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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
04/11/2013	.	
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	.	

Appropriations Subcommittee on Finance and Tax (Margolis)
recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 212.0596, Florida Statutes, is amended
to read:

212.0596 Taxation of mail order sales.—

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



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

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

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

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

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



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42 exploiting the market provided by this state by any media-
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 (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 (i) The dealer's mail order sales are subject to the power
58 of this state to tax sales or to require the dealer to collect
59 use taxes pursuant to federal law ~~under a statute or statutes of~~
60 ~~the United States~~;

61 (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 that ~~which~~ becomes a part of the
67 final printed product, or property from which the printed
68 product is produced, is not deemed to own such property for
69 purposes of this paragraph;

70 (k) The dealer, while not having nexus with this state on



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71 any of the bases described in paragraphs (a)-(j) or paragraphs
72 (l)-(m) paragraph (l), is a corporation that is a member of an
73 affiliated group of corporations, as defined in s. 1504(a) of
74 the Internal Revenue Code, whose members are includable under s.
75 1504(b) of the Internal Revenue Code and whose members are
76 eligible to file a consolidated tax return for federal corporate
77 income tax purposes and any parent or subsidiary corporation in
78 the affiliated group has nexus with this state on one or more of
79 the bases described in paragraphs (a)-(j) or paragraphs (l)-(m)
80 paragraph (l); or

81 (1) A person, other than a person acting in the capacity of
82 a common carrier, has nexus with this state and:

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

85 2. Maintains an office, distribution facility, warehouse,
86 storage place, or similar place of business in this state to
87 facilitate the delivery of property or services sold by the
88 dealer to the dealer's customers;

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

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

94 5. Facilitates the dealer's delivery of property to
95 customers in this state by allowing the dealer's customers to
96 pick up property sold by the dealer at an office, distribution
97 facility, warehouse, storage place, or similar place of business
98 maintained by the person in this state; or

99 6. Conducts any other activities in this state which are



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100 significantly associated with the dealer's ability to establish
101 and maintain a market in this state for the dealer's sales; or

102 (m) ~~(l)~~ The dealer or the dealer's activities have
103 sufficient connection with or relationship to this state or its
104 residents of some type other than those described in paragraphs
105 (a) - (l) ~~(a) - (k)~~ to create a nexus empowering this state to tax
106 its mail order sales or to require the dealer to collect sales
107 tax or accrue use tax.

108
109 Notwithstanding other provisions of law, a dealer, other than a
110 dealer described in paragraphs (g) and (i), is not required to
111 collect and remit sales or use tax under this subsection unless
112 the dealer has a physical presence in this state or the
113 activities conducted in this state on the dealer's behalf are
114 significantly associated with the dealer's ability to establish
115 and maintain a market for sales in this state.

116 (3) (a) Notwithstanding other provisions of law or this
117 section, there is a rebuttable presumption that every dealer, as
118 defined in s. 212.06, who makes a mail order sale is also
119 subject to the power of this state to levy and collect the tax
120 imposed by this chapter if the dealer enters into an agreement
121 with one or more persons in this state under which the person in
122 this state, for a commission or other consideration, directly or
123 indirectly refers potential customers, whether by a link on an
124 Internet website, an in-person oral presentation, telemarketing,
125 or otherwise, to the dealer, if the cumulative gross receipts
126 from sales by the dealer to customers in this state who are
127 referred to the dealer by all persons in this state having this
128 type of an agreement with the dealer is in excess of \$10,000



129 during the 12 months immediately before the rebuttable
130 presumption arose.

131 (b) The presumption in paragraph (a) may be rebutted by the
132 submission of evidence proving that the persons in this state
133 with whom the dealer has an agreement did not engage in any
134 activity within this state which was significantly associated
135 with the dealer's ability to establish or maintain the dealer's
136 market in this state during the 12 months immediately before the
137 rebuttable presumption arose. The evidence may consist of sworn
138 affidavits, obtained and given in good faith, from each person
139 in this state with whom the dealer has an agreement attesting
140 that he or she did not engage in any solicitation in this state
141 on the dealer's behalf during the previous year.

142 (4)-(3) A ~~Every~~ dealer engaged in the business of making
143 mail order sales is subject to the requirements of this chapter
144 for cooperation of dealers in collection of taxes and in
145 administration of this chapter, except that a ~~no~~ fee may not
146 ~~shall~~ be imposed upon such dealer for carrying out any required
147 activity.

148 (5)-(4) The department shall, with the consent of another
149 jurisdiction of the United States whose cooperation is needed,
150 enforce this chapter in that jurisdiction, ~~either~~ directly or,
151 at the option of that jurisdiction, through its officers or
152 employees.

153 (6)-(5) The tax required under this section to be collected
154 and any amount unreturned to a purchaser which ~~that~~ is not tax
155 but was collected from the purchaser under the representation
156 that it was tax constitute funds of this ~~the~~ state ~~of Florida~~
157 from the moment of collection.



