



Rhode Island Department of Revenue Division of Taxation

Summary of Legislative Changes

August 8, 2017

Following is a summary of tax law changes in the FY 2018 budget bill enacted August 3, 2017.¹

Tax amnesty

Rhode Island will offer a state tax amnesty. The amnesty will be open to all taxpayers who are delinquent on any Rhode Island state taxes – including, but not limited to, personal income tax, sales tax, use tax, corporate income tax, and unemployment insurance tax. The amnesty is for 75 days, ending on February 15, 2018.

➤ *Thus, the amnesty will begin in December 2017.
(The Division of Taxation plans to begin accepting applications on December 1, 2017.)*

The amnesty applies to any taxable period ending on or before December 31, 2016. For taxpayers whose amnesty applications are accepted, the Tax Administrator generally will not seek civil or criminal prosecution of the taxpayer, will waive penalties, and will reduce the applicable interest rate by 25 percent.

➤ *Thus, for example, the interest rate of 18 percent in effect for calendar year 2016 would be reduced by 4.5 percentage points, to 13.5 percent.*

The amnesty will be open to any taxpayer who pays the tax and interest due upon filing the amnesty tax return, or who enters into a *bona fide* installment payment agreement for reasons of financial hardship (provided that the installment payment agreement is for a short term). The Division of Taxation will develop and post the form to be used by amnesty applicants.

TAX AMNESTY

- Applies to all Rhode Island state taxes.
- Applicants eligible for waiver of penalties, reduction of interest.
- Amnesty ends February 15, 2018.

¹ This publication is an informal summary of recently enacted legislation (House Bill 5175, Substitute A as amended) and is for general information purposes only. It is not a substitute for Rhode Island General Laws, or for Rhode Island Division of Taxation regulations, rulings, or notices.

The Tax Administrator must provide a written analysis of the amnesty program by April 30, 2018, to the chairs of the House and Senate Finance Committees, with copies to the members of the Revenue Estimating Conference.

Effective: 75-day amnesty ending February 15, 2018
Citation: Rhode Island General Laws (RIGL) Chapter 44-6.5

Sales taxes

Non-collecting retailers

The new law establishes certain registration and/or notice and reporting requirements involving Rhode Island sales and use tax. Which requirements apply to you depends on whether you qualify as a non-collecting retailer, a retail sale facilitator, or a referrer.

▪ **NON-COLLECTING RETAILER**

If you qualify as a “non-collecting retailer” (as defined in statute), you must – beginning August 17, 2017 – register with the Division of Taxation for a permit to make sales at retail and collect and remit sales and use tax on all taxable sales into Rhode Island or:

- post a certain website notice on your website;²
- provide a certain checkout notice to your customer at the time of purchase;
- provide a certain notice to your customer within 48 hours of purchase;
- send the customer, who has \$100 or more in cumulative annual purchases for the previous calendar year, a certain notice by January 31; and
- provide the Division of Taxation by February 15th each year a certain annual attestation that the notice requirements (listed above) have been fulfilled.

▪ **RETAIL SALE FACILITATOR**

If you qualify as a “retail sale facilitator” (as defined in statute), you must -- beginning January 15, 2018 -- do the following:

- annually provide to the Division of Taxation a list of names/addresses of retailers for whom you collected Rhode Island sales tax; and
- annually provide to the Division of Taxation a list of names/addresses of retailers for whom you did not collect Rhode Island sales tax but who still used your services.

▪ **REFERRER**

If you qualify as a “referrer” (as defined in statute), you must – beginning August 17, 2017 – notify retailers that their sales may be subject to Rhode Island sales and use tax. This notice requirement applies at such time during the calendar year when you cumulatively receive more

² Notices mentioned on this page have been posted at: www.tax.ri.gov/notice.

than \$10,000 from fees, commissions, or other compensation. The notification must be provided to retailers within 30 days from that time.

BACKGROUND

A state may require a retailer to collect the state's sales tax only if the retailer has a physical presence in that state – in other words, nexus. That is because of a 1992 U.S. Supreme Court decision known as *Quill*.³ The *Quill* decision pre-dated widespread commercial use of the Internet.

