

State of Rhode Island and Providence Plantations
Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

RULE IDENTIFIER: ERLID 6850

REGULATION TITLE: Rental and Leases of Tangible Personal Property (Including Motor Vehicles)

TIMETABLE FOR ACTION ON THE PROPOSED RULE:

Public Notice Date: February 13, 2018

End of Comment Period Date: March 16, 2018

Pursuant to the provisions of R.I. Gen. Laws § 42-35-2(a)(1), and in accordance with the Administrative Procedures Act, R.I. Gen. Laws Chapter 42-35, the Division of Taxation hereby gives notice of its intent to repeal a regulation regarding Rental and Leases of Tangible Personal Property (Including Motor Vehicles).

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.Taylor@tax.ri.gov or by calling Michael Taylor at (401) 574-8930.

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) whether the regulation, in and of itself, would have significant economic impact on small businesses. 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 Thursday, March 16, 2018 to Michael Taylor, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8930 or via e-mail at Michael.Taylor@tax.ri.gov.

This rule is not expected to be controversial and shall be submitted as a direct final rule pursuant to R.I. Gen. Laws § 42-35-2.11. The proposed rule takes effect thirty (30) days after publication if no objection is received. If no objection is received, the rule becomes final. If an objection to the rule is received from any person not later than thirty (30) days after publication of the notice of the proposed rule, the proposed rule does not become final.

Rhode Island Department of Revenue

Division of Taxation

Concise summary of all non-technical requirements pursuant to R.I. Gen. Laws § 42-35-2(a)(1) for rules and regulations regarding Rental and Leases of Tangible Personal Property (Including Motor Vehicles).

The purpose of this regulation is repeal the regulation regarding Rental and Leases of Tangible Personal Property (Including Motor Vehicles). **This regulation shall take effect March 16, 2018.**

~~State of Rhode Island—Division of Taxation~~

~~Sales and Use Tax Regulation SU 12—62~~

~~Rentals and Leases of Tangible Personal Property~~

~~(Including Motor Vehicles)~~

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~~RULE 1. PURPOSE:~~

~~This regulation implements Chapters 44-18, 44-18.1, and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Tax Liability and Computation and Sales and Use Tax Enforcement and Collection in regard to rentals and leases of tangible personal property (including motor vehicles).~~

~~RULE 2. AUTHORITY:~~

~~This regulation is promulgated pursuant to RIGL Chapter 44-18, 44-18.1, and 44-19 as amended. These rules have been prepared in accordance with the requirements of RIGL Chapter 44-1-1 et. seq., 44-18.1-1, and 44-19-33.~~

~~RULE 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 RIGL Chapter 44-18, 44-18.1, and 44-19 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 circumstance 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. DEFINITIONS:~~

~~(a) "Lease or Rental" means any transfer of possession or control of tangible personal property including motor vehicles for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.~~

~~(b) Lease or rental includes agreements covering motor vehicles and trailers where the amount of consideration may be increased or decreased by reference to the amount realized upon sale or disposition of the property as defined in 26 USC 770(h)(1).~~

~~(c) "Lease or rental" does not include:~~

~~(1) A transfer of possession or control of property under a security agreement or deferred payment plan that requires the transfer of title upon completion of the required payments;~~

~~(2)~~

~~A transfer of possession or control of property under an agreement that requires the transfer of title upon completion of required payments and payment of an option price that does not exceed the greater of one hundred dollars or one percent of the total required payments;~~

~~(3)~~

~~Providing tangible personal property along with an operator for a fixed or indeterminate period of time. A condition of this exclusion is that the operator is necessary for the equipment to perform as designed. For the purpose of this subsection, an operator must do more than maintain, inspect, or set up the tangible personal property.~~

~~RULE 6. GENERAL SOURCING RULES:~~

~~(a)~~

~~The **retail sale**, excluding lease or rental, of a product shall be sourced as follows:~~

~~(1)~~

~~When the product is received by the purchaser at a business location of the seller, the sale is sourced to that business location.~~

~~(2)~~

~~When the product is not received by the purchaser at a business location of the seller, the sale is sourced to the location where receipt by the purchaser (or the purchaser's donee, designated as such by the purchaser) occurs, including the location indicated by instructions for delivery to the purchaser (or donee), known to the seller.~~

~~(3)~~

~~When subsections (a)(1) and (a)(2) do not apply, the sale is sourced to the location indicated by an address for the purchaser that is available from the business records of the seller that are maintained in the ordinary course of the seller's business when use of this address does not constitute bad faith.~~

