

Bill No. HB 49

Barcode 615412

CHAMBER ACTION

Senate

House

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The Committee on Communications and Public Utilities  
(Constantine) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

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

Section 2. (1) The Communications Service Tax Task

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1 Force is created and housed for administrative purposes within  
2 the Department of Revenue. The task force shall operate  
3 independently of the department.

4 (2)(a) The task force shall consist of nine members,  
5 three appointed by the Governor, three appointed by the  
6 President of the Senate, and three appointed by the Speaker of  
7 the House of Representatives. Members shall serve at the  
8 pleasure of the appointing official. Any vacancy shall be  
9 filled in the same manner as the original appointment.

10 (b) Any nonlegislative member shall possess expertise  
11 in state or national telecommunications policy, taxation, law,  
12 or technology.

13 (c) Members shall serve without compensation, but are  
14 entitled to reimbursement of travel and per diem expenses  
15 pursuant to section 112.061, Florida Statutes, relating to  
16 completing their duties and responsibilities under this  
17 section.

18 (3) The task force shall review and evaluate existing  
19 national and state regulatory and tax policies relating to the  
20 communications industry and make recommendations to the  
21 Legislature concerning the scope of communications services  
22 that should be subject to the communications services tax  
23 levied under chapters 202 and 203, Florida Statutes.

24 (4) The task force shall hold its organizational  
25 meeting by July 15, 2005. It shall select a chair and vice  
26 chair and shall meet at the call of the chair at the time and  
27 place designated by the chair or as often as necessary to  
28 accomplish the purposes of this section. A quorum is necessary  
29 for the purpose of conducting official business of the task  
30 force. The task force shall use accepted rules of procedure to  
31 conduct its meetings and shall keep a complete record of each

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1 meeting.

2       (5) The Public Service Commission shall provide  
3 administrative support and staff for the technical and  
4 regulatory issues addressed by the task force. The Department  
5 of Revenue shall provide staff for the tax issues addressed by  
6 the task force.

7       (6) The task force shall report its findings and  
8 recommendations to the Governor, the President of the Senate,  
9 and the Speaker of the House of Representatives by January 15,  
10 2006. The task force shall be dissolved by June 30, 2007.

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

13       202.11 Definitions.--As used in this chapter:

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

24       (a) The sales price of communications services shall  
25 include, whether or not separately stated, charges for any of  
26 the following:

- 27       1. The connection, movement, change, or termination of
- 28 communications services.
- 29       2. The detailed billing of communications services.
- 30       3. The sale of directory listings in connection with a
- 31 communications service.

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1 4. Central office and custom calling features.

2 5. Voice mail and other messaging service.

3 6. Directory assistance.

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

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

10 1. Any excise tax, sales tax, or similar tax levied by  
11 the United States or any state or local government on the  
12 purchase, sale, use, or consumption of any communications  
13 service, including, but not limited to, any tax imposed under  
14 this chapter or chapter 203 which is permitted or required to  
15 be added to the sales price of such service, if the tax is  
16 stated separately.

17 2. Any fee or assessment levied by the United States  
18 or any state or local government, including, but not limited  
19 to, regulatory fees and emergency telephone surcharges, which  
20 is required to be added to the price of such service if the  
21 fee or assessment is separately stated.

22 3. Communications services paid for by inserting coins  
23 into coin-operated communications devices available to the  
24 public.

25 4. The sale or recharge of a prepaid calling  
26 arrangement.

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

30 6. A dealer's internal use of communications services  
31 in connection with its business of providing communications

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1 services.

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

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

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

17           202.26 Department powers.--

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

20           (a) The filing of returns and remittance of tax,  
21 including provisions concerning electronic funds transfer and  
22 electronic data interchange.

23           (b) The determination of customer service addresses.

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

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

28           (e) Methods for granting self-accrual authority to  
29 taxpayers.

30           (f) The records and methods necessary for a dealer to  
31 demonstrate the exercise of due diligence as defined by s.

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1 202.22(4)(b).

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

5 (h) The registration of dealers.

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

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

16 1. During an audit, the department may require the  
17 production of any additional information found necessary to  
18 assist its determination.

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

22 a. If the selling dealer also offers for sale all of  
23 the tangible personal property or services that are being sold  
24 for a nonitemized sales price on an itemized or stand-alone  
25 basis and tax is computed on the itemized or stand-alone price  
26 of the taxable property or service, less any discount that can  
27 be demonstrated by the dealer to have been afforded to the  
28 purchaser as a result of the combined sale of such items. The  
29 discount shall be no greater than a proportionate price  
30 decrease for each property or service, determined on the basis  
31 of the individual sales price of all properties or services

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1 compared to the nonitemized price of each property or service  
2 when sold in combination.

3 b. If the selling dealer does not offer one or more of  
4 the items of tangible personal property or services being  
5 offered for a nonitemized price on an itemized or stand-alone  
6 basis, when the allocation is based upon the proportions that  
7 the dealer's cost of each of the items of tangible personal  
8 property and services offered for a nonitemized sales price  
9 bears to the dealer's total cost for such property and  
10 services. If the selling dealer maintains an account for the  
11 cost of the items of tangible personal property or service  
12 which must include any related intercompany charges, the  
13 selling dealer's allocation of its costs shall reflect its  
14 accounting allocation.

