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Proposed Committee Substitute by the Committee on Appropriations
(Appropriations Subcommittee on Finance an Tax)

A bill to be entitled

An act relating to taxes; amending s. 212.0596, F.S.;
revising the term "mail order sale" to specifically
include sales of tangible personal property ordered
through the Internet or from a dealer who receives the
order in a foreign country; providing that certain
persons who make mail order sales and who have a nexus
with this state are subject to this state's power to
levy and collect the sales and use tax when they
engage in certain enumerated activities; specifying
that dealers are not required to collect and remit
sales and use tax unless certain circumstances exist;
creating a rebuttable presumption that a dealer is
subject to the state's power to levy and collect the
sales or use tax under specified circumstances;
specifying evidentiary proof that may be submitted to
rebut the presumption; amending s. 212.06, F.S.;
revising the definition of the term "dealer";
requiring that the Department of Revenue develop a
tracking system, in consultation with the Revenue
Estimating Conference, to determine the amount of
sales tax remitted by out-of-state dealers who would
otherwise not be required to collect and remit sales
taxes but for the amendments made by the act;
requiring that the department submit a report to the
Governor and Legislature by a specified date each
year; requiring that the Revenue Estimating Conference



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28 use such report to determine the amount of sales taxes
29 remitted in the previous calendar year by such out-of-
30 state dealers and estimate the amount that may be
31 expected in the following fiscal year; requiring that
32 the Legislature use the information to reduce
33 communication services tax rates and provide a sales
34 tax holiday as deemed appropriate; providing an
35 effective date.

36
37 Be It Enacted by the Legislature of the State of Florida:

38
39 Section 1. Section 212.0596, Florida Statutes, is amended
40 to read:

41 212.0596 Taxation of mail order sales.—

42 (1) For purposes of this chapter, a "mail order sale" is a
43 sale of tangible personal property, ordered by mail, the
44 Internet, or other means of communication, from a dealer who
45 receives the order in another state ~~of the United States~~, or in
46 a commonwealth, territory, or other area under the jurisdiction
47 of the United States, or in a foreign country, and transports
48 the property or causes the property to be transported, whether
49 or not by mail, from any jurisdiction of the United States,
50 including this state, to a person in this state, including the
51 person who ordered the property.

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

55 (a) The dealer is ~~a corporation~~ doing business under the
56 laws of this state or is a person domiciled in, a resident of,



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57 or a citizen of, this state;

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

62 (c) The dealer has agents or representatives in this state
63 who solicit business or transact business on behalf of the
64 dealer, whether the mail order sales ~~thus~~ subject to taxation by
65 this state result from or are related in any other way to such
66 solicitation or transaction of business, except that a printer
67 who mails or delivers for an out-of-state print purchaser
68 material the printer printed for it is ~~shall~~ not ~~be~~ deemed to be
69 the print purchaser's agent or representative for purposes of
70 this paragraph;

71 (d) The property was delivered in this state in fulfillment
72 of a sales contract that was entered into in this state, in
73 accordance with applicable conflict of laws rules, when a person
74 in this state accepted an offer by ordering the property;

75 (e) The dealer, by purposefully or systematically
76 exploiting the market provided by this state by any media-
77 assisted, media-facilitated, or media-solicited means,
78 including, but not limited to, direct mail advertising,
79 unsolicited distribution of catalogs, computer-assisted
80 shopping, television, radio, or other electronic media, or
81 magazine or newspaper advertisements or other media, creates
82 nexus with this state;

83 (f) Through compact or reciprocity with another
84 jurisdiction of the United States, that jurisdiction uses its
85 taxing power and its jurisdiction over the retailer in support



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86 of this state's taxing power;

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

89 (h) The dealer is subject to service of process under s.
90 48.181;

91 (i) The dealer's mail order sales are subject to the power
92 of this state to tax sales or to require the dealer to collect
93 use taxes pursuant to federal law ~~under a statute or statutes of~~
94 ~~the United States;~~

