

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of
Award Energy Corp.

:
:
: AFFIDAVIT OF MAILING

For a Hearing with Regard to a Bond Required under :
Section 283 of Article 12-A of the Tax Law.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Award Energy Corp. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Award Energy Corp.
500 Old Country Rd.
Garden City, NY 11530

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the petitioner herein and that the address set forth on said wrapper is the last known address of the petitioner.

Sworn to before me this
31st day of January, 1984.

David Parchuck

James A. DeGard
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition
of

Award Energy Corp.

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AFFIDAVIT OF MAILING

for a Hearing with Regard to a Bond Required under:
Section 283 of Article 12-A of the Tax Law.

State of New York }

ss.:

County of Albany }

David Parchuck, being duly sworn, deposes and says that he is an employee of the State Tax Commission, that he is over 18 years of age, and that on the 31st day of January, 1984, he served the within notice of Decision by certified mail upon Basil A. Paterson the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Basil A. Paterson
Suoizzi, English & Cianciulli
One Huntington Quadrangle
Melville, NY 11747

and by depositing same enclosed in a postpaid properly addressed wrapper in a post office under the exclusive care and custody of the United States Postal Service within the State of New York.

That deponent further says that the said addressee is the representative of the petitioner herein and that the address set forth on said wrapper is the last known address of the representative of the petitioner.

Sworn to before me this
31st day of January, 1984.

David Parchuck

James A. Haggard

Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK
STATE TAX COMMISSION
ALBANY, NEW YORK 12227

January 31, 1984

Award Energy Corp.
500 Old Country Rd.
Garden City, NY 11530

Gentlemen:

Please take notice of the Decision of the State Tax Commission enclosed herewith.

You have now exhausted your right of review at the administrative level. Pursuant to section(s) 283 of the Tax Law, a proceeding in court to review an adverse decision by the State Tax Commission may be instituted only under Article 78 of the Civil Practice Law and Rules, and must be commenced in the Supreme Court of the State of New York, Albany County, within 4 months from the date of this notice.

Inquiries concerning the computation of tax due or refund allowed in accordance with this decision may be addressed to:

NYS Dept. Taxation and Finance
Law Bureau - Litigation Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2070

Very truly yours,

STATE TAX COMMISSION

cc: Petitioner's Representative
Basil A. Paterson
Suozzi, English & Cianciulli
One Huntington Quadrangle
Melville, NY 11747

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
	:	
of	:	
	:	
AWARD ENERGY CORP.	:	DECISION
	:	
for a Hearing with Regard to a Bond Required	:	
under Section 283 of Article 12-A of the Tax	:	
Law.	:	

Petitioner, Award Energy Corp., 500 Old Country Road, Garden City, New York 11530, filed a petition for a hearing with regard to a bond required under section 283 of Article 12-A of the Tax Law.

A formal hearing was held before Doris E. Steinhardt, Hearing Officer, at the offices of the State Tax Commission, Two World Trade Center, New York, New York, on December 14, 1983 at 10:00 A.M., with additional documentary evidence submitted on December 23, 1983. Petitioner appeared by Suozzi, English & Cianciulli, P.C. (Basil A. Paterson, Esq. and John V. N. Klein, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Anne W. Murphy, Esq., of counsel).

ISSUE

Whether, as a condition of petitioner's continued registration as a motor fuel distributor, it was properly required to file a surety bond in the amount of \$32,000.00 (in addition to a certificate of deposit in the amount of \$50,000.00 previously posted as security), pursuant to section 283 of the Tax Law.

FINDINGS OF FACT

1. Since October 18, 1982, petitioner, Award Energy Corp. ("Energy"), has been a registered distributor of motor fuel in this state and has timely filed returns and paid tax under Article 12-A of the Tax Law on a monthly schedule.

Upon registration, petitioner was required to and did furnish security for the payment of taxes in the form of a certificate of deposit in the amount of \$50,000.00 (Chemical Bank Certificate of Deposit 849-534967).

2. On or about January 27, 1983, in the course of reviewing the adequacy of security furnished by all New York registered distributors, the Audit Division requested Energy to submit a Motor Fuel Distributor Information Report and its most recent certified financial statement. The written request stated, in part:

"To enable us to determine the appropriate amount of surety bond required to be filed by you, if any, the attached Motor Fuel Distributor Information Report, Form TP-187.16, must be completed and filed with this office by February 28, 1983. A copy of your most recent certified financial statement must accompany your application. Failure to receive the completed information report and certified financial statement by the due date may result in the cancellation of your registration as a distributor of gasoline and similar motor fuels."

3. On or about March 7, 1983, petitioner filed the requested report, along with a financial statement prepared, but not certified, by Schuckman & Co., CPAs. According to the information report, petitioner had a net worth of \$48,355.09; for the period beginning October 18, 1982 and ending with the date of the report, petitioner incurred a motor fuel tax liability under Article 12-A in the amount of \$179,906.72; and petitioner purchased approximately 350,000 gallons of fuel monthly from various suppliers. Petitioner's financial statements, dated December 31, 1982, revealed current assets (consisting of cash, accounts receivable and inventory) of \$622,163.86 and current liabilities (consisting of accounts payable and excise and sales taxes payable) of \$439,927.84 for an asset-to-liability ratio of 1.414:1, and supported petitioner's net worth as claimed on its information report.

