

By the Committee on Finance and Taxation; and Senator Campbell

314-1980-03

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 utility services delivered to a retail  
6           consumer in this state; providing for a tax on  
7           the gross receipts of a distribution company  
8           providing delivery of electricity to a retail  
9           consumer, based on an index price; providing  
10          for an annual calculation of the index price;  
11          providing a credit for similar taxes paid to  
12          another jurisdiction; providing for a tax on  
13          the gross receipts of a distribution company  
14          providing transportation of natural gas or  
15          manufactured gas to a retail consumer, based on  
16          an index price; providing for an annual  
17          calculation of the index price; providing a  
18          credit for similar taxes paid to another  
19          jurisdiction; providing for a tax on the cost  
20          price of electricity, natural gas, or  
21          manufactured gas to be paid by any person who  
22          causes these products to be severed or imported  
23          into the state for that person's own use;  
24          revising obsolete provisions; providing that  
25          the term "gross receipts" does not include the  
26          sale of manufactured gas to a public or private  
27          utility for resale or for use as a fuel in the  
28          generation of electricity; providing that the  
29          term "gross receipts" does not include  
30          wholesale electric transmission service or the  
31          use and consumption of natural gas to produce

1 oil or natural gas or the use and consumption  
2 of natural or manufactured gas to transport  
3 those products or the sale or transportation to  
4 or use of natural or manufactured gas by  
5 certain manufacturers; amending s. 203.012,  
6 F.S.; redefining the term "utility service";  
7 defining the term "distribution company";  
8 authorizing the executive director of the  
9 department to adopt emergency rules to  
10 implement the provisions of this act; providing  
11 an amnesty for unpaid gross receipts tax,  
12 penalties, and interest on unpaid gross  
13 receipts tax otherwise due for selling natural  
14 gas in this state; providing conditions for the  
15 amnesty; providing limitations for the amnesty;  
16 authorizing the executive director of the  
17 Department of Revenue to adopt emergency rules  
18 to implement the amnesty; providing effective  
19 dates.

20  
21 Be It Enacted by the Legislature of the State of Florida:

22  
23 Section 1. Paragraph (a) and present paragraph (f) of  
24 subsection (1) of section 203.01, Florida Statutes, are  
25 amended, present paragraphs (c) through (f) of that subsection  
26 are redesignated as paragraphs (h) through (k), respectively,  
27 new paragraphs (c) through (g) are added to that subsection,  
28 and subsection (3) of that section is amended, to read:

29 203.01 Tax on gross receipts for utility and  
30 communications services.--  
31

1           (1)(a)1. A tax is imposed on gross receipts from  
2 utility services that are delivered to a retail consumer in  
3 this state. Such tax shall be levied as provided in paragraphs  
4 (b) through (j).~~Every person that receives payment for any~~  
5 ~~utility service shall report by the last day of each month to~~  
6 ~~the Department of Revenue, under oath of the secretary or some~~  
7 ~~other officer of such person, the total amount of gross~~  
8 ~~receipts derived from business done within this state, or~~  
9 ~~between points within this state, for the preceding month and,~~  
10 ~~at the same time, shall pay into the State Treasury an amount~~  
11 ~~equal to a percentage of such gross receipts at the rate set~~  
12 ~~forth in paragraph (b). Such collections shall be certified~~  
13 ~~by the Comptroller upon the request of the State Board of~~  
14 ~~Education.~~

15           2. A tax is levied on communications services as  
16 defined in s. 202.11(3). Such tax shall be applied to the same  
17 services and transactions as are subject to taxation under  
18 chapter 202, and to communications services that are subject  
19 to the exemption provided in s. 202.125(1). Such tax shall be  
20 applied to the sales price of communications services when  
21 sold at retail and to the actual cost of operating substitute  
22 communications systems, as such terms are defined in s.  
23 202.11, shall be due and payable at the same time as the taxes  
24 imposed pursuant to chapter 202, and shall be administered and  
25 collected pursuant to the provisions of chapter 202.

