

# RHODE ISLAND TAX NEWS

A NEWSLETTER FOR TAXPAYERS AND PREPARERS

JULY/AUGUST/SEPTEMBER 2013

## TAX DIVISION LAUNCHES COMPUTER SYSTEM

The Rhode Island Division of Taxation has begun the multi-year implementation of its new computer system, known as an integrated tax system.

The Division of Taxation formally launched the project on May 1, 2013, as scheduled, and has since named the new system and developed a logo (shown at right).

The name was chosen through an online survey of Division of Taxation employees. It is STAARS – State Tax Administration and Revenue System. A

budget bill approved in 2012 by the General Assembly and signed into law



by Governor Lincoln D. Chafee authorized the agency to acquire the system, along with software, hardware, and related ser-

vices for implementation, maintenance, and support.

The Division of Taxation, part of the Rhode Island Department of Revenue, administers more than 50 different types of state taxes and fees, and collects about \$2.6 billion a year - money that helps pay for vital public services.

The agency's new computer system will provide a full suite of processing and administrative functionality for the taxes and fees that the agency oversees.

*(Please turn to page 8)*

## STATE TAX CHANGES SIGNED INTO LAW

The creation of a statewide arts district.

A temporary sales tax exemption for wine and spirits sold at liquor stores.

A Rhode Island estate tax break for many farmers.

A reopening of the state's

historic tax credit program.

These are among the tax changes that were approved by the General Assembly and became law this year.

The changes 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. Each section in the summary is followed by a House or Senate bill number.

*(Please turn to page 2)*

### Inside:

### HIGHLIGHTS OF TAX LAW CHANGES

- *Historic tax credit program gets new life*
- *Section 179 expensing linked to federal law*
- *Statewide arts district to be established*
- *Sales tax exemption coming for liquor stores*

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# STATE TAX CHANGES SIGNED INTO LAW (CONTINUED FROM PAGE 1)

## Statewide arts district

The entire state of Rhode Island will soon be treated as an arts district for purposes of the sales and use tax.



As a result, the sale of original and creative works created by – and sold by –

writers, composers, and artists residing in and conducting a business within the state of Rhode Island will be exempt from the state’s 7 percent sales and use tax.

The exemption will also apply to sales by any other gallery located in the state of Rhode Island.

Under former law, the exemption generally applied only to sales by writers, composers, and artists residing in and conducting a business in designated areas in certain municipalities in the state, including Providence, Pawtucket, Newport, Warwick, Woonsocket, and Westerly.

The statewide arts district provisions take effect December 1, 2013.

- H 5127Aaa

## Liquor store exemption

For a 16-month period – from December 1, 2013, through March 31, 2015 -- Rhode Island’s sales and use tax will not apply to wine and spirits sold at package stores

and liquor stores -- “Class A” licensees under Rhode Island General Laws (RIGL) Title 3. Also during that period, no alcoholic beverages sold at retail will be subject to the state’s minimum markup. But beer and other malt beverages will continue to be subject to the sales and use tax.

- H 5127Aaa

## Estate tax on farmland

For purposes of calculating Rhode Island’s estate tax, farmland shall now be appraised at its use value, not at its full and fair cash value (fair market value). In many cases, use value is less than fair market value.

Other provisions involving the Rhode Island estate tax remain in place.

- H 5127Aaa

## Same-sex marriage

The new law, which takes effect August 1, 2013, allows any person to marry any other eligible person, regardless of gender. Thus, same-sex couples who marry under



Rhode Island law will be able to file joint Rhode Island personal income tax returns, beginning in early 2014 for tax year 2013.

The new law allows couples that have entered into civil

unions in Rhode Island since civil unions were established in 2011 to convert those unions into marriages. The new law also generally recognizes legal unions entered into in another state or jurisdiction.

- H 5015B; S 38A

## Historic tax credits

The new law essentially re-opens the state’s historic tax credit program, with certain limits, to encourage redevelopment and re-use of historic buildings.



The “old” program has generally been closed since 2008. Certain projects were essentially grandfathered and continue. However, some other projects were “abandoned” – leaving about \$34.5 million in credits available but unclaimed as of May 15, 2013. It is those unused credits that will be available to qualified applicants.

The enabling legislation establishes a new program – under a separate chapter of state law which uses the title “historic preservation tax credits” and which contains some provisions and limitations that were not present under the old program.

In summary, the new program generally provides a Rhode Island tax credit of 20 percent of qualified rehabilitation expenditures (25 percent in certain circumstances). The maximum project credit is \$5

million. No building to be completed in phases or in multiple projects may exceed the maximum project credit of \$5 million for all phases or projects involved in the rehabilitation of the building.

- H 5127Aaa

## Section 179 expensing

Rhode Island law will conform to federal law with respect to the Internal Revenue Code (IRC) § 179 deduction – better known as the Section 179 deduction.

Thus, a taxpayer will generally be able to follow federal law when electing to treat the cost of any Section 179 property as a current-year expense. Under the new law, any cost so treated shall be allowed as a deduction for the taxable year in which the Section 179 property is placed in service.



The expense deduction may be applied

for purposes of the corporate income tax, tax on banks, and personal income tax. The new Rhode Island law takes effect on January 1, 2014, and applies to all qualified assets placed in service on or after January 1, 2014.

