

ALABAMA TAX TRIBUNAL

BELLSOUTH	§	
TELECOMMUNICATIONS, LLC.,		
AT&T SERVICES, INC.,	§	DOCKET NOS. S. 22-829-LP
and	§	S. 22-830-LP
		S. 20-1085-LP
AT&T SUPPLY I, LLC.,	§	S. 20-1086-LP
		S. 24-0380-LP
Taxpayers,	§	S. 24-0391-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND PRELIMINARY ORDER

These appeals involve the denials by the Alabama Department of Revenue of requests for refunds of sales and use tax for the periods of January 1, 2014, through December 31, 2014, and January 1, 2015, through December 31, 2016 (Nos. 20-1085-LP and 20-1085-LP); sales and use tax for 2017 (Nos. S. 22-829-LP and 22-830-LP); and seller's use tax for the periods of December 2018 through December 2020 (Nos. S. 24-0380-LP and 24-391-LP). On October 17, 2024, a hearing was held on these appeals. The Taxpayers were represented by Michael Andruchek and Audra Mitchell, and David Wren, an associate director of the Taxpayers, appeared and testified. David Avery represented the Revenue Department, and Eva Lipscomb, a foreign audit specialist for the Revenue Department, appeared and testified. Following the hearing, the parties filed briefs.

The sole issue presented at the hearing was whether the Taxpayers' purchases of fiber optic cable should be taxed at the machine rate or at the general rate. The Taxpayers assert that the purchases of fiber optic cable qualify for the machine rate,

while the Revenue Department asserts that such purchases do not qualify for the machine rate and should instead be taxed at the general rate.

The Taxpayers purchased fiber optic cable for use in their (or related companies') provision of telecommunications services to customers. The fiber optic cable is connected to equipment at the central office at one end and ultimately to network equipment at a customer's location at the other end. In between are often other pieces of equipment, such as amplifiers.

The Alabama Code provides for sales tax at the machine rate as follows:

Upon every person, firm, or corporation engaged or continuing within this state in the business of selling at retail machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property an amount equal to one and one-half percent of the gross proceeds of the sale of the machines. The term "machine," as herein used, shall include machinery that is used for mining, quarrying, compounding, processing, or manufacturing tangible personal property, and the parts of the machines, attachments, and replacements therefor, that are made or manufactured for use on or in the operation of the machines and that are necessary to the operation of the machines and are customarily so used.

Alabama Code § 40-23-2(3). A use tax is imposed on machines of the same description. Alabama Code § 40-23-61(b).

"Concerning [] refund petitions, the burden is on a taxpayer to prove that a refund is due." *Game Day Tents, Inc.*, No. S. 17-358-JP, 19 (Ala. Tax Trib. April 12, 2023), (quoting *The Package Store #1, Inc., and The Package Store #2, Inc. v. Ala. Dep't of Revenue*, No. S. 87-183, 3 (Admin. Law Div. Jan. 26, 1993)). Additionally, it is well settled that a taxpayer seeking an exemption from tax must prove that he or she falls within the exemption. *State v. Ross Grady Ins. Agency, Inc.*, 266 So. 2d 787, 793-94 (Ala. Civ. App. 1972). Therefore, the burden here is on the Taxpayers to prove

that their purchases of fiber optic cable qualify for the machine rate.

The Taxpayers contend that the fiber optic cable fits within the machine-rate statute as it is used in *processing* data and that the cable is a *necessary attachment* to other qualified machines.

In *Southern Natural Gas Co. v. State*, 73 So.2d 731 (Ala. 1954), the Alabama Supreme Court held that “[i]t is apparent that the word ‘process’ is synonymous with the expressions ‘preparation for market’ and ‘to convert to marketable form.’” *Id.* at 735. See also *Sizemore v. Franco Distributing Co., Inc.*, 594 So.2d 143 (Ala. Civ. App. 1991) (holding that video games and vending machines did not convert electricity into marketable form and thus did not “process” tangible personal property under the statute).