26           (c) The tax shall be levied against the total amount  
27 of gross receipts received by a distribution company for its  
28 sale of utility services, if the utility service is delivered  
29 to the final consumer by a distribution company, and the final  
30 consumer pays the distribution company a charge for utility  
31 service which includes a charge for both the electricity or

1 natural or manufactured gas and the transportation of  
2 electricity or natural or manufactured gas to the consumer.  
3 The distribution company shall report and remit to the  
4 Department of Revenue by the last day of each month the taxes  
5 levied pursuant to this paragraph during the preceding month.  
6 (d)1. Each distribution company that receives payment  
7 for the delivery of electricity from a retail consumer in this  
8 state is subject to tax on the exercise of this privilege as  
9 provided by this paragraph unless the payment is subject to  
10 tax under paragraph (c). For the exercise of this privilege,  
11 the tax levied on such distribution company's receipts for the  
12 delivery of electricity shall be determined by multiplying the  
13 number of kilowatt hours delivered by the index price and  
14 applying the rate in paragraph (b) to the result.  
15 2. The index price is the average Florida price per  
16 kilowatt hour for commercial and industrial retail consumers  
17 in the previous calendar year, as published in the United  
18 States Energy Information Administration Electric Power  
19 Monthly and announced by the Department of Revenue on June 1  
20 of each year to be effective for the 12-month period beginning  
21 July 1 of that year.  
22 3. Tax due under this paragraph shall be administered,  
23 paid, and reported in the same manner as the tax due under  
24 paragraph (c).  
25 4. The amount of tax due under this paragraph shall be  
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 consumer purchased the electricity, whether imposed by and  
29 paid to this state, another state, a territory of the United  
30 States, or the District of Columbia. This reduction must be  
31 reflected in a reduction to any gross receipts tax passed on

1 to the final retail consumer as a separately stated charge and  
2 does not inure to the benefit of the person who receives  
3 payment for the delivery of the electricity. The methods of  
4 demonstrating proof of payment and the amount of such  
5 reduction in tax shall be made according to rules of the  
6 Department of Revenue.

7 (e)1. Every distribution company that receives payment  
8 for the transportation of natural or manufactured gas from a  
9 retail consumer in this state is subject to tax on the  
10 exercise of this privilege as provided by this paragraph  
11 unless the payment is subject to tax under paragraph (c). For  
12 the exercise of this privilege the tax levied on such  
13 distribution company's receipts for the transportation of  
14 natural or manufactured gas shall be determined by dividing  
15 the number of cubic feet delivered by 1,000, multiplying the  
16 resulting number by the index price, and applying the rate in  
17 paragraph (a) to the result.

18 2. The index price is the average Florida price per  
19 1,000 cubic feet for commercial and industrial retail  
20 consumers in the previous calendar year as published in the  
21 United States Energy Information Administration Natural Gas  
22 Monthly and announced by the Department of Revenue on June 1  
23 of each year to be effective for the 12-month period beginning  
24 July 1 of that year.

25 3. Tax due under this paragraph shall be administered,  
26 paid, and reported in the same manner as the tax due under  
27 paragraph (c).

28 4. The amount of tax due under this paragraph shall be  
29 reduced by the amount of any gross receipts tax or similar tax  
30 lawfully imposed on and paid by the person from whom the  
31 consumer purchased the natural gas or manufactured gas,

1 whether imposed by and paid to this state, another state, a  
2 territory of the United States, or the District of Columbia.  
3 This reduction must be reflected in a reduction to any gross  
4 receipts tax passed on to the consumer as a separately stated  
5 charge and does not inure to the benefit of the person  
6 providing the transportation service. The methods of  
7 demonstrating proof of payment and the amount of such  
8 reduction in tax shall be made according to rules of the  
9 Department of Revenue.

