

1                   A bill to be entitled  
2           An act relating to the tax on gross receipts for utility  
3           services; amending s. 203.01, F.S.; providing for a tax on  
4           utility services delivered to a retail consumer in this  
5           state; providing for a tax on the gross receipts of a  
6           distribution company providing delivery of electricity to  
7           a retail consumer, based on an index price; providing for  
8           an annual calculation of the index price; providing for a  
9           tax reduction by refund for similar taxes paid to another  
10          jurisdiction; providing for a tax on the gross receipts of  
11          a distribution company providing for the sale or  
12          transportation of natural gas or manufactured gas to a  
13          retail consumer, based on an index price; providing for an  
14          annual calculation of the index price; providing for a tax  
15          reduction by refund for similar taxes paid to another  
16          jurisdiction; providing for a tax on the cost price of  
17          electricity, natural gas, or manufactured gas to be paid  
18          by any person who causes these products to be severed or  
19          imported into the state for that person's own use;  
20          revising obsolete provisions; providing that the tax does  
21          not apply to certain sales, transportation, delivery, or  
22          uses; amending s. 203.012, F.S.; redefining the term  
23          "utility service"; defining the term "distribution  
24          company"; authorizing the executive director of the  
25          Department of Revenue to adopt emergency rules to  
26          implement the act; providing an amnesty for unpaid gross  
27          receipts tax, penalties, and interest on unpaid gross  
28          receipts tax otherwise due for selling natural gas in this

29 state; providing conditions for the amnesty; providing  
 30 limitations for the amnesty; authorizing the executive  
 31 director of the Department of Revenue to adopt emergency  
 32 rules to implement the amnesty; providing an effective  
 33 date.

34

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

36

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

39 203.01 Tax on gross receipts for utility and  
 40 communications services.--

41 (1)(a)1. A tax is imposed on gross receipts from utility  
 42 services that are delivered to a retail consumer in this state.  
 43 Such tax shall be levied as provided in paragraphs (b)-(j) ~~Every~~  
 44 ~~person that receives payment for any utility service shall~~  
 45 ~~report by the last day of each month to the Department of~~  
 46 ~~Revenue, under oath of the secretary or some other officer of~~  
 47 ~~such person, the total amount of gross receipts derived from~~  
 48 ~~business done within this state, or between points within this~~  
 49 ~~state, for the preceding month and, at the same time, shall pay~~  
 50 ~~into the State Treasury an amount equal to a percentage of such~~  
 51 ~~gross receipts at the rate set forth in paragraph (b). Such~~  
 52 ~~collections shall be certified by the Chief Financial Officer~~  
 53 ~~upon the request of the State Board of Education.~~

54 2. A tax is levied on communications services as defined  
 55 in s. 202.11(3). Such tax shall be applied to the same services  
 56 and transactions as are subject to taxation under chapter 202,

57 and to communications services that are subject to the exemption  
58 provided in s. 202.125(1). Such tax shall be applied to the  
59 sales price of communications services when sold at retail and  
60 to the actual cost of operating substitute communications  
61 systems, as such terms are defined in s. 202.11, shall be due  
62 and payable at the same time as the taxes imposed pursuant to  
63 chapter 202, and shall be administered and collected pursuant to  
64 the provisions of chapter 202.

65 (b) The rate applied to utility services shall be 2.5  
66 percent. The rate applied to communications services shall be  
67 2.37 percent.

68 (c) The tax shall be levied against the total amount of  
69 gross receipts received by a distribution company for its sale  
70 of utility services if the utility service is delivered to the  
71 final consumer by a distribution company and the final consumer  
72 pays the distribution company a charge for utility service which  
73 includes a charge for both the electricity and the  
74 transportation of electricity to the consumer. The distribution  
75 company shall report and remit to the Department of Revenue by  
76 the last day of each month the taxes levied pursuant to this  
77 paragraph during the preceding month.

78 (d)1. Each distribution company that receives payment for  
79 the delivery of electricity to a retail consumer in this state  
80 is subject to tax on the exercise of this privilege as provided  
81 by this paragraph unless the payment is subject to tax under  
82 paragraph (c). For the exercise of this privilege, the tax  
83 levied on such distribution company's receipts for the delivery  
84 of electricity shall be determined by multiplying the number of

85 kilowatt hours delivered by the index price and applying the  
 86 rate in paragraph (b) to the result.

87 2. The index price is the Florida price per kilowatt hour  
 88 for retail consumers in the previous calendar year, as published  
 89 in the United States Energy Information Administration Electric  
 90 Power Monthly and announced by the Department of Revenue on June  
 91 1 of each year to be effective for the 12-month period beginning  
 92 July 1 of that year. For each customer class residential,  
 93 commercial, and industrial, the applicable index posted for  
 94 residential, commercial, and industrial will be applied in  
 95 calculating the gross receipts to which the tax applies. If  
 96 publication of the indices is delayed or discontinued, the last  
 97 posted index shall be used until a current index is posted or  
 98 the department adopts a comparable index by rule.

