

STORAGE NAME: h1489s1a.ft

DATE: April 15, 1997

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

BILL #: CS/HB's 1489 & 1171

RELATING TO: Taxation of Internet access, electronic mail, electronic bulletin board, or computer exchange services

SPONSOR(S): Committee on Utilities and Communications, Representatives Starks, Harrington, and others

STATUTE(S) AFFECTED: ss.166.231, 203.012, and 212.05, F.S.

COMPANION BILL(S): Similar to CS/SB's 404 & 414

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

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

I. SUMMARY:

The Internet is a collection of more than 25,000 interconnected computer networks worldwide. These networks communicate using a common computer language called TCP/IP and they transmit data over telephone lines, television cables and satellite links. Users of the Internet can, among other things, exchange electronic mail messages, access electronic bulletin boards, access live discussion groups, log on remotely to other computers, and down-load files from other computers to their computers.

This bill would prohibit the imposition of taxes pursuant to chapter 166 (public service tax, also known as municipal utility tax), chapter 203 (gross receipts tax), and chapter 212 (sales and use tax) on Internet access service, electronic mail service, electronic bulletin board service, or on-line services.

It would delete "computer exchange service" from the definitions found in section 203.012(3), (5), and (6), Florida Statutes. The bill would specifically state that Internet access service, electronic mail service, electronic bulletin board service, or other on-line service is not included in the definition of "telecommunication service."

The bill would further provide that it is the intent of the Legislature that the exemptions provided by this act are remedial and are intended to clarify existing law.

The bill has a potential fiscal impact reduction of (\$36.3) million in FY 1997-98 and (\$62.1) million in FY 1998-99. These figures are the potential taxes lost if the Internet services were taxed. Currently these services are not being taxed.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

The Internet is a collection of more than 25,000 interconnected computer networks worldwide. These networks communicate using a common computer language called TCP/IP and they transmit data over telephone lines, television cables and satellite links. Users of the Internet can, among other things, exchange electronic mail messages, access electronic bulletin boards, access live discussion groups, log on remotely to other computers, and down-load files from other computers to their computers.

The term "Internet" is not defined in the Florida Statutes, however, the term "telecommunication service" is defined in section 203.012(5), Florida Statutes, as local telephone service, toll telephone service, telegram or telegraph service, teletypewriter, private communication service, cellular mobile telephone service, specialized mobile radio, pagers and paging service. It also includes computer exchange services which are defined by section 203.012(6), Florida Statutes, as the access from a computer or other data station and the privilege of intercommunication with substantially all persons having a computer or data station constituting a part of the same computer exchange system ". . . to which the subscriber or user is entitled upon payment of a charge or charges . . ." Telecommunication service does not include services or equipment incidental to these services.

These services are subject to the gross receipts tax levied pursuant to chapter 203, Florida Statutes. As of July 1, 1992, the current rate is 2.5 percent pursuant to section 203.01(1)(b), Florida Statutes. The tax is levied, under section 203.01, Florida Statutes, on the total amount of ". . . gross receipts derived from business done within this state, or between points within this state . . ."

Article XII, section 9(a)(2), Florida Constitution, requires that all of the revenues derived from the gross receipts tax are to be deposited in public education capital outlay and debt service trust fund and used to finance state bonds for public education capital outlay projects.

Telecommunications services are also subject to the public service tax (PST) or municipal utility tax (MUT) levied pursuant to section 166.231(10), Florida Statutes. A municipality may levy this tax by one of two options.

Option 1: Under section 166.231(10)(a)1., Florida Statutes, the municipality may choose to levy a tax on purchases within the municipality of local telephone service as defined in section 203.12(3), Florida Statutes, at a rate not to exceed 10 percent of the monthly recurring customer service charges. This provision excludes public telephone charges collected on site, access charges, and any customer access line charges that are paid to the local telephone company.

