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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/05/2021	.	
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The Committee on Appropriations (Gruters) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 590 - 1024

and insert:

Section 3. Paragraph (c) of subsection (4) of section 212.054, Florida Statutes, is amended to read:

212.054 Discretionary sales surtax; limitations, administration, and collection.—

(4)

(c)1. Any dealer located in a county that does not impose a



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11 discretionary sales surtax, as well as a marketplace provider  
12 located outside of this state which makes or facilitates a  
13 substantial number of remote sales or a person located outside  
14 this state who is required to report remote sales, but who  
15 collects the surtax due to sales of tangible personal property  
16 or services delivered to a county imposing a surtax ~~outside the~~  
17 ~~county~~ shall remit monthly the proceeds of the surtax to the  
18 department to be deposited into an account in the Discretionary  
19 Sales Surtax Clearing Trust Fund which is separate from the  
20 county surtax collection accounts. The department shall  
21 distribute funds in this account using a distribution factor  
22 determined for each county that levies a surtax and multiplied  
23 by the amount of funds in the account and available for  
24 distribution. The distribution factor for each county equals the  
25 product of:

26 a. The county's latest official population determined  
27 pursuant to s. 186.901;

28 b. The county's rate of surtax; and

29 c. The number of months the county has levied a surtax  
30 during the most recent distribution period;

31  
32 divided by the sum of all such products of the counties levying  
33 the surtax during the most recent distribution period.

34 2. The department shall compute distribution factors for  
35 eligible counties once each quarter and make appropriate  
36 quarterly distributions.

37 3. A county that fails to timely provide the information  
38 required by this section to the department authorizes the  
39 department, by such action, to use the best information



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40 available to it in distributing surtax revenues to the county.  
41 If this information is unavailable to the department, the  
42 department may partially or entirely disqualify the county from  
43 receiving surtax revenues under this paragraph. A county that  
44 fails to provide timely information waives its right to  
45 challenge the department's determination of the county's share,  
46 if any, of revenues provided under this paragraph.

47 Section 4. Section 212.0596, Florida Statutes, is amended  
48 to read:

49 (Substantial rewording of section. See  
50 s. 212.0596, F.S., for present text.)

51 212.0596 Taxation of remote sales.—

52 (1) As used in this chapter, the term:

53 (a) "Remote sale" means a retail sale of tangible personal  
54 property ordered by mail, telephone, the Internet, or other  
55 means of communication from a person who receives the order  
56 outside of this state and transports the property or causes the  
57 property to be transported from any jurisdiction, including this  
58 state, to a location in this state. For purposes of this  
59 paragraph, tangible personal property delivered to a location  
60 within this state is presumed to be used, consumed, distributed,  
61 or stored to be used or consumed in this state.

62 (b) "Substantial number of remote sales" means any number  
63 of taxable remote sales in the previous calendar year in which  
64 the sum of the sales prices, as defined in s. 212.02(16),  
65 exceeded \$100,000.

66 (2) Every person making a substantial number of remote  
67 sales is a dealer for purposes of this chapter.

68 (3) The department may establish by rule procedures for



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69 collecting the use tax from unregistered persons who but for  
70 their remote purchases would not be required to remit sales or  
71 use tax directly to the department. The procedures may provide  
72 for waiver of registration, provisions for irregular remittance  
73 of tax, elimination of the collection allowance, and  
74 nonapplication of local option surtaxes.

75 (4) A marketplace provider that makes or facilitates a  
76 substantial number of remote sales or a person who is required  
77 to report remote sales is required to collect surtax when the  
78 taxable item of tangible personal property is delivered within a  
79 county imposing a surtax as provided in s. 212.054(3)(a).

80 Section 5. Section 212.05965, Florida Statutes, is created  
81 to read:

82 212.05965 Taxation of marketplace sales.-

83 (1) As used in this chapter, the term:

84 (a) "Marketplace" means any physical place or electronic  
85 medium through which tangible personal property is offered for  
86 sale.

87 (b) "Marketplace provider" means a person who facilitates a  
88 retail sale by a marketplace seller by listing or advertising  
89 for sale by the marketplace seller tangible personal property in  
90 a marketplace and who directly, or indirectly through agreements  
91 or arrangements with third parties, collects payment from the  
92 customer and transmits all or part of the payment to the  
93 marketplace seller, regardless of whether the marketplace  
94 provider receives compensation or other consideration in  
95 exchange for its services.

96 1. The term does not include a person who solely provides  
97 travel agency services. As used in this subparagraph, the term



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98 "travel agency services" means arranging, booking, or otherwise  
99 facilitating for a commission, fee, or other consideration  
100 vacation or travel packages, rental cars, or other travel  
101 reservations; tickets for domestic or foreign travel by air,  
102 rail, ship, bus, or other mode of transportation; or hotel or  
103 other lodging accommodations.

