

**STORAGE NAME:** h1275s1.ft

**DATE:** April 16, 1997

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
FINANCE AND TAXATION  
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

**BILL #:** CS/HB 1275

**RELATING TO:** Municipal Public Service Tax

**SPONSOR(S):** The Committee on Finance and Taxation and Representative Valdes and others

**STATUTE(S) AFFECTED:** ss. 166.231, 166.233, 166.234, 203.01, and 203.63

**COMPANION BILL(S):** SB 1958

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) UTILITIES AND COMMUNICATIONS YEAS 11 NAYS 0
- (2) FINANCE AND TAXATION YEAS 13 NAYS 0
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

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**I. SUMMARY:**

This bill provides the legislative intent to establish a taxpayer's bill of rights for public service taxes under section 166.231, Florida Statutes. The bill would provide detailed procedures for the administration of the public services taxes and would provide rights and remedies to a seller concerning the assessments or determinations.

The bill would appropriate \$35,000 and one full-time equivalent position to the Department of Revenue to implement the provisions of the bill.

The bill was substantially amended in the Committee on Utilities and Communications. The committee adopted an amendment that removed everything after the enacting clause and inserted several new provisions.

The bill was further amended and CS'd in the Committee on Finance and Taxation to provide language exempting university residences from the municipal utility taxes and restrictions on refunds of gross receipts that have already been collected and remitted to the state by the seller.

The bill would take effect upon becoming a law.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Florida Constitution in Article VII, section 9(a) provides that counties, school districts, municipalities, and special districts may be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, except for ad valorem taxes on intangible personal property and taxes not prohibited by the Constitution.

Section 166.231, Florida Statutes, authorizes municipalities to levy a public service tax. The seller of the service collects the tax from the purchaser and sends it to the municipality as prescribed by ordinance. Subsection (1) of section 166.231, Florida Statutes, specifically authorizes municipalities to levy a tax on the purchase of electricity, metered or bottled gas, and water service within the municipality not to exceed 10 percent of the amount received for the service. Competitive services are taxed on a comparable base at the same rates. Except for certain continuing obligations, cable television services are not taxed. Fuel adjustment charges are not taxed, and a fuel oil tax may not exceed four cents per gallon. Municipalities must notify sellers in writing of any change in municipal boundaries or in the rate of taxation.

Municipalities levying the tax may exempt certain purchases. Municipalities also may exempt from these taxes, purchases by the United States government, the state, a public body as defined in section 1.01, Florida Statutes, or certain nonprofit corporations whose water utility services will revert to a political subdivision upon retirement of all outstanding indebtedness. The municipality is required to exempt those purchases by any recognized church that are to be used exclusively for church purposes. There is also an enterprise zone exemption from the tax.

Section 166.231(9), Florida Statutes, authorizes a public services tax on telecommunications services. The municipality is required to elect one of two alternative methods of levying the telecommunications tax and to provide a telecommunications provider with an alphabetical listing of street names and numbers within the municipality for use in calculating the tax. The municipality is authorized to audit the records of any taxable telecommunications service provider; however, the information received is exempt from the open public records requirements in section 119.07(1), Florida Statutes. Under certain circumstances, shortfalls in the collection of the tax may be determined for July 1, 1995, through June 30, 1996, and collections assessed from each company.

Although section 166.231, Florida Statutes, only grants the authority to levy public service taxes to municipalities, charter counties are also authorized to levy these taxes. In Volusia County v. Dickinson, 269 So. 2d 9 (Fla. 1972), the Florida Supreme Court stated that charter counties have the right to levy any tax that municipalities may levy. The Court subsequently found the logic in the Dickinson case applicable to "a public service tax" under section 166.231, Florida Statutes. According to the Florida Supreme Court, when Article VII, Section 9(a) of the Florida Constitution on local taxes and Article VIII, Section 1(g) of the Florida Constitution on charter government are "read together," they "give charter counties the authority to levy any tax that a municipality may impose, if it is within the county's taxing jurisdiction." McLeod v. Orange County, 645 So. 2d 411, 413, (Fla. 1994).

The *1997 Florida Tax Handbook*, Florida Legislature and Florida Department of Revenue, estimated that municipalities collected \$664.9 million and charter counties collected \$244.2 million from public services taxes in fiscal year 1996-97. As of 1995, seven charter counties, Alachua, Broward, Dade, Orange, Palm Beach, Seminole and Volusia and consolidated Duval/Jacksonville levied the public service tax. Charter counties may only levy the tax in unincorporated areas of the county.

**B. EFFECT OF PROPOSED CHANGES:**

This bill would provide that the intent of the Legislature to improve the ability of municipalities and sellers to administer this tax at reasonable cost, protects sellers who act in good faith, ensure that sellers are furnished the information necessary for remitting the taxes to the correct municipality, and prescribe a framework for administration and auditing of the tax.

Purchases made by the United States Government, the State of Florida, counties, municipalities, school districts, or public bodies that are exempt by law or court decisions would also be exempt from the public service tax. The bill would also exempt telephone lines in local dormitories owned and operated by state universities from the local municipal utility taxes. The bill would continue to authorize municipalities to exempt other public bodies, as defined in section 1.01, Florida Statutes, nonprofit corporations or cooperative associations organized under chapter 617, Florida Statutes, which provide water utility services to more than 13,500 equivalent residential units, that revert to a political subdivision after any indebtedness is paid, and any recognized church used exclusively for church purposes. Municipalities would be required to exempt any religious institution that possesses a consumer certificate of exemption issued under chapter 212, Florida Statutes, from the tax on telecommunications services.

