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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 -- EVASION OF STATE TAXES

Introduced By: Representatives Melo, Silva, San Bento, Valencia, and Slater

Date Introduced: March 04, 2014

Referred To: House Judiciary

It is enacted by the General Assembly as follows:

1 SECTION 1. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
2 adding thereto the following chapter:

3 CHAPTER 69

4 EVASION OF STATE TAXES

5 **44-69-1. Evasion of state taxes.** – (a) It is unlawful:

6 (1) For any person to engage in business without having obtained a tax permit, certificate
7 and/or license from the division of taxation;

8 (2) For the president, vice president, secretary, treasurer, or other officer of any company
9 to cause or permit the company to engage in business without having obtained a tax permit,
10 certificate and/or license from the division of taxation;

11 (3) For any person to aid or abet another in any attempt to evade the payment of any tax
12 or any part thereof;

13 (4) For any purchaser to fraudulently sign or furnish to a seller documentation without
14 intent to resell the property purchased or with intent to otherwise use the property in a manner
15 inconsistent with the claimed wholesale purchase; or

16 (5) For any person to fail or refuse to permit the examination of any book, paper, account,
17 record, or other data by the division of taxation or its duly authorized agent; or to fail or refuse to
18 permit the inspection or appraisal of any property by the division or its duly authorized agent; or
19 to refuse to offer testimony or produce any record as required.

1 (b) Any person violating any of the provisions of subsection (a) of this section is guilty of
2 a misdemeanor punishable by imprisonment up to one year or less, a fine of five thousand dollars
3 (\$5,000) or less, or both.

4 (c) It is unlawful:

5 (1) For any person to engage in business after revocation of a tax permit, certificate
6 and/or license issued by the division of taxation unless the person's tax permit, certificate and/or
7 license has been reinstated;

8 (2) For the president, vice president, secretary, treasurer, or other officer of any company
9 to cause or permit the company to engage in business after revocation of a tax permit, certificate
10 and/or license unless the company's tax permit, certificate and/or license has been reinstated; or

11 (3) For any person to make any false or fraudulent return or false statement in any return,
12 with intent to defraud the state or evade the payment of any tax or part thereof.

13 (d) Any person violating any of the provisions of subsection (c) of this section is guilty of
14 a felony punishable by imprisonment for a term of five (5) years or less, a fine of twenty thousand
15 dollars (\$20,000) or less, or both.

16 (e) In addition to the foregoing penalties, any person who knowingly swears to or verifies
17 any false or fraudulent return, or any return containing any false or fraudulent statement with the
18 intent aforesaid, is guilty of the offense of perjury; and any company for which a false return, or a
19 return containing a false statement, as aforesaid, is made, shall be punished, upon conviction
20 thereof, by a fine of not more than one thousand dollars (\$1,000).

21 **44-69-2. Use of devices to evade taxes prohibited.** – (a) It is unlawful for any person to
22 knowingly sell, purchase, install transfer, manufacture, create, design, update, repair, use,
23 possess, or otherwise make available, in this state, any automated sales suppression device or
24 phantom-ware.

25 (b) It is unlawful for any person who has been convicted of violating this section to
26 engage in business, or participate in any business as an owner, officer, director, partner, trustee,
27 member, or manager of the business, unless:

28 (1) All taxes, penalties, and interest lawfully due are paid;

29 (2) The person pays in full all penalties and fines imposed on the person for violating this
30 section; and

31 (3) The person, if the person is engaging in business subject to tax under this title, or the
32 business in which the person participates, enters into a written agreement with the division of
33 taxation for the electronic monitoring of the business's sales, by a method acceptable to the
34 division, for five (5) years at the business's expense.

1 (c)(1) Any person violating the provisions of this section, including material breach of the
2 monitoring agreement under subsection (b) of this section, is guilty of a felony punishable by a
3 term of imprisonment of five (5) years, or less, a fine of twenty thousand dollars (\$20,000) or
4 less, or both.

5 (2) Any person violating the provisions of this section by furnishing an automated sales
6 suppression device or phantom-ware to another person or by updating or repairing another
7 person's automated sales suppression device or phantom-ware is subject to a mandatory fine fixed
8 by the court in an amount equal to the greater of ten thousand dollars (\$10,000), the defendant's
9 gain from the commission of the crime, or the state's loss from the commission of the crime. For
10 purposes of this subsection, "loss" means the total of all taxes, penalties, and interest certified by
11 the division to be due, as of the date of sentencing, as a result of any violation of the provisions of
12 this section by a person using the automated sales suppression device or phantom-ware obtained
13 from, or updated or repaired by, the defendant, which results in the defendant's conviction for
14 violating the provisions of this section.

