

SB2079



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

SB2079

Introduced 2/10/2011, by Sen. Kirk W. Dillard

SYNOPSIS AS INTRODUCED:

35 ILCS 615/1	from Ch. 120, par. 467.16
35 ILCS 630/2	from Ch. 120, par. 2002
35 ILCS 640/2-4	

Amends the Gas Revenue Tax Act, the Telecommunications Excise Tax Act, and the Electricity Excise Tax Act. Provides that businesses that are primarily engaged in manufacturing are exempt from taxation under the Acts. Provides that the Acts' automatic sunset provisions do not apply to the exemption.

LRB097 10318 HLH 50526 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 Revenue Tax Act is amended by changing
5 Section 1 as follows:

6 (35 ILCS 615/1) (from Ch. 120, par. 467.16)

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

18 (i) any minimum or other charge for gas or gas service
19 where the customer has taken no terms of gas;

20 (ii) any charge for a dishonored check;

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

23 (iv) any charge for reconnection of service or for

1 replacement or relocation of facilities;

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

3 (vi) repair, inspection or servicing of equipment
4 located on customer premises;

5 (vii) leasing or rental of equipment, the leasing or
6 rental of which is not necessary to distributing,
7 furnishing, supplying, selling, transporting or storing
8 gas;

9 (viii) any sale to a customer if the taxpayer is
10 prohibited by federal or State constitution, treaty,
11 convention, statute or court decision from recovering the
12 related tax liability from such customer;

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

20 (x) prior to October 1, 2003, any charge for gas or gas
21 services to a customer who acquired contractual rights for
22 the direct purchase of gas or gas services originating from
23 an out-of-state supplier or source on or before March 1,
24 1995, except for those charges solely related to the local
25 distribution of gas by a public utility. This exemption
26 includes any charge for gas or gas service, except for

1 those charges solely related to the local distribution of
2 gas by a public utility, to a customer who maintained an
3 account with a public utility (as defined in Section 3-105
4 of the Public Utilities Act) for the transportation of
5 customer-owned gas on or before March 1, 1995. The
6 provisions of this amendatory Act of 1997 are intended to
7 clarify, rather than change, existing law as to the meaning
8 and scope of this exemption. This exemption (x) expires on
9 September 30, 2003.

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

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

17 "Gross receipts" shall not include consideration received
18 from businesses that are primarily engaged in manufacturing.
19 This paragraph is exempt from the provisions of Section 2a.3 of
20 this Act.

21 "Department" means the Department of Revenue of the State
22 of Illinois.

23 "Director" means the Director of Revenue for the Department
24 of Revenue of the State of Illinois.

25 "Taxpayer" means a person engaged in the business of
26 distributing, supplying, furnishing or selling gas for use or

1 consumption and not for resale.

2 "Person" means any natural individual, firm, trust,
3 estate, partnership, association, joint stock company, joint
4 adventure, corporation, limited liability company, or a
5 receiver, trustee, guardian or other representative appointed
6 by order of any court, or any city, town, county or other
7 political subdivision of this State.

8 "Invested capital" means that amount equal to (i) the
9 average of the balances at the beginning and end of each
10 taxable period of the taxpayer's total stockholder's equity and
11 total long-term debt, less investments in and advances to all
12 corporations, as set forth on the balance sheets included in
13 the taxpayer's annual report to the Illinois Commerce
14 Commission for the taxable period; (ii) multiplied by a
15 fraction determined under Sections 301 and 304(a) of the
16 "Illinois Income Tax Act" and reported on the Illinois income
17 tax return for the taxable period ending in or with the taxable
18 period in question. However, notwithstanding the income tax
19 return reporting requirement stated above, beginning July 1,
20 1979, no taxpayer's denominators used to compute the sales,
21 property or payroll factors under subsection (a) of Section 304
22 of the Illinois Income Tax Act shall include payroll, property
23 or sales of any corporate entity other than the taxpayer for
24 the purposes of determining an allocation for the invested
25 capital tax. This amendatory Act of 1982, Public Act 82-1024,
26 is not intended to and does not make any change in the meaning

1 of any provision of this Act, it having been the intent of the
2 General Assembly in initially enacting the definition of
3 "invested capital" to provide for apportionment of the invested
4 capital of each company, based solely upon the sales, property
5 and payroll of that company.

6 "Taxable period" means each period which ends after the
7 effective date of this Act and which is covered by an annual
8 report filed by the taxpayer with the Illinois Commerce
9 Commission.

