

CHAPTER 203

GROSS RECEIPTS TAXES

PART I GROSS RECEIPTS TAX; GENERAL PROVISIONS (ss. 203.01–203.07)

PART II GROSS RECEIPTS TAX; INTERSTATE AND INTERNATIONAL
TELECOMMUNICATIONS SERVICES (ss. 203.60–203.63)

PART I

GROSS RECEIPTS TAX;
GENERAL PROVISIONS

- 203.01 Tax on gross receipts for utility services.
- 203.0111 Application of tax increase.
- 203.012 Definitions.
- 203.013 Interstate telecommunication services; assessment; apportionment of business done within this state.
- 203.02 Powers of Department of Revenue.
- 203.03 Penalties.
- 203.04 Repeal of laws granting exemptions or exceptions.
- 203.06 Interest on delinquent payments.
- 203.07 Settlement or compromise of penalties and interest.

203.01 Tax on gross receipts for utility services.—

(1)(a) Every person that receives payment for any utility service shall report by the last day of each month to the Department of Revenue, under oath of the secretary or some other officer of such person, the total amount of gross receipts derived from business done within this state, or between points within this state, for the preceding month and, at the same time, shall pay into the State Treasury an amount equal to a percentage of such gross receipts at the rate set forth in paragraph (b). Such collections shall be certified by the Comptroller upon the request of the State Board of Education.

(b) For the period July 1, 1990, through June 30, 1991, the rate shall be 2 percent; for the period July 1, 1991, through June 30, 1992, the rate shall be 2.25 percent; beginning July 1, 1992, and thereafter, the rate shall be 2.5 percent.

(c) Any person who purchases, installs, rents, or leases a telephone system or telecommunication system for his or her own use to provide that person with telephone service or telecommunication service which is a substitute for any telephone company switched service or a substitute for any dedicated facility by which a telephone company provides a communication path shall register with the Department of Revenue and pay into the State Treasury a yearly amount equal to a percentage of the actual cost of operating such system at the rate set forth in paragraph (b). "Actual cost" includes, but is not limited to, depreciation, interest, maintenance, repair, and other expenses directly attributable to the operation of such system. For purposes of this paragraph, the depreciation expense to be included in actual cost shall be the depreciation expense claimed for federal income tax purposes. The total amount of any pay-

ment required by a lease or rental contract or agreement shall be included within the actual cost. The provisions of this paragraph do not apply to the use by any local telephone company or any telecommunication carrier of its own telephone system or telecommunication system to conduct a telecommunication service for hire or to the use of any radio system operated by any county or municipality or by the state or any political subdivision thereof. If a system described in this paragraph is located in more than one state, the actual cost of such system for purposes of this paragraph shall be the actual cost of the system's equipment located in Florida. The term "telecommunications carrier" specifically includes cellular telephone carriers and other radio common carriers.

(d) 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 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.

(e) 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 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 (d). Taxes paid pursuant to paragraph (d) 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.

(f) Any person other than a cogenerator or small power producer described in paragraph (e) 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 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.

(2)(a) In addition to any other penalty provided by law, any person who fails to timely report and pay any tax imposed under this chapter shall pay a penalty equal to 10 percent of any unpaid tax, if the failure is for less than 31 days, plus an additional 10 percent of any unpaid tax for each additional 30 days or fraction thereof. However, such penalty may not be less than \$10 or exceed a total of 50 percent in the aggregate of any unpaid tax.

(b) In addition to any other penalty provided by law, any person who falsely or fraudulently reports or unlawfully attempts to evade paying any tax imposed under this chapter shall pay a penalty equal to 100 percent of any tax due and is guilty of a misdemeanor of the second degree, punishable as provided under s. 775.082 or s. 775.083.

(3) The term "gross receipts" as used herein does not include gross receipts of any person derived from:

(a) The sale of natural 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;

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

(c) The sale of telecommunication services for resale of telecommunication services wholly or partially within this state;

provided the person deriving gross receipts from such sale demonstrates that a resale in fact occurred and complies with the following requirements: A resale in this state must be in strict compliance with the rules and regulations of the Department of Revenue; and any person making a sale for resale in this state which is not in strict compliance with the rules and regulations of the Department of Revenue shall be liable for and pay the tax. Any person making a sale for resale in this state 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 which provide that valid proof and documentation of the resale in this state by a person making the sale for resale in this state 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) Gross receipts subject to the tax imposed by this section shall not include receipts from sales or leases of telecommunications service for use in the conduct of a telecommunications service for hire or otherwise for resale.

