

By the Committee on Fiscal Resource and Senator Horne

314-1852A-00

1                                   A bill to be entitled  
2           An act relating to communications services;  
3           creating s. 202.10, F.S.; creating ch. 202,  
4           F.S., the Communications Services Tax  
5           Simplification Law; creating s. 202.11, F.S.;  
6           providing definitions; creating s. 202.12,  
7           F.S.; imposing a tax on sales of communications  
8           services; providing for the rate of the tax;  
9           creating s. 202.125, F.S.; providing certain  
10          exemptions; creating s. 202.13, F.S.; providing  
11          legislative intent if the tax is declared  
12          invalid, unconstitutional, or void; creating s.  
13          202.14, F.S.; providing for a credit against  
14          the tax; creating s. 202.15, F.S.; providing  
15          special rules for users of substitute  
16          communications systems; creating s. 202.16,  
17          F.S.; providing for payment of the tax;  
18          creating s. 202.17, F.S.; requiring dealers of  
19          communications services to register with the  
20          Department of Revenue; providing registration  
21          requirements; providing for a fee; providing  
22          circumstances under which the department may  
23          revoke a dealer's certificate of registration;  
24          creating s. 202.18, F.S.; providing for  
25          allocation of the tax proceeds; creating s.  
26          202.19, F.S.; authorizing counties and  
27          municipalities to levy a discretionary  
28          communications services tax; providing the rate  
29          of such tax; specifying authorized uses for the  
30          proceeds of the tax; creating s. 202.20, F.S.;  
31          providing for establishing the initial and

1 maximum rates of local communications services  
2 taxes; creating s. 202.21, F.S.; providing for  
3 effective dates of such levies and notice to  
4 dealers of communications services; creating s.  
5 202.22, F.S.; providing requirements for  
6 determining local tax situs; requiring the  
7 Department of Revenue to create an electronic  
8 database for the purpose of determining local  
9 taxing jurisdiction; creating s. 202.23, F.S.;  
10 providing procedures by which a purchaser may  
11 request a refund or credit of the  
12 communications services tax; creating s.  
13 202.24, F.S.; limiting the local fees and taxes  
14 that may be imposed on dealers of  
15 communications services; creating s. 202.25,  
16 F.S.; providing for jurisdiction for the  
17 purpose of collecting taxes due; creating s.  
18 202.26, F.S.; authorizing the Department of  
19 Revenue to adopt rules; creating s. 202.27,  
20 F.S.; providing requirements for dealers with  
21 respect to filing returns and remitting taxes;  
22 creating s. 202.28, F.S.; providing for a  
23 credit for collecting taxes; providing  
24 penalties for certain acts of tax evasion;  
25 creating s. 202.29, F.S.; providing for a  
26 credit against unpaid balances due under  
27 certain circumstances; creating s. 202.30,  
28 F.S.; providing for payment of taxes by  
29 electronic transfer; creating s. 202.31, F.S.;  
30 providing for tax liabilities upon the sale of  
31 a business; creating s. 202.32, F.S.; providing

1 for local governmental agencies to cooperate in  
2 administering the law; creating s. 202.33,  
3 F.S.; providing penalties for failure to remit  
4 taxes due; creating s. 202.34, F.S.; requiring  
5 dealers of communications services to maintain  
6 certain records; providing penalties; providing  
7 for audits upon written notification by the  
8 department; creating s. 202.35, F.S.;  
9 specifying the powers of the department to  
10 collect delinquent tax; creating s. 202.36,  
11 F.S.; providing powers of the department with  
12 respect to hearings, writs of garnishment, tax  
13 warrants, and subpoenas; creating s. 202.37,  
14 F.S.; providing special rules in administering  
15 local communications services taxes;  
16 establishing the Simplified Communications Tax  
17 Advisory Council to advise the department with  
18 respect to administering ch. 202, F.S., as  
19 created by the act; amending s. 203.01, F.S.,  
20 as amended; providing for the gross receipts  
21 tax on communications services to be paid  
22 pursuant to ch. 202, F.S., as created by the  
23 act; deleting provisions imposing a gross  
24 receipts tax on telephone and telecommunication  
25 systems and services; redefining the term  
26 "gross receipts" for purposes of s. 203.01;  
27 amending s. 203.012, F.S., as amended; revising  
28 definitions; repealing ss. 203.013, 203.60,  
29 203.61, 203.62, 203.63, F.S., relating to the  
30 gross receipts tax on interstate  
31 telecommunication services and other taxes on

1 interstate and international telecommunications  
2 services imposed under part II of ch. 203,  
3 F.S.; amending s. 337.401, F.S.; providing for  
4 use of right-of-way for communications services  
5 lines; providing requirements for  
6 municipalities and counties in imposing rules,  
7 fees, taxes, and other requirements on dealers  
8 of communications services placing or  
9 maintaining communications facilities in roads  
10 or rights-of-way; authorizing a municipality or  
11 county to impose permit fees and inspection  
12 fees; providing notice requirements for certain  
13 ordinances; deleting certain limitations on  
14 fees that a municipality may impose on a  
15 telecommunications company; amending ss.  
16 72.011, 213.05, F.S.; providing for the  
17 authority of the Department of Revenue and the  
18 jurisdiction of the circuit courts with respect  
19 to tax matters arising under ch. 202, F.S., as  
20 created by the act; amending s. 213.0535, F.S.;  
21 extending the Registration Information Sharing  
22 and Exchange Program to the taxes on  
23 communications services; amending s. 166.231,  
24 F.S., as amended, relating to the remittance of  
25 taxes; conforming provisions to changes made by  
26 the act; deleting provisions authorizing a  
27 municipality to levy a tax on the purchase of  
28 telecommunication services; amending s.  
29 166.233, F.S., relating to the public service  
30 tax; conforming provisions to changes made by  
31 the act; amending s. 212.20, F.S.; providing

1 for the distribution of certain taxes collected  
2 under ch. 202, F.S., as created by the act;  
3 amending s. 125.42, F.S.; deleting provisions  
4 authorizing a board of county commissioners to  
5 grant certain licenses to construct and  
6 maintain telephone lines; amending s. 166.231,  
7 F.S.; excluding from the public service tax  
8 charges for telecommunications services which  
9 are paid for through a prepaid calling  
10 arrangement; providing applicability of the  
11 amendment to s. 166.231(9), F.S.; amending ss.  
12 203.01, 203.012, F.S.; revising the definition  
13 of the term "gross receipts" for purposes of  
14 the tax on utility services; amending s.  
15 212.054, F.S.; providing that the local option  
16 sales tax applies to prepaid calling  
17 arrangements; amending s. 212.05, F.S.;  
18 requiring the payment of a sales tax on prepaid  
19 calling arrangements; providing the rate of the  
20 tax; providing for such sale to be a sale of  
21 tangible personal property; deleting provisions  
22 governing the payment of sales tax on prepaid  
23 telephone calling cards; providing  
24 applicability of the amendment to s. 212.05(1),  
25 F.S.; amending ss. 212.05, 212.054, F.S., as  
26 amended; deleting the sales tax and the  
27 discretionary sales surtax imposed on telegraph  
28 messages, long-distance telephone calls,  
29 certain other telecommunication services, and  
30 television system program services; amending s.  
31 212.031, F.S.; revising certain tax exemptions

1 provided for the lease or rental of property  
2 used in the provision of certain communications  
3 services and applying such changes  
4 retroactively; providing applicability;  
5 providing an appropriation; providing effective  
6 dates.

7  
8 Be It Enacted by the Legislature of the State of Florida:

9  
10 Section 1. Section 202.10, Florida Statutes, is  
11 created to read:

12 202.10 Short title.--This chapter may be cited as the  
13 "Communications Services Tax Simplification Law."

14 Section 2. Section 202.11, Florida Statutes, is  
15 created to read:

16 202.11 Definitions.--As used in this chapter, the  
17 term:

18 (1) "Actual cost of operating a substitute  
19 communications system" includes, but is not limited to,  
20 depreciation, interest, maintenance, repair, and other  
21 expenses directly attributable to the operation of such  
22 system. For purposes of this chapter, the depreciation expense  
23 included in actual cost is the depreciation expense claimed  
24 for federal income tax purposes. The total amount of any  
25 payment required by a lease or rental contract or agreement  
26 must be included within the actual cost of operating the  
27 substitute communications system.

28 (2) "Cable service" means the transmission of video,  
29 audio, or other programming service to purchasers, and the  
30 purchaser interaction, if any, required for the selection or  
31 use of any such programming service, regardless of whether the

1 programming is transmitted over facilities owned or operated  
2 by the cable service provider or over facilities owned or  
3 operated by one or more other dealers of communications  
4 services. The term includes point-to-multipoint distribution  
5 services by which programming is transmitted or broadcast by  
6 microwave or other equipment directly to the purchaser's  
7 premises, but does not include direct-to-home-satellite  
8 service. The term includes, but is not limited to, basic,  
9 extended, premium, pay-per-view, digital, music, and two-way  
10 cable services.

11 (3) "Communications services" means the transmission,  
12 conveyance, or routing of voice, data, audio, video, or any  
13 other information or signals, including cable services, to a  
14 point, or between or among points, by or through any  
15 electronic, radio, satellite, cable, optical, microwave, or  
16 other medium or method now in existence or hereafter devised  
17 and regardless of the protocol used for such transmission or  
18 conveyance. The term does not include:

19 (a) Information services.

20 (b) Installation or maintenance of wiring or equipment  
21 on a customer's premises.

22 (c) The sale or rental of tangible personal property.

23 (d) The sale of advertising, including, but not  
24 limited to, directory advertising.

25 (e) Bad-check charges.

26 (f) Late-payment charges.

27 (g) Billing and collection services.

28 (4) "Dealer" means a person registered with the  
29 department as a provider of communications services in this  
30 state.

31 (5) "Department" means the Department of Revenue.

1           (6) "Direct-to-home-satellite service" has the meaning  
2 ascribed in the Communications Act of 1934, 47 U.S.C. s.  
3 602(b)(2).

4           (7) "Information service" means the offering of a  
5 capability for generating, acquiring, storing, transforming,  
6 processing, retrieving, using, or making available information  
7 via communications services, including, but not limited to,  
8 electronic publishing, Web-hosting service, and end-user  
9 900-number service. The term does not include any video,  
10 audio, or other programming service that uses  
11 point-to-multipoint distribution by which programming is  
12 delivered, transmitted, or broadcast by any means, including  
13 any interaction that may be necessary for selecting and using  
14 the service, regardless of whether the programming is  
15 delivered, transmitted, or broadcast over facilities owned or  
16 operated by the seller or another, or whether denominated as  
17 cable service or as basic, extended, premium, pay-per-view,  
18 digital, music, or two-way cable service.

19           (8) "Mobile communications service" means any one-way  
20 or two-way radio communications service carried between mobile  
21 stations or receivers and land stations, or by mobile stations  
22 communicating among themselves, and includes, but is not  
23 limited to, cellular communications services, personal  
24 communications services, paging services, specialized mobile  
25 radio services, and any other form of mobile one-way or  
26 two-way communications service.

27           (9) "Person" has the meaning ascribed in s. 212.02.

28           (10) "Prepaid calling arrangement" means the  
29 separately stated retail sale by advance payment of  
30 communications services that consist exclusively of telephone  
31 calls originated by using an access number, authorization



1 code, or other means that may be manually, electronically, or  
2 otherwise entered, and that are sold in predetermined units or  
3 dollars of which the number declines with use in a known  
4 amount.

5 (11) "Purchaser" means the person paying for or  
6 obligated to pay for communications services.

7 (12) "Retail sale" means the sale of communications  
8 services for any purpose other than for resale or to be used  
9 as a component part of or integrated into communications  
10 services to be resold in the ordinary course of business.

11 However, any sale for resale must comply with s. 202.16(2) and  
12 the rules adopted thereunder.

13 (13) "Sale" means the provision of communications  
14 services for a consideration.

15 (14) "Sales price" means the total amount charged in  
16 money or other consideration by a dealer for the sale of  
17 communications services in this state, including any property  
18 or other services that are part of the sale.

19 (a) The sales price of communications services may not  
20 be reduced by charges for any of the following:

21 1. Separately identified components of the charge or  
22 expenses of the dealer, including, but not limited to, sales  
23 taxes on goods or services purchased by the dealer, property  
24 taxes, taxes measured by net income, and federal  
25 universal-service fund fees;

26 2. The connection, movement, change, or termination of  
27 communications services;

28 3. The detailed billing of communications services; or

29 4. The sale of directory listings in connection with a  
30 communications service.

31

1           (b) The sales price of communications services does  
2 not include separately stated charges for any of the  
3 following:

4           1. Any excise tax, sales tax, or similar tax levied by  
5 the United States or any state or local government on the  
6 purchase, sale, use, or consumption of any communications  
7 service, including, but not limited to, any tax imposed under  
8 this chapter or chapter 203 which is permitted or required to  
9 be added to the sales price of such service, if the tax is  
10 stated separately;

11           2. Any fee or assessment levied by the United States  
12 or any state or local government, including, but not limited  
13 to, regulatory fees and emergency telephone surcharges, which  
14 is required to be added to the price of such service if the  
15 fee or assessment is separately stated;

16           3. Local telephone service paid for by inserting coins  
17 into coin-operated communications devices available to the  
18 public;

19           4. The sale or recharge of a prepaid calling  
20 arrangement;

21           5. The provision of air-to-ground communications  
22 services, defined as a radio service provided to purchasers  
23 while on board an aircraft;

24           6. A dealer's internal use of communications services  
25 in connection with its business of providing communications  
26 services that are not for resale; or

27           7. Charges for property or other services that are not  
28 part of the sale of communications services, if such charges  
29 are stated separately from the charges for communications  
30 services.

31           (15) "Service address" means:

1           (a) In the case of cable services and  
2 direct-to-home-satellite services, the location where the  
3 customer receives the services in this state.

4           (b) In the case of all other communications services,  
5 the location of the communications equipment from which  
6 communications services originate or at which communications  
7 services are received by the customer. If the location of such  
8 equipment cannot be determined as part of the billing process,  
9 as in the case of mobile communications services, paging  
10 systems, maritime systems, third-number and calling-card  
11 calls, and similar services, the term means the location  
12 determined by the dealer based on the customer's telephone  
13 number, the customer's mailing address to which bills are sent  
14 by the dealer, or another street address provided by the  
15 customer. However, such address must be within the licensed  
16 service area of the dealer. In the case of a communications  
17 service paid through a credit or payment mechanism that does  
18 not relate to a service address, such as a bank, travel,  
19 debit, or credit card, the service address is the address of  
20 the central office, as determined by the area code and the  
21 first three digits of the seven-digit originating telephone  
22 number.

23           (16) "Substitute communications system" means any  
24 telephone system, or other system capable of providing  
25 communications services, which a person purchases, installs,  
26 rents, or leases for his or her own use to provide himself or  
27 herself with services used as a substitute for communications  
28 services provided by a dealer of communications services.

29           (17) "Unbundled network element" means a network  
30 element, as defined in 47 U.S.C. s. 153(29), to which access  
31

1 is provided on an unbundled basis pursuant to 47 U.S.C. s.  
2 251(c)(3).

3 Section 3. Effective January 1, 2002, section 202.12,  
4 Florida Statutes, is created to read:

5 202.12 Sales of communications services.--The  
6 Legislature finds that every person who engages in the  
7 business of selling communications services at retail in this  
8 state is exercising a taxable privilege. It is the intent of  
9 the Legislature that the tax imposed by chapter 203 be  
10 administered as provided in this chapter.

11 (1) For the exercise of such privilege, a tax is  
12 levied on each taxable transaction, and the tax is due and  
13 payable as follows:

14 (a) At the rate of 6.33 percent of the sales price of  
15 the communication service, except for direct-to-home-satellite  
16 service, which:

- 17 1. Originates and terminates in this state; or  
18 2. Originates or terminates in this state and is  
19 charged to a service address in this state,

20  
21 when sold at retail and computed on each taxable sale for the  
22 purpose of remitting the tax due. The gross receipts tax  
23 imposed by chapter 203 shall be collected on the same taxable  
24 transactions and remitted with the tax imposed by this  
25 paragraph.

26 (b) At the rate set forth in paragraph (a) on the  
27 actual cost of operating a substitute communications system,  
28 to be paid in accordance with s. 202.15. This paragraph does  
29 not apply to the use by any dealer of its own communications  
30 system to conduct a business of providing communications  
31 services or any communications system operated by a county, a

1 municipality, the state, or any political subdivision of the  
2 state. The gross receipts tax imposed by chapter 203 shall be  
3 applied to the same costs, and remitted with the tax imposed  
4 by this paragraph.

5 (c) At a rate to be determined by the Revenue  
6 Estimating Conference on the sales price of any  
7 direct-to-home-satellite service received in this state. The  
8 proceeds of the tax imposed under this paragraph shall be  
9 accounted for and distributed in accordance with s. 202.18(2).  
10 The gross receipts tax imposed by chapter 203 shall be  
11 collected on the same taxable transactions, and remitted with  
12 the tax imposed by this paragraph.

13 (2) A dealer of taxable communications services shall  
14 bill, collect, and remit the taxes on communications services  
15 imposed pursuant to chapter 203 and this section at a combined  
16 rate that is the sum of the rate of tax on communications  
17 services prescribed in chapter 203 and the applicable rate of  
18 tax prescribed in this section. Each dealer subject to the tax  
19 provided in paragraph (1)(b) shall also remit the taxes  
20 imposed pursuant to chapter 203 and this section on a combined  
21 basis.

22 (3) Notwithstanding any law to the contrary, the tax  
23 imposed under this section may not exceed \$100,000 per  
24 calendar year on charges to any person for interstate  
25 communications services that originate outside this state and  
26 terminate within this state. This paragraph applies only to  
27 holders of a direct-pay permit issued under this paragraph. A  
28 refund may not be given for taxes paid before receiving a  
29 direct-pay permit. Upon application, the department may issue  
30 a direct-pay permit to the purchaser of communications  
31 services authorizing such purchaser to pay tax on such

1 services directly to the department. Any dealer of  
2 communications services furnishing communications services to  
3 the holder of a valid direct-pay permit is relieved of the  
4 obligation to collect and remit the tax on such service. Tax  
5 payments and returns pursuant to a direct-pay permit shall be  
6 monthly. As used in this paragraph, the term "person" means a  
7 single legal entity and does not mean a group or combination  
8 of affiliated entities or entities controlled by one person or  
9 group of persons.

10 Section 4. Effective January 1, 2002, section 202.125,  
11 Florida Statutes, is created to read:

12 202.125 Sales of communications services; specified  
13 exemptions.--

14 (1) The separately stated sales price of certain  
15 communications services sold to residential households is  
16 exempt from the tax imposed or administered pursuant to s.  
17 202.12. This exemption applies only to the price of local  
18 telephone service and toll telephone service. This exemption  
19 does not apply to any residence that constitutes all or part  
20 of a public lodging establishment as defined in chapter 509 or  
21 to any mobile communications service.

22 (2) The sale of communications services provided to  
23 the Federal Government, any agency or instrumentality of the  
24 Federal Government, or any entity that is exempt from state  
25 taxes under federal law is exempt from the taxes imposed or  
26 administered pursuant to ss. 202.12 and 202.19.

27 (3) The sale of communications services to the state  
28 or any county, municipality, or political subdivision of the  
29 state when payment is made directly to the dealer by the  
30 governmental entity is exempt from the taxes imposed or  
31 administered pursuant to ss. 202.12 and 202.19. This exemption

1 does not inure to any transaction otherwise taxable under this  
2 chapter when payment is made by a government employee by any  
3 means, including, but not limited to, cash, check, or credit  
4 card when that employee is subsequently reimbursed by the  
5 governmental entity.

6 (4) The sale of communications services to a religious  
7 or educational organization that is exempt from federal income  
8 tax under s. 501(c)(3) of the Internal Revenue Code is exempt  
9 from the taxes imposed or administered pursuant to ss. 202.12  
10 and 202.19.

11 Section 5. Effective January 1, 2002, section 202.13,  
12 Florida Statutes, is created to read:

13 202.13 Intent.--

14 (1) If the operation or imposition of the taxes  
15 imposed or administered under this chapter are declared  
16 invalid, ineffective, inapplicable, unconstitutional, or void  
17 for any reason, chapters 166, 203, 212, and 337, as such  
18 chapters existed before January 1, 2002, shall fully apply to  
19 the sale, use, or consumption of communications services. If  
20 any exemption from the tax is declared invalid, ineffective,  
21 inapplicable, unconstitutional, or void for any reason, such  
22 declaration shall not affect the taxes imposed under this  
23 chapter, but such sale, use, or consumption shall be subject  
24 to the taxes imposed under this section to the same extent as  
25 if such exemption never existed.

26 (2) It is the intent of the Legislature to exempt from  
27 the taxes imposed or administered pursuant to this chapter  
28 only the communications services set forth in this chapter as  
29 exempt from such taxes, to the extent that such exemptions are  
30 in accordance with the constitutions of this state and of the  
31 United States.

1           Section 6. Effective January 1, 2002, section 202.14,  
2 Florida Statutes, is created to read:

3           202.14 Credit against tax imposed.--To prevent actual  
4 multistate taxation of communications services subject to tax  
5 under this chapter, any taxpayer, upon proof that such  
6 taxpayer has paid a tax legally imposed by another state or  
7 local jurisdiction in such other state with respect to such  
8 services, shall be allowed a credit against the taxes imposed  
9 under this chapter to the extent of the amount of tax paid in  
10 the other state or local jurisdiction.

11           Section 7. Effective January 1, 2002, section 202.15,  
12 Florida Statutes, is created to read:

13           202.15 Special rule for users of substitute  
14 communications systems.--Any person who purchases, installs,  
15 rents, or leases a substitute communications system must  
16 register with the department and pay the tax imposed or  
17 administered by s. 202.12 annually pursuant to rules  
18 prescribed by the department.

19           Section 8. Effective January 1, 2002, section 202.16,  
20 Florida Statutes, is created to read:

21           202.16 Payment.--The taxes imposed or administered  
22 under this chapter and chapter 203 shall be collected from all  
23 dealers of taxable communications services on the sale at  
24 retail in this state of communications services taxable under  
25 this chapter and chapter 203. The full amount of the taxes on  
26 a credit sale, installment sale, or sale made on any kind of  
27 deferred payment plan is due at the moment of the transaction  
28 in the same manner as a cash sale.

29           (1)(a) Except as otherwise provided in ss.  
30 202.12(1)(b) and 202.15, the taxes collected under this  
31 chapter and chapter 203, including any penalties or interest



1 attributable to the nonpayment of such taxes or for  
2 noncompliance with this chapter or chapter 203, shall be paid  
3 by the purchaser of the communications service and shall be  
4 collected from such person by the dealer of communications  
5 services.

6 (b) Each dealer of communications services selling  
7 communications services in this state shall collect the taxes  
8 imposed under this chapter and chapter 203 from the purchaser  
9 of such services, and such taxes must be stated separately  
10 from all other charges on the bill or invoice.

11 (2) A sale of communications services that are used as  
12 a component part of or integrated into a communications  
13 service or prepaid calling arrangement for resale, including,  
14 but not limited to, carrier-access charges, interconnection  
15 charges paid by providers of mobile communication services or  
16 other communication services, charges paid by cable service  
17 providers for the transmission of video or other programming  
18 by another dealer of communications services, charges for the  
19 sale of unbundled network elements, and any other intercompany  
20 charges for the use of facilities for providing communications  
21 services for resale, must be made in compliance with the rules  
22 of the department. Any person who makes a sale for resale  
23 which is not in compliance with these rules is liable for any  
24 tax, penalty, and interest due for failing to comply, to be  
25 calculated pursuant to s. 202.28(2)(a).

26 (3) Notwithstanding the rate of tax on the sale of  
27 communications services imposed pursuant to this chapter and  
28 chapter 203, the department shall prescribe by rule the tax  
29 amounts and brackets applicable to each taxable sale such that  
30 the tax collected results in a tax rate no less than the tax  
31 rate imposed pursuant to this chapter and chapter 203.

1           (4) Each purchaser of a communications service is  
2 liable for the taxes imposed under this chapter and chapter  
3 203. The purchaser's liability is not extinguished until the  
4 tax has been paid to the department, except that proof of  
5 payment of the tax to a dealer of communications services  
6 engaged in business in this state is sufficient to relieve the  
7 purchaser from further liability for the tax.

8           Section 9. Effective January 1, 2002, section 202.17,  
9 Florida Statutes, is created to read:

10           202.17 Registration.--

11           (1) Each person seeking to engage in business as a  
12 dealer of communications services must file with the  
13 department an application for a certificate of registration.

14           (2) A person may not engage in the business of  
15 providing communications services without first obtaining a  
16 certificate of registration. The failure or refusal to submit  
17 an application by any person required to register, as required  
18 by this section, is a misdemeanor of the first degree,  
19 punishable as provided in s. 775.082 or s. 775.083. Any person  
20 who fails or refuses to register shall pay an initial  
21 registration fee of \$100 in lieu of the \$5 registration fee  
22 prescribed under paragraphs (3)(a) and (4)(a). However, this  
23 fee increase may be waived by the department if the failure is  
24 due to reasonable cause.

25           (3)(a) An application for a certificate of  
26 registration must be completed by the dealer of communications  
27 services before engaging in business. The application for a  
28 certificate of registration must contain the information  
29 required by rule of the department.

1           (b) The department, upon receipt of a completed  
2 application, shall grant to the applicant a certificate of  
3 registration.

4           (4)(a) Any person who exclusively resells  
5 communications services to a dealer of communications services  
6 must submit an application for registration before engaging in  
7 business in this state.

8           (b) The department, upon receipt of a completed  
9 application, shall grant to the applicant a certificate of  
10 registration which states that the applicant is a reseller of  
11 communications services.

12           (5) Each application required by paragraph (3)(a) or  
13 paragraph (4)(a) must be accompanied by a registration fee of  
14 \$5, to be deposited in the General Revenue Fund, and must set  
15 forth:

16           (a) The name under which the person will transact  
17 business within this state.

18           (b) The street address of his or her principal office  
19 or place of business within this state and of the location  
20 where records are available for inspection.

