

Committee Substitute for Senate Bill No. 2070

An act relating to communications services; amending s. 202.12, F.S.; deleting a provision relating to the manner in which the tax on gross receipts for communications services is applied to a substitute communications system; amending ss. 202.16, 202.17, and 202.18, F.S.; correcting cross-references; amending s. 202.19, F.S.; deleting a provision authorizing the imposition of a local communications services tax on substitute communications systems; amending s. 203.01, F.S.; deleting a provision authorizing the imposition of a gross receipts tax on actual costs of operating substitute communications systems; amending s. 624.105, F.S.; correcting a cross-reference; specifying that retroactive operation is remedial and does not create any right to or require any refunds; repealing s. 202.15, F.S., relating to special rules for users of substitute communications systems; providing for retroactive operation; providing an effective date; creating the Communications Service Tax Task Force; providing for the membership of the task force; providing a purpose; providing for staffing and administrative support; requiring a report to the Governor and the Legislature; providing appropriations; amending s. 202.11, F.S.; redefining the term “communications services”; providing that the definition of sales price for purposes of communication services tax does not include specified charges for Internet access services; defining the term “service address” when the location of the equipment is unknown or under other circumstances; amending s. 202.26, F.S.; prescribing methods of record keeping relating to bundled sales; amending s. 212.02, F.S.; providing that the definition of sales price for purposes of sales tax does not include specified charges for Internet access services; amending s. 202.13, F.S.; prescribing methods of record keeping relating to bundled sales; providing for emergency rulemaking by the Department of Revenue; amending s. 202.17, F.S.; providing intent that all sellers of communications services must comply with ch. 202, F.S.; providing an effective date.

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

Section 1. Sections (2) through (15) of section 202.11, Florida Statutes, are renumbered as subsections (1) through (14), respectively, subsections (17) through (25) of that section are renumbered as subsections (15) through (23), respectively, and present subsections (1) and (16) of that section are amended to read:

202.11 Definitions.—As used in this chapter:

(1) ~~“Actual cost of operating a substitute communications system” includes, but is not limited to, depreciation, interest, maintenance, repair, and other expenses directly attributable to the operation of such system. For purposes of this chapter, the depreciation expense included in actual cost is the depreciation expense claimed for federal income tax purposes. The total~~

amount of any payment required by a lease or rental contract or agreement must be included within the actual cost of operating the substitute communications system.

~~(16) "Substitute communications system" means any telephone system, or other system capable of providing communications services, which a person purchases, installs, rents, or leases for his or her own use to provide himself or herself with services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communication path.~~

Section 2. Paragraphs (c), (d), and (e) of subsection (1) of section 202.12, Florida Statutes, are redesignated as paragraphs (b), (c), and (d), respectively, and present paragraph (b) of subsection (1) and subsection (2) of that section are amended to read:

202.12 Sales of communications services.—The Legislature finds that every person who engages in the business of selling communications services at retail in this state is exercising a taxable privilege. It is the intent of the Legislature that the tax imposed by chapter 203 be administered as provided in this chapter.

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

~~(b) At the rate set forth in paragraph (a) on the actual cost of operating a substitute communications system, to be paid in accordance with s. 202.15. This paragraph does not apply to the use by any dealer of his or her own communications system to conduct a business of providing communications services or any communications system operated by a county, a municipality, the state, or any political subdivision of the state. The gross receipts tax imposed by chapter 203 shall be applied to the same costs, and remitted with the tax imposed by this paragraph.~~

(2) A dealer of taxable communications services shall bill, collect, and remit the taxes on communications services imposed pursuant to chapter 203 and this section at a combined rate that is the sum of the rate of tax on communications services prescribed in chapter 203 and the applicable rate of tax prescribed in this section. ~~Each dealer subject to the tax provided in paragraph (1)(b) shall also remit the taxes imposed pursuant to chapter 203 and this section on a combined basis.~~ However, a dealer shall, in reporting each remittance to the department, identify the portion thereof which consists of taxes remitted pursuant to chapter 203. Return forms prescribed by the department shall facilitate such reporting.

Section 3. Paragraph (a) of subsection (1) of section 202.16, Florida Statutes, is amended to read:

202.16 Payment.—The taxes imposed or administered under this chapter and chapter 203 shall be collected from all dealers of taxable communications services on the sale at retail in this state of communications services taxable under this chapter and chapter 203. The full amount of the taxes on a credit sale, installment sale, or sale made on any kind of deferred payment

plan is due at the moment of the transaction in the same manner as a cash sale.

(1)(a) ~~Except as otherwise provided in ss. 202.12(1)(b) and 202.15,~~ The taxes collected under this chapter and chapter 203 shall be paid by the purchaser of the communications service and shall be collected from such person by the dealer of communications services.

Section 4. Subsection (6) of section 202.17, Florida Statutes, is amended to read:

202.17 Registration.—

(6) In addition to the certificate of registration, the department shall provide to each newly registered dealer an initial resale certificate that is valid for the remainder of the period of issuance. The department shall provide to each active dealer, ~~except persons registered pursuant to s. 202.15,~~ an annual resale certificate. As used in this section, the term “active dealer” means a person who is registered with the department and who is required to file a return at least once during each applicable reporting period.

Section 5. Subsections (1) and (2) of section 202.18, Florida Statutes, are amended to read:

202.18 Allocation and disposition of tax proceeds.—The proceeds of the communications services taxes remitted under this chapter shall be treated as follows:

(1) The proceeds of the taxes remitted under s. 202.12(1)(a) ~~and (b)~~ shall be divided as follows:

(a) The portion of such proceeds which constitutes gross receipts taxes, imposed at the rate prescribed in chapter 203, shall be deposited as provided by law and in accordance with s. 9, Art. XII of the State Constitution.

(b) The remaining portion shall be distributed according to s. 212.20(6).

(2) The proceeds of the taxes remitted under s. 202.12(1)(~~b~~)(e) shall be divided as follows:

(a) The portion of such proceeds which constitutes gross receipts taxes, imposed at the rate prescribed in chapter 203, shall be deposited as provided by law and in accordance with s. 9, Art. XII of the State Constitution.

(b) Sixty-three percent of the remainder shall be allocated to the state and distributed pursuant to s. 212.20(6), except that the proceeds allocated pursuant to s. 212.20(6)(d)3. shall be prorated to the participating counties in the same proportion as that month’s collection of the taxes and fees imposed pursuant to chapter 212 and paragraph (1)(b).

(c)1. During each calendar year, the remaining portion of such proceeds shall be transferred to the Local Government Half-cent Sales Tax Clearing Trust Fund and shall be allocated in the same proportion as the allocation

of total receipts of the half-cent sales tax under s. 218.61 and the emergency distribution under s. 218.65 in the prior state fiscal year.

2. The proportion of the proceeds allocated based on the emergency distribution under s. 218.65 shall be distributed pursuant to s. 218.65.

3. In each calendar year, the proportion of the proceeds allocated based on the half-cent sales tax under s. 218.61 shall be allocated to each county in the same proportion as the county's percentage of total sales tax allocation for the prior state fiscal year and distributed pursuant to s. 218.62.

4. The department shall distribute the appropriate amount to each municipality and county each month at the same time that local communications services taxes are distributed pursuant to subsection (3).

Section 6. Subsections (8) through (12) of section 202.19, Florida Statutes, are renumbered as subsections (7) through (11), respectively, and present subsection (7) of that section is amended to read:

202.19 Authorization to impose local communications services tax.—

~~(7) Any tax imposed by a municipality, school board, or county under this section also applies to the actual cost of operating a substitute communications system, to be paid in accordance with s. 202.15. This subsection does not apply to the use by any provider of its own communications system to conduct a business of providing communications services or to the use of any communications system operated by a county, a municipality, the state, or any political subdivision of the state.~~

Section 7. Paragraph (a) of subsection (1) of section 203.01, Florida Statutes, is amended to read:

203.01 Tax on gross receipts for utility and communications services.—

(1)(a)1. Every person that receives payment for any utility service shall report by the last day of each month to the Department of Revenue, under oath of the secretary or some other officer of such person, the total amount of gross receipts derived from business done within this state, or between points within this state, for the preceding month and, at the same time, shall pay into the State Treasury an amount equal to a percentage of such gross receipts at the rate set forth in paragraph (b). Such collections shall be certified by the Chief Financial Officer upon the request of the State Board of Education.

2. A tax is levied on communications services as defined in s. 202.11(2)(3). Such tax shall be applied to the same services and transactions as are subject to taxation under chapter 202, and to communications services that are subject to the exemption provided in s. 202.125(1). Such tax shall be applied to the sales price of communications services when sold at retail ~~and to the actual cost of operating substitute communications systems~~, as such terms are defined in s. 202.11, shall be due and payable at the same time as the taxes imposed pursuant to chapter 202, and shall be administered and collected pursuant to the provisions of chapter 202.

Section 8. Section 624.105, Florida Statutes, is amended to read:

624.105 Waiver of customer liability.—Any regulated company as defined in s. 350.111, any electric utility as defined in s. 366.02(2), any utility as defined in s. 367.021(12) or s. 367.022(2) and (7), and any provider of communications services as defined in s. 202.11(2)(~~3~~) may charge for and include an optional waiver of liability provision in their customer contracts under which the entity agrees to waive all or a portion of the customer's liability for service from the entity for a defined period in the event of the customer's call to active military service, death, disability, involuntary unemployment, qualification for family leave, or similar qualifying event or condition. Such provisions may not be effective in the customer's contract with the entity unless affirmatively elected by the customer. No such provision shall constitute insurance so long as the provision is a contract between the entity and its customer.

Section 9. The retroactive application of the provisions of this act are remedial in nature and shall not be construed to create a right to a refund or to require a refund by any governmental entity of any tax, penalty, or interest remitted to the Department of Revenue on substitute communications systems prior to the effective date of this act.

Section 10. Section 202.15, Florida Statutes, is repealed.

Section 11. Sections 1 through 10 of this act shall take effect upon becoming a law and shall apply retroactively to October 1, 2001.

Section 12. (1) The Communications Service Tax Task Force is created and housed for administrative purposes within the Department of Revenue. The task force shall operate independently of the department.

(2)(a) The task force shall consist of nine members, three appointed by the Governor, three appointed by the President of the Senate, and three appointed by the Speaker of the House of Representatives. Members shall serve at the pleasure of the appointing official. Any vacancy shall be filled in the same manner as the original appointment.

(b) All members shall possess expertise in state or national telecommunications policy, taxation, law, or technology. A member of the Legislature or a registered lobbyist may not be appointed to the task force.

(c) Members shall serve without compensation, but are entitled to reimbursement of travel and per diem expenses pursuant to section 112.061, Florida Statutes, relating to completing their duties and responsibilities under this section.

(3) The task force shall study:

(a) The national and state regulatory and tax policies relating to the communications industry, including the Internet Tax Freedom Act;

(b) The levels of tax revenue that have been generated by the communications services taxes imposed or administered pursuant to chapter 202,

Florida Statutes, in the past and that are expected to be generated in the future, and their adequacy in funding government services and bonded indebtedness that rely on them;

(c) The impact of the communications services taxes on Florida's competitiveness;

(d) The impact of the diversity of communications technology and of changes in such technology on the state's ability to design tax laws, the applicability of which is reasonably clear to communications service providers and state administrators, and which are susceptible to efficient and fair administration by the state;

(e) The administrative burdens imposed on communications services providers; and

(f) To the extent that future revenues from the communications services tax are expected to be inadequate to fund government services and bonded indebtedness that rely on them, the options that are available for funding these services and bonded indebtedness.

(4) The task force shall hold its organizational meeting by July 15, 2006. It shall select a chair and vice chair and shall meet at the call of the chair at the time and place designated by the chair or as often as necessary to accomplish the purposes of this section. A quorum is necessary for the purpose of conducting official business of the task force. The task force shall use accepted rules of procedure to conduct its meetings and shall keep a complete record of each meeting.

(5) The Public Service Commission shall provide staff for the technical and regulatory issues addressed by the task force. The Department of Revenue shall provide administrative support and staff for the tax issues addressed by the task force.

(6) The task force shall report its findings and recommendations to the Governor, the President of the Senate, and the Speaker of the House of Representatives by February 1, 2007. The task force shall be dissolved by December 31, 2007.

Section 13. (1) The sum of \$100,000 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of defraying the reimbursable travel and per diem expenses of the Communications Service Tax Task Force.

(2) The sum of \$500,000 is appropriated from the General Revenue Fund to the Department of Revenue for the purpose of retaining expert witnesses and consultant services in the areas of communications technology and computer telephony. The purpose of such services is to provide the Communications Service Tax Task Force with information, technical consulting services, analysis, and testimony regarding the current and future development of network and telecommunications architecture, products, and services and issues regarding the taxation of such products and services. These funds shall be appropriated for the 2005-2006 fiscal year in categories determined by the Department of Revenue which will best support the needs of

the task force. Any unspent funds shall be reappropriated in future fiscal years until the work of the task force is complete.

