

Bill No. SB 2066

Barcode 103720

593-2007A-05

Proposed Committee Substitute by the Committee on Government Efficiency Appropriations

1                                   A bill to be entitled

2           An act relating to the communications services

3           tax; amending s. 202.16, F.S.; requiring

4           dealers to document exempt sales for resale;

5           providing requirements; providing a definition;

6           providing construction; providing for dealer

7           provision of evidence of the exempt status of

8           certain sales through an informal protest

9           process; requiring the Department of Revenue to

10          accept certain evidence during the protest

11          period; providing limitations; providing for

12          retroactive application; requiring the

13          Department of Revenue to establish a toll-free

14          telephone number for the purpose of verifying

15          registration numbers and resale certificates;

16          requiring the department to establish a system

17          for receiving information from dealers

18          regarding certificate numbers; amending s.

19          202.19, F.S.; clarifying a characterization of

20          the local communications services tax as

21          including certain fees and being in lieu of

22          such fees; amending s. 202.20, F.S.; limiting

23          local governmental authority to make certain

24          rate adjustments in the tax under certain

25          circumstances; deleting obsolete provisions

26          relating to making certain adjustments in the

27          tax for certain periods; amending s. 202.21,

28          F.S.; deleting provisions relating to local

29          government adjustments of the tax by emergency

30          ordinance or resolution to conform; specifying

31          that certain amendments are remedial in nature

1           and clarify certain provisions of law but do  
 2           not grant rights to a refund of certain fees or  
 3           charges under certain circumstances; providing  
 4           effective dates.

5  
 6 Be It Enacted by the Legislature of the State of Florida:

7  
 8           Section 1. Effective upon this act becoming a law, and  
 9 operating retroactively to December 31, 2004, subsection (2)  
 10 of section 202.16, Florida Statutes, is amended to read:

11           202.16 Payment.--The taxes imposed or administered  
 12 under this chapter and chapter 203 shall be collected from all  
 13 dealers of taxable communications services on the sale at  
 14 retail in this state of communications services taxable under  
 15 this chapter and chapter 203. The full amount of the taxes on  
 16 a credit sale, installment sale, or sale made on any kind of  
 17 deferred payment plan is due at the moment of the transaction  
 18 in the same manner as a cash sale.

19           (2) (a) A sale of communications services that are used  
 20 as a component part of or integrated into a communications  
 21 service or prepaid calling arrangement for resale, including,  
 22 but not limited to, carrier-access charges, interconnection  
 23 charges paid by providers of mobile communication services or  
 24 other communication services, charges paid by cable service  
 25 providers for the transmission of video or other programming  
 26 by another dealer of communications services, charges for the  
 27 sale of unbundled network elements, and any other intercompany  
 28 charges for the use of facilities for providing communications  
 29 services for resale, must be made in compliance with the rules  
 30 of the department. Any person who makes a sale for resale  
 31 which is not in compliance with these rules is liable for any

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1 tax, penalty, and interest due for failing to comply, to be  
2 calculated pursuant to s. 202.28(2)(a).

3       (b)1. Any dealer who makes a sale for resale shall  
4 document the exempt nature of the transaction, as established  
5 by rules adopted by the department, by retaining a copy of the  
6 purchaser's initial or annual resale certificate issued  
7 pursuant to s. 202.17(6). In lieu of maintaining a copy of the  
8 certificate, a dealer may document, prior to the time of sale,  
9 an authorization number, provided telephonically or  
10 electronically by the department or by such other means  
11 established by rule of the department. The dealer may rely on  
12 an initial or annual resale certificate issued pursuant to s.  
13 202.17(6), valid at the time of receipt from the purchaser,  
14 without seeking additional annual resale certificates from  
15 such purchaser, if the dealer makes recurring sales to the  
16 purchaser in the normal course of business on a continual  
17 basis. For purposes of this paragraph, the term "recurring  
18 sales to a purchaser in the normal course of business" means a  
19 sale in which the dealer extends credit to the purchaser and  
20 records the debt as an account receivable, or in which the  
21 dealer sells to a purchaser who has an established cash  
22 account, similar to an open credit account. For purposes of  
23 this paragraph, purchases are made from a selling dealer on a  
24 continual basis if the selling dealer makes, in the normal  
25 course of business, sales to the purchaser no less frequently  
26 than once in every 12-month period.

