
By: **Delegate Hixson**

Introduced and read first time: February 19, 1998

Assigned to: Rules and Executive Nominations

A BILL ENTITLED

1 AN ACT concerning

2 **Electric Utility Tax Reform**

3 FOR the purpose of altering the public service company franchise tax for a public
4 service company engaged in an electric business in the State so as to impose the
5 tax based on kilowatt hours of certain electricity delivered by a public service
6 company; setting the rate of the tax imposed on a public service company
7 engaged in an electric business in the State; excluding gross charges from the
8 sale or delivery of electricity by a public service company from the definition of
9 gross receipts subject to the public service company franchise tax; altering the
10 definition of a public service company for purposes of the public service company
11 franchise tax; providing that the public service company franchise tax with
12 respect to electricity delivered for final consumption shall be surcharged to
13 customers; repealing a certain subtraction modification under the income tax for
14 gross receipts derived by a public service company engaged in an electric
15 business in the State; providing a credit against the corporate income tax for
16 certain property taxes paid on machinery and equipment used to generate
17 electricity in the State; altering the definition of taxable price under the sales
18 and use tax to include a separately stated charge for a taxable delivery service;
19 making the delivery of electricity or natural gas a taxable service under the
20 sales and use tax if the sale of the electricity or natural gas is taxable; clarifying
21 a certain exemption under the sales and use tax for sales of certain energy for
22 use in residential property; altering the definition of operating personal
23 property for property tax purposes for certain public utilities; defining certain
24 terms; requiring the Public Service Commission to determine and require a
25 certain reduction in electric utility rates; prohibiting an electric utility from
26 surcharging a certain tax to its customers until a certain reduction in rates is
27 effective; requiring an electric utility to provide certain information to certain
28 customers; requiring a certain report; providing for a delayed effective date;
29 providing for the effective dates and application of this Act; and generally
30 relating to the taxation of public service companies engaged in electric business
31 in the State.

32 BY adding to

33 Article - Tax - General

34 Section 8-401(a-1), 10-709, and 11-101(k)(11)

1 Annotated Code of Maryland
2 (1997 Replacement Volume)

3 BY repealing and reenacting, with amendments,
4 Article - Tax - General
5 Section 8-401(b)(3) and (c), 8-402 through 8-404, 8-409, 10-307(e),
6 11-101(j)(3)(i)1. and (k)(9) and (10), and 11-207(a)(2)
7 Annotated Code of Maryland
8 (1997 Replacement Volume)

9 BY repealing and reenacting, with amendments,
10 Article - Tax - Property
11 Section 1-101(u)(5)(ii)
12 Annotated Code of Maryland
13 (1994 Replacement Volume and 1997 Supplement)

14 Preamble

15 WHEREAS, The General Assembly believes that competition is good for the
16 State and that it will lead to more diverse, more efficient, and lower priced electricity
17 for consumers; and

18 WHEREAS, The electric utility industry in Maryland and around the country is
19 undergoing rapid change as companies attempt to position themselves for increasing
20 competition; and

21 WHEREAS, It is recognized that Maryland's public service company franchise
22 tax and public utility property tax law may restrict competition and that
23 comprehensive tax reform is needed to enable local electric utilities to compete more
24 effectively; and

25 WHEREAS, It is also recognized that the State of Maryland may suffer a
26 significant loss of tax revenue unless the 2% public service company franchise tax is
27 modified to apply to all deliveries of electricity for final consumption within
28 Maryland; and

29 WHEREAS, The General Assembly wishes to clarify that the sales tax
30 exemption for certain energy sold for use in residential properties and apartment
31 dwellings applies regardless of whether the sale is made by a public service company
32 or another energy supplier and that the sales tax when applicable to certain energy
33 sales applies to a charge for delivery of the energy whether or not the charge is
34 separately stated or the service is separately provided; and

35 WHEREAS, It is the intent of the General Assembly that the reforms embodied
36 in this Act not result in increases in customer electric bills, and consistent with that
37 position, the Public Service Commission is required to reduce the rates electric
38 utilities charge to reflect the public service company franchise tax included in those
39 rates that will be disclosed as a separate line item on a customer's bill; now, therefore,

1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article - Tax - General**

4 8-401.

5 (A-1) "ELECTRICITY DELIVERED FOR FINAL CONSUMPTION" INCLUDES ALL
6 ELECTRICITY DELIVERED BY A PUBLIC SERVICE COMPANY WITHIN ITS LOCAL
7 DISTRIBUTION SERVICE TERRITORY MEASURED AT THE POINT OF FINAL DELIVERY,
8 GENERALLY REFERRED TO AS THE CUSTOMER METER.

9 (b) (3) "Gross receipts" does not include:

10 (i) any revenue that a public service company derives from an
11 activity other than an electric, gas, oil pipeline, telegraph, or telephone business;

12 (ii) net uncollectible revenue;

13 (iii) gross charges from the sale by a public service company to
14 another public service company subject to the tax imposed by this subtitle of:

15 1. a service or product for resale; or

16 2. natural gas or natural gas delivery service that is used by
17 the other public service company in the generation of electricity; [or]

18 (iv) gross charges from the sale by a public service company of
19 internet access service by which a connection is provided between a computer and the
20 internet; OR

21 (V) GROSS CHARGES FROM THE SALE OR DELIVERY BY A PUBLIC
22 SERVICE COMPANY OF ELECTRICITY.

