

1 AMENDMENT TO SENATE BILL 1733

2 AMENDMENT NO. _____. Amend Senate Bill 1733 by replacing
3 the title with the following:

4 "AN ACT in relation to taxes."; and

5 by replacing everything after the enacting clause with the
6 following:

7 "ARTICLE 5

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

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

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

17 "Delivering supplier maintaining a place of business in
18 this State", or any like term, means any delivering supplier
19 having or maintaining within this State, directly or by a
20 subsidiary, an office, distribution facility, sales office,

1 or other place of business, or any employee, agent, or other
2 representative operating within this State under the
3 authority of such delivering supplier or such delivering
4 supplier's subsidiary, irrespective of whether such place of
5 business or agent or other representative is located in this
6 State permanently or temporarily, or whether such delivering
7 supplier or such delivering supplier's subsidiary is licensed
8 to do business in this State.

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

11 "Director" means the Director of Revenue.

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

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

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

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

33 (i) Any charge for a dishonored check.

34 (ii) Any finance or credit charge, penalty, charge

1 for delayed payment, or discount for prompt payment.

2 (iii) Any charge for reconnection of service or for
3 replacement or relocation of facilities.

4 (iv) Any advance or contribution in aid of
5 construction.

6 (v) Repair, inspection, or servicing of equipment
7 located on customer premises.

8 (vi) Leasing or rental of equipment, the leasing or
9 rental of which is not necessary to furnishing,
10 supplying, or selling gas.

11 (vii) Any purchase by a purchaser if the supplier
12 is prohibited by federal or State constitution, treaty,
13 convention, statute, or court decision from recovering
14 the related tax liability from such purchaser.

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

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

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

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

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

31 Section 5-10. Imposition of tax. Beginning October 1,
32 2003, a tax is imposed upon the privilege of using in this
33 State gas obtained in a purchase of out-of-state gas at the

1 rate of 2.4 cents per therm or 5% of the purchase price for
2 the billing period, whichever is the lower rate. Such tax
3 rate shall be referred to as the "self-assessing purchaser
4 tax rate." Beginning with bills issued by delivering
5 suppliers on and after October 1, 2003, purchasers may elect
6 an alternative tax rate of 2.4 cents per therm to be paid
7 under the provisions of Section 5-15 of this Law to a
8 delivering supplier maintaining a place of business in this
9 State. Such tax rate shall be referred to as the "alternate
10 tax rate". The tax imposed under this Section shall not apply
11 to gas used by business enterprises certified under Section
12 9-222.1 of the Public Utilities Act, as amended, to the
13 extent of such exemption and during the period of time
14 specified by the Department of Commerce and Community
15 Affairs.

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

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

8 A purchaser registering as a self-assessing purchaser may
9 not revoke such registration for at least one year
10 thereafter. Application for a certificate of registration as
11 a self-assessing purchaser shall be made to the Department
12 upon forms furnished by the Department and shall contain any
13 reasonable information that the Department may require. The
14 self-assessing purchaser shall be required to disclose the
15 name of the delivering supplier or suppliers who are
16 delivering the gas upon which the self-assessing purchaser
17 will be paying tax directly to the Department.

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

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

1 month, stating the following:

2 (1) His or her name and principal address.

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

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

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

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

12 In making such return, the self-assessing purchaser may
13 use any reasonable method to derive reportable "therms" and
14 "purchase price" from his or her billing and payment records.

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

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

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

34 Notwithstanding any other provision in this Law

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

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

1 previously due.

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

7 Section 5-30. Registration of delivering suppliers. A
8 delivering supplier maintaining a place of business in this
9 State who engages in the delivery of gas in this State shall
10 register with the Department. A delivering supplier, if
11 required to register under the Gas Revenue Tax Act, need not
12 obtain an additional certificate of registration under this
13 Law, but shall be deemed to be sufficiently registered by
14 virtue of his being registered under the Gas Revenue Tax Act.
15 Application for a certificate of registration shall be made
16 to the Department upon forms furnished by the Department and
17 shall contain any reasonable information the Department may
18 require. Upon receipt of the application for a certificate of
19 registration in proper form, the Department shall issue to
20 the applicant a certificate of registration. The Department
21 may deny a certificate of registration to any applicant if
22 such applicant is in default for moneys due under this Law.
23 Any person aggrieved by any decision of the Department under
24 this Section may, within 20 days after notice of such
25 decision, protest and request a hearing, whereupon the
26 Department shall give notice to such person of the time and
27 place fixed for such hearing and shall hold a hearing in
28 conformity with the provisions of this Law and then issue its
29 final administrative decision in the matter to such person.
30 In the absence of such a protest within 20 days, the
31 Department's decision shall become final without any further
32 determination being made or notice given.

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

7 (1) His or her name.

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

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

16 (4) Amount of tax computed upon item 3.

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

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

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

34 If the average monthly liability to the Department of the

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

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

8 Notwithstanding any other provision in this Law
9 concerning the time within which a delivering supplier may
10 file his or her return, in the case of any delivering
11 supplier who ceases to engage in a kind of business that
12 makes him or her responsible for filing returns under this
13 Law, such delivering supplier shall file a final return under
14 this Law with the Department not more than one month after
15 discontinuing such business.