27       2. A dealer may, through the informal protest process  
28 provided for in s. 213.21 and the rules of the department,  
29 provide the department with evidence of the exempt status of a  
30 sale. Exemption certificates executed by entities that were  
31 exempt at the time of sale, resale certificates provided by

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1 purchasers who were active dealers at the time of sale, and  
2 verification by the department of a purchaser's active dealer  
3 status at the time of sale in lieu of a resale certificate  
4 shall be accepted by the department when submitted during the  
5 protest period but may not be accepted in any proceeding under  
6 chapter 120 or any circuit court action instituted under  
7 chapter 72.

8           Section 2. Effective January 1, 2006, the Department  
9 of Revenue shall establish a toll-free telephone number for  
10 the verification of valid registration numbers and resale  
11 certificates. The system must be adequate to guarantee a low  
12 busy rate, must respond to keypad inquiries, and must provide  
13 data that is updated daily.

14           Section 3. The Department of Revenue shall establish a  
15 system, effective January 1, 2006, for receiving information  
16 from dealers regarding certificate numbers of those who are  
17 seeking to make purchases for resale. The department must  
18 provide such dealers, free of charge, with verification of  
19 numbers that are cancelled or invalid.

20           Section 4. Paragraph (a) of subsection (3) of section  
21 202.19, Florida Statutes, is amended to read:

22           202.19 Authorization to impose local communications  
23 services tax.--

24           (3) (a) The tax authorized under this section includes  
25 and is in lieu of any fee or other consideration, including,  
26 but not limited to, application fees, transfer fees, renewal  
27 fees, or claims for related costs, to which the municipality  
28 or county is otherwise entitled for granting permission to  
29 dealers of communications services, including, but not limited  
30 to, providers of cable television services, as authorized in  
31 47 U.S.C. s. 542, to use or occupy its roads or rights-of-way

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1 for the placement, construction, and maintenance of poles,  
2 wires, and other fixtures used in the provision of  
3 communications services.

4 Section 5. Paragraph (a) of subsection (2) of section  
5 202.20, Florida Statutes, is amended to read:

6 202.20 Local communications services tax conversion  
7 rates.--

8 (2)(a)1. With respect to any local taxing  
9 jurisdiction, if, for the periods ending December 31, 2001;  
10 March 31, 2002; June 30, 2002; or September 30, 2002, the  
11 revenues received by that local government from the local  
12 communications services tax imposed under subsection (1) are  
13 less than the revenues received from the replaced revenue  
14 sources for the corresponding 2000-2001 period; plus  
15 reasonably anticipated growth in such revenues over the  
16 preceding 1-year period, based on the average growth of such  
17 revenues over the immediately preceding 5-year period; plus an  
18 amount representing the revenues from the replaced revenue  
19 sources for the 1-month period that the local taxing  
20 jurisdiction was required to forego, the governing authority  
21 may adjust the rate of the local communications services tax  
22 upward to the extent necessary to generate the entire  
23 shortfall in revenues within 1 year after the rate adjustment  
24 and by an amount necessary to generate the expected amount of  
25 revenue on an ongoing basis.

26 2. If complete data are not available at the time of  
27 determining whether the revenues received by a local  
28 government from the local communications services tax imposed  
29 under subsection (1) are less than the revenues received from  
30 the replaced revenue sources for the corresponding 2000-2001  
31 period, as set forth in subparagraph 1., the local government

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1 shall use the best data available for the corresponding  
2 2000-2001 period in making such determination.

