

Governor's FY 2018 Budget: Articles

Staff Presentation to the House Finance Committee
June 1, 2017

Introduction

- Article 9 – Remote Sellers
 - Governor's original article with subsequent amendments heard 3/22
 - Re-write submitted 5/25
- Tonight's presentation will review changes and include more background on sales tax

Article 9, Remote Sellers Tax Collection

- Purchases made out of state or from remote sellers who do not collect RI sales tax are subject to use tax
 - If no sales tax was charged, 7% is owed
 - If sales tax less than 7% is charged, difference is owed
 - Auto purchased in Massachusetts

Article 9, Remote Sellers Tax Collection

- Compelling collection from out of state sellers has been seen as an impediment to interstate commerce
- Two Supreme Court rulings set standard for nexus as “physical presence”
 - National Bellasight v. Hess (1967)
 - Quill v. North Dakota (1992)

Article 9, Remote Sellers Tax Collection

- Rhode Island has taken several measures over the years to facilitate collection of use taxes owed on remote transactions
 - Streamlined Sales and Use Tax Agreement and Membership - 2007
 - “Amazon” Law - 2009
 - Use Tax Look-Up Table - 2014

Article 9, Remote Sellers Tax Collection

- Streamlined Sales and Use Agreement
 - Collective effort by states to simplify and modernize sales and use tax administration
 - Substantially reduce burden of tax compliance
 - Participating retailers volunteer to collect taxes for member states
 - Rhode Island became a full member in 2007
 - Recent annual collections \$2.7 million

Article 9, Remote Sellers Tax Collection

- “Amazon Law” – 2009
 - Added companies that *contract with RI companies* and sell over the internet to the definition “retailer”
 - Certain sites dropped RI affiliates rather than comply/challenge
 - In January 2017 Amazon announced it had agreed to begin collecting sales tax from its RI customers on Feb 1
 - Doing so for 41 states and DC now

Article 9, Remote Sellers Tax Collection

- Use Tax Tool - 2014
 - Assembly authorized Tax Administrator to develop tool for personal income tax forms to simplify use tax collection
 - 0.08% of federal adjusted gross income
 - Additional itemized tax owed on purchases of \$1,000 or more
 - Proper use of tool is “safe harbor” for all use tax owed
 - Budget assumed \$2.2 million in additional revenues, about half has been realized

Article 9, Remote Sellers Tax Collection

- Recent Colorado case ruling opened door to additional option
 - *National Marketing Association v. Brohl (2016)*
 - Physical presence still standard for collection but notification & reporting acceptable
- Remote sellers seen as more likely to opt for collection rather than reporting requirements

Article 9, Remote Sellers Tax Collection - Original

- Article 9 establishes requirements for certain entities engaged in transaction activities within RI
 - Collect and remit taxes, or
 - Provide notice to buyers of their tax liability
- Applies to those with revenues of \$100,000 or 200 transactions
 - Marketplace providers, remote sellers or referrers

Article 9, Remote Sellers Tax Collection - Original

- Notices
 - To buyers: tax liability notice on website, at purchase, and via email within 48 hours of purchase
 - Annual tax document mailing by Jan. 31
 - To retailers from referrers with \$10,000 in referral fees that transaction may be subject to tax
- Penalties
 - \$5 per notice not sent; minimum \$20,000

Article 9, Remote Sellers Tax Collection – Amended Version

- Same concept of requiring collection or notification
- Newly asserts that the existence and/or presence of software (such as “cookies” or “apps”) on the electronic devices of in-state customers means that an online retailer has physical presence in RI

Article 9, Remote Sellers Tax Collection – Amended Version

- Requirements collecting and remitting sales tax, or providing certain notices to taxpayers differ depending upon the entities' activities
- Three separate categories
 - Non-Collecting Retailers
 - Retail Sale Facilitators
 - Referrers
 - Amended penalties to \$10 per notice not sent; minimum \$10,000

