

280-RICR-20-70-37

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 70 – SALES AND USE TAX

Part 37 – Casual Sales Generally

37.1 Purpose

This regulation implements R.I. Gen. Laws Chapter 44-18. This regulation provides for sales tax collection for casual sales.

37.2 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 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.

37.3 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.

37.4 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.

37.5 Definitions

"Casual" means a sale made by a person other than a retailer, provided, however, that in the case of a sale of a motor vehicle, said term shall mean a sale made by a person other than a licensed motor vehicle dealer. Every person making more than five (5) retail sales of tangible personal property during any twelve-month period, including sales made in the capacity of assignee for the benefit of creditors or receiver or trustee in bankruptcy, shall be considered a retailer within the provisions of this regulation and R.I. Gen. Laws Chapter 44-18.

37.6 Casual Sales

- A. The tax does not apply to casual sales made by a person not regularly engaged in the business of selling tangible personal property. It is important to note, however, that the tax applies to the sale of a motor vehicle, or trailer even though such sale is a casual sale, and whether or not it is in fact registered or required to be registered by the purchaser with the Registry of Motor Vehicles. Casual sales of house trailers and mobile homes of the type ordinarily used for residential purposes are exempt. Casual sales of all other trailers, including camping trailers, are taxable.
- B. Casual sales include a sale of tangible personal property not held or used by a seller in the course of activities for which the seller is required to hold a seller's permit(s) or would be required to hold a seller's permit(s) if the activities were conducted in this state. It is further provided such sale is not one of a series of sales sufficient in number, scope and character (more than five (5) in any twelve-month period) to constitute an activity for which the person is required to hold a seller's permit or would be required to hold a seller's permit if the activity were conducted in this state.
- C. Examples of Exempt Casual Sales
 - 1. A person selling household furniture, or an insurance agent selling a typewriter;
 - 2. Sales by executors, administrators, trustees, receivers, other fiduciaries and other proper officers pursuant to a court order except when they continue the operation of the business of selling tangible personal property at retail;
 - 3. Legal sales, executions, etc., under court order or by a proper officer;
 - 4. Sales at bazaars, fairs, picnics or similar events by nonprofit organizations which are organized for charitable, educational, civic, religious, social, recreational, fraternal or literary purposes during two (2) events not to exceed a total of six (6) days during each calendar year. Such organization may, however, request of the tax administrator to have more than two (2) events in a calendar year so long as those events do not exceed, in total, six (6) days during such calendar year. Promoters of such events are required to apply to the Tax Division for a promoter's permit which permit shall be issued without cost to the applicant. All vendors at such events, including nonprofit organizations, are required to have a valid permit to make sales at retail.
 - a. Provided, however, where sales are made at such events by a vendor or organization holding a permit to make sales at retail which is not a nonprofit organization organized for the purposes

stated above or by a vendor or organization which is not a nonprofit organization organized for the purposes stated above and which is otherwise required to hold such a permit because its selling events are in excess of the number permitted, such sales constitutes sales in the regular course of business and are not exempted as casual sales.

5. A transfer of a motor vehicle, or trailer upon which the transferor has paid the tax, in connection with the organization, reorganization, dissolution or partial liquidation of a business entity where no gain or loss is recognized for income tax purposes; or
6. Casual sales are exempt where the transferee is the spouse, mother, father, brother or sister of the transferor.
7. A bulk sale of assets. However in the case of a retailer, the sale must occur after the retail business for which the retailer had a permit has ceased.

D. Examples of Nonexempt Casual Sales

1. Retail sales by an auctioneer under any of the examples of exempt sales given above;
2. Sales of motor vehicles, or trailers (see § 37.6(C)(5) of this Part above);
3. Retail sales by manufacturers, wholesalers, processors, and jobbers even though such sales are infrequent and only comprise an insignificant fraction of their total business;
4. Sales which constitute an integral part of a business, such as the sale of repossessed fixtures, or other property by a finance company, even though the sale of tangible personal property is not the primary function of such business; or
5. A manufacturer who liquidates his or her business and sells the equipment in piecemeal fashion over a period of time to either the same or to different purchasers is regarded as a retailer within the meaning of the Rhode Island sales and use tax law. The equipment owned automatically becomes an inventory of goods held for sale at retail. The fact that such equipment might have been sold in one bulk sale without being required to charge the sales tax is beside the point. Where the facts assumed above clearly show that more than five (5) retail sales of tangible personal property during any twelve month period have been made, then the sales are not casual. Therefore, under the facts the liquidating manufacturer has become, although unwittingly, a retailer, even though he or she operates as such for a relatively short period of time.

