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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2013

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A N A C T

RELATING TO TAXATION - BUSINESS CORPORATION TAX

Introduced By: Representatives Costantino, Nunes, Trillo, Giarrusso, and Fellela

Date Introduced: February 27, 2013

Referred To: House Finance

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 44-11-1, 44-11-2, 44-11-2.1, 44-11-2.2, 44-11-3, 44-11-4, 44-11-  
2   5, 44-11-6, 44-11-7, 44-11-7.1, 44-11-8, 44-11-9, 44-11-10, 44-11-11, 44-11-11.1, 44-11-11.2,  
3   44-11-11.3, 44-11-12, 44-11-13, 44-11-14, 44-11-14.1, 44-11-14.2, 44-11-14.3, 44-11-14.4, 44-  
4   11-14.5, 44-11-14.6, 44-11-15, 44-11-19, 44-11-20, 44-11-21, 44-11-22, 44-11-23, 44-11-24, 44-  
5   11-25, 44-11-26, 44-11-27, 44-11-28, 44-11-29, 44-11-29.1, 44-11-30, 44-11-31, 44-11-32, 44-  
6   11-33, 44-11-34, 44-11-35, 44-11-36, 44-11-37, 44-11-38, 44-11-39, 44-11-40, 44-11-41, 44-11-  
7   43, 44-11-44 and 44-11-45 of the General Laws in Chapter 44-11 entitled "Business Corporation  
8   Tax" are hereby repealed.

9           ~~**44-11-1. Definitions.** --- For the purpose of this chapter:~~

10           ~~-(1) (a) "Captive REIT" means a corporation, trust or association:~~

11           ~~-(i) That is considered a real estate investment trust for the taxable year under section 856~~  
12 ~~of the Internal Revenue Code;~~

13           ~~-(ii) That is not regularly traded on an established securities market; and~~

14           ~~-(iii) More than fifty percent (50%) of the voting power or value of the beneficial interests~~  
15 ~~or shares of which at any time during the last half of the taxable year, is owned or controlled,~~  
16 ~~directly or indirectly, by a single entity that is subject to the provisions of Subchapter C of~~  
17 ~~Chapter 1 of the Internal Revenue Code; and~~

18           ~~-(b) "Captive REIT" does not include:~~

19           ~~-(i) A corporation, trust or association more than fifty percent (50%) of the voting power~~

1 ~~or value of the beneficial interests or shares of which, at any time during which the corporation,~~  
2 ~~trust or association satisfies item (1)(iii) of this subsection, is owned or controlled, directly or~~  
3 ~~indirectly, by:~~

4 ~~(A) A real estate investment trust other than a real estate investment trust described in~~  
5 ~~item (i) of this subsection; or~~

6 ~~(B) A person exempt from taxation under section 501(a) of the Internal Revenue Code;~~  
7 ~~or~~

8 ~~(C) A listed Australian Property Trust; and~~

9 ~~(ii) Subject to regulations that the tax administrator adopts, a real estate investment trust~~  
10 ~~that is intended to become regularly traded on an established securities market and that satisfies~~  
11 ~~the requirements of section 865(A)(5) and (6) of the Internal Revenue Code by reason of section~~  
12 ~~856(h)(2) of the Internal Revenue Code; and~~

13 ~~(c) For purposes of this section, the constructive ownership rules prescribed under~~  
14 ~~section 318(a) of the Internal Revenue Code, as modified by section 856(d)(5) of the Internal~~  
15 ~~Revenue Code, shall apply in determining the ownership of stock, assets or net profits of any~~  
16 ~~person.~~

17 ~~(2) "Corporation" means every corporation, joint stock company, or association,~~  
18 ~~wherever incorporated, a real estate investment trust, a regulated investment company, a personal~~  
19 ~~holding company registered under the Federal Investment Company Act of 1940, 15 U.S.C.~~  
20 ~~section 80a-1 et seq., and also a trustee or trustees conducting a business where interest or~~  
21 ~~ownership is evidenced by certificates or other written instruments, deriving any income from~~  
22 ~~sources within this state or engaging in any activities or transactions within this state for the~~  
23 ~~purpose of profit or gain, whether or not an office or place of business is maintained in this state,~~  
24 ~~or whether or not the income, activities, or transactions are connected with intrastate, interstate, or~~  
25 ~~foreign commerce, except:~~

26 ~~(i) State banks, mutual savings banks, federal savings banks, trust companies, national~~  
27 ~~banking associations, building and loan associations, credit unions, and loan and investment~~  
28 ~~companies;~~

29 ~~(ii) Public service corporations included in chapter 13 of this title, except as otherwise~~  
30 ~~provided in section 44-13-2.2;~~

31 ~~(iii) Insurance and surety companies;~~

32 ~~(iv) Corporations specified in section 7-6-4, incorporated hospitals, schools, colleges,~~  
33 ~~and other institutions of learning not organized for business purposes and not doing business for~~  
34 ~~profit and no part of the net earnings of which inures to the benefit of any private stockholder or~~

1 ~~individual, whether incorporated under any general law of this state or by any special act of the~~  
2 ~~general assembly of this state;~~

3 ~~(v) Fraternal beneficiary societies as set forth in section 27-25-1;~~

4 ~~(vi) Any corporation expressly exempt from taxation by charter;~~

5 ~~(vii) Corporations which together with all corporations under direct or indirect common~~  
6 ~~ownership that satisfies the other requirements of this paragraph employ not less than five (5)~~  
7 ~~full-time equivalent employees in the state; which maintain an office in the state; and activities~~  
8 ~~within the state which are confined to the maintenance and management of their intangible~~  
9 ~~investments or of the intangible investments of corporations or business trusts registered as~~  
10 ~~investment companies under the Investment Company Act of 1940, 15 U.S.C. section 80a-1 et~~  
11 ~~seq., and the collection and distribution of the income from those investments or from tangible~~  
12 ~~property physically located outside the state. For purposes of this paragraph, "intangible~~  
13 ~~investments" includes, without limitation, investments in stocks, bonds, notes, and other debt~~  
14 ~~obligations, including debt obligations of affiliated corporations, patents, patent applications,~~  
15 ~~trademarks, trade names, copyrights, and similar types of intangible assets.~~

16 ~~(3) "Fiscal year" means an accounting period of twelve (12) months ending on the last~~  
17 ~~day of any month other than December.~~

18 ~~(4) "Place of business" means a regular place of business, which, in turn, means any~~  
19 ~~bona fide office, other than a statutory office, factory, warehouse, or other space which is~~  
20 ~~regularly used by the taxpayer in carrying on its business. Where, as a regular course of business,~~  
21 ~~property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, the~~  
22 ~~warehouse is considered a regular place of business of the taxpayer and, where as a regular course~~  
23 ~~of business, raw material or partially furnished goods of a taxpayer are delivered to an~~  
24 ~~independent contractor to be converted, processed, finished, or improved and the finished goods~~  
25 ~~remain in the possession of the independent contractor until shipped to customers, the plant of the~~  
26 ~~independent contractor is considered a regular place of business of the taxpayer. The mere~~  
27 ~~consignment of goods by the taxpayer to an independent factor outside this state for sale at the~~  
28 ~~consignee's discretion does not constitute the taxpayer as having a regular place of business~~  
29 ~~outside this state.~~

30 ~~(5) "Taxable year" means the calendar year or the fiscal year ending during the calendar~~  
31 ~~year upon the basis of which the net income is computed under this chapter. "Taxable year"~~  
32 ~~means, in the case of a return made for a fractional part of a year under the provisions of this~~  
33 ~~chapter or under regulations prescribed by the tax administrator, the period for which the return is~~  
34 ~~made.~~

1 ~~(6) "Taxpayer" means and includes any corporation subject to the provisions of this~~  
2 ~~chapter.~~

3 ~~**44-11-2. Imposition of tax.** (a) Each corporation shall annually pay to the state a tax~~  
4 ~~equal to nine percent (9%) of net income, as defined in section 44-11-11, qualified in section 44-~~  
5 ~~11-12, and apportioned to this state as provided in sections 44-11-13—44-11-15, for the taxable~~  
6 ~~year.~~

7 ~~(b) A corporation shall pay the amount of any tax as computed in accordance with~~  
8 ~~subsection (a) of this section after deducting from "net income," as used in this section, fifty~~  
9 ~~percent (50%) of the excess of capital gains over capital losses realized during the taxable year, if~~  
10 ~~for the taxable year:~~

11 ~~(1) The corporation is engaged in buying, selling, dealing in, or holding securities on its~~  
12 ~~own behalf and not as a broker, underwriter, or distributor;~~

13 ~~(2) Its gross receipts derived from these activities during the taxable year amounted to at~~  
14 ~~least ninety percent (90%) of its total gross receipts derived from all of its activities during the~~  
15 ~~year. "Gross receipts" means all receipts, whether in the form of money, credits, or other valuable~~  
16 ~~consideration, received during the taxable year in connection with the conduct of the taxpayer's~~  
17 ~~activities.~~

18 ~~(c) A corporation shall not pay the amount of the tax computed on the basis of its net~~  
19 ~~income under subsection (a) of this section, but shall annually pay to the state a tax equal to ten~~  
20 ~~cents (\$.10) for each one hundred dollars (\$100) of gross income for the taxable year or a tax of~~  
21 ~~one hundred dollars (\$100), whichever tax shall be the greater, if for the taxable year the~~  
22 ~~corporation is either a "personal holding company" registered under the federal Investment~~  
23 ~~Company Act of 1940, 15 U.S.C. section 80a-1 et seq., "regulated investment company", or a~~  
24 ~~"real estate investment trust" as defined in the federal income tax law applicable to the taxable~~  
25 ~~year. "Gross income" means gross income as defined in the federal income tax law applicable to~~  
26 ~~the taxable year, plus:~~

27 ~~(1) Any interest not included in the federal gross income; minus~~

28 ~~(2) Interest on obligations of the United States or its possessions, and other interest~~  
29 ~~exempt from taxation by this state; and minus~~

30 ~~(3) Fifty percent (50%) of the excess of capital gains over capital losses realized during~~  
31 ~~the taxable year.~~

32 ~~(d) (1) A small business corporation having an election in effect under subchapter S, 26~~  
33 ~~U.S.C. section 1361 et seq., shall not be subject to the Rhode Island income tax on corporations,~~  
34 ~~except that the corporation shall be subject to the provisions of subsection (a), to the extent of the~~

1 ~~income that is subjected to federal tax under subchapter S.~~

2 ~~(2) The shareholders of the corporation who are residents of Rhode Island shall include~~  
3 ~~in their income their proportionate share of the corporation's federal taxable income.~~

