

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Clarendon Marketing, Inc. : AFFIDAVIT OF MAILING
for Registration as a Motor Fuel Distributor :
under Article 12-A of the Tax Law. :
_____:

State of New York :

ss.:

County of Albany :

David Parchuck/Janet M. Snay, 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 15th day of October, 1986, he/she served the within notice of Decision by certified mail upon Clarendon Marketing, Inc. the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Clarendon Marketing, Inc.
100 First Stamford Place
Stamford, CT 06902

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
15th day of October, 1986.

David Parchuck
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Snay

STATE TAX COMMISSION

State of New York :
County of Albany : ss.:

David Parchuck/Janet M. Snay, 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 15th day of October, 1986, he served the within notice of Decision by certified mail upon Robert F. Fink, the representative of the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Robert F. Fink
Milgrim, Thomajan, Jacobs & Lee, P.C.
405 Lexington Ave.
New York, NY 10174

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
15th day of October, 1986.

David Paro Lusk
Authorized to administer oaths
pursuant to Tax Law section 174

Janet M. Smay

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

October 15, 1986

Clarendon Marketing, Inc.
100 First Stamford Place
Stamford, CT 06902

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
Audit Evaluation Bureau
Assessment Review Unit
Building #9, State Campus
Albany, New York 12227
Phone # (518) 457-2086

Very truly yours,

STATE TAX COMMISSION

cc: Taxing Bureau's Representative

Petitioner's Representative:
Robert F. Fink
Milgrim, Thomajan, Jacobs & Lee, P.C.
405 Lexington Ave.
New York, NY 10174

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
CLARENDON MARKETING, INC. : DECISION
for Registration as a Motor Fuel Distributor :
under Article 12-A of the Tax Law.

Petitioner, Clarendon Marketing, Inc., 100 First Stamford Place, Stamford Connecticut 06902, filed a petition for registration as a motor fuel distributor under Article 12-A of the Tax Law (File No. 69254).

On July 9, 1986, petitioner waived its right to a hearing and requested that a decision be rendered upon written arguments to be submitted by August 15, 1986, a stipulation of facts and the record contained in the file. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the State Tax Commission shall issue a Notice of Refusal to Register or shall register the applicant as a motor fuel distributor pursuant to Article 12-A of the Tax Law.

FINDINGS OF FACT

1. On April 8, 1986, the Department of Taxation and Finance issued to petitioner, Clarendon Marketing, Inc. ("CMI"), a Notice of Proposed Refusal to Register under Article 12-A of the Tax Law, stating, inter alia:

"Clarendon Ltd., which owns you through a wholly owned subsidiary, was convicted in October, 1984 of 38 counts of filing false reports to the Department of Energy and the Internal Revenue Service (18 USC, Section 1001) and of two counts of attempting to evade tax under 26 USC Section 7201 in connection with its failure to report over \$50 million of taxable income from transactions in crude oil during the years 1980 and 1981. These crimes are (1) crimes provided

for in the New York State Tax Law (Tax Law, Section 283[2]) and (2) felonies which bear on your would-be duties and responsibilities as a distributor under Article 12-A of the Tax Law (Tax Law, Section 283[4]). Accordingly, the applicant is viewed as unsuitable to become registered as a distributor of motor fuel."

2. On June 27, 1986, CMI filed a petition requesting that it be registered as a motor fuel distributor.

3. On August 14, 1986, CMI and the Department of Taxation and Finance entered into the following Stipulation of Agreed Facts:

- (1) CMI is a corporation organized and existing under the laws of the State of Delaware. It was incorporated on October 3, 1985, and was licensed to do business in New York State on October 31, 1985. Its president is Willy Strothotte, a Swiss citizen. Its vice president is In-Suk Oh a United States citizen. Its secretary and treasurer is Howard Pakett, a United States citizen. They are also the directors of CMI. None have ever been indicted or convicted of a crime in any jurisdiction.
- (2) CMI was established to distribute and trade petroleum products to other registered distributors in the United States, principally in the East Coast and Gulf Coast markets. Since its formation, CMI has been registered as an entity entitled to act as a distributor of motor fuel and gasoline by the taxation authorities in the following states:
 1. Connecticut: Gasoline distributor's license and special fuel distributor's license (nos. 44-4810-000).
 2. Delaware: Motor fuel distributor's license (No. T-86-0144-2).
 3. Florida: Special fuels permit (No. 11534).
 4. Georgia: Motor fuels distributor's license (No. 01459).
 5. Louisiana: Gasoline dealer tax bond (No. 2634103).
 6. Maine: Gasoline distributor's license (No. 515) and special fuels license (No. 900-00-0857).

