

1 A bill to be entitled

2 An act relating to the communications services tax;
3 amending s. 202.16, F.S.; requiring dealers to document
4 exempt sales for resale; providing requirements; providing
5 a definition; providing construction; providing for dealer
6 provision of evidence of the exempt status of certain
7 sales through an informal protest process; requiring the
8 Department of Revenue to accept certain evidence during
9 the protest period; providing limitations; providing for
10 retroactive application; amending s. 202.19, F.S.;
11 clarifying a characterization of the local communications
12 services tax as including certain fees and being in lieu
13 of such fees; amending s. 202.20, F.S.; limiting local
14 government authority to make certain rate adjustments in
15 the tax under certain circumstances; deleting obsolete
16 provisions relating to making certain adjustments in the
17 tax for certain periods; amending s. 202.21, F.S.;
18 deleting provisions relating to local government
19 adjustments of the tax by emergency ordinance or
20 resolution to conform; specifying that certain amendments
21 are remedial in nature and clarify certain provisions of
22 law but do not grant rights to refund of certain fees or
23 charges under certain circumstances; providing effective
24 dates.

25
26 Be It Enacted by the Legislature of the State of Florida:
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28 Section 1. Effective upon this act becoming a law, and
29 operating retroactively to December 31, 2004, subsection (2) of
30 section 202.16, Florida Statutes, is amended to read:

31 202.16 Payment.--The taxes imposed or administered under
32 this chapter and chapter 203 shall be collected from all dealers
33 of taxable communications services on the sale at retail in this
34 state of communications services taxable under this chapter and
35 chapter 203. The full amount of the taxes on a credit sale,
36 installment sale, or sale made on any kind of deferred payment
37 plan is due at the moment of the transaction in the same manner
38 as a cash sale.

39 (2)(a) A sale of communications services that are used as
40 a component part of or integrated into a communications service
41 or prepaid calling arrangement for resale, including, but not
42 limited to, carrier-access charges, interconnection charges paid
43 by providers of mobile communication services or other
44 communication services, charges paid by cable service providers
45 for the transmission of video or other programming by another
46 dealer of communications services, charges for the sale of
47 unbundled network elements, and any other intercompany charges
48 for the use of facilities for providing communications services
49 for resale, must be made in compliance with the rules of the
50 department. Any person who makes a sale for resale which is not
51 in compliance with these rules is liable for any tax, penalty,
52 and interest due for failing to comply, to be calculated
53 pursuant to s. 202.28(2)(a).

54 (b)1. Any dealer who makes a sale for resale shall
55 document the exempt nature of the transaction, as established by

56 rules adopted by the department, by retaining a copy of the
57 purchaser's initial or annual resale certificate issued pursuant
58 to s. 202.17(6). In lieu of maintaining a copy of the
59 certificate, a dealer may document, prior to the time of sale,
60 an authorization number, provided telephonically or
61 electronically by the department, or by such other means
62 established by rule of the department. The dealer may rely on an
63 initial or annual resale certificate issued pursuant to s.
64 202.17(6), valid at the time of receipt from the purchaser,
65 without seeking additional annual resale certificates from such
66 purchaser, if the dealer makes recurring sales to the purchaser
67 in the normal course of business on a continual basis. For
68 purposes of this paragraph, the term "recurring sales to a
69 purchaser in the normal course of business" means a sale in
70 which the dealer extends credit to the purchaser and records the
71 debt as an account receivable, or in which the dealer sells to a
72 purchaser who has an established cash account, similar to an
73 open credit account. For purposes of this paragraph, purchases
74 are made from a selling dealer on a continual basis if the
75 selling dealer makes, in the normal course of business, sales to
76 the purchaser no less frequently than once in every 12-month
77 period.

78 2. A dealer may, through the informal protest process
79 provided for in s. 213.21 and the rules of the department,
80 provide the department with evidence of the exempt status of a
81 sale. Exemption certificates executed by entities that were
82 exempt at the time of sale, resale certificates provided by
83 purchasers who were active dealers at the time of sale, and

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84 verification by the department of a purchaser's active dealer
85 status at the time of sale in lieu of a resale certificate shall
86 be accepted by the department when submitted during the protest
87 period but may not be accepted in any proceeding under chapter
88 120 or any circuit court action instituted under chapter 72.

89 Section 2. Paragraph (a) of subsection (3) of section
90 202.19, Florida Statutes, is amended to read:

91 202.19 Authorization to impose local communications
92 services tax.--

93 (3)(a) The tax authorized under this section includes and
94 is in lieu of any fee or other consideration, including, but not
95 limited to, application fees, transfer fees, renewal fees, or
96 claims for related costs, to which the municipality or county is
97 otherwise entitled for granting permission to dealers of
98 communications services, including, but not limited to,
99 providers of cable television services, as authorized in 47
100 U.S.C. s. 542, to use or occupy its roads or rights-of-way for
101 the placement, construction, and maintenance of poles, wires,
102 and other fixtures used in the provision of communications
103 services.

104 Section 3. Paragraph (a) of subsection (2) of section
105 202.20, Florida Statutes, is amended to read:

106 202.20 Local communications services tax conversion
107 rates.--

108 (2)(a)1. With respect to any local taxing jurisdiction,
109 if, for the periods ending December 31, 2001; March 31, 2002;
110 June 30, 2002; or September 30, 2002, the revenues received by
111 that local government from the local communications services tax

112 imposed under subsection (1) are less than the revenues received
113 from the replaced revenue sources for the corresponding 2000-
114 2001 period; plus reasonably anticipated growth in such revenues
115 over the preceding 1-year period, based on the average growth of
116 such revenues over the immediately preceding 5-year period; plus
117 an amount representing the revenues from the replaced revenue
118 sources for the 1-month period that the local taxing
119 jurisdiction was required to forego, the governing authority may
120 adjust the rate of the local communications services tax upward
121 to the extent necessary to generate the entire shortfall in
122 revenues within 1 year after the rate adjustment and by an
123 amount necessary to generate the expected amount of revenue on
124 an ongoing basis.

125 2. If complete data are not available at the time of
126 determining whether the revenues received by a local government
127 from the local communications services tax imposed under
128 subsection (1) are less than the revenues received from the
129 replaced revenue sources for the corresponding 2000-2001 period,
130 as set forth in subparagraph 1., the local government shall use
131 the best data available for the corresponding 2000-2001 period
132 in making such determination.

133 3. The adjustment permitted under subparagraph 1. may be
134 made by emergency ordinance or resolution and may be made
135 notwithstanding the maximum rate established under s. 202.19(2)
136 and notwithstanding any schedules or timeframes or any other
137 limitations contained in this chapter. The authority of a local
138 government to make such adjustment may be exercised only if the
139 department or a dealer reallocates revenue away from the local

140 government. The emergency ordinance or resolution shall specify
141 an effective date for the adjusted rate, which shall be no less
142 than 60 days after the date of adoption of the ordinance or
143 resolution and shall be effective with respect to taxable
144 services included on bills that are dated on the first day of a
145 month subsequent to the expiration of the 60-day period. At the
146 end of 1 year following the effective date of such adjusted
147 rate, the local governing authority shall, as soon as is
148 consistent with s. 202.21, reduce the rate by that portion of
149 the emergency rate which was necessary to recoup the amount of
150 revenues not received prior to the implementation of the
151 emergency rate.

152 4. If, for the period October 1, 2001, through September
153 30, 2002, the revenues received by a local government from the
154 local communications services tax conversion rate established
155 under subsection (1), adjusted upward for the difference in
156 rates between paragraphs (1)(a) and (b) or any other rate
157 adjustments or base changes, are above the threshold of 10
158 percent more than the revenues received from the replaced
159 revenue sources for the corresponding 2000-2001 period plus
160 reasonably anticipated growth in such revenues over the
161 preceding 1-year period, based on the average growth of such
162 revenues over the immediately preceding 5-year period, the
163 governing authority must adjust the rate of the local
164 communications services tax to the extent necessary to reduce
165 revenues to the threshold by emergency ordinance or resolution
166 within the timeframes established in subparagraph 3. The
167 foregoing rate adjustment requirement shall not apply to a local

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government that adopts a local communications services tax rate by resolution or ordinance. If complete data are not available at the time of determining whether the revenues exceed the threshold, the local government shall use the best data available for the corresponding 2000-2001 period in making such determination. This subparagraph shall not be construed as establishing a right of action for any person to enforce this subparagraph or challenge a local government's implementation of this subparagraph.

Section 4. Effective July 1, 2007, subsection (2) of section 202.20, Florida Statutes, as amended by this act, is amended to read:

202.20 Local communications services tax conversion rates.--

~~(2)(a)1. With respect to any local taxing jurisdiction, if, for the periods ending December 31, 2001; March 31, 2002; June 30, 2002; or September 30, 2002, the revenues received by that local government from the local communications services tax imposed under subsection (1) are less than the revenues received from the replaced revenue sources for the corresponding 2000-2001 period; plus reasonably anticipated growth in such revenues over the preceding 1-year period, based on the average growth of such revenues over the immediately preceding 5-year period; plus an amount representing the revenues from the replaced revenue sources for the 1-month period that the local taxing jurisdiction was required to forego, the governing authority may adjust the rate of the local communications services tax upward to the extent necessary to generate the entire shortfall in~~

196 ~~revenues within 1 year after the rate adjustment and by an~~
197 ~~amount necessary to generate the expected amount of revenue on~~
198 ~~an ongoing basis.~~

199 ~~2. If complete data are not available at the time of~~
200 ~~determining whether the revenues received by a local government~~
201 ~~from the local communications services tax imposed under~~
202 ~~subsection (1) are less than the revenues received from the~~
203 ~~replaced revenue sources for the corresponding 2000-2001 period,~~
204 ~~as set forth in subparagraph 1., the local government shall use~~
205 ~~the best data available for the corresponding 2000-2001 period~~
206 ~~in making such determination.~~

207 ~~3. The adjustment permitted under subparagraph 1. may be~~
208 ~~made by emergency ordinance or resolution and may be made~~
209 ~~notwithstanding the maximum rate established under s. 202.19(2)~~
210 ~~and notwithstanding any schedules or timeframes or any other~~
211 ~~limitations contained in this chapter. The authority of a local~~
212 ~~government to make such adjustment may be exercised only if the~~
213 ~~department or a dealer reallocates revenue away from the local~~
214 ~~government. The emergency ordinance or resolution shall specify~~
215 ~~an effective date for the adjusted rate, which shall be no less~~
216 ~~than 60 days after the date of adoption of the ordinance or~~
217 ~~resolution and shall be effective with respect to taxable~~
218 ~~services included on bills that are dated on the first day of a~~
219 ~~month subsequent to the expiration of the 60-day period. At the~~
220 ~~end of 1 year following the effective date of such adjusted~~
221 ~~rate, the local governing authority shall, as soon as is~~
222 ~~consistent with s. 202.21, reduce the rate by that portion of~~
223 ~~the emergency rate which was necessary to recoup the amount of~~

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224 ~~revenues not received prior to the implementation of the~~
225 ~~emergency rate.~~

226 ~~4. If, for the period October 1, 2001, through September~~
227 ~~30, 2002, the revenues received by a local government from the~~
228 ~~local communications services tax conversion rate established~~
229 ~~under subsection (1), adjusted upward for the difference in~~
230 ~~rates between paragraphs (1)(a) and (b) or any other rate~~
231 ~~adjustments or base changes, are above the threshold of 10~~
232 ~~percent more than the revenues received from the replaced~~
233 ~~revenue sources for the corresponding 2000-2001 period plus~~
234 ~~reasonably anticipated growth in such revenues over the~~
235 ~~preceding 1-year period, based on the average growth of such~~
236 ~~revenues over the immediately preceding 5-year period, the~~
237 ~~governing authority must adjust the rate of the local~~
238 ~~communications services tax to the extent necessary to reduce~~
239 ~~revenues to the threshold by emergency ordinance or resolution~~
240 ~~within the timeframes established in subparagraph 3. The~~
241 ~~foregoing rate adjustment requirement shall not apply to a local~~
242 ~~government that adopts a local communications services tax rate~~
243 ~~by resolution or ordinance. If complete data are not available~~
244 ~~at the time of determining whether the revenues exceed the~~
245 ~~threshold, the local government shall use the best data~~
246 ~~available for the corresponding 2000-2001 period in making such~~
247 ~~determination. This subparagraph shall not be construed as~~
248 ~~establishing a right of action for any person to enforce this~~
249 ~~subparagraph or challenge a local government's implementation of~~
250 ~~this subparagraph.~~

251 ~~(b)~~ The term ~~Except as otherwise provided in this~~
252 ~~subsection,~~ "replaced revenue sources," as used in this section,
253 means the following taxes, charges, fees, or other impositions
254 to the extent that the respective local taxing jurisdictions
255 were authorized to impose them prior to July 1, 2000.

