

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 01-005

**This document may not be used or cited as precedent. Ala. Code §40-2A-5(a) (1998 Replacement Volume).**

TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: July 10, 2001

RE: Applicability of Alabama sales, use and utility gross receipts tax to transactions proposed by Corporation "A".

**FACTS**

The facts as represented by the Requestor are as follows:

Corporation "A" proposes to enter into a transaction with Corporation "B" an unrelated third party, pursuant to which Corporation "A" will sell to Corporation "B" pursuant to the terms and conditions of an Equipment Purchase and Sale Agreement in substantially the form as Exhibit 1 attached to the Revenue Ruling request ("Purchase Agreement"), that portion of the furnace and boiler equipment located at Corporation "A's" City "X" sawmill in which biomass gas-methane-based gas produced from wood residue – is burned. Corporation "A" will retain ownership of that portion of the furnace and boiler equipment in which the biomass gas is produced. Corporation "A" also will lease Corporation "B" space in its sawmill where the purchased furnace and boiler equipment is located pursuant to the terms and conditions of a Space License Agreement in substantially the form of Exhibit 2 attached to the Revenue Ruling request ("Space License Agreement").

Corporation "B" will purchase from Corporation "A" the biomass gas produced by Corporation "A" pursuant to the terms and conditions of a Gas Supply Agreement substantially the form of Exhibit 3 attached to the Revenue Ruling request ("Gas Supply Agreement"). Corporation "B" will then burn the biomass gas in the furnace to produce heat. The heat generated by burning the biomass gas will be used by Corporation "B" to convert water owned by Corporation "A" and circulating through the enclosed piping system running through Corporation "A's" sawmill, into steam. Corporation "B" will supply the heat to convert Corporation "A's" water into steam pursuant to the terms and conditions of a Heat Supply Agreement in substantially the form of Exhibit 4 attached the

Revenue Ruling request (“Heat Supply Agreement”). The steam will be transported through the enclosed piping system, which is owned by Corporation “A”, to the sawmill’s kiln which is used for drying lumber.

The furnace and boiler equipment owned by each of Corporation “A” and Corporation “B” will be operated and maintained by Corporation “A” and Corporation “B”, respectively, in accordance with the terms and conditions of an Operating Maintenance Agreement in substantially the form of Exhibit 5 attached to the Revenue Ruling request (“Operating Agreement”).

The issues are as follows:

1. Whether Corporation “A’s” sale of the furnace and boiler equipment will be subject to sales tax?
2. Whether Corporation “B’s” purchase of the furnace and boiler equipment in Alabama will be subject to use tax?
3. Whether Corporation “A’s” sale of biomass gas will be subject to sales tax?
4. Whether Corporation “A’s” sale of biomass gas will be subject to utility privilege or license tax?
5. Whether Corporation “B’s” conversion of Corporation “A’s” water into steam is subject sales tax?
6. Whether Corporation “B’s” conversion of Corporation “A’s” water into steam is subject to utility privilege or license tax?

### **LAW AND ANALYSIS**

ISSUE NUMBERS 1 & 2:

Sale and Use Tax Rule 810-6-1-.33 Casual Sales states the following:

- (1) Other than the exception noted in (3) below, casual or isolated sales by persons not engaged in the business of selling are not required to be reported to the Department of Revenue by the provisions of the Sales Tax Law.
- (2) Other than the exception noted in (3) below, tangible personal property purchased outside Alabama from a person not engaged in the business of selling is not subject to use tax when brought into this state for use, storage, or consumption.

(3) Casual sales of automotive vehicles, motor boats, truck trailers, trailers, semitrailers, travel trailers and manufactured homes are subject to sales or use taxes pursuant to the provisions of Section 40-23-100, et seq., Code of Alabama 1975.

As Corporation "A's" regular course of business is not the selling of previously used furnace and boiler equipment, the sale of this furnace and boiler equipment to Corporation "B" will not subject Corporation "A" to taxation under the Alabama sales tax. Corporation "A" is merely disposing of a previously used asset and is not a dealer in this type of equipment. Corporation "B's" use of the furnace and boiler equipment will not subject Corporation "B" to taxation under the Alabama use tax as there is no purchase in interstate commerce from a dealer for storage, use, or consumption in Alabama.

