PUBLIC UTILITY TAX

- Statutory Provision

  Title 30, Delaware Code, Chapters 33, 41 and 55.

- Collection/Administrative Agency

  The Department of Finance, Division of Revenue, administers this tax.

- General Liability

  Firms that provide steam, gas, electric, telephone, telegraph, cable television services are subject to provisions in the public utility tax code. Except for cable television services, receipts from sales to residential users are exempt from this tax. A separate license tax is based on gross receipts of businesses that produce steam, gas, or electricity; and a another license tax is imposed on the owners and operators of telephone and telegraph lines, based on the length and total miles of line, wire and/or number of transmitters within the State of Delaware. The tax does not apply to firms that utilize radio or satellite signals to provide services similar to those subject to the tax.

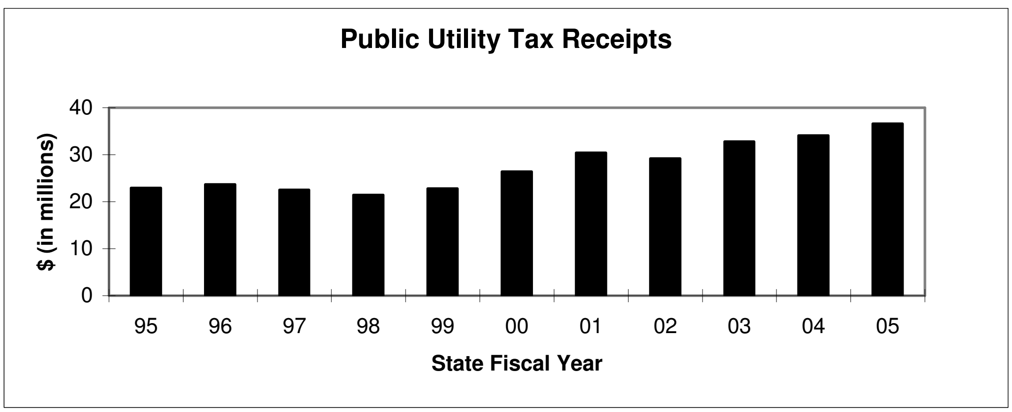
- Tax Rates

UTILITY	TAX RATE	PAYMENT DATES
Electricity Distribution	4.25% of gross receipts from non-residential users. 2% of gross receipts from manufacturers, food processors and agribusinesses. Sales to automobile and certain other types of manufacturers are exempt.	Returns and payment due on or before the 20th day after the end of each calendar month.
Gas Distribution	4.25% of gross receipts from non-residential users. 2% of gross receipts from manufacturers, food processors and agribusinesses. Sales to automobile are exempt.	Returns and payment due on or before the 20th day after the end of each calendar month.
Intrastate Telephone & Telegraph Services	4.25% of gross receipts from non-residential users	Returns and payment due on or before the 20th day after the end of each calendar month.
Telegraph	\$ 0.60 per mile of the longest wire in DE \$ 0.30 per mile of the next longest wire in DE \$ 0.20 per mile for every other wire owned, maintained or operated within DE.	Returns and reporting the number of miles of wire and transmitters are due June 1st and tax payments are due by June 15th.
Telephone	\$ 0.60 per mile of the longest wire in DE \$ 0.30 per mile of the next longest wire in DE	Returns and reporting the number of miles of wire and transmitters are due June 1st

UTILITY	TAX RATE	PAYMENT DATES
	$ 0.20 per mile for every other wire owned, maintained or operated within DE. $ 0.25 for each telephone transmitter within DE	and tax payments are due by June 15th.
Cable Television Distribution	2.125% of gross receipts	Returns and payment due on or before the 20th day after the end of each calendar month.
Electricity and Gas Manufacturing and Production	0.1 % (one mill) on each dollar of gross receipts from the production of gas or electricity. Municipalities are exempt.	Returns and payments are due on the first Monday of May.

- Tax Receipts (millions of dollars)

Fiscal Year:	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Total ($):	22.9	23.7	22.5	21.4	22.8	26.4	30.4	29.2	32.8	34.1	36.6



- Tax Preferences

The following items have been identified as public utility tax preferences within the Delaware Code:

4.01 Public Utility Exemption for Corporations Reorganizing Under Provisions of the Bankruptcy Code

1. Statutory Provision
   Title 30, Delaware Code, Chapter 55, §5506(f)

2. Description
The public utility tax on gas and electricity is exempted for 36 consecutive months for any corporation which is a debtor in possession in a reorganization proceeding under Chapter 11 of the United States Bankruptcy Code.

3. Estimated Revenue Loss
FY 05: Unknown, but likely to be negligible [1]
FY 06: Unknown, but likely to be negligible

4. Assessment
This exemption is intended to assist ailing Delaware firms that are deemed to be extremely important to the state economy. This exemption could result in a significant revenue loss if given to one or more firms that are a large electricity consumer. No firms are known to have claimed this exemption over the course of the last several years, and none is expected to do so in the near future.

5. Inadvertent Effects
None noted.

4.02 Exemption of Electricity Used in Certain Manufacturing Processes

1. Statutory Provision
Title 30, Delaware Code, Chapter 55, §5506(g)

2. Description
Gross receipts from electricity used in electrolytic (decomposition of a chemical compounds using an electrical current), electroarcthermal (steel production using electric arcs for heating), or air separation manufacturing processes (separation of air into its component parts by electric charge) are exempt from the public utility tax.

3. Estimated Revenue Loss
FY 05: $620,000
FY 06: $600,000 - $700,000

4. Assessment
This preference attempts to strengthen the competitive position of certain Delaware manufacturers relative to neighboring states by assisting specific

[1] Defined as less than $10,000.

types of firms that use large amounts of electricity in production. How successfully this tax preference meets its objective is unknown. Currently, three firms in Delaware qualify for this exemption.

5. Inadvertent effects
None noted.

4.03 Refunds of Public Utility Tax to Firms That Qualify for the New Facilities Business Credit Program

1. Statutory Provision
Title 30, Delaware Code, Chapter 55, §5507

2. Description
Any firm that is eligible for tax credits under the Blue Collar Jobs Act (as defined under Title 30, Section 2011(a)) is also entitled to receive for five years a rebate of 50 percent of the public utility tax that it owes on the operation of new or expanded enterprises.

3. Estimated Revenue Loss [2]
FY 05: less than $50,000
FY 06: less than $50,000

4. Assessment
This program was implemented as a component of the Blue Collar Jobs Act in order to enhance the business climate for the State's manufacturers. For a full discussion, please refer to Item 2.08, 2.09, 2.11 and 2.12 in the corporate income tax section above.

5. Inadvertent effects
None noted.

4.04 Rate Reduction for Electricity Used by Manufacturing, Agribusiness and Food Processing Firms

1. Statutory Provision
Title 30, Delaware Code, Chapter 55, §5502(b)(2)

[2] This estimate can vary significantly from year-to-year as claims for refunds from a handful of major energy-using firms can widely change the total amount of refunds.

2. Description

This provision lowers the tax rate for all manufacturers in the State who do not qualify for the electrochemical manufacturing exemption discussed above (see Item 4.02). Effective September 30, 1994, the public utility tax on electricity sold to Delaware manufacturers was reduced to 2 percent, down from the previous 4.25 percent rate. The General Assembly extended this preferential rate to electricity used by agribusinesses and food processors, effective January 1, 1995.

3. Estimated Revenue Loss

FY 05: $1.4 million
FY 06: $1.2 million - $1.5 million

4. Assessment

This preference attempts to strengthen the competitive position of Delaware's manufacturers relative to neighboring states by assisting firms that use large amounts of electricity in production. How successful this tax preference is in its purpose is unknown. For firms using significant amounts of electricity in the production process, overall power rates may be much more important than the 2.25 percentage point reduction provided by this provision in determining if the State's utility rates are affordable and competitive. While this provision provides a 53 percent reduction in rates (4.25 - 2.0% = 2.25%, 2.25% / 4.25% = 53%), the savings in terms of overall cost for electricity is small (only 2.16 percent). For example, consider a firm that spends $10,000 annually on electricity. The savings provided by this provision are calculated as follows:

Cost Savings From Utility Rate Reduction

Amount spent on electricity (before taxes):	**$10,000**	
Amount spent on electricity under 4.25% rate:	**$10,425**	($10,000 * 1.0425)
Amount spent on electricity under 2.0% rate:	**$10,200**	($10,000 * 1.02)
Difference:	**$225**	($10,425 - $10,200)
Percent Reduction:	**2.16%**	($225 / $10,425)

A flaw of broad, industry-based preferences such as this is that firms obtain tax relief solely because they fall under a definition of "manufacturing." Such a criterion misses the point that firms in other industries may actually be larger power users, or in more competitively precarious positions, but nonetheless do not meet the statutory definition.

