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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2020

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A N A C T

RELATING TO TAXATION -- SALES AND USE TAXES -- LIABILITY AND  
COMPUTATION

Introduced By: Representatives Kennedy, Abney, Edwards, Azzinaro, and O'Brien

Date Introduced: February 12, 2020

Referred To: House Finance

(Dept. of Revenue)

It is enacted by the General Assembly as follows:

1           SECTION 1. Sections 44-18-7 and 44-18-7.1 of the General Laws in Chapter 44-18  
2 entitled "Sales and Use Taxes - Liability and Computation" are hereby amended to read as  
3 follows:

4           **44-18-7. Sales defined.**

5           "Sales" means and includes:

6           (1) Any transfer of title or possession, exchange, barter, lease, or rental, conditional or  
7 otherwise, in any manner or by any means of tangible personal property for a consideration.  
8 "Transfer of possession," "lease," or "rental" includes transactions found by the tax administrator  
9 to be in lieu of a transfer of title, exchange, or barter.

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

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

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

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

1 (6) Any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate  
2 commerce, of tangible personal property from the place where it is located for delivery to a point  
3 in this state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental,  
4 conditional or otherwise, in any manner or by any means whatsoever, of the property for a  
5 consideration.

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

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

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

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

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

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

30 (12) The transfer for consideration of prepaid telephone calling arrangements and the  
31 recharge of prepaid telephone calling arrangements sourced to this state in accordance with §§  
32 44-18.1-11 and 44-18.1-15. "Prepaid telephone calling arrangement" means and includes prepaid  
33 calling service and prepaid wireless calling service.

34 (13) The sale, storage, use, or other consumption of over-the-counter drugs as defined in

1 § 44-18-7.1(h)(ii).

2 (14) The sale, storage, use, or other consumption of prewritten computer software  
3 delivered electronically or by load and leave as defined in § 44-18-7.1(g)(v).

4 (15) The sale, storage, use, or other consumption of vendor-hosted prewritten computer  
5 software as defined in § 44-18-7.1(g)(vii).

6 (16) The sale to, or storage, use, or other consumption by an end-user of specified digital  
7 products as defined in § 44-18-7.1(x), including the right to use the specified digital products on a  
8 permanent or less than permanent basis and regardless of whether the purchaser is required to  
9 make continued payments for such right.

10 (17) For the purposes of §§ 44-18-7(14) through 44-18-7(16) above, "sale" includes, but  
11 is not limited to, any license, lease, or rental of the products enumerated in those sections.

12 ~~(17)~~(18) The sale, storage, use, or other consumption of medical marijuana as defined in  
13 § 21-28.6-3.

14 ~~(18)~~(19) The furnishing of services in this state as defined in § 44-18-7.3.

15 **44-18-7.1. Additional definitions.**

16 (a) "Agreement" means the streamlined sales and use tax agreement.

17 (b) "Alcoholic beverages" means beverages that are suitable for human consumption and  
18 contain one-half of one percent (.5%) or more of alcohol by volume.

19 (c) "Bundled transaction" is the retail sale of two or more products, except real property  
20 and services to real property, where (1) The products are otherwise distinct and identifiable, and  
21 (2) The products are sold for one non-itemized price. A "bundled transaction" does not include  
22 the sale of any products in which the "sales price" varies, or is negotiable, based on the selection  
23 by the purchaser of the products included in the transaction.

24 (i) "Distinct and identifiable products" does not include:

25 (A) Packaging -- such as containers, boxes, sacks, bags, and bottles -- or other materials -  
26 - such as wrapping, labels, tags, and instruction guides -- that accompany the "retail sale" of the  
27 products and are incidental or immaterial to the "retail sale" thereof. Examples of packaging that  
28 are incidental or immaterial include grocery sacks, shoeboxes, dry cleaning garment bags, and  
29 express delivery envelopes and boxes.

30 (B) A product provided free of charge with the required purchase of another product. A  
31 product is "provided free of charge" if the "sales price" of the product purchased does not vary  
32 depending on the inclusion of the products "provided free of charge."

33 (C) Items included in the member state's definition of "sales price," pursuant to appendix  
34 C of the agreement.

1 (ii) The term "one non-itemized price" does not include a price that is separately  
2 identified by product on binding sales or other supporting sales-related documentation made  
3 available to the customer in paper or electronic form including, but not limited to, an invoice, bill  
4 of sale, receipt, contract, service agreement, lease agreement, periodic notice of rates and  
5 services, rate card, or price list.

6 (iii) A transaction that otherwise meets the definition of a "bundled transaction" as  
7 defined above, is not a "bundled transaction" if it is:

8 (A) The "retail sale" of tangible personal property and a service where the tangible  
9 personal property is essential to the use of the service, and is provided exclusively in connection  
10 with the service, and the true object of the transaction is the service; or

11 (B) The "retail sale" of services where one service is provided that is essential to the use  
12 or receipt of a second service and the first service is provided exclusively in connection with the  
13 second service and the true object of the transaction is the second service; or

14 (C) A transaction that includes taxable products and nontaxable products and the  
15 "purchase price" or "sales price" of the taxable products is de minimis.

16 1. De minimis means the seller's "purchase price" or "sales price" of the taxable products  
17 is ten percent (10%) or less of the total "purchase price" or "sales price" of the bundled products.

18 2. Sellers shall use either the "purchase price" or the "sales price" of the products to  
19 determine if the taxable products are de minimis. Sellers may not use a combination of the  
20 "purchase price" and "sales price" of the products to determine if the taxable products are de  
21 minimis.

22 3. Sellers shall use the full term of a service contract to determine if the taxable products  
23 are de minimis; or

24 (D) The "retail sale" of exempt tangible personal property and taxable tangible personal  
25 property where:

26 1. The transaction includes "food and food ingredients," "drugs," "durable medical  
27 equipment," "mobility enhancing equipment," "over-the-counter drugs," "prosthetic devices" (all  
28 as defined in this section) or medical supplies; and

29 2. Where the seller's "purchase price" or "sales price" of the taxable tangible personal  
30 property is fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled  
31 tangible personal property. Sellers may not use a combination of the "purchase price" and "sales  
32 price" of the tangible personal property when making the fifty percent (50%) determination for a  
33 transaction.

34 (d) "Certified automated system (CAS)" means software certified under the agreement to

1 calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to  
2 remit to the appropriate state, and maintain a record of the transaction.

3 (e) "Certified service provider (CSP)" means an agent certified under the agreement to  
4 perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on  
5 its own purchases.

6 (f) Clothing and related items.

7 (i) "Clothing" means all human wearing apparel suitable for general use.

8 (ii) "Clothing accessories or equipment" means incidental items worn on the person or in  
9 conjunction with "clothing." "Clothing accessories or equipment" does not include "clothing,"  
10 "sport or recreational equipment," or "protective equipment."

11 (iii) "Protective equipment" means items for human wear and designed as protection of  
12 the wearer against injury or disease or as protections against damage or injury of other persons or  
13 property but not suitable for general use. "Protective equipment" does not include "clothing,"  
14 "clothing accessories or equipment," and "sport or recreational equipment."

15 (iv) "Sport or recreational equipment" means items designed for human use and worn in  
16 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or  
17 recreational equipment" does not include "clothing," "clothing accessories or equipment," and  
18 "protective equipment."

19 (g) Computer and related items.

20 (i) "Computer" means an electronic device that accepts information in digital or similar  
21 form and manipulates it for a result based on a sequence of instructions.

22 (ii) "Computer software" means a set of coded instructions designed to cause a  
23 "computer" or automatic data processing equipment to perform a task.

24 (iii) "Delivered electronically" means delivered to the purchaser by means other than  
25 tangible storage media.

26 (iv) "Electronic" means relating to technology having electrical, digital, magnetic,  
27 wireless, optical, electromagnetic, or similar capabilities.

