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LEGISLATIVE ACTION

Senate	.	House
Comm: RE	.	
04/25/2014	.	
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The Committee on Appropriations (Hukill) recommended the following:

Senate Amendment to Amendment (477076) (with title amendment)

Delete lines 99 - 135

and insert:

Section 5. Effective July 1, 2014, subsections (1), (3), (4), and (7) of section 203.01, Florida Statutes, are amended to read:

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



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11 (1)(a)1. A tax is imposed on gross receipts from utility
12 services that are delivered to a retail consumer in this state.
13 The tax shall be levied as provided in paragraphs (b)-(j).

14 2. A tax is levied on communications services as defined in
15 s. 202.11(1). The tax shall be applied to the same services and
16 transactions as are subject to taxation under chapter 202, and
17 to communications services that are subject to the exemption
18 provided in s. 202.125(1). The tax shall be applied to the sales
19 price of communications services when sold at retail, as the
20 terms are defined in s. 202.11, shall be due and payable at the
21 same time as the taxes imposed pursuant to chapter 202, and
22 shall be administered and collected pursuant to ~~the provisions~~
23 ~~of~~ chapter 202.

24 3. An additional tax is levied on charges for, or the use
25 of, electrical power or energy that is subject to the tax levied
26 pursuant to s. 212.05(1)(e)1.c. or s. 212.06(1). The tax shall
27 be applied to the same transactions or uses as are subject to
28 taxation under s. 212.05(1)(e)1.c. or s. 212.06(1). If a
29 transaction is exempt from the tax imposed under
30 212.05(1)(e)1.c. or s. 212.06(1) the transaction is also exempt
31 from the tax imposed under this subparagraph. The tax shall be
32 applied to charges for electrical power or energy and is due and
33 payable at the same time as taxes imposed pursuant to chapter
34 212. Chapter 212 governs the administration and enforcement of
35 the tax imposed by this subparagraph. The charges upon which the
36 tax imposed by this subparagraph is applied do not include the
37 taxes imposed by subparagraph 1. or s. 166.231. The tax imposed
38 by this subparagraph becomes state funds at the moment of
39 collection and is not considered as revenue of a utility for



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40 purposes of a franchise agreement between the utility and a
41 local government.

42 (b)1. The rate applied to utility services shall be 2.5
43 percent.

44 2. The rate applied to communications services shall be
45 2.37 percent.

46 3. ~~There shall be~~ An additional rate of 0.15 percent shall
47 be applied to communication services subject to the tax levied
48 pursuant to s. 202.12(1)(a), (c), and (d). The exemption
49 provided in s. 202.125(1) applies to the tax levied pursuant to
50 this subparagraph.

51 4. The rate applied to electrical power or energy taxed
52 under subparagraph (a)3. shall be 2.6 percent.

53 (c)1. The tax imposed under subparagraph (a)1. shall be
54 levied against the total amount of gross receipts received by a
55 distribution company for its sale of utility services if the
56 utility service is delivered to the retail consumer by a
57 distribution company and the retail consumer pays the
58 distribution company a charge for utility service which includes
59 a charge for both the electricity and the transportation of
60 electricity to the retail consumer. The distribution company
61 shall report and remit to the Department of Revenue by the 20th
62 day of each month the taxes levied pursuant to this paragraph
63 during the preceding month.

64 2. To the extent practicable, the Department of Revenue
65 must distribute all receipts of taxes remitted under this
66 chapter to the Public Education Capital Outlay and Debt Service
67 Trust Fund in the same month as the department collects such
68 taxes.



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

79 2. The index price is the Florida price per kilowatt hour
80 for retail consumers in the previous calendar year, as published
81 in the United States Energy Information Administration Electric
82 Power Monthly and announced by the Department of Revenue on June
83 1 of each year to be effective for the 12-month period beginning
84 July 1 of that year. For each residential, commercial, and
85 industrial customer class, the applicable index posted for
86 residential, commercial, and industrial shall ~~will~~ be applied in
87 calculating the gross receipts to which the tax applies. If
88 publication of the indices is delayed or discontinued, the last
89 posted index shall be used until a current index is posted or
90 the department adopts a comparable index by rule.

