

RHODE ISLAND DIVISION OF TAXATION

RHODE ISLAND TAX NEWS

A NEWSLETTER FOR TAXPAYERS AND PREPARERS

JULY/AUGUST/SEPTEMBER 2015

STATE TAX CHANGES ARE ENACTED

Rhode Island tax laws are changing.

Bills enacted during this year's General Assembly session contain a number of tax changes affecting businesses and individuals.

For example, one of the new laws establishes tax-advantaged savings accounts for the disabled.

Another new law creates a tax break involving Social Security benefits while also increasing the earned income credit.

Yet another law sets out some of the circumstances under which a business must obtain a letter of good standing from the Division of Taxation.

This issue of *Rhode Island*



Photo by Katie O'Hanlon

New Budget: Governor Gina M. Raimondo (seated) joined Rhode Island General Assembly leaders at a ceremony at the State House in June to sign the fiscal 2016 budget bill, which included numerous tax provisions. Among those at the ceremony were (from left) House Speaker Nicholas A. Mattiello, Senator Walter S. Felag Jr., House Finance Committee Chairman Raymond E. Gallison Jr., Senate President M. Teresa Paiva Weed, and Senate Finance Committee Chairman Daniel Da Ponte.

Tax News provides a summary of many of the tax-related measures that were enacted this year. Each sec-

tion in the summary is followed by a House or Senate bill number.

(Please turn to page 2)

TAX CREDITS AIMED AT BOOSTING JOBS

Rhode Island Governor Gina M. Raimondo and General Assembly leaders gathered recently at the State House in Providence for the ceremonial signing of legislation containing a package of tax credits and other incentives that are intended to spur economic develop-

ment and grow jobs.

The credits and incentives are aimed at expanding existing jobs, stimulating the creation of new jobs, attracting new business and industry to the state, stimulating growth in real estate developments, and aiding businesses that are prepared

to invest in and foster job creation in the state. The goals are spelled out in the new statute.

Following is a brief summary of some of the tax-related incentive programs.

(Please turn to page 9)

Inside:

FIGHTING FRAUD

Rhode Island Tax Administrator David M. Sullivan joined IRS officials, software providers, and others at a meeting in Washington D.C., to announce a new collaborative effort to combat identity theft refund fraud and protect taxpayers. (Please see page 8.)

INSIDE THIS ISSUE:

TAX REFUNDS 10

NEW CHIEF 11

NEXT YEAR'S
FILING DEADLINE 11

LEGAL CORNER 12

NEWS IN BRIEF 17

PRACTITIONERS'
CORNER 18

STATE TAX CHANGES ARE ENACTED

(CONTINUED FROM PAGE 1)

Help for disabled

Federal legislation signed into law in December 2014 authorized states to establish "ABLE" programs that are intended to aid the disabled.

Under such a program, people may contribute to a special tax-advantaged account, known as an ABLE account.

Contributions are not deductible, but account earnings are generally tax-deferred; distributions escape federal income tax altogether if used for certain expenses of the account's beneficiary -- including education, housing, transportation, employment training and support, health, prevention and wellness.

A new state law formally adopts the program for Rhode Island purposes. The law specifically says that annual earnings of such accounts will be exempt from Rhode Island personal income tax. The new law suggests that qualified distributions will escape Rhode Island personal income tax.

The new law authorizes the Tax Administrator to adopt rules and regulations to monitor, implement, and administer the Rhode Island personal income tax provisions of the new law regarding ABLE accounts. The



Rhode Island law takes effect on January 1, 2016, or upon adoption of federal regulations, whichever occurs later.

-- H 5564A, S 0465A

Refund offsets

Effective July 1, 2015, the Rhode Island Division of Higher Education Assistance will stand in place of the Rhode Island Higher Education Assistance Authority for purposes of the Division of Taxation's refund offset program.

-- H 5900Aaa

Self-audits

A new law allows the Tax Administrator to enter into a written agreement with a taxpayer authorizing the taxpayer to conduct a managed audit -- a self-audit -- regarding Rhode Island sales and use tax obligations.

A managed audit is similar to a voluntary disclosure agreement. Under the managed audit, a taxpayer comes forward to pay previously undisclosed sales and use tax liabilities; the Tax Administrator does not assess penalties and may waive all or a part of the interest that would otherwise accrue.

The Division of Taxation intends to post in a timely manner a summary of the terms and conditions of the new managed audit pro-

gram, including restrictions.

-- H 5900Aaa

Heating fuel

Effective July 1, 2015, gross receipts from the sale -- and from the storage, use, or other consumption -- of every type of heating fuel are now exempt from Rhode Island's 7 percent sales and use tax. Under prior law, the exemption applied to heating fuel used in the heating of homes and residential premises, and to heating fuel used in the manufacturing process.

Under the new law, the exemption applies to heating fuel in any type of use, including any type of business use.

Thus, effective July 1, 2015, all sales of heating fuels are exempt from sales and use tax. The exemption applies to all heating fuels, including, but not limited to, gas, oil firewood, heat pellets, and propane.

-- H 5900Aaa

Electricity and gas

Effective July 1, 2015, gross receipts from the sale -- and from the storage, use, or other consumption -- of electricity and gas are exempt from the 7 percent

sales and use tax.

Under prior law, the exemption applied only to electricity and gas furnished for domestic use by occupants of residential premises, and to electricity and gas used in the manufacturing process.

Under the new law, the exemption applies to electricity and any type of gas furnished for any type of use, including business use. Thus, effective July 1, 2015, all sales of electricity and gas are exempt from sales and use tax. Every type of electricity and gas is exempt from sales and use tax, no matter how it is used. Thus, for example, gross receipts from the sale -- and from the storage, use, or other consumption -- of natural gas, propane, and other gases are all exempt.

-- H 5900Aaa

Good standing

A new law makes clear some of the circumstances under which a letter of good standing must be obtained from the Division of Taxation.

The new law, which received final passage from the General Assembly and which was signed into law by Governor Gina M. Raimondo on June 17, took effect upon passage.

(Please turn to page 3)

STATE TAX CHANGES ARE ENACTED

(CONTINUED FROM PAGE 2)

The law clarifies that letters of good standing are required for corporate filings with the Secretary of State related to articles of merger, conversions, voluntary dissolutions, articles of dissolution, and application for withdrawal.

The new law also makes clear that a letter of good standing is now required for conversion of a limited partnership to another entity formed or created under the laws of a jurisdiction other than Rhode Island.

A letter of good standing is also required for cancellation of certificates of limited partnerships and for cancellation of registrations for foreign limited partnerships.

The new law also says a letter of good standing must be obtained by a limited liability company for articles of dissolution, cancellation of registration, articles of merger (unless the surviving entity is a domestic entity of record with the Secretary of State), reinstatement of certificate of organization/registration, and certificate of conversion to a non-Rhode Island entity.

-- S 0828aa; H6035A

Minimum tax

The annual corporate minimum tax will be reduced by 10 percent. The tax, under Rhode Island General Laws (RIGL) § 44-11-2(e), has been set at \$500 since



Meeting at Town Hall: Property owners, real estate professionals, and others turned out in force for a Division of Taxation meeting in June at Narragansett Town Hall regarding taxes on short-term residential rentals. Tax Administrator David M. Sullivan thanked the Town of Narragansett for the use of the meeting room and the Rhode Island Association of Realtors for helping to organize the event.

2004. However, effective for tax years beginning on or after January 1, 2016, the tax will drop to \$450.

The tax reduction applies to entities treated as C corporations for federal income tax purposes, as well as to entities treated as subchapter S corporations under the Internal Revenue Code.

The reduction also will impact the annual charge, also known as an annual filing fee, which applies to limited liability companies, limited partnerships, limited liability partnerships, and other such entities that are treated as pass-through entities for federal income tax purposes. The charge, now \$500, will

drop to \$450 for such pass-through entities for tax years beginning on or after January 1, 2016.

-- H 5900Aaa

Imaging surcharge

Rhode Island formerly levied a 2 percent surcharge related to imaging services. The tax, enacted in 2007, generally applied to net patient revenue of providers of imaging services – including x-rays, ultrasounds, CT scans, and magnetic resonance imaging (MRI). Under the new law, the surcharge is repealed effective July 1, 2015.

-- H 5900Aaa

Surgery centers

Rhode Island formerly levied a 2 percent surcharge on certain health care facilities. The tax, enacted in 2007, applied to free-standing ambulatory surgery centers. It was equal to 2 percent of net patient services revenue. Under the new law, it is repealed effective July 1, 2015.

