

2023 -- H 5197

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STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2023

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A N A C T

RELATING TO TAXATION -- SALES AND USE TAXES -- ENFORCEMENT AND  
COLLECTION

Introduced By: Representative Joseph M. McNamara

Date Introduced: January 19, 2023

Referred To: House Finance

It is enacted by the General Assembly as follows:

1 SECTION 1. Section 44-19-15.2 of the General Laws in Chapter 44-19 entitled "Sales and  
2 Use Taxes — Enforcement and Collection" is hereby amended to read as follows:

3 **44-19-15.2. Flea markets.**

4 (a)(1) Notwithstanding any other provision of law, all persons making retail sales at a flea  
5 market shall register and pay the sales tax as provided in this section.

6 (2) "Flea market" is defined as a place of business that provides space more than six (6)  
7 times a year under a single promoter's permit at the same location to two (2) or more people making  
8 retail sales of property, usually, but not exclusively, second-hand property that is not permanently  
9 displayed or stored at the flea market.

10 (3) Excluded from this definition of "flea market" are shows such as art shows, antique  
11 shows, industry, trade, and professional shows.

12 (b)(1) Persons engaging in the business of making retail sales at flea markets shall register  
13 and pay an annual registration fee of one hundred twenty dollars (\$120), this fee being due on July  
14 1 of each year. This registration fee is credited against that person's actual annual sales tax liability.  
15 This registration is valid at any location in the state during the period for which it is issued. In the  
16 event that the annual sales tax liability is less than one hundred twenty dollars (\$120), then the  
17 person is not required to file an annual sales tax return, but in no event shall any person receive a  
18 refund of any portion of the registration fee: [provided, any person who possesses a valid retail sales](#)

1 [permit pursuant to the provisions of § 44-19-1 shall not be required to pay the annual registration](#)  
2 [fee required by this subsection, but that person shall be required to pay all taxes due pursuant to](#)  
3 [this section.](#)

4 (2) Should any person's tax liability exceed one hundred twenty dollars (\$120), then that  
5 person must file an annual return. The annual return is submitted upon forms prescribed, prepared  
6 and furnished by the tax division accounting for all sales or purchases taxable under this chapter  
7 during the preceding January 1 through December 31. The annual return is due on or before January  
8 20 of the subsequent calendar year. Any person beginning business subsequent to January 1 is  
9 responsible for transmitting an annual return on or before January 20 of the subsequent calendar  
10 year for all months in which he or she made taxable sales or purchases through December 31 of the  
11 preceding year; or

12 (c)(1) Persons engaging in the business of making retail sales at flea markets, not on a  
13 permanent basis, may, at their option, register as follows:

14 (i) On a quarterly basis for a fee of forty dollars (\$40.00). This registration is valid at any  
15 location in the state during the period for which it is used. In no event shall a refund be payable  
16 from the registration fee. This registration fee is credited against any person's actual sales tax  
17 liability;

18 (ii) On a monthly basis for a fee of ten dollars (\$10.00). This registration fee is to be paid  
19 per location at which retail sales are made. In no event shall a refund be payable from the  
20 registration fee. This registration fee is credited against any person's actual sales tax liability; and

21 (iii) Persons registering on a quarterly or monthly basis shall file quarterly returns if their  
22 tax liability exceeds the amount of the registration fees paid during that quarter. The quarterly  
23 returns are submitted upon forms prescribed, prepared and furnished by the tax administrator,  
24 showing the gross sales, or purchases, as the case may be, arising from all sales or purchases taxable  
25 under this chapter during the preceding quarter. The quarterly return is due on or before the  
26 twentieth day of the subsequent month following the last day of the preceding quarterly period;  
27 [and](#)

28 [\(iv\) Any person who possesses a valid retail sales permit pursuant to the provisions of §](#)  
29 [44-19-1 shall not be required to pay the annual registration fee provided for by this subsection, but](#)  
30 [that person shall be required to pay all taxes due pursuant to this section.](#)

31 (2) All permits issued pursuant to this section must be prominently displayed at the  
32 retailer's booth.

33 (d) At the time of transmitting any of the returns required under paragraph (c)(1)(iii) of this  
34 section to the tax administrator, the retailer shall remit with the return the amount of tax due, and

1 failure to remit the tax or to file the return causes the tax to become delinquent. The failure to remit  
2 the tax or to file the returns subjects the retailer to the penalty provided in this title for delinquent  
3 tax payments to the tax administrator.

4 (e)(1) The flea market operator/promoter is responsible for ensuring that all retailers  
5 operating at his or her flea market are properly registered with the division of taxation. The flea  
6 market promoter/operator is empowered to accept applications for registration on a monthly basis  
7 from retailers not otherwise registered, along with all fees required under this section. The flea  
8 market promoter/operator shall supply the retailer with the application/permit, along with evidence  
9 of the amount of fee submitted. This permit shall be displayed by the retailer and serves as evidence  
10 of proper registration.

11 (2) The flea market promoter/operator shall submit the fees collected under this section  
12 within three (3) business days of receipt of fees on a form prescribed, prepared and furnished by  
13 the division of taxation. The failure to remit the fee or to file the return subjects the flea market  
14 promoter/operator to the penalty provided in this title for delinquent tax payments to the tax  
15 administrator.

16 (f) There is a penalty upon the retailer of ten dollars (\$10.00) per booth per day for  
17 violations of this section. The division of taxation also imposes a penalty upon the flea market  
18 promoter/operator of twenty dollars (\$20.00) per booth per day, up to a maximum fine of two  
19 hundred dollars (\$200) per day at any location where it is determined by the tax administrator that  
20 the flea market operator has been negligent in allowing retailers to operate at the flea market without  
21 proper registration. For the purposes of this section, "negligent" includes, but is not limited to, any  
22 failure of the flea market promoter/operator to make a reasonable attempt to ensure that every dealer  
23 renting space from him or her is properly registered for tax purposes. A determination by the tax  
24 administrator that a flea market promoter/operator has been negligent is deemed presumptively  
25 correct. That determination may be rebutted only if the flea market promoter/operator makes a  
26 showing of due care. As used in this subdivision, "due care" means that the flea market  
27 promoter/operator has made every reasonable effort to ensure that every retailer renting space from  
28 him or her is properly registered for tax purposes.

29 (g) Persons selling only nontaxable items such as clothing are required to register for a  
30 special permit and display the permit but are not required to pay a registration fee.

31 (h) The provisions of this section do not apply to retailers selling prepared foods at flea  
32 markets for consumption.

33 [\(i\) Any person who possesses a retail sales permit pursuant to the provisions of § 44-19-1](#)  
34 [shall not be required to obtain a flea market vendor's permit to make sales at the flea markets as](#)

1 long as the retail sales permit is in force and effect; provided, any person utilizing a retail sales  
2 permit in lieu of a flea market vendor's permit shall be obligated to display the retail sales permit  
3 in the same manner as any other permit required by this section.

4 SECTION 2. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF

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1           This act would provide that any person who has a retail sales permit would not be required  
2 to pay a separate registration fee to make sales at flea markets; provided, however, the person would  
3 remain responsible to pay all taxes due as a result of sales at a flea market.

4           This act would take effect upon passage.

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