

By the Committee on Commerce and Tourism; and 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; amending s. 212.0596, F.S.; revising the
7 term "mail order sale" to specifically include sales
8 of tangible personal property ordered by Internet;
9 deleting certain provisions that specify dealer
10 activities or other circumstances that subject mail
11 order sales to this state's power to levy and collect
12 the sales and use tax; providing that certain persons
13 who make mail order sales and who have a substantial
14 nexus with this state are subject to this state's
15 power to levy and collect the sales and use tax when
16 they engage in certain enumerated activities;
17 specifying that dealers are not required to collect
18 and remit sales and use tax unless certain
19 circumstances exist; creating a rebuttable presumption
20 that a dealer is subject to the state's power to levy
21 and collect the sales or use tax under specified
22 circumstances; specifying evidentiary proof that may
23 be submitted to rebut the presumption; amending s.
24 212.0506, F.S.; conforming a cross-reference;
25 providing an effective date.

26
27 Be It Enacted by the Legislature of the State of Florida:

28
29 Section 1. Subsection (2) of section 212.06, Florida

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30 Statutes, is amended to read:

31 212.06 Sales, storage, use tax; collectible from dealers;
32 "dealer" defined; dealers to collect from purchasers;
33 legislative intent as to scope of tax.-

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

36 (a) Manufactures or produces tangible personal property for
37 sale at retail; for use, consumption, or distribution; or for
38 storage to be used or consumed in this state.

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

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

52 ~~(d) The term "dealer" is further defined to mean any person~~
53 ~~who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or distributed; or
54 stored for use or consumption in this state, tangible personal
55 property and ~~who~~ cannot prove that the tax levied by this
56 chapter has been paid on the sale at retail, the use, the
57 consumption, the distribution, or the storage of such tangible
58 personal property. ~~However,~~ The term "dealer" does not include

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59 ~~mean~~ a person who is not a "dealer" as otherwise defined in
60 ~~under the definition of any other paragraph of~~ this subsection
61 and whose only owned or leased property (including property
62 owned or leased by an affiliate) in this state is located at the
63 premises of a printer with which it has contracted for printing,
64 if such property consists of the final printed product, property
65 which becomes a part of the final printed product, or property
66 from which the printed product is produced.

67 ~~(e) The term "dealer" is further defined to mean any~~
68 ~~person, as used in this chapter, who~~ Leases or rents tangible
69 ~~personal property, as defined in this chapter, for a~~
70 consideration, permitting the use or possession of such property
71 without transferring title thereto, except as expressly provided
72 for to the contrary in this chapter herein.

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

79 ~~(g) "Dealer" also means and includes every person who~~
80 ~~solicits business either by direct representatives, indirect~~
81 ~~representatives, or manufacturers' agents; by distribution of~~
82 ~~catalogs or other advertising matter; or by any other means~~
83 ~~whatsoever, and by reason thereof receives orders for tangible~~
84 ~~personal property from consumers for use, consumption,~~
85 ~~distribution, and storage for use or consumption in the state;~~
86 ~~such dealer shall collect the tax imposed by this chapter from~~
87 ~~the purchaser, and no action, either in law or in equity, on a~~

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88 ~~sale or transaction as provided by the terms of this chapter may~~
89 ~~be had in this state by any such dealer unless it is~~
90 ~~affirmatively shown that the provisions of this chapter have~~
91 ~~been fully complied with.~~

92 ~~(g)(h)~~ "Dealer" also means and includes every person who,
93 As a representative, agent, or solicitor of an out-of-state
94 principal or principals, solicits, receives, and accepts orders
95 from consumers in the state for future delivery and whose
96 principal refuses to register as a dealer.

97 ~~(h)(i)~~ Constitutes "Dealer" also means and includes the
98 state or any, county, municipality, district ~~any political~~
99 ~~subdivision~~, agency, bureau, or department, or other state or
100 local governmental instrumentality.

