

## Committee Substitute for House Bill No. 1275

An act relating to taxation; providing legislative intent with respect to the municipal public service tax; amending s. 166.231, F.S.; providing that specified governmental bodies are exempt from said tax; exempting certain religious institutions from the tax on telecommunication services; providing that state universities shall not be deemed sellers of taxable items under certain circumstances; revising provisions relating to determination of the situs of telecommunication services; providing requirements for returns and remittance of the tax on telecommunication services; requiring certain purchasers claiming exemptions to certify that they are qualified therefor; requiring governmental bodies that sell taxable services to nonexempt users to collect and remit the tax; creating s. 166.233, F.S.; providing requirements for levy of the tax; specifying effective dates; providing duties of the Department of Revenue; requiring municipalities to furnish certain information relating to the tax to the Department of Revenue and to other persons; providing for fees; providing limitations on the responsibilities of sellers if information is not furnished as required; providing procedures that apply when more than one municipality claims an address or when information does not conform to the seller's address records; creating s. 166.234, F.S.; providing procedures for audits of sellers by municipalities; prohibiting contingent fee audits; prescribing record retention requirements for sellers; providing time limitations on assessments of taxes and on applications for refunds or credits; providing for offsets of overpayments against underpayments and for refunds and credits; authorizing municipalities to assess interest and penalties; providing requirements with respect to a determination by a municipality of amounts of tax; providing protest procedures and judicial remedies; providing for settlement or compromise of a seller's liability for taxes; providing for interest on refunds if a law is enacted requiring interest on sales or gross receipts tax refunds; providing rights and duties of municipalities and sellers; providing for communications between municipalities with respect to specified matters relating to audits and the identities of sellers; prescribing the circumstances for assessment of audit expenses against a seller; providing a schedule for application of the requirements of the act; amending ss. 203.01 and 203.63, F.S., relating to taxes on gross receipts for utility services and on interstate and international telecommunication services; specifying that certain sums charged as taxes under said sections and under ch. 212, F.S., shall not be subject to refund, notwithstanding requirements relating to separate statement of such taxes on bills or invoices; providing legislative intent; providing an appropriation; providing for severability; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. It is the intent of the Legislature to improve the ability of municipalities and sellers to administer the municipal public service tax at reasonable cost, to protect sellers who act in good faith, to improve the information furnished to sellers to facilitate remitting collected tax proceeds to the correct municipality, and to prescribe a procedural framework for administration and auditing functions. The Legislature finds that this act fulfills an important state interest.

Section 2. Section 166.231, Florida Statutes, 1996 Supplement, is amended to read:

166.231 Municipalities; public service tax.—

(1)(a) A municipality may levy a tax on the purchase of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, manufactured gas either metered or bottled, and water service. The tax shall be levied only upon purchases within the municipality and shall not exceed 10 percent of the payments received by the seller of the taxable item from the purchaser for the purchase of such service. Municipalities imposing a tax on the purchase of cable television service as of May 4, 1977, may continue to levy such tax to the extent necessary to meet all obligations to or for the benefit of holders of bonds or certificates which were issued prior to May 4, 1977. Purchase of electricity means the purchase of electric power by a person who will consume it within the municipality.

(b) The tax imposed by paragraph (a) shall not be applied against any fuel adjustment charge, and such charge shall be separately stated on each bill. The term “fuel adjustment charge” means all increases in the cost of utility services to the ultimate consumer resulting from an increase in the cost of fuel to the utility subsequent to October 1, 1973.

(2) Services competitive with those enumerated in subsection (1) or subsection (9), as defined by ordinance, shall be taxed on a comparable base at the same rates. However, fuel oil shall be taxed at a rate not to exceed 4 cents per gallon. However, for municipalities levying less than the maximum rate allowable in subsection (1), the maximum tax on fuel oil shall bear the same proportion to 4 cents which the tax rate levied under subsection (1) bears to the maximum rate allowable in subsection (1).

(3) A municipality may exempt from the tax imposed by this section any amount up to, and including, the first 500 kilowatt hours of electricity purchased per month for residential use. Such exemption shall apply to each separate residential unit, regardless of whether such unit is on a separate meter or a central meter, and shall be passed on to each individual tenant.

(4)(a) The purchase of natural gas or fuel oil by a public or private utility, either for resale or for use as fuel in the generation of electricity, or the purchase of fuel oil or kerosene for use as an aircraft engine fuel or propellant or for use in internal combustion engines is exempt from taxation hereunder.