4 ~~(3) [Deleted by P.L. 2004, ch. 595, art. 29, section 1.]~~

5 ~~(4) [Deleted by P.L. 2004, ch. 595, art. 29, section 1.]~~

6 ~~(e) Minimum tax. The tax imposed upon any corporation under this section shall not be~~  
7 ~~less than five hundred dollars (\$500).~~

8 ~~**44-11-2.1. Surtax.** Each corporation whose taxable year ends on or after March 31,~~  
9 ~~1991 and before January 1, 1994 shall annually pay to the state a surtax of 11% on the amount of~~  
10 ~~the tax computed under section 44-11-2. The surtax shall be added to the amount of the tax~~  
11 ~~computed under section 44-11-2 in computing the total tax due by the corporation for the taxable~~  
12 ~~year or years under this chapter. The estimated tax provisions of chapter 26 of this title shall~~  
13 ~~apply to the surtax.~~

14 ~~**44-11-2.2. Pass-Through Entities -- Definitions -- Withholding -- Returns.** (a)~~

15 ~~Definitions.~~

16 ~~(1) "Pass-through entity" means a corporation that for the applicable tax year is treated as~~  
17 ~~an S Corporation under IRC section 1362(a) [26 U.S.C. section 1362(a)] and a general~~  
18 ~~partnership, limited partnership, limited liability partnership, trust, or limited liability company~~  
19 ~~that for the applicable tax year is not taxed as a corporation for federal tax purposes under the~~  
20 ~~state's check-the-box regulation.~~

21 ~~(2) "Member" means an individual who is a shareholder of an S corporation; a partner in~~  
22 ~~a general partnership, a limited partnership, or a limited liability partnership; a member of a~~  
23 ~~limited liability company; or a beneficiary of a trust;~~

24 ~~(3) "Nonresident" means an individual who is not a resident of or domiciled in the state,~~  
25 ~~a business entity that does not have its commercial domicile in the state, and a trust not organized~~  
26 ~~in the state.~~

27 ~~(b) Withholding.~~

28 ~~(1) A pass-through entity shall withhold income tax at the highest Rhode Island~~  
29 ~~withholding tax rate provided for individuals or nine percent (9%) for corporations on the~~  
30 ~~member's share of income of the entity which is derived from or attributable to sources within~~  
31 ~~this state distributed to each nonresident member and pay the withheld amount in the manner~~  
32 ~~prescribed by the tax administrator. The pass-through entity shall be liable for the payment of the~~  
33 ~~tax required to be withheld under this section and shall not be liable to such member for the~~  
34 ~~amount withheld and paid over in compliance with this section. A member of a pass through~~

1 ~~entity that is itself a pass-through entity (a "lower tier pass-through entity") shall be subject to~~  
2 ~~this same requirement to withhold and pay over income tax on the share of income distributed by~~  
3 ~~the lower tier pass-through entity to each of its nonresident members. The tax administrator shall~~  
4 ~~apply tax withheld and paid over by a pass-through entity on distributions to a lower tier pass-~~  
5 ~~through entity to the withholding required of that lower tier pass-through entity.~~

6 ~~(2) A pass-through entity shall, at the time of payment made pursuant to this section,~~  
7 ~~deliver to the tax administrator a return upon a form prescribed by the tax administrator showing~~  
8 ~~the total amounts paid or credited to its nonresident members, the amount withheld in accordance~~  
9 ~~with this section, and any other information the tax administrator may require. A pass-through~~  
10 ~~entity shall furnish to its nonresident member annually, but not later than the fifteenth day of the~~  
11 ~~third month after the end of its taxable year, a record of the amount of tax withheld on behalf of~~  
12 ~~such member on a form prescribed by the tax administrator.~~

13 ~~(c) Notwithstanding subsection (b), a pass-through entity is not required to withhold tax~~  
14 ~~for a nonresident member if:~~

15 ~~(1) The member has a pro rata or distributive share of income of the pass-through entity~~  
16 ~~from doing business in, or deriving income from sources within, this State of less than \$1,000 per~~  
17 ~~annual accounting period;~~

18 ~~(2) The tax administrator has determined by regulation, ruling or instruction that the~~  
19 ~~member's income is not subject to withholding; or~~

20 ~~(3) The member elects to have the tax due paid as part of a composite return filed by the~~  
21 ~~pass-through entity under subsection (d); or~~

22 ~~(4) The entity is a publicly traded partnership as defined by Section 7704(b) of the~~  
23 ~~Internal Revenue Code (26 U.S.C. section 7704(b)) that is treated as a partnership for the~~  
24 ~~purposes of the Internal Revenue Code and that has agreed to file an annual information return~~  
25 ~~reporting the name, address, taxpayer identification number and other information requested by~~  
26 ~~the tax administrator of each unitholder with an income in the state in excess of \$500.~~

27 ~~(d) Composite return.~~

28 ~~(1) A pass-through entity may file a composite income tax return on behalf of electing~~  
29 ~~nonresident members reporting and paying income tax at the state's highest marginal rate on the~~  
30 ~~members' pro rata or distributive shares of income of the pass-through entity from doing business~~  
31 ~~in, or deriving income from sources within, this State.~~

32 ~~(2) A nonresident member whose only source of income within a state is from one or~~  
33 ~~more pass-through entities may elect to be included in a composite return filed pursuant to this~~  
34 ~~section.~~

1 ~~(3) A nonresident member that has been included in a composite return may file an~~  
2 ~~individual income tax return and shall receive credit for tax paid on the member's behalf by the~~  
3 ~~pass-through entity.~~

4 ~~**44-11-3. Filing of returns -- Due date.** -- A return in the form and containing the~~  
5 ~~information that the tax administrator may prescribe shall be filed with the tax administrator by~~  
6 ~~the taxpayer:~~

7 ~~(1) In case the taxable year of the taxpayer is the calendar year, on or before March 15 in~~  
8 ~~the year following the close of the taxable year; and~~

9 ~~(2) In case the taxable year of the taxpayer is a fiscal year, on or before the fifteenth~~  
10 ~~(15th) day of the third (3rd) month following the close of the fiscal year.~~

11 ~~**44-11-4. Returns of affiliated groups of corporations.** -- An affiliated group of~~  
12 ~~corporations may file a consolidated return for the taxable year in lieu of separate returns;~~  
13 ~~provided, that all the corporations which constitute the affiliated group at any time during the~~  
14 ~~period for which the return is made and which are subject to taxation under this chapter shall~~  
15 ~~consent to the making of the consolidated return. The tax administrator may prescribe rules and~~  
16 ~~regulations as he or she may deem necessary in order that the tax liability of any affiliated group~~  
17 ~~of corporations making a consolidated return and of each corporation in the group, liable to~~  
18 ~~taxation under this chapter, both during and after the period of affiliation, may be determined,~~  
19 ~~computed, assessed, collected, and adjusted in a manner as clearly to reflect the net income and~~  
20 ~~the corporate excess and to prevent avoidance of tax liability.~~

21 ~~**44-11-5. Extension of time for filing of returns.** -- The tax administrator may grant~~  
22 ~~reasonable extensions of time for filing returns under rules and regulations as he or she shall~~  
23 ~~prescribe.~~

24 ~~**44-11-6. Determination and payment of tax due -- Hearings and redeterminations.** --~~

25 ~~(a) At the time of the filing of the return, the taxpayer shall pay to the tax administrator the~~  
26 ~~amount of the tax as computed by it on the basis of its net income under section 44-11-2(a) or~~  
27 ~~other provision as applicable. As soon as possible after the filing of the return, the tax~~  
28 ~~administrator shall determine the correct tax payable under this chapter by the taxpayer, and if the~~  
29 ~~tax determined shall exceed the amount which the taxpayer has paid at the time of filing its~~  
30 ~~return, the tax administrator shall mail to the taxpayer a notice of the additional tax due indicating~~  
31 ~~the basis on which the tax was determined.~~

32 ~~(b) If any taxpayer is not satisfied with the amount of tax determined, the tax~~  
33 ~~administrator, upon being notified, in writing, within thirty (30) days from the date of the mailing~~  
34 ~~of the notice, shall fix an early date at his or her office when the taxpayer can be heard to show~~

1 ~~cause why the tax should be changed, and after which the tax administrator may redetermine the~~  
2 ~~amount of that tax.~~

3 ~~(c) If it shall appear subsequent to the mailing of any notice that the amount of the tax~~  
4 ~~was erroneously stated, the tax administrator shall mail a corrected notice and fix a day when the~~  
5 ~~taxpayer can be heard.~~

6 ~~(d) The additional tax required to be paid by any taxpayer shall be due and payable~~  
7 ~~within thirty (30) days after the mailing of the notice or corrected notice by the tax administrator.~~

8 ~~**44-11-7. Interest on delinquency payments.** If any tax imposed by this chapter is not~~  
9 ~~paid when due, a taxpayer shall be required to pay as part of the tax interest on the tax at the~~  
10 ~~annual rate provided by section 44-1-7 from that time.~~

11 ~~**44-11-7.1. Limitations on assessment.** (a) General. Except as provided in this section,~~  
12 ~~the amount of the Rhode Island corporate income tax shall be assessed within three (3) years after~~  
13 ~~the return was filed, whether or not the return was filed on or after the prescribed date. For this~~  
14 ~~purpose, a tax return filed before the due date shall be considered as filed on the due date.~~

15 ~~(b) Exceptions. (1) The tax may be assessed at any time if:~~

16 ~~(i) No return is filed.~~

17 ~~(ii) A false or fraudulent return is filed with intent to avoid tax.~~

18 ~~(2) Where, before the expiration of the time prescribed in this section for the assessment~~  
19 ~~of tax, or before the time as extended, both the tax administrator and the taxpayer have consented,~~  
20 ~~in writing, to its assessment after that time, the tax may be assessed at any time prior to the~~  
21 ~~expiration of the agreed upon period.~~

22 ~~(3) If a taxpayer's deficiency is attributable to an excessive net operating loss carryback~~  
23 ~~allowance, it may be assessed at any time that a deficiency for the taxable year of the loss may be~~  
24 ~~assessed.~~

25 ~~(4) An erroneous refund shall be considered to create an underpayment of tax on the date~~  
26 ~~made. An assessment of a deficiency arising out of an erroneous refund may be made at any time~~  
27 ~~within three (3) years thereafter, or at any time if it appears that any part of the refund was~~  
28 ~~induced by fraud or misrepresentation of a material fact.~~

29 ~~(c) Notwithstanding the provisions of this section, the tax may be assessed at any time~~  
30 ~~within six (6) years after the return was filed if a taxpayer omits from its Rhode Island income an~~  
31 ~~amount properly includable therein which is in excess of twenty five percent (25%) of the amount~~  
32 ~~of Rhode Island income stated in the return. For this purpose there shall not be taken into account~~  
33 ~~any amount which is omitted in the return if the amount is disclosed in the return, or in a~~  
34 ~~statement attached to the return, in a manner adequate to apprise the tax administrator of the~~



