

CONCISE EXPLANATORY STATEMENT

In accordance with the Administrative Procedures Act, R.I. Gen. Laws § 42-35-2.6, the following is a concise explanatory statement:

AGENCY: Rhode Island Department of Revenue

DIVISION: Division of Taxation

RULE IDENTIFIER: 280-RICR-20-75-1

RULE TITLE: Non-Owner Occupied Property Tax

REASON FOR RULEMAKING: This regulation implements R.I. Gen. Laws Chapter 44-72, which imposes a statewide tax upon non-owner occupied residential property assessed at a value of one million dollars (\$1,000,000) or more. Therefore, for tax years beginning on or after July 1, 2026, any owner of a residential property assessed at a value of one million dollars (\$1,000,000) or more that is not occupied for 183 days based on the privilege year (as defined in the regulation) must comply with the new tax. The purpose of this regulation is to provide guidance to taxpayers regarding the new tax.

ANY FINDING REQUIRED BY LAW AS A PREREQUISITE TO THE EFFECTIVENESS OF THE RULE: No findings were required.

TESTIMONY AND COMMENTS: The Division received the following comments regarding the non-owner occupied property tax and statute generally: 1) that this law is taxation without representation for non-full time residents; 2) that this law will negatively impact housing availability, real estate investment, and transaction efficiency across Rhode Island; and 3) that this tax will disincentivize out-of-state investors from investing in Rhode Island. Additionally, commenters requested consideration of a further exemption for non-insulated, non-winterized properties having ongoing long-term family ownership in geographically fragile areas. These comments addressed elements of the enacted statute and not the proposed regulation.

The Division received comments regarding the regulation's definition of "Non-owner occupied." The comments included that the regulation changes the statutory definition of "Non-owner occupied," that the regulation should reflect verbatim the statutory definition, that the regulation should be clear that whether an owner is a resident or not, the owner is excused from paying the tax if the property is occupied for 183 days or more a year, and that the legislature intended to exclude residences that are occupied by the owners for a majority of the year even if the residence does not serve as the owner's primary residence.

The regulation's definition of "Non-owner occupied" aligns with the definition of "Non-owner occupied" in R.I. Gen. Laws § 44-72-3(3). R.I. Gen. Laws § 44-72-3(3) provides, "Non-owner occupied' means that the residential property does not serve as

the owner's primary residence and is not occupied by the owner of the property for a majority of days during a given taxable year." 280-RICR-20-75-1.5(C) states, "Non-owner occupied' means that the residential property does not serve as the owner's primary residence, which means the property is not occupied by the owner of the property for one hundred eighty-three (183) days or more during the privilege year."

To "not serve as the owner's primary residence" under R.I. Gen. Laws § 44-72-3(3), the property would be occupied by the owner for less than 183 days. This is because if the property is occupied for 183 days or more by the owner, the property is the owner's primary residence. This is supported by R.I. Gen. Laws § 44-30-5, which defines a "Resident individual" for purposes of personal income tax, in part, as an individual who "maintains a permanent place of abode" in Rhode Island for more than 183 days. This is also supported by R.I. Gen. Laws § 31-10-1, which provides "[a]ny resident as defined under § 31-1-18 shall be required to obtain a Rhode Island operator's or chauffeur's license within thirty (30) days of establishing residency." "Resident" under R.I. Gen. Laws § 31-1-18 is defined as a person "[w]ho owns, rents, or leases real estate within [Rhode Island] as his or her residence" and either 1) "[e]ngages in a trade, business or profession in [Rhode Island];" or 2) enrolls their children in school in Rhode Island for longer than 90 days; or 3) "[w]ho is registered to vote or is eligible to register to vote" under Rhode Island law.

Pursuant to R.I. Gen. Laws § 17-1-3.1, "[a] person's residence for voting purposes is his or her fixed and established domicile." There are specific items in that statute that are *prima facie* evidence of a person's residence for voting purposes, including the address from which the voter filed their last federal income tax return, the address from which the voter filed their last state income tax return, the address provided for a driver's license or registration. To be "not occupied by the owner for a majority of days," the property would be occupied by the owner for less than 183 days. As a result, both parts of the definition, even if one considered it a two-part test, are the same – one of the "tests" cannot be satisfied without satisfying the other. For example, if an individual avers that a property is not their primary residence but the individual lives there for 183 days or more, then it is necessarily their primary residence. If a property owner lives in the property for 183 days or more then it is their primary residence, and they need to file a Rhode Island resident tax return.

