Cite as Det. No. 14-0219, 35 WTD 372 (2016)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition for Refund of	)	D E T E R M I N A T I O N
	)	
	)	No. 14-0219
	)	
. . .	)	Registration No. . . .
	)	

[1] RULE 17902; RCW 82.12.055 – BROKERED NATURAL GAS USE TAX – SERVICE FEES. Service fees paid by a manufacturer that contracted with a natural gas supplier for the supplier to provide certain enumerated services were properly included in the manufacturer's measure of brokered natural gas use tax liability because some of the services that the manufacturer paid for constituted either part of the of "purchasing price" or the "transportation charges" for natural gas the manufacturer purchased.

[2] RULE 17902; RCW 82.12.055 – BROKERED NATURAL GAS USE TAX – LOST AND UNACCOUNTED-FOR GAS. Certain amounts of natural gas that were "lost and unaccounted-for" before delivery from a natural gas supplier to a manufacturer were properly included in the manufacturer's measure of brokered natural gas use tax liability because those amounts of natural gas were "in kind" partial payments for transportation charges for the natural gas the manufacturer actually received.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

Yonker, A.L.J. – A manufacturer (Taxpayer) protests the Department of Revenue's (Department) denial of Taxpayer's request for refund, in which Taxpayer claimed that it overpaid brokered natural gas (BNG) use tax. Taxpayer argued that it should not have included (1) certain service fees or (2) the value of "lost and unaccounted-for" natural gas in the measure for determining the amount of BNG tax owed. We deny Taxpayer's petition.[1]

ISSUES

1. Under RCW 82.12.022 and WAC 458-20-17902, should certain service fees Taxpayer paid to its natural gas supplier be included in the measure for determining Taxpayer's brokered natural gas (BNG) use tax liability?

[1] Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

2. Under RCW 82.12.022 and WAC 458-20-17902, should the value of "lost and unaccounted-for" natural gas that Taxpayer paid for but never received, be included in the measure for determining Taxpayer's BNG use tax liability?

FINDINGS OF FACT

Taxpayer operates [two] manufacturing plants in . . . Washington . . . . Taxpayer uses natural gas as part of its plant operations in Washington. During the relevant time period, Taxpayer contracted with [Supplier], an out-of-state natural gas supplier, to purchase natural gas on Taxpayer's behalf and have that gas transported to Taxpayer's plants in Washington. Supplier, in turn, contracts with [the Pipeline] to transport Taxpayer's natural gas from its origin out of state and deliver such natural gas at a "city gate" station in Washington.[2]

The transportation of the purchased natural gas is not as simple as designating a delivery location and transporting the natural gas. The pressure inside the pipeline must be kept in equilibrium, which means the natural gas entering and leaving the pipeline must be closely matched. Each day both the suppliers of natural gas and the buyers make "nominations," or orders, with the Pipeline. These nominations specify how much gas will be withdrawn and where such withdrawals will be made. The Pipeline matches all such nominations to ensure equilibrium is maintained along the pipeline route. Once the Pipeline delivers the natural gas at the city gate in Washington, Taxpayer then contracts directly with a local distribution company (LDC) located in Washington to transport the gas from the city gate to Taxpayer's plants within Washington.

During the relevant time period, Taxpayer reported the value of the natural gas it used to the Department and paid brokered natural gas (BNG) state and local use tax on such use. In order to calculate the amount of BNG use tax due, Taxpayer used the total invoice amount that Supplier charged for all of the services it provided to Taxpayer.

1. Refund Request

On December 29, 2011, Taxpayer requested a partial refund of BNG use tax and City . . . BNG local use tax it paid from October 1, 2006 through December 31, 2011 (refund period). Taxpayer asserted in its refund request that the following four errors it made resulted in an overpayment of $. . . during the refund period:

> Error One – Taxpayer used incorrect unit values in determining the value of the natural gas Taxpayer used.
>
> Error Two – Taxpayer included the amount of service fees it pays to the Supplier in determining the value of the natural gas Taxpayer used.
>
> Error Three – Taxpayer included the value of natural gas allegedly used as "fuel gas" by the Local Distribution Company before delivery to Taxpayer in determining the value of the natural gas Taxpayer used.

[2] A city gate station is a point or measuring station at which a local distributing company receives gas from a natural gas pipeline company and transports the natural gas within the state to the natural gas customer.

> Error Four – Taxpayer failed to consider price adjustments made by the Supplier in determining the value of the natural gas Taxpayer used.

