

By the Committees on Banking and Insurance; and 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; requiring that
24 the Department of Revenue develop a tracking system,
25 in consultation with the Revenue Estimating
26 Conference, to determine the amount of sales tax
27 remitted by out-of-state dealers who would otherwise
28 not be required to collect and remit sales taxes but
29 for the amendments made by the act; requiring that the

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30 department submit a report to the Governor and
31 Legislature by a specified date each year; requiring
32 that the report contain certain information; requiring
33 that the Revenue Estimating Conference use such
34 information to determine the amount of sales taxes
35 remitted in the previous calendar year by such out-of-
36 state dealers and estimate the amount that may be
37 expected in the following fiscal year; requiring that
38 the Legislature use the information to develop
39 legislation designed to return the amount of sales
40 taxes collected to the taxpayers of the state;
41 providing an effective date.

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

44
45 Section 1. Subsection (2) of section 212.06, Florida
46 Statutes, is amended to read:

47 212.06 Sales, storage, use tax; collectible from dealers;
48 "dealer" defined; dealers to collect from purchasers;
49 legislative intent as to scope of tax.-

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

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

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

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59 distribution; or for storage to be used or consumed in this
60 state.

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

68 ~~(d) The term "dealer" is further defined to mean any person~~
69 ~~who Has sold at retail; or used, or consumed, or distributed; or~~
70 ~~stored for use or consumption in this state, tangible personal~~
71 ~~property and who cannot prove that the tax levied by this~~
72 ~~chapter has been paid on the sale at retail, the use, the~~
73 ~~consumption, the distribution, or the storage of such tangible~~
74 ~~personal property. However, The term "dealer" does not include~~
75 ~~mean a person who is not a "dealer" as otherwise defined in~~
76 ~~under the definition of any other paragraph of this subsection~~
77 ~~and whose only owned or leased property (including property~~
78 ~~owned or leased by an affiliate) in this state is located at the~~
79 ~~premises of a printer with which it has contracted for printing,~~
80 ~~if such property consists of the final printed product, property~~
81 ~~which becomes a part of the final printed product, or property~~
82 ~~from which the printed product is produced.~~

83 ~~(e) The term "dealer" is further defined to mean any~~
84 ~~person, as used in this chapter, who Leases or rents tangible~~
85 ~~personal property, as defined in this chapter, for a~~
86 ~~consideration, permitting the use or possession of such property~~
87 ~~without transferring title thereto, except as expressly provided~~

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88 for to the contrary in this chapter herein.

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

95 (g) ~~"Dealer" also means and includes every person who~~
96 Solicits business ~~either~~ by direct representatives, indirect
97 representatives, or manufacturers' agents; by distribution of
98 catalogs or other advertising matter; or by any other means
99 whatsoever, and by reason thereof receives orders for tangible
100 personal property from consumers for use, consumption,
101 distribution, and storage for use or consumption in the state;
102 such dealer shall collect the tax imposed by this chapter from
103 the purchaser, and no action, either in law or in equity, on a
104 sale or transaction as provided by the terms of this chapter may
105 be had in this state by any such dealer unless it is
106 affirmatively shown that the provisions of this chapter have
107 been fully complied with.

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

113 (i) Constitutes ~~"Dealer" also means and includes~~ the state
114 or any, county, municipality, district ~~any political~~
115 ~~subdivision,~~ agency, bureau, or department, or other state or
116 local governmental instrumentality.

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117 (j) ~~The term "dealer" is further defined to mean any person~~
118 ~~who~~ Leases, or grants a license to use, occupy, or enter upon,
119 living quarters, sleeping or housekeeping accommodations in
120 hotels, apartment houses, roominghouses, tourist or trailer
121 camps, real property, space or spaces in parking lots or garages
122 for motor vehicles, docking or storage space or spaces for boats
123 in boat docks or marinas, or tie-down or storage space or spaces
124 for aircraft at airports. The term includes ~~"dealer" also means~~
125 any person who has leased, occupied, or used or was entitled to
126 use any living quarters, sleeping or housekeeping accommodations
127 in hotels, apartment houses, roominghouses, tourist or trailer
128 camps, real property, space or spaces in parking lots or garages
129 for motor vehicles, or docking or storage space or spaces for
130 boats in boat docks or marinas, or who has purchased
131 communication services or electric power or energy, and who
132 cannot prove that the tax levied by this chapter has been paid
133 to the vendor or lessor on any such transactions. The term
134 ~~"dealer"~~ does not include any person who leases, lets, rents, or
135 grants a license to use, occupy, or enter upon any living
136 quarters, sleeping quarters, or housekeeping accommodations in
137 apartment houses, roominghouses, tourist camps, or trailer
138 camps, and who exclusively enters into a bona fide written
139 agreement for continuous residence for longer than 6 months in
140 duration with any person who leases, lets, rents, or is granted
141 a license to use such property.

