

***The FLORIDA Tax
Guide for Municipal
Electric Utilities***

Third Edition



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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

Unless there is a clear entitlement to an exemption, it should be presumed that every utility transaction is subject to sales and applicable local option taxes. Utility services also may be subject to the Gross Receipts tax. In addition, fuels such as gasoline and diesel may be subject to the Fuel Sales tax, the Discretionary Fuel tax, and the Fuel Excise tax in lieu of the sales tax. Communications services may be subject to the Communications Services Tax. Each of these taxes operates independently, and each tax has unique exemptions. When evaluating the tax status of a transaction, be sure to evaluate each tax separately. Exemptions are not generic.

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 (declaratory statement or a Technical Assistance Advisement (TAA)) from the Florida Department of Revenue (DOR) will relieve the taxpayer from all penalties and interest; and
- B.** Both DOR and the taxpayer may receive costs and attorneys' fees for any action brought without justiciable issue of fact or law; and
- 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. 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 (2005), 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 for a consideration.” § 212.02(15), Fla. Stat. (2005).

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, Florida Statutes (2005)

Any sales tax paid or collected should be stated separately on both bills to customers and invoices from vendors. 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.

- A. Sales Tax Rates.** The sales tax rate generally is 6% of the total price of the retail sale or rental of tangible personal property (including natural gas) and on certain services and admissions. The sales tax on electricity is 7%. In addition to this 6% or 7% sales tax, many counties assess various Discretionary Sales Surtaxes of 0.5% to 1%. See §§ 212.05, .054, .055, Florida Statutes (2005).

- (1) Sales Tax = 6%.
- (2) Electricity Sales Tax = 7%.
- (3) Discretionary Sales Taxes = $0.5\% \leq \geq 1\%$.

B. Sales of Electricity and Gas. The sale of electricity and gas is considered a taxable transaction. Accordingly, sales of electricity and gas to your customers are subject to sales tax unless there is an applicable exemption. The sales tax rate on the sale of electricity is 7%; and the sales tax rate on the sale of gas is 6%.

C. 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:

- (1) **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. See § 212.08(7)(j), Fla. Stat. (2005).

(a) 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 for 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.

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.

- (b) **Home-Based Businesses.** 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. Otherwise, sales of electricity or gas to residential households in which a home-based business is located are exempt when service is provided pursuant to a residential tariff and the utilities are used exclusively for residential purposes. See Fla. Admin. Code Ann. R. 12A-1.053 (2005).
- (c) **Common Areas of Residential Housing Complexes.** Sales of electricity or gas to common areas of a residential complex are exempt 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. (Exhibit A) See also Fla. Admin. Code Ann. R. 12A-1.053 (2005).

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.

- (d) **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.
- (e) **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. We believe that sales to time share units are exempt when served pursuant to a residential tariff and the use of the electricity is 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 recently 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).

- (f) **Residential Models.** Sales to model homes pursuant to a residential tariff are exempt when the utilities are used exclusively for residential purposes, which does not include use in a sales office. 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 regarding the exclusive residential use. (Exhibit A) See also Fla. Admin. Code Ann. R. 12A-1.053 (2005).
 - (g) **Residential Street Lights.** Sales of electricity for outdoor or street lights used exclusively for residential use are exempt. 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.
- (2) **Natural Gas Exemption for Commercial Customers.** Natural gas sales to a commercial user are exempt if the customer files an affidavit 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. (Exhibit A) See also § 212.08(7)(b), Fla. Stat. (2005).
 - (3) **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 tangible personal property 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 tangible personal property for shipment. See § 212.08(7)(ff), Fla. Stat. (2005). However, the following limitations apply:

- (a) 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.
- (b) 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.
- (c) As of July 1, 2000, 100% of the qualifying electricity charges are exempt.
- (d) 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.

(4) 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. See § 212.08(7)(l), Fla. Stat. (2005);
- Religious institutions, as defined by section 212.08(7)(m), Fla. Stat. (2005);
- Veteran's organizations, as defined by section 212.08(7)(n), Fla. Stat. (2005);
- State tax-supported schools, colleges and universities. See § 212.08(7)(o), Fla. Stat. (2005); 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. See § 212.08(7)(p), Fla. Stat. (2005).

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. Note that a DOR sales tax exemption certificate expires five years after the date of issuance. See § 212.084, Fla. Stat. (2005); Fla. Admin. Code Ann. r. 12A-1.038 (2005).

- (5) **Home Day Care Facilities.** Licensed family day care homes, as defined in section 402.302(7), Florida Statutes (2005), are exempt from paying sales tax on their utility bill.
- (6) **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 these areas that are used by staff, residents, and their guests. See § 212.08(7)(j), Fla. Stat. (2005); Fla. Admin. Code Ann. r. 12A-1.053 (2005); Tech. Ass’t Adv. 00A-035 (Fla. Dep’t of Rev. 2000).
- (7) **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 is on file with the seller. (Exhibit F).
- (8) **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. See also Fla. Admin. Code Ann. r. 12A-1.039 (2005).
- (9) **Enterprise Zones.** Sales of electricity to a business located in an enterprise zone may be exempt from sales tax. To qualify for the exemption, the business must already be exempt from the public service tax. This implies that the exemption is valid only if the municipality or county imposes a public service tax. Such businesses must get authorization by filing an application, provided by DOR, with the enterprise zone development agency having jurisdiction over the enterprise zone where the business is located. The sales tax exemption applies to 50% of the sale, 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)(b), Fla. Stat. (2005); Fla. Admin. Code Ann. r. 12A-1.107 (2005).

D. Other Sales by the Municipality/Utility.

- (1) **Sales of Water.** Sales of water to residential accounts and to 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, except those added at a water treatment facility, have been added. See § 212.08(4)(a)1., Fla. Stat. (2005).

- (2) **Property and Concessionaire Rentals.** Generally, property and concessionaire rentals to nonexempt 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. See § 212.031, Fla. Stat. (2005); Tech. Ass't Adv. 00A-017 (Fla. Dep't of Rev. 2000). Certain exemptions also apply to concessionaire rentals in airports.

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.

- (3) **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 tangible personal property (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.

- (a) **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] tangible personal property 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. See Fla. Admin. Code

Ann. r. 12A-1.037(2) (2005). 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 tangible personal property to form XY Corp in exchange for X Corp and Y Corp each owning 50 percent of XY Corp stock. That transfer of tangible personal property to XY Corp is exempt as an isolated sale.

EXAMPLE: X Corp transfers all or substantially all of the tangible personal property 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 tangible personal property 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.

- (b) **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.

i. **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.

ii. **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 Ann. r. 12A-1.037 (2005). Note that this exemption is limited by many restrictions, and it should be applied with extreme 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.

- (4) **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 also § 212.02(14)(a), Fla. Stat. (2005).

- (5) **Other Sales of Tangible Personal Property.** Sales of tangible personal property to nonexempt entities must be taxed, provided the sale does not otherwise qualify as an occasional sale. See § 212.05, Fla. Stat. (2005); Fla. Admin. Code r. 12A-1.037 (2005).

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.

- (6) **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:

- (a) 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.
- (b) 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). While we disagree with DOR’s reasoning in TAA 04A-067, we believe that its tax consequences can be avoided through careful customer billing. Accordingly, we recommend that charges for the sale of electricity and charges for the sale or rental of associated items of tangible personal property be separately itemized on the customer’s bill.
- (c) If the utility agrees to replace and/or repair damage to its outdoor lighting’s 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.
- (d) The long or short term lease or sale of an outdoor lighting system, i.e. TPP, is subject to sales tax.

- (e) If the utility agrees to relocate the outdoor lighting system during the course of the contract, this transaction equates to a service, and it not subject to sales tax.
- (f) 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 Ann. r. 12A-1.071(14)(b) (2005).
- (g) A municipal utility may enter into Private Outdoor Lighting Maintenance Agreements with their 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, tangible personal property utilized to fulfill the contract is subject to sales tax and should be collected from the customer.

