FLORIDA DEPARTMENT OF REVENUE

PUBLIC MEETING

VOLUME I: Pages 1 - 78

DATE:	Tuesday, August 21, 2012
TIME:	Commenced at 10:00 a.m. Concluded at 5:19 p.m.
LOCATION:	2450 Shumard Oak Blvd. Tallahassee, FL
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MEMBERS:

Marshall Stranburg, Chair

Brian Smith

Gary Resnick

Sharon R. Fox

Alan Rosenzweig

Gary S. Lindsey

Kathleen Kittrick

Charlie Dudley

Davin Suggs

Also Present:

Andrea Moreland

PROCEEDINGS

MR. STRANBURG: Good morning, everyone. I would like to convene the third meeting of the communication services tax working group. My name is Marshall Stranburg. I'm the interim executive director for the Department of Revenue. I will be chairing the meeting today. At this time, I would like to have a roll call.

MS. MORELAND: Marshall Stranburg?

MR. STRANBURG: Here.

MS. MORELAND: Charlie Dudley?

MR. DUDLEY: Here.

MS. MORELAND: Sharon Fox?

MS. FOX: Here.

MS. MORELAND: Kathleen Kittrick?

MS. KITTRICK: Here.

MS. MORELAND: Gary Lindsey?

MR. LINDSEY: Here.

MS. MORELAND: Gary -- Mayor Resnick?

MR. RESNICK: Here.

MS. MORELAND: Alan Rosenzweig?

MR. ROSENZWEIG: Here.

MS. MORELAND: Brian Smith?

MR. SMITH: Here.

MS. MORELAND: Davin Suggs?

MR. SUGGS: Here.

MS. MORELAND: All is present.

MR. STRANBURG: Before we get started, I would like to address a couple of administrative and housekeeping details for the meeting today. This is a non-rule public meeting. This is held under Section 120.525, Florida Statutes. A notice of the meeting was published in the Florida Administrative Weekly on August 10th, 2012 in volume 38, number 32. The meeting agenda materials are posted on the Department's website. We have a court reporter who is creating a transcript of the meeting today. The transcript will be posted on the working group's web page. If you wish to speak today and you are present in this room, please provide a completed speaker card to Jamie Peate. Jamie's in the back. Speaker cards are located on the side counter over on the other side of the room from Jamie. Before speaking, please state your name and the organization you represent.

As I previously mentioned, we have created a web page on the Department of Revenue's website for the working group. Agendas, meeting materials, transcripts, and other information relevant to the working group will be posted to the website. We do have some hard copies of today's meeting materials available on the back side counter. If you would like to receive updates about the working group by e-mail, please provide us with your e-mail address. A sign-up sheet is located on the side counter. Please be aware that your e-mail will be considered public record and subject to disclosure if requested.

If you are participating in today's session using WebEx, please do not mute or unmute your phone using the instructions given by WebEx's automated system. To ensure today's session goes as smoothly as possible, our staff is managing the WebEx mute and unmute feature. For those using WebEx, you should see a telephone icon next to your name on the computer screen. If you wish to make a public comment, please click on the hand icon located above the participant panel list. Our staff will let the facilitator know if you have your hand raised so you can be called on to comment. Those not using WebEx can make a public comment by sending an e-mail to CSTworkinggroup@DOR.state.FL.US. Again, that is CSTworkinggroup, all one word, @DOR.state.FL.US. In the subject line, use CST working group. Please keep your comments brief. Your e-mail will be printed and read into the record.

For those of you here in the room, we please ask that you turn off your cellphones or place them on vibrate. Our meeting is scheduled for all day. We will be taking breaks during the day and a lunch break around noon. Please note, unfortunately some have already discovered this, the cafeteria next door is currently closed for repairs. The restrooms are located in the hallway that runs directly behind this room. The men's room is located on the west end of the hallways and the lady's room at the east end of the hallway. The vending machines are located at the west end of the hallway right after the double doors. Please remember that areas closed off to the public as designated, this is a secure facility, so we ask that you remain in the main public access areas.

Any questions on this before we get started today?

Okay. Our second item on the agenda are draft minutes from the June 11th meeting. Staff has made some changes to those minutes based upon comments received at our last meeting. Does anyone have any additional changes to be made to those minutes?

Okay. Having no additional comments, we will consider the draft meeting minutes for the June 11th meeting approved. Unfortunately, we do not have the meeting minutes from our last meeting on July 25th ready for your approval. We'll have to defer approving those until our next meeting.

Moving on to item agenda three. At the June 11th meeting, if you recall, there was several requests for information. The bulk of that information was made available at the last meeting. However, we had a few follow-up materials that were not available at our previous meeting and that are now contained under tab three of your materials. And unless anyone's got any specific questions about those additional materials, we'll keep plowing on to our next agenda item.

Okay. Seeing no questions about the follow-up materials, we'll move on to agenda item number four. At our last meeting, we heard from several speakers on the issue of prepaid communication services. I, again, want to thank Kathleen Kittrick from Verizon and John Barnes from MetroPCS for the presentation they did at our last meeting. Kathleen is here with us today, and we understand John will be joining us through -- is joining us through WebEx. And I'm not sure, is Chris Miller from MetroPCS -- yeah, Chris, there he is in the back. I'm sorry, Chris. He's also here if you have any questions. Chris is the vice-president for tax and MetroPCS. So we wanted to make sure if you had any follow-up questions, since we were running out of time at our last meeting regarding the prepaid presentation at the last meeting to have an opportunity to ask additional questions or if there is any other information that they wanted to ask.

So, are there any further questions for our presenters? Sharon?

MS. FOX: We didn't really get into how the prepaid providers deal with costing to telephone numbers. And I had a question because, from a prepaid standpoint the implications were that it was difficult to charge tax at the point of sale. But I had questions about whether or not the telephone numbers could be used as a situsing point based on where it was? Because I understand that there is some costing associated with paying other providers for networks and roaming and that type of thing based on where the telephone is at the time that it's being used.

So, from a technology standpoint, I don't know how to best phrase that question. But, I know that it's done. I think that there's a little bit of confusion here. Whatever tax that we're talking about, whether it's the sales tax or the universal surcharge or any sort of tax, those taxes are sourced to the place of primary use, really not to the mobile telephone number. Because folks can take their phone number -- with number portability they can take their phone number that they've had for ten years and keep it. Port it from a land line, they can port it -- they can bring their phone number with them if they move. I mean, I know many people that have kept their same number and moved to different states. So the tax doesn't follow the phone number, it really follows the place of primary use. As we discussed before, the place of primary use is not applicable under prepaid.

MS. FOX: And I understand that. But that's -- my question is can it be done differently? I understand what the norm is and why the norm exists, but just because it's always been done that way in my mind doesn't mean that it can't be done another way.

MS. KITTRICK: I don't think that we could ever set up our billing systems to be able to track the mobile telephone number for a sourcing mechanism.

MS. FOX: But those numbers aren't being used for that purpose when you're in a different area and using the phone?

MR. LINDSEY: I'll try to add something to that as well. After years and years of grappling in the post-paid world, the bill world, how taxation would be done for mobile communications, that's how the mobile sourcing, the Federal Mobile Sourcing Act came to be because it was so complex, there was no good conventional way to do it. There was no methodology that will allow you to, you know, to track where the phone was. The industry kind of muddled through it. And as a result, the mobile sourcing, Federal Mobile Sourcing Act, was adopted in early -- in 2002. So that's kind of past history.

It was -- there was really no good way to do it other than determining the place of primary use for bills for the post-paid customer. And -- so given the complexity there and the fact that in the prepaid environment, there is no -- it's anonymous.

There's no address, it's cash and carry, that's the -- you know, that's the reason that we -- we're not going back to try to reinvent the wheel. That's already basically been tried years ago.

MR. MILLER: Chris, I think I would ask is if you looked at what all the other states --

MR. STRANBURG: Chris, can we get you to come to the mic just so everyone can hear, please?

MR.MILLER: Sure. I just wanted to add, I think if you look at what most other states have done with this issue as Gary and Kathleen pointed out is they've all started to adopt point of sale for this. So I think that that kind of just shows the complexities that are out there. And as everyone's grappled with this and implemented solutions to it, they've all gone to a point-of-sale solution which is when a customer comes in to the cash and carry, as Gary pointed out. So pretty much wanted to say that.

MR. STRANBURG: Davin?

MR. SUGGS: Question, and I really don't know, but like in terms of post paid or prepaid, do you all set aside specific amount or quantity of inventory of, I guess, numbers that you designate for prepaid versus post paid?

MS. KITTRICK: Phone numbers? Are you talking about phone numbers?

MR. SUGGS: Uh-huh.

MS. KITTRICK: No -- buy numbers and designate them for prepaid or post paid.

MR. STRANBURG: Any other questions for Kathleen, John, Chris?

There was also some preference, there was a request made at the last meeting that you wanted to hear from some retailers about the prepaid issue as well. We have a representative from the Retail Federation, Randy Miller, who's here if you've got any questions that Randy can answer. Also we have Warren Townsend from Wal-Mart participating through WebEx. Mr. Townsend is the senior director of specialty taxes with Wal-Mart. And he's graciously made himself available to answer any questions that you may have on this topic from a retailer's perspective.

Warren, we just ask if you're with us, please if you would hit star six and pound six to unmute your line so if you want to make a statement or if you have any questions that you need to respond to, we can hear you.

MR. TOWNSEND: Marshall, I appreciate that.

You let me know at the correct time. I would like to make a statement.

MR. STRANBURG: Okay. If you'd like to right now, Warren, that will be fine to do it now.

MR. TOWNSEND: Thank you, Marshall. Again, my name is Warren Townsend. I'm the specialty tax director at Wal-Mart stores. I've held that position for 22 years in the transactional tax area. Prior to that, I was with the Arkansas Department of Finance for 11 years in transactional tax.

Wal-Mart was one of the first retailers out there that seemed to move from land lines to wireless. We've seen where our areas of the stores where the E911 fees that were tied to land lines. When it moved to wireless, the communities were not receiving the funding they needed to support their E911 services. We spoke at the national association of emergency awareness, that as a retailer we would help support legislation for E911 service if it was a flat fee because the point-of-sale system, we could attach a fee and remit that tax to the state that could then distribute it to local E911 areas.

As we look at the telecommunication services in the State of Florida as a retailer, our difficulty in supporting the collection of telecommunication services has to do with the defining of a retailer as the provider of telecommunication services. As our corporate structures are set up as a retailer, we must stay away from that utility service line. We do share with the cities and counties their need for the funding, and we understand that their funding through the telecommunication service is going away. What we would ask them is to find a new way to support the revenues. We are in support. We will work with you on fees.

If you want to set a fee up for calling card, just a flat fee that we could then distribute to the state and the state could distribute it back. We are willing to work with you with new ideas. Our concern, though, is being classified as a telecommunication provider. It's not as much an issue in Florida, but once we're labeled as a telecommunication provider, then we would fall under requirements in several states that would change our structure. It would change our requirements on federal level. But we are wanting to work with you.

Our concern is if we continue down the trail and retailers were required to collect the current telecommunications tax for the retailers that sell the time cards in a vending machine or from a news stand that sits up on the corner of a street, that it would be too burdensome for them to be able to collect a flat fee because it's not a rate and the rate changes. If the state was able to come up with some type of a flat fee, then we could add it to our retail and it would be probable that a vending machine operator or small retailer could operate their point of sale from a flat fee process. We are here to work with you.

If you look through our -- went through our electronics area today, you would see that we do collect sales tax at point of sale on the gift cards or the time, both time and dollar amount from our figures. There is only one vendor that asked us not to collect tax because they collected it. Of course, you already heard from MetroPCS. At one time we started to collect the sales tax on the MetroPCS, and they informed us that they were remitting that tax; and so we have since stopped.

I would also like you to consider that it is just not the wireless telephone cards that we're looking at for the future. If we look out there today, there is a tremendous amount of game cards that are going through what I would call telecommunication services that there is not a clear distinction to a retailer, is it a telecommunication tax. If you went through the cable network, it's probably being picked up today as a telecommunications tax. But when it's sold as a retailer to use one of these cards, I believe that there is a lost revenue to the cities and counties.

Again, retailers look for clarification in these areas because if -- there is clear, concise communication that we need to collect the tax, then it's very easy for us to collect it on the front end. The last thing we're looking for is those surprises. But we would like to help you on finding a solution. We just would be used to being a telecommunications tax.

Thank you for your time today. I would be welcome to answer any questions you have. Or if you would like to call and visit with me concerning what retailers are doing out nationwide, my direct phone number is 479-273-6433. Thank you.

MR. STRANBURG: Thank you, Warren. Members, do you have any questions for Mr. Townsend?

MR. SUGGS: Mr. Townsend, this is Davin Suggs with the Florida Association of Counties. A couple questions. I guess specific to Wal-Mart or large retail chains, the way I guess your registers or your program, is it done locally in terms of let's say if you have four or five stores in one local region, is that program done locally to take into account the local taxing?

MR. TOWNSEND: The local tax is taken into account, but it is not done at a local level. The collection of tax flows from the home office in Bentonville where it is set as taxable or exempt and rates are placed into the system. That information is then flowed through maintenance to a store SMARTsystem, which we call the brain at the store. It is then downloaded to a controller which operates the cash registers. The difficulty is there is only so much maintenance can flow to our cash registers. We are very fortunate at Wal-Mart, I believe, we have the most buckets, as you would call them, that we can set rates. And we can set up to ten different rates in the system.

But if you walk into a Wal-Mart store, which we hope you do quite often, you'll see that

Wal-Mart tries to service all of your needs so you have a one-stop shop where our competitors may only cover three or four items. I will tell you that currently in the state of Louisiana, we are 100 percent full and cannot flow any additional items. I'm not sure how many open buckets we have in Florida. Again, our concern is being labeled as a telecommunication provider, not for collecting a tax for you.

MR. SUGGS: I have a follow-up question: Can you tell me sort of how you treat, I guess, in describing those buckets, how do you treat the sale of alcohol and tobacco products and the different --

MR. TOWNSEND: You caught me off-guard. I'm not sure if there is a specific extra rate, okay. There is a sales tax rate. For example, in Iowa I know that there's an extra 3 percent tax rate for alcohol. We will set that bucket in a separate category. So my sales tax would be in bucket one, my state. My local would be in bucket two. My beer would be in bucket three. I can then set a rate for each of those buckets. When an item rings through the register, we assign what's called an item number to each product. When it rings to the register on that item number, it will inform the cash register to charge the state rate or local rate or a beer rate. So an item that is beer would be charged the extra beer, an item that is not beer would not be charged the beer rate.

Does that help?

MR. SUGGS: Yes, thank you.

MS. FOX: Mr. Townsend, this is Sharon Fox. I'm with the City of Tampa. As I understand your explanation, then, you can have a bucket for each county or you can have a bucket for communications service, and that bucket can be assigned a different rate based on its location or do you need a different bucket for each location?

MR. TOWNSEND: We can -- at Wal-Mart, we can assign it by location. So we don't have to set -- so if you had a city tax, we could drop a city tax into a bucket and run it through our point-of-sale system. The difficulty is that Wal-Mart can do that, but my major competitors cannot do that nor can the small -- the vending machine company nor the little newspaper that's selling gift cards.

MS. FOX: Thank you very much.

MR. DUDLEY: Mr. Townsend, this is Charlie Dudley. You mentioned a flat fee versus a percentage. And so can you explain to me how that would work in your bucket system?

MR. TOWNSEND: A flat fee does not flow through my bucket system. The flat fee runs through as a link number and -- if you went down and bought a tire today and there's a tire fee in Florida, whenever the tire rings at the point of sale, it's automatically set so there's a linking fee that would charge $5 for a tire.

MR. DUDLEY: Right.

MR. TOWNSEND: Okay. If you were to come up and say for E911 or for your telecommunication tax, as long as I'm not a telecommunication provider, and say for every gift -- time card you sell, we want you to collect a $1 fee to pay the state. Then we could then set that link fee up for the state. We set up at a state level so it will ring up. We can't ring a link fee for just Tallahassee; we have to set a link fee for the entire state the way it's set in our system.

