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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 or from a dealer who receives the order in a  
7           foreign country; providing that certain persons who  
8           make mail order sales and who have a nexus with this  
9           state are subject to this state's power to levy and  
10          collect the sales and use tax when they engage in  
11          certain enumerated activities; specifying that certain  
12          dealers are not required to collect and remit sales  
13          and use tax unless certain circumstances exist;  
14          creating a rebuttable presumption that a dealer is  
15          subject to the state's power to levy and collect the  
16          sales or use tax under specified circumstances;  
17          specifying evidentiary proof that may be submitted to  
18          rebut the presumption; amending s. 212.06, F.S.;  
19          revising the definition of the term "dealer"; creating  
20          s. 212.0802, F.S.; creating an annual sales tax  
21          holiday; providing for determining the length of such  
22          sales tax holiday; providing for permanent reductions  
23          in the state tax rates imposed on sales, use, and  
24          other transactions under specified circumstances;  
25          requiring that the Department of Revenue develop a  
26          tracking system, in consultation with the Revenue  
27          Estimating Conference, to determine the amount of  
28          sales tax remitted by out-of-state dealers who would

29 otherwise not be required to collect and remit sales  
 30 taxes but for the amendments made by the act;  
 31 requiring the department to submit an annual report to  
 32 the Governor and Legislature; providing effective  
 33 dates.

34  
 35 Be It Enacted by the Legislature of the State of Florida:

36  
 37 Section 1. Section 212.0596, Florida Statutes, is amended  
 38 to read:

39 212.0596 Taxation of mail order sales.—

40 (1) For purposes of this chapter, a "mail order sale" is a  
 41 sale of tangible personal property, ordered by mail, the  
 42 Internet, or other means of communication, from a dealer who  
 43 receives the order in another state ~~of the United States,~~ or in  
 44 a commonwealth, territory, or other area under the jurisdiction  
 45 of the United States, or in a foreign country, and transports  
 46 the property or causes the property to be transported, whether  
 47 or not by mail, from any jurisdiction of the United States,  
 48 including this state, to a person in this state, including the  
 49 person who ordered the property.

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

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

56 (b) The dealer maintains retail establishments or offices

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57 | in this state, whether the mail order sales ~~thus~~ subject to  
58 | taxation by this state result from or are related in any other  
59 | way to the activities of such establishments or offices;

60 | (c) The dealer has agents or representatives in this state  
61 | who solicit business or transact business on behalf of the  
62 | dealer, whether the mail order sales ~~thus~~ subject to taxation by  
63 | this state result from or are related in any other way to such  
64 | solicitation or transaction of business, except that a printer  
65 | who mails or delivers for an out-of-state print purchaser  
66 | material the printer printed for it is ~~shall~~ not ~~be~~ deemed to be  
67 | the print purchaser's agent or representative for purposes of  
68 | this paragraph;

69 | (d) The property was delivered in this state in  
70 | fulfillment of a sales contract that was entered into in this  
71 | state, in accordance with applicable conflict of laws rules,  
72 | when a person in this state accepted an offer by ordering the  
73 | property;

74 | (e) The dealer, by purposefully or systematically  
75 | exploiting the market provided by this state by any media-  
76 | assisted, media-facilitated, or media-solicited means,  
77 | including, but not limited to, direct mail advertising,  
78 | unsolicited distribution of catalogs, computer-assisted  
79 | shopping, television, radio, or other electronic media, or  
80 | magazine or newspaper advertisements or other media, creates  
81 | nexus with this state;

82 | (f) Through compact or reciprocity with another  
83 | jurisdiction of the United States, that jurisdiction uses its  
84 | taxing power and its jurisdiction over the retailer in support

85 | of this state's taxing power;

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

88 | (h) The dealer is subject to service of process under s.  
89 | 48.181;

90 | (i) The dealer's mail order sales are subject to the power  
91 | of this state to tax sales or to require the dealer to collect  
92 | use taxes pursuant to federal law ~~under a statute or statutes of~~  
93 | ~~the United States;~~

94 | (j) The dealer owns real property or tangible personal  
95 | property that is physically in this state, except that a dealer  
96 | whose only property, ~~(including property owned by an affiliate,)~~  
97 | in this state is located at the premises of a printer with which  
98 | the vendor has contracted for printing, and is ~~either~~ a final  
99 | printed product, ~~or~~ property that ~~which~~ becomes a part of the  
100 | final printed product, or property from which the printed  
101 | product is produced, is not deemed to own such property for  
102 | purposes of this paragraph;

