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1 A bill to be entitled  
2 An act relating to the Small Business Fairness Act;  
3 creating such act and providing a short title;  
4 providing legislative findings and intent; amending s.  
5 202.12, F.S.; revising certain tax rates imposed on  
6 the sales price of communications services; amending  
7 s. 212.0596, F.S.; revising the definition of the term  
8 "mail order sale" to specifically include sales of  
9 tangible personal property ordered via the Internet;  
10 deleting certain provisions that specify dealer  
11 activities or other circumstances that subject mail  
12 order sales to this state's power to levy and collect  
13 the sales and use tax; providing that certain persons  
14 who make mail order sales and who have a substantial  
15 nexus with this state are subject to this state's  
16 power to levy and collect the sales and use tax if  
17 they engage in certain activities; specifying that a  
18 dealer who does not have a physical presence in this  
19 state is required to collect and remit sales and use  
20 tax under certain circumstances; providing an  
21 exception; creating a rebuttable presumption that a  
22 dealer is subject to the state's power to levy and  
23 collect the sales or use tax under specified  
24 circumstances; specifying evidentiary proof that may  
25 be submitted to rebut the presumption; amending ss.  
26 202.12001 and 203.001, F.S.; conforming provisions to  
27 changes made by the act; providing effective dates.  
28

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

30

31 Section 1. Short title.—This act may be cited as the  
 32 "Small Business Fairness Act."

33 Section 2. Legislative findings and intent.—

34 (1) The Legislature finds that:

35 (a) The revisions made by this act will increase revenues  
 36 from the taxation of mail order sales, especially mail order  
 37 sales initiated over the Internet.

38 (b) The payment of sales and use tax by sellers located  
 39 outside this state will put this state's "brick-and-mortar"  
 40 businesses on an equal competitive footing with remote sellers.

41 (2) The Legislature further finds that:

42 (a) Increased revenues from the taxation of mail order  
 43 sales create a unique opportunity to reduce the state's tax rate  
 44 on communications services, which is one of the highest rates of  
 45 taxation on communications services in the nation, and to offset  
 46 decreased revenues from taxation of communications services with  
 47 increased revenues from taxation of mail order sales.

48 (b) The portion of the proceeds of the tax on  
 49 communications services that constitutes gross receipts taxes,  
 50 imposed at the rate prescribed in chapter 203, Florida Statutes,  
 51 is required to be used in accordance with s. 9, Art. XII of the  
 52 State Constitution for Public Education Capital Outlay (PECO)  
 53 and, therefore, should not be subject to a reduction in tax  
 54 rate.

55 (c) In contrast, communications services tax revenues that  
 56 are not dedicated to PECO are deposited into the General Revenue

57 | Fund and, therefore, could be decreased as a result of a tax  
 58 | rate reduction on communications services and then the decreased  
 59 | revenues offset by increased revenues from taxation of mail  
 60 | order sales.

61 | (3) Therefore, based on these findings, with the exception  
 62 | of the rates applicable to the gross receipts tax, the proceeds  
 63 | of which are dedicated to PECO, the Legislature intends to  
 64 | decrease the current tax rates levied under s. 202.12, Florida  
 65 | Statutes, on the sale of communications services and to offset  
 66 | corresponding reductions in General Revenue with anticipated  
 67 | increased revenues from the taxation of mail order sales.

68 | Section 3. Effective January 1, 2014, section 202.12,  
 69 | Florida Statutes, is amended to read:

70 | 202.12 Sales of communications services.—The Legislature  
 71 | finds that every person who engages in the business of selling  
 72 | communications services at retail in this state is exercising a  
 73 | taxable privilege. It is the intent of the Legislature that the  
 74 | tax imposed by chapter 203 be administered as provided in this  
 75 | chapter.

76 | (1) For the exercise of such privilege, a tax is levied on  
 77 | each taxable transaction, and the tax is due and payable as  
 78 | follows:

79 | (a) Except as otherwise provided in this subsection, at a  
 80 | rate of 5 ~~6.65~~ percent applied to the sales price of the  
 81 | communications service which:

- 82 | 1. Originates and terminates in this state, or
- 83 | 2. Originates or terminates in this state and is charged
- 84 | to a service address in this state,

85  
86 when sold at retail, computed on each taxable sale for the  
87 purpose of remitting the tax due. The gross receipts tax imposed  
88 by chapter 203 shall be collected on the same taxable  
89 transactions and remitted with the tax imposed by this  
90 paragraph. If no tax is imposed by this paragraph by reason of  
91 s. 202.125(1), the tax imposed by chapter 203 shall nevertheless  
92 be collected and remitted in the manner and at the time  
93 prescribed for tax collections and remittances under this  
94 chapter.