104 2. The term does not include a person who is a delivery  
105 network company unless the delivery network company is a  
106 registered dealer for purposes of this chapter and the delivery  
107 network company notifies all local merchants that sell through  
108 the delivery network company's website or mobile application  
109 that the delivery network company is subject to the requirements  
110 of a marketplace provider under this section. As used in this  
111 subparagraph, the term:

112 a. "Delivery network company" means a person who maintains  
113 a website or mobile application used to facilitate delivery  
114 services, the sale of local products, or both.

115 b. "Delivery network courier" means a person who provides  
116 delivery services through a delivery network company website or  
117 mobile application using a personal means of transportation,  
118 such as a motor vehicle as defined in s. 320.01(1), bicycle,  
119 scooter, or other similar means of transportation; using public  
120 transportation; or by walking.

121 c. "Delivery services" means the pickup and delivery by a  
122 delivery network courier of one or more local products from a  
123 local merchant to a customer, which may include the selection,  
124 collection, and purchase of the local product in connection with  
125 the delivery. The term does not include any delivery requiring  
126 more than 75 miles of travel from the local merchant to the



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127 customer.

128 d. "Local merchant" means a kitchen, a restaurant, or a  
129 third-party merchant, including a grocery store, retail store,  
130 convenience store, or business of another type, which is not  
131 under common ownership or control of the delivery network  
132 company.

133 e. "Local product" means any tangible personal property,  
134 including food, but excluding freight, mail, or a package to  
135 which postage has been affixed.

136 3. The term does not include a payment processor business  
137 that is appointed to handle payment transactions from various  
138 channels, such as charge cards, credit cards, or debit cards,  
139 and whose sole activity with respect to marketplace sales is to  
140 handle payment transactions between two parties.

141 (c) "Marketplace seller" means a person who has an  
142 agreement with a marketplace provider and who makes retail sales  
143 of tangible personal property through a marketplace owned,  
144 operated, or controlled by the marketplace provider.

145 (2) A marketplace provider who has a physical presence in  
146 this state or who is making or facilitating through a  
147 marketplace a substantial number of remote sales as defined in  
148 s. 212.0596(1) is a dealer for purposes of this chapter.

149 (3) A marketplace provider shall certify to its marketplace  
150 sellers that it will collect and remit the tax imposed under  
151 this chapter on taxable retail sales made through the  
152 marketplace. Such certification may be included in the agreement  
153 between the marketplace provider and the marketplace seller.

154 (4) (a) A marketplace seller may not collect and remit the  
155 tax under this chapter on a taxable retail sale when the sale is



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156 made through the marketplace and the marketplace provider  
157 certifies, as required under subsection (3), that it will  
158 collect and remit such tax. A marketplace seller shall exclude  
159 such sales made through the marketplace from the marketplace  
160 seller's tax return under s. 212.11.

161 (b)1. A marketplace seller who has a physical presence in  
162 this state shall register and shall collect and remit the tax  
163 imposed under this chapter on all taxable retail sales made  
164 outside of the marketplace.

165 2. A marketplace seller making a substantial number of  
166 remote sales as defined in s. 212.0596(1) shall register and  
167 shall collect and remit the tax imposed under this chapter on  
168 all taxable retail sales made outside of the marketplace. For  
169 the purposes of determining whether a marketplace seller made a  
170 substantial number of remote sales, the marketplace seller shall  
171 consider only those sales made outside of a marketplace.

172 (5) (a) A marketplace provider shall allow the department to  
173 examine and audit its books and records pursuant to s. 212.13.  
174 For retail sales facilitated through a marketplace, the  
175 department may not examine or audit the books and records of  
176 marketplace sellers, nor may the department assess marketplace  
177 sellers except to the extent that the marketplace provider seeks  
178 relief under paragraph (b). The department may examine, audit,  
179 and assess a marketplace seller for retail sales made outside of  
180 a marketplace under paragraph (4) (b). This paragraph does not  
181 provide relief to a marketplace seller who is under audit; has  
182 been issued a bill, notice, or demand for payment; or is under  
183 an administrative or judicial proceeding before July 1, 2021.