-- H 5900Aaa

(Please turn to page 4)

STATE TAX CHANGES ARE ENACTED

(CONTINUED FROM PAGE 3)

Cigarette tax

The cigarette excise tax increases by 25 cents a pack of 20 cigarettes, to \$3.75, up from \$3.50, effective August 1, 2015.

In addition, a tax will apply to the cigarette inventory of each cigarette retailer in the state. The tax – known as a “floor tax” – will be measured by the number of cigarettes held by the retailer as of 12:01 a.m. on August 1, 2015. The tax rate will be \$0.0125 per cigarette, or 25 cents per pack of 20 cigarettes.

Similarly, a tax will apply to the inventory of cigarette tax stamps – whether affixed or not – that are held by each distributor as of

 12:01
a.m. on
August 1,
2015.

The floor tax on cigarette tax stamps will be computed at a rate of \$0.0125 per cigarette, or 25 cents per pack of 20 cigarettes.

All wholesalers and retailers of cigarettes must file a return related to the floor tax with the Tax Administrator, and pay the tax due, on or before midnight on August 17, 2015.

-- H 5900Aaa

Smoking bars

Effective July 1, 2015, all smoking bars must demonstrate quarterly, for a period of one year and annually thereafter, that the annual revenue generated from the serving of tobacco products is greater than 50 percent of the total revenue for the establishment, and the serving of food, alcohol or beverages is only incidental to the consumption of such tobacco products.

Every owner of a smoking bar must register no later than January 1 of each year with the Division of Taxation and must provide, at a minimum, the owner's name and address and the name and address of the smoking bar.

-- S 0303aa, H 5224aa

Real estate

The new law extends the real estate conveyance tax to the transfer of a controlling interest in a limited liability company (LLC), corporation, partnership, or other entity that owns real estate in Rhode Island.

The new law says that the conveyance tax applies to the sale or other transfer of an interest in an acquired real estate company.

The new law defines “real estate company” as a corporation, LLC, partnership, or other legal entity which meets certain conditions. An “acquired real estate company” is defined as a real estate company that has undergone

a change of ownership interest.

Notice must be given to the Division of Taxation at least five days before the grant, transfer, assignment, or conveyance of real estate. The notice must list the price, terms,

and conditions of the transfer, as well as the character and location of all of the real estate assets held by the real estate company.

The real estate conveyance tax itself stays the same: \$2.30 for each \$500 (or fractional part thereof) which is paid for the purchase of real estate.

-- H 5900Aaa

Earned income credit

Under current law, eligible taxpayers may claim a federal earned income credit and a Rhode Island earned income credit. (The credit is sometimes referred to as the earned income tax credit, or EITC.)

For tax year 2015, the Rhode Island credit is equal to 10 percent of the federal credit. Also, the Rhode Island credit is fully refundable (in other words, 100 percent of the amount by which the

Rhode Island earned income credit exceeds the taxpayer’s Rhode Island income tax).

Under the new law, effective for tax years beginning on or after January 1, 2016, an eligible taxpayer’s Rhode Island earned income credit will equal 12.5 percent of the federal earned income credit; the Rhode Island credit will continue to be fully refundable.

-- H 5900Aaa

Alcoholic beverages

Legislation enacted on July 3, 2013, temporarily exempted -- from Rhode Island sales and use tax -- wine and spirits sold at liquor stores (“Class A” licensees under RIGL Title 3). The exemption was for a 16-month period – from December 1, 2013, through March 31, 2015.

Legislation enacted on June 19, 2014, extended the exemption for three months, through June 30, 2015. Thus, the exemption remained in place for all of fiscal year 2015. Under the new law, the exemption is now permanent.

Beer and other malt beverages will continue to be subject to the sales and use tax.

-- H 5900Aaa

(Please turn to page 5)

STATE TAX CHANGES ARE ENACTED

(CONTINUED FROM PAGE 4)



Outreach: The Division of Taxation in June 2015 held a seminar at Narragansett Town Hall about the extension of sales and hotel taxes to short-term residential rentals, including vacation homes and beach cottages. Among those leading the seminar were (from left) Susanna Coburn, principal revenue agent in the Excise Tax section, Donald Englert, chief revenue agent in the Excise Tax section, and Patrick Gengarella, chief revenue agent in the Field Audit Services section.

Excise on alcohol

Legislation enacted on July 3, 2013, temporarily increased excise taxes on a number of categories of alcoholic beverages – effective July 1, 2013, through March 31, 2015.

Among the categories affected by the increase were malt beverages (including beer), a number of still wines, and spirits such as whiskey, gin, rum, and brandy containing alcohol measuring more than 30 proof.

Legislation enacted on June 19, 2014, extended the increases through June 30, 2015; the old tax rates were to take effect July 1, 2015. However, under the new law, the increases are now permanent.

-- H 5900Aaa

State acquisitions

Under a new law, no transfer tax or fee can be imposed by a land trust or municipality upon the acquisition of real estate by the State of Rhode Island or any of its political subdivisions.

-- S0706, H 5954

Rental of house

Effective on and after July 1, 2015, someone who rents out an entire house, an entire cottage, an entire condo, an entire apartment, or other such accommodation in its entirety for a period of 30 days or less must register for a sales permit with the Division of Taxation; pay the \$10 annual sales permit fee; charge the 7 percent sales tax and 1 percent local hotel tax, for a total of 8 percent,

on the transaction; and send the tax collected to the Rhode Island Division of Taxation.

If someone rents out an accommodation as described above, but the owner and tenant signed a written contract for the rental before July 1, 2015, for occupancy in 2015, the tax provisions do not apply. No sales or hotel tax applies on that transaction – no matter when the tenants paid or will pay for the rental.

-- H 5900Aaa

Long-term rental

Effective on and after July 1, 2015, if someone rents out an entire house, an entire cottage, an entire condo, an entire apartment, or other such accommodation in its entire-

ty for a period of more than 30 days, or for an entire calendar month or more, and has written documentation, the transaction is exempt from the 7 percent sales tax and 1 percent local hotel tax.

-- H 5900Aaa

Room rental

Starting July 1, 2015, someone who rents out a room for 30 days or less, must register for a sales permit with the Division of Taxation; pay the \$10 annual sales permit fee; charge the 7 percent sales tax, the 5 percent statewide hotel tax, and the 1 percent local hotel tax on the transaction, for a total of 13 percent.

(Please turn to page 6)

STATE TAX CHANGES ARE ENACTED

(CONTINUED FROM PAGE 5)

The taxes also must be sent to the Rhode Island Division of Taxation.

If someone rents out a room as described above, but that person and the tenant signed a written contract for the rental before July 1, 2015, for occupancy in 2015, the tax provisions do not apply. No sales or hotel tax applies on that transaction – no matter when the tenants paid or will pay for the rental.

-- H 5900Aaa

Long-term rental

Starting July 1, 2015, if someone rents out a room for a period of more than 30 days, or for an entire calendar month or more, and has written documentation (such as a signed lease), the transaction is exempt from the sales tax and the hotel taxes.

-- H 5900Aaa

Real estate professional

If a real estate professional (such as an agent or broker) lists a rental on behalf of the property's owners – whether it be a rental of an entire accommodation (such as a vacation home or beach cottage), or simply a single room in a dwelling – and collects the rental amount, the real estate professional must register with the Division of Taxation, pay the \$10 annual sales permit fee, charge and collect the applicable sales and hotel taxes on

the transaction, and remit those taxes to the Division of Taxation. The taxes apply to



the gross receipts of the transaction

– including any commissions and fees.

However, if a damage deposit is required, separately stated, and refundable, the taxes do not apply to the refunded portion of the damage deposit.

-- H 5900Aaa

Burrillville

A new law exempts the Industrial Foundation of Burrillville from Rhode Island's sales and use tax.

Specifically, the law says that gross receipts from the sale, storage, use, and other consumption in this state, of and by the Industrial Foundation of Burrillville, a Rhode Island domestic non-profit corporation, are exempt.

-- S0863, H 5892

Benefits-based contracts

Effective July 1, 2015, the Division of Taxation may enter into contracts with third parties, on a contingent fee basis, under which the vendor provides services involving the collection of

taxes, interest, or penalty – or the reduction of refunds claimed.

The contingent fee will be based on the actual amount of taxes, interest, and/or penalties collected – and/or the amount by which the refund claim is reduced.

The Division of Taxation must publish an annual report showing the number of contracts entered into, the amount collected, and the percentage of the contingency fee arrangement of each contract.

