

Bill No. CS for SB 2070

Barcode 404662

CHAMBER ACTION

Senate

House

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Senator Bennett moved the following amendment:

Senate Amendment (with title amendment)

On page 1, line 27, through
page 2, line 9, delete those lines

and insert:

Section 1. Section 202.11, Florida Statutes, is amended to read:

202.11 Definitions.--As used in this chapter:

~~(1) "Actual cost of operating a substitute communications system" includes, but is not limited to, depreciation, interest, maintenance, repair, and other expenses directly attributable to the operation of such system. For purposes of this chapter, the depreciation expense included in actual cost is the depreciation expense claimed for federal income tax purposes. The total amount of any payment required by a lease or rental contract or agreement must be included within the actual cost of operating the substitute communications system.~~

~~(1)(2)~~ "Cable service" means the transmission of

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1 video, audio, or other programming service to purchasers, and
 2 the purchaser interaction, if any, required for the selection
 3 or use of ~~any~~ such programming service, regardless of whether
 4 the programming is transmitted over facilities owned or
 5 operated by the cable service provider or over facilities
 6 owned or operated by one or more other dealers of
 7 communications services. The term includes point-to-point and
 8 point-to-multipoint distribution services by which programming
 9 is transmitted or broadcast by microwave or other equipment
 10 directly to the purchaser's premises, but does not include
 11 direct-to-home satellite service. The term includes basic,
 12 extended, premium, pay-per-view, digital, and music services.

13 (2)~~(3)~~ "Communications services" means the
 14 transmission, conveyance, or routing of voice, data, audio,
 15 video, or any other information or signals, including cable
 16 services, to a point, or between or among points, by or
 17 through any electronic, radio, satellite, cable, optical,
 18 microwave, or other medium or method now in existence or
 19 hereafter devised, regardless of the protocol used for the
 20 ~~such~~ transmission or conveyance. The term does not include:

- 21 (a) Information services.
- 22 (b) Installation or maintenance of wiring or equipment
 23 on a customer's premises.
- 24 (c) The sale or rental of tangible personal property.
- 25 (d) The sale of advertising, including, but not
 26 limited to, directory advertising.
- 27 (e) Bad check charges.
- 28 (f) Late payment charges.
- 29 (g) Billing and collection services.
- 30 (h) Internet access service, electronic mail service,
 31 electronic bulletin board service, or similar on-line computer

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1 services.

2 ~~(3)(4)~~ "Dealer" means a person registered with the
3 department as a provider of communications services in this
4 state.

5 ~~(4)(5)~~ "Department" means the Department of Revenue.

6 ~~(5)(6)~~ "Direct-to-home satellite service" has the
7 meaning ascribed in the Communications Act of 1934, 47 U.S.C.
8 s. 303(v).

9 ~~(6)(7)~~ "Information service" means the offering of a
10 capability for generating, acquiring, storing, transforming,
11 processing, retrieving, using, or making available information
12 via communications services, including, but not limited to,
13 electronic publishing, web-hosting service, and end-user 900
14 number service. The term does not include any video, audio, or
15 other programming service that uses point-to-multipoint
16 distribution by which programming is delivered, transmitted,
17 or broadcast by any means, including any interaction that may
18 be necessary for selecting and using the service, regardless
19 of whether the programming is delivered, transmitted, or
20 broadcast over facilities owned or operated by the seller or
21 another, or whether denominated as cable service or as basic,
22 extended, premium, pay-per-view, digital, music, or two-way
23 cable service.

24 ~~(7)(8)~~ "Mobile communications service" means
25 commercial mobile radio service, as defined in 47 C.F.R. s.
26 20.3 as in effect on June 1, 1999. The term does not include
27 air-ground radiotelephone service as defined in 47 C.F.R. s.
28 22.99 as in effect on June 1, 1999.

29 ~~(8)(9)~~ "Person" has the meaning ascribed in s. 212.02.

30 ~~(9)(10)~~ "Prepaid calling arrangement" means the
31 separately stated retail sale by advance payment of

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1 communications services that consist exclusively of telephone
2 calls originated by using an access number, authorization
3 code, or other means that may be manually, electronically, or
4 otherwise entered, and that are sold in predetermined units or
5 dollars of which the number declines with use in a known
6 amount.

