

By the Committee on Fiscal Resource and Senators Horne, Dawson-White, Gutman, Diaz-Balart, Forman, Holzendorf, Kirkpatrick, Childers, Casas, Bronson, Rossin, Meek, Myers, Silver, Webster, King and Campbell

314-2150-99

1 A bill to be entitled
 2 An act relating to tax on sales, use, and other
 3 transactions; amending s. 212.031, F.S.;
 4 providing that the tax on the lease or rental
 5 of a license in real property does not apply
 6 when the property is a public or private street
 7 or right-of-way used by a utility or franchised
 8 cable television company for utility,
 9 television, or communication purposes;
 10 providing a definition for the term "utility";
 11 amending s. 212.05, F.S.; reducing the rate of
 12 the tax on charges for telecommunication
 13 service from 7 percent to 6.5 percent;
 14 providing for application of such tax;
 15 providing legislative intent to further reduce
 16 the rate in a subsequent year; providing that
 17 the sales tax on prepaid calling cards will be
 18 assessed at the point of sale of the card;
 19 amending s. 212.12, F.S., to conform; providing
 20 for the change in the tax rate to be applied to
 21 monthly charges; providing an effective date.

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

24
 25 Section 1. Paragraph (a) of subsection (1) of section
 26 212.031, Florida Statutes, 1998 Supplement, is amended to
 27 read:

28 212.031 Lease or rental of or license in real
 29 property.--

30 (1)(a) It is declared to be the legislative intent
 31 that every person is exercising a taxable privilege who

1 engages in the business of renting, leasing, letting, or
2 granting a license for the use of any real property unless
3 such property is:

4 1. Assessed as agricultural property under s. 193.461.

5 2. Used exclusively as dwelling units.

6 3. Property subject to tax on parking, docking, or
7 storage spaces under s. 212.03(6).

8 4. Recreational property or the common elements of a
9 condominium when subject to a lease between the developer or
10 owner thereof and the condominium association in its own right
11 or as agent for the owners of individual condominium units or
12 the owners of individual condominium units. However, only the
13 lease payments on such property shall be exempt from the tax
14 imposed by this chapter, and any other use made by the owner
15 or the condominium association shall be fully taxable under
16 this chapter.

17 5. A public or private street or right-of-way and
18 poles, conduits, fixtures, and similar improvements located on
19 such streets or rights-of-way, occupied or used by a utility
20 or franchised cable television company for utility or
21 communications or television purposes. For purposes of this
22 subparagraph, the term "utility" means any person providing
23 utility services as defined in s. 203.012. This exception also
24 applied to property, excluding buildings, wherever located, on
25 which antennas, cables, adjacent accessory structures, or
26 adjacent accessory equipment used in the provision of
27 cellular, enhanced specialized mobile radio, or personal
28 communications services are placed.

29 6. A public street or road which is used for
30 transportation purposes.

31

1 7. Property used at an airport exclusively for the
2 purpose of aircraft landing or aircraft taxiing or property
3 used by an airline for the purpose of loading or unloading
4 passengers or property onto or from aircraft or for fueling
5 aircraft.

6 8.a. Property used at a port authority, as defined in
7 s. 315.02(2), exclusively for the purpose of oceangoing
8 vessels or tugs docking, or such vessels mooring on property
9 used by a port authority for the purpose of loading or
10 unloading passengers or cargo onto or from such a vessel, or
11 property used at a port authority for fueling such vessels, or
12 to the extent that the amount paid for the use of any property
13 at the port is based on the charge for the amount of tonnage
14 actually imported or exported through the port by a tenant.

15 b. The amount charged for the use of any property at
16 the port in excess of the amount charged for tonnage actually
17 imported or exported shall remain subject to tax except as
18 provided in sub-subparagraph a.

19 9. Property used as an integral part of the
20 performance of qualified production services. As used in this
21 subparagraph, the term "qualified production services" means
22 any activity or service performed directly in connection with
23 the production of a qualified motion picture, as defined in s.
24 212.06(1)(b), and includes:

25 a. Photography, sound and recording, casting, location
26 managing and scouting, shooting, creation of special and
27 optical effects, animation, adaptation (language, media,
28 electronic, or otherwise), technological modifications,
29 computer graphics, set and stage support (such as
30 electricians, lighting designers and operators, greensmen,
31 prop managers and assistants, and grips), wardrobe (design,

1 preparation, and management), hair and makeup (design,
2 production, and application), performing (such as acting,
3 dancing, and playing), designing and executing stunts,
4 coaching, consulting, writing, scoring, composing,
5 choreographing, script supervising, directing, producing,
6 transmitting dailies, dubbing, mixing, editing, cutting,
7 looping, printing, processing, duplicating, storing, and
8 distributing;

9 b. The design, planning, engineering, construction,
10 alteration, repair, and maintenance of real or personal
11 property including stages, sets, props, models, paintings, and
12 facilities principally required for the performance of those
13 services listed in sub-subparagraph a.; and

14 c. Property management services directly related to
15 property used in connection with the services described in
16 sub-subparagraphs a. and b.

17 10. Leased, subleased, or rented to a person providing
18 food and drink concessionaire services within the premises of
19 a movie theater, a business operated under a permit issued
20 pursuant to chapter 550, or any publicly owned arena, sports
21 stadium, convention hall, exhibition hall, auditorium, or
22 recreational facility. A person providing retail
23 concessionaire services involving the sale of food and drink
24 or other tangible personal property within the premises of an
25 airport shall be subject to tax on the rental of real property
26 used for that purpose, but shall not be subject to the tax on
27 any license to use the property. For purposes of this
28 subparagraph, the term "sale" shall not include the leasing of
29 tangible personal property.

30 11. Property occupied pursuant to an instrument
31 calling for payments which the department has declared, in a

1 Technical Assistance Advisement issued on or before March 15,
2 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),
3 Florida Administrative Code; provided that this subparagraph
4 shall only apply to property occupied by the same person
5 before and after the execution of the subject instrument and
6 only to those payments made pursuant to such instrument,
7 exclusive of renewals and extensions thereof occurring after
8 March 15, 1993.

9 Section 2. Paragraph (e) of subsection (1) of section
10 212.05, Florida Statutes, 1998 Supplement, is amended to read:

11 212.05 Sales, storage, use tax.--It is hereby declared
12 to be the legislative intent that every person is exercising a
13 taxable privilege who engages in the business of selling
14 tangible personal property at retail in this state, including
15 the business of making mail order sales, or who rents or
16 furnishes any of the things or services taxable under this
17 chapter, or who stores for use or consumption in this state
18 any item or article of tangible personal property as defined
19 herein and who leases or rents such property within the state.

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

23 (e)1. Effective January 1, 2000, at the rate of 6.5 ~~6~~
24 percent on the total charge ~~charges~~ for+

25 ~~a. All telegraph messages and long-distance telephone~~
26 ~~calls beginning and terminating in this state,~~
27 telecommunication service as defined in s. 203.012, and those
28 services described in s. 203.012(2)(a). The tax shall be
29 applied to the total charge for each message, call, or other
30 segment or component of telecommunication service for which a
31 customer is charged. It is the intent of the Legislature that,

1 pursuant to future legislative action, the rate at which
2 telecommunication service as defined in s. 203.012 and those
3 services described in s. 203.012(2)(a) are taxed be reduced to
4 6 percent on January 1, 2001, ~~except that the tax rate for~~
5 ~~charges for telecommunication service is 7 percent.~~ The tax on
6 calls made with a prepaid telephone calling card shall be
7 collected at the time of sale and remitted by the dealer
8 selling or recharging a prepaid telephone card.

9 a. A prepaid telephone card or authorization number
10 means the right to exclusively make telephone calls that must
11 be paid for in advance and that enable the origination of
12 calls using an access number, prepaid mobile account, or
13 authorization code, whether manually or electronically dialed.

14 b. If the sale or recharge of the prepaid telephone
15 calling card does not take place at the dealer's place of
16 business, it shall be deemed to take place at the customer's
17 shipping address or, if no item is shipped, at the customer's
18 address or the location associated with the customer's mobile
19 telephone number.

20 c. The prepaid phone card constitutes property in this
21 state and subjects the selling dealer to the jurisdiction of
22 this state for purposes of this subsection.

23 2. At the rate of 7 percent on the total charge for
24 electrical power or energy.

25 3. At the rate of 6 percent on charges for:

26 a.~~b.~~ Any television system program service.

27 b.~~c.~~ The installation of telecommunication and
28 telegraphic equipment.

29 d. ~~Electrical power or energy, except that the tax~~
30 ~~rate for charges for electrical power or energy is 7 percent.~~

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1 4.2. For purposes of this chapter, "television system
2 program service" means the transmitting, by any means, of any
3 audio or video signal to a subscriber for other than
4 retransmission, or the installing, connecting, reconnecting,
5 disconnecting, moving, or changing of any equipment related to
6 such service. For purposes of this chapter, the term
7 "telecommunication service" does not include local service
8 provided through a pay telephone. The provisions of s.
9 212.17(3), regarding credit for tax paid on charges
10 subsequently found to be worthless, shall be equally
11 applicable to any tax paid under the provisions of this
12 section on charges for telecommunication or telegraph services
13 or electric power subsequently found to be uncollectible. The
14 word "charges" in this paragraph does not include any excise
15 or similar tax levied by the Federal Government, any political
16 subdivision of the state, or any municipality upon the
17 purchase or sale of telecommunication, television system
18 program, or telegraph service or electric power, which tax is
19 collected by the seller from the purchaser.

