

1 A bill to be entitled

2 An act relating to the communications services tax;
3 amending s. 202.12, F.S.; decreasing the rate of the tax;
4 providing for application; amending s. 202.16, F.S.;
5 requiring dealers to document exempt sales for resale;
6 providing requirements and procedures; providing a
7 definition; providing construction; providing for dealer
8 provision of evidence of the exempt status of certain
9 sales through an informal protest process; requiring the
10 Department of Revenue to accept certain evidence during
11 the protest period; providing limitations; requiring the
12 department to establish a toll-free telephone number for
13 the purpose of verifying registration numbers and resale
14 certificates; requiring the department to establish a
15 system for receiving information from dealers regarding
16 certificate numbers; amending s. 202.18, F.S.; decreasing
17 the percentage allocation of certain tax proceeds;
18 amending s. 202.20, F.S.; limiting local governmental
19 authority to make certain rate adjustments in the tax
20 under certain circumstances; providing for a determination
21 of completeness of certain data; providing effective
22 dates.

23
24 Be It Enacted by the Legislature of the State of Florida:

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26 Section 1. Paragraphs (a) and (b) of subsection (1) of
27 section 202.12, Florida Statutes, are amended to read:

28 202.12 Sales of communications services.--The Legislature
 29 finds that every person who engages in the business of selling
 30 communications services at retail in this state is exercising a
 31 taxable privilege. It is the intent of the Legislature that the
 32 tax imposed by chapter 203 be administered as provided in this
 33 chapter.

34 (1) For the exercise of such privilege, a tax is levied on
 35 each taxable transaction, and the tax is due and payable as
 36 follows:

37 (a) Except as otherwise provided in this subsection, at a
 38 rate of 6.55 ~~6.8~~ percent applied to the sales price of the
 39 communications service which:

- 40 1. Originates and terminates in this state, or
- 41 2. Originates or terminates in this state and is charged
- 42 to a service address in this state,

43
 44 when sold at retail, computed on each taxable sale for the
 45 purpose of remitting the tax due. The gross receipts tax imposed
 46 by chapter 203 shall be collected on the same taxable
 47 transactions and remitted with the tax imposed by this
 48 paragraph. If no tax is imposed by this paragraph by reason of
 49 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless
 50 be collected and remitted in the manner and at the time
 51 prescribed for tax collections and remittances under this
 52 chapter.

53 (b) At the rate of 10.55 ~~10.8~~ percent on the retail sales
 54 price of any direct-to-home satellite service received in this
 55 state. The proceeds of the tax imposed under this paragraph

56 shall be accounted for and distributed in accordance with s.
 57 202.18(2). The gross receipts tax imposed by chapter 203 shall
 58 be collected on the same taxable transactions and remitted with
 59 the tax imposed by this paragraph.

60 Section 2. The amendments to s. 202.12, Florida Statutes,
 61 by this act shall apply to bills for communications services
 62 dated on or after January 1, 2008.

63 Section 3. Effective January 1, 2008, subsection (2) of
 64 section 202.16, Florida Statutes, is amended to read:

65 202.16 Payment.--The taxes imposed or administered under
 66 this chapter and chapter 203 shall be collected from all dealers
 67 of taxable communications services on the sale at retail in this
 68 state of communications services taxable under this chapter and
 69 chapter 203. The full amount of the taxes on a credit sale,
 70 installment sale, or sale made on any kind of deferred payment
 71 plan is due at the moment of the transaction in the same manner
 72 as a cash sale.

73 (2) (a) A sale of communications services that are used as
 74 a component part of or integrated into a communications service
 75 or prepaid calling arrangement for resale, including, but not
 76 limited to, carrier-access charges, interconnection charges paid
 77 by providers of mobile communication services or other
 78 communication services, charges paid by cable service providers
 79 for the transmission of video or other programming by another
 80 dealer of communications services, charges for the sale of
 81 unbundled network elements, and any other intercompany charges
 82 for the use of facilities for providing communications services
 83 for resale, must be made in compliance with the rules of the

84 department. Any person who makes a sale for resale which is not
85 in compliance with these rules is liable for any tax, penalty,
86 and interest due for failing to comply, to be calculated
87 pursuant to s. 202.28(2)(a).

