

## **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 Meals and Beverage Tax.

The purpose of this regulation is to implement Sections 44-18-18.1 of the Rhode Island General Laws. This Section imposes a Local Meals and Beverage Tax that is to be administered and collected in conjunction with the state sales and Use Tax. These rules govern the interpretation and application of that tax. Regulation SU 04-147 will be repealed in its entirety.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](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 November 9, 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](mailto:mcanole@tax.ri.gov). A public hearing to consider the proposed regulation will be held on November 9, 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 Meals and Beverage Tax – MBT  
09-01**

The purpose of this regulation is to implement Sections 44-18-18.1 of the Rhode Island General Laws. This Section imposes a Local Meals and Beverage Tax that is to be administered and collected in conjunction with the State Sales and Use Tax. These rules govern the interpretation and application of that tax.

This regulation amends and supercedes regulation SU 04-147 promulgated January 1, 2004.

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

## ~~Sales and Use Tax~~

### ~~Regulation SU 04-147~~

## ~~Local Meals and Beverage Tax~~

### ~~I. Definitions~~

~~"Beverage" means all nonalcoholic beverages, as well as alcoholic beverages, beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor.~~

~~"Meal" means any prepared food or beverage offered or held out for sale by any eating and/or drinking establishment for the purpose of being consumed by any person to satisfy the appetite and which is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.~~

~~"Eating and/or drinking establishments" means and includes restaurants, bars, taverns, lounges, cafeterias, lunch counters, drive ins, roadside ice cream and refreshments stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, vending machines, or similar facilities in amusement parks, bowling alleys, clubs, caterers, drive-in theaters, industrial plants, race tracks, shore resorts or other locations, lunch carts, mobile canteens and other similar vehicles, and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware or in parking facilities provided primarily for the use of patrons in consuming products purchased at the location.~~

~~Retailers selling prepared foods in bulk either in customer furnished containers or in the seller's containers, for example "Soup and Sauce" establishments, are deemed to be selling prepared foods ordinarily for immediate consumption and as such are considered eating establishments.~~

### ~~II. General~~

~~All "eating and/or drinking establishments" are required to charge and collect a one percent (1%) local tax on the sales of "meals" and/or "beverages" within this state, effective August 1, 2003.~~

~~The tax applies whether or not the meals and/or beverages are prepared in the eating and/or drinking establishment and whether or not consumed on the premises. The rate of 1% must be shown separately on the bill of sale. However, in specific transactions where no receipt is provided by the retailer, i.e. vending machine sales, liquor sold at a bar, etc.,~~

~~the local tax as well as the state sales tax is considered included in the total sales price of the meal and/or beverage sold.~~

~~The local meals and beverage tax is administered and collected by the Division of Taxation and unless provided herein, all the administration, collection and other provisions of the state sales tax law (Chapters 18 and 19, Title 44) apply.~~

~~All local taxes received by the Division of Taxation will be distributed to the city or town where the meals and/or beverages are delivered. Accordingly, each eating and/or drinking establishment must report the local tax on its monthly or quarterly sales tax returns by city or town where the meals and/or beverages are delivered. The 1% does not apply if the meal and/or beverage is delivered outside of this state.~~

### **III. Food Stores and Supermarkets**

~~There are two criteria which must be met for a sale to be subject to the 1% local tax. The first consideration is whether or not the item sold is a meal and/or beverage as defined by law. The term "meal" is defined as any prepared food or beverage. Beverage includes all alcoholic and nonalcoholic beverages. The second consideration is that the meal and/or beverage be sold by an eating and/or drinking establishment as defined by law.~~

~~Ordinarily, eating and/or drinking establishments do not mean and include food stores and supermarkets. However, the law defines "eating and/or drinking establishments" as restaurants, bars, taverns, lounges, cafeterias, lunch counters ...and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware ...provided primarily for the use of patrons in consuming products purchased at the location. Since the activities of some food stores and supermarkets fall within the definition, such stores would qualify as "eating and/or drinking establishments" when selling prepared food and/or beverages.~~

~~Following are some examples of food store operations that require the collection and remittance of the local tax:~~

