



## Summary of Legislative Changes

Rhode Island Division of Taxation

June 30, 2011

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*Following is a summary of tax law changes in the FY 2012 budget bill enacted June 30, 2011.*

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### Annual filing fee for LLPs

For tax years starting on or after January 1, 2012, limited liability partnerships (LLPs) will have to pay an annual charge – a filing fee – equal to the corporate minimum tax under Rhode Island General Laws § 44-11-2(e), which is currently \$500. The charge is due upon filing of the LLP's return:

- ❖ If the LLP uses a calendar year, the return will be due on or before the 15th day of April in the year following the close of the calendar year.
- ❖ If the LLP uses a fiscal year (not a calendar year), the return will be due on or before the 15th day of the fourth month following the close of the fiscal year.
- ❖ The Division of Taxation is studying how to implement this provision of the new law for reporting purposes – whether to create a new form or modify an existing form, and whether to continue requiring the filing of a Form 1065.

**Effective:** For tax years beginning on or after January 1, 2012

**Citation:** New RIGL § 7-12-60

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### Annual filing fee for LPs

For tax years beginning on or after January 1, 2012, limited partnerships (LPs) will have to pay an annual charge – a filing fee – equal to the corporate minimum tax under RIGL § 44-11-2(e), which is currently \$500. The charge is due upon filing of the LP's return:

- ❖ If the LP uses a calendar year, the return will be due on or before the 15th day of April in the year following the close of the calendar year.
- ❖ If the LP uses a fiscal year (not a calendar year), the return will be due on or before the 15th day of the fourth month following the close of the fiscal year.
- ❖ The Division of Taxation is studying how to implement this provision of the new law for reporting purposes – whether to create a new form or modify an existing form, and whether to continue requiring the filing of a Form 1065.

**Effective:** For tax years beginning on or after January 1, 2012

**Citation:** New RIGL § 7-13-69

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## Annual filing fee for LLCs

The new law 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.

Also, for an LLC that is not treated as a corporation for federal and Rhode Island tax purposes, the new law sets the due date – for the payment of tax and the filing of the return – as the 15<sup>th</sup> day of the fourth month following the close of the fiscal year. (Under former law, the due date for such an LLC was technically the 15<sup>th</sup> day of the third month following the close of the fiscal year, but the Division of Taxation generally accepted returns filed by the 15<sup>th</sup> day of the fourth month.)

**Effective:** Immediately

**Citation:** Amends RIGL § 7-16-67

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## Study of combined reporting

Corporations will have to file a pro forma Rhode Island corporate income tax return as if the state had adopted combined reporting.

For tax years starting after December 31, 2010 (but before January 1, 2013), each corporation that is part of a unitary business will have to file a report for the combined group, containing the net income of the combined group.

At a minimum, each such pro forma return must include all of the following:

- ❖ The difference in tax owed as a result of filing a combined report compared to the tax owed under the current filing requirements.
- ❖ The difference in tax owed as a result of using the single sales factor apportionment method as compared to the tax owed using the existing three-factor appointment method.
- ❖ The volume of sales in Rhode Island and worldwide.
- ❖ Taxable income in the state and worldwide.

Also, for purposes of calculating the sales factor numerator in a unitary combined report if any individual member of the group does not have nexus with Rhode Island, the taxpayer must do one set of computations using the Joyce<sup>1</sup> approach, and another set using the Finnigan<sup>2</sup> approach.

The taxpayer must make the combined report as an addendum to the Rhode Island income tax return for two successive tax years, starting with the 2011 tax year. For this purpose, the Division of Taxation expects to create a new Schedule to attach to the Rhode Island Form 1120C.

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<sup>1</sup> *Appeal of Joyce, Inc.*, California State Board of Equalization, 66-SBE-070, November 23, 1966.

<sup>2</sup> *Appeal of Finnigan Corp.*, California State Board of Equalization, 88-SBE-022, August 25, 1988.

Certain entities will not be required to file under combined reporting, such as state banks, national banks, insurance companies and certain utilities. However, a corporation that is required to file the combined report but fails to file – or files a false report – will be subject to a fine of up to \$10,000.

The Tax Division expects to issue proposed regulations in the coming months to offer guidance on combined reporting.