Under the new Rhode Island law, the existence and/or presence of a non-collecting retailer's, referrer's, or retail sale facilitator's in-state software on the devices of in-state customers constitutes physical presence of the non-collecting retailer, referrer, or retail sale facilitator in Rhode Island under *Quill*, according to the legislative findings accompanying the new Rhode Island law.

While such a physical presence of the non-collecting retailer, referrer, or retail sale facilitator may not constitute "presence" in the traditional sense, a non-collecting retailer, referrer, or retail sale facilitator who uses in-state software and engages in a significant number of transactions with in-state customers in a calendar year or receives significant revenue from internet sales to in-state customers in a given calendar year "evidences an intent to establish and maintain a market in this state for its sales," according to the legislative findings.

Effective: Various dates
Citation: RIGL Chapter 44-18.2

Certificate of exemption

Under the old law, certificates of exemption from the Rhode Island sales and use tax did not expire. Under the new law:

- If an organization receives a new sales tax exemption certificate, it will be valid for four years from date of issue.
- All exemption certificates issued before July 1, 2017 will expire in June 2021.
- The application fee for an exemption certificate is unchanged, at \$25.

The new provisions outlined above apply to exemption certificates for the charitable, educational, and religious organizations outlined under Rhode Island General Laws § 44-18-30(5)(i).

Effective: July 1, 2017
Citation: RIGL § 44-18-30.1

Seeds and plants

Seeds and plants that are used to grow food and food ingredients are now exempt from Rhode Island sales tax and Rhode Island use tax. However, the new law makes it clear that the exemption does not apply to marijuana seeds or plants.

Effective: July 1, 2017
Citation: RIGL § 44-18-7.1, § 44-18-30

³ *Quill Corp. v. North Dakota*, 504 U.S. 298 (1992).

Sales tax penalty

The applicable penalty for violations under Rhode Island General Laws Chapter 44-19 (“Sales and Use Taxes – Enforcement and Collection”) is now capped at \$25,000 (up from \$10,000 under the old law), or imprisonment for five years (up from one year under the old law), or both.

The new law also broadens the list of violations to include “willfully failing to remit any tax to the state which was collected from a customer.”

Effective: July 1, 2017
Citation: RIGL § 44-19-31

Business taxes

Corporate estimated tax payments

Corporations will soon have new due dates for their federal and Rhode Island estimated taxes. Under the new law, corporations will make their Rhode Island estimated tax payments in accordance with federal statute and regulations – making the system more convenient for businesses and their tax advisers.

Corporate estimated tax – due dates and amounts					
OLD SYSTEM (Front-loaded payment in two installments)			NEW SYSTEM (Payment in four equal installments, spread out)		
	DUE DATE	AMOUNT		DUE DATE	AMOUNT
1 st payment	March 15	40%	1 st payment	April 15	25%
2 nd payment	June 15	60%	2 nd payment	June 15	25%
			3 rd payment	Sept. 15	25%
			4 th payment	Dec. 15	25%

For illustration purposes, table assumes filer is calendar-year C corporation. New system applies for tax years beginning after December 31, 2017. Thus, first installment for calendar-year filer would be due in April 2018. Dates in table do not take into account weekends, holidays.

Under former law, a corporation was required to make two Rhode Island payments of estimated tax: 40 percent of the total, due on the 15th day of the third month of the tax year, and 60 percent of the total, due on the 15th day of the sixth month of the tax year.

➤ *Thus, for a calendar-year C corporation, the first payment, of 40 percent, was due March 15; the second payment, of 60 percent, was due June 15.*

Under the new law, a corporation will be required to make four payments of Rhode Island estimated tax, in equal instalments of 25 percent apiece.

The first payment will be due on the 15th day of the fourth month of the tax year, the second payment on the 15th day of the sixth month of the tax year, the third payment on the 15th day of the ninth month of the tax year, and the fourth payment on 15th day of the twelfth month of the tax year.