On December 4, 2012, the Department's Taxpayer Account Administration (TAA) Division granted Taxpayer's refund request as it related to errors one and four, and accordingly issued two credits for a total of $. . . .[3] TAA did not grant Taxpayer's refund request as it related to errors two and three, and a supervisor conference was scheduled. On March 21, 2013, Taxpayer's representatives participated in a supervisor conference with TAA to discuss those remaining errors. On July 1, 2013, TAA denied Taxpayer's refund request as it related to those remaining errors, and Taxpayer timely appealed that denial.

Facts Related to Error Two – Service Fees Paid to Supplier

In 2002, Taxpayer entered into a natural gas purchase and sales base contract (base contract) with Supplier. In addition, Taxpayer and Supplier entered into other ancillary agreements, including a fuel management services agreement contained in "Exhibit A," attached to the base contract (Exhibit A).

Under the terms of Exhibit A, Taxpayer appointed Supplier to be Taxpayer's "Fuel Manager." Exhibit A states that Taxpayer "designates [Supplier] as its sole authorized representative for the purpose of arranging for and monitoring the purchase, transportation and delivery of natural gas supplies." (Exhibit A, Section 1.01). Exhibit A also states the following:

> [Taxpayer] hereby directs [Supplier] to perform the activities necessary to purchase [Taxpayer's] natural gas and transportation requirements at reasonable and competitive pricing.

(Exhibit A, Section 1.04). Under Exhibit A, Supplier agreed to provide Taxpayer with various services for which Taxpayer paid an additional separately-itemized "service fee" on Supplier's invoices. The result was that Supplier's monthly invoices contained three separate charges: (1) the commodity gas cost, (2) the transportation charge, and (3) the service fee. The amount of the total service fee charged each month was calculated "per MMBtu for all gas nominated and accepted for delivery" in that month. (Exhibit A, Section 3.01).[4] The specific services provided to Taxpayer by the Supplier under Exhibit A were as follows:

1.01 Coordinate the implementation of the supply and transportation program among [Taxpayer's] corporate office or other designated offices of [Taxpayer], applicable suppliers, local distribution companies ("LDC") and interstate pipeline by:

- Obtaining gas supply,
- Establishing [Supplier] as the authorized transportation agent for [Taxpayer],
- Developing demand forecasts,
- Communicating implementation instructions to [Taxpayer's] plant personnel,

[3] One credit for $. . . covered the period of October 1, 2006 through June 30, 2009; the second credit for $. . . covered the period of July 1, 2009 through December 31, 2011.

[4] A British Thermal Unit, or Btu, is a standard unit of measurement for energy consumption. One Btu equals 1,055.56 joules. MMBtu means 1,000,000 Btu.

- Obtaining transportation capacity.

1.02 Coordinate, communicate and receive daily gas volume nominations from [Taxpayer].

1.03 Coordinate and communicate daily gas nominations with applicable supplier(s).

1.04 Coordinate and communicate daily gas nominations with applicable pipelines and LDC's.

1.05 Receive, transmit and verify daily nominations with the interstate pipeline.

1.06 Confirm daily nominations accepted by the interstate pipeline and LDC and coordinate any revised nominations in conformance with the interstate pipeline and LDC's nomination revision procedure.

1.07 Receive and communicate to Buyer, actual or telemetered daily consumption where applicable and possible.

1.08 Balance Gas transportation activity in conformity with the interstate pipeline and LDC's operating procedures and provide daily, weekly and/or monthly reports as requested by [Taxpayer].

1.09 Report, monitor and administer daily accepted nominations versus actual usage and manage imbalances of [Taxpayer].

1.10 Communicate to [Taxpayer] any interstate pipeline and/or LDC changes in operating conditions.

1.11 Administer balancing alternatives in the event of differences between gas nominations, actual usage, and confirmed nominations particularly during any period of pipeline and /or LDC announced curtailment.

1.12 Communicate with [Taxpayer's] natural gas suppliers to ensure that natural gas sourcing coincides with the receipt point requirements of [Taxpayer's] interstate pipeline transportation capacity.

1.13 Prepare monthly invoice(s) which accounts for all supply, transportation and administration costs for Gas delivered to the applicable city gate or burner tip for the account of each facility of [Taxpayer].

1.14 Communicate to [Taxpayer] any applicable Canadian, Federal or State regulatory matter which may impact the transportation service proposed herein.

1.15 Provide monthly price notification letter to [Taxpayer] detailing the delivered price of natural gas from [Supplier] to [Taxpayer] for each of [Taxpayer's] facilities for the upcoming delivery month.

1.16 Provide monthly or quarterly analysis or other customized management reports to [Taxpayer] that summarizes all natural gas and transportation operations and services.

1.17 In consultation with [Taxpayer] arrange for risk management services for [Taxpayer].

1.18 In consultation with [Taxpayer], develop, implement and conduct a natural gas/alternative fuel arbitrage program.

1.19 Manage any electronic bulletin board transactions conducted with the Interstate pipeline on behalf of [Taxpayer].

1.20 Remarket any excess term Gas on behalf of [Taxpayer] when necessary.

1.21 Present, evaluate and assist [Taxpayer] with implementation of new product and service offerings which include, but are not limited to, Total Energy Management, Structure Products and E-Commerce.

1.22 Monitor electric opportunities and present service offerings to [Taxpayer] that include, but are not limited to, electric deregulation service options, on-site generation and cogeneration.[5]

TAA concluded that those services were part of the transportation charges, and therefore, were properly included in the measure of BNG use tax. Taxpayer argued on appeal that those services did not constitute part of the purchase price of the natural gas or the transportation charges. As such, Taxpayer claimed that the fees Taxpayer paid for those services should not have been included in the measure for determining Taxpayer's BNG use tax liability during the refund period. Taxpayer explained its purpose in contracting with Supplier for these services as follows:

> [T]he service fee was a negotiated component of our overall contract. [Supplier's] goal is and was to afford [Taxpayer] as hassle free an environment as possible in attaining these cheaper gas supplies. As such, [Supplier] performs all nominating, balancing and scheduling between gas suppliers, pipelines and local distribution companies. [Supplier] also owns firm transportation on the pipeline versus [Taxpayer] having to contract for such and in addition to this [Supplier] then provides a "volumetric" service to [Taxpayer] wherein [Taxpayer] gets firm gas supplies equal to their actual daily needs delivered to the city gate. Under this approach [Taxpayer] avoids the potential for costly unutilized demand changes were it to hold transportation on [the Pipeline] directly in its name. [Supplier] insulates [Taxpayer] from any pipeline or LDC imbalance penalty fees and also insulates them from any effects of any operational flow order called by the pipeline and/or the LDC. These are the factors that went into the service that [Taxpayer] was willing to pay for [Supplier] doing these things versus [Taxpayer] having to do so.[6]

[5] Taxpayer stated that service 2.18, 2.21, and 2.22 were not done during the refund period.
[6] Attachment to email from . . . , Taxpayer Representative, to Travis Yonker, ALJ (November 12, 2013, 10:02 PM).

On appeal, Taxpayer also provided some additional descriptions of the nature of each of the services described in Exhibit A.

2. Facts Related to Error Three – Lost and Unaccounted-for Gas/Fuel Gas

As stated earlier, Taxpayer's Supplier contracted separately with the Pipeline for the interstate transportation of the purchased natural gas from its origin out of state to the city gate station in Washington. Between the time Supplier purchased the natural gas on Taxpayer's behalf and the time Taxpayer received the natural gas at its plants in Washington, a small percentage of natural gas was "lost and unaccounted-for."[7] This issue was explained by one federal court as follows:

> The amount of gas a shipper delivers to a pipeline will never be exactly the same as the amount of gas that arrives at the destination. In the course of moving gas from one place to another, some of it is lost due to small leaks or metering errors. Gas lost in this way is known as lost and unaccounted-for gas. In addition, some gas is used by the pipeline to power the compressors that move the shippers' gas through the pipeline. This kind of gas is known as fuel gas. Both of these quantities vary substantially and unpredictably, which makes it difficult to know in advance what the cost of shipping will be. [The Federal Energy Regulatory Commission (FERC)] permits a pipeline to adjust its tariff in two ways in an effort to provide more certainty to the pipeline's bottom line.[8]

The Pipeline's business activity is regulated by FERC, with which the Pipeline maintains a tariff that provides for the prices the Pipeline may charge for its services. [Per Internet research,] the Pipeline's FERC tariff requires that all of the Pipeline's customers, including Supplier, pay "in-kind" for lost and unaccounted-for gas, stating that each customer must "reimburse [the Pipeline] for [that customer's] pro rata share of gas used for fuel, including lost or gained and unaccounted-for gas" in order to transport gas through the Pipeline's system.[9] This "in-kind" payment arrangement in FERC tariffs means "the gas actually delivered is reduced by the amount necessary to compensate the pipeline for gas consumed in operations. Thus, the Pipeline's individual customers absorb the cost of gas required for transmission, company use, and unaccounted for gas by receiving less gas."[10] The Pipeline's FERC tariff also identifies "fuel use reimbursement furnished in-kind" as one of the "transportation components."[11]

