

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

TSB-M-86 (9)M
Motor Fuel Tax
December 1, 1986

Subject: Motor Fuel Tax Law Changes (Registrations and Licenses)

Chapter 276 of the New York State Tax Laws of 1986 amended Article 12-A, Motor Fuel Tax Law, effective July 14, 1986. This memorandum, TSB-M-86(9)M (Registrations and Licenses), together with

TSB-M-86(10)M (Tax Imposition),
TSB-M-86(11)M (Manifest Requirements) and
TSB-M-85(8.1)M (Criminal Penalties and other Offenses),

reflects the Chapter 276 Motor Fuel Tax Law changes of 1986.

These memoranda should be associated with

TSB-M-85(5)M (Registrations and Tax Imposition) and
TSB-M-85(8)M (Criminal Penalties),

which respectively reflect the Chapter 44 and Chapter 65 Motor Fuel Tax Law changes of 1985.

I. Definition of Transporter, Importing Transporter Terminal, and Terminal Operator

Section 282, subdivision 12 defines:

Transporter - any person who or which has the use or control, or right to the use or control, of any means of transportation used in transporting motor fuel, including a barge, truck or pipeline.

Importing Transporter - any transporter who or which transports motor fuel in the state where such motor fuel is being imported into the state for use, distribution, storage or sale in the state.

Section 282, subdivision 13, defines:

Terminal - a motor fuel storage facility with a storage capacity of 50,000 gallons or more, excluding facilities where motor fuel is stored solely for its retail sale at that facility.

Terminal Operator - any person who or which has the use of, or control over, or the right to use or control, a terminal.

II. Registration of Distributors

Section 283, subdivision 1, provides that only registered distributors may import motor fuel, or cause it to be imported, into New York State for use, distribution, storage or sale within the state, or shall produce, refine, manufacture or compound motor fuel within the state, and that no person required to be registered who is not so registered may sell, transfer, use, or otherwise dispose of motor fuel in New York State.

Section 283, subdivision 2, has added the following instances where the Tax Commission may refuse to register an applicant as a distributor:

1. when any tax imposed under the Tax Law or the New York City earnings tax on nonresidents has finally been determined to be due from the applicant or a "responsible person" of the applicant and has not been paid in full;

(For purposes of this memorandum a "responsible person" of the applicant is: any officer, director, or partner of the applicant, "responsible shareholder" where the applicant is a corporation, or an employee of the applicant who is under a duty to file a return or pay the taxes required by Article 12-A on behalf of the applicant.)
2. failure by an officer, a director, a "responsible shareholder," or an employee or a partner of the applicant to pay in full the penalty due under Section 289-b;

(For purposes of this memorandum a "responsible shareholder" is: any shareholder, directly or indirectly owning more than 10% of the number of shares of voting stock of the applicant, except when a shareholder owns less than 25% of the number of shares of voting stock in a corporation that consist of four or fewer shareholders at the relevant time. (See Section 283, subdivision 10).)
3. conviction of the applicant for a crime under the Tax Law within the preceding five years;
4. conviction of a "responsible person" for a crime under the Tax Law within the preceding five years, or the conviction of any employee of the applicant in his capacity as a person under a duty to file a return or pay taxes as authorized or imposed by Article 12-A on behalf of any person for a crime under the Tax Law within the preceding five years;
5. when the applicant or a "responsible person" of the applicant acted in the capacity of a "responsible person" of another entity at such time when that entity:
 - A) had taxes imposed under the Tax Law or the New York City earnings tax on nonresidents finally determined to be due and such taxes have not been paid in full, or

- B) was convicted of a crime under the Tax Law within the five years preceding the current application, or
- C) had its registration cancelled or suspended under subdivision 4 of Section 283 of the Tax Law, within the five years preceding the current application;

(However, if the applicant or a "responsible person" of the applicant was only an employee of the other entity, any examination of the tax history of the other entity is limited to the taxes imposed by or under the authority of Articles 12-A, 28, and 29 of the Tax Law with respect to motor fuel, and the examination of the other entity's prior criminal convictions is also limited to those related to motor fuel.)

- 6. the cancellation or suspension within the preceding five years of the registration of the applicant or any "responsible person" of the applicant for one of the reasons given under Section 283, subdivision 4;
- 7. the committing of any of the acts specified in Section 283, subdivision 4, within the preceding five years, by the applicant or any "responsible person" of the applicant.

Other Security in Lieu of Bond

Section 283, subdivision 3, has been amended to permit the substitution of other security acceptable to the Tax Commission in place of the bond, to secure the payment of any amount due from a distributor under Article 12-A, and Articles 28 and 29 with respect to sales and uses of motor fuel.

