

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 Committee on Communications, Energy, and Public Utilities

BILL: SB 290

INTRODUCER: Senator Galvano

SUBJECT: Taxes on Prepaid Calling Arrangements

DATE: February 6, 2013

REVISED: 2/6/2013

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	Favorable
2.	<u></u>	<u></u>	<u></u>	<u></u>
3.	<u></u>	<u></u>	<u></u>	<u></u>
4.	<u></u>	<u></u>	<u></u>	<u></u>
5.	<u></u>	<u></u>	<u></u>	<u></u>
6.	<u></u>	<u></u>	<u></u>	<u></u>

I. Summary:

SB 290 appears to modernize the communications services tax and sales tax statutes as they relate to prepaid calling arrangements to conform to current practices of selling prepaid cell phones and prepaid calling cards. Additionally, by substituting “access to communications services” for “communications services that consist exclusively of telephone calls,” the new language also appears to include services such as text messaging. The effect on overall tax revenue is uncertain; see the discussion below.

The bill also provides, in section 3, that these amendments are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Except as otherwise expressly provided in section 3, the bill takes effect July 1, 2013.

The bill substantially amends sections 212.05 and 202.11 of the Florida Statutes.

II. Present Situation:

Chapter 202, F.S., is the Communications Services Tax Simplification Law. The state communications services tax (CST) of 6.65 percent is applied to the sales price of each communications service which originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state.¹ The tax is to be charged when the service is sold at retail, computed on each taxable sale for the purpose of remitting the tax due.

¹ Section 202.12, F.S.

However, the definition of the term “sales price” expressly excludes the “sale or recharge of a prepaid calling arrangement,”² so communications service tax is not collected on the sale of a prepaid calling arrangement. The term “prepaid calling arrangement” is defined to mean “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars of which the number declines with use in a known amount.”³

Additionally, the governing authority of each county and municipality may, by ordinance, levy a discretionary communications services tax.⁴ The local tax may be up to 7.12 percent, depending on the location of the customer.

Chapter 212, F.S., provides for sales tax, including, a requirement that a sales tax at the rate of 6 percent on charges for prepaid calling arrangements be collected at the time of sale and remitted by the selling dealer.⁵ The definition of the term “prepaid calling arrangement” is almost identical; it is defined to mean “the separately stated retail sale by advance payment of communications services that consist exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered and that are sold in predetermined units or dollars whose number declines with use in a known amount.”⁶

Section 203.01, F.S., provides for a gross receipts tax on communications services delivered to a retail consumer in this state. The tax on communications services is applied to the same services and transactions as are subject to the CST and to communications services sold to residential households. The tax is applied to the sales price of communications services when sold at retail, as the terms are defined in section 202.11, F.S., and is due and payable at the same time as the CST. The rate applied to communications services is 2.37 percent. An additional rate of 0.15 percent is applied to communication services subject to the CST. With such sales, a communication services dealer may collect a combined rate of 6.8 percent comprised of the 6.65 percent for the CST and the 0.15 percent additional gross receipts tax.⁷

III. Effect of Proposed Changes:

The bill appears to modernize the communications services tax and sales tax statutes as they relate to prepaid calling arrangements to conform to current practices of selling prepaid phones and prepaid calling cards. The bill does so by amending the existing definitions of the term “prepaid calling arrangement” in both chapters, including deleting the language in both that refers to: “communications services that consist exclusively of telephone calls” and use of “an access number, authorization code, or other means.” Additionally, by substituting “access to communications services” for “communications services that consist exclusively of telephone

² Section 202.11(13)(b)4., F.S.

³ Section 202.11(9), F.S.

⁴ Section 202.19, F.S.

⁵ Section 212.05 (1)(e)1., F.S.

⁶ *Id.*

⁷ Section 202.12001, F.S.

calls,” the new language also appears to include text messaging and other communications services.

More specifically, section 1 amends section 202.11, F.S., to define the term “prepaid calling arrangement” to mean “access to communications services which must be paid for in advance of using such services and which is sold in predetermined units or dollars that expire on a predetermined schedule or that are decremented on a predetermined basis in exchange for such access.”

Section 2 amends section 212.05, F.S., to define the term prepaid calling arrangement to have the same meaning as provided in section 202.11, F.S.

Section 3 provides that these amendments are intended to be remedial in nature and apply retroactively, but do not provide a basis for an assessment of any tax not paid or create a right to a refund or credit of any tax paid before the effective date of this act.

Section 4 provides that except as otherwise expressly provided in section 3, the bill takes effect July 1, 2013.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

As is discussed below, the bill’s effect on CST revenues, including those of cities and counties, is uncertain. To the extent the bill does reduce CST revenues, it will reduce the amount of CST paid to local governments.

B. Public Records/Open Meetings Issues:

Not applicable; this bill does not appear to have any effect on public records or open meetings.

C. Trust Funds Restrictions:

Not applicable; this bill does not appear to have any effect on trust funds.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

SB 290’s effect on tax revenues is uncertain. Under current law, for a plan to qualify as a legitimate prepaid calling arrangement, it must have the following characteristics.

- It must require prepayment for services.
- The services or plans must be “sold in predetermined units or dollars whose number declines with use in a known amount,” and thus cannot include unlimited plans, which do not decline with usage, or plans that are otherwise not sold in terms of a predetermined amount of dollars or units, such as minutes.

- The services must “consist exclusively of telephone calls,” and thus cannot include any service other than voice communications, no text messaging, multimedia messaging, webmail, or similar services.
- The telephone calls must be “originated by using an access number, authorization code, or other means.”

Any arrangement that does not have all these characteristics is not a prepaid calling arrangement as defined by these statutes. It is, therefore, subject to the communications services tax statutes.⁸ The application of these statutes in these circumstances is a matter of disagreement. The Department of Revenue (DOR) concludes that the sale is subject to the CST; providers argue that such a sale may not fit within the remainder of the CST statutes and requirements either and, as such, it would not be subject to the CST.

Under the bill, a plan *can* offer texting and still qualify as a prepaid calling arrangement such that the sales tax would be applicable, not the CST.

The disagreement appears to be important, however, in attempting to determine the bill’s impact on state and local CST revenues and state gross receipts tax. Sales tax on a prepaid calling arrangement is 6 percent. The total CST can be as much as 16.29 percent, consisting of the state CST of 6.65 percent, state gross receipts tax of 2.52 percent, and a local CST of up to 7.12 percent. So in simply comparing the two rates, it appears that the bill will result in a reduction of tax revenues. However, this assumes that tax payments have been made in the past based on the DOR interpretation; if, in fact, all or most sellers have used the conflicting interpretation and paid sales tax, not the CST, the actual difference in past revenue and projected revenue under the bill will be little to nothing as there would be no change in payments under such circumstances. The fact that at least some sellers have paid sales tax, not CST, is acknowledged in DOR’s TIP, which encourages such sellers to contact DOR and voluntarily compromise on tax liability.⁹

B. Private Sector Impact:

Communications service providers can continue to offer a prepaid plan consisting of a flat-rate charge for a predetermined number of minutes of access to communications services, including services such as texting, without being subject to the increased complexity and slightly higher rate of the CST. Customers will continue to have this choice.

C. Government Sector Impact:

It does not appear that the bill will result in additional expenses for the Department of Revenue.

VI. Technical Deficiencies:

None.

⁸ For the Department of Revenue’s discussion of these characteristics, and for a history of the communications services tax and prepaid calling arrangements, see <http://dor.myflorida.com/dor/tips/tip12adm-02.html>.

⁹ *Id.*

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.
