

## 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 12-150, “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, to comply with the federal Anti-Head Tax Act, 49 U.S.C. § 40116 that preempts state tax imposed on helicopter or airplane sightseeing transportation services. This regulation shall take effect July 1, 2012 and amends and supercedes regulation SU 11-150 promulgated 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](http://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](mailto: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 Tuesday 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: [mcanole@tax.ri.gov](mailto:mcanole@tax.ri.gov). A public hearing to consider the proposed regulation will be held on Tuesday 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) 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 ~~112~~- 150**

**PACKAGE TOURS 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 tours 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 admission.

**“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.

**“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

**“Scenic and Sightseeing Transportation”** means establishments primarily engaged in providing scenic and sightseeing transportation on land, water or other means, such as sightseeing buses and trolleys, steam train excursions, and boat cruises. The services provided are usually locally and involve same-day return to place of origin.

**RULE 6. TAXATION OF PACKAGE TOURS 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 tours and scenic and sightseeing transportation services pursuant to RIGL § 44-18-7(13).

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

Boat tours

Bus/Trolley tours

Train tours

~~Helicopter/Airplane tours~~

The furnishing of a package tour and/or 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/or 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.

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).

[Helicopter and airplane sightseeing transportation services are preempted from state tax by the federal Anti-Head Tax Act, 49 U.S.C. § 40116.](#)

**RULE 7: EXAMPLES**

**Example #1:**

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

**Example #2:**

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 tour involves interstate commerce; the charge for the tour is not subject to sales and use tax.

**Example #3:**

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 the tour involves interstate commerce; the charge for the tour is not subject to sales and use tax.

**Example #4:**

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 total cost of the ticket is subject to sales and use tax as well as the local meals and beverage tax.

**Example #5:**

A travel agency arranges a tour package to Newport consisting of airfare, hotel accommodations, meals and a sightseeing boat cruise. The travel agency would be responsible for paying any sales and use tax, hotel tax and local meals and beverage tax due for the purchase of hotel accommodations and meals purchased. Effective October 1, 2011 the boat cruise operator is a retailer under §44-18-15 and shall collect the sales and use tax from the travel agency on the total sales price of the sightseeing boat cruise.

**Example #6:**

A travel agency arranges a five-day tour with one day each in Boston, MA, Mystic, CT, Portsmouth, NH, Hyannis, MA and Newport, RI. Due to the fact the tour involves interstate commerce; the charge for the tour is not subject to tax. However, any scenic and sightseeing tours purchased in Rhode Island would be subject to the provision of this regulation and subject to sales and use tax.

**Example #7:**

A cruise ship visiting Newport arranges for passengers to take a boat tour of Newport Harbor. The tour does not leave RI waters. Each passenger pays \$50 to the cruise lines for the tour. The cruise lines then pays \$40 for each passenger to a broker to arrange the harbor tour, who, in turn, pays \$30 to the tour boat operator for each passenger who wishes to take the harbor tour. The tour boat operator charges sales tax of \$2.10 on each ticket sold and is responsible for remitting the tax collected on the sales tax return filed for the period in which the transaction took place.

**Example # 8:**

A bus picks up passengers at various locations in Rhode Island, then travels to Newport as part of an all-expenses-paid trip. The bus passengers have lunch at a Newport beach club, followed by a narrated boat tour of Newport harbor. After the boating excursion, the passengers get back on the bus for a trip down Ocean Drive, which includes neither a guide nor narration. After that drive, the bus returns the passengers to the pick-up points elsewhere in Rhode Island. Since the bus company is providing scenic and sightseeing transportation services, the bus company charges each passenger \$100, plus \$7 in tax, for a total of \$107. Under the new law, the tax impact would be as follows:

- Assuming that the bus company pays the beach club \$20 per passenger for the lunch itself, the bus company would also have to pay the beach club \$1.40 in Rhode Island's 7 percent general sales tax, plus \$0.20 in local meals and beverage tax.
- Assuming that the bus company pays the boat company \$50 per passenger for the narrated boat tour, the bus company would also have to pay the boat company \$3.50 in Rhode Island general sales tax.

For every \$7 in tax that the bus company collected from each passenger for the trip, the bus company would receive a credit of \$1.40 (for the general sales tax portion of the lunch), plus a credit of \$3.50 (for the general sales tax on the narrated boat tour). As a consequence, the bus company would remit to the Tax Division a total of \$2.10:

\$7.00	tax charged by bus company per passenger
(1.40)	credit for tax paid to beach club
(3.50)	credit for tax paid to boat company
\$2.10	amount to be remitted to Tax Division

**RULE 8. EFFECTIVE DATE**

This regulation shall take effect on ~~October 1, 2011~~ [July 1, 2012](#) and amends and [supercedes regulation SU 11-150 promulgated October 1, 2011.](#)

**RULE 9. CROSS REFERENCES**

Regulation SU 89-91 – Records

Regulation SU 09-59 – Food and Food Ingredients, Prepared Foods/Meals, Candy,  
Soft Drinks, Dietary Supplements, and Alcoholic Beverages

Regulation MTB 09-01 – Local Meals and Beverage Tax

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