**HB 5601 Sales Tax/Gross Receipts Tax Swap: Alternative Language**

**Summary**

The attached draft language is a possible replacement for the language in HB 5601, as passed by the House, relating to the shift of Sales Tax to Gross Receipts Tax.

* Generally, the new approach is to create in Ch. 203 a transactions-based tax on the electrical power or energy that exactly mimics the current sales tax on electrical power or energy in all administrative and enforcement aspects.
* The new Ch. 203 tax would be collected with the sales tax, utilizing the sales tax return and a combined tax rate, which would be applicable to the same transactions and charges under both taxes (similar to the manner in which Gross Receipts Tax and Communications Services Tax are collected together on the Communications Services Tax return).
* Also, similar to the treatment of communications services under ch. 203, the new tax would become state funds at the moment of collection.

**New Language Description**

The new language is embodied in four amendments to HB 5601 described below. The language for each is also attached (though we may have left out one or two conforming changes to make the document a little shorter).

* Replace Section 3:
  + Levies tax at 3% on charges for electrical power or energy subject to the sales tax, per ch. 212. It is applied to the same charges and due and payable at the same time as the sales tax.
  + A statement is included that the provisions of ch. 212 govern the administration and enforcement of the new tax to the extent that such provisions are not manifestly incompatible with the provisions of ch. 203. (Note: A similar approach is currently used in s. 206.9835 linking administration of aviation fuel taxes in Part III of Ch. 206, to provisions in Part I of that chapter.)
  + Conforming changes are made throughout s. 203.01 to clarify that existing provisions in that section continue to apply only to the current 2.5% gross receipts tax on utility services.
* Replace Lines 287 – 288:
  + In Ch. 212, the sales tax rate on charges for electrical power and energy is reduced to 4%.
  + Language is included to clarify that the charges for electrical power or energy against which the sales tax is levied do not include the new tax levied in ch. 203.
* Insert new section 5.:
  + Authorizes sellers to collect a combined rate of 7%, comprised of 4% levied under ch. 212 and 3% levied under ch. 203.
  + Authorizes adoption of emergency rules.
* Replace Lines 648 – 649:
  + Provides, within Ch. 212 (Sales Tax), for distribution of the new tax collected under ch. 203 to the Public Education Capital Outlay and Debt Service Trust Fund (mirrors language used with communications services).

**Replace Section 3 of the bill with:**

Section 3. Paragraphs (a), (b), (c), (d), (e), (f), (g), (h), and (i) of subsection (1), and subsections (3), (4), and (7) of section 203.01, Florida Statutes, are amended to read:

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

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

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

3. A tax is levied on charges for electrical power or energy that are subject to the tax levied pursuant to s. 212.05(1)(e)1.c. The tax shall be applied to the same transactions as are subject to taxation under s. 212.05(1)(e)1.c. except those transactions eligible for an exemption provided by ch. 212. The tax shall be applied to charges for electrical power or energy and shall be due and payable at the same time as taxes imposed pursuant to ch. 212. To the extent that they are not manifestly incompatible with the provisions of this chapter, the provisions of chapter 212 shall govern the administration and enforcement of the tax imposed by this subparagraph.

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

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

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

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

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

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

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

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

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

4. The amount of tax due under this paragraph shall be reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the retail consumer purchased the electricity, whether imposed by and paid to this state, another state, a territory of the United States, or the District of Columbia. This reduction in tax shall be available to the retail consumer as a refund made pursuant to s. 215.26 and does not inure to the benefit of the person who receives payment for the delivery of the electricity. The methods of demonstrating proof of payment and the amount of such refund shall be made according to rules of the Department of Revenue.

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

2. The index price is 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 to be effective for the 12-month period beginning July 1 of that year. For each residential, commercial, and industrial customer class, the applicable index posted for residential, commercial, and industrial will be applied in calculating the gross receipts to which the tax applies. If publication of the indices is delayed or discontinued, the last posted index shall be used until a current index is posted or the department adopts a comparable index by rule.

