

RHODE ISLAND TAX NEWS

A NEWSLETTER FOR TAX PROFESSIONALS

JULY/AUGUST/SEPTEMBER 2016

TAX CHANGES IN BUDGET BILL

The annual corporate minimum tax is dropping by 11 percent. So, too is the annual filing charge for partnerships and certain

other pass-through entities.

These and other changes are the result of legislation approved by the General

Assembly and signed into law on June 24, 2016, by Governor Gina M. Raimondo.

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Photo by Catherine Rolfe / Governor's Office

Bill Signing: The budget bill for fiscal year 2017, with numerous tax changes, was signed into law on June 24, 2016, at the State House in Providence. At the ceremony were (from left to right): Rep. Samuel A. Azzinaro; Senate President M. Teresa Paiva Weed; Sen. Juan M. Pichardo; Gov. Gina M. Raimondo (seated); Rep. Marvin L. Abney, House Finance Committee chairman; and House Speaker Nicholas A. Mattiello.

CHANGES FOR BUSINESS FILING DEADLINES

Businesses and their tax advisers face a new set of filing deadlines.

Legislation enacted at the federal level in 2015 made sweeping changes to the due dates for C corporations,

partnerships, and some other entities. Legislation enacted in Rhode Island in June 2016 adopted the federal changes. The Rhode Island changes apply to tax years beginning after De-

cember 31, 2015. So most businesses and tax advisers will first encounter the changes during the coming filing season, which starts in about six months.

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SOME HIGHLIGHTS OF TAX-LAW CHANGES

Recently enacted Rhode Island legislation contained a number of tax changes, including the following:

- Reduction in unemployment insurance tax (please see page 4)
- A tax break for income from pensions and annuities (please see page 6)
- A motor fuel tax exclusion for propane used for generating electricity (please see page 7)

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CHANGES FOR BUSINESS FILING DEADLINES (CONTINUED FROM PAGE 1)

The biggest change involves partnerships and C corporations: In essence, they are swapping due dates.

Under former law, calendar-year C corporations filed in March. Now they'll be filing in April.

Under former law, calendar-year partnerships filed in April. Now they'll be filing in March.

Formulas and filing deadlines for estimated taxes remain the same as under former law.

The Division of Taxation is

examining its 2017 schedule of extended due dates and will advise practitioners about any changes as the filing season draws near.

For entities subject to the insurance gross premiums tax, the due date for the annual return is now mid-April;

the old March 1 deadline no longer applies.

The deadline has not changed for annual tax returns from surplus lines brokers/licenses: they will continue to be due on or before April 1.

Rhode Island due dates for businesses (calendar-year filers)

Tax / entity type	Old deadline	New deadline
C corporation <small>(including those subject to business corporation tax, public service corporation tax, taxation of banks, and taxation of insurance companies)</small>	March 15	April 15
Partnership <small>(including LP, LLP)</small>	April 15	March 15
Limited liability company (LLC) <small>(including single-member LLCs)</small>	April 15	March 15
S corporation	March 15	March 15

Dates are for calendar-year filers, for tax years beginning after December 31, 2015, and do not take into account impact of week-ends or holidays, including Emancipation Day. Deadlines for C corporations include those taxed under Rhode Island's corporate income tax, public service tax, bank tax, and insurance tax, and also entities subject to mandatory unitary combined reporting. Deadlines and formulas for estimated payments have not changed. New Rhode Island due date for entities treated as pass-through entities for federal purposes -- including partnerships and LLCs -- is 2 1/2 months after close of the entity's tax year. For fiscal-year C corporation filers, see tables below.

Due dates for C corporations with fiscal year-end other than June 30

	Tax years beginning before Jan. 1, 2016	Tax years beginning after Dec. 31, 2015
Fiscal-year C corp <small>(for FYE other than June 30)</small>	15th day of 3rd month <small>(after close of taxable year)</small>	15th day of 4th month <small>(after close of taxable year)</small>

Due dates for C corporations with fiscal year-end of June 30

	Tax years beginning before Jan. 1, 2026	Tax years beginning after Dec. 31, 2025
C corp FYE June 30	15th day of 3rd month	15th day of 4th month

Under special provision in new law, C corporations with June 30 fiscal year-end will continue to file by 15th day of third month after close of taxable year. They will switch to new deadline, shown above, for tax years beginning after December 31, 2025.

TAX CHANGES IN BUDGET AND OTHER BILLS (CONTINUED FROM PAGE 1)

The legislation is known as the annual budget bill, which covers the next fiscal year (in this case, the year which will end June 30, 2017). The bill typically includes a number of tax changes – including some elements that were originally proposed by the Governor and some that were originally proposed by the General Assembly.

The tax provisions have far-reaching effects on individuals and businesses, and take effect at different times. This issue of *Rhode Island Tax News* provides a summary of many of the tax-related measures that were enacted this year, including selected tax provisions from the budget bill and from other legislation. Each section in the summary is followed by a House or Senate bill number.

Minimum tax

The annual corporate minimum tax, now \$450, will drop by \$50, or 11.11 percent, to \$400, effective for tax years beginning on or after January 1, 2017.

The tax, under Rhode Island General Laws (RIGL) § 44-11-2 (e), had been set at \$500 since 2004. However, under legislation approved by the General Assembly in June 2015, the tax dropped to \$450, for tax



Annual corporate minimum tax			
	2015	2016	2017
Per entity	\$500	\$450	\$400

Tax as shown for 2016 applies for tax years beginning on or after January 1, 2016, but before January 1, 2017. Tax as shown for 2017 applies for tax years beginning on or after January 1, 2017. Amounts also apply to certain pass-through entities.

years beginning on or after January 1, 2016.

Under the new law, for tax years beginning on or after January 1, 2017, the tax will be \$400.

-- H 7454Aaa

Subchapter S

At one time, Subchapter S corporations were subject to the provisions of Rhode Island’s franchise tax. Corporations paid either the corporate income tax or the franchise tax, whichever was higher. The corporate minimum tax was \$500.

When the franchise tax was repealed, effective for tax years beginning on or after January 1, 2015, S corps became subject to the annual minimum tax under RIGL § 44-11-2(e), effective for tax years beginning on or after January 1, 2015.

Because the annual minimum tax under RIGL § 44-11-2(e) will be reduced to \$400, subchapter S corporations will also see a reduction, to \$400, for their annu-

al minimum tax, effective for tax years beginning on or after January 1, 2017.

-- H 7454Aaa

Partnerships, LLCs

The annual filing charge, or filing fee, which applies to certain entities treated as pass-through entities for federal tax purposes, is now \$450. It will drop by \$50, or 11.11 percent, to \$400, effective for tax years beginning on or after January 1, 2017.

The annual filing fee is tied to the annual corporate minimum tax under RIGL § 44-11-2(e). As a result, it had been set at \$500, but under legislation approved by the General Assembly in June 2015, the fee dropped to \$450, for tax years beginning on or after January 1, 2016. Under the new law, for tax years beginning on or after January 1, 2017, the charge will be



\$400. The reduction will apply to:

- ◆ limited partnerships
- ◆ limited liability partnerships
- ◆ limited liability companies
- ◆ single-member LLCs

-- H 7454Aaa

Energy

A new law involving renewable energy programs includes a number of elements. One involves the Division of Taxation.

As part of the new law, cities and towns may, by ordinance or resolution, tax any renewable energy resources as defined in RIGL § 39-26-5, and associated equipment, only pursuant to rules and regulations that will be established by the Office of Energy Resources in consultation with the Division of Taxation after the rules are adopted, no later than November 30, 2016.

The rules are to provide, among other things, “consistent and foreseeable tax treatment of renewable energy to facilitate and promote installation of grid-connected generation of renewable energy” and must consider certain criteria in adopting “appropriate and reasonable tangible property tax rates for commercial renewable energy systems...”

-- H 8354A, S 2450B

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TAX CHANGES IN BUDGET AND OTHER BILLS (CONTINUED FROM PAGE 3)

Ride-sharing: tax

Transportation network companies – sometimes called ride-sharing, ridesharing, ride-sourcing, or ridesourcing companies – are now included in the statutory list of services that are subject to Rhode Island's 7 percent sales and use tax, effective July 1, 2016.

A "transportation network company" means an entity that uses a digital network to connect transportation network company riders to transportation network operators who provide prearranged rides.



The new law makes clear that any transportation network company operating in Rhode Island is a retailer as provided in RIGL § 44-18-15.

The new law also makes clear that, as retailers, transportation network companies must:

- ◆ file a business application and registration form with the Division of Taxation;
- ◆ obtain a permit from the Division of Taxation to make sales at retail; and
- ◆ charge, collect, and remit sales and use tax to the Division of Taxation.

-- H 7454Aaa

Ride-sharing: regulation

A new law says, in essence, that transportation network companies are subject to the jurisdiction of the Division of Public Utilities and Carriers.

The new law also sets forth permit, insurance, and other requirements. It also spells out fees and renewal fees, as well as penalties for violations.

The new law also forbids "cities, towns, and other local entities" in Rhode Island to impose any charge, fee, or tax on transportation network companies.

Cities and towns may continue to impose excise taxes on the legal owners of vehicles used to provide transportation network company services in a manner consistent with previous such taxation of private motor vehicles.

-- S 2864Aaa, H 8044A

Liquor licenses

A new law gives the Division of Taxation grounds to request that a municipality revoke or suspend a liquor license whose renewal or issuance had been procured by virtue of material misrepresentation with respect to the licensee's tax status.

-- H 7953A, S 2702Aaa

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Tax savings for employers

The amount of state unemployment insurance tax that a particular employer pays depends on several factors, including the number of its employees, the taxable wage base, and the tax rate that's assigned to that particular employer.

Rhode Island has a system of nine unemployment insurance tax schedules, each named for a letter of the alphabet (A through I). Which tax schedule is in effect for any given calendar year depends, in part, on the level of reserves in Rhode Island's unemployment insurance trust fund.

The new law reduces the level of reserves that the trust fund must have before Rhode Island can move to a lower tax schedule. In general, the greater the amount available in the fund to pay unemployment benefits, the more generous the tax rate schedule can be.

Rhode Island has been on Schedule I – the highest tax rate schedule – since 1992. However, as a result of the new law, it is expected that the level of reserves in the unemployment insurance trust fund will be sufficient as of September 30, 2016, to allow Rhode Island to move to a lower tax schedule starting January 1, 2017 (preliminary plans are to use Schedule H).

Tax rates, which now range from 1.69% to 9.79%, are to drop to a range of 0.99% to 9.59%, starting January 1, 2017. As a result, it is estimated that employers, in the aggregate, will save approximately \$30 million in 2017.

Employers are to receive a mailing in December 2016 about their new tax rate, which will apply beginning with the first quarter of 2017. First-quarter tax bills, reflecting the new tax rates, will be due on or before May 1, 2017.

-- H 7454Aaa

TAX CHANGES IN BUDGET AND OTHER BILLS (CONTINUED FROM PAGE 4)

Nexus

The newly enacted budget bill authorizes a revenue-enhancing initiative for the Division of Taxation, involving nexus.

The Division of Taxation expects to identify and register out-of-state entities that legally do business in Rhode Island, but have not paid appropriate corporate, withholding, and/or sales and use taxes.



Establishing nexus generally means that a business has sufficient connection or presence in Rhode Island for the State to have taxing authority.

