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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2011

A N A C T

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

Introduced By: Senators Pichardo, Metts, and Miller

Date Introduced: March 10, 2011

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-18-7 and 44-18-30 of the General Laws in Chapter 44-18
2 entitled "Sales and Use Taxes - Liability and Computation" are hereby amended to read as
3 follows:

4 **44-18-7. Sales defined.** -- "Sales" means and includes:

5 (1) Any transfer of title or possession, exchange, barter, lease, or rental, conditional or
6 otherwise, in any manner or by any means of tangible personal property for a consideration.
7 "Transfer of possession", "lease", or "rental" includes transactions found by the tax administrator
8 to be in lieu of a transfer of title, exchange, or barter.

9 (2) The producing, fabricating, processing, printing, or imprinting of tangible personal
10 property for a consideration for consumers who furnish either directly or indirectly the materials
11 used in the producing, fabricating, processing, printing, or imprinting.

12 (3) The furnishing and distributing of tangible personal property for a consideration by
13 social, athletic, and similar clubs and fraternal organizations to their members or others.

14 (4) The furnishing, preparing, or serving for consideration of food, meals, or drinks,
15 including any cover, minimum, entertainment, or other charge in connection therewith.

16 (5) A transaction whereby the possession of tangible personal property is transferred, but
17 the seller retains the title as security for the payment of the price.

18 (6) Any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate

1 commerce, of tangible personal property from the place where it is located for delivery to a point
2 in this state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental,
3 conditional or otherwise, in any manner or by any means whatsoever, of the property for a
4 consideration.

5 (7) A transfer for a consideration of the title or possession of tangible personal property,
6 which has been produced, fabricated, or printed to the special order of the customer, or any
7 publication.

8 (8) The furnishing and distributing of electricity, natural gas, artificial gas, steam,
9 refrigeration, and water.

10 (9) (i) The furnishing for consideration of intrastate, interstate and international
11 telecommunications service sourced in this state in accordance with subsections 44-18.1(15) and
12 (16) and all ancillary services, any maintenance services of telecommunication equipment other
13 than as provided for in subdivision 44-18-12(b)(ii). For the purposes of chapters 18 and 19 of this
14 title only, telecommunication service does not include service rendered using a prepaid telephone
15 calling arrangement.

16 (ii) Notwithstanding the provisions of paragraph (i) of this subdivision, in accordance
17 with the Mobile Telecommunications Sourcing Act (4 U.S.C. sections 116 -- 126), subject to the
18 specific exemptions described in 4 U.S.C. section 116(c), and the exemptions provided in
19 sections 44-18-8 and 44-18-12, mobile telecommunications services that are deemed to be
20 provided by the customer's home service provider are subject to tax under this chapter if the
21 customer's place of primary use is in this state regardless of where the mobile
22 telecommunications services originate, terminate or pass through. Mobile telecommunications
23 services provided to a customer, the charges for which are billed by or for the customer's home
24 service provider, shall be deemed to be provided by the customer's home service provider.

25 (10) The furnishing of service for transmission of messages by telegraph, cable, or radio
26 and the furnishing of community antenna television, subscription television, and cable television
27 services.

28 (11) The rental of living quarters in any hotel, rooming house, or tourist camp.

29 (12) The transfer for consideration of prepaid telephone calling arrangements and the
30 recharge of prepaid telephone calling arrangements sourced to this state in accordance with
31 sections 44-18.1-11 and 44-18.1-15. "Prepaid telephone calling arrangement" means and includes
32 prepaid calling service and prepaid wireless calling service.

33 [\(13\) The transfer electronically of digital audio-visual works, digital audio works, digital](#)
34 [books or prewritten computer software, including a subscription to such products. A subscription](#)

1 means an agreement with a seller that grants a consumer the right to obtain products transferred
2 electronically from within one or more product categories having the same tax treatment, in a
3 fixed quantity or for a fixed period of time, or both.