184 (b) The marketplace provider is relieved of liability for



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185 the tax on the retail sale and the marketplace seller or  
186 customer is liable for the tax imposed under this chapter if the  
187 marketplace provider demonstrates to the department's  
188 satisfaction that the marketplace provider made a reasonable  
189 effort to obtain accurate information related to the retail  
190 sales facilitated through the marketplace from the marketplace  
191 seller, but that the failure to collect and pay the correct  
192 amount of tax imposed under this chapter was due to the  
193 provision of incorrect or incomplete information to the  
194 marketplace provider by the marketplace seller. This paragraph  
195 does not apply to a retail sale for which the marketplace  
196 provider is the seller if the marketplace provider and the  
197 marketplace seller are related parties or if transactions  
198 between a marketplace seller and marketplace buyer are not  
199 conducted at arm's length.

200 (6) For purposes of registration pursuant to s. 212.18, a  
201 marketplace is deemed a separate place of business.

202 (7) A marketplace provider and a marketplace seller may  
203 agree by contract or otherwise that if a marketplace provider  
204 pays the tax imposed under this chapter on a retail sale  
205 facilitated through a marketplace for a marketplace seller as a  
206 result of an audit or otherwise, the marketplace provider has  
207 the right to recover such tax and any associated interest and  
208 penalties from the marketplace seller.

209 (8) This section may not be construed to authorize the  
210 state to collect sales tax from both the marketplace provider  
211 and the marketplace seller on the same retail sale.

212 (9) Chapter 213 applies to the administration of this  
213 section to the extent that chapter does not conflict with this





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214 section.

215 Section 6. Effective April 1, 2022, subsections (10) and  
216 (11) are added to section 212.05965, Florida Statutes, as  
217 created by this act, to read:

218 212.05965 Taxation of marketplace sales.—

219 (10) Notwithstanding any other law, the marketplace  
220 provider is also responsible for collecting and remitting any  
221 prepaid wireless E911 fee under s. 365.172, waste tire fee under  
222 s. 403.718, and lead-acid battery fee under s. 403.7185 at the  
223 time of sale for taxable retail sales made through its  
224 marketplace.

225 (11) The marketplace provider and the marketplace seller  
226 may contractually agree to have the marketplace seller collect  
227 and remit all applicable taxes and fees if the marketplace  
228 seller:

229 (a) Has annual U.S. gross sales of more than \$1 billion,  
230 including the gross sales of any related entities, and in the  
231 case of franchised entities, including the combined sales of all  
232 franchisees of a single franchisor;

233 (b) Provides evidence to the marketplace provider that it  
234 is registered under s. 212.18; and

235 (c) Notifies the department in a manner prescribed by the  
236 department that the marketplace seller will collect and remit  
237 all applicable taxes and fees on its sales through the  
238 marketplace and is liable for failure to collect or remit  
239 applicable taxes and fees on its sales.

240 Section 7. Paragraph (c) of subsection (2) and paragraph  
241 (a) of subsection (5) of section 212.06, Florida Statutes, are  
242 amended to read:



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243           212.06 Sales, storage, use tax; collectible from dealers;  
244 "dealer" defined; dealers to collect from purchasers;  
245 legislative intent as to scope of tax.—

246           (2)

247           (c) The term "dealer" is further defined to mean every  
248 person, as used in this chapter, who sells at retail or who  
249 offers for sale at retail, or who has in his or her possession  
250 for sale at retail; or for use, consumption, or distribution; or  
251 for storage to be used or consumed in this state, tangible  
252 personal property as defined herein, including a retailer who  
253 transacts a substantial number of remote sales or a person who  
254 is a marketplace provider making or facilitating a substantial  
255 number of remote sales ~~mail order sale.~~

256           (5) (a) 1. Except as provided in subparagraph 2., it is not  
257 the intention of this chapter to levy a tax upon tangible  
258 personal property imported, produced, or manufactured in this  
259 state for export, provided that tangible personal property may  
260 not be considered as being imported, produced, or manufactured  
261 for export unless the importer, producer, or manufacturer  
262 delivers the same to a licensed exporter for exporting or to a  
263 common carrier for shipment outside the state or mails the same  
264 by United States mail to a destination outside the state; or, in  
265 the case of aircraft being exported under their own power to a  
266 destination outside the continental limits of the United States,  
267 by submission to the department of a duly signed and validated  
268 United States customs declaration, showing the departure of the  
269 aircraft from the continental United States; and further with  
270 respect to aircraft, the canceled United States registry of said  
271 aircraft; or in the case of parts and equipment installed on



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272 aircraft of foreign registry, by submission to the department of  
273 documentation, the extent of which shall be provided by rule,  
274 showing the departure of the aircraft from the continental  
275 United States; nor is it the intention of this chapter to levy a  
276 tax on any sale which the state is prohibited from taxing under  
277 the Constitution or laws of the United States. Every retail sale  
278 made to a person physically present at the time of sale shall be  
279 presumed to have been delivered in this state.