The bill would provide that if a municipality levies a tax on telecommunications services as defined in section 203.012, Florida Statutes, on purchases in which the location cannot be determined the, the source of the tax may be ascribed to the municipality on the basis of the telephone number, billing address, or service address which is used by the seller.

The bill would provide that the seller remains liable for taxes that are due and not remitted to a municipality, however, it does not prevent the seller from recovering these taxes from the purchaser.

The bill would provide for the filing of tax returns by the sellers of services each month. The form would be determined by the seller and would be sufficient if it identifies the name and address of the seller, the period of the return, any collection allowance taken, the amount of tax remitted, and the name and telephone number of the person to contact for information about the seller's administration of the tax. A municipality can only require the same date of return and payment of tax as is required by chapter 212, Florida Statutes. A municipality may grant an extension of time for the return. However, the collection allowance would not be allowed unless the seller requested the extension in writing and the extension had been granted. The extensions are required to be granted if reasonable cause is shown. The seller may also be allowed to, with written authorization from the municipality, to remit any taxes collected on a quarterly basis if

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the amount of tax collected does not exceed \$120 per quarter. The taxes would be due on the 20th day of the month following the end of the quarter.

The bill would provide that any purchaser who claims the exemptions in subsections (4), (5), or (9)(e), must certify to the seller that they qualify for the exemption. The purchaser of telecommunications service for resale may satisfy this certification requirement by presentation of a certificate that satisfies the requirements of chapter 212, Florida Statutes. A seller would be relieved from collecting and remitting the tax when the seller accepts the certification provided by this act. A governmental body does not have to furnish this certification. However, governmental bodies that sell or resell taxable service to nonexempt end users would be required to collect and remit the tax levied under this section.

The bill would provide definitions procedures to identify where addresses of purchasers are located for sections 166.231, 166.232, and 166.234, Florida Statutes. Subsection (2)(a) would provide that the tax levy be adopted by ordinance and would be effective either the subsequent January 1, April 1, July 1, or October 1 following the adoption of the ordinance. The municipality is required to notify the Department of Revenue of the action at least 120 days before the effective date of the ordinance on a form prescribed by the department. The notification would be required to specify the services taxed, including any election under section 166.231(9)(a), Florida Statutes, the rate, the effective date, and the name, address, and telephone number of a person designated to respond to inquiries about the tax. The department is required to maintain this information to respond to inquiries and any person may obtain this information by requesting it in writing from the department. A response would be timely under this section if it is in writing and dated no later than 20 days after the receipt of the request. The department would be authorized to charge a fee for the actual cost of maintaining and providing the information. The department would have no liability for any loss or decrease of revenue by reason of any error, omission, or untimely action that results in nonpayment of taxes. The effective date and departmental notification requirements apply only to taxes levied on telecommunication services by municipalities. Paragraph (b) would allow the Department of Revenue to contract with a private entity to provide its services provided the department sets the authorized fees.

The bill would also require a municipality to furnish any person, within 20 days of a request, a copy of the ordinance and amendments adopting any tax levy, a written notification indicating the type of medium is available for the address list required by this section, the charges for the list, and the person or office to contact to obtain a copy of the list. Upon any written request and payment of the cost, the municipality must send a copy of the appropriate address list to the person requesting it. A municipality must compile a list containing each street name, know street name aliases, street address number ranges, applicable directionals, and zip codes associated with each street name, for all street address numbers located within the municipality. In addition, a municipality must compile a list containing each postal zip code and all the city names associated with the zip codes located entirely within the municipality, including zip codes for post office boxes. A municipality also must compile a list containing all post office box number ranges, including the city names and zip codes located entirely within the municipality. The zip codes lists need not be duplicated. The lists may be printed or available in another medium. The lists must be updated as changes occur and must specify the effective date which must be the next ensuing quarterly effective date -- i.e., January 1, April 1, July 1, or October 1. Sellers must be furnished the updated list not

less than 60 days prior to the effective date. The updated list must show additions, deletions, and other changes made to the preceding list. The sellers are only responsible for charging the public service tax only to service and billing addresses contained in the lists supplied by the municipality. This includes lists that are furnished by a municipality without the seller's request. The municipality may collect a fee not to exceed the actual cost of duplicating the information. The compilation of these lists replaces the address database that was in the original bill.

The bill would also provide that the seller is only liable for collecting and remitting the taxes due to the extent that the address information received is accurate

The seller's obligation to collect and remit the public service tax is suspended during any delay in timely receiving the information required. The obligation would not be suspended if:

1. the request precedes the date on which a municipality is required to furnish notification to the department; or
2. the seller has been properly collecting and remitting the tax on a taxable service from customers on the date of the request.

If a seller is delayed in receiving the information required, and receives it less than 60 days before the effective date of a tax levy or update, then the seller does not have to collect and remit the taxes until the next quarterly effective date.

If more than one municipality claims the same address or group of addresses, the seller is required to notify the affected municipalities within 60 days of the determination of the competing claims. Once the municipalities resolve the competing claims, the affected municipalities must supply the seller with a signed agreement describing the resolution. The seller must begin collecting and remitting the tax after the next quarterly effective date that is at least 60 days after the receipt of the agreement. Prior to that date, the seller must continue the prior tax treatment on the addresses involved in the competing claims. The seller is not liable for the amounts that are not collected and remitted before the agreement unless the prior tax treatment was correct.

If the information supplied by the municipality does not agree with the seller's records, the sellers must notify the municipality about the problem. The seller must identify and describe the nature of the problem. If the seller notifies the municipality within 60 days of receiving the information, then the seller is not obligated to collect and remit the taxes until the next quarterly effective date that is at least 60 days after the municipality has resolved the problem.

The bill would allow a municipality to audit the records of any seller of a service that is taxable by a municipality under sections 166.231 or 166.232, Florida Statutes, during normal business hours at the location of the seller's official records. The municipalities would be required to give 60 days written notice of an audit and the seller would be required to give the municipalities access to the applicable records for such service. An extension to the 60-day period must be granted to the seller if reasonably requested by the seller. The seller may waive the 60-day notice requirement. If the municipality or seller requires an additional extension, it must give notice of at least 30 days to the other party before the extension expires. This time limit does not apply in a bona fide

emergency or the waiver of the notice requirement. In an audit, the seller would be liable only for the taxable accounts that correspond to the information provided by the municipality under section 166.233(3), Florida Statutes. The applicable records means "records kept in the ordinary course of business which establish the collection and remittance of taxes due." The records may be provided in an electronic medium if agreed to by the municipality and the seller. Contingency audit fees are prohibited and determination established through this method would be invalid.

Each seller must also preserve the applicable records until the expiration of the time that the municipality has to make an assessment. The seller is not required to keep duplicate or redundant records.

The bill would require that, before an audit is conducted, a municipality discuss with the seller, upon request, the proposed audit methodology and furnish the seller a report of each audit that identifies the nature of the deficiency or overpayment, the amount, and the manner of computation. A seller may request and the municipality must furnish all material necessary to supplement the audit findings, no less than 45 days before issuing a determination.

The bill would allow a municipality to issue a proposed assessment within three years after the date when the tax was due. This limitation would be tolled for one year if, within that time, the municipality issues a notice of intent to audit to the seller. If the audit cannot be completed within these time frames because of the seller's refusal or delay in allowing the municipality access to its records, the municipality may make a proposed assessment from an estimate based upon the best available information for the taxable period, unless the seller agrees in writing to an extension of time. If the seller still denies the municipality access to its records, the municipality may make a proposed assessment after three years from the issuance of the notice of intent to audit.

The bill would allow a seller to apply for a refund or credit for any overpayment of tax, including interest and penalties, within three years of the remittance by the seller. The municipality must refund or allow a credit for those overpayments. If the seller has refunded or credited the purchaser for the overpayment pursuant to subsection (6), the seller may apply within the above three years or within 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

The bill would also include a provision that would bar the municipality's right to assess the tax, including interest and penalties and the seller's right to apply for a refund or credit after the time limitations. However, if fraud has occurred or the parties agree, the time periods may be extended.

The bill would require a municipality to offset a seller's overpayment of tax, including interest and penalties against any deficiency of tax, interest or penalty during the same audit period and the offset must be reflected in any proposed assessment. If the overpayments exceed the deficiency, then the municipality must refund the amount the aggregate overpayments exceed the total deficiency. The audit methodology is presumed to be correct absent proof to the contrary. "Overpayment" is defined as "all remittances of public service tax, interest, or penalty which were not due to the municipality, including amounts properly collected but remitted to the incorrect municipality."

Subsection (6) would allow a purchaser of a service to request a refund or credit from the seller of the tax collected based on the tax not being due the municipality. The seller would be required to refund or credit the amount if the request is made within three years following the collection of the tax from the purchaser. If the seller determines that the amount of taxes collected from the purchaser within the preceding three years were not due the municipality, the seller must refund or credit the purchaser within 45 days of that determination.

The would authorize a municipality to assess interest and penalties for failure to pay any tax when due or to file any required return. However, no penalty may be assessed absent willful neglect, willful negligence or fraud. Interest may be assessed at a maximum rate of one percent per month from the date the tax was due and paid. Penalties may be assessed at a maximum rate of five percent per month, not to exceed a total of 25 percent. The minimum penalty is \$15.00. If the seller makes a fraudulent return or willfully attempts to evade payment of the tax, the seller is liable for a specific penalty of 100 percent of the tax. Interest and penalties are computed on the net tax due after application of overpayments; they can be compromised under subsection (14) and must be authorized by ordinance.

The bill would provide that a proposed assessment or finding of amounts due the seller constitutes a determination of the municipality for the purposes of this section. The determination must separately state the amount of the tax, interest, and penalty claimed to be due or refunded. It must be accompanied by a written narrative explaining the basis for the municipality's determination and it must state the seller's remedies if it disagrees with the determination. Finally, the narrative must indicate the consequences of the seller's failure to comply with any demand of the municipality that is stated in the determination.

The bill would allow a seller to file a written protest of any determination with the municipality within 60 days of the determination. The municipality must consider the protest and issue a written decision within 60 days of the protest. The seller may petition the municipality for a reconsideration of the decision within 30 days. The municipality then must issue a reconsideration notice within 30 days.

The bill would provide that the determination becomes final 60 days after the date of issuance, unless the seller, before the 60-day period expires, files a protest or secures a written extension of time within which to file a protest. The determination becomes final if the seller has not filed its protest within the time period of the extension. If the seller files a protest and the seller and municipality cannot resolve the disputed issues, the determination becomes final as of the date of the issuance of the notice of decision. However, if the seller has timely filed a petition for reconsideration, then the determination becomes final upon the issuance of a notice or reconsideration.

The bill would require the notice of decision or reconsideration to address each issue raised in the protest or petition and must explain the reasons for the conclusions and advise the seller of the remedies available if the seller disagrees with the decision.

The bill would allow a seller to contest the legality of any determination by filing an action in circuit court within 60 days of the final determination. The seller must pay the municipality the amount of the tax, penalty, and accrued interest which is not being contested. The venue for the actions lies in the county where the municipality is located

and the defendant in the action is the municipality. A seller's failure to protest a determination does not waive or impair its right to seek a refund of any overpayment.

The bill would allow the municipality and the seller to settle or compromise the seller's liability for any tax, interest, or penalty based on the grounds of doubt as to the liability or doubt as to the collectibility of the tax, interest, or penalty. A municipality and a seller may enter into a written closing agreement that reflects the settlement or compromise, and once it has been approved by the parties, it is binding on them. Absent a showing of fraud or misrepresentation of a material fact, no additional assessment or recovery may be made on matters agreed to in the settlement or compromise.

When a municipality issues a determination, it must include the names of persons authorized to approve compromises and to execute closing agreements. A municipality may also agree to schedule payments of taxes, interest, and penalties which recognize the seller's financial condition and the best interests of the municipality, if the seller gives accurate, current information and meets all other tax obligations on schedule.

The bill would require that all notices, determinations, protests, petitions, must be sent by certified mail, return receipt requested. The date of issuance would be the date the notice or determination is postmarked. Protests and petitions are timely filed if they are postmarked or received by the municipality within the appropriate time limits. It would also allow the seller to pay any contested amount, in whole or in part, at any time without impairing its remedies.

The bill would require each municipality that levies the public service tax to furnish sellers with prompt, accurate responses to questions and request for tax assistance. If chapter 203 or chapter 212 is amended to require payment of interest on the refund of taxes, then municipalities would be required to pay interest on public service refunds at the rate required by such law.

Sellers would be entitled with the following right to:

- (a) be represented by counsel or qualified representative;
- (b) have procedural safeguards concerning recording interviews during the tax determination process; and
- (c) have audits, record inspections, and interviews conducted at a reasonable time and place.

The bill would allow municipalities to communicate with each other about the following information:

- (a) technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit, however, this information cannot include any data relevant to a specific purchaser or account, or the seller's tax treatment of specific services;
- (b) names and addresses of companies selling taxable services within the municipalities' respective jurisdictions; and



(c) the name of any company issued a refund and the total amount of the refund.

The bill would prohibit a municipality from assessing a seller for any costs incurred or charged to the municipality for performing an audit, including travel expenses. Any assessment or proposed assessment of these costs would be void and unenforceable. However, a municipality may assess and collect from a seller for reasonable travel expenses incurred in performing an audit if the seller received timely notice of the audit and did not permit access to the records on the audit date or any alternative date agreed to by the parties.

The bill provides that only subsection (6) of this section shall apply to a seller who is a municipality or to its subdivisions levying the tax under an audit.

The bill would require municipalities that are levying the public service tax to notify the Department of Revenue what services are being taxed, including which alternative it is using for telecommunication services, the tax rate, the effective date of the tax, and the name and address of the contact person. The notification must include information for levies with prior and future effective dates. The bill would allow sellers to rely on the address listings and updates that conform to this act and were in existence prior to the act, until July 1, 1998. The lists required by this act must be made available by the municipalities no later than January 1, 1998. The lists would be effective on July 1, 1998.

The bill would provide that the provisions of the new section 166.234, Florida Statutes, apply to all taxes, assessments, and audits. Section 166.234, Florida Statutes, would not apply to:

(a) provisions requiring performance of an act before the commencement of an audit do not apply until the effective date of this act;

(b) taxes and assessments that have been resolved by concession of liability and payment, settlement, or other means before the effective date of this act are not affected;

(c) the information requirements do not apply to determinations issued before the effective date of this act. However, a municipality is required to furnish the information if requested by a seller. In addition, no document issued before the effective date of this act is invalid merely because its contents, or the manner or times of its transmittal do not comply with section 166.234, Florida Statutes.

(d) audits that are the subject of pending litigation filed before the effective date of this act are not subject to the provisions of section 166.234(12), Florida Statutes; and

The bill would provide that the provisions of section 166.234(4)(a) as created by this act shall not apply to taxes due prior to July 1, 1994. A proposed assessment for taxes due prior to July 1, 1994 may be issued on or before July 1, 1997 for any audit period beginning on or after July 1, 1992 which is specified in a notice of intent to audit issued before March 1, 1997. After July 1, 1997, the municipality's right to assess such taxes shall expire and be barred. However, if the municipality is unable to complete such an audit due to the seller's refusal or delay in allowing access to

applicable records, the municipality may make an estimate based upon the best information available unless the seller agrees in writing to extend the limitations period.

The bill would provide an appropriation of \$35,000 and one full-time equivalent position to the Department of Revenue for the purposes of implementing the provisions of section 166.233(2), Florida Statutes.

The bill would provide a severability clause.

The bill provides that gross receipts taxes that were charged on utilities and telecommunications under section 203.01, F.S., and Ch. 212, F.S., and remitted in full to the state in the correct amount, shall not be subject to refund by the state or seller. This section is intended as remedial and intended to clarify existing law.

The bill provides that this act shall take effect upon becoming a law.

**C. APPLICATION OF PRINCIPLES:**

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

N/A

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

N/A

(3) any entitlement to a government service or benefit?

N/A

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

N/A

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

N/A

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

**D. SECTION-BY-SECTION RESEARCH:**

**Section 1.** This section would provide that intent of the Legislature to improve the ability of municipalities and sellers to administer this tax at reasonable cost, protect sellers who act in good faith, ensure that sellers are furnished the information necessary for remitting the taxes to the correct municipality, and prescribe a framework for administration and auditing of the tax.

**Section 2.** Section 166.231(5), Florida Statutes, would be amended to provide that purchases made by the United States Government, the State of Florida, counties, municipalities, school districts, or public bodies that are exempt by law or court decisions would also be exempt from the public service tax. The bill would also exempt telephone lines in local dormitories owned and operated by state universities from the local municipal utility taxes. The bill would continue to authorize municipalities to exempt other public bodies, as defined in section 1.01, Florida Statutes, nonprofit corporations or cooperative associations organized under chapter 617, Florida Statutes, which provide water utility services to more than 13,500 equivalent residential units, that revert to a political subdivision after any indebtedness is paid, and any recognized church used exclusively for church purposes. Municipalities would be required to exempt any religious institution that possesses a consumer certificate of exemption issued under chapter 212, Florida Statutes, from the tax on telecommunications services.

Subsection (7) would be amended to require that the remittance of taxes by sellers of telecommunications services will be governed by the provisions of a new paragraph (f) of subsection (9). It would further provide that the seller remains liable for taxes that are due and not remitted to a municipality, however, it does not prevent the seller from recovering these taxes from the purchaser.

Subsection (10) would be renumbered (9) and paragraph (a)1. would be amended to provide that if the location cannot be determined as part of the billing address the tax will be levied on the total amount billed for the telecommunications service at the service address in addition to the telephone or telephone number or customer's billing address.

Paragraphs (c) and (d) of the new subsection (9) that provide the current administrative procedures to be followed would be deleted. Paragraph (e) would be re-lettered paragraph (c) and would delete the current provisions concerning the municipalities auditing the sellers' tax records. It would reference the new auditing provisions in the new section 166.234, Florida Statutes. The provisions requiring the municipalities and

their agents to maintain the information received as confidential and exempt from section 119.07(1), Florida Statutes, would be retained.

A new paragraph (f) would be created to provide for the filing of tax returns by the sellers of services each month. The form would be determined by the seller and would be sufficient if it identifies the name and address of the seller, the period of the return, any collection allowance taken, the amount of tax remitted, and the name and telephone number of the person to contact for information about the seller's administration of the tax. A municipality can only require the same date of return and payment of tax as is required by chapter 212, Florida Statutes. A municipality may grant an extension of time for the return. However, the collection allowance would not be allowed unless the seller requested the extension in writing and the extension had been granted. The extensions are required to be granted if reasonable cause is shown.

Paragraph (g) would be created that would allow the seller, with written authorization from the municipality, to remit any taxes collected on a quarterly basis if the amount of tax collected does not exceed \$120 per quarter. The taxes would be due on the 20th day of the month following the end of the quarter.

A new subsection (10) would provide that any purchaser who claims the exemptions in subsections (4), (5), or (9)(e), must certify to the seller that the purchaser qualifies for the exemption. The purchaser of telecommunications service for resale may satisfy this certification requirement by presentation of a certificate that satisfies the requirements of chapter 212, Florida Statutes. A seller would be relieved from collecting and remitting the tax when the seller accepts the certification provided by this act. A governmental body does not have to furnish this certification. However, governmental bodies that sell or resell taxable service to nonexempt end users would be required to collect and remit the tax levied under this section.

**Section 3.** This section would create a new section 166.233, Florida Statutes, which provides definitions and the procedure to identify where addresses of purchasers are located.

Subsection (1) would provide definitions for sections 166.231, 166.232, and 166.234, Florida Statutes.

Subsection (2)(a) would provide that the tax levy be adopted by ordinance and would be effective either the subsequent January 1, April 1, July 1, or October 1 following the adoption of the ordinance. The municipality is required to notify the Department of Revenue of the action at least 120 days before the effective date of the ordinance on a form prescribed by the department. The notification would be required to specify the services taxed, including any election under section 166.231(9)(a), Florida Statutes, the rate, the effective date, and the name, address, and telephone number of a person designated to respond to inquiries about the tax. The department is required to maintain this information to respond to inquiries and any person may obtain this information by requesting it in writing from the department. A response would be timely under this section if it is in writing and dated no later than 20 days after the receipt of the request. The department would be authorized to charge a fee for the actual cost of maintaining and providing the information. The department would have no liability for any loss or decrease of revenue by reason of any error, omission, or untimely action that results in nonpayment of taxes. The effective date and departmental notification requirements

apply only to taxes levied on telecommunication services by municipalities. Paragraph (b) would allow the Department of Revenue to contract with a private entity to provide its services provided the department sets the authorized fees.

Subsection (3) would require a municipality to furnish any person, within 20 days of a request, a copy of the ordinance and amendments adopting any tax levy, a written notification indicating the type of medium is available for the address list required by this section, the charges for the list, and the person or office to contact to obtain a copy of the list. Upon any written request and payment of the cost, the municipality must send a copy of the appropriate address list to the person requesting it. A municipality must compile a list containing each street name, know street name aliases, street address number ranges, applicable directionals, and zip codes associated with each street name, for all street address numbers located within the municipality. In addition, a municipality must compile a list containing each postal zip code and all the city names associated with the zip codes located entirely within the municipality, including zip codes for post office boxes. A municipality also must compile a list containing all post office box number ranges, including the city names and zip codes located entirely within the municipality. The zip codes lists need not be duplicated.

The lists may be printed or available in another medium. The lists must be updated as changes occur and must specify the effective date which must be the next ensuing quarterly effective date -- i.e., January 1, April 1, July 1, or October 1. Sellers must be furnished the updated list not less than 60 days prior to the effective date. The updated list must show additions, deletions, and other changes made to the preceding list. The sellers are only responsible for charging the public service tax only to service and billing addresses contained in the lists supplied by the municipality. This includes lists that are furnished by a municipality without the seller's request. The municipality may collect a fee not to exceed the actual cost of duplicating the information. The compilation of these lists replaces the address database that was in the original bill.

Subsection (4) would condition the obligation of a seller to collect and remit the public service tax upon the timely availability to the seller of accurate information maintained by the Department of Revenue and the municipality as required by subsection (2) and (3). For the purposes of timeliness, the date of each action is the date received.

The seller's obligation to collect and remit the public service tax is suspended during any delay in timely receiving the information required by this section. The obligation would not be suspended if:

1. the request precedes the date on which a municipality is required to furnish notification to the department; or
2. the seller has been properly collecting and remitting the tax on a taxable service from customers on the date of the request.

If a seller is delayed in receiving the information required by this section and receives it less than 60 days before the effective date of a tax levy or update, then the seller does not have to collect and remit the taxes until the next quarterly effective date.

If more than one municipality claims the same address or group of addresses, the seller is required to notify the affected municipalities within 60 days of the determination of the

competing claims. Once the municipalities resolve the competing claims, the affected municipalities must supply the seller with a signed agreement describing the resolution. The seller must begin collecting and remitting the tax after the next quarterly effective date that is at least 60 days after the receipt of the agreement. Prior to that date, the seller must continue the prior tax treatment on the addresses involved in the competing claims. The seller is not liable for the amounts that are not collected and remitted before the agreement unless the prior tax treatment was correct.

If the information supplied by the municipality does not agree with the seller's records, the sellers must notify the municipality about the problem. The seller must identify and describe the nature of the problem. If the seller notifies the municipality within 60 days of receiving the information, then the seller is not obligated to collect and remit the taxes until the next quarterly effective date that is at least 60 days after the municipality has resolved the problem.

**Section 4.** This section would create a new section 166.234, Florida Statutes, to provide for administrative provisions, rights and remedies for the public service tax.

Subsection (1) would allow a municipality to audit the records of any seller of a service that is taxable by a municipality under sections 166.231 or 166.232, Florida Statutes, during normal business hours at the location of the seller's official records. The municipalities would be required to give 60 days written notice of an audit and the seller would be required to give the municipalities access to the applicable records for such service. An extension to the 60-day period must be granted to the seller if reasonably requested by the seller. The seller may waive the 60-day notice requirement. If the municipality or seller requires an additional extension, it must give notice of at least 30 days to the other party before the extension expires. This time limit does not apply in a bona fide emergency or the waiver of the notice requirement. In an audit, the seller would be liable only for the taxable accounts that correspond to the information provided by the municipality under section 166.233(3), Florida Statutes. The applicable records means "records kept in the ordinary course of business which establish the collection and remittance of taxes due." The records may be provided in an electronic medium if agreed to by the municipality and the seller. Contingency audit fees are prohibited and determination established through this method would be invalid.

Subsection (2) would require each seller to preserve the applicable records until the expiration of the time that the municipality has to make an assessment. The seller is not required to keep duplicate or redundant records.

Subsection (3) would require that, before an audit is conducted, a municipality discuss with the seller, upon request, the proposed audit methodology and furnish the seller a report of each audit that identifies the nature of the deficiency or overpayment, the amount, and the manner of computation. A seller may request and the municipality must furnish all material necessary to supplement the audit findings, no less than 45 days before issuing a determination.

Subsection (4)(a) would allow a municipality to issue a proposed assessment within three years after the date when the tax was due. This limitation would be tolled for one year if, within that time, the municipality issues a notice of intent to audit to the seller. If the audit cannot be completed within these time frames because of the seller's refusal or delay in allowing the municipality access to its records, the municipality may make a



proposed assessment from an estimate based upon the best available information for the taxable period, unless the seller agrees in writing to an extension of time. If the seller still denies the municipality access to its records, the municipality may make a proposed assessment after three years from the issuance of the notice of intent to audit.

