

By Senators Horne and Carlton

6-947-01

See HB

1 A bill to be entitled
2 An act relating to tax on communications
3 services; amending s. 202.11, F.S.; revising
4 and providing definitions; amending s. 202.12,
5 F.S.; revising provisions relating to
6 application of the tax; providing for
7 application of the tax rate to private
8 communications services and mobile
9 communications services; providing the initial
10 method for determining the sales price of
11 private communications services and a revised
12 method effective January 1, 2004; relieving
13 service providers of certain liability;
14 creating s. 202.155, F.S.; providing special
15 rules for mobile communications services;
16 providing duties of home service providers and
17 the Department of Revenue in determining a
18 customer's place of primary use and determining
19 the correct taxing jurisdiction; relieving
20 service providers of certain liability;
21 providing requirements with respect to
22 identifying and separately stating the sales
23 price of mobile communications services not
24 subject to the taxes administered under ch.
25 202, F.S.; amending s. 202.16, F.S.; revising
26 provisions relating to responsibility for
27 payment of taxes; amending s. 202.17, F.S.;
28 removing the registration fee for dealers of
29 communications services; revising provisions
30 relating to resale certificates; amending s.
31 202.18, F.S.; revising provisions relating to

1 distribution of a portion of the proceeds of
2 the tax on direct-to-home satellite service to
3 local governments and to distribution of local
4 communications services taxes and adjustment of
5 such distribution; amending s. 202.19, F.S.;
6 revising provisions that authorize the
7 imposition of local communications services
8 taxes and provide for expression of the tax
9 rate, use of revenues, and certain credits;
10 providing the initial method for determining
11 the sales price of private communications
12 services for local communications services
13 taxes and for the discretionary sales surtax
14 under s. 212.055, F.S., which is imposed as a
15 local communications services tax, and
16 providing a revised method effective January 1,
17 2004; relieving service providers of certain
18 liabilities; providing for application of local
19 communications services taxes to mobile
20 communications services; amending s. 202.20,
21 F.S.; revising requirements with respect to
22 adjustment by a local government of its tax
23 rate when tax revenues are less than received
24 from replaced revenue sources; authorizing
25 local governments to increase the tax rate
26 established by the Revenue Estimating
27 Conference and approved by the Legislature to
28 the maximum tax rate so established and
29 approved; amending s. 202.22, F.S., relating to
30 determination of local tax situs for a local
31 communications services tax; revising

1 requirements relating to use of enhanced zip
2 codes; revising requirements relating to
3 certification or recertification of a database
4 by the department; specifying effect when
5 certain applications for certification are not
6 approved or denied within the required time
7 period; revising provisions relating to a
8 dealer's duty to update a database and to the
9 amount of dealer's credit allowed when an
10 alternative method of assigning service
11 addresses is used; amending s. 202.23, F.S.;
12 providing requirements for refunds when excess
13 communications services tax has been paid;
14 amending s. 202.24, F.S., relating to
15 limitations on local taxes and fees imposed on
16 dealers of communications services; deleting
17 provisions relating to legislative review;
18 amending s. 202.27, F.S.; deleting provisions
19 which allow certain dealers making sales in
20 more than one location to file a single return;
21 amending s. 202.28, F.S.; including persons
22 collecting the gross receipts tax in provisions
23 relating to the dealer's credit; amending s.
24 337.401, F.S.; providing that a municipality or
25 county that elects not to impose permit fees on
26 communications services providers may increase
27 its local tax rate by resolution; requiring
28 notice to the department; authorizing
29 municipalities and counties to change their
30 election regarding imposition of permit fees
31 and providing for adjustment of tax rates;

1 providing notice requirements; specifying
2 continued application of s. 166.234, F.S.,
3 relating to administration and rights and
4 remedies, to municipal public service taxes on
5 telecommunications services imposed prior to
6 October 1, 2001; providing for payment of
7 franchise fees by cable or telecommunications
8 service providers with respect to services
9 provided prior to October 1, 2001; repealing s.
10 58(1) of ch. 2000-260, Laws of Florida, which
11 provides for the June 30, 2001, repeal of those
12 administrative sections of ch. 202, F.S., which
13 have taken effect; repealing s. 58(2) of ch.
14 2000-260, Laws of Florida, which provides for
15 the June 30, 2001, repeal, prior to their
16 October 1, 2001, effective date, of the
17 remaining provisions of ch. 202, F.S., which
18 provide for the taxation of the sale of
19 communications services, of other statutory
20 amendments that provide related administrative
21 provisions, of provisions that remove levy of
22 the municipal public service tax on
23 telecommunication services, of provisions that
24 provide for a gross receipts tax on
25 communications services to be applied pursuant
26 to ch. 202, F.S., of provisions that remove the
27 imposition of tax under ch. 212, F.S., on
28 telecommunication service, of provisions
29 relating to the authority of counties and
30 municipalities to regulate the placement of
31 telecommunications facilities in roads and

1 rights-of-way and to impose permit fees and
2 franchise fees, and of provisions relating to
3 the application of amendments made by ch.
4 2000-260, Laws of Florida; repealing s. 59 of
5 ch. 2000-260, Laws of Florida, which, effective
6 June 30, 2001, amends s. 337.401, F.S.,
7 relating to the authority of counties and
8 municipalities to regulate the placement of
9 telecommunications facilities in roads and
10 rights-of-way and to impose permit fees and
11 franchise fees, to remove amendments made by
12 ch. 2000-260, Laws of Florida, which took
13 effect January 1, 2001; providing effective
14 dates.

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

17
18 Section 1. Subsections (2), (14), and (16) of section
19 202.11, Florida Statutes, are amended, subsection (18) is
20 added to that section, and, effective August 1, 2002,
21 subsections (8) and (15) are amended and subsections (19),
22 (20), (21), (22), (23), (24), (25), (26), and (27) are added
23 to that section, to read:

24 202.11 Definitions.--As used in this chapter:

25 (2) "Cable service" means the transmission of video,
26 audio, or other programming service to purchasers, and the
27 purchaser interaction, if any, required for the selection or
28 use of any such programming service, regardless of whether the
29 programming is transmitted over facilities owned or operated
30 by the cable service provider or over facilities owned or
31 operated by one or more other dealers of communications

1 services. The term includes point-to-point and
2 point-to-multipoint distribution services by which programming
3 is transmitted or broadcast by microwave or other equipment
4 directly to the purchaser's premises, but does not include
5 direct-to-home satellite service. The term includes basic,
6 extended, premium, pay-per-view, digital, and music services.

7 (8) "Mobile communications service" means commercial
8 mobile radio service, as defined in 47 C.F.R. s. 20.3 as in
9 effect on June 1, 1999 ~~any one-way or two-way radio~~
10 ~~communications service, whether identified by the dealer as~~
11 ~~local, toll, long distance, or otherwise, and which is carried~~
12 ~~between mobile stations or receivers and land stations, or by~~
13 ~~mobile stations communicating among themselves, and includes,~~
14 ~~but is not limited to, cellular communications services,~~
15 ~~personal communications services, paging services, specialized~~
16 ~~mobile radio services, and any other form of mobile one-way or~~
17 ~~two-way communications service.~~ The term does not include
18 air-ground radiotelephone service as defined in 47 C.F.R. s.
19 22.99 as in effect on June 1, 1999.

20 (14) "Sales price" means the total amount charged in
21 money or other consideration by a dealer for the sale of the
22 right or privilege of using communications services in this
23 state, including any property or other services that are part
24 of the sale. The sales price of communications services shall
25 not be reduced by any separately identified components of the
26 charge that constitute expenses of the dealer, including, but
27 not limited to, sales taxes on goods or services purchased by
28 the dealer, property taxes, taxes measured by net income, and
29 universal-service fund fees.

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1 (a) The sales price of communications services shall
2 also include, whether or not separately stated, charges for
3 any of the following:

4 ~~1. Separately identified components of the charge or~~
5 ~~expenses of the dealer, including, but not limited to, sales~~
6 ~~taxes on goods or services purchased by the dealer, property~~
7 ~~taxes, taxes measured by net income, and federal~~
8 ~~universal-service fund fees.~~

9 ~~1.2.~~ The connection, movement, change, or termination
10 of communications services.

