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State & Local Tax Advisor

Provided by the National Tax Office

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All States

MTC Offers Voluntary Disclosure Initiative for Online Marketplace Sellers

The Multistate Tax Commission (MTC) is offering a special limited-time voluntary disclosure initiative for online marketplace sellers in participating states during the period beginning August 17, 2017, through October 17, 2017. The relief provided under the initiative is available for sales and use tax, income/franchise tax, or both. Participating states include Alabama, Arkansas, Colorado, Connecticut, Florida, Idaho, Iowa, Kansas, Kentucky, Louisiana, Nebraska, New Jersey, Oklahoma, South Dakota, Tennessee, Texas, Utah, Vermont, and Wisconsin. These states will consider applications for voluntary disclosure received by MTC staff during the initiative period.

Requirements for Taxpayer Participation

To be eligible, taxpayers must meet the following criteria:

- The taxpayer has not yet registered with the state taxing authority, filed returns with such state for the tax type for which the taxpayer is seeking voluntary disclosure relief, made payments of such taxes to, or had any other prior contact with the state concerning liability or potential liability for such tax type.
- The taxpayer is an online marketplace seller using a marketplace provider/facilitator, such as the Amazon FBA program or similar platform or program, to facilitate retail sales into the state, and has no location, property, employees, or agents in the state except for the online marketplace seller's inventory stored in a third-party warehouse or fulfillment center located in the state or other nexus-creating activities of the marketplace provider/facilitator on behalf of the online marketplace seller in the state.

A "marketplace provider/facilitator" is a person who facilitates a retail sale by an online marketplace seller by (1) listing or advertising for sale by the online marketplace seller on a website, tangible personal property, services, or digital goods that are subject to sales or use tax; (2) either directly or indirectly through agreements or arrangements with third parties collecting payment from the customer and transmitting that payment to the online marketplace seller; and provides fulfillment services to the online marketplace seller.

- The taxpayer has timely applied electronically, using either the online application or PDF application form and emailed to MTC staff at email address nexus@mtc.gov, to the state for voluntary disclosure relief through the MTC Multistate Voluntary Disclosure Program (MVDP), in accordance with the process set forth. The taxpayer will need to state in the application that the taxpayer is applying for voluntary disclosure relief under this initiative and provide complete and accurate disclosure of the information requested, which will be used to establish eligibility.

  Note: The application form requests that the applicant provide an estimate of back tax liability to the state for the prior four years and contains the statement: "National Nexus Program staff will not process an application when the good-faith estimate for all tax-types for the look-back period is less than $500 in this state." Applications received under this special time-limited online marketplace seller voluntary disclosure initiative will be processed, even when estimated back tax liability is less than $500. Also, response times permitted in this initiative may be shorter than those provided in the MTC Procedures for Voluntary Disclosure, in order to ensure that the taxpayer timely complies with the below requirement.

- The taxpayer is seeking relief from any past due sales or use tax, including interest and penalties, and if applicable, income/franchise tax liability, including interest and penalties, in connection with its online retail sales activity in the state, except for sales or use tax collected but not remitted, with the taxpayer agreeing to register as a seller or retailer with the state and timely collect, report, and remit sales and use tax and file returns on all taxable retail sales to customers in the state prospectively as of the effective date of the voluntary disclosure agreement (not later than December 1, 2017—taxpayers are encouraged to commence collection and remittance of sales and use tax prior to that date). If a taxpayer is subject to income/franchise tax, the taxpayer further agrees to timely file income/franchise returns and pay such taxes due, commencing with the tax year including the effective date of the voluntary disclosure agreement (not later than December 1, 2017). If the taxpayer has any collected but unremitted sales or use tax, then the taxpayer agrees to remit such tax to the state, including penalties and interest.

Confidentiality

As provided in the MTC Procedures of Multistate Voluntary Disclosure, a taxpayer can apply to a state for voluntary disclosure anonymously and will not be required to disclose its identity to the state until the taxpayer registers with the state and the voluntary disclosure agreement is executed. The taxpayer may choose which state and which tax type, i.e., sales and use tax, income/franchise tax, or both, for which to seek voluntary disclosure relief. The taxpayer can also withdraw the application for voluntary disclosure with any state at any time prior to execution of the voluntary disclosure agreement.

The states participating in this special time-limited voluntary disclosure initiative have agreed not to disclose to other taxing jurisdictions the identity of any taxpayer entering into a voluntary disclosure agreement under this special time-limited initiative, except as required by law, pursuant to a court order, or in response to an inter-government exchange of information agreement in which the requesting entity provides the taxpayer’s name and taxpayer identification number. Blanket requests from other jurisdictions for the identity of such taxpayers will not be honored.