6. A retailer who sells equipment that it uses in its business, such as a grocer who sells a cash register.

36.7 Casual Sales of Motor Vehicles and Trailers

- A. The tax applies to the total sale price of a motor vehicle or trailer, which is purchased from persons other than dealers. Total sale price means and includes not only cash paid by the purchaser to the seller, but it also includes the value of any property, tangible or intangible, taken by the seller in payment of a motor vehicle or trailer.
- B. For exception on motor vehicles refer to § 28.7 of this Subchapter, Motor Vehicles Trade-In Allowance.
- C. Motor Vehicles and Trailers: The state law requires that motor vehicles and trailers be registered. Where the casual sale of a motor vehicle or a trailer is made, the purchaser is obliged to pay the use tax directly to the appropriate state agency before registering for such motor vehicle or trailer.
- D. Note: The basis of the tax on the casual sale of a motor vehicle shall be the actual selling price or the average retail value as shown in the current issue of the nationally recognized used vehicle guide prescribed by the Tax Administrator whichever is higher.
- E. A request for redetermination of the retail dollar value may be made to the Tax Administrator within thirty days after payment of the tax.
- F. The motor vehicle law requires that sales tax must be paid before title will be issued.
- G. Other Motor Vehicles: Where a casual sale is made of a motorized vehicle that does not require registration under state law, the purchaser is required to file a use tax return and pay the use tax directly to the Tax Administrator on or before the 20th day of the month following the month during which such casual sale was made. Such use tax return forms may be obtained from the Division of Taxation.

37.8 Partnership Dissolution and Distribution of Assets

Where there is a dissolution of a partnership and a distribution of the assets between the partners includes a motor vehicle or vehicles, the transfer of the interest of one partner in such vehicle or vehicles to the other partner does not constitute a taxable casual sale within the meaning of the provisions of R.I. Gen. Laws § 44-18-20, provided the last taxable sale, transfer or use of the article being transferred or sold was subjected to a sales or use tax imposed by this state, and any gain or loss to the transferor is not recognized for federal income tax purposes.

37.9 Yard/Garage Sales

- A. An individual holding a yard or garage sale will not be required to obtain a permit to make sales at retail if:
 - 1. The individual is selling his or her own goods or property only, and
 - 2. The sale is held at the residence of the individual and is not part of a block sale or a flea market operation.
- B. Exemption is limited to one (1) such event of no more than two (2) days duration each during any calendar year

37.10 Notice

- A. R.I. Gen. Laws § 44-19-22 requires every taxpayer selling or transferring a major part in value of its assets (real or tangible property) otherwise than in the ordinary course of trade and in the regular and usual prosecution of the taxpayer's business to notify the Tax Administrator of the proposed sale or transfer at least five (5) days before the sale or transfer. The notice must include the price, terms and conditions, and the character and location of the assets.
- B. Further, whenever a taxpayer makes such a sale or transfer, the tax imposed by R.I. Gen. Laws Chapter 44-18 becomes due and payable at the time the Tax Administrator is notified, or, if he is not so notified, at the time when he should have been notified.
- C. If a taxpayer fails to comply with the notification and payment provisions, the sale or transfer shall be fraudulent and void as against the state.
- D. When the taxpayer complies with the provisions of R.I. Gen. Laws § 44-19-22, including the filing of any required returns and the payment of tax due, the Tax Administrator shall issue a letter of good standing to the taxpayer. Until such time as the returns are filed, the taxes are paid and the letter of good standing has been issued, the property sold or transferred shall be subject to the claims of the Tax Administrator for taxes imposed against the transferor of the property under R.I. Gen. Laws Chapter 44-18.
- E. The five day notice requirement does not apply to sales by receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or public officers acting under judicial process.

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