

By the Committee on Regulated Industries; and Senator Pruitt

315-1951-02

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, or by a religious institution that is  
23 exempt from federal income tax under s. 501(c)(3) of the  
24 Internal Revenue Code having an established physical place for  
25 worship at which nonprofit religious services and activities  
26 are regularly conducted and carried on, is exempt from the  
27 taxes imposed or administered pursuant to ss. 202.12 and  
28 202.19. As used in this subsection, the term:

29 (a) "Religious institution" means church, synagogue,  
30 or established physical place for worship at which nonprofit

31

1 religious services and activities are regularly conducted. The  
2 term also includes:  
3 1. Any nonprofit corporation the sole purpose of which  
4 is to provide free transportation services to church members,  
5 their families, and other church attendees;  
6 2. Any nonprofit state, district, or other governing  
7 or administrative office the function of which is to assist or  
8 regulate the customary activities of religious institutions;  
9 3. Any nonprofit corporation that owns and operates a  
10 television station in this state of which at least 90 percent  
11 of the programming consists of programs of a religious nature  
12 and the financial support for which, exclusive of receipts for  
13 broadcasting from other nonprofit organizations, is  
14 predominantly from contributions from the public;  
15 4. Any nonprofit corporation the primary activity of  
16 which is making and distributing audio recordings of religious  
17 scriptures and teachings to blind or visually impaired persons  
18 at no charge; and  
19 5. Any nonprofit corporation the sole or primary  
20 purpose of which is to provide, upon invitation, nonprofit  
21 religious services, evangelistic services, religious  
22 education, administrative assistance, or missionary assistance  
23 for a church, synagogue, or established physical place of  
24 worship at which nonprofit religious services and activities  
25 are regularly conducted.  
26 (b) "Educational institution" includes:  
27 1. Any state tax-supported, parochial, church, and  
28 nonprofit private school, college, or university that conducts  
29 regular classes and courses of study required for  
30 accreditation by or membership in the Southern Association of  
31 Colleges and Schools, the Florida Council of Independent

1 Schools, or the Florida Association of Christian Colleges and  
2 Schools, Inc.;

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

7 3. Any nonprofit library;

8 4. Any nonprofit art gallery;

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

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

15 Section 2. Section 202.151, Florida Statutes, is  
16 created to read:

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

1 sellers who do not collect the taxes imposed by or  
2 administered under this chapter.

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

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

13 (1)(a) Except as otherwise provided in ss.  
14 202.12(1)(b) and 202.15, the taxes collected under this  
15 chapter and chapter 203 shall be paid by the purchaser of the  
16 communications service and shall be collected from such person  
17 by the dealer of communications services.

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

30 Section 4. Section 202.205, Florida Statutes, is  
31 created to read:

1           202.205 Transition rule for local  
2 rates.--Notwithstanding s. 202.21, the rate of the local  
3 communications services tax for a county or municipality that  
4 adopted a resolution or ordinance reducing the rate of tax  
5 effective October 1, 2002, and that notified the Department of  
6 Revenue of the reduced rate by mail postmarked by July 16,  
7 2001, shall be the adopted reduced rate beginning October 1,  
8 2002. However, the local governing body of the county or  
9 municipality may change the local rate effective January 1,  
10 2003, in the manner provided in this chapter.

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

14           202.22 Determination of local tax situs.--

15           (2)

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

27           2. The department shall update the electronic database  
28 in accordance with the information furnished by local taxing  
29 jurisdictions under subparagraph 1. Each update must specify  
30 the effective date as the next ensuing January 1 or July 1 and  
31 must be posted by the department on a website not less than 90

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

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

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

28           (a) The database must assign street addresses, address  
29 ranges, post office boxes, or post office box ranges to the  
30 proper jurisdiction with an overall accuracy rate of 95  
31 percent at a 95 percent level of confidence, as determined

1 through a statistically reliable sample. The accuracy must be  
2 measured based on the entire geographic area within the state  
3 covered by such database ~~state or, if the service area of the~~  
4 ~~dealer does not encompass the entire state, based on the~~  
5 ~~dealer's entire service area.~~

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

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

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

27 Section 6. Paragraph (g) of subsection (1) of section  
28 212.05, Florida Statutes, as amended by section 38 of chapter  
29 2001-140, Laws of Florida, is repealed.