28 (v) "Load and leave" means delivery to the purchaser by use of a tangible storage media  
29 where the tangible storage media is not physically transferred to the purchaser.

30 (vi) "Prewritten computer software" means "computer software," including prewritten  
31 upgrades, that is not designed and developed by the author or other creator to the specifications of  
32 a specific purchaser. The combining of two (2) or more "prewritten computer software"  
33 programs or prewritten portions thereof does not cause the combination to be other than  
34 "prewritten computer software." "Prewritten computer software" includes software designed and

1 developed by the author or other creator to the specifications of a specific purchaser when it is  
2 sold to a person other than the specific purchaser. Where a person modifies or enhances  
3 "computer software" of which the person is not the author or creator, the person shall be deemed  
4 to be the author or creator only of such person's modifications or enhancements. "Prewritten  
5 computer software" or a prewritten portion thereof that is modified or enhanced to any degree,  
6 where such modification or enhancement is designed and developed to the specifications of a  
7 specific purchaser, remains "prewritten computer software"; provided, however, that where there  
8 is a reasonable, separately stated charge or an invoice or other statement of the price given to the  
9 purchaser for such modification or enhancement, such modification or enhancement shall not  
10 constitute "prewritten computer software."

11 (vii) "Vendor-hosted prewritten computer software" means prewritten computer software  
12 that is accessed through the internet and/or a vendor-hosted server regardless of whether the  
13 access is permanent or temporary and regardless of whether any downloading occurs.

14 (h) Drugs and related items.

15 (i) "Drug" means a compound, substance, or preparation, and any component of a  
16 compound, substance, or preparation, other than "food and food ingredients," "dietary  
17 supplements" or "alcoholic beverages":

18 (A) Recognized in the official United States Pharmacopoeia, official Homeopathic  
19 Pharmacopoeia of the United States, or official National Formulary, and supplement to any of  
20 them; or

21 (B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of  
22 disease; or

23 (C) Intended to affect the structure or any function of the body.

24 "Drug" shall also include insulin and medical oxygen whether or not sold on prescription.

25 (ii) "Over-the-counter drug" means a drug that contains a label that identifies the product  
26 as a drug as required by 21 C.F.R. § 201.66. The "over-the-counter drug" label includes:

27 (A) A "Drug Facts" panel; or

28 (B) A statement of the "active ingredient(s)" with a list of those ingredients contained in  
29 the compound, substance, or preparation.

30 "Over-the-counter drug" shall not include "grooming and hygiene products."

31 (iii) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo,  
32 toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the  
33 items meet the definition of "over-the-counter drugs."

34 (iv) "Prescription" means an order, formula, or recipe issued in any form of oral, written,

1 electronic, or other means of transmission by a duly licensed practitioner authorized by the laws  
2 of the member state.

3 (i) "Delivery charges" means charges by the seller of personal property or services for  
4 preparation and delivery to a location designated by the purchaser of personal property or services  
5 including, but not limited to: transportation, shipping, postage, handling, crating, and packing.

6 "Delivery charges" shall not include the charges for delivery of "direct mail" if the  
7 charges are separately stated on an invoice or similar billing document given to the purchaser.

8 (j) "Direct mail" means printed material delivered or distributed by United States mail or  
9 other delivery service to a mass audience or to addressees on a mailing list provided by the  
10 purchaser or at the direction of the purchaser when the cost of the items are not billed directly to  
11 the recipients. "Direct mail" includes tangible personal property supplied directly or indirectly by  
12 the purchaser to the direct mail seller for inclusion in the package containing the printed material.  
13 "Direct mail" does not include multiple items of printed material delivered to a single address.

14 (k) "Durable medical equipment" means equipment including repair and replacement  
15 parts for same which:

- 16 (i) Can withstand repeated use; and
- 17 (ii) Is primarily and customarily used to serve a medical purpose; and
- 18 (iii) Generally is not useful to a person in the absence of illness or injury; and
- 19 (iv) Is not worn in or on the body.

