STATE OF RHODE ISLAND – DIVISION OF TAXATION

TAX PREPARER PENALTIES

REGULATION PIT 14-23

Table of Contents

Rule 1. Purpose

These rules and regulations implement R.I. Gen. Laws Chapter 44-68. That chapter outlines civil and criminal penalties which may be imposed on a paid tax preparer who fails to comply with due diligence requirements.

Rule 2. Authority

These rules and regulations are promulgated pursuant to R.I. Gen. Laws § 11-18-1, § 44-1-4 and § 44-68-6. The rules and regulations have 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

These rules and regulations shall be liberally construed so as to permit the Division of Taxation the authority to effectuate the purpose of R.I. Gen. Laws Chapter 44-68 and other applicable state laws and regulations.

Rule 4. Severability

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations 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) “Adjusted Gross Income” (AGI) means gross income minus adjustments to income as defined in 26 U.S.C. § 62;

(c) “Claimant” means a homeowner or renter, sixty-five (65) years of age or older and/or disabled, who has filed a claim under R.I. Gen. Laws Chapter 44-33 and was domiciled in Rhode Island for the entire calendar year for which he or she files a claim for relief under R.I. Gen. Laws Chapter 44-33. In the case of a claim for rent constituting property taxes accrued, the claimant shall have rented property during the preceding year for which he or she files for relief under R.I. Gen. Laws Chapter 44-33. Claimant shall not mean or include any person claimed as a dependent by any taxpayer under 26 U.S.C. § 1 et seq. When two (2) individuals of a household are able to meet the qualifications for a claimant, they may determine between themselves as to who the claimant is. If they are unable to agree, the matter is referred to the tax administrator and his or her determination is final. If a homestead is occupied by two (2) or more individuals, and more than one individual is able to qualify as a claimant and some or all of the qualified individuals are not related, the individuals may determine among themselves as to who the claimant is. If they are unable to agree, the matter is referred to the tax administrator, and his or her decision is final.

(d) "Disabled" means those persons who are receiving a social security disability benefit;

(e) "Dependent" means any person living in the household who is either a qualifying child or a qualifying relative pursuant to IRC § 152(a);

(f) "Division" means the Rhode Island Division of Taxation;

(g) "Due Diligence" means the measure of prudence and care that a reasonable person exercises in the preparation of tax returns that are to be filed with the Division;

(h) "Dwelling Unit" means a single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation;

(i) "Earned Income" means any and all income qualifying as earned income under 26 USC § 32; this includes, but is not limited to, wages, salaries, tips, and other taxable employee pay, net earnings from self-employment, and gross income received as a statutory employee;

(j) "Earned Income Credit" (EIC) means the federal and state tax credit under 26 USC § 32 for certain people who work and have earned income under certain threshold amounts;

(k) "Homestead" means your Rhode Island dwelling, whether owned or rented, and so much of the land around it as is reasonably necessary for the use of the dwelling as a home, but not exceeding one acre. It may consist of a part of a multi-dwelling or a multi-purpose building. It may be an apartment, a houseboat, a mobile home, or a farm;

(l) “Household” means one or more persons occupying a dwelling unit and living as a single nonprofit housekeeping unit. Household does not mean bona fide lessees, tenants, or roomers and boarders on contract;

(m) “Household Income” means all income, both taxable and nontaxable, received by all persons of a household in a calendar year while members of the household;

(n) “Preparer Tax Identification Number” (PTIN) means the number issued by the Internal Revenue Service (IRS) to paid preparers to use on all the returns they prepare;

(o) “Public Assistance” means cash assistance from government assistance programs informally known as welfare assistance, and more commonly known as “temporary assistance for needy families” (TANF);

(p) “Return” means any tax report, return, claim for refund, or attachment to any report, return, and/or claim for refund filed with the Tax Administrator pursuant to the Rhode Island tax laws;

(q) “Tax Return Preparer” means an individual who prepares a substantial portion of any Return for compensation. This includes preparers who sign the Return, preparers who prepare the EIC or Property Tax Relief Credit portions of the Return but do not sign the Return, or the employers of these preparers. Tax Return Preparers include individuals required to register with the Internal Revenue Service as a tax return preparer and who have a Preparer Tax Identification Number (PTIN). The following are NOT considered Tax Return Preparers:

1. Volunteer tax return preparers; or
2. Employees of a tax return preparer or employees of a commercial tax return preparation business who provide only clerical, administrative, or other similar services;

Rule 6. Earned Income Credit (EIC)

(a) Any resident or non-resident with Earned Income from Rhode Island who claims the Federal Earned Income Credit is eligible for Rhode Island’s EIC.

