STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE
	§	ADMINISTRATIVE LAW DIVISION
v.	§	
ALABAMA GAS CORPORATION AND GULF STATES PAPER CORP.,	§	DOCKET NOS. S. 94-196 S. 94-197
	§	S. 94-198
ALABAMA GAS CORPORATION AND AMERICAN CAST IRON PIPE CO.,	§	
ALABAMA GAS CORPORATION AND SMI STEEL,	§	
	§	
Taxpayers.		

FINAL ORDER

Alabama Gas Corporation ("Taxpayer") filed joint petitions for refund of utility gross receipts tax with Gulf States Paper Corporation, American Cast Iron Pipe Company ("ACIPCO"), and SMI Steel for the period June 1990 through May 1993. The Department denied the joint petitions, and the Taxpayer appealed to the Administrative Law Division. Hearings were conducted on August 9, 1994 and July 18, 1995. Joe Mays, Jr. represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether gas transportation charges are subject to the utility gross receipts tax levied at Code of Ala. 1975, §40-21-80 et seq. when the gas is purchased directly from the provider by the consumer, through an agent, and the transportation is separately contracted for and provided by a third party.

The Taxpayer entered into a written "Agency Agreement" with Gulf States Paper, ACIPCO, and SMI Steel ("customers") authorizing the Taxpayer to purchase gas on behalf of the customers from out-of-state producers. The Taxpayer subsequently purchased the

gas as agent for the customers, arranged for the gas to be transported into Alabama in pipelines belonging to Southern Natural Gas Corporation ("Sonat"), and then completed delivery of the gas to the customers over its own intrastate pipelines.

The Taxpayer subsequently billed the customers for a combined producer charge, which included both the cost of the gas and the Sonat interstate transportation charges. The Taxpayer passed through the cost of the gas and the Sonat charges directly to the customers, without mark-up. The invoice also included a separate charge by the Taxpayer for the intrastate transportation of the gas.

Because the gas was purchased outside of Alabama and subsequently used in Alabama, the utility gross receipts use tax levied at Code of Ala. 1975, §40-21-100 et seq. was applicable. The Taxpayer, as agent for the customers, collected the tax from the customers and remitted it to the Department on behalf of the customers. The Taxpayer and the customers now claim that both the interstate and intrastate transportation charges were not taxable, in which case the tax paid on those charges should be refunded.

The Department concedes that transportation services separately contracted for and provided by a party other than the seller are not subject to the utility gross receipts tax. See, State of Alabama v. Gulf States Steel, Inc., Admin. Docket No. S. 92-204 (decided July 12, 1993).

In Gulf States Steel, Gulf States had purchased gas directly from an out-of-state producer and separately contracted with Sonat to transport the gas into Alabama, and with Alabama Gas to complete delivery of the gas in Alabama. The Department agreed that the separately provided transportation charges were not subject to the utility tax.

This case is slightly different because while the customers still directly purchased the gas from the out-of-state producer, they did so through an agent, the Taxpayer. However, the principle established in Gulf States Steel is still applicable. That is, when a consumer buys gas directly from a producer, even through an agent, and the consumer or the consumer's agent then contracts with another company for transportation of the gas, the separately provided transportation services are not subject to the utility gross receipts tax.

During the period in question, the Taxpayer included the Sonat interstate transportation charges in a lump-sum charge along with the cost of the gas. The Department questions whether those transportation charges should be excluded from the taxable measure because they were not separately stated on the invoice.[1]

Department Reg. 810-6-5-.26(8)(b) provides that taxable and non-taxable utility services must be separately stated on the books of the utility. The Department agrees that the Sonat interstate charges during the subject period can be determined from the Taxpayer's books and records. Those charges should thus be excluded from the taxable measure. Shellcast Corp. v. White, 477 So.2d 422 (Ala. 1985) is not applicable because obviously transportation charges cannot be separately metered. Reg. 810-6-5-.26(8)(b)

[1]The Taxpayer changed its billing practice after the period in question and now also separately states the interstate Sonat charges on the invoice.

only requires that the non-taxable services be separately stated on the utility's records, which they are in this case.

The Taxpayer should provide the Department sufficient information to establish Sonat's interstate transportation charges during the subject period. The Department should then refund the tax erroneously paid on both the interstate and intrastate transportation charges.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 15, 1995.

BILL THOMPSON
Chief Administrative Law Judge