

CALIFORNIA STATE BOARD OF EQUALIZATION
APPEALS DIVISION SUMMARY FOR BOARD HEARING

In the Matter of the Petitions for Redetermination)
Under the Diesel Fuel Tax Law of:)
NIJJAR BROTHERS TRUCKING, INC.) Account Number: IF MT 59-018550
Case ID 258549)
NB TRUCKING, INC.) Account Number: IF MT 59-025132
Case ID 284086)
Petitioners) Madera, Madera County

Type of Business: Interstate trucking companies

Audit Periods: 4/1/99 – 12/31/01 (258549)
11/5/01 – 12/31/02 (284086)

<u>Items</u>	<u>Amounts in Dispute</u>			
	<u>258549</u>		<u>284086</u>	
	<u>Tax</u>	<u>Penalty</u>	<u>Tax</u>	<u>Penalty</u>
Negligence penalty	\$4,527		\$2,395	
Interest through 7/31/07	\$19,465		\$4,862	
	<u>258549</u>		<u>284086</u>	
As determined	\$45,267.50	\$4,526.75	\$23,948.15	\$2,394.83
Amount concurred in	<u>-45,267.62</u>		<u>-23,948.15</u>	
Protested	<u>\$ 0.00</u>	<u>\$4,526.75</u>	<u>\$ 0.00</u>	<u>\$2,394.83</u>
Proposed tax redetermination	\$ 45,267.50		\$23,948.15	
Interest through 6/30/09	82,625.08		15,001.91	
Negligence penalty	<u>4,526.75</u>		<u>2,394.83</u>	
Total tax, interest, and penalty	\$132,419.33		\$41,344.89	
Offset			- 1,021.61	
Payments			<u>-11,194.18</u>	
Balance due	<u>\$132,419.33</u>		<u>\$29,129.10</u>	
Monthly interest beginning 7/1/09	<u>\$452.67</u>		<u>\$117.32</u>	

UNRESOLVED ISSUES

Issue 1: Whether petitioners were negligent. We conclude that they were.

The Fuel Taxes Division of the Property and Special Taxes Department (Department) assessed the 10-percent negligence penalty because petitioners' books and records were incomplete and

1 considered inadequate for IFTA audit purposes. Petitioners failed to provide odometer readings,
2 individual vehicle mileage records, formal inventory records, or any summaries. Instead petitioners
3 provided dispatch books, some driver's logs, and some fuel receipts for the audit periods. The
4 Department noted that petitioners estimated reported total miles, out-of-state miles, miles per
5 jurisdiction, fuel purchased, total fuel consumption, and miles per gallon on their returns. Due to
6 petitioners' incomplete records, the Department used alternative methods (block samples) in order to
7 estimate vehicle mileage for the audit period. The Department also scheduled available fuel receipts
8 and allowed the diesel gallons as tax-paid credits. However, the Department disallowed any claimed
9 credits for which petitioners could not provide fuel receipts.

10 The Department also noted that petitioners were experienced taxpayers in the trucking industry
11 and familiar with IFTA requirements. When petitioners applied for IFTA permits, they were supplied
12 with publications explaining the responsibility of maintaining accurate mileage and fuel records.
13 Petitioners also received updated publications and they were advised to keep odometer readings for
14 total in-state and out-of-state miles, and to report total fuel purchased based on actual fuel receipts.
15 However, petitioners failed to maintain adequate records to perform an accurate IFTA audit (e.g.,
16 odometer readings, individual vehicle mileage records, formal inventory records, or summaries).

17 Petitioners claim that complete records were unavailable because boxes of records were seized
18 in 2003 by the courts and the Federal Department of Transportation (DOT), and not returned until
19 2007. Consequently, petitioners allege they were unable to produce receipts to verify their reported tax
20 liability. Petitioners also claim that a burglary occurred at the business location and among things
21 stolen were the missing records. As proof of the burglary, petitioners provided a copy of an Incident
22 Report and a Supplemental Incident Report from the Madera County Sheriff's Department dated
23 November 16, 2003, showing that "diesel receipts" and "log books" were stolen.