(b) The Rhode Island EIC is determined in accordance with R.I. Gen. Laws § 44-30-2.6(c)(2)(N) and by using the RI Schedule EIC on the RI–1040 or RI–1040NR.

Rule 7. Due Diligence Regarding Earned Income Credit

(a) It is the responsibility of the Tax Return Preparer to be knowledgeable about the law with regard to EIC, make reasonable inquiries of the taxpayer, and review supporting documentation provided by the taxpayer to validate the assertions made in preparing a Return that claims EIC.

(b) The purposes for a Tax Return Preparer to question the taxpayer regarding EIC Due Diligence are:

1) To reasonably conclude that the taxpayer is reporting all income that contributes to their total Earned Income and AGI;

2) To reasonably conclude that no other person is eligible to claim EIC or any other child-related benefits for the dependent(s) being claimed; and

3) To reasonably conclude that the dependent(s) being claimed is actually a qualifying dependent(s) for EIC purposes.

(c) Due Diligence for a Tax Return Preparer includes, but is not limited to:

1) Have reasonable knowledge or verification of the identity of the taxpayer presenting the information (such as requesting a photo ID and social security card;

2) Applying a prudent man standard to the information provided by the taxpayer;

3) Evaluating whether that information is complete and gathering any missing facts;

4) Determining if the information is consistent and recognizing contradictory statements;

5) Conducting a thorough, in-depth interview with each taxpayer each year that the taxpayer claims the EIC;

6) Asking enough questions to reasonably know the taxpayer’s eligibility for EIC and the amount of credit is correct and complete; and

7) Documenting in the file any questions asked and the taxpayer's responses.

(d) To meet the federal and Rhode Island Due Diligence requirements regarding the EIC, a Tax Return Preparer shall:

1) Complete the Paid Preparer's Earned Income Credit Checklist (U.S. Form 8867 for the IRS). This form must be submitted to the IRS. The Division does not require the 8867 Form to be submitted along with every EIC claim; however, a Tax Return Preparer shall have a copy of this document in his or her records for every EIC claim;

2) Complete the EIC worksheet in the U.S. Form 1040 instructions, Publication 596, Earned Income Credit, for the IRS. A Tax Return Preparer shall have a copy of this document in his or her records for every EIC claim;

3) Keep copies of any and all documentation provided by the taxpayer that was relied upon by the Tax Return Preparer to complete U.S. Form 8867 or the EIC worksheet;

4) Keep a record of when and how (including from whom) the Tax Return Preparer received the information used to prepare the Return. This includes documentation of what questions were asked by the Tax Return Preparer and the taxpayer's responses;

   i. If a reasonable and well informed Tax Return Preparer would conclude that any information used to determine if the taxpayer is eligible for EIC is incorrect, inconsistent, or incomplete, the Tax Return Preparer shall ask the taxpayer additional questions, as well as maintain additional records consistent with these additional questions.

   ii. These records may include, but are not limited to:

      - Verification of dependents such as copies of birth certificates, school records, medical records, court placement records, guardianship records, social security cards;

      - Verification of filing status such as marriage license, divorce settlement, bank statements, lease and/or mortgage agreement;

- Verification as to whether or not the taxpayer was required to file a U.S. Form 8862 (Information to Claim Earned Income Credit After Disallowance) with the IRS;

- For U.S. Schedule C Filers, verification of Earned Income such as a Form 1099 Misc., business license, client and/or customer lists, taxpayer prepared records or log book of income, bank statements, and any income documents other than W-2 forms;

- Verification of deductions such as a mileage deduction log, business receipts, rent receipts, and client prepared records or log book of business expenses, and bank statements; and

5) Copies of documents or records required by this rule to be kept on file by a Tax Return Preparer shall be produced within seventy two (72) hours upon request by the Division for said documents or records. However, additional time may be granted based on the Tax Return Preparer's written request to the Tax Administrator.

Rule 8. Property Tax Relief Credit

(a) Pursuant to R.I. Gen. Laws Chapter 44-33, Property Tax Relief Credit provides relief to Rhode Island taxpayers paying property tax who own or rent their homes.

