



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Administration
 BUDGET OFFICE
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MEMORANDUM

To: The Honorable Marvin L. Abney
 Chairman, House Finance Committee

The Honorable William J. Conley, Jr.
 Chairman, Senate Finance Committee

From: Thomas A. Mullaney
 Executive Director/State Budget Officer

Thomas A. Mullaney

Date: April 20, 2018

Subject: Amendments to Article 4 of the FY 2019 Appropriations Act
 (18-H-7200)

The Governor requests that Article 4 entitled "Relating to Taxes and Revenue" submitted on January 18, 2018, with amendments submitted on March 22, 2018, be further amended as follows:

In Section 1, in 42-61-4(8): In the next to the last sentence, strike the word "subjectively". Insert in place of that language "objectively". This amendment will make it clear that the director of revenue will objectively evaluate initiatives from time to time using measurable criteria.

In Section 4, 42-142-8(k) delete the words "collection unit" immediately preceding the words "shall have the authority" and insert in place of that language: "the director of the department of revenue." This amendment will make it clear that the director of revenue (as opposed to the collection unit) can institute actions available under state law to collect the delinquent debt.

In Section 6, amend the proposed definition of electronic cigarette to only tax the liquid nicotine, if sold separately from a personal vaporizer device or if sold in combination with a personal vaporizer. Also under section 6, in 44-20-13.2 (3) (b), existing language regarding record-keeping that was proposed to be eliminated in the March 22 amendment should be retained.

Attached is article 4 with the requested changes highlighted in grey. Previous changes proposed in the March 22 amendment are also included.

If you have any questions regarding this amendment, please feel free to call me at 222-6300.

TAM:sma 19-Amend-15

cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Michael DiBiase, Director of Administration
Jonathan Womer, Director, Office of Management and Budget
Neena Savage, Tax Administrator

1 **ARTICLE 4**

2 RELATING TO TAXES AND REVENUE

3 SECTION 1. Sections 42-61-4 and 42-61-15 of the General Laws in Chapter 61 entitled "State
4 Lottery" are hereby amended to read as follows:

5 **42-61-4. Powers and duties of director.**

6 The director shall have the power and it shall be his or her duty to:

7 (1) Supervise and administer the operation of lotteries in accordance with this chapter, chapter 61.2
8 of this title and with the rules and regulations of the division;

9 (2) Act as the chief administrative officer having general charge of the office and records and to
10 employ necessary personnel to serve at his or her pleasure and who shall be in the unclassified service and
11 whose salaries shall be set by the director of the department of revenue, pursuant to the provisions of § 42-
12 61-3.

13 (3) In accordance with this chapter and the rules and regulations of the division, license as agents
14 to sell lottery tickets those persons, as in his or her opinion, who will best serve the public convenience and
15 promote the sale of tickets or shares. The director may require a bond from every licensed agent, in an
16 amount provided in the rules and regulations of the division. Every licensed agent shall prominently display
17 his or her license, or a copy of their license, as provided in the rules and regulations of the committee;

18 (4) Confer regularly as necessary or desirable, and not less than nine (9) times per year, with the
19 permanent joint committee on state lottery on the operation and administration of the lotteries; make
20 available for inspection by the committee, upon request, all books, records, files, and other information,
21 and documents of the division; advise the committee and recommend those matters that he or she deems
22 necessary and advisable to improve the operation and administration of the lotteries;

23 (5) Suspend or revoke any license issued pursuant to this chapter, chapter 61.2 of this title or the
24 rules and regulations promulgated under this chapter and chapter 61.2 of this title;

25 (6) Enter into contracts for the operation of the lotteries, or any part of the operation of the lotteries,
26 and into contracts for the promotion of the lotteries;

1 (7) Ensure that monthly financial reports are prepared providing gross monthly revenues, prize
2 disbursements, other expenses, net income, and the amount transferred to the state general fund for keno
3 and for all other lottery operations; submit this report to the state budget officer, the auditor general, the
4 permanent joint committee on state lottery, the legislative fiscal advisors, and the governor no later than the
5 twentieth business day following the close of the month; the monthly report shall be prepared in a manner
6 prescribed by the members of the revenues estimating conference; at the end of each fiscal year the director
7 shall submit an annual report based upon an accrual system of accounting which shall include a full and
8 complete statement of lottery revenues, prize disbursements and expenses, to the governor and the general
9 assembly, which report shall be a public document and shall be filed with the secretary of state;

10 (8) Carry on a continuous study and investigation of the state lotteries throughout the state, and the
11 operation and administration of similar laws, which may be in effect in other states or countries; and the
12 director shall continue to exercise his authority to study, evaluate and where deemed feasible and advisable
13 by the director, implement lottery-related initiatives, including but not limited to, pilot programs for limited
14 periods of time, with the goal of generating additional revenues to be transferred by the Lottery to the
15 general fund pursuant to R.I. Gen. Laws §42-61-15(3). Each such initiative shall be ~~subjectively~~ objectively
16 evaluated from time to time using measurable criteria to determine whether the initiative is generating
17 revenue to be transferred by the Lottery to the general fund. Nothing herein shall be deemed to permit the
18 implementation of an initiative that would constitute an expansion of gambling requiring voter approval
19 under applicable Rhode Island law.

20 (9) Implement the creation and sale of commercial advertising space on lottery tickets as authorized
21 by § 42-61-4 of this chapter as soon as practicable after June 22, 1994;

22 (10) Promulgate rules and regulations, which shall include, but not be limited to:

23 (i) The price of tickets or shares in the lotteries;

24 (ii) The number and size of the prizes on the winning tickets or shares;

25 (iii) The manner of selecting the winning tickets or shares;

26 (iv) The manner of payment of prizes to the holders of winning tickets or shares;

1 (v) The frequency of the drawings or selections of winning tickets or shares;

2 (vi) The number and types of location at which tickets or shares may be sold;

3 (vii) The method to be used in selling tickets or shares;

4 (viii) The licensing of agents to sell tickets or shares, except that a person under the age of eighteen
5 (18) shall not be licensed as an agent;

6 (ix) The license fee to be charged to agents;

7 (x) The manner in which the proceeds of the sale of lottery tickets or shares are maintained,
8 reported, and otherwise accounted for;

9 (xi) The manner and amount of compensation to be paid licensed sales agents necessary to provide
10 for the adequate availability of tickets or shares to prospective buyers and for the convenience of the general
11 public;

12 (xii) The apportionment of the total annual revenue accruing from the sale of lottery tickets or
13 shares and from all other sources for the payment of prizes to the holders of winning tickets or shares, for
14 the payment of costs incurred in the operation and administration of the lotteries, including the expense of
15 the division and the costs resulting from any contract or contracts entered into for promotional, advertising,
16 consulting, or operational services or for the purchase or lease of facilities, lottery equipment, and materials,
17 for the repayment of moneys appropriated to the lottery fund;

18 (xiii) The superior court upon petition of the director after a hearing may issue subpoenas to compel
19 the attendance of witnesses and the production of documents, papers, books, records, and other evidence in
20 any matter over which it has jurisdiction, control or supervision. If a person subpoenaed to attend in the
21 proceeding or hearing fails to obey the command of the subpoena without reasonable cause, or if a person
22 in attendance in the proceeding or hearing refuses without lawful cause to be examined or to answer a legal
23 or pertinent question or to exhibit any book, account, record, or other document when ordered to do so by
24 the court, that person may be punished for contempt of the court;

25 (xiv) The manner, standards, and specification for the process of competitive bidding for division
26 purchases and contracts; and

1 (xv) The sale of commercial advertising space on the reverse side of, or in other available areas
2 upon, lottery tickets provided that all net revenue derived from the sale of the advertising space shall be
3 deposited immediately into the state's general fund and shall not be subject to the provisions of § 42-61-
4 15.

5 **42-61-15. State lottery fund.**

6 (a) There is created the state lottery fund, into which shall be deposited all revenues received by
7 the division from the sales of lottery tickets and license fees. The fund shall be in the custody of the general
8 treasurer, subject to the direction of division for the use of the division, and money shall be disbursed from
9 it on the order of the controller of the state, pursuant to vouchers or invoices signed by the director and
10 certified by the director of administration. The moneys in the state lottery fund shall be allotted in the
11 following order, and only for the following purposes:

12 (1) Establishing a prize fund from which payments of the prize awards shall be disbursed to holders
13 of winning lottery tickets on checks signed by the director and countersigned by the controller of the state
14 or his or her designee.

15 (i) The amount of payments of prize awards to holders of winning lottery tickets shall be determined
16 by the division, but shall not be less than forty-five percent (45%) nor more than sixty-five percent (65%)
17 of the total revenue accruing from the sale of lottery tickets.

18 (ii) For the lottery game commonly known as "Keno", the amount of prize awards to holders of
19 winning Keno tickets shall be determined by the division, but shall not be less than forty-five percent (45%)
20 nor more than seventy-two percent (72%) of the total revenue accruing from the sale of Keno tickets.

21 (2) Payment of expenses incurred by the division in the operation of the state lotteries including,
22 but not limited to, costs arising from contracts entered into by the director for promotional, consulting, or
23 operational services, salaries of professional, technical, and clerical assistants, and purchases or lease of
24 facilities, lottery equipment, and materials; provided however, solely for the purpose of determining
25 revenues remaining and available for transfer to the state's general fund, ~~beginning in fiscal year 2015~~
26 expenses incurred by the division in the operation of state lotteries shall reflect (i) beginning in fiscal year

1 2015, the actuarially determined employer contribution to the Employees' Retirement System consistent
2 with the state's adopted funding policy and (ii) beginning in fiscal year 2018, the actuarially determined
3 employer contribution to the State Employees and Electing Teachers' OPEB System consistent with the
4 state's adopted funding policy. For financial reporting purposes, the state lottery fund financial statements
5 shall be prepared in accordance with generally accepted accounting principles as promulgated by the
6 Governmental Accounting Standards Board; and

7 (3) Payment into the general revenue fund of all revenues remaining in the state lottery fund after
8 the payments specified in subdivisions (a)(1) – (a)(2) of this section.

9 (b) The auditor general shall conduct an annual post audit of the financial records and operations
10 of the lottery for the preceding year in accordance with generally accepted auditing standards and
11 government auditing standards. In connection with the audit, the auditor general may examine all records,
12 files, and other documents of the division, and any records of lottery sales agents that pertain to their
13 activities as agents, for purposes of conducting the audit. The auditor general, in addition to the annual post
14 audit, may require or conduct any other audits or studies he or she deems appropriate, the costs of which
15 shall be borne by the division.

16 (c) Payments into the state's general fund specified in subsection (a)(3) of this section shall be made
17 on an estimated quarterly basis. Payment shall be made on the tenth business day following the close of the
18 quarter except for the fourth quarter when payment shall be on the last business day.

19 SECTION 2. Chapter 42-61.2 of the General Laws entitled "Video-Lottery Terminal" is hereby
20 amended by adding thereto the following section:

21 **42-61.2-2.4. State to conduct sports wagering hosted by Twin River and the Tiverton Gaming**

22 **Facility. –**

23 (a) Article VI, Section 22 of the Rhode Island Constitution provides that "[n]o act expanding the
24 types or locations of gambling permitted within the state or within any city or town . . . shall take effect
25 until it has been approved by the majority of those electors voting in a statewide referendum and by the

1 majority of those electors voting in said referendum in the municipality in which the proposed gambling
2 would be allowed . . .”

3 (b) In the 2012 general election, a majority of Rhode Island voters statewide and in the Town of
4 Lincoln approved the following referendum question (among others):

5 “Shall an act be approved which would authorize the facility known as “Twin River” in the town
6 of Lincoln to add state-operated casino gaming, such as table games, to the types of gambling it
7 offers?”

8 (c) Similarly, in the 2016 general election, a majority of Rhode Island voters statewide and in the
9 Town of Tiverton approved the following referendum question (among others):

10 “Shall an act be approved which would authorize a facility owned by Twin River-Tiverton, LLC,
11 located in the Town of Tiverton at the intersection of William S. Canning Boulevard and Stafford
12 Road, to be licensed as a pari-mutuel facility and offer state-operated video-lottery games and state-
13 operated casino gaming, such as table games?”

14 (d) In the voter information handbooks setting forth and explaining the question in each instance,
15 “casino gaming” was defined to include games “within the definition of Class III gaming as that term is
16 defined in section 2703(8) of Title 25 of the United States Code and which is approved by the State of
17 Rhode Island through the Lottery Division.” “Casino gaming” is also defined to include games within the
18 definition of class III gaming in section 42-61.2-1 of the general laws.

19 (e) Section 2703(8) of Title 25 US Code (part of the Indian Gaming Regulatory Act, or “IGRA”)
20 provides that the term “class III gaming” means “all forms of gaming that are not class I gaming or class II
21 gaming.” The regulations promulgated under IGRA (25 CFR 502.4) expressly state that Class III gaming
22 includes sports wagering.

23 (f) Thus, voters state-wide and locally approved state-operated sports wagering to be offered by the
24 Twin River and Tiverton gaming facilities. Voter approval of sports wagering shall be implemented by
25 providing an infrastructure for state-operated sports wagering offered by the Twin River gaming facilities
26 in Lincoln and Tiverton, by authorizing necessary amendments to certain contracts and by authorizing the

1 division of lotteries to promulgate regulations to direct and control state-operated sports wagering, such
2 infrastructure and authorizations to become effective when federal law is enacted or repealed or the United
3 States Supreme Court affirms the authority of states to regulate sports wagering within their respective
4 borders.

5 (g) State operated sports wagering shall be operated by the state through the division of lotteries.
6 Sports wagering may be conducted at (i) the Twin River Gaming Facility, located in Lincoln at 100 Twin
7 River Road and owned by UTGR, Inc., a licensed video lottery and table game retailer, and at (ii) the
8 Tiverton Gaming Facility, located in Tiverton at the intersection of William S. Canning Boulevard and
9 Stafford Road, and owned by Twin River-Tiverton, once Twin River-Tiverton is licensed as a video lottery
10 and table game retailer, provided that a federal law has been enacted or repealed or a United States Supreme
11 Court decision affirms the authority of states to regulate sports wagering within their respective borders.

12 (h) Subject to the change in federal law referenced in subsection (a) above, the state through the
13 division of lotteries shall exercise its existing authority to implement, operate, conduct and control sports
14 wagering at the Twin River gaming facility and the Twin River-Tiverton gaming facility in accordance with
15 the provisions of this chapter and the rules and regulations of the division of lotteries.

16 (i) Notwithstanding the provisions of this section, sports wagering shall be prohibited in connection
17 with any collegiate sports or athletic event that takes place in Rhode Island or a sports contest or athletic
18 event in which any Rhode Island college team participates, regardless of where the event takes place.

19 (j) No other law providing any penalty or disability for conducting, hosting, maintaining,
20 supporting or participating in sports wagering, or any acts done in connection with sports wagering, shall
21 apply to the conduct, hosting, maintenance, support or participation in sports wagering pursuant to this
22 chapter.

23 SECTION 3. Sections 42-142-1 and 42-142-2 of the General Laws in Chapter entitled “Department
24 of Revenue” are hereby amended to read as follows:

25 **42-142-1. Department of revenue.**

1 (a) There is hereby established within the executive branch of state government a department of
2 revenue.

3 (b) The head of the department shall be the director of revenue, who shall be appointed by the
4 governor, with the advice and consent of the senate, and shall serve at the pleasure of the governor.

5 (c) The department shall contain the division of taxation (chapter 1 of title 44), the division of motor
6 vehicles (chapter 2 of title 31), the division of state lottery (chapter 61 of title 42), the office of revenue
7 analysis (chapter 142 of title 42), the division of municipal finance (chapter 142 of title 42), and a collection
8 unit (chapter 142 of title 42). Any reference to the division of property valuation, division of property
9 valuation and municipal finance, or office of municipal affairs in the Rhode Island general laws shall mean
10 the division of municipal finance.

11 **42-142-2. Powers and duties of the department.**

12 The department of revenue shall have the following powers and duties:

13 (a) To operate a division of taxation;

14 (b) To operate a division of motor vehicles;

15 (c) To operate a division of state lottery;

16 (d) To operate an office of revenue analysis; ~~and~~

17 (e) To operate a division of property valuation; and

18 (f) To operate a collection unit.

19 SECTION 4. Chapter 42-142 of the General Laws entitled "Department of Revenue" is hereby
20 amended by adding thereto the following section:

21 **42-142-8. Collection unit.**

22 (a) The director of the department of revenue is authorized to establish within the department of
23 revenue a collections unit for the purpose of assisting state agencies in the collection of debts owed to the
24 state. The director of the department of revenue may enter into an agreement with any state agency(ies) to
25 collect any delinquent debt owed to the state.

1 (b) The director of the department of revenue shall initially implement a pilot program to assist the
2 agency(ies) with the collection of delinquent debts owed to the state.

3 (c) The agency(ies) participating in the pilot program shall refer to the collection unit within
4 department of revenue, debts owed by delinquent debtors where the nature and amount of the debt owed
5 has been determined and reconciled by the agency and the debt is (i) the subject of a written settlement
6 agreement and/or written waiver agreement and the delinquent debtor has failed to timely make payments
7 under said agreement and/or waiver and is therefore in violation of the terms of said agreement and/or
8 waiver; (ii) the subject of a final administrative order or decision and the debtor has not timely appealed
9 said order or decision; (iii) the subject of final order, judgement or decision of a court of competent
10 jurisdiction and the debtor has not timely appealed said order, judgement or decision. The collections unit
11 shall not accept a referral of any delinquent debt unless it satisfies (c)(i), (ii) or (iii) above.

12 (d) Any agency(ies) entering into an agreement with the department of revenue to allow the
13 collection unit of the department to collect a delinquent debt owed to the state shall indemnify the
14 department of revenue against injuries, actions, liabilities, or proceedings arising from the collection, or
15 attempted collection, by the collection unit of the debt owed to the state.

16 (e) Before referring a delinquent debt to the collection unit, the agency(ies) must (i) notify the
17 debtor of its intention to submit the debt to the collection unit for collection and of the debtor's right to
18 appeal that decision not less than thirty (30) days before the debt is submitted to the collection unit.

19 (f) At such time as the agency(ies) refers a delinquent debt to the collection unit, the agency shall
20 (i) represent in writing to the collection unit that it has complied with all applicable state and federal laws
21 and regulations relating to the collection of the debt, including, but not limited to, the requirement to provide
22 the debtor with the notice of referral to the collection unit under section (e) above; and (ii) provide the
23 collection unit personnel with all relevant supporting documentation including, not limited to notices,
24 invoices, ledgers, correspondence, agreements, waivers, decisions, orders and judgements necessary for the
25 collection unit to attempt to collect the delinquent debt.

1 (g) The referring agency(ies) shall assist the collection unit by providing any and all information,
2 expertise and resources deemed necessary by the collection unit to collect the delinquent debts referred to
3 the collection unit.

4 (h) Upon receipt of a referral of a delinquent debt from an agency(ies), the amount of the delinquent
5 debt shall accrue interest at an annual rate with such rate determined by adding two (2) percent to the prime
6 rate which was in effect on October 1 of the preceding year; provided however, in no event shall the rate of
7 interest exceed twenty-two (21%) per annum nor be less than eighteen percent (18%) per annum.

8 (i) Upon receipt of a referral of a delinquent debt from the agency(ies), the collection unit shall
9 provide the delinquent debtor with a "Notice of Referral" advising the debtor that: (i) the delinquent debt
10 has been referred to the collection unit for collection; (ii) if payment in full of the delinquent debt has not
11 been received by the collection unit within thirty (30) days of the date of the Notice of Referral, the debtor
12 will be responsible to pay a fee of twelve percent (12%) of the amount of the outstanding delinquent debt,
13 with such fee to be applied to the costs and expenses of the collection unit, including costs and expenses
14 incurred to take further collection efforts; this fee shall be in addition to any principal and interest owed;
15 and (iii) the collection unit will initiate, in its names, any action that is available under state law for the
16 collection of the delinquent debt, including, but not limited to, referring the debt to a third party to initiate
17 said action.