95 (j) The dealer owns real property or tangible personal
96 property that is physically in this state, except that a dealer
97 whose only property, ~~(including property owned by an affiliate,)~~
98 in this state is located at the premises of a printer with which
99 the vendor has contracted for printing, and is ~~either~~ a final
100 printed product, ~~or~~ property that ~~which~~ becomes a part of the
101 final printed product, or property from which the printed
102 product is produced, is not deemed to own such property for
103 purposes of this paragraph;

104 (k) The dealer, while not having nexus with this state on
105 any of the bases described in paragraphs (a)-(j) or paragraphs
106 (l)-(m) ~~paragraph (l)~~, is a corporation that is a member of an
107 affiliated group of corporations, as defined in s. 1504(a) of
108 the Internal Revenue Code, whose members are includable under s.
109 1504(b) of the Internal Revenue Code and whose members are
110 eligible to file a consolidated tax return for federal corporate
111 income tax purposes and any parent or subsidiary corporation in
112 the affiliated group has nexus with this state on one or more of
113 the bases described in paragraphs (a)-(j) or paragraphs (l)-(m)
114 ~~paragraph (l)~~; or



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

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

119 2. Maintains an office, distribution facility, warehouse,
120 storage place, or similar place of business in this state to
121 facilitate the delivery of property or services sold by the
122 dealer to the dealer's customers;

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

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

128 5. Facilitates the dealer's delivery of property to
129 customers in this state by allowing the dealer's customers to
130 pick up property sold by the dealer at an office, distribution
131 facility, warehouse, storage place, or similar place of business
132 maintained by the person in this state; or

133 6. Conducts any other activities in this state which are
134 significantly associated with the dealer's ability to establish
135 and maintain a market in this state for the dealer's sales; or

136 (m)-(l) The dealer or the dealer's activities have
137 sufficient connection with or relationship to this state or its
138 residents of some type other than those described in paragraphs
139 (a)-(l) (a)-(k) to create a nexus empowering this state to tax
140 its mail order sales or to require the dealer to collect sales
141 tax or accrue use tax.

142
143 Notwithstanding other provisions of law, a dealer, other than a



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144 dealer described in paragraphs (g) and (i), is not required to
145 collect and remit sales or use tax under this subsection unless
146 the dealer has a physical presence in this state or the
147 activities conducted in this state on the dealer's behalf are
148 significantly associated with the dealer's ability to establish
149 and maintain a market for sales in this state.

150 (3) (a) Notwithstanding other provisions of law or this
151 section, there is a rebuttable presumption that every dealer, as
152 defined in s. 212.06, who makes a mail order sale is also
153 subject to the power of this state to levy and collect the tax
154 imposed by this chapter if the dealer enters into an agreement
155 with one or more persons in this state under which the person in
156 this state, for a commission or other consideration, directly or
157 indirectly refers potential customers, whether by a link on an
158 Internet website, an in-person oral presentation, telemarketing,
159 or otherwise, to the dealer, if the cumulative gross receipts
160 from sales by the dealer to customers in this state who are
161 referred to the dealer by all persons in this state having this
162 type of an agreement with the dealer is in excess of \$10,000
163 during the 12 months immediately before the rebuttable
164 presumption arose. Beginning July 1, 2018, and every 5 years
165 thereafter, the department shall calculate and publish an
166 adjustment to the \$10,000 gross receipts amount based on the
167 average percentage change in the Consumer Price Index for All
168 Urban Consumers, U.S. City Average, All Items, compiled by the
169 United States Department of Labor for the immediately preceding
170 5 calendar years. The adjustment to the \$10,000 minimum shall be
171 rounded to the nearest \$50 increment and take effect on the
172 January 1 following the publication of the adjustment by the



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173 department.

174 (b) The presumption in paragraph (a) may be rebutted by the
175 submission of evidence proving that the persons in this state
176 with whom the dealer has an agreement did not engage in any
177 activity within this state which was significantly associated
178 with the dealer's ability to establish or maintain the dealer's
179 market in this state during the 12 months immediately before the
180 rebuttable presumption arose. The evidence may consist of sworn
181 affidavits, obtained and given in good faith, from each person
182 in this state with whom the dealer has an agreement attesting
183 that he or she did not engage in any solicitation in this state
184 on the dealer's behalf during the previous year.

185 (4)-(3) A Every dealer engaged in the business of making
186 mail order sales is subject to the requirements of this chapter
187 for cooperation of dealers in collection of taxes and in
188 administration of this chapter, except that a fee may not
189 ~~shall~~ be imposed upon such dealer for carrying out any required
190 activity.

191 (5)-(4) The department shall, with the consent of another
192 jurisdiction of the United States whose cooperation is needed,
193 enforce this chapter in that jurisdiction, ~~either~~ directly or,
194 at the option of that jurisdiction, through its officers or
195 employees.

196 (6)-(5) The tax required under this section to be collected
197 and any amount unreturned to a purchaser which ~~that~~ is not tax
198 but was collected from the purchaser under the representation
199 that it was tax constitute funds of this ~~the state of Florida~~
200 from the moment of collection.

201 (7)-(6) Notwithstanding other provisions of law, a dealer



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202 who makes a mail order sale in this state is exempt from
203 collecting and remitting any local option surtax on the sale,
204 unless the dealer is located in a county that imposes a surtax
205 within the meaning of s. 212.054(3)(a), the order is placed
206 through the dealer's location in such county, and the property
207 purchased is delivered into such county or into another county
208 in this state which ~~that~~ levies the surtax, in which case the
209 provisions of s. 212.054(3)(a) are applicable.

210 (8) ~~(7)~~ The department may establish by rule procedures for
211 collecting the use tax from unregistered persons who but for
212 their mail order purchases would not be required to remit sales
213 or use tax directly to the department. The procedures may
214 provide for waiver of registration and registration fees,
215 provisions for irregular remittance of tax, elimination of the
216 collection allowance, and nonapplication of local option
217 surtaxes.

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

220 212.06 Sales, storage, use tax; collectible from dealers;
221 "dealer" defined; dealers to collect from purchasers;
222 legislative intent as to scope of tax.-

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

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

228 ~~(b) The term "dealer" is further defined to mean every~~
229 ~~person, as used in this chapter, who~~ Imports, or causes to be
230 imported, tangible personal property from any state or foreign



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231 country for sale at retail; for use, consumption, or
232 distribution; or for storage to be used or consumed in this
233 state.

234 ~~(c) The term "dealer" is further defined to mean every~~
235 ~~person, as used in this chapter, who Sells at retail or who~~
236 ~~offers for sale at retail, or who has in his or her possession~~
237 ~~for sale at retail; or for use, consumption, or distribution; or~~
238 ~~for storage to be used or consumed in this state, tangible~~
239 ~~personal property as defined herein, including a retailer who~~
240 ~~transacts a mail order sale.~~

241 ~~(d) The term "dealer" is further defined to mean any person~~
242 ~~who Has sold at retail; or used, or consumed, or distributed; or~~
243 ~~stored for use or consumption in this state, tangible personal~~
244 ~~property and who cannot prove that the tax levied by this~~
245 ~~chapter has been paid on the sale at retail, the use, the~~
246 ~~consumption, the distribution, or the storage of such tangible~~
247 ~~personal property. However, The term "dealer" does not include~~
248 ~~mean a person who is not a "dealer" as otherwise defined in~~
249 ~~under the definition of any other paragraph of this subsection~~
250 ~~and whose only owned or leased property, (including property~~
251 ~~owned or leased by an affiliate,) in this state is located at~~
252 ~~the premises of a printer with which it has contracted for~~
253 ~~printing, if such property consists of the final printed~~
254 ~~product, property which becomes a part of the final printed~~
255 ~~product, or property from which the printed product is produced.~~

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



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260 without transferring title thereto, except as expressly provided
261 in this chapter ~~for to the contrary herein.~~

262 (f) ~~The term "dealer" is further defined to mean any~~
263 ~~person, as used in this chapter, who~~ Maintains or has within
264 this state, directly or by a subsidiary, an office, distributing
265 house, salesroom, or house, warehouse, or other place of
266 business, or uses within this state an office, distributing
267 house, salesroom, or house, warehouse, or other place of
268 business operated by any person other than a common carrier
269 acting in the capacity of a common carrier.

