

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

TSB-M-85 (1)M
Motor Fuel Tax
July 17, 1985

This memorandum supercedes TSB-M-84(6)M

Subject: Motor Fuel Tax Law-Registration and Bonding Requirements

Before any person may be registered as a distributor of motor fuel with the Department of Taxation and Finance, and at all times after such person is registered as a distributor, he is required to file with the department a bond of \$50,000 or more executed by a surety company authorized to transact business in this State and which is registered with and under the supervision of the Insurance Department of New York State, and approved by the Superintendent of Insurance as to solvency, to secure the payment of any motor fuel tax liability of such distributor under Article 12-A (motor fuel tax) and Articles 28 and 29 (sales and use taxes) of the Tax Law.

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 total number of gallons of motor fuel expected to be sold or otherwise distributed or expended each month without any reduction for tax free or exempt sales.

Prior to the approval of an application for registration, the following procedure will be used to determine the amount of bond 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 may be used in determining the amount and sufficiency of a bond.
2. Determine the estimated six month maximum potential tax liability. (Estimated monthly gallonage per above computation 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 ratio of current assets to current liabilities is at least one to one and the net worth is equal to or greater than his estimated six-month maximum potential tax liability, the applicant is required to file with the department a bond in the amount of \$50,000.

- b. If the ratio of current assets to current liabilities is at least one to one and the net worth is less than the estimated six-month maximum potential tax liability, a bond is required for the difference between the net worth and the estimated six-month maximum potential tax liability (in no event, less than \$50,000).
 - c. If the ratio of current assets to current liabilities is less than one to one and the net worth is equal to or greater than the estimated six-month maximum potential tax liability, a bond is required for the difference between the current assets and current liabilities but not exceeding the estimated six-month maximum potential tax liability, but determined without regard to the adequacy of the net worth to cover the estimated maximum potential tax liability (in no event, less than \$50,000).
 - d. If the ratio of current assets to current liabilities is less than one to one and the net worth is less than the estimated six-month maximum potential tax liability, a bond is required for the difference between the current assets and current liabilities plus the difference between the net worth and the estimated six-month maximum potential tax liability but not exceeding the estimated six-month maximum potential tax liability (in no event, less than \$50,000).
 - e. Where the amount of liability of an applicant cannot be determined, for example where the applicant is unable to furnish an average monthly gallonage amount, as indicated above, a bond of not less than \$100,000 will be required if the ratio of current assets to current liabilities is at least one to one and the net worth does not equal or exceed \$100,000.
 - f. In addition to paragraphs a through e, the amount of bond required may be adjusted where any information indicates the need for a bond or other security in a greater or lesser amount (in no event, less than \$50,000).
4. Since the law now provides that the purpose of any bond filed by a distributor of motor fuel is to secure payment of the motor fuel taxes and the sales and use taxes on sales of motor fuel, the amount of bond computed on the basis of the above procedure will be adjusted to include both taxes.

If an applicant fails to supply an unqualified current financial statement as required the applicant will not be registered as a distributor of motor fuel. However, the State Tax Commission, on petition, either through the hearing process or on the motion of the State Tax Commission, may waive the requirement for an unqualified current financial statement. If the State Tax Commission waives the requirement for an unqualified current financial statement, it may instead require the applicant to file a bond in such amount as it deems appropriate regardless of the net worth or financial status of the applicant.

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 amount of bond needed or amount of increase in 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.

If a distributor fails to supply an unqualified current financial statement as required, such distributor's registration will be cancelled. However, the State Tax Commission, on petition, either through the hearing process or on the motion of the State Tax Commission, may waive the requirement for an unqualified current financial statement. If the State Tax Commission waives the requirement for an unqualified current financial statement, it may instead require the distributor to file a bond in such amount as it deems appropriate regardless of the net worth or financial status of the distributor.

C. General

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.