

a. through d. No change.

(7) Office Action Upon Receipt of Notice.

(a) Subsequent to receiving the initial filing, the Office will request the insurer to provide further information, or will conduct such other investigation as is necessary to determine whether the initial information provided is accurate and whether the proposed action will have the effects projected by the insurer.

(b) The Office shall inform the insurer if the proposed reduction would be in violation of, or cause a violation of, any provision of the Insurance Code or rule of the Office. Within 5 calendar days of the date of such notice, the insurer shall file with the Office a response indicating whether it will proceed to implement the reduction or, if paragraph (9)(b) applies, shall file any application for relief required thereby.

~~(8) Certificate of Authority Surrender Effected by Office Order. No surrender or attempted surrender of a certificate of authority is effective until accepted by order of the office.~~

~~(9) Relationship of Reduction to Moratorium Phaseout. The office interprets Section 627.7013(2)(a)4., Florida Statutes, relating to certain applications for reduction filed prior to August 24, 1992, as indicating a legislative intent that as to all attempted or desired reductions affecting "Florida personal lines residential policies" (hereinafter "residential policies"), other than those in which such reduction notice was filed prior to August 24, 1992, Section 627.7013, Florida Statutes, applies and takes precedence over Section 624.430, Florida Statutes, and prohibits or limits such reductions affecting residential policies, initiated for the purpose of reducing the insurer's exposure to hurricane claims.~~

~~(a) Factors which will be given great weight in evaluating whether a desired reduction is for the purpose of reducing the insurer's exposure to hurricane claims include:~~

~~1. Would the reduction in Florida be accompanied by reduction action by the insurer in other states?~~

~~2. If so, would a disproportionate amount of the impact be in areas of the country especially subject to risk of loss from hurricane?~~

~~3. How much of the reduction in Florida would be in residential policy exposures as compared to exposures in other lines of insurance in Florida?~~

~~4. If the insurer is discontinuing writing only some lines of insurance, are the lines being discontinued especially subject to risk of loss from hurricane, as compared to the lines not being discontinued?~~

~~5. Does the insurer have a significant concentration of residential policies and exposure in coastal areas of Florida?~~

~~6. Would the desired reduction significantly reduce the insurer's exposure to risk of loss from hurricane exposure under residential policies in Florida?~~

~~(b) If the office determines that any proposed reduction violates Section 627.7013, Florida Statutes, the insurer shall not proceed with the reduction as it affects residential policies,~~

~~and shall file an application under Rule 69O-141.021, F.A.C., which implements Section 627.7013, Florida Statutes. The reduction in residential policies shall be limited to the extent of relief granted the insurer by the office under Section 627.7013, Florida Statutes and Rule 69O-141.021, F.A.C.~~

~~(8)(10) No change.~~

Specific Authority 624.308(1), 624.6012 FS. Law Implemented 624.307(1), 624.430, 624.6011, 624.6012 FS. History--New 1-8-96, Amended 5-26-96, Formerly 4-141.020, Amended \_\_\_\_\_.

The remainder of the rule reads as previously published.

## Section IV Emergency Rules

### DEPARTMENT OF REVENUE

#### Miscellaneous Tax

RULE NOS.:	RULE TITLES:
12BER06-1	Scope; Definitions; Index Price
12BER06-2	Imposition of the Gross Receipts Tax
12BER06-3	Registration for Gross Receipts Tax Purposes
12BER06-4	Payment of Gross Receipts Tax; Reports

SPECIFIC FACTS AND REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY, OR WELFARE: Chapter 2005-148, Laws of Florida, authorizes the Department of Revenue to promulgate emergency rules, and to renew such rules, to implement the provisions of the law. The promulgation of these emergency rules ensures that the appropriate procedures and forms are available for reporting and remitting gross receipts tax on utility service.

REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES: The Legislature expressly authorized the promulgation of emergency rules, and the renewal of such rules, to ensure the prompt availability of procedures taxpayers can follow to comply with Chapter 203, F.S. (as amended by Chapter 2005-148, Laws of Florida). The Department of Revenue previously sought comment on these emergency rules to the extent possible within the time restraints resulting from the statutory requirements. The preliminary text of proposed rules regarding the imposition of the gross receipts tax on utility services was posted on the Department of Revenue web site. A rule development workshop was held on November 16, 2005, to receive public comments regarding the preliminary text. The public comments received were considered by the Department in preparation of Emergency Rules 12BER06-1 through 12BER06-4.

