

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

ECKART TRUCKING, INC.,)
) DOCKET NO. MT-2006-1
)
Appellant,)
)
-vs-)
) FACTUAL BACKGROUND,
) CONCLUSIONS OF LAW,
THE DEPARTMENT OF TRANSPORTATION)
OF THE STATE OF MONTANA,) ORDER AND OPPORTUNITY
) FOR JUDICIAL REVIEW
)
Respondent.)

BOARD DECISION

Eckart Trucking made the choice to become an IFTA (International Fuel Tax Agreement) licensee. IFTA imposes on licensees specific, detailed record keeping and reporting requirements. The records and reports of Eckart Trucking did not meet the IFTA requirements as disclosed by the audit conducted in 2001. Consequently, adjustments were made to the data reported by Eckart Trucking and these adjustments resulted in additional tax due. In the Board's opinion, the Montana Department of Transportation has substantiated the additional tax due, and it is the Board's decision that Eckart Trucking owes the tax assessment of \$1,499.77 and interest through the date this appeal was received by the Board.

PROCEDURAL BACKGROUND

The above-entitled appeal was heard as an informal hearing pursuant to § 15-2-302 and § 2-4-604, MCA, on February 1, 2007, in accordance with an order of the State Tax Appeal Board of the State of Montana (Board). The notice of the hearing was duly given as required by law. The Appellant, Eckart Trucking, was represented by officers Diana and Bill Eckart who participated by telephone. They presented testimony and evidence in support of the appeal. The Montana Department of Transportation (MDT) was represented by Nick Rotering, Staff Attorney. Robert Turner, Chief of the Fuel Tax Management and Analysis Bureau, and Lorraine Bigelow, Senior Auditor, presented testimony and evidence on behalf of the Department in opposition to the appeal. All MDT representatives participated in person. The Board allowed the record to remain open for a period of time for the purpose of receiving post-hearing submissions from both parties.

FACTUAL BACKGROUND

In April 2001, MDT notified Eckart Trucking that the firm had been randomly selected for audit for the three-year period from January 1, 1998, through December 31, 2000. On December 24, 2002, MDT reported the results of the audit to the Eckarts and sent them a bill for an additional tax due of \$6,585.67 plus interest of \$2,929.69, a total of \$9,515.36.

The Eckarts requested an informal review of the audit results. The review was conducted by MDT on February 4, 2003. In the Department's decision of April 28, 2003, all of 1998 and the first three quarters of 1999 were found to be past the statute of limitations for assessing a fuel tax deficiency. As a result, all tax and interest for these quarters were abated by MDT. The revised deficiency assessment totaled \$1,541.22 (\$1,499.77 in tax and \$41.45 in interest).

The Eckarts appealed the results of the informal review in May 2003. Nearly three years later, in March 2006, the Eckarts' appeal was defaulted for their failure to respond to the hearings examiner's orders. The hearings examiner also found that Eckart Trucking, a corporation, must be represented by an attorney at any contested case hearing, but the Eckarts had not retained counsel. The agency final decision in this matter was issued in May 2006 and in June the Eckarts filed an appeal with this Board.

The Board heard this matter on February 1, 2007, as an informal proceeding provided for in the Montana Administrative Procedures Act, § 2-4-604, MCA. At the outset of the hearing, Mr. Rotering renewed the Department's objection to the Eckarts representing a corporation and stated they must have an attorney to represent the company. Mrs. Eckart stated that they would represent themselves. The objection was noted and the Board

Chairwoman reminded the parties that this was an informal proceeding provided for in Montana law.

This case involves an audit of Eckart Trucking's fuel tax obligations under IFTA. IFTA is an agreement entered into by many states and Canadian jurisdictions to apportion fuel taxes based on the miles driven in each jurisdiction. Licensees are required to keep records on dates of travel, origin and destination of each trip, beginning and ending mileage, fuel purchases, type of fuel purchased, state line odometer readings, etc. Licensees are also required to file quarterly tax returns in their base jurisdiction (Montana for Eckart Trucking). The tax returns document where a licensee's permitted vehicles have traveled, the mileage in each jurisdiction, the fuel purchased and the fuel taxes paid. The Department allocates the tax revenue to each jurisdiction based on the quarterly tax returns.