103 | (k) The dealer, while not having nexus with this state on  
104 | any of the bases described in paragraphs (a)-(j) or paragraph  
105 | (m) ~~(l)~~, is a corporation that is a member of an affiliated  
106 | group of corporations, as defined in s. 1504(a) of the Internal  
107 | Revenue Code, whose members are includable under s. 1504(b) of  
108 | the Internal Revenue Code and whose members are eligible to file  
109 | a consolidated tax return for federal corporate income tax  
110 | purposes and any parent or subsidiary corporation in the  
111 | affiliated group has nexus with this state on one or more of the  
112 | bases described in paragraphs (a)-(j) or paragraph (m) ~~(l)~~; ~~or~~

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113       (1) A person, other than a person acting in the capacity  
114 of a common carrier, has nexus with this state and:

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

117       2. Maintains an office, distribution facility, warehouse,  
118 storage place, or similar place of business in this state to  
119 facilitate the delivery of property or services sold by the  
120 dealer to the dealer's customers;

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

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

126       5. Facilitates the dealer's delivery of property to  
127 customers in this state by allowing the dealer's customers to  
128 pick up property sold by the dealer at an office, distribution  
129 facility, warehouse, storage place, or similar place of business  
130 maintained by the person in this state; or

131       6. Conducts any other activities in this state which are  
132 significantly associated with the dealer's ability to establish  
133 and maintain a market in this state for the dealer's sales; or

134       (m)-(l) The dealer or the dealer's activities have  
135 sufficient connection with or relationship to this state or its  
136 residents of some type other than those described in paragraphs  
137 (a)-(k) to create a nexus empowering this state to tax its mail  
138 order sales or to require the dealer to collect sales tax or  
139 accrue use tax.

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141 Notwithstanding any other provision of law, a dealer, other than  
142 a dealer described in paragraphs (g) and (i), is not required to  
143 collect and remit sales or use tax under this subsection unless  
144 the dealer has a physical presence in this state or the  
145 activities conducted in this state on the dealer's behalf are  
146 significantly associated with the dealer's ability to establish  
147 and maintain a market for sales in this state.

148 (3) (a) Notwithstanding this section or any other provision  
149 of law, there is a rebuttable presumption that every dealer, as  
150 defined in s. 212.06, who makes a mail order sale is also  
151 subject to the power of this state to levy and collect the tax  
152 imposed by this chapter if the dealer enters into an agreement  
153 with one or more persons in this state under which the person in  
154 this state, for a commission or other consideration, directly or  
155 indirectly refers potential customers, whether by a link on an  
156 Internet website, an in-person oral presentation, telemarketing,  
157 or otherwise, to the dealer, if the cumulative gross receipts  
158 from sales by the dealer to customers in this state who are  
159 referred to the dealer by all persons in this state having this  
160 type of an agreement with the dealer is in excess of \$10,000  
161 during the 12 months immediately before the rebuttable  
162 presumption arose.

163 (b) The presumption in paragraph (a) may be rebutted by  
164 the submission of evidence proving that the persons in this  
165 state with whom the dealer has an agreement did not engage in  
166 any activity within this state which was significantly  
167 associated with the dealer's ability to establish or maintain  
168 the dealer's market in this state during the 12 months

169 immediately before the rebuttable presumption arose. The  
 170 evidence may consist of sworn affidavits, obtained and given in  
 171 good faith, from each person in this state with whom the dealer  
 172 has an agreement attesting that he or she did not engage in any  
 173 solicitation in this state on the dealer's behalf during the  
 174 previous year.

175 (4)-(3) A ~~Every~~ dealer engaged in the business of making  
 176 mail order sales is subject to the requirements of this chapter  
 177 for cooperation of dealers in collection of taxes and in  
 178 administration of this chapter, except that a ~~no~~ fee may not  
 179 ~~shall~~ be imposed upon such dealer for carrying out any required  
 180 activity.

