

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

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

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

**BILL:** CS/CS/SB 1060

**INTRODUCER:** Community Affairs Committee; Communications, Energy, and Public Utilities Committee; and Senator Bogdanoff

**SUBJECT:** Communications Services Taxes

**DATE:** February 16, 2012      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	<b>Fav/CS</b>
2.	Toman	Yeatman	CA	<b>Fav/CS</b>
3.	Cote	Diez-Arguelles	BFT	<b>Pre-meeting</b>
4.			BC	
5.				
6.				

**Please see Section VIII. for Additional Information:**

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|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/SB 1060 makes numerous changes to the communication services tax. The bill:

- defines the terms “digital good” and “digital service” and provides that both are exempted from the communications services tax;
- defines the term “internet access” by referencing federal statute;
- defines the term “sales price” to allow additional nontaxable items to be billed together without the entire amount being taxable;
- replaces the term “cable service” with “video service”;
- provides that for a dealer of communications services who is obligated to collect and remit a local communications services tax to be liable for assigning a service address to an incorrect local taxing jurisdiction, the dealer’s failure to use one or more of the specified assignment methods must be the cause of a net aggregate underpayment of the local communications services taxes and the Department of Revenue (DOR) must determine the misallocations between jurisdictions for all taxes levied and collected by the dealer with respect to any tax period being examined;
- makes specified definitions and liability provisions retroactive and remedial; and
- makes conforming changes.

The bill substantially amends the following sections of the Florida Statutes: 202.105, 202.11, 202.125, 202.16, 202.18, 202.195, 202.20, 202.22,, 202.231, 202.24, 202.26, 203.01, 610.118, and 624.105.

The bill also creates an undesignated section of law.

## II. Present Situation:

Chapter 202, F.S., is the Communications Services Tax Simplification Law. This law restructured taxes applicable to a broad array of communication services, including local and long distance telephone service, cable television, direct-to-home satellite television, and other related services.

The communication 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 6.65 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.

Chapter 203, F.S., provides for gross receipts tax of 2.52 percent applied to communication services. The state CST and gross receipt tax result in a combined state rate of 9.17 percent applied to the purchase of most communication services. Direct-to-home services are taxed at a gross receipts tax rate of 2.37 percent, for a combined state CST and gross receipt state tax rate of 13.17 percent. The local CST tax rate is up to 7.12 percent, depending on the location of the customer.

Current law defines communication services as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.”<sup>1</sup> Section 202.11(2), F.S., lists a number of items excluded from the communication services tax, such as information services, bad check and late payment charges, internet access services, and the sale or rental of tangible personal property.

### Digital Goods and Services

There is currently no provision in ch. 202, F.S., defining “digital goods” or “digital services” or providing for their communication services tax treatment.

### Situsing

Section 202.22, F.S., provides for the determination of local tax situs. It provides that a dealer of communications services who is obligated to collect and remit a local communications services tax is held harmless from any liability, including tax, interest, and penalties, which would

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<sup>1</sup> Section 202.11(2), F.S.

otherwise be due solely as a result of an assignment of a service address to an incorrect local taxing jurisdiction, if the dealer exercises due diligence in applying one or more of the following methods for determining the local taxing jurisdiction in which a service address is located:

- employing an electronic database provided by the department;
- employing a database developed by the dealer or supplied by a vendor which has been certified by the department;
- employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer's service area to a specific local taxing jurisdiction; or
- if an enhanced zip code is unsatisfactory for stated reasons, the dealer of communications services or its database vendor must assign the affected service addresses to one specific local taxing jurisdiction within the zip code based on a reasonable methodology meeting one of the specified criteria.

The statute requires DOR to create and maintain an electronic database that designates for each street address, address range, post office box, or post office box range in the state, including any multiple postal street addresses applicable to one street location, the local taxing jurisdiction in which the street address, address range, post office box, or post office box range is located and the appropriate code for each such local taxing jurisdiction, identified by one nationwide standard numeric code.

If a dealer of communications services does not use one or more of the specified methods for determining the local taxing jurisdiction in which a service address is located, the dealer may be held liable for any tax, including interest and penalties, which is due as a result of assigning the service address to an incorrect local taxing jurisdiction.

#### Taxation of items that are not separately stated

Section 202.11(13), F.S., defines the "sales price" as the total amount charged by a dealer, including any services that are part of the sale. Therefore, if a single line item contains both communication services and products that are not communication services, the CST is imposed on the entire sales price, unless the non-communication service product is Internet access and the charges for Internet access can be reasonably identified. If a dealer wishes to carve out nontaxable items<sup>2</sup>, those items would need to be separately stated.

Federal law exempts Internet access from state or local taxation.<sup>3</sup> In complying with that directive, s. 202.11(13)(b)(8), F.S., allows charges for Internet access services that are not separately itemized on a customer's bill and which can be reasonably identified from the selling dealer's books and records to be excluded from the taxable sales.

### **III. Effect of Proposed Changes:**

**Section 1** amends s. 202.105(1), F.S., which provides legislative findings and intent and includes language about the "convergence of service offerings that is now taking place among providers."

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<sup>2</sup> E.g., the sale or rental of personal property such as a cable box.

<sup>3</sup> 47 U.S.C. §151.

The bill deletes this language and replaces it with the “multitude of providers offering functionally equivalent communications services in today’s marketplace.”

**Section 2** amends s. 202.11, F.S., which provides definitions. The bill:

- deletes the term “cable services” from the definition of “communications services” and replaces it with “video services,” to recognize that other traditional types of communications companies now offer video services, not just traditional cable companies;
- includes digital goods and digital services in the exclusions from the definition of “communications services,”
- defines “digital good” as any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music, or other digital content. The term does not include video service, which remains taxable.
- defines “digital service” as any service, other than video service, which is provided electronically, including remotely provided access to or use of software or another digital good. “Digital service” also includes the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services;
- defines “Internet access service” to have the same meaning as the term “Internet access” provided by s. 1105(5) of the Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by Pub. L. No. 110-108; and
- revises the definition of “sales price” to expand the existing provisions relating to what charges a dealer may exclude from the taxable sales price of communication services.<sup>4</sup> The bill provides that the dealer may exclude charges for any good or service that is exempt from the CST, except those listed in renumbered s. 202.11(15)(a), F.S., so long as those exempt items can be reasonably identified from the selling dealer’s books and records. The bill extends the list of allowable excluded charges that do not need to be separately stated from Internet access to any good or service that is not otherwise taxable.

**Section 3** amends s. 202.125, F.S., to change a reference to “cable services” to “video services.”

**Section 4** amends s. 202.16, F.S., to change a reference to cable service to video service, and adds the “purchase of video programming” to charges that must comply with DOR rules.

**Section 5** amends s. 202.18, F.S., to conform to new situsing procedures.

**Section 6** amends s. 202.195, F.S., clarifying the public records exemption for proprietary confidential business information. It also replaces references to cable companies with references to video service providers.

**Section 7** amends s. 202.20, F.S., to change a reference to cable service to video service.

**Section 8** amends s. 202.22, F.S., modifying the situsing procedure for assigning customer service addresses to local taxing jurisdictions. The bill provides that a dealer may be held liable for the net aggregate underpayment of the tax, and for interest and penalties attributable to the net aggregate underpayment of tax, which is due as a result of assigning one or more service

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<sup>4</sup> Currently only applicable to the cost of Internet access,

addresses to an incorrect local taxing jurisdiction if the dealer failed to use one or more of the specified methods and if:

- the dealer's failure to use one or more of such methods results in a net aggregate underpayment of the local communications services taxes with respect to one or more tax periods that are being examined by the department; and
- the department has determined the misallocations between jurisdictions for all taxes levied and collected by the dealer with respect to any tax period being examined by the department.

**Section 9** amends s. 202.231, F.S. to require the department to publish on its website the gross taxable sales and net tax information contained in the monthly reports provided to each jurisdiction imposing the local communications services tax. The data should be aggregated on a jurisdiction-by-jurisdiction basis.

**Section 10** amends s. 202.24, F.S., to delete references to cable services.

**Section 11** amends s. 202.26, F.S., to conform a cross-reference.

**Section 12** amends s. 203.01, F.S., to conform a cross-reference.

**Section 13** amends s. 610.118, F.S., to conform a cross-reference.

**Section 14** amends s. 624.105, F.S., to conform a cross-reference.

**Section 15** creates an undesignated section of law to provide for retroactive application of specified sections of the bill.

**Section 16** provides that the bill takes effect July 1, 2012.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The county/municipality mandates provision of Art. VII, section 18 of the Florida Constitution, may apply because this bill may reduce the revenues collected by local governments by revising the liability dealers of communications services have in cases of underpayment due to incorrectly assigned service addresses and by the other changes made in this bill. Also, this bill does not appear to qualify under any exemption or exception. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

## V. Fiscal Impact Statement:

### A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) estimates the changes to dealer liability for incorrectly assigned service addresses will have a recurring negative impact to local governments of \$4.7 million.<sup>5</sup>

The conference also adopted indeterminate negative estimates related to:

- the “digital services” definition,<sup>6</sup>
- the “digital goods” definition,<sup>7</sup>
- the unbundling and exclusion from sales price of any property except those specifically enumerated as part of the sales price,<sup>8</sup> and
- the remedial and retroactive application of the CS.<sup>9</sup>

While the conference adopted negative indeterminate impacts for the above items, the conference estimated the impact from the remedial and retroactive language would be at least (\$0.6m) in FY2012-13. In addition, the conference agreed, that although the full scope of the unbundling provisions are indeterminate, the recurring annual impacts will be at least (\$11.3m) for gross receipts tax, (\$2.9m) for state sales and use taxes, and (\$21.2m) for local government communication services taxes.

### B. Private Sector Impact:

Indeterminate.

### C. Government Sector Impact:

See Tax/Fee Issues.

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<sup>5</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Changes to Language Regarding Assignment of Current Local Taxing Jurisdictions* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page249-252.pdf>.

<sup>6</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Exclusion of Digital Services/Digital Services Definition* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page242-244.pdf>.

<sup>7</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Exclusion of Digital Goods/Digital Goods Definition* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page239-241.pdf>.

<sup>8</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for Proposed amendment 2 to CS/HB 809 and CS/CS/CSSB 1060: Unbundling and Exclusion from Sales Price of Any Property or Services Except Those Specifically Enumerated as Part of Sales* (Feb. 16, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page456-461.pdf>.

<sup>9</sup> Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for Proposed amendment 2 to CS/HB 809 and CS/CS/SB 1060: Remedial and Retroactive* (Feb 16, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page245-246.pdf>.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Additional Information:**

- A. **Committee Substitute – Statement of Substantial Changes:**  
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

**CS by Community Affairs Committee on February 6, 2012:**

- removes an amended definition for “pre-paid calling arrangement.”

**CS by Communications, Energy, and Public Utilities Committee on January 30, 2012:**

- deletes provisions relating to prepaid calling arrangements; and
- revises the conditions under which a dealer of communications services who is obligated to collect and remit a local communications services tax may be held liable for taxes and associated interest for assigning a service address to an incorrect local taxing jurisdiction.

- B. **Amendments:**

None.