

CHAPTER 97-283

Committee Substitute for Committee Substitute for Senate Bill Nos. 404 and 414

An act relating to taxation of Internet access, electronic mail, electronic bulletin board, or on-line services; amending s. 203.012, F.S.; providing that the term “telecommunication service” does not include Internet access, electronic mail, electronic bulletin board, or similar on-line computer services for purposes of gross receipts taxes; revising the definition of the term “teletypewriter or computer exchange service” to remove computer exchange service; reenacting s. 166.231(10), F.S., relating to the municipal public service tax on telecommunication service, and s. 212.05(1)(e), F.S., relating to the sales and use tax on telecommunication service, to incorporate the amendment to s. 203.012, F.S., in references thereto; providing intent; providing an effective date.

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

Section 1. Subsections (3), (5), and (6) of section 203.012, Florida Statutes, are amended to read:

203.012 Definitions.—As used in this chapter:

(3) The term “local telephone service” means:

(a) The access to a local telephone system, and the privilege of telephonic-quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system; or

(b) Any facility or service provided in connection with a service described in paragraph (a).

The term “local telephone service” does not include any service which is a toll telephone service; private communication service; cellular mobile telephone or telecommunication service; specialized mobile radio, or pagers and paging, service, including but not limited to “beepers” and any other form of mobile and portable one-way or two-way communication; or teletypewriter or ~~computer exchange~~ service.

(5) The term “telecommunication service” means:

(a) Local telephone service, toll telephone service, telegram or telegraph service, teletypewriter or ~~computer exchange~~ service, or private communication service; or

(b) Cellular mobile telephone or telecommunication service; or specialized mobile radio, and pagers and paging, service, including but not limited to “beepers” and any other form of mobile and portable one-way or two-way

communication; but does not include services or equipment incidental to telecommunication services enumerated in this paragraph such as maintenance of customer premises equipment, whether owned by the customer or not, or equipment sales or rental for which charges are separately stated, itemized, or described on the bill, invoice, or other tangible evidence of the provision of such service.

The term “telecommunication service” does not include any Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer service.

(6) The term “~~teletypewriter or computer exchange~~ service” means the access from a teletypewriter, telephone, ~~computer~~, or other data station of which such station is a part, and the privilege of intercommunication by such station with substantially all persons having teletypewriter, telephone, ~~computer~~, or other data stations constituting a part of the same teletypewriter or ~~computer exchange~~ system, to which the subscriber or user is entitled upon payment of a charge or charges, whether such charge or charges are determined as a flat periodic amount, on the basis of distance and elapsed transmission time, or some other method. The term “teletypewriter or ~~computer exchange~~ service” does not include local telephone service or toll telephone service.

Section 2. For the purpose of incorporating the amendment to section 203.012, Florida Statutes, in a reference thereto, subsection (10) of section 166.231, Florida Statutes, 1996 Supplement, is reenacted to read:

166.231 Municipalities; public service tax.—

(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 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, the total amount billed for such telecommunications service to a telephone or telephone number, a telecommunications number or device, 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.

(e) A municipality may audit the records of any provider of telecommunications service taxable by such municipality; 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).

(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.

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.

Section 3. For the purpose of incorporating the amendment to section 203.012, Florida Statutes, in a reference thereto, paragraph (e) of subsection (1) of section 212.05, Florida Statutes, 1996 Supplement, is reenacted to read:

212.05 Sales, storage, use tax.—It is hereby declared to be the legislative intent that every person is exercising a taxable privilege who engages in the business of selling tangible personal property at retail in this state, including the business of making mail order sales, or who rents or furnishes any of the things or services taxable under this chapter, or who stores for use or consumption in this state any item or article of tangible personal property as defined herein and who leases or rents such property within the state.

(1) For the exercise of such privilege, a tax is levied on each taxable transaction or incident, which tax is due and payable as follows:

(e)1. At the rate of 6 percent on charges for:

a. All telegraph messages and long-distance telephone calls beginning and terminating in this state, telecommunication service as defined in s. 203.012, and those services described in s. 203.012(2)(a), except that the tax rate for charges for telecommunication service is 7 percent.

b. Any television system program service.

c. The installation of telecommunication and telegraphic equipment.

d. Electrical power or energy, except that the tax rate for charges for electrical power or energy is 7 percent.

2. For purposes of this part, "television system program service" means the transmitting, by any means, of any audio or video signal to a subscriber for other than retransmission, or the installing, connecting, reconnecting, disconnecting, moving, or changing of any equipment related to such service. For purposes of this part, the term "telecommunication service" does not include local service provided through a pay telephone. The provisions of s. 212.17(3), regarding credit for tax paid on charges subsequently found to be worthless, shall be equally applicable to any tax paid under the provisions of this section on charges for telecommunication or telegraph services or electric power subsequently found to be uncollectible. The word "charges" in this paragraph does not include any excise or similar tax levied by the Federal Government, any political subdivision of the state, or any municipality upon the purchase or sale of telecommunication, television system program, or telegraph service or electric power, which tax is collected by the seller from the purchaser.

3. Telegraph messages and telecommunication services which originate or terminate in this state, other than interstate private communication services, and are billed to a customer, telephone number, or device located within this state are taxable under this paragraph. Interstate private communication services are taxable under this paragraph as follows:

a. One hundred percent of the charge imposed at each channel termination point within this state;

b. One hundred percent of the charge imposed for the total channel mileage between each channel termination point within this state; and

c. The portion of the interstate interoffice channel mileage charge as determined by multiplying said charge times a fraction, the numerator of which is the air miles between the last channel termination point in this state and the vertical and horizontal coordinates, 7856 and 1756, respectively, and the denominator of which is the air miles between the last channel termination point in this state and the first channel termination point outside this state. The denominator of this fraction shall be adjusted, if necessary, by adding the numerator of said fraction to similarly determined air miles in the state in which the other channel termination point is located, so that the summation of the apportionment factor for this state and the apportionment factor for the other state is not greater than one, to ensure that no more than 100 percent of the interstate interoffice channel mileage charge can be taxed by this state and another state.

4. The tax imposed pursuant to this paragraph shall not exceed \$50,000 per calendar year on charges to any person for interstate telecommunications services defined in s. 203.012(4) and (7)(b), if the majority of such services used by such person are for communications originating outside of this state and terminating in this state. This exemption shall only be granted to holders of a direct pay permit issued pursuant to this subparagraph. No refunds shall be given for taxes paid prior to receiving a direct pay permit. Upon application, the department may issue a direct pay permit to the purchaser of telecommunications services authorizing such purchaser to pay tax on such services directly to the department. Any vendor furnishing

telecommunications services to the holder of a valid direct pay permit shall be relieved of the obligation to collect and remit the tax on such service. Tax payments and returns pursuant to a direct pay permit shall be monthly. For purposes of this subparagraph, the term "person" shall be limited to a single legal entity and shall not be construed as meaning a group or combination of affiliated entities or entities controlled by one person or group of persons.

5. If the sale of a television system program service, as defined in this paragraph, also involves the sale of an item exempt under s. 212.08(7)(j), the tax shall be applied to the value of the taxable service when it is sold separately. 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, except that the amount identified as taxable shall not be less than the cost of the service.

Section 4. It is the intent of the Legislature that this act is remedial and is intended to clarify existing law.

Section 5. This act shall take effect upon becoming a law.

Became a law without the Governor's approval May 31, 1997.

Filed in Office Secretary of State May 30, 1997.