

**Communications Services Tax Working Group**

**August 21, 2012 Meeting Materials**

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**Note: Additional materials will be posted as they become available**

**Agenda Item #1**

**No Materials**

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**Agenda Item #2**  
**Draft Meeting Minutes**

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# COMMUNICATIONS SERVICES TAX WORKING GROUP

June 11, 2012

ROOM 1820, BUILDING ONE, 2450 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA

## **AMENDED DRAFT MINUTES**

*(Additions are italicized and underlined)*

**MEMBERS PRESENT:** Lisa Vickers, Chair  
*Charlie Dudley*  
Sharon R. Fox  
Kathleen Kittrick  
Gary S. Lindsey  
The Honorable Gary Resnick  
Alan S. Rosenzweig  
Brian D. Smith  
Davin J. Suggs

### **Agenda Items:**

#### 1. *Call to Order*

The meeting was called to order. Chair Vickers introduced herself and stated that since she would be leaving the Department of Revenue at the end of the month, she has designated Deputy Executive Director Marshall Stranburg to chair subsequent meetings. It was announced that instead of a roll call, members would be introducing themselves in a following agenda item.

#### 2. *Opening Remarks and Administrative Items*

Chair Vickers discussed the following:

- This is a non-rule public meeting held under Section 120.525, Florida Statutes.
- A court reporter is present who is creating a transcript.
- Speaker cards were available for anyone who would like to speak.
- The Department of Revenue has created a web page for the Working Group where agendas, meeting materials, transcripts and other information relative to the Working Group will be posted. The website address was announced as: [http://dor.myflorida.com/dor/cst\\_workgroup/](http://dor.myflorida.com/dor/cst_workgroup/) Hard copies of the materials were available at the meeting for the public.
- It was announced that if anyone would like to receive updates about the working group by email, they could provide their email address with the

understanding that their email address will be considered a public record and subject to disclosure if requested.

- The procedures for persons participating in the meeting via WebEx were explained.
- Andrea Moreland, Department of Revenue's Legislative and Cabinet Services Director, was introduced as the person who is coordinating the activities of the Working Group for members and the public.

### *3. Mission of the Working Group*

The mission of the Working Group, as provided in Section 12 of Chapter 2012-107, Laws of Florida, was discussed.

### *4. Introduction of the Members of the Working Group*

Each of the Working Group members introduced themselves.

The members representing the communications industry are:

- Gary S. Lindsey, Director of External Tax Policy for AT&T
- Kathleen Kittrick, Director of State Government Affairs for Verizon
- Brian D. Smith, Director of Transactional Taxes for The DirectTV Group, Inc.
- Charlie Dudley, General Counsel, Florida Cable Telecommunications Association

The members representing the counties are:

- Alan S. Rosenzweig, Deputy County Administrator, Leon County
- Davin J. Suggs, Senior Legislative Advocate, Florida Association of Counties

The members representing the cities are:

- The Honorable Gary Resnick, Mayor, City of Wilton Manors
- Sharon R. Fox, Tax Revenue Coordinator, City of Tampa

### *5. Overview of the Sunshine Law*

Nancy Terrel, General Counsel for the Department of Revenue, made a presentation about Florida's Sunshine Law and made members aware of requirements that would govern their time on the Working Group.

6. *Review of National and State Tax Communications Policies*

French Brown, Deputy Director of the Department of Revenue's Office of Technical Assistance and Dispute Resolution, made a presentation on Florida's Communications Services Tax law and on research that had been conducted about how other states tax communications services.

Ms. Fox made note of the unique design of Florida's communications services tax, which combines multiple taxes, including local government rights-of-way and permit fees. She suggested that additional research is needed to gain an understanding of what rates other states and local governments continue to charge for the replaced fees.

7. *Review of Communications Services Tax Revenue and the Effect of Recent Law Changes*

Bob McKee, Chief Economist in the Department of Revenue's Office of Tax Research, presented information regarding state and local Communications Services Tax revenues. Mr. McKee also provided information regarding the effect of law changes for the past five years.

8. *Review of Communications Services Tax Revenue and the Public Education Capital Outlay Program*

Amy Baker, Coordinator of the Office of Economic and Demographic Research, presented an overview of Florida's gross receipts tax and PECO bonding capabilities.

9. *Discussion of Local Government Bonding of Communications Services Tax Revenue*

Mr. Suggs said he would be of assistance in obtaining information from Florida's counties regarding their obligation of Communications Services Tax revenues for bonds. Ms. Fox said that she would provide the same type of assistance regarding the cities.

