

By Senator Detert

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1 A bill to be entitled
2 An act relating to the tax on sales, use, and other
3 transactions; amending s. 212.0596, F.S.; revising the
4 term "mail order sale" to specifically include sales
5 of tangible personal property ordered through the
6 Internet; deleting certain provisions that specify
7 dealer activities or other circumstances that subject
8 mail order sales to this state's power to levy and
9 collect the sales and use tax; providing that certain
10 persons who make mail order sales and who have a
11 substantial nexus with this state are subject to this
12 state's power to levy and collect the sales and use
13 tax when they engage in certain enumerated activities;
14 specifying that dealers are not required to collect
15 and remit sales and use tax unless certain
16 circumstances exist; creating a rebuttable presumption
17 that a dealer is subject to the state's power to levy
18 and collect the sales or use tax under specified
19 circumstances; specifying evidentiary proof that may
20 be submitted to rebut the presumption; amending s.
21 212.06, F.S.; revising the definition of the term
22 "dealer"; providing an effective date.

23
24 Be It Enacted by the Legislature of the State of Florida:

25
26 Section 1. Section 212.0596, Florida Statutes, is amended
27 to read:

28 212.0596 Taxation of mail order sales.—

29 (1) For purposes of this chapter, a "mail order sale" is a

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30 sale of tangible personal property, ordered by mail, the
31 Internet, or other means of communication, from a dealer who
32 receives the order in another state ~~of the United States~~, or in
33 a commonwealth, territory, or other area under the jurisdiction
34 of the United States, and transports the property or causes the
35 property to be transported, whether or not by mail, from any
36 jurisdiction of the United States, including this state, to a
37 person in this state, including the person who ordered the
38 property.

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

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

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

49 (c) The dealer has agents or representatives in this state
50 who solicit business or transact business on behalf of the
51 dealer, whether the mail order sales ~~thus~~ subject to taxation by
52 this state result from or are related in any other way to such
53 solicitation or transaction of business, except that a printer
54 who mails or delivers for an out-of-state print purchaser
55 material the printer printed for it is ~~shall~~ not ~~be~~ deemed to be
56 the print purchaser's agent or representative for purposes of
57 this paragraph;

58 ~~(d) The property was delivered in this state in fulfillment~~

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59 ~~of a sales contract that was entered into in this state, in~~
 60 ~~accordance with applicable conflict of laws rules, when a person~~
 61 ~~in this state accepted an offer by ordering the property;~~

62 ~~(e) The dealer, by purposefully or systematically~~
 63 ~~exploiting the market provided by this state by any media-~~
 64 ~~assisted, media-facilitated, or media-solicited means,~~
 65 ~~including, but not limited to, direct mail advertising,~~
 66 ~~unsolicited distribution of catalogs, computer-assisted~~
 67 ~~shopping, television, radio, or other electronic media, or~~
 68 ~~magazine or newspaper advertisements or other media, creates~~
 69 ~~nexus with this state;~~

70 ~~(f) Through compact or reciprocity with another~~
 71 ~~jurisdiction of the United States, that jurisdiction uses its~~
 72 ~~taxing power and its jurisdiction over the retailer in support~~
 73 ~~of this state's taxing power;~~

74 ~~(d)~~(g) The dealer consents, expressly or by implication, to
 75 the imposition of the tax imposed by this chapter;

76 ~~(h) The dealer is subject to service of process under s.~~
 77 ~~48.181;~~

78 ~~(e)~~(i) The dealer's mail order sales are subject to the
 79 power of this state to tax sales or to require the dealer to
 80 collect use taxes pursuant to federal law ~~under a statute or~~
 81 ~~statutes of the United States;~~

82 ~~(f)~~(j) The dealer owns real property or tangible personal
 83 property that is physically in this state, except that a dealer
 84 whose only property, including property owned by an affiliate,
 85 in this state is located at the premises of a printer with which
 86 the vendor has contracted for printing, and is ~~either~~ a final
 87 printed product, ~~or~~ property that ~~which~~ becomes a part of the

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88 final printed product, or property from which the printed
89 product is produced, is not deemed to own such property for
90 purposes of this paragraph;

91 (g)-(k) A person, other than a person acting in the capacity
92 of a common carrier, The dealer, while not having nexus with
93 this state on any of the bases described in paragraphs (a)-(j)
94 or paragraph (l), is a corporation that is a member of an
95 affiliated group of corporations, as defined in s. 1504(a) of
96 the Internal Revenue Code, whose members are includable under s.
97 1504(b) of the Internal Revenue Code and whose members are
98 eligible to file a consolidated tax return for federal corporate
99 income tax purposes and any parent or subsidiary corporation in
100 the affiliated group has a substantial nexus with this state
101 and:

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

104 2. Maintains an office, distribution facility, warehouse,
105 storage place, or similar place of business in this state to
106 facilitate the delivery of property or services sold by the
107 dealer to the dealer's customers;

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

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

113 5. Facilitates the dealer's delivery of property to
114 customers in this state by allowing the dealer's customers to
115 pick up property sold by the dealer at an office, distribution
116 facility, warehouse, storage place, or similar place of business

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117 maintained by the person in this state; or

118 6. Conducts any other activities in this state which are
119 significantly associated with the dealer's ability to establish
120 and maintain a market in this state for the dealer's sales on
121 one or more of the bases described in paragraphs (a)-(j) or
122 paragraph (l); or

123 (h)(l) The dealer or the dealer's activities have
124 sufficient connection with or relationship to this state or its
125 residents of some type other than those described in paragraphs
126 (a)-(g) (a)-(k) to create a nexus empowering this state to tax
127 its mail order sales or to require the dealer to collect sales
128 tax or accrue use tax.

129
130 Notwithstanding other provisions of law, a dealer is not
131 required to collect and remit sales or use tax under this
132 subsection unless the dealer has a physical presence in this
133 state or the activities conducted in this state on the dealer's
134 behalf are significantly associated with the dealer's ability to
135 establish and maintain a market for sales in this state.

136 (3) (a) Notwithstanding other provisions of law or this
137 section, there is a rebuttable presumption that every dealer, as
138 defined in s. 212.06, who makes a mail order sale is also
139 subject to the power of this state to levy and collect the tax
140 imposed by this chapter if the dealer enters into an agreement
141 with one or more residents of this state under which the
142 resident, for a commission or other consideration, directly or
143 indirectly refers potential customers, whether by a link on an
144 Internet website, an in-person oral presentation, telemarketing,
145 or otherwise, to the dealer, if the cumulative gross receipts

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146 from sales by the dealer to customers in this state who are
147 referred to the dealer by all residents having this type of an
148 agreement with the dealer is in excess of \$10,000 during the 12
149 months immediately before the rebuttable presumption arose.

150 (b) The presumption in paragraph (a) may be rebutted by the
151 submission of evidence proving that the residents with whom the
152 dealer has an agreement did not engage in any activity within
153 this state which was significantly associated with the dealer's
154 ability to establish or maintain the dealer's market in this
155 state during the 12 months immediately before the rebuttable
156 presumption arose. The evidence may consist of sworn affidavits,
157 obtained and given in good faith, from each resident with whom
158 the dealer has an agreement attesting that he or she did not
159 engage in any solicitation in this state on the dealer's behalf
160 during the previous year.

161 (4)-(3) A Every dealer engaged in the business of making
162 mail order sales is subject to the requirements of this chapter
163 for cooperation of dealers in collection of taxes and in
164 administration of this chapter, except that a fee may not
165 ~~shall~~ be imposed upon such dealer for carrying out any required
166 activity.

167 (5)-(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 (6)-(5) The tax required under this section to be collected
173 and any amount unreturned to a purchaser which ~~that~~ is not tax
174 but was collected from the purchaser under the representation

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175 that it was tax constitute funds of this ~~the~~ state ~~of Florida~~
176 from the moment of collection.

177 (7) ~~(6)~~ Notwithstanding other provisions of law, a dealer
178 who makes a mail order sale in this state is exempt from
179 collecting and remitting any local option surtax on the sale,
180 unless the dealer is located in a county that imposes a surtax
181 within the meaning of s. 212.054(3)(a), the order is placed
182 through the dealer's location in such county, and the property
183 purchased is delivered into such county or into another county
184 in this state which ~~that~~ levies the surtax, in which case the
185 provisions of s. 212.054(3)(a) are applicable.

186 (8) ~~(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. Subsection (2) of section 212.06, Florida
195 Statutes, is amended to read:

196 212.06 Sales, storage, use tax; collectible from dealers;
197 "dealer" defined; dealers to collect from purchasers;
198 legislative intent as to scope of tax.—

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

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

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204 (b) ~~The term "dealer" is further defined to mean every~~
205 ~~person, as used in this chapter, who~~ Imports, or causes to be
206 imported, tangible personal property from any state or foreign
207 country for sale at retail; for use, consumption, or
208 distribution; or for storage to be used or consumed in this
209 state.

210 (c) ~~The term "dealer" is further defined to mean every~~
211 ~~person, as used in this chapter, who~~ Sells at retail or ~~who~~
212 offers for sale at retail, or ~~who~~ has in his or her possession
213 for sale at retail; ~~or~~ for use, consumption, or distribution; or
214 for storage to be used or consumed in this state, tangible
215 personal property ~~as defined herein~~, including a retailer who
216 transacts a mail order sale.