Registration, Return Filing, and Payment of Taxes

Normally, when a taxpayer applies for voluntary disclosure relief with states through the MTC MVDP, the taxpayer will be required to file returns and pay back tax liability plus interest for the lookback period that the state uses. The state will then waive tax liability, interest, and penalties for the time period prior to the lookback period. Under the special time-limited initiative described above, for taxpayers meeting the above criteria, the participating states (unless otherwise indicated) will agree to waive sales and use and income/franchise back tax liability, including penalties and interest, for prior tax periods, without regard to any lookback period, provided the taxpayer registers as a seller or retailer to collect, report, and remit sales and use tax and commences to file sales and use tax returns and remit sales and use tax as of the effective date (not later than December 1, 2017) set forth in the voluntary disclosure agreement. If the taxpayer is subject to income/franchise tax, the taxpayer commences filing income/franchise tax returns and paying tax due, commencing with the tax year that includes the effective date of the voluntary disclosure agreement (not later than December 1, 2017).

State-Specific Notes

The following states have specific notes:

- Colorado will waive any back tax liability for uncollected sales/use tax. However, Colorado will not waive back tax liability for income tax beyond its normal four-year lookback
- Nebraska will consider waiving back tax liability for uncollected sales/use tax and income tax.
- South Dakota imposes sales and use tax but does not impose income tax.
- Wisconsin will require payment of back tax and interest for a lookback period commencing January 1, 2015, for sales and use tax, and including the prior tax years of 2015 and 2016 for income/franchise tax.

The special one-time voluntary disclosure initiative is discussed, and application forms are available, on the MTC's website at http://www.mtc.gov/Nexus-Program/Online-Marketplace-Seller-Initiative.

Online Marketplace Seller Voluntary Disclosure Initiative, Multistate Tax Commission, August 2017

Colorado

Notice and Reporting Requirements for Non-Collecting Retailers Clarified

The Colorado Department of Revenue has issued an emergency regulation in order to clarify how a retailer that does not collect Colorado sales tax must comply with notice and reporting requirements that became effective July 1, 2017. Every non-collecting retailer with total gross sales into Colorado of $100,00 or more in a calendar year must:

- provide a Transactional Notice to all Colorado purchasers at the time of purchase;
- provide an Annual Purchase Summary to all Colorado purchasers by January 31 of each year; and
- provide an Annual Customer Information Report to the Department by March 1 of each year.

Transactional Notice

The Transactional Notice is required with every Colorado reportable purchase that is not exempt from Colorado sales and use tax. The Transactional Notice must contain the following information:

- the retailer does not collect Colorado sales or use tax;

- the purchase is not exempt from Colorado sales or use tax merely because it is made over the Internet or by other remote means; and
- the State of Colorado requires purchasers to (1) file a sales or use tax return reporting all purchases that are taxable in Colorado and for which no tax was collected by the retailer and, (B) pay tax on those purchases.

The regulation also provides: details on the required placement of the Transactional Notice for both online purchases and all other purchases not made online; additional information that may be, but is not required to be, on the Transactional Notice; and penalties for failure to properly provide a Transactional Notice.

Annual Purchase Summary

A non-collecting retailer is required to send and Annual Purchase Summary to all Colorado purchasers whose total Colorado reportable purchases for the prior calendar year are $500 or more. The summary must be sent by January 31 of each year and must contain the following information:

- the total amount paid by the Colorado purchaser, including any taxable shipping charges or other fees charged to the customer, during the prior calendar year. However, if the retailer is certain the charges and fees are not subject to tax in Colorado, those charges and fees may be excluded;
- the State of Colorado requires the purchaser to file a sales or use tax return and pay tax on all taxable purchases for which no tax was collected by the retailer;
- the retailer is required by law to provide the Colorado Department of Revenue with the total dollar amount of purchases made by the purchaser during the prior calendar year, but no information about the purchase other than the dollar amount of the purchase(s) will be provided to the Department;
- if available, the dates of each reportable purchase;
- if available, the amounts of each reportable purchase, including any taxable shipping charges or other fees charged to the customer. However, if the retailer is certain that the charges and fees are not subject to Colorado tax, those charges and fees may be excluded;
- if available, a description of the type of item(s) purchased (e.g. books, food, consumer electronics, etc.); and
- if known by the retailer, whether the purchase is subject to or exempt from Colorado sales and use tax.

The regulation also provides details on penalties for failure to properly provide an Annual Purchase Summary.

Annual Customer Information Report

Any retailer who is required to provide at least one Annual Purchase Summary to a Colorado purchaser must, by March 1 of each year, file an Annual Customer Information Report with the Department containing the following information:

- the name of each Colorado purchaser;
- the billing address, notice address, and shipping address of each Colorado purchaser; and
- the total dollar amount of Colorado reportable purchases.

If all of a retailer's sales are below the $500 threshold, then the retailer is not required to send the Annual Customer Information Report to the Department. However, if any of the retailer's sales are above the $500 threshold, the retailer is required to submit the Annual Customer Information Report to the Department with all of the Colorado reportable purchases, including those purchases that were under the $500 threshold.

If the retailer made more than $100,000 worth of total gross sales in Colorado during the prior calendar year, then they are required to send the Annual Customer Information Report to the Department electronically. By November 1st of each year the Department will publish instructions on its website regarding how to properly file the electronic report.

The regulation also provides details on penalties for failure to properly file an Annual Customer Information Report.

Definitions

The emergency regulation also provides relevant definitions related to the notice and reporting requirements.

Reg. 39-21-112(3.5), Colorado Department of Revenue, effective June 30, 2017

Massachusetts

Assessment of Taxpayer's Drop Shipment Transactions Sustained

The Massachusetts Appellate Tax Board properly determined that a wholesale company (taxpayer) was liable for collecting and remitting sales tax on products it sold to out-of-state retailers and delivered to their Massachusetts consumers. Under Massachusetts' drop shipment rule, if a wholesale supplier is engaged in business in the Commonwealth but the retailer is not, the Massachusetts wholesale supplier is required to collect and remit the sales tax due on the ultimate retail sale to the consumer. In the transaction at issue, a Massachusetts consumer ordered products from an out-of-state retailer, who subsequently purchased these products from the taxpayer. The taxpayer then shipped the products to the Massachusetts customer on behalf of the out-of-state retailer. The Massachusetts Department of Revenue, upon an audit of such transactions, assessed additional tax, interest, and penalties against the taxpayer. The taxpayer argued that before the Commissioner of Revenue could assess sales tax against a wholesale deliverer of retail goods pursuant to the drop shipment rule, the Commissioner should establish that the retailer did not do business in Massachusetts. However, the Department substantiated its assessment by noting that since the taxpayer had all the relevant information, it could have made a list of drop shipment transactions disclosing the retailers that were not registered as Massachusetts vendors. Further, the taxpayer had the burden of proving the assessment wrong but had provided no evidence to refute it. Additionally, since the transactions with both in-state and out-of-state retailers were equally subject to tax, the taxpayer's argument that there was a greater burden on interstate transactions in violation of the dormant commerce clause was rejected.

D & H Distributing Company v. Commissioner of Revenue, Massachusetts Supreme Judicial Court, No. SJC-12260, July 31, 2017

Michigan

Good Jobs for Michigan Program Allows Authorized Businesses to Retain Withholding Taxes

Governor Snyder recently signed legislation that enacts a new incentive for companies that create and maintain several hundred high-paying jobs in Michigan. Depending upon the number of jobs created and the wage level of the jobs, a company will be issued a withholding certificate covering the cost of either 50% or 100% of the income tax withheld attributable to the newly hired employees. An eligible business can receive one of three amounts:

- if the business creates a minimum of 3,000 certified new jobs in Michigan with an average annual wage that is equal to or greater than the average wage for that region of Michigan, that business will be able to receive 100% of the withholding taxes attributable to employees in those jobs for a period of up to 10 years.
- if the business creates a minimum of 500 certified new jobs in Michigan with an average annual wage that is equal to or greater than the average wage for that region of Michigan, that business will be eligible to receive 50% of the withholding taxes attributable to employees in those jobs for a period of up to 5 years.
- if the business creates a minimum of 250 certified new jobs in Michigan with an average annual wage that is equal to 125% or more of the average wage for that region of Michigan, that business will be able to receive 100% of the withholding taxes attributable to employees in those jobs for a period of up to 10 years.

These amounts will be reduced by 5% to cover administrative expenses of the Good Jobs for Michigan Fund (fund).

