

IMPORTANT NOTICE

2004 LEGISLATION REGARDING BUSINESS CORPORATION TAX AND BUSINESS TAX CREDITS PASSED BY GENERAL ASSEMBLY

Legislation passed increasing the minimum tax from \$250.00 to \$500.00 beginning with years starting 1/1/04 and thereafter in accordance with Chapter 44-11-2(e). The franchise tax has also been increased from a minimum of \$250.00 to \$500.00 starting with years beginning on or after 1/1/04 in accordance with Chapter 44-12-1. This is important to note since any requests for Letter of Good Standing for purposes of dissolution, withdrawal, merger or major sale of assets filed after July 31, 2004 where a short period return is required will necessitate the payment of a min/franchise tax of \$500.00 for years starting 1/1/04 and thereafter. When the actual final return is filed at a later date you may take credit for any advance payment of \$500.00 that you make for Letter of Good Standing purposes.

Legislation passed reducing the amount a qualified business in an enterprise zone is allowed to take as a wage credit for years ending on or after 1/1/04 from \$10,000 to \$2,500 for those employees only working in the zone and from \$15,000 to \$5,000 for those employees both working and living in the zone. Any unused enterprise zone credits carried forward from years ending prior to 1/1/04 will still be allowed as a credit for the following three tax years as long as there is sufficient tax to be offset and the employer maintains his level of employment as last certified in accordance with Chapter 42-64.3-6(6).

Legislation passed requiring Pass-Through Entities such as "s" corporations, general partnerships, limited partnerships, limited liability partnerships, trust, or limited liability companies that are not taxed as corporations for federal tax purposes to withhold from the member's share of income of the entity which is derived from or attributable to sources within this state distributed to each nonresident member and pay the withheld amount to the Tax Division at either the highest individual rate or nine percent (9%) for corporations. A pass through entity is not required to withhold tax for a nonresident member if:

1. the member has a pro rata or distributive share of income from the pass through entity from doing business in this state of less than \$1,000 per annual accounting period.
2. the tax administrator has determined by regulation, ruling or instruction that the member's income is not subject to withholding, or
3. the member elects to have the tax due paid as part of a composite return filed by the pass-through entity, or
4. the entity is a publicly traded partnership and defined by section 7704(b) of the Internal Revenue Code that is treated as a partnership for the purposes of the Internal Revenue Code and that has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the tax administrator of each unit holder with an income in this state in excess of \$500.

Regulations and forms dealing with pass-through entities and their requirements for withholding of tax for nonresident members will be completed as soon as possible, but certainly in time for the 2005 tax filing season as it relates to the 2004 tax year.

Questions on the above legislative changes should be addressed to the Corporation Tax Section at (401) 222-1120 or the Personal Income Tax Section at (401) 222-3911.

GENERAL INSTRUCTIONS FORM RI-1120C AND 1120S

1. WHO MUST FILE:

Domestic and Foreign Corporations: Every business corporation, joint stock company or association exercising corporation functions or otherwise doing business in this state is required to file an annual tax return and is subject to the income tax (minimum \$500.00). Domestic corporations and foreign corporations qualified to do business in this state are liable to the franchise tax as provided in 44-12 of the General Laws of 1956, as amended, if it exceeds the tax on income.

Under the provisions of chapter 44-12 of the General Laws of 1956, as amended, corporations which are chartered in Rhode Island and foreign corporations qualified to do business in this state which were not engaged in any business activities in Rhode Island during the last taxable year will be subject to lower franchise tax rates (minimum of \$500.00) if tax returns are accompanied by a supplement affidavit certifying the fact of such inactivity.

SUBCHAPTER "S" CORPORATIONS: A small business corporation having an election in effect under subchapter S of The Internal Revenue Code is required to file an annual tax return on Form RI-1120S. Such corporation shall not be subject to the Rhode Island income tax on corporations but is subject to and liable for a franchise tax pursuant to §44-12-1 of the General Laws as last amended (minimum \$500.00), except that such corporation shall be subject to the Rhode Island income tax, to the extent of such income as is subject to federal tax under said subchapter S and in those cases will be required to file Form RI-1120C.

If a subchapter S corporation is taxable for federal purposes it must attach Form RI-1120-Schedule S and compute and pay any tax due at the 9% tax rate.

Legislation passed requiring Pass-Through Entities such as "s" corporations, general partnerships, limited partnerships, limited liability partnerships, trust or limited liability companies that are not taxed as corporations for federal tax purposes to withhold from the member's share of income of the entity which is derived from or attributable to sources within this state distributed to each nonresident member and pay the withheld amount to the tax division at either the highest individual rate or nine percent (9%) for corporations. A pass through entity is not required to withhold tax for a nonresident member if:

1. the member has a pro rata or distributive share of income from the pass through entity from doing business in this state of less than \$1,000 per annual accounting period.
2. the tax administrator has determined by regulation, ruling or instruction that the member's income is not subject to withholding, or
3. the member elects to have the tax due paid as part of a composite return filed by the pass-through entity, or
4. the entity is a publicly traded partnership as defined by section 7704(b) of the Internal Revenue Code that is treated as a partnership for the purposes of the Internal Revenue Code and that has agreed to file an annual information return reporting the name, address, taxpayer identification number and other information requested by the tax administrator of each unit holder with an income in this state in excess of \$500.

"DISC's" (DOMESTIC INTERNATIONAL SALES CORPORATION):

DISC's are afforded similar treatment under the Rhode Island Business Corporation Tax Law as is allowed under the federal income tax law. They are required to file an annual tax return on Form RI-1120C and attaching thereto a complete copy including all schedules of the federal form. DISC's are subject to and liable for a franchise tax pursuant to §44-12-1 of the General Laws as last amended (minimum \$500.00). Any income to shareholders of DISC's is to be treated as it is treated under federal income tax law, as it existed on December 31, 1984.

"FSC's" (FOREIGN SALES CORPORATION)

Qualifying FSC's having a valid election for the entire year are required to file an annual return on Form RI-1120C with a complete copy of all federal schedules. FSC's are subject to and liable for the franchise tax (minimum tax \$500.00) under 44-12. Income to FSC shareholders will be treated as it is treated under federal income tax law of January 1, 1985.

2. WHEN AND WHERE TO FILE:

The Form RI-1120C and RI-1120S are due on or before the fifteenth day of

the third month following the close of the taxable year. Returns must be filed with the State of Rhode Island, Division of Taxation, One Capitol Hill, Suite 9, Providence, RI 02908-5811. A return will be considered timely filed if it is mailed so as to bear a U.S. postmark on or before the applicable due date. When the last day for filing the Form RI-1120C or RI 1120S falls on a Saturday, Sunday, or a Rhode Island legal holiday, the filing shall be considered timely if it is performed on the next succeeding day which is not a Saturday, Sunday or Rhode Island legal holiday.

3. EXTENSION OF TIME FOR FILING:

An automatic six month extension of time for the filing of the required return may be granted provided a Form RI-7004 is filed together with a payment equal to the full amount of tax reasonably estimated to be due for the taxable year based on income, or franchise whichever shall yield the greater tax. **Payment of a minimum amount if a larger amount is due will void the extension.**

4. PAYMENT OF TAX:

The balance of tax shown on the return to be due must be paid in full with the return. Failure to pay the tax on time will subject the taxpayer to an assessment of interest and penalties.

Interest Generally

Any tax not paid when due is subject to interest at the rates of 12% per annum from the time the tax was originally due.

Penalties-Failure to file returns on time

In case of failure to file a return within the time prescribed by law, or within the extension period, there shall be added to the tax 5% of such tax if delinquency is for not more than one month plus an additional 5% for each additional month or fractional part thereof during which such failure continues not exceeding 25% in the aggregate.

The law provides for the imposition of fines up to \$5,000 for failure to file the required returns of filing of false or fraudulent returns.

