



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

11  
12 Be It Enacted by the Legislature of the State of Florida:

13  
14 Section 1. Subsections (1) and (3) of section 203.01,  
15 Florida Statutes, are amended to read:

16 203.01 Tax on gross receipts for utility and  
17 communications services.--

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

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

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

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

25           (d)1. Each distribution company that receives payment  
26 for the delivery of electricity to a retail consumer in this  
27 state is subject to tax on the exercise of this privilege as  
28 provided by this paragraph unless the payment is subject to  
29 tax under paragraph (c). For the exercise of this privilege,  
30 the tax levied on such distribution company's receipts for the  
31 delivery of electricity shall be determined by multiplying the

1 number of kilowatt hours delivered by the index price and  
2 applying the rate in paragraph (b) to the result.

3       2. The index price is the Florida price per kilowatt  
4 hour for retail consumers in the previous calendar year, as  
5 published in the United States Energy Information  
6 Administration Electric Power Monthly and announced by the  
7 Department of Revenue on June 1 of each year to be effective  
8 for the 12-month period beginning July 1 of that year. For  
9 each residential, commercial, and industrial customer class,  
10 the applicable index posted for residential, commercial, and  
11 industrial will be applied in calculating the gross receipts  
12 to which the tax applies. If publication of the indices is  
13 delayed or discontinued, the last posted index shall be used  
14 until a current index is posted or the department adopts a  
15 comparable index by rule.

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

19       4. The amount of tax due under this paragraph shall be  
20 reduced by the amount of any gross receipts tax or similar tax  
21 lawfully imposed on and paid by the person from whom the  
22 consumer purchased the electricity, whether imposed by and  
23 paid to this state, another state, a territory of the United  
24 States, or the District of Columbia. This reduction in any  
25 gross receipts tax shall be available to the final retail  
26 consumer as a refund made pursuant to s. 215.26 and does not  
27 inure to the benefit of the person who receives payment for  
28 the delivery of the electricity. The methods of demonstrating  
29 proof of payment and the amount of such refund shall be made  
30 according to rules of the Department of Revenue.

31

1           (e)1. Every distribution company that receives payment  
2 for the sale or transportation of natural or manufactured gas  
3 to a retail consumer in this state is subject to tax on the  
4 exercise of this privilege as provided by this paragraph. For  
5 the exercise of this privilege, the tax levied on such  
6 distribution company's receipts for the sale or transportation  
7 of natural or manufactured gas shall be determined by dividing  
8 the number of cubic feet delivered by 1,000, multiplying the  
9 resulting number by the index price, and applying the rate in  
10 paragraph (b) to the result.

11           2. The index price is the Florida price per 1,000  
12 cubic feet for retail consumers in the previous calendar year  
13 as published in the United States Energy Information  
14 Administration Natural Gas Monthly and announced by the  
15 Department of Revenue on June 1 of each year to be effective  
16 for the 12-month period beginning July 1 of that year. For  
17 each residential, commercial, and industrial customer class,  
18 the applicable index posted for residential, commercial, and  
19 industrial will be applied in calculating the gross receipts  
20 to which the tax applies. If publication of the indices is  
21 delayed or discontinued, the last posted index shall be used  
22 until a current index is posted or the department adopts a  
23 comparable index by rule.

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

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

1 territory of the United States, or the District of Columbia.  
2 This reduction in any gross receipts tax shall be available to  
3 the final retail consumer as a refund pursuant to s. 215.26  
4 and does not inure to the benefit of the person providing the  
5 transportation service. The methods of demonstrating proof of  
6 payment and the amount of such refund shall be made according  
7 to rules of the Department of Revenue.

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

27 (g)(e) Electricity produced by cogeneration or by  
28 small power producers which is transmitted and distributed by  
29 a public utility between two locations of a customer of the  
30 utility pursuant to s. 366.051 is subject to the tax imposed  
31 by this section. The tax shall be applied to the cost price of

1 such electricity as provided in s. 212.02(4) and shall be paid  
2 each month by the producer of such electricity.