The Division received a comment on the regulation's definition of "Residential property," namely that the definition's reliance on municipalities to define the threshold for a statewide tax may result in unfair results given that two properties with the same characteristics could be classified differently based on municipal enabling legislation. The commenter suggested creating a state definition of "residential property" rather than relying on the municipalities' definitions. One comment noted that the 183-day threshold may misclassify properties regularly used but not meeting the 183-day threshold as non-owner occupied properties. Pursuant to 280-RICR-20-75-1.5(F), "'Residential property' means a property classified as residential by the city or town in which the property is located and assessed as such." 280-RICR-20-75-1.5(A) defines "Assessed value" as "the assessed value of the residential property by the city or town in which the property is

located as of December 31 prior to the beginning of the privilege year pursuant to R.I. Gen. Laws § 44-5-12.” The regulation’s definition is nearly identical to the statute’s definition. See R.I. Gen. Laws § 44-72-3(2) (“Assessed value’ means the assessed value of the real estate as of December 31 of the corresponding taxable year in accordance with § 44-5-12.”). Pursuant to R.I. Gen. Laws § 44-5-12(a), “[a]ll real property subject to taxation shall be assessed at its full and fair cash value, as of December 31 in the year of the last revaluation, statistical revaluation or update thereto, or at a uniform percentage thereof, not to exceed one hundred percent (100%), with such value to be determined by the assessors in each town or city.” Therefore, the regulation is consistent with statutory authority.

The Division received comments regarding property transfers. One comment urged the Division to allow for the proration of the tax between buyers and sellers. Such agreement may be privately entered into by the parties during the transfer process (i.e., the closing). Another comment asked the Division to provide clarity on whether the tax will create a lien on the property. The Division does not have the statutory authority to impose a lien on the property based on the nonpayment of the non-owner occupied property tax. One commenter requested that the deadline for a seller to contact the Division to request a Certificate of No Tax Due be reduced from fifteen (15) business days prior to the property transfer date to five (5) business days prior to the transfer date. The Division has taken the comment into consideration and has reduced the seller’s deadline to request a Certificate of No Tax Due from fifteen (15) business days prior to the property transfer date to ten (10) business days prior to the transfer date in balancing the request with current resources and administration considerations. The proposed rule was amended at Section 1.9(B)(1)(a) as a logical outgrowth of public comment. To answer a related question presented in the comments, there is no fee to obtain a Certificate of No Tax Due.

Comments were also submitted with respect to exemptions to the non-owner occupied property tax. One asked the Division to provide clear standards for documentation that would be acceptable forms of proof that a property meets a tax exemption. A property owner may provide a written lease or rental agreement indicating that the property is rented for 183 days or more during a privilege year. Alternatively, a short-term rental property owner may provide a report from a third-party realtor, landlord, or hosting platform demonstrating that the property is rented for 183 days or more during a privilege year. However, a screenshot from the third-party hosting platform will not suffice as a screenshot is not precise enough to prove the 183-day requirement and is not administrable. Further, an affidavit will not be sufficient to prove that a property meets either exemption criteria. A comment was submitted asserting that many long-term tenants do not have written leases or have month-to-month verbal agreements. However, to meet this exemption, a written lease must be provided. Additionally, a comment was received that the statute does not require that written leases must be collected by the Division in order to satisfy the exemption. The Division is authorized to promulgate rules, regulations, and procedures as the Tax Administrator deems necessary for the proper administration of the tax and to carry out the provisions, policies, and purposes of R.I. Gen. Laws § 44-72-1, *et seq.* See R.I. Gen. Laws § 44-72-14. Therefore, the Division is

permitted to add this requirement in furtherance of the statute and in order to properly administer the tax.