Penalties-Failure to pay tax on time

In case of failure to pay the tax with the return on or before the date prescribed (determined with regard to any extension of time for payment) there shall be added to the amount shown as tax on such return five-tenths percent (0.5%) of the amount of such tax if the failure is for not more than one month, plus an additional five-tenths percent (0.5%) for each additional month or fractional part thereof during which such failure continues, not exceeding 25% in the aggregate.

5. RATE OF TAX:

Nine percent (9%) of net income apportioned to Rhode Island; or an annual franchise tax on its authorized capital stock at the rate of \$2.50 for each \$10,000.00 or fractional part thereof minimum of \$500.00, whichever amount shall yield the greatest tax.

In the case of corporations having capital stock of no-par value, \$100 per share shall be deemed to be the par value for the purposes of the franchise tax.

6. DECLARATION OF ESTIMATED TAX BY CORPORATIONS:

Every corporation shall file a declaration of its estimated tax for the taxable year if its estimated tax on any basis (income or franchise) for such taxable year can reasonably be expected to exceed \$500. The entire amount of such estimated tax shall constitute the amount of the advance required to be paid. The due dates and amounts of the installments are as follows: The 15th day of the 3rd month of the taxable year (40%) and the 15th day of the 6th month of the taxable year (60%).

Underpayment-Interest on declaration of estimated tax

In case of any underpayment of the estimate by a corporation there shall be added to the tax as the case may be for the taxable year, an amount determined at the rate of 12% per annum upon the amount of the underpayment for the period of the underpayment. "The amount of the underpayment"

shall be the excess of the installment or installments which would be required to be paid if the advance payments were equal to eighty percent (80%) of the tax shown on the return for the taxable year or, if no return was filed eighty percent (80%) of the tax for such year, over the amount, if any, of the installment paid on or before the last date prescribed for payment.

The law provides for the assessment of a penalty of 5% of the tax imposed on such corporations for such taxable year for failure to file required estimated tax payments.

7. CHANGE IN NET INCOME BY FEDERAL GOVERNMENT:

Any change in net income for any prior year directly affects the tax liability to the State of Rhode Island and such changes must be reported to the Tax Administrator within 60 days of final adjustment or determination on Form T-70C.

8. SUPPORTING SCHEDULES:

All schedules are to be firmly attached to back of page 3 of the return. Each schedule must be clearly identified with the item which it supports. Write upon one side of the sheet only, so that schedule may be read without detaching from the return. If space permits, more than one schedule may be placed on a single sheet.

9. CONSOLIDATED RETURNS:

An affiliated group, as defined in regulations promulgated by the Tax Administrator, may file a consolidated return for the taxable year provided that all the corporations which constitute such affiliated group at any time during the period for which the return is made and which are subject to taxation under Chapter 44-11 shall consent to the making of such consolidated return. If the affiliated group includes corporations which are not subject to the Rhode Island Business Corporation Tax, these corporations must be excluded from the Rhode Island affiliated group. In filing a consolidated return separate income statements, balance sheets, and if applicable, apportionment schedules for each corporation joining in the filing, must be filed with the consolidated return.

10. INVESTMENT CREDIT

R.I. Law allows an investment tax credit of 2% of the cost or other basis as used for federal income tax purposes of certain property used by the taxpayer in the production of goods by manufacturing, processing or assembling. The credit allowed is 4% for qualified property placed in service January 1, 1994 through December 31, 1997 and 10% for qualified taxpayers from January 1, 1998 and thereafter. Detailed instructions are available on Form RI 3468 which must accompany any return claiming an investment credit. Forms RI 3468 may be obtained at the R.I. Division of Taxation.

11. RENEWABLE ENERGY SYSTEM CREDIT

An eligible person may claim a credit for a photovoltaic system, solar domestic hot water system, active solar space heating system or wind generation system installed in a dwelling in Rhode Island. The credit for systems claimed in 2004 is 5% of the cost of the system. For additional requirements and information, please contact the Rhode Island Division of Taxation, Taxpayer's Assistance Section.

