



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

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

MEMORANDUM

**To:** The Honorable Marvin L. Abney  
Chairman, House Finance Committee  
  
The Honorable William J. Conley, Jr.  
Chairman, Senate Finance Committee

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

**Date:** February 25, 2019

**Subject:** Amendment to Article 2 of the FY 2019 Supplemental Appropriations Act  
(19-H-5150)

---

The Governor requests that Article 2 of the FY 2019 Supplemental Appropriations Act (19-H-5150) entitled "Relating to Taxes and Revenue" submitted on January 17, 2019 be replaced with the attached version. The new version clarifies certain language and effective dates. Changes from the original version are shaded in grey.

The following changes were made to this Article (page and line numbers correspond to the article as introduced as 19-H-5150).

Page 42, Line 2 – removed the "or" after "vendor-hosted prewritten computer software" and placed it before "vendor-hosted prewritten computer software". The removed "or" should have been extracted when the term "or specified digital products" was removed from an earlier draft of the bill.

Page 45, Line 6 – removed "July 1, 2019" and replaced it with "effective ninety (90) days after the enactment of this amended chapter" since the bill could pass before July 1, 2019. When the bill becomes effective, a "non-collecting retailer" will be classified as a "remote seller".

Page 46, Line 12 – removed "July 1, 2019" and replaced it with "effective ninety (90) days after the enactment of this amended chapter" since the bill could pass before July 1, 2019. When the bill becomes effective, a "retail sale facilitator" will be classified as a "marketplace facilitator".

Page 46, Line 27 – removed "July 1, 2019 or" and added "ninety days after" to indicate that before the ninety days after the bill becomes effective, the three listed entities must comply with the requirements of subsections F, G, and H.

Page 47, Lines 12 - 15 – removed the second sentence of Paragraph E because it was confusing and could be construed as conflicting with the first sentence of the same paragraph.

Page 49, Lines 20 – added the words “prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten computer software, and/or taxable services” since those items would also be taxable in addition to tangible personal property sold by a marketplace facilitator.

Page 51, Line 9 – removed “July 1, 2019 or” from line 9 and added “ninety (90) days after” to line 10 to be consistent with the ninety-day timelines throughout this amended bill.

Page 51, Line 15– added “ninety (90) days after” to be consistent with the ninety-day timelines throughout this amended bill.

Page 51, Line 19 - removed “July 1, 2019” from line 19 and added “ninety (90) days after the effective date of the enactment of the amendment of this chapter or date to be inserted upon enactment” to line 20 to be consistent with the ninety-day timelines throughout this amended bill.

Page 51, Line 32 – removed capital letters from “marketplace seller” and “marketplace facilitator” to be consistent with the spelling conventions used throughout the bill.

Page 52, Line 7 – changed “repealed” to “amended to read as follows”. This section is not being repealed but rather amended to clarify the definition of a remote seller.

If you have any questions regarding this amendment, please feel free to call me at 222-6300.

TAM: 20-Amend-4

cc: Sharon Reynolds Ferland, House Fiscal Advisor  
Stephen Whitney, Senate Fiscal Advisor  
Jonathan Womer, Director, Office of Management and Budget  
Neena Savage, Tax Administrator

1 **ARTICLE 2**

2 RELATING TO TAXES AND REVENUE

3 SECTION 1. The title of Chapter 44-18.2 of the General Laws entitled “Sales and Use Tax –  
4 Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act” is hereby amended to read as  
5 follows:

6 ~~CHAPTER 44-18.2~~

7 ~~Sales and Use Tax – Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act~~

8 CHAPTER 44-18.2

9 SALES AND USE TAXES – REMOTE SELLERS, REFERRERS, AND MARKETPLACE

10 FACILITATORS ACT

11 SECTION 2. Section 44-18.2-2 of the General Laws in Chapter 44-18.2 entitled “Sales and Use  
12 Tax – Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act” is hereby amended to read as  
13 follows:

14 **44-18.2-2. Definitions.**

15 For the purposes of this chapter:

16 (1) "Division of taxation" means the Rhode Island department of revenue, division of taxation.