So if there was a law passed in Florida so that any time you sell telecommunication minutes or a telecommunication dollar or you sell a phone that is not -- I hate to say one of my -- TracFone, one of those type phones where you have minutes on it, then there will be a fee of $1. It doesn't matter whether it's minutes, ten minutes, $10 card, or $100 card; you have to collect this flat fee. Then I can go through and set every item in that category to collect the fee. I can send a report to the State of Florida that says at my -- at these Wal-Mart stores, and tell you the location of those stores, this is the amount that I collected and send that report at the end of the month. And then the State of Florida could distribute that back to you. Some states do it based upon population. But it is a fee collected at state level and then distributed back to the locals.

MR. DUDLEY: As a follow up, if it wasn't a dollar, if it was 10 percent, that wouldn't work?

MR. TOWNSEND: No, because 10 percent has to work out through my rate system and my rate buckets are full or they may not be full in Florida but are across the country. The other side is my competitors do not have the rate buckets I have, so they would have no way of collecting that 10 percent and showing it on your cash register tape. And then you get into the small operations that could not run multiple rates.

But, I truly believe that a smaller retailer could operate a flat fee because they will have an inventory count of the cards. So at the end of the month, they could see that they had sold 40 cards and collected the fee and remitted it. They would be able to tie it back to the location that they sold the card.

MR. DUDLEY: Okay. Thank you.

MS. KITTRICK: Hey, Warren, it's Kathleen Kittrick. I have a question: In terms of a bundle phone in de minimus amount of minutes, we have an example that I think we're going to talk about a little later, an interpretation by the Department of Revenue that in a situation where you're selling a bundled phone and minutes, you would charge the sales tax for the phone and then the CST for the de minimus amount of minutes and then potentially a 911 fee if we can get our 911 fee done. And in that CST, you've got the state and the local, you're saying --

MR. TOWNSEND: That's what -- you're absolutely -- I think -- you're absolutely right, bundles are a unique issue and what we have tried to do on the 911 fee because it's a fee and a customer does not have the burden of paying the 911 fee as a percentage of the telephone, okay. So if you bought -- and here I use again a TracFone -- you bought the phone and you bought the minutes, then the fee could be $50. Because E911 is really on the usage of the minutes, then we could allot and put a leading number to that bundle of $2 or $5. But if you put it as a percentage and if we looked, I believe the state of Texas uses a percentage, then it ends up that we charge a percentage on the phone plus the card because we cannot distinguish the price of the -- within the bundle and we tax the entire bundle.

MS. KITTRICK: Uh-huh. It gets complicated, doesn't it?

MR. TOWNSEND: It does. That's the reason it's a link fee. It makes it very simple and even the smallest retailer should be able to handle a link fee. But the difficulty is, is that going to support what the city and county needs to cover their bonding?

MR. SUGGS: Mr. Townsend, this is Davin again. With the fee, I think, you made a statement that you can only customize or set up a fee at a state-wide level and not at a local level?

MR. TOWNSEND: That is correct. And that's because it changes. If I -- I couldn't set a fee for one city one direction and another city another because of how my maintenance flows down today. I'm looking at it and I've asked for it, but then you're also going to look at if you went to a small retailer, let's say it's a small convenience store, the guy owns ten convenience stores or the lady owns ten convenience stores and they are in several different areas, they do not -- cannot -- it would be very hard for them to keep track of the different card amounts of the fee should be on or off. But if they collect a set fee completely across all of their stores, then it would be very easy to send the report to the state and tell them the number, without the burden of the different percentages. Does that help? What I'm trying to do is your small retailers, the burden of keeping track of the different cards and the different amount would be an extreme burden.

MR. SUGGS: Would it be more of a burden than keeping track of local tax rates of the different jurisdictions?

MR. TOWNSEND: I believe it would because it's tied to a single item. You're going to want them to stand back and say this is from telecommunications or this is from wireless cards.

Where today they set into their point-of-sale system, most of them could have NCR, IBM come by and set the register. It's really seamless to a small retailer where it goes. They just know that when they get a Z tape at the end of the day -- a small stand-alone register, you press a button and it gets what used to be called a Z tape at the end of that day that will tell you what your sales was and what your tax for each of the categories are. Usually, though, those are called the Banger register because they're freestanding. You have to crank it occasionally if the power goes out, but you have to look at if you are a small retailer, what is the smallest cash register brain-wise that you would have in that operation.

MR. SUGGS: Okay. Final question, this is Davin again. So far, what we received at the last meeting, I think what I've seen is that the pre-paid cards, I think we can narrow it down to like five or six-minute increments, whether it's 30 minutes, 60 minutes, a hundred minutes. So essentially I know you might have, you can generate six or seven flat fees. But generally at the point -- if the variations and quantity of minutes are known or can be governed or narrowed down, then essentially couldn't you still create a flat fee for you?

MR. TOWNSEND: I can tell you that, yes, Wal-Mart could do that. I don't believe my competitors can do that. And that's the difficulty. I would -- it would be easier for a burden and compliance for you to set that fee at a set amount and us put it on all cards. That was one of the issues we had on the E911 service. If -- or maybe it was our -- E911 service. Usually a land line would charge you $2 for that land line for the month, whether it was one minute used or a hundred minutes. So when we were able to attach an E911 with a linking number, the state had already determined that E911 was usually by a phone line, so we would say on the card it's this set fee, whether it's 5 minutes, 30 minutes, or 60 minutes.

MR. SUGGS: Okay. I lied, I have one more question. But this one is maybe for somebody here in the room from DOR or maybe somebody from Florida retail. Aren't there different brands of cigarettes that attract different levels of taxation in Florida? And I'm talking about like the sale brand, like the 305 and stuff because of the supplement that some don't carry over the taxes and others do.

MR. MILLER: Mr. Suggs, all cigarettes at the point of sale are sold with the state and local sales tax applied. Any of the tobacco taxes are applied up the stream at the wholesale level. The wholesaler is the registered tax agent that collects all the appropriate tobacco taxes. We simply collect a sales tax at the point of sale. The same thing happens with liquor. So if you're taxing liquor differently by the alcohol content or whatever, that distributor does all of that and reports that to the state. We simply collect the sales tax, including a tax on the tax.

Any other questions?

MR. SUGGS: All right. This is for both sides, since we're sort of in the middle. Has anybody -- does anybody or has anybody ever thought about, I think at the last meeting we talked about let's say Verizon, you have a package of prepaid cards that you may go to Best Buy, you may go to Wal-Mart, sell them to Wal-Mart, then they resell them and they collect a sales tax. The situation where he just painted, is there anything in exchange when you sell them wholesale to a retailer? In any state, is there any tax transactions at that level?

MS. KITTRICK: No.

MS. FOX: I have a question for Mr. Townsend again. It's a follow up just to make sure that I understand. Sharon Fox again, City of Tampa.

Are you saying then if there's a linked flat fee that each jurisdiction can report from their location or identify their location and the number of sales that they made times the flat fee so that it can be reported down to the jurisdiction level?

MR. TOWNSEND: Yes. Sharon, if it's a flat fee, I -- Wal-Mart can supply that, and I believe my other retailers could supply that.

MS. FOX: Thank you very much.

MS. KITTRICK: But, Warren, it would be sourced to the store location, right? It wouldn't be sourced to the customer location, it would be the store location?

MR. TOWNSEND: That is correct, it would be sourced to the store location because that's where we know where we sold it. And if there was a -- my competitors out there who are retailers could source it to their store locations. We do not maintain information about the customer who purchased the card. We just know the location where we sold the card.

MS. FOX: Thank you.

MR. DUDLEY: Randy? I want to ask you a question. I appreciate hearing from Wal-Mart, and I'm sensing that they may be at one end of the spectrum and your members, in terms of not -- I'm not speaking ill of your other members. But can you give us a sense of, you know, a Wal-Mart or a Target or people who may have a little bit more sophistication and what percentage we're looking at versus this universal maybe mom-and-pops or smaller? I mean, I'm just trying to understand.

MR. MILLER: Well, by account we have about 8,000 members that are much, much smaller. So we are representing everything from Wal-Mart all the way down to the small country store. And I think that what you're hearing from Mr. Townsend is that Wal-Mart is quite sophisticated in its tax system and programs. They have unlimited resources. Some of your larger competitors do not do it the same way, and they would run into challenges of trying to do a -- collect a communication services tax at the local level at this point the way it is currently established in the statutes.

The retail federation wants to help you solve a problem, but yet we don't believe the point of sale with the current way the CST is calculated is the appropriate place to collect that tax. We are retailers. We're not telephone providers. And you heard Mr. Townsend say, we do not want to be a provider. When you go into a retailer, you can buy a telephone. You can buy a telephone that you plug into the wall. We're not selling telecommunications services. Or you can buy that prepaid card or you can buy a preloaded telephone. We don't know what you do with it after you walk out of the store. But we just simply sell a trigger.

That trigger, when you buy one of those prepaids. You have to do something else with the provider of that service. At that point, the two are connected. We simply provided a mechanism for them to be able to contact the provider. So we collect sales tax. The law requires us to collect the sales tax. And that seems to be -- I think, Mr. Suggs was going to a point, you might want to look at, if you're going to change the system, backing up up the stream about where that tax incident occurs on all these other taxes. But the sales tax is at the point of sale. We're comfortable with that. We can do that, and we have done it for years, since 1949.

MR. DUDLEY: What about this flat fee concept that was put out there? Is that --

MR. MILLER: The flat fee in Florida has not been implemented, as you know. We had some legislative agreements that the E911 50-cent fee would not be collected until 2013, until, again, we can figure out nationally how to handle it so that large and small retailers can comply. We're not against it, we're just saying it's difficult. Again, Mr. Townsend shows that Wal-Mart is sophisticated and they can do it in their accounting system. Some still -- it's going to be a challenge. So we don't have that fee set up in Florida at this point.

MR. DUDLEY: I appreciate it, Randy. And if you or the federation have ideas over the next couple of months as we're trying to figure out options for this --

MR. MILLER: Sure.

MR. DUDLEY: -- that would be great. I mean, people don't know, Randy used to have Marshall's job in the '80s chairing a task force like this that had to deal with how to handle cell phones.

And he created the first -- tax option, it was 7 percent tax on cell phones with a flat 10 percent on local phone service. So I know you sat through a lot of these in the early 80s.

MR. MILLER: They --

MR. DUDLEY: Unfortunately you didn't solve it then.

MR. MILLER: No. And the reason is technology changes every day. Who would have ever thought that land lines would be going away, but they are. It's just technology. We have to keep up. Our tax system needs to be revised.

MR. DUDLEY: Thank you.

MR. SUGGS: Randy, just your comments locally on Florida, I know we talked to Mr. Townsend, he said flat fee. And we thought about that would have to be under state rate, but you know your members large and small here, the reality of customizing a flat fee --

MR. MILLER: I think Mr. Dudley was leading to that. We -- it will be a challenge for a lot of our members to customize anything. They are about trying to sell goods and not worry about trying to establish a sophisticated accounting system. It's got to be simple and keep it simple. It's the only way -- and I think the problem with -- the more complicated you make something, the more errors that occur and it just won't work. So we encourage you to keep it simple. Thank you.

MR. SUGGS: I have one question. For AT&T and Verizon, like you have some -- locations, like retail locations, how do you treat -- I think from Verizon, your example you do set up prepay -- with AT&T. How do you treat those, right now you treat those prepays with just sales tax?

MS. KITTRICK: Yeah.

MR. SUGGS: Have you guys -- how hard would it be for you -- is it because the law is ambiguous and bungled up, you don't or -- fee in your retail locations and charge the CST?

MR. LINDSEY: I think at this point the -- let me say this, that Wal-Mart's retail system is much more robust than AT&T retail system. Where we do a lot of retail, we have a point-of-sale system, we collect 911 fees, we collect sales tax. So we would be in that same challenged area of trying to grapple with how that would even be done. Similar to Warren's comments. And then also I think there's the ongoing discussion about the policy manner -- with the CST applying to prepaid which is another -- kind of another conversation.

MS. KITTRICK: Right. And we sell prepaid in our stores. And just to sort of go back to the presentation from the other day, the last meeting, in the case of Verizon, 85 percent of all of our prepaid is done in third-party retail stores. So -- but when we do sell, we sell in vending machines. You know, when you come to the store. There's multiple ways to purchase the prepaid card. And it's just very difficult. It's really difficult to set up a new regime. And we question, you know, how would we local --

MR. SUGGS: Let me ask for another comment. Moving back towards like the cigarettes and alcohol and sort of like a whole -- some type of wholesale. Let's say it was state-wide and it was one pricing level -- comments from -- at the wholesale level sometimes the transactional tax --

MS. KITTRICK: How do we know where it was sold? If we're selling in block to Wal-Mart, how are we going to know where it's going to be sold? How are we going to know -- you know, we don't track those cards. We don't know where they're going to ship them, if they're going to ship to Florida, to Kansas, to Texas. I mean, Florida has a very high CST rate. The tax rate is very, very high. Do we want a state like Delaware to be subsidizing -- customers out to Delaware to be subsidizing a product, a tax that we sell in Florida? I mean, we can't just come up with a single tax for -- at a wholesale level for Wal-Mart not knowing where they're going the sell it. Do you understand what I'm saying?

MR. SUGGS: I understand what you're saying, but I think there's a piece -- I'm not an expert on alcohol or tobacco but I know as Randy said, going through a distributor when you say someone is licensed to distribute in Florida, I think those issues -- some of those issues could be solved, I think.

MR. LINDSEY: Well, in the instance -- I'm assuming with the beer distributer, you've got X number of cases of beer that are in the state that have been sold to the distributer for wholesale. And the way that the -- it's a different manner when you're talking about the prepaid industry. Not only -- it's even more complex. Not only is it nationally Verizon or AT&T or T-Mobile or someone who's selling involved at a national level to a retailer, who then puts them in their stores throughout the US. There's also another layer, there are aggregators that also buy largely from the big carriers, and then they resell to other companies as well. So there's no real way, unless you have like a national tax that everyone shares, there's no way that you can determine where that ends up other than knowing that it's sold in a store on, you know, Apalachee, you know, at a retail location.

MR. SUGGS: Last one to the industry guys. So all of this stuff we heard, and this is I'm talking with respective to retail locations in Florida, as Mr. Townsend said, if we had to go in a direction today, normalize a state-wide flat fee and we are just talking prepaid, so maybe a state-wide flat fee would be probably the most efficient? Right now, not saying that we would, but if all of the stuff we heard today and the last time before we get to bundling and unbundling, like buy a prepaid iPhone with all the different services and stuff but the flat fee is a direction. If you had to recommend something to this body to consider moving forward, would that be on the list or very high on your list?

MR. LINDSEY: I'm trying to think of it as a disinterested third party. You know, the idea of a flat fee and we already administer, as Warren mentioned, the 911 flat fee is administered throughout the US now, a number of states are adopting that. So there is the ability in the retail setting to collect a flat fee depending on how many, as Warren mentioned, how many -- how much space you have to set those kind of fees up. So that -- I mean, that could be an option to be put out there for consideration.

MS. KITTRICK: I think it would have to be one unified rate. And it would get sourced to the store location. I mean, we couldn't get into trying to determine anything other than the store location.

MR. SUGGS: Right. Because if I have a prepaid phone and I live in Tallahassee and if I'm traveling and I'm in Tampa, it's easier to source it to the store than to try to source it back to me.

MR. LINDSEY: Right. That goes back to the whole, it's complicated enough, the regular wireless world, and even unfathomable in the prepaid world.

MR. STRANBURG: Any other questions for either

Warren or Randy? And Randy, I'm sorry I didn't give you an opportunity. Do you have any other comments you want to make?

MR. MILLER: I think I covered them. Thank you, Marshall. Appreciate it.

MR. STRANBURG: All right. Well, thank you again, Randy. Thank you, Warren. We appreciate your being here and participating. And again, if we have any other questions, Warren, we've got your phone number to follow up. And Randy, we know where to follow up with you, too. So again, thanks.

MR. MILLER: Thanks.

MR. TOWNSEND: Thank you.

MR. STRANBURG: Okay. Our next agenda item we're going to be having a presentation from French Brown on unbundling of communications services. French, as you know, is our deputy director in our technical assistance and dispute resolution section for another three or four days. Unfortunately, he's leaving us. He's taken a job with the Office of Financial Regulation as their legislative and cabinet director, so we want to thank him for all the contributions and work that he's done for the working group. And we will miss him. But we know he will be very successful in his new position in the OFR.

MR. BROWN: Thank you, Marshall.

So I wanted to give a little presentation today. As many of you on the panel are aware, this legislative session, some changes to the way that the CST sales price definition is, essentially allowing what us in the biz, like to call unbundling or bundling transactions. I just wanted to give kind of a general overview. We are going to go into some more in-depth information later in the auditing presentation about, you know, how -- what it actually means for audit. But we thought that this would be a good -- something that the work group would have a good general understanding of and what those changes really did last year.

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So really to know where we are, we've got to know where we were. And so we start off with before Chapter Law 2012-70, House Bill 809, we look at the definition, the old definition of sales price. And what it says was essentially that the key words were sales price was the amount charged for using communication services -- the amount charged for using communication services in this state including any property or other services that are part of the sale. And that was the real key language before was that, you know, so you could have things that were, quote, unquote, "bundled" with the sale of communication services, that even though they might not have been communication services themselves. They were part of the sale and they could have been taxed for it.

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Also with the old definition, also listed a number of items that were always included with the sales price including things like detailed billings, extra charges for those, sale directory listings, directory assistance, things like that. Just something to note that these things were in and they are still always included in the sales price.

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All right. So the old definition also said things that were not included in the sales price of communications services. Really the important ones to kind of focus on today probably are number seven and eight. Seven was for charges of property or other services that were not part of the sale of communication services if those services -- or sorry, if those charges were separately stated. So that was old law. That's still in current law. So that essentially said that if it wasn't part of the sale, it needed to be separately stated in order to not be considered deemed part of the taxable sales price of communication services.

The eighth one was one that came in in 2005 talking about Internet-access services, because we all know the federal government has preempted states from taxing those. And so the old law provided that charges for Internet-access services, even if they weren't separately stated, those could be, quote, unquote, "unbundled" as long as they could be reasonably identified from the selling dealer's books and records kept in the regular course of business. So that way, those items wouldn't be taxable after 2005, and they still currently aren't taxable.

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So now we get into the changes of sales price. And these are kind of the -- this obviously isn't the whole language in the bill, but these are kind of the important parts. Again, change the main definition of sales price where before it said including property or other services that were part of the sale, now it says including any property or other service not described in paragraph A, which remember those are the ones that are always taxable, which is part of the sale and for which the charge is not separately itemized on a customer's bill or separately allocated under sub-paragraph B(8).

Now again -- so this essentially -- so the new law changes essentially say that property or other services would not be subject to the communication services tax if they either are separately itemized or if they could be separately allocated under the new B(8). The new B(8) goes on to clarify the charges for goods or other services that would not be subject to communication services tax under this chapter, including Internet-access service, even if they aren't separately itemized on a customer bill but if they can be reasonably identified from the selling dealer's books and records, then again those things can be excluded. So that's kind of a wrap up real quick of where the statute went and where we get this whole term unbundling, it essentially -- the meat of it is that a provider now has the choice to be able to say that using its books and records kept in the regular course of business, they can say that certain charges are taxable, certain charges are not taxable if those nontaxable charges aren't for communication services but they're for other things that wouldn't otherwise be taxable under Chapter 202. The one note is it doesn't have to be separately stated on a customer's bill. So it just has to be kept in those back-up records that would be reviewed via audit when the Department --

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I think Kathleen mentioned earlier that sometimes it can get a little complicated. Oh, I'm sorry, we skipped one slide. As we talked about earlier, the REC did put an impact of indeterminate amount but no less than amount on this. Just wanted to mention it again because I know we had a presentation on this one earlier. Just one thing to note with REC impacts is that, you know, generally speaking something may have no administrative burden but may cause a revenue impact. Or the flip side, something may have a huge administrative impact and cause no revenue impact net to the state. So, just while we're talking about, you know, potentially things and we're going over the examples, while there may be some administrative questions that may or may not play into the whole impact to the revenue in the State of Florida.

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All right. So onto the examples. I wanted to try to give a couple examples to help the panel understand really kind of where the questions come up with unbundling and how things somewhat can get complicated. Number one, just want to say that these are not talking about -- I mean, they talk about specific industries, but they're not targeted at any specific industry, they're not targeted at any specific taxpayer. They're really just general overview to try to make it easy for everybody to understand, kind of walk through and may get a little bit more complicated as the examples go on.

All right. So the first example, we have, the video programming provider. They sell a single package to their customer for $99 and that -- albeit for that programming bundle includes video programming, voice-over-Internet protocol, and Internet access. The customer receives a bill for $99. Also included is the Florida communication services tax, local communication services tax, the various fees. So what the customer sees is the $99 and obviously taxes that are on that bill. So then if the Department goes in and audits the selling dealer, their records provide that $33 of that $99 is for video programming, $33 is for voice-over-Internet protocol, and $33 is for Internet access. Essentially what that means is that means that the Internet access is a tax is specifically excluded from 202. Video programming is taxed, and the VoIP is going to be taxed but arguably the residential rate could apply. So just note that, you know, what the -- even though the customer sees a $99 bill and they see an amount of tax on there, that tax amount is going to be full CST on $33, residential rate on $33, and no rate on the other.

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So adding another little bit of, adding another layer the next example we have is a telephone phone provider, telephone service provider. This time the customer gets a bill for $50. It has associated fees, Florida communication services tax. This time it has a Florida sales tax on it. It also has local communication services tax. Again, the Department goes in and the provider provides to the Department -- because, again, it is the provider that really determines how things are unbundled. The provider provides that $30 charge is for the wireless service, say $15 of the charge is for the actual phone, and $5 is for Internet access. For this one, CST would apply to the $30 charge, the $15 charge would be subject to Florida sales and use tax, and the $5 charge wouldn't be subject to any tax. So, you know, just trying to add on some layers and hope y'all see how things can add up.

Davin, go ahead.

MR. SUGGS: All right. In both of these examples, I just want to ask, you know, like on the back of the hotel door it states here the given rates that we've given the state that we've been charged up to a maximum of -- but they sort of -- I don't know how annually -- if that's on an annual basis or whatever with communication companies, can they change this on their own any time or do they have to notify you for a period of time this is what we charge for this service?

MR. BROWN: I think is a better question for them, but I don't believe there's any notification or any limitation on how often they can change it or --

MS. KITTRICK: Not preregulated -- whenever we want.

MR. BROWN: So really it's just tied to their books and records of how they allocate the charges for the separate services.

MR. SUGGS: Okay.

MR. BROWN: Next slide, please.

All right. So this next one, hopefully again, like I said, wanted to add on some layers. This next one gets a little complicated. So going back to a video programming provider, and I'm not trying to pick on Charlie's industry, but Brian's industry did such a good job with the puppy commercial. So, you know, it's kind of hard to go to bundling -- it's kind of easy to go to the bundling.

So a provider sells a single package. This one has video programming, voice-over-Internet protocol, and Internet access. The same $99 package also includes modem and digital video recorder. But this time the customer elects to rent a second digital video recorder for a $10 fee. This customer receives a bill for $109 plus the fees, Florida CST, Florida sales and use tax, and local CST. The provider's books and records allocate a $5 charge for the modem, a $5 charge for the first DVR, a $30 charge for the video programming service, and just to make it a little bit more complicated, let's say $10 of that $30 is nontaxable digital content or information or information service, and a $20 charge for the voice-over-Internet, and then lastly, a $39 charge for the Internet access. Okay. So what does that all mean? Under this example, the CST would apply to the $40 charge for the taxable part of the video programming, the $20, the VoIP, and you'd also have associated taxable fees on there. As for Florida sales and use tax, that would apply to the modem charge and the two digital video recorders. And then the $49, which is comprised of the Internet, $39 Internet access, and the $10 nontaxable digital content information would not be subject to sales tax.

So, now, one other thing that I didn't put in these examples, which also does make it very complicated, is you notice I didn't state what any of the fees or the communication services tax or any of those different amounts are. But just note that, you know, what the customer's going to receive is they're going to receive $109 say worth of charges, and they're going to have separate lines that separately state out, you know, various fees, various taxes, both state, local, and sales tax. And, you know, just sometimes it can be difficult in just looking at an invoice on itself without looking at -- without having the dealer's records directly available to determine what those associated charges are because of the unbundling.

Any questions on those examples? Go ahead.