95 (b) At the rate of 9.1 ~~10.8~~ percent on the retail sales  
96 price of any direct-to-home satellite service received in this  
97 state. The proceeds of the tax imposed under this paragraph  
98 shall be accounted for and distributed in accordance with s.  
99 202.18(2). The gross receipts tax imposed by chapter 203 shall  
100 be collected on the same taxable transactions and remitted with  
101 the tax imposed by this paragraph.

102 (c) At the rate set forth in paragraph (a) on the sales  
103 price of private communications services provided within this  
104 state, which shall be determined in accordance with the  
105 following provisions:

106 1. Any charge with respect to a channel termination point  
107 located within this state;

108 2. Any charge for the use of a channel between two channel  
109 termination points located in this state; and

110 3. Where channel termination points are located both  
111 within and outside of this state:

112 a. If any segment between two such channel termination

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113 points is separately billed, 50 percent of such charge; and

114       b. If any segment of the circuit is not separately billed,  
115 an amount equal to the total charge for such circuit multiplied  
116 by a fraction, the numerator of which is the number of channel  
117 termination points within this state and the denominator of  
118 which is the total number of channel termination points of the  
119 circuit.

120

121 The gross receipts tax imposed by chapter 203 shall be collected  
122 on the same taxable transactions and remitted with the tax  
123 imposed by this paragraph.

124       (d) At the rate set forth in paragraph (a) applied to the  
125 sales price of all mobile communications services deemed to be  
126 provided to a customer by a home service provider pursuant to s.  
127 117(a) of the Mobile Telecommunications Sourcing Act, Pub. L.  
128 No. 106-252, if such customer's service address is located  
129 within this state.

130       (2) A dealer of taxable communications services shall  
131 bill, collect, and remit the taxes on communications services  
132 imposed pursuant to chapter 203 and this section at a combined  
133 rate that is the sum of the rate of tax on communications  
134 services prescribed in chapter 203 and the applicable rate of  
135 tax prescribed in this section. However, a dealer shall, in  
136 reporting each remittance to the department, identify the  
137 portion thereof which consists of taxes remitted pursuant to  
138 chapter 203. Return forms prescribed by the department shall  
139 facilitate such reporting.

140       (3) Notwithstanding any law to the contrary, the combined

141 amount of taxes imposed under this section and s. 203.01(1)(a)2.  
 142 shall not exceed \$100,000 per calendar year on charges to any  
 143 person for interstate communications services that originate  
 144 outside this state and terminate within this state. This  
 145 subsection applies only to holders of a direct-pay permit issued  
 146 under this subsection. A refund may not be given for taxes paid  
 147 before receiving a direct-pay permit. Upon application, the  
 148 department may issue one direct-pay permit to the purchaser of  
 149 communications services authorizing such purchaser to pay the  
 150 Florida communications services tax on such services directly to  
 151 the department if the majority of such services used by such  
 152 person are for communications originating outside of this state  
 153 and terminating in this state. Only one direct-pay permit shall  
 154 be issued to a person. Such direct-pay permit shall identify the  
 155 taxes and service addresses to which it applies. Any dealer of  
 156 communications services furnishing communications services to  
 157 the holder of a valid direct-pay permit is relieved of the  
 158 obligation to collect and remit the taxes imposed under this  
 159 section and s. 203.01(1)(a)2. on such services. Tax payments and  
 160 returns pursuant to a direct-pay permit shall be monthly. As  
 161 used in this subsection, "person" means a single legal entity  
 162 and does not mean a group or combination of affiliated entities  
 163 or entities controlled by one person or group of persons.

164 Section 4. Section 212.0596, Florida Statutes, is amended  
 165 to read:

166 212.0596 Taxation of mail order sales.—

167 (1) As used in ~~For purposes of~~ this chapter, the term a  
 168 "mail order sale" means ~~is~~ a sale of tangible personal property.

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169 | ordered by mail, Internet, or other means of communication, from  
170 | a dealer who receives the order in another state of the United  
171 | States, or in a commonwealth, territory, or other area under the  
172 | jurisdiction of the United States, and transports the property  
173 | or causes the property to be transported, whether or not by  
174 | mail, from any jurisdiction of the United States, including this  
175 | state, to a person in this state, including the person who  
176 | ordered the property.

177 |       (2) Every dealer as defined in s. 212.06(2)(c) or person  
178 | who makes a mail order sale is subject to the power of this  
179 | state to levy and collect the tax imposed by this chapter if  
180 | ~~when~~:

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

184 |       (b) The dealer maintains retail establishments or offices  
185 | in this state, whether the mail order sales thus subject to  
186 | taxation by this state result from or are related in any other  
187 | way to the activities of such establishments or offices;

188 |       (c) The dealer has agents or representatives in this state  
189 | who solicit business or transact business on behalf of the  
190 | dealer, whether the mail order sales thus subject to taxation by  
191 | this state result from or are related in any other way to such  
192 | solicitation or transaction of business, except that a printer  
193 | who mails or delivers ~~for an out-of-state print purchaser~~  
194 | material that the printer printed for an out-of-state print  
195 | purchaser is ~~it shall not be~~ deemed to be the print purchaser's  
196 | agent or representative for purposes of this paragraph;

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197       ~~(d) The property was delivered in this state in~~  
198 ~~fulfillment of a sales contract that was entered into in this~~  
199 ~~state, in accordance with applicable conflict of laws rules,~~  
200 ~~when a person in this state accepted an offer by ordering the~~  
201 ~~property;~~

202       ~~(e) The dealer, by purposefully or systematically~~  
203 ~~exploiting the market provided by this state by any media-~~  
204 ~~assisted, media-facilitated, or media-solicited means,~~  
205 ~~including, but not limited to, direct mail advertising,~~  
206 ~~unsolicited distribution of catalogs, computer-assisted~~  
207 ~~shopping, television, radio, or other electronic media, or~~  
208 ~~magazine or newspaper advertisements or other media, creates~~  
209 ~~nexus with this state;~~

210       ~~(f) Through compact or reciprocity with another~~  
211 ~~jurisdiction of the United States, that jurisdiction uses its~~  
212 ~~taxing power and its jurisdiction over the retailer in support~~  
213 ~~of this state's taxing power;~~

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

216       ~~(h) The dealer is subject to service of process under s.~~  
217 ~~48.181;~~

218       (e)(i) The dealer's mail order sales are subject to the  
219 power of this state to tax sales or to require the dealer to  
220 collect use taxes under a statute or statutes of the United  
221 States;

222       (f)(j) The dealer owns real property or tangible personal  
223 property that is physically in this state, except that a dealer  
224 whose only property in this state, ~~(including property owned by~~



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225 an affiliate,) ~~in this state~~ is located at the premises of a  
226 printer with which the vendor has contracted for printing, and  
227 is ~~either~~ a final printed product, ~~or~~ property that ~~which~~  
228 becomes a part of the final printed product, or property from  
229 which the printed product is produced, is not deemed to own such  
230 property for purposes of this paragraph;

231 (g) ~~(k)~~ The person, other than a person acting in the  
232 capacity of a common carrier, ~~The dealer, while not having nexus~~  
233 with this state on any of the bases described in paragraphs (a)-  
234 (j) or paragraph (l), is a corporation that is a member of an  
235 affiliated group of corporations, as defined in s. 1504(a) of  
236 the Internal Revenue Code, whose members are includable under s.  
237 1504(b) of the Internal Revenue Code and whose members are  
238 eligible to file a consolidated tax return for federal corporate  
239 income tax purposes and any parent or subsidiary corporation in  
240 the affiliated group has substantial nexus with this state and:

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

243 2. Maintains an office, distribution facility, warehouse,  
244 storage place, or similar place of business in this state to  
245 facilitate the delivery of property or services sold by the  
246 dealer to the dealer's customers;

247 3. Uses trademarks, service marks, or trade names in this  
248 state that are the same or substantially similar to those used  
249 by the dealer;

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

252 5. Facilitates the dealer's delivery of property to

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253 customers in this state by allowing the dealer's customers to  
254 pick up property sold by the dealer at an office, distribution  
255 facility, warehouse, storage place, or similar place of business  
256 maintained by the person in this state; or

257 6. Conducts any other activities in this state that are  
258 significantly associated with the dealer's ability to establish  
259 and maintain a market in this state for the dealer's sales on  
260 one or more of the bases described in paragraphs (a)-(j) or  
261 paragraph (l); or

262 (h)(1) The dealer or the dealer's activities have  
263 sufficient connection with or relationship to this state or its  
264 residents of some type other than those described in paragraphs  
265 (a)-(g) (a)-(k) to create a nexus empowering this state to tax  
266 its mail order sales or to require the dealer to collect sales  
267 tax or accrue use tax.

268  
269 Notwithstanding any other provision of law, a dealer who does  
270 not have a physical presence in this state must collect and  
271 remit sales or use tax under this section if the activities  
272 conducted in this state on the dealer's behalf are significantly  
273 associated with the dealer's ability to establish and maintain a  
274 market for sales in this state, unless the dealer's gross  
275 revenue from sales in this state are less than \$100,000  
276 annually.

