

**GROSS RECEIPTS TAX AMENDMENTS,
REPEAL AND PUBLIC UTILITY TARIFFS**

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mike Dmitrich

House Sponsor: Wayne A. Harper

LONG TITLE

General Description:

This bill modifies the Public Utilities title and the Revenue and Taxation title to repeal and modify gross receipts taxes and require certain public utilities to file new tariffs with the Public Service Commission.

Highlighted Provisions:

This bill:

- ▶ requires certain public utilities to file new tariffs with the Public Service Commission and establishes procedures for filing those tariffs;
- ▶ decreases the gross receipts tax rate on certain corporations not required to pay corporate franchise or income tax;
- ▶ repeals the Gross Receipts Tax on Electrical Corporations chapter;
- ▶ repeals obsolete language;
- ▶ and makes technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

This bill takes effect on July 1, 2006.

This bill provides revisor instructions.

Utah Code Sections Affected:



28 AMENDS:

29 **11-13-303**, as renumbered and amended by Chapter 286, Laws of Utah 2002

30 **59-6-102**, as last amended by Chapter 28, Laws of Utah 2002

31 **59-8-104**, as last amended by Chapter 286, Laws of Utah 2002

32 ENACTS:

33 **54-7-12.9**, Utah Code Annotated 1953

34 REPEALS:

35 **54-7-12.2**, as enacted by Chapter 278, Laws of Utah 1995

36 **59-8a-101**, as enacted by Chapter 278, Laws of Utah 1995

37 **59-8a-102**, as enacted by Chapter 278, Laws of Utah 1995

38 **59-8a-103**, as enacted by Chapter 278, Laws of Utah 1995

39 **59-8a-104**, as last amended by Chapter 273, Laws of Utah 1996

40 **59-8a-105**, as enacted by Chapter 278, Laws of Utah 1995

41 **59-8a-106**, as enacted by Chapter 278, Laws of Utah 1995



43 *Be it enacted by the Legislature of the state of Utah:*

44 Section 1. Section **11-13-303** is amended to read:

45 **11-13-303. Source of project entity's payment of sales and use tax -- Gross**
46 **receipts taxes for facilities providing additional project capacity.**

47 (1) A project entity is not exempt from sales and use taxes under Title 59, Chapter 12,
48 Sales and Use Tax Act, to the extent provided in Subsection 59-12-104(2).

49 (2) A project entity may make payments or prepayments of sales and use taxes, as
50 provided in Title 63, Chapter 51, Resource Development, from the proceeds of revenue bonds
51 issued under Section 11-13-218 or other revenues of the project entity.

52 (3) (a) This Subsection (3) applies with respect to facilities providing additional project
53 capacity.

54 (b) (i) The in lieu excise tax imposed under Title 59, Chapter 8, Gross Receipts Tax on
55 Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, shall be
56 imposed collectively on all gross receipts derived with respect to the ownership interests of all
57 project entities and other public agencies in facilities providing additional project capacity as
58 though all such ownership interests were held by a single project entity.

59 (ii) The in lieu excise tax shall be calculated as though the gross receipts derived with
60 respect to all such ownership interests were received by a single taxpayer that has no other
61 gross receipts.

62 (iii) The gross receipts attributable to such ownership interests shall consist solely of
63 gross receipts that are expended by each project entity and other public agency holding an
64 ownership interest in the facilities for the operation or maintenance of or ordinary repairs or
65 replacements to the facilities.

66 (iv) For purposes of calculating the in lieu excise tax, the determination of whether
67 there is a tax rate and, if so, what the tax rate is shall be governed by Section 59-8-104, except
68 that the \$10,000,000 figures in [~~Subsection~~] Section 59-8-104[~~(+)~~] indicating the amount of
69 gross receipts that determine the applicable tax rate shall be replaced with \$5,000,000.

70 (c) Each project entity and public agency owning an interest in the facilities providing
71 additional project capacity shall be liable only for the portion of the gross receipts tax referred
72 to in Subsection (3)(b) that is proportionate to its percentage ownership interest in the facilities
73 and may not be liable for any other gross receipts taxes with respect to its percentage
74 ownership interest in the facilities.

75 (d) No project entity or other public agency that holds an ownership interest in the
76 facilities may be subject to the taxes imposed under Title 59, Chapter 7, Corporate Franchise
77 and Income [~~Tax~~] Taxes, [~~or Title 59, Chapter 8a, Gross Receipts Tax on Electrical~~
78 ~~Corporations,~~] with respect to those facilities.

79 (4) For purposes of calculating the gross receipts tax imposed on a project entity or
80 other public agency under Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not
81 Required to Pay Corporate Franchise or Income Tax Act, or Subsection (3), gross receipts
82 include only gross receipts from the first sale of capacity, services, or other benefits and do not
83 include gross receipts from any subsequent sale, resale, or layoff of the capacity, services, or
84 other benefits.

85 Section 2. Section **54-7-12.9** is enacted to read:

86 **54-7-12.9. Gross receipts tax decrease on electrical corporations -- Tariffs --**

87 **Procedure.**

88 (1) As used in this section:

89 (a) "gross receipts tax" means the tax:

90 (i) imposed by Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations
91 Act; and

92 (ii) repealed by this bill; and

93 (b) (i) "electrical corporation" includes every corporation, cooperative association, and
94 person, their lessees, trustees, and receivers, owning, controlling, operating, or managing any
95 electric plant, or in any way furnishing electric power for public service or to its consumers or
96 members for domestic, commercial, or industrial use, within this state, that:

97 (A) pays property taxes under Title 59, Chapter 2, Property Tax Act; and

98 (B) is subject to rate regulation by the commission; and

99 (ii) "electrical corporation" does not include independent energy producers, or
100 electricity that is generated on or distributed by the producer solely for the producer's own use,
101 the use of the producer's tenants, or for the use of members of an association of unit owners
102 formed under Title 57, Chapter 8, Condominium Ownership Act, and not for sale to the public
103 generally.

