

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1774

SPONSOR: Finance and Taxation Committee and Senator Campbell

SUBJECT: Gross Receipts Tax

DATE: March 20, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CU</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This proposed committee substitute imposes the gross receipts tax on the cost price of imported electricity or natural or manufactured gas (generally known as a use tax) and adds a per-unit tax on the distribution of electricity and natural or manufactured gas. It maintains the current gross receipts tax on electricity or natural or manufactured gas sold by in-state distribution companies.

Electricity or gas delivered or transported (but not sold) by distribution companies would be subject to a per-unit tax, with the tax rate adjusted periodically for the market price, to maintain comparable taxation of gas purchased from in-state and out-of-state suppliers. Electricity or gas purchased from out-of-state suppliers that is not transported by Florida companies would be subject to tax on its cost-price, including transportation costs. Sales or delivery of natural or manufactured gas to certain manufacturers, or use of these products by these manufacturers, would not be subject to tax.

The bill also provides amnesty for unpaid gross receipts tax, penalties, and interest if:

- the sales were by persons not regulated by Chapter 366 of the Florida Statutes, which regulates public utilities;
- the sales agreement provided for transfer of title to the gas outside of Florida; or
- the sales were of transportation services associated with the sales of gas.

The amnesty is limited to sellers that register with the Department of Revenue by the July 1, 2003, and apply for amnesty within three months of that date.

This bill substantially amends ss. 203.01 and 203.012, Florida Statutes.

II. Present Situation:

Section 203.01, F.S., imposes a tax of 2.5 percent upon the gross receipts of every person that receives payment for any utility service, defined in s. 203.012, F.S., as electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power. The definition of gross receipts does not include receipts from the sale of natural gas for resale or for use in the generation of electricity. The gross receipts tax was created in 1931, and in 1963 the Florida Constitution was amended to place all gross receipts tax revenue in a trust fund for university and junior college capital outlay, and to allow bonds to be issued for this purpose. The Constitution was amended again in 1974 to allow gross receipts tax revenue to be bonded for public school capital outlay expenditures.

When the gross receipts tax was enacted, and for most of its history, utility services were provided by regulated monopolies. The gross receipts tax was a stable revenue source, and collection of the tax from utility providers was efficient and easy to administer. Even though the statutory imposition of the tax is on the person who receives payment for any utility service, it is understood that the tax is passed on to consumers of the utility services, and the law provides for separately stating the tax on the customer's bill. (S. 203.01(4), F.S.) The law also provides for taxation of electricity produced by cogeneration or by small power producers, or any person other than a cogenerator or small producer who produces electrical energy for his or her own use. (S. 203.01(1) (d) and (e), F.S.)

There is no gross receipts tax imposed on electricity or natural or manufactured gas purchased outside the state for use in the state. Retail sales of electricity have not been deregulated in Florida, and are unlikely to be deregulated in the immediate future, but natural gas purchases outside the state for use in the state have been occurring since 1990, and have become a significant part of the market. These sales are not subject to gross receipts tax, and this creates significant problems:

- There is unequal treatment of natural gas users, with those who purchase from local distribution companies paying a price that includes tax and those who purchase from third-party suppliers or marketers outside the state paying a lower, untaxed price;
- Local distribution companies are disadvantaged compared to out-of-state suppliers; and
- Funding for school construction is reduced.

Deregulation of Natural Gas Sales in Florida

In 1990, the Florida Public Service Commission began to accommodate new competition for local distribution companies in supplying end-users in local markets by approving the purchase of natural gas by an end-user from a source other than its local distribution company. It became possible for large users of natural gas to purchase from outside the state through a marketer. The end-user paid the marketer for the gas and separately paid a Florida business to deliver it. In 1996, a rule was proposed by the PCS to require Florida's investor-owned natural gas companies to offer transportation service to all nonresidential customers. In 2000, rule 25-7.005, F.A.C., was adopted. It provides all non-residential natural gas customers with the option of purchasing gas directly from a supplier other than the utility serving the territory where the

customer is located. It also allows utilities to offer transportation of natural gas to residential customers when it is cost-effective to do so.

The market response to these regulatory changes has been dramatic. In 1990, seven percent of all natural gas provided by investor-owned companies was transported. By 1994, 55 percent of all gas provided by these companies was transported, and this figure rose to 75 percent by 2002. There are seven investor-owned natural gas utilities in Florida. In 2002 five of them offered transportation as well as sales, and transported gas accounted for 75 percent of total throughput. Peoples, City Gas, and Chesapeake, the three largest gas utilities, each transported more gas than they sold.

At least 7 of Florida's 31 publicly-owned natural gas companies provide transportation services for some customers. In FY 2001-02, more than 41 million therms of natural gas were transported by these public utilities.

Natural Gas Deregulation and Its Effect on Gross Receipts Tax Revenue

Until 1990, all natural gas purchases in Florida were made from local distribution companies that owned the pipelines through which the gas was delivered to the final consumer. The origin of the gas did not matter to the final consumer, because a Florida gas company bought the gas that flowed through its transportation system and resold it to the consumer. The price of natural gas included any costs associated with transporting it to the end-user, and gross receipts tax was calculated on the entire cost of the delivered product.

Changes adopted in 1990 allowed Florida customers to purchase gas from out-of-state vendors. In these transactions, the purchase of gas was not subject to gross receipts tax because the tax is on the vendor, which was not a Florida business. A 1992 Technical Assistance Advisement by the Department of Revenue stated that the gross receipts tax was not applicable to charges for transportation services only, because the statute imposes a tax on persons who receive payment for a utility service, and transportation does not meet the statutory definition of utility service. Because of changes due to deregulation, the gross receipts tax base has been significantly reduced. Since 1990 the amount of natural gas purchased from out-of-state suppliers has grown to over 70 percent of all gas supplied by privately-owned companies.