21           (c) The name and complete residence address of the  
22 owner or the names and residence addresses of the partners, if  
23 the applicant is a partnership, or of the principal officers,  
24 if the applicant is a corporation or association. If the  
25 applicant is a corporation organized under the laws of another  
26 state, territory, or country, he or she must also file with  
27 the application a certified copy of the certificate or license  
28 issued by the Department of State showing that the corporation  
29 is authorized to transact business in this state.

30           (d) Any other data required by the department.  
31

1       (6) Certificates of registration issued by the  
2 department are not assignable.

3       (7) In addition to the certificate of registration,  
4 the department shall provide to each newly registered dealer  
5 an annual resale certificate that is valid for the remaining  
6 portion of the year. The department shall provide to each  
7 active dealer an annual resale certificate. As used in this  
8 section, the term "active dealer" means a person who is  
9 registered with the department and who is required to file at  
10 least once during each applicable reporting period.

11       (8) A certificate of registration issued by the  
12 department may be revoked by the department or its designated  
13 agent when a dealer fails to comply with this chapter or  
14 chapter 203. Before revoking a dealer's certificate of  
15 registration, the department must schedule an informal  
16 conference at which the dealer may present evidence regarding  
17 the department's intended revocation or enter into a  
18 compliance agreement with the department. The department must  
19 notify the dealer of its intended action and of the time,  
20 place, and date of the scheduled informal conference by  
21 written notification sent by United States mail to the  
22 dealer's last-known address of record furnished by the dealer  
23 on a form prescribed by the department. The dealer must attend  
24 the informal conference and present evidence refuting the  
25 department's intended revocation or enter into a compliance  
26 agreement with the department which resolves the dealer's  
27 failure to comply with this chapter or chapter 203. The  
28 department shall issue an administrative complaint under s.  
29 120.60 if the dealer fails to attend the department's informal  
30 conference, fails to enter into a compliance agreement with  
31 the department resolving the dealer's noncompliance with this

1 chapter, or fails to comply with the executed compliance  
2 agreement.

3 Section 10. Effective January 1, 2002, section 202.18,  
4 Florida Statutes, is created to read:

5 202.18 Allocation and disposition of tax  
6 proceeds.--The proceeds of the communications services taxes  
7 remitted under this chapter shall be treated as follows:

8 (1) The proceeds of the taxes remitted under s.  
9 202.12(1)(a) and (b) shall be divided as follows:

10 (a) The portion of such proceeds which constitutes  
11 gross receipts taxes, imposed at the rate prescribed in  
12 chapter 203, shall be deposited as provided by law and in  
13 accordance with s. 9 of Art. XII of the State Constitution.

14 (b) The remaining portion shall be distributed  
15 according to s. 212.20(6).

16 (2) The proceeds of the taxes remitted under s.  
17 202.12(1)(c) shall be divided as follows:

18 (a) The portion of such proceeds which constitutes  
19 gross receipts taxes, imposed at the rate prescribed in  
20 chapter 203, shall be deposited as provided by law and in  
21 accordance with s. 9 of Art. XII of the State Constitution.

22 (b) An additional \_\_\_\_ percent of such proceeds shall  
23 be allocated to the state and distributed pursuant to s.  
24 212.20(6).

25 (c) The remaining portion of the tax collected under  
26 this subsection shall be allocated to the municipalities and  
27 counties in proportion to the allocation of receipts from the  
28 half-cent sales tax under s. 318.61 and the emergency  
29 distribution of such tax under s. 218.65. The department shall  
30 distribute the appropriate amount to each municipality and  
31

1 county each month at the same time that local communications  
2 services taxes are distributed pursuant to subsection (3).

3 (3)(a) Notwithstanding any law to the contrary, the  
4 proceeds of each local communications services tax levied by a  
5 municipality or county pursuant to s. 202.19, less the  
6 department's costs of administration, shall be transferred to  
7 the Local Communications Services Clearing Tax Trust Fund and  
8 held there to be distributed to such municipality or county.  
9 However, the proceeds of any communications services tax  
10 imposed pursuant to s. 202.19(5) shall be deposited and  
11 disbursed in accordance with ss. 212.054 and 212.055. For  
12 purposes of this section, the proceeds of any tax levied by a  
13 municipality, county, or school board under s. 202.19 are all  
14 funds collected and received by the department pursuant to a  
15 specific levy authorized by such section, including any  
16 interest and penalties attributable to the tax levy.

17 (b) The amount deducted for the costs of  
18 administration may not exceed \_\_\_ percent of the total revenue  
19 generated for all municipalities, counties, and school boards  
20 levying a tax pursuant to s. 202.19. The amount deducted for  
21 the costs of administration shall be used only for those costs  
22 that are attributable to the taxes imposed pursuant to s.  
23 202.19. The total cost of administration shall be prorated  
24 among those jurisdictions levying the tax on the basis of the  
25 amount collected for a particular jurisdiction to the total  
26 amount collected for all such jurisdictions.

27 (c)1. Except as otherwise provided in this paragraph,  
28 proceeds of the taxes levied pursuant to s. 202.19, less  
29 amounts deducted for costs of administration in accordance  
30 with paragraph (b), shall be distributed monthly to the  
31 appropriate jurisdictions. The proceeds of taxes imposed

1 pursuant to s. 202.19(5) shall be distributed in the same  
2 manner as discretionary surtaxes are distributed, in  
3 accordance with ss. 212.054 and 212.055.

4 2. The department shall make any adjustments to the  
5 distributions pursuant to this paragraph which are necessary  
6 to reflect the proper amounts due to individual jurisdictions.

7 Section 11. Effective January 1, 2002, section 202.19,  
8 Florida Statutes, is created to read:

9 202.19 Authorization to impose local communications  
10 services tax.--

11 (1) The governing authority of each county and  
12 municipality may, by ordinance, levy a discretionary  
13 communications services tax.

14 (2) The rate of such tax shall be as follows:

15 (a) For municipalities and charter counties, the rate  
16 shall be up to the maximum rate determined for municipalities  
17 and charter counties in accordance with s. 202.20(2).

18 (b) For all other counties, the rate shall be up to  
19 the maximum rate determined for other counties in accordance  
20 with s. 202.20(2).

21  
22 The rate imposed by any municipality or county shall be  
23 expressed in increments of one-tenth of a percent and rounded  
24 up to the nearest one-tenth percent.

25 (3)(a) The maximum rates established under subsection  
26 (2) reflect the rates for communications services taxes  
27 imposed under this chapter which are necessary for each  
28 municipality or county to raise the maximum amount of revenues  
29 which it was authorized to raise prior to July 1, 2000,  
30 through the imposition of taxes, charges, and fees, but that  
31

1 it is prohibited from imposing under s. 202.24, other than the  
2 discretionary surtax authorized under s. 212.055.

3 (b) The tax authorized under this section includes any  
4 fee or other consideration to which the municipality or county  
5 is otherwise entitled for granting permission to dealers of  
6 communications services or providers of cable television  
7 services, as authorized in 47 U.S.C. s. 542, to use or occupy  
8 its roads or rights-of-way for the placement, construction,  
9 and maintenance of poles, wires, and other fixtures used in  
10 the provision of communications services.

11 (c) This subsection does not supersede or impair the  
12 right, if any, of a municipality or county to require the  
13 payment of consideration by persons using or occupying its  
14 roads or rights-of-way in a capacity other than that of a  
15 dealer of communications services or to require the payment of  
16 regulatory fees or assessments pursuant to s. 337.401.

17 (4)(a) Except as otherwise provided in this section,  
18 the tax imposed by any municipality shall be on all  
19 communications services subject to tax under s. 202.12 which:

- 20 1. Originate or terminate in this state; and  
21 2. Are charged to a service address in the  
22 municipality.

23 (b) The tax imposed by any county under subsection (1)  
24 shall be on all communications services subject to tax under  
25 s. 202.12 which:

- 26 1. Originate or terminate in this state; and  
27 2. Are charged to a service address in the  
28 unincorporated area of the county.

29 (5)(a) In addition to the communications services  
30 taxes authorized by subsection (1), a discretionary surtax  
31 that a county or school board has levied under s. 212.055 is



1 imposed as a local communications services tax under this  
2 section, except that the rate shall be determined in  
3 accordance with s. 202.20. Each such tax rate shall be  
4 applied, in addition to the other tax rates applied under this  
5 chapter, to communications services subject to tax under s.  
6 202.12 which:

7 1. Originate or terminate in this state; and

8 2. Are charged to a service address in the county.

9 (b) The maximum rate established under paragraph (a)  
10 reflects the rate for communications services tax imposed  
11 under paragraph (a) which is necessary for the county to raise  
12 the maximum amount of revenues which it was authorized to  
13 raise prior to July 1, 2000, through the imposition of the  
14 discretionary surtax on telecommunications services authorized  
15 under s. 212.055.

16 (6) Notwithstanding any other provision of this  
17 section, a tax imposed under this section does not apply to  
18 any direct-to-home-satellite service.

19 (7) Any tax imposed by a municipality or county under  
20 this section also applies to the actual cost of operating a  
21 substitute communications system, to be paid in accordance  
22 with s. 202.15. This paragraph does not apply to the use by  
23 any provider of its own communications system to conduct a  
24 business of providing communications services or to the use of  
25 any communication system operated by a county, a municipality,  
26 the state, or any political subdivision of the state.

27 (8) Notwithstanding any law to the contrary, a tax  
28 imposed under this section may not exceed \$100,000 per  
29 calendar year on charges to any person for interstate  
30 communications services that originate outside this state and  
31 terminate within this state. This subsection applies only to

1 holders of a direct-pay permit issued under this paragraph. A  
2 refund may not be given for taxes paid before receiving a  
3 direct-pay permit. Upon application, the department may issue  
4 a direct-pay permit to the purchaser of communications  
5 services authorizing such purchaser to pay tax on such  
6 services directly to the department. Any dealer of  
7 communications services furnishing communications services to  
8 the holder of a valid direct-pay permit is relieved of the  
9 obligation to collect and remit the tax on such service. Tax  
10 payments and returns pursuant to a direct-pay permit shall be  
11 monthly. As used in this paragraph, the term "person" means a  
12 single legal entity and does not mean a group or combination  
13 of affiliated entities or entities controlled by one person or  
14 group of persons.

15 (9) A municipality or county that imposes a tax under  
16 this section may use the revenues raised by such tax for any  
17 public purpose, including, but not limited to, pledging such  
18 revenues for the repayment of current or future bonded  
19 indebtedness.

20 Section 12. Section 202.20, Florida Statutes, is  
21 created to read:

22 202.20 Establishment of initial and maximum rates of  
23 local communications services taxes.--The initial rates and  
24 maximum rates for the local communications services taxes  
25 imposed under this chapter shall be determined in accordance  
26 with this section.

27 (1)(a) On or before December 31, 2000, the Revenue  
28 Estimating Conference shall compute for each municipality and  
29 county the rate of local communications services tax which  
30 would be required to be levied in order for such local taxing  
31

1 jurisdiction to raise, through the imposition of a local  
2 communications services tax, revenues equal to the sum of:

3 1. The amount of revenues that were actually received  
4 from the replaced revenue sources in the fiscal year ending  
5 September 30, 2000;

6 2. An amount representing the reasonably anticipated  
7 growth in such revenues over a period of 1 year, based on the  
8 average growth of such revenues over the 5-year period  
9 immediately preceding 1999; and

10 3. An amount representing the revenues from the  
11 replaced revenue sources for the 1-month period which local  
12 taxing jurisdictions will be required to forego as a result of  
13 the repeal of the public service tax.

14 (b) For each county or school board that levies the  
15 discretionary surtax authorized in s. 212.055, the Revenue  
16 Estimating Conference shall, in accordance with this  
17 subsection, compute a rate for the tax authorized in s.  
18 202.19(1) and a separate rate for each discretionary surtax.

19 (c) The rates computed by the Revenue Estimating  
20 Conference shall be presented to the Legislature for review  
21 and approval during the 2001 regular session. The rates  
22 approved by the Legislature under this section shall be  
23 effective in the respective local taxing jurisdictions on  
24 January 1, 2002, without any action being taken by the  
25 governing authority or voters of such local taxing  
26 jurisdictions.

27 (d) With respect to any local taxing jurisdiction, if,  
28 for the calendar quarter ending December 31, 2002, the  
29 revenues raised by a local communications services tax imposed  
30 under this section are less than the revenues raised by the  
31 jurisdiction for the calendar quarter ending December 31,

1 2001, from the replaced revenue sources, the governing  
2 authority of the jurisdiction may adjust the rate of the local  
3 communications services tax upward to the extent necessary to  
4 generate such difference in revenues. The adjustment must be  
5 made by emergency ordinance and is authorized notwithstanding  
6 the maximum rate established under subsection (2).

7 (2)(a) On or before December 31, 2001, the Revenue  
8 Estimating Conference shall compute, in accordance with this  
9 paragraph, the maximum rates at which local taxing  
10 jurisdictions shall be permitted to impose local  
11 communications services taxes.

12 1. For the taxes authorized under s. 202.19(1), a  
13 single maximum rate shall apply to all municipalities and  
14 charter counties and another single maximum rate shall apply  
15 to all other counties.

16 2. Each respective maximum rate shall reflect the  
17 greatest possible amount of revenues which could have been  
18 generated from the replaced revenue sources, assuming that  
19 each local taxing jurisdiction had imposed every replaced  
20 revenue source in the manner and at the rate that would have  
21 produced the greatest amount of revenues.

22 (b) The rates computed by the Revenue Estimating  
23 Conference shall be presented to the Legislature for review  
24 and approval during the 2001 regular session. The rates  
25 approved by the Legislature pursuant to this subsection shall  
26 be the maximum rates for purposes of s. 202.19.

27 (3) Each dealer of communications services shall  
28 furnish to the Revenue Estimating Conference the information  
29 necessary for the Revenue Estimating Conference to make the  
30 computations required by subsections (1) and (2). All  
31 information furnished to the Revenue Estimating Conference

1 under this subsection shall be available to all local taxing  
2 jurisdictions.

3 (4) As used in this section, the term "replaced  
4 revenue sources" means the following taxes, charges, fees, or  
5 other impositions that the respective local taxing  
6 jurisdictions were authorized to impose prior to January 1,  
7 2002.

8 (a) With respect to municipalities and charter  
9 counties and the taxes authorized in s. 202.19(1):

10 1. The public service tax on telecommunications  
11 authorized by s. 166.231(9);

12 2. Franchise fees on cable service providers as  
13 authorized by 47 U.S.C. s. 542;

14 3. The public service tax on prepaid calling  
15 arrangements;

16 4. Franchise fees on dealers of communications  
17 services which use the public roads or rights-of-way, up to  
18 the limit set forth in s. 337.401; and

19 5. Permit fees on long-distance telephone service  
20 providers, as provided in s. 203.012(7), and cable service  
21 providers.

22 (b) With respect to all other counties and the taxes  
23 authorized in s. 202.19(1) franchise fees on cable service  
24 providers as authorized by 47 U.S.C. s. 542.

25 (c) With respect to all counties and the taxes imposed  
26 under s. 202.19(5), the term "replaced revenue sources" means  
27 the discretionary surtax levied on telecommunications services  
28 under s. 212.055.

29 Section 13. Effective January 1, 2002, section 202.21,  
30 Florida Statutes, is created to read:

31

1           202.21 Effective dates; procedures for informing  
2 dealers of communications services of tax levies and rate  
3 changes.--Any adoption, repeal, or change in the rate of a  
4 local communications services tax imposed under s. 202.19 is  
5 effective with respect to taxable services included on bills  
6 that are dated on or after the January 1 subsequent to such  
7 adoption, repeal, or change. A municipality or county  
8 adopting, repealing, or changing the rate of such tax must  
9 notify the department of the adoption, repeal, or change by  
10 September 1 immediately preceding such January 1. Notification  
11 must be furnished on a form prescribed by the department and  
12 must specify the rate of tax; the effective date of the  
13 adoption, repeal, or change thereof; and the name, mailing  
14 address, and telephone number of a person designated by the  
15 municipality or county to respond to inquiries concerning the  
16 tax. The department shall provide notice of such adoption,  
17 repeal, or change to all affected dealers of communications  
18 services at least 90 days before the effective date of the  
19 tax. The department is not liable for any loss of or decrease  
20 in revenue by reason of any error, omission, or untimely  
21 action that results in the nonpayment of a tax imposed under  
22 s. 202.19.

23           Section 14. Effective January 1, 2002, section 202.22,  
24 Florida Statutes, is created to read:

25           202.22 Determination of local tax situs.--

26           (1) A dealer of communications services who is  
27 obligated to collect and remit a local communications services  
28 tax imposed under s. 202.19 shall be held harmless from any  
29 liability, including tax, interest, and penalties, which would  
30 otherwise be due solely as a result of an assignment of a  
31 service address to an incorrect local taxing jurisdiction, if

1 the dealer of communications services exercises due diligence  
2 in applying one or more of the following methods for  
3 determining the local taxing jurisdiction in which a service  
4 address is located:

5 (a) Employing an electronic database provided by the  
6 department under subsection (2);

7 (b) Employing a database developed by the dealer or  
8 supplied by a vendor which has been certified by the  
9 department under subsection (3); or

10 (c) Employing an enhanced zip code to assign each  
11 street address, address range, or post office box in the state  
12 to a specific local taxing jurisdiction, and exercises due  
13 diligence to ensure that each such street address, address  
14 range, post office box, or post office box range is assigned  
15 to the correct local taxing jurisdiction. If an enhanced zip  
16 code overlaps boundaries of municipalities or counties, or if  
17 an enhanced zip code cannot be assigned to the service address  
18 because it is a rural area or a location without postal  
19 delivery, the dealer of communications services must designate  
20 one specific local taxing jurisdiction within such enhanced  
21 zip code based on a reasonable methodology. A methodology  
22 satisfies this paragraph if:

23 1. The information used to identify the proper local  
24 taxing jurisdictions is obtained from:

25 a. A database certified by the department under  
26 subsection (3);

27 b. Responsible representatives of the relevant local  
28 taxing jurisdictions; or

29 c. The United States Census Bureau or the United  
30 States Postal Service; and

31

1           2. The methodology is applied timely and consistently  
2 so as to correct inaccurate assignments within 120 days after  
3 discovery.

4           (2)(a) The department shall, subject to legislative  
5 appropriation, create as soon as practical and feasible, and  
6 thereafter maintain, an electronic database that gives due and  
7 proper regard to any format that is approved by the American  
8 National Standards Institute's Accredited Standards Committee  
9 X12 and that designates for each street address, address  
10 range, post office box, or post office box range in the state,  
11 including any multiple postal street addresses applicable to  
12 one street location, the local taxing jurisdiction in which  
13 the street address, address range, post office box, or post  
14 office box range is located and the appropriate code for each  
15 such local taxing jurisdiction, identified by one nationwide  
16 standard numeric code. The nationwide standard numeric code  
17 must contain the same number of numeric digits, and each  
18 digit, or combination of digits, must refer to the same level  
19 of taxing jurisdiction throughout the United States using a  
20 format similar to FIPS 55-3 or other appropriate standard  
21 approved by the Federation of Tax Administrators and the  
22 Multistate Tax Commission. Each address or address range or  
23 post office box or post office box range must be provided in  
24 standard postal format, including the street number, street  
25 number range, street name, post office box number, post office  
26 box range, and zip code. The department shall provide notice  
27 of the availability of the database, and any subsequent  
28 revision thereof, by publication in the Florida Administrative  
29 Weekly.

30           (b)1. Each local taxing jurisdiction shall furnish to  
31 the department all information needed to create and update the



1 electronic database, including changes in service addresses,  
2 annexations, incorporations, reorganizations, and any other  
3 changes in jurisdictional boundaries. The information  
4 furnished to the department must specify an effective date,  
5 which must be the next ensuing January 1 or July 1, and such  
6 information must be furnished to the department at least 120  
7 days prior to the effective date.

8       2. The department shall update the electronic database  
9 in accordance with the information furnished by local taxing  
10 jurisdictions under subparagraph 1. Each update must specify  
11 the effective date as the next ensuing January 1 or July 1 and  
12 must be posted by the department on a Web site not less than  
13 90 days prior to the effective date. The department shall also  
14 furnish the update on magnetic or electronic media to any  
15 dealer of communications services or vendor who requests the  
16 update on such media. However, the department may collect a  
17 fee from the dealer of communications services which does not  
18 exceed the actual cost of furnishing the update on magnetic or  
19 electronic media.

20       3. Each update must identify the additions, deletions,  
21 and other changes to the preceding version of the database.  
22 Each dealer of communications services shall collect and remit  
23 local communications services taxes imposed under this chapter  
24 only for those service addresses that are contained in the  
25 database and for which all of the elements required by this  
26 subsection are included in the database.

27       (3) For purposes of this section, a database must be  
28 certified by the department pursuant to rules adopted in  
29 accordance with the following criteria:

30       (a) The database must assign street addresses, address  
31 ranges, post office boxes, or post office box ranges to the

1 proper jurisdiction with an overall accuracy rate of 95  
2 percent at the 95th percent level of confidence, as determined  
3 through a statistically reliable sample. The accuracy must be  
4 measured based on the entire state or, if the service area of  
5 the respective dealer of communications services does not  
6 encompass the entire state, based on the dealer's entire  
7 service area.

8 (b) Upon receipt of an application for certification  
9 of a database, the department shall examine the application  
10 and, within 90 days after receipt, notify the applicant of any  
11 apparent errors or omissions and request any additional  
12 information, conduct any inspection, or perform any testing  
13 determined necessary. The applicant shall designate an  
14 individual responsible for providing access to all records,  
15 facilities, and processes the department determines are  
16 reasonably necessary to review and make a determination  
17 regarding the application. Such access must be provided  
18 promptly, consistent with the time requirements contained in  
19 this paragraph, but at least within 10 working days after  
20 notification. Each application for certificate must be  
21 approved or denied upon written notice within 120 days after  
22 the receipt of a completed application. The notice must  
23 specify the grounds for a denial, inform the applicant of any  
24 remedy that is available, and indicate the procedure that must  
25 be followed. Certification of a database is valid for 3 or 4  
26 years, as determined by the department.

27 (c) The application must be in the form prescribed by  
28 rule and must include the applicant's name, federal employment  
29 identification number, mailing address, business address, and  
30 any other information required by the department. The  
31 application must identify, among other elements required by

1 the department, the applicant's proposal for testing the  
2 database.

3 (d) An application for recertification of a database  
4 must be received by the department not more than 3 years after  
5 the date of any prior certification. The application must  
6 comply with this section. The department shall complete its  
7 review of the application for certification within 180 days  
8 following receipt.

9 (4)(a) As used in this section, the term "due  
10 diligence" means the care and attention that is expected from,  
11 and ordinarily exercised by, a reasonable and prudent person  
12 under the circumstances.

13 (b) Notwithstanding any law to the contrary, a dealer  
14 of communications services is exercising due diligence in  
15 applying one or more of the methods set forth in subsection  
16 (1) if the dealer:

17 1. Expends reasonable resources to accurately and  
18 reliably implement such method. However, the employment of  
19 enhanced zip codes pursuant to paragraph (1)(c) satisfies the  
20 requirements of this subparagraph; and

21 2. Maintains adequate internal controls in assigning  
22 street addresses, address ranges, or post offices boxes to  
23 taxing jurisdictions. Internal controls are adequate if the  
24 dealer of communications services:

25 a. Maintains and follows procedures to obtain and  
26 implement periodic and consistent updates to the database; and

27 b. Corrects all exceptions, including inaccurate  
28 addresses, incorrect assignments of addresses or taxing  
29 jurisdictions, or other errors or omissions of taxing  
30 jurisdictions associated with certain addresses, within 120  
31 days after discovery.

1           (5) If a dealer of communications services does not  
2 use one or more of the methods specified in subsection (1) for  
3 determining the local taxing jurisdiction in which a service  
4 address is located, the dealer of communications services may  
5 be held liable to the department for any tax, including  
6 interest and penalties, which is due as a result of assigning  
7 the service address to an incorrect local taxing jurisdiction.  
8 However, the dealer of communications services is not liable  
9 for any tax, interest, or penalty to the extent that such  
10 amount was collected and remitted by the dealer of  
11 communications services with respect to a tax imposed by  
12 another local taxing jurisdiction. Dealers of communications  
13 services and local taxing jurisdictions shall be required to  
14 report to the department discovery of any taxes that were not  
15 correctly collected and remitted. Upon determining that an  
16 amount was collected and remitted by a dealer of  
17 communications services with respect to a tax imposed by  
18 another local taxing jurisdiction, the department shall adjust  
19 the respective amounts of the proceeds paid to each such  
20 taxing jurisdiction under s. 202.20 in the month immediately  
21 following such determination.

22           (6)(a) Pursuant to rules adopted by the department,  
23 each dealer of communications services must notify the  
24 department of the methods it intends to employ for determining  
25 the local taxing jurisdiction in which service addresses are  
26 located.

27           (b) Notwithstanding s. 202.28, if a dealer of  
28 communications services employs a database that has not been  
29 certified by the department pursuant to subsection (3), the  
30 deduction allowed to the dealer of communications services as  
31

1 compensation under s. 202.28 shall be 0.25 percent of the tax  
2 due and accounted for and remitted to the department.

3 (7) As used in this section, the term "enhanced zip  
4 code" means a United States postal zip code of 9 or more  
5 digits.

6 Section 15. Effective January 1, 2002, section 202.23,  
7 Florida Statutes, is created to read:

8 202.23 Procedure on purchaser's request for refund or  
9 credit of communications services taxes.--

10 (1) Notwithstanding any other law, a purchaser seeking  
11 a refund of or credit for a tax collected by a dealer under  
12 this chapter must, within 3 years following collection of the  
13 tax from the purchaser, submit a written request for the  
14 refund or credit to the dealer in accordance with this  
15 section. A request may not be granted unless the amount  
16 claimed was collected from the purchaser and was not due to  
17 the state or to any local taxing jurisdiction.

18 (a) A request for a refund or credit may be submitted  
19 under this section if:

20 1. The dealer charged and collected the tax with  
21 respect to a transaction or charge that was not subject to the  
22 communications services taxes imposed by this chapter or  
23 chapter 203, or applied a tax rate in excess of the lawful  
24 rate.