10. *Identification of Issues to be Reviewed at Future Meetings*

Members identified issues related, but not limited to, the following areas:

- Principles for sound tax policy
- Prepaid communications services
- Residential versus commercial tax treatment of communications services
- Audits
- Situsing
- Bundling of Communications Services

- Technologies
- Tax base
- Bonding

#### *11. Future Meetings*

The Working Group adopted July 25, August 14 and October 31 for upcoming meetings.

#### *12. Adjournment*

With the agenda complete the meeting was adjourned.

**Agenda Item #3**  
**Follow-up Materials**

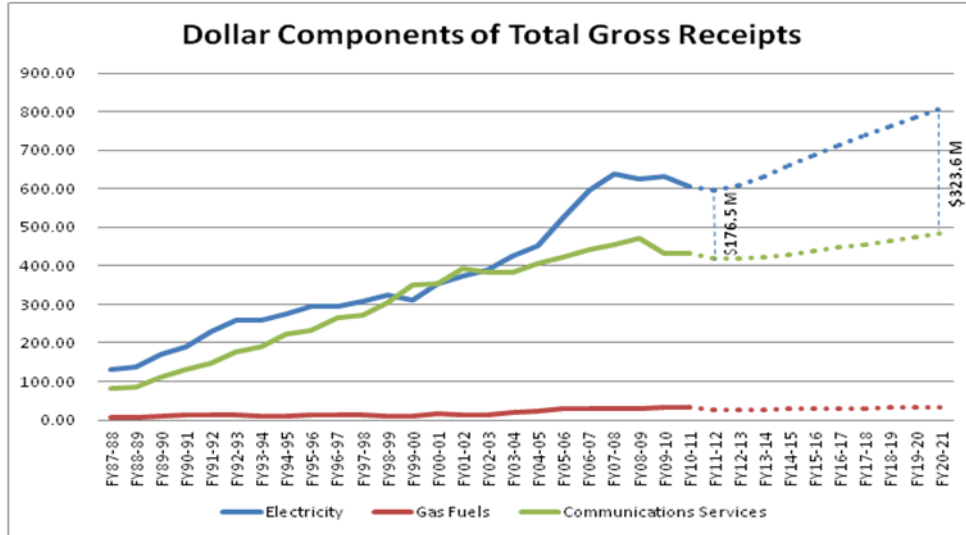
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1. Gross Receipts Components and Trends in PECO Funding
2. Follow-up Survey Responses

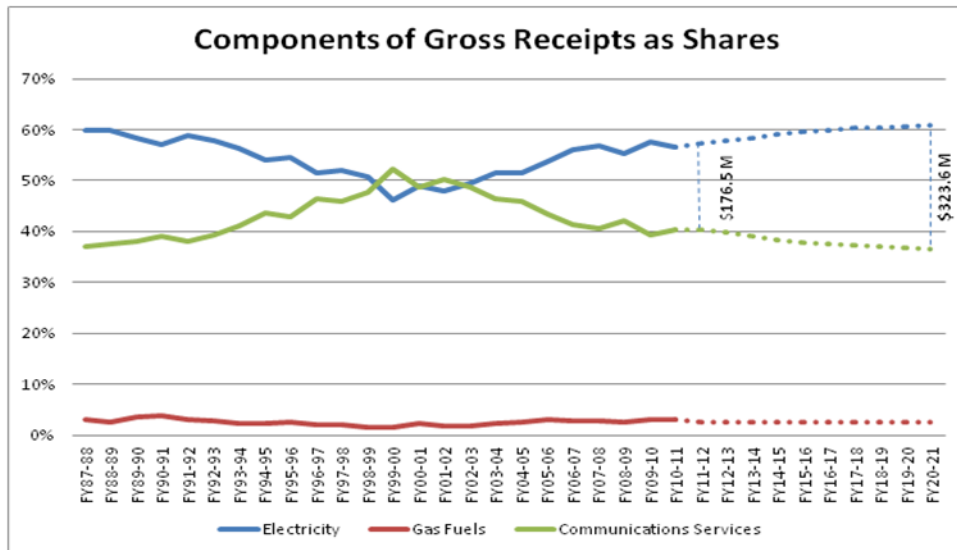


**LEGISLATIVE OFFICE OF ECONOMIC AND DEMOGRAPHIC RESEARCH:**

There are three components that make up the state portion of the Gross Receipts Tax: (1) electricity; (2) gas fuels; and (3) communications services. In dollar terms for FY 2011-12, the portion associated with electricity is \$176.53 million greater than the portion associated with communications services. Because electricity has stronger growth rates than communications services throughout the forecast period, the dollar difference between the two will increase over time. With a few isolated exceptions, electricity has had stronger growth rates than communications services since the 2002-03 fiscal year.



The three forecasted components can also be thought of as shares of the total. A similar pattern emerges, with the share for electricity increasing from 57% of the total at the beginning of the forecast period to 61% at the end of the forecast period. Because the share for gas fuels stays essentially flat, the gain comes almost entirely from the communication services portion which declines from over 40% of the total to less than 37%.



## LEGISLATIVE OFFICE OF ECONOMIC AND DEMOGRAPHIC RESEARCH:

The amount of anticipated PECO bonding is an underlying consideration in each year's General Appropriations Act (GAA). The bonding assumption for that year ultimately determines the overall level of the appropriations made from the Public Education Capital Outlay and Debt Service Trust Fund (the total PECO authorization) due to the leveraging effect of bonding versus cash.

While each new debt service issuance is associated with appropriations specific to a single fiscal year, it usually takes multiple years for all of the authorized bonds from a particular year to be issued. This means that the actual bonds issued in any given year were authorized in several prior years, so there is no direct correlation between the appropriation and the actual issuance for a specific year. The appropriations associated with those issuances were likely from other years. The chart immediately below shows the difference between the PECO appropriations for bonding and the actual issuances for each year.

	Authorized	Bonds
	Bonds in GAA	Issued in YR
FY 1991-92	\$ 643.7	\$ 650.0
FY 1992-93	\$ 886.6	\$ 500.0
FY 1993-94	\$ 642.3	\$ 907.0
FY 1994-95	\$ 805.4	\$ 705.0
FY 1995-96	\$ 417.0	\$ 460.4
FY 1996-97	\$ 441.6	\$ 462.0
FY 1997-98	\$ 490.2	\$ 450.0
FY 1998-99	\$ 447.9	\$ 490.2
FY 1999-00	\$ 367.2	\$ 397.9
FY 2000-01	\$ 428.3	\$ 367.2
FY 2001-02	\$ 887.6	\$ 578.3
FY 2002-03	\$ 613.4	\$ 475.0
FY 2003-04	\$ 516.3	\$ 712.6
FY 2004-05	\$ 473.4	\$ 400.0
FY 2005-06 *	\$ 616.3	\$ 616.5
FY 2006-07 *	\$ 1,436.6	\$ 936.8
FY 2007-08 *	\$ 1,317.2	\$ 1,166.3
FY 2008-09	\$ 924.2	\$ 950.0
FY 2009-10	\$ 155.1	\$ 791.7
FY 2010-11	\$ 304.8	\$ 522.0
FY 2011-12	\$ -	\$ 74.20

The graph on the next page shows both the level and percentage of the PECO bond issuances relative to all bond issuances for each year. Comparing the total for the ten-year period between 1991-92 and 2000-01 with the total for the ten-year period 2001-02 through 2010-11, PECO issuances increased nearly 33 percent. All other bonding programs rose 37 percent, but the composition and amounts attributed to the individual programs comprising that group were significantly different from year to year.

**PECO Bond Issuance As a Percentage of Total Issuance**  
**Historical New Money Issuance Fiscal Years 1992 through 2012**  
*(In Millions of Dollars)*



PECO Issuance \$ 650.0 \$ 500.0 \$ 907.0 \$ 460.4 \$ 462.0 \$ 450.0 \$ 490.2 \$ 490.2 \$ 397.9 \$ 367.2 \$ 475.0 \$ 471.6 \$ 400.0 \$ 616.5 \$ 936.8 \$ 1,166.3 \$ 950.0 \$ 791.7 \$ 522.0 \$ 74.2  
 Total Issuance 1,465.5 1,091.8 1,444.3 1,275.0 1,395.3 1,211.6 2,587.5 1,752.8 1,644.4 1,090.3 1,554.8 1,391.7 1,549.6 1,856.8 1,988.5 2,970.2 3,367.0 3,147.3 886.3 406.8

PECO as % of Total 44% 46% 63% 33% 38% 17% 28% 24% 24% 34% 37% 34% 46% 22% 39% 47% 28% 25% 59% 18%

