

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**RHODE ISLAND DEPARTMENT OF REVENUE
DIVISION OF TAXATION**

NOTICE OF RULE MAKING

The Division of Taxation within the Department of Revenue has drafted a Regulation regarding a sales and use tax exemption for sales by writers, composers and artists. The purpose of this rule making is to implement Rhode Island General Laws (RIGL) Chapters 44-18 and 44-19; specifically § 44-18-30B, which provides an exemption for sales by writers, composers and artists. The proposed Regulation was prepared in accordance with the provisions of Section 15, Article 9, Chapter 144 of the Public Laws of 2013. The proposed amendments have been promulgated in accordance with Chapters 44-19-33 and Chapters 44-1.4 and 42-35 of the General Laws of Rhode Island, as amended.

Notice is hereby given, in accordance with the provisions of Chapter 42-35 of the Rhode Island General Laws as amended, that a public hearing on the above proposed Regulation shall be held on **October 24, 2013, beginning at 9:30AM, in Conference Room B** within the William E. Powers Building, One Capitol Hill, Providence, Rhode Island, at which time and place all persons interested will be heard.

In the development of the proposed Regulation, consideration was given to the following: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business, as defined in Chapter 42-35.1 of the Rhode Island General Laws, as amended, which may result from these regulations. No alternative approach or duplication or overlap was identified based upon available information.

Copies of the proposed Regulation are available for public inspection at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908, or by calling Michael F. Canole at (401) 574-8729, or by sending an email to michael.canole@tax.ri.gov. If you send an email request, please refer to "Exemption of Sales by Writers, Composers and Artists Regulation, SU 13-143". In conformance with section 42-35-3(a)(1) of the General Laws of Rhode Island, a concise summary of all non-technical amendments being proposed will be included with the proposed Regulation that is filed with the Secretary of State's Office.

For the sake of accuracy, it is requested that comments made relative to any aspect of the regulations, including alternative approaches, overlap, or significant economic impact, are received prior to or at the hearing. These comments should refer to "Exemption of Sales by Writers, Composers and Artists Regulation, SU 13-143", as well as the specific regulations commented upon. Comments should be mailed to Michael F. Canole, Rhode Island of Taxation, One Capitol Hill, Providence, R.I. 02908. Written comments may also be submitted at the public hearing. Oral statements made at the hearing will be considered, but should be limited to five minutes each.

Any individual requiring a reasonable accommodation in order to participate in this hearing should contact James A. Pitassi, Jr. at 222-6395 (voice) or #711 (R.I. Relay) at least three (3) business days prior to the hearing.

David M. Sullivan
Tax Administrator

September 23, 2013

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

**RHODE ISLAND DEPARTMENT OF REVENUE
DIVISION OF TAXATION**

SEPTEMBER 23, 2013

Concise Summary of Non-Technical Amendments pursuant to RIGL § 42-35-3(a)(1)

This Regulation was drafted by the Department of Revenue's Division of Taxation. This Regulation is proposed in order to implement the provisions of Section 15, Article 9, Chapter 144 of the Public Laws of 2013.

The purpose of this rule making is to implement Rhode Island General Laws (RIGL) Chapters 44-18 and 44-19; specifically § 44-18-30B, which provides an exemption for sales by writers, composers and artists.

The amendment of this regulation shall take effect December 1, 2013

~~State of Rhode Island – Division of Taxation Sales and Use Tax~~

~~Regulation SU-99-143~~

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~~Tax Exemption of Sales by Writers, Composers and Artists~~

~~The sale of a "work," defined as an original and creative work, whether written, composed, created or executed for "one-of-a-kind, limited" production, which falls into one (1) of the following categories:~~

- ~~1. a book or other writing;~~
- ~~2. a play or the performance of said play;~~
- ~~3. a musical composition or the performance of said composition;~~
- ~~4. a painting or other like picture;~~
- ~~5. a sculpture;~~
- ~~6. traditional and fine crafts;~~
- ~~7. the creation of a film or the acting within said film;~~
- ~~8. the creation of a dance or the performance of said dance.~~

~~shall be exempt from the sale and use tax when sold by a writer, composer or artist who created such work and resides in an economic development zone ("zone") and who sells the work from the writer, composer or artist's place of business located within the zone. The sale of a "work" by an art gallery located within the zone is also exempt from the sales and use tax.~~

~~A "work" shall not include any piece or performance created or executed for industry oriented or related production.~~