7 (10)(11) "Purchaser" means the person paying for or
8 obligated to pay for communications services.

9 (11)(12) "Retail sale" means the sale of
10 communications services for any purpose other than for resale
11 or for use as a component part of or for integration into
12 communications services to be resold in the ordinary course of
13 business. However, any sale for resale must comply with s.
14 202.16(2) and the rules adopted thereunder.

15 (12)(13) "Sale" means the provision of communications
16 services for a consideration.

17 (13)(14) "Sales price" means the total amount charged
18 in money or other consideration by a dealer for the sale of
19 the right or privilege of using communications services in
20 this state, including any property or other services that are
21 part of the sale. The sales price of communications services
22 ~~may shall~~ not be reduced by any separately identified
23 components of the charge that constitute expenses of the
24 dealer, including, but not limited to, sales taxes on goods or
25 services purchased by the dealer, property taxes, taxes
26 measured by net income, and universal-service fund fees.

27 (a) The sales price of communications services shall
28 include, whether or not separately stated, charges for any of
29 the following:

30 1. The connection, movement, change, or termination of
31 communications services.

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- 1 2. The detailed billing of communications services.
- 2 3. The sale of directory listings in connection with a
- 3 communications service.
- 4 4. Central office and custom calling features.
- 5 5. Voice mail and other messaging service.
- 6 6. Directory assistance.
- 7 7. The service of sending or receiving a document
- 8 commonly referred to as a facsimile or "fax," except when
- 9 performed during the course of providing professional or
- 10 advertising services.

11 (b) The sales price of communications services does
 12 not include charges for any of the following:

- 13 1. Any excise tax, sales tax, or similar tax levied by
- 14 the United States or any state or local government on the
- 15 purchase, sale, use, or consumption of any communications
- 16 service, including, but not limited to, any tax imposed under
- 17 this chapter or chapter 203 which is permitted or required to
- 18 be added to the sales price of such service, if the tax is
- 19 stated separately.
- 20 2. Any fee or assessment levied by the United States
- 21 or any state or local government, including, but not limited
- 22 to, regulatory fees and emergency telephone surcharges, which
- 23 is required to be added to the price of such service if the
- 24 fee or assessment is separately stated.
- 25 3. Communications services paid for by inserting coins
- 26 into coin-operated communications devices available to the
- 27 public.
- 28 4. The sale or recharge of a prepaid calling
- 29 arrangement.
- 30 5. The provision of air-to-ground communications
- 31 services, defined as a radio service provided to purchasers

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1 while on board an aircraft.

2 6. A dealer's internal use of communications services
3 in connection with its business of providing communications
4 services.

5 7. Charges for property or other services that are not
6 part of the sale of communications services, if such charges
7 are stated separately from the charges for communications
8 services.

9 8. To the extent required by federal law, charges for
10 Internet access services which are not separately itemized on
11 a customer's bill, but which can be reasonably identified from
12 the selling dealer's books and records kept in the regular
13 course of business. The burden to show that the charges for
14 Internet access are reasonably identified is on the dealer.
15 The dealer may support the allocation of charges with
16 information derived from the dealer's entire service area,
17 including territories outside this state.

18 ~~(14)~~(15) "Service address" means:

19 (a) Except as otherwise provided in this section, the
20 location of the communications equipment from which
21 communications services originate or at which communications
22 services are received by the customer. In the case of a
23 communications service paid through a credit or payment
24 mechanism that does not relate to a service address, such as a
25 bank, travel, debit, or credit card, and in the case of
26 third-number and calling-card calls, the service address is
27 the address of the central office, as determined by the area
28 code and the first three digits of the seven-digit originating
29 telephone number.

30 (b) In the case of cable services and direct-to-home
31 satellite services, the location where the customer receives

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1 the services in this state.

2 (c) In the case of mobile communications services, the
3 customer's place of primary use.

