

State Of Rhode Island – Division Of Taxation

Business Corporation Tax

Regulation CT 03-03

Notice to Administrator of Sale of Assets

Letters of Good Standing

Purpose. The purpose of this regulation is to carry out the statutory requirements contained in Section 44-11-29, and any other statutory provision requiring the need for a letter of good standing. This regulation also provides special filing requirements for an S corporation that is not subject to federal tax under subchapter S. In addition, even though there is no requirement to issue a letter of good standing for a limited liability company taxed as a partnership, this regulation will cover such letter of good standing requests.

Section 44-11-29 of the Rhode Island General Laws requires every corporation selling or transferring a major part in value of its assets (real or tangible property) otherwise 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 must include the price, terms and conditions, and the character and location of the assets.

Further, whenever a corporation makes such a sale or transfer, the tax imposed by chapter 44-11 becomes due and payable at the time the Tax Administrator is notified, or, if he is not so notified, at the time when he should have been notified.

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.

A request for a Letter of Good Standing will require a final short period RI 1120 through the date of sale or transfer.

A C corporation and S corporation subject to corporate level federal tax must provide a copy of the Federal 1120 including the Form 4797 and Schedule D, if applicable, along with the final short period RI 1120.

For S corporations not subject to corporate level federal tax, a schedule of the corporate shareholders must be attached to the final short period RI 1120 through the date of sale or transfer (other than a merger) from beginning of tax year to date of sale. The schedule must include the shareholder's name, address, social security number and allocated gain. In addition, if any shareholder of the corporation is a nonresident during any part of the corporation's short period, such taxpayer shall execute and forward to the corporation, before the due date of the short period Rhode Island corporate return an agreement (Form RI 1120 Schedule SN) which states that he/she will file a Rhode Island personal income tax return and pay income tax on all

income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's Rhode Island short period return.

In the event that the nonresident shareholder's executed agreement is not attached to the Rhode Island short period return, the corporation shall within three days of the sale or transfer of the assets transmit to the Tax Administrator a portion of the share of the corporation's taxable income which was derived from or attributable to this state, which portion shall be computed at the rate set forth in paragraph 44-11-2(1), (or other applicable sections) of the nonresident shareholder's share of the corporation's income which was derived from or attributable to sources within this state.

In addition, in the event the agreement set forth above is attached to the corporate return, and thereafter such nonresident shareholder fails to file a timely personal income tax return, then within thirty (30) days of the date of the notice by the Tax Administrator to the corporation, the corporation shall remit to the Tax Administrator a portion of the share of the corporation's taxable income which was derived from or attributable to this state, which portion shall be computed at the rate set forth in paragraph 44-11-2(1), (or other applicable sections) of the nonresident shareholder's share of the corporation's income which was derived from or attributable to sources within this state.

These schedules will take the place of attaching the federal form 1120S and the related schedules as long as the corporation is not subject to tax at the federal level or it is not engaging in a merger. If it is, the corporation must attach Schedule S along with the federal return and the applicable schedules to the short period return.

Remittance by the corporation does not relieve the nonresident from filing his/her Rhode Island personal income tax return. Corporations making payments on behalf of individual, nonresident shareholders must do so using a separate RI 1040ES form and check for each taxpayer for whom payment is being made. When the nonresident does file his/her return, the remittance submitted by the corporation will be allowed as a credit against his/her Rhode Island income tax liability.

Example 1, calendar year S corporation sells a major part of the value of its Rhode Island assets on April 1, 2002. As a condition of the sale, the buyer requires the S corporation to obtain a letter of good standing from the Rhode Island Division of Taxation. The S corporation has two shareholders one of which is a nonresident of Rhode Island. The gain on the sale of the assets is \$100,000. The S corporation is not subject to federal income taxes at the entity level.

The S corporation completes the RI 1120 for the period January 1, 2002 through April 1, 2002. Attached to the short period return is a schedule as follows:

NAME	ADDRESS	SOCIAL SECURITY NUMBER	ALLOCATED GAIN
Joe Jones	125 My Way Your Town, RI	123-45-6789	\$ 50,000.00
Beckie Smith	521 Your Way My Town, CT	978-65-4321	\$ 50,000.00
TOTAL			\$100,000.00

Also attached to the RI 1120 is a Schedule SN signed by Beckie Smith where she agrees to file a Rhode Island personal income tax return and pay income tax on the gain derived from sources in Rhode Island.

In this case, the S corporation would be required to pay the minimum tax imposed by Section 44-11-2(e) of \$250.

Example 2, same facts as example 1 except the Schedule SN is not attached to the RI 1120. The corporation shall within three days of the sale or transfer of the assets transmit to the Tax Administrator a portion of the share of the corporation's taxable income in an amount equal to the rate set forth in paragraph 44-11-2(1) times the nonresident's share of the corporation's income attributable to Rhode Island sources. In this case, the amount would be \$4,500 (\$50,000 times 9%).

When the corporation complies with the provisions of Section 44-11-29, including the filing of any required returns and the payment of tax due, the Tax Administrator shall issue a letter of good standing to the corporation. Until such time as the returns are filed, the taxes are paid and the letter of good standing has been issued, the property sold or transferred shall be subject to the claims of the Tax Administrator for taxes imposed against the transferor of the property under Chapter 44-11.

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.

When requesting a letter of good standing, RI Form LGS-1 should be used.

**R. GARY CLARK
TAX ADMINISTRATOR**

EFFECTIVE: MARCH 1, 2003

THIS REGULATION AMENDS AND SUPERCEDES REGULATION CT 88-03
PROMULGATED DECEMBER 31, 1988.