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CS/HB 809, Engrossed 2

2012 Legislature

1  
2 An act relating to communications services taxes;  
3 amending s. 202.105, F.S.; revising legislative  
4 intent; amending s. 202.11, F.S.; modifying  
5 definitions; removing the definition of the term  
6 "cable service"; adding a definition for the term  
7 "Internet access service"; revising the definitions of  
8 the terms "communication services," "information  
9 service," "sales price," "service address," and "video  
10 service"; amending ss. 202.125, 202.16, and 202.24,  
11 F.S.; conforming provisions to changes in terminology;  
12 amending s. 202.18, F.S.; removing a cross-reference  
13 to conform; amending s. 202.22, F.S.; revising  
14 provisions relating to a communications services  
15 dealer's liability for tax underpayments that result  
16 from the incorrect assignment of service addresses to  
17 local taxing jurisdictions and providing requirements  
18 and conditions with respect thereto; prohibiting the  
19 Department of Revenue from denying a dealer of  
20 communications services a deduction of a specified  
21 amount as a collection allowance under certain  
22 circumstances; amending s. 202.231, F.S.; requiring  
23 the Department of Revenue to aggregate monthly and  
24 make available to the public on a jurisdiction-by-  
25 jurisdiction basis certain sales and net tax  
26 information; amending ss. 203.01 and 624.105, F.S.;  
27 conforming cross-references; providing for certain  
28 retroactive effect; creating the Communications

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29 Services Tax Working Group; housing the working group  
30 in the Department of Revenue for administrative  
31 purposes; providing for membership; limiting the  
32 reimbursement of members for per diem and travel  
33 expenses; providing issues that the working group will  
34 study; requiring the working group to hold meetings;  
35 providing for a report to the Governor and Legislature  
36 by a certain date; providing effective dates.

37  
38 Be It Enacted by the Legislature of the State of Florida:

39  
40 Section 1. Subsection (1) of section 202.105, Florida  
41 Statutes, is amended to read:

42 202.105 Legislative findings and intent.—

43 (1) It is declared to be a specific legislative finding  
44 that the creation of this chapter fulfills important state  
45 interests by reforming the tax laws to provide a fair,  
46 efficient, and uniform method for taxing communications services  
47 sold in this state. This chapter is essential to the continued  
48 economic vitality of this increasingly important industry  
49 because it restructures state and local taxes and fees to  
50 account for the impact of federal legislation, industry  
51 deregulation, and the multitude of convergence of service  
52 offerings that is now taking place among providers offering  
53 functionally equivalent communications services in today's  
54 marketplace. This chapter promotes the increased competition  
55 that accompanies deregulation by embracing a competitively  
56 neutral tax policy that will free consumers to choose a provider

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57 based on tax-neutral considerations. This chapter further spurs  
 58 new competition by simplifying an extremely complicated state  
 59 and local tax and fee system. Simplification will lower the cost  
 60 of collecting taxes and fees, increase service availability, and  
 61 place downward pressure on price. Newfound administrative  
 62 efficiency is demonstrated by a reduction in the number of  
 63 returns that a provider must file each month. By restructuring  
 64 separate taxes and fees into a revenue-neutral communications  
 65 services tax centrally administered by the department, this  
 66 chapter will ensure that the growth of the industry is  
 67 unimpaired by excessive governmental regulation. The tax imposed  
 68 pursuant to this chapter is a replacement for taxes and fees  
 69 previously imposed and is not a new tax. The taxes imposed and  
 70 administered pursuant to this chapter are of general application  
 71 and are imposed in a uniform, consistent, and nondiscriminatory  
 72 manner.