E. Rental, Lease or License to use Tangible Personal Property. Generally, any rental, lease or license to use tangible personal property is subject to sales tax at the rate of 6%. See § 212.05(1)(a)1.c., Fla. Stat. (2005); Fla. Admin. Code Ann. r. 12A-1.071 (2005). The tax applies to transactions that are not bailments in which there is a transfer of possession of tangible personal property, without regard to limitations upon the use, for a consideration, without a transfer of title to the property. See Fla. Admin. Code Ann. r. 12A-1.071(1)(a). It includes a transaction under which a person secures for consideration the temporary use of tangible personal property 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 rentee, or contracted or agreed to be paid by a lessee or rentee, to the owner of the tangible personal property. Note that various exemptions may apply.

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 tangible personal property and is subject to sales tax. See Tech. Ass't Adv. 04A-067 (Fla. Dep't of Rev. 2004).

F. 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, Fla. Stat. (2005); Fla. Admin. Code r. 12A-1.105 (2005).

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.

- G. 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. See § 212.04, Fla. Stat. (2005); Fla. Admin. Code Ann. r. 12A-1.005 (2005).

- H. Joint Pole Attachment Agreements.** If a utility pole is classified as “real property,” the rental of space on the utility pole will be exempt from sales tax if it fits within the “Utility Exemption” set forth under Section 212.031, Florida Statutes.

Pursuant to the forgoing statute, a taxpayer seeking an exemption must demonstrate;

- (1) the utility pole is classified as real property and is located on a public or private street, right-of-way, or easement; and
- (2) is being used for utility pole purposes by the taxpayer; and
- (3) the taxpayer is a utility. See §§ 212.031(1)(a)5., Fla. Stat. (2002).

This exemption also applies to communication or television attachments.

- I. Purchases by Municipalities, Utility Commissions and Authorities.** Purchases by political subdivisions of the state of tangible personal property, except “machines and equipment and parts and accessories therefor used in the generation, transmission, or distribution of electrical energy,” generally are exempt from sales tax when the payment is made directly to a vendor by the utility. (The city should provide the vendor with an Exemption Affidavit similar in form to Exhibit F) See § 212.08(6), Fla. Stat. (2005). However, 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 Ann. R. 1.094 (2005). Exhibit J 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.
 - (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. See Fla. Admin. Code Ann. r. 12A-1.094(2) (2005).
 - (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. We recommend seeking legal advice or a Technical Assistance Advisement for each major project.

DOR will consider the following factors when determining whether the municipality purchased the tangible personal property: provisions which govern bidding, indemnification, inspection, acceptance, delivery, payment, storage, and assumption of the risk of damage or loss for the tangible personal property prior to its affixation to real property. In addition, DOR may consider whether the contractor is authorized to make purchases in its own name; if the contractor 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.

In TAA 05A-035, DOR advised that a county's procedures for the purchase of materials set out in the contract for the construction of public works meet the legal requirement for the county to purchase the materials tax exempt as long as the controlling documents provide for the following:

- i. The governmental entity must execute the purchase orders for the tangible personal property involved in the contract, which must include the governmental entity's consumer's certificate of exemption number. The contractor may present the governmental entity's purchase orders to the vendors of the tangible personal property;
- ii. The governmental entity must acquire title to and assume liability for the tangible personal property from the point in time when it is delivered to the job site up until the time it is incorporated as real property;
- iii. Vendors must directly invoice the governmental entity for supplies;
- iv. The governmental entity must directly pay the vendors for the tangible personal property; and
- v. The governmental entity must assume all risk of loss or damage for the tangible personal property involved in the contract, as indicated by the entity's acquisition of, or inclusion as the insured party under, insurance on the building materials.

See Tech. Ass't Adv. 05A-035 (Fla. Dep't of Rev. 2005).

EXAMPLE: Construction materials for a new municipal building are exempt when purchased by a city, but taxable if purchased by the city's contractor, unless the contractor is the city's purchasing agent and the city "purchases" all of the materials.

- (2) **Purchases of Generation, Transmission and Distribution Equipment.** Purchases by a municipality of machinery, equipment, parts and accessories "used in" the generation, transmission or distribution of electricity generally are taxable (provided, however, machinery, equipment, parts and accessories purchased to repair, replace or refurbish a municipally owned electric transmission or distribution system are exempt). Such purchases of machinery, equipment, etc., used in the generation, transmission or distribution of electricity, which are NOT used to repair, replace or refurbish transmission or distribution systems, are specifically excluded from the general municipal sales tax exemption and are therefore taxable. (However, the purchase of certain generation equipment may nevertheless be exempt from sales tax pursuant to the power plant use exemption discussed below.)

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 and the purchase is taxable. 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.

We believe that purchases 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 T&D accessories are not subject to sales taxes when purchased by a municipality. It is arguable that only equipment that physically becomes a part of the fixed electrical system is "used in" generation, transmission or distribution.

- (a) **Power Plant Use Exemption; Generation 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. See § 212.08(5)(c), Fla. Stat. (2005). To obtain this exemption, the utility must issue an exemption affidavit prior to the purchase. (Exhibit E) 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." DOR has issued numerous TAAs regarding generating units that burn non-residual oil, but very few bright-line rules have evolved. Exhibit D lists the tax status of some coal plant equipment. Exhibit I 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.** DOR has not promulgated rules for units that have the capability of burning both residual oil and non-residual fuels. Sales tax will be prorated in the instance where machinery and equipment is necessary to burn both residual and non-residual fuels. See § 212.08(5)(c)2., Fla. Stat. (2005). 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 from all fuels. However, if 15% or less of the electricity produced is derived from the burning of residual fuels, then the full exemption applies. But, this leaves open many questions such as: Is the exemption determined at the end of each year based on the fuel consumption for the year?
- (3) **Repair, Replacement or Refurbishment of Municipal Electric Transmission and Distribution Systems.** The purchase of "machines and equipment and parts and accessories therefor" for the repair, replacement, or refurbishment of electric transmission and distribution systems owned by a municipality are exempt from sales tax.
- However, "machines and equipment and parts and accessories therefor" purchased for the expansion of electric transmission and distribution systems owned by a municipality are excluded from the more general exemption and, therefore, subject to sales tax. See § 212.08(6), Fla. Stat. (2005); see also Department of Rev. v. Florida Mun. Power Agency, 789 So. 2d 320 (Fla. 2001).
- (4) **Repairs to/Replacement of Tax Exempt Items.** Any repairs to, or replacement of, exempt tangible personal property are exempt.
- (5) **Repairs to Taxable Items.** Parts and materials purchased for repairs of nonexempt items are taxable. 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. Taxes on labor charges often can be avoided. 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.

- (6) **Repairs to Real Property.** Purchases of repairs to real property improvements are not subject to taxes. Therefore, the labor costs will not be taxed and the utility will not have any liability to DOR for the transaction. However, the contractor must pay taxes on tangible personal property purchased to fulfill the contract.

In general, tangible personal property becomes an improvement to real property when it is permanently affixed to real property. Because of the transferability, turbines and certain other power plant items may not be improvements to real property. Please note that 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. We strongly recommend that legal advice or a TAA be obtained before the labor exemption is claimed for repairs to nonexempt generating units.

In TAA 90A-1017 and TAA 91A-1040, DOR took the position that transmission and distribution facilities are improvements to real property upon installation. Today, DOR's position is the same.

- (7) **Repairs to Tangible Personal Property.** Generally, labor and materials for repairs to tangible personal property are subject to sales tax if the tangible personal property itself is subject to sales tax. See Tech. Ass't Adv. 99(A)-010 (Fla. Dep't of Rev. 1999).
- (8) **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 94(A)-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.
- (9) **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).
- (10) **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. 03A-020 (Fla. Dep't of Rev 2003).

