

FINANCE AND ADMINISTRATION CABINET
Department of Revenue
(Amendment)

103 KAR 30:170. Containers, wrapping, and packing materials.

RELATES TO: KRS 139.010, 139.470

STATUTORY AUTHORITY: KRS 131.130~~[(4)]~~

NECESSITY, FUNCTION, AND CONFORMITY: KRS 131.130(1) authorizes the Department of Revenue to promulgate administrative regulations for the assessment, collection, refunding, administration, and enforcement of Kentucky tax laws. This administrative regulation defines and clarifies~~[To define and clarify]~~ the sales and use tax law as it applies to containers, wrapping and packing materials, labels and related products.

Section 1. Definitions. (1) The term "containers"~~[which appears in KRS 139.470]~~ means articles used for shipment or delivery of tangible personal property. Examples of such articles are wrapping materials, bags, cans, twine, gummed tape, boxes, bottles, drums, carboys, cartons, baling wire, and sacks.

(2) "Nonreturnable containers" means all containers other than those defined in Section 2 of this administrative regulation. Examples are wrapping and packing materials, paper bags, twine, medicine, and distilled spirits bottles.

(3) "Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, steel drums, beer and soft drink bottles, wine barrels, chemical carboys, totes, and gas cylinders.

Section 2. Sales of Returnable Containers. (1)~~["Returnable containers" means containers of a kind customarily returned by the buyer of the contents for reuse. Examples of returnable containers are milk bottles, steel drums, beer and soft drink bottles, wine barrels, chemical carboys and gas cylinders.~~

~~(2)]~~ Sales of returnable containers when sold without the contents to manufacturers, compounders, bottlers, etc., who place the contents in the container and sell the contents together with the container are not subject to the sales or use tax. The container is not subject to the tax when it is sold at retail in connection with a retail sale of its contents. The fact that the retailer may require a deposit against the return of the container or allows a credit upon its return does not alter the rule. Returnable containers are not subject to the tax when they are resold by the final buyer for refilling.

(2) Sales of returnable containers, for example totes, to manufacturing suppliers who place the contents in the totes and sell the contents but not the tote to their manufacturing customer are subject to the sales and use tax. As the tote is not sold to the manufacturer, the sales and use tax exemption found in KRS 139.470(2) is not applicable.

Section 3. Sales of Nonreturnable Containers. (1)~~[All containers other than those defined in Section 2 of this administrative regulation are nonreturnable containers. Examples are wrapping and packing materials, paper bags, twine, medicine and distilled spirits bottles.~~

~~(2)]~~ Sales of nonreturnable containers to manufacturers, compounders, bottlers, etc., for use in packaging their product for resale which are not intended to be returned for reuse are not subject to the sales or use tax. Bottle caps and crowns shall be treated at all times as nonreturnable containers for use in packaging a product for resale.

(2)~~[(3)]~~ Sales of wrapping paper, clothes hangers, twine, tape, and similar articles to per-

sons who use them to package merchandise for sale at retail are usually sales made for resale and are therefore not subject to the tax. Sales of such articles to persons who use them in the conduct of an activity other than sale of tangible personal property at retail, for example, laundries and dry cleaning establishments, are subject to the sales or use tax.

(3)[(4)] Sales of nonreturnable paper napkins, straws, and like articles to restaurants, lunch counters, etc., who use them in connection with the sale and serving of food are sales made for resale and are therefore not subject to the tax.

Section 4. Labels and Name Plates. (1) Sales of labels and name plates are not subject to the sales or use tax if:

(a) They are affixed to a nonreturnable container of property sold; or

(b) They are affixed to returnable containers if a new label is affixed to the container each time it is refilled.

(2) Labels, name plates and price tags which are permanently affixed to the product for sale become a component part of that product and thus not subject to tax when sold to the manufacturer to be affixed by him.

(3) Price tags, shipping tags and advertising materials used in connection with the sale of property or enclosed with the property sold are subject to the tax.

DANIEL P. BORK, Commissioner

APPROVED BY AGENCY: July 12, 2019

FILED WITH LRC: July 12, 2019 at 4 p.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on August 22, 2019 at 10:00 a.m. in Room 9B, State Office Building, 501 High Street, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through August 31, 2019. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Lisa Swiger, Tax Policy Research Consultant II, Department of Revenue, 501 High Street, Station 1, Frankfort, Kentucky 40601, (502) 564-9526 (telephone), (502) 564-3875(fax), Lisa.Swiger@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Lisa Swiger

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation amends 103 KAR 30:170 to move definitions for certain types of taxable "containers" contained within the body of the language to Section 1 per KRS 13A requirements; and add examples of these types of containers; and add clarifying language.

(b) The necessity of this administrative regulation: The amendment is necessary to update outdated regulatory language and information per KRS 13A requirements.

(c) How this administrative regulation conforms to the content of the authorizing statutes:

The proposed updates amend regulatory language to conform with KRS 13A, 131.130, and KRS 131.131.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed amendment updates outdated information currently contained in the regulation and corrects formatting errors.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: See (1)(a).

(b) The necessity of the amendment to this administrative regulation: See (1)(b).

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c).

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d).

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: Any taxpayer who may utilize a returnable or non-returnable container may be impacted by this administrative regulation. The number of industries or taxpayers this may include is unknown, as the Department of Revenue does not know the day to day operation of all current or potential taxpayers that may use containers.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Unknown. They may have new or additional reporting requirements, or may need to apply for a sales tax identification number.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Costs should be minimal, if any. Most, if not all, taxpayers impacted by this amendment already possess the equipment needed to comply.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): They will remain in good standing with the Department of Revenue.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: There is no expected cost to implement the proposed amendment. Current staff and budgeted funding will absorb the implementation of this administrative regulation.

(b) On a continuing basis: There is no cost expected on a continual basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Current departmental staff and funding will be used to implement and enforce this proposed amendment.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the proposed amendment.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed amended regulation will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire

departments, or school districts) will be impacted by this administrative regulation? The Finance and Administration Cabinet, Department of Revenue.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 131.130 and KRS 131.131.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? No revenues are expected to be generated by updating this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? No additional costs will be incurred in the first year of this regulation being in effect. Any costs will be incurred as normal operating expenditures of the Department of Revenue.

(d) How much will it cost to administer this program for subsequent years? No additional costs will be incurred in subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation: