

**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.)

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Prepared By: The Professional Staff of the Committee on Communications, Energy, and Public Utilities

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BILL: CS/SB 898

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

SUBJECT: Communications Services Tax

DATE: March 4, 2014

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	<b>Fav/CS</b>
2.			CM	
3.			AFT	
4.			AP	

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

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB 898 exempts from the term “sales price” for Communications Services Tax purposes the sale of communications services between a franchisor and its franchisee. The bill defines the term “franchisee” to mean any entity, including a related company, using the franchisor’s service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor. The term “service mark” means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor.

The bill states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

**II. Present Situation:**

Chapter 202, F.S., is the Communications Services Tax Simplification Law, which combined and restructured numerous state and local taxes and fees imposed on communications services into a single tax centrally administered by the Department of Revenue (DOR). The

Communications Services Tax (CST) is applied to the retail sales price of each taxable communications service for the purpose of remitting the tax due.<sup>1</sup> The term “sales price” is defined to mean the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other service which is part of the sale and for which the charge is not separately itemized on a customer’s bill.<sup>2</sup> There are express exemptions from the sales price, including:

- an excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including, but not limited to, a tax imposed under chapter 202 or chapter 203 (gross receipts tax) which is permitted or required to be added to the sales price of such service, if the tax is stated separately;
- a fee or assessment levied by the United States or any state or local government, including, but not limited to, regulatory fees and emergency telephone surcharges, which must be added to the price of the service if the fee or assessment is separately stated;
- communications services paid for by inserting coins into coin-operated communications devices available to the public;
- the sale or recharge of a prepaid calling arrangement;
- the provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft;
- a dealer’s internal use of communications services in connection with its business of providing communications services;
- charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services; and
- charges for goods or services that are not subject to tax under this chapter, including Internet access services, that are not separately itemized on a customer’s bill, but that can be reasonably identified from the selling dealer’s books and records kept in the regular course of business.

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

The bill amends paragraph 202.11(13)(b), F.S., to add to the list of exclusions from the definition of “sales price” the sale of communications services between a franchisor and its franchisee.

The term “franchisor” is not defined. The term “franchisee” is defined to mean any entity, including a related company as defined in s. 495.011, F.S., using the franchisor’s service mark as defined in s. 495.011, F.S., whether by license, management agreement, or by a subsidiary or affiliate of the franchisor. The term “related company” means any person whose use of a mark is controlled by the owner of the mark with respect to the nature and quality of the goods or services on or in connection with which the mark is used. The term “service mark” means any word, name, symbol, or device, or any combination thereof, used by a person to identify and distinguish the services of such person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names,

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<sup>1</sup> Section 202.12, F.S.

<sup>2</sup> Section 202.11(13), F.S.

and other distinctive features of radio or television programs may be registered as service marks notwithstanding that the person or the programs may advertise the goods of the sponsor.

The exclusion does not apply to the sale of communications services to a franchisor for its own use.

The bill states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

The bill takes effect July 1, 2014.

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

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

CS/SB 898 is narrower in its effect than the original bill, but is still very broad, being applicable to the sale of any communications services between any franchisor and its franchisee. As such, it is uncertain how the bill will affect CST revenues as it is uncertain what goods or services will be exempt from CST under the bill.

B. Private Sector Impact:

CS/SB 898 is narrower in its effect than the original bill, but is still very broad, being applicable to the sale of any communications services between any franchisor and its franchisee. As such, the fiscal impact of the bill is uncertain as it is uncertain what goods or services will be exempt from CST under the bill.

C. Government Sector Impact:

CS/SB 898 is narrower in its effect than the original bill, but is still very broad, being applicable to the sale of any communications services between any franchisor and its franchisee. As such, the fiscal impact of the bill is uncertain as it is uncertain what goods or services will be exempt from CST under the bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends section 202.11 of the Florida Statutes.

**IX. 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 on March 4, 2014:**

The committee substitute completely rewrites the proposed exemption from the term “sales tax” for purposes of the Communications Services Tax. It exempts the sale of communications services between a franchisor and its franchisee, defining the term “franchisee” to mean any entity, including a related company, using the franchisor’s service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.

The bill also states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

**B. Amendments:**

None.