Subsection (4)(b) would allow a seller to apply for a refund or credit for any overpayment of tax, including interest and penalties, within three years of the remittance by the seller. The municipality must refund or allow a credit for those overpayments. If the seller has refunded or credited the purchaser for the overpayment pursuant to subsection (6), the seller may apply within the above three years or within 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

Subsection (4)(c) would bar the municipality's right to assess the tax, including interest and penalties and the seller's right to apply for a refund or credit after the time limitations set forth in this subsection. However, if fraud has occurred or the parties agree, the time periods may be extended.

Subsection (5) would require a municipality to offset a seller's overpayment of tax, including interest and penalties against any deficiency of tax, interest or penalty during the same audit period and the offset must be reflected in any proposed assessment. If the overpayments exceed the deficiency, then the municipality must refund the amount the aggregate overpayments exceed the total deficiency. The audit methodology is presumed to be correct absent proof to the contrary. "Overpayment" is defined as "all remittances of public service tax, interest, or penalty which were not due to the municipality, including amounts properly collected but remitted to the incorrect municipality."

Subsection (6) would allow a purchaser of a service to request a refund or credit from the seller of the tax collected based on the tax not being due the municipality. The seller would be required to refund or credit the amount if the request is made within three years following the collection of the tax from the purchaser. If the seller determines that the amount of taxes collected from the purchaser within the preceding three years were not due the municipality, the seller must refund or credit the purchaser within 45 days of that determination.

Subsection (7) would authorize a municipality to assess interest and penalties for failure to pay any tax when due or to file any required return. However, no penalty may be assessed absent willful neglect, willful negligence or fraud. Interest may be assessed at a maximum rate of one percent per month from the date the tax was due and paid. Penalties may be assessed at a maximum rate of five percent per month, not to exceed a total of 25 percent. The minimum penalty is \$15.00. If the seller makes a fraudulent return or willfully attempts to evade payment of the tax, the seller is liable for a specific penalty of 100 percent of the tax. Interest and penalties are computed on the net tax due after application of overpayments, they can be compromised under subsection (14) and must be authorized by ordinance.

Subsection (8) would provide that a proposed assessment or finding of amounts due the seller constitutes a determination of the municipality for the purposes of this section. The determination must separately state the amount of the tax, interest, and penalty claimed to be due or refunded. It must be accompanied by a written narrative explaining the basis for the municipality's determination and it must state the seller's remedies if it

disagrees with the determination. Finally, the narrative must indicate the consequences of the seller's failure to comply with any demand of the municipality that is stated in the determination.

Subsection (9) would allow a seller to file a written protest of any determination with the municipality within 60 days of the determination. The municipality must consider the protest and issue a written decision within 60 days of the protest. The seller may petition the municipality for a reconsideration of the decision within 30 days. The municipality then must issue a reconsideration notice within 30 days.

Subsection (10) would provide that the determination becomes final 60 days after the date of issuance, unless the seller, before the 60-day period expires, files a protest or secures a written extension of time within which to file a protest. The determination becomes final if the seller has not filed its protest within the time period of the extension. If the seller files a protest and the seller and municipality cannot resolve the disputed issues, the determination becomes final as of the date of the issuance of the notice of decision. However, if the seller has timely filed a petition for reconsideration, then the determination becomes final upon the issuance of a notice or reconsideration.

Subsection (11) would require the notice of decision or reconsideration to address each issue raised in the protest or petition and must explain the reasons for the conclusions and advise the seller of the remedies available if the seller disagrees with the decision.

Subsection (12) would allow a seller to contest the legality of any determination by filing an action in circuit court within 60 days of the final determination. The seller must pay the municipality the amount of the tax, penalty, and accrued interest which is not being contested. The venue for the actions lies in the county where the municipality is located and the defendant in the action is the municipality.

Subsection (13) would provide that a seller's failure to protest a determination does not waive or impair its right to seek a refund of any overpayment.

Subsection (14) would allow the municipality and the seller to settle or compromise the seller's liability for any tax, interest, or penalty based on the grounds of doubt as to the liability or doubt as to the collectibility of the tax, interest, or penalty. A municipality and a seller may enter into a written closing agreement that reflects the settlement or compromise, and once it has been approved by the parties, it is binding on them. Absent a showing of fraud or misrepresentation of a material fact, no additional assessment or recovery may be made on matters agreed to in the settlement or compromise.

When a municipality issues a determination, it must include the names of persons authorized to approve compromises and to execute closing agreements. A municipality may also agree to schedule payments of taxes, interest, and penalties which recognize the seller's financial condition and the best interests of the municipality, if the seller gives accurate, current information and meets all other tax obligations on schedule.

Subsection (15) would require that all notices, determinations, protests, petitions, must be sent by certified mail, return receipt requested. The date of issuance would be the date the notice or determination is postmarked. Protests and petitions are timely filed if they are postmarked or received by the municipality within the appropriate time limits.

Subsection (16) would allow the seller to pay any contested amount, in whole or in part, at any time without impairing its remedies.

Subsection (17) would require each municipality that levies the public service tax to furnish sellers with prompt, accurate responses to questions and request for tax assistance. If chapter 203 or chapter 212 is amended to require payment of interest on the refund of taxes, then municipalities would be required to pay interest on public service refunds at the rate required by such law.

