer can constitute the "final decision" contemplated by MCL 205.22. Thus, the Tribunal further finds that Petitioner's appeal to the Tribunal on December 7, 2010, was substantially in excess of the 35-day appeal period commencing on July 1, 2010.

Further, in *PIC Maintenance, supra,* correspondence between the petitioner's counsel and a representative of Treasury indicated that copies of the final assessments were provided to the petitioner's representative by at least May 19, 2009. The Court held that because the petitioner "did not file an appeal with the Tribunal until July 27, 2009, more than 35 days after admittedly having a copy of the assessments on May 19, 2009," the Tribunal lacked jurisdiction. Here, Petitioner's representative acknowledged in his correspondence to Treasury dated August 12, 2010, that he had received copies of the Final Assessments from Respondent. Therefore, the Tribunal finds that by filing his appeal with the Tribunal on December 7, 2010, Petitioner further failed to file an appeal within 35 days of August 12, 2010.

Petitioner's due process argument focuses on his claim that the Notices of Final Assessment served on Petitioner are constitutionally deficient because they contain a boilerplate reference to MCL 205.27a(5) and fail to inform Petitioner of Respondent's specific rationale in determining that the officer liability provisions applied to Petitioner. Primarily relying on *Winget, supra,* Petitioner contends that the Notices of Final Assessment issued to Petitioner do not contain (i) sufficient information of the facts and reasons causing the deficiency, (ii) the amounts of the deficiencies, sufficient to allow a reasonable estimate of liability from those facts, (iii) a reliable means of determining the taxpayer's appeal period, and (iv) an explanation of the right of appeal. The Tribunal has carefully reviewed the Final Assessments issued to Petitioner

and finds that they contain adequate information to satisfy the due process requirements of *Winget.* Clearly, the deficiency amounts and a description of Petitioner's appeal period and appeal rights are included on the Final Assessments. Further, the Tribunal finds that the Reason for Tax Bill stated on the Final Assessments[9] provides the taxpayer with sufficient information regarding the basis for the assessment against the taxpayer.[10] Therefore,

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: May 29, 2012 By: Steven H. Lasher

[9]The Reason for Tax Bill section of the Final Assessment includes the following: "[t]his assessment is issued under Act 122, Section 27A(5), Public Acts of 1941, as amended making officers/members/managers/partners liable for tax debts of the corporation/limited liability company/limited liability partnership/partnership/limited partnership." The Final Assessment further states "return(s) received without payment." The Final Assessment also identifies the company with which the tax liability is associated.

[10] Petitioner also cites *Sidun v Wayne County Treasurer*, 481 Mich 503; 751 NW2d 453 (2008), to substantiate that the failure of Respondent to "employ a reasonable method to notify Mr. Bonar's authorized representative of the Final Assessment of the taxes at issue herein . . . resulted in a violation of Mr. Bonar's due process rights." (Petitioner's Response Brief, p 18). The Tribunal finds this case, along with *Johnson v CIR*, 611 F2d 1015 (CA 5 1980) inapposite, as in both cases notices were sent by certified mail but were returned as undeliverable.