

1 of Rhode Island, for fraud in relation to any state tax imposed by the law of the state and collected
2 by the tax administrator.

3 **44-6.5-4. Interest under tax amnesty.**

4 Notwithstanding any provision of law to the contrary, interest on any taxes paid for periods
5 covered under the amnesty provisions of this chapter shall be computed at the rate imposed under
6 section 44-1-7, reduced by twenty five percent (25%).

7 **44-6.5-5. Implementation.**

8 Notwithstanding any provision of law to the contrary, the tax administrator may do all
9 things necessary in order to provide for the timely implementation of this chapter, including, but
10 not limited to, procurement of printing and other services and expenditure of appropriated funds as
11 provided for in section 44-6.4-5.

12 **44-6.5-6. Disposition of monies.**

13 (a) Except as provided in subsection (b) within, all monies collected pursuant to any tax
14 imposed by the state of Rhode Island under the provisions of this chapter shall be accounted for
15 separately and paid into the general fund.

16 (b) Monies collected for the establishment of the TDI Reserve Fund (section 28-39-7), the
17 Employment Security Fund (section 28-42-18), the Employment Security Interest Fund (section
18 28-42-75), the Job Development Fund (section 28-42-83), and the Employment Security
19 Reemployment Fund (section 28-42-87) shall be deposited in said respective funds.

20 **44-6.5-7. Analysis of amnesty program by tax administrator.**

21 The tax administrator shall provide an analysis of the amnesty program to the chairpersons
22 of the house finance committee and senate finance committee, with copies to the members of the
23 revenue estimating conference, by April 30, 2018. The report shall include an analysis of revenues
24 received by tax source, distinguishing between the tax collected and interest collected for each
25 source. In addition, the report shall further identify the amounts that are new revenues from those
26 already included in the general revenue receivable taxes, defined under generally accepted
27 accounting principles and the state's audited financial statements.

28 **44-6.5-8. Rules and regulations.**

29 The tax administrator may promulgate such rules and regulations as are necessary to
30 implement the provisions of this chapter.

31 SECTION 18. Title 44 of the General Laws entitled "TAXATION" is hereby amended by
32 adding thereto the following chapter:

33 **CHAPTER 18.2**

34 **SALES AND USE TAX -- NON-COLLECTING RETAILERS, REFERRERS, AND RETAIL**

1 SALE FACILITATORS ACT

2 **44-18.2-1. Legislative findings.**

3 The general assembly finds and declares that:

4 (1) The commerce clause of the United States Constitution prohibits states from imposing
5 an undue burden on interstate commerce.

6 (2) There has been an exponential expansion of online commerce and related technology,
7 and due to the ready availability of sales and use tax collection software and Rhode Island's status
8 as a signatory to the Streamlined Sales and Use Tax Agreement under which there is an existing
9 compliance infrastructure in place to facilitate the collection and remittance of sales tax by non-
10 collecting retailers, it is no longer an undue burden for non-collecting retailers to accurately
11 compute, collect and remit and/or report with respect to their sales and use tax obligations to Rhode
12 Island.

13 (3) The existence and/or presence of a non-collecting retailer's, referrer's, or retail sale
14 facilitator's in-state software on the devices of in-state customers constitutes physical presence of
15 the non-collecting retailer, referrer, or retail sale facilitator in Rhode Island under Quill Corp. v.
16 North Dakota, 504 U.S. 298 (U.S. 1992).

17 (4) While such a physical presence of the non-collecting retailer, referrer, or retail sale
18 facilitator may not be "presence" in the traditional sense, a non-collecting retailer, referrer, or retail
19 sale facilitator who uses in-state software and engages in a significant number of transactions with
20 in-state customers in a calendar year or receives significant revenue from internet sales to in-state
21 customers in a given calendar year evidences an intent to establish and maintain a market in this
22 state for its sales.

23 **44-18.2-2. Definitions.**

24 For the purposes of this chapter:

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

28 (2) "In-state customer" means a person or persons who makes a purchase of tangible
29 personal property, prewritten computer software delivered electronically or by load and leave as
30 defined in §44-18- 7.1(g)(v), and/or taxable services as defined under §44-18-1 et seq. for use,
31 storage, and/or other consumption in this state.

32 (3) "In-state software" means software used by in-state customers on their computers,
33 smartphones, and other electronic and/or communication devices, including information or
34 software such as cached files, cached software, or 'cookies', or other data tracking tools, that are

1 stored on property in this state or distributed within this state, for the purpose of purchasing tangible
2 personal property, prewritten computer software delivered electronically or by load and leave,
3 and/or taxable services.