3           3. The adjustment permitted under subparagraph 1. may  
4 be made by emergency ordinance or resolution and may be made  
5 notwithstanding the maximum rate established under s.  
6 202.19(2) and notwithstanding any schedules or timeframes or  
7 any other limitations contained in this chapter. The authority  
8 of a local government to make such adjustment may be exercised  
9 only if the department or a dealer reallocates revenue away  
10 from the local government. The emergency ordinance or  
11 resolution shall specify an effective date for the adjusted  
12 rate, which shall be no less than 60 days after the date of  
13 adoption of the ordinance or resolution and shall be effective  
14 with respect to taxable services included on bills that are  
15 dated on the first day of a month subsequent to the expiration  
16 of the 60-day period. At the end of 1 year following the  
17 effective date of such adjusted rate, the local governing  
18 authority shall, as soon as is consistent with s. 202.21,  
19 reduce the rate by that portion of the emergency rate which  
20 was necessary to recoup the amount of revenues not received  
21 prior to the implementation of the emergency rate.

22           4. If, for the period October 1, 2001, through  
23 September 30, 2002, the revenues received by a local  
24 government from the local communications services tax  
25 conversion rate established under subsection (1), adjusted  
26 upward for the difference in rates between paragraphs (1) (a)  
27 and (b) or any other rate adjustments or base changes, are  
28 above the threshold of 10 percent more than the revenues  
29 received from the replaced revenue sources for the  
30 corresponding 2000-2001 period plus reasonably anticipated  
31 growth in such revenues over the preceding 1-year period,

1 based on the average growth of such revenues over the  
 2 immediately preceding 5-year period, the governing authority  
 3 must adjust the rate of the local communications services tax  
 4 to the extent necessary to reduce revenues to the threshold by  
 5 emergency ordinance or resolution within the timeframes  
 6 established in subparagraph 3. The foregoing rate adjustment  
 7 requirement shall not apply to a local government that adopts  
 8 a local communications services tax rate by resolution or  
 9 ordinance. If complete data are not available at the time of  
 10 determining whether the revenues exceed the threshold, the  
 11 local government shall use the best data available for the  
 12 corresponding 2000-2001 period in making such determination.  
 13 This subparagraph shall not be construed as establishing a  
 14 right of action for any person to enforce this subparagraph or  
 15 challenge a local government's implementation of this  
 16 subparagraph.

17 Section 6. Effective July 1, 2007, subsection (2) of  
 18 section 202.20, Florida Statutes, as amended by this act, is  
 19 amended to read:

20 202.20 Local communications services tax conversion  
 21 rates.--

22 ~~(2)(a)1. With respect to any local taxing~~  
 23 ~~jurisdiction, if, for the periods ending December 31, 2001,~~  
 24 ~~March 31, 2002, June 30, 2002, or September 30, 2002, the~~  
 25 ~~revenues received by that local government from the local~~  
 26 ~~communications services tax imposed under subsection (1) are~~  
 27 ~~less than the revenues received from the replaced revenue~~  
 28 ~~sources for the corresponding 2000-2001 period, plus~~  
 29 ~~reasonably anticipated growth in such revenues over the~~  
 30 ~~preceding 1-year period, based on the average growth of such~~  
 31 ~~revenues over the immediately preceding 5-year period, plus an~~

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1 ~~amount representing the revenues from the replaced revenue~~  
2 ~~sources for the 1-month period that the local taxing~~  
3 ~~jurisdiction was required to forego, the governing authority~~  
4 ~~may adjust the rate of the local communications services tax~~  
5 ~~upward to the extent necessary to generate the entire~~  
6 ~~shortfall in revenues within 1 year after the rate adjustment~~  
7 ~~and by an amount necessary to generate the expected amount of~~  
8 ~~revenue on an ongoing basis.~~

