

ORDINANCE NO. 2003- 80

AN ORDINANCE OF THE BOARD OF COUNTY COMMISSIONERS OF CLAY COUNTY, FLORIDA; LEVYING WITHIN THE UNINCORPORATED AREA OF THE COUNTY PURSUANT TO SECTION 166.231, FLORIDA STATUTES, A PUBLIC SERVICE TAX ON THE PURCHASE OF ELECTRICITY, METERED OR BOTTLED GAS (NATURAL GAS, LIQUEFIED PETROLEUM GAS AND MANUFACTURED GAS), AND FUEL OIL; PROVIDING A RATE OF SUCH TAX THAT DOES NOT EXCEED FOUR PERCENT ON THE PURCHASE OF ELECTRICITY AND METERED OR BOTTLE GAS; PROVIDING A RATE OF SUCH TAX ON THE PURCHASE OF FUEL OIL THAT DOES NOT EXCEED ONE AND SIX TENTHS CENTS PER GALLON; PROVIDING FOR EXEMPTIONS FROM THE TAX; PROVIDING FOR THE COLLECTION OF SUCH TAX BY THE SELLER OF THE TAXABLE ITEM OR SERVICE FROM THE PURCHASER FOR THE PURCHASE; PROVIDING THAT THE TAX SHALL BE COMPUTED ON THE AGGREGATE AMOUNT OF SALES; PROVIDING FOR ADMINISTRATION OF THE TAX; PROVIDING FOR EXTENSIONS FROM PAYMENT OF THE TAX; PROVIDING THAT THE TAX SHALL BE PAID BY THE PURCHASER TO THE SELLER FOR THE BENEFIT OF THE COUNTY; PROVIDING FOR THE MANNER OF COLLECTION AND REMITTANCE TO THE COUNTY BY THE SELLER; PROVIDING FOR THE KEEPING OF RECORDS BY THE SELLER AND FOR THE INSPECTION OF SUCH RECORDS AND AUDIT BY THE COUNTY; PROVIDING INTEREST AND PENALTIES FOR LATE PAYMENTS AND OTHER VIOLATIONS OF THE ORDINANCE; PROVIDING A PROCEDURE FOR REFUNDS AND CREDITS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICT AND PROVIDING AN EFFECTIVE DATE.

DEPARTMENT OF STATE
TALLAHASSEE, FLORIDA

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Recitals

WHEREAS, pursuant to Article VIII, Section 1(g), and Article VII, Section 9(a), of the Constitution of the State of Florida, the Clay County Home Rule Charter, and the decision of the Florida Supreme Court in McLeod v. Orange County, 645 So. 2d 411 (Fla. 1994), the Board of County Commissioners (the "Board") of Clay County, Florida (the "County"), is authorized to levy and impose a Public Service Utility Tax pursuant to Section 166.231, Florida Statutes, as amended; and,

WHEREAS, by the adoption of this Ordinance the Board intends to levy and impose the Public Service Utility Tax pursuant to Section 166.231, Florida Statutes, as amended, in the manner provided herein.

Be It Ordained by the Board of County Commissioners of Clay County:

Section 1. Chapter 18.3 of the Clay County Code is hereby amended by the creation of a new Article VI thereof, to be entitled "Public Service Utility Tax", to be inserted immediately following Article V of said Code, and to read in its entirety as follows:

Article VI. Public Service Utility Tax

Section 18.3-200. Title. This article shall be known and may be cited as the Clay County Public Service Utility Tax Ordinance.

Section 18.3-201. Definitions.

(a) "Applicable Records" means records kept in the ordinary course of business which establish the collection and remittance of any Tax due and payable under this article.

(b) "Board" means the Board of County Commissioners of the County.

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- (c) "Charter" means the Clay County Home Rule Charter.
- (d) "County" means Clay County, Florida.
- (e) "County Manager" means the County Manager of the County under the Charter, or his or her designee.
- (f) "Department" means the Florida Department of Revenue or its designated agent.
- (g) "Effective Date" with respect to any levy, repeal of a levy, or update to a list required under this article, means the effective date of the related obligation or change in the obligation of Sellers to collect the Tax; however, with respect to taxable service that is regularly billed on a monthly cycle basis, each levy, repeal, or update applies to any bill dated on or after the effective date of such event.
- (h) "Electronic Transfer" means the use of the Automated Clearing House (the "ACH"), or other Electronic Transfer system approved on a case by case basis, to send the Tax collected directly from the Seller's bank to the bank so designated to receive such transfer.
- (i) "Fuel Adjustment Charge" means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.
- (j) "Levy" means the levy and imposition of a tax under Section 166.231, Florida Statutes, and all changes in the rate of a tax levied and imposed under that section.
- (k) "Overpayment" means and includes all Remittances to the County

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of Tax under this article, interest or penalty that were not due to the County.