## Follow-up from Survey

	Alabama	Connecticut	Georgia	Kentucky	Nebraska	S. Carolina	Texas	West Va.	Wyoming
Do local jurisdictions (jurisdictions other than the state and including, but not limited to, counties, municipalities, special districts, etc.) receive a portion of tax collected on the sale of communications services?	No <sup>1</sup>	No	Yes <sup>9</sup>	Yes	Yes	Yes <sup>16</sup>	Yes <sup>20</sup>	Yes <sup>25</sup>	Yes <sup>31</sup>
Are revenues shared with or between local jurisdictions (for example, does the state collect the revenue and distribute it to local jurisdictions, do local jurisdictions share the revenue through interlocal agreements)?	No <sup>2</sup>		Yes <sup>10</sup>	State collection and distribution	No	Yes <sup>17</sup>	Yes <sup>21</sup>	E-911 <sup>26</sup>	Yes <sup>32</sup>
Are revenue distributions based on actual amounts remitted (for example, if a provider collects tax from a customer in a specific jurisdiction, is that amount remitted and distributed to that jurisdiction)?	No <sup>2</sup>		Yes <sup>11</sup>	No	Yes	Yes <sup>17</sup>	Yes	Yes <sup>27</sup>	Yes <sup>32</sup>
Are revenue distributions based on a formula system?	No		No	Yes	No		No	E-911 <sup>28</sup>	Yes <sup>32</sup>
Does your state allow revenues from taxes collected on communications services to be bonded or used as collateral for loans, either at the state, local, or other jurisdictional level?	Yes <sup>3</sup>	No		No	Maybe <sup>13</sup>		Not at State Level <sup>22</sup>	Yes <sup>29</sup>	<sup>33</sup>
If yes, are revenues from taxes collected on communications services the exclusive source?	Yes <sup>4</sup>	N/A		N/A	No		N/A		
If yes, what % of the overall debt service is related to revenues from taxes collected on communications services?	0.26% <sup>5</sup>	N/A		N/A			N/A		
What revenue source does your state use to fund education capital outlay?	Education Trust Fund <sup>6</sup>	General Fund	Various Taxes	Primarily General Fund	Property Taxes <sup>14</sup>	Sales and Property Tax <sup>18</sup>	Property Taxes / Bonds <sup>23</sup>	Sales and Service Tax <sup>29</sup>	<sup>34</sup>
Does your state or local jurisdictions impose permit fees on any sales of communications services?	Yes <sup>7</sup>	Yes <sup>8</sup>	Maybe <sup>12</sup>	Not Aware	Not Aware <sup>15</sup>	Not Aware <sup>19</sup>	Not Aware <sup>24</sup>	Not Aware <sup>30</sup>	Not Aware <sup>35</sup>
Does your state or local jurisdictions impose franchise fees on any sales of communications services?	Yes <sup>7</sup>	No	Maybe <sup>12</sup>	No	Not Aware <sup>15</sup>	Not Aware <sup>19</sup>	Maybe <sup>24</sup>		Not Aware <sup>36</sup>
Does your state or local jurisdictions impose right-of-way fees on any sales of communications services?	Yes <sup>7</sup>		Maybe <sup>12</sup>	Yes	Not Aware <sup>15</sup>	Not Aware <sup>19</sup>	Maybe <sup>24</sup>		Not Aware <sup>37</sup>

## Notes

The Alabama Mobile Communications Services Tax is not distributed to the cities or counties of the State. A portion of the mobile communication service tax is appropriated to the annual payment of principal and interest due to outstanding Alabama Revolving Loan Fund Authority bonds. The Special Education Trust receives \$1.5 million and the remainder is deposited to the State General Fund (Section 40-21-123, Code of Alabama 1975).

2 The Alabama Mobile Communications Services Tax is not distributed to the cities or counties of the State.

3 Yes. Mobile Telecommunications Services Tax is used to pay the debt service on the Alabama Revolving Loan Fund Authority's bonds.

4 Yes (Section 11-285-108, Code of Alabama 1975).

5 The percent of debt paid from the Mobile Telecommunication Services Tax is .26% according to the State of Alabama Department of Finance.

6 The Education Trust Fund is used to fund capital improvements relating to educational facilities. The Education Trust Fund is made up of revenues from several sources including Mobile Telecommunications Tax, Income Tax, Sales and Use Tax, Utility License Tax, Severance Tax, and Business Licenses.

7 The Alabama Business Privilege Tax is levied for the privilege of being organized under the laws of Alabama or doing business in Alabama if organized under the laws of another state or country (Section 40-14A-22, Code of Alabama 1975). A State and County business license is required of every person, firm, company or corporation engaged in any business, vocation, occupation or profession described in Title 40, Chapter 12, Code of Alabama 1975. Business licenses, occupational licenses, franchise fees, franchise taxes, or other fees may be levied or imposed on a business activity by local jurisdictions.

8 Retailer's permit ("seller's permit") for sales tax.

9 If local taxes are collected, such taxes are distributed to the local jurisdictions

10 Yes (the state collects and distributes revenue to local jurisdictions); yes (local jurisdictions share the revenue through interlocal agreements)

11 Yes (with adjustments for vendor's compensations, audit assessments, refunds, etc.)

12 Local jurisdictions might have fees

13 Local governments can pledge sales tax revenues for infrastructure debt, but it is not common.

14 The Nebraska Tax Equity and Educational Opportunities Support Act (TEEOA) funds operating expenses. All capital for schools is funded by property taxes, either through debt service or the building fund.

15 No fees imposed at the state level; unknown regarding local jurisdictions.

16 All state sales taxes are used for education or for residential property tax relief. Local sales and use taxes are administered and collected by the Department on behalf on local jurisdictions. These local taxes must be authorized by the local jurisdiction and are used for various purposes depending on the type of local tax that is enacted in the jurisdiction.

17 Local sales and use taxes are administered and collected All state sales taxes are used for education or for residential property tax relief. Local sales and use taxes are administered and collected by the Department on behalf on local jurisdictions. These local taxes must be authorized by the local jurisdiction and are used for various purposes depending on the type of local tax that is enacted in the jurisdiction. Some local "school district" taxes are shared among the school districts within the county that has approved them. One local tax requires that some of the revenue be shared with other counties that do not collect enough from the same type of local tax imposed in their county

18 Sales tax and property taxes are the two main funding sources for education.

19 All sales and use tax retailers must obtain a license and pay \$50 for each retail location. With respect to Questions 6 – 8 and fees imposed directly by local jurisdictions, the Department has no authority in this area (local fees and permits) and is unable to provide such information.

20 Per rule 3.344, here is how local tax is sourced: (h)(6) A seller of prepaid wireless telecommunications services as defined in subsection (a)(9) of this section must collect local tax based on the business address of the seller when the sale occurs in Texas in person. However, if the sale occurs over the telephone or Internet, tax is due if the primary business address of the purchaser or residential address of the purchaser is in Texas. Note that in Texas these transactions are always subject to state tax, but local jurisdictions exempt these transactions from tax unless they have elected to do so. For more information see: [http://www.window.state.tx.us/taxinfo/taxpubs/tx96\\_339.html](http://www.window.state.tx.us/taxinfo/taxpubs/tx96_339.html)

21 The comptroller's office collects all state and local taxes and then allocates to each local jurisdiction the amount that it is entitled to, including any taxes on telecommunications services, based on the returns received from sellers.

22 Not at the state level, but to the best of our knowledge it is possible that local jurisdictions might use the tax allocations they receive as collateral, etc. We do not have more detailed information as requested below.

23 Local property taxes and locally issued bonds.

24 For the state the answer is no. At the local level, to the best of our knowledge there are no locally imposed permit fees on sales of telecommunications services or those who sell them. At the local level, we are aware that franchise fees or right-of-way may be imposed on sellers of telecommunications services.

25 Some municipalities levy their own excise tax. Some counties levy Et911 fees. Also, counties receive a portion of a State-collected Et911 fee. Currently, two West Virginia municipalities levy a local sales tax (collected by the State), but the tax is generally limited to cable television service and pre-paid wireless services.

26 A State-collected Et 911 fee is shared with counties.

- 27 The municipal sales tax of two cities is collected by the State is distributed to those in this manner.
- 28 The State collected Ed911 is distributed, in part, to counties based upon a formula.
- 29 A portion of the West Virginia Consumers Sales and Service Tax is dedicated to "School Construction" and "School Major Improvement" funds. These funds may conceivably be used for bonds. Additionally, education capital outlays may receive funding from other sources.
- 30 Further research may be necessary to respond to this question. Some local governments impose franchise fees on cable television systems.
- 31 Yes, the first step is sourcing or determining the point of taxability. If the a product or service sold is subject to sales tax at the state level; it is subject to sales tax at the county (local) level as well. Currently, the Wyoming state sales tax rate is 4% to which counties may levy up to 3% in additional sales and use tax with voter approval. Resort districts (of which there is only one in the state (Teton Village) may levy up to an additional 3% for general purposes. [W.S. 39-15-104(b), W.S. 39-15-204(a)] Thus, among Wyoming's twenty-three (23) counties the sales tax rates can range from four percent (4%) to seven percent (7%) and the resort district can range from four percent (4% to ten percent 10%). In addition, sales/use tax rates may change up to four times per year, coinciding with the calendar quarters as county taxes are instituted or expire. Specifically to prepaid wireless services, the sale is sourced as a retail sale in accordance to W.S. 39-15-104(f)(i)(A-E); however, the rule provided in subparagraph (E) shall include as an option the location associated with the mobile telephone number. [W.S. 39-15-104(f)(xi)(C)] W.S. 39-15-104(f)(i)(E) states: "When none of the previous rules of subparagraphs (A) through (D) of this paragraph apply, including the circumstance in which the seller is without sufficient information to apply any of the previous rules, then the location shall be determined by the address from which tangible personal property was shipped, from which the digital good or the computer software delivered electronically was first available for transmission by the seller, or from which the service was provided, disregarding for these purposes any location that merely provided the digital transfer of the product sold;"
- 32 Yes, all sales/use taxes are remitted to the Department of Revenue at the state level and then distributed to the counties, cities and towns based upon a population formula in accordance with W.S. 39-15-111(b) fully cited in supporting authority.
- 33 The Wyoming Department of Revenue's authority is limited to Title 39 of the Wyoming State Statutes governing excise (sales/use/cigarette and estate), property and mineral taxes. Any assessments outside of the sales/use tax realm we suggest you contact the Wyoming Public Service Commission.
- 34 The Wyoming Department of Revenue does not administer fund for education. You may wish to contact the Wyoming Department of Education. For current incentives and other programs available for higher education, you may wish to contact the Wyoming Department of Education.
- 35 Other than sales tax discussed above, we do not have authority to impose permit fees. We suggest you contact the Wyoming Public Service Commission for information on such fees.



