

Governor's FY 2020 Budget: Articles

Staff Presentation to the House Finance Committee
February 7, 2019

Introduction

- Remote Sellers
 - H 5150 – Article 2
 - H 5151 – Article 5, Sec. 11 (same as Art. 2)
 - H 5278 – Stand alone duplicate
- Mobile Sports betting
 - H 5150 – Article 3
 - H 5241 – Stand alone duplicate

Sales and Use Tax

- 7% tax on retail goods, unless specific exemption & some specified services
 - 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 month average is less than \$200 per month, file quarterly

Remote Sellers Tax Collection - Background

- 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

Remote Sellers Tax Collection - Background

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

Remote Sellers Tax Collection - Background

- Rhode Island had taken several measures over the past decade 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
 - Non-Collecting Retailers legislation - 2017

Remote Sellers Tax Collection - Background

- Streamlined Sales & Use Tax Agreement (SSUTA)
 - 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
 - Collections were \$5.1 million in FY 2018

Remote Sellers Tax Collection - Background

- “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
 - NY law was basis and found constitutional
 - In January 2017 Amazon announced it had agreed to begin collecting sales tax from its RI customers on Feb 1

Remote Sellers Tax Collection - Background

- Sales Tax Revisions
 - Rise of remote sales changed sales tax base
 - Increased focus on rates and taxable base
 - Multiple proposals considered all while congressional action was pending on remote sales allowance
- 2013 Assembly added provision to lower rate to 6.5% upon federal action
 - Maintain 8% on Meals & Beverage and Hotel with extra 0.5% going to locals – up from 1%
 - Extension of 2012 language on luxury clothing tax

Remote Sellers Tax Collection - Background

- 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
 - Collections for Tax Year 2017 were \$1.2 million

Remote Sellers Tax Collection - Background

- Colorado case ruling opened door to additional option
 - Physical presence was still standard for collection but notification & reporting acceptable
- Remote sellers seen as more likely to opt for collection rather than reporting requirements
- Basis for current law adopted in 2017

Remote Sellers Tax Collection – Current Law

- Requirements to collect & remit sales tax or provide certain notices to taxpayers
 - Depends on the entities' activities
- Three separate categories
 - Non-Collecting Retailers
 - Retail Sale Facilitators
 - Referrers
- Penalties of \$10 per notice not sent; minimum \$10,000

Remote Sellers Tax Collection - Current law

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

Remote Sellers Tax Collection – Current Law

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

Remote Sellers Tax Collection – Current Law

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

Remote Sellers Tax Collection – Current Law

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

Remote Sellers Tax Collection - “Wayfair”

- South Dakota adopted legislation following years of a multi-state effort to overcome Quill restrictions through congressional action
 - Also to draw legal challenge
- June 2018 US Supreme Court ruling *South Dakota v. Wayfair* overturned the “physical presence” standard

Remote Sellers Tax Collection - “Wayfair”

- Limitations and protections included in the South Dakota law avoided creation of undue burden on interstate commerce
 - Safe harbor for limited activity
 - No retroactivity
 - Participation in SSUTA

Remote Sellers Tax Collection - 5150/5151/5278

- Newly proposed legislation would simplify current RI law in conformance with the *Wayfair* ruling
- Updates definitions
 - Adds definitions for marketplace, facilitator and sellers
 - Phases out use of term non-collecting retailers

Remote Sellers Tax

Collection - 5150/5151/5278

- Compels all affected entities to register with the Division of Taxation
 - Collect and remit sales tax
- Includes safe harbor provisions
- Technical Changes
 - Correction to penalties language
 - Incorporation of 2018 sales tax expansion language

Remote Sellers Tax Collection - Current Law

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

Remote Sellers Tax Collection - Proposed

Entity	Sales Threshold	Requirements
Remote Sellers/ Marketplace	\$100,000 in gross RI revenue or at least 200 RI sales transactions	Collect and Remit Sales Tax
Marketplace Facilitator		
Referrers	\$100k/200 plus \$10K in commissions	Collect and Remit (if not done by other transaction participants)

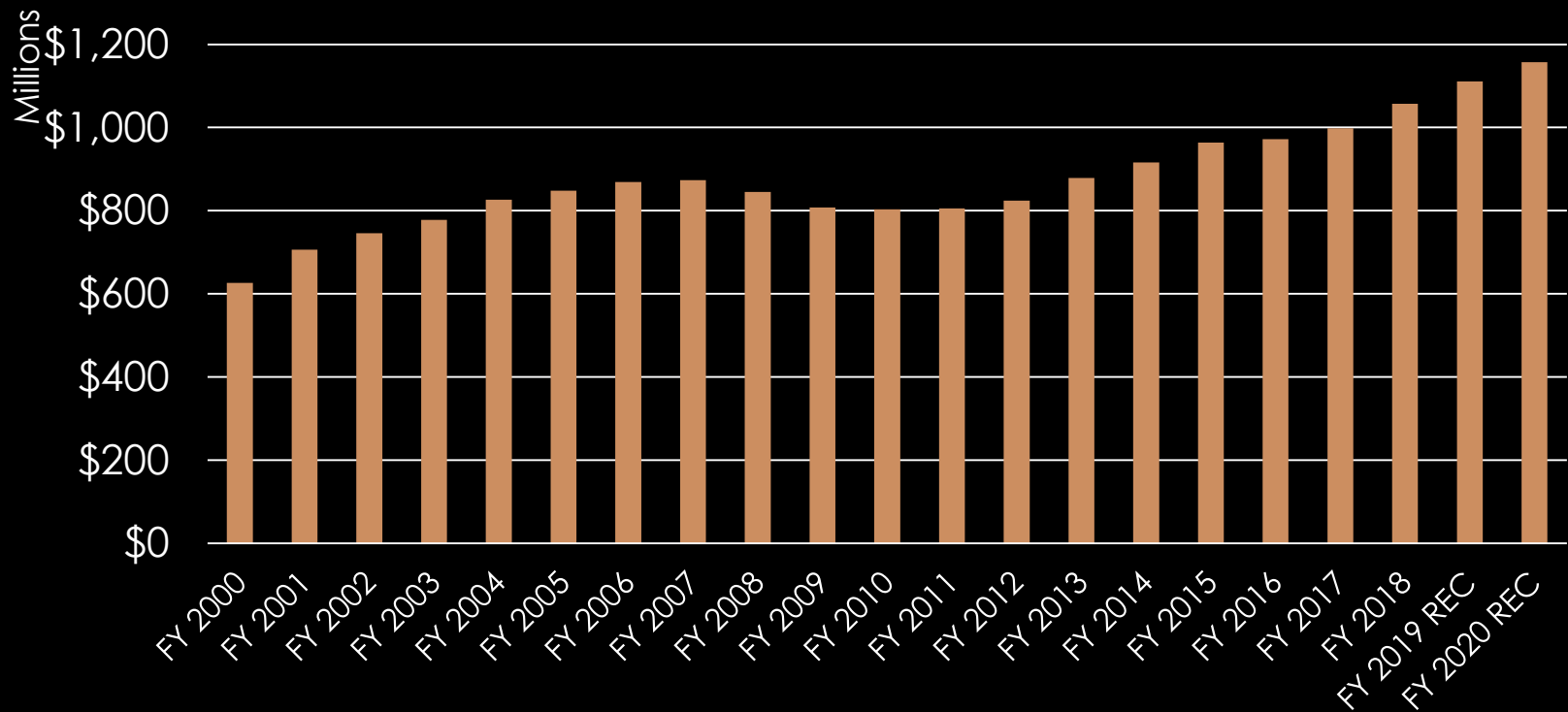
Remote Sellers Tax Collection –

- FY 2020 budget assumes \$11.5 million
 - Compliance better with upfront collection vs reporting of use tax obligation
- Proposal requires 90 days lead time
 - Would have to become law by April 1 to meet this estimate
- Additional technical changes needed
 - Clarifying conflicting effective dates 90 days after passage vs July 1

Remote Sellers Tax Collection –

- Article does not address Marketplace Fairness triggers in current law
 - Congress could still act to standardize practices
 - Sales tax would drop to 6.5% if that happens
 - Equates to over \$80 million with no revenue to offset that loss
 - New proposal closes last major loophole to capturing taxes on lost e-commerce activity that would have offset drop in rate

Sales and Use Tax: 2000-2020



Mobile Sports Betting

- H 5150 – Article 3
- H 5241 – Stand alone duplicate

Mobile Sports Betting	
FY 2020 – assumes January start	\$3.0 million
FY 2021	\$8.5 million

Sports Betting – Current Law

- 2018 Assembly authorized sports betting at the state's existing casinos
 - Previously outlawed at federal level
- Supreme Court overturned prohibition via Professional and Amateur Sports Protection Act of 1992 (PASPA)
 - New Jersey challenged law

Sports Betting – Article 3

- Must open an account in person at the hosting casino
- Servers and all related equipment must be located within the gaming facilities
- Wagers may only be placed while within state borders
 - Technology must confirm that
 - Not limited to casino operating hours
- Additional technical changes needed

Sports Betting – Budget Assumptions

- Handle: amount wagered.
- Hold percentage: Ratio of revenue to handle, also referred to as win percentage.

	Handle	Hold %	Hold	0.25% Fed Tax	Gaming Revenue	Fixed Cost	51% State Share
FY 2019	\$913.6	6.25	\$49.1	(\$2.0)	\$47.2	(\$1.2)	\$23.5
FY 2019 REC	\$386.2	6.25	\$24.1	(\$1.0)	\$23.2	(\$0.6)	\$11.5
FY 2020 REC	\$902.6	6.25	\$56.4	(\$2.3)	\$54.2	(\$0.6)	\$27.3
FY 2020 Gov.	\$1,064.6	5.90	\$62.8	(\$2.7)	\$60.1	(\$0.8)	\$30.3
Difference	\$162.0	(0.35)	\$6.4	(\$0.4)	\$6.0	(\$0.2)	\$3.0

Sports Betting – Issues

- Issues to consider
 - What is reasonable development time for capacity
 - Revenue assumption based on January start
 - Would earlier passage mean earlier start?
 - Initial sports betting rollout was much slower than prior estimates/plan
 - Phased start dates and amenities
 - Are all federal regulatory hurdles satisfied with technology to restrict to in-state?

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