

Title 280 – DEPARTMENT OF REVENUE

CHAPTER 20 – DIVISION OF TAXATION

Subchapter 00 – GFENERAL ADMINISTRATION

Part 5 – Procedures in Handling Requests for Issuance of Declaratory Orders

5.1 Purpose

This regulation describes the procedures with which a taxpayer or authorized representative must comply in requesting the issuance of a Declaratory Order.

5.2 Authority

This Regulation is promulgated pursuant to R.I. Gen. Laws §§ 42-35-8 and 44-1-4.

5.3 Declaratory Orders

- A. Based upon a taxpayer's petition filed pursuant to R.I. Gen. Laws § 42-35-8, the Tax Administrator interprets Rhode Island tax law and regulations and applies them to a specific set of facts set forth in the request. The Order issued by the Tax Administrator has precedential value and may be generally relied on by all persons with respect to subsequent like transactions.
- B. General Information Letters –A General Information Letter (commonly referred to as a "Letter Ruling") is unlike a Declaratory Order in that it generally seeks an interpretation of tax law or regulation without applying it to a specific set of facts. A General Information Letter may be issued where it appears that general information only is requested, or where a request for a Declaratory Order does not comply with all the requirements for a Declaratory Order. General Information Letters may not be relied upon by any taxpayer other than the taxpayer who requested the information. General Information Letters are not binding on the Tax Division if there has been a misstatement or omission of material facts or, on a prospective basis, if there has been a change in law or applicable regulations or a decision on point is issued by the Rhode Island or Federal Courts.
- C. Requirements – Each request for a Declaratory Order must contain:
 - 1. the name, address, and registration/identification number of the taxpayer requesting the Declaratory Order. If the taxpayer is a corporation, the state of incorporation;

2. a carefully detailed statement of all relevant facts relating to the transaction. Conferences with a taxpayer requesting an order shall not be allowed;
3. a true copy of all relevant documents bearing on the issue or issues. Relevant facts reflected in documents submitted must be included in the taxpayer's statement and not merely incorporated by reference, and must be accompanied by an analysis of their bearing on the issue(s), specifying the pertinent provisions;
4. a statement whether, to the best of the knowledge of the taxpayer or his/her representative, the identical issue is being considered by the Division of Taxation in connection with an active examination or audit of a tax return already filed;
5. a statement disclosing whether or not an order request on the same or similar issue has been or is being submitted to the Internal Revenue Service or to the taxing jurisdiction of another state;
6. a statement of the Declaratory Order requested by the taxpayer and the taxpayer's argument in support of its request, including relevant authority for such request.

D. A Declaratory Order will not be issued:

1. if the same or a similar issue is before the Tax Division in connection with an audit examination of the same taxpayer for the same or any other prior tax period;
2. in response to inquiries concerning alternative plans of proposed transactions or concerning hypothetical situations;
3. on only part of an integrated transaction.

E. After receiving a request for a Declaratory Order, the Tax Division must:

1. No later than sixty (60) days after receiving a petition, issue a Declaratory Order in response to the petition, decline to issue the Order, or schedule the matter for further consideration.
2. If the Tax Division declines to issue a Declaratory Order, it shall promptly notify the petitioner of its decision. The decision must be in a record and must include a brief statement of the reasons for declining. An agency decision to decline to issue a declaratory order is subject to judicial review for abuse of discretion. An agency failure to act within the applicable time is subject to judicial action under § 42-35-15.

3. If the Tax Division issues a Declaratory Order, the Order must contain the names of all parties to the proceeding, the facts on which it is based, and the reasons for the agency's conclusion. Declaratory Orders are effective only if filed with the Secretary of State. The order has the same status and binding effect as an order issued in a contested case and is subject to judicial review under § 42-35-15.

5.4 Binding Effect of Declaratory Orders

- A. A Declaratory Order represents the position of, and is binding on, the Tax Division with respect to
 1. a particular transaction (and subsequent like transactions) involving the persons identified as interested parties in the request for issuance of the Declaratory Order and
 2. other transactions involving persons other than those identified as interested parties in the request for issuance of the Declaratory Order, but such other persons have the burden of establishing that the facts and circumstances involved in their transactions are substantially the same and are not materially different from the facts and circumstances involved in the transaction on which the Declaratory Order is based.
- B. With respect to the taxpayer to which a Declaratory Order was originally issued or a person identified as an interested party in the request therefor, a Declaratory Ruling is not binding on the Tax Division if:
 1. there has been a misstatement or omission of material facts;
 2. the facts subsequently developed are materially different from the facts on the Declaratory Order was based.
- C. With respect to any other person, a Declaratory Order is not binding on the Tax Division if:
 1. the facts and circumstances involved in such other person's transactions are not substantially the same or are materially different from the facts and circumstances involved in the transaction on which the Declaratory Order is based.
- D. A Declaratory Order is not binding on the Tax Division (on a prospective basis) if:
 1. there has been a change in the applicable law or regulations;
 2. a decision on point is issued by the Rhode Island or Federal courts.
- E. A Declaratory Order found to be in error or not in accord with the current view of the Division of Taxation may be modified or revoked. The revocation or

modification of an order will not be applied retroactively with respect to the taxpayer to whom the order was originally issued or to a taxpayer with respect to subsequent like transactions relying on such order in good faith.

5.5 Effect of Declaratory Orders

- A. Declaratory Orders disposing of petitions have the same status as agency orders in contested cases. In the event that a Declaratory Order is contested, the tax administrator's prior acceptance of a factual presentation for purposes of rendering said order is not a waiver of his/her rights to cross-examine, supplement or rebut the taxpayer's factual recitals set forth in the request for the Declaratory Order.

5.6 Withdrawal of Requests

- A. A taxpayer may withdraw a request for issuance of a Declaratory Order at any time prior to the issuance thereof. The Tax Division will retain all correspondence and documents and may consider them in any subsequent audit examination of such taxpayer.
- B. Taxpayers requesting the issuance of Declaratory Orders must do so on the basis that the text thereof will be open to public inspection, subject to the deletions set forth herein. Taxpayers requesting the issuance of Declaratory Orders waive all copyrights, rights to privacy and similar rights to prevent disclosure of the text thereof, except such rights as are provided herein.
- C. Before making any Declaratory Order available for public inspection, the Tax Division shall exercise care to ensure the deletion of the names, addresses, tax registration numbers or any other means of identifying the taxpayer to whom the Declaratory Order applies.
- D. A request by or for a taxpayer must be signed by the taxpayer or his/her authorized representative. A Power of Attorney (Form RI 2848) may be used with regard to Declaratory Orders requested under this regulation.
 - 1. Requests must be directed to:
TAX ADMINISTRATOR
One Capitol Hill
Providence, RI 02908-5800