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

102 4. The amount of tax due under this paragraph shall be  
 103 reduced by the amount of any gross receipts tax or similar tax  
 104 lawfully imposed on and paid by the person from whom the  
 105 consumer purchased the electricity, whether imposed by and paid  
 106 to this state, another state, a territory of the United States,  
 107 or the District of Columbia. This reduction in any gross  
 108 receipts tax shall be available to the final retail consumer as  
 109 a refund made pursuant to s. 215.26 and does not inure to the  
 110 benefit of the person who receives payment for the delivery of  
 111 the electricity. The methods of demonstrating proof of payment  
 112 and the amount of such refund shall be made according to rules

113 of the Department of Revenue.

114 (e)1. Every distribution company that receives payment for  
115 the sale or transportation of natural or manufactured gas to a  
116 retail consumer in this state is subject to tax on the exercise  
117 of this privilege as provided by this paragraph. For the  
118 exercise of this privilege, the tax levied on such distribution  
119 company's receipts for the sale or transportation of natural or  
120 manufactured gas shall be determined by dividing the number of  
121 cubic feet delivered by 1,000, multiplying the resulting number  
122 by the index price, and applying the rate in paragraph (b) to  
123 the result.

124 2. The index price is the Florida price per 1,000 cubic  
125 feet for retail consumers in the previous calendar year as  
126 published in the United States Energy Information Administration  
127 Natural Gas Monthly and announced by the Department of Revenue  
128 on June 1 of each year to be effective for the 12-month period  
129 beginning July 1 of that year. For each customer class  
130 residential, commercial, and industrial, the applicable index  
131 posted for residential, commercial, and industrial will be  
132 applied in calculating the gross receipts to which the tax  
133 applies. If publication of the indices is delayed or  
134 discontinued, the last posted index shall be used until a  
135 current index is posted or the department adopts a comparable  
136 index by rule.

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

140 4. The amount of tax due under this paragraph shall be

141 reduced by the amount of any gross receipts tax or similar tax  
142 lawfully imposed on and paid by the person from whom the  
143 consumer purchased the natural gas or manufactured gas, whether  
144 imposed by and paid to this state, another state, a territory of  
145 the United States, or the District of Columbia. This reduction  
146 in any gross receipts tax shall be available to the final retail  
147 consumer as a refund pursuant to s. 215.26 and does not inure to  
148 the benefit of the person providing the transportation service.  
149 The methods of demonstrating proof of payment and the amount of  
150 such refund shall be made according to rules of the Department  
151 of Revenue.

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

169 in tax shall be made according to rules of the Department of  
170 Revenue.

171 (g)(e) Electricity produced by cogeneration or by small  
172 power producers which is transmitted and distributed by a public  
173 utility between two locations of a customer of the utility  
174 pursuant to s. 366.051 is subject to the tax imposed by this  
175 section. The tax shall be applied to the cost price of such  
176 electricity as provided in s. 212.02(4) and shall be paid each  
177 month by the producer of such electricity.

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

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196 entire process conducted at the location where the process takes  
 197 place.

198 (i)~~(e)~~ Any person other than a cogenerator or small power  
 199 producer described in paragraph (h)~~(d)~~ who produces for his or  
 200 her own use electrical energy which is a substitute for  
 201 electrical energy produced by an electric utility as defined in  
 202 s. 366.02 is subject to the tax imposed by this section. The tax  
 203 shall be applied to the cost price of such electrical energy as  
 204 provided in s. 212.02(4) and shall be paid each month. The  
 205 provisions of this paragraph do not apply to any electrical  
 206 energy produced and used by an electric utility.

207 (j)~~(f)~~ Notwithstanding any other provision of this  
 208 chapter, with the exception of a communications services dealer  
 209 reporting taxes administered under chapter 202 ~~telephone or~~  
 210 ~~telecommunication system described in paragraph (e)~~, the  
 211 department may require:

- 212 1. A quarterly return and payment when the tax remitted
- 213 for the preceding four calendar quarters did not exceed \$1,000;
- 214 2. A semiannual return and payment when the tax remitted
- 215 for the preceding four calendar quarters did not exceed \$500; or
- 216 3. An annual return and payment when the tax remitted for
- 217 the preceding four calendar quarters did not exceed \$100.

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

221 (a)1. The sale or transportation of natural gas or  
 222 manufactured gas to a public or private utility, including a  
 223 municipal corporation or rural electric cooperative association,



224 either for resale or for use as fuel in the generation of  
 225 electricity; or  
 226 2.(b) The sale or delivery of electricity to a public or  
 227 private utility, including a municipal corporation or rural  
 228 electric cooperative association, for resale ~~within the state,~~  
 229 or as part of an electrical interchange agreement or contract  
 230 between such utilities for the purpose of transferring more  
 231 economically generated power;  
 232  
 233 provided the person deriving gross receipts from such sale  
 234 demonstrates that a sale, transportation, or delivery for resale  
 235 in fact occurred and complies with the following requirements: A  
 236 sale, transportation, or delivery for resale in this state must  
 237 be in strict compliance with the rules and regulations of the  
 238 Department of Revenue; and any sale subject to the tax imposed  
 239 by this section ~~person making a sale for resale in this state~~  
 240 which is not in strict compliance with the rules and regulations  
 241 of the Department of Revenue shall be subject to ~~liable for and~~  
 242 ~~pay~~ the tax at the appropriate rate imposed on utilities by  
 243 paragraph (b) on the person making the sale. Any person making a  
 244 sale for resale ~~in this state~~ may, through an informal protest  
 245 provided for in s. 213.21 and the rules of the Department of  
 246 Revenue, provide the department with evidence of the exempt  
 247 status of a sale. The department shall adopt rules which provide  
 248 that valid proof and documentation of the resale ~~in this state~~  
 249 by a person making the sale for resale ~~in this state~~ will be  
 250 accepted by the department when submitted during the protest  
 251 period but will not be accepted when submitted in any proceeding

