



STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

Department of Revenue
DIVISION OF TAXATION
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IMPORTANT NOTICE

Definition of Sales Tax “Retailer” Amended

The 2009 Rhode Island General Assembly enacted into law Article 16 of House Bill 5983 Sub A as Amended to provide a presumption that certain sellers of taxable tangible personal property are *retailers* under § 44-18-15 and are required to register collect and remit Rhode Island sales taxes. This new law is effective as of July 1, 2009.

Background

The term *retailer* includes persons who solicit business within the state through employees, independent contractors, agents or other representatives and, by reason thereof, make sales to persons within the state of tangible personal property that are subject to sales tax. Accordingly, if a business located outside Rhode Island solicits sales of taxable tangible personal property or services through employees, salespersons, independent contractors, agents, or other representatives located in Rhode Island, the business must register as a retailer and obtain a *Permit to Make Sales at Retail* (See Regulation SU 90-20).

New rules Pertaining to E-Commerce Retailers

Under the new legislation, an e-commerce retailer that uses persons to act as its representatives in the state to solicit sales or to make and maintain a market in return for commissions, referral fees or other types of compensation is considered to be soliciting business within this state through the use of independent contractors or representatives. Therefore, the e-commerce retailer must register as a retailer for Rhode Island sales tax purposes. However, a business is not considered a retailer under the law merely because the business is advertising on a server or other computer equipment located in Rhode Island, or has advertising disseminated or displayed on the Internet.

The new legislation provides that a seller that makes taxable sales of tangible personal property in Rhode Island is presumed to be a retailer required to be registered for sales tax purposes and required to collect sales tax on all of its taxable sales in Rhode Island, if **both** of the following conditions are met:

- The seller enters into an agreement with a Rhode Island individual, corporation incorporated under the laws of Rhode Island, or any corporation, association, partnership or other entity doing business or maintaining a place of business in Rhode Island; or under which, for a commission or other consideration, the Rhode Island representative directly or indirectly refers potential customers to the seller, whether by link on an Internet Web site or otherwise. A Rhode Island representative would be indirectly referring potential customers to the seller where, for example, the Rhode Island representative refers potential customers to its own Web site, or to another party's Web site which then directs the potential customer to the seller's Web site.
- The cumulative gross receipts from sales by the seller to customers in Rhode Island as a result of referrals to the seller by all of the seller's resident representatives under the type of contract or agreement described above total more than \$5,000 during the preceding four quarterly sales tax periods. (Sales tax quarterly periods end on the last day of March, June, September and December.

For purposes of the presumption described above, a seller is also considered to have met the condition of having an agreement with a Rhode Island resident where the seller enters into an agreement with a third party under which the third party, in turn, enters into an agreement with the Rhode Island resident to act as the seller's representative.

In addition, an agreement to place an advertisement does not give rise to the presumption described above. For this purpose, placing an advertisement does not include the placement of a link on a Web site that, directly or indirectly, links to the Web site of a seller, where the consideration for placing the link on the Web site is based on the volume of completed sales generated by the link.

Registration

Please complete and return the enclosed Sales Tax registration (Form BAR) to the above address. Form BAR may also be found at: <http://www.tax.ri.gov/forms/1999/with/bar.pdf>

If you have any questions, please call the Excise Tax Section at (401) 574-8955.