

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Campbell Oil Company, Inc.	:	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/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 24th day of March, 1986, he/she served the within notice of Decision by certified mail upon Campbell Oil Company, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Campbell Oil Company, Inc.
BOX 1068, East State Road
Olean, NY 14760

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
24th day of March, 1986.

David Parchuck

Janet M. Gray
Authorized to administer oaths
pursuant to Tax Law section 174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Campbell Oil Company, Inc.	:	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/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 24th day of March, 1986, he served the within notice of Decision by certified mail upon Donald S. Day, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Donald S. Day
Saperston, Day, Lustig, Gallick, Kirschner & Gaglione, P.C.
Goldome Center, One Fountain Plaza
Buffalo, NY 142031486

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
24th day of March, 1986.

David Parchuck

Janet M. Smay
Authorized to administer oaths
pursuant to Tax Law section 174

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

March 24, 1986

Campbell Oil Company, Inc.
BOX 1068, East State Road
Olean, NY 14760

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:
Donald S. Day
Saperston, Day, Lustig, Gallick, Kirschner & Gaglione, P.C.
Goldome Center, One Fountain Plaza
Buffalo, NY 142031486

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
CAMPBELL OIL COMPANY, INC.	:	DECISION
for a Hearing with Regard to a Bond Required	:	
under Section 283 of Article 12-A of the Tax Law.	:	

Petitioner, Campbell Oil Company, Inc., Box 1068, East State Road, Olean, New York 14760, filed a petition for a hearing with regard to a bond required under section 283 of Article 12-A of the Tax Law (File No. 65353).

A hearing was held before Brian L. Friedman, Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on December 20, 1985 at 10:30 A.M., with all briefs to be submitted by January 8, 1986. Petitioner appeared by Saperston, Day, Lustig, Gallick, Kirschner & Gaglione, P.C. (Donald S. Day, Esq., of counsel). The Audit Division appeared by John P. Dugan, Esq. (Thomas Sacca, Esq., of counsel).

ISSUE

Whether the Audit Division properly required petitioner, as a condition of maintaining its registration as a New York State motor fuel distributor, to file a surety bond in the amount of \$1,558,000.00.

FINDINGS OF FACT

1. By letter dated August 28, 1985, the Central Miscellaneous Tax Section of the Audit Division advised Campbell Oil Company, Inc. (hereinafter "petitioner") that a review of motor fuel distributors was being conducted to determine the amount of surety bond required to be filed and, in conjunction with such review, requested from petitioner, within 30 days from the date of said letter,

a copy of its unqualified current financial statement certified within the previous 18 months by a certified public accountant pursuant to an audit conducted by said accountant. Petitioner timely provided the Audit Division with such financial statement certified by Teuscher & Whipple, CPA's, P.C., on April 1, 1985.

2. On November 14, 1985, petitioner was advised by the Bond Unit of the Processing Division as follows:

"We have completed our review of your current financial statement.

An analysis of this statement discloses that the current ratio (current assets divided by current liabilities) and/or net worth do not meet our established criteria. In accordance with Part 414 of the Motor Fuel Tax Regulations, as amended effective June 1, 1985, it will be necessary for you to submit a joint motor fuel and sales tax surety bond in the amount of \$1,558,000 to replace the above noted bond which is surety for motor fuel tax only.

Please forward the attached bond form and instructions to your surety and request that a bond for \$1,558,000 be sent to my attention.

Failure to post the surety bond by December 31, 1985 may result in the cancellation of your registration as a New York State motor fuel distributor."

On November 18, 1985, petitioner made a timely application for a hearing with regard to the above-noted surety bond requirement.

3. Petitioner, a 48-year old New York corporation with headquarters in the City of Olean, is engaged in the business of marketing gasoline, heating oils, motor oils and greases in a seven county area in southwestern New York State and in three or four counties in northwestern Pennsylvania. It services approximately 100 service stations and 4,000 to 6,000 home heating and industrial accounts.

4. Petitioner's annual sales volume is approximately \$50,000,000.00 per year. Petitioner makes its in-state petroleum product purchases from Ashland, Newman Oil and Mobil in Buffalo, from Ashland, Agway and Sunoco in Rochester

and from Sunoco, Ashland and W. W. Griffith in Big Flats. Out-of-state purchases are made by petitioner from United Refinery, Agway and Sunoco in Warren, Pennsylvania, from Witco Chemical in Bradford, Pennsylvania and from Quaker State Refining in Farmers Valley, Pennsylvania.

5. Petitioner has always timely filed its State and Federal tax returns and paid the taxes due and has never been assessed a penalty for a late filing or payment by New York State or any other taxing entity.

6. Petitioner was initially required to file a bond in 1980 at which time petitioner filed such bond in the amount of \$4,000.00. In 1982, petitioner's bond requirement was increased to \$135,000.00 and, in August of 1984, it was again increased to \$227,000.00.

7. The computations resulting in petitioner being advised, on November 14, 1985, that its surety bond requirement was being increased to \$1,558,000.00 were made by Mary Kearns, Senior Account Clerk in the Central Office Audit Bureau, Miscellaneous Tax of the Department of Taxation and Finance. Pursuant to said computations, petitioner's current asset to liability ratio was determined to be 1.09:1, petitioner's net worth \$829,956.00 and petitioner's prior six-month potential tax liability, obtained from petitioner's Return of Tax on Motor Fuels for the months November, 1984 through April, 1985, was determined to be \$2,387,271.51. Petitioner's net worth of \$829,956.00 was subtracted from its six-month potential tax liability of \$2,387,271.51 to arrive at a surety bond requirement of \$1,557,315.52. Petitioner was, therefore, requested to file a joint motor fuel and sales tax surety bond in the amount of \$1,558,000.00.

8. Steven Teuscher, a certified public accountant with Teuscher & Whipple, CPA's, P.C. which prepared and certified petitioner's unqualified current financial statement, also prepared an analysis of petitioner's sales tax and

motor fuel tax actual liability for the five month period from June 1, 1985 to October 31, 1985. June 1, 1985 was selected as a starting point because said date coincided with the effective date of Chapter 44 of the Laws of 1985, a law which, among other things, required that both sales and motor fuel taxes on motor fuel be paid upon the importation of such fuel into the State. At the time of the preparation of this analysis, October, 1985 was the last month for which information was available. From an examination of petitioner's books, records and tax returns, Mr. Teuscher concluded that approximately 55 percent of petitioner's total purchases were made within New York State.

9. Pursuant to Mr. Teuscher's analysis, sales tax and motor fuel tax actually payable by petitioner for the aforesaid five-month period ending October 31, 1985 was \$344,128.21 and \$405,045.04, respectively. Not excluding exempt sales from his calculation, Mr. Teuscher determined petitioner's average monthly tax liability for this period to be \$173,291.89. He then multiplied this monthly average by six to determine petitioner's six-month maximum potential tax liability and subtracted from this figure of \$1,039,751.34 petitioner's net worth of \$829,956.00 (the figure indicated in petitioner's December 31, 1984 financial statement submitted by petitioner in response to the Audit Division's letter of August 28, 1985) resulting in a difference of \$209,795.34, a figure which petitioner contends that, using the Audit Division's formula for calculation of the amount of a surety bond to be posted by each distributor, and, disregarding all other factors, results in a bond requirement of approximately \$210,000.00.

10. Petitioner's President, Chairman of the Board and major stockholder, William E. Campbell, testified that the net worth figure of \$829,956.00, used by the Audit Division in computing petitioner's surety bond requirement, does not fairly and accurately represent its underlying assets less its liabilities

as of December 31, 1984 even though said figure was contained in the unqualified current financial statement provided by petitioner to the Audit Division.

Petitioner's land, buildings and leasehold improvements, although carried on said financial statement at a depreciated value of \$1,500,000.00, were appraised by an independent New York State licensed real estate broker and appraiser at the request of the Bank of New England (petitioner's primary lender) in October, 1984 and said appraiser placed a valuation on the land, buildings and improvements at \$4,293,300.00. Mr. Campbell further testified that petitioner's equipment and motor vehicles were appraised by Eastern Tank & Truck Company in early 1983 and said appraiser placed a fair market value on these assets several hundred thousand dollars in excess of the values carried on petitioner's books and records.

11. Mr. Teuscher examined petitioner's purchases in order to determine the trend of its in-state purchases. The percentage of gallons purchased within New York State by petitioner has increased from 34.16 percent in 1983 to 50.22 percent in 1984 to 54.82 percent to 55.17 percent for the months of January through October, 1985.

12. Petitioner's insurance company, The Aetna Casualty and Surety Company, advised petitioner's insurance agent, Hunter Agency, Inc. of Olean, New York, that it could not increase petitioner's bond from \$227,000.00 to \$1,558,000.00. Hunter Agency, Inc. informed Mr. Campbell that "any demand to increase the existing bond above its current level of \$227,000 would seriously impede your company and its ability to do business."

CONCLUSIONS OF LAW

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

"The 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, to secure the payment of any sums due from such distributor (i) pursuant to this article and (ii) 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 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 to the revenues under this article and articles twenty-eight and twenty-nine of this chapter."

B. That 20 NYCRR 414.2, effective March 15, 1985, provides, in pertinent part, as follows:

"Determination of amount of bond. Prior to the approval of an application for registration as a distributor and during any subsequent review of a registered distributor, the department will: determine the estimated or actual six-month maximum potential tax liability of such distributor, and analyze the certified financial statement of such distributor with particular emphasis on the ratio of current assets to current liabilities and the net worth (total assets less total liabilities) of such distributor determined under generally accepted accounting methods. In addition to the above criteria, any independent information concerning the operations or financial status of a distributor, which is available at the time of the review, may be used in determining the amount and sufficiency of a bond. For example, consideration may be given to a taxpayer's filing record which may indicate any delinquencies in filing and/or payment of tax as a motor fuel distributor or for any other New York State tax for which the distributor is responsible." (Emphasis added.)

Said regulation, at subdivision (a) thereof, provides as follows:

"For purposes of this Part, the term 'maximum potential tax liability' shall mean the total number of gallons of motor fuel sold or otherwise distributed or expended or expected to be sold or otherwise distributed or expended by the distributor without any reduction for tax-free or exempt sales, multiplied by the rate of motor fuel tax per gallon."

Said regulation, at subdivision (b)(2) thereof, provides as follows:

"Generally, if the ratio of current assets to current liabilities is at least one to one and the net worth is less than the estimated six-month maximum potential tax liability, a bond is required for the difference between the net worth and the estimated six-month maximum potential tax liability." (Emphasis added.)

Said regulation, at subdivision (b)(6) thereof, 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."

C. That Chapter 44 of the Laws of 1985, effective June 1, 1985, imposed the motor fuel tax on the importation, manufacture or sale of gasoline in the State and further provided for the prepayment of the sales and use taxes on the importation, manufacture or sale of motor fuel in the State.

D. That Publication 882, dated May, 1985 and entitled "Sales Tax Information for Motor Fuel Distributors, Jobbers and Wholesalers" provides at page 2 thereof, in pertinent part, as follows:

"Except for retail sales of motor fuel, no motor fuel may be sold in New York State without the prepayment of sales tax and inclusion of this prepayment in the price.

Upon delivery of motor fuel, the supplier must give the purchaser a Form FT-935, Certification of Prepayment of Sales Tax and Payment of Motor Fuel Tax. This certification must include the seller's name, address, certificate of authority and motor fuel tax numbers, number of gallons purchased, purchase date, and the amount of sales tax and motor fuel tax per gallon included in the selling price. The certification must be signed by the seller."

E. That since the percentage of petitioner's total purchases of motor fuel which are purchased in-state have been increasing steadily and, for the period since the effective date of Chapter 44 of the Laws of 1985, have been approximately 55 percent of its total purchases, the Audit Division's computation of petitioner's estimated six-month maximum potential tax liability using the total number of gallons expected to be sold or otherwise distributed without reducing said gallonage by the number of gallons purchased within the State on which motor fuel and sales and use taxes are now required to be paid by petitioner's vendor does not serve to protect the revenues under Articles 12-A, 28 and 29 of the Tax Law but, instead, places an undue financial hardship upon the

petitioner, especially in light of its long history of financial stability and its prior record of timely filing of returns and payment of taxes.

In Matter of Simon Oil Company, Inc., State Tax Commission, August 12, 1983, the Tax Commission held:

"That while the Audit Division's guidelines are not unreasonable, this Commission is not obligated to sanction the Audit Division's application thereof in each instance. In determining the need for and amount of a bond as security for the payment of sums due pursuant to Article 12-A, consideration will be given to the distributor's overall financial situation. The judicious exercise of discretion after reviewing all relevant factors may allow, in certain instances, a departure from the use of the current ratio and/or net worth versus six months' tax liabilities standards in making such a determination."


F. That in view of all of the facts and circumstances presented herein, it is hereby found and determined that a bond in the amount of \$227,000.00, presently filed by petitioner with the Department of Taxation and Finance, is sufficient to secure the payment of motor fuel and sales and use taxes due from petitioner. Accordingly, petitioner's surety bond requirement shall remain unchanged.

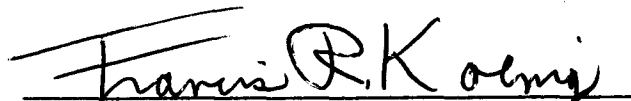
G. That the petition of Campbell Oil Company, Inc. is granted and the cancellation of its registration (as called for in the Processing Division's letter of November 14, 1985; see Finding of Fact "2"), together with the requirement of a bond in the amount of \$1,558,000.00, is cancelled.

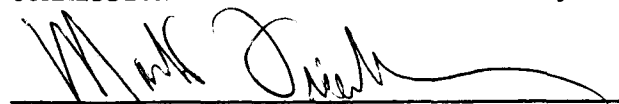
DATED: Albany, New York

STATE TAX COMMISSION

MAR 24 1986


PRESIDENT


COMMISSIONER


COMMISSIONER