~~*Example 1:* A food store provides facilities for immediate consumption of prepared food and/or beverages at tables, chairs, or counters in a specific area of the store. The prepared food and/or beverages are purchased by customers from employee(s) or at a cash register in that specific area only. The specific area is considered an eating or drinking establishment and all sales of prepared food and/or beverages from that specific area only are subject to the local tax, whether consumed on the premises or not.~~

~~*Example 2:* A convenience or food store provides facilities for immediate consumption of prepared food and/or beverages at tables, chairs, or counters in a general area of the store. However, there is no separate cash register to ring up the prepared food nor are there employee(s) attending to customers in the area where the tables are located. Customers may purchase prepared food and/or beverages from anywhere in the store and use the tables, chairs, or counter to consume the items. Under this setup, the store is considered~~

~~an eating and/or drinking establishment and the local tax applies to all prepared food and/or beverages purchased throughout the store, whether consumed on the premises or not.~~

~~Individual prepackaged or factory sealed bags or packages of chips, popcorn, nuts, trail mix, crackers, cookies, snack cakes, or other snack foods sold by food or convenience stores are not considered prepared foods and are not subject to the 1% local tax. However, packages of these items of five (5) ounces or less continue to be subject to the 7% state sales taxes as food for immediate consumption.~~

~~Chilled bottles or containers of fruit juices/drinks, milk, soda, water, iced coffee/tea, etc. are subject to the local as well as the 7% state sales tax when sold in containers or bottles of 24 ounces or less. However, such drinks are not subject to the 1% local tax if a food or convenience store is not an eating and/or drinking establishment.~~

#### **IV. Delicatessens**

~~Example: A delicatessen store or a deli area within a food store sells prepared food as part of a party platter, deli tray, etc., but does not provide facilities for immediate consumption of prepared food at tables, chairs, or counters in the store. Since the deli acts as a caterer for a portion of their deli business, the entire deli area is considered an eating and/or drinking establishment under the law. Accordingly, all sales of prepared food including individual sandwiches and servings as well as the catered food from the deli area are subject to the 1% local tax as well as the state 7% sales tax, whether served or picked up at the deli area or delivered to a customer's location.~~

~~In the event that the delicatessen or food/deli store provides facilities for immediate consumption of prepared food at tables, chairs, or counters in a general area and the same facts stated above exists, the entire store is considered an eating and/or drinking establishment and the 1% local tax, as well as the 7% state sales tax, applies to food catering sales as well as all prepared food and/or beverages purchased throughout the store, whether consumed on the premises or not.~~

~~If a separate register is maintained in the deli area to record sales of prepared and catered food from the deli area only, the deli area is an eating and/or drinking establishment and any prepared food and/or beverages sold from the other areas of the store would not be subject to the local tax.~~

~~R. GARY CLARK  
TAX ADMINISTRATOR~~

~~**EFFECTIVE:** January 1, 2004~~

~~**CROSS REFERENCE:** SU 04-59 "Meals"; SU 02-97 "Room Rentals By Hotels, Rooming Houses, Tourist Camps"~~

# State of Rhode Island - Division of Taxation

## Local Meals and Beverage Tax

### Regulation MBT 09-01

## Local Meals and Beverage Tax

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#### RULE 1. PURPOSE

These rules and regulations implement RIGL 44-18-18.1. This Section imposes a Local Meals and Beverage Tax that is to be administered and collected in conjunction with the State Sales and Use Tax. These rules govern the interpretation and application of that tax.

#### RULE 2. AUTHORITY

These rules and regulations are promulgated pursuant to RIGL §44-1-4 and RIGL §44-19-33 . The rules and regulations have been prepared in accordance with the requirements of RIGL §42-35-1 et. seq., the Rhode Island Administrative Procedures Act.

### **RULE 3. APPLICATION**

These rules and regulations shall be liberally construed so as to permit the Rhode Island Division of Taxation to effectuate the purpose of RIGL §44-18-18.1 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**

"Beverage" means all nonalcoholic beverages, as well as alcoholic beverages, beer, lager beer, ale, porter, wine, similar fermented malt or vinous liquor.

"Meal" means any prepared food or beverage offered or held out for sale by any eating and/or drinking establishment for the purpose of being consumed by any person to satisfy the appetite and which is ready for immediate consumption. All such food and beverage, unless otherwise specifically exempted or excluded herein shall be included, whether intended to be consumed on the seller's premises or elsewhere, whether designated as breakfast, lunch, snack, dinner, supper or by some other name, and without regard to the manner, time or place of service.