Section 14. Subsections (3), (14), and (15) of section 202.11, Florida Statutes, are amended to read:

202.11 Definitions.—As used in this chapter:

(3) “Communications services” means the transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals, including cable 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. The term includes such transmission, conveyance, or routing in which computer processing applications are used to act on the form, code, or protocol of the content for purposes of transmission, conveyance, or routing without regard to whether such service is referred to as voice-over-Internet-protocol services or is classified by the Federal Communications Commission as enhanced or value-added. The term does not include:

- (a) Information services.
- (b) Installation or maintenance of wiring or equipment on a customer’s premises.
- (c) The sale or rental of tangible personal property.
- (d) The sale of advertising, including, but not limited to, directory advertising.
- (e) Bad check charges.
- (f) Late payment charges.
- (g) Billing and collection services.
- (h) Internet access service, electronic mail service, electronic bulletin board service, or similar on-line computer services.

(14) “Sales price” means the total amount charged in money or other consideration by a dealer for the sale of the right or privilege of using communications services in this state, including any property or other services that are part of the sale. The sales price of communications services shall not be reduced by any separately identified components of the charge that constitute expenses of the dealer, including, but not limited to, sales taxes on goods or services purchased by the dealer, property taxes, taxes measured by net income, and universal-service fund fees.

(a) The sales price of communications services shall include, whether or not separately stated, charges for any of the following:

1. The connection, movement, change, or termination of communications services.

2. The detailed billing of communications services.
3. The sale of directory listings in connection with a communications service.
4. Central office and custom calling features.
5. Voice mail and other messaging service.
6. Directory assistance.
7. The service of sending or receiving a document commonly referred to as a facsimile or "fax," except when performed during the course of providing professional or advertising services.

(b) The sales price of communications services does not include charges for any of the following:

1. Any excise tax, sales tax, or similar tax levied by the United States or any state or local government on the purchase, sale, use, or consumption of any communications service, including, but not limited to, any tax imposed under this chapter or chapter 203 which is permitted or required to be added to the sales price of such service, if the tax is stated separately.
2. Any fee or assessment levied by the United States or any state or local government, including, but not limited to, regulatory fees and emergency telephone surcharges, which is required to be added to the price of such service if the fee or assessment is separately stated.
3. Communications services paid for by inserting coins into coin-operated communications devices available to the public.
4. The sale or recharge of a prepaid calling arrangement.
5. The provision of air-to-ground communications services, defined as a radio service provided to purchasers while on board an aircraft.
6. A dealer's internal use of communications services in connection with its business of providing communications services.
7. Charges for property or other services that are not part of the sale of communications services, if such charges are stated separately from the charges for communications services.

8. To the extent required by federal law, charges for Internet access services which are not separately itemized on a customer's bill, but which can be reasonably identified from the selling dealer's books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

(15) "Service address" means:

- (a) Except as otherwise provided in this section;

1. The location of the communications equipment from which communications services originate or at which communications services are received by the customer;

2. In the case of a communications service paid through a credit or payment mechanism that does not relate to a service address, such as a bank, travel, debit, or credit card, and in the case of third-number and calling-card calls, the term “service address” means ~~service address~~ is the address of the central office, as determined by the area code and the first three digits of the seven-digit originating telephone number; ~~or~~;

3. If the location of the equipment described in subparagraph 1. is not known and subparagraph 2. is inapplicable, the term “service address” means the location of the customer’s primary use of the communications service. For purposes of this subparagraph, the location of the customer’s primary use of a communications service is the residential street address or the business street address of the customer.

(b) In the case of cable services and direct-to-home satellite services, the location where the customer receives the services in this state.

(c) In the case of mobile communications services, the customer’s place of primary use.

Section 15. Subsection (3) of section 202.26, Florida Statutes, is amended to read:

202.26 Department powers.—

(3) To administer the tax imposed by this chapter, the department may adopt rules relating to:

(a) The filing of returns and remittance of tax, including provisions concerning electronic funds transfer and electronic data interchange.

(b) The determination of customer service addresses.

(c) The interpretation or definition of any exemptions or exclusions from taxation granted by law.

(d) Procedures for handling sales for resale and for determining the taxable status of discounts and rebates.

