

The FLORIDA Tax Guide for Municipal Electric Utilities

Sixth Edition



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This Tax Guide was written for Florida's municipally owned electric utilities that are members of the Florida Municipal Power Agency (FMPA) or the Florida Municipal Electric Association (FMEA). Please do not duplicate, or in any way distribute, this Tax Guide to anyone or any organization that is not affiliated with FMPA or FMEA.

This Tax Guide addresses many of the issues involved in collecting and remitting to the Department of Revenue (DOR) the Sales and Use, Fuel, Gross Receipt, and Communications Services taxes that apply to various electric and gas utility transactions; however, the Guide is not intended to be all-encompassing, and it does not address the tax implications of every utility transaction. Moreover, the statutes and rules regulating these transactions are often vague and subject to differing interpretations.

Some of the discussion in this Tax Guide is based on DOR's informal interpretations, which are not binding on DOR. In addition, many issues have not been addressed, and portions of this Tax Guide are based on **our** interpretation of the rules and statutes. Please note that whenever a statement is qualified with the phrase "we believe," that statement is **our** interpretation of the statutes and rules, and we are not aware of any binding interpretations regarding that issue. We encourage you to seek legal advice or a binding letter from DOR regarding transactions that are not adequately addressed by this Guide or by DOR's rules.

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I. INTRODUCTION

Municipal electric utilities provide low-cost, reliable electric service, and play an important role in Florida’s electric industry. Specifically, Florida municipal electric utilities:

- Serve approximately 15% of the state’s population—about 2 million Floridians;
- Provide an industry-wide yardstick for efficient operation and superior service;
- Promote increased wholesale competition to lower consumer power costs, and have been at the forefront of efforts to improve wholesale transmission access;
- Are community-owned, locally accountable, and locally managed; and
- Support local government with transfer payments, which improve local communities

This Tax Guide is provided as a service to members of FMEA* and FMPA** in assessing the taxability of certain transactions engaged in by municipal electric utilities. It begins by summarizing some of the rights and protections provided by Florida law to all Florida taxpayers and outlining the basic steps for determining the taxability of a transaction. This Tax Guide is then divided into two major parts, “Selling Transactions” and “Buying Transactions.” Each part analyzes the taxes applicable to either sales or purchases involving a municipal electric utility and discusses how these taxes should be applied to specific transactions. Next, this guide provides information on how to remit taxes and how the tax audit process works. Finally, it concludes by providing recommendations for getting additional information that is outside of the scope of this Tax Guide.

* The Florida Municipal Electric Association, Inc. (FMEA) represents the unified interests of 33 public power communities across Florida. FMEA was established in 1942 in response to WWII fuel shortages and is now the well-respected, statewide trade association for Florida’s public power community. FMEA provides its members with government relations, communications, and education services.

** Florida Municipal Power Agency (FMPA) is a governmental wholesale electric utility company owned by Florida’s municipal electric utilities. FMPA provides economies of scale in power generation and related services to support community-owned electric utilities.

II. TAXPAYER’S BILL OF RIGHTS

Section 213.015, Florida Statutes

In addition to the obligation to pay taxes, and possibly interest and penalties, taxpayers also have certain rights that protect their interests. In 1992 the Florida Legislature created the “Florida Taxpayer’s Bill of Rights,” which provides many protections for taxpayers, including, but not limited to, the following:

- A.** Reliance on written advice, such as a declaratory statement or a Technical Assistance Advisement (TAA), from the Florida Department of Revenue (DOR) will relieve the taxpayer from all penalties and interest;
- B.** Both DOR and the taxpayer may receive costs and attorneys’ fees for any action brought without justiciable issue of fact or law;
- C.** Any interest that accrues as a result of errors or delays caused by a DOR employee are to be waived; and
- D.** Each taxpayer has the right to have DOR begin and complete its audits in a timely and expeditious manner after notification of intent to audit.

III. BASIC TAX ANALYSIS OUTLINE

➤ Is this a selling transaction?

- **Selling electricity or gas?**

- **Sales Tax** – Sales of electricity and gas to your customers are subject to sales tax unless there is an applicable exemption. Sales of electricity are taxed at a combined rate of 6.95% and gas at a rate of 6%. In addition, counties may levy additional discretionary sales surtaxes of .5% - 1%.

- Residential sales are exempt – p. 8
- Sales for resale are exempt – p. 13
- Does another exemption apply? – p. 8-15

- **Gross Receipts Tax** – Gross receipts tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state, unless there is an applicable exemption. The gross receipts tax is 2.5%.

- Does an exemption for electricity apply? – p. 29-30
- Does an exemption for natural gas apply? – p. 33-34

- **Municipal Public Service Tax** – Municipalities and charter counties are permitted to levy a tax of up to 10% on the purchase of electricity, metered natural gas, liquefied petroleum gas (either metered or bottled), manufactured gas (either metered or bottled), and water service.

- MPST is imposed according to local ordinances – p. 43-45
- For customers outside of the city limits, a surcharge equal to the MPST is also permitted – p. 43

- **Selling communication services?**

- **Communication Service Tax** – The CST is a tax on communications services, which include long distance or toll telephone service, satellite and cable television, mobile communications, and private communications. In general, the state portion of the Florida CST contains a state rate of 4.92%, plus a gross receipts rate of 2.37% and an additional rate of .15%, for a combined state tax rate of 7.44%. In addition, each county or municipality sets its own local CST rate.

- Is the communication service a taxable service? – p. 36-38
- Is the communication service exempt? – p. 39-40
- Some residential services are exempt from the 4.92% and .15% rates – p. 39-40

- Homes for the aged, religious institutions, and educational institutions are exempt – p. 39
 - Any county, municipality, or political subdivision of the state is exempt – p. 39
 - For direct-to-home satellite service, the state rate portion of the Florida CST is 9.07%, plus a gross receipts rate of 2.37%, for a combined state tax rate of 11.44%. There is no local CST on direct-to-home satellite service. – p. 37
 - **Other Sales, Rentals, and Leases?**
 - **Sales Tax** – The sales tax rate generally is 6% of the total price of the retail sale or rental of tangible personal property (TPP) (including natural gas) and on certain services and admissions. In addition, many counties assess various Discretionary Sales Surtaxes of 0.5% to 1%.
 - Sales of water are exempt – p. 15
 - Isolated and occasional sales are exempt – p.15-18
 - Sales for resale are exempt – p. 18
 - Other sales, rentals, and leases? – p. 18-22
- **Is this a buying transaction?**
- **Buying TPP?**
 - **Sales Tax** – Purchases by political subdivisions of the state of TPP, except “machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy,” **generally** are exempt from the 6% sales tax when the payment is made directly to a vendor by the utility.
 - Is it an exempt sale to a municipality or a taxable sale to a contractor? – p. 50-51
 - Taxable purchase of generation, transmission, or distribution equipment? – p. 52
 - Does the Power Plant Use exemption apply? – p. 52-53
 - Repairs, replacements, and testing? – p. 53-54
 - Does another exemption apply? – p. 55-58
 - **Use Tax** – The use tax is imposed at the rate of 6% upon the cost of TPP imported into this state for use, consumption, distribution, or storage for use or consumption in this state, after it has come to rest and has become a part of the general mass of property of the state.
 - Applicable to municipal utilities only where non-exempt purchases are made from out-of-state vendors who do not

collect sufficient sales tax, or when a previously exempted purchase is deemed taxable due to its ultimate use by the utility – p. 61-63

- **Buying Fuel?**

- **Fuel Tax** – Purchases of fuels for use in motor vehicles are subject to the state fuel tax and discretionary taxes in lieu of the 6% sales and local taxes. Effective January 1, 2016, the state tax rate on motor fuel and diesel fuel is 17.3 cents per gallon.

- Motor Fuel – p. 64
- Diesel fuel – p. 64-65
- Natural gas fuel – p. 65-66

- **Owning/Leasing Property?**

- **Ad Valorem Tax** – All property owned and used by municipalities which is used for municipal or public purposes is generally exempt from ad valorem taxation.

- Exclusive use for municipal or public purpose? – p. 69
- Property owned by a municipal utility, but used by nongovernmental lessees? – p. 70

IV. SELLING TRANSACTIONS

In addition to selling utility services, such as electricity for light, heat, or power, municipal utilities often provide other products and services to customers, such as private area lighting and sales or rentals of personal property.

Florida law provides that it is the legislative intent that every person that engages in the business of selling tangible personal property (TPP) at retail in this state is exercising a taxable privilege. For exercising such a privilege, sales tax is levied on each taxable transaction, unless the transaction is specifically exempt.

In addition to sales tax, utility services may be subject to the gross receipts tax and communications services may be subject to the communications services tax. Municipalities and charter counties may also levy a municipal public service tax on the purchase of electricity, natural gas, liquefied petroleum, and/or manufactured gas.

This Part begins by discussing the Florida sales tax and how it applies to sales by a municipal utility. It then briefly outlines the discretionary sales surtax levied by counties, which are in addition to the Florida sales tax. Next, it details the gross receipts tax and provides instruction on how to calculate gross receipts tax due on charges for utility services. This Part then discusses the communication services tax and its applicability to communication services provided by a municipal utility. The municipal public service tax is then explained, followed by a brief discussion of the tax treatment of solar power in Florida.

Please keep in mind that each of these taxes operates independently, and each tax has unique exemptions. **Exemptions are not generic.** When evaluating the tax status of a transaction, be sure to evaluate each tax separately.

A. Sales Tax

Chapter 212, Florida Statutes

Rule Chapter 12A, Florida Administrative Code

Sales tax is computed on the sales price of an item sold, and is not a tax upon the item sold itself, but rather a tax on the privilege of selling the item in this state. Section 212.05, Florida Statutes, provides:

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

The term “sale” includes “any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property (TPP) for a consideration.” § 212.02(15), Fla. Stat. (2015).

There are various exemptions to the sales tax throughout Chapter 212, Florida Statutes, many of which are discussed in detail below. Note that many purchases by municipalities are exempt from sales tax, but most sales by municipalities are not exempt.

The general rule is that sales tax applies to every retail sale (including admissions and rentals) unless the transaction or the purchaser is exempt from taxation. However, sales taxes generally do not apply to sales of services unless the transaction is specifically enumerated in the statutes. *See* § 212.05, Fla. Stat. (2015)

Any sales tax paid or collected should be stated separately on both bills to customers and invoices from vendors. § 212.07(2), Fla. Stat. (2015). The seller is always liable for the tax and associated penalties and interest. The purchaser is liable for the tax, penalties, and interest if the purchaser cannot prove that taxes were paid to the vendor at the time of purchase. § 212.07(8), Fla. Stat. (2015).

1) Sales Tax Rates

The state sales tax rate generally is 6% of the total price of the retail sale or rental of TPP (including natural gas) and on certain services and admissions.

Sales tax on electricity, however, is comprised of two parts—the 4.35% state sales tax under § 212.05(1)(e)1.c.; and the 2.6% tax imposed under § 203.01(1)(b)4 which is subject to the same exemptions as the state sales tax. These two taxes may be collected together under a combined rate of 6.95% and shown on customer bills under a single line item of “sales tax.”

In addition to these state sales tax rates, many counties assess various Discretionary Sales Surtaxes of 0.5% to 1%. *See* §§ 212.05, .054, .055, Fla. Stat. (2015).

- (1) Sales Tax = 6%.
- (2) Electricity Sales Tax = 6.95%.
- (3) Discretionary Sales Taxes = 0.5% ≤ ≥ 1%.

2) Sales of Electricity and Gas

The sale of electricity and gas is considered the sale of TPP and a taxable transaction. Accordingly, sales of electricity and gas to your customers are subject to sales tax unless there is an applicable exemption. The combined sales tax rate on the sale of electricity is 6.95%, as discussed above, while the sale of gas falls under the general sales tax rate of 6%.

3) Exemptions from Sales Tax on Sale of Electricity and Gas

Sales of electricity and gas are subject to sales tax, unless one of the following exemptions applies:

a) Residential Household Exemption

Sales of electricity or gas to residential households or residential models are exempt when service is provided pursuant to a residential tariff and the utilities are used exclusively for residential purposes. § 212.08(7)(j), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.053 (2016).

i. **Residential Housing Complexes**

In a complex of many units, to the extent that each home, unit of a condominium, or mobile home/trailer located in a mobile home park is (1) separately metered and (2) used exclusively as a residential household, the exemption applies. The exemption must be shown to apply to each unit separately when the units are separately metered. When the units are metered together, then it must be shown that all of the units are using the electricity solely for “household purposes”—if one unit uses electricity for another purpose, then all of the units lose their exempt status. The

exemption also applies equally to situations where a residential unit is in permanent use as it does to those where it is used temporarily. Furthermore, transfer of residential electric service for a unit to the property owner or realty company between renters will not negate the exemption as long as the electricity is used for “household purposes,” i.e. if the electricity is used for the purpose of cleaning the unit and showing it to prospective renters. *See* § 212.08(7)(j), Fla. Stat. (2015).

EXAMPLE: If an apartment building is metered by a single meter, and the electricity measured by that meter is provided to 100 residential units and is used exclusively for residential purposes and is sold pursuant to a residential tariff, the sale of electricity will be exempt from sales tax. If however, the electricity measured by the single meter is provided to 99 residential units and to the apartment leasing office, the entire sale will lose its exempt status and will be subject to sales tax since it is not being used exclusively for residential purposes.

ii. *Home-Based Businesses*

Sales of electricity or gas to residential households in which a home-based business is located are exempt only when service is provided pursuant to a residential tariff and the utilities are used exclusively for residential purposes. We strongly recommend that taxes be collected when there is any home-based business unless the customer can show the home-based business is being serviced by a separate account and presents an affidavit regarding the exclusive residential use. *See* Fla. Admin. Code r. 12A-1.053 (2016).

iii. *Common Areas of Residential Housing Complexes*

Sales of electricity or gas to common areas of a residential complex are exempt only if the account does not serve any commercial activity (such as a laundry room with coin-operated machines, a vending machine, a sewer plant, or the business office), and service is provided pursuant to a residential tariff. The account is not exempt until the association or landlord presents an exemption affidavit for that account similar in form to EXHIBIT A. *See* Fla. Admin. Code r. 12A-1.053 (2016).

EXAMPLE: If an exemption affidavit is on file, sales taxes should not be charged to an apartment complex account that serves a pool, lighting, and a recreation room, unless the utility is aware of a non-residential use served by

the meter, such as an electric vending machine in the recreation room.

iv. Facility Charges

Facility charges occur where the customer requires the utility to furnish and install special facilities, beyond those required for the normal delivery of electricity, for the exclusive use of the customer. In such case, the utility often charges the customer a facilities charge in addition to the demand and energy rate. These facility charges are entitled to the residential household exemption when used exclusively for residential purposes.

DOR advises that facility charges are for the provision of electricity, and as such are not subject to sales tax when used exclusively for residential purposes. *See* Tech. Ass't Adv. 04A-059 (Fla. Dep't of Rev. 2004). For audit purposes, we strongly recommend that such service be provided pursuant to a residential tariff, and that such charges be separately stated on customer bills.

v. Rental/Time Share Units

Sales to residential rental units are entitled to the residential household exemption when service is provided pursuant to a residential tariff, and the utilities are used exclusively for residential purposes. However, taxes should be collected and remitted when such units are served pursuant to a general service tariff and there is no affidavit on file attesting that the electricity is used exclusively for residential purposes.

DOR has advised that whether time share units are served pursuant to a general service tariff or residential tariff does not affect the applicability of the residential household exemption provided the time share units are used exclusively for residential purposes. *See* Tech. Ass't Adv. 03A-019 (Fla. Dep't of Rev. 2003). Further, if a rental/time share unit customer signs a residential use affidavit and the utility relies on that affidavit, any back taxes, interest, and penalties that may arise in the future will be sought against the customer and not the utility. *See* Tech. Ass't Adv. 98A-068R (Fla. Dep't of Rev. 1998).

vi. Residential Models

Sales to model homes pursuant to a residential tariff are exempt when the utilities are used exclusively for residential purpose, which does not include use in a sales office. *See* Fla. Admin. Code r. 12A-1.053 (2016). However, due to recent enforcement

problems, we recommend taxing accounts in the name of a development company or builder unless the customer presents an affidavit similar in form to EXHIBIT A regarding the exclusive residential use.

vii. ***Residential Street Lights***

Sales of electricity for outdoor or street lights used exclusively for residential use are exempt. *See* § 212.08(7)(j), Fla. Stat. (2015). For audit purposes, we strongly recommend that such services be provided pursuant to a residential tariff. Of course, street lights provided directly to an exempt governmental entity are exempt whether or not they are used exclusively for residential purposes.

b) **Natural Gas Exemption for Commercial Customers**

Natural gas sales to a commercial user are exempt if the customer files an affidavit, similar in form to EXHIBIT A, with the utility stating that the fuel will be used exclusively as a combustible fuel to manufacture or process goods at a fixed location. However, this exemption does not apply to hotels and restaurants. *See* § 212.08(7)(b), Fla. Stat. (2015).

c) **Electricity and Steam Exemption for Manufacturers**

Charges for electricity and steam used exclusively at a fixed location to operate machinery used to manufacture, process, compound, or produce TPP for sale or to operate pollution control, recycling, maintenance, or monitoring and control equipment may be exempt from sales tax in whole or in part. Also, the exemption applies to electric and steam-powered machinery used to prepare TPP for shipment. § 212.08(7)(ff), Fla. Stat. (2015). However, the following limitations apply:

- (1) A taxpayer's SIC Code must be within one of the following major industry 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.
- (2) If a manufacturer uses at least 75% of a facility for exempt uses, then the electricity will be 100% exempt. If exempt usage of a facility's electricity is between 50% and 75%, the exemption will be 50%. If exempt usage of a facility's electricity is less than 50%, there is no sales tax exemption.
- (3) Taxpayers can claim the exemption by sending their electricity provider a written certification of entitlement to the exemption. The certification relieves the seller from

collecting tax on exempt amounts, and the purchaser has the sole responsibility for paying the tax if the purchaser was not entitled to the exemption. Certification forms are available from DOR.

d) Various Nonprofit Institutions and Organizations

The following nonprofit organizations are generally exempt from sales tax:

- Organizations providing special educational, cultural, recreational, and social benefits to minors, as defined by Section 212.08(7)(l), Florida Statutes;
- Religious institutions, as defined by Section 212.08(7)(m), Florida Statute;
- Veteran’s organizations, as defined by Section 212.08(7)(n), Florida Statutes;
- State tax-supported schools, colleges, and universities, § 212.08(7)(o), Fla. Stat. (2015); and
- Other organizations determined by the Internal Revenue Service to be exempt from federal income tax pursuant to Section 501(c)(3) of the Internal Revenue Code. § 212.08(7)(p), Fla. Stat. (2015).

However, to qualify for the sales tax exemption, these nonprofit organizations must be certified by DOR, and a signed copy of the certificate must be provided to the utility. Fla. Admin. Code r. 12A-1.038 (2016).

Note that a DOR sales tax exemption certificate expires five years after the date of issuance. § 212.084(4), Fla. Stat. (2015).

e) Home Day Care Facilities

Licensed family day care homes, as defined in Section 402.302(7), Florida Statutes, are exempt from paying sales tax on their utility bill. § 212.08(7)(j), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.053(1)(a) (2016).

f) Nursing Homes

The sale of electricity and/or natural gas to a nursing home where all of the electricity and/or natural gas is used for an exempt purpose is not subject to sales tax. A “non-exempt” consumption of electricity is

consumption in a part of the nursing home premises used directly for conducting activities of a commercial nature that is not directly related to the care and living needs of the residents (i.e. a portion of the nursing home premises being used as a bank or travel office). Electricity supplied to areas of a nursing home that are connected in some manner to the residents' care and daily life activities is not subject to sales tax. This exemption includes electricity supplied to vending machines located in areas that are used by staff, residents, and their guests. Fla. Admin. Code r. 12A-1.053 (2016); Tech. Ass't Adv. 00A-035 (Fla. Dep't of Rev. 2000). *See also* § 400.021, Florida Statutes (2015) for the definition of a nursing home.

g) Municipal Public Service Tax

The separately-stated charge on a customer's bill for municipal public service tax (MPST) is exempt from sales tax. Fla. Admin. Code r. 12A-1.022(3)(a) (2016). This means that the amount of MPST is not included in the sales price upon which sales tax is computed. However, there is no express exemption for the equivalent surcharge on out-of-city customers authorized under Fla. Admin. Code r. 25-9.0525. This outcome may run counter to a PSC rule prohibiting surcharges that result in a payment by any customer for services received outside the city limits in excess of that charged a customer in the same class within the city limits. *See* Fla. Admin. Code r. 25-9.0525 (2016).

h) Sales to Government/Political Subdivisions

Generally, sales to the United States Government, a State, or any county, municipality, or political subdivision of the state, are exempt from sales tax when payment is made directly to the dealer by the governmental entity, and provided that a valid DOR exemption certificate, similar in form to EXHIBIT B, is on file with the seller. § 212.08(6), Fla. Stat. (2015). This exemption applies to state and federal credit unions. *See* Federal Credit Union Act, 12 U.S.C. § 1768 (2006); § 213.12, Fla. Stat. (2015).

i) Electric Energy for Resale

The sale of electricity to another utility for resale is exempt, but only if the buyer presents a valid resale or exemption certificate. Fla. Admin. Code r. 12A-1.039(b) (2016).

j) Enterprise Zones

The Florida Enterprise Zone Program was created in 1982 to encourage economic development in economically distressed areas of the state by providing a variety of incentives, including a limited sales tax exemption

for sales of electricity. **The Florida Enterprise Zone Program ended on December 31, 2015.**

However, Florida House Bill 33A, which became effective July 1, 2015, created an unnumbered section of law which continued state incentives for certain businesses with incentive agreements with the state that are currently located within enterprise zones. The bill defined the term “eligible business” to mean a business that entered into a contract with the Department of Economic Opportunity (DEO) between January 1, 2012, and July 1, 2015, for a project that is located in an enterprise zone under the following programs:

- The Local Government Distressed Area Matching Grant Program;
- The Qualified Defense Contractor and Space Flight Business Tax Refund Program;
- The Qualified Target Industry (QTI) Business Tax Refund Program;
- The Brownfield Redevelopment Bonus Refund Program;
- The High-Impact Business Performance (HIPI) Grant Program;
- The Quick Action Closing Fund (QAC) Program; and
- The Innovation Incentive Program (IIP).

House Bill 33A provided that an eligible business may apply for continued enterprise zone incentives, including the sales tax exemption for sales of electricity, if the contract with the DEO is still deemed active and has not expired or terminated. If applicable, the sales tax exemption applies to 50% of the sale of electricity, or 100% of the sale if 20% or more of the business’ employees are residents of the enterprise zone. *See* §§ 166.231(8), 212.08(15), 290.016, Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.107 (2016).

k) Packing Houses

Electricity used directly or indirectly for production, packing, or processing of agricultural products on the farm, or used directly or indirectly in a packinghouse, is exempt from the sales tax. The term “packinghouse” means any building or structure where fruits, vegetables, or meat from cattle or hogs is packed or otherwise prepared for market or shipment in fresh form for wholesale distribution. The exemption does not apply to electricity used in buildings or structures where agricultural products are sold at retail. This exemption applies only if the electricity

used for the exempt purposes is separately metered. If the electricity is not separately metered, it is conclusively presumed that some portion of the electricity is used for a non-exempt purpose, and all of the electricity used for such purposes is taxable. § 212.08(5)(e), Fla. Stat. (2015).