An eligible business can be a business other than a retail establishment, professional sports stadium, casino, or the portion used exclusively for retail sales. If an eligible business meets all the requirements of the Good Jobs for Michigan program it may enter into a written agreement with the fund. New businesses cannot become authorized and written agreements cannot be entered into on or after December 31, 2019. No more than 15 new written agreements can be entered per calendar year and the total combined amount that may be issued in withholding certificates cannot exceed $200,000,000 (including the 5% payment to cover administrative expenses). The certified new jobs must be created within five years of entering into the written agreement.

If an authorized business remains in compliance, the fund will issue to it a withholding certificate each calendar year. Upon receipt of the withholding certificate, the business can request a payment from the fund and the fund must issue the withholding tax payment within 90 days of receipt of the request.

"Certified new job"generally means a full-time job created by an authorized business at a facility in Michigan that is in excess of the number of full-time jobs that authorized business maintained in Michigan prior to the expansion or location and the number of full-time jobs that the authorized business acquired through a merger or acquisition that were located in this state prior to the expansion or location, as determined by the fund. Pursuant to a written agreement between the authorized business, the fund, and the primary supplier, certified new jobs for an authorized business with a minimum of 3,000 certified new jobs in Michigan with an average annual wage that is equal to or greater than average wage for that region of Michigan may, as determined by the fund, include the number of those new jobs created by the primary supplier of that authorized business as a result of the new or increased business activity with that authorized business as determined by the fund.

Act 109 (S.B. 242), Laws 2017, effective August 25, 2017

Minnesota

Inclusion of Foreign Disregarded Entity's Income tans Apportionment Factors in Combined Report Affirmed

The Minnesota Supreme Court has affirmed a Minnesota tax court decision that held that the Minnesota Department of Revenue improperly excluded a foreign entity's income and apportionment factors in the calculation of the taxpayer's Minnesota corporate income tax liability. Under the facts presented, the taxpayer, a C corporation headquartered in Kentucky and doing business in Minnesota, acquired a subsidiary that owned 100% of a foreign entity that had elected to be treated as a disregarded entity. Since the taxpayer's acquisition of the subsidiary, the subsidiary's income had been included in the taxpayer's consolidated federal income tax return and in the combined report required by Minnesota's unitary business principle.

After an audit of the taxpayer, the Minnesota Tax Commissioner determined that the taxpayer improperly included the income, losses, and deductions of the foreign disregarded entity in its calculation of the taxpayer-subsidiary unitary business income for the tax years at issue and assessed the taxpayer additional taxes, penalties, and interest. The taxpayer appealed to the tax court, which held that the activities of a foreign subsidiary that elected to be disregarded for federal income tax purposes were properly included in the Minnesota reports of a combined entity because the entity was no longer a foreign entity, but was part of a unitary business.

The Minnesota Tax Commissioner argued that the interplay of the federal and state laws at issue required the exclusion of the foreign disregarded entity from the taxpayer's combined report because the result of the entity's federal election cannot be recognized under Minnesota law without ignoring the plain language of the water's edge rule and even if its status was disregarded, the entity's foreign nationality required its income and losses to be excluded under the water's edge rule. However, the court held that a foreign entity's election under federal tax law to have its status as a separate entity disregarded is recognized under Minnesota tax law when calculating the net income of its domestic owner. Additionally, including in "net income" the income of a foreign entity that elects under federal tax law to be disregarded as a separate entity does not violate Minnesota's water's edge rule because the disregarded entity does not retain a nationality separate from its owner under Minnesota tax law. The court notes that its conclusion runs contrary to Revenue Notice 98-08, which held that the Minnesota Department of Revenue would not recognize the "check the box" election made by a foreign eligible entity with a single C corporation owner electing to be disregarded as a separate entity for federal tax purposes. However, as the court states, revenue notices do not have the force and effect of law and to rely on the notice in this instance would not recognize "any election" made by a taxpayer, as required by Minnesota law.

Ashland Inc. and Affiliates v. Commissioner of Revenue, Minnesota Supreme Court, No. A16-1257, August 2, 2017

North Carolina

"Apportionable Income" Definition Amended; Interest Expense Deduction Modified

Legislation has been enacted that amends the definition of "apportionable income" for purposes of computing North Carolina corporate income tax liability. Effective for taxable years beginning on or after January 1, 2017, "apportionable income" is all income that is apportionable under the U.S. Constitution, including income that arises from:

- transactions and activities in the regular course of the taxpayer's trade or business; and
- tangible and intangible property if the acquisition, management, employment, development, or disposition of the property is or was related to the operation of the taxpayer's trade or business.