"Prepared food" means:

- (A) Food sold in a heated state or heated by the seller;
- (B) Two (2) or more food ingredients mixed or combined by the sell for sale as a single item; or
- (C) Food sold with eating utensils provided by the seller, including plates, knives, forks, spoons, glasses, cups, napkins, or straws. A plate does not include a container or packaging used to transport the food.

For purposes of this regulation, prepared food does not include food that is only cut, repackaged, or pasteurized by the seller, and eggs, fish, meat, poultry, and foods containing these raw animal foods requiring cooking by the consumer as recommended by the Food and Drug Administration in chapter 3 part 401.11 of its food Code so as to prevent food borne illnesses.

"Eating and/or drinking establishments" means and includes restaurants, bars, taverns, lounges, cafeterias, lunch counters, drive-ins, roadside ice cream and refreshments stands, fish and chip places, fried chicken places, pizzerias, food and drink concessions, or similar facilities in amusement parks, bowling alleys, clubs, caterers, drive-in theaters, industrial plants, race tracks, shore resorts or other locations, lunch carts, mobile canteens and other similar vehicles, and other like places of business which furnish or provide

facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware or in parking facilities provided primarily for the use of patrons in consuming products purchased at the location.

## **RULE 6. GENERAL**

All eating and/or drinking establishments are required to charge and collect a one percent (1%) local meals and beverage tax on the sales of meals and/or beverages within this state, effective August 1, 2003. The tax applies whether or not the meals and/or beverages are prepared in the eating and/or drinking establishment and whether or not consumed on the premises.

The 1% local meals and beverage tax is to be separately stated from the 7% state sales tax on the sales check or other proof of sale. In the event that this requirement causes a hardship to a business, that business may issue sales checks or other proof of sale with the taxes combined at an 8% rate. Although the sales check or other proof of sale to the customer may combine rates, the business must still maintain its books and records in such a manner to segregate the two taxes in order to properly report them to the Division of Taxation.

The 1% local meals and beverage tax is administered and collected by the Division of Taxation and unless provided herein, all the administration, collection and other provisions of the state sales tax law (Chapters 18 and 19 of Title 44) apply.

The 1% local meals and beverage tax received by the Division of Taxation will be distributed to the city or town where the meals and/or beverages were delivered. Accordingly, each eating and/or drinking establishment must report the 1% local meals and beverage tax on its monthly or quarterly meals and beverage tax returns by city or town where the meals and/or beverages were delivered. The 1% local meals and beverage tax does not apply if the meal and/or beverage is delivered outside of this state.

## **RULE 7. ANCILLARY CHARGES**

Many retailers of catered events or functions, whether the function or event is held on the retailer's premises or off-site, list charges on their invoice or statement for services and non-food items provided in connection with the sale of meals and beverages. Certain charges are not subject to the 1% local meals and beverage tax if (1) they are marginally related to the sale or service of a meal or beverage (2) are reasonable in amount and (3) are separately stated. These charges include, but are not limited to:

- 1) Valet parking
- 2) Coat checking
- 3) Fees charged or deposits forfeited for the cancellation of a function when no meal was served
- 4) Slippage (parking of boats at harbor side facilities)
- 5) Transportation provided to or from a catered function

- 6) Lodging provided in connection with a catered function or meal
- 7) Entrance fees to nearby tourist attractions or sites of interest
- 8) Ceremony fees if the ceremony is provided outside of the facility room where the meal is served
- 9) Portable commodes or toilets furnished for an outdoor function
- 10) Facility charge for lecture or instruction class when a meal is not included (incidental beverage and food provided is not considered a meal)
- 11) Cover charge when admittance to a facility is the only thing received (if cover charge includes a meal or beverage it is subject to tax)
- 12) Membership fees when member is charged an amount to comply with the minimum spending requirement for an agreed period
- 13) Charges for entertainment (including bands, orchestras and disc jockeys)
- 14) Any minimum or attrition fees (as long as the contracted meals were not provided)
- 15) Decorations, ice sculpture or flowers
- 16) Charges for any tents or canopies provided when a catered event or function is held outdoors
- 17) Audio visual equipment