4 (i) "Transferred electronically" means obtained by the purchaser by means other than
5 tangible storage media;

6 (ii) "Digital audio-visual works" means a series of related images, which, when shown in
7 succession, input an impression of motion, together with accompanying sounds, if any;

8 (iii) "Digital audio works" means works that result from the fixation of series of musical,
9 spoken, or other sounds including ringtones;

10 (iv) "Digital books" means works that are generally recognized in the ordinary and usual
11 sense as "books";

12 (v) "Prewritten computer software" means "computer software", including prewritten
13 upgrades, which is not designed and developed by the author or other creator to the specifications
14 of a specific purchaser. The combining of two (2) or more "prewritten computer software"
15 programs or prewritten portions thereof does not cause the combination to be other than
16 "prewritten computer software." "Prewritten computer software" includes software designed and
17 developed by the author or other creator to the specifications of a specific purchaser when it is
18 sold to a person other than the specific purchaser. Where a person modifies or enhances
19 "computer software" of which the person is not the author or creator, the person shall be deemed
20 to be the author or creator only of such person's modifications or enhancements. "Prewritten
21 computer software" or a prewritten portion thereof that is modified or enhanced to any degree,
22 where such modification or enhancement is designed and developed to the specifications of a
23 specific purchaser, remains "prewritten computer software;" provided, however, that where there
24 is a reasonable, separately stated charge or an invoice or other statement of the price given to the
25 purchaser for such modification or enhancement, such modification or enhancement shall not
26 constitute "prewritten computer software." "Computer" means an electronic device that accepts
27 information in digital or similar form and manipulates it for a result based on a sequence of
28 instructions. "Computer software" means a set of coded instructions designed to cause a computer
29 or automatic data processing equipment to perform a task. "Electronic" means relating to
30 technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar
31 capabilities.

32 **44-18-30. Gross receipts exempt from sales and use taxes.** -- There are exempted from
33 the taxes imposed by this chapter the following gross receipts:

34 (1) Sales and uses beyond constitutional power of state. - From the sale and from the

1 storage, use, or other consumption in this state of tangible personal property the gross receipts
2 from the sale of which, or the storage, use, or other consumption of which, this state is prohibited
3 from taxing under the Constitution of the United States or under the constitution of this state.

4 (2) Newspapers.

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

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

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

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

17 (4) Containers.

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

19 (A) Non-returnable containers, including boxes, paper bags, and wrapping materials
20 which are biodegradable and all bags and wrapping materials utilized in the medical and healing
21 arts, when sold without the contents to persons who place the contents in the container and sell
22 the contents with the container.

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

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

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

30 (5) (i) Charitable, educational, and religious organizations. - From the sale to as in
31 defined in this section, and from the storage, use, and other consumption in this state or any other
32 state of the United States of America of tangible personal property by hospitals not operated for a
33 profit, "educational institutions" as defined in subdivision (18) not operated for a profit, churches,
34 orphanages, and other institutions or organizations operated exclusively for religious or charitable

1 purposes, interest free loan associations not operated for profit, nonprofit organized sporting
2 leagues and associations and bands for boys and girls under the age of nineteen (19) years, the
3 following vocational student organizations that are state chapters of national vocational students
4 organizations: Distributive Education Clubs of America, (DECA); Future Business Leaders of
5 America, phi beta lambda (FBLA/PBL); Future Farmers of America (FFA); Future Homemakers
6 of America/Home Economics Related Occupations (FHA/HERD); and Vocational Industrial
7 Clubs of America (VICA), organized nonprofit golden age and senior citizens clubs for men and
8 women, and parent teacher associations.

9 (ii) In the case of contracts entered into with the federal government, its agencies or
10 instrumentalities, this state or any other state of the United States of America, its agencies, any
11 city, town, district, or other political subdivision of the states, hospitals not operated for profit,
12 educational institutions not operated for profit, churches, orphanages, and other institutions or
13 organizations operated exclusively for religious or charitable purposes, the contractor may
14 purchase such materials and supplies (materials and/or supplies are defined as those which are
15 essential to the project) that are to be utilized in the construction of the projects being performed
16 under the contracts without payment of the tax.

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

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

26 (7) Purchase for manufacturing purposes.

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

34 (ii) "Consumed" means destroyed, used up, or worn out to the degree or extent that the

1 property cannot be repaired, reconditioned, or rendered fit for further manufacturing use.

2 (iii) "Consumed" includes mere obsolescence.

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

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

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

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

19 (9) Food and food ingredients. - From the sale and storage, use, or other consumption in
20 this state of food and food ingredients as defined in section 44-18-7.1(l).

21 For the purposes of this exemption "food and food ingredients" shall not include candy,
22 soft drinks, dietary supplements, alcoholic beverages, tobacco, food sold through vending
23 machines or prepared food (as those terms are defined in section 44-18-7.1, unless the prepared
24 food is:

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

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

28 (iii) Bakery items, including bread, rolls, buns, biscuits, bagels, croissants, pastries,
29 donuts, danish, cakes, tortes, pies, tarts, muffins, bars, cookies, tortillas; and

30 is not sold with utensils provided by the seller, including plates, knives, forks, spoons,
31 glasses, cups, napkins, or straws.