15 (d) For the purposes of this section, the terms "manager," "member," and "officer" have
16 the same meaning as defined in §§ 7-1.2-812 and 7-16-2.

17 (e) All penalties or punishments provided in this section are in addition to all other
18 penalties provided by law.

19 **44-69-3. Property subject to seizure. --** (a) Automated sales suppression devices,
20 phantom-ware, electronic cash registers or point of sale systems used with automated sales
21 suppression devices or phantom-ware, and any property constituting proceeds traceable to any
22 violation of § 44-69-2 are considered contraband and are subject to seizure and forfeiture.

23 (b) Property subject to forfeiture under subsection (a) of this section may be seized by
24 any agent of the division authorized to assess or collect taxes, or law enforcement officer of this
25 state, upon process issued by any superior court or district court having jurisdiction over the
26 property. Seizure without process may be made if:

27 (1) The seizure is incident to an arrest or a search under a search warrant; or

28 (2) The division or the law enforcement officer has probable cause to believe that the
29 property was used or is intended to be used in violation of § 44-69-2 and exigent circumstances
30 exist making procurement of a search warrant impracticable.

31 (c) Forfeiture authorized by this section is deemed to have commenced by the seizure.
32 Notice of seizure must be given to the division if the seizure is made by a law enforcement officer
33 without the presence of any agent of the division. The division must cause notice of the seizure
34 and intended forfeiture to be served on the owner of the property seized, if known, and on any

1 other person known by the division to have a right or interest in the seized property. Such service
2 must be made within fifteen (15) days following the seizure or the division's receipt of
3 notification of the seizure. The notice may be served by any method authorized by law or court
4 rule, by certified mail with return receipt requested, or electronically. Service by certified mail or
5 electronic means is deemed complete upon mailing the notice, electronically sending the notice,
6 or electronically notifying the person or persons entitled to the notice that the notice is available
7 to be accessed by the person or persons, within the fifteen (15) day period following the seizure
8 or the division's receipt of notification of the seizure.

9 (d) If no person notifies the division, in writing, of the person's claim of lawful ownership
10 or right to lawful possession of the item or items seized within thirty (30) days of the date of
11 service of the notice of seizure and intended forfeiture, the item or items seized are deemed
12 forfeited.

13 (e)(1) If any person notifies the division, in writing, of the person's claim of lawful
14 ownership or lawful right to possession of the item or items seized within thirty (30) days of the
15 date of service of the notice of seizure and intended forfeiture, the person or persons must be
16 afforded a reasonable opportunity to be heard as to the claim. The hearing must be before the tax
17 administrator or the administrator's designee. A hearing and any administrative or judicial review
18 is governed by the provisions of the Administrative Procedures Act in chapter 35 of title 42. The
19 burden of proof by a preponderance of the evidence is upon the person claiming to be the lawful
20 owner or the person claiming to have the lawful right to possession of the item or items seized.

21 (2) The division must return the item or items to the claimant as soon as possible upon a
22 determination that the claimant is the present lawful owner or is lawfully entitled to possession of
23 the item or items seized.

24 (f) When property is sought to be forfeited on the ground that it constitutes proceeds
25 traceable to a violation of § 44-69-2, the division must prove by a preponderance of the evidence
26 that the property constitutes proceeds traceable to a violation of said section .

27 (f)(1) When property forfeited under this section, other than proceeds traceable to a
28 violation of § 44-69-2, is no longer required for evidentiary purposes, the division may:

29 (i) Destroy or have the property destroyed;

30 (ii) Retain the property for training or other official purposes; or

31 (iii) Loan or give the property to any law enforcement or tax administration agency of
32 any state, political subdivision or municipal corporation of a state, or the United States for
33 training or other official purposes.

34 (2) When proceeds traceable to a violation of § 44-69-2 forfeited under this section are no

1 longer required for evidentiary purposes, they must be deposited into the general fund.

2 **44-69-4. Search warrants –Issuance.** -- When the division has good reason to believe
3 that any property subject to seizure and forfeiture under this chapter is being used or maintained
4 in this state in violation of § 44-69-2, the division may make affidavit of facts describing the
5 place or thing to be searched before any judge of any superior or district court in this state. The
6 judge may issue a search warrant directed to a law enforcement officer or agent of the division
7 authorized under this chapter to seize contraband, commanding him or her to diligently search
8 any place or thing as designated in the affidavit and search warrant, and to seize such suspected
9 contraband and hold it until disposed of as provided by § 44-69-3.

10 **44-69-5. Severability.** – If any provision of this chapter or its application to any person
11 or circumstance is held invalid, the remainder of the chapter or the application of the provisions
12 to other persons or circumstances is not affected.

