

By Senator Pruitt

27-1147A-02

1                                   A bill to be entitled  
2           An act relating to the communications services  
3           tax; amending s. 202.125, F.S., relating to the  
4           tax exemption on the sale of communications  
5           services to religious or educational  
6           institutions; providing definitions to conform  
7           such exemption to the sales tax exemption  
8           provided for these institutions; creating s.  
9           202.151, F.S.; clarifying the imposition of a  
10          use tax on certain purchases of communications  
11          services; amending s. 202.16, F.S.; providing  
12          an exception to the requirement that dealers  
13          separately state the communications services  
14          tax on bills and invoices; creating s. 202.205,  
15          F.S.; providing a transition rule for counties  
16          and municipalities that reduced the local  
17          communications services tax on a specified  
18          date; amending s. 202.22, F.S.; clarifying  
19          provisions governing the electronic databases  
20          used to determine local tax situs for the  
21          communications services tax; repealing s.  
22          212.05(1)(g), F.S., relating to a sales tax on  
23          certain substitute telecommunications  
24          equipment; amending s. 337.401, F.S.; changing  
25          the date on which local governments must notify  
26          dealers that provide communications services of  
27          changes in permit fees; amending s. 365.172,  
28          F.S.; clarifying that the E911 fee applies to  
29          certain customers whose place of primary use is  
30          within the state; specifying that certain  
31          definitions applicable to the Communications

1 Services Tax Simplification Law apply to the  
2 E911 fee; amending ss. 212.0501, 212.08,  
3 212.20, 509.032, 561.1105, F.S., relating to  
4 the tax on diesel fuel, a tax exemption for  
5 professional services, distribution of taxes,  
6 and tax certificates; conforming  
7 cross-references to changes made by the act;  
8 specifying that certain provisions of the act  
9 are remedial in nature and intended to clarify  
10 the law in effect on the effective date of the  
11 act; providing effective dates.

12  
13 Be It Enacted by the Legislature of the State of Florida:

14  
15 Section 1. Subsection (4) of section 202.125, Florida  
16 Statutes, is amended to read:

17 202.125 Sales of communications services; specified  
18 exemptions.--

19 (4) The sale of communications services to a religious  
20 institution or educational institution ~~organization~~ that is  
21 exempt from federal income tax under s. 501(c)(3) of the  
22 Internal Revenue Code is exempt from the taxes imposed or  
23 administered pursuant to ss. 202.12 and 202.19. As used in  
24 this subsection, the term:

25 (a) "Religious institution" means church, synagogue,  
26 or established physical place for worship at which nonprofit  
27 religious services and activities are regularly conducted. The  
28 term also includes:

29 1. Any nonprofit corporation the sole purpose of which  
30 is to provide free transportation services to church members,  
31 their families, and other church attendees;

1           2. Any nonprofit state, district, or other governing  
2 or administrative office the function of which is to assist or  
3 regulate the customary activities of religious institutions;

4           3. Any nonprofit corporation that owns and operates a  
5 television station in this state of which at least 90 percent  
6 of the programming consists of programs of a religious nature  
7 and the financial support for which, exclusive of receipts for  
8 broadcasting from other nonprofit organizations, is  
9 predominantly from contributions from the public;

10           4. Any nonprofit corporation the primary activity of  
11 which is making and distributing audio recordings of religious  
12 scriptures and teachings to blind or visually impaired persons  
13 at no charge; and

14           5. Any nonprofit corporation the sole or primary  
15 purpose of which is to provide, upon invitation, nonprofit  
16 religious services, evangelistic services, religious  
17 education, administrative assistance, or missionary assistance  
18 for a church, synagogue, or established physical place of  
19 worship at which nonprofit religious services and activities  
20 are regularly conducted.

21           (b) "Educational institution" includes:

22           1. Any state tax-supported, parochial, church, and  
23 nonprofit private school, college, or university that conducts  
24 regular classes and courses of study required for  
25 accreditation by or membership in the Southern Association of  
26 Colleges and Schools, the Florida Council of Independent  
27 Schools, or the Florida Association of Christian Colleges and  
28 Schools, Inc.;

29           2. Any nonprofit private school that conducts regular  
30 classes and courses of study which are accepted for continuing  
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1 education credit by a board of the Division of Medical Quality  
2 Assurance of the Department of Health;

3 3. Any nonprofit library;

4 4. Any nonprofit art gallery;

5 5. Any nonprofit performing arts center that provides  
6 educational programs to school children, which programs  
7 involve performances or other educational activities at the  
8 performing arts center and serve a minimum of 50,000 school  
9 children a year; and

10 6. Any nonprofit museum that is open to the public.

11 Section 2. Section 202.151, Florida Statutes, is  
12 created to read:

13 202.151 Use tax imposed on certain purchasers of  
14 communications services.--Any person who purchases  
15 communications services that are otherwise taxable under ss.  
16 202.12 and 202.19 at retail from a seller in another state,  
17 territory, the District of Columbia, or any foreign country  
18 shall report and remit to the department the taxes imposed by  
19 or administered under this chapter on the communications  
20 services purchased and used, the same as if such  
21 communications services had been purchased at retail from a  
22 dealer in this state. This section does not apply if the  
23 out-of-state seller registers as a dealer in this state and  
24 collects from the purchaser the taxes imposed by or  
25 administered under this chapter. The department may adopt  
26 rules governing the reporting and remitting of communications  
27 services taxes by purchasers who purchase from out-of-state  
28 sellers who do not collect the taxes imposed by or  
29 administered under this chapter.

30 Section 3. Subsection (1) of section 202.16, Florida  
31 Statutes, is amended to read:

1           202.16 Payment.--The taxes imposed or administered  
2 under this chapter and chapter 203 shall be collected from all  
3 dealers of taxable communications services on the sale at  
4 retail in this state of communications services taxable under  
5 this chapter and chapter 203. The full amount of the taxes on  
6 a credit sale, installment sale, or sale made on any kind of  
7 deferred payment plan is due at the moment of the transaction  
8 in the same manner as a cash sale.

9           (1)(a) Except as otherwise provided in ss.  
10 202.12(1)(b) and 202.15, the taxes collected under this  
11 chapter and chapter 203 shall be paid by the purchaser of the  
12 communications service and shall be collected from such person  
13 by the dealer of communications services.

14           (b) Each dealer of communications services selling  
15 communications services in this state shall collect the taxes  
16 imposed under this chapter and chapter 203 from the purchaser  
17 of such services, and such taxes must be stated separately  
18 from all other charges on the bill or invoice. Notwithstanding  
19 the requirement in this paragraph and in s. 202.35 to  
20 separately state such taxes, a public lodging establishment  
21 licensed under chapter 509 may notify purchasers of the taxes  
22 imposed under this chapter on a notice in a guest room posted  
23 in a manner consistent with the requirements of s. 509.2015,  
24 rather than separately stating the taxes on the guest bill or  
25 invoice.

26           Section 4. Section 202.205, Florida Statutes, is  
27 created to read:

28           202.205 Transition rule for local  
29 rates.--Notwithstanding s. 202.21, the rate of the local  
30 communications services tax for a county or municipality that  
31 adopted a resolution or ordinance reducing the rate of tax

1 effective October 1, 2002, and that notified the Department of  
2 Revenue of the reduced rate by mail postmarked by July 16,  
3 2001, shall be the adopted reduced rate beginning October 1,  
4 2002. However, the local governing body of the county or  
5 municipality may change the local rate effective January 1,  
6 2003, in the manner provided in this chapter.

7 Section 5. Paragraph (b) of subsection (2) and  
8 paragraphs (a) and (g) of subsection (3) of section 202.22,  
9 Florida Statutes, are amended to read:

10 202.22 Determination of local tax situs.--

11 (2)

12 (b)1. Each local taxing jurisdiction shall furnish to  
13 the department all information needed to create and update the  
14 electronic database, including changes in service addresses,  
15 annexations, incorporations, reorganizations, and any other  
16 changes in jurisdictional boundaries. The information  
17 furnished to the department must specify an effective date,  
18 which must be the next ensuing January 1 or July 1, and such  
19 information must be furnished to the department at least 120  
20 days prior to the effective date. However, the requirement  
21 that counties submit information pursuant to this paragraph  
22 shall be subject to appropriation.

23 2. The department shall update the electronic database  
24 in accordance with the information furnished by local taxing  
25 jurisdictions under subparagraph 1. Each update must specify  
26 the effective date as the next ensuing January 1 or July 1 and  
27 must be posted by the department on a website not less than 90  
28 days prior to the effective date. A substantially affected  
29 person may provide notice to the database administrator of an  
30 objection to information contained in the electronic database.  
31 If an objection is supported by competent evidence, the

1 department shall forward the evidence to the affected local  
2 taxing jurisdictions and update the electronic database in  
3 accordance with the determination furnished by local taxing  
4 jurisdictions to the department. The department shall also  
5 furnish the update on magnetic or electronic media to any  
6 dealer of communications services or vendor who requests the  
7 update on such media. However, the department may collect a  
8 fee from the dealer of communications services which does not  
9 exceed the actual cost of furnishing the update on magnetic or  
10 electronic media. Information contained in the electronic  
11 database is conclusive for purposes of this chapter. The  
12 electronic database is not an order, a rule, or a policy of  
13 general applicability.

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

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

24 (a) The database must assign street addresses, address  
25 ranges, post office boxes, or post office box ranges to the  
26 proper jurisdiction with an overall accuracy rate of 95  
27 percent at a 95 percent level of confidence, as determined  
28 through a statistically reliable sample. The accuracy must be  
29 measured based on the entire geographic area within the state  
30 covered by such database ~~state or, if the service area of the~~  
31

1 ~~dealer does not encompass the entire state, based on the~~  
2 ~~dealer's entire service area.~~

3 (g) Notwithstanding any provision of law to the  
4 contrary, if a dealer submits an application for certification  
5 on or before the later of October 1, 2001, or the date that  
6 which is 30 days after the date on which the applicable  
7 department rule becomes effective, the 180-day time limit set  
8 forth in paragraph (d) does not apply. During the time the  
9 application is under consideration by the department or, if  
10 the application is denied, until the denial is no longer  
11 subject to administrative or judicial review or until a later  
12 date fixed by order of the reviewing court ~~and such~~  
13 ~~application is neither approved nor denied within the time~~  
14 ~~period set forth in paragraph (d):~~

15 1. For purposes of computing the amount of the  
16 deduction to which such dealer is entitled under s. 202.28,  
17 the dealer shall be deemed to have used a certified database  
18 pursuant to paragraph (1)(b), ~~until such time as the~~  
19 ~~application for certification is denied.~~

20 2. In the event that such application is approved,  
21 such approval shall be deemed to have been effective on the  
22 date of the application or October 1, 2001, whichever is  
23 later.

24 Section 6. Paragraph (g) of subsection (1) of section  
25 212.05, Florida Statutes, as amended by section 38 of chapter  
26 2001-140, Laws of Florida, is repealed.

27 Section 7. Paragraph (j) of subsection (3) of section  
28 337.401, Florida Statutes, is amended to read:

29 337.401 Use of right-of-way for utilities subject to  
30 regulation; permit; fees.--

31 (3)



1           (j) Pursuant to this paragraph, any county or  
2 municipality may by ordinance change either its election made  
3 on or before July 16, 2001, under paragraph (c) or an election  
4 made under this paragraph.