(11) **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. See Fla. Admin. Code An. r. 12A-1.059(2)(a) (2005).

(b) **Transmission and Wheeling of Electricity.** See § 212.08(4)(a)3., Fla. Stat. (2005).

(c) **Electric Energy for Resale.** See § 212.06(1)(b), Fla. Stat. (2005).

(d) **Electricity Used by the Utility.** See § 212.06(1)(b), Fla. Stat. (2005).

(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. See Fla. Admin. Code An. R. 12A-1.053(2) (2005).

(f) **Transportation Charges.** Transportation charges include carrying, delivery, freight, handling, pickup, shipping, and other similar charges or fees. See Fla. Admin. Code r. 12A-1.045(1) (2005).

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.

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.
- 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.

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 tangible personal property is taxable.
- 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.
- vi. We believe transportation charges included in the cost of tangible personal property are exempt if the tangible personal property is exempt.

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.

See Fla. Admin. Code Ann. r. 12A-1.045 (2005).

- (g) **Travel Expenses.** Employee expenditures on behalf of a municipality are exempt if the vendor directly bills the municipality, and a voucher is presented to the vendor indicating that the purchase is made on behalf of the governmental entity. (Exhibit F); see also Fla. Admin. Code Ann. r. 12A-1.038(4) (2005).

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 the employee is reimbursed by the municipality.

- (h) **Labor Only Purchases.** Generally, if a contract for the performance of some service does not involve the sale of any tangible personal property, the transaction is exempt as a professional or personal service. In addition, if the sale of tangible personal property is inconsequential to the transaction, and there are no separate charges for the items of tangible personal property, 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 Ann. r. 12A-1.006(4) (2005). 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.

IV. DISCRETIONARY SALES SURTAX
Sections 212.054 and 212.055, Florida Statutes
Rule 12A-15.004, Florida Administrative Code

A. 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 (2005). See § 212.054, Fla. Stat. (2005). 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:

- (1) Charter County Transit System Surtax (Not to exceed 1%);
- (2) Local Government Infrastructure Surtax (Equaling 0.5% or 1%);
- (3) Small County Surtax (Equaling 0.5% or 1%);
- (4) Indigent Care and Trauma Center Surtax (Not to exceed 0.5%);
- (5) County Public Hospital Surtax (Equaling 0.5%);
- (6) School Capital Outlay Surtax (Not to exceed 0.5%);
- (7) Voter-Approved Indigent Care Surtax (Equaling 0.5% or 1%);

See § 212.055, Fla. Stat. (2005).

B. 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.

C. \$5,000 Surtax Cap. The local option surtax does not apply to that portion of a sale of tangible personal property 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 tangible personal property 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. (2005). 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 Ann. r. 12A-15.004 (2005).

The \$5,000 cap applies to each monthly utility bill; 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).

V. USE TAX

Section 212.06, Florida Statutes

Rule 12A-1.091, Florida Administrative Code

A. Use Tax; Generally. Generally speaking, a sale is 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 some form of use tax. The use tax is imposed upon the cost of tangible personal property 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. (2005); Fla. Admin. Code Ann r. 12A-1.091(7) (2005).

B. Applicability to Electric Utilities. Generally, the use tax is not applicable to municipal electric utilities. The use tax applies to the use in this state of tangible personal property purchased in such a manner that Florida sales tax would not be applicable at the time of purchase, i.e., purchased from out-of-state. However, the use tax does not apply to the use or sale of any property that is exempt from sales tax. Therefore, use of electricity by a city, which is exempt from sales tax, is also exempt from the use tax. However, the 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.

(1) 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. See § 212.06(7), Fla. Stat. (2005). The use tax rate is 6% of the cost price at the moment of purchase.

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.

(2) Exception to Credit for Taxes Paid; Out-of-State Rental or Lease of Tangible Personal Property. The credit for payment of tax in another state does not apply to the rental or lease of tangible personal property 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. (2005); Fla. Admin. Code Ann r. 12A-1.091(14) (2005).

EXAMPLE: If a utility leases a non-exempt item from a New York company and the New York company collects an 8% use tax on that item (assuming New York law requires this), 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 nonexempt 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).

VI. SALES AND USE TAX REFUNDS/CREDITS

Section 215.26, Florida Statutes

Rule 12A-1.014, Florida Administrative Code

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 (or 5 years if the taxes were remitted on or after October 1, 1994, and before July 1, 1999) after the right to such refund accrues, which generally is the date the taxes were remitted to DOR. See § 215.26, Fla. Stat. (2005). 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. See Fla. Admin Code Ann. r. 12A-1.014 (2005).

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) (2005). 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.

VII. 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 excise, discretionary, fuel and fuel sales taxes in lieu of the 6% sales and local taxes. The fuels subject to these taxes include motor fuel, which also includes alternative fuels. An annual decal fee must be paid, in lieu of any fuel taxes, for vehicles that run on alternative fuels, such as compressed natural gas or liquid propane. See Fla. Admin. Code Ann. r. 12B-5.200 (2005). However, vehicles owned by governmental entities are exempt from the decal fee. See § 206.877(9), Fla. Stat. (2005).

A. Fuel Tax Rates

- (1) **Motor Fuel.** Effective January 1, 2005, the state tax rate on motor fuel is 14.5 cents per gallon. Beginning January 1, 2006, the state tax rate on motor fuel will be 14.9 cents per gallon.
- (2) **Diesel Fuel.** Effective January 1, 2005, the state tax rate on diesel fuel is 27.3 cents per gallon statewide. Beginning January 1, 2006, the state tax rate on diesel fuel will be 27.9 cents per gallon statewide.
- (3) **Discretionary Tax.** There are three possible discretionary taxes on motor fuels.
 - (a) An additional tax of 1 cent per net gallon may be imposed by each county on motor fuel, which is designated as the “ninth-cent fuel tax.” § 206.41(1)(d), Fla. Stat. (2005).
 - (b) An additional tax of between 1 cent and 11 cents per net gallon may be imposed by each county, which is designated as the “local option fuel tax.” § 206.41(1)(e), Fla. Stat. (2005).
 - (c) An additional tax designated as the “State Comprehensive Enhanced Transportation System Tax” is imposed on each net gallon of motor fuel in each county. The rate of the tax in each county shall be equal to two-thirds of the lesser of the sum of the ninth-cent fuel tax and the local option fuel tax in such county or 6 cents, rounded to the nearest tenth of a cent. § 206.41(1)(f), Fla. Stat. (2005).
 - (d) Therefore, the total discretionary tax that may be assessed on motor fuel is 18 cents per gallon.

B. Fuels Subject to Fuel Tax.

- (1) **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. However, fuels used in stationary sources are neither alternative fuel nor motor fuel.
- (2) **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. See § 206.86(1), Fla. Stat. (2005). However, fuels used in stationary sources are neither alternative fuel nor motor fuel.
- (3) **Alternative Fuel.** Alternative fuel is defined as "any liquefied petroleum gas product or compressed natural gas product or combination thereof used in an internal combustion engine or motor to propel any form of vehicle, machine, or mechanical contrivance. 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 or compressed natural gas." § 206.86(4), Fla. Stat. (2005). See § 206.01(9), Fla. Stat. (2005).

EXAMPLE: We believe that dyed 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."

C. Diesel Fuel.

- (1) **Dyed Diesel Fuel.** Dyed diesel fuel is diesel fuel that is dyed pursuant to EPA requirements and sold untaxed. 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, unless such fuel is purchased for use in a motor vehicle. See infra.
- (2) **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. However, the municipality may file a claim for refund of the diesel fuel tax paid. See § 206.8745, Fla. Stat. (2005).
- (3) **Dyed Diesel Fuel Purchased by a Municipality 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 (2005).

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), plus the taxes required under Section 206.87(1)(b), (c), and (d) for dyed or otherwise untaxed diesel fuel used in motor vehicles. This partial tax is known as the “Backup Tax.” See § 206.873, Fla. Stat. (2005).

EXAMPLE: We believe that dyed diesel fuel purchased by a municipality as fuel for a bucket truck is subject to the Backup Tax.

- (a) 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. (2005); Fla. Admin. Code Ann. r. 12B-5.090(4)(b)1. (2005).

The amount of the credit must not to 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,

EXAMPLE: We also believe the 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.

D. Refunds of Fuel Taxes Paid.

- (1) **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. (2005).

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

- (2) **Filing Requirements.** To receive a refund the seller must make out an sales invoice and the invoice must contain the purchaser's name and address, number of gallons purchased, the date, 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. (2005).

- (3) **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. (2005).
- (4) **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. (2005).

VIII. GROSS RECEIPTS TAX

Chapter 203, Florida Statutes

Rule Chapter 12B-6, Florida Administrative Code

In 2005, the Florida Legislature made significant changes to Florida's gross receipts tax law, which took effect January 1, 2006. Prior to the amendments, gross receipts tax was imposed on the gross receipts derived from utility services done within this state. The previous definition of "utility service" included only "electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power." § 203.012(1), Fla. Stat. (2004). The definition of "utility services" has since been expanded to also include transportation, delivery, transmission, and distribution of electricity or natural or manufactured gas. See § 203.01, Florida Statutes (2005). Under the new law, gross receipts tax is imposed on gross receipts from utility services that are delivered to a retail consumer in this state.

The amended 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), Florida Statutes (2005). 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. Generally, the new law does not have a substantial affect on the calculation of gross receipts for electricity; however there have been significant changes regarding the sale or transportation of natural or manufactured gas.

<**NOTE:** As of the date of the publication of this Tax Guide, DOR was in the process of amending their administrative rules interpreting the gross receipts tax. When adopted, the changes to Rule Chapter 12B-6, Florida Administrative Code, will provide guidelines regarding DOR's administration of the gross receipts tax imposed by Chapter 203, Florida Statutes, as amended by Chapter 2005-148, Laws of Florida. Furthermore, on January 1, 2006, DOR issued emergency rules to implement the new gross receipts tax law. Emergency rules have binding effect until final rules are issued. With a few exceptions, the emergency rules are nearly identical to the proposed rules, as of the date of this publication. This Tax Guide relies in part on these proposed and emergency rules in explaining the gross receipts tax.>

A. 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 dependant 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.

- (1) **Bundled Charge for Electricity and Transportation.** The new gross receipts tax law does not change the calculation of gross receipts tax due on the delivery of electricity to a retail consumer where the charge is for both the electricity and the transportation of the electricity to the retail consumer.

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), Florida Statutes (2005).

The gross receipts tax rate for the electric utility services is 2.5%. See § 203.01(1)(b), Fla. Stat. (2005).

- (2) **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), Florida Statutes (2005)

The amended gross receipts tax statute does not currently have an effect on Florida electric utilities. This is because the amendments only affect unbundled charges – where the utility charges separately for the electricity and its transmission and distribution. Electricity in Florida is currently not sold unbundled. 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) will apply to the unbundled charge.

- (3) **Specific Sales/Charges by the Utility**

- (a) **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 Ann. r. 12B-6.0015(2)(a)4. (2006). However, sales tax should be charged on separately stated gross receipt and franchise fee charges. See Fla. Admin. Code Ann. r. 12B-6.0015(2)(a)3. (2006).

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 Ann. 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.)

- (b) **Gross Receipts Charges.** Gross receipts charges are not exempt from gross receipts taxes. Gross receipts taxes should be remitted on gross receipt charges included in customer bills, whether or not those charges are separately stated.
- (c) **Joint Pole 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. However, we are not aware of any binding interpretations from DOR to support our interpretation.
- (d) **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.
- (e) **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 Ann. r. 12B-6.0015(2)(a)3. (2006).
- (f) **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 Ann. r. 12B-6.0015(2)(a)2.a. (2006). 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.

- (g) **Street Lights.** Sales of electricity used for street lights are subject to the gross receipts tax, but we believe the rental of a street light luminaire or pole is not subject to gross receipts tax.
- (h) **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). We believe DOR may be mistaken in its application of gross receipts to the rental of TPP used in Private Area Lighting. However, we believe 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.

- (i) **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. (2005). The term "facility charge," however, is not defined.

DOR advises that a utility's receipts from the provision of equipment and related services that is required beyond the normal delivery of electricity constitute charges for electricity, and are therefore subject to gross receipts tax. See Tech. Ass't Adv. 04A-059 (Fla. Dep't of Rev. 2004). In this advisement, the utility termed such charges "facility charges" in its tariff sheets. DOR advised that facilities charges are charges for the provision of electricity pursuant to § 203.01(7), and therefore those charges termed "facility charges" by the utility were subject to gross receipts.

We believe DOR may be mistaken in its application of gross receipts to "facility charges." Recall that separately itemized charges for the sale, lease, or rental of "customer premises equipment" are not subject to gross receipts. See § 203.01(7), Fla. Stat. (2005). The term "customer premises equipment" is not defined; thereby creating confusion between what constitutes a

taxable facilities charge and what constitutes an exempt sale, lease, or rental of customer premises equipment.

- (j) **Sales of Electricity by Separate Utility Authority to Municipality.** When the utility is a separate utility authority, then unless one of the exemptions provided below applies to the transaction (i.e. sales for resale, sales pursuant to electric interchange agreement, etc.) sales of electricity made by the separate utility authority to the city or other city agencies are subject to gross receipts. 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.

- (k) **Interdepartmental Transfers.** The internal transfer of power purchased pursuant to an interchange agreement or contract for the purpose of transferring more economically generated power is exempt. However, interdepartmental transfers of power purchased from other sources may be subject to gross receipts tax. See Tech. Ass't Adv. 93B-6.001A (Fla. Dep't of Rev. 1993).

When the utility pays gross receipts tax on the original power purchase (i.e. when the purchase is not exempt), the interdepartmental transfer of such power is exempt from gross receipts tax. However, when the utility's original purchase is exempt from gross receipts tax (i.e. it is purchased pursuant to a resale certificate), the interdepartmental transfer of such electricity is subject to gross receipts tax.

In the event that the utility purchases some of its power from a supplier and generated the rest, a proration of the amount of purchased power and the amount of generated power must be established and applied to the interdepartmental transfer for gross receipts tax purposes.

EXAMPLE: If Utility purchases 60% of its electricity upon which gross receipts tax has not been paid to the supplier, and generated 40% of its electricity, 60% of the amount of interdepartmental transfers of electricity shall be subject to gross receipts tax based on the purchase price from the supplier.

B. Exemptions from Gross Receipts Tax; Electricity. The following are exempt from the gross receipts tax:

- (1) **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. See Fla. Admin. Code Ann. r. 12B-6.0015(2)(c)1., (1)(b)2. (2006). (Exhibit C).
- (2) **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 Ann. r. 12B-6.0015(2)(c)2. (2006);

Furthermore, the internal use, including interdepartmental transfers of such purchased power is not subject to gross receipts tax. Id.

- (3) **Wholesale Sales.** Wholesale sales of electric transmission service. See Fla. Admin. Code Ann. r. 12B-6.0015(2)(c)3. (2006);
- (4) **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 Ann. r. 12B-6.0015(2)(c)4. (2006);
- (5) **Separately Itemized Charges to Customers.** The following receipts from customers for various separately itemized charges are exempt:
 - (a) Charges for the connection, disconnection, suspension, or restoration of electricity;
 - (b) Charges for returned checks or other forms of payments, late payments, or interest due on late payments; and
 - (c) Charges for the sale, lease, rental, repair, or maintenance of customer premises equipment.

See Fla. Admin. Code Ann. r. 12B-6.0015(2)(a)1. (2006).