To help implement its nexus program, the Division intends to rely, in part, on its new regulation on nexus for corporate income tax purposes. The effective date of Regulation CT 15-02, "Business Corporation Tax: Corporate Nexus," was January 12, 2016.

-- H 7454Aaa

Distillery fee

A manufacturer's license authorizes the holder to establish and operate a brewery, distillery, or winery at the place described in the license for the manufacture

of beverages within Rhode Island.

For a distillery, the annual fee for the license was \$3,000. Under the new law, the annual license fee remains at \$3,000 for a distillery producing more than 50,000 gallons a year, but is \$500 for a distillery producing less than or equal to 50,000 gallons per year.

-- H 7454Aaa

Earned income credit

The earned income credit, or EIC, is a special tax break for the working poor. It is available under federal and Rhode Island law. It is sometimes referred to as the earned income tax credit, or EITC. Eligible taxpayers may claim a federal earned income credit and a Rhode Island earned income credit.

For tax year 2015, the Rhode Island credit was 10 percent of the federal credit, and was fully refundable. For tax year 2016, the Rhode Island credit is 12.5 percent of the federal credit, and is fully refundable.

For tax years beginning on or after January 1, 2017, the Rhode Island credit will increase to 15 percent of the federal credit.

The refundable portion will continue to be 100 percent of the amount by which the Rhode Island earned income credit ex-

ceeds the Rhode Island income tax.

-- H 7454Aaa

Transfer prices

The newly enacted budget bill authorizes a revenue-enhancing initiative for the Division of Taxation, involving transfer prices.

In general, the term "transfer price" refers to the price which is charged between related parties, such as a parent company and a subsidiary, for a product or a service.

Tax agencies typically look to see whether transactions involving transfer prices are done at arm's length and accurately reflect income (instead of providing for a shifting of income with the goal of avoiding tax). The Division of Taxation plans to identify, for possible audit, certain businesses that have intercompany transactions between related companies.

Prior to Rhode Island's implementation of mandatory unitary combined reporting for tax years beginning on or after January 1, 2015, companies generally could shift revenues between related entities to avoid taxation in certain states. The Division's audit program will have a three-year look-back period to capture underpaid or unpaid taxes with regard to transfer pricing.

In general, combined reporting

looks at the overall business structure, eliminating the effect of transfer pricing. However, a corporation still may have intercompany transactions with an entity which, for a variety of reasons, is not part of the combined group for purposes of Rhode Island's combined reporting regime. Thus, transfer pricing review is still needed.

-- H 7454Aaa

Film tax credit

The motion picture production tax credit program (also known as the film tax credit program), formerly scheduled to sunset in 2019, is now extended by two years, through June 30, 2021.

Thus, no film tax credits can be issued on or after July 1, 2021, unless the production has received initial certification under RIGL § 44-31.2-6(a) prior to July 1, 2021.



-- H 7454Aaa

Refund offsets

The "distressed communities relief fund" is available to provide state assistance to those cities and towns which have the highest property tax burdens relative to the wealth of taxpayers.

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TAX CHANGES IN BUDGET AND OTHER BILLS (CONTINUED FROM PAGE 5)

Under the new law, in a section titled, "Mandatory Participation for Collection of Debts," once a community is determined to be a distressed community, it will have three months to notify the Tax Administrator to allow the Tax Administrator to collect outstanding liabilities owed to that community (including refund offsets, as provided under RIGL § 42-142-7, "Collections of debts").

-- H 7454Aaa

Alcoholic beverages

RIGL § 3-10-1 sets forth tax rates on alcoholic beverages. The taxes apply to manufacturers; wholesalers/distributors pay a fee equal to the applicable tax rate.

Under the statute, a brewer that brews beer in Rhode Island and that is actively and directly owned, managed, and operated by an authorized legal entity that has owned, managed, and operated a brewery in Rhode Island for at least 12 consecutive months receives a tax



exemption on the first 100,000 barrels of beer that it produces and distributes in

Rhode Island in any calendar year.

The new law provides a similar tax break for distillers. Under the new provision, a distiller that distills spirits in Rhode Island and that is actively and directly owned, managed, and operated by an authorized legal entity that has owned, managed, and operated a distillery in Rhode Island for at least 12 consecutive months will receive a tax exemption on the first 50,000 gallons of distilled spirits that it produces and distributes in Rhode Island in any calendar year.

-- H 7454Aaa

Hospital fee

For all hospitals except those located in Washington County, Rhode Island, the hospital licensing fee rate will be 5.652 percent of the net patient services revenue based on the hospital's first fiscal year ending on or after January 1, 2015. (There's a 37 percent discount for hospitals located in Washington County.)



Every hospital must pay the licensing fee to the Division of Taxation on or before July 10, 2017.

-- H 7454Aaa

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Tax break on pensions

The calculation of Rhode Island's personal income tax begins with your federal adjusted gross income (AGI). Under the new law, for tax years beginning on or after January 1, 2017, you will be allowed a modification for up to \$15,000 of taxable pension and/or annuity income that is included in your federal AGI for the taxable year.

In other words, if your federal AGI includes taxable pension and/or annuity income, up to \$15,000 of that income will escape Rhode Island's personal income tax, assuming that you meet the requirements of the new provision.

To qualify for Rhode Island's new modification regarding taxable pension and/or annuity income, you must clear three main hurdles:

- ◆ At least some of your pension and/or annuity income must be taxed at the federal level;
- ◆ You must have reached "full retirement age" based on Social Security Administration rules; and
- ◆ Your federal adjusted gross income must be below a certain amount -- \$80,000 if the filing status on your Rhode Island return is single, head of household, or married filing separately; \$100,000 if your filing status is married filing jointly or qualifying widow(er).

Assuming that you qualify and are in the 3.75 percent Rhode Island personal income tax bracket for tax year 2017, the new provision could save you about \$563 in Rhode Island personal income tax. (The example does not take into account other factors that could affect your Rhode Island tax, such as other modifications that could decrease or increase income; the Rhode Island standard deduction; personal exemptions; tax credits; and use tax.)

-- H 7454Aaa

TAX CHANGES IN BUDGET AND OTHER BILLS (CONTINUED FROM PAGE 6)

'Rebuild Rhode Island'

This program, enacted in 2015, generally offers tax credits for certain developments that have a financing gap. The credit cannot exceed \$15 million for any qualified development project. Also, no building or qualified development project to be completed in phases or in multiple projects can exceed the \$15 million cap for all phases or projects involved.

Under the new law, an exception to certain program limitations will be allowed – no more than once in a given fiscal year – to the development of land and buildings by developers and tenants on the former Route I-195 land in Providence. Also, the new law caps, at \$150 million, the aggregate sum of credits that can be issued under the overall program.

The new law gives the Commerce Corporation the right to make a loan – or an equity investment – as an alternative incentive in lieu of the provision of tax credits.



-- H 7454Aaa

Fuel use tax

All money collected from the fuel use tax on motor

carriers under RIGL Chapter 31-36.1, which formerly went to the general fund, must – under the new law – go instead to the State's Intermodal Surface Transportation Fund under RIGL § 31-36-20.



-- H 7454Aaa

Historic tax credits

The 2013 historic preservation tax credit program, formerly scheduled to sunset in 2016, is now extended by one year, to June 30, 2017.

Thus, no credits will be authorized to be reserved on or after June 30, 2017, or upon the exhaustion of the maximum aggregate credits, whichever comes first.

-- H 7454Aaa

Hotel tax

For fiscal year 2017 only, proceeds of the hotel tax – but not the portion of the hotel tax collected from residential units offered for tourist or transient use through a hosting platform – must be distributed in accordance with the distribution percentages established in RIGL § 42-63.1-3(a)(1) through § 42-63.1-3(a)(3) by the Division of Taxation and the City of Newport. The provision applies for returns and tax payments received on or



Newport: *Theriza Iafrate, chief of the Rhode Island Division of Taxation's Excise Tax section, visited Newport in June to talk about taxes on short-term residential rentals. The discussion took place on radio station 1540 WADK in Newport. She and two other tax officials were guests on "The Business of Newport County," a Newport County Chamber of Commerce show; the host was Bruce Newbury, the well-known radio personality and restaurant expert.*

after July 1, 2016, and on or before June 30, 2017.

-- H 7454Aaa

Motor fuel tax

RIGL Chapter 31-36, "Motor Fuel Tax," is amended to state that, effective July 9, 2016, propane used for the generation of electricity is not subject to the Rhode Island motor fuel tax.

Propane that is used to operate or propel motor vehicles with internal combustion machines is still taxable under the motor fuel tax.

-- H 8228A, S 2989A



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

HEARING HELD ON PERSONAL INCOME TAX REFUNDS

Rhode Island Department of Revenue Director Robert S. Hull and Acting Tax Administrator Neena S. Savage testified before the House Committee on Oversight on June 9, 2016.

The presentation was titled, “The Causes of the Delay of Tax Refunds in 2016 and How the Department Will Address Them before Next Tax Season.”

“I’ve requested that these officials be present to tell us why these late refunds continue to be a problem and what they intend to do to fix it,” Rep. Patricia Serpa, chairwoman of the House Oversight Committee, said in a statement before the meeting.

“Since Rhode Island no longer taxes Social Security income as of Jan. 1, even more Rhode Islanders will be eligible for refunds next year. I do not want this to be an annual problem for Rhode Islanders who want and need their money,” she said.

Hull and Savage testified at the hearing that the Division of Taxation had processed approximately 395,000 personal income tax refunds so far this year (through June 6, 2016). That represented about 95 percent of the refunds processed last year.

Among the reasons that some refunds have been delayed this year:



Presentation: Rhode Island Department of Revenue Director Robert S. Hull and Acting Tax Administrator Neena S. Savage (in screenshot above) testified before the House Committee on Oversight (in screenshot below) at the State House on June 9, 2016. The presentation was titled, “The Causes of the Delay of Tax Refunds in 2016 and How the Department Will Address Them before Next Tax Season.” The hearing was broadcast live by Capitol Television.



- ◆ an 84 percent increase in the number of potentially fraudulent refund claims (following a nationwide trend);
- ◆ a mandate from the Auditor General to review refund claims more closely;
- ◆ the rollout of a new, agency-wide computer system;

- ◆ filing errors; and
- ◆ staffing challenges due to increases in phone calls, walk-ins, and emails.

Hull and Savage told the committee that substantially all valid tax refunds on returns filed as of June 6, 2016, should be issued by mid-July 2016. They also made the

point that safeguarding taxpayer information and money is the agency’s primary objective. Plans for the coming filing season include expanding the Division’s cyber fraud unit to streamline the process and further protect taxpayers.

NEW CHIEF NAMED FOR EXCISE TAX SECTION

Theriza Iafrate has been promoted to the rank of chief of the Rhode Island Division of Taxation's Excise Tax section.

She assumed her post in June upon the retirement of Donald Englert.

"Whenever there were changes to the structure of our sales tax, it was Don who led the Division's efforts to analyze and interpret those changes for businesses and others," said Acting Tax Administrator Neena S. Savage.

"Through careful study and assiduous preparation, he not only wrote the regulations, but also toured the state, fielding questions from stakeholders. Don was a consummate professional who was well-known in the business community and had years of experience. He will be sorely missed," Savage said.

"I am pleased to welcome Theriza as Don's successor. She was chosen from a very strong field of candidates. Her education, work experience, language capabilities, technological savvy, and her tenacity and perseverance all make her an ideal candidate to lead our Excise Tax section," Savage said.