- H 5127Aaa

*(Please turn to page 3)*

## STATE TAX CHANGES SIGNED INTO LAW (CONTINUED FROM PAGE 2)

### 'Production deduction'

Starting January 1, 2014, corporations will no longer be able to obtain a Rhode Island tax benefit for the federal domestic production activities deduction (also known as the "production deduction" or "DPAD" under IRC § 199).

Thus, corporations will have to add the amount of the federal production deduction back into their taxable income for Rhode Island purposes.

- H 5127Aaa

### Paid preparer penalties

The new law establishes specific penalties – criminal and civil – for paid preparers who prepare Rhode Island returns with the intent to wrongfully evade or reduce a tax obligation.



For example:

- ◆ Paid preparers who fail to be diligent in determining eligibility for, or the amount of, Rhode Island's earned income credit shall be fined \$500 for each such return or claim.
- ◆ Paid preparers who fail to be diligent in determining eligibility for, or the amount of, Rhode Island's statewide property tax relief credit (Form RI-1040H) shall be fined \$500 for each such return.
- ◆ Paid preparers who willfully prepare a return with the intent to wrongfully obtain a

statewide property tax relief credit (RI-1040H), or with the intent to evade or reduce a tax obligation, shall be liable for a penalty of \$1,000, or of \$500 per return so filed, whichever amount is greater.

The new law generally says that any paid preparer who has previously been assessed a tax return preparer civil penalty by the Tax Administrator and who is found by a court to have thereafter willfully prepared a false tax return or claim for refund with the intent to wrongfully obtain a statewide property tax relief credit (RI-1040H) or with the intent to wrongfully evade or reduce a tax obligation shall be guilty of a felony and, on conviction, subject to imprisonment for up to five years, a fine of up to \$50,000, or both.

- H 5127Aaa

### Limited partnerships

Under the new law, the Rhode Island Secretary of State cannot issue a certificate of cancellation involving a limited partnership (LP) until all outstanding taxes and fees are paid to the Rhode Island Division of Taxation.



The new law also says that a foreign LP – in other words, an LP formed under an agreement governed by the laws of another jurisdiction (such as another state) – may file a certificate of cancellation of

registration with the Rhode Island Secretary of State only after paying all fees and taxes due to the Rhode Island Division of Taxation. Persons or entities typically can obtain evidence of their tax standing by applying for a letter of good standing with the Division of Taxation and paying the required \$50 fee.

-- S 668; H 5729

### Alcoholic beverages excise

Excise taxes on a number of categories of alcoholic beverages temporarily increase – effective July 1, 2013, through March 31, 2015. Among the categories affected by the in-



crease are malt beverages (including beer), a number of still wines, and spirits such as whiskey, gin, rum, and brandy containing alcohol measuring more than 30 proof. The excise tax applies to manufacturers; wholesalers/distributors pay a fee equal to the tax.

- H 5127Aaa

### Liquor licensee filing

Under the old law, each licensee authorized to sell intoxicating beverages at wholesale or retail in Rhode Island was required to file an annual report, on or before February 1, with the Division of Taxa-

tion listing total sales of alcoholic beverages, as well as sales tax and excise tax collections on those sales for the immediately preceding calendar year.

Under the new law, only Class A licensees – essentially liquor stores and package stores – must provide such annual reports.

The Division of Taxation will compile the information for an annual report due the House and Senate Finance Committee chairs on or before May 1.

Also, other licensees will continue to be subject to the usual sales and use tax reporting requirements.

- H 5127Aaa

### Scholarship credit

The aggregate amount of tax credits that the Division of Taxation may approve under the Credit for Contributions to Scholarship Organizations program, formerly \$1 million, increases to \$1.5 million for fiscal year 2014 and later fiscal years.



The program generally is intended to provide tax credits to business entities that make contributions to certain scholarship organizations.

*(Please turn to page 4)*

# STATE TAX CHANGES SIGNED INTO LAW (CONTINUED FROM PAGE 3)

Although the contribution must be made by a business entity, the credit can be used against a variety of taxes, including the business corporation tax, the public service corporation tax, the tax on banks, the bank deposits tax, the tax on insurance companies, and the personal income tax. (Owners, shareholders, and partners of pass-through entities generally can claim their share of the credit on their Rhode Island personal income tax returns.)

The scholarships are generally for students at nonpublic elementary or secondary schools in Rhode Island.

- H 5127Aaa

### Information sharing

The new law allows the Rhode Island Division of Taxation to disclose to the Rhode Island Secretary of State the name, state of incorporation, address, and other contact information for any corporation that files a tax return with Rhode Island - provided that the disclosure does not include any other information, including any financial information of the corporation.

-- S 596; H 5730

### Outside collection

To help in the collection of delinquent taxes, the Tax Administrator now has the au-

thority to hire collection agencies – whether licensed under Rhode Island law or the laws of another state or the District of Columbia.

The Tax Administrator would use such outside collection agencies to collect – from sources outside the state – taxes, interest, and penalties owed to Rhode Island. The agencies

would pursue nonresident individuals and businesses. About 11,554 nonresidents owe Rhode Island about \$28.9 million.

- H 5127Aaa

### Enforcement

The Division of Taxation plans to beef up enforcement of state tax laws by expanding and centralizing enforcement activities under a new Special Investigations Unit (SIU).

