

The Florida Senate
PROFESSIONAL STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Finance and Tax Committee

BILL: SB 980

INTRODUCER: Senators Haridopolos and others

SUBJECT: Communications Services Tax/Decrease

DATE: April 20, 2007 REVISED: 04/24/2007 _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Caldwell</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
2.	<u>Fournier</u>	<u>Johansen</u>	<u>FT</u>	Fav/1 amendment
3.	_____	_____	<u>GA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

Please see last section for Summary of Amendments

- Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

The bill lowers the tax rate of the communications tax that is applied to the sales price of communications services, direct-to-home satellite service, private communications service, and mobile communications service. It also changes the allocation to the state and local governments of a portion of the taxes remitted.

The bill establishes a new procedural system for the Department of Revenue (DOR) to administer resale certificates to dealers under the CST. The new procedural system is similar to the one DOR uses for sales and use tax. The bill requires DOR to establish a toll-free number to verify valid registration numbers and resale certificates, and to establish a system for receiving information from dealers regarding certificate numbers.

The bill provides that commencing July 1, 2007, the emergency rate provision may be exercised only if CST revenue is reallocated away from the local government. Any such adjustment must be made within six months of DOR notifying local governments in writing that complete information related to DOR audits of these amounts is available.

The bill is expected to have a negative fiscal impact of \$6.9 million in fiscal year (FY) 2007-08, and of \$16.4 million FY 2008-09.

Except as otherwise provided in the act, it shall take effect upon becoming law.

This bill substantially amends sections 202.12, 202.16, 202.18, and 202.20 of the Florida Statutes.

II. Present Situation:

In 2000 and 2001, the Legislature passed the “Communications Services Tax (CST) Simplification Law,”¹ which was codified in ch. 202, F.S. This was designed to restructure taxes on telecommunications, cable, direct-to-home satellite, and related services.^{2,3} The CST replaced and consolidated several different state and local taxes into two taxes: the Florida CST and the local CST.

Old Tax Structure (Prior to October 1, 2001)	New Tax Structure (After October 1, 2001)
Number of Taxes = 7 State Sales Tax Local Option Tax Gross Receipts Tax Public Service Tax Cable Franchise Fee Telecom Franchise Fee Cable and Telecom Permit Fees	Number of Taxes = 2 State Communications Services Tax Local Communications Services Tax

Some examples of services subject to the tax are:

- Local and long-distance telephone
- Cable television
- Direct-to-home satellite television
- Mobile communications, including detailed billing charges
- Private line services
- Pager and beeper
- Telephone charges made by a hotel or motel
- Facsimiles (FAX), when not provided in the course of professional or advertising service

In general, the tax includes a state rate of 6.8 percent plus a gross receipts tax rate of 2.37 percent, for a combined state communications services tax rate of 9.17 percent. However,

¹ Ch. 2000-260 and 2001-140, L.O.F.

² Much of the general information related to the CST is from the Florida Department of Revenue’s website on the CST. <http://dor.myflorida.com/dor/taxes/GT-800011.html#comservicetax>

³ Section 202.11(2), F.S., defines “communications services” rather broadly to encompass existing technologies and ones that may later be devised. It includes services such as cable television, local and long distance telephone service, paging service, and satellite television service; however, the definition does not include Internet access or electronic mail services.

residential wireline telephone service is subject only to the 2.37 percent gross receipts tax.⁴ Each local taxing jurisdiction may levy its own local tax rate on communications services. Charter counties and municipalities that have not chosen to levy a permit fee may levy a local CST of up to 5.1 percent. Charter counties and municipalities that have chosen to levy a permit fee may levy a local CST of up to 4.98 percent. Noncharter counties may levy a local CST of up to 1.6 percent.⁵ In addition to the local CST, discretionary sales surtaxes levied by a county or school board are imposed as a local CST tax, with conversion rates of up to one percent.⁶ However, these percentages may be higher due to emergency rates and permit fees adopted by the various local jurisdictions.⁷

Direct-to-home satellite services are taxed at a 10.8 percent state tax rate and a gross receipts tax rate of 2.37 percent for a total rate of 13.17 percent. Sixty-three percent of the revenue raised by the tax on satellite services is distributed to local governments through the Local Government Half-Cent Clearing Fund, which is allocated in the same proportion as the half-cent sales tax, and the emergency distribution. (This policy was adopted because federal law prohibits the local taxation of direct-to-home satellite service.⁸) All other state CST revenue is distributed by the same formula as the sales and use tax.⁹ The gross receipts tax administered under this law goes to the Public Education Capital Outlay and Debt Service Fund (PECO).¹⁰