(5) The tax imposed pursuant to this part 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 part 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.

(6) The tax is imposed upon every person for the privilege of conducting a utility business, and each provider of the taxable services remains fully and completely liable for the tax, even if the tax is separately stated as a line item or component of the total bill.

(7) Any person who provides such services and who fails, neglects, or refuses to remit the tax imposed in this part, either by himself or herself, or through agents or employees, is liable for the tax and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

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

(9)(a) If the sale of a taxable telecommunication service also involves the sale of commercial or cable television service exempt under the provision of s. 203.012(2)(b)2., the tax shall be applied to the value of the taxable service when it is sold separately.

(b) If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.

(c) The amounts identified as taxable in paragraph (b) shall not be less than the statewide average tariff rates set forth by the local exchange telecommunications companies in the tariffs filed with the Public Service Commission on January 1, 1995, and on January 1 of each year thereafter for the equivalent services subject to the provisions of this section. The Public Service Commission shall publish the statewide average tariff rates annually, beginning on January 1, 1996.

History.—ss. 1, 2, ch. 15658, 1931; CGL 1936 Supp. 1279(108), (109); s. 7, ch. 22858, 1945; s. 1, ch. 57-819; s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106; s. 10, ch. 75-292; s. 3, ch. 80-381; s. 15, ch. 83-137; ss. 1, 4, ch. 84-342; s. 29, ch. 85-116; s. 2, ch. 85-174; s. 2, ch. 86-155; s. 68, ch. 87-6; s. 41, ch. 87-101; s. 43, ch. 87-224; s. 7, ch. 89-292; s. 12, ch. 89-356; s. 14, ch. 90-132; s. 11, ch. 91-112; s. 234, ch. 91-224; s. 8, ch. 92-320; s. 10, ch. 93-233; s. 1054, ch. 95-147; s. 2, ch. 95-403.

Note.—Section 3, ch. 95-403, provides that "[i]f the total amount of gross receipts tax collected by the state from telecommunications services pursuant to section 203.01(1)(a), Florida Statutes, for the period July 1, 1995 to June 30, 1996 is less than the amount collected for the period July 1, 1994 to June 30, 1995, the department shall assess each person subject to such tax a prorata share of the shortfall. The shortfall shall be prorated based on the amount of tax paid by each company for the period July 1, 1995 to June 30, 1996 and the total amount of tax collected for the same period. By September 1, 1996, the department shall certify to each person the amount of additional tax owed and the tax shall be remitted to the state by October 1, 1996."

203.0111 Application of tax increase.—With respect to utility services regularly billed on a monthly cycle basis, each increase in the gross receipts tax provided in this act shall apply to any bill dated on or after July 1 in the year in which the increase becomes effective.

History.—s. 16, ch. 90-132.

203.012 Definitions.—As used in this chapter:

(1) The term "access charge" or "right of access" means any charge to any person for the right to use or for the use of a telephone system which includes equipment, facilities, or services to originate or terminate any of the services defined in subsection (4), subsection (5), subsection (6), or subsection (7) and which specifically includes customer access line charges, which includes the gross amount paid by subscribers and users in this state for access into the intrastate or interstate interexchange network as authorized by the Federal Communications Commission or the Florida Public Service Commission.

(2)(a) Gross receipts from telecommunication services include the gross receipts for all telecommunication services of whatever nature, including, but not limited to, access charges and charges for right of access; residential and business 1-party, 2-party, and 4-party rotary charges; centrex charges; directory assistance charges; public telephone charges; touch-tone charges; emergency number charges; private branch exchange message charges; public announcement service charges; dial-it charges; local area data transport charges; key lines charges; private branch exchange trunk-flat rate charges; and directory listing charges other than yellow-page classified listing charges.

(b) Gross receipts for telecommunication services do not include:

1. Charges for customer premises equipment, including such equipment that is leased or rented by the customer from any source;

2. Charges made to the public for commercial or cable television, unless it is used for two-way communication; however, if such two-way communication service is separately billed, only the charges made for two-way communication service will be subject to tax hereunder;

3. Charges made by hotels and motels, which are required under the provisions of s. 212.03 to collect transient rentals tax from tenants and lessees, for local telephone service or toll telephone service, when such charge occurs incidental to the right of occupancy in such hotel or motel;

4. Connection and disconnection charges; move or change charges; suspension of service charges; and service order, number change, and restoration charges; or

5. Charges for services or items of equipment supplied by providers of the telecommunication services described in paragraph (5)(b), such as maintenance charges, equipment sales, or rental which are incidental to the provision of such telecommunication services, provided such charges are separately stated, itemized, or described on the bill, invoice, or other tangible evidence of the provision of such service.

