STORAGE NAME: h0317a.ft
DATE: April 5, 1999

HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
FINANCE AND TAXATION
ANALYSIS

BILL #: HB 317

RELATING TO: Tax on sales, use, and other transactions (franchised cable television company lease of right of way)

SPONSOR(S): Rep. Gay

COMPANION BILL(S): SB 1200 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) UTILITIES AND COMMUNICATIONS YEAS 8 NAYS 0
(2) FINANCE AND TAXATION
(3) GENERAL APPROPRIATIONS
(4)
(5)

I. SUMMARY:

The bill creates a statutory exemption for franchised cable television companies from the taxation of leases, rentals and licenses in real property authorized by Section 212.031, Florida Statutes. The statutory exemption is consistent with current Department of Revenue practice with respect to taxation of franchised cable television company occupation of public or private streets or rights of way for communications purposes. *Cf.* Rule, 12A-1.046(4)(b), F.A.C.(The Department's pole attachment rule has the indirect effect of creating a right of way exemption for cable providers.)

The bill extends the statutory tax exemption to utility and franchised cable television company occupation of specified property for *communications purposes* in addition to the *utility purposes* exempted by current law.

The bill does not appear to have a fiscal impact on state or local governments.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Section 212.031(1)(a), Florida Statutes, provides that "every person is exercising a taxable privilege who engages in the business of renting, leasing, letting, or granting a license for the use of any real property." Numerous types of property are exempt from this provision including " a public or private street or right-of-way occupied or used *by a utility for utility purposes*." *Id*. at (1)(a)5 (emphasis supplied). A franchise cable television company is not a *utility*. *See e.g.*, *Florida Cable Television Ass'n, et al v. Dep't of Revenue*, Case No. 93-0239RP (March 11, 1993) (on file with Clerk, Div. of Admin. Hearings).

Rule 12A-1.046(4)(b), Florida Administrative Code, provides that "the charge by the owner of utility or transmission poles to others for the privilege of attaching wires and other equipment thereto is exempt [from taxation] as a service transaction." Pursuant to this Rule the Department of Revenue currently does not collect the tax, authorized by Section 212.031(1)(a), Florida Statutes, for lease, rental and license agreements that allow franchised cable television providers to occupy and use rights-of-way and roads.

However, the Department believes that it may lack specific Legislative authority for Rule 12A-1.046(4)(b), F.A.C. Thus, the Department has scheduled a Rule Development Workshop for May 25, 1999, to consider repealing the Rule. Repeal of the Rule would have the effect of eliminating the current *de facto* tax exemption for franchised cable television providers.

B. EFFECT OF PROPOSED CHANGES:

The bill creates a statutory exemption for franchised cable television companies from the taxation of leases, rentals and licenses in real property authorized by Section 212.031, Florida Statutes. The statutory exemption is consistent with current Department of Revenue practice with respect to taxation of franchised cable television company occupation of public or private streets or rights of way for communications purposes. *Cf.* Rule, 12A-1.046(4)(b), F.A.C. (The Department's pole attachment Rule has the indirect effect of creating a right-of-way exemption for cable providers.)

The bill extends the statutory exemption to utilities and franchised cable television companies occupying specified property for *communications purposes.* "Communications" means "[t]he conveyance of information, such as voice, images, and/or data, through a transmission channel without alteration of the message content." The Information Age Dictionary, First Edition (1992, Intertec Publishing Corporation and Bellcore). This language appears to be technology and content neutral.

The bill takes effect upon becoming a law.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No. However, the bill does provide a statutory exemption---for franchised cable television companies occupying public or private streets or rights of way for communications purposes---from the taxation of leases, rentals or licenses in real property. This statutory exemption is consistent with the indirect effect of the Department of Revenue's pole attachment Rule. See Rule 12A-1.046(4)(b), F.A.C. The Department has noticed the pole attachment Rule for repeal.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A.

(2) what is the cost of such responsibility at the new level/agency?

N/A.

(3) how is the new agency accountable to the people governed?

N/A.

2. <u>Lower Taxes:</u>

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No. However, the bill does clarify an existing tax exemption.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. <u>Personal Responsibility:</u>

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A.

4. <u>Individual Freedom:</u>

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      N/A.

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      N/A.

5. <u>Family Empowerment:</u>

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

          N/A.

      (2) Who makes the decisions?

          N/A.

      (3) Are private alternatives permitted?

          N/A.

      (4) Are families required to participate in a program?

          N/A.

      (5) Are families penalized for not participating in a program?

          N/A.

   b. Does the bill directly affect the legal rights and obligations between family members?

      N/A.

   c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

      (1) parents and guardians?

          N/A.

      (2) service providers?

          N/A.

(3) government employees/agencies?

N/A.

D. STATUTE(S) AFFECTED:

Section 212.031, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Amends s. 212.031(1)(a), adding an exemption from tax on the sale or lease of real property by a franchised cable television company when used for communication purposes.

Section 2: Provides the act will be effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

	FY 99-00	FY 00-01
General Revenue	($2.3M)	($2.6M)
Solid Waste Management TF	(insig.)	(insig.)

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	FY 99-00	FY 00-01
Total	($2.3M)	($2.3M)

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

	FY 99-00	FY 00-01
Local Gov't Half Cent	($0.2M)	($0.2M)
Local Option Sales Tax	($0.2M)	($0.2M)

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A.

2. Direct Private Sector Benefits:

The bill clarifies an existing tax exemption.

3. Effects on Competition, Private Enterprise and Employment Markets:

Clarification of the tax exemption would appear to benefit the development of competition within the telecommunications industry.

D. FISCAL COMMENTS:

The fiscal estimates represent potential revenue loss. Under current administration, no taxes have been collected. Should the bill fail to pass, the revenue figures represent anticipated new revenues.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does reduce the authority that municipalities or counties have to raise revenues in the aggregate, but not significantly. The mandates provisions will not apply to this bill.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

The Department of Revenue has suggested an amendment to the bill that will further clarify that the existing exemption includes *television services.*

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Utilities and Communications Committee passed the amendment recommended by the Department of Revenue to clarify that the exemption includes "television" services.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:	Staff Director:
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AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

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