

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes: The bill deletes the authorization for cities and counties to adjust CST emergency tax rate.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

In the 2000 Regular Session, the Legislature substantially rewrote Florida's communications tax law. The rewrite was intended to provide that communications services be subject to a uniform statewide tax rate and a local tax administered by the Department of Revenue (DOR). Numerous individuals from business, state and local government assisted the Legislature in formulating policy and drafting language. The new communications tax law was meant to replace the old tax structure with a simplified and revenue neutral new tax code.

Taking effect in October 2001, the new Communications Services Tax Simplification (CST) law combined different state taxes, local taxes, and fees into a two-tiered tax composed of a State Communications Services Tax and a Local Communications Service Tax. The CST broadened, among other things, the taxable base of communications services by restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the Department of Revenue (DOR). Since the rewrite was so substantial, some provisions need further clarification.

PROPOSED CHANGES

Section 1

The bill amends s. 202.16(2), F.S., to establish an alternative procedural system for any dealer who documents an exempt "sale for resale" transaction by retaining a copy of the purchaser's initial or annual resale certificate. In lieu of maintaining a copy of the certificate, a dealer may document, prior to the time of sale, an authorization number that will be provided by the DOR telephonically, or electronically, or by other means established by the DOR. The dealer may also rely on an initial or annual resale certificate issued pursuant to s. 202.17(6), F.S., valid at the time of receipt from the purchaser, without seeking additional annual resale certificates from the purchaser, if the dealer makes recurring sales to the purchaser in the normal course of business on a continual basis.

The bill defines "recurring sales to a purchaser in the normal course of business" as a sale in which the dealer extends credit to the purchaser and records the debt as an account receivable, or in which the dealer sells to a purchaser who has established cash account, similar to an open credit account. For purposes of s.202.16(2)(b)1, F.S., purchases are made from a selling dealer on a continual basis, in the normal course of business, if the dealer make sales to the purchases no less frequently than once in every 12-month period.

Through the informal protest period provided in s. 312.21, F.S., and DOR rules, the bill provides that a dealer may submit, in lieu of a resale certificate, an exemption certificate executed by entities that were exempt at the time of sale, resale certificates provided by purchasers who were active dealers at the time of sale, and verification by the DOR of the purchaser's active dealer status at the time of sale. However, this alternative documentation may not be accepted in ch. 120, F.S., or circuit court proceedings instituted under ch. 72, F.S., relating to tax matters.

Section 2

The bill requires the DOR, effective January 1, 2006, to establish a toll-free number for the verification of valid registration numbers and resale certificates under s. 202.16(2)(b), F.S. adequate to guarantee a low busy rate, respond to keypad inquiries, and be updated daily.

The DOR must also establish a system for receiving information from dealers regarding certificate numbers under s. 202.16(2)(b), F.S., who are seeking to make purchases for resale. The DOR must provide dealers, free of charge, with verification of certificate numbers that are canceled or invalid.

Section 3

The bill amends s. 202.19(3)(a), F.S., specifying that the local CST tax authorized under s. 202.19, F.S., includes "and is in lieu of . . . application fees, transfer fees, renewal fees, or claims for related costs" that a local taxing jurisdiction may impose upon dealers of communications services for the right to use or occupy public roads or rights-of-way. This change is retroactive to October 1, 2001.

The bill amends s. 202.19(9), F.S. to provide that revenue distributed to a local government pursuant to s. 202.18, F.S., may be used for any public purpose, including pledging such revenues for the repayment of bonded indebtedness.

Section 4

Section 202.20(2)(a)1, F.S., provides that if the revenues received by the local government from the CST with respect to certain periods¹ are less than the revenues from the replaced revenue source in the 2001-2002 time period, plus reasonably anticipated revenue growth the governing authority may adjust the rate of the local CST to generate the entire shortfall within 1 year of the rate adjustment and by an amount necessary to generate the expected amount of revenue on an ongoing basis. The bill amends s. 202.20(2)(a)3, F.S., allowing local governments to make the adjustment on an emergency basis. The bill adds language saying that the local government's authority to make an emergency adjustment may only be exercised only if the DOR or a dealer reallocated revenue away from the local government.