5           1.a. If a municipality or charter county changes its  
6 election under this paragraph in order to exercise its  
7 authority to require and collect permit fees in accordance  
8 with this subsection, the rate of the local communications  
9 services tax imposed by such jurisdiction pursuant to ss.  
10 202.19 and 202.20 shall automatically be reduced by the sum of  
11 0.12 percent plus the percentage, if any, by which such rate  
12 was increased pursuant to sub-subparagraph (c)1.b.

13           b. If a municipality or charter county changes its  
14 election under this paragraph in order to discontinue  
15 requiring and collecting permit fees, the rate of the local  
16 communications services tax imposed by such jurisdiction  
17 pursuant to ss. 202.19 and 202.20 may be increased by  
18 ordinance or resolution by an amount not to exceed 0.24  
19 percent.

20           2.a. If a noncharter county changes its election under  
21 this paragraph in order to exercise its authority to require  
22 and collect permit fees in accordance with this subsection,  
23 the rate of the local communications services tax imposed by  
24 such jurisdiction pursuant to ss. 202.19 and 202.20 shall  
25 automatically be reduced by the percentage, if any, by which  
26 such rate was increased pursuant to sub-subparagraph (c)2.b.

27           b. If a noncharter county changes its election under  
28 this paragraph in order to discontinue requiring and  
29 collecting permit fees, the rate of the local communications  
30 services tax imposed by such jurisdiction pursuant to ss.  
31

1 202.19 and 202.20 may be increased by ordinance or resolution  
2 by an amount not to exceed 0.24 percent.

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 September ~~July~~ 1 immediately preceding the January 1 on which  
15 such change of election becomes effective. For purposes of  
16 this sub-subparagraph, dealers providing communications  
17 services in such jurisdiction shall include every dealer  
18 reporting tax to such jurisdiction pursuant to s. 202.37 on  
19 the return required under s. 202.27 to be filed on or before  
20 the 20th day of May immediately preceding the January 1 on  
21 which such change of election becomes effective.

22 Section 8. Effective with respect to bills issued by  
23 providers of mobile telecommunications services after August  
24 1, 2002, subsections (8) and (9) of section 365.172, Florida  
25 Statutes, are amended to read:

26 365.172 Wireless emergency telephone number "E911."--

27 (8) WIRELESS E911 FEE.--

28 (a) Each home service provider shall collect a monthly  
29 fee imposed on each customer whose place of primary use is  
30 ~~service subscriber who has a service number that has a billing~~  
31 ~~address~~ within this state. The rate of the fee shall be 50

1 cents per month per each service number, beginning August 1,  
2 1999. The fee shall apply uniformly and be imposed throughout  
3 the state.

4 (b) The fee is established to ensure full recovery for  
5 providers and for counties, over a reasonable period, of the  
6 costs associated with developing and maintaining an E911  
7 system on a technologically and competitively neutral basis.

8 (c) After July 1, 2001, the board may adjust the  
9 allocation percentages provided in s. 365.173 or reduce the  
10 amount of the fee, or both, if necessary to ensure full cost  
11 recovery or prevent overrecovery of costs incurred in the  
12 provision of E911 service, including costs incurred or  
13 projected to be incurred to comply with the order. Any new  
14 allocation percentages or reduced fee may not be adjusted for  
15 2 years. The fee may not exceed 50 cents per month per each  
16 service number.

17 (d) State and local taxes do not apply to the fee.

18 (e) A local government may not levy any additional fee  
19 on wireless providers or subscribers for the provision of E911  
20 service.

21 (9) MANAGEMENT OF FUNDS.--

22 (a) Each provider, as a part of its monthly billing  
23 process, shall collect the fee imposed under subsection (8).  
24 The provider may list the fee as a separate entry on each  
25 bill, in which case the fee must be identified as a fee for  
26 E911 services. A provider shall remit the fee only if the fee  
27 is paid by the subscriber. If a provider receives a partial  
28 payment for a monthly bill from a subscriber, the amount  
29 received shall first be applied to the payment due the  
30 provider for the provision of telecommunications service.

31

1 (b) A provider is not obligated to take any legal  
2 action to enforce collection of the fees for which any  
3 subscriber is billed. The provider shall provide to the board  
4 each quarter a list of the names, addresses, and service  
5 numbers of all subscribers who have indicated to the provider  
6 their refusal to pay the fee.

7 (c) Each provider may retain 1 percent of the amount  
8 of the fees collected as reimbursement for the administrative  
9 costs incurred by the provider to bill, collect, and remit the  
10 fee. The remainder shall be delivered to the board and  
11 deposited in the fund. The board shall distribute the  
12 remainder pursuant to s. 365.173.

13 (d) Each provider shall deliver revenues from the fee  
14 to the board within 60 days after the end of the month in  
15 which the fee was billed, together with a monthly report of  
16 the number of ~~billing addresses~~ of wireless customers whose  
17 place of primary use is subscribers in each county. A provider  
18 may apply to the board for a refund of, or may take a credit  
19 for, any fees remitted to the board which are not collected by  
20 the provider within 6 months following the month in which the  
21 fees are charged off for federal income tax purposes as bad  
22 debt. The board may waive the requirement that the fees and  
23 number of customers whose place of primary use is in each  
24 county ~~billing addresses~~ be submitted to the board each month,  
25 and authorize a provider to submit the fees and number of  
26 customers ~~billing addresses~~ quarterly if the provider  
27 demonstrates that such waiver is necessary and justified.

28 (e) For purposes of this section, the definitions  
29 contained in s. 202.11 and the provisions of s. 202.155 apply  
30 in the same manner and to the same extent as such definitions  
31

1 and provisions apply to the taxes levied pursuant to chapter  
2 202 on mobile communications services.

3 (f)~~(e)~~ As used in this subsection, the term "provider"  
4 includes any person or entity that resells wireless service  
5 and was not assessed the fee by its resale supplier.

6 Section 9. Subsection (4) of section 212.0501, Florida  
7 Statutes, is amended to read:

8 212.0501 Tax on diesel fuel for business purposes;  
9 purchase, storage, and use.--

10 (4) Except as otherwise provided in s. 212.05(1)(k) ~~s.~~  
11 ~~212.05(1)(l)~~, a licensed sales tax dealer may elect to collect  
12 such tax pursuant to this chapter on all sales to each person  
13 who purchases diesel fuel for consumption, use, or storage by  
14 a trade or business. When the licensed sales tax dealer has  
15 not elected to collect such tax on all such sales, the  
16 purchaser or ultimate consumer shall be liable for the payment  
17 of tax directly to the state.

18 Section 10. Paragraph (v) of subsection (7) of section  
19 212.08, Florida Statutes, is amended to read:

20 212.08 Sales, rental, use, consumption, distribution,  
21 and storage tax; specified exemptions.--The sale at retail,  
22 the rental, the use, the consumption, the distribution, and  
23 the storage to be used or consumed in this state of the  
24 following are hereby specifically exempt from the tax imposed  
25 by this chapter.

26 (7) MISCELLANEOUS EXEMPTIONS.--

27 (v) Professional services.--

28 1. Also exempted are professional, insurance, or  
29 personal service transactions that involve sales as  
30 inconsequential elements for which no separate charges are  
31 made.

1           2. The personal service transactions exempted pursuant  
2 to subparagraph 1. do not exempt the sale of information  
3 services involving the furnishing of printed, mimeographed, or  
4 multigraphed matter, or matter duplicating written or printed  
5 matter in any other manner, other than professional services  
6 and services of employees, agents, or other persons acting in  
7 a representative or fiduciary capacity or information services  
8 furnished to newspapers and radio and television stations. As  
9 used in this subparagraph, the term "information services"  
10 includes the services of collecting, compiling, or analyzing  
11 information of any kind or nature and furnishing reports  
12 thereof to other persons.