25 2. The purchaser or the transaction was exempt or  
26 immune from such taxes.

27 3. The purchaser was assigned to the incorrect local  
28 taxing jurisdiction for purposes of the taxes authorized in s.  
29 202.19.

30 4. The purchaser paid the tax in error.

31

1           (b) A purchaser's request for a refund or credit must  
2 be signed by the purchaser and is complete for purposes of  
3 this section and the limitation period if it states the  
4 purchaser's name, mailing address, account number, the tax  
5 amounts claimed, the specific months during which those  
6 amounts were collected, and the reason for the purchaser's  
7 claim that such amounts were not due to the state or to any  
8 local taxing jurisdiction. If the reason for the request is an  
9 exemption or immunity or a claim that the purchaser was  
10 assigned to the incorrect local taxing jurisdiction for  
11 purposes of a tax imposed under s. 202.19, a completed request  
12 must also include any additional information the department  
13 prescribes by rule to facilitate verification of the  
14 purchaser's eligibility for exemption or immunity or to  
15 facilitate verification of the purchaser's service address.  
16 Upon receipt of a completed request, the dealer shall  
17 ascertain whether it collected the tax claimed from the  
18 purchaser and whether the request is timely.

19           (c) Within 30 days following receipt of a completed  
20 request, the dealer shall determine whether any portion of the  
21 tax was collected solely as the result of an error of the  
22 dealer or the purchaser or solely as the result of a  
23 combination of errors of the dealer and the purchaser. The  
24 dealer shall refund any such amount or credit the purchaser's  
25 account for such amount within 45 days following such  
26 determination.

27           (d) With respect to all amounts timely claimed which  
28 the dealer collected from the purchaser and which the dealer  
29 has not determined to be subject to refund or credit pursuant  
30 to paragraph (c), the dealer shall, within 30 days following  
31 receipt of the purchaser's completed request for refund or

1 credit, provide a copy of the request to the department. If  
2 the reason for the purchaser's request is described in  
3 subparagraph (a)1. or subparagraph (a)3., the dealer shall  
4 contemporaneously furnish to the department an identification  
5 of the charges included in the taxable measure and the tax  
6 rates applied to the charges, or a written identification of  
7 each local jurisdiction to which the purchaser was assigned  
8 and the amounts collected from the purchaser and reported for  
9 each such jurisdiction, as the case may be. If a purchaser's  
10 request submitted to the department under this section sets  
11 forth another reason for claiming a refund or credit, the  
12 dealer shall furnish to the department information to  
13 facilitate the department's evaluation of the request.

14 (e) Within 90 days following receipt of the  
15 purchaser's request from the dealer, the department shall  
16 determine whether the tax was correctly applied and notify the  
17 dealer in writing of its determination. If the department  
18 determines that the tax was incorrectly applied, its  
19 notification to the dealer must inform the dealer how the tax  
20 should have been applied, including, in the case of an  
21 incorrect assignment of the purchaser to a local taxing  
22 jurisdiction, an identification of the correct local taxing  
23 jurisdiction and the applicable rates of tax levied by the  
24 local jurisdiction. The department's notification must also  
25 inform the dealer of any portion of the amount claimed which  
26 was not due to the state or to any local taxing jurisdiction  
27 and approve the refund or credit of such amount to the  
28 purchaser. Within 45 days following receipt of notification  
29 from the department, the dealer shall issue a refund or credit  
30 the purchaser's account for any such amount. The dealer's  
31 obligation to issue a refund or credit the purchaser's account

1 is limited to amounts approved in accordance with this  
2 section.

3 (f) The dealer shall issue a written response advising  
4 the purchaser of the disposition of the purchaser's request.  
5 The response must specify any portion of the tax claimed which  
6 is being refunded or credited to the purchaser's account and  
7 the reason for denial of any portion of the request. The  
8 request may be denied if the request was untimely or  
9 incomplete, the dealer did not collect the tax claimed, the  
10 purchaser previously received a refund of or credit for the  
11 same tax, the tax collected was due, or the department failed  
12 to furnish the notification required by paragraph (e). With  
13 respect to any portion of the request which is granted, the  
14 response must be issued at the time of the refund or credit to  
15 the purchaser's account. With respect to any portion of the  
16 request which is denied, the response must be issued within 45  
17 days following the dealer's receipt of the request if the  
18 request was not submitted to the department pursuant to  
19 paragraph (d), within 45 days following the dealer's receipt  
20 of the department's notification pursuant to paragraph (e) if  
21 the denial is based on the department's notification, or  
22 within 135 days following submission of the request to the  
23 department if the dealer has not received the department's  
24 notification.

25 (g) The dealer may deduct from any refund or credit  
26 under this section any amount owed by the purchaser to the  
27 dealer which is delinquent.

28 (2) This section provides the sole and exclusive  
29 procedure and remedy for a purchaser who claims that a dealer  
30 has collected communications services taxes imposed or  
31 administered under this chapter which were not due. An action



1 that arises as a result of the claimed collection of taxes  
2 that were not due may not be commenced or maintained by or on  
3 behalf of a purchaser against a dealer, a municipality, a  
4 county, or the state unless the purchaser pleads and proves  
5 that the purchaser has exhausted the procedures in subsection  
6 (1) and that the defendant has failed to comply with  
7 subsection (1). However, no determination by a dealer under  
8 paragraph (1)(c) shall be deemed a failure to comply with  
9 subsection (1) if the dealer has complied with the obligations  
10 imposed on it by paragraphs (1)(d), (e), and (f). In any such  
11 action, it is a complete defense that the dealer, a  
12 municipality, a county, or the state has refunded the taxes  
13 claimed or credited the purchaser's account. In such an action  
14 against a dealer, it is also a complete defense that, in  
15 collecting the tax, the dealer used one or more of the methods  
16 set forth in s. 202.22 for assigning the purchaser to a local  
17 taxing jurisdiction. Such action is barred unless it is  
18 commenced within 180 days following the date of the dealer's  
19 written response under paragraph (1)(f), or within 1 year  
20 following submission of the purchaser's request to the dealer  
21 if the dealer failed to issue a timely written response. The  
22 relief available to a purchaser as a result of collection of  
23 communications services taxes that were not due is limited to  
24 a refund of or credit for such taxes.

25 (3) A dealer who remitted a tax amount to the  
26 department for which the dealer subsequently issued a refund  
27 or credit to the purchaser pursuant to this section, and a  
28 dealer who has otherwise remitted to the department a tax  
29 amount with respect to communications services which was not  
30 due under this chapter or chapter 203, is entitled to a refund  
31 or credit of such amount from the department. The dealer may

1 apply for a refund within the period prescribed in s. 215.26,  
2 or may take a credit against a tax remittance otherwise  
3 required under this chapter, within 3 years after the date  
4 that the amount for which credit is claimed was remitted to  
5 the department, or within 60 days following such provider's  
6 issuance of a refund or credit to the purchaser for such  
7 amount, whichever occurs later. In addition, s. 213.34 applies  
8 to the offset of overpayments against deficiencies in audits  
9 of dealers and purchasers.

10 (4) A dealer who takes a credit on a subsequent  
11 return, as provided in subsection (3), for a tax imposed  
12 pursuant to s. 202.19 which has been collected and remitted by  
13 the dealer must indicate such credit in the portion of the  
14 return applicable to the local taxing jurisdiction for which  
15 the tax was originally reported.

16 (5) A dealer who has collected and remitted amounts  
17 that were not due, as determined by the department under  
18 paragraph (1)(e), who has issued a refund or credit to the  
19 purchaser for such amounts, and who takes a credit or receives  
20 a refund from the department for such amounts as provided in  
21 subsection (3) is not subject to assessment for any of the tax  
22 that was refunded or credited or for any interest or penalty  
23 with respect to the tax. In addition, a dealer who modifies  
24 its tax compliance practices to conform to a department  
25 determination under paragraph (1)(e) is not subject to  
26 assessment as a result of such modification, absent a  
27 subsequent change in law or update to a database pursuant to  
28 s. 202.22.

29 (6) A purchaser who seeks a refund of communications  
30 services taxes that the purchaser paid directly to the  
31

1 department must apply to the department for such refund in  
2 accordance with s. 215.26 and may not apply to the dealer.

3 (7) The rights to a refund or credit provided in this  
4 section for purchasers and dealers may be assigned.

5 Section 16. Effective January 1, 2002, section 202.24,  
6 Florida Statutes, is created to read:

7 202.24 Limitations on local taxes and fees imposed on  
8 dealers of communications services.--

9 (1) The authority of a public body to require taxes,  
10 fees, charges, or other impositions from dealers of  
11 communications services for occupying its roads and  
12 rights-of-way is specifically preempted by the state because  
13 of unique circumstances applicable to communications services  
14 dealers. Communications services may be provided by certain  
15 dealers of communications services in a manner that requires  
16 the use of public roads or rights-of-way while similar  
17 communications services may be provided by other dealers of  
18 communications services in a manner that does not require the  
19 use of public roads or rights-of-way. Although similar  
20 communications services may be provided by different means,  
21 the state seeks to treat dealers of communications services in  
22 a nondiscriminatory and competitively neutral manner.

23 (2)(a) Except as provided in paragraph (c), each  
24 public body is prohibited from:

25 1. Levying on or collecting from dealers or purchasers  
26 of communications services any tax, charge, fee, or other  
27 imposition on or with respect to the provision or purchase of  
28 communications services;

29 2. Except as otherwise provided in 47 U.S.C. s. 541  
30 with respect to providers of cable services, requiring any  
31 dealer of communications services to enter into or extend the

1 term of a franchise or other agreement that requires the  
2 payment of a tax, charge, fee, or other imposition; or

3 3. Except as otherwise provided in 47 U.S.C. s. 541  
4 with respect to dealers of cable services, adopting or  
5 enforcing any provision of any ordinance or agreement to the  
6 extent that such provision obligates a dealer of  
7 communications services to charge, collect, or pay to the  
8 public body a tax, charge, fee, or other imposition.

9 (b) For purposes of this subsection, a tax, charge,  
10 fee, or other imposition includes any amount or in-kind  
11 payment of property or services which is required by ordinance  
12 or agreement to be paid or furnished to a public body by or  
13 through a dealer of communications services in its capacity as  
14 a dealer of communications services, regardless of whether  
15 such amount or in-kind payment of property or services is:

16 1. Designated as a sales tax, excise tax, subscriber  
17 charge, franchise fee, user fee, privilege fee, occupancy fee,  
18 rental fee, license fee, pole fee, tower fee, base-station  
19 fee, or other tax or fee;

20 2. Measured by the amounts charged or received for  
21 services, regardless of whether such amount is permitted or  
22 required to be separately stated on the customer's bill, by  
23 the type or amount of equipment or facilities deployed, or by  
24 other means; or

25 3. Intended as compensation for the use of public  
26 roads or rights-of-way, for the right to conduct business, or  
27 for other purposes.

28 (c) This subsection does not apply to:

29 1. Local communications-services taxes levied under  
30 this chapter

31 2. Ad valorem taxes levied under chapter 200;

- 1           3. Occupational license taxes levied under chapter  
2 205;
- 3           4. "911" service charges levied under chapter 365;
- 4           5. Amounts charged for the rental or other use of  
5 property owned by a public body which is not in the public  
6 rights-of-way to a dealer of communications services for any  
7 purpose, including but not limited to the placement or  
8 attachment of equipment used in the provision of  
9 communications services;
- 10          6. Permit fees of general applicability which are not  
11 related to placing or maintaining facilities in or on public  
12 roads or rights-of-way;
- 13          7. Permit fees related to placing or maintaining  
14 facilities in or on public roads or rights-of-way;
- 15          8. Any in-kind payment of property or service required  
16 to be made by a dealer of cable services under s. 337.401;  
17 however, this subparagraph does not apply to any extensions of  
18 such agreement and is not intended to impair the rights and  
19 powers of local governments to negotiate for in-kind services  
20 for or in support of public, educational, or governmental  
21 access, as provided under federal law, including the ability  
22 of cable operators to recover such expenses as are allowed  
23 under 47 U.S.C. s. 542;
- 24          9. Special assessments and impact fees;
- 25          10. Pole attachment fees;
- 26          11. Utility service fees or other similar user fees  
27 for utility services; or
- 28          12. Any other generally applicable tax, fee, charge,  
29 or imposition authorized by general law on the effective date  
30 of this chapter.
- 31

1           (3) As used in this section, the term "public body"  
2 has the meaning ascribed in s. 1.01(8), and includes, without  
3 limitation, every division, agency, and instrumentality  
4 thereof; however, the term does not include the state or any  
5 branch of state government.

6           Section 17. Effective January 1, 2002, section 202.25,  
7 Florida Statutes, is created to read:

8           202.25 Jurisdiction; dealers not qualified to do  
9 business in this state.--

10           (1) All suits brought by the department against any  
11 dealer for any violation of this chapter for the purpose of  
12 collecting any tax due from the dealer, including garnishment  
13 proceedings regardless of the amount, must be brought in the  
14 circuit court of this state having jurisdiction of the subject  
15 matter.

16           (2) Each dealer who is not qualified to do business in  
17 this state shall designate with the department an agent within  
18 this state for service of process to enforce this chapter. If  
19 a dealer fails to designate such an agent, the Secretary of  
20 State or any agent or employee of the dealer within this state  
21 constitutes the agent for the service of such process.

22           Section 18. Section 202.26, Florida Statutes, is  
23 created to read:

24           202.26 Department powers.--

25           (1) The department shall administer and enforce the  
26 assessment and collection of the taxes, interest, and  
27 penalties collected under or imposed by this chapter. The use  
28 of tokens is expressly forbidden.

29           (2) To administer the tax imposed by this chapter, the  
30 Department of Revenue may adopt rules relating to:

31

1           (a) The filing of returns and remittance of tax,  
2 including provisions concerning electronic funds transfer and  
3 electronic data interchange;

4           (b) The compilation and submission to the department  
5 of information necessary to determine the specific location of  
6 taxable transactions and the location of the ultimate  
7 consumers of such transactions;

8           (c) The interpretation or definition of any exemptions  
9 or exclusions from taxation granted by law;

10           (d) Procedures for handling sales for resale and for  
11 determining the taxable status of discounts and rebates; and

12           (e) Methods for granting self-accrual authority to  
13 taxpayers.

14           (3) Notwithstanding s. 120.54(4), the department may  
15 adopt emergency rules that are valid for 180 days after  
16 certification pursuant to chapter 120.

17           Section 19. Effective January 1, 2002, section 202.27,  
18 Florida Statutes, is created to read:

19           202.27 Return filing; rules for self-accrual.--

20           (1) For the purpose of ascertaining the amount of tax  
21 payable under this chapter, every dealer has the duty to file  
22 a return and remit the tax to the department, on or before the  
23 20th day of the month, upon forms prepared and furnished by  
24 the department or in a format prescribed by it. The department  
25 shall, by rule, prescribe the information to be furnished by  
26 taxpayers on such returns.

27           (2) The department may require:

28           (a) A quarterly return and payment when the tax  
29 remitted by the dealer for the preceding four calendar  
30 quarters did not exceed \$1,000.

31

1           (b) A semiannual return and payment when the tax  
2 remitted by the dealer for the preceding four calendar  
3 quarters did not exceed \$500.

4           (c) An annual return and payment when the tax remitted  
5 by the dealer for the preceding four calendar quarters did not  
6 exceed \$100.

7           (d) A quarterly return and monthly payment when the  
8 tax remitted by the dealer for the preceding four calendar  
9 quarters exceeded \$1,000 but did not exceed \$12,000.

10           (3) The department shall accept returns, except those  
11 required to be initiated through an electronic data  
12 interchange, as timely if postmarked on or before the 20th day  
13 of the month; if the 20th day falls on a Saturday, Sunday, or  
14 federal or state legal holiday, returns are timely if  
15 postmarked on the next succeeding workday. Any dealer who  
16 makes sales of any nature in two or more locations for which  
17 returns are required to be filed with the department and who  
18 maintains records for such locations in a central office or  
19 place may, on each reporting date, file one return for all  
20 such places of business in lieu of separate returns for each  
21 location; however, the return must clearly indicate the  
22 amounts collected within each location. Each dealer shall file  
23 a return for each tax period even though no tax is due for  
24 such period.

25           (4) Whenever returns are required to be made to the  
26 department, the full amount of the taxes required to be paid  
27 as shown by the return must be paid and accompany the return,  
28 and the failure to remit the full amount of taxes at the time  
29 of making the return shall cause the taxes to become  
30 delinquent. All taxes and all interest and penalties imposed  
31 or administered under this chapter must be remitted, to the



1 department at Tallahassee or at another office designated by  
2 the department, in the form required by the department.

3 (5) The department may require all returns of taxes  
4 under this chapter to be accompanied by a written statement,  
5 by the person or by an officer of any firm or corporation  
6 required to pay such taxes, setting forth the facts that the  
7 department requires in order to ascertain the amount of taxes  
8 that are due and payable with the return. The filing of a  
9 return that is not accompanied by payment is prima facie  
10 evidence of the wrongful conversion of the money due. Any  
11 person or any duly authorized corporation officer or agent, or  
12 members of any firm or incorporated society or organization,  
13 who refuses to make a return and pay the taxes due, as  
14 required by the department and in the manner and in the form  
15 that the department requires, or to state in writing that the  
16 return is correct to the best of his or her knowledge and  
17 belief, as required by the department, is subject to a penalty  
18 of 6 percent per annum of the amount due and commits a  
19 misdemeanor of the first degree, punishable as provided in s.  
20 775.082 or s. 775.083. The signing of a written return has the  
21 same legal effect as if made under oath without the necessity  
22 of appending an oath thereto.

23 (6) The department may provide by rule for  
24 self-accrual of the communications services tax when:

25 (a) Authorized by law for holders of direct-pay  
26 permits; or

27 (b) The taxable status of sales of communications  
28 services will be known only upon use.

29 Section 20. Effective January 1, 2002, section 202.28,  
30 Florida Statutes, is created to read:

31 202.28 Credit for collecting tax.--

1           (1) Except as otherwise provided in s. 202.22, for the  
2 purpose of compensating persons providing communications  
3 services for the keeping of prescribed records, the filing of  
4 timely tax returns, and the proper accounting and remitting of  
5 taxes, persons collecting taxes imposed under this chapter  
6 shall be allowed to deduct 0.75 percent of the amount of the  
7 tax due and accounted for and remitted to the department.

8           (a) The collection allowance may not be granted, nor  
9 may any deduction be permitted, if the required tax return or  
10 tax is delinquent at the time of payment.

11           (b) The department may deny the collection allowance  
12 if a taxpayer files an incomplete return.

13           1. For the purposes of this chapter a return is  
14 incomplete if it is lacking such uniformity, completeness, and  
15 arrangement that the physical handling, verification, review  
16 of the return, or determination of other taxes and fees  
17 reported on the return can not be readily accomplished.

18           2. The department shall adopt rules requiring the  
19 information that it considers necessary to ensure that the  
20 taxes levied or administered under this chapter are properly  
21 collected, reviewed, compiled, reported, and enforced,  
22 including, but not limited to, rules requiring the reporting  
23 of the amount of gross sales; the amount of taxable sales; the  
24 amount of tax collected or due; the amount of lawful refunds,  
25 deductions, or credits claimed; the amount claimed as the  
26 dealer's collection allowance; the amount of penalty and  
27 interest; and the amount due with the return.

28           (c) The collection allowance and other credits or  
29 deductions provided in this chapter shall be applied to the  
30 taxes reported for the jurisdiction previously credited with  
31 the tax paid.

1           (2)(a) Any person who is required to make a return or  
2 pay the taxes imposed by this chapter who fails to timely file  
3 such return or fails to pay the taxes due within the time  
4 required, in addition to all other penalties provided by law,  
5 is subject to a specific penalty in the amount of 10 percent  
6 of any unpaid tax if the failure is for not more than 30 days,  
7 and an additional 10 percent of any unpaid tax for each  
8 additional 30 days, or fraction thereof, during which the  
9 failure continues, not to exceed a total penalty of 50  
10 percent, in the aggregate, of any unpaid tax.

11           (b) Any person who knowingly and with a willful intent  
12 to evade any tax imposed under this chapter fails to file six  
13 consecutive returns as required by law commits a felony of the  
14 third degree, punishable as provided in s. 775.082 or s.  
15 775.083.

16           (c) Any person who makes a false or fraudulent return  
17 with a willful intent to evade payment of any tax or fee  
18 imposed under this chapter is liable, in addition to the other  
19 penalties provided by law, for a specific penalty of 100  
20 percent of the tax bill or fee, and:

21           1. If the total amount of unreported taxes or fees is  
22 less than \$300:

23           a. Such person commits, for the first offense, a  
24 misdemeanor of the second degree, punishable as provided in s.  
25 775.082 or s. 775.083.

26           b. Such person commits, for the second offense, a  
27 misdemeanor of the first degree, punishable as provided in s.  
28 775.082 or s. 775.083.

29           c. Such person commits, for the third and subsequent  
30 offenses, a felonies of the third degree, punishable as  
31 provided in s. 775.082, s. 775.083, or s. 775.084.

1           2. If the total amount of unreported taxes or fees is  
2 \$300 or more but less than \$20,000, such person commits a  
3 felony of the third degree, punishable as provided in s.  
4 775.082, s. 775.083, or s. 775.084.

5           3. If the total amount of unreported taxes or fees is  
6 \$20,000 or more but less than \$100,000, such person commits a  
7 felony of the second degree, punishable as provided in s.  
8 775.082, s. 775.083, or s. 775.084.

9           4. If the total amount of unreported taxes or fees is  
10 \$100,000 or more, such person commits a felony of the first  
11 degree, punishable as provided in s. 775.082, s. 775.083, or  
12 s. 775.084.

13           Section 21. Effective January 1, 2002, section 202.29,  
14 Florida Statutes, is created to read:

15           202.29 Bad debts.--

16           (1) A dealer who has paid the tax imposed by this  
17 chapter may take a credit or obtain a refund for tax paid by  
18 the dealer on unpaid balances due on worthless accounts within  
19 12 months following the last day of the calendar year for  
20 which the bad debt was charged off on the taxpayer's federal  
21 income tax return.

22           (2) If any accounts for which a credit or refund has  
23 been received are then in whole or in part paid to the dealer,  
24 the amount paid must be included in the first return filed  
25 after such receipt and the tax paid accordingly.

26           (3) Bad debts that have been assigned or sold to a  
27 third party are not eligible for inclusion in the credit or  
28 refund authorized by this section.

29           Section 22. Effective January 1, 2002, section 202.30,  
30 Florida Statutes, is created to read:

31

1           202.30 Payment of taxes by electronic funds transfers;  
2 filing of returns by electronic data interchange.--

3           (1) A dealer of communications services is required to  
4 remit taxes by electronic funds transfer, in the manner  
5 prescribed by the department, when the amount of tax paid by  
6 the dealer under this chapter, chapter 203, or chapter 212 in  
7 the previous state fiscal year was \$50,000 or more.

8           (2)(a) A dealer who is required to remit taxes by  
9 electronic funds transfer shall make a return in a manner that  
10 is initiated through an electronic data interchange. The  
11 department shall prescribe the acceptable method of transfer;  
12 the method, form, and content of the electronic data  
13 interchange, giving due regard to developing uniform standards  
14 for formats as adopted by the American National Standards  
15 Institute; the circumstances under which an electronic data  
16 interchange will serve as a substitute for the filing of  
17 another form of return; and the means, if any, by which  
18 taxpayers will be provided with acknowledgments. The  
19 department must accept such returns as timely if initiated and  
20 accepted on or before the 20th day of the month. If the 20th  
21 day falls on a Saturday, Sunday, or federal or state legal  
22 holiday, returns are timely if initiated and accepted on the  
23 next succeeding workday.

24           (b) The department may waive the requirement to make a  
25 return through an electronic data interchange when problems  
26 arise with respect to the taxpayer's computer capabilities,  
27 data systems changes, or operating procedures. To obtain a  
28 waiver, the taxpayer must prove to the department that such  
29 problems exist.

30           (3)(a) The department shall design, prepare, print,  
31 and furnish to all dealers, except dealers filing through

1 electronic data interchange, or make available or prescribe to  
2 the dealers all necessary forms for filing returns and  
3 instructions to ensure a full collection from dealers and an  
4 accounting for the taxes due, but failure of any dealer to  
5 secure such forms does not relieve the dealer of the  
6 obligation to pay the tax at the time and in the manner  
7 required.

8 (b) The department shall prescribe the format and  
9 instructions necessary for filing returns in a manner that is  
10 initiated through an electronic data interchange to ensure a  
11 full collection from dealers and an accounting for the taxes  
12 due. The failure of any dealer to use such format does not  
13 relieve the dealer of the obligation to pay the tax at the  
14 time and in the manner required.

15 Section 23. Effective January 1, 2002, section 202.31,  
16 Florida Statutes, is created to read:

17 202.31 Sale of business; liability for tax;  
18 procedures; penalty for violations.--

19 (1) If any dealer of communications services who is  
20 liable for any tax, interest, or penalty under this chapter  
21 sells his or her business or substantially all of his or her  
22 assets, the dealer shall make a final return and payment  
23 within 15 days thereafter. The dealer's successors or assigns  
24 shall withhold a sufficient portion of the purchase money to  
25 safely cover the amount of such taxes, interest, and penalties  
26 due and unpaid until the former owner produces a receipt from  
27 the department showing that they have been paid or a  
28 certificate stating that no taxes, interest, or penalty are  
29 due. If the purchaser of a business or the purchaser of  
30 substantially all of the assets of a business fails to  
31 withhold a sufficient amount of the purchase money as required

1 by this subsection, he or she is personally liable for the  
2 payment of the taxes, interest, and penalties accruing and  
3 unpaid on account of the operation of the business by any  
4 former owners or assigns. Any receipt or certificate from the  
5 department does not, without an audit of the selling dealer's  
6 books and records by the department, guarantee that there is  
7 not a tax deficiency owed the state from operation of the  
8 seller's business. To secure protection from the transferee's  
9 liability under this section, the seller or purchaser may  
10 request an audit of the seller's books and records. The  
11 department may contract with private auditors pursuant to s.  
12 213.28 to perform the audit. The department may charge the  
13 cost of the audit to the person requesting the audit.