11 ~~2.3.~~ The detailed billing of communications services.

12 ~~3.4.~~ The sale of directory listings in connection with
13 a communications service.

14 ~~4.5.~~ Central office and custom calling features.

15 ~~5.6.~~ Voice mail and other messaging service.

16 ~~6.7.~~ Directory assistance.

17 (b) The sales price of communications services does
18 not include charges for any of the following:

19 1. Any excise tax, sales tax, or similar tax levied by
20 the United States or any state or local government on the
21 purchase, sale, use, or consumption of any communications
22 service, including, but not limited to, any tax imposed under
23 this chapter or chapter 203 which is permitted or required to
24 be added to the sales price of such service, if the tax is
25 stated separately.

26 2. Any fee or assessment levied by the United States
27 or any state or local government, including, but not limited
28 to, regulatory fees and emergency telephone surcharges, which
29 is required to be added to the price of such service if the
30 fee or assessment is separately stated.

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1 3. Communications services ~~Local telephone service~~
2 paid for by inserting coins into coin-operated communications
3 devices available to the public.
4 4. The sale or recharge of a prepaid calling
5 arrangement.
6 5. The provision of air-to-ground communications
7 services, defined as a radio service provided to purchasers
8 while on board an aircraft.
9 6. A dealer's internal use of communications services
10 in connection with its business of providing communications
11 services.
12 7. Charges for property or other services that are not
13 part of the sale of communications services, if such charges
14 are stated separately from the charges for communications
15 services.
16 (15) "Service address" means:
17 (a) ~~(b)~~ Except as otherwise provided in this section in
18 ~~the case of all other communications services,~~ the location of
19 the communications equipment from which communications
20 services originate or at which communications services are
21 received by the customer. If the location of such equipment
22 cannot be determined as part of the billing process, as in the
23 case of ~~mobile communications services, paging systems,~~
24 ~~maritime systems,~~ third-number and calling-card calls, and
25 similar services, the term means the location determined by
26 the dealer based on the customer's telephone number, the
27 customer's mailing address to which bills are sent by the
28 dealer, or another street address provided by the customer.
29 ~~However, such address must be within the licensed service area~~
30 ~~of the dealer.~~ In the case of a communications service paid
31 through a credit or payment mechanism that does not relate to

1 a service address, such as a bank, travel, debit, or credit
2 card, the service address is the address of the central
3 office, as determined by the area code and the first three
4 digits of the seven-digit originating telephone number.

5 (b)~~(a)~~ In the case of cable services and
6 direct-to-home satellite services, the location where the
7 customer receives the services in this state.

8 (c) In the case of mobile communications services, the
9 customer's place of primary use.

10 (16) "Substitute communications system" means any
11 telephone system, or other system capable of providing
12 communications services, which a person purchases, installs,
13 rents, or leases for his or her own use to provide himself or
14 herself with services used as a substitute for any switched
15 service or dedicated facility by which ~~communications services~~
16 ~~provided by~~ a dealer of communications services provides a
17 communication path.

18 (18) "Private communications service" means a
19 communications service that entitles the subscriber or user to
20 exclusive or priority use of a communications channel or group
21 of channels between or among channel termination points,
22 regardless of the manner in which such channel or channels are
23 connected, and includes switching capacity, extension lines,
24 stations, and any other associated services which are provided
25 in connection with the use of such channel or channels.

26 (19) "Charges for mobile communications services"
27 means any charge for, or associated with, the provision of
28 mobile communications service, or any charge for, or
29 associated with, a service provided as an adjunct to a
30 communications mobile service, that is billed to a customer by
31 or for the customer's home service provider regardless of

1 whether individual transmissions originate or terminate within
2 the licensed service area of the home service provider.

3 (20)(a) "Customer" means:

4 1. The person or entity that contracts with the home
5 service provider for mobile communications services; or

6 2. If the end user of mobile communications services
7 is not the contracting party, the end user of the mobile
8 communications service. This subparagraph only applies for the
9 purpose of determining the place of primary use.

10 (b) "Customer" does not include:

11 1. A reseller of mobile communications services; or

12 2. A serving carrier under an agreement to serve the
13 customer outside the home service provider's licensed service
14 area.

15 (21) "Designated database provider" means a
16 corporation, association, or other entity representing all of
17 the political subdivisions of this state that is:

18 (a) Responsible for providing an electronic database
19 prescribed in s. 119(a) of the Mobile Telecommunications
20 Sourcing Act, Pub. L. No. 106-252, if the Department of
21 Revenue does not provide such electronic database; and

22 (b) Approved by the Florida League of Cities and the
23 Florida Association of Counties.

24 (22) "Enhanced zip code" means a United States postal
25 zip code of 9 or more digits.

26 (23) "Home service provider" means the
27 facilities-based carrier or reseller with which the customer
28 contracts for the provision of mobile communications services.

29 (24) "Licensed service area" means the geographic area
30 in which the home service provider is authorized by law or

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1 contract to provide mobile communications service to the
2 customer.

3 (25) "Place of primary use" means the street address
4 representative of where the customer's use of the mobile
5 communications service primarily occurs, which must be:

6 (a) The residential street address or the primary
7 business street address of the customer; and

8 (b) Within the licensed service area of the home
9 service provider.

10 (26)(a) "Reseller" means a provider who purchases
11 communications services from another communications service
12 provider and then resells, uses as a component part of, or
13 integrates the purchased services into a mobile communications
14 service.

15 (b) "Reseller" does not include a serving carrier with
16 which a home service provider arranges for the services to its
17 customers outside the home service provider's licensed service
18 area.

19 (27) "Serving carrier" means a facilities-based
20 carrier providing mobile communications service to a customer
21 outside a home service provider's or reseller's licensed
22 service area.

23 Section 2. Paragraph (a) of subsection (1) of section
24 202.12, Florida Statutes, is amended, paragraph (d) is added
25 to that subsection, and, effective with respect to bills
26 issued by communications services providers after August 1,
27 2002, paragraph (e) is added to that subsection, to read:

28 202.12 Sales of communications services.--The
29 Legislature finds that every person who engages in the
30 business of selling communications services at retail in this
31 state is exercising a taxable privilege. It is the intent of

1 the Legislature that the tax imposed by chapter 203 be
2 administered as provided in this chapter.

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

6 (a) Except as otherwise provided in this subsection,
7 at the rate calculated pursuant to s. 30, chapter 2000-260,
8 Laws of Florida, applied to the sales price of the
9 communications service, ~~except for direct-to-home satellite~~
10 ~~service,~~ which:

- 11 1. Originates and terminates in this state, or
- 12 2. Originates or terminates in this state and is
13 charged to a service address in this state,

14
15 when sold at retail, computed on each taxable sale for the
16 purpose of remitting the tax due. The gross receipts tax
17 imposed by chapter 203 shall be collected on the same taxable
18 transactions and remitted with the tax imposed by this
19 paragraph. If no tax is imposed by this paragraph by reason of
20 s. 202.125(1), the tax imposed by chapter 203 shall
21 nevertheless be collected and remitted in the manner and at
22 the time prescribed for tax collections and remittances under
23 this chapter.

24 (d) At the rate computed under paragraph (a) on the
25 sales price of private communications services provided within
26 this state. In determining the sales price of private
27 communications services subject to tax, the communications
28 service provider shall be entitled to use any method that
29 reasonably allocates the total charges among the states in
30 which channel termination points are located. An allocation
31 method is deemed to be reasonable for purposes of this

1 paragraph if the communications service provider regularly
2 used such method for Florida tax purposes prior to December
3 31, 2000. If a communications service provider uses a
4 reasonable allocation method, such provider shall be held
5 harmless from any liability for additional tax, interest, or
6 penalty based on a different allocation method. The gross
7 receipts tax imposed by chapter 203 shall be collected on the
8 same taxable transactions and remitted with the tax imposed by
9 this paragraph.