(b) A municipality may exempt from the tax imposed by this section the purchase of metered or bottled gas (natural liquefied petroleum gas or man-

ufactured) or fuel oil for agricultural purposes. As used in this paragraph, "agricultural purposes" means bona fide farming, pasture, grove, or forestry operations, including horticulture, floriculture, viticulture, dairy, livestock, poultry, bee, and aquaculture.

(5) Purchases by the United States Government, this state, and all counties, school districts, and municipalities of the state, and by public bodies exempted by law or court order, are exempt from the tax authorized by this section. A municipality may exempt from the tax imposed by this section taxation hereunder the purchase of the taxable items by the United States Government, this state, any other public body as defined in s. 1.01, or by a nonprofit corporation or cooperative association organized under chapter 617 which provides water utility services to no more than 13,500 equivalent residential units, ownership of which will revert to a political subdivision upon retirement of all outstanding indebtedness, and shall exempt purchases by any recognized church in this state for use exclusively for church purposes, and shall exempt from the tax authorized by subsection (9) purchases made by any religious institution that possesses a consumer certificate of exemption issued under chapter 212.

(6) A municipality may exempt from the tax imposed by this section any amount up to, and including, the total amount of electricity, metered natural gas, liquefied petroleum gas either metered or bottled, or manufactured gas either metered or bottled purchased per month, or reduce the rate of taxation on the purchase of such electricity or gas when purchased by an industrial consumer which uses the electricity or gas directly in industrial manufacturing, processing, compounding, or a production process, at a fixed location in the municipality, of items of tangible personal property for sale. The municipality shall establish the requirements for qualification for this exemption in the manner prescribed by ordinance. Possession by a seller of a written certification by the purchaser, certifying the purchaser's entitlement to an exemption permitted by this subsection, relieves the seller from the responsibility of collecting the tax on the nontaxable amounts, and the municipality shall look solely to the purchaser for recovery of such tax if it determines that the purchaser was not entitled to the exemption. Any municipality granting an exemption pursuant to this subsection shall grant the exemption to all companies classified in the same SIC Industry Major Group Number.

(7) The tax authorized hereunder shall be collected by the seller of the taxable item from the purchaser at the time of the payment for such service. The seller shall remit the taxes collected to the municipality in the manner prescribed by ordinance, except that remittance of taxes by sellers of telecommunication services shall be governed by paragraph (9)(f). Except as otherwise provided in ss. 166.233 and 166.234, the seller shall be liable for taxes that are due and not remitted to the municipality. This shall not bar the seller from recovering such taxes from purchasers; however, the universities in the State University System shall not be deemed a seller of any item otherwise taxable hereunder when such item is provided to university residences incidental to the provision of educational services.

~~(8) A municipality shall notify in writing any known seller of items taxable hereunder of any change in the boundaries of the municipality or in the rate of taxation.~~

~~(8)~~(9)(a) Beginning July 1, 1995, a municipality may by ordinance exempt not less than 50 percent of the tax imposed under this section on purchasers of electrical energy who are determined to be eligible for the exemption provided by s. 212.08(15) by the Department of Revenue. The exemption shall be administered as provided in that section. A copy of any ordinance adopted pursuant to this subsection shall be provided to the Department of Revenue not less than 14 days prior to its effective date.

(b) ~~If In the event~~ an area that is nominated as an enterprise zone pursuant to s. 290.0055 has not yet been designated pursuant to s. 290.0065, a municipality may enact an ordinance for such exemption; however, the ordinance shall not be effective until such area designated pursuant to s. 290.0065.

(c) This subsection shall expire and be void on December 31, 2005, except that any qualified business which has satisfied the requirements of this subsection prior to December 31, 2005, shall be allowed the full benefit of the exemption allowed under this subsection as if this subsection had not expired on December 31, 2005.

~~(9)~~(10) A municipality may levy a tax on the purchase of telecommunication services as defined in s. 203.012 as follows:

(a)1. Only upon purchases within the municipality of local telephone service as defined in s. 203.012(3) at a rate not to exceed 10 percent of the monthly recurring customer service charges, excluding public telephone charges collected on site, access charges, and any customer access line charges paid to a local telephone company; or

2. Only upon purchases within the municipality of telecommunications service ~~that which~~ originates and terminates in this state at a rate not to exceed 7 percent of the total amount charged for any telecommunications service provided within the municipality or, if the location of the telecommunications service provided cannot be determined as part of the billing process, the total amount billed for such telecommunications service to a telephone or telephone number, a telecommunications number or device, a service address, or a customers' billing address located within the municipality, excluding public telephone charges collected on site, charges for any foreign exchange service or any private line service except when such services are used or sold as a substitute for any telephone company switched service or dedicated facility by which a telephone company provides a communication path, access charges, and any customer access line charges paid to a local telephone company. However, telecommunications service as defined in s. 203.012(5)(b) shall be taxed only on the monthly recurring customer service charges excluding variable usage charges.

