

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 887 Taxation of Communications Services

**SPONSOR(S):** Energy and Utilities Subcommittee and Dorworth

**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 1198

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Helpling	Collins
2) Finance & Tax Committee	24 Y, 0 N, As CS	Flieger	Langston
3) State Affairs Committee			

### SUMMARY ANALYSIS

Due to a scrivener's error, the bill currently does not operate as intended (see DRAFTING ISSUES OR OTHER COMMENTS below). The analysis below describes the bill as it would operate absent the scrivener's error.

Chapter 202, F.S., provides that sales of communications services, except direct-to-home satellite service, are subject to a state communications services tax (CST), a gross receipt tax, and a local CST. Federal law prohibits direct-to-home satellite service sales from being subject to a local CST. Direct-to-home satellite sales are subject to a different state CST rate and gross receipt rate than that of other communications services sales.

The DOR is required to make available, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale so that the tax collected is not less than allowed by statute. To clarify the law, the DOR has created proposed Rule 12A-19.021, F.A.C. The purpose of the proposed rule is to make available the tax amounts and brackets applicable to each taxable sale of communications services. The proposed rule provides that any communications services tax resulting in a fraction of a cent to be rounded to the next whole cent.

The bill modifies the law, eliminating the requirement of the DOR to provide tax amounts and brackets to communications services dealers. The bill requires communications services dealers to compute state CST and local CST based on a rounding algorithm. This algorithm must be carried to the third decimal place and be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. The bill authorizes a dealer to apply the rounding algorithm to the state CST three different ways.

The bill provides that a dealer may compute the taxes on an item or invoice basis. A dealer must apply the rounding algorithm to the local CST separately from the state CST. A dealer who computes the taxes on an item basis must set a minimum tax amount of \$0.01 per item. The bill states that a dealer is not required to collect the taxes based on a bracket system.

The bill provides that the act is intended to be remedial in nature and apply retroactively. However, the act does not provide a basis for an assessment of any tax not paid or create a right to a refund of any tax paid before July 1, 2011.

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. Based on current industry practice, staff estimates that the bill has no impact on state or local revenues.

The bill provides an effective date of July 1, 2011.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

STORAGE NAME: h0887c.FTC

DATE: 4/6/2011

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Current Situation:

Chapter 202, F.S., provides that sales of communications services,<sup>1</sup> except direct-to-home satellite service,<sup>2</sup> are subject to a state communications services tax (CST), gross receipt tax, and a local CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Direct-to-home satellite service sales are subject to a different CST rate and gross receipt tax than that of other communications services sales. The collected local and state communications services taxes are remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.<sup>3</sup>

The state CST is set at a rate of 6.65 percent.<sup>4</sup> The gross receipt tax is set at a rate of 2.37 percent plus an additional .15 percent, subject to exemption as provided by rule 12A-19.041, F.A.C., for a combined rate of 2.52 percent.<sup>5</sup> Thus, the state CST and gross receipt tax are combined at a rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., can be found by selecting the “Jurisdiction Rate Table” link at [http://dor.myflorida.com/dor/taxes/local\\_tax\\_rates.html](http://dor.myflorida.com/dor/taxes/local_tax_rates.html). Direct-to-home satellite service sales are subject to a state CST at a rate of 10.8 percent<sup>6</sup> and a gross receipt tax of 2.37 percent<sup>7</sup> for a combined rate of 13.17 percent.

Pursuant to s. 202.12, F.S., these taxes are computed on the sale price of each taxable sale of communications services. Section 202.16(3), F.S., requires the DOR to make available, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale, so that the tax collected does not result in a tax rate less than the tax rates imposed as provided above.

To clarify s. 202.16(3), F.S., the DOR created proposed Rule 12A-19.021, F.A.C. The proposed rule provides that a Communications Services Tax Due Calculator be available on the DOR’s website for the purposes of making available the tax bracket applicable for each taxable sale of communications services.<sup>8</sup> The proposed rule establishes that a tax calculated resulting in a fraction of a cent, shall be rounded up to the next whole cent.<sup>9</sup> If a traditional rounding method were to be utilized, many transactions would round down, resulting in a tax that is less than the rate imposed by statute.<sup>10</sup>

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<sup>1</sup> For purposes of chapter 202, F.S., “communications services” is defined in s. 202.11(2), F.S., as “the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added.”

<sup>2</sup> For purposes of chapter 202, F.S., direct-to-home satellite service is defined in 47 U.S.C. s. 303(v) as the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

<sup>3</sup> Section 202.18, F.S.

<sup>4</sup> Section 202.12(1)(a), F.S.

<sup>5</sup> Section 203.01(1)(b), F.S.

<sup>6</sup> Section 202.12(1)(b), F.S.

<sup>7</sup> Section 203.01(1)(b), F.S.

<sup>8</sup> [http://dor.myflorida.com/dor/rules/pdf/12a-19-021\\_nopr.pdf](http://dor.myflorida.com/dor/rules/pdf/12a-19-021_nopr.pdf)

<sup>9</sup> <http://dor.myflorida.com/dor/rules/pdf/12a-19021serc.pdf>

<sup>10</sup> *Id.*

## **Effects of Proposed Changes:**

Due to a scrivener's error, the bill currently does not operate as intended (see DRAFTING ISSUES OR OTHER COMMENTS below). The analysis below describes the bill as it would operate absent the scrivener's error.

The bill modifies s. 202.12 (3), F.S., removing the requirement of the DOR to make available in an electronic format or otherwise the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapter 202 and 203. The bill specifically states instead that a dealer is not required to collect the taxes based on a bracket system.

The bill requires communications services dealers to compute state CST and local CST based on a rounding algorithm. This algorithm must be carried to the third decimal place and be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

### *Example:*

When a tax is computed resulting in an amount of \$10.055, the amount shall be rounded up to \$10.06. If a tax is computed resulting in an amount of 10.054, the amount shall be rounded down to \$10.05.

The dealer may elect to compute these taxes on an item or invoice basis. The bill states that the rounding algorithm must be applied to the local CST and state CST separately.

The bill authorizes a dealer to apply the rounding algorithm to the combined Florida communications services tax imposed pursuant to ss. 202.12 and 203.01, F.S., separately to the communications services tax imposed pursuant to s. 202.12(1)(a) and gross receipt tax imposed pursuant to ss. 203.01(1)(b)2. and 3., F.S., or to the combined taxes imposed pursuant to ss. 202.12(1)(a) and 203(1)(b)3., F.S., as allowed by s. 203.001, F.S., and apply the rounding algorithm separately to the gross receipts tax pursuant to s. 203.01(1)(b)2., F.S. Below are the three different ways a dealer may elect to apply the rounding algorithm to the state CST based on the rates in effect as of March 31, 2011.

1. Total 9.17 Percent
2. Separate 6.65 percent and 2.52 percent
3. Separate 6.8 (combined .15 percent and 6.65 percent) and 2.37 percent

A dealer may apply the rounding algorithm either to the aggregate tax amount that is computed on all taxable items on an invoice, or to each tax amount that is computed on one or more, but less than all, taxable items on an invoice. The aggregate tax amount for all items on the invoice must equal at least the result that would have been obtained if the rounding algorithm had been applied to the aggregate tax amount computed on all taxable items on the invoice. A dealer may satisfy this requirement by setting a minimum tax amount of not less than \$0.01 with respect to each item, or group of items, to which the rounding algorithm is applied.

The bill states that the act is intended to be remedial in nature and apply retroactively. The bill also states that the act does not provide a basis for an assessment of any tax not paid or create a right to a refund of any tax paid, under s. 202.16, F.S., before July 1, 2011.

## **B. SECTION DIRECTORY:**

**Section 1.** Amends s. 202.16(3), F.S., to provide that tax calculations be based on a rounding algorithm. Provides procedures and limitations on the use of that algorithm.

**Section 2.** Provides that the amendments made to s. 202.16(3), F.S., are remedial in nature and apply retroactively.

**Section 3.** Provides an effective date of July 1, 2011.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. Based on current industry practice, staff estimates that the bill has no impact on state revenues.

#### 2. Expenditures:

The DOR estimates it would cost \$4,800 to modify the SUNTAX system to effectively implement the bill.

### B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

#### 1. Revenues:

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. Based on current industry practice, staff estimates that the bill has no impact on local revenues.

#### 2. Expenditures:

None.

### C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To determine the fiscal impact of the proposed rule, the DOR requested cost estimates from some taxpayers. One response was received which was from a large communications services tax dealer, which indicated that there would be a one-time cost of \$2.02 million to program their system to round, as required by the proposed rule.<sup>11</sup> According to the DOR, passage of the bill would prompt the DOR to not adopt the proposed rule, thereby not imposing a fiscal impact on the private sector.

### D. FISCAL COMMENTS:

None.

## III. COMMENTS

### A. CONSTITUTIONAL ISSUES:

#### 1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

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<sup>11</sup> *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The second page of a three page amendment containing a portion of the rounding algorithm and the provision eliminating a potential negative revenue impact was not incorporated into the bill due to a scrivener's error. Consequently, the bill should be amended to include the missing language, if that remains the bill sponsor's intent.

#### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 22, 2011, the Energy and Utilities Subcommittee adopted a strike-all amendment. The amendment provides the following changes to the original bill:

- Removes the requirement of the DOR to supply communications services dealers with applicable tax amounts and tax brackets for communications services sales.
- Requires dealers to apply the rounding algorithm to the local CST separately from the state CST.
- Provides that a dealer may elect one of three ways to apply the rounding algorithm to the different portions of the state CST.
- Removes language that provides that the DOR must allow, but may not require, a dealer to collect taxes based on a bracket system.
- Provides that a dealer is not required to collect taxes based on a bracket system.

On April 5, 2011, the Finance and Tax Committee adopted an amendment that was intended to clarify the rounding language and provide a limitation on the computation of tax on a per item basis. However, due to a scrivener's error, the amendment adopted does not operate as intended. It was intended to clarify the rounding algorithm language, add a \$0.01 per item minimum tax amount, and restrict the ability of a dealer to reduce their tax liability through the use of per item rounding.

The analysis is updated to reflect the provisions of the bill had the scrivener's error not occurred.