4) Net Metering

Under net metering, excess electricity produced at a home or business is used to offset the electricity received from a utility provider. Sales tax should be collected on the net electricity provided by the utility to the customer during a particular billing cycle. Credits allowed by the utility for excess customer-generated electrical power or energy are treated as exempt sales for resale under Rule 12A-1.039. *See also* Tech. Ass't Adv. 09A-014 (Fla. Dep't of Rev. 2009); Tech. Ass't Adv. 09A-029 (Fla. Dep't of Rev. 2009); Letter of Tech. Adv. 07A-1462 (Fla. Dep't of Rev. 2007).

EXAMPLE: The bill from the utility to a non-residential customer shows electricity consumed by the customer in the amount of \$100 and a credit for excess customer-generated electricity in the amount of \$25, resulting in a balance of \$75. Sales tax would be calculated at the rate of 6.95% on the net charge of \$75.

5) Sales of Water

Sales of water to residential and commercial accounts are exempt. Note that this exemption does not apply to the sale of drinking water in bottles, cans, or other containers if carbonation or flavorings have been added, except those added at a water treatment facility. § 212.08(4)(a)1., Fla. Stat. (2015).

6) Sales of Other Tangible Personal Property (TPP)

Sales of TPP to non-exempt entities must be taxed, provided the sale does not otherwise qualify as an occasional sale or sale for resale as discussed below. *See* § 212.05, Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.037 (2016).

EXAMPLE: If a utility sells a low-flow showerhead to a customer, the sale to a residential customer must be taxed, but the sale to a church is exempt if a valid exemption certificate is presented at the time of sale.

EXAMPLE: If a utility sells logo merchandise to residential customers or employees, the sale is subject to sales tax.

a) Occasional and Isolated Sales

Sales that qualify as “occasional or isolated sales” are exempt provided that the sale or series of sales meets specific requirements regarding: the intent of the parties; the frequency and duration of the sale; the type of

TPP or services offered for sale; the location where the sale takes place; and the status of the parties as it relates to the property or taxable services being sold. Fla. Admin. Code r. 12A-1.037(1) (2016).

i. *Isolated Sales or Transactions*

Generally, the exemption for isolated sales applies to the sale by a dealer of an entire division or line of business. Specifically, an isolated sale occurs when an entity either (1) distributes [non-inventory] TPP in exchange for the surrender of a proportionate interest in an entity; or (2) transfers all, or substantially all, the property of the person's business, or a division thereof. Fla. Admin. Code r. 12A-1.037(2) (2016). To qualify as an isolated sale or transaction under the second prong, the sale must be of an entire, or nearly entire, division or business, not just certain assets within the division.

EXAMPLE: X Corp and Y Corp will each transfer \$500,000 worth of non-inventory TPP to form XY Corp in exchange for X Corp and Y Corp each owning 50% of XY Corp stock. That transfer of TPP to XY Corp is exempt as an isolated sale.

EXAMPLE: X Corp transfers all or substantially all of the TPP of one of its divisions to Y Corp, a newly formed corporation, in exchange for all of the stock of Y Corp. The transfer of the TPP is a contribution to the capital of Y Corp and therefore is an exempt isolated sale.

Note that there are several requirements and exceptions to the isolated sales exemption. Accordingly, we advise that this exemption be applied with caution.

ii. *Occasional Sales or Series of Sales*

Occasional sales or series of sales of TPP are exempt from sales tax; however there are numerous requirements to qualify as such a sale or series of sales. Fla. Admin. Code r. 12A-1.037(3) (2016).

- **Exempt Occasional Sales.** An exempt occasional sale or series of sales by the owner of TPP must occur under the following circumstances:

- (1) The seller must have previously paid any applicable sales or use tax on such property; and

- (2) Such sales must occur no more frequently than two (2) times during any twelve (12) month period. The third sale in a 12-month period is taxable, and any future sales are taxable until such sales or series of sales occur no more than two times within any 12-month period.

A “series of sales” within a 30-day period may be treated as a single sale for determining whether there are more than two sales within any 12-month period.

- **Non-Exempt Sales.** The sale of TPP under any one of the following circumstances is taxable and is not an occasional sale:

- (1) The sale or series of sales occurs more than two times in any twelve month period. Note that tax will only apply to the third and subsequent sales; it will not be retroactive on the first two sales after the third sale occurs;
- (2) The property was originally purchased or acquired for resale;
- (3) The sale or series of sales occurs from the same commercial premises or from a location, which is not a fixed and permanent business location, and which is in competition with other persons required to collect tax;
- (4) The sale is made through a person required to be registered as a dealer to collect and remit tax on such sales (i.e. an auctioneer, agent, or broker);
- (5) The sale involves an aircraft, boat, mobile home, or motor vehicle; or
- (6) The sale involves admissions or taxable rentals, leases, or licenses of transient rental accommodations, real property, parking lots, garages, docking, tie down spaces, or

storage spaces for motor vehicles, boats, or aircraft.

See Fla. Admin. Code r. 12A-1.037 (2016). Note that this exemption is limited by many restrictions, and it should be applied with caution.

EXAMPLE: A sale of used poles or wire is an exempt occasional sale if: the utility does not sell such scrap more than two times in any 12-month period, the utility initially paid sales tax on those items unless an exemption applied, and those items were not inventoried or purchased for resale.

b) Sales for Resale

The statute imposing sales and use tax applies only to sales at retail. Sales to another person for the purpose of resale are exempt if the purchaser supplies a resale affidavit. *See* § 212.02(14)(a), Fla. Stat. (2015).

7) Security Lights/Private Area Lighting

A municipality may enter into Private Area and Commercial Lighting Agreements with both residential and commercial entities. Sales tax, gross receipts tax, and utility or public service tax are often applied to the revenues received from these programs. The following list presents examples of common “sales or leases” that have tax implications:

- (i) Any electricity supplied to security lighting for a residential entity pursuant to an Outdoor Lighting Agreement is not subject to sales tax, provided that such electricity is used exclusively for residential purposes; conversely, the supply of electricity to security lighting for a commercial entity is subject to sales tax.
- (ii) However, if such sale of electricity is bundled with taxable charges, such as rental charges for light fixtures or light poles, the entire charge may be subject to sales tax. *See* Tech. Ass’t Adv. 04A-067 (Fla. Dep’t of Rev. 2004) (advising that a utility’s charge for private area lighting for residential use was nonetheless subject to sales tax since the charge for the electricity was bundled with a taxable charge for the rental of the light fixture). Accordingly, we recommend that charges for the sale of electricity and charges for the sale or rental of associated items of TPP be separately itemized on the customer’s bill. *See* Tech. Ass’t Adv. 07A-025 (Fla. Dep’t of Rev. 2007) (advising that a

utility's charge for private area lighting for residential use was not subject to sales tax since the charge for the electricity was separately stated).

- (iii) If the utility agrees to replace and/or repair damage to its outdoor lighting fixtures, lamps, or equipment, while in use on the customer's property, the utility should recoup from the customer any sales tax the utility pays for the replacement equipment or materials.
- (iv) The long or short term lease or sale of an outdoor lighting system, i.e. TPP, is subject to sales tax.
- (v) If the utility agrees to relocate the outdoor lighting system during the course of the contract, this transaction equates to a service, and is not subject to sales tax.
- (vi) If the lease is prematurely terminated by the customer, any lump sum penalty payment made to the utility is not subject to sales tax if the utility does not record the penalty payment as rental income. If the utility records the penalty payment as rental income, the penalty payment is subject to sales tax. *See Fla. Admin. Code r. 12A-1.071(14)(b) (2016).*
- (vii) A municipal utility may enter into Private Outdoor Lighting Maintenance Agreements with its customers who own their security lighting, which consist of a monthly patrol charge, incidental maintenance, and replacement materials. Improvements to real property are not subject to sales tax; therefore, labor costs will not be taxed. However, we believe TPP purchased and utilized by the utility to fulfill the contract is subject to sales tax and should be collected from the customer.

8) Renewable Fuel Machinery and Equipment

The sale or use of materials used in the distribution of biodiesel (B10-B100), ethanol (E10-E100), and other renewable fuels, including fueling infrastructure, transportation, and storage, is exempt up to a limit of \$1 million in tax each state fiscal year for all taxpayers. **The exemption is set to expire on July 1, 2016.**

An eligible item is subject to a one-time refund of previously paid sales taxes. A person who has received a refund on an eligible item shall notify the next purchaser of the item that the item is no longer eligible for a refund of paid taxes. The notification shall be provided to each subsequent purchaser on the

sales invoice or other proof of purchase. To be eligible to receive the refund, a purchaser must file an application with the Department of Agriculture and Consumer Services. § 212.08(7)(hhh), Fla. Stat. (2015).

9) Tangible Personal Property (TPP) Rentals

Generally, any rental, lease, or license to use TPP is subject to sales tax at the rate of 6%. § 212.05(1)(c), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.071 (2016). The tax applies to transactions under which a person secures for consideration the temporary use of TPP which, although not on his premises, is operated by or under the direction or control of the person or his employees. *Id.* For the exercise of the privilege of renting TPP in this state, sales tax is levied at a rate of 6% of the lease or rental price paid by a lessee or renter, or contracted or agreed to be paid by a lessee or renter, to the owner of the TPP. Note that other exemptions may apply. *See* Fla. Admin. Code r. 12A-1.071 (2016).

EXAMPLE: Regarding Private Area Lighting, DOR has advised that a monthly charge for the pole on which the light is mounted constitutes the rental of TPP and is subject to sales tax. *See* Tech. Ass't Adv. 04A-067 (Fla. Dep't of Rev. 2004).

10) Real Property and Concessionaire Rentals

Generally, property and concessionaire rentals to non-exempt entities are subject to sales tax. However, if a municipality leases property to a business to provide food and drink concessionaire services within the premises of a convention hall, exhibition hall, auditorium, stadium, theatre, arena, civic center, performing arts center, or recreational facility, that lease is exempt. § 212.031(1)(a)10., Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.070 (2016); Tech. Ass't Adv. 00A-017 (Fla. Dep't of Rev. 2000). Certain exemptions also apply to concessionaire rentals in airports. *See* Fla. Admin. Code r. 12A-1.070 (2016).

EXAMPLE: If a city rents office space to an entity that does not possess a valid exemption certificate, the rent must be taxed. However, if the same space is rented to a church that presents a valid exemption certificate, the rent is exempt.

EXAMPLE: If a city rents or licenses a concession stand for a sports event in the local civic center, that rental or license is exempt from sales tax.

11) Dark Fiber Leases

A fiber optic cable network consists of many fibers contained within a bundle, which are generally buried underground. These fibers are used to transmit

electronic information from one demarcation point to another. When in use, the fibers are considered “lit,” and while not in use the fibers are considered “dark.”

Because of the high cost of installing a fiber optic cable network, it is often economical for a utility to install significantly more fiber than needed for its own current use or demand. These additional dark fibers can be leased to third parties, either with or without accompanying transmission services. If sold without accompanying transmission services, the lessee uses its own equipment to light the dark fiber stands between two demarcation points.

Dark fiber is considered to be a fixture to real property because it is bolted in place or buried underground, and intended to be left in place for an extended period of time. Fla. Admin. Code r. 12A-1.051(2)(c)3.b. (2016). As such, charges for the lease of dark fiber are not considered to be from the sale of electricity, but rather the lease of TPP, which is subject to sales tax unless another exemption applies. Tech. Ass’t Adv. 15A19-002 (Fla. Dep’t of Rev. 2015). If the utility is also supplying other network transmission services to light the fiber, those charges may be subject to Communication Services Tax. See part IV.D, *infra*.

12) Services

Services generally are not subject to sales taxes. However, service warranties and security/protection services are subject to the sales tax. See § 212.08(7)(v), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.105 (2016).

EXAMPLE: We believe that if a utility leases a piece of equipment to its customers and charges its customers a small fee per month (\$2.00, for example) for a service warranty on that equipment, then that \$2.00 per month service warranty charge is subject to sales tax.

13) Admissions

Admissions to places of amusement, sport, or recreation are subject to sales taxes, including theater tickets, greens fees, charges for driving range balls, golf club rentals, and gate fees for swimming pools. However, a participation or sponsor fee imposed by a governmental entity for an athletic or recreational program, such as a softball league or pottery class sponsored by a parks and recreation department, is exempt if a governmental entity sponsors and controls the program. § 212.04, Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.005 (2016).

14) Pole Attachment and Joint Use Agreements

Income received for the rental of space on utility poles will be exempt from sales tax under the “Utility Exemption” if the following can be demonstrated:

- (a) the utility pole is classified as real property and is located on a public or private street, right-of-way, or easement;
- (b) is being used for utility pole purposes by the taxpayer; and
- (c) the taxpayer is a utility.

§ 212.031(1)(a)5., Fla. Stat. (2002). This exemption also applies to communication or television attachments. Note that DOR has taken the position that transmission and distribution facilities are improvements to real property once installed. *See* Tech. Ass't Adv. 91A-040 (Fla. Dep't of Rev. 1991). We believe that this position continues to be accurate.

B. Discretionary Sales Surtax

**Sections 212.054 and 212.055, Florida Statutes
Rule 12A-15.004, Florida Administrative Code**

1) Surtax

There are various discretionary sales surtaxes which may be levied by counties. However, no county may levy such a tax unless it is specifically authorized by Section 212.055, Florida Statutes. § 212.054, Fla. Stat. (2015). The allowable tax rate for each surtax generally varies between 0.5% and 1%. The actual surtax rate is that of the county in which the sale occurs, which generally is where the dealer delivers, or the customer picks up the merchandise. Authorized discretionary sales surtaxes include the following:

- (a) Charter County Transit System Surtax (Not to exceed 1%);
- (b) Local Government Infrastructure Surtax (Equaling 0.5% or 1%);
- (c) Small County Surtax (Equaling 0.5% or 1%);
- (d) Indigent Care and Trauma Center Surtax (Not to exceed 0.5%);
- (e) County Public Hospital Surtax (Equaling 0.5%);
- (f) School Capital Outlay Surtax (Not to exceed 0.5%);
- (g) Voter-Approved Indigent Care Surtax (Equaling 0.5% or 1%);
- (h) Emergency Fire and Rescue Services and Facilities Surtax (Not to exceed 1%).

§ 212.055, Fla. Stat. (2015).

2) Applicability

Any transaction that is subject to the sales and use tax also is subject to the local option surtax. However, any sale that is exempt from the sales tax also is exempt from the surtax. In other words, the general principle in applying discretionary surtaxes is that they piggyback the state sales and use tax. If a transaction is subject to sales tax and occurs at a location where surtax is imposed, the surtax also applies. *See* § 212.054(2)(a), Fla. Stat. (2015).

3) \$5,000 Surtax Cap

The local option surtax does not apply to that portion of a sale of TPP that exceeds \$5,000, including sales of gas and electricity to commercial/industrial

accounts. There are specific circumstances in which more than one item of TPP can be aggregated for purposes of application of the surtax. For purposes of administering the \$5,000 limit, if two or more taxable items of TPP are sold to the same purchaser at the same time and (under generally accepted business practice or industry standards or usage) are normally sold in bulk, or when assembled, comprise a working unit or part of a working unit, then such items may be considered a single item for purposes of the \$5,000 limitation when supported by a charge ticket, sales slip, invoice, or other tangible evidence of a single sale or rental. *See* § 212.054(2)(b), Fla. Stat. (2015). In addition, the \$5,000 limitation applies to the entire purchase order even if the items are not invoiced or shipped together, so long as the items are delivered within the time specified on the purchase order. *See* Fla. Admin. Code r. 12A-15.004 (2016).

It is our understanding that the \$5,000 cap applies to each monthly utility bill, rather than to each meter separately. However, we believe the cap applies independently to electric sales and gas sales even if they are billed together. For example, if a customer's monthly bill includes electric sales of \$11,000 and gas sales of \$6,000, the local option surtax probably applies to \$5,000 of the electric charges and \$5,000 of the gas charges. *See generally* Tech. Ass't Adv. 91A-055 (Fla. Dep't of Rev. 1991).

C. Gross Receipts Tax

Chapter 203, Florida Statutes

Rule Chapter 12B-6, Florida Administrative Code

Gross receipts tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state. § 203.01(1)(a), Fla. Stat. (2015). The definition of “utility services” includes transportation, delivery, transmission, and distribution of electricity or natural or manufactured gas. § 203.012(3), Fla. Stat. (2015).

The statute uses the term “distribution companies” when referring to the entity subject to gross receipts tax on utility services. A “distribution company” is defined to include “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.” § 203.012(1), Fla. Stat. (2015). We believe that all of FMEA’s member utilities fit within this definition of “distribution company” for gross receipts tax purposes.

This chapter examines the gross receipts tax in two areas. First, it explains the applicability of gross receipts tax to the sale and delivery of electricity. Second, it does the same for the sale or transportation of natural or manufactured gas.

1) Gross Receipts Tax on Sale/Delivery of Electricity

The gross receipts tax is imposed on the gross receipts of a distribution company for its sale and delivery of electricity to a Florida retail consumer. The amount of tax owed is dependent upon whether (1) the utility company charges a bundled charge for both the electricity and the transportation of the electricity to the customer, or (2) the utility charges an unbundled charge for just the delivery of electricity.

Electricity in Florida is not sold with unbundled pricing. All retail electric charges include the sale of both the electricity and the transportation of the electricity, and the entire charge is subject to gross receipts tax. However, if in the future electricity is unbundled, the tax calculation formula provided in Section 203.01(d), Florida Statutes, detailed below, will apply to the unbundled charge.

a) Bundled Charge for Electricity and Transportation

Where the charge includes both a charge for the electricity and a charge for the transportation, the gross receipts tax is imposed upon the distribution company’s total gross receipts from such sales. *See* § 203.01(1)(c), Fla. Stat. (2015).

The gross receipts tax rate for the electric utility services is 2.5%. See § 203.01(1)(b), Fla. Stat. (2015).

b) Unbundled Charge for Delivery of Electricity Alone

If the delivery charge does not include both a charge for the electricity and a charge for the transportation, the amount of tax due is determined by multiplying the number of kilowatt hours delivered by the index price, which is provided by DOR, and applying the applicable tax rate, which is currently 2.5%. See § 203.01(d), Fla. Stat. (2015).

As mentioned above, the provision for unbundled charges in the gross receipts tax statute does not currently have any effect on Florida electric utilities.

c) Specific Sales/Charges by the Utility

i. Sales Tax and Municipal Public Service Tax

Sales tax and municipal public service tax, when separately itemized on a customer's bill, are not subject to the gross receipts tax. See Fla. Admin. Code r. 12B-6.0015(2)(a)4. (2016). However, sales tax should be charged on separately stated gross receipt and franchise fee charges. See Fla. Admin. Code r. 12A-1.022(2) (2016).

We believe a surcharge for residents outside city limits (which is meant to mirror the municipal public service tax) is a part of the gross receipts, and is therefore subject to gross receipts tax even if separately itemized on customer's bills. However, this outcome may run counter to a PSC rule governing such surcharges. See Fla. Admin. Code r. 25-9.0525 (prohibiting surcharges that result in a payment by any customer for services received outside the city limits in excess of that charged a customer in the same class within the city limits).

ii. Gross Receipts Charges

Gross receipts charges are not exempt from gross receipts taxes. In other words, when a utility charges "Florida gross receipts tax" on a customer's billing, whether or not it is separately stated, the amount of gross receipts tax is calculated at the rate of 2.5% of the total amount billed for the electric services, including the amount charged for "Florida gross receipts tax." Fla. Admin. Code r. 12B-6.0015(3)(a) (2016). To simplify this calculation, the following formula is used in computing the gross receipts tax rate:

$$\text{GR Tax Rate} = .025 / (1 - .025) = .025641$$

iii. ***Net Metering***

Under net metering, excess electricity produced at a home or business is used to offset the electricity received from a utility provider. Gross receipts tax should be collected on the net electricity used during a particular billing cycle. *See* Tech. Ass't Adv. 09A-014 (Fla. Dep't of Rev. 2009); Tech. Ass't Adv. 09A-029 (Fla. Dep't of Rev. 2009); Letter of Tech. Adv. 07A-1462 (Fla. Dep't of Rev. 2007).

EXAMPLE: The bill from the utility shows electricity consumed by the customer in the amount of \$100 and a credit for excess customer-generated electricity in the amount of \$25, resulting in a balance of \$75. Gross receipts tax would be calculated at the rates of 2.5% on the net charge of \$75.

Note that electricity produced and consumed by the customer may also cause the customer to be required to remit gross receipts use tax to DOR. *See* § 203.01(1)(f), Fla. Stat. (2015); Fla. Admin. Code r. 12B-6.0015(4) (2016); *see also* part V.C.4., *infra*.

iv. ***Pole Attachment and Joint Use Agreements***

We believe that receipts from pole rental agreements with telephone companies, cable television companies, etc., are not subject to the gross receipts tax because such amounts are not gross receipts from the sale or delivery of electricity. *See* § 203.012(3), Fla. Stat. (2015); *see also* Tech. Ass't Adv. 11A-006 (Fla. Dep't of Rev. 2006) (explaining that "Utility service" does not include separately stated charges for tangible personal property or services which are not charges for electricity or the transportation, delivery, transmission, or distribution of electricity.").

v. ***Wheeling Services***

We believe that receipts from an entity for wheeling electricity from one of its facilities to another of its facilities are not subject to the gross receipts tax, but we are not aware of any binding interpretations from DOR to support our interpretation.

vi. **Franchise Fees**

When a franchise fee, or any other fee imposed by a political subdivision of Florida, is passed on to a utility's customers and separately stated on a customer's bill, that franchise fee is included in the charge upon which gross receipts tax is computed. *See* Fla. Admin. Code r. 12B-6.0015(2)(a)3. (2016).

vii. **Credits**

Credits, such as load management credits, should be offset against the utility's receipts for calculating the gross receipts tax on customer bills. Load management credits applied to a bill prior to receipt of payment will offset other "receipts" for that bill. *See* Fla. Admin. Code r. 12B-6.0015(2)(a)2.a. (2016). However, this does not apply to rebates. A credit reduces gross receipts, but a rebate that is not directly credited to a customer's bill or account will not offset electric revenues or reduce the gross receipts tax liability because it is not an adjustment on the same bill. *Id.*

viii. **Street Lights**

Sales of electricity used for street lights are subject to the gross receipts tax, but the rental of a street light luminaire or pole is not subject to gross receipts tax. *See* § 203.012(3), Fla. Stat. (2015). *See also* Tech. Ass't Adv. 07A-025 (Fla. Dep't of Rev. 2007).

ix. **Private Area Lighting Charges**

Sales of electricity used for private area lighting are subject to gross receipts tax. However, the rental charge for a private area lighting pole is not subject to gross receipts tax.

DOR advises that where a charge for electricity used in private area lighting is bundled on a customer bill with a rental charge for equipment used for private area lighting, the entire charge is subject to gross receipts tax. *See* Tech. Ass't Adv. 04A-067 (Fla. Dep't of Rev. 2004). However, adverse tax effects can be avoided through careful customer billing. Specifically, charges for the sale of electricity should be separately stated on the customer's bill from charges for the rental of TPP. Such line item billing will result in gross receipts tax applying to the sale of electricity, but not to the rental of TPP. *See* Tech. Ass't Adv. 07A-025 (Fla. Dep't of Rev. 2007).

x. ***Customer Charges and Facilities Charges***

Receipts from monthly customer charges or monthly customer facility charges are subject to gross receipts tax. *See* § 203.01(7), Fla. Stat. (2015). The term “facility charge,” however, is not defined.