(3) The term "local telephone service" means:

(a) The access to a local telephone system, and the privilege of telephonic-quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system; or

(b) Any facility or service provided in connection with a service described in paragraph (a).

The term "local telephone service" does not include any service which is a toll telephone service; private communication service; cellular mobile telephone or telecommunication service; specialized mobile radio, or pagers and paging, service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication; or teletypewriter or computer exchange service.

(4) The term "private communication service" means:

(a) A communication service furnished to a subscriber or user that entitles the subscriber or user to exclusive or priority use of a communication channel or groups of channels, or to the use of an intercommunication system for the subscriber's stations, regardless of whether such channel, groups of channels, or intercommunication system may be connected through switching with a service described in subsection (3), subsection (6), or subsection (7);

(b) Switching capacity, extension lines, and stations, or other associated services which are provided in connection with, and which are necessary or unique to the use of, channels or systems described in paragraph (a); or

(c) The channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system.

(5) The term "telecommunication service" means:

(a) Local telephone service, toll telephone service, telegram or telegraph service, teletypewriter or computer exchange service, or private communication service; or

(b) Cellular mobile telephone or telecommunication service; or specialized mobile radio, and pagers and paging, service, including but not limited to "beepers" and any other form of mobile and portable one-way or two-way communication; but does not include services or equipment incidental to telecommunication services enumerated in this paragraph such as maintenance of customer premises equipment, whether owned by the customer or not, or equipment sales or rental for which charges are separately stated, itemized, or described on the bill, invoice, or other tangible evidence of the provision of such service.

(6) The term "teletypewriter or computer exchange service" means the access from a teletypewriter, telephone, computer, or other data station of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter, telephone, computer, or other data stations constituting a part of the same teletypewriter or computer exchange system, to which the subscriber or user is entitled upon payment of a charge or charges, whether such charge or charges are determined as a flat

periodic amount, on the basis of distance and elapsed transmission time, or some other method. The term "teletypewriter or computer exchange service" does not include local telephone service or toll telephone service.

(7) The term "toll telephone service" means:

(a) A telephonic-quality communication for which there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication; or

(b) A service which entitles the subscriber or user, upon the payment of a periodic charge which is determined as a flat amount or upon the basis of total elapsed transmission time, to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

The term "toll telephone service" includes interstate and intrastate wide-area telephone service charges.

(8) The term "interstate," as applied to telecommunication services, means originating in this state but not terminating in this state, or terminating in this state but not originating in this state.

(9) The term "utility service" means electricity for light, heat, or power; natural or manufactured gas for light, heat, or power; or telecommunication services.

(10) The term "person" means any person as defined in s. 212.02.

History.—ss. 2, 6, ch. 84-342; s. 30, ch. 85-116; s. 3, ch. 85-174; s. 3, ch. 86-155; s. 44, ch. 87-224; s. 17, ch. 90-132; s. 13, ch. 91-112.

203.013 Interstate telecommunication services; assessment; apportionment of business done within this state.—

(1) The tax on gross receipts from the provision of interstate telecommunication services, other than interstate private communication services, the charge for which is billed or charged to a Florida telecommunication number or device, Florida telephone number or telephone, or Florida customer shall be reported and paid in the manner as provided in part II.

(2) The tax on gross receipts from the provision of interstate private communication services shall be reported and paid as provided in s. 203.01 on the charges for such service as follows:

(a) One hundred percent of the charge imposed at each channel termination point within this state;

(b) One hundred percent of the charge imposed for the total channel mileage between each channel termination point within this state; and

(c) Fifty percent of the charge imposed for the total channel mileage between the first channel termination point inside this state and the nearest channel termination point outside this state.

History.—s. 5, ch. 84-342; s. 31, ch. 85-116; s. 4, ch. 85-174; s. 4, ch. 86-155; s. 17, ch. 90-203.

203.02 Powers of Department of Revenue.—The Department of Revenue may audit the reports provided for in s. 203.01; and each and every such person shall submit all records, books, papers and accounts as to

business done to the department or its duly authorized agents for examination or investigation upon demand.

History.—s. 3, ch. 15658, 1931; CGL 1936 Supp. 1279(110); s. 7, ch. 63-253; s. 5, ch. 65-371; s. 2, ch. 65-420; ss. 21, 35, ch. 69-106.