Option 2: Section 166.231(10)(a)2., Florida Statutes, allows the municipality to choose to levy a tax upon purchases within the municipality which originates and terminates within this state at a rate not to exceed seven percent of the total amount charged for telecommunications service provided within the municipality. If the location of the service cannot be determined, then the tax is on the total amount billed for the service to a telephone, telephone number, telecommunications number or device, or customer

billing address located within the municipality. This subparagraph has the same exclusions as subparagraph 1. However, it also excludes charges for any foreign exchange service and charges for any private line service, except when the private line services are used or sold as a substitute for any telephone switched service or dedicated facility.

Pursuant to the Supreme Court decision in McLeod v. Orange County, 645 So.2d 411 (Fla. 1994), charter counties may also levy the public service tax.

Sales and use tax are also applicable to telecommunications services under section 212.05(1)(e)1., Florida Statutes. The rate for telecommunications services is seven percent. These services are also subject to the local option sales tax (discretionary sales surtax) authorized by sections 212.054 and 212.055, Florida Statutes. A transaction has occurred in the county that imposes the surtax, pursuant to section 212.054(3), Florida Statutes, when the telecommunications services are provided to a location within the county.

According to the Department of Revenue, it has not been collecting taxes on Internet access and services. During 1995, two taxpayers that provided Internet access and services petitioned the department to request the issuance of a Technical Assistance Advisement (TAA) on whether Internet access and services were taxable under chapters 166, 203, and 212, Florida Statutes. The department is authorized to issue a TAA pursuant to section 213.22, Florida Statutes. The department decided in its Technical Assistance Advisement 95A-044, September 22, 1995 that:

Taxpayer provides its subscribers the ability to intercommunicate with other subscribers by access to Internet services in exchange for a monthly fee. Under the provisions s. 203.012, F.S., Taxpayer is providing a telecommunication service to its customers.

Taxpayer, as a telecommunication service provider, is required to pay to the Department a gross receipts tax at a rate of 2.5 percent of the total receipts received from charges to all its Florida subscribers and is required to collect sales tax from its Florida subscribers, unless the charges are specifically exempt . . .

In a TAA 95A-025R issued on October 3, 1995, the department amended a previous TAA and was asked to decide whether a taxpayer, who provided its customers with access to various home pages, including a personal mailbox, electronic mail address, electronic mail capability, and full use to all sites through the Internet, was providing a service that was subject to taxation. The department decided that the services provided by the taxpayer that allowed subscribers the ability to intercommunicate with other users, through electronic mail and the home page links for a monthly fee, was providing a telecommunications service to its subscribers. As such the taxpayer was subject to the gross receipts tax and sales and use taxes pursuant to Florida Statutes.

The department deferred collection of these taxes until June 1996. Governor Lawton Chiles issued an Executive Order 96-166, May 28, 1996, which created the Florida Telecommunications Task Force to act as an advisory and recommendatory body to the Governor and the Legislature on various issues relating to state and local taxation. Upon creation of the task force, the Governor requested that the taxation of the Internet be further delayed until July 1, 1997 pending further study. The task force issued its

final report in February 1997. The task force recommended establishing a "unified tax" and privilege fee to be levied for electronic communications and administered at the state level. The task force recommended that this tax replace the current taxes and franchise fees applicable to electronic communications. Under this system, the task force recommended that "Internet access, electronic mail, two-way game playing, computer exchange services, and related online services" not be subject to the new unified tax.

According to the League of Cities, some municipalities had been levying these taxes prior to the Governor's Executive Order.

Senator Ron Wyden (D., Ore) and Representative Christopher Cox (R., Calif.) have introduced the "Internet Tax Freedom Act" in the United States Senate (S. 442) and House of Representatives (H.R. 1054) respectively. The intent of the bills is to amend the Communications Act of 1934 " to establish a national policy against State and local interference with interstate commerce on the Internet or interactive computer services." The bills also establish a moratorium on the "imposition of exactions that would interfere with the free flow of commerce via the Internet." The bills provides that no state or local government, including any political subdivision, may:

impose, assess, or attempt to collect any tax or fee directly or indirectly on--

- (1) the Internet or interactive computer services; or
- (2) the use of the Internet or interactive computer services.

