

280-RICR-20-70-36

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 70 – SALES AND USE TAX

PART 36 – Pawnbrokers and Auctioneers

36.1 Purpose

This regulation implements R.I. Gen. Laws Chapter 44-18. This regulation provides for sales tax collection by pawnbrokers and auctioneers.

36.2 Authority

This regulation is promulgated pursuant to R.I. Gen. Laws Chapter 44-18, 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.

36.3 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 Chapter 44-18 and other applicable state laws and regulations.

36.4 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.

36.5 Pawnbrokers

- A. Pawnbrokers are primarily engaged in the business of lending money for the repayment of which they accept as security tangible property from the owner or pledger.
- B. In case the pawner or pledger does not redeem the property pledged or pawned within specified statutory time, such property is forfeited to the pawnbroker, to whom title thereto passes at such time.
- C. Where pawnbrokers thereafter sell such articles at retail they are making sales within R.I. Gen. Laws Chapter 44-18, and must collect and remit the tax thereon.

36.6 Auctioneers

- A. Persons engaged in the business of making retail sales at auction of tangible personal property owned by such person or others are retailers, and are, therefore, required to hold retailers' permits and pay the tax measured by the gross receipts from such sales.
- B. Auctioneers are obliged to add, collect and remit the tax even though they have been engaged by executors, administrators, trustees, receivers or other officers of a court to make sales of tangible personal property, even though such sales may be connected with liquidation or bankruptcy proceedings or made pursuant to court order.
- C. Lump-sum charges. -- Real estate auctioneers selling real estate are retailers of the personal property contained therein. They must secure retailers' permits and pay tax on the selling price of the personal property included with the real property. If a lump-sum charge is made, it shall be deemed, unless established to the contrary in the manner described below, that 80% of the sales price was for personal property and 20% of the sales price was for real estate. In this case the auctioneer must collect and pay over tax on 80% of the lump-sum charge. However, if the purchaser gives to the auctioneer an affidavit (in duplicate) stating that the lump-sum charge is considered by him or her to be allocated differently than 80% personal and 20% real property, and the affidavit sets forth the different breakdown, then the auctioneer shall charge sales tax on only that amount which the purchaser's affidavit states to be personal property.
- D. Such affidavit shall contain the names and addresses of the purchaser and the auctioneer, the date of the sale, a description of the property sold, the lump-sum sales price, and the percentage breakdown between real and personal property.
- E. Upon receipt of such affidavit, the auctioneer shall forward the original to the Division of Taxation, Field Audit Section, and keep the duplicate for his or her files.
- F. A purchaser, who for federal income tax purposes, subsequently allocates a higher amount of the sales price of the personal property than was stated in the affidavit, shall report and pay a use tax on such additional amount that was not subject to the tax at the time of the sale.

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