5. Inadvertent effects
Enacting a public utility tax preference for a single sector of the economy may, in the long-run, cause firms in that industry to lag in the introduction of more energy-efficient production technologies. Although, given the relatively small benefit provided by this preference, this outcome seems unlikely.

Additionally, providing a preference for firms in one sector of the economy may create an incentive for other firms to construe their activities in such a way that they meet the legal requirements for eligibility. For some firms, non-substantive changes to their activities and/or accounting practices can create a basis for claiming entitlement to benefits. To the extent that they are successful, the cost of this provision is increased with no concomitant increase in benefits. Such preferences may also increase administrative costs in enforcing narrowly defined eligibility standards.

4.05 Rate Reduction for Gas Used by Manufacturing Firms

1. Statutory Provision
Title 30, Delaware Code, Section §5502(b)(2)

2. Description
This provision reduces the public utility tax rate on receipts from natural gas consumed by manufacturers, agribusinesses and food processing firms to 2.0% effective January 1, 1998.

3. Estimated Revenue Loss
FY 05: $190,000
FY 06: $200,000 - $300,000

4. Assessment
Generally speaking, the same assessment of the rate reduction for receipts from electricity consumed by manufacturers (see item 4.04) can be applied to this preference. However, an evaluation of this preference must also take into account that a rate preference for electricity consumed by manufacturers existed for several years prior to the enactment of this provision. As such, a rate differential existed between electricity and gas used in manufacturing

processes. To the extent that these inputs could be substituted, manufacturers had a tax induced incentive to favor electricity in the production of goods over natural gas. By eliminating the rate differential, the economic decisions of manufacturers for inputs in the production process will be less distorted by tax code provisions.

5. Inadvertent effects
See item 4.04.

4.06 Exemption of Electricity Used By Automobile Manufacturers

1. Statutory Provision
Title 30, Delaware Code, Chapter 55, §5506(j)

2. Description
This provision exempts automobile manufacturers from paying the public utility tax on electricity that they use in vehicle production.

3. Estimated Revenue Loss
FY 05: $200,000
FY 06: $200,000 - $250,000

4. Assessment
Noting the large "multiplier effect" that automobile plants have on Delaware's economy, the General Assembly added this provision in the spring of 1995. Automobile Manufacturers are critical Delaware employers. As the relative size of the manufacturing industry shrinks, lower tax rates offer an cost incentive for plants to remain in Delaware. How successful this tax preference is in achieving its purpose is, however, unknown. While this provision likely provides only a minor benefit to auto manufacturers, it demonstrates a visible commitment by the state to this sector of the economy.

A flaw of broad, industry-based exemptions like this one is that firms pay no public utility tax solely because they make automobiles. Such a criterion does not recognize that firms in other industries may actually be larger power users, or in more competitively precarious positions, but nonetheless do not qualify simply because they are not favored industries.

5. Inadvertent effects
Enacting a public utility tax preference for a single sector of the economy may, in the long-run, cause firms in that industry to lag in the introduction of more energy-efficient production technologies. Given the relatively small benefit provided by this preference, however, this outcome seems unlikely.

4.07 Exemption of Gas Used By Automobile Manufacturers

1. Statutory Provision
Title 30, Delaware Code, Chapter 55, §5506(j)

2. Description
This provision exempts automobile manufacturers from paying the public utility tax on gas that they use in vehicle production.

3. Estimated Revenue Loss[3] [4]
FY 05: $50,000
FY 06: $50,000 - $100,000

4. Assessment
Generally speaking, the same assessment of the exemption for receipts from electricity consumed by automobile manufacturers (see item 4.06) can be applied to this preference. However, an evaluation of this preference must also take into account that an exemption for electricity consumed by automobile manufacturers existed for several years prior to the enactment of this provision. As such, a rate differential existed between electricity and gas used in this manufacturing process. To the extent that these inputs could be substituted, manufacturers had a tax induced incentive to favor electricity in the production of automobiles over natural gas. By eliminating the rate differential, the economic decisions of automobile manufacturers for inputs in the production process will be less distorted by tax code provisions.

