

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 section 42-35-3(a)(1) of the General Laws of Rhode Island 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 issue a regulation regarding the payment of taxes by electronic funds transfer.

The purpose of this regulation is to implement Sections 44-19-10.3 and 44-30-71 of the Rhode Island General Laws. These sections provide for payment of Sales and Use Taxes and Withholding of Personal Income taxes by Electronic Funds Transfer. This regulation supercedes regulation EFT 00-01 promulgated January 1, 2000, which is repealed in its entirety.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.tax.ri.gov, in person at The Rhode Island Division of Taxation, or requested by e-mail at 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 November 10 2009 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. A public hearing to consider the proposed regulation shall be held on November 10, 2009 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 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 regarding the payment of taxes by electronic funds transfer – EFT 09-01

The purpose of this regulation is to implement Sections 44-19-10.3 and 44-30-71 of the Rhode Island General Laws. These Sections provide for payment of Sales and Use Taxes and Withholding of Personal Income taxes by Electronic Funds Transfer.

This Regulation amends and supercedes regulation EFT 00-01 promulgated January 1, 2000.

STATE OF RHODE ISLAND—DIVISION OF TAXATION

ELECTRONIC FUNDS TRANSFER

REGULATION EFT 00-01

I. GENERALLY

Payment of all taxes shall be made by Electronic Funds Transfer (EFT) where the tax required to be paid in connection with the filing of any return, report or other document with the Division of Taxation exceeds ten thousand dollars (\$10,000) and in all instances where a taxpayer is required to pay employment taxes to the Internal Revenue Service by EFT. Provided, however, payments of personal income taxes by individuals shall not be subject to EFT. A taxpayer must complete Form RI EFT-1 (Authorization Agreement for Electronic Funds Transfer) prior to filing under EFT.

The Rhode Island EFT program is employing the Automated Clearing House (ACH) Credit and Debit transaction methods. This is the national standard established by the banking industry (National Clearing House Association) for the electronic transfer of funds between banks using the Automated Clearing House Network.

II. PROGRAM PARTICIPATION

Mandatory Participation: Taxpayers which meet the threshold for the filing of any return, report or other document shall be required to file all such subsequent returns, reports or other documents and make payments by EFT regardless of amount of tax due thereon unless withdrawal from participation is authorized by the Tax Administrator.

Voluntary Participation: A taxpayer that does not meet the threshold established for mandatory participation in the EFT program, may apply to participate on a voluntary basis by completing an EFT authorization agreement with the Division of Taxation. Once accepted, a taxpayer shall be required to file all such subsequent returns, reports or other document and make payments by EFT unless withdrawal from participation is authorized by the Tax Administrator.

Withdrawal from Participation: The Tax Administrator may grant a withdrawal from participation in the EFT program only if the taxpayer's subsequent payments do not exceed the mandatory EFT threshold. A request of withdrawal from participation in the program must be submitted in writing to the Tax Administrator.

Waiver: If you receive a notification that you meet the mandatory requirement but disagree with this determination, you may request a waiver from the EFT program. This request must be made in writing to the Tax Administrator at least thirty (30) days prior to the net payment due date.

~~III. PAYROOL COMPANIES OR SERVICE COMPANIES~~

~~Any payroll company, service company, person or other entity remitting taxes to this state on its own behalf or on behalf of others which meets the threshold form any one company or entity for which it is remitting taxes is required to file all returns, reports or documents of other companies by EFT regardless of the amount of tax due thereon.~~

~~IV. PAYMENT AND REPORTING REQUIREMENTS~~

~~The method of payment shall be the Automated Clearing House (ACH) Credit or Debit. Fedwires are not allowed.~~

~~Payment Due Date: EFT does not change any existing requirements of Rhode Island state tax law. To e considered timely, a tax payment must be initiated by the payment due date for the tax period.~~

~~Proof of Payments: If proof of payment is required, it is the taxpayer's responsibility to work with its financial institution to obtain verification that funds were transferred from the taxpayer's account into the state's account. A bank can supply a taxpayer with a trace number that it generates for the ACH network.~~

~~Refunds and Reversals: current Division of Taxation procedures will be followed. Refunds will not be issued electronically though the ACH network. No reversals will be allowed except in cases permitted by ACH rules and regulations. However, even in such cases, you are required to contact the Division of Taxation's EFT unit for permission.~~

~~Once a taxpayer is registered to participate in the EFT program for a particular tax, all such payments by that taxpayer to the State of Rhode Island must be made through EFT. In an emergency, a payment coupon may be used. However, it still is required to be submitted timely. Taxpayers who are registered for EFT payments will not receive payment booklets for tax payments.~~

~~R. BARY CLARK
TAX ADMINISTRATOR~~

~~EFFECTIVE: JANUARY 2, 2000~~

~~THIS REGULATION AMENDS AND SUPERCEDES REGULATION EFT 96-01
PROMULGATED JANUARY 1, 1996~~

State of Rhode Island - Division of Taxation

Payment of Taxes by Electronic Funds Transfer

Regulation

EFT 09-01

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RULE 1. PURPOSE

This regulation implements 44-19-10.3 and 44-30-71 of the Rhode Island General Laws. These Chapters require certain taxpayer to make payments by Electronic Funds Transfer with the Division of Taxation.

RULE 2. AUTHORITY

This regulation is promulgated pursuant to RIGL 44-1 as amended. These rules have been prepared in accordance with the requirements of RIGL 44-1 and 44-1-31.1.

RULE 3. APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Division of Taxation to effectuate the purposes of RIGL 44-1-31.1 and other applicable state laws and regulations.

RULE 4. SEVERABILITY

If any provision of this regulation or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of this regulation shall not be affected thereby.

RULE 5. DEFINITIONS

As used in this rule, the following terms have the following meanings:

- A. “ACH” or “Automated Clearing House” means a central distribution and settlement point for the electronic clearing of debits and credits between financial institutions. An automated clearing house may be a Federal Reserve Bank or any organization with an operating agreement with NACHA that operates as a processing agent for ACH transactions between financial institutions.
- B. “ACH Credit” means an electronic transfer of funds using the ACH network that is originated by a taxpayer through its financial institution to credit (deposit) funds to a designated State of Rhode Island bank account and debit (withdraw) funds from the taxpayer's bank account for a specified payment amount.
- C. “ACH Debit” means an electronic transfer of funds initiated by Rhode Island Division of Taxation, upon taxpayer instruction, to debit a taxpayer's designated bank account and credit funds to a designated State of Rhode Island bank account.
- D. “Addenda Record” means an ACH record type that carries the supplemental data needed to completely identify a taxpayer's tax payment.
- E. “CCD+,” means the standard ACH transaction format that is accompanied by one addenda record when submitted to Rhode Island Division of Taxation.
- F. “Effective Date” or “Effective Entry Date” means the date specified by the originator on which it intends a payment to be settled. The “Effective Date” specified by a taxpayer or service provider is the date it intends the payment to be deposited into a State of Rhode Island bank account.

Note: NACHA Rules state that for credit entries, “... the effective entry date shall be either one or two banking days following the banking day of process as established by the Originating ACH Operator (the processing date).”

- G. “EFT” or “Electronic Funds Transfer” means a standard ACH funds transfer to credit or debit a bank account or wire transfer. Electronic funds transfer does not include payments by check, draft or similar paper instrument.
- H. “Look back Period” is the previous calendar year used by the Rhode Island Division of Taxation in order to determine whether EFT thresholds, based on reported tax liability, are met or exceeded.
- I. “NACHA” or “North American Clearing House Association” is the national regulatory body that establishes the standards, rules and procedures governing the ACH Network.
- J. “Pre-notification” or “pre-note” means a zero dollar entry that may be sent through the ACH at least seven (7) business days prior to live entries affecting an account at a financial institution.
- K. “RTN/ABA” number means the routing transit and American Banking Association numbers assigned to financial institutions. This is a nine digit number with position nine computed according to a check-digit formula.

- L. “Settlement Date,” “Deposit Date” or “Payment Date” all mean the date an electronic payment is deposited in a bank account designated by the State of Rhode Island for deposit of electronic tax payments. The dates also include the date a pre-notification transaction occurs. Generally, the “settlement date” is the same as the effective entry date.
- M. “Standard EFT Payment Methods” means the ACH credit method or the ACH debit method of electronic funds transfer.
- N. “Tax Payment Convention” or “TXP” means the standard format developed by the Federation of Tax Administrators and the Banker's EDI Council of NACHA and approved by the Banker's EDI Council of NACHA that identifies tax payments in the addenda record portion of a CCD+ ACH transaction.
- O. “Wire Transfer” or “Bank wire” mean the same day transfer of funds from a depositor's account to a State of Rhode Island bank account. Fed-wires do not contain a standard addenda record and may be used only in an emergency situation.
- P. “Zero dollar payment” means a pre-notification-type transaction that is formatted as a payment and contains an addenda record.

RULE 6. ELECTRONIC FUNDS TRANSFER MANDATE

A. Generally.

Effective January 1, 2010, any taxpayer with an average monthly sales and use tax liability of two hundred dollars (\$200) or more per month for the look back period, shall remit said payments by electronic funds transfer. Any taxpayer required to withhold and remit tax under section 44-30-71 with ten (10) or more employees, for the look back period, must make the withholding tax payments by electronic funds transfer.

For other taxes, any taxpayer that has a liability of \$10,000 or more in connection with the filing of any return, report or other document with the Division of Taxation is required to remit tax payments for the relevant tax type electronically using either the ACH credit or ACH debit method.

B. Notification by Rhode Island Division of Taxation.

The Rhode Island Division of Taxation will periodically review the payment histories of taxpayers, employing the look back period on a tax-specific basis, in order to determine which taxpayers are required to make payments via EFT. When the Division of Taxation determines that a taxpayer is liable for making payments electronically, the taxpayer will be notified and provided with the necessary registration forms or in the case of internet filing the internet address to establish an EFT account with the Division of Taxation. The taxpayer has 30 days after such notification to complete and return registration materials.

RULE 7. FORMS REQUIREMENT

Refer to “Electronic Tax Filing Guide”, Publication 1345, found at www.tax.ri.gov/documents/elf/handbook.pdf for information on filing tax reports/forms when tax payments are remitted via EFT

RULE 8. PENALTY FOR NON-COMPLIANCE

A. Generally; insufficient funds.

Payments made by electronic funds transfer are subject to the interest and penalty provisions if the payment is deemed late. EFT deposits to a designated State of Rhode Island bank account that are reversed by the State's depository bank due to insufficient funds in the originator's account are subject to the late filing and late payment penalties.

B. Failure to file electronically.

Chapter 44-19-10.3 and 44-30-71 provides that if any person fails to remit said taxes by electronic funds transfer or other electronic means defined by the tax administrator as required hereunder, the amount of tax required to have been electronically transferred shall be increased by the lesser of five percent (5%) of the amount that was not so transferred or five hundred dollars (\$500), whichever is less, unless there was reasonable cause for the failure and such failure was not due to negligence or willful neglect.

RULE 9. AUTHORITY TO WAIVE THE ELECTRONIC FUNDS TRANSFER MANDATE

A taxpayer may make a written request to the EFT Section for waiver from mandatory EFT participation for good cause. Good cause determinations will be made on a case-by-case basis. The following will generally be considered by the Tax Administrator to constitute good cause:

A. The taxpayer's bank does not participate in ACH in any form. The taxpayer must provide a letter from its financial institution.

B. The taxpayer's current tax liability and reporting trend shows a decline in the amount of reported tax liability. If projected into the future, the tax liability will not meet or exceed the applicable mandatory threshold amount.

C. The taxpayer's tax liability during the look back period no longer meets or exceeds the applicable mandatory threshold amount.

D. The taxpayer's tax liability meets or exceeds the applicable mandatory threshold amount only because of uncharacteristically high tax amounts reported in 3 or fewer months of the look back period. However, good cause does not exist under this paragraph in the case of a person reporting withholding tax on a quarterly basis.

E. The taxpayer is under the payroll administration of the federal government.

F. The taxpayer is required to file three or fewer times per year.

. Waiver requests should be sent to the following address:

Rhode Island Division of Taxation
EFT Section
One Capitol Hill
Providence, RI 02908

The waiver request must include a detailed explanation as to why the mandate should not apply.

RULE 10. EFFECTIVE DATE:

This Regulation shall take effect as of January 1, 2010 and shall amend and supercedes regulation EFT 00-01 promulgated January 1, 2000.

DAVID SULLIVAN
TAX ADMINISTRATOR