

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 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 relating to the Rhode Island Jobs Development Act.

These rules and regulations implement Chapter 42-64.5 of the Rhode General Laws. This Chapter grants incremental income tax rate reductions to companies that create new employment in this state.

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 will 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 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 relating to the Rhode Island Jobs Development
Act – CT 09-11**

These rules and regulations implement Chapter 42-64.5 of the Rhode General Laws. This Chapter grants incremental income tax rate reductions to companies that create new employment in this state.

This regulation amends and supercedes regulation CT 04-11 promulgated January 1, 2004

State of Rhode Island - Division of Taxation

Rhode Island Jobs Development Act

Regulation CT **04** 09-11

TABLE OF CONTENTS

RULE 1. PURPOSE

RULE 2. AUTHORITY

RULE 3. APPLICATION

RULE 4. SEVERABILITY

RULE 5. DEFINITIONS

RULE 6. GENERAL

RULE 7. EFFECTIVE DATE

RULE 1. PURPOSE

These rules and regulations implement Chapter 42-64.5 of the Rhode General Laws. This Chapter grants incremental income tax rate reductions to companies that create new employment in this state.

RULE 2. AUTHORITY

These rules and regulations are promulgated pursuant to RIGL §44-1-4. The rules and regulations have been prepared in accordance with the requirements of RIGL §§42-35-1 et. seq. of the Rhode Island Administrative Procedures Act.

RULE 3. APPLICATION

These rules and regulations shall be liberally construed so as to permit the Division of Taxation to effectuate the purpose of Chapter §42-64.5 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

"Adjusted current employment" means for any taxable year ending on or after July 1, 1995, the aggregate of the average daily number of full-time equivalent active employees employed within the state by an eligible company and its eligible subsidiaries during such taxable year.

"Affiliated entity" means any corporation owned or controlled by the same persons or shareholders who own or control an eligible company.

"Average daily number or full time equivalent active employees within this state" means a fraction of which the numerator is the sum of the number of full time equivalent employees for each business day and the denominator is the number of business days.

"Base employment" means the aggregate number of full-time equivalent active employees employed within the State by an eligible company and its eligible subsidiaries on July 1, 1994, or at the election of the eligible company, on July 1 of any year subsequent to 1994; provided, however, that an eligible company that is a telecommunication company shall determine its base employment on either July 1, 2001 or July 1, 2002; and provided, further, that an eligible company may not use July 1, 2003 or any subsequent date to determine its base employment unless a determination has been made by the board of directors of the Rhode Island Economic Development Corporation that (a) but for the incentives available under the law the company is not likely to retain, expand, or add employment in this state; and (b) that the company has provided reasonable evidence supporting a finding that the jobs retained, expanded, or added will generate new tax revenue for the state that is at least equivalent to the value of this incentive.

"Business days" means the number of days the employer is operating as a normal day whereby all full time equivalent employees are eligible to work.

"Eligible subsidiary" means each corporation 80% or more of the outstanding common stock of which is owned by an eligible company.

"Eligible company" means any corporation, state bank, federal savings bank, trust company, national banking association, bank holding company, loan and investment company, mutual savings bank, credit union, building and loan association, insurance company, investment company, broker-dealer company or surety company or an eligible subsidiary of any of the foregoing. An eligible company does not have to be qualified to do business in the state or have any employees in this state at the time its base employment is determined.

"Full time equivalent active employees" means any employee of an eligible company who (1) works a minimum of 30 hours per week within the State, or two or more part-time employees whose combined weekly hours equal or exceed 30 hours per week within the State and (2) earns no less than 150% of the hourly minimum wage prescribed by Rhode Island law; provided, however, for tax years ending after the later of July 1, 2003 and the first tax year that an eligible company qualifies for a rate reduction pursuant to section 42-64.5-3, for purposes of this section, one hundred fifty percent (150%) of the hourly minimum wage prescribed by Rhode Island law shall mean one hundred fifty percent (150%) of the hourly minimum wage prescribed by Rhode Island law at (a) the time the employee was first treated as a full-time equivalent active employee during a tax year that the eligible company qualified for a rate reduction pursuant to section 42-64.5-3, or, if later (b) the time the employee first earned at least one hundred fifty percent (150%) of the hourly minimum wage prescribed by Rhode Island law as an employee of the eligible company. [For eligible companies qualifying on or after July 1 2009 for a rate reduction pursuant to section 42-64.5-3, the term "full-time equivalent active employee" means any employee of an eligible company who: \(1\) works a minimum of thirty \(30\) hours per week within the state; \(2\) earns healthcare insurance benefits, and retirement benefits; and \(3\) earns no less than two hundred fifty percent \(250%\) of the hourly minimum wage prescribed by Rhode Island law at the later of: \(i\) the time the employee was first treated as a full-time equivalent active employee during a tax year that the eligible company qualified for a rate reduction pursuant to section 42-64.5-3; or \(ii\) the time the employee first earned at least two hundred fifty percent \(250%\) of the hourly minimum wage prescribed by Rhode Island law as an employee of the eligible company. For eligible companies qualifying before July 1, 2009 for a rate reduction pursuant to section 42-64.5-3, any new "full-time equivalent active employee", who replaces an existing "full-time equivalent active employee". Shall meet the following standards to remain eligible: \(1\) works a minimum of thirty \(30\) hours per week within the state; \(2\) earns healthcare insurance benefits, and retirement benefits; and \(3\) earns no less than two hundred fifty percent \(250%\) of the hourly minimum wage prescribed by Rhode Island law at the later of: \(i\) the time the employee was first treated as a full-time equivalent active employee during a tax year that the eligible company qualified for a rate reduction pursuant to section 42-64.5-3, or \(ii\) the time the employee first earned at least two hundred fifty percent \(250%\) of the hourly minimum wage prescribed by Rhode Island law as an employee of the eligible company.](#)

"New employment" means for each taxable year the amount of adjusted current employment for such taxable year minus the amount of base employment, but in no event less than zero, provided however, no eligible company is permitted to transfer, assign or hire employees who are already employed within the State by such eligible company from itself or any affiliated entity or utilize any other artifice or device for the purpose of artificially creating new employees in order to qualify for the rate reduction provided for in this chapter. New employment shall not include employees already employed in this state who become employees of an eligible company as a result of an acquisition of an existing company by purchase, merger, or otherwise, if the existing company was eligible for a rate reduction.

"**Small business concern**" means any eligible company which has a base employment level of less than one hundred (100); provided, however, that a telecommunication company may not qualify as a small business concern.

"**Telecommunications company**" means any public service company or corporation whose rate of taxation is determined under subsection 44-13-4(4).

"**Units of new employment**" means (i) for eligible companies, which are not small business concerns, the amount of new employment divided by fifty (50) rounded down to the nearest multiple of fifty (50), and (ii) for eligible companies which are small business concerns, the amount of new employment divided by ten (10), rounded down to the nearest multiple of ten (10); provided, however, that an eligible company (other than an eligible company that is a telecommunications company) with adjusted current employment of one hundred (100) or more employees in its first year of operation or in any other period following the date its base employment is determined shall determine its units of new employment by dividing the first one hundred (100) employees less its base employment by ten (10), rounded down to the nearest multiple of ten (10), and by dividing the number of additional employees in excess of one hundred (100) by fifty (50), rounded down to the nearest multiple of fifty (50).

~~"Average daily number of full time equivalent active employees employed within this state" shall be calculated as follows:~~

$$\frac{\text{\# of full time equivalent employees}}{\text{\# of business days}}$$

~~"Business days" shall be determined by the number of days the employer is operating as a normal day whereby all full time equivalent employees are eligible to work.~~

RULE 6 GENERAL

(1) **Tax rate reduction** – (a) The rate of tax payable by an eligible company and each of its eligible subsidiaries for any taxable year ending on or after July 1, 1995, on its net income pursuant to the applicable income tax provisions of the general laws, including the provisions of §§ 44-11-2(a), 44-14-3(a), 44-14-4 and 44-17-1, or on its gross earnings

pursuant to § 44-13-4(4), shall be reduced by the amount specified in Rule 6 (2); this rate reduction shall be applied annually, once to those eligible companies which are permitted by law to file a consolidated state tax return and in the case of eligible companies not permitted by law to file consolidated state tax returns, then the rate reduction shall be applied annually to each eligible company and its eligible subsidiaries; provided, however, except as provided in § 42-64.5-7, should any eligible company fail to maintain in any taxable year after 1997 or, if applicable, the third taxable year following the base employment period election set forth in § 42-64.5-5, the number of units of new employment it reported for its 1997 tax year or, if applicable, the third taxable year following the base employment period election set forth in § 42-64.5-5, the rate reduction provided for in this chapter shall expire permanently.

(2) Reduction rate schedule. – (a) The amount of the rate reduction specified in § 42-64.5-3 for any eligible company that is not a telecommunications company, for each taxable year ending on or after July 1, 1995, shall be based upon the aggregate amount of new employment of the eligible company and its eligible subsidiaries for each taxable year, and shall be determined by multiplying the numerical equivalent of one-quarter of one percent (.25%) by the number of units of new employment for each taxable year through the taxable year ending in 1997 or, if applicable, the third taxable year following the base employment period election set forth in § 42-64.5-5; and for each taxable year thereafter, the number of units of new employment reported for the taxable year 1997 or, if applicable, the third taxable year following the base employment period election set forth in § 42-64.5-5; provided, however, the amount of each rate reduction shall in no event be greater than six percent (6%).

(b) The amount of the rate reduction specified in § 42-64.5-3 for any eligible company that is a telecommunications company shall be based upon the aggregate amount of new employment of the eligible company and its eligible subsidiaries for each taxable year and shall be determined in the same manner as set forth in subsection (a) of this section, except that it shall be determined by multiplying the numerical equivalent of one-hundredth of one percent (.01%) by the number of units of new employment and the amount of each rate reduction shall in no event be greater than one percent (1%).

(c) Notwithstanding any of the provisions of this chapter, where an eligible telecommunications company has one or more affiliated entities that is an eligible company, the eligible company entitled to a rate reduction may assign its rate reduction, to be determined in the manner as provided in subsection (b) of this section, to the eligible telecommunications company. An entity that assigns the rate reduction shall not be eligible for the rate reduction.

(d) For eligible companies qualifying on or after July 1, 2009 for a rate reduction pursuant to section 42-64.5-3, the term “full-time equivalent active employee” means any employee of an eligible company who:

1. Works a minimum of thirty (30) hours per week within the state;
2. Earns healthcare insurance benefits and retirement benefits; and

3. Earns no less than two hundred fifty percent (250%) of the hourly minimum wage prescribed by Rhode Island law at the later of :
 - a. The time the employee was first treated as a full-time equivalent active employee during a tax year that the eligible company qualified for a rate reduction pursuant to section 42-64.5-3; or
 - b. The time the employee first earned at least two hundred fifty percent (250%) of the hourly minimum wage prescribed by Rhode Island law as an employee of the eligible company.

(e) For existing eligible companies qualifying before July 1, 2009 for a rate reduction pursuant to section 42-64.5-3, any new “full-time equivalent active employee” who replaces an existing “full-time equivalent active employee”, shall meet the following standards to remain eligible:

1. Works a minimum of thirty (30) hours per week within the state;
2. Earns healthcare insurance benefits and retirement benefits; and
3. Earns no less than two hundred fifty percent (250%) of the hourly minimum wage prescribed by Rhode Island law at the later of:
 - a. The time the employee was first treated as a full-time equivalent active employee during a tax year that the eligible company qualified for a rate reduction pursuant to section 42-64.5-3; or
 - b. The time the employee first earned at least two hundred fifty percent (250%) of the hourly minimum wage prescribed by Rhode Island law as an employee of the eligible company.

(f) Important Note: When determining if an employee meets the new criteria, the requirement to “earn healthcare insurance benefits and retirement benefits” means that an employee is eligible to participate in the company’s healthcare and retirement programs. If the employee is eligible for the company’s healthcare and retirement program but elects not to participate, he/she is still deemed to have “earned” healthcare insurance benefits and retirement benefits. Also, if an employee is required to complete a reasonable probationary period to be eligible for healthcare insurance benefits and retirement benefits, he/she is deemed to have “earned” these benefits from day one of their employment.

(g) On or before September 1, 2009 all eligible companies shall file an annual report with the Division of Taxation containing each “Full-Time Equivalent Active Employee” as of July 1, 2009. This report shall be filed in the manner prescribed by the Tax Administrator on Form 9261A.

EXAMPLE 1:

Rate reduction for a company with over 100 full time equivalent active employees:

Adjusted Current Employment	1,000
Less Base Employment	<u>560</u>
New Employment	<u>440</u>

Rounded Down to Nearest (50) 400

$$400/50 = 8$$

$$8 \times .0025 = .02$$

A The result is a 2% reduction is in order the rate of tax

EXAMPLE 2:

Rate reduction for a company with less than 100 full time equivalent active employees:

Adjusted Current Employment	94
Less Base Employment	<u>64</u>
New Employment	<u>26</u>

Rounded Down to Nearest (10) 20

$$20/10 = 2$$

$$2 \times .0025 = .005$$

A The result is a 0.5% reduction is in order the rate of tax

III. Maximum rate reduction

No rate reduction shall exceed six (6%) percent, or in the case of a telecommunications company, one percent (1%).

IV. Rate reduction applied to net income or gross earnings - (a) Credit unions and insurance companies do not qualify for a rate reduction since they do not pay a tax based upon income, however, they will be able to pass the rate reduction on to an "eligible subsidiary."

(b) In the case of a Subchapter S Corporation, there is no pass through to the shareholder since there is no provision for a rate reduction under Chapter 30 of Title 44 of the General Laws of Rhode Island.

(c) The amount of rate reduction for any eligible company that is a telecommunications company shall be determined by multiplying the numerical equivalent of one-hundredth of one percent (.01%) by the number of units of new employment and the amount of each rate reduction shall in no event be greater than one percent (1%).

(d) Where an eligible telecommunications company has one or more affiliated entities that ~~is an~~ are eligible companies, the eligible company entitled to a rate reduction may assign its rate reduction, determined in the manner set forth in the prior paragraph, to the eligible telecommunications company. An entity that assigns the rate reduction shall not be eligible for the rate reduction.

V. Expiration of rate reduction

A rate reduction calculation must be made for each year after a base employment period is elected in accordance with section 42-64.5-5. The reduction in place at the end of the third taxable year following the base employment period election shall be permanent unless the level of employment drops below the level in place at the end of the third taxable year. If the level is not maintained the rate reduction provided for shall permanently expire ~~permanently~~. Only one base employment period can be elected for purposes of rate reduction by an eligible company.

DAVID SULLIVAN
TAX ADMINISTRATOR

RULE 7. **EFFECTIVE:** **DATE:** ~~January 1, 2004~~ This Regulation shall take effect January 1, 2010 and shall amend and supercede ~~CT 02-11~~ CT 04-11