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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2019

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A N A C T

RELATING TO TAXATION -- SALES AND USE TAX--NON-COLLECTING RETAILERS,
REFERRERS, AND RETAIL SALE FACILITATORS ACT

Introduced By: Senators Conley, Seveney, Murray, Pearson, and DiPalma

Date Introduced: February 07, 2019

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

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

4 ~~CHAPTER 44-18.2~~

5 ~~Sales and Use Tax—Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act~~

6 CHAPTER 44-18.2

7 SALES AND USE TAXES - REMOTE SELLERS, REFERRERS, AND MARKETPLACE

8 FACILITATORS ACT

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

12 **44-18.2-2. Definitions.**

13 For the purposes of this chapter:

14 (1) "Division of taxation" means the Rhode Island department of revenue, division of
15 taxation. The division may also be referred to in this chapter as the "division of taxation", "tax
16 division", or "division."

17 (2) "In-state customer" means a person or persons who makes a purchase of tangible
18 personal property, prewritten computer software delivered electronically or by load and leave as

1 defined in § 44-18-7.1(g)(v), vendor-hosted prewritten computer software, and/or taxable services
2 as defined under § 44-18-1 et seq. for use, storage, and/or other consumption in this state.

3 (3) "In-state software" means software used by in-state customers on their computers,
4 smartphones, and other electronic and/or communication devices, including information or
5 software such as cached files, cached software, or "cookies", or other data tracking tools, that are
6 stored on property in this state or distributed within this state, for the purpose of purchasing
7 tangible personal property, prewritten computer software delivered electronically or by load and
8 leave, vendor-hosted prewritten computer software, and/or taxable services.

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

16 (5) "Marketplace facilitator" means any person or persons that contracts or otherwise
17 agrees with a marketplace seller to facilitate for consideration, regardless of whether deducted as
18 fees from the transaction, the sale of the marketplace seller's products through a physical or
19 electronic marketplace operated by the person or persons, and engages:

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

21 (i) Transmitting or otherwise communicating the offer or acceptance between the buyer
22 and seller;

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

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

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

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

31 (i) Payment processing services;

32 (ii) Fulfillment or storage services;

33 (iii) Listing products for sale;

34 (iv) Setting prices;

- 1 (v) Branding sales as those of the marketplace facilitator;
2 (vi) Order taking;
3 (vii) Advertising or promotion; or
4 (viii) Providing customer service or accepting or assisting with returns or exchanges.
5 (6) "Marketplace seller" means a person, not a related party to a marketplace facilitator,
6 who has an agreement with a marketplace facilitator and makes retail sales of tangible personal
7 property, prewritten computer software delivered electronically or by load and leave, vendor-
8 hosted prewritten computer software, and/or taxable services through a marketplace owned,
9 operated, or controlled by a marketplace facilitator, whether or not such person is required to
10 register to collect and remit sales tax.

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

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

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

20 (i) Engaging in, either directly or indirectly through a referrer, retail sale facilitator, or
21 other third party, direct response marketing targeted at in-state customers. For purposes of this
22 subsection, direct response marketing includes, but is not limited to, sending, transmitting, or
23 broadcasting via flyers, newsletters, telephone calls, targeted electronic mail, text messages,
24 social media messages, targeted mailings; collecting, analyzing and utilizing individual data on
25 in-state customers; using information or software, including cached files, cached software, or
26 "cookies", or other data tracking tools, that are stored on property in or distributed within this
27 state; or taking any other action(s) that use persons, tangible property, intangible property, digital
28 files or information, or software in this state in an effort to enhance the probability that the
29 person's contacts with a potential in-state customer will result in a sale to that in-state customer;

30 (ii) Entering into one or more agreements under which a person or persons who has
31 physical presence in this state refers, either directly or indirectly, potential in-state customers of
32 tangible personal property, prewritten computer software delivered electronically or by load and
33 leave, and/or taxable services to the non-collecting retailer for a fee, commission, or other
34 consideration whether by an internet-based link or an internet website, or otherwise. An

