

By Senator Flores

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1 A bill to be entitled
2 An act relating to electrical power or energy;
3 amending s. 203.01, F.S.; imposing an additional tax
4 on gross receipts for electrical power or energy for
5 specified years; revising exemptions from the tax on
6 gross receipts for utility and communications
7 services; providing exemptions from the additional tax
8 on gross receipts from electrical power or energy;
9 requiring the additional tax to be excluded from the
10 taxable base on which gross receipts are calculated
11 under certain circumstances; amending s. 212.05, F.S.;
12 revising the sales tax rate for charges for electrical
13 power or energy for specified years; providing that
14 discretionary sales surtaxes apply regardless of the
15 sales tax rate for charges for electrical power or
16 energy; amending s. 212.054, F.S.; requiring
17 discretionary sales surtaxes to be levied on all
18 charges for electrical power or energy unless
19 specifically exempted; amending s. 212.12, F.S.;
20 conforming a provision to a change made by the act;
21 providing for a sales tax holiday for certain
22 products; providing restrictions; providing
23 definitions; authorizing the Department of Revenue to
24 adopt emergency rules; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:
27

28 Section 1. Present subsections (5) through (9) of section
29 203.01, Florida Statutes, are renumbered as subsections (6)

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30 through (10), respectively, paragraph (b) of subsection (1),
31 subsection (3), and present subsections (4) and (8) are amended,
32 and a new subsection (4) is added to that section, to read:

33 203.01 Tax on gross receipts for utility and communications
34 services.—

35 (1)

36 (b)1. The rate applied to utility services shall be 2.5
37 percent.

38 2. The rate applied to communications services shall be
39 2.37 percent.

40 3. ~~There shall be~~ An additional rate of 0.15 percent shall
41 be applied to communication services subject to the tax levied
42 pursuant to s. 202.12(1)(a), (c), and (d). The exemption
43 provided in s. 202.125(1) applies to the tax levied pursuant to
44 this subparagraph.

45 4. An additional rate shall be applied to the gross
46 receipts for electrical power or energy delivered to a retail
47 consumer in this state.

48 a. Effective January 1, 2015, the additional rate shall be
49 1.5 percent.

50 b. Effective January 1, 2016, the additional rate shall be
51 2.5 percent.

52 c. Effective January 1, 2017, the additional rate shall be
53 3.5 percent.

54 d. Notwithstanding s. 203.0111, any increase in the gross
55 receipts tax provided by this subparagraph applies to charges
56 for electrical power or energy on any bill dated on or after the
57 date the increase takes effect.

58 (3) The tax imposed by subparagraph (1)(b)1. ~~subsection (1)~~

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59 does not apply to:

60 (a)1. The sale or transportation of natural gas or
61 manufactured gas to a public or private utility, including a
62 municipal corporation or rural electric cooperative association,
63 ~~either~~ for resale or for use as fuel in the generation of
64 electricity; or

65 2. The sale or delivery of electricity to a public or
66 private utility, including a municipal corporation or rural
67 electric cooperative association, for resale, or as part of an
68 electrical interchange agreement or contract between such
69 utilities for the purpose of transferring more economically
70 generated power,†

71
72 if provided the person deriving gross receipts from such sale
73 demonstrates that a sale, transportation, or delivery for resale
74 in fact occurred and complies with the following requirements: A
75 sale, transportation, or delivery for resale must be in strict
76 compliance with the rules ~~and regulations~~ of the Department of
77 Revenue; and any sale subject to the tax imposed by this section
78 which is not in strict compliance with the rules ~~and regulations~~
79 of the Department of Revenue shall be subject to the tax at the
80 appropriate rate imposed on utilities by paragraph (b) on the
81 person making the sale. Any person making a sale for resale may,
82 through an informal protest provided for in s. 213.21 and the
83 rules of the Department of Revenue, provide the department with
84 evidence of the exempt status of a sale. The department shall
85 adopt rules that provide that valid proof and documentation of
86 the resale by a person making the sale for resale will be
87 accepted by the department when submitted during the protest