9         ~~2. If complete data are not available at the time of~~  
10 ~~determining whether the revenues received by a local~~  
11 ~~government from the local communications services tax imposed~~  
12 ~~under subsection (1) are less than the revenues received from~~  
13 ~~the replaced revenue sources for the corresponding 2000-2001~~  
14 ~~period, as set forth in subparagraph 1., the local government~~  
15 ~~shall use the best data available for the corresponding~~  
16 ~~2000-2001 period in making such determination.~~

17         ~~3. The adjustment permitted under subparagraph 1. may~~  
18 ~~be made by emergency ordinance or resolution and may be made~~  
19 ~~notwithstanding the maximum rate established under s.~~  
20 ~~202.19(2) and notwithstanding any schedules or timeframes or~~  
21 ~~any other limitations contained in this chapter. The authority~~  
22 ~~of a local government to make such adjustment may be exercised~~  
23 ~~only if the department or a dealer reallocates revenue away~~  
24 ~~from the local government. The emergency ordinance or~~  
25 ~~resolution shall specify an effective date for the adjusted~~  
26 ~~rate, which shall be no less than 60 days after the date of~~  
27 ~~adoption of the ordinance or resolution and shall be effective~~  
28 ~~with respect to taxable services included on bills that are~~  
29 ~~dated on the first day of a month subsequent to the expiration~~  
30 ~~of the 60-day period. At the end of 1 year following the~~  
31 ~~effective date of such adjusted rate, the local governing~~

1 ~~authority shall, as soon as is consistent with s. 202.21,~~  
 2 ~~reduce the rate by that portion of the emergency rate which~~  
 3 ~~was necessary to recoup the amount of revenues not received~~  
 4 ~~prior to the implementation of the emergency rate.~~

5         ~~4. If, for the period October 1, 2001, through~~  
 6 ~~September 30, 2002, the revenues received by a local~~  
 7 ~~government from the local communications services tax~~  
 8 ~~conversion rate established under subsection (1), adjusted~~  
 9 ~~upward for the difference in rates between paragraphs (1) (a)~~  
 10 ~~and (b) or any other rate adjustments or base changes, are~~  
 11 ~~above the threshold of 10 percent more than the revenues~~  
 12 ~~received from the replaced revenue sources for the~~  
 13 ~~corresponding 2000-2001 period plus reasonably anticipated~~  
 14 ~~growth in such revenues over the preceding 1-year period,~~  
 15 ~~based on the average growth of such revenues over the~~  
 16 ~~immediately preceding 5-year period, the governing authority~~  
 17 ~~must adjust the rate of the local communications services tax~~  
 18 ~~to the extent necessary to reduce revenues to the threshold by~~  
 19 ~~emergency ordinance or resolution within the timeframes~~  
 20 ~~established in subparagraph 3. The foregoing rate adjustment~~  
 21 ~~requirement shall not apply to a local government that adopts~~  
 22 ~~a local communications services tax rate by resolution or~~  
 23 ~~ordinance. If complete data are not available at the time of~~  
 24 ~~determining whether the revenues exceed the threshold, the~~  
 25 ~~local government shall use the best data available for the~~  
 26 ~~corresponding 2000-2001 period in making such determination.~~  
 27 ~~This subparagraph shall not be construed as establishing a~~  
 28 ~~right of action for any person to enforce this subparagraph or~~  
 29 ~~challenge a local government's implementation of this~~  
 30 ~~subparagraph.~~

31         ~~(b) The term Except as otherwise provided in this~~

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1 ~~subsection~~, "replaced revenue sources," as used in this  
2 section, means the following taxes, charges, fees, or other  
3 impositions to the extent that the respective local taxing  
4 jurisdictions were authorized to impose them prior to July 1,  
5 2000.

6 ~~(a)1.~~ With respect to municipalities and charter  
7 counties and the taxes authorized by s. 202.19(1):

8 ~~1.a.~~ The public service tax on telecommunications  
9 authorized by former s. 166.231(9).

10 ~~2.b.~~ Franchise fees on cable service providers as  
11 authorized by 47 U.S.C. s. 542.

