



178758

LEGISLATIVE ACTION

Senate

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House

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Floor: WD/2R

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02/23/2012 07:48 PM

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Senator Bogdanoff moved the following:

1 **Senate Amendment to Amendment (716500) (with title**
2 **amendment)**

3
4 Between lines 195 and 196
5 insert:

6 Section 7. Subsections (1) and (2) of section 212.0596,
7 Florida Statutes, are amended to read:

8 212.0596 Taxation of mail order sales.—

9 (1) For purposes of this chapter, a "mail order sale" is a
10 sale of tangible personal property, ordered by mail, use of the
11 Internet, or other means of communication, from a dealer who
12 receives the order in another state of the United States, or in
13 a commonwealth, territory, or other area under the jurisdiction



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14 of the United States, and transports the property or causes the
15 property to be transported, whether or not by mail, from any
16 jurisdiction of the United States, including this state, to a
17 person in this state, including the person who ordered the
18 property.

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

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

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

29 (c) The dealer has agents in this state who solicit
30 business or transact business on behalf of the dealer, whether
31 the mail order sales thus subject to taxation by this state
32 result from or are related in any other way to such solicitation
33 or transaction of business, except that a printer who mails or
34 delivers for an out-of-state print purchaser material the
35 printer printed for it shall not be deemed to be the print
36 purchaser's agent for purposes of this paragraph;

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

41 ~~(e) The dealer, by purposefully or systematically~~
42 ~~exploiting the market provided by this state by any media-~~



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43 ~~assisted, media-facilitated, or media-solicited means,~~
44 ~~including, but not limited to, direct mail advertising,~~
45 ~~unsolicited distribution of catalogs, computer-assisted~~
46 ~~shopping, television, radio, or other electronic media, or~~
47 ~~magazine or newspaper advertisements or other media, creates~~
48 ~~nexus with this state;~~

49 ~~(f) Through compact or reciprocity with another~~
50 ~~jurisdiction of the United States, that jurisdiction uses its~~
51 ~~taxing power and its jurisdiction over the retailer in support~~
52 ~~of this state's taxing power;~~

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

55 ~~(h) The dealer is subject to service of process under s.~~
56 ~~48.181;~~

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

61 ~~(f)(j)~~ The dealer owns real property or tangible personal
62 property that is physically in this state, except that a dealer
63 whose only property (including property owned by an affiliate)
64 in this state is located at the premises of a printer with which
65 the vendor has contracted for printing, and is either a final
66 printed product, or property which becomes a part of the final
67 printed product, or property from which the printed product is
68 produced, is not deemed to own such property for purposes of
69 this paragraph;

70 ~~(g)(k)~~ The dealer and any affiliated person that,
71 notwithstanding its form of organization, bears the same



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72 relationship to the dealer as, while not having nexus with this
73 state on any of the bases described in paragraphs (a)-(j) or
74 paragraph (l), is a corporation that is a member of an
75 affiliated group of corporations, as defined in s. 1504(a) of
76 the Internal Revenue Code, whose members are includable under s.
77 1504(b) of the Internal Revenue Code, and whose members are
78 eligible to file a consolidated tax return for federal corporate
79 income tax purposes bears to and any parent or subsidiary
80 corporation in the affiliated group; the affiliated person has
81 nexus with this state; and: on one or more of the bases
82 described in paragraphs (a)-(j) or paragraph (l); or

83 1. The dealer sells a similar line of products as the
84 affiliated person and does so under the same or a similar
85 business name;

86 2. The affiliated person uses its in-state employees or in-
87 state facilities to advertise, promote, or facilitate sales by
88 the dealer to customers;

89 3. The affiliated person maintains an office, distribution
90 facility, warehouse, storage place, or similar place of business
91 in this state to facilitate the delivery of property or services
92 sold by the dealer to the dealer's customers;

93 4. The affiliated person uses trademarks, service marks, or
94 trade names in this state that are the same or substantially
95 similar to those used by the dealer; or

96 5. The affiliated person delivers, installs, assembles, or
97 performs maintenance services for the dealer's customers within
98 this state;

99 (h) The dealer has an arrangement with any person pursuant
100 to which that person performs services in this state for the



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101 dealer's customers on behalf of the dealer, including, but not
102 limited to, installation, assembly, maintenance, or repair
103 services;

104 (i) The dealer has an arrangement with any person, other
105 than a common carrier, pursuant to which that person facilitates
106 the dealer's delivery of property to customers in this state by
107 allowing the dealer's customers to pick up property sold by the
108 person at an office, distribution facility, warehouse, storage
109 place, or similar place of business maintained by the dealer in
110 this state; or

111 (j)~~(l)~~ The dealer or the dealer's activities have
112 sufficient connection with or relationship to this state or its
113 residents of some type other than those described in paragraphs
114 (a)-(i) ~~(a)-(k)~~ to create nexus empowering this state to tax its
115 mail order sales or to require the dealer to collect sales tax
116 or accrue use tax.

117
118 Notwithstanding any provision to the contrary, a dealer is not
119 required to collect and remit sales or use tax under this
120 subsection unless the retailer has a physical presence in this
121 state or the activities conducted in this state on the
122 retailer's behalf are significantly associated with the dealer's
123 ability to establish and maintain a market for sales in this
124 state.

125
126 ===== T I T L E A M E N D M E N T =====

127 And the title is amended as follows:

128
129 Delete line 229



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130 and insert:

131

132 estimated payment; revising the definition of "mail
133 order sale" to include the sale of tangible personal
134 property ordered by use of the Internet for purposes
135 relating to the imposition and collection of the tax
136 on sales, use, and other transactions; revising the
137 conditions, requirements, and criteria that subject a
138 dealer to the state's power to impose and collect the
139 tax on sales, use, and other transactions on mail
140 order sales; specifying that a dealer is not required
141 to collect the tax on sales, use, and other
142 transactions unless certain circumstances exist
143 relating to the retailer; providing effective dates.