280       2.a. Notwithstanding subparagraph 1., a tax is levied on  
281 each sale of tangible personal property to be transported to a  
282 cooperating state as defined in sub-subparagraph c., at the rate  
283 specified in sub-subparagraph d. However, a Florida dealer will  
284 be relieved from the requirements of collecting taxes pursuant  
285 to this subparagraph if the Florida dealer obtains from the  
286 purchaser an affidavit setting forth the purchaser's name,  
287 address, state taxpayer identification number, and a statement  
288 that the purchaser is aware of his or her state's use tax laws,  
289 is a registered dealer in Florida or another state, or is  
290 purchasing the tangible personal property for resale or is  
291 otherwise not required to pay the tax on the transaction. The  
292 department may, by rule, provide a form to be used for the  
293 purposes set forth herein.

294       b. For purposes of this subparagraph, "a cooperating state"  
295 is one determined by the executive director of the department to  
296 cooperate satisfactorily with this state in collecting taxes on  
297 remote ~~mail-order~~ sales. No state shall be so determined unless  
298 it meets all the following minimum requirements:

299       (I) It levies and collects taxes on remote ~~mail-order~~ sales  
300 of property transported from that state to persons in this



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301 state, as described in s. 212.0596, upon request of the  
302 department.

303 (II) The tax so collected shall be at the rate specified in  
304 s. 212.05, not including any local option or tourist or  
305 convention development taxes collected pursuant to s. 125.0104  
306 or this chapter.

307 (III) Such state agrees to remit to the department all  
308 taxes so collected no later than 30 days from the last day of  
309 the calendar quarter following their collection.

310 (IV) Such state authorizes the department to audit dealers  
311 within its jurisdiction who make remote ~~mail-order~~ sales that  
312 are the subject of s. 212.0596, or makes arrangements deemed  
313 adequate by the department for auditing them with its own  
314 personnel.

315 (V) Such state agrees to provide to the department records  
316 obtained by it from retailers or dealers in such state showing  
317 delivery of tangible personal property into this state upon  
318 which no sales or use tax has been paid in a manner similar to  
319 that provided in sub-subparagraph g.

320 c. For purposes of this subparagraph, "sales of tangible  
321 personal property to be transported to a cooperating state"  
322 means remote ~~mail-order~~ sales to a person who is in the  
323 cooperating state at the time the order is executed, from a  
324 dealer who receives that order in this state.

325 d. The tax levied by sub-subparagraph a. shall be at the  
326 rate at which such a sale would have been taxed pursuant to the  
327 cooperating state's tax laws if consummated in the cooperating  
328 state by a dealer and a purchaser, both of whom were physically  
329 present in that state at the time of the sale.



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330 e. The tax levied by sub-subparagraph a., when collected,  
331 shall be held in the State Treasury in trust for the benefit of  
332 the cooperating state and shall be paid to it at a time agreed  
333 upon between the department, acting for this state, and the  
334 cooperating state or the department or agency designated by it  
335 to act for it; however, such payment shall in no event be made  
336 later than 30 days from the last day of the calendar quarter  
337 after the tax was collected. Funds held in trust for the benefit  
338 of a cooperating state shall not be subject to the service  
339 charges imposed by s. 215.20.

340 f. The department is authorized to perform such acts and to  
341 provide such cooperation to a cooperating state with reference  
342 to the tax levied by sub-subparagraph a. as is required of the  
343 cooperating state by sub-subparagraph b.

344 g. In furtherance of this act, dealers selling tangible  
345 personal property for delivery in another state shall make  
346 available to the department, upon request of the department,  
347 records of all tangible personal property so sold. Such records  
348 shall include a description of the property, the name and  
349 address of the purchaser, the name and address of the person to  
350 whom the property was sent, the purchase price of the property,  
351 information regarding whether sales tax was paid in this state  
352 on the purchase price, and such other information as the  
353 department may by rule prescribe.

354 Section 8. Paragraph (b) of subsection (1) of section  
355 212.07, Florida Statutes, is amended to read:

356 212.07 Sales, storage, use tax; tax added to purchase  
357 price; dealer not to absorb; liability of purchasers who cannot  
358 prove payment of the tax; penalties; general exemptions.-



