

By the Committee on Budget Subcommittee on Finance and Tax

593-02814-12

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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 in this state,~~
78 ~~(including property owned or leased by an affiliate,) in this~~
79 ~~state is located at the premises of a printer with which it has~~
80 ~~contracted for printing, if such property consists of the final~~
81 ~~printed product, property which becomes a part of the final~~
82 ~~printed product, or property from which the printed product is~~
83 ~~produced.~~

84 ~~(e) The term "dealer" is further defined to mean any~~
85 ~~person, as used in this chapter, who Leases or rents tangible~~
86 ~~personal property, as defined in this chapter, for a~~
87 ~~consideration, permitting the use or possession of such property~~

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88 without transferring title thereto, except as expressly provided
89 for to the contrary in this chapter herein.

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

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

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

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

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117 local governmental instrumentality.

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

143 (k) ~~"Dealer" also means any person who~~ Sells, provides, or
144 performs a service taxable under this chapter. The term includes
145 ~~"Dealer" also means~~ any person who purchases, uses, or consumes

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146 a service taxable under this chapter who cannot prove that the
147 tax levied by this chapter has been paid to the seller of the
148 taxable service.

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

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

155 212.0596 Taxation of mail order sales.—

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

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

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

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

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175 way to the activities of such establishments or offices;

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

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

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

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

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

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

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204 ~~48.181;~~

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

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

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

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

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

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233 dealer to the dealer's customers;

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

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

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

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

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

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

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

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

288 (4)~~(3)~~ Every dealer engaged in the business of making mail
289 order sales is subject to the requirements of this chapter for
290 cooperation of dealers in collection of taxes and in

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291 administration of this chapter, except that no fee shall be
292 imposed upon such dealer for carrying out any required activity.

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

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

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

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

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320 Section 3. (1) The Department of Revenue shall develop a
321 tracking system, in consultation with the Revenue Estimating
322 Conference, to determine the amount of sales taxes remitted by
323 out-of-state dealers who would otherwise not be required to
324 collect and remit sales taxes in the absence of the amendments
325 made to s. 212.0596, Florida Statutes, in section 2 of this act.
326 By February 1 of each year, the Department of Revenue shall
327 submit a report to the Governor, the President of the Senate,
328 and the Speaker of the House of Representatives which sets forth
329 the amount of sales taxes collected and remitted by such dealers
330 in the previous calendar year and the methodology used to
331 determine the amount.

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

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

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349 lower the tax rate and implement other tax relief as it deems
350 appropriate.

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