Article 9, Remote Sellers Tax Collection – Amended Version

Non-Collecting Retailer: Meets at least one of these criteria:

Uses in-state software to make sales at retail

Sells, leases, or delivers in RI – or participates in any activity in RI in connection with above

Uses a sales process that includes listing, branding, or selling

Offers items for sale through one or more “retail sales facilitators” w/ a physical presence

Is related to an entity that has a physical presence in this state

Article 9, Remote Sellers Tax Collection – Amended Version

Retail Sale Facilitator: Meets ALL of these criteria

Uses in-state software to make sales at retail

Contracts with a retailer to list or advertise sales in any forum, including, but not limited to, a catalog or website

Collects payments – directly or indirectly – from the in-state customer and transmits those payments to a retailer

Article 9, Remote Sellers Tax Collection – Amended Version

Referrer: Meets ALL of these criteria

Receives a fee, commission, or other consideration from a retailer for the listing or advertisement

Transfers an in-state customer to the retailer (via telephone, Internet, or otherwise)

Does not collect payments from the in-state customer for the transaction

Article 9, Remote Sellers Tax Collection – Amended Version

Entity	Sales Threshold	Requirements
Non-Collecting Retailers	\$100,000 in gross RI revenue or at least 200 RI sales transactions	Collect and Remit Sales tax OR Comply with customer notice requirements
Retail Sale Facilitators		Must provide Taxation with lists of retailer names and addresses 1)for whom taxes were collected and 2) not collected
Referrers	\$100k/200 plus \$10K in commissions	Must notify retailers that their sales may be subject to RI's sales and use tax

Article 9, Remote Sellers Tax Collection

- Budget assumes \$34.7 million in revenues
 - Uses national sales data scaled to RI
 - Assumes a full year of collections and full compliance
 - Did not account for current use tax collections
 - SSUTA voluntary collections - \$2.7 million
 - Lookup table – law unchanged

Article 9, Remote Sellers Tax Collection

Revenue Estimation Methodology	
U.S. E-Commerce Sales 2010	\$1,790.0
Avg. Annual Growth 2010-2014	15.0%
Total Est. Sales 2018	\$3,122.0
Est. Rhode Island Share	0.27%
Est. RI E-Commerce Sales	\$835.0
Est. Non-Nexus Sales	59.4%
Est. Sales Subject to Collection	\$495.9
RI State Sales Tax	7.0%
Est. FY 2018 Revenue	\$34.7
\$ in millions	

Article 9, Remote Sellers Tax Collection – Amended Version

- Amazon retail collections now included in baseline revenue estimate
 - Collections began on Feb 1
- Original Art 9 -new impact - \$17.2 million
 - Incorporates SSUTA payments
 - Current estimated Amazon collections
- Amended version would add \$2.6 million from catalog sales

Article 9, Remote Sellers Tax Collection – Amended Version

- Article does not change use tax lookup table tool
 - Current collections \$1.5 million
- Article does not address Marketplace Fairness triggers in current law
 - Drop to 6.5% reduces collections by approximately \$75 million
 - To the extent the state is able to capture lost e-commerce activity, there would be no revenue to offset that loss