The Taxpayers’ witness Mr. David Wren, an associate director with AT&T in core network infrastructure operations, testified as to the function of the fiber optic cable. According to Mr. Wren, the fiber optic cable modifies the data that travels along the core of the cable as pulses of light bouncing off mirrors called cladding which surround the core. Mr. Wren described the signal as being “packetized” for transport on the fiber optic cable. (Transcript at 38). “[W]hen you speak into the receiver, that’s not actually your voice that they’re hearing on the other end; it’s an electrical representation of [your] voice.” (Transcript at 4). The witness testified that the fiber optic cable supports quality and efficiency of the service. In the case of a voice being transmitted over the cable, the voice is converted to an electrical signal, then to an optical signal, then back to an electrical signal, and then to an audible signal at the termination point. A review of the Taxpayers’ filing entitled “How Do Fiber Optic

Cables Work” clarifies that these conversions occur in the transmitters, amplifiers, and receivers; the fiber optic cable transmits the information between these machines. Additionally, Mr. Wren testified that connection to the machines at both ends is essential to the cable’s function and the function of the central office equipment and the customer’s network equipment.

In *Southern Natural Gas Co. v. State*, 73 So.2d 731, 735 (Ala. 1954), the issue of whether compressors of natural gas in a pipeline should be taxed at the machine rate was before the Alabama Supreme Court. The compressors served to increase pressure in the pipeline to move the gas through the pipe. The compressors also affect the number of molecules of the gas, increase the temperature, and cause the deposit or removal of distillate and moisture in the gas.

The Court pondered the purpose of the compressors:

Admittedly, the gas, insofar as its substance is concerned, is ready for use by the consumer as soon as it leaves the dehydration plant. What, then, is the particular need or purpose of the compressors? True, they are essential in getting the gas to the company’s customers. But are they not, by analogy, in the same category as all other machines used in transporting tangible personal property in marketable form?

Id. at 736.

Despite the changes to the gas, the Court found that holding “that the compressors are used in ‘processing’ the gas would require, we think, an unwarranted expansion of the ordinarily understood definition of that term.” The fact that the gas was sold at a station in Alabama before it ever reached a compressor “compels a conclusion that the compressors are not used in ‘processing’ but, instead, in the transportation system’ of the company.” *Id.* at 736. Similarly, I would ask, what is

the purpose of the fiber optic cable? As Mr. Wren said, “delivering [the customer’s] service to wherever they...want it to go.” (Transcript at 68). “We want the message to be the exact same when it is received at the end of the network.” (Transcript at 57).

The Alabama Supreme Court has also applied the “integral function” test to determine whether the machine rate applies. The Court stated:

[The machines’] status is not controlled by the material of which they are composed, but by the office they serve in the process. If the article in question performs an integral function in the procedure by which the tangible personal property is produced, we think it is part and parcel of the machinery used in its production.

State v. Newbury Mfg. Co., 93 So. 2d 400, 402 (Ala. 1957).

The Tax Tribunal’s predecessor, the Administrative Law Division of the Department of Revenue, applied the definition of “process” from *Southern Gas* as well as the *Newbury* definition of “integral function” in its decision in *Syscon, Inc. v. Alabama Dep’t of Rev.*, Admin. Law Div. Docket S. 2004-2045 (2005). In *Syscon*, the taxpayer argued for application of the machine rate on his machines, which scanned legal documents for digital storage. The Administrative Law Judge found that there was no new product created for purposes of the machine rate. “Rather, [the scanners] only convert or transfer the intangible information on the documents from written form to digital form.” *Id.* at 3.

I find that the cable is not processing the signal or data into a marketable form; there is no new product created by the cable. Instead, the cable transmits the information from one machine to another. Furthermore, while the cable may be necessary to provide the Taxpayers’ product to its customers, it is not an integral function of the other telecommunications equipment.

I find that the fiber optic cable does not qualify for the machine rate. The denial of the refunds is upheld.

The parties are directed to file by **October 24, 2025**, a joint status report of the issues that were not presented at the hearing.

Entered September 23, 2025.

/s/ Leslie Pitman
LESLIE PITMAN
Associate Judge
Alabama Tax Tribunal

cc: Rick Blattner
Audra Mitchell
Ginger Watkins
David E. Avery, III, Esq.