

# RHODE ISLAND TAX NEWS

A NEWSLETTER FOR TAXPAYERS AND PREPARERS

APRIL/MAY/JUNE 2015

## ASST. TAX ADMINISTRATOR NAMED

**N**eena S. Savage has been appointed assistant tax administrator at the Rhode Island Division of Taxation.

She succeeds Peter J. McVay, who retired on October 31, 2014.

"I am very happy to announce our new Assistant Tax Administrator, Neena Sinha Savage. We had several great candidates and it was an extremely difficult selection," said Rhode Island Tax Administrator David M. Sullivan.

"Neena has been an attorney with the Department of Business Regulation (DBR) since 1997 and most recently served as acting deputy director and executive



**Newly Appointed:** Neena S. Savage, Esq., has been appointed as assistant tax administrator at the Rhode Island Division of Taxation.

counsel. Her legal experience, along with her extensive experience with a regulatory agency, will be a

great asset to the Division of Taxation," Sullivan said.

*(Please turn to page 2)*

## STATES AND IRS FIGHT TAX REFUND FRAUD

**S**tate tax agencies, the Internal Revenue Service, tax preparation software providers, and major tax preparation firms are working together to combat tax refund fraud.

At a meeting on the topic in Washington, D.C., on March 19, 2015, Rhode

Island Tax Administrator David M. Sullivan led a delegation representing the various states in his role as president of the Federation of Tax Administrators (FTA).

Sullivan met with IRS Commissioner John Koskinen, software provid-

ers, and others at a gathering at IRS headquarters at 1111 Constitution Avenue NW. As a result of the meeting, participants agreed to form three working groups that will focus on methods of fighting the problem.

*(Please turn to page 3)*

### Inside:

#### **REFUND STATUS**

Check the status of your Rhode Island personal income tax refund by using the Division of Taxation's online refund status tool and by reading the agency's annual "Guide to Tax Refunds." Please turn to [page 6](#) to learn more.

#### **INSIDE THIS ISSUE:**

[INTERIM DOR DIRECTOR](#) 3

[TAX NEWS ON TV](#) 4

[NEW CHIEF OF CORPORATE TAX](#) 5

[SEMINAR FOR ARTISTS](#) 7

[PROMOTION FOR CHIEF](#) 8

[LEGAL CORNER](#) 9

[PRACTITIONERS' CORNER](#) 12

[TDI REFUNDS](#) 15

## ASSISTANT TAX ADMINISTRATOR NAMED (CONTINUED FROM PAGE 1)

She was born in Bhopal, India, moved to the United States at age seven, and spent her early years in Texas with her parents and three siblings (her father was an engineer in Houston for Bechtel, a global engineering, project management, and construction company).

### Texas A&M

She graduated from Texas A&M University in 1987 with a bachelor of science degree in political science.

She went on to study at American University's Washington College of Law, in Washington, D.C., where she met her future husband, Robert Savage of Warwick.

She graduated from law school in 1990, and later moved with her husband to Rhode Island.

Their son, Nicholas, was born in 1992; their daughter, Natasha, was born in 1999. Savage said she has enjoyed raising her family in Rhode Island near her hus-

band's family.

She worked for two years in Peace Dale for Rhode Island Legal Services, which helps low-income people with civil legal problems.

She later worked as a litigation associate at the Edwards & Angell law firm (now known as Locke Lord Edwards) in Providence.

She entered State service in 1997, initially as a hearing officer at the DBR. She held a number of positions at DBR, eventually becoming acting deputy director and executive counsel.

### Regulatory enforcement

While at DBR, she became experienced in all facets of regulatory enforcement, including serving as a prosecutor and hearing officer. She worked with every Division within the agency, advising them on legal issues and policies.

Most recently, her experience was with the DBR's Banking, Securities, and Racing and Athletics Divi-

sions. "I thoroughly enjoyed being a lawyer, but at this point in my career, I wanted to be part of a specialized organization and I was interested in being in a more specialized policy-making role, using legal skills to help form and implement policy," she said.

When the position at the Division of Taxation was posted, she said, "I thought it would be a good fit."

She said she had the sense that the Division of Taxation is in a transformative phase, with projects that include implementation of a new agency-wide computer system and sweeping changes to the corporate tax structure. While at DBR, she was involved in implementing an online licensing system involving mortgage lenders and others, and a second online system involving insurance producers and others.

### 'Team approach'

She also said, "I was impressed with the caliber of management and staff

within the Division of Taxation and their dedication to the agency." She said she appreciates the "team approach to policy-making and problem-solving" at the Division of Taxation.

### Monitors legislation

In her new position, she oversees the agency's Field Audit section, Office Audit and Discovery section, and Special Investigation Unit, and will also monitor legislative developments, among other things.

Savage said she has traveled to India on a number of occasions and that experience has reinforced her appreciation for the role that government plays in preserving, protecting, and promoting the public interest.

*(Savage started work at the Division of Taxation on February 9, 2015. She is assistant tax administrator and associate director of revenue services. The Division of Taxation is part of the Rhode Island Department of Revenue.)*

## ▷ DEADLINE NEARS FOR PROPERTY-TAX RELIEF CREDIT ◀

The deadline is April 15, 2015, for claiming the Rhode Island property-tax relief credit on Form RI-1040H.

New for this filing season: The maximum amount of

the credit has increased by \$5, to \$305.

Also new for this season: The program is open only to those who are 65 or old-



er, or who are disabled. (Non-disabled people younger than 65 are no longer eligible.)

Other restrictions apply;

details are in the instructions included on the form.

(For details on the deadline, and on rare deadline extensions, see [Rhode Island General Laws Chapter 44-33](#).)

## SULLIVAN APPOINTED AS ACTING DOR DIRECTOR

Rhode Island Tax Administrator David M. Sullivan has been named acting director of the Rhode Island Department

of Revenue (DOR). Rosemary Booth Gallogly, who formerly served as DOR director, has retired. Sullivan will continue to serve

as tax administrator while overseeing DOR as acting DOR director. "Rosemary served the State of Rhode Island for 35 years and should be commend-

ed for her stellar career," Sullivan said.

Governor Gina Raimondo has asked Sullivan to serve as interim DOR director. "I was honored to be asked and I am honored to serve," Sullivan said. "I look forward to working with the entire DOR team," he said.

The DOR, through its central management function, oversees the Division of Lottery, State Aid, Registry of Motor Vehicles, Division of Taxation, Division of Municipal Finance, and Office of Revenue Analysis. The DOR has 505 employees and a budget of \$460.2 million. The Division of Taxation administers and collects approximately 50 taxes and fees as required by Rhode Island law. It has 222 employees and a budget of \$22.1 million.



Photo by Verenda Smith / FTA

**Meeting in Washington:** Rhode Island Tax Administrator David M. Sullivan (left) and John Hewitt (right), founder and CEO of Liberty Tax Service, at a meeting at Internal Revenue Service headquarters in Washington, D.C., on March 19 to discuss ways to combat tax refund fraud.

## STATES AND IRS FIGHT REFUND FRAUD (CONTINUED FROM PAGE 1)

Some of the methods are to be implemented in time for the coming filing season, which starts in January 2016; others are long-term changes to be implemented in stages.

### Fraud detection

One working group will focus on fraud detection and fraud prevention; the second will review technology and security; the third will look at information sharing and related topics.

"We are encouraged by the cooperation shown here today among the states, the IRS, and the software industry," Sullivan said after the meeting.

"Tax refund fraud is a huge issue – and it's not going to be solved by any one group or organization dictating a solution," Sullivan said.

"To rein in this growing problem, we all need to work together, in partner-

ship – sharing information, ideas, and solutions," Sullivan said.

"Such a joint effort – with the IRS, the states, and the industry working together – serves all of our interests, including the interests of the taxpayer," said Sullivan.

The FTA, which sponsored Sullivan's trip to the meeting, is an association which serves the principal tax collection agencies of the 50 states, the

District of Columbia, Philadelphia, and New York City.

The FTA was organized in 1937 to improve the quality of state tax administration by providing services to state tax authorities and administrators. The FTA's work is directed and governed by an 18-member board of trustees made up of tax administrators representing all regions of the country.

## FOCUS ON TAX TOPICS ON CHANNEL 10

Channel 10 has focused on Rhode Island tax topics in recent months through interviews with Rhode Island Tax Administrator David M. Sullivan.

On January 7, 2015, Sullivan was interviewed about the misclassification of workers and the underground economy.

On February 25, 2015, Sullivan discussed the Rhode Island Division of Taxation's efforts to combat tax refund fraud.

In each instance, Sullivan was interviewed by Frank Coletta, the well-known Channel 10 anchor.

Coletta, who anchors the "NBC 10 News Sunrise" and "NBC 10 News at Noon" programs, interviewed Sullivan at Channel 10's head-



**Fighting Fraud:** Rhode Island Tax Administrator David M. Sullivan (left) was interviewed by Frank Coletta (right), the well-known Channel 10 anchor, on January 7, 2015, about the misclassification of workers. Coletta also interviewed Sullivan on February 25, 2015, about tax refund fraud.

quarters in Cranston.

The interviews with Sullivan appeared on the noon news. In the January seg-

ment, Sullivan said that when an employer misclassifies a worker, both the worker and the employer are put at risk -- and the State of Rhode Island loses needed tax revenue.

Sullivan serves on a six-agency task force that was established last year to coordinate joint efforts to combat the underground economy and employee misclassification. ("Employee misclassification" typically means a worker who should be classified as an employee but who is instead improperly classified as an independent contractor.)

The task force was formed as a result of legislation ap-

proved by the General Assembly and enacted in June 2014. As part of the task force's efforts, the Rhode Island Division of Taxation has set up an anonymous telephone tip line to receive allegations of worker misclassification.

In the February segment, Sullivan reviewed steps that the Division of Taxation has put in place to combat refund fraud, which he said is a growing threat at the federal and state tax levels.

The Division is also collaborating with other states, software providers, and the Federation of Tax Administrators to help identify possible patterns of fraud.



**Online:** Channel 10's interview with Tax Administrator David M. Sullivan on January 7, 2015, about the misclassification of workers, was broadcast on the station's "NBC 10 News at Noon" program and was also made available on the station's website, [TurnTo10.com](http://TurnTo10.com).

## NEW CHIEF NAMED FOR CORPORATE TAX

**M**arlen A. Bautista has been promoted to the rank of chief of the Rhode Island Division of Taxation's Corporate Tax section.

She succeeds Charles J. Larocque, who has retired.

"Charlie was a vital part of our operation. He was extremely knowledgeable. With many years of State service, mostly in Taxation, Charlie was the go-to guy for staff members who sought information on corporate tax matters. He brought a high level of professionalism to the job, and will be sorely missed," said Rhode Island Tax Administrator David M. Sullivan.

"I am pleased to welcome Marlen as Charlie's successor. She was chosen from a very strong field of candidates. She has a broad knowledge of the many operations of the Tax Division, having worked for multiple sections in her 10 years with the agency," Sullivan said. "In her most recent role with our Office Audit and Discovery section, she became adept at using our new com-



Charles J. Larocque, CPA



**New Chief:** *Marlen A. Bautista is now chief of the Rhode Island Division of Taxation's Corporate Tax section.*

puter system. That will come in handy as we start processing corporate tax returns through the new system next year," he said.

### Overall knowledge

While in Office Audit, Marlen also increased her knowledge of corporate tax by reviewing applications for letters of good standing. "Overall, her knowledge and experience will serve us well," Sullivan said. The Division of Taxation's Corporate Tax section oversees the corporate income tax as

well as numerous other tax types, including the bank excise tax, compassion center surcharge, hospital licensing fee, imaging services surcharge, insurance tax, and the public service gross earnings tax.

### Providence native

Bautista was born in Providence, a first-generation American; her parents are natives of the Dominican Republic. She was also the first in her family to go to college: After graduating from Classical High School

in Providence, she attended the University of Rhode Island, from which she graduated in 2006 with a bachelor's degree in business administration. While at URI, she worked at Brooks Pharmacy and Citizens Bank to help pay for tuition and other expenses.

### Accounting studies

Shortly before graduating, but after acquiring the necessary number of accounting credits, she joined the Division of Taxation, starting as a revenue officer in the Compliance & Collections section in 2005. She later worked as a:

- ◆ taxpayer service specialist in the Income Tax section;
- ◆ revenue agent in Field Audit;
- ◆ principal revenue officer in Collections;
- ◆ principal revenue agent in Employer Tax; and
- ◆ principal revenue agent in Office Audit.

Bautista, of Providence, began as chief revenue agent in Corporate Tax on March 23, 2015, overseeing a six-member staff. The size of that staff will grow to nine in the months ahead as the section ramps up to deal with single sales factor apportionment, market-based sourcing, combined reporting, and other recent changes to the Rhode Island corporate tax structure.



Tax Refund Status

Check the status of your state tax refund

You filed your tax return, now - "Where's My Refund?"

Access this secure Web site to find out if the Division of Taxation received your return and whether your refund was processed.

To get to your refund status, you'll need the following information as shown on your return:

- Your social security number
- Your filing type
- The refund amount

ONLINE TOOL AND GUIDE FOR TAX REFUNDS

Taxpayers who want to check on the status of their Rhode Island personal income tax refund have a number of options at their disposal.

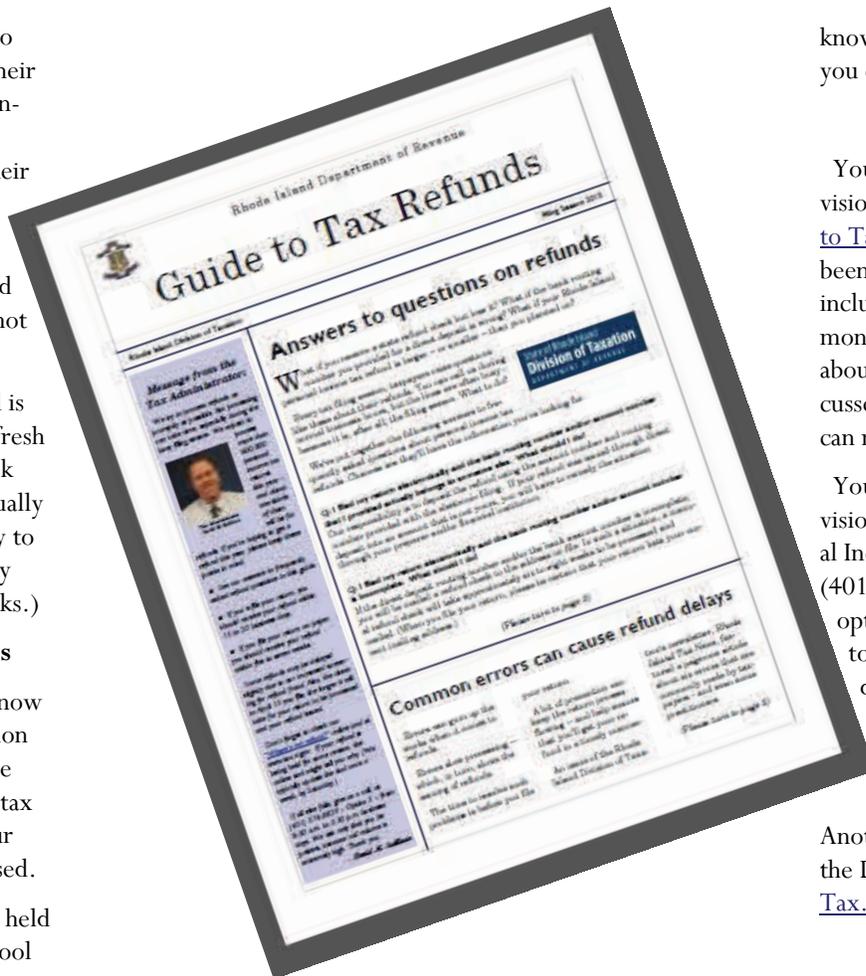
One is the Division of Taxation's online refund status tool (see screenshot above).

The secure online tool is typically updated with fresh information once a week during filing season, usually by Saturday. (From July to December, it is typically updated every two weeks.)

Processing status

The tool can let you know if the Division of Taxation has received your Rhode Island personal income tax return and whether your refund has been processed.

If your refund is being held for review, the online tool can, in many cases, let you



know why – and what steps you can take in response.

Guide updated

You can also read the Division of Taxation's "Guide to Tax Refunds," which has been updated for 2015. It includes answers to commonly asked questions about refunds. It also discusses common errors that can result in refund delays.

You may also call the Division of Taxation's Personal Income Tax section at (401) 574-8829 (choose option 3) from 8:30 a.m. to 3:30 p.m. business days. Please note that call volume is extremely high at this time of year.

Another option is to e-mail the Division of Taxation: [Tax.Assist@tax.ri.gov](mailto:Tax.Assist@tax.ri.gov)

## ARTISTS ATTEND SESSION ON SALES TAX RETURN

The Rhode Island Division of Taxation, in partnership with the Rhode Island State Council on the Arts, held an information session to answer questions from artists about completing their annual sales tax reconciliation return.

The meeting took place at the Department of Administration Building (Powers Building), One Capitol Hill, in Providence. About 25 artists attended.

Speakers included Susanna Coburn, Dennis Leary, and John Torregrossa, representing the Division of Taxation; and Randall Rosenbaum, executive director of the Rhode Island State Council on the Arts.

Under legislation enacted in June 2013, the entire state became an arts district starting December 1, 2013. As a result, original and creative works by writers, composers, and artists that are sold in Rhode Island – whether at galleries or elsewhere – are now exempt from Rhode Island sales and use tax.