DOR advises that the use of the equipment and the location of the equipment will determine whether the charge is subject to gross receipts tax or sales tax. If the equipment is used in the provision of electricity and is on the “electric utility’s side” of the “point of delivery,” then gross receipts tax is imposed, and sales tax may or may not be due. If the equipment is either on the “customer side” of the “point of delivery” or not used in the provision of electricity (e.g., a light pole or light pole fixture), and is separately stated from the charge for utility services in general, then gross receipts tax does not apply and sales tax is imposed on the leasing of that equipment. *See* Tech. Ass’t Adv. 11A-006 (Fla. Dep’t of Rev. 2011).

xi. ***Sales of Electricity by Separate Utility Authority to Municipality***

When the utility is a separate utility authority, the sales of electricity made by the separate utility authority to the city or other city agencies are subject to gross receipts unless another exemption applies to the transaction (i.e. sales for resale, sales pursuant to electric interchange agreement, etc.). *See* Tech. Ass’t Adv. 03A-061 (Fla. Dep’t of Rev. 2003).

EXAMPLE: Utility is a separate utility authority that sells electricity to City. The sale is not for resale and is not part of an electrical interchange agreement or contract for the purpose of transferring more economically generated power. Instead, City uses the electricity for normal heating, cooling, and lighting requirements. Utility’s receipts from this sale are subject to gross receipts tax provided that there are no other applicable exemptions.

xii. ***Internal Use***

A municipality’s internal use of electricity generated by a municipal utility is not considered a taxable sale or gross receipt for gross receipts tax purposes. *See* Tech. Ass’t Adv. 93(B)6-001A (Fla. Dep’t of Rev. 1993). However, interdepartmental transfers of purchased power may be subject to gross receipts tax. *See* parts IV.C.2.b and V.C.4, *infra*.

2) Exemptions from Gross Receipts Tax; Electricity

The following are exempt from the gross receipts tax:

a) **Sales for Resale**

The sale or transportation of electricity to a public or private utility, including a municipal electric utility, for resale provided that such sale is made pursuant to a valid resale certificate similar in form to EXHIBIT C. *See* Fla. Admin. Code r. 12B-6.0015(2)(c)1., (1)(b)2. (2016).

b) **Sales Pursuant to Electric Interchange Agreement**

The sale or transportation of electricity to a public or private utility, including a municipal electric utility, as part of an electric interchange agreement or contract between such utilities for the purpose of transferring more economically generated power. *See* Fla. Admin. Code r. 12B-6.0015(2)(c)2. (2016). Furthermore, the internal use, including interdepartmental transfers of such purchased power, is not subject to gross receipts tax. *Id.* However, interdepartmental transfers of power purchased from other sources may be subject to gross receipts tax. *See* part V.C.4, *infra*.

c) **Wholesale Sales**

Wholesale sales of electric transmission service are exempt from gross receipts tax. *See* Fla. Admin. Code r. 12B-6.0015(2)(c)3. (2016);

d) **Electricity Losses**

The loss of electricity resulting from the generation, transmission, or distribution of electricity, including line losses, generation losses, and any other losses for which charges are not made to the customers. *See* Fla. Admin. Code r. 12B-6.0015(2)(c)4. (2016);

e) **Separately Itemized Charges to Customers**

The following receipts from customers for various separately itemized charges are exempt:

- (i) Charges for the connection, disconnection, suspension, or restoration of electricity;
- (ii) Charges for returned checks or other forms of payments, late payments, or interest due on late payments; and

- (iii) Charges for the sale, lease, rental, repair, or maintenance of customer premises equipment.

See Fla. Admin. Code r. 12B-6.0015(2)(a)1. (2016).

3) Gross Receipts Tax on Natural or Manufactured Gas

The gross receipts tax is imposed 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 its sale or transportation. See § 203.01(1)(e), Fla. Stat. (2015). Thus, anyone who receives payment for either the sale or transportation of natural or manufactured gas must collect and remit gross receipts tax.

a) Calculation of Gross Receipts Tax; Natural or Manufactured Gas

Calculation of gross receipts tax for the sale or transportation of natural or manufactured gas is based on the amount of gas delivered, in cubic feet, to the customer. The amount delivered must be divided by 1,000 and then multiplied by the applicable gas index price. The resulting amount is the utility’s taxable gross receipts. To calculate the amount of gross receipts tax that the utility must remit to DOR, the taxable gross receipts must then be multiplied by the gross receipts tax rate (2.5%). § 203.01(1)(e)1., Fla. Stat. (2015).

In other words, the calculation of gross receipts must be done according to the following formula:

$$\text{(number of cubic feet of natural or manufactured gas delivered to a retail consumer in this state)} \div \text{(1,000)} \times \text{(applicable natural or gas index price)} \times \text{(2.5\%)}$$

i. *Index Price*

The index price is the Florida price per 1,000 cubic feet for retail consumers in the previous calendar year as published in the US Energy Information Administration’s *Natural Gas Monthly* and announced by the Florida DOR on June 1 of that year. See § 203.01(1)(e)2., Fla. Stat. (2015).

Index Prices effective July 1, 2015, through June 30, 2016

Utility Service	Residential	Commercial	Industrial
<i>Natural/Manufactured Gas</i>	\$18.97	\$11.51	\$7.25

ii. ***Customer Classifications – Residential, Commercial, Industrial***

When calculation of gross receipts tax requires the use of an index price, each utility must implement a “reasonable methodology” to apply the residential, commercial, and industrial classifications to its existing rate structure. *See* Fla. Admin. Code r. 12B-6.001(3)(c) (2016). DOR has given no indication of what will constitute a “reasonable methodology.”

We believe the instructions to the Energy Information Administration’s Form EIA-176 may offer guidance as to how utilities may establish a “reasonable methodology” to apply the residential, commercial, and industrial classifications to their existing rate structure for gross receipts tax purposes. The instructions to these forms provide:

Each dwelling, building, plant, establishment, or location is to be counted as a separate consumer, for the purpose of this report, whether or not centrally billed and whether or not provided with more than one type of service, e.g., firm and interruptible service.

Consumers should be classified by category in accordance with the definitions provided below. Multiple-use or combination consumers such as apartment buildings with commercial establishments, retail stores with attached dwellings, or industrial plants with on-site office space or buildings served from a common meter are to be classified based upon the predominate volumetric usage. If certain categories, e.g., residential and commercial, are carried on a combined basis in your accounts, please provide your best estimate of the information for each category separately.

Deliveries directly to end-use consumers are to be reported based upon the following definitions:

Residential: An energy-consuming sector that consists of living quarters for private households. Common uses of energy associated with this sector include space heating, water heating, and cooking. The residential sector includes mobile homes and apartment buildings and excludes institutional living quarters.

Commercial: An energy-consuming sector that consists of service-providing facilities and equipment of: businesses; Federal, State, and local governments; and other private and public organizations, such as religious, social, or fraternal groups. The commercial sector includes institutional living quarters.

Industrial: An energy-consuming sector that consists of all facilities and equipment used for producing, processing, or assembling goods. The industrial sector encompasses the following types of activity: manufacturing; agriculture, forestry, and fisheries; mining; and construction. Overall energy use in this sector is largely for process heat and powering machinery, with lesser amounts used for facility heating. Natural gas is also used as raw material inputs to manufactured products.

EXAMPLE: Utility delivers 2,000 cubic feet of natural gas to Customer A, a residential customer. Utility delivers 10,000 cubic feet of natural gas to Customer B, a commercial customer. Utility delivers 25,000 cubic feet of natural gas to Customer C, an industrial customer. These are all of the utility's natural/manufactured gas deliveries for the taxable period. Assume that there are no applicable exemptions to the gross receipts tax. Proper calculation of gross receipts tax due on this transaction is as follows:

Residential Customers

$$(2,000) \div (1,000) \times (\$18.97) = \mathbf{\$37.94}$$

Commercial Customers

$$(10,000) \div (1,000) \times (\$11.51) = \mathbf{\$115.10}$$

Industrial Customers

$$(25,000) \div (1,000) \times (\$7.25) = \mathbf{\$181.25}$$

$$\mathbf{\underline{\text{Taxable Gross Receipts}}} = (\$37.94) + (\$115.10) + (\$181.25) \\ = \mathbf{\$334.29}$$

$$\mathbf{\underline{\text{Gross Receipts Tax Due}}} = (\$334.29) \times (2.5\%) = \mathbf{\$8.36}$$

Note that the amount of gross receipts tax due may be reduced by a tax credit based on the amount of any like tax already paid by the

seller, regardless of where that tax was paid. This reduction is available to the customer as a refund and does not inure to the benefit of the utility. *See* § 203.01(1)(e)4., Fla. Stat. (2015).

4) Exemptions from Gross Receipts Tax; Natural/Manufactured Gas

Exemptions from gross receipts tax on the sale or transportation of natural or manufactured gas include the following:

- (a) The sale or transportation for resale of natural or manufactured gas to a utility, municipal corporation, or agency thereof, or a rural electric cooperative association, provided that such sale occur pursuant to a valid DOR resale exemption certificate. *See* § 203.01(3)(a)1., Fla. Stat. (2015);
- (b) The sale or transportation of natural or manufactured gas to a utility, municipal corporation, or agency thereof, or a rural electric cooperative association, for use as a fuel in the generation of electricity. § 203.01(3)(a)1., Fla. Stat. (2015);
- (c) The use of natural gas in the production of oil or gas, or the use of natural or manufactured gas by a person transporting natural or manufactured gas, when used and consumed in providing such services. § 203.01(3)(c), Fla. Stat. (2015);
- (d) The sale or transportation to, or use of, natural or manufactured gas by various industrial classes as provided for in Section 212.08(7)(ff)2., Florida Statutes, for use as an energy source or a raw material. A written certification, similar in form to EXHIBIT D, certifying the purchaser's entitlement to the exclusion, relieves the seller or person providing transportation or delivery from the responsibility of remitting tax on the nontaxable amounts, and DOR shall look solely to the purchaser for recovery of such tax if DOR determines that the purchaser was not entitled to the exclusion. § 203.01(3)(d), Fla. Stat. (2015).

5) Reporting Requirement for Natural or Manufactured Gas

Any person who transports natural or manufactured gas must provide DOR with an annual list of customers to whom these transportation services were provided. However, this reporting requirement does not apply to distribution companies. Fla. Admin Code r. 12B-6.005(2) (2016).

We believe that FMEA member utilities who provide customers with natural or manufactured gas are distribution companies, and therefore are not required to submit a list of customers to DOR. *See* Fla. Admin. Code r. 12B-6.001(b).

6) Billing the Customer for Gross Receipts

The utility may separately itemize gross receipts tax on a customer's bill. However, gross receipts tax is imposed on the privilege of doing business, and it is an item of cost to the utility. The utility remains liable for payment of the tax to DOR even when it is separately itemized on the customer's bill. When gross receipts tax is separately itemized on the customer's bill, the customer is liable for payment to the utility. *See* § 203.01(4)-(6), Fla. Stat. (2015); Fla. Admin. Code r. 12B-6.0015(3) (2016).

Attached as EXHIBIT E is a sample bill calculation, which includes calculation of gross receipts tax on a customer's electric bill.

7) Registration Requirement

Prior to engaging in the business of selling, transporting, delivering, or importing utility services, every person upon which gross receipts tax is imposed is required to register with DOR. *See* Fla. Admin. Code r. 12B-6.0021 (2016).

Registration is available via DOR's internet site at www.myflorida.com/dor. Alternatively, registration is available by filing an Application to Collect and/or Report Tax in Florida (Form DR-1). *Id.*

8) Payment of Gross Receipts Tax

Gross Receipts tax returns and payments are due on the first and are late after the 20th day of the month following each billing period. A return is required to be filed even if no tax is due. Fla. Admin. Code r. 12B-6.005 (2016).

Form DR-133, Gross Receipts Tax Return, is the return to be used to report gross receipts tax imposed on utility services. *See* Fla. Admin Code r. 12B-6.005(1)(b) (2016). The Gross Receipts Tax Return is attached as EXHIBIT F. *See* part VI.A.3, *infra*.

D. Communication Services Tax

Chapter 202, Florida Statutes

Rule Chapter 12A-19, Florida Administrative Code

1) Communication Services Tax at a Glance

- (a)** The Communications Services Tax (CST) took effect October 1, 2001, and replaced the myriad of taxes formally applicable to “communications services.”
- (b)** “Communications services” includes telecommunications, video, direct-to-home satellite, and other related services. However, some communications services are specifically not subject to CST.
- (c)** Electronic Funds Transfer (EFT) filing is required for some dealers, and collection allowances are available for CST.
- (d)** Like motor fuel tax, CST is a statewide tax with an established state portion and a local portion.

2) What is the Communications Services Tax?

The CST is a tax on communications services in the State of Florida. Examples of taxable communications services include long distance or toll telephone service, satellite and cable television, mobile communications, and private communications. *See* § 202.11(1), Fla. Stat. (2015). The CST is composed of a state portion and the local portion.

(1) State Portion:

- (i)** State (former sales tax); and
- (ii)** Gross receipts (former gross receipts tax on telecommunications).

(2) Local Portion:

- (i)** Local (former municipal public service tax);
- (ii)** Franchise fees; and
- (iii)** Discretionary sales surtax.

In general, the state portion of the Florida CST contains a state rate of 4.92%, plus a gross receipts rate of 2.37% and an additional rate of .15%, for a combined state tax rate of 7.44%. As discussed below, some residential services are exempt from the 4.92% and .15% rates. *See* §§ 202.12(1)(a); 203.01(1)(b), Fla. Stat. (2015). Each county or municipality sets its own local CST rate. *See* § 202.19, Fla. Stat. (2015).

For direct-to-home satellite service, the state portion of the Florida CST contains a state rate of 9.07%, plus a gross receipts rate of 2.37%, for a combined state tax rate of 11.44%. There is no local CST on direct-to-home satellite service. § 202.19(6), Fla. Stat. (2015).

3) How is CST administered?

- (a) Each dealer of communications services must file a single monthly return, accompanied by a single payment to DOR. Local communication services taxes are included in this remittance. *See* Fla. Admin. Code r. 12A-19.020 (2016) and Dept. of Rev. Form DR-700016.
- (b) DOR administers both the state and local parts of the communications services tax. After collection, DOR distributes the appropriate portion of the tax to local governments. § 202.18, Fla. Stat. (2015). DOR will coordinate all audit activities.

4) What Are Communications Services?

a) Communications Services

“Communications services” include telecommunications, video, direct-to-home satellite, and related services. This definition encompasses voice, data, audio, video, or any other information or signals, including cable services, which are transmitted by any medium. *See* § 202.11(1), Fla. Stat. (2015).

b) Services Subject to CST

- Local, long distance, or toll telephone (but not coin-operated).
- Cable television and other video services.
- Direct-to-home satellite.
- Mobile communications, including detailed billing charges.

- Private line services.
- Pager and beeper.
- Telephone charges made by a hotel or motel.
- Facsimiles (FAX), when not provided in the course of professional or advertising services.
- Telex, telegram, and teletype.

c) **Services Not Subject to CST**

- Information services (e.g., electronic publishing, web-hosting service, or end-user 900-number service).
- Internet access services, electronic mail services, electronic bulletin board services, or similar on-line computer services.
- The sale or recharge of prepaid calling arrangements.

Please note that prepaid calling arrangements remain subject to sales tax.

- Installation or maintenance of wiring or equipment on a customer's premises.
- The sale or rental of tangible personal property.
- The sale of advertising, including, but not limited to, directory advertising.
- Bad check charges.
- Late payment charges.
- Billing and collection services.
- The provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft.

See § 202.11(1), (13) Fla. Stat. (2015).

d) Bundled services are taxed

Generally, multiple services included in a single package are considered bundled. An example of a bundled service is selling telephone, cable TV, and internet access services for a single price. Prior to July 1, 2005, when nontaxable internet access service was sold with taxable items or services for a single price, the entire charge was subject to tax. However, in the 2005 session, the Florida Legislature amended the applicable law to comply with federal requirements.

As of July 1, 2005, when the charge for internet access service is not separately itemized on a customer's bill, but the selling dealer can reasonably identify the charge for internet access from its books and records kept in the regular course of business, the dealer is not required to collect tax on the nontaxable service charge. *See* § 202.11(13)(b)8., Fla. Stat. (2015).

e) Dealers must separately state CST

Dealers of communications services are required to separately itemize the state portion and the local portion of the CST on a customer's bill. *See* § 202.16(1)(b), Fla. Stat. (2015).

5) Exemptions

Exemptions from CST include the sale of communications services to the following:

- (a) Homes for the aged, religious institutions, and educational institutions that are exempt from federal income tax pursuant to Section 510(c)(3) of the Internal Revenue Code. § 202.125(4), Fla. Stat. (2015). Please refer to Section 202.125, Florida Statutes, to determine what qualifies as a home for the aged, a religious institution, or an educational institution;
- (b) Any county, municipality, or political subdivision of the state when payment is made directly to the dealer by the governmental entity; and to the federal government and any instrumentality of the federal government. *See* § 202.125(3), Fla. Stat. (2015).
- (c) **Residential Services.** Generally, residential telephone service is exempt from the state portion of CST when separately stated on the customer's bill. § 202.125(1), Fla. Stat. (2015).
 - (i) **Taxes Subject to the Exemption.** The residential household exemption from CST only applies to the 4.92% state portion and the .15% additional rate of the Florida

CST. Residential households are subject to the 2.37% gross receipts portion and the applicable local CST rate. Fla. Admin. Code r. 12A-19.041(2)-(3) (2016).

- (ii) **Services Not Subject to the Exemption.** When purchased pursuant to a residential rate schedule, video, direct-to-home satellite, and mobile communications services are not subject to residential household exemption from CST. Thus, CST must be paid on these services even when provided to residential customers. Fla. Admin. Code r. 12A-19.041(4) (2016).
- (iii) **Residential Households Subject to Exemption.** A residential household is exempt unless it is a public lodging establishment licensed under Chapter 509, Florida Statutes, or is part of such a licensed public lodging establishment. § 202.125(1), Fla. Stat. (2015), Fla. Admin. Code r. 12A-19.041(3) (2016). A residential household in a public lodging establishment that is exempt from sales tax on purchases of electricity and other utilities taxable under Chapter 212, Florida Statutes, is still subject to CST on telephone and other communications services. Fla. Admin. Code r. 12A-19.041(3) (2016).

6) Tax Return Filing Methods

Returns and payments are due on the first and are late after the 20th day of the month following each billing period. Returns must be filed, even if no tax is due. *See* Fla. Admin. Code r. 12A-19.020 (2016).

7) Electronic Filing

While DOR encourages all dealers to file using an electronic method, some dealers are required to file using an electronic method. If, in the previous state fiscal year (July 1 through June 30), a dealer paid \$20,000 or more in either gross receipts tax, sales tax, or CST, that dealer must file the return using electronic data interchange (EDI) and remit funds using electronic funds transfer (EFT), or may both file and remit using the Internet. *See* § 202.30, Fla. Stat. (2015).

8) Taxing the Customer Properly

The tax rate charged to the customer is based on the tax jurisdiction of the customer's service/billing address. Therefore, each dealer's customer database must accurately assign addresses to the appropriate taxing jurisdiction. § 202.22, Fla. Stat. (2015).

9) Collection Allowance Driven by Database Accuracy

Depending on the accuracy of the dealer's databases, two different collection allowances are available. A dealer employing one or more of the following methods to ensure proper address-to-jurisdiction assignment in each of its databases will be granted a collection allowance of .75% of total tax due. Otherwise, a collection allowance of .25% will be granted. *See Fla. Admin. Code r. 12A-19.020(2) (2002)*. To ensure that a dealer may deduct .75% of the amount of tax due as a collection allowance, it is advisable for the dealer to employ one of the following:

- (a) Using an address database provided by DOR to verify the accurate assignment of customer addresses to tax jurisdictions.
- (b) Using a database developed by the dealer and certified by DOR to verify the accurate assignment of customer addresses to tax jurisdictions.
- (c) Using a DOR certified database supplied by a vendor to verify the accurate assignment of customer addresses to tax jurisdictions.
- (d) Using ZIP+4 and matching an address to its specific tax jurisdiction.

Please refer to Rule 12A-19.020, Florida Administrative Code (2016), when choosing a method of assigning service addresses to ensure a .75% collection allowance. When a dealer employs a method of assigning service addresses other than those provided in this Rule 12A-19.020, the deduction allowed to the dealer is .25% of the amount of the tax due to DOR. *See Fla. Admin. Code r. 12A-19.020 (2016)*.

Dealers with multiple databases getting both higher and lower collection allowances may file a separate return for each allowance or a single return and receive the .25% allowance. *Fla. Admin. Code r. 12A-19.020(2)(c) (2016)*.

If, during audits, dealers employing one or more of the above methods are found to have incorrectly assigned a customer's address to a taxing jurisdiction, they will be held harmless from assessment. § 202.22, *Fla. Stat. (2015)*.

10) Governmental Entities Proposing to Provide Communications Services

Florida statutes require governmental entities to hold at least two public hearings before providing communications services within a community. *See § 350.81(2), Fla. Stat. (2015)*. Governmental entities are required to electronically provide the notice of public hearing to DOR at least 40 days

before the first public hearing. The law requires the notice to include: the time and place of the hearings; a statement that the purpose of the hearings is to consider whether the governmental entity will provide communications services; the geographic areas proposed to be served by the governmental entity; and the services, if any, that the governmental entity believes are not currently being adequately provided. The notice must also state that any dealer who wishes to do so may appear and be heard at the public hearings.

Note that the law also has numerous requirements regarding what the municipality must consider and present at these public hearings, as well as various requirements that the municipality must adhere to once it begins providing communications services. *See* § 350.81(2)(b), Fla. Stat. (2015).

E. Municipal Public Services Tax

Section 166.231, Florida Statutes

1) Municipal Public Service Tax; In General

Municipalities and charter counties are permitted to levy a tax on the purchase of electricity, metered natural gas, liquefied petroleum gas (either metered or bottled), manufactured gas (either metered or bottled), and water service. § 166.231(1)(a), Fla. Stat. (2015).

2) Rate and Taxability

The municipal public service tax shall not exceed 10% of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. *Id.*

3) Surcharge on Customers Outside City Limits

The tax shall be levied only on purchases within the municipality. *See* § 166.231, Fla. Stat. (2015). However, a municipal electric utility may impose on those customers outside of its corporate limits a surcharge equal to the public service tax charged by the municipality within its corporate limits. *See* Fla. Admin. Code r. 25-9.0525 (2016). To be equal to the tax, the surcharge must apply to the same base, at the same rate, in the same manner, and to the same types of customers as the tax. *Id.* The surcharge must not result in a payment by any customer for services received outside of the city limits in excess of that charged a customer in the same class within the city limits, including the public service tax. Each municipal electric utility seeking to impose a surcharge on customers outside of its municipal limits must provide written documentation to the PSC demonstrating compliance with this rule. *See* Fla. Admin. Code r. 25-9.0525 (2016).

4) Taxable Items

A municipality may levy the tax on the purchase of electricity, metered natural gas, liquefied petroleum gas (either metered or bottled), manufactured gas (either metered or bottled), and water service.

- Generally, fuel oil shall be taxed at a rate not to exceed 4 cents per gallon. § 166.231(2), Fla. Stat. (2015).
- A municipality may exempt from the public service tax any amount up to, and including, the first 500 kilowatt hours of electricity purchased per month for residential use. This exemption applies to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter, and shall be passed on to each individual tenant. § 166.231(3), Fla. Stat. (2015).

- The purchase of natural gas, manufactured gas, or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, is exempt. § 166.231(4)(a), Fla. Stat. (2015).
- A municipality may exempt from the municipal public service tax the purchase of metered or bottled gas (natural liquefied petroleum gas or manufactured) or fuel oil for agricultural purposes. § 166.231(4)(b), Fla. Stat. (2015).
- Purchases by the state, all counties, school districts, and municipalities of the state, the federal government, and by public bodies exempted by law or court order, are exempt from the municipal public service tax. A municipality may also exempt the purchase of taxable items by any other public body or by certain other nonprofit corporations or cooperative associations. § 166.231(5), Fla. Stat. (2015).
- A municipality may reduce the rate of taxation on such electricity or gas purchased by an industrial consumer that uses the electricity or gas directly in industrial manufacturing, processing, compounding, or in producing, at a fixed location in the municipality, items of tangible personal property for sale. Any municipality granting an exemption pursuant to Section 166.231(6), Florida Statutes, must grant the exemption to all companies classified in the same NAICS Industry Number. § 166.231(6), Fla. Stat. (2015).
- Because Section 166.231(1)(a) provides that the municipal public service tax is levied upon payments received by the utility for “utility service,” customer charges, gross receipts tax charges, and other fees on the customer’s bill attributable to the provision of utility service are properly included in calculating the municipal public service tax.

5) Fuel Adjustment Charge

- (a) The municipal public service tax shall not apply to any fuel adjustment charge.
- (b) The “fuel adjustment charge” is the portion of an electric customer’s bill that represents all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.
- (c) The fuel adjustment charge must be separately stated on a customer’s bill.

See § 166.231(1)(b), Fla. Stat. (2015).

Note that some utilities, from time to time, zero-out the fuel adjustment charge into the base rate. Even when a utility does this, the municipal public service tax must still not be applied to the portion of the base rate that is composed of that “zeroed-out” fuel adjustment charge based on the utility’s increase in the cost of fuel subsequent to October 1, 1973..

6) Collecting Municipal Public Service Tax

The municipal public service tax shall be collected by the seller of the taxable item from the purchaser at the time of payment. The seller shall remit the taxes collected to the municipality in the manner prescribed by ordinance. § 166.231(7), Fla. Stat. (2015).

F. Solar Power

Chapters 192, 193, 203, and 212, Florida Statutes

1) Solar Energy in the Sunshine State

As of September 2015, there were 251 MWs of solar energy generation installed in the state of Florida, including both demand and supply-side generation. The second quarter of 2015 saw a 149% increase in the rate of solar installation compared to the same period in 2014. Solar is clearly a growing industry, and Florida's municipal electric utilities are statewide leaders in delivering solar energy to their customers.

The prevailing demand-side solar program in Florida is net metering, which is discussed in parts IV.A.4 and IV.C.1.c., *supra*. This section will discuss the tax treatment of two methods for delivering supply-side solar to customers—solar power purchases and solar power leases. A brief overview of the sales and ad valorem tax exemptions for solar equipment will follow. This section will conclude with a short discussion of the gross receipts use tax associated with generated solar power.

2) Solar Power Energy Sales

The power generated from a solar facility can be sold by municipal utilities to customers either through a specific power purchase agreement or through a publically offered rate schedule. The tax treatment of such sales is no different than for sales of electricity produced through more conventional means. Sales tax at a combined rate of 6.95% and gross receipts tax at a rate of 2.5%, as well as any applicable discretionary surtax and municipal public service tax or surcharge, will apply to the sale unless another exemption applies (e.g., sales for resale).

3) Solar Power Leases

Another method for delivering electricity generated by a municipally-owned solar facility is through a solar power lease, where the customer pays a flat fee in exchange for the right to receive the customer's share of power produced by the municipally-owned solar facility. The amount of power received by the customer will vary according to factors including the amount of sunlight available at any given time. The municipal utility retains ownership of the facilities, and is responsible for all maintenance and operations costs.

In 1986, the Public Service Commission (PSC) determined that a similar arrangement did not constitute the sale of electricity, but rather the leasing of TPP. The fact that the lease payment was a flat amount and did not fluctuate based on output of the system, and the fact that the purchaser had to make the same payment even if there was an outage and no power was produced, was cited

by the PSC to show that the purchaser had assumed the operational risks of the system and was not simply buying its output. *See In Re: Petition of Monsanto Company for a Declaratory Statement Concerning the Lease Financing of a Cogeneration Facility*, Docket No. 860725-EU, Order No. 17009 (Fla. Pub. Serv. Comm'n 1986).

We believe that this logic applies to an arrangement whereby a municipal utility owns and operates a solar facility, and a customer makes fixed payments in exchange for the energy produced by a portion of the solar facility. Because there is no sale of electricity, gross receipts and municipal public service taxes will not apply. Only the sales tax will apply, and it would be collected at the time payment is received from the customer unless another exemption applies. *Id.*; *see also* § 212.05(1)(c), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.071 (2016).

4) Solar Equipment

a) Sales Tax

Florida law exempts from sales and use tax solar energy systems and all components of such systems. The term “solar energy system” means the equipment and requisite hardware that provide and are used for collecting, transferring, converting, storing, or using incidental solar energy for water heating, space heating and cooling, or other applications that would otherwise require the use of a conventional source of energy such as petroleum products, natural gas, manufactured gas, or electricity. §§ 212.02(26), 212.08(7)(hh), Fla. Stat. (2015).

A list of equipment and requisite hardware considered to be a solar energy system or component thereof is included as EXHIBIT G for your reference. The list is published and updated regularly by the Florida Solar Energy Center.

Sellers of solar energy systems or components thereof are required to document all exempt sales, including the purchaser’s name and address, as well as a statement signed by the purchaser certifying that all equipment and requisite hardware will be used exclusively in a solar energy system. *See Taxpayer Information Publication 05A01-05* (Fla. Dep’t Rev. 2005).

b) Ad Valorem Tax

Florida law also provides that when determining the assessed value of real property used for residential purposes, an increase in the just value of the property attributable to the installation of a renewable energy source device may not be considered in the calculation of ad valorem taxes. § 193.624, Fla. Stat. (2015).

However, if the residential property owner does not own the equipment, but rather leases the system from a third party, the lease payments may be subject to tangible personal property tax unless another exemption applies. *See* § 192.001(11)(d), 192.032(2), 193.062, Fla. Stat. (2015); Fla. Admin. Code div. 12D (2016); *see also* part V.E.3, *infra*. Additionally, renewable energy source devices installed on commercial property do not qualify for the exemption.

5) Solar Use Tax

The gross receipts tax imposed under § 203.01(1)(a), Florida Statutes, is only applicable to sales of electricity by a “distribution company.” *See* part IV.C, *supra*. However, §§203.01(1)(f)-(i) also imposes a gross receipts use tax on electricity produced and used by a person, a cogenerator, or a small power producer who cannot demonstrate prior payment of gross receipts tax. The tax is imposed at a rate of 2.5% of the cost price of the electricity produced. *See also* Fla. Admin. Code r. 12B-6.0015(4) (2016).

The gross receipts use tax does not apply to the following:

- The use of natural gas in the production of oil or gas, or the use of natural or manufactured gas by a person transporting natural or manufactured gas, when used and consumed in providing such services;
- The use of natural gas or manufactured gas by a person eligible for an exemption under Section 212.08(7)(ff)2., F.S., for use as an energy source or a raw material;
- The use of natural gas or manufactured gas by a public or private utility as fuel in the generation of electricity; or
- The loss of electricity resulting from the generation, transmission, or distribution of electricity, including line losses, generation losses, and any other losses for which charges are not made to the electric utility’s customers. *Id.*

V. BUYING TRANSACTIONS

As discussed above, sales tax applies to the sale, rental, lease, or license to use certain property, goods, and services in Florida, unless the transaction is specifically exempt. The sales tax is added to the price of the taxable goods or services and collected from the purchaser at the time of sale.

When a utility is a purchaser, it will be responsible for paying all applicable sales taxes associated with the purchase. A utility may also be required to pay use tax on certain interstate purchases which are used in the state of Florida. In addition, purchases of motor fuel or diesel fuel for use in motor vehicles may be subject to fuel tax. Although usually exempt from the ad valorem tax on real property, there may be instances where a municipal utility is also required to pay this tax as well.

This Part begins by discussing sales tax on municipal utility purchases and provides suggestions on how to avoid sales tax whenever possible. It then details the fuel tax applicable to purchases of motor or diesel fuel used in motor vehicles and explains how to apply it to municipal utility purchases. Finally, it discusses the ad valorem tax and concludes that most real property owned by a municipal utility is exempt from this tax.

Please keep in mind that each of these taxes operates independently, and each tax has unique exemptions. **Exemptions are not generic.** When evaluating the tax status of a transaction, be sure to evaluate each tax separately.

A. Sales Tax on Purchases

Purchases by political subdivisions of the state of tangible personal property (TPP) generally are exempt from sales tax when the payment is made directly to a vendor by the utility. However, “machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state for transmission or distribution expansion,” are excluded from this exemption. § 212.08(6), Fla. Stat. (2015).

Sales to a contractor on behalf of a city generally are not exempt from taxation, and the contractor will likely pass the cost of any such sales tax on to the municipality. *Id*; see also Fla. Admin. Code r. 12A-1.094 (2016). EXHIBIT H is a flow chart that can be used to determine taxability of purchases.

Following is a list of common purchases and expenditures of municipalities, utility commissions, and authorities, as well as a brief summary of their sales tax consequences:

1) Public Works Projects

For public works projects, DOR reserves the right to determine whether a particular transaction is a taxable sale to a contractor, or an exempt sale to a municipality. See § 212.08(6), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.094(4)(a) (2016).

a) Purchases by Contractor

The purchase or manufacture of supplies or materials by a public works contractor, when such supplies or materials are purchased for the purpose of going into or becoming part of public works, regardless of where the purchase or manufacture occurs, is taxable to the public works contractor if the contractor also installs such supplies or materials, since the public works contractor is the ultimate consumer of such supplies or materials. The public works contractor is liable for sales tax or use tax on such purchases and manufacturing costs. Fla. Admin. Code r. 12A-1.094(2) (2016).

b) Purchases by Municipality

As explained above, purchases by municipalities (except machines and equipment used in the generation, transmission, or distribution of electricity) are generally exempt from sales tax when the payment is made directly to the vendor by the municipality.

Whether a transaction qualifies as an exempt purchase by a municipality, or a taxable purchase by a contractor is often difficult to ascertain in

public works projects. DOR has delineated several factors in Rule 12A-1.094(4) of the Florida Administrative Code to assist in its determination, and well-designed purchasing procedures and carefully drafted contracts are required to secure this exemption. In addition, DOR has issued a Tax Information Publication that outlines the following factors and requirements in determining whether a municipality purchased the TPP for a public works project:

- Direct Purchase Order. The governmental entity must issue its purchase order directly to the vendor supplying the materials the contractor will use and provide the vendor with a copy of the governmental entity's Florida Consumer's Certificate of Exemption.
- Direct Invoice. The vendor's invoice must be issued to the governmental entity, rather than to the contractor.
- Direct Payment. The governmental entity must make payment directly to the vendor from public funds.
- Passage of Title. The governmental entity must take title to the TPP from the vendor at the time of purchase or delivery by the vendor.
- Assumption of the Risk of Loss. Assumption of the risk of damage or loss by the governmental entity at the time of purchase is a paramount consideration. A governmental entity will be deemed to have assumed the risk of loss if the governmental entity bears the economic burden of obtaining insurance covering damage or loss or directly enjoys the economic benefit of the proceeds of such insurance.
- Certificate of Entitlement. **To be entitled to purchase materials tax exempt for a public works project, a governmental entity is required to issue a Certificate of Entitlement (similar in form to EXHIBIT I) to each vendor and to the governmental entity's contractor to affirm that the TPP purchased from that vendor will go into or become a part of a public work.**

See Fla. Admin. Code r. 12A-1.094(4)(b) (2016) and TIP 13A01-01 (issued Mar. 11, 2013).

In addition, DOR may consider whether the contractor is authorized to make purchases in its own name, if the contractor is jointly or severally liable to the vendor for payment, whether purchases are subject to prior approval by the government, whether vendors are informed that the government is the only party with an independent interest in the purchase, and whether the contractor is formally denominated as a purchasing agent for the government. Generally, the determining criterion is whether the municipality assumes the risk of loss for the materials prior to their incorporation into the project.

2) **Purchases of Generation, Transmission, and Distribution Equipment**

The purchase of “machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy by systems owned and operated by a political subdivision in this state for transmission or distribution *expansion*,” are specifically excluded from the general municipal sales tax exemption, and are therefore taxable purchases. § 212.08(6), Fla. Stat. (2015) (emphasis added).

However, the purchase of “machines and equipment and parts and accessories therefor” used for the *repair, replacement, or refurbishment* of electric transmission and distribution systems owned by a municipality are exempt from sales tax. *See Dep’t of Rev. v. Fla. Mun. Power Agency*, 789 So. 2d 320 (Fla. 2001).

DOR has provided little guidance as to its interpretation of the phrase “used in.” Apparently, if electricity flows through the device it is “used in” generation, transmission, or distribution. For example, DOR determined that load management equipment on the customer’s side of the meter is taxable because it is “used in” the distribution of electricity. *See Tech. Ass’t Adv. 91A-007* (Fla. Dep’t of Rev. 1991). Whereas DOR’s test is helpful, it is not conclusive. For example, electricity does not “flow through” insulators, which we believe are subject to sales taxes. If there is doubt as to the taxability of a particular purchase, the utility is encouraged to seek a TAA from DOR on the tax treatment of the purchase.

We believe that purchases of TPP for use in transmission and distribution are subject to sales taxes if they are intended to be permanently affixed or dedicated to the transmission or distribution systems and are used to expand the municipal utility’s transmission or distribution system. However, we believe that sales of bucket trucks and other transmission and distribution accessories are not subject to sales taxes when purchased by a municipality because only equipment that physically becomes a part of the fixed electrical system is “used in” generation, transmission, or distribution. **Note that the purchase of certain generation equipment may nevertheless be exempt from sales tax pursuant to the power plant use exemption discussed below.**

3) **Power Plant Use Exemption**

a) **Units that Burn Fuels Other than Residual Oil**

The purchase of generation equipment or machinery that does not burn residual oil, which is “necessary” in the production of electrical or steam energy, is exempt from sales tax whether purchased by the utility or its contractor. § 212.08(5)(c), Fla. Stat. (2015). To obtain this exemption,

the utility must issue an exemption affidavit, similar in form to EXHIBIT J, prior to the purchase. **Note that the exemption only applies to “machinery and equipment” that is “necessary” to generate electricity**, which generally does not include buildings, site work, and several other “power plant” purchases.

- (i) Residual oil includes ASTM Grades No. 5 and 6, heavy diesel, and bunker C. We believe that any other fuels are not residual oil.
- (ii) The integrated plant theory is used to determine which items are “necessary.” *Jacksonville Elec. Auth. v. Dep’t of Revenue*, 486 So. 2d 1350 (Fla. 1st DCA 1986). DOR has issued numerous TAAs regarding generating units that burn non-residual oil, but very few bright-line rules have evolved. EXHIBIT K lists the tax status of some coal plant equipment. EXHIBIT L lists the tax status of some equipment for a gas fired plant. Please note that these are not comprehensive lists. **We recommend that legal advice or a TAA be obtained whenever this exemption will be claimed.**

b) Units that Can Burn Both Residual Oil and Other Fuels

Sales tax will be prorated in the instance where machinery and equipment is necessary to burn both residual and non-residual fuels. § 212.08(5)(c)2., Fla. Stat. (2015). Such proration shall be based upon the production of electrical or steam energy from non-residual fuels as a percentage of electrical or steam energy produced from all fuels used by the dual fuel units during the calendar year. *See Tax Info. Publ’n 97(A)-09* (Fla. Dep’t of Rev. 1997). However, if 15% or less of the electricity produced is derived from the burning of residual fuels, then the full exemption applies.

4) Repairs and Improvements to Real Property

Purchases of repairs and improvements to real property are not subject to taxes. Therefore, the labor costs will not be taxed and the utility will not have any tax liability to DOR for the transaction. However, the contractor must pay taxes on TPP purchased to fulfill the contract.

In general, TPP becomes an improvement to real property when it is permanently affixed to real property. However, DOR has not provided a bright-line rule for distinguishing real property from personal property, and DOR has specifically reserved the right to make this determination. For instance, turbines and certain other power plant items may not be considered improvements to real property because of their transferability. **We strongly**

recommend that legal advice or a TAA be obtained before the labor exemption is claimed for repairs to non-exempt generating units.

DOR has taken the position that transmission and distribution facilities are improvements to real property upon installation. Accordingly, the exclusion from the general municipal sales tax exemption of “machines and equipment and parts and accessories therefor” purchased for the expansion of electric transmission and distribution systems does not apply to the purchase of transmission and distribution facilities once installed because such facilities are no longer classified as TPP. *See* Tech. Ass’t Adv. 91A-040 (Fla. Dep’t of Rev. 1991); Tech. Ass’t Adv. 90A-1017 (Fla. Dep’t of Rev. 1990).

5) Repairs to Tangible Personal Property (TPP)

Generally, labor and materials for repairs to TPP are subject to sales tax if the TPP itself is subject to sales tax. Any repairs to, or replacement of, exempt TPP are exempt. Parts and materials purchased for repairs of non-exempt items are taxable. *See* Tech. Ass’t Adv. 99A-010 (Fla. Dep’t of Rev. 1999).

Recall, however, that machinery and equipment and parts and accessories thereof purchased to repair, replace, or refurbish existing electric distribution and transmission systems owned by a municipality are exempt. Thus, **sales tax is paid on items used to expand a municipal transmission and distribution system, but not on items purchased later to repair, replace, or refurbish that previous expansion.** *See* § 212.08(6), Fla. Stat. (2015).

6) Tools and Test Equipment

We believe that tools and test equipment are exempt unless they are “used in” the generation, transmission, or distribution of electricity. Again, please note that DOR has not defined the phrase “used in.” However, in TAA 94A-041, DOR stated that purchases of items used at a power plant, other than machinery and equipment, are entitled to the municipal exemption when purchased directly by the municipality.

7) Uninstallation of Equipment

Charges for uninstalling equipment, where no TPP is sold to accomplish the uninstallation work, are not subject to sales tax. *See* Tech. Ass’t Adv. 03A-023 (Fla. Dep’t of Rev. 2003).

8) Software Sold and Delivered Via the Internet

In TAA 03A-020, DOR took the position that software sold and delivered solely through the internet is not subject to sales tax because such software is not TPP. *See* Tech. Ass’t Adv. 11A-021 (Fla. Dep’t of Rev. 2011).

9) Other Exemptions

The following transactions are exempt regardless of the purchaser's status:

a) **Boiler (Generation) Fuels**

When purchased as combustible fuels, boiler fuels used in the generation of electric power or energy for sale are exempt. Fla. Admin. Code r. 12A-1.059(2)(a) (2016).

b) **Transmission and Wheeling of Electricity**

§ 212.08(4)(a)3., Fla. Stat. (2015).

c) **Electric Energy for Resale**

Fla. Admin. Code r. 12A-1.039 (2016).

d) **Electricity Used by the Utility**

§ 212.06(1)(b), Fla. Stat. (2015).

e) **Fuel Used by the Utility**

All fuels used by the utility in the generation of electric power or energy for sale are exempt from sales tax. Fla. Admin. Code An. R. 12A-1.053(2) (2016).

f) **Transportation Charges**

Transportation charges include carrying, delivery, freight, handling, pickup, shipping, and other similar charges or fees. Fla. Admin. Code r. 12A-1.045(1) (2016).

(i) The charge for transportation services is not subject to sales tax when both of the following conditions are met:

(1) The charge is separately stated on an invoice or bill of sale; and

(2) The charge can be avoided by a decision or action solely on the part of the purchaser.

Fla. Admin. Code r. 12A-1.045(4) (2016).

EXAMPLE: Customer A places an order for a piece of equipment for \$300 with Company B. Company B allows Customer A to choose a method of shipping or will allow Customer A to pick up the

piece of equipment at the Company B's place of business. Since Customer A can make the election to avoid the charge for transportation services, such charges are not subject to sales tax provided that they are separately stated on the customer's bill or invoice.

- (ii) Transportation charges for TPP which are not separately stated on the invoice or bill of sale are taxable if they are included in the sale price of the TPP. Fla. Admin. Code r. 12A-1.045(2) (2016).
- (iii) Where the seller agrees to deliver TPP to some designated place and the purchaser cannot elect to avoid the charge for transportation services, the charge for the transportation service is subject to tax, even if separately stated on an invoice or bill of sale. Fla. Admin. Code r. 12A-1.045(3) (2016).

EXAMPLE: Company X is in the business of selling liquefied petroleum (L.P.) gas, gas tanks, and other related equipment. Customer Y agrees to purchase a 500 gallon above ground tank from Company X to be placed at Customer Y's place of business and to make future purchases of L.P. gas from Company X. Company X requires a delivery fee of \$25 for each L.P. gas tank that it sells and will not allow the customer to pick up the tank nor make arrangements with any other transportation company to deliver the tank to the designated place. Since the \$25 delivery fee is required by the seller and is not an option to the buyer, the invoice must include the \$25 delivery charge in the total amount subject to tax, regardless of whether it is separately stated.

- (iv) Transportation charges are exempt when the purchaser, at its option, contracts with a third party carrier and the carrier bills the purchaser directly, even if the TPP is taxable. Fla. Admin. Code r. 12A-1.045(6) (2016).
- (v) Additionally, transportation charges are exempt, even if provided by the seller, when the contract specifies "FOB seller" (i.e., the title is transferred to the purchaser prior to transportation) and the freight charges are stated separately on the invoice. Note that the "FOB seller" language is

necessary to establish that title transferred prior to transportation. Although the risk of loss resides with the purchaser when freight is shipped “FOB seller,” the carrier/seller may provide insurance to the purchaser without jeopardizing the freight tax exemption. Fla. Admin. Code r. 12A-1.045(5) (2016).

- (vi) We believe transportation charges included in the cost of TPP are exempt if the TPP is exempt. *See* Fla. Admin. Code r. 12A-1.045 (2016).

EXAMPLE: Company B is in the business of selling large industrial type generators. Company B is located in Georgia. Due to the size and cost of the generators and the cost of delivery of the generators, Company B only sells the generators “F.O.B. seller.” Company C purchases a generator for \$1 million for its own use and requests that the generators be shipped to Company C’s location in Florida. Since the title to the equipment passes to Company C at Company B’s location, no tax is due on any separately stated transportation charge.

g) Travel Expenses

Employee expenditures on behalf of a municipality are exempt if the vendor directly bills the municipality, and a voucher, similar in form to EXHIBIT M, is presented to the vendor indicating that the purchase is made on behalf of the governmental entity. *See* Fla. Admin. Code r. 12A-1.038(4) (2016).

EXAMPLE: If a city employee travels to Tallahassee to attend a three-day PSC hearing, the hotel charges are exempt if the hotel directly bills the municipality (a utility credit card is acceptable), but taxable if charged to a personal credit card and reimbursed to the employee by the municipality.

h) Labor Only Purchases

Generally, if a contract for the performance of some service does not involve the sale of any TPP, the transaction is exempt as a professional or personal service. In addition, if the sale of TPP is inconsequential to the transaction, and there are no separate charges for the items of TPP, the transaction is exempt. However, with regard to the repair of TPP, DOR will allow this exemption only if the repairman can establish by evidence in his records that he furnished no TPP which was incorporated into or

attached to the repaired item. *See* Fla. Admin. Code r. 12A-1.006(4) (2016). It is irrelevant that the cost of material furnished is insignificant when compared to the cost of the labor.