20 Durable medical equipment does not include mobility enhancing equipment.

21 (l) Food and related items.

22 (i) "Food and food ingredients" means substances, whether in liquid, concentrated, solid,  
23 frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are  
24 consumed for their taste or nutritional value. "Food and food ingredients" does not include  
25 "alcoholic beverages," "tobacco," "candy," "dietary supplements," and "soft drinks."

26 (ii) "Prepared food" means:

27 (A) Food sold in a heated state or heated by the seller;

28 (B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single  
29 item; or

30 (C) Food sold with eating utensils provided by the seller, including: plates, knives, forks,  
31 spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used  
32 to transport the food.

33 "Prepared food" in (B) does not include food that is only cut, repackaged, or pasteurized  
34 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring

1 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3,  
2 part 401.11 of its Food Code so as to prevent food borne illnesses.

3 (iii) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners  
4 in combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars,  
5 drops, or pieces. "Candy" shall not include any preparation containing flour and shall require no  
6 refrigeration.

7 (iv) "Soft drinks" means non-alcoholic beverages that contain natural or artificial  
8 sweeteners. "Soft drinks" do not include beverages that contain milk or milk products, soy, rice,  
9 or similar milk substitutes, or greater than fifty percent (50%) of vegetable or fruit juice by  
10 volume.

11 (v) "Dietary supplement" means any product, other than "tobacco," intended to  
12 supplement the diet that:

13 (A) Contains one or more of the following dietary ingredients:

14 1. A vitamin;

15 2. A mineral;

16 3. An herb or other botanical;

17 4. An amino acid;

18 5. A dietary substance for use by humans to supplement the diet by increasing the total  
19 dietary intake; or

20 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient  
21 described above; and

22 (B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or  
23 if not intended for ingestion in such a form, is not represented as conventional food and is not  
24 represented for use as a sole item of a meal or of the diet; and

25 (C) Is required to be labeled as a dietary supplement, identifiable by the "supplemental  
26 facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

27 (m) "Food sold through vending machines" means food dispensed from a machine or  
28 other mechanical device that accepts payment.

29 (n) "Hotel" means every building or other structure kept, used, maintained, advertised as,  
30 or held out to the public to be a place where living quarters are supplied for pay to transient or  
31 permanent guests and tenants and includes a motel.

32 (i) "Living quarters" means sleeping rooms, sleeping or housekeeping accommodations,  
33 or any other room or accommodation in any part of the hotel, rooming house, or tourist camp that  
34 is available for or rented out for hire in the lodging of guests.

1 (ii) "Rooming house" means every house, boat, vehicle, motor court, or other structure  
2 kept, used, maintained, advertised, or held out to the public to be a place where living quarters are  
3 supplied for pay to transient or permanent guests or tenants, whether in one or adjoining  
4 buildings.

5 (iii) "Tourist camp" means a place where tents or tent houses, or camp cottages, or cabins  
6 or other structures are located and offered to the public or any segment thereof for human  
7 habitation.

8 (o) "Lease or rental" means any transfer of possession or control of tangible personal  
9 property for a fixed or indeterminate term for consideration. A lease or rental may include future  
10 options to purchase or extend. Lease or rental does not include:

11 (i) A transfer of possession or control of property under a security agreement or deferred  
12 payment plan that requires the transfer of title upon completion of the required payments;

13 (ii) A transfer of possession or control of property under an agreement that requires the  
14 transfer of title upon completion of required payments and payment of an option price does not  
15 exceed the greater of one hundred dollars (\$100) or one percent of the total required payments; or

16 (iii) Providing tangible personal property along with an operator for a fixed or  
17 indeterminate period of time. A condition of this exclusion is that the operator is necessary for  
18 the equipment to perform as designed. For the purpose of this subsection, an operator must do  
19 more than maintain, inspect, or set-up the tangible personal property.

20 (iv) Lease or rental does include agreements covering motor vehicles and trailers where  
21 the amount of consideration may be increased or decreased by reference to the amount realized  
22 upon sale or disposition of the property as defined in 26 U.S.C. § 7701(h)(1).

23 (v) This definition shall be used for sales and use tax purposes regardless if a transaction  
24 is characterized as a lease or rental under generally accepted accounting principles, the Internal  
25 Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

26 (vi) This definition will be applied only prospectively from the date of adoption and will  
27 have no retroactive impact on existing leases or rentals. This definition shall neither impact any  
28 existing sale-leaseback exemption or exclusions that a state may have, nor preclude a state from  
29 adopting a sale-leaseback exemption or exclusion after the effective date of the agreement.

30 (p) "Mobility enhancing equipment" means equipment, including repair and replacement  
31 parts to same, that:

32 (i) Is primarily and customarily used to provide or increase the ability to move from one  
33 place to another and that is appropriate for use either in a home or a motor vehicle; and

34 (ii) Is not generally used by persons with normal mobility; and

1 (iii) Does not include any motor vehicle or equipment on a motor vehicle normally  
2 provided by a motor vehicle manufacturer.

3 Mobility enhancing equipment does not include durable medical equipment.

4 (q) "Model 1 Seller" means a seller that has selected a CSP as its agent to perform all the  
5 seller's sales and use tax functions, other than the seller's obligation to remit tax on its own  
6 purchases.

7 (r) "Model 2 Seller" means a seller that has selected a CAS to perform part of its sales  
8 and use tax functions, but retains responsibility for remitting the tax.

9 (s) "Model 3 Seller" means a seller that has sales in at least five member states, has total  
10 annual sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary  
11 system that calculates the amount of tax due each jurisdiction, and has entered into a performance  
12 agreement with the member states that establishes a tax performance standard for the seller. As  
13 used in this definition, a seller includes an affiliated group of sellers using the same proprietary  
14 system.

15 (t) "Prosthetic device" means a replacement, corrective, or supportive device including  
16 repair and replacement parts for same worn on or in the body to:

17 (i) Artificially replace a missing portion of the body;

18 (ii) Prevent or correct physical deformity or malfunction; or

19 (iii) Support a weak or deformed portion of the body.

20 (u) "Purchaser" means a person to whom a sale of personal property is made or to whom  
21 a service is furnished.

22 (v) "Purchase price" applies to the measure subject to use tax and has the same meaning  
23 as sales price.

24 (w) "Seller" means a person making sales, leases, or rentals of personal property or  
25 services.

26 (x) Specified digital products.

27 (i) "Specified digital products" means electronically transferred:

28 (A) "Digital audio-visual works" which means a series of related images which, when  
29 shown in succession, impart an impression of motion, together with accompanying sounds, if any;

30 (B) "Digital audio works" which means works that result from the fixation of a series of  
31 musical, spoken, or other sounds, including ringtones, and/or;

32 (C) "Digital books" which means works that are generally recognized in the ordinary and  
33 usual sense as "books."

34 (ii) For purposes of the definition of "digital audio works," "ringtones" means digitized

1 sound files that are downloaded onto a device and that may be used to alert the customer with  
2 respect to a communication.

3 (iii) For purposes of the definitions of "specified digital products," "transferred  
4 electronically" means obtained by the purchaser by means other than tangible storage media.

5 (iv) For the purposes of "specified digital products," "end user" includes any person other  
6 than a person who receives by contract a product "transferred electronically" for further  
7 broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution,  
8 redistribution or exhibition of the product, in whole or in part, to another person or persons. A  
9 person that purchases products "transferred electronically" in a commercial manner or associated  
10 with the code for "specified digital products" for the purpose of giving away such products or  
11 code shall not be considered to have engaged in the distribution or redistribution of such products  
12 or code and shall be treated as an end user.

13 (v) For the purposes of "specified digital products," "permanent" means perpetual or for  
14 an indefinite or unspecified length of time.

15 (y) "State" means any state of the United States and the District of Columbia.

16 (z) "Telecommunications" tax base/exemption terms.

