

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 Telecommunications Service.

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 Telecommunications Service. This regulation amends and supercedes regulation SU 07-129 promulgated January 2007.

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 on telecommunications Service – SU 09-129

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State of Rhode Island - Division of Taxation

Sales and Use Tax

Regulation SU ~~07-129~~ 09-129

Telecommunications Service

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RULE 1 PURPOSE:

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 telecommunications service.

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 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

I.—Definitions:

“Ancillary services” means services that are associated with or incidental to the provision of “telecommunications service”. They include but are not limited to conference bridging service, detailed telecommunications billing service, directory assistance, vertical service, and voice mail service as those terms are defined in RIGL 44-18-7.1(y).

"Call-by-call basis" means any method of charging for telecommunications services where the price is measured by individual calls.

"Customer" means the person or entity that contracts with the seller of telecommunications services. If the end user of telecommunications services is not the contracting party, the end user of the telecommunications service is the customer of the telecommunication service, but this sentence only applies for the purpose of sourcing sales of telecommunications services under § 44-18.1-15. "Customer" does not include a reseller of telecommunications service or for mobile telecommunications service of a serving carrier under an agreement to serve the customer outside the home service provider's licensed service area.

“E-911 surcharge” means the surcharge established to ensure that adequate and sustained funding of the E-911 Emergency Services Fund or the E-911 GIS Technology Fund.

"Home service provider" means the facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.

"Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer. In the case of mobile telecommunications services, "place of primary use" must be within the licensed service area of the home service provider.

"Prepaid telephone calling arrangement" means prepaid calling service and prepaid wireless calling service as those terms are defined under RIGL 44-18-7.1(y)(i)(M) and 44-18-7.1(y)(i)(N) respectively.

"Service address" means:

(1) The location of the telecommunications equipment to which a customer's call is charged and from which the call originates or terminates, regardless of where the call is billed or paid.

(2) If the location in subsection (1) is not known, service address means the origination point of the signal of the telecommunications services first identified by either the seller's telecommunications system or in information received by the seller from its service provider, where the system used to transport such signals is not that of the seller.

(3) If the location in subsection (1) and subsection (2) are not known, the service address means the location of the customer's place of primary use.

"Telecommunications nonrecurring charges" means an amount billed for the installation, connection, change or initiation of "telecommunications service" received by the customer.

"Telecommunications service" means the electronic transmission, conveyance, or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points. The term "telecommunications service" includes such transmission, conveyance or routing in which computer processing applications are used to act on the form, code or protocol of the content for purposes of transmission, conveyance or routing without regard to whether such service is referred to as voice over Internet protocol services or is classified by the Federal Communications Commission as enhanced or value added. The term "telecommunications service" also includes the transmission of any interactive electromagnetic communications including but not limited to voice, image, data and other information, by means of but not limited to wire, cable, including

fiber optical cable, microwave, radio wave or any combinations of these media.

"Telecommunications service" includes local exchange service, intrastate toll service, interstate and international toll service, including cellular mobile telephone or telecommunications service, specialized mobile radio and pagers and paging service including any form of mobile two-way communication. "Telecommunications service" does not include service rendered using a prepaid telephone calling arrangement.

RULE 6 TELECOMMUNICATIONS SERVICE GENERALLY

~~H. Telecommunications Services Generally:~~

The furnishing of telecommunications services for a consideration ~~of telecommunications services, ancillary services and the furnishing, rental or leasing of all equipment pertaining or incidental thereto are~~ is subject to the Rhode Island sales or use tax provided the service:

(a) sold on a call-by-call basis:

1. originates and terminates in this state ~~is rendered in its entirety within this state,~~ or
2. originates or terminates in this state ~~and terminates in another state or a foreign country~~ and ~~with respect to which such~~ the service address is ~~as defined in RIGL 44-18.1-16 (K)~~ located in this state, ~~or to the account of any transmission instrument in this state,~~ or
- ~~3. originates in another state or a foreign country and terminates in this state and is charged to a service address as defined in RIGL 44-18.1-16 (K), or~~
- ~~4. is sourced to this state in accordance with RIGL 44-18.1-15 and RIGL 44-18.1-16.~~

(b) sold on a basis other than call-by-call basis (as defined in RIGL 44-18-7.1 and 44-18.1-16) is sourced in accordance with RIGL 44-18.1-15.

Rhode Island law allows a credit or refund of sales taxes upon presentation of proof of payment of the sales tax to another state to which the tax was properly due for the identical telecommunication service.

RULE 7 ANCILLARY SERVICES

The sale of ancillary services are subject to the Rhode Island sales or use tax in accordance with RIGL 44-18-7(9)(i). Ancillary services are sourced to the customer's place of primary use in accordance with RIGL 44-18.1-15

RULE 8 TELECOMMUNICATIONS NONRECURRING CHARGES

Telecommunications nonrecurring charges are included in the sales price and are subject to sales or use tax. Such services are sourced to the customer's place of primary use in accordance with RIGL 44-18.1-15

RULE 9 FURNISHING, RENTAL OR LEASING OF EQUIPMENT

The furnishing, rental or leasing of all equipment pertaining to or incidental to the furnishing of telecommunications service is subject to the Rhode Island sales or use tax and is sourced to this state in accordance with RIGL 44-18.1-11.

RULE 10 MOBILE TELECOMMUNICATIONS

~~III. Mobile Telecommunications:~~

Effective August 2, 2002, for purposes of Rhode Island sales and use tax, the provisions of the federal Mobile Telecommunications Sourcing Act (P.L. 106-252) are adopted. Mobile telecommunications services that are deemed to be provided by the customer's home service provider are subject to tax if the customer's place of primary use is in Rhode Island regardless of where the mobile telecommunications services originate, terminate, or pass through. ~~The customer's "place of primary use" means the street address representative of where the customer's use of the mobile telecommunications service primarily occurs, which must be the residential street address or the primary business street address of the customer and which must be located in the service provider's licensed service area. "Customer" means either a person or entity that contracts with a home service provider for mobile telecommunications services or, if the end user of mobile telecommunications services is not the contracting party, the end user of the mobile telecommunications service (but only for the purpose of determining the place of primary use). "Home service provider" means a facilities-based carrier or reseller with which the customer contracts for the provision of mobile facilities-based carrier or reseller with which the customer contracts for the provision of mobile telecommunications services.~~

RULE 11 E-911 SURCHARGE

Pursuant to RIGL §39-21.1-14(b), the E-911 surcharge imposed under RIGL §39-21.1-14(a) shall not be subject to the tax imposed under Chapter 18 of Title 44. Pursuant to RIGL §39-1-62(d)(3), the E-911 surcharge imposed under RIGL §39-1-62(d)(2) shall not be subject to the tax imposed under Chapter 18 of Title 44.

RULE 12 EFFECTIVE DATE:

This regulation shall take effect on January 1, 2010 and amends and supercedes SU ~~03-129 07-129~~ promulgated ~~JANUARY 1, 2003.~~ JANUARY, 2007.

DAVID SULLIVAN
TAX ADMINISTRATOR
~~EFFECTIVE: JANUARY 2007~~