

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 promulgate regulation SST 13-01, "Streamlined Sales and Use Tax Agreement."

The purpose of this rule making process is to implement Chapters 44-18 and 44-19 of the Rhode Island General Laws. Specifically, a change in the language of "Sourcing of Direct Mail" necessary to be in compliance with the Streamlined Sales and Use Tax Agreement. This regulation shall take effect May 1, 2013.

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: Michael.Canole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on Wednesday March 20, 2013, at 1 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.

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Division of Taxation**

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) regarding the Streamlined Sales and Use Tax Agreement.

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State of Rhode Island - Division of Taxation

Sales and Use Tax

Regulation SST ~~11~~13-01

Streamlined Sales and Use Tax Agreement

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RULE 1 PURPOSE:

This regulation implements Chapter 44-18.1 of the Rhode Island General Laws ([RIGL](#)). This Chapter provides for the Adoption of the Streamlined Sales and Use Tax Agreement.

RULE 2 AUTHORITY

This regulation is promulgated pursuant to RIGL Chapter 44-18.1 as amended. These rules have been prepared in accordance with the requirements of RIGL [§44-1-4](#), [§44-18.1-1](#) 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 Chapter 44-18.1 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

“Advertising and promotional direct mail” means printed material that meets the definition of “direct mail,” in ~~Section~~ [RIGL §44-18-7.1\(j\)](#), the primary purpose of which is to attract public attention to a product, person, business or organization, or to attempt to sell, popularize or secure financial support for a product, person, business or organization. As used in this subsection, the word “product” means tangible personal property, a product transferred electronically or a service.

“(CSP) Certified Service Provider ” means an agent certified under the SSUTA to perform all the seller's sales and use tax functions, other than the seller's obligation to remit tax on its own purchases.

“Other direct mail” means any direct mail that is not “advertising and promotional direct mail” regardless of whether “advertising and promotional direct mail” is included in the same mailing. The term includes, but is not limited to:

- a. Transactional direct mail that contains personal information specific to the addressee including, but not limited to, invoices, bills, statements of account, payroll advices;
- b. Any legally required mailings including, but not limited to, privacy notices, tax reports and stockholder reports; and

c. Other non-promotional direct mail delivered to existing or former shareholders, customers, employees, or agents including, but not limited to, newsletters and informational pieces. Other direct mail does not include the development of billing information or the provision of any data processing service that is more than incidental.

"Purchaser" means a person to whom a sale of personal property is made or to whom a service is furnished.

"Seller" means a person making sales, leases, or rentals of personal property or services.

"State" means the State of Rhode Island and Providence Plantations.

"SSUTA" means Streamlined Sales and Use Tax Agreement.

RULE 6 RELIEF FROM CERTAIN LIABILITY FOR PURCHASERS

(A) A purchaser is relieved from liability for penalty for failing to pay the correct amount of sales or use tax in the following circumstances:

- (1) A purchaser's seller or CSP relied on erroneous data provided by the state on tax rates, taxing jurisdiction assignments, or in the taxability matrix completed by that member state pursuant to [RIGL § 44-18.1-29](#); or
- (2) A purchaser holding a direct pay permit relied on erroneous data provided by the state on tax rates, taxing jurisdiction assignments, or in the taxability matrix completed by that member state pursuant to [RIGL § 44-18.1-29](#).
- (3) A purchaser relied on erroneous data provided by that member state in the taxability matrix completed by the state pursuant to [RIGL § 44-18.1-29](#).

(B) The state shall also relieve a purchaser from liability for tax and interest to the state for having failed to pay the correct amount of sales or use tax in the circumstances described in Section (A), provided that, with respect to reliance on the taxability matrix completed by the state pursuant to [RIGL § 44-18.1-29](#), such relief is limited to the state's erroneous classification in the taxability matrix of terms included in the Library of Definitions as "taxable" or "exempt," "included in sales price" or "excluded from sales price" or "included in the definition" or "excluded from the definition."

(C) For purposes of this rule, the term "penalty" means an amount imposed for noncompliance that is not fraudulent, willful, or intentional which is in addition to the correct amount of sales or use tax and interest.

RULE 7 DIRECT MAIL SOURCING

- (A)(1) Notwithstanding [RIGL section §44-18.1-11](#), a purchaser of advertising and promotional direct mail may provide the seller with either a direct pay permit, a

SSUTA certificate of exemption claiming “direct mail”, or information showing the jurisdictions to which the advertising and promotional direct mail is delivered to recipients.

(2) If the purchaser provides a direct pay permit or direct mail exemption certificate referred to in paragraph (A)(1) of this rule, the seller, in the absence of bad faith, is relieved of all obligations to collect, pay, or remit any tax on any transaction involving “advertising and promotional direct mail” to which the permit, certificate or statement applies. The purchaser shall source the sale to the jurisdictions to which the “advertising and promotional direct mail” is to be delivered to the recipients and shall report and pay any applicable tax due.

(3) If the purchaser provides the seller information showing the jurisdictions to which the advertising and promotional direct mail is to be delivered to recipients, the seller shall source the sale to the jurisdictions to which the advertising and promotional direct mail is to be delivered and shall collect and remit the applicable tax. In the absence of bad faith, the seller is relieved of any further obligation to collect any additional tax on the sale of advertising and promotional direct mail where the seller has sourced the sale according to the delivery information provided by the purchaser.

(4) If the purchaser does not provide the seller with any of the items listed in paragraph A- (1), A(2), or A(3) of this rule, the ~~seller sale~~ shall ~~collect the tax according to Section 44-18.1-11~~ be sourced to the address from which the advertising and promotional direct mail was shipped in accordance with RIGL section 44-18.1-11(A)(5). Nothing in this paragraph shall limit a purchaser’s obligation for sales or use tax to any state to which the advertising and promotional direct mail is delivered.

(B) If a purchaser of direct mail provides the seller with a direct pay permit, the purchaser shall not be required to provide a direct mail exemption certificate or delivery information to the seller.

(C) The sale of “other direct mail” as defined in Rule 5 is not subject to tax ~~taxable under the in~~ Rhode Island ~~sales and use tax law~~.

RULE 8 UNIFORM TAX RETURNS

Notwithstanding the provisions of ~~Section~~ RIGL §44-18.1-19:

1. A seller registered under the SSUTA indicating at the time of registration that it anticipates no sales sourced to the state will be made, is not required to file a return. A seller shall lose such exemption upon making any taxable sales into this state and shall file a return in the month following such sale.

2. A seller registered under the SSUTA, having no legal requirement to register in the state, who fails to file a return, shall be granted a minimum of (30) thirty days notice to file prior to establishing a liability amount for taxes based solely on the seller's failure to timely file a return.

RULE 9 CROSS REFERENCE

Regulation SU 07-87 Direct Mail, Printing and Related Industries
Regulation SU 07-33 Delivery Charges
RIGL 44-19-10

RULE 10 EFFECTIVE DATE

This regulation shall take effect on [May 1, 2013 and shall amend and supersede regulation SST 11-01 promulgated on December 1, 2011.](#)

DAVID SULLIVAN
TAX ADMINISTRATOR