STATE OF NEW YORK

DIVISION OF TAX APPEALS

In the Matter of the Petition of **THE BROOKLYN UNION GAS COMPANY, INC.** for Redetermination of a Deficiency or for Refund of Corporation Tax under Article 9 of the Tax Law for the Period August 1, 1991 to December 31, 1991, and the years ending December 31, 1992 and December 31, 1993.	: : : : : :	DETERMINATION DTA NO. 813033

Petitioner, Brooklyn Union Gas Company, Inc., c/o Richard M. Desmond, One MetroTech Center, Brooklyn, New York 11201-3850, filed a petition for redetermination of a deficiency or for refund of corporation tax under Article 9 of the Tax Law for the period August 1, 1991 to December 31, 1991, and the years ending December 31, 1992 and December 31, 1993.

Petitioner, appearing by Cullen & Dykman (Robert Fernandez, Esq., of counsel) and the Division of Taxation, appearing by Steven U. Teitelbaum, Esq. (John O. Michaelson, Esq., of counsel), consented to have the controversy determined on submission without a hearing by their signatures on June 22, 1995 and July 3, 1995, respectively, with all documents and briefs to be submitted by January 31, 1996, including properly requested extensions of time. On July 6, 1995, the Division of Taxation presented its submission of documentary evidence. On October 18, 1995 petitioner submitted its brief in this matter. The Division of Taxation submitted a memorandum of law in support of its position on December 4, 1995. The Division of Tax Appeals was in receipt of petitioner's reply brief on January 31, 1996.

Upon review of the documents and briefs submitted in connection with this matter, Catherine M. Bennett, Administrative Law Judge, renders the following determination.

ISSUE

Whether the Division of Taxation properly denied the deduction of gross receipts and gross income taxes when computing the proper amount of gross receipts and gross income taxes.

FINDINGS OF FACT

The parties entered into a Joint Stipulation of Facts which are presented below. Additional facts as deemed relevant to the determination herein were added by the Administrative Law Judge.

1. Petitioner, The Brooklyn Union Gas Company ("Brooklyn Union" or "Company"), is a New York corporation with its principal office and place of business at One MetroTech Center, Brooklyn, New York 11201.

2. During the period under review, August 1, 1991 through December 31, 1993, Brooklyn Union, a public utility, was engaged in the sale of natural gas to customers in the State of New York.

3. Brooklyn Union's rates and charges are subject to regulation by the New York State Public Service Commission ("PSC"). The Company's rates and charges are set forth in PSC-approved tariffs.

4. Gas sales by Brooklyn Union within New York State are subject to the taxes imposed pursuant to Article 9, §§ 186, 186-a, 186-b, 186-c and 188 of the New York Tax Law (hereinafter sometimes referred to as "gross receipts taxes" or "GRT's").

5. During the period in controversy, Brooklyn Union's rates and charges were governed by tariffs issued pursuant to valid PSC Orders ("tariffs").

6. The method and calculation by which the Company passes through to its customers the gross receipts taxes on in-state gas sales is set forth in Brooklyn Union's tariffs.

7. General Information Leaf Nos. 12-F and G of the tariffs which were issued pursuant to Order of the PSC dated July 23, 1991 in Case No. 27611, provide that the rates and charges

to the Company's customers under all service classifications shall be increased by a "Revenue Tax Surcharge" to reflect, among others, the gross receipts taxes.

8. The Revenue Tax Surcharge imposed by Brooklyn Union upon its customers for, among others, the gross receipts taxes, was calculated for the period under review pursuant to the following methodology set forth in the Company's tariffs:

> "The total amount of all rates and charges shall be increased by an Effective Aggregate Percentage factor determined by dividing the applicable aggregate percentage rate of taxes by 100% minus the applicable aggregate percentage rate of taxes."

9. The methodology quoted in Finding of Fact "8" may be expressed as the following formula:

E = T/1-T

Where "E" is the Effective Applicable Percentage Factor and "T" is the applicable aggregate rate of taxes.

10. At all times under review herein, the Company's aggregate percentage rate of taxes for New York State gross receipts taxes (including surcharges) was 5.61% computed as follows:

SECTION	RATE
(i) § 186	.75%
(ii) § 186-b MTA surcharge	17% x .75%
(iii) § 188 surcharge	15% x .75%
Subtotal (§ 186 tax = surcharges)	.99%
(iv) § 186-a	3.5%
(v) § 186c MTA surcharge	17% x 3.5%
(vi) § 188 surcharge	15% x 3.5%
Subtotal (§ 186-a tax + surcharges)	4.62%
(vii) Aggregate percentage rate of gross receipts taxes (including surcharges) (4.62% + .99%)	5.61%

11. Based upon the applicable gross receipts tax rates set forth in Finding of Fact "10", the Effective Applicable percentage Factor ("Effective Tax Rate" or "E") for gross receipts taxes, according to the tariff formula, **E = T/1-T,** (where "T" is 5.61%) is .059434 computed as follows:

.0561/1 - .0561 = .059434

12. For all periods at issue in this proceeding, Brooklyn Union Timely filed its New York State tax returns and timely paid the gross receipts tax liabilities.

13. Brooklyn Union's gross receipts for regulated gas sales as reported to the PSC[1] for each of the periods in controversy were as follows:

PERIOD	AMOUNT
8/1/91 - 12/31/91	$ 275,664,509.[2]
1/1/92 - 12/31/92	$1,050,450,588.
1/1/93 - 12/31/93	$1,085,181,860.

14. The amounts set forth in Finding of Fact "13" include the following amounts collected by Brooklyn Union from its customers and paid over to New York State as gross receipts taxes at the Effective Tax Rate of .059434:

PERIOD	AMOUNT
8/1/91 - 12/31/91	$ 15,464,779.
1/1/92 - 12/31/92	$ 58,930,278.
1/1/93 - 12/31/93	$ 60,878,702.

15. The amounts collected and paid as GRT's for each period under review were derived by applying the Effective Tax Rate to the following revenues derived from PSC-regulated sales of gas:

PERIOD	AMOUNT
8/1/91 - 12/31/91	$ 260,199,730.
1/1/92 - 12/31/92	$ 991,520,310.
1/1/93 - 12/31/93	$1,024,303,158.

16. By letters dated March 21 and March 31, 1994 Brooklyn Union requested refunds of gross receipts taxes as follows:

PERIOD	AMOUNT
8/1/91 - 12/31/91	$ 867,574.
1/1/92 - 12/31/92	$ 3,305,989.
1/1/93 - 12/31/93	$ 3,415,295.

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[1]Workpapers supporting: (i) the Company's gross receipts for regulated gas sales, (ii) the amounts collected from customers and paid to the State as gross receipt taxes, (iii) Brooklyn Union's gross receipts **excluding** gross receipts taxes and (iv) the tax refunds requested as set forth in Findings of Fact "13" - "16" herein were included as Exhibits "C", "D" and "E" for the years 1991, 1992 and 1993 respectively. The figures set forth in the workpapers are derived from the Company's books and records as reported to the PSC.

[2]The 1991 refund claim includes gross receipts derived from the Company's ledgers for the months of August, September, October, November and December.

17. The amounts requested as refunds represent the difference between applying (i) the Effective Tax Rate of .059434 and (ii) the aggregate statutory gross receipts tax rate of .0561, to the Company's revenues from PSC-regulated gas sales set forth in Finding of Fact "15".

18. Petitioner submitted the affidavit of its vice president, comptroller and chief accounting officer, Richard Desmond, who reiterated the method of calculation of its gross receipts taxes. Mr. Desmond established that petitioner seeks to recover the .33% differential in rates for the benefit of its customers.

19. Effective August 1, 1991, the New York State Legislature enacted the Gas Import Tax (L 1991 ch 166, §§ 146-149-a). The Gas Import Tax ("GIT"), codified in part in Tax Law § 189, imposes a monthly tax on natural gas importers for the privilege of importing gas services into New York for their own use or consumption.

20. Subsequent to the enactment of Tax Law § 189, the Division of Taxation ("Division") issued TSB-M-91(5)C providing guidance and explanation in reference to such section. Certain key provisions, pertinent to the matter herein, are reproduced below:

> "DEFINITIONS
>
> 1. Gas services means the delivery of natural gas through mains or lines.
>
> 2. Gas importer means every person who imports gas services or causes gas services to be imported into New York State for their own use or consumption.
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> * * *
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> 7. Public utility means a public utility subject to the jurisdiction of the Public Service Commission as to the matter of rates on sales to customers making delivery of gas services in New York to a gas importer.
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> * * *
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> IMPOSITION
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> A tax is imposed on every gas importer at the rate of 4 1/4% (plus applicable surcharges) of the consideration given or contracted to be given for gas services imported or caused to be imported into New York.
>
> 1. If importation is through a regulated public utility the public utility is required to collect the tax monthly from the gas importer. The public utility shall separately state the tax and show it on all invoices, receipts or other memoranda of price regarding the transportation of gas services.

> The public utility is a trustee of the State. Sales tax provisions apply with respect to the tax required to be collected. The sales tax requirements that: the tax be collected when collecting the payment for the transportation of gas services; the tax be separately stated; certain records are required to be kept, all pertain. The sales tax provisions concerning who is liable for the tax also pertain." (Emphasis added.)

21. By letter date June 22, 1994 the Audit Division of the New York State Department of Taxation and Finance denied the Company's requests for refunds as follows:

> "This is in reference to your claims for refund for the periods ending 12/91, 12/92, and 12/93 based on a deduction for 'gross up' to be taken against your gross receipts to be reported to New York State.
>
> "Article 9, Section 186 imposes a tax on all receipts, 'gross earnings', from the employment of capital without any deductions. Under Section 186A, however, certain deductions are allowed. They are as follows:
>
> 1. receipts from sales for resale.
> 2. cash discounts taken by customers and uncollectible accounts.
> 3. taxes imposed on the utility's customers by New York State or its municipalities or the Federal government for which the utility is merely a collecting agency for the taxing authority.
>
> "Article 9, Sections 186 and 186A taxes are imposed upon a utility for selling or furnishing a utility service. Since these taxes are not imposed upon the consumer, as is the case of Section 189 tax, your utility is not considered to be a collecting agency for the taxing authority.
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> "As the deduction for gross up is not considered to be an allowable deduction, pursuant to Tax Law Section 186A, your claims for refund are denied."

22. On July 28, 1994, Brooklyn Union filed a petition with the State Division of Tax Appeals seeking review of the Audit Division's determination.

23. On October 14, 1994, the Department of Taxation and Finance filed an answer to the Company's petitioner.

SUMMARY OF THE PARTIES' POSITIONS

24. Petitioner maintains that the interaction of U.S. Supreme Court principles and the enactment of section 149 of chapter 166 of the Laws of 1991 causes a shift in the legal incidence of New York's gross receipts taxes from the utility directly to the customer. Referring again to section 149 petitioner claims that as a result of its passage, New York utility companies

became collection agents for New York gross receipts taxes on natural gas sales. As such, amounts thus collected from customers to recover such taxes are not taxable gross receipts.

25. The Division argues that petitioner is not a collection agent for the State and that the legal incidence of the tax is upon petitioner and not the ultimate consumer.

CONCLUSIONS OF LAW

A. Tax Law § 186(1) provides the following, in pertinent part:

> "Every corporation . . . formed for or principally engaged in the business of supplying water, steam or gas, when delivered through mains or pipes, or electricity, or principally engaged in two or more of such businesses shall pay for the privilege of exercising its corporate franchise or carrying on its business in such corporate or organized capacity in this state, a tax which shall be three-quarters of one per centum upon its gross earnings from all sources within this state, and four and one-half per centum upon the amount of dividends paid during each year ending on the thirty-first day of December in excess of four per centum upon the actual amount of paid-in capital employed in this state by such corporation . . . . The term 'gross earnings' as used in this section means all receipts from the employment of capital without any deduction." (Emphasis supplied.)

Tax Law § 186-a, addressing tax on the furnishing of utility services provides as follows:

> "2. . . . the words 'gross income' mean and include receipts received in or by reason of any sale, conditional or otherwise, . . . made or service rendered for ultimate consumption or use by the purchaser in this state, including cash, credits and property of any kind or nature (whether or not such sale is made or such service is rendered for profit), without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or services or other costs, interest or discount paid, or any other expense whatsoever . . . .
>
> * * *
>
> "6. The tax imposed by this section shall be charged against and be paid by the utility and shall not be added as a separate item to bills rendered by the utility to customers or others but shall constitute a part of the operating costs of such utility." (Emphasis added.)