12. EDUCATIONAL ASSISTANCE AND DEVELOPMENT CREDIT.

A credit is available for 8% of the contribution in excess of \$10,000 made to a R.I. institution of higher education and the contribution is to be for the establishment or maintenance of programs of scientific research or education. "Contributions" include the cost or other basis (for federal income tax purposes) in excess of \$10,000 of tangible personalty excluding sale discounts and sale-gift arrangements concerning the purchase of equipment. Amounts of unused credit may be carried over for 5 years and documentation of the credit requires a written statement from the institution.

13. ADULT EDUCATION TAX CREDIT.

A R.I. employer may claim a credit of 50% of the costs incurred solely and directly for non-worksite or worksite-based adult education programs. The maximum credit per employee under the new provisions is \$300 and the maximum overall credit per taxable year per employer is \$5,000. Amounts of credit not deductible in one tax year may not be carried over to the following year and may not reduce the tax to less than \$500.00.

14. EMPLOYMENT TAX CREDIT

An employer who participates in the bonus program in conjunction with Chapter 40-6.3 of the general laws shall be eligible for a tax credit as set forth in R.I.G.L. section 40-6.3-4. An employer claiming credit must obtain a written certificate from the Director of Human Services that the employer has complied with the provisions of Chapter 40-6.3 and the rules and regulations promulgated thereunder. This credit may not reduce the tax to less than \$500.00. Amounts of unused credit may not be carried over to subsequent years.

15. CHILD DAY-CARE ASSISTANCE AND DEVELOPMENT CREDIT

Effective July 1, 1987, a credit is allowed against the business corporation tax of a taxpayer who pays for or provides child day-care services or that provides real property or dedicates rental space for child day-care services to its employees or to the employees of its commercial tenants.

The child day-care facility must be located in the State of Rhode Island and licensed by the Department of Children and Their Families pursuant to Chapter 42-72.1 of the general laws.

(a) If a taxpayer establishes and/or operates a child day-care facility either alone or in conjunction with one (1) or more other taxpayers, the credit is thirty percent (30%) of the total amount expended during the taxable year if the facility is used primarily by the dependent children of the taxpayers' employees or employees of commercial tenants of the taxpayer during such employee' hours of employment. As used above, the term "amount expended" means the actual sums of money spent, or the cost or other basis for federal tax purposes of real or tangible personal property donated or dedicated to the establishment of a child day-care center. The credit may not reduce the corporation tax to less than \$250.00 and the unused balance of the credit may be carried forward for the next five consecutive taxable years.

(b) If a taxpayer provides rental or lease space for child day-care services, the credit is thirty percent (30%) of the total amount foregone in rent or lease payments. The amount foregone shall be the difference between fair market rental and actual rentals. The credit may not reduce the corporation tax to less than \$500.00 and the unused balance of the credit may be carried forward for the next five consecutive taxable years. A maximum total credit of thirty thousand dollars (\$30,000) shall be allowed a taxpayer who qualifies under (a) or (b) above.

(c) If a taxpayer purchases day-care services, the credit is thirty percent (30%) of the amount expended and is limited to sixty percent (60%) of the actual cost of the day-care services purchased for each child. The total credit is limited to thirty thousand dollars (\$30,000) annually, may not reduce the corporation tax to less than \$500.00 and **the unused balance of the credit may not be carried forward.**

Taxpayers claiming a child day-care assistance and development credit must complete and attach Form RI 2441. Forms and assistance are available at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908-5811.

16. CAPITAL INVESTMENT IN SMALL BUSINESSES

Title 44, Chapter 44-43 of the General Laws provides a deduction for purposes of computing net income under the Rhode Island Business Corporation Tax (Chapter 44-11) for a qualifying investment in a certified venture capital partnership and for credits to entrepreneurs of a qualifying business entity for certain wages paid to employees of such entity.

Corporations claiming deductions for investments in certified venture capital partnerships or entrepreneurial wage credits should contact the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908-5811 for forms and instructions.

17. ENTERPRISE ZONE TAX BENEFITS

The Enterprise Zone Council enacted by 42-64.3-3.1 has created RI enterprise zones. Various tax benefits may be available to taxpayers in the forms of business credits, special modifications, donation credits and interest credits. Taxpayers wishing to use these benefits, should contact the Division of Taxation for details.