13 **44-69-6. Definitions.** – As used in this chapter:

14 (1) "Automated sales suppression device" means a software program that falsifies the
15 electronic records of electronic cash registers or other point of sale systems, including transaction
16 data and transaction reports. The term includes the software program, any device that carries the
17 software program, or an internet link to the software program.

18 (2) "Electronic cash register" means a device that keeps a register or supporting
19 documents through the means of an electronic device or computer system designed to record
20 transaction data for the purpose of computing, compiling, or processing sales transaction data in
21 whatever manner.

22 (3) "Phantom-ware" means a programming option that is hidden, preinstalled, or installed
23 at a later time in the operating system of an electronic cash register or other point of sale device,
24 or hardwired into the electronic cash register or other point of sale device, and that can be used to
25 create a virtual second till or may eliminate or manipulate transaction reports that may or may not
26 be preserved in digital formats to represent the true or manipulated record of transactions in the
27 electronic cash register or other point of sale device.

28 (4) "Transaction data" means information about sales transactions, including items
29 purchased by a customer, the price for each item, a taxability determination for each item, a
30 segregated tax amount for each of the taxed items, the amount of cash or credit tendered, the net
31 amount returned to the customer in change, the date and time of the purchase, the name, address,
32 and identification number of the vendor, and the receipt or invoice number of the transaction.

33 (5) "Transaction reports" means a report that includes information associated with sales
34 transactions, taxes collected, media totals, and discount voids at an electronic cash register that

1 can be printed on cash register tape at the end of a day or shift, or a report documenting every
2 action at an electronic cash register or other point of sale device and that is stored electronically.

3 **44-69-7. Revocation of tax permits, certificates or licenses.** – (a) The division may, by
4 order, revoke the tax permits, certificates and/or licenses of a taxpayer for any of the following
5 reasons:

6 (1) A warrant issued under this chapter is not paid within thirty (30) days after it has been
7 filed with the clerk of any court;

8 (2) The taxpayer is delinquent, for three (3) consecutive reporting periods, in the
9 transmission to the division of retail sales tax collected by the taxpayer;

10 (3)(i) The taxpayer was convicted of violating §§ 44-69-1 or 44-69-2, or both, and
11 continues to engage in business without fully complying with § 44-69-2(a); or

12 (ii) A person convicted of violating § 44-69-2 is an owner, officer, director, partner,
13 trustee, member, or manager of the taxpayer, and the person and taxpayer have not fully complied
14 with § 44-69-2(a);

15 (iii) For the purposes of this section, the terms "manager," "member," and "officer" mean
16 the same as defined in §§ 7-1.2-812 and 7-16-2.

17 (b) If the division of taxation enters a final order revoking a taxpayer's tax permit,
18 certificate, and/or license, a copy of the order must, if practicable, be posted in a conspicuous
19 place at the main entrance to the taxpayer's place of business. The division may also post a final
20 order revoking a taxpayer's tax permit, certificate and/or license in any public facility, such as a
21 courthouse or post office, as may be allowed by the public entity that owns or occupies the
22 facility. A final order posted at the taxpayer's place of business must remain posted until such
23 time as the taxpayer is eligible to have its tax permit, certificate and/or license reinstated as
24 provided in subsection (c) of this section or has abandoned the premises. A taxpayer will not be
25 deemed to have abandoned the premises if the taxpayer or any person with an ownership interest
26 in the taxpayer continues to operate a substantially similar type of business under a different legal
27 entity at the same location.

28 (c) Any tax permit, certificate and/or license revoked under subsection (a) may not be
29 reinstated, nor may a new tax permit, certificate and/or license be issued to the taxpayer until:

30 (1) The amount due on the warrant has been paid, or provisions for payment satisfactory
31 to the division have been entered, and until the taxpayer has deposited with the division security
32 for payment of any taxes, increases, and penalties, due or which may become due in an amount
33 and under such terms and conditions as the division may require, but the amount of the security
34 may not be greater than fifty percent (50%) of the estimated average annual liability of the

1 taxpayer; or

2 (2) The taxpayer and, if applicable, the owner, officer, director, partner, trustee, member,
3 or manager of the taxpayer who was convicted of violating §§ 44-69-1 or 44-69-2, or both, are in
4 full compliance with § 44-69-2(a), if the tax permit, certificate and/or license was revoked under
5 the provisions of subsection (a) of this section.

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7 SECTION 2. 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 -- EVASION OF STATE TAXES

1 This act would impose civil and criminal penalties upon any taxpayer attempting to evade
2 the payment of any state tax due and owing by any individual and/or any business operating
3 without the appropriate tax permits, certifications, and/or licenses, filing false or fraudulent
4 returns, utilizing any automated sales suppression device or phantom-ware and failing to report
5 and/or transmit retail sales tax collected.

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

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