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

34 (i) "Drugs" as defined in section 44-18-7.1(h)(i), sold on prescriptions, medical oxygen,

1 and insulin whether or not sold on prescription, and over-the-counter drugs as defined in section
2 44-18-7.1(h)(ii). For purposes of this exemption over-the-counter drugs shall not include
3 grooming and hygiene products as defined in section 44-18-7.1(h)(iii).

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

10 (11) Prosthetic devices and mobility enhancing equipment. - From the sale and from the
11 storage, use, or other consumption in this state, of prosthetic devices as defined in section 44-18-
12 7.1(t), sold on prescription, including but not limited to, artificial limbs, dentures, spectacles and
13 eyeglasses, and artificial eyes; artificial hearing devices and hearing aids, whether or not sold on
14 prescription and mobility enhancing equipment as defined in section 44-18-7.1(p) including
15 wheelchairs, crutches and canes.

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

19 (13) Motor vehicles sold to nonresidents.

20 (i) From the sale, subsequent to June 30, 1958, of a motor vehicle to a bona fide
21 nonresident of this state who does not register the motor vehicle in this state, whether the sale or
22 delivery of the motor vehicle is made in this state or at the place of residence of the nonresident.
23 A motor vehicle sold to a bona fide nonresident whose state of residence does not allow a like
24 exemption to its nonresidents is not exempt from the tax imposed under section 44-18-20. In that
25 event the bona fide nonresident pays a tax to Rhode Island on the sale at a rate equal to the rate
26 that would be imposed in his or her state of residence not to exceed the rate that would have been
27 imposed under section 44-18-20. Notwithstanding any other provisions of law, a licensed motor
28 vehicle dealer shall add and collect the tax required under this subdivision and remit the tax to the
29 tax administrator under the provisions of chapters 18 and 19 of this title. When a Rhode Island
30 licensed motor vehicle dealer is required to add and collect the sales and use tax on the sale of a
31 motor vehicle to a bona fide nonresident as provided in this section, the dealer in computing the
32 tax takes into consideration the law of the state of the nonresident as it relates to the trade-in of
33 motor vehicles.

34 (ii) The tax administrator, in addition to the provisions of sections 44-19-27 and 44-19-

1 28, may require any licensed motor vehicle dealer to keep records of sales to bona fide
2 nonresidents as the tax administrator deems reasonably necessary to substantiate the exemption
3 provided in this subdivision, including the affidavit of a licensed motor vehicle dealer that the
4 purchaser of the motor vehicle was the holder of, and had in his or her possession a valid out of
5 state motor vehicle registration or a valid out of state driver's license.

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

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

13 (15) Air and water pollution control facilities. - From the sale, storage, use, or other
14 consumption in this state of tangible personal property or supplies acquired for incorporation into
15 or used and consumed in the operation of a facility, the primary purpose of which is to aid in the
16 control of the pollution or contamination of the waters or air of the state, as defined in chapter 12
17 of title 46 and chapter 25 of title 23, respectively, and which has been certified as approved for
18 that purpose by the director of environmental management. The director of environmental
19 management may certify to a portion of the tangible personal property or supplies acquired for
20 incorporation into those facilities or used and consumed in the operation of those facilities to the
21 extent that that portion has as its primary purpose the control of the pollution or contamination of
22 the waters or air of this state. As used in this subdivision, "facility" means any land, facility,
23 device, building, machinery, or equipment.

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

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

30 (18) Educational institutions. - From the rental charged by any educational institution for
31 living quarters, or sleeping or housekeeping accommodations or other rooms or accommodations
32 to any student or teacher necessitated by attendance at an educational institution. "Educational
33 institution" as used in this section means an institution of learning not operated for profit which is
34 empowered to confer diplomas, educational, literary, or academic degrees, which has a regular

1 faculty, curriculum, and organized body of pupils or students in attendance throughout the usual
2 school year, which keeps and furnishes to students and others records required and accepted for
3 entrance to schools of secondary, collegiate, or graduate rank, no part of the net earnings of which
4 inures to the benefit of any individual.