17 (i) Telecommunication terms shall be defined as follows:

18 (A) "Ancillary services" means services that are associated with or incidental to the  
19 provision of "telecommunications services," including, but not limited to, "detailed  
20 telecommunications billing," "directory assistance," "vertical service," and "voice mail services."

21 (B) "Conference bridging service" means an "ancillary service" that links two (2) or more  
22 participants of an audio or video conference call and may include the provision of a telephone  
23 number. "Conference bridging service" does not include the "telecommunications services" used  
24 to reach the conference bridge.

25 (C) "Detailed telecommunications billing service" means an "ancillary service" of  
26 separately stating information pertaining to individual calls on a customer's billing statement.

27 (D) "Directory assistance" means an "ancillary service" of providing telephone number  
28 information, and/or address information.

29 (E) "Vertical service" means an "ancillary service" that is offered in connection with one  
30 or more "telecommunications services," which offers advanced calling features that allow  
31 customers to identify callers and to manage multiple calls and call connections, including  
32 "conference bridging services."

33 (F) "Voice mail service" means an "ancillary service" that enables the customer to store,  
34 send, or receive recorded messages. "Voice mail service" does not include any "vertical services"

1 that the customer may be required to have in order to utilize the "voice mail service."

2 (G) "Telecommunications service" means the electronic transmission, conveyance, or  
3 routing of voice, data, audio, video, or any other information or signals to a point, or between or  
4 among points. The term "telecommunications service" includes such transmission, conveyance,  
5 or routing in which computer processing applications are used to act on the form, code, or  
6 protocol of the content for purposes of transmission, conveyance, or routing without regard to  
7 whether such service is referred to as voice over internet protocol services or is classified by the  
8 Federal Communications Commission as enhanced or value added. "Telecommunications  
9 service" does not include:

10 (1) Data processing and information services that allow data to be generated, acquired,  
11 stored, processed, or retrieved and delivered by an electronic transmission to a purchaser where  
12 such purchaser's primary purpose for the underlying transaction is the processed data or  
13 information;

14 (2) Installation or maintenance of wiring or equipment on a customer's premises;

15 (3) Tangible personal property;

16 (4) Advertising, including, but not limited to, directory advertising;

17 (5) Billing and collection services provided to third parties;

18 (6) Internet access service;

19 (7) Radio and television audio and video programming services, regardless of the  
20 medium, including the furnishing of transmission, conveyance, and routing of such services by  
21 the programming service provider. Radio and television audio and video programming services  
22 shall include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and  
23 video programming services delivered by commercial mobile radio service providers as defined  
24 in 47 C.F.R. § 20.3;

25 (8) "Ancillary services"; or

26 (9) Digital products "delivered electronically," including, but not limited to: software,  
27 music, video, reading materials, or ring tones.

28 (H) "800 service" means a "telecommunications service" that allows a caller to dial a toll-  
29 free number without incurring a charge for the call. The service is typically marketed under the  
30 name "800," "855," "866," "877," and "888" toll-free calling, and any subsequent numbers  
31 designated by the Federal Communications Commission.

32 (I) "900 service" means an inbound toll "telecommunications service" purchased by a  
33 subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded  
34 announcement or live service. "900 service" does not include the charge for: collection services

1 provided by the seller of the "telecommunications services" to the subscriber, or service or  
2 product sold by the subscriber to the subscriber's customer. The service is typically marketed  
3 under the name "900 service," and any subsequent numbers designated by the Federal  
4 Communications Commission.

5 (J) "Fixed wireless service" means a "telecommunications service" that provides radio  
6 communication between fixed points.

7 (K) "Mobile wireless service" means a "telecommunications service" that is transmitted,  
8 conveyed, or routed regardless of the technology used, whereby the origination and/or  
9 termination points of the transmission, conveyance, or routing are not fixed, including, by way of  
10 example only, "telecommunications services" that are provided by a commercial mobile radio  
11 service provider.

12 (L) "Paging service" means a "telecommunications service" that provides transmission of  
13 coded radio signals for the purpose of activating specific pagers; such transmissions may include  
14 messages and/or sounds.

