

STATE OF NEW YORK

STATE TAX COMMISSION

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In the Matter of the Petition :  
of :  
Barrier Oil Corp. : AFFIDAVIT OF MAILING  
for a Hearing with Regard to a Bond Required :  
under Section 283 of Article 12-A of the Tax :  
Law. :

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State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of March, 1986, he/she served the within notice of decision by certified mail upon Barrier Oil Corp., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Barrier Oil Corp.  
Attn: William Jeffers, Pres.  
184 West Main Street  
Tarrytown, NY 10591

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  
18th day of March, 1986.

David Parchuck

Daniel J. Connolly  
Authorized to administer oaths  
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

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State of New York :

ss.:

County of Albany :

David Parchuck/Connie Hagelund, being duly sworn, deposes and says that he/she is an employee of the State Tax Commission, that he/she is over 18 years of age, and that on the 18th day of March, 1986, he/she served the within notice of decision by certified mail upon Thomas W. Maroney, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Thomas W. Maroney  
Walsh, Maroney & Ponzini  
14 North Broadway  
Tarrytown, NY 10591

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  
18th day of March, 1986.

*Daniel Parchuck*

*Daniel J. Ponzini*  
Authorized to administer oaths  
pursuant to Tax Law section 174

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

March 18, 1986

Barrier Oil Corp.  
Attn: William Jeffers, Pres.  
184 West Main Street  
Tarrytown, NY 10591

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) 288 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: Taxing Bureau's Representative

Petitioner's Representative:  
Thomas W. Maroney  
Walsh, Maroney & Ponzini  
14 North Broadway  
Tarrytown, NY 10591

STATE OF NEW YORK

STATE TAX COMMISSION

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

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Petitioner, Barrier Oil Corp., Attn: William Jeffers, Pres., 184 West Main Street, Tarrytown, New York, 10591, 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 Dennis M. Galliher, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York on November 20, 1984 at 11:00 A.M. Petitioner appeared by Walsh, Maroney & Ponzini, Esqs. (Thomas W. Maroney, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (James Della Porta, 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 \$400,000.00.

#### FINDINGS OF FACT

1. Petitioner, Barrier Oil Corp. ("Barrier"), is a motor fuel distributor located in Tarrytown, New York.
2. By a letter dated July 27, 1984, the Audit Division advised petitioner as follows:

"In accordance with Section 414.1(c) of the Motor Fuel Tax Regulations, we are conducting a periodic review of motor fuel distributors to determine whether a surety bond should be required or a surety bond already on file is sufficient to safeguard the revenue due under the Motor Fuel Tax Law.

To assist us in making this determination, please send a copy of your current unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by him. This financial statement will be analyzed together with your motor fuel tax account and a bond determination made.

Failure to submit a copy of your current certified financial statement within 30 days of the date of this letter will leave us no alternative but to make a bond determination on the basis of available information."

3. The above noted letter was followed by a subsequent letter to petitioner from the Audit Division, dated September 27, 1984, which provided as follows:

"Inasmuch as you have failed to submit a copy of your current unqualified certified financial statement, in accordance with section 414 of the Motor Fuel Tax Regulations effective January 18, 1984, it will be necessary for you to post a surety bond in the amount of \$400,000.

\* \* \*

Failure to post the surety bond by November 13, 1984 will result in the cancellation of your registration as a New York State motor fuel distributor."

4. By a letter dated October 2, 1984, petitioner submitted its most recent financial statements in support of its claim that a bond was not required. Such statements, providing information as of June 30, 1984 (and comparative information to June 30, 1983), were not unqualified statements certified by a certified public accountant. The statements were, however, prepared by certified public accountants (the firm of Corn, Greenhaus & Co.) and included the following statement:

"We have compiled the accompanying combined balance sheets of Barrier Oil Corp., Barrier Gasoline Service, Inc. and Barrier Energy Systems, Inc. as of June 30, 1984 and 1983, and the related statements of income and retained earnings

and changes in financial position for the six months then ended, in accordance with standards established by the American Institute of Certified Public Accountants.

A compilation is limited to presenting in the form of financial statements information that is the representation of management. We have not audited or reviewed the accompanying financial statements and, accordingly, do not express an opinion or any other form of assurance on them."

5. By a letter dated October 30, 1984, the Audit Division advised petitioner, inter alia, that the bond of \$400,000.00 was still required, but that the date by which such bond was required to be filed was extended to December 3, 1984.

6. Analysis of the financial statements submitted by petitioner reveals the following information:

- a.) current ratio  $\frac{\$ 904,830.00}{\$1,001,301.00} = .90:1$
- b.) net worth (assets less liabilities) = \$285,054.00
- c.) six month's tax liability (2/84 - 7/84) = \$400,366.21

7. Petitioner was incorporated in or about early 1973, and has been doing business continuously since that time. The business was started as a one truck - two man operation, with petitioner's two shareholders, William Jeffers and his brother Wayne Jeffers, servicing approximately forty customers. Petitioner's business has grown steadily and, at present, petitioner employs approximately 38 persons on a full-time basis and several others on a part-time basis. A major step in such expansion was the acquisition of Premium Petroleum Products in or about early 1982, which acquisition added approximately 146 commercial accounts and 56 gasoline station outlets to petitioner's business.