SUMMARY OF THE RULES: Emergency Rule 12BER06-1, F.A.C (Scope; Definitions; Index Price): (1) provides that Emergency Rules 12BER06-1 through 12BER06-4, F.A.C.,

apply to the tax imposed under Chapter 203, F.S., on utility services delivered to a retail consumer in Florida; (2) defines the terms “cost price,” “distribution company,” “Department,” “electricity index price,” “gas index price,” “gross receipts,” “utility services,” and “person” for purposes of Emergency Rules 12BER06-1 through 12BER06-4, F.A.C.; (3) provides that the gross receipts tax imposed on certain utility services delivered to a retail consumer in Florida is based on an index price; (4) provides how the Department will announce the annual index prices for electricity and for natural and manufactured gas; and (5) provides that the index price applies to electricity only if the transportation of the electricity is sold independent of the sale of the electricity itself.

Emergency Rule 12BER06-2, F.A.C. (Imposition of the Gross Receipts Tax), provides: (1) that the 2.5 percent gross receipts tax is imposed on distribution companies’ gross receipts from the privilege of selling and transporting natural or manufactured gas to retail consumers in Florida; (2) how the tax is computed based on the index price; (3) that the sale or transportation of natural or manufactured gas to public or private utilities for use as a fuel in the generation of electricity or for resale is not subject to tax; (4) that the sale or transportation of natural or manufactured gas to persons eligible for an exemption under Section 212.08(7)(ff)2., F.S., for use as an energy source or a raw material is not subject to tax and guidelines on how to document such sales; (5) that the 2.5 percent gross receipts tax is imposed on distribution companies’ gross receipts from the privilege of selling and transporting electricity to retail consumers in Florida and how the tax is to be calculated; (6) that the tax does not apply to receipts from customers for purposes of resale; (7) that receipts from separately itemized charges for the connection, disconnection, suspension, or restoration of utility services are not subject to tax; (8) that receipts from separately itemized fees for returned checks, late payments, and interest due on late payments are not subject to the gross receipts tax; (9) that receipts from separately itemized charges for the sale, lease, rental, repair, or maintenance of customer premises equipment are not subject to gross receipts tax; (10) guidelines on how gross receipts tax is applied to charges for utility services separately itemized to customers as an amount for services based on a standard rate amount with a separate rate adjustment; (11) that each and every fee imposed by a political subdivision of the State of Florida that is passed on to the customer as a separately itemized charge is included in the gross receipts subject to tax; (12) that any municipal public service tax and any sales tax separately itemized to the customer is not included in the gross receipts subject to tax; (13) that the sale or delivery of electricity as part of an electric interchange agreement or contract between utilities is not subject to tax and guidelines on how to document such sale or delivery; (14) that wholesale sales of electric transmission services and the loss of electricity from the generation, transmission, or distribution of electricity is not subject to tax;

(15) guidelines regarding any separately itemized charge for gross receipts tax on a customer’s bill, invoice, statement, or other evidence of sale; (16) guidelines on the imposition of tax on natural or manufactured gas imported into Florida for which the Florida gross receipts tax has not been paid; (17) guidelines on how to document sales of utility services for purposes of resale; and (18) recordkeeping requirements for taxpayers who sell or deliver utility services.

Emergency Rule 12BER06-3, F.A.C. (Registration for Gross Receipts Tax Purposes), provides: (1) that prior to engaging in the business of selling, transporting, delivering, or importing utility services in Florida, every person is required to register with the Department; and (2) guidelines on how to register with the Department.

Emergency Rule 12BER06-4, F.A.C. (Payment of Gross Receipts Tax; Reports): (1) provides guidelines on the how to report and remit to the Department the gross receipts tax imposed on utility services; (2) provides guidelines for when taxpayers may elect to pay the gross receipts tax on total billings for electricity each month or on the actual gross receipts for electricity received in that month; and (3) provides that persons engaged in the transportation of natural or manufactured gas must provide the Department with a list of customers to whom transportation services were provided in the prior year or post such a list on a publicly-accessible Internet web site.

THE PERSON TO BE CONTACTED REGARDING THE EMERGENCY RULES IS: Robert Babin, Senior Attorney, Technical Assistance and Dispute Resolution, Department of Revenue, P. O. Box 7443, Tallahassee, Florida 32314-7443, telephone (850)922-4842, e-mail babinr@dor.state.fl.us.

THE FULL TEXT OF THE EMERGENCY RULES IS:

#### GROSS RECEIPTS TAX

##### 12BER06-1 Scope; Definitions; Index Price.

(1) SCOPE. Emergency Rules 12BER06-1 through 12BER06-4, F.A.C., apply to the tax imposed by Chapter 203, F.S., on utility services delivered to a retail consumer in Florida. Where any conflicting language exists between Emergency Rules 12BER06-1 through 12BER06-4, F.A.C., and Rules 12B-6.001, 12B-6.0021, and 12B-6.005, F.A.C., the provisions of these emergency rules are controlling.

