

By Senator Detert

23-01256B-12

20121352

1                   A bill to be entitled  
2           An act relating to mail order sales; amending s.  
3           212.0596, F.S.; redefining the term "mail order sale"  
4           to include sales ordered through the Internet;  
5           defining the term "agent"; providing an exception to  
6           provisions that subject a dealer who makes sales  
7           through the Internet to requirements to collect sales  
8           and use taxes; creating a presumption that a dealer is  
9           presumed to be soliciting business through state  
10          residents under certain circumstances; subjecting a  
11          dealer who makes mail order sales to requirements to  
12          collect sales and use taxes if the dealer has a  
13          contract with a person located in this state under  
14          which the dealer sells the same or substantially  
15          similar line of products as the person under certain  
16          circumstances; creating s. 212.05961, F.S.; requiring  
17          a dealer who makes mail order sales and who is not  
18          required to collect sales and use taxes to notify  
19          purchasers of the duty to submit sales and use taxes  
20          to this state; specifying requirements for the notice;  
21          authorizing a dealer to use a consolidated notice that  
22          includes the information required by this state and  
23          another state; providing a contingent effective date.

24  
25          WHEREAS, the use of the Internet for shopping and making  
26          purchases has increased in recent years, and

27          WHEREAS, the United States Census Bureau reports that  
28          national e-commerce sales from November 1, 2010, through October  
29          31, 2011, total more than \$180 billion, and

23-01256B-12

20121352\_\_

30 WHEREAS, many retailers who make sales through the Internet  
31 are not located in Florida and are not registered as dealers to  
32 remit sales and use tax to this state, and

33 WHEREAS, a September 2011 report by Arduin, Laffer, and  
34 Moore Econometrics estimates that, as the result of Internet  
35 purchases, the state lost \$374 million in tax revenues in 2010  
36 and will lose between \$449.6 million and \$454.0 million in tax  
37 revenues in 2012, and

38 WHEREAS, dealers and purchasers should be required to remit  
39 sales and use taxes on purchases made over the Internet, NOW,  
40 THEREFORE,

41  
42 Be It Enacted by the Legislature of the State of Florida:

43  
44 Section 1. Section 212.0596, Florida Statutes, is amended  
45 to read:

46 212.0596 Taxation of mail order sales.—

47 (1) As used in ~~For purposes of~~ this chapter, the term a  
48 "mail order sale" means ~~is~~ a sale of tangible personal property,  
49 ordered by mail, ordered through the Internet, or ordered by  
50 other means of communication, from a dealer who receives the  
51 order in another state of the United States, or in a  
52 commonwealth, territory, or other area under the jurisdiction of  
53 the United States, and transports the property or causes the  
54 property to be transported, whether or not by mail, from any  
55 jurisdiction of the United States, including this state, to a  
56 person in this state, including the person who ordered the  
57 property.

58 (2) Every dealer as defined in s. 212.06(2)(c) who makes a

23-01256B-12

20121352

59 mail order sale is subject to the power of this state to levy  
60 and collect the tax imposed by this chapter if any of the  
61 following are satisfied ~~when~~:

62 (a) The dealer is a corporation doing business under the  
63 laws of this state or a person domiciled in, a resident of, or a  
64 citizen of, this state.~~†~~

65 (b) The dealer maintains retail establishments, ~~or~~ offices,  
66 or warehouses in this state, whether the mail order sales thus  
67 subject to taxation by this state result from or are related in  
68 any other way to the activities of such establishments, ~~or~~  
69 offices, or warehouses.~~†~~

70 (c) The dealer has an agent ~~agents~~ in this state who  
71 solicits ~~solicit~~ business or transacts ~~transact~~ business on  
72 behalf of the dealer, whether the mail order sales thus subject  
73 to taxation by this state result from or are related in any  
74 other way to such solicitation or transaction of business,  
75 except that a printer who mails or delivers for an out-of-state  
76 print purchaser material the printer printed for it is ~~shall~~ not  
77 ~~be~~ deemed to be the print purchaser's agent for purposes of this  
78 paragraph.~~†~~

79 1. As used in this paragraph, the term "agent" includes,  
80 but is not limited to, a resident of this state who enters into  
81 a contract with the dealer under which the resident, for a  
82 commission or other consideration, directly or indirectly refers  
83 potential customers to the dealer, whether by a link on an  
84 Internet website or otherwise. This subparagraph does not apply  
85 to a dealer having an agreement with a resident of this state to  
86 refer potential customers to the dealer by a link on an Internet  
87 website or otherwise if the cumulative gross receipts from sales

23-01256B-12

20121352

88 by the dealer to customers in the state who are referred to the  
89 dealer by all residents under such an agreement are less than  
90 \$10,000 during the preceding four quarterly periods ending on  
91 the last day of March, June, September, and December.

