State of Rhode Island and Providence Plantations

Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

Pursuant to the provisions of section 42-35-3(a)(1) of the General Laws of Rhode Island and in accordance with the Administrative Procedures Act (Chapter 42-35 of the General Laws), the Division of Taxation hereby gives notice of its intent to repeal a regulation regarding Business Corporation – Net Worth Tax.

The purpose of this rule making is to repeal regulation CT 88-09, Business Corporation – Net Worth Tax, also identified by ERLID Number 519, in light of Rhode Island Public Law 1988, Chapter 12, section 2, which provides for the repeal of Business Corporation Net Worth Tax. The repeal of this regulation shall take effect November 1, 2014.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.tax.ri.gov, in person at The Rhode Island Division of Taxation, or requested by e-mail at michael.canole@tax.ri.gov or by calling Michael Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Wednesday, September 17, 2014 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail at michael.canole@tax.ri.gov. A public hearing to consider the proposed regulation shall be held on Wednesday, September 17, 2014 at 9:30 a. m. at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing or by calling (401) 574-8729.

Rhode Island Department of Revenue

Division of Taxation

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1).

Rules and Regulation regarding Business Corporation Tax – Net Worth Tax.

The purpose of this rule making is to repeal regulation CT 88-09, Business Corporation – Net Worth Tax, also identified by ERLID Number 519, in light of Rhode Island Public Law 1988, Chapter 12, section 2, which provides for the repeal of Business Corporation Net Worth Tax. The repeal of this regulation shall take effect November 1, 2014.

~~State of Rhode Island - Division of Taxation~~
~~Business Corporation Tax~~

~~Regulation CT 88-09~~

~~Net Worth Tax~~

~~NOTE: The "Net Worth Tax" was repealed effective July 1, 1988, consequently this regulation applies to any corporation that has a fiscal year ending June 30, 1988 or prior. All years subsequent to June 30, 1988 are not required to pay a net worth tax.~~

~~I. Net Worth~~

~~(a) As used in chapter 44-11, net worth relates, in general to the stockholders' equity determined in accordance with generally accepted accounting principles, subject to adjustments. Among those adjustments is the inclusion of all indebtedness owing directly or indirectly to the stockholders holding 10% or more of the aggregate number of outstanding shares of the taxpayer's capital stock of all classes, except to the extent that this indebtedness constitutes "qualified intercompany indebtedness". Net worth is also subject to the authority of the tax administrator to make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets carried on the books of the corporation in accordance with generally accepted accounting principles.~~

~~(b) "Net Worth" shall mean the aggregate of the values disclosed by the books of the corporation for (1) issued and outstanding capital stock; (2) paid in or capital surplus; (3) retained earnings and undivided profits; (4) surplus reserves which can reasonably be expected to accrue to the holders or owners of equitable shares, not including reasonable valuation reserves, such as reserves for depreciation or obsolescence or depletion, and (5) the amount of all indebtedness owing directly or indirectly to holders of 10% or more of the aggregate number of outstanding shares of the taxpayer's capital stock of all classes as of the close of the taxable year, except to the extent such indebtedness constitutes qualified intercompany indebtedness. The foregoing aggregate of values shall be reduced by 50% of the amount disclosed by the books of the corporation for investment in the capital stock of one or more subsidiaries, which investment is defined as ownership (1) of at least 80% of the total combined voting power of classes of stock of the subsidiary entitled to vote and (2) of at least 80% of each class, if any, of nonvoting stock. In the case of investment in an entity organized under the laws of a foreign country, the foregoing requisite degree of ownership shall effect a like reduction of such investment from net worth of a taxpayer, if the alien entity is considered a corporation for any purpose under the United States Federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed-paid foreign tax credits or for the purpose of status as a controlled foreign corporation. In calculating the net worth of a taxpayer entitled to a reduction for investment in subsidiaries, the amount of liabilities of the vendor shall be reduced by such proportion of the liabilities as corresponds to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.~~

~~If, in the opinion of the Tax Administrator, the corporation's books do not disclose fair valuations, the Tax Administrator may make a reasonable determination of the net worth which, in his opinion, would reflect the fair value of the assets, exclusive of subsidiary investments as defined aforesaid, carried on books of the corporation, in accordance with generally accepted accounting principles, and such determination shall be used as net worth for the purpose of this chapter.~~

