

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of :
Kent Oil & Trading Company :
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 Kent Oil & Trading Company, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Kent Oil & Trading Company
Attn: Vivian Logan, Adm. Asst.
2300 Houston Natural Gas Bldg.
Houston, TX 77002

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

David A. Sheehan
pursuant to Tax Law section 174

, Authorized to administer oaths

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

January 6, 1984

Kent Oil & Trading Co.
Attn: Vivian Logan, Adm. Asst.
2300 Houston Natural Gas Bldg.
Houston, TX 77002

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	:	
KENT OIL & TRADING COMPANY	:	DECISION
for a Hearing with Regard to a Bond Required	:	
Under Section 283 of Article 12-A of the Tax	:	
Law.	:	

Petitioner, Kent Oil & Trading Company, Houston Natural Gas Building, 1200 Travis, Houston, Texas 77002, filed a petition for a hearing with regard to a bond required under Section 283 of Article 12-A of the Tax Law.

On July 11, 1983, petitioner advised the State Tax Commission in writing that it desired to waive a formal hearing and to submit the case to the State Tax Commission, based upon the entire record contained in the file with all additional documents and briefs to be filed by September 20, 1983. After due consideration of said record the State Tax Commission renders the following decision.

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 \$100,000.00.

FINDINGS OF FACT

1. On January 27, 1983, the Audit Division notified petitioner, Kent Oil & Trading Company (hereinafter, "Kent Oil"), via form letter: (i) that the Tax Commission may require a surety bond to be filed by distributors of gasoline and similar motor fuels; (ii) that petitioner was required to complete and file a Motor Fuel Distributor Information Report and to submit a copy of its most

recent certified financial statement in order to enable the Audit Division to determine whether petitioner would be required to file a bond and if so, the appropriate amount of such bond; and (iii) that failure to submit a completed information report and copy of a certified financial statement by February 28, 1983 could result in the cancellation of petitioner's registration as a distributor of gasoline and similar motor fuels.

2. On or about March 28, 1983, petitioner submitted to the Audit Division a completed distributor information report. The report stated that: (i) petitioner was a wholesaler of motor fuel which commenced business in December, 1973; (ii) it had not previously filed a surety bond with the Audit Division; (iii) during the six-month period preceding the information report, it had reported no motor fuel tax due; and (iv) it had made no purchases of motor fuel in the last three years.

3. The Audit Division notified petitioner by a letter dated April 22, 1983 that it was required to post a surety bond in the amount of \$100,000. The following reason was provided: "(Y)ou indicate (on the information report) no motor fuel tax liability during the past 6 months. Your motor fuel tax returns show no activity."

4. The Audit Division submitted into the record a document entitled Solutions To Motor Fuel Distributors Re-Registration Problems, which provides guidelines to be utilized by the Audit Division for the purpose of reviewing Motor Fuel Distributor Information Reports and determining the need for and amount of a surety bond upon the re-registration of a distributor. These guidelines set forth a current ratio test (current assets divided by current liabilities) and a net worth test. Where the ratio of a distributor's current assets to his current liabilities is less than 1:1 or where the distributor's

net worth is insufficient to meet six months' tax liability, the Audit Division will require the filing of a surety bond.

The guidelines further provide:

"If the distributor no longer imports..., disapprove re-registration even if all other criteria are met... If an information report is received from a distributor who indicates no tax liability during the past 6 months... request minimum bond for \$100,000 irrespective of amount of net worth..."

The guidelines further specify that any exceptions would be resolved on an individual basis after consultation.

5. According to the Audit Division, since it has no idea as to the amount of sales that petitioner, which is a non-operating distributor, may have in the future and the resulting motor fuel tax liability, a surety bond in the amount of \$100,000 is reasonable and necessary to protect the revenues of the state. The Audit Division further notes that there will be an annual review of distributor re-registration, and if petitioner begins operation in New York and meets the two tests noted in Finding of Fact "4", supra, no surety bond would be required at that time.

6. Petitioner has been registered as a motor fuel distributor with New York since 1978¹, and it obtained a Certificate of Authority to collect sales tax in January of 1983. According to petitioner's administrative assistant, Vivian Logan, petitioner is a wholesale petroleum marketer which sells only to licensed distributors. Because petitioner contemplates that in the future it will import petroleum products into New York by barge or ship through the New York City harbor, it desires to have all licenses and permits that are necessary. However, in the past five years during which it has been registered as a

¹ According to petitioner's letter of May 2, 1983 it has been registered since August 24, 1978. In its brief, it claims that it has been registered since May of 1978.

distributor, it has not imported or caused to be imported any motor fuel into New York.

Petitioner argues that a surety bond should not be required because (i) it takes fourteen weeks to have a \$100,000 surety bond in place; (ii) it has in the past filed all required reports in a timely fashion; (iii) as a small company with one petroleum trader, Stephen R. Kent, it cannot afford the expenditure of several thousand dollars to obtain a surety bond.

7. Petitioner proposes that in lieu of posting a surety bond, it will notify the Department of Taxation and Finance by certified mail ten days prior to shipment of any motor fuel it will import into New York.

8. The Audit Division has waived the requirement that petitioner file a certified financial statement until 1984. However, petitioner has failed to provide any evidence whatsoever concerning its current assets, current liabilities and net worth.

CONCLUSIONS OF LAW

A. That pursuant to Tax Law §283, the Tax Commission has the authority to require a distributor of motor fuel to file with the Department of Taxation and Finance a surety bond in such amount as the Commission may fix in order to secure the payment of sums due from a distributor under Article 12-A, "Tax On Gasoline And Similiar Motor Fuel", of the Tax Law. The Commission may require a bond to be filed before a distributor is registered, or at any time when in its judgment the filing of a bond is necessary to protect the revenues under Article 12-A.

B. That the burden of proof is upon petitioner to show that the Audit Division improperly required it to file a \$100,000 surety bond. 20 NYCRR 601.9(d)(4).

C. That in the Matter of Harrison C. Bryson, State Tax Commission, August 12, 1983, we waived the requirement that a motor fuel distributor post a surety bond, even though such petitioner had no motor fuel tax liability during the six months prior to its filing of a Motor Fuel Distributor Information Report, because Mr. Bryson easily met the net worth and current assets tests and had demonstrated his financial responsibility.

D. That, however, in the matter at hand, the Audit Division's determination to require petitioner to file a \$100,000 surety bond is sustained because petitioner has failed to provide any evidence concerning its financial solvency and stability. Such failure makes it impossible for this Commission to determine whether an exception to the guidelines noted in Finding of Fact "4", supra, should be made in petitioner's case.

E. That the petition of Kent Oil & Trading Company is denied.

DATED: Albany, New York

STATE TAX COMMISSION

JAN 06 1984

Rodrick Asch
PRESIDENT

Francis R. Koenig
COMMISSIONER

Mark J. Miller
COMMISSIONER