The Division of Taxation may not enter into a contingent fee contract under which the third party directly conducts a field audit.

-- H 5900Aaa

Social Security

For tax years beginning on or after January 1, 2016, a Rhode Island personal income tax break will apply to certain Social Security beneficiaries whose benefits are taxed at the federal level.

In general, someone may be able to reduce his or her Rhode Island income by the amount of Social Security benefits taxed at the federal level.

To be eligible, a taxpayer (or spouse, if married) must have reached full retirement age as defined by Social Security Administration regulation. In addition, the per-

son's federal AGI must be below a certain threshold (generally \$80,000 of federal adjusted gross income for someone who is single, \$100,000 for a married couple filing a joint return).

-- H 5900Aaa

Room reseller

Effective on and after July 1, 2015, the Rhode Island sales and use tax, statewide hotel tax, and local hotel tax, all apply to room resellers, which are sometimes called

room remarketers or travel websites. Room resellers must register with the Division of



Taxation and collect and pay to the state agency all sales and use taxes and statewide and local hotel taxes.

In general, room resellers buy rooms from hotels at a discount and resell them to customers at a markup.

Under the new law, a reseller must charge the occupant of the room Rhode Island's 7 percent sales and use tax, 5 percent statewide hotel tax, and 1 percent local hotel tax, for a total of 13 percent, on the entire sale.

(Please turn to page 7)

STATE TAX CHANGES ARE ENACTED

(CONTINUED FROM PAGE 6)



CPAs: The Division of Taxation held a seminar at the Rhode Island Society of Certified Public Accountants office in Cranston on June 26, 2015. It focused on taxes on short-term residential rentals. Among those presenting (below left) was Donald Englert, chief revenue agent in the Division of Taxation's Excise Tax section.

However, the room reseller may, in effect, claim a credit for the amount it was charged by the hotel in Rhode Island for the 7 percent sales and use tax, 5 percent statewide hotel tax, and 1 percent local hotel tax. (Room resellers are not allowed by statute to present a resale certificate to the hotel.)



Donald W. Englert

-- H 5900Aaa

Travel package

Effective for July 1, 2015, and thereafter, if a travel or tour package offers a "bundled" package – including a rental or fee for room occupancy, and other items, such as airfare and meals – and the travel agent has nexus in Rhode Island and the items in the package are not separately stated on the invoice, the cost of the entire

package will be subject to Rhode Island's 7 percent sales and use tax, 5 percent hotel tax, and 1 percent local hotel tax.

If a travel or tour package offers a "bundled" package from a travel agent with Rhode Island nexus

and the items in the bundle are not separately stated, and a tour guide is actively involved for five or more consecutive days, no tax applies to the bundled package price – regardless of whether the items in the package are stated separately or not.

That is because, with a tour guide actively involved, the package becomes a nontaxable tour operator package. In such a case, the tour packaging company must pay the applicable tax on each sub-item in the package.

-- H 5900Aaa

Hosting platform

A "hosting platform" typically means a website through which a person rents out a room in a house, apartment, or condo – or one's entire dwelling. Under the new law:

- ♦ No city or town in Rhode Island can prohibit a person from offering a room, house, or other such residential unit through a hosting platform;
- ♦ No city or town in Rhode Island can prohibit a hosting platform from providing a person or entity the means to rent, pay for, or otherwise reserve a residential unit; and

- ♦ All hosting platforms that collect money from renters for short-term residential rentals must register with the Division of Taxation, charge and collect sales and hotel taxes on transactions, and remit the tax to the Division of Taxation.

-- H 5900Aaa

Bed and breakfast

Under prior law, a bed and breakfast (B&B) was subject to sales tax and hotel tax if it had three or more rooms. Under the new law, effective for July 1, 2015, the room threshold is reduced so that sales and hotel taxes apply if a B&B has one or more rooms available for rental. The definition of "hotel" includes B&Bs. Therefore, the tax rules that apply to a hotel also apply to a B&B.

Thus, for example, if someone rents a room in a B&B for 35 consecutive days, the first 30 days are subject to the 7 percent sales tax, 5 percent statewide hotel tax, and 1 percent local hotel tax; for the remaining five consecutive days, none of the taxes applies.

-- H 5900Aaa

Health plans

The new law formally authorizes the Department of Administration to establish the Rhode Island health benefit exchange, known as HealthSource RI.

(Please turn to page 8)

TAX ADMINISTRATOR HELPS LEAD FIGHT VS. FRAUD

Rhode Island Tax Administrator David M. Sullivan joined with Internal Revenue Service Commissioner John Koskinen and tax industry representatives in June to announce a sweeping new collaborative effort to combat identity theft refund fraud and protect taxpayers.

The agreement includes identifying new steps to validate taxpayer and tax return information at the time of filing.

The effort will increase information sharing between industry and governments. There will be standardized sharing of suspected identity fraud information and analytics from the tax industry to identify fraud schemes and locate indicators of fraud patterns.

Sullivan, in his role as president of the Federation of Tax Administrators (FTA), represented the states at the meeting,

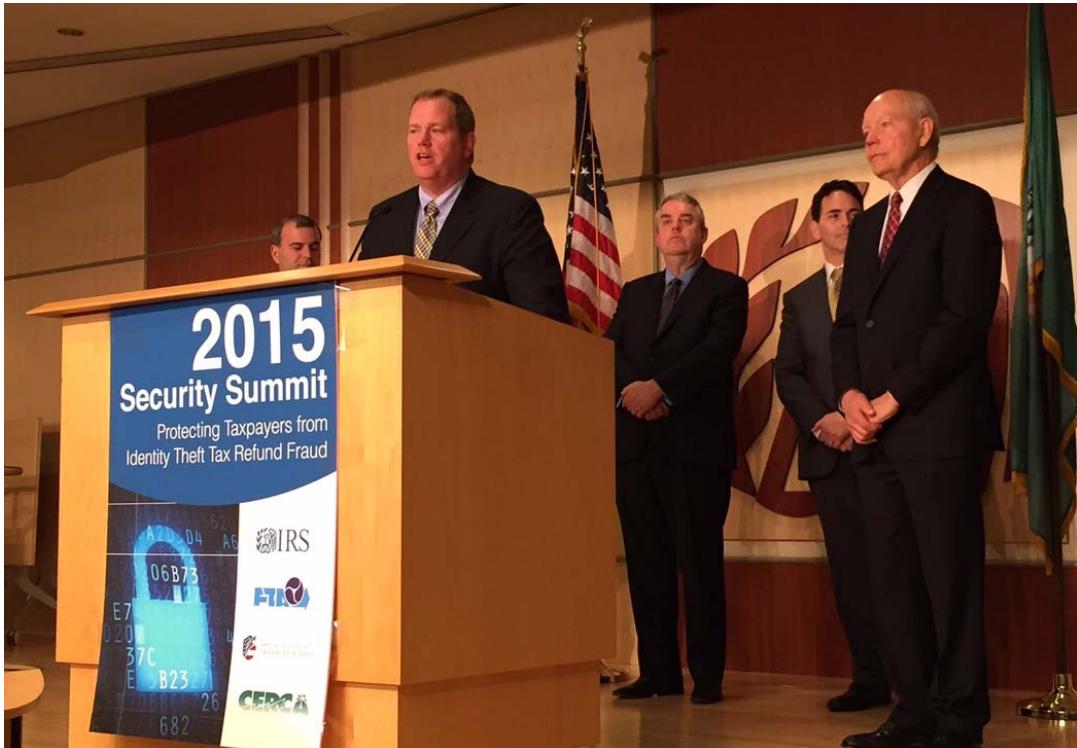


Photo by Verenda Smith / FTA

Fighting Fraud: Rhode Island Tax Administrator David M. Sullivan (at podium) represented the 50 states at a meeting in Washington, D.C., in June with the Internal Revenue Service and software companies to announce a new campaign to combat tax refund fraud involving identity theft. Also attending was IRS Commissioner John Koskinen (above, far right).

which was held in Washington, D.C.

"States share the IRS's concerns — and the industry's concerns — about fighting refund fraud and ID theft fraud," he said. "It is a top priority for states. And I'm

pleased to note that, under this agreement, a number of refund fraud detection and prevention solutions will be ready for the start of the coming filing season," Sullivan said. "We feel strongly that this plan is going to help everyone in the 2016 filing

season -- including states, the IRS, the industry, and taxpayers," Sullivan said.

