

2012 -- H 7199

=====
LC00732
=====

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2012

—————
A N A C T

RELATING TO TAXATION - SALES AND USE TAXES

Introduced By: Representatives MacBeth, McLaughlin, Guthrie, Costa, and Phillips

Date Introduced: January 19, 2012

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-18-7, 44-18-8, 44-18-12, 44-18-15, 44-18-20, 44-18-21, 44-18-
2 22, 44-18-23, and 44-18-25 of the General Laws in Chapter 44-18 entitled "Sales and Use Taxes -
3 Liability and Computation" are hereby amended to read as follows:

4 **44-18-7. Sales defined.** -- "Sales" means and includes:

5 (1) Any transfer of title or possession, exchange, barter, lease, or rental, conditional or
6 otherwise, in any manner or by any means of tangible personal property for a consideration.

7 "Transfer of possession", "lease", or "rental" includes transactions found by the tax
8 administrator to be in lieu of a transfer of title, exchange, or barter.

9 (2) The producing, fabricating, processing, printing, or imprinting of tangible personal
10 property for a consideration for consumers who furnish either directly or indirectly the materials
11 used in the producing, fabricating, processing, printing, or imprinting.

12 (3) The furnishing and distributing of tangible personal property for a consideration by
13 social, athletic, and similar clubs and fraternal organizations to their members or others.

14 (4) The furnishing, preparing, or serving for consideration of food, meals, or drinks,
15 including any cover, minimum, entertainment, or other charge in connection therewith.

16 (5) A transaction whereby the possession of tangible personal property is transferred, but
17 the seller retains the title as security for the payment of the price.

18 (6) Any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate
19 commerce, of tangible personal property from the place where it is located for delivery to a point

1 in this state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental,
2 conditional or otherwise, in any manner or by any means whatsoever, of the property for a
3 consideration.

4 (7) A transfer for a consideration of the title or possession of tangible personal property,
5 which has been produced, fabricated, or printed to the special order of the customer, or any
6 publication.

7 (8) The furnishing and distributing of electricity, natural gas, artificial gas, steam,
8 refrigeration, and water.

9 (9) (i) The furnishing for consideration of intrastate, interstate and international
10 telecommunications service sourced in this state in accordance with subsections 44-18.1(15) and
11 (16) and all ancillary services, any maintenance services of telecommunication equipment other
12 than as provided for in subdivision 44-18-12(b)(ii). For the purposes of chapters 18 and 19 of his
13 title only, telecommunication service does not include service rendered using a prepaid telephone
14 calling arrangement.

15 (ii) Notwithstanding the provisions of paragraph (i) of this subdivision, in accordance
16 with the Mobile Telecommunications Sourcing Act (4 U.S.C. sections 116 -- 126), subject to the
17 specific exemptions described in 4 U.S.C. section 116(c), and the exemptions provided in
18 sections 44-18-8 and 44-18-12, mobile telecommunications services that are deemed to be
19 provided by the customer's home service provider are subject to tax under this chapter if the
20 customer's place of primary use is in this state regardless of where the mobile
21 telecommunications services originate, terminate or pass through. Mobile telecommunications
22 services provided to a customer, the charges for which are billed by or for the customer's home
23 service provider, shall be deemed to be provided by the customer's home service provider.

24 (10) The furnishing of service for transmission of messages by telegraph, cable, or radio
25 and the furnishing of community antenna television, subscription television, and cable television
26 services.

27 (11) The rental of living quarters in any hotel, rooming house, or tourist camp.

28 (12) The transfer for consideration of prepaid telephone calling arrangements and the
29 recharge of prepaid telephone calling arrangements sourced to this state in accordance with
30 sections 44-18.1-11 and 44-18.1-15. "Prepaid telephone calling arrangement" means and includes
31 prepaid calling service and prepaid wireless calling service.

32 ~~(13) The furnishing of package tour and scenic and sightseeing transportation services as~~
33 ~~set forth in the 2007 North American Industrial Classification System codes 561520 and 487~~
34 ~~provided that such services are conducted in the state, in whole or in part. Said services include~~

1 ~~all activities engaged in for other persons for a fee, retainer, commission, or other monetary~~
2 ~~charge, which activities involve the performance of a service as distinguished from selling~~
3 ~~property.~~

4 ~~(14)~~ (13) The sale, storage, use or other consumption of over-the-counter drugs as
5 defined in paragraph 44-18-7.1(h)(ii).

