

1 ~~recovered, with costs of suit, in a civil action.~~

2 (b) Whoever fails to pay any tax imposed by this chapter at the time prescribed by law or
3 regulations, shall, in addition to any other penalty provided in this chapter, be liable for a penalty
4 of one thousand dollars (\$1,000) or not more than five (5) times the tax due but unpaid,
5 whichever is greater.

6 (c) When determining the amount of a penalty sought or imposed under this section,
7 evidence of mitigating or aggravating factors, including history, severity, and intent, shall be
8 considered.

9 SECTION 9. This article shall take effect as of July 1, 2017, except for sections 2 and 3
10 which take effect as of August 1, 2017.

11 **ARTICLE 9**

12 **RELATING REMOTE SELLERS SALES TAX COLLECTION**

13 SECTION 1. Title 44 of the general laws entitled "Taxation" is hereby amended by
14 adding thereto the following chapter:

15 CHAPTER 70

16 REMOTE SELLER SALES TAX COLLECTION ACT

17 **44-70-1. Legislative findings.**

18 The general assembly finds and declares as follows:

19 (1) The general assembly recognizes that the commerce clause prohibits states from
20 imposing an undue burden on interstate commerce.

21 (2) The general assembly finds that, due to the ready availability of sales and use tax
22 collection software and Rhode Island's status as a signatory to the Streamlined Sales and Use Tax
23 agreement under which there is an existing compliance infrastructure in place to facilitate the
24 collection and remittance of sales tax by remote sellers, it is no longer an undue burden for
25 remote sellers to accurately compute, collect and remit their sales and use tax obligations to
26 Rhode Island.

27 (3) The general assembly further finds that there has been an exponential expansion of
28 online commerce and related technology, and given that technology, it would not be an undue
29 burden for remote sellers to collect and remit sales and use tax.

30 (4) The general assembly further finds the sales and use tax system established under
31 Rhode Island law does not pose an undue burden on remote sellers and provides sufficient
32 simplification to warrant the collection and remittance of sales and use taxes that are due and
33 owing to Rhode Island by remote sellers.

34 **44-70-2. Definitions.**

1 For the purposes of this chapter:

2 (1) “Covered entity” means remote seller, marketplace provider, or referrer that meets
3 the criteria described § 44-70-3.

4 (2) “Division of taxation” means the Rhode Island department of revenue, division of
5 taxation. The division may also be referred to in this chapter as the “division of taxation,” “tax
6 division”, or “division”.

7 (3) “Marketplace provider” means any person or persons that facilitates a sale by a
8 retailer. For purposes of this chapter, a marketplace provider facilitates a retail sale when the
9 marketplace provider both:

10 (A) Lists or advertises for purchase tangible personal property or services in any forum,
11 including a catalog or internet website; and

12 (B) Either directly or indirectly through agreements or arrangements with third parties,
13 collects payments from the purchaser and transmits those payments to a marketplace seller. A
14 person or persons may be a marketplace provider regardless of whether they deduct any fees from
15 the transaction. The division may define in regulation circumstances under which a marketplace
16 provider shall be deemed to facilitate a retail sale.

17 (4) “Marketplace seller” means a person, persons or retailer that has any sales facilitated
18 by a marketplace provider.

19 (5) “Person” means person as defined in section § 44-18-6 of the general laws.

20 (6) “Referrer” means every person who:

21 (A) Contracts or otherwise agrees with a retailer to list for sale for a price one or more
22 items of tangible personal property or services in any forum, including a catalog or internet
23 website; and

24 (B) Receives a fee, commission, or other consideration from a retailer for the listing; and

25 (C) Transfers, via telephone, internet link, or otherwise, a purchaser to the retailer or the
26 retailer’s employee, affiliate, or website to complete a purchase; and

27 (D) Does not collect receipts from the purchaser for the transaction.

28 (7) “Related” means:

29 (A) A person or persons has a relationship with the remote seller within the meaning of
30 the internal revenue code of 1986 as amended; or

31 (B) A person or persons have one or more ownership relationships and such relationships
32 were designed with a principal purpose of avoiding the application of this section.

33 (8) “Remote seller” means any person or persons who does not have physical presence in
34 this state and meets at least one of the criteria below, regardless of whether or not the activity is

1 related to the sale of tangible personal property or taxable services:

2 (A) Who is currently selling, leasing, or delivering in this state, or is participating in any
3 activity in this state in connection with the selling, leasing, or delivering in this state, of tangible
4 personal property and/or taxable services for use, storage, distribution, or consumption within this
5 state. This includes, but shall not be limited to, the following acts or methods of transacting
6 business on a regular or systematic basis:

7 (i) Engaging in, either directly or indirectly through a marketplace provider, referrer, or
8 other third party, direct response marketing targeted at purchasers or potential purchasers in this
9 state. For purposes of this subsection, “direct response marketing” includes, but is not
10 limited to, sending, transmitting or broadcasting of flyers, newsletters, telephone calls, targeted
11 electronic mail, text messages, social media messages, targeted mailings; collecting, analyzing
12 and utilizing individual data on purchasers or potential purchasers in this state; using
13 information or software, including cached files, cached software, or ‘cookies’ or other data
14 tracking tools, that are stored on property in or distributed within this state; or conducting any
15 other actions that use persons, tangible property, intangible property, digital files or information,
16 or software in this state in an effort to enhance the probability that a person’s contacts with a
17 purchaser in this state will result in a sale to that purchaser.

18 (ii) Entering into one or more agreements under which a person or persons that have
19 physical presence in this state directly or indirectly refer potential purchasers of products to the
20 remote seller for a commission or other consideration, whether by an internet-based link or an
21 internet web site or otherwise.

22 An agreement under which a remote seller purchases advertisements from a person or
23 persons in this state, to be delivered on television, radio, in print, on the internet, or by any other
24 medium, is not an agreement described in this subsection (ii), unless the advertisement revenue
25 paid to the person or persons in this state consists of commissions or other consideration that is
26 based in whole or in part upon sales of products; or

27 (B) Whose sales process includes listing products for sale, soliciting, branding products,
28 selling products, processing orders, fulfilling orders, providing customer service or accepting or
29 assisting with returns or exchanges occurring in this state, regardless of whether that part of the
30 process has been subcontracted to an affiliate or third party. The sale process does not include
31 shipping via a common carrier; or

32 (C) Who offers its products for sale through one or more marketplace providers that have
33 physical presence in this state; or

34 (D) Who is related to a person that has physical presence in this state, and such related

1 person:

2 (i) Sells under the same or a similar business name tangible personal property or taxable
3 services similar to that sold by the person against whom the presumption is asserted; or

4 (ii) Maintains an office, distribution facility, salesroom, warehouse, storage place, or
5 other similar place of business in this state to facilitate the delivery of tangible personal property
6 or taxable services sold by the person against whom the presumption is asserted to such person's
7 in-state purchasers; or

8 (iii) Uses, with consent or knowledge of the person against whom the presumption is
9 asserted, trademarks, service marks, or trade names in this state that are the same or substantially
10 similar to those used by the person against whom the presumption is asserted; or

11 (iv) Delivers (except for delivery by common carrier for which the purchaser is charged
12 not more than the basic charge for shipping and handling), installs, or assembles tangible personal
13 property in this state, or performs maintenance or repair services on tangible personal property in
14 this state, which tangible personal property is sold to in-state purchasers by the person against
15 whom the presumption is asserted; or

16 (v) Facilitates the delivery of tangible personal property to in-state purchasers of the
17 person against whom the presumption is asserted by allowing such purchasers to pick up tangible
18 personal property sold by such person at an office, distribution facility, salesroom, warehouse,
19 storage place, or other similar place of business maintained in this state; or

20 (vi) Shares management, business systems, business practices, or employees with the
21 person against whom the presumption is asserted, or engages in intercompany transactions with
22 the person against whom the presumption is asserted related to the activities that establish or
23 maintain the market in this state of the person against whom the presumption is asserted.

24 (9) A "retail sale" or "sale at retail" means any retail sale or sale at retail as defined in §
25 44-18-8 of the general laws.

26 (10) A "retailer" means retailer as defined in section § 44-18-15 of the general laws.

27 (11) "State" means the State of Rhode Island and Providence Plantations.(5) "Person"
28 means person as defined in section § 44-18-6 of the general laws.

29 (12) "Streamline agreement" means the Streamlined Sales and Use Tax Agreement as
30 referenced in § 44-18.1 et seq of the general laws.

31 **44-70-3. Requirements for remote sellers, marketplace providers, and referrers.**

32 (A) Except as otherwise provided below in subsection (B)(4), beginning on January 1,
33 2018 and for any tax year thereafter, if a remote seller, marketplace provider, or referrer meets
34 either of the following criteria then it shall comply with the requirements in subsection (B):

1 (1) The gross revenue of the remote seller, marketplace provider, or referrer from the sale
2 of tangible personal property, products delivered electronically, and services delivered into this
3 state equals or exceeds one hundred thousand dollars (\$100,000) in the immediately preceding
4 calendar year; or

5 (2) The remote seller, marketplace provider, or referrer sold tangible personal property,
6 products delivered electronically, or services for delivery into this state in two hundred (200) or
7 more separate transactions in the immediately preceding calendar year.

8 (B) A covered entity shall register for a permit to make sales at retail and collect and
9 remit sales and use tax on all taxable sales into the state or, failing that, do each of the following:

10 (1) Post a conspicuous notice on its website that informs Rhode Island purchasers that
11 sales or use tax is due on certain purchases made from the covered entity and that this state
12 requires the purchaser to file a sale or use tax return; and

13 (2) At the time of purchase, notify Rhode Island purchasers that sales or use tax is due on
14 taxable purchases made from the covered entity and that the state of Rhode Island requires the
15 purchaser to file a sale or use tax return; and

16 (3) Subsequent to and within 48 hours of the time of purchase, notify Rhode Island
17 purchasers by email that sales or use tax is due on taxable purchases made from the covered
18 entity and that this state requires the purchaser to file a sale or use tax return after each taxable
19 sale is completed; and

20 (4) Send notification to all Rhode Island purchasers who have cumulative annual taxable
21 purchases from the covered entity totaling \$100 or more for the prior calendar year. The
22 notification shall be sent by January 31 of each year, including January 31, 2018 for purchases
23 made in calendar year 2017, showing the total amount paid by the purchaser for purchases
24 delivered into this state made from the covered entity in the previous calendar year and such other
25 information as the division may require by rule and regulation. Such notification shall include, if
26 available, the dates of purchases, the dollar amount of each purchase, and the category or type of
27 the purchase, including, if known by the covered entity, whether the purchase is exempt or not
28 exempt from taxation in Rhode Island. The notification shall state that the state of Rhode Island
29 requires a sales or use tax return to be filed and sales or use tax to be paid on certain categories or
30 types of purchases made by the purchaser from the covered entity. The notification shall be sent
31 separately to all Rhode Island purchasers by first-class mail and shall not be included with any
32 other shipments or mailings. The notification shall include the words “important tax document
33 enclosed” on the exterior of the mailing. The notification shall include the name of the covered
34 entity.

1 (C) A referrer subject to the provisions of § 44-70-3(B) that receives more than \$10,000
2 from fees paid by retailers during the previous calendar year is also required to provide notice to
3 retailers that the retailer's sales may be subject to sales and use tax. This notice is not required,
4 however, if (i) the retailer has previously provided a copy of the retailer's permit to make sales at
5 retail in this state to the referrer or (ii) if the referrer is a covered entity that collects and remits
6 sales and use tax.

7 **44-70-4. Exceptions for marketplace providers and referrers.**

8 (A) Notwithstanding the provisions of § 44-70-3 of this chapter, no marketplace provider
9 or referrer is required to comply with the provisions of § 44-70-3(B) for any sale facilitated for a
10 marketplace seller or retailer that has provided a copy of its retailer's sales permit to make sales at
11 retail in this state to the marketplace provider or referrer before the marketplace provider or
12 referrer facilitates that sale.

13 (B) A marketplace provider or referrer is relieved of any liability under this chapter for
14 failure to comply with the provisions of § 44-70-3 if the marketplace provider or referrer can
15 demonstrate (i) that the failure to comply was due to incorrect information given to the
16 marketplace provider or referrer by the marketplace seller or retailer and (ii) that the marketplace
17 provider or referrer and marketplace seller or retailer are not related.

18 (C) Nothing in this section shall be construed to interfere with the ability of a
19 marketplace provider or referrer and a marketplace seller or retailer to enter into agreements with
20 each other regarding fulfillment of the requirements of this chapter.

21 **44-70-5. Penalties.**

22 Any remote seller, marketplace provider or referrer that fails to provide the notices
23 described in § 44-70-3 and register for a permit to make sales at retail and collect and remit sales
24 and use tax on all taxable sales into this state shall be subject to a penalty of five dollars for each
25 such failure, but not less than a total penalty of \$20,000 per calendar year. This penalty shall be in
26 addition to any other applicable penalties under title 44 of the general laws.

27 **44-70-6. Other obligations.**

28 (A) Nothing in this section affects the obligation of any purchaser from this state to remit
29 use tax as to any applicable transaction in which the seller or covered entity does not collect and
30 remit an offsetting sales tax.

31 (B) Nothing in this chapter may be construed as relieving any business having substantial
32 nexus with this state from its sales and use tax collection obligations to this state under applicable
33 law.

34 (C) In the event that any section of this chapter is later determined to be unlawful, no

1 remote seller, marketplace provider, or referrer who has remitted sales and use tax under this
2 chapter shall be liable to a purchaser who claims that the sales tax should not have been collected.

3 **44-70-7. Rules and regulations - forms.**

4 The tax administrator may promulgate rules and regulations, not inconsistent with law,
5 to carry into effect the provisions of this chapter.

6 **44-70-8. Enforcement.**

7 (A) General. The tax administrator shall administer and enforce this chapter and is
8 authorized to make any rules and regulations, and to require any facts and information to be
9 reported, that he or she may deem necessary to enforce the tax. The provisions of chapter 1 of this
10 title relating to the tax administrator shall be applicable to this chapter.

11 (B) Examination of books and witnesses. The tax administrator, for the purpose of
12 ascertaining the correctness of any filing or notice or for the purpose of confirming the terms of
13 this chapter shall have the power to examine or to cause to have examined, by any agent or
14 representative designated by the tax administrator for that purpose, any books, papers, records, or
15 memoranda bearing upon the matters required to be included in the return, and may require the
16 attendance of the person rendering the return or any officer or employee of the person, or the
17 attendance of any other person having knowledge in the premises, and may take testimony and
18 require proof material for its information, with power to administer oaths to the person or
19 persons.

20 **44-70-9. Appeal.**

21 If the tax administrator issues one or more final determinations hereunder any appeal may
22 be made pursuant to the provisions of chapter 19 of title 44 of the general laws.

23 **44-70-10. Severability.**

24 If any provision of this chapter or the application thereof is held invalid, such invalidity
25 shall not affect the provisions or applications of this chapter which can be given effect without the
26 invalid provisions or applications.

27 SECTION 2. Unless otherwise specified herein, this article shall take effect upon
28 passage.

29 **ARTICLE 10**

30 **RELATING TO MAKING REVISED APPROPRIATIONS IN SUPPORT OF FY 2017**

31 SECTION 1. Subject to the conditions, limitations and restrictions hereinafter contained
32 in this act, the following general revenue amounts are hereby appropriated out of any money in
33 the treasury not otherwise appropriated to be expended during the fiscal year ending June 30,
34 2017. The amounts identified for federal funds and restricted receipts shall be made available