(b) For the purpose of compensating the seller, the seller shall be allowed 1 percent of the amount of the tax collected and due to the municipality in the form of a deduction from the amount collected for remittance. The deduction shall be allowed as compensation for the keeping of records and for the collection of, and the remitting of, the tax.

~~(c) A municipality shall elect by ordinance the tax specified in subparagraph (a)1. or subparagraph (a)2., and any such election shall not be changed until after the expiration of at least 12 months after the effective date of the ordinance levying the tax specified in such subparagraph. A municipality shall notify the companies responsible for collecting such tax at least 120 days prior to such change of election.~~

~~(d) A municipality electing by ordinance the tax specified in subparagraph (a)2. shall provide to a telecommunications service provider who is responsible for collecting the tax, upon its request, a printed alphabetical listing of all street names including block numbers and street numbers for streets which cross or form municipal boundaries within the municipality for use by the provider of the telecommunications service in calculating the proper amount of tax payable to the municipality. The municipality shall be responsible for updating this listing as changes occur and for providing this information to the telecommunications service provider. The provider, in turn, shall be responsible for charging the tax only to service and billing addresses contained in this listing. The municipality shall be entitled to collect a fee not to exceed the actual cost of providing the information to the telecommunications service provider requesting it.~~

~~(c)(e) A municipality may audit the records of any provider of telecommunications service taxable by the such municipality under s. 166.234.; each such provider shall provide to the municipality, upon 60 days' notice, access to all applicable records for such telecommunications service. In an audit, the telecommunications service provider shall be liable only for its taxable accounts collected corresponding to the information provided to it by the municipality. However, any information received by the municipality or its agent in connection with such audit is confidential and exempt from the provisions of s. 119.07(1).~~

~~(d)(f)1. If the sale of a taxable telecommunication service also involves the sale of an exempt cable television service, the tax shall be applied to the value of the taxable service when it is sold separately.~~

2. If the company does not offer this service separately, the consideration paid shall be separately identified and stated with respect to the taxable and exempt portions of the transaction as a condition of the exemption.

3. The amounts identified as taxable in subparagraph 2. shall not be less than the statewide average tariff rates set forth by the local exchange telecommunications companies in the tariffs filed with the Public Service Commission on January 1, 1995, and on January 1 of each year thereafter for the equivalent services subject to this section. The Public Service Commission shall publish the statewide average tariff rates annually, beginning on January 1, 1996.

4. If the total amount of municipal utility tax collected by a municipality or charter county from telecommunication services pursuant to this subsection for the period of July 1, 1995, to June 30, 1996, is less than the amount collected for the period July 1, 1994, to June 30, 1995, the municipality or charter county shall assess each company that remits such tax a pro rata share of the shortfall. The shortfall shall be prorated based on the amount

of tax remitted by each company for the period July 1, 1995, to June 30, 1996, and the total amount of tax remitted for the same period. By September 1, 1996, the municipality or charter county shall certify to each company the amount of additional tax owed and the tax shall be remitted to the municipality or charter county by October 1, 1996. Provided, however, that this assessment may only be imposed if, in addition to the conditions above, a municipality or charter county has levied the applicable maximum tax rate allowed under this paragraph during the period July 1, 1995, and June 30, 1996, and has not switched between the two options allowed under subparagraph (f)1. or subparagraph (f)2. during the period July 1, 1995, and June 30, 1996.

(e) Purchases of local telephone service or other telecommunications service for use in the conduct of a telecommunications service for hire or otherwise for resale are exempt from the tax imposed by this subsection.

(f) A seller of services which are subject to the tax imposed by a municipality under this subsection shall file a return with the municipality each month. The form of the return shall be determined by the seller, and the return shall be deemed sufficient if it identifies the name and address of the seller, the period of the return, the amount collected from the sale of taxable services, any collection allowance taken, the amount of tax remitted with the return, and the name and telephone number of a person authorized by the seller to respond to inquiries from municipalities concerning the seller's administration of the tax. A municipality may not require any return or payment of public service tax other than on a date returns and payments of tax are required under chapter 212. However, a municipality may grant an extension of the due date for a return or payment upon written request from the seller. The deduction authorized by paragraph (b) shall not be allowed in the event of an untimely return, unless the seller has in writing requested and been granted an extension of time for filing such return. Extensions of time shall be granted if reasonable cause is shown, whether requested before or after the due date of the return.

