

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Frenz Petroleum Corporation :
for a Hearing with Regard to a Bond Required under :
Section 283 of Article 12-A of the Tax Law. :

AFFIDAVIT OF MAILING

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 6th day of January, 1983, he served the within notice of Decision by certified mail upon Frenz Petroleum Corporation, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Frenz Petroleum Corporation
Attn: Glenn D. Todd, Treasurer
P.O. Box 711
New Castle, PA 16106

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
6th day of January, 1984.

David Parchuck

Ann G. Hughes
pursuant to Tax Law section 174

Authorized to administer oaths

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

January 6, 1984

Frenz Petroleum Corp.
Attn: Glenn D. Tood, Treasurer
P.O. Box 711
New Castle, PA 16106

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: Taxing Bureau's Representative

STATE OF NEW YORK

STATE TAX COMMISSION

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

Petitioner, Frenz Petroleum Corporation, P.O. Box 711, New Castle, Pennsylvania 16101, filed a petition for a hearing with regard to a bond required to be filed under section 283 of Article 12-A of the Tax Law.

On July 7, 1983, petitioner advised the State Tax Commission that it waived its right to a formal hearing and requested the State Tax Commission to issue a decision on the basis of submitted documents. Time was allowed for briefs and the date the last brief was due was October 31, 1983. After due consideration, the State Tax Commission renders the following decision.

ISSUE

Whether the Audit Division's determination that petitioner is required to file a surety bond in the amount of \$100,000.00 to secure the payment of motor fuel tax, as a condition of maintaining its registration as a motor fuel distributor, should be sustained.

FINDINGS OF FACT

1. On January 27, 1983, the Audit Division notified petitioner, via a form letter, that a surety bond might be required to be filed by distributors of gasoline and similar motor fuels. Accordingly, petitioner was requested to file a Motor Fuel Distributor Information Report ("Report") as well as its most

recent certified financial statement on or before February 28, 1983, so that the appropriate amount of the surety bond required to be filed could be determined.

2. On or about March 22, 1983, petitioner submitted the information requested. The Report stated that petitioner was incorporated in the Commonwealth of Pennsylvania on December 1, 1978 and that it became licensed to distribute motor fuel in New York in November, 1982. In addition, petitioner reported that as of March 15, 1982 it had no motor fuel tax liability for the previous six months and it had a net worth of \$187,244.52.

3. An examination of the balance sheet, dated January 31, 1983, which was submitted with the report, revealed the following information:

current assets:	<u>\$596,548.49</u>	=	<u>.7268</u>	(current
current liabilities:	<u>\$820,761.98</u>		<u>1</u>	ratio)

The balance sheet also disclosed that petitioner had total assets of \$1,289,551.62 and total liabilities of \$1,102,307.10, resulting in a net worth of \$187,244.52.

4. Petitioner also submitted an income statement for the six month period ended January 1, 1983. The income statement revealed that petitioner had a gross income of \$99,734.60 during this six month period. Petitioner's net income for said period, after federal income taxes, was \$73,090.76.

5. In a letter dated April 22, 1983, the Audit Division advised petitioner that, in order for petitioner to continue its registration as a motor fuel distributor, it would be required to post a surety bond in the amount of \$100,000.00. The letter concluded that petitioner's failure to post the surety bond by June 1, 1983 would result in the cancellation of petitioner's registration as a motor fuel distributor.

6. On June 21, 1983, petitioner advised the Audit Division by letter that it wished to appeal the minimum bonding requirement. In this letter, petitioner stated that it was currently supplying motor fuel under contract to the City of Jamestown and to Chautauqua County. Petitioner stated that it has refrained from making taxable sales in New York State because it has not acquired all of the required licenses, permits and bonds. Petitioner also noted that the cost of a \$100,000.00 bond was approximately \$500.00 per annum and that, in addition to this cost, the bonding company would require a secured letter of credit from petitioner's bank which would cost an additional \$1,500.00. Petitioner claimed that at its current or anticipated level of growth, an annual expenditure of \$2,000.00 was difficult to justify. Petitioner concluded by suggesting an initial bond of \$10,000.00.

7. It is the position of the Audit Division that in order to avoid filing a surety bond, a distributor must establish that its current assets equal or exceed its current liabilities and that its net worth equals or exceeds six months of its motor fuel tax liability. In addition, the Audit Division maintains that a distributor who has not had any tax liability during the preceeding six months is required by it to file a bond in the amount of \$100,000.00 regardless of its net worth or its current asset to current liability ratio. In this instance, the Audit Division required petitioner to file a bond in the amount of \$100,000.00 because it had reported no tax liability since its registration.

8. In its memorandum, the Audit Division argued that, since it had no idea as to the amount of sales or motor fuel tax liability petitioner might generate in the future, a surety bond in the amount of \$100,000.00 was reasonable and necessary to protect the revenues of New York State.

CONCLUSIONS OF LAW

A. That section 283 of the Tax Law provides, in pertinent 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 while the Audit Division's guidelines are not unreasonable, the Commission, in the judicious exercise of discretion, need not sanction the Audit Division's application thereof in each instance (Matter of Simon Oil Company, Inc., State Tax Commission, August 12, 1983). In this instance, it is unpersuasive for the Department to argue that a surety bond of \$100,000.00 is needed to protect the State of New York against potential loss of revenues on the ground that it does not know petitioner's potential future sales in New York, since it did not ask petitioner in its Report what its anticipated sales of motor fuel in New York were.

C. That in view of petitioner's net worth of \$187,244.52 and petitioner's apparently profitable enterprise, a surety bond in the amount suggested by petitioner of \$10,000.00 is sufficient. It is noted that section 283 of the Tax Law permits the State Tax Commission to require a greater bond at any time if new circumstances arise.

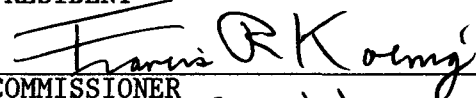
D. That the petition of Frenz Petroleum Corporation is granted and the amount of the bond to be filed is reduced to \$10,000.00.

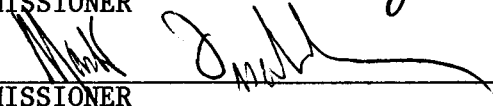
DATED: Albany, New York

JAN 06 1984

STATE TAX COMMISSION


PRESIDENT


COMMISSIONER


COMMISSIONER