



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB2075

Introduced 2/22/2011, by Rep. Lou Lang

SYNOPSIS AS INTRODUCED:

35 ILCS 173/5-50

35 ILCS 615/1

35 ILCS 640/2-4

from Ch. 120, par. 467.16

Amends the Gas Use Tax Law. Exempts certain business enterprises designated by Standard Industrial Classification from taxation under the Act. Amends the Gas Revenue Tax Act. Provides that the definition of "gross receipts" does not include consideration received from those business enterprises. Amends the Electricity Excise Tax Law. Provides that the tax under the Act is not imposed with respect to any use by those business enterprises in the process of manufacturing or assembling tangible personal property for wholesale or for retail sale or lease. Effective immediately.

LRB097 08837 HLH 48967 b

FISCAL NOTE ACT
MAY APPLY

A BILL FOR

1 AN ACT concerning revenue.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Gas Use Tax Law is amended by changing
5 Section 5-50 as follows:

6 (35 ILCS 173/5-50)

7 Sec. 5-50. Exemptions. The tax imposed under this Act shall
8 not apply to:

9 (1) Gas used by business enterprises located in an
10 enterprise zone certified by the Department of Commerce and
11 Economic Opportunity pursuant to the Illinois Enterprise
12 Zone Act;

13 (2) Gas used by governmental bodies, or a corporation,
14 society, association, foundation, or institution organized
15 and operated exclusively for charitable, religious, or
16 educational purposes. Such use shall not be exempt unless
17 the government body, or corporation, society, association,
18 foundation, or institution organized and operated
19 exclusively for charitable, religious, or educational
20 purposes has first been issued a tax exemption
21 identification number by the Department of Revenue
22 pursuant to Section 1g of the Retailers' Occupation Tax
23 Act. A limited liability company may qualify for the

1 exemption under this Section only if the limited liability
2 company is organized and operated exclusively for
3 educational purposes. The term "educational purposes"
4 shall have the same meaning as that set forth in Section 2h
5 of the Retailers' Occupation Tax Act;

6 (3) Gas used in the production of electric energy. This
7 exemption does not include gas used in the general
8 maintenance or heating of an electric energy production
9 facility or other structure;

10 (4) Gas used in a petroleum refinery operation;

11 (5) Gas purchased by persons for use in liquefaction
12 and fractionation processes that produce value added
13 natural gas byproducts for resale;

14 (6) Gas used in the production of anhydrous ammonia and
15 downstream nitrogen fertilizer products for resale.

16 (7) Gas used by any business enterprise that is
17 properly assigned or included within one of the following
18 Standard Industrial Classifications, as designated in the
19 Standard Industrial Classification Manual prepared by the
20 federal Office of Management and Budget: 10; 12; 13; 14;
21 20; 21; 22; 23; 24; 25; 26; 27; 28; 29; 30; 31; 32; 33; 34;
22 35; 36; 37; 38; or 39.

23 The Department may adopt rules to implement the provisions
24 of this Section.

25 (Source: P.A. 93-31, eff. 10-1-03.)

1 Section 10. The Gas Revenue Tax Act is amended by changing
2 Section 1 as follows:

3 (35 ILCS 615/1) (from Ch. 120, par. 467.16)

4 Sec. 1. For the purposes of this Act: "Gross receipts"
5 means the consideration received for gas distributed,
6 supplied, furnished or sold to persons for use or consumption
7 and not for resale, and for all services (including the
8 transportation or storage of gas for an end-user) rendered in
9 connection therewith, and shall include cash, services and
10 property of every kind or nature, and shall be determined
11 without any deduction on account of the cost of the service,
12 product or commodity supplied, the cost of materials used,
13 labor or service costs, or any other expense whatsoever.
14 However, "gross receipts" shall not include receipts from:

15 (i) any minimum or other charge for gas or gas service
16 where the customer has taken no therms of gas;

17 (ii) any charge for a dishonored check;

18 (iii) any finance or credit charge, penalty or charge
19 for delayed payment, or discount for prompt payment;

20 (iv) any charge for reconnection of service or for
21 replacement or relocation of facilities;

22 (v) any advance or contribution in aid of construction;

23 (vi) repair, inspection or servicing of equipment
24 located on customer premises;

25 (vii) leasing or rental of equipment, the leasing or

1 rental of which is not necessary to distributing,
2 furnishing, supplying, selling, transporting or storing
3 gas;

