

By the Committee on Government Efficiency Appropriations; and
Senator Alexander

593-1713-05

1 A bill to be entitled

2 An act relating to the tax on gross receipts

3 for utility services; amending s. 203.01, F.S.;

4 providing for a tax on utility services

5 delivered to a retail consumer in this state;

6 providing for a tax on the gross receipts of a

7 distribution company providing delivery of

8 electricity to a retail consumer, based on an

9 index price; providing for an annual

10 calculation of the index price; providing for a

11 tax reduction by refund for a like tax paid to

12 another jurisdiction; providing for a tax on

13 the gross receipts of a distribution company

14 providing for the sale or transportation of

15 natural gas or manufactured gas to a retail

16 consumer, based on an index price; providing

17 for an annual calculation of the index price;

18 providing for a tax reduction by refund for

19 similar taxes paid to another jurisdiction;

20 providing for a tax on the cost price of

21 electricity, natural gas, or manufactured gas

22 to be paid by any person who causes these

23 products to be severed or imported into the

24 state for that person's own use; revising

25 obsolete provisions; providing that the tax

26 does not apply to certain sales,

27 transportation, delivery, or uses; providing

28 that a written certificate of entitlement to

29 the exclusion from tax for persons eligible for

30 an exemption under s. 212.08(7)(ff)2., F.S.,

31 relieves the seller or person providing

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 transportation or delivery from responsibility
2 of remitting tax; requiring any person who
3 transports natural or manufactured gas to
4 furnish a list of customers to the Department
5 of Revenue; amending s. 203.012, F.S.;
6 redefining the term "utility service"; defining
7 the term "distribution company"; authorizing
8 the executive director of the Department of
9 Revenue to adopt emergency rules to implement
10 the act; providing an amnesty for unpaid gross
11 receipts tax, penalties, and interest on unpaid
12 gross receipts tax otherwise due for selling
13 natural gas in this state; providing conditions
14 for the amnesty; providing limitations for the
15 amnesty; authorizing the executive director of
16 the Department of Revenue to adopt emergency
17 rules to implement the amnesty; providing an
18 effective date.

19
20 Be It Enacted by the Legislature of the State of Florida:

21
22 Section 1. Subsections (1) and (3) of section 203.01,
23 Florida Statutes, are amended, and subsection (9) is added to
24 that section, to read:

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

27 (1)(a)1. A tax is imposed on gross receipts from
28 utility services that are delivered to a retail consumer in
29 this state. Such tax shall be levied as provided in paragraphs
30 ~~(b)-(j) Every person that receives payment for any utility~~
31 ~~service shall report by the last day of each month to the~~

1 ~~Department of Revenue, under oath of the secretary or some~~
2 ~~other officer of such person, the total amount of gross~~
3 ~~receipts derived from business done within this state, or~~
4 ~~between points within this state, for the preceding month and,~~
5 ~~at the same time, shall pay into the State Treasury an amount~~
6 ~~equal to a percentage of such gross receipts at the rate set~~
7 ~~forth in paragraph (b). Such collections shall be certified by~~
8 ~~the Chief Financial Officer upon the request of the State~~
9 ~~Board of Education.~~

10 2. A tax is levied on communications services as
11 defined in s. 202.11(3). Such tax shall be applied to the same
12 services and transactions as are subject to taxation under
13 chapter 202, and to communications services that are subject
14 to the exemption provided in s. 202.125(1). Such tax shall be
15 applied to the sales price of communications services when
16 sold at retail and to the actual cost of operating substitute
17 communications systems, as such terms are defined in s.
18 202.11, shall be due and payable at the same time as the taxes
19 imposed pursuant to chapter 202, and shall be administered and
20 collected pursuant to the provisions of chapter 202.

21 (b) The rate applied to utility services shall be 2.5
22 percent. The rate applied to communications services shall be
23 2.37 percent.

24 (c) The tax shall be levied against the total amount
25 of gross receipts received by a distribution company for its
26 sale of utility services if the utility service is delivered
27 to the final consumer by a distribution company and the final
28 consumer pays the distribution company a charge for utility
29 service which includes a charge for both the electricity and
30 the transportation of electricity to the retail consumer. The
31 distribution company shall report and remit to the Department

1 of Revenue by the last day of each month the taxes levied
2 pursuant to this paragraph during the preceding month.