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

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

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

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

23 (ii) Entering into one or more agreements under which a person or persons who has
24 physical presence in this state refers, either directly or indirectly, potential in-state customers of
25 tangible personal property, prewritten computer software delivered electronically or by load and
26 leave and/or taxable services to the non-collecting retailer for a fee, commission, or other
27 consideration whether by an Internet-based link or an Internet, website or otherwise. An agreement
28 under which a non-collecting retailer purchases advertisements from a person or persons in this
29 state to be delivered in this state on television, radio, in print, on the Internet or by any other medium
30 in this state, shall not be considered an agreement under this subsection (ii), unless the
31 advertisement revenue or a portion thereof paid to the person or persons in this state consists of a
32 fee, commission, or other consideration that is based in whole or in part upon sales of tangible
33 personal property, prewritten computer software delivered electronically or by load and leave,
34 and/or taxable services; or

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

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

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

15 (E) Is related to a person that has physical presence in this state, and such related person
16 with a physical presence in this state;

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

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

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

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

33 (v) Facilitates the delivery of tangible personal property purchased from a non-collecting
34 retailer but delivered in this state by allowing an in-state customer to pick up the tangible personal

1 property at an office distribution facility, salesroom, warehouse, storage place, or other similar
2 place of business maintained in this state; or

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

8 (F) Any person or persons who meets at least one of the criteria in §§44-18.2-2(4)(A)
9 through 44-18.2-2(4)(E) above shall be presumed to be a non-collecting retailer.

10 (5) "Person" means person as defined in §44-18-6 of the general laws.

11 (6) "Referrer" means every person who:

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

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

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

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

21 (E) A person or persons who engages in the activity set forth in all of the activities set forth
22 in §§44-18.2-2(6)(A) through 44-18.2-2(6)(D) above shall be presumed to be a referrer.

23 (7) "Related" means:

24 (A) Having a relationship with the non-collecting retailer within the meaning of the internal
25 revenue code of 1986 as amended; or

26 (B) Having one or more ownership relationships and a purpose of having the ownership
27 relationship is to avoid the application of this chapter.

28 (8) A "retail sale" or "sale at retail" means any retail sale or sale at retail as defined in §44-
29 18-8 of the general laws.

30 (9) "Retail sale facilitator" means any person or persons that facilitates a sale by a retailer
31 by engaging in the following types of activities:

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

34 (B) Contracting or otherwise agreeing with a retailer to list and/or advertise for sale

1 tangible personal property, prewritten computer software delivered electronically or by load and
2 leave, and/or taxable services in any forum, including, but not limited to, a catalog or Internet
3 website; and

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

9 (D) A person or persons who engages in the type of activity set forth in §44-18.2-2(9)(A)
10 above or both of the types of activities set forth in §§44-18.2-2(9)(B) and 44-18.2-2(9)(C) above
11 shall be presumed to be a retail sale facilitator.

12 (10) A "retailer" means retailer as defined in §44-18-15 of the general laws.

13 (11) "State" means the State of Rhode Island and Providence Plantations.

14 (12) "Streamlined agreement" means the Streamlined Sales and Use Tax Agreement as
15 referenced in §44-18.1-1 et seq. of the general laws.

16 **44-18.2-3. Requirements for non-collecting retailers, referrers, and retail sale**
17 **facilitators.**

18 (A) Except as otherwise provided below in §44-18.2-4, beginning on the later of July 15,
19 2017, or two (2) weeks after the enactment of this chapter, and for each tax year thereafter, any
20 non-collecting retailer, referrer, or retail sale facilitator, as defined in this chapter, that in the
21 immediately preceding calendar year either:

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

25 (ii) Has sold tangible personal property, prewritten computer software delivered
26 electronically or by load and leave, and/or taxable services for delivery into this state in two
27 hundred (200) or more separate transactions shall comply with the requirements in §§44-18.2-3(E),
28 (F), and (G) as applicable.

29 (B) A non-collecting retailer, as defined in this chapter, shall comply with §44-18.2-3(E)
30 below if it meets the criteria of either §44-18.2-3(A)(i) or (ii) above.

31 (C) A referrer, as defined in this chapter, shall comply with §44-18.2-3(F) below if it meets
32 the criteria of either §44-18.2-3(A)(i) or (ii) above.

33 (D) A retail sale facilitator, as defined in this chapter, shall comply with §44-18.2-3(G)
34 below if it meets the criteria of either §44-18.2-3(A)(i) or (ii) above.

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

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

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

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

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

27 (5) Beginning on February 15, 2018, and not later than each February 15 thereafter, a non-
28 collecting retailer that has not registered in this state for a permit to make sales at retail and collect
29 and remit sales and use tax on all taxable sales into the state for any portion of the prior calendar
30 year, shall file with the division on such form and/or in such format as the division prescribes an
31 attestation that the non-collecting retailer has complied with the requirements of §§44-18.2-3(E)(1)
32 through (4) herein.

33 (F) Referrer. At such time during any calendar year, or any portion thereof, that a referrer
34 receives more than ten thousand dollars (\$10,000) from fees, commissions, and/or other

1 compensation paid to it by retailers with whom it has a contract or agreement to list and/or advertise
2 for sale tangible personal property, prewritten computer software delivered electronically or by
3 load and leave, and/or taxable services, said referrer shall within thirty (30) days provide written
4 notice to all such retailers that the retailers' sales may be subject to this state's sales and use tax.

