

STATE OF NEW YORK  
TAX APPEALS TRIBUNAL

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In the Matter of the Petition	:	
of	:	
<b>OIL CO., INC.</b>	:	DECISION
<b>D/B/A EAGLE OIL</b>	:	DTA No. 812595
	:	
for Redetermination of a Deficiency or for	:	
Refund of Tax on Petroleum Businesses under	:	
Article 13-A of the Tax Law for the Fiscal	:	
Years Ended June 30, 1988 and June 30, 1989.	:	

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Petitioner Oil Co., Inc. d/b/a Eagle Oil, One Sheridan Boulevard, Inwood, New York 11696-1807, filed an exception to the determination of the Administrative Law Judge issued on August 3, 1995. Petitioner appeared by Marvin E. Kramer & Associates, P.C. (Marvin E. Kramer, Esq., of counsel). The Division of Taxation appeared by Steven U. Teitelbaum, Esq. (James P. Connolly, Esq., of counsel).

Petitioner did not file a brief on exception. The Division of Taxation filed a brief in opposition. Petitioner filed a brief in reply. Oral argument was heard on March 14, 1996.

The Tax Appeals Tribunal renders the following decision per curiam. Commissioner DeWitt took no part in the consideration of this decision.

***ISSUE***

Whether the Division of Taxation properly determined that petitioner sold petroleum products to a related corporation thereby making the receipts from such sales subject to the tax on petroleum businesses imposed by Article 13-A of the Tax Law (i.e., the "gross receipts tax").

***FINDINGS OF FACT***

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

On January 15, 1991, the Division of Taxation ("Division") issued to petitioner, Oil Co., Inc. d/b/a Eagle Oil ("Oil Co."), two notices of deficiency for additional tax under Article 13-A of the Tax Law for the fiscal years ended June 30, 1988 and June 30, 1989. At the hearing, petitioner conceded liability for the additional tax and interest imposed for the period July 1, 1987 through June 30, 1988. The Division waived the imposition of penalty on the amount of this underpaid tax. As a result, this notice was no longer at issue between the parties.

The remaining Notice of Deficiency at issue pertains to the period July 1, 1988 through June 30, 1989 and assesses tax of \$877,313.00, plus penalty and interest. It is based on an audit of Oil Co. to be discussed hereinafter.

Oil Co. was a Connecticut corporation which had filed a trade name certificate and license to do business in New York State. Its trade name was Eagle Oil. Oil Co. was a trader of motor fuel, #2 oil and enhanced diesel and was registered as a terminal operator, diesel distributor and petroleum business (Article 13-A). William S. Nappo was the 100% shareholder of Oil Co.

Eagle Gas, Inc. ("Eagle Gas") was also 100% owned by Mr. Nappo and was a national trademark corporation for the marketing of gasoline. It was a New York corporation but not registered as an Article 13-A petroleum business.

The auditor commenced the audit by reviewing the books and records of Oil Co., which included a purchase journal, sales journal, cash receipts journal, cash disbursements journal, the accountant's records, computer printout of sales, residential certificates, wire agreements between banks and accounts payable information. The auditor requested on several occasions that Oil Co. provide its U.S. Corporation Income Tax Return (Form 1120) for the year ended June 30, 1989 as had been provided for the previous year. However, the return was never provided.

The auditor determined that Oil Co. was making purchases of petroleum from Triton

Enterprises, Inc. ("Triton"). These purchases were being carried on the books of Oil Co. as accounts payable. The amount due Triton was wired in payment to Meridien Resources, Inc. ("Meridien") and was recorded on Oil Co.'s cash disbursements journal. The auditor was unable to locate Triton at the address on the invoice, although the audit report does not indicate what efforts the auditor made to locate Triton. On some of the invoices from Triton to "Eagle Oil", the word "oil" was crossed out and the word "gas" was handwritten over it. The nine invoices that were altered represented approximately 7.5% of the gallons at issue, or 3,468,290 gallons of the total of 46,283,785 gallons transferred. The accounts receivable records of Oil Co. for the period December 1988 through June 1989 indicate that Eagle Gas owed Oil Co. for the same amount of purchases that Oil Co. made from Triton. In addition, the cash receipts journal of Oil Co. states that Eagle Gas paid Oil Co. for this product. Based on this information, the auditor concluded that Oil Co. had sold motor fuel to Eagle Gas.

The petroleum taxes were not paid on the sale of motor fuel from Oil Co. to Eagle Gas nor was the sale reported. The failure of Oil Co. to include the receipts of the sale on its tax return resulted in a substantial underreporting of the gross receipts tax and the imposition of penalty pursuant to Tax Law §§ 315 and 1085(k).