92 2. A dealer is presumed to be soliciting business through  
93 residents who have an agreement with the dealer to refer  
94 customers to the dealer by a link on an Internet website or  
95 otherwise. However, the dealer may rebut this presumption by  
96 showing that the residents with whom the dealer has an agreement  
97 did not engage in any solicitation in the state on behalf of the  
98 dealer which would satisfy the nexus requirement of the United  
99 States Constitution during the preceding four quarterly periods.

100 (d) The dealer has a contract with a person located in this  
101 state under which the dealer sells the same or substantially  
102 similar line of products as the person and does so using an  
103 identical or substantially similar name, trade name, or  
104 trademark as the person, and provides a commission or other  
105 consideration to the person based upon sales by the dealer. This  
106 paragraph does not apply if the cumulative gross receipts from  
107 sales by the dealer to customers in the state under all such  
108 contracts are less than \$10,000 during the preceding four  
109 quarterly periods ending on the last day of March, June,  
110 September, and December.

111 (e)~~(d)~~ The property was delivered in this state in  
112 fulfillment of a sales contract that was entered into in this  
113 state, in accordance with applicable conflict of laws rules,  
114 when a person in this state accepted an offer by ordering the  
115 property.~~†~~

116 (f)~~(e)~~ The dealer, by purposefully or systematically

23-01256B-12

20121352

117 exploiting the market provided by this state by any media-  
118 assisted, media-facilitated, or media-solicited means,  
119 including, but not limited to, direct mail advertising,  
120 unsolicited distribution of catalogs, computer-assisted  
121 shopping, television, radio, or other electronic media, or  
122 magazine or newspaper advertisements or other media, creates  
123 nexus with this state.†

124 (g)~~(f)~~ Through compact or reciprocity with another  
125 jurisdiction of the United States, that jurisdiction uses its  
126 taxing power and its jurisdiction over the retailer in support  
127 of this state's taxing power.†

128 (h)~~(g)~~ The dealer consents, expressly or by implication, to  
129 the imposition of the tax imposed by this chapter.†

130 (i)~~(h)~~ The dealer is subject to service of process under s.  
131 48.181.†

132 (j)~~(i)~~ The dealer's mail order sales are subject to the  
133 power of this state to tax sales or to require the dealer to  
134 collect use taxes under a statute or statutes of the United  
135 States.†

136 (k)~~(j)~~ The dealer owns real property or tangible personal  
137 property that is physically in this state, except that a dealer  
138 whose only property, including property owned by an affiliate,~~†~~  
139 in this state is located at the premises of a printer with which  
140 the vendor has contracted for printing, and is ~~either~~ a final  
141 printed product, or property that ~~which~~ becomes a part of the  
142 final printed product, or property from which the printed  
143 product is produced, is not deemed to own such property for  
144 purposes of this paragraph.†

145 (l)~~(k)~~ The dealer, while not having nexus with this state

23-01256B-12

20121352

146 on any of the bases described in paragraphs (a)-(k) ~~(a)-(j)~~ or  
 147 paragraph (m) ~~(l)~~, is a corporation that is a member of an  
 148 affiliated group of corporations, as defined in s. 1504(a) of  
 149 the Internal Revenue Code, whose members are includable under s.  
 150 1504(b) of the Internal Revenue Code and whose members are  
 151 eligible to file a consolidated tax return for federal corporate  
 152 income tax purposes and any parent or subsidiary corporation in  
 153 the affiliated group has nexus with this state on one or more of  
 154 the bases described in paragraphs (a)-(k) ~~(a)-(j)~~ or paragraph  
 155 (m). ~~(l); or~~

156 (m) ~~(l)~~ The dealer or the dealer's activities have  
 157 sufficient connection with or relationship to this state or its  
 158 residents of some type other than those described in paragraphs  
 159 (a)-(l) ~~(a)-(k)~~ to create nexus empowering this state to tax its  
 160 mail order sales or to require the dealer to collect sales tax  
 161 or accrue use tax.

