



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB1445

Introduced 2/18/2009, by Sen. Mike Jacobs

#### SYNOPSIS AS INTRODUCED:

35 ILCS 173/5-10

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

LRB096 04456 RCE 14508 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 5-10 as follows:

6 (35 ILCS 173/5-10)

7 Sec. 5-10. Imposition of tax. Beginning October 1, 2003, a  
8 tax is imposed upon the privilege of using in this State gas  
9 obtained in a purchase of out-of-state gas at the rate of 2.4  
10 cents per therm or 5% of the purchase price for the billing  
11 period, whichever is the lower rate. Such tax rate shall be  
12 referred to as the "self-assessing purchaser tax rate".  
13 Beginning with bills issued by delivering suppliers on and  
14 after October 1, 2003, purchasers may elect an alternative tax  
15 rate of 2.4 cents per therm to be paid under the provisions of  
16 Section 5-15 of this Law to a delivering supplier maintaining a  
17 place of business in this State. Such tax rate shall be  
18 referred to as the "alternate tax rate".

19 The tax imposed under this Section shall not apply to gas  
20 used by business enterprises certified under Section 9-222.1 of  
21 the Public Utilities Act, as amended, to the extent of such  
22 exemption and during the period of time specified by the  
23 Department of Commerce and Economic Opportunity.

1       The tax imposed under this Section does not apply to gas  
2       used by any business enterprise that is properly assigned or  
3       included within one of the following Standard Industrial  
4       Classifications, as designated in the Standard Industrial  
5       Classification Manual prepared by the federal Office of  
6       Management and Budget: 10; 12; 13; 14; 21; 22; 23; 24; 25; 26;  
7       27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; or 39.

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

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

11           (35 ILCS 615/1) (from Ch. 120, par. 467.16)

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

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

- 1           (ii) any charge for a dishonored check;
- 2           (iii) any finance or credit charge, penalty or charge  
3 for delayed payment, or discount for prompt payment;
- 4           (iv) any charge for reconnection of service or for  
5 replacement or relocation of facilities;
- 6           (v) any advance or contribution in aid of construction;
- 7           (vi) repair, inspection or servicing of equipment  
8 located on customer premises;
- 9           (vii) leasing or rental of equipment, the leasing or  
10 rental of which is not necessary to distributing,  
11 furnishing, supplying, selling, transporting or storing  
12 gas;
- 13           (viii) any sale to a customer if the taxpayer is  
14 prohibited by federal or State constitution, treaty,  
15 convention, statute or court decision from recovering the  
16 related tax liability from such customer;
- 17           (ix) any charges added to customers' bills pursuant to  
18 the provisions of Section 9-221 or Section 9-222 of the  
19 Public Utilities Act, as amended, or any charges added to  
20 customers' bills by taxpayers who are not subject to rate  
21 regulation by the Illinois Commerce Commission for the  
22 purpose of recovering any of the tax liabilities or other  
23 amounts specified in such provisions of such Act; and
- 24           (x) prior to October 1, 2003, any charge for gas or gas  
25 services to a customer who acquired contractual rights for  
26 the direct purchase of gas or gas services originating from

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

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

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

21 "Gross receipts" does not include consideration received  
22 from any business enterprise that is properly assigned or  
23 included within one of the following Standard Industrial  
24 Classifications, as designated in the Standard Industrial  
25 Classification Manual prepared by the federal Office of  
26 Management and Budget: 10; 12; 13; 14; 21; 22; 23; 24; 25; 26;

1 27; 28; 29; 30; 31; 32; 33; 34; 35; 36; 37; 38; or 39.

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

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

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

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

15 "Invested capital" means that amount equal to (i) the  
16 average of the balances at the beginning and end of each  
17 taxable period of the taxpayer's total stockholder's equity and  
18 total long-term debt, less investments in and advances to all  
19 corporations, as set forth on the balance sheets included in  
20 the taxpayer's annual report to the Illinois Commerce  
21 Commission for the taxable period; (ii) multiplied by a  
22 fraction determined under Sections 301 and 304(a) of the  
23 "Illinois Income Tax Act" and reported on the Illinois income  
24 tax return for the taxable period ending in or with the taxable  
25 period in question. However, notwithstanding the income tax  
26 return reporting requirement stated above, beginning July 1,

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

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

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

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

20 (35 ILCS 640/2-4)

21 Sec. 2-4. Tax imposed.

22 (a) Except as provided in subsection (b), a tax is imposed  
23 on the privilege of using in this State electricity purchased  
24 for use or consumption and not for resale, other than by

1 municipal corporations owning and operating a local  
2 transportation system for public service, at the following  
3 rates per kilowatt-hour delivered to the purchaser:

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

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

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

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

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

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

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

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

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

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

25 Provided, that in lieu of the foregoing rates, the tax is  
26 imposed on a self-assessing purchaser at the rate of 5.1% of



1 the self-assessing purchaser's purchase price for all  
2 electricity distributed, supplied, furnished, sold,  
3 transmitted and delivered to the self-assessing purchaser in a  
4 month.

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

18 (c) The tax imposed by this Section 2-4 is not imposed: (i)  
19 with respect to any use of electricity by business enterprises  
20 certified under Section 9-222.1 or 9-222.1A of the Public  
21 Utilities Act, as amended, to the extent of such exemption and  
22 during the time specified by the Department of Commerce and  
23 Economic Opportunity; (ii) with respect to any use by the  
24 purchaser in the process of manufacturing or assembling  
25 tangible personal property for wholesale or for retail sale or  
26 lease; or (iii) with respect to any transaction in interstate

1 commerce, or otherwise, to the extent to which such transaction  
2 may not, under the Constitution and statutes of the United  
3 States, be made the subject of taxation by this State.

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

5 Section 99. Effective date. This Act takes effect upon  
6 becoming law.