15 (M) "Prepaid calling service" means the right to access exclusively "telecommunications  
16 services," which must be paid for in advance and that enables the origination of calls using an  
17 access number or authorization code, whether manually or electronically dialed, and that is sold  
18 in predetermined units or dollars of which the number declines with use in a known amount.

19 (N) "Prepaid wireless calling service" means a "telecommunications service" that  
20 provides the right to utilize "mobile wireless service," as well as other non-telecommunications  
21 services, including the download of digital products "delivered electronically," content and  
22 "ancillary services" which must be paid for in advance that is sold in predetermined units of  
23 dollars of which the number declines with use in a known amount.

24 (O) "Private communications service" means a telecommunications service that entitles  
25 the customer to exclusive or priority use of a communications channel or group of channels  
26 between or among termination points, regardless of the manner in which such channel or  
27 channels are connected, and includes switching capacity, extension lines, stations, and any other  
28 associated services that are provided in connection with the use of such channel or channels.

29 (P) "Value-added non-voice data service" means a service that otherwise meets the  
30 definition of "telecommunications services" in which computer processing applications are used  
31 to act on the form, content, code, or protocol of the information or data primarily for a purpose  
32 other than transmission, conveyance, or routing.

33 (ii) "Modifiers of Sales Tax Base/Exemption Terms" -- the following terms can be used  
34 to further delineate the type of "telecommunications service" to be taxed or exempted. The terms

1 would be used with the broader terms and subcategories delineated above.

2 (A) "Coin-operated telephone service" means a "telecommunications service" paid for by  
3 inserting money into a telephone accepting direct deposits of money to operate.

4 (B) "International" means a "telecommunications service" that originates or terminates in  
5 the United States and terminates or originates outside the United States, respectively. United  
6 States includes the District of Columbia or a U.S. territory or possession.

7 (C) "Interstate" means a "telecommunications service" that originates in one United  
8 States state, or a United States territory or possession, and terminates in a different United States  
9 state or a United States territory or possession.

10 (D) "Intrastate" means a "telecommunications service" that originates in one United  
11 States state or a United States territory or possession, and terminates in the same United States  
12 state or a United States territory or possession.

13 (E) "Pay telephone service" means a "telecommunications service" provided through any  
14 pay telephone.

15 (F) "Residential telecommunications service" means a "telecommunications service" or  
16 "ancillary services" provided to an individual for personal use at a residential address, including  
17 an individual dwelling unit such as an apartment. In the case of institutions where individuals  
18 reside, such as schools or nursing homes, "telecommunications service" is considered residential  
19 if it is provided to and paid for by an individual resident rather than the institution.

20 The terms "ancillary services" and "telecommunications service" are defined as a broad  
21 range of services. The terms "ancillary services" and "telecommunications service" are broader  
22 than the sum of the subcategories. Definitions of subcategories of "ancillary services" and  
23 "telecommunications service" can be used by a member state alone or in combination with other  
24 subcategories to define a narrower tax base than the definitions of "ancillary services" and  
25 "telecommunications service" would imply. The subcategories can also be used by a member  
26 state to provide exemptions for certain subcategories of the more broadly defined terms.

27 A member state that specifically imposes tax on, or exempts from tax, local telephone or  
28 local telecommunications service may define "local service" in any manner in accordance with §  
29 44-18.1-28, except as limited by other sections of this Agreement.

30 (aa) "Tobacco" means cigarettes, cigars, chewing, or pipe tobacco, or any other item that  
31 contains tobacco.

32 SECTION 2. This act shall take effect upon passage.

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LC004445  
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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

A N A C T

RELATING TO TAXATION -- SALES AND USE TAXES -- LIABILITY AND  
COMPUTATION

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1           This act would expand the definition of sales to include any license, lease, or rental of  
2    prewritten or vendor-hosted computer software and specified digital products. This act would also  
3    define "end-user" for specified digital products.

4           This act would take effect upon passage.

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