



**SURVEY OF SALES AND USE TAXES IMPOSED ON,
AND EXEMPTIONS FROM SALES AND USE TAXES FOR,
CONTAINERS, PALLETS AND OTHER
PACKAGING AND SHIPPING MATERIALS**

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SECTION I.

SUMMARY OF SALES AND USE TAXES ON CONTAINERS, PALLETS AND OTHER PACKAGING AND SHIPPING MATERIALS (INCLUDING REUSABLE PALLETS AND CONTAINERS)

A. Introduction

Most states in the United States impose a sales tax on sales of tangible personal property to a final user or consumer of the property. The transaction is referred to by various terms, such as “retail sale” or “sale at retail,” and in most jurisdictions, it includes leases, rentals and other transfers of custody or possession in exchange for valuable consideration. Most state statutes contain a provision that declares a presumption that such transactions involving the sale, lease or rental of tangible personal property are taxable. However, consistent with the intent to impose the tax on sales to a final user or consumer, every state statute contains exclusions or exemptions for many types of intermediate transactions in which the tangible personal property is not passed to the final user or consumer. Examples of such exclusions and exemptions include the following:

1. Sales for resale;
2. Sales of components or ingredients of property produced for sale;
3. Sales of property consumed in manufacture or production of articles for sale;
4. Sales of manufacturing machinery or equipment; and
5. Sales of containers and packaging.

Although the statutes, regulations and administrative pronouncements by state taxing authorities attempt to set out the scope of the various exemptions, it can often be difficult to determine when one transaction is taxable and another similar transaction is exempt. Indeed, many intermediate business transactions are subject to the sales tax.

In addition, there are many exclusions and exemptions which apply to an otherwise taxable transaction simply because of who the purchaser is. For example, charitable organizations are almost universally treated to an exemption from the sales tax. Likewise, farmers and other agricultural producers may purchase or lease tangible personal property exempt from tax, when a non-agricultural business purchasing or leasing the same items would be subject to the sales tax. And the statutory and administrative exclusions and exemptions will often be applied depending upon the particular use to which the purchaser or lessee intends to put the articles purchased or leased. Finally, the statutes and regulations often contain exclusions and exemptions that have no basis in sound tax theory, but exist simply because the legislature or tax commissioner has made a decision to carve out an exclusion or exemption for a particular type of transaction, purchaser classification, or use of the tangible personal property being purchased.

B. Taxation and Exemptions for Containers, Pallets and other “Packaging Materials”

The question of the taxability of one particular type of tangible personal property, over the years, has been so vexing that many state legislatures have written specific statutory provisions to deal with it: what are generally referred to as “containers” and “packaging materials.” The problem has been that containers and packaging materials are generally purchased or leased for the purpose of holding, containing, shipping, transporting, or delivering other property that is really the subject of the transaction. And frequently, the seller does not impose any charge or fee for the container or packaging separate and apart from the contents themselves.

The sale, lease or rental of containers or packaging materials can be viewed theoretically in more than one way: (a) as a sale for resale to the final user or consumer, or (b) as a sale to a vendor for use and consumption of the container or packaging in preparing its product for sale. Because neither of these exemptions affords consistent results in the administration of the sales tax, many state legislatures have adopted special exemptions dealing with the different kinds of containers and packaging materials. Many of these statutes, or the regulations and administrative pronouncements issued in interpreting the statutes, distinguish between “nonreturnable” and

“returnable” containers and packaging. The purpose for drawing this distinction appears to be to exempt from sales and use tax those containers and packaging materials that will accompany the goods and products sold in the containers to a final consumer (who then disposes of the packaging), and to tax containers and packaging that are to be returned to a seller, packager, shipper or other person who can reuse the container for shipment, transportation or delivery of future goods and products.

Table No. 1, which is set forth below, provides in summary form information on the taxability or exemptions of “disposable packaging,” “reusable pallets,” and “reusable containers.” Below is a brief key to the contents of each of the columns of the Table:

- Column 1:** This column sets forth the states that impose a sales or use tax on transactions in tangible personal property. At present, Alaska, Montana, New Hampshire, and Oregon do not levy a sales or use tax on containers, pallets and other similar articles.
- Column 2:** The statutory citation to the state sales tax law is set forth in this column (also referred to as “gross receipts tax,” “excise tax,” et al.). It should be noted that most states also impose a use tax, which usually is set forth in a separate title or chapter of the statute. Delaware does not impose a sales tax, but does impose a use tax on leases of tangible personal property.
- Column 3:** Exemptions for “disposable packaging.” Most states permit exemptions for disposable packaging as “nonreturnable” packaging materials.
- Column 4:** Exemptions for “reusable pallets.” Please note that a “yes” in this column does not mean that all reusable pallets are exempt from taxation; often, states have limited this exemption to a particular type of user such as farmers (e.g., New Jersey), or to particular types of use such as produce or meat shipments (e.g., Wisconsin). Where there is an asterisk (*), it indicates the exemption is usually limited to a particular user or use, rather

than to “reusable pallets” generally. Where there a question mark (?), this indicates that the issue whether there is an exemption or not is not clear cut, and further research or inquiry should be undertaken.

Column 5: Exemptions for “reusable containers.” Please note that a “yes” in this column does not mean that all reusable containers are exempt from taxation; often, states have limited this exemption to a particular type of user such as farmers (e.g., New Jersey), or to particular types of use such as produce or meat shipments (e.g., Wisconsin). Where there is an asterisk (*), it indicates the exemption is usually limited to a particular user or use, rather than to “reusable containers” generally. Where there a question mark (?), this indicates that the issue whether there is an exemption or not is not clear cut, and further research or inquiry should be undertaken.

Column 6: This column gives a brief glimpse into which types of containers, pallets, or other packaging materials the particular state exempts, if any. The pertinent provisions of the state’s statute and administrative regulations and rulings are set forth at greater length in **SECTION II**.

TABLE NO. 1

**TAXABILITY OF SALES, LEASES AND
USE OF PALLETS AND CONTAINERS,
WITH NOTES REGARDING EXEMPTIONS**

STATE	SALES TAX LAW	DP*	RP*	RC*	NOTES
Alabama	Michie’s Alabama Code §40-23-1, et seq.	Yes	Yes?	Yes?	Nonreturnable containers and pallets are exempt; returnable containers and pallets used to ship poultry products may be exempt
Alaska	No statewide sales and use tax	N/a	N/a	N/a	City or borough sales tax may apply
Arizona	Arizona Revised Statutes Annotated §42-5001, et seq.	Yes	No	No	Exempts sale of container as sale for resale if buyer is to transfer it with contents in future sale; if container is not subsequently sold, sale is taxable
Arkansas	Arkansas Code of 1987 Annotated §26-52-101, et seq.	Yes	No	No?	Nonreturnable pallets delivered with final product are exempt; returnable pallets are taxable Materials used by manufacturer or processor to transport product and which are returned or do not become part of finished product are taxable
California	California Revenue and Taxation Code Annotated §6001, et seq.	Yes	Yes	Yes	Exempt: 1. Nonreturnable containers when sold or leased without contents then sold with contents to end user 2. Containers when sold with nontaxable contents 3. Returnable containers when sold with contents in retail sale or when resold for refilling 4. Containers, when sold or leased without contents to persons who put food products in container for shipment for resale.
Colorado	Colorado Revised Statutes Annotated §39-26-101, et seq.	Yes	Yes	Yes	Containers exempt if used to contain manufactured or compounded product. Pallets and containers exempt if used as “farm equipment” by agricultural producer.
Connecticut	Connecticut General Statutes Annotated §12-401, et seq.	Yes?	Yes	Yes?	Exempt: 1. Nonreturnable containers (and returnable dairy product containers) when sold without contents, 2. Containers when sold with nontaxable contents 3. Returnable containers when sold with contents in a retail sale or when sold for refilling
Delaware	Delaware Code §4301 et seq. (no sales tax; use tax on leases of tangible personal property)	Yes	Yes	Yes	Leases of “reusable pallets and containers” used by food producers are exempt from Use Tax.

District of Columbia	District of Columbia Code §47-2001, et seq.	Yes	No?	No?	Containers purchased for delivery with other products sold by purchaser are exempt; Containers purchased for consumption and not for delivery are taxable; Returnable containers (except food and soft drinks containers) are taxable; Containers sold to person rendering non-taxable service are taxable.
Florida	Florida Statutes Annotated §212.01, et seq.	Yes	Yes*	Yes*	Returnable containers (except food and soft drinks containers) are taxable; Containers sold to person rendering non-taxable service are taxable; Containers and pallets used more than once for packaging for shipment or sale are taxable. * Containers and shipping cases exempt if used by farmer to contain, produce or process an agricultural commodity.
Georgia	Official Code of Georgia §48-8-1, et seq.	Yes	No	No	Containers, not purchased for reuse, and used solely for packaging for shipment or sale are exempt; Equipment-type containers purchased for reuse, even though used for shipment or sale, are taxable; Returnable containers, which pass to purchaser or consumer temporarily, are taxable.
Hawaii	Hawaii Revised Statutes Annotated §237-1, et seq.	Yes?	No?	No?	Containers used for packaging agricultural products are exempt
Idaho	Idaho Code §63-3601, et seq.	Yes	Yes?	Yes?	Exempt are: Nonreturnable containers when sold without contents; Returnable containers when sold with contents if the fee for the container is separately stated; Returnable containers sold for refilling; and Containers sold with nontaxable contents.
Illinois	Illinois Compiled Statutes Annotated – 35 ILCS §120/1, et seq.	Yes	No?	No?	Containers are exempt if purchased for resale along with contents Returnable pallets or containers whose ownership is transferred with deposit taken is exempt.
Indiana	Indiana Statutes Annotated §6-2.5-1-1, et seq.	Yes	No	?	Exempt: Returnable containers sold at retail with contents, if containers are billed separately. Returnable containers sold empty for purpose of refilling. Empty containers if the person acquiring them acquires them for use as nonreturnable packages for selling the contents he adds.

Indiana					Containers sold to final user or consumer are taxable.
Iowa	Iowa Code Annotated §422.41, et seq.	Yes	*Yes?	*Yes ?	Exempt: Pallets and containers sold to manufacturers, fabricators or processors as raw materials and used or consumed by manufacturer, If sold to retailer using same to hold other taxable personalty. *Containers, pallets, et al. sold for use and agricultural, livestock or dairy production are exempt.
Kansas	Kansas Statutes Annotated §79-3601, et seq.	Yes	No	No	Returnable containers (except food and soft drinks containers) are taxable. Taxable if sold to person rendering non-taxable service.
Kentucky	Kentucky Revised Statutes Chapter 139.100, et seq.	Yes	Yes?	No	Exempt: Returnable containers sold with contents in a retail sale; Returnable containers sold for refilling; Containers when sold without contents to persons who add and sell contents and containers.
Louisiana	Louisiana Statutes Annotated §47:301, et seq.	Yes	*Yes?	*Yes ?	Returnable containers (except food and soft drinks containers) are taxable. Returnable containers sold to person rendering non-taxable service are taxable Sales to wholesalers for making single wholesale delivery are taxable. * Containers and pallets sold directly to farmers used for farm products are exempt
Maine	Maine Revised Statutes Annotated §36-1751 et seq.			Yes	Exempt: Nonreturnable containers when sold to manufacturers and wholesalers; Returnable containers sold with contents or resold for filling; Wrappers and packaging material sold to: (a) packers or movers; (b) persons for packing goods sold be them or on which they performed certain services.
Maryland	Maryland Tax-General Code Annotated §11-101 et seq.	Yes	Yes*	Yes*	Containers sold to person rendering non-taxable service are taxable; *The sales and use tax does not apply to a sale of the following items for an agricultural purpose: (6) if bought by a farmer – a container to transport farm products that the farmer raises to market.

Massachusetts	Massachusetts General Laws Annotated Chapter 64H, §1, et seq.	Yes	Yes	Yes	Exempt: Returnable and nonreturnable containers sold without contents, Containers sold with exempt contents, Returnable containers sold with contents or resold for refilling.
Michigan	Michigan Compiled Laws Service §205.51 et seq.	Yes	No	No	Container is taxable if consumer pays separate charge for container; Returnable containers (except food and soft drinks containers) are taxable. Containers sold to person rendering non-taxable service are taxable. Includes sales to wholesalers and others for making deliveries.
Minnesota	Minnesota Statutes Annotated, Chapter 297A.61, et seq.	Yes	Yes?	Yes?	Nonreturnable pallets and containers are generally exempt; Returnable pallets and containers are considered equipment, and are taxable, except if used to package or ship food and beverage products.
Mississippi	West's Annotated Mississippi Code §27-65-1 et seq.	Yes?	Yes	No	Nonreturnable containers when sold to manufacturers and wholesalers are exempt.
Missouri	Vernon's Annotated Missouri Statutes, Chapter 144, §144.010 et seq.	Yes	Yes	Yes	Nonreturnable containers to persons who use them to package products are exempt; Reusable containers (such as beverage bottles and cases) transferred in retail sales are exempt if refundable deposit required and refunded upon return.
Montana	Sales tax only covers campgrounds and rental vehicles	N/a	N/a	N/a	No sales or use tax imposed on containers and pallets
Nebraska	Revised Statutes of Nebraska Annotated, §77.2701, et seq.	Yes	No	No	Exempt: Nonreturnable containers when sold without contents to persons who add contents and sell contents and container; Returnable containers when sold with contents; Returnable containers when sold for refilling; and All containers sold with nontaxable contents.
Nevada	Michie's Nevada Revised Statutes Annotated §372.101, et seq.	Yes	No	No	Exempt: Nonreturnable containers when sold without contents to persons who add contents and sell contents and container; Returnable containers when sold with contents; Returnable containers sold for refilling; and Containers sold with nontaxable contents.

New Hampshire	No sales tax	n/a	n/a	n/a	
New Jersey	New Jersey Statutes Annotated §54:32B-1, et seq.	Yes	Yes*	Yes*	Nonreturnable containers and reusable milk containers used incidentally to delivery of product are exempt. *Pallets and containers for use in farm enterprise are exempt.
New Mexico	New Mexico Statutes 1978 §7-9-1 et seq.	Yes	No	No	Nonreturnable containers sold to persons who package products are exempt; Returnable containers sold to persons who use them to delivery product are taxable;
New York	McKinney's Consolidated Laws of New York Annotated, Tax Law, §1101 et seq.	Yes	No	No	Containers and pallets used to deliver contents to ultimate consumer are exempt; Returnable cartons and pallets are taxable.
North Carolina	General Statutes of North Carolina Annotated, §105-164.1, et seq.	Yes	No	No	Containers sold for use to package and deliver goods are exempt, if part of sale, delivery to customer.
North Dakota	North Dakota Century Code Annotated §57-39.2-01 et seq.	No	No	?	Containers sold to persons who add contents and deliver container to customer are exempt; Returnable containers are taxable.
Ohio	Page's Ohio Revised Code Annotated §5739.01 et seq.	Yes	Yes?	Yes?	Containers sold to mfrs., fabricators, or processors as raw materials and used or consumed by mfr. as packaging for sale are exempt.
Oklahoma	Oklahoma Statutes Annotated 68 §1350 et seq.	Yes	No	No	Returnable containers (except soft drink bottles, cases, pallets, etc.) are taxable, except for returnable oil or chemical drums; Returnable containers sold for refilling are exempt.
Oregon	No sales tax	N/a	N/a	N/a	Substantial, but unsuccessful, legislative efforts in 2003 to establish a sales and use tax; efforts expected to continue in January 2005 legislative session.
Pennsylvania	Purdon's Pennsylvania Statutes Annotated, 72 §7201 et seq.	Yes	No	No	Exempt if part of sale, delivery to customer; If container is returnable (except food and soft drinks containers), sale is taxable.
Rhode Island	General Laws of Rhode Island §44-18-1 et seq.	?	No	?	Exempt: Nonreturnable containers when sold without contents to persons who add contents and sell with container; Returnable containers when sold with contents and sold to consumers, and

Rhode Island					Containers sold with nontaxable contents. Returnable and nonreturnable containers sold to sellers for filling and sale.
South Carolina	South Carolina Code of Laws §12-36-101 et seq.	Yes	Yes*	Yes*	Reusable containers and pallets are exempt if used for agricultural products.
South Dakota	South Dakota Codified Laws §10-45-1 et seq.	Yes	Yes	No	Containers and pallets used by manufacturers, fabricators, or processors are exempt; Containers and pallets sold to retail customers are taxable.
Tennessee	Tennessee Code Annotated, §67-6-101 et seq.	Yes*	Yes*	Yes*	Nonreturnable containers for shipment or sale of products, without separate charge, are exempt Containers sold as part of taxable services are exempt. *Containers for farm products and containers sold directly to nursery owners are exempt.
Texas	Vernon's Texas Tax Code Annotated §151.001 et seq.	Yes	Yes	Yes	Containers when sold with nontaxable contents are exempt; Nonreturnable containers when sold without contents to persons who add contents and sell contents and container to consumer; Returnable containers when sold with contents in retail sale of contents are exempt; Returnable containers when sold for refilling are exempt.
Utah	Utah Code Annotated, §59-12-101 et seq.	Yes	No	No	Nonreturnables when sold to manufacturers and wholesalers and retailers for use in packaging products for sale are exempt; Returnable containers sold to manufacturer, processor, wholesaler or retailer are taxable; Containers sold to final user or consumer are taxable.
Vermont	Vermont Statutes Annotated, §9701, et seq.	Yes	Yes*	Yes*	Containers used by a manufacturer or distributor for packaging or shipping are exempt *Exempts returnable and reusable containers and pallets with life expectancy of up to 3 years, used by manufacturer or distributor to ship product.
Virginia	Code of Virginia 1950, §58.1-609.1 et seq.	Yes	No	Yes	Containers sold to manufacturers, fabricators, or processors and used to package product for sale are exempt (commercial and industrial exemptions); Containers for fruits and vegetables (agricultural exemption); Other returnable containers and pallets are taxable.

Virginia					“Containers” defined as “packaging materials” “Pallets” defined as “transportation devices”
Washington	West’s Revised Code of Washington Annotated, §82.08.010, et seq.	Yes	Yes*	Yes*	Nonreturnable containers and pallets are generally exempt; Returnable containers and pallets are generally taxable; *Returnable containers for beverages and foods, including soft drinks, milk, beer, and mixers, are exempt.
West Virginia	Michie’s West Virginia Code Annotated, §11-15-1, et seq.	Yes	No	?	Containers exempt if returnable and billed separately.
Wisconsin	West’s Wisconsin Statutes Annotated §77.51 et seq.	Yes	Yes*	Yes*	*Containers for fruits, vegetables, grain, hay, silage and animal wastes, and containers for packaging and shipping meat and meat products, are exempt.
Wyoming	Wyoming Statutes Annotated, §39-15-101, et seq.	Yes	No	?	All returnable containers (except food and soft drinks containers) are taxable.

SECTION II.

EXEMPTIONS FROM SALES AND USE TAX FOR CONTAINERS, PALLETS AND OTHER PACKAGING AND SHIPPING MATERIALS:

SURVEY OF STATE STATUTES AND ADMINISTRATIVE CODES

The following section sets forth selected provisions from the statutes and administrative rules and regulations from all states (including the District of Columbia) that impose a sales and use tax, or similar tax, on transactions involving the sale, lease or rental of “tangible personal property.” For each jurisdiction, we have provided the citation to the applicable sales tax law contained in the statutes (title, article, chapter, part, etc.). We have also reproduced the text of the statutory section imposing or levying sales tax on taxable transactions, including, for most jurisdictions, the applicable rate of tax. Then, we have reproduced the excerpted text of sections dealing with exemptions for transactions involving containers, pallets, packaging materials, shipping materials, or similar materials that RPCC members are likely to be selling, leasing or renting. Finally, we have provided in [Appendix A](#) a table of the names, addresses, telephone numbers and web site addresses of the state administrative officials who administer and enforce these statutory and regulatory provisions.

Many states have specific “container” or “packaging” exemptions, either generally, or for particular kinds of uses or users (e.g., agricultural or farming). For such states, the text of the particular statutory “container” or “packaging” exemption is reproduced here. If a state does not have a specific “container” or “packaging” exemption, we have reproduced pertinent statutory provisions that may support an exemption for containers and packaging materials. For example, the sale, lease or rental of containers or pallets may be exempt under the manufacturing or processing exemptions, or the machinery and equipment exemptions.

After setting out pertinent statutory exemptions, we have provided the text of sections found in the state’s administrative code, or in state rules and regulations issued by the applicable tax commission or other department, division or agency with authority to administer and enforce the sales and use tax. These provisions usually elaborate upon the applicable “container” or “packaging” exemption, by providing more detailed language, examples, etc. For some jurisdictions, we have reproduced pertinent excerpts of letter rulings, directives, bulletins,

publications and other administrative pronouncements that may assist you in interpreting that state's exemption, as it applies to items or articles sold, rented or leased by RPCC members. For example, we have reproduced a letter from the Utah State Tax Commissioner, dated May 23, 2000, which specifically responded to a request from an RPCC representative for information and assistance in obtaining a sales and use tax exemption in Utah. This letter clearly states the Utah State Tax Commission's position that there is no sales or use tax exemption in Utah for the lease or rental of reusable pallets or containers.

We have tried to limit the reproduced text to what is relevant to pallets and containers. However, because some of the reproduced text is still fairly lengthy, we have used boldface type to highlight the words "**container**," "**pallet**," "**nonreturnable**," "**returnable**" and "**reusable**" to assist you in focusing on the language that addresses the exemptions or taxability of those items.

We hope you will find this section useful. From time to time, we will update some of the pages in this section, to provide you with the most current text of statutes and administrative rules and regulations dealing with the taxability of the sale, lease and rental of containers, pallets, and similar items and articles.

ALABAMA

The Code of Alabama 1975

Title 40 – Revenue and Taxation

Chapter 23 – Sales and Use Taxes

Section 40-23-2. Tax levied on gross receipts; certain sales exempt; disposition of funds.

There is levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:

(1) Upon every person, firm, or corporation, ... engaged or continuing within this state, in the business of selling at retail any tangible personal property whatsoever, including merchandise and commodities of every kind and character ... an amount equal to four percent [4%] of the gross proceeds of sales of the business except where a different amount is expressly provided herein. Provided, however, that any person engaging or continuing in business as a retailer and wholesaler or jobber shall pay the tax required on the gross proceeds of retail sales of the business at the rates specified, when his or her books are kept so as to show separately the gross proceeds of sales of each business, and when his or her books are not kept he or she shall pay the tax as a retailer, on the gross sales of the business.

Section 40-23-1. Definitions; transactions considered or not considered sales.

(a) For the purpose of this division, the following terms shall have the respective meanings ascribed by this section:

* * *

(9) **WHOLESALE SALE** or **SALE AT WHOLESALE**. Any of the following:

a. A sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale.

b. A sale of tangible personal property or products ... and including the furnished **container** and label of such property or products, to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products which the manufacturer or compounder manufactures or compounds for sale, whether or not such tangible personal property or product used ... is used with the intent that it becomes a component of the finished product; provided, however, that it is the intent of this section that no sale of capital equipment, machinery, tools, or product shall be included in the term “wholesale sale.” The term “capital equipment, machinery, tools, or product” shall mean property that is subject to depreciation allowances for Alabama income tax purposes.

c. A sale of **containers** intended for one-time use only, and the labels thereof, when **containers** are sold without contents to persons who sell or furnish **containers** along with the contents placed therein for sale by persons.

d. A sale of **pallets** intended for one-time use only when **pallets** are sold without contents to persons who sell or furnish **pallets** along with the contents placed thereon for sale by persons.

....

f. A sale of **containers** to persons engaged in selling or otherwise supplying or furnishing baby chicks to growers thereof where **containers** are used for delivery of chicks or a sale of **containers** for use in the delivery of eggs by the producer thereof to the distributor or packer of eggs even though **containers** used for delivery of baby chicks or eggs may be recovered for reuse.

....

j. A sale of tangible personal property to any person engaging in the business of leasing or renting tangible personal property to others, if tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction subject to the privilege or license tax levied in Article 4 of Chapter 12 of this title against any person engaging in the business of leasing or renting tangible personal property to others

(10) SALE AT RETAIL or RETAIL SALE. All sales of tangible personal property except those above defined as wholesale sales

Section 40-23-4. Exemptions.

(a) There are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following:

... (20) The gross proceeds of the sale, or sales, of wrapping paper and other wrapping materials when used in preparing poultry or poultry products for delivery, shipment, or sale by the producer, processor, packer, or seller of such poultry or poultry products, including **pallets** used in shipping poultry and egg products, paper or other materials used for lining boxes or other **containers** in which poultry or poultry products are packed together with any other materials placed in such **containers** for the delivery, shipment, or sale of poultry or poultry products.

Title 40 – Revenue and Taxation

Chapter 12 – Licenses

Article 4 – Leasing or Renting Tangible Personal Property

Section 40-12-222. Levy and amount of tax.

(a) In addition to all other taxes now imposed by law, there is hereby levied and shall be collected as herein provided a privilege or license tax on each person engaging or continuing to within this state in the business of leasing or renting tangible personal property at the rate of four percent [4%] of the gross proceeds derived by the lessor from the lease or rental of tangible personal property

Section 40-12-220. Definitions.

For purposes of this article, the following terms shall have the respective meanings ascribed by this section:

(5) LEASING or RENTAL. A transaction whereunder the person who owns or controls the possession of tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time without transfer of the title to such property

Section 40-12-220.1. Legislative Intent.

It was the intent of the Legislature in enacting Sections 40-12-220 to 40-12-227, inclusive, to impose a license tax or privilege tax on lessors based on the gross proceeds derived from the leasing or rental of tangible personal property. It is also the intent of the Legislature to permit lessors of tangible personal property to pass on to lessees such license or privilege taxes by adding such taxes to the leasing price or otherwise, with all such amounts constituting the gross proceeds subject to the privilege or license tax provided in this article....

Cases:

State v. Toll Gate Garment Corp., 352 So.2d 1361 (Ala. App. 1977), cert. denied, 352 So.2d 1364 (Ala. 1977)

State v. Bemis Bros. Bag Co., 267 Ala. 161, 100 So.2d 736 (1957)

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ALASKA

There is no Sales and Use Tax imposed at the State level; there may be local sales or use taxes.

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ARIZONA

Arizona Revised Statutes Annotated

Title 42 – Taxation

Chapter 5 – Transaction Privilege and Affiliated Excise Taxes

Section 42-5008. Levy of tax; purposes; distribution

A. There is levied and there shall be collected by the department, for the purpose of raising public money, privilege taxes measured by the amount or volume of business transacted by persons on account of their business activities, and in the amounts to be determined by the application of rates against values, gross proceeds of sales or gross income, as the case may be, as prescribed by this article and article 2 of this chapter.

... C. The tax levied by and collected pursuant to this article and article 2 of this chapter is designated the "transaction privilege tax".

Section 42-5061. Retail classification; definitions

A. The retail classification is comprised of the business of selling tangible personal property at retail. The tax base for the retail classification is the gross proceeds of sales and gross income derived from the business. The tax imposed on the retail classification does not apply to the gross proceeds of sales or gross income from:

*Note: This section sets forth the exemptions and deductions for businesses "selling tangible personal property at retail." There are no statutory exemptions for sales or leases of **containers** or **pallets**.*

B. In addition to the deductions from the tax base prescribed by subsection A of this section, the gross proceeds of sales or gross income derived from sales of the following categories of tangible personal property shall be deducted from the tax base:

...

20. Machinery and equipment that are sold to a person engaged in the commercial production of livestock, livestock products or agricultural, horticultural, viticultural or floricultural crops or products in this state and that are used directly and primarily to ... reduce air, water or land pollution.

Section 42-5071. Personal property rental classification

A. The personal property rental classification is comprised of the business of leasing or renting tangible personal property for a consideration.

B. The tax base for the personal property rental classification is the ... gross income derived ..., but the ... gross income derived from the following ... shall be deducted from the tax base:

...

2. Leases or rentals of tangible personal property which, if it had been purchased instead of leased or rented would have been exempt under:
(b) Section 42-5061, subsection B....

Arizona Administrative Code

R15-5-134. Sales of Containers, Bottles, and Labels

- A.** The sale of **containers** and bottles is considered a sale for resale only when the purchaser is to transfer the **containers** with their contents in future sales.
- B.** In cases where the **containers** are not subsequently sold as part of the merchandise, such sales are deemed to be taxable retail sales.
- C.** The sale of labels to a purchaser who affixes them to **nonreturnable containers** to be resold is considered to be a sale for resale and is not taxable.
- D.** In cases where the **containers** are **returnable** and a new label is to be affixed, each time the **container** is refilled, the sale of the labels is also considered to be a sale for resale.
- E.** The sale of analysis tags or other labels to be attached to **containers** of feed and sold along as a part of the article is a sale for resale.
- F.** However, the sale of items such as price tags, shipping tags, and advertising matter used in connection with the subsequent sale is taxable as a retail sale.

R15-5-136. Returnable Containers

- A.** Gross receipts from deposits on sales of **returnable containers** which contain taxable food shall be taxable.
- B.** Deposit refunds paid to purchasers on the return of such **containers** shall be deductible from the retailer's tax base in the month refunded.
- C.** Gross receipts from deposits received on **returnable containers** which contain non-taxable food shall not be taxable. Therefore, refunds paid on such deposits shall not reduce the tax base.

Arizona Department of Revenue, Publication 606 (Revised November 2004):

Personal Property Rentals

Exemptions:

- 12. Rental of tangible personal property that is shipped or delivered outside of the state and intended from the lease's inception for use exclusively outside the state.
- 13. Rental of tangible personal property that is removed from Arizona and used exclusively outside of the state. Intermittent out-of-state use does not constitute removal from the state for use exclusively outside of the state, and the rental would still be subject to tax....

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ARKANSAS

Arkansas Code of 1987 Annotated
Title 26 – Taxation
Subtitle 5. State Taxes
Chapter 52 – Gross Receipts Tax

26-52-301. Tax levied. **(Effective until July 1, 2007).**

There is levied an excise tax of three percent (3%) upon the gross proceeds or gross receipts derived from all sales to any person of the following:

- (1) Tangible personal property

26-52-103. Definitions. (Effective until July 1, 2007).

(a) As used in this Act:

(9)(A) “Sale” means the transfer of either the title or possession, except in the case of leases or rentals, for a valuable consideration of tangible personal property, regardless of the manner, method, instrumentality, or device by which the transfer is accomplished.

(B) “Sale” ... includes the exchange, barter, lease, or rental of tangible personal property.

26-52-401. [Exemptions for] Various products and services.

There is specifically exempted from the tax imposed by this act the following:

(12)(A) Gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles purchased ...;

(B) Goods, wares, merchandise, and property sold for use in manufacturing, compounding, processing, assembling, or preparing for sale can be classified as having been sold for the purposes of resale or the subject matter of resale only in the event the goods, wares, merchandise, or property becomes a recognizable integral part of the manufactured, compounded, processed, assembled, or prepared products. The sales of goods, wares, merchandise, and property not conforming to this requirement are classified for the purposes of this act as being “for consumption or use”....

[**Note: containers, pallets, and other packaging materials are not specifically exempted.**]

26-52-402. Certain machinery and equipment.

(a) There is specifically exempted from the tax imposed by this act, the following:

(1)(A) Gross receipts or gross proceeds derived from the sale of tangible personal property consisting of machinery and equipment used directly in producing, manufacturing, fabricating, assembling, processing, finishing, or packaging of articles of commerce at

manufacturing or processing plants or facilities in the State of Arkansas ... [but only to the extent that the machinery and equipment is purchased and used to create new manufacturing or processing plants or facilities within Arkansas or to expand existing manufacturing or processing plants or facilities within Arkansas.]

Arkansas Department of Finance and Administration Gross Receipts Tax Regulations

GR-53. Exemptions from Tax – Sales for Resale – Manufacturers, Compounders and Processors (Amended 1997, 1998):

- A. The gross receipts or gross proceeds derived from sales for resale to persons regularly engaged in the business of reselling the articles or services purchased whether purchased within or without the State are exempt from the tax; provided, however, that such sales within the state are made to persons to whom sales tax permits have been issued as provided in Ark. Code Ann. §26-52-201, et seq. and regulation number GR-72. (*See also GR-74*)
- I. Packaging Materials:
 - 1. Generally, the sale of materials used by the manufacturer or processor to package the finished product for sale or delivery is exempt if the materials become part of the finished product. Shrink wrap and strapping which bind the finished product together for shipment to the consumer are exempt. **Nonreturnable pallets** which are delivered with the final product are also exempt. **Returnable pallets** are taxable.
 - 2. Materials purchased by the manufacturer or processor to transport the product to the customer and which are owned by and returned to the manufacturer or which do not become part of the finished product received by the consumer are taxable. Dunnage bags which prevent **containers** of products from shifting during transit are taxable.

Cases:

Arkansas Beverage Co. v. Heath, 257 Ark. 991, 521 S.W.2d 835 (1975)

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CALIFORNIA

California Revenue and Taxation Code

Division 2. Other Taxes

Part 1. Sales and Use Taxes

§ 6051. Levy on retailers' gross receipts; rate

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of [5.25] percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state

§ 6006(g).

A "Sale" includes "any lease of tangible personal property in any manner or by any means whatsoever, for a consideration"

§ 6364. Certain containers; returnable and nonreturnable containers;

There are exempted from the taxes imposed by this part, the gross receipts from ... the sale in this state of and the storage, use, or other consumption in this state of:

(a) **Nonreturnable containers** when sold without the contents to persons who place the contents in the **container** and sell the contents together with the **container**;

(b) **Containers** when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this part.

(c) **Returnable containers** when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

(d) **Containers**, when sold or leased without the contents to persons who place food products for human consumption in the **container** for shipment, provided the food products will be sold, whether in the same **container** or not, and whether the food products are remanufactured or repackaged prior to sale.

(e) For purposes of this section, "**returnable containers**" means **containers** of a kind customarily returned by the buyer of the contents for reuse. All other **containers** are "**nonreturnable containers**."

State of California Board of Equalization Sales and Use Tax Regulations

Regulation 1589. CONTAINERS AND LABELS.

(a) DEFINITIONS. The term “**containers**” as used herein means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, sacks, **pallets**, and materials from which such **containers** are manufactured.

The term “**returnable containers**” as used herein means **containers** of a kind customarily returned or resold by the buyers of the contents for re-use by the packers, bottlers or sellers of the commodities contained therein. A **container**, title to which is retained by the seller or for which a deposit is taken by such seller, is a **returnable container**.

A **container** used for shipment or delivery of food for human consumption is not customarily returned by the buyer when:

1. The **container** is sold together with the contents;
2. No deposit is charged on the **container**;
3. Title to the **container** is not retained;
4. There is no obligation to repurchase the **container**;
5. The **container** is of the type that is fungible; and
6. The **container** is repurchased without regard to whether it is the same **container** originally sold.

Example: A tomato paste processor purchased a new or used **container**. The processor fills the **container** with tomato paste or other processed food. The tomato paste, together with the **container**, is sold to a spaghetti sauce manufacturer. No deposit is charged on the **container**, title to the **container** is not retained, and there is no obligation to repurchase the **container**. The **container** is of a type that is fungible. The spaghetti sauce manufacturer sells the **container** to a warehouse or a food processor who in turn sells **containers** that may or may not include the original **container** to a tomato paste processor that may or may not be the original purchaser. This **container** is not customarily returned to the buyer.

Examples of **returnable containers** are: registered dairy products **containers**, steel drums, certain types of beer and soft drink bottles, wine barrels, chemical carboys, and gas cylinders.

All other **containers** are “**nonreturnable containers.**” Examples of **nonreturnable containers** are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits bottles.

The term “deposit” as used herein means an amount charged to the purchaser of the contents of the **container** with the understanding that such amount will be repaid when the **container** or a similar **container** is delivered to the seller. The term “deposit” as used herein does not include amounts representing redemption or recycling values of beverage **containers** pursuant to division 12.1 (commencing with Section 14500) of the Public Resources Code whether or not such amounts are separately stated to the purchaser of the contents of the **container**.

(b) APPLICATION OF TAX.

(1) **CONTAINERS.** Tax does not apply to sales of:

(A) **Nonreturnable containers** when sold or leased without the contents to persons who place the contents in the **container** and sell the contents together with the **container**.

(B) **Nonreturnable containers** when sold without the contents to persons who place food products for human consumption in the **containers** for subsequent sale.

(C) **Returnable containers** when sold with the contents in connection with a retail sale of the contents, or when resold for refilling. In the case of a lease of a **returnable container** that is a continuing sale, the lessor's first lease of the **container** for filling is taxable for the full term of the lease or thirty (30) days whichever is greater. The lessor's subsequent lease of the **container** for refilling for sale with the contents is not taxable.

(D) All **containers** when sold or leased with contents, if the sales price of the contents is not required to be included in the measure of the sales tax or use tax.

Tax applies to all other sales of **containers** except sales for the purpose of resale to other sellers of **containers** who purchase them for resale without the contents

Deposits as defined herein are not taxable

Cases:

Associated Beverage Co., Inc. v. Board of Equalization, 224 Cal. App.3d 192, 273 Cal. Rptr. 639 (2d Dist. 1990)

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COLORADO

Colorado Revised Statutes Annotated

Title 39 – Taxation

Article 26 – Sales and Use Tax

§ 39-26-104. Property and services taxes

(1) There is levied and there shall be collected and paid a tax in the amount stated in section 39-26-106 as follows:

(a) On the purchase price paid or charged upon all sales and purchases of tangible personal property at retail

§ 39-26-102. Definitions

As used in this article, unless the context otherwise requires:

... (20) (a) Sales to and purchases of tangible personal property by a person engaged in the business of manufacturing, compounding for sale, profit, or use, any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service which is manufactured, compounded, or furnished, and the **container**, label, or the furnished shipping case thereof, shall be deemed to be wholesale sales and shall be exempt from taxation under this part 1.

(b) As used in paragraph (a) of this subsection (20) with regard to food products, tangible personal property enters into the processing of such products and is therefore exempt from taxation when:

(I) It is intended that such property become an integral or constituent part of a food product which is intended to be sold ultimately at retail for human consumption; or

(II) Such property, whether or not it becomes an integral or constituent part of a food product, is a chemical, solvent, agent, mold, skin casing, or other material; is used for the purpose of producing or inducing a chemical or physical change in a food product or is used for the purpose of placing a food product in a more marketable condition; and is directly utilized and consumed, dissipated, or destroyed, to the extent it is rendered unfit for further use, in the processing of a food product which is intended to be sold ultimately at retail for human consumption.

§ 39-26-713. Tangible personal property.

(1) The following shall be exempt from taxation under the provisions of part 1 of this article (*sales tax*):

(a) Any right to the continuous possession or use for three years or less of any article of tangible personal property under a lease or contract, if the lessor has paid to the state of Colorado a sales or use tax on such tangible personal property upon its acquisition. The department of revenue may permit a lessor of tangible personal property leased for a period of three years or less to acquire the property free of sales or use tax if the lessor agrees to collect sales tax on all lease payments received on the property.

(2) The following shall be exempt from taxation under the provisions of part 2 of this article (*use tax*):

(e)(I) The storage, use, or consumption of tangible personal property by a person engaged in the business of manufacturing or compounding for sale, profit, or use any article, substance, or commodity, which tangible personal property enters into the processing of or becomes an ingredient or component part of the product or service that is manufactured, compounded, or furnished, and the **container**, label, or the furnished **shipping case**.

Colorado Department of Revenue Sales and Use Tax Regulations

Regulation (39-) 26-102.20.

The sale of tangible personal property to a person engaged in the manufacture or compounding of a product or service, where such tangible personal property becomes a physical part of such product or service, is a wholesale sale and is exempt from sales tax. Any **container**, label or shipping case used to encase or enclose such product may be purchased tax free by the manufacturer or compounder.

Special Regulation 2 – Agricultural Producers

Limited Farm Equipment Exemptions

Effective July 1, 1999, and as modified effective July 1, 2000, a sales tax exemption is provided for certain qualifying farm and ranch vehicles and certain other items when used in qualifying activities. All these exemptions apply to state sales and use tax only, and are not available for RTD tax or local taxes unless specifically adopted by the taxing authority.

The activities qualifying for exemption are agricultural, viticultural, fruit, vegetable, milk, honey, poultry, egg and livestock production, Livestock means cattle, horses, mules, burros, sheep, lambs, poultry, swine, ostrich, llama, alpaca and goats or other animal raised for food, fiber or hide production, and alternative livestock under §35-41.5-102, C.R.S. but not pet animal as defined in §35-80-102(10), C.R.S.

An “agricultural commodity” means any agricultural commodity as defined in §35-28-104(1) C.R.S. except that, for purposes of this sales tax exemption, “agricultural commodity” shall also include sugar beets, timber, and timber products, oats, malting barley, hops, rice milo, and other feed grain.

... The purchased or leased property must be used directly and primarily on a farm, ranch or at a “livestock production facility.” It cannot be used incidentally for agricultural use, and not for janitorial, building maintenance, office, sales, distribution (even of farm products), research or transportation use. A “livestock production facility” means any structure used predominantly for the housing containing, sheltering, or feeding of livestock, including, without limitation, barns, corrals, feedlots, and swine house. [§39-26-102(5.7)]

... The purchase must be qualifying “farm equipment”:

- Bailing wire, binders twine, surface wrap and, from July 1, 2000, **pallets**, from July 1, 2001, crates or similar items.

General Issues

... **Containers**, crates, **pallets**, labels, and furnished **shipping cases** purchased by an agricultural producer are not subject to tax. “**Containers**” and “**shipping cases**” that are exempt when sold to agricultural producers include wire, twine, rope, tape, and similar binding materials, together with any other material or product used to wrap, bag, bundle, or similarly contain products. ...

Special Regulation 9 – Containers

Sales of **containers**, labels, tags, cartons, packing cases, wrapping paper, twine, wire, **pallets**, skids, bags, **shipping cases**, bottles, cans, similar articles and receptacles sold to manufacturers, producers, wholesalers, jobbers, retailers, or other licensed vendors, for use as **containers**, labels, and furnished **shipping cases** for articles sold by them, are not taxable. *See Weed v. Occhiato*, 488 P.2d 877 (Colo. 1971); *Adolph Coors Co. v. Charnes*, 690 P.2d 893 (Colo. App. 1984), *aff’d* 724 P.2d 1341 (Colo.1986). *See, also, SR-2, Agricultural Producers*, for sales tax application for farm **pallets**, crates, bailing wire, and other shipping items.

Deposits on **returnable containers** are not subject to sales tax.

Cases:

Adolph Coors Co. v. Charnes, 690 P.2d 893 (Colo. App. 1984), *aff’d* 724 P.2d 1341 (Colo. 1986)(A beer keg is exempt as a “**container**” regardless of the fact that it is continuously reused by brewer and never sold or given away.)

Weed v. Occhiato, 488 P.2d 877 (Colo. 1971)(Glass bottles purchased from a bottle manufacturer are exempt, whether or not a bottle is **returnable**.)

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CONNECTICUT

Connecticut General Statutes Annotated

Title 12 – Taxation

Chapter 219 – Sales and Use Taxes

§ 12-408. The sales tax

(1) For the privilege of making any sales, as defined in subdivision (2) of section 12-407, at retail, in this state for a consideration, a tax is hereby imposed on all retailers at the rate of six percent [6%] of the gross receipts of any retailer from the sale of all tangible personal property sold at retail or from the rendering of any services constituting a sale in accordance with subdivision (2) of section 12-407

§ 12-407. **Definitions.** (a) Whenever used in this chapter:

(2) “Sale” and “selling” mean and include:

(A) Any transfer of title, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration;

(J) The leasing or rental of tangible personal property of any kind whatsoever

§ 12-412. Exemptions

Taxes imposed by this chapter shall not apply to the gross receipts from the sale of and the storage, use or other consumption in this state with respect to the following items:

(14) **Containers.** (A) **Nonreturnable containers** and **returnable dairy product containers** when sold without the contents to persons who place the contents in the **container** and sell the contents together with the **container**; (B) **containers** when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (C) **returnable containers** when sold with the contents in connection with a retail sale of the contents or when resold for refilling. As used herein, "**returnable containers**" means **containers** of a kind customarily returned by the buyer of the contents for reuse, but does not mean nonrefillable beverage **containers**, as defined in subdivision (10) of section 22a-243. All other **containers** are "**nonreturnable containers**". Nothing in this subsection shall be construed so as to tax the gross receipts from the sale of or the storage, use or other consumption in this state of bags in which feed for livestock and poultry, as defined in subdivision (12) of this section, is customarily contained.

State of Connecticut Department of Revenue Services

Conn. Agencies Regs. § 12-426-25. Leasing and rental of tangible personal property.

(a) General rule. The rental or leasing of tangible personal property for a consideration in this state is a sale and is subject to the tax. The lesser is a retailer who must register with the Commissioner of Revenue Services for a permit and collect the tax. The tax is imposed upon the gross receipts from the rental or leasing of tangible personal property. Such retailers shall pay the taxes so collected in the manner and form as other retailers licensed to sell tangible personal property. A lessee may issue a resale certificate to a lesser only in those cases where the lessee has qualified with this department as a lesser and the property is being leased solely for sub-leasing purposes (Effective April 7, 1980).

Ruling 93-9 – Sales and Use Taxes Resales of Tangible Personal Property; Containers

“Facts:

A Connecticut company (hereinafter referred to as the “Company”) produces injection-molded plastic boxes which are designed to package laser discs for use in the video sale and rental business. The Company sells the boxes (1) to distributors who in turn resell them to retail outlets and (2) directly to retailers for the retail sale or rental of the laser discs packaged in the boxes. The video stores charge sales tax on their retail sales or rentals of the boxed laser discs to the public.

Issues:

Whether the sales of plastic boxes by the Company qualify for the exclusion from sales and use taxes as sales for resale under Conn. Gen. Stat. §§ 12-410 and 12-411 when sold to distributors who resell the boxes to retailers without the contents.

Whether the sales of plastic boxes by the Company are exempt from sales and use taxes under Conn. Gen. Stat. § 12-412(14)(A) when sold to distributors or retailers who place laser discs in the boxes and sell them in connection with the sale of the contents.

Whether the sales of plastic boxes by the Company qualify for the exclusion from sales and use taxes as sales for resale under Conn. Gen. Stat. §§ 12-410 and 12-411 or the exemption afforded by Conn. Gen. Stat. § 12-412(14) when sold to retailers to protect laser discs that the retailers rent to the public.

Discussion:

Under the Sales and Use Taxes Act it is presumed that all gross receipts are subject to sales and use taxes until the contrary is established. Conn. Gen. Stat. § 12-410(1); *cf.* Conn. Gen. Stat. § 12-411(9). The burden of proving that a sale is not a sale at retail is upon the seller unless a resale certificate is taken from the purchaser. A resale certificate is considered to have been taken in good faith only from a person who is engaged in selling tangible personal property and who hold a retailer’s permit as provided for in Conn. Gen. Stat. § 12-409 and who, at the time of purchase, intends to sell the property being purchased in the regular course of business. Conn. Gen. Stat. § 12-410(2) and Conn. Agencies Regs. § 12-426-1(a); *cf.* Conn. Gen. Stat. § 12-411(10). When the Company sells plastic boxes to distributors who resell the boxes without contents to retail outlets, such sales qualify for the sale for resale exclusion, and the Company is relieved of its burden of proving that such taxes are not sales at retail if proper resale certificates are taken from the purchasers.

Conn. Gen. Stat. § 12-412(14) provides an exemption from sales and use taxes for

(A) **Nonreturnable containers** ... when sold without the contents to persons who place the contents in the **container** and sell the contents together with the **container** ...”

When the Company sells plastic boxes to distributors or retailers who place laser discs in the boxes and transfer title to the boxes together with the discs, such sales qualify for the exemption afforded by Conn. Gen. Stat. § 12-412(14)(A).

When the Company sells plastic boxes to retailers who purchase the boxes to protect video discs which are rented to the public, such sales are not sales for resale. In the case of Harsco Corporation v. Groppo, Conn. Super. Ct. No. 302579 (November 25, 1987), the Connecticut Superior Court ruled on a similar issue involving the application of sales and use taxes to the lease of reusable gas tanks to retailers of gas products. The Superior Court found that Harsco’s customer, a gas retailer, was in the business of selling gas, but not the tanks in which the gas was delivered. The court stated that the gas retailer’s “dominant purpose in leasing the tanks was for recurring use in marketing its gases.” Harsco, p. 5. The court in Harsco held that the reusable gas tanks could not be leased on a resale basis by a retailer in the business of selling gas products, notwithstanding the fact that a demurrage fee, or late charge, was made by the gas retailer to its customers for the use of the reusable gas tanks. Harsco was held liable for sales tax, and the gas retailer for use tax, on the lease of the reusable gas tanks.

The reasoning of the *Harsco* decision is directly applicable to the instant situation. Video rental stores are in the business of renting videos to the general public, not of renting the plastic **containers** to the general public. The video rental stores’ dominant purpose in purchasing the Company’s plastic boxes is to use the plastic boxes on a recurring basis in the renting of video discs to the public. Therefore, the Company is liable for sales tax on the sale of plastic boxes sold to retailers for use in connection with the video rentals.

Nor are the exemptions in Conn. Gen. Stat. § 12-412(14) applicable to the sale of plastic boxes sold for use in connection with video rentals. Conn. Gen. Stat. § 12-412(14)(A) applies only to the sale of “**nonreturnable containers**.” The plastic boxes sold in connection with video rentals are not **nonreturnable**, but instead are intended to be returned, with their contents, to the retailer at the end of the rental period. Likewise, the exemption in § 12-412(C) does not apply. That subparagraph refers to “**returnable containers** when sold with the contents in connection with a retail sale of the contents” The plastic boxes are not sold by the Company to the retailers with their contents.

Ruling:

Sales of plastic boxes by the Company qualify for the exclusion from sales and use taxes as sales for resale under Conn. Gen. Stat. §§ 12-410 and 12-411 when sold to distributors who resell the boxes without contents to retailers, and the Company is relieved of its burden of proving that such sales are not sales at retail if proper resale certificates are taken from the purchasers.

Sales of plastic boxes by the Company are exempt from sales and use taxes under Conn. Gen. Stat. § 12-412(14)(A) when sold to distributors or retailers who place laser discs in the boxes and transfer title to them together with their contents.

Sales of plastic boxes by the Company to retailers for use in connection with the rental of video discs to the public do not qualify for the exclusion from sales and use taxes as sales for resale under Conn. Gen. Stat. §§ 12-410 and 12-411, since the retailers' purpose is to use them on a recurring basis in the rental of laser discs, and not to resell them to the public.

Sales of plastic boxes by the Company to retailers for use in connection with the rental of laser discs to the public do not qualify for the exemption from sales and use taxes under Conn. Gen. Stat. § 12-412(14)(A) since the plastic boxes are not “**nonreturnable.**” Such sales do not qualify for the exemption under § 12-412(14)(C) since they are not sold by the Company with their contents.

LEGAL DIVISION
May 20, 1993.”

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DELAWARE

[**Note:** Delaware does not have a sales tax; however, it does impose a use tax on the lease of tangible personal property to lessees in Delaware. The provisions below are excerpted from the Delaware Use Tax statute.]

Delaware Code

Title 30 – State Taxes

Chapter 43. Use tax on leases of tangible personal property

§4302. Imposition of tax on lessees.

(a) There is imposed by this section on every lessee a use tax, for the use within this State, under a lease of tangible personal property (other than motor vehicles, household furniture, household fixtures or household furnishings, hospital equipment and any and all medical and remedial equipment, aids and devices leased by or to elderly, ill, injured or handicapped persons for their own use, including television sets leased to patients in a health care facility, and manufacturing equipment under leveraged leases in which rental payments are guaranteed, in whole or in part, by the Economic Development Administration of the United States Department of Commerce pursuant to Public Law 89-136 [42 U.S.C. § 3121 et seq.], as amended) equal to 1.536% of the rent under such lease....

(b) There shall be added to the tax calculated under subsection (a) of this section a surtax in the amount of 10% of the tax calculated under subsection (a) of this section.

(c) This section shall not apply to rents on leases of equipment, machinery, fixtures, buildings and/or non-registered vehicles used in the business of raising crops or animals in agricultural production, [or] **reusable pallets and containers** for use by food processors. For purposes of this subsection, the term “**reusable pallet and container**” means any **pallet** or crate which is under an arrangement for the repeated return of such property to its initial purchaser for long-term reuse.

Delaware Division of Revenue

Tax Ruling 86-1: Applicability of the 2% Use Tax on Lessees

“Questions have risen concerning the applicability of the 2% use tax on lessees where the use of rented personal property occurs wholly or partly without the State of Delaware.

Section 4302, Title 30, Delaware Code, provides, with stated exceptions, that:

“There is imposed by this Section on every lessee a use tax, for use within this State, under a lease of tangible personal property....”

We interpret the foregoing to exclude use without the State to those cases where the lease in question provides specifically for use exclusively without Delaware.

There are conceivable situations where the totality of the circumstances is such that the situs of the proposed use within the State is so much a recognized improbability that such terms are reasonably excluded from the express terms of the contract.

We also interpret the law to not provide for proration of the tax between in-state and out-of-state use. Should the lease not reasonably exclude the possibility of in-state use, then the entire lease payment is subject to the 2% tax.

Should questions arise concerning the application of the foregoing to specific circumstances, your request for a ruling should be directed to the Office of the Deputy Director, Division of Revenue, Carvel State Office Building, 820 N. French Street, Wilmington, DE 19801.

Robert W. Chastant
Director of Revenue”

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DISTRICT OF COLUMBIA

District of Columbia Code Title 47, Chapter 20. Gross Sales Tax.

§47-2002. Imposition of tax.

A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as “retail sale” and “sale at retail” in this chapter).

§47-2001. Definitions.

(n)(1) “Retail sale” and “sale at retail” means the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but not be limited to, the following:

(F) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event . . . , such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid

§47-2005. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

[**Note:** No specific statutory exemption relates to **containers** or **pallets**]

Weil's Code of D.C. Municipal Regulations

9-439. CONTAINERS, CARTONS, BOXES, AND SIMILAR ITEMS (*CDCR 9-439 (2004)*)

439.1 Sales of **containers**, shipping cartons, bottles, boxes, excelsior, bale binding, and similar items shall be classified into three (3) groups.

439.2 The first group shall include those sales in which the **container**, shipping carton, bottle, box, excelsior, bale binding, or similar item is purchased for delivery with other tangible property sold by the purchaser. Receipts from these sales shall not be subject to the tax.

439.3 The second group shall include those sales in which the **container** (or other item covered by this section) is purchased for consumption by the vendee and not for delivery by the vendee, as described in §439.2. Receipts from these sales shall be subject to the tax.

439.4 If tangible personal property shall be sold by a vendor in a **container** (or other item); and if that vendor will retain title to the **container** and the **container** is to be returned to the vendor by the vendee; the vendor is using the **container** in the conduct of business and is a purchaser for use or consumption. The sale of the **container** to the vendor is a sale at retail to which the sales tax shall apply.

439.5 The third group shall include those sales in which the **container** (or other item) is purchased by a vendee engaged in rendering services not subject to the sales tax who uses the **container** in connection with that business. The receipts from these sales shall be subject to the tax.

439.6 Charges for the retention of possession of **containers** (such as gas cylinders) generally referred to as demurrage, are subject to District sales and use tax under the Act. Charges for demurrage are usually made by suppliers of gas to customers for retaining possession of these **containers** after the expiration of a fixed period of time.

Cases:

District of Columbia v. Seven-Up of Washington, Inc., et al., 93 U.S. App.D.C. 272, 214 F.2d 197 (D.C. 1954)

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FLORIDA

Florida Statutes Annotated

Title XIV - Taxation and Finance

Chapter 212 – Tax on Sales, Use, and Other Transactions

§ 212.02. Definitions

The following terms and phrases when used in this chapter have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

(10)... (g) “Lease,” “let,” or “rental” ... means the leasing or rental of tangible personal property and the possession or use thereof by the lessee or rentee for a consideration, without transfer of the title of such property, except as expressly provided to the contrary herein.

(14) (a) “Retail sale” or a “sale at retail” means a sale to a consumer or to any person for any purpose other than for resale in the form of tangible personal property or services taxable under this chapter, and includes all such transactions that may be made in lieu of retail sales or sales at retail

(14) (c) “Retail sales,” “sale at retail,” “use,” “storage,” and “consumption” do not include materials, **containers**, labels, sacks, bags, or similar items intended to accompany a product sold to a customer without which delivery of the product would be impracticable because of the character of the contents and be used one time only for packaging tangible personal property for sale or for the convenience of the customer or for packaging in the process of providing a service taxable under this chapter. When a separate charge for packaging materials is made, the charge shall be considered part of the sales price or rental charge for purposes of determining the applicability of tax

(15) “Sale” means and includes:

(a) Any transfer of title or possession, or both, exchange, barter, license, lease, or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for a consideration.

§ 212.08. Sales, rental, use, consumption, distribution, and storage tax; specified exemptions

The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(5) Exemptions; Account Of Use.—

(a) *Items in agricultural use and certain nets.*--There are exempt from the tax imposed by this chapter nets designed and used exclusively by commercial fisheries; disinfectants, fertilizers,

insecticides, pesticides, herbicides, fungicides, and weed killers used for application on crops or groves, including commercial nurseries and home vegetable gardens, used in dairy barns or on poultry farms for the purpose of protecting poultry or livestock, or used directly on poultry or livestock; portable **containers** or movable receptacles in which portable **containers** are placed, used for processing farm products; field and garden seeds, including flower seeds; nursery stock, seedlings, cuttings, or other propagative material purchased for growing stock; seeds, seedlings, cuttings, and plants used to produce food for human consumption; cloth, plastic, and other similar materials used for shade, mulch, or protection from frost or insects on a farm; generators used on poultry farms; and liquefied petroleum gas or other fuel used to heat a structure in which started pullets or broilers are raised; however, such exemption shall not be allowed unless the purchaser or lessee signs a certificate stating that the item to be exempted is for the exclusive use designated herein. Also exempt are cellophane wrappers, glue for tin and glass (apiarists), mailing cases for honey, shipping cases, window cartons, and baling wire and twine used for baling hay, when used by a farmer to contain, produce, or process an agricultural commodity.

**Florida Administrative Code
State of Florida Department of Revenue**

Chapter 12A-1 Sales and Use Tax

12A-1.040 Sales of Containers, Wrapping and Packing Materials and Related Products

(1) Items actually accompanying the product sold to the final buyer or ultimate consumer without which delivery of the product is impracticable on account of the character of the contents and for which there is no separate charge are exempt

(2) Whenever tangible personal property is sold in barrels, bottles, boxes, bags, kegs, drums, cartons, sacks, cans or other **containers**, the title to which **containers** is retained by the seller of the tangible personal property contained therein and which **containers** are to be returned to the seller and are intended by the seller to provide merely a means of containing such tangible personal property while in process of being delivered or conveyed to the purchaser for use or consumption, then a person so using such **containers** in the conduct of his business is a purchaser for use or consumption and the sale to him is a sale at retail and is taxable

(5) **Containers**, sacks and bags used more than one time for packaging tangible personal property for shipment for sale are taxable

(8) Egg crates, egg cartons and other **containers** used for the purpose of shipping and transporting eggs to the consumer for final purchase are exempt. This rule applies to used as well as new **containers**

(16) The sale of **containers** which are suitable for more than one time use are taxable. Therefore, if a sales invoice covering both tax exempt merchandise and **reusable containers** shows a separate charge for the **containers**, only the charge for the **containers** is taxable;

otherwise, tax is based on the fair retail value of the **containers** and should be collected at the time of sale

(21) **Pallets** for one time use which are a part of packaging tangible personal property for shipment and sale are tax exempt.

Cases:

Gay v. Canada Dry Bottling Co. of Fla., 59 So.2d 788 (1952):

*Purchase by manufacturer of **nonreturnable containers** for use in packing tangible personal property for shipment or sale, where the cost of such **containers** affects and adds to the price of product, constitutes a “purchase for resale” not taxable as a “retail sale.”*

*Where bottling company sold its beverages at fixed price per **case**, including a charge for bottles and **case** without reservation of title thereto, but allowed credit or made cash refund for empty bottles and **cases** returned in good condition by anyone, purchase of new bottles and **cases** by bottling company for purpose of packaging and distributing beverages was not a “purchase for resale” but was taxable as a “retail sale.”*

[Note: this case construed statute prior to amendment]

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GEORGIA

Official Code of Georgia Title 48 – Revenue and Taxation Chapter 8 – Sales and Use Taxes

Article 1 – State Sales and Use Tax

48-8-1. It is the intention of the General Assembly in enacting this article to exercise its full and complete power to tax the retail purchase, retail sale, rental, storage, use, and consumption of tangible personal property and the services described in this article except to the extent prohibited by the Constitution of the United States and of this state and except to the extent of specific exemptions provided in this article.

48-8-3. Exemptions.

The sales and use taxes levied or imposed by this article shall not apply to:

(35)(A) The sale, use, storage, or consumption of:

(i) Industrial materials for future processing, manufacture, or conversion into articles of tangible personal property for resale when the industrial materials become a component part of the finished product;

(ii) Industrial materials other than machinery and machinery repair parts that are coated upon or impregnated into the product at any stage of its processing, manufacture, or conversion; or

(iii) Materials, **containers**, labels, sacks, or bags used for packaging tangible personal property for shipment or sale. To qualify for the packaging exemption, the items shall be used solely for packaging and shall not be purchased for reuse;

(B) As used in this paragraph, the term "industrial materials" does not include natural or artificial gas, oil, gasoline, electricity, solid fuel, ice, or other materials used for heat, light, power, or refrigeration in any phase of the manufacturing, processing, or converting process....

Georgia Administrative Code Department of Revenue Sales and Use Tax Regulations

560-12-2-.25 Containers.

(1) **Package-Type Containers.** The tax does not apply to **containers** used for packaging tangible personal property for shipment or sale if such items are used solely for packaging and are not purchased for reuse by the seller or shipper of the tangible personal property. This class

of **containers** includes such things as cans in which goods, paint and other commodities are contained, medicine bottles, boxes in which jewelry, candy and clothes are delivered to customers, tooth paste tubes, etc., wrapping paper, twine, cotton baling wire, ice cream cartons, milk bottle caps, crating, packing cases, excelsior insulating material and the like when used in connection with the packaging for shipment or sale of tangible personal property and labels or name plates affixed to products manufactured or processed.

(2) **Equipment-Type Containers.** The tax applies to the purchase of **containers** for use as equipment in the operation of a business, even though such **containers** may be used in connection with the shipment or sale of tangible personal property. Such **containers** are purchased by the shipper or seller of tangible personal property for reuse. Examples: Storage tanks, truck bodies, shopping carts and baskets, delivery crates, dispensers, measures, dishes and beverage glasses.

(3) **Returnable Containers.** Some equipment-type **containers** may pass to the purchaser or consumer, but only temporarily until such **containers** can serve their purpose and be returned to the seller or shipper for reuse. The tax applies to purchases of such **returnable containers**. Examples: milk bottles, beer bottles, soft drink bottles and crates, bread boxes, banana boxes, chicken coops, wine barrels, chemical carboys, gas cylinders, etc.

Cases:

Undercofler v. Buck, 107 Ga. App. 870, 132 S.E.2d 157 (1963)(decided under Ga. L. 1951, p. 360)

*Bottles and cases for milk and soft drinks are exempt **containers** used for packaging tangible personal property for shipment and sale.*

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HAWAII

Hawaii Revised Statutes Annotated Title 14 – Taxation Chapter 237 – General Excise Tax Law

§ 237-13. Imposition of tax.

There is hereby levied and shall be assessed and collected annual privilege taxes against persons on account of their business and other activities in the State measured by the application of rates against values of products, gross proceeds of sale, or gross income, whichever is specified, as follows:

... (2) Tax on business of selling tangible personal property; producing.

(A) Upon every person engaging or continuing in the business of selling any tangible personal property whatsoever ..., there is likewise hereby levied, and shall be assessed and collected, a tax equivalent to **four percent [4%]** of the gross proceeds of sales of the business; and in the case of a **wholesaler**, the tax shall be equal to **one-half of one percent [0.5%]** of the gross proceeds of sales of the business (*emphasis added*).

§ 237-1. Definitions.

“Retailing” or “sales at retail” includes the sale of tangible personal property for consumption or use by the purchaser and not for resale, the renting of tangible personal property, and the rendering of services ... to a person who is not purchasing the services for resale. Persons described in this definition are “retailers.”

§ 237-4. “Wholesaler”, “jobber”, defined.

(a) “Wholesaler” or “jobber” applies only to a person making sales at wholesale. Only the following are sales at wholesale:

(1) Sales to a licensed retail merchant, jobber, or other licensed seller for purposes of resale;

(2) Sales to a licensed manufacturer of materials or commodities that are to be incorporated by the manufacturer into a finished or saleable product (including the **container** or package in which the product is contained) during the course of its preservation, manufacture, or processing, including preparation for market, and that will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by the manufacturer;

(7) Sales to a licensed producer, or to a cooperative association ... for sale to such producer; ... of cartons and such other **containers**, wrappers, and sacks, and binders to be used for packaging eggs, vegetables, fruits, and other agricultural and aquacultural products; or of chick **containers**; which cartons and such other **containers**, wrappers, and sacks, binders, ... and **containers** are to be used as described in section 237-5, or to be incorporated in a manufactured product as described in paragraph (2);

(9) Sales to a licensed leasing company of capital goods with a depreciable life, are purchased by the leasing company for lease to its customers, and are thereafter leased as a service to others

Hawaii Administrative Code
Title 18 – Department of Taxation
Chapter 237 – General Excise Tax Law

§18-237-4 “Wholesaler”, “jobber”, defined. (a) Sales at wholesale defined. Pursuant to section 237-4, HRS, and taking into consideration sections 237-13(3)(C) and 237-13(3)(D), HRS, only the following are sales at wholesale:

- (1) Sales to a licensed retail merchant, jobber or other licensed seller for purposes of resale;
- (2) Sales to a licensed manufacturer of materials or commodities which are to be incorporated by such manufacturer into a finished or saleable product (including the **container** or package in which the product is contained) during the course of its preservation, manufacture or processing, including preparation for market, and which will remain in such finished or saleable product in such form as to be perceptible to the senses, which finished or saleable product is to be sold and not otherwise used by such manufacturer; ...
- (7) Sales to a licensed producer or to a cooperative association ... for sale to the producer, of:
 - (A) Cartons and other **containers**, wrappers and sacks, and binders to be used for packaging eggs, vegetables, fruits and other agricultural products; ...
- (9) Sales to a licensed leasing company which leases capital goods as a service to others. For this purpose, capital goods are goods which in the hands of a licensed leasing company has a depreciable life and which are to be used by the licensed leasing company for leasing to others for a consideration.

(b) Subsection (c) and (d) relate to the tax rates applicable under the general excise tax law with respect to **containers** and packaging materials sold in the State.

(c) **Nonreturnable containers**; packaging materials

(d) **Returnable containers**.

- (1) Sales of **containers** to licensed persons whose customers receive title to the **containers** shall take the one-half of one per cent rate when the instance would be covered by subsection (c)(1) or (2), except for the fact that the **containers** are **returnable** by these customers. The circumstance that the customers may return the **containers** and receive a credit or refund for doing so does not necessarily show that title does not pass to the customers.
- (2) However, in some instances involving **returnable containers** title to the **containers** does not pass to the customers of the purchaser and accordingly the **containers** are not “resold” by the purchaser; in such cases the sales of the **containers** to the purchaser so using them takes the **four per cent** rate. For example, the name of the purchaser may

appear on the **containers** in such a way as to show that there is no intention on his part to pass title to the **containers**, and accordingly the **containers** are not “resold” by the purchaser and the sale of the **containers** to this purchaser takes the **four per cent** rate.

Whether paragraph (1) or (2) applies depends upon all the facts, which shall be submitted for ruling.

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IDAHO

Idaho Code

Title 63 – Revenue and Taxation

Chapter 36. Sales Tax

§ 63-3619. **Imposition and rate of the sales tax.** -- An excise tax is hereby imposed upon each sale at retail at the rate of five per cent (5%) of the sales price of all retail sales subject to taxation under this chapter and such amount shall be computed monthly on all sales at retail within the preceding month.

§ 63-3622E. **Containers.** -- There is exempted from the taxes imposed by this chapter the sale or purchase of **containers** in the following categories:

(a) **Nonreturnable containers** when sold without the contents to persons who place the contents in the **container** and sell the contents together with the **container**.

(b) **Containers** when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this act.

(c) **Returnable containers** when sold with the contents in connection with a retail sale of the contents or when resold for filling.

Idaho Administrative Code

IDAPA 35.01.02 – Idaho Sales and Use Tax Administrative Rules

024. RENTALS OR LEASES OF TANGIBLE PERSONAL PROPERTY (RULE 024)

01. **In General.** The lease or rental of tangible personal property, including licensed motor vehicles, is a sale. (7-1-93)

02. **Bare Equipment Rental.** A bare equipment rental, that is, a rental of equipment without operator, is a taxable sale. The owner of the equipment is a retailer and must get a seller's permit and collect and remit sales taxes. The equipment owner must collect a sales tax on each rental payment and remit the tax to the State Tax Commission just like any other retailer. The tax applies whether the equipment is rented by the hour, day, week, month, or on a mileage, or any other basis. The equipment owner who mainly rents bare equipment may buy the equipment without paying tax to the vendor by giving him a resale certificate. See Rule 128 of these rules. If the owner uses the equipment for his own benefit or in his own business operations, he must pay use tax based on a reasonable rental value for the period during which he used his own equipment.

... **06. Maintenance of Rental Equipment.** If the owner who rents bare equipment is responsible for the maintenance of the equipment, he may buy the necessary repair parts and equipment tax exempt by providing his vendor with a resale certificate

084. CONTAINERS RETURNABLE NONRETURNABLE (RULE 084)

01. Container. A **container** encloses or will enclose tangible personal property which is sold at wholesale or retail. A **container** may be comprised of one (1) or more components. Items used as shipping supplies which do not enclose the product are not considered to be **containers**. Example: Cartons of canned goods are placed on a **pallet**. Shrink wrap is used to bind the cartons to the **pallet**. A shipping address label is affixed to the shrink wrap. The **container** includes the cans in which the goods are enclosed; the cartons in which the canned goods are placed; and the shrink wrap and **pallet** which enclose the cartons. The address label is not part of the **container**. (4-6-05)

02. Containers Exempt From Tax. The following **containers** are exempt from sales or use tax: (7-1-93)

a. Nonreturnable containers purchased by a retailer or wholesaler who places the contents in the **container** and sells the contents with the **container** at retail or wholesale, including cans, barrels, boxes, cartons, grocery sacks, disposable soft drink cups and lids, and other to-go fast food **containers**. (4-6-05)

b. Returnable containers when the **container**, along with the contents, is sold at retail if the fee for the **container** is separately stated, including returnable beer kegs, returnable barrels, and **returnable pallets**. (7-1-98)

c. Returnable containers when sold back to retailers or manufacturers for refilling. (7-1-93)

d. Returnable or nonreturnable containers when sold with contents that are exempted from the tax, regardless of whether or not the **container** is separately billed, including **containers** for prescription drugs, and oxygen or acetylene cylinders, when the use of the gases qualifies for the production exemption. (7-1-93)

03. Taxable Containers. **Containers** subject to sales and use tax include **containers** used by persons who are providing a service rather than selling a product, such as plastic clothing bags purchased by dry cleaners. (7-1-98)

04. Supplies. Shipping, selling, or distribution supplies are not considered to be **containers** and are subject to the tax when purchased by the shipper, seller, or distributor, such as: (7-1-93)

a. Shipping pallets and lumber stickers when not banded or shrink wrapped to the product to be sold, thereby not becoming a part of the **container**. (7-1-93)

b. Banding or binders used to secure goods to transportation equipment.
(7-1-93)

c. Price stickers and address labels affixed to **containers** that do not provide any product information such as weight, quantity, nutritional value, or other necessary product description. *See Idaho Sales Tax Administrative Rule 042.*
(4-6-05)

d. Example: Plywood is wrapped with lumber wrap. The bundles are rested on **pallets** for shipping. In this example the lumber wrap is the only **container**. As the bundles are not enclosed onto the **pallet**, the **pallet** is not a **container** and is instead a shipping supply subject to the tax.
(7-1-93)

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ILLINOIS

Illinois Compiled Statutes Annotated – Chapter 35. Revenue Act 120. Retailers' Occupation Tax Act

120/2. Tax imposed

§ 2. Tax imposed. A tax is imposed upon persons engaged in the business of selling at retail tangible personal property, including computer software, and including photographs, negatives, and positives that are the product of photoprocessing, but not including products of photoprocessing produced for use in motion pictures of public commercial exhibition.

Illinois Administrative Code Title 86 – Revenue (Illinois Department of Revenue Regulations) Part 130 – Retailers' Occupation Tax

Section 130.2070 Sales of Containers, Wrapping and Packing Materials and Related Products

a) Definition

When used in this Section, the term “**containers**” includes all **containers**, wrapping and packing materials, bags, twines, **container** handles, wrapping papers, gummed tapes, cellophane, boxes, bottles, drums, cartons, sacks or other packing, packaging, containing and wrapping materials in which tangible personal property may be contained.

b) Sales for Resale

- 1) Sellers of **containers** to purchasers who sell tangible personal property contained in such **containers** to others are deemed to make sales of such **containers** to purchasers for purposes of resale, the receipts from which sales are not subject to the Retailers' Occupation Tax, if the purchasers of such **containers** transfer the ownership of the **containers** to their customers together with the ownership of the tangible personal property contained in such **containers**.
- 2) For example, a sale of fruit boxes to a packer who fills the boxes with fruits and sells the fruit in such boxes is a sale of the boxes to the packer for resale by him. If the packer places the boxes upon **pallets** that are then transferred to purchasers and the ownership of the **pallets** also passes to the purchasers, then the packer who purchases the **pallets** would be making a purchase for resale. There is no difference between a **returnable container** whose ownership is transferred with a deposit being taken and a **nonreturnable container**. This means that if the seller charges purchasers a deposit for **pallets**, or other **containers**, and there is an understanding that the **pallet** or other **container** can be returned by purchasers for

refund or credit of the deposit amount, then the purchase of the **pallets** or other **containers** by sellers are nontaxable purchases for resale. Although sales of **containers** to purchasers who retransfer such **containers** to others as an incident to engaging in a service occupation are not subject to the Retailers' Occupation Tax, such transactions are governed by the Service Occupation Tax Act (*see Subpart A of Service Occupation Tax, 86 Ill. Adm. Code 140*).

[3) omitted.]

c) Sales for Use or Consumption

- 1) Sellers of **containers** to purchasers who do not transfer the ownership thereof to others, but who intend such **containers** merely to provide a means of containing tangible personal property while in the process of being delivered to their customers, retaining and reusing or discarding the **containers** after such delivery is completed, and sellers of **containers** to purchasers who use such **containers** as a means of storing tangible personal property, are making sales for use or consumption, and their receipts from such sales are subject to the Retailers' Occupation Tax.

[2-5) omitted.]

- 6) When **containers** are sold to a purchaser for use or consumption, it is not material that the purchaser, after such **containers** have been used by him until they no longer have utility to him, sells such **containers** in order to recover as much as he can of the amount which he has invested in such **containers**.
- 7) **Pallets** are taxable upon purchase by sellers and do not qualify for the resale exemption where after sale and delivery of the products contained on the **pallets** the seller retains and reuses the **pallets** or discards them.

ST 05-0055-GIL 07/15/2005 SALE AT RETAIL

General information regarding the sale of **containers** and packaging materials may be found at 86 Ill. Adm. Code 130.2070. (This is a GIL [General Information Letter].)

July 15, 2005

Dear Xxxxx:

This letter is in response to your letter dated October 27, 2004, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLR's") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLR's must

comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.10. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Our company is requesting a letter ruling on the issue mentioned below. Our company's main business is the manufacturing and assembly of automotive lighting. We are requesting a letter ruling on the issue of **returnable packaging** used between our customers and us. Please refer to the facts listed below.

Our customer authorizes us to purchase the **returnable packaging** from our vendor. We pay our vendor for the packaging. We have 2 scenarios that our customers follow for reimbursement. 1) The customer reimburses us for the packaging through the piece price of the part being shipped or 2) the customer pays us in a lump sum for the packaging needed. In both cases, the payment does reimburse us for the cost we incurred.

Technically, our customer does own the packaging because they have paid for it, but it is shipped back and forth between them and us with manufactured parts in it. When the packaging is not in transit, it is stored at our facility.

Thank you for your prompt response and assistance concerning my sales tax issues. If you should have other questions, I can be reached at #.

DEPARTMENT'S RESPONSE:

The Department is without sufficient information to provide you with a specific answer to your request. Your letter indicates a retail sale has occurred between your company and its vendor for the **returnable packaging** materials, but then refers to a reimbursement from your customer, with the customer "technically" owning the **returnable packaging** material. In order to clearly understand the nature of these transactions, we would need to examine any contracts between the parties along with other documentation, such as the bills of sale. This would aid the Department in determining the actual ownership of the **packaging** materials.

For general information regarding **packaging** materials, please see 86 Ill. Adm. Code 130.2070. This regulation discusses the sale of **containers** and **packaging** materials. You may find this regulation on the Department's internet website under the heading of "Legal Research." In addition, you may find other information in the form of general information letters which have discussed the regulation.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at

(217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110(b).

Very truly yours,
Edwin E. Bogguss
Associate Counsel

ST 05-0068-GIL 07/22/2005 LEASING

Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. See 86 Ill. Adm. 130.220 and 86 Ill. Adm. Code 130.2013. (This is a GIL.)

July 22, 2005

Dear Xxxxx:

This letter is in response to your letter dated January 19, 2005, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings (“PLR’s”) are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLR’s must comply with the procedures for PLRs found in the Department’s regulations at 2 Ill. Adm. Code 1200.10. The purpose of a General Information Letter (“GIL”) is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

Pursuant to my conversation with one of your tax professionals, on January 14, 2005, I was advised that our customer could be exempt from sales tax under Section 130.330 of your Administrative Code on their true lease. I was also advised that they are exempt from sales tax on forklifts because they qualify under the manufacturing exemption. The use of that forklift I provided to Jim is on the second page.

Given this information detailed in the paragraph above we feel empowered by your advice and our comprehension of your Administrative Code 130.330 to exempt our customer from sales tax. If this is incorrect or I misunderstood any information please inform me by responding by mail; that this is not correct and tax should be charged on this account. We

have from the date of this letter exempted our customer from sales tax and will continue unless we receive written documentation contrary to the information detailed above.

DEPARTMENT'S RESPONSE:

We are without sufficient information on the nature of the transaction to provide you with a detailed response to your inquiry. In general, the information you received regarding true leases is correct, the State of Illinois taxes leases differently for Retailers' Occupation Tax and Use Tax purposes than the majority of other states. For Illinois sales tax purposes, there are two types of leasing situations: conditional sales and true leases. A conditional sale is usually characterized by a nominal or one dollar purchase option at the close of the lease term. Stated otherwise, if lessors are guaranteed at the time of the lease that the leased property will be sold, this transaction is considered to be a conditional sale at the outset of the transaction, thus making all receipts subject to Retailers' Occupation Tax.

A true lease generally has not buy out provision at the close of the lease. If a buy out provision does exist, it must be a fair market value buy out option in order to maintain the character of the true lease. Lessors of tangible personal property under true leases in Illinois are deemed end users of the property to be leased. See 86 Ill. Adm. Code 130.220. As end users of tangible personal property located in Illinois, lessors owe Use Tax on their cost price of such property. The State of Illinois imposes no tax on rental receipts. Consequently, lessees incur no tax liability.

As stated above, in the case of a true lease, if your company is a lessor of the property being used in Illinois, your company would incur Use Tax obligations on the cost price of the leased property. As a lessor, you must either pay your supplier, if your supplier is registered to collect Illinois Use Tax, or self assess and remit the tax directly to the Department. If, as a lessor, you have already paid taxes in another state with respect to the acquisition of the tangible personal property, then you would be exempt from Illinois Use Tax only to the extent of the amount of such tax properly due and paid in such other state. See Subsection (a)(3) of 86 Ill. Adm. Code 150.310.

Under Illinois law, lessors may not "pass through" their tax obligation to the lessees as taxes. However, lessors and lessees may make private contractual arrangements for a reimbursement of the tax to be paid by the lessees. If lessors and lessees have made private agreements where lessees agree to reimburse lessors for the amount of the tax paid, then lessees are obligated to fulfill the terms of the private contractual agreements.

The above guidelines are applicable to all true leases of tangible personal property in Illinois except for automobiles leased under terms of one year or less, which are subject to the Automobile Renting Occupation and Use Tax found at 35 ILCS 155/1 et seq. There are also some limited exceptions to the general rule described in the preceding paragraphs for purchases of tangible personal property leased to governmental entities and exempt hospitals. See 86 Ill. Adm. Code 130.2011 and 130.2012.

* * *

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110(b).

Very truly yours,
Edwin E. Bogguss
Associate Counsel

Cases:

Belleville Dr. Pepper v. Korshak, 36 Ill.2d 352, 221 N.E.2d 365 (1966)

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INDIANA

Indiana Statutes Annotated Title 6 – Taxation Article 2.5 – Sales and Use Taxes

Chapter 1 – Definitions

§ 6-2.5-2-1. Tax imposed – Payment – Collection. (a) An excise tax, known as the state gross retail tax, is imposed on retail transactions made in Indiana.

§ 6-2.5-2-2. Rates. – (a) The state gross retail tax is measured by the gross retail income received by a retail merchant in a retail unitary transaction On a retail unitary transaction in which the gross retail income received by the retail merchant is one dollar and ten cents (\$1.10) or more, the state gross retail tax is five percent (5%) of that gross retail income.

§ 6-2.5-4-10. Rental or leasing of personal property to another. -- (a) A person, other than a public utility, is a retail merchant making a retail transaction when he rents or leases tangible personal property to another person other than for subrent or sublease.

(b) A person is a retail merchant making a retail transaction when the person sells any tangible personal property which has been rented or leased in the regular course of the person's rental or leasing business.

Chapter 5 – Exemption Transactions of a Retail Merchant

§ 6-2.5-5-3.

§ 6-2.5-5-8. Transactions involving tangible personal property – Acquisition for resale, rental or leasing. – Transactions involving tangible personal property are exempt from the state gross retail tax if the person acquiring the property acquires it for resale, rental, or leasing in the ordinary course of his business without changing the form of the property

§ 6-2.5-5-9. Sales of returnable containers – Nonreturnable packages. – (a) As used in this section, “**returnable containers**” means **containers** customarily returned by the buyer of the contents for reuse as **containers**.

(b) Sales of **returnable containers** are exempt from the state gross retail tax if the transaction constitutes selling at retail as defined in IC 6-2.5-4-1 and if the **returnable containers** contain contents.

(c) Sales of **returnable containers** are exempt from the state gross retail tax if the **containers** are transferred empty for the purpose of refilling.

(d) Sales of wrapping material and empty **containers** are exempt from the state gross retail tax if the person acquiring the material or **containers** acquires them for use as nonreturnable packages for selling the contents that he adds.

Indiana Administrative Code
Article 2.2. Sales and Use Tax
45 IAC 2.2-1-1, et seq.

45 IAC 2.2-5-4 Farmers and others engaged in agricultural production

Authority: IC 6-8.1-3-3

Affected: IC 6-2.5

Sec. 4.(a) Agricultural exemption certificates may be used only if the purchaser is occupationally engaged in the business of producing food or commodities for human, animal, or poultry consumption for sale or for further use in such production.

Sec. 4.(d) Each of the following items is considered exempt from the sales tax ONLY when the purchaser is occupationally engaged in agricultural production and uses the items directly in direct production of agricultural products.

EXEMPT TRANSACTIONS

... (8) **Containers** used to package farm products for sale.

45 IAC 2.2-5-8 Sales of manufacturing machinery, tools, equipment used in direct production manufacture, fabrication, assembly, or finishing of other tangible personal property

Authority: IC 6-8.1-3-3

Affected: IC 6-2.5

Sec. 8.(a) In general, all purchases of tangible personal property by persons engaged in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property are taxable. The exemption provided by this regulation ((45 IAC 2.2) extends only to manufacturing machinery, tools, and equipment directly used by the purchaser in direct production. It does not apply to material consumed in production or to materials incorporated into tangible personal property produced.

(b) The state gross retail tax does not apply to sales of manufacturing machinery, tools, and equipment to be directly used by the purchaser in the direct production, manufacture, fabrication, assembly, or finishing of tangible personal property.

(e) Storage equipment. Tangible personal property used in or for the purpose of storing raw materials or finished goods is subject to tax except for temporary storage equipment necessary for moving materials being manufactured from one (1) machine to another or from one (1) production step to another.

(1) Temporary storage. Tangible personal property used in or for the purpose of storing work-in-process or semi-finished goods is not subject to tax if the work-in-process or semi-finished goods are ultimately completely produced for resale and in fact resold.

- (2) Storage **containers** for finished goods after completion of the production process are subject to tax.
- (3) Storage facilities or **containers** for materials or items currently undergoing production during the production process are deemed temporary storage facilities and **containers** and are not subject to tax.

-EXAMPLES-

- (3) Finished goods are placed in the packages in which they will be delivered to customers, and the packages are loaded onto storage **pallets** which are used only in a finished goods storage area. The **pallets** are taxable.

45 IAC 2.2-5-16 Wrapping materials and containers

Authority: IC 6-8.1-3-3
 Affected: IC 6-2.5

Sec. 16. (a) The state gross retail tax shall not apply to sales of nonreturnable wrapping materials and empty **containers** to be used by the purchaser as enclosures or **containers** for selling contents to be added, and **returnable containers** containing contents sold in a sale constituting selling at retail and **returnable containers** sold empty for refilling.

(b) In general the gross proceeds from the sale of tangible personal property in a transaction of a retail merchant constituting selling at retail are taxable. This regulation [45 IAC 2.2] provided an exemption for wrapping materials and **containers**.

(c) General rule. The receipt from a sale by a retail merchant of the following types of tangible personal property are exempt from state gross retail tax:

- (1) **Nonreturnable containers** and wrapping materials including steel strap and shipping **pallets** to be used by the purchaser as enclosures for selling tangible personal property.
- (2) Deposits for **returnable containers** received as an incident to a transaction of a retail merchant constituting selling at retail.
- (3) **Returnable containers** sold empty for refilling.
- (d) Application of general rule.

(1) Nonreturnable wrapping material and empty **containers**. To qualify for this exemption, nonreturnable wrapping materials and empty **containers** must be used by the purchaser in the following way:

- (A) The purchaser must add contents to the **containers** purchased; and
- (B) The purchaser must sell the contents added.

(2) **Returnable containers** sold at retail with contents. To qualify for this exemption, the **returnable containers** must be:

- (A) Sold in a taxable transaction of a retail merchant constituting selling at retail; and
- (B) Billed as a separate charge by the retail merchant to his customer. If there is a separate charge for such **containers**, the sale of the **container** is exempt from tax under this regulation [45 IAC 2.2].

(3) **Returnable containers** sold empty. To qualify for this exemption the **returnable container** must be resold with the purpose of refilling. The sale of **returnable containers** to the original or first user thereof is taxable.

(e) Definitions.

(1) **Returnable containers.** As used in this regulation [45 IAC 2.2], the term **returnable container** means **containers** customarily returned by the buyer of the contents for reuse as **containers**.

(2) **Nonreturnable containers.** As used in this regulation [45 IAC 2.2], the term “**nonreturnable containers**” means all **containers** which are not **returnable containers**.

Cases:

General Motors Corp. v. Indiana Dep’t. of State Revenue, 578 N.E.2d 399 ((Ind. Tax 1991)

Indiana Dep’t of State Revenue v. American Dairy of Evansville, 167 Ind. App. 367, 50 Ind. Dec. 317, 338 N.E.2d 698 (1975):

Purchases of wire and plastic milk cases which were used by a dairy as conveyances in delivering its products to purchasers but which were not acquired by the purchasers did not qualify for the exemption under a prior similar provision.

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IOWA

Iowa Code Annotated

Title X – Financial Resources

Subtitle 1. Revenues and Financial Management

Chapter 422. Income, Sales, Services, and Franchise Taxes.

Division IV. Retail Sales Tax

§ 422.43. Tax imposed

1. There is imposed a tax of five percent (5%) upon the gross receipts from all sales of tangible personal property, consisting of goods, wares, or merchandise, except as otherwise provided in this division, sold at retail in the state to consumers or users

§ 422.45. Exemptions

There are hereby specifically exempted from the provisions of this division and from the computation of the amount of tax imposed by it, the following:

19. The gross receipts from the sale of property which is a **container**, label, carton, **pallet**, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing.

*[Plastic bags provided by bottling company to retailers for purpose of returning soft drink beverage **containers** as required by beverage **containers** deposit law were not exempt from use tax as used to package or transport personal property sold at retail. Atlantic Bottling Co. v. Iowa Dept. of Revenue, 385 N.W.2d 565 (1986)].*

Iowa Administrative Code

Revenue and Finance [701]

Chapter 18 – Sales and Use Tax

701 – 18.7(422,423) Containers, including packing cases, shipping cases, wrapping material and similar items. The gross receipts from the sale of **containers**, labels, cartons, **pallets**, packing cases, wrapping paper, twine, bags, bottles, shipping cases, garment hangers, and other similar articles and receptacles sold to retailers or manufacturers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property which is sold either at retail or for resale shall be exempt from the tax.

For the purpose of this rule, wholesalers and jobbers are considered retailers or manufacturers.

18.7(1) *Sales to other than retailers or manufacturers.*

a. **Containers** and all other specified items delivered with tangible personal property which are sold to a final buyer or ultimate consumer shall be exempt from the tax when no

separate charge is made for the **container**. This group including such items as boxes, cartons, **pallets**, paper bags, bottles, shipping cases, wrapping paper and twine. If a separate charge is made for the **container**, the sale of the **container** is subject to the tax. The sale of wrapping paper, paper bags, and like items are subject to the tax when sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it uses to wrap meat for customers to whom meat is sold. The wrapping paper and tape would be exempt from tax as being purchased as a packaging material of tangible personal property sold at retail.

EXAMPLE: A meat locker purchases materials such as wrapping paper and tape which it used to wrap meat for customers who own the meat. The meat locker only performs the service of processing the meat. The wrapping paper and tape are subject to tax as they were not purchased for packaging or for the facilitating of transportation of tangible personal property sold at retail, but were used in the rendering of a service.

b. Packing paper, lining paper, paper used to line boxes and crates, and similar items shall be exempt from the tax if delivered with tangible personal property ultimately sold at retail when no separate charge is made for the paper

18.7(3) Pallets. **Pallets** purchased by manufacturers or retailers which are purchased for the purpose of packaging or facilitating the transportation of tangible personal property ultimately sold at retail shall be exempt from the tax.

701 – 18.44(422,423) Sale or rental of farm machinery and equipment. On or after July 1, 1987, the gross receipts from the sale or rental of farm machinery and equipment will be exempt from tax. Effective July 1, 1996, the gross receipts from the sale of property which is a **container**, label, carton, **pallet**, packing case, wrapping, baling wire, twine, bag, bottle, shipping case or other similar article or receptacle sold for use in agricultural, livestock or dairy production are not subject to sales tax.

18.44(1) Characteristics of and limitations upon farm machinery and equipment. To be eligible for exemption from or refund of tax under this rule the machinery or equipment must:

- a.* Be directly and primarily used in production of agricultural products; and
- b.* Be one of the following:

...(6) Effective July 1, 1996, the gross receipts from the sale of property which is a **container**, label, carton, **pallet**, packing case, wrapping, baling wire, twine, bag, bottle, shipping case, or other similar article or receptacle sold for use in agricultural, livestock or dairy production.

Policy letter; containers; Jan. 24, 2003

Topic Code: C371>Containers (ST)<

Document Reference: 03300007

January 24, 2003

Re: **Shipping containers**, your letter, 12-31-02.

Thank you for your letter and for Deloitte & Touche's continuing confidence in my ability to answer its more difficult questions about Iowa sales and use tax law.

On this occasion, you inquire on behalf of a client which is an Iowa manufacturer. The client buys or constructs **pallets**, drums, and customized **containers** used to transport the product which the client manufactures. Delivery in the **containers** can be by third party common carrier or by the client's own trucks. After the **pallets**, drums, and **containers** are offloaded and the product removed from them, they are returned to your client and reused for another shipment to the same or a different customer.

Your letter asks if your client's purchases of the **pallets** and other shipping **contain[er]s** or its purchases of the materials to construct shipping **containers** are exempt from Iowa sales and use tax. In reply, I would state that its purchases of the shipping **containers** are exempt from Iowa tax but not its purchases of the materials used to construct those **containers**.

Iowa Code, § 422.45(19) exempts from tax:

19. The gross receipts from the sale of property which is a **container**, label, carton, **pallet**, packing case, wrapping paper, twine, bag, bottle, shipping case, or other similar article or receptacle sold to retailers or manufacturers for the purpose of packaging or facilitating the transportation of tangible personal property sold at retail or transferred in association with the maintenance or repair of fabric or clothing. (emphasis added).

The subsection clearly exempts from Iowa tax the gross receipts from sales of shipping **containers** to your client. The requirement that an exempt **container** carry "tangible personal property sold at retail" might be the source of some confusion if the person claiming the exemption is a manufacturer; however, I think department rule **701-18.7** correctly interprets § 422.45(19) and logically explains away this difficulty. The statute does not require that a manufacturer transport the product in the **container** for sale at retail by the manufacturer; it is enough that some purchaser subsequent to the manufacturer will sell the product at retail. The product must be "ultimately" sold at retail (subrule **18.7(3)**). In the hands of a manufacturer or a carrier selected by a manufacturer the product can be transported for resale rather than sale to an ultimate consumer, and the exemption will still apply; see subrule **18.7(1)**.

Conversely, I do not think the phrase "or other similar article" exempts from tax sales of raw materials used by your client to make the **containers**. First, a contrary conclusion would contradict the well-established standard of statutory construction which states that an exemption statute is to be construed strictly against the person claiming the exemption. All rational doubt about its meaning is resolved against exemption and in favor of taxation, ... Secondly, with regard to the exemptions set out in § 422.45, the Legislature has shown that it considers a finished product and the materials which are part of the product to be two different things. See § 422.45(27) which separately exempts "machinery, equipment, and computers" and "materials use[d] to self-construct" those items, thus my conclusion that your client's purchases of the raw materials are not exempt from tax.

In closing, I must issue my usual warning. The opinions which I have expressed in this letter are informal only. Because of this, the Department could, in the future, take a position contrary to them.

Sincerely,
Darwin D. Clipper
Tax Specialist, Policy Section, Compliance Division

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KANSAS

Kansas Statutes Annotated

Chapter 79.--Taxation

Article 36.--Kansas Retailers' Sales Tax

76-3603. Retailers' sales tax imposed; rate. For the privilege of engaging in the business of selling tangible personal property at retail in this state or rendering or furnishing any of the services taxable under this act, there is hereby levied and there shall be collected and paid a tax at the rate of 5.2% on and after July 1, 2004, and before July 1, 2005, ... upon:

(a) The gross receipts received from the sale of tangible personal property at retail within this state;

(h) The gross receipts from the service of renting or leasing of tangible personal property...

79-3602. Definitions. Except as otherwise provided, as used in the Kansas retailers' sales tax act:

(p) "Ingredient or component part" means tangible personal property which is necessary or essential to, and which is actually used in and becomes an integral and material part of tangible personal property or services produced, manufactured or compounded for sale by the producer, manufacturer or compounder in its regular course of business. The following items of tangible personal property are hereby declared to be ingredients or component parts, but the listing of such property shall not be deemed to be exclusive nor shall such listing be construed to be a restriction upon, or an indication of, the type or types of property to be included within the definition of "ingredient or component part" as herein set forth:

(1) **Containers**, labels and shipping cases used in the distribution of property produced, manufactured or compounded for sale which are not to be returned to the producer, manufacturer or compounder for reuse.

(2) **Containers**, labels, shipping cases, paper bags, drinking straws, paper plates, paper cups, twine and wrapping paper used in the distribution and sale of property taxable under the provisions of this act by wholesalers and retailers and which is not to be returned to such wholesaler or retailer for reuse.

79-3606. Exempt sales. The following shall be exempt from the tax imposed by this act:

...(3) For purposes of this subsection, machinery and equipment shall be deemed to be used as an integral or essential part of an integrated production operation when used:

...(H) to package the property being manufactured or processed in a **container** or wrapping in which such property is normally sold or transported;

Kansas Administrative Regulation 92-19-54

92-19-54 Ingredient or component part.

(a) For purchases of tangible personal property to qualify for exemption under K.S.A. 1986 Supp. 79-3606(m) ... the following requirements must be met:

- (1) The tangible personal property shall be essential or necessary to the tangible personal property or service produced, manufactured or compounded;
- (2) the tangible personal property shall be actually used in or on the tangible personal property or service produced, manufactured or compounded;
- (3) the tangible personal property shall become an integral and material part of the tangible personal property or service produced, manufactured or compounded; and
- (4) the tangible personal property must become an ingredient or compound part of tangible personal property or service for ultimate sale at retail.

The identity of the buyer, seller or the item is immaterial. Whether the purchase qualifies for exemption shall be determined by how the item is used in the production or processing activity. An item may be taxable for one use and exempt for another use, even though purchased by the same consumer. Each transaction shall be separately measured against the statutes and regulations to determine the taxability of the transaction.

(b) For the purpose of determining whether tangible personal property is an ingredient or component part of a service, the term "service" refers only to taxable services enumerated under the sales tax act. Each person providing a nontaxable service shall pay sales tax on all articles of tangible personal property and services purchased to provide the nontaxable service, and may not claim an exemption from sales tax.

(c) "Integral and material" means:

- (1) The physical incorporation of two or more parts or elements by chemical or mechanical process in a manufacturing, production or compounding process, the result of which renders a third item or product separate and distinct from the constituent parts or elements; or
- (2) an attachment or part that is so necessary and essential to the final product that, if omitted, would render the final product valueless for its intended purpose.

Except as provided in paragraph (d), tangible personal property that is important to the production process but does not become an integral and material or physical part of the tangible personal property for sale at retail is not exempt from sales tax.

(d) Each **container**, wrapper or other shipping or handling material actually accompanying the product sold is not subject to sales tax.

(e) Each retailer purchasing a **container** or other shipping or handling material for consumption which is not for resale as described in paragraph (d) is subject to sales tax. Each purchase by a retailer of a **container** or other shipping or handling material in which title remains with the retailer when the tangible personal property contained therein is sold by the retailer, or where the **container** or other shipping or handling materials are to be returned to the retailer by the consumer of the tangible personal property, is subject to sales tax.

(f) Each purchase of a **container**, wrapper or other shipping or handling material by a retailer using the **container**, wrapper or other handling material to provide nontaxable services is deemed to be consumed by the service provider and is subject to tax.

(Authorized by K.S.A. 79-3618; implementing K.S.A. 1986 Supp. 79-3602, K.S.A. 1986 Supp. 79-3606 as amended by L. 1987, Ch. 292, Sec. 32, as further amended by L. 1987, Ch. 64, Sec. 1; effective May 1, 1988.)

Cases:

Consumer Coop. Association v. State Commission of Revenue & Taxation, 174 Kan. 461, 256 P.2d 850 (1953)

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KENTUCKY

Kentucky Revised Statutes Title XI – Revenue and Taxation Chapter 139 – Sales and Use Taxes

§139.200 Imposition of sales tax.

For the privilege of making “retail sales” or “sales at retail,” a tax is hereby imposed upon all retailers at the rate of six percent (6%) of the gross receipts of any retailer derived from “retail sales” or “sales at retail” made within this Commonwealth on or after July 1, 1990.

§139.100 “Retail Sale.”

“Retail sale” means any sale, lease, or rental for any purpose other than resale, sublease, or subrent in the regular course of business of tangible personal property.

§139.120 “Sale” – “Lease or rental.”

(1) “Sale” means, the furnishing of any services included in KRS 139.200 and any transfer of title or possession, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any reason whatsoever, of tangible personal property for a consideration

(2) “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration....

§139.470 Exempt transactions.

There are excluded from the computation of the amount of taxes imposed by this chapter:

- ... (2) Gross receipts from the sales of, and the storage, use, or other consumption in this state of:
- (a) **Nonreturnable and returnable containers** when sold without the contents to persons who place the contents in the **container** and sell the contents together with the **container**; and
 - (b) **Returnable containers** when sold with the contents in connection with a retail sale of the contents or when sold for refilling;

As used in this section the term “**returnable containers**” means **containers** of a kind customarily returned by the buyer of the contents for reuse. All other **containers** are “**nonreturnable containers**.”

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

RELATES TO: KRS 139.100, 139.150, 139.470

STATUTORY AUTHORITY: KRS Chapter 13A

NECESSITY, FUNCTION, AND CONFORMITY: 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. 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.

Section 2. 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.

Section 3. 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.

(3) 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, for example, laundries and dry cleaning establishments, are subject to the sales or use tax.

(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.

Cases:

***Ross v. Ale-8-One Bottling Co.*, 536 S.W.2d 465 (Ky. 1976)]**

Soft drink paperboard cartons used by a bottling company to market its beverages were found to be "nonreturnable containers" not subject to use tax.

***Coca-Cola Bottling Works Co. v. Kentucky Dep't of Revenue*, 517 S.W.2d 746 (Ky. 1974):**

*By excluding from computation of sales and use taxes the receipts of sales of **returnable containers** when sold with the contents, this section recognized the delivery of soft drink bottles and **cases** by a soft drink company to its dealers as a “sale” of the **containers** to the dealers.*

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LOUISIANA

Louisiana Revised Statutes

Title 47 – Revenue and Taxation

Subtitle II. Provisions Relating to Taxes Collected and Administered by the Collector of Revenue

Chapter 2 – Sales Tax

R.S. § 47:302. Imposition of Tax

A. There is hereby levied a tax upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property, as defined herein, the levy of said tax to be as follows:

(1) At the rate of two per centum (2%) of the sales price of each item or article of tangible personal property when sold at retail in this state; the tax to be computed on gross sales for the purpose of remitting the amount of tax due the state, and the include each and every retail sale.

(2) At the rate of two per centum (2%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of tax.

[B. Imposition of 2% tax on lease or rental in Louisiana of each item or article of tangible personal property.]

R.S. § 47:305. Exclusions and exemptions for the tax

D.(1) The sale at retail, the use, consumption, the distribution, and the storage to be used or consumed in the taxing jurisdiction of the following tangible personal property is hereby specifically exempted from the tax imposed by taxing authorities, except as otherwise provided in this Paragraph:

(f) Fertilizer and **containers** used for farm products when sold directly to the farmer.

Louisiana Administrative Code

Title 61 – Revenue and Taxation

Chapter 44 – Sales and Use Tax Exemptions

§4401. Various Exemptions from the Tax

A. While the sales tax law imposed by R.S. 47:302, above, is classified as a general sales tax law indicating that it applies broadly across all sales, use, consumption, or lease of tangible personal property as well as to some selected services, the law does provide many exemptions from the taxes imposed by this Chapter.

... D. In addition to exemptions granted for broad categories of property or transactions, R.S. 47:305(D) grants exemption for a limited number of specific items of property. The sale at retail, use, consumption, distribution or the storage to be used or consumed, of ... fertilizer and **containers** used for farm products if they are sold directly to the farmer are specifically exempted by this Subsection.

Cases:

Exxon Corporation v. Schofield, 583 So.2d 1195 (La.App. 1 Cir. 1991)

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MAINE

Maine Revised Statutes Annotated Title 36 – Taxation Part 3 – Sales and Use Tax Chapter 213 – Sales Tax

§ 36-1811. Imposition of tax.

A tax is imposed on the value of all tangible personal property and taxable services sold at retail in this State. The rate of tax is 7% on the value of liquor sold in licensed establishments as defined in Title 28-A ...; 7% on the value of rental of living quarters in any hotel, rooming house or tourist or trailer camp; 10% on the value of rental for a period of less than one year of an automobile; 7% on the value of prepared food; and 5% on the value of all other tangible personal property and taxable services. Value is measured by the sale price, except as otherwise provided.

§ 36-1760. Exemptions.

No tax on sales, storage or use shall be collected upon or in connection with:

12. **Containers.** Sale of **returnable containers** when sold with the contents in connection with a retail sale of the contents or when sold for refilling.

12-A. **Packaging Materials.** Sales of **containers**, boxes, crates ... and other packing, packaging, shipping material to: (A) persons engaged in the business of packing, packaging, shipping and transporting tangible personal property; or (B) persons for use in packing, packaging, and shipping tangible personal property sold by them or on which they have performed the service of cleaning, pressing, dyeing, washing, repairing or reconditioning in their regular course of business that are transferred to the possession of the purchaser of that tangible personal property.

Maine Administrative Code 18 – Department of Finance and Administration 125 Bureau of Taxation Chapter 301 Sales for Resale and Sales of Packaging Materials Summary: Explains exemptions pertaining to sales of resale and sales of packaging materials.

.01 Sales for Resale.

A. General. A sale of tangible personal property for resale (except for resale as a casual sale) is not a taxable transaction. However, the burden of proving that a casual sale of tangible personal property is for resale is upon the person making the sale. The seller will be relieved of this burden of proof only if a resale certificate in accordance with the

provisions of this rule is obtained from the purchaser. Where the sale is to a person who, by reason of being a non-resident of the state not doing business within the state has no seller's registration certificate, the seller should obtain sufficient evidence to sustain the burden of proving the sale is actually for resale. If the purchaser cannot furnish such evidence, the seller should, as a protection, collect the sales tax.

B. [Resale Certificate; Form]

C. Acceptance of Resale Certificate by Seller. The certificate must be taken in good faith from a person engaged in selling tangible personal property who, at the time of purchase, intends to sell the property in the regular course of business or cannot then ascertain whether it will be sold or not.

The good faith of the seller will be questioned if he has knowledge of facts which give rise to a reasonable inference the purchaser does not intend to resell the property, as, for example, knowledge that a purchaser of particular merchandise is not engaged in the business of selling that kind of merchandise.

.02 Packaging Materials.

A. General. Non-taxable sales of packaging materials may be made in substantially the same manner as sales for resale, as explained in Section .01 of this rule. The sale of **containers**, boxes, crates, bags, cores, twines, tapes, bindings, wrappings, labels and other packing, packaging and shipping materials is not subject to tax when sale is to a person for use in packing, packaging and shipping tangible personal property sold by them or upon which they have performed the services of cleaning, pressing, dyeing, washing, repairing or reconditioning in the regular course of business, where such materials are not to be retained in the possession of the purchaser, but are to be transferred in due course to the possession of his customer.

B. [Exemption Certificates; Forms]

.03 Misuse of Resale Certificate.

Purchasers who avoid payment of tax through deliberate misuse of resale certificates will be subject to prosecution.

Maine Revenue Services - Sales, Fuel & Special Tax Division Instructional Bulletin No. 20

“Lease & Rental Transactions in Maine”

“...The Sales and Use Tax Law requires that every lessor engaged in the leasing of tangible personal property located in this State be responsible for the sales/use tax in connection with the leasing of that property. The appropriate application of sales/use tax to any specific lease

transaction will depend upon the terms of the lease. The following information applies to most property and is intended as a guideline for determining the appropriate tax application.

1. Types of Leasing Transactions

a. Straight (True) Lease

In a “straight” or “true” lease, the lessor enters into a lease agreement with a lessee for a stated period of time (including day-to-day, week-to-week, and similar leases) and the property is to be returned to the lessor at the conclusion of the lease term. The lessor is **making a taxable use** of the property through the derivation of rental income in this State. The lessor is therefore liable for a sales/use tax, due at the point that the property enters this State (generally at the beginning of the lease), and based on the purchase price paid by the lessor for the property. If sales tax was not paid directly to the vendor when the property was purchased, the lessor must report the use tax directly to Maine Revenue Services. **No sales tax is charged to the lessee, nor are the lease payments subject to tax.** If the property is returned to the lessor and leased to another Maine customer, no additional use tax is due....”

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MARYLAND

Annotated Code of Maryland Tax-General Title 11 – Sales and Use Tax, §11-101, et seq.

§ 11-102. Imposition of tax.

(a) Sales and use tax imposed. – Except as otherwise provided in this title, a tax is imposed on:

- (1) a retail sale in the State; and
- (2) a use, in the State, of tangible personal property or a taxable service.

[at the rate of 5 cents per dollar].

§ 11-101. Definitions.

(h) *Retail Sale*.-

(1) “Retail Sale” means the sale of: (i) tangible personal property; or (ii) a taxable service....

(i) *Sale*.-

(1) “Sale” means a transaction for a consideration whereby: (i) title or possession of property is transferred or is to be transferred absolutely or conditionally by any means, including by lease, rental, royalty agreement, or grant of a license for use

Subtitle 2. Exemptions.

§11-201. Agricultural purposes and products.

(a) *Agricultural purposes*. – The sales and use tax does not apply to a sale of the following items for an agricultural purpose:

(6) if bought by a farmer:

- (i) a **container** to transport farm products that the farmer raises to market.

Code Of Maryland Regulations (COMAR)

COMAR 03.06.01.15 (2004)

.15 Containers.

A. The resale exclusion includes not only the purchase for resale of the particular products or their components but also the **containers**, cartons, bottles, **pallets**, packing, and their components sold with these products.

