

By Senator Horne

6-1316B-00

1                                   A bill to be entitled  
2           An act relating to the taxation of prepaid  
3           telephone calling cards; amending s. 166.231,  
4           F.S.; excluding from the public service tax  
5           charges at retail on prepaid calling cards;  
6           providing applicability of the amendment to s.  
7           166.231(9), F.S.; amending s. 212.05, F.S.;  
8           reducing the amount of the sales tax which is  
9           imposed on prepaid calling cards; amending s.  
10          212.054, F.S.; providing that the local option  
11          sales tax applies to prepaid calling cards;  
12          providing an effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16           Section 1. Paragraph (f) of subsection (9) of section  
17 166.231, Florida Statutes, is amended to read:

18           166.231 Municipalities; public service tax.--

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

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

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

14 Section 2. Paragraph (e) of subsection (1) of section  
15 212.05, Florida Statutes, is amended to read:

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

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

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

29 a. All telegraph messages and long-distance telephone  
30 calls beginning and terminating in this state,  
31 telecommunication service as defined in s. 203.012, and those

1 services described in s. 203.012(2)(a), except that the tax  
2 rate for charges for telecommunication service is 7 percent.  
3 No tax shall be due under this paragraph on a long-distance  
4 telephone call or telecommunication service that is sold by  
5 way of a prepaid telephone calling card that is taxable under  
6 sub-subparagraph b.

7 b. ~~The tax on calls made with a~~ Prepaid telephone  
8 calling cards. The tax imposed by this sub-subparagraph card  
9 shall be collected at the time of sale or recharge of the card  
10 and remitted by the dealer selling or recharging a prepaid  
11 telephone calling card.

12 (I) A prepaid telephone calling card ~~or authorization~~  
13 ~~number~~ means the right to exclusively make telephone calls  
14 that must be paid for in advance and that enable the  
15 origination of calls using an access number, prepaid wireless  
16 ~~mobile~~ account, or authorization code or number, whether  
17 manually or electronically dialed.

18 (II) If the sale or recharge of the prepaid telephone  
19 calling card does not take place at the dealer's place of  
20 business, it shall be deemed to take place at the customer's  
21 shipping address or, if no item is shipped, at the customer's  
22 address or the location associated with the customer's mobile  
23 telephone number.

24 (III) The prepaid telephone calling ~~phone~~ card  
25 constitutes property in this state and subjects the selling  
26 dealer to the jurisdiction of this state for purposes of this  
27 subsection.

28 c.b. Any television system program service.

29 d.c. The installation of telecommunication and  
30 telegraphic equipment.

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1           ~~e.d.~~ Electrical power or energy, except that the tax  
2 rate for charges for electrical power or energy is 7 percent.

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

22           3. Telegraph messages and telecommunication services  
23 ~~that which~~ originate or terminate in this state, other than  
24 interstate private communication services, and are billed to a  
25 customer, telephone number, or device located within this  
26 state are taxable under sub-subparagraph 1.a.~~this paragraph.~~  
27 Interstate private communication services are taxable under  
28 sub-subparagraph 1.a.~~this paragraph~~ as follows:

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

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1           b. One hundred percent of the charge imposed for the  
2 total channel mileage between each channel termination point  
3 within this state; and

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

21           4. The tax imposed pursuant to sub-subparagraph 1.a.  
22 ~~this paragraph~~ shall not exceed \$50,000 per calendar year on  
23 charges to any person for interstate telecommunications  
24 services defined in s. 203.012(4) and (7)(b), if the majority  
25 of such services used by such person are for communications  
26 originating outside of this state and terminating in this  
27 state. This exemption shall only be granted to holders of a  
28 direct pay permit issued pursuant to this subparagraph. No  
29 refunds shall be given for taxes paid prior to receiving a  
30 direct pay permit. Upon application, the department may issue  
31 a direct pay permit to the purchaser of telecommunications

1 services authorizing such purchaser to pay tax on such  
2 services directly to the department. Any vendor furnishing  
3 telecommunications services to the holder of a valid direct  
4 pay permit shall be relieved of the obligation to collect and  
5 remit the tax on such service. Tax payments and returns  
6 pursuant to a direct pay permit shall be monthly. For purposes  
7 of this subparagraph, the term "person" shall be limited to a  
8 single legal entity and shall not be construed as meaning a  
9 group or combination of affiliated entities or entities  
10 controlled by one person or group of persons.