1 ~~nature and amount of the item.~~

2 ~~(d) The running of the period of limitations on assessment or collection of the tax or~~  
3 ~~other amount, or of a transferee's liability, shall, after the mailing of a notice of deficiency, be~~  
4 ~~suspended for any period during which the tax administrator is prohibited from making the~~  
5 ~~assessment or from collecting by levy, and for sixty (60) days thereafter.~~

6 ~~(e) No period of limitations specified in any other law shall apply to the assessment or~~  
7 ~~collection of Rhode Island corporate income tax.~~

8 ~~**44-11-8. Lien on real estate.** The amount of any tax, penalty, and interest charge~~  
9 ~~imposed upon any corporation under the provisions of this chapter shall, until collected,~~  
10 ~~constitute a lien upon the corporation's real estate located in this state, and this lien shall take~~  
11 ~~precedence over any other lien or encumbrance on the real estate.~~

12 ~~**44-11-9. Records, statements, and rules and regulations.** Each taxpayer shall keep~~  
13 ~~records, render statements, make returns, and comply with rules and regulations, not inconsistent~~  
14 ~~with law, as the tax administrator may from time to time prescribe to carry into effect the~~  
15 ~~provisions of this chapter.~~

16 ~~**44-11-10. Returns and statements required to show whether corporation liable.**~~  
17 ~~The tax administrator may, whenever in his or her judgment if it is necessary, require any~~  
18 ~~corporation, association, or organization, by notice served upon it, to make a return, render~~  
19 ~~statements, or keep records as the tax administrator deems sufficient to show whether or not the~~  
20 ~~corporation, association, or organization is liable for any tax under this chapter.~~

21 ~~**44-11-11. "Net income" defined.** (a) (1) "Net income" means, for any taxable year~~  
22 ~~and for any corporate taxpayer, the taxable income of the taxpayer for that taxable year under the~~  
23 ~~laws of the United States, plus:~~

24 ~~(i) Any interest not included in the taxable income;~~

25 ~~(ii) Any specific exemptions;~~

26 ~~(iii) For a captive REIT, an amount equal to the amount of the dividends paid deduction~~  
27 ~~allowed under the Internal Revenue Code for the taxable year;~~

28 ~~(iv) The tax imposed by this chapter;~~

29 ~~(v) Any deductions required to be added back to net income under the provisions of~~  
30 ~~paragraph (f) of this section, and minus~~

31 ~~(vi) Interest on obligations of the United States or its possessions, and other interest~~  
32 ~~exempt from taxation by this state; and~~

33 ~~(vii) The federal net operating loss deduction.~~

34 ~~(2) All binding federal elections made by or on behalf of the taxpayer applicable either~~

1 ~~directly or indirectly to the determination of taxable income shall be binding on the taxpayer~~  
2 ~~except where this chapter or its attendant regulations specifically modify or provide otherwise.~~  
3 ~~Rhode Island taxable income shall not include the "gross up of dividends" required by the federal~~  
4 ~~Internal Revenue Code to be taken into taxable income in connection with the taxpayer's election~~  
5 ~~of the foreign tax credit.~~

6 ~~(b) A net operating loss deduction shall be allowed which shall be the same as the net~~  
7 ~~operating loss deduction allowed under 26 U.S.C. section 172, except that:~~

8 ~~(1) Any net operating loss included in determining the deduction shall be adjusted to~~  
9 ~~reflect the inclusions and exclusions from entire net income required by subsection (a) of this~~  
10 ~~section and section 44-11-11.1;~~

11 ~~(2) The deduction shall not include any net operating loss sustained during any taxable~~  
12 ~~year in which the taxpayer was not subject to the tax imposed by this chapter; and~~

13 ~~(3) The deduction shall not exceed the deduction for the taxable year allowable under 26~~  
14 ~~U.S.C. section 172; provided, that the deduction for a taxable year may not be carried back to any~~  
15 ~~other taxable year for Rhode Island purposes but shall only be allowable on a carry forward basis~~  
16 ~~for the five (5) succeeding taxable years.~~

17 ~~(c) "Domestic international sales corporations" (referred to as DISCs), for the purposes~~  
18 ~~of this chapter, will be treated as they are under federal income tax law and shall not pay the~~  
19 ~~amount of the tax computed under section 44-11-2(a). Any income to shareholders of DISCs is to~~  
20 ~~be treated in the same manner as it is treated under federal income tax law as it exists on~~  
21 ~~December 31, 1984.~~

22 ~~(d) A corporation which qualifies as a "foreign sales corporation" (FSC) under the~~  
23 ~~provisions of subchapter N, 26 U.S.C. section 861 et seq., and which has in effect for the entire~~  
24 ~~taxable year a valid election under federal law to be treated as a FSC, shall not pay the amount of~~  
25 ~~the tax computed under section 44-11-2(a). Any income to shareholders of FSCs is to be treated~~  
26 ~~in the same manner as it is treated under federal income tax law as it exists on January 1, 1985.~~

27 ~~(e) As used in this section:~~

28 ~~(1) "Affiliated group" has the same meaning as in section 1504 of the Internal Revenue~~  
29 ~~Code.~~

30 ~~(2) "Intangible expenses and costs" includes: (A) expenses, losses and costs for, related~~  
31 ~~to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance~~  
32 ~~or management, ownership, sale, exchange, or any other disposition of intangible property to the~~  
33 ~~extent such amounts are allowed as deductions or costs in determining taxable income before~~  
34 ~~operating loss deduction and special deductions for the taxable year under the Internal Revenue~~

1 ~~Code; (B) losses related to or incurred in connection directly or indirectly with factoring~~  
2 ~~transactions or discounting transactions; (C) royalty, patent, technical and copyright fees; (D)~~  
3 ~~licensing fees; and (E) other similar expenses and costs.~~

4 ~~(3) "Intangible property" means patents, patent applications, trade names, trademarks,~~  
5 ~~service marks, copyrights and similar types of intangible assets.~~

6 ~~(4) "Interest expenses and costs" means amounts directly or indirectly allowed as~~  
7 ~~deductions under section 163 of the Internal Revenue Code for purposes of determining taxable~~  
8 ~~income under the Internal Revenue Code to the extent such expenses and costs are directly or~~  
9 ~~indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance,~~  
10 ~~management, ownership, sale, exchange or disposition of intangible property.~~

11 ~~(5) "Related member" means a person that, with respect to the taxpayer during all or any~~  
12 ~~portion of the taxable year, is a related entity, as defined in this subsection, a component member~~  
13 ~~as defined in section 1563(b) of the Internal Revenue Code, or is a person to or from whom there~~  
14 ~~is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue~~  
15 ~~Code.~~

16 ~~(6) "Related entity" means: (A) a stockholder who is an individual, or a member of the~~  
17 ~~stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder~~  
18 ~~and the members of the stockholder's family own directly, indirectly, beneficially or~~  
19 ~~constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's~~  
20 ~~outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company,~~  
21 ~~estate, trust or corporation, if the stockholder and the stockholder's partnership, limited liability~~  
22 ~~companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively,~~  
23 ~~in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or~~  
24 ~~(C) a corporation, or a party related to the corporation in a manner that would require an~~  
25 ~~attribution of stock from the corporation to the party or from the party to the corporation under~~  
26 ~~the attribution rules of section 318 of the Internal Revenue Code, if the taxpayer owns, directly,~~  
27 ~~indirectly, beneficially or constructively, at least fifty percent (50%) of the value of the~~  
28 ~~corporation's outstanding stock. The attribution rules on section 318 of the Internal Revenue Code~~  
29 ~~shall apply for purposes of determining whether the ownership requirements of this subdivision~~  
30 ~~have been met.~~

31 ~~(f) For purposes of computing its net income under this section, a corporation shall add~~  
32 ~~back otherwise deductible interest expenses and costs and intangible expenses and costs directly~~  
33 ~~or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more~~  
34 ~~direct or indirect transactions with, one or more related members.~~

1       ~~(1) The adjustments required in subsection (f) of this section shall not apply if the~~  
2 ~~corporation establishes by clear and convincing evidence that the adjustments are unreasonable,~~  
3 ~~as determined by the tax administrator or the corporation and the tax administrator agree in~~  
4 ~~writing to the application or use of an alternative method of apportionment under section 44-11-~~  
5 ~~15. Nothing in this subsection shall be construed to the limit or negate the tax administrator's~~  
6 ~~authority to otherwise enter into agreements and compromises otherwise allowed by law.~~

7       ~~(2) The adjustments required in subsection (f) of this section shall not apply to such~~  
8 ~~portion of interest expenses and costs and intangible expenses and costs that the corporation can~~  
9 ~~establish by the preponderance of the evidence meets both of the following: (A) the related~~  
10 ~~member during the same income year directly or indirectly paid, accrued or incurred such portion~~  
11 ~~to a person who is not a related member; and (B) the transaction giving rise to the interest~~  
12 ~~expenses and costs or the intangible expenses and costs between the corporation and the related~~  
13 ~~member did not have as a significant purpose the avoidance of any portion of the tax due under~~  
14 ~~chapter 44-11.~~

15       ~~(3) The adjustments required in subsection (f) shall not apply if the corporation~~  
16 ~~establishes by clear and convincing evidence, as determined by the tax administrator, that: (i) a~~  
17 ~~principal purpose of the transaction giving rise to the payment of interest was not to avoid~~  
18 ~~payment of taxes due under this chapter; (ii) the interest is paid pursuant to a contract that reflects~~  
19 ~~an arm's length rate of interest and terms; and (iii) (A) the related member was subject to tax on~~  
20 ~~its net income in this state or another state or possession of the United States or a foreign nation;~~  
21 ~~(B) a measure of said tax included the interest received from the taxpayer; and (C) the effective~~  
22 ~~rate of tax applied to the interest received by the related member is no less than the effective rate~~  
23 ~~of tax applied to the taxpayer under this chapter minus 3 percentage points.~~

24       ~~(4) Partial Adjustments.—The add back required in subsection (f) shall not be required in~~  
25 ~~part if a portion of the add back would be unreasonable. A portion of the add back will be~~  
26 ~~considered unreasonable to the extent that the taxpayer establishes to the tax administrator by~~  
27 ~~clear and convincing evidence that interest or intangible expense was paid, accrued or incurred to~~  
28 ~~a related member that is taxed on the corresponding income by a state, U.S. possession or foreign~~  
29 ~~jurisdiction. An adjustment to the add back will be allowed based on a factor determined by the~~  
30 ~~apportioned tax rate of the related member in the other jurisdiction compared to the apportioned~~  
31 ~~tax rate of the taxpayer in this state. A taxpayer that seeks to claim this adjustment must file a~~  
32 ~~schedule that sets forth the information required by the tax administrator.~~

33       ~~(g) Nothing in this section shall require a corporation to add to its net income more than~~  
34 ~~once any amount of interest expenses and costs or intangible expenses and costs that the~~

1 corporation pays, accrues or incurs to a related member described in subsection (b) of this  
2 section.