36 The authority to impose franchise fees is falls under the jurisdiction of the Public Service commission. We suggest you contact them with this question.

37 This is outside of the Department's jurisdiction. We feel your best resource would be to contact the Wyoming Public Service Commission about right-of-way fees.

**Agenda Item #4**

**Prepaid Communications Services**

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**Materials will be posted as soon as available**

**Agenda Item #5**

**Unbundling of Communications Services**

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# “Unbundling” of Communications Services

Presented by: French Brown, Deputy Director,  
Technical Assistance and Dispute Resolution

August 21, 2012



# “Sales Price”

## Before Chapter 2012-70 Laws of Florida (CS HB 809)

202.11(13) “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.



# “Sales Price”

## **Always Included**

- (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.



# “Sales Price”

## Not Included

(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.*



# Chapter 2012-70 L.O.F.

## Amendment

(13) “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 service, not described in paragraph (a), which is services that are part of the sale and for which the charge is not separately itemized on a customer’s bill or separately allocated under subparagraph (b)8....

(b) 8. ~~To the extent required by federal law,~~ Charges for goods or services that are not subject to tax under this chapter, including Internet access services but excluding any item described in paragraph (a), that ~~which~~ are not separately itemized on a customer’s bill, but that ~~which~~ can be reasonably identified from the selling dealer’s books and records kept in the regular course of business....





# Chapter 2012-70 L.O.F.

During the 2012 Legislative session, the Revenue Estimating Committee adopted the following statement for the impact of the unbundling:

Though the full scope of the impacts is indeterminate, the recurring annual impacts would be at least -\$11.3 million for Gross Receipts Tax, -\$2.9 million for state communications services tax, and -\$21.3 million for local government communications services tax. The speed with which the minimum recurring impacts will be reached is unknown, so the cash impacts in FY 2012-13 are unknown.

Based on the retroactive application of unbundling, the REC adopted a negative indeterminate impact, along with the following statement:

The 2012-13 impact is expected to be at least -\$6.0 million (-\$2.5m GR Sales Tax, -\$0.3 Local Sales Tax, -\$1.0 Gross Receipts Tax, and -\$2.2 local Communications Services Tax).

# Examples of Bundled Services



# Example 1

A provider sells a single package of video programming, VoIP, and Internet access for \$99.00

The customer receives a bill for \$99.00 plus fees, Florida communications services tax, and local communications services tax. The provider's books and records allocate \$33.00 charges to each of the video programming, the VoIP, and Internet access.

Florida's CST would generally apply to the \$66.00 charges for video programming, VoIP, and associated taxable fees.

The \$33.00 charge for Internet access would not be subject to tax.



## Example 2

A provider sells a cellular phone bundled with a month of wireless service (talk, text, and web).

The customer receives a bill for \$50.00 plus fees, Florida communications services tax, Florida sales and use tax, and local communications services tax.

The provider's books and records allocate a \$30.00 charge for the wireless service, a \$15.00 charge for the cellular phone, and a \$5.00 charge for Internet access.

Florida's CST would generally apply to the \$30 charge for wireless service and associated taxable fees.

Florida's SUT would generally apply to the \$15 charge for the phone. The \$5.00 charge for Internet access would not be subject to tax.



## Example 3

A provider sells a single package of video programming, VoIP, and Internet access for \$99.00. This package includes a modem and one digital video recorder. The customer elects to rent a second DVR for \$10.00.

The customer receives a bill for \$109.00 plus fees, Florida communications services tax, Florida sales and use tax, and local communications services tax.

The provider's books and records allocate a \$5.00 charge for the modem, a \$5.00 charge for the first DVR, a \$30.00 charge for video programming service (of which \$10.00 is nontaxable digital content/information), a \$20.00 charge for VoIP, and a \$39.00 charge for Internet access.

Florida's CST would generally apply to the \$40.00 charges for taxable video programming, VoIP, and associated taxable fees.

Florida SUT would generally apply to the \$20.00 charges for the modem and two digital video recorders.

The \$49.00 charges for Internet access and nontaxable digital content/information would not be subject to tax.

