

STATE OF NEW YORK

STATE TAX COMMISSION

In the Matter of the Petition	:	
of	:	
Topeka Gas & Fuel, Inc.	:	
for a Hearing with Regard to a Bond Required	:	AFFIDAVIT OF MAILING
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 31st day of December, 1984, he served the within notice of Decision by certified mail upon Topeka Gas & Fuel, Inc., the petitioner in the within proceeding, by enclosing a true copy thereof in a securely sealed postpaid wrapper addressed as follows:

Topeka Gas & Fuel, Inc.
Attn: Gary Bomholt, President
420 East 29th St.
Topeka, KS 66605

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
31st day of December, 1984.

David Parchuck

Nicola P. Williams
Authorized to administer oaths
pursuant to Tax Law section 174

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

December 31, 1984

Topeka Gas & Fuel, Inc.
Attn: Gary Bomholt, President
420 East 29th St.
Topeka, KS 66605

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	:	
TOPEKA GAS & FUEL, INC.	:	DECISION
for a Hearing with Regard to a Bond Required	:	
Under Section 283 of Article 12-A of the Tax	:	
Law.	:	

Petitioner, Topeka Gas & Fuel, Inc., Attn: Gary Bomholt, President, 420 East 29th Street, Topeka, Kansas 66605, 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 17, 1984, petitioner advised the State Tax Commission in writing that it waived its right to a formal hearing and requested the State Tax Commission to issue a decision on the basis of the documents submitted. After due consideration, 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 \$39,000.00.

FINDINGS OF FACT

1. Petitioner, Topeka Gas & Fuel, Inc. ("Topeka"), is a motor fuel distributor located in Topeka, Kansas.
2. By a letter dated June 20, 1984, the Audit Division advised Topeka that in order to maintain its registration as a motor fuel distributor, it would be required to post a surety bond in the amount of \$39,000.00 on or

before August 7, 1984. This letter was issued following the Audit Division's review of Topeka's current financial statement. The amount of the bond is based upon Topeka's New York Tax liability paid for the six month period spanning October 1983 through March 1984.

3. Topeka filed a petition dated July 17, 1984 to contest the above-noted bond requirement. The petition also requested that the matter be decided by the State Tax Commission on a submission basis without need for a hearing.

4. The sole basis upon which the Audit Division asserts the need for a bond is that Topeka's financial statement is not an unqualified statement certified by a certified public accountant pursuant to an audit conducted by such accountant.

5. There is no assertion made nor any evidence to indicate that Topeka's past record for filing returns and paying taxes has been less than adequate, nor is it alleged that Topeka does not meet, per information reported on its financial statements, the tests of financial condition specified by 20 NYCRR 414.2 (i.e. "current ratio" and "net worth" tests).

6. Topeka's monthly New York tax liability under Article 12-A paid for calendar year 1983 was as follows:

January	\$ 6,121.00
February	5,297.00
March	5,920.00
April	5,552.00
May	8,320.00
June	7,040.00
July	7,251.00
August	6,118.00
September	7,480.00
October	6,737.00
November	6,120.00
December	6,800.00
Total	<u>\$78,756.00</u>

7. Topeka does not claim financial hardship or an inability to afford the cost of posting a bond in the amount of \$39,000.00, but maintains in seeking waiver of the bond that the dollar amount of its business in New York (as indicated by its monthly New York tax liability) does not justify either the need for a bond, as requested, or the approximately \$1,500.00 price quoted to petitioner as the cost for preparation of a certified financial statement.

8. By a letter dated October 11, 1984, the Audit Division extended to December 10, 1984 the due date by which the noted surety bond, if required, must be filed.

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 TP 187.16);
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 which is to provide independent verification of the reliability of a distributor's financial statements and, in turn, its financial condition. Furthermore, there is no evidence indicating an intent by petitioner to file such certified statement, either now or in the future. Accordingly, in the absence of such a statement, the Audit Division properly required the filing of a bond equal to six months' tax liability, notwithstanding the volume of petitioner's business in New York. Matter of Dave Reisdorf, Inc., State Tax Comm., September 10, 1984.

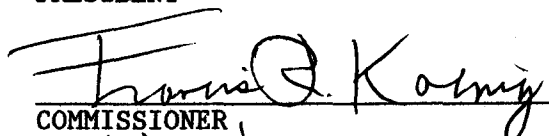
D. That the petition of Topeka Gas & Fuel, Inc. is hereby denied and the requirement of a surety bond in the amount of \$39,000.00 as a condition of continued registration as a motor fuel distributor is sustained.

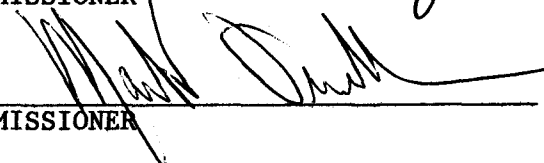
DATED: Albany, New York

STATE TAX COMMISSION

DEC 31 1984


PRESIDENT


COMMISSIONER


COMMISSIONER