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

11 Section 10. The Telecommunications Excise Tax Act is
12 amended by changing Section 2 as follows:

13 (35 ILCS 630/2) (from Ch. 120, par. 2002)

14 Sec. 2. As used in this Article, unless the context clearly
15 requires otherwise:

16 (a) "Gross charge" means the amount paid for the act or
17 privilege of originating or receiving telecommunications in
18 this State and for all services and equipment provided in
19 connection therewith by a retailer, valued in money whether
20 paid in money or otherwise, including cash, credits, services
21 and property of every kind or nature, and shall be determined
22 without any deduction on account of the cost of such
23 telecommunications, the cost of materials used, labor or
24 service costs or any other expense whatsoever. In case credit

1 is extended, the amount thereof shall be included only as and
2 when paid. "Gross charges" for private line service shall
3 include charges imposed at each channel termination point
4 within this State, charges for the channel mileage between each
5 channel termination point within this State, and charges for
6 that portion of the interstate inter-office channel provided
7 within Illinois. Charges for that portion of the interstate
8 inter-office channel provided in Illinois shall be determined
9 by the retailer as follows: (i) for interstate inter-office
10 channels having 2 channel termination points, only one of which
11 is in Illinois, 50% of the total charge imposed; or (ii) for
12 interstate inter-office channels having more than 2 channel
13 termination points, one or more of which are in Illinois, an
14 amount equal to the total charge multiplied by a fraction, the
15 numerator of which is the number of channel termination points
16 within Illinois and the denominator of which is the total
17 number of channel termination points. Prior to January 1, 2004,
18 any method consistent with this paragraph or other method that
19 reasonably apportions the total charges for interstate
20 inter-office channels among the states in which channel
21 terminations points are located shall be accepted as a
22 reasonable method to determine the charges for that portion of
23 the interstate inter-office channel provided within Illinois
24 for that period. However, "gross charges" shall not include any
25 of the following:

- 26 (1) Any amounts added to a purchaser's bill because of

1 a charge made pursuant to (i) the tax imposed by this
2 Article; (ii) charges added to customers' bills pursuant to
3 the provisions of Sections 9-221 or 9-222 of the Public
4 Utilities Act, as amended, or any similar charges added to
5 customers' bills by retailers who are not subject to rate
6 regulation by the Illinois Commerce Commission for the
7 purpose of recovering any of the tax liabilities or other
8 amounts specified in such provisions of such Act; (iii) the
9 tax imposed by Section 4251 of the Internal Revenue Code;
10 (iv) 911 surcharges; or (v) the tax imposed by the
11 Simplified Municipal Telecommunications Tax Act.

12 (2) Charges for a sent collect telecommunication
13 received outside of the State.

14 (3) Charges for leased time on equipment or charges for
15 the storage of data or information for subsequent retrieval
16 or the processing of data or information intended to change
17 its form or content. Such equipment includes, but is not
18 limited to, the use of calculators, computers, data
19 processing equipment, tabulating equipment or accounting
20 equipment and also includes the usage of computers under a
21 time-sharing agreement.

22 (4) Charges for customer equipment, including such
23 equipment that is leased or rented by the customer from any
24 source, wherein such charges are disaggregated and
25 separately identified from other charges.

26 (5) Charges to business enterprises certified under

1 Section 9-222.1 of the Public Utilities Act, as amended, to
2 the extent of such exemption and during the period of time
3 specified by the Department of Commerce and Economic
4 Opportunity.

5 (5-5) Charges to businesses that are primarily engaged
6 in manufacturing. This item (5-5) is exempt from the
7 provisions of Section 4.5.

8 (6) Charges for telecommunications and all services
9 and equipment provided in connection therewith between a
10 parent corporation and its wholly owned subsidiaries or
11 between wholly owned subsidiaries when the tax imposed
12 under this Article has already been paid to a retailer and
13 only to the extent that the charges between the parent
14 corporation and wholly owned subsidiaries or between
15 wholly owned subsidiaries represent expense allocation
16 between the corporations and not the generation of profit
17 for the corporation rendering such service.

18 (7) Bad debts. Bad debt means any portion of a debt
19 that is related to a sale at retail for which gross charges
20 are not otherwise deductible or excludable that has become
21 worthless or uncollectable, as determined under applicable
22 federal income tax standards. If the portion of the debt
23 deemed to be bad is subsequently paid, the retailer shall
24 report and pay the tax on that portion during the reporting
25 period in which the payment is made.

26 (8) Charges paid by inserting coins in coin-operated

1 telecommunication devices.

2 (9) Amounts paid by telecommunications retailers under
3 the Telecommunications Municipal Infrastructure
4 Maintenance Fee Act.

5 (10) Charges for nontaxable services or
6 telecommunications if (i) those charges are aggregated
7 with other charges for telecommunications that are
8 taxable, (ii) those charges are not separately stated on
9 the customer bill or invoice, and (iii) the retailer can
10 reasonably identify the nontaxable charges on the
11 retailer's books and records kept in the regular course of
12 business. If the nontaxable charges cannot reasonably be
13 identified, the gross charge from the sale of both taxable
14 and nontaxable services or telecommunications billed on a
15 combined basis shall be attributed to the taxable services
16 or telecommunications. The burden of proving nontaxable
17 charges shall be on the retailer of the telecommunications.

18 (b) "Amount paid" means the amount charged to the
19 taxpayer's service address in this State regardless of where
20 such amount is billed or paid.

21 (c) "Telecommunications", in addition to the meaning
22 ordinarily and popularly ascribed to it, includes, without
23 limitation, messages or information transmitted through use of
24 local, toll and wide area telephone service; private line
25 services; channel services; telegraph services;
26 teletypewriter; computer exchange services; cellular mobile

1 telecommunications service; specialized mobile radio;
2 stationary two way radio; paging service; or any other form of
3 mobile and portable one-way or two-way communications; or any
4 other transmission of messages or information by electronic or
5 similar means, between or among points by wire, cable,
6 fiber-optics, laser, microwave, radio, satellite or similar
7 facilities. As used in this Act, "private line" means a
8 dedicated non-traffic sensitive service for a single customer,
9 that entitles the customer to exclusive or priority use of a
10 communications channel or group of channels, from one or more
11 specified locations to one or more other specified locations.
12 The definition of "telecommunications" shall not include value
13 added services in which computer processing applications are
14 used to act on the form, content, code and protocol of the
15 information for purposes other than transmission.
16 "Telecommunications" shall not include purchases of
17 telecommunications by a telecommunications service provider
18 for use as a component part of the service provided by him to
19 the ultimate retail consumer who originates or terminates the
20 taxable end-to-end communications. Carrier access charges,
21 right of access charges, charges for use of inter-company
22 facilities, and all telecommunications resold in the
23 subsequent provision of, used as a component of, or integrated
24 into end-to-end telecommunications service shall be
25 non-taxable as sales for resale.

26 (d) "Interstate telecommunications" means all

1 telecommunications that either originate or terminate outside
2 this State.

3 (e) "Intrastate telecommunications" means all
4 telecommunications that originate and terminate within this
5 State.

6 (f) "Department" means the Department of Revenue of the
7 State of Illinois.

8 (g) "Director" means the Director of Revenue for the
9 Department of Revenue of the State of Illinois.

10 (h) "Taxpayer" means a person who individually or through
11 his agents, employees or permittees engages in the act or
12 privilege of originating or receiving telecommunications in
13 this State and who incurs a tax liability under this Article.

14 (i) "Person" means any natural individual, firm, trust,
15 estate, partnership, association, joint stock company, joint
16 venture, corporation, limited liability company, or a
17 receiver, trustee, guardian or other representative appointed
18 by order of any court, the Federal and State governments,
19 including State universities created by statute or any city,
20 town, county or other political subdivision of this State.

21 (j) "Purchase at retail" means the acquisition,
22 consumption or use of telecommunication through a sale at
23 retail.

24 (k) "Sale at retail" means the transmitting, supplying or
25 furnishing of telecommunications and all services and
26 equipment provided in connection therewith for a consideration

1 to persons other than the Federal and State governments, and
2 State universities created by statute and other than between a
3 parent corporation and its wholly owned subsidiaries or between
4 wholly owned subsidiaries for their use or consumption and not
5 for resale.

6 (l) "Retailer" means and includes every person engaged in
7 the business of making sales at retail as defined in this
8 Article. The Department may, in its discretion, upon
9 application, authorize the collection of the tax hereby imposed
10 by any retailer not maintaining a place of business within this
11 State, who, to the satisfaction of the Department, furnishes
12 adequate security to insure collection and payment of the tax.
13 Such retailer shall be issued, without charge, a permit to
14 collect such tax. When so authorized, it shall be the duty of
15 such retailer to collect the tax upon all of the gross charges
16 for telecommunications in this State in the same manner and
17 subject to the same requirements as a retailer maintaining a
18 place of business within this State. The permit may be revoked
19 by the Department at its discretion.

20 (m) "Retailer maintaining a place of business in this
21 State", or any like term, means and includes any retailer
22 having or maintaining within this State, directly or by a
23 subsidiary, an office, distribution facilities, transmission
24 facilities, sales office, warehouse or other place of business,
25 or any agent or other representative operating within this
26 State under the authority of the retailer or its subsidiary,

1 irrespective of whether such place of business or agent or
2 other representative is located here permanently or
3 temporarily, or whether such retailer or subsidiary is licensed
4 to do business in this State.