(Under the old law, the ex-

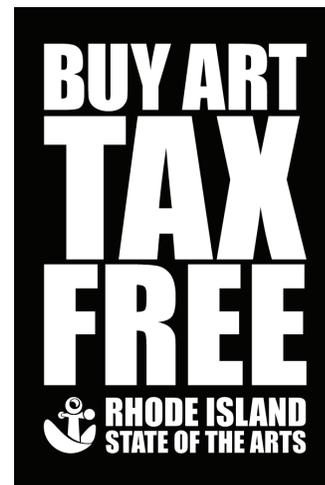


Photo by Randall Rosenbaum / Rhode Island State Council on the Arts

**Artists Convene:** A number of artists and others attended an information session at the Powers Building in Providence in January 2015, sponsored by the Rhode Island Division of Taxation in partnership with the Rhode Island State Council on the Arts. The session was intended to answer artists' questions about completing their annual sales tax reconciliation return. Above, Susanna Coburn of the Division of Taxation's Excise Tax section explains the return during the meeting. Below, some of the artists and others who took part in the session.

emption generally applied only to sales in designated areas in a limited number of cities and towns in the state.)

Rhode Island thus became the first state in the nation to allow for a statewide sales tax exemption on the sale of original and limited edition works of art, according to the Rhode Island State Council on the Arts. (See the Council's poster, at right.)



## NEW CHIEF OF TAX PROCESSING SERVICES

Daniel T. Clemence has been promoted to chief of tax processing services in the Rhode Island Division of Taxation’s Project Oversight & Development section.

He formerly was chief of the Division of Taxation’s E-Government section.

“Dan’s responsibilities and workload have increased as the Division of Taxation continues to implement its new agency-wide computer system, known as STAARS, and as more and more taxpayers are filing their returns – including business returns – electronically,” said Rhode Island Tax Administrator David M. Sullivan.

“This promotion represents a formal recognition of the depth and breadth of Dan’s knowledge and experience, his strong work ethic, and his ability to master new skills and take on new tasks,” Sullivan said. “Dan is extremely knowledgeable about e-filing and



**Promotion:** *Daniel T. Clemence has been promoted to chief of tax processing services at the Rhode Island Division of Taxation.*

continues to play a vital role for us in the implementation of STAARS.”

Born and raised in North Scituate, Clemence graduated from the University of Rhode Island in 1998 with a bachelor of science degree in

accounting. He joined the Division of Taxation in 1998 as a revenue officer in the Compliance & Collections section, and later worked as a revenue agent in Field Audit.

In 2001, he worked for

American Power Conversion Corp. as a desktop computer support analyst before returning to the Division of Taxation later that year as a tech support specialist in Processing.

In 2004, Clemence was promoted to the rank of principal revenue agent in the electronic funds transfer unit of Processing.

In 2013, he was appointed chief of the E-Government section, overseeing electronic filing and electronic payments while working with software vendors.

Clemence recently served as a member of the Federal-State Tactical Advisory Group (TAG), a joint effort of the Internal Revenue Service and the Federation of Tax Administrators. TAG focuses on electronic tax initiatives, including e-filing.

He resides in North Scituate with his wife, Ellie, and their three children.

## ESTATE TAX CHIEF DEPARTS FOR PRIVATE SECTOR JOB

Linda M. Riordan, chief of the Rhode Island Division of Taxation’s Estate Tax section, recently left the agency to take a position in the private sector.

A lawyer and member of the Rhode Island, Massachusetts, and Connecticut bars, she joined the Divi-

sion of Taxation in 2010 after working for a large trust company which focused on ultra-high net worth clients.

“Linda has been a great asset to this agency. She brought a keen intelligence, a sense of humor, and an even temper to her job,”

Rhode Island Tax Administrator David M. Sullivan said. “She will be sorely missed, and we wish her the best in her new career” as a senior lawyer for a large corporation, Sullivan



**Linda Riordan, Esq.**

said. The Division of Taxation plans to fill the position eventually. In the interim, Chief of Examinations Michael F. Canole will oversee the Estate Tax section.

**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.*

**Cigarette tax**

A taxpayer had been arrested for possession of 50 cartons and two packs of unstamped cigarettes. The Division of Taxation issued Notices of Deficiency for cigarette tax, sales tax, and related penalties. The taxpayer in August 2014 entered into an agreement (a stipulation) to make payments, but never did. After a hearing in December 2014, Hearing Officer Catherine R. Warren decided on January 22, 2015, that the taxpayer violated the stipulation and owes the tax. Warren also set a deadline for payment. Tax Administrator David M. Sullivan on January 23, 2015, adopted her decision and recommendation.

[-- Final Decision and Order No. 2015-01](#)

**Unreported income**

The Division of Taxation learned that a taxpayer's 2009 federal income tax return was changed due to unreported income. As a result, in accordance with Rhode Island General Laws § 44-30-59, the taxpayer should have filed an amended Rhode Island personal income tax return – but



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.*

did not. The Division of Taxation therefore issued a Notice of Deficiency for the unreported income and imposed interest and a late-payment penalty.

The taxpayer appealed; a hearing was held but the taxpayer did not attend. On January 28, 2015, Warren concluded that the taxpayer failed to file the required 2009 amended Rhode Island return. Warren also concluded that the Division of Taxation properly assessed the taxpayer for tax, interest, and penalty. On February 3, 2015, Sullivan adopted the hearing officer's decision and recommendation.

[-- Final Decision and Order No. 2015-02](#)

**Employer withholding**

As a result of an audit, the Division of Taxation determined that the actual amount of Rhode Island personal income tax that an employer withheld from employee wages was greater than the amount of withholding tax that the employer submitted to the Division of Taxation. The Division thus issued a Notice of Deficiency for the discrepancy – and imposed interest and penalties.

At a hearing, the employer testified that he had paid the entire amount of withholding tax to a payroll company, but the payroll company entered bankruptcy proceedings and did not transmit the entire amount of withholding to the Division.

The employer also testified that the Division had subsequently given him clearance on his sales permit and liquor licenses, essentially saying he was in good standing from a state tax standpoint. The employer also said it was unfair to have to pay over the withholding tax twice, first to the payroll company, and now a second time to the Division – and to pay interest and penalties. The employer requested a refund of the interest and penalties.

On February 12, 2015, Warren cited RIGL § 44-30-84 in concluding that the employer owes the interest.

*(Please turn to page 10)*

**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 9)

However, Warren also determined, in essence, that under RIGL § 44-30-85, a late-filing and late-payment penalty can be waived if it can be shown that the late filing and late payment are due to reasonable cause and not willful neglect.

