HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1245 Taxation of Internet Video Services
SPONSOR(S): Brodeur
TIED BILLS: **IDEN./SIM. BILLS:** SB 1210

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	8 Y, 4 N	Keating	Keating
2) Ways & Means Committee			
3) Commerce Committee			

SUMMARY ANALYSIS

Under current law, Internet video services, like Netflix, Hulu, Sling TV, and other, fall within the definition of communications services and, accordingly, are subject to state and local communications services taxes (CST) and gross receipts tax.

The bill amends the CST law to define "Internet video services" and exclude such services from the definition of "communications services." Thus, the bill exempts Internet video services from the state and local CST and the gross receipts tax. Further, the bill prohibits all public bodies from imposing or collecting any tax or fee with respect to the provision or purchase of Internet video services.

The bill conforms cross-references to renumbered subsections of s. 202.11, F.S.

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill. The bill will reduce the base upon which the state and local CST and gross receipts taxes are levied and collected, thus it will have a negative fiscal impact on state and local governments.

The bill may be a Mandate requiring a 2/3 vote of the membership. See Mandates section of the analysis.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 202, F.S., is the Communications Services Tax Simplification Law (CST law), which took effect in 2001. The law provides 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]

For purposes of the CST law, the term "communications services" is defined 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] but does include video programming services provided via Internet.[4]

The state tax rate for communications services (state CST) is 4.92 percent applied to the sales price of 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.[5] In addition, a gross receipts tax of 2.52 percent is calculated and collected on the same taxable transactions and remitted with the communications services tax.[6] Local governments may also levy a communications service tax (local CST) at rates specified in Florida law.[7]

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[1] s. 202.105, F.S.
[2] s. 202.11(1), F.S.
[3] s. 202.11(1)(h), F.S.
[4] Florida Department of Revenue, Agency Analysis of 2017 House Bill 1377, p. 2 (Mar. 24, 2017).
[5] s. 202.12(1)(a), F.S.
[6] *Id.;* s. 203.01(2)(b), F.S.
[7] ss. 202.19-202.22, F.S.

The state CST is distributed by the same formula as the sales and use tax, as prescribed in s. 212.20(6), F.S. The gross receipts tax goes to the Public Education Capital Outlay and Debt Service Trust Fund (PECO).[8]

The CST law provides that taxes and fees on communications services are preempted by the state. [9] Except as otherwise provided by law, public bodies are prohibited from levying taxes or fees on such services, requiring dealers of communications services to enter into an agreement that requires the payment of such a tax or fee, and adopting or enforcing any ordinance or agreement that obligates a dealer of communications services to charge, collect, or pay such a tax or fee.[10]

Effect of Proposed Changes

The bill amends the CST law to exclude "Internet video services" from the definition of "communications services." The bill defines Internet video services as "a subscription-based wired or wireless Internet video programming service." Thus, the bill exempts Internet video services, like Netflix, Hulu, Sling TV, and others, from the state and local CST and the gross receipts tax.

Further, the bill prohibits all public bodies from imposing or collecting any tax or fee with respect to the provision or purchase of Internet video services.

The bill conforms cross-references to renumbered subsections of s. 202.11, F.S.

B. SECTION DIRECTORY:

Section 1. Amends s. 202.11, F.S., providing definitions for Ch. 202, F.S.

Section 2. Amends s. 202.24, F.S., relating to limitations on local taxes and fees imposed on dealers of communications services.

Section 3. Amends s. 202.26, F.S., to conform a cross-reference.

Section 4. Amends s. 212.05, F.S., to conform a cross-reference.

Section 5. Amends s. 610.118, F.S., to conform a cross-reference.

Section 6. Provides an effective date of July 1, 2018.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill. The bill will reduce the base upon which the state CST and gross receipts taxes are levied and collected, thus it will have a negative fiscal impact on distributions from the state CST and on gross receipts tax revenues deposited to PECO.

[8] s. 202.18(1), F.S.
[9] s. 202.24(1), F.S.
[10] s. 202.24(2), F.S.

2. Expenditures:

The Department of Revenue (DOR) indicates that the bill will have an insignificant negative impact on its expenditures.[11]

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill. The bill will reduce the base upon which the local CST is levied and collected, thus it will have a negative fiscal impact on local governments.

2. Expenditures:

The bill may impact local government expenditures for purposes of implementation.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will eliminate state and local taxes on Internet video services, which may make such services more competitive in relation to cable and video services that remain subject to the taxes.

D. FISCAL COMMENTS:

At least one cable service provider has begun offering a streaming video service for its broadband service customers.[12] The fiscal impact of the bill will become more significant if cable and video service providers that do not currently provide "Internet video service" shift to a streaming service platform.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision appear to apply because this bill may reduce the authority that counties and municipalities have to raise revenues in the aggregate, as such authority existed on February 1, 1989. While local CST taxing authority did not exist on February 1, 1989, the CST replaced several taxes and fees, some of which likely did exist on that date. The Revenue Estimating Conference has not yet estimated the fiscal impact of this bill, so it is unclear whether the bill may qualify for an exemption due to having an insignificant fiscal impact. If the bill qualifies as a mandate, it must have a 2/3 vote of the membership of each house.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

[11] *Supra* note 4, at p. 3

[12] Chris Welch, *Comcast launches $18 streaming TV service, but only for its own broadband customers,* THE VERGE, https://www.theverge.com/2017/9/27/15095464/comcast-xfinity-instant-tv-stream-abc-cbs-fox-nbc (last visited January 22, 2018).

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

Not applicable.