23 (c) [(1)] "Public service company" means a person engaged in an electric, gas,
24 oil pipeline, telegraph, or telephone business in the State.

25 [(2)] "Public service company" does not include:

26 (i) a county;

27 (ii) a municipal corporation; or

28 (iii) a nonprofit electric cooperative.]

29 8-402.

30 (A) A franchise tax, measured by gross receipts, is imposed, for each calendar
31 year, on each public service company [doing] ENGAGED IN A GAS, OIL PIPELINE,
32 TELEGRAPH, OR TELEPHONE business in the State.

1 (B) A FRANCHISE TAX, MEASURED BY KILOWATT HOURS OF ELECTRICITY
2 DELIVERED FOR FINAL CONSUMPTION WITHIN THE STATE, IS IMPOSED, FOR EACH
3 CALENDAR YEAR, ON EACH PUBLIC SERVICE COMPANY ENGAGED IN AN ELECTRIC
4 BUSINESS IN THE STATE.

5 8-403.

6 (A) The public service company franchise tax rate FOR THE TAX IMPOSED
7 UNDER § 8-402(A) OF THIS SUBTITLE is 2% of gross receipts derived from business in
8 the State.

9 (B) THE PUBLIC SERVICE COMPANY FRANCHISE TAX RATE FOR THE TAX
10 IMPOSED UNDER § 8-402(B) OF THIS SUBTITLE IS \$0.14 CENTS PER KILOWATT HOUR
11 OF ELECTRICITY DELIVERED FOR FINAL CONSUMPTION BY THE PUBLIC SERVICE
12 COMPANY.

13 8-404.

14 (a) Each public service company that, in a calendar year, has gross receipts
15 derived from business in the State OR DELIVERS ELECTRICITY FOR FINAL
16 CONSUMPTION IN THE STATE shall complete, under oath, and file with the
17 Department a public service company franchise tax return, on or before March 15th of
18 the next year.

19 (b) (1) Each public service company that reasonably expects its public
20 service company franchise tax for a year to exceed \$1,000 shall complete, under oath,
21 and file with the Department a declaration of estimated tax, on or before April 15 of
22 that year.

23 (2) A public service company required under paragraph (1) of this
24 subsection to file a declaration of estimated tax for a taxable year shall complete and
25 file with the Department a quarterly estimated tax return on or before June 15,
26 September 15, and December 15 of that year.

27 (c) A public service company shall file with the return an attachment that
28 states any information that the Department requires to determine gross receipts
29 derived from business in the State OR KILOWATT HOURS OF ELECTRICITY
30 DELIVERED FOR FINAL CONSUMPTION IN THE STATE.

31 8-409.

32 (A) The public service company franchise tax with respect to gross receipts
33 from telecommunications service shall be added to and disclosed as an element of the
34 public service company's charge to the customer for the service.

35 (B) A PUBLIC SERVICE COMPANY SHALL SURCHARGE ITS CUSTOMERS FOR
36 THE PUBLIC SERVICE COMPANY FRANCHISE TAX IMPOSED UNDER § 8-402(B) OF THIS
37 SUBTITLE.

1 10-307.

2 (e) The subtraction under subsection (a) of this section includes gross receipts,
3 less related expenses, that:

4 (1) are subject to the public service company franchise tax UNDER §
5 8-402(A) OF THIS ARTICLE; and

6 (2) are not derived from telephone business.

7 10-709.

8 (A) IN THIS SECTION, "AFFILIATED GROUP" HAS THE MEANING STATED IN §
9 1504 OF THE INTERNAL REVENUE CODE.

10 (B) AN INDIVIDUAL OR CORPORATION MAY CLAIM A CREDIT AGAINST THE
11 INCOME TAX IN AN AMOUNT EQUAL TO 60% OF THE TOTAL COUNTY AND MUNICIPAL
12 CORPORATION PROPERTY TAXES ON MACHINERY AND EQUIPMENT USED TO
13 GENERATE ELECTRICITY IN THE STATE IF:

14 (1) THE MACHINERY AND EQUIPMENT USED TO GENERATE THE
15 ELECTRICITY IS OWNED BY THE INDIVIDUAL OR CORPORATION OR BY A MEMBER OF
16 AN AFFILIATED GROUP OF WHICH THE CORPORATION IS A MEMBER; AND

17 (2) THE PROPERTY TAXES ARE PAID DURING THE TAXABLE YEAR BY THE
18 INDIVIDUAL OR CORPORATION OR BY A MEMBER OF THE AFFILIATED GROUP.

19 (C) THE TOTAL CREDIT CLAIMED BY MEMBERS OF AN AFFILIATED GROUP
20 MAY NOT EXCEED 60% OF THE TOTAL COUNTY AND MUNICIPAL CORPORATION
21 PROPERTY TAXES ON MACHINERY AND EQUIPMENT USED TO GENERATE
22 ELECTRICITY BY ALL THE MEMBERS OF THE AFFILIATED GROUP.

23 (D) (1) THE CREDIT ALLOWED UNDER THIS SECTION MAY NOT EXCEED THE
24 STATE INCOME TAX BEFORE APPLICATION OF THE CREDITS ALLOWED UNDER THIS
25 SECTION AND §§ 10-701 AND 10-701.1 OF THIS SUBTITLE BUT AFTER APPLICATION OF
26 ALL OTHER CREDITS ALLOWED UNDER THIS SUBTITLE.

27 (2) THE UNUSED AMOUNT OF THE CREDIT FOR ANY TAXABLE YEAR MAY
28 NOT BE CARRIED OVER TO ANY OTHER TAXABLE YEAR.

29 11-101.

30 (j) (3) "Taxable price" does not include:

31 (i) a charge that is made in connection with a sale and is stated as a
32 separate item of the consideration for:

33 1. a delivery, freight, or other transportation service for delivery
34 directly to the buyer by the vendor or by another person acting for the vendor,
35 UNLESS THE TRANSPORTATION SERVICE IS A TAXABLE SERVICE;

1 (k) "Taxable service" means:

2 (9) credit reporting; [or]

3 (10) a security service, including:

4 (i) a detective, guard, or armored car service; and

5 (ii) a security systems service[.]; OR

6 (11) A TRANSPORTATION SERVICE FOR DELIVERY OF ELECTRICITY OR
7 NATURAL GAS, IF THE SALE OR USE OF THE ELECTRICITY OR NATURAL GAS IS
8 SUBJECT TO THE SALES AND USE TAX.

9 11-207.

10 (a) The sales and use tax does not apply to:

11 (2) a sale of electricity, steam, or artificial or natural gas [made under a
12 residential or domestic rate schedule on file with the Public Service Commission]
13 FOR USE IN RESIDENTIAL PROPERTY IF THE SALE IS MADE DIRECTLY TO THE
14 OCCUPANT OF THE PROPERTY OR DWELLING;

15 **Article - Tax - Property**

16 1-101.

17 (u) (5) (ii) For a public utility [that is a telecommunications provider],
18 "operating personal property" includes [the] cables, lines, poles, and towers [used to
19 provide telecommunications services].

20 SECTION 2. AND BE IT FURTHER ENACTED, That:

21 (a) The Public Service Commission shall determine and require a reduction in
22 electric utility rates to be effective January 1, 2000, to reflect the changes to the
23 public service company franchise tax pursuant to § 8-409(b) of the Tax - General
24 Article and new tax credit provided under § 10-709 of the Tax - General Article, the
25 costs of which were formerly included in the electric utility rates, less the corporate
26 income tax imposed as a result of the change to the subtraction modification of §
27 10-307(e) of the Tax - General Article, as enacted under Section 1 of this Act;

28 (b) Notwithstanding the provisions of § 8-409(b) of the Tax - General Article
29 as enacted under Section 1 of this Act, an electric utility may not add the public
30 service company franchise tax to its charge to the customer for electricity service until
31 the reduction in electric utility rates required under subsection (a) of this section is
32 effective; and

33 (c) Beginning with the first monthly billing showing the public service
34 company franchise tax as a line item on the customer bill and for the next three
35 billings thereafter, the electric utility shall provide the customer with information in

1 the utility's monthly billing that the public service company franchise tax line item is
2 not a tax increase but merely a disclosure of taxes presently and previously paid by
3 the customer.

4 SECTION 3. AND BE IT FURTHER ENACTED, That the General Assembly
5 finds that the actual fiscal impact of this Act will depend on the attainment of the
6 public service company franchise tax and corporate income tax from public service
7 companies engaged in an electric business and the amount of the property tax credits
8 against the public service company franchise tax and corporate income tax taken by
9 these companies. In this regard, the Comptroller of the Treasury and the Department
10 of Assessments and Taxation shall submit a report to the House Committee on Ways
11 and Means and the Senate Budget and Taxation Committee disclosing for tax year
12 2000, for public service companies engaged in an electric business, the public service
13 company franchise tax and corporate income tax revenues collected and the amount
14 of property tax credits taken, attributable to this Act. The report shall be submitted
15 on or before December 15, 2001.

16 SECTION 4. AND BE IT FURTHER ENACTED, That Section 1 of this Act shall
17 take effect January 1, 2000. The changes to the public service company franchise tax
18 and the income tax under Section 1 of this Act shall be applicable to all taxable years
19 beginning after December 31, 1999. However, the income tax credit allowed under §
20 10-709 of the Tax - General Article, as enacted by Section 1 of the Act, shall be
21 allowed only for property tax paid for a property tax year beginning on or after July 1,
22 2000.

23 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in
24 Section 4 of this Act, this Act shall take effect July 1, 1998.