

# 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/SB 594

SPONSOR: Finance and Taxation Committee and Senator Campbell

SUBJECT: Utility & Communications Services Tax

DATE: January 14, 2004      REVISED: \_\_\_\_\_

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

## I. Summary:

This committee substitute imposes the gross receipts tax on the cost price of imported electricity (generally known as a use tax) and adds a per-unit tax on the distribution of electricity. It maintains the current gross receipts tax on electricity or natural or manufactured gas sold by in-state distribution companies, and clarifies that every person that receives payment for any natural or manufactured gas for light, heat, or power must report the total amount of gross revenue from these sales to the Department of Revenue and pay the appropriate gross receipts tax.

Electricity delivered or transported (but not sold) by distribution companies would be subject to a per-unit tax, with the tax rate adjusted periodically for the market price. This will maintain comparable taxation of gas purchased from in-state and out-of-state suppliers. Electricity purchased from out-of-state suppliers that is not transported by Florida companies would be subject to tax on its cost-price, including transportation costs. Sales or delivery of natural or manufactured gas to a person eligible for an exemption under s. 212.08(7) (ff), F.S., (primarily manufacturers and processors) for use as an energy source or a raw material would not be subject to tax.

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 July 1, 2004, and:

- 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; or
- the sales were of transportation services associated with the sales of gas.

The forgiveness, which is called amnesty in the bill, is limited to sellers that register with the Department of Revenue by the July 1, 2004, and apply for forgiveness within three months of that date.

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

## **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 began to accommodate new competition for local distribution companies in supplying end-users in local markets by approving the purchase

of natural gas by an end-user from a source other than its local distribution company. It became possible for large users of natural gas 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, seven 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 2002, six of them offered transportation as well as sales, and transported gas accounted for 75 percent of total throughput. Peoples, City Gas, and Chesapeake, the three largest gas utilities, each transported more gas than they sold.

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. In these transactions, the purchase of gas was not subject to gross receipts tax because the tax is 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, described above, 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. 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 is forecast to be 1.9 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.

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

This 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 the Department of Revenue and pay gross receipts tax at the appropriate rate. It 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 final 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 average Florida price for commercial retail consumers published by the United States Energy Information Administration. 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 chapter 203. This tax is based on the cost price of the electricity.

This committee substitute provides that delivery of electricity for resale within or without the state is not subject to gross receipts tax. These resale provisions apply only if the resale is in compliance with Department of Revenue rules and regulations. Wholesale sales of electric transmissions are not subject to gross receipts tax, and neither is the use of natural gas to produce oil or gas or the use of natural or manufactured gas to transport natural or manufactured gas. Sales or transportation to, or use of, natural or manufactured gas by a person eligible for an exemption under s. 212.08(ff), F.S., (certain manufacturers) for use as an energy source or raw material would not be subject to tax. It also provides that there is no tax on separately stated charges for the transportation of natural or manufactured gas.

This committee substitute amends s. 203.012, F.S., providing a definition of "distribution company" to mean any person owning or operating local electrical utility distribution facilities within this state for the distribution of electricity to the final retail consumer.

This committee substitute provides forgiveness for unpaid gross receipts tax, penalties, and interest on sales made before July 1, 2004, if 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; or the sales were of transportation services associated with the sales of gas. The forgiveness, referred to in the bill as amnesty, is limited to sellers that register with the Department of Revenue by the effective date of the section, and apply for forgiveness within three months of the section's effective date (July 1, 2004).

The committee substitute gives the Department of Revenue emergency rulemaking authority to implement the provisions of this committee substitute. The emergency rules would remain in effect 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 committee substitute corrects certain out-of-date provisions in this section regarding the tax on telecommunications systems.

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

Article VII sec. 9 of the Florida 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, and the amount of bonds issued may not exceed 90 percent of the average amount of gross receipts tax revenue from the two preceding years.

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 which are stipulated in the 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.

##### **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 impact of the forgiveness for unpaid gross receipts tax, penalties, and interest was estimated by the revenue estimating conference in 2003 to be (\$1.5) million in the first year and (\$4.5) million in the second year after it is implemented. It has no recurring impact.

**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 even if retail deregulation of electricity occurs in Florida.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.