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

94 4. The amount of tax due under this paragraph shall be
95 reduced by the amount of any like tax lawfully imposed on and
96 paid by the person from whom the retail consumer purchased the
97 electricity, whether imposed by and paid to this state, another



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98 state, a territory of the United States, or the District of
99 Columbia. This reduction in tax shall be available to the retail
100 consumer as a refund made pursuant to s. 215.26 and does not
101 inure to the benefit of the person who receives payment for the
102 delivery of the electricity. The methods of demonstrating proof
103 of payment and the amount of such refund shall be made according
104 to rules of the Department of Revenue.

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

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



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

130 4. The amount of tax due under this paragraph shall be
131 reduced by the amount of any like tax lawfully imposed on and
132 paid by the person from whom the retail consumer purchased the
133 natural gas or manufactured gas, whether imposed by and paid to
134 this state, another state, a territory of the United States, or
135 the District of Columbia. This reduction in tax shall be
136 available to the retail consumer as a refund pursuant to s.
137 215.26 and does not inure to the benefit of the person providing
138 the transportation service. The methods of demonstrating proof
139 of payment and the amount of such refund shall be made according
140 to rules of the Department of Revenue.

141 (f) Any person who imports into this state electricity,
142 natural gas, or manufactured gas, or severs natural gas, for
143 that person's own use or consumption as a substitute for
144 purchasing utility, transportation, or delivery services taxable
145 under subparagraph (a)1. this chapter and who cannot demonstrate
146 payment of the tax imposed by this chapter must register with
147 the Department of Revenue and pay into the State Treasury each
148 month an amount equal to the cost price, as defined in s.
149 212.02, of such electricity, natural gas, or manufactured gas
150 times the rate set forth in subparagraph (b)1. paragraph (b),
151 reduced by the amount of any like tax lawfully imposed on and
152 paid by the person from whom the electricity, natural gas, or
153 manufactured gas was purchased or any person who provided
154 delivery service or transportation service in connection with
155 the electricity, natural gas, or manufactured gas. ~~For purposes~~



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156 ~~of this paragraph, the term "cost price" has the meaning~~
157 ~~ascribed in s. 212.02(4).~~ The methods of demonstrating proof of
158 payment and the amount of such reductions in tax shall be made
159 according to rules of the Department of Revenue.

160 (g) Electricity produced by cogeneration or by small power
161 producers which is transmitted and distributed by a public
162 utility between two locations of a customer of the utility
163 pursuant to s. 366.051 is subject to the tax imposed by
164 subparagraph (a)1. this section. The tax shall be applied to the
165 cost price, as defined in s. 212.02, of such electricity ~~as~~
166 ~~provided in s. 212.02(4)~~ and shall be paid each month by the
167 producer of such electricity.

168 (h) Electricity produced by cogeneration or by small power
169 producers during the 12-month period ending June 30 of each year
170 which is in excess of nontaxable electricity produced during the
171 12-month period ending June 30, 1990, is subject to the tax
172 imposed by subparagraph (a)1. this section. The tax shall be
173 applied to the cost price, as defined in s. 212.02, of such
174 electricity ~~as provided in s. 212.02(4)~~ and shall be paid each
175 month, beginning with the month in which total production
176 exceeds the production of nontaxable electricity for the 12-
177 month period ending June 30, 1990. As used in ~~For purposes of~~
178 this paragraph, the term "nontaxable electricity" means
179 electricity produced by cogeneration or by small power producers
180 which is not subject to tax under paragraph (g). Taxes paid
181 pursuant to paragraph (g) may be credited against taxes due
182 under this paragraph. Electricity generated as part of an
183 industrial manufacturing process that ~~which~~ manufactures
184 products from phosphate rock, raw wood fiber, paper, citrus, or



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185 any agricultural product is ~~shall~~ not be subject to the tax
186 imposed by this paragraph. The term "industrial manufacturing
187 process" means the entire process conducted at the location
188 where the process takes place.