3 ~~(h) Any taxpayer required to make an adjustment required in subsection (f) for tax years~~  
4 ~~beginning on or after January 1, 2008, is additionally required to report to the tax administrator,~~  
5 ~~on forms required by him, the amount of any adjustments that would have been required if the~~  
6 ~~law applied to tax years beginning on or after January 1, 2007.~~

7 ~~(i) Nothing in this section shall be construed to limit or negate the tax administrator~~  
8 ~~authority to make adjustments under section 44-11-15.~~

9 ~~**44-11-11.1. Amortization of air or water pollution prevention or hazardous solid**~~

10 ~~**waste control facilities.**—(a) (1) General rule.—Every taxpayer, at his or her election, is entitled~~  
11 ~~to a deduction with respect to the amortization of the adjusted basis, for determining gain, of any~~  
12 ~~treatment facility, as defined in subsection (d) of this section, based on a period of sixty (60)~~  
13 ~~months. The amortization deduction shall be an amount, with respect to each month of the period~~  
14 ~~within the taxable year, equal to the adjusted basis of the facility at the end of the month divided~~  
15 ~~by the number of months, including the month for which the deduction is computed, remaining in~~  
16 ~~the period. The adjusted basis at the end of the month shall be computed without regard to the~~  
17 ~~amortization deduction for the month.~~

18 ~~(2) The amortization deduction with respect to any month shall be in lieu of the~~  
19 ~~depreciation deduction with respect to the facility for the month provided for under section 44-11-~~  
20 ~~11. The sixty (60) month period shall begin as to any prevention or treatment facility, at the~~  
21 ~~election of the taxpayer, with the month following the month in which the facility was completed,~~  
22 ~~or with the succeeding taxable year.~~

23 ~~(b) Election of amortization.—The election of the taxpayer under subsection (a) of this~~  
24 ~~section to take the amortization deduction and to begin the sixty (60) month period with the~~  
25 ~~month following the month in which the facility was completed shall be made only by a statement~~  
26 ~~to that effect in the return for the taxable year in which the facility was completed. The election of~~  
27 ~~the taxpayer under subsection (a) of this section to take the amortization deduction and to begin~~  
28 ~~the period with the taxable year succeeding the year shall be made only by a statement to that~~  
29 ~~effect in the return for the succeeding taxable year.~~

30 ~~(c) Termination of amortization deduction.—A taxpayer which has elected under~~  
31 ~~subsection (b) of this section to take the amortization deduction provided in subsection (a) of this~~  
32 ~~section may, at any time after making the election, discontinue the amortization deduction with~~  
33 ~~respect to the remainder of the amortization period, the discontinuance to begin as of the~~  
34 ~~beginning of any month specified by the taxpayer in a notice, in writing, filed with the tax~~

1 administrator before the beginning of the month. The depreciation deduction provided for under  
2 section 44-11-11 shall be allowed, beginning with the first month as to which the amortization  
3 deduction does not apply, and the taxpayer shall not be entitled to any further amortization  
4 deduction with respect to the treatment facility.

5 ~~(d) Treatment facility. For purposes of this section, "treatment facility" means any land,  
6 facility, device, building, machinery, or equipment, the construction, reconstruction, erection,  
7 installation, or acquisition of which: (1) is in furtherance of or in compliance with federal or state  
8 requirements or standards for the control of water or air pollution or contamination; (2) has been  
9 made by the taxpayer primarily to control the pollution or chapter 25 of title 23, respectively; and  
10 (3) has been certified as approved in an order contamination of the water or the air of the state as  
11 defined in chapter 12 of title 46 and entered by the director of environmental management. This  
12 provision applies only to water and air pollution control properties and facilities that are installed  
13 for the treatment of waste waters and air contaminants resulting from industrial processing. It  
14 applies only to water or air pollution control properties and facilities placed in operation for the  
15 first time after April 13, 1970.~~

16 ~~(e) Prevention facility. For purposes of this section, "prevention facility" means any  
17 land, facility, device, building, machinery, or equipment, the construction, reconstruction,  
18 erection, installation, or acquisition of which: (1) is in furtherance of or in compliance with  
19 federal or state requirements or standards for the prevention of water or air pollution or  
20 contamination; (2) has been made by the taxpayer primarily to prevent the pollution or  
21 contamination of the water or the air of the state as defined in chapter 12 of title 46 and chapter  
22 25 of title 23, respectively; and (3) has been certified as approved by the director of  
23 environmental management. This provision applies only to water and air pollution prevention  
24 properties and facilities that are installed for the prevention of wastewaters, air contaminants, and  
25 hazardous solid wastes resulting from industrial processing. The prevention facility amortization  
26 deduction shall be available prospectively on July 13, 2000.~~

27 ~~(f) Certificate of compliance. Any taxpayer who has adopted a "treatment facility" as  
28 defined in subsection (d) of this section shall be entitled to the deduction afforded in subsection  
29 (a) of this section; provided, that in no event shall an amortization deduction be allowed in  
30 respect to any "treatment facility" for any taxable year unless an attested copy of the order of  
31 approval of the facility entered by the director of environmental management and a written  
32 statement of the department certifying that the installation of the facility has been completed and  
33 that it is in proper operation are provided to the tax administrator at the time of filing of the  
34 taxpayer's return.~~

1 ~~(g) Deduction from apportioned net income. — The deduction taken under subsection (a)~~  
2 ~~of this section on any treatment facility shall, in the case of a taxpayer whose income is subject to~~  
3 ~~apportionment under the provisions of section 44-11-14, be deducted from the portion of its entire~~  
4 ~~net income allocated to this state; provided, that its entire net income is computed without any~~  
5 ~~deduction for depreciation or amortization of any facility.~~

6 ~~(h) Amortization not to exceed cost. — The total of all deductions for depreciation and~~  
7 ~~amortization of any treatment facility allowed pursuant to the provisions of this and the~~  
8 ~~succeeding section shall not exceed its cost.~~

9 ~~(i) Amortization in excess of depreciation. — Gain from the sale or exchange of any~~  
10 ~~treatment facility which has been sold or exchanged by a taxpayer which has been constructed,~~  
11 ~~reconstructed, erected, installed, or acquired the facility as provided under subsection (f) of this~~  
12 ~~section and has taken the deduction provided by subsection (a) of this section, to the extent that~~  
13 ~~the adjusted basis of the facility is less than its adjusted basis determined by the method provided~~  
14 ~~for under section 44-11-11, shall be considered additional net income. In the case of a taxpayer~~  
15 ~~whose net income is subject to apportionment under the provisions of section 44-11-14, the~~  
16 ~~additional net income shall be specifically allocated to this state and is not subject to~~  
17 ~~apportionment.~~

18 ~~**44-11-11.2. Definition of "treatment facility".** — For the purpose of section 44-11-~~  
19 ~~11.1(a) and (h), "treatment facility" also means any tangible personal property exempt from~~  
20 ~~taxation under section 44-3-3(26).~~

21 ~~**44-11-11.3. Accelerated amortization deductions for certain manufacturers.** — (a)~~  
22 ~~Any taxpayer engaged in manufacturing activities in Rhode Island that has on the average over~~  
23 ~~the five (5) previous years annually produced goods at facilities located in Rhode Island which~~  
24 ~~generate net sales of at least ten million dollars (\$10,000,000) and where on the average at least~~  
25 ~~eighty percent (80%) of that production has been for eventual sale to a branch of the United~~  
26 ~~States armed services may, if it represents that it anticipates the need to reduce its reliance on the~~  
27 ~~sales, elect to amortize the unrecovered basis of all or a portion of its depreciable assets over a~~  
28 ~~sixty (60) month period in equal monthly installments. This election shall be effective as of the~~  
29 ~~first day of the fiscal year of the taxpayer in which the election is made and shall apply only to~~  
30 ~~assets located in this state as of the effective date of the election. In the event any asset covered~~  
31 ~~by this election is sold or disposed of during the sixty (60) month period following the effective~~  
32 ~~date of the election, or if the asset is transferred to another location outside of Rhode Island and is~~  
33 ~~not replaced at a location in this state by an asset of at least equal value and with a similar~~  
34 ~~function, all deductions claimed with respect to the property under this section shall be~~

1 ~~immediately included in the taxpayer's income for Rhode Island income tax purposes in the year~~  
2 ~~of the sale, disposition, or transfer.~~

3 ~~(b) If in any year during the five (5) year period following the effective date of the~~  
4 ~~election, the average annual level of its full time employees in this state drops below one~~  
5 ~~thousand (1,000), the company shall recapture twenty percent (20%) of any benefit resulting from~~  
6 ~~the election for each decrease of one hundred (100) full time employees below the level up to a~~  
7 ~~maximum of one hundred percent (100%) of the benefit.~~

8 ~~**44-11-12. Dividends and interest excluded from net income.** --- There shall not be~~  
9 ~~included in a taxpayer's net income:~~

10 ~~(1) Dividends received from the shares of stock of:~~

11 ~~(i) Any banking institution liable to a tax under chapter 14 of this title; or~~

12 ~~(ii) Any corporation liable to a tax imposed by this chapter; or~~

13 ~~(2) Dividends received from the shares of stock of, or interest received on, the bonds,~~  
14 ~~debentures, or other evidences of indebtedness or the distributive share of the taxable income of~~  
15 ~~any public service corporation or company liable to a tax imposed by chapter 13 of this title.~~

16 ~~**44-11-13. Entire net income of business wholly within state.** --- In the case of a~~  
17 ~~taxpayer deriving all its income from sources within this state or engaging in activities or~~  
18 ~~transactions wholly within this state for the purpose of profit or gain, or where the taxpayer does~~  
19 ~~not have a regular place of business outside this state other than a statutory office, its entire net~~  
20 ~~income shall be apportioned to this state.~~

21 ~~**44-11-14. Allocation of income from business partially within state.** --- (a) In the case~~  
22 ~~of a taxpayer deriving its income from sources both within and outside of this state or engaging in~~  
23 ~~any activities or transactions both within and outside of this state for the purpose of profit or gain,~~  
24 ~~its net income shall be apportioned to this state by means of an allocation fraction to be computed~~  
25 ~~as a simple arithmetical mean of three (3) fractions:~~

26 ~~(1) The first of these fractions shall represent that part held or owned within this state of~~  
27 ~~the average net book value of the total tangible property (real estate and tangible personal~~  
28 ~~property) held or owned by the taxpayer during the taxable year, without deduction on account of~~  
29 ~~any encumbrance thereon;~~