Eckart Trucking is a small, family-held corporation that hauls sand, gravel and asphalt primarily for highway construction jobs. The company has had an IFTA license since 1991. During the audit period, Eckart Trucking had IFTA permits for ten vehicles and did work in Montana and Nevada. The Eckart trucks buy fuel at retail outlets. The company has no bulk fuel storage. (Eckart Testimony).

When Eckart Trucking received an IFTA license, according to MDT, the Eckarts would have been given a manual that spelled out

IFTA procedures and record-keeping requirements. The Eckarts testified that no other training was provided on the record-keeping and reporting requirements of IFTA, which are considerable, prior to the audit.

The Eckarts stressed that they always paid fuel taxes at the time of purchase. Mrs. Eckart has been reporting the required IFTA information the same way for a number of years and has never had anyone tell her that she was doing it wrong. During one calendar quarter in the audit period, the Eckarts had a verbal agreement with a prime contractor, MRT Transport (MRT), for MRT to pay for the fuel. Consequently, Eckarts do not have any invoices for this fuel. The fuel and the taxes were paid by MRT. The Eckarts believe the Department is asking them to pay taxes a second time on fuel on which the taxes have already been paid.

Ms. Bigelow testified that the audit found problems with the Eckarts' record-keeping. Some errors occurred only once in the period audited. Others were recurring errors. In the audit narrative, the auditor (Ms. Christy Norman) noted record keeping issues such as inconsistency in records and methods used to determine mileage. In some instances, mileage and fuel for both IFTA and non-IFTA vehicles were reported as IFTA usage.

The audit is conducted using sample quarters from the total audit period. In the Eckart audit, the sample quarters used

were the first and second quarters of 1998 and the second quarter of 1999 (Exhibit A). The auditor reviewed records from these three quarters and the results of this review became the basis on which adjustments were made to every quarter in the audit period.

Eckart Trucking vehicles traveled and used fuel in three jurisdictions during the audit period: Montana, Idaho and Nevada. For the sample quarters, the auditor used documentation provided by the Eckarts to identify the miles traveled and the gallons of fuel used by Eckart Trucking. Then these results were compared to the miles and gallons reported on the quarterly tax returns submitted to MDT by Eckart Trucking. In each of the sample quarters, there were differences between the miles and gallons documented in Eckart Trucking's records and the miles and gallons reported. The results of the audit are contained in Exhibit B, a Standard Field Audit Report ("Audit Report").

For each jurisdiction, a total of all the miles documented in Eckart Trucking's records for the sample quarters ("Audited Data") was divided by a total of all the miles reported on the quarterly tax returns for the same quarters ("Reported Data") to get an adjustment factor. The same process was used to derive an adjustment factor for gallons of fuel. These calculations are shown on pages E-5 through E-7 of the Audit Report. Audited mpg (miles per gallon) for all sample quarters were also divided

by reported mpg to get an adjustment factor for mpg. This factor was then applied to the reported mpg for each quarter in the audit period to calculate an audited mpg; the results appear on page E-2 of the Audit Report.

The remainder of the Audit Report shows the application of the adjustment factors to the miles and gallons reported in each quarter of the audit period. These pages also show the results of calculations used to determine the amount of additional tax (or refund) due based on the application of the audit adjustments. Each page contains information for a single quarter, for all IFTA jurisdictions, with the applicable numbers and calculations shown for each state in which Eckart Trucking operated.