104 (2) An electrical corporation shall:

105 (a) file new tariffs with the commission on or before September 1, 2006:

106 (i) reflecting the decrease in the electrical corporation's rates as a result of the repeal of
107 the gross receipts tax by this bill; and

108 (ii) spreading the amount of the decrease described in Subsection (2)(a)(i) among all
109 classes of the electrical corporation's customers on the same basis that the gross receipts tax
110 was allocated to each class of the electrical corporation's customers under the rates in effect on
111 June 30, 2006; and

112 (b) on or before the day on which the electrical corporation files new tariffs with the
113 commission under Subsection (2)(a), file with the commission a complete report of the
114 calculation of the allocation required by this section.

115 (3) The tariffs required to be filed with the commission under Subsection (2)(a) take
116 effect as provided in Section 54-7-12.

117 Section 3. Section **59-6-102** is amended to read:

118 **59-6-102. Producer's obligation to deduct and withhold payments -- Amount --**
119 **Exempt payments -- Credit against tax.**

120 (1) Except as provided in Subsection (2), each producer shall deduct and withhold from

121 each payment being made to any person in respect to production of minerals in this state, but
 122 not including that to which the producer is entitled, an amount equal to 5% of the amount
 123 which would have otherwise been payable to the person entitled to the payment.

124 (2) Notwithstanding Subsection (1), the obligation to deduct and withhold from
 125 payments as provided in Subsection (1) does not apply to those payments which are payable to:

126 (a) the United States, this state, or an agency or political subdivision of the United
 127 States or this state;

128 (b) an organization that is exempt from the taxes imposed by Chapter 7, Corporate
 129 Franchise and Income Taxes, in accordance with Subsection 59-7-102(1)(a); or

130 (c) an Indian or Indian tribe if the amounts accruing are subject to the supervision of the
 131 United States or an agency of the United States.

132 (3) (a) A person who files a tax return with the state in accordance with the following
 133 is entitled to a credit against the tax reflected on the return for the amount withheld by the
 134 producer under Subsection (1):

135 (i) Chapter 7, Corporate Franchise and Income Taxes;

136 (ii) Chapter 8, Gross Receipts Tax on Certain Corporations not Required to Pay
 137 Corporate Franchise or Income Tax Act; or

138 [~~(iii) Chapter 8a, Gross Receipts Tax on Electrical Corporations Act; or~~]

139 [~~(iv)~~] (iii) Chapter 10, Individual Income Tax Act.

140 (b) If the amount withheld under Subsection (1) is greater than the tax due on the
 141 return, the person making the return is entitled to a refund in the amount of the overpayment.

142 Section 4. Section **59-8-104** is amended to read:

143 **59-8-104. Rate -- Change of rate.**

144 [~~(1) For taxable years beginning~~] Beginning on or after July 1, [~~1996~~] 2006, and subject
 145 to Section 11-13-303, an in lieu excise tax is imposed on the gross receipts of a taxpayer
 146 engaging in business in the state of Utah in each taxable year as follows:

147	Gross Receipts Amount	Rate of Tax
148	Not in excess of \$10,000,000	None
149	In excess of \$10,000,000 but not	
150	in excess of \$500,000,000	[.8613%] <u>.6250%</u>
151	In excess of \$500,000,000 but not	

152 in excess of \$1,000,000,000 [1.3214%] .9375%
 153 In excess of \$1,000,000,000 [1.7520%] 1.2500%
 154 [~~(2) A taxpayer subject to the in lieu excise tax under Subsection (1) is not required to~~
 155 ~~pay the tax imposed under Title 59, Chapter 8a, Gross Receipts Tax on Electrical Corporations~~
 156 ~~Act.]~~

157 Section 5. **Repealer.**
 158 This bill repeals:
 159 Section **54-7-12.2, Property tax decrease -- Rate decrease -- Procedure.**
 160 Section **59-8a-101, Title.**
 161 Section **59-8a-102, Purpose.**
 162 Section **59-8a-103, Definitions.**
 163 Section **59-8a-104, Rate -- Change of rate.**
 164 Section **59-8a-105, Time for filing of return -- Other applicable provisions.**
 165 Section **59-8a-106, Rulemaking authority.**
 166 Section 6. **Effective date.**
 167 This bill takes effect on July 1, 2006.
 168 Section 7. **Revisor instructions.**
 169 It is the intent of the Legislature that, in preparing the Utah Code database for
 170 publication, the Office of Legislative Research and General Counsel shall replace the reference
 171 in Subsections 54-7-12.9(1)(a)(ii) and (2)(a)(i) from "this bill" to the bill's designated chapter
 172 number in the Laws of Utah.

Legislative Review Note
 as of 11-14-05 12:38 PM

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

Office of Legislative Research and General Counsel

Interim Committee Note
 as of 12-15-05 11:55 AM

The Revenue and Taxation Interim Committee recommended this bill.

12-15-05 11:55 AM

S.B. 34

**Mixed Membership Committee Note
as of 12-15-05 11:55 AM**

The Tax Reform Task Force recommended this bill.

Membership:	13 legislators	2 non-legislators	
Legislative Vote:	8 voting for	0 voting against	5 absent