

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.)

Prepared By: Ways and Means Committee

BILL: CS/SB 1244

SPONSOR: Government Efficiency Appropriations and Senator Alexander

SUBJECT: Tax/Gross Receipts for Utility Services

DATE: April 11, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>Johansen</u>	<u>GE</u>	<u>Fav/CS</u>
2.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	<u>Favorable</u>
3.	<u>Barrett</u>	<u>Cooper</u>	<u>CM</u>	<u>Favorable</u>
4.	<u>McVaney</u>	<u>Coburn</u>	<u>WM</u>	<u>Favorable</u>
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

CS/SB 1244 imposes gross receipts tax on all utility services delivered to in-state retail consumers. It broadens the definitions of “utility services” and provides a definition of “distribution companies.” It also provides an exclusion from the tax on natural or manufactured gas for certain industries.

This committee substitute 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 January 1, 2006, and:

- the sales were by persons not regulated by ch. 366, F.S., which regulates public utilities;
- the sales agreement provided for transfer of title to the gas outside of Florida; or
- the sales were of transportation services associated with the sales of gas.

The forgiveness, which is called amnesty in the committee substitute, is limited to sellers that register with the Department of Revenue (if they are required to register) and apply for forgiveness by January 1, 2006.

This committee substitute substantially amends sections 203.01 and 203.012 of the Florida Statutes.

II. Present Situation:

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 definition of gross receipts does not include receipts from the sale of natural gas for resale or for use in the generation of electricity. 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. (s. 203.01(4), F.S.) The law also provides for 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. (s. 203.01(1) (d) and (e), F.S.)

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, but 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. The tax status of these sales has been ambiguous, and this creates significant problems:

- There may be unequal treatment of natural gas users, with those who purchase from local distribution companies paying a price that includes tax and those who purchase from out-of-state third-party suppliers or marketers outside the state paying a lower, untaxed price;
- Local distribution companies may be disadvantaged compared to out-of-state suppliers; and
- Funding for school construction is reduced.

Deregulation of Natural Gas Sales in Florida

In 1990, the Florida Public Service Commission (PSC) began to accommodate new competition for local distribution companies in supplying end-users in local markets; it authorized the purchase of natural gas by an end-user from a source other than its local distribution company. Consequently, large users of natural gas began to purchase from outside the state through a marketer. The end-user paid the marketer for the gas and separately paid a Florida business to deliver it.

In 1996, a rule was proposed by the PCS to require Florida's investor-owned natural gas companies to offer transportation service to all nonresidential customers. In 2000, rule 25-7.005,

F.A.C., was adopted. It provides all non-residential natural gas customers with the option of purchasing gas directly from a supplier other than the utility serving the territory where the customer is located. It also allows utilities to offer transportation of natural gas to residential customers when it is cost-effective to do so.

The market response to these regulatory changes has been dramatic. In 1990, 7 percent of all natural gas provided by investor-owned companies was transported. By 1994, 55 percent of all gas provided by these companies was transported, and this figure rose to 73 percent by 2002. There are seven investor-owned natural gas utilities in Florida. In 2003, four of them offered transportation as well as sales and two offered only transportation, and transported gas accounted for 69 percent of total throughput.

At least 7 of Florida's 31 publicly-owned natural gas companies provide transportation services for some customers. In FY 2001-02, more than 41 million therms of natural gas were transported by these public utilities.

Natural Gas Deregulation and Its Effect on Gross Receipts Tax Revenue

Until 1990, all natural gas purchases in Florida were made from local distribution companies that owned the pipelines through which the gas was delivered to the final consumer. The origin of the gas did not matter to the final consumer, because a Florida gas company bought the gas that flowed through its transportation system and resold it to the consumer. The price of natural gas included any costs associated with transporting it to the end-user, and gross receipts tax was calculated on the entire cost of the delivered product.

Changes adopted in 1990 allowed Florida customers to purchase gas from out-of-state vendors. The taxability of these transactions was ambiguous, because the tax is imposed on the vendor, which was not a Florida business. A 1992 Technical Assistance Advisement by the Department of Revenue stated that the gross receipts tax was not applicable to charges for transportation services only, 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. Because of changes due to deregulation, the gross receipts tax base has been significantly reduced. Since 1990, the amount of natural gas purchased from out-of-state suppliers has grown to over 70 percent of all gas supplied by privately-owned companies.

Purchase of natural gas from outside the state is no longer limited to large end-users. Rule 25-7.0335, F.A.C., requires Florida's investor-owned natural gas utilities to offer transportation service to all non-residential customers and authorizes the transportation of natural gas to residential customers when it is cost effective to do so.

