

By Senator Bogdanoff

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1 A bill to be entitled
2 An act relating to the communications services tax;
3 amending s. 202.16, F.S.; providing for a rounding
4 algorithm; allowing dealers to compute the tax using
5 the rounding algorithm for certain aggregated state
6 and local taxes; providing for retroactive
7 application; clarifying that the act does not provide
8 for an assessment of any tax not paid or create a
9 right to a refund of any tax paid before a date
10 certain; amending s. 202.11, F.S.; conforming a cross-
11 reference; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 202.16, Florida Statutes, is amended to
16 read:

17 202.16 Payment.—The taxes imposed or administered under
18 this chapter and chapter 203 shall be collected from all dealers
19 of taxable communications services on the sale at retail in this
20 state of communications services taxable under this chapter and
21 chapter 203. The full amount of the taxes on a credit sale,
22 installment sale, or sale made on any kind of deferred payment
23 plan is due at the moment of the transaction in the same manner
24 as a cash sale.

25 (1)~~(a)~~ The taxes collected under this chapter and chapter
26 203 shall be paid by the purchaser of the communications service
27 and shall be collected from such person by the dealer of
28 communications services.

29 (2)~~(b)~~ Each dealer of communications services selling

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30 communications services in this state shall collect the taxes
31 imposed under this chapter and chapter 203 from the purchaser of
32 such services, and such taxes must be stated separately from all
33 other charges on the bill or invoice. Notwithstanding the
34 requirement in this paragraph and in s. 202.35 to separately
35 state such taxes, a public lodging establishment licensed under
36 chapter 509 may notify purchasers of the taxes imposed under
37 this chapter on a notice in a guest room posted in a manner
38 consistent with the requirements of s. 509.2015, rather than
39 separately stating the taxes on the guest bill or invoice.

40 (3)~~(2)(a)~~ A sale of communications services that are used
41 as a component part of or integrated into a communications
42 service or prepaid calling arrangement for resale, including,
43 but not limited to, carrier-access charges, interconnection
44 charges paid by providers of mobile communication services or
45 other communication services, charges paid by cable service
46 providers for the transmission of video or other programming by
47 another dealer of communications services, charges for the sale
48 of unbundled network elements, and any other intercompany
49 charges for the use of facilities for providing communications
50 services for resale, must be made in compliance with the rules
51 of the department. Any person who makes a sale for resale which
52 is not in compliance with these rules is liable for any tax,
53 penalty, and interest due for failing to comply, to be
54 calculated pursuant to s. 202.28(2)(a).

55 (a)~~(b)1.~~ Any dealer who makes a sale for resale shall
56 document the exempt nature of the transaction, as established by
57 rules adopted by the department, by retaining a copy of the
58 purchaser's initial or annual resale certificate issued pursuant

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59 to s. 202.17(6). In lieu of maintaining a copy of the
60 certificate, a dealer may document, prior to the time of sale,
61 an authorization number provided telephonically or
62 electronically by the department or by such other means
63 established by rule of the department. The dealer may rely on an
64 initial or annual resale certificate issued pursuant to s.
65 202.17(6), valid at the time of receipt from the purchaser,
66 without seeking additional annual resale certificates from such
67 purchaser, if the dealer makes recurring sales to the purchaser
68 in the normal course of business on a continual basis. For
69 purposes of this paragraph, the term "recurring sales to a
70 purchaser in the normal course of business" means sales in which
71 the dealer extends credit to the purchaser and records the debt
72 as an account receivable, or in which the dealer sells to a
73 purchaser who has an established cash account, similar to an
74 open credit account. For purposes of this paragraph, purchases
75 are made from a selling dealer on a continual basis if the
76 selling dealer makes, in the normal course of business, sales to
77 the purchaser no less frequently than once in every 12-month
78 period.

79 (b)2- A dealer may, through the informal conference
80 procedures provided for in s. 213.21 and the rules of the
81 department, provide the department with evidence of the exempt
82 status of a sale. Exemption certificates executed by entities
83 that were exempt at the time of sale, resale certificates
84 provided by purchasers who were active dealers at the time of
85 sale, and verification by the department of a purchaser's active
86 dealer status at the time of sale in lieu of a resale
87 certificate shall be accepted by the department when submitted

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88 during the protest period but may not be accepted in any
89 proceeding under chapter 120 or any circuit court action
90 instituted under chapter 72.

91 (4) (a) ~~(3)~~ Notwithstanding the rate of tax on the sale of
92 communications services imposed pursuant to this chapter and
93 chapter 203, the department shall make available in an
94 electronic format or otherwise the tax amounts and brackets
95 applicable to each taxable sale based on a rounding algorithm
96 that carries the tax computation to the third decimal place and
97 rounds the tax to a whole cent using a method that rounds up to
98 the next cent whenever the third decimal place is greater than
99 four. Dealers may elect to compute the tax due on a transaction,
100 on an item, or an invoice basis, and shall allow the rounding
101 algorithm to be applied to the aggregate state and local taxes
102 imposed pursuant to this chapter and chapter 203. The department
103 may allow but shall not require a dealer to collect the tax
104 based on a bracket system such that the tax collected results in
105 a tax rate no less than the tax rate imposed pursuant to this
106 chapter and chapter 203.

107 (b) This subsection is intended to be remedial in nature
108 and applies retroactively. This subsection does not provide a
109 basis for an assessment of any tax not paid or create a right to
110 a refund of any tax paid under this section before July 1, 2011.

111 (5) ~~(4)~~ Each purchaser of a communications service is liable
112 for the taxes imposed under this chapter and chapter 203. The
113 purchaser's liability is not extinguished until the tax has been
114 paid to the department, except that proof of payment of the tax
115 to a dealer of communications services engaged in business in
116 this state is sufficient to relieve the purchaser from further

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117 liability for the tax.

118 Section 2. Subsection (11) of section 202.11, Florida
119 Statutes, is amended to read:

120 202.11 Definitions.—As used in this chapter:

121 (11) "Retail sale" means the sale of communications
122 services for any purpose other than for resale or for use as a
123 component part of or for integration into communications
124 services to be resold in the ordinary course of business.
125 However, any sale for resale must comply with s. 202.16(3)~~(2)~~
126 and the rules adopted thereunder.

127 Section 3. This act shall take effect July 1, 2011.