

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 803 Communications Services Tax

SPONSOR(S): Boyd and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Finance & Tax Subcommittee		Flieger	Langston
2) Energy & Utilities Subcommittee			
3) Appropriations Committee			

SUMMARY ANALYSIS

The bill amends s. 202.11(13)(b), F.S., to add “the use of communications services to furnish a good or service that is not subject to [the communications services tax]” to the list of exemptions from the term “sales price” for the purpose of determining communications services tax liability.

The exclusion applies to the use of a communications service to furnish a product or service that is not subject to tax, whether charged as part of the sales price of the nontaxable good or service or charged separately. Any charge for that nontaxable good or service is also excluded from the definition, regardless of the nomenclature used to describe the charge on an invoice.

The bill also states that the above revision of sales prices does not exempt the sale of communications services to a provider of a good or service that is not subject to the tax.

The Revenue Estimating Conference has not evaluated this bill. Staff estimates that the bill likely has a negative impact on state and local revenues.

The bill has effective date of July 1, 2014.

This bill may be a county or municipality mandate requiring a two-thirds vote of the membership of the House. See Section III.A.1 of the analysis.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Chapter 202, F.S., provides that the sale of communications services is subject to a state communications services tax ("CST"), gross receipts tax, and a locally levied CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Collected local and state communications services taxes are remitted to the Department of Revenue ("the department"), which distributes the proceeds to the appropriate jurisdictions.¹

Current law defines communications services as "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."²

The state CST is set at a rate of 6.65 percent.³ The gross receipt tax is 2.37 percent plus an additional 0.15 percent, for a combined rate of 2.52 percent.⁴ Thus, the state CST and gross receipts tax are imposed at a combined rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., vary widely, ranging from 0.1% to 7.0%.⁵

The CST is applied to the retail sales price of each taxable communications service for the purpose of remitting the tax due.⁶ The term "sales price" is defined to mean 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 service which is part of the sale and for which the charge is not separately itemized on a customer's bill.⁷

Section 202.11(13)(b), F.S., provides the following express exclusions from the "sales price":

- 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, a tax imposed under chapter 202 or chapter 203 (gross receipts tax) which is permitted or required to be added to the sales price of such service, if the tax is stated separately;
- 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 must be added to the price of the service if the fee or assessment is separately stated;
- communications services paid for by inserting coins into coin-operated communications devices available to the public;
- the sale or recharge of a "prepaid calling arrangement";
- the provision of air-to-ground communications services, defined as a radio service provided to a purchaser while on board an aircraft;
- a dealer's internal use of communications services in connection with its business of providing communications services;
- 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; and

¹ Section 202.18, F.S.

² Section 202.11(2), F.S.

³ Section 202.12(1)(a), F.S.

⁴ Section 203.01(1)(b), F.S.

⁵ Local CST rates can be found at the "Jurisdiction Rate Table" at http://dor.myflorida.com/dor/taxes/local_tax_rates.html.

⁶ Section 202.12, F.S.

⁷ Section 202.11(13), F.S.

- charges for goods or services that are not subject to tax under this chapter, including Internet access services, that are not separately itemized on a customer's bill, but that can be reasonably identified from the selling dealer's books and records kept in the regular course of business.

The revenue collected pursuant to this tax (except for 37 percent of the direct-to-home satellite tax revenue) is distributed by the same formula as the state sales tax, as provided by s. 212.20(6), F.S. Approximately 10.8 percent is distributed to local governments through county and municipal revenue sharing, the Local Government Half-cent Sales Tax Clearing Trust Fund and the distribution to counties of \$29,915,500 that was formerly funded from pari-mutuel tax revenues. Smaller amounts are distributed to qualified counties for emergency distributions, selected sports facilities, and to the Public Employee Relations Trust Fund. The remainder of state CST remitted goes into the General Revenue Fund.

Proposed Changes

The bill amends s. 202.11(13)(b), F.S., to add "the use of communications services to furnish a good or service that is not subject to [the CST]" to the list of exclusions from the term "sales price."

The exclusion applies to the use of a communications service to furnish a product or service that is not subject to tax, whether charged as part of the sales price of the nontaxable good or service or charged separately. Any charge for that nontaxable good or service is also excluded from the definition, regardless of the nomenclature used to describe the charge on an invoice.

The bill also states that the above revision of sales prices does not exempt the sale of communications services to a provider of a good or service that is not subject to the CST.

The bill takes effect July 1, 2014.

B. SECTION DIRECTORY:

Section 1. Amending s. 202.11, F.S., revising a definition

Section 2. Providing an effective date

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not evaluated this bill. Staff estimates that the bill likely has a negative impact on state revenues.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not evaluated this bill. Staff estimates that the bill likely has a negative impact on local revenues.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Certain charges currently included in the definition of "sales price" may be excluded from that definition by this bill, reducing their tax liability.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The county/municipality mandates provision of Art. VII, section 18, of the Florida Constitution may apply because this bill may reduce the taxable base for local communications services. If the bill does qualify as a mandate, final passage must be approved by two-thirds of the membership of each house of the Legislature.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES