

**280-RICR-20-70-25**

## **TITLE 280 - DEPARTMENT OF REVENUE**

### **CHAPTER 20 - DIVISION OF TAXATION**

#### **SUBCHAPTER 70 - SALES AND USE TAX**

Part 25 - Use Tax Generally

#### **25.1 Purpose**

This regulation implements R.I. Gen. Laws § 44-18.1. This regulation provides for the application and regulation of the various use taxes of the State of Rhode Island.

#### **25.2 Authority**

This regulation is promulgated pursuant to R.I. Gen. Laws § 44-18.1 as amended, R.I. Gen. Laws §§ 44-1-4, 44-18.1-1 and 44-19-33. Additionally these regulations have been prepared in accordance with the requirements of R.I. Gen. Laws Chapter 42-35 "Rhode Island Administrative Procedures Act.

#### **25.3 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 R.I. Gen. Laws § 44-18.1 and other applicable state laws and regulations.

#### **25.4 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.

#### **25.5 Definitions**

A. "Use Tax" means:

1. An excise tax imposed on the storage, use, or other consumption in this state of tangible personal property, including a motor vehicle, or a trailer, purchased from any retailer, or prewritten computer software delivered electronically or by load and leave, and/or package tour and scenic and sightseeing transportation services at the rate of tax as provided in R. I. Gen. Laws § 44-18-20.

2. An excise tax is imposed on the storage, use, or other consumption in this state of a motor vehicle, or a trailer purchased from other than a licensed motor vehicle dealer or other than a retailer of trailers respectively, at the rate tax as provided in R. I. Gen. Laws § 44-18-20.
- B. "Trailer" as used in this section and in R. I. Gen. Laws § 44-18-21 means and includes those defined in R. I. Gen. Laws § 31-1-5 and also includes boat trailers, camping trailers, house trailers, and mobile homes.

## **25.6 Taxes Imposed on Consumers**

- A. Gross receipts subject to sales tax and the sales price subject to use tax do not include the amount of any taxes legally imposed directly on the consumer that are separately stated on the invoice, bill of sale or similar document given to the purchaser.
- B. Gross receipts subject to sales tax and the sales price subject to use tax include the amount of any manufacturer's, importer's or retailer's excise tax included in the prices of the property sold and it is immaterial whether or not the amount of such tax is stated as a separate charge.

## **25.7 Interstate Sales**

- A. Goods coming into this State: When tangible personal property is purchased in interstate commerce for use or consumption in this state and:
1. the seller is engaged in the business of selling such tangible personal property in this state for use or consumption and
  2. delivery is made in this state, such sale is subject to the use tax.
  3. Such sale is taxable regardless of the fact that the purchaser's order may specify that the goods are to be manufactured or procured by the seller at a point outside this state and shipped directly to the purchaser from the point of origin, and the seller is required to report all such transactions and collect and remit to this state the use tax on all taxable purchases.
- B. If the conditions above are met it is immaterial:
1. that contract of sale is closed by acceptance outside the state or
  2. that the contract is made before the property is brought into the state.
- C. Delivery is held to have taken place in this state:
1. when physical possession of the tangible personal property is actually transferred to the buyer within this state or

2. when the tangible personal property is placed in the mails at a point outside this state directed to the buyer in this state or placed on board a carrier at a point outside this state (or otherwise) and directed to the buyer in this state.
- D. Engaging in business in this state includes the following acts or methods of transacting business:
1. Maintaining directly, indirectly or through a subsidiary, an office, distribution house, sales house, warehouse or other place of business;
  2. Having an agent, sales person or solicitor operating within the state under the authority of the seller or its subsidiary irrespective of whether such place of business, agent, sales person or solicitor is located in this state permanently or temporarily or whether such seller or subsidiary is qualified to do business in this state;
  3. The regular or systematic solicitation of tangible personal property in this state by means of advertising in newspapers and other periodicals; billboards; brochures, catalogs and similar advertising material mailed to or distributed within the state to residents of this state; telephone; computer assisted shopping networks; television, radio or other electronic media intended to be broadcast to customers located in this state.
- E. Goods Shipped from this State: When tangible personal property is sold within the state and the seller is obligated to deliver it to a point outside of the state, or to deliver it to a common carrier or to the mails for transportation to a point outside this state, the retail sales tax or use tax does not apply, provided that the property is not returned to a point within the state. Acceptable proof of transportation outside the state will be:
1. A waybill or bill of lading made out to the seller's order and calling for delivery; or
  2. An insurance or other receipt or registry issued by the United States postal authorities; or
  3. A trip sheet signed by the seller's delivery agent or agency and showing the signature and address of the person outside this state who received the goods delivered.
- F. Where tangible personal property pursuant to a sale is delivered in this state to the buyer or to the buyer's agent other than a common carrier the retail sales tax applies notwithstanding that the buyer may subsequently transport the property out of the state, except in the case of property sold for resale.

## **25.8 Payment by Purchasers**

- A. Business Purchases:
  - 1. Payment of tax is made directly to the person from whom such property or taxable service is purchased if such person holds a seller's permit, or a certificate of authority to collect tax, under the Sales and Use Tax Act; or
  - 2. Directly to the Tax Administrator on a Consumer Use Tax Return (Form T-205) if the person from whom the tangible personal property, or prewritten computer software delivered electronically or by load and leave, and/or package tour and scenic and sightseeing transportation services is purchased does not hold a permit to make sales at retail.
- B. Individual Consumer Purchases: when filing their personal income tax return by entering the amount of use tax due on the appropriate line on Form RI-1040 or Form RI-1040NR
- C. Purchasers should not pay the tax to a person who does not hold a seller's permit or a certificate of authority to collect tax. Purchasers will be liable for payment of the tax to the Tax Administrator unless receipts are obtained from sellers holding a retailer's permit or a certificate of authority to collect tax.

