

**HOUSE OF REPRESENTATIVES  
FINAL BILL ANALYSIS**

<b>BILL #:</b>	CS/HB 809 (CS/CS/CS/SB 1060)	<b>FINAL HOUSE FLOOR ACTION:</b>	
<b>SPONSOR(S):</b>	Grant and others	115 Y's	0 N's
<b>COMPANION BILLS:</b>	CS/CS/CS/SB 1060	<b>GOVERNOR'S ACTION:</b>	Pending

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**SUMMARY ANALYSIS**

CS/HB 809 passed the House on February 23, 2012, and subsequently passed the Senate on March 9, 2012. The bill updates and modifies a number of provisions regarding the manner in which the communications services tax is levied:

- The term "cable service" is replaced with "video service."
- The term "internet access" is defined through reference to federal statute.
- The definition of "sales price" is revised to allow additional nontaxable items to be billed together in a single line item on a customer's invoice without the entire amount of the line item being taxable.

Statutory provisions that govern the liability of a communications services tax dealer in cases of incorrect assignment of customers to local taxing jurisdictions for the purpose of imposing the applicable local communications services tax are revised. The liability of a communications services tax dealer in the cases of underpayment of the tax resulting from that dealer assigning a service address to the incorrect local taxing jurisdiction is limited to only those situations where the dealer did not use an approved situsing method and the Department of Revenue has determined the amount underpaid by that dealer between all jurisdictions.

The bill makes these revised definitions and liability provisions retroactive and remedial. It also creates a 9 member working group to review various aspects of the communications services tax and provide recommendations in a report.

The 2012 Revenue Estimating Conference estimates that the changes to dealer liability for incorrectly assigned service addresses will have a negative impact to local governments of -\$4.3 million in FY 2012-13 and a recurring negative impact of -\$4.7 million. Other changes made by the bill will have a negative indeterminate effect on state and local government revenues. Specifically regarding the provisions related to the taxation of items not separately stated, on February 17, 2012, the conference agreed that, though the full scope of the impacts is indeterminate, the recurring annual impacts would be at least -\$11.3 million for the gross receipts tax, -\$2.9 million for the state communications services tax, and -\$21.3 million for local communications services tax. The speed with which the minimum recurring impacts will be reached is unknown, so the cash impacts in FY 2012-13 are indeterminate. Additionally, regarding the remedial and retroactive provisions, the conference adopted an indeterminate negative estimate, with the FY 2012-13 impact being at least -\$6.0 million (-\$2.5 million General Revenue, -\$0.3 million local Sales Tax, -\$1.0 million Gross Receipts Tax, and -\$2.2 million local Communications Services Tax).

Subject to the Governor's veto power, the bill has an effective date of July 1, 2012.

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Present Situation

Chapter 202, F.S., provides that the sale of communications services,<sup>1</sup> except direct-to-home satellite service,<sup>2</sup> is subject to a state communications services tax (“CST”), gross receipts tax, and a locally levied CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Collected local and state communications services taxes are remitted to the Department of Revenue (“the department”), who distributes the proceeds to the appropriate jurisdictions.<sup>3</sup>

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund, and the distribution to counties of \$29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of state CST remitted goes into the General Revenue Fund.

The state CST is currently set at a rate of 6.65 percent.<sup>4</sup> The gross receipt tax is 2.37 percent plus an additional 0.15 percent, for a combined rate of 2.52 percent.<sup>5</sup> Thus, the state CST and gross receipt tax are imposed at a combined rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., vary widely, ranging from 0.1% to 7.0%.<sup>6</sup>

Direct-to-home satellite service sales are subject to a state CST at a rate of 10.8 percent<sup>7</sup> and a gross receipt tax of 2.37 percent,<sup>8</sup> for a combined rate of 13.17 percent.

Prior to 2001, much of what is now taxed under ch. 202, F.S. as communication services was subject to the state sales and use tax imposed by ch. 212, F.S. The Communications Services Tax Simplification Law<sup>9</sup> revamped definitions and consolidated the taxation of communications services into ch. 202, F.S.

Current law defines communications services as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such

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<sup>1</sup> For purposes of ch. 202, F.S., “communications services” is defined in s. 202.11(2), F.S., as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.”

