

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1237 Relating to Local Communications Services Tax
SPONSOR(S): Murzin
TIED BILLS: **IDEN./SIM. BILLS:** SB 2322

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR |
|---------------------------------------|--------|---------|----------------|
| 1) Subcommittee on Telecommunications | | Holt | Liepshutz |
| 2) Business Regulation | | | |
| 3) Finance & Tax | | | |
| 4) Appropriations | | | |
| 5) | | | |

SUMMARY ANALYSIS

In the 2000 Regular Session, the Legislature substantially rewrote Florida’s communications tax law. The rewrite was to provide that communications services be subject to a uniform statewide tax rate and a local tax administered by the Department of Revenue (DOR). Numerous individuals from business, state and local government assisted the Legislature in formulating policy and drafting language. The new communications tax law was meant to replace the old tax structure with a simplified and revenue-neutral new tax code.

Taking effect in October 2001, the new Communications Services Tax Simplification (CST) law combined seven different state taxes, local taxes, and fees into a two-tiered tax composed of a State Communications Services Tax and a Local Communications Service Tax. The CST broadened, among other things, the taxable base of communications services by restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the Department of Revenue (DOR). Among the legislative findings and intent, chapter 202 is to “ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and it is not a new tax.” Since the rewrite was so substantial, some of the details that need further clarification are proposed by this bill.

The bill deletes the legislative intent language that provides for reversion to the pre-2001 tax structure if the CST is declared invalid, ineffective, inapplicable, unconstitutional, or void. The bill establishes a new procedural system for the DOR to administer resale certificates issued to dealers under the CST; this new procedural system is similar to the one DOR utilizes for sales and use tax under s. 212.07(1)(b), F.S. Additionally, the bill repeals the authority for local governments to adopt by ordinance or resolution “emergency rates” which exceed the statutory maximum rates allowed under the local CST. The bill also expands the list of prohibited taxes, charges, and fees that each public body can levy with respect to the sale or purchase of communications services. The act takes effect on July 1, 2004.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

- | | | | |
|--------------------------------------|---|-----------------------------|---|
| 1. Reduce government? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes? | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |
| 3. Expand individual freedom? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

In the 2000 Regular Session, the Legislature substantially rewrote Florida's communications tax law. The rewrite was to provide that communications services be subject to a uniform statewide tax rate and a local tax administered by the Department of Revenue (DOR). Numerous individuals from business, state and local government assisted the Legislature in formulating policy and drafting language. The new communications tax law was meant to replace the old tax structure with a simplified and revenue-neutral new tax code.

Taking effect in October 2001, the new Communications Services Tax Simplification (CST) law combined seven different state taxes, local taxes, and fees into a two-tiered tax composed of a State Communications Services Tax and a Local Communications Service Tax. The CST broadened, among other things, the taxable base of communications services by restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the Department of Revenue (DOR). Among the legislative findings and intent, chapter 202 is to "ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and it is not a new tax." Since the rewrite was so substantial, some of the details that need further clarification are proposed by this bill.

PROPOSED CHANGES

The bill repeals the provision that provides for the reversion to the pre-2001 tax structure if the CST is declared invalid, ineffective, inapplicable, unconstitutional, or void.

The bill amends s. 202.16(2), F.S., to establish an alternative procedural system for any dealer who documents an exempt "sale for resale" transaction by retaining a copy of the purchaser's initial or annual resale certificate. In lieu of maintaining a copy of the certificate, a dealer may document, prior to the time of sale, an authorization number that will be provided by the DOR telephonically, or electronically, or by other means established by the DOR. The dealer may also rely on an initial or annual resale certificate issued pursuant to s. 202.17(6), valid at the time of receipt from the purchaser, without seeking additional annual resale certificates from the purchaser, if the dealer makes recurring sales to the purchaser in the normal course of business on a continual basis.

The bill defines "recurring sales to a purchaser in the normal course of business" as a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash account, similar to an open credit account. The bill describes purchases that are made from a selling dealer on a continual basis occurs if the

selling dealer makes, in the normal course of business, sales to the purchaser no less than once in every 12-month period. During any tax protest period, the bill provides that a dealer may submit, in lieu of a resale certificate, an exemption certificate executed by entities that were exempt at the time of sale, resale certificates provided by purchasers who were active dealers at the time of sale, and verification by the DOR of the purchaser's active dealer status at the time of sale. However, this alternative documentation may not be accepted in chapter 120, F.S., or circuit court proceedings instituted under chapter 72, F.S., relating to tax matters.

Further the bill amends s. 202.19(3)(a), F.S., specifying that the local CST rates authorized under s. 202.19, F.S., includes "and is in lieu of . . . application fees, transfer fees, siting fees, renewal fees, or claims for related costs" that a local taxing jurisdiction may impose upon dealers of communications services for the right to use or occupy public roads or rights-of-way. The bill also adds the term "towers" to "poles, wires, and other fixtures" for the placement, construction, and maintenance used in the provision of communication services.