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359 (1)  
360 (b) A resale must be in strict compliance with s. 212.18  
361 and the rules and regulations adopted thereunder. A dealer who  
362 makes a sale for resale that is not in strict compliance with s.  
363 212.18 and the rules and regulations adopted thereunder is  
364 liable for and must pay the tax. A dealer who makes a sale for  
365 resale shall document the exempt nature of the transaction, as  
366 established by rules adopted by the department, by retaining a  
367 copy of the purchaser's resale certificate. In lieu of  
368 maintaining a copy of the certificate, a dealer may document,  
369 before the time of sale, an authorization number provided  
370 telephonically or electronically by the department, or by such  
371 other means established by rule of the department. The dealer  
372 may rely on a resale certificate issued pursuant to s.  
373 212.18(3)(e) ~~s. 212.18(3)(d)~~, valid at the time of receipt from  
374 the purchaser, without seeking annual verification of the resale  
375 certificate if the dealer makes recurring sales to a purchaser  
376 in the normal course of business on a continual basis. For  
377 purposes of this paragraph, "recurring sales to a purchaser in  
378 the normal course of business" refers to a sale in which the  
379 dealer extends credit to the purchaser and records the debt as  
380 an account receivable, or in which the dealer sells to a  
381 purchaser who has an established cash or C.O.D. account, similar  
382 to an open credit account. For purposes of this paragraph,  
383 purchases are made from a selling dealer on a continual basis if  
384 the selling dealer makes, in the normal course of business,  
385 sales to the purchaser at least once in every 12-month period. A  
386 dealer may, through the informal protest provided for in s.  
387 213.21 and the rules of the department, provide the department



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388 with evidence of the exempt status of a sale. Consumer  
389 certificates of exemption executed by those exempt entities that  
390 were registered with the department at the time of sale, resale  
391 certificates provided by purchasers who were active dealers at  
392 the time of sale, and verification by the department of a  
393 purchaser's active dealer status at the time of sale in lieu of  
394 a resale certificate shall be accepted by the department when  
395 submitted during the protest period, but may not be accepted in  
396 any proceeding under chapter 120 or any circuit court action  
397 instituted under chapter 72.

398 Section 9. Paragraphs (f) is added to subsection (4) of  
399 section 212.11, Florida Statutes, to read:

400 212.11 Tax returns and regulations.—

401 (4)

402 (f) A marketplace provider that makes or facilitates a  
403 substantial number of remote sales or a person who is required  
404 to report remote sales shall file returns and pay taxes by  
405 electronic means under s. 213.755.

406 Section 10. Paragraph (a) of subsection (1) and paragraph  
407 (a) of subsection (5) of section 212.12, Florida Statutes, are  
408 amended to read:

409 212.12 Dealer's credit for collecting tax; penalties for  
410 noncompliance; powers of Department of Revenue in dealing with  
411 delinquents; brackets applicable to taxable transactions;  
412 records required.—

413 (1) (a) ~~1-~~ Notwithstanding any other law and for the purpose  
414 of compensating persons granting licenses for and the lessors of  
415 real and personal property taxed hereunder, for the purpose of  
416 compensating dealers in tangible personal property, for the



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417 purpose of compensating dealers providing communication services  
418 and taxable services, for the purpose of compensating owners of  
419 places where admissions are collected, and for the purpose of  
420 compensating remitters of any taxes or fees reported on the same  
421 documents utilized for the sales and use tax, as compensation  
422 for the keeping of prescribed records, filing timely tax  
423 returns, and the proper accounting and remitting of taxes by  
424 them, such seller, person, lessor, dealer, owner, and remitter  
425 ~~(except dealers who make mail order sales)~~ who files the return  
426 required pursuant to s. 212.11 only by electronic means and who  
427 pays the amount due on such return only by electronic means  
428 shall be allowed 2.5 percent of the amount of the tax due,  
429 accounted for, and remitted to the department in the form of a  
430 deduction. However, if the amount of the tax due and remitted to  
431 the department by electronic means for the reporting period  
432 exceeds \$1,200, an allowance is not allowed for all amounts in  
433 excess of \$1,200. For purposes of this paragraph ~~subparagraph~~,  
434 the term "electronic means" has the same meaning as provided in  
435 s. 213.755(2)(c).

436 ~~2. The executive director of the department is authorized~~  
437 ~~to negotiate a collection allowance, pursuant to rules~~  
438 ~~promulgated by the department, with a dealer who makes mail~~  
439 ~~order sales. The rules of the department shall provide~~  
440 ~~guidelines for establishing the collection allowance based upon~~  
441 ~~the dealer's estimated costs of collecting the tax, the volume~~  
442 ~~and value of the dealer's mail order sales to purchasers in this~~  
443 ~~state, and the administrative and legal costs and likelihood of~~  
444 ~~achieving collection of the tax absent the cooperation of the~~  
445 ~~dealer. However, in no event shall the collection allowance~~





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446 ~~negotiated by the executive director exceed 10 percent of the~~  
447 ~~tax remitted for a reporting period.~~

448 (5) (a) The department is authorized to audit or inspect the  
449 records and accounts of dealers defined herein, including audits  
450 or inspections of dealers who make remote ~~mail order~~ sales ~~to~~  
451 ~~the extent permitted by another state~~, and to correct by credit  
452 any overpayment of tax, and, in the event of a deficiency, an  
453 assessment shall be made and collected. No administrative  
454 finding of fact is necessary prior to the assessment of any tax  
455 deficiency.