Cancellation or Suspension of a Distributor's Registration

Section 283, subdivision 4, adds the following conditions under which the Tax Commission may cancel or suspend a distributor's registration:

- 1. the distributor fails to maintain in full force and effect the required bond or other security;
- 2. the distributor fails to comply with any provision of Article 28 of the Tax Law with respect to motor fuel, and any rules or regulations adopted thereunder;
- 3. the distributor knowingly aided and abetted another person in violating any of the provisions, rules or regulations of Article 12-A, or Article 28 with respect to motor fuel;
- 4. the distributor transfers its registration without the prior written approval of the Tax Commission; or
- 5. a shareholder or employee acting for the registrant:

- A) commits fraud or deceit in operations as a distributor or has committed fraud or deceit in procuring a registration;
 - B) has been convicted of a felony in a court of competent jurisdiction, either in or out of New York State, within the meaning of Section 283, subdivision 8, bearing on the distributor's duties and obligations under the Tax Law;
 - C) has knowingly aided and abetted a person who is not registered as a distributor in the importation, production, refining, manufacture, or compounding of motor fuel; or
 - D) has impersonated a person represented to be a distributor but who was not registered as a distributor;
6. the registrant or an officer, director, shareholder, employee, or partner acting for the registrant has knowingly aided and abetted the distribution of motor fuel imported, caused to be imported, produced, refined, manufactured, or compounded by a distributor who is not registered by the department.

Opportunities for Hearings

Section 283, subdivision 5, provides that a registration or an application for a registration cannot be cancelled, suspended or refused without the registrant or applicant having an opportunity for a hearing. However, an application for registration can be refused prior to a hearing if the applicant is given an opportunity for a subsequent hearing.

A registration may be cancelled or suspended prior to an opportunity for a hearing:

- 1. for failure to file a return or to remit taxes under Article 12-A, or Articles 28 and 29 with respect to sales and uses of motor fuel, within 10 days after the date a demand is sent by registered or certified mail to the address of the distributor as required;
- 2. for failure to continue to maintain in full force and effect, the required bond or other security filed with the Tax Commission. However, when a surety bond is cancelled prior to its expiration, the Tax Commission, after considering all relevant circumstances, may make other arrangements and require the filing of such other bond or other security as it considers appropriate; or
- 3. for the transfer of the registration without the prior written approval of the Tax Commission.

Section 283, subdivision 6 provides,

- a) for the issuance of a notice of proposed cancellation or suspension of registration or refusal to register, in the manner as a notice of determination is issued under Section 288.

The petition to challenge the notice must be filed within 90 days after the date the notice is issued.

Where a notice of proposed refusal to register has been issued and in response thereto a timely application for a hearing is made, if the Tax Commission fails to issue a notice of refusal to register within 3 months from the date of the application, the registration must be issued, provided the applicant has filed the bond or other security required by the Tax Commission.

Where the Tax Commission proposes to cancel or suspend a registration or refuse to register an applicant, as a result of an act or omission under subdivision (2) or (4) of Section 283, the required notice of such proposed action must be issued to the registrant or applicant within 5 years from the date of the act or omission, upon which it is based.

- b) that when the Tax Commission determines that the amount of the bond or other security filed by a registrant must be increased, as provided under Section 283(3), a notice and demand requesting the filing of the increase within 30 days from the date of the notice and demand will be sent to the registrant.

The registrant may apply for a hearing to review the increase with the Tax Commission, by making an application to the Tax Commission within 7 days from the date of the notice and demand for the increase.

If the registrant does not file the increase in the amount of the bond or security within the 30 days or apply for the hearing within the 7 days, the Tax Commission shall cancel or suspend the registration of the registrant.

When an application for a hearing is made, the Tax Commission must issue its determination regarding the increase within 15 days from its receipt of the application. If it is determined as a result of a hearing that an increase in the amount of a bond or other security is due, the registrant must file the increase within 7 days from the date of the hearing determination, or if later, within 30 days from the date of the notice and demand for the increase.

Motor Fuel Transactions by Unregistered Distributors

Section 283, subdivision 7, has been amended to provide that when the Tax Commission furnishes evidence to any justice of the supreme court, showing that an unregistered distributor has imported motor fuel into New York, caused motor fuel to be imported into this state, or produced, refined, manufactured, or compounded motor fuel in New York State, the justice shall make a summary order prohibiting that person and his agents from selling any motor fuel illegally, and prohibiting all other

persons from selling or releasing any motor fuel illegally imported or sold by that person. The order will remain in effect until the distributor is registered by the Tax Commission and has reported the importation or sale of motor fuel that is illegally imported or sold, and pays the tax on the motor fuel, or until the Tax Commission consents to the sale.

Transfer of a Registration

Section 283, subdivision 9, has been added to provide:

1. that a registration is personal to whom it is granted, and that a transfer of such registration can only be made by application to the Tax Commission;
2. that a transfer of registration includes:
 - a. the addition or substitution of a partner of the registrant,
 - b. the acquisition of stock by another person giving such person ownership of more than 10% of the voting shares of stock (if the registrant is a corporation);
3. that an application for a transfer must be made in the same manner as any other application for registration as a distributor of motor fuel. The following additional information must also be provided with the application: a statement describing the transaction which will constitute the transfer, including the date of the proposed transfer, the identities of the parties to the transaction, the interests which are proposed to be transferred and the responsible persons (as defined on page 2) of the transferee. The Tax Department must issue its approval or disapproval of an application within 75 days from the date of its receipt of a properly completed application, and any other documents or additional information requested. If the department fails to issue a determination within the 75 days, it is required to register the transferee.

The transfer of a registration without the prior written approval of the department is grounds for the immediate cancellation or suspension of the registration of the registrant.

An exception to this rule applies when a registration is bequested to or inherited by certain related persons, including a) an ancestor of the decedent, b) the spouse of the decedent, c) a lineal descendant of the decedent, of the decedent's spouse, or of a parent of the decedent, or d) the spouse of any lineal descendant in (c).

These transfers are not grounds for an immediate cancellation or suspension, if within 90 days of the date of the decedent's death, the registrant, the personal representative of the decedent's estate, or one of the persons described in subparagraphs (a), (b), (c), or (d), submits a revised application for registration.

Corporate Registrations (Applicants)

Section 283, subdivision 10 provides that where Section 283 refers to ownership of more than 10% of the voting stock of an applicant, 25% or more will be substituted as the percentage of ownership, if the applicant, corporation or other person has four or fewer shareholders holding voting stock.

III. Licensing of Importing Transporters

Section 283-a has been added to provide for the licensing of importing transporters.

Section 283-a, subdivision 1, provides for the licensing of importing transporters upon their application. Unless so licensed, a person may not transport motor fuel in the state, where such motor fuel is being imported into the state for use, distribution, storage, or sale within the state.

Section 283-a, subdivision 2, provides for refusing to license an applicant as an importing transporter on substantially the same basis as Section 283(2).

Filing a Bond or Other Acceptable Security

Section 283-a, subdivision 3, provides the Tax Commission with the authority to require a bond or other security (presently in the amount of \$2000) to be filed to obtain a license as an importing transporter and to secure the performance of the duties and responsibilities of an importing transporter as required under Article 12-A and Articles 28 and 29 with respect to motor fuel. The bond or other security may be dispensed with if the applicant is also a registered distributor under Section 283.

Cancellation or Suspension of a Transporter's License

Section 283-a, subdivision 4, specifies those actions that may cause the cancellation or suspension of the license of an importing transporter. These actions are substantially the same as those provided for in Section 283(4).

Opportunities for Hearings

Section 283-a, subdivision 5, provides importing transporters with the opportunity for a hearing with respect to the cancellation or suspension of a license or the refusal of an application for a license on the same basis as Section 283(5). However, this section adds that an importing transporter's license may also be cancelled or suspended without a prior hearing, for failure to file a report, as well as a return, within 10 day after the date a demand

is sent by registered or certified mail to the address of the importing transporter pursuant to Article 12-A.

Section 283-a, subdivision 6 provides that subdivisions (6), (8), (9) and (10) of Section 283 of Article 12-A will apply to the provisions of Section 283-a in the same manner and force with respect to importing transporters, except where any provisions of such subdivisions are either inconsistent with or irrelevant to Section 283-a.

IV. Licensing of Terminal Operators

Section 283-b has been added to provide for the licensing of terminal operators.

Section 283-b, subdivision 1, provides for the licensing of terminal operators upon the application of a person who operates a facility where motor fuel is deposited. No person may operate a motor fuel terminal in New York State unless he is licensed, with the exception of those persons who only store motor fuel in a facility for their own use and consumption.

Section 283-b, subdivision 2, provides for refusing to license an applicant as a terminal operator on substantially the same basis as Section 283(2).

Filing a Bond or Other Acceptable Security

Section 283-b, subdivision 3, provides the Tax Commission with the authority to require a bond or other security (presently in the amount of \$10,000) to be filed to obtain a license as a terminal operator and to secure the performance of the operator's duties and responsibilities as required under Article 12-A and Articles 28 and 29 with respect to motor fuel. The bond or other security may be dispensed with if the applicant is also a registered distributor under Section 283.

Cancellation or Suspension of an Operator's License

Section 283-b, subdivision 4, specifies those actions that may cause the cancellation or suspension of the license of a terminal operator. These actions are substantially the same as those provided for in Section 283(4).

Opportunities for Hearings

Section 283-b, subdivision 5, provides terminal operators with the opportunity for a hearing with respect to the cancellation or suspension of a license or the refusal of an application for license on the same basis as Section 283(5). However, this section adds that a terminal operator's license may be cancelled or suspended without a prior hearing, for failure to file a report, as well as a return, within 10 days after the date a demand is sent by registered or certified mail to the address of the terminal operator pursuant to Article 12-A.

Section 283-b, subdivision 6, provides that subdivisions (6), (8), (9), and (10) of Section 283 of Article 12-A will apply to the provisions of Section 283-b in the same manner and force with respect to terminal operators, except where any provisions of such subdivisions are either inconsistent with or irrelevant to Section 283-b.