

2016 First Extraordinary Session

HOUSE BILL NO. 94

BY REPRESENTATIVES MONTOUCET AND SMITH

TAX/SALES-USE-EXEMPT: Provides for the extent of the sales and use tax exemption for business utilities (Item #16)

1 AN ACT

2 To amend and reenact R.S. 47:301(10)(n) and (x) and (13)(m), 305(D)(1)(b) through (d),  
3 (g), and (h), and 305.51(A), to enact R.S. 47:305.72, and to repeal 47:301(3)(j),  
4 (10)(c)(i)(bb), (c)(ii)(aa), (z), and (bb), and 18(l), relative to state sales and use  
5 taxes; to provide with respect to the definitions used for the administration of the  
6 taxes; to provide for an exemption for certain utilities consumed by businesses; to  
7 provide for effectiveness; and to provide for related matters.

8 Be it enacted by the Legislature of Louisiana:

9 Section 1. R.S. 47:301(10)(n) and (x) and (13)(m), 305(D)(1)(b) through (d), (g), and  
10 (h), and 305.51(A) are hereby amended and reenacted and R.S. 47:305.72 is hereby enacted  
11 to read as follows:

12 §301. Definitions

13 As used in this Chapter the following words, terms, and phrases have the  
14 meaning ascribed to them in this Section, unless the context clearly indicates a  
15 different meaning:

16 \* \* \*

17 (10)

18 \* \* \*

19 (n) For purposes of sales and use taxes imposed or levied by ~~the state or any~~  
20 political subdivision thereof, the term "sale at retail" shall not include the sales of

1 pelletized paper waste when purchased for use as combustible fuel by an electric  
 2 utility or in an industrial manufacturing, processing, compounding, reuse, or  
 3 production process, including the generation of electricity or process steam, at a  
 4 fixed location in this state. However, such sale shall not be excluded unless the  
 5 purchaser has signed a certificate stating that the fuel purchased is for the exclusive  
 6 use designated herein. For purposes of this Subparagraph, "pelletized paper waste"  
 7 means pellets produced from discarded waste paper that has been diverted or  
 8 removed from solid waste which is not marketable for recycling and which is wetted,  
 9 extruded, shredded, or formulated into compact pellets of various sizes for use as a  
 10 supplemental fuel in a permitted boiler.

11 \* \* \*

12 (x) For purposes of the sales and use tax imposed by the state or any political  
 13 subdivision whose boundaries are coterminous with those of the state, the terms  
 14 "retail sale" or "sale at retail" shall not include the following:

15 (i) ~~The~~ sale or purchase by a ~~person~~ consumer of any fuel or gas, including  
 16 but not limited to butane and propane for residential use by that consumer.

17 (ii) ~~Beginning July 1, 2008, the sale or purchase by any person of butane and~~  
 18 ~~propane.~~

19 \* \* \*

20 (13)

21 \* \* \*

22 (m) For purposes of the sales and use tax imposed by ~~the state or~~ any  
 23 political subdivision whose boundaries are coterminous with those of the state, the  
 24 "sales price" of electric power or energy, or natural gas for the period beginning July  
 25 1, 2007, and thereafter, sold for use by paper or wood products manufacturing  
 26 facilities shall not include any of such price.

27 \* \* \*

28 §305. Exclusions and exemptions from the tax

29 \* \* \*

1 D.(1)

2 \* \* \*

3 (b) Steam, shall be exempt from state sales and use taxes, except as may  
4 otherwise be provided for in R.S. 47:305.72.

5 (c) Water ~~(not including~~ excluding mineral water or carbonated water or  
6 any water put in bottles, jugs, or containers, ~~all of which are not exempted~~), shall be  
7 exempt from the state sales and use taxes, except as may otherwise be provided for  
8 in RS. 47:305.72.

9 (d) Electric power or energy and any materials or energy sources used to fuel  
10 the generation of electric power for resale or used by an industrial manufacturing  
11 plant for self-consumption or cogeneration shall only be exempt from the sales and  
12 use tax imposed by a political subdivision.

13 \* \* \*

14 (g) Natural gas shall only be exempt from the sales and use tax imposed by  
15 any political subdivision.

16 (h) All energy sources when used for boiler fuel except refinery gas shall  
17 only be exempt from the sales and use tax imposed by a political subdivision.

18 \* \* \*

19 §305.51. Exemption; utilities used by steelworks and blast furnaces

20 A. The sales and use tax imposed ~~by the state of Louisiana or any of its~~ by  
21 a political subdivisions subdivision shall not apply to sales or purchases of utilities  
22 used by steelworks, blast furnaces, coke ovens, or rolling mills with more than one  
23 hundred twenty-five full-time employees, which are classified by the Louisiana  
24 Workforce Commission within Sector 331111 of the North American Industry  
25 Classification System as it existed in 2002. However, this exemption shall not apply  
26 to utilities used in and around the production of coke in oil refineries and the use of  
27 coke in oil refineries and other chemical processes.

28 \* \* \*

1        §305.72. Exclusions and Exemptions; business utilities

2            A. Business utilities include the following:

3            (1) Electric power or energy, or natural gas purchase.

4            (2) Steam.

5            (3) Water, excluding mineral and carbonated water, and any other water  
6 contained in a bottle or other receptacle.

7            (4) Electric power or energy and any materials or energy sources used to fuel  
8 the generation of electric power for resale or used by an industrial manufacturing  
9 plant for self-consumption or cogeneration.

10           (5) Natural gas, including natural gas used in the production of iron in the  
11 process known as "direct reduced iron process".

12           (6) All energy sources including pelletized paper waste used for boiler fuel  
13 except refinery gas or used by paper or wood products manufacturing facilities.

14           (7) Sales of electricity for chlor-alkali manufacturing facilities.

15           (8) Purchases of butane and propane for nonresidential purposes.

16           B. The secretary shall determine the natural gas price based on July first of  
17 each year for the ensuing twelve months based upon the average New York  
18 Mercantile Exchange Price per million BTU per month on the close of business June  
19 thirtieth for the prior twelve months. The portion of the sales price of business  
20 utilities exempted from the imposition of state sales tax will be as follows:

21           (1) If the price of natural gas is at or below four dollars and fifty cents per  
22 million BTU, then one hundred percent of the sales price of business utilities shall  
23 be subject to state sales tax.

24           (2) If the price of natural gas is above four dollars and fifty cents per million  
25 BTU, and at or below five dollars and fifty cents per million BTU, then eighty  
26 percent of the sales price of business utilities shall be subject to the imposition of  
27 state sales tax.

28           (3) If the price of natural gas is above five dollars and fifty cents per million  
29 BTU, and at or below six dollars and fifty cents per million BTU, then sixty percent

1 of the sales price of business utilities shall be subject to the imposition of state sales  
2 tax.

3 (4) If the price of natural gas is above six dollars and fifty cents per million  
4 BTU, and at or below seven dollars per million BTU, then forty percent of the sales  
5 price of business utilities shall be subject to the imposition of state sales tax.

6 (5) If the price of natural gas is above seven dollars per million BTU, then  
7 twenty percent of the sales price of business utilities shall be subject to the  
8 imposition of state sales tax.

9 C. The provisions of this Section shall be applicable for all taxable periods  
10 beginning on and after April 1, 2016.

11 Section 2. R.S. 47:301(3)(j), (10)(c)(i)(bb), (c)(ii)(aa), (z), and (bb), and 18(l) are  
12 hereby repealed in their entirety.

13 Section 3. The provisions of this Act shall be applicable for all taxable periods  
14 beginning on and after April 1, 2016.

15 Section 4. This Act shall become effective upon signature by the governor or, if not  
16 signed by the governor, upon expiration of the time for bills to become law without signature  
17 by the governor, as provided by Article III, Section 18 of the Constitution of Louisiana. If  
18 vetoed by the governor and subsequently approved by the legislature, this Act shall become  
19 effective on the day following such approval.

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#### DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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HB 94 Original

2016 First Extraordinary Session

Montoucet

**Abstract:** Provides for the extent of state sales and use taxes on business utilities.

Present law imposes a 4% state sales tax on the sale, use, consumption, and storage of tangible personal property.

Present law excludes the following property by definition from the tax base:

- (1) Sales of electricity for chlor-alkali manufacturing processes.
- (2) Pelletized paper waste used as combustible fuel by manufacturers.

- (3) Butane and propane.
- (4) Steam.
- (5) Water, other than mineral water, carbonated water, or water within a bottle or other receptacle.
- (6) Electric power or energy and any materials or energy sources used to fuel the generation of electric power for resale or used by an industrial manufacturing plant for self-consumption or cogeneration.
- (7) Natural gas.
- (8) All energy sources when used for boiler fuel, other than refinery gas.
- (9) Utilities used by steelworks, blast furnaces, coke ovens, or rolling mills.

Proposed law removes the exclusions listed above from the definitions for sales and use tax, and instead re-establishes the special tax treatment as a tax exemption for the same property.

Proposed law specifies that the exclusion for butane and propane is applicable to residential use only.

Proposed law provides for the extent of the new exemption based on the Natural Gas Spot Price at Henry Hub (nominal dollars per million BTU) adopted by the Energy Information Administration which is published in the Annual Energy Outlook report. For purchases of business utilities on or after April 1, 2016, through Dec. 31, 2016, the price of natural gas used for purposes of the exemption shall be the price published in the Feb. 2016 edition of the Annual Energy Outlook report. For purchases of business utilities on and after Jan. 1, 2017, and for the ensuing 12 calendar months the price shall be the price published in the Annual Energy Outlook report.

Proposed law establishes the following price thresholds for the extent of the exemption:

- (1) No exemption if the price of natural gas is at or below \$4.50 per million BTU.
- (2) If the price of natural gas is above \$4.50 per million BTU and at or below \$5.50 per million BTU, then 80% of the sales price of business utilities shall be subject to state sales tax.
- (3) If the price of natural gas is above \$5.50 per million BTU and at or below \$6.50 per million BTU, then 60% of the sales price of business utilities shall be subject to state sales tax.
- (4) If the price of natural gas is above \$6.50 per million BTU and at or below \$7 per million BTU, then 40% of the sales price of business utilities shall be subject to state sales tax.
- (5) If the price of natural gas is above \$7 per million BTU, then 20% of the sales price of business utilities shall be subject to the state sales tax.

Proposed law applicable for all taxable periods beginning on and after April 1, 2016.

Effective upon signature of governor or lapse of time for gubernatorial action.

(Amends R.S. 47:301(10)(n) and (x) and (13)(m), 305(D)(1)(b) through (d), (g), and (h), and 305.51(A); Adds R.S. 47:305.72; Repeals R.S. 47:301(3)(j), (10)(c)(i)(bb), (c)(ii)(aa), (z), and (bb), and 18(l))