

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 887 Taxation of Communications Services

SPONSOR(S): Energy and Utilities Subcommittee and Dorworth

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1198

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Energy & Utilities Subcommittee	13 Y, 0 N, As CS	Helpling	Collins
2) Finance & Tax Committee		Flieger	Langston
3) State Affairs Committee			

SUMMARY ANALYSIS

Chapter 202, F.S., provides that sales of communications services, except direct-to-home satellite service, are subject to a state communications services tax (CST), a gross receipt tax, and a local CST. Federal law prohibits direct-to-home satellite service sales from being subject to a local CST. Direct-to-home satellite sales are subject to a different state CST rate and gross receipt rate than that of other communications services sales. The local and state communications services taxes are collected by communications services dealers and remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.

The DOR is required to make available, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale so that the tax collected is not less than allowed by statute. To clarify the law, the DOR has created proposed Rule 12A-19.021, F.A.C. The purpose of the proposed rule is to make available the tax amounts and brackets applicable to each taxable sale of communications services. To accomplish this, the proposed rule provides that a Communications Services Tax Due Calculator be available on the DOR's website. The proposed rule provides that any communications services tax resulting in a fraction of a cent to be rounded to the next whole cent.

The bill modifies the law, eliminating the requirement of the DOR to provide tax amounts and brackets to communications services dealers. The bill requires communications services dealers to compute state CST and local CST based on a rounding algorithm. This algorithm must be carried to the third decimal place and be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four. The bill authorizes a dealer to apply the rounding algorithm to the state CST three different ways.

The bill provides that a dealer may compute the taxes on an item or invoice basis. A dealer must apply the rounding algorithm to the local CST separately from the state CST. The bill states that a dealer is not required to collect the taxes based on a bracket system.

The bill provides that the act is intended to be remedial in nature and apply retroactively. However, the act does not provide a basis for an assessment of any tax not paid or create a right to a refund of any tax paid before July 1, 2011.

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. According to the DOR, most large communications services dealers currently use a traditional rounding method, similar to the one proscribed by the bill, to calculate state and local communications services taxes.

The bill provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation:

Chapter 202, F.S., provides that sales of communications services,¹ except direct-to-home satellite service,² are subject to a state communications services tax (CST), gross receipt tax, and a local CST. Federal law prohibits direct-to-home satellite sales from being subject to a local CST. Direct-to-home satellite service sales are subject to a different CST rate and gross receipt tax than that of other communications services sales. The collected local and state communications services taxes are remitted to the Department of Revenue (DOR), who distributes the proceeds to the appropriate jurisdictions.³

The state CST is set at a rate of 6.65 percent.⁴ The gross receipt tax is set at a rate of 2.37 percent plus an additional .15 percent, subject to exemption as provided by rule 12A-19.041, F.A.C., for a combined rate of 2.52 percent.⁵ Thus, the state CST and gross receipt tax are combined at a rate of 9.17 percent. Local CST rates, as authorized in s. 202.19, F.S., can be found by selecting the “Jurisdiction Rate Table” link at http://dor.myflorida.com/dor/taxes/local_tax_rates.html. Direct-to-home satellite service sales are subject to a state CST at a rate of 10.8 percent⁶ and a gross receipt tax of 2.37 percent⁷ for a combined rate of 13.17 percent.

Pursuant to s. 202.12, F.S., these taxes are computed on the sale price of each taxable sale of communications services. Section 202.16(3), F.S., requires the DOR to make available, in an electronic format or otherwise, the tax amounts and brackets applicable to each taxable sale, so that the tax collected does not result in a tax rate less than the tax rates imposed as provided above.

To clarify s. 202.16(3), F.S., the DOR created proposed Rule 12A-19.021, F.A.C. The proposed rule provides that a Communications Services Tax Due Calculator be available on the DOR’s website for the purposes of making available the tax bracket applicable for each taxable sale of communications services.⁸ The proposed rule establishes that a tax calculated resulting in a fraction of a cent, shall be rounded up to the next whole cent.⁹ If a traditional rounding method were to be utilized, many transactions would round down, resulting in a tax that is less than the rate imposed by statute.¹⁰

¹ For purposes of chapter 202, F.S., “communications services” is defined in s. 202.11(2), F.S., 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. 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.”

² For purposes of chapter 202, F.S., direct-to-home satellite service is defined in 47 U.S.C. s. 303(v) as the distribution or broadcasting of programming or services by satellite directly to the subscriber’s premises without the use of ground receiving or distribution equipment, except at the subscriber’s premises or in the uplink process to the satellite.

