

Bill No. SB 980

Barcode 385636

CHAMBER ACTION

Senate

House

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The Committee on Finance and Tax (Haridopolos) recommended the following amendment:

**Senate Amendment (with title amendment)**

Delete everything after the enacting clause

and insert:

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

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

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

(a) Except as otherwise provided in this subsection, at a rate of 6.7 ~~6.8~~ percent applied to the sales price of the communications service which:

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1           1. Originates and terminates in this state, or  
 2           2. Originates or terminates in this state and is  
 3 charged to a service address in this state,  
 4  
 5 when sold at retail, computed on each taxable sale for the  
 6 purpose of remitting the tax due. The gross receipts tax  
 7 imposed by chapter 203 shall be collected on the same taxable  
 8 transactions and remitted with the tax imposed by this  
 9 paragraph. If no tax is imposed by this paragraph by reason of  
 10 s. 202.125(1), the tax imposed by chapter 203 shall  
 11 nevertheless be collected and remitted in the manner and at  
 12 the time prescribed for tax collections and remittances under  
 13 this chapter.

14           (b) At the rate of 10.7 ~~10.8~~ percent on the retail  
 15 sales price of any direct-to-home satellite service received  
 16 in this state. The proceeds of the tax imposed under this  
 17 paragraph shall be accounted for and distributed in accordance  
 18 with s. 202.18(2). The gross receipts tax imposed by chapter  
 19 203 shall be collected on the same taxable transactions and  
 20 remitted with the tax imposed by this paragraph.

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

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

26           202.16 Payment.--The taxes imposed or administered  
 27 under this chapter and chapter 203 shall be collected from all  
 28 dealers of taxable communications services on the sale at  
 29 retail in this state of communications services taxable under  
 30 this chapter and chapter 203. The full amount of the taxes on  
 31 a credit sale, installment sale, or sale made on any kind of

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1 deferred payment plan is due at the moment of the transaction  
2 in the same manner as a cash sale.

3       (2)(a) A sale of communications services that are used  
4 as a component part of or integrated into a communications  
5 service or prepaid calling arrangement for resale, including,  
6 but not limited to, carrier-access charges, interconnection  
7 charges paid by providers of mobile communication services or  
8 other communication services, charges paid by cable service  
9 providers for the transmission of video or other programming  
10 by another dealer of communications services, charges for the  
11 sale of unbundled network elements, and any other intercompany  
12 charges for the use of facilities for providing communications  
13 services for resale, must be made in compliance with the rules  
14 of the department. Any person who makes a sale for resale  
15 which is not in compliance with these rules is liable for any  
16 tax, penalty, and interest due for failing to comply, to be  
17 calculated pursuant to s. 202.28(2)(a).

18       (b)1. Any dealer who makes a sale for resale shall  
19 document the exempt nature of the transaction, as established  
20 by rules adopted by the department, by retaining a copy of the  
21 purchaser's initial or annual resale certificate issued  
22 pursuant to s. 202.17(6). In lieu of maintaining a copy of the  
23 certificate, a dealer may document, prior to the time of sale,  
24 an authorization number provided telephonically or  
25 electronically by the department or by such other means  
26 established by rule of the department. The dealer may rely on  
27 an initial or annual resale certificate issued pursuant to s.  
28 202.17(6), valid at the time of receipt from the purchaser,  
29 without seeking additional annual resale certificates from  
30 such purchaser, if the dealer makes recurring sales to the  
31 purchaser in the normal course of business on a continual

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1 basis. For purposes of this paragraph, the term "recurring  
 2 sales to a purchaser in the normal course of business" means  
 3 sales in which the dealer extends credit to the purchaser and  
 4 records the debt as an account receivable, or in which the  
 5 dealer sells to a purchaser who has an established cash  
 6 account, similar to an open credit account. For purposes of  
 7 this paragraph, purchases are made from a selling dealer on a  
 8 continual basis if the selling dealer makes, in the normal  
 9 course of business, sales to the purchaser no less frequently  
 10 than once in every 12-month period.

11       2. A dealer may, through the informal conference  
 12 procedures provided for in s. 213.21 and the rules of the  
 13 department, provide the department with evidence of the exempt  
 14 status of a sale. Exemption certificates executed by entities  
 15 that were exempt at the time of sale, resale certificates  
 16 provided by purchasers who were active dealers at the time of  
 17 sale, and verification by the department of a purchaser's  
 18 active dealer status at the time of sale in lieu of a resale  
 19 certificate shall be accepted by the department when submitted  
 20 during the protest period but may not be accepted in any  
 21 proceeding under chapter 120 or any circuit court action  
 22 instituted under chapter 72.

23       Section 4. Effective January 1, 2008, the Department  
 24 of Revenue shall establish a toll-free telephone number for  
 25 the verification of valid dealer registration numbers and  
 26 resale certificates issued under chapter 202, Florida  
 27 Statutes. The system must be adequate to guarantee a low busy  
 28 rate, must respond to keypad inquiries, and must provide data  
 29 that is updated daily.

30       Section 5. Effective January 1, 2008, the Department  
 31 of Revenue shall establish a system for receiving information

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1 from dealers regarding certificate numbers of purchasers who  
 2 are seeking to make purchases for resale under chapter 202,  
 3 Florida Statutes. The department shall provide such dealers,  
 4 free of charge, with verification of those numbers that are  
 5 canceled or invalid.

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

9 202.18 Allocation and disposition of tax  
 10 proceeds.--The proceeds of the communications services taxes  
 11 remitted under this chapter shall be treated as follows:

12 (2) The proceeds of the taxes remitted under s.  
 13 202.12(1)(b) shall be divided as follows:

14 (b) Sixty-two and six-tenths ~~Sixty-three~~ percent of  
 15 the remainder shall be allocated to the state and distributed  
 16 pursuant to s. 212.20(6), except that the proceeds allocated  
 17 pursuant to s. 212.20(6)(d)3. shall be prorated to the  
 18 participating counties in the same proportion as that month's  
 19 collection of the taxes and fees imposed pursuant to chapter  
 20 212 and paragraph (1)(b).

21 Section 7. Paragraph (a) of subsection (2) of section  
 22 202.20, Florida Statutes, is amended to read:

23 202.20 Local communications services tax conversion  
 24 rates.--

25 (2)(a)1. With respect to any local taxing  
 26 jurisdiction, if, for the periods ending December 31, 2001;  
 27 March 31, 2002; June 30, 2002; or September 30, 2002, the  
 28 revenues received by that local government from the local  
 29 communications services tax imposed under subsection (1) are  
 30 less than the revenues received from the replaced revenue  
 31 sources for the corresponding 2000-2001 period; plus

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1 reasonably anticipated growth in such revenues over the  
 2 preceding 1-year period, based on the average growth of such  
 3 revenues over the immediately preceding 5-year period; plus an  
 4 amount representing the revenues from the replaced revenue  
 5 sources for the 1-month period that the local taxing  
 6 jurisdiction was required to forego, the governing authority  
 7 may adjust the rate of the local communications services tax  
 8 upward to the extent necessary to generate the entire  
 9 shortfall in revenues within 1 year after the rate adjustment  
 10 and by an amount necessary to generate the expected amount of  
 11 revenue on an ongoing basis.

12         2. If complete data are not available at the time of  
 13 determining whether the revenues received by a local  
 14 government from the local communications services tax imposed  
 15 under subsection (1) are less than the revenues received from  
 16 the replaced revenue sources for the corresponding 2000-2001  
 17 period, as set forth in subparagraph 1., the local government  
 18 shall use the best data available for the corresponding  
 19 2000-2001 period in making such determination. Complete data  
 20 shall be deemed available to all local governments after the  
 21 department completes audits, including the redistribution of  
 22 local tax, of dealers who account for no less than 80 percent  
 23 of the amount of communications services tax revenues received  
 24 for fiscal year 2005-2006.

25         3. The adjustment permitted under subparagraph 1. may  
 26 be made by emergency ordinance or resolution and may be made  
 27 notwithstanding the maximum rate established under s.  
 28 202.19(2) and notwithstanding any schedules or timeframes or  
 29 any other limitations contained in this chapter. Beginning  
 30 July 1, 2007, a local government may make such adjustment only  
 31 if the department or a dealer allocates or reallocates

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1 revenues away from the local government. However, any such  
2 adjustment shall be made no later than 6 months following the  
3 date the department notifies the local governments in writing  
4 that complete data is available. The emergency ordinance or  
5 resolution shall specify an effective date for the adjusted  
6 rate, which shall be no less than 60 days after the date of  
7 adoption of the ordinance or resolution and shall be effective  
8 with respect to taxable services included on bills that are  
9 dated on the first day of a month subsequent to the expiration  
10 of the 60-day period. At the end of 1 year following the  
11 effective date of such adjusted rate, the local governing  
12 authority shall, as soon as is consistent with s. 202.21,  
13 reduce the rate by that portion of the emergency rate which  
14 was necessary to recoup the amount of revenues not received  
15 prior to the implementation of the emergency rate.

16         4. If, for the period October 1, 2001, through  
17 September 30, 2002, the revenues received by a local  
18 government from the local communications services tax  
19 conversion rate established under subsection (1), adjusted  
20 upward for the difference in rates between paragraphs (1)(a)  
21 and (b) or any other rate adjustments or base changes, are  
22 above the threshold of 10 percent more than the revenues  
23 received from the replaced revenue sources for the  
24 corresponding 2000-2001 period plus reasonably anticipated  
25 growth in such revenues over the preceding 1-year period,  
26 based on the average growth of such revenues over the  
27 immediately preceding 5-year period, the governing authority  
28 must adjust the rate of the local communications services tax  
29 to the extent necessary to reduce revenues to the threshold by  
30 emergency ordinance or resolution within the timeframes  
31 established in subparagraph 3. The foregoing rate adjustment

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

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

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

16 And the title is amended as follows:

17 Delete everything before the enacting clause

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19 and insert:

20 A bill to be entitled  
 21 An act relating to the communications services  
 22 tax; amending s. 202.12, F.S.; decreasing the  
 23 rate of the tax; providing for application;  
 24 amending s. 202.16, F.S.; requiring dealers to  
 25 document exempt sales for resale; providing  
 26 requirements and procedures; providing a  
 27 definition; providing construction; providing  
 28 for dealer provision of evidence of the exempt  
 29 status of certain sales through an informal  
 30 protest process; requiring the Department of  
 31 Revenue to accept certain evidence during the



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1 protest period; providing limitations;  
2 requiring the department to establish a  
3 toll-free telephone number for the purpose of  
4 verifying registration numbers and resale  
5 certificates; requiring the department to  
6 establish a system for receiving information  
7 from dealers regarding certificate numbers;  
8 amending s. 202.18, F.S.; decreasing the  
9 percentage allocation of certain tax proceeds;  
10 amending s. 202.20, F.S.; limiting local  
11 governmental authority to make certain rate  
12 adjustments in the tax under certain  
13 circumstances; providing for a determination of  
14 completeness of certain data; providing  
15 effective dates.

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