30 ~~(2) The second fraction shall represent that part of the taxpayer's total receipts from sales~~  
31 ~~or other sources during the taxable year which is attributable to the taxpayer's activities or~~  
32 ~~transactions within this state during the taxable year; meaning and including within that part, as~~  
33 ~~being thus attributable, receipts from:~~

34 ~~(i) Gross sales of its tangible personal property (inventory sold in the ordinary course of~~



1 business) where:

2 ~~(A) Shipments are made to points within this state; or~~

3 ~~(B) Shipments are made from an office, store, warehouse, factory or other place of~~

4 ~~storage in this state and the taxpayer is not taxable in the state of the purchase.~~

5 ~~(ii) Gross income from services performed within the state;~~

6 ~~(iii) Gross income from rentals from property situated within the state;~~

7 ~~(iv) Net income from the sale of real and personal property, other than inventory sold in~~

8 ~~the ordinary course of business as described in paragraph (i) of this subdivision, or other capital~~

9 ~~assets located in the state;~~

10 ~~(v) Net income from the sale or other disposition of securities or financial obligations;~~

11 and

12 ~~(vi) Gross income from all other receipts within the state;~~

13 ~~(3) The third fraction shall represent that part of the total wages, salaries, and other~~

14 ~~compensation to officers, employees, and agents paid or incurred by the taxpayer during the~~

15 ~~taxable year which is attributable to services performed in connection with the taxpayer's~~

16 ~~activities or transactions within this state during the taxable year.~~

17 ~~(b) Notwithstanding any of the provisions of this section, revenue and expenses subject~~

18 ~~to the gross earnings tax pursuant to chapter 13 of this title shall not be included in the calculation~~

19 ~~described in this section.~~

20 ~~**44-11-14.1. Certified facility apportionment exclusion.** (a) In the event that the~~

21 ~~taxpayer has a Rhode Island facility which is both certified and registered by the United States~~

22 ~~Food and Drug Administration (USFDA) and is considered manufacturing as defined by the US~~

23 ~~Standard Industrial Classification Code(s)(SIC Code) 283, and 384, the taxpayer may exclude~~

24 ~~from the allocation formula set forth in section 44-11-14:~~

25 ~~(1) From the numerator of the fraction set forth in section 44-11-14(a)(1), the amount, if~~

26 ~~any, by which the net book value of qualified property in the tax year for which an exclusion is~~

27 ~~claimed under this section exceeds the net book value of qualified property in the preceding tax~~

28 ~~year. For purposes of this section, "qualified property" means real estate and tangible personal~~

29 ~~property used solely and exclusively in all of the taxpayer's certified Rhode Island facilities.~~

30 ~~(2) From the numerator of the fraction set forth in section 44-11-14(a)(3), the amount, if~~

31 ~~any, by which total qualified payroll expenses of the taxpayer in the tax year for which an~~

32 ~~exclusion is claimed under this section exceeds the total qualified payroll expenses of the~~

33 ~~taxpayer in the immediately preceding tax year. For purposes of this section, "qualified payroll"~~

34 ~~means the total amount of salaries, wages and other compensation paid to employees and to~~

1 officers, except officers who have a direct or indirect ownership interest in the taxpayer in excess  
2 of five percent (5%) or who are substantial creditors of the taxpayer, which is attributable solely  
3 and exclusively to services performed in connection with the taxpayer's activities or transactions  
4 at all of the taxpayer's certified Rhode Island facilities.

5 ~~(b) In the event that a facility is certified during the taxpayer's tax year or in the event  
6 that a facility ceases to be certified during the taxpayer's tax year, the taxpayer shall prorate the  
7 amounts determined under subdivisions (a)(1) and (2) of this section.~~

8 ~~(c) The taxpayer shall attach to the return for each tax year for which an exclusion is  
9 claimed under this section detailed calculations substantiating each exclusion and proof that the  
10 taxpayer has satisfied the conditions relating to registration and certification by USFDA  
11 contained in this section.~~

12 ~~**44-11-14.2. Allocation and apportionment of regulated investment companies and**  
13 **securities brokerage services.**~~

14 ~~(a) Notwithstanding any other provisions of the general laws,  
15 any taxpayer located within the state which sells management, distribution or administration  
16 services (including without limitations, transfer agent, fund accounting, custody and other similar  
17 or related services) as described in this section to or on behalf of a regulated investment company  
18 (as defined in the Internal Revenue Code of 1986, as amended) may elect the allocation and  
19 apportionment method for the taxpayer's net income provided for in this section. The election, if  
20 made, shall be irrevocable for successive periods of five (5) years. All net income derived directly  
21 or indirectly from the sale of management, distribution, or administration services to or on behalf  
22 of regulated investment companies, including net income received directly or indirectly from  
23 trustees, and sponsors or participants of employee benefit plans which have accounts in a  
24 regulated investment company, shall be apportioned to Rhode Island only to the extent that  
25 shareholders of the regulated investment company are domiciled in Rhode Island as follows:~~

26 ~~(1) Net income shall be multiplied by a fraction, the numerator of which shall be Rhode  
27 Island receipts from the services during the taxable year and the denominator of which shall be  
28 the total receipts everywhere from the services for the same taxable year.~~

29 ~~(2) For purposes of this section, Rhode Island receipts shall be determined by  
30 multiplying total receipts for the taxable year from each separate regulated investment company  
31 for which the services are performed by a fraction. The numerator of the fraction shall be the  
32 average of the number of shares owned by the regulated investment company's shareholders  
33 domiciled in this state at the beginning of and at the end of the regulated investment company's  
34 taxable year, and the denominator of the fraction shall be the average of the number of the shares  
35 owned by the regulated investment company shareholders everywhere at the beginning of and at~~

1 ~~the end of the regulated investment company's taxable year.~~

2 ~~(b) Notwithstanding any other provisions of the general laws, any taxpayer which~~  
3 ~~provides securities brokerage services and which operates within the state may elect the~~  
4 ~~allocation and apportionment method for the taxpayer's net income provided for in this section.~~  
5 ~~The election, if made, shall be irrevocable for successive periods of five (5) years. All net income~~  
6 ~~derived directly or indirectly from the sale of securities brokerage services by a taxpayer shall be~~  
7 ~~apportioned to Rhode Island only to the extent that securities brokerage customers of the taxpayer~~  
8 ~~are domiciled in Rhode Island. The portion of net income apportioned to Rhode Island shall be~~  
9 ~~determined by multiplying the total net income from the sale of the services by a fraction~~  
10 ~~determined in the following manner:~~

11 ~~(1) The numerator of the fraction shall be the brokerage commissions and total margin~~  
12 ~~interest paid in respect of brokerage accounts owned by customers domiciled in Rhode Island for~~  
13 ~~the taxpayer's taxable year; and~~

14 ~~(2) The denominator of the fraction shall be the brokerage commissions and total margin~~  
15 ~~interest paid in respect of brokerage accounts owned by all of the taxpayer's customers for the~~  
16 ~~same taxable year.~~

17 ~~**44-11-14.3. Credit card banks -- Allocation and apportionment of income.**~~

18 ~~Notwithstanding any other provisions of the general laws, any banking institution whose business~~  
19 ~~activities are taxable within and outside of this state and whose activities are limited to those~~  
20 ~~described in Section 2(c)(2)(F) of the Bank Holding Company Act (12 U.S.C. section~~  
21 ~~1841(c)(2)(F)) may elect the allocation and apportionment method for the taxpayer's net income~~  
22 ~~provided for in this section. The election, if made, shall be irrevocable for successive periods of~~  
23 ~~five (5) years. All net income derived directly or indirectly from the banking institution shall be~~  
24 ~~apportioned to Rhode Island only to the extent that customers of the taxpayer are domiciled in~~  
25 ~~Rhode Island. The portion of net income apportioned to Rhode Island shall be determined by~~  
26 ~~multiplying the total net income from the sale of the services by a fraction determined in the~~  
27 ~~following manner:~~

28 ~~(1) The numerator of the fraction shall be the income derived from accounts owned by~~  
29 ~~customers domiciled in Rhode Island for the banking institution's taxable year; and~~

30 ~~(2) The denominator of the fraction shall be income derived from accounts owned by all~~  
31 ~~of the banking institution's customers for the same taxable year.~~

32 ~~**44-11-14.4. Allocation and apportionment -- Retirement and pension plans.**~~

33 ~~Notwithstanding any provisions of this chapter, any taxpayer located within the state that sells~~  
34 ~~management, distribution or administration services, including without limitations, transfer agent,~~

1 ~~fund accounting, custody and other similar or related services, as described in this section to or on~~  
2 ~~behalf of an employee retirement plan or pension plan may elect the allocation and apportionment~~  
3 ~~method for the taxpayer's net income provided for in this section. The election, if made, shall be~~  
4 ~~irrevocable for successive periods of five (5) years. All net income derived directly and indirectly~~  
5 ~~from the sale of the management, distribution, or administration services to or on behalf of a~~  
6 ~~retirement plan or pension plan, including net income received directly or indirectly from~~  
7 ~~trustees, sponsors or participants of such a retirement plan or pension plan, shall be apportioned~~  
8 ~~to Rhode Island only to the extent that the beneficiaries or participants of a retirement plan or~~  
9 ~~pension plan are domiciled in Rhode Island as follows:~~

10 ~~(1) Net income shall be multiplied by a fraction, the numerator of which shall be Rhode~~  
11 ~~Island receipts from the services during the taxable year and the denominator of which shall be~~  
12 ~~the total receipts everywhere from the services for the same taxable year.~~

13 ~~(2) For the purposes of this section, Rhode Island receipts shall be determined by~~  
14 ~~multiplying total receipts for the taxable year from a retirement plan or pension plan for which the~~  
15 ~~services are performed by a fraction. The numerator of the fraction shall be the average of the~~  
16 ~~number of total beneficiaries or participants of each retirement plan or pension plan domiciled in~~  
17 ~~this state at the beginning of and at the end of taxable year of the taxpayer, and the denominator~~  
18 ~~of the fraction shall be the average of the number of total beneficiaries or participants of the~~  
19 ~~retirement plan or pension plan everywhere at the beginning of and at the end of each taxable~~  
20 ~~year of the taxpayer.~~

21 ~~**44-11-14.5. International investment management service income.** (a)~~  
22 ~~Notwithstanding any other provisions of the general laws, any qualified taxpayer located within~~  
23 ~~the state which sells international investment management services to non-U.S. persons or non-~~  
24 ~~U.S. investment funds shall exclude from its net income any income derived directly or indirectly~~  
25 ~~from the sale of international investment management services.~~