8. Included as part of petitioner's financial statements are two other corporations, Barrier Energy Systems, Inc. and Barrier Gasoline Service, Inc. The former was created as a marketing device to sell the idea of oil conservation and to promote petitioner's image, while the latter was created because of the

potential liability associated with handling gasoline. Petitioner's shareholders, namely William Jeffers and Wayne Jeffers, are also the shareholders of the other two entities which, according to William Jeffers, are operated together with petitioner as essentially one business.<sup>1</sup>

9. Petitioner owns its own oil terminal located in Tarrytown, New York. The terminal was purchased at a cost of approximately \$127,000.00, and has a remaining first mortgage of approximately \$60,000.00. The terminal was appraised in or about 1981 at \$330,000.00, and petitioner recently refused a purchase offer of \$750,000.00 for the terminal. Petitioner has also refused an offer of \$750,000.00 for its heating oil customer list, which comprises approximately four million gallons of business per year, and petitioner estimates that a price of approximately \$1,000,000.00 could be commanded for the gasoline business alone, if it were for sale.

10. The debt on many of petitioner's assets, including its equipment, trucks, rolling stock etc., has either been paid off entirely or paid down substantially, thus steadily decreasing the amount of petitioner's current expenses (i.e. monthly payments). According to petitioner's president, this equipment, although fully or substantially paid off and depreciated (and thus carried at low value on petitioner's books), has not in fact diminished in value but rather has a true value equal to or greater than its original cost and has many years of useful life remaining.

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1 The record is somewhat unclear as to the actual operating distinctions, if any, between petitioner and Barrier Gasoline Service, Inc. It is noted that while Barrier Gasoline Service, Inc. handles gasoline, the bond is required only of petitioner. The combined financial statements, as submitted, make no distinctions between any of the three corporations.

11. At the time of its purchase of Premium Petroleum Products, petitioner was in need of capital, both to finance the acquisition and to maintain its cash flow for operations, including payment of suppliers. Petitioner received from Barclay's Bank of New York, after review of petitioner's financial statements, a \$300,000.00 line of credit, a \$400,000.00 term loan and \$265,000.00 in stand-by letters of credit, and gave the following security in return therefor:

- Security:
- A) First mortgage on land and building at Tarrytown, New York.
  - B) Security interest in accounts receivable, inventory equipment, rolling stock and all intangibles including customer lists.
- Guarantors:
- A) Wayne Jeffers, William Jeffers and cross corporate guaranty.
  - B) To support the guaranty of Wayne Jeffers, a second mortgage on his home in the amount of \$50,000.
- Life Insurance:
- Keyman life insurance in an amount of not less than \$400,000 assigned to the bank.

12. Petitioner, its attorneys and its insurance agent all have made inquiries in an attempt to obtain a bond as requested by the Audit Division in the amount of \$400,000.00. Petitioner's insurance agent advised petitioner, in writing, on November 19, 1984, regarding such efforts to obtain a bond as follows:

"The Bond to guarantee payment of New York Gasoline Sales Taxes has been declined by every Carrier we have approached.

Fireman's Fund advised they would not be interested even with full collateralization. Other Carriers such as the Peerless and United States Fidelity and Guarantee will consider such a Bond only if it is 100% collateralized either by a Letter of Credit (on their own form) or equivalent securities.



Bill, I will gladly keep trying, but since this is a forfeiture Bond, it is virtually certain that no Carrier will write such a Bond unless the necessary collateral is secured. Please advise."

Petitioner notes that it would not be able to continue its business operations at their present level if all of its available credit was tied up to provide full collateralization for the bond. Assuming petitioner met the noted full collateralization requirement, the bond would cost petitioner approximately \$5,000.00 annually.

13. A previous Audit Division analysis of petitioner's financial statements for 1983 to determine the need for a bond had resulted in a request, by letter dated April 22, 1983, for a bond in the amount of \$176,000.00 to be posted by June 1, 1983. Thereafter, by letter dated December 15, 1983, the Audit Division advised petitioner that combined financial statements (including petitioner, Barrier Energy Systems, Inc. and Barrier Gasoline Service, Inc., and apparently submitted by petitioner sometime between April 22, 1983 and December 15, 1983) were not acceptable, requested a separate statement regarding Barrier and repeated the requirement of a bond in the amount of \$176,000.00.<sup>2</sup>

14. The above-noted \$176,000.00 bond requirement was held in abeyance pending receipt of the financial statements referred to in Finding of Fact "4", after which the bond amount was increased to the \$400,000.00 bond at issue herein.