(g) Notwithstanding any other provision of this section, in the event the total amount of tax anticipated to be collected within a calendar quarter does not exceed \$120, the seller of such service may, with the written authorization of the municipality, remit the taxes collected during such calendar quarter to the municipality quarterly. In such case, the tax shall be due on or before the 20th day of the month following the end of the calendar quarter in which the taxes were collected.

(10) A purchaser who claims an exemption under subsection (4), subsection (5), or paragraph (9)(e) shall certify to the seller that he or she qualifies for the exemption, which certification may encompass all purchases after a specified date or other multiple purchases. For purchases made under paragraph (9)(e) which are exempted, upon the presentation of a certificate, from the tax imposed by chapter 212, the certification required by this subsection may be satisfied by presentation of a certificate that satisfies the requirements of chapter 212. A seller accepting the certification required by this subsection is relieved of the obligation to collect and remit tax; however, a governmental body that is exempt from the tax authorized by this section

shall not be required to furnish such certification, and a seller is not required to collect tax from such an exempt governmental body.

(11) Governmental bodies which sell or resell taxable service to nonexempt end users must collect and remit the tax levied under this section.

Section 3. Section 166.233, Florida Statutes, is created to read:

166.233 Public service tax; effective dates; procedures for informing sellers of tax levies and related information.—

(1) As used in this section and ss. 166.231, 166.232, and 166.234:

(a) “Department” means the Department of Revenue or its designated agent.

(b) “Effective date,” with respect to any levy, repeal of a levy, or update to a list required under this section, means the effective date of the related obligation or change in the obligation of sellers to collect the tax; however, with respect to taxable service that is regularly billed on a monthly cycle basis, each levy, repeal, or update applies to any bill dated on or after the effective date of such event.

(c) “Levy” means and includes the imposition of a tax under s. 166.231 or s. 166.232, all changes in the rate of a tax imposed under either of those sections, and all changes of election under s. 166.231(9)(a).

(d) “Seller” means a person who sells a service that is subject to a levy.

(2)(a) A tax levy must be adopted by ordinance, and the effective date of every levy or repeal thereof must be a subsequent January 1, April 1, July 1, or October 1. A municipality shall notify the department of the adoption or repeal of a levy at least 120 days before the effective date thereof. Such notification must be furnished on a form prescribed by the department and must specify the services taxed under the authority of s. 166.231 or s. 166.232, including any election under s. 166.231(9)(a), the rate of tax applied to each service, the effective date of the levy or repeal thereof, and the name, mailing address, and telephone number of a person designated by the municipality to respond to inquiries concerning the tax. The department shall maintain this information for the purpose of responding to inquiries with respect thereto, and any person may in writing request such information from the department. For purposes of this section, a response to such a person is timely if in writing and dated no later than 20 days after the receipt of the request. The department shall charge such persons a fee to recover the actual cost of maintaining and furnishing such information. The department has no liability for any loss of or decrease in revenue by reason of any error, omission, or untimely action that results in the nonpayment of the tax imposed under s. 166.231 or s. 166.232. The provisions of this paragraph which prescribe effective dates and require municipalities to furnish notifications to the department do not apply to taxes levied on service, other than telecommunication service, provided by the municipality levying the tax or by a separate utility authority, board, or commission of the municipality.

(b) The department may contract with a private entity to maintain and furnish the information described in paragraph (a); however, the department shall establish the fee charged to persons requesting that information.

(3) A municipality shall provide to any person, within 20 days following receipt of the person's written request, a copy of the ordinance adopting any levy and all amendments thereto, and shall advise such person in writing of the types of media on which the lists described in this subsection are available, the charges, if any, for supplying the lists on each available medium, and the address to which a request for such lists should be transmitted. Within 20 days following receipt of a written request therefor accompanied by payment of the cost, the municipality shall transmit the following to the person requesting them:

(a) A list containing each street name, known street name aliases, street address number ranges, applicable directionals, and zip codes associated with each street name, for all street addresses located within the municipality. For a range of street address numbers located within a municipality which consists only of odd or even street numbers, the list must specify whether the street numbers in the range are odd or even. The list shall be alphabetical, except that numbered streets shall be in numerical sequence;

(b) A list containing each postal zip code and all the city names associated therewith for all zip codes assigned to geographic areas located entirely within the municipality, including zip codes assigned to post office boxes; and

(c) A sequential list containing all post office box number ranges and the city names and zip codes associated therewith, for all post office boxes located within the municipality, except that post office boxes with postal zip codes entirely within the municipality which are included on the list furnished under paragraph (b) need not be duplicated.