7. Maryland: Class-B motor vehicle fuel license (No. 10355); Class-S special fuel seller's license (No. 34568).
 8. Massachusetts: Exporter's permit (No. UE162) and importer's license (No. UI145).
 9. New Jersey: Motor fuel distributor's license (No. 266).
 10. New Hampshire: Motor fuel distributor's license (No. 480).
 11. North Carolina: Motor Fuel distributor's license (No. 2976).
 12. Pennsylvania: Liquid fuels tax permit (No. 2310).
 13. South Carolina: Gasoline dealer's license (No. 38001490); special fuels supplier's license (No. 37002070).
 14. Texas: Gasoline distributor's permit; diesel fuel supplier's permit (Nos. 1-13-2198874-7).
 15. Virginia: Motor fuel distributor's license (No. 1-000265); special fuels license (No. 2-000229).
 16. Rhode Island: Application pending.
- (3) On December 6, 1985, CMI filed its application for registration as a motor fuel distributor in New York State with the Department, enclosing copies of Application Form TA-1283, letters from fuel suppliers, a financial statement, and the required Form CT-13-AQ. Additional information was provided to the Department in a letter dated February 13, 1986. The Department refused to register CMI as a motor fuel distributor by notice dated April 8, 1986.
- (4) CMI is a wholly-owned subsidiary of Century Chartering Company, Inc. ("Century"), a Delaware corporation, with offices at 100 Stamford Place, Stamford, Connecticut 06902. Century, in turn, is a wholly-owned subsidiary of Clarendon. Clarendon is a Swiss corporation, headquartered in Zug, Switzerland with a United States branch office located in Stamford, Connecticut. The company was originally founded in 1978 as Marc Rich & Co. International Ltd ("International"), a wholly-owned subsidiary of a Swiss-based company, Marc Rich & Co. AG. However, it no longer is a subsidiary because in

1983, Marc Rich & Co. AG sold all of the shares of International and the company changed its name to Clarendon Ltd.

- (5) In October, 1984, Clarendon was convicted, upon its guilty plea, of thirty-eight counts of filing false reports to the Department of Energy and the Internal Revenue Service (18 USC §1001) and of two counts of attempting to evade tax (26 USC §7201) in connection with its failure to report over \$50 million of taxable income from transactions in crude oil during the years 1980 and 1981. All of the counts are federal felonies.

CONCLUSIONS OF LAW

A. That section 283 of the Tax Law was adopted as part of a series of amendments to existing Article 12-A (L 1985, ch 44) and was a companion measure to the Omnibus Tax Equity and Enforcement Act (L 1985, ch 65, 68) now codified at Article 37, section 1800 et seq. of the Tax Law. Section 283 was amended a year after its adoption "to enhanc[e] the enforcement of the taxes on motor fuel imposed by and pursuant to the authority of [Article 12-A]" (L 1986, ch 276). The amendments became effective on June 14, 1986 (L 1986, ch 276, §37).

B. Prior to the 1986 amendments, section 283, subdivision 2, provided, in pertinent part, that the Tax Commission may refuse to register an applicant as a distributor where the Tax Commission ascertains that:

"(c) such applicant has been convicted of a crime provided for in this chapter within five years of the application, [or]

(d) an officer director, shareholder, employee or partner of such applicant has, in his capacity as a person under a duty to file a return... or pay the taxes imposed by or pursuant to [Article 12-A] on behalf of such applicant or of any other person, been convicted of a crime provided for in this chapter within the previous five years, [or]

(e) a shareholder owning more than fifty percent of the number of shares of stock of [a corporate] applicant... entitling the holder thereof to vote for the election of directors or trustees, who owned more than fifty percent of the number of such shares of another [corporation]... at the time such other [corporation] was convicted of a crime

provided for in this chapter within the preceding five years, [or]

(f) the registration of such applicant has been cancelled pursuant to [§283(4) of the Tax Law]... within the preceding five years.

