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LEGISLATIVE ACTION

Senate

House

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Floor: WD

05/06/2011 03:25 PM

Senator Ring moved the following:

Senate Amendment (with title amendment)

Before line 43

insert:

Section 1. Subsection (2) of section 212.0596, Florida Statutes, is amended to read:

212.0596 Taxation of mail order sales.—

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

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



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

18 (c) The dealer has agents in this state who solicit
19 business or transact business on behalf of the dealer, whether
20 the mail order sales thus subject to taxation by this state
21 result from or are related in any other way to such solicitation
22 or transaction of business, except that:

23 1. A printer who mails or delivers for an out-of-state
24 print purchaser material the printer printed for it shall not be
25 deemed to be the print purchaser's agent for purposes of this
26 paragraph; or

27 2. A fulfillment center owned, leased, or operated by an
28 economic investment entity that is owned, maintained, occupied,
29 operated, or used in this state permanently, temporarily,
30 directly, or indirectly by the dealer, or through a subsidiary,
31 affiliate, or agent of the dealer, may not be deemed to be the
32 dealer's agent for purposes of this paragraph. This provision
33 does not apply to any person that is registered to collect the
34 tax imposed under this chapter as of May 1, 2011;

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

39 (e) The dealer, by purposefully or systematically
40 exploiting the market provided by this state by any media-
41 assisted, media-facilitated, or media-solicited means,
42 including, but not limited to, direct mail advertising,



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43 unsolicited distribution of catalogs, computer-assisted
44 shopping, television, radio, or other electronic media, or
45 magazine or newspaper advertisements or other media, creates
46 nexus with this state;

47 (f) Through compact or reciprocity with another
48 jurisdiction of the United States, that jurisdiction uses its
49 taxing power and its jurisdiction over the retailer in support
50 of this state's taxing power;

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

53 (h) The dealer is subject to service of process under s.
54 48.181;

55 (i) The dealer's mail order sales are subject to the power
56 of this state to tax sales or to require the dealer to collect
57 use taxes under a statute or statutes of the United States;

58 (j) The dealer owns real property or tangible personal
59 property that is physically in this state, except that:

60 1. A dealer whose only property (including property owned
61 by an affiliate) in this state is located at the premises of a
62 printer with which the vendor has contracted for printing, and
63 is either a final printed product, or property which becomes a
64 part of the final printed product, or property from which the
65 printed product is produced, is not deemed to own such property
66 for purposes of this paragraph; or

67 2. A dealer whose property, including property owned by a
68 subsidiary, affiliate, or agent, in this state is located at the
69 premises of a fulfillment center that is owned, leased, or
70 operated by an economic investment entity in this state is not
71 deemed to own such property for purposes of this paragraph. This



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72 provision does not apply to any person that is registered to
73 collect the tax imposed under this chapter as of May 1, 2011;

74 (k) The dealer, while not having nexus with this state on
75 any of the bases described in paragraphs (a)-(j) or paragraph
76 (l), is a corporation that is a member of an affiliated group of
77 corporations, as defined in s. 1504(a) of the Internal Revenue
78 Code, whose members are includable under s. 1504(b) of the
79 Internal Revenue Code and whose members are eligible to file a
80 consolidated tax return for federal corporate income tax
81 purposes and any parent or subsidiary corporation in the
82 affiliated group has nexus with this state on one or more of the
83 bases described in paragraphs (a)-(j) or paragraph (l); or

84 (l) The dealer or the dealer's activities have sufficient
85 connection with or relationship to this state or its residents
86 of some type other than those described in paragraphs (a)-(k) to
87 create nexus empowering this state to tax its mail order sales
88 or to require the dealer to collect sales tax or accrue use tax.

89 Section 2. Paragraphs (m), (n), and (o) are added to
90 subsection (2) of section 212.06, Florida Statutes, to read:

91 212.06 Sales, storage, use tax; collectible from dealers;
92 "dealer" defined; dealers to collect from purchasers;
93 legislative intent as to scope of tax.-

94 (2)

95 (m) Except as provided in paragraph (n), a remote dealer
96 shall be considered a "dealer" for purposes of subsection (3).

97 (n) Notwithstanding paragraph (m) or any other law, a
98 remote dealer that qualifies as an economic investment entity
99 under s. 212.099 may not be considered a to be "dealer" under
100 this chapter. However, the economic investment entity shall be



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101 considered a dealer for purposes of obtaining a purchaser resale
102 certificate.

103 (o)1. Notwithstanding paragraph (m) or any other law, a
104 person shall not be considered to be a "dealer" under this
105 chapter, except for purposes of obtaining a purchaser resale
106 certificate, due to that person's:

107 a. Maintenance, occupation, operation, or use in this state
108 permanently, temporarily, directly, or indirectly, or through a
109 subsidiary, affiliate, or agent by whatever name, of a
110 fulfillment center that is owned, leased, or operated by an
111 economic investment entity;

112 b. Ownership of tangible personal property located at the
113 premises of a fulfillment center owned, leased, or operated by
114 an economic investment entity; or

115 c. Maintenance, occupation, operation, or use in this state
116 permanently, temporarily, directly, or indirectly, or through a
117 subsidiary, affiliate, agent by whatever name, or otherwise of a
118 computer server.

