

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ALLENS, INC.)	
)	DOCKET NO.: MT-1997-4
Appellant,)	
)	
-vs-)	
)	
MONTANA DEPARTMENT OF)	FINDINGS OF FACT,
TRANSPORTATION,)	CONCLUSIONS OF LAW,
)	ORDER and OPPORTUNITY
Respondent.)	<u>FOR JUDICIAL REVIEW</u>

The above-entitled appeal was heard on the 2nd day of June in the City of Helena, Montana, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was given as required by law. Michael W. Allen, President, Allen's Inc., presented testimony in support of the appeal. The Montana Department of Transportation (MDOT), represented by staff attorney Nick A. Roterling and Fuel Tax Management and Analysis Bureau manager Tracy A. Halubka, presented testimony in opposition to the appeal. Testimony was presented, exhibits were received, and the Board then took the appeal under advisement; and the Board having fully considered the testimony, exhibits and all things and matters presented to it, finds and concludes as follows:

STATEMENT OF THE ISSUE

ALLEN'S, INC. seeks to have the MONTANA DEPARTMENT OF TRANSPORTATION grant a bad debt motor fuel credit of \$6,304.38 for taxes paid on gasoline delivered to Blackfoot Service Station in Lincoln, Montana.

FINDINGS OF FACT

1. Due, proper and sufficient notice was given of this matter, the hearing, and of the time and place of the hearing. All parties were afforded opportunity to present evidence, oral and documentary.

2. During the period in which the bad debts were incurred, Allen's, Inc. was not a licensed distributor; Allen's was a petroleum products dealer and a sub-jobber, selling products purchased from Hi-Noon Petroleum, Inc. (Hi-Noon) and others to retail service stations.

3. Blackfoot Service Station (Blackfoot) went out of business and failed to pay \$27,723.98 for gasoline product provided by Allen's, Inc. Allen's, Inc. had paid Hi-Noon for the gasoline, all taxes, and freight for the product that was delivered to Blackfoot. Hi-Noon, as a licensed distributor, paid the gasoline taxes to the state.

4. At the request of Allen's, Hi-Noon submitted Bad

Debt Credit Applications for Motor Fuels Taxes to MDOT on March 6 and April 3, 1996. These applications were denied. Hi-Noon requested reconsideration on December 30, 1996 based on additional information. MDOT responded, requesting proof a bad debt had been claimed by Hi-Noon on its federal income tax. Allen's, Inc. responded to this request and explained that Allen's had declared the accounts of Blackfoot Service Station as bad debts on its tax returns and requested a refund or credit be allowed either to Allen's or to Hi-Noon.

5. On October 3, 1997, MDOT clarified that a credit and not a refund is allowed in these circumstances; however, the request was denied on the grounds that Hi-Noon's initial request came more than 14 months after the debt was incurred and, further, that federal income tax returns had not been submitted that reflected Hi-Noon had claimed the bad debt as a loss.

6. Allen's Inc. appealed this decision to MDOT administrator Bill Salisbury on October 27, 1997, asserting the request for credit was timely in that, while §15-70-225(4) MCA states that requests for refunds must be filed within 14 months after the gasoline is purchased, requests for credits must be filed within three years as stated in that same statute. The

initial request for credit was filed in March, 1996 and was, therefore, timely. Allen's also submitted copies of federal tax returns that illustrated it had declared the accounts of Blackfoot Service Station as bad debts; it also provided schedules listing taxes paid with each transaction, the total tax written off, and a schedule indicating the total amount of tax to be credited as \$6,304.38, prorated to include funds which Allen's had collected from Blackfoot earlier in 1997.

7. On December 5, 1997, MDOT denied the tax credit based on the fact that Allen's, Inc. was not a licensed distributor at the time of the transactions.

