

By the Committees on Commerce, Economic Opportunities, and Consumer Services; Finance and Taxation; and Senator Campbell

310-1553-04

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 an effective
3 date.

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

23 203.01 Tax on gross receipts for utility and
24 communications services.--

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

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

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

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

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

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

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

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

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

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

23 4. The amount of tax due under this paragraph shall be
24 reduced by the amount of any gross receipts tax or similar tax
25 lawfully imposed on and paid by the person from whom the
26 retail consumer purchased the electricity, whether imposed by
27 and paid to this state, another state, a territory of the
28 United States, or the District of Columbia. This reduction
29 must be reflected in a reduction to any gross receipts tax
30 passed on to the retail consumer as a separately stated charge
31 and does not inure to the benefit of the person who receives

1 payment for the delivery of the electricity. The methods of
2 demonstrating proof of payment and the amount of such
3 reduction in tax shall be made according to rules of the
4 Department of Revenue.

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

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

28 (g)(d) Electricity produced by cogeneration or by
29 small power producers during the 12-month period ending June
30 30 of each year which is in excess of nontaxable electricity
31 produced during the 12-month period ending June 30, 1990, is

1 subject to the tax imposed by this section. The tax shall be
2 applied to the cost price of such electricity as provided in
3 s. 212.02(4) and shall be paid each month, beginning with the
4 month in which total production exceeds the production of
5 nontaxable electricity for the 12-month period ending June 30,
6 1990. For purposes of this paragraph, "nontaxable
7 electricity" means electricity produced by cogeneration or by
8 small power producers which is not subject to tax under
9 paragraph ~~(f)~~~~(c)~~. Taxes paid pursuant to paragraph ~~(f)~~~~(c)~~
10 may be credited against taxes due under this paragraph.
11 Electricity generated as part of an industrial manufacturing
12 process which manufactures products from phosphate rock, raw
13 wood fiber, paper, citrus, or any agricultural product shall
14 not be subject to the tax imposed by this paragraph.
15 "Industrial manufacturing process" means the entire process
16 conducted at the location where the process takes place.
17 (h)~~(e)~~ Any person other than a cogenerator or small
18 power producer described in paragraph ~~(g)~~~~(d)~~ who produces for
19 his or her own use electrical energy which is a substitute for
20 electrical energy produced by an electric utility as defined
21 in s. 366.02 is subject to the tax imposed by this section.
22 The tax shall be applied to the cost price of such electrical
23 energy as provided in s. 212.02(4) and shall be paid each
24 month. The provisions of this paragraph do not apply to any
25 electrical energy produced and used by an electric utility.
26 (i)~~(f)~~ Notwithstanding any other provision of this
27 chapter, with the exception of a communications services
28 dealer reporting taxes administered under chapter 202
29 ~~telephone or telecommunication system described in paragraph~~
30 ~~(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 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 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 July 1, 2004.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 594

The committee substitute for committee substitute revises the effective dates, January 1, 2005, that applied to all provisions of the committee substitute but the amnesty provision, and July 1, 2004, that applied only to the amnesty provision, to establish one effective date for the entire committee substitute -- July 1, 2004. It also replaces the phrases "final consumer" and "final retail consumer" with the phrase "retail consumer" wherever those phrases were used in the legislation to describe a purchaser of electricity. The committee substitute establishes requirements related to gross receipts tax on the sale of electricity to a retail consumer if the electric utility industry is deregulated in the future. Prior to the change, "consumer" was described variously as the "final consumer" or as the "final retail consumer."