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

21 Section 3. Paragraph (b) of subsection (2) of section  
22 212.054, Florida Statutes, is amended to read:

23 212.054 Discretionary sales surtax; limitations,  
24 administration, and collection.--

25 (2)

26 (b) However:

27 1. The ~~tax on any~~ sales amount above \$5,000 on any  
28 item of tangible personal property and on long-distance  
29 telephone service shall not be subject to the surtax.  
30 However, charges for prepaid telephone calling cards, as  
31 defined in s. 212.05(1)(e)1.b., shall be subject to the

1 surtax.For purposes of administering the \$5,000 limitation on  
2 an item of tangible personal property, if two or more taxable  
3 items of tangible personal property are sold to the same  
4 purchaser at the same time and, under generally accepted  
5 business practice or industry standards or usage, are normally  
6 sold in bulk or are items that, when assembled, comprise a  
7 working unit or part of a working unit, such items must be  
8 considered a single item for purposes of the \$5,000 limitation  
9 when supported by a charge ticket, sales slip, invoice, or  
10 other tangible evidence of a single sale or rental. The  
11 limitation provided in this subparagraph does not apply to the  
12 sale of any other service.

13         2. In the case of utility, telecommunication, or  
14 television system program services billed on or after the  
15 effective date of any such surtax, the entire amount of the  
16 charge tax for utility, telecommunication, or television  
17 system program services shall be subject to the surtax. In  
18 the case of utility, telecommunication, or television system  
19 program services billed after the last day the surtax is in  
20 effect, the entire amount of the charge tax on said items  
21 shall not be subject to the surtax.

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

1 the manner prescribed by the department by rule. A complete  
2 application shall include proof of the written contract and of  
3 payment of the surtax. The application shall contain a sworn  
4 statement, signed by the applicant or its representative,  
5 attesting to the validity of the application. The department  
6 shall, within 30 days after approval of a complete  
7 application, certify to the county information necessary for  
8 issuance of a refund to the applicant. Counties are hereby  
9 authorized to issue refunds for this purpose and shall set  
10 aside from the proceeds of the surtax a sum sufficient to pay  
11 any refund lawfully due. Any person who fraudulently obtains  
12 or attempts to obtain a refund pursuant to this subparagraph,  
13 in addition to being liable for repayment of any refund  
14 fraudulently obtained plus a mandatory penalty of 100 percent  
15 of the refund, is guilty of a felony of the third degree,  
16 punishable as provided in s. 775.082, s. 775.083, or s.  
17 775.084.

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

27 Section 4. All taxes that have been collected pursuant  
28 to section 166.231(9)(f), Florida Statutes, on prepaid  
29 telephone calling cards sold at retail prior to the effective  
30 date of this act must be remitted, and taxes that have been  
31 remitted before July 1, 2000, on prepaid telephone calling



1 cards sold at retail are not subject to refund. Any taxes that  
2 were not collected pursuant to section 166.231(9)(f), Florida  
3 Statutes, on prepaid telephone calling cards sold at retail  
4 which taxes were not collected prior to the effective date of  
5 this act need not be paid and are forgiven.

6 Section 5. This act shall take effect July 1, 2000.

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9 SENATE SUMMARY

10 Relates to the taxation of prepaid telephone calling  
11 cards. Excludes certain services paid for by such cards  
12 from the public service tax. Lowers from 7 percent to 6  
13 percent the amount of the sales tax imposed on charges  
14 paid by such cards. Provides that the local option sales  
15 tax applies to the cards.  
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