

## Resources

### Court of Appeals Upholds Requirement that Tax Notices be Issued to Representative

November 19, 2012

The Michigan Court of Appeals recently upheld two decisions of the Michigan Tax Tribunal regarding notice requirements under Michigan law as applied to the appeal of sales tax assessments. In *Fradco, Inc. v. Dep't of Treas.*, Docket No. 306617 (Oct. 30, 2012), and *SMK, LLC v. Dep't of Treas.*, Docket No. 306639 (Oct. 30, 2012), the court issued concurrent opinions affirming in each case the Tax Tribunal's order cancelling the Department of Treasury's final assessments. In both cases, the Department failed to comply with all of the applicable statutory notice requirements for enforcing an assessment—in particular, the requirement that the Department serve a copy of a notice of assessment on a taxpayer's official representative in compliance with a taxpayer's properly filed written request.

#### Michigan Notice Requirements

Under MCL § 205.22, a taxpayer may appeal an assessment to the Tax Tribunal if the appeal is filed within 35 days after the assessment. For taxes imposed under the General Sales Tax Act, MCL § 205.28(1) requires that the Department properly serve a notice of assessment to the last known address of the taxpayer. In addition, MCL § 205.8 requires the Department to send a copy of letters and notices regarding a dispute to a taxpayer's official representative as specified in a properly submitted written request filed with the Department by the taxpayer (e.g., a power of attorney form that requests copies be sent to the representative). At issue in both *Fradco* and *SMK* was whether each taxpayer's appeal of the Department's assessment was timely where the appeal was filed more than 35 days after notice was served on the taxpayer, but less than 35 days after a copy of such notice was served on the taxpayer's official representative.

#### The Holding in *Fradco* and *SMK*

In *Fradco*, the petitioner submitted a proper written request that the Department send copies of all letters and notices to the petitioner's representative. However, the Department issued a notice of final assessment of sales tax to the petitioner in September 2009 and failed to send a copy of the notice to the petitioner's representative until 10 months later. The petitioner filed an appeal of the final assessment on July 28, 2010, within 8 days after its representative received a copy of the notice. The Court of Appeals interpreted MCL § 205.8 to impose "an affirmative and mandatory duty on [the Department] to send copies of letters and notices regarding a dispute to taxpayers' official representatives." Accordingly, the court held that the 35-day statute of limitations for appeal did not begin to run until a copy of the final notice of assessment was received by the petitioner's representative on July 20, 2010. Therefore, the petitioner's appeal to the Tax Tribunal was timely. Because the Department failed to establish in fact that additional taxes were due, the Tax Tribunal cancelled the assessment. On similar facts, the Court of Appeals also ruled in favor of the taxpayers in *SMK*, upholding the Tax Tribunal Decision in both cases.

It is important to note that the Department has revised the power of attorney form to remove the check box for requesting that copies be sent to a taxpayer's representative. Care should be taken to properly add such a request on any power of attorney submitted to the Department. For any taxpayer who has received a final assessment while a valid power of attorney was on file with the Department, or has received any tax-related notices of any kind, it is important to discuss appeal rights immediately with an experienced tax counsel. Dykema's Taxation Group members are available to assist taxpayers in a broad array of tax matters, including state tax audits, notices, and appeals.

Please contact **Steve Grob** at 313-568-6582, with questions about this alert or other tax matters.

To learn more about Dykema's Taxation practice, [click here](#).

## Court of Appeals Upholds Requirement that Tax Notices be Issued to Representative (Cont.)

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### State & Local Tax

#### Taxation

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