The lists shall be printed, except that, if a list is available on another medium, the municipality shall, upon request, furnish the list on such medium in addition to or in lieu of the printed lists. The municipality shall be responsible for updating the lists as changes occur and for furnishing this information to all sellers affected by the changes. Each update shall specify an effective date which shall be either the next ensuing January 1, April 1, July 1, or October 1; shall be furnished to sellers not less than 60 days prior to the effective date; and shall identify the additions, deletions, and other changes to the preceding version of the list. The seller shall be responsible for charging the tax only to service and billing addresses contained in the lists which include all the required elements required by this subsection, including lists furnished to it by a municipality without the seller's request. The municipality shall be entitled to collect a fee not to exceed the actual cost of duplicating the information furnished to the person requesting it.

(4) The obligation of a seller to collect and remit the tax for any municipality is conditioned upon the timely availability to the seller of accurate information as described in subsections (2) and (3) in the manner prescribed in those subsections. For purposes of determining the timeliness of such



information, the date of a request, response, update, or other transmittal is the date received. If any such information is not timely furnished to a seller, any related obligation to collect and remit tax is suspended during the period of delay, except that:

(a) If a request for information described in subsection (2) or subsection (3) precedes the date on which a municipality is required to furnish notification to the department as prescribed in subsection (2), the lack of a timely response to the request does not affect the seller's obligation to collect and remit tax for that municipality.

(b) If a seller is properly collecting and remitting tax on a taxable service from customers within a municipality as of the date of any request for information under subsection (2) or subsection (3), the lack of a timely response to the request does not affect the seller's obligation to continue collecting and remitting the tax levied on the same service from the same customers.

(c) If a failure to furnish timely information under subsection (2) or subsection (3) causes a delay in a seller's receipt of a list or update required by subsection (3) to a date less than 60 days before the effective date of a levy or update, the obligation to collect and remit tax pursuant thereto may not commence until the next subsequent January 1, April 1, July 1, or October 1.

(5) If it is determined from lists or updates furnished under subsection (3) that more than one municipality claims the same address or group of addresses, the seller shall notify the municipalities affected within 60 days. Upon resolution of the competing claims, the affected municipalities shall furnish the seller with a signed agreement describing the resolution. The seller shall begin collecting and remitting tax pursuant to the agreement as of the next ensuing January 1, April 1, July 1, or October 1 that is at least 60 days after its receipt of the signed agreement. Prior to such date, the seller shall continue its prior tax treatment of charges to customers with addresses subject to competing claims. For purposes of this subsection, "prior tax treatment" means the practice of collecting and remitting or not collecting and remitting tax during periods prior to discovery of the competing claims. The seller has no liability to any affected municipality for amounts not collected and remitted before the agreement was implemented, except to the extent that the seller's prior tax treatment was confirmed as correct in the agreement.

(6) If a list or update furnished pursuant to subsection (3) contains all the elements required by that subsection, but such information does not conform with address information in the seller's records, the seller may so notify the municipality that furnished the list or update. The notification shall identify the portion of the list or update that is in question and describe the nature of the problem. If the seller furnishes such a notification within 60 days after first receiving the list or update from the municipality, the seller shall not be obligated to collect and remit the tax with respect to the portion of the list or update at issue until the next ensuing January 1, April 1, July 1, or October 1 which is at least 60 days after the municipality furnishes the seller with information which resolves the issue raised by the seller.

Section 4. Section 166.234, Florida Statutes, is created to read:

166.234 Public service tax; administrative provisions; rights and remedies.—

(1) A municipality may, during the seller's normal business hours at the official location of the seller's books and records, audit the records of any seller of a service that is taxable by the municipality under s. 166.231 or s. 166.232, for the purpose of ascertaining whether taxable services have been provided or the correctness of any return that has been filed or payment that has been made, if the municipality's power to assess tax or grant a refund is not barred by the applicable limitations period. Each such seller must provide to the municipality, upon 60 days' written notice of intent to audit from the municipality, access to applicable records for such service, except an extension of this 60-day period must be granted if reasonably requested by the seller. The seller may at its option waive the 60-day notice requirement. If either the municipality or the seller requires an additional extension, it must give notice to the other no less than 30 days before the existing extension expires, except in cases of bona fide emergency or waiver of the notice requirement by the other party. In an audit, the seller is liable only for its taxable accounts collected which correspond to the information provided to it by the municipality under s. 166.233(3). As used in this section, "applicable records" means records kept in the ordinary course of business which establish the collection and remittance of taxes due. Such applicable records may be provided to the municipality on an electronic medium if agreed to by the seller and the municipality. No fee or any portion of a fee for audits conducted on behalf of a municipality shall be based upon the amount assessed or collected as a result of the audit, and no determination based upon an audit conducted in violation of this prohibition shall be valid.

(2) Each seller of services that are taxable under s. 166.231 or s. 166.232 shall preserve applicable records relating to such taxes until the expiration of the time within which the municipality may make an assessment with respect to that tax; however, a seller is not required to retain duplicative or redundant records.

(3) Before auditing a seller under subsection (1), the municipality shall, upon request of the seller, discuss with the seller the municipality's proposed audit methodology. The municipality shall prepare and furnish to the seller a report of each audit which identifies the nature of any deficiency or overpayment, the amount thereof, and the manner in which the amount was computed. In addition, the municipality, upon request and no less than 45 days before issuing a determination under subsection (8), shall furnish the seller with all other information or material in possession of the municipality or its agents which is necessary to supplement the audit findings.

(4)(a) A municipality may issue a proposed assessment of tax levied under s. 166.231 or s. 166.232 within 3 years after the date the tax was due. However, this limitation is tolled for 1 year if within the 3-year period the municipality issues to the seller a notice of intent to audit. If the audit cannot be completed prior to the expiration of this limitation period as extended by tolling, and such condition is due to the seller's refusal or delay

in allowing access to applicable records, the municipality may make a proposed assessment from an estimate based upon the best information available for the taxable period, unless the seller agrees in writing to extend the limitations period. The municipality may also make a proposed assessment from such an estimate if, notwithstanding agreed extensions of the limitations period to a date which is 3 years following issuance of the notice of intent to audit, the seller does not allow access to applicable records prior to such date.

(b) A seller may apply to a municipality for refund of, or may take a credit for, any overpayment of tax or interest or penalty thereon within 3 years following remittance by the seller, and the municipality must refund or allow the seller credit for such overpayments as were remitted to the municipality. However, in the case of an overpayment which the seller has previously refunded or credited to a purchaser in accordance with subsection (6), the limitation period for the seller's refund application or credit shall expire 3 years following the seller's remittance to the municipality or 60 days following the seller's issuance of the refund or credit to the purchaser, whichever is later.

(c) Upon expiration of the periods set forth in this subsection, the municipality's right to assess tax, interest, or penalty and the seller's right to apply for a refund or credit expire and are barred, unless fraud has occurred; however, sellers and municipalities may enter into agreements to extend these periods.

(5) Notwithstanding subsection (4), a municipality shall offset a seller's overpayment of any tax, interest, or penalty revealed by an audit against any deficiency of tax, interest, or penalty which is determined to be due for the same audit period, and such offsets must be reflected in any proposed assessment. If the overpayments by the seller exceed the deficiency, the municipality must refund to the seller the amount by which the aggregate overpayments exceed the total deficiency. Absent proof to the contrary, the methodology that is employed in computing the amount of a deficiency is presumed to yield an appropriate computation of the amount of any overpayments. As used in subsection (4) and this subsection, "overpayment" to a municipality means and includes all remittances of public service tax, interest, or penalty which were not due to the municipality, including amounts properly collected but remitted to the incorrect municipality.

(6) Any purchaser of a service may request from a seller a refund of, or credit for, taxes collected from the purchaser upon the ground that the amounts collected were not due to any municipality. The seller shall issue the refund or allow a credit to the purchaser entitled thereto, if the request is made within 3 years following collection of the tax from the purchaser. In any event, a seller shall issue a refund or credit to a purchaser within 45 days following the seller's determination of the amount of taxes collected from the purchaser within the preceding 3 years that were not due to any municipality.

(7) Municipalities are authorized to assess interest and penalties in accordance with this subsection for failure to pay any tax when due or to file

any required return, except that no penalty shall be assessed absent willful neglect, willful negligence, or fraud. Interest may be assessed at a maximum rate of 1 percent per month of the delinquent tax from the date the tax was due until paid. Penalties may be assessed at a maximum rate of 5 percent per month of the delinquent tax, not to exceed a total penalty of 25 percent, except that a municipality may provide that in no event will the penalty for failure to file a return be less than \$15. In the case of a fraudulent return or a willful intent to evade payment of the tax, the seller making such fraudulent return or willfully attempting to evade payment of the tax, shall be liable for a specific penalty of 100 percent of the tax. Interest and penalties shall be computed on the net tax due after application of any overpayments, and are subject to compromise pursuant to subsection (14). Interest or penalties and the rates thereof shall be authorized by ordinance.

(8) Any proposed assessment or finding of amounts due the seller constitutes a determination of the municipality for purposes of this section. A determination must separately state the amounts of tax, interest, and penalty claimed to be due or to be refunded, must be accompanied by a written narrative explanation of the basis for the municipality's determinations, must inform the seller of the remedies available to it if it disagrees with any such determination, and must state the consequences of the seller's failure to comply with any demand of the municipality which is stated in the determination.

