

BEFORE THE STATE TAX APPEAL BOARD
OF THE STATE OF MONTANA

FRONTIER CHEVROLET,)	DOCKET NO.: CT-2006-2
)	
Appellant,)	
)	
v.)	
)	FINDINGS OF FACT, CONCLUSIONS
)	<u>OF LAW and ORDER</u>
THE DEPARTMENT OF REVENUE)	
OF THE STATE OF MONTANA,)	
)	
Respondent.)	

The above-entitled appeal was heard on July 19, 2006, in the City of Helena, in accordance with an order of the State Tax Appeal Board of the State of Montana (the Board). The notice of the hearing was duly given as required by law. The Appellant was represented by Peter T. Stanley, attorney. The Department of Revenue (DOR), represented by Derek R. Bell, tax counsel; Brian Staley, corporate tax unit manager; and Kari Turnbow, corporate tax auditor, presented testimony in opposition to the appeal.

The duty of this Board is to determine whether the DOR acted in accordance with Montana law regarding the assessment of tax and interest on a deficiency in Frontier Chevrolet's corporate license tax payment for the tax years ending December 31, 1995 and 1996. Based on the evidence

and testimony, the Board finds that the Department of Revenue's calculation of tax and interest is affirmed and the appeal of Frontier Chevrolet is denied.

Findings of Fact

1. Frontier Chevrolet appeals from an Order Granting the Motion to Dismiss filed by the Department of Revenue hearing examiner and requested de novo review of the decision. Frontier Chevrolet, complaint.

2. Frontier Chevrolet contested the Department's Statement of Account for tax years 1994, 1995 and 1996. Frontier Chevrolet complaint, 3.

3. Due, proper and sufficient notice was given of this matter, and of its briefing schedule. A hearing was held on September 6, 2006. All parties were given the opportunity to present documentary and other evidence.

4. In 1998, the Internal Revenue Service issued a Notice of Deficiency to Frontier Chevrolet with respect to its federal tax liability for tax years 1994, 1995, and 1996. Ex. 5.

5. Frontier Chevrolet disputed the deficiency and initiated litigation in the United States Tax Court. United States Tax Court, Docket No. 19627-98. The US Tax Court issued a decision ordering deficiencies in income tax due from the petitioner for the taxable years 1995 and 1996

in the amounts of \$38,720 and \$9,289, respectively. Ex. 6.

6. Frontier Chevrolet appealed. The Ninth Circuit issued a decision affirming the decision of the US Tax Court in May 28, 2003. Frontier Chevrolet v. Comm'r, 329 F.3d 1131 (2003). No testimony or evidence indicated that Frontier Chevrolet appealed the decision of the 9th Circuit.

7. The Department and the IRS are authorized to exchange certain taxpayer information pursuant to "An Implementation Agreement on Coordination of Tax Administration Between the Montana Department of Revenue and the Internal Revenue Service" signed in 1987. The document provides for information sharing, including allowing the IRS to send a Revenue Agent Report ("RAR") relating to federal income of Montana taxpayers. Exhibit 1, pages 3 and 5.

8. The Department received an RAR from the Internal Revenue Service (IRS) in July 2004 relating to additional federal tax liability for Frontier Chevrolet. Staley Testimony.

9. Based on the RAR received from the IRS, the Department issues an Assessment on September 23, 2004 with additional tax owed of \$34,663.00 and interest of \$35,010 for tax year 1995 and additional tax owed of \$23,746.00 and interest of \$21,134.00 for tax year 1996. Ex 3.

10. Based on discussions with representatives of Frontier Chevrolet, the Department issued a Revised Assessment to Frontier Chevrolet on April 4, 2005. The Revised Assessment indicated \$7,687 tax due for 1995, with interest accruing at a rate of 1% per month from the due date of the return to the payment date, and \$1,844 tax due for 1996, with interest accruing at a rate of 1% per month from the due date of the return to the payment date. The total balance owed was \$15,858.83 for tax year 1995 and \$3,614.32 for tax year 1996. Ex 4.

11. The amount of federal income tax directly affects the amount of money owed to Montana (Staley testimony)

12. Frontier has not filed amended Montana returns reflecting any change to federal income tax for tax years 1995 and 1996. Staley testimony.

Conclusions of Law

The Board has jurisdiction over this matter pursuant to §15-2-302, MCA. Frontier Chevrolet is subject to Montana corporate license tax pursuant to §15-31-101(3), and § 15-31-503, MCA, authorizes the Department to assess tax liability.