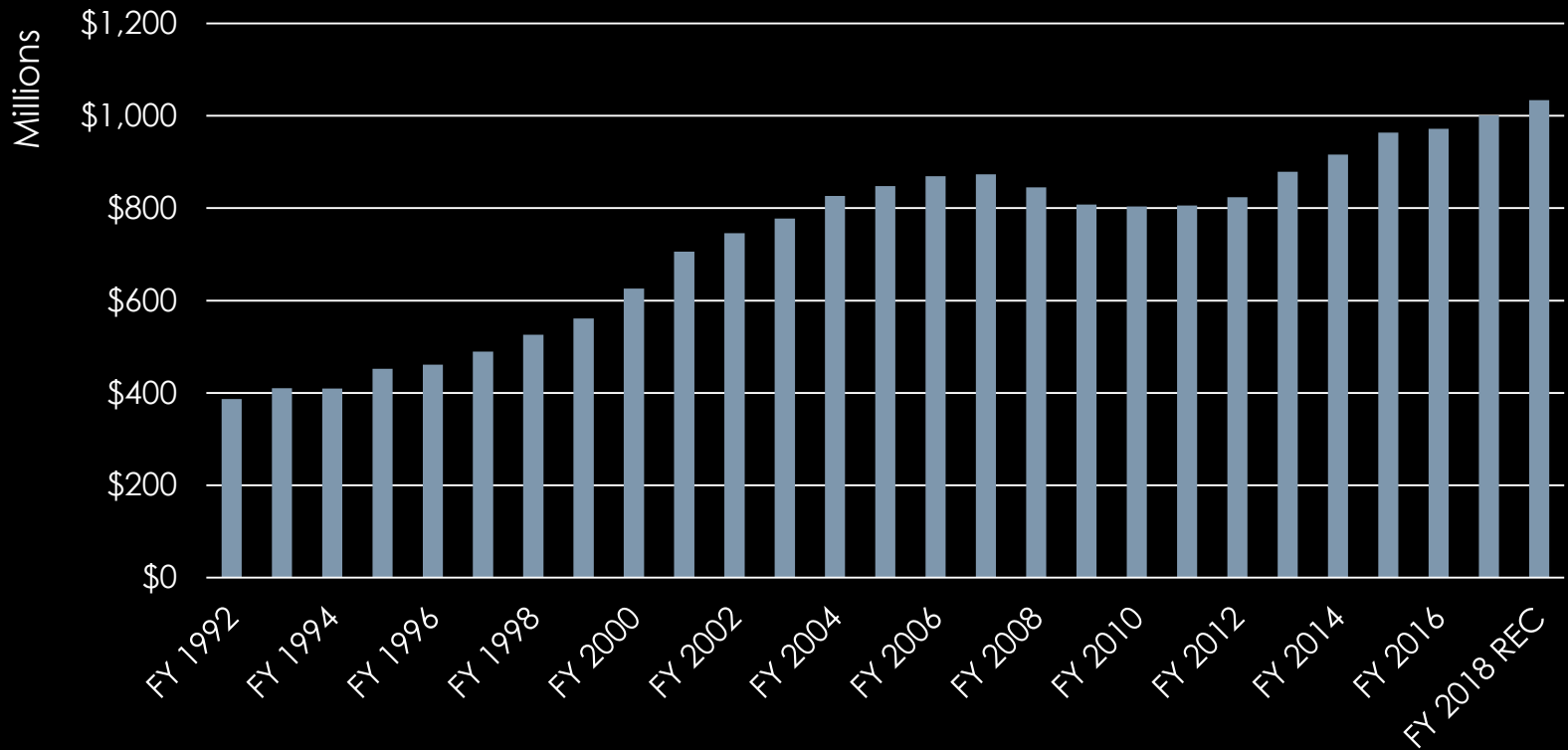
Sales and Use Tax

- Who Pays
- Rates
- Comparison
- Recent proposed and enacted changes

Sales and Use Tax

- The purchaser pays at the time of sale
 - Use tax is generally self reported
- Retailer remits to the state monthly, by the 20th day of the month following the month in which the sale was made
- Small retailers, whose six months average is less than \$200 per month, file quarterly

Sales and Use Tax: 1992-2018



Sales and Use Tax

- Who Pays
- Rates
- Comparison
- Recent proposed and enacted changes

Sales and Use Tax Rates

Effective Date	Rate
July 1, 1947	1%
June 1, 1951	2%
June 1, 1964	3%
June 1, 1964	3.5%

Effective Date	Rate
June 1, 1965	4%
June 1, 1967	5%
June 1, 1976	6%
July 1, 1990	7%*

**Increase from 6% to 7% as originally enacted was to decrease to 6.5 % on July 1, 1991; the law was amended in 1991 to retain 7% rate*

Meals & Beverage Tax Rate

- Meals and Beverage Tax
 - 7% sales tax – general fund
 - 1% on tax on gross receipts from sale of food and beverages sold in or from eating and drinking establishments effective August 1, 2003 - locals

Hotel Tax Rates

- Hotel Tax
- 7% sales and use tax – general fund
- 5.0% charge for occupancy – regional tourism, state tourism and locals
- 1% tax – locals

Sales and Use Tax

- Who Pays
- Rates
- Comparison
- Recent proposed and enacted changes

Comparison

- 45 states impose
- Only 1 state tax rate above 7%
 - California is 7.25%
- Many states have local option taxes increasing the total sales tax in some cases over 9%
- Rhode Island ranks 21st on total sales tax rate

Comparison

- Rhode Island's tax rate is applied to a narrow base
- Exempts clothing and food
 - 60+ other categories
 - Generally does not tax services
- Differences among states more apparent outside New England

Sales and Use Tax

- Who Pays
- Rates
- Comparison
- Recent proposed and enacted changes

2011 – Chafee Budget Article

- Sales and use tax rate reduction from 7% to 6%
- Expansion of sales tax base
- 1.0 % sales tax on certain items currently exempt
 - Sunset if Congress acts on remote sales tax collection

2011 – Chafee Budget Article

- Drop rate from 7% to 6%
 - \$118 million reduction in revenues per 1 percent change
- Apply 6% percent tax to items currently not taxed - \$198 million add
 - Goods - \$22 million
 - Services - \$123 million
 - Recreation & entertainment - \$21 million
 - Labor on maintenance & repairs - \$27 million
 - Other - \$5 million

2011 – Chafee Budget Article

- Goods - \$22 million
 - **Prewritten software delivered electronically**
 - **Non Prescription Drugs**
 - Newspapers
 - **Trade-in value on insurance proceeds**
- Services - \$123 million
 - Home & blding services
 - Taxi cabs/transp
 - **Scenic & sightseeing tours**
 - Employment agencies
 - Pet Services
 - Personal Care - Salons
 - Business support services
 - Laundry & dry cleaning

2011 – Chafee Budget Article

- Recreation & entertainment - \$21 million
 - Amusement Parks
 - Campgrounds
 - Membership Clubs
- Labor on Maintenance & Repairs - \$27 million
 - Motor vehicles
 - Appliances, Clothing etc.

2011 – Chafee Budget Article

- Apply 1% to some exempt items = \$86.8 million including
 - Manufacturing inputs & equip. - \$45.0 million
 - Sales to Non Profits - \$10.6 million
 - Clothing and footwear - \$6.6 million
 - Auto trade-in values - \$2.5 million
 - Home Heating Fuel - \$2.2 million

Changes Since FY 2012

- 2012 Assembly
 - *Repealed* sales tax on package tours & sightseeing services
 - Removed exemption on clothing & footwear costing > \$250 per item
 - Added taxis, limos, charter bus services and pet care services

Changes Since FY 2012

- 2012 Assembly
 - Added provision that if Congress enacts legislation to require remote sellers to collect & remit taxes, the tiered clothing system would be repealed
 - 2013 Assembly added provision to lower rate from 7% to 6.5% upon federal action
 - Would maintain 8% on Meals and Beverage and Hotel with extra 0.5% going to locals

Changes Since FY 2012

- 2013 Assembly
 - Exempted retail wine and spirit sales from December 1, 2013 – March 31, 2015
 - 2014 Assembly extended to June 30, 2015
 - 2015 Assembly made it permanent
 - Exempted qualified original art
- 2014 Assembly
 - Established safe harbor for filers that use lookup table to estimate taxes owed on taxable items purchased from vendors that do not collect or remit sales tax

Changes Since FY 2012

- 2015 Assembly
 - Exempted commercial energy sales from sales tax
 - Expanded lodging covered by sales tax
- 2016 Assembly
 - Clarified inclusion of transportation network companies

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