30 Section 7. Paragraph (j) of subsection (3) of section  
31 337.401, Florida Statutes, is amended to read:



1           337.401 Use of right-of-way for utilities subject to  
2 regulation; permit; fees.--

3           (3)

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

8           1.a. If a municipality or charter county changes its  
9 election under this paragraph in order to exercise its  
10 authority to require and collect permit fees in accordance  
11 with this subsection, the rate of the local communications  
12 services tax imposed by such jurisdiction pursuant to ss.  
13 202.19 and 202.20 shall automatically be reduced by the sum of  
14 0.12 percent plus the percentage, if any, by which such rate  
15 was increased pursuant to sub-subparagraph (c)1.b.

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

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

30           b. If a noncharter county changes its election under  
31 this paragraph in order to discontinue requiring and

1 collecting permit fees, the rate of the local communications  
2 services tax imposed by such jurisdiction pursuant to ss.  
3 202.19 and 202.20 may be increased by ordinance or resolution  
4 by an amount not to exceed 0.24 percent.

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

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

24 Section 8. Effective with respect to bills issued by  
25 providers of mobile telecommunications services after August  
26 1, 2002, subsections (8) and (9) of section 365.172, Florida  
27 Statutes, are amended to read:

28 365.172 Wireless emergency telephone number "E911."--

29 (8) WIRELESS E911 FEE.--

30 (a) Each home service provider shall collect a monthly  
31 fee imposed on each customer whose place of primary use is

1 ~~service subscriber who has a service number that has a billing~~  
2 address within this state. The rate of the fee shall be 50  
3 cents per month per each service number, beginning August 1,  
4 1999. The fee shall apply uniformly and be imposed throughout  
5 the state.

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

10 (c) After July 1, 2001, the board may adjust the  
11 allocation percentages provided in s. 365.173 or reduce the  
12 amount of the fee, or both, if necessary to ensure full cost  
13 recovery or prevent overrecovery of costs incurred in the  
14 provision of E911 service, including costs incurred or  
15 projected to be incurred to comply with the order. Any new  
16 allocation percentages or reduced fee may not be adjusted for  
17 2 years. The fee may not exceed 50 cents per month per each  
18 service number.

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

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

23 (9) MANAGEMENT OF FUNDS.--

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

31

1 received shall first be applied to the payment due the  
2 provider for the provision of telecommunications service.

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

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

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

30 (e) For purposes of this section, the definitions  
31 contained in s. 202.11 and the provisions of s. 202.155 apply

1 in the same manner and to the same extent as such definitions  
2 and provisions apply to the taxes levied pursuant to chapter  
3 202 on mobile communications services.

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

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

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

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

19 Section 10. Paragraph (v) of subsection (7) of section  
20 212.08, Florida Statutes, is amended to read:

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

27 (7) MISCELLANEOUS EXEMPTIONS.--

28 (v) Professional services.--

29 1. Also exempted are professional, insurance, or  
30 personal service transactions that involve sales as

31

1 inconsequential elements for which no separate charges are  
2 made.

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

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

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

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

26           Section 11. Paragraph (c) of subsection (6) of section  
27 212.20, Florida Statutes, is amended to read:

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

31

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

3           (c) Proceeds from the fees imposed under ss.  
4 212.05(1)(h)~~3.212.05(1)(i)3~~ and 212.18(3) shall remain with  
5 the General Revenue Fund.

6           Section 12. Paragraph (f) of subsection (2) of section  
7 509.032, Florida Statutes, is amended to read:

8           509.032 Duties.--

9           (2) INSPECTION OF PREMISES.--

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

20           Section 13. Section 561.1105, Florida Statutes, is  
21 amended to read:

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

1 conspicuously displayed as required by s. 212.05(1)(h)~~s.~~  
2 ~~212.05(1)(i)~~.

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

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

10

11                           STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
12   COMMITTEE SUBSTITUTE FOR  
13   SB 1610

13

14 Provides that the sale of communications services by a  
15 religious institution that is exempt from federal income tax  
16 under s. 501 of the Internal Revenue Code having an  
17 established physical place for worship at which nonprofit  
18 religious services and activities are regularly conducted is  
19 exempt from the taxes imposed or administered pursuant to ss.  
20 202.12 and 202.19, F.S.

18

19

20

21

22

23

24

25

26

27

28

29

30

31