

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petition	:	
of	:	
OK PETROLEUM PRODUCTS CORPORATION	:	DETERMINATION
for Review of a Denial, Suspension, Cancellation or Revocation of a License, Permit or Registration under Article 12-A of the Tax Law.	:	

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Petitioner, OK Petroleum Products Corporation, 850 South Main Street, Farmingdale, New York 11735, filed a petition for review of a denial, suspension, cancellation or revocation of a license, permit or registration under Article 12-A of the Tax Law (File No. 807334).

A hearing was commenced before Thomas C. Sacca, Administrative Law Judge, at the offices of the Division of Tax Appeals, Riverfront Professional Tower, 500 Federal Street, Troy, New York on December 18, 1989 at 10:00 A.M. The hearing was continued to conclusion before Daniel J. Ranalli, Administrative Law Judge, at the offices of the Division of Tax Appeals, Two World Trade Center, New York, New York on February 28, 1990 at 10:45 A.M., with all briefs to be filed by April 30, 1990. Petitioner appeared by Whiteman, Osterman and Hanna (Heather D. Diddel, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Patricia L. Brumbaugh, Esq., of counsel).

ISSUE

Whether sufficient grounds exist to support the Division of Taxation's proposed refusal to license petitioner as a distributor of diesel motor fuel.

FINDINGS OF FACT

The stock of petitioner, OK Petroleum Products Corporation ("OK"), is owned by its sole shareholder and president, John Musacchia. OK Petroleum is engaged in the business of the purchase and sale of gasoline.

On August 19, 1988, OK filed an application for registration as a distributor of diesel

motor fuel under Article 12-A of the Tax Law. The application was dated August 11, 1988. In response to question 18 on the application, which asks whether the applicant or any owner, director, partner or responsible individual has been convicted of a crime within the preceding five years, petitioner responded "no".

Applications for registration as a distributor of diesel motor fuel are reviewed by the Registration/Bond Unit of the Transfer and Transaction Tax Bureau ("TTTB") of the Division of Taxation ("Division"), located in Albany, New York.

On August 24, 1988, TTTB received a copy of a newspaper article which appeared in the August 16, 1988 edition of Newsday. The article was sent by the TTTB unit located in New York City. The article stated that John Musacchia, a chief executive of OK, was convicted on August 15, 1988 by a Federal jury of seven counts of conspiracy to defraud and of evading Federal gasoline taxes.

On August 26 and 29, 1988, in response to the information contained in the newspaper article, TTTB returned to OK its Application for Registration as a Distributor of Diesel Motor Fuel. TTTB advised OK Petroleum that if it still desired to be registered as a distributor of diesel motor fuel, it should update and resubmit the application for further consideration.

On September 1, 1988, OK Petroleum resubmitted its Application for Registration as a Distributor of Diesel Motor Fuel. In response to question 18, petitioner indicated that John Musacchia was convicted on August 15, 1988 of seven counts of aiding and abetting others in filing false forms and failing to pay Federal excise taxes in 1983, pursuant to Internal Revenue Code § 7202. The application further indicated that John Musacchia was convicted in the United States District Court, Eastern District of New York, Suffolk Division. This application was dated August 29, 1988. On November 18, 1988, TTTB notified OK Petroleum that in order to complete the review process, it was necessary for petitioner to provide a certified copy of the record of conviction, including the indictment and jury verdict, relating to the case of John Musacchia.

By way of a letter dated December 1, 1988, James O. Druker, Esq., Mr. Musacchia's

attorney in the criminal matter, forwarded a certified copy of the record of conviction, the jury verdict and a copy of the indictment. Mr. Musacchia was indicted on May 25, 1988, found guilty on seven counts of the indictment on August 15, 1988 and sentenced to serve three years imprisonment on each count, with the prison terms to run concurrently, on October 27, 1988. Mr. Musacchia was also fined \$70,350.00. The conviction was upheld on appeal by the United States Court of Appeals, Second Circuit, on March 21, 1990.

The seven counts on which John Musacchia was convicted were as follows: conspiracy to defraud the Federal government of gasoline excise taxes and to commit offenses under the Internal Revenue Code, specifically 26 USC §§ 7201, 7202 and 7206(2) (18 USC § 371) (count 1); willfully attempting to evade or defeat the excise tax by filing false Quarterly Federal Excise Tax Returns (IRS form 720) for the quarters ended March 31, 1984 and June 30, 1984 (26 USC § 7201) (counts 2 and 4); willfully failing to truthfully account for and pay excise taxes for the quarters ended September 30, 1983, March 31, 1984 and June 30, 1984 (26 USC § 7202) (counts 3, 5 and 7); and willfully attempting to evade or defeat the excise tax by falsely representing that OK was registered for Federal excise tax purposes and possessed a valid Registration for Tax Free Transactions (IRS form 637) (26 USC § 7201) (count 6). On each of counts 2 through 7, Mr. Musacchia was convicted as a principal by reason of his aiding and abetting another to commit the crime (18 USC § 2). The acts which gave rise to the indictment and conviction occurred between July 1983 and July 1984.

The seven counts involved gasoline excise tax of approximately \$1,045,000.00 on 11,600,000 gallons of gasoline.

According to counts 1 through 7 of the indictment, John Musacchia and a co-defendant were involved in a conspiracy to evade and defeat the payment of Federal gasoline excise taxes to the Internal Revenue Service. The indictment alleged that Mr. Musacchia formed two sham petroleum corporations, A.K.A. Petroleum Sales Corporation ("AKA") and C.W.M. Petroleum Corporation ("CWM"), opened business checking accounts and obtained business addresses for the corporations. However, the corporations were operated out of OK's office.

John Musacchia, through OK, AKA and CWM, took possession of gasoline from his supplier, who had received it from various producers. This gasoline was sold by John Musacchia to other distributors and retail service stations. The producers would invoice Musacchia's supplier for the gasoline that was later delivered to OK, AKA and CWM. The supplier would not invoice OK, AKA or CWM, but would instead create false invoices showing tax-free sales to other distributors. The supplier also falsified its books and records to indicate tax-free sales to other distributors. In exchange, the president of the supplier would receive between one and two cents per gallon of gasoline from Musacchia for creating the false invoices and records.

The producers of the gasoline were paid by Musacchia out of the checking accounts of AKA and CWM. The supplier did not receive the Federal excise taxes properly due from OK, AKA or CWM and such taxes were therefore not paid to the Internal Revenue Service. OK had guaranteed payments to the producers for any indebtedness owed the producers by the supplier.

The indictment further alleged, in counts 1 through 7, that Musacchia, as part of the conspiracy, (1) ordered the president of the supplier to file false quarterly Federal excise tax returns which did not reflect \$775,000.00 in taxes from sales of 8,600,000 gallons of gasoline to OK, AKA and CWM; (2) ordered the president of the supplier to fail to truthfully account for and pay over to the Internal Revenue Service Federal gasoline excise taxes in the amount of \$775,000.00 on the sale of 8,600,000 gallons of gasoline sold to OK, AKA and CWM; and (3) attempted to evade Federal gasoline excise taxes in the amount of \$270,000.00 on the sale of 3,000,000 gallons of gasoline by falsely representing that OK was registered and possessed a valid Registration for Tax Free Transactions (IRS Form 637).

On December 19, 1988, the Division issued to OK a notice of proposed refusal to register the applicant as a distributor of diesel motor fuel. The notice set forth two grounds for the Division's determination:

"You have not responded to our earlier communication concerning unpaid liabilities finally determined to be due or delinquent returns. T.L. Sec. 282-a(5), 283(2)(a), 283(2)(g), 283(4).

\* \* \*

You have not filed the automotive fuel tax surety bond or alternative security as requested in our earlier correspondence. T.L. Sec. 282-a(5), 283(2)(g), 283(3), 283(4)."

On March 8, 1989, the Division asserted an additional ground for refusing to register OK as a distributor of diesel motor fuel:

"You have been convicted of a felony bearing on duties and obligations under the Tax Law within the last five years. (T.L. Sec. 283.2(g), 283.4[ii])."

The Division determined that as a condition of OK being registered as a distributor of diesel motor fuel, it would have to file an automotive fuel tax surety bond in the amount of \$48,000.00. The bond amount was computed by multiplying an average monthly taxable gallonage of 50,000 gallons by the tax rate of 16 cents per gallon to arrive at a monthly tax liability of \$8,000.00. That figure was then multiplied by six to compute OK's six-month potential tax liability of \$48,000.00. OK does not contest the bond determination and states that it will immediately file a \$48,000.00 bond should it be determined that the criminal conviction of John Musacchia is not a bar to OK being registered as a distributor of diesel motor fuel.