# Other States

# Initial Survey Responses

Twenty-five jurisdictions that imposed a tax on communications services answered the initial survey.

- Alabama
- Arkansas
- Connecticut
- D.C.
- Florida
- Georgia
- Hawaii
- Indiana
- Iowa
- Kentucky
- Louisiana
- Maryland
- Massachusetts
- Michigan
- Missouri
- Nebraska
- New Jersey
- New York
- South Carolina
- Texas
- Utah
- Virginia
- Washington
- West Virginia
- Wyoming



# Initial Survey Responses

Out of the 25 jurisdictions, all *allowed* unbundling of transactions using the dealer's books and records except:

- Connecticut
- Louisiana
- Maryland
- Massachusetts, but they do allow unbundling for Internet access.
- New York has guidance pending related to the unbundling of other items and services, but they do allow unbundling of Internet access.





# Additional Questions

The twenty-five jurisdictions were asked:

If your state allows unbundling of services, is your state aware any legal challenges or general audit issues related to unbundling (possibly related to unbundling Internet access)?

- Alabama (see attached)
- Connecticut - do not allow "unbundling" (charge for exempt Internet access must be separately stated from taxable charges).
- Kentucky - do allow unbundling; no legal/audit issues currently.
- Nebraska – no, see Reg-1-108.06.
- New York
- South Carolina – no.
- Texas (see attached)
- West Virginia – no.
- Wyoming (see attached)

# Florida's Communications Services Tax unbundling vs. Florida's Sales and Use Tax



# SUT “Sales Price”

212.02(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.... 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.

# Questions



## Detailed Responses

### ALABAMA

1) *If your state allows unbundling of services, is your state aware any legal challenges or general audit issues related to unbundling (possibly related to unbundling Internet access)?*

Mobile telecommunications services subject to Alabama Mobile Communication Services Tax may be sold in bundled or unbundled form. When bundled, the charges for nontaxable mobile communication services may be subject to taxation unless the provider can reasonably identify charges not subject to taxation from its books and records that are kept in the regular course of business (Section 40-21-121(d), Code of Alabama 1975).

### TEXAS

1) *If your state allows unbundling of services, is your state aware any legal challenges or general audit issues related to unbundling (possibly related to unbundling Internet access)?*

Texas allows for bundling of telecommunications services with nontaxable services, but we are not aware of any issues with it. See Texas Tax Code § 151.025(d) which provides that:

If any nontaxable charges are combined with and not separately stated from taxable telecommunications service charges on the customer bill or invoice of a provider of telecommunications services, the combined charge is subject to tax unless the provider can identify the portion of the charges that are nontaxable through the provider's books and records kept in the regular course of business. If the nontaxable charges cannot reasonably be identified, the charges from the sale of both nontaxable services and taxable telecommunications services are attributable to taxable telecommunications services. The provider of telecommunications services has the burden of proving nontaxable charges.

We are also not aware of issues with the “unbundling” of telecommunications services from other services. A seller in Texas does not have to bundle telecommunications services with other services.

### WYOMING

1) *If your state allows unbundling of services, is your state aware any legal challenges or general audit issues related to unbundling (possibly related to unbundling Internet access)?*

No. Wyoming does not require bundling. Per W.S. 39-15-101(a)(xl), “‘Bundled transaction’ means the retail sale of two (2) or more products, except real property and services to real

property, where the products are otherwise distinct and identifiable, and the products are sold for one (1) nonitemized price. A bundled transaction does not include the sale of any products in which the sales price varies or is negotiable based on the selection by the purchaser of the products included in the transaction:

(D) When a bundled transaction includes a telecommunications service, ancillary service, internet access or audio or video programming service:

(I) If the price of the bundle is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to nontax purposes;”

In accordance with our definition of “bundled transaction”, specifically section (I), If the price of the bundle is attributable to products that are taxable and products that are nontaxable, the portion of the price attributable to the nontaxable products may be subject to tax unless the provider can identify by reasonable and verifiable standards such portion from its books and records that are kept in the regular course of business for other purposes, including, but not limited to nontax purposes;” . W.S. 39-15-101(a)(xl)(D)(I)]

Per our definition of telecommunication service, “Internet access service” is specifically not included and thus, if stated separately from a taxable intrastate telecommunication service it is not subject to sales tax. [W.S. 39-15-101(a)(xxxix)(U)(VI)] Furthermore, rule *WY Dept. of Rev. Rules, Chap. 2, Sec. 9(a)* states: “General. Non-taxable transactions, including sales made for resale, shall be shown separately from taxable charges on sales invoices. The entire invoice amount shall be subject to the sales/use tax if the exempt charges are not separately shown and distinguishable from taxable charges.”