181 (5)-(4) The department shall, with the consent of another  
 182 jurisdiction of the United States whose cooperation is needed,  
 183 enforce this chapter in that jurisdiction, ~~either~~ directly or,  
 184 at the option of that jurisdiction, through its officers or  
 185 employees.

186 (6)-(5) The tax required under this section to be collected  
 187 and any amount unreturned to a purchaser which ~~that~~ is not tax  
 188 but was collected from the purchaser under the representation  
 189 that it was tax constitute funds of this ~~the state of Florida~~  
 190 from the moment of collection.

191 (7)-(6) Notwithstanding other provisions of law, a dealer  
 192 who makes a mail order sale in this state is exempt from  
 193 collecting and remitting any local option surtax on the sale,  
 194 unless the dealer is located in a county that imposes a surtax  
 195 within the meaning of s. 212.054(3)(a), the order is placed  
 196 through the dealer's location in such county, and the property

197 purchased is delivered into such county or into another county  
 198 in this state which ~~that~~ levies the surtax, in which case the  
 199 provisions of s. 212.054(3)(a) are applicable.

200 (8)~~(7)~~ The department may establish by rule procedures for  
 201 collecting the use tax from unregistered persons who but for  
 202 their mail order purchases would not be required to remit sales  
 203 or use tax directly to the department. The procedures may  
 204 provide for waiver of registration and registration fees,  
 205 provisions for irregular remittance of tax, elimination of the  
 206 collection allowance, and nonapplication of local option  
 207 surtaxes.

208 Section 2. Subsection (2) of section 212.06, Florida  
 209 Statutes, is amended to read:

210 212.06 Sales, storage, use tax; collectible from dealers;  
 211 "dealer" defined; dealers to collect from purchasers;  
 212 legislative intent as to scope of tax.—

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

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

218 ~~(b) The term "dealer" is further defined to mean every~~  
 219 ~~person, as used in this chapter, who~~ Imports, or causes to be  
 220 imported, tangible personal property from any state or foreign  
 221 country for sale at retail; for use, consumption, or  
 222 distribution; or for storage to be used or consumed in this  
 223 state.

224 ~~(c) The term "dealer" is further defined to mean every~~

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225 ~~person, as used in this chapter, who~~ Sells at retail or ~~who~~  
226 offers for sale at retail, or ~~who~~ has in his or her possession  
227 for sale at retail; ~~or~~ for use, consumption, or distribution; or  
228 for storage to be used or consumed in this state, tangible  
229 personal property ~~as defined herein~~, including a retailer who  
230 transacts a mail order sale.

231 (d) ~~The term "dealer" is further defined to mean any~~  
232 ~~person who~~ Has sold at retail; ~~or~~ used, ~~or~~ consumed, or  
233 distributed; or stored for use or consumption in this state,  
234 tangible personal property and ~~who~~ cannot prove that the tax  
235 levied by this chapter has been paid on the sale at retail, the  
236 use, the consumption, the distribution, or the storage of such  
237 tangible personal property. ~~However,~~ The term "~~dealer~~" does not  
238 include ~~mean~~ a person who is not a "dealer" as otherwise defined  
239 in ~~under the definition of any other paragraph of this~~  
240 subsection and whose only owned or leased property, ~~(including~~  
241 property owned or leased by an affiliate,~~)~~ in this state is  
242 located at the premises of a printer with which it has  
243 contracted for printing, ~~if such property consists of the final~~  
244 printed product, property which becomes a part of the final  
245 printed product, or property from which the printed product is  
246 produced.

247 (e) ~~The term "dealer" is further defined to mean any~~  
248 ~~person, as used in this chapter, who~~ Leases or rents tangible  
249 personal property, ~~as defined in this chapter,~~ for a  
250 consideration, permitting the use or possession of such property  
251 without transferring title thereto, except as expressly provided  
252 in this chapter ~~for to the contrary herein~~.

253           (f) ~~The term "dealer" is further defined to mean any~~  
 254 ~~person, as used in this chapter, who~~ Maintains or has within  
 255 this state, directly or by a subsidiary, an office, distributing  
 256 house, salesroom, or house, warehouse, or other place of  
 257 business, or uses within this state an office, distributing  
 258 house, salesroom, or house, warehouse, or other place of  
 259 business operated by any person other than a common carrier  
 260 acting in the capacity of a common carrier.