6 ~~(15)~~ (14) The sale, storage, use or other consumption of prewritten computer software
7 delivered electronically or by load and leave as defined in paragraph 44-18-7.1(v).

8 ~~(16)~~ (15) The sale, storage, use or other consumption of medical marijuana as defined in
9 section 21-28.6-3.

10 **44-18-8. Retail sale or sale at retail defined.** -- A "retail sale" or "sale at retail" means
11 any sale, lease or rentals of tangible personal property, or prewritten computer software delivered
12 electronically or by load and leave, ~~and/or package tour and scenic and sightseeing transportation~~
13 ~~services~~ for any purpose other than resale, sublease or subrent in the regular course of business.
14 The sale of tangible personal property to be used for purposes of rental in the regular course of
15 business is considered to be a sale for resale. In regard to telecommunications service as defined
16 in section 44-18-7(9), retail sale does not include the purchase of telecommunications service by
17 a telecommunications provider from another telecommunication provider for resale to the
18 ultimate consumer; provided, that the purchaser submits to the seller a certificate attesting to the
19 applicability of this exclusion, upon receipt of which the seller is relieved of any tax liability for
20 the sale.

21 **44-18-12. "Sale price" defined.** -- (a) "Sales price" applies to the measure subject to
22 sales tax and means the total amount of consideration, including cash, credit, property, and
23 services, for which personal property or services are sold, leased, or rented, valued in money,
24 whether received in money or otherwise, without any deduction for the following:

25 (i) The seller's cost of the property sold;

26 (ii) The cost of materials used, labor or service cost, interest, losses, all costs of
27 transportation to the seller, all taxes imposed on the seller, and any other expense of the seller;

28 (iii) Charges by the seller for any services necessary to complete the sale, other than
29 delivery and installation charges;

30 (iv) Delivery charges, as defined in section 44-18-7.1(i); or

31 (v) Credit for any trade-in, as determined by state law. ~~;~~

32 ~~(vi) The amount charged for package tour and scenic and sightseeing transportation~~
33 ~~services; or~~

34 (b) "Sales price" shall not include:

1 (i) Discounts, including cash, term, or coupons that are not reimbursed by a third party
2 that are allowed by a seller and taken by a purchaser on a sale;

3 (ii) The amount charged for labor or services, ~~except for package tours and scenic and~~
4 ~~sightseeing transportation services~~, rendered in installing or applying the property sold when the
5 charge is separately stated by the retailer to the purchaser; provided that in transactions subject to
6 the provisions of this chapter the retailer shall separately state such charge when requested by the
7 purchaser and, further, the failure to separately state such charge when requested may be
8 restrained in the same manner as other unlawful acts or practices prescribed in chapter 13.1 of
9 title 6.

10 (iii) Interest, financing, and carrying charges from credit extended on the sale of personal
11 property or services, if the amount is separately stated on the invoice, bill of sale or similar
12 document given to the purchaser; and

13 (iv) Any taxes legally imposed directly on the consumer that are separately stated on the
14 invoice, bill of sale or similar document given to the purchaser.

15 (v) Manufacturer rebates allowed on the sale of motor vehicles.

16 (c) "Sales price" shall include consideration received by the seller from third parties if:

17 (i) The seller actually receives consideration from a party other than the purchaser and the
18 consideration is directly related to a price reduction or discount on the sale;

19 (ii) The seller has an obligation to pass the price reduction or discount through to the
20 purchaser;

21 (iii) The amount of the consideration attributable to the sale is fixed and determinable by
22 the seller at the time of the sale of the item to the purchaser; and

23 (iv) One of the following criteria is met:

24 (A) The purchaser presents a coupon, certificate or other documentation to the seller to
25 claim a price reduction or discount where the coupon, certificate or documentation is authorized,
26 distributed or granted by a third party with the understanding that the third party will reimburse
27 any seller to whom the coupon, certificate or documentation is presented;

28 (B) The purchaser identifies himself or herself to the seller as a member of a group or
29 organization entitled to a price reduction or discount (a "preferred customer" card that is available
30 to any patron does not constitute membership in such a group), or

31 (C) The price reduction or discount is identified as a third party price reduction or
32 discount on the invoice received by the purchaser or on a coupon, certificate or other
33 documentation presented by the purchaser.