The question presented to the Board is whether the Department properly assessed additional tax due for the tax

years 1995 and 1996.

Frontier Chevrolet argues that the Department failed to timely assess additional tax due for tax years 1995 and 1996. Frontier Chevrolet presented three arguments. First, when the legislature enacted a change in the statute of limitations, the legislature intended a three-year statute of limitations relating to all actions going forward, including any subsequent activity relating to prior tax years. Second, Frontier Chevrolet argues that litigation does not create a "change or correction" of federal tax liability that would trigger the requirements of §15-31-506, MCA. Finally, Frontier Chevrolet argues that §15-31-544, MCA, does not apply because Frontier Chevrolet did file a return relating to the 1995 and 1996 tax years.

The Department argues that under all presented scenarios, the Department was within the statute of limitations for assessing tax due.

The legislature enacted certain statutory time limitations for assessment. Section 15-31-509, MCA, (1995) states in relevant part "[e]xcept as otherwise provided in § 15-31-544 and this section, no deficiency shall be assessed or collected with respect to the year for which a return is filed unless the notice of additional tax

proposed to be assessed is mailed within 5 years from the date the return is filed."

The legislature also provided for elimination of the statute of limitations in certain circumstances. Section 15-31-544, MCA, (1995) provides in relevant part: "Whenever a return is required to be filed and the taxpayer files a fraudulent return or fails to file the return, the department may at any time assess the tax or begin a proceeding in court for the collection of the tax without assessment."

The DOR argues that Frontier Chevrolet failed to file a return under §15-31-544, MCA, which allows the DOR to assess additional tax liability for tax years 1995 and 1996. Frontier Chevrolet initially filed federal and state tax returns for the years 1995 and 1996. Subsequent to the tax court decision imposing additional federal tax due and owing, and the 9th Circuit decision upholding the additional tax assessment, Frontier Chevrolet did not file any amended Montana tax returns.

Section 15-31-506, MCA, requires in relevant part "if the amount of a corporation's taxable income reported on its federal income tax return or the computation schedule filed for any taxable year is changed or corrected by the United States internal revenue service or other competent

authority, the corporation shall report such proposed change or correction to the department within 90 days after receiving official notice thereof." Frontier Chevrolet received official notice of additional assessment from the IRS, the U.S. Tax Court, and the 9th Circuit Court of Appeals. At no time did Frontier Chevrolet notify DOR of a change or correction to its federal tax liability.

Frontier Chevrolet argues that the litigation and settlement of federal tax liability are activities that do not require notification of tax changes under §15-31-506, MCA. This Board disagrees.

The language of §15-31-506, MCA, is explicit in its requirement that all corporations shall file amended Montana returns upon either notification from the IRS, or other competent authority, of a change in taxable income or a corporation itself filing an amended federal return. Certainly a federal appellate court, in this case the Ninth Circuit Court of Appeals, qualifies as a "competent authority." As the return was required to be filed under law, and Frontier Chevrolet failed to file a return, the DOR may at any time assess the tax pursuant to §15-31-544, MCA.

Frontier Chevrolet further argues that the legislative amendment that shortened the general statute of limitation

from five years to three years prevents the DOR from assessing tax certain liabilities in this matter. As §15-31-544, MCA, eliminates the general statute of limitations in this matter, whether the general statute of limitation is five years or three years is not at issue. We note, however, that the final determination by a "competent authority" pursuant to §15-31-506, MCA, is May 28, 2003, well within either a five-or a three-year time frame.

Because Frontier Chevrolet failed to timely file an amended Montana return at the time it filed amended federal returns, and such a return was required by §15-31-506, MCA, the DOR may assess tax liability pursuant to §15-31-544, MCA, and is not barred by statute of limitations.

ORDER

IT IS THEREFORE ORDERED by the State Tax Appeal Board of the State of Montana that the decision of the Department of Revenue in the matter of Frontier Chevrolet v. Department of Revenue, CT 2006-2, is affirmed. Taxes are owing in the amount of \$7,687 tax due for 1995, with interest accruing at a rate of 1% per month from the due date of the return to the payment date, and \$1,844 tax due for 1996, with interest accruing at a rate of 1% per month from the due date of the return to the payment date.

Dated this 3rd day of October, 2006.

BY ORDER OF THE
STATE TAX APPEAL BOARD

(S E A L)

KAREN E. POWELL, Chairwoman

JOE R. ROBERTS, Member

SUE BARTLETT, 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.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 3rd day of October, 2006, 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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