10 (e) At the rate set forth in paragraph (a) applied to
11 the sales price of all mobile communications services deemed
12 to be provided to a customer by a home service provider
13 pursuant to s. 117(a) of the Mobile Telecommunications
14 Sourcing Act, Pub. L. No. 106-252, if such customer's service
15 address is located within this state.

16 Section 3. Effective January 1, 2004, paragraph (d) of
17 subsection (1) of section 202.12, Florida Statutes, as created
18 by this act, is amended to read:

19 202.12 Sales of communications services.--The
20 Legislature finds that every person who engages in the
21 business of selling communications services at retail in this
22 state is exercising a taxable privilege. It is the intent of
23 the Legislature that the tax imposed by chapter 203 be
24 administered as provided in this chapter.

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

28 (d) At the rate computed under paragraph (a) on the
29 sales price of private communications services provided within
30 this state, which shall be determined in accordance with the
31 following provisions:--

1 1. Any charge with respect to a channel termination
2 point located within this state;

3 2. Any charge for the use of a channel between two
4 channel termination points located in this state; and

5 3. Where channel termination points are located both
6 within and outside of this state:

7 a. If any segment between two such channel termination
8 points is separately billed, 50 percent of such charge; and

9 b. If any segment of the circuit is not separately
10 billed, an amount equal to the total charge for such circuit
11 multiplied by a fraction, the numerator of which is the number
12 of channel termination points within this state and the
13 denominator of which is the total number of channel

14 termination points of the circuit.~~In determining the sales~~
15 ~~price of private communications services subject to tax, the~~
16 ~~communications service provider shall be entitled to use any~~
17 ~~method that reasonably allocates the total charges among the~~
18 ~~states in which channel termination points are located. An~~
19 ~~allocation method is deemed to be reasonable for purposes of~~
20 ~~this paragraph if the communications service provider~~
21 ~~regularly used such method for Florida tax purposes prior to~~
22 ~~December 31, 2000. If a communications service provider uses a~~
23 ~~reasonable allocation method, such provider shall be held~~
24 ~~harmless from any liability for additional tax, interest, or~~
25 ~~penalty based on a different allocation method.~~

26
27 The gross receipts tax imposed by chapter 203 shall be
28 collected on the same taxable transactions and remitted with
29 the tax imposed by this paragraph.

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1 Section 4. Effective with respect to bills issued by
2 communications services providers after August 1, 2002,
3 section 202.155, Florida Statutes, is created to read:

4 202.155 Special rules for mobile communications
5 services.--

6 (1) A home service provider shall be responsible for
7 obtaining and maintaining the customer's place of primary use.
8 Subject to subsections (2) and (3), if the home service
9 provider's reliance on information provided by its customer is
10 in good faith:

11 (a) The home service provider shall be entitled to
12 rely on the applicable residential or business street address
13 supplied by such customer.

14 (b) The home service provider shall be held harmless
15 from liability for any additional taxes imposed by or pursuant
16 to this chapter or chapter 203 which are based on a different
17 determination of such customer's place of primary use.

18 (2) Except as provided in subsection (3), a home
19 service provider shall be allowed to treat the address used
20 for tax purposes for any customer under a service contract in
21 effect on August 1, 2002, as that customer's place of primary
22 use for the remaining term of such service contract or
23 agreement, excluding any extension or renewal of such service
24 contract or agreement.

25 (3)(a) If the department determines that the address
26 used by a home service provider as a customer's place of
27 primary use does not meet the definition of "place of primary
28 use" provided by s. 202.11, the department shall notify the
29 customer of this determination and provide the customer an
30 opportunity to demonstrate that the address satisfies that
31 definition.

1 (b) If the customer fails to demonstrate that the
2 address meets the definition of such customer's place of
3 primary use, the department shall provide the home service
4 provider with the proper address to be used as the customer's
5 place of primary use, and the home service provider shall
6 begin using the address provided by the department as the
7 customer's place of primary use within 120 days.

8 (4)(a) If the department determines that the
9 assignment of a taxing jurisdiction by a home service provider
10 under s. 202.22 does not reflect the correct taxing
11 jurisdiction to which taxes imposed by or pursuant to this
12 chapter or chapter 203 should be remitted, the department
13 shall notify the home service provider and provide the home
14 service provider an opportunity to demonstrate that the
15 assignment reflects the correct taxing jurisdiction.

16 (b) If the home service provider fails to demonstrate
17 that the assignment reflects the correct taxing jurisdiction
18 to which taxes imposed by or pursuant to this chapter or
19 chapter 203 should be remitted, the department shall provide
20 the home service provider with the proper taxing jurisdiction,
21 and the home service provider shall begin using such taxing
22 jurisdiction within 120 days.

23 (5) All notices to customers and home service
24 providers pursuant to this section, and all procedures for
25 allowing customers and home service providers to demonstrate
26 the correctness of addresses and taxing jurisdictions, shall
27 be accomplished in accordance with rules promulgated by the
28 department.

29 (6)(a) If a mobile communications service is not
30 subject to the taxes administered pursuant to this chapter,
31 and if the sales price of such service is aggregated with and

1 not separately stated from the sales price of services subject
2 to tax, then the nontaxable mobile communications service
3 shall be treated as being subject to tax unless the home
4 service provider can reasonably identify the sales price of
5 the service not subject to tax from its books and records kept
6 in the regular course of business.

7 (b) If a mobile communications service is not subject
8 to the taxes administered pursuant to this chapter, a customer
9 may not rely upon the nontaxability of such service unless the
10 customer's home service provider separately states the sales
11 price of such nontaxable services or the home service provider
12 elects, after receiving a written request from the customer in
13 the form required by the provider, to provide verifiable data
14 based upon the home service provider's books and records that
15 are kept in the regular course of business that reasonably
16 identifies the sales price of such nontaxable service.

17 Section 5. Paragraph (a) of subsection (1) of section
18 202.16, Florida Statutes, is amended to read:

19 202.16 Payment.--The taxes imposed or administered
20 under this chapter and chapter 203 shall be collected from all
21 dealers of taxable communications services on the sale at
22 retail in this state of communications services taxable under
23 this chapter and chapter 203. The full amount of the taxes on
24 a credit sale, installment sale, or sale made on any kind of
25 deferred payment plan is due at the moment of the transaction
26 in the same manner as a cash sale.

27 (1)(a) Except as otherwise provided in ss.
28 202.12(1)(b) and 202.15, the taxes collected under this
29 chapter and chapter 203, ~~including any penalties or interest~~
30 ~~attributable to the nonpayment of such taxes or for~~
31 ~~noncompliance with this chapter or chapter 203,~~ shall be paid

1 by the purchaser of the communications service and shall be
2 collected from such person by the dealer of communications
3 services.

4 Section 6. Subsections (2), (4), and (6) of section
5 202.17, Florida Statutes, are amended to read:

6 202.17 Registration.--

7 (2) A person may not engage in the business of
8 providing communications services without first obtaining a
9 certificate of registration. The failure or refusal to submit
10 an application by any person required to register, as required
11 by this section, is a misdemeanor of the first degree,
12 punishable as provided in s. 775.082 or s. 775.083. Any person
13 who fails or refuses to register shall pay an initial
14 registration fee of \$100 ~~in lieu of the \$5 registration fee~~
15 ~~prescribed under subsection (4)~~. However, this fee ~~increase~~
16 may be waived by the department if the failure is due to
17 reasonable cause.

18 (4) Each application required by paragraph (3)(a) must
19 ~~be accompanied by a registration fee of \$5, to be deposited in~~
20 ~~the General Revenue Fund, and must set forth:~~

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

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

26 (c) The name and complete residence address of the
27 owner or the names and residence addresses of the partners, if
28 the applicant is a partnership, or of the principal officers,
29 if the applicant is a corporation or association. If the
30 applicant is a corporation organized under the laws of another
31 state, territory, or country, he or she must also file with

1 the application a certified copy of the certificate or license
2 issued by the Department of State showing that the corporation
3 is authorized to transact business in this state.

4 (d) Any other data required by the department.