IRS Commissioner Koskinen said in a statement, "This agreement represents a new era of cooperation and collaboration among the IRS, states and the electronic tax industry that will help combat identity theft and protect taxpayers against tax refund fraud." He added, "We've made tremendous progress, and we will continue these efforts. Taxpayers filing their tax returns next filing season should have a safer and more secure experience."

STATE TAX CHANGES ENACTED

(CONTINUED FROM PAGE 7)

To help pay for the state-operated health insurance exchange, the new law authorizes the Department of Administration to levy an assessment on insurers that offer qualified health plans and qualified dental plans. The assessment will be established in accordance and conformity with the feder-

al government's assessment on insurers that offer products on the federal health benefit exchange.

-- H 5900Aaa

Hospital licensing

The new law sets hospital licensing fee rates on net pa-

tient services revenue. It also extends a discount for hospitals located in Washington County, Rhode Island.

-- H 5900Aaa

TAX CREDITS AIMED AT BOOSTING JOBS

Jobs incentive

Under this program, a qualifying business may receive a tax credit for creating jobs. The base amount of the credit can be up to \$2,500 a year for each new full-time job created. However, the credit can rise to \$7,500 a year if the business meets certain criteria.



The program is administered by the Rhode Island Commerce Corporation. The credit may be used against the corporate income tax, the public service corporation tax, the bank tax, and the insurance tax. It may also be used against the personal income tax by owners or shareholders of pass-through entities.

The program includes a credit carryforward provision; a provision involving credit assignment, transfer, or conveyance; and clawback provisions. Further, the Division of Taxation must stand ready to redeem credits, at the business's request, for up to 90 percent of the value of the credit. Also, the tax rate reduction allowed under the Jobs Development Act is discontinued as of July 1, 2015 (see below).

Anchor institution

Under this program, a tax credit is offered in order to

attract businesses to locate in Rhode Island and give existing Rhode Island businesses an incentive to get their service providers, customers, and supply chain businesses to relocate to Rhode Island.

Administered by the Commerce Corporation, this program provides that a Rhode Island business may

be allowed a credit for having played "a substantial role in the decision of a qualified business to relocate a minimum number of jobs" to Rhode Island, according to the statute. For the years 2015 through 2018, the minimum is 10 employees to Rhode Island. For the years 2019 through 2020, the minimum is 25 employees in Rhode Island.

The tax credit can be used against the corporate income tax, public service corporation tax, the tax on banks, and the tax on insurance companies. The Rhode Island business may – before assigning the credit or transferring it to a third party – file a request with the Division of Taxation to redeem the credit in whole or in part.

Rebuild Rhode Island

In general, this program offers tax credits for certain commercial developments that have a financing gap.

The project cost must be at least \$5 million. Also, the maximum credit is the lesser of 30 percent of the total project cost, or the amount needed to close a project financing gap.

Overall, the maximum credit is \$15 million per project. The credits may be used against the corporate income tax, the public service corporation tax, the tax on banks, and the tax on insurance companies. It also may be used against the personal income tax by owners of pass-through entities.

Credits can be carried forward for a certain number of years. The credits may also be assigned or sold. Upon request of the taxpayer, and subject to annual appropriation, the State will redeem a credit in whole or in part for 90 percent of the value of the tax credit. Projects eligible for the tax credit may, at the discretion of the Commerce Corporation, be exempt from sales and use tax on certain items used in the project, such as furniture, fixtures, equipment, and construction materials.

Wavemaker credits

The tax credits under this program are intended to serve as an incentive to keep educated individuals in the state. The credits will go to qualifying applicants to help them pay their higher education loans. The credits are for application against the Rhode Island per-

sonal income tax. The credit amount cannot exceed the applicant's education loan expenses during a certain period.

The Commerce Corporation will select applicants on a competitive basis to receive tax credits for up to a maximum of:

- ♦ \$1,000 for an associate's degree holder;
- ♦ \$4,000 for a bachelor's degree holder, and
- ♦ \$6,000 for a graduate degree holder.

An applicant must be a full-time employee with a Rhode Island-based employer located in this state. The applicant's employment must be for work in one of more of the following covered fields: life, natural, or environmental sciences; computer, information, or software tech-



nology; advanced mathematics or finance; engineering; industrial design or other commercially related design field; or medicine or medical device technology. At the taxpayer's request, the Division of Taxation must redeem the credits in whole or in part for 100 percent of the value of the credit.

(Please turn to page 10)

(CONTINUED FROM PAGE 1)

TAX CREDITS AIMED AT BOOSTING JOBS (CONTINUED FROM PAGE 9)

Tax increment

The new law requires the Commerce Corporation to establish a tax increment financing program to encourage qualified development projects in qualifying areas. The Division of Taxation must certify the "revenue increment base" – in other words, in general, the amounts of all eligible revenues from sources within certain areas named by the Commerce Corporation.

The Division of Taxation also must pay to a developer the incremental state revenues that are directly realized from projects or businesses operating in a qualifying TIF area from the taxes assessed and collected

under certain chapters of RIGL Title 44 – or realized from venue ticket sales or parking taxes.

Guidance

The Commerce Corporation and the Division of Taxation intend to develop regulations that will provide guidance on various tax credits and incentives under the new law. In addition, the new law requires that the various tax credits and incentives be tracked and reported on by the Commerce Corporation and the Division of Taxation; a number of the reports are to be made public at established intervals. Furthermore, certain new tax credit/incentive programs must be included

in the state's systematic and comprehensive analysis of economic development tax incentives

Jobs Development Act

The tax rate reduction provision allowed under the Jobs Development Act is discontinued as of July 1, 2015. However, any company that has

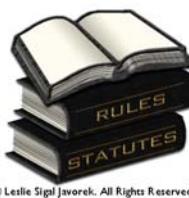
qualified for a rate reduction under

the Jobs Development Act before July 1, 2015, will be allowed to maintain the rate reduction in effect as of June 30, 2015, although no additional rate reduction under

the program will be allowed.

Enterprise zone

No new tax credits under the Rhode Island Distressed Areas Economic Revitalization Act ("enterprise zone" tax credits) will be issued on or after July 1, 2015. However, under a grandfather provision, new credits will be allowed for a business that has received certification from the State Enterprise Zone Council prior to July 1, 2015. Furthermore, unused credits from before July 1, 2015, may continue to be carried forward for a period of three years under certain conditions.



© Leslie Sigal Javorek. All Rights Reserved.

TAX DIVISION ISSUES MORE REFUNDS; AVERAGE DROPS

Tax year	Date	Refund total	Number issued	Average refund
2014	07/20/15	\$238,397,461	445,248	\$535.43
2013	07/21/14	\$237,929,643	438,219	\$542.95

Cumulative figures for tax year 2013 refunds through July 21, 2014, and for tax year 2014 refunds through July 20, 2015. Figures are before interest and offset, and do not include refunds for tax years other than those stated.

The Rhode Island Division of Taxation has issued \$238.4 million in personal income tax refunds so far this year. That is about the same amount that was is-

sued at approximately the same point last year.

However, the Division of Taxation issued more refunds this year compared with the corresponding pe-

riod last year.

So far this year, the agency issued 445,248 refunds, compared with 438,219 last year, a 1.6 percent increase.

As a result, there was a 1.39 percent drop in the average refund amount, to \$535.43. (Please see nearby table for details.)

NEW CHIEF NAMED FOR ESTATE TAX SECTION

Meaghan E. Kelly has been promoted to the rank of chief of the Rhode Island Division of Taxation's Estate Tax section.

An attorney, she formerly served as the Tax Division's senior legal counsel.

"I am delighted to welcome Meaghan as our new chief. She was chosen from among some very strong candidates," said Rhode Island Tax Administrator David M. Sullivan.

"She has performed most professionally while at the Tax Division and has handled a variety of tax cases and tax issues reliably and with top-shelf competence," Sullivan said.

Chicago native

Kelly was born in Chicago, Ill., where she spent her first eight years.

She then moved with her family to Middletown, N.J., when her father was relocated in his job as an agent with the Federal Bureau of Investigation. (He eventually became supervisor of the FBI's



New Chief: Meaghan E. Kelly, Esq., is now chief of the Rhode Island Division of Taxation's Estate Tax section.

Newark, N.J., office before retiring.) She graduated from the University of Delaware in 2002 with a bachelor of arts degree in political

science, with minors in legal studies and Spanish. She then worked as a legal secretary for firms in Delaware and earned a paralegal certificate

from Widener University in 2005.

Roger Williams Law

Kelly later moved to Rhode Island to attend law school at Roger Williams University, from which she graduated in 2009 *cum laude*.