34 **44-18-15. "Retailer" defined.** -- (a) "Retailer" includes:

1 (1) Every person engaged in the business of making sales at retail, and prewritten
2 computer software delivered electronically or by load and leave, ~~and/or package tour and scenic~~
3 ~~and sightseeing transportation services~~, including sales at auction of tangible personal property
4 owned by the person or others.

5 (2) Every person making sales of tangible personal property; and/or prewritten computer
6 software delivered electronically or by load and leave, ~~and/or package tour and scenic and~~
7 ~~sightseeing transportation services~~, through an independent contractor or other representative, if
8 the retailer enters into an agreement with a resident of this state, under which the resident, for a
9 commission or other consideration, directly or indirectly refers potential customers, whether by a
10 link on an Internet website or otherwise, to the retailer, provided the cumulative gross receipts
11 from sales by the retailer to customers in the state who are referred to the retailer by all residents
12 with this type of an agreement with the retailer, is in excess of five thousand dollars (\$5,000)
13 during the preceding four (4) quarterly periods ending on the last day of March, June, September
14 and December. Such retailer shall be presumed to be soliciting business through such independent
15 contractor or other representative, which presumption may be rebutted by proof that the resident
16 with whom the retailer has an agreement did not engage in any solicitation in the state on behalf
17 of the retailer that would satisfy the nexus requirement of the United States Constitution during
18 such four (4) quarterly periods.

19 (3) Every person engaged in the business of making sales for storage, use, or other
20 consumption, or the business of making sales at auction of tangible personal property, and/or
21 prewritten computer software delivered electronically or by load and leave, ~~and/or package tour~~
22 ~~and scenic and sightseeing transportation services~~, owned by the person or others for storage, use,
23 or other consumption.

24 (4) A person conducting a horse race meeting with respect to horses, which are claimed
25 during the meeting.

26 (5) Every person engaged in the business of renting any living quarters in any hotel,
27 rooming house, or tourist camp.

28 (6) Every person maintaining a business within or outside of this state who engages in the
29 regular or systematic solicitation of sales of tangible personal property, or prewritten computer
30 software delivered electronically or by load and leave, ~~and/or package tour and scenic and~~
31 ~~sightseeing transportation services~~, in this state by means of:

32 (i) Advertising in newspapers, magazines, and other periodicals published in this state,
33 sold over the counter in this state or sold by subscription to residents of this state, billboards
34 located in this state, airborne advertising messages produced or transported in the airspace above

1 this state, display cards and posters on common carriers or any other means of public conveyance
2 incorporated or operated primarily in this state, brochures, catalogs, circulars, coupons,
3 pamphlets, samples, and similar advertising material mailed to, or distributed within this state to
4 residents of this state;

5 (ii) Telephone;

6 (iii) Computer assisted shopping networks; and

7 (iv) Television, radio or any other electronic media, which is intended to be broadcast to
8 consumers located in this state.

9 (b) When the tax administrator determines that it is necessary for the proper
10 administration of chapters 18 and 19 of this title to regard any salespersons, representatives,
11 truckers, peddlers, or canvassers as the agents of the dealers, distributors, supervisors, employers,
12 or persons under whom they operate or from whom they obtain the tangible personal property
13 sold by them, irrespective of whether they are making sales on their own behalf or on behalf of
14 the dealers, distributors, supervisors, or employers, the tax administrator may so regard them and
15 may regard the dealers, distributors, supervisors, or employers as retailers for purposes of
16 chapters 18 and 19 of this title.

