

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Budget Subcommittee on Finance and Tax

BILL: CS/CS/CS/SB 1060

INTRODUCER: Budget Subcommittee on Finance and Tax; Community Affairs Committee; Communications, Energy, and Public Utilities Committee; and Senator Bogdanoff

SUBJECT: Communications Services Taxes

DATE: February 23, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Fav/CS
2.	Toman	Yeatman	CA	Fav/CS
3.	Cote	Diez-Arguelles	BFT	Fav/CS
4.			BC	
5.				
6.				

Please see Section VIII. for Additional Information:

- A. COMMITTEE SUBSTITUTE..... Statement of Substantial Changes
- B. AMENDMENTS..... Technical amendments were recommended
- Amendments were recommended
- Significant amendments were recommended

I. Summary:

CS/CS/CS/SB 1060 creates a Communication Services Tax Working Group housed at the Department of Revenue. The working group will consist of 11 members from both the communications industry and local government. The work group will study state and local tax policy relating to CST and will submit a report to the Governor, Senate President, and Speaker of the House on or before February 1, 2013.

The CS creates an undesignated section of law.

II. Present Situation:

Chapter 202, F.S., is the Communications Services Tax Simplification Law. This law restructured taxes applicable to a broad array of communication services, including local and long distance telephone service, cable television, direct-to-home satellite television, and other related services.

The communication services tax (CST) replaced and consolidated several different state and local taxes and fees into two taxes: the Florida CST and the local CST. The Florida CST is established in s. 202.12, F.S., and is applied at a rate of 6.65 percent to all communications services except direct-to-home satellite services, which are taxed at a rate of 10.8 percent. The local CST is established in s. 202.19, F.S., varies by jurisdiction, and is not applicable to direct-to-home satellite services. The Florida CST and the local CST are collected by communications service providers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.

Chapter 203, F.S., provides for gross receipts tax of 2.52 percent applied to communication services. The state CST and gross receipt tax result in a combined state rate of 9.17 percent applied to the purchase of most communication services. Direct-to-home services are taxed at a gross receipts tax rate of 2.37 percent, for a combined state CST and gross receipt state tax rate of 13.17 percent. The local CST tax rate is up to 7.12 percent, depending on the location of the customer.

Current law defines communication services 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.”¹ Section 202.11(2), F.S., lists a number of items excluded from the communication services tax, such as information services, bad check and late payment charges, internet access services, and the sale or rental of tangible personal property.

Situsing

Section 202.22, F.S., provides for the determination of local tax situs. It provides that a dealer of communications services who is obligated to collect and remit a local communications services tax is held harmless from any liability, including tax, interest, and penalties, which would otherwise be due solely as a result of an assignment of a service address to an incorrect local taxing jurisdiction, if the dealer exercises due diligence in applying one or more of the following methods for determining the local taxing jurisdiction in which a service address is located:

- employing an electronic database provided by the department;
- employing a database developed by the dealer or supplied by a vendor which has been certified by the department;
- employing enhanced zip codes to assign each street address, address range, post office box, or post office box range in the dealer’s service area to a specific local taxing jurisdiction; or
- if an enhanced zip code is unsatisfactory for stated reasons, the dealer of communications services or its database vendor must assign the affected service addresses to one specific local taxing jurisdiction within the zip code based on a reasonable methodology meeting one of the specified criteria.

The statute requires DOR to create and maintain an electronic database that designates for each street address, address range, post office box, or post office box range in the state, including any multiple postal street addresses applicable to one street location, the local taxing jurisdiction in which the street address, address range, post office box, or post office box range is located and the appropriate code for each such local taxing jurisdiction, identified by one nationwide standard numeric code.

¹ Section 202.11(2), F.S.

If a dealer of communications services does not use one or more of the specified methods for determining the local taxing jurisdiction in which a service address is located, the dealer may be held liable for any tax, including interest and penalties, which is due as a result of assigning the service address to an incorrect local taxing jurisdiction.

Taxation of items that are not separately stated

Section 202.11(13), F.S., defines the “sales price” as the total amount charged by a dealer, including any services that are part of the sale. Therefore, if a single line item contains both communication services and products that are not communication services, the CST is imposed on the entire sales price, unless the non-communication service product is Internet access and the charges for Internet access can be reasonably identified. If a dealer wishes to carve out nontaxable items², those items would need to be separately stated.

Federal law exempts Internet access from state or local taxation.³ In complying with that directive, s. 202.11(13)(b)(8), F.S., allows charges for Internet access services that are not separately itemized on a customer’s bill and which can be reasonably identified from the selling dealer’s books and records to be excluded from the taxable sales.

III. Effect of Proposed Changes:

Section 1 creates a new section of law which establishes the Communication Services Tax Working Group housed within the Department of Revenue. The working group will consist of eleven members including the executive director of the Department of Revenue, four representatives of counties and municipalities, and six representatives of dealers, retailers, video service providers, direct-to-home satellite service providers, local phone service providers, and wireless phone providers.

The working group will:

- Review national and state tax policies relating to the communications industry;
- Review the amount of tax revenue that has been generated by the communication services taxes imposed or administered pursuant to chapter 202, Florida Statutes, and that is expected to be generated in the future, and the extent to which this revenue has been relied on to secure bonded indebtedness;
- Review the state’s ability to design tax laws that are efficient and fairly administered, including whether the applicability of the tax laws is reasonably clear to communications service providers, retailers, customers, local governments, and state administrators, taking into consideration the diverse and evolutionary nature of communication technology and the resulting services, particularly as it applies to prepaid wireless services;
- Review the administrative burdens imposed on communications services providers, retailers, local governments, and the department under the current tax structure;

² E.g., the sale or rental of personal property such as a cable box.

³ 47 U.S.C. §151.

- Identify options for reducing the administrative burdens and for developing a unified tax or reducing the high degree of local communications services tax rate variability, including the feasibility of distributing revenues based on formulas; and
- Identify options that remove competitive advantages due to taxation for competing, functionally equivalent communications services.

The working group must submit a report that addresses these issues to the Governor, President of the Senate, and Speaker of the House of Representatives by February 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

This CS will require the Department of Revenue to house and chair the workgroup for administrative purposes.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS/CS/CS by Budget Subcommittee on Finance and Tax on February 23, 2012:

- deletes all provisions of the bill and creates a Communication Services Tax Work group.

CS/CS by Community Affairs Committee on February 6, 2012:

- removes an amended definition for “pre-paid calling arrangement.”

CS by Communications, Energy, and Public Utilities Committee on January 30, 2012:

- deletes provisions relating to prepaid calling arrangements; and
- revises the conditions under which a dealer of communications services who is obligated to collect and remit a local communications services tax may be held liable for taxes and associated interest for assigning a service address to an incorrect local taxing jurisdiction.

- B. **Amendments:**

None.