- ❖ *As part of the law, the Tax Administrator must analyze the policy and fiscal ramifications of changing the business corporation tax statute to a combined method of reporting instead of separate reporting (also known as separate entity reporting). As part of the process, the Tax Administrator will aggregate and analyze data provided in the pro forma tax returns. The Tax Administrator's report is due to legislative leaders and others by March 15, 2014.*

**Effective:** For taxable years beginning after December 31, 2010, but before January 1, 2013

**Citation:** New RIGL § 44-11-45

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## Taxpayer accountability

Recipients of certain tax incentives will soon have to comply with new or expanded reporting, accountability and transparency requirements. The provisions apply to those who claim any of the following tax incentives:

- ❖ “Project status” through the Rhode Island Economic Development Corporation (RIEDC) under RIGL § 42-64-10.
- ❖ The “Incentives for Innovation and Growth” credit under RIGL § 44-63-3.
- ❖ Enterprise zone tax credits under RIGL § 42-64.3-6.1.
- ❖ Motion picture production tax credits under RIGL § 44-31.2-6.1.

On or before each September 1, the taxpayer receiving the credit (or other such incentive listed above) must file an annual report with the Tax Administrator containing the name, Social Security number, date of hire, and hourly wage of each full-time equivalent, part-time or seasonal employee.

The first such report is due on or before September 1, 2011.

The new law clarifies that those who benefit from the tax rate reduction available under the Jobs Development Act (RIGL § 42-64.5-3) continue to be subject to the accountability requirement.

(Recipients of the tax credits listed above still must report to the Division of Taxation, by August 15 each year, the source and amount of their tax credits or other such tax incentives.)

**Effective:** Immediately

**Citation:** Amends RIGL §§ 42-64-10, 44-63-3, 42-64.3-6.1, and 44-31.2-6.1

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## Comprehensive transparency

The Director of the Rhode Island Department of Revenue must publish and make public, by January 15 each year, a comprehensive report spelling out the costs and benefits of certain tax incentives, including:

- ❖ "Project status" through the RIEDC under RIGL § 42-64-10;
- ❖ The "Incentives for Innovation and Growth" credit under RIGL § 44-63-3;
- ❖ Enterprise zone tax credits under RIGL § 42-64.3;
- ❖ Motion picture production tax credits under RIGL § 44-31.2-6.1; and
- ❖ The Jobs Development Act rate reduction under RIGL § 42-64.5.

The publication, known as the "annual unified economic development report," will note the degree to which a corporation has met the job-creation, job-retention or other such goals or targets associated with a given tax incentive. The publication will also spell out the extent to which those employed by the recipient corporation have received benefits or other such assistance under the state's RIte Care or RIte Share health insurance programs.

- ❖ *A somewhat similar law, RIGL § 42-142-5, enacted in 2008, is now repealed.*

**Effective:** Immediately

**Citation:** New RIGL § 42-142-6

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## Hospital licensing fee

The law lowers the hospital licensing fee to 5.43 percent (from 5.465 percent) on net patient services revenue for the hospital's first fiscal year ending on or after January 1, 2010. The fee must be paid to the Tax Administrator by July 16, 2012, by electronic funds transfer.

Each hospital must file a return with the Tax Administrator, by June 18, 2012, containing the correct computation of net patient services revenue for the hospital fiscal year ending September 30, 2010, and the licensing fee due on that amount.

**Effective:** Immediately

**Citation:** Amends RIGL § 23-17-38.1

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### Lottery offset

If someone wins a lottery prize valued at more than \$600, and is delinquent on state taxes, the Lottery Director is now authorized to apply some or all of the prize to reduce the winner's unpaid taxes. Offsets will be made based on a schedule of priorities set forth in the new law.

**Effective:** Immediately

**Citation:** New RIGL § 42-61-7.2

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### Estate filing fee

The estate filing fee doubles, to \$50. The fee applies to the statement that executors, administrators and heirs-at-law must file with the Tax Administrator within nine months of a decedent's death showing the value of the decedent's estate and certain other items. The existing fee was established in 1993.

**Effective:** Immediately

**Citation:** Amends RIGL § 44-23-1

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### "Letter of good standing" fee

The fee for obtaining a letter of good standing from the Division of Taxation doubles, to \$50. The letter essentially states that the business or other taxpayer is not delinquent on taxes. The letter is required in order to liquidate or dissolve a business, or for certain other purposes. The existing \$25 fee was instituted in 1993.

**Effective:** Immediately

**Citation:** Amends RIGL § 44-11-29.1

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### Surcharge on compassion centers

Nonprofit centers registered under RIGL § 21-28.6-12 that are involved in marijuana for medical use are now subject to a surcharge of 4 percent on net patient revenue. Each center must file a return, and make payment, no later than the 20th day of the month following the month in which the net patient revenue was received. Payments must be made electronically.