MR. SMITH: Just one comment. As his example plays out here, I want to make people aware that I think I'm the only provider at the table that has a uniform CST rate throughout the state. So it's very -- you know, I kind of sometimes feel like I'm getting away with murder in the simplicity of applying the CST because it's the same rate across the state. When I hear from all my counterparts is they spend a lot of time and energy calculating the right rate. Then they turn around and fight an audit that says they don't have people in the right location. So if you look at this charge and think it's that simple, it isn't for anybody at this table except for me. And I think one of the things we should be thinking about is adding -- or taking away complexity in administration and adding some simplification, especially to some of the situsing issues with the CST so that we get ease of administration. Because this makes it look really simple. That's it.

MR. BROWN: You're absolutely correct, Brian. It is -- this is trying to make it simple for the panel, but it is a lot more difficult than this, especially when you start playing with the actual numbers of those fees and taxes that are going to be on a bill to determine back where those came from.

Mayor, did you have a question?

MR. RESNICK: I'll hold off. That's all right. Go ahead, Davin.

MR. SUGGS: If digital content, and it turns into this video -- digital content, does that include like a movie? Or is it more now I can get stuff like what I get on my phone through DirectTV and extended services and download?

MR. BROWN: Generally speaking when it comes to Florida CST is you have -- under the current law you have video programming, which is a definition -- sorry, video service, which used to be cable service and has a specific definition, talking about video/audio programming. As for -- but also which has been in CST for a long time is there is an exclusion for information services which can be a number of things that -- you know so there is some interplay between those two things. But just in this example I wanted to point out that, you know, arguably some of a charge could be an information service and that could lead to the impact.

MR. RESNICK: Can you provide -- I mean, that's what I was going to also because DirectTV, would be -- generally might have similar services as part of its service and yet it's paid -- it pays 13.17 percent or charges its customers 13.17 percent tax on those services. So with respect to the other services that pay the CST on video programming, how would the digital programming come out? I'm trying to figure out what would be digital programming or digital content and information services that would be exempt from the CST on video programming.

MR. BROWN: There's no way to know exactly. It comes down to -- honestly it comes down -- the way unbundling works, it comes down to each provider. So, you know, Brian's company could decide that this amount is for the actual direct-to-home satellite, the video programming, and this portion of it is information service and that could be different from another company. I mean, they can -- it all goes down to the dealer's books and records.

MR. RESNICK: -- of the delivery of the service?

MR. BROWN: It's whether or not it falls into the statutory definition of video service or information service. It's the definition --

MR. RESNICK: All right.

MR. BROWN: Next slide.

Okay. Which has been kind of a reoccurring theme of when I've been up here the last couple of times, I'm going to talk about other states and how they treat unbundling. I think, as you all recall, our initial survey that we sent out right after session, we just asked states whether or not they had unbundling provisions. And then as a follow-up question to that, everyone kind of wanted to know if other states had seen various issues and things like that associated with unbundling.

So, first of all, you know, our initial survey we received 25 different jurisdictions that responded to that. Of those 25 jurisdictions, all of them did allow unbundlings using the dealer's books and records except for Connecticut, Louisiana, and Maryland. Massachusetts, that initial one did specifically say that they just allowed unbundling for the Internet assess. And then New York told us that they had guidance pending relating to other items, but New York does allow unbundling of Internet access.

MR. RESNICK: French, did you ask about whether they allow unbundling for franchises fees on the cable?

MR. BROWN: We did, and that's in your backup information. But, unfortunately, I think what we talked about last time is that a lot of the states don't know whether or not specific local counties and cities, other smaller jurisdictions collect that information. So, unfortunately, our conclusions in the back-up material aren't really concrete. But, any information that you want to provide to help us with building a report would definitely be greatly appreciated.

MR. RESNICK: Any information -- we don't know either. But, I mean, every other state other than Florida, right, based on your research, has franchise fee and cable service?

MR. BROWN: Again, all of the states that we were able to ask, I think it's in tab three, and unfortunately, I don't have it right in front of me. But, unfortunately, most of them said maybe or they don't know. They said that, you know, local counties or cities could, but again, it's -- a lot of the states at that level --

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So of those initial 25 people we had asked the follow-up question: Is your state aware of any legal challenges or general audit issues related to unbundling? One thing that we pointed out to them where it might help them is, you know, specifically looking related to the unbundling of Internet access, since many of the states do allow unbundling of Internet access. For the responses we got back, generally, just generally speaking, most of them said they weren't aware of any issues. Alabama provided a lengthy explanation that's behind your package but essentially they just said that they explained that they do allow unbundling. Connecticut, specifically explained that they don't allow unbundling, and they said that the charges for exempt Internet access must be separately stated for them to be exempt. Kentucky does allow unbundling, and they weren't aware of any legal or audit issues. Nebraska was not aware of any. South Carolina was -- South Carolina and West Virginia were also not aware of any issues. Texas said they were not aware of any and they also do not require their providers to unbundle, which is essentially the same as Florida. We don't require providers to unbundle, but it's an option that providers have. And then also Wyoming said that they -- in a nutshell they said that unbundling --

MR. RESNICK: I have another question, too. Other than traditional communication providers and the video providers that bundle, do retailers bundle?

MR. BROWN: Do you mean other retailers?

MR. RESNICK: Like would -- not to use this as an example, but he was on the phone, so would a Wal-Mart sell a bundled package of wireless service, video service, phone service, et cetera, satellite? I know retailers sell satellite service, but I don't know if they would sell it as a bundle with the wireless service or Internet service or something like that. I guess they could.

MR. MILLER: They could, but I don't think they do.

MR. RESNICK: And they would unbundle the services.

MR. BROWN: It's actually, it's actually a good segue to my next -- perfect segue. Is to really kind of explain -- is to explain the differences now, differences with how sales tax treats the definition of sales price. And just one other thing to remember, you know, the definition of sales price when you have a transaction-based tax, that really is kind of the root of the tax. That's kind of where you go to determine how much is taxable. So again, like I explained earlier, the old definition of communication services tax said that it was for communication services and any property or services that were part of the sale for that communication service. If you look at our definition of sales price, sales price of sales and use tax, again it says sales tax is based on the sale of tangible personal property, and that definition says that it's total amount paid for the tangible personal property including any services that are part of the sale. So, you know, take a retailer that's generally -- that we think of as a sales tax dealer, if they bundle goods and services, then those services can become part of that sales price when they're part of the sale.

MR. RESNICK: So subject to the sales tax?

MR. BROWN: Be totally subject to the sales tax. Essentially --

MR. RESNICK: Including the communications part of that?

MR. BROWN: Well, now communications is a little bit different because it allows the unbundling. So you can carve out communications. But just when you're talking for a normal sales tax dealer, say you went to get an oil change say at Wal-Mart, you're going to pay for a filter, you're going to pay for oil, but you're also going to pay for labor. But because that labor is part of the sale of the oil and the filter, that entire, say $20 charge, is subject to sales tax. But with unbundling, if there was unbundling with sales tax, you could just charge the tax on the amount of the oil and the filter.

MR. RESNICK: That's like for satellite service, for example, if you charge one fee for the -- you know, for the install and first-month service, I think the -- I'm not even sure if the labor and install part are subject to sales tax or --

MR. BROWN: Generally a labor-only transaction isn't going to be, but I think it depends on if they have any tangible items that would then be bundled sales tax.

MR. RESNICK: All right.

MR. BROWN: Any other questions?

That's the end of my presentation. Any other questions? Give y'all something to think about. Sharon?

MS. FOX: Not so much a question as a statement. The irony to me is that when we first set up the CST knowing how complex unbundling can be and knowing what Florida law was engineered to accomplish, we set up the CST so that it was all taxable unless it was separately stated. And knowing how legislation comes to pass, there was a request then to be allowed to unbundle, and now it's, oh, unbundling has made things so complicated when we had simplified it initially. And now parties that are involved had asked for it to be complex and then complain that it can't be administered. So I -- it's just very ironic to me. I don't understand. It seems like there are parties to this that asked for this problem so that it could not be administered.

MR. RESNICK: That's -- well, it seems like actually what we were talking about before with respect to the difficulty of establishing CST in a sales transaction really is sort of advocating we're going back to what would be in place before the CST, which there was, I think seven separate taxes and fees that applied to all the services. And it was fairly easy to administer. But we'll have to take a look at that one when we look at ways to make it simple. Maybe we just get rid of it and go back to what we had.

MS. FOX: Perhaps unbundling the tax is the next step.