B. As established by the record, Brooklyn Union was subject to taxes under Tax Law §§ 186, 186-a, 186-b and 186-c, which collectively resulted in the imposition of a rate equivalent to 5.61%. Tariffs which governed petitioner's rates and charges pursuant to Order of the Public Service Commission provided that rates pertaining to petitioner's operation shall be increased by a Revenue Tax Surcharge to reflect, among other charges, the gross receipts taxes. Although utility companies such as Brooklyn Union were permitted to pass the economic burden of the taxes along to customers as operating costs, the amounts collected from customers as gross

receipts were subject to taxation because they were included in the company's taxable receipts, creating a "tax-on-tax" effect. In order for petitioner to remain economically whole, petitioner collected from its customers, and remitted to New York State, gross receipts taxes at the "grossed-up" rate of 5.94%. Petitioner now seeks to recover this rate differential for the benefit of its customers. The basis for its refund argument centers upon the enactment of certain 1991 legislation, which will be discussed in more detail, infra. Petitioner submits that after 1991, (i) gross receipts taxes were, as a matter of law, imposed directly on customers; (ii) petitioner became a mere collection agent for such taxes; (iii) similar to sales taxes, such amounts should have been excluded from taxable gross receipts; and (iv) petitioner overpaid its tax liability by remitting to New York State the gross receipts taxes at the grossed-up rate.

C. Prior to August 1991, some in-state gas consumers avoided gross receipts taxes by purchasing natural gas outside New York and then arranged for its transport across state lines into New York for use in the State. In an effort to equalize the tax burdens imposed by gas importers and customers who were purchasing gas from in-state sellers such as petitioner, the New York State Legislature enacted the Gas Import Tax which took effect August 1, 1991. The GIT imposes a monthly tax on natural gas importers for the privilege of importing gas services into New York for their own use or consumption. The tax imposed, including surcharges was designed to equal, or at least approximate, the aggregate gross receipts taxes rate of 5.61%. The GIT is imposed directly upon the importer and, where the gas is transported by a PSC-regulated utility it must be collected by the utility. The amounts collected from importers as GITs are not taxable receipts of the utility, and therefore no gross-up is necessary (see, TSB-M-91[5]C).

Tax Law § 189(3)(a)(1), a codification of some of the principles of the GIT, provides in part as follows:

> "If the gas services are delivered in this state to the gas importer by a public utility, then the public utility making such delivery of gas services shall be required to collect the tax imposed by this section pursuant to subparagraph two of this paragraph, and shall be collected monthly from such gas importer and such gas importer shall so pay the tax required to be collected to such public utility. The tax shall be due and owing and shall be required to be paid to the public utility within thirty days from the billing for the tax. The tax required to be collected by such public utility shall be separately stated, charged and shown on all invoices, receipts

or other memoranda of price with respect to the transportation of such gas services. The amount of tax required to be collected shall be paid to such public utility required to collect it as trustee for and on account of the state. . . . All of the provisions of subdivision one of section eleven hundred thirty-one, subdivisions (a) and (e) of section eleven hundred thirty-two, section eleven hundred thirty-three and section eleven hundred thirty-five of this chapter shall apply to the tax imposed by this section with the same force and effect as if the language of those provisions had been incorporated in full in this section and had expressly referred to the tax imposed by this section, with such modification as may be necessary in order to adapt the language of such provisions to the provisions of this section, provided, specifically, that the term 'person required to collect tax' shall refer to a public utility required to collect tax under this section, the term 'customer' shall refer to a gas importer from whom tax under this section is required to be collected by a public utility and the term 'tax' shall refer to the tax imposed by this section." (Emphasis supplied.)

Laws of 1991 (ch 166, § 149) summarizes the legislative intent relied upon by petitioner to support its argument:

"the main goal of this act is to attempt to equalize the tax burden in relation to consumers of gas service. Presently, consumers of gas services may avoid the burden of the taxes imposed by sections 186 and 186-a of the tax law by purchasing the service out-of-state and hiring transportation to carry that service to the consumer's premises in this state. The legal incidence of the taxes imposed by sections 186 and 186-a of the tax law are on the utility making sales of gas services in this state. However, both of these taxes are presently passed through by the utility separately, and in their entirety, to consumers purchasing gas services from such utility in this state pursuant to rate regulation of the charge for such services by the public service commission. Thus, consumers of gas services purchased in this state from utilities bear the direct pass-through of both such taxes. Sections one hundred forty-six through one hundred forty-nine-a of this act are an attempt to impose on those consumers who purchase gas services outside this state a comparable fair tax burden. Accordingly, to insure continuing comparability, pursuant to regulation by the public service commission, utilities shall be required to continue to pass through the total amount of such taxes to in-state consumers so that such consumers will continue to bear the economic burden of such taxes. In this manner a continuing comparable economic burden is imposed by such sections of this act on these consumers who purchase gas service out-of-state for use or consumption in this state as compared to consumers who purchase gas services in this state from utilities." (Emphasis added.)

