

By Senator Detert

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1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; amending s. 212.06, F.S.; revising the
4 definition of the term "dealer" for purposes relating
5 to the collection of the tax on sales, use, and other
6 transactions; declaring void certain rulings,
7 agreements, or contracts that maintain certain persons
8 are not dealers required to collect sales and use tax
9 in this state unless the Legislature approves the
10 ruling, agreement, or contract by a specified vote of
11 each house; defining the term "affiliated person";
12 amending s. 212.0596, F.S.; revising the term "mail
13 order sale" to specifically include sales of tangible
14 personal property ordered by Internet; deleting
15 certain provisions that specify dealer activities or
16 other circumstances that subject mail order sales to
17 this state's power to levy and collect the sales and
18 use tax; providing that certain persons who make mail
19 order sales and who have a substantial nexus with this
20 state are subject to this state's power to levy and
21 collect the sales and use tax when they engage in
22 certain enumerated activities; specifying that dealers
23 are not required to collect and remit sales and use
24 tax unless certain circumstances exist; creating a
25 rebuttable presumption that a dealer is subject to the
26 state's power to levy and collect the sales or use tax
27 under specified circumstances; specifying evidentiary
28 proof that may be submitted to rebut the presumption;
29 amending s. 212.0506, F.S.; conforming a cross-

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reference; providing an effective date.

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

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:

1. Manufactures or produces tangible personal property for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

~~2.(b) The term "dealer" is further defined to mean every person, as used in this chapter, who~~ Imports, or causes to be imported, tangible personal property from any state or foreign country for sale at retail; for use, consumption, or distribution; or for storage to be used or consumed in this state.

~~3.(c) The term "dealer" is further defined to mean every person, as used in this chapter, who~~ Sells at retail or ~~who~~ offers for sale at retail, or ~~who~~ has in his or her possession for sale at retail; ~~or~~ for use, consumption, or distribution; or for storage to be used or consumed in this state, tangible personal property ~~as defined herein~~, including a retailer who transacts a mail order sale.

~~4.(d) The term "dealer" is further defined to mean any person who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or

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59 distributed; or stored for use or consumption in this state,
60 tangible personal property and ~~who~~ cannot prove that the tax
61 levied by this chapter has been paid on the sale at retail, the
62 use, the consumption, the distribution, or the storage of such
63 tangible personal property. ~~However,~~ The term "dealer" does not
64 include ~~mean~~ a person who is not a "dealer" as otherwise defined
65 in ~~under the definition of any other paragraph of this~~
66 subsection and whose only owned or leased property (including
67 property owned or leased by an affiliate) in this state is
68 located at the premises of a printer with which it has
69 contracted for printing, if such property consists of the final
70 printed product, property which becomes a part of the final
71 printed product, or property from which the printed product is
72 produced.

73 5.(e) ~~The term "dealer" is further defined to mean any~~
74 ~~person, as used in this chapter, who~~ Leases or rents tangible
75 personal property, ~~as defined in this chapter,~~ for a
76 consideration, permitting the use or possession of such property
77 without transferring title thereto, except as expressly provided
78 for to the contrary in this chapter herein.

79 6.(f) ~~The term "dealer" is further defined to mean any~~
80 ~~person, as used in this chapter, who~~ Maintains or uses ~~has~~
81 within this state, ~~directly or by a subsidiary,~~ an office,
82 distributing house, salesroom, or house, warehouse, or other
83 place of business operated by any person other than a common
84 carrier acting in the capacity of a common carrier.

85 ~~(g) "Dealer" also means and includes every person who~~
86 ~~solicits business either by direct representatives, indirect~~
87 ~~representatives, or manufacturers' agents; by distribution of~~

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88 ~~catalogs or other advertising matter; or by any other means~~
89 ~~whatsoever, and by reason thereof receives orders for tangible~~
90 ~~personal property from consumers for use, consumption,~~
91 ~~distribution, and storage for use or consumption in the state;~~
92 ~~such dealer shall collect the tax imposed by this chapter from~~
93 ~~the purchaser, and no action, either in law or in equity, on a~~
94 ~~sale or transaction as provided by the terms of this chapter may~~
95 ~~be had in this state by any such dealer unless it is~~
96 ~~affirmatively shown that the provisions of this chapter have~~
97 ~~been fully complied with.~~

98 ~~7.(h) "Dealer" also means and includes every person who, As~~
99 ~~a representative, agent, or solicitor of an out-of-state~~
100 ~~principal or principals, solicits, receives, and accepts orders~~
101 ~~from consumers in the state for future delivery and whose~~
102 ~~principal refuses to register as a dealer.~~

103 ~~8.(i) Constitutes "Dealer" also means and includes the~~
104 ~~state or any, county, municipality, district any political~~
105 ~~subdivision, agency, bureau, or department, or other state or~~
106 ~~local governmental instrumentality.~~

107 ~~9.(j) The term "dealer" is further defined to mean any~~
108 ~~person who Leases, or grants a license to use, occupy, or enter~~
109 ~~upon, living quarters, sleeping or housekeeping accommodations~~
110 ~~in hotels, apartment houses, roominghouses, tourist or trailer~~
111 ~~camp, real property, space or spaces in parking lots or garages~~
112 ~~for motor vehicles, docking or storage space or spaces for boats~~
113 ~~in boat docks or marinas, or tie-down or storage space or spaces~~
114 ~~for aircraft at airports. The term includes "dealer" also means~~
115 ~~any person who has leased, occupied, or used or was entitled to~~
116 ~~use any living quarters, sleeping or housekeeping accommodations~~

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117 in hotels, apartment houses, roominghouses, tourist or trailer
118 camps, real property, space or spaces in parking lots or garages
119 for motor vehicles, or docking or storage space or spaces for
120 boats in boat docks or marinas, or who has purchased
121 communication services or electric power or energy, and who
122 cannot prove that the tax levied by this chapter has been paid
123 to the vendor or lessor on any such transactions. The term
124 ~~"dealer"~~ does not include any person who leases, lets, rents, or
125 grants a license to use, occupy, or enter upon any living
126 quarters, sleeping quarters, or housekeeping accommodations in
127 apartment houses, roominghouses, tourist camps, or trailer
128 camps, and who exclusively enters into a bona fide written
129 agreement for continuous residence for longer than 6 months in
130 duration with any person who leases, lets, rents, or is granted
131 a license to use such property.

132 10.(k) ~~"Dealer" also means any person who~~ Sells, provides,
133 or performs a service taxable under this chapter. The term
134 includes "Dealer" also means any person who purchases, uses, or
135 consumes a service taxable under this chapter who cannot prove
136 that the tax levied by this chapter has been paid to the seller
137 of the taxable service.

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

142 (b) Any ruling, agreement, or contract, whether written or
143 oral, express or implied, between a person and the executive
144 branch of this state, or any other agency or department of this
145 state, stating, agreeing, or ruling that the person is not a

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146 "dealer" required to collect sales and use tax in this state
147 despite the presence of a warehouse, distribution center, or
148 fulfillment center in this state that is owned or operated by
149 the person or an affiliated person is void unless it is
150 specifically approved by a majority vote of each house of the
151 Legislature. As used in this paragraph, the term "affiliated
152 person" means any person that is a member of the same
153 "controlled group of corporations" as defined in s. 1563(a) of
154 the Internal Revenue Code as the dealer or any other entity
155 that, notwithstanding its form of organization, bears the same
156 ownership relationship to the dealer as a corporation that is a
157 member of the same "controlled group of corporations" as defined
158 in s. 1563(a) of the Internal Revenue Code.

159 Section 2. Section 212.0596, Florida Statutes, is amended
160 to read:

161 212.0596 Taxation of mail order sales.—

162 (1) For purposes of this chapter, a "mail order sale" is a
163 sale of tangible personal property, ordered by mail, Internet,
164 or other means of communication, from a dealer who receives the
165 order in another state of the United States, or in a
166 commonwealth, territory, or other area under the jurisdiction of
167 the United States, and transports the property or causes the
168 property to be transported, whether or not by mail, from any
169 jurisdiction of the United States, including this state, to a
170 person in this state, including the person who ordered the
171 property.

172 (2) Every dealer as defined in s. 212.06(2)(a)3.

173 ~~212.06(2)(e)~~ who makes a mail order sale is subject to the power
174 of this state to levy and collect the tax imposed by this

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175 chapter when:

176 (a) The dealer is ~~a corporation~~ doing business under the
177 laws of this state or is a person domiciled in, a resident of,
178 or a citizen of, this state;

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

183 (c) The dealer has agents or representatives in this state
184 who solicit business or transact business on behalf of the
185 dealer, whether the mail order sales thus subject to taxation by
186 this state result from or are related in any other way to such
187 solicitation or transaction of business, except that a printer
188 who mails or delivers for an out-of-state print purchaser
189 material the printer printed for it is ~~shall~~ not ~~be~~ deemed to be
190 the print purchaser's agent or representative for purposes of
191 this paragraph;

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

196 ~~(e) The dealer, by purposefully or systematically~~
197 ~~exploiting the market provided by this state by any media-~~
198 ~~assisted, media-facilitated, or media-solicited means,~~
199 ~~including, but not limited to, direct mail advertising,~~
200 ~~unsolicited distribution of catalogs, computer-assisted~~
201 ~~shopping, television, radio, or other electronic media, or~~
202 ~~magazine or newspaper advertisements or other media, creates~~
203 ~~nexus with this state;~~

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204 ~~(f) Through compact or reciprocity with another~~
205 ~~jurisdiction of the United States, that jurisdiction uses its~~
206 ~~taxing power and its jurisdiction over the retailer in support~~
207 ~~of this state's taxing power;~~

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

210 ~~(h) The dealer is subject to service of process under s.~~
211 ~~48.181;~~

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

216 (f)~~(j)~~ The dealer owns real property or tangible personal
217 property that is physically in this state, except that a dealer
218 whose only property (including property owned by an affiliate)
219 in this state is located at the premises of a printer with which
220 the vendor has contracted for printing, and is ~~either~~ a final
221 printed product, ~~or~~ property which becomes a part of the final
222 printed product, or property from which the printed product is
223 produced, is not deemed to own such property for purposes of
224 this paragraph;

225 (g)~~(k)~~ The person, other than a person acting in the
226 capacity of a common carrier, ~~The dealer, while not having nexus~~
227 ~~with this state on any of the bases described in paragraphs (a)-~~
228 ~~(j) or paragraph (l), is a corporation that is a member of an~~
229 ~~affiliated group of corporations, as defined in s. 1504(a) of~~
230 ~~the Internal Revenue Code, whose members are includable under s.~~
231 ~~1504(b) of the Internal Revenue Code and whose members are~~
232 ~~eligible to file a consolidated tax return for federal corporate~~

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233 ~~income tax purposes and any parent or subsidiary corporation in~~
234 ~~the affiliated group~~ has substantial nexus with this state and:

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

237 2. Maintains an office, distribution facility, warehouse or
238 storage place, or similar place of business in this state to
239 facilitate the delivery of property or services sold by the
240 dealer to the dealer's customers;

241 3. Uses trademarks, service marks, or trade names in this
242 state that are the same or substantially similar to those used
243 by the dealer;

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

246 5. Facilitates the dealer's delivery of property to
247 customers in this state by allowing the dealer's customers to
248 pick up property sold by the person at an office, distribution
249 facility, warehouse, storage place, or similar place of business
250 maintained by the person in this state; or

251 6. Conducts any other activities in this state that are
252 significantly associated with the dealer's ability to establish
253 and maintain a market in this state for the dealer's sales ~~on~~
254 ~~one or more of the bases described in paragraphs (a)-(j) or~~
255 ~~paragraph (l); or~~

256 (h)-(l) The dealer or the dealer's activities have
257 sufficient connection with or relationship to this state or its
258 residents of some type other than those described in paragraphs
259 (a)-(g) ~~(a)-(k)~~ to create nexus empowering this state to tax its
260 mail order sales or to require the dealer to collect sales tax
261 or accrue use tax.

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262
263 Notwithstanding other provisions of law, a dealer is not
264 required to collect and remit sales or use tax under this
265 subsection unless the dealer has a physical presence in this
266 state or the activities conducted in this state on the dealer's
267 behalf are significantly associated with the dealer's ability to
268 establish and maintain a market for sales in this state.

269 (3) (a) Notwithstanding other provisions of law or this
270 section, on or after October 1, 2012, there is established a
271 rebuttable presumption that every dealer as defined in s.
272 212.06(2) (a) who makes a mail order sale is also subject to the
273 power of this state to levy and collect the tax imposed by this
274 chapter if the dealer enters into an agreement with one or more
275 residents of this state under which the resident, for a
276 commission or other consideration, directly or indirectly refers
277 potential customers, whether by a link on an Internet website,
278 an in-person oral presentation, telemarketing, or otherwise, to
279 the dealer, if the cumulative gross receipts from sales by the
280 dealer to customers in this state who are referred to the dealer
281 by all residents with this type of an agreement with the dealer
282 is in excess of \$10,000 during the 12-month period immediately
283 before the rebuttable presumption arose.

284 (b) The presumption in paragraph (a) may be rebutted by the
285 submission of evidence proving the residents with whom the
286 dealer has an agreement did not engage in any activity within
287 this state that was significantly associated with the dealer's
288 ability to establish or maintain the dealer's market in this
289 state during the 12 months immediately before the rebuttable
290 presumption arose. The evidence may consist of sworn affidavits,

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291 obtained and given in good faith, from each resident with whom
292 the dealer has an agreement attesting that he or she did not
293 engage in any solicitation in this state on the dealer's behalf
294 during the previous year.

295 (4)~~(3)~~ Every dealer engaged in the business of making mail
296 order sales is subject to the requirements of this chapter for
297 cooperation of dealers in collection of taxes and in
298 administration of this chapter, except that no fee shall be
299 imposed upon such dealer for carrying out any required activity.

300 (5)~~(4)~~ The department shall, with the consent of another
301 jurisdiction of the United States whose cooperation is needed,
302 enforce this chapter in that jurisdiction, either directly or,
303 at the option of that jurisdiction, through its officers or
304 employees.

305 (6)~~(5)~~ The tax required under this section to be collected
306 and any amount unreturned to a purchaser that is not tax but was
307 collected from the purchaser under the representation that it
308 was tax constitute funds of the State of Florida from the moment
309 of collection.

310 (7)~~(6)~~ Notwithstanding other provisions of law, a dealer
311 who makes a mail order sale in this state is exempt from
312 collecting and remitting any local option surtax on the sale,
313 unless the dealer is located in a county that imposes a surtax
314 within the meaning of s. 212.054(3)(a), the order is placed
315 through the dealer's location in such county, and the property
316 purchased is delivered into such county or into another county
317 in this state that levies the surtax, in which case the
318 provisions of s. 212.054(3)(a) are applicable.

319 (8)~~(7)~~ The department may establish by rule procedures for

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320 collecting the use tax from unregistered persons who but for
321 their mail order purchases would not be required to remit sales
322 or use tax directly to the department. The procedures may
323 provide for waiver of registration and registration fees,
324 provisions for irregular remittance of tax, elimination of the
325 collection allowance, and nonapplication of local option
326 surtaxes.

327 Section 3. Subsection (11) of section 212.0506, Florida
328 Statutes, is amended to read:

329 212.0506 Taxation of service warranties.—

330 (11) Any duties imposed by this chapter upon dealers of
331 tangible personal property with respect to collecting and
332 remitting taxes; making returns; keeping books, records, and
333 accounts; and complying with the rules and regulations of the
334 department apply to all dealers as defined in s. 212.06(2)(a)11.
335 ~~212.06(2)(1)~~—

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