The SIU will serve as the Division of Taxation's primary criminal tax enforcement unit. It will report directly to the Tax Administrator, and will have nine positions overall, including seven existing positions and two new positions: a chief revenue agent and a revenue agent.

The unit's function will include reviewing alleged violations of tax law, investigating violations, and recommending criminal prosecutions.

The SIU will also focus on trust fund violations and potential refund fraud – such as

earned income credit fraud, property tax relief credit fraud, and identity fraud.

- H 5127Aaa

### Remote seller language

The new law makes clear that if the federal government enacts a law allowing states to require remote sellers to collect and remit the state's sales and use tax (such as the Marketplace Fairness Act), Rhode Island will take advantage of the opportunity by requiring remote sellers to pay, collect, and remit Rhode Island sales and use tax.

The new law also makes it clear that if the federal government enacts a law such as the Marketplace Fairness Act, the following changes would take place on the date that the state requires remote sellers to collect and remit sales and use taxes:

- ◆ Rhode Island's 7 percent sales and use tax rate would drop to 6.5 percent;
- ◆ Rhode Island's 1 percent local meals and beverage tax would increase to 1.5 percent; and
- ◆ retail sales of clothing and footwear would be fully exempt from sales and use tax. (Under current law, the 7 percent sales and use tax applies to



articles of clothing, including footwear, with a sales price of more than \$250 per item – with only the incremental

amount above the \$250 threshold subject to the tax.)

- H 5127Aaa

### Job assessment

In 2011, the state's job development assessment, which is paid by employers, increased to fifty-one hundredths of one percent (0.51%) of an employer's taxable payroll, from 0.21 percent. The difference – of 0.3 percentage point – went to pay the interest on federal loans and to help repay bor-



rowings from the federal government. (Proceeds of the loans had

been used to cover benefit payments to the unemployed.) The new law sunsets that 0.3 percentage point difference in tax year 2015, lowering the job development assessment to its pre-2011 level of 0.21 percent, if the loans from the federal government are paid off in full.

- H 5127Aaa

### Hazardous substances fee

Employers no longer must pay a \$42 annual assessment to the state Department of Labor and Training for aiding in the implementation of the state's Hazardous Substances Right-to-Know Act.

(Please turn to page 5)

# STATE TAX CHANGES SIGNED INTO LAW (CONTINUED FROM PAGE 4)

Employers are still subject to the reporting and other provisions of the law.

- H 5127Aaa

## Hospital licensing fee

For all hospitals except those located in Washington County, Rhode Island, the hospital licensing fee rate will be 5.246 percent of the net patient services revenue based on the hospital's first fiscal

year ending on or after January 1, 2012. (The rate was formerly 5.35 percent.)



For hospitals located in Washington County, Rhode Island, the rate is discounted by 37 percent, to 3.305 percent -- subject to approval by the Secretary of the U.S. Department of Health and Human Services.

- H 5127Aaa

## Newport Grand

The rate of net terminal income payable to slot parlor Newport Grand LLC will increase by 2.25 percentage points effective July 1, 2013, through June 30, 2015. At the same time, the state's share will drop by 2.25 percentage points during that period. (Under RIGL § 42-61.2-1, "net terminal income" means currency placed into a video lottery terminal, less credits redeemed for cash by players.)

As of June 30, 2013, the share for Newport Grand equals 27.80 percent. Effective

July 1, 2013, through June 30, 2015, it will be 30.05 percent. As of July 1, 2015, it is scheduled to drop back to 27.80 percent.



As of June 30, 2013, the state's share equals 61.80 percent.

Effective July 1, 2013,

through June 30, 2015, it will be 59.55 percent. As of July 1, 2015, it is to return to 61.80 percent.

- H 5127Aaa

## Advisory board

A Council of Economic Advisors will collect data and information on the state's economy, and advise on economic policy for the governor, Executive Office of Commerce, and the state.

It also will prepare economic policy analysis on specific issues such as tax credits, tax expenditures, and other related matters.

-- S 730B; H 6070B

## TDI program

Rhode Island's temporary disability insurance (TDI) program, which typically pays benefits to workers who are unemployed due to illness or injury unrelated to work, will be broadened to provide wage replacement benefits of up to four



weeks in a benefit year to workers who take time off to care for a seriously ill child, spouse, domestic partner, parent, parent-in-law, or grandparent, or to bond with a new child -- whether through birth, adoption or foster care. The "temporary caregiver benefits" are to be available on or after January 1, 2014.

TDI is paid for by a tax which applies to most workers. The program's expansion could raise the TDI tax rate by 0.1 percentage point for calendar year 2015. (The TDI tax rate for 2013 is 1.2 percent of the first \$61,400 of a worker's wages, for a maximum tax of \$736.80.)

-- S 231B; H 5889Aaa

## Accountability

The new law sets a roadmap for evaluating a number of tax incentives that are aimed at

encouraging economic development. For example, the new law calls for a cost-benefit



analysis of certain tax credit/incentive programs -- and the analysis must be included in the state's unified economic development report starting January 1, 2014.

-- S 734B; H 6066B

## Sales tax study

A joint legislative resolution calls for the creation of a special commission to make a

comprehensive study of all aspects of the state's sales and use tax -- including possible repeal of the tax. A report to the General Assembly is due on or before February 6, 2014.

