BEFORE THE HEARING OFFICER
OF THE TAXATION AND REVENUE DEPARTMENT
OF THE STATE OF NEW MEXICO

IN THE MATTER OF THE PROTEST OF
CIMARRON OILFIELD SERVICE CO. **No. 02-06**
MTD ID NO. 036176-6
IFTA ASSESSMENT DATED JUNE 20, 2001

DECISION AND ORDER

A formal hearing on the above-referenced protest was held February 21, 2002, before Margaret B. Alcock, Hearing Officer. Cimarron Oilfield Service Co. ("Cimarron") was represented by James Wood, its office manager. The Taxation and Revenue Department ("Department") was represented by Javier Lopez, Special Assistant Attorney General. Based on the evidence and arguments presented, IT IS DECIDED AND ORDERED AS FOLLOWS:

FINDINGS OF FACT

1. Cimarron is engaged in the business of providing oilfield services and is based in Farmington, New Mexico.

2. During the period January 1998 through December 2000, Cimarron filed quarterly returns to report fuel taxes due to New Mexico and other states pursuant to the terms of the International Fuel Tax Agreement ("IFTA").

3. IFTA is an agreement entered into among 48 U.S. states, including New Mexico, as well as many Canadian provinces and territories.

4. The goal of IFTA is to simplify the reporting of fuel taxes by interstate motor carriers. In lieu of requiring a motor carrier to file separate tax returns with each state in which it travels, IFTA establishes a single "base jurisdiction" for the motor carrier and provides for that jurisdiction to administer tax reporting and collection on behalf of all IFTA jurisdictions.

5. In 1995, New Mexico conducted several training sessions to explain the application of IFTA to motor carriers based in New Mexico and the record keeping and reporting requirements under IFTA. These sessions were held in cities and towns throughout New Mexico, including Farmington.

6. James Wood, Cimarron's current office manager, was not involved in the company's IFTA reporting during 1995 and did not attend any of the Department's IFTA training sessions. Mr. Wood does not know whether anyone else from Cimarron attended the training.

7. When Mr. Wood took over Cimarron's IFTA reporting in 1998, he called the Department to ask whether there were any seminars or training materials available. Although no seminars were scheduled, Mr. Wood did receive an IFTA Compliance Manual and Department instructions for filing IFTA quarterly tax returns.

8. When completing Cimarron's quarterly IFTA returns for the period January 1998 through December 2000, Mr. Wood made two reporting errors.

9. The first error concerned the reporting of tax-exempt fuel that was placed in IFTA-qualified vehicles and subsequently transferred from those vehicles into off-highway equipment. Pursuant to New Mexico's Special Fuels Supplier Tax Act, all fuel placed in IFTA-qualified vehicles is subject to tax, without regard to the Taxpayer's subsequent use of the fuel.

10. The second error concerned the reporting of taxable miles in Column 5 on the "Fuel Tax Computation Worksheet" on page two of the IFTA return. In computing taxable miles, Mr. Wood subtracted off-highway miles traveled in New Mexico from the total miles traveled in New Mexico during the reporting period. This deduction is not allowed under New Mexico's Special Fuels Supplier Tax Act.

11. Although the IFTA Compliance Manual does not define taxable and nontaxable miles, the Department's instructions do. The line instructions for Columns 4 and 5 of the IFTA return state as follows:

> Column 4: Enter the total miles traveled in the jurisdiction shown in Column 1.
>
> Column 5: Taxable miles are the same as total miles. **NOTE**: Off highway miles <u>are</u> considered taxable for fuel purposes under IFTA in New Mexico (emphasis in the original).

12. Mr. Wood did not read the Department's instructions when completing Cimarron's IFTA returns, but simply assumed that the deduction allowed for off-highway miles under New Mexico's weight distance tax also applied to New Mexico's special fuels supplier tax. He also assumed that fuel placed into the fuel tank of an IFTA-qualified vehicle was not subject to tax when the fuel was later transferred into off-highway equipment.