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

17 212.02 Definitions.--The following terms and phrases  
18 when used in this chapter have the meanings ascribed to them  
19 in this section, except where the context clearly indicates a  
20 different meaning:

21 (16) "Sales price" means the total amount paid for  
22 tangible personal property, including any services that are a  
23 part of the sale, valued in money, whether paid in money or  
24 otherwise, and includes any amount for which credit is given  
25 to the purchaser by the seller, without any deduction  
26 therefrom on account of the cost of the property sold, the  
27 cost of materials used, labor or service cost, interest  
28 charged, losses, or any other expense whatsoever. "Sales  
29 price" also includes the consideration for a transaction which  
30 requires both labor and material to alter, remodel, maintain,  
31 adjust, or repair tangible personal property. Trade-ins or

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1 discounts allowed and taken at the time of sale shall not be  
2 included within the purview of this subsection. "Sales price"  
3 also includes the full face value of any coupon used by a  
4 purchaser to reduce the price paid to a retailer for an item  
5 of tangible personal property; where the retailer will be  
6 reimbursed for such coupon, in whole or in part, by the  
7 manufacturer of the item of tangible personal property; or  
8 whenever it is not practicable for the retailer to determine,  
9 at the time of sale, the extent to which reimbursement for the  
10 coupon will be made. The term "sales price" does not include  
11 federal excise taxes imposed upon the retailer on the sale of  
12 tangible personal property. The term "sales price" does  
13 include federal manufacturers' excise taxes, even if the  
14 federal tax is listed as a separate item on the invoice. To  
15 the extent required by federal law, the term "sales price"  
16 does not include charges for Internet access services which  
17 are not itemized on the customer's bill, but which can be  
18 reasonably identified from the selling dealer's books and  
19 records kept in the regular course of business.

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

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

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



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1 person's business is located or wherein such person's books  
2 and records are kept, provided further that such person's  
3 books and records are kept within the state. When the dealer  
4 has made an allocation or attribution pursuant to the  
5 definition of sales price in s. 212.02(16), the department may  
6 prescribe by rule the information that must be made available  
7 during an audit of a dealer's books and records and the  
8 standards for determining the reasonableness thereof. Such  
9 records may be required to be made available to the department  
10 in an electronic format when so kept by the dealer. The burden  
11 to show that the charges for Internet access are reasonably  
12 identified is on the dealer. The dealer may support the  
13 allocation of charges with information derived from the  
14 dealer's entire service area, including territories outside  
15 this state.

16 (a) During an audit, the department may require the  
17 production of any additional information found necessary to  
18 assist its determination.

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

22 1. If the selling dealer also offers for sale all of  
23 the tangible personal property or services that are being sold  
24 for a nonitemized sales price on an itemized or stand-alone  
25 basis and tax is computed on the itemized or stand-alone price  
26 of the taxable property or service, less any discount that can  
27 be demonstrated by the dealer to have been afforded to the  
28 purchaser as a result of the combined sale of such items. The  
29 discount shall be no greater than a proportionate price  
30 decrease for each property or service, determined on the basis  
31 of the individual sales price of all properties or services

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1 compared to the nonitemized price of each property or service  
2 when sold in combination.

3       2. If the selling dealer does not offer one or more of  
4 the items of tangible personal property or services being  
5 offered for a nonitemized price on an itemized or stand-alone  
6 basis, when the allocation is based upon the proportions that  
7 the dealer's cost of each of the items of tangible personal  
8 property and services offered for a nonitemized sales price  
9 bears to the dealer's total cost for such property and  
10 services. If the selling dealer maintains an account for the  
11 cost of the items of tangible personal property or service,  
12 which must include any related intercompany charges, the  
13 selling dealer's allocation of its costs shall reflect its  
14 accounting allocation.

15       Section 7. This act shall take effect upon becoming a  
16 law.

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

20 And the title is amended as follows:

21       Delete everything before the enacting clause

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23 and insert:

24                           A bill to be entitled  
25       An act relating to communications services;  
26       providing a short title; specifying the period  
27       during which the actual cost of operating a  
28       substitute communications system is exempt from  
29       such taxes; creating the Communications Service  
30       Tax Task Force; providing for the membership of  
31       the task force; providing a purpose; providing

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1 for staffing and administrative support;  
2 requiring a report to the Governor and the  
3 Legislature; amending s. 202.11, F.S.;  
4 providing that the definition of sales price  
5 for purposes of communication services tax does  
6 not include specified charges for Internet  
7 access services; amending s. 202.26, F.S.;  
8 prescribing methods of record keeping relating  
9 to bundled sales; amending s. 212.02, F.S.;  
10 providing that the definition of sales price  
11 for purposes of sales tax does not include  
12 specified charges for Internet access services;  
13 amending s. 202.13, F.S.; prescribing methods  
14 of record keeping relating to bundled sales;  
15 providing an effective date.

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