18 (j) In the event that the delinquent debtor has not paid the delinquent debt in full within thirty (30)
19 days of the issuance of a "Notice of Referral" pursuant to subsection (i) above, the collection unit shall
20 impose upon each delinquent debtor a fee equal to twelve percent (12%) of the amount of the outstanding
21 delinquent debt.

22 (k) Upon receipt of a referral of a delinquent debt from an agency(ies), the department of revenue
23 collection unit shall have the authority to institute, in its name, any action(s) that are available under state
24 law for collection of the delinquent debt and interest, penalties and/or fees thereon and to, with or without
25 suit, settle the delinquent debt.

1 (l) In exercising its authority under this section, the collection unit shall comply with all state and
2 federal laws and regulations related to the collection of debts.

3 (m) The director of the department may enter into contracts with any person or entity to be paid on
4 a contingent or fee or other basis, for services rendered to the collection unit where the contract is for the
5 collection of delinquent debt, interest, penalty and/or fee owed by the debtor. Under such contracts, the
6 contingent fee shall be based on the actual amount of the debt, interest, penalties or fee collected.

7 (n) Upon of the receipt of payment from a delinquent debtor, whether a full or partial payment, the
8 collection unit shall disburse/deposit the proceeds of said payment in the following order:

9 (i) to any person or entity owed for services under a contract entered into pursuant to section (m)
10 above;

11 (ii) to the appropriate federal account to reimburse the federal government funds owed to them by
12 the state from funds recovered;

13 (iii) into a restricted receipt account in the department of revenue, twelve percent (12%) of the total
14 amount collected from the delinquent debtor to be used to help defray the costs and expenses of operating
15 the collection unit; and

16 (iv) the balance of the amount collected to the referring agency.

17 (o) Notwithstanding the above, the establishment of a collection unit within the department of
18 revenue shall be contingent upon an annual appropriation by the general assembly of amounts necessary
19 and sufficient to cover the costs and expenses to establish, maintain and operate the collection unit
20 including, but not limited, computer hardware and software, maintenance of the computer system to manage
21 the system and personnel perform work within the collection unit. In the event that the amount of the annual
22 appropriation was sufficient to fund the costs and expenses of operating the collection unit in any year, the
23 amount in the restricted receipt at the end of that fiscal year shall be deposited into the general fund or
24 credited against any future appropriation by the general assembly.

25 (p) In addition to the implementation of any pilot program, the collection unit shall comply with
26 the provisions of this section in the collection of all delinquent debts under to this section.

1 (q) The department of revenue is authorized to promulgate rules and regulations as it deems
2 appropriate with respect to the collection unit.

3 SECTION 5. Sections 44-18-7, 44-18-7.1, 44-18-7.3, 44-18-8, 44-18-15, 44-18-20, 44-18-21, 44-
4 18-22, 44-18-23, 44-18-25, and 44-19-7 of the General Laws in Chapter 44-18 entitled "Sales and Use
5 Taxes – Liability and Computation" are hereby amended to read as follows:

6 **44-18-7. Sales defined.**

7 "Sales" means and includes:

8 (1) Any transfer of title or possession, exchange, barter, lease, or rental, conditional or otherwise,
9 in any manner or by any means of tangible personal property for a consideration. "Transfer of possession",
10 "lease", or "rental" includes transactions found by the tax administrator to be in lieu of a transfer of title,
11 exchange, or barter.

12 (2) The producing, fabricating, processing, printing, or imprinting of tangible personal property for
13 a consideration for consumers who furnish either directly or indirectly the materials used in the producing,
14 fabricating, processing, printing, or imprinting.

15 (3) The furnishing and distributing of tangible personal property for a consideration by social,
16 athletic, and similar clubs and fraternal organizations to their members or others.

17 (4) The furnishing, preparing, or serving for consideration of food, meals, or drinks, including any
18 cover, minimum, entertainment, or other charge in connection therewith.

19 (5) A transaction whereby the possession of tangible personal property is transferred, but the seller
20 retains the title as security for the payment of the price.

21 (6) Any withdrawal, except a withdrawal pursuant to a transaction in foreign or interstate
22 commerce, of tangible personal property from the place where it is located for delivery to a point in this
23 state for the purpose of the transfer of title or possession, exchange, barter, lease, or rental, conditional or
24 otherwise, in any manner or by any means whatsoever, of the property for a consideration.

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

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

3 (9)(i) The furnishing for consideration of intrastate, interstate and international telecommunications
4 service sourced in this state in accordance with subsections 44-18.1(15) and (16) and all ancillary services,
5 any maintenance services of telecommunication equipment other than as provided for in subdivision 44-
6 18-12(b)(ii). For the purposes of chapters 18 and 19 of this title only, telecommunication service does not
7 include service rendered using a prepaid telephone calling arrangement.

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

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

18 (11) The rental of living quarters in any hotel, rooming house, or tourist camp.

19 (12) The transfer for consideration of prepaid telephone calling arrangements and the recharge of
20 prepaid telephone calling arrangements sourced to this state in accordance with §§ 44-18.1-11 and 44-18.1-
21 15. "Prepaid telephone calling arrangement" means and includes prepaid calling service and prepaid
22 wireless calling service.

23 (13) The sale, storage, use or other consumption of over-the-counter drugs as defined in paragraph
24 44-18-7.1(h)(ii).

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

1 (15) The sale, storage, use or other consumption of vendor-hosted prewritten computer software as
2 defined in paragraph 44-18-7.1(g)(vii).

3 (16~~5~~) The sale, storage, use or other consumption of medical marijuana as defined in § 21-28.6-3.

4 (17~~6~~) The furnishing of services in this state as defined in § 44-18-7.3.

5 **44-18-7.1. Additional Definitions.**

6 (a) "Agreement" means the streamlined sales and use tax agreement.

7 (b) "Alcoholic beverages" means beverages that are suitable for human consumption and contain
8 one-half of one percent (.5%) or more of alcohol by volume.

9 (c) "Bundled transaction" is the retail sale of two or more products, except real property and
10 services to real property, where (1) The products are otherwise distinct and identifiable, and (2) The
11 products are sold for one non-itemized price. A "bundled transaction" does not include the sale of any
12 products in which the "sales price" varies, or is negotiable, based on the selection by the purchaser of the
13 products included in the transaction.

14 (i) "Distinct and identifiable products" does not include:

15 (A) Packaging – such as containers, boxes, sacks, bags, and bottles – or other materials – such as
16 wrapping, labels, tags, and instruction guides – that accompany the "retail sale" of the products and are
17 incidental or immaterial to the "retail sale" thereof. Examples of packaging that are incidental or immaterial
18 include grocery sacks, shoeboxes, dry cleaning garment bags, and express delivery envelopes and boxes.

19 (B) A product provided free of charge with the required purchase of another product. A product is
20 "provided free of charge" if the "sales price" of the product purchased does not vary depending on the
21 inclusion of the products "provided free of charge."

22 (C) Items included in the member state's definition of "sales price," pursuant to appendix C of the
23 agreement.

24 (ii) The term "one non-itemized price" does not include a price that is separately identified by
25 product on binding sales or other supporting sales-related documentation made available to the customer in

1 paper or electronic form including, but not limited to, an invoice, bill of sale, receipt, contract, service
2 agreement, lease agreement, periodic notice of rates and services, rate card, or price list.

3 (iii) A transaction that otherwise meets the definition of a "bundled transaction" as defined above,
4 is not a "bundled transaction" if it is:

5 (A) The "retail sale" of tangible personal property and a service where the tangible personal
6 property is essential to the use of the service, and is provided exclusively in connection with the service,
7 and the true object of the transaction is the service; or

8 (B) The "retail sale" of services where one service is provided that is essential to the use or receipt
9 of a second service and the first service is provided exclusively in connection with the second service and
10 the true object of the transaction is the second service; or

11 (C) A transaction that includes taxable products and nontaxable products and the "purchase price"
12 or "sales price" of the taxable products is de minimis.

13 1. De minimis means the seller's "purchase price" or "sales price" of the taxable products is ten
14 percent (10%) or less of the total "purchase price" or "sales price" of the bundled products.

15 2. Sellers shall use either the "purchase price" or the "sales price" of the products to determine if
16 the taxable products are de minimis. Sellers may not use a combination of the "purchase price" and "sales
17 price" of the products to determine if the taxable products are de minimis.

18 3. Sellers shall use the full term of a service contract to determine if the taxable products are de
19 minimis; or

20 (D) The "retail sale" of exempt tangible personal property and taxable tangible personal property
21 where:

22 1. The transaction includes "food and food ingredients", "drugs", "durable medical equipment",
23 "mobility enhancing equipment", "over-the-counter drugs", "prosthetic devices" (all as defined in this
24 section) or medical supplies; and

25 2. Where the seller's "purchase price" or "sales price" of the taxable tangible personal property is
26 fifty percent (50%) or less of the total "purchase price" or "sales price" of the bundled tangible personal

1 property. Sellers may not use a combination of the "purchase price" and "sales price" of the tangible
2 personal property when making the fifty percent (50%) determination for a transaction.

3 (d) "Certified automated system (CAS)" means software certified under the agreement to calculate
4 the tax imposed by each jurisdiction on a transaction, determine the amount of tax to remit to the appropriate
5 state, and maintain a record of the transaction.

6 (e) "Certified service provider (CSP)" means an agent certified under the agreement to perform all
7 the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

8 *(f) Clothing and Related Items*

9 (i) "Clothing" means all human wearing apparel suitable for general use.

10 (ii) "Clothing accessories or equipment" means incidental items worn on the person or in
11 conjunction with "clothing." "Clothing accessories or equipment" does not include "clothing", "sport or
12 recreational equipment", or "protective equipment."

13 (iii) "Protective equipment" means items for human wear and designed as protection of the wearer
14 against injury or disease or as protections against damage or injury of other persons or property but not
15 suitable for general use. "Protective equipment" does not include "clothing", "clothing accessories or
16 equipment", and "sport or recreational equipment."

17 (iv) "Sport or recreational equipment" means items designed for human use and worn in
18 conjunction with an athletic or recreational activity that are not suitable for general use. "Sport or
19 recreational equipment" does not include "clothing", "clothing accessories or equipment", and "protective
20 equipment."

21 *(g) Computer and Related Items*

22 (i) "Computer" means an electronic device that accepts information in digital or similar form and
23 manipulates it for a result based on a sequence of instructions.

24 (ii) "Computer software" means a set of coded instructions designed to cause a "computer" or
25 automatic data processing equipment to perform a task.

1 (iii) "Delivered electronically" means delivered to the purchaser by means other than tangible
2 storage media.

3 (iv) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical,
4 electromagnetic, or similar capabilities.

5 (v) "Load and leave" means delivery to the purchaser by use of a tangible storage media where the
6 tangible storage media is not physically transferred to the purchaser.

7 (vi) "Prewritten computer software" means "computer software," including prewritten upgrades,
8 that is not designed and developed by the author or other creator to the specifications of a specific purchaser.
9 The combining of two (2) or more "prewritten computer software" programs or prewritten portions thereof
10 does not cause the combination to be other than "prewritten computer software." "Prewritten computer
11 software" includes software designed and developed by the author or other creator to the specifications of
12 a specific purchaser when it is sold to a person other than the specific purchaser. Where a person modifies
13 or enhances "computer software" of which the person is not the author or creator, the person shall be deemed
14 to be the author or creator only of such person's modifications or enhancements. "Prewritten computer
15 software" or a prewritten portion thereof that is modified or enhanced to any degree, where such
16 modification or enhancement is designed and developed to the specifications of a specific purchaser,
17 remains "prewritten computer software"; provided, however, that where there is a reasonable, separately
18 stated charge or an invoice or other statement of the price given to the purchaser for such modification or
19 enhancement, such modification or enhancement shall not constitute "prewritten computer software."

20 (vii) "Vendor-hosted prewritten computer software" means prewritten computer software that is
21 accessed through the Internet and/or a vendor-hosted server regardless of whether the access is permanent
22 or temporary and regardless of whether any downloading occurs.

23 *(h) Drugs and Related Items*

24 (i) "Drug" means a compound, substance, or preparation, and any component of a compound,
25 substance, or preparation, other than "food and food ingredients," "dietary supplements" or "alcoholic
26 beverages":

1 (A) Recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia
2 of the United States, or official National Formulary, and supplement to any of them; or

3 (B) Intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease; or

4 (C) Intended to affect the structure or any function of the body.

5 "Drug" shall also include insulin and medical oxygen whether or not sold on prescription.

6 (ii) "Over-the-counter drug" means a drug that contains a label that identifies the product as a drug
7 as required by 21 C.F.R. § 201.66. The "over-the-counter drug" label includes:

8 (A) A "Drug Facts" panel; or

9 (B) A statement of the "active ingredient(s)" with a list of those ingredients contained in the
10 compound, substance, or preparation.

11 "Over-the-counter drug" shall not include "grooming and hygiene products."

12 (iii) "Grooming and hygiene products" are soaps and cleaning solutions, shampoo, toothpaste,
13 mouthwash, antiperspirants, and suntan lotions and screens, regardless of whether the items meet the
14 definition of "over-the-counter drugs."

15 (iv) "Prescription" means an order, formula, or recipe issued in any form of oral, written, electronic,
16 or other means of transmission by a duly licensed practitioner authorized by the laws of the member state.

17 (i) "Delivery charges" means charges by the seller of personal property or services for preparation
18 and delivery to a location designated by the purchaser of personal property or services including, but not
19 limited to: transportation, shipping, postage, handling, crating, and packing.

20 "Delivery charges" shall not include the charges for delivery of "direct mail" if the charges are
21 separately stated on an invoice or similar billing document given to the purchaser.

22 (j) "Direct mail" means printed material delivered or distributed by United States mail or other
23 delivery service to a mass audience or to addressees on a mailing list provided by the purchaser or at the
24 direction of the purchaser when the cost of the items are not billed directly to the recipients. "Direct mail"
25 includes tangible personal property supplied directly or indirectly by the purchaser to the direct mail seller

1 for inclusion in the package containing the printed material. "Direct mail" does not include multiple items
2 of printed material delivered to a single address.

3 (k) "Durable medical equipment" means equipment including repair and replacement parts for same
4 which:

5 (i) Can withstand repeated use; and

6 (ii) Is primarily and customarily used to serve a medical purpose; and

7 (iii) Generally is not useful to a person in the absence of illness or injury; and

8 (iv) Is not worn in or on the body.

9 Durable medical equipment does not include mobility enhancing equipment.

10 (l) *Food and Related Items*

11 (i) "Food and food ingredients" means substances, whether in liquid, concentrated, solid, frozen,
12 dried, or dehydrated form, that are sold for ingestion or chewing by humans and are consumed for their
13 taste or nutritional value ~~and seeds and plants used to grow food and food ingredients~~. "Food and food
14 ingredients" does not include "alcoholic beverages", "tobacco", "candy", "dietary supplements", and "soft
15 drinks." ~~or "marijuana seeds or plants."~~

16 (ii) "Prepared food" means:

17 (A) Food sold in a heated state or heated by the seller;

18 (B) Two (2) or more food ingredients mixed or combined by the seller for sale as a single item; or

19 (C) Food sold with eating utensils provided by the seller, including: plates, knives, forks, spoons,
20 glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the
21 food.

22 "Prepared food" in (B) does not include food that is only cut, repackaged, or pasteurized by the
23 seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the
24 consumer as recommended by the Food and Drug Administration in chapter 3, part 401.11 of its Food Code
25 so as to prevent food borne illnesses.

1 (iii) "Candy" means a preparation of sugar, honey, or other natural or artificial sweeteners in
2 combination with chocolate, fruits, nuts, or other ingredients or flavorings in the form of bars, drops, or
3 pieces. "Candy" shall not include any preparation containing flour and shall require no refrigeration.

4 (iv) "Soft drinks" means non-alcoholic beverages that contain natural or artificial sweeteners. "Soft
5 drinks" do not include beverages that contain milk or milk products, soy, rice, or similar milk substitutes,
6 or greater than fifty percent (50%) of vegetable or fruit juice by volume.

7 (v) "Dietary supplement" means any product, other than "tobacco", intended to supplement the diet
8 that:

9 (A) Contains one or more of the following dietary ingredients:

10 1. A vitamin;

11 2. A mineral;

12 3. An herb or other botanical;

13 4. An amino acid;

14 5. A dietary substance for use by humans to supplement the diet by increasing the total dietary
15 intake; or

16 6. A concentrate, metabolite, constituent, extract, or combination of any ingredient described
17 above; and

18 (B) Is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form, or if not
19 intended for ingestion in such a form, is not represented as conventional food and is not represented for use
20 as a sole item of a meal or of the diet; and

21 (C) Is required to be labeled as a dietary supplement, identifiable by the "supplemental facts" box
22 found on the label and as required pursuant to 21 C.F.R. § 101.36.

23 (m) "Food sold through vending machines" means food dispensed from a machine or other
24 mechanical device that accepts payment.

1 (n) "Hotel" means every building or other structure kept, used, maintained, advertised as, or held
2 out to the public to be a place where living quarters are supplied for pay to transient or permanent guests
3 and tenants and includes a motel.

4 (i) "Living quarters" means sleeping rooms, sleeping or housekeeping accommodations, or any
5 other room or accommodation in any part of the hotel, rooming house, or tourist camp that is available for
6 or rented out for hire in the lodging of guests.

7 (ii) "Rooming house" means every house, boat, vehicle, motor court, or other structure kept, used,
8 maintained, advertised, or held out to the public to be a place where living quarters are supplied for pay to
9 transient or permanent guests or tenants, whether in one or adjoining buildings.

10 (iii) "Tourist camp" means a place where tents or tent houses, or camp cottages, or cabins or other
11 structures are located and offered to the public or any segment thereof for human habitation.

12 (o) "Lease or rental" means any transfer of possession or control of tangible personal property for
13 a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or
14 extend. Lease or rental does not include:

15 (i) A transfer of possession or control of property under a security agreement or deferred payment
16 plan that requires the transfer of title upon completion of the required payments;

17 (ii) A transfer of possession or control of property under an agreement that requires the transfer of
18 title upon completion of required payments and payment of an option price does not exceed the greater of
19 one hundred dollars (\$100) or one percent of the total required payments; or

20 (iii) Providing tangible personal property along with an operator for a fixed or indeterminate period
21 of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as
22 designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the
23 tangible personal property.

24 (iv) Lease or rental does include agreements covering motor vehicles and trailers where the amount
25 of consideration may be increased or decreased by reference to the amount realized upon sale or disposition
26 of the property as defined in 26 U.S.C. § 7701(h)(1).

1 (v) This definition shall be used for sales and use tax purposes regardless if a transaction is
2 characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue
3 Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

4 (vi) This definition will be applied only prospectively from the date of adoption and will have no
5 retroactive impact on existing leases or rentals. This definition shall neither impact any existing sale-
6 leaseback exemption or exclusions that a state may have, nor preclude a state from adopting a sale-leaseback
7 exemption or exclusion after the effective date of the agreement.

8 (p) "Mobility enhancing equipment" means equipment, including repair and replacement parts to
9 same, that:

10 (i) Is primarily and customarily used to provide or increase the ability to move from one place to
11 another and that is appropriate for use either in a home or a motor vehicle; and

12 (ii) Is not generally used by persons with normal mobility; and

13 (iii) Does not include any motor vehicle or equipment on a motor vehicle normally provided by a
14 motor vehicle manufacturer.

