

By the Committee on Communications, Energy, and Public Utilities; and Senator Flores

579-02436-14

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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 1.0 percent.

50 b. Effective January 1, 2016, the additional rate shall be  
51 1.5 percent.

52 c. Effective January 1, 2017, the additional rate shall be  
53 1.75 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 4.5 percent.

217 (II) Effective January 1, 2016, the tax rate for charges  
218 for electrical power or energy is 3.0 percent.

219 (III) Effective January 1, 2017, the tax rate for charges  
220 for electrical power or energy is 1.75 percent.

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



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233 the seller from the purchaser.

234 Section 3. Paragraph (a) of subsection (2) of section  
235 212.054, Florida Statutes, is amended to read:

236 212.054 Discretionary sales surtax; limitations,  
237 administration, and collection.—

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

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

261 212.12 Dealer's credit for collecting tax; penalties for

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262 noncompliance; powers of Department of Revenue in dealing with  
263 delinquents; brackets applicable to taxable transactions;  
264 records required.—

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

276 Section 5. Sales tax holiday for Energy Star and WaterSense  
277 products.—

278 (1) The tax levied under chapter 212, Florida Statutes, may  
279 not be collected during the period from 12:01 a.m. on September  
280 19, 2014, through 11:59 p.m. on September 21, 2014, on the first  
281 \$1,500 of the sale price of a new Energy Star product or  
282 WaterSense product. However, a person is limited to one purchase  
283 of each specific type of Energy Star or WaterSense product  
284 listed in paragraph (2)(a) or paragraph (2)(b), respectively,  
285 which has a sales price of \$500 or more. A second or subsequent  
286 purchase of a specific type of Energy Star product or WaterSense  
287 product that has a sales price of \$500 or more is subject to  
288 tax.

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

290 (a) "Energy Star product" means an air conditioner, air

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291 purifier, ceiling fan, clothes washer, dehumidifier, dishwasher,  
292 freezer, refrigerator, water heater, or package of light bulbs  
293 that is designated by the United States Environmental Protection  
294 Agency and the United States Department of Energy as meeting or  
295 exceeding each agency's requirements under the Energy Star  
296 program and which is affixed with an Energy Star label.

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

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

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