

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition :
of
Peterson Petroleum :

: 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, 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 17th day of May, 1985, he served the within notice of Decision by certified mail upon Peterson Petroleum, the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Peterson Petroleum
ATTN: John D. Yeager
Box 17
Hudson, NY 12534

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
17th day of May, 1985.

David Parchuck

James W. Dege
Authorized to administer oaths
pursuant to Tax Law section 174

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

May 17, 1985

Peterson Petroleum
ATTN: John D. Yeager
Box 17
Hudson, NY 12534

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	:	
	:	
PETERSON PETROLEUM INC.	:	DECISION
	:	
for a Hearing with Regard to a Bond Required	:	
under Section 283 of Article 12-A of the Tax	:	
Law.	:	

Petitioner, Peterson Petroleum Inc., P.O. Box 17, Hudson, New York 12534, 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. 58416).

A formal hearing was held before James J. Morris, Jr., Hearing Officer, at the offices of the State Tax Commission, Building #9, State Office Campus, Albany, New York, on March 5, 1985 at 9:15 A.M. Petitioner appeared by John D. Yeager, Vice President. 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 motor fuel distributor, to file a surety bond in the amount of \$788,000.00.

FINDINGS OF FACT

1. In a letter dated August 30, 1984, the Audit Division requested that petitioner, Peterson Petroleum Inc., file a current unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by such certified public accountant. The letter advised petitioner that the financial statement would be analyzed in conjunction with its motor

fuel tax account in order to determine whether a surety bond would be required.

2. In a letter dated October 22, 1984, petitioner advised that it expected its financial statement to be completed by November, 1984 and that a copy thereof would be forwarded to the Audit Division at that time.

3. Petitioner, a registered distributor of motor fuel, purchases motor fuel both within and without the State of New York and has been in business for over twenty years. Petitioner owns or operates service station outlets, makes sales of motor fuel to other registered distributors in this state and makes sales and transfers of motor fuel outside the State of New York.

4. Petitioner, for at least the last twelve years, has employed the same accounting firm to maintain its books and records. Petitioner's fiscal year ends the thirtieth day of June.

5. John D. Yeager petitioner's Vice-President stated at the hearing that petitioner's current financial statement for the fiscal year ended June 30, 1984 was not yet available and that although it was expected that its financial statement for the fiscal year ended June 30, 1985 would be an unqualified financial statement certified by a certified public accountant pursuant to an audit, said statement for the fiscal year ended June 30, 1984, when available, would not be so certified. He likewise stated that petitioner's financial statements for its several previous fiscal years were not unqualified financial statements certified by a certified public accountant pursuant to an audit.

6. The record contains no information concerning petitioner's current assets, liabilities, net worth and financial status.

7. In determining the amount of the bond to be posted by petitioner, the Audit Division reviewed petitioner's Return of Tax on Motor Fuels for the six

months of March, 1984 through August, 1984 inclusive. For that period, petitioner's returns reflect that petitioner purchased and sold in excess of 14,000,000 gallons of motor fuel of which sales of approximately 2.7 million gallons were claimed exempt as out-of-state sales or tax-free interdistributor sales.

For said six months, petitioner's returns admit taxable sales of motor fuel generating a gross liability for tax in excess of \$875,000.00. However, petitioner's liability for motor fuel tax actually required to be remitted to the Department for such six month period was \$788,179.84 due to credits (in excess of \$90,000.00) for motor fuel tax paid on purchases of motor fuel.

8. Petitioner submitted to the Department a worksheet scheduling its motor fuel tax payments to the Department for the period September, 1975 through November, 1984. The taxes for the three most recent complete calendar years, as reflected on that worksheet, disclose:

a) For the calendar year 1981, petitioner claimed an annual tax liability of approximately \$1,596,612.00. Petitioner's average liability for any six months in such year would therefore be approximately \$788,312.00. However, petitioner's actual liability for the six months of May, 1981 through October, 1981 inclusive was approximately \$961,737.00.

b) For the calendar year 1982, petitioner claimed an annual tax liability of approximately \$1,637,802.00. Petitioner's average liability for any six months in such year would therefore be approximately \$818,901.00. However, petitioner's actual liability for the six months of January, 1982 through June, 1982 inclusive was approximately \$1,033,264.00.

c) For the calendar year 1983, petitioner claimed an annual liability of approximately \$1,312,014.00. Petitioner's average liability for any six months in such year would therefore be approximately \$656,007.00. However, petitioner's actual liability for the six months of January, 1983 through June, 1983 inclusive was approximately \$706,824.00.

