



1 tax by emergency ordinance or resolution to  
2 conform; specifying that certain amendments are  
3 remedial in nature and clarify certain  
4 provisions of law but do not grant rights to a  
5 refund of certain fees or charges under certain  
6 circumstances; providing a savings clause for  
7 emergency rules adopted before the effective  
8 dates of the act; providing effective dates.  
9

10 Be It Enacted by the Legislature of the State of Florida:  
11

12 Section 1. Effective upon this act becoming a law, and  
13 operating retroactively to December 31, 2004, subsection (2)  
14 of section 202.16, Florida Statutes, is amended to read:

15 202.16 Payment.--The taxes imposed or administered  
16 under this chapter and chapter 203 shall be collected from all  
17 dealers of taxable communications services on the sale at  
18 retail in this state of communications services taxable under  
19 this chapter and chapter 203. The full amount of the taxes on  
20 a credit sale, installment sale, or sale made on any kind of  
21 deferred payment plan is due at the moment of the transaction  
22 in the same manner as a cash sale.

23 (2)(a) A sale of communications services that are used  
24 as a component part of or integrated into a communications  
25 service or prepaid calling arrangement for resale, including,  
26 but not limited to, carrier-access charges, interconnection  
27 charges paid by providers of mobile communication services or  
28 other communication services, charges paid by cable service  
29 providers for the transmission of video or other programming  
30 by another dealer of communications services, charges for the  
31 sale of unbundled network elements, and any other intercompany

1 charges for the use of facilities for providing communications  
2 services for resale, must be made in compliance with the rules  
3 of the department. Any person who makes a sale for resale  
4 which is not in compliance with these rules is liable for any  
5 tax, penalty, and interest due for failing to comply, to be  
6 calculated pursuant to s. 202.28(2)(a).

7 (b)1. Any dealer who makes a sale for resale shall  
8 document the exempt nature of the transaction, as established  
9 by rules adopted by the department, by retaining a copy of the  
10 purchaser's initial or annual resale certificate issued  
11 pursuant to s. 202.17(6). In lieu of maintaining a copy of the  
12 certificate, a dealer may document, prior to the time of sale,  
13 an authorization number, provided telephonically or  
14 electronically by the department or by such other means  
15 established by rule of the department. The dealer may rely on  
16 an initial or annual resale certificate issued pursuant to s.  
17 202.17(6), valid at the time of receipt from the purchaser,  
18 without seeking additional annual resale certificates from  
19 such purchaser, if the dealer makes recurring sales to the  
20 purchaser in the normal course of business on a continual  
21 basis. For purposes of this paragraph, the term "recurring  
22 sales to a purchaser in the normal course of business" means a  
23 sale in which the dealer extends credit to the purchaser and  
24 records the debt as an account receivable, or in which the  
25 dealer sells to a purchaser who has an established cash  
26 account, similar to an open credit account. For purposes of  
27 this paragraph, purchases are made from a selling dealer on a  
28 continual basis if the selling dealer makes, in the normal  
29 course of business, sales to the purchaser no less frequently  
30 than once in every 12-month period.

1           2. A dealer may, through the informal protest process  
2 provided for in s. 213.21 and the rules of the department,  
3 provide the department with evidence of the exempt status of a  
4 sale. Exemption certificates executed by entities that were  
5 exempt at the time of sale, resale certificates provided by  
6 purchasers who were active dealers at the time of sale, and  
7 verification by the department of a purchaser's active dealer  
8 status at the time of sale in lieu of a resale certificate  
9 shall be accepted by the department when submitted during the  
10 protest period but may not be accepted in any proceeding under  
11 chapter 120 or any circuit court action instituted under  
12 chapter 72.

13           Section 2. Effective January 1, 2006, the Department  
14 of Revenue shall establish:

15           (1) A toll-free telephone number for the verification  
16 of valid registration numbers and resale certificates under  
17 section 202.16(2)(b), Florida Statutes. The system must be  
18 adequate to guarantee a low busy rate, must respond to keypad  
19 inquiries, and must provide data that is updated daily.

20           (2) A system for receiving information from dealers  
21 regarding certificate numbers, under section 202.16(2)(b),  
22 Florida Statutes, of dealers who are seeking to make purchases  
23 for resale. The department shall provide such dealers, free of  
24 charge, with verification of those numbers that are cancelled  
25 or invalid.