Native of Egypt

Born in Cairo, she was raised in Alexandria, Egypt, where she was educated in Catholic schools and attended the University of Alexan-



New Chief: *Theriza Iafrate is now chief of the Rhode Island Division of Taxation's Excise Tax section.*

dria. In the summer of 1995, when she was 19, her parents -- both agricultural engineers -- moved the family to live with relatives in Florida. Her parents felt there would be more opportunities for the family in the U.S., she said.

For Christmas 1995, the family visited relatives in Connecticut, and soon settled in Rhode Island -- mainly to be close to a Coptic Orthodox church in

Cranston. She returned to Egypt to complete her studies at the University of Alexandria, from which she graduated in 1997 with a bachelor's degree in accounting.

Held two jobs

Upon her return to Rhode Island, she held two full-time jobs simultaneously -- as opening shift manager at a local McDonald's restaurant, and in cost accounting

analysis for Colibri, a manufacturer of pens, lighters, and other items. She also studied at Johnson & Wales University in Providence, from which she graduated with a master's degree in accounting in 2000.

Joined in 2002

She joined the Division of Taxation in January 2002, as a revenue officer in the Collections section. She continued working part-time for a while as a jewelry specialist at the J.C. Penney store in Warwick, where she met her future husband, Justin Iafrate.

From May 2006 through December 2013, she worked as a revenue agent in the Division's Field Audit section, then was promoted to principal in early 2014 in the Division's Excise Tax section.

Taxes and fees

As chief of Excise, she supervises a staff of eight, who together oversee approximately 20 different taxes and fees -- including sales and use tax, meals and beverage tax, motor fuel tax, alcoholic beverage taxes, cigarette and tobacco taxes, and hotel taxes.



Donald Englert

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.

Federal change

The Internal Revenue Service notified a taxpayer that she had certain pension income for her 2010 tax year – income that she had not reported.

Rhode Island General Laws § 44-30-59 says, in essence, that if your federal taxable income reported on your federal return is changed or corrected by the IRS, you must file an amended Rhode Island return to report the change.

In this case, the taxpayer did not file an amended Rhode Island return, so the Division issued a Notice of Deficiency for the additional Rhode Island tax owed as a result of the federal change, as well as interest and penalty.

A hearing was held on the matter, but the taxpayer did not appear. On March 9, 2016, Hearing Officer Catherine R. Warren determined that the taxpayer failed to file the required amended 2010 Rhode Island personal income tax return and thus owes tax on the unreported income, plus interest and penalty. In April 2016, Acting Tax Administrator Neena S. Savage



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.

adopted Warren's decision and recommendation.

-- Final Decision and Order
No. 2016-07

Fire truck

A corporation that provides fire and rescue services resident to a town in Rhode Island bought a fire truck in 2013 and paid Rhode Island's 7 percent use tax.

The next year, the corporation was deemed, by the Internal Revenue Service, to be exempt from federal income tax under Internal Revenue Code § 501(c)(3).

With the IRS letter in hand,

the corporation submitted a form, "Sales & Use Exemption for an Exempt Organization," to the Division of Taxation.

In response, the Division issued to the corporation a sales tax exemption certificate. The corporation would be able to use the certificate to buy goods and services without paying Rhode Island's sales and use tax.

In 2015, the corporation asked the Division for a refund of the tax that the corporation paid in buying the fire truck in 2013. The Division denied the request; the corporation appealed. The corporation argued about equity and fairness:

- ◆ A municipality is not required to apply for a tax exempt certificate; why should the corporation?
- ◆ The corporation was eligible for a sales tax exemption certificate when the corporation bought the truck, and eventually received the certificate.

The Division asserted that an administrative hearing is not the forum for raising issues of equity. The Division also asserted that sales tax and use tax regulations require that an entity must first have an IRS-issued tax-exemption certificate in hand before the entity can obtain a Division-issued sales tax exemption certificate.

(Please turn to page 11)



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 IN SUMMARY (CONTINUED FROM PAGE 10)

In her decision, Warren wrote that, under the statute and applicable regulations, the corporation was not eligible to be exempt from the sales tax because the corporation did not have the required exemption certificate at the time of purchase. On March 18, 2016, Warren found that the Division properly denied the corporation’s request for a refund. On April 21, 2016, Savage adopted Warren’s decision and recommendation.

-- Final Decision and Order No. 2016-08

Refund deadline

A married couple’s tax payment for 2012 was deemed paid by the due date of April 15, 2013.

The couple filed their tax year 2012 return on April 23, 2015. The couple sought a refund, but their refund claim was denied because it was out of time.

The statute provides different times periods within which a refund is allowed. (Please see nearby table.) In this case:

◆ April 23, 2015, was past the two-year period – from the date the taxes were deemed paid – that is allowed for requesting a refund.



Statute of limitations for Rhode Island personal income tax refunds [Rhode Island General Laws § 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.

<p>Three-year rule</p>	<p>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.</p>
<p>Two-year rule</p>	<p>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.</p>

Note: Any income tax withheld from the taxpayer during any calendar year, and any amount paid as estimated income tax for a taxable year, is deemed to have been paid on the fifteenth day of the fourth month following the close of the taxable year for which the payments were being made.

Example of how the rules apply

Maria’s 2012 return was due on April 15, 2013. She actually filed the return on July 1, 2015. As a result, July 1, 2015, becomes the starting date for the three-year rule. The three-year period thus runs from July 1, 2015, to July 1, 2018. Were there any Rhode Island income tax payments attributable to 2012 during this three-year period? No.

When Maria worked in 2012, Rhode Island personal income tax was withheld from her wages each week for 52 weeks. By statute, the wage withholding was deemed paid on April 15, 2013. Maria then had two years from the April 15, 2013, payment date to file a 2012 return. Was the return filed within the two-year period? No. Maria does not pass either the three-year rule or the two-year rule. Her refund claim is therefore denied.