-- S 246A; H 5365B

## Commerce

The Rhode Island Commerce Corporation (RICC) will be

established to replace the Rhode Island Economic Development Corporation. Its board will be responsible

for establishing accountability standards, reporting standards, and outcome measures for each of its programs -- including the use of tax credits.

-- S 718B; H 6071A



## Editor's Note: S 831A

calls for a commission to study whether taxpayers in certain circumstances should be allowed to reduce their income, for Rhode Island tax purposes, by the amount of their Rhode Island personal income tax refund. (At issue are taxpayers who itemize their deductions for federal income tax purposes.) The commission would report findings and results to the General Assembly on or before February 5, 2014. S 831A was approved by the House and Senate, but at press time had not been transmitted to Governor Chafee. [Click here](#) to check a bill's status.

## CIGARETTE SMUGGLERS CAUGHT AND CHARGED

It had the basic formula typically used by those involved in the illegal smuggling and sale of contraband cigarettes:

- 1.) Buy cigarettes from a mid-Atlantic state such as Virginia, where the state cigarette tax is low.
- 2.) Transport the cigarettes to Rhode Island, where the state tax is higher.
- 3.) Sell the cigarettes in Rhode Island at full price – without paying the Rhode Island cigarette tax – and make a tidy profit.

But this time around there was a twist.

In some previous cases, smugglers simply drove down to Virginia, loaded up on cigarettes, and drove back to Rhode Island to make illegal sales. But that approach raised eyebrows – consumers buying cigarettes in huge quantities.

So this time, the smugglers opened their own businesses in Virginia in an attempt to make it appear that they were running convenience stores, investigators allege.

The smugglers opened two such sites in King George, Va., about a block from the Potomac River, and a third location in Stafford, Va., just down Route 95 from U.S. Marine Corps Base, Quantico, according to a federal grand jury indictment.

The businesses applied for various state permits. They also applied to big-box retail stores for corporate memberships. That way, they reckoned, a convenience store purchasing large quantities of cigarettes would not spark suspicion.

The smugglers never really opened the stores; instead, they smuggled the contraband cigarettes to Rhode Island, using various vehicles – including a Ford Triton truck with false walls, investigators say.

### Game over

The smugglers' game ended on May 8, 2013. That's when more than a dozen teams of federal and state law enforcement agents and officers – executing federal arrest and search warrants – conducted a sweep, arresting seven people and searching 10 locations where a significant quantity of contraband cigarettes, cash, vehicles, and other items were seized.

Among those charged were several people that the Rhode Island Division of Taxation had previously focused on for sell-

ing cigarettes without the proper tax stamps. The Division of Taxation assisted in the case that led to the May 8, 2013, sweep, investigators said.

Details of the case were disclosed in a federal grand jury indictment that was unsealed May 8, 2013, and in a U.S. Department of Justice news release issued the same day.

### 'Criminal enterprise'

The sweep shut down "a wide-ranging, complex interstate criminal enterprise," U.S. Attorney Peter F. Neronha said in a statement. "Members of this enterprise, often under the cloak of purportedly legitimate businesses, used any means possible to steal more than a million dollars from Rhode Island taxpayers."

Neronha added, "I want to thank the many outstanding Rhode Island State Police detectives and the federal agents who tirelessly investigated this matter for many, many months. Our work to defeat this type of fraud continues on many fronts. There is certainly more to come."

Colonel Steven G. O'Donnell, Superintendent of the Rhode Island State Police, said, "The Rhode Island State

Police will continue to target any organized criminal group that profits by taking advantage of a system set up to help those who truly need it. I commend all law enforcement officers, prosecutors and linguists who partici-

parted in this long-term investigation."

In Virginia, the cigarette tax is 35 cents a pack. In Rhode Island, it's \$3.50 a pack. The smugglers pocketed the difference when they illegally sold the Virginia cigarettes in Rhode Island -- at or near the full Rhode Island retail price. Investigators allege that Rhode Island lost about \$1.05 million in state tax revenue as a result.

### 30,000 cartons

Law enforcement officials allege that between July 2011 and May 2013, more than 30,000 cartons of cigarettes were purchased in Virginia and shipped to Rhode Island in a truck bearing Rhode Island War Veteran plates – and, on numerous occasions, that vehicle was driven by one of the alleged smugglers who was in the U.S. Army Reserves and wore his U.S. Army uniform while smuggling in an effort to gain favor and avoid law enforcement detection.

*(Please see bottom of page 7 for more about the investigation and indictment.)*



U.S. Atty. Neronha



Colonel O'Donnell



Pennmaps.net

## NEW CHIEF LEGAL OFFICER APPOINTED

**B**ernard J. Lemos has been promoted to the rank of chief legal officer in the Rhode Island Division of Taxation. He had formerly served as deputy chief of legal services.

“This is a well-deserved recognition of Bernard’s career as a passionate and hard-working barrister serving the taxpayers of Rhode Island,” said Rhode Island Tax Administrator David M. Sullivan.

“Bernard has represented us in some of our most complex and challenging cases, and he has always applied himself with perseverance and grace,” Sullivan said. “We are fortunate to have his razor-sharp mind and his wit on our side.”