(2) DEFINITIONS. For purposes of Rules 12BER06-1 through 12BER06-4, F.A.C.:

(a) “Cost price” means the actual cost of articles of tangible personal property without any deductions therefrom on account of the cost of materials used, labor or service costs, transportation charges, or any expenses whatsoever.

(b) “Distribution company” means any person owning or operating local electric, or natural or manufactured gas, utility distribution facilities within this state for the transmission, delivery, and sale of electricity or natural or manufactured gas.

The term does not include natural gas transmission companies that are subject to the jurisdiction of the Federal Energy Regulatory Commission.

(c) "Department" means the Florida Department of Revenue.

(d) "Electricity index price" means the applicable residential, industrial, or commercial price per kilowatt hour for retail consumers in Florida in the previous calendar year, as published in the United States Energy Information Administration Electric Power Monthly.

(e) "Gas index price" means the applicable residential, industrial, or commercial price per 1,000 cubic feet for retail consumers in Florida in the previous calendar year, as published in the United States Energy Information Administration Natural Gas Monthly.

(f) "Gross receipts" means the total payments received in money, goods, services, or other consideration.

(g) "Person" includes any individual, firm, copartnership, joint adventure, association, corporation, estate, trust, business trust, receiver, syndicate, or other group or combination acting as a unit and also includes any political subdivision, municipality, state agency, bureau, or department and includes the plural as well as the singular number.

(h) "Utility services" means electricity for light, heat, or power; and natural or manufactured gas for light, heat, or power, including transportation, delivery, transmission, and distribution of the electricity or natural or manufactured gas. This paragraph does not broaden the definition of utility service to include separately stated charges for tangible personal property or services which are not charges for the electricity or natural or manufactured gas or the transportation, delivery, transmission, or distribution of electricity or natural or manufactured gas. Liquefied petroleum gas is sold in liquid form and transformed into gas when released from the container to be used for fuel. The term "utility services" does not include liquefied petroleum gas.

(3) INDEX PRICE. The calculation of the tax imposed on certain utility services delivered to a retail consumer in Florida is based on an index price.

(a) The Department will announce the residential, commercial, and industrial index prices for electricity and for natural and manufactured gas on June 1 of each year through issuance of a Taxpayer Information Publication and by posting the rates on the Department's Internet web site located on the Internet at [www.myflorida.com/dor/taxes](http://www.myflorida.com/dor/taxes). The index prices announced by the Department on June 1 will be effective from the following July 1 through June 30, and will apply to any bill dated on or after July 1 in the year in which the change becomes effective. The index prices effective July 1, 2006, through December 31, 2006, have been announced by the Department in Tax Information Publication 06B06-01 and apply to any bill dated on or after July 1, 2006, until the new index prices become effective on July 1, 2007.

(b) The index prices for electricity only apply if the transportation of electricity is sold independent of the sale of the electricity itself. If electricity is sold to a retail consumer in Florida for a price that includes both a charge for the electricity and a charge for the transportation of the electricity, the tax imposed by Chapter 203, F.S., is calculated by using the distribution company's gross receipts, rather than through use of an index price.

(c) When the calculation of the tax imposed on utility services delivered to a retail consumer in Florida requires the use of an index price, the distribution company must use a reasonable methodology to apply the residential, commercial, and industrial classifications to its existing rate structure.

This rule shall take effect on July 1, 2006.

Specific Authority s. 3, Ch. 2005-148, L.O.F. Law Implemented 203.01, 203.012 FS. History—New 7-1-06.

#### 12BER06-2 Imposition of the Gross Receipts Tax.

##### (1) NATURAL OR MANUFACTURED GAS.

(a) A tax is imposed at the rate of 2.5 percent on distribution companies' gross receipts from the privilege of selling or transporting natural or manufactured gas to a retail consumer in this state. The gross receipts tax on the sale or transportation of natural or manufactured gas is calculated as follows:  $(\text{number of cubic feet of gas sold or transported}) \div 1,000 \times (\text{the applicable gas index price}) \times (2.5 \text{ percent})$ .