The effect of changes on the way natural gas is sold in Florida can be seen in the state's gross receipts tax revenue history. Total gross receipts tax revenue has grown by almost 270 percent since 1985-86 (including rate increases in 1990, 1991, and 1992), but receipts from natural gas have grown much more slowly. In FY 1990-91, gross receipts tax revenue attributable to natural gas was 3.7 percent of total collections. This percentage has trended downward since then and, by 2003-04, it had fallen to 2 percent of total collections.

In 2003, a Senate Interim Project (2003-124) by the Committee on Finance and Taxation, *Implications of the Absence of a Use Tax on Utilities for Education Funding*, increased awareness of in-state gas marketers of their tax obligation under the current law for gas that they market to in-state consumers, and the Revenue Estimating Conference increased its estimate of gross receipts tax on natural gas for FY 2002-03 and FY 2003-04. This study was updated in 2005 as Senate Interim Project 2005-132.

III. Effect of Proposed Changes:

The committee substitute amends ss. 203.01 and 203.12, F.S., relating to tax on gross receipts for utility and communication services.

Section 1 amends sub-paragraph 1. of s. 203.01(1)(a), F.S., to impose a tax on the gross receipts from utility services that are delivered to in-state retail consumers. New paragraph (c) imposes a tax on the gross receipts of a distribution company for its sale and delivery of utility services to an in-state consumer, who pays a charge for both the electricity and the transportation. The distribution company shall on the last day of each month report and remit to the Department of Revenue (DOR) the taxes levied during the preceding month for gross receipts taxes on such transactions.

New paragraph (d) imposes a tax on the gross receipts of a distribution company that receives payment from an in-state retail consumer for the delivery of electricity, unless the payment is subject to paragraph (c). A tax calculation formula is also provided in this paragraph based on the number of kilowatt hours delivered. This paragraph also provides that the amount of tax due under this paragraph shall be reduced by the amount of any like tax imposed on and paid by the person delivering the electricity, whether imposed by Florida, another state, U.S. territory, or the District of Columbia. This reduction in tax is available to the retail consumer as a refund pursuant to s. 215.26, F.S., and it does not inure to the benefit of the person delivering the electricity. (s. 215.26, F.S.- Repayment of funds paid into State Treasury through error.) DOR shall establish rules for demonstrating proof of payment and the amount of refund.

New paragraph (e) imposes a tax on the gross receipts of a distribution company for the sale or transportation of natural or manufactured gas to an in-state consumer, who pays a charge for the sale or the transportation of the gas. A tax calculation formula is also provided in this paragraph based on the volume of gas and the appropriate index price. The tax due shall be administered, paid, and reported in the same manner as paragraph (c). Also, under certain circumstances, a refund provision is included in this paragraph.

New paragraph (f) imposes a tax on any person who imports electricity or natural or manufactured gas or severs natural gas for that person's own use or consumption as a substitute for purchasing in-state taxable utility, transportation, or delivery services and who cannot demonstrate payment of the tax being made elsewhere. Such person must register with DOR and pay monthly into the State Treasury, an amount calculated as follows: the cost price of the importation times the gross receipts tax rate. The term "cost price" has the meaning ascribed in s. 212.02(4), F.S.:

(4) “Cost price” means the actual cost of articles of tangible personal property without any deductions there on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

The amount of tax due under this paragraph, however, shall be reduced by the amount of any like tax imposed on and paid by the person from whom the importation was purchased, or any person who provided delivery or transportation service in connection with the importation. The DOR shall establish rules for demonstrating proof of payment and the amount of reduction.

New paragraph (j) is amended to delete the words “telephone or telecommunication system described in paragraph (c)” and to add the words “communications services dealers reporting taxes administered under chapter 202” as conforming language. This change is consistent with administration of the communications services tax under ch. 202, F.S.

Paragraph (a) of s. 203.01(3), F.S., is amended to provide exclusions. An exclusion is provided to the gross receipts tax charges for transportation of natural or manufactured gas to a public or private utility, municipal corporation, or rural cooperative for resale or for use as a fuel to generate electricity. The committee substitute renumbers the resale provision of paragraph (b) to subparagraph 2. and amends the provisions to also exclude from the gross receipts tax charges for delivery of electricity to a public or private utility, municipal corporation, or rural cooperative for resale as part of an electrical interchange agreement or contract between such utilities for the purpose of transferring more economically generated power.