## **25.9 Use Tax on Items Purchased from Out-of-State Suppliers - Due Date of the Tax**

- A. Unlike liability for the sales tax, which the retailer is obliged to pay to the state on or before the 20th day of the month following the month in which the sales are made, liability for the use tax does not arise until a certain event occurs -- that is, until the property which has been purchased outside of Rhode Island is stored, used, or otherwise consumed in this state. Accordingly, in considering USE TAX liability, just how and when such property is paid for by the purchaser is not controlling.
- B. Completed items (e.g. a milling machine, lathe, television set, washing machine, etc.) are used or stored in Rhode Island by the local purchaser thereof upon their delivery into this state. The use tax on such items must therefore be paid on or before the 20th day of the month following the month during which such delivery occurs.

When several completed items have been purchased at the same time from an out-of-state supplier, regardless of how payment therefor is made, and where the cost of each such completed item is either designated or can be determined, and where such items are delivered into Rhode Island at various times over a period of months, then the use tax must be paid by the 20th day of the month following the respective months during which such items were successively delivered into this state. Each such item is regarded as a separate unit.

- C. Uncompleted items usually consist of various component parts delivered into Rhode Island and thereafter assembled before the local purchaser thereof can store, use, or otherwise consume such fully assembled item.

Therefore, regardless of the date of purchase and of the terms for payment, the purchaser would not be obliged to pay the use tax until the 20th day of the month following the month during which delivery into this state of the final shipment of the component parts and completion of the assembly, erection or installation of the machinery or equipment is made.

## **25.10 Statute of Limitation**

- A. Where a taxpayer who is liable only for use tax files a use tax return monthly, and does not report the correct amount of the use tax due, nevertheless such filing sets the running of the statute of limitations, and an assessment for additional tax must be made and the determination mailed within three (3) years after the return is filed, excepting in case of fraud or intent to evade the provisions of the law, in which case the statute does not operate.
- B. Where a retailer or permittee has filed a sales and use tax return monthly, but has reported only a sales tax and has left blank those lines on the return referring to the use tax, such filing of the return in good faith, (i.e., containing no information that is misleading or designed to prevent discovery of material facts necessary to make an assessment,) sets the running of the statute as to both the sales and use tax and an assessment for recovery of any use tax claimed to be due must be made and the determination mailed within three (3) years after the return was filed, except in case of fraud or intent to evade the provisions of the law, in which case the Statute does not operate against the State.
- C. Where a taxpayer or retailer who is required to file a return under the provisions of the sales and use tax law fails to do so, the statute of limitations is inoperative against the State and an assessment covering a period of six (6) years may be made.

## **25.11 Credit Against the Rhode Island Use Tax for Sales or Use Tax Paid in Another Taxing Jurisdiction**

- A. A taxpayer, when computing the use tax due on an article brought into Rhode Island for use, storage or other consumption therein, may credit the amount of the sales or use tax which he or she was lawfully obligated to pay and paid in another taxing jurisdiction on such article.
- B. Liability for the use tax on tangible personal property purchased outside Rhode Island arises at the time such property is first stored, used or consumed in this state. Even though liability for the tax on such use, storage or consumption of property purchased outside Rhode Island accrues at the time aforesaid, payment

of said tax is not required to be made until the 20th day of the month following the month during which such use, storage or consumption first occurred.

- C. In considering the imposition of the Rhode Island use tax, the significant factor is the date the property is first used, stored or consumed in Rhode Island, and not the date of its purchase outside this state or the due date for the payment of such tax.
- D. Before any person who is liable for the payment of the Rhode Island use tax can claim a credit for any sales or use tax paid in another taxing jurisdiction, he or she must produce proof of the payment of such tax in the other jurisdiction.

Accordingly, as evidence of such payment, the taxpayer is required to show to the Tax Administrator or to his representative either the original invoice or a duplicate copy thereof, describing the article purchased, the selling price thereof, the amount of the sales or use tax paid thereon, the date of purchase, the name and address of the seller and the seller's sales tax permit number, and the name and address of the purchaser. The invoice or copy must show that payment of the tax by the purchaser has been duly receipted for by the seller.

- E. Where, due to the nature of the item purchased from a retailer (e.g. a motor vehicle) or because of a taxable casual sale having been made (e.g. an airplane, boat, trailer or motor vehicle), the purchaser is required to pay the sales or use tax imposed by another taxing jurisdiction directly to the Tax Division or other governmental agency of the jurisdiction, the receipt issued by such division or agency showing payment of the tax on the item and the bill of sale therefore must be presented to the Tax Administrator or his representative before any credit for tax payment can be claimed.
- F. It is emphasized that no such credit can be claimed unless the sales or use tax imposed in another taxing jurisdiction has actually been paid by the purchaser and the purchaser was lawfully obligated to pay such tax in the other taxing jurisdiction prior to the inception of his obligation to this state.

## **25.12 Receipts for Use Tax Paid to Retailers**

- A. Each retailer required or authorized to collect use tax from purchasers must give a receipt to each purchaser for the amount of tax collected. The receipt need not be in any particular form but must show the following:
  1. The name and place of business of the retailer.
  2. The serial number of the retailer's permit to engage in business as a seller or the serial number of the retailer's certificate of authority to collect use tax.
  3. The name and address of the purchaser.

4. A description identifying the property sold to the purchaser.
  5. The date on which the property was sold.
  6. The sale price of the property.
  7. The amount of tax collected by the retailer from the purchaser.
- B. A sales invoice containing the data required above, together with evidence of payment of such sales invoice, will constitute a receipt. Purchasers will be liable for payment of the tax to the state unless they obtain and retain for inspection receipts as herein provided.