5 (n) "Service address" means the location of
6 telecommunications equipment from which the telecommunications
7 services are originated or at which telecommunications
8 services are received by a taxpayer. In the event this may not
9 be a defined location, as in the case of mobile phones, paging
10 systems, maritime systems, service address means the
11 customer's place of primary use as defined in the Mobile
12 Telecommunications Sourcing Conformity Act. For air-to-ground
13 systems and the like, service address shall mean the location
14 of a taxpayer's primary use of the telecommunications equipment
15 as defined by telephone number, authorization code, or location
16 in Illinois where bills are sent.

17 (o) "Prepaid telephone calling arrangements" mean the
18 right to exclusively purchase telephone or telecommunications
19 services that must be paid for in advance and enable the
20 origination of one or more intrastate, interstate, or
21 international telephone calls or other telecommunications
22 using an access number, an authorization code, or both, whether
23 manually or electronically dialed, for which payment to a
24 retailer must be made in advance, provided that, unless
25 recharged, no further service is provided once that prepaid
26 amount of service has been consumed. Prepaid telephone calling

1 arrangements include the recharge of a prepaid calling
2 arrangement. For purposes of this subsection, "recharge" means
3 the purchase of additional prepaid telephone or
4 telecommunications services whether or not the purchaser
5 acquires a different access number or authorization code.
6 "Prepaid telephone calling arrangement" does not include an
7 arrangement whereby a customer purchases a payment card and
8 pursuant to which the service provider reflects the amount of
9 such purchase as a credit on an invoice issued to that customer
10 under an existing subscription plan.

11 (Source: P.A. 93-286, 1-1-04; 94-793, eff. 5-19-06.)

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

14 (35 ILCS 640/2-4)

15 Sec. 2-4. Tax imposed.

16 (a) Except as provided in subsection (b), a tax is imposed
17 on the privilege of using in this State electricity purchased
18 for use or consumption and not for resale, other than by
19 municipal corporations owning and operating a local
20 transportation system for public service, at the following
21 rates per kilowatt-hour delivered to the purchaser:

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

24 (ii) For the next 48,000 kilowatt-hours used or

1 consumed in a month: 0.319 cents per kilowatt-hour;
2 (iii) For the next 50,000 kilowatt-hours used or
3 consumed in a month: 0.303 cents per kilowatt-hour;
4 (iv) For the next 400,000 kilowatt-hours used or
5 consumed in a month: 0.297 cents per kilowatt-hour;
6 (v) For the next 500,000 kilowatt-hours used or
7 consumed in a month: 0.286 cents per kilowatt-hour;
8 (vi) For the next 2,000,000 kilowatt-hours used or
9 consumed in a month: 0.270 cents per kilowatt-hour;
10 (vii) For the next 2,000,000 kilowatt-hours used or
11 consumed in a month: 0.254 cents per kilowatt-hour;
12 (viii) For the next 5,000,000 kilowatt-hours used or
13 consumed in a month: 0.233 cents per kilowatt-hour;
14 (ix) For the next 10,000,000 kilowatt-hours used or
15 consumed in a month: 0.207 cents per kilowatt-hour;
16 (x) For all electricity in excess of 20,000,000
17 kilowatt-hours used or consumed in a month: 0.202 cents per
18 kilowatt-hour.

19 Provided, that in lieu of the foregoing rates, the tax is
20 imposed on a self-assessing purchaser at the rate of 5.1% of
21 the self-assessing purchaser's purchase price for all
22 electricity distributed, supplied, furnished, sold,
23 transmitted and delivered to the self-assessing purchaser in a
24 month.

25 (b) A tax is imposed on the privilege of using in this
26 State electricity purchased from a municipal system or electric

1 cooperative, as defined in Article XVII of the Public Utilities
2 Act, which has not made an election as permitted by either
3 Section 17-200 or Section 17-300 of such Act, at the lesser of
4 0.32 cents per kilowatt hour of all electricity distributed,
5 supplied, furnished, sold, transmitted, and delivered by such
6 municipal system or electric cooperative to the purchaser or 5%
7 of each such purchaser's purchase price for all electricity
8 distributed, supplied, furnished, sold, transmitted, and
9 delivered by such municipal system or electric cooperative to
10 the purchaser, whichever is the lower rate as applied to each
11 purchaser in each billing period.

12 (c) The tax imposed by this Section 2-4 is not imposed with
13 respect to any use of electricity by business enterprises
14 certified under Section 9-222.1 or 9-222.1A of the Public
15 Utilities Act, as amended, to the extent of such exemption and
16 during the time specified by the Department of Commerce and
17 Economic Opportunity; or with respect to any transaction in
18 interstate commerce, or otherwise, to the extent to which such
19 transaction may not, under the Constitution and statutes of the
20 United States, be made the subject of taxation by this State.

21 (d) The tax imposed by this Section 2-4 is not imposed with
22 respect to any use of electricity by businesses that are
23 primarily engaged in manufacturing. This subsection (d) is
24 exempt from the provisions of Section 2-6.

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