

State of Rhode Island - Division of Taxation

Business Corporation Tax

Notice to Administrator of Sale of Assets

Letters of Good Standing

Regulation CT 12-03

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RULE 1. PURPOSE

The purpose of this regulation is to implement Rhode Island General Law (RIGL) §44-11-29 and 44-11-29.1 that requires a corporation to notify the Tax Administrator if it is selling or transferring a major part in value of its Rhode Island assets other than in the ordinary course of trade and in the regular and usual prosecution of the corporation's business. Filing a Request for a Letter of Good Standing is the required method for this notification. In addition, even though there is no requirement for notification by a Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Limited Partnership (LP) that has not made an election to be taxed as a corporation for federal tax purposes, this regulation shall cover such Letter of Good Standing requests.

RULE 2. AUTHORITY

These rules and regulations are promulgated pursuant to RIGL §44-1-4. The rules and regulations have been prepared in accordance with the requirements of RIGL §42-35-1 et seq. of the Rhode Island Administrative Procedures Act.

RULE 3. APPLICATION

These rules and regulations shall be liberally construed so as to permit the Division of Taxation to effectuate the purpose of RIGL §44-11-29 and §44-11-29.1 and other applicable state laws and regulations.

RULE 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.

RULE 5. REQUIREMENTS

- A. RIGL § 44-11-29 requires every corporation selling or transferring a major part in value of its assets other than in the ordinary course of trade and in the regular and usual prosecution of the corporation'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 shall include the price, terms and conditions, and the character and location of the assets. This notice shall accompany a request for a Letter of Good Standing with the appropriate fee as required in RIGL §44-11-29.1.
- B. Whenever a corporation makes such a sale or transfer, the tax imposed by RIGL chapters 44-11 and 44-12 becomes due and payable at the time the Tax Administrator is notified, or if he/she is not so notified, at the time when he/she should have been notified.
- C. If a corporation fails to comply with the notification and payment provisions, the sale or transfer shall be fraudulent and void as against the state.
- D. A Request for a Letter of Good Standing shall require a tentative tax return through the date of sale or transfer, along with any past due returns and payments. (A tentative return shall present as if the tax year had ended as of the date of the sale or transfer and includes said sale or transfer).
 - (1) Any entity treated or that has elected to be treated as a corporation shall provide a copy of a tentative federal Form 1120 including Form 4797 and Schedule D, if applicable, and a tentative Form RI-1120C.
 - (2) For any entity that has not elected to be treated as a corporation for federal tax purposes, a schedule of the shareholders/members/partners shall be attached to the

tentative tax return through the date of sale or transfer. The schedule shall include the shareholder's/member's/partner's name, address, identification number and allocated gain/loss. If nonresident shareholders/members/partners are involved, there are additional requirements discussed in Rule 6.

(a) Subchapter S corporations shall attach to Form RI-1120S a tentative federal Form 1120S including the Form 4797 and/or Schedule D (if applicable).

(b) LLCs, LLPs and LPs not treated as corporations for federal tax purposes shall attach to Form RI-1065 ¹ a tentative federal Form 1065, federal Schedule C, federal Schedule E and/or federal Schedule F (whichever is applicable) along with federal Form 4797 and/or federal Schedule D (if applicable).

- E. When the corporation complies with the provisions of RIGL § 44-11-29, including the filing of required returns and the payment of any and all tax due, the Tax Administrator shall issue a Letter of Good Standing. Until such time as the returns are filed, the taxes are paid and the Letter of Good Standing has been issued, the sale or transfer shall be fraudulent and void as against the state.
- F. 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.

**RULE 6. ENTITIES WITH NONRESIDENT
SHAREHOLDERS/MEMBERS/PARTNERS**

In addition to the requirements in Rule 5, any entity with nonresident shareholders/members/partners (S-Corps, LLCs, LLPs and LPs) would be required to file a tentative Form RI-1096PT with any payment that may be due. The tentative Form RI-1096PT shall not include Form RI-1099PTs.

RULE 7. EFFECTIVE DATE

This Regulation shall take effect July 1, 2012 and shall amend and supercede CT 03-03 promulgated March 1, 2003.

David M. Sullivan
TAX ADMINISTRATOR

¹ For taxable years beginning on or after January 1, 2012, LLCs are required to file Form RI-1065. Prior to January 1, 2012, LLCs shall file Form RI-1120S.