

By Senator Constantine

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A bill to be entitled
An act relating to the tax on communication services; amending s. 202.11, F.S.; defining additional terms related to communication services; amending s. 202.125, F.S.; providing an exception for services purchased, used, or sold to provide access to the Internet; amending s. 202.16, F.S.; requiring a dealer to document the resale sale to prove the exempt status of the sale; requiring that certain documents be retained by the dealer; providing alternative methods to document the exempt nature of the sale; amending s. 202.19, F.S.; clarifying the type of local fees the communication services tax replaces; amending s. 202.20, F.S.; clarifying the authority for certain revenue adjustments; repealing s. 202.20(2)(a), F.S., relating to the allocation of revenues by local government; amending s. 202.21, F.S.; deleting a provision granting emergency powers to local governments to adjust rates for the local communications service tax; clarifying that the act is remedial in nature; providing that the act does not grant any right to a refund; providing an exception; providing an effective date.

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

1 Section 1. Subsection (12) of section 202.11, Florida
2 Statutes, is amended and subsections (26), (27), and (28) are
3 added to that section to read:

4 202.11 Definitions.--As used in this chapter:

5 (12) "Retail sale" means the sale of communications
6 services for any purpose other than for resale or for use as a
7 component part of or for integration into communications
8 services to be resold in the ordinary course of business.
9 However, any sale for resale must comply with s. 202.16(2) and
10 the rules adopted thereunder.

11 (26) "Internet" means collectively the myriad of
12 computer and telecommunications facilities, including
13 equipment and operating software, that comprises the
14 interconnected world-wide network of networks that employs the
15 Transmission Control Protocol/Internet Protocol, or any
16 predecessor or successor protocols to such protocol, to
17 communicate information of all kinds by wire or radio.

18 (27) "Internet access service" means a service that
19 enables users to access content, information, electronic mail,
20 or other services offered over the Internet.

21 (28) "Internet access provider" means a person engaged
22 in the business of providing a computer and communications
23 facility through which a customer may access the Internet, but
24 does not include a common carrier to the extent that it
25 provides only communications services.

26 Section 2. Subsection (5) is added to section 202.125,
27 Florida Statutes, to read:

28 202.125 Sales of communications services; specified
29 exemptions.--

30 (5) The sale of communications services, if the
31 services are purchased, used, or sold by an Internet access

1 provider to provide access to the Internet, is exempt from the
2 taxes imposed or administered under ss. 202.12 and 202.19.

3 Section 3. Subsection (2) 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 (2)(a) A sale of communications services that are used
14 as a component part of or integrated into a communications
15 service or prepaid calling arrangement for resale, including,
16 but not limited to, carrier-access charges, interconnection
17 charges paid by providers of mobile communication services or
18 other communication services, charges paid by cable service
19 providers for the transmission of video or other programming
20 by another dealer of communications services, charges for the
21 sale of unbundled network elements, and any other intercompany
22 charges for the use of facilities for providing communications
23 services for resale, must be made in compliance with the rules
24 of the department. Any person who makes a sale for resale
25 which is not in compliance with these rules is liable for any
26 tax, penalty, and interest due for failing to comply, to be
27 calculated under ~~pursuant to~~ s. 202.28(2)(a).

28 (b) Any dealer who makes a sale for resale shall
29 document the exempt nature of the transaction by retaining a
30 copy of the initial or annual resale certificate of the
31 purchaser which was issued under s. 202.17(6). In lieu of

1 maintaining a copy of the certificate, a dealer may document,
2 before the time of sale, an authorization number provided
3 telephonically or electronically by the department, or by such
4 other means established by rule of the department. A dealer
5 may rely on an initial or annual resale certificate issued
6 under s. 202.17(6), valid at the time of receipt from the
7 purchaser, without seeking additional annual resale
8 certificates from the purchaser, if the dealer makes recurring
9 sales to the purchaser in the normal course of business on a
10 continuing basis. For purposes of this paragraph, the term
11 "recurring sales to a purchaser in the normal course of
12 business" means a sale in which the dealer extends credit to
13 the purchaser and records the debt as an account receivable,
14 or in which the dealer sells to a purchaser who has an
15 established cash account, similar to an open credit account.
16 For purposes of this paragraph, purchases are made from a
17 selling dealer on a continuing basis if the selling dealer
18 makes, in the normal course of business, sales to the
19 purchaser no less frequently than once in every 12-month
20 period. A dealer may, using the informal protest process
21 provided in s. 213.21 and the rules of the Department of
22 Revenue, provide the department with evidence of the exempt
23 status of a sale. Exemption certificates executed by entities
24 that were exempt at the time of sale, resale certificates
25 provided by purchasers who were active dealers at the time of
26 sale, and verification by the department of a purchaser's
27 active dealer status at the time of sale in lieu of a resale
28 certificate shall be accepted by the department when submitted
29 during the protest period, but may not be accepted in any
30 proceeding under chapter 120 or any circuit court action
31 instituted under chapter 72.

1 Section 4. Paragraph (a) of subsection (3) of section
2 202.19, Florida Statutes, is amended to read:

3 202.19 Authorization to impose local communications
4 services tax.--

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

16 Section 5. Paragraph (a) of subsection (2) of section
17 202.20, Florida Statutes, is amended to read:

18 202.20 Local communications services tax conversion
19 rates.--

20 (2)(a)1. With respect to any local taxing
21 jurisdiction, if, for the periods ending December 31, 2001;
22 March 31, 2002; June 30, 2002; or September 30, 2002, the
23 revenues received by that local government from the local
24 communications services tax imposed under subsection (1) are
25 less than the revenues received from the replaced revenue
26 sources for the corresponding 2000-2001 period; plus
27 reasonably anticipated growth in such revenues over the
28 preceding 1-year period, based on the average growth of such
29 revenues over the immediately preceding 5-year period; plus an
30 amount representing the revenues from the replaced revenue
31 sources for the 1-month period that the local taxing

1 jurisdiction was required to forego, the governing authority
2 may adjust the rate of the local communications services tax
3 upward to the extent necessary to generate the entire
4 shortfall in revenues within 1 year after the rate adjustment
5 and by an amount necessary to generate the expected amount of
6 revenue on an ongoing basis.

7 2. If complete data are not available at the time of
8 determining whether the revenues received by a local
9 government from the local communications services tax imposed
10 under subsection (1) are less than the revenues received from
11 the replaced revenue sources for the corresponding 2000-2001
12 period, as set forth in subparagraph 1., the local government
13 shall use the best data available for the corresponding
14 2000-2001 period in making such determination.

15 3. The adjustment permitted under subparagraph 1. may
16 be made by emergency ordinance or resolution and may be made
17 notwithstanding the maximum rate established under s.
18 202.19(2) and notwithstanding any schedules or timeframes or
19 any other limitations contained in this chapter. The authority
20 to make the adjustment may be exercised only in the event of a
21 reallocation of revenue away from the local government by the
22 Department of Revenue or a dealer. The emergency ordinance or
23 resolution shall specify an effective date for the adjusted
24 rate, which shall be no less than 60 days after the date of
25 adoption of the ordinance or resolution and shall be effective
26 with respect to taxable services included on bills that are
27 dated on the first day of a month subsequent to the expiration
28 of the 60-day period. At the end of 1 year following the
29 effective date of ~~the such~~ adjusted rate, the local governing
30 authority shall, as soon as is consistent with s. 202.21,
31 reduce the rate by that portion of the emergency rate which

1 was necessary to recoup the amount of revenues not received
2 prior to the implementation of the emergency rate.

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

29 Section 6. Effective July 1, 2007, paragraph (a) of
30 subsection (2) of section 202.20, Florida Statutes, is
31 repealed.

1 Section 7. Effective July 1, 2007, section 202.21,
2 Florida Statutes, is amended to read:

3 202.21 Effective dates; procedures for informing
4 dealers of communications services of tax levies and rate
5 changes.--Any adoption, repeal, or change in the rate of a
6 local communications services tax imposed under s. 202.19 is
7 effective with respect to taxable services included on bills
8 that are dated on or after the January 1 subsequent to the
9 ~~such~~ adoption, repeal, or change. A municipality or county
10 adopting, repealing, or changing the rate of such tax must
11 notify the department of the adoption, repeal, or change by
12 September 1 immediately preceding such January 1. Notification
13 must be furnished on a form prescribed by the department and
14 must specify the rate of tax; the effective date of the
15 adoption, repeal, or change thereof; and the name, mailing
16 address, and telephone number of a person designated by the
17 municipality or county to respond to inquiries concerning the
18 tax. The department shall provide notice of such adoption,
19 repeal, or change to all affected dealers of communications
20 services at least 90 days before the effective date of the
21 tax. ~~Any local government that adjusts the rate of its local~~
22 ~~communications services tax by emergency ordinance or~~
23 ~~resolution pursuant to s. 202.20(2) shall notify the~~
24 ~~department of the new tax rate immediately upon its adoption.~~
25 ~~The department shall provide written notice of the adoption of~~
26 ~~the new rate to all affected dealers within 30 days after~~
27 ~~receiving such notice.~~ In any notice to providers or
28 publication of local tax rates for purposes of this chapter,
29 the department shall express the rate for a municipality or
30 charter county as the sum of the tax rates levied within such
31 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall

