

By Senator Detert

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1 A bill to be entitled
2 An act relating to mail order sales; amending s.
3 212.0596, F.S.; redefining the term "mail order sale"
4 to include sales ordered through the Internet;
5 defining the term "agent"; providing an exception to
6 provisions that subject a dealer who makes sales
7 through the Internet to requirements to collect sales
8 and use taxes; creating a presumption that a dealer is
9 presumed to be soliciting business through state
10 residents under certain circumstances; subjecting a
11 dealer who makes mail order sales to requirements to
12 collect sales and use taxes if the dealer has a
13 contract with a person located in this state under
14 which the dealer sells the same or substantially
15 similar line of products as the person under certain
16 circumstances; creating s. 212.05961, F.S.; requiring
17 a dealer who makes mail order sales and who is not
18 required to collect sales and use taxes to notify
19 purchasers of the duty to submit sales and use taxes
20 to this state; specifying requirements for the notice;
21 authorizing a dealer to use a consolidated notice that
22 includes the information required by this state and
23 another state; providing a contingent effective date.

24
25 WHEREAS, the use of the Internet for shopping and making
26 purchases has increased in recent years, and

27 WHEREAS, the United States Census Bureau reports that
28 national e-commerce sales from November 1, 2010, through October
29 31, 2011, total more than \$180 billion, and

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30 WHEREAS, many retailers who make sales through the Internet
31 are not located in Florida and are not registered as dealers to
32 remit sales and use tax to this state, and

33 WHEREAS, a September 2011 report by Arduin, Laffer, and
34 Moore Econometrics estimates that, as the result of Internet
35 purchases, the state lost \$374 million in tax revenues in 2010
36 and will lose between \$449.6 million and \$454.0 million in tax
37 revenues in 2012, and

38 WHEREAS, dealers and purchasers should be required to remit
39 sales and use taxes on purchases made over the Internet, NOW,
40 THEREFORE,

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. Section 212.0596, Florida Statutes, is amended
45 to read:

46 212.0596 Taxation of mail order sales.—

47 (1) As used in ~~For purposes of~~ this chapter, the term a
48 "mail order sale" means ~~is~~ a sale of tangible personal property,
49 ordered by mail, ordered through the Internet, or ordered by
50 other means of communication, from a dealer who receives the
51 order in another state of the United States, or in a
52 commonwealth, territory, or other area under the jurisdiction of
53 the United States, and transports the property or causes the
54 property to be transported, whether or not by mail, from any
55 jurisdiction of the United States, including this state, to a
56 person in this state, including the person who ordered the
57 property.

58 (2) Every dealer as defined in s. 212.06(2)(c) who makes a

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59 mail order sale is subject to the power of this state to levy
60 and collect the tax imposed by this chapter if any of the
61 following are satisfied ~~when~~:

62 (a) The dealer is a corporation doing business under the
63 laws of this state or a person domiciled in, a resident of, or a
64 citizen of, this state.~~†~~

65 (b) The dealer maintains retail establishments, ~~or~~ offices,
66 or warehouses in this state, whether the mail order sales thus
67 subject to taxation by this state result from or are related in
68 any other way to the activities of such establishments, ~~or~~
69 offices, or warehouses.~~†~~

70 (c) The dealer has an agent ~~agents~~ in this state who
71 solicits ~~solicit~~ business or transacts ~~transact~~ business on
72 behalf of the dealer, whether the mail order sales thus subject
73 to taxation by this state result from or are related in any
74 other way to such solicitation or transaction of business,
75 except that a printer who mails or delivers for an out-of-state
76 print purchaser material the printer printed for it is ~~shall~~ not
77 ~~be~~ deemed to be the print purchaser's agent for purposes of this
78 paragraph.~~†~~

79 1. As used in this paragraph, the term "agent" includes,
80 but is not limited to, a resident of this state who enters into
81 a contract with the dealer under which the resident, for a
82 commission or other consideration, directly or indirectly refers
83 potential customers to the dealer, whether by a link on an
84 Internet website or otherwise. This subparagraph does not apply
85 to a dealer having an agreement with a resident of this state to
86 refer potential customers to the dealer by a link on an Internet
87 website or otherwise if the cumulative gross receipts from sales

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88 by the dealer to customers in the state who are referred to the
89 dealer by all residents under such an agreement are less than
90 \$10,000 during the preceding four quarterly periods ending on
91 the last day of March, June, September, and December.