B. A vendor may claim the resale exclusion on the purchase of **returnable containers**, provided that the vendor uses them solely to deliver other property for sale. If the vendor makes any use of the **containers** for other purposes, the resale exclusion does not apply.

C. The resale exclusion does not apply to purchases of **containers** which will not be used to package tangible personal property for sale. For example, the tax applies to the purchase of materials used to package an item transferred in a nontaxable service transaction, such as the sale to a dry cleaner of boxes and plastic bags.

D. Except for sales to farmers, the claim for the resale exclusion on purchases of **containers** is made through the issuance of resale certificates. Sales of **containers** to farmers to transport products the farmer raises are expressly exempt and need not be supported with resale certificates.

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MASSACHUSETTS

Massachusetts General Law Annotated

Chapter 64H Tax on Retail Sales of Certain Tangible Personal Property

Section 2. Sales tax; services tax; imposition; rate; payment.

An excise is hereby imposed upon sales at retail in the commonwealth, by any vendor, of tangible personal property or of services performed in the commonwealth at the rate of five percent [5%] of the gross receipts of the vendor from all such sales of such property or services, except as otherwise provided in this chapter. The excise shall be paid by the vendor to the commissioner at the time provided for filing the return required by section sixteen of chapter sixty-two C.

Section 1. Definitions. As used in this chapter, the following words shall have the following meanings: -

“Gross receipts”, the total sales price received by a vendor as a consideration for retail sales.

“Sale” and “selling” include (i) any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property or the performance of services for a consideration, in any manner or by any means whatsoever....

“Sale at retail” or “retail sale”, a sale of services or tangible personal property or both for any purpose other than resale in the regular course of business.

Section 6. Exemptions.

The following sales and the gross receipts therefrom shall be exempt from the tax imposed by this chapter:--

(q) (1) Sales of both **returnable and nonreturnable containers** when sold without the contents together with the **container**; (2) **containers** when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) **returnable containers** when sold with the contents or resold for refilling. As used in this paragraph the term “**returnable containers**” means **containers** of a kind customarily returned by the buyer of the contents for reuse. All other **containers** are “**nonreturnable**” **containers**. Nothing in this paragraph shall be construed so as to tax the sale of bags in which feed for livestock and poultry is contained.

Commonwealth of Massachusetts – Department of Revenue

Technical Information Release 82-5

Sales Taxation of Refuse Container Rentals

“Massachusetts General Laws Chapter 64H, Section 6(ii), as added by Section of Chapter 429 of the Acts of 1982, effective January 16, 1983, exempts from the sales tax rental receipts or charges in connection with service contracts between waste service firms and customers for the use, maintenance and repair of refuse **containers** places on customers’ premises by waste service firms.

“*Prior to January 6, 1983.* Separately stated charges to customers by a waste service firm, however characterized, for the rental of refuse **containers** or bins under a rubbish removal contract are subject to the Massachusetts sales tax. However, if the charge for the rental of a refuse **container** is not separately stated from the charge for services by the waste service firm, such as transportation and dumping, the entire charge is not subject to the tax, if the rental value of the refuse **container** is an inconsequential element of the total charge. The rental value of the **container** will be considered inconsequential if it is less than 10% of the total charge. The rental value will be determined on a case by case basis.

“*On and after January 16, 1983.* Charges to customers by a waste service firm for the rental of refuse **containers** or bins placed on the customers’ premises under a rubbish removal contract for rental periods beginning on or after January 16, 1983 are exempt from the Massachusetts sales tax. A lump-sum charge by a waste service firm for the rental of **containers** and for its services, such as transportation and dumping, is not subject to the tax.

“Purchases of items by a waste service firm which are used to carry out the service contract are taxable. This includes, but is not limited to, the purchase of **container**, trucks used to transport the rubbish and **containers**, and parts, paint or materials used to maintain or repair the **containers**. The waste service firm is the consumer of such items and must pay the sales tax on their purchase.

Joyce Hampers
Commissioner of Revenue
December 16, 1982.”

Letter Ruling 95-9 (July 13, 1995)

“This letter is to inform you that the Commissioner herein rescinds the advice given to (“Taxpayer”) by letter from Francis P. Holland, Chief, Bureau of Sales Excise, dated June 7, 1976.

“The letter stated that ‘the rentals of **returnable containers** in connection with the retail sale of the contents are exempt from Massachusetts sales and use tax, as are the rentals of **containers** which are rented with the contents when the sale of the contents is exempt.’

“That statement was in error as applied to the facts in your case.

“General Laws chapter 64H, § 6(q) states that the following sales and gross receipts therefrom are exempt from the sales tax:

“Sales of ... (2) **containers** when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this chapter; (3) **returnable containers** when sold with the contents or resold for refilling. As used in this paragraph the term ‘**returnable containers**’ means **containers** of a kind customarily returned by the buyer of the contents for reuse.

[citation omitted].

“The Commissioner promulgated Letter Ruling 79-30 on August 31, 1979 which examined facts nearly identical to those of Taxpayer. In that letter ruling, the Commissioner determined that gas cylinders for which a separate rental charge was billed at the end of a month were not **containers** ‘sold with the contents’ under G.L.c.64H, § 6(q)(3).

“The letter ruling concluded that ‘rentals of **returnable** gas cylinders, where the rental fee is based on the number of cylinders in the possession of customers at the end of each month, are not exempt from the Massachusetts sales tax under General Laws chapter 64H, § 6(q)(3).

“To the extent the advice given in the June 7, 1976 letter might be viewed as a ‘ruling’ of the Department of Revenue (a matter which the Commissioner does not concede) the Commissioner of Revenue herein revokes such advice and purported ruling ... and rules instead that [it] is required to collect sales tax on these transactions under the quoted provision on the statute.

“Very truly yours,
Mitchell Adams
Commissioner of Revenue.”

Directive 96-4 **Sales and Use Tax Treatment of Milk Crates, Bread Racks, and Similar Items**

“Facts

“Food and beverage distributors often use **reusable** crates, bread racks, soft drink shells, etc. (“crates” and “racks”) to store and transport packaged food and beverages to retailers. In some cases, the contents of these crates and racks are unloaded by the distributor upon delivery to a retailer so that the crates and racks remain in the exclusive possession of the distributor. In other cases, the crates, racks, and their contents are left with the retailer, occasionally pursuant to a deposit arrangement, to be unloaded as the retailer’s stocks are restocked. These crates and racks are not transferred with their contents to retail customers; the retailer is expected to return the empty crates and racks to the distributor, but distributors may or may not actually attempt to recover unreturned crates and racks.

”Issue

“Are sales by manufacturers of crates and racks to food and beverage distributors for their use in delivering packaged foods and beverages to retailers and for storage exempt from the

Massachusetts sales tax under G.L.c.64H, § 6(q)(1) and from the Massachusetts tax under G.L.c.64I, § 7(b)?

“Is the result the same if these crates and racks are left temporarily with retailers, irrespective of a deposit arrangement?”

“Directive

“Sales of crates and racks by a manufacturer to a distributor, for its exclusive use in delivering packaged foods and beverages to retailers, are not exempt from sales tax under G.L.c.64H, § 6(q)(1) or from use tax under G.L.c.64I, § 7(b).

“Similarly, sales of crates and racks by a manufacturer to a distributor for the storage or conveyance of packaged retail products are not exempt from sales tax under G.L.c.64H, § 6(q)(1) or from use tax under G.L.c.64I, § 7(b) if the crates and racks are left with retailers, irrespective of a deposit arrangement.

“Discussion of Law

“Massachusetts imposes a five percent [5%] sales tax on all sales at retail in the Commonwealth by any vendor of tangible personal property, unless otherwise exempted. G.L.c.64H, § 2. If no sales tax is paid on the purchase of the tangible personal property, a five percent [5%] use tax is imposed on the storage, use, or other consumption of the property in Massachusetts. G.L.c.64I, § 2. Purchases with respect to which sales tax has been collected, or which are exempt from sales tax, are generally exempt from use tax under G.L.c.64I, § 7(a) and (b).

“Sales of both **returnable** and **nonreturnable containers** when sold without the contents [to persons who place the contents in the **container** and sell the contents] together with the **container**’ are expressly exempted from sales tax pursuant to G.L.c.64H, § 6(q)(1).

“That a **container** is **returnable** or **nonreturnable** is in itself insufficient to exempt it from sales tax under G.L.c.64H, § 6(q)(1). There must also ultimately be a subsequent sale of the filled **container**. ‘Sale,’ as the term is used in chapter 64H, includes: ‘any transfer of title or possession, or both, exchange, barter, lease, rental, conditional or otherwise, of tangible personal property ... for a consideration, in any manner or by any means whatsoever.’ G.L.c.64H, § 1.

“Crates and Racks Which Remain in the Exclusive Possession of the Distributor

“Employing the above criteria, crates and racks which remain in the possession of a food or beverage distributor for his exclusive use are not resold. Title to and possession of these crates and racks always remain with the distributor. Accordingly, such crates and racks are not exempt from sales tax under G.L.c.64H, § 6(q)(1) when purchased by a food and beverage distributor.

“Crates and Racks Left with Retailers

“To determine the applicability of a sales and use tax exemption, a review of both the buyer’s basic purpose and the inherent nature of his business often must be undertaken. *Coca Cola Bottling Company of Northampton v. Commissioner of Revenue*, 393 Mass. 726, 729 (1985). *See also Jan Co. Central v. Commissioner of Revenue*, 405 Mass. 686 (1989). A food or beverage distributor buys the crates and racks described above for use in its business specifically

for its own storage, transportation, and delivery of products. That a distributor may leave these crates and racks with a retailer pending the unloading, whether or not pursuant to a deposit arrangement, does not change the fact that the distributor sells food or beverages, but retains ownership of the crates and racks. The incidental transfer to a customer (in this case a retailer) of a crate or rack used primarily for the convenience of the vendor in its business is not within the intended scope of G.L.c.64H, § 6(q)(1). *See Jan Co.* Accordingly, crates and racks which are left with retailers, incidental to the sale of their contents, are not resold. Thus, a distributor's purchase of such crates and racks is not exempt from tax under G.L.c.64H, § 6(q)(1).

“Conclusion

“For the reasons stated above, sales of food and beverage crates, bread racks, soft drink shells, etc. to a food or beverage distributor for its exclusive use for storage, conveyance, etc. of packaged goods are not exempt from sales tax. G.L.c.64H, § 6(q)(1). Additionally, sales of crates and racks to a food and beverage distributor for the storage or conveyance of packaged goods are not exempt from sales tax under G.L.c.64H, § 6(q)(1) if the crates and racks are left with retailers, irrespective of any deposit arrangements.

“In cases where these crates and racks are used by a distributor exclusively, the Commissioner of Revenue will enforce the rule of this Directive with respect to both completed and future sales transactions. However, for reasons of taxpayer notification and proper tax administration, in cases where distributors leave these crates and racks with retailers, the Commissioner will only enforce the rule of this Directive prospectively, beginning with crate and rack sales on or after the date of this Directive.

“Mitchell Adams
Commissioner of Revenue
December 17, 1996.”

Cases:

Jan Co. Central v. Commissioner of Revenue, 405 Mass. 686 (1989)

Coca Cola Bottling Company of Northampton v. Commissioner of Revenue, 393 Mass. 726, 729 (1985)

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MICHIGAN

Michigan Compiled Laws Service

Chapter 205 – Taxation

General Sales Tax Act - §§205.51 to 205.78

§ 205.52. Sales tax imposed; rate; separate books for business of making sales at retail; penalty; tax as personal obligation of taxpayer.

Sec. 2. (1) Except as provided in section 2a, there is levied upon and there shall be collected from all persons engaged in the business of making sales at retail, as defined in section 1, an annual tax for the privilege of engaging in that business equal to 6% of the gross proceeds of the business, plus the penalty and interest if applicable as provided by law, less deductions allowed by this act.

§ 205.51. Definitions; etc.

Sec. 1. (1) As used in this act:

(b) “Sale at retail” or “retail sale” means a sale, lease, or rental of tangible personal property for any purpose other than for resale, sublease, or subrent.

(c) “Gross proceeds” means sales price.

(d) “Sales price” means the total amount of consideration, including cash, credit, property, and services, for which tangible personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise, and applies to the measure subject to sale tax. * * *

§ 205.54 et seq. Sales excluded from gross proceeds

§ 205.54t. Industrial processing equipment; exemption.

Sec. 4t. (1) A person subject to the tax under this act may exclude from the gross proceeds used for the computation of the tax the sale of tangible personal property to the following after March 30, 1999, subject to subsection (2):

(a) An industrial processor for use or consumption in industrial processing.

...

(4) Property that is eligible for an industrial processing exemption includes the following:

... (f) Machinery, equipment, or materials used within a plant site or between plant sites operated by the same person for movement to tangible personal property in the process of production.

...

(5) Property that is not eligible for an industrial processing exemption includes the following:

...(j) **Returnable shipping containers** or materials, except as provided in subsection 4(f).

(7) As used in this section:

...(b) “Industrial processor” means a person who performs the activity of converting or conditioning tangible personal property for ultimate sale at retail or use in the manufacturing of a product to be ultimately sold at retail.

Michigan Department Of Treasury -- Bureau Of Revenue General and Specific Sales and Use Tax Rules

R 205.68 Containers, cartons, and wrapping materials.

Rule 18. (1) “**Containers**” means the articles and devices in which tangible personal property is placed for shipment and delivery, such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, tote boxes, **pallets**, racks, bottles, drums, carboys, cartons, sacks, and materials from which such **containers** are manufactured.

(2) Sales of **containers** to persons regularly engaged in rendering a service are taxable.

(3) Sales of **containers** to persons for resale are exempt. If a separate charge is made for the sale of a **container** to a person, other than for resale, the receipts from the sales are taxable.

(4) Sales of **containers** to a person, such as a manufacturer, wholesaler, jobber, or retailer, who uses the **containers** to ship or deliver goods, and who retains the ownership or legal right of possession of the **containers**, are taxable.

(5) Sales or purchases, for a single use only, of bracings, blocking, skidding, shoring, and other materials, commonly known as “dunnage,” are taxable when used in the shipment of a product to a customer.

(6) Deposits on a **returnable container** for a beverage, or the deposit on a carton or case which is used for **returnable beverage containers**, are not taxable when sold in conjunction with a sale of a beverage.

R 205.132 Rentals.

Rule 82. (1) A person engaged in the business of renting or leasing tangible personal property to others shall pay the Michigan sales or use tax at the time he purchases tangible personal property, or he may report and pay use tax on the rental receipts from the rental thereof. A person remitting tax on the purchase price as a purchaser-consumer or remitting tax on rental receipts as a lessor, shall follow 1 or the other methods of remitting for his entire business operation. A person remitting tax on rental receipts shall be the holder of a sales tax license, or a

registration as is provided in the use tax act. Each month such lessor shall compute and pay use taxes on the total rentals charged.

* * * *

REVENUE ADMINISTRATIVE BULLETIN 2000-4 (Approved: June 13, 2000)
SALES AND USE TAX – INDUSTRIAL PROCESSING

RAB-2000 – 4. This Revenue Administrative Bulletin (RAB) describe the industrial processing exemption allowed under the Sales and Use Tax Acts.

* * *

ISSUES

V. What property is eligible for an industrial processing exemption?

VI. What property is **not** eligible for an industrial processing exemption?

* * *

VI. Property that is **not** eligible for an industrial processing exemption includes the following:

(10) **Returnable shipping containers** or materials, except when used within a plant site or between plant sites operated by the same person for movement of tangible personal property in the process of production.

The definition for **containers** is found in Departmental rules and means:

[T]he article and devices in which tangible personal property is placed for shipment and delivery, such wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, tote boxes, **pallets**, racks, bottles, drums, carboys, cartons, sacks, and materials from which such **containers** are manufactured.

Example 36

An industrial processor used **containers** for shipment of in-process parts from one of its plant sites to another of its plant sites. These **containers**, when used in in-process storage, or movement within or between plant sites operated by the same person, are exempt under industrial processing. This includes “dunnage” which is defined in Departmental rules as being “... for a single use only, of bracing, blocking, skidding, shoring, and other materials, ...” However, dunnage, when used in shipment of a product to a customer, is taxable.

Example 37

Containers such as **pallets** and barrels which are used to ship a product and then returned to the industrial processor for reuse are taxable. An industrial processor uses **pallets** 40% of

the time in the plant in movement of in-process materials. The remaining 60% of the time the **pallets** are used in shipping the finished product to its customers. The **pallets** would qualify for a 40% industrial processing exemption.

Cases:

Goebel Brewing Co. v. Brown, 306 Mich. 222, 10 N.W.2d 835 (1943)

Consolidated Paper Co. v. Nims, 306 Mich. 216, 10 N.W.2d 833 (1943)

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MINNESOTA

Minnesota Statutes Annotated Chapter 297A General Sales and Use Taxes

297A.62 Sales tax imposed; rates.

Subdivision 1. Generally. Except as otherwise provided in subdivision 2 or 3 or in this chapter, a sales tax of 6.5 percent is imposed on the gross receipts from retail sales as defined in section 297A.61, subdivision 4, made in this state or to a destination in this state by a person who is required to have or voluntarily obtains a permit under section 297A.83, subdivision 1.

297A.61 Definitions.

Subdivision 3. Sale and purchase. (a) “Sale” and “purchase” include, but are not limited to, each of the transactions listed in this subdivision.

(b) Sale and purchase include:

(1) any transfer of title or possession, or both, of tangible personal property, whether absolutely or conditionally, for a consideration in money or by exchange or barter; and

(2) the leasing or granting of a license to use or consume, for a consideration in money or by exchange or barter, tangible personal property, other than a manufactured home used for residential purposes for a continuous period of 30 days or more.

Subdivision 4. Retail sale. (a) A “retail sale” means any sale, lease, or rental for any purpose, other than resale, sublease, or subrent of items by the purchaser in the normal course of business as defined in subdivision 21.

297A.68 Business exemptions.

Subdivision 1. Scope. The gross receipts from the sale of, and storage, distribution, use, or consumption of the items contained in this section are specifically exempted from the taxes imposed by this chapter.

Subd. 2. Materials consumed in industrial production. (a) Materials stored, used, or consumed in industrial production of personal property intended to be sold ultimately at retail are exempt, whether or not the item so used becomes an ingredient or constituent part of the property produced. Materials that qualify for this exemption include, but are not limited to, the following:

... (5) packaging materials, including **returnable containers** used in packaging food and beverage products;

297A.69 Agricultural exemptions.

Subdivision 1. Scope. The gross receipts from the sale of, and storage, distribution, use, or consumption of the items contained in this section are specifically exempted from the taxes imposed by this chapter.

Subd. 2. Materials consumed in agricultural production. Materials stored, used, or consumed in agricultural production of personal property intended to be sold ultimately at retail are exempt, whether or not the item becomes an ingredient or constituent part of the property produced. Materials that qualify for this exemption include, but are not limited to, the following:

... (7) packaging materials, including **returnable containers** used in packaging food and beverage products.

Minnesota Administrative Rules Department of Revenue – Sales and Use Taxes

8130.0400 Leases.

Subpart 1. General rule; examples. Any item which is taxable if sold is also taxable if leased. If an item is contracted for lease in Minnesota and physical possession of the item by the lessee occurs in Minnesota, a taxable transaction has occurred even if the lessee removes the property from the state for personal use. However, leased property which will be used in a trade or business outside Minnesota by the lessee without any intermediate use in Minnesota, and which will not be returned to Minnesota except in the course of interstate commerce, is exempt from tax.

All payments made pursuant to leases of tangible personal property, including mobile equipment such as motor vehicles, trailers, and contractor's equipment, constitute sales made in Minnesota if such property is either garaged or principally used, including use thereof in interstate commerce for delivery or other temporary purpose outside, by the lessee at or from a Minnesota situs of the lessee * * * *

8130.5500 Agricultural and Industrial Production.

Subpart 1. Agricultural and industrial production. There is a sales and use tax exemption for materials used or consumed in agricultural or industrial production of personal property intended to be sold ultimately at retail. This exemption is found in Minnesota Statutes, section [297A.68 and 69]. The provisions of this part apply to those persons engaged in agricultural or industrial production.

Subpart. 6. Packaging materials. Sales of materials to persons engaged in agricultural or industrial production for use in packaging, shipping, or delivering tangible personal property produced or manufactured by them are exempt. Packaging material includes **nonreturnable containers**, but does not include **returnable containers** except as otherwise specified in this subpart.

Packaging materials do not include **reusable containers, reusable pallets, or other reusable materials** that are used to ship tangible personal property between production facilities, or for handling, storing, or moving materials within the confines of business premises. “**Container**” means the articles in which tangible personal property is placed for shipment and delivery, such as cartons, cans, and bags. **Container** does not include items that are used primarily to facilitate loading, unloading, handling, transportation, or storage of products, such as bakery delivery carts, bread trays, milk carts, and milk crates.

Items A to M govern the tax status of specific packaging materials and **containers**.

A. Price tags, shipping tags and address labels, packing slip envelopes, invoices, and advertising matter to be used in connection with the sale of property or to be enclosed with property sold are not packaging materials.

B. Labels that are used to identify the contents of a package are exempt. For example, a grocery store is engaged in production when it cuts and wraps meat or produce. The content labels that are used on the meat or produce are not taxable because they are packaging material. Price labels that do not contain any content information are not packaging materials and are taxable.

C. **Returnable containers** constitute equipment and generally are not within the scope of the exemption provided under Minnesota Statutes, section 297A. However, purchases of **returnable containers** for use in packaging food and beverage products are within the exemption by specific statutory authorization. *See Minnesota Statutes, section 297A.*

D. **Returnable containers** are designed and ordinarily used for more than one-time use as **containers**. They are customarily expected or required to be returned by customers to the vendor of the contents for reuse. Vendors commonly require a deposit or payment by the customer with the understanding that the amount of the deposit will be refunded either in cash or in credit when the **container** is returned to the vendor. Regardless of the condition or appearance of the **container**, it is a **returnable container** if the vendor requires a deposit or payment from the customer and if there is an express or implied agreement that the deposit will be refunded upon return of the **container**.

E. Deposits that are charged to customers as security for the return of **containers** are not subject to tax if separately stated on the invoice or billing.

F. Purchases of materials used to repair or recondition taxable **returnable containers** by the owners of those **containers** are taxable.

G. **Nonreturnable containers** are considered packaging material. The sale of **nonreturnable containers** used to package an article of tangible personal property for sale is exempt.

H. Internal packaging materials are those used inside of packages and **containers** in order to shape, form, preserve, stabilize, or protect the contents. All internal packaging materials purchased for use in packaging food and beverage products are exempt.

I. If the internal packaging materials are not being used to package food and beverage products, then the taxability of those packaging materials depends on whether they are **returnable** to the vendor. If the materials are **returnable**, then they are treated as machinery or equipment and are taxable. If the materials are **not returnable**, then they are not taxable.

J. External packaging materials are those used under, outside of, and among packages and **containers** to protect, brace, pad, or cushion the packages or **containers** against damage, motion, shock, or breakage while being shipped. These materials are commonly known as dunnage and are exempt when purchased for use in industrial or agricultural production of tangible personal property and used to ship products to customers. However, sales of these same items to vendors of transportation services are taxable unless otherwise exempted.... If the external packaging materials are not being used to package food and beverage products, then the taxability of those packaging materials depends on whether they are **returnable** to the vendor. If the materials are **returnable**, they are equipment and are taxable. If the external packaging materials are **not returnable**, they are not taxable.

K. External packaging materials do not include items that are used primarily to facilitate loading, unloading, handling, transportation, or storage of products, such as bakery delivery carts, bread trays, milk carts, and milk crates.

L. The taxability of skids and **pallets** depends on whether they are **returnable** to the vendor. The rules that apply to **containers**, under items C to G, and to external packaging, under items J and K, also apply to skids and **pallets**. If the skids and **pallets** are **returnable**, they are equipment and taxable. If the **pallets** and skids are **not returnable**, they are not taxable.

M. Sales of packaging materials, such as bags, wrapping paper, boxes, and clothes hangers, to vendors of services are not exempt under Minnesota Statutes.... Meat locker operators are vendors of services when they cut meat furnished by their customers into smaller pieces, which they wrap and place in cold storage for the customers' convenience. Sales of wrapping paper, tape, and other materials to vendors for this purpose are taxable. However, meat locker operators who also make retail sales as well as cutting meat furnished by their customers may purchase wrapping materials exempt for resale and report and pay use tax on the portion of the wrapping materials used in performing the cutting service.

Minnesota – Revenue Agricultural Production (Sales Tax Fact Sheet #100)

Agricultural production includes the following activities *when they result in a product that will ultimately be sold at retail*:

- Agriculture – cultivating soil; planting, raising and harvesting crops; rearing, feeding and managing animals

- Aquaculture – cultivating plants and animals in water, including hydroponics and fish farms * * *
- Horticulture – cultivating fruits, vegetables and plants

* * *

Agricultural production *does not* include processing agricultural products at places such as co-ops, grain elevators, dairies or meat packers, or raising animals for your own use.

* * *

Materials consumed in production

Persons in the business of agricultural production may buy some items without paying tax. This applies to items used or consumed in the production process, whether or not they become part of the product produced.

* * *

Packaging materials -

Nonreturnable packaging materials (berry boxes, egg cartons, paper bags) are not taxable.

Returnable containers, such as milk cans, used to package food products are not taxable.

Returnable containers used to package non-food items are taxable.

Minnesota – Revenue Industrial Production (Sales Tax Fact Sheet #145)

This fact sheet explains how Minnesota sales and use tax applies to businesses involved in industrial production and also how to report and pay sales and use tax.

Businesses must pay tax on administrative supplies, most machinery, accessories, furniture, fixtures, and other items used to produce a product. However, materials used or consumed to produce products for sale are exempt from sales tax.

To be eligible for this exemption, the business must produce tangible personal property intended to be sold ultimately at retail. Industrial producers include manufacturers, fabricators, miners and refiners.

* * *

Packaging Materials

Nonreturnable materials used to package products can be purchased exempt. **Returnable containers** are taxable, except when used to package food and beverages.

Examples of exempt packaging include:

Nonreturnable pallets and skids

Nonreturnable external packaging materials or dunnage which protect, braces, pads or cushions against damage, motion, shock or breakage, such as cartons, **containers**, cans, boxes and bags

Packaging for food and beverage products, materials used to repair or recondition **returnable** food and beverage **containers**; and **returnable packaging** for food and beverage products

Examples of taxable packaging:

Returnable containers such as steel drums, barrels, bottles, gas cylinders, boxes, tanks, sacks, cans (*except when used to package food and beverage*)

Returnable skids and pallets including raw materials purchased to construct, repair or reconditions them....

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MISSISSIPPI

West's Annotated Mississippi Code Title 27 – Taxation and Finance Chapter 65 – Sales Tax

Sec. 27-65-13. Privilege tax assessed.

There is hereby levied and assessed, and shall be collected, privilege taxes for the privilege of engaging or continuing in business or doing business within this state to be determined by the application of rates against gross proceeds of sales or gross income or values, as the case may be, as provided in the following sections.

Sec. 27-65-3. Definitions.

The words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them herein.

(f) “Sale” or “sales” includes the barter or exchange of property as well as the sale thereof for money or other consideration, and every closed transaction by which the title to taxable property passes shall constitute a taxable event.

(i) “Gross income” means the total charges for service or the total receipts (actual or accrued) derived from trades, business or commerce by reason of the investment of capital in the business engaged in, including the sale or rental of tangible personal property, compensation for labor and services performed, and including the receipts from the sales of property retained as toll, without any deduction for rebates, cost of property sold, cost of materials used, labor costs, interest paid, losses or expense whatever.

Sec. 27-65-5. “Wholesaler” and “wholesale sales” defined

“Wholesaler,” “jobber” or “distributor” means a person doing a regularly organized wholesale or jobbing business, known to the trade as such, and selling to licensed retail dealers or other wholesalers for resale in the regular course of business. This classification has no bearing on rates of tax due under this chapter, each sale or part of sales being taxable or exempt depending upon the class in which it falls.

“Wholesale sales” shall apply to:

... (3) A sale of boxes, crates, cartons, cans, bottles and other packaging materials to a retailer or retail custom processor for use as a **container** to accompany goods and services sold by said retailer or custom processor where possession thereof shall pass to the customer at the time of the sales of the goods contained therein.

Sec. 27-65-7. Definitions; “Retailer”; “Retail sales”.

“Retailer” shall apply to a person making retail sales through vending machines, by maintaining a store, or operating as a transient vendor, or renting or leasing tangible personal property.

“Retail sales” shall mean and include all sales of tangible personal property except those defined herein as wholesale and those made to a wholesaler, jobber, manufacturer or customer processor for resale or for further processing.

Sec. 27-65-101. Industrial exemptions

(1) The exemptions from the provisions of this chapter which are of an industrial nature or which are more properly classified as industrial exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by the provisions of the Constitution of the U.S. or the State of Mississippi. No industrial exemption as now provided by any other section except Section 57-3-33 shall be valid as against the tax herein levied. Any subsequent industrial exemption from the tax levied hereunder shall be provided by amendment to this section.

The tax levied by this chapter shall not apply to the following:

(a) Sales of boxes, crates, cartons, cans, bottles and other packaging materials to manufacturers and wholesalers for use as **containers** or shipping materials to accompany goods sold by said manufacturers or wholesalers where possession thereof will pass to the customer at the time of sale of the goods contained therein and sales to anyone of **containers** or shipping materials for use in ships engaged in international commerce.

Sec. 27-65-103. Agricultural exemptions.

The exemptions from the provisions of this chapter which are of an agricultural nature or which are more properly classified as agricultural exemptions than any other exemption classification of this chapter shall be confined to those persons or property exempted by this section or by the provisions of the Constitution of the U.S. or the State of Mississippi. No agricultural exemption as now provided by any other section except Section 57-3-33 shall be valid as against the tax herein levied. Any subsequent agricultural exemption from the tax levied hereunder shall be provided by amendment to this section.

The tax levied by this chapter shall not apply to the following:

(a) The gross proceeds of sales of lint cotton, seed cotton, baled cotton, whether compressed or not, and cottonseed and soybeans in their original condition. Retail sales of seeds, livestock feed, poultry feed, fish feed and fertilizers. Sales of defoliants, insecticides, fungicides, herbicides and baby chicks used in growing agricultural products for market. Bagging and ties for baling cotton, hay baling wire and twine, boxes, bags and cans used in growing or preparing agricultural products for market when possession thereof will pass to the customer at the time of sale of the product contained therein. Sales of ice to commercial

fishermen purchased for use in the preservation of seafood or to producers for use in the refrigeration of vegetables for market.

**Mississippi State Tax Commission
Sales and Use Tax Rules**

Rule 4. Wholesale Sales.

“Wholesale sales” shall apply to:

(3) A sale of boxes, crates, cartons, cans, bottles and other packaging materials to a retailer or retail custom processor for use as a **container** to accompany goods or services sold by said retailer or custom processor where possession thereof will pass to the customer at the time of sale of the goods or services contained therein.

**Mississippi State Tax Commission
Letter Ruling LR 05-106**

November 28, 2005

RE: Request for Information
File No. LR 05-106

Dear Mr. xxxx:

This is in response to your request of October 24, 2005, for information on the sales tax treatment of rental of **reusable/returnable containers**. Your request has been assigned the file number listed above. Please use this number in any further correspondence with the Tax Commission concerning this request.

You stated that [Company] rents plastic **reusable and returnable containers** (crates) to farmers/growers. The farmer loads his produce into the crates and ships the loaded crates to the retailer. The produce is displayed for sale by the retailer in the same crate. The empty crates are picked up by [Company], sanitized and sent out to be rented again. You are requesting a ruling on the taxability of the rental of the **containers** to the farmers/growers.

Section 27-65-103(a), Mississippi Code of 1972, provides an exemption from sales tax for boxes, bags and cans used in growing or preparing agricultural products for market when possession thereof will pass to the customer at the time of sale of the product contained therein. The rental of **containers** to farmers/growers for packaging of agricultural products is exempt when the possession of the **containers** passes to the customer or in this case the retailer of the agricultural products.

This letter ruling is based on the specific facts and circumstances that you communicated to the Tax Commission. This ruling is not binding on the Commission if these facts and circumstances are inaccurate, contain a material omission of a relevant fact or facts to the issue(s) presented or if such facts and circumstances change. This letter ruling is also only valid for seven (7) years from the date of this letter. At the end of this seven (7) year period, you are free to update your information and request and request another letter ruling if you wish. This ruling is only applicable to you or to your client if you are requesting this ruling on behalf of another and can only be relied upon by the person for whom the ruling was requested.

If the facts and circumstances presented in your request are accurate, complete and do not change for the seven (7) year period indicated above, the person for whom it was requested can rely upon this ruling unless and until there is a change in the law or regulation or the issuance of judicial decision that indicates that the ruling is no longer correct or the Commission retracts the ruling. The Commission does reserve the right to retract this ruling if it later determines on its own review that the ruling is wrong. Such a retraction would be in writing and the effect of the retraction would be prospective from the date of retraction letter.

I trust this is the information you have requested. Please feel free to contact this office should you need additional information.

Sincerely,

Greg Duke, Deputy Director
Sales and Use Tax Bureau

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MISSOURI

Vernon's Annotated Missouri Statutes Title X – Taxation and Revenue Chapter 144 - Sales and Use Tax

§ 144.020. Imposition of tax; rate

1. A tax is hereby levied and imposed upon all sellers for the privilege of engaging in the business of selling tangible personal property or rendering taxable service at retail in this state....

(1) Upon every retail sale in this state of tangible personal property, a tax equivalent to four percent [4%] of the purchase price paid or charged...;

... (8) A tax equivalent to four percent [4%] of the amount paid or charged for rental or lease of tangible personal property, provided that if the lessor or renter of any tangible personal property had previously purchased the property under the conditions of "sale at retail" as defined in subdivision (8) of section 144.010 or leased or rented the property and the tax was paid at the time of purchase, lease or rental, the lessor, sublessor, renter or subrenter shall not apply or collect the tax on the subsequent lease, sublease, rental or subrental receipts from that property.

§ 144.010. Definitions.

1. The following words, terms, and phrases when used in sections 144.010 to 144.525 have the meanings ascribed to them in this section, except when the context indicates a different meaning:

(3) "Gross receipts", except as provided in section 144.012, means the total amount of the sale price of the sales at retail including any services other than charges incident to the extension of credit that are a part of such sales made by the businesses herein referred to, capable of being valued in money, whether received in money or otherwise; For the purposes of sections 144.010 to 144.525 the total amount of the sale price above mentioned shall be deemed to be the amount received. It shall also include the lease or rental consideration where the right to continuous possession or use of any article of tangible personal property is granted under a lease or contract and such transfer of possession would be taxable if outright sale were made and, in such cases, the same shall be taxable as if outright sale were made and considered as a sale of such article, and the tax shall be computed and paid by the lessee upon the rentals paid;

(9) "Sale" or "sales" includes installment and credit sales, and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale, and means any transfer, exchange or barter, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property for valuable consideration and the rendering, furnishing or selling for a valuable consideration any of the substances, things and services herein designated and defined as taxable under the terms of sections 144.010 to 144.525;

(11) “Seller” means a person selling or furnishing tangible personal property or rendering services, on the receipts from which a tax is imposed pursuant to section 144.020.

§ 144.011.1 Sale at retail not to include certain transfers.

1. For purposes of sections 144.010 to 144.525 and 144.060 to 144.748, and the taxes imposed thereby, the definition of “retail sale” or “sale at retail” shall not be construed to include any of the following:

... (9) The transfer of **reusable containers** used in connection with the sale of tangible personal property contained therein for which a deposit is required and refunded upon return....

Missouri Code of State Regulations 12 CSR 10-3– Department of Revenue

12 CSR 10-3.196. Nonreturnable Containers

*PURPOSE: This rule interprets the sales tax law as it applies to **nonreturnable containers** and interprets and applies section 144.011(9), RSMo.*

(1) Sales of **nonreturnable containers** to persons who use them to package tangible personal property so that the **containers** become part of the products ultimately sold are sales for resale. The buyer of this type of **container** may give a sale for resale exemption certificate for the **containers** which s/he purchases. Thus, a seller, who sells **nonreturnable containers** to a person who has delivered a sale for resale certificate and uses the **containers** in packaging goods which are then sold to consumers, may deduct the receipts from his/her sales.

(2) Example: The sale of disposable bottles to a bottler for use in bottling beverages is a sale for resale and is not subject to the sales tax.