(9) A seller may file with the municipality a written protest of any determination within 60 days after the determination is issued. The municipality must consider the protest and must, within 60 days, issue a written notice of decision to the seller. The seller may petition the municipality for reconsideration of a notice of decision within 30 days after the issuance of the notice, and, following reconsideration of such a petition, the municipality must, within 30 days, issue a written notice of reconsideration to the seller.

(10) A determination becomes final 60 days after the date of issuance, unless the seller, before the 60-day period expires, has filed a protest or secured a written extension of time within which to file a protest. If the seller has secured a written extension of time and fails to file a protest within the extended time period, the proposed assessment becomes a final assessment at the expiration of the extended filing period. If a protest is timely filed and the seller and the municipality are unable to resolve the disputed issues, the determination becomes final as of the date of issuance of the notice of decision, unless the seller timely files a petition for reconsideration. If a petition for reconsideration is timely filed, the determination becomes final upon issuance of a notice of reconsideration.

(11) A notice of decision or a notice of reconsideration must address each issue raised in the protest or petition, must explain the reasoning underlying the conclusions reached, and must advise the seller of the remedies available to it if it disagrees with the municipality's disposition of the issues.

(12) A seller may contest the legality of any determination by filing an action in circuit court within 60 days after the date the determination becomes final. However, in any action filed in circuit court to contest the

legality of any tax, penalty, or interest assessed under this section, the plaintiff must pay the municipality the amount of the tax, penalty, and accrued interest which is not being contested by the seller. Venue lies in the county where the municipality is located. The defendant in any such action is the municipality.

(13) A seller's failure to protest a determination under this section administratively or judicially does not waive or impair the seller's right to seek refund of any overpayment within the time allowed under subsection (4).

(14) A seller's liability for any tax, interest, or penalty may be settled or compromised by the municipality upon the grounds of doubt as to liability or doubt as to the collectibility of such tax, interest, or penalty. A municipality and a seller may enter into a written closing agreement that reflects the terms of any settlement or compromise. When such a closing agreement has been approved on behalf of the municipality and the seller, it is final, conclusive, and binding on the parties with respect to all matters set forth therein; and, except upon a showing of fraud or misrepresentation of material fact, additional assessment may not be made against the seller for the tax, interest, or penalty specified in the closing agreement for the time period specified in the closing agreement, and the seller may not institute any judicial or administrative proceeding to recover any tax, interest, or penalty paid under the closing agreement. In issuing a determination, a municipality must include in its notification thereof to the seller the names of the persons authorized to approve compromises and to execute closing agreements. A municipality may also enter into agreements for scheduling payments of taxes, interest, and penalties, which agreements must recognize both the seller's financial condition and the best interest of the municipality, if the seller gives accurate, current information and meets all other tax obligations on schedule.

(15) All notices of intent to audit, determinations, notices of decisions, and notices of reconsideration issued under this section must be transmitted to the seller by certified mail, return receipt requested, and the date of issuance is the postmark date of the transmittal. All protests and petitions for reconsideration are timely filed if postmarked or received by the municipality within the time prescribed by this section. If mailed, protests and petitions must be transmitted by certified mail, return receipt requested.

(16) A seller may pay any contested amount, in whole or in part, at any time, and the payment does not impair any of the seller's remedies as provided in this section.

(17) Each municipality that levies the public service tax shall furnish sellers with prompt, accurate responses to questions and to requests for tax assistance. In the event a law is enacted requiring payment of interest on refunds of taxes paid pursuant to chapter 203 or chapter 212, municipalities shall pay interest on public service tax refunds at the rate required by such law.

(18) In all matters connected with the administration of the public service tax, sellers have the right:

- (a) To be represented by counsel or other qualified representatives;
- (b) To procedural safeguards with respect to the recording of interviews during tax determination processes conducted by the municipality; and
- (c) To have audits, inspections of records, and interviews conducted at a reasonable time and place.

(19) Municipalities may communicate with each other concerning the following:

(a) Technical information concerning a seller's tax and accounting system necessary to conduct an accurate and efficient audit of a specific company; however, in no event shall the information include any data relevant to a specific purchaser or account or the seller's tax treatment of specific services;

(b) Names and addresses of companies selling taxable services within their respective jurisdictions; and

(c) The name of any company issued a refund of taxes and the total amount of taxes refunded to such company.

