

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Commerce and Tourism

BILL: CS/SB 898

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senators Abruzzo and Soto

SUBJECT: Communications Services Tax

DATE: March 21, 2014

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|-----------------|-----------------|------------|--------------------|
| 1. | <u>Wiehle</u> | <u>Caldwell</u> | <u>CU</u> | <u>Fav/CS</u> |
| 2. | <u>Hrdlicka</u> | <u>Hrdlicka</u> | <u>CM</u> | <u>Pre-meeting</u> |
| 3. | _____ | _____ | <u>AFT</u> | _____ |
| 4. | _____ | _____ | <u>AP</u> | _____ |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 898 excludes from the definition of “sales price” for the communications services tax the sale of communications services between a franchisor and its franchisee. The exclusion does not apply to the sale of communications services to a franchisor for its own use.

The bill states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof on the sale of communications services between a franchisor and its franchisee for periods before or after the effective date of the bill.

II. Present Situation:

Chapter 202, F.S., imposes a communications services tax on “retail sales of communications services which originate and terminate in Florida, or originate or terminate in Florida and are billed to a Florida address.”¹ Communication services include telecommunications, cable, direct-to-home satellite, and related services.² Generally, the communication services tax includes a state tax rate of 6.65 percent and a gross receipts tax rate of 2.52 percent for a

¹ Florida Revenue Estimating Conference, 2014 Florida Tax Handbook, 55.

² Chapter 202, F.S.

combined rate of 9.17 percent.³ In addition, local governments impose a local tax rate of up to 7.12 percent.⁴

The communications services tax is applied to the retail “sales price” of each taxable communications service for the purpose of remitting the tax due.⁵ The term “sales price” is defined to mean the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service which is part of the sale and for which the charge is not separately itemized on a customer’s bill.⁶ The following are express exclusions from the definition of “sales price”:

- An excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including communications services tax that is permitted or required to be added to the sales price of such service if the tax is stated separately;
- A fee or assessment levied by the United States or any state or local government, including regulatory fees and emergency telephone surcharges that must be added to the price of the service if the fee or assessment is separately stated;
- Communications services paid for by inserting coins into coin-operated communications devices available to the public;
- The sale or recharge of a prepaid calling arrangement;
- The provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft;
- A dealer’s internal use of communications services in connection with its business of providing communications services;
- Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services; and
- Charges for goods or services, including Internet access services, that are not subject to the communications services tax and are not separately itemized on a customer’s bill but can be reasonably identified from the selling dealer’s books and records kept in the regular course of business.

The state taxes collected are deposited into the general revenue fund and a portion is distributed to local governments.⁷ Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for the capital funding of public schools, community colleges, and universities. The Department of Revenue provides tax collection services for local governments, and local communication services taxes are distributed to local governments.

³ See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Local, long distance, and toll telephone services sold to a residential household are exempt from the 6.65 percent state tax and 0.15 percent gross receipts tax.

⁴ Section 202.19, F.S.

⁵ Section 202.12, F.S.

⁶ Section 202.11(13), F.S.

⁷ Section 202.18, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 202.11(13)(b), F.S., to add the sale of communications services between a franchisor and its franchisee to the list of express exclusions from the definition of “sales price.”

The term “franchisor” is not defined. The term “franchisee” is defined to mean any entity, including a related company, using the franchisor’s service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.^{8,9}

The exclusion does not apply to the sale of communications services to a franchisor for its own use.

Section 2 states that the bill is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof on the sale of communications services between a franchisor and its franchisee for periods before or after the effective date of the bill.

Section 3 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The Revenue Estimating Conference has not yet determined the impact of this bill.

Generally, the exception to the prohibitions under art. VII, s. 18 of the Florida Constitution, is if the Legislature passes such a law by two-thirds of the membership of each chamber. Additionally, laws determined to have an “insignificant fiscal impact,” which means an amount not greater than the average statewide population for the applicable fiscal year times \$0.10, are exempt. As of April 1, 2013, the statewide population estimate was about 19.3 million.¹⁰

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁸ The term “related company” means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used. Section 495.011(10), F.S.

⁹ The term “service mark” means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person from the services of others and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor. Section 495.011(11), F.S.

¹⁰ Office of Economic and Demographic Research, Florida Population Estimates for Counties and Municipalities, April 1, 2013, available at http://edr.state.fl.us/Content/population-demographics/data/2013_Pop_Estimates.pdf (last visited 3/16/2014).

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference has not yet determined the impact of this bill.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

The Department of Revenue stated that the bill would have an insignificant operational impact.¹¹

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 202.11 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Communications, Energy, and Public Utilities on March 4, 2014:

The committee substitute completely rewrites the proposed exemption from the term “sales tax” for purposes of the Communications Services Tax. It exempts the sale of communications services between a franchisor and its franchisee, defining the term “franchisee” to mean any entity, including a related company, using the franchisor’s service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.

The bill also states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

B. Amendments:

None.

¹¹ Department of Revenue, 2014 Legislative Bill Analysis: CS/SB 898 (3/14/2014).

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