Warren determined that the employer in this case had demonstrated that the failure was the result of the payroll company entering bankruptcy. As a result, Warren concluded that the employer does not owe penalties – and that the penalties he did pay must be refunded.

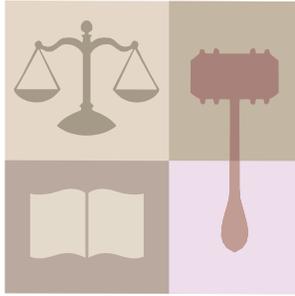
On February 24, 2015, Sullivan adopted the hearing officer's decision and recommendation.

[-- Final Decision and Order No. 2015-03](#)

**Drinks and taxes**

At issue is the tax treatment of complimentary drinks. Are they subject to use tax? Or are they nontaxable as discounts to the sales price?

The Division of Taxation performed a routine sales-and-use tax audit of seven



full-service restaurants. Part of the focus was on 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.

In this case, the parties agreed that the complimentary drinks were given only to regular customers, customers who had had a bad dining experience, and customers who were waiting to be seated.

An administrative hearing was held on the matter. The Division argued, in part, that the complimentary drinks are not discounts at the point of sale pursuant to RIGL § 44-18-12 because the free drinks are not available to all patrons and the taxpayers exercise absolute discretion over who gets the complimentary drinks.

The taxpayers argued, in part, that the drinks are only given to patrons who are dining in the restaurant and that the drinks are part of the meal; the complimentary drinks are excluded

from the “sales price” because they are discounts; whether complimentary drinks are available to all patrons or are based on objective criteria is not relevant.

On February 13, 2015, Warren concluded that the complimentary drinks are considered discounts – so they do not fall under the definition of “sales price” and, therefore, the taxpayers are not subject to additional tax, interest, or penalty. On February 24, 2015, Sullivan adopted the hearing officer's decision and recommendation.

[-- Final Decision and Order No. 2015-04](#)

**Cigarette tax**

A retailer owed cigarette tax and was issued Notices of Deficiency. The retailer subsequently entered into a stipulation to pay the deficiency in 12 installments - but failed to make them all. The taxpayer also failed to attend a hearing. On February 12, 2015, Warren concluded that the taxpayer violated the stipulation and must pay the entire tax plus penalty (minus the amounts already paid). Sullivan on March 5, 2015, adopted the hearing officer's decision and recommendation.

[-- Final Decision and Order No. 2015-05](#)

**Sales permit**

The applicant for a sales permit and cigarette sales license is married. Her husband is a former owner or registered agent of an LLC that has outstanding tax liabilities – including cigarette tax, sales tax, corporate tax, and litter permit fees – and failed to timely file various sales and withholding filings. The husband also was an officer of three entities that are delinquent in their filings. Warren found that because of the family relationship involved, neither the sales permit nor the cigarette sales license can be issued. On February 20, 2015, Warren concluded that the applicant's Business Application and Registration (BAR) (a sales and withholding tax registration form) should be denied. On March 9, 2015, Sullivan adopted the hearing officer's decision and recommendation.

[-- Final Decision and Order No. 2015-06](#)

**Domicile: Taxpayer wins**

At issue is whether a taxpayer was a domiciliary of Rhode Island in 2008 and thus was subject to Rhode Island personal income tax. The matter arose when the Division of Taxation found that the woman had filed a federal income tax return for 2008 but not a Rhode Island return for that year.

*(Please turn to page 11)*

**Legal Corner:**

# RECENT STATE TAX CASES (CONTINUED FROM PAGE 10)

On the one hand:

- The woman owned real estate in Rhode Island in which her son and father lived at various times.

- She bought a car in 2007 when her car lease expired while she was in the United Kingdom; she let her sister use the car.

- She maintained her Rhode Island driver's license and voting registration.

On the other hand:

- She banked in the U.K.
- She took a permanent job in the U.K. and chose to pay tax to the U.K. in order to move

permanently to the U.K.

- She obtained a general work visa in 2008 in the U.K. to facilitate working there.

In 2011 she did return to Rhode Island – due to a family matter and a job change.

The issue of domicile turns on intent and objective manifestations of intent. In this case, the evidence showed that she was not a domiciliary of Rhode Island in 2008 because at that time she had the intent to live permanently in the U.K. -- and evidence supported that.

On February 27, 2015, War-



DECISIONS ONLINE

The Division of Taxation's website shows all Administrative Decisions since early 2011. (See screenshot above.) To view, click [here](#).

ren determined that the taxpayer "has demonstrated by a preponderance of evidence that she was not a domiciliary of Rhode Island in 2008 . . . ." Warren concluded that the taxpayer does not owe Rhode Island

personal income tax for 2008. Sullivan on March 9, 2015, adopted the hearing officer's decision and recommendation.

[-- Final Decision and Order No. 2015-07](#)

## WHEN PREPARING SCHEDULE W, KEEP THIS IN MIND . . .

When filling out box 15 of an employee's Form W-2, the employer should list the 11-digit Rhode Island withholding account number -- in other words, the number that the employer uses to transmit, to the State of Rhode Island, the money that the employer withholds from wages for Rhode Island personal income tax.

The employer should not enter in box 15 the number that the employer uses for state unemployment insurance or temporary disability insurance (TDI) tax.

What can the preparer do?

If the number in box 15 begins with "000," it is -- in most cases -- the employer's number for state unemployment insurance or TDI, it should not be in box 15, and it should not be used by the preparer on Schedule W.

In such a situation, the preparer should instead enter on Schedule W the first nine digits of the federal Employer Identification Number (EIN) from box b of Form W-2. (In most instances, the employer's federal EIN is the same as the employer's number for personal income tax with-

holding, so you should be all set using the federal EIN on Schedule W.)

Why is all this so important? If the wrong number is entered on Schedule W, processing of the return can be bogged down and the client's refund delayed.

If the client is due a refund and has not received the refund after a [reasonable amount of time](#) after the return is filed, the client should check with the Division of Taxation regarding the refund's status. (Start with the "[Where's](#)



[My Refund](#)" tool, which at this time of year is updated weekly, typically by Saturday.)

