

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 regulations regarding Notice to Administrator of Sale of Assets.

The purpose of this regulation is to implement section Rhode Island General Law (RIGL) §44-11-29 and 44-11-29.1 that requires a corporation to notify the Tax Administrator if it is selling or transferring a major part in value of its Rhode Island assets other than in the ordinary course of trade and in the regular and usual prosecution of the corporation's business. Filing a Request for a Letter of Good Standing is the required method for this notification. In addition, even though there is no requirement for notification by a limited liability company (LLC), Limited Liability Partnership (LLP) or Limited Partnership (LP) that has not made an election to be taxed as a corporation for federal tax purposes, this regulation shall cover such Letter of Good Standing requests. This regulation shall take effect July 1, 2012 and amends and supercedes regulation CT 03-03 promulgated March 1, 2003.

The proposed regulation and concise summary of non-technical requirements and proposed new rules are available for public inspection at [www.tax.ri.gov](http://www.tax.ri.gov), in person at The Rhode Island Division of Taxation, or requested by e-mail at [mcanole@tax.ri.gov](mailto:mcanole@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 May 15, 2012 to Michael Canole, Rhode Island Division of Taxation, One Capitol Hill, Providence, RI – telephone number (401) 574-8729 or via e-mail at [mcanole@tax.ri.gov](mailto:mcanole@tax.ri.gov). A public hearing to consider the proposed regulation will be held on May 15, 2012 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) for Notice to Administrator of Sale of Assets.**

**The purpose of this regulation is to implement (RIGL) §44-11-29 and 44-11-29.1 that require a corporation to notify the Tax Administrator if it is selling or transferring a major part in value of its Rhode Island assets other than in the ordinary course of trade and in the regular and usual prosecution of the corporation's business. Filing a Request for a Letter of Good Standing is the required method for this notification. In addition, even though there is no requirement for notification by a limited liability company (LLC), Limited Liability Partnership (LLP) or Limited Partnership (LP) that has not made an election to be taxed as a corporation for federal tax purposes, this regulation shall cover such Letter of Good Standing requests.**

**This regulation shall take effect July 1, 2012 and amends and supercedes regulation CT 03-03 promulgated March 1, 2003.**

# ~~State of Rhode Island -- Division of Taxation~~

## ~~Business Corporation Tax~~

### ~~Regulation CT-03-03~~

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## ~~Notice to Administrator of Sale of Assets~~

## ~~Letters of Good Standing~~

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~~Purpose. The purpose of this regulation is to carry out the statutory requirements contained in Section 44-11-29, and any other statutory provision requiring the need for a letter of good standing. This regulation also provides special filing requirements for an S corporation that is not subject to federal tax under subchapter S. In addition, even though there is no requirement to issue a letter of good standing for a limited liability company taxed as a partnership, this regulation will cover such letter of good standing requests.~~

~~Section 44-11-29 of the Rhode Island General Laws requires every corporation selling or transferring a major part in value of its assets (real or tangible property) otherwise than in the ordinary course of trade and in the regular and usual prosecution of the corporation's business to notify the Tax Administrator of the proposed sale or transfer at least five (5) days before the sale or transfer. The notice must include the price, terms and conditions, and the character and location of the assets.~~

~~Further, whenever a corporation makes such a sale or transfer, the tax imposed by chapter 44-11 becomes due and payable at the time the Tax Administrator is notified, or, if he is not so notified, at the time when he should have been notified.~~

~~If a corporation fails to comply with the notification and payment provisions, the sale or transfer shall be fraudulent and void as against the state.~~

~~A request for a Letter of Good Standing will require a final short period RI-1120 through the date of sale or transfer.~~

~~A C corporation and S corporation subject to corporate level federal tax must provide a copy of the Federal 1120 including the Form 4797 and Schedule D, if applicable, along with the final short period RI-1120.~~

~~For S corporations not subject to corporate level federal tax, a schedule of the corporate shareholders must be attached to the final short period RI-1120 through the date of sale or transfer (other than a merger) from beginning of tax year to date of sale. The schedule must~~

~~include the shareholder's name, address, social security number and allocated gain. In addition, if any shareholder of the corporation is a nonresident during any part of the corporation's short period, such taxpayer shall execute and forward to the corporation, before the due date of the short period Rhode Island corporate return an agreement (Form RI 1120 Schedule SN) which states that he/she will file a Rhode Island personal income tax return and pay income tax on all income derived from or connected with sources in this state, and such agreement shall be attached to the corporation's Rhode Island short period return.~~