She then worked as an associate at The Delaney Law Firm LLC – working alongside one of her former law professors, William J. Delaney – before she left to resume her formal education, this time at the Boston University School of Law's Graduate Tax program. From there she graduated in 2011 with a Master of Law (LL.M) degree in taxation.

After graduating, she went to work as a contract lawyer for several firms in the Boston area, focusing on litigation involving intellectual property and securities fraud.

She joined the Division of Taxation in December 2012 as senior legal counsel. She assumed her new role as chief of Estate Tax on May 25, 2015.

PERSONAL INCOME TAX FILING DEADLINE: APRIL 18, 2016

The filing deadline for personal income tax returns for the coming filing season will be Monday, April 18, 2016.

Because Emancipation Day falls on Saturday, April 16, in 2016, it will be observed in the District of Columbia

on Friday, April 15, 2016. The Internal Revenue Service considers Emancipation Day a legal holiday for purposes of filing deadlines, so the federal income tax filing deadline will be pushed to the next business day --

Monday, April 18, 2016. Under Rhode Island Division of Taxation Regulation PIT 98-7, Rhode Island typically follows federal rules on filing deadlines. Thus, Rhode Island's deadline will also be April 18, 2016.



For more information:

<http://go.usa.gov/39y3R>

Legal Corner:

RECENT STATE TAX CASES IN SUMMARY

Following is a summary of tax-related cases in which final decisions were made after administrative hearings. By law, decisions are public information but taxpayer information cannot be disclosed.

Historic tax credits

At issue is whether the taxpayer is eligible for historic preservation tax credits.

The Division of Taxation notified the taxpayer in June 2014 that credits were available.

By then, however, the taxpayer's project had already been issued a certificate of occupancy, meaning that it had already been placed in service – making it ineligible for the credits under the Division's regulation for the program.

The taxpayer asserted that, among other things, the Division had failed to define a term in the regulation – so the regulation is void due to vagueness.

However, just because a regulation or statute does not define every term does not make the regulation or statute invalid, Hearing Officer Catherine Warren indicated after a public hearing on the issue.

On March 30, 2015, Warren concluded that the project was placed in service on December 30, 2013, which is



Rhode Island Tax News provides only summaries of some recent tax-case decisions, which are based on specific facts and circumstances.

The summaries are merely informative and provide general information. To determine how state tax laws and regulations apply to your particular circumstances, please consult your tax professional.

before the credits were available. She recommended that the taxpayer's claimed credit be denied. On April 7, 2015, Tax Administrator David M. Sullivan adopted her decision and recommendation.

-- Final Decision and Order No. 2015-08

License revocation

Division of Taxation investigators found a retailer in possession of tobacco products that did not have the required tax stamps – repeat offenses that violated a previous settlement. The Tax Division sought penalties and license revocation. The taxpayer said it could not afford to lose the

license and pay the penalties because business was slow.

On April 3, 2015, Warren determined that the tax and penalties were properly assessed on the retailer's un-stamped cigarettes and other tobacco products and recommended that the license be revoked immediately. On April 17, 2015, Sullivan adopted Warren's decision and recommendation.

-- Final Decision and Order No. 2015-09

Refund claim

At issue is whether a married couple's claim for refund -- filed in May 2014, for tax year 2011 -- was filed on time.

At a hearing, the husband testified that during 2011, his wife had suffered a stroke and his father-in-law – for whom he had been primary caretaker – had died.

A Division of Taxation official testified that the couple's claim for refund was not allowed under either of the refund provisions set forth under Rhode Island General Laws § 44-30-87.

The statute provides two different time periods within which a refund is allowed.

(Please turn to page 13)



Tax Hearings

Any taxpayer aggrieved by the action of the Tax Division in determining the amount of tax, surcharge, or penalty, may make written request for a formal hearing.

The taxpayer is first afforded an opportunity to have a preliminary review. Should the matter not be resolved, it may then proceed to formal hearing under the terms of the state Administrative Procedures Act (RIGL § 42-35-1 *et seq*) and Tax Division regulation AHP 97-01.

If not satisfied with the outcome, the taxpayer may appeal to Sixth Division District Court (RIGL § 8-8-24 *et seq*).

Legal Corner:

RECENT STATE TAX CASES (CONTINUED FROM PAGE 12)

In essence, a refund claim must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever of these periods expires the later. (Please see table at right.)

In this case, the couple did not pass the two-year test. The couple did file within the three-year period, but the statute limits the amount of refund to the portion of tax paid within the three-year period – and in this case, the couple had not paid any tax since May 13, 2014 (which is when they filed the return).

The Tax Division official who testified at the hearing also noted that the statute of limitations for filing federal refund claims is different from the one for filing state refund claims.

Warren, in her summary of the case, wrote that while the taxpayers in this case “had serious health and family situations during 2011, there are no provisions in the statute that provide for any exemptions from the time limits set by statute.” Furthermore, the place to raise issues involving miti-



gating circumstances and issues of fairness is in a court, not in an administrative proceeding, she essentially said. In conclusion, Warren said on April 15, 2015, that the taxpayers are not entitled to the refund claim for 2011 and that the refund was properly denied by the Tax Division. Sullivan on April 17, 2015, adopted the hearing officer’s decision and recommendation.

-- Final Decision and Order
No. 2015-10

More refund claims

A taxpayer filed a 2009 return on April 15, 2013. The Division of Taxation rejected the taxpayer’s refund claim,

noting that it was beyond the two-year time period (Please see table above.)

Although the taxpayer was within the three-year limit (please see table above), the taxpayer had not paid any tax since April 15, 2013, so the taxpayer did not clear that hurdle, either.

The taxpayer had also filed a 2010 return on April 15, 2014. The Division of Taxation rejected the taxpayer’s refund claim, noting that it was beyond the two-year time period (see table above). Although the taxpayer was within the three-year limit (see table above), the taxpayer had not paid any tax since April 15, 2014, so the taxpayer did not clear that hurdle, either.

For both refund claims, the taxpayer requested a hearing but did not attend. On April 15, 2015, Warren found that the taxpayer is not entitled to the claimed

refunds for 2009 and 2010 and that the Tax Division properly denied the claims. On April 17, 2015, Sullivan adopted the hearing officer’s decision and recommendation.

-- Final Decision and Order
No. 2015-11

Withholding

On his personal income tax return for 2010, a taxpayer listed three companies as having withheld tax during the year.

The Tax Division, however, found no evidence that the companies ever filed withholding tax.

The Tax Division requested copies of Form W-2 from the taxpayer for each of the companies, but the taxpayer did not provide them.

(Please turn to page 14)

Statute of limitations for Rhode Island personal income tax refunds

[RIGL § 44-30-87]

A claim for credit or refund of an overpayment of tax must be filed within three years from the time the return was filed or two years from the time the tax was paid, whichever of the periods expires the later.

Three-year rule ➔

If the claim is filed within the three-year period, the amount of the credit or refund cannot exceed the amount of the tax paid within the three-year period.

Two-year rule ➔

If the claim is not filed within the three-year period, but is filed within the two-year period, the amount of the credit or refund cannot exceed the amount of the tax paid during the two years immediately preceding the filing of the claim.

Legal Corner:

RECENT STATE TAX CASES (CONTINUED FROM PAGE 13)

Without any proof of the claimed withholding tax, the Tax Division disallowed the claim and issued a Notice of Deficiency for the additional tax owed, as well as the associated penalty and interest.



A hearing was held at the taxpayer's request, but the taxpayer did not show up. On April 15, 2015, Warren officially found that the taxpayer did not document the claimed withholding -- and that the Tax Division properly assessed the tax, interest, and penalty. On April 17, 2015, Sullivan adopted the hearing officer's decision and recommendation.

-- Final Decision and Order
No. 2015-12

Nursing home costs

Rhode Island once allowed itemized deductions -- including unreimbursed medical expenses above a certain threshold. However, effective for 2011 and later tax years, a package of tax changes was enacted. The package included a sharply lower top tax rate, fewer tax brackets, broader tax brackets, a single set of tax brackets for everyone instead of multiple brackets based on filing status, fewer

state tax credits, higher standard deduction amounts for nearly everyone, and the elimination of itemized deductions. Therefore, when a son recently prepared a Rhode Island personal income tax return on behalf of his elderly parents, he was unable to claim a deduction or modification for his father's nursing home costs.

The son decided to file the return without paying the tax due. The Tax Division sent a Notice of Deficiency, and levied additional tax as well as interest and penalties.