(3) Also, a retail sale does not encompass the purchase, by persons operating eating or food service establishments, of items of a nonreusable nature which are furnished to the customers of those establishments with or in conjunction with the retail sales of their food or beverage. This exemption includes, but is not limited, wrapping or packaging materials and nonreusable paper, wood, plastic and aluminum articles such as **containers**, trays, napkins, dishes, silverware, cups, bags, boxes, straws, sticks and toothpicks.

12 CSR 10-3.198 Returnable Containers

*PURPOSE: This rule interprets the sales tax law as it applies to **returnable containers** and interprets and applies sections 144.010 and 144.011(9), RSMo.*

(1) No sales tax is due on the sale of **reusable containers** for which a deposit is required and refunded on return. The term encompasses returnable bottles for beverages and **returnable soft drink cases**.

12 CSR 10-3.200 Wrapping Materials

(Rescinded September 30, 2001)

12 CSR 10-3.202 Pallets

(Rescinded September 30, 2001)

12 CSR 10-3.208 Crates and Cartons

(Rescinded September 30, 2001)

12 CSR 10-103.700 Packaging and Shipping Materials

*PURPOSE: Section 144.010.1(10), RSMo excludes from tax, purchases that are intended to be resold as tangible personal property. Section 144.030.2(2), RSMo exempts materials that become a component part of new personal property. Section 144.011.1(10), RSMo excludes from tax certain items of a **non-reusable** nature purchased by eating or food service establishments. This rule explains when purchases of packaging and shipping materials are not subject to tax.*

(1) In general, purchases of packaging and shipping materials included with, or used to deliver, a product for ultimate sale at retail are not subject to tax. Purchases of **nonreusable** items by eating or food service establishments are not subject to tax.

(2) Definition of Terms.

(A) Packaging and shipping materials – **containers, pallets**, drums and other items used to ship merchandise to customers. It also includes supplies used in shipping, such as tape, strapping, plastic peanuts, foam, cardboard pads, packaging slips, etc. Finally, packaging encompasses integral parts of the finished product such as display cartons and packaging containing the product, e.g., cereal box, and shipping **containers**.

(3) Basic Application of Tax.

(A) The purchase of packaging and shipping materials are taxable if:

1. The packaging is used solely “in house” by the seller and is not subsequently transferred to a purchaser;
2. The packaging material must be returned to the seller and the customer does not acquire title to, ownership of or the right to use the packaging material;
3. The packaging is transferred incidental to the rendering of a non-taxable service, such as with the sale of custom software or color separations; or
4. The packaging is used to ship items that are being transferred as gifts or free samples.

(B) [omitted].

(4) Examples.

(A) A retailer packages its goods to be shipped to its customers. The packaging and shipping items include boxes, **pallets**, metal banding, cardboard pads, etc. The customer is not

required to return any of these items. The retailer does not owe tax on its purchase of these items.

(B) A distributor separately purchases boxes to store its merchandise in its warehouse. These boxes are not subsequently used for shipments to its customers. The purchase of these boxes is subject to tax.

(C) A grocery store purchases bags that its customers use to carry out their groceries. The grocery store may purchase these bags exempt from tax.

(D) A taxpayer purchases or leases **pallets** that will be used to ship merchandise to its customers. The customer is required to return the **pallet** and never acquires title to, ownership of or the right to use them. The purchase or lease of the **pallets** is taxable.

(E) A taxpayer purchases or leases **pallets** that will be used to ship merchandise to its customers. The customer is required to return the **pallet**, but does have the right to use the **pallet** until it is returned. If there is consideration paid for the use of the **pallet**, the purchase or lease of the **pallets** is not taxable.

(F) A dry cleaner purchases plastic bags used to protect clothes after cleaning. Because the dry cleaning is not a sale at retail, the dry cleaner must pay tax on the purchases of the bags.

Cases:

Brambles Industries, Inc. d/b/a Chep USA v. Director of Revenue, 981 S.W.2d 568 (Mo. en banc 1998), the Court held that leases of **packaging materials** are excluded from sales tax when the **packaging material** is leased for the purpose of transferring the right to use the **packaging material** to a subsequent purchaser for valuable consideration.

House of Lloyd, Inc. v. Director of Revenue, 884 S.W.2d 271 (Mo. 1994)

Kaiser Aluminum & Chemical Corp v. Director of Revenue, Case No. RS-82-0068 (A.H.C.) 10/28/93)

Rival Manufacturing Co. v. Director of Revenue, Case No. RS-81-0522 (A.H.C. 6/4/83)

King v. National Super Markets, Inc., 653 S.W.2d 220 (Mo. banc 1983)

Floyd Charcoal Co. v. Director of Revenue, 599 S.W.2d 173 (1980)

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MONTANA

Note: Sales and Use Tax is imposed only on campgrounds and rental vehicles, not on pallets, containers or similar items.

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NEBRASKA

Revised Statutes of Nebraska Annotated Chapter 77 – Revenue and Taxation

§77-2703. Sales and use tax; rate; collection; understatement; violation; penalty; interest.

(1) There is hereby imposed a tax at the rate provided in section 77-2701.02 upon the gross receipts from all sales of tangible personal property sold at retail in this state....

§77-2701.16. Gross receipts, defined.

(7) Gross receipts means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers.

§77-2701.18. Lease or rental, defined.

(1) Lease or rental means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend

(4) This definition shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other provisions of federal, state, or local law.

§77-2701.31. Retail sale or sale at retail, defined.

Retail sale or sale at retail means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

§77.2704.47. Containers; Exemption.

Sales and use taxes shall not be imposed on the sale, lease or rental of and the storage, use or other consumption in Nebraska of:

(1) **Nonreturnable containers** when sold without contents to persons who place contents in the **container** and sell the contents together with the **container**;

(2) **Containers** when sold with the contents if the sales price of the contents is not required to be included in tax computation;

(3) **Returnable containers** when sold with contents in connection with a retail sale or when resold for refilling.

For purposes of this section, **returnable containers** mean **containers** of a kind customarily returned by the buyer of the contents for reuse. All other **containers** are **nonreturnable containers**.

Rules and Regulations – Nebraska Department of Revenue

REG-1-012 EXEMPTIONS

012.02D Transactions exempt because of the purchaser's intended use of the property. The consumer's use tax is due on these items if they are used in a manner other than originally intended. Included in this group are sales of:

012.02D(10) **Nonreturnable containers** when sold empty for resale with the contents, (Reg-1-043, **Containers**);

012.02D(11) **Returnable containers** when sold with the contents, or when returned for refilling, (Reg-1-043, **Containers**);

012.02D(12) All **containers** when the contents are exempt, (Reg-1-043, **Containers**).

REG-1-043 CONTAINERS

043.01 **Container** means the materials used to contain, cover, wrap, or package a product for sale, shipment, or delivery. **Container** includes boxes, bottles, cans, bags, sacks, and wrapping materials, such as paper, tape, string, and labels.

043.02 **Containers** are either **returnable containers** or **nonreturnable containers**.

043.02A **Returnable container** means a **reusable container** that is normally returned to the seller by the buyer of the contents of the **container**. A **returnable container** includes any **container** on which there is a deposit that is refunded to the purchaser of the contents when the **container** is returned.

043.02B **Nonreturnable containers** are all **containers** that are not **returnable containers**.

043.03 **Returnable containers** are taxable when sold or rented to the person who will place the contents in the **container**.

043.03A The collecting or refunding of deposits on **returnable containers** is exempt.

043.04 Empty **nonreturnable containers** are exempt if purchased by a person who will fill the **container** and sell the contents and the **container** together.

043.04A **Empty nonreturnable containers** are taxed if purchased by a person who will not sell the contents or will remove the contents from the **container** before sale.

043.05 Any charge for a **container**, for wrapping an item, or filling a **container**, is taxable, except if the contents are sold at the same time and the contents are exempt, the charge is exempt.

043.05A The person charging for the **container**, for wrapping, or for filling may purchase the **container** or the materials used for resale.

Cases:

Pepsi Cola Bottling Co. v. Peters, 189 Neb. 271, 202 N.W.2d 582 (1972)

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NEVADA

Michie's Nevada Revised Statutes Annotated Title 32 – Revenue and Taxation Chapter 372. Sales and Use Taxes

372.105. Imposition [of sales tax] and rate.

For the privilege of selling tangible personal property at retail a tax is hereby imposed upon all retailers at the rate of 2 percent of the gross receipts of any retailer from the sale of all tangible personal property sold at retail in this state

372.025. “Gross receipts” defined. [Effective through December 31, 2006, and after that date if the proposal to amend the Sales and Use Tax Act of 1955 submitted pursuant to chapter 484, Statutes of Nevada 2005, is not approved by the voters at the 2006 general election.]

1. “Gross receipts” means the total amount of the sale or lease or rental price, as the case may be, of the retail sales of retailers, valued in money, whether received in money or otherwise

....

2. The total amount of the sale or lease or rental price includes all of the following:
- (a) Any services that are a part of the sale.
 - (b) All receipts, cash, credits and property of any kind.
 - (c) Any amount for which credit is allowed by the seller to the purchaser.

372.050. “Retail sale” and “sale at retail” defined.

1. “Retail sale” or “sale at retail” means a sale for any purpose other than for resale in the regular course of business of tangible personal property.

2. The delivery in this State of tangible personal property by an owner or former owner thereof or by a factor, or agent of such owner, former owner or factor, if the delivery is to a consumer or person for redelivery to a consumer, pursuant to a retail sale made by a retailer not engaged in business in this State, is a retail sale in this State by the person making the delivery. He shall include the retail selling price of the property in his gross receipts.

372.290. Containers.

1. There are exempted from the taxes imposed by this chapter the gross receipts from sales of, and the storage, use or other consumption in this state of:

- (a) **Nonreturnable containers** when sold without the contents to persons who place the contents in the **container** and sell the contents together with the **container**.

(b) **Containers** when sold with the contents if the sales price of the contents is not required to be included in the measure of the taxes imposed by this chapter.

(c) **Returnable containers** when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

2. As used in this section the term “**returnable containers**” means **containers** of a kind customarily returned by the buyer of the contents for reuse. All other **containers** are “**nonreturnable containers.**”

[58:397:1955]

Nevada Administrative Code **Chapter 372 – Sales and Use Taxes**

NAC 372..585 Food: Application of tax to items sold in containers (NRS 360.090, 372.284, 372.725)

If otherwise exempt food is sold:

1. In the same **container** as taxable personal property, all items in the **container** are taxable unless the price of the otherwise exempt food is separately stated.

2. In a **container** to which the retailer purchased and added the food, the **container** is taxable. The otherwise exempt food is also taxable unless the price of the food is separately stated.

3. In a **container** to which the manufacturer added the food, the **container** is taxable if the retail price of the **container** is more than the retail price of the food. The otherwise exempt food is also taxable unless the price of the food is separately stated.

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NEW HAMPSHIRE

Note: There is no state sales or use tax.

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NEW JERSEY

New Jersey Statutes Annotated Title 54 – Taxation Chapter 32B – Sales and Use Tax Act

54:32B-3. Imposition of sales tax.

There is imposed and there shall be paid a tax of 6% upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this act. If the lessor of tangible personal property purchased for lease elects to pay tax on the amount of the sales price as provided in paragraph (2) of subsection (bb) of section 2 of P.L.1966, c.30 (C.54:32B-2), any and each subsequent lease or rental is a retail sale, and a subsequent sale of such property is a retail sale.

54:32B-2. Definitions.

2. Unless the context in which they occur requires otherwise, the following terms when used in this act shall mean:

(d) “Receipt” means the amount of the sales price of any tangible personal property or service taxable under this act.

(e) “Retail sale” means any sale, lease, or rental for any purpose, other than for resale, sublease, or subrent.

(f) “Sale, selling or purchase” means any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this act, for a consideration or any agreement therefor.

(aa) “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A “lease or rental” may include future options to purchase or extend.

(1) “Lease or rental” does not include:

(3) The definition of “lease or rental” provided in this subsection shall be used for the purposes of this act regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the federal Internal Revenue Code or other provisions of federal, state or local law.

54:32B-8.15. Exemption from taxation for certain wrapping supplies.

Sales or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, **nonreturnable containers, reusable milk containers**, and all other wrapping supplies when

such use is incidental to the delivery of any personal property and **containers** for use in a “farming enterprise” ... are exempt from the tax imposed under the Sales and Use Tax Act.

New Jersey Division of Taxation – Bulletin S&U-6 (Sales Tax Exemption Certificates) (excerpts)

“Exempt Use Certificate (Form ST-4)

Form ST-4 makes it possible for businesses to purchase production machinery, packaging supplies, and other goods or services without paying sales tax if the way they intend to use these items is specifically exempt under New Jersey law. The exemption does not apply to services performed on the property, except as otherwise noted, of a newspaper plant.

• **Wrapping/Packaging Materials:** Wrapping paper, bags, cartons, tape, rope, twine, labels, **nonreturnable containers**, and all other packaging supplies *when the use of the supplies is incidental to the delivery of merchandise*. Storage **containers** are not considered to be packaging materials. However, **containers** used in a farming enterprise are exempt.

Example

Henry Johnson owns a company (Crest Manufacturing, Inc.) that manufactures television sets. In order to deliver the sets to wholesalers, he must package them in cardboard boxes and seal the boxes with tape. When Henry purchases the boxes and rolls of tape, he may issue his supplier an exempt use certificate. However, he may *not* purchase the tape dispensers with Form ST-4 as these items are not part of the packaging used to deliver the television sets.

New Jersey Division of Taxation – Bulletin S&U-9 (Business Purchases) (excerpts)

Purchases of Tangible Personal Property

Rentals

When you rent office equipment such as copiers, computers, desks, or postage meters, you are required to pay sales tax. The New Jersey Sales and Use Tax Act defines a rental as a short-term transaction, with an original contract term of no more than 28 days. Rental transactions are treated as retail sales and the renter pays sales tax on the amount of the rental payment. Where the rental includes the services of an operator, such as with construction equipment, and a separate billing is made for the rental of equipment and the services of the operator, only the rental charge for the equipment is subject to the sales tax; the charge for the operator’s services is exempt from sales tax. However, if the charges are not separately stated on the invoice, the entire amount is subject to tax.

Leases

The New Jersey Sales and Use Tax defines a lease as a long-term transaction with an original contract term of more than 28 days. The lessor (generally the owner of the property) is responsible for paying use tax based on either the purchase price of the property or the total amount of payments attributable to the lease (not including separately stated, nontaxable charges such as finance charges). The lessor does *not* collect sales tax from the lessee.

Packaging Supplies

Nonreturnable materials used to **contain**, protect, wrap, and ship your product to customers are exempt from New Jersey sales tax. You may issue a New Jersey Exempt Use Certificate (Form ST-4) to your supplier when purchasing these items and not pay sales tax. The packaging materials must be used in the delivery of your product to qualify for the exemption. Inventory storage **containers** are not considered to be exempt packaging materials. However, **containers** that are used in a farming enterprise are exempt.

Example

Brittany James owns a company that manufactures radios. In order to deliver the radios to wholesalers, she must package them in cardboard boxes and seal the boxes with tape. When Brittany purchases the boxes and rolls of tape, she issues her supplier an ST-4 exemption certificate and does not pay sales tax. However, she may not use an ST-4 when purchasing the tape dispensers, which are not part of the packaging used to deliver the radios.

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NEW MEXICO

New Mexico Statutes 1978

Chapter 7 – Taxation

Article 9 – Gross Receipts and Compensating Use Tax

§7-9-4. Imposition and rate of tax; denomination as “gross receipts tax.”

A. For the privilege of engaging in business, an excise tax equal to five percent [5%] of gross receipts is imposed on any person engaging in business in New Mexico.

B. The tax imposed by this section shall be referred to as the “gross receipts tax.”

§7-9-47. Deductions; gross receipts tax; governmental gross receipts tax; sale of tangible personal property or licenses for resale.

Receipts from selling tangible personal property or licenses may be deducted from gross receipts or from governmental gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate must resell the tangible personal property or license either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

§7-9-49. Deduction; gross receipts tax; sale of tangible personal property and licenses for leasing.

A. Except as otherwise provided by Subsection B of this section, receipts from selling tangible personal property and licenses may be deducted from gross receipts if the sale is made to a person who delivers a nontaxable transaction certificate to the seller. The buyer delivering the nontaxable transaction certificate shall be engaged in a business that derives a substantial portion of its receipts from leasing or selling tangible personal property or licenses of the type sold. The buyer may not utilize the tangible personal property or license in any manner other than holding it for lease or sale or leasing or selling it either by itself or in combination with other tangible personal property or licenses in the ordinary course of business.

* * * *

New Mexico Administrative Code

Title 3 – Taxation

Chapter 2 – Gross Receipts Taxes

Part 205 - Deduction – Gross Receipts Tax – Sale of Tangible Personal Property for Resale

NMAC 3.2.205.13 PACKAGING AND RELATED MATERIALS

A. Containers, wrapping paper and other packaging products.

(1) **Nonreturnable containers.** Sales of **nonreturnable containers** to persons who use them to package tangible personal property so that the **containers** become part of the products ultimately sold are sales for resale. The buyer of this type of **container** may give a nontaxable transaction certificate (nttc) for the **containers** purchased. Thus a person who sells **nonreturnable containers** to one who has delivered an nttc and used the **containers** in packaging food which is then sold may deduct the receipts from the sales to the person who delivered the nttc under Section 7-9-47 NMSA 1978.

(2) **Returnable containers.** Sales of **returnable containers** to persons who use the **containers** for the delivery of their goods are not sales for resale. The purchase of the **returnable containers** by the person who packages the goods for sale is a purchase for use. Therefore, the seller of the **containers** must pay the gross receipts tax on the receipts from the sale. Normally included in the category of **returnable containers** are glass milk bottles, some gasoline and oil cans, water bottles and milk and soft drink cases.

... (5) **Crowns, bottles, crates, cartons.**

(a) Crowns. The sale of caps or crowns to persons who use them in bottling soft drinks are treated as sales for resale. The sale of caps or crowns as a part of the bottled beverage to a person selling the beverage for ultimate consumption also is a sale for resale.

(b) Bottles. The sale of nonreturnable bottles, cans or other types of **containers** to a bottler or canner for use in packaging soft drinks is a sale for resale. The sale of the bottle or can as part of the drink to a person selling the beverage for ultimate consumption also is a sale for resale.

(c) Crates. The sale of crates, made of any material, to a soft drink bottler is not a sale for resale. The seller of the crate must pay the gross receipts tax if the sale is made in New Mexico. If the sale is not made in this state then the compensating tax must be paid by the buyer.

(d) Cartons or cases. The sale of paper, cardboard or plastic cartons and can and bottle holders to a soft drink bottler or canner is a sale for resale. The sale of the carton to a person engaged in selling soft drinks to consumers also is a sale for resale....

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NEW YORK

McKinney's Consolidated Laws of New York Annotated

Chapter 60 - Tax Law

Article 28 – Sales and Compensating Use Tax.

Section 1105. Imposition of sales tax.

On and after June first, nineteen hundred seventy-one, there is hereby imposed and there shall be paid a tax of four percent [4%] upon:

(a) The receipts from every retail sale of tangible personal property, except as otherwise provided in this article....

(3) *Receipt.* The amount of the sale price of any property and the charge for any service taxable under this article ... valued in money, whether received in money or otherwise

(4) *Retail sale.* (i) A sale of tangible personal property to any person for any purpose, other than (A) for resale as such or as a physical component part of tangible personal property, or (B) for use by that person in performing the services subject to tax under paragraphs (1), (2), (3), (5), (7) and (8) of subdivision (c) of [§1105] where the property so sold is later actually transferred to the purchaser of the service in conjunction with the performance of the service subject to tax....

(5) *Sale, selling or purchase.* Any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume (including with respect to computer software, merely the right to reproduce), conditional or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor, including the rendering of any service, taxable under this article, for a consideration or any agreement therefor.

Section 1115. Exemptions from sales and use taxes.

(a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five [§1105] and the compensating use tax imposed under section eleven hundred ten [§1110]:

... (19) Cartons, **containers**, and wrapping and packaging materials and supplies, and components thereof, for use and consumption by a vendor in packaging or packing tangible personal property for sale, and actually transferred by the vendor to the purchaser.

**New York State Department of Taxation and Finance Publication 852 (12/97) --
Sales Tax Information For: Manufacturers, Processors, Generators, Assemblers, Refiners,
Miners and Extractors, Other Producers of Goods and Merchandise (excerpts)**

Cartons, Containers, and Other Packaging Materials (at page 22)

“Packaging and wrapping materials used by a manufacturer in packing a product to be sold may be eligible for exemption. To qualify, the materials must actually be transferred with the product to the purchaser and become the property of the purchaser.

“Examples of items which are exempt when transferred with the product to the purchaser are:

Bags	Glue
Barrels	Gummed labels
Binding	Gummed tape
Bottles (including deposit bottles)	Kegs
Boxes	Lumber used for blocking
Cans	Pallets
Carboys	Reels
Cartons	Sacks
Cellophane	Spools
Coating and other preservative materials	Staples
Cores	Strapping
Crates	String
Cylinders	Tape
Drums	Twine
Excelsior	Wrapping paper

“Use Form ST-121, *Exempt Use Certificate*, to claim the exemption for these materials.

“The purchase of packing or packaging material which is not transferred to the purchaser with a product is subject to sales or use taxes in all localities (at the combined state and local rates). The materials are taxable regardless of the taxability of the items being packed or packaged, and regardless of whether the items, when sold, are shipped outside of New York State.

“Examples of taxable items are:

- **returnable cartons and pallets**; and
- racks, trays or similar devices used to facilitate delivery of the product when the ownership of these items is not transferred with the product to the purchaser.

Cases:

Albany Calcium Light Co. v. State Tax Comm’n, 44 N.Y.2d 986, 408 N.Y.S.2d 333, 380 N.E.2d 165 (1978)

Nehi Bottling Co. v. Gellman, 333 N.Y.S.2d 824, *aff’d* 34 N.Y.2d 808, 316 N.E.2d 331, 359 N.Y.S.2d 44

Colgate-Palmolive-Peet Co. v. Joseph, 308 N.Y. 333, 125 N.E.2d 857, 859 (1955)

American Molasses Co. v. McGoldrick, 281 N.Y. 269, 22 N.E.2d 369 (1939)

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NORTH CAROLINA

General Statutes of North Carolina Annotated

Chapter 105 – Taxation

Article 5 – Sales and Use Taxes

§ 105-164.4. Tax imposed on retailers.

(a) A privilege tax is imposed on a retailer at the following percentage rates of the retailer's net taxable sales or gross receipts, as appropriate. The general rate of tax is four and one-half percent (4 ½ %). * * * The general rate of tax applies to the sales price of each item or article of tangible personal property that is sold at retail and is not subject to tax under another subdivision in this section.

§ 105-164.3. Definitions. The following definitions apply in this Article:

(17) Lease or rental. – A transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration....

(34) Retail sale or sale at retail. – The sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

(37) Sales price. – The total amount or consideration for which personal property or services are sold, leased, or rented. The consideration may be in the form of cash, credit, property, or services. The sales price must be valued in money, regardless of whether it is received in money.

§ 105-164.13. Retail sales and use tax; Exemptions and Exclusions.

The sale at retail, the use, storage or consumption in this State of the following tangible personal property and services is specifically exempted from the tax imposed by this Article:

[Agricultural Group]

- (1a) A **container** sold to a farmer, as defined in subdivision (1) of this section, used for a purpose set out in that subdivision or in packaging and transporting the farmer's product for sale.

[Unclassified Group]

- (23) Sales of following packaging items:

a. Wrapping paper, labels, wrapping twine, paper, cloth, plastic bags, cartons, packages, and **containers** ... sold to manufacturers, producers, and retailers, when such retailers are used for packaging shipment or delivery of tangible personal property,

which is sold either at wholesale or retail and when such articles constitute a part of the sale of such tangible personal property and are delivered with it to the customer.

b. A **container** that is used as packaging by the owner of the **container** or another to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to the owner for reuse.

North Carolina Administrative Code

17 NCAC 07B .0502 **PACKAGING MATERIALS**

* * *

(g) Packaging materials which are purchased by a contract manufacturer and used to package products which it is manufacturing or processing for its manufacturer-customers in such packages or **containers** are not subject to the tax since the packaging materials will become a part of the sale of the products by the owner thereof. If such packaging materials are used by the contract manufacturer to package or hold products which are returned to the manufacturer-customers or sent to other contract manufacturers for further processing, they would be subject to the one percent rate of tax.

17 NCAC 07B .3901 **CONTAINERS: WRAPPING: PACKING AND SHIPPING MATERIALS**

(a) Sales to manufacturers, producers, wholesalers, and retailers of wrapping paper, labels, bags, cartons, and the other items specified in G.S. 105-164.13(23)a. are not subject to tax if they are used for packaging, shipping, or delivering tangible personal property to the customer. Except for the items described in Paragraph (b) of this Rule, this exemption does not apply to items that are used solely for delivery purposes and do not become a part of the sale of tangible personal property.

(b) Sales of **containers**, such as barrels and drums, that are used to package tangible personal property for delivery to the customer and are returned to the owner for reuse are not subject to tax.

17 NCAC 07B .3907 **REUSABLE CONTAINERS**

(a) Deposits charged by vendors for **reusable containers**, other than those described in G.S. 105-164.13(47) and (48) are subject to sales or use tax when the purchasers of the property contained therein can, during the period the **containers** are in their possession, exercise such control over the **containers** as is ordinarily associated with ownership. Such amounts are a part of the sales price even though designated as a deposit for the **containers**.

(b) When the vendors retain title to such **containers** and the vendors retain the right to control the use which the vendee makes of the **containers**, the **containers** are not considered to be a part of the sale of the property. In such cases, amounts charged to the customers as security for the

return of the **containers** are not subject to sales or use tax if such charges are shown separately from the sales price of the property on the customers' invoices. If such amounts are not separately stated, the total charge is subject to the tax.

17 NCAC 07B .3909 DRUMS FOR PACKAGING PRODUCTS

Sales of drums to manufacturers, producers, wholesalers, and retailers are exempt from tax under G.S.105-164.13(23) when such drums are used for packaging, shipment, or delivery of tangible personal property which is sold at wholesale or retail and when such drums constitute a part of the sale of such tangible personal property and are delivered with it to the customer. Sales of paint to manufacturers, producers, wholesalers, and retailers for use in painting such drums are also exempt from tax.

17 NCAC 07B .3910 RETURNABLE CONTAINERS

When a vendor sells tangible personal property in **returnable containers** without a charge being made for the use of the **containers** for a specified time but, at the expiration of the specified time, the **containers** enter a demurrage period and a penalty charge is made as an inducement for the return of the **containers**, the charges are incidental to the sale of the property and are not subject to the tax. If a **container** is used by the owner of the **container** or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse, it is exempt from tax in accordance with G.S. 105-164.13(23)b.

SALES AND USE TAX BULLETINS:

SECTION 6 – CONTAINERS USED IN WRAPPING, PACKING AND SHIPPING MATERIALS

6-1 CONTAINERS: WRAPPING, PACKING AND SHIPPING MATERIALS

- A. Sales to manufacturers, producers, wholesalers, and retailers of wrapping paper, labels, bags, cartons, and the other items specified in G.S. 105-164.13(23)a. are not subject to tax if they are used for packaging, shipping, or delivering tangible personal property sold at wholesale or retail and they constitute a part of the sale of the property and are delivered with the property to the customer. Except for the items described in Paragraph B. of this Bulletin, this exemption does not apply to items that are used solely for delivery purposes and do not become a part of the sale of tangible personal property.
- B. Sales of **containers**, such as barrels and drums, that are used to package tangible personal property for delivery to the customer and are returned to the owner for reuse are not subject to tax. Such **containers** must enclose products from all sides.

6-2 DRUMS FOR PACKAGING PRODUCTS

Sales of drums to manufacturers, producers, wholesalers and retailers are exempt from tax under G.S. 105-164.13(23) when the drums are used for packaging, shipment or delivery of tangible personal property which is sold at wholesale or retail and when the drums constitute a part of the sale of such tangible personal property and are delivered with it to the customer. Sales of paint to manufacturers, producers, wholesalers and retailers for use in painting the drums are also exempt from tax.

* * *

6-8 PACKAGING MATERIALS SOLD TO WAREHOUSEMEN AND MOVERS

Sales of packaging and packing materials to warehousemen and movers for use in the performance of storage and moving services are subject to the general rate of State tax and any applicable local sales or use tax.

6-9 RETURNABLE CONTAINERS

- A. When a vendor sells tangible personal property in **returnable containers** and no charge is made for the use of the **containers** for a specified time, but, at the expiration of the specified time, the **containers** enter a **demurrage period** and a penalty charge is made to encourage the return of the **containers**, the charge is incidental to the sale of the property and is not subject to the tax.
- B. If a **container** is used by the owner of the **container** or another person to enclose tangible personal property for delivery to a purchaser of the property and is required to be returned to its owner for reuse, it is exempt from tax in accordance with G.S. 105-164.13(23)b. Such **containers** must enclose products from all sides.

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NORTH DAKOTA

North Dakota Century Code Annotated

Title 57 – Taxation

Chapter 57-39.2 – Sales Tax

57-39.2-02.1. Sales tax imposed.

1. Except as otherwise expressly provided in subsection 2 for sales of mobile homes used for residential or business purposes, and except as otherwise expressly provided in this chapter, there is imposed a tax of five percent [5%] upon the gross receipts of retailers from all sales at retail including the leasing or renting of tangible personal property as provided in this section, within this state of the following to consumers or users:

- a. Tangible personal property, consisting of goods, wares, or merchandise, except mobile homes used for residential or business purposes

57-39.2-01. Definitions. The following words, terms, and phrases, when used in this chapter, have the meaning ascribed to them in this section, unless the context clearly indicates a different meaning:

9. a. “Gross receipts” means the measure subject to sales tax and means the total amount of consideration, including cash, credit, property, and services, for which personal property or services are sold, leased, or rented, valued in money, whether received in money or otherwise
10. “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend
15. “Retail sale” or “sale at retail” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrental. “Retail sale” or “sale at retail” includes the sale, including the leasing or renting, to a consumer or to any person for any purpose, other than for processing or resale, of tangible personal property;

57-39.2-04. Exemptions.

There are specifically exempted from the provisions of this chapter and from computation of the amount of tax imposed by it the following:

North Dakota Administrative Rules

Article 81-04.1 Sales and Use Taxes

81-04.1-01.12. Processing. The **nonreturnable containers** in which tangible personal property is sold, when sold for processing, are exempt from sales tax if it is intended that such **containers** become an integral, ingredient, or component part of tangible personal property intended to be sold ultimately at retail. Receipts from the sale of tangible personal property to fabricators, manufacturers, producers, or processors which will not actually become an integral, ingredient, or component part of the product produced are taxable.

81-04.1-01.13. Containers, wrapping materials, cartons, string. Receipts from the sale of **containers**, labels, cartons, packing cases, wrapping paper, wrapping twine, bags, bottles, shipping cases, and similar articles and receptacles sold to manufacturers, producers, wholesalers, retailers, or jobbers, which are used as **containers** of tangible personal property and are sold either for resale or at retail, are not subject to sales tax if the charge made for the property sold includes the **container** and title to the **container** passes to the purchaser with the merchandise sold.

Receipts from the sale of **containers**, labels, and cartons sold to those businesses rendering service are subject to the sales tax since these businesses are the users or consumers of such items, and sales to them are taxable.

Containers used for the purpose of delivering tangible personal property sold to customers, which may be returned to the seller, are not subject to sales tax when sold to the customer. The seller consumes or uses the **containers** in the seller's business, and the sale to the seller of such **containers** is subject to the tax. A deposit made by or required of the customer to secure the return of the **container** is not regarded as a retail sale, and it is not subject to the sales tax.

North Dakota Office of State Tax Commissioner Guideline – Sales Tax Exemptions (March 2006)

I. Products which are Exempt from Sales Tax

- J. **Containers:** The gross receipts from the sale of **containers**, labels, cartons, packing cases, wrapping paper, wrapping twine, bags, bottles, shipping cases and similar articles and receptacles are not subject to North Dakota sales tax provided that the charge made for the merchandise sold includes the **container** and title (ownership) to the **container** passes to the purchaser along with the merchandise sold.

Receipts from the sale of **containers**, labels, cartons, packing cases, wrapping paper, twine bags, shipping cases and similar articles and receptacles sold to businesses that render a service, such as dry cleaners, laundries and similar businesses, are subject to the sales tax since these businesses are the final users of such items.

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OHIO

Page's Ohio Revised Code Annotated

Title 57 – Taxation

Chapter 5739: Sales Tax

§ 5739.02 Levy of sales tax; purpose; rate; exemptions.

For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, ... an excise tax is hereby levied on each retail sale made in this state.

(B) The tax does not apply to the following:

* * *

(15) Sales to persons engaged in any of the activities mentioned in division (B)(42)(a) or (g) of this section, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material, labels, and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale, including any machinery, equipment, and supplies used to make labels or packages, to prepare packages or products for labeling, or to label packages or products, by or on the order of the person doing the packaging, or sold at retail. “**Packages**” include bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and **containers**, and “**packaging**” means placing therein.

* * *

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property.

§ 5739.01 Definitions.

(B) “Sale” and “selling” include all of the following transactions for a consideration in any manner, whether absolutely or conditionally, whether for a price or rental, in money or by exchange, and by any means whatsoever:

(1) All transactions by which title or possession, or both, of tangible personal property, is or is to be transferred, or a license to use or consume tangible personal property is to be granted;

(E) “Retail sale” and “sales at retail” include all sales, except those in which the purpose of the consumer is to resell the thing transferred or benefit of the service provided, by a person engaging in business, in the form in which the same is, or is to be, received by the person.

(UU) (1) “Lease” or “rental” means any transfer of the possession or control of tangible personal property for a fixed or indefinite term, for consideration. “Lease” or “rental” includes future options to purchase or extend ...;

* * *

(3) “Lease” and “rental” have the same meaning as in division (UU)(1) of this section regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, Title XIII of the Revised Code, or other federal, state, or local laws.

Ohio Administrative Code
Department of Taxation
Chapter 5703-9 Sales and Use Tax

§ 5703-9-21 Sales and use tax; manufacturing.

(A) For purposes of this rule, all purchases of tangible personal property are taxable, except those in which the purpose of the consumer is to incorporate the thing transferred as a material or a part into tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining or to use the thing transferred, as described in section 5739.011 of the Revised Code and this rule, primarily in a manufacturing operation to produce tangible personal property for sale.

This means that a person who buys tangible personal property and will make it a part or constituent of something that he is manufacturing for sale, or buys something that is used in a manufacturing operation, does not have to pay sales or use tax on the thing purchased.

Tangible personal property purchased by a manufacturer as a component or constituent of a product to be manufactured for sale is excepted from sales or use tax. The purchase of all such tangible personal property is not taxable, even though a portion will be lost or removed as waste or for testing. The manufacturer must pay use tax on the price, as defined in division (G) of section 5741.01 of the Revised Code, of any completed product not sold and stored or used by the manufacturer in a taxable manner, except such product that is consumed in testing or is disposed of because it is defective or otherwise unsalable.

(B)(1) “Manufacturing operation” means a process in which materials are changed, converted, or transformed into a different state or form from which they previously existed and includes refining materials, assembling parts, and preparing raw materials and parts by mixing, measuring, blending or otherwise committing such materials or parts to the manufacturing process. “Manufacturing operation” does not include packaging.

Tangible personal property purchased by a manufacturer for use in packaging is taxable unless exempted pursuant to division (B)(15) of section 5739.02 of the Revised Code.....

Cases:

Newfield Publications, Inc. v. Tracy, 87 Ohio St.3d 150, 718 N.E.2d 420 (1999)

Mennel Milling Company v. Limbach, 72 Ohio App.3d 330, 594 N.E.2d 681 (1991)

Sauder Woodworking Company v. Limbach, 38 Ohio St.3d 175, 527 N.E.2d 296 (1988)

General Mills, Inc. v. Limbach, 35 Ohio St.3d 256, 520 N.E.2d 218 (1988)

Cole National Corp. v. Collins, 46 Ohio St.2d 336, 348 N.E.2d 708 (1976)

Custom Beverage Packers v. Kosydar, 33 Ohio St.2d 68, 294 N.E.2d 672 (1973)

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OKLAHOMA

**Oklahoma Statutes Annotated
Title 68 – Revenue and Taxation
Article 13 – Sales Tax Code**

Section 1354. Tax levy; rate; sales subject to tax.

A. There is hereby levied upon all sales, not otherwise exempted in the Oklahoma Sales Tax Code, an excise tax of four and one-half percent (4.5%) of the gross receipts or gross proceeds of each sale of the following:

1. Tangible personal property, except newspapers and periodicals; etc.

Section 1352. Definitions.

11. a. "Gross receipts", "gross proceeds" or "sales price" means the total amount of consideration, including cash, credit, property and services, for which personal property or services are sold, leased or rented, valued in money, whether received in money or otherwise

21. "Sale" means the transfer of either title or possession of tangible personal property for a valuable consideration regardless of the manner, method, instrumentality, or device by which the transfer is accomplished in this state, or other transactions as provided by this paragraph, including but not limited to:

- a. the exchange, barter, lease, or rental of tangible personal property resulting in the transfer of the title to or possession of the property * * * *

Section 1358. Exemptions - Agriculture.

Exemptions – Agriculture.

A. There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

5. Sales of items to be and in fact used in the production of agricultural products.

Section 1359. Exemptions - Manufacturers.

There are hereby specifically exempted from the tax levied by Section 1350 et seq. of this title:

3. Sales of **containers** when sold to a person regularly engaged in the business of reselling empty or filled **containers** or when purchased for the purpose of packaging raw products of farm, garden, or orchard for resale to the consumer or processor. This exemption shall not apply

to the sale of any **containers** used more than once and which are ordinarily known as **returnable containers**, except returnable soft drink bottles and the cartons, crates, **pallets**, and **containers** used to transport returnable soft drink bottles. Each and every transfer of title or possession of such **returnable containers** in this state to any person who is not regularly engaged in the business of selling, reselling or otherwise transferring empty or filled **containers** shall be taxable under this Code. Additionally, this exemption shall not apply to the sale of labels or other materials delivered along with items sold but which are not necessary or absolutely essential to the sale of the sold merchandise;

4. Sales of or transfers of title to or possession of any **containers**, after June 30, 1987, used or to be used more than once and which are ordinarily known as **returnable containers** and which do or will contain beverages defined by paragraphs 4 and 14 of Section 506 of Title 37 of the Oklahoma Statutes, or water for human consumption and the cartons, crates, **pallets**, and **containers** used to transport such **returnable containers**;

10. Sales of packaging materials for use in packing, shipping or delivering tangible personal property for sale when sold to a producer of agricultural products. This exemption shall not apply to the sale of any packaging material which is ordinarily known as a **returnable container**;

12. Deposits or other charges made and which are subsequently refunded for **returnable cartons, crates, pallets, and containers** used to transport cement and cement products; ...

14. Deposits, rent or other charges made for **returnable** cartons, crates, **pallets**, and **containers** used to transport mushrooms or mushroom products from a farm for resale to the consumer or processor.

Oklahoma Administrative Code
Title 710 – Oklahoma Tax Commission
Chapter 65 – Sales and Use Tax

Subchapter 1 – General Provisions

710:65-1-2. Definitions

“**Lease or rental**” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

* * *

(C) This definition shall be used for sales and use tax purposes if a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Oklahoma Uniform Commercial Code (12A O.S. § 1-101 et seq.), or other provision of federal, state, or local law.

“**Retail sale**” means any sale, lease, or rental for any purpose other than for resale, sublease, or subrent.

“Sale” means, for purposes of this Chapter, transfer of title or possession of tangible personal property for consideration. All consideration received for the sale is included in gross receipts subject to tax. “Sale” does not include sale and leaseback.

710:65-1-11. Rentals and leases of tangible personal property.

(a) **Rental or lease of tangible personal property taxable.** The gross receipts or gross proceeds derived from the rental or lease of tangible personal property are subject to sales tax.

(b) **“Rental” or “lease” defined.** “Lease” or “rental”, as used in this Section, shall have the same meaning as set out in 710:65-1-2.

Subchapter 13 – Sales and Use Tax Exemptions

Part 3. Agricultural Transactions.

710:65-13-15. “Agricultural production” defined; taxable and exempt transactions.

* * *

(k) **Examples of exempt items.** The following items are **exempt** if used in agricultural production, or as otherwise stated:

(51) **Containers** used to package farm products for sale.

* * *

(58) Packaging materials, such as sacks, wrappers, and crates, for use in packing, shipping or delivering of agricultural products. This exemption shall not apply to any packaging material which can be used more than once or which is ordinarily known as a **returnable container**, except those specifically noted under 68 O.S. § 1359(3), 68 O.S. § 1359(4), and 68 O.S. § 1359(14).

(59) *“Returnable cartons, crates, pallets, and containers used to transport mushroom products from a farm for resale to the consumer or processor.”* [See: 68 O.S. § 1359(14)]

Part 11. Containers.

710:65-13-60. Exemption for **containers**

(a) The gross proceeds derived from the sale of **containers**, to persons regularly engaged in reselling empty or filled **containers**, are exempt from sales tax. Also exempt are sales to persons packaging raw products of farm, garden, or orchard, for resale to the consumer or processor.

(b) Sales of **returnable** soft drink bottles, crates, **pallets**, cartons, and **containers** used to transport **returnable** soft drink bottles are not taxable. Transfers of title or possession to **returnable** oil and chemical drums to any person not regularly engaged in the business of selling such **returnable** "oil drums" are exempt from taxation. Deposits on other “**returnable containers**” such as barrels, drums, **pallets**, and wire spools are subject to sales tax. Effective September 1, 1994, refundable deposits made for **returnable cartons, crates, pallets, and containers** used to transport cement and cement products are not taxable.

(c) [G]ross receipts derived from the sale of or transfer of title to or possession of any **returnable container** which does or will contain water for human consumption are specifically exempt from taxation. Also specifically exempt as of July 1, 1988 are the charges made for cartons, crates, **pallets**, and **containers** to transport such **returnable containers** that do or will contain water for human consumption. *[See: 68 O.S. §§ 1357(8) and 1359(4)]*

(d) [T]he deposits, rent or other charges made for **returnable cartons, crates, pallets, and containers** used to transport mushrooms or mushroom products from a farm for resale to the consumer or processor shall be exempt from sales tax. *[Source: Amended at 12 Ok Reg 2635, eff 6-26-95; Amended at 18 Ok Reg 2823, eff 6-25-01; Amended at 19 Ok Reg 1859, eff 6-13-02]*

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OREGON

[Note: Oregon does not currently impose any sales or use taxes.]

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PENNSYLVANIA

Purdon’s Pennsylvania Statutes Annotated
Title 72 – Taxation and Fiscal Affairs
Article II. Tax for Education

§ 7202. Imposition of tax

(a) There is hereby imposed upon each separate sale at retail of tangible personal property or services, as defined herein, within this commonwealth a tax of six per cent [6%] of the purchase price, which tax shall be collected by the vendor from the purchaser, and shall be paid over to the Commonwealth as herein provided.

§ 7204. Exclusions from tax

The tax imposed by section 7202 shall not be imposed upon:

(13) The sale at retail, or use of wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, **nonreturnable containers** and all other wrapping supplies, when such use is incidental to the delivery of any personal property, except that any charge for wrapping or packaging shall be subject to tax at the rate imposed by section 7202.

Pennsylvania Code
Title 61 - Department of Taxation Regulations

§ 31.1. Persons and sales subject to tax.

An excise tax shall be imposed upon the sale at retail or the use within this Commonwealth of tangible personal property and certain services, unless otherwise exempted.

(1) Sale at retail includes a transfer for value of the ownership, custody or possession of tangible personal property. “Rentals or leases” of tangible personal property and the grant of a license to use or consume are sales at retail.

* * * *

§ 31.3. Exclusions.

The tax does not apply to the following:

(1) Sales of tangible personal property or rendition of services for resale. Resale includes incorporation of property as an ingredient into other tangible personal property which is either sold in the regular course of business or transported in interstate commerce to out-of-State destinations for use outside of this Commonwealth.

... (5) Wrapping paper, wrapping twine, bags, cartons, tape, rope, labels, **nonreturnable containers** and other wrapping supplies, when the use is incidental to the delivery of tangible personal property. Charges for wrapping or packaging are subject to tax.

§ 31.4. Rentals or leases of tangible personal property.

(a) *Imposition.* Transfers of possession or of custody of tangible personal property for consideration, by whatever means effected and irrespective of the terms employed by the parties to describe the transaction, are taxable. The rental, lease or license to use or consume tangible personal property is subject to tax. ... If a transferee fails to pay the tax to the transferor in connection with a taxable transaction, the Commonwealth may collect the tax from the transferor or transferee.

* * *

(b) *Exemptions.* Persons who purchase tangible personal property for the predominant purpose of renting or leasing it to others are entitled to claim the resale exemption. Purchases of repair parts or otherwise taxable services for the property are similarly entitled to exemption. Purchases of equipment or supplies used in conjunction with the service or care of rental property are subject to tax since the materials are not considered to be resold.

(1)

(2) The TRC grants certain purchasers an exemption from tax not only on tangible personal property purchased for use in exempt activities, but also on rentals of the tangible personal property. Persons engaged in activities such as farming, dairying, manufacturing and mining, may, on renting or leasing tangible personal property, use an Exemption Certificate applicable to their particular activity.

§ 32. Exemptions.

§ 32.1 Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

Returnable containers – **Containers** which are designed to deliver property more than one time, including **containers** which require cleaning, repair or refurbishing prior to their subsequent use.

Wrapping supplies – The term includes property, except for **returnable containers** as defined in this section, which is used as an outside covering or internal packing in order to deliver personal property to a purchaser. The term also includes items such as **nonreturnable containers**, mailing labels, envelopes and packing slips attached to the covering transferred with the personal property, instruction sheets, warranty cards, material for preservation of the property, paper and plastic plates, cups and similar items. The term does not include napkins, wooden or plastic spoons, forks, straws and similar items and these items are therefore subject to tax when sold to restaurants or other eating places. The sale or use of wrapping supplies,

equipment and services for residential use is explained in § 58.1 (relating to publication of list of taxable and exempt tangible personal property).

§ 32.6. Wrapping supplies, equipment and services.

(a) *Wrapping supplies.*

(1) The purchase or use of wrapping supplies by a person engaged in the business of selling personal property is entitled to an exemption from tax upon the person's purchase or use of wrapping supplies when the use is incidental to the delivery of property which he sells.

(2) The sale or use of **returnable containers** is taxable unless the purchaser is engaged in the business of manufacturing, processing, dairying or farming and the **returnable container** is used in the delivery of the product to the ultimate consumer

Cases:

Commonwealth v. Yorktowne Paper Mills, Inc., 426 Pa. 18, 231 A.2d 287 (1967):
Lumber, nails, and metal bands for skids and pallets in conjunction with transportation and delivery of paper products manufactured by paper mill were within provision excluding from sales and use tax cartons, nonreturnable containers, and all other "wrapping supplies."

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RHODE ISLAND

General Laws of Rhode Island

Title 44 – Taxation

Chapter 44-18 Sales and Use Taxes

§ 44-18-18 Sales tax imposed. – A tax is imposed upon sales at retail in this state including charges for rentals of living quarters in hotels, rooming houses, or tourist camps, at the rate of six percent (6%) of the gross receipts of the retailer from the sales or rental charges; provided, that the tax imposed on charges for the rentals applies only to the first period of not exceeding thirty (30) consecutive calendar days of each rental; provided further, that for the period commencing July 1, 1990, the tax rate is seven percent (7%). The tax is paid to the tax administrator by the retailer at the time and in the manner provided. Excluded from this tax are those living quarters in hotels, rooming houses, or tourist camps for which the occupant has a written lease for the living quarters which lease covers a rental period of twelve (12) months or more.

§ 44-18-8 “Retail sale” defined. – (a) A “retail sale” or “sale at retail” means a sale, including rentals of tangible of personal property, for any purpose other than resale in the regular course of business and also means the rental of living quarters in any hotel, rooming house, or tourist camp. The sale of tangible personal property to be used for purposes of rental in the regular course of business is considered to be a sale for resale. “Rental” means the agreeing by the owner to give exclusive use of property to another for a consideration and for any period of time under any one agreement.....

§ 44-18-30 Gross receipts exempt from sales and use taxes. – There are exempted from the taxes imposed by this chapter the following gross receipts:

(4) **Containers.** (i) From the sale and from the storage, use, or other consumption in Rhode Island of:

(A) **Nonreturnable containers**, including boxes, paper bags, and wrapping materials which are biodegradable and all bags and wrapping materials utilized in the medical and healing arts, when sold without the contents to persons who place the contents in the **container** and sell the contents with the **container**.

(B) **Containers** when sold with the contents if the sale price of the contents is not required to be included in the measure of the taxes imposed by this chapter.

(C) **Returnable containers** when sold with the contents in connection with a retail sale of the contents or when resold for refilling.

(ii) As used in this subdivision, the term “**returnable containers**” means **containers** of a kind customarily returned by the buyer of the contents for reuse. All other **containers** are “**nonreturnable containers**.”

Rhode Island Administrative Code
Division of Taxation
Sales and Use Tax

Regulation SU 87-26 Containers and Labels

I. Containers

A. Definitions

The term “**containers**” means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, cans, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, **pallets** and materials from which such **containers** are manufactured.

The terms “**returnable containers**” means **containers** of a kind customarily returned by the buyers of the contents for reuse by the packers, bottlers, or sellers of the commodities contained therein. A **container**, title to which is retained by the seller of the contents, or for which a deposit is taken by such seller, is a **returnable container**. Examples of **returnable containers** are: registered dairy products **containers**, steel drums, beer and soft drink bottles, wine barrels, chemical carboys, cement bags, and gas cylinders.

All other **containers** are “**nonreturnable containers.**” Examples of **nonreturnable containers** are: wrapping and packing materials, paper bags, twine, cartons, cans, medicine and distilled spirits’ bottles.

The term “deposit” means an amount charged to the purchaser of the contents of the **container** with the understanding that such amount will be repaid when the **container** or a similar **container** is delivered to the seller.

B. Tax does not apply to sales of:

(a) **Nonreturnable containers** (including boxes, paper bags, and wrapping materials) when sold without the contents to persons who place the contents in the **container** and sell the contents with the **container**.

(b) **Returnable containers** when sold with the contents in connection with a retail sale of contents, or when resold for refilling.

(c) All **containers** when sold with the contents, if the sale of the contents is exempt.

Tax applies to all other sales of **containers** except sales for the purpose of resale to other sellers of **containers** who purchase them for resale without the contents.

Deposits as defined herein are not taxable.

The purchase of **returnable containers** by a manufacturer or processor from a supplier is a taxable transaction

R. Gary Clark, Tax Administrator Date: May 1, 1987

Regulation SU 92-62
Rentals and Leases of Tangible Personal Property

I. In General

The receipts or proceeds derived from the rental or lease of tangible personal property are subject to sales and use taxes.

Rental or lease means the agreeing by the owner to give exclusive use of property to another for a consideration and for any period of time under any one agreement.

The tax shall be computed on the gross amount without any allowance for service, maintenance, insurance, property taxes, etc., whether paid by the lessor or lessee.

Each period for which a rental or lease charge is made shall be considered a complete sale for the purpose of the imposition, collection and payment of sales or use taxes. For example, in the case of a weekly rate, each week shall be considered a complete transaction. In the case of continuing rentals or leases with or without a definite expiration date, the tax shall be due for each complete period for which a regular installment is paid.

* * *

II. Election to Pay Sales or Use Tax

(A) A person engaged in the renting or leasing of tangible personal property may elect to pay the tax as measured by the cost of the property to him or her upon acquisition. Such election shall be exercised by the payment of the sales tax to the seller or by filing the required use tax return on or before the due date.

(B) On the failure to so elect, a lessor shall be deemed to be a retailer; the lessor is required to obtain a sales tax permit and collect and remit sales taxes as measured by the total amount of rental or lease charges. Such permittee shall provide the supplier with a resale certificate.

* * *

R. GARY CLARK
TAX ADMINISTRATOR

EFFECTIVE DATE: JANUARY 1, 1993

Cases:

Red Fox Gingerale Co. v. Langton, 100 R.I. 531, 217 A.2d 466 (1966)

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SOUTH CAROLINA

South Carolina Code

Title 12 – Taxation

Chapter 36 – The South Carolina Sales and Use Tax Act

Article 9. Sales Tax

Section 12-36-910. Five percent [5%] tax on tangible personal property; laundry services, electricity, communications services, and manufacturer-consumed goods.

(A) A sales tax, equal to five percent [5%] of the gross proceeds of sales, is imposed upon every person engaged or continuing within this State in the business of selling tangible personal property at retail. ... etc.

SECTION 12-36-100. “Sale” and “purchase”.

“Sale” and “purchase” mean any transfer, exchange, or barter, conditional or otherwise, of tangible personal property for a consideration including:

- (1) a transaction in which possession of tangible personal property is transferred but the seller retains title as security for payment, including installment and credit sales;
- (2) a rental, lease, or other form of agreement;
- (3) a license to use or consume; and
- (4) a transfer of title or possession, or both.

SECTION 12-36-110. Sale at retail; retail sale.

Sale at retail and retail sale mean all sales of tangible personal property except those defined as wholesale sales. The quantity or sales price of goods sold is immaterial in determining if a sale is at retail.

(1) The terms include:

- (a) sales of building materials to construction contractors, builders, or landowners for resale or use in the form of real estate;
- (b) sales of tangible personal property to manufacturers, processors, compounders, quarry operators, or mine operators, which are used or consumed by them, and do not become an ingredient or component part of the tangible personal property manufactured, processed, or compounded for sale;
- (c) the withdrawal, use, or consumption of tangible personal property by anyone who purchases it at wholesale, except:
 - (i) withdrawal of tangible personal property previously withdrawn and taxed by such business or person,
 - (ii) tangible personal property which becomes an ingredient or component part of tangible personal property manufactured or compounded for sale,

- (iii) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property for sale,
- (iv) materials, **containers**, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property;
- (v) a motor vehicle operated with a dealer, transporter, or manufacturer, or education license plate and used in accordance with the provisions of Section 56-3-2320 or 56-3-2330;

* * * *

Section 12-36-120. “Wholesale sale” and “sale at wholesale.”

“Wholesale sale” and “sale at wholesale” mean a sale of:

- (1) tangible personal property to licensed retail merchants, jobbers, dealers, or wholesalers for resale, and do not include sales to users or consumers not for resale;
- (2) tangible personal property to a manufacturer or compounder as an ingredient or component part of the tangible personal property or products manufactured or compounded for sale;
- (3) tangible personal property used directly in manufacturing, compounding, or processing tangible personal property into products for sale;
- (4) materials, **containers**, cores, labels, sacks, or bags used incident to the sale and delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property....

Section 12-36-2120. Exemptions from sales tax.

Exempted from the taxes imposed by this chapter are the gross proceeds of sales, or sales price of:

...(7) **containers** and labels used in:

- (a) preparing agricultural, dairy, grove, or garden products for sale; or
- (b) preparing turpentine gum, gum spirits of turpentine, and gum resin for sale.

For purposes of this exemption, **containers** mean boxes, crates, bags, bagging, ties, barrels, and other **containers**;

... (14) wrapping paper, wrapping twine, paper bags, and **containers**, used incident to the sale and delivery of tangible personal property.

**South Carolina Administrative Code
Department of Revenue**

R 117-301. Agriculture.

117-301.4. Containers and Labels.

Containers and labels used in preparing agricultural products for sale and used in preparing turpentine gum, gum spirits of turpentine, and gum resins for sale are exempt under Code Section 12-36-2120(7). For purposes of this exemption, “**containers**” means boxes, crates, bags, bagging, ties, barrels, and other **containers**.

This exemption applies to bags sold to:

- (a) wholesale grain and feed dealers for use as furnished **containers** of corn and oats.
- (b) cotton dealers or ginnermen for use as furnished **containers** of cotton seed.
- (c) produce dealers for use as furnished **containers** of potatoes, cabbage, etc.
- (d) peanut hullers for use as furnished **containers** of peanut kernels, hulls, and vines.
- (e) nurserymen for use as furnished **containers** for nursery stock.

Wrapping paper, wrapping twine, paper bags, and **containers**, used incident to the sale and delivery of tangible personal property are exempt under Code Section 12-36-2120(14).

The above exemptions do not apply to tobacco twine used by farmers incident to the curing of tobacco.

R 117-302. Manufacturers, Processors, Compounders, Miners, and Quarries.

Manufacturers, processors, compounders, miners, and quarries enjoy several exclusions and exemptions from the sales and use taxes. The exclusions can be found in Code Section 12-36-120 and include[s] **containers**, ingredients and component parts, and items used directly in manufacturing, compounding or processing tangible personal property for sale. The exemptions can be found in Code Section 12-36-2120 and include exemptions for coal, coke, fuel, electricity, and machines. This regulation will explain these exclusions and exemptions in more detail.

In many of the subsections of this regulation, examples are provided. These examples are not all inclusive.

117-302.2. Containers.

The sale of materials, **containers**, cores, labels, sacks or bags used incident to the sale and delivery of tangible personal property or used by manufacturers, processors, or compounders in shipping tangible personal property are not subject to sales and use taxes.

“Materials” is defined to include, among other things, wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum

foils, and **pallets** used in packaging tangible personal property incident to its sales and delivery and used by manufacturers, processors, or compounders in shipping tangible personal property.

“**Containers**” is defined to include, but are not limited to, such items as, paper, plastic or cloth sacks, bags, boxes, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

“**Cores**” is defined to include spools, cylindrical tubes and the like on which tangible personal property is wound.

This exclusion applies to:

(a) labels affixed to manufactured articles to identify such products only when such labels are passed on to the ultimate consumer of such products.

(b) excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. Also excluded from the exemption are materials such as strapping and dunnage to temporarily brace or block tangible personal property within trucks and railroad cars as a protection during shipment.

(c) hogsheads, when used by a manufacturer, compounder or processor for the purpose of packaging tobacco for shipment or sale.

This exclusion does not apply to:

(a) address stickers and shipping tags.

(b) materials such as dry ice and rust preservatives used to preserve property during shipment.

117-309.15. Rentals and Leases.

The gross receipts or gross proceeds proceeding or accruing from the leasing or renting of tangible personal property are subject to the sales or use tax.

When on long-term continuing lease agreements where the lessor is required to furnish, for a consideration, maintenance services and/or operating supplies, the tax may be paid measured by (1) the total amount received, or (2) the total amount, taking as a deduction on the return charges for such services and/or supplies.

By using the first method, the lessor may purchase tax-free, as for resale, all items of tangible personal property passed on to the lessee. By using the second method, tax must be paid on all items of tangible personal property used in servicing the leased property.

If the owner of tangible personal property furnishes an operator or crew to operate such property, such owner is not deemed to be renting or leasing the property but is rendering a service and the receipts therefrom are not subject to the sales or use tax. Persons purchasing

tangible personal property for use in rendering such service are liable for payment of sales or use tax at the applicable rate on the purchase price.

Where a person customarily rents tangible personal property and customarily withdraws the same for his own use, storage or consumption, a tax is due by such person on each withdrawal for use, the tax to be measured by the amount he would customarily receive as rental had the property been leased or rented for a like period of time. In the alternative the tax may be paid on the full purchase price of the property and no further liability incurred on withdrawals for use. Having once elected either method of reporting on withdrawals for use, the taxpayer must so continue unless and until permission has been received from the department in writing to make a change. Regardless of the method selected for accounting for the tax on withdrawals for use, the tax is due on all amounts proceeding or accruing from the rental, lease or sale of the property.

R 117-312. Containers and other Packaging Material.

The statute provides an exemption (Section 12—36-2120) and an exclusion (Section 12-36-120) for **containers** and other packaging material. The following explains the application of the exemption and exclusion in certain situations.

117-312.1. Containers and Packaging Materials, Sales of to Licensed Retailers.

Licensed retailers purchase free of sales or use taxes wrapping paper, wrapping twine, paper bags and **containers** for use incident to the delivery of tangible personal property sold by them. They also purchase tax-free materials used in packaging personal property sold by them.

The list below, while illustrative of items falling within the exemption or exclusion, is not exhaustive:

Souffle cups, butter chips, paper cups, paper plates, boxes and crates and glazed tissue used to package articles of food.

It will be seen that items such as straws, napkins, wooden or paper spoons and forks do not meet the requirements outlined above and, hence, must bear the tax. Such items are rather in the nature of supplies used or consumed by the retailer in the operation of his or its business.

117-312.2. Containers, Beverage Boxes and Crates.

Especially designed crates and boxes of the type used by distributors of soft drinks or milk products retained by the purchaser of such products for reuse by the distributor thereof may be purchased free of sales or use taxes.

The exemption extends to materials used in repairing such crates and boxes.

117-312.3. Packaging Materials.

Section 12-36-120 excludes from the measure of the sales or use taxes the gross proceeds of the sale of "... materials, **containers**, cores, labels, sacks or bags used incident to the sale and

delivery of tangible personal property, or used by manufacturers, processors, and compounders in shipping tangible personal property.”

The term “materials” is deemed to include, among other things, wrapping paper, twine, strapping, nails, staples, wire, lumber, cardboard, adhesives, tape, waxed paper, plastic materials, aluminum foils, and **pallets** used in packaging tangible personal property for shipment or sale; also excelsior, cellulose wadding, paper stuffing, sawdust and other packing materials used to protect products in transit. Materials such as dry ice and rust preservatives used to preserve property during shipment do not come within the exemption. Also excluded from the exemption are materials such as strapping and dunnage (e.g., lumber used to block up equipment for shipment) to temporarily brace or block tangible personal property within trucks and railroad cars as a protection during shipment.

“**Containers**” include, but are not limited to, such items as, paper, plastic or cloth sacks, bags, boxes, bottles, cans, cartons, drums, barrels, kegs, carboys, cylinders, and crates.

The term “cores” is defined to include spools, spindles, cylindrical tubes and the like on which tangible personal property is wound.

Labels affixed to manufactured articles to identify such products are exempted from the tax only when such labels are passed on to the ultimate consumer of such products

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SOUTH DAKOTA

South Dakota Codified Laws

Title 10 – Taxation

Chapter 10-45 - Retail Sales and Service Tax

§ 10-45-2. Tax on sale of tangible personal property. There is hereby imposed upon the privilege of engaging in business as a retailer, a tax of four percent [4%] upon the gross receipts of all sales of tangible personal property consisting of goods, wares, or merchandise, except as taxed by §10-45-3 and except as otherwise provided in this chapter, sold at retail in the State of South Dakota to consumers or users.

§ 10-45-1. Definition of terms. Terms used in this chapter mean:

(10) “Retail sale” or “sale at retail,” any sale, lease, or rental for any purpose other than for resale, sublease, or subrent....

§ 10-45-14.4. Packaging and container materials as tax exempt raw material.

Containers, labels, cartons, packing cases, wrapping paper, twine, glue, bags, bottles, shipping cases, wrapping film, strapping, rope, tape, cans, lids, boxes, pads, dividers, stockinettes, casings, and similar articles and receptacles used or consumed by manufacturers, processors, or fabricators are raw material within the meaning of §10-46-9 and are not subject to sales or use tax.

§ 10-45-14.5. Packaging and container materials sold to retailers exempt. There are specifically exempted from the provisions of this chapter, and from the computation of tax imposed by it, gross receipts from the sale of paper and plastic bags, wrapping paper, twine, tape, and similar articles sold to retailers licensed under this chapter if the retailer uses the articles as wrappers or **containers** to hold other tangible personal property sold by the retailer and subject to sales or use tax and the articles are supplied free by the retailer as a convenience to the customer.

South Dakota Administrative Rules

Revenue and Regulation

Article 64:06 Sales Tax

64:06:03:09. Containers. A **container** is an article whose major function is as a receptacle or flexible covering for shipment or transportation of goods. Items such as molds, dies, or castings, the chief purpose of which is for use in a manufacturing or fabricating process rather than for shipping or transportation, are not **containers**.

Containers are taxable as follows:

(1) **Containers** and similar articles, such as drums, cartons, **pallets**, and shipping cases, used or consumed by manufacturers, processors, or fabricators are not subject to sales or use tax. A

manufacturer, processor, or fabricator is one who produces, whether by hand or machinery, a new or different article or product from raw or prepared materials. To constitute manufacturing, processing, or fabricating, there must be some substantial or significant change in the basic materials;

(2) Sales of certain **containers** to retailers are exempt from tax. The retailer exemption applies only to paper and plastic bags, wrapping paper, twine, tape, and similar articles which are used to hold other property sold by the retailer which is subject to sales or use tax. The **containers** must be supplied free as a convenience to the customer;

(3) Gross receipts from sales of **containers** to retail customers are subject to tax. If title to the **container** passes to the customer, the receipts are subject to tax even when the receipt is called a deposit. Passage of title to the **container** is indicated by the following:

(a) **Containers** are not identified to a particular retailer by a logo, stamp, inventory number, or other means;

(b) The retailer will refund the deposit on any **container** returned regardless of where the **container** was obtained;

(c) The retailer makes no effort to identify or keep records on which customers have their **containers**;

(d) The retailer makes no effort, such as a phone call or letter, to get the **container** back if it is not returned; and

(e) An invoice, sales slip, or other document may contain language showing passage of title.

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TENNESSEE

Tennessee Code Annotated
Title 67 - Taxes and Licenses
Chapter 6 – Sales and Use Taxes

67-6-202. Property sold at retail – Food [Variable effective dates. See the Compiler’s Notes].

(a) For the exercise of the privilege of engaging in the business of selling tangible personal property at retail in this state, a tax is levied on the sales price of each item or article of tangible personal property when sold at retail in this state; the tax is to be computed on gross sales for the purpose of remitting the amount of tax due the state and is to include each and every retail sale. The tax shall be levied at the rate of seven percent (7%).

67-6-204. Lease or rental of property.

(a) It is declared to be the intention of this chapter to impose a tax on the gross proceeds of all leases and rentals of tangible personal property in this state where the lease or rental is a part of the regularly established business, or the same is incidental or germane thereto.

67-6-329. Miscellaneous exemptions.

(a) The sale at retail, the use, the consumption, the distribution and the storage for use or consumption in this state of the following tangible personal property is specifically exempted from the tax imposed by this chapter:

... (6) **Containers** for farm products and plastic or canvas used in the care and raising of plants, seeds or seedlings, as defined in subdivision (a)(3), and plastic or canvas used in covering feed bins, silos and other similar storage structures;

... (17) Any item or substance exempt pursuant to subdivision (a)(3), (4), (5), (6), or (9) [**containers**] regardless of whether or not such item or substance is used in the production of food or fiber for human or animal consumption, if such item or substance is sold directly to a nurseryman.

**Tennessee Administrative Code
State Sales and Use Tax Rules**

1320-5-1-.11 CONTAINERS, WRAPPING AND PACKING MATERIALS AND RELATED PRODUCTS.

- (1) Items actually accompanying the product sold or shipped, without which the delivery of the product is impracticable on account of the character of the contents, and for which there is no separate charge, are not subject to Sales or Use Tax. These items include such things as **containers**, packing materials, labels or name plate affixed to products manufactured, and printed matter containing only directions for use.
- (2) Sales of **containers**, wrapping and packing material and related products which actually accompany work done for customers, when the services are subject to the Sales or Use Tax, are exempt from the Sales or Use Tax. Sales of tangible personal property to persons who render services which are not subject to the Sales or Use Tax, are subject to the Sales or Use Tax.
- (3) Charges made by dealers in this State for “gift wrapping” are subject to the Sales or Use Tax.

1320-5-1-.32 LEASE OR RENTAL.

- (1) The gross receipts or gross proceeds derived from or amount agreed to be paid for the lease or rental, within Tennessee, of all kinds of types of tangible personal property are subject to the Sales and Use Tax. The tax shall be computed on the gross receipts, gross proceeds, or rental payable without any deduction whatsoever for expense incident to the conduct of business.
- (2) The terms of the contract under which such tangible personal property is leased or rented shall be the basis for computing the tax. The tax is to be computed on a billing basis, either on the lump sum at the time of execution, or on a monthly or periodical basis as provided in the contract. The Sales Tax shall apply to all lease of tangible personal property delivered to a lessee or rentee in this State, regardless of where the property will be taken or used by the lessee or rentee, whether within or without the State of Tennessee.

* * * *

**TENNESSEE DEPARTMENT OF REVENUE
LETTER RULING # 01-13**

WARNING

Letter rulings are binding on the Department only with respect to the individual taxpayer being addressed in the ruling. This presentation of the ruling in a redacted form is informational only. Rulings are made in response to particular facts presented and are not intended necessarily as statements of Department policy.

SUBJECT

Application of sales and use tax to [SHIPPING DEVICES] used in shipping [TYPE OF PRODUCTS].

SCOPE

This letter ruling is an interpretation and application of the tax law as it relates to a specific set of existing facts furnished to the department by the taxpayer. The rulings herein are binding upon the Department and are applicable only to the individual taxpayer being addressed. This letter ruling may be revoked or modified by the Commissioner at any time. Such revocation or modification shall be effective retroactively unless the following conditions are met, in which case the revocation shall be prospective only:

- (A) The taxpayer must not have misstated or omitted material facts involved in the transaction;
- (B) Facts that develop later must not be materially different from the facts upon which the ruling was based;
- (C) The applicable law must not have been changed or amended;
- (D) The ruling must have been issued originally with respect to a prospective or proposed transaction; and
- (E) The taxpayer directly involved must have acted in good faith in relying upon the ruling; and a retroactive revocation of the ruling must inure to the taxpayer's detriment.

FACTS

[THE TAXPAYER] is a manufacturer of [TYPE OF PRODUCTS] with a facility in Tennessee. The taxpayer sells [PRODUCTS] that it ships from the Tennessee facility to its customers. The [PRODUCT] is shipped [VIA] [SHIPPING DEVICES], to customers located both inside and outside of Tennessee. The taxpayer and its customer have an understanding that, once the customer has removed the [PRODUCT] from the [SHIPPING DEVICES], the [SHIPPING DEVICES] are to be **returned** to the taxpayer, which then **re-uses** the [SHIPPING DEVICES]. While some customers are charged a deposit to insure the **return** of the [SHIPPING DEVICES], other customers are not.

QUESTION

Does the taxpayer owe sales or use tax on its purchase of the [SHIPPING DEVICES] [VIA] which its [TYPE OF PRODUCTS] are shipped?

RULING

The taxpayer does not owe sales or use tax on its purchase of the [SHIPPING DEVICES].

ANALYSIS

Tenn. Code Ann. § 67-6-102(24)(E) states, in pertinent part:

"Sale at retail," "use," "storage," and "consumption" do not include the sale, use, storage or consumption of:

* * *

(ii) Materials, **containers**, labels, sacks, bags or bottles used for packaging tangible personal property when such property is either sold therein directly to the consumer or when such use is incidental to the sale of such property for resale ...

Tenn. Code Ann. § 67-6-102(24) operates to negate in part other provisions of the Retailers' Sales Tax Act that would otherwise impose sales or use taxes. Therefore, the rules of statutory construction that apply to exemptions apply to the construction and application of Tenn. Code Ann. § 67-6-102(24). See, *Hutton v. Johnson*, 956 S.W.2d 484 (Tenn. 1997). Tax exemption statutes are to be construed against the taxpayer and exemptions will not be implied. *Hyatt v. Taylor*, 788 S.W.2d 554 (Tenn. 1990). Every presumption is against exemption, and any well founded doubt defeats a claimed exemption. *United Canners, Inc. v. King*, 696 S.W.2d 525 (Tenn. 1985). The burden is upon the taxpayer to establish a claimed exemption. *Woods v. General Oils, Inc.*, 558 S.W.2d 433 (Tenn. 1977).

TENN. COMP. R. & REGS. 1320-5-1-.11 (hereinafter "Rule 11" or "the Rule"), entitled "**Containers**, Wrapping and Packing Materials and Related Products" interprets Tenn. Code Ann. § 67-6-102(24). The first paragraph of the regulation states:

Items actually accompanying the product sold or shipped, without which the delivery of the product is impracticable on account of the character of the contents, and for which there is no separate charge, are not subject to Sales or Use Tax. These items include such things as **containers**, packing materials, labels or name plate affixed to products manufactured, and printed matter containing only directions for use.

The Rule must be read in conjunction with the statute. While the Commissioner of Revenue is authorized to prescribe reasonable rules and regulations not inconsistent with the taxing statutes under Tenn. Code Ann. § 67-1-102, such rules and regulations may not enlarge the scope of either a taxing statute or an exemption. See, *Covington Pike Toyota, Inc. v. Cardwell*, 829 S.W.2d 132, 135 (Tenn. 1992); *Volunteer Val-Pak v. Celauro*, 767 S.W.2d 635, 637 (Tenn. 1989); *Coca-Cola Bottling Co. v. Woods*, 620 S.W.2d 473, 475-76 (Tenn. 1981).