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88 period but will not be accepted when submitted in any proceeding
89 under chapter 120 or any circuit court action instituted under
90 chapter 72;

91 (b) Wholesale sales of electric transmission service;

92 (c) The use of natural gas in the production of oil or gas,
93 or the use of natural or manufactured gas by a person
94 transporting natural or manufactured gas, when used and consumed
95 in providing such services; or

96 (d) The sale or transportation ~~to, or use of,~~ natural gas
97 or manufactured gas to, or the use of natural gas or
98 manufactured gas by, a person eligible for an exemption under s.
99 212.08(7)(ff)2. for use as an energy source or a raw material.
100 Possession by a seller of natural or manufactured gas or by any
101 person providing transportation or delivery of natural or
102 manufactured gas of a written certification by the purchaser,
103 certifying the purchaser's entitlement to the exclusion
104 permitted by this paragraph, relieves the seller or person
105 providing transportation or delivery from the responsibility of
106 remitting tax on the nontaxable amounts, and the department
107 shall look solely to the purchaser for recovery of such tax if
108 the department determines that the purchaser was not entitled to
109 the exclusion. The certification must include an acknowledgment
110 by the purchaser that it will be liable for tax pursuant to
111 paragraph (1)(f) if the requirements for exclusion are not met.

112 (4) The additional tax imposed by subparagraph (1)(b)4.
113 does not apply to:

114 (a) The sale of electrical power or energy to a person
115 eligible for an exemption under s. 212.08(7)(ff) for use in
116 operating machinery and equipment at a fixed location in this

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117 state;

118 (b) The sale or transportation of electrical power or
119 energy to, or the use of electrical power or energy by, a person
120 eligible for an exemption under s. 212.08(5)(e) for certain
121 agricultural purposes;

122 (c) The sale or transportation of electrical power or
123 energy to, or the use of electrical power or energy by, a person
124 eligible for an exemption under s. 212.08(7)(j) for use as a
125 household fuel;

126 (d) The sale or transportation of electrical power or
127 energy to, or the use of electrical power or energy by, a person
128 eligible for an exemption under s. 212.08(15)(a) for use in an
129 enterprise zone;

130 (e) The sale or transportation of electrical power or
131 energy to, or the use of electrical power or energy by, a person
132 who holds a valid Consumer's Certificate of Exemption issued by
133 the Department of Revenue;

134 (f) The sale or transportation of electrical power or
135 energy to, or the use of electrical power or energy by, a
136 foreign diplomat and consular personnel who hold a tax exemption
137 card issued by the United States Department of State; or

138 (g) The sale or transportation of electrical power or
139 energy to, or the use of electrical power or energy by, the
140 Federal Government or any federal department, commission,
141 agency, or other instrumentality thereof.

142 (5)~~(4)~~ The taxes ~~tax~~ imposed pursuant to this chapter
143 relating to the provision of any utility services at the option
144 of the person supplying the taxable services may be separately
145 stated as Florida gross receipts taxes ~~tax~~ on the total amount

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146 of any bill, invoice, or other tangible evidence of the
147 provision of such taxable services and may be added as a
148 component part of the total charge. If ~~Whenever~~ a provider of
149 taxable services elects to separately state such taxes ~~tax~~ as a
150 component of the charge for the provision of such taxable
151 services, every person, including all governmental units, shall
152 remit the taxes ~~tax~~ to the person who provides such taxable
153 services as a part of the total bill, and the taxes are ~~tax is~~ a
154 component part of the debt of the purchaser to the person who
155 provides such taxable services until paid and, if unpaid, are ~~is~~
156 recoverable at law in the same manner as any other part of the
157 charge for such taxable services. If a utility provider elects
158 to separately state the additional tax imposed by subparagraph
159 (1)(b)4. on any bill, invoice, or other tangible evidence of the
160 provision of such taxable service, the additional tax may not be
161 included as part of the taxable base on which the gross receipts
162 tax is calculated. For a utility, the decision to separately
163 state any increase in the rate of tax imposed by this chapter
164 which is effective after December 31, 1989, and the ability to
165 recover the increased charge from the customer is ~~shall not be~~
166 subject to regulatory approval.