15. The \$400,000.00 bond is requested by the Audit Division upon the basis that petitioner's financial statements are not unqualified statements certified by a certified public accountant pursuant to an audit conducted by such accountant.

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2 The record does not reveal the method by which such amount was calculated.

The amount of such bond is not premised upon a deficiency in petitioner's current ratio or net worth, but rather is simply petitioner's six months tax liability with such calculation specified by the terms of 20 NYCRR 414.1(d).

16. Petitioner's tax liability averages approximately \$60,000.00 to \$65,000.00 per month, based on sales of approximately one million gallons of product per month. Petitioner has an unblemished record of timely filing tax returns and paying tax due over the entire course of its existence. Petitioner has never been delinquent in filing or payment, nor are there any outstanding tax assessments against petitioner.

17. Petitioner maintains that its past history of timely filing returns and paying taxes to New York, the steady growth of its business, and the substantial amount of physical assets it owns, including real estate which is located in New York and other assets having a higher value than that reflected on petitioner's books, together with the cost and business impairment a bond would occasion, militates against the need for a bond. In addition, the petitioner has been advised by its certified public accountants (Corn, Greenhaus & Co.) that they will begin certification of petitioner's 1984 financial statements on or about December 15, 1984 and expect to have certification completed on or slightly before March 31, 1985. Petitioner asserts that these statements will "carve out" Barrier Oil Corp. from the other two corporations included on the previously submitted uncertified combined financial statements. Petitioner thus expects to receive and submit to the Audit Division unqualified certified statements which will reflect current ratio and net worth positions falling within (or nearly within) the parameters specified as acceptable by the regulations (20 NYCRR 414.2), and thus obviate the need for a bond. Accordingly,

petitioner requests a stay of the bond requirement until March 31, 1985 in order to submit such statements.

CONCLUSIONS OF LAW

A. That section 283 of the Tax Law provides, in part:

"[t]he tax commission may require any 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, to secure the payment of any sums due from such distributor pursuant to [Article 12-A]. The tax commission may require that such a bond be filed before a distributor is registered, or at any time when in its judgment the same is necessary as a protection to the revenues under [Article 12-A]."

B. That 20 NYCRR 414.1(c), effective January 19, 1984, provides as follows:

"(c) The department, in order to protect article 12-A revenues, will periodically review the financial status of registered distributors and may, at any time subsequent to registration of any person, as a distributor, require any such distributor to submit to the department a completed:

(1) motor fuel distributor information report (form TP 187.16); and

(2) current unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by him."

Said regulation, at subdivision (d), further provides, in relevant part, as follows:

"[i]f any distributor fails to meet in full the requirements of subdivision (c)(2) of this section, a bond equal to six months tax liability will be required of such distributor regardless of the net worth or financial status of such distributor. In cases where an applicant or distributor shows financial hardship by reason solely of the requirements of subdivisions (b)(2) and (c)(2) of this section that the unqualified financial statement be certified by a certified public accountant, the State Tax Commission, on petition, either through the hearing process or on the motion of the State Tax Commission, may permit a licensed public accountant not a certified public accountant, to certify such financial statement". [20 NYCRR 414.1(d); emphasis added.]

C. That petitioner has not submitted, as required, an unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by such certified public accountant. The purpose of this requirement is to provide independent verification of the reliability of a distributor's financial statements and, in turn, its financial condition. Accordingly, in the absence of such a statement, a bond equal to six month's tax liability is required, notwithstanding a distributor's past perfect filing and payment record or even an indication on its financial statements that it meets the tests of financial condition specified in 20 NYCRR 414.2 (i.e. "current ratio" and "net-worth" tests).


D. That in establishing the January 19, 1984 effective date of the instant regulations, this Commission provided that a currently registered distributor who fails to file the requisite unqualified certified financial statement may nonetheless maintain its registration without need to post a bond, if such distributor meets all of the other requirements of 20 NYCRR 414 and "within the succeeding twelve months such distributor files an unqualified financial statement certified by a certified public accountant..." (see New York State Register, Agency Action I.D. No. TAF-32-83-00009-A, Section 4, February 8, 1984, p.23). While petitioner has indicated its intent to file the requisite unqualified certified financial statements on or before March 31, 1985, the current statements submitted by petitioner reveal that petitioner does not meet either the current ratio or net-worth tests specified by 20 NYCRR 414.2 (refer to Finding of Fact "6"). Accordingly, since petitioner fails to meet the specified tests, the foregoing provision is inapplicable and the bond requirement is sustained.

E. That the petition of Barrier Oil Corp. is hereby denied and the requirement of a surety bond in the amount of \$400,000.00 as a condition of continued registration as a motor fuel distributor is sustained.


Dated: Albany, New York

STATE TAX COMMISSION

**MAR 18 1986**

  
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PRESIDENT

  
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