C. That section 283(2) of the Tax Law, as it existed when application was made, did not provide the Tax Commission with statutory authority to refuse to register CMI as a distributor. CMI has never been convicted of a crime nor have any of its officers or directors. Clarendon Ltd. ("Clarendon"), indirectly CMI's 100 percent shareholder, was convicted of 40 Federal felony counts, including two counts of attempting to evade tax under 26 USC §7201. The Tax Law provided for a similar crime at the time of Clarendon's conviction (see Tax Law §289-b[3], L 1929, ch 364, as amended L 1932 ch 330, §4), and the Tax Law was amended in 1985 to provide for crimes virtually identical to the Federal crimes (see, e.g., Tax Law §§1812[a],[c]). Nonetheless, it cannot be said that Clarendon was convicted of a crime provided for in the Tax Law. When the legislature intended that conviction of a crime in another jurisdiction be a criteria for the Tax Commission's consideration, it said so unequivocally (see Tax Law §283(4)(11)).

D. That as amended, Tax Law §283(2) (added by L 1986, ch 276, §2) provides as follows:

"Where a person files an application for registration under this section and in considering such application the tax commission ascertains that...(g) the applicant, an officer, director or partner of the applicant, a shareholder directly or indirectly owning more than ten percent of the number of shares of stock of such applicant (where such applicant is a corporation) entitling the holder thereof to vote for the election of directors or trustees, ... has committed any of the acts specified in subdivision four of this section within the preceding five years, the tax commission may refuse to register such applicant" (emphasis added).

E. That among the acts specified in subdivision four of section 283 is conviction "in a court of competent jurisdiction, either within or without the state, of a felony... bearing on such distributor's duties and obligations" under the Tax Law. Accordingly, if section 283 as amended applies, the Tax Commission may refuse to register CMI as a distributor.

F. That it would be both illogical and contrary to the explicitly stated intention of the legislature (see Memorandum in Support to S.9605 and A.11724) for the State Tax Commission to fail to give effect to the 1986 amendments. Application of the amended statute is prohibited only if it would deprive CMI of a vested right or be so harsh and oppressive as to constitute a violation of due process (Consolidated Edison Co. of New York v. State Board of Equalization and Assessment, 120 Misc 2d 617, affd 103 AD2d 453). A right is not deemed vested unless it is something more than a mere expectation based on a continuation of the present general laws (Ten Ten Lincoln Place v. Consolidated Edison Company of New York, Inc., 190 Misc 174, affd 273 App Div 903). Moreover, a license to distribute motor fuel, being a statutory creation, is not in the nature of a vested right (Public Service Commission v. Booth, 156 NYS 568, affd 170 App Div 590; see also, Arcelo Reproduction Co. v. Modugno, 31 AD2d 642; Adelman v. Adelman, 58 Misc 2d 803, 807). Furthermore, CMI's application for registration was not finally adjudicated by the State Tax Commission when the amended statute took effect. In keeping with the provisions of sections 283(5) and 283(6), CMI was issued a Proposed Notice of Refusal to Register which fully informed CMI of the factual basis for the challenged determination and its right to seek a hearing before the State Tax Commission. Under these circumstances, it cannot be said that application of amended section 283(2) affects a vested right (Consolidated Edison Company of New York v. State Board of Equalization and Assessment, supra). It is further noted that the legislative

purpose of the amendments under consideration was to enhance the enforcement of the motor fuel tax, in part, by preventing the registration of distributors under circumstances such as the ones that exist here. In light of the legislative intent embodied in both versions of the statute, the consequences of applying the new provision of the law are neither overly harsh nor oppressive.

G. That the petition of Clarendon Marketing, Inc. is denied, and a Notice of Refusal to Register shall be issued immediately.

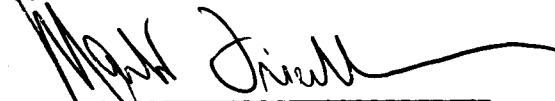
DATED: Albany, New York

STATE TAX COMMISSION

OCT 15 1986


PRESIDENT


COMMISSIONER


COMMISSIONER