**Effective:** Immediately

**Citation:** New RIGL § 44-67

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## List of delinquent taxpayers

Instead of periodically posting a list of the top 100 delinquent taxpayers, as required under former law, the Tax Administrator now must post two lists:

- ❖ The top 100 delinquents of personal income tax, and
- ❖ The top 100 delinquents of business tax.

The new business-only list will be drawn from those who are delinquent on any of a number of business-related taxes, including the corporate income tax, franchise tax, public service corporation tax, sales and use tax, and cigarette tax.

**Effective:** Immediately

**Citation:** Amends RIGL § 44-1-34

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## Debt collections

The new law essentially authorizes the Tax Administrator to collect debts owed other government agencies and entities in the state, including public colleges and universities and cities and towns. For this purpose, the Tax Administrator may use the refund offset power authorized under RIGL § 44-30.1. The contracting government entity may pay a fee to the Tax Administrator for collecting its debts.

**Effective:** Immediately

**Citation:** New RIGL § 42-142-6

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## Sales tax exemption – “project status”

Firms that use bond financing programs offered through the RIEDC, or which are given “project status” by the RIEDC, obtain an exemption from Rhode Island sales tax on certain items, such as construction materials.

Under the new law, such sales tax incentives will no longer be allowed after June 30, 2011. The incentives shall apply only to projects approved before July 1, 2011.

**Effective:** Prohibition applies on and after July 1, 2011

**Citation:** Amends RIGL § 42-64-20

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## Rhode Island Industrial Facilities Corporation

Sales tax incentives related to projects involving the Rhode Island Industrial Facilities Corporation will no longer be allowed after June 30, 2011. The incentives will apply only to projects approved before July 1, 2011.

**Effective:** Immediately

**Citation:** Amends RIGL § 45-37.1-9.1

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### Sales tax broadened

The law extends Rhode Island's 7 percent sales and use tax to the following, effective October 1:

- ❖ Non-prescription drugs, also known as over-the-counter drugs;
- ❖ Pre-written computer software delivered electronically, or by "load and leave," including applications ("apps") for smartphones and similar devices;
- ❖ Furnishing package tour and scenic and sightseeing transportation services as set forth in the 2007 North American Industrial Classification System (NAICS) code 561520 and Subsector 487;
- ❖ Marijuana for medical use

Another provision has to do with insurance proceeds that result from the total loss or destruction of a motor vehicle. In general, if a motorist uses the proceeds to buy an automobile, the portion of the acquisition price attributable to the insurance proceeds is exempt from Rhode Island sales tax. Under the new law, the sales tax generally will apply to the entire sales price, without an allowance for an exemption for insurance proceeds.

**Effective:** October 1, 2011

**Citation:** Amends RIGL §§ 44-18-7, 44-18-8, 44-18-12, 44-18-15, 44-18-20, 44-18-21, 44-18-22, 44-18-23, 44-18-25 and 44-18-30

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### Sales tax rate reduction

In the event that a federal law is enacted that requires remote sellers to collect and remit state sales taxes, the following would happen as a result:

- ❖ The 7 percent sales and use tax rate would drop to 6.5 percent.
- ❖ The 1 percent local meals and beverage tax would increase to 1.5 percent.
- ❖ The 1 percent local hotel tax would increase to 1.5 percent.

**Effective:** Upon change in federal law

**Citation:** Amends RIGL §§ 44-18-18, 44-18-18.1, and 44-18-36.1

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## Unemployment insurance tax

The taxable wage base – which generally means the maximum amount of wages to which the state’s unemployment insurance tax rate applies – will increase in 2012 because of a change in formula, part of a broader effort to restore the state’s unemployment insurance trust fund to solvency.

As a result of a 1998 state law, the taxable wage base was tied to the balance of the state’s unemployment insurance trust fund. The new law echoes pre-1998 law by tying the wage base to the statewide average annual wage.

The taxable wage base was set at \$19,000 for 2011, based on provisions of the 1998 law.

Under the new law, for 2012 and later years, the taxable wage base will be equal to 46.5 percent of the statewide average annual wage. It is estimated that the taxable wage base for 2012 will be \$19,600 or \$19,800. (The final figure will not be set until autumn.)

In addition, for those employers who have had the greatest negative effect on the state’s unemployment insurance trust fund, the taxable wage base will be \$1,500 higher than it is for other employers.

(The maximum state unemployment insurance tax rate will remain at 9.79 percent.)

**Effective:** Tax changes begin January 1, 2012

**Citation:** Amends RIGL § 28-43-7

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### Notice

This publication is an informal summary of recently enacted legislation 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.

– Tax Administrator David M. Sullivan