The bills do not apply to taxes imposed on net income derived from Internet or interactive computer services and fairly apportioned business license taxes. They also do not apply to sales or use taxes on sales or other transactions effected by the use of the Internet or interactive computer services if the tax is the same as that imposed on interstate transactions effected by mail order, telephone or other remote means, or the obligation to collect those taxes.

B. EFFECT OF PROPOSED CHANGES:

This bill would provide that no tax levied pursuant to chapter 166 (public service tax), chapter 203 (gross receipts tax), or chapter 212 (sales and use tax), Florida Statutes, may be imposed on charges or receipts from Internet access service, electronic mail service, electronic bulletin board service, or on-line service.

It would amend section 203.012, Florida Statutes, to delete "computer exchange service" from the definitions of "local telephone service" and "telecommunication service." The term "computer exchange service" is also deleted from the access provisions of this section. The bill would also specifically state that the term "telecommunications service" does not include any Internet access service, electronic mail service, electronic bulletin board service or other on-line service.

The bill would further provide that it is the intent of the Legislature that the provisions of this act are remedial and are intended to clarify existing 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?

Yes. This bill prohibits taxes from being collected pursuant to chapters 166, 203, or 212, Florida Statutes, on charges or receipts from Internet access services, electronic mail services, electronic bulletin board services, or computer exchange services. The Department of Revenue considers these services to be telecommunications services and as such subject to tax under these chapters. The department has not levied these taxes or collected revenues from these services at the present time.

- 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:

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:

None.

2. Recurring Effects:

Even though the Department of Revenue is not collecting taxes on Internet access and services at the present time, the revenues, according to procedure, must be handled as if they were already being collected.

<u>Revenues</u>	<u>1997-1998</u>	<u>1998-1999</u>
General Revenue Fund	(\$10.0)M	(\$17.1)M
Solid Waste Trust Fund	(Insignif)	(Insignif)
Capital Outlay Trust Fund	(\$10.6)M	(\$18.1)M

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

	<u>1997-1998</u>	<u>1998-1999</u>
Total	(\$20.6)M	(\$35.2)M

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

<u>Revenues</u>	<u>1997-1998</u>	<u>1998-1999</u>
Public Service Tax	(\$14.8)M	(\$25.3)M
Sales and Use Tax	(\$0.9)M	(\$1.6)M

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:

Providers and consumers of Internet access service and other services would not be required to pay taxes on those items.

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

D. FISCAL COMMENTS:

The fiscal impact of this bill is the potential taxes if the Internet services were taxed. Currently these services are not being taxed.

Currently, voice communications through the Internet are in the development stage and do not have the same voice quality as wire and wireless telephone services. According to the Governor's Telecommunication Task Force Report this may be a potential erosion of the state and local tax base in the future.

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

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill would prohibit local governments from taxing Internet access services, electronic mail services, electronic bulletin board services, and computer exchange services. This would seem to indicate that a mandate is present, however, the bill provides that it is the intent of the Legislature that the provisions in the act are remedial and are intended to clarify existing law.

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

As noted above, this bill would prohibit local governments from taxing Internet access services, electronic mail services, electronic bulletin board services, and computer exchange services. The bill states that the act is remedial and intended to clarify existing law.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The CS to HB1489 removed language providing for the "bundling" of non-taxable Internet-related services with other taxable services. This language would have created an unnecessary hardship on the Department of revenue. The CS also re-enacted 166.231(10) and 212.05(1), Florida Statutes, to re-emphasize the incorporation of the definition change to "telecommunications services" and the non-taxability of Internet-related services according to 203.012, Florida Statutes.

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.