(b) The tax implemented in paragraph (1)(a) does not apply to:

1. The sale or transportation of natural or manufactured gas to a public or private utility, including a municipal corporation, or agency thereof, or rural electric cooperative association for use as a fuel in the generation of electricity;

2. Subject to the documentation requirements outlined in subsection (5), the sale or transportation of natural or manufactured gas to a public or private utility, including a municipal corporation or agency thereof, or rural electric cooperative association for resale;

3. The sale or transportation to, or use of, natural or manufactured gas by any person eligible for an exemption under Section 212.08(7)(ff)2., F.S., for use as an energy source or a raw material. Possession by a seller of natural or manufactured gas or by any person providing transportation or delivery of natural or manufactured gas of a written certification by the purchaser relieves the seller or person providing transportation or delivery from the responsibility of remitting tax on the nontaxable amounts, and the Department shall look solely to the purchaser for recovery of such tax if the Department determines that the purchaser was not entitled to the exclusion. The certification must include an acknowledgment by the purchaser that it will be liable for tax pursuant to Section 203.01(1)(f), F.S., if the requirements for

exclusion are not met. The following is a suggested format of an exemption certificate to be issued by a manufacturer to a natural or manufactured gas distribution company:

CERTIFICATION

NATURAL OR MANUFACTURED GAS PURCHASED BY A PERSON ELIGIBLE FOR EXEMPTION UNDER INDUSTRIAL CLASSIFICATIONS IN SECTION 212.08(7)(ff)2., F.S.

This is to certify that I have purchased natural or manufactured gas for use as an energy source or raw material that is excluded from tax pursuant to Section 203.01(3)(d), Florida Statutes.

I certify that the applicable purchases were made by a company whose four-digit SIC Industry Number, as listed below, is classified under SIC Industry Major Group Number 10, 12 through 14, 20, or 22 through 39 or Group Number 212 in the Standard Industrial Classification (SIC) Manual, 1987, published by the Office of Management and Budget.

I acknowledge that I will be liable for tax pursuant to Section 203.01(1)(f), Florida Statutes, if the requirements for exclusion pursuant to Section 203.01(3)(d), F.S., are not satisfied.

I understand that if such purchases of natural or manufactured gas do not qualify for the exclusion as indicated on this certification, I must pay the applicable tax directly to the Department of Revenue.

Under penalties of perjury, I declare that I have read the foregoing certificate and the facts stated herein are true.

\_\_\_\_\_  
Purchaser's Name (Print or Type)      Date

\_\_\_\_\_  
Signature of Authorized Person      Title

\_\_\_\_\_  
Federal Employer Identification Number (FEI No.)

(2) ELECTRICITY.

(a) A tax is imposed at the rate of 2.5 percent on a distribution company's gross receipts from the privilege of selling electricity that is delivered to a retail consumer in this state when the charge to the consumer includes charges for both the electricity and the transportation of the electricity. Tax imposed pursuant to this subparagraph is calculated by multiplying the distribution company's gross receipts by 2.5 percent.

1. The tax implemented in paragraph (2)(a) does not apply to:

a. Receipts from customers for separately itemized charges for the connection, disconnection, suspension, or restoration of electricity;

b. Receipts from customers for separately itemized charges for returned checks or other forms of payment, late payments, or interest due on late payments;

c. Receipts from customers for separately itemized charges for the sale, lease, rental, repair, or maintenance of customer premises equipment;

2.a. When charges for utility services are separately itemized as an amount for services based on a standard rate amount with a separate rate adjustment on the same billing, invoice, statement, or other evidence of sale for services, gross receipts tax is due on the receipts for utility services after the application of the rate adjustment.

b. Example: A customer purchases electricity from an electric utility under an energy management program. The customer is billed the standard residential rate. In addition, the customer receives load management monthly credits for allowing specified electrical equipment to be interrupted at the option of the electric utility. The charge for electric service after the load management credits are applied against the charge at the standard residential rate is the amount subject to the gross receipts tax.

c. Example: A customer purchases electricity from an electric utility at the standard residential service rate. The electric utility charges each residential customer in this rate class an additional energy cost recovery factor, called "energy charges," on a per kilowatt hour basis. The customer is billed for electricity at the standard residential rate, plus the applicable energy charges. The amount charged to the customer at the standard residential rate, plus the amount of the energy charges, is the amount subject to the gross receipts tax.

3. Each and every fee imposed by a political subdivision of the State of Florida on the distribution company, such as a franchise fee, is included in the charge upon which the gross receipts tax is computed, when the fees are passed on to the customer and separately itemized on a customer's bill, invoice, statement, or other evidence of sale.

4. Any municipal public service tax imposed under Section 166.231 or 166.232, F.S., or any sales tax imposed under Chapter 212, F.S., on the sale or purchase of electric power or energy is not included in the charge upon which the gross receipts tax is computed when the municipal tax or sales tax is separately itemized on a customer's bill, invoice, statement, or other evidence of sale.

(b) Each distribution company that receives payment for the delivery of electricity to a retail consumer in this state is subject to tax on the exercise of this privilege as provided by this paragraph, unless the payment is subject to tax under paragraph (a). Under this paragraph, the gross receipts tax on the delivery of electricity is calculated as follows: (number of kilowatt hours delivered) × (the applicable electricity index price) × (2.5 percent).

