

1 A bill to be entitled
2 An act relating to communications services;
3 providing a short title; specifying the period
4 during which the actual cost of operating a
5 substitute communications system is exempt from
6 such taxes; creating the Communications Service
7 Tax Task Force; providing for the membership of
8 the task force; providing a purpose; providing
9 for staffing and administrative support;
10 requiring a report to the Governor and the
11 Legislature; providing appropriations; amending
12 s. 202.11, F.S.; redefining the term
13 "communications services"; providing that the
14 definition of sales price for purposes of
15 communication services tax does not include
16 specified charges for Internet access services;
17 defining the term "service address" when the
18 location of the equipment is unknown or under
19 other circumstances; amending s. 202.26, F.S.;
20 prescribing methods of record keeping relating
21 to bundled sales; amending s. 212.02, F.S.;
22 providing that the definition of sales price
23 for purposes of sales tax does not include
24 specified charges for Internet access services;
25 amending s. 202.13, F.S.; prescribing methods
26 of record keeping relating to bundled sales;
27 providing for emergency rulemaking by the
28 Department of Revenue; amending s. 202.17,
29 F.S.; providing intent that all sellers of
30 communications services must comply with ch.
31 202, F.S.; providing an effective date.

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

2
3 Section 1. (1) The taxes levied under sections
4 202.12(1), 202.19(7), 202.15, and 203.01, Florida Statutes,
5 shall not be levied on the actual cost of operating a
6 substitute communications system, as defined in section
7 202.11, Florida Statutes, during the period from the effective
8 date of this act through October 31, 2007.

9 (2) The Department of Revenue shall not make
10 assessments of tax on the costs of operating a substitute
11 communications system for the period October 1, 2001, through
12 the effective date of this act. No refunds shall be made of
13 any tax that has been remitted to the Department of Revenue on
14 the costs of operating a substitute communications system
15 prior to the effective date of this act.

16 Section 2. (1) The Communications Service Tax Task
17 Force is created and housed for administrative purposes within
18 the Department of Revenue. The task force shall operate
19 independently of the department.

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

26 (b) All members shall possess expertise in state or
27 national telecommunications policy, taxation, law, or
28 technology. A member of the Legislature or a registered
29 lobbyist may not be appointed to the task force.

30 (c) Members shall serve without compensation, but are
31 entitled to reimbursement of travel and per diem expenses

1 pursuant to section 112.061, Florida Statutes, relating to
2 completing their duties and responsibilities under this
3 section.

4 (3) The task force shall study:

5 (a) The national and state regulatory and tax policies
6 relating to the communications industry, including the
7 Internet Tax Freedom Act;

8 (b) The levels of tax revenue that have been generated
9 by the communications services taxes imposed or administered
10 pursuant to chapter 202, Florida Statutes, in the past and
11 that are expected to be generated in the future, and their
12 adequacy in funding government services and bonded
13 indebtedness that rely on them;

14 (c) The impact of the communications services taxes on
15 Florida's competitiveness;

16 (d) The impact of the diversity of communications
17 technology and of changes in such technology on the state's
18 ability to design tax laws, the applicability of which is
19 reasonably clear to communications service providers and state
20 administrators, and which are susceptible to efficient and
21 fair administration by the state;

22 (e) The administrative burdens imposed on
23 communications services providers; and

24 (f) To the extent that future revenues from the
25 communications services tax are expected to be inadequate to
26 fund government services and bonded indebtedness that rely on
27 them, the options that are available for funding these
28 services and bonded indebtedness.

29 (4) The task force shall hold its organizational
30 meeting by July 15, 2006. It shall select a chair and vice
31 chair and shall meet at the call of the chair at the time and

1 place designated by the chair or as often as necessary to
2 accomplish the purposes of this section. A quorum is necessary
3 for the purpose of conducting official business of the task
4 force. The task force shall use accepted rules of procedure to
5 conduct its meetings and shall keep a complete record of each
6 meeting.