➤ Thus, for a calendar-year C corporation, the first payment will be due on April 15, the second on June 15, the third on September 15, and the fourth on December 15.

➤ The new Rhode Island system applies for tax years beginning after December 31, 2017. Thus, for example, a calendar-year corporation will first encounter the new system in calendar year 2018; its first quarterly estimated payment, 25 percent of the total, will be due in April 2018.

➤ The new law specifically notes that if a due date falls on a Saturday, Sunday, or Rhode Island legal holiday, the installment will be due on the next regular business day.

▪ ENTITIES AFFECTED

The following table shows which filers are affected.

New corporate estimated tax system – who is affected		
<i>For every corporation having a taxable year after December 31, 2017, payment of estimated tax shall be made in four installments of 25 percent each. This requirement shall apply to the following:</i>		
TAX/ENTITY	NORMALLY FILES ANNUAL RETURN ON:	SUBJECT TO TAX UNDER RHODE ISLAND GENERAL LAWS:
Business corporation tax (also known as corporate income tax)	Form RI-1120C	Chapter 44-11
Political organization tax	Form RI-1120POL	Chapter 44-11.1
Public service corporation tax (also known as public service gross earnings tax)	Form T-72	Chapter 44-13
Taxation of banks (also known as bank excise tax)	Form T-74	Chapter 44-14
Bank deposits tax	Form T-86	Chapter 44-15
Taxation of insurance companies (also known as insurance gross premiums tax)	Form T-71	Chapter 44-17
Surplus lines	Form T-71A	Chapter 27-3
First payment due on 15 th day of fourth month of tax year, second payment on 15 th day of sixth month of tax year, third payment on 15 th day of ninth month of tax year, fourth payment on 15 th day of twelfth month of tax year. New estimated payment system also applies to entities subject to mandatory unitary combined reporting. Forms in table are listed solely for convenience; filers of estimated tax will use estimated tax form (unless filing electronically).		

➤ For estimated tax purposes, surplus lines filers will follow the same schedule that applies to other tax types: The first payment will be due on April 15, the second on June 15, the third on September 15, and the fourth on December 15.

▪ CALENDAR VS. FISCAL YEAR

The payment due dates depend on whether the entity has a calendar year or a fiscal year, as the following table shows.

Corporate estimated tax – calendar vs. fiscal year

Payments must be made in equal installments of 25 percent each. Due dates depend on whether entity has a calendar or fiscal year, as shown below.

FILER	FIRST PAYMENT	SECOND PAYMENT	THIRD PAYMENT	FOURTH PAYMENT
Calendar year	April 15	June 15	September 15	December 15
Fiscal year	15 th day of 4 th month (of the tax year)	15 th day of 6 th month (of the tax year)	15 th day of 9 th month (of the tax year)	15 th day of 12 th month (of the tax year)

New system applies for tax years beginning after December 31, 2017. Thus, first installment for calendar-year filer would be due in April 2018. Dates in table do not take into account weekends, holidays.

Effective: Tax years beginning after December 31, 2017

Citation: RIGL § 44-26-2.1

Sale or transfer of assets

The new law makes clear that domestic or foreign limited liability companies, limited partnerships, or any other domestic or foreign business entities are subject to the same notice requirements as are domestic and foreign corporations when it comes to the sale or transfer of a major part in value of the entity's assets:

Under the new law, any entity listed above must notify the Tax Administrator at least five business days before the sale or transfer, providing details of the sale or transfer. The notification must be made by requesting a letter of good standing from the Division of Taxation.

All required tax returns must be filed and all Rhode Island state taxes paid when the Tax Administrator is notified of the sale or transfer.

- *The new law makes clear that the provisions described above, with respect to sales as well as transfers, also apply for purposes of sales and use taxes.*
- *The new law makes clear that the provisions described above don't apply to sales by debtors in possession in bankruptcy.*

Effective: July 1, 2017

Citation: RIGL §§ 44-11-29, 44-19-22

Pass-through withholding

The new law officially reduces the tax rate on pass-through withholding to a corporate member so that the rate equals the current Rhode Island corporate income tax rate.