Section 5

Effective July 1, 2007, the bill deletes subsection 202.20(2), F.S., relating to local CST conversion rates, and it renumbers the remaining subsection that provides the levy and conversion rate for a discretionary sales surtax on the sale of communication services. This provision eliminates the emergency rate authority currently granted to local jurisdictions.

Section 6

Effective July 1, 2007, the bill deletes references to local CST rate changes by emergency ordinance or resolution contained in s. 202.21, F.S., dealing with notice to dealers of changes in rates.

Section 7

The bill provides that the amendments to s. 202.19(3)(a), F.S. are remedial in nature and intended to clarify the law in effect on October 1, 2001, but it does not grant a right to a refund of any fees or charges paid prior to July 1, 2005, unless the payment was paid under written protest as to the authority of any local government to impose such fees or costs on a dealer.

Section 8

The bill provides that the amendments in this act do not apply to emergency rates adopted prior to the effective date of this act.

¹ The actual periods are for periods ending December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002.

Section 9

Except as otherwise provided, this act shall take effect on becoming law.

C. SECTION DIRECTORY:

Section 1. Amends s. 202.16(2), F.S., which provides that a dealer must document an exempt "sale for resale" transaction by retaining a copy of the purchaser's annual resale certificate.

Section 2. Provides that the Department of Revenue must establish a toll-free number to verify and receive registration numbers and resale certificates by January 1, 2006.

Section 3. Amends s. 202.19(3)(a), F.S., relating to the authorization to impose local communications services tax.

Section 4. Amends s. 212.20(2)(a), F.S., relating to local communications services tax conversion rates.

Section 5. Effective July 1, 2007, repeals subsection 202.20(2), F.S.

Section 6. Effective July 1, 2007, amends s. 202.21, F.S., to delete references to local CST rate changes by emergency ordinance or resolution.

Section 7. Provides that the amendment to s. 202.19(3)(a), F.S., is remedial in nature and intended to clarify existing law.

Section 8. Provides that the amendments to this act do not apply to emergency rates adopted prior to the effective date of this act.

Section 9. Provides that, except as otherwise provided, the act takes effect on July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None

2. Expenditures:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has determined that the bill will have a negative indeterminate impact on local revenues. The provisions amending and then repealing the authority of cities and counties to adjust CST rates by emergency ordinance have an indeterminate fiscal impact on local government revenues, since it is unknown whether the authority to adjust rates would be exercised.

Some local governments are charging fees that will have to be rescinded pursuant to the provisions of Section 2 of the bill.

2. Expenditures:

None. According to the DOR, it can set-up the required toll-free number and system for receiving information from dealers with its existing resources.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Some communication services dealers will pay lower fees and related costs to local governments.

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The provisions deleting the authority of some cities and counties to adjust CST rates by emergency ordinance reduce their authority to raise revenues. The CST was designed as a revenue-neutral tax and the legislature made specific findings that the legislation did not reduce the authority that cities or counties had to raise revenues in the aggregate, as such authority existed on February 1, 1989. Section 202.15, F.S. It is unclear to what extent, if any, the deletion of the emergency rate authority by this bill reduces the authority of cities and counties to raise revenues in the aggregate.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 106 through 109 require the department of revenue to establish a system for receiving information from dealers regarding certificate numbers under s. 202.16(2)(b), F.S., of dealers who are seeking to make purchases for resale. The use of the "dealer" for two separate entities is confusing and the second "dealers" may need to be changed to "those" or "persons." The use of "those" would be similar to the language contained in s. 212.186(2), F.S., which describes a similar system for the verification of resale certificates for sales tax purposes.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 29, 2005, the Finance and Tax Committee adopted two amendments. One amendment changed an incorrect date in Section 7. The other amendment provided that by January 1, 2006, the Department of Revenue must establish a toll-free number to verify and receive registration numbers and resale certificates.

On April 6, 2005, the Utilities & Telecommunications Committee adopted an amendment to add two additional sections to the bill. The first section provided that the amendments in the act do not apply to emergency rates adopted prior to the effective date of the act. The second section provides that the taxes distributed to local government pursuant to s. 202.18, F.S., may be used by a local government to repay current or future bonded indebtedness.