4 ~~(16) "Substitute communications system" means any~~
5 ~~telephone system, or other system capable of providing~~
6 ~~communications services, which a person purchases, installs,~~
7 ~~rents, or leases for his or her own use to provide himself or~~
8 ~~herself with services used as a substitute for any switched~~
9 ~~service or dedicated facility by which a dealer of~~
10 ~~communications services provides a communication path.~~

11 ~~(15)(17)~~ "Unbundled network element" means a network
12 element, as defined in 47 U.S.C. s. 153(29), to which access
13 is provided on an unbundled basis under ~~pursuant to~~ 47 U.S.C.
14 s. 251(c)(3).

15 ~~(16)(18)~~ "Private communications service" means a
16 communications service that entitles the subscriber or user to
17 exclusive or priority use of a communications channel or group
18 of channels between or among channel termination points,
19 regardless of the manner in which the ~~such~~ channel or channels
20 are connected, and includes switching capacity, extension
21 lines, stations, and any other associated services which are
22 provided in connection with the use of such channel or
23 channels.

24 ~~(17)(19)~~(a) "Customer" means:

25 1. The person or entity that contracts with the home
26 service provider for mobile communications services; or

27 2. If the end user of mobile communications services
28 is not the contracting party, the end user of the mobile
29 communications service. This subparagraph only applies for the
30 purpose of determining the place of primary use.

31 (b) "Customer" does not include:

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- 1 1. A reseller of mobile communications services; or
- 2 2. A serving carrier under an agreement to serve the
- 3 customer outside the home service provider's licensed service
- 4 area.

5 ~~(18)(20)~~ "Enhanced zip code" means a United States

6 postal zip code of 9 or more digits.

7 ~~(19)(21)~~ "Home service provider" means the

8 facilities-based carrier or reseller with which the customer

9 contracts for the provision of mobile communications services.

10 ~~(20)(22)~~ "Licensed service area" means the geographic

11 area in which the home service provider is authorized by law

12 or contract to provide mobile communications service to the

13 customer.

14 ~~(21)(23)~~ "Place of primary use" means the street

15 address representative of where the customer's use of the

16 mobile communications service primarily occurs, which must be:

17 (a) The residential street address or the primary

18 business street address of the customer; and

19 (b) Within the licensed service area of the home

20 service provider.

21 ~~(22)(24)~~(a) "Reseller" means a provider who purchases

22 communications services from another communications service

23 provider and then resells, uses as a component part of, or

24 integrates the purchased services into a mobile communications

25 service.

26 (b) "Reseller" does not include a serving carrier with

27 which a home service provider arranges for the services to its

28 customers outside the home service provider's licensed service

29 area.

30 ~~(23)(25)~~ "Serving carrier" means a facilities-based

31 carrier providing mobile communications service to a customer

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1 outside a home service provider's or reseller's licensed
2 service area.

3 Section 2. Subsections (1) and (2) of section 202.12,
4 Florida Statutes, are amended to read:

5 202.12 Sales of communications services.--The
6 Legislature finds that every person who engages in the
7 business of selling communications services at retail in this
8 state is exercising a taxable privilege. It is the intent of
9 the Legislature that the tax imposed by chapter 203 be
10 administered as provided in this chapter.

11 (1) For the exercise of the ~~such~~ privilege, a tax is
12 levied on each taxable transaction, and the tax is due and
13 payable as follows:

14 (a) Except as otherwise provided in this subsection,
15 at a rate of 6.8 percent applied to the sales price of the
16 communications service which:

17 1. Originates and terminates in this state, or

18 2. Originates or terminates in this state and is
19 charged to a service address in this state,

20

21 when sold at retail, computed on each taxable sale for the
22 purpose of remitting the tax due. The gross receipts tax
23 imposed by chapter 203 shall be collected on the same taxable
24 transactions and remitted with the tax imposed by this
25 paragraph. If no tax is imposed by this paragraph by reason of
26 s. 202.125(1), the tax imposed by chapter 203 shall
27 nevertheless be collected and remitted in the manner and at
28 the time prescribed for tax collections and remittances under
29 this chapter.

30 ~~(b) At the rate set forth in paragraph (a) on the~~
31 ~~actual cost of operating a substitute communications system,~~

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1 ~~to be paid in accordance with s. 202.15. This paragraph does~~
 2 ~~not apply to the use by any dealer of his or her own~~
 3 ~~communications system to conduct a business of providing~~
 4 ~~communications services or any communications system operated~~
 5 ~~by a county, a municipality, the state, or any political~~
 6 ~~subdivision of the state. The gross receipts tax imposed by~~
 7 ~~chapter 203 shall be applied to the same costs, and remitted~~
 8 ~~with the tax imposed by this paragraph.~~

9 **(b)(c)** At the rate of 10.8 percent on the retail sales
 10 price of any direct-to-home satellite service received in this
 11 state. The proceeds of the tax imposed under this paragraph
 12 shall be accounted for and distributed in accordance with s.
 13 202.18(2). The gross receipts tax imposed by chapter 203 shall
 14 be collected on the same taxable transactions and remitted
 15 with the tax imposed by this paragraph.

16 **(c)(d)** At the rate set forth in paragraph (a) on the
 17 sales price of private communications services provided within
 18 this state, which shall be determined in accordance with the
 19 following provisions:

- 20 1. Any charge with respect to a channel termination
- 21 point located within this state;
- 22 2. Any charge for the use of a channel between two
- 23 channel termination points located in this state; and
- 24 3. Where channel termination points are located both
- 25 within and outside of this state:
 - 26 a. If any segment between two such channel termination
 - 27 points is separately billed, 50 percent of the ~~such~~ charge;
 - 28 and
 - 29 b. If any segment of the circuit is not separately
 - 30 billed, an amount equal to the total charge for such circuit
 - 31 multiplied by a fraction, the numerator of which is the number

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1 of channel termination points within this state and the
2 denominator of which is the total number of channel
3 termination points of the circuit.

4

5 The gross receipts tax imposed by chapter 203 shall be
6 collected on the same taxable transactions and remitted with
7 the tax imposed by this paragraph.

8 ~~(d)(e)~~ At the rate set forth in paragraph (a) applied
9 to the sales price of all mobile communications services
10 deemed to be provided to a customer by a home service provider
11 under ~~pursuant to~~ s. 117(a) of the Mobile Telecommunications
12 Sourcing Act, Pub. L. No. 106-252, if the ~~such~~ customer's
13 service address is located within this state.

14 (2) A dealer of taxable communications services shall
15 bill, collect, and remit the taxes on communications services
16 imposed under ~~pursuant to~~ chapter 203 and this section at a
17 combined rate that is the sum of the rate of tax on
18 communications services prescribed in chapter 203 and the
19 applicable rate of tax prescribed in this section. ~~Each dealer~~
20 ~~subject to the tax provided in paragraph (1)(b) shall also~~
21 ~~remit the taxes imposed pursuant to chapter 203 and this~~
22 ~~section on a combined basis.~~ However, a dealer shall, in
23 reporting each remittance to the department, identify the
24 portion thereof which consists of taxes remitted under
25 ~~pursuant to~~ chapter 203. Return forms prescribed by the
26 department shall facilitate the ~~such~~ reporting.

27 Section 3. Paragraph (a) of subsection (1) of section
28 202.16, Florida Statutes, is amended to read:

29 202.16 Payment.--The taxes imposed or administered
30 under this chapter and chapter 203 shall be collected from all
31 dealers of taxable communications services on the sale at

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1 retail in this state of communications services taxable under
 2 this chapter and chapter 203. The full amount of the taxes on
 3 a credit sale, installment sale, or sale made on any kind of
 4 deferred payment plan is due at the moment of the transaction
 5 in the same manner as a cash sale.

6 (1)(a) ~~Except as otherwise provided in ss.~~
 7 ~~202.12(1)(b) and 202.15,~~ The taxes collected under this
 8 chapter and chapter 203 shall be paid by the purchaser of the
 9 communications service and shall be collected from the ~~such~~
 10 person by the dealer of communications services.

11 Section 4. Subsection (6) of section 202.17, Florida
 12 Statutes, is amended to read:

13 202.17 Registration.--

14 (6) In addition to the certificate of registration,
 15 the department shall provide to each newly registered dealer
 16 an initial resale certificate that is valid for the remainder
 17 of the period of issuance. The department shall provide to
 18 each active dealer, ~~except persons registered pursuant to s.~~
 19 ~~202.15,~~ an annual resale certificate. As used in this section,
 20 "active dealer" means a person who is registered with the
 21 department and who is required to file a return at least once
 22 during each applicable reporting period.

23 Section 5. Subsections (1) and (2) of section 202.18,
 24 Florida Statutes, are amended to read:

25 202.18 Allocation and disposition of tax
 26 proceeds.--The proceeds of the communications services taxes
 27 remitted under this chapter shall be treated as follows:

28 (1) The proceeds of the taxes remitted under s.
 29 202.12(1)(a) ~~and (b)~~ shall be divided as follows:

30 (a) The portion of the ~~such~~ proceeds which constitutes
 31 gross receipts taxes, imposed at the rate prescribed in

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1 chapter 203, shall be deposited as provided by law and in
2 accordance with s. 9, Art. XII of the State Constitution.

3 (b) The remaining portion shall be distributed
4 according to s. 212.20(6).

5 (2) The proceeds of the taxes remitted under s.
6 202.12(1)(b) ~~s. 202.12(1)(c)~~ shall be divided as follows:

7 (a) The portion of the ~~such~~ proceeds which constitutes
8 gross receipts taxes, imposed at the rate prescribed in
9 chapter 203, shall be deposited as provided by law and in
10 accordance with s. 9, Art. XII of the State Constitution.

11 (b) Sixty-three percent of the remainder shall be
12 allocated to the state and distributed under ~~pursuant to~~ s.
13 212.20(6), except that the proceeds allocated under ~~pursuant~~
14 ~~to~~ s. 212.20(6)(d)3. shall be prorated to the participating
15 counties in the same proportion as that month's collection of
16 the taxes and fees imposed under ~~pursuant to~~ chapter 212 and
17 paragraph (1)(b).

18 (c)1. During each calendar year, the remaining portion
19 of the ~~such~~ proceeds shall be transferred to the Local
20 Government Half-cent Sales Tax Clearing Trust Fund and shall
21 be allocated in the same proportion as the allocation of total
22 receipts of the half-cent sales tax under s. 218.61 and the
23 emergency distribution under s. 218.65 in the prior state
24 fiscal year.

25 2. The proportion of the proceeds allocated based on
26 the emergency distribution under s. 218.65 shall be
27 distributed under ~~pursuant to~~ s. 218.65.

28 3. In each calendar year, the proportion of the
29 proceeds allocated based on the half-cent sales tax under s.
30 218.61 shall be allocated to each county in the same
31 proportion as the county's percentage of total sales tax

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1 allocation for the prior state fiscal year and distributed
2 ~~under pursuant to~~ s. 218.62.

3 4. The department shall distribute the appropriate
4 amount to each municipality and county each month at the same
5 time that local communications services taxes are distributed
6 ~~under pursuant to~~ subsection (3).

7 Section 6. Subsection (7) of section 202.19, Florida
8 Statutes, is repealed.

9 Section 7. Paragraph (a) of subsection (1) of section
10 203.01, Florida Statutes, is amended to read:

11 203.01 Tax on gross receipts for utility and
12 communications services.--

13 (1)(a)1. Every person who ~~that~~ receives payment for
14 any utility service shall report by the last day of each month
15 to the Department of Revenue, under oath of the secretary or
16 some other officer of the ~~such~~ person, the total amount of
17 gross receipts derived from business done within this state,
18 or between points within this state, for the preceding month
19 and, at the same time, shall pay into the State Treasury an
20 amount equal to a percentage of the ~~such~~ gross receipts at the
21 rate set forth in paragraph (b). The ~~Such~~ collections shall be
22 certified by the Chief Financial Officer upon the request of
23 the State Board of Education.

24 2. A tax is levied on communications services as
25 defined in s. 202.11(2) ~~s. 202.11(3)~~. The ~~Such~~ tax shall be
26 applied to the same services and transactions as are subject
27 to taxation under chapter 202, and to communications services
28 that are subject to the exemption provided in s. 202.125(1).
29 The ~~Such~~ tax shall be applied to the sales price of
30 communications services when sold at retail ~~and to the actual~~
31 ~~cost of operating substitute communications systems~~, as such

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1 terms are defined in s. 202.11, shall be due and payable at
2 the same time as the taxes imposed under ~~pursuant to~~ chapter
3 202, and shall be administered and collected under ~~pursuant to~~
4 the provisions of chapter 202.

5 Section 8. The retroactive application of sections 1
6 through 7 of this act is remedial in nature and may not be
7 construed to create a right to a refund or to require a refund
8 by any governmental entity of any tax, penalty, or interest
9 remitted to the Department of Revenue on substitute
10 communications systems before the effective date of this act.

11 Section 9. Section 202.15, Florida Statutes, is
12 repealed.

13 Section 10. (1) The Communications Service Tax Task
14 Force is created and housed for administrative purposes within
15 the Department of Revenue. The task force shall operate
16 independently of the department.

17 (2)(a) The task force shall consist of nine members,
18 three appointed by the Governor, three appointed by the
19 President of the Senate, and three appointed by the Speaker of
20 the House of Representatives. Members shall serve at the
21 pleasure of the appointing official. Any vacancy shall be
22 filled in the same manner as the original appointment.

23 (b) Any nonlegislative member shall possess expertise
24 in state or national telecommunications policy, taxation, law,
25 or technology.

26 (c) Members shall serve without compensation, but are
27 entitled to reimbursement of travel and per diem expenses
28 pursuant to section 112.061, Florida Statutes, relating to
29 completing their duties and responsibilities under this
30 section.

31 (3) The task force shall review and evaluate existing

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1 national and state regulatory and tax policies relating to the
 2 communications industry and make recommendations to the
 3 Legislature concerning the scope of communications services
 4 that should be subject to the communications services tax
 5 levied under chapters 202 and 203, Florida Statutes.

6 (4) The task force shall hold its organizational
 7 meeting by July 15, 2005. It shall select a chair and vice
 8 chair and shall meet at the call of the chair at the time and
 9 place designated by the chair or as often as necessary to
 10 accomplish the purposes of this section. A quorum is necessary
 11 for the purpose of conducting official business of the task
 12 force. The task force shall use accepted rules of procedure to
 13 conduct its meetings and shall keep a complete record of each
 14 meeting.

15 (5) The Public Service Commission shall provide
 16 administrative support and staff for the technical and
 17 regulatory issues addressed by the task force. The Department
 18 of Revenue shall provide staff for the tax issues addressed by
 19 the task force.

20 (6) The task force shall report its findings and
 21 recommendations to the Governor, the President of the Senate,
 22 and the Speaker of the House of Representatives by January 15,
 23 2006. The task force shall be dissolved by June 30, 2007.

24 Section 11. Subsection (3) of section 202.26, Florida
 25 Statutes, is amended to read:

26 202.26 Department powers.--

27 (3) To administer the tax imposed by this chapter, the
 28 department may adopt rules relating to:

29 (a) The filing of returns and remittance of tax,
 30 including provisions concerning electronic funds transfer and
 31 electronic data interchange.

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1 (b) The determination of customer service addresses.

2 (c) The interpretation or definition of any exemptions
3 or exclusions from taxation granted by law.

4 (d) Procedures for handling sales for resale and for
5 determining the taxable status of discounts and rebates.

6 (e) Methods for granting self-accrual authority to
7 taxpayers.

8 (f) The records and methods necessary for a dealer to
9 demonstrate the exercise of due diligence as defined by s.
10 202.22(4)(b).

11 (g) The creation of the database described in s.
12 202.22(2) and the certification and recertification of the
13 databases as described in s. 202.22(3).

14 (h) The registration of dealers.

15 (i) The review of applications for, and the issuance
16 of, direct-pay permits, and the returns required to be filed
17 by holders thereof.

