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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 *Thomas A. Mullaney*
Executive Director/State Budget Officer

Date: August 18, 2020

Subject: Amendment to Article 8 – Relating to Taxes (20-H-7171)

The Governor requests that Article 8 – Relating to Taxes be amended to include the attached new section. This language amends section 44-30-12 of the Rhode Island General Laws to accomplish two things. First, to disallow the excess loss deduction in 26 U.S.C. §461(l)(1)(B) in tax years 2018-2020 by adding that amount to Rhode Island taxable income. Second, to allow for 20 percent of the disallowed deduction to be taken each year, for tax years 2021 through 2025.

With these modifications, Rhode Island would join Nebraska, Colorado, and North Carolina in decoupling from 26 U.S.C. §461 in response to the CARES Act of 2020. New York also has the same tax treatment in limited excess business losses allowed through their fixed date conformity to the IRC.

A loss of revenue of \$29,086,344 is estimated without these modifications across fiscal years as follows:

Items	FY20	FY21	FY22	FY23	FY24	FY25	FY26
IRC 461(l)	\$(18,787,024)	\$(10,299,320)	\$0	\$0	\$0	\$0	\$0

A similar revenue loss of \$29,086,344 is still estimated with these modifications but spread out over five fiscal years as follows:

Items	FY20	FY21	FY22	FY23	FY24	FY25	FY26
IRC 461(l)	\$0	\$0	\$(5,817,268.80)	\$(5,817,268.80)	\$(5,817,268.80)	\$(5,817,268.80)	\$(5,817,268.80)

Please contact Neena Savage, Tax Administrator, with any specific questions about these requested changes.

Thank you.

Attachment

TAM: 21-Amend-14

Cc: Sharon Reynolds Ferland, House Fiscal Advisor
Stephen Whitney, Senate Fiscal Advisor
Mark Furcolo, Director, Department of Revenue
Neena Savage, Tax Administrator

ARTICLE 8 – RELATING TO TAXES

1 **SECTION 8.** Section 44-30-12 of the General Laws in Chapter 44-30 entitled “Rhode
2 Island income of a resident individual” is hereby amended to read as follows:

3 **§ 44-30-12. Rhode Island income of a resident individual.**

4 (a) *General.* The Rhode Island income of a resident individual means his or her adjusted gross
5 income for federal income tax purposes, with the modifications specified in this section.

6 (b) *Modifications increasing federal adjusted gross income.* There shall be added to
7 federal adjusted gross income:

8 (1) Interest income on obligations of any state, or its political subdivisions, other than
9 Rhode Island or its political subdivisions;

10 (2) Interest or dividend income on obligations or securities of any authority, commission,
11 or instrumentality of the United States, but not of Rhode Island or its political subdivisions, to
12 the extent exempted by the laws of the United States from federal income tax but not from state
13 income taxes;

14 (3) The modification described in § 44-30-25(g);

15 (4)(i) The amount defined below of a nonqualified withdrawal made from an account in
16 the tuition savings program pursuant to § 16-57-6.1. For purposes of this section, a nonqualified
17 withdrawal is:

18 (A) A transfer or rollover to a qualified tuition program under Section 529 of the Internal
19 Revenue Code, 26 U.S.C. § 529, other than to the tuition savings program referred to in § 16-57-
20 6.1; and

21 (B) A withdrawal or distribution that is:

22 (I) Not applied on a timely basis to pay "qualified higher education expenses" as defined
23 in § 16-57-3(12) of the beneficiary of the account from which the withdrawal is made;

24 (II) Not made for a reason referred to in § 16-57-6.1(e); or

25 (III) Not made in other circumstances for which an exclusion from tax made applicable
26 by Section 529 of the Internal Revenue Code, 26 U.S.C. § 529, pertains if the transfer, rollover,
27 withdrawal, or distribution is made within two (2) taxable years following the taxable year for
28 which a contributions modification pursuant to subsection (c)(4) of this section is taken based on
29 contributions to any tuition savings program account by the person who is the participant of the

