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A bill to be entitled

An act relating to the tax on gross receipts for utility and communications services; providing for an amnesty for unpaid gross receipts taxes, penalties, and interest on unpaid gross receipts taxes relating to the sale or transportation of natural gas under certain circumstances; providing exceptions; providing for adoption of emergency rules by the Department of Revenue; providing for period of effect of such rules; amending s. 203.01, F.S.; applying provisions imposing a tax on gross receipts for utility services to sales, transportation, or delivery of natural or manufactured gas or electricity for heat, light, or power; specifying imposition of the tax; providing for determining the amount of the tax; providing limitations and exceptions; providing for registration and payment of the tax by certain persons bringing electricity into this state under certain circumstances; exempting certain transactions or uses from the tax; amending s. 203.012, F.S.; providing a definition; providing for adoption of emergency rules by the Department of Revenue for certain purposes; providing for period of effect of such rules; providing for renewal under certain circumstances; providing effective dates.

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

Section 1. Amnesty for registration and remittance of gross receipts taxes.--

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29 (1) The state shall provide an amnesty for unpaid gross
 30 receipts taxes, penalties, and interest on unpaid gross receipts
 31 taxes that may otherwise be due from the sale or transportation
 32 of natural gas for consumption in this state if:

33 (a) The sales subject to amnesty were made prior to July
 34 1, 2004.

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

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

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

41 3. Sales of transportation services associated with the
 42 sales of gas; or

43 4. Sales to persons eligible for the exemption under s.
 44 212.08(7)(ff), Florida Statutes.

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

47 (d) The seller applies for amnesty by October 1, 2004, in
 48 accordance with the rules of the Department of Revenue.

49 (2) The amnesty is not available for:

50 (a) Any tax, penalty, or interest that has been assessed
 51 if the assessment is final and has not been timely challenged,
 52 or for any tax, penalty, or interest that has been previously
 53 paid to the department unless the payment is the subject of an
 54 assessment that is not final or that has been timely challenged.

55 (b) Any tax billed to or collected by the seller as an
 56 itemized charge to customers.

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57 (3) The executive director of the Department of Revenue
58 may adopt emergency rules under ss. 120.536(1) and 120.54(4),
59 Florida Statutes, to implement the amnesty. Such rules may
60 provide forms and procedures for applying for the amnesty; for
61 reporting the sales for which the amnesty is sought; and for
62 ensuring the applicant's ongoing commitment to registration,
63 collection, and remittance of the state's gross receipts tax.
64 Notwithstanding any other provision of law, the emergency rules
65 shall remain effective until the later of the date that is 6
66 months after the date of adoption of the rule or the date of
67 final resolution of all amnesty applications filed pursuant to
68 this section.

69 (4) This section shall take effect July 1, 2004.

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

72 203.01 Tax on gross receipts for natural or manufactured
73 gas or electricity for light, heat, or power utility and
74 communications services.--

75 (1)(a)1. Every person that receives payment for any
76 natural or manufactured gas for light, heat, or power utility
77 ~~service~~ shall report by the last day of each month to the
78 Department of Revenue, under oath of the secretary or some other
79 officer of such person, the total amount of gross receipts
80 derived from business done within this state, or between points
81 within this state, for the preceding month and, at the same
82 time, shall pay into the State Treasury an amount equal to a
83 percentage of such gross receipts at the rate set forth in
84 paragraph (b). Such collections shall be certified by the Chief

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85 Financial Officer upon the request of the State Board of
 86 Education.

87 2. A tax is levied on communications services as defined
 88 in s. 202.11(3). Such tax shall be applied to the same services
 89 and transactions as are subject to taxation under chapter 202,
 90 and to communications services that are subject to the exemption
 91 provided in s. 202.125(1). Such tax shall be applied to the
 92 sales price of communications services when sold at retail and
 93 to the actual cost of operating substitute communications
 94 systems, as such terms are defined in s. 202.11, shall be due
 95 and payable at the same time as the taxes imposed pursuant to
 96 chapter 202, and shall be administered and collected pursuant to
 97 the provisions of chapter 202.

98 3. A tax is levied upon payments received for electricity
 99 for light, heat, or power that is delivered to a retail consumer
 100 in this state. Such tax shall be levied as provided in paragraphs
 101 (b)-(i).

102 (b) The rate applied to utility service as described in
 103 subparagraph (a)1. or subparagraph (a)3. ~~services~~ shall be 2.5
 104 percent. The rate applied to communications services shall be
 105 2.37 percent.

