

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 Rhode Island General Law §42-35-3(a)(1) 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 promulgate regulation SU 11-150, "Package Tour and Scenic and Sightseeing Transportation Services."

The purpose of this rule making process is to implement Chapters 44-18 and 44-19 of the Rhode Island General Laws. Specifically, RIGL §44-18-7(13) defines sales to include the furnishing of package tour and scenic and sightseeing transportation services. This regulation shall take effect October 1, 2011.

The proposed rule to be adopted and a concise summary of non-technical requirements are available for public inspection at www.tax.ri.gov, in person at the Rhode Island Division of Taxation, or can be requested by e-mail at mcanole@tax.ri.gov or by calling Michael F. 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) significant economic impact on small business. No alternative approach, duplication, or overlap, or significant economic impact on small business was identified based upon available information.

All interested parties are invited to submit written or oral comments concerning the proposed regulations by Friday, September 2, 2011, to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail: mcanole@tax.ri.gov. A public hearing to consider the proposed regulation will be held on Friday, September 2, 2011, at 10 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 Rhode Island Division of Taxation, One Capitol Hill, Providence, RI 02908 or by calling (401) 574-8729.

Rhode Island Department of Revenue

Division of Taxation

Concise Summary of ALL Non-technical requirements pursuant to RIGL Section 42-35-3(a)(1) regarding package tour and scenic and sightseeing transportation services – Amended.

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State of Rhode Island - Division of Taxation

Sales and Use Tax

Regulation SU 11- 150

**PACKAGE TOUR AND SCENIC AND SIGHTSEEING
TRANSPORTATION SERVICES**

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RULE 1. PURPOSE

This regulation implements Chapters 44-18 and 44-19 of the Rhode Island General Laws. These Chapters provide for Sales and Use Taxes Liability and Computation and Sales and Use Taxes Enforcement and Collection in regard to package tour and scenic and sightseeing transportation services.

RULE 2. AUTHORITY

This regulation is promulgated pursuant to RIGL Chapters 44-18 and 44-19 as amended. These rules have been prepared in accordance with the requirements of RIGL § 44-1-1 et. seq. and § 44-19-33.

RULE 3. APPLICATION

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department of Revenue to effectuate the purposes of RIGL Chapters 44-18 and 44-19 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

“Admission charge” means a fee charged for entry into a venue, i.e., mansion museum, etc.

“Commission” means a mutually agreed upon, or fixed by custom or law, fee accruing to an agent, broker, or salesperson for facilitating, initiating, and/or executing a commercial transaction.

“Fee” means a charge for services rendered.

“Mark-up” means the difference between the total selling price less cost of goods sold.

“Package tour” means transportation, accommodations and other services advertised and sold together by a vendor known as a tour operator. Other services provided may include a rental car, activities or outings.

“Point to point transportation” means transportation between two points that does not involve a sightseeing activity.

“Retainer” means an amount paid to retain the services of a professional adviser.

“Tour Operators” means establishments primarily engaged in arranging and assembling tours. The tours are sold through travel agencies, tour operators or other entities. Travel or wholesale tour operators are included in this industry.

“Scenic and Sightseeing Transportation, Land” means establishments primarily engaged in providing scenic and sightseeing transportation on land, such as sightseeing buses and trolleys, steam train excursions, walking tours of multiple sites and horse-drawn sightseeing rides. The services provided are usually locally and involve same-day return to place of origin.

“Scenic and Sightseeing Transportation, Water” means establishments primarily engaged in providing sightseeing transportation on water. The services provided are usually local and involve same-day return to place of origin.

“Scenic and Sightseeing Transportation, Other” means establishments primarily engaged in providing scenic and sightseeing transportation (except on land and water). The services provided are usually local and involve same-day return to place of departure.

RULE 6. TAXATION OF PACKAGE TOUR AND, SCENIC AND SIGHTSEEING TRANSPORTATION SERVICES

For the period commencing October 1, 2011, sales and use tax at the tax rate as provided in RIGL 44-18-18 and 44-18-20 shall apply to package tour and scenic and sightseeing transportation services pursuant to RIGL § 44-18-7(13).