16 Each delivering supplier whose average monthly liability
17 to the Department under this Law was \$10,000 or more during
18 the preceding calendar year, excluding the month of highest
19 liability and the month of lowest liability in such calendar
20 year, and who is not operated by a unit of local government,
21 shall make estimated payments to the Department on or before
22 the 7th, 15th, 22nd, and last day of the month during which
23 tax liability to the Department is incurred in an amount not
24 less than the lower of either 22.5% of such person's actual
25 tax liability for the month or 25% of such person's actual
26 tax liability for the same calendar month of the preceding
27 year. The amount of such quarter-monthly payments shall be
28 credited against the final tax liability of such person's
29 return for that month. Any outstanding credit, approved by
30 the Department, arising from such person's overpayment of his
31 or her final tax liability for any month may be applied to
32 reduce the amount of any subsequent quarter-monthly payment
33 or credited against the final tax liability of such person's
34 return for any subsequent month. If any quarter-monthly

1 payment is not paid at the time or in the amount required by
2 this Section, such person shall be liable for penalty and
3 interest on the difference between the minimum amount due as
4 a payment and the amount of such payment actually and timely
5 paid, except insofar as such person has previously made
6 payments for that month to the Department in excess of the
7 minimum payments previously due.

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

13 Section 5-40. Incorporation of applicable Sections. The
14 Department shall have full power to administer and enforce
15 this Law; to collect all taxes, penalties, and interest due
16 hereunder; to dispose of taxes, penalties, and interest so
17 collected in the manner hereinafter provided; and to
18 determine all rights to credit memoranda or refunds arising
19 on account of the erroneous payment of tax, penalty, or
20 interest hereunder. In the administration of, and compliance
21 with, this Section, the Department and persons who are
22 subject to this Section shall have the same rights, remedies,
23 privileges, immunities, powers, and duties, be subject to the
24 same conditions, restrictions, limitations, penalties, and
25 definitions of terms, and employ the same modes of procedure,
26 as are prescribed in Sections 2, 4, 5, 6, 7, 9 (except
27 provisions relating to transaction returns and except that
28 the due date for returns shall be the 15th day of each month
29 for the preceding calendar month), 10, 11, 12, 12a, 12b, 13,
30 14, 15, 18, 19, 20, 21, and 22 of the Use Tax Act, and are
31 not inconsistent with this Section, as fully as if those
32 provisions were set forth herein.

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

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

10 (1) Gas used by business enterprises certified
11 under Section 9-222.1 of the Public Utilities Act, to the
12 extent of such exemptions and during the period of time
13 specified by the Department of Commerce and Community
14 Affairs;

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

32 (3) Gas used in the production of electric energy.
33 This exemption does not include gas used in the general

1 maintenance or heating of an electric energy production
2 facility or other structure;

3 (4) Gas used in a petroleum refinery operation;

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

7 (6) Gas that becomes a component part of
8 nitrogen-based fertilizer products for resale.

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

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

13 (35 ILCS 615/1) (from Ch. 120, par. 467.16)

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

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

27 (ii) any charge for a dishonored check;

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

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

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

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

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

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

13 (ix) any charges added to customers' bills pursuant
14 to the provisions of Section 9-221 or Section 9-222 of
15 the Public Utilities Act, as amended, or any charges
16 added to customers' bills by taxpayers who are not
17 subject to rate regulation by the Illinois Commerce
18 Commission for the purpose of recovering any of the tax
19 liabilities or other amounts specified in such provisions
20 of such Act; and

21 (x) prior to October 1, 2003, any charge for gas or
22 gas services to a customer who acquired contractual
23 rights for the direct purchase of gas or gas services
24 originating from an out-of-state supplier or source on or
25 before March 1, 1995, except for those charges solely
26 related to the local distribution of gas by a public
27 utility. This exemption includes any charge for gas or
28 gas service, except for those charges solely related to
29 the local distribution of gas by a public utility, to a
30 customer who maintained an account with a public utility
31 (as defined in Section 3-105 of the Public Utilities Act)
32 for the transportation of customer-owned gas on or before
33 March 1, 1995. The provisions of this amendatory Act of
34 1997 are intended to clarify, rather than change,

1 existing law as to the meaning and scope of this
2 exemption. This exemption (x) expires on September 30,
3 2003.

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

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

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

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

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

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

24 "Invested capital" means that amount equal to (i) the
25 average of the balances at the beginning and end of each
26 taxable period of the taxpayer's total stockholder's equity
27 and total long-term debt, less investments in and advances to
28 all corporations, as set forth on the balance sheets included
29 in the taxpayer's annual report to the Illinois Commerce
30 Commission for the taxable period; (ii) multiplied by a
31 fraction determined under Sections 301 and 304(a) of the
32 "Illinois Income Tax Act" and reported on the Illinois income
33 tax return for the taxable period ending in or with the
34 taxable period in question. However, notwithstanding the

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

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

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

20 (35 ILCS 615/2) (from Ch. 120, par. 467.17)

21 Sec. 2. A tax is imposed upon persons engaged in the
22 business of distributing, supplying, furnishing or selling
23 gas to persons for use or consumption and not for resale at
24 the rate of 2.4 cents per therm of all gas which is so
25 distributed, supplied, furnished, sold or transported to or
26 for each customer in the course of such business, or 5% of
27 the gross receipts received from each customer from such
28 business, whichever is the lower rate as applied to each
29 customer for that customer's billing period, provided that
30 any change in rate imposed by this amendatory Act of 1985
31 shall become effective only with bills having a meter reading
32 date on or after January 1, 1986. However, such taxes are not
33 imposed with respect to any business in interstate commerce,

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

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

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

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

13 Section 5-999. Effective date. This Act takes effect on
14 October 1, 2003."