STATE OF ALABAMA, DEPARTMENT OF REVENUE, vs. GULF STATES STEEL, INC. P. O. Box 55727 Birmingham, AL 35255-5727, Taxpayer.	§ § § § § §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION DOCKET NO. S. 92-204

OPINION AND PRELIMINARY ORDER

The Revenue Department denied a petition for refund of utility gross receipts tax 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 Mississippi suppliers during the period in issue. The gas was delivered from Mississippi to the Taxpayer's facility in Gadsden, Alabama in pipelines belonging to Southern Natural Gas Corporation. Southern Natural Gas Corporation is a utility subject to the utility gross receipts tax on 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 corporation 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 Mississippi 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, 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. The United States Supreme Court held in Complete Auto that an activity involving interstate commerce may be taxed by a state if (1) the taxpayer or the activity to be taxed

has a substantial nexus with the taxing state; (2) tax is fairly apportioned; (3) the tax does not discriminate against interstate commerce; and (4) the tax is fairly related to services provided by the taxing state.

The above four criteria are clearly satisfied in this case. The Taxpayer and the transportation charges have a substantial nexus with Alabama in that the Taxpayer is located in Alabama and the transportation occurred in pipelines located within Alabama. The tax is obviously fairly apportioned because only the transportation that occurred within Alabama is being taxed. The tax does not discriminate against interstate commerce because both interstate and intrastate transportation charges are taxed alike. Finally, both the Taxpayer and Southern Natural Gas benefit from services provided in Alabama and the tax is fairly related to those services.

The cases cited by the Taxpayer are either inapplicable to the present facts are were overturned by the Complete Auto decision.

The Department is directed to determine what portion of the charges are related to in-state versus out-of-state transportation. A Final Order will then be entered directing the Department to issue a refund for the tax relating to the out-of-state transportation charges, but denying that part of the refund relating to in-state charges.

Entered on January 13, 1993.

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BILL THOMPSON
Chief Administrative Law Judge