13           3. This exemption does not apply to any service  
14 warranty transaction taxable under s. 212.0506.

15           4. This exemption does not apply to any service  
16 transaction taxable under s. 212.05(1)(i)~~s. 212.05(1)(j)~~.

17  
18 Exemptions provided to any entity by this subsection shall not  
19 inure to any transaction otherwise taxable under this chapter  
20 when payment is made by a representative or employee of such  
21 entity by any means, including, but not limited to, cash,  
22 check, or credit card even when that representative or  
23 employee is subsequently reimbursed by such entity.

24           Section 11. Paragraph (c) of subsection (6) of section  
25 212.20, Florida Statutes, is amended to read:

26           212.20 Funds collected, disposition; additional powers  
27 of department; operational expense; refund of taxes  
28 adjudicated unconstitutionally collected.--

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

31

1 (c) Proceeds from the fees imposed under ss.  
2 212.05(1)(h)~~3.212.05(1)(i)3~~ and 212.18(3) shall remain with  
3 the General Revenue Fund.

4 Section 12. Paragraph (f) of subsection (2) of section  
5 509.032, Florida Statutes, is amended to read:

6 509.032 Duties.--

7 (2) INSPECTION OF PREMISES.--

8 (f) In conducting inspections of establishments  
9 licensed under this chapter, the division shall determine if  
10 each coin-operated amusement machine that is operated on the  
11 premises of a licensed establishment is properly registered  
12 with the Department of Revenue. Each month the division shall  
13 report to the Department of Revenue the sales tax registration  
14 number of the operator of any licensed establishment that has  
15 on location a coin-operated amusement machine and that does  
16 not have an identifying certificate conspicuously displayed as  
17 required by s. 212.05(1)(h)~~s. 212.05(1)(i)~~.

18 Section 13. Section 561.1105, Florida Statutes, is  
19 amended to read:

20 561.1105 Inspection of licensed premises;  
21 coin-operated amusement machines.--In conducting inspections  
22 of establishments licensed under the Beverage Law, the  
23 division shall determine if each coin-operated amusement  
24 machine that is operated on the licensed premises is properly  
25 registered with the Department of Revenue. Each month, the  
26 division shall report to the Department of Revenue the sales  
27 tax registration number of the operator of any licensed  
28 premises that has on location a coin-operated amusement  
29 machine and that does not have an identifying certificate  
30 conspicuously displayed as required by s. 212.05(1)(h) ~~s.~~  
31 ~~212.05(1)(i)~~.

1           Section 14. The amendments to sections 202.125(4),  
 2 202.22(2)(b) and (3)(a) and (g), and 212.05(1)(g), Florida  
 3 Statutes, contained in this act are remedial in nature and  
 4 intended to clarify the law in effect on the effective date of  
 5 this act.

6           Section 15. Except as otherwise expressly provided in  
 7 this act, this act shall take effect upon becoming a law.

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 9                           \*\*\*\*\*

10   SENATE SUMMARY

11 Revises various provisions concerning the communications  
 12 services tax. Conforms the tax exemption on the sale of  
 13 communications services to religious or educational  
 14 institutions to the sales tax exemption provided for  
 15 those institutions. Provides that public lodging  
 16 establishments need not separately state the  
 17 communications services tax on bills and invoices.  
 18 Clarifies the effect of a reduction in the local  
 19 communications services tax for counties and  
 20 municipalities. Abolishes the sales tax imposed on  
 21 certain substitute telecommunications equipment. Changes  
 22 the date on which local governments must notify dealers  
 23 that provide communications services of certain changes  
 24 in permit fees from July 1 to September 1. Clarifies  
 25 provisions imposing the wireless E911 fee. (See bill for  
 26 details.)  
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