(b) In order to qualify for Property Tax Relief Credit a Claimant shall meet all of the following conditions:

1) The Claimant shall be domiciled in Rhode Island for the entire calendar year;

2) The Claimant's total Household Income shall have been $30,000 or less;

3) The Claimant's Homestead shall be subject to property taxes;

4) The Claimant shall be current on all property tax or rent/lease payments due on the Homestead for all prior years and on any current installments;

5) The Claimant shall timely file Form RI–1040H by April 15 of the following year; and

6) Only one (1) property tax relief claim is allowed per household.

(c) Under R.I. Gen. Laws § 44-33-16, a claim for property tax relief shall exclude all taxes or rent paid with public assistance;

(d) The right to file a claim for Property Tax Relief does not survive a person's death; therefore, a claim filed on behalf of a deceased person cannot be allowed. If the Claimant dies after having filed a timely claim, the amount thereof will be disbursed to another member of the Household as determined by the Tax Administrator.

Rule 9. Due Diligence Regarding Property Tax Relief Credit

(a) It is the responsibility of the Tax Return Preparer to be knowledgeable about the law with regard to Property Tax Relief, make reasonable inquiries of the Claimant, and review supporting documentation provided by the Claimant to validate the assertions made in preparing a Return that claims Property Tax Relief Credit.

(b) The purposes for a Tax Return Preparer to question the Claimant for Property Tax Relief Due Diligence analysis are:

1) To reasonably conclude that the Claimant is reporting all income that contributes to their total Household Income; and

2) To reasonably conclude that only one Claimant per Household claims the Property Tax Relief Credit.

(c) Due Diligence for a Tax Return Preparer includes, but is not limited to:

1) Have reasonable knowledge or verification of the identity of the Claimant presenting the information (such as requesting a photo ID and social security card;

2) Applying a prudent man standard to the information provided by the Claimant;

3) Evaluating whether that information is complete and gathering any missing facts;

4) Determining if the information is consistent and recognizing contradictory statements;

5) Conducting a thorough, in-depth interview with each Claimant each year;

6) Asking enough questions to have reasonable knowledge the Property Tax Relief Claim is correct and complete; and

7) Documenting in the file any questions asked and the Claimant's responses.

(d) To meet the Rhode Island Due Diligence requirements for Property Tax Relief Credit, a Tax Return Preparer shall:

1) Keep copies of any and all documentation provided by the Claimant that was relied upon by the Tax Return Preparer to complete the Return claiming Property Tax Relief Credit;

2) Keep a record of when and how (including from whom) the Tax Return Preparer received the information used to prepare the Return. This includes documentation of what questions were asked by the Tax Return Preparer and the Claimant's responses.

   i. If a reasonable and well informed Tax Return Preparer would conclude that any information used to determine if the Claimant is eligible for Property Tax Relief Credit is incorrect, inconsistent, or incomplete, the Tax Return Preparer shall ask the Claimant additional questions as well as maintain additional records consistent with these additional questions.

   ii. These records may include, but are not limited to:

      - Verification that Household Income is $30,000 or less such as bank statements, W-2 forms for any persons living in the Household, social security award letters, disability award letters, 1099-C Cancellation of Debt, unemployment benefits, worker's compensation benefits, Public Assistance, child support received, cash assistance from friends/family, gambling winnings, non-taxable military compensation, gross amounts of pensions and annuities; and

- Verification that Homestead is subject to property tax such as rent receipts, cancelled rent checks, proof of mortgage payments, proof of paid property tax bill, HUD Lease Form 50059 or lease agreement, and landlord’s name, address, and phone number;

3) Copies of documents or records required by this rule to be kept on file by a Tax Return Preparer shall be produced within seventy two (72) hours upon request by the Division for said documents or records. However, additional time may be granted based on the Tax Return Preparer’s written request to the Tax Administrator.

Rule 10. Record Retention Requirements

(a) Records kept under Rule 7 and Rule 9 of this regulation shall be kept for three (3) years from the later of:

1) The due date of the Return;

2) The date the Return was electronically filed;

3) For a paper Return, the date the Return was presented to the taxpayer for signature; or

4) If you are a non-signing Tax Return Preparer, the date you give the part for which you are responsible to the signing Tax Return Preparer.

(b) Records may be kept in either paper or electronic format, but shall be capable of being produced within seventy two (72) hours if requested by the Division. However, additional time may be granted based on the tax return preparer’s written request to the Tax Administrator. Every Tax Return Preparer shall keep a back-up of these records in a separate, secure location.

