

AN ACT in relation to taxes.

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

ARTICLE 5

Section 5-1. Short title. This Article may be cited as  
the Gas Use Tax Law.

Section 5-5. Definitions. For purposes of this Law:

"Delivering supplier" means any person engaged in the  
business of delivering gas to persons for use or consumption  
and not for resale, and who, in any case where more than one  
person participates in the delivery of gas to a specific  
purchaser, is the last of the suppliers engaged in delivering  
the gas prior to its receipt by the purchaser.

"Delivering supplier maintaining a place of business in  
this State", or any like term, means any delivering supplier  
having or maintaining within this State, directly or by a  
subsidiary, an office, distribution facility, sales office,  
or other place of business, or any employee, agent, or other  
representative operating within this State under the  
authority of such delivering supplier or such delivering  
supplier's subsidiary, irrespective of whether such place of  
business or agent or other representative is located in this  
State permanently or temporarily, or whether such delivering  
supplier or such delivering supplier's subsidiary is licensed  
to do business in this State.

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

"Director" means the Director of Revenue.

"Gas" means any gaseous fuel distributed through a  
pipeline system.

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

"Purchase of out-of-State gas" means a transaction for the purchase of gas from any supplier in a manner that does not subject the seller of that gas to liability under the Gas Revenue Tax Act.

"Purchase price" means the consideration paid for the distribution, supply, furnishing, sale, transportation, or delivery of gas to a person for use or consumption and not for resale, and for all services directly related to the production, transportation, or distribution of gas distributed, supplied, furnished, sold, transmitted, or delivered for use or consumption, including cash, services, and property of every kind and nature. However, "purchase price" shall not include consideration paid for:

- (i) Any charge for a dishonored check.
- (ii) Any finance or credit charge, penalty, charge for delayed payment, or discount for prompt payment.
- (iii) Any charge for reconnection of service or for replacement or relocation of facilities.
- (iv) Any advance or contribution in aid of construction.
- (v) Repair, inspection, or servicing of equipment located on customer premises.
- (vi) Leasing or rental of equipment, the leasing or rental of which is not necessary to furnishing, supplying, or selling gas.
- (vii) Any purchase by a purchaser if the supplier is prohibited by federal or State constitution, treaty, convention, statute, or court decision from recovering

the related tax liability from such purchaser.

(viii) Any amounts added to purchasers' bills because of changes made pursuant to the tax imposed by this Law.

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

"Purchaser" means any person who acquires the ownership of gas for use or consumption, and not for resale, for a valuable consideration.

"Self-assessing purchaser" means a purchaser of gas for use or consumption that is required to be registered with the Department and is responsible for filing returns and paying the tax imposed under this Law directly to the Department.

"Use" means the exercise by any person of any right or power over gas incident to the ownership of that gas, except that it does not include the sale of gas in the regular course of business.

Section 5-10. Imposition of tax. Beginning October 1, 2003, a tax is imposed upon the privilege of using in this State gas obtained in a purchase of out-of-state gas at the rate of 2.4 cents per therm or 5% of the purchase price for the billing period, whichever is the lower rate. Such tax rate shall be referred to as the "self-assessing purchaser tax rate". Beginning with bills issued by delivering suppliers on and after October 1, 2003, purchasers may elect an alternative tax rate of 2.4 cents per therm to be paid under the provisions of Section 5-15 of this Law to a delivering supplier maintaining a place of business in this State. Such tax rate shall be referred to as the "alternate tax rate". The tax imposed under this Section shall not apply to gas used by business enterprises certified under Section 9-222.1 of the Public Utilities Act, as amended, to the extent of such exemption and during the period of time

specified by the Department of Commerce and Community Affairs.

Section 5-15. Collection of Gas Use Tax; relief of duty. Beginning with bills issued on and after October 1, 2003, a delivering supplier maintaining a place of business in this State shall collect, from the purchasers who have elected the alternate tax rate provided in Section 5-10 of this Law, the tax that is imposed by this Law at the alternate 2.4 cents per therm rate. The tax imposed at the alternate tax rate by this Law shall, when collected, be stated as a distinct and separate item apart from the selling price of the gas. The tax collected by any delivering supplier shall constitute a debt owed by that person to this State. Upon receipt by a delivering supplier of a copy of a certificate of registration issued to a self-assessing purchaser under Section 5-20 of this Law, that delivering supplier is relieved of the duty to collect the alternate tax from that self-assessing purchaser beginning with bills issued to that self-assessing purchaser 30 or more days after receipt of the copy of that certificate of registration.

Section 5-20. Self-assessing purchaser registration; certificate of registration. Any purchaser who does not elect the alternate tax rate to be paid to a delivering supplier shall register with the Department as a self-assessing purchaser and pay the tax imposed by Section 5-10 of this Law directly to the Department at the self-assessing purchaser rate.

A purchaser registering as a self-assessing purchaser may not revoke such registration for at least one year thereafter. Application for a certificate of registration as a self-assessing purchaser shall be made to the Department upon forms furnished by the Department and shall contain any

reasonable information that the Department may require. The self-assessing purchaser shall be required to disclose the name of the delivering supplier or suppliers who are delivering the gas upon which the self-assessing purchaser will be paying tax directly to the Department.

Upon receipt of the application for a certificate of registration in proper form, the Department shall issue to the applicant a certificate of registration as a self-assessing purchaser. The applicant shall provide a copy of the certificate of registration as a self-assessing purchaser to the applicant's delivering supplier or suppliers.

Section 5-25. Self-assessing purchaser; direct return and payment of tax. Except for purchasers who have chosen the alternate tax rate to be paid to a delivering supplier maintaining a place of business in this State, the tax imposed in Section 5-10 of this Law shall be paid to the Department directly by each self-assessing purchaser who is subject to the tax imposed by this Law. Each self-assessing purchaser shall, on or before the 15th day of each month, make a return to the Department for the preceding calendar month, stating the following:

(1) His or her name and principal address.

(2) The total number of therms used by him or her during the preceding calendar month and upon the basis of which the tax is imposed.

(3) The purchase price of gas used by him or her during the preceding calendar month and upon the basis of which the tax is imposed.

(4) Amount of tax (computed upon items 2 and 3).

(5) Such other reasonable information as the Department may require.

In making such return, the self-assessing purchaser may

use any reasonable method to derive reportable "therms" and "purchase price" from his or her billing and payment records.

If the average monthly liability of the self-assessing purchaser to the Department does not exceed \$100, the Department may authorize his or her returns to be filed on a quarter-annual basis, with the return for January, February, and March of a given year being due by April 30 of such year; with the return for April, May, and June of a given year being due by July 31 of such year; with the return for July, August, and September of a given year being due by October 31 of such year; and with the return for October, November, and December of a given year being due by January 31 of the following year.

If the average monthly liability of the self-assessing purchaser to the Department does not exceed \$20, the Department may authorize his or her returns to be filed on an annual basis, with the return for a given year being due by January 31 of the following year.

Such quarter-annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Law concerning the time within which a self-assessing purchaser may file his or her return, in the case of any such self-assessing purchaser who ceases to engage in a kind of business which makes him or her responsible for filing returns under this Law, such person shall file a final return under this Law with the Department not more than one month after discontinuing such business.

Each self-assessing purchaser whose average monthly liability to the Department under this Law was \$10,000 or more during the preceding calendar year, excluding the month of highest liability and the month of lowest liability in such calendar year, and who is not operated by a unit of

local government, shall make estimated payments to the Department on or before the 7th, 15th, 22nd, and last day of the month during which tax liability to the Department is incurred in an amount not less than the lower of either 22.5% of such person's actual tax liability for the month or 25% of such person's actual tax liability for the same calendar month of the preceding year. The amount of such quarter-monthly payments shall be credited against the final tax liability of the self-assessing purchaser's return for that month. Any outstanding credit, approved by the Department, arising from the self-assessing purchaser's overpayment of his or her final tax liability for any month may be applied to reduce the amount of any subsequent quarter-monthly payment or credited against the final tax liability of such self-assessing purchaser's return for any subsequent month. If any quarter-monthly payment is not paid at the time or in the amount required by this Section, such person shall be liable for penalty and interest on the difference between the minimum amount due as a payment and the amount of such payment actually and timely paid, except insofar as such person has previously made payments for that month to the Department in excess of the minimum payments previously due.

The self-assessing purchaser making the return provided for in this Section shall, at the time of making such return, pay to the Department the amount of tax imposed by this Law. All moneys received by the Department under this Law shall be paid into the General Revenue Fund in the State treasury.

Section 5-30. Registration of delivering suppliers. A delivering supplier maintaining a place of business in this State who engages in the delivery of gas in this State shall register with the Department. A delivering supplier, if required to register under the Gas Revenue Tax Act, need not

obtain an additional certificate of registration under this Law, but shall be deemed to be sufficiently registered by virtue of his being registered under the Gas Revenue Tax Act. Application for a certificate of registration shall be made to the Department upon forms furnished by the Department and shall contain any reasonable information the Department may require. Upon receipt of the application for a certificate of registration in proper form, the Department shall issue to the applicant a certificate of registration. The Department may deny a certificate of registration to any applicant if such applicant is in default for moneys due under this Law. Any person aggrieved by any decision of the Department under this Section may, within 20 days after notice of such decision, protest and request a hearing, whereupon the Department shall give notice to such person of the time and place fixed for such hearing and shall hold a hearing in conformity with the provisions of this Law and then issue its final administrative decision in the matter to such person. In the absence of such a protest within 20 days, the Department's decision shall become final without any further determination being made or notice given.

Section 5-35. Return and payment of tax by delivering supplier. Each delivering supplier who is required under Section 5-15 to collect the tax imposed by this Law shall make a return to the Department on or before the 15th day of each month for the preceding calendar month stating the following:

(1) His or her name.

(2) The address of his or her principal place of business and the address of the principal place of business (if that is a different address) from which he or she engages in the business of delivering gas to persons for use or consumption and not for resale.



(3) The total number of therms of gas delivered to purchasers during the preceding calendar month and upon the basis of which the tax is imposed.

(4) Amount of tax computed upon item 3.

(5) Such other reasonable information as the Department may require.

In making such return the person engaged in the business of delivering gas to persons for use or consumption and not for resale may use any reasonable method to derive reportable "therms" from his or her billing and payment records.

If the average monthly liability to the Department of the delivering supplier does not exceed \$100, the Department may authorize his or her returns to be filed on a quarter-annual basis, with the return for January, February, and March of a given year being due by April 30 of such year; with the return for April, May, and June of a given year being due by July 31 of such year; with the return for July, August, and September of a given year being due by October 31 of such year; and with the return for October, November, and December of a given year being due by January 31 of the following year.

If the average monthly liability to the Department of the delivering supplier does not exceed \$20, the Department may authorize his or her returns to be filed on an annual basis, with the return for a given year being due by January 31 of the following year.

Such quarter-annual and annual returns, as to form and substance, shall be subject to the same requirements as monthly returns.

Notwithstanding any other provision in this Law concerning the time within which a delivering supplier may file his or her return, in the case of any delivering supplier who ceases to engage in a kind of business that makes him or her responsible for filing returns under this

Law, such delivering supplier shall file a final return under this Law with the Department not more than one month after discontinuing such business.

Each delivering supplier whose average monthly liability to the Department under this Law was \$10,000 or more during the preceding calendar year, excluding the month of highest liability and the month of lowest liability in such calendar year, and who is not operated by a unit of local government, shall make estimated payments to the Department on or before the 7th, 15th, 22nd, and last day of the month during which tax liability to the Department is incurred in an amount not less than the lower of either 22.5% of such person's actual tax liability for the month or 25% of such person's actual tax liability for the same calendar month of the preceding year. The amount of such quarter-monthly payments shall be credited against the final tax liability of such person's return for that month. Any outstanding credit, approved by the Department, arising from such person's overpayment of his or her final tax liability for any month may be applied to reduce the amount of any subsequent quarter-monthly payment or credited against the final tax liability of such person's return for any subsequent month. If any quarter-monthly payment is not paid at the time or in the amount required by this Section, such person shall be liable for penalty and interest on the difference between the minimum amount due as a payment and the amount of such payment actually and timely paid, except insofar as such person has previously made payments for that month to the Department in excess of the minimum payments previously due.

The delivering supplier making the return provided for in this Section shall, at the time of making such return, pay to the Department the amount of tax imposed by this Law. All moneys received by the Department under this Law shall be paid into the General Revenue Fund in the State treasury.

Section 5-40. Incorporation of applicable Sections. The Department shall have full power to administer and enforce this Law; to collect all taxes, penalties, and interest due hereunder; to dispose of taxes, penalties, and interest so collected in the manner hereinafter provided; and to determine all rights to credit memoranda or refunds arising on account of the erroneous payment of tax, penalty, or interest hereunder. In the administration of, and compliance with, this Section, the Department and persons who are subject to this Section shall have the same rights, remedies, privileges, immunities, powers, and duties, be subject to the same conditions, restrictions, limitations, penalties, and definitions of terms, and employ the same modes of procedure, as are prescribed in Sections 2, 4, 5, 6, 7, 9 (except provisions relating to transaction returns and except that the due date for returns shall be the 15th day of each month for the preceding calendar month), 10, 11, 12, 12a, 12b, 13, 14, 15, 18, 19, 20, 21, and 22 of the Use Tax Act, and are not inconsistent with this Section, as fully as if those provisions were set forth herein.

Section 5-45. Multistate exemption. To prevent actual multi-state taxation of the privilege that is subject to taxation under this Law, any purchaser, upon proof that purchaser has paid a tax in another state on such event, shall be allowed a credit against the tax imposed by this Law, to the extent of the amount of the tax properly due and paid in the other state.