APPELLANT'S CONTENTIONS

Allen's, Inc. testified that the applications for bad debt credit for taxes paid on product sold to Blackfoot were timely. Blackfoot went out of business in April, 1993; Allen's reported the loss on its 1994 federal and state tax returns; Hi-Noon applied to the State of Montana in March and April, 1996 for a credit or a refund of the gasoline taxes paid on product sold to Blackfoot. Allen's argued that Montana Code Annotated §15-70-225 states that, while applications for refund must be filed within 14 months after the fuel was purchased, "A distributor may file a claim....for a credit for taxes paid

by the distributor on unpaid accounts within 3 years after the date of payment.[] Citing a memorandum from MDOT Legal Services to MDOT Administration Division of January 7, 1997 regarding []Bad Debt Refund or Credit Request Allen, Inc. or High Noon Petroleum,[] the fourth paragraph states: []The bad debt credit (legislation) is governed by a three-year statute of limitations, which has been satisfied in this case.[] (Appellant Exhibit 10)

Allen's, Inc. testified that, while Hi-Noon was the licensed distributor during the time of the transactions between Allen's and Blackfoot, Allen's actually paid the gasoline taxes which were sent to the State of Montana via Hi-Noon; and Allen's incurred the bad debt losses when Blackfoot failed to pay for gasoline product and taxes. Allen's has been in the past and is currently a licensed distributor, though not at the time of the transactions with Blackfoot.

Allen's testified that documentation of the bad debt losses was supplied to MDOT together with copies of Allen's federal tax returns, substantiating that accounts of Blackfoot Service Station had been declared as bad debts.(Appellant Exhibit 5) Allen's testified that Hi-Noon had agreed to pass along to Allen's any credit received from MDOT as a result of

Hi-Noon's applications for bad debt credit which were based on Allen's Blackfoot bad debt losses. This agreement was detailed in a December 30, 1996 letter written by Hi-Noon to MDOT. (Respondent Exhibit A)

Allen cited Great Northern v. Board of Equalization, 1948 as supportive of its claim that the credit being sought from MDOT can be assigned to a third party. The case involved gasoline that was destroyed in transit. The gasoline purchaser, a California company, paid gasoline taxes to a Texas company. The California company applied for a refund of taxes paid and assigned to Great Northern Railway the right to any refund. The court found that there was nothing to prevent an assignment of the right to the refund. (Appellant Exhibit 8)

Allen concluded that the intent of the legislature, when crafting the tax credit statute, was to assist small businesses when faced with accounts in default. Allen is entitled to a credit for the taxes paid for a product sold but for which it sustained bad debt losses. [The State's position essentially prohibits the use of jobbers or pass-through agreements in the motor fuel industry, which was not the intent of the tax credit statute. For the State of Montana to

withhold this credit from either Hi-Noon or Allen's, Inc. would create an unfair windfall to the state.

Allen's considers itself a "distributor" under the definitions provided in 15-70-201(6)(d)and(f).

RESPONDENT'S CONTENTIONS

The MDOT emphasized that, between March, 1990 and January, 1994, Allen's, Inc. was not a licensed petroleum distributor; and the transactions with Blackfoot, which comprise the basis for the bad debt credit that is the subject of this appeal, occurred during this period of time. Allen's, therefore, had no standing with the MDOT to request a credit for the bad debts incurred. Montana statute provides for bad debt credit for taxes paid by a licensed distributor but not by a sub-jobber as Allen's was at the time of the transactions.

Montana statute also provides that the distributor filing for the bad debt credit must claim the worthless accounts as bad debts on its federal income tax return. MDOT cited 15-70-225(2)and 15-70-225(4)MCA:

(2) A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(4) All applications for refunds must be filed with the department within 14 months after the date on which the gasoline or aviation fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

Requests to MDOT for credit from Hi-Noon, a licensed distributor, were dated March 6 and April 3, 1996. (Respondent Exhibit B) These requests were denied: [Hi-Noon sold this product to Allens Inc, not to Blackfoot Service and Far West Auto. Blackfoot Service and Far West Auto are not Hi-Noon's accounts.] (Respondent Exhibit C)

DISCUSSION

Allen's, Inc. is asking this Board to direct the state: (1) to use a licensed distributor (Hi-Noon) as the vehicle to transfer to Allen's a bad debt tax credit; or (2) to consider Allen's to be a distributor under the definitions provided in statute and, as such, eligible to receive directly the bad debt credit for which it has applied.

Statute provides that the distributor must provide documents [....showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return.] [15-70-225(2) MCA. Hi-Noon did not document the bad debts nor claim them on an income tax return; Allen's did.

Hi-Noon, therefore, is not entitled to the credit for which it applied, either directly or as a conduit for Allen's.

Statute clearly states that, in order to receive a bad debt credit, the entity making application must be a distributor qualifying under §15-70-201(6). In the context of this application, Hi-Noon qualifies for this designation; Allen's does not. Allen's, therefore, is not entitled to the bad debt credit for which it applied.

It is the opinion of this Board that, while circumstances reflect Allen's did pay taxes to Hi-Noon for petroleum products purchased and, thus, paid taxes indirectly to the state, Montana Code clearly states that bad debt credit is only allowed to distributors. In order for a credit to be allowed, Hi-Noon, as the entity that paid the taxes to the state, would have had to document the bad debt loss and claim that loss on its federal income tax return. In the instant case, Allen's is not the party in interest.

The case cited by the appellant, Great Northern v. Board of Equalization, 1948 establishes no precedent. The petroleum products in that case were not used, but were destroyed, unlike the instant case in which the petroleum products were sold and used.

CONCLUSIONS OF LAW

1. The State Tax Appeal Board has jurisdiction over this matter. ¶15-2-302 MCA

2. **¶15-70-201. Definitions.** As used in this part, unless the context requires otherwise, the following definitions apply: (6) "Distributor" means:

- (a) a person who engages in the business in this state of producing, refining, manufacturing, or compounding gasoline for sale, use, or distribution;
- (b) a person who imports gasoline for sale, use, or distribution;
- (c) a person who engages in the wholesale distribution of gasoline in this state and chooses to become licensed to assume the Montana state gasoline tax liability;
- (d) an exporter as defined in subsection (8);
- (e) a dealer licensed as of January 1, 1969, except a dealer at an established airport; or
- (f) a person in Montana who blends alcohol with gasoline. (Montana Code Annotated)

3. **¶15-70-221. Refund or credit authorized.** (3) (a) A distributor is entitled to a credit for the tax paid to the department on those sales of gasoline with a tax liability of \$200 or greater for which the distributor has not received consideration from or on behalf of the purchaser and for which the distributor has not forgiven any liability. The distributor may not have declared the accounts of the purchaser worthless more than once during a 3-year period, and the distributor must have claimed those accounts as bad debts for federal income tax purposes.

(b) If a credit has been granted under this subsection (3), any amount collected on the accounts that were declared worthless must be reported to the department and the tax due must be prorated on the collected amount and must be paid to the department.

(c) The department may require a distributor to submit periodic reports listing accounts that are delinquent for 90 days or more. (Montana Code Annotated)

4. **¶15-70-225. Application for refund or credit -- filing -- correction by**

department. (1) The application for refund is a signed statement, on a form furnished by the department of transportation. Except for a claim for a credit of taxes paid on unpaid accounts, the form must be accompanied by the original bulk delivery invoice or invoices issued to the claimant at the time of each purchase and delivery, showing the total amount of gasoline purchased or aviation fuel purchased by a certified scheduled passenger air carrier, the total amount of gasoline or aviation fuel on which a refund is claimed, and the amount of the tax claimed for refund.

(2) A claim for a credit for taxes paid on accounts for which the distributor did not receive compensation must be accompanied by documents or copies of documents showing that the accounts were worthless and claimed as bad debts on the distributor's federal income tax return. Any further information pertaining to a claim must be furnished as required by the department.

(3) A bulk delivery invoice issued by a dealer for a sale that does not qualify as a bulk delivery under 15-70-201 is not valid for refund purposes.

(4) All applications for refunds must be filed with the department within 14 months after the date on which the gasoline or aviation fuel was purchased as shown by invoices or after the date on which the tax was erroneously paid. A distributor may file a claim for refund of taxes erroneously paid or for a credit for taxes paid by the distributor on unpaid accounts within 3 years after the date of payment.

(5) If the department finds that the statement contains errors that are not fraudulently inserted, it may correct the statement and approve it as corrected or the department may require the claimant to file an amended statement. (Montana Code Annotated)

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the bad debt credit sought by Allen's, Inc. is denied and the decision of the Montana Department of Transportation is affirmed.

Dated this 20th of July, 1998.

BY ORDER OF THE
STATE TAX APPEAL BOARD

PATRICK E. McKELVEY, Chairman

(S E A L)

GREGORY A. THORNQUIST, Member

LINDA L. VAUGHEY, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in district court within 60 days following the service of this Order.