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158 (7)~~(6)~~ Notwithstanding other provisions of law, a dealer
159 who makes a mail order sale in this state is exempt from
160 collecting and remitting any local option surtax on the sale,
161 unless the dealer is located in a county that imposes a surtax
162 within the meaning of s. 212.054(3)(a), the order is placed
163 through the dealer's location in such county, and the property
164 purchased is delivered into such county or into another county
165 in this state which ~~that~~ levies the surtax, in which case the
166 provisions of s. 212.054(3)(a) are applicable.

167 (8)~~(7)~~ The department may establish by rule procedures for
168 collecting the use tax from unregistered persons who but for
169 their mail order purchases would not be required to remit sales
170 or use tax directly to the department. The procedures may
171 provide for waiver of registration and registration fees,
172 provisions for irregular remittance of tax, elimination of the
173 collection allowance, and nonapplication of local option
174 surtaxes.

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

177 212.06 Sales, storage, use tax; collectible from dealers;
178 "dealer" defined; dealers to collect from purchasers;
179 legislative intent as to scope of tax.-

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

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

185 ~~(b) The term "dealer" is further defined to mean every~~
186 ~~person, as used in this chapter, who~~ Imports, or causes to be



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187 imported, tangible personal property from any state or foreign
188 country for sale at retail; for use, consumption, or
189 distribution; or for storage to be used or consumed in this
190 state.

191 ~~(c) The term "dealer" is further defined to mean every~~
192 ~~person, as used in this chapter, who Sells at retail or who~~
193 ~~offers for sale at retail, or who has in his or her possession~~
194 ~~for sale at retail; or for use, consumption, or distribution; or~~
195 ~~for storage to be used or consumed in this state, tangible~~
196 ~~personal property as defined herein, including a retailer who~~
197 ~~transacts a mail order sale.~~

198 ~~(d) The term "dealer" is further defined to mean any person~~
199 ~~who Has sold at retail; or used, or consumed, or distributed; or~~
200 ~~stored for use or consumption in this state, tangible personal~~
201 ~~property and who cannot prove that the tax levied by this~~
202 ~~chapter has been paid on the sale at retail, the use, the~~
203 ~~consumption, the distribution, or the storage of such tangible~~
204 ~~personal property. However, The term "dealer" does not include~~
205 ~~mean a person who is not a "dealer" as otherwise defined in~~
206 ~~under the definition of any other paragraph of this subsection~~
207 ~~and whose only owned or leased property, (including property~~
208 ~~owned or leased by an affiliate,) in this state is located at~~
209 ~~the premises of a printer with which it has contracted for~~
210 ~~printing, if such property consists of the final printed~~
211 ~~product, property which becomes a part of the final printed~~
212 ~~product, or property from which the printed product is produced.~~

213 ~~(e) The term "dealer" is further defined to mean any~~
214 ~~person, as used in this chapter, who Leases or rents tangible~~
215 ~~personal property, as defined in this chapter, for a~~



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216 consideration, permitting the use or possession of such property
217 without transferring title thereto, except as expressly provided
218 in this chapter ~~for to the contrary herein.~~

219 ~~(f) The term "dealer" is further defined to mean any~~
220 ~~person, as used in this chapter, who~~ Maintains or has within
221 this state, directly or by a subsidiary, an office, distributing
222 house, salesroom, or house, warehouse, or other place of
223 business, or uses within this state an office, distributing
224 house, salesroom, or house, warehouse, or other place of
225 business operated by any person other than a common carrier
226 acting in the capacity of a common carrier.

227 ~~(g) "Dealer" also means and includes every person who~~
228 Solicits business ~~either~~ by direct representatives, indirect
229 representatives, or manufacturers' agents within this state; ~~by~~
230 ~~distribution of catalogs or other advertising matter; or by any~~
231 ~~other means whatsoever,~~ and by reason thereof receives orders
232 for tangible personal property from consumers for use,
233 consumption, distribution, and storage for use or consumption in
234 the state. ~~+~~ Such dealer shall collect the tax imposed by this
235 chapter from the purchaser, and no action, ~~either~~ in law or in
236 equity, on a sale or transaction as provided by ~~the terms of~~
237 this chapter may be had in this state by ~~any~~ such dealer unless
238 it is affirmatively shown that the provisions of this chapter
239 have been fully complied with.

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



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245 (i) Constitutes ~~"Dealer"~~ ~~also means and includes~~ the state
246 ~~or any~~, county, municipality, district ~~any political~~
247 ~~subdivision~~, agency, bureau, or department, or other state or
248 local governmental instrumentality.

249 (j) ~~The term "dealer" is further defined to mean any person~~
250 ~~who~~ Leases, or grants a license to use, occupy, or enter upon,
251 living quarters, sleeping or housekeeping accommodations in
252 hotels, apartment houses, roominghouses, tourist or trailer
253 camps, real property, space or spaces in parking lots or garages
254 for motor vehicles, docking or storage space or spaces for boats
255 in boat docks or marinas, or tie-down or storage space or spaces
256 for aircraft at airports. The term includes ~~"dealer" also means~~
257 any person who has leased, occupied, or used or was entitled to
258 use any living quarters, sleeping or housekeeping accommodations
259 in hotels, apartment houses, roominghouses, tourist or trailer
260 camps, real property, space or spaces in parking lots or garages
261 for motor vehicles, or docking or storage space or spaces for
262 boats in boat docks or marinas, or who has purchased
263 communication services or electric power or energy, and who
264 cannot prove that the tax levied by this chapter has been paid
265 to the vendor or lessor on ~~any~~ such transactions. The term
266 ~~"dealer"~~ does not include a ~~any~~ person who leases, lets, rents,
267 or grants a license to use, occupy, or enter upon any living
268 quarters, sleeping quarters, or housekeeping accommodations in
269 apartment houses, roominghouses, tourist camps, or trailer
270 camps, and who exclusively enters into a bona fide written
271 agreement for continuous residence for longer than 6 months ~~in~~
272 ~~duration~~ with a ~~any~~ person who leases, lets, rents, or is
273 granted a license to use such property.



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274 (k) ~~"Dealer" also means any person who~~ Sells, provides, or
275 performs a service taxable under this chapter. The term includes
276 a "Dealer" also means any person who purchases, uses, or
277 consumes a service taxable under this chapter who cannot prove
278 that the tax levied by this chapter has been paid to the seller
279 of the taxable service.

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

284 Section 3. (1) The Department of Revenue shall develop a
285 tracking system, in consultation with the Revenue Estimating
286 Conference, to determine the amount of sales taxes remitted by
287 out-of-state dealers who would otherwise not be required to
288 collect and remit sales taxes in the absence of the amendments
289 made to s. 212.0596, Florida Statutes, in section 1 of this act.
290 By February 1 of each year, the Department of Revenue shall
291 submit a report to the Governor, the President of the Senate,
292 and the Speaker of the House of Representatives which sets forth
293 the amount of sales taxes collected and remitted by such dealers
294 in the previous calendar year and the methodology used to
295 determine the amount.

296 (2) By March 1 of each year, the Revenue Estimating
297 Conference shall use the information provided by the Department
298 of Revenue pursuant to subsection (1) to determine the amount of
299 sales taxes remitted in the previous calendar year by such out-
300 of-state dealers who would otherwise not be required to collect
301 and remit sales taxes and estimate the amount that may be
302 expected in the following fiscal year.



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303 (3) The Legislature shall use the information provided by
304 the Department of Revenue and the Revenue Estimating Conference
305 to develop legislation designed to return the amount of those
306 sales taxes collected to the taxpayers of this state. If the
307 amount collected is determined to be of a recurring nature and
308 sufficient to lower tax rates, the Legislature shall reduce the
309 communication services tax rate set forth in chapter 202,
310 Florida Statutes. The legislature shall also implement a three
311 day sales tax holiday reduce taxes. Both actions shall reduce
312 tax collections in an amount not less than the amount determined
313 by the Revenue Estimating Conference.

314 Section 4. This act shall take effect February 1, 2014.

315
316 ===== T I T L E A M E N D M E N T =====

317 And the title is amended as follows:

318 Delete everything before the enacting clause
319 and insert:

320 A bill to be entitled
321 An act relating to taxes; amending s. 212.0596, F.S.;
322 revising the term "mail order sale" to specifically
323 include sales of tangible personal property ordered
324 through the Internet or from a dealer who receives the
325 order in a foreign country; providing that certain
326 persons who make mail order sales and who have a nexus
327 with this state are subject to this state's power to
328 levy and collect the sales and use tax when they
329 engage in certain enumerated activities; specifying
330 that dealers are not required to collect and remit
331 sales and use tax unless certain circumstances exist;



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332 creating a rebuttable presumption that a dealer is
333 subject to the state's power to levy and collect the
334 sales or use tax under specified circumstances;
335 specifying evidentiary proof that may be submitted to
336 rebut the presumption; amending s. 212.06, F.S.;

337 revising the definition of the term "dealer";
338 requiring that the Department of Revenue develop a
339 tracking system, in consultation with the Revenue
340 Estimating Conference, to determine the amount of
341 sales tax remitted by out-of-state dealers who would
342 otherwise not be required to collect and remit sales
343 taxes but for the amendments made by the act;

344 requiring that the department submit a report to the
345 Governor and Legislature by a specified date each
346 year; requiring that the Revenue Estimating Conference
347 use such report to determine the amount of sales taxes
348 remitted in the previous calendar year by such out-of-
349 state dealers and estimate the amount that may be
350 expected in the following fiscal year; requiring that
351 the Legislature use the information to reduce
352 communication services tax rates and provide a sales
353 tax holiday as deemed appropriate; providing an
354 effective date.

355