

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 Community Affairs Committee

BILL: CS/SB 1060

INTRODUCER: Communications, Energy, and Public Utilities Committee and Senator Bogdanoff

SUBJECT: Communications Services Taxes

DATE: February 1, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Fav/CS
2.	Toman	Yeatman	CA	Pre-meeting
3.			BC	
4.				
5.				
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes

B. AMENDMENTS..... Technical amendments were recommended

Amendments were recommended

Significant amendments were recommended

I. Summary:

The bill:

- defines the terms “digital good” and “digital service” and provides that both are exempted from the communications services tax;
- defines the term “sales price” to allow additional nontaxable items to be billed together without the entire amount being taxable;
- provides that for a dealer in 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 these changes retroactive and remedial;
- makes numerous conforming changes; and
- changes numerous references to cable service to references to video service to recognize that other traditional types of communications companies now offer video services, not just traditional cable companies.

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, 212.05, 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.

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 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.

Section 202.231, F.S., requires the department to provide a monthly report to each jurisdiction imposing the local communications services tax. Each report must contain the following information for the jurisdiction which is receiving the report: the name and other information necessary to identify each dealer providing service in the jurisdiction, including each dealer's federal employer identification number; the gross taxable sales reported by each dealer; the amount of the dealer's collection allowance; and any adjustments specified on the return, including audit assessments or refunds, and interest or penalties, affecting the net tax from each dealer which is being remitted to the jurisdiction. The report must total the net amount

transferred to the jurisdiction, showing the net taxes remitted by dealers less the administrative fees deducted by the department. The monthly reports must be transmitted through a secure electronic mail system or by other suitable written or electronic means.

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.” 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 existing definition of “cable service,”
- deletes the term “cable services” from the definition of “communications services” and replaces it with “video services,”
- includes digital goods and digital services in the exclusions from the definition of “communications services,”
- defines “digital good” to mean 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, and not to include video service;
- defines “digital service” to mean any service, other than video service, which is provided electronically, including remotely provided access to or use of software or another digital good, and also includes the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services. If a digital service is bundled for sale with the transmission, conveyance, or routing of any information or signals, the bundled service is a digital service unless the tax imposed under this chapter and chapter 203 has not been paid with respect to such transmission, conveyance, or routing.;
- defines “Internet access service” to have the same meaning as ascribed to the term “Internet access” 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
- defines “video service” to mean the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser’s premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

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 remove the language “Notwithstanding the time period specified in s. 202.22(5),” as that time period is deleted in section 8 of bill.

Section 6 amends s. 202.195, F.S. This section provides a public records exemption for proprietary confidential business information obtained from a telecommunications company or cable company for the purposes of imposing a fee for occupying the public rights-of-way, assessing the local communications services tax, or regulating the rights-of-way. The bill deletes all references to imposing a fee for occupying the rights-of-way. 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., on determination of local tax situs. The statute currently provides that if a dealer of communications services who is obligated to collect and remit a local communications services tax assigns a service address to an incorrect local taxing jurisdiction, but has exercised due diligence in applying one or more of specified methods for determining the local taxing jurisdiction in which a service address is located, the dealer is held harmless from any liability, including tax, interest, and penalties, which would otherwise be due. If the dealer has not used one of these methods, the dealer is liable.

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 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. This section requires the department to provide a monthly report to each jurisdiction imposing the local communications services tax. Each report must contain jurisdiction-specific information: identifying each dealer providing service in the jurisdiction; the gross taxable sales reported by each dealer; the amount of the dealer’s collection allowance; any adjustments specified on the return, including audit assessments or refunds, and interest or penalties, affecting the net tax from each dealer which is being remitted to the jurisdiction; and the net amount transferred to the jurisdiction, showing the net taxes remitted by dealers less the administrative fees deducted by the department.

The bill adds to this a requirement that the gross taxable sales and net tax information contained in the monthly reports be aggregated on a jurisdiction-by-jurisdiction basis, and the aggregate jurisdiction-by-jurisdiction information be made available by the department to the public through the department’s website for each fiscal year this chapter has been in effect.

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. 212.05, F.S., to amend the definition of “prepaid calling arrangement.” The bill changes the portion of the definition stating that they “are sold in predetermined units or dollars whose number declines with use in a known amount” to “are sold in predetermined units or dollars whose number declines on a predetermined basis in a known amount,” which would appear to allow the value to decline without use.

Section 14 amends s. 610.118, F.S., to conform a cross-reference.

Section 15 amends s. 624.105, F.S., to conform a cross-reference.

Section 16 creates an undesignated section of law to provide for retroactive application of specified sections of the bill.

Section 17 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. 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 2012 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.¹

¹ 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>.

In addition, the REC adopted a negative impact related to the expanded “prepaid calling arrangement” definition.² The cash impact adopted by the conference reflects expected reductions to the gross receipts, state sales tax, and local portion of the Communication Services Tax primarily due to the actual remittances currently received as Communication Services Taxes that will in the future be remitted as sales tax due to the broader definition of prepaid calling arrangements. There is an additional small amount in the estimate that represents changes in business models that will result in additional migration from Communication Services Tax to sales tax. The projected recurring losses to general revenue are \$11.7 million. Projected recurring losses to gross receipts tax are \$51.4 million.³ The projected recurring losses to local governments are \$97.3 million.

The conference also adopted indeterminate negative estimates related to:

- the “digital services” definition,⁴
- the “digital goods” definition,⁵
- the unbundling and exclusion from sales price of any property except those specifically enumerated as part of the sales price,⁶ and
- the remedial and retroactive application of the CS.⁷

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

See Tax/Fee Issues.

VI. Technical Deficiencies:

None.

² Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Expanded “Prepaid Calling Arrangement” Definition* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page294-296.pdf>.

³ Article XII, Section 9(a)(2), of the Florida Constitution provides that school districts may share in the proceeds from gross receipts taxes, referred to as Public Education Capital Outlay or PECO funds, as provided by legislative appropriation.

⁴ 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>.

⁵ 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>.

⁶ Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Unbundling and Exclusion from Sales Price of Any Property or Services Except Those Specifically Enumerated as Part of Sales* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page245-248.pdf>.

⁷ Office of Economic and Demographic Research, The Florida Legislature, *Impact Analysis for HB 809 and SB 1060: Remedial and Retroactive* (Jan. 19, 2012) available at <http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2012/pdf/page297-299.pdf>.

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 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.