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

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

(f) Any person who imports into this state electricity, natural gas, or manufactured gas, or severs natural gas, for that person's own use or consumption as a substitute for purchasing utility, transportation, or delivery services taxable under subparagraph (a)1. ~~this chapter~~ and who cannot demonstrate payment of the tax imposed by this chapter must register with the Department of Revenue and pay into the State Treasury each month an amount equal to the cost price of such electricity, natural gas, or manufactured gas times the rate set forth in paragraph (b)1., reduced by the amount of any like tax lawfully imposed on and paid by the person from whom the electricity, natural gas, or manufactured gas was purchased or any person who provided delivery service or transportation service in connection with the electricity, natural gas, or manufactured gas. For purposes of this paragraph, the term "cost price" has the meaning ascribed in s. 212.02(4). The methods of demonstrating proof of payment and the amount of such reductions in tax shall be made according to rules of the Department of Revenue.

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

(h) Electricity produced by cogeneration or by small power producers during the 12-month period ending June 30 of each year which is in excess of nontaxable electricity produced during the 12-month period ending June 30, 1990, is subject to the tax imposed by subparagraph (a)1. ~~this section~~. The tax shall be applied to the cost price of such electricity as provided in s. 212.02(4) and shall be paid each month, beginning with the month in which total production exceeds the production of nontaxable electricity for the 12-month period ending June 30, 1990. For purposes of this paragraph, "nontaxable electricity" means electricity produced by cogeneration or by small power producers which is not subject to tax under paragraph (g). Taxes paid pursuant to paragraph (g) may be credited against taxes due under this paragraph. Electricity generated as part of an industrial manufacturing process which manufactures products from phosphate rock, raw wood fiber, paper, citrus, or any agricultural product shall not be subject to the tax imposed by this paragraph. "Industrial manufacturing process" means the entire process conducted at the location where the process takes place.

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

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

(a)1. The sale or transportation of natural gas or manufactured gas to a public or private utility, including a municipal corporation or rural electric cooperative association, either for resale or for use as fuel in the generation of electricity; or

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

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

(4) The tax imposed pursuant to subparagraph (1)(a)1. ~~this chapter~~ relating to the provision of any utility services at the option of the person supplying the taxable services may be separately stated as Florida gross receipts tax on the total amount of any bill, invoice, or other tangible evidence of the provision of such taxable services and may be added as a component part of the total charge. Whenever a provider of taxable services elects to separately state such tax as a component of the charge for the provision of such taxable services, every person, including all governmental units, shall remit the tax to the person who provides such taxable services as a part of the total bill, and the tax is a component part of the debt of the purchaser to the person who provides such taxable services until paid and, if unpaid, is recoverable at law in the same manner as any other part of the charge for such taxable services. For a utility, the decision to separately state any increase in the rate of tax imposed by this chapter which is effective after December 31, 1989, and the ability to recover the increased charge from the customer shall not be subject to regulatory approval.

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

**Replace lines 287-288 with:**

c. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 4 ~~7~~ percent. Charges for electrical power and energy do not include any tax imposed under s. 203.01(a)3.

**Insert new section 5**

Section 5. In complying with sections 3 and 4 of this act, a seller of electrical power or energy may collect a combined rate of 7 percent, comprised of 4 percent and 3 percent required by ss. 212.05(1)(e)1.c. and 203.01(1)(b)4., Florida Statutes, respectively, as long as the provider properly reflects the tax collected with respect to the two provisions as required in the return to the Department of Revenue on a tax return initiated through electronic means. The Department of Revenue may, and all conditions are deemed met to, adopt emergency rules pursuant to ss. 120.536(1) and 120.54, Florida Statutes, for the purpose of implementing sections 3, 4, and 9 of this act.

**Replace lines 648-649**

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

(a) Proceeds from the convention development taxes authorized under s. 212.0305 shall be reallocated to the Convention Development Tax Clearing Trust Fund.

(b) Proceeds from discretionary sales surtaxes imposed pursuant to ss. 212.054 and 212.055 shall be reallocated to the Discretionary Sales Surtax Clearing Trust Fund.

(c) 1. Proceeds from the fees imposed under ss. 212.05(1)(h)3. and 212.18(3) shall remain with the General Revenue Fund.

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