

By Senator Campbell

314-420A-03

1                                   A bill to be entitled  
2           An act relating to the tax on gross receipts  
3           for utility and communications services;  
4           amending s. 203.01, F.S.; providing for a tax  
5           on the delivery of electricity to a final  
6           consumer, based on an index price; providing  
7           for an annual calculation of the index price;  
8           providing a credit for similar taxes paid to  
9           another jurisdiction; providing for a tax on  
10          the transportation of natural gas or  
11          manufactured gas to a final consumer, based on  
12          an index price; providing for an annual  
13          calculation of the index price; providing a  
14          credit for similar taxes paid to another  
15          jurisdiction; providing for a tax on the cost  
16          price of electricity, natural gas, or  
17          manufactured gas to be paid by any person who  
18          causes these products to be imported into the  
19          state for that person's own use; revising  
20          obsolete provisions; providing that the term  
21          "gross receipts" does not include the sale of  
22          manufactured gas to a public or private utility  
23          for resale or for use as a fuel in the  
24          generation of electricity; providing an amnesty  
25          for unpaid gross receipts tax, penalties, and  
26          interest on unpaid gross receipts tax otherwise  
27          due for selling natural gas in this state;  
28          providing conditions for the amnesty; providing  
29          limitations for the amnesty; authorizing the  
30          executive director of the Department of Revenue  
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1 to adopt emergency rules to implement the  
2 amnesty; providing effective dates.

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4 Be It Enacted by the Legislature of the State of Florida:

5

6 Section 1. Present paragraph (f) of subsection (1) of  
7 section 203.01, Florida Statutes, is redesignated as paragraph  
8 (i) and amended and new paragraphs (f), (g), and (h) are added  
9 to that subsection, and subsections (2), (3), and (4) of that  
10 section are amended to read:

11 203.01 Tax on gross receipts for utility and  
12 communications services.--

13 (1)

14 (f)1. Every person who receives payment from a final  
15 retail consumer in this state for the delivery of electricity  
16 to that final consumer is subject to the tax imposed by this  
17 paragraph unless the payment is subject to tax under paragraph  
18 (a). The tax due in connection with each payment for delivery  
19 shall be determined by multiplying the number of kilowatt  
20 hours delivered by the index price and applying the rate in  
21 paragraph (a) to the result.

22 2. The index price is the average Florida price per  
23 kilowatt hour for commercial and industrial retail consumers  
24 in the previous calendar year, as published in the United  
25 States Energy Information Administration Electric Power  
26 Monthly and announced by the Department of Revenue on July 1  
27 of each year to be effective for the subsequent 12-month  
28 period.

29 3. Tax due under this paragraph shall be administered,  
30 paid, and reported in the same manner as the tax due under  
31 paragraph (a).

1           4. The amount of tax due under this paragraph shall be  
2 reduced by the amount of any gross receipts tax or similar tax  
3 lawfully imposed on and paid by the person from whom the  
4 consumer purchased the electricity, whether imposed by and  
5 paid to this state, another state, a territory of the United  
6 States, or the District of Columbia. This reduction must be  
7 reflected in a reduction to any gross receipts tax passed on  
8 to the final retail consumer as a separately stated charge and  
9 does not inure to the benefit of the person who receives  
10 payment for the delivery of the electricity. The methods of  
11 demonstrating proof of payment and the amount of such  
12 reduction in tax shall be made according to rules of the  
13 Department of Revenue.

14           (g)1. Every person who receives payment from a final  
15 retail consumer in this state for the transportation of  
16 natural gas or manufactured gas to that final consumer is  
17 subject to the tax imposed by this paragraph unless the  
18 payment is subject to tax under paragraph (a). The tax due in  
19 connection with each payment received shall be determined by  
20 dividing the number of cubic feet delivered by 1,000,  
21 multiplying the resulting number by the index price, and  
22 applying the rate in paragraph (a) to the result.

23           2. The index price is the average Florida price per  
24 1,000 cubic feet for commercial and industrial retail  
25 consumers in the previous calendar year as published in the  
26 United Station Energy Information Administration Natural Gas  
27 Monthly and announced by the Department of Revenue on July 1  
28 of each year to be effective for the subsequent 12-month  
29 period.

1           3. Tax due under this paragraph shall be administered,  
2 paid, and reported in the same manner as the tax due under  
3 paragraph (a).

4           4. The amount of tax due under this paragraph shall be  
5 reduced by the amount of any gross receipts tax or similar tax  
6 lawfully imposed on and paid by the person from whom the  
7 consumer purchased the natural gas or manufactured gas,  
8 whether imposed by and paid to this state, another state, a  
9 territory of the United States, or the District of Columbia.  
10 This reduction must be reflected in a reduction to any gross  
11 receipts tax passed on to the consumer as a separately stated  
12 charge and does not inure to the benefit of the person  
13 providing the transportation service. The methods of  
14 demonstrating proof of payment and the amount of such  
15 reduction in tax shall be made according to rules of the  
16 Department of Revenue.

17           (h) Any person who purchases and imports into this  
18 state electricity, natural gas, or manufactured gas for that  
19 person's own use or consumption as a substitute for purchasing  
20 utility, transportation, or delivery services taxable under  
21 this chapter and who cannot demonstrate payment of the tax  
22 imposed by this chapter must register with the Department of  
23 Revenue and pay into the State Treasury each month an amount  
24 equal to the cost price of such electricity, natural gas, or  
25 manufactured gas times the rate set forth in paragraph (b),  
26 reduced by the amount of any gross receipts tax or similar tax  
27 lawfully imposed on and paid by the person from whom the  
28 electricity, natural gas, or manufactured gas was purchased  
29 and any person who provided delivery service or transportation  
30 service in connection with the electricity, natural gas, or  
31 manufactured gas. For purposes of this paragraph, the term

1 "cost price" has the meaning ascribed in s. 212.02(4). The  
2 methods of demonstrating proof of payment and the amount of  
3 such reductions in tax shall be made according to rules of the  
4 Department of Revenue.

5 (i)(f) Notwithstanding any other provision of this  
6 chapter, with the exception of a communications services  
7 dealer reporting taxes administered under chapter 202  
8 telephone or telecommunication system described in paragraph  
9 (c), the department may require:

10 1. A quarterly return and payment when the tax  
11 remitted for the preceding four calendar quarters did not  
12 exceed \$1,000;

13 2. A semiannual return and payment when the tax  
14 remitted for the preceding four calendar quarters did not  
15 exceed \$500; or

16 3. An annual return and payment when the tax remitted  
17 for the preceding four calendar quarters did not exceed \$100.

18 (2)(a) In addition to any other penalty provided by  
19 law, any person who fails to timely report and pay any tax  
20 imposed by subsection (1) on gross receipts from utility  
21 services under this chapter shall pay a penalty equal to 10  
22 percent of any unpaid tax, if the failure is for less than 31  
23 days, plus an additional 10 percent of any unpaid tax for each  
24 additional 30 days or fraction thereof. However, such penalty  
25 may not be less than \$10 or exceed a total of 50 percent in  
26 the aggregate of any unpaid tax.

27 (b) In addition to any other penalty provided by law,  
28 any person who falsely or fraudulently reports or unlawfully  
29 attempts to evade paying any tax imposed by subsection (1) on  
30 gross receipts from utility services under this chapter shall  
31 pay a penalty equal to 100 percent of any tax due and is

1 guilty of a misdemeanor of the second degree, punishable as  
2 provided under s. 775.082 or s. 775.083.

3 (3) The term "gross receipts" as used herein does not  
4 include gross receipts of any person derived from:

5 (a) The sale of natural gas or manufactured gas to a  
6 public or private utility, including a municipal corporation  
7 or rural electric cooperative association, either for resale  
8 or for use as fuel in the generation of electricity; or

9 (b) The sale of electricity to a public or private  
10 utility, including a municipal corporation or rural electric  
11 cooperative association, for resale within the state, or as  
12 part of an electrical interchange agreement or contract  
13 between such utilities for the purpose of transferring more  
14 economically generated power;

15  
16 provided the person deriving gross receipts from such sale  
17 demonstrates that a resale in fact occurred and complies with  
18 the following requirements: A resale in this state must be in  
19 strict compliance with the rules and regulations of the  
20 Department of Revenue; and any person making a sale for resale  
21 in this state which is not in strict compliance with the rules  
22 and regulations of the Department of Revenue shall be liable  
23 for and pay the tax. Any person making a sale for resale in  
24 this state may, through an informal protest provided for in s.  
25 213.21 and the rules of the Department of Revenue, provide the  
26 department with evidence of the exempt status of a sale. The  
27 department shall adopt rules which provide that valid proof  
28 and documentation of the resale in this state by a person  
29 making the sale for resale in this state will be accepted by  
30 the department when submitted during the protest period but  
31 will not be accepted when submitted in any proceeding under

1 chapter 120 or any circuit court action instituted under  
2 chapter 72.