14 (2) If any dealer who is liable for any tax, interest,  
15 or penalty quits the business without the benefit of a  
16 purchaser and there are no successors or assigns, he or she  
17 shall make a final return and payment within 15 days. Any  
18 person who fails to file such final return and make payment is  
19 prohibited from engaging in any business in this state until  
20 the person has filed such final return and paid any moneys  
21 due. The Department of Legal Affairs may seek an injunction,  
22 at the request of the department, to prevent any activity in  
23 the performance of further business activity until such tax is  
24 paid. A temporary injunction enjoining further business  
25 activity may be granted by a court without notice.

26 (3) If a dealer is delinquent in the payment of the  
27 taxes imposed or administered by this chapter, the department  
28 may give notice of the amount of such delinquency by  
29 registered mail to all persons having in their possession or  
30 under their control any credits or other personal property  
31 belonging to such dealer or owing any debts to such dealer at

1 the time of receipt by them of such notice. All persons so  
2 notified shall within 5 days after receipt of the notice  
3 advise the department of all such credits, other personal  
4 property, or debts in their possession, under their control,  
5 or owing by them. After receiving the notice, the persons so  
6 notified may not transfer or make any other disposition of the  
7 credits, other personal property, or debts in their possession  
8 or under their control at the time they receive the notice  
9 until the department consents to a transfer or disposition or  
10 until 60 days elapse after the receipt of the notice,  
11 whichever occurs first, except that the credits, other  
12 personal property, or debts that exceed the delinquent amount  
13 stipulated in the notice are not subject to the provisions of  
14 this section, wherever held, if such dealer does not have a  
15 prior history of sales tax delinquencies. All persons notified  
16 must, within 5 days, advise the department of any credits or  
17 other personal property belonging to such dealer or any debts  
18 incurred and owing to such dealer which subsequently come into  
19 their possession or under their control during the time  
20 prescribed by the notice or until the department consents to a  
21 transfer or disposition, whichever occurs first. If the notice  
22 seeks to prevent the transfer or other disposition of a  
23 deposit in a bank or other credits or personal property in the  
24 possession or under the control of a bank, the notice is  
25 ineffective unless it is delivered or mailed to the office of  
26 the bank at which the deposit is carried or at which the  
27 credits or personal property are held. If, during the  
28 effective period of the notice to withhold, any person so  
29 notified makes any transfer or disposition of the property or  
30 debts required to be withheld, he or she is liable to the  
31 state for any indebtedness due under this chapter from the



1 person with respect to whose obligation the notice was given  
2 to the extent of the value of the property or the amount of  
3 the debts thus transferred or paid if, solely by reason of  
4 such transfer or disposition, the state is unable to recover  
5 the indebtedness of the person with respect to whose  
6 obligation the notice was given. All such credits or other  
7 personal property or debts are subject to garnishment by the  
8 department for satisfaction of the delinquent taxes due.

9 (4) After notice by the department of a transferee's  
10 liability under this section, the dealer shall have 60 days  
11 within which to file an action as provided in chapter 72.

12 (5) Any violation of this section is a misdemeanor of  
13 the first degree, punishable as provided in s. 775.082 or s.  
14 775.083.

15 Section 24. Effective January 1, 2002, section 202.32,  
16 Florida Statutes, is created to read:

17 202.32 State and local agencies to cooperate in  
18 administration of law.--The department may request from any  
19 state, county, municipal, or local governmental agency any  
20 information that the department considers necessary in  
21 administering this chapter, and such agency shall furnish such  
22 information.

23 Section 25. Effective January 1, 2002, section 202.33,  
24 Florida Statutes, is created to read:

25 202.33 Taxes declared to be government funds;  
26 penalties for failure to remit taxes; due and delinquent  
27 dates; judicial review.--

28 (1) The taxes collected under this chapter become  
29 government funds from the moment of collection by the dealer.

30 (2) Any person who with intent to unlawfully deprive  
31 or defraud the state or a local government of its moneys or

1 the use or benefit thereof fails to remit taxes collected  
2 under this chapter is guilty of the theft of government funds,  
3 punishable as follows:

4 (a) If the total amount of stolen revenue is less than  
5 \$300, the offense is a misdemeanor of the second degree,  
6 punishable as provided in s. 775.082 or s. 775.083. For a  
7 second offense, the offender is guilty of a misdemeanor of the  
8 first degree, punishable as provided in s. 775.082 or s.  
9 775.083. For a third or subsequent offense, the offender is  
10 guilty of a felony of the third degree, punishable as provided  
11 in s. 775.082, s. 775.083, or s. 775.084.

12 (b) If the total amount of stolen revenue is \$300 or  
13 more, but less than \$20,000, the offense is a felony of the  
14 third degree, punishable as provided in s. 775.082, s.  
15 775.083, or s. 775.084.

16 (c) If the total amount of stolen revenue is \$20,000  
17 or more, but less than \$100,000, the offense is a felony of  
18 the second degree, punishable as provided in s. 775.082, s.  
19 775.083, or s. 775.084.

20 (d) If the total amount of stolen revenue is \$100,000  
21 or more, the offense is a felony of the first degree,  
22 punishable as provided in s. 775.082, s. 775.083, or s.  
23 775.084.

24 (3) All taxes collected under this chapter must be  
25 remitted to the department. In addition to criminal sanctions,  
26 the department shall, when any tax becomes delinquent or is  
27 otherwise in jeopardy under this chapter, issue a warrant for  
28 the full amount of the tax due or estimated to be due, with  
29 the interest, penalties, and cost of collection, directed to  
30 the sheriffs of the state, and mail the warrant to the clerk  
31 of the circuit court of the county where any property of the

1 taxpayer is located. Upon receipt of the warrant, the clerk of  
2 the circuit court shall record it, and thereupon the amount of  
3 the warrant becomes a lien on any real or personal property of  
4 the taxpayer in the same manner as a recorded judgment. The  
5 department may issue a tax execution to enforce the collection  
6 of taxes imposed by this chapter and deliver it to any  
7 sheriff. The sheriff shall thereupon proceed in the same  
8 manner as prescribed by law for executions and shall be  
9 entitled to the same fees for his or her services in executing  
10 the warrant to be collected. The department may also have a  
11 writ of garnishment with respect to any indebtedness due to  
12 the delinquent dealer by a third person in any goods, money,  
13 chattels, or effects of the delinquent dealer in the hands,  
14 possession, or control of the third person. Upon payment of  
15 the execution, warrant, judgment, or garnishment, the  
16 department shall satisfy the lien of record within 30 days. If  
17 there is jeopardy to the revenue and jeopardy is asserted in  
18 or with an assessment, the department shall proceed in the  
19 manner specified for jeopardy assessments in s. 213.732.

20 Section 26. Effective January 1, 2002, section 202.34,  
21 Florida Statutes, is created to read:

22 202.34 Records required to be kept; power to inspect;  
23 audit procedure.--

24 (1)(a) Each dealer shall secure, maintain, and keep as  
25 long as required by s. 213.35 a complete record of  
26 communications services sold at retail by the dealer, together  
27 with invoices, records of gross receipts from such sales, and  
28 other pertinent records and papers required by the department  
29 for the reasonable administration of this chapter; all such  
30 records that are located or maintained in this state must be  
31 made available for inspection by the department at all

1 reasonable hours at the dealer's office or other place of  
2 business located in this state. Any dealer who maintains such  
3 books and records outside this state must make such books and  
4 records available for inspection by the department wherever  
5 the dealer's general records are kept. Any dealer subject to  
6 the provisions of this chapter who violates this subsection is  
7 guilty of a misdemeanor of the first degree, punishable as  
8 provided in s. 775.082 or s. 775.083. If, however, any  
9 subsequent offense involves intentional destruction of such  
10 records with an intent to evade payment of or deprive the  
11 government of any tax revenues, such subsequent offense  
12 constitutes a felony of the third degree, punishable as  
13 provided in s. 775.082 or s. 775.083.

14 (b) For the purpose of this subsection, if a dealer  
15 does not have adequate records of its sales of communications  
16 services, the department may, upon the basis of a test or  
17 sampling of the dealer's available records or other  
18 information relating to the sales made by such dealer for a  
19 representative period, determine the proper basis for  
20 assessing tax. This subsection does not affect the duty of the  
21 dealer to collect, or the liability of any consumer to pay,  
22 any tax imposed or administered under this chapter.

23 (c) If the records of a dealer are adequate but  
24 voluminous, the department may reasonably sample such records  
25 and project the audit findings derived therefrom over the  
26 entire audit period to determine the proper basis for  
27 assessing tax. In order to conduct such a sample, the  
28 department must first make a good-faith effort to reach an  
29 agreement with the dealer which provides for the means and  
30 methods to be used in the sampling process. If an agreement is  
31 not reached, the dealer is entitled to a review by the

1 executive director or the executive director's designee of the  
2 sampling method to be used by the auditor.

3 (2) For the purpose of enforcement of this chapter,  
4 each dealer must allow the department to examine its books and  
5 records at all reasonable hours; and, if the dealer refuses,  
6 the department may petition the circuit court to order the  
7 dealer to permit such examination, subject to the right of  
8 removal of the cause to the judicial circuit wherein such  
9 person's business is located or wherein such person's books  
10 and records are kept.

11 (3) Each wholesaler of communications services is  
12 required to permit the department to examine its books and  
13 records at all reasonable hours. The wholesaler must also  
14 maintain its books and records as long as required by s.  
15 213.35 in order to disclose the sales of all services sold, to  
16 whom sold, and also the amount sold, in such form and in such  
17 manner as the department requires, so that the department can  
18 determine the volume of services sold by wholesalers to  
19 dealers, as defined under this chapter, and the dates and  
20 amounts of sales made. The department may petition the circuit  
21 court to require any wholesaler who refuses to keep such  
22 records or to permit such inspection to submit to such  
23 inspection, subject to the right of removal of the cause to  
24 the judicial circuit wherein such person's business is located  
25 or wherein such person's books and records are kept.

26 (4)(a) The department shall send written notification,  
27 at least 60 days prior to the date an auditor is scheduled to  
28 begin an audit, informing the taxpayer of the audit. The  
29 department is not required to give 60 days' prior notification  
30 of a forthcoming audit whenever the taxpayer requests an  
31 emergency audit.

1           (b) The written notification must specify:  
2           1. The approximate date on which the auditor is  
3 scheduled to begin the audit.  
4           2. A reminder that all of the records, receipts,  
5 invoices, resale certificates, and related documentation of  
6 the taxpayer must be made available to the auditor.  
7           3. Any other requests or suggestions that the  
8 department considers necessary.  
9           (c) Only records, receipts, invoices, resale  
10 certificates, and related documentation that are available to  
11 the auditor when the audit begins are acceptable for the  
12 purposes of the audit. A resale certificate containing a date  
13 prior to the date the audit commences constitutes acceptable  
14 documentation of the specific transactions that occurred in  
15 the past.  
16           (d) The provisions of this chapter concerning  
17 fraudulent or improper records, receipts, invoices, resale  
18 certificates, and related documentation apply with respect to  
19 any audit.  
20           (e) The requirement in paragraph (a) of 60 days'  
21 written notification does not apply in cases of distress or  
22 jeopardy as provided in s. 202.23 or s. 202.36.  
23           Section 27. Effective January 1, 2002, section 202.35,  
24 Florida Statutes, is created to read:  
25           202.35 Powers of department in dealing with  
26 delinquents; tax to be separately stated.--  
27           (1) If any dealer or other person fails to remit the  
28 tax, or any portion thereof, on or before the day when the tax  
29 is required by law to be paid, there will be added to the  
30 amount due interest at the rate calculated pursuant to s.  
31 213.235 of the amount due from the date due until paid.

1 Interest on the delinquent tax is to be calculated beginning  
2 on the 21st day of the month following the month for which the  
3 tax is due, except as otherwise provided in this chapter.

4 (2) All penalties and interest imposed by this chapter  
5 are payable to and collectible by the department in the same  
6 manner as if they were a part of the tax collected under this  
7 chapter. The department may settle or compromise any such  
8 interest or penalties pursuant to s. 213.21.

9 (3) If a dealer or other person fails or refuses to  
10 make his or her records available for inspection so that an  
11 audit or examination of his or her books and records cannot be  
12 made, fails or refuses to register as a dealer, fails to make  
13 a report and pay the tax as provided by this chapter, makes a  
14 grossly incorrect report, or makes a report that is false or  
15 fraudulent, the department shall make an assessment from an  
16 estimate based upon the best information then available to it  
17 for the taxable period of retail sales of the dealer, together  
18 with any accrued interest and penalties. The department shall  
19 then proceed to collect the taxes, interest, and penalties on  
20 the basis of such assessment, which shall be considered prima  
21 facie correct; and the burden to show the contrary rests upon  
22 the dealer or other person.

23 (4) Each dealer who makes retail sales of  
24 communications services shall add the amount of the taxes  
25 imposed or administered under this chapter to the price of the  
26 services sold by it and shall state the taxes separately from  
27 the price of the services on all invoices. The combined amount  
28 of taxes due under ss. 202.12 and 203.01 shall be stated and  
29 identified as the Florida communications tax, and the combined  
30 amount of taxes due under s. 202.19 shall be stated and  
31 identified as the local communications tax.

1           (5) A dealer may not advertise or hold out to the  
2 public, in any manner, directly or indirectly, that it will  
3 absorb all or any part of the tax; that it will relieve the  
4 purchaser of the payment of all or any part of the tax; that  
5 the tax will not be added to the selling price of the property  
6 or services sold or released; or, when added, that it or any  
7 part thereof will be refunded either directly or indirectly by  
8 any method. A person who violates this subsection with respect  
9 to advertising or refund is guilty of a misdemeanor of the  
10 second degree, punishable as provided in s. 775.082 or s.  
11 775.083. A second or subsequent offense constitutes a  
12 misdemeanor of the first degree, punishable as provided in s.  
13 775.082 or s. 775.083.

14           (6) Whenever in the construction, administration, or  
15 enforcement of this chapter there is any question respecting a  
16 duplication of the tax, the sale to the end consumer or last  
17 retail sale is the sale to be taxed, and, insofar as is  
18 practicable, there is to be no duplication or pyramiding of  
19 the tax.

20           Section 28. Effective January 1, 2002, section 202.36,  
21 Florida Statutes, is created to read:

22           202.36 Departmental powers; hearings; distress  
23 warrants; bonds; subpoenas and subpoenas duces tecum.--

24           (1) Any person required to pay a tax imposed or  
25 administered under this chapter or to make a return who  
26 renders a return or makes a payment of a tax with intent to  
27 deceive or defraud the government and prevent the government  
28 from collecting the amount of taxes imposed or administered by  
29 this chapter, or who otherwise fails to comply with this  
30 chapter for the taxable period for which any return is made,  
31 any tax is paid, or any report is made to the department, may



1 be required by the department to show cause at a time and  
2 place to be set by the department, after 10 days' notice in  
3 writing requiring the production of such books, records, or  
4 papers relating to the business of such person for such tax  
5 period as the department requires. The department may require  
6 such person or their employees to give testimony under oath  
7 and answer interrogatories respecting the sale of  
8 communications services within this state, the failure to make  
9 a true report thereof, or failure to pay the true amount of  
10 the tax required to be paid under this chapter. If such person  
11 fails to produce such books, records, or papers or to appear  
12 and answer questions within the scope of investigation  
13 relating to matters concerning taxes to be imposed or  
14 administered under this chapter, or fails to allow his or her  
15 agents or employees to give testimony, the department may  
16 estimate any unpaid deficiencies in taxes to be assessed  
17 against such person based on whatever information is available  
18 to it and may issue a distress warrant for the collection of  
19 such taxes, interest, or penalties estimated by the department  
20 to be due and payable; and such assessment shall be deemed  
21 prima facie correct. In such cases, the warrant shall be  
22 issued to the sheriff of any county in the state where such  
23 person owns or possesses any property; and the sheriff shall  
24 seize such property as is required to satisfy any such taxes,  
25 interest, or penalties and sell such property under the  
26 distress warrant in the same manner as property is permitted  
27 to be seized and sold under distress warrants issued to secure  
28 the payment of delinquent taxes. The department shall also  
29 have the right to writ of garnishment to subject any  
30 indebtedness due to the delinquent dealer by a third person in  
31 any goods, money, chattels, or effects of the delinquent

1 dealer in the hands, possession, or control of the third  
2 person in the manner provided by law. The person whose tax  
3 return or report is being investigated may by written request  
4 to the department require that the hearing be set at a place  
5 within the judicial circuit wherein the person's business is  
6 located or wherein such person's books and records are kept.  
7 If there is jeopardy to the revenue and jeopardy is asserted  
8 in or with an assessment, the department shall proceed in the  
9 manner specified for jeopardy assessment in s. 213.732.

10 (2) Whenever it is necessary to ensure compliance with  
11 this chapter, the department shall require a cash deposit,  
12 bond, or other security as a condition to a person's obtaining  
13 or retaining a dealer's certificate of registration under this  
14 chapter. The bond must be in such form and amount as the  
15 department deems appropriate under the particular  
16 circumstances. Any person who fails to produce such cash  
17 deposit, bond, or other security may not obtain or retain a  
18 dealer's certificate of registration under this chapter. The  
19 Department of Legal Affairs may seek an injunction, when  
20 requested by the department, to prevent such person from doing  
21 business subject to the provisions of this chapter until the  
22 cash deposit, bond, or other security is posted with the  
23 department. Any security required to be deposited may be sold  
24 by the department at public sale if it becomes necessary to do  
25 so in order to recover any tax, interest, or penalty due.  
26 Notice of such sale may be served personally or by mail upon  
27 the person who deposited the security. Mailing the notice to  
28 the last known address appearing on the records of the  
29 department constitutes adequate service. Any proceeds of the  
30 sale exceeding the amount due under this chapter must be  
31 returned to the person who deposited the security.

1           (3) The department or any person authorized by it in  
2 writing is authorized to make and sign assessments, tax  
3 warrants, assignments of tax warrants, and satisfaction of tax  
4 warrants.

5           (4)(a) The department may issue subpoenas or subpoenas  
6 duces tecum compelling the attendance and testimony of  
7 witnesses and the production of books, records, written  
8 materials, and electronically recorded information. Subpoenas  
9 must be issued with the written and signed approval of the  
10 executive director or his or her designee on written and sworn  
11 application by any employee of the department. The application  
12 must set forth the reason for the application, the name of the  
13 person subpoenaed, the time and place of appearance of the  
14 witness, and a description of any books, records, or  
15 electronically recorded information to be produced, together  
16 with a statement by the applicant that the department has  
17 unsuccessfully attempted other reasonable means of securing  
18 information and that the testimony of the witness or the  
19 written or electronically recorded materials sought in the  
20 subpoena are necessary for the collection of taxes, penalty,  
21 or interest or the enforcement of the taxes levied or  
22 administered under this chapter. A subpoena shall be served in  
23 the manner provided by law and by the Florida Rules of Civil  
24 Procedure and shall be returnable only during regular business  
25 hours and at least 20 calendar days after the date of service  
26 of the subpoena. Any subpoena to which this subsection applies  
27 must identify the taxpayer to whom the subpoena relates and to  
28 whom the records pertain and must provide other information to  
29 enable the person subpoenaed to locate the records required  
30 under the subpoena. The department shall give notice to the  
31 taxpayer to whom the subpoena relates within 3 days after the

1 day on which the service of the subpoena is made. Within 14  
2 days after service of the subpoena, the person to whom the  
3 subpoena is directed may serve written objection to the  
4 inspection or copying of any of the designated materials. If  
5 objection is made, the department may not inspect or copy the  
6 materials, except pursuant to an order of the circuit court.  
7 If an objection is made, the department may petition any  
8 circuit court for an order to comply with the subpoena. The  
9 subpoena must contain a written notice of the right to object  
10 to the subpoena. Every subpoena served upon the witness or  
11 custodian of records must be accompanied by a copy of the  
12 provisions of this subsection. If a person refuses to obey a  
13 subpoena or subpoena duces tecum, the department may apply to  
14 any circuit court of this state to enforce compliance with the  
15 subpoena. Witnesses are entitled to be paid a mileage  
16 allowance and witness fees as authorized for witnesses in  
17 civil cases.

18 (b)1. If any subpoena is served on any person who is a  
19 third-party recordkeeper and the subpoena requires the  
20 production of any portion of the records made or kept of the  
21 business transactions or affairs of any person other than the  
22 person subpoenaed, notice of the subpoena must be given to any  
23 person to whom the records pertain and to the taxpayer to whom  
24 the subpoena relates. Such notice must be given within 3 days  
25 after the day on which the service on the third-party  
26 recordkeeper is made, if the department can at that time  
27 identify the person to whom the records pertain. If the person  
28 to whom the records pertain cannot be identified at the time  
29 of issuance of the subpoena, the third-party recordkeeper  
30 shall immediately inform the department of such person's  
31 identity, and the department shall give notice to that person

1 within 3 days thereafter. The notice must be accompanied by a  
2 copy of the subpoena that has been served and must contain  
3 directions for staying compliance with the subpoena under  
4 subparagraph (c)2.

5 2. The notice is sufficient if, on or before the 3rd  
6 day, the notice is delivered in hand to the person entitled to  
7 notice or is mailed by certified or registered mail to the  
8 last-known mailing address of the person, or, in the absence  
9 of a last known address, is left with the person subpoenaed.

10 3. As used in this subsection, the term "third-party  
11 recordkeeper" means:

12 a. Any mutual savings bank, cooperative bank, domestic  
13 building and loan association, or other savings institution  
14 chartered and supervised as a savings and loan association or  
15 similar association under federal or state law; a bank as  
16 defined in s. 581 of the Internal Revenue Code; or any credit  
17 union within the meaning of s. 501(c)(14)(A) of the Internal  
18 Revenue Code;

19 b. Any consumer reporting agency as defined under s.  
20 603(f) of the Fair Credit Reporting Act, 15 U.S.C. s.  
21 1681a(f);

22 c. Any person extending credit through the use of  
23 credit cards or similar devices;

24 d. Any broker as defined in s. 3(a)(4) of the  
25 Securities Exchange Act of 1934, 15 U.S.C. s. 78c(a)(4);

26 e. Any attorney;

27 f. Any accountant;

28 g. Any barter exchange as defined in s. 6045(c)(3) of  
29 the Internal Revenue Code; or

30 h. Any regulated investment company as defined in s.  
31 851 of the Internal Revenue Code.

1           4. This paragraph does not apply to a subpoena served  
2 on the person with respect to whose liability the subpoena is  
3 issued or an officer or employee of the person; or to a  
4 subpoena to determine whether or not records of the business  
5 transactions or affairs of an identified person have been made  
6 or kept; or to a subpoena described in paragraph (f).

7           (c)1. Notwithstanding any other law, a person who is  
8 entitled to notice of a subpoena under paragraph (b) and the  
9 taxpayer to whom the subpoena relates have the right to  
10 intervene in any proceeding with respect to the enforcement of  
11 the subpoena under paragraph (a).

12           2. Notwithstanding any other law, a person who is  
13 entitled to notice of a subpoena under paragraph (b) and the  
14 taxpayer to whom the subpoena relates have the right to stay  
15 compliance with the subpoena if, not later than the 14th day  
16 after the day the notice is given in the manner provided in  
17 subparagraph (b)2.:

18           a. Notice of intent to stay the subpoena is given in  
19 writing to the person subpoenaed;

20           b. A copy of the notice of intent to stay the subpoena  
21 is mailed by registered or certified mail to the person and to  
22 the department; and

23           c. Suit is filed against the department in the circuit  
24 court to stay compliance with the subpoena.

25           (d) An examination of any records required to be  
26 produced under a subpoena as to which notice is required under  
27 paragraph (b) may not be made:

28           1. Before the expiration of the 14-day period allowed  
29 for the notice of intent to stay under subparagraph (c)2.; or

30           2. When the requirements of subparagraph (c)2. have  
31 been met, except in accordance with an order issued by the

1 circuit court authorizing examination of the records or with  
2 the consent of the person staying compliance.

3 (e) Any subpoena issued under paragraph (a) which does  
4 not identify the person with respect to whose liability the  
5 subpoena is issued may be served only after a proceeding in  
6 any circuit court in which the department establishes that:

7 1. The subpoena relates to the investigation of a  
8 particular person or ascertainable group or class of persons.

9 2. There is reasonable basis for believing that the  
10 person or group or class of persons may fail or may have  
11 failed to comply with any provision of state law.

12 3. The information sought to be obtained from the  
13 examination of the records and the identity of the person or  
14 persons with respect to whose liability the subpoena is issued  
15 is not readily available from other sources.

16 (f) In the case of a subpoena issued under paragraph  
17 (a), the provisions of subparagraph (b)1. and paragraph (c) do  
18 not apply if, upon petition by the department, a circuit court  
19 determines, on the basis of the facts and circumstances  
20 alleged, that there is reasonable cause to believe that the  
21 giving of notice may lead to attempts to conceal, destroy, or  
22 alter records relevant to the examination, may prevent the  
23 communication of information from other persons through  
24 intimidation, bribery, or collusion, or may result in flight  
25 to avoid prosecution, testifying, or production of records.

26 (g)1. Any circuit court has jurisdiction to hear and  
27 determine proceedings brought under paragraph (e) or paragraph  
28 (f). The determinations required to be made under paragraphs  
29 (e) and (f) shall be ex parte and shall be made solely upon  
30 the petition and supporting affidavits. An order denying the  
31 petition shall be deemed a final order that may be appealed.

1           2. Except for cases that the court considers of great  
2 importance, any proceeding brought for the enforcement of any  
3 subpoena or any proceeding under this subsection, and any  
4 appeal therefrom, takes precedence on the docket over all  
5 cases and shall be assigned for hearing and decided at the  
6 earliest practicable date.

7           (h) The department shall by rule establish the rates  
8 and conditions for payments to reimburse reasonably necessary  
9 costs directly incurred by third-party recordkeepers in  
10 searching for, reproducing, or transporting books, papers,  
11 records, or other data required to be produced by subpoena  
12 upon request of the department. The reimbursement shall be in  
13 addition to any mileage allowance and fees paid under  
14 paragraph (a).