(e) Methods for granting self-accrual authority to taxpayers.

(f) The records and methods necessary for a dealer to demonstrate the exercise of due diligence as defined by s. 202.22(4)(b).

(g) The creation of the database described in s. 202.22(2) and the certification and recertification of the databases as described in s. 202.22(3).

(h) The registration of dealers.

(i) The review of applications for, and the issuance of, direct-pay permits, and the returns required to be filed by holders thereof.

(j) The types of books and records kept in the regular course of business which must be available during an audit of a dealer's books and records when the dealer has made an allocation or attribution pursuant to the definition of sales prices in s. 202.11(14)(b)8. and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such records may be required to be made available to the department in an electronic format when so kept by the dealer. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state. During an audit, the department may reasonably require production of any additional books and records found necessary to assist in its determination.

Section 16. Subsection (16) of section 212.02, Florida Statutes, is amended to read:

212.02 Definitions.—The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(16) "Sales price" means the total amount paid for tangible personal property, including any services that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of materials used, labor or service cost, interest charged, losses, or any other expense whatsoever. "Sales price" also includes the consideration for a transaction which requires both labor and material to alter, remodel, maintain, adjust, or repair tangible personal property. Trade-ins or discounts allowed and taken at the time of sale shall not be included within the purview of this subsection. "Sales price" also includes the full face value of any coupon used by a purchaser to reduce the price paid to a retailer for an item of tangible personal property; where the retailer will be reimbursed for such coupon, in whole or in part, by the manufacturer of the item of tangible personal property; or whenever it is not practicable for the retailer to determine, at the time of sale, the extent to which reimbursement for the coupon will be made. The term "sales price" does not include federal excise taxes imposed upon the retailer on the sale of tangible personal property. The term "sales price" does include federal manufacturers' excise taxes, even if the federal tax is listed as a separate item on the invoice. To the extent required by federal law, the term "sales price" does not include charges for Internet access services which are not itemized on the customer's bill, but which can be reasonably identified from the selling dealer's books and records kept in the regular course of business. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state.

Section 17. Subsection (3) of section 212.13, Florida Statutes, is amended to read:

212.13 Records required to be kept; power to inspect; audit procedure.—

(3) For the purpose of enforcement of this chapter, every manufacturer and seller of tangible personal property or services licensed within this state is required to permit the department to examine his or her books and records at all reasonable hours, and, upon his or her refusal, the department may require him or her to permit such examination by resort to the circuit courts of this state, subject however to the right of removal of the cause to the judicial circuit wherein such person's business is located or wherein such person's books and records are kept, provided further that such person's books and records are kept within the state. When the dealer has made an allocation or attribution pursuant to the definition of sales price in s. 212.02(16), the department may prescribe by rule the books and records that must be made available during an audit of the dealer's books and records and examples of methods for determining the reasonableness thereof. Books and records kept in the regular course of business include, but are not limited to, general ledgers, price lists, cost records, customer billings, billing system reports, tariffs, and other regulatory filings and rules of regulatory authorities. Such record may be required to be made available to the department in an electronic format when so kept by the dealer. The dealer may support the allocation of charges with books and records kept in the regular course of business covering the dealer's entire service area, including territories outside this state. During an audit, the department may reasonably require production of any additional books and records found necessary to assist in its determination.

Section 18. The Executive Director of the Department of Revenue is authorized, and all conditions are deemed met, to adopt emergency rules under sections 120.563(1) and 120.54(4), Florida Statutes, to administer this act. Notwithstanding any other provision of law, the emergency rules shall remain effective for 6 months after the date of their adoption and may be renewed during the pendency of procedures to adopt rules addressing the subject of the emergency rules.

Section 19. Subsection (8) is added to section 202.17, Florida Statutes, to read:

202.17 Registration.—

(8) It is the intent of the Legislature to subject to the provisions of this chapter all sellers of communications services that have established a sufficient connection with this state to permit the state constitutionally to require compliance with this chapter. Activities of a seller of communications services that may subject such a seller to the provisions of this chapter include, but are not limited to:

(a) Maintaining an office or other place of business within this state.

(b) Solicitation of business from one or more Florida locations through employees, agents, independent contractors, or other representatives of such seller.

Section 20. This act shall take effect July 1, 2005.

Approved by the Governor June 10, 2005.

Filed in Office Secretary of State June 10, 2005.