In addition, and effective for taxable years beginning on or after January 1, 2017, the corporate income tax deduction for qualified interest expense paid to a related member is limited to the taxpayer's proportionate share of interest paid to a person who is not a related member during the same taxable year. The legislation eliminated a provision limiting the deduction to the greater of the taxpayer's proportionate share of interest or "15% of the taxpayer's North Carolina adjusted taxable income." Finally, the North Carolina Department of Revenue will not apply the covered debt instrument rules contained in the regulations under IRC §385 in determining whether a nominal debt instrument creates a deductible interest expense.

Ch. 204 (S.B. 628), Laws 2017, effective August 11, 2017 and as noted

Oklahoma

Taxpayer’s Sale of Assets in Pass-Through Entities Qualified for Capital Gains Deduction

A corporate income taxpayer’s sale of assets held in two S corporations (pass-through entities) qualified for the Oklahoma net capital gains deduction because the transaction amounted to the sale of an indirect ownership interest. Under the applicable statute, a sale of a "direct or indirect ownership interest" in an Oklahoma company will qualify for a net capital gains deduction if the taxpayer that makes the sale has held the stock or ownership interest in the company for at least two years prior to the date of the transaction from which the capital gains arise. In this case, the taxpayer received his proportionate share of the proceeds from the sale of the assets and reported the sum as a net capital gains on his federal individual income tax return and sought an equivalent deduction on an amended Oklahoma return. However, the Oklahoma Tax Commission (Commission) disallowed the deduction to the extent the proceeds were derived from intangible personal property (goodwill), on the grounds that the applicable statute did not allow for that deduction. However, the commission’s reasoning was rejected as the applicable statute provided capital gains deduction from selling"indirect ownership interest" in an Oklahoma pass-through entity including proceeds derived from intangible personal property (goodwill). Further, the taxpayer’s argument that the applicable statute, prior to a 2007 amendment, intended to afford a deduction for net capital gains arising from the sale of an Oklahoma company's assets including goodwill, was affirmed. Accordingly, the commission’s denial of the net capital gain deduction was reversed.

Bill Hare, Jr. v. Oklahoma Tax Commission, Oklahoma Supreme Court, No. 114893, June 27, 2017

Oregon

Functional Test Removed for Apportionment Purposes

Oregon Gov. Kate Brown has signed legislation removing the functional test for determining apportioned income subject to the corporate excise (income) tax and clarifying that certain types of money received by corporations is not considered sales for purposes of apportionment. Applicable to tax years beginning on or after January 1, 2018, the definition of "sales" is amended to include all gross receipts of the taxpayer that are not allocated under ORS 314.615 to 314.645 and that are received from transactions and activity occurring in the regular course of the taxpayer’s trade or business, except:

- receipts from hedging transactions and from the maturity, redemption, sale, exchange, loan or other disposition of cash or securities;
- property or money received or acquired by an agent, intermediary, fiduciary or other person acting in a similar capacity on behalf of another in excess of the recipient’s commission, fee or other remuneration; or
- amounts received from others and held in trust by the taxpayer, or other exceptions designated by rule by the Department of Revenue.

Previously, "sales" meant all gross receipts of the taxpayer not allocated under ORS 314.615 to 314.645.

H.B. 2273, Laws 2017, effective on 91st day following adjournment sine die

Rhode Island

Tax Amnesty Enacted

The budget bill signed by Rhode Island Governor Gina Raimondo on August 3, 2017, contains a provision directing the tax administrator to establish a tax amnesty program for all taxpayers owing any tax. The amnesty program will be conducted for a 75-day period ending on February 15, 2018. Penalties will be waived and the tax administrator will not seek civil or criminal prosecution if the taxpayer applies for amnesty and pays all taxes and interest (reduced by 25%) due for any taxable period ending on or prior to December 31, 2016.

Amnesty will be granted only to taxpayers applying during the amnesty period who have paid the tax and interest due upon filing the amnesty tax return, or who have entered into an installment payment agreement based on financial hardship. If taxpayer fails to pay any installment due, the agreement will cease to be effective and the balance will be due immediately. Amnesty will not be granted to any taxpayer under criminal investigation or who is a party to a civil or criminal proceeding in federal or state court.

Amnesty tax return forms will be prepared by the tax administrator.

H.B. 5175, Laws 2017, effective August 3, 2017

Out-of-State Retailers Using In-State Software, Seeds & Plants, Criminal Penalties, and More

Rhode Island Gov. Gina Raimondo has signed the 2017-18 fiscal year budget bill, which makes various changes to the sales and use tax laws. Specifically, the legislation affects certain out-of-state retailers using in-state software, the taxation of seeds and plants used to grow food and food ingredients, tax exempt certificates, a taxpayer's sale of assets, criminal penalties, and remote data manipulation.