◆ The taxpayers were within the three-year period, but had not paid any tax from April 23, 2015, to the present.

On March 24, 2016, Warren determined that the taxpayers were not entitled to the refund claimed for 2012 and that the Division properly denied their claim for the re-

fund. On April 21, 2016, Savage adopted Warren’s decision and recommendation.

-- Final Decision and Order No. 2016-09

Administrative penalty

In 2015, Division of Taxation agents seized untaxed tobacco products from a retailer. The Division issued a Notice of Deficiency (assessing tax, interest, and penalty) and a Notice of License Suspension (imposing a 60-day license

suspension). The retailer and Division entered into an agreement required the retailer to make payments to the Division in five monthly installments. The paid the entire amount due, but was late with two payments. On March 28, 2016, Warren determined that the taxpayer should pay an administrative penalty. (The retailer is no longer licensed as a cigarette dealer and its retail store is no longer open.)

(Please turn to page 12)

Legal Corner**RECENT STATE TAX CASES IN SUMMARY** (CONTINUED FROM PAGE 11)

On April 21, 2016, Savage adopted Warren's decision and recommendation.

-- Final Decision and Order
No. 2016-10

Refund claim

A taxpayer's 2010 Rhode Island personal income tax return, due in April 2011, was actually filed in April 2015 -- and included a claim for a refund.

However, the taxpayer did not qualify under the terms of the two-year rule or the three-year rule (see table on previous page), so the Division denied her request for a refund.

On May 3, 2016, Warren determined that the taxpayer is not entitled to the claimed refund. Warren also determined that the Division properly denied the taxpayer's refund claim. On June 24, 2016, Savage adopted her decision and recommendation.

-- Final Decision and Order
No. 2016-11

Untimely refund claim

A taxpayer's 2012 Rhode Island personal income tax return was due in April 2013. She filed it on June 1, 2015, claiming a refund. However, the taxpayer met neither the two-year rule nor the three-year rule (see table on previous page).

The taxpayer testified that at the time the 2012 return was due, she had personal health issues and was also the sole caretaker for a terminally ill parent and a sick brother.

Warren found that the taxpayer's refund claim was out of time. "While the taxpayer had a complicated medical and distressing family situation during 2012 and subsequently, there are no provisions in the statute that provide for any exemptions from the time limits set by statute," Warren wrote. (Also, an administrative hearing is a forum for facts; matters of equity are for the courts, she indicated.)

On May 3, 2016, Warren determined that the Division had properly denied the taxpayer's claim. On June 24, 2016, Savage adopted her decision and recommendation.

-- Final Decision and Order
No. 2016-12

Refund claim denied

The taxpayer filed his 2012 Rhode Island personal income tax return in May 2015, claiming a refund. However, the taxpayer did not qualify under the terms of the two-year rule or the three-year rule (see table on previous page), so the Division denied his request for a refund.

On June 10, 2016, Warren determined that the taxpayer is not entitled to the claimed refund and that the Division properly denied the taxpayer's refund claim. On June 24, 2016, Savage adopted her decision and recommendation.

-- Final Decision and Order
No. 2016-13

Out-of-time refund

The taxpayer filed his 2012 Rhode Island personal income tax return in July 2015, claiming a refund. However, the taxpayer did not qualify under the terms of the two-year rule or the three-year rule (see table on previous page), so the Division denied his request for a refund.

On June 10, 2016, Warren determined that the taxpayer is not entitled to the claimed refund and that the Division properly denied the taxpayer's refund claim.

On June 24, 2016, Savage adopted her decision and recommendation.

-- Final Decision and Order
No. 2016-14

Couple's refund claim

A married couple filed their 2010 Rhode Island personal income tax return in December 2015.

However, the couple did not qualify under the terms of the two-year rule or the

three-year rule (see table on previous page), so the Division denied their request for a refund.

On June 10, 2016, Warren determined that the taxpayer is not entitled to the claimed refund and that the Division properly denied the taxpayer's refund claim. On June 24, 2016, Savage adopted her decision and recommendation.

-- Final Decision and Order
No. 2016-15

**Tax tip line**

If you have information about wrongdoing involving state taxes, 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.

RHODE ISLAND TAX NEWS ROUNDUP

Following are some Tax Division developments that have occurred since the last quarterly newsletter was posted:

Sales permits

The Division of Taxation in June issued an Advisory to keep tax professionals and others posted about sales permits.

The Division noted that it would be mailing sales permits and coupon booklets in June and July 2016.

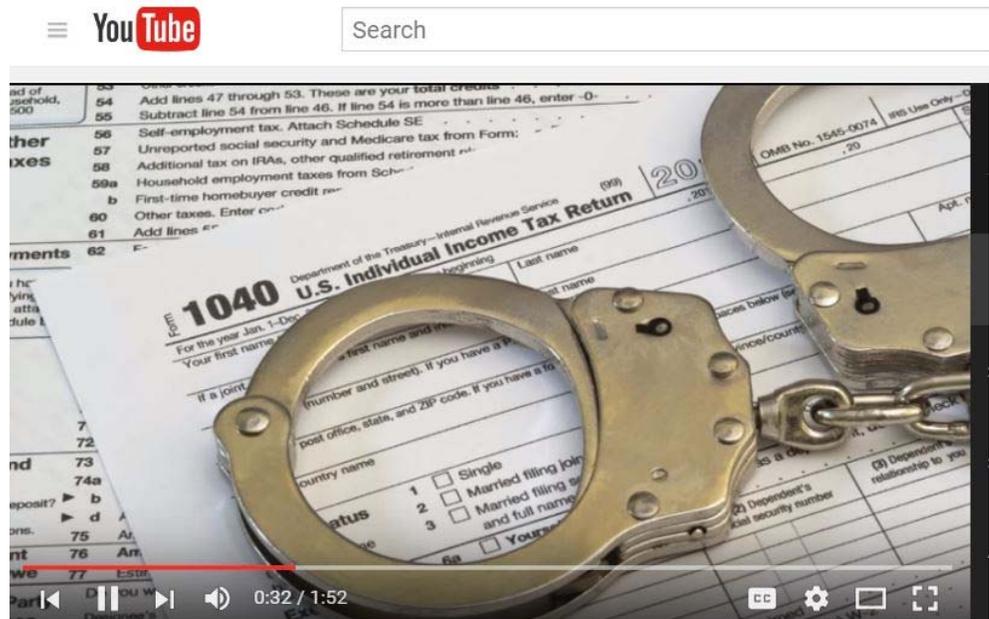
Permits would be sent only to those who have applied or reapplied for permits, paid the annual \$10 permit fee, and are current on their state taxes.

For those who are delinquent on their state taxes, the Division of Taxation places a “block” on their accounts, preventing renewal of their sales tax permit(s).

Those whose sales permit renewals are blocked due to tax delinquency cannot use their old permits to continue selling. Instead, they must contact the Division’s Collections section to make arrangements to pay what they owe.

For questions about sales permits and coupon booklets, call the Division’s Excise Tax section at (401) 574-8955.

If you are delinquent on state taxes and your sales permit has been blocked, call the Division’s Collections section at (401) 574-8941.



Fighting Theft: The Internal Revenue Service, state tax agencies, and others recently warned tax preparers about cybercriminals and urged preparers to take appropriate steps to protect clients from data theft. The IRS has YouTube videos about identity theft (see screenshot above).

Investigation

The Rhode Island Division of Taxation helped to investigate a multi-state illegal tobacco distribution network. The investigation led to the arrest and arraignment in May of a man in Holyoke, Massachusetts.

“We allege that this defendant was running a multi-state criminal operation that involved transporting, selling and distributing illegal, untaxed cigarettes to convenience stores across Massachusetts and across state lines,” Massachusetts Attorney General Maura Healey said in a statement at the time.

“We will continue to work with our state and federal partners to crack down on those who evade the law and rob our state of needed tax revenue,” Healey said.

“This is the result of teamwork and of close cooperation and hard work among investigative authorities in multiple jurisdictions, including Massachusetts, Rhode Island, and Connecticut,” said Rhode Island Acting Tax Administrator Neena S. Savage.

“We are proud of the efforts that the Rhode Island Division of Taxation’s Special Investigation Unit made over multiple months in this complex investigation. We will continue to work together with state and federal agen-

cies to make sure that the law is upheld,” Savage said.

IRS warning

Leaders from the Internal Revenue Service, state tax agencies, and tax businesses warned tax preparers in June that they increasingly are targets of cybercriminals and should take appropriate steps to protect clients from data theft.

The IRS also posted new information to help tax professionals get started with safeguards to protect clients’ data.

It was the first in a series of fact sheets and tips on security, scams and identity theft prevention measures aimed at tax professionals.

Practitioners' Corner**QUESTIONS AND ANSWERS ABOUT STATE TAXES**

Q: I'll be filing on extension this year. Is there a way I can pay my Rhode Island personal income tax electronically when I file my return for tax year 2015?

A: Yes, by direct debit of your bank or credit union account. Here's how it works: Just before you e-file your return, fill out the "direct debit" section on your tax preparation software program. Carefully enter, on that screen, the required bank account information. Also indicate when you want the withdrawal made. We will make the withdrawal (the "debit") automatically from your account, on the date and in the amount you specified before you e-filed your return to us.

If you choose the direct debit option – also known as the automatic withdrawal option, you must make the election before you e-file; it cannot be added afterward. Also, if you don't prepare your own return, chances are that your preparer will have the direct debit option available on the preparer's professional tax preparation software.

Q: I have a client, a corporation, which owns



real estate in Rhode Island and has a potential buyer. The corporation will not be liquidated in the transaction. The buyer's attorney is looking for a letter of good standing.

The corporation's 2015 return is on extension and probably will not get filed until later this year. The corporation has no employees nor does it collect sales taxes; it basically collects rent. Is there any way for us to get a letter of good standing prior to filing of the 2015 corporate return?

A: Yes. Provided that the corporation has a valid extension payment for 2015 on hand with us, we would consider the taxpayer filed up-to-date. The only other requirement would be the *pro forma* tax return if the sale is a major portion of Rhode Island assets. (See the letter of good standing application for more details.)

Q: We filed a Form RI-1040 for tax year 2015, based upon a client telling us he made his fourth-quarter estimated tax payment. He has

now informed us that he did not make that payment and would like to pay it as soon as possible. Can you please advise us on how he can do so? He'd like to pay as soon as possible to stop the clock on any interest due.

A: Your best bet is to have the client write us a check for the amount of the estimated payment he did not make. Have him mail the check to us as soon as possible. He must include in the same envelope a completed Form RI-1040 voucher (not Form RI-1040ES voucher). If it turns out he owes interest and underestimating penalty, we'll bill him.

Q: Before I e-file my Rhode Island personal income tax return on extension this year, I will fill out a section of the computer program that lets me arrange for direct debit of my bank account to cover my Rhode Island personal income tax balance due. Will the direct debit be done the same day as I e-file? And, if not, will I face penalty and interest?

A: If you fill out the section of the computer program that lets you arrange for direct debit of your bank account to cover your Rhode Island personal income tax balance due, you can schedule the date on which you want to have the debit – the withdrawal – made.

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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.