1 account at the time of the contribution, whether or not the person is the participant of the account
2 at the time of the transfer, rollover, withdrawal or distribution;

3 (ii) In the event of a nonqualified withdrawal under subsection (b)(4)(i)(A) or (b)(4)(i)(B)
4 of this section, there shall be added to the federal adjusted gross income of that person for the
5 taxable year of the withdrawal an amount equal to the lesser of:

6 (A) The amount equal to the nonqualified withdrawal reduced by the sum of any
7 administrative fee or penalty imposed under the tuition savings program in connection with the
8 nonqualified withdrawal plus the earnings portion thereof, if any, includible in computing the
9 person's federal adjusted gross income for the taxable year; and

10 (B) The amount of the person's contribution modification pursuant to subsection (c)(4) of
11 this section for the person's taxable year of the withdrawal and the two (2) prior taxable years
12 less the amount of any nonqualified withdrawal for the two (2) prior taxable years included in
13 computing the person's Rhode Island income by application of this subsection for those years.
14 Any amount added to federal adjusted gross income pursuant to this subdivision shall constitute
15 Rhode Island income for residents, nonresidents and part-year residents;

16 (5) The modification described in § 44-30-25.1(d)(3)(i);

17 (6) The amount equal to any unemployment compensation received but not included in
18 federal adjusted gross income; and

19 (7) The amount equal to the deduction allowed for sales tax paid for a purchase of a
20 qualified motor vehicle as defined by the Internal Revenue Code § 164(a)(6).

21 (8) For taxable years beginning after December 31, 2017, and before January 1, 2021, the
22 amount of excess business loss of the taxpayer allowed as a deduction by section 461(l)(1)(B) of
23 the Internal Revenue Code, as amended, 26 U.S.C. § 461(l)(1)(B), and as in effect on the 15th
24 day of July 2020.

25 (c) *Modifications reducing federal adjusted gross income.* There shall be subtracted from
26 federal adjusted gross income:

27 (1) Any interest income on obligations of the United States and its possessions to the
28 extent includible in gross income for federal income tax purposes, and any interest or dividend
29 income on obligations, or securities of any authority, commission, or instrumentality of the
30 United States to the extent includible in gross income for federal income tax purposes but
31 exempt from state income taxes under the laws of the United States; provided, that the amount to

1 be subtracted shall in any case be reduced by any interest on indebtedness incurred or continued
2 to purchase or carry obligations or securities the income of which is exempt from Rhode Island
3 personal income tax, to the extent the interest has been deducted in determining federal adjusted
4 gross income or taxable income;

5 (2) A modification described in § 44-30-25(f) or § 44-30-1.1(c)(1);

6 (3) The amount of any withdrawal or distribution from the "tuition savings program"
7 referred to in § 16-57-6.1 that is included in federal adjusted gross income, other than a
8 withdrawal or distribution or portion of a withdrawal or distribution that is a nonqualified
9 withdrawal;

10 (4) Contributions made to an account under the tuition savings program, including the
11 "contributions carryover" pursuant to subsection (c)(4)(iv) of this section, if any, subject to the
12 following limitations, restrictions and qualifications:

13 (i) The aggregate subtraction pursuant to this subdivision for any taxable year of the
14 taxpayer shall not exceed five hundred dollars (\$500) or one thousand dollars (\$1,000) if a joint
15 return;

16 (ii) The following shall not be considered contributions:

17 (A) Contributions made by any person to an account who is not a participant of the
18 account at the time the contribution is made;

19 (B) Transfers or rollovers to an account from any other tuition savings program account
20 or from any other "qualified tuition program" under section 529 of the Internal Revenue Code,
21 26 U.S.C. § 529; or

22 (C) A change of the beneficiary of the account;

23 (iii) The subtraction pursuant to this subdivision shall not reduce the taxpayer's federal
24 adjusted gross income to less than zero (0);

25 (iv) The contributions carryover to a taxable year for purpose of this subdivision is the
26 excess, if any, of the total amount of contributions actually made by the taxpayer to the tuition
27 savings program for all preceding taxable years for which this subsection is effective over the
28 sum of:

29 (A) The total of the subtractions under this subdivision allowable to the taxpayer for all
30 such preceding taxable years; and

1 (B) That part of any remaining contribution carryover at the end of the taxable year
2 which exceeds the amount of any nonqualified withdrawals during the year and the prior two (2)
3 taxable years not included in the addition provided for in this subdivision for those years. Any
4 such part shall be disregarded in computing the contributions carryover for any subsequent
5 taxable year;

6 (v) For any taxable year for which a contributions carryover is applicable, the taxpayer
7 shall include a computation of the carryover with the taxpayer's Rhode Island personal income
8 tax return for that year, and if for any taxable year on which the carryover is based the taxpayer
9 filed a joint Rhode Island personal income tax return but filed a return on a basis other than
10 jointly for a subsequent taxable year, the computation shall reflect how the carryover is being
11 allocated between the prior joint filers;

12 (5) The modification described in § 44-30-25.1(d)(1);

13 (6) Amounts deemed taxable income to the taxpayer due to payment or provision of
14 insurance benefits to a dependent, including a domestic partner pursuant to chapter 12 of title 36
15 or other coverage plan;

16 (7) *Modification for organ transplantation.*

17 (i) An individual may subtract up to ten thousand dollars (\$10,000) from federal adjusted
18 gross income if he or she, while living, donates one or more of his or her human organs to
19 another human being for human organ transplantation, except that for purposes of this
20 subsection, "human organ" means all or part of a liver, pancreas, kidney, intestine, lung, or bone
21 marrow. A subtract modification that is claimed hereunder may be claimed in the taxable year in
22 which the human organ transplantation occurs.

23 (ii) An individual may claim that subtract modification hereunder only once, and the
24 subtract modification may be claimed for only the following unreimbursed expenses that are
25 incurred by the claimant and related to the claimant's organ donation:

26 (A) Travel expenses.

27 (B) Lodging expenses.

28 (C) Lost wages.

29 (iii) The subtract modification hereunder may not be claimed by a part-time resident or a
30 nonresident of this state;

31 (8) *Modification for taxable Social Security income.*

1 (i) For tax years beginning on or after January 1, 2016:

2 (A) For a person who has attained the age used for calculating full or unreduced social
3 security retirement benefits who files a return as an unmarried individual, head of household, or
4 married filing separate whose federal adjusted gross income for the taxable year is less than
5 eighty thousand dollars (\$80,000); or

6 (B) A married individual filing jointly or individual filing qualifying widow(er) who has
7 attained the age used for calculating full or unreduced social security retirement benefits whose
8 joint federal adjusted gross income for the taxable year is less than one hundred thousand dollars
9 (\$100,000), an amount equal to the social security benefits includable in federal adjusted gross
10 income.

11 (ii) Adjustment for inflation. The dollar amount contained in subsections (c)(8)(i)(A) and
12 (c)(8)(i)(B) of this section shall be increased annually by an amount equal to:

13 (A) Such dollar amount contained in subsections (c)(8)(i)(A) and (c)(8)(i)(B) of this
14 section adjusted for inflation using a base tax year of 2000, multiplied by;

15 (B) The cost-of-living adjustment with a base year of 2000.

16 (iii) For the purposes of this section the cost-of-living adjustment for any calendar year is
17 the percentage (if any) by which the consumer price index for the preceding calendar year
18 exceeds the consumer price index for the base year. The consumer price index for any calendar
19 year is the average of the consumer price index as of the close of the twelve-month (12) period
20 ending on August 31, of such calendar year.

21 (iv) For the purpose of this section the term "consumer price index" means the last
22 consumer price index for all urban consumers published by the department of labor. For the
23 purpose of this section the revision of the consumer price index which is most consistent with the
24 consumer price index for calendar year 1986 shall be used.