The bill deletes subsection 202.20(2), F.S., relating to local CST conversion rates, and it renumbers the remaining subsection that provides the levy and conversion rate for a discretionary sales surtax on the sale of communication services. This provision eliminates the emergency rate authority currently granted to local jurisdictions. Additionally, the bill deletes references to local CST rate changes by emergency ordinance or resolution.

Section 202.24(2)(a)1. F.S., provides that except for the list of taxes and fees contained in paragraph (c) of s. 202.24(2), F.S., each public body is prohibited from levying on or collecting any tax charge, or fee with respect to the sale or purchase of communication services. The bill adds "application fees, transfer fees, siting fees, renewal fees, or claims for related costs" to the list of prohibited taxes and fees in s. 202.24(2)(a)1., F.S.

Lastly, amendments to ss. 202.19(3)(a) and 202.24(2)(a), F.S., contained in this act are remedial in nature and intended to clarify the law in effect on the effective date of this act, which is July 1, 2004.

C. SECTION DIRECTORY:

Section 1. repeals the legislative intent language in s. 202.13(1), F.S., that provides for reversion to the prior tax structure if the CST is declared invalid, ineffective, inapplicable, unconstitutional, or void.

Section 2. amends s. 202.16(2), F.S., which provides that a dealer must document an exempt "sale for resale" transaction by retaining a copy of the purchaser's annual resale certificate. The bill provides an alternative documentation procedure for "sale for resale" transactions whereby an authorization number may provided by the DOR either telephonically, electronically, or by other means established by DOR. The dealer may also rely on an initial or annual resale certificate issued pursuant to s. 202.17(6), F.S., which is to be valid at the time of receipt from the purchaser, without seeking additional annual resale certificates from the purchaser, if the dealer makes recurring sales to the purchaser in the normal course of business on a continual basis.

The bill defines "recurring sales to a purchaser in the normal course of business" as a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has an established cash account, similar to an open credit account. The bill describes purchases that are made from a selling dealer on a continual basis occurs if the selling dealer makes, in the normal course of business, sales to the purchaser no less that once in every 12-month period. During any tax protest period, the bill provides that a dealer may submit, in lieu of a resale certificate, an exemption certificate executed by entities that were exempt at the time of sale, resale certificates provided by purchasers who were active dealers at the time of sale, and verification by the DOR of the purchaser's active dealer status at the time of sale. However, this alternative documentation may not be accepted in chapter 120, F.S., or circuit court proceedings instituted under chapter 72, F.S., relating to tax matters.

Section 3. amends s. 202.19(2)(c), F.S., to conform cross references to the amendment made to s. 202.20(2), F.S. by section 4. of the bill. The bill amends s. 202.19(3)(a), F.S., specifying that the local CST rate authorized under s. 202.19, F.S., includes “and is in lieu of . . . application fees, transfer fees, siting fees, renewal fees, or claims for related costs” that a local taxing jurisdiction may impose upon dealers of communications services for the right to use or occupy public roads or rights-of-way. The bill also adds the term “towers” to “poles, wires, and other fixtures” for the placement, construction, and maintenance used in the provision of communication services. Amends s. 202.19(5), F.S., to conform cross references to the amendments made to s. 202.20(2), (3), F.S., by section 4. of the bill.

Section 4. deletes subsection 202.20(2), F.S., and renumbers the remaining subsection that provides the levy and conversion rate for a discretionary sales surtax on the sale of communication services. This provision eliminates the emergency rate authority currently granted to local jurisdictions.

Section 5. deletes references to local CST rate changes by emergency ordinance or resolution.

Section 6. adds “application fees, transfer fees, siting fees, renewal fees, or claims for related costs” to the list of prohibited taxes and fees in s. 202.24(2)(a)1., F.S.

Section 7. provides that the amendments to ss. 202.19(3)(a) and 202.24(2)(a), F.S., contained in this act are remedial in nature and intended to clarify the law in effect on the effective date of this act.

Section 8. provides that this act shall take effect on July 1, 2004.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

Indeterminate. A Revenue Estimating Conference has not yet been scheduled.

2. Expenditures:

Indeterminate. A Revenue Estimating Conference has not yet been scheduled.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate. A Revenue Estimating Conference has not yet been scheduled.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Indeterminate. A Revenue Estimating Conference has not yet been scheduled.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to DOR, an effective date of July 1, 2004 will not provide sufficient time to develop and make computer software changes to comply with the alternative method for maintaining a copy of the annual resale certificates. The new system, which corresponds with a similar provision for sales and use tax under s. 212.07(1)(b), F.S., provides for an authorization number that will be provided by the DOR telephonically, or electronically, or by other means established by the DOR. DOR suggests that an effective date of January 1, 2005, for section 2. of the bill will provide the DOR the time needed for making the necessary computer software and operational changes and for preparing educational materials for taxpayers and DOR personnel.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES