

State of Rhode Island and Providence Plantations
Rhode Island Department of Revenue
Division of Taxation

Public Notice of Proposed Rule-Making

Pursuant to the provisions of 42-35-3(a)(1) of the General Laws of Rhode Island, and in accordance with the Administrative Procedures Act Chapter 42-35 of the General Laws, the Division of Taxation hereby gives notice of its intent to issue a regulation regarding Tax on Other Tobacco Products.

The purpose of this regulation is to implement Rhode Island General Laws (RIGL) section 44-20-13.2, which provides for Tax on smokeless tobacco, cigars, and pipe tobacco products sold or held for sale in the state by any person. Any dealer having in his or her possession any tobacco, cigars, and pipe tobacco products with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after coming into possession of the tobacco, cigars, and pipe tobacco in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due. Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at www.tax.ri.gov, in person at the Rhode Island Division of Taxation, or requested by e-mail at Michael.Canole@tax.ri.gov or by calling Michael Canole at (401) 574-8729.

In the development of the proposed regulation, consideration was given to: (1) alternative approaches; (2) overlap or duplication with other statutory and regulatory provisions; and (3) whether the regulation, in and of itself, would have significant economic impact on small business. No alternative approach, duplication, or overlap was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Tuesday, June 10, 2014 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail at Michael.Canole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on Tuesday, June 10, 2014 at 9:30 a.m., at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI, at which time and place all persons interested therein will be heard. The room is accessible to the disabled and interpreter services for the hearing impaired will be provided if requested 48 hours prior to the hearing. Requests for this service can be made in writing to Michael Canole at the Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling (401) 574-8729.

Date Posted: May 7, 2014

Rhode Island Department of Revenue

Division of Taxation

Concise summary of all non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) for rules and regulations regarding tax on other tobacco products.

The purpose of this regulation is to implement Rhode Island General Laws (RIGL) section 44-20-13.2, which provides for Tax on smokeless tobacco, cigars, and pipe tobacco products sold or held for sale in the state by any person. Any dealer having in his or her possession any tobacco, cigars, and pipe tobacco products with respect to the storage or use of which a tax is imposed by this section shall, within five (5) days after coming into possession of the tobacco, cigars, and pipe tobacco in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due. Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

This regulation shall take effect July 1, 2014

STATE OF RHODE ISLAND – DIVISION OF TAXATION

TAX ON OTHER TOBACCO PRODUCTS

REGULATION OTP 14-01

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Rule 1. Purpose

(a) The purpose of this regulation is to implement Rhode Island General Laws (R.I. Gen. Laws) § 44-20-13.2, which provides for Tax on smokeless tobacco, cigars, and pipe tobacco products sold or held for sale in the state by any person.

(b) Any dealer having in his or her possession any tobacco, cigars, and pipe tobacco products with respect to the storage or use of which a tax is imposed by this section shall,

within five (5) days after coming into possession of the tobacco, cigars, and pipe tobacco in this state, file a return with the tax administrator in a form prescribed by the tax administrator. The return shall be accompanied by a payment of the amount of the tax shown on the form to be due.

(c) Records required under this section shall be preserved on the premises described in the relevant license in such a manner as to ensure permanency and accessibility for inspection at reasonable hours by authorized personnel of the administrator.

Rule 2. Authority

This regulation is promulgated pursuant to R.I. Gen. Laws § 44-1-4 and § 44-20-50. This regulation has been prepared in accordance with the requirements of R.I. Gen. Laws §§ 42-35-1 et seq. of the Rhode Island Administrative Procedures Act.

Rule 3. Application

This regulation shall be liberally construed so as to permit the Division of Taxation the authority to effectuate the purpose of R.I. Gen. Laws § 44-20-13.2 and other applicable state laws and regulations.

Rule 4. Severability

If any provision of this regulation, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of this regulation shall not be affected thereby.

Rule 5. Definitions

- (a) “Administrator” or “Tax Administrator” means the tax administrator of the State of Rhode Island, and head of the Rhode Island Division of Taxation;
- (b) “Dealer” means any Person whether located within or outside of this state, who sells or distributes cigarettes and/or Other Tobacco Products to a consumer in this state;
- (c) “Distributor” means any Person:
 - (i) Whether located within or outside of this state, other than a Dealer, who sells or distributes cigarettes and/or Other Tobacco Products within or into this state. Such term shall not include any cigarette and/or Other Tobacco Product Manufacturer, export warehouse proprietor, or Importer with a valid permit under 26 U.S.C. § 5712, if such Person sells or distributes cigarettes and/or Other Tobacco

Products in this state only to licensed Distributors, or to an export warehouse proprietor or another Manufacturer with a valid permit under 26 U.S.C. § 5712;

- (ii) Selling cigarettes and/or Other Tobacco Products directly to consumers in this state by means of at least twenty-five (25) vending machines;
 - (iii) Engaged in this state in the business of manufacturing cigarettes and/or Other Tobacco Products, or any Person engaged in the business of selling cigarettes and/or Other Tobacco Products to Dealers, or to other Persons, for the purpose of resale only; provided, that seventy-five percent (75%) of all cigarettes and/or Other Tobacco Products sold by that Person in this state are sold to Dealers or other Persons for resale and selling cigarettes and/or Other Tobacco Products directly to at least forty (40) Dealers or other Persons for resale; or
 - (iv) Maintaining one or more regular Place of Business in this state for that purpose; provided, that seventy-five percent (75%) of the sold cigarettes and/or Other Tobacco Products are purchased directly from the Manufacturer and selling cigarettes and/or Other Tobacco Products directly to at least forty (40) Dealers or other Persons for resale;
- (d) “Importer” means any Person who imports into the United States, either directly or indirectly, a finished cigarette and/or Other Tobacco Products for sale or distribution;
- (e) “Licensed,” when used with reference to a Manufacturer, Importer, Distributor or Dealer, means only those persons who hold a valid and current license from the State of Rhode Island issued under § 44-20-2 for the type of business being engaged in. When the term “licensed” is used before a list of entities, such as “licensed Manufacturer, Importer, wholesale Dealer, or retailer Dealer,” such term shall be deemed to apply to each entity in such list;
- (f) “Manufacturer” means any Person who manufactures, fabricates, assembles, processes, or labels a finished cigarette and/or Other Tobacco Products;

- (g) “Notice of Deficiency Determination” means a written statement of a tentative determination of tax liability, including any interest and penalties due, that does not become due, final, and payable until thirty (30) days have transpired from the date the notice issued without a request for hearing;
- (h) “Other Tobacco Product/s” (OTP) means any cigars (excluding Little Cigars which are subject to cigarette tax), cheroots, stogies, smoking tobacco (including granulated, plug cut, crimp cut, ready rubbed and any other kinds and forms of tobacco suitable for smoking in a pipe or otherwise), chewing tobacco (including Cavendish, twist, plug, scrap and any other kinds and forms of tobacco suitable for chewing), any and all forms of hookah and shisha tobacco, snuff, and shall include any other articles or products made of tobacco or any substitute therefore, except cigarettes;
- (i) “Person” means any individual, including an employee or agent, firm, fiduciary, partnership, corporation, trust, or association, however formed;
- (j) “Place of Business” means and includes any place where cigarettes and/or Other Tobacco Products are sold, or where cigarettes and/or Other Tobacco Products are or could be stored or kept for the purpose of sale or consumption, including any locked storage safe and/or containers, any vessel, vehicle, airplane, train, or vending machine;
- (k) “Sale” or “Sell” includes and applies to gifts, exchanges, and barter;
- (l) “Snuff” means any finely cut, ground, or powdered tobacco that is not intended to be smoked;
- (m) “Wholesale Cost” means:
- (i) In the case of a Manufacturer of Other Tobacco Products, the price set for such products or, if no price has been set, the wholesale value of such products;
 - (ii) In the case of a Distributor, the price at which the Distributor purchases Other Tobacco Products before the allowance of any discounts, trade allowances, rebate or other reduction;
 - (iii) In the case of a Dealer of Other Tobacco Products, the invoice price to the Dealer.

Rule 6. Mandatory Filing of Tax for Other Tobacco Products

- (a) **Dealer filing requirements.** Pursuant to R.I. Gen. Laws § 44-20-13.2(b), any Dealer who purchases Other Tobacco Products from a Distributor who does not possess a valid Rhode Island Distributor's license shall, within five (5) days after coming into possession of the Other Tobacco Products, file a return with the Tax Administrator and pay the appropriate tax.
- (i) The Dealer or retailer shall file the return by completing Form OTP-4, which is available on the Division of Taxation's website: www.tax.ri.gov. The return shall be accompanied by a payment of the amount of the tax due, as calculated on the return.
 - (ii) The Dealer shall keep a copy of the OTP-4 return remitted to the Division as well as proof of payment for the return. These documents shall be kept in accordance with Rules 8 and 9 of this Regulation.
 - (iii) Any Dealer who purchases Other Tobacco Products from a Distributor who possesses a valid Rhode Island Distributor's license is not required to file an OTP-4 return; however, the Dealer must keep records/invoices of all purchases in accordance with Rules 8 and 9 of this Regulation.

(b) Distributor licensing and filing requirements. Any Distributor of Other Tobacco Products shall file an "Application For Tobacco Products Distributor's License" (Form TOB-APP) with the Division of Taxation. As a Distributor of Other Tobacco Products, the licensee shall file a Monthly Report of Tobacco Products Tax Return with the Division of Taxation (Form OTP-1). The "Application For Tobacco Products Distributor's License" (Form TOB-APP) and the "Distributor's Other Tobacco Products Return" (Form OTP-1) are both available on the Tax Division's website at: www.tax.ri.gov/taxforms/sales_excise/tobacco. The Distributor's Return (Form OTP-1) shall be filed on or before the tenth day of each month accompanied by a payment of the amount of the tax due as shown on the return.

Rule 7. Tax Rates

(a) *General Rate.* The tax rate for Other Tobacco Products, excluding cigars and snuff, is eighty percent (80%) of the wholesale cost of the product. For purposes of this tax rate, Other Tobacco Products includes, but is not limited to, any and all forms of hookah and shisha tobacco, chew, heavy weight cigars, and other forms of tobacco products.

(b) *Cigar Tax Rate.* The tax rate for cigars is eighty (80%) of the Wholesale Cost, with a maximum tax of no more than fifty cents (\$0.50) per cigar. If the wholesale value of the cigar is \$0.63 or more, then the maximum tax due on that cigar is fifty cents (\$0.50).

(c) Snuff Tax Rate. The tax on snuff shall be calculated by net weight. The tax rate is one dollar (\$1.00) per ounce, and a proportionate tax on all fractional parts thereof. However, any product with a net weight of less than 1.2 ounces shall be taxed as if the product has a net weight of 1.2 ounces.

Rule 8. Records Requirements

- (a) Every Distributor of Other Tobacco Products must keep complete and accurate records of all tobacco products sold to a Dealer. Distributor's records must contain an accurate date, the name, address, phone number, and OTP Distributor's license number of the Distributor, the identity of the Dealer purchasing the tobacco product/s including name, address, phone number, and Dealer's cigarette license number, as well as the quantity, wholesale cost of the item/s, and the actual amount of tax paid for specific items.
- (b) Every Dealer of Other Tobacco Products must keep complete and accurate records of all tobacco products purchased from either a licensed or non-licensed Distributor. These purchase records must contain an accurate date, the identity of the person selling the tobacco product/s including name, address, phone number, and OTP Distributor's license number, the identity of the Dealer including the name, address, phone number, and Dealer's cigarette license number, as well as the quantity, wholesale cost of the item/s, and the actual amount of tax paid for specific items.
- (c) Both Distributors and Dealers must keep documentation of any returns filed with the Division, as well as proof of payment of Other Tobacco Products Tax.
- (d) For a period of at least six (6) months after purchase, the records shall be kept at the Place of Business in accordance with R.I. Gen. Laws § 44-20-13.2(b). After six (6) months, the records may be kept off site; however, they must be produced upon demand to the Division of Taxation within twenty-four (24) hours.
- (e) Distributors and Dealers may keep records electronically as long as they are immediately accessible for inspection at the Place of Business.
- (f) All records shall be kept safely for a period of three (3) years in a manner to insure permanency and accessibility for inspection by the tax administrator or his or her agents.

Rule 9. Inspections

(a) The Tax Administrator and his or her agents is authorized under Section 44-20-40.1 to conduct unannounced inspections to insure compliance with all provisions of Title 44,

Chapter 20 of the Rhode Island General Laws. Accordingly, the Tax Administrator and his or her agents shall be permitted to inspect the Place of Business of any Person selling any tobacco products within the State. Inspections of licensed Distributors or Dealers shall be conducted during normal business hours without a warrant and without prior notice.

(b) The Tax Administrator and his or her duly authorized agents shall be permitted to inspect the books, papers, reports, and records of any Manufacturer, Importer, Distributor, or Dealer in this state for the purpose of determining whether taxes imposed by this chapter have been fully paid, and may investigate the stock of cigarettes and Other Tobacco Products in or upon the Place of Business for the purpose of determining whether the provisions of this chapter are being obeyed.

(c) Failure to allow such inspection(s) of the Place of Business and/or records may result in civil penalties and/or suspension or revocation of a Cigarette Dealer's or Distributor's License.

Rule 10. Seizures

All Other Tobacco Products which are possessed, stored, retained, or otherwise brought into the State in contradiction to R.I. Gen. Laws § 44-20-13.2 and this Regulation shall be considered untaxed contraband by the Tax Administrator and his or her agents. The Other Tobacco Products may be seized by the Tax Administrator or his or her agents or employees or by any sheriff or his or her deputy or any police officer when directed by the Tax Administrator to do so, without a warrant.

Rule 11. Billings and Penalties

(a) In the event that contraband Other Tobacco Products are seized, the Tax Administrator shall issue a Notice of Deficiency Determination for the amount of tax due but unpaid on the seized items. The Tax Administrator may impose civil penalties for failure to pay tax on any Notice of Deficiency that results from a seizure of contraband Other Tobacco Products. The civil penalty shall be in the amount of five times the tax due but unpaid, as calculated by the Tax Administrator and his or her agents.

(b) In addition to the civil penalties listed above, the Tax Administrator, in his or her sole discretion, may suspend or revoke a cigarette Dealer's or Distributor's license for any violation of these Regulations.

Rule 12. Destruction of Other Tobacco Products

In the event that the taxpayer is unable or unwilling to provide valid records/invoices to evidence tax paid on the seized contraband, the contraband shall be destroyed in any manner deemed appropriate by the Tax Administrator pursuant to R.I. Gen. Laws § 44-20-15(b). If a Dealer contests a Notice of Deficiency Determination within thirty (30) days, no seized Other Tobacco Products will be destroyed while the matter is pending

hearing. All seized contraband may be stored at any facility or location that the Tax Administrator deems appropriate.

Rule 13. Appeals

(a) Any Person aggrieved by a Notice of Deficiency Determination issued by the Tax Administrator is entitled to an administrative hearing. In order to request this hearing, the taxpayer must notify the Tax Administrator in writing within thirty (30) days from the date of the Notice of Deficiency Determination. The Tax Administrator shall, as soon as is practicable, set a time and place for hearing, and shall render a final decision. The administrative hearing is the taxpayer's opportunity to present valid records/invoices, as detailed above in Rule 8, evidencing tax paid on the seized items.

(b) Appeals from a final decision of the Tax Administrator shall be to the Rhode Island Sixth (6th) Division District Court pursuant to RIGL § 8-8 *et seq.* The taxpayer's right to appeal to the district court is expressly made conditional upon prepayment of all taxes, interest, and penalties, unless the taxpayer files a timely motion for exemption from prepayment with the district court in accordance with the requirements imposed pursuant to RIGL § 8-8-26.

Rule 14. Effective Date

This regulation shall take effect July 1, 2014.

David M. Sullivan

Tax Administrator