

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

GULF STATES STEEL, INC.
P. O. Box 55727
Birmingham, AL 35255-5727,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 92-204

FINAL ORDER

The Revenue Department denied a petition for refund of utility gross receipts tax in the amount of \$20,729.86 filed by Gulf States Steel, Inc. (Taxpayer) for the period December 1988 through April 1991. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on November 18, 1992. Bradley J. Sklar represented the Taxpayer. Assistant counsel Wade Hope represented the Department. The facts are undisputed.

The Taxpayer purchased natural gas from several out-of-state suppliers during the period in issue. The gas was delivered from out-of-state suppliers to the Taxpayer's facility in Gadsden, Alabama in pipelines belonging to Southern Natural Gas Corporation. The gas was not purchased from Southern Natural Gas Corporation. However, Southern Natural Gas Corporation is a utility subject to the utility gross receipts tax on utility services provided in Alabama.

The utility gross receipts tax is levied on the utility customer, but is usually collected by and remitted to the

Department by the utility provider. However, the Taxpayer has a direct pay permit with the Department and consequently pays the tax directly to the Department. The Taxpayer paid tax on the gas in issue on both the cost of the natural gas and also the separately billed transportation charges. The Taxpayer subsequently petitioned for a refund of the tax relating to the transportation charges. The Department denied the refund and the Taxpayer appealed to the Administrative Law Division.

The Taxpayer does not dispute that natural gas transportation charges per se constitute taxable gross receipts derived from utility services. However, the Taxpayer argues that transportation charges involving interstate commerce cannot be taxed under either Alabama law or the Commerce Clause of the United States Constitution.

The tax in dispute was paid on the transportation charges from the point of origin in outside the state to the Taxpayer's Gadsden facility. The Department concedes and I agree that the charges relating to transportation outside of Alabama cannot be taxed. Accordingly, that portion of the petition relating to out-of-state transportation charges is due to be granted.

However, while that part of the transportation charges relating to in-state transportation can be taxed in accordance with the guidelines set out in Complete Auto Transit Company v. Brady, 430 U.S. 274, 97 S.Ct. 1076, transportation charges are not subject

the utility gross receipts tax unless they are a part of the gross receipts derived from the furnishing of utility services. Where transportation charges are furnished by one entity and utility services by another, the entity furnishing the transportation is not liable to collect the utility gross receipts tax on the transportation charges.

Accordingly, the transportation charges on which the Taxpayer paid the utility gross receipts tax is not subject to the tax since the utility service and the transportation of the gas was provided by different entities.

The Department is directed to issue a refund of utility gross receipts tax to the Taxpayer as requested in his petition for refund, plus applicable interest.

Entered on July 7, 1993.

BILL THOMPSON
Chief Administrative Law Judge