Said schedule also reflects a liability of \$1,246,777.00 for the period January, 1984 through November, 1984 which, when projected to a full twelve months, would reflect an annual liability of \$1,360,120.00 for 1984 and a six month average therefor of \$680,000.00.

9. The record does not reflect whether and to what extent, if any, the claimed tax liability actually required to be remitted to the Tax Department for any particular month or year as shown on the worksheet submitted by petitioner may have been reduced by credits for motor fuel tax paid by petitioner upon its purchases of motor fuel.

CONCLUSIONS OF LAW

A. That section 283 of the Tax Law provides, in 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 20 NYCRR 414.1(c), effective January 19, 1984, provides as follows:

"(c) The department, in order to protect article 12-A revenues, will periodically review the financial status of registered distributors

and may, at any time subsequent to registration of any person, as a distributor, require any such distributor to submit to the department a completed:

(1) motor fuel distributor information report (form TP187.16);
and

(2) current unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by him."

Said regulation, at subdivision (d), further provides, in relevant part, as follows:

"[i]f any distributor fails to meet in full the requirements of subdivision (c)(2) of this section, a bond equal to six months tax liability will be required of such distributor regardless of the net worth or financial status of such distributor. In cases where an applicant or distributor shows financial hardship by reason solely of the requirements of subdivisions (b)(2) and (c)(2) of this section that the unqualified financial statement be certified by a certified public accountant, the State Tax Commission, on petition, either through the hearing process or on the motion of the State Tax Commission, may permit a licensed public accountant not a certified public accountant, to certify such financial statement." [20 NYCRR 414.1(d); emphasis added.]

C. That petitioner has not submitted, as required, an unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by such certified public accountant. The purpose of this requirement is to provide independent verification of the reliability of a distributor's financial statements and, in turn, its financial condition. Accordingly, in the absence of such a statement, a bond equal to six months' tax liability is required.

D. That the Tax Law and regulations do not specify which periods are to be used in computing the six month tax liability which serves as the basis for setting the bond requirement. It is implicit, however, that the bond should be set at an amount which accurately reflects petitioner's tax liability.

In the instance at hand, had petitioner modified its purchasing practices for the period March through August, 1984 and purchased all its fuel tax free, petitioner's actual tax liability and the Audit Division's determination of the amount of the bond required based upon such period would have been in excess of \$788,000.00.

Using information concerning petitioner's most recent years of operation (1981 - 1983, plus the projected figures for the year 1984), petitioner's annual liability to the Department fluctuated from \$1.596 million in 1981, up to \$1.637 million in 1982, down to \$1.312 million in 1983 and a projected rise to \$1.360 million in 1984, and petitioner's six month average and actual liability for six consecutive months for such years were:

<u>Year</u>	<u>Six Month Average</u>	<u>Actual Liability For Any Six Consecutive Months During the Year</u>
1981	\$788,312	\$ 961,737
1982	818,901	1,033,264
1983	656,007	706,824
1984	680,000	788,179

There is no definite pattern to petitioner's actual liability for any six consecutive six months during the year, said amounts being attributable to the months of January through June for the years 1982 and 1983, the months of May through October for the year 1981 and the months of March through August for the year 1984.

There is nothing in the record to indicate whether or not petitioner's business has actually fluctuated, as is reflected by these figures, or has in fact remained relatively stable with any fluctuation in petitioner's tax liability being attributable to petitioner's purchasing practices.

E. That in protection of the revenues required to be paid by petitioner to the Department pursuant to Article 12-A of the Tax Law, the Audit Division's determination to set the amount of the bond required to be filed at \$788,000.00 is not excessive, unreasonable, or unrepresentative of petitioner's liability for tax over any six consecutive monthly periods or any six months' average.


F. That the petition of Peterson Petroleum Inc. is, in all respects, denied.

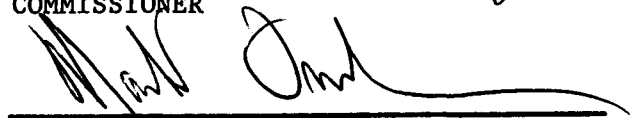
DATED: Albany, New York

STATE TAX COMMISSION

MAY 17 1985


PRESIDENT


COMMISSIONER


COMMISSIONER