26           Section 3. Paragraph (a) of subsection (3) and  
27 subsection (9) of section 202.19, Florida Statutes, are  
28 amended to read:

29           202.19 Authorization to impose local communications  
30 services tax.--  
31

1           (3)(a) The tax authorized under this section includes  
2 and is in lieu of any fee or other consideration, including,  
3 but not limited to, application fees, transfer fees, renewal  
4 fees, or claims for related costs, to which the municipality  
5 or county is otherwise entitled for granting permission to  
6 dealers of communications services, including, but not limited  
7 to, providers of cable television services, as authorized in  
8 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way  
9 for the placement, construction, and maintenance of poles,  
10 wires, and other fixtures used in the provision of  
11 communications services.

12           (9) The revenues raised by any tax imposed under  
13 subsection (1), ~~or~~ s. 202.20(1), or distributed to a local  
14 government under s. 202.18, may be used by a municipality or  
15 county for any public purpose, including, but not limited to,  
16 pledging such revenues for the repayment of current or future  
17 bonded indebtedness. Revenues raised by a tax imposed under  
18 subsection (5) shall be used for the same purposes as the  
19 underlying discretionary sales surtax imposed by the county or  
20 school board under s. 212.055.

21           Section 4. Paragraph (a) of subsection (2) of section  
22 202.20, Florida Statutes, is amended to read:

23           202.20 Local communications services tax conversion  
24 rates.--

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

1 reasonably anticipated growth in such revenues over the  
2 preceding 1-year period, based on the average growth of such  
3 revenues over the immediately preceding 5-year period; plus an  
4 amount representing the revenues from the replaced revenue  
5 sources for the 1-month period that the local taxing  
6 jurisdiction was required to forego, the governing authority  
7 may adjust the rate of the local communications services tax  
8 upward to the extent necessary to generate the entire  
9 shortfall in revenues within 1 year after the rate adjustment  
10 and by an amount necessary to generate the expected amount of  
11 revenue on an 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 subsection (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 or resolution and may be made  
22 notwithstanding the maximum rate established under s.  
23 202.19(2) and notwithstanding any schedules or timeframes or  
24 any other limitations contained in this chapter. The authority  
25 of a local government to make such adjustment may be exercised  
26 only if the department or a dealer reallocates revenue away  
27 from the local government. The emergency ordinance or  
28 resolution shall specify an effective date for the adjusted  
29 rate, which shall be no less than 60 days after the date of  
30 adoption of the ordinance or resolution and shall be effective  
31 with respect to taxable services included on bills that are

1 | dated on the first day of a month subsequent to the expiration  
2 | of the 60-day period. At the end of 1 year following the  
3 | effective date of such adjusted rate, the local governing  
4 | authority shall, as soon as is consistent with s. 202.21,  
5 | reduce the rate by that portion of the emergency rate which  
6 | was necessary to recoup the amount of revenues not received  
7 | prior to the implementation of the emergency rate.

8 |         4. If, for the period October 1, 2001, through  
9 | September 30, 2002, the revenues received by a local  
10 | government from the local communications services tax  
11 | conversion rate established under subsection (1), adjusted  
12 | upward for the difference in rates between paragraphs (1)(a)  
13 | and (b) or any other rate adjustments or base changes, are  
14 | above the threshold of 10 percent more than the revenues  
15 | received from the replaced revenue sources for the  
16 | corresponding 2000-2001 period plus reasonably anticipated  
17 | growth in such revenues over the preceding 1-year period,  
18 | based on the average growth of such revenues over the  
19 | immediately preceding 5-year period, the governing authority  
20 | must adjust the rate of the local communications services tax  
21 | to the extent necessary to reduce revenues to the threshold by  
22 | emergency ordinance or resolution within the timeframes  
23 | established in subparagraph 3. The foregoing rate adjustment  
24 | requirement shall not apply to a local government that adopts  
25 | a local communications services tax rate by resolution or  
26 | ordinance. If complete data are not available at the time of  
27 | determining whether the revenues exceed the threshold, the  
28 | local government shall use the best data available for the  
29 | corresponding 2000-2001 period in making such determination.  
30 | This subparagraph shall not be construed as establishing a  
31 | right of action for any person to enforce this subparagraph or

1 challenge a local government's implementation of this  
2 subparagraph.