In addition to the CST, there may be an E911 fee of up to 50 cents per month for wireless and wireline telephone service.¹¹ For landline telephones, there is a surcharge on customer bills for telephone relay service for the hard of hearing. This charge is capped at 25 cents per access line;¹² the current surcharge is 15 cents per access line.¹³

In state fiscal year 2005-2006, the state collected \$2.325 billion in CST. The breakdown of the receipts is as follows:

Sales Tax: \$1,007.2 million (43.31 percent)
Local Tax: \$843.3 million (36.26 percent)
Gross Receipts: \$382.5 million (18.18 percent)
Direct-to-Home Satellite Tax: \$52.2 million (2.24 percent)

⁴ There is also an exemption from the CST for sales to the Federal government, state and local government agencies, and various non-profit organizations. (s. 202.125, F.S.)

⁵ S. 202.19(2), F.S.

⁶ See s.202.19(5), F.S. The conversion rates are contained in s. 202.20(3), F.S.

⁷ Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007. Emergency rates are authorized in s. 202.20(2), F.S.

⁸ Pub. L. 104-104, Title IV, s. 602, February 8, 1996, 110 Stat. 144

⁹ S. 202.20(6), F.S.

¹⁰ 2006 Florida Tax Handbook, Communications Services Tax, p. 38. Available at <http://edr.state.fl.us/reports/taxhandbooks/taxhandbook2006.pdf>. (February 1, 2007)

¹¹ S. 365.171(13)(a)1., F.S. for wireline and s. 365.172(8)(a), F.S., for wireless.

¹² S. 427.704, F.S.

¹³ Florida Public Service Commission, *The Status of The Telecommunications Access System Act of 1991*, December 2006, p.

The breakdown of the tax distribution is as follows:

- Local Government: \$1,003 million (43.21 percent)
- General Revenue: \$887.7 million (38.24 percent)
- PECO: \$426.9 million (18.39 percent)
- Administration: \$3.6 million (0.16 percent)¹⁴

III. Effect of Proposed Changes:

Tax Rate

The bill amends s. 202.12(1)(a) F.S., to reduce the general state CST from 6.8 percent to 6.7 percent. The bill also amends s. 202.12(1)(b), F.S., to reduce the general state CST on direct-to-home satellite television service from 10.8 percent to 10.7 percent.

The bill provides that the reduction in the state CST rate applies to bills for communications services dated on or after January 1, 2008.

Resale Certificates

Current law requires that a sale of communications services for resale must be made in compliance with DOR's rules. To ensure that a sale of communications services for resale is not subjected to the CST, DOR's rules provide that resale certificates are issued annually by DOR. These rules provide that a selling dealer must receive a copy of a resale certificate from a reseller purchasing its services. The rules allow a selling dealer, who makes a sale for purposes of resale to a purchaser who has previously provided a copy of its current resale certificate, to seek a new copy of the resale certificate for each subsequent transaction in that calendar year. The selling dealer must obtain a new copy of the resale certificate for sales made for the purpose of resale in subsequent calendar years.¹⁵

The bill creates s. 202.16(2)(b), F.S, providing that effective January 1, 2008, any dealer who makes a sale for resale is required to document the exempt sale by retaining a copy of the purchaser's initial or annual resale certificate issued by DOR. Under the bill, 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 DOR telephonically, electronically, or by other means established by DOR. The dealer may also rely on an additional or annual resale certificate issued pursuant to s. 202.17(6), F.S., valid at the time of receipt for 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.

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 an established cash account, similar to an open credit account.

¹⁴ Information compiled from the Florida Department of Revenue's Presentation to the Florida House of Representative's Committee on Utilities & Telecommunications on January 11, 2007.

¹⁵ Rule 12-A19.060, F.A.C.

For purposes of s. 202.16(2)(b)1, F.S., purchases are made from a selling dealer on a continual basis if, in the normal course of business, the selling dealer makes sales to the purchaser no less frequently than once in every 12-month period.

Through the informal protest process provided in s. 213.21, 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 or resale certificates provided by purchasers who were active dealers at the time of sale. However, this alternative documentation may not be accepted in a proceeding under ch. 120, F.S., or in circuit court proceedings instituted under ch. 72, F.S., relating to tax matters.

The bill provides for a certificate verification system for the CST that is essentially the same as what is currently provided for the sales and use tax. The bill requires DOR, by January 1, 2008, to establish a toll-free number for the verification of valid registration numbers and resale certificates for the CST. The system must be able to guarantee a low busy rate, respond to keypad inquiries, and be updated daily.

The bill also requires DOR to establish a system for receiving information from dealers regarding resale certificate numbers of other dealers who are seeking to make purchases for resale. DOR must provide dealers, free of charge, with verification of certificate numbers that are canceled or invalid.

Allocation and Disposition of Tax Proceeds

Section 202.18, F.S., provides for the distribution of the CST proceeds. Section 202.18(2)(b), F.S., provides that 63 percent of the state CST from direct-to-home satellite service is allocated to the state for distributing the same as state sales taxes. The remaining portion is allocated to the Local Government Half-cent Sales Tax Clearing Trust Fund. Of the amount that is allocated to the Local Government Half-cent Sales Tax Clearing Trust Fund, seventy percent is allocated in the same proportion as the allocation of total receipts of the half-cent sales tax and the emergency distribution in the prior state fiscal year. The remaining thirty percent is distributed to fiscally constrained counties. The bill reduces the allocation to the state to 62.6 percent of the satellite service tax collected, in order to keep the local governments whole with respect to the portion of the taxes they receive from the state on such services.

For example, with a \$100 satellite service bill, one would currently pay \$10.80 (10.8 percent) in state CST and \$2.37 in GRT. Of the \$10.80 in state CST, \$4 would go to local governments. Under the allocations provided in the bill, one would pay \$10.70 (10.7 percent) in state CST, of which \$4 would still be going to local governments.

Emergency Local CST Rates

Section 202.20(2)(a)1, F.S., provides that if revenues received by a local government from the CST with respect to certain periods¹⁶ are less than the revenues from the replaced revenue source in the 2000-2001 period, plus reasonably anticipated revenue growth, the governing authority may adjust

¹⁶ The actual periods are the periods ending December 31, 2001, March 31, 2002, June 30, 2002, and September 30, 2002.

the rate of the local CST to generate the entire shortfall within one year of the rate adjustment and by an amount necessary to generate the expected amount of revenue on an annual basis. Section 202.20(2)(a)2, F.S., provides that if complete data is not available to determine whether or not the revenues the local government actually received are less than the revenues received from the replaced revenue source, the local government shall use the best data available to make that determination. The bill amends this section to provide that complete data shall be deemed available to local governments after DOR completes audits, including the redistribution of local tax, of dealers who account for no less than 80 percent of the amount of CST received for fiscal year 2005-2006.

Section 202.20(2)(a)3, F.S., allows a local government to make the adjustment permitted under Section 202.20(2)(a)(1), F.S., by emergency ordinance or resolution. The bill provides that beginning July 1, 2007, local governments may use this authority only if DOR or a dealer reallocates revenue away from the local government. However, the adjustments must be made within six months following the date the department notifies local governments in writing that complete data is deemed available.

Effective Date

Except as otherwise expressly provided in the act, this act shall take effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The total 2007-08 annualized revenue impact is expected to be-\$16.4 million.
The effective date of the bill is January 1, 2008, resulting in a partial first-year impact which is expected to be -\$6.9 million.

B. Private Sector Impact:

Communications services users will pay \$16.4 million less in communications services taxes on an annualized basis.

C. Government Sector Impact:

Government revenue is reduced by approximately \$16.4 million on an annualized basis.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

This Senate Professional Staff Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

VIII. Summary of Amendments:

Barcode 385636 by Finance and Tax:

The amendment lowers the tax rate of the communications tax that is applied to the sales price of communications services, direct-to-home satellite service, private communications service, and mobile communications service. It also changes the allocation to the state and local governments of a portion of the taxes remitted.

The amendment establishes a new procedural system for the Department of Revenue (DOR) to administer resale certificates to dealers under the CST. The new procedural system is similar to the one DOR uses for sales and use tax. The amendment requires DOR to establish a toll-free number to verify valid registration numbers and resale certificates, and to establish a system for receiving information from dealers regarding certificate numbers.

The amendment provides that commencing July 1, 2007, the emergency rate provision may be exercised only if CST revenue is reallocated away from the local government. Any such adjustment must be made within six months of DOR notifying local governments in writing that complete information related to DOR audits of these amounts is available.

The amendment is expected to have an annualized fiscal impact of negative \$16.4 million, and a first-year impact of negative \$6.9million in fiscal year (FY) 2007-08. (WITH TITLE AMENDMENT)