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 Appropriations Subcommittee on Finance and Tax

BILL: SB 378

INTRODUCER: Senator Flores

SUBJECT: Taxation

DATE: March 14, 2017 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Babin/Fournier	Diez-Arguelles	AFT	**Pre-meeting**
2.			AP	

I. Summary:

SB 378 reduces the state's communications services tax rates by two percentage points, effective for sales of communications services reflected on bills after July 1, 2017, and deletes the salary tax credit for insurance companies, effective for premiums received after December 31, 2016.

The Revenue Estimating Conference estimates that the reduction in the state communications services tax rates will decrease General Revenue receipts by $230.9 million in Fiscal Year 2017-2018, with a recurring impact of $251.9 million. The deletion of the salary tax credit will increase General Revenue receipts by $453.3 million in Fiscal Year 2017-2018, and $299.6 million on a recurring basis. In total, the bill will increase General Revenue receipts by $222.4 million in Fiscal Year 2017-2018, and $47.7 million on a recurring basis.

II. Present Situation:

The bill affects two revenue sources. The present situation for each issue is explained below in Effect of Proposed Changes.

III. Effect of Proposed Changes:

Sections 1 – 8 (Communications Services Tax)

Present Situation: Florida imposes a communications services tax on the sale of communication services, including telecommunications (both wireline and mobile), cable television, direct-to-home satellite television and other services.[1] Sales of communications services are subject to both the communications services tax and the gross receipts tax.[2]

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[1] *See generally* ch. 202, F.S.

[2] Section 202.12(1)(c), F.S.

Most sales of communications services are subject to a state communications services tax rate of 4.92 percent[3] and a state gross receipts tax rate of 2.52 percent[4], for a combined state tax rate of 7.44 percent.[5]

In addition to the state taxes, local governments may impose a local communications services tax.[6] The maximum local communications services tax rate for municipalities or charter counties is 5.1 percent, or 4.98 percent, if the municipality or charter county levies certain permit fees.[7] The maximum rate for non-charter counties is 1.6 percent.[8] Local governments are not authorized to impose franchise fees for rights-of-way on communications services providers;[9] however, municipalities and charter counties are authorized to impose an additional 0.12 percent, and non-charter counties are authorized to impose an additional 0.24 percent.[10] Lastly, local governments are authorized to impose emergency rates that exceed the statutory limits in certain situations.[11]

Direct-to-home satellite service is subject to a state communications services tax rate of 9.07 percent[12] and is subject to the 2.37 percent state gross receipts tax[13] for a combined rate of 11.44 percent. The local communications services tax does not apply to direct-to-home satellite service.

A portion of the state communications tax on direct-to-home satellite service is shared directly with local governments.[14] The remaining collections of the state tax on direct-to-home satellite service and all of the state tax on other communications services are treated like state sales tax collections and a portion is shared with cities and counties, with the remainder being deposited in the General Revenue Fund.[15]

Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used for funding public education system capital projects.

Proposed Changes: The bill permanently reduces the state communications services tax rates by two percentage points – the standard rate is reduced from 4.92 percent to 2.92 percent, and the rate on direct-to-home satellite service is reduced from 9.07 percent to 7.07 percent, beginning July 1, 2017. The bill revises the percentage of direct-to-home satellite collections shared with local governments and the revenue-sharing percentages of other collections to ensure that local

[3] Section 202.12(1)(a), F.S.
[4] *See* s. 203.01(1)(b)2. and 3., F.S.
[5] The gross receipts tax is comprised of two separate taxes, one at the rate of 2.37 percent and another at the rate of 0.15 percent. Dealers of communications services are authorized to combine the 4.92 percent communications services tax and the 0.15 percent gross receipts tax into a single tax of 5.07 percent. *See* s. 203.001, F.S.
[6] Section 202.19, F.S.
[7] Section 202.19(2)(a), F.S.
[8] Section 202.19(2)(b), F.S.
[9] Section 337.401(3)(a), F.S.
[10] Section 202.19(2)(c), F.S.
[11] *See* s. 202.20, F.S.
[12] Section 202.12(1)(b), F.S.
[13] Section 203.01(1)(b)2., F.S.
[14] *See* s. 202.18, F.S.
[15] Section 212.20(6)(d), F.S.

government receipts are not affected by the rate changes in the bill. The gross receipts tax rate is not affected.

The tax rate changes apply to taxable transactions included on bills for communications services dated on or after July 1, 2017. Dealers that are unable to implement the rate reductions by July 1, 2017, may continue collecting tax at the previous tax rates as late as October 1, 2017, but must subsequently refund to customers any such excess collections by March 1, 2018.

