

STORAGE NAME: h1511.utco.doc
DATE: February 9, 2002

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES & TELECOMMUNICATIONS
ANALYSIS**

BILL #: HB 1511
RELATING TO: Telecommunications Services Taxation
SPONSOR(S): Representative(s) Ritter and Attkisson
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) UTILITIES & TELECOMMUNICATIONS
 - (2) FISCAL POLICY & RESOURCES
 - (3) READY INFRASTRUCTURE
 - (4)
 - (5)
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I. SUMMARY:

This bill addresses several issues relating to the administration of the communications services tax.

It creates a transition rule for counties and municipalities that reduced the local communications services tax on a specified date. It conforms the communications services tax exemptions for religious and educational institutions to similar provisions in the sales tax statute. It clarifies that the use tax is due on purchases of communications services from dealers outside the state, unless that dealer has already collected the taxes.

The bill provides an exception for the public lodging industry from the requirement that dealers separately state the communications services tax. It clarifies provisions governing the electronic database used to determine local tax situs for the communications services tax. It repeals the sales tax on substitute communications systems.

The bill conforms the date for local governments to notify the dealers of permit fee changes to the date required for local governments to notify the Department of Revenue of local communications services tax rate changes. It clarifies that the monthly E911 fee applies to a mobile communications services customers whose place of primary use is within the state. It corrects several cross-references.

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

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Communications services are subject to state and local taxes under chapter 202, Florida Statutes, the Communications Services Tax Simplification Law, chapter 2000-260, Laws of Florida. The gross receipts tax on communications services imposed by chapter 203, Florida Statutes, is also administered under chapter 202, Florida Statutes. Revenue-neutral tax rates for communications services were established in 2001 by chapter 2001-140, Laws of Florida, and the tax took effect October 1, 2001. Several administrative issues concerning this tax have been identified by a working group of representatives from the communications industry and state and local governments.

State communications taxes are imposed and administered under the provisions of section 202.12, Florida Statutes. Local communications are imposed under the provisions of section 202.19, Florida Statutes.

Local governments were authorized under chapter 202, Florida Statutes, to adopt ordinances or resolutions establishing higher rates for the first year to cover the loss of one month's receipts during the transition to the new communications services tax. There was not authority in the act, for them to adopt ordinances or resolutions lowering the rates to the lower level on October 1, 2002.

Section 202.125, Florida Statutes, provides an exemption for the sale of communications services to a religious or educational organization that is exempt from federal income tax under section 501(c)(3) of the Internal Revenue Code. Administration of this exemption has caused confusion because it does not conform to a similar sales and use tax exemptions under chapter 212, Florida Statutes.

Section 202.16, Florida Statutes, provides that the state and local communications services tax must be stated separately from all other charges on the bill or invoice. This provision has caused billing problems for the public lodging industry.

Section 202.22, Florida Statutes, provides that local tax situs for the purposes of the local communications services tax may be determined by employing an electronic database provided by the Department of Revenue, employing a database developed by a dealer or supplied by a vendor certified by the department, or employing the enhanced zip code. The department is required to establish a database under the provisions of this section. The department is also required to

maintain the database, and may certify databases prepared by private vendors. Local taxing jurisdictions are required to furnish the department with all the information needed to create and update the database. Each dealer of communications services is only required to collect and remit the local communications taxes for the service addresses contained in the department database in standard postal format. This section also provides criteria by which private databases shall be evaluated for certification, and the process by which certification is accomplished. The accuracy of the database must be measured on the entire state, or the dealer's entire service area.

Section 212.05 (1)(g), Florida Statutes, imposes sales and use tax upon any person who purchases, installs, rents, or leases a telephone system or telecommunication system for his or her own use to provide telephone or telecommunication service which is a substitute for such service provided by a telephone company. The tax is based upon the actual cost of operating such system. Section 202.12(3)(b), Florida Statutes, imposes the communications services tax upon the same costs.

Section 337.401, Florida Statutes, regulates the imposition of fees by local governments for use of rights-of-way by utilities. Subsection (3) requires local governments to choose between two options with respect to permit fees imposed on dealers of communications services. Local governments that choose to retain the authority to impose permit fees are capped in the level of fees they may impose and must lower their communications services tax rate. A local government that changes its election on this issue must provide written notice to all communications services dealers in the jurisdiction by July 1 immediately preceding the January 1 on which the change becomes effective.

Subsection (8) of section 365.172, Florida Statutes, requires each provider of wireless telephone service to collect a monthly fee from each service subscriber who has a service number that has a billing address within this state. The purpose of this fee is to recover the costs of developing and maintaining a E911 system. Subsection (9) of this section requires that each provider shall provide a monthly report of the billing address of wireless subscribers in each county.

C. EFFECT OF PROPOSED CHANGES:

Please see Section-by-Section Analysis.

D. SECTION-BY-SECTION ANALYSIS:

Section 1 ratifies the local communications services tax rate that a county or municipality adopted by resolution or ordinance reducing the rate effective October 1, 2002 and provides that the rate shall be the adopted local communications services tax rate beginning on October 1, 2002.

Section 2 amends section 202.125(4), Florida Statutes, to conform to the sales tax exemption for religious and educational institutions to similar provisions in chapter 212, Florida Statutes.

Section 3 creates section 202.151, Florida Statutes, to impose a use tax on purchases of communications services from a seller outside of Florida, if those purchases are otherwise taxable under sections 202.12 and 202.19, Florida Statutes. This section does not apply if the out-of-state seller registers as a dealer in this state and collects tax from the purchaser.

Section 4 amends section 202.16, Florida Statutes, to allow a public lodging establishment to post information about communications services taxes in a manner consistent with section 509.2015, Florida Statutes, instead of separately stating them on the guest bill or invoice.

Section 5 amends section 202.22, Florida Statutes, to clarify that when an address is known and used by a provider, the provider shall collect the tax even if the address is not in the department's

electronic database. It provides that the department shall determine the accuracy of a database, other than its own database, by the geographic area covered by that database. It also clarifies the application of the 180-day time period for the department's determination as to whether a database meets the certification criteria.

Section 6 amends section 337.401, Florida Statutes, to allow a local government to notify communications service dealers of a change in the local government's election with respect to permit fees by September 1 instead of July 1 of each year. This conforms to the date for notifying the department of any change in election.

Section 7 amends section 365.172, Florida Statutes, to clarify that situsing of mobile telecommunications customers for the monthly E911 fee is the same as situsing for the local communications services tax under chapter 202, Florida Statutes.

Section 8 provides that amendments to sections 202.125, 202.22, and the repeal of section 212.05(1)(g), Florida Statutes, are remedial in nature and intended to clarify existing law.

Section 9 corrects a cross-reference.

Section 10 corrects a cross-reference.

Section 11 corrects a cross-reference.

Section 12 corrects a cross-reference.

Section 13 repeals section 212.05(1)(g), Florida Statutes. This corrects an error in the law that inadvertently subjected substitute telephone systems to both the sales tax and the communications services tax.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to communication service providers, this bill clarifies certain administrative issues with respect to the communications services tax, and will make it easier for the communication service providers to comply with the law.

D. FISCAL COMMENTS:

None.

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 not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

C. OTHER COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON UTILITIES & TELECOMMUNICATIONS:

Prepared by:

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