256 (a)~~1.~~ With respect to municipalities and charter counties
257 and the taxes authorized by s. 202.19(1):

258 1.a. The public service tax on telecommunications
259 authorized by former s. 166.231(9).

260 2.b. Franchise fees on cable service providers as
261 authorized by 47 U.S.C. s. 542.

262 3.e. The public service tax on prepaid calling
263 arrangements.

264 4.d. Franchise fees on dealers of communications services
265 which use the public roads or rights-of-way, up to the limit set
266 forth in s. 337.401. For purposes of calculating rates under
267 this section, it is the legislative intent that charter counties
268 be treated as having had the same authority as municipalities to
269 impose franchise fees on recurring local telecommunication
270 service revenues prior to July 1, 2000. However, the Legislature
271 recognizes that the authority of charter counties to impose such
272 fees is in dispute, and the treatment provided in this section
273 is not an expression of legislative intent that charter counties
274 actually do or do not possess such authority.

275 5.e. Actual permit fees relating to placing or maintaining
276 facilities in or on public roads or rights-of-way, collected
277 from providers of long-distance, cable, and mobile
278 communications services for the fiscal year ending September 30,

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1999; however, if a municipality or charter county elects the option to charge permit fees pursuant to s. 337.401(3)(c)1.a., such fees shall not be included as a replaced revenue source.

(b)2- With respect to all other counties and the taxes authorized in s. 202.19(1), franchise fees on cable service providers as authorized by 47 U.S.C. s. 542.

Section 5. Effective July 1, 2007, section 202.21, Florida Statutes, is amended to read:

202.21 Effective dates; procedures for informing dealers of communications services of tax levies and rate changes.--Any adoption, repeal, or change in the rate of a local communications services tax imposed under s. 202.19 is effective with respect to taxable services included on bills that are dated on or after the January 1 subsequent to such adoption, repeal, or change. A municipality or county adopting, repealing, or changing the rate of such tax must notify the department of the adoption, repeal, or change by September 1 immediately preceding such January 1. Notification must be furnished on a form prescribed by the department and must specify the rate of tax; the effective date of the adoption, repeal, or change thereof; and the name, mailing address, and telephone number of a person designated by the municipality or county to respond to inquiries concerning the tax. The department shall provide notice of such adoption, repeal, or change to all affected dealers of communications services at least 90 days before the effective date of the tax. ~~Any local government that adjusts the rate of its local communications services tax by emergency ordinance or resolution pursuant to s. 202.20(2) shall notify~~

307 ~~the department of the new tax rate immediately upon its~~
308 ~~adoption. The department shall provide written notice of the~~
309 ~~adoption of the new rate to all affected dealers within 30 days~~
310 ~~after receiving such notice.~~ In any notice to providers or
311 publication of local tax rates for purposes of this chapter, the
312 department shall express the rate for a municipality or charter
313 county as the sum of the tax rates levied within such
314 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall
315 express the rate for any other county as the sum of the tax
316 rates levied pursuant to s. 202.19(2)(b) and (5). The department
317 is not liable for any loss of or decrease in revenue by reason
318 of any error, omission, or untimely action that results in the
319 nonpayment of a tax imposed under s. 202.19.

320 Section 6. The amendments to s. 202.19(3)(a), Florida
321 Statutes, contained in this act are remedial in nature and
322 intended to clarify the law in effect on October 1, 2001, but do
323 not grant any right to a refund of any fees or charges paid
324 prior to July 1, 2004, unless the payment was made under written
325 protest as to the authority of any local government to impose
326 such fees or costs on a dealer.

327 Section 7. Except as otherwise provided herein, this act
328 shall take effect upon becoming a law.