Purchase of natural gas from outside the state is no longer limited to large end-users. Rule 25-7.0335, described above, requires Florida's investor-owned natural gas utilities to offer transportation service to all non-residential customers and authorizes the transportation of natural gas to residential customers when it is cost effective to do so.

The effect of changes on the way natural gas is sold in Florida can be seen in the state's gross receipts tax revenue history. Gross receipts tax revenue has grown by almost 270 percent since 1985-86 (including rate increases in 1990, 1991, and 1992), but receipts from natural gas have grown much more slowly. In FY 1990-91 gross receipts tax revenue attributable to natural gas was 3.7 percent of total collections. This percentage has trended downward since then, and by 2002-03 it had fallen to 1.7 percent of total gross receipts tax revenue.

III. Effect of Proposed Changes:

This proposed committee substitute amends s. 203.01, F.S., to tax utility services that are delivered to a retail consumer in this state. The gross receipts of a distribution company that sells and delivers utility services to a retail consumer are taxable as they are under current law. If a distribution company delivers electricity or transports natural or manufactured gas to a retail consumer but does not sell the electricity or natural or manufactured gas, the distribution company's receipts are taxed at a per-unit rate. This rate is set annually, based on the average Florida price for commercial and industrial retail consumers published by the United States Energy Information Administration. The proposed committee substitute also extends the gross receipts tax to any person who severs natural gas or imports electricity or natural or manufactured gas for that person's own use or consumption as a substitute for purchasing utility, transportation or delivery services taxable under chapter 203. This tax is based on the cost price of the electricity or natural or manufactured gas.

This proposed committee substitute amends existing provisions to provide that the sale or transportation of natural or manufactured gas to an electric utility or for resale, whether within or without the state, is not subject to gross receipts tax. It also provides that delivery of electricity for resale within or without the state is not subject to gross receipts tax. These resale provisions apply only if the resale is in compliance with Department of Revenue rules and regulations. Wholesale sales of electric transmissions are not subject to gross receipts tax, and neither is the use of natural gas to produce oil or gas or the use of natural or manufactured gas to transport natural or manufactured gas. Sales or delivery of natural or manufactured gas to manufacturers of lumber and wood products; paper and allied products; chemical products, phosphate rock; nonwoven fabrics; and minerals, ground or treated; or use of natural or manufactured gas by these manufacturers, would not be subject to tax.

This proposed committee substitute amends s. 203.012, F.S., redefining utility service to include transportation, delivery, transmission, and distribution of electricity and natural or manufactured gas. It also provides that the definition is not intended to broaden the definition of utility services to include separately stated charges for tangible personal property or services that are not charges for electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas.

The proposed committee substitute gives the Department of Revenue emergency rulemaking authority to implement the provisions of this bill. The emergency rules would remain in effect for 6 months after the date of adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

The proposed committee substitute also provides amnesty for unpaid gross receipts tax, penalties, and interest if the sales were by persons not regulated by Chapter 366 of the Florida Statutes, which regulates public utilities; the sales agreement provided for transfer of title to the gas outside of Florida; or the sales were of transportation services associated with the sales of gas. The amnesty is limited to sellers that register with the Department of Revenue by the effective date of the section, and apply for amnesty within three months of the section's effective date (July 1, 2003).

This proposed committee substitute corrects certain out-of-date provisions in this section regarding the tax on telecommunications systems, and provides an exemption for the sale of manufactured gas to a public or private utility for resale or for use as a fuel in the generation of electricity. There is currently no manufactured gas being sold in the state to generate electricity, but one facility has proposed generating electricity with purchased manufactured gas.

IV. Constitutional Issues:

Article VII sec. 9 of the Florida Constitution provides that gross receipts tax revenue must be placed in the Public Education Capital Outlay (PECO) Fund, and used to pay for capital projects at universities, community colleges, vocational technical schools, or public schools. These capital projects may be financed by bonds pledging the full faith and credit of the state, and the amount of bonds issued may not exceed 90 percent of the average amount of gross receipts tax revenue from the two preceding years.

Available PECO funds for any given year are made up of bond proceeds and cash proceeds. Both estimates begin with the Gross Receipts Tax. The maximum debt service capacity is determined and the amount of already existing debt is subtracted, leaving the amount available to support new bonds. The state then sells the new bonds and places the proceeds in the trust fund for spending on a set of projects which are stipulated in the Appropriations Act. Any tax collections not needed for paying debt service can be spent as cash. These remaining tax collections are combined with interest earnings of the trust fund to pay for the remainder of the PECO appropriation.

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Based on FL PSC Annual Gas Reports, data supplied by municipal gas utilities and large natural gas users, and Florida Natural Gas Prices reported by the U.S. Energy Information Administration, the preliminary revenue impact for FY 2003-04 of taxing gas purchased from out of state is an additional \$2.4 million for the Public Education Capital Outlay

Fund. The recurring increase is \$9.7 million. The exemption of manufactured gas sold for electricity generation will result in a recurring loss of \$0.6 million that would otherwise have been collected if the sale of the manufactured gas facility occurs. The current gross receipts tax estimate does not include this revenue since there are currently no sales of manufactured gas to an electric utility.

B. Private Sector Impact:

Except for those manufacturers specifically excluded from the gross receipts tax on natural or manufactured gas, consumers that have avoided the gross receipts tax on their consumption of these products will be subject to the same tax as natural or manufactured gas users who have purchased from in-state providers.

C. Government Sector Impact:

The increased bonding capacity resulting from this bill is approximately \$133 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.