142 (k) ~~"Dealer" also means any person who~~ Sells, provides, or
143 performs a service taxable under this chapter. The term includes
144 ~~"Dealer" also means~~ any person who purchases, uses, or consumes
145 a service taxable under this chapter who cannot prove that the

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146 tax levied by this chapter has been paid to the seller of the
147 taxable service.

148 (1) ~~"Dealer" also means any person who~~ Solicits, offers,
149 provides, enters into, issues, or delivers any service warranty
150 taxable under this chapter, or who receives, on behalf of such a
151 person, any consideration from a service warranty holder.

152 Section 2. Section 212.0596, Florida Statutes, is amended
153 to read:

154 212.0596 Taxation of mail order sales.—

155 (1) For purposes of this chapter, a "mail order sale" is a
156 sale of tangible personal property, ordered by mail, Internet,
157 or other means of communication, from a dealer who receives the
158 order in another state of the United States, or in a
159 commonwealth, territory, or other area under the jurisdiction of
160 the United States, and transports the property or causes the
161 property to be transported, whether or not by mail, from any
162 jurisdiction of the United States, including this state, to a
163 person in this state, including the person who ordered the
164 property.

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

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

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

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

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

188 ~~(e) The dealer, by purposefully or systematically~~
189 ~~exploiting the market provided by this state by any media-~~
190 ~~assisted, media-facilitated, or media-solicited means,~~
191 ~~including, but not limited to, direct mail advertising,~~
192 ~~unsolicited distribution of catalogs, computer-assisted~~
193 ~~shopping, television, radio, or other electronic media, or~~
194 ~~magazine or newspaper advertisements or other media, creates~~
195 ~~nexus with this state;~~

196 ~~(f) Through compact or reciprocity with another~~
197 ~~jurisdiction of the United States, that jurisdiction uses its~~
198 ~~taxing power and its jurisdiction over the retailer in support~~
199 ~~of this state's taxing power;~~

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

202 ~~(h) The dealer is subject to service of process under s.~~
203 ~~48.181;~~

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

208 (f)~~(j)~~ The dealer owns real property or tangible personal
209 property that is physically in this state, except that a dealer
210 whose only property (including property owned by an affiliate)
211 in this state is located at the premises of a printer with which
212 the vendor has contracted for printing, and is ~~either~~ a final
213 printed product, ~~or~~ property which becomes a part of the final
214 printed product, or property from which the printed product is
215 produced, is not deemed to own such property for purposes of
216 this paragraph;

217 (g)~~(k)~~ A person, other than a person acting in the capacity
218 of a common carrier, ~~The dealer, while not having nexus with~~
219 ~~this state on any of the bases described in paragraphs (a)–(j)~~
220 ~~or paragraph (l), is a corporation that is a member of an~~
221 ~~affiliated group of corporations, as defined in s. 1504(a) of~~
222 ~~the Internal Revenue Code, whose members are includable under s.~~
223 ~~1504(b) of the Internal Revenue Code and whose members are~~
224 ~~eligible to file a consolidated tax return for federal corporate~~
225 ~~income tax purposes and any parent or subsidiary corporation in~~
226 ~~the affiliated group has substantial nexus with this state and:~~

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

229 2. Maintains an office, distribution facility, warehouse,
230 storage place, or similar place of business in this state to
231 facilitate the delivery of property or services sold by the
232 dealer to the dealer's customers;

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

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

238 5. Facilitates the dealer's delivery of property to
239 customers in this state by allowing the dealer's customers to
240 pick up property sold by the dealer at an office, distribution
241 facility, warehouse, storage place, or similar place of business
242 maintained by the person in this state; or

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

248 ~~(h)-(l)~~ The dealer or the dealer's activities have
249 sufficient connection with or relationship to this state or its
250 residents of some type other than those described in paragraphs
251 ~~(a)-(g) (a)-(k)~~ to create nexus empowering this state to tax its
252 mail order sales or to require the dealer to collect sales tax
253 or accrue use tax.