In addition, section 149-a provides in part:

"The department of public service and the public service commission shall cooperate with the tax department in assisting such department in matters affecting the administration of the tax imposed by sections one hundred forty-six through one hundred forty-nine-a of this act. . . ."

D. The crux of petitioner's argument is that the "import tax" should apply to sales by petitioner to its customers as well as to transactions where petitioner merely delivers the gas into the state for the "gas importer", since petitioner maintains that the passage of the GIT

shifted the legal incidence of the GRTs directly to the customers and rendered petitioner a collection agent for the State. Petitioner claims that the natural result of such a change is that the GRTs collected in gas rates should be excluded from taxable receipts thereby eliminating the need for the tax "gross-up", and entitling petitioner to a refund from the point in time of the GIT enactment. I reject petitioner's argument.

The 1991 legislation deals with a specific situation namely, where gas is imported or caused to be imported into the state by a "gas importer" and delivered by a public utility. In such cases a tax is imposed upon the importer and collected by the utility which delivers the gas into the state for the importer. By specific language in the legislation the "import tax" is treated as a sales tax and as such is not included in the utility's gross earnings base for Article 9.

E. Petitioner places a great deal of reliance on U.S. v. State of Delaware (988 F2d 555), which challenged the validity of a state utility tax imposed upon electricity provided to Dover Air Force Base, a U.S. military installation in Delaware, which purchases electricity from a regulated public utility. Under the Delaware law taxing the distribution of electricity (imposed as a gross receipts tax), the distributor, not the consumer, nominally pays the tax. However, the Delaware Public Service Commission, which regulates utility rates, is directed to adjust electricity rates such that the tax is passed through to consumers and the utility company's earnings are unaffected. This resulted in the consumer, in that case the United States, indirectly paying the Delaware utility tax. The Circuit Court of Appeals succinctly described the issues before it:

> "Under the longstanding doctrine of intergovernmental tax immunity, direct state taxes on federal entities are per se unconstitutional absent congressional consent, but indirect taxes are constitutional where the tax does not discriminate against the federal government, in which case it is unconstitutional as applied, or as an indirect tax, in which case it is constitutional.
>
> "In doctrinal terms, we must decide the legal incidence of the tax, which is distinct from both the economic incidence of the tax and the nominal liability to pay the tax. Although . . . the analytic basis for distinguishing unconstitutional taxes from constitutional ones is problematic, the Supreme Court has squarely held that the legal incidence of a state sales tax falls on the federal government, even though nominally imposed on a supplier to the federal government, if the tax is mandatorily passed through to the United States." (Id. at 556.)

The court additionally stated:

> "These cases [referring to several Federal District Court matters] recognize . . . that the Supreme Court has adopted at least one per se rule on legal incidence: if a state tax on a supplier is mandatorily passed through to the United States as a consumer, the seemingly indirect tax is functionally indistinguishable from a tax directly imposed on the United States and is therefore unconstitutional." (Id. at 561.)

The court ultimately concluded that the since the Delaware tax, by statute, was mandatorily passed through to consumers, the legal incidence fell directly on the Federal government as the customer, and held it to be unconstitutional as applied to sales to Dover. Petitioner herein argues that the plain language of Laws of 1991 (ch 166, § 149) now requires that utilities pass the GRTs on to their customers. Although New York consumers have long borne the economic burden of these taxes because the Public Service Commission has permitted their recovery in gas rates, since utilities must pass through the taxes, petitioner reasons that consumers now bear the legal incidence of the GRTs. This shift, petitioner maintains, makes the tax, as a matter of law, one imposed directly on the customer, and the vendor becomes merely a collection agent. Taxes imposed directly on customers, which the utility then merely collects for the government, would not be considered receipts subject to GRTs. It is on this basis that petitioner seeks a refund of the .33% differential in the tax rates for the period after the enactment of the Laws of 1991, as described above.