▪ BACKGROUND

If a pass-through entity⁴ distributes income to a nonresident member,⁵ the entity must withhold tax. If the member (or shareholder, partner, beneficiary) is an individual, withholding is at the highest Rhode Island personal income tax rate. If the member (or shareholder, partner, beneficiary) is a C corporation, withholding is at the highest Rhode Island corporate income tax rate.

The corporate income tax rate under Rhode Island General Laws § 44-11-2 had been 9 percent, but in June 2014, as part of sweeping changes to Rhode Island's corporate income tax regime, legislation was enacted reducing the rate by two percentage points, to 7 percent, effective for tax years beginning on or after January 1, 2015.

➤ Thus, the new law updates pass-through withholding to reflect the current highest Rhode Island withholding rate of 7 percent for a corporate owner. The new law codifies a practice that the Division of Taxation has been following, as shown on Form RI-1096PT, "Pass-through Withholding Return and Transmittal."

Effective: July 1, 2017

Citation: RIGL § 44-11-2.2

Sales suppression

In general, a zipper is a software program that is often carried on a memory stick or CD, or accessed through an Internet link that is then installed onto an electronic cash register or point-of-sale system.

Zippers may also be installed through phantom-ware software, a hidden programming option embedded into the operating system of an electronic cash register. The program manipulates transaction records, allowing businesses to underreport the amount of sales collected for the purposes of avoiding sales or individual taxes.

A law enacted in 2014 forbade anyone to sell, buy, install, transfer, or possess an automated sales suppression device or phantom-ware, and set forth penalties.

The new law changes and broadens the 2014 statute. For example, the new law adds the term "remote data manipulation" – which generally means electronically sending, transmitting, or receiving transaction data to a remote location for the purpose of manipulating or altering data.

The new law also says that a person shall not knowingly suppress sales by engaging in remote data manipulation, either as the sender of the receiver of the information.

Effective: July 1, 2017

Citation: RIGL § 44-19-42

⁴ Subchapter S corporation, general partnership, limited partnership, limited liability partnership, trust, or limited liability company (that is not taxed as a corporation for federal tax purposes).

⁵ Income which is derived from or attributable to sources within Rhode Island.

Historic preservation tax credits of 2013

Under the old law, no credits could be authorized to be reserved on or after June 30, 2017, or upon the exhaustion of the maximum aggregate credits, whichever came first. Under the new law, the sunset date is now June 30, 2019, instead of June 30, 2017.

As of July 13, 2017, there were 30 projects awaiting credits under Rhode Island's historic preservation tax credit program of 2013. Those 30 projects in the program's queue sought up to \$53.96 million in potential tax credits. However, there was only \$400,000 available in the program at that time. The projects in the queue are free to proceed without tax credits. However, they remain in queue under the historic preservation tax credit program of 2013 in hopes that additional funds will become available under the program. For example, a project which has already been assigned credits may drop out of the program, freeing up credits. Also, a project which has already been assigned credits may be completed under budget, freeing up some credits.

Effective: Upon passage
Citation: RIGL § 44-33.6-11

Credit for qualified research expenses

Small businesses that qualify for vouchers or matching fund awards from the Rhode Island Commerce Corporation under Rhode Island General Laws Chapter 42-64.28 ("Innovation Initiative") cannot also receive a tax credit in the same tax year under Rhode Island General Laws § 44-32-3 ("Credit for qualified research expenses").

Effective: July 1, 2017
Citation: RIGL § 42-64.28-5

Tobacco taxes

Cigarette tax

Rhode Island's cigarette excise tax rises to \$4.25 per pack of 20 cigarettes, from \$3.75. The increase of 50 cents, or 13.3 percent, per pack, applies on and after August 16, 2017.⁶ (The same tax is imposed on unstamped cigarettes.)

⁶ The effective date of this provision is shown in the legislation's text as August 1, 2017. However, that date was prior to the legislation's actual enactment. In response to questions and concerns raised by stakeholders, the Tax Administrator has set August 16, 2017, as the effective date of the cigarette tax increase; August 16, 2017, at 12:01 a.m. as the inventory measuring point associated with the floor tax; and August 30, 2017, as the date floor tax returns and payments are due.