20 5.3. Telegraph messages and telecommunication services
21 which originate or terminate in this state, other than
22 interstate private communication services, and are billed to a
23 customer, telephone number, or device located within this
24 state are taxable under this paragraph. Interstate private
25 communication services are taxable under this paragraph as
26 follows:

27 a. One hundred percent of the charge imposed at each
28 channel termination point within this state;

29 b. One hundred percent of the charge imposed for the
30 total channel mileage between each channel termination point
31 within this state; and

1 c. The portion of the interstate interoffice channel
2 mileage charge as determined by multiplying said charge times
3 a fraction, the numerator of which is the air miles between
4 the last channel termination point in this state and the
5 vertical and horizontal coordinates, 7856 and 1756,
6 respectively, and the denominator of which is the air miles
7 between the last channel termination point in this state and
8 the first channel termination point outside this state. The
9 denominator of this fraction shall be adjusted, if necessary,
10 by adding the numerator of said fraction to similarly
11 determined air miles in the state in which the other channel
12 termination point is located, so that the summation of the
13 apportionment factor for this state and the apportionment
14 factor for the other state is not greater than one, to ensure
15 that no more than 100 percent of the interstate interoffice
16 channel mileage charge can be taxed by this state and another
17 state.

18 6.4. The tax imposed pursuant to this paragraph shall
19 not exceed \$50,000 per calendar year on charges to any person
20 for interstate telecommunications services defined in s.
21 203.012(4) and (7)(b), if the majority of such services used
22 by such person are for communications originating outside of
23 this state and terminating in this state. This exemption
24 shall only be granted to holders of a direct pay permit issued
25 pursuant to this subparagraph. No refunds shall be given for
26 taxes paid prior to receiving a direct pay permit. Upon
27 application, the department may issue a direct pay permit to
28 the purchaser of telecommunications services authorizing such
29 purchaser to pay tax on such services directly to the
30 department. Any vendor furnishing telecommunications services
31 to the holder of a valid direct pay permit shall be relieved

1 of the obligation to collect and remit the tax on such
2 service. Tax payments and returns pursuant to a direct pay
3 permit shall be monthly. For purposes of this subparagraph,
4 the term "person" shall be limited to a single legal entity
5 and shall not be construed as meaning a group or combination
6 of affiliated entities or entities controlled by one person or
7 group of persons.

8 7.5. If the sale of a television system program
9 service, as defined in this paragraph, also involves the sale
10 of an item exempt under s. 212.08(7)(j), the tax shall be
11 applied to the value of the taxable service when it is sold
12 separately. If the company does not offer this service
13 separately, the consideration paid shall be separately
14 identified and stated with respect to the taxable and exempt
15 portions of the transaction as a condition of the exemption,
16 except that the amount identified as taxable shall not be less
17 than the cost of the service.

18 Section 3. Subsection (11) of section 212.12, Florida
19 Statutes, 1998 Supplement, is amended to read:

20 212.12 Dealer's credit for collecting tax; penalties
21 for noncompliance; powers of Department of Revenue in dealing
22 with delinquents; brackets applicable to taxable transactions;
23 records required.--

24 (11) The department is authorized to provide by rule
25 the tax amounts and brackets applicable to all taxable
26 transactions that occur in counties that have a surtax at a
27 rate other than 1 percent which transactions would otherwise
28 have been transactions taxable at the rate of 6 percent.
29 Likewise, the department is authorized to promulgate by rule
30 the tax amounts and brackets applicable to transactions
31 taxable at 3 percent pursuant to s. 212.08(3), transactions

1 taxable ~~at 7 percent~~ pursuant to s. 212.05(1)(e)1. and 2., and
2 on transactions which would otherwise have been so taxable in
3 counties which have adopted a discretionary sales surtax.

4 Section 4. With respect to charges for
5 telecommunication services which are regularly billed on a
6 monthly cycle, the changes in the sales tax rate provided for
7 in this act shall apply to charges appearing on any bill dated
8 on or after February 1, 2000.

9 Section 5. This act shall take effect July 1, 1999.

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11 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
12 COMMITTEE SUBSTITUTE FOR
13 SB 770

14 The committee substitute makes the following changes to SB
15 770:

- 16 1) Effective January 1, 2000, the bill reduces from 7% to
17 6.5%, the tax on the non-residential use of
18 "telecommunication services" as defined in s. 203.012,
19 F.S., and on those services described in s.
20 203.012(2)(a), F.S. Provides intent language for a
21 further reduction to 6% on January 1, 2001.
- 22 2) Provides that the sales tax on prepaid calling cards
23 will be assessed at the point of sale of the card,
24 instead of at the time of usage.
- 25 3) Extends the sales tax exemption for rental fees for
26 utility pole attachments to certain cellular and
27 personal communications systems tower attachments.
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