(Note: When entering the employer's federal EIN on Schedule W, do not add any zeroes to the end of the number.)

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

**Q: My client owes at least \$10,000 in Rhode Island personal income tax, penalty, and interest, but she does not have the resources to pay it. Does the Rhode Island Division of Taxation have payment plans available? If so, what are the terms?**

A: We do make available payment plans, but they are offered on a case-by-case basis. As a general rule, payment plans – also known as installment agreements – are available when the total amount owed is \$1,000 or more. We typically require a 50 percent down payment and the balance paid off within six months.

Will your client qualify for an installment agreement? It depends on many factors. For example, if the client's Rhode Island tax debt is \$2,500, but the client has \$250,000 in annual income – and no other claims on that income, save for living expenses and the like – that person probably will not qualify.

Your best bet is to run the details by someone in our Collections section to try to get at least an indication of whether your client would



qualify – whether it'd be worth your client applying for an installment agreement. Call (401) 574-8941 between 8:30 a.m. and 4:00 p.m. business days.

If your client elects to proceed, she will have to complete the installment agreement request form and the applicable collection information statement. To view or download the forms, click [here](#) for the "Delinquent Taxes / Collection" section of our website.

**Q: Could you tell me if the sales tax portion of the tax return is a mandatory filing requirement for 2014? In the past people voluntarily completed the section. Now it has a lookup table.**

A: It is mandatory. The statute was changed in 2014, for tax years beginning in 2014 and later years. The current statute says that, when reporting the amount of use tax obligation on the Rhode Island personal income return, the taxpayer "shall list either the actual amount (from books, records, and other sources), or an amount using a lookup table established by

the tax administrator."

What if the taxpayer has no use tax obligation? In that case, the taxpayer would list zero. Even in that case, however, the taxpayer must check the box attesting that the amount listed is correct.

"When completing and filing a Rhode Island personal income tax return, the taxpayer shall check a box attesting to the amount of use tax listed on the return. The tax administrator shall direct computer software providers to require the taxpayer or the taxpayer's preparer to proactively check the box; software providers shall not program an automatically checked attestation box," the statute says.

**Q: My client bought a car in Michigan and paid a 6 percent sales and use tax to Michigan, then brought the car back to Rhode Island to register it. Will the client have to pay Rhode Island's 7 percent sales and use tax?**

A: When you register the car in Rhode Island, you will be charged the Rhode Island 7 percent sales and use tax, but you will be given credit for the 6 percent that you paid to Michigan. As a result, you will actually owe Rhode Island the difference, which is 1 percentage point.

**Q: I have a client who has to pay on the federal side**

**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.

**but is getting a refund on the state side. Can he have the state refund direct deposited while he has to pay federally?**

A: If a taxpayer e-files and is due a Rhode Island personal income tax refund, the taxpayer has the option to have the refund deposited directly into his or her bank or credit union account.

*(Please turn to page 13)*

**Practitioners' Corner:****QUESTIONS AND ANSWERS ABOUT STATE TAXES** (CONTINUED FROM PAGE 12)

It makes no difference to us whether a taxpayer has a federal refund or a federal balance due.

(Whether one's software allows for direct deposit of a state refund when there is no refund due at the federal level will depend on the software.)

**Q: I heard that, as a result of a change in the statute last year, single member LLCs no longer have to pay the annual \$500 charge.**

A: Someone has provided you with the wrong information. The applicable statute -- Rhode Island General Laws (RIGL) § 7-16-67 -- "Filing of returns with the tax administrator -- annual charge" -- makes it clear that any limited liability company (LLC) that is not taxed as a corporation for federal and Rhode Island tax purposes must pay an annual charge -- a filing fee -- equal to the corporate minimum tax under RIGL § 44-11-2(e), which is currently \$500. For more information, see the instructions to Form RI-1065.

**Q: My client runs a store and sells e-cigarettes. He already has a Division of Taxation sales tax permit. Does he need any other permits?**

A: Yes. The Rhode Island Department of Health re-

quires a license for the selling of e-cigarettes. The application fee is \$25. For more information, please click [here](#).

**Q: The Division of Taxation in February 2015 provided guidance on the application of Section 179 expensing for Rhode Island tax purposes, given that Rhode Island has re-coupled**

**with federal law when it comes to Section 179. But can you tell me if Rhode Island remains decoupled from the federal when it comes to Section 168 bonus depreciation?**

A: Yes. Under legislation enacted in 2002, Rhode Island decoupled from federal bonus depreciation provisions -- and has remained decoupled ever since. In other words, there's no bonus depreciation at the Rhode Island level. As a result, taxpayers who've claimed bonus depreciation at the federal level must make modifications, up and down, on the Rhode Island return.

**Q: My client made a mistake on the annual sales tax reconciliation return, which was filed in January 2015, for tax year**

**2014. Can he file an amended return?**

A: Yes. Keep in mind that for the return that was due in January 2015, there were three separate returns: one for liquor stores, one for artists, and one for all other retailers.

(Due to system limitations, only the regular annual sales tax reconciliation was able to be e-filed.) All returns must be filed on paper, so please be sure to choose the

correct one. To view the page that contains the forms, please click [here](#). Before filing the amended return, please call Dennis Leary in our Excise Tax section, at (401) 574-8959, for instructions on how to proceed. (For example, amended sales tax reconciliation returns must be faxed to the Division of Taxation's Excise Tax section at (401) 574-8914, and marked to Dennis Leary's attention.)

**Q: I need to file Form RI 1040-FAC to report federal audit changes to my client's return.**

A: That form is defunct. It is no longer in use by us. To report changes resulting from a federal audit, please use Form RI-1040X.

**Q: I bought a case of beer,**

**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.*

**a bottle of wine, and a bottle of rum from a liquor store in Rhode Island. They charged sales tax on the beer, but not on the wine or rum. Why is that?**

A: By statute, sales of wine and spirits sold by liquor stores in Rhode Island from December 1, 2013, through June 30, 2015, are exempt from Rhode Island sales tax. Beer and malt beverages continue to be subject to sales and use tax during that period.

*(Please turn to page 14)*



**Practitioners' Corner:****QUESTIONS AND ANSWERS ABOUT STATE TAXES** (CONTINUED FROM PAGE 13)

So the wine and rum you bought were exempt from the tax, but the case of beer was not.

**Q: Our business prepares its own Form RI-1120S internally and does not use a paid preparer. Are we supposed to file our return electronically?**

A: Rhode Island's e-file mandate applies to paid preparers, not to taxpayers themselves. So you can file a paper return; you won't be subject to penalty for filing a paper return; but keep in mind the many benefits of e-filing.

**Q: Can you confirm that the Rhode Island system is not capable of receiving e-filed returns for fiscal year filers for fiscal year 2013 and that we should paper file those returns?**

A: In November 2014, our mainframe computer system stopped accepting e-filed returns for tax year 2013. One reason is that the system needs to be prepared for the new filing season. As you read this, our system is accepting e-filed returns for tax year 2014. However, due to system limitations, we cannot now accept e-filed returns for tax years prior to tax year 2014.

**Q: Is the filing deadline for pass-through entities still April 15, or is it March 15?**

A: For entities that use a calendar year and file Form RI-1065, the due date is April 15th. For entities that use a calendar year and file Form RI-1120C or Form RI-1120S, the deadline is March 15.

**Q: When making estimated tax payments for a combined group that is engaged in a unitary business, should only one of the corporations make one payment for all, or should each of the corporations make a separate payment?**

A: The group must appoint a designated agent as its representative. The designated agent makes each tax payment on behalf of the entire group. For more about designated agents, please see Rule 19 of the draft regulation on combined reporting.

**Q: My client would like to make a payment of Rhode Island personal income tax by direct debit. Does the Rhode Island Division of Taxation accept that?**

A: Yes. We receive millions of dollars in that way. The question is whether your software will allow for the method.

**Q: My client took a cab from Providence to Newport. The cab driver took a route through Fall River, Mass., to get to Newport, and at the end, the driver did not charge sales tax. Why?**

A: In general, taxicab trips in Rhode Island are subject to Rhode Island's 7 percent sales and use tax. However, we would be in violation of interstate commerce provisions of the U.S. Constitution if we were to charge sales tax on an interstate trip. As a result, Rhode Island sales tax cannot be charged on an interstate trip – even if the trip begins and ends in Rhode Island.

**Q: I have a client who lives in Rhode Island and works in Rhode Island. His Rhode Island employer sent him to work in Puerto Rico for a short while. They took out Puerto Rico taxes. Is this an offset to the Rhode Island taxes when we file his Rhode Island return? In other words, does he get credit for taxes paid to Puerto Rico as he would be given credit for having worked in another state?**

A: Under RIGL § 44-30-18, a Rhode Island resident is allowed a credit, against the Rhode Island personal income tax otherwise due for

**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/newsletter/index.php](http://www.tax.ri.gov/newsletter/index.php)

the taxable year, for the aggregate of net income taxes imposed on him or her for the taxable year by other states (including the District of Columbia) of the United States. Puerto Rico is not a "state" for this purpose. Thus, taxes paid to Puerto Rico don't count for purposes of the credit.

On a separate subject, the Internal Revenue Code allows a foreign tax credit to be claimed in certain circumstances against the federal income tax. However, that credit is not allowed against the Rhode Island personal income tax; it was eliminated as a result of Rhode Island Public Law 2008, ch. 100, art. 32, § 3, retroactive to tax years beginning on or after January 1, 2008.

## SEE IF YOU'RE DUE A REFUND FOR TDI TAX

If you worked for a single employer last year, odds are that the employer withheld the proper amount in Rhode Island temporary disability insurance (TDI) tax.

But if you worked for two or more employers last year – at the same time, or in succession – you may have overpaid in TDI tax. That's because there's no way for one employer to know how much in TDI tax the other employer withheld.

### See for yourself

So check for yourself: If you paid more than the maximum of \$752.40 in TDI tax last year, you paid too much and should therefore file for a refund.

Although the TDI program is generally overseen by the Rhode Island Department of Labor and Training, TDI taxes – and refunds – are handled by the Rhode Island Division of Taxation.

To claim your refund, use [Form TX-16, "Claim for Refund of Temporary Disability Insurance Tax."](#) Instructions are on the form. Following are some points to keep in mind as you fill it out:

- ◆ TDI applies to each person, individually. So if you're married and trying to figure out if you're owed a TDI tax refund, count only the TDI tax that you yourself paid. Your spouse will have to do a separate calculation.

- ◆ If you're married, each spouse must file a separate form for a TDI tax refund. (Remember: TDI applies to each person, individually.)

- ◆ Claims for TDI tax refunds can be filed only on paper, not electronically. The mailing address is in the instructions. (TDI tax refunds are issued only by check, not electronically.)

- ◆ For each employer you list on the claim form, you must attach a copy of the Form W-2 wage statement you received from that employer.

- ◆ You may request TDI refunds only for 2014, 2013, and 2012. You must use a separate Form TX-16 for each year for which you claim a refund.

- ◆ For more information on TDI refunds, call (401) 574-8700. (The "Where's My Refund?" online tool is only for personal income tax refunds, not for TDI refunds.)

### Potential delay

Don't expect to receive your TDI refund immediately after you file for it. There are reasons it could be delayed. For example, TDI refunds for 2014 can't be processed until the Tax Division has received and processed employers' tax and wage reports for late 2014. It can take until early April, depending on the year, to start processing all those employer reports. Depending on when you file your claim for a refund, it could take up to 12 weeks until you receive your refund check.



### 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.

In general, you typically pay TDI taxes through paycheck withholding. 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. For more about TDI and the related temporary caregiver insurance (TCI) program see the [Rhode Island Department of Labor and Training website](#).

## SCHOLARSHIP CREDIT APPLICATION PERIOD STARTS JULY 1

The Credit for Contributions to Scholarship Organizations program will begin on July 1.

The credit is for approved business entities that make contributions to approved scholarship organizations.

Although the contribution

must be made by a business entity, the credit can be used against a variety of taxes -- and can be used by owners, shareholders, or partners of pass-through entities.