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

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

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

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

17 **44-18.2-4. Exceptions for referrers, and retail sale facilitators.**

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

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

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

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

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

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

32 (B) Nothing in this section shall be construed to interfere with the ability of a non-collecting
33 retailer, referrer, or retail sale facilitator and a retailer to enter into agreements with each other;
34 provided, however, the terms of said agreements shall not in any way be inconsistent with or

1 contravene the requirements of this chapter.

2 **44-18.2-5. Penalties.**

3 Any non-collecting retailer, referrer, or retail sale facilitator that fails to comply with any
4 of the requirements of this chapter shall be subject to a penalty of ten dollars (\$10.00) for each such
5 failure, but not less than a total penalty of ten thousand dollars (\$10,000) per calendar year. Each
6 instance of failing to comply with the requirements of this chapter shall constitute a separate
7 violation for purposes of calculating the penalty under this section. This penalty shall be in addition
8 to any other applicable penalties under title 44 of the general laws.

9 **44-18.2-6. Other obligations.**

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

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

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

19 **44-18.2-7. Rules and regulations -- Forms.**

20 The tax administrator may promulgate rules and regulations, not inconsistent with law, to
21 carry into effect the provisions of this chapter.

22 **44-18.2-8. Enforcement.**

23 (A) General. The tax administrator shall administer and enforce this chapter and may
24 require any facts and information to be reported that he or she may deem necessary to enforce the
25 provisions of this chapter.

26 (B) Examination of books and witnesses. For the purpose of ascertaining the correctness
27 of any filing or notice or for the purpose of compliance with the terms of this chapter, the tax
28 administrator shall have the power to examine or to cause to have examined, by any agent or
29 representative designated by the tax administrator for that purpose, any books, papers, records, or
30 memoranda bearing upon said matters and may require the attendance of the person rendering the
31 return or any officer or employee of the person, or the attendance of any other person having
32 knowledge of the correctness of any filing or notice or compliance with the terms of this chapter,
33 and may take testimony and require proof material for its information, with power to administer
34 oaths to the person or persons.

1 **44-18.2-9. Appeal.**

2 If the tax administrator issues a final determination hereunder, an appeal may be made
3 pursuant to the provisions of chapter 19 of title 44 of the general laws.

4 **44-18.2-10. Severability.**

5 If any provision of this chapter or the application thereof is held invalid, such invalidity
6 shall not affect the provisions or applications of this chapter which can be given effect without the
7 invalid provisions or applications.

8 SECTION 19. Section 44-30-2.6 of the General Laws in Chapter 44-30 entitled "Personal
9 Income Tax" is hereby amended to read as follows:

10 **44-30-2.6. Rhode Island taxable income -- Rate of tax. [Effective January 1, 2017.]**

11 (a) "Rhode Island taxable income" means federal taxable income as determined under the
12 Internal Revenue Code, 26 U.S.C. § 1 et seq., not including the increase in the basic, standard-
13 deduction amount for married couples filing joint returns as provided in the Jobs and Growth Tax
14 Relief Reconciliation Act of 2003 and the Economic Growth and Tax Relief Reconciliation Act
15 of 2001 (EGTRRA), and as modified by the modifications in § 44-30-12.

16 (b) Notwithstanding the provisions of §§ 44-30-1 and 44-30-2, for tax years beginning on
17 or after January 1, 2001, a Rhode Island personal income tax is imposed upon the Rhode Island
18 taxable income of residents and nonresidents, including estates and trusts, at the rate of twenty-
19 five and one-half percent (25.5%) for tax year 2001, and twenty-five percent (25%) for tax year
20 2002 and thereafter of the federal income tax rates, including capital gains rates and any other
21 special rates for other types of income, except as provided in § 44-30-2.7, which were in effect
22 immediately prior to enactment of the Economic Growth and Tax Relief Reconciliation Act of
23 2001 (EGTRRA); provided, rate schedules shall be adjusted for inflation by the tax administrator
24 beginning in taxable year 2002 and thereafter in the manner prescribed for adjustment by the
25 commissioner of Internal Revenue in 26 U.S.C. § 1(f). However, for tax years beginning on or
26 after January 1, 2006, a taxpayer may elect to use the alternative flat tax rate provided in § 44-30-
27 2.10 to calculate his or her personal income tax liability.

28 (c) For tax years beginning on or after January 1, 2001, if a taxpayer has an alternative
29 minimum tax for federal tax purposes, the taxpayer shall determine if he or she has a Rhode Island
30 alternative minimum tax. The Rhode Island alternative minimum tax shall be computed by
31 multiplying the federal tentative minimum tax without allowing for the increased exemptions
32 under the Jobs and Growth Tax Relief Reconciliation Act of 2003 (as redetermined on federal
33 form 6251 Alternative Minimum Tax-Individuals) by twenty-five and one-half percent (25.5%)
34 for tax year 2001, and twenty-five percent (25%) for tax year 2002 and thereafter, and comparing