

280-RICR-20-70-43

TITLE 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

SUBCHAPTER 70 – SALES AND USE TAX

PART 43 – Gift Certificates and Premiums

43.1 Purpose

This regulation implements R.I. Gen. Laws Chapter 44-18. This regulation provides for the taxability of gift certificates, gifts, and premiums under the sales tax.

43.2 Authority

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

43.3 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.

43.4 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.

43.5 Gift Certificates

The sale of gift certificates is not taxable, but when the owner of a gift certificate receives tangible personal property by use of such a certificate, or a part thereof, the transaction is a sale and taxable as such. For example, if the owner of a gift certificate valued at \$100 purchases a \$25 item, tax computed on \$25 must be collected by the retailer and remitted to the Tax Administrator.

43.6 Gifts and Premiums

- A. Tax applies to sales of tangible personal property to persons who make gifts of the property to others, as for example, property:
1. given away for advertising purposes
 2. given away for sample use
 3. awarded as prizes, the winning of which depends upon chance or skill.
- B. Tax does not apply to sales of tangible personal property to be given as a premium, together with tangible personal property sold by the purchaser of the premium. The transaction is regarded as a sale of both articles and the sale of the premium for such purpose is therefore a sale for resale, provided the obtaining of the premium is certain and does not depend upon chance or skill. Tax applies to the entire gross receipts received by the retailer from the purchaser of the goods and the premium, except where a premium, is delivered along with another exempt item, to a purchaser thereof. In such case, tax applies to the gross receipts from the sale of the premium, which will be regarded as the cost of the premium to the retailer, in the absence of any evidence that the retailer is receiving a larger sum. If there is no such evidence, and if the retailer has paid sales tax reimbursement to his or her vendors of the premiums, or use tax to his or her vendors or to the state, measured by the sale price of the premiums to him or her, no further tax is due from him or her.

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