During the period commencing with OK's application to register as a distributor of diesel motor fuel and continuing through the hearing process, petitioner has conducted its business operations pursuant to temporary authorizations issued by the Division. OK has filed returns of tax on diesel motor fuel during the period September 1988 through August 1989 and has paid all taxes due and owing. Subsequent to Mr. Musacchia's conviction in 1988, the Federal government issued a 637 number for OK to purchase heating oil tax free, by registering OK for tax-free transactions under chapters 31, 32 and 38 of the Internal Revenue Code.

In 1983, OK hired an accounting firm, (Jerome S. Raifman, C.P.A.), to review its books and records, file its tax returns and apprise petitioner of any tax obligations. At the hearing, Mr. Raifman and one of his staff accountants testified that Mr. Musacchia never refused to pay any State taxes that were determined to be due. They also testified that Mr. Musacchia never asked either of them to conceal OK's liabilities or assets, nor had they seen or heard evidence of any improper conduct by Mr. Musacchia or OK. Finally, Mr. Raifman testified that any State

taxes collected from OK's activities had been remitted to the Department of Taxation and Finance.

#### SUMMARY OF THE PARTIES' POSITIONS

Petitioner asserts that Tax Law § 283(4)(ii) does not require the Division of Taxation to deny OK's registration as a distributor of diesel motor fuel, but rather, provides that the Division must exercise its discretion to make such a determination after considering all the surrounding circumstances. Petitioner contends that there are sufficient mitigating factors to conclude that OK and Mr. Musacchia do not pose a threat to the State's fiscal interests.

Petitioner points to the fact that (1) OK has hired qualified accountants to handle its tax matters; (2) OK has paid all taxes due; (3) OK has properly filed its diesel motor fuel returns; (4) the acts committed by John Musacchia that led to his conviction occurred six to seven years ago; (5) the Federal government has issued a 637 number for OK to purchase heating oil products tax free; (6) OK and John Musacchia have operated openly and properly since the conviction; and (7) OK is willing to file the required bond if registration is approved.

The Division contends that the acts which led to the Federal felony conviction of Mr. Musacchia would be considered a felony conviction in New York State pursuant to Article 12-A of the Tax Law. Petitioner has not contested this position. Therefore, the Division argues, it was proper to deny OK's registration as a distributor of diesel motor fuel as John Musacchia's conviction involved acts bearing on OK's duties and obligations under Article 12-A of the Tax Law.

#### CONCLUSIONS OF LAW

A. Tax Law § 282-a(2) provides that the registration provisions of section 283 are applicable to the licensing of diesel motor fuel distributors. The 1988 diesel amendments represent the latest of a series of statutory revisions enacted in response to widespread problems in the administration and collection of taxes on motor fuels.

Tax Law § 283-b was enacted by Laws of 1986 (ch 276) and was the culmination of legislative and executive efforts to combat massive evasion of the excise and sales taxes

imposed on motor fuel by Articles 12-A and 28 and pursuant to the authority of Article 29 of the Tax Law. Chapter 276 followed a restructuring of the imposition and enforcement of these taxes a year earlier by chapter 44 of the Laws of 1985.

The memorandum in support of chapter 44 discussed the large revenue loss caused by evasion of the taxes on motor fuel:

"This bill is aimed at deterring tax evasion with respect to motor fuel sold in this State. This evasion has promoted unfair competition and erosion of the State and local tax bases for which the Governor's Task Force on Administration of Taxes on Petroleum Products and Businesses estimates an annual State local loss of at least \$90 million. Industry estimates of the combined State and local revenue loss range as high as \$200 million annually." (Memorandum in Support, Governor's Bill Jacket, L 1985, ch 44; see Memorandum of Senator James J. Lack, 1985 NY Legis Ann, at 55).

Two basic methods of evasion were identified: (1) the daisy-chain scheme whereby multiple tax-free sales of motor fuel were made to obfuscate liability and the taxable event was a sale by a non-existent distributor and (2) the bootlegging scheme whereby motor fuel was imported into the State and sold without being reported (see Memorandum in Support, Governor's Bill Jacket, L 1985, ch 44; Memorandum of Senator James J. Lack, 1985 NY Legis Ann, at 55; Governor's Approval Memorandum, 1985 NY Legis Ann, at 57).

Chapter 44 combatted the daisy-chain scheme by eliminating tax-free sales between registered distributors and imposing the excise tax and a prepaid sales tax on the importation of motor fuel into the State (Tax Law §§ 284, 1102). Thus, with respect to motor fuel imported into the State, the first person in the distribution chain in the State, the importer, is liable for the taxes. In order to import and distribute motor fuel in the State, a business must be registered as a distributor under Tax Law § 283. Chapter 44 amended Tax Law § 283 to set forth grounds upon which the Division may refuse to issue a registration as a distributor to an applicant (Tax Law § 283[2]) or may cancel or suspend a registration (Tax Law § 283[4]).

In addition to the taxation and registration amendments of chapter 44, the Legislature in 1985 enacted amendments to the penalty and criminal enforcement provisions of the Tax Law by chapter 65 of the Laws of 1985, the Omnibus Tax Equity and Enforcement Act ("Omnibus"). Various existing criminal provisions were transferred into a new Article 37 by Omnibus and

new provisions were also enacted.

Having addressed the daisy chain and bootlegging problems for motor fuels, the Legislature then addressed evasion and avoidance of the tax imposed on diesel motor fuel (L 1988, ch 261, §§ 67 - 105). The 1988 diesel amendments required diesel distributors to be registered in order to engage in the sale of the product (Tax Law § 283-a[2]). The earlier motor fuel amendments required registration only to engage in importation for: sale, distribution, storage or use (Tax Law §§ 282, 283[1]; L 1985, ch 44); a wholesaler not registered as a distributor was permitted to sell motor fuel purchased within the State if a registered distributor had certified that the tax had been paid by the registered distributor who imported it (Tax Law § 285-a). In contrast, under the new diesel distributor statute, registration is required to "make a sale or use..., import or cause the importation...or produce, refine, manufacture or compound Diesel motor fuel within the state..." (Tax Law § 282-a[2]). In addition, the amendments placed the incidence of taxation upon the first sale or use of the product within the State (Tax Law § 283-a[1]).

B. Tax Law § 283(1) provides, in part, that:

"The department of taxation and finance, upon the application of a person, shall register such person as a distributor under this article except as provided in subdivisions two and five of this section."

The statute grants to the Commissioner of Taxation and Finance ("Commissioner") the discretion to refuse to register an applicant as a distributor of diesel motor fuel under certain circumstances enunciated by the statute. The Commissioner may refuse to register an applicant where, inter alia, he ascertains that:

"the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, or an employee of such applicant under a duty to file a return under or pursuant to the authority of this article or to pay the taxes imposed by or pursuant to the authority of this article on behalf of the applicant, has committed any of the acts specified in subdivision four of this section within the preceding five years..." (Tax Law § 283[2][g]).

C. Subdivision four provides for the cancellation or suspension of the registration of any distributor upon its failure, inter alia, "to comply with any of the provisions of [Article 12-A] or



article twenty-eight" (Tax Law § 283[4]). It further provides that a registration may be cancelled or suspended if the Commissioner determines that a registrant or an officer, director, shareholder, employee or partner of the registrant who as such officer, director, shareholder, employee or partner is under a duty to act for such registrant:

"has been convicted in a court of competent jurisdiction, either within or without the state, of a felony, within the meaning of subdivision eight of this section, bearing on such distributor's duties and obligations under this chapter" (Tax Law § 283[4][ii]).

Tax Law § 283(8)(b) states that a conviction in a court of the United States shall be deemed a conviction of a felony for the purposes of Article 12-A if the crime, whether a felony or a misdemeanor in the other jurisdiction, is a felony in New York.

D. As Tax Law § 283(8)(b) does not provide an express standard for making the comparison between the crime in another jurisdiction and a particular felony in New York, it is necessary to look for guidance to other similar New York laws. Judiciary Law § 90(4) provides for the disbarment of an attorney upon conviction of a felony. The Court of Appeals has held, with respect to Federal convictions in this context, that "the felony in the other jurisdiction need not be a mirror image of the New York felony, precisely corresponding in every detail, but it must have essential similarity" (Matter of Margiotta, 60 NY2d 147; see Matter of Cahn v. Joint Bar Assn. Grievance Committee, 52 NY2d 479; Matter of Chu v. Assoc. of Bar of City of New York, 42 NY2d 490). In determining "essential similarity", courts have looked to the underlying nature of the offenses in the other jurisdiction (Matter of Best, 126 AD2d 286), the accusatory instrument (Matter of Goldblatt, 138 AD2d 1) or the plea allocation (Matter of Reich, 128 AD2d 329).