15 Mobility enhancing equipment does not include durable medical equipment.

16 (q) "Model 1 Seller" means a seller that has selected a CSP as its agent to perform all the seller's
17 sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

18 (r) "Model 2 Seller" means a seller that has selected a CAS to perform part of its sales and use tax
19 functions, but retains responsibility for remitting the tax.

20 (s) "Model 3 Seller" means a seller that has sales in at least five member states, has total annual
21 sales revenue of at least five hundred million dollars (\$500,000,000), has a proprietary system that
22 calculates the amount of tax due each jurisdiction, and has entered into a performance agreement with the
23 member states that establishes a tax performance standard for the seller. As used in this definition, a seller
24 includes an affiliated group of sellers using the same proprietary system.

25 (t) "Prosthetic device" means a replacement, corrective, or supportive device including repair and
26 replacement parts for same worn on or in the body to:

1 (i) Artificially replace a missing portion of the body;

2 (ii) Prevent or correct physical deformity or malfunction; or

3 (iii) Support a weak or deformed portion of the body.

4 (u) "Purchaser" means a person to whom a sale of personal property is made or to whom a service
5 is furnished.

6 (v) "Purchase price" applies to the measure subject to use tax and has the same meaning as sales
7 price.

8 (w) "Seller" means a person making sales, leases, or rentals of personal property or services.

9 (x) "State" means any state of the United States and the District of Columbia.

10 (y) "Telecommunications" tax base/exemption terms

11 (i) Telecommunication terms shall be defined as follows:

12 (A) "Ancillary services" means services that are associated with or incidental to the provision of
13 "telecommunications services", including, but not limited to, "detailed telecommunications billing",
14 "directory assistance", "vertical service", and "voice mail services".

15 (B) "Conference bridging service" means an "ancillary service" that links two (2) or more
16 participants of an audio or video conference call and may include the provision of a telephone number.
17 "Conference bridging service" does not include the "telecommunications services" used to reach the
18 conference bridge.

19 (C) "Detailed telecommunications billing service" means an "ancillary service" of separately
20 stating information pertaining to individual calls on a customer's billing statement.

21 (D) "Directory assistance" means an "ancillary service" of providing telephone number
22 information, and/or address information.

23 (E) "Vertical service" means an "ancillary service" that is offered in connection with one or more
24 "telecommunications services", which offers advanced calling features that allow customers to identify
25 callers and to manage multiple calls and call connections, including "conference bridging services".

1 (F) "Voice mail service" means an "ancillary service" that enables the customer to store, send, or
2 receive recorded messages. "Voice mail service" does not include any "vertical services" that the customer
3 may be required to have in order to utilize the "voice mail service".

4 (G) "Telecommunications service" means the electronic transmission, conveyance, or routing of
5 voice, data, audio, video, or any other information or signals to a point, or between or among points. The
6 term "telecommunications service" includes such transmission, conveyance, or routing in which computer
7 processing applications are used to act on the form, code, or protocol of the content for purposes of
8 transmission, conveyance, or routing without regard to whether such service is referred to as voice over
9 internet protocol services or is classified by the Federal Communications Commission as enhanced or value
10 added. "Telecommunications service" does not include:

11 (1) Data processing and information services that allow data to be generated, acquired, stored,
12 processed, or retrieved and delivered by an electronic transmission to a purchaser where such purchaser's
13 primary purpose for the underlying transaction is the processed data or information;

14 (2) Installation or maintenance of wiring or equipment on a customer's premises;

15 (3) Tangible personal property;

16 (4) Advertising, including, but not limited to, directory advertising;

17 (5) Billing and collection services provided to third parties;

18 (6) Internet access service;

19 (7) Radio and television audio and video programming services, regardless of the medium,
20 including the furnishing of transmission, conveyance, and routing of such services by the programming
21 service provider. Radio and television audio and video programming services shall include, but not be
22 limited to, cable service as defined in 47 U.S.C. § 522(6) and audio and video programming services
23 delivered by commercial mobile radio service providers as defined in 47 C.F.R. § 20.3;

24 (8) "Ancillary services"; or

25 (9) Digital products "delivered electronically", including, but not limited to: software, music, video,
26 reading materials or ring tones.

1 (H) "800 service" means a "telecommunications service" that allows a caller to dial a toll-free
2 number without incurring a charge for the call. The service is typically marketed under the name "800",
3 "855", "866", "877", and "888" toll-free calling, and any subsequent numbers designated by the Federal
4 Communications Commission.

5 (I) "900 service" means an inbound toll "telecommunications service" purchased by a subscriber
6 that allows the subscriber's customers to call in to the subscriber's prerecorded announcement or live
7 service. "900 service" does not include the charge for: collection services provided by the seller of the
8 "telecommunications services" to the subscriber, or service or product sold by the subscriber to the
9 subscriber's customer. The service is typically marketed under the name "900 service," and any subsequent
10 numbers designated by the Federal Communications Commission.

11 (J) "Fixed wireless service" means a "telecommunications service" that provides radio
12 communication between fixed points.

13 (K) "Mobile wireless service" means a "telecommunications service" that is transmitted, conveyed,
14 or routed regardless of the technology used, whereby the origination and/or termination points of the
15 transmission, conveyance, or routing are not fixed, including, by way of example only,
16 "telecommunications services" that are provided by a commercial mobile radio service provider.

17 (L) "Paging service" means a "telecommunications service" that provides transmission of coded
18 radio signals for the purpose of activating specific pagers; such transmissions may include messages and/or
19 sounds.

20 (M) "Prepaid calling service" means the right to access exclusively "telecommunications services",
21 which must be paid for in advance and that enables the origination of calls using an access number or
22 authorization code, whether manually or electronically dialed, and that is sold in predetermined units or
23 dollars of which the number declines with use in a known amount.

24 (N) "Prepaid wireless calling service" means a "telecommunications service" that provides the right
25 to utilize "mobile wireless service", as well as other non-telecommunications services, including the
26 download of digital products "delivered electronically", content and "ancillary services" which must be paid

1 for in advance that is sold in predetermined units of dollars of which the number declines with use in a
2 known amount.

3 (O) "Private communications service" means a telecommunications service that entitles the
4 customer to exclusive or priority use of a communications channel or group of channels between or among
5 termination points, regardless of the manner in which such channel or channels are connected, and includes
6 switching capacity, extension lines, stations, and any other associated services that are provided in
7 connection with the use of such channel or channels.

8 (P) "Value-added non-voice data service" means a service that otherwise meets the definition of
9 "telecommunications services" in which computer processing applications are used to act on the form,
10 content, code, or protocol of the information or data primarily for a purpose other than transmission,
11 conveyance, or routing.

12 (ii) "Modifiers of Sales Tax Base/Exemption Terms" – the following terms can be used to further
13 delineate the type of "telecommunications service" to be taxed or exempted. The terms would be used with
14 the broader terms and subcategories delineated above.

15 (A) "Coin-operated telephone service" means a "telecommunications service" paid for by inserting
16 money into a telephone accepting direct deposits of money to operate.

17 (B) "International" means a "telecommunications service" that originates or terminates in the
18 United States and terminates or originates outside the United States, respectively. United States includes
19 the District of Columbia or a U.S. territory or possession.

20 (C) "Interstate" means a "telecommunications service" that originates in one United States state, or
21 a United States territory or possession, and terminates in a different United States state or a United States
22 territory or possession.

23 (D) "Intrastate" means a "telecommunications service" that originates in one United States state or
24 a United States territory or possession, and terminates in the same United States state or a United States
25 territory or possession.

1 (E) "Pay telephone service" means a "telecommunications service" provided through any pay
2 telephone.

3 (F) "Residential telecommunications service" means a "telecommunications service" or "ancillary
4 services" provided to an individual for personal use at a residential address, including an individual dwelling
5 unit such as an apartment. In the case of institutions where individuals reside, such as schools or nursing
6 homes, "telecommunications service" is considered residential if it is provided to and paid for by an
7 individual resident rather than the institution.

8 The terms "ancillary services" and "telecommunications service" are defined as a broad range of
9 services. The terms "ancillary services" and "telecommunications service" are broader than the sum of the
10 subcategories. Definitions of subcategories of "ancillary services" and "telecommunications service" can
11 be used by a member state alone or in combination with other subcategories to define a narrower tax base
12 than the definitions of "ancillary services" and "telecommunications service" would imply. The
13 subcategories can also be used by a member state to provide exemptions for certain subcategories of the
14 more broadly defined terms.

15 A member state that specifically imposes tax on, or exempts from tax, local telephone or local
16 telecommunications service may define "local service" in any manner in accordance with § 44-18.1-28,
17 except as limited by other sections of this Agreement.

18 (z) "Tobacco" means cigarettes, cigars, chewing, or pipe tobacco, or any other item that contains
19 tobacco.

20 **44-18-7.3. Services defined.**

21 (a) "Services" means all activities engaged in for other persons for a fee, retainer, commission, or
22 other monetary charge, which activities involve the performance of a service in this state as distinguished
23 from selling property.

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

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

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

2 (ii) Limousine services (485320).

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

4 (i) Charter bus service (485510);

5 (ii) "Transportation network companies" (TNC) defined as an entity that uses a digital network to
6 connect transportation network company riders to transportation network operators who provide
7 prearranged rides. Any TNC operating in this state is a retailer as provided in § 44-18-15 and is required to
8 file a business application and registration form and obtain a permit to make sales at retail with the tax
9 administrator, to charge, collect, and remit Rhode Island sales and use tax; and

10 (iii) All other transit and ground passenger transportation (485999).

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

12 (4)(i) "Room reseller" or "reseller" means any person, except a tour operator as defined in § 42-
13 63.1-2, having any right, permission, license, or other authority from or through a hotel as defined in § 42-
14 63.1-2, to reserve, or arrange the transfer of occupancy of, accommodations the reservation or transfer of
15 which is subject to this chapter, such that the occupant pays all or a portion of the rental and other fees to
16 the room reseller or reseller, room reseller or reseller shall include, but not be limited to, sellers of travel
17 packages as defined in this section. Notwithstanding the provisions of any other law, where said reservation
18 or transfer of occupancy is done using a room reseller or reseller, the application of the sales and use tax
19 under §§ 44-18-18 and 44-18-20, and the hotel tax under § 44-18-36.1 shall be as follows: The room reseller
20 or reseller is required to register with, and shall collect and pay to, the tax administrator the sales and use
21 and hotel taxes, with said taxes being calculated upon the amount of rental and other fees paid by the
22 occupant to the room reseller or reseller, less the amount of any rental and other fees paid by the room
23 reseller or reseller to the hotel. The hotel shall collect and pay to the tax administrator said taxes upon the
24 amount of rental and other fees paid to the hotel by the room reseller or reseller and/or the occupant. No
25 assessment shall be made by the tax administrator against a hotel because of an incorrect remittance of the
26 taxes under this chapter by a room reseller or reseller. No assessment shall be made by the tax administrator

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

17 (ii) "Travel package" means a room, or rooms, bundled with one or more other, separate
18 components of travel such as air transportation, car rental, or similar items, which travel package is charged
19 to the customer or occupant for a single, retail price. When the room occupancy is bundled for a single
20 consideration, with other property, services, amusement charges, or any other items, the separate sale of
21 which would not otherwise be subject to tax under this chapter, the entire single consideration shall be
22 treated as the rental or other fees for room occupancy subject to tax under this chapter; provided, however,
23 that where the amount of the rental, or other fees for room occupancy is stated separately from the price of
24 such other property, services, amusement charges, or other items, on any sales slip, invoice, receipt, or other
25 statement given the occupant, and such rental and other fees are determined by the tax administrator to be
26 reasonable in relation to the value of such other property, services, amusement charges, or other items, only

1 such separately stated rental and other fees will be subject to tax under this chapter. The value of the transfer
2 of any room, or rooms, bundled as part of a travel package may be determined by the tax administrator from
3 the room reseller's and/or reseller's and/or hotel's books and records that are kept in the regular course of
4 business.

5 (5) Investigation, Guard, and Armored Car Services (56161).

6 (c) All services as defined herein are required to file a business application and registration form
7 and obtain a permit to make sales at retail with the tax administrator, to charge, collect, and remit Rhode
8 Island sales and use tax.

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

11 **44-18-8. Retail sale or sale at retail defined.**

12 A "retail sale" or "sale at retail" means any sale, lease or rentals of tangible personal property,
13 prewritten computer software delivered electronically or by load and leave, vendor-hosted prewritten
14 computer software, or services as defined in § 44-18-7.3 for any purpose other than resale, sublease or
15 subrent in the regular course of business. The sale of tangible personal property to be used for purposes of
16 rental in the regular course of business is considered to be a sale for resale. In regard to telecommunications
17 service as defined in § 44-18-7(9), retail sale does not include the purchase of telecommunications service
18 by a telecommunications provider from another telecommunication provider for resale to the ultimate
19 consumer; provided, that the purchaser submits to the seller a certificate attesting to the applicability of this
20 exclusion, upon receipt of which the seller is relieved of any tax liability for the sale.

21 **44-18-15. "Retailer" defined.**

22 (a) "Retailer" includes:

23 (1) Every person engaged in the business of making sales at retail including prewritten computer
24 software delivered electronically or by load and leave, vendor-hosted prewritten computer software, sales
25 of services as defined in § 44-18-7.3, and sales at auction of tangible personal property owned by the person
26 or others.

1 (2) Every person making sales of tangible personal property including prewritten computer
2 software delivered electronically or by load and leave, or vendor-hosted prewritten computer software, or
3 sales of services as defined in § 44-18-7.3, through an independent contractor or other representative, if the
4 retailer enters into an agreement with a resident of this state, under which the resident, for a commission or
5 other consideration, directly or indirectly refers potential customers, whether by a link on an Internet
6 website or otherwise, to the retailer, provided the cumulative gross receipts from sales by the retailer to
7 customers in the state who are referred to the retailer by all residents with this type of an agreement with
8 the retailer, is in excess of five thousand dollars (\$5,000) during the preceding four (4) quarterly periods
9 ending on the last day of March, June, September and December. Such retailer shall be presumed to be
10 soliciting business through such independent contractor or other representative, which presumption may be
11 rebutted by proof that the resident with whom the retailer has an agreement did not engage in any solicitation
12 in the state on behalf of the retailer that would satisfy the nexus requirement of the United States
13 Constitution during such four (4) quarterly periods.

14 (3) Every person engaged in the business of making sales for storage, use, or other consumption
15 of: ~~(i)~~ tangible personal property, (ii) sales at auction of tangible personal property owned by the person
16 or others, (iii) prewritten computer software delivered electronically or by load and leave, (iv) vendor-
17 hosted prewritten computer software, and ~~(ivv)~~ services as defined in § 44-18-7.3.

18 (4) A person conducting a horse race meeting with respect to horses, which are claimed during the
19 meeting.

20 (5) Every person engaged in the business of renting any living quarters in any hotel as defined in §
21 42-63.1-2, rooming house, or tourist camp.

22 (6) Every person maintaining a business within or outside of this state who engages in the regular
23 or systematic solicitation of sales of tangible personal property, prewritten computer software delivered
24 electronically or by load and leave, vendor-hosted prewritten computer software:

25 (i) Advertising in newspapers, magazines, and other periodicals published in this state, sold over
26 the counter in this state or sold by subscription to residents of this state, billboards located in this state,

1 airborne advertising messages produced or transported in the airspace above this state, display cards and
2 posters on common carriers or any other means of public conveyance incorporated or operated primarily in
3 this state, brochures, catalogs, circulars, coupons, pamphlets, samples, and similar advertising material
4 mailed to, or distributed within this state to residents of this state;

5 (ii) Telephone;

6 (iii) Computer assisted shopping networks; and

7 (iv) Television, radio or any other electronic media, which is intended to be broadcast to consumers
8 located in this state.

9 (b) When the tax administrator determines that it is necessary for the proper administration of
10 chapters 18 and 19 of this title to regard any salespersons, representatives, truckers, peddlers, or canvassers
11 as the agents of the dealers, distributors, supervisors, employers, or persons under whom they operate or
12 from whom they obtain the tangible personal property sold by them, irrespective of whether they are making
13 sales on their own behalf or on behalf of the dealers, distributors, supervisors, or employers, the tax
14 administrator may so regard them and may regard the dealers, distributors, supervisors, or employers as
15 retailers for purposes of chapters 18 and 19 of this title.

16 **44-18-20. Use tax imposed.**

17 (a) An excise tax is imposed on the storage, use, or other consumption in this state of tangible
18 personal property; prewritten computer software delivered electronically or by load and leave; vendor-
19 hosted prewritten computer software; or services as defined in § 44-18-7.3, including a motor vehicle, a
20 boat, an airplane, or a trailer, purchased from any retailer at the rate of six percent (6%) of the sale price of
21 the property.

22 (b) An excise tax is imposed on the storage, use, or other consumption in this state of a motor
23 vehicle, a boat, an airplane, or a trailer purchased from other than a licensed motor vehicle dealer or other
24 than a retailer of boats, airplanes, or trailers respectively, at the rate of six percent (6%) of the sale price of
25 the motor vehicle, boat, airplane, or trailer.

1 (c) The word "trailer," as used in this section and in § 44-18-21, means and includes those defined
2 in § 31-1-5(a) – (e) and also includes boat trailers, camping trailers, house trailers, and mobile homes.

3 (d) Notwithstanding the provisions contained in this section and in § 44-18-21 relating to the
4 imposition of a use tax and liability for this tax on certain casual sales, no tax is payable in any casual sale:

5 (1) When the transferee or purchaser is the spouse, mother, father, brother, sister, or child of the
6 transferor or seller;

7 (2) When the transfer or sale is made in connection with the organization, reorganization,
8 dissolution, or partial liquidation of a business entity, provided:

9 (i) The last taxable sale, transfer, or use of the article being transferred or sold was subjected to a
10 tax imposed by this chapter;

11 (ii) The transferee is the business entity referred to or is a stockholder, owner, member, or partner;
12 and

13 (iii) Any gain or loss to the transferor is not recognized for income tax purposes under the
14 provisions of the federal income tax law and treasury regulations and rulings issued thereunder;

15 (3) When the sale or transfer is of a trailer, other than a camping trailer, of the type ordinarily used
16 for residential purposes and commonly known as a house trailer or as a mobile home; or

17 (4) When the transferee or purchaser is exempt under the provisions of § 44-18-30 or other general
18 law of this state or special act of the general assembly of this state.

19 (e) The term "casual" means a sale made by a person other than a retailer, provided, that in the case
20 of a sale of a motor vehicle, the term means a sale made by a person other than a licensed motor vehicle
21 dealer or an auctioneer at an auction sale. In no case is the tax imposed under the provisions of subsections
22 (a) and (b) of this section on the storage, use, or other consumption in this state of a used motor vehicle less
23 than the product obtained by multiplying the amount of the retail dollar value at the time of purchase of the
24 motor vehicle by the applicable tax rate; provided, that where the amount of the sale price exceeds the
25 amount of the retail dollar value, the tax is based on the sale price. The tax administrator shall use as his or
26 her guide the retail dollar value as shown in the current issue of any nationally recognized, used-vehicle

1 guide for appraisal purposes in this state. On request within thirty (30) days by the taxpayer after payment
2 of the tax, if the tax administrator determines that the retail dollar value as stated in this subsection is
3 inequitable or unreasonable, he or she shall, after affording the taxpayer reasonable opportunity to be heard,
4 re-determine the tax.

5 (f) Every person making more than five (5) retail sales of tangible personal property or prewritten
6 computer software delivered electronically or by load and leave, or vendor-hosted prewritten computer
7 software, or services as defined in § 44-18-7.3 during any twelve-month (12) period, including sales made
8 in the capacity of assignee for the benefit of creditors or receiver or trustee in bankruptcy, is considered a
9 retailer within the provisions of this chapter.