The bill grants the Department of Revenue emergency rulemaking authority to implement the changes to the communications services tax.

Sections 9-12 (Insurance Premium Tax)

Present Situation: Florida imposes a tax of 1.75 percent on most Florida insurance premiums.[16] (Different tax rates apply to wet marine and transportation insurance, self-insurance, and annuity premiums.) Several credits are provided that can be used by insurance companies to reduce their premium tax liability.[17]

The Florida employees' salary credit is equal to 15 percent of salaries paid to employees located or based within this state, and does not include amounts paid as commissions. For purposes of this credit, "employees" does not include independent contractors or any person whose duties require that the person hold a valid license under the Florida Insurance Code, except adjustors, managing general agents, and service representatives.

Until 1987, Florida exempted insurance companies that maintained their home offices in Florida from the insurance premium tax, and provided a lower tax rate for out-of-state insurance companies doing business in Florida if they owned and substantially occupied any building in the state as a regional home office. Chapter 87-99, L.O.F., repealed these differential rates and provided a credit equal to 10 percent of the salaries of Florida employees. One year later, chapter 88-20, L.O.F., increased the salary credit to 15 percent.

The maximum salary credit that can be taken is equal to the lesser of total premium tax due after subtracting credits for taxes levied for police and firefighters' retirement funds and corporate income taxes paid, or 15 percent of eligible Florida salaries.[18] This amount is further limited by a requirement that the sum of the salary credit and the credit for corporate income taxes paid may not exceed 65 percent of the total premium tax due after subtracting credits for taxes levied for police and firefighters' retirement funds and workers' compensation administrative assessment credits.

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[16] Section 624.509(1), F.S.

[17] Credit for payments to police and firefighters' retirement trust funds (s. 175.141, F.S.) and (s. 185.12, F.S.); Corporate Income Tax Credit (s. 624.509(4), F.S.); Florida Employees' Salary Credit (s. 624.509(5), F.S.); New Markets Tax Credit (s. 288.9916, F.S.); Capital Investment Tax Credit (s. 220.191, F.S.); Community Contribution Tax Credit (s. 624.5105, F.S.); Child Care Tax Credit (s. 624.5107, F.S.); Credit for Contributions to Scholarship-Funding Organizations (s. 624.51055, F.S.); Credit for assessments paid to the Workers' Compensation Administration Trust Fund (s. 440.51(5), F.S.); and assessments paid to the Florida Life and Health Insurance Guaranty Association (s. 631.72, F.S.).

[18] Section 624.509(4), F.S.

Credits and deductions against the insurance premium tax must be taken in the following order prescribed in s. 624.509(7), F.S.: credits for assessments paid to the Workers' Compensation Administration Trust Fund, credits for taxes levied by local governments to fund firefighters' and police retirement trust funds, credits for corporate income taxes, credits for employees' salaries, and all other available credits and deductions.

Because of the types of credits that are available, the order in which they must be taken, and the limits placed on some credits, an insurer may not be able to take full advantage of all the credits available to it. In the 2015 insurance premium tax year, 15 percent of eligible salaries equaled $558.4 million. However, because of the other credits taken and the 65 percent limitation on combined salary and corporate income tax credits, total salary credits taken on tax returns were $287.4 million.

Proposed Change: The bill amends s. 624.509, F.S., to delete the Florida employees' salary tax credit for premiums received after December 31, 2016, and makes conforming changes to ss. 624.5091, F.S., and 624.51055, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference estimates that the reduction in the state communications services tax rates will decrease General Revenue receipts by $230.9 million in Fiscal Year 2017-2018, with a recurring impact of $251.9 million.[19] The deletion of the salary tax credit will increase General Revenue receipts by $453.3 million in Fiscal Year 2017-2018, and $299.6 million on a recurring basis.[20,21] In total, the bill will increase General Revenue receipts by $222.4 million in Fiscal Year 2017-2018, and $47.7 million on a recurring basis.

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[19] Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results, available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page241-247.pdf (last visited March 9, 2017).
[20]Office of Economic and Demographic Research, *Revenue Estimating Impact Conference Results, available at* http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2017/_pdf/page248-249.pdf (last visited March 9, 2017).
[21] The Fiscal Year 2017-2018 increase is larger than the recurring impact because it includes estimated payments for calendar year 2018 premiums.

B. Private Sector Impact:

Consumers of communications services will pay less communications services tax beginning July 1, 2017.

Some insurance companies will pay more insurance premium tax in the future.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

The bill substantially amends the following sections of the Florida Statutes: 202.12, 202.12001, 202.18, 203.001, 212.20, 624.509, 624.5091, and 624.51055.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.