Practitioners' Corner

QUESTIONS AND ANSWERS ABOUT STATE TAXES (CONTINUED FROM PAGE 14)

For example, you can e-file your return on, say, July 29, and – in that filing – tell us to make the withdrawal on, say, October 18. What if you e-file on October 18 and ask us to make the withdrawal that very same day? We probably won't be able to, because even though it's an automated process, there are too many steps involved to complete it the same day. In this example, we might be able to make the withdrawal by, say, October 19. However, for purposes of penalty and interest, we will use the date on which your e-file directed us to make the withdrawal – not the actual withdrawal date. Thus, assuming the withdrawal covers your balance due, no late-payment penalty or related interest will apply. In other words, you'll be all set.



Q: As a private-sector employer in Rhode Island, must I include TDI information in Box 14 of the Form W-2?

A: Rhode Island's temporary disability insurance (TDI) program is paid for through a tax on workers (mainly private-sector employees). When it comes to Form W-2, you may report the amount of TDI tax withheld by using Box 14. It's not required, but we recommend reporting the information on the W-2 for audit and other reasons

(including employees who claim TDI refunds).

Q: My question involves a multi-state S corporation and its qualified subchapter S subsidiary. The subsidiary ("Q-sub") is domiciled outside of Rhode Island and apportions business income to multiple states, including Rhode Island. Can the subsidiary be included on the Form RI-1120S that the S corporation parent files with Rhode Island, or must each entity file a separate Form RI-1120S?

A: They can all be included on the same return, the same Form RI-1120S. That's true even if the qualified subchapter S subsidiary (Q-sub) does not apportion 100 percent of its income to Rhode Island.

If one or more qualified subchapter S subsidiaries are included for federal purposes, they may also be filed on one return for Rhode Island purposes.

Check the "Q-sub Included" box on page 1 of Form RI-1120S and attach the Form RI-1120S Q-Sub Schedule to the tax return. The minimum tax must be included for each entity included in the return.

Q: This question involves the expansion of

sales and hotel taxes to short-term residential rentals. I'm renting a cottage for a week this summer and am going through a real estate agent. The rent itself is \$1,600. Additional costs bring the overall total to \$2,100. Is the tax on the \$1,600 rental, the \$2,100 total, or something in between?

A: The breakdown is shown in the table above. The taxes are applied to the amount of rent paid by you, the renter – the total consideration paid.

Thus, in this example, the 7 percent sales tax and 1 percent local hotel tax would apply to the rent, insurance, cleaning fee, and reservation fee.

The taxes would not apply to the refundable security deposit. (This assumes that all of the security deposit is refunded. But the taxes would apply to any part of the security deposit that is not refunded.)

Taxes on short-term residential rental	
Item on bill	Taxed?
Rent: \$1,600	Yes
Insurance: \$100	Yes
Cleaning fee: \$125	Yes
Agent reservation fee: \$75	Yes
Refundable security deposit: \$200	No



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.

New email address

The Rhode Island Division of Taxation's Corporate Tax section now has its own email address:

Tax.Corporate@tax.ri.gov

(Please turn to page 16)

Practitioners' Corner**QUESTIONS AND ANSWERS ABOUT STATE TAXES** (CONTINUED FROM PAGE 15)

Q: I made my first-quarter surplus lines estimated payment online. I emailed Form SLB-EST along with the receipt of the first-quarter estimated payment to the Rhode Island Department of Business Regulation and they emailed me back stating that it was not the correct email address to use to be sending the form. Is there another email I can use to send the form?

A: When estimated tax payments are made online on behalf of a surplus lines broker, there is no need to file the estimated tax form (Form SLB-EST). To make estimated payments, please use the following link:

<https://www.ri.gov/taxation/business/index.php>

However, if you pay by check, you must file the paper form.

In any event, please keep in mind that Rhode Island taxes are overseen by us, at the Rhode Island Division of Taxation: www.tax.ri.gov

Insurance licensing and related matters are handled by the Department of Business Regulation: www.dbr.ri.gov

Q: If we pay our surplus lines or insurance gross premiums tax online, must we mail in the form?

A: If you pay your estimated tax online, there's no need to file the estimated-tax form.

However, if you pay your actual tax online, you still must file your annual return (and file it this season on paper).

Q: Could you please tell me where to find how to report a first-time homebuyer's credit on the Rhode Island return? I've searched your website and can't find it.

A: No such credit is allowed against the Rhode Island personal income tax.

However, there is a credit which is allowed against your federal personal income tax, on your federal return, involving mortgage credit certificates. Locally, it's called the "FirstHomes Tax Credit" program and it's available exclusively through Rhode Island Housing.

For more information, please use the following links:

<http://loans.rhodeislandhousing.org/FirstHomesTaxCreditprogram/>

and

http://loans.rhodeislandhousing.org/uploadedFiles/RIHpublic/Homeownership/FirstHomes_Tax_Credit_program/FirstHomes%20Tax%20Credit%20Program%20Description%20Disclosure_rev_0615.pdf

Q: A couple wants to rent out my boat so they can spend the weekend on it. They may keep it tied up at the dock in

Rhode Island the entire time, or they may take it out onto the Bay for a few hours, then return to the dock each

night. Does that law enacted last year, the one involving short-term residential rentals, apply in this case? If so, will I have to collect and remit sales and hotel taxes to the State of Rhode Island?

A: No. Legislation enacted June 30, 2015, expanded the sales and hotel taxes to short-term rentals of residential property, including the rental of vacation homes and beach cottages. However, boats are excluded by regulation. Thus, the sales and hotel taxes do not apply to the boat rental you described in your question, so do not collect and remit the taxes.

**E-file reminder**

The Rhode Island Division of Taxation this year accepts the following returns under its electronic filing program (e-file):

- ◆ Form RI-1040
- ◆ Form RI-1040NR
- ◆ Form RI-1120C
- ◆ Form RI-1120S
- ◆ Form RI-1065



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 rulings, 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

Unless otherwise indicated, all articles and photos in this issue are by the newsletter's editor, Neil Downing. If you have comments or suggestions for *Rhode Island Tax News*, please email: 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
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