

## 1 CALIFORNIA STATE BOARD OF EQUALIZATION

## 2 APPEALS DIVISION FINAL ACTION SUMMARY

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

9 Type of Business: Interstate trucking companies

10 Audit Periods: 4/1/99 – 12/31/01 (258549)  
 11 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>    |
| 12 Negligence penalty                | \$4,527                   |                   | \$2,395            |                   |
| 13 Interest through 7/31/07          | \$19,465                  |                   | \$4,862            |                   |
|                                      | <u>258549</u>             |                   | <u>284086</u>      |                   |
| 14                                   | <u>Tax</u>                | <u>Penalty</u>    | <u>Tax</u>         | <u>Penalty</u>    |
| 15 As determined                     | \$45,267.50               | \$4,526.75        | \$23,948.15        | \$2,394.83        |
| 16 Amount concurred in               | <u>-45,267.62</u>         |                   | <u>-23,948.15</u>  |                   |
| 17 Protested                         | <u>\$ 0.00</u>            | <u>\$4,526.75</u> | <u>\$ 0.00</u>     | <u>\$2,394.83</u> |
| 18 Proposed tax redetermination      | \$ 45,267.50              |                   | \$23,948.15        |                   |
| 19 Interest through 8/31/09          | 83,530.42                 |                   | 15,236.55          |                   |
| 20 Negligence penalty                | <u>4,526.75</u>           |                   | <u>2,394.83</u>    |                   |
| 21 Total tax, interest, and penalty  | \$133,324.67              |                   | \$41,579.53        |                   |
| 22 Offset                            |                           |                   | - 1,021.61         |                   |
| 23 Payments                          |                           |                   | <u>-11,194.18</u>  |                   |
| 24 Balance due                       | <u>\$133,324.67</u>       |                   | <u>\$29,363.74</u> |                   |
| 25 Monthly interest beginning 9/1/09 | <u>\$452.67</u>           |                   | <u>\$117.32</u>    |                   |

24 These matters had been scheduled for Board hearing on June 9, 2009, but petitioners'  
 25 representative asked for a postponement for medical reasons, which was granted. The matter was  
 26 thereafter rescheduled for hearing for September 1, 2009, but petitioners did not respond to the Notice  
 27 of Hearing. Thus, the Board Proceedings Division informed petitioners that these matters will be  
 28 presented to the Board for decision without oral hearing.

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

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

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

The Department points out that even though the Sheriff's report indicates diesel receipts and

1 log books were stolen, the report does not indicate that the stolen articles were for the audit periods  
2 here at issue and thus fails to establish a reasonable basis for petitioner's incomplete records. As for  
3 the records seized by DOT, the Department notes that even though DOT returned the records to  
4 petitioners in 2007, petitioners have previously indicated that they chose not to examine the records to  
5 refute any audit findings, which implies that the returned records did not contain fuel receipts or other  
6 documentation to support any audit adjustments.

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

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

23 Additionally, Nijjar's understatement of \$45,267.50 computes to an error ratio of 1,096 percent  
24 when compared to reported tax of \$4,129.23. NB reported no tax due and claimed a tax credit of  
25 \$437.07, but the audit disclosed a tax understatement of \$23,948.15. The amount and percentage of  
26 these errors also indicate a standard of conduct below that of a reasonable prudent businessperson. We  
27 find that petitioners were negligent and that the penalties were properly imposed.

