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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. 212.0596, F.S.; revising the
4 definition of "mail order sale" to include the sale of
5 tangible personal property ordered by use of the
6 Internet for purposes relating to the imposition and
7 collection of the tax on sales, use, and other
8 transactions; revising the conditions, requirements,
9 and criteria that subject a dealer to the state's
10 power to impose and collect the tax on sales, use, and
11 other transactions on mail order sales; specifying
12 that a dealer is not required to collect the tax on
13 sales, use, and other transactions unless certain
14 circumstances exist relating to the retailer; amending
15 s. 212.06, F.S.; revising the definition of the term
16 "dealer" for purposes relating to the imposition and
17 collection of the tax on sales, use, and other
18 transactions from dealers; amending s. 212.0506, F.S.;
19 conforming a cross-reference; providing an effective
20 date.

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Subsections (1) and (2) of section 212.0596,
25 Florida Statutes, are amended to read:

26 212.0596 Taxation of mail order sales.—

27 (1) For purposes of this chapter, a "mail order sale" is a
28 sale of tangible personal property, ordered by mail, use of the

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29 Internet, or other means of communication, from a dealer who
30 receives the order in another state of the United States, or in
31 a commonwealth, territory, or other area under the jurisdiction
32 of the United States, and transports the property or causes the
33 property to be transported, whether or not by mail, from any
34 jurisdiction of the United States, including this state, to a
35 person in this state, including the person who ordered the
36 property.

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

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

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

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

55 ~~(d) The property was delivered in this state in~~
56 ~~fulfillment of a sales contract that was entered into in this~~

57 ~~state, in accordance with applicable conflict of laws rules,~~
 58 ~~when a person in this state accepted an offer by ordering the~~
 59 ~~property;~~

60 ~~(e) The dealer, by purposefully or systematically~~
 61 ~~exploiting the market provided by this state by any media-~~
 62 ~~assisted, media-facilitated, or media-solicited means,~~
 63 ~~including, but not limited to, direct mail advertising,~~
 64 ~~unsolicited distribution of catalogs, computer-assisted~~
 65 ~~shopping, television, radio, or other electronic media, or~~
 66 ~~magazine or newspaper advertisements or other media, creates~~
 67 ~~nexus with this state;~~

68 ~~(f) Through compact or reciprocity with another~~
 69 ~~jurisdiction of the United States, that jurisdiction uses its~~
 70 ~~taxing power and its jurisdiction over the retailer in support~~
 71 ~~of this state's taxing power;~~

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

74 ~~(h) The dealer is subject to service of process under s.~~
 75 ~~48.181;~~

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

80 (f)~~(j)~~ The dealer owns real property or tangible personal
 81 property that is physically in this state, except that a dealer
 82 whose only property (including property owned by an affiliate)
 83 in this state is located at the premises of a printer with which
 84 the vendor has contracted for printing, and is either a final

85 printed product, or property which becomes a part of the final
 86 printed product, or property from which the printed product is
 87 produced, is not deemed to own such property for purposes of
 88 this paragraph;

89 (g)(k) The dealer and any affiliated person that,
 90 notwithstanding its form of organization, bears the same
 91 relationship to the dealer as, ~~while not having nexus with this~~
 92 ~~state on any of the bases described in paragraphs (a)-(j) or~~
 93 ~~paragraph (l),~~ is a corporation that is a member of an
 94 affiliated group of corporations, as defined in s. 1504(a) of
 95 the Internal Revenue Code, whose members are includable under s.
 96 1504(b) of the Internal Revenue Code, and whose members are
 97 eligible to file a consolidated tax return for federal corporate
 98 income tax purposes bears to ~~and any parent or subsidiary~~
 99 corporation in the affiliated group; the affiliated person has
 100 nexus with this state; and: ~~on one or more of the bases~~
 101 ~~described in paragraphs (a)-(j) or paragraph (l); or~~

102 1. The dealer sells a similar line of products as the
 103 affiliated person and does so under the same or a similar
 104 business name;

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

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

112 4. The affiliated person uses trademarks, service marks,

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113 or trade names in this state that are the same or substantially
 114 similar to those used by the dealer; or

115 5. The affiliated person delivers, installs, assembles, or
 116 performs maintenance services for the dealer's customers within
 117 this state;

118 (h) The dealer has an arrangement with any person pursuant
 119 to which that person performs services in this state for the
 120 dealer's customers on behalf of the dealer, including, but not
 121 limited to, installation, assembly, maintenance, or repair
 122 services;

123 (i) The dealer has an arrangement with any person, other
 124 than a common carrier, pursuant to which that person facilitates
 125 the dealer's delivery of property to customers in this state by
 126 allowing the dealer's customers to pick up property sold by the
 127 person at an office, distribution facility, warehouse, storage
 128 place, or similar place of business maintained by the dealer in
 129 this state; or

130 (j)~~(l)~~ The dealer or the dealer's activities have
 131 sufficient connection with or relationship to this state or its
 132 residents of some type other than those described in paragraphs
 133 (a)-(i) ~~(a)-(k)~~ to create nexus empowering this state to tax its
 134 mail order sales or to require the dealer to collect sales tax
 135 or accrue use tax.

136
 137 Notwithstanding any provision to the contrary, a dealer is not
 138 required to collect and remit sales or use tax under this
 139 subsection unless the retailer has a physical presence in this
 140 state or the activities conducted in this state on the

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141 retailer's behalf are significantly associated with the dealer's
142 ability to establish and maintain a market for sales in this
143 state.