Born in Providence and raised in Cumberland, Lemos graduated in 1972 from Northeastern University, Boston, with a bache-



### Chief Legal Officer

*Bernard J. Lemos, at work at his desk (above), has been promoted to the rank of chief legal officer.*

lor of arts degree in biology. For the next seven years, he worked at various medical institutions in the Boston area as a clinical chemist.

Changing tack, he enrolled in Suffolk University Law School, Boston, from which he graduated cum laude in 1982 with a Juris Doctor (J.D.) degree. For the fol-

lowing 20 months he worked in various legal and non-legal jobs, including as a court-appointed defense counsel.

Lemos joined the Division of Taxation in April 1984 as legal counsel, gradually working his way up the ranks to become senior legal counsel in the agency. In

2004, as part of a government reorganization, he was transferred to the Department of Administration’s Division of Legal Services. While there, Lemos for a time represented both the Division of Motor Vehicles and the Tax Division.

In 2008, he was named deputy chief of legal services for the Department of Revenue and was assigned to the Division of Taxation. Thus, Lemos returned to representing the Division of Taxation exclusively. He has been closely involved in a variety of state tax cases. His current title is Chief Legal Officer, Rhode Island Division of Taxation, a position that had been vacant for several years.

Lemos is a member of the Rhode Island Bar and Massachusetts Bar and is also admitted to practice before the U.S. Court of Appeals and U.S. Supreme Court. He and his wife have two children and reside in Cumberland.

## INVESTIGATING THE CIGARETTE SMUGGLING RING

The cigarette smuggling case detailed in a federal indictment unsealed May 8, 2013, was investigated by the Rhode Island State Police, Federal Bureau of Investigation, Internal Revenue Service Criminal Investigations, Social Security Administration Office of Inspector General – Office of Investigations, Homeland Security Investigations, and the U. S. Depart-

ment of Agriculture Office of Inspector General.

The federal grand jury indictment in the cigarette smuggling case was announced on May 8, 2013, by Peter F. Neronha, United States Attorney for the District of Rhode Island, and Colonel Steven G. O’Donnell, Superintendent of the Rhode Island State Police, and others. Neronha said in

a statement, “I want to thank the many outstanding Rhode Island State Police Detectives and the federal agents who tirelessly investigated this matter for many, many months. Our work to defeat this type of fraud continues on many fronts. There is certainly more to come.” Neronha also acknowledged and thanked the Virginia State Police, the Virginia Depart-

ment of Attorney General, the Virginia Division of Taxation, the Rhode Island Department of Attorney General, the Rhode Island Division of Taxation – Excise Tax Compliance Unit, and the Cranston and Providence Police Departments for their assistance in the investigation. The case is being prosecuted by Assistant U.S. Attorney William J. Ferland.

## RHODE ISLAND PREPARES FOR E-FILING FORM RI-1041

The Rhode Island Division of Taxation expects to begin accepting electronically filed fiduciary income tax returns on Form RI-1041 starting in January 2014.

(Fiduciary income tax returns generally involve estates and trusts.)

The Internal Revenue Service recently identified 18 jurisdictions – including Rhode Island – that have been cleared to participate in the joint fed/state e-filing

program for fiduciary income tax returns for processing year 2014.

Rhode Island hopes to offer e-filing of fiduciary income tax returns on Form RI-1041 in January, for tax year 2013.

As a result, practitioners would be able to e-file their federal and Rhode Island fiduciary income tax returns.

Due to system limitations, the Division of Taxation would be able to accept 2013

e-filings only until late November 2014. Returns filed after that, for tax year 2013, would have to be paper filed.

But if a fiscal year filer e-files before late November

of 2014, for tax year 2013, it would be accepted. Such limitations would be resolved by a new integrated tax system that is to be phased in over several years at the Division of Taxation.

RI-1041 Rhode Island Fiduciary Income Tax Return			
You <i>must</i> check a box:	Name of estate or trust		Federal employer
	<input type="checkbox"/> Estates and Trusts	Name and title of fiduciary	
	<input type="checkbox"/> Bankruptcy Estate	Address line 1	
	<input type="checkbox"/> Amended Return	Address line 2	
	City, town or post office	State	ZIP code

## THIRD-QUARTER ESTIMATED PAYMENTS DUE SEPTEMBER 16

The next quarterly estimated payment of Rhode Island personal income tax must be made on or before September 16, 2013.

Third-quarter payments of estimated tax are normally

due on September 15.

### A Sunday

But that falls on a Sunday this year.

As a result, the due date for third-quarter payments this year will fall on the following

day -- which is Monday, September 16.

If you have questions, call the Personal Income Tax section at (401) 574-8829 (choose option 3) from 8:30 a.m. to 3:30 p.m. business days.



## TAX DIVISION LAUNCHES COMPUTER SYSTEM (CONTINUED FROM PAGE 1)

In addition, taxpayers and tax practitioners will gain secure online access to an array of services on the agency's website, said Rhode Island Tax Administrator David M. Sullivan.

### Consolidation

The Tax Division needs the new system so it can consolidate tax information which is now dispersed across a number of different platforms -- some antiquated and ill-suited

for the agency's requirements.