At a hearing, the son did not dispute that the tax law had changed but said it was unfair. He said his father, who has since died, was paying tax on income that went directly to the nursing home for his care. The son also said that the law was changed without people realizing its impact on the elderly.

Warren determined that Rhode Island statute does not allow for medical care, such as nursing home costs, to be subtracted from federal adjusted gross income for Rhode Island tax purposes. Nor does the statute allow for anything other than a standard deduction. On



DECISIONS ONLINE

The Division of Taxation's website shows all Administrative Decisions since early 2011. (See screenshot above.) To view, see www.tax.ri.gov.

April 15, 2015, Warren said that the taxpayers were unable to deduct nursing home costs on their 2013 Rhode Island resident return, so the taxpayers owe the tax and interest assessed. However, she recommended that the Tax Division revisit whether the late-payment penalty should apply -- based on an exception in statute involving reasonable cause. On April 17, 2015, Sullivan adopted the hearing officer's decision and recommendation.

-- Final Decision and Order No. 2015-13

Use tax

At issue is whether envelopes used in a business mailing are exempt from Rhode Island use tax.

A company has a facility in Rhode Island that is involved mainly in printing individualized account

statements, benefit statements, and similar institutional documents related to the customers of its clients -- which include credit unions, insurance companies, banks, and other such institutions.

The company, among other things, prints data onto paper to create account or benefit statements, folds the statements, and inserts the statements into mailing envelopes -- "outer envelopes" -- so they can be mailed directly to customers' through the U.S. Postal Service. In some cases, the company includes a reply envelope -- "inner envelope" -- in the mailing, depending on a client's request.

The company buys the paper, the inner envelopes, and the outer envelopes *extax* from third-party vendors and does not remit use tax on the purchases.

(Please turn to page 15)

Legal Corner:

RECENT STATE TAX CASES (CONTINUED FROM PAGE 14)

The Tax Division determined that the purchases of the inner and outer envelopes should be subject to tax at the time of purchase.

Because the company charged sales tax on the amounts it charged clients for the inner and outer envelopes that were mailed to Rhode Island addresses, the company was given credit for taxes paid against the amount of additional taxes the Tax Division assessed after audit.

At a hearing, the Tax Division said that storage or use is presumed taxable unless a taxpayer demonstrates otherwise. The company said the envelopes are not taxable because they are purchased to be manufactured into a finished product for resale.

Warren wrote on April 30, 2015, that the envelopes are not part of the manufacturing process. She further determined that the envelopes are subject to the use tax and that the company owes tax, interest, and penalty, as set forth in the Notice of Deficiency. On May 26, 2015, Sullivan adopted the hearing officer's decision and recommendation.

-- Final Decision and Order
No. 2015-14



Domicile

A taxpayer filed a 2006 Rhode Island resident return and a part-year 2007 Rhode Island resident return. For 2008, was he a domiciliary of Rhode Island — and therefore subject to the Rhode

Island personal income tax for that year? The Tax Division said yes; the taxpayer said Florida was his domicile that year. The Tax Division noted that:

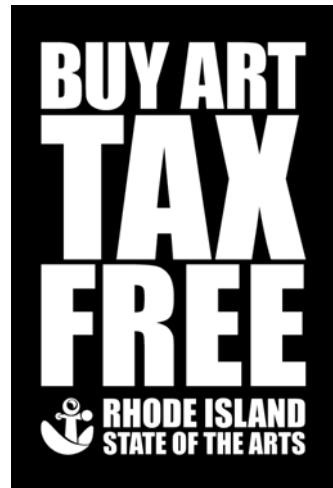
- ♦ He owns a house in Narragansett.
- ♦ He co-owns property in North Providence.
- ♦ A Form W-2, "Wage and Tax Statement," showed Rhode Island employment earnings for 2008.
- ♦ A Form W-2G, "Certain Gambling Winnings," showed Rhode Island lottery winnings for 2008.
- ♦ He voted in Narragansett in 2002 and in North Providence in 2006. In the September 2008 primary, he voted by mail ballot to North Providence. In the November 2008 general election, he voted by regular ballot in North Providence.
- ♦ He renewed his Rhode Island driver's license in February 2014, using his Narragansett address.

The taxpayer says:

- ♦ He filed a declaration of domicile in St. Lucie County in Florida in 2005.
- ♦ He treats his Narragansett house as a vacation home.
- ♦ He owns a one-third share in a house in North Providence, a house in which his mother has a life estate.
- ♦ He worked in Florida from August 2007 through June 2008. His contract was renewed in July 2008 through June 2009, when he was laid off.
- ♦ His lottery winnings were from small prizes that he won when visiting his mother in the summer.
- ♦ His Rhode Island W-2 for 2008 related to his teaching for three weeks in the summer in Rhode Island.

The Tax Division said the taxpayer filed a declaration of domicile with Florida but his actions show he did not change domicile. The taxpayer said he changed his domicile and visited Rhode Island on only a limited basis thereafter to visit family.

Domicile is determined on a case-by-case basis, Warren noted. In this case, the taxpayer signed a domicile declaration in 2005 for Florida, but continued to vote and maintain his driver's license in Rhode Island



The Rhode Island State Council on the Arts is spreading the word (see above) about Rhode Island's statewide sales tax exemption on the sale of original and limited edition works of art.

and own property in Rhode Island. The only contact he had with Florida in 2008 was a teaching job. "Otherwise . . . , all his remaining contacts were with Rhode Island. He has not demonstrated an intent in 2008 to make Florida his permanent place of abode," Warren wrote. Because the taxpayer failed to show, by a preponderance of evidence, that he was not a domiciliary of Rhode Island for 2008, he owes Rhode Island personal income tax for that year, interest and penalties, Warren determined on June 2, 2015. Sullivan on June 3, 2015, adopted her decision and recommendation.

-- Final Decision and Order No. 2015-15

(Please turn to page 16)

Legal Corner:

RECENT STATE TAX CASES (CONTINUED FROM PAGE 15)

Refund claim

The taxpayer filed his 2011 Rhode Island personal income tax return on June 9, 2014, seeking a refund. The Tax Division denied the claim, citing the statutory requirements. (Please see table on page 13.) The taxpayer said he understands the law, but had endured a series of unfortunate events that delayed his filing – including a protracted divorce, a bout with cancer, and other issues. He requested an exemption from the statute. Warren determined that neither statute nor regulation provides for exemptions from the law regarding the claiming of late refunds. On June 1, 2015, she concluded that the taxpayer is not entitled to the refund and that the Tax Division properly denied the refund claim. Sullivan on June 3, 2015, adopted the hearing officer's decision and recommendation.

-- Final Decision and Order No. 2015-16

Federal change

The Internal Revenue Service (IRS) disallowed a deduction for a contribution to an individual retirement account (IRA) for tax year 2010. The IRS notified the

married couple about the disallowance and the resulting increase in income on their 2010 return.

When a taxpayer's federal income changes, the taxpayer is required by Rhode Island statute to file an amended Rhode Island return (RIGL § 44-30-59, "Report of change in federal taxable income"). But the couple failed to do so in this case. So when the IRS

notified the Division of Taxation about the change, the Division issued the taxpayers a Notice of Deficiency, showing the additional tax owed on account of their new income amount, as well as a penalty and interest.

As the Tax Division noted, there is no statute of limitations when a taxpayer fails to file an amended Rhode Island return after a federal change.

On May 27, 2015, Warren determined that the taxpayers had failed to file an amended return for tax year 2010, as required.

She further determined that the Division properly assessed the taxpayers for tax owed, plus interest and late penalty. On June 2, 2015, Sullivan adopted her decision and recommendation.

-- Final Decision and Order No. 2015-17

**License suspension**

The Tax Division seized, from a cigarette dealer, 11 packs of cigarettes that did not have the required tax stamps. The dealer's license had been previously suspended. Warren determined that tax and penalties were properly assessed and recommended a 60-day license suspension; Sullivan adopted the hearing officer's decision and recommendation.

-- Final Decision and Order No. 2015-18

Refund claim

On July 3, 2014, the taxpayer filed her Rhode Island personal income tax return for 2011 and requested a refund/credit for overpayment of tax. The request was past the two-year period provided by statute (please see table on page 13). The request was within the three-year period provided by statute (please see table on page 13), but the taxpayer had not paid any tax related to tax year 2011 since July 3, 2014. On June 4, 2015,

Warren determined that the taxpayer is not entitled to the claimed refund/credit for 2011. Warren also determined that the Tax Division properly denied the taxpayer's claim. On June 12, 2015, Sullivan adopted the hearing of-

**Notices**

The Rhode Island Division of Taxation urges tax practitioners and taxpayers to keep up with Notices that the agency posts on its website. The agency has posted numerous Notices in recent weeks in response to tax-related legislation recently approved by the General Assembly. To check, use the following link:

<http://www.tax.ri.gov/notice/>

ficer's decision and recommendation.

-- Final Decision and Order No. 2015-19

Circumstances

On July 7, 2014, a married couple filed their Rhode Island personal income tax return for 2011 and requested a refund.

The husband testified that his wife had owned a small business in 2011 and that her home office was destroyed by water damage.

(Please turn to page 17)

RHODE ISLAND TAX NEWS IN BRIEF

TV show

Rhode Island Tax Administrator David M. Sullivan provided some last-minute tax-filing tips during an interview in April with Frank Coletta, the well-known anchor at Channel 10.

Sullivan discussed electronic filing of returns (a process known as e-filing); refund totals and averages; filing for a deadline extension; and making payments to avoid penalty and interest. The interview, on Channel 10's "Money Watchers Business Lunch" segment, was broadcast during the noon newscast and was online.

FAQs updated

The Division of Taxation has posted an updated version of its FAQs involving



Filing Season: Rhode Island Tax Administrator David M. Sullivan (left) offered last-minute filing tips during an interview on Channel 10 with the popular news anchor Frank Coletta.

taxes on short-term residential rentals. To view the document, use this link:

<http://1.usa.gov/1KAirSo>

New report

The Division of Taxation has posted this year's report on alcoholic beverages. It includes a look at sales and taxes from a retail and

wholesale standpoint. It also has a breakdown by county. To read it, please use the following link:

<http://go.usa.gov/3BuJV>

Legal Corner:

RECENT STATE TAX CASES (CONTINUED FROM PAGE 16)

He also said that his wife had fallen, required various surgeries, lost the business, is now permanently disabled, and wound up in a legal dispute with her business partner that was finally resolved in 2014. After the dispute was resolved, they filed their federal and state returns.



Warren found that the taxpayers had failed to file their refund request within the two-year period required by statute (please see table on page 13). The couple did file their refund request within the three-year period (please see table on page 13), but since July 7, 2014, the couple had not

paid any Rhode Island personal income tax related to tax 2011. "While the Taxpayers had serious health and family situations during 2011 and subsequently, there are no provisions in the statute that provide for any exemptions from the time limits set by statute," Warren wrote. Warren also said that an administrative hearing is not the place to raise arguments related to fairness; such

arguments belong in court. On June 4, 2015, Warren determined that the taxpayers were not entitled to the refund claimed for 2011 and that the Tax Division properly denied their claim for refund. On June 12, 2015, Sullivan adopted the hearing officer's decision and recommendation.

-- Final Decision and Order No. 2015-20

Practitioners' Corner:

QUESTIONS AND ANSWERS ABOUT STATE TAXES

Q: My client has formed a limited liability company (LLC) which is treated as a true pass-through entity for federal income tax purposes. The income and expenses will be reported on Schedule C of the client's U.S. Form 1040. The client said he was advised that he must obtain a federal employer identification number (EIN) for Rhode Island purposes for the LLC, the LLC must file a Form RI-1065 with Rhode Island each year, and the LLC must pay the annual \$500 fee. Is that correct?



A: There is an annual Rhode Island filing requirement for an LLC even if the LLC is treated as a pass-through entity for federal income tax purposes (reporting income and expenses on the federal Schedule C).

Also, there is a Rhode Island requirement for the LLC to pay the annual \$500 filing fee (also known as a filing charge) even if the LLC is treated as a pass-through entity for federal income tax purposes. Please note, however, that the \$500 annual fee will be reduced by 10 percent, to

\$450, for tax years beginning on or after January 1, 2016.

The LLC is required by regulation to obtain a federal EIN for Rhode Island purposes.

Please see Rhode Island Division of Taxation Regulation CT 13-14. It is available on our website:

www.tax.ri.gov

Q: If we e-file a Rhode Island return, the submission fails for a specific reason and we fix the problem, can we electronically resubmit the return? If you do allow for electronic resubmission, is there a limited amount of time within which we would have to resubmit? And is the re-submission policy for personal income tax returns different from the policy for corporate returns?

A: If you e-file a Rhode Island return – whether a personal income tax return or a corporate return – and the submission fails, we do not allow for electronic resubmission of that return; the return must be submitted to us on paper after you have resolved whatever issue led to the rejected

submission. (By the way, we reject original submissions for a limited number of reasons, and such issues cannot be resolved by electronic resubmission; they must be resolved submitting the return on paper.)

Q: I know that Rhode Island adopted federal limits on Section 179 for 2014. Rhode Island has previously treated canned software as property not qualifying for Section 179. I can't determine in the law change if it is still non-qualifying property. It is allowed for federal purposes.

A: Under legislation enacted in 2013, Rhode Island recoupled with the federal expensing deduction for assets placed in service on or after January 1, 2014. In other words, Rhode Island recoupled with the federal Section 179 expensing deduction.

"In the year that those assets are placed in service, expensing of assets for Rhode Island tax purposes shall be allowed in the same manner as is provided for under Section 179 of the Internal Revenue Code," according to the Rhode Island legislation as enacted (Public Law 2013, ch. 144, art. 9, § 1, as amended).

Thus, to the extent that the definition of Section 179

About 'Practitioners' Corner'

The "Practitioners' Corner" feature provides general answers to some of the questions that the Tax Division encounters through the normal course of business.

The answers are intended solely to provide general information. They do not represent formal guidance, and are not substitutes for Rhode Island General Laws, Tax Division regulations, or Tax Division rulings.

property at the federal level includes off-the-shelf computer software, it is allowed at the Rhode Island level.

Under federal legislation enacted in December 2014 (Public Law 113-295), Section 179 qualifying property includes off-the-shelf computer software – but only for taxable years beginning before 2015.

(Please turn to page 19)

Practitioners' Corner:**QUESTIONS AND ANSWERS ABOUT STATE TAXES** (CONTINUED FROM PAGE 18)

In other words, the federal Section 179 expensing of off-the-shelf computer software is limited to such software placed in service in a taxable year beginning before 2014. (Please see Section 179 for other limitations.)

Q: I was curious about the entity-level taxation on Rhode Island SMLLCs owned by C corporations.

A: Entities that are treated as pass-through entities for federal income tax purposes are treated the same way for Rhode Island income tax purposes. Thus, we do not tax a true pass-through entity at the entity level. However, a true pass-through entity still must file form RI-1065 each year and pay the \$500 annual filing charge (also known as a filing fee).

A single member LLC, also known as an SMLLC, still must file the Form RI-1065 and pay the \$500 charge each year even if that SMLLC is owned by a C corporation. If the C corporation owns multiple SMLLCs, each SMLLC must file and each must pay.

An SMLLC is subject to the filing requirement and the annual charge no matter who (or what) owns the entity.

Our regulation involving limited liability companies, including SMLLCs, and our regulation on partnerships, including LPs and LLPs, are

available on our website:

www.tax.ri.gov

Q: Could you provide us the requirements for both a declaratory ruling and a letter ruling?

A: With a declaratory ruling, issued after a taxpayer's petition, 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 declaratory ruling issued by the Tax Administrator has precedential value and may be generally relied on by all persons with respect to subsequent like transactions.

A private letter ruling (PLR), sometimes called a general informational letter or 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 PLR 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. PLRs may not be relied on by any taxpayer other than the taxpayer who requested

the information.

For more information on, please see Division of Taxation Regulation DR 03-01, available on our website:

www.tax.ri.gov

Q: I have as a client an auto repair shop. On the customer invoice, the shop lists an environmental disposal fee (for the disposal of oil, tires, etc.)

Is that fee subject to tax?

A: You're talking about the tax on hard-to-dispose material. It is required under RIGL § 44-44-3.7. (See also Division of

Taxation Regulation LIT 92-02 and Regulation SU 07-43.)



The tax is actually levied on the shop, not on the customer; it is a cost of doing business. In fact, retailers are not permitted to charge that tax to their customers and/or separately state that tax on their customers' invoices.

In practice, however, retailers may charge customers an "environmental fee" or other such fee to cover the retailer's cost. (It might appear on the invoice as a flat fee of \$2.00, for example). When that "environmental fee" – or whatever else the shop may call it – appears as an item on the customer's bill, Rhode



Archives online

Previous issues of the Rhode Island Division of Taxation's newsletter, *Rhode Island Tax News*, are available for viewing or for download at the agency's website:

www.tax.ri.gov

Island's 7 percent sales and use tax applies to that fee and any other taxable item on the bill – such as parts. (The sales tax does not apply to labor.)