3 Section 5. Effective July 1, 2007, subsection (2) of  
4 section 202.20, Florida Statutes, as amended by this act, is  
5 amended to read:

6 202.20 Local communications services tax conversion  
7 rates.--

8 ~~(2)(a)1. With respect to any local taxing~~  
9 ~~jurisdiction, if, for the periods ending December 31, 2001;~~  
10 ~~March 31, 2002; June 30, 2002; or September 30, 2002, the~~  
11 ~~revenues received by that local government from the local~~  
12 ~~communications services tax imposed under subsection (1) are~~  
13 ~~less than the revenues received from the replaced revenue~~  
14 ~~sources for the corresponding 2000-2001 period; plus~~  
15 ~~reasonably anticipated growth in such revenues over the~~  
16 ~~preceding 1 year period, based on the average growth of such~~  
17 ~~revenues over the immediately preceding 5 year period; plus an~~  
18 ~~amount representing the revenues from the replaced revenue~~  
19 ~~sources for the 1 month period that the local taxing~~  
20 ~~jurisdiction was required to forego, the governing authority~~  
21 ~~may adjust the rate of the local communications services tax~~  
22 ~~upward to the extent necessary to generate the entire~~  
23 ~~shortfall in revenues within 1 year after the rate adjustment~~  
24 ~~and by an amount necessary to generate the expected amount of~~  
25 ~~revenue on an ongoing basis.~~

26 ~~2. If complete data are not available at the time of~~  
27 ~~determining whether the revenues received by a local~~  
28 ~~government from the local communications services tax imposed~~  
29 ~~under subsection (1) are less than the revenues received from~~  
30 ~~the replaced revenue sources for the corresponding 2000-2001~~  
31 ~~period, as set forth in subparagraph 1., the local government~~



1 ~~shall use the best data available for the corresponding~~  
2 ~~2000-2001 period in making such determination.~~

3 ~~3. The adjustment permitted under subparagraph 1. may~~  
4 ~~be made by emergency ordinance or resolution and may be made~~  
5 ~~notwithstanding the maximum rate established under s.~~  
6 ~~202.19(2) and notwithstanding any schedules or timeframes or~~  
7 ~~any other limitations contained in this chapter. The authority~~  
8 ~~of a local government to make such adjustment may be exercised~~  
9 ~~only if the department or a dealer reallocates revenue away~~  
10 ~~from the local government. The emergency ordinance or~~  
11 ~~resolution shall specify an effective date for the adjusted~~  
12 ~~rate, which shall be no less than 60 days after the date of~~  
13 ~~adoption of the ordinance or resolution and shall be effective~~  
14 ~~with respect to taxable services included on bills that are~~  
15 ~~dated on the first day of a month subsequent to the expiration~~  
16 ~~of the 60 day period. At the end of 1 year following the~~  
17 ~~effective date of such adjusted rate, the local governing~~  
18 ~~authority shall, as soon as is consistent with s. 202.21,~~  
19 ~~reduce the rate by that portion of the emergency rate which~~  
20 ~~was necessary to recoup the amount of revenues not received~~  
21 ~~prior to the implementation of the emergency rate.~~

22 ~~4. If, for the period October 1, 2001, through~~  
23 ~~September 30, 2002, the revenues received by a local~~  
24 ~~government from the local communications services tax~~  
25 ~~conversion rate established under subsection (1), adjusted~~  
26 ~~upward for the difference in rates between paragraphs (1)(a)~~  
27 ~~and (b) or any other rate adjustments or base changes, are~~  
28 ~~above the threshold of 10 percent more than the revenues~~  
29 ~~received from the replaced revenue sources for the~~  
30 ~~corresponding 2000-2001 period plus reasonably anticipated~~  
31 ~~growth in such revenues over the preceding 1 year period,~~

1 ~~based on the average growth of such revenues over the~~  
2 ~~immediately preceding 5 year period, the governing authority~~  
3 ~~must adjust the rate of the local communications services tax~~  
4 ~~to the extent necessary to reduce revenues to the threshold by~~  
5 ~~emergency ordinance or resolution within the timeframes~~  
6 ~~established in subparagraph 3. The foregoing rate adjustment~~  
7 ~~requirement shall not apply to a local government that adopts~~  
8 ~~a local communications services tax rate by resolution or~~  
9 ~~ordinance. If complete data are not available at the time of~~  
10 ~~determining whether the revenues exceed the threshold, the~~  
11 ~~local government shall use the best data available for the~~  
12 ~~corresponding 2000-2001 period in making such determination.~~  
13 ~~This subparagraph shall not be construed as establishing a~~  
14 ~~right of action for any person to enforce this subparagraph or~~  
15 ~~challenge a local government's implementation of this~~  
16 ~~subparagraph.~~

17 ~~(b) The term~~ Except as otherwise provided in this  
18 ~~subsection,~~ "replaced revenue sources," as used in this  
19 section, means the following taxes, charges, fees, or other  
20 impositions to the extent that the respective local taxing  
21 jurisdictions were authorized to impose them prior to July 1,  
22 2000.

23 ~~(a)1-~~ (a)1- With respect to municipalities and charter  
24 counties and the taxes authorized by s. 202.19(1):

25 1.a- The public service tax on telecommunications  
26 authorized by former s. 166.231(9).