119 2. This paragraph does not apply to any person that is
120 registered to collect the tax imposed under this chapter as of
121 May 1, 2011.

122 Section 3. Subsection (10) is added to section 212.07,
123 Florida Statutes, to read:

124 212.07 Sales, storage, use tax; tax added to purchase
125 price; dealer not to absorb; liability of purchasers who cannot
126 prove payment of the tax; penalties; general exemptions.—

127 (10) Notwithstanding any other law:

128 (a) A sale for resale of tangible personal property,
129 regardless of whether the sale for resale is otherwise tax-



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130 exempt under this chapter, to an economic investment entity, as
131 defined by s. 212.099; and

132 (b) Such property is delivered to the economic investment
133 entity or its customer in this state,

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135 is not subject to any tax that would otherwise be imposed on
136 such transactions under this chapter.

137 Section 4. Section 212.099, Florida Statutes, is created to
138 read:

139 (1) DEFINITIONS.—As used in this section and in ss.
140 212.0596(2)(c) and (j), 212.06(2)(m), (n), and (o), 212.07(10),
141 and 212.18, the term:

142 (a) "Affiliate" means a person that directly or indirectly,
143 through one or more intermediaries, controls, is controlled by,
144 or is under common control with another person. For purposes of
145 this paragraph, a person controls another person if that person
146 directly or indirectly holds an ownership interest of more than
147 50 percent in the other person.

148 (b) "Fulfillment center" means an establishment in this
149 state where tangible personal property and gift cards are stored
150 or processed for delivery to customers via common carrier. The
151 term does not include an establishment that is open to the
152 general public for the in-person receipt of tangible personal
153 property sold at retail, excluding sales for resale, regardless
154 of whether the sale for resale is tax exempt under this chapter.

155 (c) "Remote dealer" means any person whose physical
156 presence in this state is attributable to the maintenance,
157 occupation, operation, or use of a distributing house, or house,
158 warehouse or other place of business by such person directly,



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159 indirectly, or by such person's subsidiary, affiliate, or agent,
160 unless the in-state place of business is a physical location
161 that is open to the general public for the sale of goods at
162 retail or for the in-person receipt of goods sold at retail and
163 at least one of the following activities is performed at the
164 place of business:

165 1. Retail sales of goods by such person or on such person's
166 behalf, excluding sales for resale, regardless of whether the
167 sale for resale is tax exempt under this chapter;

168 2. Promotion of such person's business, such as
169 distributing such person's coupons or compiling such person's
170 mailing list, but excluding the distribution of such person's
171 merchandise, advertising materials, including flyers and other
172 promotional materials and the availability of such person's
173 catalogs at such place of business to use for reference purposes
174 or to be provided to a retail customer at the customer's
175 request;

176 3. Acceptance of in-person returns or exchanges of, or
177 credits for, merchandise purchased from or through such person;

178 4. Maintenance of telephone or Internet kiosks that allow
179 retail customers to access inventories and purchase merchandise
180 from or through such person; or

181 5. Acceptance or placement of customers' orders with such
182 person when a product is unavailable at such place of business.

183 (d) "Economic investment entity" means a remote dealer, as
184 defined in paragraph (c), which may, in combination with any
185 affiliates of the remote dealer, also be remote dealers:

186 1. Within 3 years after July 1, 2011, achieves a net
187 increase in employees in this state of 1,500, measured pursuant



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188 to subsection (3);

189 2. For 4 years subsequent to achieving the net increase
190 described under subparagraph 1., maintains an increase of at
191 least 1,500 employees in this state in each year, measured
192 pursuant to subsection (3);

193 3. Within 3 years after July 1, 2011, invests more than
194 \$100 million in qualified expenditures in this state; and

195 4. Owns or operates one or more fulfillment centers in this
196 state.

197 (e) "Qualified expenditure" means any capital expenditure
198 other than inventory or compensation paid to employees.

199 (2) SPECIAL CONSIDERATIONS.—For purposes of this section
200 only:

201 (a) All persons who are employed at a facility regardless
202 of whether such persons are employed by the remote dealer shall
203 be treated as employed by the remote dealer.

204 (b) All qualified expenditures that are incurred by those
205 entities and persons that are affiliates of a remote dealer, or
206 by any other person with respect to a facility to be used
207 primarily by the remote dealer or an affiliate of the remote
208 dealer, shall be treated as incurred by the remote dealer.

209 (3) MEASUREMENT OF EMPLOYEE THRESHOLDS.—

210 (a) For purposes of subparagraph (1)(d)1. the net increase
211 in employees shall be measured by subtracting the number of
212 employees, determined on a full-time equivalent basis, employed
213 by the remote dealer as of July 1, 2011, from the average number
214 of employees, determined on a full-time equivalent basis,
215 employed by the remote dealer from July 1, 2013, to June 30,
216 2014.



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217 (b) For purposes of subparagraph (1)(d)2., the number of
218 employees, determined on a full-time equivalent basis, employed
219 by the remote dealer for each year shall be the average number
220 of employees, determined on a full-time equivalent basis,
221 employed by the remote dealer from July 1 of the previous
222 calendar year to June 30 of the current calendar year.

223 (4) QUALIFICATION AS AN ECONOMIC INVESTMENT ENTITY.-

224 (a) To qualify as an economic investment entity, a remote
225 dealer must file a statement with the department indicating that
226 the remote dealer will meet the definition of economic
227 investment entity under paragraph (1)(d). The statement must
228 include, but need not be limited to:

229 1. The federal employer identification number of the remote
230 dealer and its applicable affiliates, including existing or
231 acquired affiliates, which in combination with the remote
232 dealer, are taken into account for qualification of an economic
233 investment entity.

234 2. The anticipated net increase in employees, determined on
235 a full-time equivalent basis, in this state as of June 30, 2014,
236 calculated pursuant to paragraph (3)(a).

237 3. The anticipated number of employees, determined on a
238 full-time equivalent basis, employed by the remote dealer for
239 each of the 4 years subsequent to the year in which the remote
240 dealer achieves the net increase described in subparagraph
241 (1)(d)1., calculated pursuant to paragraph (3)(b).

242 4. The anticipated amount of qualified expenditures that
243 will be invested by the remote dealer in this state as of June
244 30, 2014.

245 (b) A remote dealer shall be considered an economic



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246 investment entity as of January 1 of the year in which the
247 statement is filed.

248 (c) Any remote dealer who is an affiliate of a remote
249 dealer that qualifies as an economic investment entity under
250 this section shall also be considered an economic investment
251 entity and is not required to file a separate statement with the
252 department.

253 (5) PENALTIES.—Notwithstanding the provisions of s.
254 95.091(3), a remote dealer who is considered an economic
255 investment entity in a particular year but who is subsequently
256 shown to have failed to meet the requirements of paragraph
257 (1) (d) for the required periods set forth in paragraph (1) (d) is
258 liable for any tax that the remote dealer would have been
259 required to remit to the department with respect to such non-
260 qualifying year had that remote dealer not qualified as an
261 economic investment entity for such year.

262 (6) EFFECT OF QUALIFYING STATEMENT.—Notwithstanding any
263 other provision of law, the filing of a statement to qualify as
264 an economic investment entity under subsection (4) shall not
265 serve as the basis for subjecting an economic investment entity
266 to liability for tax imposed under this chapter except for
267 taxable expenditures consumed at the fulfillment center.

268 (7) RULEMAKING.—The department may adopt forms and rules to
269 administer this section.

270 Section 5. Present subsection (4) of section 212.18,
271 Florida Statutes, is renumbered as subsection (5), and a new
272 subsection (4) is added to that section, to read:

273 212.18 Administration of law; registration of dealers;
274 rules.—



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275 (4) An economic investment entity that ships items to
276 customers located in this state shall not be required to file
277 any report, statement, or other information with any government
278 agency or official in this state related to sales and use tax
279 notification with respect to purchases made from such economic
280 investment entity. The economic investment entity shall not be
281 required to send to customers in this state sales and use tax
282 notifications with respect to their purchases.

283
284 ===== T I T L E A M E N D M E N T =====

285 And the title is amended as follows:

286 Delete line 2

287 and insert:

288 An act relating to taxation; amending s. 212.0596,
289 F.S.; creating an exception to acts that may otherwise
290 subject a fulfillment center to requirements to
291 collect and remit sales and use taxes to this state;
292 amending s. 212.06, F.S.; providing that an economic
293 investment entity is not considered to be a dealer;
294 providing that specified conduct relating to a
295 fulfillment center does not result in a person being
296 considered as a dealer; amending s. 212.07, F.S.;
297 providing that certain transactions by an economic
298 investment entity are exempt from sales and use taxes;
299 creating s. 212.099, F.S.; providing definitions;
300 requiring an a remote dealer that seeks to qualify as
301 an economic investment entity to have a specified
302 number of employees and make a specified investment in
303 this state; imposing additional tax liability for



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304 failing to employ the required number of employees or
305 make the required minimum investment; authorizing the
306 Department of Revenue to adopt rules; amending s.
307 212.18, F.S.; providing that an economic investment
308 entity is not required to file reports, statements, or
309 information relating to sales and use taxes under
310 certain circumstances; providing that an economic
311 investment entity is not required to send customers
312 sales and use tax notifications;