

2015 -- H 5395

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2015

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A N A C T

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

Introduced By: Representatives Fogarty, Naughton, Filippi, Keable, and Shekarchi

Date Introduced: February 11, 2015

Referred To: House Finance

It is enacted by the General Assembly as follows:

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

3 **44-18-7.1. Additional definitions.** -- (a) "Agreement" means the Streamlined Sales and
4 Use Tax Agreement.

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

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

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

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

18 (B) A product provided free of charge with the required purchase of another product. A

1 product is "provided free of charge" if the "sales price" of the product purchased does not vary
2 depending on the inclusion of the products "provided free of charge."

3 (C) Items included in the member state's definition of "sales price," pursuant to
4 Appendix C of the Agreement.

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

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

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

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

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

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

22 2. Sellers shall use either the "purchase price" or the "sales price" of the products to
23 determine if the taxable products are de minimis. Sellers may not use a combination of the
24 "purchase price" and "sales price" of the products to determine if the taxable products are de
25 minimis.

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

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

30 1. the transaction includes "food and food ingredients", "drugs", "durable medical
31 equipment", "mobility enhancing equipment", "over-the-counter drugs", "prosthetic devices" (all
32 as defined in § 44-18-7.1) or medical supplies; and

33 2. where the seller's "purchase price" or "sales price" of the taxable tangible personal
34 property is fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled

1 tangible personal property. Sellers may not use a combination of the "purchase price" and "sales
2 price" of the tangible personal property when making the fifty percent (50%) determination for a
3 transaction.

4 (d) "Certified Automated System (CAS)" means software certified under the Agreement
5 to calculate the tax imposed by each jurisdiction on a transaction, determine the amount of tax to
6 remit to the appropriate state, and maintain a record of the transaction.

7 (e) "Certified Service Provider (CSP)" means an agent certified under the Agreement to
8 perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on
9 its own purchases.

10 (f) Clothing and Related Items

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

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

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

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

23 (g) Computer and Related Items

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

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

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

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

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

34 (vi) "Prewritten computer software" means "computer software," including prewritten

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

15 (h) Drugs and Related Items

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

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

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

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

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

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

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

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

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

33 (iii) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo,
34 toothpaste, mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the

1 items meet the definition of "over-the-counter-drugs."

2 (iv) "Prescription" means an order, formula or recipe issued in any form of oral, written,
3 electronic, or other means of transmission by a duly licensed practitioner authorized by the laws
4 of the member state.

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

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

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

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

18 (i) Can withstand repeated use; and

19 (ii) Is primarily and customarily used to serve a medical purpose; and

20 (iii) Generally is not useful to a person in the absence of illness or injury; and

21 (iv) Is not worn in or on the body.

22 Durable medical equipment does not include mobility enhancing equipment.

23 (l) Food and Related Items

24 (i) "Food and food ingredients" means substances, whether in liquid, concentrated, solid,
25 frozen, dried, or dehydrated form, that are sold for ingestion or chewing by humans and are
26 consumed for their taste or nutritional value [and seeds and plants used to grow food and food](#)
27 [ingredients](#). "Food and food ingredients" does not include "alcoholic beverages," "tobacco,"
28 "candy," "dietary supplements" and "soft drinks."

29 (ii) "Prepared food" means:

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

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

33 (C) Food sold with eating utensils provided by the seller, including plates, knives, forks,
34 spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used

1 to transport the food.

2 "Prepared food" in (B) does not include food that is only cut, repackaged, or pasteurized
3 by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring
4 cooking by the consumer as recommended by the Food and Drug Administration in chapter 3,
5 part 401.11 of its Food Code so as to prevent food borne illnesses.

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

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

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

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

17 1. A vitamin;

18 2. A mineral;

19 3. An herb or other botanical;

20 4. An amino acid;

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

23 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient
24 described in above; and

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

28 (C) Is required to be labeled as a dietary supplement, identifiable by the "Supplemental
29 Facts" box found on the label and as required pursuant to 21 C.F.R. § 101.36.

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

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

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

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

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

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

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

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

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

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

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

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

33 (p) "Mobility enhancing equipment" means equipment including repair and replacement
34 parts to same, which:

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

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

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

6 Mobility enhancing equipment does not include durable medical equipment.

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

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

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

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

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

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

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

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

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

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

29 (x) "State" means any state of the United States and the District of Columbia.

30 (y) "Telecommunications" tax base/exemption terms

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

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

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

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

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

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

13 (F) "Voice mail service" means an "ancillary service" that enables the customer to store,
14 send or receive recorded messages. "Voice mail service" does not include any "vertical services"
15 that the customer may be required to have in order to utilize the "voice mail service".

16 (G) "Telecommunications service" means the electronic transmission, conveyance, or
17 routing of voice, data, audio, video, or any other information or signals to a point, or between or
18 among points. The term "telecommunications service" includes such transmission, conveyance,
19 or routing in which computer processing applications are used to act on the form, code or
20 protocol of the content for purposes of transmission, conveyance or routing without regard to
21 whether such service is referred to as voice over Internet protocol services or is classified by the
22 Federal Communications Commission as enhanced or value added. "Telecommunications
23 service" does not include:

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

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

29 (3) Tangible personal property;

30 (4) Advertising, including, but not limited to, directory advertising.

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

32 (6) Internet access service;

33 (7) Radio and television audio and video programming services, regardless of the
34 medium, including the furnishing of transmission, conveyance and routing of such services by the

1 programming service provider. Radio and television audio and video programming services shall
2 include, but not be limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video
3 programming services delivered by commercial mobile radio service providers, as defined in 47
4 CFR 20.3;

5 (8) "Ancillary services"; or

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

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

12 (I) "900 service" means an inbound toll "telecommunications service" purchased by a
13 subscriber that allows the subscriber's customers to call in to the subscriber's prerecorded
14 announcement or live service. "900 service" does not include the charge for: collection services
15 provided by the seller of the "telecommunications services" to the subscriber, or service or
16 product sold by the subscriber to the subscriber's customer. The service is typically marketed
17 under the name "900 service," and any subsequent numbers designated by the Federal
18 Communications Commission.

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

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

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

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

33 (N) "Prepaid wireless calling service" means a "telecommunications service" that
34 provides the right to utilize "mobile wireless service" as well as other non-telecommunications

1 services including the download of digital products "delivered electronically", content and
2 "ancillary services" which must be paid for in advance that is sold in predetermined units of
3 dollars of which the number declines with use in a known amount.

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

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

13 (ii) "Modifiers of Sales Tax Base/Exemption Terms" -- the following terms can be used
14 to further delineate the type of "telecommunications service" to be taxed or exempted. The terms
15 would be used with the broader terms and subcategories delineated above.

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

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

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

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

27 (E) "Pay telephone service" means a "telecommunications service" provided through any
28 pay telephone.

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

34 The terms "ancillary services" and "telecommunications service" are defined as a broad

1 range of services. The terms "ancillary services" and "telecommunications service" are broader
2 than the sum of the subcategories. Definitions of subcategories of "ancillary services" and
3 "telecommunications service" can be used by a member state alone or in combination with other
4 subcategories to define a narrower tax base than the definitions of "ancillary services" and
5 "telecommunications service" would imply. The subcategories can also be used by a member
6 state to provide exemptions for certain subcategories of the more broadly defined terms.

7 A member state that specifically imposes tax on, or exempts from tax, local telephone or
8 local telecommunications service may define "local service" in any manner in accordance with §
9 44-18.1-28, except as limited by other sections of this Agreement.

10 (z) "Tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any other item that
11 contains tobacco.

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

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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

- 1 This act would expand the definition of food and food ingredients for purposes of title 44
- 2 to include seeds and plants used to grow food and food ingredients.
- 3 This act would take effect upon passage.

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