EXAMPLE: Charges for legal and engineering services are exempt personal services.

EXAMPLE: Charges for lubrication services to non-exempt generators, including grease jobs and oil changes, are taxable. However, if the utility provides **all** of the grease, oil, and other materials used to perform the service, and a contractor is hired to perform the labor, the contractor's labor is exempt.

NOTE: The municipal exemption or the power plant use exemption may still apply where the professional service exemption might not.

B. How to Avoid Sales Tax on Purchases *

1) Public Works

For public works projects that are not “used in” the generation, transmission, or distribution of electricity, all purchases of TPP are exempt from sales taxes when purchased directly by the municipality in accordance with Rule 12A-1.094 of the Florida Administrative Code. In order to use this exemption, municipal utilities must submit a Certificate of Entitlement (attached as EXHIBIT I).

2) Power Plants

a) That Burn Fuels Other than Residual Oil

- (i)** Request a TAA to determine those items that are entitled to the power plant use exemption for power plants that burn non-residual fuel.
- (ii)** Prior to purchase, issue an affidavit to the contractor for the exempt items.
- (iii)** Define the non-exempt items as a public works project or an improvement to real property whenever possible, the sale of which is not subject to sales taxes to the municipality. Sales of non-exempt TPP used in such public works projects are taxable to the contractor, but the labor charges will avoid taxation.

b) That Burn Residual Oil

Define the non-exempt elements of the plant as a public works project or an improvement to real property whenever possible. The sale of those items to the municipality is not subject to sales tax. Sales of non-exempt TPP are taxable to the contractor, but the labor charges will avoid taxation.

c) Construction or Repair by a Contractor

- (i)** Directly pay all engineering costs provided by an entity other than the contractor, which will preserve the professional service exemption.
- (ii)** Utilize the freight exemption whenever possible.

* Please note that several of these tax saving methods require a carefully drafted contract to ensure the exemption.

(iii) Purchase all of the materials directly so that the construction or repair is an exempt service.

d) **Travel Expenses**

Present voucher and charge expenses directly to the municipality.

C. Use Taxes

Sections 212.06 and 203.01, Florida Statutes

Rules 12A-1.091 and 12B-6.0015, Florida Administrative Code

1) Use Tax; Generally

Use tax is applicable when a previously exempted purchase is deemed taxable due to its ultimate use. While purchases by municipal utilities are generally not subject to use tax because of the municipal exemption, use tax can apply in certain situations.

Generally, use tax will be applicable to municipal electric utilities where non-exempt purchases are made from out-of-state vendors who do not collect sufficient sales tax, or when a previously exempted purchase is deemed taxable due to its ultimate use by the utility. Depending on the type of purchase, the use tax due will mirror either the 6% sales tax or the 2.5% gross receipts tax.

2) Use Tax on Out-of-State Purchases

A sale is generally attributable to its destination. Where the destination is within the same state as its origin, the tax is referred to as a sales tax. If it is an interstate transaction, the tax will be designated a use tax. Use tax is imposed upon the cost of TPP imported into this state for use, consumption, distribution, or storage for use or consumption in this state, after it has come to rest and has become a part of the general mass of property of the state. *See* § 212.06(1), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.091(7) (2016).

a) Credit for Taxes Paid Out-of-State

If a utility purchases a non-exempt item from an out-of-state vendor and that vendor collects sales tax in the amount required in the vendor's state, a credit for that amount of sales tax paid by the utility is given against the use tax due in Florida. § 212.06(7), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.091(3) (2016). **The use tax rate is 6% of the cost price at the moment of purchase.** § 212.06(1)(a), Fla. Stat. (2015).

EXAMPLE: If a utility purchases a non-exempt item for \$100 from a Georgia company and the Georgia company collects 4% Georgia sales tax, the Florida utility will be obligated to pay a 2% use tax to DOR to make up the difference between the credit given for paying the Georgia sales tax and the amount of use tax due under Florida law.

EXAMPLE: If a utility purchases a non-exempt item from \$100 from a North Carolina company and the North Carolina company

collects 6% North Carolina sales tax, the Florida utility will owe no Florida use tax because the amount of the credit will equal the amount of the use tax owed.

b) Out-of-State Rental or Lease of TPP

The credit for payment of tax in another state does not apply to the rental or lease of TPP which is used or stored in this state. Such items are taxable without regard to its prior use or tax paid on purchase outside this state. *See* § 212.06(8)(a), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.091(2)(b) (2016).

EXAMPLE: If a utility leases a non-exempt item from a New York company and the New York company collects an 8% tax on that item, we believe the utility may still be required to pay Florida use tax on the monthly lease payments if the utility uses or stores that non-exempt item in Florida. *See* Tech. Ass't Adv. 98(A)-037 (Fla. Dep't of Rev. 1998) (requiring payment of Florida use tax on car leased in New York but used in Florida despite fact that lessee paid New York use tax).

3) Use Tax on TPP for Transmission and Distribution Expansion

When a municipal utility purchases TPP, the ultimate use of the TPP may be unknown at the time of purchase. For instance, a utility may purchase equipment for its inventory that can be used for replacement *or* expansion of its transmission and distribution system. If a municipal utility purchases TPP tax-exempt, but ultimately uses the TPP in a taxable manner (i.e., for transmission and distribution expansion), the utility will be liable for use tax at the rate of 6% of the cost price of the TPP. *See* § 212.06(1), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.091 (2016).

4) Use Tax on Purchased Power

Gross receipts use tax is levied upon a utility's cost price of electricity, or natural or manufactured gas, imported into this state or severed within this state for the utility's own use or consumption as a substitute for purchasing utility, transportation, or delivery services that would otherwise be taxable under Chapter 203, F.S., if the utility cannot demonstrate payment of gross receipts tax on the purchase. The tax is calculated by multiplying the cost price of the utility service by 2.5%. *See* § 203.01(1)(f), Fla. Stat. (2015); Fla. Admin. Code r. 12B-6.0015(4) (2016). Note that if power is purchased pursuant to an electric interchange agreement or contract for the purpose of transferring more economically generated power, the interdepartmental transfer is exempt from this tax. *See* part IV.C.2.b, *supra*.

In TAA 93(B)6-001A, DOR took the position that if a municipal utility purchases all of its electricity or gas from another provider, and the sale is not subject to gross receipts tax because it is a sale for resale, the amount of purchased utility service which is transferred as interdepartmental sales to the municipality is subject to the gross receipts use tax because the transfer is not a sale for resale. If the utility purchases some of its power from a provider and generates the rest, a prorated amount of the interdepartmental transfer is taxable.

EXAMPLE: A utility purchases 100% of its electricity from a wholesale provider, and the sale is not subject to gross receipts tax because the utility issues the provider a resale certificate similar in form to EXHIBIT C. During the course of a month, the utility transfers a portion of its purchased electricity to the municipality as an interdepartmental transfer. Because the interdepartmental transfer is not a sale for resale, gross receipts use tax is due at a rate of 2.5% of the cost price of the entire interdepartmental transfer. *See* Tech. Ass't Adv. 93(B)6-001A (Fla. Dep't of Rev. 1993).

EXAMPLE: A utility purchases 60% of its electricity from a wholesale provider, and the sale is not subject to gross receipts tax because the utility issues the provider a resale certificate similar in form to EXHIBIT C. During the course of a month, the utility transfers a portion of its purchased electricity to the municipality as an interdepartmental transfer. Because the interdepartmental transfer is not a sale for resale, the cost price of 60% of the interdepartmental transfer is subject to gross receipts use tax at a rate of 2.5%. *See* Tech. Ass't Adv. 93(B)6-001A (Fla. Dep't of Rev. 1993).

D. Fuel Tax

Chapters 206, 336, Florida Statutes Rule 12B-5, Florida Administrative Code

Purchases of fuels for use in motor vehicles are subject to the state fuel tax and discretionary taxes in lieu of the 6% sales and local taxes. *See* §§ 206.41, 206.87, Fla. Stat. (2015).

1) Fuels Subject to Fuel Tax

a) **Motor Fuel**

Motor fuel includes all gasoline products or any product blended with gasoline or any fuel placed in the fuel storage tank of a gasoline powered motor vehicle. § 206.01(9), Fla. Stat. (2015). However, fuels used in stationary sources are not motor fuel. *See* § 206.01(23), Fla. Stat. (2015).

b) **Diesel Fuel**

Diesel fuel includes all petroleum distillates commonly known as diesel or any other product blended with diesel or any product placed into the storage supply tank of a diesel-power motor vehicle. § 206.86(1), Fla. Stat. (2015). However, fuels used in stationary sources are not diesel fuel. *See* § 206.01(23), Fla. Stat. (2015).

EXAMPLE: We believe that diesel fuel purchased by a municipality as fuel for a combustion turbine power plant is exempt from the fuel tax imposed on diesel fuel. Such diesel fuel is never placed into the fuel tank of a diesel-power motor vehicle, and thus does not meet the statutory definition of “diesel fuel.”

EXAMPLE: We believe that diesel fuel is exempt from the diesel fuel tax if held in a separate fuel tank for use by separate engines and motors to operate machinery that is mounted on the bucket truck (as opposed to the engine used to propel the vehicle) such as air compressors, cherry pickers, or well diggers.

i. ***Undyed Diesel Fuel***

When a municipality purchases undyed diesel fuel for its exclusive use, it must pay the diesel fuel tax applicable to that undyed diesel fuel. § 206.86(2), Fla. Stat. (2015). However, the municipality may file a claim for refund of the diesel fuel tax paid. § 206.8745, Fla. Stat. (2015).

ii. Dyed Diesel Fuel

Dyed diesel fuel is diesel fuel that is dyed pursuant to EPA requirements and sold untaxed. § 206.86(9), Fla. Stat. (2015). Dyed diesel fuel purchased and used by a municipality for its exclusive use is exempt from the diesel fuel taxes imposed by Chapter 206, Part II, Florida Statutes. § 206.874(3), Fla. Stat. (2015). However, if such fuel is purchased for use in a motor vehicle, there are additional licensing requirements in order for such fuel to be exempt from tax. See below.

iii. Dyed Diesel Fuel Purchased for Use in a Motor Vehicle

For a municipality to be eligible to use dyed diesel fuel in a motor vehicle, the municipality must first be licensed by DOR as a local government user of diesel fuel pursuant to Section 206.874(4)(a), Florida Statutes.

Notwithstanding the dyed diesel fuel exemption, a municipality that is registered as a local government user of diesel fuel is required, each month, to file a return with DOR accounting for diesel fuel acquisitions, inventory, and use, and remit a partial tax equal to 3 cents of the 4 cent tax required under Section 206.87(1)(a), Florida Statutes, plus the taxes required under Section 206.87(1)(b), (c), and (d), Florida Statutes, for dyed or otherwise untaxed diesel fuel used in motor vehicles. § 206.874(4)(b), Fla. Stat. (2015).

If a municipality that files the Local Government User Tax Fuel Tax Return is registered as a local government user of diesel fuel, that municipality is entitled to take a credit of taxes paid on the monthly diesel fuel tax from their tax liability when the return is filed. See 206.41(4)(d), Fla. Stat. (2015); Fla. Admin. Code r. 12B-5.090(4)(b)1. (2016).

The amount of the credit must not exceed the sum of the 1 cent “County Fuel Tax” under Section 206.41(1)(b), Florida Statutes, and the “Fuel Sales Tax” under Section 206.41(1)(g)1., Florida Statutes. See 206.41(4)(d), Fla. Stat. (2015).

c) Natural Gas Fuel

Effective January 1, 2014, a natural gas fuel retailer must have a license issued by DOR in order to engage in the business of selling, producing, or refining natural gas fuel for use in a motor vehicle. § 206.9952, Fla. Stat. (2015).

Natural gas fuel is defined as “any liquefied petroleum gas product, compressed natural gas product, or combination thereof used in a motor vehicle as defined in s. 206.01(23). This term includes, but is not limited to, all forms of fuel commonly or commercially known or sold as natural gasoline, butane gas, propane gas, or any other form of liquefied

petroleum gas, compressed natural gas, or liquefied natural gas. This term does not include natural gas or liquefied petroleum placed in a separate tank of a motor vehicle for cooking, heating, water heating, or electric generation.” § 206.9951(2), Fla. Stat. (2015).

For the period of January 1, 2014, through December 31, 2018, natural gas fuel is exempt from fuel taxes. However, effective January 1, 2019, natural gas fuel retailers must obtain a bond and file monthly reports electronically with DOR showing inventory, purchases, nontaxable disposals, taxable uses, and taxable sales in gallons of natural gas fuel for the preceding month, and must pay then applicable fuel taxes based on a motor fuel equivalent gallon ratio. *See* § 206.9955, Fla. Stat.; § 206.996, Fla. Stat. (2015).

2) Fuel Tax Rates

a) State Fuel Tax

Effective January 1, 2016, the state tax rate on motor fuel and diesel fuel is **17.3 cents per gallon.**

b) Discretionary Tax

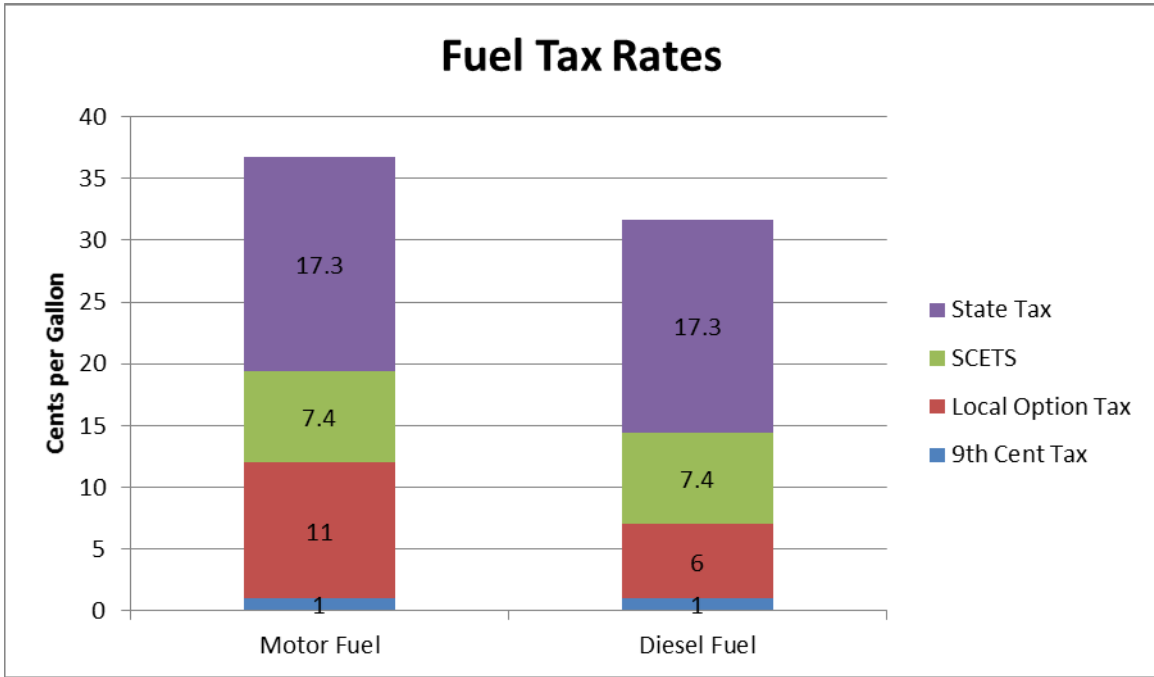
There are three possible discretionary taxes on motor and diesel fuels in addition to the state tax rate above.

- (a) An additional tax of 1 cent per net gallon may be imposed by each county on motor fuel and diesel fuel, which is designated as the “ninth-cent fuel tax.” § 206.41(1)(d), § 206.87(1)(b), Fla. Stat. (2015).
- (b) An additional tax of between 1 cent and 11 cents per net gallon may be imposed on motor fuel by each county, which is designated as the “local option fuel tax.” § 206.41(1)(e), Fla. Stat. (2015).

Since 1993, pursuant to a statewide policy to equalize diesel fuel tax rates, the local option fuel tax on diesel fuel is equal to 6 cents per gallon in every county, regardless of whether the county has actually levied the local option fuel tax. § 206.87(1)(c), Fla. Stat. (2015).

- (c) An additional tax designated as the “State Comprehensive Enhanced Transportation System Tax” (SCETS) is imposed on each net gallon of motor fuel and diesel fuel in each county. The rate of the tax in each county, effective January 1, 2016, is 7.4 cents per gallon for both motor fuel and diesel fuel. § 206.41(1)(f), § 206.87(1)(d), Fla. Stat. (2015).

(d) The chart below shows the components of the allowable motor fuel and diesel fuel tax rates. See Department of Revenue Tax Information Publication 11B05-01 for the specific tax rates in each county.



3) Fuel Backup Tax

The motor and diesel fuel taxes imposed by Sections 206.41 or 206.87, Florida Statutes, are imposed as a backup tax on the delivery or receipt in this state for any use which is not exempt under Sections 206.42, 206.62, or 206.874, Florida Statutes, of any of the following:

- (1) Any diesel fuel that contains a dye.
- (2) Any diesel fuel on which a credit or claim for refund has been allowed.
- (3) Any diesel fuel on which tax has not been imposed by Chapter 206.
- (4) Any motor fuel on which tax has not been imposed by Chapter 206.

§ 206.873, Fla. Stat. (2015).

4) Refunds of Fuel Taxes Paid

a) Motor Fuel

Municipalities are entitled to a refund or credit for the “fuel sales tax” portion of the state fuel tax paid on motor fuel used to operate a municipal motor vehicle. *See* § 206.41(4)(d), Fla. Stat. (2015).

We believe utility commissions and authorities are probably not entitled to the refund.

b) Filing Requirements

To receive a refund, the seller must make out a sales invoice and the invoice must contain the purchaser’s name and address, number of gallons purchased, the date, the price paid, the seller’s name and address, the license number of the purchaser’s motor vehicle, and the storage tank facility identification number for the seller’s location if the location is required to be registered in accordance with Section 376.303, Florida Statutes. *See* §§ 206.41(5), 206.8745(1), Fla. Stat. (2015).

c) Filing Date

The sworn application for a refund must be filed with DOR not later than the last day of the month following the quarter for which the refund is claimed. *See* § 206.41(5)(c), Fla. Stat. (2015).

d) Use of Refund

Any refund received by a municipality must be used exclusively for the construction, reconstruction, and maintenance of roads and streets within the municipality. *See* § 206.41(4)(d), Fla. Stat. (2015).

E. Ad Valorem Tax

Chapter 196, Florida Statutes

1) Property Owned and Used by the Municipal Utility

All property, including real property and tangible personal property, owned and used by municipalities, or by entities created by general or special law and composed entirely of governmental agencies, which is used for municipal or public purposes, is generally exempt from ad valorem taxation. Art. VII, § 3(a), Fla. Const.; § 196.199(1)(c), Fla. Stat. (2015).

2) Municipal or Public Purposes

The “municipal or public purposes” for which municipally owned property must be exclusively used in order to qualify for the exemption provided for by Article VII, Section 3(a) of the Florida Constitution encompasses activities that are “essential to the health, morals, safety, and general welfare of the people within the municipality.” *Florida Dep’t of Rev. v. City of Gainesville*, 918 So.2d 250, 264 (Fla. 2005). The Florida Supreme Court thus interprets the definition of “municipal or public purposes” in regards to municipal exemption for ad valorem taxes narrowly.

a) Property Used for Electric Services

The Florida Supreme Court has made clear that municipal property used by the municipality to provide electricity meets the narrow “municipal or public purposes” interpretation. *See Ford v. Orlando Utilities Commission*, 629 So. 2d 845 (Fla. 1994); *Saunders v. City of Jacksonville*, 25 So. 2d 648 (Fla. 1946). Further, the court reasoned, “such [electric] services are essential in that municipally owned power companies have legally protected monopolies within their territorial boundaries, and have traditionally provided these services.” *Florida Dep’t of Rev. v. City of Gainesville*, 918 So.2d 250, 264-65 (Fla. 2005) (emphasis added).

b) Property Used for Telecommunication Services

Unlike electric services, telecommunications services are outside the narrow “municipal or public purposes” requirement for exemption from ad valorem taxation. *See Florida Dep’t of Rev. v. City of Gainesville*, 918 So. 2d 250 (Fla. 2005). In fact, the Legislature has conditioned the grant of the power to obtain or hold a certificate from the Public Service Commission (PSC) for operation of a telecommunications facility on the municipality’s payment of ad valorem taxes, and specified that payment of the taxes is necessary for the facility to serve a public purpose under the municipal powers clause of the Constitution. § 166.047(3), Fla. Stat. (2015).

3) **Property Owned by a Municipal Utility, but Used by Nongovernmental Lessees**

a) **Property Used for Governmental, Municipal, or Public Purpose or Function**

When property which is owned by a municipality is leased to a non-governmental entity, the leasehold will only be exempt from taxation when the lessee serves or performs a governmental, municipal, or public purpose or function. This exemption applies to a nongovernmental lessee that uses such property for the operation of a multipurpose hazardous waste treatment facility. § 196.199(2)(a), Fla. Stat. (2015).

EXAMPLE: When a municipality leases real property for a private golf course, the leasehold will be subject to ad valorem taxation because the golf course does not serve a governmental, municipal, or public purpose or function.

b) **Property Used Exclusively for Literary, Scientific, Religious, or Charitable Purpose**

There is also an exemption from ad valorem taxation for any governmental property which is leased to an organization which uses the property exclusively for literary, scientific, religious, or charitable purposes. §§ 196.196, 196.199(2)(c), Fla. Stat. (2015).

EXAMPLE: If the municipality leases space in its electric utility office building to United Way, and United Way uses the space exclusively for a charitable purpose, then the governmental property is exempt from ad valorem taxation.

4) **Property Leased to a Municipal Utility**

When property owned by a third party is leased to a municipal utility, the owner of the property may be subject to ad valorem taxation based on the depreciated fair market value of the leased property. *See* § 196.001, Fla. Stat. (2015). Such property may be subject to taxation even if the lessee utility is using the property exclusively for municipal or public purposes because the exemption in section 196.199 only applies to property actually owned by a municipal utility. § 196.199(1)(c), Fla. Stat. (2015).

While the ad valorem tax is imposed on the third party owner of the property, municipal utilities should be cautious when signing lease agreements allowing the property owner to recover all taxes imposed pursuant to the transaction from the utility.

VI. PAYING TAXES

A. When to Remit

1) Sales and Use Taxes

Generally, all sales and use taxes, along with the sales tax return, must be postmarked or received by DOR on or before the 20th of the month following the transaction. Fla. Admin. Code r. 12A-1.056(1)(a) (2016).

When quarterly, semiannual, or annual reporting is authorized by DOR pursuant to Sections 212.11(1)(c) or (d), Florida Statutes, sales tax is due the first day of the month following the authorized reporting period and becomes delinquent on the 21st day of that month. Fla. Admin. Code r. 12A-1.056(1)(b) (2016).

In addition, payments may be subject to the Electronic Fund Transfer (EFT) requirement. Fla. Admin Code r. 12-24.003 (2016).

2) Fuel Taxes

For licensed local government users, all fuel taxes, along with the tax return, must be postmarked or received by DOR before or on the 20th day of the month following the transaction. In addition, payments may be subject to the EFT requirement. *See* § 206.43, Fla. Stat. (2015).