88 (b)1. Any dealer who makes a sale for resale shall
89 document the exempt nature of the transaction, as established by
90 rules adopted by the department, by retaining a copy of the
91 purchaser's initial or annual resale certificate issued pursuant
92 to s. 202.17(6). In lieu of maintaining a copy of the
93 certificate, a dealer may document, prior to the time of sale,
94 an authorization number provided telephonically or
95 electronically by the department or by such other means
96 established by rule of the department. The dealer may rely on an
97 initial or annual resale certificate issued pursuant to s.
98 202.17(6), valid at the time of receipt from the purchaser,
99 without seeking additional annual resale certificates from such
100 purchaser, if the dealer makes recurring sales to the purchaser
101 in the normal course of business on a continual basis. For
102 purposes of this paragraph, the term "recurring sales to a
103 purchaser in the normal course of business" means sales in which
104 the dealer extends credit to the purchaser and records the debt
105 as an account receivable, or in which the dealer sells to a
106 purchaser who has an established cash account, similar to an
107 open credit account. For purposes of this paragraph, purchases
108 are made from a selling dealer on a continual basis if the
109 selling dealer makes, in the normal course of business, sales to
110 the purchaser no less frequently than once in every 12-month
111 period.

112 2. A dealer may, through the informal conference
113 procedures provided for in s. 213.21 and the rules of the
114 department, provide the department with evidence of the exempt
115 status of a sale. Exemption certificates executed by entities
116 that were exempt at the time of sale, resale certificates
117 provided by purchasers who were active dealers at the time of
118 sale, and verification by the department of a purchaser's active
119 dealer status at the time of sale in lieu of a resale
120 certificate shall be accepted by the department when submitted
121 during the protest period but may not be accepted in any
122 proceeding under chapter 120 or any circuit court action
123 instituted under chapter 72.

124 Section 4. Effective January 1, 2008, the Department of
125 Revenue shall establish a toll-free telephone number for the
126 verification of valid dealer registration numbers and resale
127 certificates issued under chapter 202, Florida Statutes. The
128 system must be adequate to guarantee a low busy rate, must
129 respond to keypad inquiries, and must provide data that is
130 updated daily.

131 Section 5. Effective January 1, 2008, the Department of
132 Revenue shall establish a system for receiving information from
133 dealers regarding certificate numbers of purchasers who are
134 seeking to make purchases for resale under chapter 202, Florida
135 Statutes. The department shall provide such dealers, free of
136 charge, with verification of those numbers that are canceled or
137 invalid.

138 Section 6. Effective January 1, 2008, paragraph (b) of
 139 subsection (2) of section 202.18, Florida Statutes, is amended
 140 to read:

141 202.18 Allocation and disposition of tax proceeds.--The
 142 proceeds of the communications services taxes remitted under
 143 this chapter shall be treated as follows:

144 (2) The proceeds of the taxes remitted under s.
 145 202.12(1)(b) shall be divided as follows:

146 (b) Sixty-two and one-tenth ~~Sixty-three~~ percent of the
 147 remainder shall be allocated to the state and distributed
 148 pursuant to s. 212.20(6), except that the proceeds allocated
 149 pursuant to s. 212.20(6)(d)3. shall be prorated to the
 150 participating counties in the same proportion as that month's
 151 collection of the taxes and fees imposed pursuant to chapter 212
 152 and paragraph (1)(b).

153 Section 7. Paragraph (a) of subsection (2) of section
 154 202.20, Florida Statutes, is amended to read:

155 202.20 Local communications services tax conversion
 156 rates.--

157 (2)(a)1. With respect to any local taxing jurisdiction,
 158 if, for the periods ending December 31, 2001; March 31, 2002;
 159 June 30, 2002; or September 30, 2002, the revenues received by
 160 that local government from the local communications services tax
 161 imposed under subsection (1) are less than the revenues received
 162 from the replaced revenue sources for the corresponding 2000-
 163 2001 period; plus reasonably anticipated growth in such revenues
 164 over the preceding 1-year period, based on the average growth of
 165 such revenues over the immediately preceding 5-year period; plus

166 an amount representing the revenues from the replaced revenue
167 sources for the 1-month period that the local taxing
168 jurisdiction was required to forego, the governing authority may
169 adjust the rate of the local communications services tax upward
170 to the extent necessary to generate the entire shortfall in
171 revenues within 1 year after the rate adjustment and by an
172 amount necessary to generate the expected amount of revenue on
173 an ongoing basis.

174 2. If complete data are not available at the time of
175 determining whether the revenues received by a local government
176 from the local communications services tax imposed under
177 subsection (1) are less than the revenues received from the
178 replaced revenue sources for the corresponding 2000-2001 period,
179 as set forth in subparagraph 1., the local government shall use
180 the best data available for the corresponding 2000-2001 period
181 in making such determination. Complete data shall be deemed
182 available to all local governments after the department
183 completes audits, including the redistribution of local tax, of
184 dealers who account for no less than 80 percent of the amount of
185 communications services tax revenues received for fiscal year
186 2005-2006.

187 3. The adjustment permitted under subparagraph 1. may be
188 made by emergency ordinance or resolution and may be made
189 notwithstanding the maximum rate established under s. 202.19(2)
190 and notwithstanding any schedules or timeframes or any other
191 limitations contained in this chapter. Beginning July 1, 2007, a
192 local government may make such adjustment only if the department
193 or a dealer allocates or reallocates revenues away from the

194 local government. However, any such adjustment shall be made no
195 later than 6 months following the date the department notifies
196 the local governments in writing that complete data is
197 available. The emergency ordinance or resolution shall specify
198 an effective date for the adjusted rate, which shall be no less
199 than 60 days after the date of adoption of the ordinance or
200 resolution and shall be effective with respect to taxable
201 services included on bills that are dated on the first day of a
202 month subsequent to the expiration of the 60-day period. At the
203 end of 1 year following the effective date of such adjusted
204 rate, the local governing authority shall, as soon as is
205 consistent with s. 202.21, reduce the rate by that portion of
206 the emergency rate which was necessary to recoup the amount of
207 revenues not received prior to the implementation of the
208 emergency rate.

209 4. If, for the period October 1, 2001, through September
210 30, 2002, the revenues received by a local government from the
211 local communications services tax conversion rate established
212 under subsection (1), adjusted upward for the difference in
213 rates between paragraphs (1)(a) and (b) or any other rate
214 adjustments or base changes, are above the threshold of 10
215 percent more than the revenues received from the replaced
216 revenue sources for the corresponding 2000-2001 period plus
217 reasonably anticipated growth in such revenues over the
218 preceding 1-year period, based on the average growth of such
219 revenues over the immediately preceding 5-year period, the
220 governing authority must adjust the rate of the local
221 communications services tax to the extent necessary to reduce

222 revenues to the threshold by emergency ordinance or resolution
223 within the timeframes established in subparagraph 3. The
224 foregoing rate adjustment requirement shall not apply to a local
225 government that adopts a local communications services tax rate
226 by resolution or ordinance. If complete data are not available
227 at the time of determining whether the revenues exceed the
228 threshold, the local government shall use the best data
229 available for the corresponding 2000-2001 period in making such
230 determination. This subparagraph shall not be construed as
231 establishing a right of action for any person to enforce this
232 subparagraph or challenge a local government's implementation of
233 this subparagraph.

234 Section 8. Except as otherwise expressly provided by this
235 act, this act shall take effect upon becoming a law.