³ Section 202.18, F.S.

⁴ Section 202.12(1)(a), F.S.

⁵ Section 203.01(1)(b), F.S.

⁶ Section 202.12(1)(b), F.S.

⁷ Section 203.01(1)(b), F.S.

⁸ http://dor.myflorida.com/dor/rules/pdf/12a-19-021_nopr.pdf

⁹ <http://dor.myflorida.com/dor/rules/pdf/12a-19021serc.pdf>

¹⁰ *Id.*

Effects of Proposed Changes:

The bill modifies s. 202.12 (3), F.S., removing the requirement of the DOR to make available in an electronic format or otherwise the tax amounts and brackets applicable to each taxable sale such that the tax collected results in a tax rate no less than the tax rate imposed pursuant to chapter 202 and 203. The bill specifically states instead that a dealer is not required to collect the taxes based on a bracket system.

The bill requires communications services dealers to compute state CST and local CST based on a rounding algorithm. This algorithm must be carried to the third decimal place and be rounded to a whole cent using a method that rounds up to the next cent whenever the third decimal place is greater than four.

Example:

When a tax is computed resulting in an amount of \$10.055, the amount shall be rounded up to \$10.06. If a tax is computed resulting in an amount of 10.054, the amount shall be rounded down to \$10.05.

The dealer may elect to compute these taxes on an item or invoice basis. The bill states that the rounding algorithm must be applied to the local CST and state CST separately.

The bill authorizes a dealer to apply the rounding algorithm to the combined Florida communications services tax imposed pursuant to ss. 202.12 and 203.01, F.S., separately to the communications services tax imposed pursuant to s. 202.12(1)(a) and gross receipt tax imposed pursuant to ss. 203.01(1)(b)2. and 3., F.S., or to the combined taxes imposed pursuant to ss. 202.12(1)(a) and 203(1)(b)3., F.S., as allowed by s. 203.001, F.S., and apply the rounding algorithm separately to the gross receipts tax pursuant to s. 203.01(1)(b)2., F.S. Below are the three different ways a dealer may elect to apply the rounding algorithm to the state CST based on the rates in effect as of March 31, 2011.

1. Total 9.17 Percent
2. Separate 6.65 percent and 2.52 percent
3. Separate 6.8 (combined .15 percent and 6.65 percent) and 2.37 percent

The bill states that the act is intended to be remedial in nature and apply retroactively. However, the act does not provide a basis for an assessment of any tax not paid or create a right to a refund of any tax paid, under s. 202.16, F.S., before July 1, 2011.

B. SECTION DIRECTORY:

Section 1. Amends s. 202.16(3), F.S., to provide that tax calculations be based on a rounding algorithm.

Section 2. Provides that the amendments made to s. 202.16(3), F.S., are remedial in nature and apply retroactively.

Section 3. Provides an effective date of July 1, 2011.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. According to the DOR, most large communications services dealers currently compute state CST based on a traditional rounding method, as described in the bill. However, the option to calculate the tax at the item level creates a possibility of a negative revenue impact.

2. Expenditures:

The DOR estimates it would cost \$4,800 to modify the SUNTAX system to effectively implement the bill.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The 2011 Revenue Estimating Conference has not yet adopted an estimate for this bill. According to the DOR, most large communications services dealers currently compute local CST based on a traditional rounding method. However, the option to calculate the tax at the item level creates a possibility of a negative revenue impact.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To determine the fiscal impact of the proposed rule, the DOR requested cost estimates from some taxpayers. One response was received which was from a large communications services tax dealer, which indicated that there would be a one-time cost of \$2.02 million to program their system to round, as required by the proposed rule.¹¹ According to the DOR, passage of the bill would prompt the DOR to not adopt the proposed rule, thereby not imposing a fiscal impact on the private sector.

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 authority of counties and cities to raise communications services tax revenues. This bill does not appear to qualify under any exemption or exception. 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.

¹¹ *Id.*

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 22, 2011, the Energy and Utilities Subcommittee adopted a strike-all amendment. The amendment provides the following changes to the original bill:

- Removes the requirement of the DOR to supply communications services dealers with applicable tax amounts and tax brackets for communications services sales.
- Requires dealers to apply the rounding algorithm to the local CST separately from the state CST.
- Provides that a dealer may elect one of three ways to apply the rounding algorithm to the different portions of the state CST.
- Removes language that provides that the DOR must allow, but may not require, a dealer to collect taxes based on a bracket system.
- Provides that a dealer is not required to collect taxes based on a bracket system.