73 Section 2. Section 202.11, Florida Statutes, is amended to  
 74 read:

75 202.11 Definitions.—As used in this chapter, the term:

76 ~~(1) "Cable service" means the transmission of video,~~  
 77 ~~audio, or other programming service to purchasers, and the~~  
 78 ~~purchaser interaction, if any, required for the selection or use~~  
 79 ~~of any such programming service, regardless of whether the~~  
 80 ~~programming is transmitted over facilities owned or operated by~~  
 81 ~~the cable service provider or over facilities owned or operated~~  
 82 ~~by one or more other dealers of communications services. The~~  
 83 ~~term includes point-to-point and point-to-multipoint~~  
 84 ~~distribution services by which programming is transmitted or~~

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85 ~~broadcast by microwave or other equipment directly to the~~  
 86 ~~purchaser's premises, but does not include direct-to-home~~  
 87 ~~satellite service. The term includes basic, extended, premium,~~  
 88 ~~pay-per-view, digital, and music services.~~

89 (1)~~(2)~~ "Communications services" means the transmission,  
 90 conveyance, or routing of voice, data, audio, video, or any  
 91 other information or signals, including video ~~cable~~ services, to  
 92 a point, or between or among points, by or through any  
 93 electronic, radio, satellite, cable, optical, microwave, or  
 94 other medium or method now in existence or hereafter devised,  
 95 regardless of the protocol used for such transmission or  
 96 conveyance. The term includes such transmission, conveyance, or  
 97 routing in which computer processing applications are used to  
 98 act on the form, code, or protocol of the content for purposes  
 99 of transmission, conveyance, or routing without regard to  
 100 whether such service is referred to as voice-over-Internet-  
 101 protocol services or is classified by the Federal Communications  
 102 Commission as enhanced or value-added. The term does not  
 103 include:

- 104 (a) Information services.
- 105 (b) Installation or maintenance of wiring or equipment on  
 106 a customer's premises.
- 107 (c) The sale or rental of tangible personal property.
- 108 (d) The sale of advertising, including, but not limited  
 109 to, directory advertising.
- 110 (e) Bad check charges.
- 111 (f) Late payment charges.
- 112 (g) Billing and collection services.

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113 (h) Internet access service, electronic mail service,  
 114 electronic bulletin board service, or similar online computer  
 115 services.

116 (2)~~(3)~~ "Dealer" means a person registered with the  
 117 department as a provider of communications services in this  
 118 state.

119 (3)~~(4)~~ "Department" means the Department of Revenue.

120 (4)~~(5)~~ "Direct-to-home satellite service" has the meaning  
 121 ascribed in the Communications Act of 1934, 47 U.S.C. s. 303(v).

122 (5)~~(6)~~ "Information service" means the offering of a  
 123 capability for generating, acquiring, storing, transforming,  
 124 processing, retrieving, using, or making available information  
 125 via communications services, including, but not limited to,  
 126 electronic publishing, web-hosting service, and end-user 900  
 127 number service. The term does not include ~~any video, audio, or~~  
 128 ~~other programming service that uses point-to-multipoint~~  
 129 ~~distribution by which programming is delivered, transmitted, or~~  
 130 ~~broadcast by any means, including any interaction that may be~~  
 131 ~~necessary for selecting and using the service, regardless of~~  
 132 ~~whether the programming is delivered, transmitted, or broadcast~~  
 133 ~~over facilities owned or operated by the seller or another, or~~  
 134 ~~whether denominated as cable service or as basic, extended,~~  
 135 ~~premium, pay-per-view, digital, music, or two-way cable service.~~

136 (6) "Internet access service" has the same meaning as  
 137 ascribed to the term "Internet access" by s. 1105(5) of the  
 138 Internet Tax Freedom Act, 47 U.S.C. s. 151 note, as amended by  
 139 Pub. L. No. 110-108.

140 (7) "Mobile communications service" means commercial

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141 mobile radio service, as defined in 47 C.F.R. s. 20.3 as in  
 142 effect on June 1, 1999. The term does not include air-ground  
 143 radiotelephone service as defined in 47 C.F.R. s. 22.99 as in  
 144 effect on June 1, 1999.

145 (8) "Person" has the meaning ascribed in s. 212.02.

146 (9) "Prepaid calling arrangement" means the separately  
 147 stated retail sale by advance payment of communications services  
 148 that consist exclusively of telephone calls originated by using  
 149 an access number, authorization code, or other means that may be  
 150 manually, electronically, or otherwise entered, and that are  
 151 sold in predetermined units or dollars of which the number  
 152 declines with use in a known amount.

153 (10) "Purchaser" means the person paying for or obligated  
 154 to pay for communications services.

155 (11) "Retail sale" means the sale of communications  
 156 services for any purpose other than for resale or for use as a  
 157 component part of or for integration into communications  
 158 services to be resold in the ordinary course of business.  
 159 However, any sale for resale must comply with s. 202.16(2) and  
 160 the rules adopted thereunder.

161 (12) "Sale" means the provision of communications services  
 162 for a consideration.

163 (13) "Sales price" means the total amount charged in money  
 164 or other consideration by a dealer for the sale of the right or  
 165 privilege of using communications services in this state,  
 166 including any property or other service, not described in  
 167 paragraph (a), which is services that are part of the sale and  
 168 for which the charge is not separately itemized on a customer's

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169 bill or separately allocated under subparagraph (b)8. The sales  
 170 price of communications services may ~~shall~~ not be reduced by any  
 171 separately identified components of the charge which ~~that~~  
 172 constitute expenses of the dealer, including, but not limited  
 173 to, sales taxes on goods or services purchased by the dealer,  
 174 property taxes, taxes measured by net income, and universal-  
 175 service fund fees.

176 (a) The sales price of communications services includes  
 177 ~~shall include~~, whether or not separately stated, charges for any  
 178 of the following:

- 179 1. The connection, movement, change, or termination of  
 180 communications services.
- 181 2. The detailed billing of communications services.
- 182 3. The sale of directory listings in connection with a  
 183 communications service.
- 184 4. Central office and custom calling features.
- 185 5. Voice mail and other messaging service.
- 186 6. Directory assistance.
- 187 7. The service of sending or receiving a document commonly  
 188 referred to as a facsimile or "fax," except when performed  
 189 during the course of providing professional or advertising  
 190 services.

191 (b) The sales price of communications services does not  
 192 include charges for any of the following:

- 193 1. An ~~Any~~ excise tax, sales tax, or similar tax levied by  
 194 the United States or any state or local government on the  
 195 purchase, sale, use, or consumption of any communications  
 196 service, including, but not limited to, a ~~any~~ tax imposed under

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197 | this chapter or chapter 203 which is permitted or required to be  
 198 | added to the sales price of such service, if the tax is stated  
 199 | separately.

200 |         2. A ~~Any~~ fee or assessment levied by the United States or  
 201 | any state or local government, including, but not limited to,  
 202 | regulatory fees and emergency telephone surcharges, which must  
 203 | ~~is required to~~ be added to the price of the ~~such~~ service if the  
 204 | fee or assessment is separately stated.

205 |         3. Communications services paid for by inserting coins  
 206 | into coin-operated communications devices available to the  
 207 | public.

208 |         4. The sale or recharge of a prepaid calling arrangement.

209 |         5. The provision of air-to-ground communications services,  
 210 | defined as a radio service provided to a purchaser ~~purchasers~~  
 211 | while on board an aircraft.

212 |         6. A dealer's internal use of communications services in  
 213 | connection with its business of providing communications  
 214 | services.

215 |         7. Charges for property or other services that are not  
 216 | part of the sale of communications services, if such charges are  
 217 | stated separately from the charges for communications services.

218 |         8. ~~To the extent required by federal law,~~ Charges for  
 219 | goods or services that are not subject to tax under this  
 220 | chapter, including Internet access services but excluding any  
 221 | item described in paragraph (a), that ~~which~~ are not separately  
 222 | itemized on a customer's bill, but that ~~which~~ can be reasonably  
 223 | identified from the selling dealer's books and records kept in  
 224 | the regular course of business. The dealer may support the



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225 allocation of charges with books and records kept in the regular  
 226 course of business covering the dealer's entire service area,  
 227 including territories outside this state.

228 (14) "Service address" means:

229 (a) Except as otherwise provided in this section:

230 1. The location of the communications equipment from which  
 231 communications services originate or at which communications  
 232 services are received by the customer;

233 2. In the case of a communications service paid through a  
 234 credit or payment mechanism that does not relate to a service  
 235 address, such as a bank, travel, debit, or credit card, and in  
 236 the case of third-number and calling-card calls, the term  
 237 "service address" means the address of the central office, as  
 238 determined by the area code and the first three digits of the  
 239 seven-digit originating telephone number; or

240 3. If the location of the equipment described in  
 241 subparagraph 1. is not known and subparagraph 2. is  
 242 inapplicable, the term "service address" means the location of  
 243 the customer's primary use of the communications service. For  
 244 purposes of this subparagraph, the location of the customer's  
 245 primary use of a communications service is the residential  
 246 street address or the business street address of the customer.

247 (b) In the case of video ~~cable~~ services and direct-to-home  
 248 satellite services, the location where the customer receives the  
 249 services in this state.

250 (c) In the case of mobile communications services, the  
 251 customer's place of primary use.

252 (15) "Unbundled network element" means a network element,

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253 as defined in 47 U.S.C. s. 153(29), to which access is provided  
 254 on an unbundled basis pursuant to 47 U.S.C. s. 251(c)(3).

255 (16) "Private communications service" means a  
 256 communications service that entitles the subscriber or user to  
 257 exclusive or priority use of a communications channel or group  
 258 of channels between or among channel termination points,  
 259 regardless of the manner in which such channel or channels are  
 260 connected, and includes switching capacity, extension lines,  
 261 stations, and any other associated services that ~~which~~ are  
 262 provided in connection with the use of such channel or channels.

263 (17) (a) "Customer" means:

264 1. The person or entity that contracts with the home  
 265 service provider for mobile communications services; or

266 2. If the end user of mobile communications services is  
 267 not the contracting party, the end user of the mobile  
 268 communications service. This subparagraph only applies for the  
 269 purpose of determining the place of primary use.

270 (b) "Customer" does not include:

271 1. A reseller of mobile communications services; or

272 2. A serving carrier under an agreement to serve the  
 273 customer outside the home service provider's licensed service  
 274 area.

275 (18) "Enhanced zip code" means a United States postal zip  
 276 code of 9 or more digits.

277 (19) "Home service provider" means the facilities-based  
 278 carrier or reseller with which the customer contracts for the  
 279 provision of mobile communications services.

280 (20) "Licensed service area" means the geographic area in

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281 | which the home service provider is authorized by law or contract  
 282 | to provide mobile communications service to the customer.

283 |       (21) "Place of primary use" means the street address  
 284 | representative of where the customer's use of the mobile  
 285 | communications service primarily occurs, which must be:

286 |       (a) The residential street address or the primary business  
 287 | street address of the customer; and

288 |       (b) Within the licensed service area of the home service  
 289 | provider.

290 |       (22) (a) "Reseller" means a provider who purchases  
 291 | communications services from another communications service  
 292 | provider and then resells, uses as a component part of, or  
 293 | integrates the purchased services into a mobile communications  
 294 | service.

295 |       (b) "Reseller" does not include a serving carrier with  
 296 | which a home service provider arranges for the services to its  
 297 | customers outside the home service provider's licensed service  
 298 | area.

299 |       (23) "Serving carrier" means a facilities-based carrier  
 300 | providing mobile communications service to a customer outside a  
 301 | home service provider's or reseller's licensed service area.

302 |       (24) "Video service" means the transmission of video,  
 303 | audio, or other programming service to a purchaser, and the  
 304 | purchaser interaction, if any, required for the selection or use  
 305 | of a programming service, regardless of whether the programming  
 306 | is transmitted over facilities owned or operated by the video  
 307 | service provider or over facilities owned or operated by another  
 308 | dealer of communications services. The term includes point-to-

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309 point and point-to-multipoint distribution services through  
 310 which programming is transmitted or broadcast by microwave or  
 311 other equipment directly to the purchaser's premises, but does  
 312 not include direct-to-home satellite service. The term includes  
 313 basic, extended, premium, pay-per-view, digital video, two-way  
 314 cable, and music services ~~has the same meaning as that provided~~  
 315 ~~in s. 610.103.~~

316 Section 3. Subsection (1) of section 202.125, Florida  
 317 Statutes, is amended to read:

318 202.125 Sales of communications services; specified  
 319 exemptions.—

320 (1) The separately stated sales price of communications  
 321 services sold to residential households is exempt from the tax  
 322 imposed by s. 202.12 and s. 203.01(1)(b)3. This exemption does  
 323 not apply to any residence that constitutes all or part of a  
 324 transient public lodging establishment as defined in chapter  
 325 509, any mobile communications service, any video ~~cable~~ service,  
 326 or any direct-to-home satellite service.

327 Section 4. Paragraph (a) of subsection (2) of section  
 328 202.16, Florida Statutes, is amended to read:

329 202.16 Payment.—The taxes imposed or administered under  
 330 this chapter and chapter 203 shall be collected from all dealers  
 331 of taxable communications services on the sale at retail in this  
 332 state of communications services taxable under this chapter and  
 333 chapter 203. The full amount of the taxes on a credit sale,  
 334 installment sale, or sale made on any kind of deferred payment  
 335 plan is due at the moment of the transaction in the same manner  
 336 as a cash sale.

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337 (2) (a) A sale of communications services that are used as  
 338 a component part of or integrated into a communications service  
 339 or prepaid calling arrangement for resale, including, but not  
 340 limited to, carrier-access charges, interconnection charges paid  
 341 by providers of mobile communication services or other  
 342 communication services, charges paid by a video cable service  
 343 provider ~~providers~~ for the purchase of video programming or the  
 344 transmission of video or other programming by another dealer of  
 345 communications services, charges for the sale of unbundled  
 346 network elements, and any other intercompany charges for the use  
 347 of facilities for providing communications services for resale,  
 348 must be made in compliance with the rules of the department. A  
 349 ~~Any~~ person who makes a sale for resale which is not in  
 350 compliance with these rules is liable for any tax, penalty, and  
 351 interest due for failing to comply, to be calculated pursuant to  
 352 s. 202.28(2) (a).

353 Section 5. Paragraph (c) of subsection (3) of section  
 354 202.18, Florida Statutes, is amended to read:

355 202.18 Allocation and disposition of tax proceeds.—The  
 356 proceeds of the communications services taxes remitted under  
 357 this chapter shall be treated as follows:

358 (3)

359 (c)1. Except as otherwise provided in this paragraph,  
 360 proceeds of the taxes levied pursuant to s. 202.19, less amounts  
 361 deducted for costs of administration in accordance with  
 362 paragraph (b), shall be distributed monthly to the appropriate  
 363 jurisdictions. The proceeds of taxes imposed pursuant to s.  
 364 202.19(5) shall be distributed in the same manner as

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365 discretionary surtaxes are distributed, in accordance with ss.  
366 212.054 and 212.055.

367 2. The department shall make any adjustments to the  
368 distributions pursuant to this section which are necessary to  
369 reflect the proper amounts due to individual jurisdictions or  
370 trust funds. In the event that the department adjusts amounts  
371 due to reflect a correction in the situsing of a customer, such  
372 adjustment shall be limited to the amount of tax actually  
373 collected from such customer by the dealer of communication  
374 services.

375 3.a. ~~Notwithstanding the time period specified in s.~~  
376 ~~202.22(5),~~ Adjustments in distributions which are necessary to  
377 correct misallocations between jurisdictions shall be governed  
378 by this subparagraph. If the department determines that  
379 misallocations between jurisdictions occurred, it shall provide  
380 written notice of such determination to all affected  
381 jurisdictions. The notice shall include the amount of the  
382 misallocations, the basis upon which the determination was made,  
383 data supporting the determination, and the identity of each  
384 affected jurisdiction. The notice shall also inform all affected  
385 jurisdictions of their authority to enter into a written  
386 agreement establishing a method of adjustment as described in  
387 sub-subparagraph c.

388 b. An adjustment affecting a distribution to a  
389 jurisdiction which is less than 90 percent of the average  
390 monthly distribution to that jurisdiction for the 6 months  
391 immediately preceding the department's determination, as  
392 reported by all communications services dealers, shall be made

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393 in the month immediately following the department's  
394 determination that misallocations occurred.

395 c. If an adjustment affecting a distribution to a  
396 jurisdiction equals or exceeds 90 percent of the average monthly  
397 distribution to that jurisdiction for the 6 months immediately  
398 preceding the department's determination, as reported by all  
399 communications services dealers, the affected jurisdictions may  
400 enter into a written agreement establishing a method of  
401 adjustment. If the agreement establishing a method of adjustment  
402 provides for payments of local communications services tax  
403 monthly distributions, the amount of any such payment agreed to  
404 may not exceed the local communications services tax monthly  
405 distributions available to the jurisdiction that was allocated  
406 amounts in excess of those to which it was entitled. If affected  
407 jurisdictions execute a written agreement specifying a method of  
408 adjustment, a copy of the written agreement shall be provided to  
409 the department no later than the first day of the month  
410 following 90 days after the date the department transmits notice  
411 of the misallocation. If the department does not receive a copy  
412 of the written agreement within the specified time period, an  
413 adjustment affecting a distribution to a jurisdiction made  
414 pursuant to this sub-subparagraph shall be prorated over a time  
415 period that equals the time period over which the misallocations  
416 occurred.

417 Section 6. Subsections (5) and (6) of section 202.22,  
418 Florida Statutes, are amended to read:

419 202.22 Determination of local tax situs.—

420 (5) If a dealer of communications services does not use

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421 one or more of the methods specified in subsection (1) for  
 422 determining the local taxing jurisdiction in which one or more  
 423 service addresses are a service address is located and:

424 (a) The dealer's failure to use one or more of such  
 425 methods results in a net aggregate underpayment of all taxes  
 426 levied pursuant to s. 202.19 with respect to one or more tax  
 427 periods that are being examined by the department under the  
 428 provisions of this chapter; and

429 (b) The department has determined the misallocations  
 430 between jurisdictions for all taxes levied pursuant to s. 202.19  
 431 and collected by the dealer with respect to any tax period being  
 432 examined by the department; then,

433  
 434 the dealer of communications services may be held liable to the  
 435 department for the net aggregate underpayment of any tax, and  
 436 for including interest and penalties attributable to the net  
 437 aggregate underpayment of tax, which is due as a result of  
 438 assigning one or more the service addresses address to an  
 439 incorrect local taxing jurisdiction. Subject to the provisions  
 440 of ss. 202.22(8), 202.34, and 202.35(3) However, the dealer of  
 441 communications services is not liable for any tax, interest, or  
 442 penalty under this subsection unless the department has  
 443 determined the net aggregate underpayment of tax for any tax  
 444 period that is being examined, taking into account all  
 445 underpayments and overpayments for such period or periods to the  
 446 extent that such amount was collected and remitted by the dealer  
 447 of communications services with respect to a tax imposed by  
 448 another local taxing jurisdiction. Upon determining that an



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449 ~~amount was collected and remitted by a dealer of communications~~  
450 ~~services with respect to a tax imposed by another local taxing~~  
451 ~~jurisdiction, the department shall adjust the respective amounts~~  
452 ~~of the proceeds paid to each such taxing jurisdiction under s.~~  
453 ~~202.18 in the month immediately following such determination.~~

454 (6) (a) Pursuant to rules adopted by the department, each  
455 dealer of communications services must notify the department of  
456 the methods it intends to employ for determining the local  
457 taxing jurisdiction in which service addresses are located.

458 (b) Notwithstanding s. 202.28, if a dealer of  
459 communications services:

460 1. Employs a method of assigning service addresses other  
461 than as set forth in paragraph (1) (a), paragraph (1) (b), or  
462 paragraph (1) (c), the deduction allowed to the dealer of  
463 communications services as compensation under s. 202.28 shall be  
464 0.25 percent of that portion of the tax due and accounted for  
465 and remitted to the department which is attributable to such  
466 method of assigning service addresses other than as set forth in  
467 paragraph (1) (a), paragraph (1) (b), or paragraph (1) (c).

468 2. Employs a method of assigning service addresses as set  
469 forth in paragraph (1) (a), paragraph (1) (b), or paragraph  
470 (1) (c), the department may not deny the deduction allowed to the  
471 dealer of communications services as compensation allowed under  
472 s. 202.28 because the dealer assigned one or more service  
473 addresses to an incorrect local taxing jurisdiction.

474 Section 7. Subsection (3) is added to section 202.231,  
475 Florida Statutes, to read:

476 202.231 Provision of information to local taxing

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477 jurisdictions.—

478 (3) The gross taxable sales and the total net amount  
479 transferred to the jurisdiction, showing the net taxes remitted  
480 by dealers less the administrative fees deducted by the  
481 department contained in the monthly reports required by this  
482 section, shall be aggregated on a jurisdiction-by-jurisdiction  
483 basis, and the aggregate jurisdiction-by-jurisdiction  
484 information shall be made available by the department to the  
485 public through the department's website for each fiscal year  
486 this chapter has been in effect.

487 Section 8. Paragraphs (a) and (c) of subsection (2) of  
488 section 202.24, Florida Statutes, are amended to read:

489 202.24 Limitations on local taxes and fees imposed on  
490 dealers of communications services.—

491 (2)(a) Except as provided in paragraph (c), each public  
492 body is prohibited from:

493 1. Levying on or collecting from dealers or purchasers of  
494 communications services any tax, charge, fee, or other  
495 imposition on or with respect to the provision or purchase of  
496 communications services.

497 2. Requiring any dealer of communications services to  
498 enter into or extend the term of a franchise or other agreement  
499 that requires the payment of a tax, charge, fee, or other  
500 imposition.

501 3. Adopting or enforcing any provision of any ordinance or  
502 agreement to the extent that such provision obligates a dealer  
503 of communications services to charge, collect, or pay to the  
504 public body a tax, charge, fee, or other imposition.

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505  
 506 Municipalities and counties may not negotiate those terms and  
 507 conditions related to franchise fees or the definition of gross  
 508 revenues or other definitions or methodologies related to the  
 509 payment or assessment of franchise fees on providers of ~~cable~~~~or~~  
 510 video services.

511 (c) This subsection does not apply to:

512 1. Local communications services taxes levied under this  
 513 chapter.

514 2. Ad valorem taxes levied pursuant to chapter 200.

515 3. Business taxes levied under chapter 205.

516 4. "911" service charges levied under chapter 365.

517 5. Amounts charged for the rental or other use of property  
 518 owned by a public body which is not in the public rights-of-way  
 519 to a dealer of communications services for any purpose,  
 520 including, but not limited to, the placement or attachment of  
 521 equipment used in the provision of communications services.

522 6. Permit fees of general applicability which are not  
 523 related to placing or maintaining facilities in or on public  
 524 roads or rights-of-way.

525 7. Permit fees related to placing or maintaining  
 526 facilities in or on public roads or rights-of-way pursuant to s.  
 527 337.401.

528 8. Any in-kind requirements, institutional networks, or  
 529 contributions for, or in support of, the use or construction of  
 530 public, educational, or governmental access facilities allowed  
 531 under federal law and imposed on providers of ~~cable~~~~or~~ video  
 532 service pursuant to any existing ordinance or an existing

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533 franchise agreement granted by each municipality or county,  
 534 under which ordinance or franchise agreement service is provided  
 535 before ~~prior to~~ July 1, 2007, or as permitted under chapter 610.  
 536 ~~Nothing in~~ This subparagraph does not ~~shall~~ prohibit ~~the ability~~  
 537 ~~of~~ providers of ~~cable or~~ video service from recovering the ~~to~~  
 538 ~~recover such~~ expenses as allowed under federal law.

539 9. Special assessments and impact fees.

540 10. Pole attachment fees that are charged by a local  
 541 government for attachments to utility poles owned by the local  
 542 government.

543 11. Utility service fees or other similar user fees for  
 544 utility services.

545 12. Any other generally applicable tax, fee, charge, or  
 546 imposition authorized by general law on July 1, 2000, which is  
 547 not specifically prohibited by this subsection or included as a  
 548 replaced revenue source in s. 202.20.

549 Section 9. Paragraph (a) of subsection (1) of section  
 550 203.01, Florida Statutes, is amended to read:

551 203.01 Tax on gross receipts for utility and  
 552 communications services.—

553 (1)(a)1. A tax is imposed on gross receipts from utility  
 554 services that are delivered to a retail consumer in this state.  
 555 The ~~Such~~ tax shall be levied as provided in paragraphs (b)-(j).

556 2. A tax is levied on communications services as defined  
 557 in s. 202.11(1) ~~202.11(2)~~. The ~~Such~~ tax shall be applied to the  
 558 same services and transactions as are subject to taxation under  
 559 chapter 202, and to communications services that are subject to  
 560 the exemption provided in s. 202.125(1). The ~~Such~~ tax shall be

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561 applied to the sales price of communications services when sold  
 562 at retail, as the ~~such~~ terms are defined in s. 202.11, shall be  
 563 due and payable at the same time as the taxes imposed pursuant  
 564 to chapter 202, and shall be administered and collected pursuant  
 565 to the provisions of chapter 202.

566 Section 10. Section 624.105, Florida Statutes, is amended  
 567 to read:

568 624.105 Waiver of customer liability.—Any regulated  
 569 company as defined in s. 350.111, any electric utility as  
 570 defined in s. 366.02(2), any utility as defined in s.  
 571 367.021(12) or s. 367.022(2) and (7), and any provider of  
 572 communications services as defined in s. 202.11(1) ~~202.11(2)~~ may  
 573 charge for and include an optional waiver of liability provision  
 574 in their customer contracts under which the entity agrees to  
 575 waive all or a portion of the customer's liability for service  
 576 from the entity for a defined period in the event of the  
 577 customer's call to active military service, death, disability,  
 578 involuntary unemployment, qualification for family leave, or  
 579 similar qualifying event or condition. Such provisions may not  
 580 be effective in the customer's contract with the entity unless  
 581 affirmatively elected by the customer. No such provision shall  
 582 constitute insurance so long as the provision is a contract  
 583 between the entity and its customer.

584 Section 11. The following changes made in this act are  
 585 intended to be remedial in nature and apply retroactively, but  
 586 do not provide a basis for an assessment of any tax not paid or  
 587 create a right to a refund or credit of any tax paid before the  
 588 general effective date of this act:

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589           (1) The changes made in section 2 of this act to  
 590 subsection (13) of s. 202.11, Florida Statutes.

591           (2) The changes made in section 6 of this act to s.  
 592 202.22, Florida Statutes.

593           Section 12. Effective upon this act becoming a law:

594           (1) The Communications Services Tax Working Group is  
 595 created and housed for administrative purposes within the  
 596 Department of Revenue.

597           (2) The working group shall consist of 9 members as  
 598 follows:

599           (a) The executive director of the Department of Revenue,  
 600 or his or her designee, who shall serve as chairperson and as a  
 601 nonvoting member and who shall appoint the remaining members.

602           (b) Four members, that may include, but not limited to,  
 603 video service providers, direct-to-home satellite service  
 604 providers, local phone service providers, and wireless providers  
 605 who provide prepaid services.

606           (c) Two representatives of counties.

607           (d) Two representatives of municipalities.

608           (3) Members of the working group are not entitled to  
 609 receive reimbursement for per diem and travel expenses other  
 610 than reimbursement provided by their respective company, group,  
 611 office, or agency.

612           (4) The working group shall:

613           (a) Review national and state tax policies relating to the  
 614 communications industry;

615           (b) Review the historical amount of tax revenue that has  
 616 been generated by the communications services taxes imposed or

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617 administered pursuant to chapter 202, Florida Statutes, for the  
618 purposes of determining the effect that laws passed in the past  
619 5 years have had on declining revenues;

620 (c) Review the extent to which this revenue has been  
621 relied on to secure bonded indebtedness;

622 (d) Review the fairness of the state's communications tax  
623 laws and the administrative burdens it contains, including  
624 whether the applicability of the tax laws is reasonably clear to  
625 communications services providers, retailers, customers, local  
626 government entities and state administrators;

627 (e) Identify options for streamlining the administrative  
628 system; and

629 (f) Identify options that remove competitive advantages  
630 within the industry as it relates to the state's tax structure  
631 without unduly reducing revenue to local governments.

632 (5) The working group shall prepare a report that  
633 addresses each issue specified in subsection (4). The group  
634 shall submit the report to the Governor, the President of the  
635 Senate, and the Speaker of the House of Representatives by  
636 February 1, 2013. The working group shall hold meetings as  
637 frequently as deemed necessary by the chair to produce the  
638 report.

639 Section 13. Except as otherwise expressly provided in this  
640 act, this act shall take effect July 1, 2012.