252 under chapter 120 or any circuit court action instituted under  
 253 chapter 72;~~:-~~

254 (b) Wholesale sales of electric transmission service;

255 (c) The use of natural gas in the production of oil or  
 256 gas, or the use of natural or manufactured gas by a person  
 257 transporting natural or manufactured gas, when used and consumed  
 258 in providing such services; or

259 (d) The sale or transportation to, or use of, natural gas  
 260 or manufactured gas by a person eligible for an exemption under  
 261 s. 212.08(7)(ff)2. for use as an energy source or a raw  
 262 material.

263 Section 2. Section 203.012, Florida Statutes, is amended  
 264 to read:

265 203.012 Definitions.--As used in this chapter:

266 (1) "Distribution company" means any person owning or  
 267 operating local electric or natural or manufactured gas utility  
 268 distribution facilities within this state for the transmission,  
 269 delivery, and sale of electricity or natural or manufactured  
 270 gas. The term does not include natural gas transmission  
 271 companies that are subject to the jurisdiction of the Federal  
 272 Energy Regulatory Commission.

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

274 (3)~~(1)~~ "Utility service" means electricity for light,  
 275 heat, or power; and natural or manufactured gas for light, heat,  
 276 or power, including transportation, delivery, transmission, and  
 277 distribution of the electricity or natural or manufactured gas.  
 278 This subsection does not broaden the definition of utility  
 279 service to include separately stated charges for tangible

280 personal property or services which are not charges for the  
 281 electricity or natural or manufactured gas or the  
 282 transportation, delivery, transmission, or distribution of  
 283 electricity or natural or manufactured gas.

284 Section 3. Emergency rules.--The executive director of the  
 285 Department of Revenue is authorized, and all conditions are  
 286 deemed met, to adopt emergency rules, under ss. 120.536(1) and  
 287 120.54(4), Florida Statutes, to implement the provisions of s.  
 288 203.01, Florida Statutes, which provide for remittance of tax by  
 289 distribution companies and self-accrual of tax by retail  
 290 consumers and the provisions of s. 203.012, Florida Statutes,  
 291 which define the term "distribution company" and provide that  
 292 utility services include transportation, transmission, and  
 293 distribution of electricity and natural or manufactured gas.  
 294 Such rules shall include forms the Department of Revenue  
 295 determines are necessary or appropriate for registration,  
 296 applying for self-accrual authority, reporting, and remitting  
 297 taxes, or applying for credits. Notwithstanding any other law,  
 298 such emergency rules shall remain effective for 6 months after  
 299 the date of adoption and may be renewed during the pendency of  
 300 procedures to adopt rules addressing the subject of the  
 301 emergency rules.

302 Section 4. Amnesty for registration and remittance of  
 303 tax.--

304 (1) The state shall provide an amnesty for unpaid gross  
 305 receipts tax, penalties, and interest on unpaid gross receipts  
 306 tax that may otherwise be due for the sale or transportation of  
 307 natural gas for consumption in this state if all of the

308 following requirements are satisfied:

309 (a) The sales subject to amnesty were made prior to  
 310 October 1, 2005.

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

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

315 2. Sales for which the written sales agreement provides  
 316 for transfer of title to the gas outside the state; or

317 3. Sales of transportation services associated with the  
 318 sales of gas.

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

321 (d) The seller applies for amnesty on or before October 1,  
 322 2005, in accordance with the rules of the Department of Revenue.

323 (2) The amnesty is not available for taxes, penalties, or  
 324 interest that have been assessed if the assessment is final and  
 325 has not been timely challenged, or for any tax, penalty, or  
 326 interest that has been previously paid to the department unless  
 327 the payment is the subject of an assessment that is not final or  
 328 that has been timely challenged.

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

331 (4) The executive director of the Department of Revenue  
 332 may adopt emergency rules under ss. 120.536(1) and 120.54(4),  
 333 Florida Statutes, to implement the amnesty. Such rules may  
 334 provide forms and procedures for applying for amnesty; for  
 335 reporting the sales for which amnesty is sought; and for

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336 ensuring the applicant's ongoing commitment to registration,  
337 collection, and remittance of the state's gross receipts tax.  
338 Notwithstanding any other law, the emergency rules shall remain  
339 effective until the later of the date that is 6 months after the  
340 date of adoption of the rule or the date of final resolution of  
341 all amnesty applications filed pursuant to this section.

342 Section 5. This act shall take effect October 1, 2005.