~~Economic development zone ("zone") shall mean the statutory defined area designated in R.I.G.L. 44-30-1.1.~~

Residing in The Zone

~~A writer, composer or artist shall be deemed to be residing in the zone if he/she:~~

~~(a) is domiciled in the state, or~~

~~(b) is not domiciled in the state but maintains a permanent place of abode in this state and is in the state for an aggregate of more than one hundred eighty-three (183) days of the taxable year;~~

~~(c) meets the requirements of either (a) or (b) above and physically occupies a place of abode within the economic development zone.~~

Application for Exemption

~~Sales by Individuals – For a sale of a work to be exempt, an eligible writer, composer or artist must prior to the sale of the work, apply to the tax administrator for a Certificate of Exempt Sale on a form prescribed by the tax administrator. In determining the eligibility of the work for exemption the tax administrator may require the submission of all books, documents or other evidence relating to the creation of the work.~~

~~Sales by Art Galleries – For the sale of a work to be exempt by an art gallery, the operator of the art gallery must apply to the tax administrator for a sales tax exemption.~~

~~The tax administrator may also require a writer, composer, artist, or the operator of an art gallery to submit an annual certified accounting of the numbers of works sold, the type of work sold and the date of sale. Failure to file such a report may, in the sole discretion of the tax administrator, terminate any further eligibility of the writer, composer, artist or art gallery.~~

~~Compliance Under the Sales/Use Tax Law~~

~~At the time of application, every writer, composer, artist or art gallery making any retail sales, whether or not such sales are exempt, shall hold a valid permit to make sales at retail and shall comply with all the administrative, collection and remittance requirements of the sales and use tax law.~~

~~The exemption number assigned to the artistic work by the Division of Taxation must be shown on the customer invoice. This exemption number must also be shown on the line designated as "other" deductions on Form T-204, Sales and Use Tax Return, to substantiate the deduction taken from the gross sales being reported.~~

~~Use Tax Exemption~~

~~Any person storing, using or otherwise consuming in this state any work or works which is deemed to be exempt from the sales tax pursuant to this section shall not be liable for the use tax on such work or works.~~

~~R. GARY CLARK
TAX ADMINISTRATOR~~

~~DATE: January 1, 1999~~

~~THIS REGULATION AMENDS AND SUPERCEDES REGULATION 97-143 PROMULGATED
JANUARY 1, 1997 AND 98-143 PROMULGATED JANUARY 1, 1998.~~

State of Rhode Island – Division of Taxation

Sales and Use Tax

Exemption of Sales by Writers, Composers and Artists

Regulation SU 13-143

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Rule 1. Purpose

The purpose of this rule making is to implement Rhode Island General Laws (RIGL) Chapters 44-18 and 44-19; specifically § 44-18-30B, which provides an exemption for sales by writers, composers and artists.

Rule 2. Authority

These rules and regulations are promulgated pursuant to RIGL § 44-1-4 and § 44-19-33. These rules and regulations have been prepared in accordance with the requirements of RIGL chapter 42-35 of the Rhode Island Administrative Procedures Act.

Rule 3. Application

These rules and regulations shall be liberally construed so as to permit the Division of Taxation to effectuate the purpose of chapters 18 and 19 of title 44 and other applicable state laws and regulations.

Rule 4. Severability

If any provision of these rules and regulations, or the application thereof to any person or circumstance, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

Rule 5. Definitions

“art gallery” means a room or building devoted to the exhibition of works of art, or an institution or business exhibiting or dealing in works of art. This definition also includes temporary spaces devoted to the exhibition of works of art or dealing in works of art, such as “pop-up galleries” or art festivals.

“council” means the Rhode Island Council on the Arts.

“individual” means any person, partnership, association, corporation, estate, trust, fiduciary, limited liability company, limited liability partnership, or any other legal entity.

“legal entity” see “individual.”

“one of a kind or limited edition” means the creation of a solitary work, conceived and produced by the artist or author or under their direction, not intended for multiple or mass production; or the creation of a solitary work, conceived and produced by the artist or under their direction, which is intended for limited reproduction, signed and numbered by the artist.

“principal place of business” means the primary location where a taxpayer's business is performed. The principal place of business is generally where the business's books and records are kept and is often where the owner/head of the firm or top management is located.