13. Mr. Wood did not ask anyone at the Department whether his assumptions concerning the reporting of Cimarron's IFTA taxes were correct.

14. Mr. Wood did not read New Mexico's Special Fuels Supplier Tax Act or the Department's regulations under that Act to determine whether he was reporting tax correctly.

15. Mr. Wood did not consult with a tax accountant or attorney concerning Cimarron's reporting of tax on its IFTA returns.

16. As a result of Cimarron's reporting errors, the company's quarterly IFTA returns for the period January 1998 through December 2000 incorrectly showed that Cimarron was entitled to tax refunds.

17. Up until the 4th quarter of 1999, the Department accepted Cimarron's returns as filed and granted refunds shown on the returns.

18. During the 4th quarter of 1999, the bureau chief and tax compliance supervisor of the Department's Commercial Vehicle Bureau became aware that many IFTA taxpayers were incorrectly deducting off-highway miles on their IFTA returns and claiming refunds to which they were not entitled.

19. The bureau chief directed Department personnel to review future IFTA returns and recalculate the tax on any return where taxable miles reported in Column 5 of the Fuel Tax Computation Worksheet did not match total miles reported in Column 4.

20. Once the Department determined that a particular taxpayer had incorrectly deducted off-highway miles, resulting in an erroneous claim for refund, the Department took no further action. The Department did not grant the refund, nor did the Department formally deny the refund and notify the taxpayer of his reporting error. Instead, the Department simply withheld payment of the refund.

21. The Department's bureau chief took the position that it was up to the taxpayer to call the Department and ask why he had not received the refund claimed on his IFTA return. At that time, Department personnel would explain the taxpayer's reporting error.

22. The Department did not implement any procedures to reassess taxpayers who received erroneous refunds for reporting periods prior to the 4th quarter of 1999. While taxpayers randomly selected for audit under IFTA's audit selection system were assessed for the additional tax due, taxpayers not selected for audit were not required to repay their erroneous refunds.

23. During the audit period, Cimarron filed returns showing refunds due in the total amount of $10,770.84, but actually received refunds of only $5,608.26.

24. Because of the way Cimarron structured its accounting procedures, no one at Cimarron realized the company was not receiving the full amount of refunds claimed on its returns.

25. While Mr. Wood was responsible for filing Cimarron's IFTA returns, all tax refund checks were forwarded directly to Cimarron's comptroller. Neither Mr. Wood nor the comptroller compared the amount of the refunds received to the amount claimed on the returns. As a result, they were not aware that the Department was withholding a portion of the refunds claimed and never contacted the Department or discovered the errors in Cimarron's tax reporting.

26. After the 4th quarter of 1999, Cimarron continued to receive some refunds attributable to the company's erroneous reporting of fuel placed into IFTA-qualified vehicles.

27. In March 2001, Cimarron was randomly selected for an audit of its IFTA reporting for the period January 1998 through December 2000. During the audit, Cimarron's reporting errors were discovered, and Mr. Wood was advised as to the correct way to complete the company's quarterly IFTA returns.

28. On June 20, 2001, the Department assessed Cimarron for $10,503.60 of underreported IFTA taxes, plus $2,575.79 of interest. No penalty was assessed.

29. On June 27, 2001, Cimarron filed a written protest to the Department's assessment.

DISCUSSION

Cimarron does not dispute its legal liability for the tax assessed. Cimarron maintains, however, that the Department's failure to provide adequate training and instructions to taxpayers concerning the IFTA program, as well as the Department's disparate treatment of taxpayers who received erroneous refunds, should estop the Department from enforcing collection of the assessment.

Estoppel. As a general rule, courts are reluctant to apply the doctrine of estoppel against the state. This general rule is given even greater weight in cases involving the assessment and collection of taxes. *Taxation and Revenue Department v. Bien Mur Indian Market*, 108 N.M. 228, 231, 770 P.2d

873, 876 (1989). Section 7-1-60 NMSA 1978 provides for estoppel against the Department in two circumstances: where the taxpayer acted according to a revenue ruling addressed to the taxpayer or where the taxpayer acted according to a regulation. Here, Cimarron's erroneous deduction of off-highway miles and its failure to report tax on fuel placed into the fuel tanks of IFTA-qualified vehicles was not in accordance with any Department ruling or regulation. Accordingly, there is no statutory basis to estop the Department from collecting tax assessed as a result of these errors.

Case law provides for estoppel against the state where "right and justice" demand its application. *Bien Mur, supra*, 108 N.M. at 230, 770 P.2d at 875. In determining whether estoppel is appropriate, the conduct of both parties must be considered. *Gonzales v. Public Employees Retirement Board*, 114 N.M. 420, 427, 839 P.2d 630, 637 (Ct. App.), *cert. denied,* 114 N.M. 227, 836 P.2d 1248 (1992). The following elements must be shown as to the party to be estopped: (1) conduct that amounts to a false representation or concealment of material facts, (2) actual or constructive knowledge of the true facts, and (3) an intention or expectation that the other party will act on the representations. As to the party claiming estoppel, the following must be shown: (1) lack of knowledge and of the means of knowledge of the true facts, (2) detrimental reliance on the other party's representations or concealment of facts, and (3) that such reliance was reasonable. *Id*. *See also*, *Johnson & Johnson v. Taxation and Revenue Department*, 1997-NMCA-030, P28, 123 N.M. 190, 195, 936 N.M. 872, 877 (Ct. App.), *cert. denied*, 123 N.M. 167, 936 P.2d 337 (1997); *Memorial Medical Center v. Tatsch Construction, Inc*., 2000-NMSC-030, P9, 129 N.M. 677, 671-672, 12 P.3d 431, 435-436.

The facts of this case do not establish a basis for applying equitable estoppel against the Department. First, there is no evidence that the Department misrepresented or concealed the fact that off-highway miles are not an allowable deduction in calculating New Mexico's special fuels

supplier tax. Although Mr. Wood argues that the Department failed to provide adequate training materials on this issue, a review of the Department's written instructions indicates otherwise. The line instructions for Column 5 of the IFTA return state: "Taxable miles are the same as total miles. **NOTE**: Off highway miles <u>are</u> considered taxable for fuel purposes under IFTA in New Mexico." (emphasis in the original). These instructions appear more than adequate to alert taxpayers to the fact that off-highway miles may not be deducted when reporting taxable miles on the IFTA return. At the hearing on Cimarron's protest, Mr. Wood admitted that he did not read the Department's instructions when completing Cimarron's IFTA returns, but simply assumed that the deduction allowed for off-highway miles under New Mexico's weight distance tax also applied to New Mexico's special fuels supplier tax. He also assumed that fuel placed into the fuel tank of an IFTA-qualified vehicle was not subject to tax when the fuel was later transferred into off-highway equipment. Mr. Wood did not ask anyone at the Department whether these assumptions were correct, nor did he review the Special Fuels Supplier Tax Act or the Department's regulations to determine whether he was entitled to the deductions claimed.[1] Mr. Wood also testified that he never consulted with a tax accountant or attorney concerning Cimarron's liability for IFTA taxes.

Cimarron's belief that it was the Department's responsibility to insure that IFTA taxpayers were reporting their taxes correctly misapprehends the nature of New Mexico's self-reporting tax system. It is the obligation of taxpayers, who have the most accurate and direct knowledge of their activities, to determine their tax liabilities and accurately report those liabilities to the state. *See*, Section 7-1-13(B) NMSA 1978; *Tiffany Construction Co. v. Bureau of Revenue*, 90 N.M. 16, 17, 558

[1] Mr. Wood read the Department's instructions for the first time only after Cimarron's audit was complete. At that time, he noticed a discrepancy between the Department's instructions and the tax form itself, although he was unable to testify as to the exact nature of the problem. Upon noticing the discrepancy, Mr. Wood called the Department and was advised of the proper reporting procedures. This indicates that had Mr. Wood read the instructions or contacted

