

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

FRONTIER CHEVROLET,)	DOCKET NO.: CT-2007-1
)	
Appellant,)	
)	
v.)	ORDER
)	
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

The Department of Revenue filed a motion for Summary Judgment in the above referenced matter. The parties agreed on the facts for purposes of this motion, and the facts as presented to the Board in the Department's Motion for Summary Judgment and attached Exhibits are set forth below in their entirety.

FINDINGS OF FACT

1. Frontier Chevrolet (Frontier) is a retail automobile dealership doing business in Billings, Montana.
2. On or about September 15, 1995, Frontier filed its Montana Corporation License Tax Return for tax year 1994. (Exhibit A).
3. On Line 1 of its 1994 Return, Frontier reported that its federal taxable income totaled \$1,812,435.

4. After making certain state specific adjustments to its federal taxable income, Frontier reported on line 9 of its 1994 return Montana taxable income in the amount of \$1,943,630.

5. Frontier's Montana tax liability for 1994 totaled \$131,245.

6. On or about September 15, 1998, the Internal Revenue Service (IRS) issued Frontier a *Notice of Deficiency* with respect to its federal tax liability for tax years 1994, 1995, and 1996. (Exhibit B).

7. The Notice of Deficiency increased Frontier's federal taxable income for tax year 1994 by \$85,280, which resulted in a federal deficiency of \$28,996 for that year.

8. Frontier protested the assessment issued by the IRS and initiated litigation in the United States Tax Court. (Request for Admission No. 9; Exhibit C).

9. On or about August 15, 1999, Frontier filed with the IRS an amended U.S. Corporation Income Tax Return (Form 1120 X) for tax year 1994. (Exhibit D).

10. On its amended federal return for 1994, Frontier reduced its federal taxable income by \$106,945.

11. On its amended federal return for 1994, Frontier submitted an explanation of how it calculated the \$106,945

reduction to its federal taxable income, a portion of which reads as follows:

Taxpayer's original 1120 return for 1994 incorrectly treated the \$110,000 in non-compete payments as amortized under Section 197 over a 15 year payment period. . . .

. . . . Since 197 does not apply the correct reporting for the covenant not to compete payments is that the expense should be deducted as payments are made over the 60 month term. . .

.

In the amended return the \$110,000 non-compete expense is included on Line 26 as "other deductions" increasing that amount from \$27,463 to \$137,463. In the amended return the Section 197 deduction of \$3,155 reduces the amortization expense from \$3,305 to \$250. This leads to a net change in line 26 increasing the deduction \$106,945.

(Exhibit E).

12. At approximately the same time, Frontier filed an Amended Montana Corporation License Tax Return for tax year 1994. (Exhibit F).

13. Attached to the Amended Montana Return, Frontier included a copy of the amended federal return, together with the explanation described in Exhibit E.

14. Because Frontier reduced its federal taxable income by \$106,945, its Montana taxable income was reduced by that same amount. Therefore, after applying the \$106,945 reduction, Frontier's Montana taxable income had

been reduced from \$1,943,630 to \$1,836,685. (Request for Admission No. 4; Exhibit C).

15. The \$106,945 reduction to Frontier's 1994 Montana taxable income resulted in a refund of state tax in the amount of \$10,973 (\$7,219 in tax and \$3,754 in interest). Frontier ultimately received a refund in the amount of \$11,262. (Request for Admission Nos. 5-6; Exhibit C).

16. In May 2001, the United States Tax Court agreed with the Internal Revenue Service and concluded that the amortization of the non-competition agreement had to occur over 15 years, rather than over 60 months. (Exhibit G) The Ninth Circuit Court of Appeals affirmed the United States Tax Court's decision in May 2003. (Exhibit H); see also: *Frontier Chevrolet v. Dep't of Revenue*, STAB Docket No. CT-2006-2, October 3, 2006. (Exhibit J).

17. As a result of the Tax Court's decision that the non-competition agreement was properly amortized over 15 years, rather than 60 months, the IRS and Frontier agreed that Frontier's 1994 federal taxable income should not be reduced by \$106,945. Accordingly, on June 19, 2001, the IRS and Frontier stipulated that no adjustment to Frontier's federal taxable income was appropriate for tax year 1994. (Exhibit I).