456 Section 11. Present paragraphs (c) through (f) of  
457 subsection (3) of section 212.18, Florida Statutes, are  
458 redesignated as paragraphs (d) through (g), respectively, a new  
459 paragraph (c) is added to that subsection, and present paragraph  
460 (f) of that subsection is amended, to read:

461 212.18 Administration of law; registration of dealers;  
462 rules.-

463 (3)

464 (c) A marketplace provider that makes or facilitates a  
465 substantial number of remote sales or a person who is required  
466 to report remote sales must file with the department an  
467 application for a certificate of registration electronically.

468 (g) ~~(f)~~ As used in this paragraph, the term "exhibitor"  
469 means a person who enters into an agreement authorizing the  
470 display of tangible personal property or services at a  
471 convention or a trade show. The following provisions apply to  
472 the registration of exhibitors as dealers under this chapter:

473 1. An exhibitor whose agreement prohibits the sale of  
474 tangible personal property or services subject to the tax



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475 imposed in this chapter is not required to register as a dealer.

476         2. An exhibitor whose agreement provides for the sale at  
477 wholesale only of tangible personal property or services subject  
478 to the tax imposed by this chapter must obtain a resale  
479 certificate from the purchasing dealer but is not required to  
480 register as a dealer.

481         3. An exhibitor whose agreement authorizes the retail sale  
482 of tangible personal property or services subject to the tax  
483 imposed by this chapter must register as a dealer and collect  
484 the tax on such sales.

485         4. An exhibitor who makes a remote ~~mail-order~~ sale pursuant  
486 to s. 212.0596 must register as a dealer.

487  
488 A person who conducts a convention or a trade show must make his  
489 or her exhibitor's agreements available to the department for  
490 inspection and copying.

491         Section 12. Subsection (4) of section 212.20, Florida  
492 Statutes, is amended to read:

493         212.20 Funds collected, disposition; additional powers of  
494 department; operational expense; refund of taxes adjudicated  
495 unconstitutionally collected.—

496         (4) When there has been a final adjudication that any tax  
497 pursuant to s. 212.0596 or s. 212.05965 was levied, collected,  
498 or both, contrary to the Constitution of the United States or  
499 the State Constitution, the department shall, in accordance with  
500 rules, determine, based upon claims for refund and other  
501 evidence and information, who paid such tax or taxes, and refund  
502 to each such person the amount of tax paid. For purposes of this  
503 subsection, a "final adjudication" is a decision of a court of



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504 competent jurisdiction from which no appeal can be taken or from  
505 which the official or officials of this state with authority to  
506 make such decisions has or have decided not to appeal.

507 Section 13. Subsection (5) of section 213.27, Florida  
508 Statutes, is amended to read:

509 213.27 Contracts with debt collection agencies and certain  
510 vendors.—

511 (5) The department may, for the purpose of ascertaining the  
512 amount of or collecting any taxes due from a person making or  
513 facilitating remote sales under s. 212.0596 or s. 212.05965  
514 ~~doing mail order business~~ in this state, contract with any  
515 auditing agency doing business within or without this state for  
516 the purpose of conducting an audit of such person ~~mail order~~  
517 ~~business~~; however, such audit agency may not conduct an audit on  
518 behalf of the department of any person domiciled in this state,  
519 person registered for sales and use tax purposes in this state,  
520 or corporation filing a Florida corporate tax return, if any  
521 such person or corporation objects to such audit in writing to  
522 the department and the auditing agency. The department shall  
523 notify the taxpayer by mail at least 30 days before the  
524 department assigns the collection of such taxes.

525 Section 14. For the purpose of incorporating the amendment  
526 made by this act to section 212.054, Florida Statutes, in  
527 references thereto, paragraph (c) of subsection (2), paragraph  
528 (c) of subsection (3), paragraph (c) of subsection (8), and  
529 paragraph (c) of subsection (9) of section 212.055, Florida  
530 Statutes, are reenacted to read:

531 212.055 Discretionary sales surtaxes; legislative intent;  
532 authorization and use of proceeds.—It is the legislative intent



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533 that any authorization for imposition of a discretionary sales  
534 surtax shall be published in the Florida Statutes as a  
535 subsection of this section, irrespective of the duration of the  
536 levy. Each enactment shall specify the types of counties  
537 authorized to levy; the rate or rates which may be imposed; the  
538 maximum length of time the surtax may be imposed, if any; the  
539 procedure which must be followed to secure voter approval, if  
540 required; the purpose for which the proceeds may be expended;  
541 and such other requirements as the Legislature may provide.  
542 Taxable transactions and administrative procedures shall be as  
543 provided in s. 212.054.