Cigarette tax calculation

Effective August 16, 2017, the Rhode Island cigarette tax will be \$4.25 per pack of 20, up from \$3.75. In statute, the tax is computed by mills. One mill is equal to 1/1000th of one dollar.

- By statute, the tax in July 2017 is 187.5 mills per cigarette.
- Effective on or after August 16, 2017, the tax by statute is 212.5 mills per cigarette.
- Typically, the tax is expressed based on a 20-cigarette pack. Following is the computation.

Tax per pack in July 2017:	0.001×187.5 (mills per cigarette) \times 20 (cigarettes per pack) = \$3.75
Tax per pack August 2017:	0.001×212.5 (mills per cigarette) \times 20 (cigarettes per pack) = \$4.25
New tax rate applies on and after August 16, 2017.	

Effective: August 16, 2017

Citation: RIGL §§ 44-20-12, 44-20-13

Floor tax on cigarette tax and stamps

A tax will apply to the cigarette inventory of each cigarette retailer in the state (and to the stamp inventory of each distributor). The tax – known as a “floor tax” – will be measured by the number of cigarettes held by the retailer (and the stamps held by the distributor) as of 12:01 a.m. on August 16, 2017.⁷ The tax rate will be 50 cents a pack.

Those subject to the floor tax on cigarettes or the floor tax on cigarette tax stamps must file a return with the Tax Administrator and make the associated tax payment on or before August 30, 2017.⁸

Floor tax calculation

Effective August 16, 2017, the Rhode Island cigarette tax is \$4.25 per pack of 20, up from \$3.75. A floor tax – in essence, a tax on the inventory of cigarettes – will be computed at 12:01 a.m. on August 16, 2017.

In statute, the floor tax is computed by mills. One mill is equal to 1/1000th of one dollar.

- By statute, the tax in July 2017 is 187.5 mills per cigarette.
- Effective August 16, 2017, the tax by statute will be 212.5 mills per cigarette.
- Typically, the tax is expressed based on a 20-cigarette pack. Following is the computation.

Floor tax per cigarette:	0.001×25 (mills per cigarette) = \$0.025
Floor tax per pack of 20:	0.001×25 (mills per cigarette) \times 20 (cigarettes per pack) = \$0.50
New tax rate applies August 16, 2017.	

Effective: August 16, 2017

Citation: RIGL § 44-20-12.6

⁷ The official inventory measuring point associated with the floor tax is 12:01 a.m. on August 16, 2017. However, retailers that do not operate at that time are urged to complete their cigarette inventory at close of business on August 15, 2017.

⁸ The effective date of this provision is shown in the legislation’s text as August 15, 2017. However, in response to questions and concerns raised by stakeholders, the Tax Administrator has set August 30, 2017, as the date floor tax returns and payments are due.

Tobacco tax changes

The new law makes numerous changes to Rhode Island statutes involving the taxation and regulation of cigarettes and other tobacco products.

For example:

- The definition of the term “cigarettes” under Rhode Island General Laws § 44-20-1 has been broadened to include “paper made into a hollow cylinder or cone, made with paper or any other material, with or without a filter suitable for use in making cigarettes.”
- The definition of the term “dealer” has been broadened to include any person who sells or distributes other tobacco products.
- Rhode Island General Laws Chapter 44-20, formerly titled “Cigarette Tax,” is now titled “Cigarette and Other Tobacco Products Tax” – and a number of definitions and other provisions that formerly focused only on cigarettes have been extended to include other tobacco products, too.
- Any person distributing or dealing cigarettes or other tobacco products without a license may not only be fined for up to \$10,000 for each offense, but also imprisoned for up to one year, (or be fined and imprisoned).
- Penalties also have been increased or altered for any person violating state statutes involving unstamped contraband cigarettes or contraband other tobacco products, and for those violating statutory requirements involving reports and records.

