



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
BUDGET OFFICE
One Capitol Hill
Providence, R.I. 02908-5886 **Memorandum**

To: The Honorable Helio Melo
Chairman, House Finance Committee

The Honorable Daniel DaPonte
Chairman, Senate Finance Committee

From: Thomas A. Mullaney *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: May 16, 2013

Subject: Amendments to FY 2014 Appropriations Act (13-H-5127)

The Governor requests that a new Article – Relating to Taxation be added to the FY 2014 Appropriations Act. This article makes amendments to the Sales and Use Tax Act in anticipation of passage of federal legislation known as the Marketplace Fairness Act of 2013. Legislation enacted in the 2012 session of the General Assembly requires that the sales tax rate be lowered from seven percent (7.0%) to six and one-half percent (6.5%) effective on the first day of the first quarter following enactment of the federal legislation. However, the federal legislation requires states to provide 180 days notice to remote sellers before requiring them to collect the state's sales tax. The amendments proposed in this article reconcile the effective dates, so the state will not lower its sales tax rate or make other changes required under current state law until the date remote sellers are required to collect and remit state sales and use taxes.

If you have any questions regarding this new article, please feel free to call me or my staff at 222-6300.

TAM:13-Amend07
Attachments

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Eugene Gessow, Senate Fiscal Advisor
Kelly Mahoney, Director of Policy
Richard Licht, Director of Administration
Peter Marino, Director, Office of Management and Budget
Gregory Stack, Supervising Budget Analyst

NEW ARTICLE (5/16/2013)

RELATING TO SALES AND USE TAX COLLECTIONS

SECTION 1. Chapter 44-18 of the General Laws entitled "Sales and Use Taxes – Liability and Computation" is hereby amended by adding thereto the following section:

§ 44-18-15.2 "Remote seller" and "remote sale" defined - Collection of sales and use tax by remote seller.

(a) "Remote seller" means a person that makes remote sales in this state.

(b) "Remote sale" means a sale into this state for which the seller would not legally be required to pay, collect, or remit state or local sales and use taxes unless provided by federal law.

(c) Upon passage of any federal law authorizing states to require remote sellers to collect and remit sales and use taxes, this state will require a remote seller making remote sales in this state to pay, collect, and remit sales and use taxes at the rate imposed under § 44-18-18, and in accordance with the provisions of this chapter, chapters 44-18.1 and 44-19, and applicable federal law.

SECTION 2. Sections 44-18-18, 44-18-18.1, 44-18-20, and 44-18-30 of the General Laws in Chapter 44-18 entitled "Sales and Use Taxes – Liability and Computation" are hereby amended to read as follows:

§ 44-18-18 Sales tax imposed. – A tax is imposed upon sales at retail in this state including charges for rentals of living quarters in hotels as defined in § 42-63.1-2, rooming houses, or tourist camps, at the rate of six percent (6%) of the gross receipts of the retailer from the sales or rental charges; provided, that the tax imposed on charges for the rentals applies only to the first period of not exceeding thirty (30) consecutive calendar days of each rental; provided, further, that for the period commencing July 1, 1990, the tax rate is seven percent (7%). The tax is paid to the tax administrator by the retailer at the time and in the manner provided. Excluded from this tax are those living quarters in hotels, rooming houses, or tourist camps for which the occupant has a written lease for the living quarters which lease covers a rental period of twelve (12) months or more. In recognition of the work being performed by the Streamlined Sales and Use Tax Governing Board, upon passage of any federal law which authorizes

states to require remote sellers to collect and remit sales and use taxes, effective the first (1st) day of the first (1st) state fiscal quarter following the change, the rate imposed under § 44-18-18 shall be reduced from seven percent (7.0%) to six and one-half percent (6.5%). The six and one-half percent (6.5%) rate shall take effect on the date that the state requires remote sellers to collect and remit sales and use taxes.

§ 44-18-18.1 Local meals and beverage tax. – (a) There is hereby levied and imposed, upon every purchaser of a meal and/or beverage, in addition to all other taxes and fees now imposed by law, a local meals and beverage tax upon each and every meal and/or beverage sold within the state of Rhode Island in or from an eating and/or drinking establishment, whether prepared in the eating and/or drinking establishment or not and whether consumed at the premises or not, at a rate of one percent of the gross receipts. The tax shall be paid to the tax administrator by the retailer at the time and in the manner provided.

(b) All sums received by the division of taxation under this section as taxes, penalties or forfeitures, interest, costs of suit and fines shall be distributed at least quarterly, credited and paid by the state treasurer to the city or town where the meals and beverages are delivered.

(c) When used in this section, the following words have the following meanings:

(1) "Beverage" means all nonalcoholic beverages, as well as alcoholic beverages, beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor.

(2) "Eating and/or drinking establishments" mean and include restaurants, bars, taverns, lounges, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshment stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, or similar facilities in amusement parks, bowling alleys, clubs, caterers, drive-in theatres, industrial plants, race tracks, shore resorts or other locations, lunch carts, mobile canteens and other similar vehicles, and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware or in parking facilities provided primarily for the use of patrons in consuming products purchased at the location. Ordinarily, eating establishments do not mean and include food stores and supermarkets. Eating establishments do not mean "vending machines," a self-contained automatic

device that dispenses for sale foods, beverages, or confection products. Retailers selling prepared foods in bulk either in customer-furnished containers or in the seller's containers, for example "Soup and Sauce" establishments, are deemed to be selling prepared foods ordinarily for immediate consumption and, as such, are considered eating establishments.

(3) "Meal" means any prepared food or beverage offered or held out for sale by an eating and/or drinking establishment for the purpose of being consumed by any person to satisfy the appetite and which is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

(d) This local meals and beverage tax shall be administered and collected by the division of taxation and unless provided to the contrary in this chapter, all of the administration, collection, and other provisions of chapters 18 and 19 of this article apply.