(c) The tax implemented in paragraphs (2)(a) and (b) does not apply to:

1. The sale or delivery of electricity to a public or private utility, including a municipal corporation or agency thereof, or rural electric cooperative association, for resale subject to the documentation requirements outlined in subsection (5);

2. The sale or delivery of electricity to a public or private utility, including a municipal corporation or agency thereof, or rural electric cooperative association, as part of an electric interchange agreement or contract between such utilities for the purpose of transferring more economically generated power.

a. The electric utility is required to maintain a copy of the agreement or contract in its books and records and is not required to meet the provisions of this rule regarding sales for resale.

b. The internal use, including interdepartmental transfers, of the purchased power is not subject to tax.

3. Wholesale sales of electric transmission service.

4. The loss of electricity resulting from the generation, transmission, or distribution of electricity, including line losses, generation losses, and any other losses for which charges are not made to the electric utility's customers.

(3) SEPARATELY ITEMIZED CHARGES. A distribution company may wholly or partially separately itemize the gross receipts tax on the customer's bill, invoice, statement, or other evidence of sale. However, the gross receipts tax is imposed on the privilege of doing business, and it is an item of cost to the distribution company. The distribution company remains fully and completely liable for the payment of the tax, even when the tax is wholly or partially separately itemized on the customer's bill, invoice, statement, or other evidence of sale. When the tax is wholly or partially separately itemized, every person, including governmental units and charitable and religious organizations, is liable for the payment of the tax to the distribution company.

(4) USE TAX.

(a) Gross receipts tax is levied upon a person's cost price of electricity, or natural or manufactured gas, imported into this state or severed within this state for the person's own use or consumption as a substitute for purchasing utility, transportation, or delivery services taxable under Chapter 203, F.S., and who cannot demonstrate payment of the tax imposed by Chapter 203, F.S. The tax implemented pursuant to this paragraph is calculated by multiplying the cost price of the utility service by 2.5 percent.

(b) The tax implemented pursuant to paragraph (4)(a) does not apply to:

1. The use of natural gas in the production of oil or gas, or the use of natural or manufactured gas by a person transporting natural or manufactured gas, when used and consumed in providing such services;

2. The use of natural gas or manufactured gas by a person eligible for an exemption under Section 212.08(7)(ff)2., F.S., for use as an energy source or a raw material; or

3. The loss of electricity resulting from the generation, transmission, or distribution of electricity, including line losses, generation losses, and any other losses for which charges are not made to the electric utility's customers.

(5) SALES FOR RESALE. The sale, transportation, or delivery of utility services for resale is only exempt from the tax imposed under Chapter 203, F.S., if the sale, transportation, or delivery is documented in strict compliance with this rule. Distribution companies must document sales for resale by obtaining resale certificates from customers who purchase transportation, delivery, or utility services for the purposes of resale. The distribution company is only required to obtain one certificate for sales made for the purposes of resale from each customer making purchases for the purposes of resale. The certificate must contain the purchaser's name and address, the purchaser's gross receipts tax registration number and its effective date, a statement that the purchases are for the purpose of resale, the signature of the purchaser or an authorized representative of the purchaser, and the date of issuance. The following is a suggested format of a resale certificate:

RESALE CERTIFICATE FOR GROSS RECEIPTS TAX ON UTILITY SERVICES

This is to certify that the electricity for light, heat, or power or the natural or manufactured gas for light, heat, or power \_\_\_\_\_ purchased \_\_\_\_\_ after \_\_\_\_\_ (date) from \_\_\_\_\_ (seller's name) is purchased for the purpose of resale pursuant to Chapter 203, F.S.

I understand that if I fraudulently issue this certificate to evade the payment of gross receipts tax I will be liable for payment of the tax directly to the Department of Revenue and subject to the penalties imposed under Section 203.03(2), F.S.

I understand that I must disclose to the seller, or remit tax on, any purchase not for resale when tax was not paid to the seller and/or distribution company.

Under penalties of perjury, I declare that I have read the foregoing certificate and the facts stated herein are true.

Purchaser's Name \_\_\_\_\_

Purchaser's Address \_\_\_\_\_

Name and Title of Purchaser's Authorized Signature \_\_\_\_\_

\_\_\_\_\_

Certificate of Registration Number \_\_\_\_\_

Effective Date of Registration \_\_\_\_\_

By \_\_\_\_\_ (authorized signature)

Date \_\_\_\_\_

(6) RECORDKEEPING REQUIREMENTS. Distribution companies that sell, transport, or deliver utility services to retail consumers in Florida and taxpayers that import utility services into Florida for their own use must maintain electrical interchange agreements or contracts, resale certificates, exemption certificates, and other documentation required under the provisions of this rule chapter in their books and records until tax imposed under Chapter 203, F.S., may no

longer be determined and assessed under Section 95.091, F.S. Electronic storage of required documentation through the use of imaging, microfiche, or other electric storage media will satisfy compliance with recordkeeping requirements. This rule shall take effect on July 1, 2006.