P.2d 1155, 1156 (Ct. App. 1976), *cert. denied*, 90 N.M. 255, 561 P.2d 1348 (1977). If a taxpayer does not have adequate knowledge or information to complete his tax returns, he has an obligation to consult with a qualified accountant or attorney. In *Tiffany Construction, supra*, the court held that a taxpayer's mere belief that taxes are not owed, without further investigation, constitutes negligence. The court further held that a taxpayer's failure to consult with an expert as to his tax liability may also constitute negligence.

In this case, the Department was not responsible for Mr. Wood's erroneous assumptions concerning Cimarron's tax liability. The fact that the Department granted Cimarron's claims for refund during the first two years of the three-year audit period did not estop the Department from reassessing those refunds once the error was discovered. Section VII on page 9 of the IFTA Compliance Manual states as follows:

> VII. REFUNDS
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> An IFTA quarterly tax report showing an overpayment of tax in a reporting quarter is treated as a claim for refund. A refund will be issued after the Department determines that all tax liabilities, including any audit assessments, have been satisfied to all member jurisdictions. A refund will be denied if the licensee is delinquent in filing any quarterly tax report(s).

Mr. Wood reads this language to mean that the Department is required to conduct an audit of every taxpayer who files a claim for refund and make a conclusive determination of liability before granting the refund. This is not the case. Section VII simply provides that the Department will check to see whether there are any liabilities—including audit assessments—currently outstanding against a taxpayer before granting a refund. This is consistent with Section 7-1-29(C) NMSA 1978 of the Tax Administration Act, which states that "any amount of tax due to be refunded may be offset against any amount of tax for the payment of which the person due to receive the refund is liable."

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the Department at the time he filed Cimarron's original IFTA returns, he would have discovered the reporting errors

The Department receives thousands of refund claims each year. Many of these claims are in the form of taxpayers' self-assessed tax returns. In addition to IFTA returns, every personal income tax return, corporate income tax return, estate tax return, and oil and gas return that is filed showing a balance due qualifies as a claim for refund. Section 7-1-26 NMSA 1978. It is not possible for the Department to audit each of these returns before determining whether the refund should be granted. As a general rule, the Department must rely on the information provided by the taxpayer. If the Department later determines that the refund was not justified, it has an obligation to issue an assessment to recover any amount of unpaid tax. *See*, Section 7-1-3 NMSA 1978 (defining the term "tax" to include refunds paid to any person "contrary to law") and Section 7-1-17 NMSA 1978 (directing the secretary to assess any taxpayer liable for tax in excess of $10.00).

In this case, the Department stopped issuing refunds based on taxpayers' deductions of off-highway miles once it discovered the problem in late 1999. While it would have been helpful for the Department to send each taxpayer a written denial of the refund with an explanation of the taxpayer's reporting error, the Department was not legally required to do so. *See*, 7-1-26 NMSA 1978; *Unisys Corp. v. New Mexico Taxation & Revenue Department*, 117 N.M. 609, 612, 874 P.2d 1273, 1276 (Ct. App. 1994). Apparently, the bureau chief of the Commercial Vehicle Bureau assumed that once taxpayers realized their refunds were no longer being granted, they would call the Department to find out why. The Department did not anticipate Cimarron's failure to reconcile the amount of tax refunds requested to the amount of tax refunds received. As a direct result of this failure, Cimarron did not know that its refunds were no longer being granted and never called the Department to determine the reason. Had someone from Cimarron contacted the Department, that person would have been informed of the company's reporting error in deducting off-highway miles.

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that led to the Department's assessment.