Taxpayer argued on appeal that the lost and unaccounted-for natural gas that is used by the Pipeline should not be included in the measure for Taxpayer's BNG use tax liability because the value of such gas should not be considered part of the purchase price for the natural gas

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[7] In the majority of Taxpayer's arguments, it refers only to "fuel gas" as opposed to "lost and unaccounted-for" gas. Throughout this determination, however, we generally refer to the amount of gas at issue here as "lost and unaccounted-for gas" as opposed to only "fuel gas" because, as Taxpayer acknowledged on appeal, only some of the gas at issue was likely consumed as fuel gas for the compressors. [Additional gas was likely lost through leakage that is apparently a common issue in the transportation of natural gas.]

[8] *Colorado Interstate Gas Co. v. FERC*, 599 F.3d 698, 700 (C.A.D.C. 2010). We rely on the language of this case here merely for the purpose of providing relevant factual background as to the nature of lost and unaccounted-for gas and fuel gas.

[9] . . .

[10] *Transwestern Pipeline Co.*, 51 FERC P 61343, p. 1, fn. 4 (1990). We rely on the language of this case here merely for the purpose of providing relevant factual background as to the nature of an "in-kind" form of payment for lost and unaccounted-for gas under a FERC tariff.

[11] . . .

Taxpayer received, and also because Taxpayer did not ever "use" the lost and unaccounted-for gas because the Pipeline used that gas during transportation.[12]

RCW 82.12.022 imposes a BNG use tax for the privilege of "using" natural gas within Washington "as a consumer." RCW 82.12.022 describes the measure of the BNG use tax as follows:

> (2) The tax must be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the public utility tax on gas distribution businesses under RCW 82.16.020. The "value of the article used" does not include any amounts that are paid for the hire or use of a gas distribution business as defined in RCW 82.16.010(2) in transporting the gas subject to tax under this subsection if those amounts are subject to tax under that chapter.[13]

RCW 82.12.010(7)(a) defines the "value of the article used" as "the purchase price" of the article of tangible personal property at issue and specifically includes "the amount of any tariff or duty paid with respect to the importation of the article used." Pursuant to RCW 82.12.010(3), "purchase price" means the same as "sales price," as defined by RCW 82.08.010.[14]

WAC 458-20-17902 (Rule 17902), the Department's rule implementing RCW 82.12.022, provides the following additional guidance on the measure for the BNG use tax:

> (4) **State tax.** When the [BNG] use tax applies, the rate of tax imposed is equal to the public utility tax on gas distribution business under RCW 82.16.020(1)(c). The rate of tax applies to the value of the gas consumed or used and is imposed upon the consumer.
>
> (5) **City tax.** Cities are given the authority to impose a use tax on brokered natural gas. When imposed and applicable, the rate of tax is equal to the tax on natural gas businesses under RCW 35.21.870 on the value of gas consumed or used and is imposed on the consumer.

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[12] Taxpayer originally argued that the "lost and unaccounted-for" gas used by the LDC within Washington should not be included in the measure of Taxpayer's BNG use tax liability, but later amended its argument, stating, "[t]here is additional Fuel Gas consumption by [the LDC] from the city gate to [Taxpayer's] plants, but the amounts are insignificant for use tax purposes. All of the Fuel Gas at issue in this claim is gas used by [the Pipeline] rather than [the LDC] (we were originally mistaken on this point)." As such, we do not engage in any analysis regarding the lost and unaccounted-for gas that the LDC may have used or received as payment within Washington.

[13] RCW 82.14.230 similarly authorizes cities to impose their own BNG use tax.

[14] RCW 82.08.010(1)(a) defines "selling price" and "sales price" as follows:

> The total amount of consideration, except separately stated trade-in property of like kind, including cash, credit, property, and services, for which tangible personal property, extended warranties, digital goods, digital codes, digital automated services, or other services or anything else defined as a 'retail sale' under RCW 82.04.050 are sold, leased, or rented, valued in money, whether received in money or otherwise. No deduction from the total amount of consideration is allowed for the following: (i) The seller's cost of the property sold; (ii) the cost of materials used, labor or service cost, interest, losses, all costs of transportation to the seller, and any other expense of the seller; (iii) charges by the seller for any services necessary to complete the sale, other than delivery and installation charges; (iv) delivery charges; and (v) installation charges.

Rule 17902 defines the "value of gas consumed or used" as "the **purchasing price of the gas** to the consumer and generally must include all or part of the **transportation charges**." (Emphasis added). Thus, a taxpayer must include both of the following in the measure of the BNG use tax: (1) the purchase price of the gas and (2) "all" or "part" of any additional transportation charges. Whether "all" or only "part" of the transportation charges is used depends on the individual circumstances of the transaction, as explained in Rule 17902(6)(a) as follows:

> If all or part of the transportation charges for the delivery of the brokered natural gas are separately subject to the state's and cities' public utility taxes (RCW 82.16.020(1)(c) and RCW 35.21.870), those transportation charges are excluded from [the] measure of the use tax. The transportation charges not subject to the public utility taxes are included in the value of the gas consumed or used.

1. Error Two – Service Fees Paid to Supplier

Taxpayer contends that the amounts of service fees Taxpayer paid to Supplier during the refund period should not have been included as part of the "value of gas consumed or used" because those fees are neither part of the purchase price of the gas, nor part of the transportation charges. Specifically, with regard to transportation charges, Taxpayer argues that "[s]ince none of the contracted for services were for transportation of the gas, the only question is whether or not the service charges are part of the 'purchase price' of the gas commodity." Thus, Taxpayer's position is that the services at issue here cannot be transportation charges. Further, Taxpayer argues that because those services are not "necessary to complete the sale," the services do not fall under the definition of "selling price" contained in RCW 82.08.010(1)(a).

Under the terms of Exhibit A, Taxpayer paid Supplier on a monthly basis for 22 specifically-listed services.[15] We note that Supplier's charge for such services was calculated based on the amount of gas nominated and accepted for delivery at the city gate by Taxpayer, as opposed to the amount of time Supplier devoted to such services. We reviewed each of these services, and considered Taxpayer's explanation of the purpose of each service. Virtually all of the services provided relate to communication between Supplier and either other suppliers, the pipeline, LDCs, other buyers, or Taxpayer, or a combination thereof.

We conclude that at least twelve of the specifically-listed communication services constituted part of the "transportation charges" or part of the "purchase price" of the natural gas. Many of the services at issue here involve the communication regarding the nomination of natural gas, and maintaining the required pressure and integrity of the pipeline route. Given the unique nature of transporting natural gas, we conclude that such communication is an integral part of the transportation of such gas. This is consistent with our decision in Determination No. 09-0361E, 29 WTD 44 (2010). In that case, we held that a "demand/reservation charge" to reserve a certain natural gas pipeline capacity was "simply one part of the total transportation charge paid to [the Pipeline] for natural gas transportation services." *Id.*; *see also* Det. No. 87-100, 2 WTD 433 (1987) (holding that "miscellaneous" fees charged by an escrow company for preparation of an informational return with the Internal Revenue Service was "an integral part" of the closing of a

[15] While Taxpayer contracted for Supplier to perform 22 services, Taxpayer stated on appeal that Supplier only performed 19 of those services.

real estate transaction, and therefore taxable as escrow services). Thus, we conclude that at least services 2.01 through 2.12 constitute part of "transportation charges."

In addition, we conclude that at least two of the services also relate to purchasing natural gas on behalf of Taxpayer. For instance, service 2.01 includes "[o]btaining gas supply" for Taxpayer. Similarly, Taxpayer explained service 2.03 in the following manner: "when purchasing gas on the spot market, [Supplier] will communicate with our gas suppliers daily if needed." We conclude that these two services are "necessary to complete the sale" of natural gas. First, we fail to see how "obtaining" the gas supply under service 2.01 can be anything other than necessary. If such gas supply is not obtained, the sale is not completed. Second, likewise, without communicating to other suppliers the daily gas volume nominations under service 2.03, the sale of gas is not even initiated, thus, it is necessary to complete the sale of the gas. As such, we conclude that the description of at least 12 of the 19 individual services performed by Supplier were either part of the transportation charges or necessary for the purchase of natural gas.[16]

We are further convinced that all of the services in Exhibit A were a necessary part of the transportation charges or the purchase of price of the natural gas based on the stated purpose of Exhibit A. In Exhibit A, Taxpayer appoints Supplier to be Taxpayer's fuel manager, thereby becoming Taxpayer's "sole authorized representative for the purpose of arranging for and monitoring the purchase, transportation and delivery of natural gas supplies." Exhibit A goes on to say that "[Taxpayer] hereby directs [Supplier] to perform **the activities necessary to purchase [Taxpayer's] natural gas and transportation requirements** at reasonable and competitive pricing." (Emphasis added). It is clear that Taxpayer thought it necessary to contract with Supplier for the services Supplier performed to accomplish two goals: (1) purchase natural gas and (2) transport that natural gas to Taxpayer's plants. Further, the contract makes clear that Supplier was authorized to only perform those services related to those two goals that were "necessary." As such, we must presume that any of the services in Exhibit A that Supplier performed and billed for must have been "necessary" for either the purchase of natural gas for the transportation of that natural gas.

We conclude that, based on all of these considerations, the services listed in Exhibit A are part of the value of the gas Taxpayer used, and, as such, were correctly included in the basis for determining the BNG use tax, and Taxpayer was not entitled to a refund based on this issue. Accordingly, we deny Taxpayer's petition as it relates to this issue.

2. Error Three – Lost and Unaccounted-for Gas/Fuel Gas

Taxpayer advanced two arguments on appeal for its position that lost and unaccounted for natural gas Taxpayer never received at its plants should have been excluded from the measure of Taxpayer's BNG tax liability.[17] First, Taxpayer argued that the value of the lost and unaccounted-for gas is not part of the purchase price of the gas Taxpayer received. Yet Taxpayer also stated on appeal that the Pipeline "requires that the gas used to power compressors on its interstate pipeline be supplied by the gas shippers **as 'in kind' partial payment for**

[16] The remaining seven services appear to be either more indirectly related to the purchase and transportation of the natural gas, or in the nature of miscellaneous administrative services.

[17] . . . .

transportation services." (Emphasis added). We agree and conclude that, while the value of the lost and unaccounted-for gas may not be part of the purchase price of the natural gas, it is part of the transportation charges, which is still properly included in the measure for determining BNG tax liability.

Our conclusion here is consistent with the Pipeline's tariff, which indicates that the "in kind" payment of a small amount of natural gas to cover the Pipeline's lost and unaccounted-for gas is considered part of the compensation for the Pipeline's transportation services. It is also consistent with our past decisions, which have recognized that transportation charges for natural gas may include other charges for services that are integral to the process. *See* Det. No. 09-0361E, 29 WTD 44 (2010); *see also* Det. No. 87-100, 2 WTD 433 (1987). Thus, Taxpayer's "in kind" payment of natural gas to Supplier for transportation that was, in turn, provided by the Pipeline is appropriately included in the value of the gas consumed or used – as part of the transportation charges – for the purpose of measuring Taxpayer's BNG tax liability.

Second, Taxpayer argued that because it did not receive those amounts of "lost and unaccounted-for" natural gas, it could not have "used" such amounts, as required under RCW 82.12.022. Instead, Taxpayer claims that the Pipeline – not Taxpayer – used those amounts as fuel gas and that "[o]bviously, [Taxpayer] could not have also used" the fuel gas.[18] We conclude that even if the Pipeline – and not Taxpayer – used the amounts of natural gas in questions, such a finding does not change Taxpayer's BNG tax liability. Inclusion of the value of the lost and unaccounted-for gas does not mean Taxpayer is being taxed on that amount of gas not received; rather, that value is simply a part of the transportation charges for the gas Taxpayer actually received.

Taxpayer argued that "[a]dding the cost of the Fuel Gas to the measure of the gas [Taxpayer] actually used is really a back-door way of imposing the tax twice on the same use of the same gas; once on [the Pipeline] and once on [Taxpayer]." The tax liability of the Pipeline is not before us and we decline to rule here on the tax liability of a third party.[19]

For all of these reasons, we conclude that Taxpayer should have included the value of lost and unaccounted-for gas in its measure of BNG use tax was correct and, as such, TAA properly denied Taxpayer's refund request as it related to this issue.

DECISION AND DISPOSITION

Taxpayer's petition is denied.

Dated this 9th day of July, 2014.

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[18] Taxpayer did not offer any evidence of what portion of the lost and unaccounted-for gas actually constitutes fuel gas.

[19] For further discussion of interstate transporter tax liability, *see Independent Warehouses v. Scheele*, 331 U.S. 70, 67 S.Ct. 1062 (1947); *State of Minnesota v. Blasius*, 290 U.S. 1, 54 S.Ct. 34 (1933). *See also* RCW 82.16.050(6); WAC 458-20-193D.