

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>UNI-MARTS, INC.</b>	:	DECISION
for Revision of a Determination or for Refund	:	DTA No. 806939
of Tax on Petroleum Businesses under Article	:	
13-A of the Tax Law for the Fiscal Year Ended	:	
September 30, 1983	:	

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Petitioner Uni-Marts, Inc., 477 East Beaver Avenue, State College, Pennsylvania 16801 filed an exception to the determination of the Administrative Law Judge issued on September 5, 1991 with respect to its petition for revision of a determination or for refund of tax on petroleum businesses under Article 13-A of the Tax Law for the fiscal year ended September 30, 1983. Petitioner appeared by Borenkind & Mondschein, Esqs. (Samuel H. Borenkind and Morris A. Mondschein, Esqs., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Gary Palmer, Esq., of counsel).

Petitioner filed a brief on exception. Petitioner's request for oral argument was denied.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

***ISSUE***

Whether the Division of Taxation validly computed the gross receipts tax under Article 13-A based on the retail sale price.

***FINDINGS OF FACT***

We find the facts as determined by the Administrative Law Judge. These facts are set forth below.

Petitioner, Uni-Marts, Inc., is headquartered in Pennsylvania and was incorporated in Delaware on January 26, 1977. In October of 1982 it purchased several Quaker State gasoline stations in New York State and built retail food or "convenience" stores on each site.

Petitioner purchased gasoline in Pennsylvania and imported it into New York State for resale to retail customers at its convenience store locations.

Effective June 30, 1983, the Legislature imposed on petroleum businesses a gross receipts tax on sales of petroleum where shipments are made to points within New York State (Tax Law § 301, as added by L 1983, ch 400). Petitioner registered as a petroleum business under Tax Law § 302.

In computing its gross receipts tax for the fiscal year ended September 30, 1983, petitioner used the wholesale purchase price from its suppliers rather than the retail sales price to its retail customers in New York.

After an audit of petitioner's tax filings, the Division of Taxation sent to petitioner a Statement of Audit Adjustment dated March 23, 1987 indicating a gross receipts tax deficiency of \$1,800.00, plus interest. This adjustment was computed by multiplying the gross retail sales (minus any highway use tax and sales tax) for the period July 1, 1983 through September 30, 1983 by the statutory tax rate of 3.25%.

A Notice of Deficiency, dated March 23, 1987, was sent to petitioner asserting a tax deficiency of \$1,800.00, plus interest for the fiscal year ended September 30, 1983.<sup>1</sup>

By Conciliation Order, dated March 3, 1989, the conciliation conferee sustained the statutory notice.

Petitioner filed a petition, dated April 25, 1989, challenging the tax assessment as discriminatory. Petitioner argued that because it is both a distributor and a retailer, the gasoline it sells is taxed at the higher retail price than gasoline sold at the wholesale price by its

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<sup>1</sup>A consent form extending the period of limitation of the assessment until June 15, 1987 was signed by Harry A. Martin, petitioner's secretary and treasurer, on October 1, 1986.

competitors. Petitioner therefore claimed that it is at a competitive disadvantage because it, in effect, pays a higher tax per gallon.

***OPINION***

In the determination below, the Administrative Law Judge held that there was no claim by petitioner that the law in effect during the audit period in question was applied in any manner other than in accordance with the language and intent of the statute, and that the 1988 task force report and the legislative history underlying the 1990 changes to Article 13-A support the Division of Taxation's (hereinafter the "Division") application of the law in this case. The Administrative Law Judge, in denying petitioner's petition and sustaining the Notice of Deficiency, further held that, while the reasons for the legislative changes in 1990 may have been motivated by the perception that the then current law contributed to unfair competition, there is nothing in this cited legislative history to indicate that, prior to the 1990 amendments, Tax Law § 301 was in any way illegal or constitutionally invalid.

On exception, petitioner alleges that a good faith effort was made to comply with Tax Law § 301 and that it paid to the State of New York a gross receipts tax equivalent to or greater than the tax that would have been due had petitioner imported the product through a subsidiary or affiliate which resold the same to petitioner in New York State at the wholesale price. Petitioner argues that the gross receipts tax, as sought to be applied in this instance, is discriminatory since it is being imposed upon the retail rather than the wholesale price, thus placing petitioner at a competitive disadvantage. Petitioner further alleges that the application of Tax Law § 301(a) in the instant case places a premium on form over substance, and that competitors of petitioner, by utilizing multiple entities, would be charged a lesser tax. Finally, petitioner argues that New York State has long recognized the inequities inherent in the gross receipts tax, resulting in amendment of the Tax Law so as to impose the tax on a cents per gallon basis.

The Division, while not filing a brief in this matter, instead relies on its letter brief filed with the Administrative Law Judge.

We find no basis in the record before us for modifying the determination of the Administrative Law Judge in any respect. Therefore, we affirm the determination of the Administrative Law Judge for the reasons stated in said determination.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of petitioner Uni-Marts, Inc. is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Uni-Marts, Inc. is denied; and
4. The Notice of Deficiency dated March 23, 1987 is sustained.

DATED: Troy, New York  
May 14, 1992

/s/John P. Dugan  
John P. Dugan  
President

/s/Francis R. Koenig  
Francis R. Koenig  
Commissioner

/s/Maria T. Jones  
Maria T. Jones  
Commissioner