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

- (1) Gas used by business enterprises located in an enterprise zone certified by the Department of Commerce and Economic Opportunity pursuant to the Illinois

Enterprise Zone Act;

(2) Gas used by governmental bodies, or a corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes. Such use shall not be exempt unless the government body, or corporation, society, association, foundation, or institution organized and operated exclusively for charitable, religious, or educational purposes has first been issued a tax exemption identification number by the Department of Revenue pursuant to Section 1g of the Retailers' Occupation Tax Act. A limited liability company may qualify for the exemption under this Section only if the limited liability company is organized and operated exclusively for educational purposes. The term "educational purposes" shall have the same meaning as that set forth in Section 2h of the Retailers' Occupation Tax Act;

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

(4) Gas used in a petroleum refinery operation;

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

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

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

Section 5-905. The Gas Revenue Tax Act is amended by changing Sections 1 and 2 as follows:

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

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

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

(ii) any charge for a dishonored check;

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

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

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

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

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

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

(ix) any charges added to customers' bills pursuant to the provisions of Section 9-221 or Section 9-222 of

the Public Utilities Act, as amended, or any charges added to customers' bills by taxpayers who are not subject to rate regulation by the Illinois Commerce Commission for the purpose of recovering any of the tax liabilities or other amounts specified in such provisions of such Act; and

(x) prior to October 1, 2003, any charge for gas or gas services to a customer who acquired contractual rights for the direct purchase of gas or gas services originating from an out-of-state supplier or source on or before March 1, 1995, except for those charges solely related to the local distribution of gas by a public utility. This exemption includes any charge for gas or gas service, except for those charges solely related to the local distribution of gas by a public utility, to a customer who maintained an account with a public utility (as defined in Section 3-105 of the Public Utilities Act) for the transportation of customer-owned gas on or before March 1, 1995. The provisions of this amendatory Act of 1997 are intended to clarify, rather than change, existing law as to the meaning and scope of this exemption. This exemption (x) expires on September 30, 2003.

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

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

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

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

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

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

"Invested capital" means that amount equal to (i) the average of the balances at the beginning and end of each taxable period of the taxpayer's total stockholder's equity and total long-term debt, less investments in and advances to all corporations, as set forth on the balance sheets included in the taxpayer's annual report to the Illinois Commerce Commission for the taxable period; (ii) multiplied by a fraction determined under Sections 301 and 304(a) of the "Illinois Income Tax Act" and reported on the Illinois income tax return for the taxable period ending in or with the taxable period in question. However, notwithstanding the income tax return reporting requirement stated above, beginning July 1, 1979, no taxpayer's denominators used to compute the sales, property or payroll factors under subsection (a) of Section 304 of the Illinois Income Tax Act shall include payroll, property or sales of any corporate entity other than the taxpayer for the purposes of determining an allocation for the invested capital tax. This amendatory Act of 1982, Public Act 82-1024, is not intended to and does not make any change in the meaning of any provision of this Act, it having been the intent of the General Assembly in initially enacting the definition of "invested capital" to provide for apportionment of the invested capital of each company, based solely upon the sales, property and payroll of that company.

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

(Source: P.A. 89-417, eff. 1-1-96; 90-16, eff. 6-16-97.)

(35 ILCS 615/2) (from Ch. 120, par. 467.17)

Sec. 2. A tax is imposed upon persons engaged in the business of distributing, supplying, furnishing or selling gas to persons for use or consumption and not for resale at the rate of 2.4 cents per therm of all gas which is so distributed, supplied, furnished, sold or transported to or for each customer in the course of such business, or 5% of the gross receipts received from each customer from such business, whichever is the lower rate as applied to each customer for that customer's billing period, provided that any change in rate imposed by this amendatory Act of 1985 shall become effective only with bills having a meter reading date on or after January 1, 1986. However, such taxes are not imposed with respect to any business in interstate commerce, or otherwise to the extent to which such business may not, under the Constitution and statutes of the United States, be made the subject of taxation by this State.

Nothing in this amendatory Act of 1985 shall impose a tax with respect to any transaction with respect to which no tax was imposed immediately preceding the effective date of this amendatory Act of 1985.

Beginning with bills issued to customers on and after October 1, 2003, no tax shall be imposed under this Act on transactions with customers who incur a tax liability under the Gas Use Tax Law.

(Source: P.A. 84-307; 84-1093.)

Section 5-999. Effective date. This Act takes effect on



Public Act 093-0031  
SB1733 Enrolled

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October 1, 2003.