4 (viii) any sale to a customer if the taxpayer is
5 prohibited by federal or State constitution, treaty,
6 convention, statute or court decision from recovering the
7 related tax liability from such customer;

8 (ix) any charges added to customers' bills pursuant to
9 the provisions of Section 9-221 or Section 9-222 of the
10 Public Utilities Act, as amended, or any charges added to
11 customers' bills by taxpayers who are not subject to rate
12 regulation by the Illinois Commerce Commission for the
13 purpose of recovering any of the tax liabilities or other
14 amounts specified in such provisions of such Act; and

15 (x) prior to October 1, 2003, any charge for gas or gas
16 services to a customer who acquired contractual rights for
17 the direct purchase of gas or gas services originating from
18 an out-of-state supplier or source on or before March 1,
19 1995, except for those charges solely related to the local
20 distribution of gas by a public utility. This exemption
21 includes any charge for gas or gas service, except for
22 those charges solely related to the local distribution of
23 gas by a public utility, to a customer who maintained an
24 account with a public utility (as defined in Section 3-105
25 of the Public Utilities Act) for the transportation of
26 customer-owned gas on or before March 1, 1995. The

1 provisions of this amendatory Act of 1997 are intended to
2 clarify, rather than change, existing law as to the meaning
3 and scope of this exemption. This exemption (x) expires on
4 September 30, 2003.

5 In case credit is extended, the amount thereof shall be
6 included only as and when payments are received.

7 "Gross receipts" shall not include consideration received
8 from business enterprises certified under Section 9-222.1 of
9 the Public Utilities Act, as amended, to the extent of such
10 exemption and during the period of time specified by the
11 Department of Commerce and Economic Opportunity.

12 "Gross receipts" does not include consideration received
13 from any business enterprise that is properly assigned or
14 included within one of the following Standard Industrial
15 Classifications, as designated in the Standard Industrial
16 Classification Manual prepared by the federal Office of
17 Management and Budget: 10; 12; 13; 14; 20; 21; 22; 23; 24; 25;
18 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; or 39,
19 during the period in time in which such business enterprise
20 provides a valid exemption certificate (as determined by the
21 Illinois Department of Revenue) to their gas supplier and
22 delivering gas utility. Gas suppliers and delivering gas
23 utilities may reasonably rely on exemption certificates
24 provided by those business enterprises. Gas suppliers and
25 delivering gas utilities may implement this exemption
26 beginning with any bill issued to the business enterprise on or

1 after receipt of the certificate of exemption, but shall
2 implement the exemption not later than the first bill issued on
3 or after 30 days after receipt of the certificate of exemption.

4 "Department" means the Department of Revenue of the State
5 of Illinois.

6 "Director" means the Director of Revenue for the Department
7 of Revenue of the State of Illinois.

8 "Taxpayer" means a person engaged in the business of
9 distributing, supplying, furnishing or selling gas for use or
10 consumption and not for resale.

11 "Person" means any natural individual, firm, trust,
12 estate, partnership, association, joint stock company, joint
13 adventure, corporation, limited liability company, or a
14 receiver, trustee, guardian or other representative appointed
15 by order of any court, or any city, town, county or other
16 political subdivision of this State.

17 "Invested capital" means that amount equal to (i) the
18 average of the balances at the beginning and end of each
19 taxable period of the taxpayer's total stockholder's equity and
20 total long-term debt, less investments in and advances to all
21 corporations, as set forth on the balance sheets included in
22 the taxpayer's annual report to the Illinois Commerce
23 Commission for the taxable period; (ii) multiplied by a
24 fraction determined under Sections 301 and 304(a) of the
25 "Illinois Income Tax Act" and reported on the Illinois income
26 tax return for the taxable period ending in or with the taxable

1 period in question. However, notwithstanding the income tax
2 return reporting requirement stated above, beginning July 1,
3 1979, no taxpayer's denominators used to compute the sales,
4 property or payroll factors under subsection (a) of Section 304
5 of the Illinois Income Tax Act shall include payroll, property
6 or sales of any corporate entity other than the taxpayer for
7 the purposes of determining an allocation for the invested
8 capital tax. This amendatory Act of 1982, Public Act 82-1024,
9 is not intended to and does not make any change in the meaning
10 of any provision of this Act, it having been the intent of the
11 General Assembly in initially enacting the definition of
12 "invested capital" to provide for apportionment of the invested
13 capital of each company, based solely upon the sales, property
14 and payroll of that company.