Effective: July 1, 2017
Citation: Various statutes

Miscellaneous tax matters

Historic homeownership tax credits

Legislation enacted in 1989 established a personal income tax credit “for the maintenance or rehabilitation of historic residences.”⁹ However, as part of the sweeping changes to Rhode Island’s personal income tax regime in 2010, the historic homeownership tax credit was no longer allowed against the personal income tax, effective for tax years beginning on or after January 1, 2011.

The new law allows unused carryforward for credits previously issued. The new law applies to tax year 2017 and thereafter. The new law also makes it clear that the allowance is solely for

⁹ Rhode Island Public Law 1989, ch. 376, § 1, establishing Rhode Island General Laws Chapter 44-33.1.

credits already issued “and shall not be construed to authorize the issuance of new credits” under the program.

Effective: Tax year 2017 and thereafter
Citation: RIGL § 44-30-2.6

Disclosure for audits

The Tax Administrator is now authorized to disclose certain confidential tax and taxpayer information to the Rhode Island State Office of Internal Audit for the purposes of fraud detection and fraud prevention in any State of Rhode Island or federal program.

Effective: July 1, 2017
Citation: RIGL § 44-1-14

Administrative penalties, legal fees

The new law broadens the Tax Administrator’s authority regarding violations of Rhode Island state tax law.

▪ PENALTIES

Under the new law, whenever a licensee and/or a taxpayer violates any provision of state tax law (under Rhode Island General Laws Title 44), or the associated regulations, the Tax Administrator may:

- revoke or suspend a license or permit issued by the Division of Taxation;
- levy an administrative penalty of between \$100 and \$50,000;
- order the violator to cease such actions; and/or
- implement any combination of the penalties listed above.

(In levying the penalties listed above, the Tax Administrator must follow the requirements of the Administrative Procedures Act, which, among other things, provides for appeals and other rights for the taxpayer or licensee.)

▪ RECOVER LEGAL COSTS

The new law authorizes the Tax Administrator to recover reasonable cost of legal services provided by in-house Department of Revenue or Division of Taxation lawyers – services that are incurred in matters pertaining to administrative hearings, court hearings, and appeals.

▪ JEOPARDY DETERMINATIONS

The new law makes clear that the Tax Administrator may collect a tax which is assessed, but which is not yet due, if the Tax Administrator believes that payment may be jeopardized by a delay (a “jeopardy tax assessment”).

Specifically, the new law says that if the Tax Administrator believes “that the collection of any amount of tax, interest, and/or penalty assessed in a notice of deficiency determination will be jeopardized by a delay which could render a person or entity judgment proof and/or frustrate the

collectability of said determination, the Tax Administrator shall . . . make a jeopardy determination of the amount of tax required to be collected, including interest and penalties, if any." In that case, the amount of tax/interest/penalty will be due and payable immediately upon the Tax Administrator's mailing of the notice of jeopardy determination. (The taxpayer will be afforded certain appeal rights.)

▪ **STATE PROPERTY**

The new law states that, for the purpose of determining taxpayer compliance, "any and all information or data required to be generated or maintained" under Rhode Island General Laws Title 44 ("Taxation"), or tax regulations, "shall be deemed to be the property of the State of Rhode Island."

Effective: July 1, 2017

Citation: New RIGL §§ 44-1-37, 44-1-38, 44-1-39

Hospital licensing fee

For all hospitals except those located in Washington County, Rhode Island, the hospital licensing fee rate is 5.652 percent of the net patient services revenue based on the hospital's first fiscal year ending on or after January 1, 2015. (There's a 37 percent discount for hospitals located in Washington County.) Every hospital must pay the licensing fee to the Division of Taxation on or before July 10, 2017.

Under the new law, for all hospitals except those located in Washington County, Rhode Island, the hospital licensing fee rate is increased to 5.856 percent of the net patient services revenue based on the hospital's first fiscal year ending on or after January 1, 2016. (There's a 37 percent discount for hospitals located in Washington County.) Every hospital must pay the licensing fee to the Division of Taxation on or before July 10, 2018.

Effective: July 1, 2017

Citation: RIGL § 23-17-38.1



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