

2014 -- S 2482

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2014

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A N A C T

RELATING TO TAXATION-SALES AND USE TAXES

Introduced By: Senator Daniel DaPonte

Date Introduced: February 27, 2014

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 44-18-7, 44-18-7.3, 44-18-12.1 and 44-18-36.1 of the General
2 Laws in Chapter 44-18 entitled "Sales and Use Taxes - Liability and Computation" are hereby
3 amended to read as 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
19 commerce, of tangible personal property from the place where it is located for delivery to a point

1 in this state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental,
2 conditional or otherwise, in any manner or by any means whatsoever, of the property for a
3 consideration.

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

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

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

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

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

27 (11) The rental of living quarters in any hotel, [as defined in § 42-63.1-2](#), rooming house,
28 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 sale, storage, use or other consumption of over-the-counter drugs as defined in
34 paragraph 44-18-7.1(h)(ii).

1 (14) The sale, storage, use or other consumption of prewritten computer software
2 delivered electronically or by load and leave as defined in paragraph 44-18-7.1(v).

3 (15) The sale, storage, use or other consumption of medical marijuana as defined in
4 section 21-28.6-3.

5 (16) The furnishing of services in this state as defined in section 44-18-7.3.

6 **44-18-7.3. Services defined.** -- (a) "Services" means all activities engaged in for other
7 persons for a fee, retainer, commission, or other monetary charge, which activities involve the
8 performance of a service in this state as distinguished from selling property.

9 (b) The following businesses and services performed in this state, along with the
10 applicable 2007 North American Industrial Classification System (NAICS) codes, are included in
11 the definition of services:

12 (1) Taxicab and limousine services including but not limited to:

13 (i) Taxicab services including taxi dispatchers (485310); and

14 (ii) Limousine services (485320).

15 (2) Other road transportation service including but not limited to:

16 (i) Charter bus service (485510); and

17 (ii) All other transit and ground passenger transportation (485999).

18 (3) Pet care services (812910) except veterinary and testing laboratories services.

19 (c)(1) "Room reseller" or "reseller" means: any person having any right, permission,
20 license, or other authority from or through a hotel, as defined in § 42-63.1-2, to reserve, or
21 arrange the transfer of occupancy of, accommodations, the reservation or transfer of which is
22 subject to this chapter, such that the occupant pays all or a portion of the rental and other fees to
23 the reseller. Room reseller or reseller shall include, but not be limited to, sellers of travel
24 packages as defined in this section. Notwithstanding any provision of the general or public law to
25 the contrary, where said reservation or transfer of occupancy is made using a room reseller, the
26 application of the sales and use under §§ 44-18-18 and 44-18-20, and the hotel tax under § 44-
27 18-36.1 shall be as follows:

28 (i) The room reseller is required to register with and shall collect and pay to the tax
29 administrator the sales and use and hotel taxes with said taxes being calculated upon the amount
30 of rental and other fees paid by the occupant to the room reseller, less the amount of any rental
31 and other fees paid by the reseller to the hotel; and

32 (ii) The hotel shall collect and pay to the tax administrator said taxes upon the amount of
33 rental and other fees paid to the hotel by the reseller and/or the occupant. No assessment shall be
34 made by the tax administrator against a hotel because of an incorrect remittance of the taxes

1 under this chapter by a room reseller. No assessment shall be made by the tax administrator
2 against a room reseller because of an incorrect remittance of the taxes under this chapter by a
3 hotel. If the hotel has paid the taxes imposed under this chapter, the occupant and/or room reseller
4 shall reimburse the hotel for said taxes. If the reseller has paid said taxes, the occupant shall
5 reimburse the reseller for said taxes. Each hotel and room reseller shall add and collect from the
6 occupant or the room reseller the full amount of the taxes imposed on the rental and other fees.
7 When added to the rental and other fees, the taxes shall be a debt owed by the occupant to the
8 hotel or room reseller, as applicable, and shall be recoverable at law in the same manner as other
9 debts. The amount of the taxes collected by the hotel and/or room reseller from the occupant
10 under this chapter shall be stated and charged separately from the rental and other fees, and shall
11 be shown separately on all records thereof, whether made at the time the transfer of occupancy
12 occurs and made on valid evidence of the transfer, issued or used by the hotel or the room
13 reseller. A room reseller shall not be required to disclose to the occupant the amount of tax
14 charged by the hotel; provided, however, the reseller shall represent to the occupant that the
15 separately stated taxes charged by the reseller include taxes charged by the hotel. No person shall
16 operate a hotel in this state, or act as a room reseller for any hotel in the state, unless the tax
17 administrator has issued a permit pursuant to § 44-19-1.

18 (2) "Travel package" means: a room or rooms bundled with one or more other, separate
19 components of travel such as air transportation, car rental or similar items, which travel package
20 is charged to the customer or occupant for a single retail price. When the room occupancy is
21 bundled for a single consideration, with other property, services, amusement charges, or any other
22 items, the separate sale of which would not otherwise be subject to tax under this chapter, the
23 entire single consideration shall be treated as rent, subject to tax under this chapter; provided,
24 however, that where the amount of the rental or other fees for room occupancy is stated
25 separately from the price of such other property, services, amusement charges, or other items, on
26 any sales slip, invoice, receipt, or other statement given the occupant, and such rental and other
27 fees are determined by the tax administrator to be reasonable in relation to the value of such other
28 property, services, amusement charges or other items, only such separately stated rental and other
29 fees will be subject to tax under this chapter. The value of the transfer of any room or rooms
30 bundled as part of a travel package may be determined by the tax administrator from the room
31 reseller's and/or hotel's books and records kept in the regular and ordinary course of business.

32 (e)(d) The tax administrator is authorized to promulgate rules and regulations in
33 accordance with the provisions of chapter 42-35 to carry out the provisions, policies, and
34 purposes of this chapter.

1 **44-18-12.1. "Additional measure subject to tax".** -- Also included in the measure
2 subject to tax under this chapter is the total amount charged for the furnishing or distributing of
3 electricity, natural gas, artificial gas, steam, refrigeration, water, telecommunications, telegraph,
4 cable, and radio message service, community antenna television, subscription television, and
5 cable television service; provided, that the measure of tax in regard to telecommunications service
6 is the total consideration received for the service as defined in section 44-18-7(9); provided, that
7 in order to prevent multistate taxation of all telecommunications service, any taxpayer is allowed
8 a credit or refund of sales tax upon presenting proof that a tax has been paid to another state to
9 which the tax is properly due for the identical service taxed under this chapter. Furthermore,
10 included in the measure of tax is the total amount charged for the rental of living quarters in any
11 hotel, [as defined in § 42-63.1-2](#), rooming house, or tourist camp.

12 **44-18-36.1. Hotel tax.** -- (a) There is imposed a hotel tax of five percent (5%) upon the
13 total consideration charged for occupancy of any space furnished by any hotel, [as defined in § 42-](#)
14 [63.1-2, or room reseller, as defined in § 44-18-7.3\(c\)\(1\)](#) in this state. The hotel tax is in addition
15 to any sales tax imposed. This hotel tax is administered and collected by the division of taxation
16 and unless provided to the contrary in this chapter, all the administration, collection, and other
17 provisions of chapters 18 and 19 of this title apply. Nothing in this chapter shall be construed to
18 limit the powers of the convention authority of the city of Providence established pursuant to the
19 provisions of chapter 84 of the public laws of 1980, except that distribution of hotel tax receipts
20 shall be made pursuant to chapter 63.1 of title 42 rather than chapter 84 of the public laws of
21 1980.

22 (b) There is hereby levied and imposed, upon the total consideration charged for
23 occupancy of any space furnished by any hotel, [as defined in § 42-63.1-2, or room reseller, as](#)
24 [defined in § 44-18-7.3\(c\)\(1\)](#) in this state, in addition to all other taxes and fees now imposed by
25 law, a local hotel tax at a rate of one percent (1%). The local hotel tax shall be administered and
26 collected in accordance with subsection (a).

27 (c) All sums received by the division of taxation from the local hotel tax, penalties or
28 forfeitures, interest, costs of suit and fines shall be distributed at least quarterly, credited and paid
29 by the state treasurer to the city or town where the space for occupancy that is furnished by the
30 hotel is located. Unless provided to the contrary in this chapter, all of the administration,
31 collection, and other provisions of chapters 18 and 19 of this title shall apply.

32 (d) Notwithstanding the provisions of subsection (a) of this section, the city of Newport
33 shall have the authority to collect from hotels, [as defined in § 42-63.1-2, or room reseller, as](#)
34 [defined in § 44-18-7.3\(c\)\(1\)](#) located in the city of Newport the tax imposed by subsection (a) of

1 this section.

2 (1) Within ten (10) days of collection of the tax, the city of Newport shall distribute the
3 tax as provided in section 42-63.1-3. No later than the first day of March and the first day of
4 September in each year in which the tax is collected, the city of Newport shall submit to the
5 division of taxation a report of the tax collected and distributed during the six (6) month period
6 ending thirty (30) days prior to the reporting date.

7 (2) The city of Newport shall have the same authority as the division of taxation to
8 recover delinquent hotel taxes pursuant to chapter 44-19, and the amount of any hotel tax, penalty
9 and interest imposed by the city of Newport until collected constitutes a lien on the real property
10 of the taxpayer. In recognition of the work being performed by the Streamlined Sales and Use
11 Tax Governing Board, upon passage of any federal law which authorizes states to ~~requires~~ require
12 remote sellers to collect and remit taxes, ~~effective the first (1st) day of the first (1st) state fiscal~~
13 ~~quarter following the change,~~ the rate imposed under section 44-18-36.1(b) shall be one and one-
14 half percent (1.5%), effective on the same date this state requires remote sellers to collect and
15 remit sales and use taxes.

16 SECTION 2. Section 42-63.1-2 of the General Laws in Chapter 42-63.1 entitled
17 "Tourism and Development" is hereby amended to read as follows:

18 **42-63.1-2. Definitions.** -- For the purposes of this chapter:

19 (1) "Consideration" means the monetary charge for the use of space devoted to transient
20 lodging accommodations.

21 (2) "Corporation" means the Rhode Island economic development corporation.

22 (3) "District" means the regional tourism districts set forth in section 42-63.1-5.

23 (4) "Hotel" means any facility offering a minimum of ~~three (3)~~ one room, or a
24 portion of a room, for which the public may, for a consideration, obtain transient lodging
25 accommodations. The term "hotel" shall include hotels, motels, bed and breakfasts (B&B's),
26 short-term rental units, time-shares, as defined in § 34-41-1.02(13), tourist homes, tourist camps,
27 lodging houses, and inns and shall exclude schools, hospitals, sanitariums, nursing homes, and
28 chronic care centers.

29 (5) "Occupancy" means a person, firm or corporation's use of space ordinarily used for
30 transient lodging accommodations not to exceed thirty (30) days. Excluded from "occupancy" is
31 the use of space for which the occupant has a written lease for the space, which lease covers a
32 rental period of twelve (12) months or more as well as the right of a time-share owner, as defined
33 in § 34-41-1.02(19), or time-share exchange guest to use a time-share property as defined in § 34-
34 41-1.02(22).

1 (6) "Short-term rental units" means a residential dwelling wherein a single room or
2 portion thereof is available for rent or hire for less than thirty (30) days by guests.

3 ~~(6)~~(7) "Tax" means the hotel tax imposed by subsection 44-18-36.1(a).

4 SECTION 3. This act shall take effect on July 1, 2014.

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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO TAXATION-SALES AND USE TAXES

1 This act would require "room resellers" to collect and pay sales and use taxes and hotel
2 taxes to the state tax administrator. Room resellers would include sellers of travel packages.

3 This act would take effect on July 1, 2014.

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