Applications are approved on a first-come, first-served basis until the credit cap of \$1.5 million per fiscal year is

met. A list of qualified scholarship organizations and other helpful information is available on [the program's web page](#).



The application for the fiscal year that starts July 1, 2015, will be available in late May or early June. For more information, contact Donna Dube at the Division of Taxation at (401) 574-8903 or e-mail: [Donna.Dube@tax.ri.gov](mailto:Donna.Dube@tax.ri.gov)

# PUBLIC EMPLOYEE TAX COMPLIANCE ACT

The Rhode Island Division of Taxation in early April prepared to issue letters to certain state and local government employees regarding the Public Employee Tax Compliance Act.

Under Rhode Island General Laws Chapter 44-69, the State of Rhode Island as well as local government agencies must provide the Division of Taxation each August with a list of all public employees as of the preceding July 1.

The Division of Taxation must then analyze that information to determine whether the employees are in compliance with Rhode Island income tax law.

If an employee is not in compliance, the Division of

Taxation must send a notice to that employee. The notice must include, at a minimum, the following information:

- ◆ a statement that the employee will be subject to mandatory garnishment of wages unless the taxpayer is deemed by the Tax Administrator to be in compliance with Rhode Island income tax laws;
- ◆ the reasons that the taxpayer is considered to be out of compliance -- including a statement of the amount of any tax, penalties, and interest due, or a list of the tax years for which income tax returns have not been filed; and
- ◆ an explanation of the rights of the taxpayer and

## Compliance Act results at a glance

Total number of public employees:	36,779
Number delinquent on tax:	726
Total tax delinquency:	\$1,138,575
Number of non-filers:	1,828

Figures are preliminary. "Total number of public employees" means total as reported by 72 State and local government entities. (Most, but not all, government entities reported.) "Number delinquent on tax" means public employees who have balance outstanding. "Number of non-filers" means public employees who failed to file Rhode Island personal income tax return for a prior year.

the procedures which must be followed by the taxpayer in order to come into compliance with Rhode Island income tax laws.

In general, if a State or local government employee does not come into compliance after all of the required notice and related provisions, the employer must begin mandatory garnish-

ment of the employee's wages.

The Act is the result of Rhode Island Public Law 2014, ch. 145, art. 12, § 3, which was enacted in June 2014. The first lists under the law were provided to the Division of Taxation in August 2014.

## DIVISION OF TAXATION POSTS LATEST SOI REPORTS

The Division of Taxation has posted on its website two sets of statistics of income (SOI) reports (see screenshot at right).

One set is for Rhode Island's personal income tax, another for the state corporate income tax. Both cover tax year 2013.

The reports, posted in March 2015, are drawn on figures contained in tax returns filed with the Division of Taxation.

The reports do not disclose confidential taxpayer information; they provide aggregate

data for a given tax type.

For example, one of the SOI reports for the Rhode Island personal income tax shows how many resident returns were filed for tax year 2013, how much adjusted gross income that taxpayers reported in the aggregate, and how much in credits they claimed. The report also breaks down the figures within various income groupings.

The set of corporate SOI reports shows the total number of returns for tax year 2013, how much busi-



nesses reported in federal taxable income, how much in deductions were claimed, and how much in credits were claimed. The corporate SOI set also shows how many business entities paid the corpo-

rate minimum tax of \$500.

The [Division of Taxation website](#) has corporate SOI reports back to tax year 2008, personal income tax SOI reports back to tax year 2005.

# HIGHLIGHTING BENEFITS OF FREE FILE PROGRAM

U.S. Sen. Sheldon Whitehouse, U.S. Rep. Jim Langevin, and Rhode Island General Treasurer Seth Magaziner were among the featured speakers at a meeting in Providence on February 17, 2015, to highlight the benefits of the Rhode Island Free File program.

The Rhode Island Free File program generally allows people with income of \$60,000 or less to use a participating tax preparation software program to prepare and file their federal and Rhode Island personal income tax returns online at no charge. (A [special](#)



**Speaking of Free File:** U.S. Rep. Jim Langevin was among the featured speakers at a recent meeting at the Manton Heights Community Center in Providence to discuss the Rhode Island Free File program.

[page on the Rhode Island Division of Taxation's website](#) lists the participating software programs and

includes a summary of each.)

The meeting was held at the Manton Heights Com-

munity Center on Salmon Street in Providence.

Other speakers included Meg Chevalier of the Internal Revenue Service, Neil Downing of the Rhode Island Division of Taxation, Dave Macklin of the Computer & Communications Industry Association (CCIA), Jim Ruda of the Intuit Financial Freedom Foundation, Jennifer Hawkins of the

Olneyville Housing Corporation, and Paul Tavares of the Providence Housing Authority.

Rhode Island is one of 20 states, plus the District of Columbia, that have formed state Free File programs. Free File is a public-private partnership between the Internal Revenue Service and tax preparation software companies.

## New agreement

The IRS and Free File Inc. (also known as the Free File Alliance) recently announced a new five-year agreement that guarantees free, federal tax preparation software products for 70 percent of all taxpayers, the IRS said.

For more on the agreement, click [here](#).



**Filing Event:** U.S. Sen. Sheldon Whitehouse addresses crowd at Free File event in Providence.



## 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](http://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](mailto: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](mailto:Neil.Downing@tax.ri.gov)

### BACK ISSUES

*Rhode Island Tax News* back issues are on the Tax Division website: [www.tax.ri.gov](http://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 4:00 p.m. business days.)

##### Website

[www.tax.ri.gov](http://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:*

**Michael Canole**  
**Daniel Clemence**  
**Steven Cobb**  
**Susanna Coburn**  
**Richard Coia**  
**Donna Dube**  
**Philip D'Ambra**  
**Donald Englert**  
**Susan Galvin**  
**Sharon Garner**  
**Christine Girard**

**Theriza Iafrate**  
**William Kaniecki**  
**Matthew Lawlor**  
**Leo Lebeuf**  
**Neena Savage**  
**David Sullivan**  
**John Torregrossa**



*The Division of Taxation also thanks Charles Larocque, Randall Rosenbaum, Linda Riordan, and Catherine Warren for their assistance.*