



## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives:

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Present Situation**

##### **Communication Services Tax**

Chapter 202, F.S., establishes the "Communications Services Tax Simplification Law."<sup>1</sup> This law restructured taxes applicable to a broad array of communications services, including local and long distance telephone services, cable television, direct-to-home satellite television, and other related services.

The communications services tax (CST) replaced and consolidated several different state and local taxes and fees into two taxes: the Florida CST and the local CST. The Florida CST is established in s. 202.12, F.S., and is applied at a rate of 6.8 percent to all communications services except direct-to-home satellite services, which are taxed at a rate of 10.8 percent. The local CST is established in s. 202.19, F.S., varies by jurisdiction, and is not applicable to direct-to-home satellite services. The Florida CST and the local CST are collected by communications service providers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.<sup>2</sup>

Section 202.29, F.S., states that a communications services provider subject to the CST may take a credit, or claim a refund, for tax the provider has paid on a balance that is ultimately written off as bad debt for a worthless account. Pursuant to s. 202.27, F.S., the provider (also referred to in chapter 202, F.S., as a "dealer") must file a communications services tax return with DOR. According to DOR, the dealer is required to report credits for bad debts separately from the tax when filing its return, and must do so by the time period and the jurisdiction in which the original sale(s) occurred.

DOR estimates that, historically, dealers have received an average tax credit amount of approximately 3 percent.

##### **E911 Prepaid Wireless Fee**

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<sup>1</sup> Ch. 2000-260 and 2001-140, Laws of Florida.

<sup>2</sup> See, generally, <http://dor.myflorida.com/dor/taxes/cst.html>.

In 1974, the Legislature enacted the Florida Emergency Telephone Number Act in s. 364.171, F.S., to designate a statewide emergency telephone number.<sup>3</sup> In 1999, the Legislature created the Wireless Emergency Communications Act in s. 365.172, F.S.<sup>4</sup> This law established a wireless E911 fee of 50 cents per month on wireless communications and created the Wireless 911 Board, with oversight by DMS to administer the revenues derived from this fee. The purpose of the wireless E911 fee is to ensure full recovery for providers and for counties of the costs associated with developing and maintaining an E911 system on a technologically and competitively neutral basis.<sup>5</sup> The proceeds of the wireless E911 fee are deposited into the Emergency Communications Number E911 System Fund.<sup>6</sup> The Wireless 911 Board reviews and oversees the disbursement of the revenues from the Fund to the counties and wireless providers subject to statutory guidelines.<sup>7</sup>

Effective May 25, 2007, Chapter 2007-79, L.O.F., exempted prepaid wireless service from the E911 fee. However, the E911 Wireless Board was required to conduct a study of the feasibility of collecting E911 fees on the sale of prepaid wireless service. The Board was directed to report its findings to the Governor, the President of the Senate, and the Speaker of the House of Representatives by December 31, 2008. If the Board determined that collection is feasible of the E911 fee on prepaid wireless service, then the Board is required to begin collecting the fee on prepaid wireless on July 1, 2009.

The Board completed the study and timely submitted its report.<sup>8</sup> The report concluded that collection of the E911 fee for prepaid wireless services is feasible. Accordingly the Board is tasked with collecting the E911 fee for prepaid wireless services beginning July 1, 2009.

## **Proposed Changes**

### **Communication Services Tax**

This bill amends s. 202.29, F.S., by allowing dealers to “net” the credit allowed by s. 202.29, F.S., against the amount of tax due to the state or to a local jurisdiction for reporting purposes. This “netting” may not reduce the amount due to the state or to any local jurisdiction below zero.

This bill allows dealers to use a “proportionate allocation method” to determine the credit for bad debt attributable to the state or to a local jurisdiction, rather than specifically identify the jurisdiction in which the bad debt originated. The allocation method must be based upon current gross taxes due, rather than requiring dealers to identify the specific time period of the sales associated with the bad debt. In addition, the bill allows dealers to use other reasonable allocation methods approved by DOR.

The provisions of the bill relating to communications services tax are deemed remedial and operate retroactively to July 1, 2000. However, the bill specifies that the retroactive operation does not create a right to a refund or require a refund by any governmental entity of any tax, penalty, or interest remitted to DOR before July 1, 2009.

This bill has an effective date of July 1, 2009.

### **E911 Prepaid Wireless Fee**

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<sup>3</sup> Ch. 74-357, L.O.F.

<sup>4</sup> Ch. 99-367, L.O.F.

<sup>5</sup> S. 365.173(8)(b), F.S.

<sup>6</sup> S. 365.173(1), F.S.

<sup>7</sup> S. 365.173(6), F.S.

<sup>8</sup> *E911 Prepaid Wireless Fee Collection and E911 Fee Exemptions: A Feasibility Analysis*, available at: [http://dms.myflorida.com/suncom/public\\_safety/florida\\_e911/e911\\_board\\_prepaid\\_study](http://dms.myflorida.com/suncom/public_safety/florida_e911/e911_board_prepaid_study)

The bill amends s. 365.172, F.S., to extend from July 1, 2009, to July 1, 2011, the date the E911 Wireless Board is to begin collecting the E911 fee on prepaid wireless services.

**B. SECTION DIRECTORY:**

**Section 1.** Amends s. 202.29, F.S., relating to credits against communications services taxes for bad debts.

**Section 2:** Amends s. 365.172, F.S., relating to the effective date of the collection of the E911 fees on prepaid wireless services.

**Section 3.** Provides for retroactive operation of the amendments to s. 202.29, F.S. made by the bill to July 1, 2000.

**Section 4.** Provides an effective date of July 1, 2009.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

The Revenue Estimating Conference estimates that the provisions of the bill relating to communications services tax will have no fiscal impact on state or local governments.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference estimates that the provisions of the bill relating to the wireless E911 fee will have a negative, but indeterminate, impact on local governments.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

It appears that the provisions of this bill will ease data retention requirements on dealers who may seek a credit for bad debt. As a result, dealers may experience lower administrative costs.

**D. FISCAL COMMENTS:**

DOR has indicated that this bill would not have an operational impact on the agency or present difficulty in implementation, administration, or enforcement.

In addition, it appears that this bill will not impact the total amount of credit claimed for bad debt or the total amount of revenues collected. According to DOR, a proportionate allocation method will distribute any credit for bad debt to the state and to the local jurisdictions in the same proportion as CST

revenues are distributed in a given month. Therefore, some slight variances in revenues may be expected from month-to-month. However, over time, total revenues should not be affected.

### **III. COMMENTS**

#### **A. CONSTITUTIONAL ISSUES:**

##### **1. Applicability of Municipality/County Mandates Provision:**

Not applicable. This bill does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

##### **2. Other:**

None.

#### **B. RULE-MAKING AUTHORITY:**

Not applicable.

#### **C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

On April 7, 2009, the Finance & Tax Council adopted one amendment that added to the bill a provision relating to the wireless E911 fee. The amendment extends from July 1, 2009, to July 1, 2011, the date the E911 Wireless Board is to begin collecting the E911 fee on prepaid wireless services.