

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 1636

INTRODUCER: Senator Artiles

SUBJECT: Taxation of Internet Video Service

DATE: March 27, 2017 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wiehle	Caldwell	CU	Favorable
2.			AFT	
3.			AP	

I. Summary:

SB 1636 defines “internet video service” to mean “a subscription video programming service received by the end user customer by means of a wired or wireless Internet connection.” It exempts internet video service from the definition of “communications services,” and therefore from the communications services tax. It prohibits all public bodies from levying on or collecting from sellers or purchasers of Internet video service any tax, charge, fee, or other imposition on or with respect to the provision or purchase of Internet video service.

The bill makes conforming changes to cross-references.

The bill takes effect July 1, 2017.

II. Present Situation:

Florida Taxes on Sales of Video Services

Chapter 202, F.S., is the Communications Services Tax Simplification Law (CST). The chapter contains the following statement of legislative findings and intent.

It is declared to be a specific legislative finding that the creation of this chapter fulfills important state interests by reforming the tax laws to provide a fair, efficient, and uniform method for taxing communications services sold in this state. This chapter is essential to the continued economic vitality of this increasingly important industry because it restructures state and local taxes and fees to account for the impact of federal legislation, industry deregulation, and the multitude of providers offering functionally equivalent communications services in today’s marketplace. This chapter promotes the increased competition that accompanies deregulation by embracing a competitively neutral tax policy that will free consumers to choose a provider based on tax-neutral considerations.

This chapter further spurs new competition by simplifying an extremely complicated state and local tax and fee system. Simplification will lower the cost of collecting taxes and fees, increase service availability, and place downward pressure on price. Newfound administrative efficiency is demonstrated by a reduction in the number of returns that a provider must file each month. By restructuring separate taxes and fees into a revenue-neutral communications services tax centrally administered by the department, this chapter will ensure that the growth of the industry is unimpaired by excessive governmental regulation. The tax imposed pursuant to this chapter is a replacement for taxes and fees previously imposed and is not a new tax. The taxes imposed and administered pursuant to this chapter are of general application and are imposed in a uniform, consistent, and nondiscriminatory manner.¹

The chapter defines the term “communications services” to include the “transmission, conveyance, or routing of . . . video, or any other information or signals, including video services, to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance.”² The term does not include Internet access service.³

The tax rate for communications services is 4.92 percent applied to the sales price of the communications service that originates and terminates in this state, or originates or terminates in this state and is charged to a service address in this state. The tax is calculated and collected on each retail sale of communications services. The gross receipts tax imposed by chapter 203, F.S., is calculated and collected on the same taxable transactions and remitted with the communications services tax.⁴ The gross receipts tax on these sales is 2.52 percent.⁵

Taxes on Internet Video in Other States

As technology changes and more and more cable customers “cut the cord” and go to video streaming video services like Netflix, Hulu, and Amazon Prime, revenues from taxes such as the CST and similar taxes are decreasing.⁶ In response, some states and cities are applying or considering applying these taxes to streaming video.⁷ Some customers are pushing back; in

¹ Section 202.105, F.S.

² Section 202.11(1), F.S.

³ Section 202.11(1)(h), F.S.

⁴ Section 202.12(1)(a), F.S.

⁵ Section 203.01(2)(b), F.S.

⁶ Coming Soon To A Television Near You: 'Netflix' Tax, November 16, 2016, Joe Harpaz, <https://www.forbes.com/sites/joeharpaz/2016/11/16/coming-soon-to-a-television-near-you-netflix-tax/#2d0a709769f2> (Last accessed March 23, 2017).

⁷ On June 9, 2015, Chicago extended its entertainment tax to apply to streaming video services. *See, e.g.,* This Lawsuit Could Have a Big Impact on Your Netflix Bill, <http://www.attn.com/stories/13076/chicago-is-getting-sued-over-video-streaming-tax> (Last accessed March 23, 2017). The Pennsylvania legislature expanded their 6-percent sales tax law to the purchase of digital products delivered to a customer electronically, digitally or by streaming. Pennsylvania Department of Revenue, General Tax Information, Tax Types and Information <http://www.revenue.pa.gov/GeneralTaxInformation/Tax%20Types%20and%20Information/Pages/Sales%20Use%20and%20Hotel%20Occupancy%20Tax/Digital-Products.aspx#.WNP4APnys2w> (Last accessed March 23, 2017). Pasadena, California has reinterpreted a tax ordinance to apply to video programming regardless of the technology used to deliver such

Chicago, they sued the city challenging its tax interpretation.⁸ One author has described the situation as follows.

Tax authorities around the world are very much aware of the growth of streaming video because it is both a tremendous opportunity for new revenue and – if they are too slow to enact new legislation – a huge revenue loss. Ultimately, if the world shifts away from traditional broadcast distribution of video content, which has an elaborate mix of hefty telecommunications taxes associated with it, the tax authorities that receive these taxes could see their share of the pie decrease measurably.

Seeing this tide shift coming, some regional and municipal tax authorities have worked quickly to push through so-called “Netflix taxes,” which have not been received so well. The most famous of these was in Chicago, where irate residents recently sued the city arguing that it did not have the authority to tax the cloud. Pasadena, CA city officials are also reportedly considering a streaming video tax that will use existing municipal utility tax codes that were initially designed for cable television subscriptions.⁹

Put very basically, supporters focus on the service provided (video is video) while opponents focus on the technology or business model used to provide the service or on arguments of discriminatory pricing.

Applicable Federal Law

The allegations of discriminatory taxation are based on the Federal Internet Tax Freedom Act (act).¹⁰ The act prohibits any state or political subdivision from imposing taxes on Internet¹¹ access or multiple or discriminatory taxes on electronic commerce.¹² The act defines the term

programming, applying the rate for cable services to all video programming. Video-Streaming Companies See the “Netflix Tax” Going into Effect Around the Country to the Dismay of “Cord Cutters”, BIZLITNEWS BLOG, Melonie S. Wright November 1, 2016, <http://www.butlersnow.com/2016/11/video-streaming-companies-see-netflix-tax-going-effect-around-country-dismay-cord-cutters/> (Last accessed March 23, 2017); and Time to Tax Netflix? Some Cities, and a State, Think So, January 03, 2017, Elaine S. Povich, <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/01/03/time-to-tax-netflix-some-cities-and-a-state-think-so> (Last accessed March 23, 2017). The Iowa Department of Revenue ruled that Amazon Prime Membership is subject to sales and use tax as “pay television.” idor rules that internet video streaming is subject to sales/use tax. is it really?, 02/13/2017, Cody Edwards, <https://www.dickinsonlaw.com/blogs-articles/iowa-tax-cafe-blog/2017/02/13/idor-rules-that-internet-video-streaming-is-subject-to-salesuse-tax-is-it-really> (Last accessed March 23, 2017).

⁸ See, e.g., This Lawsuit Could Have a Big Impact on Your Netflix Bill, <http://www.attn.com/stories/13076/chicago-is-getting-sued-over-video-streaming-tax> (Last accessed March 23, 2017).

⁹ Coming Soon To A Television Near You: 'Netflix' Tax, November 16, 2016, Joe Harpaz, <https://www.forbes.com/sites/joeharpaz/2016/11/16/coming-soon-to-a-television-near-you-netflix-tax/#2d0a709769f2> (Last accessed March 23, 2017).

¹⁰ 47 USC sections 1100-1109 <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title47-section151&num=0&edition=prelim> (Last accessed March 23, 2017).

¹¹ The act defines “internet” to mean collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected world-wide network of networks that employ the Transmission Control Protocol/Internet Protocol, or any predecessor or successor protocols to such protocol, to communicate information of all kinds by wire or radio. *Id.* section 1105(4), F.S.