MR. LINDSEY: Well, I'll add a different perspective to the unbundling. I think part of it certainly is prompted by the Internet Tax Freedom Act. And also part of it is that consumers, you know, who are the taxpayers, we're responding to the market. And taxpayers want to pay tax on what is taxable. So part of this is responding to what's -- we're not -- I don't think the industry is trying to create complexities, I think they're responding to the market and to pay a tax on certainly what's taxable.

And in the retail environment, I guess the example would be an oil-change company, Jiffy Lube Company can decide if they're going to separately state their -- it's, you know, the labor and parts. And I guess the customer -- you know, down the street another vendor may try to charge one fee and the customer can decide which one to go to. I think we have that dynamic in the communications industry where customers are saying they want to be taxed on what's taxable. So that's kind of a different -- you know, just another take on it from a taxpayer point of view in the industry.

MR. RESNICK: We talked about some of the definitions in your -- the definition of video programming has changed last session.

MR. BROWN: Essentially, it was really just renamed from cable service to video service. But the subsidence remains the same.

MR. RESNICK: So is Apple TV -- use Apple because it's the largest company in the world now, is Apple TV subject to tax?

MR. BROWN: I think it depends on what you're being charged for Apple TV. I think when you walk into a retailer and purchase an Apple TV, say for $99, that's going to be sales tax. Now, as for the other charges with that, you know, I think there's obviously a question there whether or not it's communication service that you're paying for, whether or not there's something else that you're paying for.

MR. RESNICK: What would be the Department's position for you with respect to that?

MR. BROWN: I think the DOR has taken a position in a technical assistance advisement. I think was issued either last year or maybe -- either 2010 or 2011, that talked about certain streaming video services and that technical system device, partly took the position that their streaming video programming services essentially were communication services. And there potentially is an argument that things that other people are selling could be communication services.

MR. SUGGS: Marshall?

MR. STRANBURG: Go ahead.

MR. SUGGS: Here's my understanding. Charlie and I had long discussions. The trade off for cable or anybody to be able to unbundle is now -- and I think is what you said and I agree with Sharon that unbundling or bundling, it adds complexity. But the trade off is now a cable provider who wants to offer home security services.

The trade off is the administration is more complex but the marketing on the front end is easy. Because now somebody that Charlie represents says you get all this for 99 bucks, period. And it adds maybe an hour or two. You know, it makes it more complex on the back end when they're reporting to you guys, but I think that's sport of the trade off in terms of responding to -- if I'm a customer, I want to get as many services as I can from one person. And they're trying to respond to that. And in response -- and in agreement with Sharon. So I guess it's not you all but responding to the market, that the more you give a customer what they want, the more sales you make, yada, yada, yada, in terms of sort of reverse fees and made it more complex. So -- but it's my understanding that part of that -- some of that complexity, if I understand that DirectTV is simpler for him than it is for you all, some of that, I guess, in asking for this, you are willing to take on some of those complexity to better respond to market as a trade off in your own -- there's a trade-off decision that the people that you represent have made internally. We're willing to take a certain amount of X to be able to respond better. But I know we're here, that this is within reason. If there's a solution, there's a solution. But at some point there is a decision that it's going to be a pain for us on our books, but we'll be able to sell more, market better, and respond better.

MR. DUDLEY: Well, I think that we felt like we had no choice but to advocate for the unbundling. Because without it, as we offer services that are not defined as communication services like home alarm and monitoring, which is a sales tax service, then our customers, because they elected to have a bundled offering from a communications provider, would have been paying 16 percent tax on a service that's otherwise subject to 6 or 7 percent tax.

So, A, we had no choice from our own perspective in entering a competitive environment and alarm monitoring, alarm services. Then, B, our customers, you know, don't want to pay three times the tax just because we happen to be a communication service provider. Just like Wal-Mart and the rest of them don't ever want to be called a telephone provider. I understand that. I think that if the world hadn't changed, Gary's comment about the way things used to be, you know, cable never paid for gross receipts tax. It wasn't a utility. It wasn't defined that way. This -- the emergence of the communication service tax was because all the companies were now crossing over the different lines that used to be demarcation lines. If we went back to world that was, you know, had demarcation then it wouldn't be a problem. This whole country is going to have to deal with this issue because of the Federal Internet Tax Freedom Act and how broadly it's drafted. We're going to -- we already find ourselves migrating to an IP platform world where that particular act walls off that entire platform for taxation. So while Apple TV may be selling subscriptions one day or maybe now outside of the TPP, they may buy at retail outlet then you'd be subject to the sales tax if they have jurisdiction. Some sort of future subscription that Apple gets for that particular service delivered by somebody that you may or may not have jurisdiction over and may completely undermine the video portions of the similar receipts that you get from Brian's industry and my industry and others that are investment-based Florida-based companies. You may lose that money.

Now, this is a huge debate, and it's much bigger than us in Florida and everything else that is going on the national level. But the unbundling was a way of trying to treat our customers and ourselves in a fair way. If this tax was a 6 or 7 percent tax, then you wouldn't necessarily need all this. We could say just, hey, 6 or 7 percent is a broad base, we're going to generate another couple billion dollars because you're going to apply to all these other things and you could replace all the other state and local taxes that would be lost by migrating. To me, that's the goal. Our goal has always been to have a broad-based tax with a consumption level rate. The problem is being a rate that is almost three times of the consumption level in many parts of Florida. And that's what we struggle with. If we could figure that out, figure out how to add to the base and get the rate down to more of the sales tax rate, then we have a much, much easier system for everybody, for customers, and a much more predictable revenue stream for governments.

MR. SUGGS: And someone else chime in, if I'm wrong here, but before the legislation, let's say cable, you can still offer the home security and I wouldn't have to pay CST on it if it was separately stated. It would make an awkward for you to market.

MR. DUDLEY: I think there was an argument there that -- you know, I think there was an argument that we may have had to pay CST on that even if it was -- stated.

MR. BROWN: I think the language that I pointed out earlier, you know, said that you could arguably unbundle in the pre-law if it was separately stated in the inbound part of the sale. So then you get into the whole question of whether or not it's part of the sale and things like that. But like you -- you know, I think exactly as you pointed out, the reason they wanted the unbundling is because they wanted to apply the tax to things that they thought that 202 fell under.

MR. SUGGS: It works out. We had a good, long talk during our session, and I understand. But, just sort of backing up to Sharon's comment. It's sort of responding to the market, there's some sacrifice there. We're here to try to diminish some of that on the administrative side of the coin. But it sort of, I guess the consumer paying the fair rate that gives you -- keeps you competitive in responding to the customers and everything. And I guess until, I think we're talking about audits later, because I think on our side, the whole big to-do is is everybody telling the truth, are we -- is what is being collected being collected? What needs to be collected is being collected. I guess we'll talk about that in audits.

MR. DUDLEY: Just so we're clear about something, if you go back to the answer that French just gave you, pre the change there was audit liability potentially for a bundled transaction in which we separately stated on the bill $19 for home security. There was still audit -- potential audit liability that we owed CST, even though that's a sales tax transaction, because it's being offered by Comcast or Bright House or someone who's not ADT or somebody else. And that's one of the reasons that we advocated for the clarification in law, that just because we are registered communication service tax providers, if we happen to offer a service that's non taxable or taxable under another tax, we can elect to either bundle it and/or separately state it. And there is zero chance of the tax liability because we are fully complying with the law. Before we didn't have that uncertainty -- we have this uncertainty out there, now we've clarified it -- the advocacy part of it.

MR. BROWN: Charlie, I just was to clarify just one minor point of that is it wasn't necessarily tied because you were, a quote, unquote "provider," but again it tied back to the whole part of the sale language which we have not so much case law in CST but under the sales tax arena because that tax had been around longer of what that phrase really means. But it wasn't -- I just want to make sure it's clear, it wasn't because Comcast also sells cable, it was because -- it's whether or not those home security services were inextricably inclined.

MR. SUGGS: I get my security as a resort of getting cable. No, Charlie, I agree with you. Everything is -- now with the new law, you can do it either way you wanted. You can separately state and then be very clear of what rate goes where or you can bundle. But I know part of that is either way now -- either way they do it is clear what rate is applied to what type of service.

MR. DUDLEY: We run into this on sales tax when we go to a fiberoptic provider and buy -- and have a $2 million contract for an upgrade. Of the $2 million in the contract, 500,000 of it is the actual fiberoptic TPP tangible cable that we're adding to our ad valorem base, too. Their 1.5 million is labor that is exempt from the Florida law because we don't have services tax on those construction services. Yet we pay sales tax on the full 2 million because it's a contemporaneous transaction of I'm buying from X company, both labor and tangible personal property material at that value.

MR. RESNICK: That's an easier example with your construction aspects of this. I mean, we keep forgetting that the CST is not only supposed to give revenues to local governments for bonding and debt, it's to compensate local governments for maintenance use of -- so that example you gave, just somebody needs to still keep that in mind when we look at reforming this tax structure that franchise fees, which pay for the rights of way went away also, and so we need to make sure that there's still going to be -- otherwise the rights of way are just not going to be obtained in a way that allows the services to be delivered.

MR. DUDLEY: All that capacity was included in the local CST.

MR. RESNICK: Right.

MS. FOX: I just want to make sure that when an audit is covered, we go into a little bit more what point that French was making about even if it was separately stated, the audit incidents of those other services that are not considered taxable being taxed. Because I'm not clear on how that worked in practical aspects of the application of the law.

MR. STEFFENS: I'll certainly be glad to do it in the presentation. I don't have it as a specific item, but if I don't address it, you can certainly ask again.

MS. FOX: Okay. Thank you.

MR. STRANBURG: Peter, do you want to come up and talk about that now maybe just briefly?

MR. BROWN: Thank you.

MR. STEFFENS: So can you restate your question so that I make sure I understand?

MR. STRANBURG: This is Peter Steffens. He's with our general tax program, for lack of a better term, I'll just call him -- he's our leader of the audit program.

MR. STEFFENS: I'm the manager of field operations. I learned that the other day.

MR. STRANBURG: Hold our regular questions to the audit presentation. Just answer with Sharon.

MS. FOX: Could you explain about audit assessments on separately stated items that weren't considered taxable normally being taxed under the CST provisions of the law?

MR. STEFFENS: Well, under the old definition of sales price, we would look at all of the items in a transaction, whether it's contract or an invoice -- we would have to figure out which one governs -- and certain things would be optional and other things would be tied together so that the service couldn't actually be provided without that item. And so consequently, if it was an item that you couldn't separate out, you wouldn't actually have a sale of service without that item, then it was considered to be part of the sale price.

You know, the the DVR charge for the cable company probably not because you can buy cable service without the DVR. But there are certain things that if they charged you to have lines run to your house, that's kind of part of the service. There's no way for it to receive the service without the line. And so, you know, that would be tied to it even if they tried to itemize it. But if the question is, is it optional, is there some other way for me the get the service but if all the components are necessary in order for me to buy the service, then it's part of the service.

MS. FOX: That didn't really --

MR. STEFFENS: That didn't help?

MS. FOX: No.

MR. RESNICK: Are you talking about like with a large service, for example?

MS. FOX: Yes.

MR. RESNICK: Like with a large service, you know, you need a telephone line -- correct me if I'm wrong -- you need a telephone line or telephone service to have an alarm monitoring service.

MR. STEFFENS: Yeah, I think based on the fact security systems are listed to not be covered by communication service tax, we would probably, as long as they separately stated it and it was a reasonable amount supported by the records, we probably would not have tried to tax that for CST. Because if it's a separate service it's not necessary for the CST to be provided and it was an optional service that I added on to my service and so as long as it was separately stated, I don't believe we would have attempted to tax that for CST because we know that it's specifically exempt from that tax.

MS. FOX: Thank you. That's exactly the answer --

MR. STEFFENS: We didn't combine everything in, we only combined those things in that are not really optional or a part of a service. If it was clearly a separate option, we wouldn't have taxed it.

MS. FOX: Thank you.

MR. STRANBURG: Any other questions on unbundling?

MR. SUGGS: Just generally from the industry, unbundling is positive, correct?

MR. LINDSEY: Yes.

MS. KITTRICK: (Inaudible comment.)

MR. LINDSEY: And I think like was said, in other states, even though it's complex, it's simpler because there's not a big discrepancy between two different types of taxes. In other states we're typically saying, this doesn't have to be taxed or have a tax on it at all. Which is kind of the luxury that Brian has, I guess, where you wouldn't have to think about taxing in two different ways.

MR. SUGGS: Because like with phone companies where you're -- unbundling phone service, Internet service, and then like content.

MR. LINDSEY: Sure. It's like Charlie had said, everyone's selling -- you know, phone companies are selling videos, security service, everybody's selling everything now. And once again, like you had said, the customer likes these bundled deals. So that's kind of the trade off to do that, to be able to provide that, the markets demand it.

MR. STRANBURG: If there's no other questions --

MR. SUGGS: I had one question for -- this could be for everybody but let me use DirectTV, for example. Again, DirectTV customer maybe about six or eight months ago you launched DirectTV everywhere so that I can get stuff on my phone, iPad but the price of my service has not changed. When you unbundle, have you reshifted prices or assigned anything so that particular service is now -- well, with you, does it matter whether -- you pay one rate regardless, or do you pay a CS -- your CST rate for sales tax? Like on my rentals of my DVRs, we only pay sales tax.

MR. SMITH: Right.

MR. SUGGS: So now in unbundling it was the same way. I used to pay a hundred bucks for my satellite service. Now you offer DirectTV everywhere. I can get it on every device. If you unbundle that, you're assigning $80 to my satellite service and $20 to my video service or content, whatever, which is taxable --

MR. SMITH: Yeah. It's separated on our books and records so we can isolate whether you bought a movie. It gives you a -- path whether you bought a movie -- DVR.

MR. SUGGS: Okay. I love the service, but in terms of local government, 12 months ago I was paying a hundred dollars and -- CST on a hundred dollars. Where now you got a new service and you didn't change my price. But I may be getting CST on 80 bucks if you assign 20 bucks to the new content delivery.

MR. SMITH: So we just expect you to spend 20 more dollars --

MR. SUGGS: I mean, I'll do my part, but -- is that -- am I -- is that --

MR. SMITH: No, our unbundling, I mean, we've always had the detail in the background. So I think as many providers, you know, we're trying to keep up sales and marketing to try to keep a lot of the line item detail on our books and records. Yet when it comes to the bill presentation to the customer, make it as customer-friendly as possible.

MR. RESNICK: You do -- I mean, the satellite service, though, is offered in conjunction with other providers. Like, for example, I get one bill from the communications provider that includes any charge for the -- service that they don't provide.

MR. SMITH: Kind of like they're saying, everybody's selling everybody's service. So depending on where you're located, you could buy through -- I don't know if Charlie's selling my service, but it's interesting -- I mean, I think depending on what market you're in, we have different marketing -- again to try and get the best value to the customer. So we might partner up, you know, with local, you know, Quest Communications in Colorado because they have so many customers they can bring us.

MR. RESNICK: I'm trying to remember on the bill, I think it's separately stated that the tax is on satellite, just not -- but I think the taxes are on satellite service.

MR. SMITH: They are. They are. Yeah.

MR. STRANBURG: All right. Again, thank you, French, appreciate your presentation. We've got our next presenter, who's coming in on a flight in a little bit. So she is not here yet.

So what we'll go ahead and do is take our lunch break now. If you could be back about 1:15, we'd appreciate that. And if I could ask one further favor of you during lunch, if you could all take a look, if you've got the ability to take a look at your calendars because at the end of the day I think we want to have a little discussion about trying to schedule some additional meetings. Andrea's put some possible dates out that do not seem to work for everyone, so we'll talk about some other options. So if you can just take a look and see what you might have upcoming over the next few months. We'll, at the end of the day, try to see what we can do to schedule a couple more dates, whether we do it in person or by phone or some other options, we'll talk about those.

See you back at 1:15.

(Lunch recess.)

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CERTIFICATE OF REPORTER

STATE OF FLORIDA:
COUNTY OF LEON:

I, TRACY L. BROWN, court reporter and Notary Public do hereby certify that the foregoing proceedings were taken before me at the time and place therein designated, and that the foregoing pages numbered 1 through are a true and correct record of the aforesaid proceedings.

I further certify that I am not a relative, employee, attorney or counsel of any of the parties, nor am I a relative or employee of any of the parties' attorney or counsel connected with the action, nor am I financially interested in the foregoing action.

DATED THIS day of , 2012.

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