

By Senator Horne

6-1314A-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 for telecommunications services which
6 are paid for through a prepaid calling card;
7 amending ss. 203.01, 203.012, F.S.; revising
8 the definition of the term "gross receipts";
9 amending s. 212.05, F.S.; reducing the amount
10 of the sales tax which is imposed on prepaid
11 calling cards; amending s. 212.054, F.S.;
12 providing that the local option sales tax
13 applies to prepaid calling cards; providing an
14 effective date.

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

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18 Section 1. Paragraphs (a) and (e) of subsection (9) of
19 section 166.231, Florida Statutes, are amended to read:

20 166.231 Municipalities; public service tax.--

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

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

30 2. Only upon purchases within the municipality of
31 telecommunications service that originates and terminates in

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

21 (e) Purchases of local telephone service or other
22 telecommunications service for use in the conduct of a
23 telecommunications service for hire or otherwise for resale,
24 including resale of telecommunication services paid by using a
25 prepaid telephone calling card as defined in s.
26 212.05(1)(e)1.b., are exempt from the tax imposed by this
27 subsection.

28 Section 2. Subsections (3) and (4) of section 203.01,
29 Florida Statutes, are amended to read:

30 203.01 Tax on gross receipts for utility services.--
31

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

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

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

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

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

1 and documentation of the resale in this state by a person
2 making the sale for resale in this state will be accepted by
3 the department when submitted during the protest period but
4 will not be accepted when submitted in any proceeding under
5 chapter 120 or any circuit court action instituted under
6 chapter 72.

7 (4) Gross receipts subject to the tax imposed by this
8 section shall not include receipts from sales or leases of
9 telecommunications service for use in the conduct of a
10 telecommunications service for hire or otherwise for resale,
11 including resale of telecommunication services paid by using a
12 prepaid telephone calling card as defined in s.
13 212.05(1)(e)1.b.

14 Section 3. Paragraph (b) of subsection (2) of section
15 203.012, Florida Statutes, is amended to read:

16 203.012 Definitions.--As used in this chapter:

17 (1) The term "access charge" or "right of access"
18 means any charge to any person for the right to use or for the
19 use of a telephone system which includes equipment,
20 facilities, or services to originate or terminate any of the
21 services defined in subsection (4), subsection (5), subsection
22 (6), or subsection (7) and which specifically includes
23 customer access line charges, which includes the gross amount
24 paid by subscribers and users in this state for access into
25 the intrastate or interstate interexchange network as
26 authorized by the Federal Communications Commission or the
27 Florida Public Service Commission.

28 (2)

29 (b) Gross receipts for telecommunication services do
30 not include:

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

4 2. Charges made to the public for commercial or cable
5 television, unless it is used for two-way communication;
6 however, if such two-way communication service is separately
7 billed, only the charges made for two-way communication
8 service will be subject to tax hereunder;

9 3. Charges made by hotels and motels, which are
10 required under the provisions of s. 212.03 to collect
11 transient rentals tax from tenants and lessees, for local
12 telephone service or toll telephone service, when such charge
13 occurs incidental to the right of occupancy in such hotel or
14 motel;

15 4. Connection and disconnection charges; move or
16 change charges; suspension of service charges; and service
17 order, number change, and restoration charges; ~~or~~

18 5. Charges for services or items of equipment supplied
19 by providers of the telecommunication services described in
20 paragraph (5)(b), such as maintenance charges, equipment
21 sales, or rental which are incidental to the provision of such
22 telecommunication services, provided such charges are
23 separately stated, itemized, or described on the bill,
24 invoice, or other tangible evidence of the provision of such
25 service; ~~or-~~

26 6. Charges for telecommunication services which are
27 paid by using a prepaid telephone calling card as defined in
28 s. 212.05(1)(e)1.b.

29 Section 4. Paragraph (e) of subsection (1) of section
30 212.05, Florida Statutes, is amended to read:

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1 212.05 Sales, storage, use tax.--It is hereby declared
2 to be the legislative intent that every person is exercising a
3 taxable privilege who engages in the business of selling
4 tangible personal property at retail in this state, including
5 the business of making mail order sales, or who rents or
6 furnishes any of the things or services taxable under this
7 chapter, or who stores for use or consumption in this state
8 any item or article of tangible personal property as defined
9 herein and who leases or rents such property within the state.