10 (f) Any person who purchases and imports into this  
11 state electricity, natural gas, or manufactured gas, or severs  
12 natural gas, for that person's own use or consumption as a  
13 substitute for purchasing utility, transportation, or delivery  
14 services taxable under this chapter and who cannot demonstrate  
15 payment of the tax imposed by this chapter must register with  
16 the Department of Revenue and pay into the State Treasury each  
17 month an amount equal to the cost price of such electricity,  
18 natural gas, or manufactured gas times the rate set forth in  
19 paragraph (b), reduced by the amount of any gross receipts tax  
20 or similar tax lawfully imposed on and paid by the person from  
21 whom the electricity, natural gas, or manufactured gas was  
22 purchased or any person who provided delivery service or  
23 transportation service in connection with the electricity,  
24 natural gas, or manufactured gas. For purposes of this  
25 paragraph, the term "cost price" has the meaning ascribed in  
26 s. 212.02(4). The methods of demonstrating proof of payment  
27 and the amount of such reductions in tax shall be made  
28 according to rules of the Department of Revenue.

29 (g)~~(f)~~ Notwithstanding any other provision of this  
30 chapter, with the exception of a communications services  
31 dealer reporting taxes administered under chapter 202

1 ~~telephone or telecommunication system described in paragraph~~  
2 ~~(c)~~, the department may require:

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

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

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

11       (3) The tax imposed by subsection (1) does not apply  
12 ~~to term "gross receipts" as used herein does not include gross~~  
13 ~~receipts of any person derived from:~~

14       (a) The sale or transportation of natural gas or  
15 manufactured gas to a public or private utility, including a  
16 municipal corporation or rural electric cooperative  
17 association, either for resale or for use as fuel in the  
18 generation of electricity; ~~or~~

19       (b) The sale or delivery of electricity to a public or  
20 private utility, including a municipal corporation or rural  
21 electric cooperative association, for resale ~~within the state,~~  
22 or as part of an electrical interchange agreement or contract  
23 between such utilities for the purpose of transferring more  
24 economically generated power, ~~+~~

25

26 provided the person deriving gross receipts from such sale  
27 demonstrates that a sale, transportation, or delivery for  
28 resale in fact occurred and complies with the following  
29 requirements: A sale, transportation, or delivery for resale  
30 ~~in this state~~ must be in strict compliance with the rules and  
31 regulations of the Department of Revenue; and any sale subject

1 to the tax imposed by this section which is ~~person making a~~  
2 ~~sale for resale in this state which is~~ not in strict  
3 compliance with the rules and regulations of the Department of  
4 Revenue shall be subject to liable for and pay the tax at the  
5 appropriate rate imposed on utilities by paragraph (b) on the  
6 person making such sale. Any person making a sale for resale  
7 ~~in this state~~ may, through an informal protest provided for in  
8 s. 213.21 and the rules of the Department of Revenue, provide  
9 the department with evidence of the exempt status of a sale.  
10 The department shall adopt rules which provide that valid  
11 proof and documentation of the resale ~~in this state~~ by a  
12 person making the sale for resale in this state will be  
13 accepted by the department when submitted during the protest  
14 period but will not be accepted when submitted in any  
15 proceeding under chapter 120 or any circuit court action  
16 instituted under chapter 72;:-

17 (c) Wholesale sales of electric transmission service;

18 (d) The use of natural gas in the production of oil or  
19 gas, or the use of natural or manufactured gas by a person  
20 transporting natural or manufactured gas, when used and  
21 consumed in providing such services; or

22 (e) The sale or transportation to, or use of, natural  
23 gas or manufactured gas by manufacturers classified under SIC  
24 Industry Major Group Numbers 24, 26, or 28 or Industry Group  
25 Numbers 1475, 2297, or 3295, as published in the Standard  
26 Industrial Classification Manual, 1987, by the Office of  
27 Management and Budget, Executive Office of the President, for  
28 use as an energy source or a raw material.

29 Section 2. Section 203.012, Florida Statutes, is  
30 amended to read:

31 203.012 Definitions.--As used in this chapter:



1           (1) "Utility service" means electricity for light,  
2 heat, or power; and natural or manufactured gas for light,  
3 heat, or power, including transportation, delivery,  
4 transmission, and distribution of the electricity or natural  
5 or manufactured gas. This subsection does not broaden the  
6 definition of utility service to include separately stated  
7 charges for tangible personal property or services that are  
8 not charges for the electricity or natural or manufactured gas  
9 or the transportation, delivery, transmission, or distribution  
10 of electricity or natural or manufactured gas.

11           (2) "Person" means any person as defined in s. 212.02.

12           (3) "Distribution company" means any person owning or  
13 operating local electric or natural or manufactured gas  
14 utility distribution facilities within this state for the  
15 transmission, delivery, and sale of electricity, or natural or  
16 manufactured gas. The term does not include natural gas  
17 transmission companies that are subject to the jurisdiction of  
18 the Federal Energy Regulatory Commission.

19           Section 3. Emergency rules.--The executive director of  
20 the Department of Revenue is authorized, and all conditions  
21 are deemed met, to adopt emergency rules, under sections  
22 120.536(1) and 120.54(4), Florida Statutes, to implement the  
23 provisions of section 203.01, Florida Statutes, that provide  
24 for remittance of tax by distribution companies and  
25 self-accrual of tax by retail consumers and the provision of  
26 section 203.012(1), Florida Statutes, that provides that  
27 utility services include transportation, transmission, and  
28 distribution of electricity and natural or manufactured gas.  
29 Such rules shall include forms the Department of Revenue  
30 determines are necessary or appropriate for registration,  
31 applying for self-accrual authority, reporting, and remitting

1 taxes, or applying for credits. Notwithstanding any other  
2 provision of law, such emergency rules shall remain effective  
3 for 6 months after the date of adoption and may be renewed  
4 during the pendency of procedures to adopt rules addressing  
5 the subject of the emergency rules.

6 Section 4. Amnesty for registration and remittance of  
7 tax.--

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

13 (a) The sales subject to amnesty were made prior to  
14 the effective date of this section.

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

17 1. Sales by persons who are not regulated pursuant to  
18 chapter 366;

19 2. Sales for which the written sales agreement  
20 provides for transfer of title to the gas outside the state;  
21 or

22 3. Sales of transportation services associated with  
23 the sales of gas.

24 (c) The seller registers with the Department of  
25 Revenue to pay gross receipts tax on or before the effective  
26 date of this section.

27 (d) The seller applies for amnesty within 3 months  
28 after the effective date of this section, in accordance with  
29 the rules of the Department of Revenue.

30 (2) The amnesty is not available for taxes, penalties,  
31 or interest that have been assessed if the assessment is final

1 and has not been timely challenged, or for any tax, penalty,  
2 or interest that has been previously paid to the department  
3 unless the payment is the subject of an assessment that is not  
4 final or that has been timely challenged.

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

7 (4) The executive director of the Department of  
8 Revenue may adopt emergency rules under sections 120.536(1)  
9 and 120.54(4), Florida Statutes, to implement the amnesty.  
10 Such rules may provide forms and procedures for applying for  
11 amnesty; for reporting the sales for which amnesty is sought;  
12 and for ensuring the applicant's ongoing commitment to  
13 registration, collection, and remittance of the state's gross  
14 receipts tax. Notwithstanding any other law, the emergency  
15 rules shall remain effective until the later of the date that  
16 is 6 months after the date of adoption of the rule or the date  
17 of final resolution of all amnesty applications filed pursuant  
18 to this section.

19 (5) This section shall take effect July 1, 2003.

20 Section 5. Except as otherwise expressly provided in  
21 this act, this act shall take effect January 1, 2004.

22  
23 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
24 COMMITTEE SUBSTITUTE FOR  
25 SB 1774

26 This committee substitute for SB 1774 provides that sales or  
27 transportation to, or use of natural or manufactured gas by  
28 certain manufacturers is not subject to gross receipts tax. It  
29 also gives the Department of Revenue authority to enact  
30 emergency rules to implement provisions of the bill, and  
31 redefines "utility services" and defines "distribution  
company" for the purposes of the Chapter 203, Florida  
Statutes.