189 (i) Any person other than a cogenerator or small power
190 producer described in paragraph (h) who produces for his or her
191 own use electrical energy that ~~which~~ is a substitute for
192 electrical energy produced by an electric utility as defined in
193 s. 366.02 is subject to the tax imposed by subparagraph (a)1.
194 ~~this section.~~ The tax shall be applied to the cost price, as
195 defined in s. 212.02, of such electrical energy ~~as provided in~~
196 ~~s. 212.02(4)~~ and shall be paid each month. ~~The provisions of~~
197 This paragraph does ~~do~~ not apply to ~~any~~ electrical energy
198 produced and used by an electric utility.

199 (j) Notwithstanding any other provision of this chapter,
200 with the exception of a communications services dealer reporting
201 taxes administered under chapter 202, the department may
202 require:

203 1. A quarterly return and payment when the tax remitted for
204 the preceding four calendar quarters did not exceed \$1,000;

205 2. A semiannual return and payment when the tax remitted
206 for the preceding four calendar quarters did not exceed \$500; or

207 3. An annual return and payment when the tax remitted for
208 the preceding four calendar quarters did not exceed \$100.

209 (3) The tax imposed by subparagraph (1)(a)1. ~~subsection (1)~~
210 does not apply to:

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



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214 ~~either~~ for resale or for use as fuel in the generation of
215 electricity; or

216 2. The sale or delivery of electricity to a public or
217 private utility, including a municipal corporation or rural
218 electric cooperative association, for resale, or as part of an
219 electrical interchange agreement or contract between such
220 utilities for the purpose of transferring more economically
221 generated power;

222
223 if provided the person deriving gross receipts from such sale
224 demonstrates that a sale, transportation, or delivery for resale
225 in fact occurred and complies with the following requirements: A
226 sale, transportation, or delivery for resale must be in strict
227 compliance with the rules ~~and regulations~~ of the Department of
228 Revenue; and any sale subject to the tax imposed by this section
229 which is not in strict compliance with the rules ~~and regulations~~
230 of the Department of Revenue shall be subject to the tax at the
231 appropriate rate imposed on utilities under subparagraph
232 (1) (b) 1. ~~by paragraph (b)~~ on the person making the sale. Any
233 person making a sale for resale may, through an informal protest
234 provided ~~for~~ in s. 213.21 and the rules of the Department of
235 Revenue, provide the department with evidence of the exempt
236 status of a sale. The department shall adopt rules that provide
237 that valid proof and documentation of the resale by a person
238 making the sale for resale will be accepted by the department
239 when submitted during the protest period but will not be
240 accepted when submitted in any proceeding under chapter 120 or
241 any circuit court action instituted under chapter 72;

242 (b) Wholesale sales of electric transmission service;



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

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

262 (4) The tax imposed pursuant to subparagraph (1)(a)1. ~~this~~
263 ~~chapter~~ relating to the provision of ~~any~~ utility services at the
264 option of the person supplying the taxable services may be
265 separately stated as Florida gross receipts tax on the total
266 amount of any bill, invoice, or other tangible evidence of the
267 provision of such taxable services and may be added as a
268 component part of the total charge. If ~~Whenever~~ a provider of
269 taxable services elects to separately state such tax as a
270 component of the charge for the provision of such taxable
271 services, any ~~every~~ person, including all governmental units,



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272 shall remit the tax to the person who provides such taxable
273 services as a part of the total bill, and the tax is a component
274 part of the debt of the purchaser to the person who provides
275 such taxable services until paid and, if unpaid, is recoverable
276 at law in the same manner as any other part of the charge for
277 such taxable services. For a utility, the decision to separately
278 state any increase in the rate of tax imposed by this chapter
279 which is effective after December 31, 1989, and the ability to
280 recover the increased charge from the customer is ~~shall~~ not be
281 subject to regulatory approval.

282 (7) Gross receipts subject to the tax imposed under
283 subparagraph (1)(a)1. ~~by this section~~ for the provision of
284 electricity must ~~shall~~ include receipts from monthly customer
285 charges or monthly customer facility charges.

286 Section 6. Effective July 1, 2014, paragraph (e) of
287 subsection (1) of section 212.05, Florida Statutes, is amended
288 to read:

289 212.05 Sales, storage, use tax.—It is hereby declared to be
290 the legislative intent that every person is exercising a taxable
291 privilege who engages in the business of selling tangible
292 personal property at retail in this state, including the
293 business of making mail order sales, or who rents or furnishes
294 any of the things or services taxable under this chapter, or who
295 stores for use or consumption in this state any item or article
296 of tangible personal property as defined herein and who leases
297 or rents such property within the state.

298 (1) For the exercise of such privilege, a tax is levied on
299 each taxable transaction or incident, which tax is due and
300 payable as follows:



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301 (e)1. At the rate of 6 percent on charges for:

302 a. Prepaid calling arrangements. The tax on charges for
303 prepaid calling arrangements shall be collected at the time of
304 sale and remitted by the selling dealer.

305 (I) "Prepaid calling arrangement" means the separately
306 stated retail sale by advance payment of communications services
307 that consist exclusively of telephone calls originated by using
308 an access number, authorization code, or other means that may be
309 manually, electronically, or otherwise entered and that are sold
310 in predetermined units or dollars whose number declines with use
311 in a known amount.

312 (II) If the sale or recharge of the prepaid calling
313 arrangement does not take place at the dealer's place of
314 business, it shall be deemed to take place at the customer's
315 shipping address or, if no item is shipped, at the customer's
316 address or the location associated with the customer's mobile
317 telephone number.

318 (III) The sale or recharge of a prepaid calling arrangement
319 shall be treated as a sale of tangible personal property for
320 purposes of this chapter, regardless of whether ~~or not~~ a
321 tangible item evidencing such arrangement is furnished to the
322 purchaser, and such sale within this state subjects the selling
323 dealer to the jurisdiction of this state for purposes of this
324 subsection.

325 b. The installation of telecommunication and telegraphic
326 equipment.

327 c. Electrical power or energy, except that the tax rate for
328 charges for electrical power or energy is 4.35 7 percent.

329 Charges for electrical power and energy do not include taxes



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330 imposed under ss. 203.01(1)(a)3. and 166.231.

331 2. Section ~~The provisions of s.~~ 212.17(3), regarding credit
332 for tax paid on charges subsequently found to be worthless, is
333 ~~shall be~~ equally applicable to any tax paid under ~~the provisions~~
334 ~~of~~ this section on charges for prepaid calling arrangements,
335 telecommunication or telegraph services, or electric power
336 subsequently found to be uncollectible. As used in this
337 paragraph, the term ~~word~~ "charges" ~~in this paragraph~~ does not
338 include any excise or similar tax levied by the Federal
339 Government, a ~~any~~ political subdivision of the state, or a ~~any~~
340 municipality upon the purchase, sale, or recharge of prepaid
341 calling arrangements or upon the purchase or sale of
342 telecommunication, television system program, or telegraph
343 service or electric power, which tax is collected by the seller
344 from the purchaser.

345 Section 7. Effective July 1, 2014, subsection (11) of
346 section 212.12, Florida Statutes, is amended to read:

347 212.12 Dealer's credit for collecting tax; penalties for
348 noncompliance; powers of Department of Revenue in dealing with
349 delinquents; brackets applicable to taxable transactions;
350 records required.—

351 (11) The department shall make available in an electronic
352 format or otherwise the tax amounts and brackets applicable to
353 all taxable transactions that occur in counties that have a
354 surtax at a rate other than 1 percent which ~~transactions~~ would
355 otherwise have been transactions taxable at the rate of 6
356 percent. Likewise, the department shall make available in an
357 electronic format or otherwise the tax amounts and brackets
358 applicable to transactions taxable at 4.35 ~~7~~ percent pursuant to



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359 s. 212.05(1)(e)1.c. ~~s. 212.05(1)(e)~~ and on transactions which
360 would otherwise have been so taxable in counties which have
361 adopted a discretionary sales surtax.