3) Gross Receipt Taxes

Returns and payments are due on the first and are late after the 20th day of the month following each billing period. Returns must be filed, even if no tax is due. Fla. Admin. Code r. 12B-6.005 (2016). DOR encourages all dealers to file using an electronic method. In addition, gross receipt tax payments may be subject to the EFT requirements. *See* § 203.01(1)(c), Fla. Stat. (2015).

4) Communication Services Taxes

Returns and payments are due on the first and are late after the 20th day of the month following each billing period. Returns must be filed, even if no tax is due. Fla. Admin. Code r. 12A-19.020 (2016). DOR encourages all dealers to file using an electronic method. In addition, communication services tax payments may be subject to the EFT requirements. *See* § 202.30, Fla. Stat. (2015).

5) Municipal Public Services Tax

The Municipal Public Services Tax is collected by the seller of the taxable item from the purchaser at the time of the payment for such service. The

seller shall remit the taxes collected to the municipality in the manner prescribed by ordinance. § 166.231, Fla. Stat. (2015).

B. Estimated Sales and Use Tax Payments

Estimated sales tax payments are required if an entity's sales tax liability for the preceding state fiscal year (July 1 through June 30) was greater than or equal to \$200,000. Discretionary sales surtaxes should not be included for the \$200,000 criteria or the monthly payment calculations. *See* § 212.11(4), Fla. Stat. (2015); Fla. Admin. Code r. 12A-1.056(3) (2016).

1) When Must Estimated Payments be Made?

All estimated sales tax payments must be remitted through EFT by the 20th day of the month in which the transaction occurred. Fla. Admin Code r. 12-24.003 (2016). However, in order for the transaction to take place on the 20th, the account must be reported by 5:00 p.m. on the last business day prior to the 20th. Fla. Admin. Code r. 12-24.008(1)(a) (2016).

2) How Much Estimated Tax Must be Paid?

Pursuant to Section 212.11(1), Florida Statutes, one of the following three methods must be used to calculate estimated tax liability for any given month:

- (a) 60% of the current month's liability, which is the amount of tax liability for the previous calendar month; or
- (b) 60% of the tax reported for the same month of the previous calendar year; or
- (c) 60% of the average monthly tax liability for those months of the preceding calendar year in which there were reported taxable transactions.

Please note that the 60% applies only to sales taxes, not discretionary surtaxes.

As well, these three calculation methods can result in dramatically different amounts of estimated tax liability for any given month depending on the prior tax patterns.

3) How Are the Remaining Sales Taxes Paid?

The difference between the amount of estimated tax paid and the actual tax liability for the month shall be remitted by EFT on or prior to the 20th day of the month after the month in which the transaction occurred. § 212.11(4)(b), Fla. Stat. (2015).

C. Collection Allowance

Pursuant to Section 212.12(1), Florida Statutes, as compensation for collecting taxes, DOR allows a deduction of 2.5% of the first \$1,200 of sales taxes due and remitted to DOR for each tax period subject to the following exceptions:

- (1) The collection allowance may not be granted if the tax is delinquent at the time of payment, which applies to adjustments; and
- (2) DOR may deny the collection allowance if a taxpayer files an incomplete return.

D. Self-Accrual

Dealers that annually purchase at least \$100,000 worth of taxable tangible personal property, including maintenance and repairs, may self-accrue use taxes when the taxable status of the property purchased will be known only upon its use. However, self-accrual authority first must be obtained from DOR. *See* Fla. Admin. Code r. 12A-1.0911(2)(a)(6) (2016).

E. Penalties and Interest

- (1) **Penalties.** The penalty assessed for delinquent sales and use taxes, as well as communication services taxes, is 10% per month, with a maximum penalty equal to 50% of the taxes assessed. *See* §§ 212.12(2), 202.28(2)(a), Fla. Stat. (2015).

The penalty for delinquent gross receipts tax is 1% per month, accruing from the due date until paid. § 203.06, Fla. Stat. (2015).

- (2) **Interest.** Pursuant to Section 213.235, Florida Statutes, DOR is authorized to assess a floating rate of interest for tax returns and payments of taxes.

The rate of interest for the period January 1, 2016, through June 30, 2016, is 7%. The daily interest rate factor to be used for this period is .000191257. This rate is subject to change effective July 1, 2016.

- (3) **Compromise.** DOR can compromise taxes and interest for doubt as to liability or collectability. In addition, DOR can waive penalties for reasonable cause. *See* 213.21, Fla. Stat. (2015).

F. Electronic Funds Transfer (EFT)

1) Who Must Remit Taxes Through EFT?

DOR will notify all taxpayers who are required to remit a tax by EFT. *See* Fla. Admin. Code r. 12-24.004(1) (2016). A taxpayer is required to remit taxes by EFT if its liability for any tax during the previous state fiscal year (July 1 through June 30) was greater than or equal to \$20,000. Fla. Admin. Code r. 12-24.003 (2016). Any taxpayer who pays communications services tax, gross receipts tax, and sales and use tax in an aggregate amount of \$20,000 must remit communications services tax payments by electronic funds transfer for taxes due during the succeeding calendar year. § 202.3, Fla. Stat. (2015).

2) When to Remit

The taxpayer must report payment information to the Data Collection Center by 5:00 p.m. on the business day prior to the payment due date. *See* Fla. Admin. Code r. 12-24.008 (2016).

a) Late Penalties

If the payment information is reported to the Data Collection Center after 5:00 p.m. on the business day prior to the due date, DOR will assess penalties, interest, and a loss of the collection allowance. Fla. Admin. Code r. 12-24.009(2) (2016).

b) Penalties Compromised

Late penalties may be compromised for the following reasons:

- Inability to access the EFT system on the required date because of a system failure beyond the reasonable control of the taxpayer;
- Failure of the EFT system to properly apply a payment;
- Failure of the EFT system to issue a proper verification of receipt of the payment information;
- System failures within the banking system/ACH interface that are beyond the taxpayer's control; or

- Errors made by the Data Collection Center, State Treasury, or DOR.

Fla. Admin Code r. 12-24.009(3) (2016).

3) Tax Returns

The filing dates for tax returns are not affected by the EFT requirement.

G. SALES AND USE TAX REFUNDS/CREDITS

Taxes remitted to DOR in error, which include payments when no taxes were due and any overpayment of taxes, are subject to refund. However, the refund request must be filed within 3 years after the right to such refund accrues, which generally is the date the taxes were remitted to DOR. § 215.26, Fla. Stat. (2015). In addition, whenever a dealer applies for a refund of taxes erroneously collected and remitted, such taxes must be refunded to the customer before the state will refund any monies to the dealer. Fla. Admin. Code r. 12A-1.014(3) (2016).

A dealer may take a credit or claim a refund for overpayments of sales taxes remitted within the applicable statutory period. *See* Fla. Admin. Code r. 12A-1.014(5)(b) (2016). We believe taking a credit is the preferred option. However, if a credit is taken without the benefit of written advice from DOR, the dealer is subject to penalties and interest if the credit is later disallowed.

When a utility receives a request for refund of overpaid tax from a customer, the utility may either refund the tax directly to the customer, through either a direct refund or a credit, or may provide the customer with an assignment of right so that the customer may seek the refund directly from DOR. The utility should maintain documentary proof that the tax was paid by the customer to the utility, such as an invoice or a cancelled check, and should also maintain any other documentation that is necessary to substantiate the customer's right to a refund of the tax. *See* Tech. Ass't Adv. 10A-048 (Fla. Dep't of Rev. 2010).

VII. AUDIT PROCESS

The audit process provides opportunities for informal meetings with the local auditor and later with the tax conferee in Tallahassee. Each of these opportunities should be exploited, especially the field conference with the local auditor.

A. Notification of Intent to Audit Books and Records

DOR begins the audit process by issuing such a letter of notification, which states the beginning and ending dates of the audit period and the specific taxes to be audited.

B. Audit Period

DOR may assess additional taxes for a period of up to 3 years, or 6 years if the taxpayer makes a substantial underpayment of taxes or files a substantially incorrect return.

C. Assessments Based on Statistical Sample

DOR may statistically sample records and project the audit findings from the sample. However, the auditor is required to make a good faith effort to reach an agreement with the taxpayer on the means and method to be used in the sampling process. Before the utility agrees to a sampling procedure, it should verify that the method is statistically sound (or else in the utility's favor) and require the auditor to explain the sampling methodology in writing.

D. Notice of Intent to Make Audit Changes

Upon completion of the audit, if any additional liability or refunds are discovered, DOR will issue a Notice of Intent to Make Audit Changes (the Notice). The taxpayer will then have 30 consecutive calendar days after the date of issuance of the Notice to request a field conference. Such a request should be in writing and addressed to the address or fax number listed on the Notice. If the taxpayer does not request a field conference within 30 days of issuance of the Notice, a proposed assessment will be issued by DOR. *See* Fla. Admin. Code r. 12-6.002 (2016).

E. Field Conference

The taxpayer has 30 days from receipt of the Notice of Intent to Make Audit Changes to request a field conference with the local auditor or the auditor's supervisor. The purpose of this conference is to question the auditor as to his or her understanding of the audit and to resolve any differences, especially factual disputes, before the assessment is sent to Tallahassee. This is the best opportunity

to resolve issues because the auditor is still in control of the audit and changes are not subject to approval from Tallahassee. If a field conference is not requested, the audit will be forwarded to Tallahassee “as is” after 30 days. If a field conference is requested, it must be held within 90 days of the issuance date of the Notice, unless specifically authorized in writing by DOR. *See Fla. Admin. Code r. 12-6.002 (2016).*

F. Proposed Assessment

After the field conference, or after 30 days if a request for a field conference is not timely made, DOR will issue the proposed assessment. The taxpayer has 60 days from issuance to file a written protest of the proposed assessment with DOR Compliance Support Process. The protest should include a request for waiver of the penalties and interest. *See Fla. Admin. Code r. 12-6.003 (2016).*

1) Final Agency Action

If a written protest is not filed within 60 days of issuance or an extension of time for filing is not granted by DOR, the proposed assessment will become final agency action.

2) Protest

If a protest is filed, DOR may schedule a conference to review the protest. After review, DOR will issue a Notice of Decision which is a statement of DOR’s position. The taxpayer may file a petition for reconsideration if there are additional facts or arguments that DOR should consider. If a petition for reconsideration is not filed within 30 days, the Notice of Decision becomes final agency action. If the petition is filed within 30 days, DOR will review the assessment and issue a Notice of Reconsideration, which is final agency action.

3) Challenge

Final agency action may be contested within 60 days. Prior to filing a petition, the taxpayer must pay all of the uncontested tax, interest, and penalty. *See § 72.011, Fla. Stat. (2015).*

a) Circuit Court

If challenged in circuit court, the taxpayer must pay the uncontested amount to DOR and post a bond or pay the amount protested to the registry of the court; however, the executive director may waive this requirement. The challenge may be filed in the Second Circuit (Tallahassee) or in the circuit court of the county where the taxpayer resides. *See § 72.011, Fla. Stat. (2015).*

b) Division of Administrative Hearings

If challenged at the Division of Administrative Hearings (DOAH), the taxpayer may be required to pay the uncontested amount to DOR; however, the executive director may waive this requirement. If challenged at DOAH, the taxpayer must file the petition with DOR. § 120.57, Fla. Stat. (2015).

4) Payment of Amounts Not Protested

Once the assessment has been evaluated, the taxpayer should remit all taxes that will not be protested. The taxpayer must specify that the payment is for taxes, otherwise the payment will be applied to the interest and penalty, and interest will continue to accrue on the taxes.

5) How to Avoid Most Audit Problems

a) Sales

Charge and remit sales and discretionary taxes on all sales unless:

- (i) The customer has furnished a valid exemption certificate issued by DOR; or
- (ii) The electricity and/or gas are provided to a residential household at a residential rate;
- (iii) The customer has furnished an affidavit stating that the electricity and/or gas will be used exclusively for residential purposes, and service is provided on a residential rate; or
- (iv) The customer purchases natural gas for use as a combustible fuel in a manufacturing process at a fixed location and an affidavit is on file with the utility.

Always itemize sales taxes separately on customer bills to document the payment of taxes. Liability for sales taxes lies with both the seller and the buyer.

b) Purchases

- (i) Pay and remit sales and discretionary taxes on each purchase unless the transaction is exempt.
- (ii) Require the dealer to itemize sales taxes separately on the invoice to document the payment of taxes. Both the seller and the buyer are liable for sales taxes.

c) **Public Works**

- (i) Submit a Certificate of Entitlement (EXHIBIT I).
- (ii) Purchase TPP directly from vendors pursuant to an approved purchasing scheme.

d) **Machinery and Equipment Used in the Generation, Transmission or Distribution of Electricity**

i. ***Power Plants that Burn Residual Oil***

- Pay sales and discretionary taxes on all purchases of machinery, equipment, and parts and accessories therefor.

ii. ***Power Plants that Burn Non-Residual Fuels***

- Request a TAA to determine which items are exempt from sales and discretionary taxes.
- Issue affidavits to vendors for exempt purchases.
- Pay sales and discretionary taxes on all purchases of TPP that are not “necessary” or otherwise exempt.

e) **Transmission and Distribution Material and Equipment**

- (i) Pay sales and discretionary taxes on all purchases of machinery, equipment, and parts and accessories therefor used for the expansion of a municipal electric transmission or distribution system. All purchases of machinery, equipment, and parts and accessories therefor to repair, replace, or refurbish a municipal electric transmission or distribution system is exempt from sales tax.
- (ii) Seek the advice of counsel or request a TAA to determine if the activity being undertaken, for which the purchase of machinery, equipment, and parts and accessories therefor is being purchased, constitutes an expansion of the municipal electric transmission or distribution system.

6) Request a Technical Assistance Advisement (TAA)

A TAA is a binding informal advisement from DOR on the tax consequences of a specific transaction or event. Reasonable reliance on a TAA will protect the taxpayer from penalties and interest if DOR erred in its statement. The TAA request must be in writing and must contain all the relevant facts, including the taxpayer's identifying number and a detailed description of the transaction. *See Fla. Admin. Code r. 12-11.003 (2016)*. In addition, if the taxpayer is asserting a particular determination of the issues, an explanation of the grounds for determination and a statement of relevant authorities in support of the determination should be furnished to DOR. A TAA is recommended when building or making extensive repairs to public works, including power plants, for which an exemption will be claimed.

7) Be Wary of Advice from the Department of Revenue (DOR)

Advice from local auditors and the tax hotline is unreliable. In addition, the only binding advice from DOR is a TAA or a declaratory statement. Reliance on a TAA or declaratory statement should relieve the taxpayer of all penalties and interest.

8) Conduct Self-Audits

Unfortunately, flaws in a utility's internal tax procedures generally are not detected absent an extraordinary event such as a DOR audit or a change in the tax regulations. Due to the high cost of errors, we recommend that each utility routinely conduct internal audits before an audit notice arrives.

VIII. CONCLUSION

This Tax Guide does not address every tax issue. When you have questions that are beyond the scope of this guide, we recommend that you do one of the following:

A. Call your Attorney

An attorney that specializes in state and local taxes can answer questions and resolve disputes with DOR. In addition, FMEA should be notified of any problems that utilities are facing so that we can address those issues with every municipal electric utility.

B. Request a Technical Assistance Advisement (TAA)

We recommend that a TAA be considered when building, or making extensive repairs to, power plants or other public works projects for which an exemption will be claimed.

C. DO NOT Ask your Local Auditor

Oral advice from DOR is not binding, and reliance on written advice only relieves the taxpayer of penalties and interest, not taxes. In addition, our experience leads us to believe that advice from local auditors and the tax hotline frequently is wrong.

IX. INDEX TO EXHIBITS

EXHIBIT A	Residential Household Affidavit
EXHIBIT B	Consumer's Certificate of Exemption
EXHIBIT C	Resale Certificate for Gross Receipts Tax on Utility Services
EXHIBIT D	Certificate for Natural or Manufactured Gas Purchased by a Person Eligible for Exemption Under Industrial Classifications in Section 212.08(7)(ff)2., Florida Statutes.
EXHIBIT E	Sample Bill Calculation
EXHIBIT F	Gross Receipts Tax Return
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EXHIBIT I	Certificate of Entitlement for Public Works Projects
EXHIBIT J	Exemption Affidavit Prior to Purchase (for generation equipment or machinery that does not burn residual oil, whether purchased by the utility or its contractor)
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EXHIBIT M	Employer's Authorization to Make Purchases on Behalf of an Exempt Governmental Unit

EXHIBIT A

Residential Household Affidavit

This is to certify that until the undersigned notifies <utility> otherwise in writing, all of the electrical or natural gas services provided by <utility> to the following account number(s) are exempt from Florida's Sales taxes for the following reasons:

- The electric and/or natural gas service provided to this account will be used exclusively to serve a residential household, and the meter(s) will not serve any commercial or business activities. Commercial or business activities include but are not limited to rental operations that cater primarily to transient guests (hotels, motels, room rentals), and the performance of any activity that is not residential in nature.
- The electric and/or natural gas service provided to this account will be used exclusively to serve common areas of residential housing complexes, and the meter(s) will not serve any commercial or business activities, such as vending machines, coin operated laundry facilities, sewage/lift station equipment, or any activity that is not residential in nature.
- The electric and/or natural gas service provided to this account will be used exclusively to serve a residential model home. The meter(s) will not serve any commercial activity, such as a sales or business office, or any activity that is not residential in nature.

ADDRESSES OF EXEMPT LOCATIONS

UTILITY ACCOUNT NUMBERS

THE UNDERSIGNED UNDERSTANDS THAT IF SUCH PURCHASES OF ELECTRICITY AND NATURAL GAS DO NOT QUALIFY FOR THE EXEMPTION INDICATED ABOVE, THE UNDERSIGNED WILL BE SUBJECT TO SALES AND USE TAXES, INTEREST, AND PENALTIES BY THE FLORIDA DEPARTMENT OF REVENUE, AND THAT WHEN ANY PERSON SHALL FRAUDULENTLY, FOR THE PURPOSE OF EVADING TAX, ISSUE TO A VENDOR OR TO ANY AGENT OF THE STATE A CERTIFICATE OR STATEMENT IN WRITING IN WHICH SUCH PERSON CLAIMS EXEMPTION FROM THE SALES TAX, SUCH PERSON, IN ADDITION TO BEING LIABLE FOR PAYMENT OF THE TAX PLUS A MANDATORY PENALTY OF 200 PERCENT OF THE TAX, SHALL BE LIABLE FOR FINE AND PUNISHMENT AS PROVIDED BY LAW FOR A CONVICTION OF A MISDEMEANOR OF THE SECOND DEGREE, AS PROVIDED IN s. 775.082, s. 775.083 or s. 775.084, F.S.

Signature

Title

Name of Organization

Date

EXHIBIT B

**Sales and Use Tax Resale and
Exemption Certificate**

(purchaser) does hereby certify that electricity purchased from (seller) on or after (date) is purchased for resale and that such purchases are not subject to the sales taxes imposed by Chapter 212, Florida Statutes. (purchaser) further certifies that (purchaser) will remit any sales taxes to the Florida Department of Revenue on all electricity purchased from (seller) that is not resold or otherwise exempt from taxation. Such sales taxes shall be based upon the purchase price paid to (seller) for such electricity.

Purchaser: _____

Address: _____

Certificate of Registration Number: _____

THE UNDERSIGNED UNDERSTANDS THAT IF SUCH PURCHASES OF ELECTRIC POWER OR ENERGY DO NOT QUALIFY FOR EXEMPTION, THE UNDERSIGNED WILL BE SUBJECT TO ALL SALES AND USE TAXES, INTEREST AND PENALTIES BY THE FLORIDA STATE DEPARTMENT OF REVENUE, AND THAT WHEN ANY PERSON SHALL FRAUDULENTLY, FOR THE PURPOSE OF EVADING TAX, ISSUE TO A VENDOR OR TO ANY AGENT OF THE STATE A CERTIFICATE OR STATEMENT IN WRITING IN WHICH SUCH PERSON CLAIMS EXEMPTION FROM THE SALES TAXES, SUCH PERSON, IN ADDITION TO BEING LIABLE FOR PAYMENT OF THE TAX PLUS A MANDATORY PENALTY OF 200 PERCENT OF THE TAX, SHALL BE LIABLE FOR FINE AND PUNISHMENT AS PROVIDED BY LAW FOR A CONVICTION OF A MISDEMEANOR OF THE SECOND DEGREE, AS PROVIDED IN s. 775.082, s.775.083 or s. 775.084, F.S.

Signature

Title

Date

EXHIBIT C

Gross Receipts Tax Resale and Exemption Certificate

This is to certify that the things or services purchased after _____ (date) from _____ (name) is or was purchased for resale pursuant to the exemption under Chapter 203, F.S. It is further certified that the undersigned vendee shall pay the tax on the things or services that are not resold pursuant to the exemption under Chapter 203, F.S., based upon the purchase price of the things or services unless otherwise provided.

Purchaser _____

Address _____

Certificate of Registration Number _____ Effective Date _____

THE UNDERSIGNED UNDERSTANDS THAT IF SUCH PURCHASES OF ELECTRIC POWER OR ENERGY ARE NOT SUBJECT TO THE TAX IMPOSED PURSUANT TO CHAPTER 203, F.S., THE UNDERSIGNED WILL BE SUBJECT TO GROSS RECEIPTS TAX, INTEREST AND PENALTIES BY THE FLORIDA STATE DEPARTMENT OF REVENUE, AND THAT IN ADDITION TO ANY OTHER PENALTY PROVIDED BY LAW, ANY PERSON WHO FALSELY OR FRAUDULENTLY REPORTS OR UNLAWFULLY ATTEMPTS TO EVADE PAYING ANY GROSS RECEIPT TAXES IMPOSED UNDER THIS CHAPTER SHALL PAY A PENALTY EQUAL TO 100 PERCENT OF THE TAX DUE AND IS GUILTY OF A MISDEMEANOR OF THE SECOND DEGREE PUNISHABLE AS PROVIDED UNDER s. 775.082, s. 775.083. or s. 775.084, F.S.

I hereby declare that I have examined this certificate and to the best of my knowledge and belief it is true, correct and complete.

By _____ (authorized signature)

Date _____

EXHIBIT D

**Certificate for Natural or Manufactured Gas
Purchased by a Person Eligible for Exemption
Under Industrial Classifications in Section
212.08(7)(ff)2., F.S.**

This is to certify that I have purchased natural or manufactured gas for use as an energy source or raw material that is excluded from tax pursuant to Section 203.01(3)(d), Florida Statutes.

I certify that the applicable purchases were made by a company whose four-digit SIC Industry Number, as listed below, is classified under SIC Industry Major Group Number 10,12 through 14, 20, or 22 through 39 or Group Number 212 in the Standard Industrial Classification (SIC) Manual, 1987, published by the Office of Management and Budget.

I acknowledge that I will be liable for tax pursuant to Section 203.01(1)(f), Florida Statutes, if the requirements for exclusion pursuant to Section 203.01(3)(d), F.S., are not satisfied.

I understand that if such purchases of natural or manufactured gas do not qualify for the exclusion as indicated on this certification, I must pay the applicable tax directly to the Department of Revenue. Under penalties of perjury, I declare that I have read the foregoing certificate and the facts stated herein are true.

Purchaser's Name (Print or Type)

Date

Signature of Authorized Person

Title

Federal Employer Identification Number (FBI No.)

