

STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition	:	
of	:	
MAJOR OILS	:	DETERMINATION
(GEORGE DUNN D/B/A MAJOR OILS)	:	
for a Hearing with Regard to a Bond Required	:	
to be Filed Under Section 283 of Article 12-A	:	
of the Tax Law.	:	

Petitioner, Major Oils (George Dunn d/b/a Major Oils), 455 Empire Boulevard, Rochester, New York 14609, filed a petition for a hearing with regard to a bond required to be filed under Section 283 of Article 12-A of the Tax Law (File No. 76293).

A hearing was held before Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building #9, W. A. Harriman State Office Campus, Albany, New York, on June 3, 1987 at 1:15 P.M. Petitioner appeared by George Dunn. The Audit Division appeared by John P. Dugan, Esq. (Thomas C. Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division properly required petitioner, as a condition of maintaining its registration as a motor fuel distributor, to file a surety bond in the amount of \$100,000.00.

FINDINGS OF FACT

1. Petitioner, Major Oils, a sole proprietorship operated by George Dunn, is currently registered as a motor fuel distributor located in Rochester, New York. Prior to George Dunn's personal bankruptcy in or about 1983 (which included bankruptcy of the sole proprietorship, petitioner Major Oils), petitioner

had been involved in reselling petroleum products purchased primarily from Sipco Corporation at Sipco's Buffalo, New York storage facilities. The petroleum products involved included gasoline and lubricating oils, including aviation lubricating oil. Petitioner sold the products to various users situated at or near airports, and estimated that its volume of business during its period of operation (prior to 1984) varied from 10,000 gallons to as much as 50,000 gallons of product per month.

2. Petitioner has been a registered distributor of motor fuels for a number of years prior to the present. As part of the Audit Division's ongoing review of motor fuel distributors, petitioner was requested to file an Application for Motor Fuel Tax and Sales and Use Tax Reregistration (Form TP-128.4), and a Certificate of Reregistration questionnaire (Form TP-128.5). Petitioner promptly completed these forms and returned the same to the Audit Division on or about January 20, 1987.

3. The above-noted forms indicated that petitioner operated as a sole proprietorship and, when doing business, had operated as a petroleum broker. The forms indicated that petitioner does not at present have any surety bond on file with the Department, has no history of tax delinquencies or nonpayments, has not been convicted of any crimes in the last five years, and has not at any time had its registration as a motor fuel distributor or its Certificate of Authority suspended or revoked. Petitioner did not submit a financial statement of any kind to the Audit Division for review, and stated at Item 16 of its Application for Motor Fuel Tax and Sales and Use Tax Reregistration that "Major Oils is not presently purchasing and/or reselling any product."

4. By a letter dated April 10, 1987, the Audit Division advised petitioner that its review of petitioner's reregistration documents was completed and

that, as a result, the Audit Division was proposing that petitioner provide security equal to \$100,000.00 as a condition of continued registration as a motor fuel distributor. The Audit Division's calculation sheet with respect to the requested security bond, dated March 31, 1987, indicated that for the six month period spanning January 1986 through June 1986 petitioner had no opening inventory, no receipts and no closing inventory.

5. By letters dated April 17, 1987 and April 20, 1987, petitioner requested a hearing with regard to the Audit Division's request for a \$100,000.00 surety bond. At hearing, petitioner noted that it has done no business since 1983, but indicated a desire to maintain its registration as a motor fuel distributor with the hope that petitioner may be able to commence business at some point in the future. Petitioner does not anticipate that any of its future business would involve importing petroleum products into New York State. Petitioner requests, in light of the fact that it has done no business in approximately four years and noting it has, at present, no firm commitments to do any business, that the requirement for a bond be abated or reduced to an amount less than \$100,000.00.

6. Audit Division computer printouts and copies of petitioner's tax returns confirm that from at least September 12, 1983, petitioner has done no business as a motor fuel distributor. During the period of its inactivity, petitioner has not incurred the expense of having audited financial statements prepared.

7. Petitioner asserts that inasmuch as its tax liability, not only for the most recent six month period but actually for a period of approximately three and one-half years, has been zero, there should be no bond or a considerably reduced bond to reflect its current (non)operating practice. Finally,

petitioner requests the Commission to consider the cost involved in obtaining a surety bond.

CONCLUSIONS OF LAW

A. That section 283(3) of the Tax Law provides, in part, as follows:

"[t]he tax commission shall require a distributor to file with the department of taxation and finance a bond issued by a surety company..., in such amount as the tax commission may fix, in an amount determined in accordance with rules and regulations prescribed by it, to secure the payment of any sums due from such distributor (1) pursuant to [Article 12-A] and (11) pursuant to articles twenty-eight and twenty-nine of this chapter with respect to sales and uses of motor fuel. The tax commission shall require that such a bond or other security be filed before a distributor is registered, and the amount thereof may be increased at any time when in its judgment the same is necessary as a protection of the revenues under [Article 12-A] and articles twenty-eight and twenty-nine of this chapter."

B. That 20 NYCRR 414.2(b) provides as follows:

"Bond Required. In all cases a distributor is required to file with the department a bond, the amount of which shall be at least adequate to meet the requirements of paragraphs (1) through (6) of this subdivision."

C. That paragraphs (1) through (6) of 20 NYCRR 414.2 provide, in general, the various methods by which the amount of the bond or other security required of a distributor is to be determined. Paragraph (5) of 20 NYCRR 414.2 provides as follows:

"However, notwithstanding the provisions of paragraphs (2), (3), (4) and (6) of this subdivision, the amount of any bond required to be filed pursuant to the provisions of this section shall in no event be less than \$50,000. Additionally, where the amount of liability of a distributor cannot be determined, for example where the distributor is unable to furnish an average monthly gallonage sold, a bond of not less than \$100,000 will be required if the distributor's ratio of current assets to current liabilities is at least one to one and the net worth does not equal or exceed \$100,000."

D. That paragraph (6) of 20 NYCRR 414.2 provides as follows:

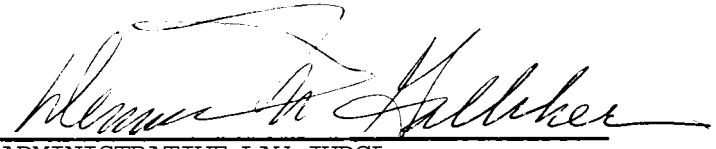
"In addition to paragraphs (1) through (5) of this subdivision, the amount of bond required may be adjusted where any information indicates the need for a bond or other security in a greater or lesser amount."

E. That, mindful of the requirement that a bond must be filed, but taking into account that petitioner is at present inactive with regard to conducting any petroleum-related business and the fact that petitioner has been inactive for a period of nearly four years, it is appropriate that petitioner file a bond (or other security) in the minimum amount of \$50,000.00. This requirement takes into account petitioner's current and recent past operational status, but reflects that petitioner does maintain its registration and may, in the future, again become involved to some degree in the business of distribution of petroleum products (cf. Matter of Benak Corp., State Tax Commn., January 15, 1985).

F. That the petition of Major Oils is granted to the extent that the amount of the bond or other security to be filed as a condition of maintaining registration is reduced to \$50,000.00.

DATED: Albany, New York

SEP 03 1987


ADMINISTRATIVE LAW JUDGE