10 (g)(1) "Casual sale" includes a sale of tangible personal property not held or used by a seller in the
11 course of activities for which the seller is required to hold a seller's permit or permits or would be required
12 to hold a seller's permit or permits if the activities were conducted in this state, provided that the sale is not
13 one of a series of sales sufficient in number, scope, and character (more than five (5) in any twelve-month
14 (12) period) to constitute an activity for which the seller is required to hold a seller's permit or would be
15 required to hold a seller's permit if the activity were conducted in this state.

16 (2) Casual sales also include sales made at bazaars, fairs, picnics, or similar events by nonprofit
17 organizations, that are organized for charitable, educational, civic, religious, social, recreational, fraternal,
18 or literary purposes during two (2) events not to exceed a total of six (6) days duration each calendar year.
19 Each event requires the issuance of a permit by the division of taxation. Where sales are made at events by
20 a vendor that holds a sales tax permit and is not a nonprofit organization, the sales are in the regular course
21 of business and are not exempt as casual sales.

22 (h) The use tax imposed under this section for the period commencing July 1, 1990, is at the rate
23 of seven percent (7%). In recognition of the work being performed by the streamlined sales and use tax
24 governing board, upon passage of any federal law that authorizes states to require remote sellers to collect
25 and remit sales and use taxes, effective the first (1st) day of the first (1st) state fiscal quarter following the
26 change, the rate imposed under § 44-18-18 shall be reduced from seven percent (7.0%) to six and one-half

1 percent (6.5%). The six and one-half percent (6.5%) rate shall take effect on the date that the state requires
2 remote sellers to collect and remit sales and use taxes.

3 **44-18-21. Liability for use tax.**

4 (a) Every person storing, using, or consuming in this state tangible personal property, including a
5 motor vehicle, boat, airplane, or trailer, purchased from a retailer, and a motor vehicle, boat, airplane, or
6 trailer, purchased from other than a licensed motor vehicle dealer or other than a retailer of boats, airplanes,
7 or trailers respectively; or storing, using or consuming specified prewritten computer software delivered
8 electronically or by load and leave, or vendor-hosted prewritten computer software, or services as defined
9 in § 44-18-7.3 is liable for the use tax. The person's liability is not extinguished until the tax has been paid
10 to this state, except that a receipt from a retailer engaging in business in this state or from a retailer who is
11 authorized by the tax administrator to collect the tax under rules and regulations that he or she may
12 prescribe, given to the purchaser pursuant to the provisions of § 44-18-22, is sufficient to relieve the
13 purchaser from further liability for the tax to which the receipt refers.

14 (b) Each person before obtaining an original or transferral registration for any article or commodity
15 in this state, which article or commodity is required to be licensed or registered in the state, shall furnish
16 satisfactory evidence to the tax administrator that any tax due under this chapter with reference to the article
17 or commodity has been paid, and for the purpose of effecting compliance, the tax administrator, in addition
18 to any other powers granted to him or her, may invoke the provisions of § 31-3-4 in the case of a motor
19 vehicle. The tax administrator, when he or she deems it to be for the convenience of the general public, may
20 authorize any agency of the state concerned with the licensing or registering of these articles or commodities
21 to collect the use tax on any articles or commodities which the purchaser is required by this chapter to pay
22 before receiving an original or transferral registration. The general assembly shall annually appropriate a
23 sum that it deems necessary to carry out the purposes of this section. Notwithstanding the provisions of §§
24 44-18-19, 44-18-22, and 44-18-24, the sales or use tax on any motor vehicle and/or recreational vehicle
25 requiring registration by the administrator of the division of motor vehicles shall not be added by the retailer

1 to the sale price or charge but shall be paid directly by the purchaser to the tax administrator, or his or her
2 authorized deputy or agent as provided in this section.

3 (c) In cases involving total loss or destruction of a motor vehicle occurring within one hundred
4 twenty (120) days from the date of purchase and upon which the purchaser has paid the use tax, the amount
5 of the tax constitutes an overpayment. The amount of the overpayment may be credited against the amount
6 of use tax on any subsequent vehicle which the owner acquires to replace the lost or destroyed vehicle or
7 may be refunded, in whole or in part.

8 **44-18-22. Collection of use tax by retailer.**

9 Every retailer engaging in business in this state and making sales of tangible personal property or
10 prewritten computer software delivered electronically or by load and leave, or vendor-hosted prewritten
11 computer software, or services as defined in § 44-18-7.3, for storage, use, or other consumption in this state,
12 not exempted under this chapter shall, at the time of making the sales, or if the storage, use, or other
13 consumption of the tangible personal property, prewritten computer software delivered electronically or by
14 load and leave, vendor-hosted prewritten computer software, or services as defined in § 44-18-7.3, is not
15 then taxable under this chapter, at the time the storage, use, or other consumption becomes taxable, collect
16 the tax from the purchaser and give to the purchaser a receipt in the manner and form prescribed by the tax
17 administrator.

18 **44-18-23. "Engaging in business" defined.**

19 As used in §§ 44-18-21 and 44-18-22 the term "engaging in business in this state" means the selling
20 or delivering in this state, or any activity in this state related to the selling or delivering in this state of
21 tangible personal property or prewritten computer software delivered electronically or by load and leave,
22 or vendor-hosted prewritten computer software, for storage, use, or other consumption in this state; or
23 services as defined in § 44-18-7.3 in this state. This term includes, but is not limited to, the following acts
24 or methods of transacting business:

25 (1) Maintaining, occupying, or using in this state permanently or temporarily, directly or indirectly
26 or through a subsidiary, representative, or agent by whatever name called and whether or not qualified to

1 do business in this state, any office, place of distribution, sales or sample room or place, warehouse or
2 storage place, or other place of business;

3 (2) Having any subsidiary, representative, agent, salesperson, canvasser, or solicitor permanently
4 or temporarily, and whether or not the subsidiary, representative, or agent is qualified to do business in this
5 state, operate in this state for the purpose of selling, delivering, or the taking of orders for any tangible
6 personal property, or prewritten computer software delivered electronically or by load and leave, or vendor-
7 hosted prewritten computer software, or services as defined in § 44-18-7.3;

8 (3) The regular or systematic solicitation of sales of tangible personal property, or prewritten
9 computer software delivered electronically or by load and leave, or vendor-hosted prewritten computer
10 software, or services as defined in § 44-18-7.3, in this state by means of:

11 (i) Advertising in newspapers, magazines, and other periodicals published in this state, sold over
12 the counter in this state or sold by subscription to residents of this state, billboards located in this state,
13 airborne advertising messages produced or transported in the air space above this state, display cards and
14 posters on common carriers or any other means of public conveyance incorporated or operating primarily
15 in this state, brochures, catalogs, circulars, coupons, pamphlets, samples, and similar advertising material
16 mailed to, or distributed within this state to residents of this state;

17 (ii) Telephone;

18 (iii) Computer-assisted shopping networks; and

19 (iv) Television, radio or any other electronic media, which is intended to be broadcast to consumers
20 located in this state.

21 **44-18-25. Presumption that sale is for storage, use, or consumption – Resale certificate.**

22 It is presumed that all gross receipts are subject to the sales tax, and that the use of all tangible
23 personal property, or prewritten computer software delivered electronically or by load and leave, or vendor-
24 hosted prewritten computer software, or services as defined in § 44-18-7.3, are subject to the use tax, and
25 that all tangible personal property, or prewritten computer software delivered electronically or by load and
26 leave, or vendor-hosted prewritten computer software, or services as defined in § 44-18-7.3, sold or in

1 processing or intended for delivery or delivered in this state is sold or delivered for storage, use, or other
2 consumption in this state, until the contrary is established to the satisfaction of the tax administrator. The
3 burden of proving the contrary is upon the person who makes the sale and the purchaser, unless the person
4 who makes the sale takes from the purchaser a certificate to the effect that the purchase was for resale. The
5 certificate shall contain any information and be in the form that the tax administrator may require.

6 **44-19-7. Registration of retailers.**

7 Every retailer selling tangible personal property or prewritten computer software delivered
8 electronically or by load and leave or vendor-hosted prewritten computer software for storage, use, or other
9 consumption in this state, as well as services as defined in § 44-18-7.3, in this state, or renting living quarters
10 in any hotel as defined in § 42-63.1-2, rooming house, or tourist camp in this state must register with the
11 tax administrator and give the name and address of all agents operating in this state, the location of all
12 distribution or sales houses or offices, or of any hotel as defined in § 42-63.1-2, rooming house, or tourist
13 camp or other places of business in this state, and other information that the tax administrator may require.

14 SECTION 6. Sections 44-20-1, 44-20-8.2, 44-20-12, 44-20-13 and 44-20-13.2 of the General Laws
15 in Chapter 44-20 entitled "Cigarette and Other Tobacco Products Tax" are hereby amended to read as
16 follows:

17 **44-20-1. Definitions.** Whenever used in this chapter, unless the context requires otherwise:

18 (1) "Administrator" means the tax administrator;

19 (2) "Cigarettes" means and includes any cigarettes suitable for smoking in cigarette form, and each
20 sheet of cigarette rolling paper, including but not limited to, paper made into a hollow cylinder or cone,
21 made with paper or any other material, with or without a filter suitable for use in making cigarettes;

22 (3) "Dealer" means any person whether located within or outside of this state, who sells or
23 distributes cigarettes and/or other tobacco products to a consumer in this state;

24 (4) "Distributor" means any person:

25 (A) Whether located within or outside of this state, other than a dealer, who sells or distributes
26 cigarettes and/or other tobacco products within or into this state. Such term shall not include any cigarette

1 or other tobacco product manufacturer, export warehouse proprietor, or importer with a valid permit under
2 26 U.S.C. § 5712, if such person sells or distributes cigarettes and/or other tobacco products in this state
3 only to licensed distributors, or to an export warehouse proprietor or another manufacturer with a valid
4 permit under 26 U.S.C. § 5712;

5 (B) Selling cigarettes and/or other tobacco products directly to consumers in this state by means of
6 at least twenty-five (25) vending machines;

7 (C) Engaged in this state in the business of manufacturing cigarettes and/or other tobacco products
8 or any person engaged in the business of selling cigarettes and/or other tobacco products to dealers, or to
9 other persons, for the purpose of resale only; provided, that seventy-five percent (75%) of all cigarettes
10 and/or other tobacco products sold by that person in this state are sold to dealers or other persons for resale
11 and selling cigarettes and/or other tobacco products directly to at least forty (40) dealers or other persons
12 for resale; or

13 (D) Maintaining one or more regular places of business in this state for that purpose; provided, that
14 seventy-five percent (75%) of the sold cigarettes and/or other tobacco products are purchased directly from
15 the manufacturer and selling cigarettes and/or other tobacco products directly to at least forty (40) dealers
16 or other persons for resale;

17 (5) “Electronic cigarette” means: (i) a personal vaporizer, electronic nicotine delivery system or an
18 electronic inhaler which generally utilizes a heating element that vaporizes a liquid solution containing
19 nicotine or nicotine derivative; sold in combination with (ii) the liquid solution containing nicotine or
20 nicotine derivative; or, the liquid solution containing nicotine or nicotine derivative, whether sold separately
21 or in combination with a personal vaporizer, electronic nicotine system or an electronic inhaler which
22 generally utilizes a heating element that vaporizes a liquid solution containing nicotine or nicotine
23 derivative. (iii) any combination thereof.

24 (5) (6) "Importer" means any person who imports into the United States, either directly or
25 indirectly, a finished cigarette or other tobacco product for sale or distribution;

1 ~~(6)~~ (7) "Licensed", when used with reference to a manufacturer, importer, distributor or dealer,
2 means only those persons who hold a valid and current license issued under § 44-20-2 for the type of
3 business being engaged in. When the term "licensed" is used before a list of entities, such as "licensed
4 manufacturer, importer, wholesale dealer, or retailer dealer," such term shall be deemed to apply to each
5 entity in such list;

6 ~~(7)~~ (8) "Manufacturer" means any person who manufactures, fabricates, assembles, processes, or
7 labels a finished cigarette and/or other tobacco products;

8 ~~(8)~~ (9) "Other tobacco products" (OTP) means any cigars (excluding Little Cigars, as defined in §
9 44-20.2-1, which are subject to cigarette tax), cheroots, stogies, smoking tobacco (including granulated,
10 plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a
11 otherwise), chewing tobacco (including Cavendish, twist, plug, scrap and any other kinds and forms of
12 tobacco suitable for chewing), any and all forms of hookah, shisha and "mu'assel" tobacco, snuff, electronic
13 cigarettes, and shall include any other articles or products made of or containing tobacco, in whole or in
14 part, or any tobacco substitute, except cigarettes;

15 ~~(9)~~ (10) "Person" means any individual, including an employee or agent, firm, fiduciary,
16 partnership, corporation, trust, or association, however formed;

17 ~~(10)~~ (11) "Pipe" means an apparatus made of any material used to burn or vaporize products so that
18 the smoke or vapors can be inhaled or ingested by the user;

19 ~~(11)~~ (12) "Place of business" means any location where cigarettes and/or other tobacco products
20 are sold, stored, or kept, including, but not limited to; any storage room, attic, basement, garage or other
21 facility immediately adjacent to the location. It also includes any receptacle, hide, vessel, vehicle, airplane,
22 train, or vending machine;

23 ~~(12)~~ (13) "Sale" or "sell" means gifts, exchanges, and barter of cigarettes and/or other tobacco
24 products. The act of holding, storing, or keeping cigarettes and/or other tobacco products at a place of
25 business for any purpose shall be presumed to be holding the cigarettes and/or other tobacco products for

1 sale. Furthermore, any sale of cigarettes and/or other tobacco products by the servants, employees, or agents
2 of the licensed dealer during business hours at the place of business shall be presumed to be a sale by the
3 licensee;

4 (13) (14) "Stamp" means the impression, device, stamp, label, or print manufactured, printed, or
5 made as prescribed by the administrator to be affixed to packages of cigarettes, as evidence of the payment
6 of the tax provided by this chapter or to indicate that the cigarettes are intended for a sale or distribution in
7 this state that is exempt from state tax under the provisions of state law; and also includes impressions made
8 by metering machines authorized to be used under the provisions of this chapter.

9 **44-20-8.2. Transactions only with licensed manufacturers, importers, distributors, and**
10 **dealers.**

11 A manufacturer or importer may sell or distribute cigarettes and/or other tobacco products to a
12 person located or doing business within this state, only if such person is a licensed importer or distributor.
13 An importer may obtain cigarettes and/or other tobacco products only from a licensed manufacturer. A
14 distributor may sell or distribute cigarettes and/or other tobacco products to a person located or doing
15 business within the state, only if such person is a licensed distributor or dealer. A distributor may obtain
16 cigarettes and/or other tobacco products only from a licensed manufacturer, importer, or distributor. A
17 dealer may obtain cigarettes and/or other tobacco products only from a licensed distributor.

18 **44-20-13.2. Tax imposed on other tobacco products, smokeless tobacco, cigars, and pipe**
19 **tobacco products.**

20 (a) A tax is imposed on all other tobacco products, smokeless tobacco, cigars, electronic cigarettes,
21 and pipe tobacco products sold, ~~or~~ held for sale in the state by any person, the payment of the tax to be
22 accomplished according to a mechanism established by the administrator, division of taxation, department
23 of revenue. The tax imposed by this section shall be as follows:

24 (1) At the rate of eighty percent (80%) of the wholesale cost of other tobacco products, cigars, pipe
25 tobacco products and smokeless tobacco other than snuff.

1 (2) Notwithstanding the eighty percent (80%) rate in subsection (a) above, in the case of cigars, the
2 tax shall not exceed ~~fifty cents (\$.50)~~ eighty cents (\$.80) for each cigar.

3 (3) At the rate of one dollar (\$1.00) per ounce of snuff, and a proportionate tax at the like rate on
4 all fractional parts of an ounce thereof. Such tax shall be computed based on the net weight as listed by the
5 manufacturer; provided, however, that any product listed by the manufacturer as having a net weight of less
6 than 1.2 ounces shall be taxed as if the product has a net weight of 1.2 ounces.

7 (b) ~~Any dealer having in his or her possession any other tobacco, cigars, and pipe tobacco products~~
8 ~~with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after~~
9 ~~coming into possession of the other tobacco, cigars, and pipe tobacco in this state, file a return with the tax~~
10 ~~administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment~~
11 ~~of the amount of the tax shown on the form to be due.~~ Records required under this section shall be preserved
12 on the premises described in the relevant license in such a manner as to ensure permanency and accessibility
13 for inspection at reasonable hours by authorized personnel of the administrator.

14 (c) The proceeds collected are paid into the general fund.

15

1 SECTION 7. Sections 44-20-12 and 44-20-13 of the General Laws in Chapter 44-20 entitled
2 “Cigarette and Other Tobacco Products Tax” are hereby amended to read as follows:

3 **44-20-12 Tax imposed on cigarettes sold.**

4 A tax is imposed on all cigarettes sold or held for sale in the state. The payment of the tax to be
5 evidenced by stamps, which may be affixed only by licensed distributors to the packages containing such
6 cigarettes. Any cigarettes on which the proper amount of tax provided for in this chapter has been paid,
7 payment being evidenced by the stamp, is not subject to a further tax under this chapter. The tax is at the
8 rate of ~~two hundred twelve and one half (212.5)~~ two hundred twenty-five (225) mills for each cigarette.

9 **44-20-13 Tax imposed on unstamped cigarettes.**

10 A tax is imposed at the rate of ~~two hundred twelve and one half (212.5)~~ two hundred twenty-five
11 (225) mills for each cigarette upon the storage or use within this state of any cigarettes not stamped in
12 accordance with the provisions of this chapter in the possession of any consumer within this state.

13 SECTION 8. Chapter 44-20 of the General Laws entitled “Cigarette and Other Tobacco Products
14 Tax” is hereby amended by adding thereto the following section:

15 **44-20-12.7 Floor stock tax on cigarettes and stamps.**

16 (a) Each person engaging in the business of selling cigarettes at retail in this state shall pay a tax or
17 excise to the state for the privilege of engaging in that business during any part of the calendar year 2018.
18 In calendar year 2018, the tax shall be measured by the number of cigarettes held by the person in this state
19 at 12:01 a.m. on August 1, 2018 and is computed at the rate ~~thirty seven and one half (37.5) mills~~ twelve
20 and one half (12.5) mills for each cigarette on August 1, 2018.

21 (b) Each distributor licensed to do business in this state pursuant to this chapter shall pay a tax or
22 excise to the state for the privilege of engaging in that business during any part of the calendar year 2018.
23 The tax is measured by the number of stamps, whether affixed or to be affixed to packages of cigarettes, as
24 required by § 44-20-28. In calendar year 2018 the tax is measured by the number of stamps), whether
25 affixed or to be affixed, held by the distributor at 12:01 a.m. on August 1, 2018, and is computed at the rate

1 of thirty-seven and one-half (37.5) mills twelve and one half (12.5) mills per cigarette in the package to
2 which the stamps are affixed or to be affixed.

3 (c) Each person subject to the payment of the tax imposed by this section shall, on or before August
4 15, 2018, file a return, under oath or certified under the penalties of perjury, with the tax administrator on
5 forms furnished by him or her, showing the amount of cigarettes and the number of stamps in that person's
6 possession in this state at 12:01 a.m. on August 1, 2018, as described in this section above, and the amount
7 of tax due, and shall at the time of filing the return pay the tax to the tax administrator. Failure to obtain
8 forms shall not be an excuse for the failure to make a return containing the information required by the tax
9 administrator.

10 (d) The tax administrator may prescribe rules and regulations, not inconsistent with law, with
11 regard to the assessment and collection of the tax imposed by this section.

12 SECTION 9. This Article shall take effect as of July 1, 2018, except for Section 7 and Section 8,
13 which will take effect on August 1, 2018.