Specific Authority s. 3, Ch. 2005-148, L.O.F. Law Implemented 203.01, 213.37 FS. History--New 7-1-06.

#### 12BER06-3 Registration for Gross Receipts Tax Purposes.

(1) Prior to engaging in the business of selling, transporting, delivering, or importing utility services, every person, distribution company, or other entity upon which the gross receipts tax is imposed is required to register with the Department.

(2) Registration with the Department for gross receipts tax purposes is available by using one of the following methods:

(a) Registering through the Department's "e-Services" system located on the Department's Internet site at [www.myflorida.com/dor](http://www.myflorida.com/dor); or

(b) Filing an Application to Collect and/or Report Tax in Florida (R. 01/06) (Form DR-1, incorporated by reference in Rule 12A-1.097, F.A.C.), with the Department as indicated on the form. Copies of this form are available, without cost, by one or more of the following methods: 1) downloading selected forms from the Department's Internet site at [www.myflorida.com/dor/forms](http://www.myflorida.com/dor/forms); or 2) faxing a forms request to the Distribution Center at (850)922-2208; or 3) calling the Distribution Center at (850)488-8422; or 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or 5) visiting any local Department of Revenue Service Center to personally obtain a copy. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

This rule shall take effect on July 1, 2006.

Specific Authority s. 3, Ch. 2005-148, L.O.F. Law Implemented 203.01 FS. History--New 7-1-06.

#### 12BER06-4 Payment of Gross Receipts Tax; Reports.

(1)(a) Except as provided in Rule Chapter 12-24, F.A.C., and paragraph (c) below, all taxes imposed on utility services are due to the Department on or before the last day of the month following the date of the sale or transaction. The payment and return must either reach the Department or be postmarked on or before the last day of the month for receipts for utility services received in the preceding calendar month for a taxpayer to avoid penalty and interest for late filing. When the last day of the month falls on a Saturday, Sunday, or a legal holiday, payments accompanied by returns will be accepted as timely if postmarked or delivered to the Department on the next succeeding day that is not a Saturday, a Sunday, or a legal holiday. A tax return is required to be filed on or before the last day of each month even when no tax is

due. The report is required to be signed by an officer or a representative duly authorized to act by the taxpayer. For this purpose, a legal holiday means a holiday that is observed by federal or state agencies as a legal holiday as this term is defined in Chapter 683, F.S., and Section 7503 of the 1986 Internal Revenue Code, as amended. A "legal holiday" pursuant to Section 7503 of the Internal Revenue Code of 1986, as amended, means a legal holiday in the District of Columbia or a statewide legal holiday at a location outside the District of Columbia but within an internal revenue district.

(b) Form DR-133, Gross Receipts Tax Return (R. 01/06, hereby incorporated by reference), is the return to be used to report the gross receipts tax imposed on utility services. Copies of this form are available, without cost, by one or more of the following methods: 1) downloading selected forms from the Department's Internet site at [www.myflorida.com/dor](http://www.myflorida.com/dor); or 2) faxing a forms request to the Distribution Center at (850)922-2208; or 3) calling the Distribution Center at (850)488-8422; or 4) writing the Florida Department of Revenue, Distribution Center, 168A Blountstown Highway, Tallahassee, Florida 32304; or 5) visiting any local Department of Revenue Service Center to personally obtain a copy. Persons with hearing or speech impairments may call the Department's TDD at (800)367-8331.

(c) When quarterly, semiannual, or annual reporting is authorized by the Department pursuant to Section 203.01(1)(j), F.S., the tax is due on or before the last day of the month following the authorized reporting period and becomes delinquent on the first day of the next succeeding month.

(d) Payments and returns for reporting tax must be submitted to the Department, as provided in Rule Chapter 12-24, F.A.C., when:

1. Payment of the tax is required to be made by electronic means;

2. Any return for reporting tax is required to be submitted by electronic means; or

3. No tax is due with a return for reporting tax.

(e)1. For taxes implemented pursuant to paragraph (2)(a) of Rule 12BER06-2, F.A.C., the taxpayer may elect to pay the gross receipts tax on total billings for electricity for each month or on the actual gross receipts for electricity received in that month.

2. When the taxpayer elects to pay gross receipts tax on total billings for electricity, the taxpayer may take a credit for net uncollectibles for which gross receipts tax has been previously paid to the Department. The credit must be reported on the provider's return in accordance with the timing provisions of Section 215.26(2), F.S.

3. In lieu of a credit for net uncollectibles, the taxpayer may seek a refund of tax previously paid by filing an Application for Refund (Form DR-26, incorporated by reference in Rule 12-26.008, F.A.C.) with the Department. The application for refund must be filed in accordance with the

timing provisions of Section 215.26(2), F.S., and must meet the requirements of Sections 213.255(2) and (3), F.S., and Rule 12-26.003, F.A.C.

4. Form DR-26, Application for Refund, must be filed with the Department within 3 years after the date the tax was paid. Credits for tax paid must be reported on the provider's return within 3 years after the date the tax was paid.

(2) Persons who engage in the transportation of natural or manufactured gas must provide the Department with a list of customers to whom transportation services were provided in the prior year. A person may satisfy the customer-reporting requirement by: 1) providing a written list of customers to the Department; or 2) maintaining a publicly-accessible customer list on the person's Internet web site. The person must provide the written list of customers or the Internet address of the publicly-accessible Internet web site by January 31 of each year to GTA Miscellaneous Tax Coordinator, c/o GTA Program Director, Florida Department of Revenue, 5050 W. Tennessee Street, Bldg D-1, Tallahassee, Florida 32399-0100. Persons who choose to satisfy the customer-reporting requirement by posting a list of customers on a publicly-accessible Internet web site must update the list by January 31 of each year. This reporting requirement does not apply to distribution companies. Any person required to furnish such a list may elect to identify only those customers who take direct delivery without purchasing interconnection services from a distribution company.

This rule shall take effect on July 1, 2006.

Specific Authority s. 3, Ch. 2005-148, L.O.F. Law Implemented 203.01, 203.06, 213.235, 213.37, 213.755, 215.26 FS. History—New 7-1-06.

THESE RULES TAKE EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE ARE SPECIFIED IN THESE RULES.

EFFECTIVE DATE: July 1, 2006

#### **BOARD OF TRUSTEES OF THE INTERNAL IMPROVEMENT TRUST FUND**

Pursuant to Chapter 2003-145, Laws of Florida, all notices for the Board of Trustees of the Internal Improvement Trust Fund are published on the Internet at the Department of Environmental Protection's home page at <http://www.dep.state.fl.us/> under the link or button titled "Official Notices."

#### **DEPARTMENT OF ENVIRONMENTAL PROTECTION**

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## **FISH AND WILDLIFE CONSERVATION COMMISSION**

### **Marine Fisheries**

RULE NO.:  
68BER06-1

RULE TITLE:  
Emergency Reinstatement of Blue Crab Endorsement Moratorium and Suspension of Implementation of the Blue Crab Limited Entry Endorsement Program

**SPECIFIC REASONS FOR FINDING AN IMMEDIATE DANGER TO THE PUBLIC HEALTH, SAFETY, AND WELFARE:** The 1998 Florida Legislature imposed a moratorium on new blue crab endorsements at the request of the commercial blue crab industry, with the support of the Florida Marine Fisheries Commission, while an effort management or limited entry program was being developed by the Commission and the industry. That moratorium was extended by the new Florida Fish and Wildlife Conservation Commission in 2002 and again in 2005, as the new program approached completion. The original and continuing purpose of the endorsement moratorium was to stabilize the fishery by not allowing new entrants prior to implementation of an effort management plan. Pursuant to the provisions of paragraph 68B-45.004(9)(a), F.A.C., the moratorium is scheduled to expire July 1, 2006.

The Fish and Wildlife Conservation Commission has adopted rules that would implement the final effort management plan for the commercial blue crab fishery that would take effect July 1, 2006. Indispensable to the program are the penalties applicable to specific requirements and prohibitions in the implementing rules of the Commission and fees to be charged by the Commission under the program. These penalties and fees are not within the authority of the Commission to set, but rather are constitutionally the responsibility of the Florida Legislature. In the recently-concluded legislative session, the bill that would have set those penalties and fees failed to pass.

Without the penalties and fees necessary to the program, the Commission finds that implementation of the blue crab effort management program would be detrimental to the commercial blue crab fishery and imperil any success that might be expected from immediate implementation of the program. Therefore, the Commission also finds that there is an immediate danger to the public welfare if immediate action is not taken to stop implementation of the program and reimpose the moratorium on issuance of new commercial blue crab endorsements.

It is the intent of the Commission to immediately begin regular rulemaking to extend the moratorium on issuance of new blue crab endorsements, and delay the start of the new effort management program for this fishery, for one year, to allow time for the establishment of appropriate penalties and fees by the Florida Legislature. This action will provide the

opportunity to make sure that all parts of this important plan are implemented at the same time, to avoid confusion among the participants in the fishery.

