

State Of Rhode Island – Division Of Taxation

PROCEDURES IN HANDLING REQUESTS FOR ISSUANCE OF DECLARATORY RULINGS

Regulation DR 03-01

This regulation describes the procedures with which a taxpayer or authorized representative must comply in requesting the issuance of a Declaratory Ruling pursuant to RIGL 42-35-8.

Declaratory Rulings – Based upon a taxpayer’s petition filed pursuant to RIGL 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 Ruling issued by the Tax Administrator has precedential value and may be generally relied on by all persons with respect to subsequent like transactions.

General Information Letters – A General Informational Letter, (commonly referred to as a “Letter Ruling”) is unlike a Declaratory Ruling in that it generally seeks an interpretation of tax law or regulation without applying it to a specific set of facts. A General Informational Letter may be issued where it appears that general information only is requested, or where a request for a Declaratory Ruling does not comply with all the requirements for a Declaratory Ruling. General Informational Letters may not be relied upon by any taxpayer other than the taxpayer who requested the information. General Informational 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.

Requirements – Each request for a Declaratory Ruling must contain:

1. the name, address, registration/identification number of the taxpayer requesting the Declaratory Ruling. 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 a ruling 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 a ruling 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 Ruling requested by the taxpayer and the taxpayer's argument in support of its request, including relevant authority for such request.

A Declaratory Ruling 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.

Binding Effect of Declaratory Rulings:

A Declaratory Ruling 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 Ruling and (2) other transactions involving persons other than those identified as interested parties in the request for issuance of the Declaratory Ruling, 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 Ruling is based.

With respect to the taxpayer to which a Declaratory Ruling 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 which the Declaratory Ruling was based.

With respect to any other person, a Declaratory Ruling 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 Ruling is based.

A Declaratory Ruling 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.

A Declaratory Ruling 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 a ruling will not be applied retroactively with respect to the taxpayer to whom the ruling was originally issued or to a taxpayer with respect to subsequent like transactions relying on such ruling in good faith.

Effect of Declaratory Rulings:

Declaratory Rulings disposing of petitions have the same status as agency orders in contested cases. In the event that a Declaratory Ruling is contested, the tax administrator's prior acceptance of a factual presentation for purposes of rendering said ruling 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 Ruling.

Withdrawal of Requests:

A taxpayer may withdraw a request for issuance of a Declaratory Ruling 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.

Disclosure of Declaratory Rulings:

Taxpayers requesting the issuance of Declaratory Rulings 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 Rulings waive all copyrights, rights to privacy and similar rights to prevent disclosure of the text thereof, except such rights as are provided herein.

Before making any Declaratory Ruling 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 Ruling applies.

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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 Rulings requested under this regulation.

Requests must be directed to: TAX ADMINISTRATOR
One Capitol Hill
Providence, RI 02908-5800

R. GARY CLARK
TAX ADMINISTRATOR

EFFECTIVE: JANUARY 1, 2003

THIS REGULATION AMENDS AND SUPERCEDES REGULATION DR 94-01
PROMULGATED JANUARY 1, 1994.