362 Section 8. In complying with the amendments to ss. 203.01
363 and 212.05, Florida Statutes, relating to the additional tax on
364 electrical power or energy, made by this act, a seller of
365 electrical power or energy may collect a combined rate of 6.95
366 percent, which consists of the 4.35 percent and 2.6 percent
367 required under ss. 212.05(1)(e)1.c. and 203.01(1)(b)4., Florida
368 Statutes, respectively, if the provider properly reflects the
369 tax collected with respect to the two provisions as required in
370 the return to the Department of Revenue.

371 Section 9. Effective upon this act becoming a law, the
372 Department of Revenue may, and all conditions are deemed met to,
373 adopt emergency rules pursuant to ss. 120.536(1) and 120.54,
374 Florida Statutes, for the purpose of implementing the amendments
375 to ss. 203.01, 212.05, 212.12, and 212.20, Florida Statutes,
376 relating to the additional tax on electrical power or energy,
377 made by this act. This section expires July 1, 2017.

378 Section 10. Effective July 1, 2014, paragraphs (c) and (d)
379 of subsection (6) of section 212.20, Florida Statutes, are
380 amended to read:

381 212.20 Funds collected, disposition; additional powers of
382 department; operational expense; refund of taxes adjudicated
383 unconstitutionally collected.—

384 (6) Distribution of all proceeds under this chapter, ~~and~~ s.
385 202.18(1)(b) and (2)(b), and s. 203.01(a)3. is shall be as
386 follows:

387 (c) 1. Proceeds from the fees imposed under ss.



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388 212.05(1)(h)3. and 212.18(3) shall remain with the General
389 Revenue Fund.

390 2. The portion of the proceeds which constitutes gross
391 receipts tax imposed pursuant to s. 203.01(a)3. shall be
392 deposited as provided by law and in accordance with s. 9, Art.
393 XII of the State Constitution.

394 (d) The proceeds of all other taxes and fees imposed
395 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
396 and (2)(b) shall be distributed as follows:

397 1. In any fiscal year, the greater of \$500 million, minus
398 an amount equal to 4.6 percent of the proceeds of the taxes
399 collected pursuant to chapter 201, or 5.2 percent of all other
400 taxes and fees imposed pursuant to this chapter or remitted
401 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
402 monthly installments into the General Revenue Fund.

403 2. After the distribution under subparagraph 1., 8.8794
404 ~~8.814~~ percent of the amount remitted by a sales tax dealer
405 located within a participating county pursuant to s. 218.61
406 shall be transferred into the Local Government Half-cent Sales
407 Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to
408 be transferred shall be reduced by 0.1 percent, and the
409 department shall distribute this amount to the Public Employees
410 Relations Commission Trust Fund less \$5,000 each month, which
411 shall be added to the amount calculated in subparagraph 3. and
412 distributed accordingly.

413 3. After the distribution under subparagraphs 1. and 2.,
414 0.0956 ~~0.095~~ percent shall be transferred to the Local
415 Government Half-cent Sales Tax Clearing Trust Fund and
416 distributed pursuant to s. 218.65.



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417 4. After the distributions under subparagraphs 1., 2., and
418 3., 2.0602 ~~2.0440~~ percent of the available proceeds shall be
419 transferred monthly to the Revenue Sharing Trust Fund for
420 Counties pursuant to s. 218.215.

421 5. After the distributions under subparagraphs 1., 2., and 3.,
422 1.3514 ~~1.3409~~ percent of the available proceeds shall be
423

424 ===== T I T L E A M E N D M E N T =====

425 And the title is amended as follows:

426 Delete lines 387 - 388

427 and insert:

428 the communications services tax; amending s. 203.01,
429 F.S.; providing for an additional tax on charges for
430 electrical power or energy and the rate for such tax;
431 providing for the redistribution of certain taxes on
432 electrical power and energy; amending ss. 212.05 and
433 212.12, F.S.; conforming provisions to changes made by
434 the act; providing that a seller of electrical power
435 may combine the collection of certain taxes if
436 properly reflected in its return to the Department of
437 Revenue; providing for emergency rules; amending s.
438 212.20, F.S.; revising the distribution of taxes,
439 including the taxes collected on charges for
440 electrical power and energy; providing for a monthly
441 distribution of a