3 (h)~~(d)~~ Electricity produced by cogeneration or by  
4 small power producers during the 12-month period ending June  
5 30 of each year which is in excess of nontaxable electricity  
6 produced during the 12-month period ending June 30, 1990, is  
7 subject to the tax imposed by this section. The tax shall be  
8 applied to the cost price of such electricity as provided in  
9 s. 212.02(4) and shall be paid each month, beginning with the  
10 month in which total production exceeds the production of  
11 nontaxable electricity for the 12-month period ending June 30,  
12 1990. For purposes of this paragraph, "nontaxable electricity"  
13 means electricity produced by cogeneration or by small power  
14 producers which is not subject to tax under paragraph (g)~~(e)~~.  
15 Taxes paid pursuant to paragraph (g)~~(e)~~ may be credited  
16 against taxes due under this paragraph. Electricity generated  
17 as part of an industrial manufacturing process which  
18 manufactures products from phosphate rock, raw wood fiber,  
19 paper, citrus, or any agricultural product shall not be  
20 subject to the tax imposed by this paragraph. "Industrial  
21 manufacturing process" means the entire process conducted at  
22 the location where the process takes place.

23 (i)~~(e)~~ Any person other than a cogenerator or small  
24 power producer described in paragraph (h)~~(d)~~ who produces for  
25 his or her own use electrical energy which is a substitute for  
26 electrical energy produced by an electric utility as defined  
27 in s. 366.02 is subject to the tax imposed by this section.  
28 The tax shall be applied to the cost price of such electrical  
29 energy as provided in s. 212.02(4) and shall be paid each  
30 month. The provisions of this paragraph do not apply to any  
31 electrical energy produced and used by an electric utility.

1           ~~(j)(f)~~ Notwithstanding any other provision of this  
2 chapter, with the exception of a communications services  
3 dealer reporting taxes administered under chapter 202  
4 ~~telephone or telecommunication system described in paragraph~~  
5 ~~(e)~~, the department may require:

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

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

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

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

17           (a)1. The sale or transportation of natural gas or  
18 manufactured gas to a public or private utility, including a  
19 municipal corporation or rural electric cooperative  
20 association, either for resale or for use as fuel in the  
21 generation of electricity; or

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

28

29 provided the person deriving gross receipts from such sale  
30 demonstrates that a sale, transportation, or delivery for  
31 resale in fact occurred and complies with the following



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

- 20 (b) Wholesale sales of electric transmission service;  
21 (c) The use of natural gas in the production of oil or  
22 gas, or the use of natural or manufactured gas by a person  
23 transporting natural or manufactured gas, when used and  
24 consumed in providing such services; or  
25 (d) The sale or transportation to, or use of, natural  
26 gas or manufactured gas by a person eligible for an exemption  
27 under s. 212.08(7)(ff)2. for use as an energy source or a raw  
28 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) "Distribution company" means any person owning or  
2 operating local electric or natural or manufactured gas  
3 utility distribution facilities within this state for the  
4 transmission, delivery, and sale of electricity or natural or  
5 manufactured gas. The term does not include natural gas  
6 transmission companies that are subject to the jurisdiction of  
7 the Federal Energy Regulatory Commission.

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

9           (3)(1) "Utility service" means electricity for light,  
10 heat, or power; and natural or manufactured gas for light,  
11 heat, or power, including transportation, delivery,  
12 transmission, and distribution of the electricity or natural  
13 or manufactured gas. This subsection does not broaden the  
14 definition of utility service to include separately stated  
15 charges for tangible personal property or services which are  
16 not charges for the electricity or natural or manufactured gas  
17 or the transportation, delivery, transmission, or distribution  
18 of electricity or natural or manufactured gas.

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, which provide  
24 for remittance of tax by distribution companies and  
25 self-accrual of tax by retail consumers and the provisions of  
26 section 203.012, Florida Statutes, which define the term  
27 "distribution company" and provide that utility services  
28 include transportation, transmission, and distribution of  
29 electricity and natural or manufactured gas. Such rules shall  
30 include forms the Department of Revenue determines are  
31 necessary or appropriate for registration, applying for

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

7 Section 4. 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 that 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 October 1, 2005.

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 or

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

25 (c) The seller registered with the Department of  
26 Revenue to pay gross receipts tax on or before October 1,  
27 2005.

28 (d) The seller applies for amnesty on or before  
29 October 1, 2005, 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 5. This act shall take effect October 1, 2005.  
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