

By Senator Campbell

32-599A-04

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 tax does not apply to the sale or
26 transportation of natural gas or manufactured
27 gas to a public or private utility for resale
28 or for use as a fuel in the generation of
29 electricity; amending s. 203.012, F.S.;
30 redefining the term "utility service"; defining
31 the term "distribution company"; authorizing

1 the executive director of the Department of
2 Revenue to adopt emergency rules to implement
3 the act; providing an amnesty for unpaid gross
4 receipts tax, penalties, and interest on unpaid
5 gross receipts tax otherwise due for selling
6 natural gas in this state; providing conditions
7 for the amnesty; providing limitations for the
8 amnesty; authorizing the executive director of
9 the Department of Revenue to adopt emergency
10 rules to implement the amnesty; providing an
11 effective date.

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

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15 Section 1. Subsections (1) and (3) of section 203.01,
16 Florida Statutes, are amended to read:

17 203.01 Tax on gross receipts for utility and
18 communications services.--

19 (1)(a)1. A tax is imposed on gross receipts from
20 utility services that are delivered to a retail consumer in
21 this state. Such tax shall be levied as provided in paragraphs
22 (b) through (j).~~Every person that receives payment for any~~
23 ~~utility service shall report by the last day of each month to~~
24 ~~the Department of Revenue, under oath of the secretary or some~~
25 ~~other officer of such person, the total amount of gross~~
26 ~~receipts derived from business done within this state, or~~
27 ~~between points within this state, for the preceding month and,~~
28 ~~at the same time, shall pay into the State Treasury an amount~~
29 ~~equal to a percentage of such gross receipts at the rate set~~
30 ~~forth in paragraph (b). Such collections shall be certified~~

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1 ~~by the Chief Financial Officer upon the request of the State~~
2 ~~Board of Education.~~

3 2. A tax is levied on communications services as
4 defined in s. 202.11(3). Such tax shall be applied to the same
5 services and transactions as are subject to taxation under
6 chapter 202, and to communications services that are subject
7 to the exemption provided in s. 202.125(1). Such tax shall be
8 applied to the sales price of communications services when
9 sold at retail and to the actual cost of operating substitute
10 communications systems, as such terms are defined in s.
11 202.11, shall be due and payable at the same time as the taxes
12 imposed pursuant to chapter 202, and shall be administered and
13 collected pursuant to the provisions of chapter 202.

14 (b) The rate applied to utility services shall be 2.5
15 percent. The rate applied to communications services shall be
16 2.37 percent.

17 (c) The tax shall be levied against the total amount
18 of gross receipts received by a distribution company for its
19 sale of utility services, if the utility service is delivered
20 to the final consumer by a distribution company, and the final
21 consumer pays the distribution company a charge for utility
22 service which includes a charge for both the electricity or
23 natural or manufactured gas and the transportation of
24 electricity or natural or manufactured gas to the consumer.
25 The distribution company shall report and remit to the
26 Department of Revenue by the last day of each month the taxes
27 levied pursuant to this paragraph during the preceding month.

28 (d)1. Each distribution company that receives payment
29 for the delivery of electricity to a retail consumer in this
30 state is subject to tax on the exercise of this privilege as
31 provided by this paragraph unless the payment is subject to

1 tax under paragraph (c). For the exercise of this privilege,
2 the tax levied on such distribution company's receipts for the
3 delivery of electricity shall be determined by multiplying the
4 number of kilowatt hours delivered by the index price and
5 applying the rate in paragraph (b) to the result.

6 2. The index price is the Florida price per kilowatt
7 hour for commercial retail consumers in the previous calendar
8 year, as published in the United States Energy Information
9 Administration Electric Power Monthly and announced by the
10 Department of Revenue on June 1 of each year to be effective
11 for the 12-month period beginning July 1 of that year.

12 3. Tax due under this paragraph shall be administered,
13 paid, and reported in the same manner as the tax due under
14 paragraph (c).

15 4. The amount of tax due under this paragraph shall be
16 reduced by the amount of any gross receipts tax or similar tax
17 lawfully imposed on and paid by the person from whom the
18 consumer purchased the electricity, whether imposed by and
19 paid to this state, another state, a territory of the United
20 States, or the District of Columbia. This reduction must be
21 reflected in a reduction to any gross receipts tax passed on
22 to the final retail consumer as a separately stated charge and
23 does not inure to the benefit of the person who receives
24 payment for the delivery of the electricity. The methods of
25 demonstrating proof of payment and the amount of such
26 reduction in tax shall be made according to rules of the
27 Department of Revenue.