254
255 Notwithstanding other provisions of law, a dealer is not
256 required to collect and remit sales or use tax under this
257 subsection unless the dealer has a physical presence in this
258 state or the activities conducted in this state on the dealer's
259 behalf are significantly associated with the dealer's ability to
260 establish and maintain a market for sales in this state.

261 (3) (a) Notwithstanding other provisions of law or this

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

276 (b) The presumption in paragraph (a) may be rebutted by the
277 submission of evidence proving that the residents with whom the
278 dealer has an agreement did not engage in any activity within
279 this state which was significantly associated with the dealer's
280 ability to establish or maintain the dealer's market in this
281 state during the 12 months immediately before the rebuttable
282 presumption arose. The evidence may consist of sworn affidavits,
283 obtained and given in good faith, from each resident with whom
284 the dealer has an agreement attesting that he or she did not
285 engage in any solicitation in this state on the dealer's behalf
286 during the previous year.

287 (4)~~(3)~~ Every dealer engaged in the business of making mail
288 order sales is subject to the requirements of this chapter for
289 cooperation of dealers in collection of taxes and in
290 administration of this chapter, except that no fee shall be

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291 imposed upon such dealer for carrying out any required activity.

292 (5)~~(4)~~ The department shall, with the consent of another
293 jurisdiction of the United States whose cooperation is needed,
294 enforce this chapter in that jurisdiction, either directly or,
295 at the option of that jurisdiction, through its officers or
296 employees.

297 (6)~~(5)~~ The tax required under this section to be collected
298 and any amount unreturned to a purchaser that is not tax but was
299 collected from the purchaser under the representation that it
300 was tax constitute funds of the State of Florida from the moment
301 of collection.

302 (7)~~(6)~~ Notwithstanding other provisions of law, a dealer
303 who makes a mail order sale in this state is exempt from
304 collecting and remitting any local option surtax on the sale,
305 unless the dealer is located in a county that imposes a surtax
306 within the meaning of s. 212.054(3)(a), the order is placed
307 through the dealer's location in such county, and the property
308 purchased is delivered into such county or into another county
309 in this state that levies the surtax, in which case the
310 provisions of s. 212.054(3)(a) are applicable.

311 (8)~~(7)~~ The department may establish by rule procedures for
312 collecting the use tax from unregistered persons who but for
313 their mail order purchases would not be required to remit sales
314 or use tax directly to the department. The procedures may
315 provide for waiver of registration and registration fees,
316 provisions for irregular remittance of tax, elimination of the
317 collection allowance, and nonapplication of local option
318 surtaxes.

319 Section 3. (1) The Department of Revenue shall develop a

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320 tracking system, in consultation with the Revenue Estimating
321 Conference, to determine the amount of sales taxes remitted by
322 out-of-state dealers who would otherwise not be required to
323 collect and remit sales taxes in the absence of the amendments
324 made to s. 212.0596, Florida Statutes, in section 2 of this act.
325 By February 1 of each year, the Department of Revenue shall
326 submit a report to the Governor, the President of the Senate,
327 and the Speaker of the House of Representatives which sets forth
328 the amount of sales taxes collected and remitted by such dealers
329 in the previous calendar year and the methodology used to
330 determine the amount.

331 (2) By March 1 of each year, the Revenue Estimating
332 Conference shall use the information provided by the Department
333 of Revenue pursuant to subsection (1) to determine the amount of
334 sales taxes remitted in the previous calendar year by such out-
335 of-state dealers who would otherwise not be required to collect
336 and remit sales taxes and estimate the amount that may be
337 expected in the following fiscal year.

338 (3) The Legislature shall use the information provided by
339 the Department of Revenue and the Revenue Estimating Conference
340 to develop legislation designed to return the amount of those
341 sales taxes collected to the taxpayers of this state. The
342 Legislature may accomplish this by establishing one or more
343 sales tax holidays designed to reduce tax collections in an
344 amount not less than the amounts determined by the Revenue
345 Estimating Conference. If the amounts collected are determined
346 to be of a recurring nature and sufficient to lower the tax rate
347 set forth in chapter 212, Florida Statutes, the Legislature may
348 lower the tax rate and implement other tax relief as it deems

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349 appropriate.

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