

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~~

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.

140

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~~

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

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"

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

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

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.