

By the Committee on Utilities & Communications and Representatives Starks, Harrington, Bainter, Lynn, Fasano, Morroni, Brown, Arnall, Sublette, Dockery, Roberts-Burke, Maygarden, Ball, Feeney, Saunders, Cosgrove, Minton, Valdes, (Additional Sponsors on Last Printed Page)

1 A bill to be entitled
2 An act relating to taxation of Internet access,
3 electronic mail, electronic bulletin board, or
4 on-line services; providing that no tax
5 pursuant to chapter 166, chapter 203, or
6 chapter 212, F.S., shall be imposed on Internet
7 access, electronic mail, electronic bulletin
8 board, or on-line services; amending s.
9 203.012, F.S.; providing that
10 "telecommunication service" does not include
11 such services for purposes of gross receipts
12 taxes; revising the definition of
13 "teletypewriter or computer exchange service"
14 to remove computer exchange service; reenacting
15 s. 166.231(10), F.S., relating to the municipal
16 public service tax on telecommunication
17 service, and s. 212.05(1)(e)1., F.S., relating
18 to the sales and use tax on telecommunication
19 service, to incorporate the amendment to s.
20 203.012, F.S., in references thereto; providing
21 intent; providing an effective date.

22
23 Be It Enacted by the Legislature of the State of Florida:

24
25 Section 1. No tax shall be imposed, assessed, or
26 collected pursuant to chapter 166, chapter 203, or chapter
27 212, Florida Statutes, with respect to charges for or receipts
28 from Internet access service, electronic mail service,
29 electronic bulletin board service, or on-line service.

30 Section 2. Subsections (3), (5), and (6) of section
31 203.012, Florida Statutes, are amended to read:

1 203.012 Definitions.--As used in this chapter:

2 (3) The term "local telephone service" means:

3 (a) The access to a local telephone system, and the
4 privilege of telephonic-quality communication with
5 substantially all persons having telephone or radio telephone
6 stations constituting a part of such local telephone system;
7 or

8 (b) Any facility or service provided in connection
9 with a service described in paragraph (a).

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11 The term "local telephone service" does not include any
12 service which is a toll telephone service; private
13 communication service; cellular mobile telephone or
14 telecommunication service; specialized mobile radio, or pagers
15 and paging, service, including but not limited to "beepers"
16 and any other form of mobile and portable one-way or two-way
17 communication; or teletypewriter ~~or computer exchange~~ service.

18 (5) The term "telecommunication service" means:

19 (a) Local telephone service, toll telephone service,
20 telegram or telegraph service, teletypewriter ~~or computer~~
21 ~~exchange~~ service, or private communication service; or

22 (b) Cellular mobile telephone or telecommunication
23 service; or specialized mobile radio, and pagers and paging,
24 service, including but not limited to "beepers" and any other
25 form of mobile and portable one-way or two-way communication;
26 but does not include services or equipment incidental to
27 telecommunication services enumerated in this paragraph such
28 as maintenance of customer premises equipment, whether owned
29 by the customer or not, or equipment sales or rental for which
30 charges are separately stated, itemized, or described on the

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1 bill, invoice, or other tangible evidence of the provision of
2 such service.

3
4 The term "telecommunication service" does not include any
5 Internet access service, electronic mail service, electronic
6 bulletin board service, or on-line service.

7 (6) The term "teletypewriter ~~or computer exchange~~
8 service" means the access from a teletypewriter, telephone,
9 ~~computer~~, or other data station of which such station is a
10 part, and the privilege of intercommunication by such station
11 with substantially all persons having teletypewriter,
12 telephone, ~~computer~~, or other data stations constituting a
13 part of the same teletypewriter ~~or computer exchange~~ system,
14 to which the subscriber or user is entitled upon payment of a
15 charge or charges, whether such charge or charges are
16 determined as a flat periodic amount, on the basis of distance
17 and elapsed transmission time, or some other method. The term
18 "teletypewriter ~~or computer exchange~~ service" does not include
19 local telephone service or toll telephone service.

20 Section 3. For the purpose of incorporating the
21 amendment to section 203.012, Florida Statutes, in a reference
22 thereto, subsection (10) of section 166.231, Florida Statutes,
23 1996 Supplement, is reenacted to read:

24 166.231 Municipalities; public service tax.--

25 (10) A municipality may levy a tax on the purchase of
26 telecommunication services as defined in s. 203.012 as
27 follows:

28 (a)1. Only upon purchases within the municipality of
29 local telephone service as defined in s. 203.012(3) at a rate
30 not to exceed 10 percent of the monthly recurring customer
31 service charges, excluding public telephone charges collected

1 on site, access charges, and any customer access line charges
2 paid to a local telephone company; or

3 2. Only upon purchases within the municipality of
4 telecommunications service which originates and terminates in
5 this state at a rate not to exceed 7 percent of the total
6 amount charged for any telecommunications service provided
7 within the municipality or, if the location of the
8 telecommunications service provided cannot be determined, the
9 total amount billed for such telecommunications service to a
10 telephone or telephone number, a telecommunications number or
11 device, or a customers' billing address located within the
12 municipality, excluding public telephone charges collected on
13 site, charges for any foreign exchange service or any private
14 line service except when such services are used or sold as a
15 substitute for any telephone company switched service or
16 dedicated facility by which a telephone company provides a
17 communication path, access charges, and any customer access
18 line charges paid to a local telephone company. However,
19 telecommunications service as defined in s. 203.012(5)(b)
20 shall be taxed only on the monthly recurring customer service
21 charges excluding variable usage charges.

22 (b) For the purpose of compensating the seller, the
23 seller shall be allowed 1 percent of the amount of the tax
24 collected and due to the municipality in the form of a
25 deduction from the amount collected for remittance. The
26 deduction shall be allowed as compensation for the keeping of
27 records and for the collection of, and the remitting of, the
28 tax.

29 (c) A municipality shall elect by ordinance the tax
30 specified in subparagraph (a)1. or subparagraph (a)2., and any
31 such election shall not be changed until after the expiration

1 of at least 12 months after the effective date of the
2 ordinance levying the tax specified in such subparagraph. A
3 municipality shall notify the companies responsible for
4 collecting such tax at least 120 days prior to such change of
5 election.

6 (d) A municipality electing by ordinance the tax
7 specified in subparagraph (a)2. shall provide to a
8 telecommunications service provider who is responsible for
9 collecting the tax, upon its request, a printed alphabetical
10 listing of all street names including block numbers and street
11 numbers for streets which cross or form municipal boundaries
12 within the municipality for use by the provider of the
13 telecommunications service in calculating the proper amount of
14 tax payable to the municipality. The municipality shall be
15 responsible for updating this listing as changes occur and for
16 providing this information to the telecommunications service
17 provider. The provider, in turn, shall be responsible for
18 charging the tax only to service and billing addresses
19 contained in this listing. The municipality shall be entitled
20 to collect a fee not to exceed the actual cost of providing
21 the information to the telecommunications service provider
22 requesting it.

23 (e) A municipality may audit the records of any
24 provider of telecommunications service taxable by such
25 municipality; each such provider shall provide to the
26 municipality, upon 60 days' notice, access to all applicable
27 records for such telecommunications service. In an audit, the
28 telecommunications service provider shall be liable only for
29 its taxable accounts collected corresponding to the
30 information provided to it by the municipality. However, any
31 information received by the municipality or its agent in

1 connection with such audit is confidential and exempt from the
2 provisions of s. 119.07(1).

3 (f)1. If the sale of a taxable telecommunication
4 service also involves the sale of an exempt cable television
5 service, the tax shall be applied to the value of the taxable
6 service when it is sold separately.

7 2. If the company does not offer this service
8 separately, the consideration paid shall be separately
9 identified and stated with respect to the taxable and exempt
10 portions of the transaction as a condition of the exemption.

11 3. The amounts identified as taxable in subparagraph
12 2. shall not be less than the statewide average tariff rates
13 set forth by the local exchange telecommunications companies
14 in the tariffs filed with the Public Service Commission on
15 January 1, 1995, and on January 1 of each year thereafter for
16 the equivalent services subject to this section. The Public
17 Service Commission shall publish the statewide average tariff
18 rates annually, beginning on January 1, 1996.

19 4. If the total amount of municipal utility tax
20 collected by a municipality or charter county from
21 telecommunication services pursuant to this subsection for the
22 period of July 1, 1995, to June 30, 1996, is less than the
23 amount collected for the period July 1, 1994, to June 30,
24 1995, the municipality or charter county shall assess each
25 company that remits such tax a pro rata share of the
26 shortfall. The shortfall shall be prorated based on the
27 amount of tax remitted by each company for the period July 1,
28 1995, to June 30, 1996, and the total amount of tax remitted
29 for the same period. By September 1, 1996, the municipality
30 or charter county shall certify to each company the amount of
31 additional tax owed and the tax shall be remitted to the

1 municipality or charter county by October 1, 1996. Provided,
2 however, that this assessment may only be imposed if, in
3 addition to the conditions above, a municipality or charter
4 county has levied the applicable maximum tax rate allowed
5 under this paragraph during the period July 1, 1995, and June
6 30, 1996, and has not switched between the two options allowed
7 under subparagraph (f)1. or subparagraph (f)2. during the
8 period July 1, 1995, and June 30, 1996.

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10 Purchases of local telephone service or other
11 telecommunications service for use in the conduct of a
12 telecommunications service for hire or otherwise for resale
13 are exempt from the tax imposed by this subsection.

14 Section 4. For the purpose of incorporating the
15 amendment to section 203.012, Florida Statutes, in a reference
16 thereto, subparagraph 1. of paragraph (e) of subsection (1) of
17 section 212.05, Florida Statutes, 1996 Supplement, is
18 reenacted to read:

19 212.05 Sales, storage, use tax.--It is hereby declared
20 to be the legislative intent that every person is exercising a
21 taxable privilege who engages in the business of selling
22 tangible personal property at retail in this state, including
23 the business of making mail order sales, or who rents or
24 furnishes any of the things or services taxable under this
25 chapter, or who stores for use or consumption in this state
26 any item or article of tangible personal property as defined
27 herein and who leases or rents such property within the state.

28 (1) For the exercise of such privilege, a tax is
29 levied on each taxable transaction or incident, which tax is
30 due and payable as follows:

31 (e)1. At the rate of 6 percent on charges for:

1 a. All telegraph messages and long-distance telephone
2 calls beginning and terminating in this state,
3 telecommunication service as defined in s. 203.012, and those
4 services described in s. 203.012(2)(a), except that the tax
5 rate for charges for telecommunication service is 7 percent.

6 b. Any television system program service.

7 c. The installation of telecommunication and
8 telegraphic equipment.

9 d. Electrical power or energy, except that the tax
10 rate for charges for electrical power or energy is 7 percent.

11 Section 5. It is the intent of the Legislature that
12 this act is remedial and is intended to clarify existing law.

13 Section 6. This act shall take effect upon becoming a
14 law.

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19 ADDITIONAL SPONSORS

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