101 ~~(i)(j)~~ The term "dealer" is further defined to mean any
102 ~~person who~~ Leases, or grants a license to use, occupy, or enter
103 upon, living quarters, sleeping or housekeeping accommodations
104 in hotels, apartment houses, roominghouses, tourist or trailer
105 camps, real property, space or spaces in parking lots or garages
106 for motor vehicles, docking or storage space or spaces for boats
107 in boat docks or marinas, or tie-down or storage space or spaces
108 for aircraft at airports. The term includes ~~"dealer" also means~~
109 any person who has leased, occupied, or used or was entitled to
110 use any living quarters, sleeping or housekeeping accommodations
111 in hotels, apartment houses, roominghouses, tourist or trailer
112 camps, real property, space or spaces in parking lots or garages
113 for motor vehicles, or docking or storage space or spaces for
114 boats in boat docks or marinas, or who has purchased
115 communication services or electric power or energy, and who
116 cannot prove that the tax levied by this chapter has been paid

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117 to the vendor or lessor on any such transactions. The term
118 ~~"dealer"~~ does not include any person who leases, lets, rents, or
119 grants a license to use, occupy, or enter upon any living
120 quarters, sleeping quarters, or housekeeping accommodations in
121 apartment houses, roominghouses, tourist camps, or trailer
122 camps, and who exclusively enters into a bona fide written
123 agreement for continuous residence for longer than 6 months in
124 duration with any person who leases, lets, rents, or is granted
125 a license to use such property.

126 (j) ~~(k)~~ ~~"Dealer"~~ also means any person who Sells, provides,
127 or performs a service taxable under this chapter. The term
128 includes ~~"Dealer"~~ also means any person who purchases, uses, or
129 consumes a service taxable under this chapter who cannot prove
130 that the tax levied by this chapter has been paid to the seller
131 of the taxable service.

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

136 Section 2. Section 212.0596, Florida Statutes, is amended
137 to read:

138 212.0596 Taxation of mail order sales.—

139 (1) For purposes of this chapter, a "mail order sale" is a
140 sale of tangible personal property, ordered by mail, Internet,
141 or other means of communication, from a dealer who receives the
142 order in another state of the United States, or in a
143 commonwealth, territory, or other area under the jurisdiction of
144 the United States, and transports the property or causes the
145 property to be transported, whether or not by mail, from any

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146 jurisdiction of the United States, including this state, to a
147 person in this state, including the person who ordered the
148 property.

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

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

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

159 (c) The dealer has agents or representatives in this state
160 who solicit business or transact business on behalf of the
161 dealer, whether the mail order sales thus subject to taxation by
162 this state result from or are related in any other way to such
163 solicitation or transaction of business, except that a printer
164 who mails or delivers for an out-of-state print purchaser
165 material the printer printed for it is ~~shall~~ not ~~be~~ deemed to be
166 the print purchaser's agent or representative for purposes of
167 this paragraph;

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

172 ~~(e) The dealer, by purposefully or systematically~~
173 ~~exploiting the market provided by this state by any media-~~
174 ~~assisted, media facilitated, or media solicited means,~~

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175 ~~including, but not limited to, direct mail advertising,~~
176 ~~unsolicited distribution of catalogs, computer-assisted~~
177 ~~shopping, television, radio, or other electronic media, or~~
178 ~~magazine or newspaper advertisements or other media, creates~~
179 ~~nexus with this state;~~

180 ~~(f) Through compact or reciprocity with another~~
181 ~~jurisdiction of the United States, that jurisdiction uses its~~
182 ~~taxing power and its jurisdiction over the retailer in support~~
183 ~~of this state's taxing power;~~

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

186 ~~(h) The dealer is subject to service of process under s.~~
187 ~~48.181;~~

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

192 ~~(f)(j)~~ (f) The dealer owns real property or tangible personal
193 property that is physically in this state, except that a dealer
194 whose only property (including property owned by an affiliate)
195 in this state is located at the premises of a printer with which
196 the vendor has contracted for printing, and is ~~either~~ a final
197 printed product, ~~or~~ property which becomes a part of the final
198 printed product, or property from which the printed product is
199 produced, is not deemed to own such property for purposes of
200 this paragraph;

201 ~~(g)(k)~~ (g) The person, other than a person acting in the
202 capacity of a common carrier, ~~The dealer, while not having nexus~~
203 ~~with this state on any of the bases described in paragraphs (a)-~~

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204 ~~(j) or paragraph (l), is a corporation that is a member of an~~
205 ~~affiliated group of corporations, as defined in s. 1504(a) of~~
206 ~~the Internal Revenue Code, whose members are includable under s.~~
207 ~~1504(b) of the Internal Revenue Code and whose members are~~
208 ~~eligible to file a consolidated tax return for federal corporate~~
209 ~~income tax purposes and any parent or subsidiary corporation in~~
210 ~~the affiliated group has substantial nexus with this state and:~~

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

213 2. Maintains an office, distribution facility, warehouse or
214 storage place, or similar place of business in this state to
215 facilitate the delivery of property or services sold by the
216 dealer to the dealer's customers;

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

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

222 5. Facilitates the dealer's delivery of property to
223 customers in this state by allowing the dealer's customers to
224 pick up property sold by the person at an office, distribution
225 facility, warehouse, storage place, or similar place of business
226 maintained by the person in this state; or

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

232 (h) ~~(l)~~ The dealer or the dealer's activities have

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233 sufficient connection with or relationship to this state or its
234 residents of some type other than those described in paragraphs
235 (a)-(g) ~~(a)-(k)~~ to create nexus empowering this state to tax its
236 mail order sales or to require the dealer to collect sales tax
237 or accrue use tax.

238
239 Notwithstanding other provisions of law, a dealer is not
240 required to collect and remit sales or use tax under this
241 subsection unless the dealer has a physical presence in this
242 state or the activities conducted in this state on the dealer's
243 behalf are significantly associated with the dealer's ability to
244 establish and maintain a market for sales in this state.

245 (3) (a) Notwithstanding other provisions of law or this
246 section, on or after October 1, 2012, there is established a
247 rebuttable presumption that every dealer as defined in s.
248 212.06(2) who makes a mail order sale is also subject to the
249 power of this state to levy and collect the tax imposed by this
250 chapter if the dealer enters into an agreement with one or more
251 residents of this state under which the resident, for a
252 commission or other consideration, directly or indirectly refers
253 potential customers, whether by a link on an Internet website,
254 an in-person oral presentation, telemarketing, or otherwise, to
255 the dealer, if the cumulative gross receipts from sales by the
256 dealer to customers in this state who are referred to the dealer
257 by all residents with this type of an agreement with the dealer
258 is in excess of \$10,000 during the 12-month period immediately
259 before the rebuttable presumption arose.

260 (b) The presumption in paragraph (a) may be rebutted by the
261 submission of evidence proving the residents with whom the

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262 dealer has an agreement did not engage in any activity within
263 this state that was significantly associated with the dealer's
264 ability to establish or maintain the dealer's market in this
265 state during the 12 months immediately before the rebuttable
266 presumption arose. The evidence may consist of sworn affidavits,
267 obtained and given in good faith, from each resident with whom
268 the dealer has an agreement attesting that he or she did not
269 engage in any solicitation in this state on the dealer's behalf
270 during the previous year.

271 (4)~~(3)~~ Every dealer engaged in the business of making mail
272 order sales is subject to the requirements of this chapter for
273 cooperation of dealers in collection of taxes and in
274 administration of this chapter, except that no fee shall be
275 imposed upon such dealer for carrying out any required activity.

276 (5)~~(4)~~ The department shall, with the consent of another
277 jurisdiction of the United States whose cooperation is needed,
278 enforce this chapter in that jurisdiction, either directly or,
279 at the option of that jurisdiction, through its officers or
280 employees.

281 (6)~~(5)~~ The tax required under this section to be collected
282 and any amount unreturned to a purchaser that is not tax but was
283 collected from the purchaser under the representation that it
284 was tax constitute funds of the State of Florida from the moment
285 of collection.

286 (7)~~(6)~~ Notwithstanding other provisions of law, a dealer
287 who makes a mail order sale in this state is exempt from
288 collecting and remitting any local option surtax on the sale,
289 unless the dealer is located in a county that imposes a surtax
290 within the meaning of s. 212.054(3)(a), the order is placed

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291 through the dealer's location in such county, and the property
292 purchased is delivered into such county or into another county
293 in this state that levies the surtax, in which case the
294 provisions of s. 212.054(3)(a) are applicable.

295 (8)~~(7)~~ The department may establish by rule procedures for
296 collecting the use tax from unregistered persons who but for
297 their mail order purchases would not be required to remit sales
298 or use tax directly to the department. The procedures may
299 provide for waiver of registration and registration fees,
300 provisions for irregular remittance of tax, elimination of the
301 collection allowance, and nonapplication of local option
302 surtaxes.

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

305 212.0506 Taxation of service warranties.—

306 (11) Any duties imposed by this chapter upon dealers of
307 tangible personal property with respect to collecting and
308 remitting taxes; making returns; keeping books, records, and
309 accounts; and complying with the rules and regulations of the
310 department apply to all dealers as defined in s. 212.06(2)(k)
311 ~~212.06(2)(1)~~.

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