(Please turn to page 20)

Practitioners' Corner:**QUESTIONS AND ANSWERS ABOUT STATE TAXES** (CONTINUED FROM PAGE 19)

Q: I have a tax client that was asking about the form titled "Business Application and Registration." He is setting up a new business. There is a question that says, 'Do you have employees?' He is the owner and there are no other employees. Should he answer the question as 'No'? Another question asks, 'Do you have Rhode Island withholding?' Should he answer 'No' because there are no employees?

A: Based on the facts and circumstances you described, your client should answer 'no' to both questions.

Q: One of our payroll clients is adding an employee who resides in Rhode Island and works in Massachusetts. My understanding of the withholding requirements is that the employee is subject to Massachusetts withholding and can also have Rhode Island withholding if they wish. The employee would be subject to Massachusetts state unemployment insurance (UI) tax. Are my assumptions correct?

A: Without knowing all of the facts and circumstances, we can't give you a detailed response. But as a general rule, a Rhode Island resident working in Massachusetts would be subject to withholding for

Massachusetts personal income tax. That person could elect Rhode Island withholding, too, assuming that the employer allows for it.

During filing season, the worker would first file a Massachusetts non-resident return, then file a Rhode Island resident return and claim a credit for taxes paid to other jurisdictions (in this case, Massachusetts).

In answer to your UI question, if the person works solely in Massachusetts, the employer would have to count that employee's wages for purposes of calculating, reporting, and paying Massachusetts UI tax.

Q: My client works in the private sector in Rhode Island and pays TDI taxes, which funds the state's TDI and temporary caregivers insurance (TCI) program. She took some time off in 2014 and received benefits from the TCI program. Are those benefits taxable?

A: If the benefits are included as income for federal tax purposes, they are included in federal adjusted gross income (AGI) and, therefore, automatically included as income for Rhode Island tax purposes. There is no modification

decreasing federal AGI for Rhode Island purposes. So, your question is really a federal tax question, not a Rhode Island one.

By the way: Rhode Island TDI taxes are deductible for federal income tax purposes if the taxpayer itemizes. There is no corresponding deduction for Rhode Island tax purposes. TDI benefits are tax-free.

Q: My client, a retailer located in another state, has no Rhode Island nexus, but collects and remits Rhode Island sales tax as a direct result of the Streamlined Sales and Use Tax Agreement (SSUTA). Does my client have to file the annual reconciliation form?

A: No. The purpose of the agreement is to simplify and modernize sales and use tax administration in order to substantially reduce the burden of tax compliance.

The agreement focuses on improving sales and use tax administration systems for all sellers and for all types of commerce. A total of 24 states – including Rhode Island – have adopted the simplification measures in the agreement. As a result, a number of retailers who are located outside of Rhode Island and who

**Tax Fraud Tip Line**

If you have information about state tax fraud -- such as worker misclassification -- call the tax fraud tip line at (401) 574-TIPS or (401) 574-8477 and leave a message. The line is staffed by the Rhode Island Division of Taxation's Special Investigation Unit, which follows up on all tips. Callers can leave their names and contact information or remain anonymous.

have no Rhode Island sales tax filing requirement nevertheless voluntarily agree to collect and remit Rhode Island sales tax. But they are not required to file the annual reconciliation form.

(Please turn to page 21)

Practitioners' Corner:

QUESTIONS AND ANSWERS ABOUT STATE TAXES (CONTINUED FROM PAGE 20)

Q: My son's girlfriend lived in Massachusetts in 2014 and worked in RI. Can she get a refund of her TDI and if so where can I get the form for that?

A: Without knowing all of the facts and circumstances, we can't give you a detailed response to her situation. All we can do is provide the general rules.

Rhode Island's temporary disability insurance (TDI) program applies to those who work in the private sector in Rhode Island -- no matter where they live.

Any TDI participant may qualify for a refund if that person pays too much in TDI tax. For 2014, the

maximum TDI tax was \$752.40. A refund situation is typically triggered when the worker has two or more jobs and each employer withholds TDI. (If you have just one employer, and that employer withholds too much in TDI, that employer must reimburse you.) To learn more, and view the form, use this link:

[http://www.uitax.ri.gov/
refunds.htm](http://www.uitax.ri.gov/refunds.htm)

Note that Massachusetts generally allows a credit against the Massachusetts personal income tax for taxes paid to other jurisdictions. For this purpose, TDI is treated as a tax paid to another jurisdiction. (Contact the Massachusetts Department of Revenue for more

information.)

Q: I have several questions on which items sold in the supermarket are subject to Rhode Island sales and use tax and which are not. I want to make sure I am using the most updated information from your website. Can you provide a link to what would be the most current and most complete?

A: Please see Regulation SU 09-59, "Food and Food Ingredients, Prepared Food/ Meals, Candy, Soft Drinks, Dietary Supplements, and Alcoholic Beverages."



More about TDI

TDI is a kind of short-term disability insurance program. It generally pays benefits to people who are out of work due to illness or injury unrelated to the job.

You pay TDI taxes through withholding from your paycheck. The money goes into a trust fund to pay for benefits. If you work in the private sector in Rhode Island, you probably pay TDI tax. Altogether, about 403,000 workers contribute to the TDI fund.

TAX TREATMENT OF 'COMP DRINKS'

The Rhode Island Division of Taxation recently faced an issue involving complimentary alcoholic beverages, also known as "comp drinks," which are given free of charge to dining patrons or prospective dining patrons.

Handing out complimentary drinks is a common business practice in the restaurant industry. The issue was whether they are subject to sales and use tax, or if they are instead non-

taxable as discounts to the sales price.

A hearing officer concluded in February 2015 that comp drinks are considered discounts – so they do not fall under the definition of "sales price" and, therefore, are typically not subject to Rhode Island sales and use tax. Tax Administrator David M. Sullivan adopted the hearing officer's decision and recommendation.

As a result, the Division of Taxation in April 2015 is-

sued a Notice to all restaurants, bars, or similar establishments offering comp drinks outlining the tax treatment of comp drinks, which depends on the circumstances. For more details:

<http://1.usa.gov/1OC6mgh>





Rhode Island Department of Revenue Division of Taxation

NEWSLETTER POLICY

Rhode Island Tax News is a newsletter from the Rhode Island Department of Revenue's Division of Taxation. It is typically published each quarter. Its purpose is to provide taxpayers and tax professionals with general information regarding Rhode Island tax laws, regulations and procedures. It is neither designed nor intended to address complex issues in detail. Nothing contained in this newsletter in any way alters or otherwise changes any provisions of the Rhode Island General Laws, regulations of the Tax Division, or formal rulings. The Tax Division is at One Capitol Hill, Providence, RI 02908. Its website is www.tax.ri.gov.

HOW TO SUBSCRIBE

Rhode Island Tax News is distributed free, by e-mail, to those who have joined our listserv. If you are not on our listserv but would like to join, send an email to Susan.Galvin@tax.ri.gov with the word SUBSCRIBE in uppercase in the subject block.

COMMENTS AND SUGGESTIONS

If you have comments or suggestions for *Rhode Island Tax News*, please e-mail its editor, Neil Downing: Neil.Downing@tax.ri.gov

BACK ISSUES

Rhode Island Tax News back issues are on the Tax Division website: www.tax.ri.gov

How to contact us

Taxpayers may contact the Division of Taxation online, by phone, by letter, or in person.
(Hours of operation are typically 8:30 a.m. to 3:30 p.m. business days.)

Website

www.tax.ri.gov

(For numbers and e-mail addresses for specific sections, click the "Contact us" link.)

Mailing address

Rhode Island Division of Taxation
One Capitol Hill
Providence, R.I. 02908

Telephone

Phone: 401-574-8829
Fax: 401-574-8917



NEWSLETTER CONTRIBUTORS

The following Division of Taxation personnel provided assistance for this issue:

Marlen Bautista	Theriza Salib-Iafrate
Michael Canole	Meaghan Kelly
Daniel Clemence	Matthew Lawlor
Steven Cobb	Leo Lebeuf
Susanna Coburn	Bernard Lemos
Richard Coia	Neena Savage
Donna Dube	John Torregrossa
Donald Englert	David Sullivan
Susan Galvin	
Patrick Gengarella	



*The illustration on page 10 is by artist Leslie Sigal Javorek. All Rights Reserved.
For more about the illustrator:
icondoit.wordpress.com/about*