

Committee Substitute for Senate Bill No. 1244

An act relating to the tax on gross receipts for utility services; amending s. 203.01, F.S.; providing for a tax on utility services delivered to a retail consumer in this state; providing for a tax on the gross receipts of a distribution company providing delivery of electricity to a retail consumer, based on an index price; providing for an annual calculation of the index price; providing for a tax reduction by refund for a like tax paid to another jurisdiction; providing for a tax on the gross receipts of a distribution company providing for the sale or transportation of natural gas or manufactured gas to a retail consumer, based on an index price; providing for an annual calculation of the index price; providing for a tax reduction by refund for similar taxes paid to another jurisdiction; providing for a tax on the cost price of electricity, natural gas, or manufactured gas to be paid by any person who causes these products to be severed or imported into the state for that person's own use; revising obsolete provisions; providing that the tax does not apply to certain sales, transportation, delivery, or uses; providing that a written certificate of entitlement to the exclusion from tax for persons eligible for an exemption under s. 212.08(7)(ff)2., F.S., relieves the seller or person providing transportation or delivery from responsibility of remitting tax; requiring any person who transports natural or manufactured gas to furnish a list of customers to the Department of Revenue; amending s. 203.012, F.S.; redefining the term "utility service"; defining the term "distribution company"; authorizing the executive director of the Department of Revenue to adopt emergency rules to implement the act; providing an amnesty for unpaid gross receipts tax, penalties, and interest on unpaid gross receipts tax otherwise due for selling natural gas in this state; providing conditions for the amnesty; providing limitations for the amnesty; authorizing the executive director of the Department of Revenue to adopt emergency rules to implement the amnesty; providing an effective date.

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

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

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

(1)(a)1. A tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state. Such tax shall be levied as provided in paragraphs (b)-(j) ~~Every person that receives payment for any utility service shall report by the last day of each month to the Department of Revenue, under oath of the secretary or some other officer of such person, the total amount of gross receipts derived from business done within this state, or between points within this state, for the preceding month and, at the same time, shall pay into the State Treasury an amount equal to a percentage of such gross receipts at the rate set forth in paragraph (b). Such~~

collections shall be certified by the Chief Financial Officer upon the request of the State Board of Education.

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

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

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

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

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

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

4. The amount of tax due under this paragraph shall be reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the retail consumer purchased the electricity, whether imposed by and paid to this state, another state, a territory of the United States, or the District of Columbia. This reduction in tax shall be available to the retail consumer as a refund made pursuant to s. 215.26 and does not inure to the

benefit of the person who receives payment for the delivery of the electricity. The methods of demonstrating proof of payment and the amount of such refund shall be made according to rules of the Department of Revenue.

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

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

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

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

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

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

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

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

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

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

(3) The tax imposed by subsection (1) does not apply to term “gross receipts” as used herein does not include gross receipts of any person derived from:

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

cooperative association, either for resale or for use as fuel in the generation of electricity; or

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

~~provided the person deriving gross receipts from such sale demonstrates that a sale, transportation, or delivery for resale in fact occurred and complies with the following requirements: A sale, transportation, or delivery for resale in this state must be in strict compliance with the rules and regulations of the Department of Revenue; and any sale subject to the tax imposed by this section person making a sale for resale in this state which is not in strict compliance with the rules and regulations of the Department of Revenue shall be subject to liable for and pay the tax at the appropriate rate imposed on utilities by paragraph (b) on the person making the sale. Any person making a sale for resale in this state may, through an informal protest provided for in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. The department shall adopt rules that which provide that valid proof and documentation of the resale in this state by a person making the sale for resale in this state will be accepted by the department when submitted during the protest period but will not be accepted when submitted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72;~~

(b) Wholesale sales of electric transmission service;

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

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

(9) Any person who engages in the transportation of natural or manufactured gas shall furnish annually to the Department of Revenue a list of customers to whom transportation services were provided in the prior year. This reporting requirement does not apply to distribution companies. Any person required to furnish such a list may elect to identify only those customers who take direct delivery without purchasing interconnection services

from a distribution company. Such reports are subject to the confidentiality provisions of s. 213.053. Any person required to furnish a customer list may instead comply by maintaining a publicly-accessible customer list on its Internet website. Such list shall be updated no less than annually.

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

203.012 Definitions.—As used in this chapter:

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

(2) “Person” means any person as defined in s. 212.02.

(3)(4) “Utility service” means electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas. This subsection does not broaden the definition of utility service to include separately stated charges for tangible personal property or services which are not charges for the electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas.

Section 3. Emergency rules.—The executive director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules, under sections 120.536(1) and 120.54(4), Florida Statutes, to implement the provisions of section 203.01, Florida Statutes, which provide for remittance of tax by distribution companies and self-accrual of tax by retail consumers and the provisions of section 203.012, Florida Statutes, which define the term “distribution company” and provide that utility services include transportation, transmission, and distribution of electricity and natural or manufactured gas. Such rules shall include forms the Department of Revenue determines are necessary or appropriate for registration, applying for self-accrual authority, reporting, and remitting taxes, or applying for credits. Notwithstanding any other law, such emergency rules shall remain effective for 6 months after the date of adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules. This section is effective upon this act becoming a law.

Section 4. Amnesty for registration and remittance of tax.—

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

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

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

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

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

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

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

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

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

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

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

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

Approved by the Governor June 8, 2005.

Filed in Office Secretary of State June 8, 2005.