F. An independent examination of Tax Law §§ 186 and 186-a and their history, in conjunction with the enactment of Tax Law § 189 and the Laws of 1991 (ch 166, § 149), persuades me to conclude that the legal incidence of the GRTs remains with the utility providing gas services in this State. The nature of the GRTs places the legal incidence for such taxes on the utility providing the gas services. This is well established, and the legislative intent as set forth in Laws of 1991 (ch 166, § 149) specifically acknowledges that fact in its discussion. This enactment neither changed nor modified the statutes governing the GRTs. In short, petitioner errs when it states that section 149 of chapter 166 "expresses a clear legislative mandate that GRT's be passed on to consumers. In contrast to traditional PSC policy, by which utilities were permitted to recover gross receipts taxes from ratepayers, section 149 now

requires that utilities pass these taxes on to customers." (Petitioner's br. p. 11) Nothing in chapter 166 alters the language of sections 186, 186-a, 186-b, 186-c and 188 with regard to petitioner's computing its tax liability under such sections. The statement relied upon by petitioner is merely a synopsis by the legislature of its view of the existing law vis-a-vis the 1991 amendment. There is no basis to accept this statement as an amendment to the existing, clear and unchanged language of sections 186, 186-a, 186-b, 186-c and 188 which treats the taxes imposed under these sections as operating costs. The fact that the legislative intent of the enactment of Tax Law § 189 was an attempt to equalize the tax burden imposed on consumers of gas service, and in part was accomplished by requiring the utilities to continue to pass through the GRTs to in-state consumers, as had been the practice, does not change the legal incidence of the GRTs. It was an attempt to approximate the economic burden of the taxes imposed, but not an alteration of the legal responsibility for such taxes. Most persuasive in this regard is the fact that with the GRTs, if the utility does not pay the tax, the State cannot collect it from the consumers, since it remained a tax on the gross receipts of the utility, due from the utility and only the utility. However, the GIT was clearly enacted with a different view. In contrast it is clear that the intent was for the GIT to become a trust tax, and incorporate basic sales tax principles. Both the statute (Tax Law § 189) and the guiding Taxpayer Services Bureau Memorandum (TSB-M-91[5]C) provide with no uncertainty that liability for the GIT follow sales tax rules and could impose GIT liability on both the person required to collect the tax (the utility) and the customer (the gas importer) should the former fail to collect appropriately. Although the economic burden for the GRTs and the GIT fall with the consumer, the legal incidence for the GRTs remains with the utility, and the utility has not become a mere collection agent under such provisions.

The court's analysis in U.S. v. Delaware does not conflict with this conclusion. The court's holding in that case on legal incidence indicated that because a tax was mandatorily being passed through to the United States as a consumer, although it was an indirect tax on the consumer, it was viewed as functionally indistinguishable from a tax directly imposed for

constitutional purposes. The court did not conclude that the tax became something else, but rather that the directness of the taxation infringed upon principles of constitutionality, which are not relevant to the matter before me. The dicta of the Delaware case should not be read to mean that a gross receipts tax required to be passed through to the customer essentially acts to transform such tax into a sales tax, thereby altering the nature of the liability.

Although the gross-up presently imposed upon in-state gas purchasers, for which there is no analogous charge to gas importers subject to the GIT is unfortunate, costly and perhaps even unintended, my review of the legislative materials pertaining to the enactment of the GIT indicates a desire to close a loophole which existed by an attempt to equalize the tax burden to consumers of gas service. The focus of the enactment was clearly to impose a comparable fair tax burden on consumers who purchase gas service out of state for use or consumption in the State, previously imposed only on consumers who purchased gas services in the State from utilities. Under the circumstances presented before me, the Legislature met its intent to substantially narrow such gap, despite its failure to reach exact equality, and did not alter the effect of the GRTs in doing so. Accordingly, the Division of Taxation properly denied the refunds sought by petitioner.

G. The petition of The Brooklyn Union Gas Company is denied and the Division of Taxation's denial of the claim for refund of utility franchise and gross income taxes is hereby sustained.

DATED: Troy, New York
July 25, 1996

/s/ Catherine M. Bennett
ADMINISTRATIVE LAW JUDGE