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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 95-006

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TO: Attorney for Company A

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: December 14, 1995

RE: To determine the applicability of the public utility license tax, utility gross receipts tax, utility service use tax and sales and use tax to the Taxpayer's transactions involving natural gas.

FACTS

The Taxpayer, Company A, a wholly owned subsidiary of The Corporation, an Alabama corporation, is a company engaged in the business of locating industrial end users of natural gas as well as certain local utility companies which, in turn, either use such gas for generating heat for their own purposes or re-sell such gas to their customers. All such industrial end users and local utility companies are located in either Mississippi, Alabama, Georgia or Florida and all such customers of the Taxpayer have a need to purchase natural gas in large quantities, usually on a short-term basis, but which, for various reasons, are not willing or able to purchase such gas directly from the producers of such gas (each such end user and local utility company is hereinafter referred to individually as the "Customer"). The Taxpayer's operations are not subject to regulation or oversight by the Public Service Commission of the State of Alabama.

Taxpayer undertakes the responsibility to locate a seller of gas (hereinafter referred to as a gas supplier), negotiates with

the gas supplier of the price and other terms in which the gas supplier will agree to sell such gas, and, subject to two exceptions, negotiates an arrangement with a company which owns and operates a gas pipeline transportation company (hereinafter referred to as a pipeline company) for the transportation of such gas from the gas suppliers delivery point to the desired delivery point of the customer.

The two cases in which the Taxpayer would not negotiate a transportation arrangement with a pipeline company involve cases where either (1) the customer desires to negotiate such arrangement itself, or (2) the customer desires to use as a pipeline company an entity which is related to Taxpayer, in which case Taxpayer will require the customer to handle such negotiations without the assistance of Taxpayer.

In those cases where the Taxpayer negotiates the transportation arrangement with the pipeline company, then in the case of scenario one described below, the Taxpayer directly pays the pipeline company out of its own funds for the transportation of such gas, and in the case scenarios two through six, as described below, the Taxpayer directs the customer to remit the negotiated transportation fee directly to the pipeline company out of the customer's own funds. In every case, the price paid to the pipeline company, whether by the Taxpayer or the customer, represents the prevailing competitive rate for gas pipeline transportation services.

In each of the below listed scenarios one through six, however, after the Taxpayer separately negotiates the purchase contract with the customer, the sale contract with the gas supplier, and where applicable, the gas transportation contract with the pipeline company (hereinafter such contracts are collectively referred to as the contract), the Taxpayer collects one amount from the customer for the gas purchased by it, and then remits out of its own funds the price for the subject gas charged by the gas supplier (as well as the price for the transportation of the gas charged by the pipeline company under scenario one, below), retaining the balance as compensation for its services.

The Taxpayer presently structured such sale arrangements with its customers in six alternative ways, hereinafter referred to as scenario one, scenario two, scenario three, scenario four, scenario five, and scenario six, as follows:

SCENARIO ONE

In each contract, it is specifically stated that the taxpayer never takes title to the gas being delivered to the customer, but rather that title to such gas passes from the gas supplier to the customer at some mutually agreeable delivery point.

SCENARIO TWO

(1) In the contract with the gas supplier, the contract will call for title to the subject gas to pass to taxpayer at some point inside the State of Alabama.

(2) The gas purchased from the gas supplier is gas which is held for sale inside the State of Alabama immediately prior to its sale to taxpayer.

(3) The taxpayer's contract with the customer states that the title to the subject gas passes from taxpayer to customer at some point inside the State of Alabama.

SCENARIO THREE

(1) The taxpayer's contract with the gas supplier states that the title to the subject gas passes to taxpayer at some point outside the State of Alabama.

(2) The gas purchased from the gas supplier is gas which is held for sale outside the State of Alabama immediately prior to its sale to taxpayer.

(3) The taxpayer's contract with the customer states that title to the subject gas passes from taxpayer to customer at some point outside the State of Alabama.

SCENARIO FOUR

(1) The taxpayer's contract with the gas supplier states that the title to the subject gas passes to taxpayer at some point inside the State of Alabama.

(2) The gas purchased from the gas supplier is gas which is held for sale outside the State of Alabama immediately prior to its sale to taxpayer.

(3) The taxpayer's contract with a customer states that title to the subject gas passes from taxpayer to customer at some point outside the State of Alabama.

SCENARIO FIVE

(1) The taxpayer's contract with the gas supplier states that the title to the subject gas passes to taxpayer at some point inside the State of Alabama.

(2) The gas purchased from the gas supplier is gas which

is held for sale outside the State of Alabama immediately prior to its sale to taxpayer.

(3) The taxpayer's contract with the customer states that title to the subject gas passes from taxpayer to customer at some point inside the State of Alabama.

SCENARIO SIX

(1) The taxpayer's contract with the gas supplier states that the title to the subject gas passes to taxpayer at some point outside the State of Alabama.

(2) The gas purchased from the gas supplier is gas which is held for sale outside the State of Alabama immediately prior to its sale to taxpayer.

(3) The taxpayer's contract with the customer states that title to the subject gas passes from taxpayer to customer at some point inside the State of Alabama.

The Taxpayer's choice of any one of the above scenarios for brokering the sale of natural gas to its customers would be solely motivated by that particular method which will enable the taxpayer to maximize its profit for facilitating the sale of natural gas to any particular customer based on the needs and wants of such customer.

LAW AND ANALYSIS

Under the facts given, Company "A" (hereinafter referred to as the "Company" or "Taxpayer") would be subject, as a gas company and/or as a gas distributing company, to the public utility license tax levied §40-21-50, et seq., Code of Alabama 1975. Purchasing gas from spot market and at times allowing customers to arrange transportation of the gas are not factors that would necessarily render the Company a non-utility as defined by §40-21-50. Neither is the fact that the Company is not regulated by the Alabama Public Service Commission.

Section 40-21-80(a)(8), Code of Alabama 1975, defines a utility as a "Every person regularly engaged in furnishing utility services to another person in the State of Alabama." Under this definition, the Company would be a utility if its activities include the furnishing of utility services.

Natural gas is a utility service as defined at §40-21-80(a)(9), accordingly, when the Company takes title to the gas for resale to its customer, as in scenarios two through six, it

is a utility for purposes of §40-21-80, et seq., Code of Alabama 1975.

SCENARIO ONE

The agency agreement provided and marked as Exhibit A, shows the Company as a purchasing agent for the customer. In this case, Company is not making a retail sale, therefore, it would not be required to collect utility gross receipts tax on either the gas or the transportation. However, the customer could possibly owe utility service use tax if the sale ended in Alabama and was not for resale.

SCENARIOS TWO, FIVE AND SIX

The sales agreement provided as Exhibit B, showing the Company as the seller, indicates the customer takes title in Alabama. In these cases, all sales would be subject to the utility gross receipts tax unless for resale.

SCENARIOS THREE AND FOUR

If an the Company customer takes title outside the State for use outside the State, then no Alabama tax would be due.

HOLDING

Company "A" is, for purposes of §40-21-50 Code of Alabama 1975 and §40-21-80, Code of Alabama 1975, a utility. As a utility, the Company is subject to the provisions of §40-21-50, et seq., Code of Alabama 1975 and §40-21-80, et seq., Code of Alabama 1975.

Ralph P. Eagerton, Jr.
Commissioner

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