27 2.b- Franchise fees on cable service providers as  
28 authorized by 47 U.S.C. s. 542.

29 3.c- The public service tax on prepaid calling  
30 arrangements.  
31

1           ~~4.d.~~ Franchise fees on dealers of communications  
2 services which use the public roads or rights-of-way, up to  
3 the limit set forth in s. 337.401. For purposes of calculating  
4 rates under this section, it is the legislative intent that  
5 charter counties be treated as having had the same authority  
6 as municipalities to impose franchise fees on recurring local  
7 telecommunication service revenues prior to July 1, 2000.  
8 However, the Legislature recognizes that the authority of  
9 charter counties to impose such fees is in dispute, and the  
10 treatment provided in this section is not an expression of  
11 legislative intent that charter counties actually do or do not  
12 possess such authority.

13           ~~5.e.~~ Actual permit fees relating to placing or  
14 maintaining facilities in or on public roads or rights-of-way,  
15 collected from providers of long-distance, cable, and mobile  
16 communications services for the fiscal year ending September  
17 30, 1999; however, if a municipality or charter county elects  
18 the option to charge permit fees pursuant to s.  
19 337.401(3)(c)1.a., such fees shall not be included as a  
20 replaced revenue source.

21           ~~(b)2.~~ With respect to all other counties and the taxes  
22 authorized in s. 202.19(1), franchise fees on cable service  
23 providers as authorized by 47 U.S.C. s. 542.

24           Section 6. Effective July 1, 2007, section 202.21,  
25 Florida Statutes, is amended to read:

26           202.21 Effective dates; procedures for informing  
27 dealers of communications services of tax levies and rate  
28 changes.--Any adoption, repeal, or change in the rate of a  
29 local communications services tax imposed under s. 202.19 is  
30 effective with respect to taxable services included on bills  
31 that are dated on or after the January 1 subsequent to such

1 adoption, repeal, or change. A municipality or county  
2 adopting, repealing, or changing the rate of such tax must  
3 notify the department of the adoption, repeal, or change by  
4 September 1 immediately preceding such January 1. Notification  
5 must be furnished on a form prescribed by the department and  
6 must specify the rate of tax; the effective date of the  
7 adoption, repeal, or change thereof; and the name, mailing  
8 address, and telephone number of a person designated by the  
9 municipality or county to respond to inquiries concerning the  
10 tax. The department shall provide notice of such adoption,  
11 repeal, or change to all affected dealers of communications  
12 services at least 90 days before the effective date of the  
13 tax. ~~Any local government that adjusts the rate of its local~~  
14 ~~communications services tax by emergency ordinance or~~  
15 ~~resolution pursuant to s. 202.20(2) shall notify the~~  
16 ~~department of the new tax rate immediately upon its adoption.~~  
17 ~~The department shall provide written notice of the adoption of~~  
18 ~~the new rate to all affected dealers within 30 days after~~  
19 ~~receiving such notice.~~ In any notice to providers or  
20 publication of local tax rates for purposes of this chapter,  
21 the department shall express the rate for a municipality or  
22 charter county as the sum of the tax rates levied within such  
23 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall  
24 express the rate for any other county as the sum of the tax  
25 rates levied pursuant to s. 202.19(2)(b) and (5). The  
26 department is not liable for any loss of or decrease in  
27 revenue by reason of any error, omission, or untimely action  
28 that results in the nonpayment of a tax imposed under s.  
29 202.19.

30 Section 7. The amendments to section 202.19(3)(a),  
31 Florida Statutes, contained in this act are remedial in nature

1 and intended to clarify the law in effect on October 1, 2001,  
2 but do not grant any right to a refund of any fees or charges  
3 paid prior to July 1, 2005, unless the payment was made under  
4 written protest as to the authority of any local government to  
5 impose such fees or costs on a dealer.

6 Section 8. The amendments to provisions of law made by  
7 this act do not apply to emergency rates adopted under section  
8 202.20, Florida Statutes, prior to the effective dates of this  
9 act.

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

12  
13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN  
14 COMMITTEE SUBSTITUTE FOR  
15 CS/SB 1296 and CS/SB 2066

16 The CS revises requirements relating to the establishment of a  
17 system by the Department of Revenue to verify resale  
18 certificates and valid registration numbers of communications  
19 dealers.

20 The CS clarifies the authority of local governments to pledge  
21 the revenues from communications services tax extends to the  
22 revenues generated through the local government half-cent  
23 sales tax authorized under s. 218.61, F.S.

24 The CS provides a grandfathering provision for existing  
25 emergency rates already adopted by local governments.

26 The CS implements several technical revisions.  
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