(l) "Person" means any natural Person or any corporation, limited liability corporation, professional association, partnership, limited partnership, joint venture or any other artificial or non-natural entity.

(m) "Purchase" means the purchase of a utility service by a Person who will consume the same within the unincorporated area of the County.

(n) "Remit", "Remittance" and "Remitting", for purposes of the Tax imposed by this article, means the sending by the Seller and the receipt by the County of all Taxes levied and collected pursuant to this article.

(o) "Seller" means a Person who sells a service that is subject to a Levy.

(p) "Tax" means the Public Service Utility Tax levied under this article.

Section 18.3-202. Tax Imposed; Rates; Exemption for Fuel Adjustment Charge.

(a) There is hereby imposed and levied by the County on each Purchase of electricity and metered or bottled gas (natural, liquefied petroleum gas or manufactured), in the unincorporated area of the County a Tax in the amount of four percent of the payments received by the Seller of the service from the purchaser for the Purchase of the service. The Tax hereby imposed shall not be applied against a Fuel Adjustment Charge, if the charge is separately stated on each bill rendered by the Seller to the purchaser for the Purchase of a utility service.

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(b) There is hereby imposed and levied by the County on each Purchase of fuel oil a Tax in the amount of one and six tenths cents per gallon.

(c) In every case, the Tax shall be collected from the purchaser of the service and paid by the purchaser for the use of the County to the Seller of the service at the time of the purchaser's paying the charge therefor to the Seller. The Tax shall be collected on all payments received by the Seller in payment of bills, statements or invoices rendered by the Seller to the purchaser on or after January 1, 2004.

Section 18.3-203. Exemptions.

(a) The following are exempt from the Tax levied and imposed by this article:

(1) Purchases by the United States government, the State of Florida and all counties, school districts, and municipalities of the state, and by public bodies exempted by general law or court order. Governmental bodies which sell or resell taxable service to nonexempt end users must collect and Remit the Tax.

(2) A Purchase by a recognized church in the State of Florida for use exclusively for church purposes.

(3) The Purchase of natural gas, fuel oil and manufactured gas by a public or private utility, either for resale or for use as fuel in the generation of electricity.

(4) The Purchase of fuel oil and kerosene for use as an aircraft engine fuel or propellant or for use in an internal combustion engine.

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(5) Purchases by a public body as defined in section 1.01, Florida Statutes.

(6) The Purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, or manufactured gas either metered or bottled by an industrial consumer which uses the electricity or gas directly in industrial manufacturing, processing, compounding, or a production process, at a fixed location in the county, of items of tangible personal property for sale. This exemption shall apply to industrial consumers, otherwise meeting the requirements of this paragraph, classified in the following SIC Major Group Numbers as shown on their federal income tax returns:

- 10 Metal Mining
- 12 Coal Mining
- 13 Oil and gas extraction
- 14 Nonmetallic minerals, except fuels
- 20 Food and kindred products
- 22 Textile mill products
- 23 Apparel and other textile products
- 24 Lumber and wood products
- 25 Furniture and fixtures
- 26 Paper and allied products
- 27 Printing and publishing
- 28 Chemicals and allied products
- 29 Petroleum and coal products
- 30 Rubber and miscellaneous plastic products
- 31 Leather and leather products
- 32 Stone, clay, glass and concrete products
- 33 Primary metal industries
- 34 Fabricated metal products
- 35 Industry machinery and equipment
- 36 Electrical and electronic equipment
- 37 Transportation equipment
- 38 Instruments and related products
- 39 Miscellaneous manufacturing industries

(7) The Purchase of 500 kilowatt hours per month of electricity

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for residential use. This exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter, and shall be passed on to each individual tenant. Notwithstanding the certification requirement in this section, the purchaser of electricity for residential use shall not be required to certify such use to the Seller.

(8) The Purchase of metered or bottled gas (natural liquefied petroleum gas or manufactured) or fuel oil for agricultural purposes. As used in this paragraph, "agricultural purposes" means bona fide farming, pasture, grove or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee and aquaculture.

