

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 141 w/CS Taxable Price of Bundled Transactions

**SPONSOR(S):** Haridopolos

**TIED BILLS:** **IDEN./SIM. BILLS:**

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation	34 Y, 0 N w/CS	Holt	Liepshutz
2) Finance & Tax			
3) Appropriations			
4)			
5)			

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### SUMMARY ANALYSIS

The bill amends the definition in s. 202.11, F.S., of the word "service address" to provide a tax sourcing mechanism for communication service that is paid through third-number and calling-card calls. The bill creates a new section in Chapter 202, F.S., which provides a methodology for taxing bundled communications transactions. The bill defines "bundled transaction." A bundled transaction means a transaction consisting of distinct and identifiable properties and services that are sold for a single nonitemized price but which are treated differently for tax purposes.

The bill further prescribes that in the case of a bundled transaction that includes taxable and tax exempt properties and services, certain principles apply:

If the price is attributable to properties or services that are taxable and properties or services that are non taxable, the properties or services shall be subject to the tax unless the provider can reasonably identify such portion from its books and records kept in the regular course of business.

If the price is attributable to prices or services that are taxable at different rates, the total price shall be treated as attributable to the properties or services taxable at the highest rates unless the provider can reasonably identify the portion of the price attributable to properties or services at the lower rate.

The bill defers to s. 213.35, F.S., for the types of book and records used by a provider in the recordkeeping of a bundled transaction.

This Act takes effect upon becoming a law.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0141a.br.doc

**DATE:** March 13, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | 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. EFFECT OF PROPOSED CHANGES:

Chapter 202, F.S., relates to the Communications Services Tax Simplification Law. Section 202.11(14), F.S., provides in part that:

(14) "Sales price" means 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 services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

Section 202.11(14)(b), F.S., provides in part that the sales price of communications services does not include charges for any of the following:

7. 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.

Section 202.11(15)(a), F.S., "Service address" means:

(a) Except as otherwise provided in this section, the location of the communications equipment from which communications services originate or at which communications services are received by the customer. If the location of such equipment cannot be determined as part of the billing process, as in the case of third-number and calling-card calls and similar services, the term means the location determined by the dealer based on the customer's telephone number, the customer's mailing address to which bills are sent by the dealer, or another street address provided by the customer. In the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, the service address is the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number.

The bill amends the definition in s. 202.11(15)(a), F.S., for the word “service address” to provide a tax sourcing mechanism for communication service that is paid through third-number and calling-card calls. This change conforms Florida Statutes to the sourcing rules for telecommunications services that were adopted by the Streamlined Sales Tax Project.

The bill creates s. 202.165, F.S., and provides a definition for a bundled transaction. For purposes of the section, a bundled transaction means a transaction consisting of distinct and identifiable properties and services that are sold for a single nonitemized price but which are treated differently for tax purposes.

The bill provides for a single nonitemized price for transactions that are bundled with taxable and nontaxable properties or services, if the provider can reasonably identify the different portions of the price from its books and records.

The bill further provides that if the provider can not reasonably identify the different portions of the total price from its books and records, the total price shall be subject to the appropriate tax. The bill defers to s. 213.35, F.S., for the types of book and records used by the provider in the recordkeeping of the bundled transaction.

The bill also allows the sale of services or properties that are taxed at different rates for a single nonitemized price to be taxed based on the different tax rates attributable to the different portions of the total price, if the provider can reasonably identify the portions of the transaction that are subject to different tax rates from its books and records. If the provider cannot reasonably identify the portion of the price taxable at a lower rate, the entire sales price is subject to tax at the highest rate.

C. SECTION DIRECTORY:

Section 1. Amends s. 202.11, F.S., definition of “service address” relating to tax sourcing  
Section 2. Creates s. 202.165 relating to the taxable price of a bundled transaction and defers to s. 213.35, F.S., for recordkeeping purposes.  
Section 3. Provides and effective date.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Unknown. A revenue estimating conference has not been conducted.

2. Expenditures:

Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Unknown. A revenue estimating conference has not been conducted.

2. Expenditures:

Indeterminate.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

According to industry representatives, many states have already adopted wireline bundling provisions. The communications industry has been working together to develop a fair and equitable methodology for taxing bundles of taxable and exempt services.

D. FISCAL COMMENTS:

A revenue estimating conference has not been conducted. Preliminary discussions have been had with the Department of Revenue (DOR). In its bill analysis, DOR has raised concerns relating to the administration and/or enforcement of the bill.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2003, the Committee on Business Regulation adopted two amendments. The bill was voted favorably with a committee substitute. One change to the bill defers to s. 213.35, F.S., for the types of books and records used by the provider in the recordkeeping of a bundled transaction for taxing purposes. The other change amended the definition of "service address" to provide a tax sourcing mechanism for communication service that is paid through third-number and calling-card calls.