5. Inadvertent effects
See Item 4.06

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[3] Utilities are collection agents and as such, the Department of Finance relies on the utilities to provide background data for this estimate. Several of the utilities were unable to provide DOF with detailed information with respect to this preference.

[4] The fiscal impact estimate for this item represents the cost difference between the complete exemption for automobile manufacturers and the reduced rate for other manufacturers (see Item 4.05). In the absence of this preference, receipts from automobile manufacturers would be subject to a rate of 2%.

4.08 Rate Reduction for the Provision of Cable Television Services

1. Statutory Provision
   Title 30, Delaware Code, Chapter 55, §5502(b)(3)

2. Description
   This preference imposes a rate of 2.125% (as opposed to 4.25% for other services defined as public utilities[5]) on the provision of cable television communications, commodities and services. The legal incidence of this tax falls on entities distributing cable television services within the State of Delaware.

3. Estimated Revenue Loss
   FY 05: $4.0 million
   FY 06: $4.3 million

4. Assessment
   Although it can be debated as to whether this provision is appropriately included in this report as a tax preference, it is treated as such because it taxes one type of public utility service (cable television) differently from others, and it meets the definition of a tax preference found in 8305(6) of Title 29.[6] Moreover, as the focus of this report is meant to be as inclusive as possible, an argument can be made to include this item.

   The goal of this preference is to reduce the tax differential between the provision of cable television and other television services not subject to the public utility tax (e.g., Direct Broadcast Satellite [DBS] services). Firms providing traditional cable television services in Delaware are subject to the public utility tax, while satellite and wireless cable providers are not.

   In recent years, satellite television services have been becoming increasingly popular. To the extent that household have increased their consumption of DBS services based on tax cost considerations, this preference should help level the playing field and mitigate any inefficiency caused by the rate

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[5] See Title 30, Delaware Code, §5501(1) for a listing of commodities and services defined as "public utilities."

[6] The definition of a "tax preference" found in §8305(6) describes a preference as a tax code provision that (among other things) "...exempts, in whole or in part, certain persons, income, goods, *services* or property from the impact of established taxes..." The federal definition speaks more directly to the issue by defining a tax preference as "a preferential rate of tax."

differential. It is unknown, however, the extent to which other features of DBS services (e.g., improved sound and picture quality, larger number of available channels) may influence households' consumption of these services.

5. Inadvertent effects
   None noted.

4.09 Exemption for Electronic Pager Service

1. Statutory Provision
   Title 30, Delaware Code, Chapter 55, §5501(6)

2. Description
   This provision excludes electronic pager service from the public utility tax.

3. Estimated Revenue Loss
   FY 05: Unknown
   FY 06: Unknown

4. Assessment
   This exemption differentiates electronic pager service from other types of telecommunications service. While traditional electronic pagers had limited utility (providing little more than a return telephone number), advances in telecommunications technology have greatly enhanced the features available through pagers. For example, electronic pagers now provide a variety of information beyond a return number, including written messages from the paging entity. In addition, cellular telephone technology has advanced significantly, providing additional features (including paging features) to cell phones.

   In fact, growth in cellular phone service has severely damaged the traditional paging service providers. In recent years, dozens of paging service companies have merged and three of the nations ten largest have declared bankruptcy.[7]

   As this technology advances, and the lines separating the different types of telecommunications technologies is further blurred, policy makers and tax administrators need to be aware of the issues that can be created by tax code provisions. For example, when confronted with "bundled services" (e.g., voice, paging, and internet access) delivered via a cellular phone, officials

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[7] Wow-com.com: News Daily, "Pager Industry in Crisis as Customers Turn to Cellular Phones," April 24, 2001.

attempting to administer this exemption may need to wrestle with the question of what portion of the cellular phone bill is derived as a result of the paging service. If providers find that the additional record-keeping needed to break out the pager component of a "bundled service" bill costs more than the potential tax saving permitted by this provision, then one would expect that few firms would use this preference and its fiscal impact would be minimal.

5. Inadvertent effects
None Noted.