17 The division may also be referred to in this chapter as the "division of taxation", "tax division", or  
18 "division."

19 (2) "In-state customer" means a person or persons who makes a purchase of tangible personal  
20 property, prewritten computer software delivered electronically or by load and leave as defined in § 44-  
21 18-7.1(g)(v), vendor-hosted prewritten computer software, and/or taxable services as defined under §  
22 44-18-1 et seq. for use, storage, and/or other consumption in this state.

23 (3) "In-state software" means software used by in-state customers on their computers,  
24 smartphones, and other electronic and/or communication devices, including information or software such  
25 as cached files, cached software, or "cookies", or other data tracking tools, that are stored on property in  
26 this state or distributed within this state, for the purpose of purchasing tangible personal property,

1 prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten  
2 computer software, and/or taxable services.

3 (4) “Marketplace” means a physical or electronic place including, but not limited to, a store,  
4 booth, Internet website, catalog, television or radio broadcast, or a dedicated sales software application  
5 where tangible personal property, prewritten computer software delivered electronically or by load and  
6 leave, vendor-hosted prewritten computer software, and/or taxable services is/are sold or offered for sale  
7 for delivery in this state regardless of whether the tangible personal property, prewritten computer  
8 software delivered electronically or by load and leave, or vendor-hosted prewritten computer software, or  
9 have a physical presence in the state.

10 (5) “Marketplace facilitator” means any person or persons that contracts or otherwise agrees with  
11 a marketplace seller to facilitate for consideration, regardless of whether deducted as fees from the  
12 transaction, the sale of the marketplace seller’s products through a physical or electronic marketplace  
13 operated by the person or persons, and engages:

14 (a) Directly or indirectly, through one or more affiliated persons in any of the following:

15 (i) Transmitting or otherwise communicating the offer or acceptance between the buyer and  
16 seller;

17 (ii) Owning or operating the infrastructure, electronic or physical, or technology that brings  
18 buyers and sellers together;

19 (iii) Providing a virtual currency that buyers are allowed or required to use to purchase products  
20 from the seller; or

21 (iv) Software development or research and development activities related to any of the activities  
22 described in (b) of this subsection (5), if such activities are directly related to a physical or electronic  
23 marketplace operated by the person or an affiliated person; and

24 (b) In any of the following activities with respect to the seller’s products:

25 (i) Payment processing services;

26 (ii) Fulfillment or storage services;

- 1           (iii) Listing products for sale;
- 2           (iv) Setting prices;
- 3           (v) Branding sales as those of the marketplace facilitator;
- 4           (vi) Order taking;
- 5           (vii) Advertising or promotion; or
- 6           (viii) Providing customer service or accepting or assisting with returns or exchanges.

7           (6) "Marketplace seller" means a person, not a related party to a marketplace facilitator, who has  
8 an agreement with a marketplace facilitator and makes retail sales of tangible personal property,  
9 prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten  
10 computer software, and/or taxable services through a marketplace owned, operated, or controlled by a  
11 marketplace facilitator, whether or not such person is required to register to collect and remit sales tax.

12           (47) "Non-collecting retailer" means any person or persons who meets at least one of the  
13 following criteria:

14           (A) Uses in-state software to make sales at retail of tangible personal property, prewritten  
15 computer software delivered electronically or by load and leave, and/or taxable services; or

16           (B) Sells, leases, or delivers in this state, or participates in any activity in this state in connection  
17 with the selling, leasing, or delivering in this state, of tangible personal property, prewritten computer  
18 software delivered electronically or by load and leave, and/or taxable services for use, storage,  
19 distribution, or consumption within this state. This includes, but shall not be limited to, any of the  
20 following acts or methods of transacting business:

21           (i) Engaging in, either directly or indirectly through a referrer, retail sale facilitator, or other third  
22 party, direct response marketing targeted at in-state customers. For purposes of this subsection, direct  
23 response marketing includes, but is not limited to, sending, transmitting, or broadcasting via flyers,  
24 newsletters, telephone calls, targeted electronic mail, text messages, social media messages, targeted  
25 mailings; collecting, analyzing and utilizing individual data on in-state customers; using information or  
26 software, including cached files, cached software, or "cookies", or other data tracking tools, that are

1 stored on property in or distributed within this state; or taking any other action(s) that use persons,  
2 tangible property, intangible property, digital files or information, or software in this state in an effort to  
3 enhance the probability that the person's contacts with a potential in-state customer will result in a sale to  
4 that in-state customer;

5 (ii) Entering into one or more agreements under which a person or persons who has physical  
6 presence in this state refers, either directly or indirectly, potential in-state customers of tangible personal  
7 property, prewritten computer software delivered electronically or by load and leave, and/or taxable  
8 services to the non-collecting retailer for a fee, commission, or other consideration whether by an  
9 internet-based link or an internet website, or otherwise. An agreement under which a non-collecting  
10 retailer purchases advertisements from a person or persons in this state to be delivered in this state on  
11 television, radio, in print, on the internet or by any other medium in this state, shall not be considered an  
12 agreement under this subsection (ii), unless the advertisement revenue or a portion thereof paid to the  
13 person or persons in this state consists of a fee, commission, or other consideration that is based in whole  
14 or in part upon sales of tangible personal property, prewritten computer software delivered electronically  
15 or by load and leave, and/or taxable services; or

16 (iii) Using a retail sale facilitator to sell, lease, or deliver in this state, or participate in any activity  
17 in this state in connection with the selling, leasing, or delivering in this state, of tangible personal  
18 property, prewritten computer software delivered electronically or by load and leave, and/or taxable  
19 services for use, storage, or consumption in this state.

20 (C) Uses a sales process that includes listing, branding, or selling tangible personal property,  
21 prewritten computer software delivered electronically or by load and leave, and/or taxable services for  
22 sale, soliciting, processing orders, fulfilling orders, providing customer service and/or accepting or  
23 assisting with returns or exchanges occurring in this state, regardless of whether that part of the process  
24 has been subcontracted to an affiliate or third party. The sales process for which the in-state customer is  
25 charged not more than the basic charge for shipping and handling as used in this subsection shall not  
26 include shipping via a common carrier or the United States mail;

1 (D) Offers its tangible personal property, prewritten computer software delivered electronically or  
2 by load and leave, and/or taxable services for sale through one or more retail sale facilitators that has  
3 physical presence in this state;

4 (E) Is related to a person that has physical presence in this state, and such related person with a  
5 physical presence in this state:

6 (i) Sells tangible personal property, prewritten computer software delivered electronically or by  
7 load and leave, and/or taxable services that are the same or substantially similar to that sold by a non-  
8 collecting retailer under a business name that is the same or substantially similar to that of the non-  
9 collecting retailer;

10 (ii) Maintains an office, distribution facility, salesroom, warehouse, storage place, or other similar  
11 place of business in this state to facilitate the delivery of tangible personal property, prewritten computer  
12 software delivered electronically or by load and leave, and/or taxable services sold by the non-collecting  
13 retailer;

14 (iii) Uses, with consent or knowledge of the non-collecting retailer, trademarks, service marks, or  
15 trade names in this state that are the same or substantially similar to those used by the non-collecting  
16 retailer;

17 (iv) Delivers or has delivered (except for delivery by common carrier or United States mail for  
18 which the in-state customer is charged not more than the basic charge for shipping and handling), installs,  
19 or assembles tangible personal property in this state, or performs maintenance or repair services on  
20 tangible personal property in this state, which tangible personal property is sold to in-state customers by  
21 the non-collecting retailer;

22 (v) Facilitates the delivery of tangible personal property purchased from a non-collecting retailer  
23 but delivered in this state by allowing an in-state customer to pick up the tangible personal property at an  
24 office distribution facility, salesroom, warehouse, storage place, or other similar place of business  
25 maintained in this state; or

1 (vi) Shares management, business systems, business practices, computer resources,  
2 communication systems, payroll, personnel, or other such business resources and activities with the non-  
3 collecting retailer, and/or engages in intercompany transactions with the non-collecting retailer, either or  
4 both of which relate to the activities that establish or maintain the non-collecting retailer's market in this  
5 state.

6 (F) Any person or persons who meets at least one of the criteria in subsections (47)(A) – (47)(E)  
7 above shall be presumed to be a non-collecting retailer.

8 (G) The term “non-collecting retailer” will no longer apply to any entity that meets the definition  
9 of this subsection on or after July 1, 2019 effective ninety (90) days after the enactment of this amended  
10 chapter, at which time such entity shall be classified as a “remote seller” as referenced in R.I. Gen. Laws  
11 § 44-18-15.2.

12 (58) "Person" means person as defined in § 44-18-6.

13 (69) "Referrer" means every person who:

14 (A) Contracts or otherwise agrees with a retailer to list and/or advertise for sale in this state  
15 tangible personal property, prewritten computer software delivered electronically or by load and leave,  
16 vendor-hosted prewritten computer software, and/or taxable services in any forum, including, but not  
17 limited to, a catalog or internet website;

18 (B) Receives a fee, commission, and/or other consideration from a retailer for the listing and/or  
19 advertisement;

20 (C) Transfers, via in-state software, internet link, or otherwise, an in-state customer to the retailer  
21 or the retailer's employee, affiliate, or website to complete a purchase; and

22 (D) Does not collect payments from the in-state customer for the transaction.

23 (E) A person or persons who engages in the activity set forth in all of the activities set forth in  
24 subsections (69)(A) – (69)(D) above shall be presumed to be a referrer.

25 (710) "Related" means:



1 (A) Having a relationship with the non-collecting retailer within the meaning of the internal  
2 revenue code of 1986 as amended; or

3 (B) Having one or more ownership relationships and a purpose of having the ownership  
4 relationship is to avoid the application of this chapter.

5 (~~§11~~) A "retail sale" or "sale at retail" means any retail sale or sale at retail as defined in § 44-18-  
6 8.

7 (~~912~~) "Retail sale facilitator" means any person or persons that facilitates a sale by a retailer by  
8 engaging in the following types of activities:

9 (A) Using in-state software to make sales at retail of tangible personal property, prewritten  
10 computer software delivered electronically or by load and leave, and/or taxable services; or

11 (B) Contracting or otherwise agreeing with a retailer to list and/or advertise for sale tangible  
12 personal property, prewritten computer software delivered electronically or by load and leave, and/or  
13 taxable services in any forum, including, but not limited to, a catalog or internet website; and

14 (C) Either directly or indirectly through agreements or arrangements with third parties, collecting  
15 payments from the in-state customer and transmitting those payments to a retailer. A person or persons  
16 may be a retail sale facilitator regardless of whether they deduct any fees from the transaction. The  
17 division may define in regulation circumstances under which a retail sale facilitator shall be deemed to  
18 facilitate a retail sale.

19 (D) A person or persons who engages in the type of activity set forth in subsection (~~912~~)(A)  
20 above or both of the types of activities set forth in subsections (~~912~~)(B) and (~~912~~)(C) above shall be  
21 presumed to be a retail sale facilitator.

22 (E) The term "retail sale facilitator" will no longer apply to any entity that meets the definition of  
23 this subsection on or after July 1, 2019 effective ninety (90) days after the enactment of this amended  
24 chapter, at which time such entity shall be classified as a "marketplace facilitator" as referenced above in  
25 R.I. Gen. Laws § 44-18.2-2(5).

26 (~~130~~) A "retailer" means retailer as defined in § 44-18-15.

1           ~~(144)~~ "State" means the State of Rhode Island and Providence Plantations.

2           ~~(152)~~ "Streamlined agreement" means the Streamlined Sales and Use Tax Agreement as  
3 referenced in § 44-18.1-1 et seq.

4           ~~(16)~~ "Vendor-hosted prewritten computer software" refers to the same term as defined in R.I.  
5 Gen. Laws § 44-18-7.1(g)(vii) effective October 1, 2018.

6           SECTION 3. Section 44-18.2-3 of the General Laws in Chapter 44-18.2 entitled "Sales and Use  
7 Tax – Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act" is hereby amended to read as  
8 follows:

9           **44-18.2-3. Requirements for non-collecting retailers, referrers, and retail sale facilitators.**

10           (A) Except as otherwise provided below in § 44-18.2-4, beginning on the later of July 15, 2017,  
11 or two (2) weeks after the enactment of this chapter, and for each tax year thereafter prior to July 1, 2019  
12 or ninety days after the effective date of the amendment of this chapter, any non-collecting retailer,  
13 referrer, or retail sale facilitator, as defined in this chapter, that in the immediately preceding calendar  
14 year either:

15           (i) Has gross revenue from the sale of tangible personal property, prewritten computer software  
16 delivered electronically or by load and leave, and/or has taxable services delivered into this state equal to  
17 or exceeding one hundred thousand dollars (\$100,000); or

18           (ii) Has sold tangible personal property, prewritten computer software delivered electronically or  
19 by load and leave, and/or taxable services for delivery into this state in two hundred (200) or more  
20 separate transactions shall comply with the requirements in subsections ~~(EF)~~, ~~(FG)~~, and ~~(GH)~~ as  
21 applicable.

22           (B) A non-collecting retailer, as defined in this chapter, shall comply with subsection ~~(EF)~~ below  
23 if it meets the criteria of either subsection (A)(i) or (A)(ii) above.

24           (C) A referrer, as defined in this chapter, shall comply with subsection ~~(FG)~~ below if it meets the  
25 criteria of either subsection (A)(i) or (A)(ii) above.

1 (D) A retail sale facilitator, as defined in this chapter, shall comply with subsection (G) below if  
2 it meets the criteria of either subsection (A)(i) or (A)(ii) above.

3 (E) Any noncollecting retailer, retail sale facilitator and/or referrer that is collecting and remitting  
4 sales tax into this state prior to the enactment of this amended chapter, date to be inserted after enactment,  
5 shall be deemed a remote seller and/or marketplace facilitator and/or referrer and shall continue to collect  
6 and remit sales tax. Beginning on ninety (90) days after the enactment of this amended chapter, date to be  
7 inserted after enactment, any remote seller, referrer, marketplace seller and/or marketplace facilitator,  
8 upon amendment of this chapter and shall continue to collect and remit sales tax.

9 Beginning on ninety (90) days after the enactment of this amended chapter, date to be inserted after  
10 enactment, any remote seller, marketplace seller, marketplace facilitator, and/or referrer, as defined in this  
11 chapter, who is not collecting and remitting sales tax shall comply with the requirements in subsection (I)  
12 if that remote seller, marketplace seller, marketplace facilitator, and/or referrer, as defined in this chapter:

13 (i) has not been collecting or remitting sales tax in this state and, in the immediately preceding calendar  
14 year either:

15 (i) Has gross revenue from the sale of tangible personal property, prewritten computer software  
16 delivered electronically or by load and leave, vendor-hosted prewritten computer software, and/or has  
17 taxable services delivered into this state equal to or exceeding one hundred thousand dollars (\$100,000);

18 or

19 (ii) Has sold tangible personal property, prewritten computer software delivered electronically or  
20 by load and leave, vendor-hosted prewritten computer software, and/or taxable services for delivery into  
21 this state in two hundred (200) or more separate transactions.

22 (F) *Non-collecting retailer.* A non-collecting retailer shall either register in this state for a  
23 permit to make sales at retail and collect and remit sales and use tax on all taxable sales into the state or:

24 (1) Post a conspicuous notice on its website that informs in-state customers that sales or use tax is  
25 due on certain purchases made from the non-collecting retailer and that this state requires the in-state  
26 customer to file a sales or use tax return;

1 (2) At the time of purchase, notify in-state customers that sales or use tax is due on taxable  
2 purchases made from the non-collecting retailer and that the state of Rhode Island requires the in-state  
3 customer to file a sales or use tax return;

4 (3) Within forty-eight (48) hours of the time of purchase, notify in-state customers in writing that  
5 sales or use tax is due on taxable purchases made from the non-collecting retailer and that this state  
6 requires the in-state customer to file a sales or use tax return reflecting said purchase;

7 (4) On or before January 31 of each year, including January 31, 2018, for purchases made in  
8 calendar year 2017, send a written notice to all in-state customers who have cumulative annual taxable  
9 purchases from the non-collecting retailer totaling one hundred dollars (\$100) or more for the prior  
10 calendar year. The notification shall show the name of the non-collecting retailer, the total amount paid by  
11 the in-state customer to the non-collecting retailer in the previous calendar year, and, if available, the  
12 dates of purchases, the dollar amount of each purchase, and the category or type of the purchase,  
13 including, whether the purchase is exempt or not exempt from taxation in Rhode Island. The notification  
14 shall include such other information as the division may require by rule and regulation. The notification  
15 shall state that the state of Rhode Island requires a sales or use tax return to be filed and sales or use tax to  
16 be paid on certain categories or types of purchases made by the in-state customer from the non-collecting  
17 retailer. The notification shall be sent separately to all in-state customers by first-class mail and shall not  
18 be included with any other shipments or mailings. The notification shall include the words "Important  
19 Tax Document Enclosed" on the exterior of the mailing; and

20 (5) Beginning on February 15, 2018, and not later than each February 15 thereafter, a non-  
21 collecting retailer that has not registered in this state for a permit to make sales at retail and collect and  
22 remit sales and use tax on all taxable sales into the state for any portion of the prior calendar year, shall  
23 file with the division on such form and/or in such format as the division prescribes an attestation that the  
24 non-collecting retailer has complied with the requirements of subsections ~~(E)~~(1) – ~~(E)~~(4) herein.

25 ~~(F)~~ *Referrer*. At such time during any calendar year, or any portion thereof, that a referrer  
26 receives more than ten thousand dollars (\$10,000) from fees, commissions, and/or other compensation

1 paid to it by retailers with whom it has a contract or agreement to list and/or advertise for sale tangible  
2 personal property, prewritten computer software delivered electronically or by load and leave, and/or  
3 taxable services, said referrer shall within thirty (30) days provide written notice to all such retailers that  
4 the retailers' sales may be subject to this state's sales and use tax.

5 ~~(GH)~~ *Retail sale facilitator.* Beginning January 15, 2018, and each year thereafter, a retail sale  
6 facilitator shall provide the division of taxation with:

7 (i) A list of names and addresses of the retailers for whom during the prior calendar year the retail  
8 sale facilitator collected Rhode Island sales and use tax; and

9 (ii) A list of names and addresses of the retailers who during the prior calendar year used the  
10 retail sale facilitator to serve in-state customers but for whom the retail sale facilitator did not collect  
11 Rhode Island sales and use tax.

12 (I) Remote sellers, referrers, and marketplace facilitators. A remote seller, referrer, and  
13 marketplace facilitator shall register in this state for a permit to make sales at retail and collect and remit  
14 sales and use tax on all taxable sales into the state.

15 (i) A marketplace facilitator shall collect sales and use tax on all sales made through the  
16 marketplace to purchasers in this state whether or not the marketplace seller (1) has or is required to have  
17 a permit to make sales at retail or (2) would have been required to collect and remit sales and use tax had  
18 the sale not been made through the marketplace provider.

19 (ii) A marketplace facilitator shall certify to its marketplace sellers that it will collect and remit  
20 sales and use tax on sales of taxable items made through the marketplace. A marketplace seller that  
21 accepts a marketplace provider's collection certificate in good faith may exclude sales made through the  
22 marketplace from the marketplace seller's returns under Chapters 18 and 19 of Title 44 of the Rhode  
23 Island General Laws.

24 (iii) A marketplace facilitator with respect to a sale of tangible personal property, prewritten  
25 computer software delivered electronically by load and leave, vendor-hosted prewritten software,  
26 and/or taxable services it facilitates;

1 (A) shall have all the obligations and rights of a retailer under Chapters 18 and 19 of Title 44 of the  
2 Rhode Island General Laws and under any regulations adopted pursuant thereto, including, but not limited  
3 to, the duty to obtain a certificate of authority, to collect tax, file returns, remit tax, and the right to accept  
4 a certificate or other documentation from a customer substantiating an exemption or exclusion from tax,  
5 the right to receive a refund or credit allowed by law; and (B) shall keep such records and information and  
6 cooperate with the tax administrator to ensure the proper collection and remittance of tax imposed,  
7 collected, or required to be collected under Chapters 18 and 19 of Title 44 of the Rhode Island General  
8 Laws.

9 (iv) A marketplace facilitator shall be subject to audit by the tax administrator with respect to all  
10 retail sales for which it is required to collect and pay the tax imposed under Chapters 18 and 19 of Title  
11 44 of the Rhode Island General Laws. Where the tax administrator audits the marketplace facilitator, the  
12 tax administrator is prohibited from auditing the marketplace seller for the same retail sales unless the  
13 marketplace facilitator seeks relief under this subsection (iv).

14 (v) If the marketplace facilitator demonstrates to the tax administrator's satisfaction that the  
15 marketplace facilitator has made a reasonable effort to obtain accurate information from the marketplace  
16 seller about a retail sale and that the failure to collect and pay the correct amount of tax imposed under  
17 Chapters 18 and 19 of Title 44 of the Rhode Island General Laws was due to incorrect information  
18 provided to the marketplace facilitator by the marketplace seller, then the marketplace facilitator shall be  
19 relieved of liability of the tax for that retail sale. This subsection (v) does not apply with regard to a retail  
20 sale for which the marketplace facilitator is the seller or if the marketplace facilitator and seller are  
21 affiliates. Where the marketplace facilitator is relieved under this subsection (v), the seller is liable for the  
22 tax imposed under Chapters 18 and 19 of Title 44 of the Rhode Island General Laws.

23 (vi) A class action may not be brought against a marketplace facilitator on behalf of purchasers  
24 arising from or in any way related to an overpayment of sales or use tax collected by the marketplace  
25 facilitator, regardless of whether such action is characterized as a tax refund claim. Nothing in this  
26 subsection (vi) shall affect a purchaser's right to seek a refund as otherwise allowed by law.

1           (~~HJ~~) Any person or entity that engages in any activity or activities of a non-collecting retailer,  
2 referrer, and/or retail sale facilitator as defined herein shall be presumed to be a non-collecting retailer,  
3 referrer, and/or retail sale facilitator as applicable even if referred to by another name or designation. Said  
4 person or entity shall be subject to the terms and conditions set forth in this chapter.

5           SECTION 4. Section 44-18.2-4 of the General Laws in Chapter 44-18.2 entitled “Sales and Use  
6 Tax – Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act” is hereby amended to read as  
7 follows:

8           **44-18.2-4. Exceptions for referrers and retail sale facilitators.**

9           (A)(i) Notwithstanding the provisions of § 44-18.2-3, no retail sale facilitator shall be  
10 required to comply with the provisions of § 44-18.2-3(~~GH~~), for any sale where the retail sale facilitator  
11 within ninety (90) days of the date of the sale has been provided either:

12           (1) A copy of the retailer's Rhode Island sales tax permit to make sales at retail in this state or its  
13 resale certificate as applicable; or

14           (2) Evidence of a fully completed Rhode Island or Streamlined agreement sales and use tax  
15 exemption certificate.

16           (ii) Notwithstanding the provisions of § 44-18.2-3, no referrer shall be required to comply with  
17 the provisions of § 44-18.2-3(~~FG~~) for any referral where the referrer within ninety (90) days of the date of  
18 the sale has been provided either:

19           (1) A copy of the retailer's Rhode Island sales tax permit to make sales at retail in this state or its  
20 resale certificate as applicable; or

21           (2) Evidence of a fully completed Rhode Island or Streamlined agreement sales and use tax  
22 exemption certificate.

23           (B) Nothing in this section shall be construed to interfere with the ability of a non-collecting  
24 retailer, referrer, or retail sale facilitator and a retailer to enter into agreements with each other; provided,  
25 however, the terms of said agreements shall not in any way be inconsistent with or contravene the  
26 requirements of this chapter.

1           (C) The provisions of subsections (A) and (B) herein will not be applicable as of July 1, 2019 or  
2 ninety (90) days after the effective date of the amendment of this chapter.

3           SECTION 5. Section 44-18.2-5 of the General Laws in Chapter 44-18.2 entitled “Sales and Use  
4 Tax – Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act” is hereby amended to read as  
5 follows:

6           **44-18.2-5. Penalties.**

7           Prior to ninety (90) days after the effective date of the enactment of this  
8 chapter or date to be inserted upon enactment, ~~Any~~ non-collecting retailer, referrer, or retail sale  
9 facilitator that fails to comply with any of the requirements of this chapter shall be subject to a penalty of  
10 ten dollars (\$10.00) for each such failure, but not ~~more~~less than a total penalty of ten thousand dollars  
11 (\$10,000) per calendar year. As of July 1, 2019 ninety (90) days after the effective date of the enactment  
12 of this chapter or date to be inserted upon enactment, any remote seller, referrer, or marketplace facilitator  
13 that fails to comply with any of the requirements of this chapter shall be subject to a penalty of ten dollars  
14 (\$10.00) for each such failure, but not less than a total penalty of ten thousand dollars (\$10,000) per  
15 calendar year. Each instance of failing to comply with the requirements of this chapter shall constitute a  
16 separate violation for purposes of calculating the penalty under this section. This penalty shall be in  
17 addition to any other applicable penalties under title 44.

18           SECTION 6. Section 44-18.2-6 of the General Laws in Chapter 44-18.2 entitled “Sales and Use  
19 Tax – Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act” is hereby amended to read as  
20 follows:

21           **44-18.2-6. Other obligations.**

22           (A) Nothing in this section affects the obligation of any in-state customer to remit use tax as to  
23 any applicable transaction in which the seller, non-collecting retailer, ~~or~~ retail sale facilitator, remote  
24 seller, marketplace seller, or marketplace facilitator has not collected and remitted the sales tax for  
25 said transaction.



1 (B) Nothing in this chapter shall be construed as relieving any other person or entity otherwise  
2 required to collect and remit sales and use tax under applicable Rhode Island law from continuing to do  
3 so.

4 (C) In the event that any section of this chapter is later determined to be unlawful, no person,  
5 persons, or entity shall have a cause of action against the person that collected and remitted the sales and  
6 use tax pursuant to this chapter.

7 SECTION 7. Section 44-18-15.2 of the General Laws in Chapter 44-18 entitled "Sales and Use  
8 Taxes – Liability and Computation" is hereby ~~repealed~~ amended to read as follows:

9 **44-18-15.2. "Remote seller" and "remote sale" defined – Collection of sales and use tax by**  
10 **remote seller.**

11 (a) As used in this section:

12 (1) "Remote seller" means ~~a person who makes remote sales in this state.~~any seller, other than a  
13 marketplace facilitator or referrer, who does not have a physical presence in this state and makes retail  
14 sales to purchasers.

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

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

21 SECTION 8. This article shall take effect upon passage.