In recognition of the work being performed by the Streamlined Sales and Use Tax Governing Board, upon passage of any federal law which authorizes states to requires remote sellers to collect and remit sales and use taxes, ~~effective the first (1st) day of the first (1st) state fiscal quarter following the~~ change, the rate imposed under § 44-18-18.1 shall be increased from one percent (1.0%) to one and one-half percent (1.5%). The one and one-half percent (1.5%) rate shall take effect on the date that the state requires remote sellers to collect and remit sales and use taxes.

§ 44-18-20 Use tax imposed. – (a) An excise tax is imposed on the storage, use, or other consumption in this state of tangible personal property, prewritten computer software delivered electronically or by load and leave or services as defined in § 44-18-7.3; including a motor vehicle, a boat, an airplane, or a trailer, purchased from any retailer at the rate of six percent (6%) of the sale price of the property.

(b) An excise tax is imposed on the storage, use, or other consumption in this state of a motor vehicle, a boat, an airplane, or a trailer purchased from other than a licensed motor vehicle dealer or other

than a retailer of boats, airplanes, or trailers respectively, at the rate of six percent (6%) of the sale price of the motor vehicle, boat, airplane, or trailer.

(c) The word "trailer" as used in this section and in § 44-18-21 means and includes those defined in § 31-1-5(a) – (e) and also includes boat trailers, camping trailers, house trailers, and mobile homes.

(d) Notwithstanding the provisions contained in this section and in § 44-18-21 relating to the imposition of a use tax and liability for this tax on certain casual sales, no tax is payable in any casual sale:

(1) When the transferee or purchaser is the spouse, mother, father, brother, sister, or child of the transferor or seller;

(2) When the transfer or sale is made in connection with the organization, reorganization, dissolution, or partial liquidation of a business entity; provided:

(i) The last taxable sale, transfer, or use of the article being transferred or sold was subjected to a tax imposed by this chapter;

(ii) The transferee is the business entity referred to or is a stockholder, owner, member, or partner; and

(iii) Any gain or loss to the transferor is not recognized for income tax purposes under the provisions of the federal income tax law and treasury regulations and rulings issued thereunder;

(3) When the sale or transfer is of a trailer, other than a camping trailer, of the type ordinarily used for residential purposes and commonly known as a house trailer or as a mobile home; or

(4) When the transferee or purchaser is exempt under the provisions of § 44-18-30 or other general law of this state or special act of the general assembly of this state.

(e) The term "casual" means a sale made by a person other than a retailer; provided, that in the case of a sale of a motor vehicle, the term means a sale made by a person other than a licensed motor vehicle dealer or an auctioneer at an auction sale. In no case is the tax imposed under the provisions of subsections (a) and (b) of this section on the storage, use, or other consumption in this state of a used motor vehicle less than the product obtained by multiplying the amount of the retail dollar value at the

time of purchase of the motor vehicle by the applicable tax rate; provided, that where the amount of the sale price exceeds the amount of the retail dollar value, the tax is based on the sale price. The tax administrator shall use as his or her guide the retail dollar value as shown in the current issue of any nationally recognized used vehicle guide for appraisal purposes in this state. On request within thirty (30) days by the taxpayer after payment of the tax, if the tax administrator determines that the retail dollar value as stated in this subsection is inequitable or unreasonable, he or she shall, after affording the taxpayer reasonable opportunity to be heard, re-determine the tax.

(f) Every person making more than five (5) retail sales of tangible personal property or prewritten computer software delivered electronically or by load and leave, or services as defined in § 44-18-7.3 during any twelve (12) month period, including sales made in the capacity of assignee for the benefit of creditors or receiver or trustee in bankruptcy, is considered a retailer within the provisions of this chapter.

(g)(1) "Casual sale" includes a sale of tangible personal property not held or used by a seller in the course of activities for which the seller is required to hold a seller's permit or permits or would be required to hold a seller's permit or permits if the activities were conducted in this state; provided, that the sale is not one of a series of sales sufficient in number, scope, and character (more than five (5) in any twelve (12) month period) to constitute an activity for which the seller is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state.

(2) Casual sales also include sales made at bazaars, fairs, picnics, or similar events by nonprofit organizations, which are organized for charitable, educational, civic, religious, social, recreational, fraternal, or literary purposes during two (2) events not to exceed a total of six (6) days duration each calendar year. Each event requires the issuance of a permit by the division of taxation. Where sales are made at events by a vendor, which holds a sales tax permit and is not a nonprofit organization, the sales are in the regular course of business and are not exempt as casual sales.

(h) The use tax imposed under this section for the period commencing July 1, 1990 is at the rate of seven percent (7%). In recognition of the work being performed by the Streamlined Sales and Use Tax Governing Board, upon passage of any federal law which authorizes states to requires remote sellers to

collect and remit sales and use taxes, ~~effective the first (1st) day of the first (1st) state fiscal quarter following the change~~; the rate imposed under § 44-18-18 shall be reduced from seven percent (7.0%) to six and one-half percent (6.5%). The six and one-half percent (6.5%) rate shall take effect on the date that the state requires remote sellers to collect and remit sales and use taxes.

§ 44-18-30 Gross receipts exempt from sales and use taxes. – There are exempted from the taxes imposed by this chapter the following gross receipts:

(1) *Sales and uses beyond constitutional power of state.* From the sale and from the storage, use, or other consumption in this state of tangible personal property the gross receipts from the sale of which, or the storage, use, or other consumption of which, this state is prohibited from taxing under the Constitution of the United States or under the constitution of this state.

(2) *Newspapers.*

(i) From the sale and from the storage, use, or other consumption in this state of any newspaper.

(ii) "Newspaper" means an unbound publication printed on newsprint, which contains news, editorial comment, opinions, features, advertising matter, and other matters of public interest.

(iii) "Newspaper" does not include a magazine, handbill, circular, flyer, sales catalog, or similar item unless the item is printed for and distributed as a part of a newspaper.

