

By Senator Rodriguez

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1 A bill to be entitled
2 An act relating to forwarding agents; amending s.
3 212.06, F.S.; defining the term "electronic database";
4 providing that an applicant may not be required to
5 submit an application to register as a dealer under
6 certain circumstances; requiring the forwarding agent
7 to surrender its certificate to the Department of
8 Revenue under certain circumstances; requiring the
9 department to report the state sales tax rate and
10 discretionary sales surtax rate in a specified system
11 as zero under certain circumstances; providing
12 applicability; prohibiting certain dealers from
13 collecting certain taxes under certain circumstances;
14 revising the liability of a dealer under certain
15 circumstances; providing an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19 Section 1. Paragraph (b) of subsection (5) of section
20 212.06, Florida Statutes, is amended to read:

21 212.06 Sales, storage, use tax; collectible from dealers;
22 "dealer" defined; dealers to collect from purchasers;
23 legislative intent as to scope of tax.—

24 (5)

25 (b)1. As used in this subsection, the term:

26 a. "Certificate" means a Florida Certificate of Forwarding
27 Agent Address.

28 b. "Electronic database" means the database created and
29 maintained by the department pursuant to s. 202.22(2).

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30 ~~c.b.~~ "Facilitating" means preparation for or arranging for
31 export.

32 ~~d.e.~~ "Forwarding agent" means a person or business whose
33 principal business activity is facilitating for compensation the
34 export of property owned by other persons.

35 ~~e.d.~~ "NAICS" means those classifications contained in the
36 North American Industry Classification System as published in
37 2007 by the Office of Management and Budget, Executive Office of
38 the President.

39 ~~f.e.~~ "Principal business activity" means the activity from
40 which the person or business derives the highest percentage of
41 its total receipts.

42 2. A forwarding agent engaged in international export may
43 apply to the department for a certificate.

44 3. Each application must include all of the following:

45 a. The designation of an address for the forwarding agent.
46 b. A certification that:

47 (I) The tangible personal property delivered to the
48 designated address ~~for export~~ originates with a United States
49 vendor;

50 (II) The tangible personal property delivered to the
51 designated address for export is irrevocably committed to export
52 out of the United States through a continuous and unbroken
53 exportation process; and

54 (III) The designated address is used exclusively by the
55 forwarding agent for such export.

56 c. A copy of the forwarding agent's last filed federal
57 income tax return showing the entity's principal business
58 activity classified under NAICS code 488510, except as provided

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59 under subparagraph 4. or subparagraph 5.

60 d. A statement of the total revenues of the forwarding
61 agent.

62 e. A statement of the amount of revenues associated with
63 international export of the forwarding agent.

64 f. A description of all business activity that occurs at
65 the designated address.

66 g. The name and contact information of a designated contact
67 person of the forwarding agent.

68 h. The forwarding agent's website address.

69 i. Any additional information the department requires by
70 rule to demonstrate eligibility for the certificate.

71 j. ~~and~~ A signature attesting to the validity of the
72 information provided.

73 4. An applicant that has not filed a federal return for the
74 preceding tax year under NAICS code 488510 shall provide all of
75 the following:

76 a. A statement of estimated total revenues.

77 b. A statement of estimated revenues associated with
78 international export.

79 c. The NAICS code under which the forwarding agent intends
80 to file a federal return.

81 5. If an applicant does not file a federal return
82 identifying a NAICS code, the applicant must ~~shall~~ provide
83 documentation to support that its principal business activity is
84 that of a forwarding agent and that the applicant is otherwise
85 eligible for the certificate.

86 6. A forwarding agent that applies for and receives a
87 certificate shall register as a dealer with the department. An

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88 applicant is not required to submit an application to register
89 as a dealer when application is made for a certificate, or
90 renewal of a certificate, if the applicant is already registered
91 as a dealer with the department.

92 7. A forwarding agent must ~~shall~~ remit the tax imposed
93 under this chapter on any tangible personal property shipped to
94 the certified ~~designated forwarding agent~~ address if no tax was
95 collected and the tangible personal property remained in this
96 state or if delivery to the purchaser or purchaser's
97 representative occurs in this state. This subparagraph does not
98 prohibit the forwarding agent from collecting such tax from the
99 consumer of the tangible personal property.

100 8. A forwarding agent shall maintain the following records:

101 a. Copies of sales invoices or receipts between the vendor
102 and the consumer when provided by the vendor to the forwarding
103 agent. If sales invoices or receipts are not provided to the
104 forwarding agent, the forwarding agent must maintain export
105 documentation evidencing the value of the purchase consistent
106 with the federal Export Administration Regulations, 15 C.F.R.
107 parts 730-774.

108 b. Copies of federal returns evidencing the forwarding
109 agent's NAICS principal business activity code.

110 c. Copies of invoices or other documentation evidencing
111 shipment to the forwarding agent.

112 d. Invoices between the forwarding agent and the consumer
113 or other documentation evidencing the ship-to destination
114 outside the United States.

115 e. Invoices for foreign postal or transportation services.

116 f. Bills of lading.

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117 g. Any other export documentation.

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119 Such records must be kept in an electronic format and made
120 available for the department's review pursuant to subparagraph
121 9. and ss. 212.13 and 213.35.

122 9. Each certificate expires 5 years after the date of
123 issuance, except as specified in this subparagraph.

124 a. At least 30 days before expiration, a new application
125 must be submitted to renew the certificate, and the application
126 must contain the information required in subparagraph 3. Upon
127 application for renewal, the certificate is subject to the
128 review and reissuance procedures prescribed by this chapter and
129 department rule.

130 b. Each forwarding agent shall update its application
131 information annually or within 30 days after any material
132 change.

133 c. The department shall verify that the forwarding agent is
134 actively engaged in facilitating the international export of
135 tangible personal property.

136 d. The department may suspend or revoke the certificate of
137 any forwarding agent that fails to respond within 30 days to a
138 written request for information regarding its business
139 transactions.

140 e. Each forwarding agent shall surrender its certificate to
141 the department if:

142 (I) The forwarding agent has ceased to do business;

143 (II) The forwarding agent has changed addresses;

144 (III) The forwarding agent's principal business activity
145 has changed to something other than facilitating the

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146 international export of property owned by other persons; or

147 (IV) The certified address is not used for export under
148 this paragraph.

149 10.a. The department shall provide a list on the
150 department's website of forwarding agents that have applied for
151 and received a Florida Certificate of Forwarding Agent Address
152 from the department. The list must include a forwarding agent's
153 entity name, address, and expiration date as provided on the
154 Florida Certificate of Forwarding Agent Address.

155 b. For any certified address with a special five-digit zip
156 code provided by the United States Postal Service, the
157 department shall report the state sales tax rate and
158 discretionary sales surtax rate in the department's Tax and
159 Address Lookup System as zero. This sub-subparagraph does not
160 apply to a certified address with a special five-digit zip code
161 provided by the United States Postal Service if that address
162 includes a suite address or secondary address.

163 11. A dealer, other than a forwarding agent that is
164 required to remit tax pursuant to subparagraph 7., may not
165 collect the tax imposed under this chapter on tangible personal
166 property shipped to a certified address listed ~~may accept a copy~~
167 ~~of the forwarding agent's certificate or rely on the list of~~
168 ~~forwarding agents' names and addresses on the department's~~
169 ~~website in lieu of collecting the tax imposed under this chapter~~
170 ~~when the property is required by terms of the sale to be shipped~~
171 ~~to the designated address on the certificate. A dealer who~~
172 ~~accepts a valid copy of a certificate or~~ who ~~relies on the list~~
173 ~~of forwarding agents' names and addresses on the department's~~
174 ~~website~~ or the electronic database and who in good faith ~~and~~

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175 ships ~~purchased~~ tangible personal property to a certified ~~the~~
176 address ~~on the certificate~~ is not liable for any tax due on
177 sales made during the effective dates indicated on the
178 certificate.

179 12. The department may revoke a forwarding agent's
180 certificate for noncompliance with this paragraph. Any person
181 found to fraudulently use the address on the certificate for the
182 purpose of evading tax is subject to the penalties provided in
183 s. 212.085.

184 13. The department may adopt rules to administer this
185 paragraph, including, but not limited to, rules relating to
186 procedures, application and eligibility requirements, and forms.

187 Section 2. This act shall take effect upon becoming a law.