18 (j) The information that must be made available during
19 an audit of a dealer's books and records when the dealer has
20 made an allocation or attribution pursuant to the definition
21 of sales price in s. 202.11(14)(b)8. and the standards for
22 determining the reasonableness thereof. Such records may be
23 required to be made available to the department in an
24 electronic format when so kept by the dealer.

25 1. During an audit, the department may require the
26 production of any additional information found necessary to
27 assist its determination.

28 2. When a dealer uses one of the following methods to
29 support the allocation, the sales price shall be presumed
30 reasonably identified:

31 a. If the selling dealer also offers for sale all of

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1 the tangible personal property or services that are being sold
 2 for a nonitemized sales price on an itemized or stand-alone
 3 basis and tax is computed on the itemized or stand-alone price
 4 of the taxable property or service, less any discount that can
 5 be demonstrated by the dealer to have been afforded to the
 6 purchaser as a result of the combined sale of such items. The
 7 discount shall be no greater than a proportionate price
 8 decrease for each property or service, determined on the basis
 9 of the individual sales price of all properties or services
 10 compared to the nonitemized price of each property or service
 11 when sold in combination.

12 b. If the selling dealer does not offer one or more of
 13 the items of tangible personal property or services being
 14 offered for a nonitemized price on an itemized or stand-alone
 15 basis, when the allocation is based upon the proportions that
 16 the dealer's cost of each of the items of tangible personal
 17 property and services offered for a nonitemized sales price
 18 bears to the dealer's total cost for such property and
 19 services. If the selling dealer maintains an account for the
 20 cost of the items of tangible personal property or service
 21 which must include any related intercompany charges, the
 22 selling dealer's allocation of its costs shall reflect its
 23 accounting allocation.

24 Section 12. Subsection (16) of section 212.02, Florida
 25 Statutes, is amended to read:

26 212.02 Definitions.--The following terms and phrases
 27 when used in this chapter have the meanings ascribed to them
 28 in this section, except where the context clearly indicates a
 29 different meaning:

30 (16) "Sales price" means the total amount paid for
 31 tangible personal property, including any services that are a

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1 part of the sale, valued in money, whether paid in money or
2 otherwise, and includes any amount for which credit is given
3 to the purchaser by the seller, without any deduction
4 therefrom on account of the cost of the property sold, the
5 cost of materials used, labor or service cost, interest
6 charged, losses, or any other expense whatsoever. "Sales
7 price" also includes the consideration for a transaction which
8 requires both labor and material to alter, remodel, maintain,
9 adjust, or repair tangible personal property. Trade-ins or
10 discounts allowed and taken at the time of sale shall not be
11 included within the purview of this subsection. "Sales price"
12 also includes the full face value of any coupon used by a
13 purchaser to reduce the price paid to a retailer for an item
14 of tangible personal property; where the retailer will be
15 reimbursed for such coupon, in whole or in part, by the
16 manufacturer of the item of tangible personal property; or
17 whenever it is not practicable for the retailer to determine,
18 at the time of sale, the extent to which reimbursement for the
19 coupon will be made. The term "sales price" does not include
20 federal excise taxes imposed upon the retailer on the sale of
21 tangible personal property. The term "sales price" does
22 include federal manufacturers' excise taxes, even if the
23 federal tax is listed as a separate item on the invoice. To
24 the extent required by federal law, the term "sales price"
25 does not include charges for Internet access services which
26 are not itemized on the customer's bill, but which can be
27 reasonably identified from the selling dealer's books and
28 records kept in the regular course of business.