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

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

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

28 4. The amount of tax due under this paragraph shall be
29 reduced by the amount of any like tax lawfully imposed on and
30 paid by the person from whom the retail consumer purchased the
31 electricity, whether imposed by and paid to this state,

1 another state, a territory of the United States, or the
2 District of Columbia. This reduction in tax shall be available
3 to the retail consumer as a refund made pursuant to s. 215.26
4 and does not inure to the benefit of the person who receives
5 payment for the delivery of the electricity. The methods of
6 demonstrating proof of payment and the amount of such refund
7 shall be made according to rules of the Department of Revenue.

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

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

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

4 4. The amount of tax due under this paragraph shall be
5 reduced by the amount of any like tax lawfully imposed on and
6 paid by the person from whom the retail consumer purchased the
7 natural gas or manufactured gas, whether imposed by and paid
8 to this state, another state, a territory of the United
9 States, or the District of Columbia. This reduction in tax
10 shall be available to the retail consumer as a refund pursuant
11 to s. 215.26 and does not inure to the benefit of the person
12 providing the transportation service. The methods of
13 demonstrating proof of payment and the amount of such refund
14 shall be made according to rules of the Department of Revenue.

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

1 reductions in tax shall be made according to rules of the
2 Department of Revenue.

3 ~~(g)(e)~~ Electricity produced by cogeneration or by
4 small power producers which is transmitted and distributed by
5 a public utility between two locations of a customer of the
6 utility pursuant to s. 366.051 is subject to the tax imposed
7 by this section. The tax shall be applied to the cost price of
8 such electricity as provided in s. 212.02(4) and shall be paid
9 each month by the producer of such electricity.

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

30 ~~(i)(e)~~ Any person other than a cogenerator or small
31 power producer described in paragraph ~~(h)(d)~~ who produces for

1 his or her own use electrical energy which is a substitute for
2 electrical energy produced by an electric utility as defined
3 in s. 366.02 is subject to the tax imposed by this section.
4 The tax shall be applied to the cost price of such electrical
5 energy as provided in s. 212.02(4) and shall be paid each
6 month. The provisions of this paragraph do not apply to any
7 electrical energy produced and used by an electric utility.

8 ~~(j)(f)~~ Notwithstanding any other provision of this
9 chapter, with the exception of a communications services
10 dealer reporting taxes administered under chapter 202
11 ~~telephone or telecommunication system described in paragraph~~
12 ~~(e)~~, the department may require:

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

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

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

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

24 (a)1. The sale or transportation of natural gas or
25 manufactured gas to a public or private utility, including a
26 municipal corporation or rural electric cooperative
27 association, either for resale or for use as fuel in the
28 generation of electricity; or

29 2.(b) The sale or delivery of electricity to a public
30 or private utility, including a municipal corporation or rural
31 electric cooperative association, for resale ~~within the state,~~

1 or as part of an electrical interchange agreement or contract
2 between such utilities for the purpose of transferring more
3 economically generated power;
4
5 provided the person deriving gross receipts from such sale
6 demonstrates that a sale, transportation, or delivery for
7 resale in fact occurred and complies with the following
8 requirements: A sale, transportation, or delivery for resale
9 ~~in this state~~ must be in strict compliance with the rules and
10 regulations of the Department of Revenue; and any sale subject
11 to the tax imposed by this section ~~person making a sale for~~
12 ~~resale in this state~~ which is not in strict compliance with
13 the rules and regulations of the Department of Revenue shall
14 be subject to ~~liable for and pay~~ the tax at the appropriate
15 rate imposed on utilities by paragraph (b) on the person
16 making the sale. Any person making a sale for resale ~~in this~~
17 ~~state~~ may, through an informal protest provided for in s.
18 213.21 and the rules of the Department of Revenue, provide the
19 department with evidence of the exempt status of a sale. The
20 department shall adopt rules that ~~which~~ provide that valid
21 proof and documentation of the resale ~~in this state~~ by a
22 person making the sale for resale ~~in this state~~ will be
23 accepted by the department when submitted during the protest
24 period but will not be accepted when submitted in any
25 proceeding under chapter 120 or any circuit court action
26 instituted under chapter 72;-
27 (b) Wholesale sales of electric transmission service;
28 (c) The use of natural gas in the production of oil or
29 gas, or the use of natural or manufactured gas by a person
30 transporting natural or manufactured gas, when used and
31 consumed in providing such services; or

1 (d) The sale or transportation to, or use of, natural
2 gas or manufactured gas by a person eligible for an exemption
3 under s. 212.08(7)(ff)2. for use as an energy source or a raw
4 material. Possession by a seller of natural or manufactured
5 gas or by any person providing transportation or delivery of
6 natural or manufactured gas of a written certification by the
7 purchaser, certifying the purchaser's entitlement to the
8 exclusion permitted by this paragraph, relieves the seller or
9 person providing transportation or delivery from the
10 responsibility of remitting tax on the nontaxable amounts, and
11 the department shall look solely to the purchaser for recovery
12 of such tax if the department determines that the purchaser
13 was not entitled to the exclusion. The certification must
14 include an acknowledgment by the purchaser that it will be
15 liable for tax pursuant to paragraph (1)(f) if the
16 requirements for exclusion are not met.

17 (9) Any person who engages in the transportation of
18 natural or manufactured gas shall furnish annually to the
19 Department of Revenue a list of customers to whom
20 transportation services were provided in the prior year. This
21 reporting requirement does not apply to distribution
22 companies. Any person required to furnish such a list may
23 elect to identify only those customers who take direct
24 delivery without purchasing interconnection services from a
25 distribution company. Such reports are subject to the
26 confidentiality provisions of s. 213.053. Any person required
27 to furnish a customer list may instead comply by maintaining a
28 publicly-accessible customer list on its Internet website.
29 Such list shall be updated no less than annually.

30 Section 2. Section 203.012, Florida Statutes, is
31 amended to read:

1 203.012 Definitions.--As used in this chapter:

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

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

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

20 Section 3. Emergency rules.--The executive director of
21 the Department of Revenue is authorized, and all conditions
22 are deemed met, to adopt emergency rules, under sections
23 120.536(1) and 120.54(4), Florida Statutes, to implement the
24 provisions of section 203.01, Florida Statutes, which provide
25 for remittance of tax by distribution companies and
26 self-accrual of tax by retail consumers and the provisions of
27 section 203.012, Florida Statutes, which define the term
28 "distribution company" and provide that utility services
29 include transportation, transmission, and distribution of
30 electricity and natural or manufactured gas. Such rules shall
31 include forms the Department of Revenue determines are

1 necessary or appropriate for registration, applying for
2 self-accrual authority, reporting, and remitting taxes, or
3 applying for credits. Notwithstanding any other law, such
4 emergency rules shall remain effective for 6 months after the
5 date of adoption and may be renewed during the pendency of
6 procedures to adopt rules addressing the subject of the
7 emergency rules. This section is effective upon this act
8 becoming a law.

9 Section 4. Amnesty for registration and remittance of
10 tax.--

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

16 (a) The sales subject to amnesty were made prior to
17 January 1, 2006.

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

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

22 2. Sales for which the written sales agreement
23 provides for transfer of title to the gas outside the state;
24 or

25 3. Sales of transportation services associated with
26 the sales of gas.

27 (c) The seller registered with the Department of
28 Revenue to pay gross receipts tax on or before January 1,
29 2006, if the seller is required to be registered as of January
30 1, 2006.

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1 (d) The seller applies for amnesty on or before
2 January 1, 2006, in accordance with the rules of the
3 Department of Revenue.

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

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

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

25 Section 5. Except as otherwise expressly provided in
26 this act and except for this section, which shall take effect
27 upon becoming a law, this act shall take effect January 1,
28 2006.

1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
2 COMMITTEE SUBSTITUTE FOR
3 SB 1244

4 This committee substitute:

- 5 1) creates a mechanism by which a person selling or
6 delivering natural or manufactured gas to a purchaser who
7 is not subject to the tax can accept a certificate from
8 the purchaser certifying the purchaser's entitlement to
9 the exclusion. This certificate relieves the seller or
10 deliverer from the responsibility of collecting the tax;
11 2) requires any person who transports natural gas to provide
12 a list of transportation service customers to the
13 Department of Revenue;
14 3) clarifies the treatment of taxes paid in other states, as
15 recommended by the Department of Revenue;
16 4) makes technical changes to improve clarity and
17 consistency;
18 5) makes the amnesty and emergency rule-making sections of
19 the act effective upon becoming a law; and
20 6) changes the effective date of the statutory changes to
21 January 1, 2006.
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