25 (v) If any increase determined under this section is not a multiple of fifty dollars
26 (\$50.00), such increase shall be rounded to the next lower multiple of fifty dollars (\$50.00). In
27 the case of a married individual filing separate return, if any increase determined under this
28 section is not a multiple of twenty-five dollars (\$25.00), such increase shall be rounded to the
29 next lower multiple of twenty-five dollars (\$25.00);

30 (9) Modification for up to fifteen thousand dollars (\$15,000) of taxable retirement income
31 from certain pension plans or annuities.

1 (i) For tax years beginning on or after January 1, 2017, a modification shall be allowed
2 for up to fifteen thousand dollars (\$15,000) of taxable pension and/or annuity income that is
3 included in federal adjusted gross income for the taxable year:

4 (A) For a person who has attained the age used for calculating full or unreduced social
5 security retirement benefits who files a return as an unmarried individual, head of household, or
6 married filing separate whose federal adjusted gross income for such taxable year is less than the
7 amount used for the modification contained in subsection (c)(8)(i)(A) of this section an amount
8 not to exceed \$15,000 of taxable pension and/or annuity income includable in federal adjusted
9 gross income; or

10 (B) For a married individual filing jointly or individual filing qualifying widow(er) who
11 has attained the age used for calculating full or unreduced social security retirement benefits
12 whose joint federal adjusted gross income for such taxable year is less than the amount used for
13 the modification contained in subsection (c)(8)(i)(B) of this section an amount not to exceed
14 \$15,000 of taxable pension and/or annuity income includable in federal adjusted gross income.

15 (ii) Adjustment for inflation. The dollar amount contained by reference in subsections
16 (c)(9)(i)(A) and (c)(9)(i)(B) of this section shall be increased annually for tax years beginning on
17 or after January 1, 2018 by an amount equal to:

18 (A) Such dollar amount contained by reference in subsections (c)(9)(i)(A) and
19 (c)(9)(i)(B) of this section adjusted for inflation using a base tax year of 2000, multiplied by;

20 (B) The cost-of-living adjustment with a base year of 2000.

21 (iii) For the purposes of this section, the cost-of-living adjustment for any calendar year is
22 the percentage (if any) by which the consumer price index for the preceding calendar year
23 exceeds the consumer price index for the base year. The consumer price index for any calendar
24 year is the average of the consumer price index as of the close of the twelve-month (12) period
25 ending on August 31, of such calendar year.

26 (iv) For the purpose of this section, the term "consumer price index" means the last
27 consumer price index for all urban consumers published by the department of labor. For the
28 purpose of this section, the revision of the consumer price index which is most consistent with
29 the consumer price index for calendar year 1986 shall be used.

30 (v) If any increase determined under this section is not a multiple of fifty dollars
31 (\$50.00), such increase shall be rounded to the next lower multiple of fifty dollars (\$50.00). In

1 the case of a married individual filing a separate return, if any increase determined under this
2 section is not a multiple of twenty-five dollars (\$25.00), such increase shall be rounded to the
3 next lower multiple of twenty-five dollars (\$25.00); and

4 (10) *Modification for Rhode Island investment in opportunity zones.* For purposes of a
5 taxpayer's state tax liability, in the case of any investment in a Rhode Island opportunity zone by
6 the taxpayer for at least seven (7) years, a modification to income shall be allowed for the
7 incremental difference between the benefit allowed under 26 U.S.C. § 1400Z-2(b)(2)(B)(iv) and
8 the federal benefit allowed under 26 U.S.C. § 1400Z-2(c).

9 (11) Limitation on excess losses. A taxpayer who made an addition under subsection
10 (b)(8) of this section may deduct twenty percent (20%) of the total addition in each of the taxable
11 years beginning on or after January 1, 2021, and before January 1, 2026.

12 (d) *Modification for Rhode Island fiduciary adjustment.* There shall be added to, or
13 subtracted from, federal adjusted gross income (as the case may be) the taxpayer's share, as
14 beneficiary of an estate or trust, of the Rhode Island fiduciary adjustment determined under § 44-
15 30-17.

16 (e) *Partners.* The amounts of modifications required to be made under this section by a
17 partner, which relate to items of income or deduction of a partnership, shall be determined under
18 § 44-30-15.

19 **SECTION 9.** This Act shall take effect upon passage.