26 ~~(b) For purposes of this section, "non-U.S. persons" means any person who is not a~~  
27 ~~citizen of the United States and who is domiciled outside of the United States during the entire~~  
28 ~~taxable year; "non-U.S. investment funds" means any collective investment fund the sole~~  
29 ~~beneficiaries of which are non-U.S. persons.~~

30 ~~(c) For purposes of this section, "international investment management services" shall~~  
31 ~~include, without limitation, investment advice, investment research, investment consulting,~~  
32 ~~portfolio management, administration or distribution services (including, without limitation,~~  
33 ~~transfer agent, fund accounting, customary and other similar or related services) rendered to or on~~  
34 ~~behalf of non-U.S. persons and non-U.S. investment funds.~~

1 ~~(d) For purposes of this section, a "qualified taxpayer" is one which during the taxable~~  
2 ~~year employs, or together with affiliated taxpayers with which it is eligible to file a consolidated~~  
3 ~~tax return for federal income tax purposes, an average of not less than five hundred (500) full-~~  
4 ~~time equivalent employees in the state.~~

5 ~~**44-11-14.6. Allocation and apportionment -- Manufacturers.** Notwithstanding any~~  
6 ~~other provision of the general laws, a taxpayer, as described in section 44-11-14(a), whose~~  
7 ~~principal business is described in sector 31, 32, or 33 of the North American Industry~~  
8 ~~Classification System, as adopted by the United States Office of Management and Budget and as~~  
9 ~~revised from time to time, may, in lieu of apportioning its net income to this state based on the~~  
10 ~~allocation fraction described in section 44-11-14(a), elect for any year to apportion its net income~~  
11 ~~to this state based on the following allocation fraction:~~

12 ~~(1) for the tax year beginning on or after January 1, 2004, but before January 1, 2005,~~  
13 ~~thirty percent (30%) of the property factor determined pursuant to section 44-11-14(a)(1) (the~~  
14 ~~"property factor"), thirty percent (30%) of the payroll factor determined pursuant to section 44-~~  
15 ~~11-14(a)(3) (the "payroll factor"), and forty percent (40%) of the sales factor determined pursuant~~  
16 ~~to section 44-11-14(a)(2) (the "sales factor");~~

17 ~~(2) for tax years beginning on or after January 1, 2005, twenty five percent (25%) of the~~  
18 ~~property factor, twenty five percent (25%) of the payroll factor and fifty percent (50%) of the~~  
19 ~~sales factor.~~

20 ~~**44-11-15. Variation of method of allocating income.** If at any time the tax~~  
21 ~~administrator, on his or her own motion or acting upon a complaint by a taxpayer, determines that~~  
22 ~~the methods of allocation provided are inequitable either to the state or to the taxpayer, the tax~~  
23 ~~administrator, after affording the taxpayer reasonable opportunity to be heard, may apply any~~  
24 ~~other method of allocation that is equitable and, if necessary, shall redetermine the tax.~~

25 ~~**44-11-19. Supplemental returns -- Additional tax or refund.** (a) Any taxpayer which~~  
26 ~~fails to include in its return any items of income or assets or any other information required by~~  
27 ~~this chapter or by regulations prescribed in pursuance of this chapter shall make a supplemental~~  
28 ~~return disclosing these facts. Any taxpayer whose return to the collector of internal revenue, or~~  
29 ~~whose net income returned, shall be changed or corrected by any official of the United States~~  
30 ~~government in any respect affecting a tax imposed by this chapter shall, within sixty (60) days~~  
31 ~~after receipt of a notification of the final adjustment and determination of the change or~~  
32 ~~correction, make the supplemental return required by this section.~~

33 ~~(b) Upon the filing of a supplemental return the tax administrator shall examine the~~  
34 ~~return and shall determine any additional tax or refund that may be due and shall notify the~~

1 taxpayer. Any additional tax shall be paid within fifteen (15) days after the notification together  
2 with interest at the annual rate provided by section 44-1-7 from the original due date of the return  
3 for the taxable year to the date of payment of the additional tax. Any refund shall be made by the  
4 tax administrator together with interest at the annual rate provided by section 44-1-7.1 from the  
5 date of payment of the tax to the date of the refund.

6 ~~**44-11-20. Claims for refund -- Hearing upon denial.**~~ (a) Any taxpayer may file a  
7 claim for refund with the tax administrator at any time within three (3) years after the tax has  
8 been paid, or in the case of a change or correction of its taxable income by any official of the  
9 United States government, within three (3) years after receiving notice of the change or  
10 correction. If the tax administrator determines that the tax has been overpaid, he or she shall make  
11 a refund with interest at the annual rate provided by section 44-1-7.1 from the date of payment.

12 (b) If the claim for refund relates to an overpayment attributable to a net operating loss  
13 carryback or a capital loss carryback, a taxpayer may file a claim for refund with the tax  
14 administrator within the period which ends with the expiration of the 15th day of the 39th month  
15 following the end of the taxable year of the net operating loss or net capital loss which results in  
16 the carryback, or the period prescribed in subsection (a) of this section in respect of the taxable  
17 year, whichever expires later.

18 (c) Any taxpayer whose claim for refund has been denied may, within thirty (30) days  
19 from the date of the mailing by the tax administrator of the notice of the decision, request a  
20 hearing and the tax administrator shall, as soon as practicable, set a time and place for the hearing  
21 and shall so notify the applicant.

22 ~~**44-11-21. Information confidential -- Types of disclosure authorized -- Penalties for**~~  
23 ~~**unauthorized disclosure.**~~ (a) It is unlawful for any state official or employee to divulge or to  
24 make known to any person in any manner not provided by law the amount or source of income,  
25 profits, losses, expenditures, or any particular set forth or disclosed in any return, or to permit any  
26 return or copy or any book containing any abstract or particulars to be seen or examined by any  
27 person except as provided by law. It is unlawful for any person to print or publish in any manner  
28 not provided by law any return or any part or source of income, profits, losses, or expenditures  
29 appearing in any return.

30 (b) Any offense against this provision is punishable by a fine not exceeding one  
31 thousand dollars (\$1,000) or by imprisonment not exceeding one year, or both, at the discretion of  
32 the court. If the offender is an officer or employee of the state of Rhode Island, he or she may be  
33 dismissed from office or discharged from employment; provided, that the tax administrator may  
34 authorize examination of the return by the tax officials regularly in the employ of another state or

1 of the federal government if a reciprocal arrangement exists.

2 ~~**44-11-22. Tax administrator's power to summon witnesses and evidence.** -- The tax~~  
3 ~~administrator may summon any corporation, or officer, agent, or employee of any corporation, or~~  
4 ~~any other person, to appear before him or her and produce records and documents at a time and~~  
5 ~~place named in the summons and to give testimony and to answer interrogatories, under oath,~~  
6 ~~respecting any matter which the tax administrator deems pertinent or material to the~~  
7 ~~administration of this chapter.~~

8 ~~**44-11-23. Service of summons.** -- The summons may be sent by registered or certified~~  
9 ~~mail to the corporation, or to any officer, agent, or employee of the corporation, or to any other~~  
10 ~~person, or may be left by any authorized agent of the tax administrator with the corporation, or~~  
11 ~~with any officer, agent, or employee of the corporation, or any other person, or left at his or her~~  
12 ~~last and usual place of abode. When the summons requires the production of records or~~  
13 ~~documents, it shall be sufficient if the records and documents are described with reasonable~~  
14 ~~certainty.~~

15 ~~**44-11-24. Enforcement of summons.** -- Whenever any person or corporation summoned~~  
16 ~~under the provisions of sections 44-11-22 and 44-11-23 neglects or refuses to obey the summons~~  
17 ~~or to give testimony or to answer interrogatories as required, the tax administrator may apply to~~  
18 ~~the sixth (6=ss th=ks ) division of the district court for a citation against that person or~~  
19 ~~corporation as for a contempt. Any judge of the court may hear the application and, if satisfactory~~  
20 ~~proof is made, shall issue a citation for the arrest of the person, or of any officer of the~~  
21 ~~corporation, and upon the person or officer being brought before the judge, he or she shall~~  
22 ~~proceed to a hearing of the case; and upon the hearing the judge shall have power to make an~~  
23 ~~order that he or she deems proper. A party aggrieved by an order of the court may appeal the~~  
24 ~~order to the supreme court in accordance with the procedures contained in the rules of appellate~~  
25 ~~procedure of the supreme court.~~

26 ~~**44-11-25. Determination of tax without return.** -- If any corporation fails to file a~~  
27 ~~return at the time and as prescribed by law, the tax administrator shall proceed to determine the~~  
28 ~~tax from any information he or she can obtain.~~

29 ~~**44-11-26. Pecuniary penalty for failure to file return or to pay tax or for negligence.**~~  
30 ~~--(a) In the case of any failure to file a return within the time prescribed by law, there shall be~~  
31 ~~added to the tax five percent (5%) if the failure is for not more than one month, with an additional~~  
32 ~~five percent (5%) for each additional month or fraction of a month during which the failure~~  
33 ~~continues, not exceeding twenty five percent (25%) in the aggregate, except that when a return is~~  
34 ~~filed after the time prescribed by law and it is shown that the failure to file the return at the~~

1 ~~prescribed time was due to reasonable cause and not due to willful neglect, no addition to the tax~~  
2 ~~shall be made.~~

3 ~~(b) In the case of any failure to pay the tax as imposed by this chapter with the return on~~  
4 ~~or before the date prescribed by law (determined with regard to any extension of time for~~  
5 ~~payment), there shall be added to the amount shown as tax on the return five tenths percent~~  
6 ~~(0.5%) of the amount of the tax if the failure is for not more than one month, with an additional~~  
7 ~~five tenths percent (0.5%) for each additional month or fraction of a month during which the~~  
8 ~~failure continues, not exceeding twenty five percent (25%) in the aggregate, except that when the~~  
9 ~~failure is due to reasonable cause and not to willful neglect, no addition to the tax shall be made.~~

10 ~~(c) In the case of any failure to pay any amount in respect of any tax required to be~~  
11 ~~shown on a return, which is not shown, including an assessment made as a result of mathematical~~  
12 ~~error, within thirty (30) days of the date of the notice and demand, there shall be added to the~~  
13 ~~amount of tax stated in the notice and demand five tenths percent (0.5%) of the amount of the tax~~  
14 ~~if the failure is for not more than one month, with an additional five tenths percent (0.5%) for~~  
15 ~~each additional month or fraction of a month during which the failure continues, not exceeding~~  
16 ~~twenty five percent (25%) in the aggregate, except that when the failure is due to reasonable~~  
17 ~~cause and not to willful neglect, no addition to the tax shall be made.~~