C. Gross Receipts Tax on Sale/Transportation of 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), Florida Statutes (2005). Thus, anyone who receives payment for either the sale or transportation of natural or manufactured gas must collect and remit gross receipts tax.

- (1) **Calculation of Gross Receipts Tax; Natural or Manufactured Gas.** Calculation of gross receipts tax for the sale or transportation of natural or manufactured gas has changed significantly under the new gross receipts law. Rather than calculating the tax based on the amount charged to the customer, gross receipts must now be calculated 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%).

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

(number of cubic feet of natural or manufactured gas delivered to a retail consumer in this state) ÷ (1,000) x (applicable natural or gas index price) x (2.5%)

- (a) **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 Department of Revenue (DOR) on June 1 of that year. See § 203.01(1)(e)2., Fla. Stat. (2005).

Index Prices effective January 1, 2006, through June 30, 2006

| Utility Service | Residential | Commercial | Industrial |
|---------------------------------|-------------|------------|------------|
| <i>Natural/Manufactured Gas</i> | \$18.47 | \$11.46 | \$8.72 |

- (b) **Customer Classifications – Residential, Commercial, Industrial.** When calculation of gross receipts tax requires the use of an index price, the emergency rules published by DOR require each utility to implement a “reasonable methodology” to apply the

residential, commercial, and industrial classifications to its existing rate structure. See Fla. Admin Code r. 12BER05-10(3)(c) (2006). 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 and Form EIA-857 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. [If you have no reasonable basis for estimates, enter the information under the category you believed received the largest total volume of gas and describe in a footnote in Section VII.] <Note: The bracketed sentence is only found in Form EIA-176.>

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

$$(2,000) \div (1,000) \times (\$18.47) = \$36.94$$

Commercial Customers

$$(10,000) \div (1,000) \times (\$11.46) = \$114.60$$

Industrial Customers

$$(25,000) \div (1,000) \times (\$8.72) = \$218.00$$

$$\text{Taxable Gross Receipts} = (\$36.94) + (\$114.60) + (\$218.00) = \$369.54$$

$$\text{Gross Receipts Tax Due} = (\$369.54) \times (2.5\%) = \underline{\underline{\$9.2385}}$$

Note that the amount of gross receipts tax due may be reduced by a tax credit based on the amount of any like tax paid, 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. (2005).

D. 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:

- (1) 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. See § 203.01(3)(a)1., Fla. Stat. (2005);
- (2) The sale or transportation of natural or manufactured gas to a utility, municipal corporation, or agency thereof, or a rural electric cooperative association, for resale; provided that such sale occur pursuant to a valid DOR resale exemption certificate. See § 203.01(3)(a)2., Fla. Stat. (2005);
- (3) 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. See § 203.01(3)(c), Fla. Stat. (2005);
- (4) 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 (2005), for use as an energy source or a raw material. A written certification, certifying the purchaser's entitlement to the exclusion permitted by this paragraph, relieves the seller or person providing transportation or delivery from the responsibility of remitting tax on the nontaxable amounts, and the department shall look solely to the purchaser for recovery of such tax if the department determines that the purchaser was not entitled to the exclusion. See § 203.01(3)(d), Fla. Stat. (2005); (Exhibit K).

E. Reporting Requirement for Transporters of 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.

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.

F. 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 Fla. Admin. Code r. 12BER05-11(3) (2006).

G. Use Tax; Electricity and Natural/Manufactured Gas.

Any person who imports into this state, or severs within this state, electricity or natural or manufactured gas for the person's own use or consumption as a substitute for purchasing utility, transportation, or delivery services, must remit gross receipts tax to DOR. The tax is calculated by multiplying the cost price of the utility service by 2.5%. See § 203.01(1)(f), Fla. Stat. (2005).

H. Registration Requirement; Electricity and Natural/Manufactured Gas

Prior to engaging in 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. 12BER05-12 (2006).

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).

I. Payment of Gross Receipts Tax; Electricity and Natural/Manufactured Gas.

All gross receipts tax is due to DOR on or before the last day of the month following the date of the sale or transaction. In order to avoid a late fee or penalty, the payment must be received by DOR or be postmarked on or before the last day of the month for receipts for utility services received in the preceding calendar month. A return is required to be filed on or before the last day of the month even if no tax is due.

Form DR-133, Gross Receipts Tax Return, is the return to be used to report gross receipts tax imposed on utility services. (Exhibit L)

IX. COMMUNICATIONS SERVICES TAX

Chapter 202, Florida Statutes

Rule Chapter 12A-19, Florida Administrative Code

A. Communication Services Tax AT A GLANCE

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

B. What is the Communications Services Tax? The communications services tax 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. The communications services tax is composed of the Florida communications services tax and the local communications services tax. In general, the Florida communications services tax contains a state rate of 6.8 percent, plus a gross receipts rate of 2.37 percent, for a combined state tax rate of 9.17 percent, plus the applicable local communications services tax rate. (Some residential services are exempt from the 6.8 percent rate. The residential exemption does not apply to mobile communications services, satellite or cable service.) See §§ 202.12(1)(a); 203.01(1)(b), Fla. Stat. (2005). Each county or municipality has its own local communications services tax rate. See § 202.19, Fla. Stat. (2005).

For direct-to-home satellite service, the Florida communications services tax rate is 13.17 percent. There is no local communications services tax on direct-to-home satellite service.

C. How is CST administered?

- (1) Each dealer of communications services must file a single monthly return, accompanied by a single payment to DOR. Municipal public services taxes for telecommunication services are included in this remittance.

- (2) 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. DOR will coordinate all audit activities.

(a) State Portion:

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

(b) Local Portion:

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

D. What are communications services?

- (1) **Communications Services.** The definition of “communications services” includes telecommunications, cable, 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, Fla. Stat. (2005).

(2) **Services Subject to CST.**

- Local, long distance or toll telephone (but not coin-operated).
- Cable television.
- 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.

(3) Services Not Subject to CST. See § 202.11(2), Fla. Stat. (2005).

- 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, 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 TPP.
- The sale of advertising, including, but not limited to, directory advertising.
- Bad check charges.
- Late payment charges.
- Billing and collection services.

(4) Bundled services are taxed. Generally, multiple services included in a single package are considered bundled. When a bundled package contains both taxable and nontaxable services, the entire package is taxable. An example of a bundled service is selling telephone, cable TV, and pager/beeper services for a single price. This entire package is subject to the tax.

Exception - Prior to July 1, 2005, when 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 and 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 that charge. See § 212.02(16), Fla. Stat. (2005).

- (5) **Dealers must separately state CST.** Dealers of communications services are required to separately itemize the state communications services tax and the local communications services tax on a customer's bill. See § 202.16(1)(b), Fla. Stat. (2005).

E. Exemptions.

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

- (1) 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. Please refer to Section 202.125, Florida Statutes, to determine what qualifies as a home for the aged, religious institution, or educational institution;
- (2) Any county, municipality, or political subdivision of the state when payment is made directly to the dealer by the governmental entity; and the federal government and any instrumentality of the federal government. See § 202.125, Fla. Stat. (2005).
- (3) **Residential Services.** Generally, residential telephone service maintains its exemption from the state portion of CST when separately stated on the customer's bill.
 - (a) **Taxes Subject to the Exemption.** The residential household exemption from CST only applies to the 6.8% state portion of the Florida CST. Residential households are subject to the 2.37% gross receipts portion and the applicable local communications services tax rate.
 - (b) **Services Not Subject to the Exemption.** When purchased by residential customers, cable, 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.
 - (c) **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. 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.

