

By the Committee on Finance and Taxation; and Senator Campbell

314-1090A-04

1                                   A bill to be entitled  
2           An act relating to the tax on gross receipts  
3           for utility and communications services;  
4           providing an amnesty for unpaid gross receipts  
5           tax, penalties, and interest on unpaid gross  
6           receipts tax otherwise due for the sale or  
7           transportation of natural gas in this state;  
8           providing conditions for the amnesty; providing  
9           limitations for the amnesty; authorizing the  
10          executive director of the Department of Revenue  
11          to adopt emergency rules to implement the  
12          amnesty; amending s. 203.01, F.S.; revising the  
13          tax on electricity used for light, heat, or  
14          power; providing for a tax on the gross  
15          receipts of an electric distribution company  
16          providing delivery of electricity to a retail  
17          consumer, based on an index price; providing  
18          for an annual calculation of the index price;  
19          proving a credit for similar taxes paid to  
20          another jurisdiction; providing for a tax on  
21          the cost price of electricity to be paid by any  
22          person who causes these products to be 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          defining the term "distribution company";  
31          authorizing the executive director of the

1 Department of Revenue to adopt emergency rules  
2 to implement the act; providing effective  
3 dates.

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

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7 Section 1. Amnesty for registration and remittance of  
8 tax.--

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

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

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

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

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

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

24 4. Sales to persons exempt under section 203.01(3)(e),  
25 Florida Statutes, as created by this act.

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

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

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1           (2) The amnesty is not available for taxes, penalties,  
2 or interest that have been assessed if the assessment is final  
3 and has not been timely challenged, or for any tax, penalty,  
4 or interest that has been previously paid to the department  
5 unless the payment is the subject of an assessment that is not  
6 final or that has been timely challenged.

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

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

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

22           Section 2. Subsections (1) and (3) of section 203.01,  
23 Florida Statutes, are amended to read:

24           203.01 Tax on gross receipts for utility and  
25 communications services.--

26           (1)(a)1. Every person that receives payment for any  
27 natural or manufactured gas for light, heat, or power utility  
28 ~~service~~ shall report by the last day of each month to the  
29 Department of Revenue, under oath of the secretary or some  
30 other officer of such person, the total amount of gross  
31 receipts derived from business done within this state, or

1 between points within this state, for the preceding month and,  
2 at the same time, shall pay into the State Treasury an amount  
3 equal to a percentage of such gross receipts at the rate set  
4 forth in paragraph (b). Such collections shall be certified  
5 by the Chief Financial Officer upon the request of the State  
6 Board of Education.

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

18         3. A tax is levied upon payments received for  
19 electricity for light, heat, or power which is delivered to a  
20 retail consumer in this state. Such tax shall be levied as  
21 provided in paragraphs (b) through (i).

22         (b) The rate applied to utility service described in  
23 subparagraphs (a)1. and 3.~~services~~ shall be 2.5 percent. The  
24 rate applied to communications services shall be 2.37 percent.

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

1 transportation of electricity to the consumer. The  
2 distribution company shall report and remit to the Department  
3 of Revenue by the last day of each month the taxes levied  
4 pursuant to this paragraph during the preceding month.

5 (d)1. Each distribution company that receives payment  
6 for the delivery of electricity to a retail consumer in this  
7 state is subject to tax on the exercise of this privilege as  
8 provided by this paragraph unless the payment is subject to  
9 tax under paragraph (c). For the exercise of this privilege,  
10 the tax levied on such distribution company's receipts for the  
11 delivery of electricity shall be determined by multiplying the  
12 number of kilowatt hours delivered by the index price and  
13 applying the rate in paragraph (b) to the result.

14 2. The index price is the Florida price per kilowatt  
15 hour for residential, commercial, or industrial retail  
16 consumers, as applicable, in the previous calendar year, as  
17 published in the United States Energy Information  
18 Administration Electric Power Monthly and announced by the  
19 Department of Revenue on June 1 of each year to be effective  
20 for the 12-month period beginning July 1 of that year.

21 3. The tax due under this paragraph shall be  
22 administered, paid, and reported in the same manner as the tax  
23 due under paragraph (c).

24 4. The amount of tax due under this paragraph shall be  
25 reduced by the amount of any gross receipts tax or similar tax  
26 lawfully imposed on and paid by the person from whom the  
27 consumer purchased the electricity, whether imposed by and  
28 paid to this state, another state, a territory of the United  
29 States, or the District of Columbia. This reduction must be  
30 reflected in a reduction to any gross receipts tax passed on  
31 to the final retail consumer as a separately stated charge and

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

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

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

29 (g)(d) Electricity produced by cogeneration or by  
30 small power producers during the 12-month period ending June  
31 30 of each year which is in excess of nontaxable electricity

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

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 include  
10 ~~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, if ~~for the purpose of transferring~~  
22 ~~more economically generated power;~~

23  
24 ~~provided~~ the person deriving gross receipts from such sale  
25 demonstrates that the sale, transportation, or delivery for a  
26 resale in fact occurred and complies with the following  
27 requirements: The sale, transportation, or delivery for a  
28 resale ~~in this state~~ must be in strict compliance with the  
29 rules and regulations of the Department of Revenue; and any  
30 sale subject to the tax imposed by this section ~~person making~~  
31 ~~a sale for resale in this state~~ which is not in strict



1 compliance with the rules and regulations of the Department of  
2 Revenue shall be subject to liable for and pay the tax at the  
3 appropriate rate imposed by paragraph (1)(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) The wholesale sale of electric transmission  
16 service;

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

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

25  
26 This subsection does not imply that tax is due on separately  
27 stated charges for the transportation of natural or  
28 manufactured gas.

29 Section 3. 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.

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

5           (3) "Distribution company" means any person owning or  
6 operating local electric utility distribution facilities  
7 within this state for the distribution of electricity to the  
8 final retail consumer.

9           Section 4. Emergency rules.--The executive director of  
10 the Department of Revenue is authorized, and all conditions  
11 are deemed met, to adopt emergency rules, under sections  
12 120.536(1) and 120.54(4), Florida Statutes, to implement the  
13 provisions of section 203.01, Florida Statutes. Such rules  
14 shall include forms the Department of Revenue determines are  
15 necessary or appropriate for registration, applying for  
16 self-accrual authority, reporting, and remitting taxes, or  
17 applying for credits. Notwithstanding any other law, such  
18 emergency rules shall remain effective for 6 months after the  
19 date of adoption and may be renewed during the pendency of  
20 procedures to adopt rules addressing the subject of the  
21 emergency rules.

22           Section 5. This act shall take effect January 1, 2005,  
23 except that this section and section 1 of this act shall take  
24 effect July 1, 2004.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
COMMITTEE SUBSTITUTE FOR  
SB 594

This CS does not include a "use tax" on the cost price of natural gas imported for one's own use, and does not impose per-unit tax on the distribution of natural or manufactured gas. Instead, it clarifies that every person that receives payment for any natural or manufactured gas for light, heat, or power must report the payments to the Department of Revenue and pay the appropriate tax on those payments. It also levies a tax on payments received for electricity for light, heat, or power that is delivered to a retail consumer in this state.