29 Section 13. Subsection (3) of section 212.13, Florida
30 Statutes, is amended to read:

31 212.13 Records required to be kept; power to inspect;

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1 audit procedure.--

2 (3) For the purpose of enforcement of this chapter,
3 every manufacturer and seller of tangible personal property or
4 services licensed within this state is required to permit the
5 department to examine his or her books and records at all
6 reasonable hours, and, upon his or her refusal, the department
7 may require him or her to permit such examination by resort to
8 the circuit courts of this state, subject however to the right
9 of removal of the cause to the judicial circuit wherein such
10 person's business is located or wherein such person's books
11 and records are kept, provided further that such person's
12 books and records are kept within the state. When the dealer
13 has made an allocation or attribution pursuant to the
14 definition of sales price in s. 212.02(16), the department may
15 prescribe by rule the information that must be made available
16 during an audit of a dealer's books and records and the
17 standards for determining the reasonableness thereof. Such
18 records may be required to be made available to the department
19 in an electronic format when so kept by the dealer. The burden
20 to show that the charges for Internet access are reasonably
21 identified is on the dealer. The dealer may support the
22 allocation of charges with information derived from the
23 dealer's entire service area, including territories outside
24 this state.

25 (a) During an audit, the department may require the
26 production of any additional information found necessary to
27 assist its determination.

28 (b) When a dealer uses one of the following methods to
29 support the allocation, the sales price shall be presumed
30 reasonably identified:

31 1. If the selling dealer also offers for sale all of

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1 the tangible personal property or services that are being sold
 2 for a nonitemized sales price on an itemized or stand-alone
 3 basis and tax is computed on the itemized or stand-alone price
 4 of the taxable property or service, less any discount that can
 5 be demonstrated by the dealer to have been afforded to the
 6 purchaser as a result of the combined sale of such items. The
 7 discount shall be no greater than a proportionate price
 8 decrease for each property or service, determined on the basis
 9 of the individual sales price of all properties or services
 10 compared to the nonitemized price of each property or service
 11 when sold in combination.

12 2. If the selling dealer does not offer one or more of
 13 the items of tangible personal property or services being
 14 offered for a nonitemized price on an itemized or stand-alone
 15 basis, when the allocation is based upon the proportions that
 16 the dealer's cost of each of the items of tangible personal
 17 property and services offered for a nonitemized sales price
 18 bears to the dealer's total cost for such property and
 19 services. If the selling dealer maintains an account for the
 20 cost of the items of tangible personal property or service,
 21 which must include any related intercompany charges, the
 22 selling dealer's allocation of its costs shall reflect its
 23 accounting allocation.

24 Section 14. This act shall take effect upon becoming a
 25 law, except that the elimination of the tax on substitute
 26 communications, as set forth in sections (1) through (7) of
 27 this act, shall apply retroactively to October 1, 2001.
 28
 29

30 ===== T I T L E A M E N D M E N T =====

31 And the title is amended as follows:

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1 On page 1, lines 2 through 6, delete those lines

2

3 and insert:

4 An act relating to taxation; amending s.
5 202.11, F.S.; deleting certain definitions;
6 amending s. 202.12, F.S.; deleting a provision
7 relating to the manner in which the tax on
8 gross receipts for communications services is
9 applied to a substitute communications system;
10 amending ss. 202.16, 202.17, and 202.18, F.S.;
11 conforming cross-references; repealing s.
12 202.19(7), F.S., relating to imposing a local
13 communications services tax on substitute
14 communications systems; amending s. 203.01,
15 F.S.; deleting a provision imposing a gross
16 receipts tax on the actual costs of operating
17 substitute communications systems; amending s.
18 624.105, F.S.; conforming a cross-reference;
19 specifying that the retroactive operation is
20 remedial and does not create any right to or
21 require any refunds; repealing s. 202.15, F.S.,
22 relating to special rules for users of
23 substitute communications systems; creating the
24 Communications Service Tax Task Force;
25 providing for the membership of the task force;
26 providing a purpose; providing for staffing and
27 administrative support; requiring a report to
28 the Governor and the Legislature; amending s.
29 202.11, F.S.; providing that the definition of
30 sales price for purposes of communication
31 services tax does not include specified charges

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1 for Internet access services; amending s.
2 202.26, F.S.; prescribing methods of record
3 keeping relating to bundled sales; amending s.
4 212.02, F.S.; providing that the definition of
5 sales price for purposes of sales tax does not
6 include specified charges for Internet access
7 services; amending s. 202.13, F.S.; prescribing
8 methods of record keeping relating to bundled
9 sales; providing an effective date.

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