In *Coca-Cola Bottling Co. of West Tennessee v. Celauro*, 1993 WL 330303 (Tenn. 1993), the Tennessee Supreme Court considered the exclusion from sales tax for **containers** found in the statute. In that case, Coca-Cola used pressurized tanks to deliver either a "pre-mix" or "post-mix" soft drink syrup. Pre-mix tanks contained a solution of syrup, water, and carbon dioxide that could be dispensed directly into a drinking **container** for the consumer. Post-mix tanks contained only soft drink syrup so that the customer was required to combine the syrup with water and carbon dioxide before the product was served. Coca-Cola's customers consisted primarily of restaurants that sold soft drinks directly to consumers. The pressurized tanks were delivered to the restaurants, or other customers, and connected to a dispensing unit. Empty tanks were either returned by the customer or retrieved by Coca-Cola and were cleaned and used again. No separate charge was made to the customer for the tank.

In construing the statute, the Court determined that the product tanks used by Coca-Cola were incidental to the sale of the soft drink products for resale. The evidence showed that there was no practical alternative for the product to be sold "to customers for resale without use of the product tank." The Court did not discuss Rule 11 in this case, but the Court's ruling is consistent with the Rule's requirement that delivery of the product would be impracticable without the **container**. In *Evans v. Memphis Dairy Exchange*, 194 Tenn. 317, 250 S.W.2d 547 (1952), the Court considered a predecessor to the current statute. At that time, the exemption provided: The terms 'sale at retail,' 'use,' 'storage,' and 'consumption' shall not include the sale, use, storage or consumption of industrial materials for * * * nor * * * materials, containers, labels, sacks or bags used for packaging tangible personal property for shipment or sale. In that case, Memphis Dairy Exchange sold bottles to distributors who used the bottles in packaging milk for delivery to consumers. Consumers paid the distributors a deposit of three cents per bottle in order to assure the return of the bottle to the distributor. The Court held that the sale of the milk bottles to the distributors was not a taxable sale at retail under the above statute.

In the Coca-Cola and Memphis Dairy Exchange cases cited above, the packaging at issue consisted of the packaging which immediately held the actual property to be sold, that is, tanks to contain soft drinks or bottles to contain milk. Further, the product remained in the packaging at issue until after the product was delivered to the vendor's immediate customer. The **container** at issue in this ruling, the [SHIPPING DEVICE], holds the [PRODUCT] until the [SHIPPING DEVICE] comes into the possession of the taxpayer's customer. Whether the customer is an end user, or whether the customer is purchasing the [PRODUCT] for resale, the [SHIPPING DEVICE] clearly falls within the exemption outlined above. There is a strong analogy between the [SHIPPING DEVICES] and the tanks in *Coca-Cola v. Celauro*, *supra*. Therefore, the **container** is exempt under the provisions of Tenn. Code Ann. § 67-6-102(24)(E)(ii) and Rule 11. The taxpayer does not owe sales or use tax on its purchase of the [SHIPPING DEVICES].

Owen Wheeler
Tax Counsel
APPROVED: Ruth E. Johnson
Commissioner

DATE: 7/17/01

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TEXAS

Vernon's Texas Tax Codes Annotated

Title 2. State Taxation

Subtitle E. Sales, Excise and Use Taxes

Chapter 151. Limited Sales, Excise, and Use Tax

§ 151.051. Sales Tax Imposed.

- (a) A tax is imposed on each sale of a taxable item in this state.
- (b) The sales tax rate is 6-1/4 percent of the sales price of the taxable item sold.

§ 151.005. "Sale" or "Purchase." "Sale" or "purchase" means any of the following when done or performed for consideration:

- (1) a transfer of title or possession of tangible personal property;
- (2) the exchange, barter, lease, or rental of tangible personal property;

§ 151.301. "Exempted From The Taxes Imposed By This Chapter".

If a taxable item is exempted from the taxes imposed by this chapter, the sale, storage, use or other consumption of the item is not subject to the sales tax imposed by Section 151.051 of this code or the use tax imposed by Section 151.101 of this code if the item meets the qualifications for exemption as provided in this subchapter; and when an item is exempted from the taxes imposed by this chapter the receipts from its sale are excluded from the computation of the taxes.

§ 151.302. Sales For Resale.

- (a) The sale for resale of a taxable item is exempted from the taxes imposed by this chapter.
- (b) Tangible personal property used to perform a taxable service is not considered resold unless the care, custody, and control of the tangible personal property is transferred to the purchaser of the service.
- (c) Internal or external wrapping, packing, and packaging supplies used by a person in wrapping, packing, or packaging tangible personal property or in the performance of a service for the purpose of furthering the sale of the tangible personal property or the service may not be purchased by the person for resale.
- (d) In this section, "wrapping," "packing," and "packaging supplies" include: (1) wrapping paper, wrapping twine, bags, cartons, crates, crating material, tape, rope, rubber bands, labels, staples, glue, and mailing tubes; and (2) excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, hay laths, and property used inside a package to shape, form, stabilize, preserve, or protect the contents.

§151.322. Containers

(a) The following are exempted from the taxes imposed by this chapter:

(1) a **container** sold with its contents if the sales price of the contents is not taxed under this chapter;

(2) a **nonreturnable container** sold without its contents to a person who fills the **container** and sells the contents and the **container** together; and

(3) a **returnable container** sold with its contents or resold for refilling.

(b) In this section:

(1) “**Returnable container**” means a **container** of a kind customarily returned for reuse by the buyer of the contents.

(2) “**Nonreturnable container**” means a **container** other than a **returnable container**.

(3) “**Container**” means glass, plastic, or metal bottles, cans, barrels, and cylinders, but does not include any item of a type described in Section 151.302(d) (“wrapping” “packing” and “packaging supplies”).

Texas Administrative Code
Title 34 – Public Finance
Part I – Comptroller of Public Accounts
Chapter 3 – Tax Administration
Subchapter O – State Sales and Use Tax

Rule § 3.294 Rental and Lease of Tangible Personal Property.

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

* * *

(2) Lease or rental – A transaction, by whatever name called, in which possession but not title to tangible personal property is transferred for a consideration. In this section, the words lease and rental are used interchangeably.

(b) Leases. Tax must be collected from the lessee on all charges contained in the lease unless the charge is separately stated and is nontaxable as provided by this section

* * *

(f) Imposition of taxes; time for filing; credits.

(1) Leases subject to sales tax.

(A) An operating lease executed while the property is within the state is subject to sales tax. Tax will be due on the total lease amount for the entire term of the lease regardless of where the property is used if the lessee takes delivery in the state....

(B) A financing lease executed while the property is within the state is subject to sales tax if the lessee takes delivery in the state. Tax will be due on the total amount of the contract regardless of where the property is received in Texas is used during the lease.

Rule § 3.314 Wrapping, Packing, Packaging Supplies, Containers, Labels, Tags, Export Packers, and Stevedoring Materials and Supplies

(a) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) **Containers** – Glass, plastic, or metal bottles, cans, barrels, and cylinders. The term does not include any item of a type that is enumerated in paragraph (4) of this subdivision.

(2) **Manufacturers** – Those persons covered by the provisions of § 3.300 of this title (relating to Manufacturing; Custom Manufacturing; Fabricating; Processing).

(3) **Nonreturnable container** – A **container** other than a **returnable container**.

(4) **Packaging supplies** – All internal and external wrapping, packing, and packaging supplies including wrapping paper, wrapping twine, bags, boxes, cartons, crates, crating material, **pallets**, tape, rope, rubber bands, metal bands, labels, staples, glue, mailing tubes, excelsior, straw, cardboard fillers, separators, shredded paper, ice, dry ice, cotton batting, shirt boards, and hay lath.

(5) **Returnable container** – a **container** of a kind customarily returned for reuse by the buyer of the contents.

(b) Manufacturers.

(1) Sales or use tax is not due on **containers** or **packaging supplies** purchased by manufacturers for use as a part of the completion of the manufacturing process. For the purposes of this section, the manufacturing process is complete when the tangible personal property being produced has been packaged by the manufacturer as it will be sold. For example, toothpaste may be sold at retail in a tube enclosed in a box. Multiple units of the boxed toothpaste are placed in cardboard boxes by the manufacturer. A label is placed on the cardboard boxes identifying the product. The manufacturer then places these labeled boxes on a **pallet** and covers them with shrink-wrap for shipment, either to the manufacturer's distribution center, the manufacturer's warehouse, or to the manufacturer's customer. The toothpaste manufacturer may purchase the tubes, boxes, labels, **pallets**, and shrink-wrap tax free. Any additional packaging necessary to

transfer the product from the manufacturer's distribution center, or from the manufacturer's warehouse to the manufacturer's customer would also be exempt from tax.

(2) Sales tax is not due on internal or external wrapping, packing and packaging supplies sold to a person for the person's own use, stored for use, or used in wrapping, packing, or packaging newspapers as defined in § 3.299(a) of this title (relating to Newspapers, Magazines, Publishers, Exempt Writings), including those distributed free of charge to the general public.

(3) Sales tax is not due on **nonreturnable containers**, if the purchaser fills the **container** and sells the **container** with its contents. *See subsection (g)(3) of this section regarding returnable containers.*

(4) Sales or use tax is not due on ice used by manufacturers and processors inside or outside a package in order to shape, form, preserve, stabilize, or protect the contents of the manufactured product.

(c) Sales of packaging supplies to persons other than manufacturers. Sales and use tax is due on the sale of **packaging supplies**, including gift wrapping supplies, to persons who repack tangible personal property prior to sale, produce shippers who are not original producers, wholesalers, retailers, and service providers other than laundry and dry cleaners for use in delivering, expediting, or furthering in any way:

- (1) the performance of a taxable or nontaxable service;
- (2) the rental of tangible personal property; or
- (3) the sale of tangible personal property.

(d) [omitted]

(e) [omitted]

(f) Purchases for resale. A person who purchases **packaging supplies** "as is," not as part of a packaged product, may purchase the **packaging supplies** tax free by issuing a resale certificate in lieu of paying tax.

(g) Containers. Sales or use tax is not due on:

(1) **containers** when sold with the contents, if sales or use tax is not due on the sales price of the contents;

(2) **nonreturnable containers** when sold without the contents to persons who place the contents in the **container** and sell the contents together with the **container**. Throwaway glass bottles are examples of **nonreturnable containers**;

(3) **returnable containers** when sold with the contents in connection with the retail sale of the contents or when resold for refilling. An example is a person who sells oxygen with an oxygen cylinder. The oxygen seller must pay sales or use tax on the oxygen cylinder at the time of purchase. If the oxygen purchaser returns the cylinder to be refilled, then no tax is due on the cylinder in that transaction.

(h) [omitted]

(i) Export packers.

(1) An export packer is a person who packages property to be exported outside the territorial limits of the United States.

(2) Crating and packaging supplies as listed in subsection (a)(4) of this section, when purchased by an export packer to export personal property, are exempt under Tax Code, §151.307, whether used to package the export packer's property, that of vendors shipping such property to their foreign customers, or that of purchasers who contract and pay for such services.

(3) An export packer may give exemption certificates to suppliers on material purchases but must maintain records showing which materials were used for the exempt purpose of exporting tangible personal property.

(4) The export packer need not obtain a sales or use tax permit if all crating and packing supplies are purchased for exporting tangible personal property.

(j) [omitted]

k) [omitted]

Cases:

East Texas Oxygen Co. v. State, 681 S.W.2d 741 (Tex. Ct. App. 1984)

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UTAH

Utah Code Annotated Title 59 – Revenue and Taxation Chapter 12 – Sales and Use Tax Act

§59-12-103. Sales and use tax base – Rates – Effective dates – Use of sales and use tax revenues.

(1) A tax is imposed on the purchaser as provided in this part for amounts paid or charged for the following transactions:

- (a) retail sales of tangible personal property made within the state;
etc.

§59-12-102. Definitions. As used in this chapter:

(64) “Retail sale” or “sale at retail” means a sale, lease, or rental for a purpose other than (a) resale; (b) sublease; or (c) subrent.

§59-12-104. Exemptions.

The following sales and uses are exempt from the taxes imposed by this chapter:

...(20) (a)(i) sales of tangible personal property used or consumed primarily and directly in farming operations, including sales of irrigation equipment and supplies used for agricultural production purposes, whether or not they become part of real estate and whether or not installed by farmer, contractor, or subcontractor, but not sales of:

- (A) machinery, equipment, materials, and supplies used in a manner that is incidental to farming, such as hand tools and maintenance and janitorial equipment and supplies;
- (B) tangible personal property used in any activities other than farming, such as office equipment and supplies, equipment and supplies used in sales or distribution of farm products, in research, or in transportation; or
- (C) any vehicle required to be registered by the laws of this state, without regard to the use to which the vehicle is put

...(23) sales of **nonreturnable containers**, nonreturnable labels, nonreturnable bags, **nonreturnable shipping cases**, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler, or retailer....

Utah State Tax Commission Rules
R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax

R865-19S-27. Retail Sales Define Pursuant to Utah Code Ann. Sections 59-12-102 and 59-12-103(1)(g).

A. The term retail sale has a broader meaning than the sale of tangible personal property. It includes any transfers, exchanges, or barter whether conditional or for a consideration by a person doing business in such commodity or service, either as a regularly organized principal endeavor or as an adjunct thereto. The price of the service or tangible personal property, the quantity sold, or the extent of the clientele are not factors which determine whether or not it is a retail sale.

B. Retail sale also includes certain leases and rentals of tangible personal property as defined in Rule R865-19S-32

C. A particular retail sale or portion of the selling price may not be subject to a sales or use tax. The status of the exemption is governed by the circumstances in each case. *See other rules for specific and general exemption definitions, Rule R865-19S-30 for definition of sales price and Rule R865-19S-72 covering trade-ins.*

R865-19S-48. Sales Tax Exemption For Coverings and Containers Pursuant to Utah Code Ann. Section 59-12-104.

A. Sales of **containers**, labels, bags, shipping cases, and casings are taxable when:

1. sold to the final user or consumer;
2. sold to a manufacturer, processor, wholesaler, or retailer for use as a **returnable container** that is ordinarily returned to and reused by the manufacturer, processor, wholesaler, or retailer for storing or transporting their product; or
3. sold for internal transportation or accounting control purposes.

B. **Returnable containers** may include water bottles, carboys, drums, beer kegs for draft beer, dairy product **containers**, and gas cylinders.

1. Labels used for accounting, pricing, or other control purposes are also subject to tax.

C. For the purpose of this rule, soft drink bottles and similar **containers** that are ultimately destroyed or retained by the final user or consumer are not considered **returnable** and are exempt from the tax when purchased by the processor.

D. When tangible personal property sold in **containers**, for example soft drinks, is assessed a deposit or other **container** charge, that charge is subject to the tax. Upon refund of this charge, the retailer may take credit on a sales tax return if the tax is refunded to the customer.

May 31, 2005

NAME
ADDRESS

RE: Private Letter Ruling Request – Sales Tax and Leases of **Pallets** in a Pooling Arrangement

Dear NAME,

We have received your request for an opinion concerning the taxability of transactions involving a manufacturer's lease of **pallets** on a day-to-day basis under a **pallet** pooling arrangement. Although the Commission has previously ruled a similar transaction to be taxable in *Utah State Tax Commission Private Letter Ruling 00-018*, you have asked the Commission to find the transaction exempt under either of two Utah provisions. Your first point relates to Utah Code Ann. §59-12-104(23), which exempts "sales of **nonreturnable containers**, nonreturnable labels, nonreturnable bags, nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor, wholesaler, or retailer for use in packaging tangible personal property to be sold by that manufacturer, processor, wholesaler or retailer." Second, you refer to UCA 59-12-104(26), which exempts "property purchased for resale in this state, in the regular course of business, either in its original form or as an ingredient or component part of a manufactured or compounded product[.]" We understand the "shipping pool" you describe to involve a manufacturer leasing **pallets** from a supplier for a limited period of time until the **pallet** is shipped to the manufacturer's customer, then returned to the "shipping pool." For any **pallet** not returned to the "shipping pool," the manufacturer pays the supplier a predetermined price.

From the information you have provided, there appear to be two possible, distinct transactions. First, the manufacturer enters into a transaction to lease a **pallet** on a daily basis for use in shipping its products to its customers. Should the **pallet** be shipped outside the pooling program and lost, however, the manufacturing [sic] must pay a predetermined settlement fee. The Commission considers the settlement fee to be the purchase price of a second transaction, which is the purchase of the **pallet**. In other words, the first transaction is the lease of the **pallet**, while the second transaction, the purchase of the **pallet**, only occurs if the **pallet** is not returned to the shipping pool. We will separately address the taxability of each of these transactions below.

Before discussing each of these transactions, we address whether a "**pallet**" is the type of item contemplated for exemption under Section 59-12-104(23). While this section exempts certain specified **nonreturnable** items including "**shipping cases**" and "**containers**," the language does not include the term "**pallet**." However, the Commission's long-standing policy is to consider a "**pallet**" to be a "**shipping case**" or "**container**" for purposes of the exemption. The Commission believes such a conclusion is reasonable, given that a **pallet** is usually one part of the total **shipping case** or **container**.

Lease. You contend that the lease of **pallets** under the circumstances described is exempt from taxation. To support your position, you refer to *Brambles Indus. v. Director of Revenue*, 981 S.W.2d 568 (Mo. Banc 1998), in which the Supreme Court of Missouri found that leases of **pallets** in a pooling arrangement by Brambles Industries, Inc. (a/k/a Chep USA) to a manufacturer were exempt from taxation. That case did not address whether Missouri had a specific exemption for transactions involving **pallets** or other **container** and packaging materials. Nor did the Court specifically analyze whether a “sale” of **pallets** (involving a transfer of title) was exempt from taxation under Missouri’s resale exemption. Instead, because the Director of Revenue had conceded that a “sale” of **pallets** in a pooling arrangement would be exempt under the resale exemption, the issue before the Court was whether a “lease” of **pallets** (without passage of title) should be treated similarly to a “sale” under Missouri law and, as a result, also be exempt. /fn1

States without explicit provisions governing the taxability of sales of **containers** and other packaging materials generally resolve issues by determining whether the manufacturer purchases the materials for resale (as part of the product it sells) or whether it consumes the materials (as an incident to its sales and delivery of its product). However, Utah has an explicit statute for dealing with the taxability of such materials. UCA 59-12-104(23) provides an exemption from taxation, but only if the **container** or other packaging materials are “**nonreturnable**.” Under the pooling arrangement you describe, the **pallets** are returned to the lessor in order to terminate the manufacturer’s responsibilities with respect to the leased **pallets**. Under such circumstances, we consider the **pallets** to be “**returnable**” materials and, accordingly, the transactions you describe to be taxable under Utah law.

With respect to your second point, when the Commission considers the applicability of Utah’s resale exemption, we believe the lease transactions are still taxable. Utah Admin. Rule R865-19S-48(A)(1) (“Rule 48”) provides that sales of **containers**, labels, bags, shipping cases, and casings are taxable when “sold to the final user or consumer[.]” We do not consider the manufacturer’s customer to be the final user or consumer of the **pallets**. Under the circumstances described, we would consider the manufacturer, who leases the **pallets**, to be the final consumer of the **pallets** for that period for which it is entitled to the right of possession or use under the lease. Accordingly, the manufacturer’s transaction to lease **pallets** that are returnable is not a sale for resale. We note that while the lease between the **pallet** provider and the manufacturer is subject to taxation, the **pallet** provider may purchase the **pallets** tax-free under the resale exemption.

Settlement Fee. As for the second potential transaction, we understand that subsequent to leasing a **pallet**, there may be occasion when a manufacturer ships a “leased” **pallet** to a customer outside the pooling program. If so, the manufacturer is required to pay a settlement fee for the “lost” **pallet**. Under these circumstances, the Commission considers the settlement fee to be the purchase price of a **pallet** that, at the time of purchase, will not be returned. It does not matter that the **pallet** is the “type” of **pallet** that could have been returned. What is critical is that, at the time of the second transaction, it is not contemplated that the **pallet** will be returned. Accordingly, the **pallet** purchased is now a “**nonreturnable**” shipping case or **container** and its purchase is exempt from taxation under Section 59-12-104(23). The fact that the settlement fee is exempt does not affect the taxability of the lease payment associated with the same **pallet**. At

the time the **pallet** was leased, it was contemplated that it would be returned. Again, we consider these to be separate and distinct transactions.

The Commission's ruling is based on the facts and circumstances described herein. Should the actual circumstances be difference [sic], our response could also be different. Please contact us if we can provide any further assistance.

For the Commission,

Marc B. Johnson
Commissioner

Fn1/ The Commission is also aware that other states, both with and without specific exemptions relating to **containers** and packaging materials, have considered transactions involving leases of **pallets** in a pooling arrangement to be taxable. See *In the Matter of the Appeal of Imperial Sugar Company from a Decision by the Department of Revenue*, 2002-108, 06/11/2003 (also involving lease by Chep USA); *California Sales Tax Counsel Ruling No. 195.1526* (1/2/98); 5/14/98) (ruling that **pallets** leased to a manufacturer in a pooling arrangement constitute "**returnable**" **containers**); *Texas Comptroller's Decision No. 40,282* (12/09/2002).

* * *

Response Letter from Utah State Tax Commission to RPCC Request for Information and Assistance with Sales Tax Exemption

(May 23, 2000)

"NAME

COMPANY

RE: Utah Sales and Use Tax – Application to **Reusable Pallets and Containers**

Dear NAME,

Rich McKeown has forwarded to the Utah State Tax Commission your letter of April 14, 2000, and asked us to respond to your request. Your concern is whether an exemption from Utah sales and use tax is available on the rental of **reusable pallets and containers** and, if not, how such an exemption may be effected in Utah. Utah Code Ann. §59-12-104(23) provides an exemption only on the sale of **nonreturnable containers**, labels, bags, shipping cases, and casings. As you specifically ask about "**reusable**" **pallets and containers**, we must clarify that the terms "**reusable**" and "**returnable**" are not necessarily synonymous. Specifically, a **nonreturnable container** may be **reusable**, and a **returnable container** may be **nonreusable**. Accordingly, we will assume for purposes of this opinion that the **pallets and containers** you ask about are "**returnable**" items. This assumption is supported by the fact that returning an item is an inherent part of any rental transaction. For sales tax purposes, a rental or lease transaction is considered the same as a sale. Utah Code Ann. §59-12-102[64]. Accordingly,

whether one rents or sells a **returnable pallet or container**, the transaction is not exempt under Section 59-12-104(23).

You also asked by telephone whether an exemption exists when the **returnable pallets and containers** are used to distribute or transport agricultural products. Utah Code Ann. §59-12-104(20) provides an exemption for certain sales (or rentals) of tangible personal property used in farming operations; however, it specifically excludes from the exemption the sale (or rental) of tangible personal property used in the distribution or transportation of farm products. Accordingly, there is no exemption for **returnable or nonreturnable pallets and containers** used to distribute or transport agricultural products.

The Tax Commission does not have authority to administratively enact an exemption for the rental of **returnable pallets or containers** when the statute specifically mandates otherwise. Accordingly, the only means to obtain the exemption you request is through statutory action by the Utah Legislature. However, we point out that the Utah Legislature previously addressed whether to exempt **returnable containers** and packaging materials in 1994. In that year, the Legislature specifically amended the **containers** and packaging materials exemption statute to exclude **returnable** items. That action was in response to *Mt. Olympus Waters, Inc. v. Utah State Tax Comm'n*, 243 Utah Adv. Rep. 10, 877 P.2d 1271 (Ct. App. 1994), in which the Utah Court of Appeals found that the packaging exemption language in effect prior to the 1994 amendment was sufficiently broad to include both **nonreusable** items (consumed by purchasers of the manufactured product) and **reusable** items (consumed by the manufacturer).

Please contact us if you have any other questions.
For the Commission,
Marc B. Johnson, Commissioner.”

Cases

Mt. Olympus Waters, Inc. v. Utah State Tax Comm'n, 243 Utah Adv. Rep. 10, 877 P.2d 1271 (Ct. App. 1994)

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VERMONT

Vermont Statutes Annotated Title 32 – Taxation and Finance Chapter 233 – Sales and Use Taxes

§ 9771. Imposition of sales tax

Except as otherwise provided in this chapter, there is imposed a tax on retail sales. The tax shall be paid at the rate of six percent [6%] of the sales price charged for the following:

- (1) Tangible personal property sold at retail in this state.

§ 9703. Liability for tax

(a) Every person required to collect any tax imposed by this chapter or to pay it to the commissioner as required by this chapter shall be personally and individually liable for the amount of such tax together with such interest and penalty as has accrued under the provisions of section 3202 of this title; and if the person is a corporation or other entity, the personal liability shall extend and be applicable to any officer or agent of the corporation or entity who as an officer or agent of the same is under a duty to collect the tax and transmit it to the commissioner as required by this chapter....

§ 9701. Definitions

(5) Retail sale or sold at retail: means any sale, lease, rental for any purpose other than for resale, sublease, or subrent.

(33) Lease or rental: means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. A lease or rental may include future options to purchase or extend.

§ 9741. Sales not covered

Retail sales and use of the following shall be exempt from the tax on retail sales imposed under Section 9771 of this title and the use tax imposed under Section 9773 of this title.

....(16) Materials, **containers**, labels, sacks, cans, boxes, drums or bags and other packing, packaging, or shipping materials for use in packing, packaging, or shipping tangible personal property by a manufacturer or distributor.

Vermont Department of Taxes Tax Bulletin TB11

TAX: SALES AND USE TAX

SUBJECT: THE PACKAGING EXEMPTION FROM THE VERMONT SALES AND USE TAX APPLIED TO **RETURNABLE** AND **REUSABLE** ITEMS
ISSUED: 7/14/98

This bulletin addresses the scope of the “packaging” exemption as it applies to **returnable** and **reusable** items.

Exemption: 32 V.S.A. § 9741(16) exempts from the sales and use tax “[m]aterials, **containers**, labels, sacks, cans, boxes, drums or bags and other packing, packaging, or shipping materials for use in packing, packaging, or shipping tangible personal property by a manufacturer or distributor.”

Definition of Exempt Materials: “**Packing, packaging or shipping materials**” are defined in the Vermont Sales and Use Tax Regulations as “the articles and devices used in packing, packaging or shipping tangible personal property such as **containers**, bags, labels, gummed tapes, bottles, drums, cartons and sacks.” Reg. § 1.9741(a)(16)-6 (Effective 7/74). Explicitly excluded from this definition are “**returnable or reusable pallets**, skids, reels and similar equipment.” Reg. § 1.9741(a)(16)-6 (Effective 7/74). These items are considered to be “equipment,” not packing, packaging or shipping materials.

Past Administration of the Exemption: It has long been the Department’s position that **returnable** and **reusable** packaging is not exempt from the sale and use tax. The rationale for the exemption is that packaging is ordinarily transferred to the retail customer as part of the sale and it is part of the taxable base. Therefore the same packaging should be exempt at the manufacturing or distributor level to avoid taxing it twice. In contrast, **returnable** or **reusable packaging** which is not permanently transferred to a retail customer does not become part of the taxable base. Therefore, the exemption has extended only to materials that were transferred to the buyer with the product; and **returnable** or **reusable** materials used by manufacturers or distributors in getting their product to the market have not been exempt.

Present Administration of the Exemption: Although the approach outlined above affords a bright line for administering the exemption, an unintended consequence of this position is to favor the use of disposable materials over recyclable materials. The State of Vermont has elsewhere in law demonstrated a commitment to encouraging recycling and reuse of property, *e.g.*, 24 V.S.A. § 2206 (secretary of natural resources shall develop state plan for recycling centers); 10 V.S.A., chapter 53 (beverage **containers**; deposit redemption system); title 32, chapter 151, subchapter 13 (franchise tax on waste facilities); 10 V.S.A. § 6619 (packaging information); 10 V.S.A. § 6621c (collection of lead-acid batteries for recycling); 10 V.S.A. § 6622 (source separation incentives). In order to accommodate that state policy while still giving effect to the apparent intent of the exemption, *i.e.*, to exempt packaging not equipment, the department has adopted the following position: items of **returnable** and **reusable packaging** are exempt from sales and use tax as long as the life expectancy of the item is not more than three [3] years and the item holds or contains or is used by a manufacturer or distributor to pack and ship tangible personal property. Items with a life expectancy of longer than three [3] years are considered to be equipment which is used and consumed by the manufacturer or distributor and is therefore properly taxed to that party. The three year rule permits the exemption of packaging materials

regardless of whether the materials are **reusable** or not. At the same time it denies the exemption to items which are more akin to equipment and may in fact be capitalized.

Examples of items which are considered to be exempt packaging materials and not taxable equipment are: **pallets**, reels and skids used for holding tangible personal property during shipment; beer kegs; and water **containers**. Each of these items may be returned to and reused by the manufacturer or distributor. If the life expectancy of the item is not more than three [3] years and the item is used to package and ship tangible personal property, it is exempt from the Vermont sales tax pursuant Section 9741(16).

Equipment used for transportation is not exempt as packaging. For example, and not by way of limitations, forklifts used to transport tangible personal property around the premises of the manufacturer or distributor, trucks, freight cars and freight car linings are not exempt under Section 9741(16). Items which are not shipped with the tangible personal property are not exempt even if they are similar to exempt items. For example, specialized **pallets** used to move product, ingredients or supplies around a distributor's or manufacturer's warehouse are not exempt although **pallets** used in shipping product are exempt.

Use of Technical Bulletins: A technical bulletin provides general information on a specific subject to the public. It does not replace the need for competent legal advice. This technical bulletin supercedes all prior Department pronouncements on this subject.

Effective Date: The change in policy contained in this bulletin shall take effect on July 1, 1998. It does not [a]ffect taxes paid or assessed prior to July 1, 1998 unless an appeal is pending on the issue of reusable packaging.

Approved:
Molly Bachman, General Counsel
Edward W. Haase, Commissioner of Taxes

Vermont Department of Taxes

Date: April 12, 1996

Written by: Gloria Hobson, Business Taxes Policy Analyst

Approved by: Edward W. Haase, Commissioner of Taxes

You requested a formal ruling on how leases are treated for Vermont sales and use tax. This ruling is based on the facts in your December 13, 1995 letter and the attached sample of your lease.

Issue: Is the lease between [Taxpayer] and its customer a rental of tangible personal property and taxable under 32 V.S.A. §§ 9701(6), 9771(1), or financing executed through a lease an exempt from sales tax under 32 V.S.A. § 9742(7)?

* * *

Ruling: The lease agreement between the customer and the [Taxpayer] is a financing lease. The transfer of the security interest title to the [Taxpayer] and the lease payments are not subject to Vermont sales and use tax.

Vermont imposes the sales and use tax on the sale of tangible personal property. Sales, as defined in 32 V.S.A. § 9701(6), means "... any transfer of title or possession or both, exchange or barter, rental, lease or license to use or consume, condition or otherwise, in any manner or by any means whatsoever for a consideration, or any agreement therefor;" The payments under a lease agreement would be subject to tax. A lease agreement has the following characteristics:

1. The lessor holds title and/or ownership of the tangible personal property.
2. The lessee may purchase the tangible personal property at the end of the lease agreement for other than a nominal amount and generally at fair market value.
3. The lease agreement can be renewed and the new payments may be a continuation of the existing payments, but not based on the value of the equipment.

* * * *

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VIRGINIA

Code of Virginia (1950)

Title 58.1 Taxation

Subtitle I. Taxes Administered by the Department of Taxation

Chapter 6. Retail Sales and Use Tax

§58.1-603. Imposition of sales tax.

There is hereby levied and imposed ... a license or privilege tax upon every person who engages in the business of selling at retail or distributing tangible personal property in this Commonwealth, ... or who stores for use or consumption in this Commonwealth any item or article of tangible personal property as defined in this chapter, or who leases or rents such property within this Commonwealth

§58.1-602 Definitions

“Lease or rental” means the leasing or renting of tangible personal property and the possession or use thereof by the lessee or renter for a consideration, without transfer of the title to such property.

“Sale” means any transfer of title or possession, or both, exchange, barter, lease or rental, conditional or otherwise, in any manner or by any means whatsoever, of tangible personal property.... A transaction whereby the possession of property is transferred but the seller retains title as security for the payment of the price shall be deemed a sale.

§58.1-609.2 Agricultural Exemptions

The tax imposed by this chapter or pursuant to the authority granted in §§58.1-605 and 606 shall not apply to the following:

1. ... **containers** for fruit and vegetables.

§58.1-609.3 Commercial and Industrial Exemptions

The tax imposed by this chapter or pursuant to the authority granted in §§58.1-605 and 606 shall not apply to the following:

2. ... (iv) materials, **containers**, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale.

Virginia Administrative Code

23VAC10-210-400. Containers, packaging materials, and equipment.

A. *Definitions.* The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise:

“Packaging materials” means items which are used to package products for sale and which become the property of the purchaser subsequent to the sale. Examples of such items are **containers**, labels, sacks, cans, boxes, drums, and other similar items.

“Transportation devices” means items which are used to transport and protect products for sale and to restrain product movement in a single plane of direction. Examples of such items are **pallets**, dunnage, strapping and similar materials used to brace or secure cargo for transport.

B. *Exempt uses.* Packaging materials may be purchased tax exempt if the items are marketed with the product being sold and become the property of the purchaser. Packaging materials which do not become the property of the purchaser are subject to the tax.

“Packaging material” may be purchased exempt by industrial manufacturers, processors or miners, regardless of whether they are **returnable** or **nonreturnable** (*see 23VAC10-210-320*). “Transportation devices” are not packaging materials and may not be purchased tax exempt unless purchased for resale.

C. *Taxable uses.* Packaging materials and transportation devices, the ownership of which remains with the seller and does not pass to the customer are taxable. Persons who provide packaging and transportation services must pay the tax on all material used in providing such services unless the materials are resold to a customer and no transportation services are provided therewith.

D. *Equipment.* The tax applies to the purchase of equipment for use in the operation of a business even though such equipment may be used in connection with the shipment or sale of tangible personal property. Examples of property which is subject to the tax are truck bodies and trailers, tank and freight cars, containerized cargo, shopping carts and baskets, crates, dispensers, dishes, beverage glasses, and similar articles which are not resold and do not become the property of the purchaser.

Statutory Authority:

§§ 58.1-203 and 58.1-609.3(2) of the Code of Virginia

23VAC10-210-920. Manufacturing and Processing.

A. Generally. The retail sales and use tax does not apply to the following types of tangible personal property when used or consumed by an industrial manufacturer or processor of products for sale or resale:

* * *

4. Materials, **containers**, labels, sacks, cans, boxes, drums or bags for future use for packaging tangible personal property for shipment or sale (whether **returnable** or **nonreturnable**).

* * *

Based upon the foregoing, for a business to obtain the exemption, it first must be manufacturing or processing products for sale or resale and secondly, such production must be industrial in nature. ... Third, the types of tangible personal property which may be purchased exclusive of tax by an industrial producer are machinery and tools, raw materials or one of the other types specifically set forth above....

Rulings of the Tax Commissioner

Document Number: 03-79

Tax Type: Retail Sales and Use Tax

Brief Description: Tax of packaging materials

Topics: Appropriateness of Audit Methodology; Exemption; Property Subject to Tax

Date Issued: 11/03/2003

November 3, 2003

Re: § 58.1-1821 Application: Retail Sales and Use Tax

Dear *****:

This is in reply to your letter in which you seek correction of the retail sales and use tax audit assessments issued to ***** (the "Taxpayer") for the period May 1998 through May 2001. I apologize for the delay in the Department's response.

FACTS

The Taxpayer is an industrial manufacturer of concrete block and masonry products including industrial aggregate products. The Taxpayer's products are shipped to its customers on pallets. The Department's audit held the pallets taxable. The Taxpayer disagrees with the assessment and states that the pallets are used in the manufacturing process in conjunction with a shrink-wrapping system to form a unitary package for its shipment of the product.

DETERMINATION

The application of the tax to packaging materials is set out in Title 23 of the Virginia Administrative Code (VAC) 10-210-400. This regulation distinguishes exempt packaging materials (such as sacks, cans, and boxes) from taxable transportation devices (such as **pallets**, strapping, and similar materials). The regulation defines "transportation devices" to mean "items which are used to transport and protect products for sale and to restrain product movement in a single plane or direction." The regulation further provides that transportation devices may not be purchased tax exempt unless purchased for resale.

An exception to this general rule is provided in 23 VAC 10-210-920. This regulation notes that the tax does not apply to "materials, **containers**, labels, sacks, cans, boxes, drums or bags for

future use for packaging tangible personal property for shipment or sale (whether **returnable** or **nonreturnable**),” when used or consumed by an industrial manufacturer or processor of products for sale or resale.