“resident of” or “residing in” means a writer, composer or artist who:

(a) is domiciled in the state, or

(b) is not domiciled in the state but maintains a permanent place of abode in this state and is in the state for an aggregate of more than one-hundred eighty-three (183) days of the taxable year,

“state” means within the exterior limits of the state of Rhode Island and includes all territory within these limits owned by or ceded to the United States of America.

“work” means (a) an original and creative work, whether written, composed or executed for “one of a kind or limited edition” production and which falls into one of the following categories:

1. a book or other writing;
2. a play;
3. a musical composition;
4. a painting, print, photograph or other like picture;
5. a sculpture;
6. traditional and fine crafts;
7. the creation of a film;
8. the creation of a dance.

(b) “work” also includes any product generated as a result of any of the above categories.

(c) this definition does not apply to any piece or performance created or executed for industry oriented, commercial or related production.

Rule 6. Sales and Use Tax Exemption

The exemption from sales and use tax for sales of artistic works applies to sales by:

(a) an individual who is a resident of and has a principal place of business situated in this state, and has been determined by the tax administrator, in consultation with the council, to have written, composed, or executed, either solely or jointly, a work or works, by the individual. Such determination shall be made after consideration of any evidence submitted by the individual.

(b) a writer, composer or artist conducting their business as a legal entity organized and registered under the laws of this state and that has its principal place of business situated in this state, and has been determined by the tax administrator, in consultation with the council, to have written, composed, or executed, either solely or jointly, a work or works. Such determination shall be made after consideration of any evidence submitted by the entity.

(c) any art gallery located in the state of Rhode Island.

Rule 7. Application for Exemption

(a) Individuals or Legal Entities - For a sale of a work to be exempt, an eligible writer, composer or artist must prior to the sale of any "work", apply to the tax administrator for a Certificate of Exemption on a form prescribed by the tax administrator. In determining the eligibility of the work for exemption the tax administrator will consult with the council, and may require the submission of all books, documents or other evidence relating to the creation of the work.

(b) Art Galleries - For the sale of a work to be exempt by an art gallery, the operator of the art gallery must apply to the tax administrator for a sales tax exemption. The tax administrator will consult with the council to ascertain whether the applicant is eligible for the exemption under the provisions of the law.

(c) The tax administrator shall require a writer, composer, artist, or the operator of an art gallery to submit an annual certified accounting of the total amount of revenue from the sale of art, the number of works sold, the

type of work sold (i.e. book, painting, print, photograph, sculpture, etc.) and the date of sale. Failure to file such a report may, at the sole discretion of the tax administrator, terminate any further eligibility for the exemption of the writer, composer, artist or art gallery.

Rule 8. Individuals, Legal Entities or Galleries with Exemption for Artistic Works Granted Prior to December 1, 2013

(a) Individuals, legal entities or galleries with an exemption for artistic works granted prior to December 1, 2013 are required to re-apply as required under Rule 7 for a Certificate of Exemption on a form prescribed by the tax administrator in consultation with the council.

(b) The tax administrator shall require a writer, composer, artist, or the operator of an art gallery to submit an annual certified accounting of the total amount of revenue from the sale of art, the number of works sold, the type of work sold (i.e. book, painting, print, photograph, sculpture, etc.) and the date of sale. Failure to file such a report may, in the sole discretion of the tax administrator, terminate any further eligibility for the exemption of the writer, composer, artist or art gallery.

Rule 9. Compliance under Sales/Use Tax Law

(a) at the time of application, every writer, composer, artist or art gallery making any retail sales, whether or not such sales are exempt, shall hold a valid permit to make sales at retail and shall comply with all the administrative, collection and remittance requirements of the sales and use tax law.

(b) the exemption number assigned to the artistic work by the Division of Taxation must be shown on the customer invoice. This exemption number must also be shown on the line designated as "other" deductions on Form T-204, Annual Reconciliation, to substantiate the deduction taken from the gross sales being reported.

Rule 10. Income Tax Exemption – Specified Districts

Income derived from the sale of works created within a specified district (as outlined in RIGL 44-30-1.1) by writers, composers and artists who live and work within those districts is exempt from state personal income tax. These districts are within Providence, Pawtucket, Westerly, Woonsocket, Tiverton, Little Compton, Newport, Warwick and Warren. The income derived from the sale of works created in areas other than the specified districts is taxable.

Rule 11. Effective Date

This regulation shall take effect December 1, 2013 and shall amend and supersede regulation SU 99-143 promulgated January 1, 1999

David M. Sullivan
Tax Administrator