

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 Appropriations Subcommittee on Finance and Tax

BILL: CS/CS/CS/SB 898

INTRODUCER: Appropriations Subcommittee on Finance and Tax; Commerce and Tourism Committee; Communications, Energy, and Public Utilities Committee; and Senators Abruzzo and Soto

SUBJECT: Communications Services Tax

DATE: April 3, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. <u>Wiehle</u>	<u>Caldwell</u>	<u>CU</u>	<u>Fav/CS</u>
2. <u>Hrdlicka</u>	<u>Hrdlicka</u>	<u>CM</u>	<u>Fav/CS</u>
3. <u>Cote</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	<u>Fav/CS</u>
4. _____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/CS/SB 898 excludes certain data processing services delivered by electronic transmission from the communications services tax by including such services in the definition of “information services.” Information services are not included within the definition of “communication services,” and are not subject to communications services tax.

The bill states that “the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the 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.”.

The bill has no revenue impact because the change is a clarification that aligns the statutes with current administrative practice.

II. Present Situation:

Chapter 202, F.S., imposes a communications services tax on “retail sales of communications services which originate and terminate in Florida, or originate or terminate in Florida and are

billed to a Florida address.”¹ Communication services include telecommunications, cable, direct-to-home satellite, and related services.² The communication services tax includes a state tax rate of 6.65 percent and a gross receipts tax rate of 2.52 percent for a combined rate of 9.17 percent.³ In addition, local governments impose a local tax rate of up to 7.12 percent.⁴

The communications services tax is applied to the retail sales price of each taxable communications service.⁵ The definition of “communications services” specifically excludes “information services” and therefore they are not subject to the communication services tax.⁶ “Information services” are defined as “the offering of a capability for generating, acquiring, storing, transforming, processing, retrieving, using, or making available information via communications services.”⁷ Information services include electronic publishing, web-hosting services, and end-user 900 number services.

The state taxes collected are deposited into the General Revenue Fund and a portion is distributed to local governments.⁸ Gross receipts tax collections are deposited into the Public Education Capital Outlay and Debt Service Trust Fund and are used to fund public schools’, community colleges’, and universities’ capital projects. The Department of Revenue provides tax collection services for local governments, and local communication services taxes are distributed to local governments.

III. Effect of Proposed Changes:

The bill specifically excludes certain data processing services delivered by electronic transmission from the communications services tax by including such services in the definition of “information services.”

Section 1 amends s. 202.11(5), F.S., to include in the definition of “information services” data processing and other services that allow data to be generated, acquired, stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where the purchaser’s primary purpose for the underlying transaction is the data or information.

Section 2 states that “the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the 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 3 provides an effective date of upon becoming law.

¹ Florida Revenue Estimating Conference, 2014 Florida Tax Handbook, at p. 55.

² Chapter 202, F.S.

³ See ss. 202.12(1)(a) and 203.01(1)(b), F.S. The gross receipts tax is 2.37 percent, plus an additional 0.15 percent for certain services. Local, long distance, and toll telephone services sold to a residential household are exempt from the 6.65 percent state tax and 0.15 percent gross receipts tax.

⁴ Section 202.19, F.S.

⁵ Section 202.12, F.S.

⁶ Section 202.11(1)(a) and (5), F.S.

⁷ Section 202.11(5), F.S.

⁸ Section 202.18, F.S.

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:

The Revenue Estimating Conference determined that CS/CS/CS/SB 898 will have no revenue impact because the change is a clarification that aligns the statutes with current administrative practice.⁹

B. Private Sector Impact:

Indeterminate.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill amends section 202.11 of the Florida Statutes.

This bill creates an undesignated section of Florida Law.

⁹ Revenue Estimating Conference, HB 803 Draft Language, consensus estimate adopted 3/21/2014.

IX. Additional Information:

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

Recommended CS/CS/CS by Appropriations Subcommittee on Finance and Tax on April 2, 2014:

The committee substitute clarifies that “the amendments made by this act to s. 202.11, Florida Statutes, are remedial in nature and apply retroactively, but do not provide a basis for the 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.”

CS/CS by Commerce and Tourism on March 24, 2014:

The committee substitute amends the definition of “information services” to include certain data processing services. This change excludes such services from the communications services tax, because information services are not communication services subject to the tax.

The bill previously had excluded from the definition of “sales price” for the communications services tax the sale of communications services between a franchisor and its franchisee, which excluded such services from the communications services tax.

CS by Communications, Energy, and Public Utilities on March 4, 2014:

The committee substitute completely rewrites the proposed exemption from the term “sales tax” for purposes of the Communications Services Tax. It exempts the sale of communications services between a franchisor and its franchisee, defining the term “franchisee” to mean any entity, including a related company, using the franchisor’s service mark, whether by license, management agreement, or by a subsidiary or affiliate of the franchisor.

The bill also states that it is a clarification of existing law, and a tax may not be assessed or collected with respect to any charge or portion thereof described in s. 202.11(13)(b), F.S., as amended by this act, for periods before or after the effective date of this act.

- B. **Amendments:**

None.