STORAGE NAME: h0317z.uco ****FINAL ACTION****
DATE: May 5, 1999 ****SEE FINAL ACTION STATUS SECTION****

HOUSE OF REPRESENTATIVES
AS FURTHER REVISED BY THE COMMITTEE ON
UTILITIES AND COMMUNICATIONS
FINAL 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 YEAS 12 NAYS 0
(3) GENERAL APPROPRIATIONS YEAS 21 NAYS 0
(4)
(5)

I. FINAL ACTION STATUS:

HB 317 was approved by the Governor on June 17, 1999 (Chapter No. 99-363) Laws of Florida).

II. SUMMARY:

The bill creates a statutory exemption for franchised cable television companies and wireless telecommunications providers from the taxation of specified property and improvements authorized by Section 212.031, Florida Statutes.

The bill extends the statutory tax exemption to utility and franchised cable television company occupation of specified property for *communications and television* purposes in addition to the *utility purposes* exempted by current law. The bill also exempts specified property upon which equipment has been placed for the purpose of providing cellular, enhanced specialized mobile radio, or personal communications services are placed.

The bill amends s. 212.05(1)(e)1.a, F.S. to require collection of sales tax on prepaid calling cards at the point of sale. The tax is to be remitted by the dealer selling or recharging a prepaid card. The bill creates standards with respect to calling cards by establishing 1) what constitutes a prepaid calling card, 2) the location of a calling card sale under various scenarios, and 3) that a calling card is property in Florida and subjects the selling dealer to the jurisdiction of the state for purposes of the subsection

The bill has a fiscal impact of $0.2 million for FY 99-00 and $(0.7) million for FY 00-01.

The bill will take effect on July 1, 1999.

III. 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 s. 212.031(1)(a), F.S., for lease, rental and license agreements that allow franchised cable television providers to occupy and use rights-of-way and roads.

However, the Department of Revenue believed that it lacked specific legislative authority for Rule 12A-1.046(4)(b), F.A.C. Thus, the department scheduled a Rule Development Workshop for May 25, 1999, to consider repealing the rule. Repeal of the rule would have had the effect of eliminating the current *de facto* tax exemption for franchised cable television providers. (With the passage of HB 317 this workshop was canceled.)

Wireless telecommunications providers need to place equipment on property to make their wireless networks operate. However, wireless communications services have not been included by the department in the definition of utility for purposes exemption from taxation under s. 212.031(1)(a), F.S.

Taxation of prepaid calling cards has been problematic because of the distinction between when and where the *sale* occurs versus when and where the *call* occurs.

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 s. 212.031, F.S.. 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 and television purposes.* The bill applies the exemption to property, excluding buildings, upon which specified equipment is located for the provision of cellular, enhanced specialized mobile radio, or personal communications services are placed.

The bill amends s. 212.05(1)(e)1.a, F.S. to require collection of the 7% sales tax on prepaid calling cards at the point of sale. The tax is to be remitted by the dealer selling or recharging a prepaid card instead of by the telecommunications provider. The bill creates standards with respect to calling cards by establishing the following technical requirements:

1) *Calling Card* --- a prepaid calling card constitutes the right to exclusively make telephone calls that must be paid for in advance and that enable the origination of calls using an access number, prepaid mobile account, or authorization code whether manually or electronically dialed.

2) *Location of Sale* --- if the sale or recharge of the prepaid calling card does not take place at the dealer's place of business, the sale is deemed to take place at the customer's shipping address, or if no item is shipped, at the customer's address or the location associated with the customer's mobile telephone number.

3) --- A prepaid calling card is property in this state and subjects the selling dealer to the jurisdiction of Florida for purposes of this subsection of law.

event, and the state’s jurisdiction.

The bill has a fiscal impact of $0.2 million for FY 99-00 and $(0.7) million for FY 00-01.

C. APPLICATION OF PRINCIPLES:

<u>Less Government:</u>

a.

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

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

No.

(3)

No.

b.

(1) what responsibilities, costs and powers are passed on to another program, agency,

N/A.

(2)

N/A.

(3)

N/A.

