

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 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. 2.0% 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. 2.0% of gross receipts from manufacturers, food processors and agribusinesses. Sales to automobile manufacturers are exempt.	Returns and payment due on or before the 20th day after the end of each calendar month.
Intrastate Telephone & Telegraph Services	5.0% 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	Returns and reporting the number of miles

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UTILITY	TAX RATE	PAYMENT DATES
	\$ 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. \$ 0.25 for each telephone transmitter within DE	of wire and transmitters are due June 1st and tax payments are due by June 15 th .
Cable and Satellite 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:	<u>2001</u>	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
<u>Total (\$):</u>	30.4	29.2	32.8	34.1	36.5	39.4	46.2	48.1	55.9	56.7	57.5

▪ 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 11: less than \$50,000
FY 12: less than \$50,000
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 11:\$630,000
FY 12:\$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 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 New Job Creation Credits (as defined under Title 30, Section 2011(a)) (formerly, the Blue Collar Jobs credits) 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 Loss¹
FY 11: less than \$50,000
FY 12: 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 2.05, 2.06, 2.08 and 2.09 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. 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). The public utility tax on electricity sold to Delaware manufacturers is 2 percent, as opposed to the general 4.25 percent rate.
3. Estimated Revenue Loss
FY 11: \$700,000
FY 12: \$650,000 - \$750,000
4. Assessment

¹ 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.

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%. The general rate is 4.25%
3. Estimated Revenue Loss
FY 11: \$120,000
FY 12: \$100,000 - \$200,000
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 11: less than \$50,000
FY 12: less than \$50,000

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 were then critical Delaware employers. 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.

Ultimately, in the wake of the closure of the states two auto plants, relative to the powerful economic and operational challenges that faced Delaware's auto industry, this preference's minor incentive proved essentially irrelevant. Fisker Automotive, an electric-hybrid start-up automaker has taken over the former GM plant. Production is slated to begin towards during FY2013, and, as a result has little or no impact on the revenue loss in the periods (FY2011-12) covered by this report.

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
FY 11: less than \$25,000
FY 12: less than \$25,000

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

4.08 Rate Reduction for the Provision of Cable and Satellite 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 5.00% for other telecommunication services) on the provision of cable and satellite 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 11: \$5.6 million
FY 12: \$5.5 to \$6.0 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 essentially one type of public utility service (cable and satellite television) differently from others, and it meets the definition of a tax preference found

in 8305(6) of Title 29.² 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 appears to be the provision of tax relief to residential consumers. Unlike most other elements of the public utility tax, which are limited to nonresidential services, the tax on cable and satellite services applies to residential and nonresidential consumption. By simply applying a lower tax rate to these services, this provision achieves this goal.

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 11: Unknown
FY 12: Unknown
4. Assessment
This exemption differentiates electronic pager service from other types of telecommunications service. Traditional electronic pagers had limited utility (providing little more than a return telephone number) and advances in telecommunications technology have essentially rendered pagers obsolete. The advent of “smart phones” which provide an even wider array of services, it is increasingly clear that “stand-alone” pager service is fast becoming a technological anachronism calling into question the policy rationale for this preference.
5. Inadvertent effects
None Noted.

² 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.”