15 "Taxable period" means each period which ends after the
16 effective date of this Act and which is covered by an annual
17 report filed by the taxpayer with the Illinois Commerce
18 Commission.

19 (Source: P.A. 93-31, eff. 10-1-03; 94-793, eff. 5-19-06.)

20 Section 15. The Electricity Excise Tax Law is amended by
21 changing Section 2-4 as follows:

22 (35 ILCS 640/2-4)

23 Sec. 2-4. Tax imposed.

24 (a) Except as provided in subsection (b), a tax is imposed

1 on the privilege of using in this State electricity purchased
2 for use or consumption and not for resale, other than by
3 municipal corporations owning and operating a local
4 transportation system for public service, at the following
5 rates per kilowatt-hour delivered to the purchaser:

6 (i) For the first 2000 kilowatt-hours used or consumed
7 in a month: 0.330 cents per kilowatt-hour;

8 (ii) For the next 48,000 kilowatt-hours used or
9 consumed in a month: 0.319 cents per kilowatt-hour;

10 (iii) For the next 50,000 kilowatt-hours used or
11 consumed in a month: 0.303 cents per kilowatt-hour;

12 (iv) For the next 400,000 kilowatt-hours used or
13 consumed in a month: 0.297 cents per kilowatt-hour;

14 (v) For the next 500,000 kilowatt-hours used or
15 consumed in a month: 0.286 cents per kilowatt-hour;

16 (vi) For the next 2,000,000 kilowatt-hours used or
17 consumed in a month: 0.270 cents per kilowatt-hour;

18 (vii) For the next 2,000,000 kilowatt-hours used or
19 consumed in a month: 0.254 cents per kilowatt-hour;

20 (viii) For the next 5,000,000 kilowatt-hours used or
21 consumed in a month: 0.233 cents per kilowatt-hour;

22 (ix) For the next 10,000,000 kilowatt-hours used or
23 consumed in a month: 0.207 cents per kilowatt-hour;

24 (x) For all electricity in excess of 20,000,000
25 kilowatt-hours used or consumed in a month: 0.202 cents per
26 kilowatt-hour.

1 Provided, that in lieu of the foregoing rates, the tax is
2 imposed on a self-assessing purchaser at the rate of 5.1% of
3 the self-assessing purchaser's purchase price for all
4 electricity distributed, supplied, furnished, sold,
5 transmitted and delivered to the self-assessing purchaser in a
6 month.

7 (b) A tax is imposed on the privilege of using in this
8 State electricity purchased from a municipal system or electric
9 cooperative, as defined in Article XVII of the Public Utilities
10 Act, which has not made an election as permitted by either
11 Section 17-200 or Section 17-300 of such Act, at the lesser of
12 0.32 cents per kilowatt hour of all electricity distributed,
13 supplied, furnished, sold, transmitted, and delivered by such
14 municipal system or electric cooperative to the purchaser or 5%
15 of each such purchaser's purchase price for all electricity
16 distributed, supplied, furnished, sold, transmitted, and
17 delivered by such municipal system or electric cooperative to
18 the purchaser, whichever is the lower rate as applied to each
19 purchaser in each billing period.

20 (c) The tax imposed by this Section 2-4 is not imposed: (i)
21 with respect to any use of electricity by business enterprises
22 certified under Section 9-222.1 or 9-222.1A of the Public
23 Utilities Act, as amended, to the extent of such exemption and
24 during the time specified by the Department of Commerce and
25 Economic Opportunity; (ii) with respect to any use by any
26 business enterprise that is properly assigned or included

1 within one of the following Standard Industrial
2 Classifications, as designated in the Standard Industrial
3 Classification Manual prepared by the federal Office of
4 Management and Budget: 10; 12; 13; 14; 20; 21; 22; 23; 24; 25;
5 26; 27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; or 39, in
6 the process of manufacturing or assembling tangible personal
7 property for wholesale or for retail sale or lease; or (iii)
8 with respect to any transaction in interstate commerce, or
9 otherwise, to the extent to which such transaction may not,
10 under the Constitution and statutes of the United States, be
11 made the subject of taxation by this State.

12 (Source: P.A. 94-793, eff. 5-19-06.)

13 Section 99. Effective date. This Act takes effect upon
14 becoming law.