The new system is from Revenue Solutions Inc. (RSI), of Pembroke, Mass., which was the successful bidder. The new system will help make processing more effective and efficient -- thereby aiding taxpayers and tax practitioners alike.



The first phase of the project, which began in May 2013 and will extend through half of calendar year 2014, involves the migration of 36 tax types to a single new platform, including the hospital license fee, insurance tax, and bank-related taxes. The tax types are currently spread across a

variety of systems.

The second phase, planned for mid-2014 through late 2015, involves the migration of the personal income tax system.

The third phase, from late 2015 through late 2016, is to include the migration of the corporate income tax, sales and use tax, withholding tax, and remaining taxes administered by the Division of Taxation.

**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.*

**Sales tax audit**

The Rhode Island Division of Taxation conducted a sales and use tax audit of a taxpayer who owns a group of six businesses and had not filed sales and use tax returns.

The Division of Taxation assessed sales and use tax, relying mainly on estimates, saying in part that the taxpayer had made purchases but kept few if any records.

The taxpayer testified, in part, that she relied on other people for her recordkeeping, did not intentionally fail to pay sales tax, and tried to gather as many invoices as she could after the audit.

Hearing Officer Catherine R. Warren determined that the taxpayer “did not have the requisite records,” and had “belatedly tried to gather the records for the purchases and assets.”

Warren on March 14 ruled that the Division of Taxation had properly made an assessment covering six years, and had properly imposed tax, penalties, and interest. Tax Administrator David M.



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.*

Sullivan on March 27 adopted the hearing officer’s decision and recommendation.

- [Final Decision and Order No. 2013-01](#)

**Cigarettes online**

A taxpayer bought cigarettes online between 2007 and 2009 from an out-of-state company, which shipped the cigarettes to her.

When someone buys cigarettes online, the person must file a special form – [Form T-205C](#) – with the Rhode Island Division of Taxation within 24 hours of the purchase and pay any required cigarette excise tax, sales tax, and interest.

The taxpayer argued that she did not possess the cigarettes and therefore is not liable for any taxes. When called on by the Division of Taxation to testify at a hearing, she refused to answer questions; she invoked her constitutional rights against compelled self-incrimination, citing the U.S. Constitution’s Fifth Amendment, according to her lawyer.

Citing RIGL § 44-18-1 *et seq.*, § 44-19-1 *et seq.*, § 44-20-1 *et seq.*, and others, Warren on March 22, 2013, determined that the Division properly assessed sales tax and cigarette tax.

“Cigarette purchases made over the internet and mailed to Rhode Island residents are still subject to the same Rhode Island cigarette and sales taxes” that would otherwise apply had the purchase been made at a retail establishment in Rhode Island, Warren wrote.

She also determined that the taxpayer in this case owed interest on both the cigarette tax and sales tax deficiencies, plus a 10 percent penalty on the sales tax deficiency. Sullivan on April 22 adopted the hearing officer’s decision and recommendation.

- [Final Decision and Order No. 2013-02](#)

**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.](#)).

## JUDGE SENTENCES PROVIDENCE TAX PREPARER

A federal judge in May sentenced a local tax preparer to more than two years in prison.

Michael Brier, 50, owner of Refunds Now Inc., a tax preparation firm based in Providence, was sentenced to 27 months in federal prison for violating a federal judge's order permanently barring him from preparing tax returns for others, underreporting more than \$1.1 million in income between 2004 and 2009, and failing to pay nearly \$400,000 in federal taxes. Details of the case were announced by U.S. Attorney Peter F.

Neronha and William P. Offord, Special Agent in Charge of the Boston office of the Internal Revenue Service -- Criminal Investigation.

At sentencing, U.S. District Court Chief Judge Mary M. Lisi also ordered Brier to serve three years of supervised release upon completion of his prison term and to pay back taxes to the IRS in the amount of \$399,424.

In November 2010, the court entered a preliminary injunction against Brier and his employees after finding that at least 300 tax returns prepared by Brier and Re-

funds Now understated customers' tax liabilities, and that Brier and his employees fabricated tax deductions and credits on the returns.

Brier and his employees prepared approximately 24,000 federal income tax returns between 2003 and 2007. An IRS examination of 350 of those returns determined that 92 percent of them required adjustments, resulting in a government-estimated loss of more than \$1.1 million in tax revenue.

On March 7, 2011, Judge Lisi permanently barred Brier and his employees from preparing federal income tax returns for

others. On April 26, 2011, IRS agents executed a court-authorized search at Refunds Now and seized copies of tax returns prepared by Brier and several of his employees that were filed after the date of the permanent injunction.

Brier pleaded guilty on Feb. 11, 2013, to one count of criminal contempt and one count of tax evasion. At the time of his guilty plea, Brier admitted to the court that he underreported his taxable income to the IRS between 2004 and 2009 totaling \$1,152,679, and that he underpaid \$399,424 in taxes to the IRS.

## RHODE ISLAND TAX NEWS IN BRIEF

### ETAAC

The Internal Revenue Service's Electronic Tax Administration Advisory Committee (ETAAC) in June issued its [annual report to Congress](#). Rhode Island Tax Administrator David M. Sullivan is a member of the 15-member committee.

ETAAC provides an organized public forum for discussion of electronic tax administration issues and the overriding goal that paperless filing should be the preferred and most-convenient method of filing tax and information returns.