One comment asserted that the statute's exemption for short-term rentals does not include a 183-day occupancy requirement and urged the Division to strike that requirement from the Regulation. However, the requirement that a short-term rental be occupied for 183 days or more is a non-discretionary regulatory provision. Further, a statutory interpretation to the contrary would be unreasonable and render the statute and, therefore, the regulation meaningless. See *CFS 915, LLC v. Unetixs Vascular, Inc.*, 226 A.3d 1058, 1062 (R.I. 2020) ("Legislative enactments will not be interpreted as meaningless or nugatory if any other construction is reasonably possible.") (quoting *Ward v. City of Pawtucket Police Dep't*, 639 A.2d 1379, 1382 (R.I. 1994)).

Additionally, several comments were received relating to privacy concerns and apprehensions that the Division would share written lease agreements and other documentation with third parties. Taxpayer information is confidential, and any documentation provided to the Division in support of a taxpayer's eligibility will be protected by the applicable statutory and regulatory taxpayer confidentiality provisions. Therefore, the Division will not share any information provided to it from property owners in order to meet either non-owner occupied property tax exemption. To confirm this point, the Division has revised the text of the final regulation in consideration of, and response to, the comments. See 280-RICR-20-75-1.11(B)(3).

One commenter asked whether a property owner could qualify for an exemption if a family member lives in the property rent-free for more than 183 days during a privilege year. This comment is more akin to a question about tax application rather than a comment on the regulation, and the appropriate method for fact-specific inquiries would be to contact the Division directly.

CHANGE TO TEXT OF THE RULE: The Division made three changes to the text of the rule as proposed. First, the "Track Changes" comment within 280-RICR-20-75-1.14, which stated "Formatted: RICR Paragraph 2," was deleted. See 280-RICR-20-75-1.14 (Record Requirements). The inclusion of the comment in the proposed rule was inadvertent and was not intended to be included in the final rule. Second, the text of 280-RICR-20-75-1.9(B)(1)(a) (Property Transfers) has been changed as follows. The deadline for a seller to contact the Division to request a Certificate of No Tax Due has been reduced from fifteen (15) business days prior to the property transfer date to ten (10) business days prior to the transfer date. See 280-RICR-20-75-1.9(B)(1)(a). Third, a clause has been added to 280-RICR-20-75-1.11 (Application for Exemption), which states, "Any documentation provided to the Division in support of a taxpayer's eligibility shall be protected by the applicable statutory and regulatory taxpayer confidentiality provisions and shall not be disclosed to third parties." See 280-RICR-20-75-1.11(B)(3). The final rule with these changes is consistent with, and a logical outgrowth of, the rule proposed in the Notice of Proposed Rulemaking. Moreover, the modifications are based on the public comments received in writing and testimony received at the public hearing.

REGULATORY ANALYSIS: Pursuant to the APA, R.I. Gen. Laws § 42-35-2.9(b)(1), the regulatory analysis must include “the benefits and costs of a reasonable range of regulatory alternatives.” In addition to the provisions of the proposed adoption, other alternatives were considered by the Division, including: 1) creating a definition of residential property administered by the state and independent of the local classification; 2) establishing a system of voluntary compliance, similar to how other tax types such as personal income tax are administered; 3) providing a definitive list of documents that can be provided to determine residency in the regulation and establishing standards for these documents; and 4) providing a deadline for taxpayers to prove their residency. The Division analyzed the quantitative and qualitative societal costs and benefits resulting from the proposed regulatory adoption. Pursuant to the APA, R.I. Gen. Laws § 42-35-2.9(b), the Division has determined that there is no alternative approach among the alternatives considered during the rulemaking process which would be as effective and less burdensome to affected private persons as another regulation. Additionally, there are no other state regulations that are overlapped or duplicated by the proposed regulation. See R.I. Gen. Laws § 42-35-2.9(b). Further, the Division has determined that the benefits of the proposed rule justify the costs of the proposed rule, and the proposed rule will achieve the objectives of the authorizing statute in a more cost-effective manner, or with greater net benefits, than other regulatory alternatives. See Division’s [Benefit-Cost Analysis](#) and [Fiscal Note](#) submitted with the regulatory rulemaking package.