

STORAGE NAME: h1275.uco

DATE: April 1, 1997

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
UTILITIES AND COMMUNICATIONS
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: HB 1275

RELATING TO: Municipal Public Service Tax

SPONSOR(S): Representative Valdes and others

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

COMPANION BILL(S): SB 1958

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

- (1) UTILITIES AND COMMUNICATIONS
- (2) FINANCE AND TAXATION
- (3) GENERAL GOVERNMENT APPROPRIATIONS
- (4)
- (5)

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 provide for an address database to be compiled by municipalities and administered by the Department of Revenue.

The bill would appropriate \$100,000 and one full-time equivalent position to the Department of Revenue to implement the provisions of the bill.

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, 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.

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 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 that revert to a political subdivision after the bonds are paid, and any recognized churches. The bill would require any religious institution that possesses a consumer certificate to receive not less than a 50 percent exemption from the tax on electrical energy.

The bill would provide that if a municipality levies a tax on telecommunications services as defined in section 203.012, Florida Statutes, on purchases with the municipality, the source of the tax must be ascribed to the municipality on the basis of the billing address or service address which is used by the seller.

The provisions of section 166.231(10), Florida Statutes, concerning the administrative procedure to be followed in levying the tax would be deleted and new sections dealing with procedures would be created and the subsection would be renumbered as subsection (9).

Any purchaser who claims the nonprofit, religious, or resale exemption 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.

The bill would create a new section 166.233, Florida Statutes, which provides the procedures for informing sellers of tax levies and related information. This section would provide that the tax levy be adopted by ordinance and would be effective either the subsequent January 1 or July 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. The notification would be required to include the services taxed, the rate, the effective date, and the name, address, and telephone number of a person designated to respond to inquiries about the tax.

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The municipalities would be required to furnish the Department of Revenue with information to be stored in an address database which would include street addresses, each postal zip and all city names associated with it, and all post office box number ranges and the city names and zip codes associated with it. The address database must be electronically available to the sellers at no charge. It would provide that updates to the database must be made at least 120 days before the semiannual effective dates.

The obligation of the seller to collect and remit the tax for any municipality would be conditioned on the timely (dated within 20 days after receiving the request) availability of accurate information in the address database. The Department of Revenue 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 department is required to update the database no later than 90 days of the semiannual effective dates. If the information is not timely furnished to the seller any related obligation to collect and remit the tax is suspended during the period of delay except for the following provisions.

If the request for information precedes the date that the department is required to update the database, then an untimely response does not relieve the seller of the obligation to collect and remit the taxes. In addition, if the seller is already collecting taxes from customers within a municipality on the date of the request, an untimely response also does not affect the obligation to collect and remit the taxes. However, if the untimely response is less than 90 days of the effective date of the levy, then the obligation to collect and remit the tax would not be valid until the next effective date (January 1 or July 1, respectively).

This section would also provide procedures for resolving duplicative and incorrect address information.

Section 166.234, Florida Statutes, would be created to provide for administrative provisions, rights and remedies for the public service tax. This section would allow a municipality to audit a seller's records 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. An extension to the 60-day period must be granted to the seller if reasonably requested by the seller. If the municipality or seller requires an additional extension, it must give notice of at least 30 days to the other party. The seller would be liable only for the taxable accounts that correspond to the information found in the address database. This section would also prohibit the municipalities from charging the seller for the costs or expenses associated with an audit and would prohibit the municipalities from contracting with auditors on a contingency fee.

Before an audit is conducted, the municipalities would be required to 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, including any computer program or software.

This section would provide that a municipality may issue a proposed assessment of tax levied under section 166.231 and 166.232, Florida Statutes, within three years of the

date the tax was due. The seller may apply for a refund or credit within three years of remittance of the tax and the municipality must refund or credit the overpayments. After the three year periods the right to assess and the right to a refund would be barred, excluding any fraud or unless the parties agree otherwise.

The bill would provide for offsets, refunds and credits for purchasers. It would also provide for the determinations of taxes, protests, time limits for disposition of determinations, reconsideration and contesting the legality of the determination. It would provide that the seller's liability for any tax may be settled or compromised by a municipality based upon doubt as to the liability or the ability to collect the tax. This section would also allow a municipality and a seller to enter into a written closing agreement that reflects the terms of any settlement or compromise. When the closing agreement has been approved on behalf of the municipality and the seller, it would be considered final, conclusive, and binding on the parties with respect to the matters covered.

The bill would provide deadlines to comply with the provisions of the act, it provides a \$100,000 appropriation and a severability clause.

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:

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- 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:

Please see "Effect of Proposed Changes" section above.

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 appropriate \$100,000 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.

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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.

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.

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V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

VII. SIGNATURES:

COMMITTEE ON UTILITIES AND COMMUNICATIONS:

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