Also, in s. 203.01(3)(a), F.S., the committee substitute deletes the words “in this state” throughout revised paragraph (a). Under current law, there is a resale provision that exempts sales to utilities when the sale of gas or electricity is purchased for resale to a retail consumer. The DOR rule interpreting this resale provision is Rule 12B-6.001(2), FAC. That rule provides that tax does not apply to the “receipts from the sale within this state of natural gas or electricity . . . for resale.” The current statute is ambiguous because the “in the state” language appears to modify where the resale occurs versus where the original sale occurs. The committee substitute clarifies statutory language to track the rule and current practice of exempting sales to utilities in Florida for resale by deleting the words.

To qualify for these exemptions, the person deriving gross receipts from such sale must demonstrate that a sale, transportation, or delivery for resale complies with the following requirements: the sale, transportation, or delivery for resale must be in strict compliance with DOR rules and regulations; and any sale subject to the gross receipts utility tax that is not in compliance shall be subject to the tax at the appropriate utility rate.

Additional exclusions from the gross receipts tax are included in new paragraphs (b), (c), and (d). Paragraph (b) provides for wholesale sales of electric transmission service; paragraph (c) provides for the use of natural gas in production of oil or gas, or the use of natural or manufactured gas, when used and consumed in providing such services. Paragraph (d) creates an exclusion for the sale, transportation to, or use of, natural or manufactured gas by any person eligible for an exemption under s. 212.08(7)(ff)2., F.S., for use as an energy source or a raw material. This includes industries classified under SIC Industry Major Group Numbers 10, 12, 13, 14, 20, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39 and Industry

Group Number 212. These are mining industries and manufacturers. A mechanism is provided by which a person selling or delivering natural or manufactured gas to a purchaser who is not subject to the tax can accept a certificate from the purchaser certifying the purchaser's entitlement to the exclusion. This certificate relieves the seller or deliverer from the responsibility of collecting the tax.

A new subsection is created that requires any person who transports natural gas to provide annually a list of customers for transportation services to the Department of Revenue. This requirement may be satisfied by maintaining a publicly-accessible customer list on an Internet website that is updated no less than annually.

Section 2 amends s. 203.012, F.S., to add a new subsection (1) providing the following definition for "distribution company" as used in the chapter. The term 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 subject to the jurisdiction of the Federal Energy Regulatory Commission.

The committee substitute renumbers previous subsection (1) to create a new subsection (3) amending the existing definition of "utility service" in s. 203.012, F.S. This amended definition for "utility service" includes the transportation, delivery, transmission, and distribution of electricity or natural or manufactured gas. The amended definition of "utility service" does not include separately stated charges for tangible personal property or services which are not charges for natural or manufactured gas, electricity, transportation, delivery, transmission, or distribution of electricity or gas.

Section 3 grants emergency rulemaking authority to DOR to implement the provisions for the remittance of tax by distribution companies and self-accrual of tax by retail consumers. Emergency rules will remain in effect for six months after the date of adoption and may be renewed pending the adoption of permanent rules. This section is effective upon the act becoming a law.

Section 4 provides forgiveness for unpaid gross receipts tax, penalties, and interest on sales made before January 1, 2006, if:

- the sales were by persons not regulated by ch. 366, F.S., which regulates public utilities;
- the sales agreement provided for transfer of title to the gas outside of Florida; or
- the sales were of transportation services associated with the sales of gas.

The forgiveness, referred to in the committee substitute as amnesty, is limited to sellers that register with the Department of Revenue (if they are required to be registered as of January 1, 2006) and apply for forgiveness by January 1, 2006. This section is effective upon the act becoming a law.

The committee substitute gives the Department of Revenue emergency rulemaking authority to implement the amnesty. The emergency rules would remain in effect for 6 months after the date

of adoption or the date of final resolution of all amnesty applications filed pursuant to this section.

Section 5 provides that except for this section and as otherwise provided (sections 3 and 4), the act shall take effect January 1, 2006.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The Revenue Estimating Conference has determined that the proposed legislation will have the following positive impacts on state revenue:

SB 1244 Impact on State Funds (Gross Receipts Tax)	FY 2005-06 Annualized	FY 2005-06 Cash	FY 2006-07 Cash
	\$2.9 million	\$.6 million	\$1.1 million

B. Private Sector Impact:

This committee substitute provides that gross receipts tax is levied on all utility services delivered to a consumer in Florida unless the transaction is specifically exempted or excluded by the statute. It also provides that “utility service” includes the transportation, delivery, transmission, and distribution of electricity or natural or manufactured gas. These changes will result in some additional consumers paying gross receipts tax. The committee substitute also provides an exclusion from the tax on natural or manufactured gas for certain industrial and manufacturing users.

C. Government Sector Impact:

This committee substitute will provide additional funding for the Public Education Capital Outlay (PECO) Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

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

VIII. Summary of Amendments:

None.

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