144 Section 2. Subsection (2) of section 212.06, Florida
145 Statutes, is amended to read:

146 212.06 Sales, storage, use tax; collectible from dealers;
147 "dealer" defined; dealers to collect from purchasers;
148 legislative intent as to scope of tax.—

149 (2) (a) The term "dealer," as used in this chapter,
150 includes every person who manufactures or produces tangible
151 personal property for sale at retail; for use, consumption, or
152 distribution; or for storage to be used or consumed in this
153 state.

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

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

167 (d) The term "dealer" is further defined to mean any
168 person who has sold at retail; or used, or consumed, or

169 distributed; or stored for use or consumption in this state,
 170 tangible personal property and who cannot prove that the tax
 171 levied by this chapter has been paid on the sale at retail, the
 172 use, the consumption, the distribution, or the storage of such
 173 tangible personal property. However, the term "dealer" does not
 174 mean a person who is not a "dealer" under the definition of any
 175 other paragraph of this subsection and whose only owned or
 176 leased property (including property owned or leased by an
 177 affiliate) in this state is located at the premises of a printer
 178 with which it has contracted for printing, if such property
 179 consists of the final printed product, property which becomes a
 180 part of the final printed product, or property from which the
 181 printed product is produced.

182 (e) The term "dealer" is further defined to mean any
 183 person, as used in this chapter, who leases or rents tangible
 184 personal property, as defined in this chapter, for a
 185 consideration, permitting the use or possession of such property
 186 without transferring title thereto, except as expressly provided
 187 for to the contrary herein.

188 (f) The term "dealer" is further defined to mean any
 189 person, as used in this chapter, who maintains or has within
 190 this state, directly or by an affiliated person as defined in s.
 191 212.0596(2)(g) ~~a subsidiary~~, an office, distributing house,
 192 salesroom, or house, warehouse, or other place of business.

193 ~~(g) "Dealer" also means and includes every person who~~
 194 ~~solicits business either by direct representatives, indirect~~
 195 ~~representatives, or manufacturers' agents; by distribution of~~
 196 ~~catalogs or other advertising matter; or by any other means~~

197 ~~whatsoever, and by reason thereof receives orders for tangible~~
 198 ~~personal property from consumers for use, consumption,~~
 199 ~~distribution, and storage for use or consumption in the state;~~
 200 ~~such dealer shall collect the tax imposed by this chapter from~~
 201 ~~the purchaser, and no action, either in law or in equity, on a~~
 202 ~~sale or transaction as provided by the terms of this chapter may~~
 203 ~~be had in this state by any such dealer unless it is~~
 204 ~~affirmatively shown that the provisions of this chapter have~~
 205 ~~been fully complied with.~~

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

211 (h)~~(i)~~ "Dealer" also means and includes the state, county,
 212 municipality, any political subdivision, agency, bureau or
 213 department, or other state or local governmental
 214 instrumentality.

215 (i)~~(j)~~ The term "dealer" is further defined to mean any
 216 person who leases, or grants a license to use, occupy, or enter
 217 upon, living quarters, sleeping or housekeeping accommodations
 218 in hotels, apartment houses, roominghouses, tourist or trailer
 219 camps, real property, space or spaces in parking lots or garages
 220 for motor vehicles, docking or storage space or spaces for boats
 221 in boat docks or marinas, or tie-down or storage space or spaces
 222 for aircraft at airports. The term "dealer" also means any
 223 person who has leased, occupied, or used or was entitled to use
 224 any living quarters, sleeping or housekeeping accommodations in

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225 hotels, apartment houses, roominghouses, tourist or trailer
226 camps, real property, space or spaces in parking lots or garages
227 for motor vehicles or docking or storage space or spaces for
228 boats in boat docks or marinas, or who has purchased
229 communication services or electric power or energy, and who
230 cannot prove that the tax levied by this chapter has been paid
231 to the vendor or lessor on any such transactions. The term
232 "dealer" does not include any person who leases, lets, rents, or
233 grants a license to use, occupy, or enter upon any living
234 quarters, sleeping quarters, or housekeeping accommodations in
235 apartment houses, roominghouses, tourist camps, or trailer
236 camps, and who exclusively enters into a bona fide written
237 agreement for continuous residence for longer than 6 months in
238 duration with any person who leases, lets, rents, or is granted
239 a license to use such property.

240 (j)~~(k)~~ "Dealer" also means any person who sells, provides,
241 or performs a service taxable under this chapter. "Dealer" also
242 means any person who purchases, uses, or consumes a service
243 taxable under this chapter who cannot prove that the tax levied
244 by this chapter has been paid to the seller of the taxable
245 service.

246 (k)~~(l)~~ "Dealer" also means any person who solicits,
247 offers, provides, enters into, issues, or delivers any service
248 warranty taxable under this chapter, or who receives, on behalf
249 of such a person, any consideration from a service warranty
250 holder.

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

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253 | 212.0506 Taxation of service warranties.—

254 | (11) Any duties imposed by this chapter upon dealers of
255 | tangible personal property with respect to collecting and
256 | remitting taxes; making returns; keeping books, records, and
257 | accounts; and complying with the rules and regulations of the
258 | department apply to all dealers as defined in s. 212.06(2)(k)
259 | ~~212.06(2)(1)~~.

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