261           (g) ~~"Dealer" also means and includes every person who~~  
 262 Solicits business ~~either~~ by direct representatives, indirect  
 263 representatives, or manufacturers' agents within this state; ~~by~~  
 264 ~~distribution of catalogs or other advertising matter; or by any~~  
 265 ~~other means whatsoever,~~ and by reason thereof receives orders  
 266 for tangible personal property from consumers for use,  
 267 consumption, distribution, and storage for use or consumption in  
 268 the state.† Such dealer shall collect the tax imposed by this  
 269 chapter from the purchaser, and no action, ~~either~~ in law or in  
 270 equity, on a sale or transaction as provided by ~~the terms of~~  
 271 this chapter may be had in this state by ~~any~~ such dealer unless  
 272 it is affirmatively shown that the provisions of this chapter  
 273 have been fully complied with.

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

279           (i) Constitutes ~~"Dealer" also means and includes the state~~  
 280 or any, county, municipality, district ~~any political~~

281 ~~subdivision~~, agency, bureau, or department, or other state or  
 282 local governmental instrumentality.

283 (j) ~~The term "dealer" is further defined to mean any~~  
 284 ~~person who~~ Leases, or grants a license to use, occupy, or enter  
 285 upon, living quarters, sleeping or housekeeping accommodations  
 286 in hotels, apartment houses, roominghouses, tourist or trailer  
 287 camps, real property, space or spaces in parking lots or garages  
 288 for motor vehicles, docking or storage space or spaces for boats  
 289 in boat docks or marinas, or tie-down or storage space or spaces  
 290 for aircraft at airports. The term includes ~~"dealer" also means~~  
 291 any person who has leased, occupied, or used or was entitled to  
 292 use any living quarters, sleeping or housekeeping accommodations  
 293 in hotels, apartment houses, roominghouses, tourist or trailer  
 294 camps, real property, space or spaces in parking lots or garages  
 295 for motor vehicles, or docking or storage space or spaces for  
 296 boats in boat docks or marinas, or who has purchased  
 297 communication services or electric power or energy, and who  
 298 cannot prove that the tax levied by this chapter has been paid  
 299 to the vendor or lessor on ~~any~~ such transactions. The term  
 300 ~~"dealer"~~ does not include a ~~any~~ person who leases, lets, rents,  
 301 or grants a license to use, occupy, or enter upon any living  
 302 quarters, sleeping quarters, or housekeeping accommodations in  
 303 apartment houses, roominghouses, tourist camps, or trailer  
 304 camps, and who exclusively enters into a bona fide written  
 305 agreement for continuous residence for longer than 6 months ~~in~~  
 306 ~~duration~~ with a ~~any~~ person who leases, lets, rents, or is  
 307 granted a license to use such property.

308 (k) ~~"Dealer" also means any person who~~ Sells, provides, or

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309 performs a service taxable under this chapter. The term includes  
310 a "Dealer" also means any person who purchases, uses, or  
311 consumes a service taxable under this chapter who cannot prove  
312 that the tax levied by this chapter has been paid to the seller  
313 of the taxable service.

314 (1) ~~"Dealer" also means any person who~~ Solicits, offers,  
315 provides, enters into, issues, or delivers any service warranty  
316 taxable under this chapter, or ~~who~~ receives, on behalf of such a  
317 person, any consideration from a service warranty holder.

318 Section 3. Effective July 1, 2014, section 212.0802,  
319 Florida Statutes, is created to read:

320 212.0802 Annual sales tax holiday.—

321 (1) The tax levied under this chapter may not be collected  
322 during the period beginning at 12:01 a.m. on the first Friday in  
323 August and continuing for the number of days determined under  
324 subsection (3) on the sale of:

325 (a) Clothing, wallets, or bags, including handbags,  
326 backpacks, fanny packs, and diaper bags, but excluding  
327 briefcases, suitcases, and other garment bags, having a sales  
328 price of \$75 or less per item. As used in this paragraph, the  
329 term "clothing" means:

330 1. Any article of wearing apparel intended to be worn on  
331 or about the human body, excluding watches, watchbands, jewelry,  
332 umbrellas, and handkerchiefs; and

333 2. All footwear, excluding skis, swim fins, roller blades,  
334 and skates.

