

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Harrison C. Bryson : 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
County of Albany

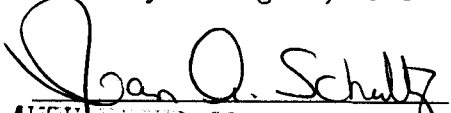
Connie Hagelund, being duly sworn, deposes and says that she is an employee of the Department of Taxation and Finance, over 18 years of age, and that on the 12th day of August, 1983, she served the within notice of Decision by certified mail upon Harrison C. Bryson, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Harrison C. Bryson
662 Cayuga Drive
Lewiston, NY 14092

and by depositing same enclosed in a postpaid properly addressed wrapper in a (post office or official depository) 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
12th day of August, 1983.


AUTHORISED TO ADMINISTER
OATHS PURSUANT TO TAX LAW
SECTION 174



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

August 12, 1983

Harrison C. Bryson
662 Cayuga Drive
Lewiston, NY 14092

Dear Mr. Bryson:

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, any proceeding in court to review an adverse decision by the State Tax Commission can only be instituted 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

Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Harrison C. Bryson, 662 Cayuga Drive, Lewiston, New York 14092, 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 Steinhardt, Hearing Officer, at the offices of the State Tax Commission, State Campus, Albany, New York, on June 8, 1983 at 1:00 P.M. Petitioner appeared pro se. The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether, as a condition of petitioner's continued registration as a motor fuel distributor, he was properly required to file a surety bond in the amount of \$100,000.00, pursuant to section 283 of the Tax Law.

FINDINGS OF FACT

1. On January 27, 1983, the Audit Division notified petitioner, Harrison C. Bryson, via form letter that: the Tax Commission may require a surety bond to be filed by distributors of gasoline and similar motor fuels; in order to enable the Audit Division to determine whether petitioner need file a bond and if so, the appropriate amount of such bond, he was required to submit by February 28, 1983 a Motor Fuel Distributor Information Report and a copy of his most recent certified financial statement; and further, petitioner's failure to

submit the required documents could result in the cancellation of his registration as a distributor.

2. On or about February 25, 1983, petitioner submitted to the Audit Division a completed distributor information report and financial statement. The report stated that (a) petitioner began the business of importing and selling motor fuel as a sole proprietor in 1975; (b) he had not previously filed a surety bond with the Audit Division; (c) for the six-month period preceding the information report, he had reported no motor fuel tax due; and (d) the estimated number of gallons he purchased on a monthly basis was zero. According to the financial statement Mr. Bryson prepared on February 22, 1983, his assets and liabilities were as follows:

ASSETS	
Cash on hand and on deposit	\$ 12,553.84
Securities	22,696.00
Land and building	55,000.00
Household and personal property	38,500.00
Vehicles	4,400.00
	<u>\$133,149.84</u>
LIABILITIES	
Loans and credit cards	\$ 9,186.00

3. Audit Division excise tax examiners reviewed petitioner's report and financial statement 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 problem areas and resolutions relevant to this proceeding are summarized below.

(a) Where the ratio of a distributor's current assets to his current liabilities is less than 1:1, notwithstanding the adequacy of his net worth to meet six months' motor fuel tax liability, the Audit Division will require the filing of a surety bond in the amount of the excess of his current liabilities over his current assets. If his net worth is insufficient to meet six months'

tax liability, a bond will be required for (i) the excess of such tax liability over his net worth, plus (ii) the excess of his current liabilities over his current assets.

(b) If the distributor's current assets to current liabilities ratio is at least 1:1, and his net worth is inadequate to cover six months' tax liability, the Audit Division will require a bond in the amount of the excess of such tax liability over his net worth.

(c) If, according to the distributor's information report, he has incurred no motor fuel tax liability over the six-month period preceding such report, the Audit Division will require a bond in the amount of \$100,000.00, irrespective of his net worth.

The guidelines also provide, "Exceptions to the proposed policy outlined above will be resolved on an individual basis after consultation."

The examiners computed the ratio of petitioner's current assets to current liabilities as 35,249:9,186 or approximately 3.84:1 and his net worth as \$123,963, and considered petitioner to have satisfied each of these tests. However, because petitioner indicated no importation activity for the six months preceding the report and his returns for 1978 and 1979 similarly reflected inactivity, the Audit Division determined that petitioner would be required to file a bond in the amount of \$100,000.00. By letter dated April 1, 1983, the Audit Division notified petitioner of its determination, as follows:

"We have completed our review of your Form TP-187.16, Motor Fuel Distributor Information Report, recently submitted by you. On this form, you indicate no motor fuel tax liability during the past 6 months. Your motor fuel tax returns show no activity. As a condition of your continued registration as a motor fuel distributor, it will be necessary for you to post a surety bond in the amount of \$100,000... Failure to post the surety bond by May 15, 1983 will result in the cancellation of your registration as a motor fuel distributor."

4. On or about May 8, 1983, petitioner requested a hearing with respect to the Audit Division's bonding requirement.

5. Mr. Bryson has held a registration as a distributor of motor fuel since 1975. During that year, he engaged in importing fuel from Canada and supplying at least one retailer in Niagara Falls, New York. Canada ceased the exportation of petroleum products at some point during 1975, and from that time forward, Mr. Bryson has not imported fuel into this state. He has retained his registration and filed all necessary returns in a timely manner.

6. For approximately the last 12 years, petitioner has also been engaged as a marketing representative for, among others, American Oil, Union Oil of California and Citgo. As a consequence, he is well-known among the industry in the Buffalo, New York area.

7. Within the last few months, petitioner has discussed the possibility of doing business with representatives of several Canadian fuel suppliers and also, several New York suppliers. As he stated, all depends on price. If he can purchase at a good price and in turn sell for a good price, he will be able to deal in a reasonable volume. Mr. Bryson anticipates importing fuel within the coming year, provided the amount of the surety bond required to be filed is reduced. His initial goal will be to acquire three or four accounts and to distribute approximately 600,000 gallons of fuel the first year. He hopes to increase the volume thereafter to at least one million gallons annually.

8. The rationale underlying the Audit Division's requirement of a bond in this instance is uncertainty regarding whether petitioner will import fuel, and if he does so, the gallonage he will import. The Audit Division further maintains that petitioner may elect not to file the bond if he has no firm plan to import, in which event his registration will be cancelled. (Lacking a

registration petitioner may, of course, purchase fuel within New York and pay the Article 12-A tax at the time of his purchases.) He may then make application for a new registration in 1984. Provided that he satisfied the net worth and ratio criteria (according to a certified financial statement submitted), and that he states the gallonage he intends to import, he will be issued a registration without the necessity of a bond.

CONCLUSIONS OF LAW

A. 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 the Audit Division's determination to require petitioner to file a \$100,000.00 surety bond was without reasonable basis. In light of the facts that the ratio of petitioner's current assets to current liabilities exceeds 3:1, his net worth is sufficient to meet his anticipated motor fuel tax liability for a period in excess of two years, and his record of timely filing returns over the past seven years is unblemished, petitioner's financial ability and responsibility have been more than adequately demonstrated. In the case of a new applicant (as opposed to a re-registration) who satisfied the asset-to-liability ratio and the net worth tests, the Audit Division conceded no bond would be required. There exists no basis to so distinguish between petitioner

herein, whose filing record is excellent, and a new applicant whose compliance with the requirements of Article 12-A at the time of his application is an unknown.

C. That the petition of Harrison C. Bryson is granted, and the Audit Division is hereby directed to continue his registration without the necessity of a bond.


DATED: Albany, New York

STATE TAX COMMISSION

AUG 12 1983


PRESIDENT


COMMISSIONER


COMMISSIONER