

State of Rhode Island and Providence Plantations

Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

Pursuant to the provisions of Rhode Island General Law §42-35-3(a)(1) and in accordance with the Administrative Procedures Act (Chapter 42-35 of the General Laws), the Division of Taxation hereby gives notice of its intent to amend regulation SU 11-91, "Records Requirements."

The purpose of this rule making process is to implement Chapters 44-18 and 44-19 of the Rhode Island General Laws, specifically regarding records requirements. This regulation shall take effect on May 1, 2013 and shall amend and supersede regulation SU 11-91 promulgated December 1, 2011.

The proposed rule to be adopted and a concise summary of non-technical requirements are available for public inspection at www.tax.ri.gov, in person at the Rhode Island Division of Taxation, or can be requested by e-mail at Michael.Canole@tax.ri.gov or by calling Michael F. Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap, or significant economic impact on small business was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Wednesday, March 20, 2013 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail: Michalel.Canole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on Wednesday, March 20, 2013, at 1:00 p.m., at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing to Michael Canole at Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling (401) 574-8729.

Rhode Island Department of Revenue

Division of Taxation

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) regarding Records Requirements – Amended.

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State of Rhode Island - Division of Taxation

Sales and Use Tax

Regulation SU ~~44~~ 13-91

Records Requirements

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RULE 1. PURPOSE

This regulation implements Chapters 44-18 and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Taxes Liability and Computation and Sales and Use Taxes Enforcement and Collection in regard to records [requirements](#).

RULE 2. AUTHORITY

This regulation is promulgated pursuant to RIGL Chapters 44-18 and 44-19 as amended. These rules have been prepared in accordance with the requirements of RIGL § 44-1-1 et. seq. and § 44-19-33.

RULE 3. APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department of Revenue to effectuate the purposes of RIGL Chapters 44-18 and 44-19 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 circumstances, 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~~

~~"Person" includes any individual, partnership, association, corporation, estate, trust, fiduciary, limited liability company, limited liability partnership, or any other legal entity~~

~~"Retailer" (1) Every person engaged in the business of making sales at retail, including sales at auction of tangible personal property owned by the person or others, prewritten computer software delivered electronically or by load and leave, package tours, scenic and sightseeing transportation services.~~

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

~~—(3) Every person engaged in the business of renting any living quarters in any hotel, rooming house, or tourist camp.~~

~~—(4) Every person maintaining a business within or outside of this state who engages in the regular or systematic solicitation of sales of tangible personal property, prewritten computer software delivered electronically or by load and leave, package tours, scenic and sightseeing transportation services, in this state by means of:~~

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

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

~~—(ii) Telephone;~~

~~—(iii) Computer assisted shopping networks; and~~

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

RULE 65. RECORDS

(a) Each retailer as defined in [RIGL §44-18-15](#), ~~the regulation~~ shall keep adequate and complete records of the business entity showing:

1. The gross receipts from the sales of tangible personal property [and services](#), including both taxable and nontaxable items and any services [necessary to complete that are part of a sale](#); ~~and prewritten computer software delivered electronically or by load and leave, package tours, scenic and sightseeing transportation services~~
2. All deductions allowed by law and claimed in filing returns.
3. Total purchase price of all tangible personal property [or services](#) purchased for resale and the total purchase price of all such property [or services](#) purchased for use or consumption in this state.

(b) These records, but not limited to, shall include the normal books of account ordinarily maintained by the average prudent business person engaged in the activity in question, together with all bills, receipts, invoices, cash register tapes, all data collected or stored by means of electronic or magnetic media, or other documents of original entry supporting the entries in the books of account as well as all schedules or working papers used in connection with the preparation of tax returns.

(c) Magnetic and electronic media records, used as reproductions of general books of account, such as cash books, journals, voucher registers, ledgers, sales invoices, purchase invoices, credit memoranda, etc., are acceptable in lieu of original records, providing the following conditions are met:

1. Taxpayers shall set forth in writing the procedures governing the establishment of a magnetic or electronic system, and the individuals who are responsible for maintaining and operating the system with appropriate authorization from the Board of Directors, general partner(s), or owner, whichever is applicable.
2. The magnetic or electronic system shall be complete and shall be used consistently in the regularly conducted activity of the business.
3. Taxpayers shall establish procedures with appropriate documentation so the

original document can be followed through the system.

4. Taxpayers shall establish internal procedures for inspection and quality assurance.
5. Taxpayers are responsible for the effective identification, processing, storage, and preservation of the system, making it readily available for as long as the contents may become material in the administration of the sales/use tax law.
6. Taxpayers shall keep a record of where, when, by whom, and on what equipment the magnetic or electronic media was produced.
7. When a display is required on a magnetic or electronic media reader (viewer) or reproduced on paper, the material shall exhibit a high degree of legibility and readability. For this purpose, legibility is defined as the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. Readability is defined as the quality of a group of letters or numerals being recognizable as words or complete numbers.
8. A detailed index of all magnetic and electronic media data shall be maintained and arranged in a manner that permits the immediate location of any particular record.
9. All magnetic and electronic media in regards to processing duplication, quality control, storage, identification, and inspection shall meet industry standards as set forth by the American National Standards Institute, Association for Information and Image Management, or National Institute of Standards and Technology.
10. The taxpayer shall make available upon the Division of Taxation's request a reader/printer in good working order at the examination site for reading, locating, and reproducing any record maintained on magnetic or electronic media.

RULE 7.6. REQUIREMENT FOR RECORD RETENTION

(a) Records based on any of the above media shall be maintained for a period of at least three (3) years as provided in RIGL §44-19-27 unless the destruction or other disposal of the same shall be authorized by the Tax Administrator or his/her authorized representative in writing.

(b) Failure to maintain such records will be considered evidence of negligence or intent to evade the tax, and will result in the imposition of appropriate penalties as provided by statute.

RULE 8.7. EFFECTIVE DATE

This regulation shall take effect on May 1, 2013 ~~December 1, 2011~~ and shall amend and supersede regulation SU ~~89-11-91~~ promulgated December ~~1989. 1, 2011~~.

DAVID M. SULLIVAN
TAX ADMINISTRATOR