Out-of-State Retailers Using In-State Software

The legislation states that the existence and/or presence of certain out-of-state retailer's, referrer's, and facilitator's in-state software on the devices of in-state customers constitutes physical presence (and thus creates nexus) under Quill Corp. v. North Dakota, 504 U.S. 298 (1992). As a result, new requirements are established for the retailers, referrers, and facilitators that in the immediately preceding calendar year either:

- had gross revenue from the sale of tangible personal property, prewritten computer software delivered electronically or by load and leave, and/or taxable services delivered into Rhode Island of at least $100,000; or
- sold tangible personal property, prewritten computer software delivered electronically or by load and leave, and/or taxable services for delivery into Rhode Island in 200 or more separate transactions.

"In-state software" is defined as software used by in-state customers on their computers, smartphones, and other electronic and/or communication devices (including information or software such as cached files, cached software, "cookies," or other data tracking tools) that are stored on property in Rhode Island or distributed in the state for the purpose of purchasing tangible personal property, prewritten computer software delivered electronically or by load and leave, and/or taxable services.

Under the new requirements, certain out-of-state retailers must either (1) register in Rhode Island for a retail sales permit and collect/remit sales and use tax on all taxable sales into the state, or (2) comply with various notice and reporting requirements. In addition, notice requirements are also created for certain referrers that receive more than $10,000 from fees, commissions, and/or other compensation paid from retailers for listing and/or advertising for sales of tangible personal property, prewritten computer software delivered electronically or by load and leave, and/or taxable services. Furthermore, certain retail sale facilitators must submit annual reports to the Rhode Island Division of Taxation concerning the retailers they did business with during the previous year.

Exemptions exists for referrers and retail sale facilitators that provided either (1) a copy of the retailer's Rhode Island sales tax permit or its resale certificate, or (2) evidence of a fully completed Rhode Island or Streamlined agreement sales and use tax exemption certificate.

Failure to comply with any of the new requirements will result in a penalty of $10 for each failure, but not less than a total penalty of $10,000 per calendar year. Each instance of failure to comply will constitute a separate violation for purposes of calculating the penalty. The penalty is also in addition to any other applicable penalties allowed by law.

Seeds and Plants

Gross receipts from the sale, storage, use or other consumption in Rhode Island of seeds and plants used to grow food and food ingredients (not including marijuana seeds or plants) is exempt from sales tax. The definition of "food and food ingredients" is also amended to include "seeds and plants used to grow food and food ingredients" and exclude "marijuana seeds or plants."

Certificates of Exemption

The legislation clarifies that the $25 fee that must be paid by organizations applying for a certificate of exemption from the Rhode Island sales and use tax applies to charitable, educational, and religious organizations. In addition, the legislation states that certificates of exemption will be valid for four years from the date of issue. All certificates issued prior to July 1, 2017, will expire July 1, 2021.

Sale of Assets

The asset transfer or sale notice requirements are revised to exempt debtors in possession in bankruptcy, specify that the notice must come in the form of a request for a letter of good standing from the Rhode Island Tax Division, and force taxpayers to file any and all sales tax returns when the notice is provided.

Criminal Penalties

The sales and use tax criminal penalties for noncompliance are increased to $25,000 and/or five years of imprisonment (previously $10,000 and/or one year of imprisonment), and made applicable to the willful failure to remit any tax to the state that was collected from a customer.

Remote Data Manipulation

A person may not knowingly suppress sales by engaging in remote data manipulation, either as the sender or the receiver of the information. "Remote data manipulation" means and includes, but is not limited to, sending, transmitting, transporting, or receiving through any electronic means any and all transaction data to a remote location, whether or not that location is in Rhode Island or outside the state or the United States, for the purpose of manipulating and/or altering the data in any way, whether or not the actual manipulation is performed manually or through automated means.

Any person who violates is provision will be guilty of a felony and, upon conviction, subject to a fine of up to $50,000 and/or five years of imprisonment. In addition, a person who violates this provision will be liable to the state for (1) all taxes, interest, and penalties due as the result of the person's remote data manipulation; and (2) all profits associated with the person's remote data manipulation.

Income tax provisions are reported separately.

Ch. 302, H.B. 5175, Laws 2017, effective July 1, 2017

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