18 ~~(d) If any part of a deficiency is due to negligence or intentional disregard of the Rhode~~  
19 ~~Island business corporation tax law or rules or regulations hereunder, but without intent to~~  
20 ~~defraud, five percent (5%) of that part of the deficiency shall be added to the tax. This amount~~  
21 ~~shall be in lieu of any other additional amount imposed by subsection (b) of this section.~~

22 ~~**44-11-27. Pecuniary penalty for fraud.** --- In case a false or fraudulent return is made~~  
23 ~~with intent to evade any tax imposed by this chapter, the tax administrator shall add to the tax~~  
24 ~~fifty percent (50%) of its amount.~~

25 ~~**44-11-28. Collection of pecuniary penalties.** --- The amount added to any tax under~~  
26 ~~sections 44-11-26 and 44-11-27 shall be collected as a part of and at the same time and in the~~  
27 ~~same manner as the tax, unless the tax has been paid before the discovery of the neglect, falsity,~~  
28 ~~or fraud, in which case the amount so added shall be collected in the same manner as the tax.~~

29 ~~**44-11-29. Notice to tax administrator of sale of assets -- Tax due.** --- (a) The sale or~~  
30 ~~transfer of the major part in value of the assets of a domestic corporation, or of the major part in~~  
31 ~~value of the assets situated in this state of a foreign corporation, other than in the ordinary course~~  
32 ~~of trade and in the regular and usual prosecution of the corporation's business, and the sale or~~  
33 ~~transfer of the major part in value of the assets of a domestic corporation, or of the major part in~~  
34 ~~value of the assets situated in this state of a foreign corporation which is engaged in the business~~



1 of buying, selling, leasing, renting, managing, or dealing in real estate, shall be fraudulent and  
2 void as against the state unless the corporation shall, at least five (5) days before the sale or  
3 transfer, notify the tax administrator of the proposed sale or transfer and of the price, terms, and  
4 conditions the sale or transfer and of the character and location of the assets. Whenever a  
5 corporation shall make such a sale or transfer, the tax imposed by this chapter shall become due  
6 and payable at the time when the tax administrator is notified, or, if he or she is not notified, at  
7 the time when he or she should have been notified.

8 ~~(b) This section shall not apply to sales by receivers, assignees under a voluntary~~  
9 ~~assignment for the benefit of creditors, trustees in bankruptcy, or public officers acting under~~  
10 ~~judicial process.~~

11 ~~**44-11-29.1. Letters of good standing -- Fees.** -- There shall be a fee of fifty dollars~~  
12 ~~(\$50.00) for any letter of good standing issued upon the request of a taxpayer. All fees collected~~  
13 ~~under this section shall be allocated to the tax administrator for enforcement and collection of all~~  
14 ~~taxes.~~

15 ~~**44-11-30. Examination of taxpayer's records -- Witnesses.** -- The tax administrator, for~~  
16 ~~the purpose of ascertaining the correctness of any return or for the purpose of determining the~~  
17 ~~amount of any tax imposed by this chapter, may, by any of his or her officers or employees~~  
18 ~~designated by him or her for that purpose, examine any books, papers, records, or memoranda~~  
19 ~~bearing upon the matters required to be included in the return, and may require the attendance of~~  
20 ~~the person executing the return or of any officer or employee of any corporation, association, or~~  
21 ~~organization, or the attendance of any other person, and may examine him or her under oath~~  
22 ~~respecting any matter which the tax administrator deems pertinent or material in determining the~~  
23 ~~liability of any corporation, association, or organization to a tax imposed by this chapter.~~

24 ~~**44-11-31. Examinations as to liability of transferee.** -- The tax administrator, for the~~  
25 ~~purpose of determining the liability of a transferee of the property of any corporation with respect~~  
26 ~~to any tax imposed upon the corporation, may, by any of his or her officers or employees~~  
27 ~~designated by him or her for that purpose, examine any books, papers, records, or memoranda~~  
28 ~~bearing upon the liability, and may require the attendance of the corporation or transferee, or of~~  
29 ~~any officer or employee of the corporation or transferee, or the attendance of any other person~~  
30 ~~having knowledge in the premises, and may take testimony with reference to the matter, with~~  
31 ~~power to administer oaths to any officer, employee, or other person.~~

32 ~~**44-11-32. Violations by corporations.** -- Whenever any corporation delivers or discloses~~  
33 ~~or causes to be delivered or disclosed to the tax administrator any false or fraudulent return,~~  
34 ~~account, or statement, with intent to defeat or evade any tax imposed under this chapter, or being~~

1 ~~summoned to appear to testify or to appear and produce books as required under this chapter,~~  
2 ~~neglects to appear or to produce books, the corporation is guilty of a felony and upon conviction~~  
3 ~~shall be fined not exceeding ten thousand dollars (\$10,000).~~

4 ~~**44-11-33. Violations by individuals.** --- Whenever any person delivers or discloses or~~  
5 ~~causes to be delivered or disclosed to the tax administrator any false or fraudulent return, account,~~  
6 ~~or statement, with intent to defeat or evade any tax imposed under this chapter, or being~~  
7 ~~summoned to appear to testify or to appear and produce books as required under this chapter,~~  
8 ~~neglects to appear or to produce books, the person is guilty of a felony and upon conviction~~  
9 ~~thereof shall be fined not exceeding ten thousand dollars (\$10,000), or be imprisoned not~~  
10 ~~exceeding one year, or both.~~

11 ~~**44-11-34. Criminal penalty for failure to file return.** --- Any taxpayer, or any officer or~~  
12 ~~agent of the taxpayer, who willfully fails to file any return or statement, including a supplemental~~  
13 ~~return, required to be made under the provisions of this chapter within the time fixed or extended~~  
14 ~~is guilty of a felony and upon conviction shall be fined not exceeding ten thousand dollars~~  
15 ~~(\$10,000), or be imprisoned not exceeding one year, or both.~~

16 ~~**44-11-35. Appeals.** --- Appeals from administrative orders or decisions made pursuant to~~  
17 ~~any provisions of this chapter shall be to the sixth (6th) division district court pursuant to chapter~~  
18 ~~8 of title 8. The taxpayer's right to appeal shall be expressly made conditional upon prepayment~~  
19 ~~of all taxes, interest, and penalties unless the taxpayer moves for and is granted an exemption~~  
20 ~~from the prepayment requirement pursuant to section 8-8-26. If the court, after appeal, holds that~~  
21 ~~the taxpayer is entitled to a refund, the taxpayer shall also be paid interest on the amount at the~~  
22 ~~rate provided in section 44-1-7.1.~~

23 ~~**44-11-36. Liability of fiduciaries.** --- Any receiver, liquidator, trustee, trustee in~~  
24 ~~bankruptcy, assignee, conservator, or other fiduciary conducting or liquidating the business or~~  
25 ~~selling the assets of any corporation shall, except as provided in section 44-11-29(b), be subject to~~  
26 ~~the provisions of and the tax imposed by this chapter in the same manner and to the same extent~~  
27 ~~as if the business were being conducted or liquidated or the assets sold by the agents or officers of~~  
28 ~~the corporation.~~

29 ~~**44-11-37. General collection powers.** --- The tax administrator shall receive and collect~~  
30 ~~any tax imposed under this chapter in the same manner and with the same powers as are~~  
31 ~~prescribed for and given to collectors of taxes by chapters 7—9 of this title.~~

32 ~~**44-11-38. Collection by writ of execution.** --- If any tax or penalty imposed by this~~  
33 ~~chapter is not paid within thirty (30) days after the tax or penalty shall become due and payable,~~  
34 ~~the tax administrator, in addition to any other powers provided by law, may petition the sixth~~

1 ~~(6th) division of the district court for a writ of execution, setting forth the nonpayment of the tax~~  
2 ~~or penalty. The court shall appoint a time for a hearing and shall cause a reasonable notice to be~~  
3 ~~given to the adverse party, and at the time and place of the return of the notice shall summarily~~  
4 ~~proceed to hear the parties. If upon the hearing it shall appear that the tax or penalty is unpaid, the~~  
5 ~~court shall issue an execution for the collection of the tax or penalty, which shall run to the~~  
6 ~~sheriffs, or their deputies, of the several counties of this state, and in which the officer making~~  
7 ~~service of the execution shall be commanded to levy upon the property of the corporation as may~~  
8 ~~be taken on execution, and the officer charged with the service of the execution shall serve the~~  
9 ~~execution as commanded, and shall sell the property seized as property is sold when taken on~~  
10 ~~execution in actions at law, or the court shall take any other action as it may deem proper to~~  
11 ~~enforce the payment of the tax by the appointment of a receiver of the property of the corporation~~  
12 ~~or otherwise. A party aggrieved by a final order of the court may seek review of the order in the~~  
13 ~~supreme court by writ of certiorari in accordance with the procedures contained in section 42-35-~~  
14 ~~16.~~

15 ~~**44-11-39. Tax as debt to state.** --- Any tax imposed under the provisions of this chapter,~~  
16 ~~together with all increases, penalties, charges, and interest, shall also become, from the time the~~  
17 ~~same are due and payable, a debt due to the state of Rhode Island from the corporation liable for~~  
18 ~~the payment of the tax.~~

19 ~~**44-11-40. Severability.** --- If any provision of this chapter or the application of this~~  
20 ~~chapter to any corporation or circumstances is held invalid, the remainder of this chapter and the~~  
21 ~~application of the provisions to the other corporations or circumstances shall not be affected.~~

22 ~~**44-11-41. Tax credit for machine tool, metal trade or plastic process technician**~~  
23 ~~**apprenticeships.** --- (a) Any taxpayer who employs a machine tool and metal trade apprentice or~~  
24 ~~plastic process technician apprentice duly enrolled and registered under the terms of a qualified~~  
25 ~~program (as determined by the state apprenticeship council) is entitled to a tax credit for each~~  
26 ~~eligible apprentice for fifty percent (50)% of actual wages paid, or four thousand eight hundred~~  
27 ~~dollars (\$4,800), whichever is less; provided, that the apprenticeships meet the following~~  
28 ~~requirements:~~

29 ~~(1) The tax credit is limited to qualified Machine Tool, Metal Trade and Plastics Process~~  
30 ~~Technician programs with apprenticeship periods of duration which are more than four thousand~~  
31 ~~(4,000) hours and less than ten thousand (10,000) hours.~~

32 ~~(2) The apprentice must be employed on a full-time basis, which is defined as working a~~  
33 ~~minimum of one hundred twenty (120) hours per month at the trade. Up to eighty (80) hours may~~  
34 ~~be applied during the tax year against the one hundred twenty (120) hour limitation.~~

1 ~~(3) Pre-apprentices are not counted as apprenticeships begun and wages earned by pre-~~  
2 ~~apprentices are not eligible for tax credits under this regulation.~~

3 ~~(4) The number of apprenticeships for which tax credit is allowed must exceed the~~  
4 ~~average number of apprenticeships begun during the five (5) preceding income years.~~