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

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

13 (ii) For the purpose of this subsection the term "special adaptations" includes, but is not
14 limited to: wheelchair lifts; wheelchair carriers; wheelchair ramps; wheelchair securements; hand
15 controls; steering devices; extensions, relocations, and crossovers of operator controls; power-
16 assisted controls; raised tops or dropped floors; raised entry doors; or alternative signaling
17 devices to auditory signals.

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

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

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

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

29 (22) Manufacturing machinery and equipment.

30 (i) From the sale and from the storage, use, or other consumption in this state of tools,
31 dies, and molds, and machinery and equipment (including replacement parts), and related items to
32 the extent used in an industrial plant in connection with the actual manufacture, conversion, or
33 processing of tangible personal property, or to the extent used in connection with the actual
34 manufacture, conversion or processing of computer software as that term is utilized in industry

1 numbers 7371, 7372, and 7373 in the standard industrial classification manual prepared by the
2 technical committee on industrial classification, office of statistical standards, executive office of
3 the president, United States bureau of the budget, as revised from time to time, to be sold, or that
4 machinery and equipment used in the furnishing of power to an industrial manufacturing plant.
5 For the purposes of this subdivision, "industrial plant" means a factory at a fixed location
6 primarily engaged in the manufacture, conversion, or processing of tangible personal property to
7 be sold in the regular course of business;

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

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

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

28 (23) Trade-in value of motor vehicles. - From the sale and from the storage, use, or other
29 consumption in this state of so much of the purchase price paid for a new or used automobile as is
30 allocated for a trade-in allowance on the automobile of the buyer given in trade to the seller or of
31 the proceeds applicable only to the motor vehicle as are received from an insurance claim as a
32 result of a stolen or damaged motor vehicle, or of the proceeds applicable only to the automobile
33 as are received from the manufacturer of automobiles for the repurchase of the automobile
34 whether the repurchase was voluntary or not towards the purchase of a new or used automobile

1 by the buyer; provided, that the proceeds from an insurance claim or repurchase is in lieu of the
2 benefit prescribed in section 44-18-21 for the total loss or destruction of the automobile; and
3 provided, further, that the tax has not been reimbursed as part of the insurance claim or
4 repurchase. For the purpose of this subdivision, the word "automobile" means a private passenger
5 automobile not used for hire and does not refer to any other type of motor vehicle.

6 (24) Precious metal bullion.

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

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

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

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

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

1 passengers for hire; (ii) U.S.C.G. vessel documentation in the coast wide fishery trade; (iii)
2 U.S.C.G. vessel documentation as to proof of Rhode Island home port status or a Rhode Island
3 boat registration to prove Rhode Island home port status; (iv) the vessel must be used as a
4 commercial passenger carrying fishing vessel to carry passengers for fishing. The vessel must be
5 able to demonstrate that at least fifty percent (50%) of its annual gross income derives from
6 charters or provides documentation of a minimum of one hundred (100) charter trips annually; (v)
7 the vessel must have a valid Rhode Island party and charter boat license. The tax administrator
8 shall implement the provisions of this subdivision by promulgating rules and regulations relating
9 thereto.

10 (27) Clothing and footwear. - From the sales of articles of clothing, including footwear,
11 intended to be worn or carried on or about the human body. For the purposes of this section,
12 "clothing or footwear" does not include clothing accessories or equipment or special clothing or
13 footwear primarily designed for athletic activity or protective use as these terms are defined in
14 section 44-18-7.1(f).

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

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

22 (30) Boats.

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

28 (ii) The tax administrator, in addition to the provisions of sections 44-19-17 and 44-19-
29 28, may require the seller of the boat or vessel to keep records of the sales to bona fide
30 nonresidents as the tax administrator deems reasonably necessary to substantiate the exemption
31 provided in this subdivision, including the affidavit of the seller that the buyer represented
32 himself or herself to be a bona fide nonresident of this state and of the buyer that he or she is a
33 nonresident of this state.

34 (31) Youth activities equipment. - From the sale, storage, use, or other consumption in

1 this state of items for not more than twenty dollars (\$20.00) each by nonprofit Rhode Island
2 eleemosynary organizations, for the purposes of youth activities which the organization is formed
3 to sponsor and support; and by accredited elementary and secondary schools for the purposes of
4 the schools or of organized activities of the enrolled students.

5 (32) Farm equipment. - From the sale and from the storage or use of machinery and
6 equipment used directly for commercial farming and agricultural production; including, but not
7 limited to, tractors, ploughs, harrows, spreaders, seeders, milking machines, silage conveyors,
8 balers, bulk milk storage tanks, trucks with farm plates, mowers, combines, irrigation equipment,
9 greenhouses and greenhouse coverings, graders and packaging machines, tools and supplies and
10 other farming equipment, including replacement parts, appurtenant to or used in connection with
11 commercial farming and tools and supplies used in the repair and maintenance of farming
12 equipment. "Commercial farming" means the keeping or boarding of five (5) or more horses or
13 the production within this state of agricultural products, including, but not limited to, field or
14 orchard crops, livestock, dairy, and poultry, or their products, where the keeping, boarding, or
15 production provides at least two thousand five hundred dollars (\$2,500) in annual gross sales to
16 the operator, whether an individual, a group, a partnership, or a corporation for exemptions issued
17 prior to July 1, 2002; for exemptions issued or renewed after July 1, 2002, there shall be two (2)
18 levels. Level I shall be based on proof of annual gross sales from commercial farming of at least
19 twenty-five hundred dollars (\$2,500) and shall be valid for purchases subject to the exemption
20 provided in this subdivision except for motor vehicles with an excise tax value of five thousand
21 dollars (\$5,000) or greater; Level II shall be based on proof of annual gross sales from
22 commercial farming of at least ten thousand dollars (\$10,000) or greater and shall be valid for
23 purchases subject to the exemption provided in this subdivision including motor vehicles with an
24 excise tax value of five thousand dollars (\$5,000) or greater. For the initial issuance of the
25 exemptions, proof of the requisite amount of annual gross sales from commercial farming shall be
26 required for the prior year; for any renewal of an exemption granted in accordance with this
27 subdivision at either Level I or Level II, proof of gross annual sales from commercial farming at
28 the requisite amount shall be required for each of the prior two (2) years. Certificates of
29 exemption issued or renewed after July 1, 2002, shall clearly indicate the level of the exemption
30 and be valid for four (4) years after the date of issue. This exemption applies even if the same
31 equipment is used for ancillary uses, or is temporarily used for a non-farming or a non-
32 agricultural purpose, but shall not apply to motor vehicles acquired after July 1, 2002, unless the
33 vehicle is a farm vehicle as defined pursuant to section 31-1-8 and is eligible for registration
34 displaying farm plates as provided for in section 31-3-31.

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

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

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

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

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

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

34 (39) Food items paid for by food stamps. - From the sale and from the storage, use, or

1 other consumption in this state of eligible food items payment for which is properly made to the
2 retailer in the form of U.S. government food stamps issued in accordance with the Food Stamp
3 Act of 1977, 7 U.S.C. section 2011 et seq.

4 (40) Transportation charges. - From the sale or hiring of motor carriers as defined in
5 section 39-12-2(1) to haul goods, when the contract or hiring cost is charged by a motor freight
6 tariff filed with the Rhode Island public utilities commission on the number of miles driven or by
7 the number of hours spent on the job.

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

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

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

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

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

30 (46) Boats or vessels brought into the state exclusively for winter storage, maintenance,
31 repair or sale. - Notwithstanding the provisions of sections 44-18-10, 44-18-11, 44-18-20, the tax
32 imposed by section 44-18-20 is not applicable for the period commencing on the first day of
33 October in any year to and including the 30th day of April next succeeding with respect to the use
34 of any boat or vessel within this state exclusively for purposes of: (i) delivery of the vessel to a

1 facility in this state for storage, including dry storage and storage in water by means of apparatus
2 preventing ice damage to the hull, maintenance, or repair; (ii) the actual process of storage,
3 maintenance, or repair of the boat or vessel; or (iii) storage for the purpose of selling the boat or
4 vessel.

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

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

15 (49) Banks and Regulated investment companies interstate toll-free calls. -
16 Notwithstanding the provisions of this chapter, the tax imposed by this chapter does not apply to
17 the furnishing of interstate and international, toll-free terminating telecommunication service that
18 is used directly and exclusively by or for the benefit of an eligible company as defined in this
19 subdivision; provided, that an eligible company employs on average during the calendar year no
20 less than five hundred (500) "full-time equivalent employees", as that term is defined in section
21 42-64.5-2. For purposes of this section, an "eligible company" means a "regulated investment
22 company" as that term is defined in the Internal Revenue Code of 1986, 26 U.S.C. section 1 et
23 seq., or a corporation to the extent the service is provided, directly or indirectly, to or on behalf of
24 a regulated investment company, an employee benefit plan, a retirement plan or a pension plan or
25 a state chartered bank.

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

29 (51) Manufacturing business reconstruction materials.

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

1 damage resulting from the willful act of the owner of the manufacturing business facility.

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

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

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

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

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

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

22 (i) From the sale, subsequent to June 30, 2003, of a non-motorized recreational vehicle to
23 a bona fide nonresident of this state who does not register the non-motorized recreational vehicle
24 in this state, whether the sale or delivery of the non-motorized recreational vehicle is made in this
25 state or at the place of residence of the nonresident; provided, that a non-motorized recreational
26 vehicle sold to a bona fide nonresident whose state of residence does not allow a like exemption
27 to its nonresidents is not exempt from the tax imposed under section 44-18-20; provided, further,
28 that in that event the bona fide nonresident pays a tax to Rhode Island on the sale at a rate equal
29 to the rate that would be imposed in his or her state of residence not to exceed the rate that would
30 have been imposed under section 44-18-20. Notwithstanding any other provisions of law, a
31 licensed non-motorized recreational vehicle dealer shall add and collect the tax required under
32 this subdivision and remit the tax to the tax administrator under the provisions of chapters 18 and
33 19 of this title. Provided, that when a Rhode Island licensed non-motorized recreational vehicle
34 dealer is required to add and collect the sales and use tax on the sale of a non-motorized

1 recreational vehicle to a bona fide nonresident as provided in this section, the dealer in computing
2 the tax takes into consideration the law of the state of the nonresident as it relates to the trade-in
3 of motor vehicles.

4 (ii) The tax administrator, in addition to the provisions of sections 44-19-27 and 44-19-
5 28, may require any licensed non-motorized recreational vehicle dealer to keep records of sales to
6 bona fide nonresidents as the tax administrator deems reasonably necessary to substantiate the
7 exemption provided in this subdivision, including the affidavit of a licensed non-motorized
8 recreational vehicle dealer that the purchaser of the non-motorized recreational vehicle was the
9 holder of, and had in his or her possession a valid out-of-state non-motorized recreational vehicle
10 registration or a valid out-of-state driver's license.

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

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

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

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

31 (57) Renewable energy products. - Notwithstanding any other provisions of Rhode
32 Island general laws the following products shall also be exempt from sales tax: solar photovoltaic
33 modules or panels, or any module or panel that generates electricity from light; solar thermal
34 collectors, including, but not limited to, those manufactured with flat glass plates, extruded

1 plastic, sheet metal, and/or evacuated tubes; geothermal heat pumps, including both water-to-
2 water and water-to-air type pumps; wind turbines; towers used to mount wind turbines if
3 specified by or sold by a wind turbine manufacturer; DC to AC inverters that interconnect with
4 utility power lines; manufactured mounting racks and ballast pans for solar collector, module or
5 panel installation. Not to include materials that could be fabricated into such racks; monitoring
6 and control equipment, if specified or supplied by a manufacturer of solar thermal, solar
7 photovoltaic, geothermal, or wind energy systems or if required by law or regulation for such
8 systems but not to include pumps, fans or plumbing or electrical fixtures unless shipped from the
9 manufacturer affixed to, or an integral part of, another item specified on this list; and solar storage
10 tanks that are part of a solar domestic hot water system or a solar space heating system. If the tank
11 comes with an external heat exchanger it shall also be tax exempt, but a standard hot water tank is
12 not exempt from state sales tax.

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

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

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

21 ~~(61) Prewritten computer software delivered electronically. — From the sale and from the~~
22 ~~storage, use or other consumption of prewritten computer software delivered electronically or by~~
23 ~~load and leave.~~

24 ~~(62)~~(61) Agricultural products for human consumption. - From the sale and from the
25 storage, use or other consumption of livestock and poultry of the kinds of products of which
26 ordinarily constitute food for human consumption and of livestock of the kind the products of
27 which ordinarily constitute fibers for human use.

28 ~~(63)~~(62) Diesel emission control technology. - From the sale and use of diesel retrofit
29 technology that is required by section 31-47.3-4 of the general laws.

30 SECTION 2. This act shall take effect on January 1, 2012.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T
RELATING TO TAXATION - SALES AND USE TAXES - LIABILITY AND
COMPUTATION

- 1 This act would provide taxation on the sale and use of the electronic transfer of digital
- 2 audio-visual works, digital audio works, digital books or prewritten computer software.
- 3 This act would take effect on January 1, 2012.

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