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

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

14 a. All telegraph messages and long-distance telephone
15 calls beginning and terminating in this state,
16 telecommunication service as defined in s. 203.012, and those
17 services described in s. 203.012(2)(a), except that the tax
18 rate for charges for telecommunication service is 7 percent.
19 No tax shall be due under this paragraph on a long-distance
20 telephone call or telecommunication service that is sold by
21 way of a prepaid telephone calling card that is taxable under
22 sub-subparagraph b.

23 ~~b. The tax on calls made with a~~ Prepaid telephone
24 calling cards. The tax imposed by this sub-subparagraph ~~card~~
25 shall be collected at the time of sale or recharge of the card
26 and remitted by the dealer selling or recharging a prepaid
27 telephone calling card.

28 (I) A prepaid telephone calling card ~~or authorization~~
29 ~~number~~ means the right to exclusively make telephone calls
30 that must be paid for in advance and that enable the
31 origination of calls using an access number, prepaid wireless

1 ~~mobile~~ account, or authorization code or number, whether
2 manually or electronically dialed.

3 (II) If the sale or recharge of the prepaid telephone
4 calling card 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 prepaid telephone calling ~~phone~~ card
10 constitutes property in this state and subjects the selling
11 dealer to the jurisdiction of this state for purposes of this
12 subsection.

13 ~~c.b.~~ Any television system program service.

14 ~~d.e.~~ The installation of telecommunication and
15 telegraphic equipment.

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

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

1 or similar tax levied by the Federal Government, any political
2 subdivision of the state, or any municipality upon the
3 purchase or sale of telecommunication, television system
4 program, or telegraph service or electric power, which tax is
5 collected by the seller from the purchaser.

6 3. Telegraph messages and telecommunication services
7 that ~~which~~ originate or terminate in this state, other than
8 interstate private communication services, and are billed to a
9 customer, telephone number, or device located within this
10 state are taxable under sub-subparagraph 1.a.~~this paragraph~~.
11 Interstate private communication services are taxable under
12 sub-subparagraph 1.a.~~this paragraph~~ as follows:

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

15 b. One hundred percent of the charge imposed for the
16 total channel mileage between each channel termination point
17 within this state; and

18 c. The portion of the interstate interoffice channel
19 mileage charge as determined by multiplying said charge times
20 a fraction, the numerator of which is the air miles between
21 the last channel termination point in this state and the
22 vertical and horizontal coordinates, 7856 and 1756,
23 respectively, and the denominator of which is the air miles
24 between the last channel termination point in this state and
25 the first channel termination point outside this state. The
26 denominator of this fraction shall be adjusted, if necessary,
27 by adding the numerator of said fraction to similarly
28 determined air miles in the state in which the other channel
29 termination point is located, so that the summation of the
30 apportionment factor for this state and the apportionment
31 factor for the other state is not greater than one, to ensure

1 that no more than 100 percent of the interstate interoffice
2 channel mileage charge can be taxed by this state and another
3 state.

4 4. The tax imposed pursuant to sub-subparagraph 1.a.
5 ~~this paragraph~~ shall not exceed \$50,000 per calendar year on
6 charges to any person for interstate telecommunications
7 services defined in s. 203.012(4) and (7)(b), if the majority
8 of such services used by such person are for communications
9 originating outside of this state and terminating in this
10 state. This exemption shall only be granted to holders of a
11 direct pay permit issued pursuant to this subparagraph. No
12 refunds shall be given for taxes paid prior to receiving a
13 direct pay permit. Upon application, the department may issue
14 a direct pay permit to the purchaser of telecommunications
15 services authorizing such purchaser to pay tax on such
16 services directly to the department. Any vendor furnishing
17 telecommunications services to the holder of a valid direct
18 pay permit shall be relieved of the obligation to collect and
19 remit the tax on such service. Tax payments and returns
20 pursuant to a direct pay permit shall be monthly. For purposes
21 of this subparagraph, the term "person" shall be limited to a
22 single legal entity and shall not be construed as meaning a
23 group or combination of affiliated entities or entities
24 controlled by one person or group of persons.

25 5. If the sale of a television system program service,
26 as defined in this paragraph, also involves the sale of an
27 item exempt under s. 212.08(7)(j), the tax shall be applied to
28 the value of the taxable service when it is sold separately.
29 If the company does not offer this service separately, the
30 consideration paid shall be separately identified and stated
31 with respect to the taxable and exempt portions of the

1 transaction as a condition of the exemption, except that the
2 amount identified as taxable shall not be less than the cost
3 of the service.

4 Section 5. Paragraph (b) of subsection (2) of section
5 212.054, Florida Statutes, is amended to read:

6 212.054 Discretionary sales surtax; limitations,
7 administration, and collection.--

8 (2)

9 (b) However:

10 1. The ~~tax on any~~ sales amount above \$5,000 on any
11 item of tangible personal property and on long-distance
12 telephone service shall not be subject to the surtax.
13 However, charges for prepaid telephone calling cards, as
14 defined in s. 212.05(1)(e)1.b., shall be subject to the
15 surtax. For purposes of administering the \$5,000 limitation on
16 an item of tangible personal property, if two or more taxable
17 items of tangible personal property are sold to the same
18 purchaser at the same time and, under generally accepted
19 business practice or industry standards or usage, are normally
20 sold in bulk or are items that, when assembled, comprise a
21 working unit or part of a working unit, such items must be
22 considered a single item for purposes of the \$5,000 limitation
23 when supported by a charge ticket, sales slip, invoice, or
24 other tangible evidence of a single sale or rental. The
25 limitation provided in this subparagraph does not apply to the
26 sale of any other service.

27 2. In the case of utility, telecommunication, or
28 television system program services billed on or after the
29 effective date of any such surtax, the entire amount of the
30 charge tax for utility, telecommunication, or television
31 system program services shall be subject to the surtax. In

1 the case of utility, telecommunication, or television system
2 program services billed after the last day the surtax is in
3 effect, the entire amount of the charge tax on said items
4 shall not be subject to the surtax.

5 3. In the case of written contracts which are signed
6 prior to the effective date of any such surtax for the
7 construction of improvements to real property or for
8 remodeling of existing structures, the surtax shall be paid by
9 the contractor responsible for the performance of the
10 contract. However, the contractor may apply for one refund of
11 any such surtax paid on materials necessary for the completion
12 of the contract. Any application for refund shall be made no
13 later than 15 months following initial imposition of the
14 surtax in that county. The application for refund shall be in
15 the manner prescribed by the department by rule. A complete
16 application shall include proof of the written contract and of
17 payment of the surtax. The application shall contain a sworn
18 statement, signed by the applicant or its representative,
19 attesting to the validity of the application. The department
20 shall, within 30 days after approval of a complete
21 application, certify to the county information necessary for
22 issuance of a refund to the applicant. Counties are hereby
23 authorized to issue refunds for this purpose and shall set
24 aside from the proceeds of the surtax a sum sufficient to pay
25 any refund lawfully due. Any person who fraudulently obtains
26 or attempts to obtain a refund pursuant to this subparagraph,
27 in addition to being liable for repayment of any refund
28 fraudulently obtained plus a mandatory penalty of 100 percent
29 of the refund, is guilty of a felony of the third degree,
30 punishable as provided in s. 775.082, s. 775.083, or s.
31 775.084.

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

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

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13 SENATE SUMMARY

14 Relates to the taxation of prepaid telephone calling
15 cards. Excludes certain services paid for by such cards
16 from the public service tax. Amends the definition of the
17 term "gross receipts" for purposes of ch. 203, F.S.
18 Lowers from 7 percent to 6 percent the amount of the
19 sales tax imposed on charges paid by such cards. Provides
20 that the local option sales tax applies to the cards.
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