106 (c) The tax on electricity for light, heat, or power shall
 107 be levied against the total amount of gross receipts received by
 108 a distribution company for sales of such electricity delivered to
 109 the final consumer by the distribution company for which the
 110 final consumer pays the distribution company an amount which
 111 includes a charge for both the electricity and the transportation
 112 of electricity to the consumer. The distribution company shall
 113 report and remit to the Department of Revenue by the last day of

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114 each month the taxes levied pursuant to this paragraph during the
 115 preceding month.

116 (d)1. Each distribution company that receives payment for
 117 the delivery of electricity to a retail consumer in this state is
 118 subject to a tax on the exercise of the privilege as provided by
 119 this paragraph unless the payment is subject to tax under
 120 paragraph (c). For the exercise of this privilege, the tax levied
 121 on such distribution company's receipts for the delivery of
 122 electricity shall be determined by multiplying the number of
 123 kilowatt hours delivered by the index price and applying the rate
 124 in paragraph (b) to the result.

125 2. The index price is the price per kilowatt hour in this
 126 state for residential, commercial, or industrial retail
 127 consumers, as applicable, in the previous calendar year, as
 128 published in the United States Energy Information Administration
 129 Electric Power Monthly and announced by the Department of Revenue
 130 on June 1 of each year to be effective for the 12-month period
 131 beginning July 1 of that year.

132 3. Tax due under this paragraph shall be administered,
 133 paid, and reported in the same manner as the tax due under
 134 paragraph (c).

135 4. The amount of tax due under this paragraph shall be
 136 reduced by the amount of any gross receipts tax or similar tax
 137 lawfully imposed on and paid by the person from whom the consumer
 138 purchased the electricity, whether imposed by and paid to this
 139 state, another state, a territory of the United States, or the
 140 District of Columbia. This reduction must be reflected in a
 141 reduction to any gross receipts tax passed on to the final retail
 142 consumer as a separately stated charge and does not inure to the

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143 benefit of the person who receives payment for the delivery of
 144 the electricity. The methods of demonstrating proof of payment
 145 and the amount of such reduction in tax shall be made according
 146 to rules of the Department of Revenue.

147 (e) Any person who imports into this state electricity for
 148 that person's own use or consumption as a substitute for
 149 purchasing electricity, transportation, or delivery services
 150 taxable under this chapter and who cannot demonstrate payment of
 151 the tax imposed by this chapter must register with the Department
 152 of Revenue and pay into the State Treasury each month an amount
 153 equal to the cost price of such electricity times the rate set
 154 forth in paragraph (b), reduced by the amount of any gross
 155 receipts tax or similar tax lawfully imposed on and paid by the
 156 person from whom the electricity was purchased or any person who
 157 provided delivery service or transportation service in connection
 158 with the electricity. For purposes of this paragraph, the term
 159 "cost price" has the same meaning as provided in s. 212.02(4).
 160 The methods of demonstrating proof of payment and the amount of
 161 such reductions in tax shall be made according to rules of the
 162 Department of Revenue.

163 (f)(e) Electricity produced by cogeneration or by small
 164 power producers which is transmitted and distributed by a public
 165 utility between two locations of a customer of the utility
 166 pursuant to s. 366.051 is subject to the tax imposed by this
 167 section. The tax shall be applied to the cost price of such
 168 electricity as provided in s. 212.02(4) and shall be paid each
 169 month by the producer of such electricity.

170 (g)(d) Electricity produced by cogeneration or by small
 171 power producers during the 12-month period ending June 30 of

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172 each year which is in excess of nontaxable electricity produced
 173 during the 12-month period ending June 30, 1990, is subject to
 174 the tax imposed by this section. The tax shall be applied to the
 175 cost price of such electricity as provided in s. 212.02(4) and
 176 shall be paid each month, beginning with the month in which
 177 total production exceeds the production of nontaxable
 178 electricity for the 12-month period ending June 30, 1990. For
 179 purposes of this paragraph, "nontaxable electricity" means
 180 electricity produced by cogeneration or by small power producers
 181 which is not subject to tax under paragraph (f)~~(e)~~. Taxes paid
 182 pursuant to paragraph (f)~~(e)~~ may be credited against taxes due
 183 under this paragraph. Electricity generated as part of an
 184 industrial manufacturing process which manufactures products
 185 from phosphate rock, raw wood fiber, paper, citrus, or any
 186 agricultural product shall not be subject to the tax imposed by
 187 this paragraph. "Industrial manufacturing process" means the
 188 entire process conducted at the location where the process takes
 189 place.