~~II. Indebtedness Includible in Net Worth~~

~~(a) "Indebtedness owing directly and indirectly" includes, but is not limited to, all indebtedness owing to any stockholder or shareholder and to members of his or her immediate family, where a stockholder and members of his or her immediate family, together or in the aggregate, own or beneficially own 10% or more of the aggregate number of outstanding shares of the taxpayer's capital stock of all classes.~~

~~(b) The "immediate family" of an individual shall include the collective body of persons, consisting of parents, children and other relatives, living together in one household in a permanent and domestic character under one head or management.~~

~~(c) In the case of a creditor, corporate or otherwise (other than an individual), including an estate, trust or other entity, indebtedness, if not includible by reason of direct ownership of taxpayer's stock by such creditor, shall be includible if both the taxpayer and the creditor are substantially owned or controlled directly or indirectly by the same interests; or where the creditor is controlled, directly or indirectly by the same interests; or where the creditor is controlled (directly or indirectly) by interests, including members of the immediate family of stockholders, which in the aggregate hold 10% or more in number of the taxpayer's outstanding shares of capital stock of all classes. For the purpose of determining the degree of stock ownership of a corporate creditor, all the shares of the taxpayer's capital stock held by all corporations bearing the relationship of parent, subsidiary or affiliate of the corporate creditor, shall be aggregated.~~

~~(d) Among other factors as whether a debtor-creditor relationship exists are:~~

~~(1) whether there is a written, unconditional promise to pay on demand or on a specified date a sum certain in money in return for an adequate consideration in money or money's worth, and to pay a fixed rate of interest;~~

~~(2) whether there is subordination to or preference over any indebtedness of the corporation;~~

~~(3) the ratio of debt to equity of the corporation;~~

~~(4) whether there is convertibility into the stock of the corporation; and~~

~~(5) the relationship between holdings of stock in the corporation and holdings of the interest in question.~~

~~(e) "Indebtedness" is not limited in scope by the duration thereof and therefore includes all debts due, whether money, goods or services, including, inter alia, accruals of salaries, bonuses and dividends, as well as interest accrued on all indebtedness.~~

~~The taxpayer may offset against includible indebtedness owed to any creditor the amount of any receivable due from each such creditor.~~

~~III. Qualified Intercompany Indebtedness~~

~~"Qualified intercompany indebtedness" means amounts owing to an eighty percent (80%) or more shareholder to the extent of such shareholder's indebtedness. The amount of qualified intercompany indebtedness for the accounting year shall be the lesser of (1) all indebtedness owing directly or indirectly to such shareholder or (2) the total indebtedness of such shareholder multiplied by a fraction the numerator of which is the amount of indebtedness owing from the corporation to such shareholder and the denominator of which is the amount owing from all eighty percent (80%) or more owned corporations to the same shareholder.~~

~~IV. Governmental Obligations and Securities~~

~~In the determination of net worth, the value of governmental obligations and securities, including State and Municipal governmental obligations and securities is includible.~~

~~V. Treasury Stock~~

~~In the determination of net worth, the value of treasury stock will be included where treasury stock is held or treated by the taxpayer as an asset on its books or in any other manner.~~

~~Treasury stock meeting ALL the following requirements will not be includible in net worth:~~

~~(a) The shares of its own stock held as treasury stock by taxpayer were acquired for general corporate purposes, but were not acquired for the specific purpose of satisfying any particular corporate obligation or liability of taxpayer; and~~

~~(b) said shares are not committed or dedicated to or earmarked for the satisfaction of any particular corporate obligation or liability of taxpayer; and~~

~~(c) the taxpayer does not receive dividends from or vote such shares or reflect them in calculations of earnings per share of stock; and~~

~~(d) the taxpayer does not treat said shares on its books or otherwise as an asset or as outstanding stock, but treats said shares as a deduction from total stockholders' equity.~~

~~Where taxpayer contends that its treasury stock meets the foregoing requirements, a rider so certifying should accompany the return filed.~~

~~VI. Subsidiary Corporations~~

~~(a) Definition of a subsidiary:~~

~~Under section 44-11-16 a subsidiary corporation is a corporation in which ownership of at least 80% of the total combined voting power of all classes of its stock entitled to vote and of at least 80% of each class, if any, of nonvoting stock are owned by another, single corporation. An entity organized under the laws of a foreign country shall be considered a subsidiary under section 44-11-16 of the law, if the foregoing requisite degree of ownership is met and if the entity is considered a corporation for any purpose under the United States Federal income tax laws, such as (but not by way of sole examples) for the purpose of supplying deemed-paid foreign tax credits or for the purpose of status as a controlled foreign corporation.~~

~~(b) Subsidiary deductions from net worth:~~

~~For any subsidiaries meeting the definition of a subsidiary under VI(a) of this regulation, the parent corporation may deduct from its net worth a maximum of 50% of the value disclosed by the books of the parent corporation for the investment in the capital stock of such subsidiaries. In calculating the net worth of a parent corporation entitled to reduction for investment in subsidiaries, the amount of liabilities of the taxpayer shall be reduced by the proportion of the liabilities corresponding to the ratio which the excluded portion of the subsidiary values bears to the total assets of the taxpayer.~~

~~(c) Miscellaneous~~

~~For any subsidiaries meeting the definition VI(a) above, the parent corporation's book value for such subsidiary's stock must be reported, in computing the parent corporation's net worth tax liability under the chapter. No revaluation of the parent corporation's net worth is permitted for the stock of these subsidiaries.~~

~~VII. Adjustment of Net Worth to Period Covered by Return~~

~~If the net worth required to be reported is for a period less than 12 calendar months, the net worth is first determined in the manner set forth in this regulation, then divided by 12 and the result multiplied by the number of calendar months or parts thereof covered by the return under this chapter. A part of a month shall be deemed to be a month.~~

~~However, if, in the opinion of the Tax Administrator, this method does not properly reflect the taxpayer's net worth property apportionable to Rhode Island for the period covered by its Rhode Island return, the Tax Administrator may determine net worth solely on the basis of the taxpayer's net worth during such period.~~

~~VIII. Adjustments to Correct Distortions of Net Worth~~

~~(a) Whenever it shall appear to the Tax Administrator that any taxpayer fails to maintain its records in accordance with generally accepted accounting principles or conducts its business or maintains its records in such manner as either directly or indirectly to distort its true net worth under this chapter or the proportion thereof properly allocable to this state, or whenever any taxpayer maintains a place of business outside this state, or whenever any agreement, understanding or arrangement exists between a taxpayer and any other corporation or person or firm, for the purpose of evading tax under this chapter, or whereby the activity, business, receipts, expenses, assets, liabilities, net income or net worth of the taxpayer are improperly or inaccurately reflected, the Tax Administrator is authorized and empowered, in his discretion and in such manner as he may determine, to adjust and redetermine such items, and to adjust items of gross receipts, tangible or intangible property and payrolls within and without the state and the allocation of net worth or to make any other adjustments in any tax report or tax return as may be necessary to make a fair and reasonable determination of the amount of tax payable under 44-11. The Tax Administrator may require any person or corporation to submit such information under oath or affirmation, or to permit such examination of its books, papers and documents, as may be necessary to enable him to determine the existence, nature or extent of an agreement, understanding or arrangement to which this section relates, whether or not such person or corporation is subject to the tax imposed by this chapter.~~

~~(b) Whenever the Tax Administrator deems it necessary, in order properly to reflect net worth of the taxpayer, he may determine the year or period in which any item of income, deduction, asset or liability shall be included without regard to the method of accounting used by the taxpayer.~~

~~IX. Valuation--Cash or Accrual Basis~~

~~Returns must be reported upon the same basis: cash, accrual, or other--used in taxpayer's Federal income tax return for the same tax year.~~

~~X. Valuation--Reserves~~

~~Reserves for deferred Federal income taxes are not includible in computing net worth for purposes of this chapter.~~

~~XI. Valuation--Adjustments~~

~~When any valuation adjustment is made to any taxpayer's assets, the adjustment shall, in general, be made only for the purpose of determining the net worth tax base and shall not be reflected in the allocation factor.~~

~~XII. Allocation of Net Worth--General~~

~~See Allocation of Income and Net Worth Regulation CT88-04~~

~~XIII. Short Period Returns--Allocation~~

~~In the case of a taxpayer entitled to and electing to allocate less than the full amount of its net worth to Rhode Island, the allocation factors must reflect only the period covered by the short period return in both the numerators and denominators. In this case, the average of the factors shall be applied to net worth only after the net worth has been prorated as indicated in paragraph VII above.~~

~~R. GARY CLARK TAX ADMINISTRATOR~~

~~DATE FILED: December 9, 1988~~

~~EFFECTIVE DATE: December 31, 1988~~

~~THIS REGULATION AMENDS AND SUPERCEDES THE REGULATION ENTITLED "NET WORTH TAX" PROMULGATED JANUARY 20, 1977.~~