¹² The act defines “electronic commerce” to mean any transaction conducted over the Internet or through Internet access, comprising the sale, lease, license, offer, or delivery of property, goods, services, or information, whether or not for consideration, and includes the provision of Internet access. *Id.* section 1105(3), F.S.

“discriminatory tax” to mean any tax imposed by a state or political subdivision thereof on electronic commerce that:

- Is not generally imposed and legally collectible by such state or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means;
- Is not generally imposed and legally collectible at the same rate by such state or such political subdivision on transactions involving similar property, goods, services, or information accomplished through other means, unless the rate is lower as part of a phase-out of the tax over not more than a 5-year period;
- Imposes an obligation to collect or pay the tax on a different person or entity than in the case of transactions involving similar property, goods, services, or information accomplished through other means; or
- Establishes a classification of Internet access service providers or online service providers for purposes of establishing a higher tax rate to be imposed on such providers than the tax rate generally applied to providers of similar information services delivered through other means.¹³

III. Effect of Proposed Changes:

The bill defines “internet video service” to mean “a subscription video programming service received by the end user customer by means of a wired or wireless Internet connection.” It exempts internet video service from the definition of “communications services,” and therefore from the communications services tax. It prohibits all public bodies from levying on or collecting from sellers or purchasers of Internet video service any tax, charge, fee, or other imposition on or with respect to the provision or purchase of Internet video service.

In creating the definition of the term internet video service, the bill creates a new subsection in the lengthy definitions section, requiring renumbering of 18 existing subsections. Sections 3, 4, and 5 make conforming changes to existing cross-references to one of those subsections.

The bill takes effect July 1, 2017.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Subsection (b) of section 18, Article VII of the Florida Constitution, provides that except upon the approval of each house of the Legislature by a two-thirds vote of the membership, the Legislature may not enact, amend, or repeal any general law if the anticipated effect of doing so would be to reduce the authority that municipalities or counties have to raise revenue in the aggregate, as such authority existed on February 1,

¹³ *Id.* section 1105(2), F.S.

1989. However, the mandate requirements do not apply to laws having an insignificant impact, which for Fiscal Year 2016-2017 was \$2 million or less.^{14,15,16}

The bill may be subject to a challenge that it reduces the authority of local governments to raise revenues in that it effectively prohibits an interpretation of “communications services” that would include internet video services, thereby preventing any application of the communications services tax and reducing revenues at both the state and local levels. CST taxing authority did not exist on February 1, 1989, however the CST replaced a number of taxes and fees, some of which likely did exist on that date. The application of this provision is uncertain. The amount of revenue “lost” is not known, so the application of the insignificant impact provision is also uncertain. 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:

By exempting internet video services from the CST, the bill prevents any future interpretation of the CST statutes that would treat those services as equivalent to other video communications services, and thus prevents changing tax policy to comport with changes in technology. As people shift from obtaining video services from service providers subject to the CST to those that are not, the state and local governments will lose tax revenues. The amount of the loss is unknown.

B. Private Sector Impact:

Providers of internet video services will have a competitive edge over video services providers, whose services are subject to the CST. Internet video services customers will avoid paying a tax on these services. Companies providing non-Internet video services will lose more customers.

¹⁴ FLA. CONST. art. VII, s. 18(d).

¹⁵ An insignificant fiscal impact is the amount not greater than the average statewide population for the applicable fiscal year times \$0.10. See Florida Senate Committee on Community Affairs, *Interim Report 2012-115: Insignificant Impact*, (Sept. 2011), available at <http://www.flsenate.gov/PublishedContent/Session/2012/InterimReports/2012-115ca.pdf> (last visited Feb. 13, 2017).

¹⁶ Based on the Demographic Estimating Conference’s population adopted on November 1, 2016. The conference packet is available at <http://edr.state.fl.us/Content/conferences/population/ConferenceResults.pdf> (last visited Feb. 13, 2017).

C. Government Sector Impact:

Both the state and local governments will lose CST revenues.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 202.11, 202.24, 202.26, 212.05, and 610.118.

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.