In his testimony, Mr. Turner pointed out that a verbal agreement between Eckart Trucking and MRT Transport to pay certain fuel taxes would not be adequate documentation of the arrangement under IFTA requirements, nor would the memo from Al Park Petroleum (page 2 of Exhibit D). However, the taxes and interest from the quarter in question were dropped from the assessment as a result of the informal review that he conducted because the quarter was beyond the statute of limitations. A total of seven quarters (all of 1998 and the first three quarters of 1999) were removed from the original deficiency assessment for exceeding the statute of limitations.

BOARD DISCUSSION

The State Tax Appeal Board has jurisdiction over this matter pursuant to § 15-70-111, MCA, and § 15-2-302, MCA. The Montana Department of Transportation is authorized by § 15-70-121, MCA, to enter into the International Fuel Tax Agreement "for audits, exchange of information, and collection and distribution of motor fuel taxes pertaining to users of motor fuel in fleets of motor vehicles operated or intended to operate across jurisdictional boundaries". Section 15-70-121(4), MCA, enables MDT to audit licensees based in Montana "to determine if the motor fuel taxes due each jurisdiction are **properly** reported and paid." (Emphasis added).

MDT conducted such an audit of Eckart Trucking for the period from 1-1-1998 through 12-31-2000 and reported the results of the audit to the Eckarts on December 24, 2002. Although Eckart Trucking had held an IFTA license since 1991, this was the first time that their records were audited. Further, the results of the audit were the first time the Eckarts received notice that their record-keeping was deficient, despite the fact that, as far as the record indicates, they had faithfully filed the quarterly tax returns with all required documentation, as the Eckarts understood the documentation required. The audit revealed, however, that the records of Eckart Trucking were not

as complete nor as detailed as IFTA requires those records to be.

The Eckarts insist that Eckart Trucking buys all its fuel from dealers and pays the tax due at the time of purchase. The Board does not doubt the truth of this statement. The problem is that the International Fuel Tax Agreement, a legal document and international agreement, demands that Eckart Trucking maintain detailed records to support every fuel purchase and the miles traveled by their trucks in each jurisdiction. The audit found that the records of Eckart Trucking do not meet the IFTA required standard for record keeping.

Because the Eckart Trucking records were inadequate, the audit used the sample quarters to calculate adjustment factors based on the records that were available and on the quarterly tax returns filed. These adjustment factors were applied to every quarter in the entire audit period to determine whether or not additional tax was due. In the case of Eckart Trucking, there was additional tax due, which also subjects the firm to interest on the additional tax.

It is regrettable that the Eckarts received no training in record keeping and no indication that their records were inadequate until the audit report or after. But these omissions do not relieve the Eckarts of their obligation as IFTA licensees to follow the record keeping and reporting

instructions in the manual they most likely received shortly after their trucking firm was awarded a license.

The Board notes that the informal review conducted by MDT found that nearly two full years were beyond the statute of limitations for a deficiency assessment by the time that the Department notified Eckart Trucking of the audit results. Thus, the taxes and interest due for these quarters were dropped from the assessment, a substantial reduction in the amount due.

The Board finds that the Department has substantiated the remaining deficiency assessment levied against Eckart Trucking for fuel taxes due under IFTA. The Board therefore affirms the decision of the Department in this matter.

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ORDER

The Board hereby orders that taxes in the amount of \$1,499.77 are properly due and owing from Eckart Trucking. It is further ordered that the interest associated with this assessment is owed as set out in § 15-70-121, MCA, through June 7, 2006.

DATED this 9th day of March 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

KAREN E. POWELL, Chairwoman

SUE BARTLETT, Member

DOUGLAS A. KAERCHER, Member

NOTICE: You are entitled to judicial review of this Order in accordance with Section 15-70-111, MCA, and 15-2-303(2), MCA. Judicial review may be obtained by filing a petition in the district court of Lewis and Clark County within 60 days following the service of this Order.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 9th day of March, 2007, the foregoing Order of the Board was served on the parties hereto by depositing a copy thereof in the U.S. Mails, postage prepaid, addressed to the parties as follows:

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