



NEWS

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REPEAL THE SUBSTITUTE COMMUNICATIONS TAX *Unintended Consequences Harmful to Florida's Economy*

TALLAHASSEE — Florida's Substitute Communications Tax, created in the 1980's era of telephone deregulation is now antiquated and unnecessary and in 2005 poses a clear threat to Florida's growing economy and competitiveness. That's the conclusion of Florida TaxWatch, which is urging the Legislature to follow the Governor's recommendation to repeal the tax to avoid creating a large unintended tax increase.

"This is a very serious 'economic ticking time bomb' for Florida's citizens and businesses," said Dominic Calabro, President of Florida TaxWatch at a news conference this morning.

The Substitute Communications Systems tax—as defined in 202.11(16), *Florida Statutes*—is a tax on any system capable of providing communications services used as a substitute for any switched service or dedicated facility by which a dealer of communications services provides a communications path. After the divestiture of AT&T, the Florida Legislature enacted this tax in 1985 for companies that attempted to bypass the phone companies by setting up their own internal phone systems.

A new TaxWatch research report notes that while this tax language may have been suitable 20 years ago when communication was mostly limited to phone service, it is damaging to individuals and businesses operating in today's Internet, networked, and wireless world, under rules proposed by the Department of Revenue.

"This is extremely destructive to our high tech economy in Florida," said Rick Kearney, Chairman of IT Florida, a not-for-profit membership organization that represents Florida's diverse information technology communities. "High tech is where we want to go. This is a giant step backwards to where we want to grow high tech firms in Florida. This tax is going to blow it for us," Kearney said at the news conference.

"Should the tax be allowed to stay on the books and the rules developed, it could cause us to have a very serious competitive disadvantage," echoed Chris Hart, Senior Vice President of External Affairs for Enterprise Florida, the economic development arm of the state. "This would be disasterous as a business climate issue."

Substitute Communications Systems are subject to the Communications Services Tax, which includes state and local levies and averages about 14.5%, ranging as high as 18%. This tax is assigned to both

the value of the depreciated communications equipment and all the support costs to maintain and operate such systems.

At the urging of Florida TaxWatch and others, the Legislature in 2000 created the Communications Services Tax to simplify a myriad of taxing and regulating entities providing telecommunications services. But it left in the old 1985 language of the Substitute Communications Systems tax and gave the Department of Revenue (DOR) new authority to develop rules to administer the tax, creating an unintended consequence: The DOR is using a narrow but precise reading of the law and has concluded that computer networks - from business networks to home systems - fall under this existing law, and are therefore subject to taxation and regulation as a telecommunications provider.

The TaxWatch report states the potential reach of this tax, as evidenced by the DOR's draft rule, is huge and potentially encompasses every business or home with: two or more computers networked together; an intercom system; walkie-talkies, wireless routers and dispatch systems that transmit/switch voice or data among remote receivers and a central base system; or a system that transmits, routes and switches data to permit monitoring the activities and operations of manufacturing equipment, pipelines, rail systems or utilities.

Florida TaxWatch's Substitute Communications Tax Task Force, under its Center for a Competitive Florida, concluded the tax is unworkable and its potential application is a dangerous threat to Florida's business climate. The Task Force noted that no other state has such a tax and decided the only sound course of action was repeal.

"This is not a high-tech issue," said David Smith, President & CEO of PSS World Medical of Jacksonville and Chairman of the Task Force. "This is an issue that affects citizens and all businesses, small to large, in Florida. Any person who moves information between two points could be subject to this tax," Smith said.

The research report found that any attempt to apply this tax uniformly would constitute a tax increase, in conflict with the 2000 Communications Services Tax Law, which was intended to be revenue neutral. No revenue from taxing substitute communications was included when the new tax rates were calculated. Revenue generated from the tax currently amounts to less than \$400,000 and repeal would have little impact on forecasted state revenues.

"We've had to modify past tax laws as needed, including the co-generation tax and intangibles tax. As then, we've captured something unintended here with the Substitute Communications Tax and need to make a correction," said Calabro. "A tax is wrong when its revenue is counter-productive, and this is a wrong tax."

The TaxWatch report also noted the need for urgency in repealing the law. New federal guidelines under the Sarbanes-Oxley Act require publicly traded companies to report all tax liabilities, current and potential. Difficulty in determining a company's substitute communications tax liability makes full compliance with Sarbanes-Oxley questionable. Not only is accuracy a problem, but public companies may be forced to report large tax liabilities that may not ever materialize. Even while the tax is effectively in limbo, pending DOR rule making, it could hurt companies and tie-up capital that could be used to expand businesses and create new jobs.

"For those Florida companies competing on a larger level, regionally or nationally, this tax would encourage the unintended effect of ownership change to non-Florida based companies, to avoid the tax," said Calabro. "We saw this with IBM, when faced with the onerous Services Tax in 1986, closed its Boca Raton plant and re-located its 10,000 employees to Raleigh-Durham, North Carolina."

The report notes that a predictable business environment is important to the well being of Florida's growing economy.

“Businesses need to know they can put together a business plan without surprises,” said Charles Ranson, Executive Director of the Florida TaxWatch Center for a Competitive Florida, which produced the report. “This tax will clearly affect the competitiveness of Florida.”

Representative John Stargel (HB 49) and Senator Mike Haridopolos (SB 818) have filed bills to remove the tax and passage is the most important tax issue the Legislature will face this session.

“Florida is facing funding challenges and growing needs,” said Barney Barnett, Chairman of Florida TaxWatch and Vice Chairman of Publix Super Markets. “Although our economy is better than most other states, we’re walking a fine line. Why would we embrace a tax and rules that would threaten the economic vitality of the state and be so difficult to enforce?”

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