

By Senator Atwater

25-1185A-04

1 A bill to be entitled
2 An act relating to the communications services
3 tax; creating s. 202.165, F.S.; providing a
4 definition of the term "bundled transaction";
5 providing guidelines for the taxation of
6 bundled transactions that include
7 communications services; amending s. 212.02,
8 F.S.; redefining the term "sales price" for
9 purposes of ch. 212, F.S.; providing an
10 effective date.

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

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14 Section 1. Section 202.165, Florida Statutes, is
15 created to read:

16 202.165 Taxable price of bundled transactions.--
17 (1) For purposes of this section, the term "bundled
18 transaction" means a transaction consisting of distinct and
19 identifiable properties or services that are sold for a single
20 nonitemized sales price, but are treated differently for tax
21 purposes.

22 (2) Notwithstanding any provision of s. 202.11(14) or
23 s. 212.02(16) to the contrary, in the case of a bundled
24 transaction that includes communications services:

25 (a) If the sales price is attributable to properties
26 or services that are taxable under the laws of this state and
27 properties or services that are nontaxable, the portion of the
28 sales price attributable to the nontaxable properties or
29 services is taxable unless the selling dealer identifies and
30 allocates such portion based upon its books and records kept
31 in the regular course of business for other purposes.

1 **(b) If the sales price is attributable to properties**
2 **or services that are taxable under the laws of this state at**
3 **different rates, the total sales price shall be treated as**
4 **attributable to the properties or services taxable at the**
5 **highest rate unless the selling dealer identifies and**
6 **allocates the portion of the sales price attributable to the**
7 **properties or services taxable at a lower rate based upon its**
8 **books and records kept in the regular course of business for**
9 **other purposes.**

10 **(3) If, upon audit, the department determines that the**
11 **selling dealer did not reasonably identify and allocate the**
12 **portions of the nonitemized sales price for purposes of**
13 **collecting and remitting tax on those portions of the**
14 **nonitemized sales price subject to tax under the laws of this**
15 **state or on those portions that are taxable at varying rates,**
16 **the department may redetermine the allocation to ensure that**
17 **the tax has not been underpaid on the different properties or**
18 **services and determine and assess any resulting deficiency.**
19 **However, such redetermination must be supported by substantial**
20 **competent evidence.**

21 **(4) The department may adopt rules relating to the**
22 **determination of whether the portions of the single**
23 **nonitemized sales price have been reasonably identified and**
24 **allocated based upon books and records and the types of books**
25 **and records used to support such allocation. The types of**
26 **books and records that a dealer may use to support such an**
27 **allocation include, but are not limited to, items such as the**
28 **dealer's general ledger, price lists, invoices, customer bills**
29 **and billing records, cost records, applicable tariffs and**
30 **other regulatory filings, and rules or orders of regulatory**
31 **authorities.**

1 (5) Within 60 days after receipt of a written request
2 from a customer who is under audit under chapter 202 or
3 chapter 212, the selling dealer shall provide a written
4 explanation of how the sales price for a bundled transaction
5 was allocated to services and property involved in the
6 transaction for purposes of determining the tax due. A
7 customer is not liable for any tax, penalty, or interest
8 resulting from the selling dealer's determination of the
9 amount of tax due. This subsection does not apply to bundled
10 transactions that include mobile communications services.

11 (6) This section does not create any customer right to
12 require that, for purposes of determining the amount of tax
13 applicable to a bundled transaction, the selling dealer or the
14 department allocate the sales price to the different portions
15 of such transaction in order to minimize the amount of tax
16 charged to the customer.

17 Section 2. Subsection (16) of section 212.02, Florida
18 Statutes, is amended to read:

19 212.02 Definitions.--The following terms and phrases
20 when used in this chapter have the meanings ascribed to them
21 in this section, except where the context clearly indicates a
22 different meaning:

23 (16) "Sales price" means the total amount paid for
24 tangible personal property, including any services that are a
25 part of the sale, valued in money, whether paid in money or
26 otherwise, and includes any amount for which credit is given
27 to the purchaser by the seller, without any deduction
28 therefrom on account of the cost of the property sold, the
29 cost of materials used, labor or service cost, interest
30 charged, losses, or any other expense whatsoever. "Sales
31 price" also includes the consideration for a transaction which

1 requires both labor and material to alter, remodel, maintain,
2 adjust, or repair tangible personal property. Trade-ins or
3 discounts allowed and taken at the time of sale shall not be
4 included within the purview of this subsection. "Sales price"
5 also includes the full face value of any coupon used by a
6 purchaser to reduce the price paid to a retailer for an item
7 of tangible personal property; where the retailer will be
8 reimbursed for such coupon, in whole or in part, by the
9 manufacturer of the item of tangible personal property; or
10 whenever it is not practicable for the retailer to determine,
11 at the time of sale, the extent to which reimbursement for the
12 coupon will be made. The term "sales price" does not include
13 federal excise taxes imposed upon the retailer on the sale of
14 tangible personal property. The term "sales price" does
15 include federal manufacturers' excise taxes, even if the
16 federal tax is listed as a separate item on the invoice.
17 Section 202.165 applies to determining the sales price of a
18 bundled transaction that includes communications services as
19 defined in s. 202.11(3).

20 Section 3. This act shall take effect January 1, 2005.

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23 SENATE SUMMARY

24 Provides guidelines for the taxation of bundled
25 transactions that include communications services. (See
26 bill for details.)
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