5 (6) In addition to the certificate of registration,
6 the department shall provide to each newly registered dealer
7 an initial ~~annual~~ resale certificate that is valid for the
8 remainder of the period of issuance ~~remaining portion of the~~
9 ~~year~~. The department shall provide to each active dealer,
10 except persons registered pursuant to s. 202.15, an annual
11 resale certificate. As used in this section, "active dealer"
12 means a person who is registered with the department and who
13 is required to file a return at least once during each
14 applicable reporting period.

15 Section 7. Subsection (2) and paragraphs (a) and (c)
16 of subsection (3) of section 202.18, Florida Statutes, are
17 amended to read:

18 202.18 Allocation and disposition of tax
19 proceeds.--The proceeds of the communications services taxes
20 remitted under this chapter shall be treated as follows:

21 (2) The proceeds of the taxes remitted under s.
22 202.12(1)(c) shall be divided as follows:

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

27 (b) The portion of such proceeds which is derived from
28 the rate component specified in s. 202.12(1)(c)1. shall be
29 allocated to the state and distributed pursuant to s.
30 212.20(6), except that the proceeds allocated pursuant to s.
31 212.20(6)(e)3. shall be prorated to the participating counties

1 in the same proportion as that month's collection of the taxes
2 and fees imposed pursuant to chapter 212 and paragraph (1)(b).

3 (c)1. During each calendar year, the remaining portion
4 of such proceeds shall be transferred to the Local Government
5 Half-cent Sales Tax Clearing Trust Fund and shall be allocated
6 in the same proportion as the allocation of total receipts of
7 the half-cent sales tax under s. 218.61 and the emergency
8 distribution under s. 218.65 in the prior state fiscal year.
9 However, during calendar year 2001, state fiscal year
10 2000-2001 proportions shall be used.

11 2. The proportion of the proceeds allocated based on
12 the emergency distribution under s. 218.65 shall be
13 distributed pursuant to s. 218.65.

14 3. In each calendar year, the proportion of the
15 proceeds allocated based on the half-cent sales tax under s.
16 218.61 shall be allocated to each county in the same
17 proportion as the county's percentage of total sales tax
18 allocation for the prior state fiscal year and distributed
19 pursuant to s. 218.62, except that for calendar year 2001,
20 state fiscal year 2000-2001 proportions shall be used.~~The~~
21 ~~remaining portion of such proceeds shall be allocated to the~~
22 ~~municipalities and counties in proportion to the allocation of~~
23 ~~receipts from the half-cent sales tax under s. 218.61 and the~~
24 ~~emergency distribution of such tax under s. 218.65.~~

25 4. The department shall distribute the appropriate
26 amount to each municipality and county each month at the same
27 time that local communications services taxes are distributed
28 pursuant to subsection (3).

29 (3)(a) Notwithstanding any law to the contrary, the
30 proceeds of each local communications services tax levied by a
31 municipality or county pursuant to s. 202.19(1) or s.

1 202.20(1), less the department's costs of administration,
2 shall be transferred to the Local Communications Services Tax
3 Clearing Trust Fund and held there to be distributed to such
4 municipality or county. However, the proceeds of any
5 communications services tax imposed pursuant to s. 202.19(5)
6 shall be deposited and disbursed in accordance with ss.
7 212.054 and 212.055. For purposes of this section, the
8 proceeds of any tax levied by a municipality, county, or
9 school board under s. 202.19(1) or s. 202.20(1) are all funds
10 collected and received by the department pursuant to a
11 specific levy authorized by such sections ~~section~~, including
12 any interest and penalties attributable to the tax levy.

13 (c)1. Except as otherwise provided in this paragraph,
14 proceeds of the taxes levied pursuant to s. 202.19, less
15 amounts deducted for costs of administration in accordance
16 with paragraph (b), shall be distributed monthly to the
17 appropriate jurisdictions. The proceeds of taxes imposed
18 pursuant to s. 202.19(5) shall be distributed in the same
19 manner as discretionary surtaxes are distributed, in
20 accordance with ss. 212.054 and 212.055.

21 2. The department shall make any adjustments to the
22 distributions pursuant to this paragraph which are necessary
23 to reflect the proper amounts due to individual jurisdictions.
24 In the event that the department adjusts amounts due to
25 reflect a correction in the situsing of a customer, such
26 adjustment shall be limited to the amount of tax actually
27 collected from such customer by the dealer of communication
28 services.

29 Section 8. Subsection (2), paragraph (b) of subsection
30 (3), and subsections (4), (5), (9), and (11) of section
31 202.19, Florida Statutes, are amended to read:

1 202.19 Authorization to impose local communications
2 services tax.--

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

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

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

10
11 The rate imposed by any municipality or county shall be
12 expressed in increments of one-hundredth ~~one-tenth~~ of a
13 percent and rounded up to the nearest one-hundredth ~~one-tenth~~
14 percent.

15 (3)

16 (b) The tax authorized under this section includes any
17 fee or other consideration to which the municipality or county
18 is otherwise entitled for granting permission to dealers of
19 communications services, including, but not limited to, ~~or~~
20 providers of cable television services, as authorized in 47
21 U.S.C. s. 542, to use or occupy its roads or rights-of-way for
22 the placement, construction, and maintenance of poles, wires,
23 and other fixtures used in the provision of communications
24 services.

25 (4)(a)1. Except as otherwise provided in this section,
26 the tax imposed by any municipality shall be on all
27 communications services subject to tax under s. 202.12 which:

28 a.1. Originate or terminate in this state; and

29 b.2. Are charged to a service address in the
30 municipality.

31

1 2. With respect to private communications services,
2 the tax shall be on the sales price of such services provided
3 within the municipality. In determining the sales price of
4 private communications services subject to tax, the
5 communications service provider shall be entitled to use any
6 method that reasonably allocates the total charges among the
7 state and local taxing jurisdictions in which channel
8 termination points are located. An allocation method is deemed
9 to be reasonable for purposes of this subparagraph if the
10 communications service provider regularly used such method for
11 Florida tax purposes prior to December 31, 2000. If a
12 communications service provider uses a reasonable allocation
13 method, such provider shall be held harmless from any
14 liability for additional tax, interest, or penalty based on a
15 different allocation method.

16 (b)1. Except as otherwise provided in this section,
17 the tax imposed by any county under subsection (1) shall be on
18 all communications services subject to tax under s. 202.12
19 which:

20 a.1. Originate or terminate in this state; and

21 b.2. Are charged to a service address in the
22 unincorporated area of the county.

23 2. With respect to private communications services,
24 the tax shall be on the sales price of such services provided
25 within the unincorporated area of the county. In determining
26 the amount of charges for private communications services
27 subject to tax, the communications service provider shall be
28 entitled to use any method that reasonably allocates the total
29 charges among the state and local taxing jurisdictions in
30 which channel termination points are located. An allocation
31 method is deemed to be reasonable for purposes of this

1 subparagraph if the communications service provider regularly
2 used such method for Florida tax purposes prior to December
3 31, 2000. If a communications service provider uses a
4 reasonable allocation method, such provider shall be held
5 harmless from any liability for additional tax, interest, or
6 penalty based on a different allocation method.

7 (5) In addition to the communications services taxes
8 authorized by subsection (1), a discretionary sales surtax
9 that a county or school board has levied under s. 212.055 is
10 imposed as a local communications services tax under this
11 section, and the rate shall be determined in accordance with
12 s. 202.20(5).

13 (a) Except as otherwise provided in this subsection,
14 each such tax rate shall be applied, in addition to the other
15 tax rates applied under this chapter, to communications
16 services subject to tax under s. 202.12 which:

17 1.~~(a)~~ Originate or terminate in this state; and

18 2.~~(b)~~ Are charged to a service address in the county.

19 (b) With respect to private communications services,
20 the tax shall be on the sales price of such services provided
21 within the county. In determining the sales price of private
22 communications services subject to tax, the communications
23 service provider shall be entitled to use any method that
24 reasonably allocates the total charges among the state and
25 local taxing jurisdictions in which channel termination points
26 are located. An allocation method is deemed to be reasonable
27 for purposes of this paragraph if the communications service
28 provider regularly used such method for Florida tax purposes
29 prior to December 31, 2000. If a communications service
30 provider uses a reasonable allocation method, such provider

31

1 shall be held harmless from any liability for additional tax,
2 interest, or penalty based on a different allocation method.

3 ~~(9) A municipality or county that imposes a tax under~~
4 ~~subsection (1) may use~~ The revenues raised by any such tax
5 imposed under subsection (1) or s. 202.20(1) may be used by a
6 municipality or county for any public purpose, including, but
7 not limited to, pledging such revenues for the repayment of
8 current or future bonded indebtedness. Revenues raised by a
9 tax imposed under subsection (5) shall be used for the same
10 purposes as the underlying discretionary sales surtax imposed
11 by the county or school board under s. 212.055.

12 (11) To the extent that a provider of communications
13 services is required to pay to a local taxing jurisdiction a
14 tax, charge, or other fee under any franchise agreement or
15 ordinance with respect to the services or revenues that are
16 also subject to the tax imposed by this section, such provider
17 is entitled to a credit against the amount payable to the
18 state pursuant to this section in the amount of such tax,
19 charge, or fee with respect to such services or revenues. The
20 amount of such credit shall be deducted from the amount that
21 such local taxing jurisdiction is entitled to receive under s.
22 202.18(3).

23 Section 9. Effective January 1, 2004, subsections (4)
24 and (5) of section 202.19, Florida Statutes, as amended by
25 this act, are amended to read:

26 202.19 Authorization to impose local communications
27 services tax.--

28 (4)(a)1. Except as otherwise provided in this section,
29 the tax imposed by any municipality shall be on all
30 communications services subject to tax under s. 202.12 which:

31 a. Originate or terminate in this state; and

1 b. Are charged to a service address in the
2 municipality.

3 2. With respect to private communications services,
4 the tax shall be on the sales price of such services provided
5 within the municipality, which shall be determined in
6 accordance with the following provisions:-

7 a. Any charge with respect to a channel termination
8 point located within such municipality;

9 b. Any charge for the use of a channel between two
10 channel termination points located in such municipality; and

11 c. Where channel termination points are located both
12 within and outside of the municipality:

13 (I) If any segment between two such channel
14 termination points is separately billed, 50 percent of such
15 charge; and

16 (II) If any segment of the circuit is not separately
17 billed, an amount equal to the total charge for such circuit
18 multiplied by a fraction, the numerator of which is the number
19 of channel termination points within such municipality and the
20 denominator of which is the total number of channel

21 termination points of the circuit.~~In determining the sales~~
22 ~~price of private communications services subject to tax, the~~
23 ~~communications service provider shall be entitled to use any~~
24 ~~method that reasonably allocates the total charges among the~~
25 ~~state and local taxing jurisdictions in which channel~~
26 ~~termination points are located. An allocation method is deemed~~
27 ~~to be reasonable for purposes of this subparagraph if the~~
28 ~~communications service provider regularly used such method for~~
29 ~~Florida tax purposes prior to December 31, 2000. If a~~
30 ~~communications service provider uses a reasonable allocation~~
31 ~~method, such provider shall be held harmless from any~~

1 ~~liability for additional tax, interest, or penalty based on a~~
2 ~~different allocation method.~~

3 (b)1. Except as otherwise provided in this section,
4 the tax imposed by any county under subsection (1) shall be on
5 all communications services subject to tax under s. 202.12
6 which:

7 a. Originate or terminate in this state; and

8 b. Are charged to a service address in the
9 unincorporated area of the county.

10 2. With respect to private communications services,
11 the tax shall be on the sales price of such services provided
12 within the unincorporated area of the county, which shall be
13 determined in accordance with the following provisions:-

14 a. Any charge with respect to a channel termination
15 point located within the unincorporated area of such county;

16 b. Any charge for the use of a channel between two
17 channel termination points located in the unincorporated area
18 of such county; and

19 c. Where channel termination points are located both
20 within and outside of the unincorporated area of such county:

21 (I) If any segment between two such channel
22 termination points is separately billed, 50 percent of such
23 charge; and

24 (II) If any segment of the circuit is not separately
25 billed, an amount equal to the total charge for such circuit
26 multiplied by a fraction, the numerator of which is the number
27 of channel termination points within the unincorporated area
28 of such county and the denominator of which is the total
29 number of channel termination points of the circuit.~~in~~

30 ~~determining the amount of charges for private communications~~
31 ~~services subject to tax, the communications service provider~~

1 ~~shall be entitled to use any method that reasonably allocates~~
2 ~~the total charges among the state and local taxing~~
3 ~~jurisdictions in which channel termination points are located.~~
4 ~~An allocation method is deemed to be reasonable for purposes~~
5 ~~of this subparagraph if the communications service provider~~
6 ~~regularly used such method for Florida tax purposes prior to~~
7 ~~December 31, 2000. If a communications service provider uses a~~
8 ~~reasonable allocation method, such provider shall be held~~
9 ~~harmless from any liability for additional tax, interest, or~~
10 ~~penalty based on a different allocation method.~~

11 (5) In addition to the communications services taxes
12 authorized by subsection (1), a discretionary sales surtax
13 that a county or school board has levied under s. 212.055 is
14 imposed as a local communications services tax under this
15 section, and the rate shall be determined in accordance with
16 s. 202.20(5).

17 (a) Except as otherwise provided in this subsection,
18 each such tax rate shall be applied, in addition to the other
19 tax rates applied under this chapter, to communications
20 services subject to tax under s. 202.12 which:

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

23 (b) With respect to private communications services,
24 the tax shall be on the sales price of such services provided
25 within the county, which shall be determined in accordance
26 with the following provisions:-

- 27 1. Any charge with respect to a channel termination
28 point located within such county;
- 29 2. Any charge for the use of a channel between two
30 channel termination points located in such county; and

31

1 3. Where channel termination points are located both
2 within and outside of such county:

3 a. If any segment between two such channel termination
4 points is separately billed, 50 percent of such charge; and

5 b. If any segment of the circuit is not separately
6 billed, an amount equal to the total charge for such circuit
7 multiplied by a fraction, the numerator of which is the number
8 of channel termination points within such county and the
9 denominator of which is the total number of channel
10 termination points of the circuit.

~~In determining the sales price of private communications services subject to tax, the communications service provider shall be entitled to use any method that reasonably allocates the total charges among the state and local taxing jurisdictions in which channel termination points are located. An allocation method is deemed to be reasonable for purposes of this paragraph if the communications service provider regularly used such method for Florida tax purposes prior to December 31, 2000. If a communications service provider uses a reasonable allocation method, such provider shall be held harmless from any liability for additional tax, interest, or penalty based on a different allocation method.~~

23 Section 10. Effective with respect to bills issued by
24 communications services providers after August 1, 2002,
25 subsection (12) is added to section 202.19, Florida Statutes,
26 to read:

27 202.19 Authorization to impose local communications
28 services tax.--

29 (12) Notwithstanding any other provision of this
30 section, with respect to mobile communications services, the
31 rate of a local communications services tax levied under this

1 section shall be applied to the sales price of all mobile
2 communications services deemed to be provided to a customer by
3 a home service provider pursuant to s. 117(a) of the Mobile
4 Telecommunications Sourcing Act, Pub. L. No. 106-252, if such
5 customer's service address is located within the municipality
6 levying the tax or within the unincorporated area of the
7 county levying the tax, as the case may be.

8 Section 11. Paragraphs (b) and (c) of subsection (1)
9 of section 202.20, Florida Statutes, are amended, and,
10 effective upon this act becoming a law, subsection (8) is
11 added to that section, to read:

12 202.20 Local communications services tax rates.--

13 (1)

14 (b) The rates computed by the Revenue Estimating
15 Conference shall be presented to the Legislature for review
16 and approval during the 2001 Regular Session. The rates
17 approved by the Legislature under this subsection shall be
18 effective in the respective local taxing jurisdictions on
19 October 1, 2001, without any action being taken by the
20 governing authority or voters of such local taxing
21 jurisdictions. Each ~~The~~ rate computed and approved pursuant to
22 this subsection shall be reduced on October 1, 2002, by that
23 portion of the rate which was necessary to recoup the 1 month
24 of foregone revenues addressed in subparagraph (a)2.

25 (c) 1. With respect to any local taxing jurisdiction,
26 if, for the periods ending December 31, 2001; March 31, 2002;
27 June 30, 2002; or September 30, 2002, the revenues received by
28 that local government from the local communications services
29 tax imposed under s. 202.19(1) are less than the revenues
30 received from the replaced revenue sources for the
31 corresponding 2000-2001 period; plus reasonably anticipated

1 growth in such revenues over the preceding 1-year period,
2 based on the average growth of such revenues over the
3 immediately preceding 5-year period; plus an amount
4 representing the revenues from the replaced revenue sources
5 for the 1-month period that the local taxing jurisdiction was
6 required to forego, the governing authority may adjust the
7 rate of the local communications services tax upward to the
8 extent necessary to generate the entire shortfall in revenues
9 within 1 year after the rate adjustment and by an amount
10 necessary to generate the expected amount of revenue on an
11 ongoing basis.

12 2. If complete data are not available at the time of
13 determining whether the revenues received by a local
14 government from the local communications services tax imposed
15 under s. 202.19(1) are less than the revenues received from
16 the replaced revenue sources for the corresponding 2000-2001
17 period, as set forth in subparagraph 1., the local government
18 shall use the best data available for the corresponding
19 2000-2001 period in making such determination.

20 3. The adjustment permitted under subparagraph 1. may
21 be made by emergency ordinance and may be made notwithstanding
22 the maximum rate established under subsection (2) and
23 notwithstanding any schedules or timeframes or any other
24 limitations contained in this chapter. The emergency ordinance
25 shall specify an effective date for the adjusted rate, which
26 shall be no less than 60 ~~90~~ days after the date of adoption of
27 the ordinance and shall be effective with respect to taxable
28 services included on bills that are dated on the first day of
29 a month subsequent to the expiration of the 60-day period. At
30 the end of ~~1 that~~ year following the effective date of such
31 adjusted rate, the local governing authority shall, as soon as

1 is consistent with s. 202.21, reduce the rate by that portion
2 of the emergency rate which was necessary to recoup the amount
3 of revenues not received prior to the implementation of the
4 emergency rate.

5 (8) Notwithstanding any provision of this chapter to
6 the contrary, any municipality or county that has a local
7 communications services tax rate established under paragraphs
8 (1)(a) and (b) which is less than the maximum rate established
9 under paragraphs(2)(a) and (b) may by resolution increase the
10 local communications services tax rate established under
11 paragraphs (1)(a) and (b) up to the maximum rate established
12 under paragraphs (2)(a) and (b), with such increased rate to
13 be effective October 1, 2001. The municipality or county shall
14 notify the department of such increased rate by certified mail
15 postmarked on or before July 15, 2001.

16 Section 12. Paragraph (c) of subsection (1), paragraph
17 (b) of subsection (2), and paragraphs (b) and (c) of
18 subsection (3) of section 202.22, Florida Statutes, are
19 amended, paragraph (g) is added to subsection (3) of that
20 section, and paragraph (b) of subsection (4) and paragraph (b)
21 of subsection (6) of that section are amended, to read:

22 202.22 Determination of local tax situs.--

23 (1) A dealer of communications services who is
24 obligated to collect and remit a local communications services
25 tax imposed under s. 202.19 shall be held harmless from any
26 liability, including tax, interest, and penalties, which would
27 otherwise be due solely as a result of an assignment of a
28 service address to an incorrect local taxing jurisdiction, if
29 the dealer of communications services exercises due diligence
30 in applying one or more of the following methods for
31

1 determining the local taxing jurisdiction in which a service
2 address is located:

3 (c)1. Employing enhanced zip codes to assign each
4 street address, address range, post office box, or post office
5 box range in the dealer's service area to a specific local
6 taxing jurisdiction.

7 2. If an enhanced zip code overlaps boundaries of
8 municipalities or counties, or if an enhanced zip code cannot
9 be assigned to the service address because the service address
10 is in a rural area or a location without postal delivery, the
11 dealer of communications services or its database vendor shall
12 assign the affected service addresses to one specific local
13 taxing jurisdiction within such zip code based on a reasonable
14 methodology. A methodology satisfies this subparagraph
15 ~~paragraph~~ if the information used to assign service addresses
16 is obtained by the dealer or its database vendor from:

17 a.1. A database provided by the department;

18 b.2. A database certified by the department under
19 subsection (3);

20 c.3. Responsible representatives of the relevant local
21 taxing jurisdictions; or

22 d.4. The United States Census Bureau or the United
23 States Postal Service.

24 (2)

25 (b)1. Each local taxing jurisdiction shall furnish to
26 the department all information needed to create and update the
27 electronic database, including changes in service addresses,
28 annexations, incorporations, reorganizations, and any other
29 changes in jurisdictional boundaries. The information
30 furnished to the department must specify an effective date,
31 which must be the next ensuing January 1 or July 1, and such

1 information must be furnished to the department at least 120
2 days prior to the effective date. However, the requirement
3 that counties submit information pursuant to this paragraph
4 shall be subject to appropriation.

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

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

24 (3) For purposes of this section, a database must be
25 certified by the department pursuant to rules that implement
26 the following criteria and procedures:

27 (b) Upon receipt of an application for certification
28 or recertification of a database, the provisions of s. 120.60
29 shall apply, except that the department shall examine the
30 application and, within 90 days after receipt, notify the
31 applicant of any apparent errors or omissions and request any

1 additional information, conduct any inspection, or perform any
2 testing determined necessary. The applicant shall designate an
3 individual responsible for providing access to all records,
4 facilities, and processes the department determines are
5 reasonably necessary to review, inspect, or test to ~~and~~ make a
6 determination regarding the application. Such access must be
7 provided within 10 working days after notification.

8 (c) The application must be in the form prescribed by
9 rule and must include the applicant's name, federal employer
10 identification number, mailing address, business address, and
11 any other information required by the department. The
12 application may request that the applicant identify ~~must~~
13 ~~identify, among other elements required by the department,~~ the
14 applicant's proposal for testing the database.

15 (g) Notwithstanding any provision of law to the
16 contrary, if a dealer submits an application for certification
17 on or before October 1, 2001, and such application is neither
18 approved nor denied within the time period set forth in
19 paragraph (d):

20 1. For purposes of computing the amount of the
21 deduction to which such dealer is entitled under s. 202.28,
22 the dealer shall be deemed to have used a certified database
23 pursuant to paragraph (1)(b), until such time as the
24 application for certification is denied.

25 2. In the event that such application is approved,
26 such approval shall be deemed to have been effective on the
27 date of the application or October 1, 2001, whichever is
28 later.

29 (4)

30 (b) Notwithstanding any law to the contrary, a dealer
31 of communications services is exercising due diligence in

1 applying one or more of the methods set forth in subsection
2 (1) if the dealer:
3 1. Expends reasonable resources to accurately and
4 reliably implement such method. However, the employment of
5 enhanced zip codes pursuant to paragraph (1)(c) satisfies the
6 requirements of this subparagraph; and
7 2. Maintains adequate internal controls in assigning
8 street addresses, address ranges, post offices boxes, and post
9 office box ranges to taxing jurisdictions. Internal controls
10 are adequate if the dealer of communications services:
11 a. Maintains and follows procedures to obtain and
12 implement periodic and consistent updates to the database at
13 least once every 6 months; and
14 b. Corrects errors in the assignments of service
15 addresses to local taxing jurisdictions within 120 days after
16 the dealer discovers such errors.
17 (6)
18 (b) Notwithstanding s. 202.28, if a dealer of
19 communications services employs a method of assigning service
20 addresses other than as set forth in paragraph (1)(a),
21 paragraph (1)(b), or paragraph (1)(c), the deduction allowed
22 to the dealer of communications services as compensation under
23 s. 202.28 shall be 0.25 percent of that portion of the tax due
24 and accounted for and remitted to the department which is
25 attributable to such method of assigning service addresses
26 other than as set forth in paragraph (1)(a), paragraph (1)(b),
27 or paragraph (1)(c).
28 Section 13. Subsection (8) is added to section 202.23,
29 Florida Statutes, to read:
30 202.23 Procedure on purchaser's request for refund or
31 credit of communications services taxes.--

1 (8)(a) Subject to the provisions of s. 213.756, if it
2 appears, upon examination of a communications services tax
3 return made under this chapter, or upon proof submitted to the
4 department by the dealer, that an amount of communications
5 services tax has been paid in excess of the amount due, the
6 department may refund the amount of the overpayment to the
7 dealer. The department may refund the overpayment without
8 regard to whether the dealer has filed a written claim for
9 refund; however, the department may require the dealer to file
10 a statement affirming that the dealer made the overpayment.
11 Prior to issuing a refund pursuant to this subsection, the
12 department shall notify the dealer of its intent to issue such
13 refund, the amount of such refund, and the reason for such
14 refund.

15 (b) Notwithstanding the provisions of paragraph (a), a
16 refund of communications services tax shall not be made, and
17 no action for a refund may be brought by a dealer or other
18 person, after the applicable period set forth in s. 215.26(2)
19 has elapsed.

20 (c) If, after the issuance of a refund by the
21 department pursuant to this subsection, the department
22 determines that the amount of such refund exceeds the amount
23 legally due to the dealer, the provisions of s. 202.35
24 concerning penalties and interest shall not apply if, within
25 60 days of receiving notice of such determination, the dealer
26 reimburses the department the amount of such excess.

27 Section 14. Subsection (2) of section 202.24, Florida
28 Statutes, is amended to read:

29 202.24 Limitations on local taxes and fees imposed on
30 dealers of communications services.--

31

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

3 1. Levying on or collecting from dealers or purchasers
4 of communications services any tax, charge, fee, or other
5 imposition on or with respect to the provision or purchase of
6 communications services.

7 2. Requiring any dealer of communications services to
8 enter into or extend the term of a franchise or other
9 agreement that requires the payment of a tax, charge, fee, or
10 other imposition.

11 3. Adopting or enforcing any provision of any
12 ordinance or agreement to the extent that such provision
13 obligates a dealer of communications services to charge,
14 collect, or pay to the public body a tax, charge, fee, or
15 other imposition.

16
17 Each municipality and county retains authority to negotiate
18 all terms and conditions of a cable service franchise allowed
19 by federal and state law except those terms and conditions
20 related to franchise fees and the definition of gross revenues
21 or other definitions or methodologies related to the payment
22 or assessment of franchise fees on providers of cable
23 services.

24 (b) For purposes of this subsection, a tax, charge,
25 fee, or other imposition includes any amount or in-kind
26 payment of property or services which is required by ordinance
27 or agreement to be paid or furnished to a public body by or
28 through a dealer of communications services in its capacity as
29 a dealer of communications services, regardless of whether
30 such amount or in-kind payment of property or services is:

31

1 1. Designated as a sales tax, excise tax, subscriber
2 charge, franchise fee, user fee, privilege fee, occupancy fee,
3 rental fee, license fee, pole fee, tower fee, base-station
4 fee, or other tax or fee;

5 2. Measured by the amounts charged or received for
6 services, regardless of whether such amount is permitted or
7 required to be separately stated on the customer's bill, by
8 the type or amount of equipment or facilities deployed, or by
9 other means; or

10 3. Intended as compensation for the use of public
11 roads or rights-of-way, for the right to conduct business, or
12 for other purposes.

13 (c) This subsection does not apply to:

14 1. Local communications services taxes levied under
15 this chapter.

16 2. Ad valorem taxes levied pursuant to chapter 200.

17 3. Occupational license taxes levied under chapter
18 205.

19 4. "911" service charges levied under chapter 365.

20 5. Amounts charged for the rental or other use of
21 property owned by a public body which is not in the public
22 rights-of-way to a dealer of communications services for any
23 purpose, including, but not limited to, the placement or
24 attachment of equipment used in the provision of
25 communications services.

26 6. Permit fees of general applicability which are not
27 related to placing or maintaining facilities in or on public
28 roads or rights-of-way.

29 7. Permit fees related to placing or maintaining
30 facilities in or on public roads or rights-of-way pursuant to
31 s. 337.401.

1 8. Any in-kind requirements, institutional networks,
2 or contributions for, or in support of, the use or
3 construction of public, educational, or governmental access
4 facilities allowed under federal law and imposed on providers
5 of cable service pursuant to any ordinance or agreement.
6 Nothing in this subparagraph shall prohibit the ability of
7 providers of cable service to recover such expenses as allowed
8 under federal law. ~~This subparagraph shall be reviewed by the~~
9 ~~legislature during the 2001 legislative session in conjunction~~
10 ~~with the study required by this act.~~

11 9. Special assessments and impact fees.

12 10. Pole attachment fees that are charged by a local
13 government for attachments to utility poles owned by the local
14 government.

15 11. Utility service fees or other similar user fees
16 for utility services.

17 12. Any other generally applicable tax, fee, charge,
18 or imposition authorized by general law on July 1, 2000, which
19 is not specifically prohibited by this subsection or included
20 as a replaced revenue source in s. 202.20.

21 Section 15. Subsection (3) of section 202.27, Florida
22 Statutes, is amended to read:

23 202.27 Return filing; rules for self-accrual.--

24 (3) The department shall accept returns, except those
25 required to be initiated through an electronic data
26 interchange, as timely if postmarked on or before the 20th day
27 of the month; if the 20th day falls on a Saturday, Sunday, or
28 federal or state legal holiday, returns are timely if
29 postmarked on the next succeeding workday. ~~Any dealer who~~
30 ~~makes sales of any nature in two or more locations for which~~
31 ~~returns are required to be filed with the department and who~~

1 ~~maintains records for such locations in a central office or~~
2 ~~place may, on each reporting date, file one return for all~~
3 ~~such places of business in lieu of separate returns for each~~
4 ~~location; however, the return must clearly indicate the~~
5 ~~amounts collected within each location.~~ Each dealer shall file
6 a return for each tax period even though no tax is due for
7 such period.

8 Section 16. Subsection (1) of section 202.28, Florida
9 Statutes, is amended to read:

10 202.28 Credit for collecting tax; penalties.--

11 (1) Except as otherwise provided in s. 202.22, for the
12 purpose of compensating persons providing communications
13 services for the keeping of prescribed records, the filing of
14 timely tax returns, and the proper accounting and remitting of
15 taxes, persons collecting taxes imposed under this chapter and
16 under s. 203.01(1)(a)2. shall be allowed to deduct 0.75
17 percent of the amount of the tax due and accounted for and
18 remitted to the department.

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

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

24 1. For the purposes of this chapter, a return is
25 incomplete if it is lacking such uniformity, completeness, and
26 arrangement that the physical handling, verification, review
27 of the return, or determination of other taxes and fees
28 reported on the return can not be readily accomplished.

29 2. The department shall adopt rules requiring the
30 information that it considers necessary to ensure that the
31 taxes levied or administered under this chapter are properly

1 collected, reviewed, compiled, reported, and enforced,
2 including, but not limited to, rules requiring the reporting
3 of the amount of gross sales; the amount of taxable sales; the
4 amount of tax collected or due; the amount of lawful refunds,
5 deductions, or credits claimed; the amount claimed as the
6 dealer's collection allowance; the amount of penalty and
7 interest; and the amount due with the return.

8 (c) The collection allowance and other credits or
9 deductions provided in this chapter shall be applied to the
10 taxes reported for the jurisdiction previously credited with
11 the tax paid.

12 Section 17. Effective upon this act becoming a law,
13 paragraph (c) of subsection (3) of section 337.401, Florida
14 Statutes, as amended by section 50 of chapter 2000-260, Laws
15 of Florida, is amended to read:

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

18 (3)

19 (c)1. It is the intention of the state to treat all
20 providers of communications services that use or occupy
21 municipal or charter county roads or rights-of-way for the
22 provision of communications services in a nondiscriminatory
23 and competitively neutral manner with respect to the payment
24 of permit fees. Certain providers of communications services
25 have been granted by general law the authority to offset
26 permit fees against franchise or other fees while other
27 providers of communications services have not been granted
28 this authority. In order to treat all providers of
29 communications services in a nondiscriminatory and
30 competitively neutral manner with respect to the payment of
31 permit fees, each municipality and charter county shall make

1 an election under either sub-subparagraph a. or
2 sub-subparagraph b. and must inform the Department of Revenue
3 of the election by certified mail by July 1, 2001. Such
4 election shall take effect October 1, 2001.

5 a.(I) The municipality or charter county may require
6 and collect permit fees from any providers of communications
7 services that use or occupy municipal or county roads or
8 rights-of-way. All fees permitted under this sub-subparagraph
9 must be reasonable and commensurate with the direct and actual
10 cost of the regulatory activity, including issuing and
11 processing permits, plan reviews, physical inspection, and
12 direct administrative costs; must be demonstrable; and must be
13 equitable among users of the roads or rights-of-way. A fee
14 permitted under this sub-subparagraph may not: be offset
15 against the tax imposed under chapter 202; include the costs
16 of roads or rights-of-way acquisition or roads or
17 rights-of-way rental; include any general administrative,
18 management, or maintenance costs of the roads or
19 rights-of-way; or be based on a percentage of the value or
20 costs associated with the work to be performed on the roads or
21 rights-of-way. In an action to recover amounts due for a fee
22 not permitted under this sub-subparagraph, the prevailing
23 party may recover court costs and attorney's fees at trial and
24 on appeal. In addition to the limitations set forth in this
25 section, a fee levied by a municipality or charter county
26 under this sub-subparagraph may not exceed \$100. However,
27 permit fees may not be imposed with respect to permits that
28 may be required for service drop lines not required to be
29 noticed under s. 556.108(5)(b) or for any activity that does
30 not require the physical disturbance of the roads or

31

1 | rights-of-way or does not impair access to or full use of the
2 | roads or rights-of-way.

3 | (II) To ensure competitive neutrality among providers
4 | of communications services, for any municipality or charter
5 | county that elects to exercise its authority to require and
6 | collect permit fees under this sub-subparagraph, the rate of
7 | the local communications services tax imposed by such
8 | jurisdiction, as computed under s. 202.20(1) and (2), shall
9 | automatically be reduced by a rate of 0.12 percent.

10 | b. Alternatively, the municipality or charter county
11 | may elect not to require and collect permit fees from any
12 | provider of communications services that uses or occupies
13 | municipal or charter county roads or rights-of-way for the
14 | provision of communications services; however, each
15 | municipality or charter county that elects to operate under
16 | this sub-subparagraph retains all authority to establish rules
17 | and regulations for providers of communications services to
18 | use or occupy roads or rights-of-way as provided in this
19 | section. If a municipality or charter county elects to operate
20 | under this sub-subparagraph, the total rate for the local
21 | communications services tax as computed under s. 202.20(1) and
22 | (2) for that municipality or charter county may be increased
23 | by ordinance or resolution by an amount not to exceed a rate
24 | of 0.12 percent. If a municipality or charter county elects to
25 | increase its rate effective October 1, 2001, the municipality
26 | or charter county shall inform the department of such
27 | increased rate by certified mail postmarked on or before July
28 | 15, 2001.

29 | c. A municipality or charter county that does not make
30 | an election as provided for in this subparagraph shall be
31 |

1 presumed to have elected to operate under the provisions of
2 sub-subparagraph b.

3 2. Each noncharter county shall make an election under
4 either sub-subparagraph a. or sub-subparagraph b. and shall
5 inform the Department of Revenue of the election by certified
6 mail by July 1, 2001. Such election shall take effect October
7 1, 2001.

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

1 556.108(5)(b) or for any activity that does not require the
2 physical disturbance of the roads or rights-of-way or does not
3 impair access to or full use of the roads or rights-of-way.

4 b. Alternatively, the noncharter county may elect not
5 to require and collect permit fees from any provider of
6 communications services that uses or occupies noncharter
7 county roads or rights-of-way for the provision of
8 communications services; however, each noncharter county that
9 elects to operate under this sub-subparagraph shall retain all
10 authority to establish rules and regulations for providers of
11 communications services to use or occupy roads or
12 rights-of-way as provided in this section. If a noncharter
13 county elects to operate under this sub-subparagraph, the
14 total rate for the local communications services tax as
15 computed under s. 202.20(1) and (2) for that noncharter county
16 may be increased by ordinance or resolution by an amount not
17 to exceed a rate of 0.24 percent, to replace the revenue the
18 noncharter county would otherwise have received from permit
19 fees for providers of communications services. If a noncharter
20 county elects to increase its rate effective October 1, 2001,
21 the noncharter county shall inform the department of such
22 increased rate by certified mail postmarked on or before July
23 15, 2001.

24 c. A noncharter county that does not make an election
25 as provided for in this subparagraph shall be presumed to have
26 elected to operate under the provisions of sub-subparagraph b.

27 3. Except as provided in this paragraph,
28 municipalities and counties retain all existing authority to
29 require and collect permit fees from users or occupants of
30 municipal or county roads or rights-of-way and to set
31 appropriate permit fee amounts.

1 Section 18. Effective October 1, 2001, paragraph (1)
2 is added to subsection (3) of section 337.401, Florida
3 Statutes, as amended by section 51 of chapter 2000-260, Laws
4 of Florida, to read:

5 337.401 Use of right-of-way for utilities subject to
6 regulation; permit; fees.--

7 (3)

8 (1) Pursuant to this paragraph, any county or
9 municipality may by ordinance change either its election made
10 on or before July 1, 2001, under paragraph (c) or an election
11 previously made under this paragraph.

12 1.a. If a municipality or charter county changes its
13 election under this paragraph in order to exercise its
14 authority to require and collect permit fees in accordance
15 with this subsection, the rate of the local communications
16 services tax imposed by such jurisdiction as computed under s.
17 202.20(1) and (2) shall automatically be reduced by the sum of
18 0.12 percent plus the percentage, if any, by which such rate
19 was increased pursuant to sub-subparagraph (c)1.b.

20 b. If a municipality or charter county changes its
21 election under this paragraph in order to discontinue
22 requiring and collecting permit fees, the rate of the local
23 communications services tax imposed by such jurisdiction as
24 computed under s. 202.20(1) and (2) may be increased by
25 ordinance by an amount not to exceed 0.24 percent.

26 2. If a noncharter county changes its election under
27 this paragraph in order to exercise its authority to require
28 and collect permit fees in accordance with this subsection,
29 the rate of the local communications services tax imposed by
30 such jurisdiction as computed under s. 202.20(1) and (2) shall
31

1 automatically be reduced by the percentage, if any, by which
2 such rate was increased pursuant to sub-subparagraph (c)2.b.

3 3.a. Any change of election pursuant to this paragraph
4 and any tax rate change resulting from such change of election
5 shall be subject to the notice requirements of s. 202.21;
6 however, no such change of election shall become effective
7 prior to January 1, 2003.

8 b. Any county or municipality changing its election
9 under this paragraph in order to exercise its authority to
10 require and collect permit fees shall, in addition to
11 complying with the notice requirements under s. 202.21,
12 provide to all dealers providing communications services in
13 such jurisdiction written notice of such change of election by
14 July 1 immediately preceding the January 1 on which such
15 change of election becomes effective. For purposes of this
16 sub-subparagraph, dealers providing communications services in
17 such jurisdiction shall include every dealer reporting tax to
18 such jurisdiction pursuant to s. 202.37 on the return required
19 under s. 202.27 to be filed on or before the 20th day of May
20 immediately preceding the January 1 on which such change of
21 election becomes effective.

22 Section 19. Notwithstanding any provision of law to
23 the contrary, the provisions of section 166.234, Florida
24 Statutes, shall continue to apply with respect to all public
25 service taxes imposed on telecommunications services under
26 section 166.231(9), Florida Statutes, prior to its amendment
27 by chapter 2000-260, Laws of Florida.

28 Section 20. Notwithstanding any law or ordinance to
29 the contrary, and regardless of the payment schedule contained
30 in any license, franchise, ordinance, or other arrangement,
31 all franchise fees required to be paid by cable or