15           (i)1. Except as provided in subparagraph 2., an action  
16 initiated in circuit court under this subsection must be filed  
17 in the circuit court in the county where:

18           a. The taxpayer to whom the subpoena relates resides  
19 or maintains his or her principal commercial domicile in this  
20 state;

21           b. The person subpoenaed resides or maintains his or  
22 her principal commercial domicile in this state; or

23           c. The person to whom the records pertain resides or  
24 maintains his or her principal commercial domicile in this  
25 state.

26           2. Venue in an action initiated in circuit court under  
27 this subsection by a person who is not a resident of this  
28 state or does not maintain a commercial domicile in this state  
29 rests in Leon County.

30  
31



1           3. Venue in an action initiated in circuit court  
2 pursuant to paragraph (e) rests in the Second Judicial Circuit  
3 Court in and for Leon County.

4           Section 29. Section 202.37, Florida Statutes, is  
5 created to read:

6           202.37 Special rules for administration of local  
7 communications services tax.--

8           (1)(a) Except as otherwise provided in this section,  
9 all statutory provisions and administrative rules applicable  
10 to the communications services tax imposed by s. 202.12 apply  
11 to any local communications services tax imposed under s.  
12 202.19, and the department shall administer, collect, and  
13 enforce all taxes imposed under s. 202.19, including interest  
14 and penalties attributable thereto, in accordance with the  
15 same procedures used in the administration, collection, and  
16 enforcement of the communications services tax imposed by s.  
17 202.12.

18           (b) The department may contract with one or more  
19 private entities to assist it in fulfilling its obligation of  
20 administering the local communications services taxes imposed  
21 under this chapter, including, but not limited to, the  
22 compilation, maintenance, and publication of data pursuant to  
23 ss. 202.21 and 202.22.

24           (2) Each dealer of communications services obligated  
25 to collect and remit one or more local communications services  
26 taxes imposed under s. 202.19 shall separately report and  
27 identify each such tax to the department, by jurisdiction, on  
28 a form prescribed by the department and shall pay such taxes  
29 to the department. However, taxes imposed under s. 202.19(5)  
30 may be added to and included in the amounts reported to the  
31 department as taxes imposed under s. 202.19(1) upon notice to

1 the department in accordance with rules of the department. A  
2 dealer of communications services may include in a single  
3 payment to the department:

4 (a) The total amount of all local communications  
5 services taxes imposed pursuant to s. 202.19; and

6 (b) The amount of communications services tax imposed  
7 by s. 202.12.

8 Section 30. The Executive Director of the Department  
9 of Revenue shall appoint an advisory council to be known as  
10 the Simplified Communications Tax Advisory Council. The  
11 members shall be appointed by August 1, 2000. Each member  
12 shall serve at the discretion of the executive director for a  
13 term not to exceed 2 years. The council shall consist of  
14 individuals representing consumers, counties, municipalities,  
15 cable and telecommunications companies, and other  
16 communications companies or interested parties that the  
17 executive director deems appropriate. The council shall  
18 consist of not less than 11 members but not more than 17  
19 members. The executive director or his or her designee shall  
20 serve as the chair of the council. The council shall advise  
21 the Department of Revenue in implementing a transition  
22 strategy, developing internal controls and processes, adopting  
23 rules, and identifying issues for further legislative  
24 consideration.

25 Section 31. Effective January 1, 2002, and applicable  
26 to communications services reflected on bills dated on or  
27 after that date, section 203.01, Florida Statutes, as amended  
28 by this act, is amended to read:

29 203.01 Tax on gross receipts for utility and  
30 communications services.--

31

1           (1)(a)1. Every person that receives payment for any  
2 utility service shall report by the last day of each month to  
3 the Department of Revenue, under oath of the secretary or some  
4 other officer of such person, the total amount of gross  
5 receipts derived from business done within this state, or  
6 between points within this state, for the preceding month and,  
7 at the same time, shall pay into the State Treasury an amount  
8 equal to a percentage of such gross receipts at the rate set  
9 forth in paragraph (b). Such collections shall be certified  
10 by the Comptroller upon the request of the State Board of  
11 Education.

12           2. A tax is levied on communications services as  
13 defined in s. 202.11(3). Such tax shall be applied to the same  
14 services and transactions as are subject to taxation under  
15 chapter 202, and shall be administered and collected pursuant  
16 to the provisions of chapter 202.

17           ~~(b) Beginning July 1, 1992, and thereafter,~~The rate  
18 applied to utility services shall be 2.5 percent. The rate  
19 applied to communications services shall be 2.2 percent.

20           ~~(c) Any person who purchases, installs, rents, or~~  
21 ~~leases a telephone system or telecommunication system for his~~  
22 ~~or her own use to provide that person with telephone service~~  
23 ~~or telecommunication service which is a substitute for any~~  
24 ~~telephone company switched service or a substitute for any~~  
25 ~~dedicated facility by which a telephone company provides a~~  
26 ~~communication path shall register with the Department of~~  
27 ~~Revenue and pay into the State Treasury a yearly amount equal~~  
28 ~~to a percentage of the actual cost of operating such system at~~  
29 ~~the rate set forth in paragraph (b). "Actual cost" includes,~~  
30 ~~but is not limited to, depreciation, interest, maintenance,~~  
31 ~~repair, and other expenses directly attributable to the~~

1 ~~operation of such system. For purposes of this paragraph, the~~  
2 ~~depreciation expense to be included in actual cost shall be~~  
3 ~~the depreciation expense claimed for federal income tax~~  
4 ~~purposes. The total amount of any payment required by a lease~~  
5 ~~or rental contract or agreement shall be included within the~~  
6 ~~actual cost. The provisions of this paragraph do not apply to~~  
7 ~~the use by any local telephone company or any~~  
8 ~~telecommunication carrier of its own telephone system or~~  
9 ~~telecommunication system to conduct a telecommunication~~  
10 ~~service for hire or to the use of any radio system operated by~~  
11 ~~any county or municipality or by the state or any political~~  
12 ~~subdivision thereof. If a system described in this paragraph~~  
13 ~~is located in more than one state, the actual cost of such~~  
14 ~~system for purposes of this paragraph shall be the actual cost~~  
15 ~~of the system's equipment located in Florida. The term~~  
16 ~~"telecommunications carrier" specifically includes cellular~~  
17 ~~telephone carriers and other radio common carriers.~~

18       (c)~~(d)~~ Electricity produced by cogeneration or by  
19 small power producers which is transmitted and distributed by  
20 a public utility between two locations of a customer of the  
21 utility pursuant to s. 366.051 is subject to the tax imposed  
22 by this section. The tax shall be applied to the cost price  
23 of such electricity as provided in s. 212.02(4) and shall be  
24 paid each month by the producer of such electricity.

25       (d)~~(e)~~ Electricity produced by cogeneration or by  
26 small power producers during the 12-month period ending June  
27 30 of each year which is in excess of nontaxable electricity  
28 produced during the 12-month period ending June 30, 1990, is  
29 subject to the tax imposed by this section. The tax shall be  
30 applied to the cost price of such electricity as provided in  
31 s. 212.02(4) and shall be paid each month, beginning with the

1 month in which total production exceeds the production of  
2 nontaxable electricity for the 12-month period ending June 30,  
3 1990. For purposes of this paragraph, "nontaxable  
4 electricity" means electricity produced by cogeneration or by  
5 small power producers which is not subject to tax under  
6 paragraph (d). Taxes paid pursuant to paragraph (d) may be  
7 credited against taxes due under this paragraph. Electricity  
8 generated as part of an industrial manufacturing process which  
9 manufactures products from phosphate rock, raw wood fiber,  
10 paper, citrus or any agricultural product shall not be subject  
11 to the tax imposed by this paragraph. "Industrial  
12 manufacturing process" means the entire process conducted at  
13 the location where the process takes place.

14 (e)~~(f)~~ Any person other than a cogenerator or small  
15 power producer described in paragraph (e) who produces for his  
16 or her own use electrical energy which is a substitute for  
17 electrical energy produced by an electric utility as defined  
18 in s. 366.02 is subject to the tax imposed by this section.  
19 The tax shall be applied to the cost price of such electrical  
20 energy as provided in s. 212.02(4) and shall be paid each  
21 month. The provisions of this paragraph do not apply to any  
22 electrical energy produced and used by an electric utility.

23 (2)(a) In addition to any other penalty provided by  
24 law, any person who fails to timely report and pay any tax  
25 imposed on gross receipts from utility service under this  
26 chapter shall pay a penalty equal to 10 percent of any unpaid  
27 tax, if the failure is for less than 31 days, plus an  
28 additional 10 percent of any unpaid tax for each additional 30  
29 days or fraction thereof. However, such penalty may not be  
30 less than \$10 or exceed a total of 50 percent in the aggregate  
31 of any unpaid tax.

1 (b) In addition to any other penalty provided by law,  
2 any person who falsely or fraudulently reports or unlawfully  
3 attempts to evade paying any tax imposed on gross receipts  
4 from utility service under this chapter shall pay a penalty  
5 equal to 100 percent of any tax due and is guilty of a  
6 misdemeanor of the second degree, punishable as provided under  
7 s. 775.082 or s. 775.083.

8 (3) The term "gross receipts" as used herein does not  
9 include gross receipts of any person derived from:

10 (a) The sale of natural gas to a public or private  
11 utility, including a municipal corporation or rural electric  
12 cooperative association, either for resale or for use as fuel  
13 in the generation of electricity; or

14 (b) The sale of electricity to a public or private  
15 utility, including a municipal corporation or rural electric  
16 cooperative association, for resale within the state, or as  
17 part of an electrical interchange agreement or contract  
18 between such utilities for the purpose of transferring more  
19 economically generated power. ~~or~~

20 ~~(c) The sale of telecommunication services for resale~~  
21 ~~of telecommunication services wholly or partially within this~~  
22 ~~state, which includes, for purposes of this subsection, the~~  
23 ~~sale of telecommunication services to a person reselling such~~  
24 ~~telecommunication services by way of a prepaid calling~~  
25 ~~arrangement as defined in s. 212.05(1)(e)1.a.;~~

26  
27 ~~provided the person deriving gross receipts from such sale~~  
28 ~~demonstrates that a resale in fact occurred and complies with~~  
29 ~~the following requirements: A resale in this state must be in~~  
30 ~~strict compliance with the rules and regulations of the~~  
31 ~~Department of Revenue; and any person making a sale for resale~~

1 ~~in this state which is not in strict compliance with the rules~~  
2 ~~and regulations of the Department of Revenue shall be liable~~  
3 ~~for and pay the tax. Any person making a sale for resale in~~  
4 ~~this state may, through an informal protest provided for in s.~~  
5 ~~213.21 and the rules of the Department of Revenue, provide the~~  
6 ~~department with evidence of the exempt status of a sale. The~~  
7 ~~department shall adopt rules which provide that valid proof~~  
8 ~~and documentation of the resale in this state by a person~~  
9 ~~making the sale for resale in this state will be accepted by~~  
10 ~~the department when submitted during the protest period but~~  
11 ~~will not be accepted when submitted in any proceeding under~~  
12 ~~chapter 120 or any circuit court action instituted under~~  
13 ~~chapter 72.~~

14 ~~(4) Gross receipts subject to the tax imposed by this~~  
15 ~~section shall not include receipts from sales or leases of~~  
16 ~~telecommunications service for use in the conduct of a~~  
17 ~~telecommunications service for hire or otherwise for resale,~~  
18 ~~including resale of telecommunication services paid by using a~~  
19 ~~prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.~~

20 (4)(5) The tax imposed pursuant to this part relating  
21 to the provision of any utility services at the option of the  
22 person supplying the taxable services may be separately stated  
23 as Florida gross receipts tax on the total amount of any bill,  
24 invoice, or other tangible evidence of the provision of such  
25 taxable services and may be added as a component part of the  
26 total charge. Whenever a provider of taxable services elects  
27 to separately state such tax as a component of the charge for  
28 the provision of such taxable services, every person,  
29 including all governmental units, shall remit the tax to the  
30 person who provides such taxable services as a part of the  
31 total bill, and the tax is a component part of the debt of the

1 purchaser to the person who provides such taxable services  
2 until paid and, if unpaid, is recoverable at law in the same  
3 manner as any other part of the charge for such taxable  
4 services. For a utility, the decision to separately state any  
5 increase in the rate of tax imposed by this part which is  
6 effective after December 31, 1989, and the ability to recover  
7 the increased charge from the customer shall not be subject to  
8 regulatory approval.

9 (5)~~(6)~~ The tax is imposed upon every person for the  
10 privilege of conducting a utility or communications services  
11 business, and each provider of the taxable services remains  
12 fully and completely liable for the tax, even if the tax is  
13 separately stated as a line item or component of the total  
14 bill.

15 (6)~~(7)~~ Any person who provides such services and who  
16 fails, neglects, or refuses to remit the tax imposed in this  
17 part, either by himself or herself, or through agents or  
18 employees, is liable for the tax and is guilty of a  
19 misdemeanor of the first degree, punishable as provided in s.  
20 775.082 or s. 775.083.

21 (7)~~(8)~~ Gross receipts subject to the tax imposed by  
22 this section for the provision of electricity shall include  
23 receipts from monthly customer charges or monthly customer  
24 facility charges.

25 ~~(9)(a) If the sale of a taxable telecommunication~~  
26 ~~service also involves the sale of commercial or cable~~  
27 ~~television service exempt under the provision of s.~~  
28 ~~203.012(2)(b)2., the tax shall be applied to the value of the~~  
29 ~~taxable service when it is sold separately.~~

30 ~~(b) If the company does not offer this service~~  
31 ~~separately, the consideration paid shall be separately~~



1 ~~identified and stated with respect to the taxable and exempt~~  
2 ~~portions of the transaction as a condition of the exemption.~~

3 ~~(c) The amounts identified as taxable in paragraph (b)~~  
4 ~~shall not be less than the statewide average tariff rates set~~  
5 ~~forth by the local exchange telecommunications companies in~~  
6 ~~the tariffs filed with the Public Service Commission on~~  
7 ~~January 1, 1995, and on January 1 of each year thereafter for~~  
8 ~~the equivalent services subject to the provisions of this~~  
9 ~~section. The Public Service Commission shall publish the~~  
10 ~~statewide average tariff rates for commonly used services~~  
11 ~~annually, beginning on January 1, 1996.~~

12 ~~(8)(10)~~ Notwithstanding the provisions of subsection  
13 ~~(4)(5)~~ and s. 212.07(2), sums that were charged or billed as  
14 taxes under this section and chapter 212 and that were  
15 remitted to the state in full as taxes shall not be subject to  
16 refund by the state or by the utility or other person that  
17 ~~which~~ remitted the sums, when the amount remitted was not in  
18 excess of the amount of tax imposed by chapter 212 and this  
19 section.

20 Section 32. Effective January 1, 2002, section  
21 203.012, Florida Statutes, as amended by this act, is amended  
22 to read:

23 203.012 Definitions.--As used in this chapter:

24 ~~(1) The term "access charge" or "right of access"~~  
25 ~~means any charge to any person for the right to use or for the~~  
26 ~~use of a telephone system which includes equipment,~~  
27 ~~facilities, or services to originate or terminate any of the~~  
28 ~~services defined in subsection (4), subsection (5), subsection~~  
29 ~~(6), or subsection (7) and which specifically includes~~  
30 ~~customer access line charges, which includes the gross amount~~  
31 ~~paid by subscribers and users in this state for access into~~

1 ~~the intrastate or interstate interexchange network as~~  
2 ~~authorized by the Federal Communications Commission or the~~  
3 ~~Florida Public Service Commission.~~ (2)(a) ~~Gross receipts from~~  
4 ~~telecommunication services include the gross receipts for all~~  
5 ~~telecommunication services of whatever nature, including, but~~  
6 ~~not limited to, access charges and charges for right of~~  
7 ~~access; residential and business 1-party, 2-party, and 4-party~~  
8 ~~rotary charges; centrex charges; directory assistance charges;~~  
9 ~~public telephone charges; touch-tone charges; emergency number~~  
10 ~~charges; private branch exchange message charges; public~~  
11 ~~announcement service charges; dial-it charges; local area data~~  
12 ~~transport charges; key lines charges; private branch exchange~~  
13 ~~trunk-flat rate charges; and directory listing charges other~~  
14 ~~than yellow page classified listing charges.~~

15 (b) ~~Gross receipts for telecommunication services do~~  
16 ~~not include:~~

17 1. ~~Charges for customer premises equipment, including~~  
18 ~~such equipment that is leased or rented by the customer from~~  
19 ~~any source;~~

20 2. ~~Charges made to the public for commercial or cable~~  
21 ~~television, unless it is used for two-way communication;~~  
22 ~~however, if such two-way communication service is separately~~  
23 ~~billed, only the charges made for two-way communication~~  
24 ~~service will be subject to tax hereunder;~~

25 3. ~~Charges made by hotels and motels, which are~~  
26 ~~required under the provisions of s. 212.03 to collect~~  
27 ~~transient rentals tax from tenants and lessees, for local~~  
28 ~~telephone service or toll telephone service, when such charge~~  
29 ~~occurs incidental to the right of occupancy in such hotel or~~  
30 ~~motel;~~

31

1           ~~4. Connection and disconnection charges; move or~~  
2 ~~change charges; suspension of service charges; and service~~  
3 ~~order, number change, and restoration charges; or~~

4           ~~5. Charges for services or items of equipment supplied~~  
5 ~~by providers of the telecommunication services described in~~  
6 ~~paragraph (5)(b), such as maintenance charges, equipment~~  
7 ~~sales, or rental which are incidental to the provision of such~~  
8 ~~telecommunication services, provided such charges are~~  
9 ~~separately stated, itemized, or described on the bill,~~  
10 ~~invoice, or other tangible evidence of the provision of such~~  
11 ~~service; or~~

12           ~~6. Charges for telecommunication services which are~~  
13 ~~paid by using a prepaid calling arrangement as defined in s.~~  
14 ~~212.05(1)(e)1.a.~~

15           ~~(3) The term "local telephone service" means:~~

16           ~~(a) The access to a local telephone system, and the~~  
17 ~~privilege of telephonic-quality communication with~~  
18 ~~substantially all persons having telephone or radio telephone~~  
19 ~~stations constituting a part of such local telephone system;~~  
20 ~~or~~

21           ~~(b) Any facility or service provided in connection~~  
22 ~~with a service described in paragraph (a).~~

23  
24 ~~The term "local telephone service" does not include any~~  
25 ~~service which is a toll telephone service; private~~  
26 ~~communication service; cellular mobile telephone or~~  
27 ~~telecommunication service; specialized mobile radio, or pagers~~  
28 ~~and paging, service, including but not limited to "beepers"~~  
29 ~~and any other form of mobile and portable one-way or two-way~~  
30 ~~communication; or teletypewriter service.~~

31           ~~(4) The term "private communication service" means:~~

1           ~~(a) A communication service furnished to a subscriber~~  
2 ~~or user that entitles the subscriber or user to exclusive or~~  
3 ~~priority use of a communication channel or groups of channels,~~  
4 ~~or to the use of an intercommunication system for the~~  
5 ~~subscriber's stations, regardless of whether such channel,~~  
6 ~~groups of channels, or intercommunication system may be~~  
7 ~~connected through switching with a service described in~~  
8 ~~subsection (3), subsection (6), or subsection (7);~~

9           ~~(b) Switching capacity, extension lines, and stations,~~  
10 ~~or other associated services which are provided in connection~~  
11 ~~with, and which are necessary or unique to the use of,~~  
12 ~~channels or systems described in paragraph (a); or~~

13           ~~(c) The channel mileage which connects a telephone~~  
14 ~~station located outside a local telephone system area with a~~  
15 ~~central office in such local telephone system.~~

16           ~~(5) The term "telecommunication service" means:~~

17           ~~(a) Local telephone service, toll telephone service,~~  
18 ~~telegram or telegraph service, teletypewriter service, or~~  
19 ~~private communication service; or~~

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

31

1 ~~The term "telecommunication service" does not include any~~  
2 ~~Internet access service, electronic mail service, electronic~~  
3 ~~bulletin board service, or similar on-line computer service.~~  
4 ~~(6) The term "teletypewriter service" means the access~~  
5 ~~from a teletypewriter, telephone, or other data station of~~  
6 ~~which such station is a part, and the privilege of~~  
7 ~~intercommunication by such station with substantially all~~  
8 ~~persons having teletypewriter, telephone, or other data~~  
9 ~~stations constituting a part of the same teletypewriter~~  
10 ~~system, to which the subscriber or user is entitled upon~~  
11 ~~payment of a charge or charges, whether such charge or charges~~  
12 ~~are determined as a flat periodic amount, on the basis of~~  
13 ~~distance and elapsed transmission time, or some other method.~~  
14 ~~The term "teletypewriter service" does not include local~~  
15 ~~telephone service or toll telephone service.~~  
16 ~~(7) The term "toll telephone service" means:~~  
17 ~~(a) A telephonic-quality communication for which there~~  
18 ~~is a toll charge which varies in amount with the distance and~~  
19 ~~elapsed transmission time of each individual communication; or~~  
20 ~~(b) A service which entitles the subscriber or user,~~  
21 ~~upon the payment of a periodic charge which is determined as a~~  
22 ~~flat amount or upon the basis of total elapsed transmission~~  
23 ~~time, to the privilege of an unlimited number of telephonic~~  
24 ~~communications to or from all or a substantial portion of the~~  
25 ~~persons having telephone or radio telephone stations in a~~  
26 ~~specified area which is outside the local telephone system~~  
27 ~~area in which the station provided with this service is~~  
28 ~~located.~~  
29  
30 ~~The term "toll telephone service" includes interstate and~~  
31 ~~intrastate wide-area telephone service charges.~~

1           ~~(8) The term "interstate," as applied to~~  
2 ~~telecommunication services, means originating in this state~~  
3 ~~but not terminating in this state, or terminating in this~~  
4 ~~state but not originating in this state.~~

5           (1)~~(9)~~ The term "utility service" means electricity  
6 for light, heat, or power; and natural or manufactured gas for  
7 light, heat, or power; ~~or telecommunication services.~~

8           (2)~~(10)~~ The term "person" means any person as defined  
9 in s. 212.02.

10           Section 33. Effective January 1, 2002, sections  
11 203.013, 203.60, 203.61, 203.62, and 203.63, Florida Statutes,  
12 are repealed.

13           Section 34. Effective January 1, 2001, section  
14 337.401, Florida Statutes, is amended to read:

15           337.401 Use of right-of-way for utilities subject to  
16 regulation; permit; fees.--

17           (1) The department and local governmental entities,  
18 referred to in ss. 337.401-337.404 as the "authority," that  
19 have jurisdiction and control of public roads or publicly  
20 owned rail corridors are authorized to prescribe and enforce  
21 reasonable rules or regulations with reference to the placing  
22 and maintaining along, across, or on any road or publicly  
23 owned rail corridors under their respective jurisdictions any  
24 electric transmission, telephone, or telegraph lines; pole  
25 lines; poles; railways; ditches; sewers; water, heat, or gas  
26 mains; pipelines; fences; gasoline tanks and pumps; or other  
27 structures hereinafter referred to as the "utility."

28           (2) The authority may grant to any person who is a  
29 resident of this state, or to any corporation which is  
30 organized under the laws of this state or licensed to do  
31 business within this state, the use of a right-of-way for the

1 utility in accordance with such rules or regulations as the  
2 authority may adopt. No utility shall be installed, located,  
3 or relocated unless authorized by a written permit issued by  
4 the authority. The permit shall require the permitholder to  
5 be responsible for any damage resulting from the issuance of  
6 such permit. The authority may initiate injunctive  
7 proceedings as provided in s. 120.69 to enforce provisions of  
8 this subsection or any rule or order issued or entered into  
9 pursuant thereto.

10           (3)(a) Because federal and state law require the  
11 nondiscriminatory treatment of dealers of telecommunications  
12 services and because of the desire to promote competition  
13 among dealers of telecommunications services, it is the intent  
14 of the Legislature that municipalities and counties treat  
15 telecommunications companies in a nondiscriminatory and  
16 competitively neutral manner when imposing rules governing the  
17 placement or maintenance of telecommunications facilities in  
18 the public roads or rights-of-way. Rules or regulations  
19 imposed by a municipality or county relating to  
20 telecommunications companies placing or maintaining  
21 telecommunications facilities in its roads or rights-of-way  
22 must be generally applicable to all telecommunications  
23 companies and may not require a telecommunications company to  
24 apply for or enter into an individual license, franchise, or  
25 other agreement with the municipality or county as a condition  
26 of placing or maintaining telecommunications facilities in its  
27 roads or rights-of-way. In addition to other reasonable rules  
28 that a municipality or county may adopt relating to the  
29 placement or maintenance of telecommunications facilities in  
30 its roads or rights-of-way under this subsection, a  
31 municipality or county may require a telecommunications

1 company that places or seeks to place facilities in its roads  
2 or rights-of-way to register with the municipality or county  
3 and to provide the name of the registrant; the name, address,  
4 and telephone number of a contact person for the registrant;  
5 the number of the registrant's current certificate of  
6 authorization issued by the Florida Public Service Commission  
7 or the Federal Communications Commission; and proof of  
8 insurance or self-insuring status adequate to defend and cover  
9 claims.

10 (b) Each municipality and county retains the authority  
11 to regulate and manage municipal and county roads or  
12 rights-of-way in exercising its police power. Any rules or  
13 regulations adopted by a municipality or county which govern  
14 the occupation of its roads or rights-of-way by  
15 telecommunications companies must be related to the placement  
16 or maintenance of facilities in such roads or rights-of-way,  
17 must be reasonable and nondiscriminatory, and may include only  
18 those matters necessary to manage the roads or rights-of-way  
19 of the municipality or county.

