

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 Communications, Energy, and Public Utilities Committee

BILL: SB 1060

INTRODUCER: Senator Bogdanoff

SUBJECT: Communications Services Taxes

DATE: January 26, 2012

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Carter	CU	Pre-meeting
2.			CA	
3.			GO	
4.			BC	
5.				
6.				

I. Summary:

The bill:

- defines the terms “digital good” and “digital service” and provides that both are exempted from the communications services tax;
- defines the term “sales price” to allow additional nontaxable items to be billed together without the entire amount being taxable;
- reduces the actions a dealer in communications services who is obligated to collect and remit a local communications services tax must take to avoid liability for assigning a service address to an incorrect local taxing jurisdiction;
- makes these changes retroactive and remedial;
- makes numerous conforming changes; and
- changes numerous references to cable service to references to video service to recognize that other traditional types of communications companies now offer video services, not just traditional cable companies.

The bill takes effect July 1, 2012.

The bill substantially amends the following sections of the Florida Statutes: 202.105, 202.11, 202.125, 202.16, 202.195, 202.20, 202.22, 202.23, 202.231, 202.24, 202.26, 202.28, 203.01, 212.05, 610.118, and 624.105

II. Present Situation:

Chapter 202, F.S., is the Communications Services Tax Simplification Law.

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 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.

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.

Section 202.231, F.S., requires the department to provide a monthly report to each jurisdiction imposing the local communications services tax. Each report must contain the following information for the jurisdiction which is receiving the report: the name and other information necessary to identify each dealer providing service in the jurisdiction, including each dealer's federal employer identification number; the gross taxable sales reported by each dealer; the amount of the dealer's collection allowance; and any adjustments specified on the return, including audit assessments or refunds, and interest or penalties, affecting the net tax from each dealer which is being remitted to the jurisdiction. The report must total the net amount transferred to the jurisdiction, showing the net taxes remitted by dealers less the administrative fees deducted by the department. The monthly reports must be transmitted through a secure electronic mail system or by other suitable written or electronic means.

III. Effect of Proposed Changes:

Section 1 amends s. 202.105(1), F.S., which provides legislative findings and intent and includes language about the "convergence of service offerings that is now taking place among providers." The bill deletes this language and replaces it with the "multitude of providers offering functionally equivalent communications services in today's marketplace."

Section 2 amends s. 202.11, F.S., which provides definitions. The bill:

- deletes the existing definition of “cable service”;
- deletes the term “cable services” from the definition of “communications services” and replaces it with “video services”;
- includes digital goods and digital services in the exclusions from the definition of “communications services”;
- defines “digital good” to mean any downloaded good or product that is delivered or transferred by means other than tangible storage media, including downloaded games, software, music, or other digital content, and not to include video service;
- defines “digital service” to mean any service, other than video service, which is provided electronically, including remotely provided access to or use of software or another digital good, and also includes the following services, if they are provided remotely: monitoring, security, distance learning, energy management, medical diagnostic, mechanical diagnostic, and vehicle tracking services. If a digital service is bundled for sale with the transmission, conveyance, or routing of any information or signals, the bundled service is a digital service unless the tax imposed under this chapter and chapter 203 has not been paid with respect to such transmission, conveyance, or routing.;
- defines “Internet access service” to have the same meaning as 158 ascribed to the term “Internet access” by s. 1105(5) of the 159 Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by 160 Pub. L. No. 110-108; and
- defines “video service” to means the transmission of video, audio, or other programming service to a purchaser, and the purchaser interaction, if any, required for the selection or use of a programming service, regardless of whether the programming is transmitted over facilities owned or operated by the video service provider or over facilities owned or operated by another dealer of communications services. The term includes point-to-point and point-to-multipoint distribution services through which programming is transmitted or broadcast by microwave or other equipment directly to the purchaser’s premises, but does not include direct-to-home satellite service. The term includes basic, extended, premium, pay-per-view, digital video, two-way cable, and music services.

Section 3 amends s. 202.125, F.S., to change a reference to “cable services” to “video services.”

Section 4 amends s. 202.16, F.S., to change a reference to cable service to video service.

Section 5 amends s. 202.195, F.S. This section provides a public records exemption for proprietary confidential business information obtained from a telecommunications company or cable company for the purposes of imposing a fee for occupying the public rights-of-way, assessing the local communications services tax, or regulating the rights-of-way. The bill deletes all references to imposing a fee for occupying the rights-of-way. It also replaces references to cable companies with references to video service providers.

Section 6 amends s. 202.20, F.S., to change a reference to cable service to video service.

Section 7 amends s. 202.22, F.S., on determination of local tax situs. The statute currently provides that if a dealer of communications services who is obligated to collect and remit a local communications services tax assigns a service address to an incorrect local taxing jurisdiction,

but has exercised due diligence in applying one or more of specified methods for determining the local taxing jurisdiction in which a service address is located, the dealer is held harmless from any liability, including tax, interest, and penalties, which would otherwise be due. If the dealer has not used one of these methods, the dealer is liable.

The bill deletes all the specified methods and related provisions, and simply exempts the dealer from any liability unless the liability arises from tax that is due with respect to taxable services that are included on bills to a customer which are dated on or after the first day of the fourth month after the dealer is notified by the department that the customer has been incorrectly assigned.

Section 8 amends s. 202.23(2), F.S. This section provides the sole and exclusive procedure and remedy for a purchaser who claims that a dealer has collected communications services taxes which were not due. It provides that, in such an action, it is a complete defense that, in collecting the tax, the dealer used one or more of the methods set forth in s. 202.22 for assigning the purchaser to a local taxing jurisdiction.

The bill deletes this reference to the methods set forth in s. 202.22, F.S., to conform to the deletion of those methods in section 7 of the bill.

Section 9 amends s. 202.231, F.S. This section requires the department to provide a monthly report to each jurisdiction imposing the local communications services tax. Each report must contain jurisdiction-specific information: identifying each dealer providing service in the jurisdiction; the gross taxable sales reported by each dealer; the amount of the dealer's collection allowance; any adjustments specified on the return, including audit assessments or refunds, and interest or penalties, affecting the net tax from each dealer which is being remitted to the jurisdiction; and the net amount transferred to the jurisdiction, showing the net taxes remitted by dealers less the administrative fees deducted by the department.

The bill adds to this a requirement that the gross taxable sales and net tax information contained in the monthly reports be aggregated on a jurisdiction-by-jurisdiction basis, and the aggregate jurisdiction-by-jurisdiction information be made available by the department to the public through the department's website for each fiscal year this chapter has been in effect.

Section 10 amends s. 202.24, F.S., to delete references to cable services.

Section 11 amends s. 202.26, F.S., to conform cross-references and to delete a reference to the database referred to in s. 202.22, F.S., as section 7 of the bill deletes the database provision from the statute.

Section 12 amends s. 202.28, F.S., to delete a reference to the methods set forth in s. 202.22, as section 7 of the bill deletes those methods from the statute.

Section 13 amends s. 203.01, F.S., to conform a cross-reference.

Section 14 amends s. 212.05, F.S., to amend the definition of "prepaid calling arrangement." The bill changes the portion of the definition stating that they "are sold in predetermined units or

dollars whose number declines with use in a known amount” to “are sold in predetermined units or dollars whose number declines on a predetermined basis in a known amount,” which would appear to allow the value to decline without use.

Section 15 amends s. 610.118, F.S., to conform a cross-reference.

Section 16 amends s. 624.105, F.S., to conform a cross-reference.

Section 17 provides for retroactive application of specified sections of the bill.

Section 18 provides that the bill takes effect July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the revenues collected by local governs by revising the liability dealers of communications services have in cases of underpayment due to incorrect assigned of service addresses. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

In reviewing a comparable proposal, the 2012 Revenue Estimating Conference estimated that the changes to dealer liability for incorrectly assigned service addresses will have a negative recurring impact to local governments of -\$4.3 million in FY 2012-13 (-\$4.7 million recurring). Other changes will have a negative indeterminate effect on both state and local government revenues.

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

See tax/fee section.

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.)

None.

B. Amendments:

None.

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