

## **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 RIGL §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 repeal regulation CR 99-05 Credit for Small Business Loan Guaranty Fee.

The purpose of this rule making process is to repeal regulation CR 99-05 in light of Rhode Island Public Law 2004, Chapter 595, Article 17, Section 3 that provided for the repeal of RIGL Chapter 44-43.1 in its entirety. This repeal shall take effect January 1, 2011.

The proposed rule to be repealed and concise summary of non-technical requirements and proposed new rules are available for public inspection at [www.tax.ri.gov](http://www.tax.ri.gov), in person at The Rhode Island Division of Taxation, or requested by e-mail at [mcanole@tax.ri.gov](mailto:mcanole@tax.ri.gov) or by calling Michael 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 was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Wednesday, November 24, 2010 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via, e-mail at [mcanole@tax.ri.gov](mailto:mcanole@tax.ri.gov). A public hearing to consider the proposed regulation will be held on Wednesday, November 24, 2010 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)**

**Rules and Regulation on Credit for Small Business Loan Guaranty Fee  
CR 99-05 Repealed**

The purpose of this rule making process is to repeal regulation CR 99-05 in light of Rhode Island Public Law 2004, Chapter 595, Article 17, Section 3 that provided for the repeal of RIGL Chapter 44-43.1 in its entirety. This repeal shall take effect January 1, 2011.

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

## ~~Tax Credits/Deductions~~

### ~~Regulation CR 99-05~~

#### ~~Credit for Small Business Loan Guaranty Fee~~

##### ~~In General:~~

~~Every small business formed under the laws of the State of Rhode Island and operating within this state is entitled to claim the amount paid as a guaranty fee to the United States Small Business Administration (SBA) as a credit against the business' tax as levied under R.I.G.L. 44-11 (Business Corporation Tax); 44-17 (Gross Premiums Tax on Insurance Companies); or 44-30 (Personal Income Tax).~~

##### ~~I. Definition:~~

~~A "small business" means any corporation, partnership, sole proprietorship or other business entity qualifying as "small" under the standards contained in Title 13, Code of Federal Regulations, Section 121. The fact that a taxpayer was the primary obligor, obtained SBA guaranteed financing and paid the guaranty fee on which this credit is based shall be prima facie evidence that the taxpayer is considered a "small business".~~

##### ~~II. Qualification:~~

~~To qualify, the small business must:~~

- ~~1. be formed under Rhode Island law; and~~
- ~~2. be operating in this state; and~~
- ~~3. be the primary obligor in the financing; and~~
- ~~4. be the entity that actually paid the fee.~~

##### ~~III. Guaranty Fee:~~

~~If the guaranty fee is deducted from the loan proceeds paid to an otherwise qualifying small business, it is considered "paid" by that small business. The guaranty fee is that amount paid to the U.S. Small Business Administration solely as the fee for obtaining SBA guaranteed financing and does not include other costs or fees attendant to such financing.~~

##### ~~IV. Calculation and Limitations:~~

- ~~1. The credit is equal to the fee paid and is claimed in the tax year in which the guaranty fee was actually paid.~~
- ~~2. If the small business is a corporation filing a consolidated return (Title 44, Chapter 11), the credit is allowed against the tax of only that corporation which qualifies for the credit and will not be allowed against the tax of other corporations that may join the filing of a consolidated state tax return.~~

- ~~3. In the event that the small business is a partnership or 1120S corporation, the credit shall be divided according to ownership share.~~
- ~~4. The credit cannot reduce the tax below the minimum.~~
- ~~5. For tax years beginning after December 31, 1997, amounts of unused credit may be carried forward for four (4) subsequent tax years.~~

## **V. Documentation**

~~Copies of documents such as, but not limited to, the SBA credit letter from the Providence SBA office, loan documents or canceled checks evidencing that the small business is the primary obligor and that it paid the guaranty must be attached to its form RI 2642.~~

### **Examples:**

- ~~1. A company (a corporation) has a tax year which begins 01/01/98 and on 08/01/98 it paid \$3,100 of qualifying SBA loan guaranty fees. A's tax for calendar year 1998 was \$2,300. A is entitled to reduce its tax to the minimum \$250 and A has \$1,050 of credit which it may carry forward for a maximum of four (4) subsequent tax years.~~
- ~~2. B Company (a corporation) has a tax year which began 07/01/97 and on 03/01/98 it paid \$5,500 in qualifying SBA loan guaranty fees. B's tax for fiscal year ended 06/30/98 is \$2,400. B is entitled to use \$2,150 of credit to reduce its tax to the minimum \$250 but the remaining \$3,350 may not be carried forward. The carry forward provisions apply to tax years beginning after December 31, 1997 regardless of when the fees were paid.~~
- ~~3. In 1998 C Company is a calendar year, 1120 S corporation which has three shareholders; John, Maria and Susan. The corporation ownership shares are divided as follows: John 50%, Maria 30% and Susan 20%. The corporation paid a Small Business Guaranty Fee of \$3,000 and is entitled to claim a credit of \$3,000. For Rhode Island personal income tax purposes, all three shareholders are calendar year filers. Before application of their share of the credit, John's personal income tax liability is \$500; Maria's tax liability is zero; and Susan's personal income tax liability is \$1,200. The \$3,000 credit would be divided among the shareholders and flow through according to ownership as follows: John \$1,500; Maria \$900; Susan \$600. Since C Corporation's tax year began after December 31, 1997, the carry forward provisions apply to the credit distributed to the shareholders (see below for example #4). John may apply his credit to the personal income tax to reduce it to zero and carry forward \$900 to the four subsequent tax years. Maria can carry forward the \$900 credit to the four subsequent tax years. Susan may apply the \$600 credit to her income tax liability, which would result in a personal income tax balance due of \$600.~~
- ~~4. D Company is an 1120 S corporation with a tax year beginning June 1, 1997. D has two shareholders—Sam and Anne of which each own 50%. On February 14, 1998, D paid \$2,400 in qualifying SBA loan guaranty fees. On May 31, 1998 D's tax year ended and, since it was an 1120 S corporation, it passed \$1,700 to each shareholder. Each shareholder is entitled to use the credit against his/her Rhode Island personal income tax but cannot reduce the tax below zero. Amounts of unused credit may not be carried forward since D Company was the taxpayer who~~

~~actually paid the fee and generated the credit. D's tax year began June 1, 1997 and the carry forward provisions apply to tax years beginning after December 31, 1997.~~

~~R. GARY CLARK  
TAX ADMINISTRATOR~~

~~EFFECTIVE: January 1, 1999~~

~~THIS REGULATION AMENDS AND SUPERSEDES REGULATION CR95-05  
EFFECTIVE JANUARY 1, 1995.~~