

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/CS/SB 594

SPONSOR: Commerce, Economic Opportunities, and Consumer Services Committee, Finance and Taxation Committee, and Senator Campbell

SUBJECT: Utility & Communications Services Tax

DATE: February 4, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Johansen	FT	Favorable/CS
2.	Caldwell	Caldwell	CU	Favorable
3.	Kruse	Maclure	CM	Favorable/CS
4.	_____	_____	AP	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for Committee Substitute for Senate Bill 594 provides forgiveness for unpaid gross receipts tax, penalties, and interest which may be due on the sale or transportation of natural gas for consumption in this state if the sales were made prior to July 1, 2004, and the gross receipts were derived from one of the following:

- the sales were by persons not regulated by chapter 366 of the Florida Statutes, relating to public utilities;
- the sales agreement provided for transfer of title to the gas outside of Florida;
- the sales were of transportation services associated with the sales of gas; or
- the sales were to persons eligible for a sales tax exemption for certain charges for electricity or steam used to operate machinery and equipment.

The forgiveness, which is called amnesty in the committee substitute, is limited to sellers that register with the Department of Revenue by July 1, 2004, and apply for forgiveness within three months of that date. The committee substitute establishes certain circumstances under which the amnesty will not be available.

The committee substitute also imposes the gross receipts tax on a distribution company which receives payment from a retail consumer for selling and delivering electricity to the retail consumer. If a distribution company only provides for the delivery of electricity to a retail consumer, the committee substitute imposes a per-unit tax on the transaction. If a person imports electricity for the person's own use or consumption instead of purchasing it within the state, the committee substitute imposes a tax on the cost price of the imported electricity (generally known as a use tax). It maintains the current gross receipts tax on electricity or natural or manufactured

gas sold by in-state distribution companies, but strikes the term “utility service” referenced in s. 203.01(1)(a)1., F.S., and replaces it with a portion of the definition of “utility service” relating to natural or manufactured gas for light, heat, or power. This revision may clarify gas distribution companies’ responsibility to pay the gross receipts tax. The committee substitute defines the term “distribution company” and also provides several exemptions from the gross receipts tax for certain electric or gas purchases or deliveries.

The committee substitute provides authority to the executive director of the Department of Revenue to adopt emergency rules to implement the amnesty and to implement s. 203.01, F.S.

The committee substitute creates an unnumbered section of the Florida Statutes and substantially amends the following sections of the Florida Statutes: 203.01 and 203.012.

## **II. Present Situation:**

### **Gross Receipts Tax and Utility Service**

Section 203.01, F.S., imposes a tax of 2.5 percent upon the gross receipts of every person that receives payment for any utility service, defined in s. 203.012, F.S., as electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power. The gross receipts tax was created in 1931, and in 1963 the Florida Constitution was amended to place all gross receipts tax revenue in a trust fund for university and junior college capital outlay, and to allow bonds to be issued for this purpose. The constitution was amended again in 1974 to allow gross receipts tax revenue to be bonded for public school capital outlay expenditures.

When the gross receipts tax was enacted, and for most of its history, utility services were provided by regulated monopolies. The gross receipts tax was a stable revenue source, and collection of the tax from utility providers was efficient and easy to administer. Even though the statutory imposition of the tax is on the person who receives payment for any utility service, it is understood that the tax is passed on to consumers of the utility services, and the law provides for separately stating the tax on the customer’s bill.<sup>1</sup> The law also provides for gross receipts taxation of electricity produced by cogeneration or by small power producers, or any person other than a cogenerator or small producer who produces electrical energy for his or her own use.<sup>2</sup>

The gross receipts tax statute does not address the situation in which electricity or natural or manufactured gas is purchased outside the state for use in the state. Retail sales of electricity have not been deregulated in Florida. However, natural gas purchases outside the state for use in the state, arranged either by the final users of the gas or by gas marketers, have been occurring since 1990, and have become a significant part of the market. Changes adopted by the Public Service Commission in 1990 allowed Florida customers to purchase gas from out-of-state vendors. In these transactions, the purchase of gas was (and remains) not subject to gross receipts tax because the tax is on the vendor, which was not a Florida business. Additionally, a 1992 Technical Assistance Advisement by the Department of Revenue (DOR) stated that the gross

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<sup>1</sup> Section 203.01(4), F.S.

<sup>2</sup> Section 203.01(1)(d) and (e), F.S.

receipts tax was not applicable to transportation services charges because the statute imposes a tax on persons who receive payment for a utility service, and transportation does not meet the statutory definition of utility service. The state does receive payment from the gross receipts tax on utility service on business done within this state, or between points within this state.<sup>3</sup>

### **Gross Receipts Tax and Natural Gas Marketers**

Natural gas marketers and DOR disagree over whether the marketers are required to pay the gross receipts tax. According to DOR, natural gas marketers believe that they do not provide a utility service and therefore are not subject to the gross receipts tax. However, both sides agree that if the marketers were required to pay all the back taxes, penalties, and interest DOR believes may be owed, many of the marketers would be forced out of business. To resolve this situation, DOR and the marketers are proposing an amnesty or forgiveness of all back taxes, penalties, and interest as long as the marketers register with DOR to pay the tax now and into the future. Both DOR and the marketers believe the amnesty is a reasonable solution to prevent lengthy and expensive audits and litigation over this situation.

