

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

RELATES TO: KRS 139.010, 139.470

STATUTORY AUTHORITY: KRS 131.130

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 the sales and use tax law as it applies to containers, wrapping and packing materials, labels, and related products.

Section 1. Definitions.

- (1) "Containers" 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 subsection (3) of this section. Examples are wrapping and packing materials, paper bags, twine, medicine packaging, 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) 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) 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) Sales of wrapping paper, clothes hangers, twine, tape, and similar articles to persons 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 are subject to the sales or use tax.
- (3) 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.

(SU-17-1; 1 Ky.R. 706; eff. 5-14-1975; Am. 3 Ky.R. 324; eff. 11-3-1976; TAm eff. 6-22-2016; 46 Ky.R. 581, 1091; eff. 11-1-2019; 46 Ky.R. 2602; eff. 6-30-2020.)