270 (g) ~~"Dealer" also means and includes every person who~~
271 Solicits business ~~either~~ by direct representatives, indirect
272 representatives, or manufacturers' agents within this state; ~~by~~
273 ~~distribution of catalogs or other advertising matter; or by any~~
274 ~~other means whatsoever,~~ and by reason thereof receives orders
275 for tangible personal property from consumers for use,
276 consumption, distribution, and storage for use or consumption in
277 the state. ~~;~~ Such dealer shall collect the tax imposed by this
278 chapter from the purchaser, and no action, ~~either~~ in law or in
279 equity, on a sale or transaction as provided by ~~the terms of~~
280 this chapter may be had in this state by ~~any~~ such dealer unless
281 it is affirmatively shown that the provisions of this chapter
282 have been fully complied with.

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

288 (i) Constitutes ~~"Dealer" also means and includes the state~~



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289 ~~or any~~ county, municipality, district ~~any political~~
290 ~~subdivision~~, agency, bureau, ~~or~~ department, or other state or
291 local governmental instrumentality.

292 (j) ~~The term "dealer" is further defined to mean any person~~
293 ~~who~~ Leases, or grants a license to use, occupy, or enter upon,
294 living quarters, sleeping or housekeeping accommodations in
295 hotels, apartment houses, roominghouses, tourist or trailer
296 camps, real property, space or spaces in parking lots or garages
297 for motor vehicles, docking or storage space or spaces for boats
298 in boat docks or marinas, or tie-down or storage space or spaces
299 for aircraft at airports. The term includes ~~"dealer" also means~~
300 any person who has leased, occupied, or used or was entitled to
301 use any living quarters, sleeping or housekeeping accommodations
302 in hotels, apartment houses, roominghouses, tourist or trailer
303 camps, real property, space or spaces in parking lots or garages
304 for motor vehicles, or docking or storage space or spaces for
305 boats in boat docks or marinas, or who has purchased
306 communication services or electric power or energy, and who
307 cannot prove that the tax levied by this chapter has been paid
308 to the vendor or lessor on ~~any~~ such transactions. The term
309 ~~"dealer"~~ does not include a ~~any~~ person who leases, lets, rents,
310 or grants a license to use, occupy, or enter upon any living
311 quarters, sleeping quarters, or housekeeping accommodations in
312 apartment houses, roominghouses, tourist camps, or trailer
313 camps, and who exclusively enters into a bona fide written
314 agreement for continuous residence for longer than 6 months ~~in~~
315 ~~duration~~ with a ~~any~~ person who leases, lets, rents, or is
316 granted a license to use such property.

317 (k) ~~"Dealer" also means any person who~~ Sells, provides, or



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318 performs a service taxable under this chapter. The term includes
319 a "Dealer" also means any person who purchases, uses, or
320 consumes a service taxable under this chapter who cannot prove
321 that the tax levied by this chapter has been paid to the seller
322 of the taxable service.

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

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

339 (2) By March 1 of each year, the Revenue Estimating
340 Conference shall use the information provided by the Department
341 of Revenue pursuant to subsection (1) to determine the amount of
342 sales taxes remitted in the previous calendar year by such out-
343 of-state dealers who would otherwise not be required to collect
344 and remit sales taxes and estimate the amount that may be
345 expected in the following fiscal year.

346 (3) The Legislature shall use the information provided by



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347 the Department of Revenue and the Revenue Estimating Conference
348 to develop legislation designed to return the amount of those
349 sales taxes collected to the taxpayers of this state. If the
350 amount collected is determined to be of a recurring nature and
351 sufficient to lower tax rates, the Legislature shall reduce the
352 communication services tax rate set forth in chapter 202,
353 Florida Statutes. The Legislature shall also implement a 3-day
354 sales tax holiday to reduce taxes. Both actions shall reduce tax
355 collections in an amount not less than the amount determined by
356 the Revenue Estimating Conference.

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