20 (c) After January 1, 2001, in addition to any other  
21 notice requirements, a municipality must provide to the  
22 Secretary of State, at least 10 days prior to consideration on  
23 first reading, notice of a proposed ordinance governing a  
24 telecommunications company placing or maintaining  
25 telecommunications facilities in its roads or rights-of-way.  
26 After January 1, 2001, in addition to any other notice  
27 requirements, a county must provide to the Secretary of State,  
28 at least 15 days prior to consideration at a public hearing,  
29 notice of a proposed ordinance governing a telecommunications  
30 company placing or maintaining telecommunications facilities  
31 in its roads or rights-of-way. The notice required by this



1 paragraph must be published by the Secretary of State on a  
2 designated Internet website. The failure of a municipality or  
3 county to provide such notice does not render the ordinance  
4 invalid.

5 (d) If any municipality requires any  
6 telecommunications company to pay a fee or other consideration  
7 as a condition for granting permission to occupy municipal  
8 streets and rights-of-way for poles, wires, and other  
9 fixtures, such fee or consideration may not exceed 1 percent  
10 of the gross receipts on recurring local service revenues for  
11 services provided within the corporate limits of the  
12 municipality by such telecommunications company. Included  
13 within such 1-percent maximum fee or consideration are all  
14 taxes, licenses, fees, in-kind contributions accepted pursuant  
15 to paragraph (f)~~subsection (5)~~, and other impositions except  
16 ad valorem taxes and amounts for assessments for special  
17 benefits, such as sidewalks, street pavings, and similar  
18 improvements, and occupational license taxes levied or imposed  
19 by a municipality upon the telecommunications company. This  
20 paragraph subsection shall not impair any franchise in  
21 existence on July 1, 1985.

22 ~~(e)(4)~~ A municipality may require ~~by ordinance enter~~  
23 ~~into an agreement with~~ any person providing telecommunication  
24 services defined in s. 203.012(7) as a condition for granting  
25 permission to occupy or use any city street, alley, viaduct,  
26 elevated roadway, bridge, or other public way to pay. ~~The~~  
27 ~~agreement shall permit the telecommunication service provider~~  
28 ~~to construct, operate, maintain, repair, rebuild, or replace a~~  
29 ~~telecommunications route within a municipal right-of-way. The~~  
30 ~~agreement shall provide for a fee or other consideration~~  
31 payable annually based on actual linear feet of any cable,

1 fiber optic, or other pathway that makes physical use of the  
2 municipal right-of-way. In no event shall the fee or other  
3 consideration imposed pursuant to this subsection be less than  
4 \$500 per linear mile of any cable, fiber optic, or other  
5 pathway that makes physical use of the municipal right-of-way.  
6 Any fee or other consideration imposed by this subsection in  
7 excess of \$500 shall be applied in a nondiscriminatory manner  
8 and shall not exceed the sum of:

9 1.(a) Costs directly related to the inconvenience or  
10 impairment solely caused by the disturbance of the municipal  
11 right-of-way; ~~and~~

12 2.(b) The reasonable cost of the regulatory activity  
13 of the municipality; ~~and~~

14 3.(c) The proportionate share of cost of land for such  
15 street, alley, or other public way attributable to utilization  
16 of the right-of-way by a telecommunication service provider.

17  
18 Furthermore, no telecommunication service provider shall be  
19 required to pay more than one such fee or other consideration  
20 annually for the construction, maintenance, operation, repair,  
21 rebuilding, or replacement of a parallel telecommunications  
22 route owned by it, or by a subsidiary under its direct  
23 control, which makes use of the right-of-way of any  
24 municipality enacting an ordinance pursuant to this paragraph  
25 ~~subsection~~. The fee or other consideration imposed pursuant  
26 to this paragraph ~~subsection~~ shall not apply in any manner to  
27 any telecommunication service provider who provides  
28 telecommunication services as defined in s. 203.012(3) for any  
29 services provided by such service provider. Any agreement  
30 entered into pursuant to the authority of this paragraph  
31 ~~subsection~~ prior to June 3, 1988, and into pursuant to the

1 authority of this paragraph ~~subsection~~ prior to June 3, 1988,  
2 and the fees or fee schedule in effect on that date shall  
3 remain in full force and effect until such agreement expires.  
4 Any ordinance enacted pursuant to this paragraph ~~subsection~~  
5 prior to June 3, 1988, and the fees or fee schedule in effect  
6 on that date shall remain in full force and effect unless the  
7 ordinance is repealed by the municipality. Notwithstanding the  
8 language contained herein a municipality may reenact any  
9 ordinance which has an automatic expiration date provided the  
10 ordinance does not increase the fees in effect in said  
11 ordinance in violation of this section.

12 (f)~~(5)~~ Except as expressly allowed or authorized by  
13 general law and except for the rights-of-way permit fees  
14 subject to subsection (3), a municipality may not levy on a  
15 telecommunications company a tax, fee, or other charge for  
16 operating as a telecommunications company within the  
17 jurisdiction of the municipality or which is in any way  
18 related to using its roads or rights-of-way. A municipality  
19 may not allow a telecommunications company to pay a fee or  
20 provide compensation in excess of the limits prescribed in  
21 this section. A municipality may not require or solicit  
22 in-kind compensation in lieu of any fees imposed pursuant to  
23 this section. Nothing in this paragraph ~~subsection~~ shall  
24 impair any ordinance or agreement in effect on May 22, 1998,  
25 ~~the effective date of this act~~ which provides for or allows  
26 in-kind compensation by a telecommunications company.

27 (g)~~(6)~~ A local governmental entity may not use its  
28 authority over the placement of facilities in its roads and  
29 rights-of-way as a basis for asserting or exercising  
30 regulatory control over a telecommunications company regarding  
31 matters within the exclusive jurisdiction of the Florida

1 Public Service Commission or the Federal Communications  
2 Commission, including, but not limited to, the operations,  
3 systems, qualifications, services, service quality, service  
4 territory, and prices of a telecommunications company.

5 (h)~~(7)~~ A telecommunications company that has obtained  
6 permission to occupy the roads and rights-of-way of an  
7 incorporated municipality pursuant to s. 362.01 ~~city or town~~  
8 or that is otherwise lawfully occupying the roads or  
9 rights-of-way of a municipality on the effective date of this  
10 act shall not be required to obtain ~~additional~~ consent to  
11 continue such lawful occupation of those roads or  
12 rights-of-way; however, nothing in this paragraph ~~subsection~~  
13 shall be interpreted to limit the power of a municipality to  
14 impose a fee or adopt or enforce reasonable rules or  
15 regulations as provided in this section.

16 (i)~~(8)~~ Except as expressly provided in this subsection  
17 ~~section~~, this subsection ~~section~~ does not modify the authority  
18 of local governmental entities to levy the tax authorized in  
19 s. 166.231 or the duties of telecommunications companies under  
20 ss. 337.402-337.404. This section does not apply to building  
21 permits, pole attachments, or private roads, private  
22 easements, and private rights-of-way. Except as expressly  
23 provided in this section, this section does not limit or  
24 expand whatever powers counties may have relating to roads and  
25 rights-of-way. Nothing in this section shall limit or expand  
26 whatever authority a local government may have to impose any  
27 fee pursuant to 47 U.S.C. ss. 542 and 573.

28 (j)~~(9)~~ As used in this section, the term  
29 "telecommunications company" has the same meaning as defined  
30 in s. 364.02.

31

1           ~~(4)(10)~~ This section, except subsections (1) ~~and~~ ~~(2)~~  
2 and paragraph (3)(g)(6), does not apply to the provision of  
3 pay telephone service on public or municipal roads or  
4 rights-of-way.

5           Section 35. Effective January 1, 2002, section  
6 337.401, Florida Statutes, as amended by this act, is amended  
7 to read:

8           337.401 Use of right-of-way for utilities subject to  
9 regulation; permit; fees.--

10           (1) The department and local governmental entities,  
11 referred to in ss. 337.401-337.404 as the "authority," that  
12 have jurisdiction and control of public roads or publicly  
13 owned rail corridors are authorized to prescribe and enforce  
14 reasonable rules or regulations with reference to the placing  
15 and maintaining along, across, or on any road or publicly  
16 owned rail corridors under their respective jurisdictions any  
17 electric transmission, telephone, ~~or~~ telegraph, or other  
18 communications services lines; pole lines; poles; railways;  
19 ditches; sewers; water, heat, or gas mains; pipelines; fences;  
20 gasoline tanks and pumps; or other structures hereinafter  
21 referred to as the "utility."

22           (2) The authority may grant to any person who is a  
23 resident of this state, or to any corporation which is  
24 organized under the laws of this state or licensed to do  
25 business within this state, the use of a right-of-way for the  
26 utility in accordance with such rules or regulations as the  
27 authority may adopt. No utility shall be installed, located,  
28 or relocated unless authorized by a written permit issued by  
29 the authority. The permit shall require the permitholder to  
30 be responsible for any damage resulting from the issuance of  
31 such permit. The authority may initiate injunctive

1 proceedings as provided in s. 120.69 to enforce provisions of  
2 this subsection or any rule or order issued or entered into  
3 pursuant thereto.

4           (3)(a) Because of the unique circumstances applicable  
5 to dealer of communications services, including, but not  
6 limited to, the circumstances described in paragraph (e) and  
7 the fact that federal and state law require the  
8 nondiscriminatory treatment of dealers of telecommunications  
9 services, and because of the desire to promote competition  
10 among dealers of communications ~~telecommunications~~ services,  
11 it is the intent of the Legislature that municipalities and  
12 counties treat dealer of communications services  
13 ~~telecommunications companies~~ in a nondiscriminatory and  
14 competitively neutral manner when imposing rules governing the  
15 placement or maintenance of communications ~~telecommunications~~  
16 facilities in the public roads or rights-of-way. Rules or  
17 regulations imposed by a municipality or county relating to  
18 dealers of communications services ~~telecommunications~~  
19 ~~companies~~ placing or maintaining communications  
20 ~~telecommunications~~ facilities in its roads or rights-of-way  
21 must be generally applicable to all dealers of communications  
22 services ~~telecommunications companies~~ and may not require a  
23 dealer of communications services ~~telecommunications company~~  
24 to apply for or enter into an individual license, franchise,  
25 or other agreement with the municipality or county as a  
26 condition of placing or maintaining communications  
27 ~~telecommunications~~ facilities in its roads or rights-of-way.  
28 In addition to other reasonable rules that a municipality or  
29 county may adopt relating to the placement or maintenance of  
30 communications ~~telecommunications~~ facilities in its roads or  
31 rights-of-way under this subsection, a municipality or county

1 may require a dealer of communications services  
2 ~~telecommunications company~~ that places or seeks to place  
3 facilities in its roads or rights-of-way to register with the  
4 municipality or county and to provide the name of the  
5 registrant; the name, address, and telephone number of a  
6 contact person for the registrant; the number of the  
7 registrant's current certificate of authorization issued by  
8 the Florida Public Service Commission or the Federal  
9 Communications Commission; and proof of insurance or  
10 self-insuring status adequate to defend and cover claims.

11 (b) Each municipality and county retains the authority  
12 to regulate and manage municipal and county roads or  
13 rights-of-way in exercising its police power. Any rules or  
14 regulations adopted by a municipality or county which govern  
15 the occupation of its roads or rights-of-way by dealers of  
16 communications services ~~telecommunications companies~~ must be  
17 related to the placement or maintenance of facilities in such  
18 roads or rights-of-way, must be reasonable and  
19 nondiscriminatory, and may include only those matters  
20 necessary to manage the roads or rights-of-way of the  
21 municipality or county.

22 (c)1. Each municipality and charter county shall make  
23 a selection under either sub-subparagraph a. or  
24 sub-subparagraph b. and must inform the Department of Revenue  
25 of the selection by certified mail by October 1, 2001.

26 a.(I) Require and collect permit fees from any dealers  
27 of communications services that use or occupy municipal or  
28 county roads or rights-of-way. All fees permitted under this  
29 sub-subparagraph must be reasonable and commensurate with the  
30 direct and actual cost of the regulatory activity, including  
31 issuing and processing permits, plan reviews, physical

1 inspection, and direct administrative costs; must be  
2 demonstrable; and must be equitable among users of the roads  
3 or rights-of-way. A fee permitted under this sub-subparagraph  
4 may not be offset against the tax imposed under chapter 202;  
5 include the costs of roads or rights-of-way acquisition or  
6 roads or rights-of-way rental; include any general  
7 administrative, management, or maintenance costs of the roads  
8 or rights-of-way; or be based on a percentage of the value  
9 associated with the work to be performed in the roads or  
10 rights-of-way. In an action to recover amounts due for a fee  
11 not permitted under this sub-subparagraph, the prevailing  
12 party may recover court costs and attorney's fees at trial and  
13 on appeal. A fee levied by a municipality or charter county  
14 may not exceed \$100.

15 (II) To ensure competitive neutrality among dealers of  
16 communications services, any municipality or charter county  
17 that elects to exercise its authority to require and collect  
18 permit fees under this sub-subparagraph must decrease by \_\_\_\_  
19 percent the total rate for the local portion of the  
20 communications services tax, as computed under s. 202.20 for  
21 that municipality or charter county.

22 b. Not require and collect permit fees from any dealer  
23 of communications services that uses or occupies municipal or  
24 charter county roads or rights-of-way for the provision of  
25 communications services; however, each municipality or charter  
26 county that elects to operate under this sub-subparagraph  
27 retains all authority to establish rules and regulations for  
28 dealers of communications services to use or occupy roads or  
29 rights-of-way as provided in this section. If a municipality  
30 or charter county elects to operate under this  
31 sub-subparagraph, the total rate for the local communications



1 services tax as computed under s. 202.20 for that municipality  
2 or charter county may be increased by ordinance to an amount  
3 not to exceed \_\_\_ percent, to replace the revenue the  
4 municipality or charter county would otherwise have received  
5 from permit fees for long distance, cable, and wireless  
6 dealers of communications services.

7 2. Each noncharter county shall make a selection under  
8 either sub-subparagraph a. or sub-subparagraph b. and shall  
9 inform the Department of Revenue of the selection by certified  
10 mail by October 1, 2001.

11 a. Require and collect permit fees from any dealers of  
12 communications services that use or occupy municipal or county  
13 roads or rights-of-way. All fees permitted under this  
14 sub-subparagraph must be reasonable and commensurate with the  
15 direct and actual cost of the regulatory activity, including  
16 issuing and processing permits, plan reviews, physical  
17 inspection, and direct administrative costs; must be  
18 demonstrable; and must be equitable among users of the roads  
19 or rights-of-way. A fee permitted under this sub-subparagraph  
20 may not be offset against the tax imposed under chapter 202;  
21 include the costs of roads or rights-of-way acquisition or  
22 roads or rights-of-way rental; include any general  
23 administrative, management, or maintenance costs of the roads  
24 or rights-of-way; or be based on a percentage of the value  
25 associated with the work to be performed in the roads or  
26 rights-of-way. In an action to recover amounts due for a fee  
27 not permitted under this sub-subparagraph, the prevailing  
28 party may recover court costs and attorney's fees at trial and  
29 on appeal. A fee levied by a noncharter county may not exceed  
30 \$100.

31

1           b. Not require and collect permit fees from any dealer  
2 of communications services that uses or occupies noncharter  
3 county roads or rights-of-way for the provision of  
4 communications services; however, each noncharter county that  
5 elects to operate under this sub-subparagraph shall retain all  
6 authority to establish rules and regulations for dealers of  
7 communications services to use or occupy roads or  
8 rights-of-way as provided in this section. If a noncharter  
9 county elects to operate under this sub-subparagraph, the  
10 total rate for local communications services tax as computed  
11 under s. 202.20 for that noncharter county may be increased by  
12 ordinance to an amount not to exceed \_\_\_\_\_ percent, to replace  
13 the revenue the noncharter county would otherwise have  
14 received from permit fees for dealers of communications  
15 services.

16           (d)(c) After January 1, 2001, in addition to any other  
17 notice requirements, a municipality must provide to the  
18 Secretary of State, at least 10 days prior to consideration on  
19 first reading, notice of a proposed ordinance governing a  
20 dealer of communications services ~~telecommunications company~~  
21 placing or maintaining communications ~~telecommunications~~  
22 facilities in its roads or rights-of-way. After January 1,  
23 2001, in addition to any other notice requirements, a county  
24 must provide to the Secretary of State, at least 15 days prior  
25 to consideration at a public hearing, notice of a proposed  
26 ordinance governing a dealer of communications services  
27 ~~telecommunications company~~ placing or maintaining  
28 communications ~~telecommunications~~ facilities in its roads or  
29 rights-of-way. The notice required by this paragraph must be  
30 published by the Secretary of State on a designated Internet  
31

1 Web site. The failure of a municipality or county to provide  
2 such notice does not render the ordinance invalid.

3 (e) The authority of municipalities and counties to  
4 require franchise fees from dealers of communications  
5 services, with respect to the provision of communications  
6 services, is specifically preempted by the state, except as  
7 otherwise provided in paragraph (f), because of unique  
8 circumstances applicable to dealers of communications services  
9 when compared to other utilities occupying municipal or county  
10 roads or rights-of-way. Dealers of communications services may  
11 provide similar services in a manner that requires the  
12 placement of facilities in municipal or county roads or  
13 rights-of-way or in a manner that does not require the  
14 placement of facilities in such roads or rights-of-way.  
15 Although similar communications services may be provided by  
16 different means, the state desires to treat dealers of  
17 communications services in a nondiscriminatory manner and to  
18 have the taxes, franchise fees, and other fees paid by dealers  
19 of communications services be competitively neutral.  
20 Municipalities and counties retain all existing authority to  
21 collect franchise fees from users or occupants of municipal or  
22 county roads or rights-of-way other than dealers of  
23 communications services, and the provisions of this section  
24 shall have no effect upon this authority. The provisions of  
25 this subsection do not restrict the authority of  
26 municipalities or counties or other governmental entities to  
27 receive reasonable rental fees based on fair market value for  
28 the use of public lands and buildings on property outside the  
29 public roads or rights-of-way for the placement of  
30 communications antennas and towers.

31

1           (f) A municipality or county may request and negotiate  
2 for in-kind compensation, capital contributions, and community  
3 benefits only from dealers of cable service pursuant to  
4 federal law. Each municipality and county retains authority to  
5 negotiate all terms and conditions of a cable service  
6 franchise allowed by law except those terms and conditions  
7 related to franchise fees and the definition of gross revenues  
8 or other definitions or methodologies related to the payment  
9 or assessment of franchise fees on dealers of cable services.  
10 Nothing in this section shall impair any ordinance or  
11 agreement in effect on the effective date of this act which  
12 provides for or allows in-kind compensation, capital  
13 contributions, or community benefits as permitted by federal  
14 law by a dealer of cable services, including the ability of  
15 dealers of cable service to recover such expenses pursuant to  
16 federal law.

17           ~~(d) If any municipality requires any~~  
18 ~~telecommunications company to pay a fee or other consideration~~  
19 ~~as a condition for granting permission to occupy municipal~~  
20 ~~streets and rights-of-way for poles, wires, and other~~  
21 ~~fixtures, such fee or consideration may not exceed 1 percent~~  
22 ~~of the gross receipts on recurring local service revenues for~~  
23 ~~services provided within the corporate limits of the~~  
24 ~~municipality by such telecommunications company. Included~~  
25 ~~within such 1-percent maximum fee or consideration are all~~  
26 ~~taxes, licenses, fees, in-kind contributions accepted pursuant~~  
27 ~~to paragraph (f), and other impositions except ad valorem~~  
28 ~~taxes and amounts for assessments for special benefits, such~~  
29 ~~as sidewalks, street pavings, and similar improvements, and~~  
30 ~~occupational license taxes levied or imposed by a municipality~~

31

1 ~~upon the telecommunications company. This paragraph shall not~~  
2 ~~impair any franchise in existence on July 1, 1985.~~

3 ~~(e) A municipality may require any person providing~~  
4 ~~telecommunication services defined in s. 203.012(7) as a~~  
5 ~~condition for granting permission to occupy or use any city~~  
6 ~~street, alley, viaduct, elevated roadway, bridge, or other~~  
7 ~~public way to pay a fee or other consideration payable~~  
8 ~~annually based on actual linear feet of any cable, fiber~~  
9 ~~optic, or other pathway that makes physical use of the~~  
10 ~~municipal right-of-way. In no event shall the fee or other~~  
11 ~~consideration imposed pursuant to this subsection be less than~~  
12 ~~\$500 per linear mile of any cable, fiber optic, or other~~  
13 ~~pathway that makes physical use of the municipal right-of-way.~~  
14 ~~Any fee or other consideration imposed by this subsection in~~  
15 ~~excess of \$500 shall be applied in a nondiscriminatory manner~~  
16 ~~and shall not exceed the sum of:~~

17 ~~1. Costs directly related to the inconvenience or~~  
18 ~~impairment solely caused by the disturbance of the municipal~~  
19 ~~right-of-way;~~

20 ~~2. The reasonable cost of the regulatory activity of~~  
21 ~~the municipality; and~~

22 ~~3. The proportionate share of cost of land for such~~  
23 ~~street, alley, or other public way attributable to utilization~~  
24 ~~of the right-of-way by a telecommunication service provider.~~

25  
26 ~~Furthermore, no telecommunication service provider shall be~~  
27 ~~required to pay more than one such fee or other consideration~~  
28 ~~annually for the construction, maintenance, operation, repair,~~  
29 ~~rebuilding, or replacement of a parallel telecommunications~~  
30 ~~route owned by it, or by a subsidiary under its direct~~  
31 ~~control, which makes use of the right-of-way of any~~

1 ~~municipality enacting an ordinance pursuant to this paragraph.~~  
2 ~~The fee or other consideration imposed pursuant to this~~  
3 ~~paragraph shall not apply in any manner to any~~  
4 ~~telecommunication service provider who provides~~  
5 ~~telecommunication services as defined in s. 203.012(3) for any~~  
6 ~~services provided by such service provider. Any agreement~~  
7 ~~entered into pursuant to the authority of this paragraph prior~~  
8 ~~to June 3, 1988, and into pursuant to the authority of this~~  
9 ~~paragraph prior to June 3, 1988, and the fees or fee schedule~~  
10 ~~in effect on that date shall remain in full force and effect~~  
11 ~~until such agreement expires. Any ordinance enacted pursuant~~  
12 ~~to this paragraph prior to June 3, 1988, and the fees or fee~~  
13 ~~schedule in effect on that date shall remain in full force and~~  
14 ~~effect unless the ordinance is repealed by the municipality.~~  
15 ~~Notwithstanding the language contained herein a municipality~~  
16 ~~may reenact any ordinance which has an automatic expiration~~  
17 ~~date provided the ordinance does not increase the fees in~~  
18 ~~effect in said ordinance in violation of this section.~~

19 (g)(f) Except as expressly allowed or authorized by  
20 general law and except for the rights-of-way permit fees  
21 subject to paragraph (c)subsection (3), a municipality or  
22 county may not levy on a dealer of communications services  
23 ~~telecommunications company~~ a tax, fee, or other charge or  
24 imposition for operating as a dealer of communications  
25 services telecommunications company within the jurisdiction of  
26 the municipality or county which is in any way related to  
27 using its roads or rights-of-way. ~~A municipality may not allow~~  
28 ~~a telecommunications company to pay a fee or provide~~  
29 ~~compensation in excess of the limits prescribed in this~~  
30 ~~section.~~A municipality may not require or solicit in-kind  
31 compensation except as otherwise provided in paragraph (f)in

1 ~~lieu of any fees imposed pursuant to this section. Nothing in~~  
2 ~~this paragraph shall impair any ordinance or agreement in~~  
3 ~~effect on May 22, 1998, which provides for or allows in-kind~~  
4 ~~compensation by a telecommunications company.~~

5 (h)(g) A municipality or county local governmental  
6 entity may not use its authority over the placement of  
7 facilities in its roads and rights-of-way as a basis for  
8 asserting or exercising regulatory control over a dealer of  
9 communications services telecommunications company regarding  
10 matters within the exclusive jurisdiction of the Florida  
11 Public Service Commission or the Federal Communications  
12 Commission, including, but not limited to, the operations,  
13 systems, qualifications, services, service quality, service  
14 territory, and prices of a dealer of communications services  
15 telecommunications company.

16 (i)(h) A dealer of communications services  
17 telecommunications company that has obtained permission to  
18 occupy the roads or ~~and~~ rights-of-way of an incorporated  
19 municipality pursuant to s. 362.01 or that is otherwise  
20 lawfully occupying the roads or rights-of-way of a  
21 municipality ~~on the effective date of this act~~ shall not be  
22 required to obtain consent to continue such lawful occupation  
23 of those roads or rights-of-way; however, nothing in this  
24 paragraph shall be interpreted to limit the power of a  
25 municipality to ~~impose a fee or~~ adopt or enforce reasonable  
26 rules or regulations as provided in this section.

27 (j)(i) Except as expressly provided in this  
28 subsection, this subsection does not modify the authority of  
29 municipalities and counties local governmental entities to  
30 levy the tax authorized in chapter 202 s. 166.231 or the  
31 duties of dealers of communications services

1 ~~telecommunications companies~~ under ss. 337.402-337.404. This  
2 section does not apply to building permits, pole attachments,  
3 or private roads, private easements, and private  
4 rights-of-way. ~~Except as expressly provided in this section,~~  
5 ~~this section does not limit or expand whatever powers counties~~  
6 ~~may have relating to roads and rights-of-way. Nothing in this~~  
7 ~~section shall limit or expand whatever authority a local~~  
8 ~~government may have to impose any fee pursuant to 47 U.S.C.~~  
9 ~~ss. 542 and 573.~~

10         ~~(4)(j)~~ As used in this section, the terms  
11 "communications services" and "cable services" have term  
12 "telecommunications company" has the same meanings ascribed in  
13 chapter 202 meaning as defined in s. 364.02.

14         ~~(5)(4)~~ This section, except subsections (1) and (2)  
15 and paragraph ~~(3)(h)(3)(g)~~, does not apply to the provision  
16 of pay telephone service on public, or municipal, or county  
17 roads or rights-of-way.

18         Section 36. Effective January 1, 2002, paragraph (a)  
19 of subsection (1) of section 72.011, Florida Statutes, is  
20 amended to read:

21         72.011 Jurisdiction of circuit courts in specific tax  
22 matters; administrative hearings and appeals; time for  
23 commencing action; parties; deposits.--

24         (1)(a) A taxpayer may contest the legality of any  
25 assessment or denial of refund of tax, fee, surcharge, permit,  
26 interest, or penalty provided for under s. 125.0104, s.  
27 125.0108, chapter 198, chapter 199, chapter 201, chapter 202,  
28 chapter 203, chapter 206, chapter 207, chapter 210, chapter  
29 211, chapter 212, chapter 213, chapter 220, chapter 221, s.  
30 370.07(3), chapter 376, s. 403.717, s. 403.718, s. 403.7185,  
31 s. 403.7195, s. 538.09, s. 538.25, chapter 550, chapter 561,



1 chapter 562, chapter 563, chapter 564, chapter 565, chapter  
2 624, or s. 681.117 by filing an action in circuit court; or,  
3 alternatively, the taxpayer may file a petition under the  
4 applicable provisions of chapter 120. However, once an action  
5 has been initiated under s. 120.56, s. 120.565, s. 120.569, s.  
6 120.57, or s. 120.80(14)(b), no action relating to the same  
7 subject matter may be filed by the taxpayer in circuit court,  
8 and judicial review shall be exclusively limited to appellate  
9 review pursuant to s. 120.68; and once an action has been  
10 initiated in circuit court, no action may be brought under  
11 chapter 120.

12 Section 37. Effective January 1, 2002, section 213.05,  
13 Florida Statutes, is amended to read:

14 213.05 Department of Revenue; control and  
15 administration of revenue laws.--The Department of Revenue  
16 shall have only those responsibilities for ad valorem taxation  
17 specified to the department in chapter 192, taxation, general  
18 provisions; chapter 193, assessments; chapter 194,  
19 administrative and judicial review of property taxes; chapter  
20 195, property assessment administration and finance; chapter  
21 196, exemption; chapter 197, tax collections, sales, and  
22 liens; chapter 199, intangible personal property taxes; and  
23 chapter 200, determination of millage. The Department of  
24 Revenue shall have the responsibility of regulating,  
25 controlling, and administering all revenue laws and performing  
26 all duties as provided in s. 125.0104, the Local Option  
27 Tourist Development Act; s. 125.0108, tourist impact tax;  
28 chapter 198, estate taxes; chapter 201, excise tax on  
29 documents; chapter 202, communications services tax;chapter  
30 203, gross receipts taxes; chapter 206, motor and other fuel  
31 taxes; chapter 211, tax on production of oil and gas and

1 severance of solid minerals; chapter 212, tax on sales, use,  
2 and other transactions; chapter 220, income tax code; chapter  
3 221, emergency excise tax; ss. 336.021 and 336.025, taxes on  
4 motor fuel and special fuel; s. 370.07(3), Apalachicola Bay  
5 oyster surcharge; s. 376.11, pollutant spill prevention and  
6 control; s. 403.718, waste tire fees; s. 403.7185, lead-acid  
7 battery fees; s. 403.7195, waste newsprint disposal fees; s.  
8 538.09, registration of secondhand dealers; s. 538.25,  
9 registration of secondary metals recyclers; s. 624.4621, group  
10 self-insurer's fund premium tax; s. 624.5091, retaliatory tax;  
11 s. 624.475, commercial self-insurance fund premium tax; ss.  
12 624.509-624.511, insurance code: administration and general  
13 provisions; s. 624.515, State Fire Marshal regulatory  
14 assessment; s. 627.357, medical malpractice self-insurance  
15 premium tax; s. 629.5011, reciprocal insurers premium tax; and  
16 s. 681.117, motor vehicle warranty enforcement.

17 Section 38. Effective January 1, 2002, subsection (1)  
18 of section 213.053, Florida Statutes, is amended, and  
19 paragraph (r) is added to subsection (7) of that section, to  
20 read:

21 213.053 Confidentiality and information sharing.--

22 (1) The provisions of this section apply to s.  
23 125.0104, county government; s. 125.0108, tourist impact tax;  
24 chapter 175, municipal firefighters' pension trust funds;  
25 chapter 185, municipal police officers' retirement trust  
26 funds; chapter 198, estate taxes; chapter 199, intangible  
27 personal property taxes; chapter 201, excise tax on documents;  
28 chapter 202, communications services tax; chapter 203, gross  
29 receipts taxes; chapter 211, tax on severance and production  
30 of minerals; chapter 212, tax on sales, use, and other  
31 transactions; chapter 220, income tax code; chapter 221,

1 emergency excise tax; s. 252.372, emergency management,  
2 preparedness, and assistance surcharge; s. 370.07(3),  
3 Apalachicola Bay oyster surcharge; chapter 376, pollutant  
4 spill prevention and control; s. 403.718, waste tire fees; s.  
5 403.7185, lead-acid battery fees; s. 403.7195, waste newsprint  
6 disposal fees; s. 538.09, registration of secondhand dealers;  
7 s. 538.25, registration of secondary metals recyclers; ss.  
8 624.501 and 624.509-624.515, insurance code; s. 681.117, motor  
9 vehicle warranty enforcement; and s. 896.102, reports of  
10 financial transactions in trade or business.

11 (7) Notwithstanding any other provision of this  
12 section, the department may provide:

13 (r) Information relative to chapter 202 to each local  
14 government that imposes a tax pursuant to s. 202.19 in the  
15 conduct of its official duties as specified in chapter 202.  
16 Data provided under this paragraph may not be disclosed to any  
17 other person or entity other than a person or entity directly  
18 responsible for administering the tax. Such data may not be  
19 used for any purpose other than for administering the tax and  
20 assisting the department's administration of chapter 202.

21  
22 Disclosure of information under this subsection shall be  
23 pursuant to a written agreement between the executive director  
24 and the agency. Such agencies, governmental or  
25 nongovernmental, shall be bound by the same requirements of  
26 confidentiality as the Department of Revenue. Breach of  
27 confidentiality is a misdemeanor of the first degree,  
28 punishable as provided by s. 775.082 or s. 775.083.

29 Section 39. Effective January 1, 2002, and applicable  
30 to communications services reflected on bills dated on or  
31 after that date, subsection (9) of section 166.231, Florida

1 Statutes, as amended by this act, is repealed, and subsections  
2 (7) and (10) of that section are amended to read:

3 166.231 Municipalities; public service tax.--

4 (7) The tax authorized hereunder shall be collected by  
5 the seller of the taxable item from the purchaser at the time  
6 of the payment for such service. The seller shall remit the  
7 taxes collected to the municipality in the manner prescribed  
8 by ordinance, ~~except that remittance of taxes by sellers of~~  
9 ~~telecommunication services shall be governed by paragraph~~  
10 ~~(9)(f)~~. Except as otherwise provided in ss. 166.233 and  
11 166.234, the seller shall be liable for taxes that are due and  
12 not remitted to the municipality. This shall not bar the  
13 seller from recovering such taxes from purchasers; however,  
14 the universities in the State University System shall not be  
15 deemed a seller of any item otherwise taxable hereunder when  
16 such item is provided to university residences incidental to  
17 the provision of educational services.

18 (10) A purchaser who claims an exemption under  
19 subsection (4) or, subsection (5), ~~or paragraph (9)(e)~~ shall  
20 certify to the seller that he or she qualifies for the  
21 exemption, which certification may encompass all purchases  
22 after a specified date or other multiple purchases. ~~For~~  
23 ~~purchases made under paragraph (9)(e) which are exempted, upon~~  
24 ~~the presentation of a certificate, from the tax imposed by~~  
25 ~~chapter 212, the certification required by this subsection may~~  
26 ~~be satisfied by presentation of a certificate that satisfies~~  
27 ~~the requirements of chapter 212.~~ A seller accepting the  
28 certification required by this subsection is relieved of the  
29 obligation to collect and remit tax; however, a governmental  
30 body that is exempt from the tax authorized by this section  
31 shall not be required to furnish such certification, and a

1 seller is not required to collect tax from such an exempt  
2 governmental body.

3 Section 40. Effective January 1, 2002, subsection (2)  
4 of section 166.233, Florida Statutes, is amended to read:

5 166.233 Public service tax; effective dates;  
6 procedures for informing sellers of tax levies and related  
7 information.--

8 (2)(a) A tax levy must be adopted by ordinance, and  
9 the effective date of every levy or repeal thereof must be a  
10 subsequent January 1, April 1, July 1, or October 1. A  
11 municipality shall notify the department of the adoption or  
12 repeal of a levy at least 120 days before the effective date  
13 thereof. Such notification must be furnished on a form  
14 prescribed by the department and must specify the services  
15 taxed under the authority of s. 166.231 or s. 166.232,  
16 ~~including any election under s. 166.231(9)(a)~~, the rate of tax  
17 applied to each service, the effective date of the levy or  
18 repeal thereof, and the name, mailing address, and telephone  
19 number of a person designated by the municipality to respond  
20 to inquiries concerning the tax. The department shall maintain  
21 this information for the purpose of responding to inquiries  
22 with respect thereto, and any person may, in writing, request  
23 such information from the department. For purposes of this  
24 section, a response to such a person is timely if in writing  
25 and dated no later than 20 days after the receipt of the  
26 request. The department shall charge such persons a fee to  
27 recover the actual cost of maintaining and furnishing such  
28 information. The department has no liability for any loss of  
29 or decrease in revenue by reason of any error, omission, or  
30 untimely action that results in the nonpayment of the tax  
31 imposed under s. 166.231 or s. 166.232. The provisions of this

1 paragraph which prescribe effective dates and require  
2 municipalities to furnish notifications to the department do  
3 not apply to taxes levied on service, ~~other than~~  
4 ~~telecommunication service~~, provided by the municipality  
5 levying the tax or by a separate utility authority, board, or  
6 commission of the municipality.

7 (b) The department may contract with a private entity  
8 to maintain and furnish the information described in paragraph  
9 (a); however, the department shall establish the fee charged  
10 to persons requesting that information.

11 Section 41. Effective January 1, 2002, subsection (6)  
12 of section 212.20, Florida Statutes, is amended to read:

13 212.20 Funds collected, disposition; additional powers  
14 of department; operational expense; refund of taxes  
15 adjudicated unconstitutionally collected.--

16 (6) Distribution of all proceeds under this chapter  
17 and s. 202.18(1)(b) and (2)(a)2. shall be as follows:

18 (a) Proceeds from the convention development taxes  
19 authorized under s. 212.0305 shall be reallocated to the  
20 Convention Development Tax Clearing Trust Fund.

21 (b) Proceeds from discretionary sales surtaxes imposed  
22 pursuant to ss. 212.054 and 212.055 shall be reallocated to  
23 the Discretionary Sales Surtax Clearing Trust Fund.

24 (c) Proceeds from the tax imposed pursuant to s.  
25 212.06(5)(a)2. shall be reallocated to the Mail Order Sales  
26 Tax Clearing Trust Fund.

27 (d) Proceeds from the fee imposed pursuant to s.  
28 212.18(5) shall be deposited in the Solid Waste Management  
29 Clearing Trust Fund, which is hereby created to be used by the  
30 department, and shall be subsequently transferred to the State  
31

1 Treasurer to be deposited into the Solid Waste Management  
2 Trust Fund.

3 (e) Proceeds from the fees imposed under ss.  
4 212.05(1)(i)3. and 212.18(3) shall remain with the General  
5 Revenue Fund.

6 (f) The proceeds of all other taxes and fees imposed  
7 pursuant to this chapter or remitted pursuant to s.  
8 202.18(1)(b) and (2)(a)2. shall be distributed as follows:

9 1. In any fiscal year, the greater of \$500 million,  
10 minus an amount equal to 4.6 percent of the proceeds of the  
11 taxes collected pursuant to chapter 201, or 5 percent of all  
12 other taxes and fees imposed pursuant to this chapter or  
13 remitted pursuant to s. 202.18(1)(b) and (2)(a)2. shall be  
14 deposited in monthly installments into the General Revenue  
15 Fund.

16 2. Two-tenths of one percent shall be transferred to  
17 the Solid Waste Management Trust Fund.

18 3. After the distribution under subparagraphs 1. and  
19 2., 9.653 percent of the amount remitted by a sales tax dealer  
20 located within a participating county pursuant to s. 218.61  
21 shall be transferred into the Local Government Half-cent Sales  
22 Tax Clearing Trust Fund.

23 4. After the distribution under subparagraphs 1., 2.,  
24 and 3., 0.054 percent shall be transferred to the Local  
25 Government Half-cent Sales Tax Clearing Trust Fund and  
26 distributed pursuant to s. 218.65.

27 5. Of the remaining proceeds:

28 a. Beginning July 1, 1992, \$166,667 shall be  
29 distributed monthly by the department to each applicant that  
30 has been certified as a "facility for a new professional  
31 sports franchise" or a "facility for a retained professional

1 sports franchise" pursuant to s. 288.1162 and \$41,667 shall be  
2 distributed monthly by the department to each applicant that  
3 has been certified as a "new spring training franchise  
4 facility" pursuant to s. 288.1162. Distributions shall begin  
5 60 days following such certification and shall continue for 30  
6 years. Nothing contained herein shall be construed to allow an  
7 applicant certified pursuant to s. 288.1162 to receive more in  
8 distributions than actually expended by the applicant for the  
9 public purposes provided for in s. 288.1162(7). However, a  
10 certified applicant shall receive distributions up to the  
11 maximum amount allowable and undistributed under this section  
12 for additional renovations and improvements to the facility  
13 for the franchise without additional certification.

14         b. Beginning 30 days after notice by the Office of  
15 Tourism, Trade, and Economic Development to the Department of  
16 Revenue that an applicant has been certified as the  
17 professional golf hall of fame pursuant to s. 288.1168 and is  
18 open to the public, \$166,667 shall be distributed monthly, for  
19 up to 300 months, to the applicant.

20         c. Beginning 30 days after notice by the Department of  
21 Commerce to the Department of Revenue that the applicant has  
22 been certified as the International Game Fish Association  
23 World Center facility pursuant to s. 288.1169, and the  
24 facility is open to the public, \$83,333 shall be distributed  
25 monthly, for up to 180 months, to the applicant. This  
26 distribution is subject to reduction pursuant to s. 288.1169.

27         6. All other proceeds shall remain with the General  
28 Revenue Fund.

29         Section 42. Effective January 1, 2002, section 125.42,  
30 Florida Statutes, is amended to read:

31



1           125.42 Water, sewage, gas, power, ~~telephone~~, other  
2 utility, and television lines along county roads and  
3 highways.--

4           (1) The board of county commissioners, with respect to  
5 property located without the corporate limits of any  
6 municipality, is authorized to grant a license to any person  
7 or private corporation to construct, maintain, repair,  
8 operate, and remove lines for the transmission of water,  
9 sewage, gas, power, ~~telephone~~, other public utilities, and  
10 television under, on, over, across and along any county  
11 highway or any public road or highway acquired by the county  
12 or public by purchase, gift, devise, dedication, or  
13 prescription. However, the board of county commissioners shall  
14 include in any instrument granting such license adequate  
15 provisions:

16           (a) To prevent the creation of any obstructions or  
17 conditions which are or may become dangerous to the traveling  
18 public;

19           (b) To require the licensee to repair any damage or  
20 injury to the road or highway by reason of the exercise of the  
21 privileges granted in any instrument creating such license and  
22 to repair the road or highway promptly, restoring it to a  
23 condition at least equal to that which existed immediately  
24 prior to the infliction of such damage or injury;

25           (c) Whereby the licensee shall hold the board of  
26 county commissioners and members thereof harmless from the  
27 payment of any compensation or damages resulting from the  
28 exercise of the privileges granted in any instrument creating  
29 the license; and

30           (d) As may be reasonably necessary, for the protection  
31 of the county and the public.

1           (2) A license may be granted in perpetuity or for a  
2 term of years, subject, however, to termination by the  
3 licensor, in the event the road or highway is closed,  
4 abandoned, vacated, discontinued, or reconstructed.

5           (3) The board of county commissioners is authorized to  
6 grant exclusive or nonexclusive licenses for the purposes  
7 stated herein for television.

8           (4) This law is intended to provide an additional  
9 method for the granting of licenses and shall not be construed  
10 to repeal any law now in effect relating to the same subject.

11           (5) In the event of widening, repair, or  
12 reconstruction of any such road, the licensee shall move or  
13 remove such water, sewage, gas, power, ~~telephone~~, and other  
14 utility lines and television lines at no cost to the county.

15           Section 43. Paragraphs (a), (e), and (f) of subsection  
16 (9) of section 166.231, Florida Statutes, are amended to read:

17           166.231 Municipalities; public service tax.--

18           (9) A municipality may levy a tax on the purchase of  
19 telecommunication services as defined in s. 203.012 as  
20 follows:

21           (a)1. Only upon purchases within the municipality of  
22 local telephone service as defined in s. 203.012(3) at a rate  
23 not to exceed 10 percent of the monthly recurring customer  
24 service charges, excluding public telephone charges collected  
25 on site, access charges, and any customer access line charges  
26 paid to a local telephone company; or

27           2. Only upon purchases within the municipality of  
28 telecommunications service that originates and terminates in  
29 this state at a rate not to exceed 7 percent of the total  
30 amount charged for any telecommunications service provided  
31 within the municipality or, if the location of the

1 telecommunications service provided cannot be determined as  
2 part of the billing process, the total amount billed for such  
3 telecommunications service to a telephone or telephone number,  
4 a telecommunications number or device, a service address, or a  
5 customers' billing address located within the municipality,  
6 excluding charges for telecommunication services that are paid  
7 by using a prepaid calling arrangement as defined in s.  
8 212.05(1)(e)1.a., public telephone charges collected on site,  
9 charges for any foreign exchange service or any private line  
10 service except when such services are used or sold as a  
11 substitute for any telephone company switched service or  
12 dedicated facility by which a telephone company provides a  
13 communication path, access charges, and any customer access  
14 line charges paid to a local telephone company. However,  
15 telecommunications service as defined in s. 203.012(5)(b)  
16 shall be taxed only on the monthly recurring customer service  
17 charges excluding variable usage charges.

18 (e) Purchases of local telephone service or other  
19 telecommunications service for use in the conduct of a  
20 telecommunications service for hire or otherwise for resale,  
21 including resale of telecommunication services paid by using a  
22 prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.,  
23 are exempt from the tax imposed by this subsection.

24 (f) A seller of services which are subject to the tax  
25 imposed by a municipality under this subsection shall file a  
26 return with the municipality each month. The form of the  
27 return shall be determined by the seller, and the return shall  
28 be deemed sufficient if it identifies the name and address of  
29 the seller, the period of the return, the amount collected  
30 from the sale of taxable services, any collection allowance  
31 taken, the amount of tax remitted with the return, and the

1 name and telephone number of a person authorized by the seller  
2 to respond to inquiries from municipalities concerning the  
3 seller's administration of the tax. A municipality may not  
4 require any return or payment of public service tax other than  
5 on a date returns and payments of tax are required under  
6 chapter 212. However, a municipality may grant an extension of  
7 the due date for a return or payment upon written request from  
8 the seller. The deduction authorized by paragraph (b) shall  
9 not be allowed in the event of an untimely return, unless the  
10 seller has in writing requested and been granted an extension  
11 of time for filing such return. Extensions of time shall be  
12 granted if reasonable cause is shown, whether requested before  
13 or after the due date of the return. Notwithstanding any other  
14 provision of law, the public service tax shall not be  
15 collected at point of sale on prepaid calling arrangements.

16 Section 44. Effective July 1, 2000, all taxes that  
17 have been collected pursuant to section 166.231(9)(f), Florida  
18 Statutes, at the point of sale on prepaid calling arrangements  
19 prior to July 1, 2000, must be remitted, and taxes that have  
20 been collected at the point of sale on prepaid calling  
21 arrangements and remitted before July 1, 2000, are not subject  
22 to refund. Any taxes that were not collected pursuant to s.  
23 166.231(9)(f) prior to July 1, 2000, at the point of sale on  
24 prepaid calling arrangements need not be paid and are  
25 forgiven.

26 Section 45. Subsections (3) and (4) of section 203.01,  
27 Florida Statutes, are amended to read:

28 203.01 Tax on gross receipts for utility services.--

29 (3) The term "gross receipts" as used herein does not  
30 include gross receipts of any person derived from:  
31

1           (a) The sale of natural gas to a public or private  
2 utility, including a municipal corporation or rural electric  
3 cooperative association, either for resale or for use as fuel  
4 in the generation of electricity;

5           (b) The sale of electricity to a public or private  
6 utility, including a municipal corporation or rural electric  
7 cooperative association, for resale within the state, or as  
8 part of an electrical interchange agreement or contract  
9 between such utilities for the purpose of transferring more  
10 economically generated power; or

11           (c) The sale of telecommunication services for resale  
12 of telecommunication services wholly or partially within this  
13 state, which includes, for purposes of this subsection, the  
14 sale of telecommunication services to a person reselling such  
15 telecommunication services by way of a prepaid calling  
16 arrangement as defined in s. 212.05(1)(e)1.a.;

17  
18 provided the person deriving gross receipts from such sale  
19 demonstrates that a resale in fact occurred and complies with  
20 the following requirements: A resale in this state must be in  
21 strict compliance with the rules and regulations of the  
22 Department of Revenue; and any person making a sale for resale  
23 in this state which is not in strict compliance with the rules  
24 and regulations of the Department of Revenue shall be liable  
25 for and pay the tax. Any person making a sale for resale in  
26 this state may, through an informal protest provided for in s.  
27 213.21 and the rules of the Department of Revenue, provide the  
28 department with evidence of the exempt status of a sale. The  
29 department shall adopt rules which provide that valid proof  
30 and documentation of the resale in this state by a person  
31 making the sale for resale in this state will be accepted by

1 the department when submitted during the protest period but  
2 will not be accepted when submitted in any proceeding under  
3 chapter 120 or any circuit court action instituted under  
4 chapter 72.

5 (4) Gross receipts subject to the tax imposed by this  
6 section shall not include receipts from sales or leases of  
7 telecommunications service for use in the conduct of a  
8 telecommunications service for hire or otherwise for resale,  
9 including resale of telecommunication services paid by using a  
10 prepaid calling arrangement as defined in s. 212.05(1)(e)1.a.

11 Section 46. Paragraph (b) of subsection (2) of section  
12 203.012, Florida Statutes, is amended to read:

13 203.012 Definitions.--As used in this chapter:

14 (2)

15 (b) Gross receipts for telecommunication services do  
16 not include:

17 1. Charges for customer premises equipment, including  
18 such equipment that is leased or rented by the customer from  
19 any source;

20 2. Charges made to the public for commercial or cable  
21 television, unless it is used for two-way communication;  
22 however, if such two-way communication service is separately  
23 billed, only the charges made for two-way communication  
24 service will be subject to tax hereunder;

25 3. Charges made by hotels and motels, which are  
26 required under the provisions of s. 212.03 to collect  
27 transient rentals tax from tenants and lessees, for local  
28 telephone service or toll telephone service, when such charge  
29 occurs incidental to the right of occupancy in such hotel or  
30 motel;

31

1           4. Connection and disconnection charges; move or  
2 change charges; suspension of service charges; and service  
3 order, number change, and restoration charges; ~~or~~

4           5. Charges for services or items of equipment supplied  
5 by providers of the telecommunication services described in  
6 paragraph (5)(b), such as maintenance charges, equipment  
7 sales, or rental which are incidental to the provision of such  
8 telecommunication services, provided such charges are  
9 separately stated, itemized, or described on the bill,  
10 invoice, or other tangible evidence of the provision of such  
11 service; ~~or-~~

12           6. Charges for telecommunication services which are  
13 paid by using a prepaid calling arrangement as defined in s.  
14 212.05(1)(e)1.a.

15           Section 47. Paragraph (b) of subsection (2) of section  
16 212.054, Florida Statutes, is amended to read:

17           212.054 Discretionary sales surtax; limitations,  
18 administration, and collection.--

19           (2)

20           (b) However:

21           1. The ~~tax on any~~ sales amount above \$5,000 on any  
22 item of tangible personal property and on long-distance  
23 telephone service shall not be subject to the surtax.

24 However, charges for prepaid calling arrangements, as defined  
25 in s. 212.05(1)(e)1.a., shall be subject to the surtax.For  
26 purposes of administering the \$5,000 limitation on an item of  
27 tangible personal property, if two or more taxable items of  
28 tangible personal property are sold to the same purchaser at  
29 the same time and, under generally accepted business practice  
30 or industry standards or usage, are normally sold in bulk or  
31 are items that, when assembled, comprise a working unit or

1 part of a working unit, such items must be considered a single  
2 item for purposes of the \$5,000 limitation when supported by a  
3 charge ticket, sales slip, invoice, or other tangible evidence  
4 of a single sale or rental. The limitation provided in this  
5 subparagraph does not apply to the sale of any other service.

6           2. In the case of utility, telecommunication, or  
7 television system program services billed on or after the  
8 effective date of any such surtax, the entire amount of the  
9 charge tax for utility, telecommunication, or television  
10 system program services shall be subject to the surtax. In  
11 the case of utility, telecommunication, or television system  
12 program services billed after the last day the surtax is in  
13 effect, the entire amount of the charge tax on said items  
14 shall not be subject to the surtax.

15           3. In the case of written contracts which are signed  
16 prior to the effective date of any such surtax for the  
17 construction of improvements to real property or for  
18 remodeling of existing structures, the surtax shall be paid by  
19 the contractor responsible for the performance of the  
20 contract. However, the contractor may apply for one refund of  
21 any such surtax paid on materials necessary for the completion  
22 of the contract. Any application for refund shall be made no  
23 later than 15 months following initial imposition of the  
24 surtax in that county. The application for refund shall be in  
25 the manner prescribed by the department by rule. A complete  
26 application shall include proof of the written contract and of  
27 payment of the surtax. The application shall contain a sworn  
28 statement, signed by the applicant or its representative,  
29 attesting to the validity of the application. The department  
30 shall, within 30 days after approval of a complete  
31 application, certify to the county information necessary for



1 issuance of a refund to the applicant. Counties are hereby  
2 authorized to issue refunds for this purpose and shall set  
3 aside from the proceeds of the surtax a sum sufficient to pay  
4 any refund lawfully due. Any person who fraudulently obtains  
5 or attempts to obtain a refund pursuant to this subparagraph,  
6 in addition to being liable for repayment of any refund  
7 fraudulently obtained plus a mandatory penalty of 100 percent  
8 of the refund, is guilty of a felony of the third degree,  
9 punishable as provided in s. 775.082, s. 775.083, or s.  
10 775.084.