<sup>2</sup> For purposes of ch. 202, F.S., direct-to-home satellite service is defined in 47 U.S.C. s. 303(v) as the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

<sup>3</sup> Section 202.18, F.S.

<sup>4</sup> Section 202.12(1)(a), F.S.

<sup>5</sup> Section 203.01(1)(b), F.S.

<sup>6</sup> Local CST rates can be found at the “Jurisdiction Rate Table” at [http://dor.myflorida.com/dor/taxes/local\\_tax\\_rates.html](http://dor.myflorida.com/dor/taxes/local_tax_rates.html).

<sup>7</sup> Section 202.12(1)(b), F.S.

<sup>8</sup> Section 203.01(1)(b), F.S.

<sup>9</sup> Chapter 2000-260, L.O.F.

transmission or conveyance.”<sup>10</sup> Section 202.11(2), F.S., lists a number of specifically excluded items, such as information services, bad check and late payment charges, internet access services (currently undefined in statute), and the sale or rental of tangible personal property, which are not subject to the communications services tax.

### Situsing

Currently, communications services dealers must assign customers to local tax jurisdictions (“siting”) so that the correct local CST rate can be applied to each sale. Section 202.22, F.S., provides that a dealer who uses one of three specific methods to determine to which local taxing jurisdiction a customer’s service address should be assigned and who exercises due diligence in that use is held harmless from any taxes, penalties, and interest that result from incorrect assignment of a customer. The three methods are:

- Employing an electronic database provided by the department.
- Employing a database developed by the dealer or supplied by a vendor that has been certified by the department.<sup>11</sup>
- Employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer’s service area to a specific local taxing jurisdiction.<sup>12</sup>

A dealer that does not use one of the approved methods may be held liable for any tax, interest, or penalty which is due as a result of incorrectly assigning service addresses among jurisdictions. However, a dealer is not liable for taxes, interest, or penalties to the extent that such amount was collected and remitted with respect to a tax imposed by another jurisdiction.

A dealer who uses one of the three methods is granted a collection allowance deduction of 0.75 percent of the amount of tax due, while a dealer who does not use one of these methods is permitted to deduct only 0.25 percent.

### Taxation of items that are not separately stated

Federal law exempts Internet access from state or local taxation.<sup>13</sup> In complying with that directive, s. 202.11(13)(b)8., F.S., allows charges for Internet access services that are not separately itemized on a customer’s bill but which can be reasonably identified from the selling dealer’s books and records to be excluded from the taxable sale. However, s. 202.11(13), F.S., defines the “sales price” as the total amount charged by a dealer, including any services that are part of the sale.

Thus, if a single line item contains both communications services and products that are not communications services, the CST is imposed on that entire sale unless the non-communications service product is Internet access and the charges for Internet access can be reasonably identified. If a dealer wishes to carve out nontaxable items,<sup>14</sup> those items would need to be separately stated.

### Effect of Proposed Changes

The bill makes a number of definitional and terminology updates. The bill redefines “cable service” as “video service,”<sup>15</sup> and language is changed throughout ch. 202, F.S., to conform to that redefinition.

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<sup>10</sup> Section 202.11(2), F.S.

<sup>11</sup> The certification process currently involves testing the accuracy of the third-party database against the master database maintained by the department.

<sup>12</sup> Section 202.22(1)(a)-(c), F.S.

<sup>13</sup> 47 U.S.C. §151.

<sup>14</sup> E.g., the sale or rental of personal property such as a cable box.

<sup>15</sup> “Video service” is defined in the bill to mean “the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is

The previously undefined term "Internet access service" is defined to have the same meaning as "Internet access" as used in the relevant federal law.<sup>16</sup>

The bill also updates the legislative intent contained in s. 202.105, F.S.

### Situsing

The bill modifies the requirements of s. 202.22, F.S., relating to a dealer that does not use one of the three approved situsing methods. A dealer who incorrectly assigns a customer to a local CST taxing jurisdiction may be held liable for the net aggregate underpaid local CST tax and any penalties or interest due as a result of that incorrect assignment only if:

- The failure to use one of the approved situsing methods results in a net aggregate underpayment of local tax, and
- The department has first determined the amount misallocated by the dealer between all jurisdictions.

The bill also provides that if a dealer does use one of the three methods described in s. 202.22(1), F.S., with or without due diligence, the department may not deny that dealer's collection allowance because of incorrectly assigned customers.

The bill requires the department to make monthly reports on jurisdiction-by-jurisdiction gross taxable sales and net tax information available to the public.

### Taxation of items that are not separately stated

The bill revises the definition of "sales price" in renumbered s. 202.11(15), F.S., to expand the existing provisions relating to what charges a dealer may exclude from the taxable sales price of communications services.<sup>17</sup> The bill provides that a dealer may exclude charges for any good or service that is exempt from the CST, except those listed in renumbered s. 202.11(15)(a), F.S.,<sup>18</sup> so long as those exempt items can be reasonably identified from the selling dealer's books and records. The bill extends the list of allowable excluded charges that do not need to be separately stated from Internet access to any good or service that is not otherwise taxable.

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transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser's premises, but the term does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services."

<sup>16</sup> 47 U.S.C. §151.

<sup>17</sup> Currently solely applicable to the cost of Internet access.

<sup>18</sup> Section 202.11(15)(a), as revised in the bill, establishes that charges for the following items are included in the sales price of communications services:

1. The connection, movement, change, or termination of communications services.
2. The detailed billing of communications services.
3. The sale of directory listings in connection with a communications service.
4. Central office and custom calling features.
5. Voice mail and other messaging service.
6. Directory assistance.
7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

## Remedial and retroactive nature of changes

The definition changes, modification of taxation of items not separately stated, and new situsing procedures contained within the bill are remedial and retroactive but do not provide a basis for a right to a refund or credit for any tax paid, nor do they provide the basis for an assessment of tax not paid.

## Communications Services Tax Working Group

The bill creates a 9 member working group directed to create a report to be submitted to the Governor, President of the Senate, and Speaker of the House by February 1, 2013. The report by the working group shall address a review of national and state tax policies, a review of the effect of recent legislation on CST revenues and the extent that revenue has been relied on for bonding, a review of the fairness of the CST and options to streamline the administrative system, and the identification of options that will equalize competitive advantages within the industry without unduly reducing revenues collected by local governments.

The working group will consist of the Executive Director of the department or his or her designee as a nonvoting chairperson, 4 representatives of the communications services industry, 2 representatives of counties, and 2 representatives of municipalities.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The 2012 Revenue Estimating Conference estimates that the bill will have a negative indeterminate impact on state revenues. Specifically regarding the provisions related to the taxation of items not separately stated, on February 17, 2012, the conference agreed that, though the full scope of the impacts is indeterminate, the recurring annual impacts would be at least -\$11.3 million for the gross receipts tax and -\$2.9 million for the state communications services tax. The speed with which the minimum recurring impacts will be reached is unknown, so the cash impacts in FY 2012-13 are indeterminate. Additionally, regarding the remedial and retroactive provisions, the conference adopted an indeterminate negative estimate, with the FY 2012-13 impact being at least -\$2.5 million to General Revenue and -\$1.0 million to Gross Receipts Tax.

#### **2. Expenditures:**

None.

### **B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

#### **1. Revenues:**

The 2012 Revenue Estimating Conference estimates the changes to dealer liability for incorrectly assigned service addresses will have a negative recurring impact to local governments of -\$4.3 million in FY 2012-13 and a recurring negative impact of -\$4.7 million. Other changes made by the bill will have a negative indeterminate effect on local government revenues. Specifically regarding the provisions related to the taxation of items not separately stated, on February 17, 2012, the

conference agreed that, though the full scope of the impacts is indeterminate, the impact will be at least -\$21.3 million for local government communications services tax. As with the state impact, the speed at which that impact will be reached is unknown. Additionally, regarding the remedial and retroactive provisions, the conference adopted an indeterminate negative estimate, with the FY 2012-13 impact being at least -\$0.3 million to local Sales Tax and -\$2.2 million to local Communications Services Tax.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The changes to the situsing process may decrease the administrative burden placed on communications services dealers.

D. FISCAL COMMENTS:

None.