Rule 11. Inspections

(a) The Tax Administrator, and his or her agents, may conduct audit inspections to ensure compliance with all provisions of R.I. Gen. Laws Chapter 44-68. Audit inspections of Tax Return Preparers shall be conducted during normal business hours.

(b) Failure to allow such inspection(s) of records kept under Rule 7 and Rule 9 of this regulation may result in civil penalties and/or suspension or revocation of a Tax Return Preparer's privilege to file Returns with the Division.

Rule 12. Civil and Administrative Penalties

(a) Failure to exercise Due Diligence Regarding Earned Income Credit - Upon a determination by the Tax Administrator that a Tax Return Preparer prepared a Return(s) and failed to comply with the Due Diligence requirements imposed by Rule 7 above with respect to determining eligibility for, or the amount of, the EIC allowable by the State pursuant to R.I. Gen. Laws § 44-30-2.6(c)(2)(N), the Tax Return Preparer shall pay a penalty of five hundred dollars ($500) for each such return.

(b) Failure to exercise Due Diligence Regarding Property Tax Relief Credit – Upon a determination by the Tax Administrator that a Tax Return Preparer prepared a Return(s) and failed to comply with the due diligence requirements imposed by Rule 9 above with respect to determining eligibility for, or the amount of, the Property Tax Relief Credit allowable by the State pursuant to R.I. Gen. Laws § 44-33, the Tax Return Preparer shall pay a penalty of five hundred dollars ($500) for each such return.

(c) Willful Intent - Upon a determination by the Tax Administrator that a Tax Return Preparer willfully prepared, assisted in preparing, or caused the preparation of a Return(s) with intent to wrongfully obtain a Property Tax Relief credit, or with the intent to evade or reduce a tax obligation, the Tax Return Preparer shall be liable for a penalty of one thousand dollars ($1,000), or five hundred dollars ($500) for each return so filed during any calendar year, whichever is greater.

(d) Warning - The Tax Administrator, in his or her sole discretion, may provide a warning to any Tax Return Preparer who fails to exercise Due Diligence in preparing a return(s) that negligently claim(s) EIC or Property Tax Relief Credit or who intends to wrongfully evade or reduce a tax obligation.

(e) Suspension or Revocation - The Tax Administrator may suspend or revoke the privilege of a Tax Return Preparer to prepare and/or file Returns with the Division upon a determination that the Tax Return Preparer has failed to comply with or violated any provision of R.I. Gen. Laws Chapter 44-68, these regulations, or any provision of any other laws relative to the preparation of tax Returns.

(f) Criminal Offenses - If a Tax Return Preparer has been convicted of a crime involving identity theft, fraud, or tax evasion in any court of competent jurisdiction, the Tax Administrator may, in his or her sole discretion, suspend or revoke the privilege of the Tax Return Preparer to file tax returns with the Division without analyzing whether or not the Tax Return Preparer met the Due Diligence requirements.

Rule 13. Criminal Penalties

Any Tax Return Preparer who has previously been assessed a penalty by the Tax Administrator under R.I. Gen. Laws § 44-68-4(c), who is found by a court of competent jurisdiction to have thereafter willfully prepared, assisted in preparing, or caused a preparation of a subsequent false tax Return or claim for refund which was filed with the Division with the intent to wrongfully obtain a Property Tax Relief credit or the intent to wrongfully evade or reduce a tax obligation shall be guilty of a felony and, upon conviction, shall be subject to a fine not exceeding fifty thousand dollars ($50,000), or imprisonment not exceeding five (5) years, or both.

Rule 14. Appeals

(a) Any Tax Return Preparer receiving notice of the Tax Administrator's intent to impose civil and administrative penalties, including suspension or revocation of the privilege to file Returns with the Division may request an administrative hearing on the notice of intent to suspend or revoke.

(b) In order to request this hearing, the Tax Return Preparer shall notify the Tax Administrator in writing within thirty (30) days from the date of the notice to suspend or revoke. 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 Tax Return Preparer's opportunity to present evidence regarding Due Diligence including checklists and documentation provided by the taxpayer to the Tax Return Preparer as detailed in Rule 7 and Rule 9 of this regulation.

(c) Pursuant to R.I. Gen Laws § 8-8-24, appeals from a final decision of the Tax Administrator shall be to the Rhode Island Sixth (6th) Division District Court within thirty (30) of the final decision.

Rule 15. Effective Date

This regulation shall be effective on January 1, 2015.

David M. Sullivan
Tax Administrator

Date Filed: October 9, 2014
ERLID Number: 7881