217 (d) ~~The term "dealer" is further defined to mean any person~~
218 ~~who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or distributed; or
219 stored for use or consumption in this state, ~~7~~ tangible personal
220 property and ~~who~~ cannot prove that the tax levied by this
221 chapter has been paid on the sale at retail, the use, the
222 consumption, the distribution, or the storage of such tangible
223 personal property. ~~However,~~ The term "dealer" does not include
224 ~~mean~~ a person who is not a "dealer" as otherwise defined in
225 ~~under the definition of any other paragraph of this subsection~~
226 and whose only owned or leased property, (including property
227 owned or leased by an affiliate,) in this state is located at
228 the premises of a printer with which it has contracted for
229 printing, ~~7~~ if such property consists of the final printed
230 product, property which becomes a part of the final printed
231 product, or property from which the printed product is produced.

232 (e) ~~The term "dealer" is further defined to mean any~~

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233 ~~person, as used in this chapter, who~~ Leases or rents tangible
234 ~~personal property, as defined in this chapter,~~ for a
235 consideration, permitting the use or possession of such property
236 without transferring title thereto, except as expressly provided
237 in this chapter for to the contrary herein.

238 (f) ~~The term "dealer" is further defined to mean any~~
239 ~~person, as used in this chapter, who~~ Maintains or uses has
240 within this state, ~~directly or by a subsidiary,~~ an office,
241 distributing house, salesroom, or house, warehouse, or other
242 place of business operated by any person other than a common
243 carrier acting in the capacity of a common carrier.

244 (g) ~~"Dealer" also means and includes every person who~~
245 Solicits business ~~either~~ by direct representatives, indirect
246 representatives, or manufacturers' agents; by distribution of
247 catalogs or other advertising matter; or by any other means
248 whatsoever, and by reason thereof receives orders for tangible
249 personal property from consumers for use, consumption,
250 distribution, and storage for use or consumption in the state.~~†~~
251 Such dealer shall collect the tax imposed by this chapter from
252 the purchaser, and no action, ~~either~~ in law or in equity, on a
253 sale or transaction as provided by ~~the terms of~~ this chapter may
254 be had in this state by ~~any~~ such dealer unless it is
255 affirmatively shown that the provisions of this chapter have
256 been fully complied with.

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

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262 (i) Constitutes ~~"Dealer"~~ also means and includes the state
263 or any, county, municipality, district ~~any political~~
264 ~~subdivision~~, agency, bureau, or department, or other state or
265 local governmental instrumentality.

266 (j) ~~The term "dealer" is further defined to mean any person~~
267 ~~who~~ Leases, or grants a license to use, occupy, or enter upon,
268 living quarters, sleeping or housekeeping accommodations in
269 hotels, apartment houses, roominghouses, tourist or trailer
270 camps, real property, space or spaces in parking lots or garages
271 for motor vehicles, docking or storage space or spaces for boats
272 in boat docks or marinas, or tie-down or storage space or spaces
273 for aircraft at airports. The term includes ~~"dealer" also means~~
274 any person who has leased, occupied, or used or was entitled to
275 use any living quarters, sleeping or housekeeping accommodations
276 in hotels, apartment houses, roominghouses, tourist or trailer
277 camps, real property, space or spaces in parking lots or garages
278 for motor vehicles, or docking or storage space or spaces for
279 boats in boat docks or marinas, or who has purchased
280 communication services or electric power or energy, and who
281 cannot prove that the tax levied by this chapter has been paid
282 to the vendor or lessor on ~~any~~ such transactions. The term
283 ~~"dealer"~~ does not include a ~~any~~ person who leases, lets, rents,
284 or grants a license to use, occupy, or enter upon any living
285 quarters, sleeping quarters, or housekeeping accommodations in
286 apartment houses, roominghouses, tourist camps, or trailer
287 camps, and who exclusively enters into a bona fide written
288 agreement for continuous residence for longer than 6 months ~~in~~
289 ~~duration~~ with a ~~any~~ person who leases, lets, rents, or is
290 granted a license to use such property.

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291 (k) ~~"Dealer" also means any person who~~ Sells, provides, or
292 performs a service taxable under this chapter. The term includes
293 a "Dealer" also means any person who purchases, uses, or
294 consumes a service taxable under this chapter who cannot prove
295 that the tax levied by this chapter has been paid to the seller
296 of the taxable service.

297 (l) ~~"Dealer" also means any person who~~ Solicits, offers,
298 provides, enters into, issues, or delivers any service warranty
299 taxable under this chapter, or who receives, on behalf of such a
300 person, any consideration from a service warranty holder.

301 Section 3. This act shall take effect July 1, 2013.

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