5 ~~(b) The tax credit is limited to the following trade: machinist, toolmaker, tool and~~  
6 ~~diemaker, model maker, gage maker, patternmaker, tool and machine setter, diesinker,~~  
7 ~~moldmaker, machine tool repairer, plastic process technician and in similar occupations which, as~~  
8 ~~above, involve multiple work processes including the shaping of metals by machine tool~~  
9 ~~equipment designed to perform cutting, grinding, milling, turning, drilling, boring, planing,~~  
10 ~~hobbing, and abrading operations.~~

11 ~~**44-11-43. Passive investment treatment.** (a) Notwithstanding any amendments or~~  
12 ~~revisions to, or the repeal of, section 44-11-1(1)(vii), or any other law, or new legislative action~~  
13 ~~that shall serve to repeal or limit the benefits conferred therein, the provisions of that statute as in~~  
14 ~~effect on the date of passage of this section shall continue to be applicable until December 31,~~  
15 ~~2014, for a "qualifying business" that meets the requirements set forth herein.~~

16 ~~(b) A "qualifying business" for the purposes of this chapter shall mean a business which~~  
17 ~~meets the terms and conditions imposed by the board of directors of the Rhode Island economic~~  
18 ~~development corporation and is designated as such upon a finding of fact that:~~

19 ~~(1) The business has committed to relocate from outside the state to a Rhode Island~~  
20 ~~location no less than an annual tax year average of two hundred and fifty (250) full-time~~  
21 ~~employees with a combined payroll of no less than twelve million dollars (\$12,000,000) annually~~  
22 ~~within twenty-eight (28) months following such designation; for the purposes of this section "full-~~  
23 ~~time employee" means any employee of the qualified business who works a minimum of thirty~~  
24 ~~(30) hours per week within the state;~~

25 ~~(2) The business would not relocate such jobs to the state but for such a designation of a~~  
26 ~~qualifying business; and~~

27 ~~(3) The annual salary of each employee counted in subdivision (b)(1) shall be no less~~  
28 ~~than twenty-five thousand dollars (\$25,000) per year, plus benefits typical to the industry.~~

29 ~~(c) The division of taxation shall require annual reports from a qualified business, which~~  
30 ~~shall include, but not be limited to, the number of individuals employed by the company within~~  
31 ~~the state, the job descriptions, and the annual salaries. The division of taxation shall verify these~~  
32 ~~annual reports and certify that they are correct. The certification shall be sent to the board of~~  
33 ~~directors of the economic development corporation, president of the senate, speaker of the house,~~  
34 ~~the chairperson of the senate finance committee, the chairperson of the house finance committee,~~

1 ~~the senate fiscal advisor, and the house fiscal advisor. If the division of taxation finds that the~~  
2 ~~qualified business no longer meets the criteria set forth in subdivision (b)(1) or (3), and if, sixty~~  
3 ~~(60) days after receipt of written notice from the division of taxation describing such finding in~~  
4 ~~detail, the business has reasonably cured the noticed violations, then such business will continue~~  
5 ~~to receive the benefits offered under the provisions of subsection (f) as if such violation had not~~  
6 ~~occurred, otherwise that business shall no longer be considered a qualified business and shall no~~  
7 ~~longer be entitled to any further benefits under any agreement made under the provisions of~~  
8 ~~subsection (f) and such provisions shall become null and void.~~

9 ~~Notwithstanding the foregoing, upon a finding the violation was caused by natural~~  
10 ~~disaster, acts of terrorism, acts of war, or other similar events reasonably beyond the control of~~  
11 ~~the business, the division of taxation may extend the cure period hereunder for up to twelve~~  
12 ~~months.~~

13 ~~(d) The economic development corporation shall certify only one company pursuant to~~  
14 ~~this section, and such certification shall be issued prior to August 31, 2004.~~

15 ~~(e) The economic development corporation shall be authorized to enter into such~~  
16 ~~agreements as it may deem necessary or prudent in order to memorialize and effect the intent of~~  
17 ~~the provisions of this section. The terms of such agreements shall not extend beyond December~~  
18 ~~31, 2014. Any such agreement shall include provisions for recapture of some portion of lost tax~~  
19 ~~revenue, if any, resulting from the conveyance of the benefits contemplated hereunder, if the~~  
20 ~~division of taxation finds that the qualified business has failed to maintain its qualified status~~  
21 ~~pursuant to subsection (c) above. Such recapture provisions shall be in place for the first five (5)~~  
22 ~~years of the agreement, and shall require the recapture of the value of any tax revenue lost in the~~  
23 ~~last tax year that the company was a qualified company. Such recapture shall only apply to tax~~  
24 ~~revenue lost through the amendment or revision to, or the repeal of, section 44-11-1(1)(vii), or~~  
25 ~~any other law, or new legislative action that shall serve to repeal or limit the benefits conferred~~  
26 ~~therein, and the subsequent avoidance of such newly imposed tax by the company through the~~  
27 ~~function of this section. Calculation of any amount recaptured shall take into account other~~  
28 ~~preferential tax treatments, credits, or other benefits in order to assure that the company is treated~~  
29 ~~no less favorably under the recapture calculation than they would have been if they had not~~  
30 ~~become a qualifying company under the provisions of this section. The corporation may, within~~  
31 ~~the terms of the contract, include as a condition of default the failure to maintain employment~~  
32 ~~criteria more rigorous than the criteria set forth in subdivision (b)(1) or (3); however, a default for~~  
33 ~~violation of such higher contractual standards shall not necessitate a recapture of lost revenues as~~  
34 ~~contemplated herein.~~

1           ~~**44-11-44. Annual Rhode Island corporate income and tax data report.**~~ No later  
2           ~~than March 15, 2010 and every March 15th thereafter, the division of taxation shall annually~~  
3           ~~submit a report for the previous calendar year of Rhode Island corporate income and tax data by~~  
4           ~~size of federal taxable income to the chairpersons of the house finance committee and senate~~  
5           ~~finance committee, and the house fiscal advisor and the senate fiscal advisor. The report should~~  
6           ~~be as similar as practical to the business and income tax data for Rhode Island federal taxpayers~~  
7           ~~issued by the Statistics of Income Division of the Internal Revenue Service.~~

8           ~~**44-11-45. Combined reporting study.**~~ (a) For the purpose of this section:

9           ~~(1) "Common ownership" means more than fifty percent (50%) of the voting control of~~  
10          ~~each member of the group is directly or indirectly owned by a common owner or owners, either~~  
11          ~~corporate or non corporate, whether or not owner or owners are members of the combined group.~~

12          ~~(2) "Member" means a corporation included in a unitary business.~~

13          ~~(3) "Unitary business" means the activities of a group of two (2) or more corporations~~  
14          ~~under common ownership that are sufficiently interdependent, integrated or interrelated through~~  
15          ~~their activities so as to provide mutual benefit and produce a significant sharing or exchange of~~  
16          ~~value among them or a significant flow of value between the separate parts. The term unitary~~  
17          ~~business shall be construed to the broadest extent permitted under the United States Constitution.~~

18          ~~(4) "United States" means the fifty (50) states of the United States, the District of~~  
19          ~~Columbia, the United States' territories and possessions.~~

20          ~~(b) Combined reporting:~~

21          ~~(1) As part of its tax return for a taxable year beginning after December 31, 2010 but~~  
22          ~~before January 1, 2013, each corporation which is part of an unitary business must file a report, in~~  
23          ~~a manner prescribed by the tax administrator, for the combined group containing the combined~~  
24          ~~net income of the combined group. The use of a combined report does not disregard the separate~~  
25          ~~identities of the members of the combined group. The report shall include, at minimum, for each~~  
26          ~~taxable year the following:~~

27          ~~(i) The difference in tax owed as a result of filing a combined report compared to the tax~~  
28          ~~owed under the current filing requirements;~~

29          ~~(ii) The difference in tax owed as a result of using the single sales factor apportionment~~  
30          ~~method under this paragraph as compared to the tax owed using the current three (3) factor~~  
31          ~~apportionment method under section 44-11-14;~~

32          ~~(iii) Volume of sales in the state and worldwide; and~~

33          ~~(iv) Taxable income in the state and worldwide.~~

34          ~~(2) The combined reporting requirement required pursuant to this section shall not~~

1 ~~include any persons that engage in activities enumerated in sections 44-13-4, 44-14-3, 44-14-4 or~~  
2 ~~44-17-1, whether within or outside this state. Neither the income or loss nor the apportionment~~  
3 ~~factors of such a person shall be included, directly or indirectly, in the combined report.~~

4 ~~(3) Members of a combined group shall exclude as a member and disregard the income~~  
5 ~~and apportionment factors of any corporation incorporated in a foreign jurisdiction (a "foreign~~  
6 ~~corporation") if the average of its property, payroll and sales factors outside the United States is~~  
7 ~~eighty percent (80%) or more. If a foreign corporation is includible as a member in the combined~~  
8 ~~group, to the extent that such foreign corporation's income is subject to the provisions of a federal~~  
9 ~~income tax treaty, such income is not includible in the combined group net income. Such member~~  
10 ~~shall also not include in the combined report any expenses or apportionment factors attributable~~  
11 ~~to income that is subject to the provisions of a federal income tax treaty. For purposes of this~~  
12 ~~chapter, "federal income tax treaty" means a comprehensive income tax treaty between the United~~  
13 ~~States and a foreign jurisdiction, other than a foreign jurisdiction which the organization for~~  
14 ~~economic co-operation and development has determined has not committed to the internationally~~  
15 ~~agreed tax standard, or has committed to the international agreed tax standard but has not yet~~  
16 ~~substantially implemented that standard, as identified in the then-current organization for~~  
17 ~~economic co-operation and development progress report.~~

18 ~~(c) Any corporation which is required to file a report under this section which fails to file~~  
19 ~~a timely report or which files a false report shall be assessed a penalty not to exceed ten thousand~~  
20 ~~dollars (\$10,000). The penalty may be waived for good cause shown for failure to timely file.~~

21 ~~(d) The tax administrator shall on or before March 15, 2014, based on the information~~  
22 ~~provided in income tax returns and the data submitted under this section, submit a report to the~~  
23 ~~chairpersons of the house finance committee and senate finance committee, and the house fiscal~~  
24 ~~advisor and the senate fiscal advisor analyzing the policy and fiscal ramifications of changing the~~  
25 ~~business corporation tax statute to a combined method of reporting.~~

26 SECTION 2. This act shall take effect on July 1, 2013.

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LC01596  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO TAXATION - BUSINESS CORPORATION TAX

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- 1 This act would repeal the business corporation tax in its entirety.
- 2 This act would take effect on July 1, 2013.

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LC01596  
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