335 (b) School supplies having a sales price of \$15 or less  
336 per item. As used in this paragraph, the term "school supplies"

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337 means pens, pencils, erasers, crayons, notebooks, notebook  
338 filler paper, legal pads, binders, lunch boxes, construction  
339 paper, markers, folders, poster board, composition books, poster  
340 paper, scissors, cellophane tape, glue or paste, rulers,  
341 computer disks, protractors, compasses, and calculators.

342 (2) The tax exemptions provided in this section do not  
343 apply to sales within a theme park or entertainment complex as  
344 defined in s. 509.013(9), Florida Statutes, within a public  
345 lodging establishment as defined in s. 509.013(4), Florida  
346 Statutes, or within an airport as defined in s. 330.27(2),  
347 Florida Statutes.

348 (3) (a) As used in this subsection, the term "amount of tax  
349 reported by the department" means the amount of taxes imposed  
350 under this chapter, remitted in a 12-month period ending on  
351 April 30 immediately before the estimate required under  
352 paragraph (b) by dealers who would otherwise not be required to  
353 collect and remit taxes imposed under this chapter but for the  
354 revisions to s. 212.0596, that take effect February 1, 2014,  
355 pursuant to this act.

356 (b) On or before June 1 each year, the Revenue Estimating  
357 Conference shall estimate the number of days that the tax-free  
358 period authorized under this section must continue in order to  
359 reduce total tax collections under this chapter on the items  
360 subject to the tax-free period by an amount not less than the  
361 amount of tax reported by the department.

362 1. The Revenue Estimating Conference shall use the latest  
363 methodology employed before May 1, 2013, to estimate the revenue  
364 impacts of tax-free periods on the items listed in subsection

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365 (1).

366 2. Except as provided in subsection (4), the result of the  
367 estimate shall determine the number of days for the tax-free  
368 period provided in subsection (1).

369 (4) (a) If the number of days determined under subsection  
370 (3) is less than 3 days, then no tax-free period under this  
371 section may begin in the upcoming August, and the amount of tax  
372 used in the determination shall be retained unallocated in the  
373 General Revenue Fund for use in estimates under subsection (3)  
374 in subsequent years.

375 (b) If the number of days determined under subsection (3)  
376 exceeds 365 days, then, in lieu of the tax-free period provided  
377 in subsection (1), the state tax rates imposed under this  
378 chapter shall, effective on January 1 of the upcoming year, be  
379 reduced by multiplying each state tax rate by the difference  
380 between one and a ratio:

381 1. The numerator of which shall be the sum of the amount  
382 of tax as determined by the Department of Revenue and any  
383 additional amounts carried forward from previous years; and

384 2. The denominator of which shall be the sum of the state  
385 tax collections under this chapter forecasted by the Revenue  
386 Estimating Conference for the upcoming calendar year.

387 (c) Any tax rate reductions under paragraph (b) shall be  
388 permanent. After such tax rate reductions, future estimates made  
389 by the Revenue Estimating Conference for an upcoming fiscal year  
390 under subsection (3) shall decrease the amount of tax reported  
391 by the department by an amount equal to the reduction in state  
392 tax collections attributable to the tax rate reductions as

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393 estimated by the Revenue Estimating Conference for the upcoming  
394 fiscal year.

395 Section 4. (1) The Department of Revenue shall, in  
396 consultation with the Revenue Estimating Conference, determine  
397 the amount of taxes remitted by dealers who would otherwise not  
398 be required to collect and remit taxes imposed by chapter 212,  
399 Florida Statutes, but for the amendments made by this act to s.  
400 212.0596, Florida Statutes.

401 (2) By May 15, 2014, and by May 15 annually thereafter,  
402 the Department of Revenue shall report to the Governor, the  
403 President of the Senate, and the Speaker of the House of  
404 Representatives the amount of taxes determined pursuant to  
405 subsection (1) for the 12-month period ending on April 30  
406 immediately before the due date of the report and the tracking  
407 system used to determine such amount.

408 (3) The amount reported in subsection (2) shall be the  
409 same amount of tax that is reported by the Department of Revenue  
410 for use in making the estimate required in s. 212.0802(3),  
411 Florida Statutes.

412 Section 5. Except as otherwise expressly provided in this  
413 act and except for this section, which shall take effect upon  
414 this act becoming a law, this act shall take effect February 1,  
415 2014.