**Agenda Item #6**

**Developments in Technology**

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**Materials will be posted as soon as available**

**Agenda Item #7**

**Communications Services Tax Audits**

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# Communication Services Tax Audits

**Presented by: Peter Steffens, General Tax administration**

**August 21, 2012**



# Audit Results

State Fiscal Year	Cases	Hours	\$ Collected
2003	13	666	\$577,048
2004	38	1,860	\$1,482,546
2005	57	2,847	\$723,349
2006	162	10,073	\$3,706,611
2007	222	20,686	\$23,559,988
2008	180	22,064	\$11,582,041
2009	161	19,469	\$8,652,679
2010	176	19,247	\$10,569,205
2011	159	13,550	\$31,030,426
2012	206	10,874	\$37,900,315
<b>Total</b>	<b>1,374</b>	<b>121,336</b>	<b>\$129,784,209</b>



# Major Issues

- **SITUSING**
- **SURCHARGES AND FEES**
- **IMPROPERLY EXEMPTED SALES**
- **UNSUPPORTED BAD DEBTS AND CREDITS**
- **FILING/ACCOUNTING PERIOD**
- **OTHER RECORDS ISSUES**



# Situsing

- **ACCESS TO HISTORICAL RECORDS**
- **ACCESS TO COMPLETE BILLING CYCLE/ACCOUNTING PERIOD**
- **CUSTOMER DATA NOT READILY ASSOCIATED WITH BILLING SYSTEM**
- **MULTIPLE BILLING SYSTEMS AND THIRD PARTY BILLERS**
- **SINGLE BILLING AND ADDRESS SYSTEM FOR MULTIPLE ENTITIES**
- **MATCHING ACCOUNTING RECORDS TO RETURNS FILED**
- **ABILITY TO ISOLATE TAXABLE CUSTOMERS FROM EXEMPT**



# Situsing - Continued

- **SERVICE ADDRESS = PROVIDER BUSINESS LOCATION**
- **BAD ADDRESSES / INCOMPLETE DATABASE**
- **NO USABLE JURISDICTION ASSIGNMENT IN DATABASE OR ACCOUNTING RECORDS**
- **NO CUSTOMER SERVICE ADDRESS INFORMATION: PAGERS, PRE-PAID, THIRD PARTY BILLERS, USE OF NON ADDRESS SITUSING**
- **JURISDICTIONS EXCLUDED FROM RETURNS**
- **DEFAULT JURISDICTIONAL ASSIGNMENT – SELECTED JURISDICTION OR CITY NAMED**



# Surcharges and Fees

- **SIMILAR NAMES, TAXABLE & EXEMPT**
- **CUSTOMER ISSUES**
- **ACCESS TO HISTORICAL RECORDS**
- **INSUFFICIENT SUPPORTING RECORDS**
- **CUSTOMER BILL ANALYSIS, TAX BASE AND RATES**



# Improperly Exempted Sales

- **ACCEPTING SUT FOR CST**
- **RESIDENTIAL EXEMPTION**
- **RESALE**
- **ACCESS TO HISTORICAL RECORDS**
- **SITUSING IMPROPERLY EXEMPTED SALES**
- **ISOLATING EXEMPT TRANSACTIONS**
- **DETERMINING UNTAXED PORTIONS OF A TRANSACTION**
- **SUPPORT RECORDS**



# Bad Debts and Credits

- **STATUTORY REQUIREMENTS FOR BAD DEBT VS. CREDIT**
- **NETTING CREDITS ON SCHEDULE I**
- **ABILITY TO ISOLATE CREDITS AND BAD DEBTS TAKEN**
- **ACCESS TO HISTORICAL RECORDS**
- **RECONCILING REVENUE AND CREDITS TO ACCOUNTING RECORDS AND RETURNS**





# Filing / Accounting Period

- **USE OF DIFFERENT PERIOD CUT-OFF DATES**
- **LATE REPORTING OF ALL OR PART OF EACH MONTH FILED**
- **MATCHING RECORDS TO RETURNS**
- **ACCESS TO HISTORICAL RECORDS**
- **MATCHING BILLING CYCLES & CUSTOMERS TO RETURNS**



# Other Records Issues

- **HISTORICAL RECORDS ARE NOT AVAILABLE ELECTRONICALLY**
- **NO HISTORY FOR PRODUCTS AND SERVICES OFFERED AND BUNDLED**
- **INSUFFICIENT RECORDS TO SUPPORT REALLOCATION OF PAST AMOUNTS REPORTED**
- **MULTIPLE ENTITIES COMINGLED**
- **CHANGE IN ENTITY**
- **CHANGE IN SERVICE AREA**

**Questions?**

**Agenda Items #8 and #9**

**No Materials**

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