162 (3) Every dealer engaged in the business of making mail  
 163 order sales is subject to the requirements of this chapter for  
 164 cooperation of dealers in collection of taxes and in  
 165 administration of this chapter, except that no fee shall be  
 166 imposed upon such dealer for carrying out any required activity.

167 (4) The department shall, with the consent of another  
 168 jurisdiction of the United States whose cooperation is needed,  
 169 enforce this chapter in that jurisdiction, either directly or,  
 170 at the option of that jurisdiction, through its officers or  
 171 employees.

172 (5) The tax required under this section to be collected and  
 173 any amount unreturned to a purchaser that is not tax but was  
 174 collected from the purchaser under the representation that it

23-01256B-12

20121352

175 was tax constitute funds of the State of Florida from the moment  
176 of collection.

177 (6) Notwithstanding other provisions of law, a dealer who  
178 makes a mail order sale in this state is exempt from collecting  
179 and remitting any local option surtax on the sale, unless the  
180 dealer is located in a county that imposes a surtax within the  
181 meaning of s. 212.054(3)(a), the order is placed through the  
182 dealer's location in such county, and the property purchased is  
183 delivered into such county or into another county in this state  
184 that levies the surtax, in which case the provisions of s.  
185 212.054(3)(a) are applicable.

186 (7) The department may establish by rule procedures for  
187 collecting the use tax from unregistered persons who but for  
188 their mail order purchases would not be required to remit sales  
189 or use tax directly to the department. The procedures may  
190 provide for waiver of registration and registration fees,  
191 provisions for irregular remittance of tax, elimination of the  
192 collection allowance, and nonapplication of local option  
193 surtaxes.

194 Section 2. Section 212.05961, Florida Statutes, is created  
195 to read:

196 212.05961 Notice for certain mail order sales.-

197 (1) A dealer who makes a mail order sale but who is not  
198 subject to s. 212.0596 must give notice to the purchaser who  
199 resides in this state that use tax must be paid by the purchaser  
200 on nonexempt purchases of tangible personal property as provided  
201 in s. 212.05.

202 (2) The notice in this section must be readily visible and  
203 must state that:

23-01256B-12

20121352

204       (a) The dealer is not required to collect and does not  
205 collect Florida sales and use tax.

206       (b) The purchase is subject to state use tax unless it is  
207 specifically exempt from taxation.

208       (c) The purchase is not exempt merely because the purchase  
209 is made over the Internet, by catalog, or by other remote means.

210       (d) The State of Florida requires each resident to report  
211 any purchase that was not taxed and to pay tax on the purchase.  
212 The tax may be reported and paid on the Florida use tax form.

213       (e) The use tax form and corresponding instructions are  
214 available on the website of the Florida Department of Revenue.

215       (3) If a dealer knows that a purchase is exempt from  
216 Florida sales and use tax, the dealer may display or indicate  
217 that no sales or use tax is due.

218       (4) For purchases occurring through a website, the notice  
219 may be displayed on a page necessary to facilitate the  
220 applicable transaction, on the check-out page, or on any  
221 electronic order confirmation. Notice is sufficient if the  
222 dealer prominently displays a link that reads: "See important  
223 Florida sales and use tax information regarding the tax you may  
224 owe directly to the State of Florida." The link must direct the  
225 purchaser to the notice required under subsection (2). If the  
226 dealer does not issue an electronic order confirmation, the  
227 notice required under subsection (2) must be prominently  
228 displayed on the purchase order, bill, receipt, sales slip,  
229 order form, or packing statement.

230       (5) For purchases made from a catalog, the notice required  
231 under subsection (2) must be part of the order form. Notice is  
232 also sufficient if the dealer provides a prominent reference to

23-01256B-12

20121352

233 a supplemental page that reads as follows: "See important  
234 Florida sales and use tax information regarding the tax you may  
235 owe directly to the state of Florida on page ....."

236 (6) For any telephone purchases, the notice required under  
237 subsection (2) must be placed on the purchase order, bill,  
238 receipt, sales slip, order form, or packing statement.

239 (7) If a dealer is required to provide a similar notice for  
240 another state in addition to this state, the dealer may provide  
241 a consolidated notice if the notice includes the information  
242 required under subsection (2), specifically references this  
243 state, and meets the placement requirements of this section.

244 Section 3. This act shall take effect July 1, 2013, if SJR  
245 1064, or a similar proposed amendment to the State Constitution,  
246 is approved by a vote of the electors in the 2012 General  
247 Election.