EXHIBIT E

Sample Bill Calculations

➤ In-City Customer; No Franchise Fee

Step 1: Calculate Bill for Services ("Bill")

Usage	\$100.00
FAC	\$30.00
Demand Charge	\$50.00
Customer Charge	\$20.00
TOTAL	\$200.00

***NOTE:** The above amounts are examples only.

Step 2: Calculate Gross Receipts on Bill ("GR Bill")

	Bill	Rate	Amount
GR Bill	\$200.00	0.025641	\$5.13

Step 3: Calculate MPST

	Amount	Rate	MPST
Bill	\$200.00	0.10	\$20.000
(Less FAC)*	(\$30.00)	0.10	(\$3.000)
GR Bill	\$5.13	0.10	\$0.513
TOTAL	\$175.13		\$17.51

***NOTE:** The FAC is not included in calculating the MPST.

Step 7: Calculate State Sales Tax

	Amount	Rate	Tax
Bill	\$200.00	0.0695	\$13.900
GR Bill	\$5.13	0.0695	\$0.356
TOTAL	\$205.13		\$14.26

Step 8: Calculate County Sales Surtax

	Amount	Rate	Tax
Bill	\$200.00	0.005	\$1.000
GR Bill	\$5.13	0.005	\$0.026
TOTAL	\$205.13		\$1.03

Step 9: Calculate Total Bill

Bill	\$200.00
GR Bill	\$5.13
MPST	\$17.51
State Sales Tax	\$14.26
County Sales Surtax	\$1.03
TOTAL	\$237.92

➤ Out-of-City Customer; No Franchise Fee

Step 1: Calculate Bill for Services ("Bill")

Usage	\$100.00
FAC	\$30.00
Demand Charge	\$50.00
Customer Charge	\$20.00
TOTAL	\$200.00

*NOTE: The above amounts are examples only.

Step 2: Calculate Gross Receipts on Bill ("GR Bill")

	Bill	Rate	Amount
GR Bill	\$200.00	0.025641	\$5.13

Step 3: Calculate Surcharge

	Amount	Rate	Surcharge
Bill	\$200.00	0.10	\$20.000
(Less FAC)*	(\$30.00)	0.10	(\$3.000)
GR Bill	\$5.13	0.10	\$0.513
TOTAL	\$175.13		\$17.51

*NOTE: The FAC is not included in calculating the Surcharge.

Step 4: Calculate Gross Receipts on Surcharge ("GR Sur")

	Surcharge	Rate	Amount
GR Sur	\$17.51	0.025641	\$0.45

Step 7: Calculate State Sales Tax

	Amount	Rate	Tax
Bill	\$200.00	0.0695	\$13.900
GR Bill	\$5.13	0.0695	\$0.356
Surcharge	\$17.51	0.0695	\$1.217
GR Sur	\$0.45	0.0695	\$0.031
TOTAL	\$223.09		\$15.50

Step 8: Calculate County Sales Surtax

	Amount	Rate	Tax
Bill	\$200.00	0.005	\$1.000
GR Bill	\$5.13	0.005	\$0.026
Surcharge	\$17.51	0.005	\$0.088
GR Sur	\$0.45	0.005	\$0.002
TOTAL	\$223.09		\$1.12

Step 9: Calculate Total Bill

Bill	\$200.00
GR Bill	\$5.13
Surcharge	\$17.51
GR Sur	\$0.45
State Sales Tax	\$15.50
County Sales Surtax	\$1.12
TOTAL	\$239.71

➤ Out-of-City Customer with Franchise Fee

Step 1: Calculate Bill for Services ("Bill")

Usage	\$100.00
FAC	\$30.00
Demand Charge	\$50.00
Customer Charge	\$20.00
TOTAL	\$200.00

*NOTE: The above amounts are examples only.

Step 2: Calculate Gross Receipts on Bill ("GR Bill")

	Bill	Rate	Amount
GR Bill	\$200.00	0.025641	\$5.13

Step 3: Calculate Surcharge

	Amount	Rate	Surcharge
Bill	\$200.00	0.10	\$20.000
(Less FAC)*	(\$30.00)	0.10	(\$3.000)
GR Bill	\$5.13	0.10	\$0.513
TOTAL	\$175.13		\$17.51

*NOTE: The FAC is not included in calculating the Surcharge.

Step 4: Calculate Gross Receipts on Surcharge ("GR Sur")

	Surcharge	Rate	Amount
GR Sur	\$17.51	0.025641	\$0.45

Step 5: Calculate Franchise Fee ("Fee")

	Amount	Rate	Fee
Bill	\$200.00	0.06	\$12.000
GR Bill	\$5.13	0.06	\$0.308
TOTAL	\$205.13		\$12.31

Step 6: Calculate Gross Receipts on Franchise Fee ("GR Fee")

	Fee	Rate	Amount
GR Fee	\$12.31	0.0256	\$0.32

Step 7: Calculate State Sales Tax

	Amount	Rate	Tax
Bill	\$200.00	0.0695	\$13.900
GR Bill	\$5.13	0.0695	\$0.356
Surcharge	\$17.51	0.0695	\$1.217
GR Sur	\$0.45	0.0695	\$0.031
Fee	\$12.31	0.0695	\$0.855
GR Fee	\$0.32	0.0695	\$0.022
TOTAL	\$235.71		\$16.38

Step 8: Calculate County Sales Surtax

	Amount	Rate	Tax
Bill	\$200.00	0.005	\$1.000
GR Bill	\$5.13	0.005	\$0.026
Surcharge	\$17.51	0.005	\$0.088
GR Sur	\$0.45	0.005	\$0.002
Fee	\$12.31	0.005	\$0.062
GR Fee	\$0.32	0.005	\$0.002
TOTAL	\$235.71		\$1.18

Step 9: Calculate Total Bill

Bill		\$200.00
GR Bill		\$5.13
Surcharge		\$17.51
GR Sur		\$0.45
Fee		\$12.31
GR Fee		\$0.32
State Sales Tax		\$16.38
County Sales Surtax		\$1.18
TOTAL		\$253.27

➤ Net Metering Customer (Consumer)

Step 1: Calculate Bill for Services ("Bill")

Usage	\$100.00
<i>Net Meter Credit</i>	<i>-\$50.00</i>
Net Energy	\$50.00
FAC	\$30.00
Demand Charge	\$50.00
Customer Charge	\$20.00
Total Other Charges	\$100.00
TOTAL	\$150.00

*NOTE: The above amounts are examples only.

Step 2: Calculate Gross Receipts on Bill ("GR Bill")

	Bill	Rate	Amount
Energy	\$50.00	0.025641	\$1.28
Other	\$100.00	0.025641	\$2.56
TOTAL	\$150.00		\$3.85

Step 3: Calculate MPST

	Amount	Rate	MPST
Energy	\$50.00	0.10	\$5.000
Other	\$100.00	0.10	\$10.000
(Less FAC)*	(\$30.00)	0.10	(\$3.000)
GR Bill	\$3.85	0.10	\$0.385
TOTAL	\$123.85		\$12.38

*NOTE: The FAC is not included in calculating the MPST.

Step 7: Calculate State Sales Tax

	Amount	Rate	Tax
Energy	\$50.00	0.0695	\$3.475
Other	\$100.00	0.0695	\$6.950
GR Bill	\$3.85	0.0695	\$0.267
TOTAL	\$153.85		\$10.69

Step 8: Calculate County Sales Surtax

	Amount	Rate	Tax
Energy	\$50.00	0.005	\$0.250
Other	\$100.00	0.005	\$0.500
GR Bill	\$3.85	0.005	\$0.019
TOTAL	\$153.85		\$0.77

Step 9: Calculate Total Bill

Bill	\$150.00
GR Bill	\$3.85
MPST	\$12.38
State Sales Tax	\$10.69
County Sales Surtax	\$0.77
TOTAL	\$177.69

➤ Net Metering Customer (Producer)

Step 1: Calculate Bill for Services ("Bill")

Usage	\$100.00
Net Meter Credit	-\$125.00
Net Energy	-\$25.00
FAC	\$30.00
Demand Charge	\$50.00
Customer Charge	\$20.00
Total Other Charges	\$100.00
TOTAL	\$75.00

*NOTE: The above amounts are examples only.

Step 2: Calculate Gross Receipts on Bill ("GR Bill")

	Bill	Rate	Amount
Energy*	-\$25.00	0.025641	\$0.00
Other	\$100.00	0.025641	\$2.56
TOTAL	\$75.00		\$2.56

*NOTE: When net usage is negative, GR tax on the energy portion of the bill must be limited to zero in order to properly collect GR tax on the other separately-stated charges on the bill.

Step 3: Calculate MPST

	Amount	Rate	MPST
Energy*	-\$25.00	0.10	\$0.000
Other	\$100.00	0.10	\$10.000
(Less FAC)*	(\$30.00)	0.10	(\$3.000)
GR Bill	\$2.56	0.10	\$0.256
TOTAL	\$47.56		\$7.26

*NOTE: When net usage is negative, MPST on the energy portion of the bill must be limited to zero in order to properly collect MPST tax

on the other separately-stated charges on the bill. Also, the FAC is not included in calculating the MPST.

Step 7: Calculate State Sales Tax

	Amount	Rate	Tax
Energy*	-\$25.00	0.0695	\$0.000
Other	\$100.00	0.0695	\$6.950
GR Bill	\$2.56	0.0695	\$0.178
TOTAL	\$77.56		\$7.13

***NOTE:** When net usage is negative, sales tax on the energy portion of the bill must be limited to zero in order to properly collect sales tax on the other separately-stated charges on the bill.

Step 8: Calculate County Sales Surtax

	Amount	Rate	Tax
Energy*	-\$25.00	0.005	\$0.000
Other	\$100.00	0.005	\$0.500
GR Bill	\$2.56	0.005	\$0.013
TOTAL	\$77.56		\$0.51

***NOTE:** When net usage is negative, sales tax on the energy portion of the bill must be limited to zero in order to properly collect sales tax on the other separately-stated charges on the bill.

Step 9: Calculate Total Bill

Bill	\$75.00
GR Bill	\$2.56
MPST	\$7.26
State Sales Tax	\$7.13
County Sales Surtax	\$0.51
TOTAL	\$92.46

EXHIBIT F

Gross Receipts Tax Return



Mail to:
 FLORIDA DEPARTMENT OF REVENUE
 5050 W TENNESSEE ST
 TALLAHASSEE FL 32399-0150

Name and address if not preprinted:

DR-133
R. 07/07
TC
 Rule 12B-6.005
 Florida Administrative Code
 Effective 09/08

Certificate #:
 Business Partner #:
 Contract Object #:
 FEIN:
 Collection Period:

Location Address:

Return due date:

A return must be filed even if no tax is due or EFT payment sent.

Read pages 3 and 4 before completing this form.

What is the gross receipts tax for utility services? The tax is imposed on gross receipts from the sale, delivery, or transportation of natural gas, manufactured gas, or electricity to a retail consumer in Florida.

Line-by-Line Instructions

Column A - Taxable Gross Receipts or Costs

Line 1. Electric Receipts. Enter the total due on **taxable** electric utility service receipts.

Line 2. Use Tax/Cogeneration or Small Power Producers. Enter the total amount of costs subject to tax. **See Page 3.** A use tax component of gross receipts tax may impact persons who cannot prove payment of tax.

Line 3. Gas Receipts. Enter the total due on **taxable** gas receipts. **See Page 4.** Use the appropriate fiscal year index price for each class of customer (residential, commercial, or industrial).

Column B - Tax Rate

Lines 1-3. The current tax rate is printed on the return.

Column C - Tax Due

Lines 1-3. Multiply the amount in Column A (Taxable Gross Receipts or Costs) by the tax rate in Column B.

Line 4. Column C Total. Enter the total of Lines 1, 2, and 3.

Line 5a. DOR Credit Memo. Enter the amount of credit memo issued by DOR and attach a copy of the original memo.

Line 5b. Other Credits. Enter the amount of allowable credits, such as gross receipts taxes paid to a service provider for taxable services that are resold by you.

Line 5. Total Credits. Enter the total of Lines 5a and 5b.

Line 6. Amount of Tax Due. Subtract Line 5 from Line 4. Enter total amount of tax due. If your return is late, complete Lines 7 and 8. If on time, skip to Line 9.

(continued on page 2)

****Complete both sides of coupon. Detach coupon and return with payment.****

Florida Department of Revenue Gross Receipts Tax Return HD/PM Date: / / DR-133 R. 07/07

	Column A Taxable Gross Receipts or Costs	Column B Tax Rate 2.5%	Column C Tax Due (AxB)
1. Electric Receipts		X .025	
2. Use Tax/ Cogeneration or Small Power Producers (See Page 3)		X .025	
3. Gas Receipts (See Page 4)		X .025	
		4. Column C Total	
5a. DOR Credit Memo	5b. Other Credits	5. Total Credits	
CERTIFICATE #		6. Amount of Tax Due (Line 4 minus Line 5)	
COLLECTION PERIOD		7. Penalty Amount Due (See instructions for rates)	
<div style="border: 1px solid black; padding: 5px; width: fit-content;"> Name Address City/St/ZIP </div>		8. Interest Amount Due (See instructions for rates)	
		9. Total Due with Return (Add Lines 6, 7, and 8)	

DR-133

Due:

Late After:

Check here if payment was made electronically.

9100 0 99999999 0022000031 0 9999999999 0000 0

Line 7. Penalty Amount Due. Tax returns and payments are due by the 20th day of the month following each collection period. If the 20th falls on a Saturday, Sunday, or state or federal holiday, your tax return must be postmarked or hand-delivered to the Department on the first business day following the 20th. The penalty for a **late-filed** return or late payment is 10 percent for each month (or fraction of a month) the tax is late, not to exceed 50 percent of the tax due. Multiply the amount on Line 6 by the appropriate penalty rate. The minimum penalty is \$10, even if no tax is due.

Line 8. Interest Amount Due. Interest is due on late payments from the date tax is due until paid. A floating rate of interest applies to underpayments and late payments of tax. The rate is updated January 1 and July 1 of each year by using the formula established in section 213.235, Florida Statutes (F.S.). You can obtain interest rates from our Internet site or by calling Taxpayer Services. Multiply the tax due on Line 6 by the daily interest rate, then by the number of days late.

Line 9. Total Due with Return. Add the amounts on Lines 6, 7, and 8 and enter the total. Remit this amount with your return. Make your check payable to the Florida Department of Revenue. Check the box if you have electronically transmitted your payment.

Sign and date the return. The return must be signed by a person who is authorized to sign on behalf of the provider.

Mail your return and payment to: Florida Department of Revenue, 5050 W Tennessee St, Tallahassee FL 32399-0150.

File and Pay Electronically: The Department maintains a free and secure Internet site to file and pay gross receipts tax. To enroll, go to the Department's Internet site at:

www.myflorida.com/dor/eservices/

Change of Information - Gross Receipts Tax

The legal entity changed on ____/____/____. **If you change your legal entity and are continuing to do business in Florida, you must register online or complete and mail a new Application to Collect and/or Report Tax in Florida (Form DR-1).**

The business was closed permanently on ____/____/____. (The Department will cancel your gross receipts tax certificate number as of this date.)
Are you a corporation/partnership required to file corporate income tax returns? Yes No

The business address has changed.
New Address: _____
City: _____ State: _____ ZIP: _____

The business was sold on ____/____/____. The new owner information is:
Name of New Owner: _____ Telephone Number of New Owner: (____) _____
Mailing Address of New Owner: _____
City: _____ County: _____ State: _____ ZIP: _____

Gross Receipts Tax Certificate Number [] [] - [] [] [] [] [] [] [] [] [] [] [] [] [] [] - [] **FEIN** [] [] - [] [] [] [] [] [] [] [] [] []

Business Partner Number _____

▶ Signature of Taxpayer (Required): _____ Date: _____ Telephone Number: (____) _____

****Detach coupon and return with payment****

HAS YOUR ADDRESS OR BUSINESS INFORMATION CHANGED?

Check here and complete the change of information form above.

CHANGE OF OWNERSHIP?

If you sell your business or ownership changes, check here and complete the change of information form above. You will also need to file a final return.

FINAL RETURN?

Check here if you are discontinuing your business and this is your final return. Closing date: ____/____/____.

Under penalties of perjury, I declare that I have examined this tax return and the facts stated in it are true.

Authorized Signature _____ Type or print name _____

Title _____ Date _____ Telephone _____

Who must file a return?

Distribution company. Each distribution company that receives payment for the sale or transportation of natural or manufactured gas or electricity to a retail consumer in Florida must report and remit the gross receipts tax from utility services.

“Distribution company” means any person owning or operating local electric, or natural or manufactured gas, utility distribution facilities within Florida for the transmission, delivery, and sale of electricity or natural or manufactured gas. The term does not include natural gas transmission companies that are subject to the jurisdiction of the Federal Energy Regulatory Commission.

Use Tax. Any person who imports into this state electricity, natural gas, or manufactured gas, or severs natural gas for his or her own use as a substitute for purchasing utility, transportation, or delivery services taxable under Chapter 203, F.S., who cannot prove payment of tax, must register and report and remit gross receipts tax. Tax is applied to the “cost price” of electricity as provided in s. 212.02(4), F.S.

Cogeneration or Small Power Producers are required to report and remit gross receipts tax. Tax is applied to the “cost price” of electricity as provided in s. 212.02(4), F.S.

Electricity produced by cogeneration or by small power producers is electricity that is:

- Transmitted and distributed by a public utility between two locations of a customer of a utility according to s. 366.051, F.S.
- Produced for the producers’ own use as a substitute for electrical energy produced by an electric utility.

What is exempt?

A complete list of tax-exempt transactions is provided in Chapter 203, F.S. Examples of exemptions include:

- A sale, transportation, or delivery of natural or manufactured gas or electricity for resale when documented in compliance with Department rules.
- Wholesale sales of electric transmission service.
- The use of natural gas in the production of oil or gas, or use of natural or manufactured gas by a person transporting natural or manufactured gas, when used and consumed in providing such services.
- 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)2., F.S.
- A sale, transportation, or delivery of natural or manufactured gas for use as a fuel in the generation of electricity.

Taxable Gross Receipts or Costs (use for completing Column A, Line 2)

Use tax/cogeneration or small power producers should enter in Column A, Line 2, the total taxable cost price of electricity or natural gas or manufactured gas, and follow the line-by-line instructions.

“Cost price” is defined in s. 212.02(4), F.S., as the actual cost of articles of tangible personal property without any deductions for the cost of materials used, labor or service costs, transportation charges, or expenses.

Index Price Calculations

Go to www.myflorida.com/dor/taxes for current index prices used to calculate gross receipts. Look under the category "Check Rates Here."

Taxable Gross Receipts for Gas Receipts (use for completing Column A, Line 3)

Distribution Company: The tax levied on a distribution company's gross receipts from the sale or transportation of natural gas or manufactured gas is determined by dividing the number of cubic feet delivered by 1,000 and multiplying the resulting number by the appropriate index price (residential, commercial, or industrial).

Index Price: The Florida price per 1,000 cubic feet for retail consumers in the previous calendar year as published in the United States Energy Information Administration Natural Gas Monthly and announced by the Department of Revenue on June 1 of each year. The price will be effective for the 12-month period beginning July 1 of that year.

Index Price Calculations for Column A, Line 3 – Gas Receipts:

1. Total number of cubic feet delivered to **residential customers** divided by 1,000, then multiplied by current index price.
2. Total number of cubic feet delivered to **commercial customers** divided by 1,000, then multiplied by current index price.
3. Total number of cubic feet delivered to **industrial customers** divided by 1,000, then multiplied by current index price.

Add the totals for all classes of customers and enter the result in Column A, Line 3. Follow the line-by-line instructions to complete the return.

Example: A distribution company sells 3 million cubic feet of natural/manufactured gas (for illustration only – index prices change yearly on July 1):

1. Residential customers: (1,000,000 divided by 1,000) multiplied by current index price (\$22.00) = \$22,000
2. Commercial customers: (1,000,000 divided by 1,000) multiplied by current index price (\$13.81) = \$13,810
3. Industrial customers: (1,000,000 divided by 1,000) multiplied by current index price (\$11.77) = \$11,770
4. Add the results from 1 through 3 (\$22,000 + \$13,810 + \$11,770 = \$47,580). Enter the total in Column A, Line 3.

For Information and Forms



Information and forms are available on our Internet site at:

www.myflorida.com/dor



To speak with a Department of Revenue representative, call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671.



Persons with hearing or speech impairments may call the TDD at 800-367-8331 or 850-922-1115.



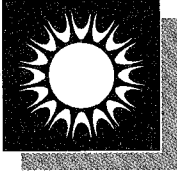
For a written reply to **tax questions**, write:

Taxpayer Services
Florida Department of Revenue
5050 W Tennessee St
Tallahassee FL 32399-0112



To receive forms by mail:

- Order multiple copies of forms from our Internet site at: www.myflorida.com/dor/forms or
- Mail **form requests** to:
Distribution Center
Florida Department of Revenue
5050 W Tennessee St
Tallahassee FL 32399-0112



The Florida Solar Energy Center certifies the following list to the Department of Revenue, pursuant to Section 212.08(7)(hh), Florida Statutes.

SOLAR ENERGY SYSTEM COMPONENTS

COLLECTOR: The purpose of a solar collector in thermal applications is to gather radiant energy from the sun and transfer it in the form of heat to a fluid for the purpose of domestic water heating, pool heating, space heating and cooling. A collector may consist of an absorber plate and tubing which may or may not be enclosed in an insulated box with a transparent cover. The collector provides the primary energy input to the system. Solar electric systems considered eligible for the exemption collect the light energy from the sun and convert it to electricity. A solar photovoltaic powered attic fan ventilation system is eligible. A pool blanket is eligible as a "passive" solar collector whether used in conjunction with or independently from an active solar pool system.

TYPICAL MATERIALS: Cover plate - glass, resin - fiberglass, plastic, vinyl; Absorber and tubing - copper, galvanized steel, aluminum, plastic, rubber; Coating - non-selective, moderately selective, and selective; Insulation - polyisocyanurate, homasote, urethane, ductboards, fiberglass; Box - aluminum, galvanized steel, exterior grade wood, molded fiberglass; Photovoltaic Array - photovoltaic modules.

PUMP AND CONTROLS: The equipment which regulates the circulation of the fluid between the storage medium and the collector.

TYPICAL MATERIALS: Pump - bronze, brass, stainless steel, cast iron; Controller - solid state transistorized controller, sensors, timer, snap switches, and photovoltaic modules.

PHOTOVOLTAIC POWER CONDITIONING EQUIPMENT: The equipment which receives the direct current from the photovoltaic array, converts it to alternating current for consumption and/or transfer to the electric utility grid.

TYPICAL MATERIALS: Inverters, transformers, junction boxes, meters, maximum power trackers, dc to dc converters, and charge controllers.

STORAGE UNIT: The equipment which receives thermal energy, or direct current in the case of a solar electric system, and retains it for future use.

TYPICAL MATERIALS: Conventional tank, solar specific tank, tank equipped with heat exchanger, expansion tank, heat storage by phase change material, desiccants, batteries, regulators, mechanical housing and venting.

ACCESSORIES (when used as an integral part of a solar system): Piping, insulation, air vents, relief valves, mixing valves, check valves, gate valves, assorted bolts, nuts, washers and screws, mounting brackets, angle irons and other structural support (other than roof), solder, flux, pitch and pitch pans or other sealant, drain down reservoir, fans, air handling units, air dampers, heat exchangers, heat transfer fluids, convectors, radiators, pool blankets, direct current wiring, and miscellaneous safety equipment required for P.V. applications; for example, blocking and bypass diodes, surge arrestors, disconnect switches, fuse holders, fuses, relays, junction boxes, ground fault detector and/or interrupter, grounding hardware, and utility-interconnection protection equipment.