24 The Department points out that even though the Sheriff's report indicates diesel receipts and
25 log books were stolen, the report does not indicate that the stolen articles were for the audit periods
26 here at issue and thus fails to establish a reasonable basis for petitioner's incomplete records. As for
27 the records seized by DOT, the Department notes that even though DOT returned the records to
28 petitioners in 2007, petitioners have previously indicated that they chose not to examine the records to

1 refute any audit findings, which implies that the returned records did not contain fuel receipts or other
2 documentation to support any audit adjustments.

3 Under IFTA, licensees are required to maintain detailed distance and fuel records for each
4 vehicle for each jurisdiction in which the vehicle operated. (IFTA Procedures Manual, §§ P540.100-
5 .200, P550.100-.400.) These records must include, in part, dates of trip, trip origin and destination,
6 route, beginning and ending odometer readings, and distance traveled by jurisdiction. (IFTA
7 Procedures Manual, § P540.200.) The records must also include the date of each receipt of fuel, from
8 whom the fuel was purchased, the amount of fuel purchased, and the vehicle into which the fuel was
9 placed. (IFTA Procedures Manual, § P550.400.)

10 Petitioners have not established that the stolen boxes contained any receipts or documents
11 related to the audit periods at issue, nor have they established that they routinely maintained proper
12 documentation, such as by showing that they customarily have done so for all periods since the theft.
13 Moreover, the DOT's seizure and retention of records necessarily means that at least *some* relevant
14 documents were not stolen (or DOT would have had nothing to seize), and despite DOT's return of
15 those documents to petitioners, they have submitted them to the Department for review. We find that
16 petitioner failed to maintain fuel receipts to support claimed fuel credits and that this failure constitutes
17 conduct that is substantially below the standard of care of a reasonable prudent businessman and is
18 evidence of negligence.

19 Additionally, Nijjar's understatement of \$45,267.50 computes to an error ratio of 1,096 percent
20 when compared to reported tax of \$4,129.23. NB reported no tax due and claimed a tax credit of
21 \$437.07, but the audit disclosed a tax understatement of \$23,948.15. The amount and percentage of
22 these errors also indicate a standard of conduct below that of a reasonable prudent businessperson and
23 constitutes evidence of negligence.

24 Based on the foregoing, we find that petitioners were negligent and that the penalty was
25 properly imposed.

26 **Issue 2:** Whether petitioners are entitled to relief from the accrued interest. We conclude that
27 there is no basis for relieving the interest.

28 Petitioners seek relief of the interest that accrued between the dates of their respective petitions

1 for redetermination (Nijjar - January 28, 2004 and NB - September 2, 2004) and the first appeals
2 conference (July 17, 2007), in the amounts of \$19,464.81 (Nijjar) and \$4,861.80 (NB), under Revenue
3 and Taxation Code section 60212 for unreasonable delay by a Board employee. NB filed a statement
4 under penalty of perjury setting forth the facts upon which it bases its claims for relief. (Rev. & Tax.
5 Code, § 60212, subd. (c).)¹

6 We note that none of the interest accrued on petitioner Nijjar's liability for the period April 1,
7 1999 through December 31, 1999 (which, for the period of alleged delay, is \$415.20) is eligible for
8 relief under section 60212 since such relief is available only for interest imposed on tax liabilities that
9 arise during taxable periods commencing on or after January 1, 2000.

10 Petitioners filed a settlement proposal that was under review through June 2005, after which the
11 matter was prepared for transfer to the Case Management Section, who scheduled the appeals
12 conference held in July 2007. We do not believe this timing represents an unreasonable delay by
13 Board employees that justifies relief of interest under section 60212, and therefore recommend that
14 relief be denied.

15 **OTHER DEVELOPMENTS**

16 None.

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19 Summary prepared by Rey Obligacion, Business Taxes Specialist III.
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25 ¹ Although the D&R seems to indicate that the request for relief applied to both petitions, in fact, we have received a
26 written request for relief only from NB. In addition to the request filed by NB, the conference holder obtained additional
27 information from petitioners during the appeals conference, including refinements as the reasons for the request for relief
28 (e.g., the written request appears to indicate the request is for relief extending back to the date the tax was incurred, but
during the appeals conference petitioners clarified that they sought relief from the dates of each petitioner's respective
petition for redetermination). The conference holder also understood from the conference that Nijjar sought relief of
interest on the same basis as NB.