(b) A purchaser who claims an exemption under this section shall certify to the Seller that he or she qualifies for the exemption, which certification may encompass all Purchases after a specific date or other multiple purchases; provided, however, a government or other public body whose Purchase is exempt pursuant to this Section shall not be required to certify qualification for the exemption.

Section 18.3-204. Collection; Liability Of Seller; Discontinuance Of Service.

(a) It shall be the duty of every Seller of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), or fuel oil, in acting as the tax-collecting agency for the County, to collect from the purchaser, for the use of the County, the Tax hereby imposed and levied at the time of collecting the Purchase price charged for each transaction, and to report and pay over, on or

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before the twentieth day of each calendar month, to the County all the Taxes imposed, levied and collected during the preceding calendar month. In the event the twentieth day falls on a Saturday, Sunday or holiday, the time shall be extended additionally to the next business day following the Saturday, Sunday or holiday. The date of receipt of such Taxes by the County will be the date postmarked by the United States Postal Service, the day received by the County, or if by Electronic Transfer, the date received by the bank so designated to receive Electronic Transfers as indicated on the bank statement. The prescribed forms on which reports shall be made shall provide for the reporting of a Fuel Adjustment Charge upon which no Tax is levied. It shall be unlawful for a Seller of a utility service to collect the price of a sale of electricity, gas or fuel oil, without, at the same time, collecting the Tax hereby imposed and levied in respect to the Purchase and for a Seller of the utility service to fail to state a Fuel Adjustment Charge upon which no Tax is levied separately from all other charges upon which the Tax is levied at the time the Seller collects the charges and Tax from the purchaser.

(b) A Seller failing to collect the Tax at the time of collecting the price of a Purchase shall be liable to the County for the amount of the Tax in like manner as if it had actually been paid to the Seller; and a Seller failing to show separately the amount of the Fuel Adjustment Charge upon which no Tax is levied at the time of collecting the charge shall be liable to the County for the amount of Tax which would have been collected on the charge if the Tax had been levied thereon. When a Seller fails to make a report or fails to pay the Tax

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within the time required hereunder, interest and penalties are imposed to the maximum extent permitted by section 166.234(7), Florida Statutes, as amended, which interest and penalties shall be payable and collectible in the same manner as if it were a part of the Tax imposed. The County Manager shall cause to be brought all suits and actions and to take all proceedings in the name of the County as may be necessary for the recovery of the Tax, interest or penalties; provided, that the Seller shall not be liable for the payment of the Tax upon uncollected charges. If a purchaser fails, neglects or refuses to pay the Seller the Seller's charge for the Purchase or Purchases and the Tax hereby imposed and levied and as hereby required on account of the Purchase for which the charge is made, or either, the Seller shall have and is hereby vested with the right, power and authority immediately to discontinue further service to the purchaser until the Tax and the Seller's bill shall have been paid in full.

(c) A Seller Remitting Tax collections of ten thousand dollars or more, on average, per month over a period of three consecutive months shall thereafter, beginning in the month immediately following the third consecutive month, make all Tax Remittances to the bank so designated to receive by Electronic Transfer using the ACH system, or other electronic means as may be approved on a case by case basis. A Seller meeting this criteria shall continue Remittances by Electronic Transfer regardless of whether the Seller's average collections fall below the ten thousand dollar threshold for any subsequent consecutive three month period, unless approval is given by the County to discontinue on a case-by-case basis. All other Sellers may Remit by hand-delivery, United States postal

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service or Electronic Transfer. However, if a Seller elects to Remit by Electronic Transfer, that Seller shall thereafter always Remit by Electronic Transfer, unless approval is given by the County Manager to discontinue on a case-by-case basis.

Section 18.3-205. Records Of Purchases; Inspection.

(a) Each Seller of electricity, metered or bottled gas (natural, liquefied, petroleum gas or manufactured), or fuel oil shall keep Applicable Records as provided in section 166.234(1), Florida Statutes, as amended, showing all Purchases in the County of the service, which records shall show the price charged upon each Purchase (showing as separate amounts the Fuel Adjustment Charge upon which no Tax is collected and all other charges upon which the Tax levied hereby is collected), the date thereof and the date of payment thereof, and the records shall be kept open for inspection by the duly authorized agents of the County during business hours on all business days. The duly authorized agents of the County shall have the right, power and authority to audit, examine, and make transcripts of any and all business and sales records including those records stored on computer software or otherwise kept by electronic means, in any way pertaining to the sale, within the unincorporated area of the County during such times as they may desire. It shall be the duty of the County to inspect the records in order to determine that the Tax hereby imposed and levied is being properly reported and paid to the County by each Seller of the service.

