

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2666

SPONSOR: Senator Atwater

SUBJECT: Taxable Price of Bundled Transaction

DATE: April 2, 2003

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Favorable</u>
2.	<u> </u>	<u> </u>	<u>FT</u>	<u> </u>
3.	<u> </u>	<u> </u>	<u>AP</u>	<u> </u>
4.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
5.	<u> </u>	<u> </u>	<u> </u>	<u> </u>
6.	<u> </u>	<u> </u>	<u> </u>	<u> </u>

I. Summary:

The bill revises the procedure for determining the service address for third number calling and calling-card calls and provides for taxation of a “bundled transaction,” which is defined as 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 substantially amends section 202.11 of the Florida Statutes and creates section 202.165 of the Florida Statutes.

II. Present Situation:

Chapter 202, F.S., provides the Communications Services Tax Simplification Law.

Sales address

Section 202.11(15)(a), F.S., defines “service address” to mean:

- (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 service address is an integral part of assessment of the communications services tax. Pursuant to s. 202.12, F.S., the state communications services tax is assessed at 6.8 percent of the sales price of communications services which either originate and terminate in this state or originate and terminate in this state and are charged to a service address in this state. Under s. 202.19(4), F.S., local government communications services taxes are assessed based, in part, on whether the service address is in a municipality, in which case the municipality imposes the tax, or in unincorporated area of a county, in which case the county imposes the tax. Taxes on mobile communications services are similarly imposed under s. 202.19(12), F.S.

Taxable sales price

Section 202.11(14), F.S., defines “sales price” and provides, in part:

(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.

...

(b) 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 202.155(4)(a), F.S., provides:

(4)(a) If a mobile communications service is not subject to the taxes administered pursuant to this chapter, and if the sales price of such service is aggregated with and not separately stated from the sales price of services subject to tax, then the nontaxable mobile communications service shall be treated as being subject to tax unless the home service provider can reasonably identify the sales price of the service not subject to tax from its books and records kept in the regular course of business.

Books and records

Section 213.35, F.S., requires each person required by law to perform any act in the administration of any tax enumerated in s. 72.011, F.S., to keep suitable books and records relating to that tax, such as invoices, bills of lading, and other pertinent records and papers, and

to preserve such books and records until expiration of the time within which the department may make an assessment with respect to that tax pursuant to s. 95.091(3), F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 202.11(15)(a), F.S. This paragraph currently provides that if the service address of a customer cannot be determined as part of the billing process, as in the case of third number calling and calling-card calls and similar services, the service address is the location determined by the dealer based upon the customer's telephone number, the customer's mailing address to which bills are sent, or another street address provided by the customer. The bill deletes this provision and replaces it with a provision that the service address for third-number calling and calling-card calls is the address of the central office, as determined by the area code and the first three digits of the originating telephone number. This is the current mechanism for cases in which a communications service is paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card.

Section 2 creates s. 202.165, F.S., to provide for taxation of a "bundled transaction," which it defines as, for purposes of the section, 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.

If the price for a bundled transaction is attributable to both taxable and nontaxable items, the portion of the price that is attributable to nontaxable items is taxable unless the provider can reasonably identify the different portions of the price from the books and records required to be kept under s. 213.35, F.S.

If the price for a bundled transaction is attributable to items that are taxable at different rates, the total price is taxable at the highest applicable rate unless the provider can reasonably identify the different portions of the total price from the books and records required to be kept under s. 213.35, F.S.

Section 3 provides that the bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

The Revenue Estimating Conference met on the bundled transaction proposal on April 4, 2003, and was unable to quantify a fiscal impact. It appears that various communications companies currently have different interpretations about the taxability of services such as Internet access, and that there is no uniform practice in the industry. Given this, the Conference could not develop a clear picture of what is currently being done industry-wide, and could not determine how the bill would affect tax revenues.

C. Government Sector Impact:

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VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.