Package tour services and, scenic and sightseeing transportation services include, but are not limited to:

Boat tours

Taxi tours

Bus tours

Train tours

Helicopter tours

Trolley tours

Gondola tours

Kayak and canoe tours

Walking tours

Hay rides

Bike tours

Pedi cab tours

The furnishing of a package tour and scenic and sightseeing transportation services by a tour operator or any entity or person where the services are conducted in Rhode Island, in whole or in part and involve a fee, retainer, commission, or other monetary charge and such activities involve the performance of a service as distinguished from selling property are subject to sales and use tax. Entities or persons providing package tour and scenic and sightseeing transportation services are retailers under RIGL § 44-18-15 and are required to register with the tax administrator under RIGL § 44-19-7.

A package tour must include a sightseeing activity, in whole or in part in Rhode Island, to qualify as taxable. Those tours consisting of only transportation, accommodations and meals, without a sightseeing activity are not subject to sales and use tax.

Tour operators may arrange package tours consisting of various components, which may include meals or hotel rooms on which the sales, hotel and meals and beverage taxes must be paid. In such case, the portion of the tour price attributable to the taxable meals or lodging, including all taxes paid thereon, may be deducted before calculating the tax. The

charge for meals and lodging need not be separately stated on the invoice. If a package tour includes various admissions charges that are otherwise nontaxable, e.g. museum admission, the price of the nontaxable admissions charges may be deducted in calculating the sales tax. Tax charged by the tour operator may be included in the total tour price and is not required to be separately stated on the invoice.

A retailer (including tour operators) must preserve records for a period of three (3) years, unless the Tax Administrator consents to their destruction within that period or requires that they be kept longer. (RIGL § 44-19-27).

RULE 7: EXAMPLES

Example #1:

A travel agency, acting as a tour operator, arranges for a group to travel from Providence to Newport via motor coach for a sightseeing tour of Newport with stops at several mansions located in Newport. The fee charged to each individual is for transportation to, and tour of, Newport and return to Providence and admission to three (3) mansions for guided tours. The charge to each individual is as follows:

Motor coach tour transportation	\$ 40.00
Museum admission fees	<u>60.00</u>
Total tour price before tax	\$100.00
Less: Nontaxable museum admissions	<u>(60.00)</u>
Taxable Base – tour transportation	\$ 40.00
Sales tax	\$ 2.80

Total tour cost including sales tax on sightseeing transportation is \$102.80.

Tax applies only to the sightseeing transportation and not to the admissions charges to the mansions.

Example #2:

An individual visiting Newport for a day decides to tour three (3) mansions. The cost of admission to the mansions is not subject to tax as it is not part of a package tour and/or does not include scenic and sightseeing transportation.

Example #3:

A group of conventioners attending a convention in Rhode Island have two days to tour the New England area. The convention organizer arranges a trip to Boston via motor coach to a baseball game and dinner. Tax does not apply to this trip, as it does not involve a tour or transportation for scenic and sightseeing purposes.

On another day, a boat trip to Block Island is arranged. This includes a tour of the island and dinner. The fee for this trip is as follows:

Ferry	\$50.00
Bicycle tour of island	30.00
Dinner (including all taxes)	<u>64.80</u>
Total tour price before tax	\$144.80
Less: nontaxable ferry transportation	(50.00)
Less: dinner (inclusive of all taxes)	<u>(64.80)</u>
Taxable base – bicycle tour of island	\$ 30.00
Sales tax	\$ 2.10

Total cost of tour package including tax on bicycle tour of island is \$146.90

Example #4:

A train tour departs from northern Rhode Island to view fall foliage in Rhode Island and nearby Massachusetts before returning to Rhode Island. Due to the fact the trip is organized for sightseeing purposes and is conducted in part in Rhode Island, the charge for the tour is subject to tax.

Example #5:

A tour operator located in Rhode Island offers tours of foliage in northern New England via bus, which departs from Cumberland, RI and travels to the White Mountains in New Hampshire, and returns to Cumberland, RI. Due to the fact the sightseeing portion of the tour takes place outside RI, the cost of these tours is not subject to sales tax.

Example #6:

A tour originating in Boston, MA travels to Newport, RI via motor coach where a local guide boards the bus to give a guided tour. Due to the fact a portion of the tour service is provided in RI makes the entire tour fee taxable. It does not matter if the tour guide boards the bus in Massachusetts or Rhode Island.

Example #7:

A theatrical production held on a train traveling in Rhode Island where the cost of the ticket does not include food or drink is not subject to tax. The object of the entertainment is the theatrical production and not sightseeing. Should refreshments be served, the cost of which is de minimis, the cost of the ticket remains nontaxable. However, should a meal be served on the train, the cost of the ticket is subject to sales and meals and beverage taxes.

Example #8:

A travel agency arranges a tour package to Newport consisting of airfare, hotel accommodations, meals and a boat cruise. In such a case, the portion of the charge for the tour package attributable to the meals, lodging, and boat cruise, including all taxes paid, may be deducted from the total in calculating the amount of tax on the package tour.

Please see the following illustration:

Airfare (including all taxes)	\$800.00
Hotel (including all taxes)	734.50
Meals (including all taxes)	648.00
Boat cruise (including all taxes)	<u>53.50</u>
Total cost to tour operator	\$2,236.00

The tour operator charges the traveler \$2,500. The fee of \$264 (2,500-2,236) is subject to sales tax of \$18.48. Tax may be included in the tour package price of \$2,500 or separately stated on the invoice by the tour operator.

In addition, any commissions paid to the tour operator by vendors located in Rhode Island, i.e. hotel located in Newport, are subject to tax.

Example #9:

A travel agency arranges a five-day tour with one day each in Boston, MA, Mystic, CT, Portsmouth, NH, Hyannis, MA and Newport, RI. The total selling price, cost, taxable portion and tax calculation are as follows:

Total selling price	\$5,000.00
Less: total expense to travel agent	<u>(4,000.00)</u>
Mark-up	\$1,000.00
Portion allocated to RI (1 day)	<u>x 1/5</u>
Taxable amount	\$ 200.00
Tax @ 7%	\$ 14.00

Example #10:

A tour operator traveling with a group visiting Providence wished to arrange a bus tour of beaches in Rhode Island and asks the hotel to arrange the transportation. The hotel rents a bus from a local company at a cost of \$300 plus tax. The hotel charges the tour operator \$400 for the bus plus tax. The tour operator charges each customer of the tour group \$50 for the sightseeing tour plus tax.

Please see below for calculations:

- Bus company charges hotel \$300 plus tax of \$21 for a total of \$321.00
- Hotel charges tour operator \$400, charging tax of \$7 only on the mark-up of \$100 (\$400-\$300). The hotel reports a deduction of \$300 for tax paid purchases on the sales tax return for the period of this transaction.
- Tour operator charges 20 customers \$50 each for a total of \$1,000. Tax of \$42 is calculated on the mark-up of \$600 (\$1,000-\$400). The tour operator reports a deduction of \$400 for tax paid purchases on the sales tax return for the period of this transaction.

The total tax remitted by the parties involved in this transaction is as follows:

- Bus company $\$300 \times .07 = \21.00
- Hotel $\$400 - 300 = \$100 \times .07 = 7.00$
- Tour operator $\$1,000 - 400 = \$600 \times .07 = 42.00$

Total tax remitted on \$1,000 charge to consumers $\$70.00$
for sightseeing transportation

Each retailer furnishing package tour or scenic and sightseeing transportation services is required to charge the sales tax on their portion of the transaction.

RULE 8. EFFECTIVE DATE

This regulation shall take effect on October 1, 2011.

RULE 9. CROSS REFERENCES

ROSS REFERENCE: Reg. SU 89-91, Records

DAVID M. SULLIVAN
TAX ADMINISTRATOR