### Employer tax

July 31 is the deadline for employers to file their second wage and tax report for

2013 and pay the tax due.

About 32,000 employers have until midnight on July 31, 2013, to file and pay their state unemployment insurance tax (also known as the employment security, or ES, tax) and job development fund tax, and to file and remit the amount of Rhode Island temporary disability insurance (TDI) tax withheld from employees' wages.

### Beverages report

The Division of Taxation on May 1, 2013, posted on its website a [report about the sale and taxation of alcoholic beverages](#) in Rhode Island.

A state law enacted in June 2012 requires the Tax Administrator to provide such a

report by May 1 of each year to the chairs of the House and Senate Finance Committees.

### Refund offsets

The State of Rhode Island last year recovered \$6.5 million for taxpayers by taking part in the U.S. Treasury's Treasury Offset Program (TOP). One element of the program involves delinquent income taxes. Another involves delinquent child support obligations. A [U.S. Treasury report](#) includes more details.

### Filing deadline

Business entities that have received certain tax credits or incentives must complete and file a disclosure form with the Rhode Island Division of

Taxation on or before August 15, 2013. They also must complete and file an annual report on or before September 1, 2013.

Details are contained in a [notice that the Rhode Island Division of Taxation posted on its website](#).

### Massachusetts taxes

A total of 67,203 Rhode Island residents pay Massachusetts income tax, according to a [recent posting](#) by the Massachusetts Department of Revenue.

The posting shows the Massachusetts personal income tax paid by nonresidents, by state, for tax year 2010.

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

**Q: I'm a Rhode Island resident. What is the difference, from a sales tax perspective, whether I buy a car in Rhode Island or in Massachusetts?**

A: The overall sales and use tax cost to you will be 7.0

percent either way. The question is, do you want all of it to go to Rhode Island – to help pay for vital public services in Rhode

Island – or do you want most of it to go to Massachusetts?

Here's a summary:

If you buy a car in Rhode Island, you'll be charged Rhode Island's 7.0 percent sales tax.

If you buy a car in Massachusetts, you'll owe the Massachusetts tax of 6.25 percent -- and Rhode Island will give you credit for that toward the Rhode Island 7.0 percent tax, so all you will owe Rhode Island is 0.75 percent.

(You may not even notice the tax matter because the dealer may handle it for you: The dealer in Massachusetts may charge you 7.0 percent tax, and the dealer's "runner" -- in registering the car for you as a courtesy -- will send the 6.25 percent to Massachusetts and pay the 0.75 percent to Rhode Island. Everything will

take place behind the scenes. But if the dealer doesn't handle registration for you, you'll pay the 6.25 percent to Massachusetts and pay, at the Rhode Island Division of Motor Vehicles, the 0.75 percent to Rhode Island.)



What if you buy the vehicle from a Massachusetts dealer, but it's delivered to you in Rhode Island – in other words, if

you take title and possession of it in Rhode Island? You'll owe Rhode Island the 7.0 percent; Massachusetts gets nothing. You'll pay the 7.0 percent at the DMV.

**Q: I have a client who received a tax refund in his name and his deceased wife's name. The bank will not honor the check because she is dead. Should we send the check back with a cover letter and ask that it be reissued?**

A: Yes. Mail the check back to us with a cover letter explaining the situation. That way, we'll be able to reissue the check in the name of the surviving spouse. Turnaround time is usually two to three weeks.

Send the letter to: Chief Revenue Agent, Personal Income Tax Section, Rhode Island Division of Taxation,

One Capitol Hill, Providence RI 02908.

Other practitioners, please note: If a spouse dies before the return is filed, clearly indicate on the return which spouse has died. (Your software should have a procedure for this.) When we receive a return so marked, we can issue the check solely in the name of the surviving spouse.

At the top of page one of the return, next to the name of the deceased taxpayer, enter the word "deceased" and the date of death. For example, suppose that John Doe died on June 4, 2013, survived by his wife, Mary. On their Rhode Island personal income tax return for 2013, the names would appear this way:

John Doe (Deceased June 4, 2013) SSN: 123-45-6789

Mary Doe SSN: 012-34-5678

The spouse of a decedent can claim the refund on a joint return without having to attach or complete Form RI-1310. However, Form RI-1310 is required when a claimant other than a spouse is requesting the income tax refund. (Form RI-1310 is not needed for an assessment or a return with no tax due.)

**Q: It has been my understanding that any LLC or S corporation is required to pay \$500 tax even if it has a tax loss. But I thought I read that a "disregarded entity" is exempt. Can you clarify?**

A: A limited liability company (LLC) can elect to be treated as a corporation, partnership,

**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.

or as part of the single member's own tax return (if it has only a single owner or member and is therefore deemed to be a "disregarded entity," which means the entity is not regarded as separate from the owner).

◆ If the LLC is treated as a corporation, it is subject to Rhode Island's corporate income tax. The tax cannot be less than \$500 a year.

◆ If the LLC is treated as a subchapter S corporation, it must pay the corporate minimum tax of \$500 – and could be subject to additional tax.