4. Audit Division excise tax examiners reviewed petitioner's report and financial statements with reference to certain policy guidelines. The guidelines were developed to define recurring problem areas in the re-registration of distributors and to propose solutions thereto. The guidelines set forth a current ratio test (current assets divided by current liabilities) and a net worth test, each of which a distributor must satisfy to avoid the necessity of posting security. Under the guidelines: (a) if a distributor's current ratio is less than 1:1, a bond is requested in an amount equivalent to the excess of current liabilities over current assets; (b) if the ratio is at least 1:1 but net worth is insufficient to cover six months' motor fuel tax liability, a bond is requested in an amount equivalent to the excess of such tax liability over net worth; and (c) if the ratio is less than 1:1 and net worth is less than six months' tax liability, a bond is requested in an amount equal to the excess of current liabilities over current assets, plus the excess of the tax liability over net worth. In no event will a distributor be required to post a bond exceeding six months' tax liability.

Because petitioner's information report and financial statement disclosed that the ratio of current assets to current liabilities exceeded 1:1, and net worth was inadequate to meet six months' motor fuel tax liability, the Audit Division required petitioner to post a security in the amount of \$82,000.00, calculated as shown below.

Six months' motor	
fuel tax liability	\$179,907
Net worth	<u>48,355</u>
Difference	\$131,552
Bond in effect	<u>50,000</u>
Additional bond	\$ 81,552*

* Rounded to \$82,000

The Audit Division did not review Energy's books and records but relied on the information provided by Energy in its report and statement as aforesaid.

5. By letter dated April 1, 1983, the Audit Division advised petitioner of its determination, as follows:

"As a condition of your continued registration as a motor fuel distributor, it will be necessary for you to post a security in the amount of \$82,000 which is in addition to the above noted Certificate of Deposit [849-534967]... Failure to post the required security by May 15, 1983 will result in the cancellation of your registration as a New York State motor fuel distributor."

6. Petitioner's principal argument in this proceeding is that commencing January, 1983, its methods of operation have changed so as to dramatically reduce its tax liability; petitioner consequently requests elimination of any bond requirement.

7. During 1982, petitioner's general practice was to purchase gasoline tax-free (as a registered distributor) and to sell to non-registered distributors or retailers, charging, collecting and remitting the Article 12-A tax. The tax collected provided a float, or source of working capital, which petitioner deemed advantageous. In January, 1983, however, petitioner began to aggressively solicit the business of other registered distributors, and its current emphasis is on purchasing tax-free and selling tax-free to such distributors. Petitioner has reduced its retail business and purchases tax-paid gallons to supply retailers. Only a small portion of petitioner's overall operations consists in purchasing tax-free and selling tax-paid to retailers (specifically, several Sunoco service stations). Petitioner's monthly motor fuel tax returns reflect these modifications in its business practices.

<u>PERIOD</u>	<u>MOTOR FUEL TAX PAID</u>
1/83	\$46,921
2/83	4,330
3/83	5,333
4/83	688
5/83	674
6/83	320
7/83	0
8/83	2,419
9/83	4,628
10/83	943
11/83	0*

* Tentative amount, return not yet filed

CONCLUSIONS OF LAW

A. That pursuant to section 283 of Article 12-A of the Tax Law, the Tax Commission is authorized to require any distributor of motor fuel to file with the Department of Taxation and Finance a surety bond in such amount as the Commission may fix, to secure the payment of sums due from the distributor under such article. The Commission may require that the bond be filed before the distributor is registered, or at any time when in its judgment the filing of a bond is necessary as a protection to the revenues under Article 12-A. The distributor's registration may be cancelled for failure to file a bond when required.

B. That in determining the need for and amount of a bond as security for the payment of sums due under Article 12-A, consideration is given to the distributor's overall financial situation, including its history of timely filing motor fuel tax returns and remitting the tax. And, review of all relevant factors may indicate a departure from the application of the current ratio and/or net worth standards to be warranted in a particular instance.

Matter of Simon Oil Co., Inc., State Tax Comm., August 12, 1983.

C. That in light of the reduction in petitioner's 1983 tax liability to a level at which the net worth standard is satisfied,¹ and also its compliance record, the posting of a security in the amount of \$50,000.00 is adequate and no additional security is necessary. Presently, the majority of petitioner's sales are tax-free, to other registered distributors; with regard to a large portion of petitioner's taxable sales, it has elected to pay the tax upon purchasing the fuel. We note that petitioner will be required to re-register for the year 1984, and its financial picture will again, at that time, be subject to re-examination.

D. That the petition of Award Energy Corp. is granted to the extent indicated in Conclusion of Law "C", and the Audit Division is directed to continue petitioner's registration without the necessity of any additional bond.

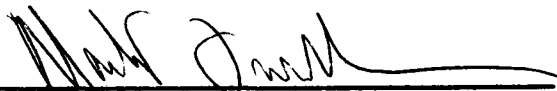
DATED: Albany, New York

JAN 31 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER

¹ Average monthly tax liability 1/83 - 11/83 = \$6,023
\$6,023 x 6 = \$36,138