The law provides that the party relying on estoppel has the burden of establishing all facts necessary to support the claim. *In re Estates of Salas*, 105 N.M. 472, 475, 734 P.2d 250, 253 (Ct. App. 1987). Cimarron has not met its burden in this case. While there is some evidence of poor tax administration on the part of the Department, there is no evidence that the Department made false representations or concealed material facts with the intent of causing Cimarron to underreport its taxes. Nor is there evidence that Cimarron lacked the means of obtaining knowledge concerning its tax reporting obligations. Instead, the evidence shows that Cimarron's reporting errors were primarily due to the failure of its office manager to: (1) read the written instructions provided by the Department, (2) read the pertinent tax laws and regulations, (3) call the Department to verify that Cimarron was entitled to the deductions it was claiming, or (4) consult with a qualified tax professional. This evidence does not provide a basis for applying the doctrine of equitable estoppel against the Department.

Disparate Treatment of Taxpayers. The second argument raised by Cimarron concerns the disparate treatment of taxpayers who received erroneous refunds from the Department. As discussed in the previous section, Section 7-1-17 NMSA 1978 requires the Department to assess any taxpayer liable for tax in excess of $10.00. Section 7-1-3 NMSA 1978 defines "tax" to include refunds paid to any person contrary to law. Once the Department became aware that a substantial number of IFTA taxpayers had received tax refunds to which they were not entitled, the Department had a statutory obligation to assess those taxpayers for the amount of the refunds. The Department made no effort to do so. As a result, only those taxpayers randomly selected for audit under IFTA's routine audit selection process were required to repay the improper refunds. Taxpayers not selected for audit were not required to repay their refunds.

Cimarron argues that it is unfair to assess some taxpayers while other taxpayers in the same circumstances escape taxation. It is true that the Department's inaction resulted in unequal enforcement of the state's tax laws. Nonetheless, New Mexico law holds that "a taxpayer who is not assessed more than the law provides has no cause for complaint in the courts in the absence of some well-defined and established scheme of discrimination or some fraudulent action." *Skinner v. New Mexico State Tax Commission*, 66 N.M. 221, 223, 345 P.2d 750, 752 (1959); *Appelman v. Beach*, 94 N.M. 237, 239, 608 P.2d 1119, 1121 (1980), *cert. denied*, 449 U.S. 839. *See also, State v. Lujan*, 79 N.M. 525, 527, 445 P.2d 749, 751 (Ct. App. 1968) (lack of uniformity in enforcement of law does not excuse a particular defendant's violation of the law).

In *Campos de Suenos, Ltd. v. County of Bernalillo*, 2001-NMCA-043, P34, 130 N.M. 563, 572, 28 P.3d 1104, 1113, *cert. denied*, 130 N.M. 484, 27 P.3d 476 (2001), the court of appeals quoted the following passage from the United States Supreme Court's decision in *Snowden v. Hughes*, 321 U.S. 1, 8 (1944):

> [T]he unlawful administration by state officers of a state statute fair on its face, resulting in its unequal application to those who are entitled to be treated alike, is not a denial of equal protection unless there is shown to be present in it an element of intentional or purposeful discrimination.

The court of appeals further noted that there must be a showing of "clear and intentional" discrimination—the plaintiff must prove more than mere nonenforcement against other violators. *Id.* In this case, there is no evidence that the Department's unequal enforcement of the special fuels supplier tax resulted from any improper motive. The fact that Cimarron was randomly selected for audit pursuant to IFTA's normal audit selection process establishes that the assessment was not the result of any purposeful discrimination. Given these facts, there is no basis for abating the assessment against Cimarron.

CONCLUSIONS OF LAW

1. The Taxpayer filed a timely, written protest to the Department's assessment of IFTA taxes for the period January 1998 through December 2000, and jurisdiction lies over the parties and the subject matter of this protest.

2. The Department is not estopped from enforcing collection of the assessment against Cimarron.

3. In the absence of any intentional or purposeful discrimination, the fact that Cimarron was assessed tax while other taxpayers in the same circumstances escaped taxation does not provide a basis for abating the assessment.

For the foregoing reasons, Cimarron's protest IS DENIED.

DATED March 4, 2002.