(3) *School meals.* From the sale and from the storage, use, or other consumption in this state of meals served by public, private, or parochial schools, school districts, colleges, universities, student organizations, and parent teacher associations to the students or teachers of a school, college, or university whether the meals are served by the educational institutions or by a food service or management entity under contract to the educational institutions.

(4) *Containers.*

(i) From the sale and from the storage, use, or other consumption in this state of:

(A) Non-returnable containers, including boxes, paper bags, and wrapping materials which are biodegradable and all bags and wrapping materials utilized in the medical and healing arts, when sold

without the contents to persons who place the contents in the container and sell the contents with the container.

(B) Containers when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this chapter.

(C) Returnable containers when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

(ii) As used in this subdivision, the term "returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. All other containers are "non-returnable containers."

(5) Charitable, educational, and religious organizations.

(i) From the sale to as in defined in this section, and from the storage, use, and other consumption in this state or any other state of the United States of America of tangible personal property by hospitals not operated for a profit, "educational institutions" as defined in subdivision (18) not operated for a profit, churches, orphanages, and other institutions or organizations operated exclusively for religious or charitable purposes, interest free loan associations not operated for profit, nonprofit organized sporting leagues and associations and bands for boys and girls under the age of nineteen (19) years, the following vocational student organizations that are state chapters of national vocational students organizations: Distributive Education Clubs of America, (DECA); Future Business Leaders of America, phi beta lambda (FBLA/PBL); Future Farmers of America (FFA); Future Homemakers of America/Home Economics Related Occupations (FHA/HERD); and Vocational Industrial Clubs of America (VICA), organized nonprofit golden age and senior citizens clubs for men and women, and parent teacher associations.

(ii) In the case of contracts entered into with the federal government, its agencies or instrumentalities, this state or any other state of the United States of America, its agencies, any city, town, district, or other political subdivision of the states, hospitals not operated for profit, educational institutions not operated for profit, churches, orphanages, and other institutions or organizations operated exclusively for religious or charitable purposes, the contractor may purchase such materials and supplies

(materials and/or supplies are defined as those which are essential to the project) that are to be utilized in the construction of the projects being performed under the contracts without payment of the tax.

(iii) The contractor shall not charge any sales or use tax to any exempt agency, institution, or organization but shall in that instance provide his or her suppliers with certificates in the form as determined by the division of taxation showing the reason for exemption; and the contractor's records must substantiate the claim for exemption by showing the disposition of all property so purchased. If any property is then used for a nonexempt purpose, the contractor must pay the tax on the property used.

(6) *Gasoline.* From the sale and from the storage, use, or other consumption in this state of: (i) gasoline and other products taxed under chapter 36 of title 31, and (ii) fuels used for the propulsion of airplanes.

(7) *Purchase for manufacturing purposes.*

(i) From the sale and from the storage, use, or other consumption in this state of computer software, tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, and water, when the property or service is purchased for the purpose of being manufactured into a finished product for resale, and becomes an ingredient, component, or integral part of the manufactured, compounded, processed, assembled, or prepared product, or if the property or service is consumed in the process of manufacturing for resale computer software, tangible personal property, electricity, natural gas, artificial gas, steam, refrigeration, or water.

(ii) "Consumed" means destroyed, used up, or worn out to the degree or extent that the property cannot be repaired, reconditioned, or rendered fit for further manufacturing use.

(iii) "Consumed" includes mere obsolescence.

(iv) "Manufacturing" means and includes manufacturing, compounding, processing, assembling, preparing, or producing.

(v) "Process of manufacturing" means and includes all production operations performed in the producing or processing room, shop, or plant, insofar as the operations are a part of and connected with the manufacturing for resale of tangible personal property, electricity, natural gas, artificial gas, steam,

refrigeration, or water and all production operations performed insofar as the operations are a part of and connected with the manufacturing for resale of computer software.

(vi) "Process of manufacturing" does not mean or include administration operations such as general office operations, accounting, collection, sales promotion, nor does it mean or include distribution operations which occur subsequent to production operations, such as handling, storing, selling, and transporting the manufactured products, even though the administration and distribution operations are performed by or in connection with a manufacturing business.

(8) *State and political subdivisions.* From the sale to, and from the storage, use, or other consumption by, this state, any city, town, district, or other political subdivision of this state. Every redevelopment agency created pursuant to chapter 31 of title 45 is deemed to be a subdivision of the municipality where it is located.

(9) *Food and food ingredients.* From the sale and storage, use, or other consumption in this state of food and food ingredients as defined in § 44-18-7.1(l). For the purposes of this exemption "food and food ingredients" shall not include candy, soft drinks, dietary supplements, alcoholic beverages, tobacco, food sold through vending machines or prepared food (as those terms are defined in § 44-18-7.1, unless the prepared food is:

(i) Sold by a seller whose primary NAICS classification is manufacturing in sector 311, except sub-sector 3118 (bakeries);

(ii) Sold in an unheated state by weight or volume as a single item;

(iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries, donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas; and is not sold with utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws.

(10) *Medicines, drugs and durable medical equipment.* From the sale and from the storage, use, or other consumption in this state, of;

(i) "Drugs" as defined in § 44-18-7.1(h)(i), sold on prescriptions, medical oxygen, and insulin whether or not sold on prescription. For purposes of this exemption drugs shall not include over-the-counter drugs and grooming and hygiene products as defined in § 44-18-7.1(h)(iii).

(ii) Durable medical equipment as defined in section 44-18-7.1(k) for home use only, including, but not limited to, syringe infusers, ambulatory drug delivery pumps, hospital beds, convalescent chairs, and chair lifts. Supplies used in connection with syringe infusers and ambulatory drug delivery pumps which are sold on prescription to individuals to be used by them to dispense or administer prescription drugs, and related ancillary dressings and supplies used to dispense or administer prescription drugs shall also be exempt from tax.

(11) Prosthetic devices and mobility enhancing equipment. From the sale and from the storage, use, or other consumption in this state, of prosthetic devices as defined in § 44-18-7.1(t), sold on prescription, including but not limited to, artificial limbs, dentures, spectacles and eyeglasses, and artificial eyes; artificial hearing devices and hearing aids, whether or not sold on prescription and mobility enhancing equipment as defined in § 44-18-7.1(p) including wheelchairs, crutches and canes.

(12) Coffins, caskets, and burial garments. From the sale and from the storage, use, or other consumption in this state of coffins or caskets, and shrouds or other burial garments which are ordinarily sold by a funeral director as part of the business of funeral directing.

(13) Motor vehicles sold to nonresidents.

(i) From the sale, subsequent to June 30, 1958, of a motor vehicle to a bona fide nonresident of this state who does not register the motor vehicle in this state, whether the sale or delivery of the motor vehicle is made in this state or at the place of residence of the nonresident. A motor vehicle sold to a bona fide nonresident whose state of residence does not allow a like exemption to its nonresidents is not exempt from the tax imposed under § 44-18-20. In that event the bona fide nonresident pays a tax to Rhode Island on the sale at a rate equal to the rate that would be imposed in his or her state of residence not to exceed the rate that would have been imposed under § 44-18-20. Notwithstanding any other provisions of law, a licensed motor vehicle dealer shall add and collect the tax required under this

subdivision and remit the tax to the tax administrator under the provisions of chapters 18 and 19 of this title. When a Rhode Island licensed motor vehicle dealer is required to add and collect the sales and use tax on the sale of a motor vehicle to a bona fide nonresident as provided in this section, the dealer in computing the tax takes into consideration the law of the state of the nonresident as it relates to the trade-in of motor vehicles.

(ii) The tax administrator, in addition to the provisions of §§ 44-19-27 and 44-19-28, may require any licensed motor vehicle dealer to keep records of sales to bona fide nonresidents as the tax administrator deems reasonably necessary to substantiate the exemption provided in this subdivision, including the affidavit of a licensed motor vehicle dealer that the purchaser of the motor vehicle was the holder of, and had in his or her possession a valid out of state motor vehicle registration or a valid out of state driver's license.

(iii) Any nonresident who registers a motor vehicle in this state within ninety (90) days of the date of its sale to him or her is deemed to have purchased the motor vehicle for use, storage, or other consumption in this state, and is subject to, and liable for the use tax imposed under the provisions of § 44-18-20.

(14) Sales in public buildings by blind people. From the sale and from the storage, use, or other consumption in all public buildings in this state of all products or wares by any person licensed under § 40-9-11.1.

(15) Air and water pollution control facilities. From the sale, storage, use, or other consumption in this state of tangible personal property or supplies acquired for incorporation into or used and consumed in the operation of a facility, the primary purpose of which is to aid in the control of the pollution or contamination of the waters or air of the state, as defined in chapter 12 of title 46 and chapter 25 of title 23, respectively, and which has been certified as approved for that purpose by the director of environmental management. The director of environmental management may certify to a portion of the tangible personal property or supplies acquired for incorporation into those facilities or used and consumed in the operation of those facilities to the extent that that portion has as its primary purpose the

control of the pollution or contamination of the waters or air of this state. As used in this subdivision, "facility" means any land, facility, device, building, machinery, or equipment.

(16) *Camps.* From the rental charged for living quarters, or sleeping or housekeeping accommodations at camps or retreat houses operated by religious, charitable, educational, or other organizations and associations mentioned in subdivision (5), or by privately owned and operated summer camps for children.

(17) *Certain institutions.* From the rental charged for living or sleeping quarters in an institution licensed by the state for the hospitalization, custodial, or nursing care of human beings.

(18) *Educational institutions.* From the rental charged by any educational institution for living quarters, or sleeping or housekeeping accommodations or other rooms or accommodations to any student or teacher necessitated by attendance at an educational institution. "Educational institution" as used in this section means an institution of learning not operated for profit which is empowered to confer diplomas, educational, literary, or academic degrees, which has a regular faculty, curriculum, and organized body of pupils or students in attendance throughout the usual school year, which keeps and furnishes to students and others records required and accepted for entrance to schools of secondary, collegiate, or graduate rank, no part of the net earnings of which inures to the benefit of any individual.

(19) *Motor vehicle and adaptive equipment for persons with disabilities.*

(i) From the sale of: (A) special adaptations, (B) the component parts of the special adaptations, or (C) a specially adapted motor vehicle; provided, that the owner furnishes to the tax administrator an affidavit of a licensed physician to the effect that the specially adapted motor vehicle is necessary to transport a family member with a disability or where the vehicle has been specially adapted to meet the specific needs of the person with a disability. This exemption applies to not more than one motor vehicle owned and registered for personal, noncommercial use.

(ii) For the purpose of this subsection the term "special adaptations" includes, but is not limited to: wheelchair lifts; wheelchair carriers; wheelchair ramps; wheelchair securements; hand controls;

steering devices; extensions, relocations, and crossovers of operator controls; power-assisted controls; raised tops or dropped floors; raised entry doors; or alternative signaling devices to auditory signals.

(iii) From the sale of: (a) special adaptations, (b) the component parts of the special adaptations, for a "wheelchair accessible taxicab" as defined in § 39-14-1 and/or a "wheelchair accessible public motor vehicle" as defined in § 39-14.1-1.

(iv) For the purpose of this subdivision the exemption for a "specially adapted motor vehicle" means a use tax credit not to exceed the amount of use tax that would otherwise be due on the motor vehicle, exclusive of any adaptations. The use tax credit is equal to the cost of the special adaptations, including installation.

(20) *Heating fuels.* From the sale and from the storage, use, or other consumption in this state of every type of fuel used in the heating of homes and residential premises.

(21) *Electricity and gas.* From the sale and from the storage, use, or other consumption in this state of electricity and gas furnished for domestic use by occupants of residential premises.

(22) *Manufacturing machinery and equipment.*

(i) From the sale and from the storage, use, or other consumption in this state of tools, dies, and molds, and machinery and equipment (including replacement parts), and related items to the extent used in an industrial plant in connection with the actual manufacture, conversion, or processing of tangible personal property, or to the extent used in connection with the actual manufacture, conversion or processing of computer software as that term is utilized in industry numbers 7371, 7372, and 7373 in the standard industrial classification manual prepared by the technical committee on industrial classification, office of statistical standards, executive office of the president, United States bureau of the budget, as revised from time to time, to be sold, or that machinery and equipment used in the furnishing of power to an industrial manufacturing plant. For the purposes of this subdivision, "industrial plant" means a factory at a fixed location primarily engaged in the manufacture, conversion, or processing of tangible personal property to be sold in the regular course of business;

(ii) Machinery and equipment and related items are not deemed to be used in connection with the actual manufacture, conversion, or processing of tangible personal property, or in connection with the actual manufacture, conversion or processing of computer software as that term is utilized in industry numbers 7371, 7372, and 7373 in the standard industrial classification manual prepared by the technical committee on industrial classification, office of statistical standards, executive office of the president, United States bureau of the budget, as revised from time to time, to be sold to the extent the property is used in administration or distribution operations;

(iii) Machinery and equipment and related items used in connection with the actual manufacture, conversion, or processing of any computer software or any tangible personal property which is not to be sold and which would be exempt under subdivision (7) or this subdivision if purchased from a vendor or machinery and equipment and related items used during any manufacturing, converting or processing function is exempt under this subdivision even if that operation, function, or purpose is not an integral or essential part of a continuous production flow or manufacturing process;

(iv) Where a portion of a group of portable or mobile machinery is used in connection with the actual manufacture, conversion, or processing of computer software or tangible personal property to be sold, as previously defined, that portion, if otherwise qualifying, is exempt under this subdivision even though the machinery in that group is used interchangeably and not otherwise identifiable as to use.

(23) Trade-in value of motor vehicles. From the sale and from the storage, use, or other consumption in this state of so much of the purchase price paid for a new or used automobile as is allocated for a trade-in allowance on the automobile of the buyer given in trade to the seller, or of the proceeds applicable only to the automobile as are received from the manufacturer of automobiles for the repurchase of the automobile whether the repurchase was voluntary or not towards the purchase of a new or used automobile by the buyer. For the purpose of this subdivision, the word "automobile" means a private passenger automobile not used for hire and does not refer to any other type of motor vehicle.

(24) Precious metal bullion.

(i) From the sale and from the storage, use, or other consumption in this state of precious metal bullion, substantially equivalent to a transaction in securities or commodities.

(ii) For purposes of this subdivision, "precious metal bullion" means any elementary precious metal which has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, rhodium, and chromium, and which is in a state or condition that its value depends upon its content and not upon its form.

(iii) The term does not include fabricated precious metal which has been processed or manufactured for some one or more specific and customary industrial, professional, or artistic uses.

(25) *Commercial vessels.* From sales made to a commercial ship, barge, or other vessel of fifty (50) tons burden or over, primarily engaged in interstate or foreign commerce, and from the repair, alteration, or conversion of the vessels, and from the sale of property purchased for the use of the vessels including provisions, supplies, and material for the maintenance and/or repair of the vessels.

(26) *Commercial fishing vessels.* From the sale and from the storage, use, or other consumption in this state of vessels and other water craft which are in excess of five (5) net tons and which are used exclusively for "commercial fishing", as defined in this subdivision, and from the repair, alteration, or conversion of those vessels and other watercraft, and from the sale of property purchased for the use of those vessels and other watercraft including provisions, supplies, and material for the maintenance and/or repair of the vessels and other watercraft and the boats nets, cables, tackle, and other fishing equipment appurtenant to or used in connection with the commercial fishing of the vessels and other watercraft. "Commercial fishing" means the taking or the attempting to take any fish, shellfish, crustacea, or bait species with the intent of disposing of them for profit or by sale, barter, trade, or in commercial channels. The term does not include subsistence fishing, i.e., the taking for personal use and not for sale or barter; or sport fishing; but shall include vessels and other watercraft with a Rhode Island party and charter boat license issued by the department of environmental management pursuant to § 20-2-27.1 which meet the following criteria: (i) the operator must have a current U.S.C.G. license to carry passengers for hire; (ii) U.S.C.G. vessel documentation in the coast wide fishery trade; (iii) U.S.C.G. vessel documentation as to

proof of Rhode Island home port status or a Rhode Island boat registration to prove Rhode Island home port status; (iv) the vessel must be used as a commercial passenger carrying fishing vessel to carry passengers for fishing. The vessel must be able to demonstrate that at least fifty percent (50%) of its annual gross income derives from charters or provides documentation of a minimum of one hundred (100) charter trips annually; (v) the vessel must have a valid Rhode Island party and charter boat license. The tax administrator shall implement the provisions of this subdivision by promulgating rules and regulations relating thereto.

(27) Clothing and footwear. From the sales of articles of clothing, including footwear, intended to be worn or carried on or about the human body for sales prior to October 1, 2012. Effective October 1, 2012, the exemption will apply to the sales of articles of clothing, including footwear, intended to be worn or carried on or about the human body up to two hundred and fifty dollars (\$250) of the sales price per item. For the purposes of this section, "clothing or footwear" does not include clothing accessories or equipment or special clothing or footwear primarily designed for athletic activity or protective use as these terms are defined in § 44-18-7.1(f). In recognition of the work being performed by the Streamlined Sales and Use Tax Governing Board, upon passage of any federal law which authorizes states to require remote sellers to collect and remit sales and use taxes, effective the first (1st) day of the first (1st) state fiscal quarter following the change, this unlimited exemption will apply as it did prior to October 1, 2012. The unlimited exemption on sales of clothing and footwear shall take effect on the date that the state requires remote sellers to collect and remit sales and use taxes.

(28) Water for residential use. From the sale and from the storage, use, or other consumption in this state of water furnished for domestic use by occupants of residential premises.

(29) Bibles. [Unconstitutional; see *Ahlburn v. Clark*, 728 A.2d 449 (R.I. 1999); see Notes to Decisions.] From the sale and from the storage, use, or other consumption in the state of any canonized scriptures of any tax-exempt nonprofit religious organization including, but not limited to, the Old Testament and the New Testament versions.

(30) Boats.

(i) From the sale of a boat or vessel to a bona fide nonresident of this state who does not register the boat or vessel in this state, or document the boat or vessel with the United States government at a home port within the state, whether the sale or delivery of the boat or vessel is made in this state or elsewhere; provided, that the nonresident transports the boat within thirty (30) days after delivery by the seller outside the state for use thereafter solely outside the state.

(ii) The tax administrator, in addition to the provisions of §§ 44-19-17 and 44-19-28, may require the seller of the boat or vessel to keep records of the sales to bona fide nonresidents as the tax administrator deems reasonably necessary to substantiate the exemption provided in this subdivision, including the affidavit of the seller that the buyer represented himself or herself to be a bona fide nonresident of this state and of the buyer that he or she is a nonresident of this state.

(31) Youth activities equipment. From the sale, storage, use, or other consumption in this state of items for not more than twenty dollars (\$20.00) each by nonprofit Rhode Island eleemosynary organizations, for the purposes of youth activities which the organization is formed to sponsor and support; and by accredited elementary and secondary schools for the purposes of the schools or of organized activities of the enrolled students.

(32) Farm equipment. From the sale and from the storage or use of machinery and equipment used directly for commercial farming and agricultural production; including, but not limited to, tractors, ploughs, harrows, spreaders, seeders, milking machines, silage conveyors, balers, bulk milk storage tanks, trucks with farm plates, mowers, combines, irrigation equipment, greenhouses and greenhouse coverings, graders and packaging machines, tools and supplies and other farming equipment, including replacement parts, appurtenant to or used in connection with commercial farming and tools and supplies used in the repair and maintenance of farming equipment. "Commercial farming" means the keeping or boarding of five (5) or more horses or the production within this state of agricultural products, including, but not limited to, field or orchard crops, livestock, dairy, and poultry, or their products, where the keeping, boarding, or production provides at least two thousand five hundred dollars (\$2,500) in annual gross sales to the operator, whether an individual, a group, a partnership, or a corporation for exemptions issued prior

to July 1, 2002; for exemptions issued or renewed after July 1, 2002, there shall be two (2) levels. Level I shall be based on proof of annual gross sales from commercial farming of at least twenty-five hundred dollars (\$2,500) and shall be valid for purchases subject to the exemption provided in this subdivision except for motor vehicles with an excise tax value of five thousand dollars (\$5,000) or greater; Level II shall be based on proof of annual gross sales from commercial farming of at least ten thousand dollars (\$10,000) or greater and shall be valid for purchases subject to the exemption provided in this subdivision including motor vehicles with an excise tax value of five thousand dollars (\$5,000) or greater. For the initial issuance of the exemptions, proof of the requisite amount of annual gross sales from commercial farming shall be required for the prior year; for any renewal of an exemption granted in accordance with this subdivision at either Level I or Level II, proof of gross annual sales from commercial farming at the requisite amount shall be required for each of the prior two (2) years. Certificates of exemption issued or renewed after July 1, 2002, shall clearly indicate the level of the exemption and be valid for four (4) years after the date of issue. This exemption applies even if the same equipment is used for ancillary uses, or is temporarily used for a non-farming or a non-agricultural purpose, but shall not apply to motor vehicles acquired after July 1, 2002, unless the vehicle is a farm vehicle as defined pursuant to § 31-1-8 and is eligible for registration displaying farm plates as provided for in § 31-3-31.

(33) *Compressed air.* From the sale and from the storage, use, or other consumption in the state of compressed air.

(34) *Flags.* From the sale and from the storage, consumption, or other use in this state of United States, Rhode Island or POW-MIA flags.

(35) *Motor vehicle and adaptive equipment to certain veterans.* From the sale of a motor vehicle and adaptive equipment to and for the use of a veteran with a service-connected loss of or the loss of use of a leg, foot, hand, or arm, or any veteran who is a double amputee, whether service connected or not. The motor vehicle must be purchased by and especially equipped for use by the qualifying veteran. Certificate of exemption or refunds of taxes paid is granted under rules or regulations that the tax administrator may prescribe.

(36) *Textbooks.* From the sale and from the storage, use, or other consumption in this state of textbooks by an "educational institution" as defined in subdivision (18) of this section and as well as any educational institution within the purview of § 16-63-9(4) and used textbooks by any purveyor.

(37) *Tangible personal property and supplies used in on-site hazardous waste recycling, reuse, or treatment.* From the sale, storage, use, or other consumption in this state of tangible personal property or supplies used or consumed in the operation of equipment, the exclusive function of which is the recycling, reuse, or recovery of materials (other than precious metals, as defined in subdivision (24)(ii) of this section) from the treatment of "hazardous wastes", as defined in § 23-19.1-4, where the "hazardous wastes" are generated in Rhode Island solely by the same taxpayer and where the personal property is located at, in, or adjacent to a generating facility of the taxpayer in Rhode Island. The taxpayer shall procure an order from the director of the department of environmental management certifying that the equipment and/or supplies as used, or consumed, qualify for the exemption under this subdivision. If any information relating to secret processes or methods of manufacture, production, or treatment is disclosed to the department of environmental management only to procure an order, and is a "trade secret" as defined in § 28-21-10(b), it is not open to public inspection or publicly disclosed unless disclosure is required under chapter 21 of title 28 or chapter 24.4 of title 23.

(38) *Promotional and product literature of boat manufacturers.* From the sale and from the storage, use, or other consumption of promotional and product literature of boat manufacturers shipped to points outside of Rhode Island which either: (i) accompany the product which is sold, (ii) are shipped in bulk to out of state dealers for use in the sale of the product, or (iii) are mailed to customers at no charge.

(39) *Food items paid for by food stamps.* From the sale and from the storage, use, or other consumption in this state of eligible food items payment for which is properly made to the retailer in the form of U.S. government food stamps issued in accordance with the Food Stamp Act of 1977, 7 U.S.C. § 2011 et seq.

(40) *Transportation charges.* From the sale or hiring of motor carriers as defined in § 39-12-2(1) to haul goods, when the contract or hiring cost is charged by a motor freight tariff filed with the Rhode

Island public utilities commission on the number of miles driven or by the number of hours spent on the job.

(41) *Trade-in value of boats.* From the sale and from the storage, use, or other consumption in this state of so much of the purchase price paid for a new or used boat as is allocated for a trade-in allowance on the boat of the buyer given in trade to the seller or of the proceeds applicable only to the boat as are received from an insurance claim as a result of a stolen or damaged boat, towards the purchase of a new or used boat by the buyer.

(42) *Equipment used for research and development.* From the sale and from the storage, use, or other consumption of equipment to the extent used for research and development purposes by a qualifying firm. For the purposes of this subdivision, "qualifying firm" means a business for which the use of research and development equipment is an integral part of its operation, and "equipment" means scientific equipment, computers, software, and related items.

(43) *Coins.* From the sale and from the other consumption in this state of coins having numismatic or investment value.

(44) *Farm structure construction materials.* Lumber, hardware and other materials used in the new construction of farm structures, including production facilities such as, but not limited to, farrowing sheds, free stall and stanchion barns, milking parlors, silos, poultry barns, laying houses, fruit and vegetable storages, rooting cellars, propagation rooms, greenhouses, packing rooms, machinery storage, seasonal farm worker housing, certified farm markets, bunker and trench silos, feed storage sheds, and any other structures used in connection with commercial farming.

(45) *Telecommunications carrier access service.* Carrier access service or telecommunications service when purchased by a telecommunications company from another telecommunications company to facilitate the provision of telecommunications service.

(46) *Boats or vessels brought into the state exclusively for winter storage, maintenance, repair or sale.* Notwithstanding the provisions of §§ 44-18-10, 44-18-11, 44-18-20, the tax imposed by § 44-18-20 is not applicable for the period commencing on the first day of October in any year to and including the

30th day of April next succeeding with respect to the use of any boat or vessel within this state exclusively for purposes of: (i) delivery of the vessel to a facility in this state for storage, including dry storage and storage in water by means of apparatus preventing ice damage to the hull, maintenance, or repair; (ii) the actual process of storage, maintenance, or repair of the boat or vessel; or (iii) storage for the purpose of selling the boat or vessel.

(47) *Jewelry display product.* From the sale and from the storage, use, or other consumption in this state of tangible personal property used to display any jewelry product; provided, that title to the jewelry display product is transferred by the jewelry manufacturer or seller and that the jewelry display product is shipped out of state for use solely outside the state and is not returned to the jewelry manufacturer or seller.

(48) *Boats or vessels generally.* Notwithstanding the provisions of this chapter, the tax imposed by §§ 44-18-20 and 44-18-18 shall not apply with respect to the sale and to the storage, use, or other consumption in this state of any new or used boat. The exemption provided for in this subdivision does not apply after October 1, 1993, unless prior to October 1, 1993, the federal ten percent (10%) surcharge on luxury boats is repealed.

(49) *Banks and Regulated investment companies interstate toll-free calls.* Notwithstanding the provisions of this chapter, the tax imposed by this chapter does not apply to the furnishing of interstate and international, toll-free terminating telecommunication service that is used directly and exclusively by or for the benefit of an eligible company as defined in this subdivision; provided, that an eligible company employs on average during the calendar year no less than five hundred (500) "full-time equivalent employees", as that term is defined in § 42-64.5-2. For purposes of this section, an "eligible company" means a "regulated investment company" as that term is defined in the Internal Revenue Code of 1986, 26 U.S.C. § 1 et seq., or a corporation to the extent the service is provided, directly or indirectly, to or on behalf of a regulated investment company, an employee benefit plan, a retirement plan or a pension plan or a state chartered bank.

(50) Mobile and manufactured homes generally. From the sale and from the storage, use, or other consumption in this state of mobile and/or manufactured homes as defined and subject to taxation pursuant to the provisions of chapter 44 of title 31.

(51) Manufacturing business reconstruction materials.

(i) From the sale and from the storage, use or other consumption in this state of lumber, hardware, and other building materials used in the reconstruction of a manufacturing business facility which suffers a disaster, as defined in this subdivision, in this state. "Disaster" means any occurrence, natural or otherwise, which results in the destruction of sixty percent (60%) or more of an operating manufacturing business facility within this state. "Disaster" does not include any damage resulting from the willful act of the owner of the manufacturing business facility.

(ii) Manufacturing business facility includes, but is not limited to, the structures housing the production and administrative facilities.

(iii) In the event a manufacturer has more than one manufacturing site in this state, the sixty percent (60%) provision applies to the damages suffered at that one site.

(iv) To the extent that the costs of the reconstruction materials are reimbursed by insurance, this exemption does not apply.

(52) Tangible personal property and supplies used in the processing or preparation of floral products and floral arrangements. From the sale, storage, use, or other consumption in this state of tangible personal property or supplies purchased by florists, garden centers, or other like producers or vendors of flowers, plants, floral products, and natural and artificial floral arrangements which are ultimately sold with flowers, plants, floral products, and natural and artificial floral arrangements or are otherwise used in the decoration, fabrication, creation, processing, or preparation of flowers, plants, floral products, or natural and artificial floral arrangements, including descriptive labels, stickers, and cards affixed to the flower, plant, floral product or arrangement, artificial flowers, spray materials, floral paint and tint, plant shine, flower food, insecticide and fertilizers.

(53) *Horse food products.* From the sale and from the storage, use, or other consumption in this state of horse food products purchased by a person engaged in the business of the boarding of horses.

(54) *Non-motorized recreational vehicles sold to nonresidents.*

(i) From the sale, subsequent to June 30, 2003, of a non-motorized recreational vehicle to a bona fide nonresident of this state who does not register the non-motorized recreational vehicle in this state, whether the sale or delivery of the non-motorized recreational vehicle is made in this state or at the place of residence of the nonresident; provided, that a non-motorized recreational vehicle sold to a bona fide nonresident whose state of residence does not allow a like exemption to its nonresidents is not exempt from the tax imposed under § 44-18-20; provided, further, that in that event the bona fide nonresident pays a tax to Rhode Island on the sale at a rate equal to the rate that would be imposed in his or her state of residence not to exceed the rate that would have been imposed under § 44-18-20. Notwithstanding any other provisions of law, a licensed non-motorized recreational vehicle dealer shall add and collect the tax required under this subdivision and remit the tax to the tax administrator under the provisions of chapters 18 and 19 of this title. Provided, that when a Rhode Island licensed non-motorized recreational vehicle dealer is required to add and collect the sales and use tax on the sale of a non-motorized recreational vehicle to a bona fide nonresident as provided in this section, the dealer in computing the tax takes into consideration the law of the state of the nonresident as it relates to the trade-in of motor vehicles.

(ii) The tax administrator, in addition to the provisions of §§ 44-19-27 and 44-19-28, may require any licensed non-motorized recreational vehicle dealer to keep records of sales to bona fide nonresidents as the tax administrator deems reasonably necessary to substantiate the exemption provided in this subdivision, including the affidavit of a licensed non-motorized recreational vehicle dealer that the purchaser of the non-motorized recreational vehicle was the holder of, and had in his or her possession a valid out-of-state non-motorized recreational vehicle registration or a valid out-of-state driver's license.

(iii) Any nonresident who registers a non-motorized recreational vehicle in this state within ninety (90) days of the date of its sale to him or her is deemed to have purchased the non-motorized

recreational vehicle for use, storage, or other consumption in this state, and is subject to, and liable for the use tax imposed under the provisions of § 44-18-20.

(iv) "Non-motorized recreational vehicle" means any portable dwelling designed and constructed to be used as a temporary dwelling for travel, camping, recreational, and vacation use which is eligible to be registered for highway use, including, but not limited to, "pick-up coaches" or "pick-up campers," "travel trailers," and "tent trailers" as those terms are defined in chapter 1 of title 31.

(55) *Sprinkler and fire alarm systems in existing buildings.* From the sale in this state of sprinkler and fire alarm systems, emergency lighting and alarm systems, and from the sale of the materials necessary and attendant to the installation of those systems, that are required in buildings and occupancies existing therein in July 2003, in order to comply with any additional requirements for such buildings arising directly from the enactment of the Comprehensive Fire Safety Act of 2003, and that are not required by any other provision of law or ordinance or regulation adopted pursuant to that Act. The exemption provided in this subdivision shall expire on December 31, 2008.

(56) *Aircraft.* Notwithstanding the provisions of this chapter, the tax imposed by §§ 44-18-18 and 44-18-20 shall not apply with respect to the sale and to the storage, use, or other consumption in this state of any new or used aircraft or aircraft parts.

(57) *Renewable energy products.* Notwithstanding any other provisions of Rhode Island general laws the following products shall also be exempt from sales tax: solar photovoltaic modules or panels, or any module or panel that generates electricity from light; solar thermal collectors, including, but not limited to, those manufactured with flat glass plates, extruded plastic, sheet metal, and/or evacuated tubes; geothermal heat pumps, including both water-to-water and water-to-air type pumps; wind turbines; towers used to mount wind turbines if specified by or sold by a wind turbine manufacturer; DC to AC inverters that interconnect with utility power lines; manufactured mounting racks and ballast pans for solar collector, module or panel installation. Not to include materials that could be fabricated into such racks; monitoring and control equipment, if specified or supplied by a manufacturer of solar thermal, solar photovoltaic, geothermal, or wind energy systems or if required by law or regulation for such systems but

not to include pumps, fans or plumbing or electrical fixtures unless shipped from the manufacturer affixed to, or an integral part of, another item specified on this list; and solar storage tanks that are part of a solar domestic hot water system or a solar space heating system. If the tank comes with an external heat exchanger it shall also be tax exempt, but a standard hot water tank is not exempt from state sales tax.

(58) *Returned property.* The amount charged for property returned by customers upon rescission of the contract of sale when the entire amount exclusive of handling charges paid for the property is refunded in either cash or credit, and where the property is returned within one hundred twenty (120) days from the date of delivery.

(59) *Dietary Supplements.* From the sale and from the storage, use or other consumption of dietary supplements as defined in § 44-18-7.1(l)(v), sold on prescriptions.

(60) *Blood.* From the sale and from the storage, use or other consumption of human blood.

(61) *Agricultural products for human consumption.* From the sale and from the storage, use or other consumption of livestock and poultry of the kinds of products of which ordinarily constitute food for human consumption and of livestock of the kind the products of which ordinarily constitute fibers for human use.

(62) *Diesel emission control technology.* From the sale and use of diesel retrofit technology that is required by § 31-47.3-4 of the general laws.

(63) *Feed for certain animals used in commercial farming.* From the sale of feed for animals as described in subsection 44-18-30(61).

SECTION 3. This article shall take effect upon passage.