NOTE: Amount of piping allowable for the exemption is limited to that used in collector construction and the feed and return lines between collector and storage. Piping from the tank to the taps would be required in a conventional system and therefore is not eligible for an exemption. A typical or rule of thumb piping length for feed and return would be a total of 80 to 100 feet. Wiring used in photovoltaic applications considered eligible for the exemption is limited to that wiring which is unique to the system. Therefore, alternating current wiring throughout the structure which would be present without regard to the photovoltaic system is not eligible for the exemption. Tangible personal property in which the solar equipment is integral to the property (such as calculators, patio lights, appliances and novelty items), and where the cost of the solar equipment cannot be or is not separate from the total product cost, is not considered to be a solar energy system.



GENERAL TAX STATUS OF TPP

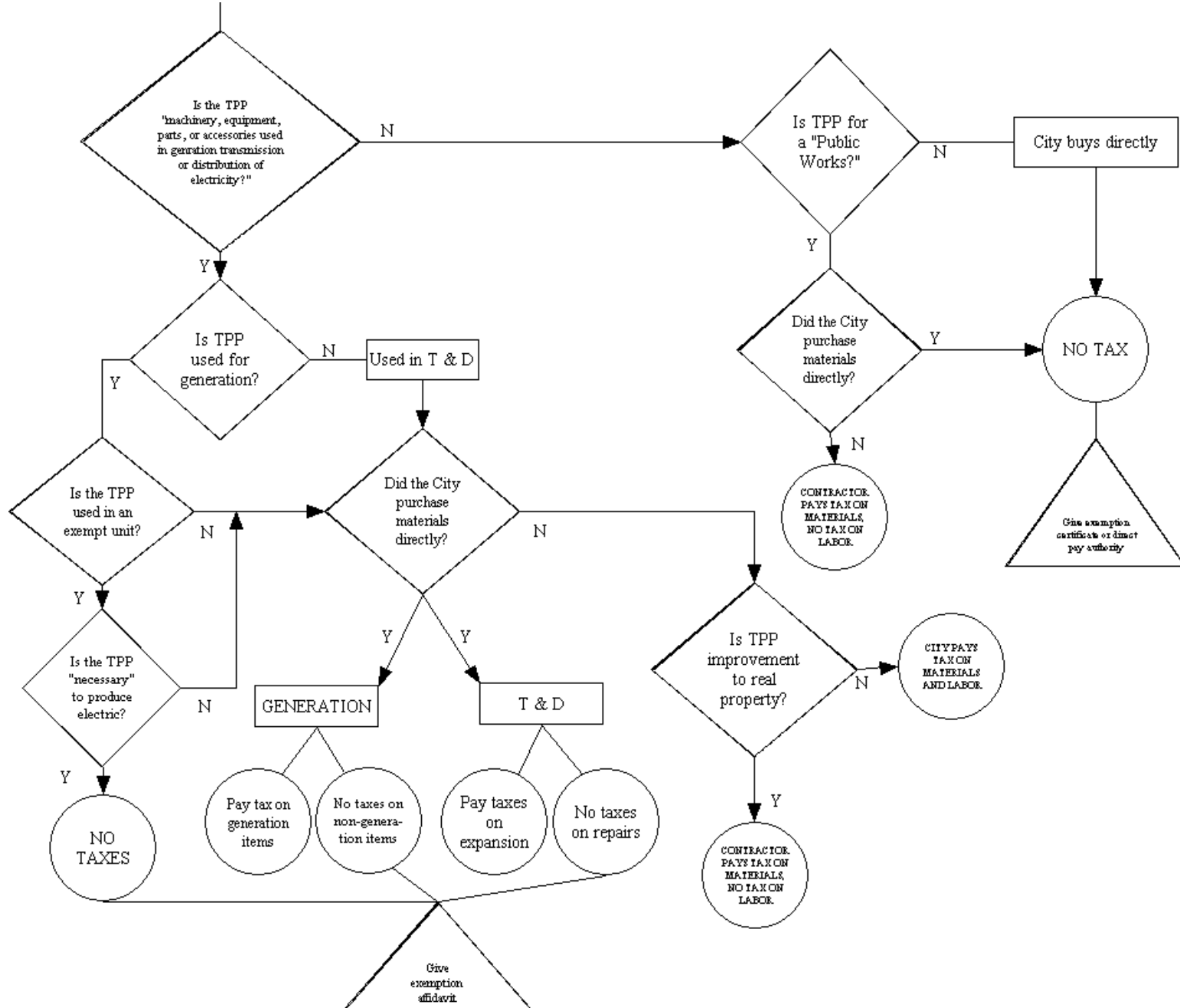


EXHIBIT H

EXHIBIT I

CERTIFICATE OF ENTITLEMENT

The undersigned authorized representative of _____ (hereinafter "Governmental Entity"), Florida Consumer's Certificate of Exemption Number _____, affirms that the tangible personal property purchased pursuant to Purchase Order Number _____ from _____ (Vendor) on or after _____ (date) will be incorporated into or become a part of a public facility as part of a public works contract pursuant to contract # _____ with _____ (Name of Contractor) for the construction of _____.

Governmental Entity affirms that the purchase of the tangible personal property contained in the attached Purchase Order meets the following exemption requirements contained in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C.:

You must initial each of the following requirements.

- ____ 1. The attached Purchase Order is issued directly to the vendor supplying the tangible personal property the Contractor will use in the identified public works.
- ____ 2. The vendor's invoice will be issued directly to Governmental Entity.
- ____ 3. Payment of the vendor's invoice will be made directly by Governmental Entity to the vendor from public funds.
- ____ 4. Governmental Entity will take title to the tangible personal property from the vendor at the time of purchase or of delivery by the vendor.
- ____ 5. Governmental Entity assumes the risk of damage or loss at the time of purchase or delivery by the vendor.

Governmental Entity affirms that if the tangible personal property identified in the attached Purchase Order does not qualify for the exemption provided in Section 212.08(6), F.S., and Rule 12A-1.094, F.A.C., Governmental Entity will be subject to the tax, interest, and penalties due on the tangible personal property purchased. If the Florida Department of Revenue determines that the tangible personal property purchased tax-exempt by issuing this Certificate does not qualify for the exemption, Governmental Entity will be liable for any tax, penalty, and interest determined to be due.

I understand that if I fraudulently issue this certificate to evade the payment of sales tax I will be liable for payment of the sales tax plus a penalty of 200% of the tax and may be subject to conviction of a third degree felony.

Under the penalties of perjury, I declare that I have read the foregoing Certificate of Entitlement and the facts stated in it are true.

Signature of Authorized Representative

Title

Purchaser's Name (Print or Type)

Date

Federal Employer Identification Number: _____

Telephone Number: _____

You must attach a copy of the Purchase Order to this Certificate of Entitlement.

Do not send to the Florida Department of Revenue. This Certificate of Entitlement must be retained in the vendor's and the contractor's books and records.

EXHIBIT J

Exemption Affidavit Prior to Purchase

STATE OF FLORIDA)
)
COUNTY OF _____)

On this day, personally appeared the undersigned who, being first duly sworn, deposes and says:

That all machinery and equipment purchased from _____ will be incorporated into and/or become a component part of the _____ located in _____, Florida, County of _____. Further that said machinery and equipment is necessary for the production of electric or steam energy resulting from the burning of boiler fuels other than residual oil and is exempt from the tax imposed by Chapter 212, Florida Statutes, Sales and Use Tax Act, pursuant to Section 212.08(5)(c), Florida Statutes.

I understand any person furnishing a false affidavit to a vendor for the purpose of evading payment of any tax imposed under Chapter 212, Florida Statutes, shall be subject to the penalty set forth in Section 212.085, Florida Statutes, and as otherwise provided by law.

[Name of Utility]

By: _____

(Print Name of Signatory)

Its: _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2002, by _____ as _____ for [NAME OF UTILITY], who did take an oath and who did swear or affirm that the facts set forth above are true and correct.

NOTARY PUBLIC

Official Notary Signature and Notary Seal

Name of Notary Typed, Printed or Stamped

Personally known _____ OR produced identification _____.
Type of identification produced: _____.

EXHIBIT K

Items and Systems Which Consist of Machinery and Equipment Exempt From the Sales Tax Pursuant to Section 212.08(5)(C), F.S.

(Coal Burning Unit)

<u>No.</u>	<u>Systems of Machinery and Equipment</u>	<u>Tax Treatment of Specific Systems of Machinery and Equipment</u>
1.	Subsurface Improvements Related to Exempt Equipment	Prorated
2.	Waste Water Treatment - Above Grade	Exempt
3.	Waste Water Treatment - Below Grade	Exempt
4.	Permanent Railroad System	Taxable
5.	Well Water Supply System	Exempt
6.	Water Pretreatment System	Exempt
7.	Sanitary Sewage System	Taxable
8.	Yard Fire Protection System	Exempt
9.	Service Water System	Exempt
10.	Waste Water Treatment System	Exempt
11.	Above Ground Racks/Below Ground Trenches	Prorated
12.	Circulating Water Systems Structures	Exempt
13.	Control Building	Taxable
14.	Plant Water Service Equipment	Exempt
15.	Fire Protection Equipment - Lube Oil Purification Area	Exempt
16.	Coal Car Thawing Facility	N/A
17.	ID & FD Fan Driver Control Building	Taxable
18.	Fly Ash Blower Building	Taxable
19.	Miscellaneous Coal Handling System	Prorated
20.	Coal Unloading Facility	Exempt
21.	Emergency Stackout System	Exempt
22.	Reclaim System	Exempt
23.	Crusher House and SWGR Room	Prorated
24.	CH - Unloading Equipment	Exempt
25.	Transfer House #1	Prorated
26.	TH #1 - Unloading Equipment	Exempt
27.	Transfer House #2	Prorated
28.	TH #2 - Unloading Equipment	Exempt
29.	Reclaim Hopper/Tunnel	Exempt
30.	Conveyors & Trippers	Exempt

31.	Emergency Conveyors	Exempt
32.	Primary Power	Exempt
33.	Coal Transporting Equipment (railroad cars are taxable but yard equipment is exempt)	Prorated
34.	Silo Bay	Prorated
35.	Silo Bay - Cranes and Hoists	Exempt
36.	Coal Equipment Fuel Oil Storage Tank	Taxable
37.	Ash Handling System	N/A
38.	Furnace Bottom Ash System	Exempt
39.	Instrumentation and Controls	Exempt
40.	Pyrites Handling System	Exempt
41.	Economizer Ash System	Exempt
42.	Fly Ash System	Exempt
43.	Miscellaneous Boiler Equipment	Taxable
44.	Boiler Steel	Exempt
45.	Boiler Miscellaneous Steel	Exempt
46.	Steam Gen. Lifting Equipment	Exempt
47.	Boiler Pressure Parts	Exempt
48.	Settings and Casings	Exempt
49.	Air Preheaters	Exempt
50.	Forced Draft Equipment	Exempt
51.	Pulverizer and Fuel Burning Equipment	Exempt
52.	Sootblowers and Piping	Exempt
53.	Boiler Ductwork	Exempt
54.	Dust Collectors	N/A
55.	Thermocouples	Exempt
56.	Induced Draft Fans	Exempt
57.	Light Oil Facilities	Exempt
58.	Electrostatic Precipitator	Exempt
59.	Induced Draft Equipment	Exempt
60.	Flue Gas Desulfurization System	Exempt
61.	Combustion Control Equipment	Exempt
62.	Boiler Instruments - Miscellaneous	Exempt
63.	Chemical Cleaning Piping	Exempt
64.	Plant Instrumentation	Exempt
65.	Feed Water and Condensation System	Exempt
66.	Main Steam	Exempt
67.	Hot Reheat	Exempt
68.	Cold Reheat	Exempt
69.	Extraction Steam	Exempt
70.	Auxiliary Steam	Exempt
71.	Condensate and Boiler Feed Piping	Exempt
72.	Air Evacuation Piping	Exempt
73.	Cooling Water System Piping	Exempt
74.	Demineralized Water Transfer	Exempt
75.	Seal Steam	Exempt

76.	Desuperheater Spray	Exempt
77.	Lube Oil	Exempt
78.	Closed Cooling Water System	Exempt
79.	Auxiliary Steam System - ASS	Exempt
80.	Condensers and Auxiliaries 80A-E, 80B-T, 80C-E	Exempt
81.	Circulating Water System	Exempt
82.	Cooling Towers	Exempt
83.	Auxiliary Power Transformers	Exempt
84.	Start Up Transformers	Exempt
85.	Battery Equipment	Exempt
86.	Inverter	Exempt
87.	Underground Conduit & Ducts	Exempt
88.	Metallic Conduit	Exempt
89.	Non-Metallic	Exempt
90.	Cable Tray System	Exempt
91.	Non-Segregated Cable Bus & Supports	Prorated
92.	Power Cable	Prorated
93.	Control and Instrumentation Cable	Exempt
94.	Control Boards, Switchgear & Motor Control Centers	Exempt
95.	Grounding for All Exempt Equipment	Exempt
96.	Flue Gas Desulfurization System Electrical	Exempt
97.	Turbine Generator	Exempt

EXHIBIT L

Items and Systems Which Consist of Machinery and Equipment Exempt From the Sales Tax Pursuant to Section 212.08(5)(C), F.S.

(Gas Fired Unit)

A.	<u>Auxiliary Power Supply System</u>	EXEMPT
1.	480-240/120 volt dry type transformers for 120/240 volt subsystem	EXEMPT
2.	Three wire panelboards for 120/240 volt subsystem	EXEMPT
3.	480-208Y/120 volt dry type transformers for 120/208 volt subsystem	EXEMPT
4.	Four-wire panelboards for 120/208 volt subsystem	EXEMPT
5.	13,800 volt to 480Y/277 volt dry type transformers	EXEMPT
6.	480 volt, three-phase, three-wire balance-of-plant motor control centers	EXEMPT
7.	480 volt three-phase, three-wire panelboards	EXEMPT
8.	480 volt to 480Y/277 volt dry type transformers	EXEMPT
9.	480Y/277 volt, three-phase, four-wire panelboards	EXEMPT
10.	Two winding delta, wye 13.8kV/4160 volt auxiliary power transformer	EXEMPT
11.	4160 volt motor starter section	EXEMPT
12.	125 volt dc batteries	EXEMPT
13.	Battery chargers	EXEMPT
14.	DC distribution panel	EXEMPT
B.	<u>Plant Services</u>	
1.	Building	TAXABLE
2.	Drains and Plumbing	TAXABLE
3.	Lighting	TAXABLE
a.	Light fixtures	TAXABLE
b.	Light switches	TAXABLE
c.	Receptacles	TAXABLE
4.	Building Space Conditioning	TAXABLE
a.	Supply fans	TAXABLE
b.	Exhaust fans	TAXABLE
c.	Power roof ventilators	TAXABLE
d.	Air filters	TAXABLE
e.	Air conditioning equipment	TAXABLE
f.	Ductwork and accessories	TAXABLE
g.	Electric unit heaters	TAXABLE
h.	Temperature controls	TAXABLE
C.	<u>Water Treatment</u>	
1.	Building	PRORATED
2.	Drains and Plumbing	TAXABLE

3.	Lighting	TAXABLE
a.	Light fixtures	TAXABLE
b.	Light switches	TAXABLE
c.	Receptacles	TAXABLE
4.	Building Space Conditioning	TAXABLE
a.	Supply fans	TAXABLE
b.	Exhaust fans	TAXABLE
c.	Power roof ventilators	TAXABLE
d.	Air filters	TAXABLE
e.	Electric unit heaters	TAXABLE
f.	Controls	TAXABLE
D.	<u>Site Fire Protection</u>	
1.	Fire Water Pump Building	PRORATED
2.	Lighting	TAXABLE
a.	Light fixtures	TAXABLE
b.	Light switches	TAXABLE
c.	Receptacles	TAXABLE
3.	Fire Water Foam Tank Shelter	TAXABLE
4.	Diesel driven fire pump	EXEMPT
5.	Motor driven fire pump	EXEMPT
6.	Pressure maintenance pump	EXEMPT
7.	Sprinkler system in appropriate areas of plant services building	TAXABLE
8.	Foam system for protection of the fuel oil storage tank	EXEMPT
9.	Portable extinguisher	TAXABLE
E.	<u>Compressed Air System</u>	PRORATED
1.	Two full capacity, reciprocating air compressors	
2.	Dual tower, heatless, desiccant air dryer	
3.	Full capacity vertical air receiver	
F.	<u>Construction Facilities</u>	
1.	Construction Water	TAXABLE
2.	Construction Buildings	TAXABLE
3.	Construction Facilities	TAXABLE
4.	Construction Lighting	TAXABLE
a.	Light fixtures	TAXABLE
b.	Light switches	TAXABLE
c.	Receptacles	TAXABLE
5.	Construction Sanitary Facilities	TAXABLE
G.	<u>Control System</u>	
1.	Control Panels	EXEMPT
2.	SCADA Interface	EXEMPT

H.	<u>Electrical System</u>	
1.	Freeze Protection	EXEMPT
a.	Freeze protection cable	EXEMPT
b.	Thermostats	EXEMPT
c.	Insulation	EXEMPT
d.	Enclosure heaters	EXEMPT
e.	Heated instrument enclosures	EXEMPT
2.	Grounding	EXEMPT
a.	Ground grid conductor	EXEMPT
b.	Ground rods	EXEMPT
c.	Ground connectors	EXEMPT
3.	Raceway	EXEMPT
a.	Cable Tray	EXEMPT
b.	Conduit	EXEMPT
c.	Duct bank	EXEMPT
d.	Wireways	EXEMPT
e.	Junction boxes	EXEMPT
f.	Manholes	EXEMPT
4.	Cathodic Protection	EXEMPT
a.	Sacrificial modes	EXEMPT
b.	Test stations	EXEMPT
I.	<u>Fuel Gas Supply System</u>	PRORATED
1.	Full capacity, reciprocating natural gas compressor	PRORATED
2.	Inlet vane separator type gas scrubber to remove impurities from the gas prior to entering the compressor	PRORATED
3.	Discharge coalescing filter type gas scrubber to remove liquids and vapor prior to delivering the gas to the turbine	PRORATED
4.	Scrubber drain tanks	PRORATED
5.	Flow meter to measure the gas flow to the turbine	PRORATED
6.	Fuel gas strainers, stop and control valves, and automatic vent valves (these items are furnished with the combustion turbine)	PRORATED
J.	<u>Fuel Oil Unloading and Storage</u>	
1.	Truck unloading station	EXEMPT
2.	Duplex basket type unloading strainer	EXEMPT
3.	Positive displacement totalizing type flowmeter	EXEMPT
4.	Biocide injection system	EXEMPT
5.	Fuel oil storage tank	PRORATED
K.	<u>Fuel Oil Supply</u>	
1.	Fuel oil forwarding skid (furnished with combustion turbine)	EXEMPT
2.	On base fuel oil control equipment to distribute fuel oil to the combustors (furnished with combustion turbine)	EXEMPT

L.	<u>Generator Terminal</u>	
1.	Generator Bus Duct	PRORATED
a.	Non segregated phase bus duct	PRORATED
2.	Generator Transformer	PRORATED
3.	Generator Surge Protection	PRORATED
a.	Surge capacitors	PRORATED
b.	Surge arresters	PRORATED
c.	Potential transformers	PRORATED
4.	Generator Neutral Grounding	PRORATED
a.	Neutral grounding transformer	PRORATED
b.	Neutral grounding resistor	PRORATED
M.	<u>Primary Power Supply System</u>	
1.	Disconnect switches	PRORATED
2.	Bus	PRORATED
3.	Support towers	PRORATED
N.	<u>Site System</u>	
1.	Roads and Parking	TAXABLE
a.	Main plant access road	TAXABLE
b.	Plant roads	TAXABLE
c.	Permanent parking	TAXABLE
2.	Fencing and Security	TAXABLE
a.	Chain link fence around the developed portion of the site	TAXABLE
b.	Barbed wire or woven wire farm fencing around the undeveloped portion of the site	TAXABLE
c.	Vehicular and personnel gates	TAXABLE
3.	Grading and Drainage	TAXABLE
a.	General site excavation and fill	TAXABLE
b.	Roadbed subgrades	TAXABLE
c.	Water and waste retaining embankments	TAXABLE
d.	Engineered structural fill	TAXABLE
e.	General backfill	TAXABLE
f.	Slope protection	TAXABLE
g.	Site drainage	TAXABLE
h.	Runoff collection yard piping	TAXABLE
4.	Area Lighting	TAXABLE
a.	High-pressure sodium luminaries	TAXABLE
b.	Galvanized steel poles	TAXABLE
c.	Interconnecting cable	TAXABLE
O.	<u>Combustion Turbine Generator</u>	
1.	Combustion Turbine Generator	EXEMPT
a.	Combustion turbine and related accessories	EXEMPT
b.	Generator and required accessories	EXEMPT

	c.	Control cab containing the generator breaker and control devices required to control and monitor the combustion turbine generator	EXEMPT
2.		Combustion Turbine Drains	EXEMPT
	a.	Piping and valves	EXEMPT
3.		Combustion Turbine Off-Base Auxiliaries	EXEMPT
	a.	Exhaust fans for the turbine and generator compartments	EXEMPT
	b.	Lube oil demister for the turbine and generator lube oil systems	EXEMPT
	c.	Oil to air lube oil coolers	EXEMPT
	d.	Carbon dioxide fire protection skid	EXEMPT
	e.	Consolidated skid containing the turbine lube oil tanks, wastewater tank, and hydraulic system components	EXEMPT
P.		<u>Waste Collection and Treatment</u>	
	1.	Drainage piping	EXEMPT
	2.	Oil separator	EXEMPT
	3.	Impoundment areas	EXEMPT
	4.	Neutralization basin	EXEMPT
	5.	Chemical waste mixer	EXEMPT
	6.	Wastewater wet well pumps	EXEMPT
Q.		<u>Water Supply and Storage System</u>	
	1.	Service Water	PRORATED
	a.	Two service/fire water storage tanks	
	b.	Two full capacity well water supply pumps	
	c.	Two well water supply pump houses	
	d.	Service water pumps	
	e.	Service water pressure tank	
	2.	NOx Injection Water Supply	PRORATED
	a.	One demineralized water storage tank	
	b.	One NOx injection water skid	
	c.	Interconnecting piping and valves	
R.		<u>NOx Injection Water Treatment</u>	PRORATED

EXHIBIT M

**Employer's Authorization to Make
Purchases on Behalf of an Exempt
Governmental or Nonprofit Organization**

[Date]

TO: [Selling Dealer's Name]
[Selling Dealer's Address]

I, the undersigned, am a representative of the exempt governmental organization identified below. The purchase or lease of tangible personal property or services or the rental of living accommodations made on <date> from the business identified above is for use by the exempt governmental organization identified below.

The charges for the purchase or lease of tangible personal property or services or the rental of living accommodations from the dealer identified above will be billed to and paid directly by the exempt governmental organization identified below.

Under penalties of perjury, I declare that I have read the foregoing and that the facts stated in it are true.

Authorized Signature on Behalf of Exempt Entity

Name of Exempt Entity

Address of Exempt Entity

Consumer's Certificate of Exemption Number

THIS CERTIFICATE MAY NOT BE USED TO MAKE PURCHASES OR LEASES OF TANGIBLE PERSONAL PROPERTY OR SERVICES OR RENTAL OF LIVING ACCOMMODATIONS FOR THE PERSONAL USE OF ANY INDIVIDUAL REPRESENTING THE EXEMPT ENTITY IDENTIFIED ABOVE.