~~(4)~~

~~When subsections (a)(1) and (a)(2), and (a)(3) do not apply, the sale is sourced to the location indicated by an address for the purchaser obtained during the consummation of the sale, including the address of a purchaser's payment instrument, if no other address is available, when use of this address does not constitute bad faith.~~

~~(5)~~

~~When subsections (a)(1), (a)(2), (a)(3) and/or (a)(4) do not apply, including when the seller is without sufficient information to apply the previous rules, then the location will be the address (i) from which the tangible personal property was shipped; (ii) or from which the digital good or the computer software delivered electronically was first available for transmission by the seller; or (iii) or from which the service was provided (disregarding for these purposes any location that merely provided the digital transfer of the product sold).~~

~~(b)~~

~~The **lease or rental of tangible personal property**, other than motor vehicles, trailers, semi-trailers or transportation equipment shall be sourced as follows:~~

- ~~(1) For a lease or rental that requires recurring periodic payments, the first periodic payment is sourced in the same manner as a retail sale in accordance with the provisions of subsection (a). Periodic payments made subsequent to the first payment are sourced to the primary location of the property during each period covered by the payment. The primary location of the property shall be the address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. The property location for tax purposes shall not be altered by intermittent use at different locations, such as business property used by employees on business trips and service calls.~~

~~(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced in the same manner as a retail sale in accordance with the provisions of subsection (a).~~

~~(3)~~

~~This subsection does not affect the imposition or computation of sales or use tax on lease or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.~~

~~(e)~~

~~The lease or rental of motor vehicles, trailers or semi-trailers that do not qualify as transportation equipment, as defined in subsection (d), shall be sourced as follows:~~

~~(1) For a lease or rental that requires recurring periodic payments, each periodic payment is sourced to the primary property location. The property location shall be as indicated by an address for the property provided by the lessee that is available to the lessor from its records maintained in the ordinary course of business, when use of this address does not constitute bad faith. This location shall not be altered by intermittent use at different locations.~~

~~(2) For a lease or rental that does not require recurring periodic payments, the payment is sourced the same as a retail sale in accordance with the provisions of subsection (a).~~

~~(3) This subsection does not affect the imposition or computation of sales or use tax on leases or rentals based on a lump sum or accelerated basis, or on the acquisition of property for lease.~~

~~(d)~~

~~The **retail sale**, including lease or rental, of transportation equipment shall be sourced the same as a retail sale in accordance with the provisions of subsection (a), notwithstanding the exclusion of rentals or leases in subsection (a). "Transportation equipment" means any of the following:~~

~~(1) Locomotives and railcars that are utilized for the carriage of persons or property in interstate commerce.~~

~~(2) Trucks and truck tractors with a Gross Vehicle Weight Rating (GVWR) of 10,001 pounds or greater, trailers, semi-trailers, or passenger buses that are:~~

~~(a) Registered through the International Registration Plan; and~~

~~(b) Operated under authority of a carrier authorized and certificated by the U.S. Department of Transportation or another federal authority to engage in the carriage of persons or property in interstate commerce.~~

~~(3)~~

~~Aircraft that are operated by air carriers authorized and certificated by the~~

~~U.S. Department of Transportation or another federal or a foreign authority to engage in the carriage of persons or property in interstate or foreign commerce.~~

~~(4)~~

~~Containers designed for use on and component parts attached or secured on the items set forth in subsection (d)(1)—(d)(3).~~

~~7. TAXATION OF RENTALS AND LEASES OF TANGIBLE PERSONAL PROPERTY (EXCLUDING MOTOR VEHICLES):~~

~~(a) The receipts or proceeds derived from the rental or lease of tangible personal property are subject to sales and use tax.~~

~~(b) The tax shall be computed on the gross amount of the lease or rental without any allowance for service, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee.~~

~~(c) Each period for which a rental or lease charge is made shall be considered a complete sale for the purpose of the imposition, collection and payment of sales or use tax. Sales tax shall be computed based on “General Sourcing Rules” in Rule 6.~~

~~(d) Service providers such as linen and towel suppliers are the taxable consumers of linens, towels, etc., provided to their customers, including out of state customers or exempt organizations, since the essential character of this type of business operation is the furnishing of the recurring service of laundering or cleaning such articles. No tax is due on the payments received from the customer for this service, however the sales or use tax is payable at the time of purchase of the property used in rendering the service.~~

~~(e) The transactions described in Section (c)(1) and (c)(2) of Rule 5 are considered financing arrangements and therefore the periodic payments shall be excluded from sales and use tax regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state or local law. The tangible personal property in such transactions is subject to sales and use tax at the time of purchase.~~

~~RULE 8. TAXATION OF RENTALS AND LEASES OF MOTOR VEHICLES:~~

~~(a). General~~

~~(1) In many motor vehicle leasing transactions, the retail customer negotiates the terms and executes the lease contract with a motor vehicle dealer. In executing the lease, certain "Capitalization Cost Reductions" such as cash down payments, are factored into the lease as they reduce the amount of the monthly payments due under the term of the lease. These Capitalization Cost Reductions are part of the lease charges and are subject to tax. Other charges, such as acquisition fees, origination fees, registration and title fees are also subject to tax under a lease. Motor vehicle excise taxes are considered gross receipts and are subject to sales and use tax under a lease.~~

~~(2) The dealer, acting on behalf of the leasing company, generally collects the first month's lease payment and the leasing company subsequently collects the balance of the lease payments due under the contract. The leasing company is responsible for collecting and remitting the tax on all lease charges including the initial charges collected by the dealer. If the dealer remits the tax it collects directly to the Division of Taxation and such collection or remittance is improper, the leasing company remains responsible for the remittance of the proper amount of the tax due.~~

~~(b) Trade-ins: When leasing a private passenger automobile for use in this state, the amount of the trade-in allowance of a private passenger automobile given in trade to the dealer towards the lease of a private passenger automobile is excluded from the tax base.~~

~~(c) Sourcing Rule for Rentals and Leases of Motor Vehicles: The rentals and leases of motor vehicles will be sourced in accordance with Rule 6(c).~~

~~RULE 9. ELECTION TO PAY SALES OR USE TAX:~~

~~(a) A person engaged in the renting or leasing of tangible personal property may elect to pay the tax as measured by the cost of the property upon acquisition. Such election shall be exercised by the payment of the sales tax to the seller or by filing the required use tax return on or before the due date. If the lessor elects to pay the tax as measured by the cost of the property upon acquisition, then the lessor, in this instance, is not a retailer and gross receipts paid under the lease are not subject to sales and use tax.~~

~~(b)~~

~~If a lessor does not make the election as provided in subsection (a) above, the lessor shall be deemed to be a retailer. The lessor is then required to obtain a sales tax permit and collect and remit sales tax in accordance with Rule 7 or Rule~~

~~8, whichever is applicable. Such permittee shall provide the supplier of the tangible personal property with a resale certificate at the time of purchase.~~

~~(e)~~

~~Payment of sales or use tax by a contractor or other lessor on equipment purchased for his /her own use and so used does not exempt a subsequent rental or lease of the equipment from the sales tax.~~

~~(d)~~

~~If the sole use of the property by a retailer, other than retention, demonstration or display in the regular course of business is the rental or lease of the property while holding it for sale, the retailer may elect to pay the use tax as measured by the cost of the property to the retailer. Such election shall be exercised by reporting and paying the use tax on the sales tax return for the month in which the property is first so rented or leased. Upon the subsequent sale of such property, the person making the sale shall include the full amount of the selling price in his or her gross receipts and shall pay the sales tax thereon.~~

~~(e)~~

~~If a lessor of tangible personal property dissolves, reorganizes or merges with another company and the transfer of tangible personal property is not subject to tax pursuant to RIGL 44-18-20(d)(2), the transferee is subject to the same rights and liabilities as the transferor with regard to the property transferred as if the transfer had not occurred.~~

~~**RULE 10. PARTS PURCHASED BY LESSORS:**~~

~~The sales and use tax does not apply to parts or accessories purchased by lessors of tangible personal property for installation therein or thereon for the purpose of keeping such rented or leased property in usable condition, provided the sales tax is collected on the entire rental or lease charges paid by the lessees of such property.~~

~~**RULE 11. MANUFACTURER AS A LESSOR:**~~

~~When tangible personal property is leased or rented by the manufacturers of the tangible personal property and the manufacturer elects to pay on the cost basis, the cost of the property to the manufacture will be the total manufactured cost consisting of materials, labor and overhead and any other costs capitalized for purposes of depreciation or amortization.~~

~~**RULE 12. EFFECTIVE DATE:**~~

~~This regulation shall take effect July 1, 2012 and shall amend and supercede regulation SU-09-62 promulgated January 1, 2010.~~

~~DAVID M. SULLIVAN~~

~~TAX ADMINISTRATOR~~