#### ISSUE NUMBERS 3 & 4:

Ala. Code §40-23-4(a)(8) provides the following applicable exemption to the sale of gas:

(8) The gross proceeds of sales or gross receipts of or by any person, firm, or corporation, from the sale of transportation, gas, water, or electricity, of the kinds and nature, the rates and charges for which, when sold by public utilities, are customary fixed and determined by the Public Service Commission of Alabama or like regulatory bodies.

Therefore, the sale of the biomass gas will be subject to sales tax unless it is of the "kind and nature" that will be regulated by the Public Service Commission if sold by a public utility. Attached to the Revenue Ruling request is an opinion from the Chief Administrative Law Judge of the Public Service Commission, requested by Corporation "A", which states as follows:

[b]ased on the facts provided in your letter, the biomass gas manufactured and used at Corporation "A's" City "X" sawmill is of the "kind and nature" that would be regulated if distributed and sold to the public by a public utility operating in Alabama.

Consequently, the biomass gas produced by Corporation "A" and sold to Corporation "B" is of the "kind and nature" that will be regulated by the Public Service Commission were it sold by a public utility, thus, exempting Corporation "A's" sale of the biomass gas from Alabama sales and use tax, in accordance with Ala. Code §40-23-4(a)(8).

Additionally, only "public utilities" are required to collect and remit utility license tax, as imposed by Ala. Code §40-21-82. Since Corporation "A" is not a utility, it has no legal obligation to collect and remit utility license tax. Ala. Code §40-21-80(a)(9) defines "utility services" to include only "electricity, domestic water, and natural gas, telegraph services, and telephone services. . . ." Since the biomass gas is a manufactured gas its sale is not

subject to the levy imposed by Ala. Code §40-21-82. Therefore, no utility license tax will be due from Corporation “A” on this transaction.

#### ISSUE NUMBERS 5&6:

Corporation “B” will use the heat generated generated from burning the biomass gas in the furnace to convert Corporation “A’s” water into steam. The steam will then circulate through Corporation “A’s” enclosed piping system to heat the kiln. Since Corporation “A” owns both the water located within the enclosed piping system and the steam into which it is converted, there will no transfer of title or possession of steam or water. Corporation “B” is merely providing a service to Corporation “A” in the form of heating Corporation “A’s” water and converting it into steam. The heat to be used by Corporation “B” in providing the service is not tangible personal property. Since Corporation “B” is providing a service rather than selling tangible personal property, no Alabama sales tax will be due. See Ala. Code §40-23-2(a).

Further the utility privilege or license tax imposed by Ala. Code §40-21-82 is not applicable as there will be no sale of a “utility service” as defined in Ala. Code §40-21-80(a)(9) or Sales and Use Tax Rule 810-6-5-.26(4).

#### **HOLDING**

Based upon the particular facts of this case, as Corporation “A’s” regular course of business is not the selling of used furnace and boiler equipment, the sale of this equipment is exempt from Alabama sales tax as a casual sale. No use tax will be due from Corporation “B” on this transaction as there is no purchase in interstate commerce from a dealer for storage, use, or consumption in Alabama.

The sale of the biomass gas is of the “kind and nature” that would be regulated by the Public Service Commission if sold by a public utility, so no sales tax will be due on this transaction. Additionally, Corporation “A” is not required to collect and remit utility tax on this transaction for two reasons. First, Corporation “A” is not a public utility. Second, the utility tax is only imposed on the sale of natural gas, and the biomass gas is a manufactured gas.

In the case of steam sales, no sales tax will be due as there is no sale or transfer of tangible personal property as defined under Alabama law. Consequently, no utility privilege license tax will be due as there is no sale of a utility service.

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MICHAEL PATTERSON, Commissioner  
Alabama Department of Revenue

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