

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-84 (6) M
Motor Fuel
July 20, 1984

Subject: Motor Fuel Tax Law-Registration and Bonding Requirements

Section 283 of Article 12-A (Motor Fuel Tax) of the Tax Law provides that the State Tax Commission may compel any distributor of motor fuel required to be registered with the Tax Department to file a surety bond, in such amount as the Tax Commission may fix, to secure the payment of any sums due from such distributors. In lieu of such bond, a distributor may deposit securities approved by the Tax Commission. The bond or securities may be required before a distributor is registered or at any time when it is deemed necessary as a protection of Article 12-A revenue.

Part 414 of the Motor Fuel Tax Regulations has been amended to reflect the current bonding and registration policy of the Department.

A. New Applicants

An applicant for registration as a distributor of motor fuel must submit Form TP128.3 (Application for Registration as Distributor of Gasoline and Similar Motor Fuels), an unqualified current financial statement certified within the previous eighteen months by a certified public accountant pursuant to an audit conducted by such accountant and an estimate of the number of gallons of gasoline or other motor fuel he expects to sell each month.

Prior to the approval of an application for registration, the following procedure will be used to determine whether or not a bond is required and the amount of the bond, if needed:

1. Analyze any independent information concerning the operations, financial status or reliability of an applicant which is available at the time of the review and also determine whether or not the applicant is registered or has applied for registration as a vendor for sales tax purposes. This registration may not be approved if the information on the application is incorrect, if the applicant is delinquent in the payment of any other taxes or if the applicant is not registered as a sales tax vendor.
2. Determine the estimated six month tax liability.
(estimated monthly gallonage x 6 months x \$.08 per gallon)
3. Analyze the financial statement with particular emphasis on the current ratio (current assets to current liabilities) and the net worth (total assets less total liabilities).
 - a. If the current ratio is at least 1:1 and the net worth is equal to or greater than the estimated six month tax liability and if there is no independent information available which may indicate otherwise, a bond is not required.

- b. If the current ratio is at least 1:1 and the net worth is less than the estimated six month tax liability, a bond is required for the difference between the net worth and the estimated six month tax liability but not exceeding the estimated six month tax liability.
- c. If the current ratio is less than 1:1 and the net worth is equal to or greater than the estimated six month tax liability, a bond is required for the difference between the current assets and current liabilities but not exceeding the estimated six months tax liability regardless of the adequacy of the net worth to cover the estimated tax liability.
- d. If the current ratio is less than 1:1 and the net worth is less than the estimated six months tax liability, a bond is required for the difference between the current assets and current liability plus the difference between the net worth and the estimated six months tax liability but not exceeding the estimated six month tax liability.
- e. If the amount of liability of the applicant cannot be determined, for example, where the applicant is unable to furnish an average monthly gallonage sold, a bond for \$100,000 will be requested if the applicant's current ratio is at least 1:1 and net worth does not equal or exceed \$100,000.
- f. If it is determined that a bond is required, an application for registration will not be approved until the bond is filed.

B. Review of Financial Status of Registered Distributors

The department will periodically review the financial status of registered distributors and may, at any time, require such distributor to submit to this department a completed:

1. Motor Fuel Distributor Information Report (Form TP187.16)
2. An unqualified current financial statement certified within the previous eighteen months by a certified public accountant pursuant to an audit conducted by such accountant.

The financial statement submitted by the distributor will be analyzed in the same manner as presented in section A (new applicants) to determine the necessity to require a bond or increase an existing bond. Any available independent information concerning the operations, financial status or reliability, of a distributor may be used to make such determination. Such bond or an increase in an existing bond must be filed within forty five days after the department has given written notice of such determination. Failure to comply may result in the cancellation of the distributor's registration.

C. General

If an applicant or a distributor fails to submit an unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by such accountant, a bond equal to six months tax liability will be required regardless of the net worth or financial status of the applicant or distributor.

In cases where the applicant or distributor is unable to provide an unqualified financial statement certified by a certified public accountant pursuant to an audit conducted by such accountant solely because of the financial hardship of such requirement, the state tax commission, on petition, either through a 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.

In lieu of the bond required to be filed, an applicant or a distributor may deposit with the department securities approved by the state tax commission. Bonds of New York State and United States treasury bonds having maturity dates at least five years subsequent to the date of filing are examples of the types of securities which are acceptable. The fair market value of the securities to be deposited in lieu of a surety bond must be at least the fair market value of the bond required. Fair market value greater than the maturity value will not be recognized.

Any determination by the department that an applicant or registered distributor must file a bond or other security or that a registered distributor must increase the amount of such bond already filed may be reviewed by the state tax commission if the applicant or distributor, within thirty days after the notice of determination has been given, applies to the state tax commission for a hearing. Such application for a hearing does not relieve an applicant from the requirement to file a bond prior to registration or a distributor to file a bond within the required forty five day period.

In any case, the amount of bond required may be adjusted where any information indicates the need for a bond in a greater or lesser amount.