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## STATE OF RHODE ISLAND

### IN GENERAL ASSEMBLY

### JANUARY SESSION, A.D. 2019

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#### A N A C T

RELATING TO TAXATION - SALES AND USE TAXES - ENFORCEMENT AND COLLECTION

Introduced By: Senators Lombardi, McCaffrey, Felag, Ciccone, and Lombardo

Date Introduced: January 16, 2019

Referred To: Senate Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 44-19-13 of the General Laws in Chapter 44-19 entitled "Sales and

2 Use Taxes - Enforcement and Collection" is hereby amended to read as follows:

3 **44-19-13. Notice of determination.**

4       (a) The tax administrator shall give to the retailer or to the person storing, using, or  
5 consuming the tangible personal property a written notice of his or her determination. Except in  
6 the case of fraud, intent to evade the provisions of this article, failure to make a return, or claim  
7 for additional amount pursuant to §§ 44-19-16 -- 44-19-19, every notice of a deficiency  
8 determination shall be mailed within three (3) years after the fifteenth (15th) day of the calendar  
9 month following the month for which the amount is proposed to be determined or within three (3)  
10 years after the return is filed, whichever period expires later, unless a longer period is agreed  
11 upon by the tax administrator and the taxpayer.

12       (b) Notwithstanding the provisions of subsection (a) of this section, under no  
13 circumstances shall the tax administrator issue a notice of a deficiency determination for any sales  
14 or use tax determined to be due and payable more than ten (10) years after the return is filed or  
15 was due to be filed, nor shall the tax administrator commence any collection action for any tax  
16 that is due and payable unless the collection action is commenced within ten (10) years after a  
17 notice of a deficiency determination becomes a final collectible assessment; provided, however,  
18 that the tax administrator may renew a statutory lien that was initially filed within the ten (10)

1     year period for collection actions. Both of the aforementioned ten (10) year periods are tolled for  
2     any period of time the taxpayer is in federal bankruptcy or state receivership proceedings.  
3     "Collection action" refers to any activity undertaken by the division of taxation to collect on any  
4     state tax liabilities that are final, due, and payable under Rhode Island law. "Collection action"  
5     may include, but is not limited to, any civil action involving a liability owed under chapters 18,  
6     18.1, 18.2, and 19 of title 44. This section excludes any sales and use tax liabilities that are  
7     deemed trust funds as defined in § 44-19-35, as well as any meals and beverage tax liabilities that  
8     are collected pursuant to § 44-18-18.1, and any hotel tax liabilities that are collected pursuant to §  
9     44-18-36.1.

10                 (c) The ten (10) year limitation shall not apply to the renewal or continuation of the  
11     state's attempt to collect a liability that became final, due, and payable within the ten (10) year  
12     limitation periods set forth in this section.

13                 SECTION 2. Section 44-23-9 of the General Laws in Chapter 44-23 entitled "Estate and  
14     Transfer Taxes - Enforcement and Collection" is hereby amended to read as follows:

15                 **44-23-9. Assessment and notice of estate tax -- Collection powers -- Lien.**

16                 (a) The tax imposed by § 44-22-1.1 shall be assessed upon the full and fair cash value of  
17     the net estate determined by the tax administrator as provided in this chapter. Notice of the  
18     amount of the tax shall be mailed to the executor, administrator, or trustee, but failure to receive  
19     the notice does not excuse the nonpayment of or invalidate the tax. The tax administrator shall  
20     receive and collect the assessed taxes in the same manner and with the same powers as are  
21     prescribed for and given to the collectors of taxes by chapters 7 -- 9 of this title. The tax shall be  
22     due and payable as provided in § 44-23-16, shall be paid to the tax administrator, and shall be and  
23     remain a lien upon the estate until it is paid. All executors, administrators, and trustees are  
24     personally liable for the tax until it is paid.