2. ____________

a. Does the bill increase anyone's taxes?

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

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

The bill clarifies an existing tax exemption, and extends the exemption to wireless

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

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

3. Personal Responsibility:

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

No.

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

4. Individual Freedom:

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

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

No.

5. ____________________

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

Who evaluates the family's needs?

N/A.

Who makes the decisions?

N/A.

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:

Sections 212.031, 212.05, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

N/A.

IV. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

Indeterminate.

2. Recurring Effects:

Revenues	FY 99-01	FY 00-01
Sales and Use Tax		
Cell towers	(2.1)	(2.6)
Phone cards	2.3	2.1

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	FY 99-01	FY 00-01
State Revenues		
Sales and Use Tax		
Cell towers	(2.1)m	(2.6)m
Phone cards	2.3 m	2.1 m
	0.2 m	(0.5) m
Local Revenues		
Sales and Use Tax		
Cell towers	(0.4)m	(0.5)m
Phone cards	0.4 m	0.3 m
	0.0 m	(0.2) m
Total	0.2 m	(0.7)m

Note: Trust fund impacts for FY 99-00 and 00-01 were insignificant for the cell tower and phone card portions of the bill and there was no impact for the portion of the bill addressing use of rights-of-way by cable.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Local Revenues		
Sales and Use Tax		
Cell towers	(0.4)m	(0.5)m
Phone cards	0.4 m	0.3 m
	0.0 m	(0.2)m

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

There will be private costs associated with collecting the tax on prepaid calling cards, and extends this exemption to wireless telecommunications providers.

2. Direct Private Sector Benefits:

The bill codifies a current sales tax exemption provided by departmental rule and practice, and extends the exemption to the wireless industry.

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

Clarification of the tax exemption, and extension of the exemption, to the wireless industry would appear to benefit the development of competition within the telecommunications industry.

D. FISCAL COMMENTS:

With respect to use of rights-of-way by cable providers, under current tax administration, no state or local taxes on these transactions have been assessed or collected nor are revenues associated with such taxes in the current revenue estimates. It is the Department of Revenue's interpretation that no statutory basis exists to justify this beneficial tax treatment, and, under the provisions of the Administrative Procedures Act, the department has initiated repeal of the rule. This legislation codifies the current rule as a tax exemption for these transactions.

The impact of provisions of the bill addressing debit cards and wireless service providers are set forth above at Sections A and B of the Fiscal Analysis.

V. 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 reduces the authority that municipalities and counties have to raise revenues in the aggregate. However, the anticipated impact is insignificant, and therefore, Art. VII, Section 18(b) of the Florida Constitution does not apply.

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.

VI. COMMENTS:

The Department of Revenue notes that the exemption created by the bill "includes agreements for the placement of antennas upon towers, as well as to the lease or license of space for the cables and adjacent accessory buildings and equipment that service the antenna. However, the lease rental, or license of land upon which the cell tower itself is placed remains subject to the sales tax" The department observes that "revenue estimates developed for the final version of this bill evidence that the Legislature did not intend to extend the exemption to ground leases between the tower owner and the landowner." Industry stakeholders who tracked the legislation and worked with the department on the issues addressed in the bill agree with the department that the wireless exemption does not apply to ground leases.

Some retailers have indicated that there is a problem with collecting the 7% tax on the calling cards because most registers are programmed to calculate a 6% tax. The department has met with the House and Senate staffs on this issue as well as with representatives of retailers. It is anticipated that some action may be necessary next session to address the problems presented by the unique 7% tax.

VII. 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.

amendment that exempts the rental or lease of poles, conduits, fixtures, and similar improvements located in the rights-of-way that are used for utility, communication, or television purposes. The

The House adopted a “strike-everything” substitute amendment to the Finance and Taxation amendment. The House amendment incorporated the amendments of the Utilities and

extended the right-of-way exemption to “property excluding buildings, wherever located,” on which equipment “used in the provision of enhanced specialized mobile radio or personal communications

calling cards is to be collected at the point of sale and establishing guidelines associated with collection of the tax.

SIGNATURES:

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