*(Please turn to page 12)*

**Practitioners' Corner:****QUESTIONS AND ANSWERS ABOUT STATE TAXES** (CONTINUED FROM PAGE 11)

◆ If the LLC is treated as a partnership or as a disregarded entity, it must pay an annual charge – a filing fee – of \$500 a year, and file its own Rhode Island return. (Remember: A single-member LLC that is treated as part of the owner's return, and does not file an entity return at the federal level, nevertheless must file its own Rhode Island return on Form RI-1065 and pay the annual minimum charge of \$500.)

A subchapter S corporation must pay the corporate minimum tax of \$500 -- and could be subject to additional tax.

**Q: My client found a Rhode Island personal income tax refund check dated 2003. How does she go about getting this check voided and having a new one sent out?**

A: Have her mail the check to the Rhode Island General Treasurer's Office, 50 Service Ave., Warwick R.I. 02886. The Treasury will issue a new check. The taxpayer should include a cover letter of explanation along with her contact information, including current address and phone number.

**Q: I am preparing a return for a client who has a carryover from 2009 of the Innovation Tax Credit. Rhode Island General Laws § 44-63-2 states that any unused balance from 2009 is eligible to be carried forward for a period not to exceed three years. Accordingly, 2012 would be the third and final year to carry forward the credit. However, for 2012, the Rhode Island Schedule CR states that if the credit you are**

**trying to use is not listed, the credit is no longer allowed as a credit against personal income tax. Is this tax credit no longer allowed? Is the credit simply lost?**

A: The personal income tax law was changed in 2010, effective for tax years beginning on or after January 1, 2011.

It brought the top personal income tax rate down significantly. It also limited the number of credits allowed against the tax. One result is that the Innovation credit is no longer allowed against the personal income tax. This is made clear in Rhode Island General Laws § 44-30-2.6.

Thus, even carry forwards of that credit are no longer allowed against the personal income tax.

**Q: I'm an out-of-state tax return preparer. Will LLCs and single-member LLCs (both foreign and domestic with respect to Rhode Island) that have already filed for 2012 using the Form RI-1120S be required to file amended 2012 forms using the Form RI-1065?**

A: No. Our Corporate Tax section anticipated this issue in advance and prepared a way to resolve it internally. Thus, provided the returns are complete and accurate – and the taxpayer paid what was owed on time – there should not be a problem.

Some background:

In response to a change in state law, we redesigned our Form RI-1065 for tax year 2012. And so, new for the filing season that began earlier this year, Form RI-1065 is to be filed by LPs, LLPs, general partnerships, and many LLCs -- including many single-member LLCs.

Form RI-1120S is now reserved chiefly for subchapter S corporations.

Because the change took effect so recently, we anticipated that some preparers would end up using the wrong form -- despite our outreach efforts and many written communications on the

subject.

But we strongly urge those preparers who used the wrong form this past filing season to switch to the correct form next season. Your software should help guide you in this process, and please contact us if you have any questions. Our Corporate Tax section is at (401) 574-8935 from 8:30 a.m. to 3:30 p.m. business days.

**Q: I have a client who is a nonprofit. They sell items that are donated to them at silent auctions and raffles. Should they be charging sales tax on those items?**

A: Sales made by nonprofit organizations at fundraisers

**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)

such as bazaars, fairs, auctions, or similar events are not subject to tax provided the event is organized for charitable, educational or other similar purposes (the proceeds from the event go back to the nonprofit organization).

The exemption for "casual sales" includes sales at bazaars, fairs, picnics or similar events by nonprofit organizations which are organized for charitable, educational, civic, religious, social, recreational, fraternal or literary purposes during two events not to exceed a total of six (6) days during each calendar year. (You may seek the tax administrator's approval to have more than two events in a calendar year so long as those events do not exceed, in total, six days during the calendar year.)

See [Regulation SU 07-17](#) for details.



## 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

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## 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)

## REGULATORY UPDATE: TAXATION

Following is a Rhode Island Division of Taxation regulatory update:

**LLCs:** Single-member limited liability companies (LLCs) that are treated as disregarded entities for federal tax purposes must obtain a federal Employer Identification Number (EIN) in order to file their Rhode Island return. The new regulation, [CT 13-14](#), took effect July 1, 2013; it amended and superseded regulation CT 12-14.

**Lead abatement:** State law involving the residential lead abatement income tax credit has changed in recent years, but the Division of Taxation's regula-

tion has not kept up. So the agency's new regulation is updated to reflect current state law. The new regulation, [CR 13-08](#), took effect July 1, 2013; it amended and superseded regulation CR 95-08.

### Other regs

The Division of Taxation is also in the process of:

- ◆ revising a regulation to provide guidance on the sales and use tax exemption for farmers;
- ◆ repealing an outdated regulation involving feeds, fertilizer, and other items;
- ◆ revising a regulation to provide guidance on the

filing of a personal income tax extension – and making a proper estimate when filing;

- ◆ repealing a regulation involving the ISO certification credit;
- ◆ proposing a regulation related to the new musical and theatrical production tax credits;
- ◆ updating a regulation involving motion picture production company tax credits; and
- ◆ revising a regulation to require that qualified subchapter S subsidiary corporations obtain a federal EIN.



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*Rhode Island Tax News* would also like to thank Marilyn Shannon McConaghy, of the Rhode Island Department of Revenue, and Robert Langlais, of the Rhode Island Department of Labor and Training, for their assistance.

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