- F. 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 Ann. r. 12A-19.020 (2005). DOR encourages all dealers to file using an electronic method.
- G. Electronic Filing.** 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 \$50,000 or more in either gross receipts tax, sales tax, or communications services tax, 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. (2005).
- H. 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.
- I. 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 percent of total tax due. Otherwise, a collection allowance of .25 percent will be granted. See Fla. Admin. Code Ann. r. 12A-19.020(2) (2002). To ensure that a dealer may deduct .75 percent of the amount of tax due as a collection allowance, it is advisable for the dealer to employ one of the following:
- (1) Using an address database provided by DOR to verify the accurate assignment of customer addresses to tax jurisdictions.
 - (2) Using a database developed by the dealer and certified by DOR to verify the accurate assignment of customer addresses to tax jurisdictions.
 - (3) Using a DOR certified database supplied by a vendor to verify the accurate assignment of customer addresses to tax jurisdictions.
 - (4) Using ZIP+4 and matching an address to its specific tax jurisdiction.

Please refer to Rule 12A-19.020, Florida Administrative Code (2005), when choosing a method of assigning services addresses to ensure a .75 percent 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 percent of the amount of the tax due to the Department. See Fla. Admin. Code Ann. r. 12A-19-020 (2005).

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 percent allowance.

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.

- J. Tax on Substitute Communications Systems; Repealed.** In the 2005 session, the Florida Legislature repealed the communications services tax on substitute communications systems contained in Chapter 202, Florida Statutes, effective June 2, 2005. The repeal is retroactive to October 1, 2001, but does not create a right to a refund for taxpayers who paid the communications services tax prior to the effective date.

Accordingly, the obligation to pay communications services tax on substitute system and file an annual tax return has been removed. This cancellation does not affect any other tax obligations, which will remain active. Refunds of taxes previously paid on substitute communications systems will not be granted by DOR.

- K. Governmental Entities Proposing to Provide Communications Services.** A new law effective June 2, 2005, requires governmental entities to hold at least two public hearings before providing communications services within a community. See § 350.81(2), Fla. Stat. (2005). Governmental entities are required to electronically provide the notice of public hearing to the Department of Revenue at least 40 days before the first public hearing. The law requires the notice to include: the time and place of the hearings; 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), Fla. Stat. (2005).

X. MUNICIPAL PUBLIC SERVICE TAX

Section 166.231, Florida Statutes

- A. 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.
- B. Rate and Taxability.** The 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.
- C. Surcharge on Customers Outside City Limits.** The tax shall be levied only on purchases within the municipality. See § 166.231, Fla. Stat. (2005). 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 Ann. r. 25-9.0525 (2005). 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 Ann. r. 25-9.0525 (2005).
- D. 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. See § 166.231(2), Fla. Stat. (2005).
 - 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. See § 166.231(3), Fla. Stat. (2005).
 - 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. See § 166.231(4), Fla. Stat. (2005).

- 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. See § 166.231(5), Fla. Stat. (2005).
- 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 SIC Industry Major Group Number. See § 166.231(6), Fla. Stat. (2005).

E. Fuel Adjustment Charge.

- (1) The municipal public service tax shall not apply to any fuel adjustment charge.
- (2) 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.
- (2) The fuel adjustment charge must be separately stated on a customer’s bill. However, several 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 portion of the base rate that is composed of that “zeroed-out” fuel adjustment charge.

See § 166.231(1)(b), Fla. Stat. (2005).

XIV. AD VALOREM TAX

- A. Real Property Owned and Used by the Municipal Utility.** All real 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.
- B. 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, 30 Fla. L. Weekly S829 (Fla. Dec. 8, 2005). The Florida Supreme Court thus interprets the definition of “municipal or public purposes” in regards to municipal exemption for ad valorem taxes narrowly.
- (1) **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, 30 Fla. L. Weekly S829 (Fla. Dec. 8, 2005).
- (2) **Property used for Telecommunication Services.** Unlike electric services, telecommunications services may be outside the “municipal or public purposes” requirement. See Florida Dep’t of Rev. v. City of Gainesville, 30 Fla. L. Weekly S829 (Fla. Dec. 8, 2005). If it cannot be shown that the services are “essential to the health, morals, safety, and general welfare of the people within the municipality,” the property used to provide these services may be subject to ad valorem taxation. Id.
- C. Real Property Owned by a Municipal Utility, but Used by Nongovernmental Lessees.**
- (1) **Real Property used for Governmental, Municipal, or Public Purpose or Function.** When real 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.

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.

- (2) **Real 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.

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.

XI. REMITTING TAXES TO THE DEPARTMENT OF REVENUE

A. When to Remit.

- (1) **Sales 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. See Fla. Admin. Code Ann. r. 12A-1.056(1)(a) (2005). 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. See Fla. Admin. Code Ann. r. 12A-1.056(1)(b) (2005). In addition, payments may be subject to the Electronic Fund Transfer (EFT) requirement.
- (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. (2005).
- (3) **Gross Receipt Taxes.** Generally, gross receipt taxes are due on the last day of the month following the date of the sale or transaction. The tax return must be filed on the same day that the gross receipts tax is due. In addition, gross receipt tax payments may be subject to the EFT requirements. See § 203.01(c), Fla. Stat. (2005).

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. (2005); Fla. Admin. Code Ann. r. 12A-1.056(3) (2005).

(1) When must estimated payments be made?

All estimated sales tax payments must be remitted through Electronic Funds Transfer (EFT) by the 20th day of the month in which the transaction occurred. 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. See Fla. Admin. Code Ann. r. 12-24.008(1)(a) (2005).

(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, 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. See § 212.11(4)(b), Fla. Stat. (2005).

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 Ann. r. 12A-1.0911 (2005).

E. Penalties and Interest.

- (1) **Penalties.** The penalty assessed for delinquent taxes is 10% per month, with a maximum penalty equal to 50% of the taxes assessed. See 212.12(2), Fla. Stat. (2005).
- (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 due on or after January 1, 2000.

The rate of interest for the period January 1, 2006, through June 30, 2006, is **10 percent**. The daily interest rate factor to be used for this period is .000273973. This rate is subject to change effective July 1, 2006.

The floating rate of interest for underpayments, late payments and overpayments of tax due after December 31, 1999, are:

| Interest Period | Interest Rate | Daily Factor |
|---------------------|---------------|--------------|
| 01/01/00 - 06/30/00 | 8 percent | .000218579 |
| 07/01/00 - 12/31/00 | 9 percent | .000245902 |
| 01/01/01 - 12/31/01 | 9 percent | .000246575 |
| 01/01/02 - 06/30/02 | 7 percent | .000191781 |
| 07/01/02 - 06/30/03 | 5 percent | .000136986 |
| 07/01/03 - 10/31/03 | 4 percent | .000109589 |
| 11/01/03 - 12/31/03 | 8 percent | .000219178 |
| 01/01/04 - 12/31/04 | 8 percent | .000218579 |
| 01/01/05 - 06/30/05 | 8 percent | .000219178 |
| 07/01/05 - 12/31/05 | 9 percent | .000246575 |
| 01/01/06 - 06/30/06 | 10 percent | .000273973 |

- (3) **Compromise.** DOR can compromise taxes and interest for doubt as to liability or collectibility. In addition, DOR can waive penalties for reasonable cause. See 213.21, Fla. Stat. (2005).

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 Ann. r. 12-24.004(2)(a) (2005). 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 \$30,000.

See Fla. Admin. Code Ann. r. 12-24.003 (2005). Any taxpayer who pays communications services tax, gross receipts tax, and sales and use tax in an aggregate amount of \$50,000 must remit communications services tax payments by electronic funds transfer for taxes due during the succeeding calendar year.

(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 (generally the 19th for sales and fuel taxes, and the second to last business day of the month for the gross receipts tax). See Fla. Admin. Code Ann. r. 12-24.008 (2005).

(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.

(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; or
- Failure of the EFT system to properly apply a payment; or
- Failure of the EFT system to issue a proper verification of receipt of the payment information; or
- Errors made by the Data Collection Center, State Treasury or DOR; or

(3) Tax Returns.