544 (2) LOCAL GOVERNMENT INFRASTRUCTURE SURTAX.—

545 (c) Pursuant to s. 212.054(4), the proceeds of the surtax  
546 levied under this subsection shall be distributed to the county  
547 and the municipalities within such county in which the surtax  
548 was collected, according to:

549 1. An interlocal agreement between the county governing  
550 authority and the governing bodies of the municipalities  
551 representing a majority of the county's municipal population,  
552 which agreement may include a school district with the consent  
553 of the county governing authority and the governing bodies of  
554 the municipalities representing a majority of the county's  
555 municipal population; or

556 2. If there is no interlocal agreement, according to the  
557 formula provided in s. 218.62.

558  
559 Any change in the distribution formula must take effect on the  
560 first day of any month that begins at least 60 days after  
561 written notification of that change has been made to the



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562 department.

563 (3) SMALL COUNTY SURTAX.—

564 (c) Pursuant to s. 212.054(4), the proceeds of the surtax  
565 levied under this subsection shall be distributed to the county  
566 and the municipalities within the county in which the surtax was  
567 collected, according to:

568 1. An interlocal agreement between the county governing  
569 authority and the governing bodies of the municipalities  
570 representing a majority of the county's municipal population,  
571 which agreement may include a school district with the consent  
572 of the county governing authority and the governing bodies of  
573 the municipalities representing a majority of the county's  
574 municipal population; or

575 2. If there is no interlocal agreement, according to the  
576 formula provided in s. 218.62.

577

578 Any change in the distribution formula shall take effect on the  
579 first day of any month that begins at least 60 days after  
580 written notification of that change has been made to the  
581 department.

582 (8) EMERGENCY FIRE RESCUE SERVICES AND FACILITIES SURTAX.—

583 (c) Pursuant to s. 212.054(4), the proceeds of the  
584 discretionary sales surtax collected under this subsection, less  
585 an administrative fee that may be retained by the Department of  
586 Revenue, shall be distributed by the department to the county.  
587 The county shall distribute the proceeds it receives from the  
588 department to each local government entity providing emergency  
589 fire rescue services in the county. The surtax proceeds, less an  
590 administrative fee not to exceed 2 percent of the surtax



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591 collected, shall be distributed by the county based on each  
592 entity's average annual expenditures for fire control and  
593 emergency fire rescue services in the 5 fiscal years preceding  
594 the fiscal year in which the surtax takes effect in proportion  
595 to the average annual total of the expenditures for such  
596 entities in the 5 fiscal years preceding the fiscal year in  
597 which the surtax takes effect. The county shall revise the  
598 distribution proportions to reflect a change in the service area  
599 of an entity receiving a distribution of the surtax proceeds. If  
600 an entity declines its share of surtax revenue, such revenue  
601 shall be redistributed proportionally to the entities that are  
602 participating in the sharing of such revenue based on each  
603 participating entity's average annual expenditures for fire  
604 control and emergency fire rescue services in the preceding 5  
605 fiscal years in proportion to the average annual total of the  
606 expenditures for the participating entities in the preceding 5  
607 fiscal years.

608 (9) PENSION LIABILITY SURTAX.—

609 (c) Pursuant to s. 212.054(4), the proceeds of the surtax  
610 collected under this subsection, less an administrative fee that  
611 may be retained by the department, shall be distributed by the  
612 department to the local government.

613 Section 15. This act first applies to remote sales made or  
614 facilitated on or after July 1, 2021, by a person who made or  
615 facilitated a substantial number of remote sales in calendar  
616 year 2020. A marketplace seller shall consider only those sales  
617 made outside of a marketplace to determine whether it made a  
618 substantial number of remote sales in calendar year 2020.

619 Section 16. (1) A person subject to the requirements of



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620 this act to collect and remit the tax under chapter 212, Florida  
621 Statutes, on remote sales is relieved of liability for tax,  
622 penalty, and interest due on remote sales that occurred before  
623 the effective date of this act, provided that the person  
624 registers with the department before October 1, 2021. This  
625 subsection is also intended to provide relief to a marketplace  
626 seller for remote sales made before the effective date of this  
627 act which were facilitated by a marketplace provider. For a  
628 marketplace provider with a physical presence in this state,  
629 this subsection is intended to provide relief only for sales  
630 facilitated by the marketplace provider on behalf of a  
631 marketplace seller. This subsection does not apply to a person  
632 who is under audit; has been issued a bill, notice, or demand  
633 for payment; or is under an administrative or judicial  
634 proceeding before July 1, 2021.