**REASONS FOR CONCLUDING THAT THE PROCEDURE USED IS FAIR UNDER THE CIRCUMSTANCES:** On May 6, 2006, the day after the 2006 session of the Florida Legislature ended without adoption of penalties and fees for the blue crab effort management program, staff of the Fish and Wildlife Conservation Commission contacted the members of the *ad hoc* Blue Crab Advisory Board. Those members contacted were of the opinion that under the circumstances, the moratorium needed to be extended until the legislative issues could be resolved. On May 15, 2006, a revised agenda for the Commission's June 7-8, 2006 meeting was posted on the Commission's website, which agenda included consideration of an emergency rule to address the blue crab effort management program. On May 16, 2006, the Commission's Division of Marine Fisheries Management sent a notice to all blue crab endorsement holders indicating that the Division would be requesting the Commission at its meeting on June 8 to "extend the moratorium on blue crab endorsements until July 1, 2007 . . . , and delay implementation of the blue crab effort management rule that was approved by the Commission last March." Division staff was invited to a meeting of interested members of the Organized Fishermen of Florida (OFF) and Southeastern Fisheries Association (SFA) on June 3, 2006, in Ocala, to explain the situation and agency intentions. The emergency rule was approved at the Commission's meeting on June 8, 2006, at which meeting appeared participants in the blue crab commercial fishery. Notice of this action was provided by press release to the news media immediately upon conclusion of the meeting.

The entire text of this emergency rule, including the findings required by Section 120.54(4), Florida Statutes, is to be published in the *Florida Administrative Weekly* and distributed to the Joint Administrative Procedures Committee of the Florida Legislature.

The Florida Fish and Wildlife Conservation Commission hereby find that the procedures used to promulgate this emergency rule are fair under the circumstances.

**SUMMARY OF THE RULE:** Emergency Rule 68BER06-1 extends the moratorium on issuance of new blue crab endorsements as it exists in paragraph 68B-45.004(9)(b), F.A.C., for the pendency of the emergency rule. The emergency rule also suspends implementation of the Blue Crab Limited Entry Endorsement Program pursuant to Rule

68B-45.007, F.A.C., during the same period. An intention is stated to continue the moratorium until July 1, 2007, and to suspend the program's implementation until the same date.

**A COPY OF THE EMERGENCY RULE MAY BE OBTAINED BY CONTACTING:** James V. Antista, General Counsel, Fish and Wildlife Conservation Commission, 620 South Meridian Street, Tallahassee, Florida 32399-1600, (850)487-1764

**THE FULL TEXT OF THE EMERGENCY RULE IS:**

During the period of effectiveness of this emergency rule, paragraph (9)(b) of Rule 68B-45.004, F.A.C., is amended to read:

68BER06-1 (68B-45.004) Emergency Reinstatement of Blue Crab Endorsement Moratorium and Suspension of Implementation of the Blue Crab Limited Entry Endorsement Program Regulation and Prohibition of Certain Harvesting Gear.

(1) through (9)(a) No change.

(b) Notwithstanding Section 370.135(2)(a), F.S., effective July 1, ~~2006~~ ~~2002~~, and until July 1, ~~2007~~ ~~2006~~, no blue crab endorsements, except those endorsements that were active during the ~~2005-2006~~ ~~2001-2002~~ fiscal year, shall be renewed or replaced. ~~In 2002 and in subsequent years until July 1, 2006,~~ Persons or corporations holding a blue crab endorsement that was active in the ~~2005-2006~~ ~~2001-2002~~ fiscal year or an immediate family member of that person must request renewal of the blue crab endorsement before September 30, ~~2006~~ ~~of each year~~. All provisions of Sections 370.135(2)(c)-(e), F.S., shall continue to apply to the issuance and renewal of blue crab endorsements with the applicable dates specified in this paragraph.

(c) through (10) No change.

EFFECTIVE DATE July 1, 2006.

Specific Authority Art. IV, Sec. 9, Fla. Const. Law Implemented Art. IV, Sec. 9, Fla. Const. History—New 12-14-93, Amended 6-1-94, 1-1-95, 10-4-95, 9-30-96, 1-1-98, 6-1-99, Formerly 46-45.004, Amended 2-28-02, 10-21-04, 3-1-05, 3-30-06, ~~7-1-06~~.

**THIS RULE TAKE EFFECT UPON BEING FILED WITH THE DEPARTMENT OF STATE UNLESS A LATER TIME AND DATE ARE SPECIFIED IN THIS RULE.**

**EFFECTIVE DATE:** July 1, 2006