

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 712

INTRODUCER: Senator Galvano

SUBJECT: Taxes on Prepaid Calling Arrangements

DATE: February 17, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Pre-meeting
2.			AFT	
3.			AP	

I. Summary:

SB 712 revises the definition of the term “prepaid calling card” for purposes of the Communications Services Tax (CST) and the sales tax. The primary effect is to include mobile communications services that meet specified conditions. The bill also provides that if a purchaser of a prepaid calling arrangement has paid sales tax on the sale or recharge of such arrangement, no additional sales tax or CST tax is due or payable if the purchaser applies one or more units of the prepaid calling arrangement to obtain communications services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services, other services that are not communications services, or products.

These changes 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, July 1, 2014.

II. Present Situation:

Communications Services Tax Simplification Law

Overview and History

Chapter 202, F.S., is the Communications Services Tax Simplification Law. Effective October 1, 2001, the law simplified and restructured numerous state and local taxes and fees imposed on communications services into a single tax centrally administered by the Department of Revenue (DOR). The revenue collected under the CST is distributed three ways: a portion goes to the General Revenue Fund; a portion goes to the Public Education Capital Outlay (PECO) fund used for improvements for public education; and a portion goes to local governments based upon statutory distributions and established local rates.

Prepaid Calling Arrangement

The state 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. However, the definition of the term “sales price” expressly excludes the “sale or recharge of a prepaid calling arrangement,”² so CST 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

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.

Prepaid Calling Arrangement: Tax on Sales, Use and Other Transactions (SUT)

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 to the definition in ch. 202, F.S.; 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

Gross Receipts Tax on Communications Services

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 s. 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 communications services subject to the CST. With such sales, a communications 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

¹ Section 202.12, F.S.

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.

DOR Tax Information Publication on Prepaid Communications Services

In March of 2012, DOR issued Tax Information Publication (TIP) No. 12ADM-02 to provide department clarification regarding the application of Florida taxes to sales of certain prepaid communications plans and services.⁸ The document stated that certain prepaid communications plans or services are not "prepaid calling arrangements."

Examples of such plans that do not fall under this definition include, but are not limited to:

- service that includes text messaging, multimedia messaging, web, e-mail, etc.;
- unlimited calling plans that do *not* decline with usage;
- services or plans that are *not* sold in predetermined units or dollars; or
- services or plans that are *not* originated using an access number or authorization code.⁹

The TIP went on to affirm that a "sale of a prepaid card or prepaid arrangement that does not fall under the definition of a "prepaid calling arrangement" is not subject to SUT. Instead, sales of such plans are subject to CST, because Florida's CST law generally applies to services that allow the transmission, conveyance, or routing of voice, data, audio, or video."¹⁰

III. Effect of Proposed Changes:

Section 1 amends subsection 202.11(9), F.S., to revise the definition of the term "prepaid calling card." For other than mobile communications services, the term includes a right to use communications services for which a separately stated price must be paid in advance, which is sold at retail in predetermined units that decline in number with use on a predetermined basis, and which consists exclusively of telephone calls originated by using an access number, authorization code, or other means that may be manually, electronically, or otherwise entered.

For mobile communications services, the term would include a right to use mobile communications services that must be paid for in advance and is sold at retail in predetermined units that expire or decline in number on a predetermined basis if:

- the purchaser's right to use mobile communications services terminates upon all purchased units expiring or being exhausted unless the purchaser pays for additional units;
- the purchaser is not required to purchase additional units; and
- any right of the purchaser to use units to obtain communications services other than mobile communications services is limited to services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services.

Predetermined units may be quantified as amounts of usage, time, money, or a combination of these or other means of measurement.

⁸ Florida Department of Revenue, *Prepaid Communications Services*, TIP No. 12ADM-02 (March 27,2012) available at <http://dor.myflorida.com/dor/tips/tip12adm-02.html>.

⁹ *Id.* Emphasis in the original.

¹⁰ *Id.*

Section 2 amends paragraph 212.05(1)(e), F.S., on sales tax, to provide that the term “prepaid calling arrangement” has the same meaning as provided in s. 202.11, F.S. The bill also provides that if a purchaser of a prepaid calling arrangement has paid tax sales on the sale or recharge of such arrangement, no additional sales tax or CST tax is due or payable if the purchaser applies one or more units of the prepaid calling arrangement to obtain communications services that are provided to or through the same handset or other electronic device that is used by the purchaser to access mobile communications services, other services that are not communications services, or products.

Section 3 provides that the amendments made by the bill 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, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill’s effect on local government tax revenues is uncertain. Currently there is a disagreement among DOR and communications services providers as to how the law applies to sales of services that do not meet all the statutory requirements, for example, a sale of services that includes text, email, or data services.¹¹ DOR concludes that such a sale does not meet the requirements, with the effect that it is subject to the CST; providers argue that such a sale may not fit within the remainder of the CST statutes and, as such, it is not 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. Sales tax on a prepaid calling arrangement is 6 percent plus any local discretionary sales surtaxes. 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. 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 No. 12ADM-02, which encourages such sellers to contact DOR.¹²

¹¹ 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>.

¹² *Id.*

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

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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.

¹³ 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>.

¹⁴ *Id.*

C. **Government Sector Impact:**

The impact on DOR is uncertain; it may have expenses of notifying sales tax dealers and communications services providers of the provisions of the bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.11 and 212.05.

IX. Additional Information:

A. **Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. **Amendments:**

None.