

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 90-20, “Out-of-State Retailers – Registration.” The amended regulation will be titled Registration and Collection of Sales and Use Tax by Retailers.

The purpose of this rule making process is to implement Chapters 44-18 and 44-19 of the Rhode Island General Laws in regard to the requirement of retailers to register and to collect and remit Rhode Island Sales and Use Tax. This regulation shall take effect on December 1, 2011 and shall amend and supersede regulation SU 90-20 promulgated December 1990.

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 mcanole@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 Friday, November 4, 2011, to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail: mcanole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on Friday, November 4, 2011, at 10:30 a.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.

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Division of Taxation

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) regarding registration and collection of sales and use tax by retailers.

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~~State of Rhode Island -- Division of Taxation~~

~~Sales and Use Tax~~

~~Regulation SU 90-20~~

~~Out-of-State Retailers -- Registration~~

~~1. Who must register — Every retailer engaging in business in this state and making sales of tangible personal property for storage, use, or other consumption in this state.~~

~~The term "engaging in business in this state" means the selling or delivering in this state, or any activity in this state related to the selling or delivering in this state of tangible personal property for storage, use, or other consumption in this state. The term includes the following acts or methods of transacting business:~~

~~a. Maintaining, occupying, or using in this state permanently or temporarily, directly or indirectly or through a subsidiary, representative, or agent by whatever name called and whether or not qualified to do business in this state, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;~~

~~b. having any subsidiary, representative, agent, salesperson, canvasser, or solicitor permanently or temporarily, and whether or not said subsidiary, representative, or agent is qualified to do business in this state, operates in this state for the purpose of selling, delivering, or the taking of orders for any tangible personal property;~~

~~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.~~

~~2. Registration of Out-of-State Retailers — All out-of-state retailers engaged in business in this state, as defined above, must register with the Tax Administrator to collect the use tax.~~

~~Therefore, a nonresident seller has the same obligation to add, collect and remit the tax on his Rhode Island sales in the same manner as though that seller were a local retailer who has an actual place of business located within this state.~~

~~3. Statutory agent for process — Under the laws of Rhode Island, a nonresident seller engaging in business in this state, as defined above, and making sales of tangible personal property for storage, use, or other consumption in this state, automatically consents to the~~

~~appointment of the Director of Business Regulation of the State of Rhode Island as statutory agent for the purpose of accepting service of process on his or her behalf in any suit or other proceedings brought by the Tax Administrator in the courts of Rhode Island for the collection of the Rhode Island use tax from such nonresident seller.~~

~~R. GARY CLARK
TAX ADMINISTRATOR~~

~~DATE FILED: December 7, 1990~~

~~EFFECTIVE DATE: December 31, 1990~~

~~THIS REGULATION AMENDS AND SUPERCEDES REGULATION SU 87-20
PROMULGATED MAY 1, 1987.~~

State of Rhode Island - Division of Taxation

Sales and Use Tax

Regulation SU 11-20

Registration and Collection of Sales and Use Tax by Retailers

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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 Tax Liability and Computation and Sales and Use Tax Enforcement and Collection in regard to registration of retailers to collect and remit Rhode Island Sales and Use Tax.

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

“Engaging in business in this state” means the selling or delivering in this state, or any activity related to the selling or delivering of tangible personal property or prewritten computer software delivered electronically or by load and leave for storage, use, or other consumption in this state, as well as providing package tour and scenic and sightseeing transportation services. The term includes the following acts or methods of transacting business:

(1) Maintaining, occupying, or using in this state permanently or temporarily, directly or indirectly or through a subsidiary, representative, or agent by whatever name called and whether or not qualified to do business in this state, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business;

(2) Having any subsidiary, representative, agent, salesperson, canvasser, or solicitor permanently or temporarily, and whether or not said subsidiary, representative, or agent is qualified to do business in this state, operate in this state for the purpose of selling, delivering, or the taking of orders for any tangible personal property or taxable services;

(3) The regular or systematic solicitation of sales of tangible personal property or taxable services 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.

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

“Retail sale” or “sale at retail” means any sale, lease or rental of tangible personal property, prewritten computer software delivered electronically or by load and leave, and/or package tour and scenic and sightseeing transportation services for any purpose other than resale, sublease or subrent in the regular course of business. The sale of tangible personal property to be used for purposes of rental in the regular course of business is considered to be a sale for resale. In regard to telecommunications service as defined in § 44-18-7(9), retail sale does not include the

purchase of telecommunications service by a telecommunications provider from another telecommunication provider for resale to the ultimate consumer; provided, that the purchaser submits to the seller a certificate attesting to the applicability of this exclusion, upon receipt of which the seller is relieved of any tax liability for the sale.

"Retailer" means: (1) Every person engaged in the business of making sales at retail as defined above. (2) Every person making sales at retail as defined above 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 at retail as defined 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 6. REGISTRATION AND COLLECTION OF SALES AND USE TAX BY RETAILERS

(a) Every retailer selling tangible personal property or prewritten computer software delivered electronically or by load and leave for storage, use, or other consumption in this state, or package tour and scenic and sightseeing transportation services, or renting living quarters in any hotel, rooming house, or tourist camp in this state, shall register with the tax administrator and give the name and address of all agents operating in this state, the location of all distribution or sales houses or offices, or of any hotel, rooming house, or tourist camp or other places of business in this state, and other information that the tax administrator may require.

(b) Registration of Out-of-State Retailers – All out-of-state retailers engaging in business in this state, shall register with the Tax Administrator to collect the use tax, and have the same obligation to add, collect and remit the tax on Rhode Island sales in the same manner as a local retailer with a place of business located within this state.

(c) Every Retailer, at the time of making taxable sales, shall collect and remit sales and use tax at the tax rate as provided in RIGL 44-18-18 and 44-18-20 from the purchaser or person renting the room and give a receipt therefore.

RULE 7. STATUTORY AGENT FOR PROCESS

Under the laws of Rhode Island, a nonresident seller engaging in business in this state and making sales of tangible personal property and taxable services for use or consumption in this state, automatically consents to the appointment of the Director of Business Regulation of the State of Rhode Island as statutory agent for the purpose of accepting service of process on his or her behalf in any suit or other proceeding brought by the Tax Administrator in the courts of Rhode Island for the collection of the Rhode Island use tax from such nonresident seller.

RULE 8. EFFECTIVE DATE: This regulation takes effect December 1, 2011 and shall amend and supercede regulation SU 90-20 promulgated December 31, 1990, and regulation SU 87-21 promulgated May 1, 1987.

RULE 9. CROSS REFERENCES

CROSS REFERENCE:

SU 11-25 “Computers, Software, and Related Systems”

SU 11- 150 “Package Tour and Scenic and Sightseeing Transportation Services”

Business application and Registration Form (BAR)

RIGL 44-18-12: Sales defined.

David M. Sullivan
Tax Administrator