92 2. A dealer is presumed to be soliciting business through
93 residents who have an agreement with the dealer to refer
94 customers to the dealer by a link on an Internet website or
95 otherwise. However, the dealer may rebut this presumption by
96 showing that the residents with whom the dealer has an agreement
97 did not engage in any solicitation in the state on behalf of the
98 dealer which would satisfy the nexus requirement of the United
99 States Constitution during the preceding four quarterly periods.

100 (d) The dealer has a contract with a person located in this
101 state under which the dealer sells the same or substantially
102 similar line of products as the person and does so using an
103 identical or substantially similar name, trade name, or
104 trademark as the person, and provides a commission or other
105 consideration to the person based upon sales by the dealer. This
106 paragraph does not apply if the cumulative gross receipts from
107 sales by the dealer to customers in the state under all such
108 contracts are less than \$10,000 during the preceding four
109 quarterly periods ending on the last day of March, June,
110 September, and December.

111 (e)~~(d)~~ The property was delivered in this state in
112 fulfillment of a sales contract that was entered into in this
113 state, in accordance with applicable conflict of laws rules,
114 when a person in this state accepted an offer by ordering the
115 property.~~†~~

116 (f)~~(e)~~ The dealer, by purposefully or systematically

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117 exploiting the market provided by this state by any media-
118 assisted, media-facilitated, or media-solicited means,
119 including, but not limited to, direct mail advertising,
120 unsolicited distribution of catalogs, computer-assisted
121 shopping, television, radio, or other electronic media, or
122 magazine or newspaper advertisements or other media, creates
123 nexus with this state.†

124 (g)~~(f)~~ Through compact or reciprocity with another
125 jurisdiction of the United States, that jurisdiction uses its
126 taxing power and its jurisdiction over the retailer in support
127 of this state's taxing power.†

128 (h)~~(g)~~ The dealer consents, expressly or by implication, to
129 the imposition of the tax imposed by this chapter.†

130 (i)~~(h)~~ The dealer is subject to service of process under s.
131 48.181.†

132 (j)~~(i)~~ The dealer's mail order sales are subject to the
133 power of this state to tax sales or to require the dealer to
134 collect use taxes under a statute or statutes of the United
135 States.†

136 (k)~~(j)~~ The dealer owns real property or tangible personal
137 property that is physically in this state, except that a dealer
138 whose only property, including property owned by an affiliate,~~†~~
139 in this state is located at the premises of a printer with which
140 the vendor has contracted for printing, and is ~~either~~ a final
141 printed product, or property that ~~which~~ becomes a part of the
142 final printed product, or property from which the printed
143 product is produced, is not deemed to own such property for
144 purposes of this paragraph.†

145 (l)~~(k)~~ The dealer, while not having nexus with this state

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146 on any of the bases described in paragraphs (a)-(k) ~~(a)-(j)~~ or
147 paragraph (m) ~~(l)~~, is a corporation that is a member of an
148 affiliated group of corporations, as defined in s. 1504(a) of
149 the Internal Revenue Code, whose members are includable under s.
150 1504(b) of the Internal Revenue Code and whose members are
151 eligible to file a consolidated tax return for federal corporate
152 income tax purposes and any parent or subsidiary corporation in
153 the affiliated group has nexus with this state on one or more of
154 the bases described in paragraphs (a)-(k) ~~(a)-(j)~~ or paragraph
155 (m). ~~(l)~~; ~~or~~

156 (m) ~~(l)~~ The dealer or the dealer's activities have
157 sufficient connection with or relationship to this state or its
158 residents of some type other than those described in paragraphs
159 (a)-(l) ~~(a)-(k)~~ to create nexus empowering this state to tax its
160 mail order sales or to require the dealer to collect sales tax
161 or accrue use tax.

162 (3) Every dealer engaged in the business of making mail
163 order sales is subject to the requirements of this chapter for
164 cooperation of dealers in collection of taxes and in
165 administration of this chapter, except that no fee shall be
166 imposed upon such dealer for carrying out any required activity.

167 (4) The department shall, with the consent of another
168 jurisdiction of the United States whose cooperation is needed,
169 enforce this chapter in that jurisdiction, either directly or,
170 at the option of that jurisdiction, through its officers or
171 employees.

172 (5) The tax required under this section to be collected and
173 any amount unreturned to a purchaser that is not tax but was
174 collected from the purchaser under the representation that it

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175 was tax constitute funds of the State of Florida from the moment
176 of collection.

177 (6) Notwithstanding other provisions of law, a dealer who
178 makes a mail order sale in this state is exempt from collecting
179 and remitting any local option surtax on the sale, unless the
180 dealer is located in a county that imposes a surtax within the
181 meaning of s. 212.054(3)(a), the order is placed through the
182 dealer's location in such county, and the property purchased is
183 delivered into such county or into another county in this state
184 that levies the surtax, in which case the provisions of s.
185 212.054(3)(a) are applicable.

186 (7) The department may establish by rule procedures for
187 collecting the use tax from unregistered persons who but for
188 their mail order purchases would not be required to remit sales
189 or use tax directly to the department. The procedures may
190 provide for waiver of registration and registration fees,
191 provisions for irregular remittance of tax, elimination of the
192 collection allowance, and nonapplication of local option
193 surtaxes.

194 Section 2. Section 212.05961, Florida Statutes, is created
195 to read:

196 212.05961 Notice for certain mail order sales.-

197 (1) A dealer who makes a mail order sale but who is not
198 subject to s. 212.0596 must give notice to the purchaser who
199 resides in this state that use tax must be paid by the purchaser
200 on nonexempt purchases of tangible personal property as provided
201 in s. 212.05.

202 (2) The notice in this section must be readily visible and
203 must state that:

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204 (a) The dealer is not required to collect and does not
205 collect Florida sales and use tax.

206 (b) The purchase is subject to state use tax unless it is
207 specifically exempt from taxation.

208 (c) The purchase is not exempt merely because the purchase
209 is made over the Internet, by catalog, or by other remote means.

210 (d) The State of Florida requires each resident to report
211 any purchase that was not taxed and to pay tax on the purchase.
212 The tax may be reported and paid on the Florida use tax form.

213 (e) The use tax form and corresponding instructions are
214 available on the website of the Florida Department of Revenue.

215 (3) If a dealer knows that a purchase is exempt from
216 Florida sales and use tax, the dealer may display or indicate
217 that no sales or use tax is due.

218 (4) For purchases occurring through a website, the notice
219 may be displayed on a page necessary to facilitate the
220 applicable transaction, on the check-out page, or on any
221 electronic order confirmation. Notice is sufficient if the
222 dealer prominently displays a link that reads: "See important
223 Florida sales and use tax information regarding the tax you may
224 owe directly to the State of Florida." The link must direct the
225 purchaser to the notice required under subsection (2). If the
226 dealer does not issue an electronic order confirmation, the
227 notice required under subsection (2) must be prominently
228 displayed on the purchase order, bill, receipt, sales slip,
229 order form, or packing statement.

230 (5) For purchases made from a catalog, the notice required
231 under subsection (2) must be part of the order form. Notice is
232 also sufficient if the dealer provides a prominent reference to

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233 a supplemental page that reads as follows: "See important
234 Florida sales and use tax information regarding the tax you may
235 owe directly to the state of Florida on page"

236 (6) For any telephone purchases, the notice required under
237 subsection (2) must be placed on the purchase order, bill,
238 receipt, sales slip, order form, or packing statement.

239 (7) If a dealer is required to provide a similar notice for
240 another state in addition to this state, the dealer may provide
241 a consolidated notice if the notice includes the information
242 required under subsection (2), specifically references this
243 state, and meets the placement requirements of this section.

244 Section 3. This act shall take effect July 1, 2013, if SJR
245 1064, or a similar proposed amendment to the State Constitution,
246 is approved by a vote of the electors in the 2012 General
247 Election.