### **III. Effect of Proposed Changes:**

The committee substitute provides forgiveness for unpaid gross receipts tax, penalties, and interest on sales made before July 1, 2004, if one of the following is met:

- the sales were by persons not regulated by chapter 366 of the Florida Statutes, which regulates public utilities;
- the sales agreement provided for transfer of title to the gas outside of Florida;
- the sales were of transportation services associated with the sales of gas; or
- the sales were to persons eligible for a sales tax exemption for certain charges for electricity or steam used to operate machinery and equipment.

The forgiveness, referred to in the committee substitute as amnesty, applies to sellers that register with the Department of Revenue (DOR) by July 1, 2004, and apply for forgiveness by October 1, 2004. 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 DOR unless the payment is the subject of an assessment that is not final or that has been timely challenged. The amnesty is also not available for tax billed to or collected by the seller as an itemized charge to customers. The executive director of DOR is given authority to adopt emergency rules to implement the amnesty. Notwithstanding any other law, the emergency rules remain in effect until the later of the date that is six months after the date of adoption of the rule or the date of final resolution of all amnesty applications filed under this section.

The committee substitute amends s. 203.01, F.S., to provide that every person that receives payment for any natural or manufactured gas for light, heat, or power must report those sales to DOR and pay gross receipts tax at the appropriate rate. This change replaces the term “utility

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<sup>3</sup> Section 203.01(1)(a)1., F.S.

service” with the term “natural or manufactured gas for light, heat, or power,” which is contained in the definition of “utility service” under s. 203.012(1), F.S.

The committee substitute also levies a tax on gross receipts received by a distribution company for its sales of electricity for light, heat, or power, if the electricity is delivered to a retail consumer in the state who pays the distribution company a charge for both the electricity and the transportation. The gross receipts of a distribution company that sells and delivers utility services to a retail consumer are taxable as they are under current law. If a distribution company delivers electricity to a retail consumer but does not sell the electricity, the distribution company’s receipts are taxed at a per-unit rate. This rate is set annually, based on the Florida price per kilowatt hour for residential, commercial, or industrial retail consumers, as applicable, as published by the United States Energy Information Administration. The amount of tax due is reduced by any gross receipts tax or similar tax paid to another state or U.S. territory when purchasing the electricity. The committee substitute also extends the gross receipts tax to any person who imports electricity for that person’s own use or consumption as a substitute for purchasing utility, transportation, or delivery services taxable under ch. 203, F.S. This tax is based on the cost price of the electricity. The amount of tax owed may be reduced if a gross receipts or similar tax was paid. The changes the committee substitute makes to the collection of the gross receipts tax on electricity will not be applicable unless or until the electric utility market is deregulated in the future.

The committee substitute provides the following exemptions from the gross receipts tax:

- The transportation of natural or manufactured gas to a public or private utility either for resale or for use as fuel in the generation of electricity;
- The delivery of electricity to a public or private utility for resale within or without the state (applies only if the resale is in compliance with DOR rules and regulations);
- The wholesale sale of electric transmissions;
- The use of natural gas to produce oil or gas or the use of natural or manufactured gas to transport natural or manufactured gas; or
- The sale or transportation to, or use of, natural or manufactured gas by a person eligible for an exemption under s. 212.08(7)(ff), F.S., (certain manufacturers) for use as an energy source or raw material.

Also, the committee substitute states that it does not imply that a tax is due on separately stated charges for the transportation of natural or manufactured gas.

The committee substitute amends s. 203.012, F.S., defining “distribution company” to mean any person owning or operating local electric utility distribution facilities within this state for the distribution of electricity to the retail consumer. The committee substitute also gives DOR emergency rulemaking authority to implement the provisions of s. 203.01, F.S. The emergency rules would remain in effect for six 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.

Additionally, an out-of-date provision is updated by the committee substitute regarding the tax on telecommunications systems.

The committee substitute takes effect July 1, 2004.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Article XII, s. 9 of the State Constitution provides that gross receipts tax revenue must be placed in the Public Education Capital Outlay (PECO) Fund and used to pay for capital projects at universities, community colleges, vocational technical schools, or public schools. These capital projects may be financed by bonds pledging the full faith and credit of the state.

Available PECO funds for any given year are made up of bond proceeds and cash proceeds. Both estimates begin with the gross receipts tax. The maximum debt service capacity is determined and the amount of already-existing debt is subtracted, leaving the amount available to support new bonds. The state then sells the new bonds and places the proceeds in the trust fund for spending on a set of projects that are stipulated in the General Appropriations Act. Any tax collections not needed for paying debt service can be spent as cash. These remaining tax collections are combined with interest earnings of the trust fund to pay for the remainder of the PECO appropriation.

#### **V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

The impact of the forgiveness for unpaid gross receipts tax, penalties, and interest has not been established yet by the Revenue Impact Conference.

B. Private Sector Impact:

The responsibility of natural gas marketers with respect to gross receipts tax is clarified by this committee substitute.

The committee substitute provides forgiveness for unpaid gross receipts tax, penalties, and interest, if certain conditions are met, for sellers that register with the Department of Revenue by July 1, 2004, and apply for forgiveness by October 1, 2004.

**C. Government Sector Impact:**

The changes in the gross receipts tax on electricity included in this committee substitute will preserve the source of funding for school construction if retail deregulation of electricity occurs in Florida.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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