HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1897 Taxable Price of Bundled Transactions
SPONSOR(S): Committee on Business Regulation
TIED BILLS: **IDEN./SIM. BILLS:** SB 2666

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Business Regulation	29 Y, 0 N	Holt	Liepshutz
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill amends the definition in section 202.11, Florida Statutes, of the word “service address” to provide a tax sourcing mechanism for communications service that is paid through third–number and calling-card calls. The bill creates a new section in Chapter 202, Florida Statutes, which provides a methodology for taxing bundled communications transactions. The bill defines “bundled transaction” as a transaction consisting of distinct and identifiable properties or services which are sold for a single non-itemized sales price but which are treated differently for tax purposes.

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

If the sales price is attributable to taxable and non-taxable properties or services, the non-taxable items are subject to tax, unless the dealer reasonably identifies and allocates the non-taxables from its normally kept books and records.

If the sales price is attributed to properties or services with different tax rates, the entire bundle will be taxed at the rate of highest component, unless the dealer reasonably identifies and allocates the portions of the transactions with each appropriate tax rate from its normally kept books and records.

The bill excludes Internet services from being part of a bundled communications service package that can be sold for a single non-itemized sales price and have each of its component services in the “bundle” treated separately for tax purposes.

The bill provides authority for the Department of Revenue (Department) to audit a selling dealer in determining whether the correct methodology of taxing was used. The Department is granted specific rulemaking authority to carry out this provision.

The bill provides for duties to the customer by the selling dealer.

Additionally, this section does not create a requirement that the selling dealer or the Department identify the different portions of a bundled transaction to minimize the customer’s tax responsibility.

The fiscal impact of this bill, if any, has not been established by the Revenue Estimating Conference to-date.

This act shall take effect on January 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

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

B. EFFECT OF PROPOSED CHANGES:

The bill pertains to the Communications Service Tax. This tax applies to cable, satellite, and telephone service, both landline and wireless. Currently if taxable and non-taxable services are bundled on a customer’s bill, the law requires the entire bundled sales price to be taxed. Moreover, if services are bundled together that are taxed at a different rates, such as cable TV and residential telephone service, the combined sales price must taxed at the higher rate of the two.

This bill permits communications companies to levy the appropriate tax rates on the components of the bundle as long as the company can reasonably identify the non-taxable portion from its books and records kept in the regular course of business. This methodology will allow residential service to continue to have an exemption from state sales tax.

Chapter 202, Florida Statutes, provides for the Communications Services Tax Simplification Law. Section 202.11(14), Florida Statutes, 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)7., Florida Statutes, 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.

The bill creates section 202.165, Florida Statutes. The term “bundled transaction” is defined for purposes of this section. A bundled transaction means a transaction consisting of distinct and identifiable properties or services which are sold for a single non-itemized sales price but which are treated differently for tax purposes.

The bill prescribes the principles that apply in the case of a bundled transaction that includes taxable and tax-exempt communications properties or services:

> If the sales price is attributable to taxable and non-taxable properties or services, the non-taxable items are subject to tax, unless the dealer reasonably identifies and allocates the non-taxables from its normally kept books and records.
>
> If the sales price is attributed to properties or services with different tax rates, the tax rate of the entire bundle will be at the rate of the highest component, unless the dealer reasonably identifies and allocates the portions of the transactions with each appropriate tax rate from its normally kept books and records.

However, the bill excludes Internet services from being part of a bundled communications service package that can be sold for a single non-itemized sales price and have each of its component services in the "bundle" treated separately for tax purposes. Therefore, if Internet services are part of a bundled communications service package that consists of components that are taxable, the entire non-itemized package of services will remain taxable as provided under existing law.

The bill provides authority for the Department to audit a selling dealer in determining whether the correct methodology of taxing was used for the purposes of collecting and remitting taxes on those portions of the non-itemized sales price subject to Florida Law, or properties or services with varying rates. The Department has authority to re-determine the proper allocation and assess any resulting tax deficiency. The Department is granted specific rulemaking authority to carry out this provision.

Additionally, upon a written customer's request, the selling dealer is required, within 60 days, to provide a written explanation of how the sales price was apportioned to services or properties for calculating the tax due.

The bill further provides that this section does not create a requirement that the selling dealer or the Department identify the different portions of a bundled transaction to minimize the customer's tax responsibility.

In addition, the bill amends the definition in section 202.11(15)(a), Florida Statutes, for the word "service address" to provide a tax sourcing mechanism for communications service that is paid through third–number and calling-card calls. This change brings the sourcing of telephone calling cards and calls billed to a third number in sourcing line with that for calls billed to a bank, travel, debit, or credit card. This provision is a part of the Streamlined Sales Tax Agreement. An example of this type of transaction would be:

A tourist from New York comes to Orlando and makes a calling card call back home; the tax will be sourced to the jurisdiction of the originating telephone number. Sourcing identification is accomplished with the area code. In this case, the tax would be sourced in either (321) or (407) for the jurisdiction of Orlando, with benefits to the State of Florida. Currently this is not the taxing methodology. The tax in this example would be sourced to the jurisdiction of the service address for the calling card, i.e. New York.

This act shall take effect on January 1, 2004.

C. SECTION DIRECTORY:

Section 1. Amends section 202.11, Florida Statutes, definition of "service address" relating to tax sourcing.

Section 2. Creates section 202.165, Florida Statutes, relating to the taxable price of a bundled transaction, providing the Department enforcement powers and rulemaking authority, specifying duties and responsibilities of dealers and the Department in regard to customers.
Section 3. Provides and effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Unknown. A consensus was not reached in the Revenue Estimating Conference in regard to HB 141 by former Representative Haridopolos which is the bill that this HB 1897 replaces. It is likely that a conference on the substance of this bill will be scheduled in the future.

2. Expenditures:

   Indeterminate.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   Unknown. A consensus was not reached in the Revenue Estimating Conference in regard to HB 141 by former Representative Haridopolos which is the bill that this HB 1897 replaces. It is likely that a conference on the substance of this bill will be scheduled in the future.

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 methodology for taxing bundles of taxable and non-taxable services.

D. FISCAL COMMENTS:

Revenue Estimating Conferees discussed provisions in HB 141 by former Representative Haridopolos that are similar to those contained in this bill; however, the bill differs from HB 141 in that this bill removes Internet access as a service that can be bundled with other services, sold for a single non-itemized price, and then treated separately for tax computation purposes. The removal of Internet services from the bundle of services that are eligible for such tax treatment would appear to significantly lessen any potential fiscal impact 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:

Much of the substance of this bill comes from HB 141 by former Representative Haridopolos, which was reported favorably with committee substitute by the Business Regulation Committee on March 13, 2003. This bill differs from HB 141 in that it expressly authorizes the Department to assess tax deficiencies for incorrect computation of the taxes due for bundled services, grants rulemaking authority to the Department, and removes Internet access from the operative provisions of the bill.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES