



243574

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/16/2012	.	
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	.	

The Committee on Banking and Insurance (Bennett) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsection (2) of section 212.06, Florida
Statutes, is amended to read:

212.06 Sales, storage, use tax; collectible from dealers;
"dealer" defined; dealers to collect from purchasers;
legislative intent as to scope of tax.—

(2) ~~(a)~~ The term "dealer," as used in this chapter, means
any includes every person who:

(a) Manufactures or produces tangible personal property for



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13 sale at retail; for use, consumption, or distribution; or for
14 storage to be used or consumed in this state.

15 ~~(b) The term "dealer" is further defined to mean every~~
16 ~~person, as used in this chapter, who~~ Imports, or causes to be
17 imported, tangible personal property from any state or foreign
18 country for sale at retail; for use, consumption, or
19 distribution; or for storage to be used or consumed in this
20 state.

21 ~~(c) The term "dealer" is further defined to mean every~~
22 ~~person, as used in this chapter, who~~ Sells at retail or ~~who~~
23 offers for sale at retail, or ~~who~~ has in his or her possession
24 for sale at retail; ~~or~~ for use, consumption, or distribution; or
25 for storage to be used or consumed in this state, tangible
26 personal property ~~as defined herein~~, including a retailer who
27 transacts a mail order sale.

28 ~~(d) The term "dealer" is further defined to mean any person~~
29 ~~who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or distributed; or
30 stored for use or consumption in this state, tangible personal
31 property and ~~who~~ cannot prove that the tax levied by this
32 chapter has been paid on the sale at retail, the use, the
33 consumption, the distribution, or the storage of such tangible
34 personal property. ~~However,~~ The term "dealer" does not include
35 ~~mean~~ a person who is not a "dealer" as otherwise defined in
36 ~~under the definition of any other paragraph of this subsection~~
37 and whose only owned or leased property (including property
38 owned or leased by an affiliate) in this state is located at the
39 premises of a printer with which it has contracted for printing,
40 if such property consists of the final printed product, property
41 which becomes a part of the final printed product, or property



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42 from which the printed product is produced.

43 ~~(e) The term "dealer" is further defined to mean any~~
44 ~~person, as used in this chapter, who~~ Leases or rents tangible
45 ~~personal property, as defined in this chapter, for a~~
46 consideration, permitting the use or possession of such property
47 without transferring title thereto, except as expressly provided
48 for to the contrary in this chapter herein.

49 ~~(f) The term "dealer" is further defined to mean any~~
50 ~~person, as used in this chapter, who~~ Maintains or uses has
51 within this state, ~~directly or by a subsidiary,~~ an office,
52 distributing house, salesroom, or house, warehouse, or other
53 place of business operated by any person other than a common
54 carrier acting in the capacity of a common carrier.

55 ~~(g) "Dealer" also means and includes every person who~~
56 solicits business either by direct representatives, indirect
57 representatives, or manufacturers' agents; by distribution of
58 catalogs or other advertising matter; or by any other means
59 whatsoever, and by reason thereof receives orders for tangible
60 personal property from consumers for use, consumption,
61 distribution, and storage for use or consumption in the state;
62 such dealer shall collect the tax imposed by this chapter from
63 the purchaser, and no action, either in law or in equity, on a
64 sale or transaction as provided by the terms of this chapter may
65 be had in this state by any such dealer unless it is
66 affirmatively shown that the provisions of this chapter have
67 been fully complied with.

68 ~~(h) "Dealer" also means and includes every person who,~~ As a
69 representative, agent, or solicitor of an out-of-state principal
70 or principals, solicits, receives, and accepts orders from



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71 consumers in the state for future delivery and whose principal
72 refuses to register as a dealer.

73 (i) Constitutes ~~"Dealer"~~ also means and includes the state
74 or any, county, municipality, district ~~any political~~
75 ~~subdivision~~, agency, bureau, ~~or~~ department, or other state or
76 local governmental instrumentality.

77 (j) ~~The term "dealer" is further defined to mean any person~~
78 ~~who~~ Leases, or grants a license to use, occupy, or enter upon,
79 living quarters, sleeping or housekeeping accommodations in
80 hotels, apartment houses, roominghouses, tourist or trailer
81 camps, real property, space or spaces in parking lots or garages
82 for motor vehicles, docking or storage space or spaces for boats
83 in boat docks or marinas, or tie-down or storage space or spaces
84 for aircraft at airports. The term includes ~~"dealer" also means~~
85 any person who has leased, occupied, or used or was entitled to
86 use any living quarters, sleeping or housekeeping accommodations
87 in hotels, apartment houses, roominghouses, tourist or trailer
88 camps, real property, space or spaces in parking lots or garages
89 for motor vehicles, or docking or storage space or spaces for
90 boats in boat docks or marinas, or who has purchased
91 communication services or electric power or energy, and who
92 cannot prove that the tax levied by this chapter has been paid
93 to the vendor or lessor on any such transactions. The term
94 ~~"dealer"~~ does not include any person who leases, lets, rents, or
95 grants a license to use, occupy, or enter upon any living
96 quarters, sleeping quarters, or housekeeping accommodations in
97 apartment houses, roominghouses, tourist camps, or trailer
98 camps, and who exclusively enters into a bona fide written
99 agreement for continuous residence for longer than 6 months in



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100 duration with any person who leases, lets, rents, or is granted
101 a license to use such property.

102 (k) ~~"Dealer" also means any person who~~ Sells, provides, or
103 performs a service taxable under this chapter. The term includes
104 ~~"Dealer" also means~~ any person who purchases, uses, or consumes
105 a service taxable under this chapter who cannot prove that the
106 tax levied by this chapter has been paid to the seller of the
107 taxable service.

108 (l) ~~"Dealer" also means any person who~~ Solicits, offers,
109 provides, enters into, issues, or delivers any service warranty
110 taxable under this chapter, or who receives, on behalf of such a
111 person, any consideration from a service warranty holder.

112 Section 2. Section 212.0596, Florida Statutes, is amended
113 to read:

114 212.0596 Taxation of mail order sales.—

115 (1) For purposes of this chapter, a "mail order sale" is a
116 sale of tangible personal property, ordered by mail, Internet,
117 or other means of communication, from a dealer who receives the
118 order in another state of the United States, or in a
119 commonwealth, territory, or other area under the jurisdiction of
120 the United States, and transports the property or causes the
121 property to be transported, whether or not by mail, from any
122 jurisdiction of the United States, including this state, to a
123 person in this state, including the person who ordered the
124 property.

125 (2) Every dealer as defined in s. 212.06(2)(c) who makes a
126 mail order sale is subject to the power of this state to levy
127 and collect the tax imposed by this chapter when:

128 (a) The dealer is ~~a corporation~~ doing business under the



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129 laws of this state or is a person domiciled in, a resident of,
130 or a citizen of, this state;

131 (b) The dealer maintains retail establishments or offices
132 in this state, whether the mail order sales thus subject to
133 taxation by this state result from or are related in any other
134 way to the activities of such establishments or offices;

135 (c) The dealer has agents or representatives in this state
136 who solicit business or transact business on behalf of the
137 dealer, whether the mail order sales thus subject to taxation by
138 this state result from or are related in any other way to such
139 solicitation or transaction of business, except that a printer
140 who mails or delivers for an out-of-state print purchaser
141 material the printer printed for it is shall not ~~be~~ deemed to be
142 the print purchaser's agent or representative for purposes of
143 this paragraph;

144 ~~(d) The property was delivered in this state in fulfillment~~
145 ~~of a sales contract that was entered into in this state, in~~
146 ~~accordance with applicable conflict of laws rules, when a person~~
147 ~~in this state accepted an offer by ordering the property;~~

148 ~~(e) The dealer, by purposefully or systematically~~
149 ~~exploiting the market provided by this state by any media-~~
150 ~~assisted, media-facilitated, or media-solicited means,~~
151 ~~including, but not limited to, direct mail advertising,~~
152 ~~unsolicited distribution of catalogs, computer-assisted~~
153 ~~shopping, television, radio, or other electronic media, or~~
154 ~~magazine or newspaper advertisements or other media, creates~~
155 ~~nexus with this state;~~

156 ~~(f) Through compact or reciprocity with another~~
157 ~~jurisdiction of the United States, that jurisdiction uses its~~



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158 ~~taxing power and its jurisdiction over the retailer in support~~
159 ~~of this state's taxing power;~~

160 (d) ~~(g)~~ The dealer consents, expressly or by implication, to
161 the imposition of the tax imposed by this chapter;

162 ~~(h) The dealer is subject to service of process under s.~~
163 ~~48.181;~~

164 (e) ~~(i)~~ The dealer's mail order sales are subject to the
165 power of this state to tax sales or to require the dealer to
166 collect use taxes under a statute or statutes of the United
167 States;

168 (f) ~~(j)~~ The dealer owns real property or tangible personal
169 property that is physically in this state, except that a dealer
170 whose only property (including property owned by an affiliate)
171 in this state is located at the premises of a printer with which
172 the vendor has contracted for printing, and is ~~either~~ a final
173 printed product, ~~or~~ property which becomes a part of the final
174 printed product, or property from which the printed product is
175 produced, is not deemed to own such property for purposes of
176 this paragraph;

177 (g) ~~(k)~~ A person, other than a person acting in the capacity
178 of a common carrier, ~~The dealer, while not having nexus with~~
179 ~~this state on any of the bases described in paragraphs (a) (j)~~
180 ~~or paragraph (l), is a corporation that is a member of an~~
181 ~~affiliated group of corporations, as defined in s. 1504(a) of~~
182 ~~the Internal Revenue Code, whose members are includable under s.~~
183 ~~1504(b) of the Internal Revenue Code and whose members are~~
184 ~~eligible to file a consolidated tax return for federal corporate~~
185 ~~income tax purposes and any parent or subsidiary corporation in~~
186 ~~the affiliated group has substantial nexus with this state and:~~



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187 1. Sells a similar line of products as the dealer and does
188 so under the same or a similar business name;

189 2. Maintains an office, distribution facility, warehouse,
190 storage place, or similar place of business in this state to
191 facilitate the delivery of property or services sold by the
192 dealer to the dealer's customers;

193 3. Uses trademarks, service marks, or trade names in this
194 state which are the same or substantially similar to those used
195 by the dealer;

196 4. Delivers, installs, assembles, or performs maintenance
197 services for the dealer's customers in this state;

198 5. Facilitates the dealer's delivery of property to
199 customers in this state by allowing the dealer's customers to
200 pick up property sold by the dealer at an office, distribution
201 facility, warehouse, storage place, or similar place of business
202 maintained by the person in this state; or

203 6. Conducts any other activities in this state which are
204 significantly associated with the dealer's ability to establish
205 and maintain a market in this state for the dealer's sales ~~on~~
206 ~~one or more of the bases described in paragraphs (a)-(j) or~~
207 ~~paragraph (l); or~~

208 (h)-(l) The dealer or the dealer's activities have
209 sufficient connection with or relationship to this state or its
210 residents of some type other than those described in paragraphs
211 (a)-(g) ~~(a)-(k)~~ to create nexus empowering this state to tax its
212 mail order sales or to require the dealer to collect sales tax
213 or accrue use tax.

214
215 Notwithstanding other provisions of law, a dealer is not



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216 required to collect and remit sales or use tax under this
217 subsection unless the dealer has a physical presence in this
218 state or the activities conducted in this state on the dealer's
219 behalf are significantly associated with the dealer's ability to
220 establish and maintain a market for sales in this state.

221 (3) (a) Notwithstanding other provisions of law or this
222 section, there is established a rebuttable presumption that
223 every dealer as defined in s. 212.06(2) who makes a mail order
224 sale is also subject to the power of this state to levy and
225 collect the tax imposed by this chapter if the dealer enters
226 into an agreement with one or more residents of this state under
227 which the resident, for a commission or other consideration,
228 directly or indirectly refers potential customers, whether by a
229 link on an Internet website, an in-person oral presentation,
230 telemarketing, or otherwise, to the dealer, if the cumulative
231 gross receipts from sales by the dealer to customers in this
232 state who are referred to the dealer by all residents having
233 this type of an agreement with the dealer is in excess of
234 \$10,000 during the 12-month period immediately before the
235 rebuttable presumption arose.

236 (b) The presumption in paragraph (a) may be rebutted by the
237 submission of evidence proving that the residents with whom the
238 dealer has an agreement did not engage in any activity within
239 this state that was significantly associated with the dealer's
240 ability to establish or maintain the dealer's market in this
241 state during the 12 months immediately before the rebuttable
242 presumption arose. The evidence may consist of sworn affidavits,
243 obtained and given in good faith, from each resident with whom
244 the dealer has an agreement attesting that he or she did not



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245 engage in any solicitation in this state on the dealer's behalf
246 during the previous year.

247 (4)~~(3)~~ Every dealer engaged in the business of making mail
248 order sales is subject to the requirements of this chapter for
249 cooperation of dealers in collection of taxes and in
250 administration of this chapter, except that no fee shall be
251 imposed upon such dealer for carrying out any required activity.

252 (5)~~(4)~~ The department shall, with the consent of another
253 jurisdiction of the United States whose cooperation is needed,
254 enforce this chapter in that jurisdiction, either directly or,
255 at the option of that jurisdiction, through its officers or
256 employees.

257 (6)~~(5)~~ The tax required under this section to be collected
258 and any amount unreturned to a purchaser that is not tax but was
259 collected from the purchaser under the representation that it
260 was tax constitute funds of the State of Florida from the moment
261 of collection.

262 (7)~~(6)~~ Notwithstanding other provisions of law, a dealer
263 who makes a mail order sale in this state is exempt from
264 collecting and remitting any local option surtax on the sale,
265 unless the dealer is located in a county that imposes a surtax
266 within the meaning of s. 212.054(3)(a), the order is placed
267 through the dealer's location in such county, and the property
268 purchased is delivered into such county or into another county
269 in this state that levies the surtax, in which case the
270 provisions of s. 212.054(3)(a) are applicable.

271 (8)~~(7)~~ The department may establish by rule procedures for
272 collecting the use tax from unregistered persons who but for
273 their mail order purchases would not be required to remit sales



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274 or use tax directly to the department. The procedures may
275 provide for waiver of registration and registration fees,
276 provisions for irregular remittance of tax, elimination of the
277 collection allowance, and nonapplication of local option
278 surtaxes.

279 Section 3. (1) The Department of Revenue shall develop a
280 tracking system, in consultation with the Revenue Estimating
281 Conference, to determine the amount of sales taxes remitted by
282 out-of-state dealers who would otherwise not be required to
283 collect and remit sales taxes in the absence of the amendments
284 made to s. 212.0596, Florida Statutes, in section 2 of this act.
285 By February 1 of each year, the Department of Revenue shall
286 submit a report to the Governor, the President of the Senate,
287 and the Speaker of the House of Representatives which sets forth
288 the amount of sales taxes collected and remitted by such dealers
289 in the previous calendar year and the methodology used to
290 determine the amount.

291 (2) By March 1 of each year, the Revenue Estimating
292 Conference shall use the information provided by the Department
293 of Revenue pursuant to subsection (1) to determine the amount of
294 sales taxes remitted in the previous calendar year by such out-
295 of-state dealers who would otherwise not be required to collect
296 and remit sales taxes and estimate the amount that may be
297 expected in the following fiscal year.

298 (3) The Legislature shall use the information provided by
299 the Department of Revenue and the Revenue Estimating Conference
300 to develop legislation designed to return the amount of those
301 sales taxes collected to the taxpayers of this state. The
302 Legislature may accomplish this by establishing one or more



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303 sales tax holidays designed to reduce tax collections in an
304 amount not less than the amounts determined by the Revenue
305 Estimating Conference. If the amounts collected are determined
306 to be of a recurring nature and sufficient to lower the tax rate
307 set forth in chapter 212, Florida Statutes, the Legislature may
308 lower the tax rate and implement other tax relief as it deems
309 appropriate.

310 Section 4. This act shall take effect July 1, 2012.

311
312 ===== T I T L E A M E N D M E N T =====

313 And the title is amended as follows:

314 Delete everything before the enacting clause
315 and insert:

316 A bill to be entitled
317 An act relating to the tax on sales, use, and other
318 transactions; amending s. 212.06, F.S.; revising the
319 definition of the term "dealer" for purposes relating
320 to the collection of the tax on sales, use, and other
321 transactions; amending s. 212.0596, F.S.; revising the
322 term "mail order sale" to specifically include sales
323 of tangible personal property ordered by Internet;
324 deleting certain provisions that specify dealer
325 activities or other circumstances that subject mail
326 order sales to this state's power to levy and collect
327 the sales and use tax; providing that certain persons
328 who make mail order sales and who have a substantial
329 nexus with this state are subject to this state's
330 power to levy and collect the sales and use tax when
331 they engage in certain enumerated activities;



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332 specifying that dealers are not required to collect
333 and remit sales and use tax unless certain
334 circumstances exist; creating a rebuttable presumption
335 that a dealer is subject to the state's power to levy
336 and collect the sales or use tax under specified
337 circumstances; specifying evidentiary proof that may
338 be submitted to rebut the presumption; requiring that
339 the Department of Revenue develop a tracking system,
340 in consultation with the Revenue Estimating
341 Conference, to determine the amount of sales tax
342 remitted by out-of-state dealers who would otherwise
343 not be required to collect and remit sales taxes but
344 for the amendments made by the act; requiring that the
345 department submit a report to the Governor and
346 Legislature by a specified date each year; requiring
347 that the report contain certain information; requiring
348 that the Revenue Estimating Conference use such
349 information to determine the amount of sales taxes
350 remitted in the previous calendar year by such out-of-
351 state dealers and estimate the amount that may be
352 expected in the following fiscal year; requiring that
353 the Legislature use the information to develop
354 legislation designed to return the amount of sales
355 taxes collected to the taxpayers of the state;
356 providing an effective date.

357