E. It is uncontroverted that John Musacchia's Federal felony conviction would be a conviction of a felony in New York State. Tax Law § 1812(a), which became effective November 1, 1985, states:

"Attempt to evade or defeat tax. -- Any person who willfully attempts in any manner to evade or defeat any tax imposed by article twelve-A of this chapter or the payment thereof shall, in addition to other penalties provided by law, be guilty of a felony...."

Section 7201 of the Internal Revenue Code, virtually identical to Tax Law § 1812(a), provides:

"Attempt to evade or defeat tax. Any person who willfully attempts in any manner to evade or defeat any tax imposed by this title or the payment thereof shall, in addition to other penalties provided by law, be guilty of a...felony."

Mr. Musacchia was convicted of violating Internal Revenue Code § 7201 under counts 1, 2, 4 and 6 of the indictment. These four counts covered the total amount of tax that Mr. Musacchia was convicted of evading and involved the quarters ending 9/30/83, 3/31/84 and 6/30/84.

Counts 3, 5 and 7 of the indictment, which involved the failure to truthfully account for and pay over to the Internal Revenue Service Federal gasoline excise taxes, covered the same amount of tax and the same quarters. The acts underlying the Federal convictions, consisting of a conspiracy to evade the payment of Federal gasoline excise taxes through false books and records, false invoices and false tax returns, would be sufficient to constitute a felony under Tax Law § 1812(a).

F. At the time the acts that led to Mr. Musacchia's Federal conviction were committed, the predecessor to Tax Law § 1812(a), section 289-b(2), was in effect. Such section provided that:

"Any distributor or owner who or which files or causes to be filed any return or statement, required or permitted by this article, which is willfully false shall be guilty of a felony" (Tax Law former § 289-b[2], repealed L 1985, ch 44, § 13, also repealed by L 1985, ch 65, § 14, which was repealed by L 1985, ch 138, § 2).

Section 7202 of the Internal Revenue Code provides:

"Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall...be guilty of a felony...."

Section 7206(2) of the Internal Revenue Code is virtually identical to Tax Law former § 289-b(2) and provides:

"Any person who willfully aids or assists in, or procures, counsels, or advises the preparation or presentation under, or in connection with any matter arising under, the internal revenue laws, or a return, affidavit, claim, or other document, which is fraudulent or is false as to any material matter... shall be guilty of a felony."

Mr. Musacchia was convicted of violating Internal Revenue Code § 7202 under counts 3, 5 and 7 of the indictment and of violating Internal Revenue Code § 7206(2) under count 1 of the

indictment. The acts underlying the Federal conviction as to counts 1, 2 and 4 involved the aiding of another individual to file false Federal excise tax returns. Willfully aiding another to unlawfully fail to truthfully account for and pay over Federal gasoline excise taxes is essentially similar to causing to be filed a return which is willfully false, under Tax Law § 289-b(2).

G. If the Division is not precluded from refusing to register petitioner on the basis of its criminal conviction, neither is it required to deny registration on that basis. Tax Law § 283 specifies those acts which the Division may consider in exercising its discretionary authority to register motor fuel distributors. It does not direct the Division to refuse to register on those grounds. The Division's power to register or to refuse to register motor fuel distributors, to suspend or cancel that registration or to reinstate the enjoyment of the rights granted by registration are nonseverable parts of its discretionary licensing authority. Generally, a licensing agency's discretion must be exercised in conformity with the express or clearly implied purpose of the licensing law (Matter of Bologno v. O'Connell, 7 NY2d 155, 196 NYS2d 90). The licensing authority may not deny a license on grounds which under the applicable statute are not to be considered or upon a ground which is not supported by the evidence (Matter of Maytum v. Nelson, 53 AD2d 221, 385 NYS2d 654, 658).

OK has not contested the Division's position that Mr. Musacchia's Federal conviction would be a felony conviction in New York State. It argues that, when this fact is weighed against its history of tax payments, its filing of diesel motor fuel returns, its hiring of qualified accountants to handle its tax matters, the issuance by the Federal government of a 637 number and the time which has elapsed since the acts which led to Mr. Musacchia's conviction occurred, a refusal to register OK as a diesel motor fuel distributor is an excessive penalty.

In reviewing the licensing decisions of administrative agencies, the courts are confined to questions of whether the determination is supported by substantial evidence and whether the decision under review amounts to an abuse of the agency's discretion (CPLR § 7803[3], [4]; Pell v. Board of Education, 34 NY2d 222, 356 NYS2d 833). The review of a decision of the Division of Taxation by the Division of Tax Appeals is not as limited as that of an appellate

court (see Matter of Harold W. Small, Tax Appeals Tribunal, August 11, 1988). However, standards applied by the courts in determining whether an abuse of discretion has occurred in the context of a licensing determination are useful in weighing the arguments presented by the parties here. Where the grounds for denial of a license are clearly proven, as they were here, the test used by the courts to determine whether an agency has abused its discretion is whether the penalty imposed upon the license is so disproportionate to the misconduct, in light of all of the circumstances presented, as to be shocking to one's sense of fairness (see Matter of Pell v. Board of Educ., supra). The Pell court elaborated on this standard.

"Of course, terminology like 'shocking to one's sense of fairness' reflects a purely subjective response to the situation presented and is hardly satisfactory. Yet its usage has persisted for many years and through many cases. Obviously, such language reflects difficulty in articulating an objective standard. But this is not unusual in the common-law process until, by the impact of sufficient instances, a more analytical and articulated standard evolves. The process must in any event be evolutionary. At this time, it may be ventured that a result is shocking to one's sense of fairness if the sanction imposed is so grave in its impact on the individual subjected to it that it is disproportionate to the misconduct, incompetence, failure or turpitude of the individual, or to the harm or risk of harm to the agency or institution, or to the public generally visited or threatened by the derelictions of the individuals. Additional factors would be the prospect of deterrence of the individual or of others in like situations, and therefore a reasonable prospect of recurrence of derelictions by the individual or persons similarly employed. There is also the element that the sanctions reflect the standards of society to be applied to the offense involved." ( Matter of Pell v. Board of Educ., supra at 234.)

H. With the Pell court's opinion acting as guidance, it is found that the Division's refusal to register OK as a diesel motor fuel distributor is an appropriate sanction in light of all the circumstances presented.

Mr. Musacchia was involved in a scheme to defraud the Internal Revenue Service of excise tax in the amount of \$1,045,000.00 on the sale of 11,600,000 gallons of gasoline. The conspiracy, which involved a substantial amount of tax, covered a period of only nine months (quarters ending 9/30/83, 3/31/84 and 6/30/84). It involved the formation of two sham corporations with checking accounts and business addresses that were used to hide the gasoline sales. Mr. Musacchia paid the president of another corporation to create false books and records and false invoices which showed sales to other distributors rather than to OK. He used the checking accounts of the sham corporations to surreptitiously pay for the gasoline delivered

to OK. Mr. Musacchia aided another to file false quarterly Federal excise tax returns, he falsely represented that OK was registered and possessed a valid registration for tax-free transactions and failed to pay the Federal excise taxes on OK's purchases of gasoline.

Weighed against John Musacchia's Federal conviction for involvement in a scheme to defraud the Internal Revenue Service of \$1,045,000.00 in gasoline excise taxes are the circumstances surrounding Mr. Musacchia's and OK's conduct since those acts were committed. OK argues that the State would not be at financial risk in registering OK as a distributor of diesel motor fuel because of its filing and payment record, its hiring of qualified accountants to handle its tax matters and the proper manner in which business has been conducted since the acts that led to the conviction were committed.

These factors are insufficient to outweigh Mr. Musacchia's deliberate actions in creating a scheme to evade over one million dollars in excise taxes due on gasoline sales, his Federal conviction as a result of such acts, the direct relationship between the acts he was convicted of and the responsibilities of a distributor of diesel motor fuel in New York State and the purpose and intent of the extensive legislation that was enacted to combat tax evasion schemes similar to the one created and operated by Mr. Musacchia. Under these circumstances, the Division's refusal to register OK as a distributor of diesel motor fuel does not appear to be unfair.

I. The petition of OK Petroleum Products Corporation is denied, and a Notice of Refusal to Register may be issued immediately.

DATED: Troy, New York

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ADMINISTRATIVE LAW JUDGE