635 (2) The department may not use data received from  
636 registered marketplace providers or persons making remote sales  
637 for the purposes of identifying use tax liabilities occurring  
638 before July 1, 2021, from unregistered persons who, but for  
639 their purchases from the registered taxpayer, would not be  
640 required to remit sales or use tax directly to the department.  
641 This subsection does not apply to a person who is under audit;  
642 has been issued a bill, notice, or demand for payment; or is  
643 under an administrative or judicial proceeding before July 1,  
644 2021.

646 ===== T I T L E A M E N D M E N T =====

647 And the title is amended as follows:

648 Delete lines 2 - 57



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649 and insert:

650 An act relating to taxes and fees on remote sales;  
651 amending s. 212.02, F.S.; expanding the definition of  
652 the term "retail sale" to include sales facilitated  
653 through a marketplace; conforming a provision to  
654 changes made by the act; amending s. 212.05, F.S.;  
655 conforming a provision to changes made by the act;  
656 amending s. 212.054, F.S.; requiring marketplace  
657 providers and persons located outside of this state to  
658 remit discretionary sales surtax when delivering  
659 tangible personal property to a county imposing a  
660 surtax; amending s. 212.0596, F.S.; replacing  
661 provisions relating to the taxation of mail order  
662 sales with provisions relating to the taxation of  
663 remote sales; defining the terms "remote sale" and  
664 "substantial number of remote sales"; providing that  
665 every person making a substantial number of remote  
666 sales is a dealer for purposes of the sales and use  
667 tax; authorizing the Department of Revenue to adopt  
668 rules for collecting use taxes from unregistered  
669 persons; requiring marketplace providers and persons  
670 located outside of this state to remit discretionary  
671 sales surtax when delivering tangible personal  
672 property to a county imposing a surtax; creating s.  
673 212.05965, F.S.; defining terms; providing that  
674 certain marketplace providers are dealers for purposes  
675 of the sales and use tax; requiring marketplace  
676 providers to provide a certain certification to their  
677 marketplace sellers; specifying requirements for





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678 marketplace sellers; requiring marketplace providers  
679 to allow the Department of Revenue to examine and  
680 audit their books and records; specifying the  
681 examination and audit authority of the department;  
682 providing that a marketplace seller, rather than the  
683 marketplace provider, is liable for sales tax  
684 collection and remittance under certain circumstances;  
685 authorizing marketplace providers and marketplace  
686 sellers to enter into agreements for the recovery of  
687 certain taxes, interest, and penalties; providing  
688 construction and applicability; amending s. 212.05965,  
689 F.S.; requiring marketplace providers to collect and  
690 remit certain additional fees at the time of sale;  
691 authorizing marketplace providers and marketplace  
692 sellers to contractually agree for marketplace sellers  
693 to collect applicable taxes and fees; specifying  
694 requirements for marketplace sellers who collect such  
695 taxes and fees; providing applicability; providing for  
696 liability of sellers who fail to collect or remit such  
697 taxes and fees; amending s. 212.06, F.S.; revising the  
698 definition of the term "dealer"; conforming provisions  
699 to changes made by the act; amending 212.07, F.S.;  
700 conforming a cross-reference; amending 212.11, F.S.;  
701 requiring a marketplace provider or a person required  
702 to report remote sales to file returns and pay taxes  
703 electronically; amending s. 212.12, F.S.; deleting the  
704 authority of the department's executive director to  
705 negotiate a collection allowance with certain dealers;  
706 conforming provisions to changes made by the act;



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707 amending s. 212.18, F.S.; requiring a marketplace  
708 provider or a person required to report remote sales  
709 to file a registration application electronically;  
710 conforming a provision to changes made by the act;  
711 amending s. 212.20, F.S.; providing applicability of  
712 requirements for refund of taxes adjudicated  
713 unconstitutionally collected to taxes levied or  
714 collected pursuant to marketplace provisions; amending  
715 s. 213.27, F.S.; conforming provisions to changes made  
716 by the act; reenacting s. 212.055, F.S., relating to  
717 discretionary sales surtaxes, to incorporate the  
718 amendment made to s. 212.054, F.S., in references  
719 thereto; providing applicability; providing relief to  
720 certain persons for liability for tax, penalty, and  
721 interest due on certain remote sales and owed on  
722 certain purchases that occurred before the effective  
723 date of the act; providing applicability; prohibiting  
724 the department from using data received from  
725 marketplace providers or persons making remote sales  
726 for certain purposes; providing applicability;