18. In August 2006, the Department conducted discovery at the office of Frontier's legal counsel with respect to *Frontier Chevrolet v. Dep't of Revenue*, STAB Docket No. CT-2006-2.

19. During that discovery trip, the Department viewed the Stipulation indicating that Frontier and the IRS had agreed that Frontier's federal taxable income for tax year 1994 totaled \$1,943,630.

20. On August 24, 2006, the Department issued the assessment at issue in this dispute. Specifically, the Department increased Frontier's taxable income by \$106,945 which resulted in an assessment of additional tax and interest owing of \$17,037 (\$7,219 in tax and \$9,818 in interest).

21. On September 22, 2006, Frontier objected to the Department's assessment, stating as follows:

The asset amortized was a covenant not to compete. Taxpayer filed an amended return on the basis that the covenant not to compete was an intangible asset that should be amortized over the life of the asset, rather than a 15 year period. This issue has been litigated in the federal court for the years 1995 and 1996 as part of an adjustment sought by the taxpayer. It was rejected by the federal court. It was not litigated for the tax year 1994.

22. On October 6, 2006, the Department issued its Final Determination, upholding the August 2006 assessment.

23. The crux of Frontier's appeal before this Board is that the statute of limitations prevented the Department from issuing the August 2006 assessment, as noted in the following:

INTERROGATORY NO. 2: State with specificity all facts, reasons, and conclusions detailing why Frontier never submitted the requisite documentation to the Department readjusting its 1994 Montana Taxable Income upward by \$106,945 to a total of \$1,943,630.

ANSWER: At the time the ruling was finally made the statute of limitations had run. There is no obligation to file an amended return once the federal government made a final decision regarding the amortization. During the entire period Frontier Chevrolet believed that the proper amortization was a 15 year period.

(Exhibit C).

24. As of this date, Frontier has not filed a second amended Montana return for tax year 1994 reflecting either of the following:

a. that the covenant not to compete was required to be amortized over a 15 year period, rather than the 60 month period Frontier previously reported; or

b. the corresponding re-addition of \$106,945 to its federal taxable income as agreed upon by the IRS and Frontier.

CONCLUSIONS OF LAW

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

Summary judgment is appropriate when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56 (c), M.R.Civ.P.

As the parties have agreed to the facts at issue, there are no material issues of fact in this matter. There is only one legal issue at question in this motion for summary judgment, whether the Department is barred from assessing additional tax due based on the applicable statute of limitations.

The taxpayer argues that the Department is barred from issuing an assessment to Frontier Chevrolet in 2006 for tax year 1994 due to the 3 year statute of limitations set forth in § 15-31-509, MCA. The Taxpayer fails to address however, that § 15-31-509 expressly allows for an exception to the statute of limitations when a taxpayer fails to file a required return as set forth in § 15-31-544.

In this case, as a result of a decision of the tax court, a change of federal tax liability occurred. FOF, 17. A taxpayer is required to file a return when there is a change to its federal tax liability. Section 15-31-506, MCA. The taxpayer failed to do so. FOF, 24.

The Board has extensively addressed this exact statutory issue in *Frontier Chevrolet v. DOR*, CT-2006-2 (Oct. 3, 2006) and *Northwest Farm Credit Services, ACA v. DOR*, CT-2004-3 (September 1, 2006). *Frontier Chevrolet* was upheld by the 13th Judicial District Court on May 18, 2007.

We see no reason to reiterate the arguments and analysis set forth in those cases and hereby incorporate those cases by reference. *Frontier Chevrolet* failed to file a required tax return. Pursuant to § 15-31-544, MCA, DOR may assess additional tax liability outside of the typical three year statute of limitations.

The Department is entitled to judgment as a matter of law

DATED this 18th day of July, 2007.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

KAREN POWELL, Chairperson

SUE BARTLETT, Member

DOUGLAS A. KAERCHER, Member

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 18th day of July, 2007, the foregoing Order of the Board was served on the parties hereto by faxing a copy to the parties as follows:

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