190 (h)~~(e)~~ Any person other than a cogenerator or small power
 191 producer described in paragraph (g)~~(d)~~ who produces for his or
 192 her own use electrical energy which is a substitute for
 193 electrical energy produced by an electric utility as defined in
 194 s. 366.02 is subject to the tax imposed by this section. The tax
 195 shall be applied to the cost price of such electrical energy as
 196 provided in s. 212.02(4) and shall be paid each month. The
 197 provisions of this paragraph do not apply to any electrical
 198 energy produced and used by an electric utility.

199 (i)~~(f)~~ Notwithstanding any other provision of this
 200 chapter, with the exception of a communications services dealer

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201 reporting taxes administered under chapter 202 ~~telephone or~~
 202 ~~telecommunication system described in paragraph (c),~~ the
 203 department may require:

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

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

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

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

213 (a) 1. The sale or transportation of natural gas or
 214 manufactured gas to a public or private utility, including a
 215 municipal corporation or rural electric cooperative association,
 216 either for resale or for use as fuel in the generation of
 217 electricity; or

218 2.(b) The sale or delivery of electricity to a public or
 219 private utility, including a municipal corporation or rural
 220 electric cooperative association, for resale ~~within the state,~~
 221 or as part of an electrical interchange agreement or contract
 222 between such utilities ~~for the purpose of transferring more~~
 223 ~~economically generated power;~~

224
 225 provided the person deriving gross receipts from such sale
 226 demonstrates that a sale or transportation or delivery for
 227 resale in fact occurred and complies with the following
 228 requirements: A sale or transportation or delivery for resale ~~in~~
 229 ~~this state~~ must be in strict compliance with the rules and

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230 regulations of the Department of Revenue; and any sale subject
 231 to the tax imposed by this section ~~person making a sale for~~
 232 ~~resale in this state~~ which is not in strict compliance with the
 233 rules and regulations of the Department of Revenue shall be
 234 subject to liable for and pay the tax at the appropriate rate
 235 imposed by paragraph (1)(b) on the person making the sale. Any
 236 person making a sale for resale ~~in this state~~ may, through an
 237 informal protest provided for in s. 213.21 and the rules of the
 238 Department of Revenue, provide the department with evidence of
 239 the exempt status of a sale. The department shall adopt rules
 240 which provide that valid proof and documentation of the resale
 241 ~~in this state~~ by a person making the sale for resale in this
 242 state will be accepted by the department when submitted during
 243 the protest period but will not be accepted when submitted in
 244 any proceeding under chapter 120 or any circuit court action
 245 instituted under chapter 72.

246 (b) Wholesale sales of electric transmission service.

247 (c) The use of natural gas in the production of oil or gas,
 248 or the use of natural or manufactured gas by a person
 249 transporting natural or manufactured gas, when used and consumed
 250 in providing such services.

251 (d) The sale or transportation to, or use of, natural gas
 252 or manufactured gas by a person eligible for an exemption under
 253 s. 212.08(7)(ff) for use as an energy source or a raw material.

254
 255 Nothing in this subsection is intended to imply that tax is due
 256 on separately stated charges for transportation of natural or
 257 manufactured gas.

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258 Section 3. Subsection (3) is added to section 203.012,
 259 Florida Statutes, to read:

260 203.012 Definitions.--As used in this chapter:

261 (3) "Distribution company" means any person owning or
 262 operating local electric utility distribution facilities within
 263 this state for the distribution of electricity to the final
 264 retail consumer.

265 Section 4. The executive director of the Department of
 266 Revenue is authorized, and all necessary conditions are deemed
 267 met, to adopt emergency rules under ss. 120.536(1) and 120.54(4),
 268 Florida Statutes, to implement the provisions of s. 203.01,
 269 Florida Statutes. Such rules shall include forms the department
 270 determines necessary or appropriate to register, apply for self-
 271 accrual authority, report, and remit taxes, or apply for credits.
 272 Notwithstanding any other provision of law, such emergency rules
 273 shall remain effective for 6 months after the date of adoption
 274 and may be renewed during the pendency of procedures to adopt
 275 rules addressing the subject of the emergency rules.

276 Section 5. Except as otherwise provided herein, this act
 277 shall take effect January 1, 2005.