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, or cable television services are subject to the public utility tax. 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.

- 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.
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	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Total ($)	45.4	44.5	47.4	47.2	45.0	43.7	43.1	37.0	35.8	35.0

- Tax Preferences

The following table identifies public utility tax preferences within the Delaware Code along with annual estimated costs. Links within the table navigate to more detailed analysis of each tax preference.

TAX PREFERENCE	FY 21 (EST)	FY 22 (EST)
4.01 Public Utility Exemption for Corporations Reorganizing Under Provisions of the Bankruptcy Code	Negligible	Negligible
4.02 Exemption of Electricity Used in Certain Manufacturing Processes	$150,000	$125,000 - $175,000
4.03 Refunds of Public Utility Tax to Firms That Qualify for the New Facilities Business Credit Program	Negligible	Negligible
4.04 Rate Reduction for Electricity Used by Manufacturing, Agribusiness and Food Processing Firms	$1.3 million	$1.0 - $1.5 million
4.05 Rate Reduction for Gas Used by Manufacturing, Agribusiness and Food Processing Firms	$80,000	$75,000 - $100,000
4.06 Exemption of Electricity Used By Automobile Manufacturers	$0	$0
4.07 Exemption of Gas Used By Automobile Manufacturers	$0	$0
4.08 Rate Reduction for the Provision of Cable and Satellite Television Services	$8.9 million	$8.5 - $9.3 million
4.09 Exemption for Electronic Pager Service	Negligible	Negligible

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 21: Negligible
FY 22: Negligible

4. Assessment
This exemption is intended to assist ailing Delaware firms that are considered 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 are 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 21: $150,000
FY 22: $125,000 - $175,000

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.

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 (defined under Title 30, Section 2011(a), formerly 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 Loss [1]
FY 21: Negligible
FY 22: Negligible

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 of this report.

5. Inadvertent effects
None noted.

[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.

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 21: $1.3 million
   FY 22: $1.0 - $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 whether the state's utility rates are affordable and competitive. While this provision provides a 53 percent reduction in tax rates, the overall reduction in electricity costs is 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." Firms in other industries may actually be larger power users or in more competitively precarious positions but do not meet the statutory definition.

5. <u>Inadvertent effects</u>
Enacting a public utility tax preference for a single sector of the economy may 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.

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 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 Natural Gas Used by Manufacturing, Agribusiness and Food Processing Firms

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

2. <u>Description</u>
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. <u>Estimated Revenue Loss</u>
FY 21: $80,000
FY 22: $75,000 - $100,000

4. <u>Assessment</u>
Generally speaking, the same assessment of the rate reduction for receipts from electricity consumed by manufacturers (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 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 21: $0
   FY 22: $0

4. Assessment
   Noting the large "multiplier effect" that automobile plants had 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 provided 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 state's two auto plants, relative to the powerful economic and operational challenges that faced Delaware's auto industry, this preference's relief proved irrelevant.

5. Inadvertent effects
   Enacting a public utility tax preference for a single sector of the economy may 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 Natural 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 natural gas that they use in vehicle production.

3. Estimated Revenue Loss
FY 21: $0
FY 22: $0

4. Assessment
Generally speaking, the same assessment of the exemption for receipts from electricity consumed by automobile manufacturers (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.

Ultimately, in the wake of the closure of the state's two auto plants, relative to the powerful economic and operational challenges that faced Delaware's auto industry, this preference's relief proved irrelevant.

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)(4).

2. Description
This preference imposes a reduced 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 21: $8.9 million
FY 22: $8.5 - $9.3 million

4. Assessment
Although it can be debated whether this provision is appropriately included in this report, it is treated as a tax preference because it taxes one type of public utility service differently from others and it meets the definition of a tax preference found in 8305(6) of Title 29.[2] As 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 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(7)(b).

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

3. Estimated Revenue Loss
FY 21: Negligible
FY 22: Negligible

4. Assessment
This exemption differentiates electronic pager service from other types of telecommunications service. Traditional electronic pagers have limited functionality and advances in telecommunications technology have essentially rendered pagers obsolete. With the advent of smart phones, which provide a wider array of services, it is increasingly clear that "stand-alone" pagers are becoming a technological anachronism, calling into question the policy rationale for continuing this preference.

[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."

5. Inadvertent effects
   None Noted.