7 (5) The Public Service Commission shall provide staff
8 for the technical and regulatory issues addressed by the task
9 force. The Department of Revenue shall provide administrative
10 support and staff for the tax issues addressed by the task
11 force.

12 (6) The task force shall report its findings and
13 recommendations to the Governor, the President of the Senate,
14 and the Speaker of the House of Representatives by February 1,
15 2007. The task force shall be dissolved by December 31, 2007.

16 Section 3. (1) The sum of \$100,000 is appropriated
17 from the General Revenue Fund to the Department of Revenue for
18 the purpose of defraying the reimbursable travel and per diem
19 expenses of the Communications Service Tax Task Force.

20 (2) The sum of \$500,000 is appropriated from the
21 General Revenue Fund to the Department of Revenue for the
22 purpose of retaining expert witnesses and consultant services
23 in the areas of communications technology and computer
24 telephony. The purpose of such services is to provide the
25 Communications Service Tax Task Force with information,
26 technical consulting services, analysis, and testimony
27 regarding the current and future development of network and
28 telecommunications architecture, products, and services and
29 issues regarding the taxation of such products and services.
30 These funds shall be appropriated for the 2005-2006 fiscal
31 year in categories determined by the Department of Revenue

1 which will best support the needs of the task force. Any
2 unspent funds shall be reappropriated in future fiscal years
3 until the work of the task force is complete.

4 Section 4. Subsections (3), (14), and (15) of section
5 202.11, Florida Statutes, are amended to read:

6 202.11 Definitions.--As used in this chapter:

7 (3) "Communications services" means the transmission,
8 conveyance, or routing of voice, data, audio, video, or any
9 other information or signals, including cable services, to a
10 point, or between or among points, by or through any
11 electronic, radio, satellite, cable, optical, microwave, or
12 other medium or method now in existence or hereafter devised,
13 regardless of the protocol used for such transmission or
14 conveyance. The term includes such transmission, conveyance,
15 or routing in which computer processing applications are used
16 to act on the form, code, or protocol of the content for
17 purposes of transmission, conveyance, or routing without
18 regard to whether such service is referred to as
19 voice-over-Internet-protocol services or is classified by the
20 Federal Communications Commission as enhanced or value-added.

21 The term does not include:

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

4 (14) "Sales price" means the total amount charged in
5 money or other consideration by a dealer for the sale of the
6 right or privilege of using communications services in this
7 state, including any property or other services that are part
8 of the sale. The sales price of communications services shall
9 not be reduced by any separately identified components of the
10 charge that constitute expenses of the dealer, including, but
11 not limited to, sales taxes on goods or services purchased by
12 the dealer, property taxes, taxes measured by net income, and
13 universal-service fund fees.

14 (a) The sales price of communications services shall
15 include, whether or not separately stated, charges for any of
16 the following:

17 1. The connection, movement, change, or termination of
18 communications services.

19 2. The detailed billing of communications services.

20 3. The sale of directory listings in connection with a
21 communications service.

22 4. Central office and custom calling features.

23 5. Voice mail and other messaging service.

24 6. Directory assistance.

25 7. The service of sending or receiving a document
26 commonly referred to as a facsimile or "fax," except when
27 performed during the course of providing professional or
28 advertising services.

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

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1 1. Any excise tax, sales tax, or similar tax levied by
2 the United States or any state or local government on the
3 purchase, sale, use, or consumption of any communications
4 service, including, but not limited to, any tax imposed under
5 this chapter or chapter 203 which is permitted or required to
6 be added to the sales price of such service, if the tax is
7 stated separately.

8 2. Any fee or assessment levied by the United States
9 or any state or local government, including, but not limited
10 to, regulatory fees and emergency telephone surcharges, which
11 is required to be added to the price of such service if the
12 fee or assessment is separately stated.

13 3. Communications services paid for by inserting coins
14 into coin-operated communications devices available to the
15 public.

16 4. The sale or recharge of a prepaid calling
17 arrangement.

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

21 6. A dealer's internal use of communications services
22 in connection with its business of providing communications
23 services.

24 7. Charges for property or other services that are not
25 part of the sale of communications services, if such charges
26 are stated separately from the charges for communications
27 services.

28 8. To the extent required by federal law, charges for
29 Internet access services which are not separately itemized on
30 a customer's bill, but which can be reasonably identified from
31 the selling dealer's books and records kept in the regular

1 course of business. The dealer may support the allocation of
 2 charges with books and records kept in the regular course of
 3 business covering the dealer's entire service area, including
 4 territories outside this state.

5 (15) "Service address" means:

6 (a) Except as otherwise provided in this section:~~7~~

7 1. The location of the communications equipment from
 8 which communications services originate or at which
 9 communications services are received by the customer;~~7~~

10 2. In the case of a communications service paid
 11 through a credit or payment mechanism that does not relate to
 12 a service address, such as a bank, travel, debit, or credit
 13 card, and in the case of third-number and calling-card calls,
 14 the term "service address" means ~~service address is~~ the
 15 address of the central office, as determined by the area code
 16 and the first three digits of the seven-digit originating
 17 telephone number; ~~or~~

18 3. If the location of the equipment described in
 19 subparagraph 1. is not known and subparagraph 2. is
 20 inapplicable, the term "service address" means the location of
 21 the customer's primary use of the communications service. For
 22 purposes of this subparagraph, the location of the customer's
 23 primary use of a communications service is the residential
 24 street address or the business street address of the customer.

25 (b) In the case of cable services and direct-to-home
 26 satellite services, the location where the customer receives
 27 the services in this state.

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

30 Section 5. Subsection (3) of section 202.26, Florida
 31 Statutes, is amended to read:

1 | 202.26 Department powers.--

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

4 | (a) The filing of returns and remittance of tax,
5 | including provisions concerning electronic funds transfer and
6 | electronic data interchange.

7 | (b) The determination of customer service addresses.

8 | (c) The interpretation or definition of any exemptions
9 | or exclusions from taxation granted by law.

10 | (d) Procedures for handling sales for resale and for
11 | determining the taxable status of discounts and rebates.

12 | (e) Methods for granting self-accrual authority to
13 | taxpayers.

14 | (f) The records and methods necessary for a dealer to
15 | demonstrate the exercise of due diligence as defined by s.
16 | 202.22(4)(b).

17 | (g) The creation of the database described in s.
18 | 202.22(2) and the certification and recertification of the
19 | databases as described in s. 202.22(3).

20 | (h) The registration of dealers.

21 | (i) The review of applications for, and the issuance
22 | of, direct-pay permits, and the returns required to be filed
23 | by holders thereof.

24 | (j) The types of books and records kept in the regular
25 | course of business which must be available during an audit of
26 | a dealer's books and records when the dealer has made an
27 | allocation or attribution pursuant to the definition of sales
28 | prices in s. 202.11(14)(b)8. and examples of methods for
29 | determining the reasonableness thereof. Books and records kept
30 | in the regular course of business include, but are not limited
31 | to, general ledgers, price lists, cost records, customer

1 billings, billing system reports, tariffs, and other
2 regulatory filings and rules of regulatory authorities. Such
3 records may be required to be made available to the department
4 in an electronic format when so kept by the dealer. The dealer
5 may support the allocation of charges with books and records
6 kept in the regular course of business covering the dealer's
7 entire service area, including territories outside this state.
8 During an audit, the department may reasonably require
9 production of any additional books and records found necessary
10 to assist in its determination.

11 Section 6. Subsection (16) of section 212.02, Florida
12 Statutes, is amended to read:

13 212.02 Definitions.--The following terms and phrases
14 when used in this chapter have the meanings ascribed to them
15 in this section, except where the context clearly indicates a
16 different meaning:

17 (16) "Sales price" means the total amount paid for
18 tangible personal property, including any services that are a
19 part of the sale, valued in money, whether paid in money or
20 otherwise, and includes any amount for which credit is given
21 to the purchaser by the seller, without any deduction
22 therefrom on account of the cost of the property sold, the
23 cost of materials used, labor or service cost, interest
24 charged, losses, or any other expense whatsoever. "Sales
25 price" also includes the consideration for a transaction which
26 requires both labor and material to alter, remodel, maintain,
27 adjust, or repair tangible personal property. Trade-ins or
28 discounts allowed and taken at the time of sale shall not be
29 included within the purview of this subsection. "Sales price"
30 also includes the full face value of any coupon used by a
31 purchaser to reduce the price paid to a retailer for an item

1 of tangible personal property; where the retailer will be
2 reimbursed for such coupon, in whole or in part, by the
3 manufacturer of the item of tangible personal property; or
4 whenever it is not practicable for the retailer to determine,
5 at the time of sale, the extent to which reimbursement for the
6 coupon will be made. The term "sales price" does not include
7 federal excise taxes imposed upon the retailer on the sale of
8 tangible personal property. The term "sales price" does
9 include federal manufacturers' excise taxes, even if the
10 federal tax is listed as a separate item on the invoice. To
11 the extent required by federal law, the term "sales price"
12 does not include charges for Internet access services which
13 are not itemized on the customer's bill, but which can be
14 reasonably identified from the selling dealer's books and
15 records kept in the regular course of business. The dealer may
16 support the allocation of charges with books and records kept
17 in the regular course of business covering the dealer's entire
18 service area, including territories outside this state.

19 Section 7. Subsection (3) of section 212.13, Florida
20 Statutes, is amended to read:

21 212.13 Records required to be kept; power to inspect;
22 audit procedure.--

23 (3) For the purpose of enforcement of this chapter,
24 every manufacturer and seller of tangible personal property or
25 services licensed within this state is required to permit the
26 department to examine his or her books and records at all
27 reasonable hours, and, upon his or her refusal, the department
28 may require him or her to permit such examination by resort to
29 the circuit courts of this state, subject however to the right
30 of removal of the cause to the judicial circuit wherein such
31 person's business is located or wherein such person's books

1 and records are kept, provided further that such person's
2 books and records are kept within the state. When the dealer
3 has made an allocation or attribution pursuant to the
4 definition of sales price in s. 212.02(16), the department may
5 prescribe by rule the books and records that must be made
6 available during an audit of the dealer's books and records
7 and examples of methods for determining the reasonableness
8 thereof. Books and records kept in the regular course of
9 business include, but are not limited to, general ledgers,
10 price lists, cost records, customer billings, billing system
11 reports, tariffs, and other regulatory filings and rules of
12 regulatory authorities. Such record may be required to be made
13 available to the department in an electronic format when so
14 kept by the dealer. The dealer may support the allocation of
15 charges with books and records kept in the regular course of
16 business covering the dealer's entire service area, including
17 territories outside this state. During an audit, the
18 department may reasonably require production of any additional
19 books and records found necessary to assist in its
20 determination.

21 Section 8. The Executive Director of the Department of
22 Revenue is authorized, and all conditions are deemed met, to
23 adopt emergency rules under sections 120.563(1) and 120.54(4),
24 Florida Statutes, to administer this act. Notwithstanding any
25 other provision of law, the emergency rules shall remain
26 effective for 6 months after the date of their adoption and
27 may be renewed during the pendency of procedures to adopt
28 rules addressing the subject of the emergency rules.

29 Section 9. Subsection (8) is added to section 202.17,
30 Florida Statutes, to read:

31 202.17 Registration.--

1 (8) It is the intent of the Legislature to subject to
2 the provisions of this chapter all sellers of communications
3 services that have established a sufficient connection with
4 this state to permit the state constitutionally to require
5 compliance with this chapter. Activities of a seller of
6 communications services that may subject such a seller to the
7 provisions of this chapter include, but are not limited to:
8 (a) Maintaining an office or other place of business
9 within this state.
10 (b) Solicitation of business from one or more Florida
11 locations through employees, agents, independent contractors,
12 or other representatives of such seller.

13 Section 10. This act shall take effect July 1, 2005.
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