(20) Except as otherwise provided in this subsection, a municipality may not assess or attempt to assess a seller for any costs incurred by or charged to the municipality in connection with performing an audit of the seller's books and records, including all travel expenses. Any assessment or proposed assessment of such costs shall be void and unenforceable. A municipality may, however, assess and collect from the seller the reasonable travel expenses incurred by or charged to the municipality in connection with performing an audit of the seller's books and records if the seller received timely notice requesting access to such books and records in accordance with subsection (1) and the seller failed or refused to allow such access and did not propose an alternative date on which the audit was to commence, or if the seller and the municipality agreed in writing to an alternative date on which the audit was to commence but the seller then failed or refused to permit reasonable access to its books and records on the alternative date.

(21) The provisions of this section, other than subsection (6), shall not apply to the extent that the seller is the municipality levying the tax under audit or a separate utility authority, board, or commission of such municipality.

Section 5. (1) No later than September 1, 1997, each municipality levying a tax under s. 166.231 or s. 166.232, Florida Statutes, shall furnish to the Department of Revenue a notification that specifies the services taxed by such municipality under the authority of either section, including any election chosen by the municipality under s. 166.231(9)(a), Florida Statutes; the rate of tax applied to each service; the effective date of the levy; and the name, mailing address, and telephone number of a person designated by the municipality to respond to inquiries concerning the tax. The notification must include such information for levies with prior and future effective dates.

(2) Address listings and updates that conform to the requirements of s. 166.231(10)(d), Florida Statutes, as in effect before the effective date of this act, are in compliance with this act and sellers may rely thereon, until July 1, 1998. However, no later than January 1, 1998, each municipality shall make available lists which conform to the requirements of this act, and such lists shall have an effective date of July 1, 1998.

(3) Section 166.234, Florida Statutes, as created by this act, applies to all taxes, assessments, and audits for periods before and after the effective date of this act, except as follows:

(a) Provisions requiring the performance of acts before the commencement of an audit do not apply to audits commenced before the effective date of this act.

(b) Nothing in s. 166.234, Florida Statutes, affects taxes and assessments that have been resolved by concession of liability and payment, by settlement, or by other means, before the effective date of this act.

(c) The requirements that municipalities furnish the information prescribed in s. 166.234(3) and (8), Florida Statutes, do not apply to determinations issued before the effective date of this act, except that upon the seller's request a municipality shall furnish such information to the seller. No notice, report, determination, protest, petition, or other document issued before the effective date of this act is invalid merely because its contents or the manner or timing of its transmittal do not comply with s. 166.234, Florida Statutes.

(d) In the case of audits that are the subject of pending litigation as of the effective date of this act, the requirements and limitations of s. 166.234(12), Florida Statutes, do not apply to actions filed before the effective date of this act.

(e) The provisions of s. 166.234(4)(a), Florida Statutes, shall not apply to taxes due prior to July 1, 1994. A proposed assessment for taxes due prior to July 1, 1994, may be issued on or before July 1, 1997, for any audit period beginning on or after July 1, 1992, which is specified in a notice of intent to audit issued before March 1, 1997. After July 1, 1997, the municipality's right to assess such taxes shall expire and be barred. However, if the municipality is unable to complete such an audit due to the seller's refusal or delay in allowing access to applicable records, the municipality may make an estimate based upon the best information available unless the seller agrees in writing to extend the limitations period.

Section 6. Subsection (10) is added to section 203.01, Florida Statutes, 1996 Supplement, to read:

203.01 Tax on gross receipts for utility services.—

(10) Notwithstanding the provisions of subsection (5) and s. 212.07(2), sums that were charged or billed as taxes under this section and chapter 212 and that were remitted to the state in full as taxes shall not be subject to refund by the state or by the utility which remitted the sums, when the

amount remitted was not in excess of the amount of tax imposed by chapter 212 and this section.

Section 7. Subsection (4) is added to section 203.63, Florida Statutes, to read:

203.63 Tax on interstate and international telecommunication services.—

(4) Notwithstanding the provisions of subsection (1) and s. 212.07(2), sums that were charged or billed as taxes under this section and chapter 212 and that were remitted to the state in full as taxes shall not be subject to refund by the state or by the utility which remitted the sums, when the amount remitted was not in excess of the amount of tax imposed by chapter 212 and this section.

Section 8. It is the intent of the Legislature that the creation of s. 203.01(10), Florida Statutes, 1996 Supplement, and s. 203.63(4), Florida Statutes, by this act are remedial and are intended to clarify existing law.

Section 9. The sum of \$35,000 is appropriated to the Department of Revenue from the Administrative Trust Fund for fiscal year 1997-1998, and one full-time-equivalent position is authorized, for the purpose of performing the functions identified in s. 166.233(2), Florida Statutes, as created by this act.

Section 10. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared severable.

Section 11. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 30, 1997.

Filed in Office Secretary of State May 29, 1997.