25                 (b) Notwithstanding the provisions of subsection (a) of this section, under no  
26     circumstances shall the tax administrator issue any notice of deficiency determination for the  
27     amount of the estate tax due more than ten (10) years after the return was filed or should have  
28     been filed, nor shall the tax administrator commence any collection action for any estate tax due  
29     and payable unless the collection action is commenced within ten (10) years after the date a  
30     notice of deficiency determination became a final collectible assessment. "Collection action"  
31     refers to any activity undertaken by the division of taxation to collect on any state tax liabilities  
32     that are final, due, and payable under Rhode Island law. "Collection action" may include, but is  
33     not limited to, any civil action involving a liability owed under chapters 22 and 23 of title 44.

34                 (c) The ten (10) year limitation shall not apply to the renewal or continuation of the

1       state's attempt to collect a liability that became final, due, and payable within the ten (10) year  
2       limitation periods set forth in this section.

3           SECTION 3. Section 44-30-83 of the General Laws in Chapter 44-30 entitled "Personal  
4       Income Tax" is hereby amended to read as follows:

5           **44-30-83. Limitations on assessment.**

6           (a) General. Except as otherwise provided in this section the amount of the Rhode Island  
7       personal income tax shall be assessed within three (3) years after the return was filed, whether or  
8       not the return was filed on or after the prescribed date. For this purpose a tax return filed before  
9       the due date shall be considered as filed on the due date; and a return of withholding tax for any  
10      period ending with or within a calendar year filed before April 15 of the succeeding calendar year  
11      shall be considered filed on April 15 of the succeeding calendar year.

12           (b) Exceptions.

13           (1) Assessment at any time. The tax may be assessed at any time if:

14           (i) No return is filed;

15           (ii) A false or fraudulent return is filed with intent to evade tax; or

16           (iii) The taxpayer fails to file a report, pursuant to § 44-30-59, of a change, correction, or  
17       amended return, increasing his or her federal taxable income as reported on his or her federal  
18       income tax return or to report a change or correction which is treated in the same manner as if it  
19       were a deficiency for federal income tax purposes.

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

24           (3) Report of changed or corrected federal income. If the taxpayer shall, pursuant to § 44-  
25       30-59, file an amended return, or report a change or correction increasing his or her federal  
26       taxable income or report a change or correction which is treated in the same manner as if it were a  
27       deficiency for federal income tax purposes, an assessment may be made at any time prior to two  
28       (2) years after the report or amended return was filed. This assessment of Rhode Island personal  
29       income tax shall not exceed the amount of the increase attributable to the federal change,  
30       correction, or items amended on the taxpayer's amended federal income tax return. The  
31       provisions of this paragraph shall not affect the time within which or the amount for which an  
32       assessment may otherwise be made.

33           (4) Deficiency attributable to net operating loss carryback. If a taxpayer's deficiency is  
34       attributable to an excessive net operating loss carryback allowance, it may be assessed at any time

1 that a deficiency for the taxable year of the loss may be assessed.

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

6       (6) Armed forces relief. For purposes of this tax, the date appearing in 26 U.S.C. § 692(a)  
7 shall be January 1, 1971.

8           (c) Omission of income on return. Notwithstanding the foregoing provisions of this  
9 section, the tax may be assessed at any time within six (6) years after the return was filed if an  
10 individual omits from his or her Rhode Island income an amount properly includible therein  
11 which is in excess of twenty-five percent (25%) of the amount of Rhode Island income stated in  
12 the return. For this purpose there shall not be taken into account any amount which is omitted in  
13 the return if the amount is disclosed in the return, or in a statement attached to the return, in a  
14 manner adequate to apprise the tax administrator of the nature and amount of the item.

15           (d) Suspension of limitation. The running of the period of limitations on assessment or  
16 collection of tax or other amount (or of a transferee's liability) shall, after the mailing of a notice  
17 of deficiency, be suspended for the period during which the tax administrator is prohibited under  
18 § 44-30-81(c) from making the assessment or from collecting by levy, and for sixty (60) days  
19 thereafter.