~~In the event that the nonresident shareholder's executed agreement is not attached to the Rhode Island short period return, the corporation shall within three days of the sale or transfer of the assets transmit to the Tax Administrator a portion of the share of the corporation's taxable income which was derived from or attributable to this state, which portion shall be computed at the rate set forth in paragraph 44-11-2(1), (or other applicable sections) of the nonresident shareholder's share of the corporation's income which was derived from or attributable to sources within this state.~~

~~In addition, in the event the agreement set forth above is attached to the corporate return, and thereafter such nonresident shareholder fails to file a timely personal income tax return, then within thirty (30) days of the date of the notice by the Tax Administrator to the corporation, the corporation shall remit to the Tax Administrator a portion of the share of the corporation's taxable income which was derived from or attributable to this state, which portion shall be computed at the rate set forth in paragraph 44-11-2(1), (or other applicable sections) of the nonresident shareholder's share of the corporation's income which was derived from or attributable to sources within this state.~~

~~These schedules will take the place of attaching the federal form 1120S and the related schedules as long as the corporation is not subject to tax at the federal level or it is not engaging in a merger. If it is, the corporation must attach Schedule S along with the federal return and the applicable schedules to the short period return.~~

~~Remittance by the corporation does not relieve the nonresident from filing his/her Rhode Island personal income tax return. Corporations making payments on behalf of individual, nonresident shareholders must do so using a separate RI 1040ES form and check for each taxpayer for whom payment is being made. When the nonresident does file his/her return, the remittance submitted by the corporation will be allowed as a credit against his/her Rhode Island income tax liability.~~

~~Example 1, calendar year S corporation sells a major part of the value of its Rhode Island assets on April 1, 2002. As a condition of the sale, the buyer requires the S corporation to obtain a letter of good standing from the Rhode Island Division of Taxation. The S corporation has two shareholders one of which is a nonresident of Rhode Island. The gain on the sale of the assets is \$100,000. The S corporation is not subject to federal income taxes at the entity level.~~

~~The S corporation completes the RI 1120 for the period January 1, 2002 through April 1, 2002. Attached to the short period return is a schedule as follows:~~

<del>NAME</del>	<del>ADDRESS</del>	<del>SOCIAL SECURITY NUMBER</del>	<del>ALLOCATED GAIN</del>
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Joe Jones	<del>125 My Way</del>	<del>123-45-6789</del>	<del>\$50,000.00</del>
	<del>Your Town, RI</del>		
	<del>521 Your Way</del>		
Beekie Smith		<del>978-65-4321</del>	<del>\$50,000.00</del>
	<del>My Town, CT</del>		
TOTAL	-	-	<del>\$100,000.00</del>

~~Also attached to the RI 1120 is a Schedule SN signed by Beekie Smith where she agrees to file a Rhode Island personal income tax return and pay income tax on the gain derived from sources in Rhode Island.~~

~~In this case, the S corporation would be required to pay the minimum tax imposed by Section 44-11-2(e) of \$250.~~

~~Example 2, same facts as example 1 except the Schedule SN is not attached to the RI 1120. The corporation shall within three days of the sale or transfer of the assets transmit to the Tax Administrator a portion of the share of the corporation's taxable income in an amount equal to the rate set forth in paragraph 44-11-2(1) times the nonresident's share of the corporation's income attributable to Rhode Island sources. In this case, the amount would be \$4,500 (\$50,000 times 9%).~~

~~When the corporation complies with the provisions of Section 44-11-29, including the filing of any required returns and the payment of tax due, the Tax Administrator shall issue a letter of good standing to the corporation. Until such time as the returns are filed, the taxes are paid and the letter of good standing has been issued, the property sold or transferred shall be subject to the claims of the Tax Administrator for taxes imposed against the transferor of the property under Chapter 44-11.~~

~~The five day notice requirement does not apply to sales by receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or public officers acting under judicial process.~~

~~When requesting a letter of good standing, RI Form LGS-1 should be used.~~

~~R. GARY CLARK  
TAX ADMINISTRATOR~~

~~EFFECTIVE DATE: March 1, 2003~~

~~THIS REGULATION AMENDS AND SUPERCEDES REGULATION CT 88-03  
PROMULGATED DECEMBER 31, 1988.~~

# State of Rhode Island - Division of Taxation

## Business Corporation Tax

### Notice to Administrator of Sale of Assets

#### Letters of Good Standing

##### Regulation CT 12-03

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###### RULE 1. PURPOSE

The purpose of this regulation is to implement Rhode Island General Law (RIGL) §44-11-29 and 44-11-29.1 that requires a corporation to notify the Tax Administrator if it is selling or transferring a major part in value of its Rhode Island assets other than in the ordinary course of trade and in the regular and usual prosecution of the corporation's business. Filing a Request for a Letter of Good Standing is the required method for this notification. In addition, even though there is no requirement for notification by a Limited Liability Company (LLC), Limited Liability Partnership (LLP) or Limited Partnership (LP) that has not made an election to be taxed as a corporation for federal tax purposes, this regulation shall cover such Letter of Good Standing requests.

## **RULE 2. AUTHORITY**

These rules and regulations are promulgated pursuant to RIGL §44-1-4. The rules and regulations have been prepared in accordance with the requirements of RIGL §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 to effectuate the purpose of RIGL §44-11-29 and §44-11-29.1 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. REQUIREMENTS**

A. RIGL § 44-11-29 requires every corporation selling or transferring a major part in value of its assets other than in the ordinary course of trade and in the regular and usual prosecution of the corporation's business to notify the Tax Administrator of the proposed sale or transfer at least five (5) days before the sale or transfer. The notice shall be in the form of a Request for a Letter of Good Standing and shall include the price, terms and conditions, and the character and location of the assets. This notice shall accompany a Letter of Good Standing request form with the appropriate fee as required in RIGL §44-11-29.1.

B. Whenever a corporation makes such a sale or transfer, the tax imposed by RIGL chapters 44-11 and 44-12 becomes due and payable at the time the Tax Administrator is notified, or if he/she is not so notified, at the time when he/she should have been notified.

C. If a corporation fails to comply with the notification and payment provisions, the sale or transfer shall be fraudulent and void as against the state.

D. A Request for a Letter of Good Standing shall require a tentative tax return through the date of sale or transfer, along with any past due returns and payments. (A tentative return shall present as if the tax year had ended as of the date of the sale or transfer and includes said sale or transfer).

(1) Any entity treated or that has elected to be treated as a corporation shall provide a copy of a tentative federal Form 1120 including Form 4797 and Schedule D, if applicable, and a tentative Form RI-1120C.

(2) For any entity that has not elected to be treated as a corporation for federal tax purposes, a schedule of the shareholders/members/partners shall be attached to the tentative tax return through the date of sale or transfer. The schedule shall include the shareholder's/member's/partner's name, address, identification number and allocated

gain/loss. If nonresident shareholders/members/partners are involved, there are additional requirements discussed in Rule 6.

(a) Subchapter S corporations shall attach to Form RI-1120S a tentative federal Form 1120S including the Form 4797 and/or Schedule D (if applicable).

(b) LLCs, LLPs and LPs not treated as corporations for federal tax purposes shall attach to Form RI-1065<sup>1</sup> a tentative federal Form 1065, federal Schedule C, federal Schedule E and/or federal Schedule F (whichever is applicable) along with federal Form 4797 and/or federal Schedule D (if applicable).

E. When the corporation complies with the provisions of RIGL § 44-11-29, including the filing of required returns and the payment of any and all tax due, the Tax Administrator shall issue a Letter of Good Standing. Until such time as the returns are filed, the taxes are paid and the Letter of Good Standing has been issued, the sale or transfer shall be fraudulent and void as against the state.

F. The five day notice requirement does not apply to sales by receivers, assignees under a voluntary assignment for the benefit of creditors, trustees in bankruptcy, or public officers acting under judicial process.

#### **RULE 6. ENTITIES WITH NONRESIDENT SHAREHOLDERS/MEMBERS/PARTNERS**

In addition to the requirements in Rule 5, any entity with nonresident shareholders/members/partners (S-Corps, LLCs, LLPs and LPs) would be required to file a tentative Form RI-1096PT with any payment that may be due. The tentative Form RI-1096PT shall not include Form RI-1099PTs.

#### **RULE 7. EFFECTIVE DATE**

This Regulation shall take effect July 1, 2012 and shall amend and supercede CT 03-03 promulgated March 1, 2003.

David M. Sullivan  
TAX ADMINISTRATOR

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<sup>1</sup> For taxable years beginning on or after January 1, 2012, LLCs are required to file Form RI-1065. Prior to January 1, 2012, LLCs shall file Form RI-1120S.