

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 regarding Rentals and Leases of Tangible Personal Property.

The purpose of this regulation is to implement Chapters 44-18 and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Taxes Liability and Computation and Sales and Use Taxes Enforcement and Collection in regard to Rentals and Leases of Tangible Personal Property. This regulation amends and supercedes regulation SU 92-62 promulgated January 1, 1993.

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 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. 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 regarding Rental and Leases of Tangible Personal
Property – SU 09-62**

The purpose of this regulation is to implement Chapters 44-18 and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Taxes Liability and Computation and Sales and Use Taxes Enforcement and Collection in regard to rentals and leases of tangible personal property.

This regulation amends and supercedes regulation SU 92-62 promulgated January 1, 1993

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

~~Sales and Use Tax~~

~~Regulation SU 92-62~~

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~~Rentals and Leases of Tangible Personal Property~~

~~I. In General~~

~~The receipts or proceeds derived from the rental or lease of tangible personal property are subject to sales and use taxes.~~

~~Rental or lease means the agreeing by the owner to give exclusive use of property to another for a consideration and for any period of time under any one agreement.~~

~~The tax shall be computed on the gross amount without any allowance for service, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee.~~

~~Each period for which a rental or lease charge is made shall be considered a complete sale for the purpose of the imposition, collection and payment of sales or use taxes. For example, in the case of a weekly rate, each week shall be considered a complete transaction. In the case of continuing rentals or leases with or without a definite expiration date, the tax shall be due for each complete period for which a regular installment is paid.~~

~~Payment of a sales or use tax by a contractor or other lessor on equipment purchased for his/her own use and so used does not exempt subsequent rentals or leasing of the equipment from the sales tax.~~

~~Examples of transactions not considered rentals or leases:~~

~~(1) The furnishing of equipment with an operator shall be considered a service.~~

~~(2) Linen and towel suppliers are the taxable consumers of linens, towels, etc., rented or leased to their customers, including out of state customers or exempt organizations, since the essential character of this type of rental or lease is the furnishing of the recurring service of laundering or cleaning such articles. No tax is due on the receipts from the rental or lease.~~

~~(3) Boat charters with captains, "head boat" trips, excursions and the like are considered a transportation service.~~

~~In each of the above situations the sales or use tax is payable on acquisition of the property used in rendering the service. The above examples are furnished as guides and are not intended to be all inclusive.~~

~~H. Election to Pay Sales or Use Tax~~

~~(A) A person engaged in the renting or leasing of tangible personal property may elect to pay the tax as measured by the cost of the property to him or her upon acquisition. Such election shall be exercised by the payment of the sales tax to the seller or by filing the required use tax return on or before the due date.~~

~~(B) On failure to so elect, a lessor shall be deemed to be a retailer; the lessor is required to obtain a sales tax permit and collect and remit sales taxes as measured by the total amount of rental or lease charges. Such permittee shall provide the supplier with a resale certificate.~~

~~(C) If the sole use of the property by a retailer, other than retention, demonstration or display in the regular course of business, is the rental or lease of the property while holding it for sale, the retailer may elect to pay the tax as measured by the cost of the property to the retailer. Such election shall be exercised by reporting and paying the use tax on the sales tax return for the month in which the property is first so rented or leased.~~

~~(D) Upon the subsequent sale of such property, the person making the sale shall include the full amount of the selling price in his or her gross receipts and shall pay the tax thereon.~~

~~(E) If a lessor of tangible personal property dissolves, reorganizes or merges with another company and the transfer is not subject to tax pursuant to R.I.G.L. 44-18-20(4)(b), the transferee is subject to the same rights and liabilities as the transferor with regard to the property transferred as if the transfer had not occurred.~~

~~III. Parts Purchased by Lessors of Tangible Personal Property~~

~~The tax does not apply to parts or accessories purchased by lessors of tangible personal property for installation therein or thereon for the purpose of keeping such rented or leased property in usable condition, provided the sales tax is collected on the entire rental or lease charges paid by the lessees of such property.~~

~~IV. Manufacturer-Lessor~~

~~When tangible personal property is leased or rented by the manufacturers of the tangible personal property and the manufacturer elects to pay on the cost basis, the "cost of the property to him or her" will be the total manufactured cost consisting of materials, labor, overhead and any other costs capitalized for purposes of depreciation, amortization or the like.~~

~~Cross Reference: SU 87-41—Boat Rentals and Leases~~

~~R. GARY CLARK
TAX ADMINISTRATOR~~

~~EFFECTIVE DATE: JANUARY 1, 1993~~

~~THIS REGULATION AMENDS AND SUPERCEDES REGULATION SU 87-62
PROMULGATED MAY 1, 1987.~~

State of Rhode Island – Division of Taxation

Sales and Use Tax
Regulation SU 09 – 62

Rental and Leases of Tangible Personal Property
(Excluding motor vehicles, trailers, semi-trailers and transportation equipment)

RULE 1. PURPOSE

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RULE 11. TRANSACTIONS NOT CONSIDERED A LEASE OR RENTAL

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RULE 13. CROSS REFERENCE

RULE 1. PUROPSE:

This regulation implements Chapter 44-18 and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Taxes Liability and Computation and Sales and Use Taxes Enforcement and Collection in regard to rentals and leases.

RULE 2. AUTHORITY:

This regulation is promulgated pursuant to RIGL Chapter 44-18 and 44-19 as amended. These rules have been prepared in accordance with the requirements of RIGL Chapter 44-1-1 et. seq. 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 and 44-19 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 circumstance, 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:

“Lease or Rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

RULE 6. GENERAL

The receipts or proceeds derived from the rental or lease of tangible personal property are subject to sales and use taxes.

The tax shall be computed on the gross amount of the lease or rental without any allowance for service, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee.

Each period for which a rental or lease charge is made shall be considered a complete sale for the purpose of the imposition, collection and payment of sales or use taxes. Sales tax shall be computed based on “General Sourcing Rules” in Rule 7.

“ Lease or rental” does not include:

1. A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;
2. A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an

- option price that does not exceed the greater of one hundred dollars or one percent of the total required payments;
3. Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set-up the tangible personal property; or
 4. Agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 USC 7701(h)(1).

The above transactions shall be excluded for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state or local law.

RULE 7. GENERAL SOURCING RULES

(A) The **retail sale**, excluding lease or rental, of a product shall be sourced as follows:

- (1) When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.
- (2) When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.
- (3) When subsections (A)(1) and (A)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.
- (4) When subsections (A)(1) and (A)(2), and (A)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.
- (5) When subsections (A)(1), (A)(2), (A)(3) and/or (A)(4) do not apply, including when the seller is without sufficient information to apply the previous rules, then the location will be the address (i) from which the tangible personal property was shipped; (ii) or from which the digital good or the computer software delivered electronically was first available for transmission by the seller; or (iii) or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).

(B) The lease or rental of tangible personal property, other than motor vehicles, trailers, semi-trailers or transportation equipment shall be sourced as follows:

- (1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced in the same manner as a retail sale in accordance with the provisions of RULE 7(A). Periodic payments made subsequent to the first payment are sourced to the primary location of the property during each period covered by the payment. The primary location of the property shall be the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location for tax purposes shall not be altered by intermittent use at different locations, where business property is used by employees on business trips and service calls.
- (2) For a lease or rental that does not require recurring periodic payments, the payment is sourced in the same manner as a retail sale in accordance with the provisions of Rule 7(A).
- (3) This subsection does not affect the imposition or computation of sales or use tax on lease or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.

RULE 8. ELECTION TO PAY SALES OR USE TAX

- (A) A person engaged in the renting or leasing of tangible personal property may elect to pay the tax as measured by the cost of the property to him/her upon acquisition. Such election shall be exercised by the payment of the sales tax to the seller or by filing the required use tax return on or before the due date.
- (B) If a lessor did not elect as provided in RULE 8(A) above, the lessor shall be deemed to be a retailer. The lessor is then required to obtain a sales tax permit and collect and remit sales taxes as measured by the total amount of rental or lease charges. Such permittee shall provide the supplier of the tangible personal property with a resale certificate at the time of purchase.
- (C) Payment of a sales or use tax by a contractor or other lessor on equipment purchased for his /her own use and so used does not exempt a subsequent rental or lease of the equipment from the sales tax.
- (D) If the sole use of the property by a retailer, other than retention, demonstration or display in the regular course of business is the rental or lease of the property while holding it for sale, the retailer may elect to pay the use tax as measured by the cost of the property to the retailer. Such election shall be exercised by

reporting and paying the use tax on the sales tax return for the month in which the property is first so rented or leased.

(E) Upon the subsequent sale of such property, the person making the sale shall include the full amount of the selling price in his or her gross receipts and shall pay the sales tax thereon.

(F) If a lessor of tangible personal property dissolves, reorganizes or merges with another company and the transfer of tangible personal property is not subject to tax pursuant to RIGL.44-18-20(d)(2), the transferee is subject to the same rights and liabilities as the transferor with regard to the property transferred as if the transfer had not occurred.

RULE 9. PARTS PURCHD BY LESSORS

The sales and use tax does not apply to parts or accessories purchased by lessors of tangible personal property for installation therein or thereon for the purpose of keeping such rented or leased property in usable condition, provided the sales tax is collected on the entire rental or lease charges paid by the lessees of such property.

RULE 10. MANUFACTURER AS A LESSOR

When tangible personal property is leased or rented by the manufacturers of the tangible personal property and the manufacturer elects to pay on the cost basis, the cost of the property to the manufacture will be the total manufactured cost consisting of materials, labor and overhead and any other costs capitalized for purposes of depreciation or amortization.

RULE 11. TRANSACTIONS NOT CONSIDERED A LEASE OR RENTAL

Examples:

- (1) A taxpayer may purchase equipment and subsequently transfer possession to a customer under an agreement or deferred payment plan that requires monthly payments by the customer for a specific period of time. Upon completion of the required payments and per the agreement, the title is transferred to the customer who then becomes the owner of the equipment. No tax is due on the monthly payments received from the customer, however the sales or use tax is payable at the time of purchase of the equipment by the taxpayer.

- (2) The same set of facts in (1) above apply, however upon completion of the required monthly payments and an agreed upon option price which does not exceed the greater of one hundred dollars (\$100) or one percent (1%) of the required payments, the title is then transferred to the customer who then becomes the owner of the equipment. No tax is due on the monthly payments received from the customer, however the sales or use tax is payable at the time of purchase of the equipment by the taxpayer.
- (3) Linen and towel suppliers are the taxable consumers of linens, towels, etc., provided to their customers, including out-of-state customers or exempt organizations, since the essential character of this type of business operation is the furnishing of the recurring service of laundering or cleaning such articles. No tax is due on the payments received from the customer for this service, however the sales or use tax is payable at the time of purchase of the property used in rendering the service.

RULE 12 CROSS REFERENCE

SU 07-144 – Leases of Motor Vehicles, Trailers, Semi-trailers and Transportation Equipment

RULE 13 EFFECTIVE DATE

This regulation shall take effect January 1, 2010 and shall amend and supercede regulation SU 92-62 promulgated January 1, 1993

DAVID M. SULLIVAN
TAX ADMINISTRATOR