

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 857 Communications Services Taxes

SPONSOR(S): McBurney

TIED BILLS: None. IDEN./SIM. BILLS: SB 1590

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|--|-----------|---------|----------------|
| 1) Energy & Utilities Policy Committee | 22 Y, 0 N | Keating | Collins |
| 2) Military & Local Affairs Policy Committee | 12 Y, 0 N | Noriega | Hoagland |
| 3) General Government Policy Council | | | |
| 4) Finance & Tax Council | | | |
| 5) | | | |

SUMMARY ANALYSIS

Current law states that a communications services provider subject to the Communications Services Tax may take a credit, or claim a refund, for a tax the provider has paid on a balance that is ultimately written off as bad debt for a worthless account. The provider, also referred to as a "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.

This bill allows dealers to "net" the tax paid on amounts later written off as bad debt against the amount of tax due to the state or to a local jurisdiction for reporting purposes, provided that the resulting amount is not less than zero. This bill also allows dealers to use a "proportionate allocation method," based on gross taxes due, to determine the credit for bad debt attributable to the state or to a local jurisdiction. In addition, the bill provides that the Department of Revenue may approve the use of another reasonable allocation method.

This bill also provides for retroactive operation to July 1, 2000, as a remedial measure. However, the bill does not create a right to a refund or require a refund by any governmental entity of any tax, penalty, or interest remitted to the Department of Revenue before July 1, 2009.

The provisions of this bill have no fiscal impact on state or local governments.

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

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

Chapter 202, F.S., establishes the "Communications Services Tax Simplification Law."¹ 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.²

Section 202.29, F.S., states that a communications services provider subject to the CST may take a credit, or claim a refund, for a 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.

Historically, DOR has estimated that dealers have received an average tax credit amount of roughly 3 percent.

Proposed Changes

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.

¹ Ch. 2000-260 and 2001-140, Laws of Florida.

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

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 identifying 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.

This bill provides for retroactive operation to July 1, 2000, as a remedial measure. However, the bill specifies that the retroactive operation of its provisions 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.

B. SECTION DIRECTORY:

Section 1: amends s. 202.29, F.S., relating to credits against communication service taxes for bad debts.

Section 2: provides for retroactive operation to July 1, 2000, in a remedial manner.

Section 3: provides an effective date of July 1, 2009.

II. 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:

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

None.