20           (e) Limitations exclusive. No period of limitations specified in any other law shall apply  
21 to the assessment or collection of Rhode Island personal income tax. Under no circumstances  
22 shall the tax administrator issue any notice of a deficiency determination for Rhode Island  
23 personal income tax due or payable more than ten (10) years after the date upon which the return  
24 was filed or due to be filed, nor shall the tax administrator commence any collection action for  
25 any personal income tax due and payable unless the collection action is commenced within ten  
26 (10) years after a notice of deficiency determination became a final collectible assessment;  
27 provided however, that the tax administrator can renew a statutory lien that was initially filed  
28 within the ten (10) year period for collection actions. Both of the aforementioned ten (10) year  
29 periods are tolled for any period of time the taxpayer is in federal bankruptcy or state receivership  
30 proceedings. "Collection action" refers to any activity undertaken by the division of taxation to  
31 collect on any state tax liabilities that are final, due, and payable under Rhode Island law.  
32 "Collection action" may include, but is not limited to, any civil action involving a liability owed  
33 under chapter 30 of title 44. This section excludes any liabilities that are deemed trust funds as  
34 defined in § 44-30-76, as amended.

1           (f) The ten (10) year limitation shall not apply to the renewal or continuation of the state's  
2 attempt to collect a liability that became final, due, and payable within the ten (10) year limitation  
3 periods set forth in this section.

4           SECTION 4. Section 44-11-7.1 of the General Laws in Chapter 44-11 entitled "Business  
5 Corporation Tax" is hereby amended to read as follows:

6           **44-11-7.1. Limitations on assessment.**

7           (a) General. Except as provided in this section, the amount of the Rhode Island corporate  
8 income tax shall be assessed within three (3) years after the return was filed, whether or not the  
9 return was filed on or after the prescribed date. For this purpose, a tax return filed before the due  
10 date shall be considered as filed on the due date.

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

12           (i) No return is filed.

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

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

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

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

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

32           (d) The running of the period of limitations on assessment or collection of the tax or other  
33 amount, or of a transferee's liability, shall, after the mailing of a notice of deficiency, be  
34 suspended for any period during which the tax administrator is prohibited from making the

1 assessment or from collecting by levy, and for sixty (60) days thereafter.

2                 (e) No period of limitations specified in any other law shall apply to the assessment or  
3 collection of Rhode Island corporate income tax. Under no circumstances shall the tax  
4 administrator issue any notice of deficiency determination for Rhode Island business corporation  
5 tax due and payable more than ten (10) years after the date upon which the return was filed or due  
6 to be filed, nor shall the tax administrator commence any collection action for any business  
7 corporation tax due and payable unless the collection action is commenced within ten (10) years  
8 after a notice of deficiency determination became a final collectible assessment; provided  
9 however, that the tax administrator may renew a statutory lien that was initially filed within the  
10 ten (10) year period for collection actions. Both of the aforementioned ten (10) year periods are  
11 tolled for any period of time the taxpayer is in federal bankruptcy or state receivership  
12 proceedings. "Collection action" refers to any activity undertaken by the division of taxation to  
13 collect on any state tax liabilities that are final, due, and payable under Rhode Island law.  
14 "Collection action" may include, but is not limited to, any civil action involving a liability owed  
15 under chapter 11 of title 44.

16                 (f) The ten (10) year limitation shall not apply to the renewal or continuation of the state's  
17 attempt to collect a liability that became final, due, and payable within the ten (10) year limitation  
18 periods set forth in this section.

19                 SECTION 5. This act shall take effect on July 1, 2019 and shall apply only to state tax  
20 liabilities that become final, due and payable after July 1, 2019.

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

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1        This act would enact two ten (10) year statute of limitations on two (2) separate tax  
2    functions. One requires the tax administrator to issue a notice of deficiency determination no  
3    more than ten (10) years after a return was filed or should have been filed. The other allows the  
4    tax administrator to pursue collections activity on that deficiency determination once it becomes a  
5    final collectible assessment of tax due. Both statute of limitations would apply to the sales and  
6    use tax, the estate tax, the personal income tax, and business corporation tax.

7        The ten (10) year limitation would not apply to the renewal or continuation of the state's  
8    attempt to collect a liability that became final, due, and payable within the ten (10) year limitation  
9    periods in this act.

10        This act would take effect on July 1, 2019 and would apply only to state tax liabilities  
11    that become final, due and payable after July 1, 2019.

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