12 ~~3.c.~~ The public service tax on prepaid calling  
13 arrangements.

14 ~~4.d.~~ Franchise fees on dealers of communications  
15 services which use the public roads or rights-of-way, up to  
16 the limit set forth in s. 337.401. For purposes of calculating  
17 rates under this section, it is the legislative intent that  
18 charter counties be treated as having had the same authority  
19 as municipalities to impose franchise fees on recurring local  
20 telecommunication service revenues prior to July 1, 2000.

21 However, the Legislature recognizes that the authority of  
22 charter counties to impose such fees is in dispute, and the  
23 treatment provided in this section is not an expression of  
24 legislative intent that charter counties actually do or do not  
25 possess such authority.

26 ~~5.e.~~ Actual permit fees relating to placing or  
27 maintaining facilities in or on public roads or rights-of-way,  
28 collected from providers of long-distance, cable, and mobile  
29 communications services for the fiscal year ending September  
30 30, 1999; however, if a municipality or charter county elects  
31 the option to charge permit fees pursuant to s.

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1 337.401(3)(c)1.a., such fees shall not be included as a  
2 replaced revenue source.

3 ~~(b)2.~~ With respect to all other counties and the taxes  
4 authorized in s. 202.19(1), franchise fees on cable service  
5 providers as authorized by 47 U.S.C. s. 542.

6 Section 7. Effective July 1, 2007, section 202.21,  
7 Florida Statutes, is amended to read:

8 202.21 Effective dates; procedures for informing  
9 dealers of communications services of tax levies and rate  
10 changes.--Any adoption, repeal, or change in the rate of a  
11 local communications services tax imposed under s. 202.19 is  
12 effective with respect to taxable services included on bills  
13 that are dated on or after the January 1 subsequent to such  
14 adoption, repeal, or change. A municipality or county  
15 adopting, repealing, or changing the rate of such tax must  
16 notify the department of the adoption, repeal, or change by  
17 September 1 immediately preceding such January 1. Notification  
18 must be furnished on a form prescribed by the department and  
19 must specify the rate of tax; the effective date of the  
20 adoption, repeal, or change thereof; and the name, mailing  
21 address, and telephone number of a person designated by the  
22 municipality or county to respond to inquiries concerning the  
23 tax. The department shall provide notice of such adoption,  
24 repeal, or change to all affected dealers of communications  
25 services at least 90 days before the effective date of the  
26 tax. ~~Any local government that adjusts the rate of its local  
27 communications services tax by emergency ordinance or  
28 resolution pursuant to s. 202.20(2) shall notify the  
29 department of the new tax rate immediately upon its adoption.  
30 The department shall provide written notice of the adoption of  
31 the new rate to all affected dealers within 30 days after~~

1 ~~receiving such notice.~~ In any notice to providers or  
 2 publication of local tax rates for purposes of this chapter,  
 3 the department shall express the rate for a municipality or  
 4 charter county as the sum of the tax rates levied within such  
 5 jurisdiction pursuant to s. 202.19(2)(a) and (5), and shall  
 6 express the rate for any other county as the sum of the tax  
 7 rates levied pursuant to s. 202.19(2)(b) and (5). The  
 8 department is not liable for any loss of or decrease in  
 9 revenue by reason of any error, omission, or untimely action  
 10 that results in the nonpayment of a tax imposed under s.  
 11 202.19.

12           Section 8. The amendments to section 202.19(3)(a),  
 13 Florida Statutes, contained in this act are remedial in nature  
 14 and intended to clarify the law in effect on October 1, 2001,  
 15 but do not grant any right to a refund of any fees or charges  
 16 paid prior to July 1, 2004, unless the payment was made under  
 17 written protest as to the authority of any local government to  
 18 impose such fees or costs on a dealer.

19           Section 9. Except as otherwise expressly provided in  
 20 this act, this act shall take effect upon becoming a law.

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