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

XII. 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 Ann. r. 12-6.002 (2005).
- 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 Ann. r. 12-6.002 (2005).

- 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 Ann. r. 12-6.003 (2005).
- (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. (2005).
 - (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. (2005).
 - (b) Division of Administrative Hearings.** If challenged at DOAH, the taxpayer must pay the uncontested amount to DOR; however, the executive director may waive this requirement. File the petition at DOR.
- G. 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.

H. How to Avoid Most Audit Problems.

(1) Sales.

(a) 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 on a residential rate; or
- (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 designate sales taxes separately on customer bills to document the payment of taxes. Liability for sales taxes lies with both the seller and the buyer.

(2) Purchases.

(a) Generally.

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

(3) Public Works.

- (a)** Request a TAA for public works projects.
- (b)** Purchase tangible personal property directly from vendors pursuant to an approved purchasing scheme.

(4) Machinery and Equipment used in the Generation, Transmission or Distribution of Electricity.

(a) Power Plants that Burn Residual Oil.

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

(b) Power Plants that Burn Non-Residual Fuels.

- (i)** Request a TAA to determine which items are exempt from sales and discretionary taxes.
- (ii)** Issue affidavits to vendors for exempt purchases.
- (iii)** Pay sales and discretionary taxes on all purchases of tangible personal property that are not "necessary" or otherwise exempt.

(5) Transmission and Distribution Material and Equipment.

- (a)** 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.
- (b)** 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.

- I. Request a Technical Assistance Advisement.** 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 Ann. r. 12-11.003 (2005). 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.

- J. Be Wary of Advice from the Department of Revenue.** 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.
- K. 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 the audit notice arrives.

XIII. HOW TO AVOID SALES TAXES ON PURCHASES**

- A. Public Works.** For public works projects that are not "used in" the generation, transmission, or distribution of electricity, all purchases of tangible personal property are exempt from sales taxes when purchased directly by the municipality in accordance with Rule 12A-1.094 of the Florida Administrative Code. We recommend requesting a TAA that approves the purchasing procedure.
- B. Power Plants.**
 - (1) That Burn Fuels Other than Residual Oil.**
 - (a)** Request a TAA to determine those items that are entitled to the power plant use exemption for power plants that burn non-residual fuel.
 - (b)** Prior to purchase, issue an affidavit to the contractor for the exempt items.
 - (c)** Define the nonexempt 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 nonexempt tangible personal property used in such public works projects are taxable to the contractor, but the labor charges will avoid taxation.
 - (2) That Burn Residual Oil.**
 - (a)** Define the nonexempt 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 nonexempt tangible personal property are taxable to the contractor, but the labor charges will avoid taxation.
- C. Construction of or Repair to Nonexempt Generation Equipment, Substation, Transmission, or Distribution Facilities by a Contractor.**
 - (1)** Directly pay all engineering costs provided by an entity other than the contractor, which will preserve the professional service exemption.
 - (2)** Utilize the freight exemption whenever possible.

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

- (3) 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

XV. 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, we should be notified of any problems that utilities are facing so that we can address those issues with every FMPA/FMEA member.
- B. Request a Technical Assistance Advise ment (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.

INDEX TO EXHIBITS

| | |
|-----------|---|
| Exhibit A | Residential Household Affidavit |
| Exhibit B | THERE IS NO EXHIBIT B |
| Exhibit C | Resale Certificate for Gross Receipts Tax on Utility Services |
| Exhibit D | Items and Systems which Consist of Machinery and Equipment Exempt from Sales Tax Pursuant to Section 212.08(5)(c) (coal burning unit) |
| Exhibit E | Exemption Affidavit Prior to Purchase (for generation <u>equipment</u> or <u>machinery</u> that does not burn residual oil, whether purchased by the utility or its contractor) |
| Exhibit F | Employer's Authorization to Make Purchases on Behalf of an Exempt Governmental Unit |
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| Exhibit L | Gross Receipts Tax Return Form Dr-133 |

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 C

RESALE CERTIFICATE FOR GROSS RECEIPTS TAX ON UTILITY SERVICES

This is to certify that the electricity for light, heat, or power or the natural or manufactured gas for light, heat, or power purchased after _____ (date) from _____ (seller's name) is purchased for the purpose of resale pursuant to Chapter 203, F.S.

I understand that if I fraudulently issue this certificate to evade the payment of gross receipts tax I will be liable for payment of the tax directly to the Department of Revenue and subject to the penalties imposed under Section 203.03(2), F.S.

I understand that I must disclose to the seller, or remit tax on, any purchase not for resale when tax was not paid to the seller and/or distribution company.

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

Purchaser's Name: _____

Purchaser's Address: _____

Name and Title of Purchaser's Authorized Signature:

Certificate of Registration Number:

Effective Date of Registration: _____

By: _____

Date: _____

EXHIBIT D

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)

| No. | Systems of Machinery and Equipment | Tax Treatment of Specific Systems of Machinery and Equipment |
|------------|---|---|
| 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 E

Affidavit

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 F

EMPLOYER'S AUTHORIZATION TO MAKE PURCHASES ON BEHALF OF AN EXEMPT GOVERNMENTAL UNIT

[Date]

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

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

The charges for the purchase or lease of tangible personal property or services or the rental of living quarters or sleeping accommodations from the dealer identified above will be billed to and paid directly by the exempt governmental unit 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 Governmental Unit

Name of Exempt Governmental Unit

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.

EXHIBIT M



Suggested Format for Blanket Exemption Certificate Based on Property's Use

DR-97
R. 07/05

The Department of Revenue **does not supply** a blanket certificate of exemption form. We do provide this suggested format that you may use in accordance with Rule 12A-1.038, Florida Administrative Code (F.A.C.). Generic certificates are available at your local office supply store for a nominal fee. If you prefer, your printer can prepare a certificate to suit your particular needs as long as it contains the essential information set out below.

Suggested Format Blanket Exemption Certificate In Accordance with Rule 12A-1.038, F.A.C.

This is to certify that the tangible personal property purchased, leased, licensed, or rented; or services purchased on or after _____ (date) from _____ (selling dealer's business name) is purchased, leased, licensed, or rented for the following purpose as checked in the space provided below. **Note:** This is not intended to be an exhaustive list.

- | | |
|---|--|
| <input type="checkbox"/> Materials, containers, labels, sacks, bags, or similar items intended to accompany a product for sale at other than retail, as provided in section 212.02(14)(c), Florida Statutes (F.S.), by persons who are not required to be registered under s. 212.18(3), F.S. | <input type="checkbox"/> Educational materials, such as glue, paper, paints, crayons, unique craft items, scissors, books, and educational toys, purchased by child care facilities outlined in s. 402.305, F.S., that hold a current license under s. 402.308, F.S., hold a current Gold Seal Quality Care designation as provided in s. 402.281, F.S., and provide employees with basic health insurance as defined in s. 627.6699(12), F.S., as provided in s. 212.08(5)(m), F.S. |
| <input type="checkbox"/> Incorporation into items of tangible personal property manufactured, produced, compounded, processed, or fabricated for one's own use, as provided in Rule 12A-1.043, F.A.C. | |
| <input type="checkbox"/> Printing of a publication exempt under the provisions of s. 212.08(7)(w), F.S. | <input type="checkbox"/> Motor vehicle rented or leased by a dealer who will provide the motor vehicle at no charge to a person whose motor vehicle is being repaired, adjusted, or serviced by dealer, as provided in s. 212.0601(4), F.S. |
| <input type="checkbox"/> Items, such as paper and ink, that will be incorporated into and become a component part of a publication exempt under the provisions of s. 212.08(7)(w), F.S. | |
| <input type="checkbox"/> Other (include description and statutory citation): _____ | |

Note: There are other suggested formats for exemption certificates based on the use of the property or services that are provided in other sections of Rule Chapter 12A-1, F.A.C. and in Tax Information Publications (TIPs) issued by the Department.

I understand that if I use the property or service for any nonexempt purpose, I must pay tax on the purchase or lease price of the taxable property or service directly to the Department of Revenue.

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 percent of the tax and may be subject to conviction of a third degree felony.

The exemption specified by the purchaser may be verified by calling 800-352-3671.

Purchaser's name: _____

Purchaser's address: _____

Name and title of purchaser's authorized representative: _____

By: _____

(Signature of purchaser or authorized representative)

Title: _____

(Title – only if purchased by an authorized representative of a business entity)

Date: _____

EXHIBIT I

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 |

GENERAL TAX STATUS OF TPP

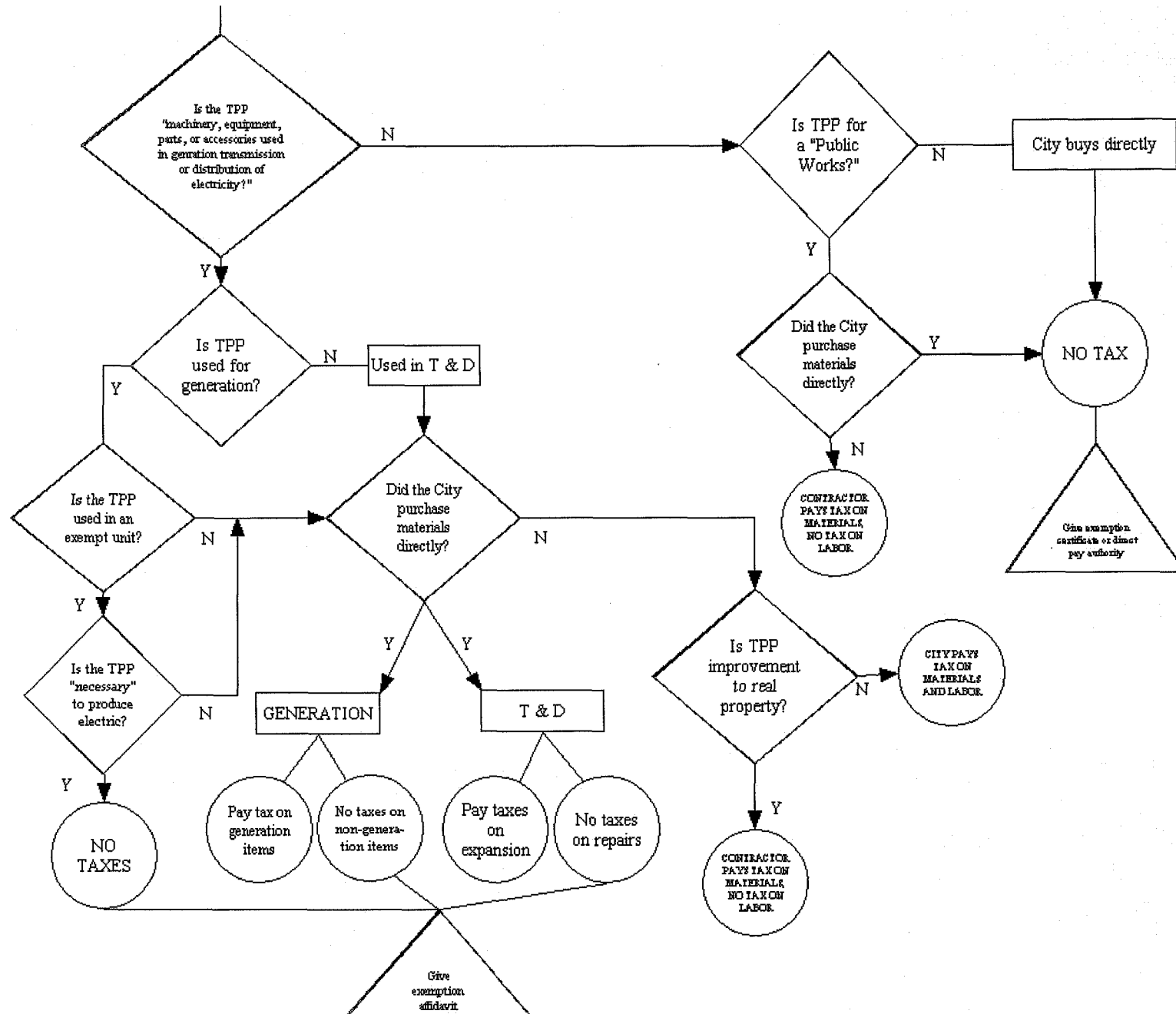


EXHIBIT J

EXHIBIT K

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 (FEI No.)



Gross Receipts Tax Return

DR-133
R. 01/06

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

Name and address if not preprinted:

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.

Before completing this form, carefully read the information on Pages 3 and 4.

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.

Who must file a return? See Page 3.

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.** Effective January 1, 2006, 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. 01/06

| 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 | |
| 6. Amount of Tax Due (Line 4 minus Line 5) | | | |
| 7. Penalty Amount Due (See instructions for rates) | | | |
| 8. Interest Amount Due (See instructions for rates) | | | |
| 9. Total Due with Return (Add Lines 6, 7, and 8) | | | |

CERTIFICATE # _____ COLLECTION PERIOD _____

Name _____
Address _____
City/ST/ZIP _____

Due:

Late After:

☐ Check here if payment was made electronically.

DR-133

0100 0 99999999 0022000031 3 4999999999 0000 5

Line 7. Penalty Amount Due. Returns and payments are due by the last day of the month immediately following the collection period. 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. 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 offers the convenience of our free and secure Internet site to file and pay gross receipts tax. If you want to voluntarily file and pay taxes electronically, you may do so. However, if you paid **\$30,000 or more** in gross receipts tax during the most recent state fiscal year (July 1 through June 30), you **are required** to file and pay taxes electronically during the following calendar year. To enroll, go to the Department's Internet site at **www.myflorida.com/dor** and click on e-Services.

For Information and Forms: Visit the Department's Internet site at **www.myflorida.com/dor** or call Taxpayer Services, Monday through Friday, 8 a.m. to 7 p.m., ET, at 800-352-3671 or 850-488-6800.

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 or corporate intangible 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 _____

General Instructions for Completing Form DR-133

Effective January 1, 2006: Chapter Law 2005-148, **Laws of Florida**, significantly revised how tax is calculated for natural/manufactured gas utilities. Before completing Form DR-133, carefully read the information on Pages 3 and 4 of these instructions.

Highlights of law changes that are effective January 1, 2006:

- Gross receipts tax is due on the delivery and/or transportation of electric and gas services to retail consumers in Florida. **Note:** Gross receipts tax continues to be due from the sale of electricity and gas services.
- The method for determining taxable gross receipts from the sale and/or transportation of natural or manufactured gas has changed. **See Page 4.** **Note:** The 2006 law changes do not impact the way electric utility companies report and remit tax.
- There is now a use tax component to the gross receipts tax that may impact persons who cannot prove payment of tax. See "Use Tax" section.

Who must file a return?

Distribution company. Effective January 1, 2006, 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. Effective January 1, 2006, 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. 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.

Cogenerators and 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.

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.

Specific Instructions for Completing Form DR-133

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.

Go to www.myflorida.com/dor/taxes for current index prices used to calculate gross receipts, beginning January 1, 2006. Look under the category "Check Rates Here."

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.

Examples for delivery of 1 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 (\$18.47) = \$18,470
2. Commercial customers: (1,000,000 divided by 1,000) multiplied by current index price (\$11.46) = \$11,460
3. Industrial customers: (1,000,000 divided by 1,000) multiplied by current index price (\$8.72) = \$8,720
4. Add the results from 1 through 3 (\$18,470 + \$11,460 + \$8,720 = \$38,650). Enter the total in Column A, Line 3.

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.