1 agreement under which a non-collecting retailer purchases advertisements from a person or
2 persons in this state to be delivered in this state on television, radio, in print, on the internet or by
3 any other medium in this state, shall not be considered an agreement under this subsection (ii),
4 unless the advertisement revenue or a portion thereof paid to the person or persons in this state
5 consists of a fee, commission, or other consideration that is based in whole or in part upon sales
6 of tangible personal property, prewritten computer software delivered electronically or by load
7 and leave, and/or taxable services; or

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

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

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

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

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

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

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

1 non-collecting retailer;

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

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

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

16 (F) Any person or persons who meets at least one of the criteria in subsections (4)(A) --
17 (4)(E) above shall be presumed to be a non-collecting retailer.

18 (G) The term "non-collecting retailer" will no longer apply to any entity that meets the
19 definition of this subsection on or after July 1, 2019, at which time such entity shall be classified
20 as a "remote seller" as referenced in R.I. Gen. Laws § 44-18-15.2.

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

22 ~~(69)~~ "Referrer" means every person who:

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

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

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

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

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

34 ~~(710)~~ "Related" means:

1 (A) Having a relationship with the non-collecting retailer within the meaning of the
2 internal 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 ~~(811)~~ A "retail sale" or "sale at retail" means any retail sale or sale at retail as defined in §
6 44-18-8.

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

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

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

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

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

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

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

28 ~~(141)~~ "State" means the State of Rhode Island and Providence Plantations.

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

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

33 SECTION 3. Section 44-18.2-3 of the General Laws in Chapter 44-18.2 entitled "Sales
34 and Use Tax - Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act" is hereby

1 amended to read as follows:

2 **44-18.2-3. Requirements for non-collecting retailers, referrers, and retail sale**
3 **facilitators.**

4 (A) Except as otherwise provided below in § 44-18.2-4, beginning on the later of July 15,
5 2017, or two (2) weeks after the enactment of this chapter, and for each tax year thereafter prior
6 to July 1, 2019 or the effective date of the amendment of this chapter, any non-collecting retailer,
7 referrer, or retail sale facilitator, as defined in this chapter, that in the immediately preceding
8 calendar year either:

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

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

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

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

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

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

29 Beginning on ninety (90) days after the enactment of this amended chapter, date to be
30 inserted after enactment, any remote seller, marketplace seller, marketplace facilitator, and/or
31 referrer, as defined in this chapter, who is not collecting and remitting sales tax shall comply with
32 the requirements in subsection (I) if that remote seller, marketplace seller, marketplace facilitator,
33 and/or referrer, as defined in this chapter: (i) has not been collecting or remitting sales tax in this
34 state and, in the immediately preceding calendar year either:

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

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

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

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

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

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

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

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

7 ~~(E)~~(G) Referrer. At such time during any calendar year, or any portion thereof, that a
8 referrer receives more than ten thousand dollars (\$10,000) from fees, commissions, and/or other
9 compensation paid to it by retailers with whom it has a contract or agreement to list and/or
10 advertise for sale tangible personal property, prewritten computer software delivered
11 electronically or by load and leave, and/or taxable services, said referrer shall within thirty (30)
12 days provide written notice to all such retailers that the retailers' sales may be subject to this
13 state's sales and use tax.

14 ~~(G)~~(H) Retail sale facilitator. Beginning January 15, 2018, and each year thereafter, a retail
15 sale facilitator shall provide the division of taxation with:

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

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

21 [\(I\) Remote sellers, referrers, and marketplace facilitators. A remote seller, referrer, and](#)
22 [marketplace facilitator shall register in this state for a permit to make sales at retail and collect](#)
23 [and remit sales and use tax on all taxable sales into the state.](#)

24 [\(i\) A marketplace facilitator shall collect sales and use tax on all sales made through the](#)
25 [marketplace to purchasers in this state whether or not the marketplace seller \(1\) has or is required](#)
26 [to have a permit to make sales at retail or \(2\) would have been required to collect and remit sales](#)
27 [and use tax had the sale not been made through the marketplace provider.](#)

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

33 [\(iii\) A marketplace facilitator with respect to a sale of tangible personal property it](#)
34 [facilitates:](#)

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

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

14 (v) If the marketplace facilitator demonstrates to the tax administrator's satisfaction that
15 the marketplace facilitator has made a reasonable effort to obtain accurate information from the
16 marketplace seller about a retail sale and that the failure to collect and pay the correct amount of
17 tax imposed under Chapters 18 and 19 of Title 44 of the Rhode Island General Laws was due to
18 incorrect information provided to the marketplace facilitator by the marketplace seller, then the
19 marketplace facilitator shall be relieved of liability of the tax for that retail sale. This subsection
20 (v) does not apply with regard to a retail sale for which the marketplace facilitator is the seller or
21 if the marketplace facilitator and seller are affiliates. Where the marketplace facilitator is relieved
22 under this subsection (v), the seller is liable for the tax imposed under Chapters 18 and 19 of Title
23 44 of the Rhode Island General Laws.

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

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

34 SECTION 4. Section 44-18.2-4 of the General Laws in Chapter 44-18.2 entitled "Sales

1 and Use Tax - Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act" is hereby
2 amended to read as follows:

3 **44-18.2-4. Exceptions for referrers and retail sale facilitators.**

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

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

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

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

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

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

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

22 (C) The provisions of subsections (A) and (B) herein will not be applicable as of July 1,
23 2019 or the effective date of the amendment of this chapter.

24 SECTION 5. Section 44-18.2-5 of the General Laws in Chapter 44-18.2 entitled "Sales
25 and Use Tax - Non-Collecting Retailers, Referrers, and Retail Sale Facilitators Act" is hereby
26 amended to read as follows:

27 **44-18.2-5. Penalties.**

28 Prior to the effective date of the enactment of the amendment of this chapter or date to be
29 inserted upon enactment, Aany non-collecting retailer, referrer, or retail sale facilitator that fails
30 to comply with any of the requirements of this chapter shall be subject to a penalty of ten dollars
31 (\$10.00) for each such failure, but not ~~more~~ less than a total penalty of ten thousand dollars
32 (\$10,000) per calendar year. As of July 1, 2019, any remote seller, referrer, or marketplace
33 facilitator that fails to comply with any of the requirements of this chapter shall be subject to a
34 penalty of ten dollars (\$10.00) for each such failure, but not less than a total penalty of ten

1 thousand dollars (\$10,000) per calendar year. Each instance of failing to comply with the
2 requirements of this chapter shall constitute a separate violation for purposes of calculating the
3 penalty under this section. This penalty shall be in addition to any other applicable penalties
4 under title 44.

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

8 **44-18.2-6. Other obligations.**

9 (A) Nothing in this section affects the obligation of any in-state customer to remit use tax
10 as to any applicable transaction in which the seller, non-collecting retailer, ~~or~~ retail sale
11 facilitator, remote seller, Marketplace Seller, or Marketplace Facilitator has not collected and
12 remitted the sales tax for said transaction.

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

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

19 SECTION 7. Section 44-18-15.2 of the General Laws in Chapter 44-18 entitled "Sales
20 and Use Taxes - Liability and Computation" is hereby repealed.

21 **44-18-15.2. "Remote seller" and "remote sale" defined -- Collection of sales and use**
22 **tax by remote seller.**

23 (a) As used in this section:

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

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

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

1 SECTION 8. This act shall take effect upon passage.

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LC001182
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF

A N A C T

RELATING TO TAXATION -- SALES AND USE TAX--NON-COLLECTING RETAILERS,
REFERRERS, AND RETAIL SALE FACILITATORS ACT

1 This act would extend the requirement to collect sales tax to remote sellers in a way that
2 conforms to a recent U.S. Supreme Court decision making it easier for states to compel collection
3 of the sales tax from retailers who do not have a physical presence in their state.

4 This act would take effect upon passage.

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LC001182
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