277 (3) (a) Notwithstanding other provisions of law, there is  
278 established a rebuttable presumption that every dealer as  
279 defined in s. 212.06(2) who makes a mail order sale is also  
280 subject to the power of this state to levy and collect the tax

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281 imposed by this chapter if the dealer enters into an agreement  
282 with one or more residents of this state under which the  
283 resident, for a commission or other consideration, directly or  
284 indirectly refers potential customers to the dealer, whether by  
285 a link on an Internet website, an in-person oral presentation,  
286 telemarketing, or otherwise, and if the cumulative gross  
287 receipts from sales by the dealer to the customers in this state  
288 who are referred to the dealer by all residents having this type  
289 of an agreement with the dealer are more than \$10,000 during the  
290 12-month period immediately before the rebuttable presumption  
291 arose.

292 (b) The presumption in paragraph (a) may be rebutted by  
293 the submission of evidence proving that the residents with whom  
294 the dealer has an agreement did not engage in any activity  
295 within this state that was significantly associated with the  
296 dealer's ability to establish or maintain the dealer's market in  
297 this state during the 12 months immediately before the  
298 rebuttable presumption arose. The evidence may consist of sworn  
299 affidavits, obtained and given in good faith, from each resident  
300 with whom the dealer has an agreement attesting that the  
301 resident did not engage in any solicitation in this state on the  
302 dealer's behalf during the 12-month period immediately before  
303 the rebuttable presumption arose.

304 (4) ~~(3)~~ Each ~~Every~~ dealer engaged in the business of making  
305 mail order sales is subject to the requirements of this chapter  
306 for cooperation of dealers in collection of taxes and in  
307 administration of this chapter, except that no fee shall be  
308 imposed upon such dealer for carrying out any required activity.

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309        (5)~~(4)~~ The department shall, with the consent of another  
310 jurisdiction of the United States whose cooperation is needed,  
311 enforce this chapter in that jurisdiction, ~~either~~ directly or,  
312 at the option of that jurisdiction, through its officers or  
313 employees.

314        (6)~~(5)~~ The tax required under this section to be collected  
315 and any amount unreturned to a purchaser that is not tax but was  
316 collected from the purchaser under the representation that it  
317 was tax constitute funds of the State of Florida from the moment  
318 of collection.

319        (7)~~(6)~~ Notwithstanding other provisions of law, a dealer  
320 who makes a mail order sale in this state is exempt from  
321 collecting and remitting any local option surtax on the sale,  
322 unless the dealer is located in a county that imposes a surtax  
323 within the meaning of s. 212.054(3)(a), the order is placed  
324 through the dealer's location in such county, and the property  
325 purchased is delivered into such county or into another county  
326 in this state that levies the surtax, in which case the  
327 provisions of s. 212.054(3)(a) are applicable.

328        (8)~~(7)~~ The department may establish by rule procedures for  
329 collecting the use tax from unregistered persons who but for  
330 their mail order purchases would not be required to remit sales  
331 or use tax directly to the department. The procedures may  
332 provide for waiver of registration and registration fees,  
333 provisions for irregular remittance of tax, elimination of the  
334 collection allowance, and nonapplication of local option  
335 surtaxes.

336        Section 5. Section 202.12001, Florida Statutes, is amended

337 to read:

338           202.12001 Combined rate for tax collected pursuant to ss.  
 339 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.  
 340 2010-149, Laws of Florida, the dealer of communication services  
 341 may collect a combined rate of 5.15 ~~6.8~~ percent comprised of 5  
 342 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and  
 343 203.01(1)(b)3., respectively, as long as the provider properly  
 344 reflects the tax collected with respect to the two provisions as  
 345 required in the return to the Department of Revenue.

346           Section 6. Section 203.001, Florida Statutes, is amended  
 347 to read:

348           203.001 Combined rate for tax collected pursuant to ss.  
 349 202.12(1)(a) and 203.01(1)(b).—In complying with ss. 1-3, ch.  
 350 2010-149, Laws of Florida, the dealer of communication services  
 351 may collect a combined rate of 5.15 ~~6.8~~ percent comprised of 5  
 352 ~~6.65~~ percent and 0.15 percent required by ss. 202.12(1)(a) and  
 353 203.01(1)(b)3., respectively, as long as the provider properly  
 354 reflects the tax collected with respect to the two provisions as  
 355 required in the return to the Department of Revenue.

356           Section 7. Except as otherwise expressly provided in this  
 357 act, this act shall take effect July 1, 2013.