(b) Providers of services taxable in accordance with the provisions of this chapter are subject to audit under section 166.234, Florida Statutes, as amended.

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Section 18.3-206. Computation Of Tax. In all cases where the Seller of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), or fuel oil, collects the Purchase price thereof at monthly or other periods the Tax hereby imposed and levied may be computed on the aggregate amount of Purchase, except Fuel Adjustment Charges on which no Tax is levied, during the period; provided, that the amount of the Tax to be collected shall be the nearest whole cent to the amount computed.

Section 18.3-207. Penalty And Interest.

(a) It shall be unlawful and an offense for a purchaser to willfully fail, refuse or neglect to pay the Tax hereby imposed and levied and for a Seller, or an officer, agent or employee of a Seller, to willfully make a false report, fail to make a report or fail to pay the Tax, or violate any other provision hereof. The Person shall, upon conviction, be punished by a fine not to exceed five hundred dollars (\$500.00) or by imprisonment in the County jail not to exceed sixty (60) days or by both such fine and imprisonment, as is required by section 125.69, Florida Statutes, as amended. Each day any such violation of any of the provisions of this article shall continue shall constitute a separate offense, unless otherwise provided.

(b) In addition to the penalty imposed by subsection (a) of this section, a Person who willfully:

(1) Obtains an exemption with the intent to avoid paying the Tax hereby imposed and levied when the Tax would otherwise be payable; or

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(2) Uses an exemption to avoid paying the Tax hereby imposed and levied when the Tax would otherwise be payable; or

(3) Procures or permits either of the foregoing; shall upon conviction be liable to the County in an amount not to exceed three times the amount of the Tax that would have been payable in respect to the Purchase or Purchases for which the exemption was used contrary to the provisions of this article. "Conviction" as used in this subsection shall mean a finding of guilty by a court of competent jurisdiction whether or not adjudication of guilt is withheld; the term shall also include a plea of nolo contendere by such Person.

(c) Additional fees including reasonable attorney's fees and costs may be assessed against a Seller not complying with any provision of this article, such fee being based upon the actual cost incurred by the County in collecting the Tax or information due.

(d) Penalties and interest are authorized to the maximum extent permitted by section 166.234(7), Florida Statutes, but in no case shall penalties and interest exceed the amount allowed by such section.

Section 18.3-208. Lists And Updates. Upon written request from any Person, within twenty days following receipt of the Person's written request, the County Manager shall provide a copy of the Ordinance adopting any Levy and all amendments thereto, and shall advise such Person in writing of the types of media on which the lists described in section 166.233(3), Florida Statutes, are available and the costs not to exceed the actual cost of duplicating the information as

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determined by the County Manager.

Section 18.3-209. Procedure on a Purchaser's Request for Refund or Credit. The provisions of section 166.235, Florida Statutes shall apply to the administration of a request by a purchaser of a refund or credit for Overpayment.

Section 2. Notification to Florida Department of Revenue. Upon adoption of this ordinance, the County Manager shall immediately notify the Florida Department of Revenue on the form provided for such notification. In addition, the County Manager shall immediately notify the Department of the name of a Person designated by the County Manager to respond to inquiries about the Tax levied and imposed under Section 1 of this ordinance.

Section 3. Conflict. Any ordinance or part thereof in conflict with this ordinance or any part hereof is hereby repealed to the extent of the conflict.

Section 4. Severability. It is declared to the intent of the Board that if any section, subsection, paragraph, sentence, clause, phrase, or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions hereof.

Section 5. Effective Date. This ordinance shall take effect immediately upon the filing of a certified copy thereof with the Florida Department of State in the manner provided by law.

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DULY ADOPTED by the Board of County Commissioners of Clay County, Florida, this
27th day of August, 2003.

BOARD OF COUNTY COMMISSIONERS
CLAY COUNTY, FLORIDA

By: *Larry R. Lancaster*
Larry R. Lancaster
Its Chairman

ATTEST:

Robert M. Wilson
Robert M. Wilson
County Manager and
Clerk of the Board

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