

2014 -- S 2988

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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 STATE AFFAIRS AND GOVERNMENT - TAXATION

Introduced By: Senators DaPonte, Paiva Weed, Ruggerio, Algieri, and Walaska

Date Introduced: May 07, 2014

Referred To: Senate Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 42-64.5-3 of the General Laws in Chapter 42-64.5 entitled "Jobs
2 Development Act" is hereby amended to read as follows:

3 **42-64.5-3. Tax rate reduction.** – (a) The rate of tax payable by an eligible company and
4 each of its eligible subsidiaries for any taxable year ending on or after July 1, 1995, on its net
5 income pursuant to the applicable income tax provisions of the general laws, including the
6 provisions of sections 44-11-2(a), 44-14-3(a), 44-14-4 and 44-17-1, or on its gross earnings
7 pursuant to section 44-13-4(4), shall be reduced by the amount specified in section 42-64.5-4; this
8 rate reduction shall be applied annually once to those eligible companies which are permitted by
9 law to file a consolidated state tax return and in the case of eligible companies not permitted by
10 law to file consolidated state tax returns, then the rate reduction shall be applied annually to each
11 eligible company and its eligible subsidiaries; provided, however, except as provided in section
12 42-64.5-7, should any eligible company fail to maintain in any taxable year after 1997 or, if
13 applicable, the third taxable year following the base employment period election set forth in
14 section 42-64.5-5, the number of units of new employment it reported for its 1997 tax year or, if
15 applicable, the third taxable year following the base employment period election set forth in
16 section 42-64.5-5; the rate reduction provided for in this chapter shall expire permanently.

17 (b) Effective for tax years beginning on or after January 1, 2015, the rate imposed under §
18 44-11-2 shall be reduced from nine percent (9.0%) to seven percent (7.0%). An eligible company
19 subject to tax under § 44-11-2 shall calculate the rate payable by subtracting the amount specified

1 [in § 42-64.5-4 from nine percent \(9.0%\). The total rate reduction under this section shall be](#)
2 [effective for tax years beginning on or after January 1, 2015.](#)

3 SECTION 2. Sections 42-64.14-10 and 42-64.14-11 of the General Laws in Chapter 42-
4 64.14 entitled "The I-195 Redevelopment Act of 2011" are hereby amended to read as follows:

5 **42-64.14-10. Life sciences tax rate reduction.** -- The rate of tax payable by an eligible
6 life sciences company and each of its eligible subsidiaries for any taxable year beginning on or
7 after January 1, 2011, on its net income pursuant to the provisions of subsection 44-11-2(a), shall
8 be reduced by the amount specified in section 42-64.14-11; this rate reduction shall be applied
9 annually once to those eligible life sciences companies which are permitted by law to file a
10 consolidated state tax return [or as part of a combined group](#) and in the case of eligible companies
11 not ~~permitted~~ [required](#) by law to file consolidated state tax returns [or as part of a combined group](#),
12 then the rate reduction shall be applied annually to each eligible life sciences company and its
13 eligible subsidiaries; provided, however, should any eligible life sciences company fail to
14 maintain in any taxable year after 2014 or, if applicable, the third taxable year following the base
15 employment period election set forth in section 42-64.14-12, the number of units of new
16 employment it reported for its 2014 tax year or, if applicable, the third taxable year following the
17 base employment period election set forth in section 42-64.14-12, the rate reduction provided for
18 in this chapter shall expire permanently.

19 **42-64.14-11. Reduction rate schedule.** – (a) The amount of the rate reduction specified
20 in section 42-64.14-10 for any eligible life sciences company for each taxable year beginning on
21 or after January 1, 2012, shall be based upon the aggregate amount of new employment of the
22 eligible life sciences company and its eligible subsidiaries for each taxable year, and shall be
23 determined by multiplying the numerical equivalent of one-quarter of one percent (.25%) by the
24 number of units of new employment for each taxable year through the taxable year ending in
25 2014 or, if applicable, the third taxable year following the base employment period election set
26 forth in section 42-64.14-12; and for each taxable year thereafter, the number of units of new
27 employment reported for the taxable year 2014 or, if applicable, the third taxable year following
28 the base employment period election set forth in section 42-64.14-12; provided, however, the
29 amount of each rate reduction shall in no event be lower than three percent (3%).

30 [\(b\) Effective for tax years beginning on or after January 1, 2015, the rate imposed under §](#)
31 [44-11-2 shall be reduced from nine percent \(9.0%\) to seven percent \(7.0%\). An eligible company](#)
32 [subject to tax under § 44-11-2 shall calculate the rate payable by subtracting the amount specified](#)
33 [in § 42-64.5-4 from nine percent \(9.0%\). The total rate reduction under this section shall be](#)
34 [effective for tax years beginning on or after January 1, 2015.](#)

1 SECTION 3. Sections 44-11-1, 44-11-2, 44-11-4, 44-11-11 and 44-11-14 of the General
2 Laws in Chapter 44-11 entitled "Business Corporation Tax" are hereby amended to read as
3 follows:

4 **44-11-1. Definitions.** -- For the purpose of this chapter:

5 (1) (a) "Captive REIT" means a corporation, trust or association:

6 (i) That is considered a real estate investment trust for the taxable year under section 856
7 of the Internal Revenue Code;

8 (ii) That is not regularly traded on an established securities market; and

9 (iii) More than fifty percent (50%) of the voting power or value of the beneficial interests
10 or shares of which at any time during the last half of the taxable year, is owned or controlled,
11 directly or indirectly, by a single entity that is subject to the provisions of Subchapter C of
12 Chapter 1 of the Internal Revenue Code; and

13 (b) "Captive REIT" does not include:

14 (i) A corporation, trust or association more than fifty percent (50%) of the voting power
15 or value of the beneficial interests or shares of which, at any time during which the corporation,
16 trust or association satisfies item (1)(iii) of this subsection, is owned or controlled, directly or
17 indirectly, by:

18 (A) A real estate investment trust other than a real estate investment trust described in
19 item (i) of this subsection; or

20 (B) A person exempt from taxation under section 501(a) of the Internal Revenue Code;
21 or

22 (C) A listed Australian Property Trust; and

23 (ii) Subject to regulations that the tax administrator adopts, a real estate investment trust
24 that is intended to become regularly traded on an established securities market and that satisfies
25 the requirements of section 865(A)(5) and (6) of the Internal Revenue Code by reason of section
26 856(h)(2) of the Internal Revenue Code; and

27 (c) For purposes of this section, the constructive ownership rules prescribed under
28 section 318(a) of the Internal Revenue Code, as modified by section 856(d)(5) of the Internal
29 Revenue Code, shall apply in determining the ownership of stock, assets or net profits of any
30 person.

31 (2) "Combined group" means a group of two (2) or more corporations in which more
32 than fifty percent (50%) of the voting stock of each member corporation is directly or indirectly
33 owned by a common owner or owners, either corporate or non-corporate, or by one or more of
34 the member corporations, and that are engaged in a unitary business.

1 (3) "Common ownership" means more than fifty percent (50%) of the voting control of
2 each member of the group is directly or indirectly owned by a common owner or owners, either
3 corporate or non-corporate, whether or not the owner or owners are members of the combined
4 group.

5 ~~(3)~~(4) "Corporation" means every corporation, joint-stock company, or association,
6 wherever incorporated, a real estate investment trust, a regulated investment company, a personal
7 holding company registered under the Federal Investment Company Act of 1940, 15 U.S.C.
8 section 80a-1 et seq., and also a trustee or trustees conducting a business where interest or
9 ownership is evidenced by certificates or other written instruments, deriving any income from
10 sources within this state or engaging in any activities or transactions within this state for the
11 purpose of profit or gain, whether or not an office or place of business is maintained in this state,
12 or whether or not the income, activities, or transactions are connected with intrastate, interstate, or
13 foreign commerce, except:

14 (i) State banks, mutual savings banks, federal savings banks, trust companies, national
15 banking associations, building and loan associations, credit unions, and loan and investment
16 companies;

17 (ii) Public service corporations included in chapter 13 of this title, except as otherwise
18 provided in section 44-13-2.2;

19 (iii) Insurance and surety companies;

20 (iv) Corporations specified in section 7-6-4, incorporated hospitals, schools, colleges,
21 and other institutions of learning not organized for business purposes and not doing business for
22 profit and no part of the net earnings of which inures to the benefit of any private stockholder or
23 individual, whether incorporated under any general law of this state or by any special act of the
24 general assembly of this state;

25 (v) Fraternal beneficiary societies as set forth in section 27-25-1;

26 (vi) Any corporation expressly exempt from taxation by charter;

27 (vii) Corporations which together with all corporations under direct or indirect common
28 ownership that satisfies the other requirements of this paragraph employ not less than five (5)
29 full-time equivalent employees in the state; which maintain an office in the state; and activities
30 within the state which are confined to the maintenance and management of their intangible
31 investments or of the intangible investments of corporations or business trusts registered as
32 investment companies under the Investment Company Act of 1940, 15 U.S.C. section 80a-1 et
33 seq., and the collection and distribution of the income from those investments or from tangible
34 property physically located outside the state. For purposes of this paragraph, "intangible

1 investments" includes, without limitation, investments in stocks, bonds, notes, and other debt
2 obligations, including debt obligations of affiliated corporations, patents, patent applications,
3 trademarks, trade names, copyrights, and similar types of intangible assets.

4 ~~(3)~~(5) "Fiscal year" means an accounting period of twelve (12) months ending on the last
5 day of any month other than December.

6 (6) "Member" means a corporation included in a unitary business.

7 ~~(4)~~(7) "Place of business" means a regular place of business, which, in turn, means any
8 bona fide office, other than a statutory office, factory, warehouse, or other space which is
9 regularly used by the taxpayer in carrying on its business. Where, as a regular course of business,
10 property of the taxpayer is stored by it in a public warehouse until it is shipped to customers, the
11 warehouse is considered a regular place of business of the taxpayer and, where as a regular course
12 of business, raw material or partially furnished goods of a taxpayer are delivered to an
13 independent contractor to be converted, processed, finished, or improved and the finished goods
14 remain in the possession of the independent contractor until shipped to customers, the plant of the
15 independent contractor is considered a regular place of business of the taxpayer. The mere
16 consignment of goods by the taxpayer to an independent factor outside this state for sale at the
17 consignee's discretion does not constitute the taxpayer as having a regular place of business
18 outside this state.

19 (8) "Tax haven" means a jurisdiction that, during the tax year in question has no, or
20 nominal effective tax on the relevant income and:

21 (i) Has laws or practices that prevent effective exchange of information for tax purposes
22 with other governments on taxpayers benefiting from the tax regime;

23 (ii) Has a tax regime which lacks transparency. A tax regime lacks transparency if the
24 details of legislative, legal or administrative provisions are not open and apparent, or are not
25 consistently applied among similarly situated taxpayers, or if the information needed by tax
26 authorities to determine a taxpayer's correct tax liability, such as accounting records and
27 underlying documentation, is not adequately available;

28 (iii) Facilitates the establishment of foreign-owned entities without the need for a local
29 substantive presence, or prohibits these entities from having any commercial impact on the local
30 economy;

31 (iv) Explicitly or implicitly excludes the jurisdiction's resident taxpayers from taking
32 advantage of the tax regime's benefits, or prohibits enterprises that benefit from the regime from
33 operating in the jurisdiction's domestic market; or

34 (v) Has created a tax regime which is favorable for tax avoidance, based upon an overall

1 assessment of relevant factors, including whether the jurisdiction has a significant untaxed
2 offshore financial/other services sector relative to its overall economy.

3 ~~(5)~~(9) "Taxable year" means the calendar year or the fiscal year ending during the
4 calendar year upon the basis of which the net income is computed under this chapter. "Taxable
5 year" means, in the case of a return made for a fractional part of a year under the provisions of
6 this chapter or under regulations prescribed by the tax administrator, the period for which the
7 return is made.

8 ~~(6)~~(10) "Taxpayer" means and includes any corporation subject to the provisions of this
9 chapter.

10 (11) "Unitary business" means the activities of a group of two (2) or more corporations
11 under common ownership that are sufficiently interdependent, integrated or interrelated through
12 their activities so as to provide mutual benefit and produce a significant sharing or exchange of
13 value among them or a significant flow of value between the separate parts. The term unitary
14 business shall be construed to the broadest extent permitted under the United States Constitution.

15 (12) "United States" means the fifty (50) states of the United States, the District of
16 Columbia, the United States' territories and possessions.

17 **44-11-2. Imposition of tax.** -- (a) Each corporation shall annually pay to the state a tax
18 equal to nine percent (9%) of net income, as defined in section 44-11-11, qualified in section 44-
19 11-12, and apportioned to this state as provided in sections 44-11-13 -- 44-11-15, for the taxable
20 year. For tax years beginning on or after January 1, 2015, each corporation shall annually pay to
21 the state a tax equal to seven percent (7.0%) of net income, as defined in § 44-11-11, qualified in
22 § 44-11-12, and apportioned to this state as provided in §§ 44-11-13 – 44-11-15, for the taxable
23 year.

24 (b) A corporation shall pay the amount of any tax as computed in accordance with
25 subsection (a) of this section after deducting from "net income," as used in this section, fifty
26 percent (50%) of the excess of capital gains over capital losses realized during the taxable year, if
27 for the taxable year:

28 (1) The corporation is engaged in buying, selling, dealing in, or holding securities on its
29 own behalf and not as a broker, underwriter, or distributor;

30 (2) Its gross receipts derived from these activities during the taxable year amounted to at
31 least ninety percent (90%) of its total gross receipts derived from all of its activities during the
32 year. "Gross receipts" means all receipts, whether in the form of money, credits, or other valuable
33 consideration, received during the taxable year in connection with the conduct of the taxpayer's
34 activities.

1 (c) A corporation shall not pay the amount of the tax computed on the basis of its net
2 income under subsection (a) of this section, but shall annually pay to the state a tax equal to ten
3 cents (\$.10) for each one hundred dollars (\$100) of gross income for the taxable year or a tax of
4 one hundred dollars (\$100), whichever tax shall be the greater, if for the taxable year the
5 corporation is either a "personal holding company" registered under the federal Investment
6 Company Act of 1940, 15 U.S.C. section 80a-1 et seq., "regulated investment company", or a
7 "real estate investment trust" as defined in the federal income tax law applicable to the taxable
8 year. "Gross income" means gross income as defined in the federal income tax law applicable to
9 the taxable year, plus:

10 (1) Any interest not included in the federal gross income; minus

11 (2) Interest on obligations of the United States or its possessions, and other interest
12 exempt from taxation by this state; and minus

13 (3) Fifty percent (50%) of the excess of capital gains over capital losses realized during
14 the taxable year.

15 (d) (1) A small business corporation having an election in effect under subchapter S, 26
16 U.S.C. section 1361 et seq., shall not be subject to the Rhode Island income tax on corporations,
17 except that the corporation shall be subject to the provisions of subsection (a), to the extent of the
18 income that is subjected to federal tax under subchapter S.

19 (2) The shareholders of the corporation who are residents of Rhode Island shall include
20 in their income their proportionate share of the corporation's federal taxable income.

21 (3) [Deleted by P.L. 2004, ch. 595, art. 29, section 1.]

22 (4) [Deleted by P.L. 2004, ch. 595, art. 29, section 1.]

23 (e) Minimum tax. - The tax imposed upon any corporation under this section shall not be
24 less than five hundred dollars (\$500).

25 **44-11-4. Returns of affiliated groups of corporations.** – [For tax years beginning before](#)
26 [January 1, 2015, an](#) ~~an~~ affiliated group of corporations may file a consolidated return for the
27 taxable year in lieu of separate returns; provided, that all the corporations which constitute the
28 affiliated group at any time during the period for which the return is made and which are subject
29 to taxation under this chapter shall consent to the making of the consolidated return. The tax
30 administrator may prescribe rules and regulations as he or she may deem necessary in order that
31 the tax liability of any affiliated group of corporations making a consolidated return and of each
32 corporation in the group, liable to taxation under this chapter, both during and after the period of
33 affiliation, may be determined, computed, assessed, collected, and adjusted in a manner as clearly
34 to reflect the net income and the corporate excess and to prevent avoidance of tax liability.

1 **44-11-11. "Net income" defined.** -- (a) (1) "Net income" means, for any taxable year
2 and for any corporate taxpayer, the taxable income of the taxpayer for that taxable year under the
3 laws of the United States, plus:

- 4 (i) Any interest not included in the taxable income;
- 5 (ii) Any specific exemptions;
- 6 ~~(iii) For a captive REIT, an amount equal to the amount of the dividends paid deduction~~
7 ~~allowed under the Internal Revenue Code for the taxable year;~~
- 8 ~~(iv)~~(iii) The tax imposed by this chapter;
- 9 ~~(v) Any deductions required to be added back to net income under the provisions of~~
10 ~~paragraph (f) of this section,~~ and minus
- 11 ~~(vi)~~(iv) Interest on obligations of the United States or its possessions, and other interest
12 exempt from taxation by this state; and
- 13 ~~(vii)~~(v) The federal net operating loss deduction.

14 (2) All binding federal elections made by or on behalf of the taxpayer applicable either
15 directly or indirectly to the determination of taxable income shall be binding on the taxpayer
16 except where this chapter or its attendant regulations specifically modify or provide otherwise.
17 Rhode Island taxable income shall not include the "gross-up of dividends" required by the federal
18 Internal Revenue Code to be taken into taxable income in connection with the taxpayer's election
19 of the foreign tax credit.

20 (b) A net operating loss deduction shall be allowed which shall be the same as the net
21 operating loss deduction allowed under 26 U.S.C. section 172, except that:

- 22 (1) Any net operating loss included in determining the deduction shall be adjusted to
23 reflect the inclusions and exclusions from entire net income required by subsection (a) of this
24 section and section 44-11-11.1;
- 25 (2) The deduction shall not include any net operating loss sustained during any taxable
26 year in which the taxpayer was not subject to the tax imposed by this chapter; and
- 27 (3) The deduction shall not exceed the deduction for the taxable year allowable under 26
28 U.S.C. section 172; provided, that the deduction for a taxable year may not be carried back to any
29 other taxable year for Rhode Island purposes but shall only be allowable on a carry forward basis
30 for the five (5) succeeding taxable years.

31 (c) "Domestic international sales corporations" (referred to as DISCs), for the purposes
32 of this chapter, will be treated as they are under federal income tax law and shall not pay the
33 amount of the tax computed under section 44-11-2(a). Any income to shareholders of DISCs is to
34 be treated in the same manner as it is treated under federal income tax law as it exists on

1 December 31, 1984.

2 (d) A corporation which qualifies as a "foreign sales corporation" (FSC) under the
3 provisions of subchapter N, 26 U.S.C. section 861 et seq., and which has in effect for the entire
4 taxable year a valid election under federal law to be treated as a FSC, shall not pay the amount of
5 the tax computed under section 44-11-2(a). Any income to shareholders of FSCs is to be treated
6 in the same manner as it is treated under federal income tax law as it exists on January 1, 1985.

7 ~~(e) As used in this section:~~

8 ~~(1) "Affiliated group" has the same meaning as in section 1504 of the Internal Revenue~~
9 ~~Code.~~

10 ~~(2) "Intangible expenses and costs" includes: (A) expenses, losses and costs for, related~~
11 ~~to, or in connection directly or indirectly with the direct or indirect acquisition, use, maintenance~~
12 ~~or management, ownership, sale, exchange, or any other disposition of intangible property to the~~
13 ~~extent such amounts are allowed as deductions or costs in determining taxable income before~~
14 ~~operating loss deduction and special deductions for the taxable year under the Internal Revenue~~
15 ~~Code; (B) losses related to or incurred in connection directly or indirectly with factoring~~
16 ~~transactions or discounting transactions; (C) royalty, patent, technical and copyright fees; (D)~~
17 ~~licensing fees; and (E) other similar expenses and costs.~~

18 ~~(3) "Intangible property" means patents, patent applications, trade names, trademarks,~~
19 ~~service marks, copyrights and similar types of intangible assets.~~

20 ~~(4) "Interest expenses and costs" means amounts directly or indirectly allowed as~~
21 ~~deductions under section 163 of the Internal Revenue Code for purposes of determining taxable~~
22 ~~income under the Internal Revenue Code to the extent such expenses and costs are directly or~~
23 ~~indirectly for, related to, or in connection with the direct or indirect acquisition, maintenance,~~
24 ~~management, ownership, sale, exchange or disposition of intangible property.~~

25 ~~(5) "Related member" means a person that, with respect to the taxpayer during all or any~~
26 ~~portion of the taxable year, is a related entity, as defined in this subsection, a component member~~
27 ~~as defined in section 1563(b) of the Internal Revenue Code, or is a person to or from whom there~~
28 ~~is attribution of stock ownership in accordance with section 1563(e) of the Internal Revenue~~
29 ~~Code.~~

30 ~~(6) "Related entity" means: (A) a stockholder who is an individual, or a member of the~~
31 ~~stockholder's family enumerated in section 318 of the Internal Revenue Code, if the stockholder~~
32 ~~and the members of the stockholder's family own directly, indirectly, beneficially or~~
33 ~~constructively, in the aggregate, at least fifty percent (50%) of the value of the taxpayer's~~
34 ~~outstanding stock; (B) a stockholder, or a stockholder's partnership, limited liability company,~~

1 ~~estate, trust or corporation, if the stockholder and the stockholder's partnership, limited liability~~
2 ~~companies, estates, trusts and corporations own directly, indirectly, beneficially or constructively,~~
3 ~~in the aggregate, at least fifty percent (50%) of the value of the taxpayer's outstanding stock; or~~
4 ~~(C) a corporation, or a party related to the corporation in a manner that would require an~~
5 ~~attribution of stock from the corporation to the party or from the party to the corporation under~~
6 ~~the attribution rules of section 318 of the Internal Revenue Code, if the taxpayer owns, directly,~~
7 ~~indirectly, beneficially or constructively, at least fifty percent (50%) of the value of the~~
8 ~~corporation's outstanding stock. The attribution rules on section 318 of the Internal Revenue Code~~
9 ~~shall apply for purposes of determining whether the ownership requirements of this subdivision~~
10 ~~have been met.~~

11 ~~(f) For purposes of computing its net income under this section, a corporation shall add~~
12 ~~back otherwise deductible interest expenses and costs and intangible expenses and costs directly~~
13 ~~or indirectly paid, accrued or incurred to, or in connection directly or indirectly with one or more~~
14 ~~direct or indirect transactions with, one or more related members.~~

15 ~~(1) The adjustments required in subsection (f) of this section shall not apply if the~~
16 ~~corporation establishes by clear and convincing evidence that the adjustments are unreasonable,~~
17 ~~as determined by the tax administrator or the corporation and the tax administrator agree in~~
18 ~~writing to the application or use of an alternative method of apportionment under section 44-11-~~
19 ~~15. Nothing in this subsection shall be construed to the limit or negate the tax administrator's~~
20 ~~authority to otherwise enter into agreements and compromises otherwise allowed by law.~~

21 ~~(2) The adjustments required in subsection (f) of this section shall not apply to such~~
22 ~~portion of interest expenses and costs and intangible expenses and costs that the corporation can~~
23 ~~establish by the preponderance of the evidence meets both of the following: (A) the related~~
24 ~~member during the same income year directly or indirectly paid, accrued or incurred such portion~~
25 ~~to a person who is not a related member; and (B) the transaction giving rise to the interest~~
26 ~~expenses and costs or the intangible expenses and costs between the corporation and the related~~
27 ~~member did not have as a significant purpose the avoidance of any portion of the tax due under~~
28 ~~chapter 44-11.~~

29 ~~(3) The adjustments required in subsection (f) shall not apply if the corporation~~
30 ~~establishes by clear and convincing evidence, as determined by the tax administrator, that: (i) a~~
31 ~~principal purpose of the transaction giving rise to the payment of interest was not to avoid~~
32 ~~payment of taxes due under this chapter; (ii) the interest is paid pursuant to a contract that reflects~~
33 ~~an arm's length rate of interest and terms; and (iii) (A) the related member was subject to tax on~~
34 ~~its net income in this state or another state or possession of the United States or a foreign nation;~~

1 ~~(B) a measure of said tax included the interest received from the taxpayer; and (C) the effective~~
2 ~~rate of tax applied to the interest received by the related member is no less than the effective rate~~
3 ~~of tax applied to the taxpayer under this chapter minus 3 percentage points.~~

4 ~~(4) Partial Adjustments.— The add back required in subsection (f) shall not be required in~~
5 ~~part if a portion of the add back would be unreasonable. A portion of the add back will be~~
6 ~~considered unreasonable to the extent that the taxpayer establishes to the tax administrator by~~
7 ~~clear and convincing evidence that interest or intangible expense was paid, accrued or incurred to~~
8 ~~a related member that is taxed on the corresponding income by a state, U.S. possession or foreign~~
9 ~~jurisdiction. An adjustment to the add back will be allowed based on a factor determined by the~~
10 ~~apportioned tax rate of the related member in the other jurisdiction compared to the apportioned~~
11 ~~tax rate of the taxpayer in this state. A taxpayer that seeks to claim this adjustment must file a~~
12 ~~schedule that sets forth the information required by the tax administrator.~~

13 ~~(g) Nothing in this section shall require a corporation to add to its net income more than~~
14 ~~once any amount of interest expenses and costs or intangible expenses and costs that the~~
15 ~~corporation pays, accrues or incurs to a related member described in subsection (b) of this~~
16 ~~section.~~

17 ~~(h) Any taxpayer required to make an adjustment required in subsection (f) for tax years~~
18 ~~beginning on or after January 1, 2008, is additionally required to report to the tax administrator,~~
19 ~~on forms required by him, the amount of any adjustments that would have been required if the~~
20 ~~law applied to tax years beginning on or after January 1, 2007.~~

21 ~~(i) Nothing in this section shall be construed to limit or negate the tax administrator~~
22 ~~authority to make adjustments under section 44-11-15.~~

23 **44-11-14. Allocation of income from business partially within state.** -- (a) In the case
24 of a taxpayer deriving its income from sources both within and outside of this state or engaging in
25 any activities or transactions both within and outside of this state for the purpose of profit or gain,
26 its net income shall be apportioned to this state by means of an allocation fraction to be computed
27 as a simple arithmetical mean of three (3) fractions:

28 (1) The first of these fractions shall represent that part held or owned within this state of
29 the average net book value of the total tangible property (real estate and tangible personal
30 property) held or owned by the taxpayer during the taxable year, without deduction on account of
31 any encumbrance thereon;

32 (2) The second fraction shall represent that part of the taxpayer's total receipts from sales
33 or other sources during the taxable year which is attributable to the taxpayer's activities or
34 transactions within this state during the taxable year; meaning and including within that part, as

1 being thus attributable, receipts from:

2 (i) Gross sales of its tangible personal property (inventory sold in the ordinary course of
3 business) where:

4 (A) Shipments are made to points within this state; or

5 (B) Shipments are made from an office, store, warehouse, factory or other place of
6 storage in this state and the taxpayer is not taxable in the state of the purchase.

7 (ii) Gross income from services performed within the state;

8 (iii) Gross income from rentals from property situated within the state;

9 (iv) Net income from the sale of real and personal property, other than inventory sold in
10 the ordinary course of business as described in paragraph (i) of this subdivision, or other capital
11 assets located in the state;

12 (v) Net income from the sale or other disposition of securities or financial obligations;
13 and

14 (vi) Gross income from all other receipts within the state;

15 (3) The third fraction shall represent that part of the total wages, salaries, and other
16 compensation to officers, employees, and agents paid or incurred by the taxpayer during the
17 taxable year which is attributable to services performed in connection with the taxpayer's
18 activities or transactions within this state during the taxable year.

19 (b) For tax years beginning on or after January 1, 2015, all taxpayers organized under
20 subchapter C of the Internal Revenue Code deriving income from sources both within and outside
21 of this state, or engaging in any activities or transactions both within and outside of this state for
22 the purpose of profit or gain, its net income shall be apportioned to this state by means of an
23 allocation fraction to be computed as a simple arithmetical of the following factors:

24 (1) The factor shall represent that part of the taxpayer's total receipts from sales or other
25 sources during the taxable year which is attributable to the taxpayer's activities or transactions
26 within this state during the taxable year; meaning and including within that part, as being thus
27 attributable, receipts from:

28 (i) Gross sales of its tangible personal property (inventory sold in the ordinary course of
29 business) where:

30 (A) Shipments are made to points within this state; or

31 (B) Shipments are made from an office, store, warehouse, factory or other place of
32 storage in this state and the taxpayer is not taxed in the state of the purchase.

33 (ii) Gross income from services performed within the state;

34 (iii) Gross income from rentals from property situated within the state;

1 (iv) Net income from the sale of real and personal property, other than inventory sold in
2 the ordinary course of business as described in subsection (b)(1)(i) of this section, or other capital
3 assets located in the state;

4 (v) Net income from the sale or other disposition of securities or financial obligations;
5 and

6 (vi) Gross income from all other receipts within the state.

7 (vii) Except as otherwise provided under this section, for a taxpayer that is a unitary
8 business group, sales include sales in this state of every member included in the unitary business
9 group without regard to whether the member has nexus in this state. Sales between members
10 included in a unitary business group must be eliminated in calculating the sales factor.

11 ~~(b)~~(c) Notwithstanding any of the provisions of this section, revenue and expenses
12 subject to the gross earnings tax pursuant to chapter 13 of this title shall not be included in the
13 calculation described in this section.

14 SECTION 4. Chapter 44-11 of the General Laws entitled "Business Corporation Tax" is
15 hereby amended by adding thereto the following section:

16 **44-11-4.1. Combined reporting.** -- (a) For tax years beginning on or after January 1,
17 2015, each corporation which is part of an unitary business with one or more other corporations
18 must file a return, in a manner prescribed by the tax administrator, for the combined group
19 containing the combined income, determined under subsection (b) of this section, of the
20 combined group.

21 (b) An affiliated group of C corporations, as defined in section 1504 of the Internal
22 Revenue Code, may elect to make a consolidated return with respect to the combined reporting
23 requirement imposed by § 44-11-4.1(a) for the taxable year in lieu of an unitary business group.
24 The making of a consolidated return shall be upon the condition that all C corporations which at
25 any time during the taxable year have been members of the affiliated group consent to be
26 included in such return. The making of a consolidated return shall be considered as such consent.
27 Such election may not be revoked in less than five (5) years unless approved by the tax
28 administrator.

29 (c) The use of a combined report does not disregard the separate identities of the taxpayer
30 members of the combined group. Each taxpayer member is responsible for tax based on its
31 taxable income or loss apportioned to this state.

32 (d) Members of a combined group shall exclude as a member and disregard the income
33 and apportionment factors of any corporation not incorporated in the United States (a "non US
34 corporation") if the sales factors outside the United States is eighty percent (80%) or more. If a

1 non US corporation is includible as a member in the combined group, to the extent that such non
2 US corporation's income is subject to the provisions of a federal income tax treaty, such income is
3 not includible in the combined group net income. Such member shall also not include in the
4 combined report any expenses or apportionment factors attributable to income that is subject to
5 the provisions of a federal income tax treaty. For purposes of this chapter, "federal income tax
6 treaty" means a comprehensive income tax treaty between the United States and a foreign
7 jurisdiction, other than a foreign jurisdiction which are defined as a tax haven.

8 (e) Net operating losses; a tracing protocol shall apply to net operating losses created
9 before January 1, 2015. Such net operating losses shall be allowed to offset only the income of
10 the corporation that created the net operating loss; the net operating loss cannot be shared with
11 other members of the combined group. No deduction is allowable for a net operating loss
12 sustained during any taxable year in which a taxpayer was not subject to the Rhode Island
13 business corporation tax. For net operating losses created in tax years beginning on or after
14 January 1, 2015 such loss allowed shall be the same as the net operating loss deduction allowed
15 under 26 U.S.C. 172 for the combined group, except that:

16 (1) Any net operating loss included in determining the deduction shall be adjusted to
17 reflect the inclusions and exclusions from entire net income required by §§ 44-11-11(a) and 44-
18 11-11.1;

19 (2) The deduction shall not include any net operating loss sustained during any taxable
20 year in which the member was not subject to the tax imposed by this chapter; and

21 (3) The deduction shall not exceed the deduction for the taxable year allowable under 26
22 U.S.C. 172; provided, that the deduction for a taxable year may not be carried back to any other
23 taxable year for Rhode Island purposes, but shall only be allowable on a carry forward basis for
24 the five (5) succeeding taxable years.

25 (f) Tax Credits and Tax Rate Reduction.

26 (1) A tracing protocol shall apply to Rhode Island tax credits earned before tax years
27 beginning on or before January 1, 2015. Such Rhode Island tax credits shall be allowed to offset
28 only the tax liability of the corporation that earned the credits; the Rhode Island tax credits cannot
29 be shared with other members of the combined group. Rhode Island tax credits earned in tax
30 years beginning on or after January 1, 2015, may be applied to other members of the group.

31 (2) The tax rate reductions authorized under chapter 64.5 of title 42 (Jobs Development
32 Act) and chapter 64.14 of title 42 (I-195 Redevelopment Act of 2011) shall be allowed against the
33 net income of the entire combined group.

34 SECTION 5. Section 44-11-45 of the General Laws in Chapter 44-11 entitled "Business

1 Corporation Tax" is hereby repealed.

2 ~~44-11-45. Combined reporting study.~~ (a) For the purpose of this section:

3 ~~(1) "Common ownership" means more than fifty percent (50%) of the voting control of~~
4 ~~each member of the group is directly or indirectly owned by a common owner or owners, either~~
5 ~~corporate or non-corporate, whether or not owner or owners are members of the combined group.~~

6 ~~(2) "Member" means a corporation included in a unitary business.~~

7 ~~(3) "Unitary business" means the activities of a group of two (2) or more corporations~~
8 ~~under common ownership that are sufficiently interdependent, integrated or interrelated through~~
9 ~~their activities so as to provide mutual benefit and produce a significant sharing or exchange of~~
10 ~~value among them or a significant flow of value between the separate parts. The term unitary~~
11 ~~business shall be construed to the broadest extent permitted under the United States Constitution.~~

12 ~~(4) "United States" means the fifty (50) states of the United States, the District of~~
13 ~~Columbia, the United States' territories and possessions.~~

14 ~~(b) Combined reporting.~~

15 ~~(1) As part of its tax return for a taxable year beginning after December 31, 2010 but~~
16 ~~before January 1, 2013, each corporation which is part of an unitary business must file a report, in~~
17 ~~a manner prescribed by the tax administrator, for the combined group containing the combined~~
18 ~~net income of the combined group. The use of a combined report does not disregard the separate~~
19 ~~identities of the members of the combined group. The report shall include, at minimum, for each~~
20 ~~taxable year the following:~~

21 ~~(i) The difference in tax owed as a result of filing a combined report compared to the tax~~
22 ~~owed under the current filing requirements;~~

23 ~~(ii) The difference in tax owed as a result of using the single sales factor apportionment~~
24 ~~method under this paragraph as compared to the tax owed using the current three (3) factor~~
25 ~~apportionment method under section 44-11-14;~~

26 ~~(iii) Volume of sales in the state and worldwide; and~~

27 ~~(iv) Taxable income in the state and worldwide.~~

28 ~~(2) The combined reporting requirement required pursuant to this section shall not~~
29 ~~include any persons that engage in activities enumerated in sections 44-13-4, 44-14-3, 44-14-4 or~~
30 ~~44-17-1, whether within or outside this state. Neither the income or loss nor the apportionment~~
31 ~~factors of such a person shall be included, directly or indirectly, in the combined report.~~

32 ~~(3) Members of a combined group shall exclude as a member and disregard the income~~
33 ~~and apportionment factors of any corporation incorporated in a foreign jurisdiction (a "foreign~~
34 ~~corporation") if the average of its property, payroll and sales factors outside the United States is~~

1 the first day of the third month of the taxable yearthe fifteenth day of the third month of
2 after the first day of the third month and before the taxable year;
3 the first day of the sixth month of the taxable yearthe fifteenth day of the sixth month of
4 the taxable year.

5 (2) The declaration of estimated tax required of corporations subject to section 27-3-38
6 relating to surplus line brokers premium tax or under any special act or acts in lieu of the
7 provisions of that section or in amendment of or in addition to that section shall be filed as
8 follows:

9 If the requirements of subsection (a) of this section The declaration shall be filed on or
10 are first met: before:

11 Before the first day of the fourth month of thethe thirtieth day of the fourth month
12 of the taxable year taxable year

13 After the first day of the fourth month and
14 before the first day of the sixth month of the
15 taxable yearthe thirtieth day of the sixth month of
16 the taxable year

17 After the first day of the sixth month and
18 before the first day of the tenth month of thethe thirtieth day of the tenth month of
19 taxable year the taxable year

20 After the first day of the tenth month and
21 before the first day of the twelfth month of the
22 of the taxable year the thirty-first day of the twelfth month
23 taxable year

24 (c) An amendment of a declaration may be filed in any interval between installment
25 dates prescribed for the taxable year, but only one amendment may be filed in each interval.

26 (d) The tax administrator may grant a reasonable extension of time, not to exceed thirty
27 (30) days, for filing a declaration.

28 (e) (1) The amount of the advance based on the estimated tax declared under subsection
29 (a) of this section by corporations described in subdivision (b)(1) of this section shall be paid as
30 follows:

31 (i) If the declaration is filed on or before the fifteenth (15th) day of the third (3rd) month
32 of the taxable year, the advance shall be paid in two (2) installments. The first installment in the
33 amount of forty percent (40%) of the estimated tax shall be paid at the time of the filing of the
34 declaration. The second and last installment in the amount of sixty percent (60%) of the estimated

1 tax shall be paid on or before the fifteenth (15th) day of the sixth (6th) month of the taxable year.

2 (ii) If the declaration is filed after the fifteenth (15th) day of the third (3rd) month of the
3 taxable year and is not required by subsection (b) of this section to be filed on or before the
4 fifteenth (15th) day of the third (3rd) month of the taxable year, but is required to be filed on or
5 before the fifteenth (15th) day of the sixth (6th) month, the advance shall be paid in full at the
6 time of filing.

7 (2) The amount of the advance based in the estimated tax declared under subsection (a) of
8 this section by corporations listed in subdivision (b)(2) of this section shall be paid as follows:

9 (i) If the declaration is filed on or before the thirtieth (30th) day of the fourth (4th) month
10 of the taxable year, the advance shall be paid in four (4) equal installments. The first installment
11 shall be paid on or before the thirtieth (30th) day of the fourth (4th) month of the taxable year,
12 and the second (2nd), third (3rd), and fourth (4th) installments shall be paid on or before the
13 thirtieth (30th) day of the sixth (6th) month, the thirtieth (30th) day of the tenth (10th) month, and
14 the thirty-first (31st) day of the twelfth (12th) month of the taxable year, respectively.

15 (ii) If the declaration is filed before the thirtieth (30th) day of the sixth (6th) month of the
16 taxable year, the advance shall be paid in three (3) equal installments. The first installment shall
17 be paid on or before the thirtieth (30th) day of the sixth (6th) month of the taxable year and the
18 second (2nd) and third (3rd) installments shall be paid on or before the thirtieth (30th) day of the
19 tenth (10th) month and the thirty-first (31st) day of the twelfth (12th) month of the taxable year
20 respectively.

21 (iii) If the declaration is filed on or before the thirtieth (30th) day of the tenth (10th)
22 month of the taxable year, the advance shall be paid in two (2) equal installments. The first
23 installment shall be paid on or before the thirtieth (30th) day of the tenth (10th) month of the
24 taxable year and the second installment shall be paid on or before the thirty-first (31st) day of the
25 twelfth (12th) month of the taxable year.

26 (iv) If the declaration is filed after the time prescribed in subdivision (b)(2) of this
27 section, including cases in which an extension of time for filing the declaration has been granted,
28 there shall be paid at the time of the filing all installments of the advance which would have been
29 payable on or before that time if the declaration had been filed within the time prescribed in
30 subdivision (b)(2) of this section.

31 (f) If the declaration is filed after the time prescribed in subsection (b) of this section
32 including cases in which an extension of time for filing the declaration has been granted,
33 paragraph (e)(1)(ii) of this section does not apply, and there shall be paid at the time of the filing
34 all installments of the advance which would have been payable on or before that time if the

1 declaration had been filed within the time prescribed in subsection (b).

2 (g) If any amendment of a declaration is filed, the installment payable on or before the
3 fifteenth (15th) day of the sixth (6th) month, if any, or in the case of corporations licensed as
4 surplus line brokers under section 27-3-38, the installments payable on or before the thirtieth
5 (30th) days of the sixth (6th) or tenth (10th) month and thirty-first (31st) day of the twelfth (12th)
6 month are ratably increased or decreased, as the case may be, to reflect the increase or decrease,
7 as the case may be, in the estimated tax by reason of the amendment.

8 (h) At the election of the corporation, any installment of the advance may be paid prior to
9 the date prescribed for payment.

10 (i) In the case of any underpayment of the advance by a corporation, except as provided
11 in this section, there is added to the tax due under chapters 11 -- 15 and 17 of this title, or section
12 27-3-38, for the taxable year an amount determined at the rate described in section 44-1-7 upon
13 the amount of the underpayment for the period of the underpayment. For the purpose of this
14 subsection, the "amount of the underpayment" is the excess of the amount of the installment or
15 installments which would be required to be paid if the advance payments were equal to eighty
16 percent (80%) of the tax shown on the return for the taxable year. For the purposes of this
17 subsection, the "period of the underpayment" is the period from the date the installment was
18 required to be paid to the date prescribed under any of the chapters previously mentioned in this
19 section for the payment of the tax for the taxable year or, with respect to any portion of the
20 underpayment, the date on which the portion is paid, whichever date is the earlier. A payment of
21 the advance on the fifteenth (15th) day of the sixth (6th) month, or for section 27-3-38 on the
22 thirtieth (30th) day of the sixth (6th) month, of the taxable year is considered a payment of any
23 previous underpayment only to the extent that the payment exceeds the amount of the installment
24 due on the fifteenth (15th) day of the sixth (6th) month, or for section 27-3-38 on the thirtieth
25 (30th) day of the sixth (6th) month, of the taxable year.

26 (j) Notwithstanding the provisions of this section, the addition to the tax with respect to
27 any underpayment of any installment is not imposed if the total amount of all payments of the
28 advance made on or before the last date prescribed for payment of the installment equals or
29 exceeds the amount which would have been required to be paid on or before that date if the
30 amount of the advance was an amount equal to one hundred percent (100%) of the tax computed
31 at the rates applicable to the taxable year but otherwise on the basis of the fact shown on the
32 return of the corporation for and the law applicable to the preceding taxable year.

33 (k) This section is effective for estimated payments being made by corporations for
34 taxable years ending on or after December 31, 1990.

1 (l) Notwithstanding any other provisions of this section any taxpayer required to make an
2 adjustment in accordance with section 44-11-11(f) in a tax year beginning in calendar year 2008
3 shall compute estimated payments for that tax year as follows: (1) The installments must equal
4 100% of the tax due for the prior year plus any additional tax due for the current year adjustment
5 under section 44-11-11(f), or (2) That installments must equal 100% of the current year tax
6 liability.

7 (m) Notwithstanding any other provisions of this section any taxpayer required to file a
8 combined report in accordance with § 44-11-4.1 in a tax year beginning on or after January 1,
9 2015 shall compute estimated payments for that tax year as follows:

10 (1) The installments must equal one hundred percent (100%) of the tax due for the prior
11 year plus any additional tax due to the combined report provisions under § 44-11-4.1; or

12 (2) The installments must equal one hundred percent (100%) of the current year tax
13 liability.

14 SECTION 7. This act shall take effect upon passage.

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LC005614
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO STATE AFFAIRS AND GOVERNMENT - TAXATION

1 This act would reduce the annual business corporation tax from nine percent (9%) to
2 seven percent (7%) for tax years commencing on or after January 1, 2015. The act would also
3 revise the reporting requirements and procedures for corporations affiliated or involved in a
4 combined group or a unitary business, which terms are defined in the act.

5 This act would take effect upon passage.

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LC005614
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