203.03 Penalties.—

(1) Any officer, agent, or representative of any such person who receives any payment for the furnishing of the things or the services above mentioned without first complying with the provisions of this chapter is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(2) Any person who willfully violates or fails to comply with any of the provisions of this chapter is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 4, ch. 15658, 1931; CGL 1936 Supp. 7455(3); s. 108, ch. 71-136; s. 69, ch. 87-6; s. 42, ch. 87-101; s. 15, ch. 91-224.

203.04 Repeal of laws granting exemptions or exceptions.—

(1) All provisions of presently existing general, special, or local statutes or laws, or parts thereof, including municipal charters and laws relating to quasi-municipal corporations, of this state granting or providing exemptions or exceptions, either directly or indirectly, from the gross receipts taxes imposed by this chapter are hereby repealed. This section shall not repeal, modify, or amend any of the provisions of s. 203.01.

(2) No statute or law, general, special, or local hereafter enacted which either directly or indirectly relates to exemptions or exceptions from taxation in this state shall be construed as including or extending to the gross receipts taxes imposed by this chapter unless its application to said chapter, either directly or indirectly, is clearly and specifically expressed and no repeals by implication shall be recognized in this connection. This is a rule of statutory construction to be applied to statutes and laws hereafter enacted.

(3) Subsection (1) shall be construed as applying to chapter 29334, 1953, as amended by chapter 31051, 1955; chapters 30415, 30576, 30845, and 31166, 1955; and chapters 57-1174 and 57-1348, Laws of Florida. This enumeration of chapters shall not be construed as being all inclusive.

History.—ss. 1, 2, 3, ch. 63-535; s. 49, ch. 91-45.

203.06 Interest on delinquent payments.—Any payments as imposed in this chapter, if not received by the Department of Revenue on or before the due date as provided by law, shall include, as an additional part of such amount due, interest at the rate of 1 percent per month, accruing from the date due until paid.

History.—s. 5, ch. 76-261.

203.07 Settlement or compromise of penalties and interest.—The department, pursuant to s. 213.21, may settle or compromise penalties or interest imposed by this chapter.

History.—s. 6, ch. 81-178.

PART II

GROSS RECEIPTS TAX; INTERSTATE AND INTERNATIONAL TELECOMMUNICATIONS SERVICES

- 203.60 Intent.
 203.61 Definitions.
 203.62 Applicability of specified sections of part I.
 203.63 Tax on interstate and international telecommunication services.

203.60 Intent.—

(1) It is the intent of the Legislature that interstate telecommunication services, other than interstate private communication services, the charge for which is billed or charged to a Florida telecommunication number or device, Florida telephone or number, or Florida customer, shall be subject to the tax imposed by this part.

(2) The Legislature hereby finds and declares that, as a matter of necessity, and truth in pricing related to average toll rates, the gross receipts tax applicable to interstate telecommunication services other than private communication services shall be levied and collected exclusively as provided in this part.

History.—s. 32, ch. 85-116; s. 6, ch. 85-174; s. 5, ch. 86-155.

203.61 Definitions.—As used in this part, the definitions or services described in part I shall apply.

History.—s. 32, ch. 85-116; s. 6, ch. 85-174.

203.62 Applicability of specified sections of part I.

The provisions of ss. 203.01, 203.012, 203.013, 203.02, 203.03, 203.04, 203.06, and 203.07 shall be applicable to the levy and collection of taxes imposed pursuant to this part as if fully set out in this part.

History.—s. 32, ch. 85-116; s. 6, ch. 85-174; s. 45, ch. 87-224; s. 18, ch. 90-203.

203.63 Tax on interstate and international telecommunication services.—

(1) The tax imposed pursuant to this part relating to the provision of any telecommunication 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 such 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 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 the original charge for such taxable services.

(2) The tax is imposed upon every person for the privilege of conducting a telecommunication business, and each provider of the taxable services remains fully and completely liable for the tax, even if the tax is separately stated as a line item or component of the total bill.

(3) Any person who provides such services and who fails, neglects, or refuses to collect or remit the tax imposed in this part, either by himself or herself, or through agents or employees, is liable for the tax and is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

History.—s. 32, ch. 85-116; s. 6, ch. 85-174; s. 70, ch. 87-6; s. 43, ch. 87-101; s. 19, ch. 90-203; s. 235, ch. 91-224; s. 1055, ch. 95-147.