

By Senator Margolis

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

21
22 Be It Enacted by the Legislature of the State of Florida:

23
24 Section 1. Section 212.0596, Florida Statutes, is amended
25 to read:

26 212.0596 Taxation of mail order sales.—

27 (1) As used in ~~For purposes of~~ this chapter, the term a
28 "mail order sale" means ~~is~~ a sale of tangible personal property~~7~~
29 ordered by mail, Internet, or other means of communication~~7~~ from

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

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

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

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

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

56 ~~(d) The property was delivered in this state in fulfillment~~
57 ~~of a sales contract that was entered into in this state, in~~
58 ~~accordance with applicable conflict of laws rules, when a person~~

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59 ~~in this state accepted an offer by ordering the property;~~

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

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

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

74 ~~(h) The dealer is subject to service of process under s.~~
75 ~~48.181;~~

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

80 (f)(j) The dealer owns real property or tangible personal
81 property that is physically in this state, except that a dealer
82 whose only property in this state, ~~(including property owned by~~
83 ~~an affiliate,)~~ in this state is located at the premises of a
84 printer with which the vendor has contracted for printing, and
85 is ~~either~~ a final printed product, ~~or~~ property that ~~which~~
86 becomes a part of the final printed product, or property from
87 which the printed product is produced, is not deemed to own such

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88 property for purposes of this paragraph;

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

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

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

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

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

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

115 6. Conducts any other activities in this state which are
116 significantly associated with the dealer's ability to establish

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117 and maintain a market in this state for the dealer's sales on
118 one or more of the bases described in paragraphs (a)-(j) or
119 paragraph (l); or

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

126

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

133 (3) (a) Notwithstanding other provisions of law, there is
134 established a rebuttable presumption that every dealer as
135 defined in s. 212.06(2) who makes a mail order sale is also
136 subject to the power of this state to levy and collect the tax
137 imposed by this chapter if the dealer enters into an agreement
138 with one or more residents of this state under which the
139 resident, for a commission or other consideration, directly or
140 indirectly refers potential customers to the dealer, whether by
141 a link on an Internet website, an in-person oral presentation,
142 telemarketing, or otherwise, and if the cumulative gross
143 receipts from sales by the dealer to the customers in this state
144 who are referred to the dealer by all residents having this type
145 of an agreement with the dealer are more than \$10,000 during the

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146 12-month period immediately before the rebuttable presumption
147 arose.

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

160 (4)~~(3)~~ Each ~~Every~~ dealer engaged in the business of making
161 mail order sales is subject to the requirements of this chapter
162 for cooperation of dealers in collection of taxes and in
163 administration of this chapter, except that no fee shall be
164 imposed upon such dealer for carrying out any required activity.

165 (5)~~(4)~~ The department shall, with the consent of another
166 jurisdiction of the United States whose cooperation is needed,
167 enforce this chapter in that jurisdiction, ~~either~~ directly or,
168 at the option of that jurisdiction, through its officers or
169 employees.

170 (6)~~(5)~~ The tax required under this section to be collected
171 and any amount unreturned to a purchaser which ~~that~~ is not tax
172 but was collected from the purchaser under the representation
173 that it was tax constitute funds of the State of Florida from
174 the moment of collection.

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175 (7)~~(6)~~ Notwithstanding other provisions of law, a dealer
176 who makes a mail order sale in this state is exempt from
177 collecting and remitting any local option surtax on the sale,
178 unless the dealer is located in a county that imposes a surtax
179 within the meaning of s. 212.054(3)(a), the order is placed
180 through the dealer's location in such county, and the property
181 purchased is delivered into such county or into another county
182 in this state which ~~that~~ levies the surtax, in which case the
183 provisions of s. 212.054(3)(a) are applicable.

184 (8)~~(7)~~ The department may establish by rule procedures for
185 collecting the use tax from unregistered persons who but for
186 their mail order purchases would not be required to remit sales
187 or use tax directly to the department. The procedures may
188 provide for waiver of registration and registration fees,
189 provisions for irregular remittance of tax, elimination of the
190 collection allowance, and nonapplication of local option
191 surtaxes.

192 Section 2. This act shall take effect July 1, 2013.