

1 202.11, Florida Statutes, during the period from the effective
2 date of this act through October 31, 2007.

3 (2) The Department of Revenue shall not make
4 assessments of tax on the costs of operating a substitute
5 communications system for the period October 1, 2001, through
6 the effective date of this act. No refunds shall be made of
7 any tax that has been remitted to the Department of Revenue on
8 the costs of operating a substitute communications system
9 prior to the effective date of this act.

10 Section 2. (1) The Communications Service Tax Task
11 Force is created and housed for administrative purposes within
12 the Department of Revenue. The task force shall operate
13 independently of the department.

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

20 (b) Any nonlegislative member shall possess expertise
21 in state or national telecommunications policy, taxation, law,
22 or technology.

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

28 (3) The task force shall review and evaluate existing
29 national and state regulatory and tax policies relating to the
30 communications industry and make recommendations to the
31 Legislature concerning the scope of communications services

1 that should be subject to the communications services tax
2 levied under chapters 202 and 203, Florida Statutes.

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

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

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

21 Section 3. Subsection (14) of section 202.11, Florida
22 Statutes, is amended to read:

23 202.11 Definitions.--As used in this chapter:

24 (14) "Sales price" means the total amount charged in
25 money or other consideration by a dealer for the sale of the
26 right or privilege of using communications services in this
27 state, including any property or other services that are part
28 of the sale. The sales price of communications services shall
29 not be reduced by any separately identified components of the
30 charge that constitute expenses of the dealer, including, but
31 not limited to, sales taxes on goods or services purchased by

1 the dealer, property taxes, taxes measured by net income, and
2 universal-service fund fees.

3 (a) The sales price of communications services shall
4 include, whether or not separately stated, charges for any of
5 the following:

6 1. The connection, movement, change, or termination of
7 communications services.

8 2. The detailed billing of communications services.

9 3. The sale of directory listings in connection with a
10 communications service.

11 4. Central office and custom calling features.

12 5. Voice mail and other messaging service.

13 6. Directory assistance.

14 7. The service of sending or receiving a document
15 commonly referred to as a facsimile or "fax," except when
16 performed during the course of providing professional or
17 advertising services.

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

20 1. Any excise tax, sales tax, or similar tax levied by
21 the United States or any state or local government on the
22 purchase, sale, use, or consumption of any communications
23 service, including, but not limited to, any tax imposed under
24 this chapter or chapter 203 which is permitted or required to
25 be added to the sales price of such service, if the tax is
26 stated separately.

27 2. Any fee or assessment levied by the United States
28 or any state or local government, including, but not limited
29 to, regulatory fees and emergency telephone surcharges, which
30 is required to be added to the price of such service if the
31 fee or assessment is separately stated.

1 3. Communications services paid for by inserting coins
2 into coin-operated communications devices available to the
3 public.

4 4. The sale or recharge of a prepaid calling
5 arrangement.

6 5. The provision of air-to-ground communications
7 services, defined as a radio service provided to purchasers
8 while on board an aircraft.

9 6. A dealer's internal use of communications services
10 in connection with its business of providing communications
11 services.

12 7. Charges for property or other services that are not
13 part of the sale of communications services, if such charges
14 are stated separately from the charges for communications
15 services.

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

25 Section 4. Subsection (3) of section 202.26, Florida
26 Statutes, is amended to read:

27 202.26 Department powers.--

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

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1 (a) The filing of returns and remittance of tax,
2 including provisions concerning electronic funds transfer and
3 electronic data interchange.

4 (b) The determination of customer service addresses.

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

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

9 (e) Methods for granting self-accrual authority to
10 taxpayers.

11 (f) The records and methods necessary for a dealer to
12 demonstrate the exercise of due diligence as defined by s.
13 202.22(4)(b).

14 (g) The creation of the database described in s.
15 202.22(2) and the certification and recertification of the
16 databases as described in s. 202.22(3).

17 (h) The registration of dealers.

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

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

28 1. During an audit, the department may require the
29 production of any additional information found necessary to
30 assist its determination.

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

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

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

28 Section 5. Subsection (16) of section 212.02, Florida
29 Statutes, is amended to read:

30 212.02 Definitions.--The following terms and phrases
31 when used in this chapter have the meanings ascribed to them

1 | in this section, except where the context clearly indicates a
2 | different meaning:

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

3 Section 6. Subsection (3) of section 212.13, Florida
4 Statutes, is amended to read:

5 212.13 Records required to be kept; power to inspect;
6 audit procedure.--

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

1 (a) During an audit, the department may require the
2 production of any additional information found necessary to
3 assist its determination.

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

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

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

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1 Section 7. This act shall take effect upon becoming a
2 law.

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4 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
5 COMMITTEE SUBSTITUTE FOR
6 SB 2070

7 The committee substitute for Senate Bill 2070 deletes the
8 provisions repealing the tax on a substitute communication
9 system and replaces this with provisions that taxes on
10 substitute communications systems are not to be levied or
11 assessed during specified time periods; that create a task
12 force to study the implications of emerging technologies on
13 Florida's communication service tax; and that provide for
14 access by the Department of Revenue to communications services
15 companies' books and records to properly assess taxes.
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