11 4. In the case of any vessel, railroad, or motor  
12 vehicle common carrier entitled to partial exemption from tax  
13 imposed under this chapter pursuant to s. 212.08(4), (8), or  
14 (9), the basis for imposition of surtax shall be the same as  
15 provided in s. 212.08 and the ratio shall be applied each  
16 month to total purchases in this state of property qualified  
17 for proration which is delivered or sold in the taxing county  
18 to establish the portion used and consumed in intracounty  
19 movement and subject to surtax.

20 Section 48. Paragraph (e) of subsection (1) of section  
21 212.05, Florida Statutes, is amended to read:

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

31

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

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

5           a. All telegraph messages and long-distance telephone  
6 calls beginning and terminating in this state,  
7 telecommunication service as defined in s. 203.012, and those  
8 services described in s. 203.012(2)(a), except that the tax  
9 rate for charges for telecommunication service other than  
10 charges for prepaid calling arrangements is 7 percent. The tax  
11 on charges for prepaid calling arrangements ~~calls made with a~~  
12 ~~prepaid telephone calling card~~ shall be collected at the time  
13 of sale and remitted by the selling dealer ~~selling or~~  
14 ~~recharging a prepaid telephone card.~~

15           (I) "Prepaid calling arrangement" means the separately  
16 stated retail sale by advance payment of communications  
17 services that consist exclusively of telephone calls  
18 originated by using an access number, authorization code, or  
19 other means that may be manually, electronically, or otherwise  
20 entered and that are sold in predetermined units or dollars  
21 whose number declines with use in a known amount. ~~A prepaid~~  
22 ~~telephone card or authorization number means the right to~~  
23 ~~exclusively make telephone calls that must be paid for in~~  
24 ~~advance and that enable the origination of calls using an~~  
25 ~~access number, prepaid mobile account, or authorization code,~~  
26 ~~whether manually or electronically dialed.~~

27           (II) If the sale or recharge of the prepaid ~~telephone~~  
28 calling arrangement ~~card~~ does not take place at the dealer's  
29 place of business, it shall be deemed to take place at the  
30 customer's shipping address or, if no item is shipped, at the  
31

1 customer's address or the location associated with the  
2 customer's mobile telephone number.

3 (III) The sale or recharge of a prepaid calling  
4 arrangement shall be treated as a sale of tangible personal  
5 property for purposes of this chapter, whether or not a  
6 tangible item evidencing such arrangement is furnished to the  
7 purchaser, and such sale within this state ~~phone card~~  
8 ~~constitutes property in this state and~~ subjects the selling  
9 dealer to the jurisdiction of this state for purposes of this  
10 subsection. Notwithstanding any other provision of this  
11 sub-sub-subparagraph, the sale of telecommunication services  
12 to a person who furnishes telecommunication services pursuant  
13 to a prepaid calling arrangement is deemed a sale for resale,  
14 and a dealer selling telecommunication services to such a  
15 person shall accept a resale certificate in lieu of the tax,  
16 in accordance with rules of the department.

17 b. Any television system program service.

18 c. The installation of telecommunication and  
19 telegraphic equipment.

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

22 2. For purposes of this chapter, "television system  
23 program service" means the transmitting, by any means, of any  
24 audio or video signal to a subscriber for other than  
25 retransmission, or the installing, connecting, reconnecting,  
26 disconnecting, moving, or changing of any equipment related to  
27 such service. For purposes of this chapter, the term  
28 "telecommunication service" does not include local service  
29 provided through a pay telephone. The provisions of s.  
30 212.17(3), regarding credit for tax paid on charges  
31 subsequently found to be worthless, shall be equally

1 applicable to any tax paid under the provisions of this  
2 section on charges for prepaid calling arrangements,  
3 telecommunication or telegraph services, or electric power  
4 subsequently found to be uncollectible. The word "charges" in  
5 this paragraph does not include any excise or similar tax  
6 levied by the Federal Government, any political subdivision of  
7 the state, or any municipality upon the purchase, or sale, or  
8 recharge of prepaid calling arrangements or upon the purchase  
9 or sale of telecommunication, television system program, or  
10 telegraph service or electric power, which tax is collected by  
11 the seller from the purchaser.

12           3. Telegraph messages and telecommunication services  
13 which originate or terminate in this state, other than  
14 interstate private communication services, and are billed to a  
15 customer, telephone number, or device located within this  
16 state are taxable under this paragraph. Interstate private  
17 communication services are taxable under this paragraph as  
18 follows:

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

21           b. One hundred percent of the charge imposed for the  
22 total channel mileage between each channel termination point  
23 within this state; and

24           c. The portion of the interstate interoffice channel  
25 mileage charge as determined by multiplying said charge times  
26 a fraction, the numerator of which is the air miles between  
27 the last channel termination point in this state and the  
28 vertical and horizontal coordinates, 7856 and 1756,  
29 respectively, and the denominator of which is the air miles  
30 between the last channel termination point in this state and  
31 the first channel termination point outside this state. The

1 denominator of this fraction shall be adjusted, if necessary,  
2 by adding the numerator of said fraction to similarly  
3 determined air miles in the state in which the other channel  
4 termination point is located, so that the summation of the  
5 apportionment factor for this state and the apportionment  
6 factor for the other state is not greater than one, to ensure  
7 that no more than 100 percent of the interstate interoffice  
8 channel mileage charge can be taxed by this state and another  
9 state.

10           4. The tax imposed pursuant to this paragraph shall  
11 not exceed \$50,000 per calendar year on charges to any person  
12 for interstate telecommunications services defined in s.  
13 203.012(4) and (7)(b), if the majority of such services used  
14 by such person are for communications originating outside of  
15 this state and terminating in this state. This exemption  
16 shall only be granted to holders of a direct pay permit issued  
17 pursuant to this subparagraph. No refunds shall be given for  
18 taxes paid prior to receiving a direct pay permit. Upon  
19 application, the department may issue a direct pay permit to  
20 the purchaser of telecommunications services authorizing such  
21 purchaser to pay tax on such services directly to the  
22 department. Any vendor furnishing telecommunications services  
23 to the holder of a valid direct pay permit shall be relieved  
24 of the obligation to collect and remit the tax on such  
25 service. Tax payments and returns pursuant to a direct pay  
26 permit shall be monthly. For purposes of this subparagraph,  
27 the term "person" shall be limited to a single legal entity  
28 and shall not be construed as meaning a group or combination  
29 of affiliated entities or entities controlled by one person or  
30 group of persons.

31

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

11           Section 49. Effective July 1, 2000, all taxes that  
12 have been collected pursuant to section 212.05(1)(e), Florida  
13 Statutes, at the point of sale on prepaid calling arrangements  
14 before July 1, 2000, must be remitted, and taxes that have  
15 been collected at the point of sale on prepaid calling  
16 arrangements and remitted before July 1, 2000, are not subject  
17 to refund. Any taxes that were not collected pursuant to s.  
18 212.05(1)(e) before July 1, 2000, at point of sale on prepaid  
19 calling arrangements need not be paid and are forgiven.

20           Section 50. Effective January 1, 2002, and applicable  
21 to communications services reflected on bills dated on or  
22 after that date, paragraph (e) of subsection (1) of section  
23 212.05, Florida Statutes, as amended by this act, is amended  
24 to read:

25           212.05 Sales, storage, use tax.--It is hereby declared  
26 to be the legislative intent that every person is exercising a  
27 taxable privilege who engages in the business of selling  
28 tangible personal property at retail in this state, including  
29 the business of making mail order sales, or who rents or  
30 furnishes any of the things or services taxable under this  
31 chapter, or who stores for use or consumption in this state

1 any item or article of tangible personal property as defined  
2 herein and who leases or rents such property within the state.

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

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

7 a. ~~All telegraph messages and long-distance telephone~~  
8 ~~calls beginning and terminating in this state,~~  
9 ~~telecommunication service as defined in s. 203.012, and those~~  
10 ~~services described in s. 203.012(2)(a), except that the tax~~  
11 ~~rate for charges for telecommunication service other than~~  
12 ~~charges for prepaid calling arrangements is 7 percent. The tax~~  
13 ~~on charges for prepaid calling arrangements shall be collected~~  
14 ~~at the time of sale and remitted by the selling dealer.~~

15 (I) "Prepaid calling arrangement" means the separately  
16 stated retail sale by advance payment of communications  
17 services that consist exclusively of telephone calls  
18 originated by using an access number, authorization code, or  
19 other means that may be manually, electronically, or otherwise  
20 entered and that are sold in predetermined units or dollars  
21 whose number declines with use in a known amount. ~~A prepaid~~  
22 ~~calling arrangement means the separately stated retail sale by~~  
23 ~~advance payment of a communication service exclusively~~  
24 ~~consisting of the right to originate telephone service~~  
25 ~~otherwise subject to a toll charge. The right must be accessed~~  
26 ~~by use of an access number, authorization code, or other means~~  
27 ~~that is not preprogrammed into a customer device originating~~  
28 ~~the service, other than a prepaid telephone card, but which~~  
29 ~~may be manually, electronically, or otherwise entered. The~~  
30 ~~sale must not be for resale and must be made in dollars and~~  
31 ~~must entitle the purchaser to use the telephone service for a~~

1 ~~predetermined unit of time that declines with use in a known~~  
2 ~~amount.~~

3 (II) If the sale or recharge of the prepaid calling  
4 arrangement does not take place at the dealer's place of  
5 business, it shall be deemed to take place at the customer's  
6 shipping address or, if no item is shipped, at the customer's  
7 address or the location associated with the customer's mobile  
8 telephone number.

9 (III) The sale or recharge of a prepaid calling  
10 arrangement shall be treated as a sale of tangible personal  
11 property for purposes of this chapter, whether or not a  
12 tangible item evidencing such arrangement is furnished to the  
13 purchaser, and such sale within this state subjects the  
14 selling dealer to the jurisdiction of this state for purposes  
15 of this subsection. ~~Notwithstanding any other provision of~~  
16 ~~this sub-sub-subparagraph, the sale of telecommunication~~  
17 ~~services to a person who furnishes telecommunication services~~  
18 ~~pursuant to a prepaid calling arrangement is deemed a sale for~~  
19 ~~resale, and a dealer selling telecommunication services to~~  
20 ~~such a person shall accept a resale certificate in lieu of the~~  
21 ~~tax, in accordance with rules of the department.~~

22 ~~b. Any television system program service.~~

23 ~~b.e.~~ The installation of telecommunication and  
24 telegraphic equipment.

25 ~~c.d.~~ Electrical power or energy, except that the tax  
26 rate for charges for electrical power or energy is 7 percent.

27 2. ~~For purposes of this chapter, "television system~~  
28 ~~program service" means the transmitting, by any means, of any~~  
29 ~~audio or video signal to a subscriber for other than~~  
30 ~~retransmission, or the installing, connecting, reconnecting,~~  
31 ~~disconnecting, moving, or changing of any equipment related to~~



1 ~~such service. For purposes of this chapter, the term~~  
2 ~~"telecommunication service" does not include local service~~  
3 ~~provided through a pay telephone. The provisions of s.~~  
4 ~~212.17(3), regarding credit for tax paid on charges~~  
5 ~~subsequently found to be worthless, shall be equally~~  
6 ~~applicable to any tax paid under the provisions of this~~  
7 ~~section on charges for prepaid calling arrangements,~~  
8 ~~telecommunication or telegraph services, or electric power~~  
9 ~~subsequently found to be uncollectible. The word "charges" in~~  
10 ~~this paragraph does not include any excise or similar tax~~  
11 ~~levied by the Federal Government, any political subdivision of~~  
12 ~~the state, or any municipality upon the purchase, sale, or~~  
13 ~~recharge of prepaid calling arrangements or upon the purchase~~  
14 ~~or sale of telecommunication, television system program, or~~  
15 ~~telegraph service or electric power, which tax is collected by~~  
16 ~~the seller from the purchaser.~~

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

24 ~~a. One hundred percent of the charge imposed at each~~  
25 ~~channel termination point within this state;~~

26 ~~b. One hundred percent of the charge imposed for the~~  
27 ~~total channel mileage between each channel termination point~~  
28 ~~within this state; and~~

29 ~~c. The portion of the interstate interoffice channel~~  
30 ~~mileage charge as determined by multiplying said charge times~~  
31 ~~a fraction, the numerator of which is the air miles between~~

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

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

1 ~~the term "person" shall be limited to a single legal entity~~  
2 ~~and shall not be construed as meaning a group or combination~~  
3 ~~of affiliated entities or entities controlled by one person or~~  
4 ~~group of persons.~~

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

15 Section 51. Effective January 1, 2002, paragraph (b)  
16 of subsection (2) and paragraph (c) of subsection (3) of  
17 section 212.054, Florida Statutes, as amended by this act, are  
18 amended to read:

19 212.054 Discretionary sales surtax; limitations,  
20 administration, and collection.--

21 (2)

22 (b) However:

23 1. The sales amount above \$5,000 on any item of  
24 tangible personal property ~~and on long-distance telephone~~  
25 ~~service~~ shall not be subject to the surtax. However, charges  
26 for prepaid calling arrangements, as defined in s.  
27 212.05(1)(e)1.a., shall be subject to the surtax. For purposes  
28 of administering the \$5,000 limitation on an item of tangible  
29 personal property, if two or more taxable items of tangible  
30 personal property are sold to the same purchaser at the same  
31 time and, under generally accepted business practice or

1 industry standards or usage, are normally sold in bulk or are  
2 items that, when assembled, comprise a working unit or part of  
3 a working unit, such items must be considered a single item  
4 for purposes of the \$5,000 limitation when supported by a  
5 charge ticket, sales slip, invoice, or other tangible evidence  
6 of a single sale or rental. ~~The limitation provided in this~~  
7 ~~subparagraph does not apply to the sale of any other service.~~

8         2. In the case of utility, ~~telecommunication, or~~  
9 ~~television system program~~ services billed on or after the  
10 effective date of any such surtax, the entire amount of the  
11 charge for utility, ~~telecommunication, or television system~~  
12 ~~program~~ services shall be subject to the surtax. In the case  
13 of utility, ~~telecommunication, or television system program~~  
14 services billed after the last day the surtax is in effect,  
15 the entire amount of the charge on said items shall not be  
16 subject to the surtax. The term "utility service," as used in  
17 this section, does not include any communications services as  
18 defined in chapter 202.

19         3. In the case of written contracts which are signed  
20 prior to the effective date of any such surtax for the  
21 construction of improvements to real property or for  
22 remodeling of existing structures, the surtax shall be paid by  
23 the contractor responsible for the performance of the  
24 contract. However, the contractor may apply for one refund of  
25 any such surtax paid on materials necessary for the completion  
26 of the contract. Any application for refund shall be made no  
27 later than 15 months following initial imposition of the  
28 surtax in that county. The application for refund shall be in  
29 the manner prescribed by the department by rule. A complete  
30 application shall include proof of the written contract and of  
31 payment of the surtax. The application shall contain a sworn

1 statement, signed by the applicant or its representative,  
2 attesting to the validity of the application. The department  
3 shall, within 30 days after approval of a complete  
4 application, certify to the county information necessary for  
5 issuance of a refund to the applicant. Counties are hereby  
6 authorized to issue refunds for this purpose and shall set  
7 aside from the proceeds of the surtax a sum sufficient to pay  
8 any refund lawfully due. Any person who fraudulently obtains  
9 or attempts to obtain a refund pursuant to this subparagraph,  
10 in addition to being liable for repayment of any refund  
11 fraudulently obtained plus a mandatory penalty of 100 percent  
12 of the refund, is guilty of a felony of the third degree,  
13 punishable as provided in s. 775.082, s. 775.083, or s.  
14 775.084.

15 4. In the case of any vessel, railroad, or motor  
16 vehicle common carrier entitled to partial exemption from tax  
17 imposed under this chapter pursuant to s. 212.08(4), (8), or  
18 (9), the basis for imposition of surtax shall be the same as  
19 provided in s. 212.08 and the ratio shall be applied each  
20 month to total purchases in this state of property qualified  
21 for proration which is delivered or sold in the taxing county  
22 to establish the portion used and consumed in intracounty  
23 movement and subject to surtax.

24 (3) For the purpose of this section, a transaction  
25 shall be deemed to have occurred in a county imposing the  
26 surtax when:

27 (c) The consumer of utility ~~or television system~~  
28 ~~program~~ services is located in the county, ~~or the~~  
29 ~~telecommunication services are provided to a location within~~  
30 ~~the county.~~

31

1 Section 52. Effective July 1, 2000, subsection (1) of  
2 section 212.031, Florida Statutes, is amended to read:

3 212.031 Lease or rental of or license in real  
4 property.--

5 (1)(a) It is declared to be the legislative intent  
6 that every person is exercising a taxable privilege who  
7 engages in the business of renting, leasing, letting, or  
8 granting a license for the use of any real property unless  
9 such property is:

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

11 2. Used exclusively as dwelling units.

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

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

23 5. A public or private street or right-of-way and  
24 poles, conduits, fixtures, and similar improvements located on  
25 such streets or rights-of-way, occupied or used by a utility  
26 or franchised cable television company for utility or  
27 communications or television purposes. For purposes of this  
28 subparagraph, the term "utility" means any person providing  
29 utility services as defined in s. 203.012. This exception also  
30 applies to property, ~~excluding buildings,~~ wherever located, on  
31 which the following are placed: towers, antennas, cables,

1 ~~adjacent~~ accessory structures, or ~~adjacent accessory~~  
2 equipment, not including switching equipment, used in the  
3 provision of ~~cellular, enhanced specialized mobile radio, or~~  
4 ~~personal~~ communications services as defined in s. 202.11 ~~are~~  
5 placed. For purposes of this chapter, towers used in the  
6 provision of mobile communications services, as defined in s.  
7 202.11, are considered to be fixtures.

8           6. A public street or road which is used for  
9 transportation purposes.

10           7. Property used at an airport exclusively for the  
11 purpose of aircraft landing or aircraft taxiing or property  
12 used by an airline for the purpose of loading or unloading  
13 passengers or property onto or from aircraft or for fueling  
14 aircraft.

15           8.a. Property used at a port authority, as defined in  
16 s. 315.02(2), exclusively for the purpose of oceangoing  
17 vessels or tugs docking, or such vessels mooring on property  
18 used by a port authority for the purpose of loading or  
19 unloading passengers or cargo onto or from such a vessel, or  
20 property used at a port authority for fueling such vessels, or  
21 to the extent that the amount paid for the use of any property  
22 at the port is based on the charge for the amount of tonnage  
23 actually imported or exported through the port by a tenant.

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

28           9. Property used as an integral part of the  
29 performance of qualified production services. As used in this  
30 subparagraph, the term "qualified production services" means  
31 any activity or service performed directly in connection with

1 the production of a qualified motion picture, as defined in s.  
2 212.06(1)(b), and includes:

3 a. Photography, sound and recording, casting, location  
4 managing and scouting, shooting, creation of special and  
5 optical effects, animation, adaptation (language, media,  
6 electronic, or otherwise), technological modifications,  
7 computer graphics, set and stage support (such as  
8 electricians, lighting designers and operators, greensmen,  
9 prop managers and assistants, and grips), wardrobe (design,  
10 preparation, and management), hair and makeup (design,  
11 production, and application), performing (such as acting,  
12 dancing, and playing), designing and executing stunts,  
13 coaching, consulting, writing, scoring, composing,  
14 choreographing, script supervising, directing, producing,  
15 transmitting dailies, dubbing, mixing, editing, cutting,  
16 looping, printing, processing, duplicating, storing, and  
17 distributing;

18 b. The design, planning, engineering, construction,  
19 alteration, repair, and maintenance of real or personal  
20 property including stages, sets, props, models, paintings, and  
21 facilities principally required for the performance of those  
22 services listed in sub-subparagraph a.; and

23 c. Property management services directly related to  
24 property used in connection with the services described in  
25 sub-subparagraphs a. and b.

26 10. Leased, subleased, licensed, or rented to a person  
27 providing food and drink concessionaire services within the  
28 premises of a convention hall, exhibition hall, auditorium,  
29 stadium, theater, arena, civic center, performing arts center,  
30 recreational facility, or any business operated under a permit  
31 issued pursuant to chapter 550. A person providing retail



1 concessionaire services involving the sale of food and drink  
2 or other tangible personal property within the premises of an  
3 airport shall be subject to tax on the rental of real property  
4 used for that purpose, but shall not be subject to the tax on  
5 any license to use the property. For purposes of this  
6 subparagraph, the term "sale" shall not include the leasing of  
7 tangible personal property.

8           11. Property occupied pursuant to an instrument  
9 calling for payments which the department has declared, in a  
10 Technical Assistance Advisement issued on or before March 15,  
11 1993, to be nontaxable pursuant to rule 12A-1.070(19)(c),  
12 Florida Administrative Code; provided that this subparagraph  
13 shall only apply to property occupied by the same person  
14 before and after the execution of the subject instrument and  
15 only to those payments made pursuant to such instrument,  
16 exclusive of renewals and extensions thereof occurring after  
17 March 15, 1993.

18           (b) When a lease involves multiple use of real  
19 property wherein a part of the real property is subject to the  
20 tax herein, and a part of the property would be excluded from  
21 the tax under subparagraph (a)1., subparagraph (a)2., ~~or~~  
22 subparagraph (a)3., or subparagraph (a)5., the department  
23 shall determine, from the lease or license and such other  
24 information as may be available, that portion of the total  
25 rental charge which is exempt from the tax imposed by this  
26 section. The portion of the premises leased or rented by a  
27 for-profit entity providing a residential facility for the  
28 aged will be exempt on the basis of a pro rata portion  
29 calculated by combining the square footage of the areas used  
30 for residential units by the aged and for the care of such  
31 residents and dividing the resultant sum by the total square

1 footage of the rented premises. For purposes of this section,  
2 the term "residential facility for the aged" means a facility  
3 that is licensed or certified in whole or in part under  
4 chapter 400 or chapter 651; or that provides residences to the  
5 elderly and is financed by a mortgage or loan made or insured  
6 by the United States Department of Housing and Urban  
7 Development under s. 202, s. 202 with a s. 8 subsidy, s.  
8 221(d)(3) or (4), s. 232, or s. 236 of the National Housing  
9 Act; or other such similar facility that provides residences  
10 primarily for the elderly.

11 (c) For the exercise of such privilege, as tax is  
12 levied in an amount equal to 6 percent of and on the total  
13 rent or license fee charged for such real property by the  
14 person charging or collecting the rental or license fee. The  
15 total rent or license fee charged for such real property shall  
16 include payments for the granting of a privilege to use or  
17 occupy real property for any purpose and shall include base  
18 rent, percentage rents, or similar charges. Such charges shall  
19 be included in the total rent or license fee subject to tax  
20 under this section whether or not they can be attributed to  
21 the ability of the lessor's or licensor's property as used or  
22 operated to attract customers. Payments for intrinsically  
23 valuable personal property such as franchises, trademarks,  
24 service marks, logos, or patents are not subject to tax under  
25 this section. In the case of a contractual arrangement that  
26 provides for both payments taxable as total rent or license  
27 fee and payments not subject to tax, the tax shall be based on  
28 a reasonable allocation of such payments and shall not apply  
29 to that portion which is for the nontaxable payments.

30 (d) When the rental or license fee of any such real  
31 property is paid by way of property, goods, wares,

1 merchandise, services, or other thing of value, the tax shall  
2 be at the rate of 6 percent of the value of the property,  
3 goods, wares, merchandise, services, or other thing of value.

4       Section 53. The taxes imposed by sections 203.01,  
5 202.12, and 202.19, Florida Statutes, on communications  
6 services shall be applied in accordance with chapter 202,  
7 Florida Statutes, as created by this act, to communications  
8 services reflected on bills dated on or after January 1, 2002.

9       Section 54. The sums of \$1,272,073, to be used for  
10 salaries, benefits and expenses, and \$42,000, for operating  
11 capital outlay, are appropriated from the Administrative Trust  
12 Fund to the Department of Revenue, and 21 FTE's are  
13 authorized, to implement the provisions of this act.

14       Section 55. Except as otherwise expressly provided in  
15 this act, this act shall take effect July 1, 2000.

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1 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
2 COMMITTEE SUBSTITUTE FOR  
3 SB 1338

4 CS for SB 1338 substantially rewrites Florida's communications  
5 tax law. It creates a new chapter 202, the Communications  
6 Services Tax Simplification Law, and provides that  
7 communications services are subject to a uniform statewide tax  
8 rate and a local tax to be administered by the Department of  
9 Revenue.

10 The taxes imposed under Chapter 202 will replace the sales tax  
11 on telecommunications and cable services, as well as the  
12 public services tax and local franchise fees on these  
13 services, effective January 1, 2002. The gross receipts tax on  
14 telecommunications services will be administered under this  
15 new chapter, and cable service will be subject to this tax.  
16 Local governments will be limited in their imposition of  
17 permit fees on dealers of communications services. The  
18 intention of the bill is to simplify the imposition and  
19 administration of taxes on dealers of communications services,  
20 with tax rates generating the same amount of revenue in the  
21 first year as would have been raised under the previous tax  
22 structure.

23 The bill also changes the taxation of prepaid calling  
24 arrangements effective July 1, 2000, by subjecting charges for  
25 prepaid calling arrangements to the 6 percent sales and use  
26 tax instead of the 7 percent telecommunication service tax  
27 rate and to the discretionary sales surtax pursuant to s.  
28 212.054. It specifies that such sales of prepaid calling  
29 arrangements are not subject to the gross receipts tax or the  
30 public services tax. The bill also forgives gross receipts tax  
31 and public services taxes not paid at retail before July 1,  
2000.

The bill includes leases for the placement of wireless towers  
and leases of space on buildings for the placement of wireless  
antennas to the exemption from sales tax for the lease or  
rental of public or private streets or rights-of-way for  
purposes of placing utility facilities.