Other charges are deemed to be reasonably related to the sale or service of a meal or beverages and are taxable, regardless if separately stated or not. These charges include, but are not limited to:

- 1) Charges for glassware, linen, china or silverware
- 2) Charges for tables or chairs
- 3) Gratuities stated on an invoice or statement by the retailer.
- 4) Corkage or set up fees
- 5) Any special labor or service charges such as bartender, chef's station or white glove service.
- 6) Charges for the public room wherein the catered event or function is held

The above lists of taxable and nontaxable ancillary charges are not exhaustive and are intended to be illustrative only. Charges for items of tangible personal property provided in connection with a meal that are not subject to tax under the Meals and Beverage Tax may be taxable under the Sales & Use Tax Laws. In addition, certain charges may also be taxable under the Hotel Tax (RIGL 44-18-36.1).

## **RULE 8. CONVENIENCE & FOOD STORES, DELICATESSANS, & BAKERY/CAFES**

There are two criteria that must be met for a sale to be subject to the 1% local meals and beverage tax. The first criterion is whether or not the item sold is a meal and/or beverage as defined by Rule 5. The second criterion is whether the meal and/or beverage is sold by an eating and/or drinking establishment as provided by Rules 5.

As a general rule, eating and/or drinking establishments do not include food stores and supermarkets. However, the law defines eating and/or drinking establishments as

restaurants, bars, taverns, lounges, cafeterias, lunch counters and other like places of business which furnish or provide facilities for immediate consumption of food at tables, chairs or counters or from trays, plates, cups or other tableware provided primarily for the use of patrons in consuming products purchased at the location. Since the activities of some food stores and supermarkets fall within this definition, such stores or a certain area of the stores would qualify as eating and/or drinking establishment when selling prepared food and/or beverages. Therefore, such sales would be subject to the 1% local meals and beverage tax on those receipts.

In the event that a food/delicatessen store or bakery/café provides facilities for immediate consumption of prepared food at tables, chairs, or counters in a general area, the entire store is considered an eating and/or drinking establishment and the 1% local meals and beverage tax, as well as the 7% state sales tax applies to food catering sales as well as all prepared food and/or beverages purchased throughout the store, whether consumed on the premises or not.

If the same facts stated above exist and a separate register is maintained in a specific area to record sales of prepared and catered food from this area only, this area is considered an eating and/or drinking establishment and any prepared food and/or beverages sold from the other areas would not be subject to the 1% local meals and beverage tax.

Examples:

Example 1: A convenience or food store provides facilities for immediate consumption of prepared food and/or beverages at tables, chairs, or counters in a general area of the store. However, there is no separate cash register to ring up the prepared food nor are there employee(s) attending to customers in the area where the tables are located. Customers may purchase prepared food and/or beverages from anywhere in the store and use the tables, chairs, or counter to consume the items. In this example, the store is considered an eating and/or drinking establishment and the 1% local meals and beverage tax applies to all prepared food and/or beverages purchased throughout the store, whether consumed on the premises or not.

Example 2: A convenience or food store provides facilities for immediate consumption of prepared food and/or beverages at tables, chairs, or counters in a specific area of the store. The prepared food and/or beverages are purchased by customers from employee(s) or at a cash register in that specific area only. The specific area is considered an eating or drinking establishment and all sales of prepared food and/or beverages from that specific area only are subject to the 1% local meals and beverage tax., whether consumed on the premises or not. Prepared food and/or beverages sold from the grocery section of the store are not subject to the 1% local meals and beverage tax.

Example 3: A convenience or food store sells prepared food but does not provide facilities for immediate consumption (tables, chairs or counters); the store is not an “eating and/or drinking establishment; therefore, the 1% local meals and beverage tax does not apply.

**RULE 9. EFFECTIVE DATE:** This Regulation shall take January 1, 2010 and shall amend and supercede regulation SU 04-147 promulgated January 1, 2004

**RULE 10. CROSS REFERENCES:** SU 09-59 "Food and Food Ingredients, Prepared Food/Meals, Candy, Soft Drinks, Dietary Supplements, and Alcoholic Beverages"

DAVID SULLIVAN  
TAX ADMINISTRATOR