

State of Rhode Island - Division of Taxation

Sales and Use Tax

Regulation SU 90-56

Interstate Sales

(A) Goods coming into this State

When tangible personal property is purchased in interstate commerce for use or consumption in this state and (1) the seller is engaged in the business of selling such tangible personal property in this state for use or consumption and (2) delivery is made in this state, such sale is subject to the use tax. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a point outside this state and shipped directly to the purchaser from the point of origin, and the seller is required to report all such transactions and collect and remit to this state the use tax on all taxable purchases.

If the conditions above are met it is immaterial (1) that contract of sale is closed by acceptance outside the state or (2) that the contract is made before the property is brought into the state.

Delivery is held to have taken place in this state (1) when physical possession of the tangible personal property is actually transferred to the buyer within this state or (2) when the tangible personal property is placed in the mails at a point outside this state directed to the buyer in this state or placed on board a carrier at a point outside this state (or otherwise) and directed to the buyer in this state.

Engaging in business in this state includes the following acts or methods of transacting business: (a) maintaining directly, indirectly or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business; (b) having an agent, sales person or solicitor operating within the state under the authority of the seller or its subsidiary irrespective of whether such place of business, agent, sales person or solicitor is located in this state permanently or temporarily or whether such seller or subsidiary is qualified to do business in this state; (c) the regular or systematic solicitation of tangible personal property in this state by means of advertising in newspapers and other periodicals; billboards; brochures, catalogs and similar advertising material mailed to or distributed within the state to residents of this state; telephone; computer assisted shopping networks; television, radio or other electronic media intended to be broadcast to customers located in this state.

(B) Goods Shipped from this State

When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside of the state, or to deliver it to a common carrier or to the mails for transportation to a point outside this state, the retail sales tax or use tax does not apply, provided that the property is not returned to a point within the state. Acceptable proof of transportation outside the state will be:

- (a) A waybill or bill of lading made out to the seller's order and calling for delivery; or
- (b) An insurance or other receipt or registry issued by the United States postal authorities; or
- (c) A trip sheet signed by the seller's delivery agent or agency and showing the signature and address of the person outside this state who received the goods delivered.

Where tangible personal property pursuant to a sale is delivered in this state to the buyer or to the buyer's agent other than a common carrier the retail sales tax applies notwithstanding that the buyer may subsequently transport the property out of the state, except as provided below in the case of property sold for resale.

(C) Goods Delivered in this State to a Purchaser who Resells them in Another State

When tangible personal property is delivered in this state to a buyer who does not hold a Rhode Island permit, or to his or her agent other than a common carrier who then transports the property outside the state for the sole purpose of reselling, or manufacturing or processing for resale, such property outside the state, the tax will not apply and the seller may accept a resale certificate, provided:

- (a) The purchaser is generally recognized and known to the seller as a retailer, jobber wholesaler, manufacturer, or processor who regularly sells or processes for resale the kind of property involved in the transaction;
- (b) The purchaser maintains a permanent place of business at which the property purchased will be sold, or will be processed or manufactured for resale; and the resale certificate or other record of the seller shows the location or locations in which such resale, manufacturing, or processing will be carried on;
- (c) The resale certificate or invoice or other record of the seller contains a listing of the quantities and kinds of goods purchased.

Under the act, a resale certificate taken from a purchaser not holding a Rhode Island permit does not relieve the person making the sale of the burden of proving that the sale is not subject to the tax. Therefore, whenever the Tax Administrator finds that there is reason to believe that the property so purchased has been used or consumed rather than resold or manufactured or processed for resale, the Rhode Island retailer will be held liable for the tax.

R. GARY CLARK
TAX ADMINISTRATOR

DATE FILED: December 7, 1990

EFFECTIVE DATE: December 31, 1990

THIS REGULATION AMENDS AND SUPERCEDES REGULATION SU 87-56
PROMULGATED MAY 1, 1987.