3 (4) The tax imposed pursuant to this chapter relating  
4 to the provision of any utility, transportation, or delivery  
5 services ~~must~~ ~~at the option of the person supplying the~~  
6 ~~taxable services~~ may be separately stated as Florida gross  
7 receipts tax on the total amount of any bill, invoice, or  
8 other tangible evidence of the provision of such taxable  
9 services and must ~~may~~ be added as a component part of the  
10 total charge. Whenever a provider of taxable services ~~elects~~  
11 ~~to separately states~~ state such tax as a component of the  
12 charge for the provision of such taxable services, every  
13 person, including all governmental units, shall remit the tax  
14 to the person who provides such taxable services as a part of  
15 the total bill, and the tax is a component part of the debt of  
16 the purchaser to the person who provides such taxable services  
17 until paid and, if unpaid, is recoverable at law in the same  
18 manner as any other part of the charge for such taxable  
19 services. ~~For a utility, the decision to separately state any~~  
20 ~~increase in the rate of tax imposed by this chapter which is~~  
21 ~~effective after December 31, 1989, and the ability to recover~~  
22 ~~the increased charge from the customer shall not be subject to~~  
23 ~~regulatory approval.~~

24 Section 2. Amnesty for registration and remittance of  
25 tax.--

26 (1) The state shall provide an amnesty for unpaid  
27 gross receipts tax, penalties, and interest on unpaid gross  
28 receipts tax that may otherwise be due for the sale or  
29 transportation of natural gas for consumption in this state if  
30 all of the following requirements are satisfied.

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1           (a) The sales subject to amnesty were made prior to  
2 the effective date of this act.

3           (b) The gross receipts at issue were derived from one  
4 of the following:

5           1. Sales by persons who are not regulated pursuant to  
6 chapter 366;

7           2. Sales for which the written sales agreement  
8 provides for transfer of title to the gas outside the state;  
9 or

10           3. Sales of transportation services associated with  
11 the sales of gas.

12           (c) The seller, if unregistered for gross receipts tax  
13 purposes, registers with the Department of Revenue to pay  
14 gross receipts tax on or before the effective date of this  
15 act.

16           (d) The seller applies for amnesty within 3 months  
17 after the effective date of this act, in accordance with the  
18 rules of the Department of Revenue.

19           (2) The amnesty is not available for taxes, penalties,  
20 or interest that have been assessed if the assessment is final  
21 and has not been timely challenged, or for any tax, penalty,  
22 or interest that has been previously paid to the department  
23 unless the payment is the subject of an assessment that is not  
24 final or that has been timely challenged.

25           (3) The amnesty is not available for tax billed to or  
26 collected by the seller as an itemized charge to customers.

27           (4) The executive director of the department may adopt  
28 emergency rules under sections 120.536(1) and 120.54(4),  
29 Florida Statutes, to implement the amnesty. Such rules may  
30 provide forms and procedures for applying for amnesty; for  
31 reporting the sales for which amnesty is sought; and for

1 ensuring the applicant's ongoing commitment to registration,  
2 collection, and remittance of the state's gross receipts tax.  
3 Notwithstanding any other law, the emergency rules shall  
4 remain effective until the later of the date that is 6 months  
5 after the date of adoption of the rule or the date of final  
6 resolution of all amnesty applications filed pursuant to this  
7 section.

8 (5) This section shall take effect upon this act  
9 becoming a law.

10 Section 3. Except as otherwise expressly provided in  
11 this act, this act shall take effect July 1, 2003.

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14 SENATE SUMMARY

15 Provides for the tax on gross receipts for utility and  
16 communications services to apply to the delivery of  
17 electricity to a final consumer and on the transportation  
18 of natural gas or manufactured gas to a final consumer.  
19 Provides for calculating the tax. Provides a tax credit  
20 for similar taxes paid to another jurisdiction. Provides  
21 an amnesty for unpaid gross receipts tax, penalties, and  
22 interest due for selling natural gas in the state.  
23 Provides requirements for qualifying for the amnesty.  
24 Authorizes the executive director of the Department of  
25 Revenue to adopt rules. (See bill for details.)  
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