167 (9) ~~(8)~~ Notwithstanding ~~the provisions of~~ subsection (5) ~~(4)~~
168 and s. 212.07(2), sums that were charged or billed as taxes
169 under this section and chapter 212 and that were remitted to the
170 state in full as taxes are ~~shall not be~~ subject to refund by the
171 state or by the utility or other person that remitted the sums
172 if, ~~when~~ the amount remitted was not in excess of the amount of
173 tax imposed by chapter 212 and this section.

174 Section 2. Paragraph (e) of subsection (1) of section

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175 212.05, Florida Statutes, is amended to read:

176 212.05 Sales, storage, use tax.—It is hereby declared to be
 177 the legislative intent that every person is exercising a taxable
 178 privilege who engages in the business of selling tangible
 179 personal property at retail in this state, including the
 180 business of making mail order sales, or who rents or furnishes
 181 any of the things or services taxable under this chapter, or who
 182 stores for use or consumption in this state any item or article
 183 of tangible personal property as defined herein and who leases
 184 or rents such property within the state.

185 (1) For the exercise of such privilege, a tax is levied on
 186 each taxable transaction or incident, which tax is due and
 187 payable as follows:

188 (e)1. At the rate of 6 percent on charges for:

189 a. Prepaid calling arrangements. The tax on charges for
 190 prepaid calling arrangements shall be collected at the time of
 191 sale and remitted by the selling dealer.

192 (I) "Prepaid calling arrangement" means the separately
 193 stated retail sale by advance payment of communications services
 194 that consist exclusively of telephone calls originated by using
 195 an access number, authorization code, or other means that may be
 196 manually, electronically, or otherwise entered and that are sold
 197 in predetermined units or dollars whose number declines with use
 198 in a known amount.

199 (II) If the sale or recharge of the prepaid calling
 200 arrangement does not take place at the dealer's place of
 201 business, it shall be deemed to take place at the customer's
 202 shipping address or, if no item is shipped, at the customer's
 203 address or the location associated with the customer's mobile

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204 telephone number.

205 (III) The sale or recharge of a prepaid calling arrangement
206 shall be treated as a sale of tangible personal property for
207 purposes of this chapter, whether or not a tangible item
208 evidencing such arrangement is furnished to the purchaser, and
209 such sale within this state subjects the selling dealer to the
210 jurisdiction of this state for purposes of this subsection.

211 b. The installation of telecommunication and telegraphic
212 equipment.

213 c. Electrical power or energy, except that the tax rate for
214 charges for electrical power or energy is 7 percent.

215 (I) Effective January 1, 2015, the tax rate for charges for
216 electrical power or energy is 4 percent.

217 (II) Effective January 1, 2016, the tax rate for charges
218 for electrical power or energy is 2 percent.

219 (III) Effective January 1, 2017, the tax rate for charges
220 for electrical power or energy is 0 percent.

221 (IV) A discretionary sales surtax levied pursuant to s.
222 212.055 and administered under s. 212.054 applies to charges for
223 electrical power or energy regardless of the tax rate imposed
224 under this sub-subparagraph.

225 2. The provisions of s. 212.17(3)~~7~~ regarding credit for tax
226 paid on charges subsequently found to be worthless are, ~~shall be~~
227 equally applicable to any tax paid under ~~the provisions of~~ this
228 section on charges for prepaid calling arrangements,
229 telecommunication or telegraph services, or electric power
230 subsequently found to be uncollectible. The term ~~word~~ "charges"
231 in this paragraph does not include any excise or similar tax
232 levied by the Federal Government, any political subdivision of

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233 the state, or any municipality upon the purchase, sale, or
234 recharge of prepaid calling arrangements or upon the purchase or
235 sale of telecommunication, television system program, or
236 telegraph service or electric power, which tax is collected by
237 the seller from the purchaser.

238 Section 3. Paragraph (a) of subsection (2) of section
239 212.054, Florida Statutes, is amended to read:

240 212.054 Discretionary sales surtax; limitations,
241 administration, and collection.—

242 (2) (a) The tax imposed by the governing body of any county
243 authorized to so levy pursuant to s. 212.055 shall be a
244 discretionary surtax on all transactions occurring in the county
245 which transactions are subject to the state tax imposed on
246 sales, use, services, rentals, admissions, and other
247 transactions by this chapter and communications services as
248 defined for purposes of chapter 202. The surtax shall be levied
249 on all charges for electrical power or energy unless
250 specifically exempted under this chapter. The surtax, if levied,
251 shall be computed as the applicable rate or rates authorized
252 pursuant to s. 212.055 times the amount of taxable sales and
253 taxable purchases representing such transactions. If the surtax
254 is levied on the sale of an item of tangible personal property
255 or on the sale of a service, the surtax shall be computed by
256 multiplying the rate imposed by the county within which the sale
257 occurs by the amount of the taxable sale. The sale of an item of
258 tangible personal property or the sale of a service is not
259 subject to the surtax if the property, the service, or the
260 tangible personal property representing the service is delivered
261 within a county that does not impose a discretionary sales

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262 surtax.

263 Section 4. Subsection (11) of section 212.12, Florida
264 Statutes, is amended to read:

265 212.12 Dealer's credit for collecting tax; penalties for
266 noncompliance; powers of Department of Revenue in dealing with
267 delinquents; brackets applicable to taxable transactions;
268 records required.—

269 (11) The department shall make available in an electronic
270 format or otherwise the tax amounts and brackets applicable to
271 all taxable transactions that occur in counties that have a
272 surtax at a rate other than 1 percent which transactions would
273 otherwise have been transactions taxable at the rate of 6
274 percent. Likewise, the department shall make available in an
275 electronic format or otherwise the tax amounts and brackets
276 applicable to transactions taxable as provided in at 7 percent
277 ~~pursuant to~~ s. 212.05(1)(e), and on transactions which would
278 otherwise have been so taxable in counties that ~~which~~ have
279 adopted a discretionary sales surtax.

280 Section 5. Sales tax holiday for Energy Star and WaterSense
281 products.—

282 (1) The tax levied under chapter 212, Florida Statutes, may
283 not be collected during the period from 12:01 a.m. on September
284 19, 2014, through 11:59 p.m. on September 21, 2014, on the first
285 \$1,500 of the sale price of a new Energy Star product or
286 WaterSense product. However, a person is limited to one purchase
287 of each specific type of Energy Star or WaterSense product
288 listed in paragraph (2)(a) or paragraph (2)(b), respectively,
289 which has a sales price of \$500 or more. A second or subsequent
290 purchase of a specific type of Energy Star product or WaterSense

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291 product that has a sales price of \$500 or more is subject to
292 tax.

293 (2) As used in this section, the term:

294 (a) "Energy Star product" means an air conditioner, air
295 purifier, ceiling fan, clothes washer, dehumidifier, dishwasher,
296 freezer, refrigerator, water heater, or package of light bulbs
297 that is designated by the United States Environmental Protection
298 Agency and the United States Department of Energy as meeting or
299 exceeding each agency's requirements under the Energy Star
300 program and which is affixed with an Energy Star label.

301 (b) "WaterSense product" means a bathroom sink faucet,
302 faucet accessory, high-efficiency toilet, showerhead, or weather
303 or sensor-based irrigation controller that is recognized as
304 water efficient by the WaterSense program sponsored by the
305 United States Environmental Protection Agency and which is
306 affixed with a WaterSense label.

307 (3) The Department of Revenue may, and all conditions are
308 deemed met to, adopt emergency rules pursuant to ss. 120.536(1)
309 and 120.54, Florida Statutes, to administer this section.

310 Section 6. This act shall take effect July 1, 2014.