

103 KAR 27:220. Miscellaneous restaurant transactions.

RELATES TO: KRS 139.010, 91A.400, 139.200, 139.210, 139.260, 139.270, 139.290, 139.310, 139.330, 139.480, 139.485

STATUTORY AUTHORITY: KRS 131.130(1), 139.710

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations necessary for the administration and enforcement of all tax laws in Kentucky. This administrative regulation establishes the sales and use tax requirements for miscellaneous transactions relating to restaurants.

Section 1. Definitions. (1) "Food and food ingredients" is defined in KRS 139.485(2).
(2) "Prepared food" is defined in KRS 139.485(3)(g).

Section 2. Tax shall apply to any charge added to the price of prepared food by a restaurant, including a gratuity, service charge, surcharge, or fee itemized on the invoice or ticket to the customer by the restaurant. These charges shall be considered part of the selling price of prepared food. A voluntary gratuity left by the customer shall not be subject to tax. A gratuity not required by the restaurant but willfully added by the customer shall be considered voluntary.

Section 3. A restaurant employee shall pay tax on the sales price of any prepared food or other taxable item purchased from the employer.

Section 4. (1) Tangible personal property shall be subject to tax based upon the restaurant's purchase price if the property was:

(a) Purchased exempt from tax under a Resale Certificate (Form 51A105) or a Streamlined Sales and Use Tax Agreement - Certificate of Exemption (Form 51A260), both incorporated by reference in 103 KAR 3:020; and

(b) Provided free of charge to employees, or otherwise used or consumed by the restaurant.

(2) Food and food ingredients and prepared food donated by a restaurant to charity shall not be subject to the tax.

Section 5. The tax imposed by a city on a restaurant pursuant to KRS 91A.400 shall be classified as a license tax that when passed on to customers shall constitute gross receipts subject to sales tax according to the provisions of KRS 139.010.

Section 6. (1) This administrative regulation shall replace Revenue Circular 51C001-S2 and Revenue Policy 51P345.

(2) Revenue Circular 51C001-S2 and Revenue Policy 51P345 are hereby rescinded and shall be null, void, and unenforceable. (33 Ky.R. 2804; 3151; eff. 5-4-2007; TAm eff. 5-20-2009; TAm eff. 6-22-2016.)