17 **44-18-20. Use tax imposed.** -- (a) An excise tax is imposed on the storage, use, or other
18 consumption in this state of tangible personal property, or prewritten computer software delivered
19 electronically or by load and leave, ~~and/or package tour and scenic and sightseeing transportation~~
20 ~~services~~, including a motor vehicle, a boat, an airplane, or a trailer, purchased from any retailer at
21 the rate of six percent (6%) of the sale price of the property.

22 (b) An excise tax is imposed on the storage, use, or other consumption in this state of a
23 motor vehicle, a boat, an airplane, or a trailer purchased from other than a licensed motor vehicle
24 dealer or other than a retailer of boats, airplanes, or trailers respectively, at the rate of six percent
25 (6%) of the sale price of the motor vehicle, boat, airplane, or trailer.

26 (c) The word "trailer" as used in this section and in section 44-18-21 means and includes
27 those defined in section 31-1-5(a) -- (e) and also includes boat trailers, camping trailers, house
28 trailers, and mobile homes.

29 (d) Notwithstanding the provisions contained in this section and in section 44-18-21
30 relating to the imposition of a use tax and liability for this tax on certain casual sales, no tax is
31 payable in any casual sale:

32 (1) When the transferee or purchaser is the spouse, mother, father, brother, sister, or child
33 of the transferor or seller;

34 (2) When the transfer or sale is made in connection with the organization, reorganization,

1 dissolution, or partial liquidation of a business entity; provided:

2 (i) The last taxable sale, transfer, or use of the article being transferred or sold was
3 subjected to a tax imposed by this chapter;

4 (ii) The transferee is the business entity referred to or is a stockholder, owner, member, or
5 partner; and

6 (iii) Any gain or loss to the transferor is not recognized for income tax purposes under the
7 provisions of the federal income tax law and treasury regulations and rulings issued thereunder;

8 (3) When the sale or transfer is of a trailer, other than a camping trailer, of the type
9 ordinarily used for residential purposes and commonly known as a house trailer or as a mobile
10 home; or

11 (4) When the transferee or purchaser is exempt under the provisions of section 44-18-30
12 or other general law of this state or special act of the general assembly of this state.

13 (e) The term "casual" means a sale made by a person other than a retailer; provided, that
14 in the case of a sale of a motor vehicle, the term means a sale made by a person other than a
15 licensed motor vehicle dealer or an auctioneer at an auction sale. In no case is the tax imposed
16 under the provisions of subsections (a) and (b) of this section on the storage, use, or other
17 consumption in this state of a used motor vehicle less than the product obtained by multiplying
18 the amount of the retail dollar value at the time of purchase of the motor vehicle by the applicable
19 tax rate; provided, that where the amount of the sale price exceeds the amount of the retail dollar
20 value, the tax is based on the sale price. The tax administrator shall use as his or her guide the
21 retail dollar value as shown in the current issue of any nationally recognized used vehicle guide
22 for appraisal purposes in this state. On request within thirty (30) days by the taxpayer after
23 payment of the tax, if the tax administrator determines that the retail dollar value as stated in this
24 subsection is inequitable or unreasonable, he or she shall, after affording the taxpayer reasonable
25 opportunity to be heard, re-determine the tax.

26 (f) Every person making more than five (5) retail sales of tangible personal property or
27 prewritten computer software delivered electronically or by load and leave, ~~and/or package tour~~
28 ~~and scenic and sightseeing transportation services~~ during any twelve (12) month period, including
29 sales made in the capacity of assignee for the benefit of creditors or receiver or trustee in
30 bankruptcy, is considered a retailer within the provisions of this chapter.

31 (g) (1) "Casual sale" includes a sale of tangible personal property not held or used by a
32 seller in the course of activities for which the seller is required to hold a seller's permit or permits
33 or would be required to hold a seller's permit or permits if the activities were conducted in this
34 state; provided, that the sale is not one of a series of sales sufficient in number, scope, and

1 character (more than five (5) in any twelve (12) month period) to constitute an activity for which
2 the seller is required to hold a seller's permit or would be required to hold a seller's permit if the
3 activity were conducted in this state.

4 (2) Casual sales also include sales made at bazaars, fairs, picnics, or similar events by
5 nonprofit organizations, which are organized for charitable, educational, civic, religious, social,
6 recreational, fraternal, or literary purposes during two (2) events not to exceed a total of six (6)
7 days duration each calendar year. Each event requires the issuance of a permit by the division of
8 taxation. Where sales are made at events by a vendor, which holds a sales tax permit and is not a
9 nonprofit organization, the sales are in the regular course of business and are not exempt as casual
10 sales.

11 (h) The use tax imposed under this section for the period commencing July 1, 1990 is at
12 the rate of seven percent (7%). In recognition of the work being performed by the Streamlined
13 Sales and Use Tax Governing Board, upon any federal law which requires remote sellers to
14 collect and remit taxes, effective the first (1st) day of the first (1st) state fiscal quarter following
15 the change, the rate imposed under section 44-18-18 shall be six and one-half percent (6.5%).

16 **44-18-21. Liability for use tax.** -- (a) Every person storing, using, or consuming in this
17 state tangible personal property, including a motor vehicle, boat, airplane, or trailer, purchased
18 from a retailer, and a motor vehicle, boat, airplane, or trailer, purchased from other than a
19 licensed motor vehicle dealer or other than a retailer of boats, airplanes, or trailers respectively ;
20 or storing, using or consuming specified prewritten computer software delivered electronically ~~or~~
21 ~~by load and leave, and/or package tour and scenic and sightseeing transportation services~~ is liable
22 for the use tax. The person's liability is not extinguished until the tax has been paid to this state,
23 except that a receipt from a retailer engaging in business in this state or from a retailer who is
24 authorized by the tax administrator to collect the tax under rules and regulations that he or she
25 may prescribe, given to the purchaser pursuant to the provisions of section 44-18-22, is sufficient
26 to relieve the purchaser from further liability for the tax to which the receipt refers.

27 (b) Each person before obtaining an original or transferral registration for any article or
28 commodity in this state, which article or commodity is required to be licensed or registered in the
29 state, shall furnish satisfactory evidence to the tax administrator that any tax due under this
30 chapter with reference to the article or commodity has been paid, and for the purpose of effecting
31 compliance, the tax administrator, in addition to any other powers granted to him or her, may
32 invoke the provisions of section 31-3-4 in the case of a motor vehicle. The tax administrator,
33 when he or she deems it to be for the convenience of the general public, may authorize any
34 agency of the state concerned with the licensing or registering of these articles or commodities to

1 collect the use tax on any articles or commodities which the purchaser is required by this chapter
2 to pay before receiving an original or transferral registration. The general assembly shall annually
3 appropriate a sum that it deems necessary to carry out the purposes of this section.

4 Notwithstanding the provisions of sections 44-18-19, 44-18-22, and 44-18-24, the sales
5 or use tax on any motor vehicle and/or recreational vehicle requiring registration by the
6 administrator of the division of motor vehicles shall not be added by the retailer to the sale price
7 or charge but shall be paid directly by the purchaser to the tax administrator, or his or her
8 authorized deputy or agent as provided in this section.

9 (c) In cases involving total loss or destruction of a motor vehicle occurring within one
10 hundred twenty (120) days from the date of purchase and upon which the purchaser has paid the
11 use tax, the amount of the tax constitutes an overpayment. The amount of the overpayment may
12 be credited against the amount of use tax on any subsequent vehicle which the owner acquires to
13 replace the lost or destroyed vehicle or may be refunded, in whole or in part.

14 **44-18-22. Collection of use tax by retailer.** -- Every retailer engaging in business in this
15 state and making sales of tangible personal property or prewritten computer software delivered
16 electronically or by load and leave, for storage, use, or other consumption in this state, ~~and/or~~
17 ~~providing package tour and scenic and sightseeing transportation services,~~ not exempted under
18 this chapter shall, at the time of making the sales, or if the storage, use, or other consumption of
19 the tangible personal property, prewritten computer software delivered electronically or by load
20 and leave, ~~and/or providing package tour and scenic and sightseeing transportation services,~~ is not
21 then taxable under this chapter, at the time the storage, use, or other consumption becomes
22 taxable, collect the tax from the purchaser and give to the purchaser a receipt in the manner and
23 form prescribed by the tax administrator.

24 **44-18-23. "Engaging in business" defined.** -- As used in sections 44-18-21 and 44-18-
25 22 the term "engaging in business in this state" means the selling or delivering in this state, or any
26 activity in this state related to the selling or delivering in this state of tangible personal property
27 or prewritten computer software delivered electronically or by load and leave for storage, use, or
28 other consumption in this state, ~~as well as providing package tour and scenic and sightseeing~~
29 ~~transportation services.~~ This term includes, but is not limited to, the following acts or methods of
30 transacting business:

31 (1) Maintaining, occupying, or using in this state permanently or temporarily, directly or
32 indirectly or through a subsidiary, representative, or agent by whatever name called and whether
33 or not qualified to do business in this state, any office, place of distribution, sales or sample room
34 or place, warehouse or storage place, or other place of business;

1 (2) Having any subsidiary, representative, agent, salesperson, canvasser, or solicitor
2 permanently or temporarily, and whether or not the subsidiary, representative, or agent is
3 qualified to do business in this state, operate in this state for the purpose of selling, delivering, or
4 the taking of orders for any tangible personal property, or prewritten computer software delivered
5 electronically or by load and leave, ~~and/or package tour and scenic and sightseeing transportation~~
6 ~~services~~;

7 (3) The regular or systematic solicitation of sales of tangible personal property, or
8 prewritten computer software delivered electronically or by load and leave, ~~and/or package tour~~
9 ~~and scenic and sightseeing transportation services~~, in this state by means of:

10 (i) Advertising in newspapers, magazines, and other periodicals published in this state,
11 sold over the counter in this state or sold by subscription to residents of this state, billboards
12 located in this state, airborne advertising messages produced or transported in the air space above
13 this state, display cards and posters on common carriers or any other means of public conveyance
14 incorporated or operating primarily in this state, brochures, catalogs, circulars, coupons,
15 pamphlets, samples, and similar advertising material mailed to, or distributed within this state to
16 residents of this state;

17 (ii) Telephone;

18 (iii) Computer-assisted shopping networks; and

19 (iv) Television, radio or any other electronic media, which is intended to be broadcast to
20 consumers located in this state.

21 **44-18-25. Presumption that sale is for storage, use, or consumption -- Resale**
22 **certificate.** -- It is presumed that all gross receipts are subject to the sales tax, and that the use of
23 all tangible personal property, or prewritten computer software delivered electronically or by load
24 and leave, ~~and/or package tour and scenic and sightseeing transportation services~~ are subject to
25 the use tax, and that all tangible personal property, or prewritten computer software delivered
26 electronically or by load and leave, ~~and/or package tour and scenic and sightseeing transportation~~
27 ~~services~~ sold or in processing or intended for delivery or delivered in this state is sold or delivered
28 for storage, use, or other consumption in this state, until the contrary is established to the
29 satisfaction of the tax administrator. The burden of proving the contrary is upon the person who
30 makes the sale and the purchaser, unless the person who makes the sale takes from the purchaser
31 a certificate to the effect that the purchase was for resale. The certificate shall contain any
32 information and be in the form that the tax administrator may require.

33 SECTION 2. Section 44-19-7 of the General Laws in Chapter 44-19 entitled "Sales and
34 Use Taxes - Enforcement and Collection" is hereby amended to read as follows:

1 **44-19-7. Registration of retailers.** -- Every retailer selling tangible personal property or
2 prewritten computer software delivered electronically or by load and leave for storage, use, or
3 other consumption in this state ~~and/or package tour and scenic and sightseeing transportation~~
4 ~~services~~ or renting living quarters in any hotel, rooming house, or tourist camp in this state must
5 register with the tax administrator and give the name and address of all agents operating in this
6 state, the location of all distribution or sales houses or offices, or of any hotel, rooming house, or
7 tourist camp or other places of business in this state, and other information that the tax
8 administrator may require.

9 SECTION 3. This act shall take effect upon passage.

=====
LC00732
=====

EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION - SALES AND USE TAXES

- 1 This act would exempt package tour and scenic and sightseeing transportation services
- 2 from sales and use taxes.
- 3 This act would take effect upon passage.

=====
LC00732
=====