Mr. Nappo testified that Eagle Gas and Oil Co. were independently operated. According to Mr. Nappo, Triton purchased the product from Meridien and resold it to Eagle Gas, which then sold the product to independent distributors. It was Meridien which arranged to deliver the motor fuel to Oil Co.'s terminal on behalf of Triton for its sale to Eagle Gas, and it was the George E. Warren Company which had originally imported the gasoline and then transferred it to Meridien. Mr. Nappo stated that Eagle Gas received invoices from Triton indicating all taxes paid, including the gross receipts tax, and paid for the product by wire transfer. According to Mr. Nappo, the altered invoices represented a clerical error which was corrected by replacing "oil" with "gas". Mr. Nappo and petitioner's representative both knew the president of Triton.

Mr. Nappo explained that the two affiliated corporations had three bank accounts under the following names - Oil Co. d/b/a Eagle Oil, Eagle Gas, Inc. and Eagle Oil oil account - which

were used to pay bills. Whenever money was needed, it was taken from whichever account could supply it. This was the source of the intercompany transactions between Oil Co. and Eagle Gas.

Finally, Mr. Nappo explained that it would be an economic disadvantage to have Oil Co. purchase the product rather than Eagle Gas because Oil Co. is registered under Article 13-A and would have to pay the gross receipts tax twice, assuming it was paid originally by one of the suppliers in the sales chain, and pass it onto the consumer, thereby raising the price of the gasoline. Eagle Gas, a non-13-A company, would not be required to pay the gross receipts tax.

Petitioner introduced into the record of this matter the sales tax returns of Eagle Gas.

The Division contends that the audit revealed that Oil Co. purchased motor fuel from Triton and resold it to Eagle Gas. The sale to Eagle Gas was taxable pursuant to Article 13-A of the Tax Law. Oil Co. failed to report the sale of the product or pay the petroleum business taxes thereon and is therefore liable for the taxes and penalties imposed.

Petitioner claims that it was not involved in the sale between Triton and Eagle Gas. Oil Co. contends that the entries in its books reflect intercompany transactions between itself and Eagle Gas caused by the common use of the bank accounts by the two affiliated corporations. The invoices merely reflect an effort to correct a clerical error when the word "oil" was mistakenly used instead of the word "gas". Finally, Oil Co. points out that it would have been economically disadvantageous for it rather than Eagle Gas to purchase the product at issue.

Petitioner further argues that the auditor should have made additional efforts to find Triton, including contacting Meridien and searching the files of the Department of Taxation and Finance. Petitioner would have also liked to see the auditor contact Meridien to obtain information needed to do a more complete audit and to contact the Department of Taxation and Finance to locate the Form 1120 for the year ended June 30, 1989.

### ***OPINION***

In the determination below, the Administrative Law Judge stated that petitioner was registered as a "petroleum business" as that term is defined in Tax Law former § 300(c) of the

Tax Law during the relevant time period. Therefore, since petitioner was registered as a "petroleum business," it was liable for the tax imposed by Tax Law former § 301(a) on: (1) gross receipts from sales of petroleum where shipments were made to points within the state; and (2) the consideration given or contracted to be given by it for petroleum which it imported or caused to be imported (by a person other than one subject to the tax imposed by Article 13-A of the Tax Law) into this State for consumption by it in this State.

The Administrative Law Judge held that petitioner failed to establish that the product was sold directly from Triton to Eagle Gas. Rather, the Administrative Law Judge determined that the evidence introduced by the Division was sufficient to establish that Oil Co. purchased certain product from Triton and resold it to Eagle Gas. Therefore, the Administrative Law Judge concluded that the sales were properly taxable pursuant to Tax Law former § 301(a)(1).

On exception, petitioner makes the same arguments as made before the Administrative Law Judge. Since the Administrative Law Judge completely and adequately addressed the issues, we affirm for the reasons stated in the determination below.

Accordingly, it is ORDERED, ADJUDGED and DECREED that:

1. The exception of Oil Co., Inc. d/b/a Eagle Oil is denied;
2. The determination of the Administrative Law Judge is affirmed;
3. The petition of Oil Co., Inc. d/b/a Eagle Oil is denied; and
4. The remaining Notice of Deficiency issued on January 15, 1991 is sustained.

DATED: Troy, New York  
January 16, 1997

/s/Carroll R. Jenkins  
Carroll R. Jenkins  
Commissioner

/s/Joseph W. Pinto, Jr.  
Joseph W. Pinto, Jr.  
Commissioner