Subsection (18) would provide sellers with the following right to:

- (a) be represented by counsel or qualified representative;
- (b) have procedural safeguards concerning recording interviews during the tax determination process; and
- (c) have audits, record inspections, and interviews conducted at a reasonable time and place.

Subsection (19) would allow municipalities to communicate with each other about the following information:

- (a) technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit, however, this information cannot include any data relevant to a specific purchaser or account, or the seller's tax treatment of specific services;
- (b) names and addresses of companies selling taxable services within the municipalities' respective jurisdictions; and
- (c) the name of any company issued a refund and the total amount of the refund.

Subsection (20) would prohibit a municipality from assessing a seller for any costs incurred or charged to the municipality for performing an audit, including travel expenses. Any assessment or proposed assessment of these costs would be void and unenforceable. However, a municipality may assess and collect from a seller for reasonable travel expenses incurred in performing an audit if the seller received timely notice of the audit and did not permit access to the records on the audit date or any alternative date agreed to by the parties.

Subsection (21) provides that only subsection (6) of this section shall apply to a seller who is a municipality or to its subdivisions levying the tax under an audit.

**Section 5.** Subsection (1) would require municipalities that are levying the public service tax to notify the Department of Revenue what services are being taxed, including which alternative it is using for telecommunication services, the tax rate, the effective date of the tax, and the name and address of the contact person. The notification must include information for levies with prior and future effective dates.

Subsection (2) would allow sellers to rely on the address listings and updates that conform to this act and were in existence prior to the act, until July 1, 1998. The lists

required by this act must be made available by the municipalities no later than January 1, 1998. The lists would be effective on July 1, 1998.

Subsection (3) would provide that the provisions of the new section 166.234, Florida Statutes, apply to all taxes, assessments, and audits. Section 166.234, Florida Statutes, would not apply to:

(a) provisions requiring performance of an act before the commencement of an audit do not apply until the effective date of this act;

(b) taxes and assessments that have been resolved by concession of liability and payment, settlement, or other means before the effective date of this act are not affected;

(c) the information requirements do not apply to determinations issued before the effective date of this act. However, a municipality is required to furnish the information if requested by a seller. In addition, no document issued before the effective date of this act is invalid merely because its contents, or the manner or times of its transmittal do not comply with section 166.234, Florida Statutes.

(d) audits that are the subject of pending litigation filed before the effective date of this act are not subject to the provisions of section 166.234(12), Florida Statutes; and

Paragraph (e) would provide that the provisions of section 166.234(4)(a) as created by this act shall not apply to taxes due prior to July 1, 1994. A proposed assessment for taxes due prior to July 1, 1994 may be issued on or before July 1, 1997 for any audit period beginning on or after July 1, 1992 which is specified in a notice of intent to audit issued before March 1, 1997. After July 1, 1997, the municipality's right to assess such taxes shall expire and be barred. However, if the municipality is unable to complete such an audit due to the seller's refusal or delay in allowing access to applicable records, the municipality may make an estimate based upon the best information available unless the seller agrees in writing to extend the limitations period.

**Section 6.** This section would provide an appropriation of \$35,000 and one full-time equivalent position to the Department of Revenue for the purposes of implementing the provisions of section 166.233(2), Florida Statutes.

**Section 7.** This section would provide a severability clause.

**Section 8.** This section provides that gross receipts taxes that were charged on utilities under section 203.01, F.S., and Ch. 212, F.S., and remitted in full to the state in the correct amount, shall not be subject to refund by the state or seller.

**Section 9.** This section provides that gross receipts taxes that were charged on interstate and international telecommunications services under section 203.01, F.S., and Ch. 212, F.S., and remitted in full to the state in the correct amount, shall not be subject to refund by the state or seller.

**Section 11.** This section provides that these amendments are remedial and intended to clarify existing law.

**Section 12.** This section provides that this act shall take effect upon becoming a law.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Department of Revenue will incur expenses in starting up the address database.

2. Recurring Effects:

The bill would exempt university residences from municipal utility and telecommunications taxes when the service is provided incidental to the provision of educational services. Only Orange County has been collecting these taxes to date. Their estimates show the revenue decrease to be approximately \$20,000 dollars a year. This fiscal impact for this issue is indeterminate.

The bill would appropriate \$35,000 from the Administrative Trust Fund and one full-time equivalent position for the purposes of seller notification, maintenance of the database and responses to inquiries under section 166.233(2), Florida Statutes.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

See "Recurring Effects" section above.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

Indeterminate.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

Indeterminate.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill would require the municipalities and charter counties to expend funds to meet the requirements of this bill. The amount to be expended cannot be determined at this time.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

**STORAGE NAME:** h1275s1.ft

**DATE:** April 16, 1997

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VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee on Utilities and Communications adopted amendment # 1 as amended, that removed from the bill everything after the enacting clause. The amendment inserted the following section by section provisions.

The Committee for Finance and Taxation adopted the committee substitute combining the amendment from the previous committee with three amendments adopted in Finance and Taxation. The analysis reflects these changes.

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

Prepared by:

Legislative Research Director:

Patrick L. "Booter" Imhof

Patrick L "Booter" Imhof

AS REVISED BY THE COMMITTEE ON FINANCE AND TAXATION:

Prepared by:

Legislative Research Director:

George T. Levesque

Keith G. Baker, Ph.D.