28 (e)1. Every distribution company that receives payment
29 for the transportation of natural or manufactured gas to a
30 retail consumer in this state is subject to tax on the
31 exercise of this privilege as provided by this paragraph

1 unless the payment is subject to tax under paragraph (c). For
2 the exercise of this privilege the tax levied on such
3 distribution company's receipts for the transportation of
4 natural or manufactured gas shall be determined by dividing
5 the number of cubic feet delivered by 1,000, multiplying the
6 resulting number by the index price, and applying the rate in
7 paragraph (b) to the result.

8 2. The index price is the Florida price per 1,000
9 cubic feet for commercial retail consumers in the previous
10 calendar year as published in the United States Energy
11 Information Administration Natural Gas Monthly and announced
12 by the Department of Revenue on June 1 of each year to be
13 effective for the 12-month period beginning July 1 of that
14 year.

15 3. Tax due under this paragraph shall be administered,
16 paid, and reported in the same manner as the tax due under
17 paragraph (c).

18 4. The amount of tax due under this paragraph shall be
19 reduced by the amount of any gross receipts tax or similar tax
20 lawfully imposed on and paid by the person from whom the
21 consumer purchased the natural gas or manufactured gas,
22 whether imposed by and paid to this state, another state, a
23 territory of the United States, or the District of Columbia.
24 This reduction must be reflected in a reduction to any gross
25 receipts tax passed on to the consumer as a separately stated
26 charge and does not inure to the benefit of the person
27 providing the transportation service. The methods of
28 demonstrating proof of payment and the amount of such
29 reduction in tax shall be made according to rules of the
30 Department of Revenue.

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

20 (g)~~(c)~~ Electricity produced by cogeneration or by
21 small power producers which is transmitted and distributed by
22 a public utility between two locations of a customer of the
23 utility pursuant to s. 366.051 is subject to the tax imposed
24 by this section. The tax shall be applied to the cost price
25 of such electricity as provided in s. 212.02(4) and shall be
26 paid each month by the producer of such electricity.

27 (h)~~(d)~~ Electricity produced by cogeneration or by
28 small power producers during the 12-month period ending June
29 30 of each year which is in excess of nontaxable electricity
30 produced during the 12-month period ending June 30, 1990, is
31 subject to the tax imposed by this section. The tax shall be

1 applied to the cost price of such electricity as provided in
2 s. 212.02(4) and shall be paid each month, beginning with the
3 month in which total production exceeds the production of
4 nontaxable electricity for the 12-month period ending June 30,
5 1990. For purposes of this paragraph, "nontaxable
6 electricity" means electricity produced by cogeneration or by
7 small power producers which is not subject to tax under
8 paragraph (g)~~(c)~~. Taxes paid pursuant to paragraph (g)~~(c)~~
9 may be credited against taxes due under this paragraph.
10 Electricity generated as part of an industrial manufacturing
11 process which manufactures products from phosphate rock, raw
12 wood fiber, paper, citrus, or any agricultural product shall
13 not be subject to the tax imposed by this paragraph.
14 "Industrial manufacturing process" means the entire process
15 conducted at the location where the process takes place.
16 (i)~~(e)~~ Any person other than a cogenerator or small
17 power producer described in paragraph (h)~~(d)~~ who produces for
18 his or her own use electrical energy which is a substitute for
19 electrical energy produced by an electric utility as defined
20 in s. 366.02 is subject to the tax imposed by this section.
21 The tax shall be applied to the cost price of such electrical
22 energy as provided in s. 212.02(4) and shall be paid each
23 month. The provisions of this paragraph do not apply to any
24 electrical energy produced and used by an electric utility.
25 (j)~~(f)~~ Notwithstanding any other provision of this
26 chapter, with the exception of a communications services
27 dealer reporting taxes administered under chapter 202
28 ~~telephone or telecommunication system described in paragraph~~
29 ~~(c)~~, the department may require:
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1 1. A quarterly return and payment when the tax
2 remitted for the preceding four calendar quarters did not
3 exceed \$1,000;

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

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

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

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

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

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24 provided the person deriving gross receipts from such sale
25 demonstrates that a sale, transportation, or delivery for
26 resale in fact occurred and complies with the following
27 requirements: A sale, transportation, or delivery for resale
28 ~~in this state~~ must be in strict compliance with the rules and
29 regulations of the Department of Revenue; and any sale subject
30 to the tax imposed by this section ~~person making a sale for~~
31 ~~resale in this state~~ which is not in strict compliance with

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

15 (c) Wholesale sales of electric transmission service;

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

20 (e) The sale or transportation to, or use of, natural
21 gas or manufactured gas by a person eligible for an exemption
22 under s. 212.08(7)(ff) for use as an energy source or a raw
23 material.

24 Section 2. Section 203.012, Florida Statutes, is
25 amended to read:

26 203.012 Definitions.--As used in this chapter:

27 (1) "Utility service" means electricity for light,
28 heat, or power; and natural or manufactured gas for light,
29 heat, or power, including transportation, delivery,
30 transmission, and distribution of the electricity or natural
31 or manufactured gas. This subsection does not broaden the

1 definition of utility service to include separately stated
2 charges for tangible personal property or services which are
3 not charges for the electricity or natural or manufactured gas
4 or the transportation, delivery, transmission, or distribution
5 of electricity or natural or manufactured gas.

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

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

14 Section 3. Emergency rules.--The executive director of
15 the Department of Revenue is authorized, and all conditions
16 are deemed met, to adopt emergency rules, under sections
17 120.536(1) and 120.54(4), Florida Statutes, to implement the
18 provisions of section 203.01, Florida Statutes, which provide
19 for remittance of tax by distribution companies and
20 self-accrual of tax by retail consumers and the provision of
21 section 203.012(1), Florida Statutes, which provides that
22 utility services include transportation, transmission, and
23 distribution of electricity and natural or manufactured gas.
24 Such rules shall include forms the Department of Revenue
25 determines are necessary or appropriate for registration,
26 applying for self-accrual authority, reporting, and remitting
27 taxes, or applying for credits. Notwithstanding any other law,
28 such emergency rules shall remain effective for 6 months after
29 the date of adoption and may be renewed during the pendency of
30 procedures to adopt rules addressing the subject of the
31 emergency rules.

1 Section 4. Amnesty for registration and remittance of
2 tax.--

3 (1) The state shall provide an amnesty for unpaid
4 gross receipts tax, penalties, and interest on unpaid gross
5 receipts tax that may otherwise be due for the sale or
6 transportation of natural gas for consumption in this state if
7 all of the following requirements are satisfied:

8 (a) The sales subject to amnesty were made prior to
9 July 1, 2004.

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

12 1. Sales by persons who are not regulated pursuant to
13 chapter 366, Florida Statutes;

14 2. Sales for which the written sales agreement
15 provides for transfer of title to the gas outside the state;

16 3. Sales of transportation services associated with
17 the sales of gas; or

18 4. Sales to persons exempt under section 203.01(3)(e),
19 Florida Statutes.

20 (c) The seller registered with the Department of
21 Revenue to pay gross receipts tax on or before July 1, 2004.

22 (d) The seller applies for amnesty on or before
23 October 1, 2004, in accordance with the rules of the
24 Department of Revenue.

25 (2) The amnesty is not available for taxes, penalties,
26 or interest that have been assessed if the assessment is final
27 and has not been timely challenged, or for any tax, penalty,
28 or interest that has been previously paid to the department
29 unless the payment is the subject of an assessment that is not
30 final or that has been timely challenged.

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

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

15 (5) This section shall take effect July 1, 2004.

16 Section 5. Except as otherwise expressly provided in
17 this act, this act shall take effect January 1, 2005.

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20 SENATE SUMMARY

21 Provides for the tax on gross receipts for utility and
22 communications services to apply to the delivery of
23 electricity to a final consumer and on the transportation
24 of natural gas or manufactured gas to a final consumer.
25 Provides for calculating the tax. Provides a tax credit
26 for similar taxes paid to another jurisdiction. Provides
27 an amnesty for unpaid gross receipts tax, penalties, and
28 interest due for selling natural gas in the state.
29 Provides requirements for qualifying for the amnesty.
30 Authorizes the executive director of the Department of
31 Revenue to adopt rules. Exempts certain manufacturers
 from the tax, provides for the adoption of emergency
 rules, and redefines certain terms. (See bill for
 details.)