While **pallets** generally do not qualify as “packaging” materials and are taxable, the Department has traditionally held that **pallets** qualify as exempt “packaging” materials if the **pallets** are bound (such as by shrink-wrapping) to the items they carry so as to restrain product movement in more than a single plane of direction and if the packaging activity occurs at the manufacturing plant site. Such **pallets** and the boards to repair them would qualify for the exemption.

The Taxpayer maintains that the cured concrete block is placed on **pallets** at the shrink-wrapping machine where a plastic bag is placed over the block and **pallet**. Heat is then applied to the plastic that encloses the blocks stacked on the **pallet** and, on average, covers two or more sides of the **pallet** including the corners. The Department’s policy regarding pallets bound by plastic in a shrink-wrapping process and qualifying as “packaging” does not provide that all corners of the **pallet** must be bound by the shrink-wrap. This policy is set out in Public Document (P.D.) 98-47 (03/11/98), in which the Department found cause to exempt such **pallets** when the evidence demonstrated that sufficient quantities of the **pallets** were bound to a product by shrink-wrapping, and that the product’s movement was restrained in more than one plane of direction.

In the instant case, however, the audit staff noted that the product completed the production line without any plastic covering. The audit staff also observed that most of the block being held in a staging yard before shipment was not covered with any plastic, and in those cases where a plastic covering was present, the plastic did not even reach the **pallet**. In most cases where the plastic did reach the **pallets**, the plastic was not shrink-wrapped to the **pallet**. Based on the information before me, the Taxpayer has not demonstrated that the **pallets** qualify for the manufacturing exemption in that sufficient quantities of **pallets** are not bound to products by a shrink-wrap process. Accordingly, while the plastic bags would continue to qualify for the packaging exemption under 23 VAC 10-210-920, the **pallets** would not qualify as they do not restrain movement of the product in more than one plane of direction. Consequently, the **pallets** are not considered packaging materials but are considered transportation devices and are taxable at the time of purchase unless purchased for resale.

Use or Sale of Pallets – Prior Audit

In a prior audit of the Taxpayer, percentages were established for **pallets** purchased by the Taxpayer for its use and **pallets** purchased for resale. It was determined that 70% of all **pallet** purchases were for the use of the Taxpayer. As noted above, these **pallets** do not as packaging under the manufacturing exemption because they are not bound to the product by a shrink-wrap process.

The remaining 30% of the **pallets** were assumed to be purchased for resale. The Taxpayer could purchase these **pallets** exempt of the tax, and the sale of the **pallet** to the customer is subject to the sales tax. Documentation reviewed by the auditor, however, revealed that while the **pallets** purchased for resale were listed on invoices to the customer, there was no indication that the **pallets** were subjected to the tax. Accordingly, the auditor properly assessed tax on the **pallets** listed on the Taxpayer’s invoices.

Based on all of the information before me, I do not find sufficient cause to allow for any adjustment to the Department's audit. Accordingly, I find that the assessments are correct. A revised bill, with interest accrued to date, will be sent to the Taxpayer separately. No further interest will accrue provided the outstanding balance is paid within 30 days from the date on the bill. * * *

The regulations and public documents cited are available on-line in the Tax Policy Library section of the Department of Taxation's website, located at www.tax.state.va.us. * * *

Sincerely,
Kenneth W. Thorson
Tax Commissioner

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WASHINGTON

West's Revised Code of Washington Annotated (RCWA)

Title 82 – Excise Taxes

Chapter 82.08 RCW – Retail Sales Tax

82.08.020. Tax imposed. – Retail sales – Retail car rental.

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent [6.5%] of the selling price.

RCW 82.04.040. “Sale,” “lease or rental.”

(1) “Sale” means any transfer of the ownership of, title to, or possession of property for a valuable consideration and includes any activity classified as a “sale at retail” or “retail sale” under RCW 82.04.050. It includes lease or rental”

(3)(a) “Lease or rental” means any transfer of possession or control of tangible personal property for a fixed or indeterminate term for consideration. . . . The definition in this subsection (3) shall be used for sales and use tax purposes regardless if a transaction is characterized as a lease or rental under generally accepted accounting principles, the United States internal revenue code, Washington state’s commercial code, or other provisions of federal, state, or local law. . . .

82.08.0282. Exemptions – Sales of returnable containers for beverage and foods.

The tax levied by RCW 82.08.020 shall not apply to sales of **returnable containers** for beverages and foods, including but not limited to soft drinks, milk, beer, and mixers.

Washington Administrative Code

WAC 458-20-115 Sales of packing materials and containers.

(1) Introduction. This section explains the B&O, retail sales, and use taxes which apply to persons who sell packing materials and to those who use packing materials.

(2) Definitions. The term “packing materials” means and includes all boxes, crates, bottles, cans, bags, drums, cartons, wrapping papers, cellophane, twines, gummed tapes, wire, bands, excelsior, waste paper, and all other materials in which tangible personal property may be contained or protected within a **container**, for transportation or delivery to a purchaser.

(3) Business and occupation tax.

(a) Sales of packing materials to persons who sell tangible personal property contained therein or protected thereby are sales for resale and subject to tax under the wholesaling classification.

Sellers must obtain resale certificates from the purchaser to support that these sales are for resale. *Refer to WAC 458-20-102.*

(b) Sales of **containers** to persons who sell tangible personal property therein, but who retain title to such **containers** which are to be returned, are sales for consumption and subject to tax under the retailing classification. This class includes wooden or metal bottle cases, barrels, gas tanks, carboys, drums, bags and other items, when title thereto remains in the seller of the tangible personal property contained therein, and even though a deposit is not made for the **containers**, and when such articles are customarily returned to the seller. If a charge is made against a customer for the **container**, with the understanding that such charge will be cancelled or rebated when the **container** is returned, the amount charged is deemed to be made as security for the return of the **container** and is not part of the selling price for tax purposes. However, refer to the comments below for sales of **containers** for beverages and foods.

(c) Title to **containers**, whether designated as **returnable or nonreturnable**, for beverages and food sold at retail, including beer, milk, soft drinks, mixers and the like, will be deemed to pass to the customer along with the contents. In such cases, amounts charged for the **containers** are part of the selling price of the food or beverage and subject to retailing tax when sold to consumers. Sales to persons who will resell the food or beverages are wholesale sales.

(d) Persons who perform custom or commercial packing for others are generally taxable under the service B&O tax classification on the income from the packing activity.

(i) Under RCW 82-04-190, persons taxable under the service B&O tax classification are consumers of any materials used in performing the service. Sales of packing materials to persons engaged in the business of custom or commercial packing are sales for consumption and are subject to the retail sales tax. However, there is a specific statutory exemption from the B&O tax for persons who perform packing of fresh perishable horticultural products for the grower. These persons are also exempt from retail sales tax on the purchase of any materials and supplies used in performing the packing service.

(ii) Persons who perform custom or commercial packing for others and who also manufacture the boxes, **containers**, or other packaging materials used by them in the packing are subject to the manufacturing tax and use tax on the value of the packing materials which they manufacture. *Refer to WAC 458-20-136.*

(e) Persons who operate cold storage warehouses or who perform processing for hire for others, which includes packaging the processed items, are not the consumers of the **containers** or other packaging materials. Sales of boxes, cartons, and packaging materials to these persons are taxable under the wholesaling tax classification. *Refer to WAC 458-20-136 and 458-20-133.*

(f) Persons who manufacture packing materials for delivery outside Washington or for their own commercial or industrial use are manufacturers and should refer to *WAC 458-20-136, 458-20-134, and 458-20-112.*

(4) Retail sales tax.

(a) All sales taxable under the retailing classification of the business and occupation tax as indicated above are also subject to retail sales tax except those specifically distinguished hereafter in this subsection.

(b) Retail sales tax does not apply to sales of returnable food and beverage **containers**, and vendors may take a deduction from gross retail sales for the amount of such sales in reporting sales tax due, providing (i) the seller separately states the charge for the **container** and (ii) the separately stated charge is the amount the vendor will pay for a repurchase of the **container**. Return of the **containers** is a repurchase by the vendor, and sales tax is not due on amounts paid to the customer on such repurchases, since the vendor will resell the **containers** in the regular course of business. (*RCW 82.08.0282.*)

(c) No deduction is allowed in computing tax under the retail sales tax classification where the retail sales tax is collected from the customer upon the charge for the **container**.

(d) Sales of packing materials to cooperative marketing associations, agents, or independent contractors for the purpose of packing fresh perishable horticultural products for the growers thereof, are not subject to retail sales tax. *See also WAC 458-20-214.*

(5) Use tax.

(a) The use tax applies to uses of packing materials and **containers** to which retail sales tax would apply but, for any reason, was not paid at the time such materials and **containers** were acquired.

(b) The use tax applies to the use of packing materials, such as boxes, cartons, and strapping materials, by a manufacturer in Washington where the packing materials are used to protect materials while being transported to another site of the manufacturer for further processing.

(c) The use tax applies to the use of **pallets** by a manufacturer or seller where the **pallets** will not be sold with the product, but are for use in the manufacturing plant or warehouse.

(6) Examples. The following examples identify a number of facts and then state a conclusion. These examples should be used only as a general guide. The tax status of each situation must be determined after a review of all of the facts and circumstances.

(a) ABC Packing Co. does custom packing of small parts for a Washington manufacturer. The parts are sent by truck to ABC who then places the parts into plastic bags and seals the bags through a heat fusion process. ABC is the consumer of the bags and must pay either retail sales tax or use tax on the use of the bags. This is true even though the bags will remain with the parts until delivered to the ultimate user of the parts.

(b) XY manufactures paper products in Washington. The paper is placed on large rolls. These large rolls are shipped to another of its own plants where the paper goes through a slitter for conversion into reams of paper. These large rolls involve the use of “cores” made of heavy fiber board on which the paper is rolled. “Plugs” are placed in the ends to give additional support.

The rolls are also wrapped and banded with steel banding. The cores, plugs, wrapping materials, and banding are all eventually removed during the additional processing. XY is the consumer of the plugs, cores, and other packing materials and must pay retail sales or use tax on these items.

(c) XY uses three types of **pallets** in its manufacturing operations. One type of **pallet** is used strictly for storing paper which is in the manufacturing process. A second type of **pallet** is **returnable** and the customer is charged a deposit which is refunded at the time the **pallet** is returned. The third type of **pallet** is **nonreturnable** and is sold with the product. XY is required to pay retail sales and use tax on the first two types of **pallets**. The third type of **pallets** may be purchased by XY without the payment of retail sales or use tax since those **pallets** are sold with the paper products

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WEST VIRGINIA

Michie's West Virginia Code Annotated

Chapter 11 – Taxation

Article 15 – Consumers Sales and Service Tax

§ 11-15-3. Amount of tax; allocation of tax and transfers.

(a) *Vendor to collect.* – For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in sections two (2) and eight (8) of this article, the vendor shall collect from the purchaser the tax as provided under this article and article fifteen (15)-b of this chapter, and shall pay the amount of tax to the tax commissioner in accordance with the provisions of this article or article fifteen (15)-b of this chapter.

(b) *Amount of tax.* – The general consumer sales and service tax imposed by this article shall be at the rate of six (6) cents on the dollar of sales and services, excluding gasoline and special fuel sales, which remain taxable at the rate of five (5) cents on the dollar.

§ 11-15-2. Definitions.

(16) “Sale”, “sales” or “selling” includes any transfer of the possession or ownership of tangible personal property or custom software for a consideration, including a lease or rental, when the transfer or delivery is made in the ordinary course of the transferor’s business and is made to the transferee or his or her agent for consumption or use or any other purpose. “Sale” also includes the furnishing of a service for consideration.

(25) “Vendor” means any person engaged in this state in furnishing services taxed by this article or making sales of tangible personal property or custom software. “Vendor” and “seller” are used interchangeably in this article.

§ 11-15-9. Exemptions.

(a) *Exemptions for which exemption certificate may be issued.* – Any person having a right or claim to any exemption set forth in this subsection may, in lieu of paying the tax imposed by this article and filing a claim for refund, execute a certificate of exemption, in the form required by the tax commissioner, and deliver it to the vendor of the property or service in the manner required by the tax commissioner. However, the tax commissioner may, by rule, specify those exemptions authorized in this subsection for which exemption certificates are not required. The following sales of tangible personal property and services are exempt as provided in this subsection:

(8) Sales of tangible personal property or of any taxable services rendered for use or consumption in connection with the commercial production of an agricultural product the ultimate sale of which is subject to the tax imposed by this article or which would have been subject to tax under this article: *Provided*, That sales of tangible personal property and services

to be used or consumed in the construction of or permanent improvement to real property and sales of gasoline and special fuel are not exempt: *Provided, however,* That nails and fencing may not be considered as improvements to real property.

(9) Sales of tangible personal property to a person for the purpose of resale in the form of tangible personal property....

West Virginia Code of State Rules

TITLE 110
LEGISLATIVE RULE
DEPARTMENT OF TAX AND REVENUE

SERIES 15
CONSUMERS SALES AND SERVICE AND USE TAX

§110-15-32. Containers, Wrapping, Packing and Shipping Materials.

32.1 In General.

32.1.1. The sale to a vendor of boxes, cartons, **containers**, and wrapping and packaging materials and supplies, and components thereof, for use or consumption by that vendor in packaging or packing tangible personal property for sale, and actually transferred by that vendor to the purchaser, is exempt from consumers sales and service tax and use tax as a purchase for resale.

Example 1. A manufacturer sells goods in bulk and ships them in corrugated cardboard cartons to a retailer. The retailer after using the cartons as temporary storage **containers** removes the goods and discards the cartons. The manufacturer's purchase of the cartons is exempt from consumers sales and use taxes as a purchase for resale.

Example 2. Wax tissue paper is sold to a bakery which uses it to pick cookies from a tray. The cookies and paper are then placed in bags or boxes. The wax paper and the bags and boxes are exempt from consumers sales and service tax and use tax as a purchase for resale.

Example 3. Purchases of egg cartons by persons engaged in the business of selling eggs are exempt from tax when such cartons become a part of the sale of the eggs to the customer.

32.1.2. The sale to a vendor of boxes, cartons, **containers**, and wrapping and packaging materials and supplies, and components thereof, to a vendor which are actually transferred to a customer in conjunction with the performance of a taxable service are exempt from consumers sales and service and use tax as a purchase for resale.

Example 1. A watch repairman packs a watch in a box, with cushioning material, to return it to his customer. His purchase of the box and packing material is exempt as a purchase for resale.

Example 2. Purchases of packaging and packing materials by warehousemen and movers for use in the performance of storage or moving services are exempt if such materials are actually transferred to the customer in conjunction with the service being furnished.

32.1.3. The sale to a vendor of boxes, cartons, **containers**, and wrapping and packaging materials and supplies, and components thereof, which are not purchased for resale are taxable unless some other exemption applies.

32.2. Definitions.

32.2.1. The term “Packaging materials” includes, but is not limited to: bags, barrels, baskets, bindings, bottles, boxes, cans, carboys, cartons, cellophane, coating and preservative materials, cores, crates, cylinders, drums, excelsior, glue, gummed tape, kegs, lumber used for blocking, pails, **pallets**, reels, sacks, spools, staples, strapping, string, tape, time, wax paper, and wrapping paper actually transferred with the product to the purchaser.

32.2.2. “Purchaser” in this section refers to any person who purchases tangible personal property from a vendor, whether or not the purchaser is the ultimate consumer.

32.2.3. “Actually transferred” means that the packaging material is physically transferred to the purchaser, for whatever disposition the purchaser wishes.

Example 1. **Returnable** soda bottles may be returned for refund of deposits or disposed of otherwise. Such bottle is actually transferred to the purchaser and is a purchase for resale except when sold to the ultimate consumer.

Example 2. If a beer keg is required to be returned to the vendor after its contents are used, ownership of this keg is not actually transferred to the purchaser-consumer of the beer. Kegs purchased by a vendor of kegged beer are taxable.

32.3. Returnable Containers. – Sales of **returnable containers**, such as drums, barrels, or acid carboys, to a purchaser/vendor who does not transfer ownership of the **container**, are taxable. Title to the **container** remains with the purchaser/vendor when possession of the **container** is transferred to one who purchases commodities contained therein and then returns the **container** to the seller for refilling.

32.3.1. Returnable Containers; Deposits.

32.3.1.1. Deposits charged by vendors for **reusable containers** are subject to tax when the purchasers of the property contained therein can, during the period the **containers** are in their possession, exercise such control over the **containers** as is ordinarily associated with

ownership. Such amounts are a part of the sales price even though designated as a deposit for the **containers**.

32.3.1.2. When the vendor retains title to such **containers** and the vendor retains the right to control the use which vendee makes of the **containers**, the **containers** are not considered to be a part of the sale of the property. In such cases, amounts charged to the customers as security for the return of the **containers** are not subject to tax if such charges are shown separately from the sales price of the property on the customers' invoices and the security deposit is refunded to the customer when the **container** is returned. If such amounts are not separately stated, the total charge is subject to the tax.

32.3.2. *Returnable Containers; Demurrage.* – When a vendor sells tangible personal property in **returnable containers** without a charge being made for the use of the **containers** for a specified time but, at the expiration of the specified time, the **containers** enter a demurrage period and a penalty charge is made as an inducement for the return of the **containers**, such charges are not subject to the tax unless the penalty is computed on an hourly, daily or some other periodic basis, or payment of the penalty results in title to the **container** passing to the customer. When a vendor sells tangible personal property in **returnable containers** and a stated charge is made for the use of the **containers** throughout the period of retention by the customer, such charges are deemed to be rentals and are taxable.

32.4. *Other Containers.* – Racks, trays or similar devices used to facilitate delivery of the vendor's product, if title to them is not transferred to the purchaser, are taxable.

Example 1. A baking company delivers bread to a grocer in plastic trays. After unloading the trays, the delivery person takes the trays with him. Sale of the trays to the baking company are taxable.

Example 2. A baking company delivers hamburger buns to a restaurant in stackable plastic trays. The filled trays are placed in the kitchen. The next time that buns are delivered, the empty trays are picked up and returned to the bakery. Sale of the trays to the baking company is taxable.

32.5. *Gift Wrapping.* – When a vendor gift wraps an item which he sells, the paper, ribbon, and bow become a part of the sale of the item notwithstanding that the wrapping of the item may take place at the point of delivery thereof to the vendee or at one of the vendor's wrapping stations or that the vendor may make a charge for gift wrapping the item. The vendor's purchases of paper, ribbons and bows are purchases for resale and exempt from tax. If a separate charge is made for wrapping, it is deemed to be for services performed in wrapping the item rather than a separate sale of wrapping material, and consumers sales and service tax and use tax will be due on the wrapping charge. In this instance, the vendor's purchases of paper, ribbon and bows are exempt because they are used and consumed by the vendor in providing a taxable service.

32.5.1. In a case where an organization, as a means of raising funds, offers to wrap gift items the customer purchases from others, the organization is considered to be performing a

wrapping service; and its purchases of paper, ribbon, and bows for use in the performance of the service are exempt from tax as provided in Section 9 of these regulations. Tax is due on the service charges unless the providing of the services is a “casual and occasional sale” or “isolated transaction” as defined in Section 2 and exempt under Section 9 of these regulations.

32.6. Restaurants – Containers. – Containers of paper, cups, plates and **other nonreturnable containers** purchased by restaurants and other food service establishments for use as **containers** for food sold to customers are exempt from consumers sales and use taxes as a purchase for resale when the **container** is actually transferred to the customer in connection with the customer’s purchase of food or drink. This includes, but is not limited to, cups, plates and **containers** for hot or cold drinks or food purchased for resale as a **container** of food or drink.

**West Virginia Department of Tax and Revenue: Publication TSD-371 (Rev. April, 1993)
“Sales Tax Responsibilities of Agricultural Producers”**

“The purpose of this publication is to provide information on State tax requirements that affect agricultural producers. This publication is meant to be a source of general information and not a substitute for tax laws or regulations.”

“PURCHASES

“In general, tangible personal property or taxable services purchased for use or consumption in connection with the commercial production of an agricultural product are exempt from sales and use tax. However, purchases of tangible personal property and services to be used or consumed in the construction of, or permanent improvement to, real property and purchases of gasoline and special fuel are not exempt....

“It should be noted that “commercial production of an agricultural product” means the production of food, fiber, or woodland products (but not timbering activity) by means of cultivation, tillage of the soil or by the conduct of livestock, dairy, apiary, or any other plant or animal production activity and all farm practices related, usual or incidental thereto, including the storage, packing, shipping and marketing of agricultural or farm products”

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WISCONSIN

West's Wisconsin Statutes Annotated Chapter 77 – Taxation of [Sales and Use Taxes] Subchapter III – General Sales and Use Tax

§ 77.52 Imposition of retail sales tax.

(1) For the privilege of selling, leasing or renting tangible personal property, including accessories, components, attachments, parts, supplies and materials, at retail a tax is imposed upon all retailers at the rate of 5% of the gross receipts from the sale, lease or rental of tangible personal property, including accessories, components, attachments, parts, supplies and materials, sold, leased or rented at retail in this state.

§ 77.54 General exemptions.

There are exempted from the taxes imposed by this subchapter:

(3m) The gross receipts from the sale of and the storage, use or other consumption of the following items if they are used exclusively by the purchaser or user in the business of farming:

... (L) **Containers** for fruits, vegetables, grain, hay, silage, and animal wastes.

(6) The gross receipts from the sale of and the storage, use or other consumption of:

(b) **Containers**, labels, sacks, cans, boxes, drums, bags or other packaging or shipping materials for use in packing, packaging or shipping tangible personal property, if such items are used by the purchaser to transfer merchandise to customers, and meat casing, wrapping paper, tape, **containers**, labels, sacks, cans, boxes, drums, bags, or other packaging and shipping materials for use in packing, packaging or shipping meat or meat products regardless of whether such items are used to transfer merchandise to customers.

Wisconsin Administrative Code

Tax 11.15 Containers and other packaging and shipping materials.

(1) Items exempt under s. 77.54(6)(b), Stats.

(a) To be exempt, **containers**, labels, sacks, cans, boxes, drums, bags and other packaging and shipping materials for use in packing, packaging or shipping tangible personal property shall be “used by the purchaser to transfer merchandise to customers.” Whether the **containers** or other packaging or shipping materials are **returnable** or **nonreturnable** is not a factor. The exemption does not apply to **containers** used in the incidental transfer of property to customers by persons providing services.

(b) **Containers** include barrels, bottles, cartons, chemical carboys and kegs. Packaging and shipping materials include property used inside a package to shape, form, preserve, stabilize or protect the contents, such as excelsior, straw, cotton, cardboard fillers, separators, shredded paper, ice, dry ice and batting, and rope, twine, gummed tape, wrapping paper, rubber bands, crates and crating materials, **pallets**, skids and mailing tubes.

(c) Gross receipts from the sale of the following items are within the exemption:

1. Cans in which canned goods, paints and other commodities are contained; medicine bottles; boxes in which jewelry, candy, suits, dresses and hats are delivered to customers; and ice cream cartons.
2. Bottles and cases used by breweries, wineries and soda water beverage producers to transfer the product to customers.
3. Barrels, half-barrels, kegs and the like, used by a brewery to transfer draft beer to wholesalers or retailers.
4. Caps for milk, beer and soda water bottles.
5. “Fragile,” “Handle with Care” or other shipping labels.
6. Paper food dividers used to separate food sections in a **container** for transfer to a customer.
7. Paper bags purchased by grocery stores, bakeries or other retailers and used by their customers in carrying out their purchases.
8. Feed bags purchased by feed dealers who use the bags to transfer merchandise sold to their customers.
9. Bale ties sold to a hay owner and used to deliver hay to the owner’s customers.
10. Ice used by a commercial fisher inside a box of fish to preserve the fish during shipment to market.
11. LPG tanks used to transfer fuel to customers which are replaced each time the fuel is exhausted.
12. **Packaging and shipping materials** for use in packing, packaging or shipping **meat or meat products**, regardless of whether these items are used to transfer merchandise to customers.

*Note: See Tax 11.12 for information on farmer’s **container** exemption.*

(2) Items not exempt under s. 77.54(6), Stats. Gross receipts from the sales of the following items are not within the exemption:

(a) Wrapping equipment such as paper holders, tape dispensers, staplers and string holders.

(b) Coat hangers used on display racks in stores.

(c) Shopping carts or baskets and similar equipment.

(d) Computer produced gummed label mailing lists used to address envelopes. However, labels for envelopes used to transfer tangible personal property to customers are exempt.

(e) **Containers** or other packaging and shipping materials used merely for storage or to transfer merchandise owned by a person from one location to another, such as bakery delivery carts and **containers** used in delivering bakery products to retailers.

(f) Lumber or other material used for bracing, blocking, skidding or shoring items while in transit; and cardboard and paper used to line box cars.

(g) “Valuable **containers**” such as fondue bowls, steins and popcorn poppers which are filled with cheese or other exempt food items and sold as a gift package. A “valuable **container**” is a **container** which has some use by virtue of its shape or design such that the purchaser envisions further use of the **container** after the contents have been removed. If the **container’s** contents are not subject to the tax and the cost to the seller of the **container** or **containers** in a particular package is \$1 or more, the seller shall assign a reasonable part of the retail selling price of the total package to the valuable **container** or **containers** and pay a sales tax on that part of the selling price. If the contents of the **container** or **containers** are taxable items, such as candy, the entire gross receipts from the sale of the package are subject to the tax.

(h) Price tags and advertising matter used in connection with the sale of tangible personal property, including counter display cards used for advertising and display purposes.

(i) Tanks on trucks used to deliver merchandise to customers.

(j) Corrugated boxes and other **containers** and related packing materials purchased by movers for use in transporting a customer’s goods.

(k) Bags, boxes, hangers and other **containers** transferred to customers by laundries, dry cleaners and other persons providing services.

(3) Deposits on **Returnable Containers**.

(a) **Returnable container** deposits received by a retailer at the time of the retail sale of tangible personal property, such as soft drink bottles, beer bottles and milk **containers**, and refunds of the deposits may be excluded from the computation of taxable gross receipts if they are excluded from gross receipts on the retailer’s books of account.

(b) If a retailer's books of account include **container** deposits in gross receipts and if refunds of the deposits are deducted from gross receipts, the retailer shall use this method of reporting taxable gross receipts on a sales tax return. Under this method, the gross receipts from the deposit are subject to the tax and the tax may be collected from the customer. However, when the deposit is refunded to the customer, the applicable sales tax shall also be refunded to the customer.

(4) Disposable Items Used by Restaurants. Gross receipts from sales to restaurants, cafeterias, caterers, nursing homes or vending machine operators of disposable items, including paper and plastic cups, plates, butter chips, hamburger and frankfurter baskets or buckets, utensils, straws, placemats, napkins, doggie bags, wrapping materials and toothpicks, transferred to customers for a valuable consideration by these persons as part of the sale of food, food products and beverages to customers are not subject to the tax.

(5) Demurrage, Lease or Rental of Fuel Storage Tanks. A gas supplier's monthly charge to a customer for the use of an LPG or other fuel storage tank which remains indefinitely on the customer's premises is taxable. The charge a supplier makes because a gas cylinder is retained by a customer beyond a 30-day period is also taxable. These "demurrage" charges constitute taxable rentals paid for the continuation of possession of the **container**. If a charge is made to the customer for the use of the **container** and the **container** is used exclusively for those leasing purposes, the gas supplier may issue a resale certificate when the supplier purchases the **container**. However, if the gas supplier furnishes a **container** or other storage tank to a customer without making a separately itemized charge for its use, the supplier shall be deemed the consumer of and shall pay tax on the acquisition of the **containers** or tanks.

(6) **Containers Sold.**

(a) If a charge is made by a seller or lessor of tangible personal property to a customer for packaging materials used in connection with the shipment of the property, the charge for packaging materials becomes a part of the selling price or rental charge. If the sale of the property shipped is not subject to or is exempt from tax, the charge for packaging materials is not subject to or is exempt from tax. If the sale of the property shipped is subject to tax, the charge for packaging materials is subject to tax. This paragraph is applicable to the taxation of packaging materials regardless of whether the charge for packaging materials is separately stated or not separately stated.

(b) Any credit given by a seller or lessor to a customer for packaging materials used in connection with the shipment of property which the customer returns to the seller or lessor shall reduce the seller's or lessor's gross receipts subject to tax in the reporting period during which the materials are returned, if the seller or lessor included the selling price of the packaging materials in the gross receipts subject to tax, and the seller or lessor returns the tax to the customer.

(7) Gift Wrapping. The amount charged for gift wrapping packages is taxable.

Note: Section Tax 11.15 interprets ss. 77.51(4)(a) and (b) and (14)(intro.) and (j), 77.52(1) and (2)(a)10. And 77.54(3m) and (6)(b), Stats.

Cases:

Leicht Transfer & Storage Co., Inc. vs. Wisconsin Department of Revenue:

In a decision dated November 23, 1979, the Wisconsin Tax Appeals Commission held that corrugated boxes and related packing materials used by Leicht to transport a customer's property from one location to another do not come within the exemption in s. 77.54(6)(b), Stats. This decision was affirmed by the Dane County Circuit Court on May 19, 1980, by the Court of Appeals, District IV on May 26, 1981.

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WYOMING

Wyoming Statutes Annotated (2003 ed.)

Title 39 – Taxation and Revenue

Chapter 15 – Sales Tax

Article 1. State Sales Tax

39-15-103. Imposition.

(a) Taxable event. The following shall apply:

(i) Except as provided by W.S. 39-15-105, there is levied an excise tax upon:

(A) The sales price of every retail sale of tangible personal property within the state;

(B) The gross rental paid for the lease or contract transferring possession of tangible personal property if the transfer of possession would be taxable if a sale occurred;

etc.

§ 39-15-101. Definitions.

(a) ...

(vi) “Retail Sale” means any sale, lease or rental for any purpose other than resale, sublease or subrent;

(xxxii) “Lease” or “rental” means any transfer of possession or control of tangible personal property for consideration for a fixed or indeterminate period of time. A lease or rental may include future options to purchase or extend the lease or rental. ... The definitions in this paragraph shall be used for sales and use tax purposes regardless of whether a transaction is characterized as a lease or rental under generally accepted accounting principles, the Internal Revenue Code, the Uniform Commercial Code, or other applicable provisions of federal, state or local law.....”

§ 39-15-105. Exemptions.

(a) The following sales or leases are exempt from the excise tax imposed by this article:

(iii) For the purpose of exempting sales of services and tangible personal property consumed in production, the following are exempt:

(A) Sales of tangible personal property to a person engaged in the business of manufacturing, processing or compounding when the tangible personal property purchased becomes an ingredient or component of the tangible personal property manufactured, processed or compounded for sale or use and sales of **containers**, labels or **shipping cases** used for the tangible personal property so manufactured, processed or compounded. This subparagraph shall apply to chemicals and catalysts used directly in manufacturing, processing or compounding which are consumed or destroyed during that process

Wyoming Administrative Rules
Department of Revenue – Current Rules and Regulations
Chapter 2 – Sales and Use Tax

Section 9. Non-Taxable Transactions.

(f) Containers.

Sales of **containers** and packing, when sold to persons who resell the **containers** together with their contents, shall be exempt from the sales and use tax. Disposable items purchased by restaurants, drive-ins, lunch counters, motels, hotels, and similar retailers, for their customers' consumption shall be exempt from the sales and use tax. All purchases of **reusable** products used or directly consumed by vendors shall be subject to sales and use tax at the time of purchase.

(g) Manufacturing, Processing, Agriculture.

...(ii) Ingredients or Components. Tangible personal property which is necessarily used or consumed in manufacturing, processing or compounding operations by a person engaged in the operations, shall be exempt from the sales and use tax, if that property becomes an ingredient or component of the final product. This exemption applies to chemical and catalysts used directly in manufacturing, processing or compounding which are consumed or destroyed during that process. The act of extracting a mineral or other substance from the earth shall not be considered manufacturing or processing. Sales of **containers**, labels or **shipping cases** used for tangible property so manufactured or processed are exempt. To be considered exempt the shipping materials must be unique to the property and consumed as part of the shipping. **Shipping materials** which are **reusable** are not exempt under this exemption clause.

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SECTION III.

STATE DEPARTMENTS OF TAX AND REVENUE

The following section provides in tabular form a list of the names, addresses and telephone numbers of the chief administrators of state departments of tax and revenue. See Table No. 2.

This table of contact information should give you a starting point in the event you have a question relating to the interpretation of any of the statutes, administrative regulations, letter rulings or judicial opinions excerpted in Section II. If a particular issue arises that cannot be resolved after a review of the statutes, regulations, rulings or cases, you may want to contact the state tax department's staff to provide guidance on that issue. In some cases, this guidance may take the form of a simple telephone discussion of the issue with a department staffer; in other cases, you may prefer to submit a request for a written ruling or other interpretation from the commissioner of tax and revenue.

From time to time, we will update this list of names, addresses and telephone numbers in an effort to provide you with the most current contact information available.

TABLE NO. 2

STATE DEPARTMENTS OF TAX AND REVENUE

ALABAMA	Tom Surtees, Commissioner Department of Revenue 4112 Gordon Persons Building 50 N. Ripley Street Montgomery, AL 36132-7123	(334) 242-1175 www.ador.state.al.us/
ALASKA	William A. Corbus, Commissioner Department of Revenue State Office Building, 11 th Floor 333 Willoughby Avenue P.O. Box 11-0420 Juneau, AK 99811-0420	(907) 465-2300 www.revenue.state.ak.us www.tax.state.ak.us
ARIZONA	J. Elliott Hibbs, Director Department of Revenue 1600 W. Monroe Street Phoenix, AZ 85007-2612	(602) 542-3572 www.azdor.gov/
ARKANSAS	Timothy J. Leathers, Commissioner Dept. of Finance and Administration P.O. Box 3278 Little Rock, AR 72203	(501) 682-2242 www.state.ar.us/dfa
CALIFORNIA	Timothy W. Boyer, Interim Exec. Director State Board of Equalization P.O. Box 942879 Sacramento, CA 94279-0090	(800) 852-5711 www.boe.ca.gov/
COLORADO	M. Michael Cooke, Executive Director Department of Revenue State Capitol Annex 1375 Sherman Street Denver, CO 80261	(303) 866-3091 www.revenue.state.co.us
CONNECTICUT	Pamela Law, Commissioner Department of Revenue Services 25 Sigourney Street Hartford, CT 06106	(860) 297-5962 www.ct.gov/drs/
DELAWARE	Patrick Carter, Director Division of Revenue Carvel State Building 820 N. French Street Wilmington, DE 19801	(302) 577-8200 www.state.de.us/revenue/
DISTRICT OF COLUMBIA	Phil Brand, Deputy Chief Financial Officer Office of Tax and Revenue 941 N. Capitol Street, N.E. Washington, DC 20002	(202) 727-4829 http://cfo.dc.gov/otr/
FLORIDA	James A. Zingale, Executive Director Department of Revenue Carlton Building 501 S. Calhoun Street Tallahassee, FL 32399-0100	(850) 488-5238 www.myflorida.com/dor/
GEORGIA	Bart L. Graham, Commissioner Department of Revenue 1800 Century Center Boulevard, N.E. Atlanta, GA 30345-3205	(404) 656-8477 www.etax.dor.ga.gov/

HAWAII	Kurt Kawafuchi, Director Department of Taxation P.O. Box 259 Honolulu, HI 96809-0259	(808) 587-4242 www.state.hi.us/tax
IDAHO	DuWayne D. Hammond, Jr., Chairman Idaho State Tax Commission P.O. Box 36 800 Park Boulevard, Plaza IV Boise, ID 83722-0410	(208) 334-7660 1-800-972-7660 www.tax.idaho.gov
ILLINOIS	Brian Hamer, Director Department of Revenue 101 West Jefferson Street Springfield, IL 62702	(217) 782-3336 www.revenue.state.il.us
INDIANA	Kenneth L. Miller, Commissioner Department of Revenue 100 North Senate Avenue Indiana Government Center North Indianapolis, IN 46204-2253	(317) 233-4018 www.in.gov/dor/
IOWA	Michael Ralston, Director Department of Revenue Hoover State Office Building East 13 th & Walnut Des Moines, IA 50319	(515) 281-3204 www.state.ia.us/tax/
KANSAS	Joan Wagnon, Secretary Department of Revenue Robert B. Docking State Office Building 915 SW Harrison Street Topeka, KS 66625-0001	(785) 368-8222 www.ksrevenue.org
KENTUCKY	Dana Mayton, Secretary Revenue Cabinet 200 Fair Oaks Lane Frankfort, KY 40620	(502) 564-4581 www.revenue.ky.gov
LOUISIANA	Cynthia Bridges, Secretary Department of Revenue 617 North Third Street P.O. Box 201 Baton Rouge, LA 70821	(225) 219-2448 www.rev.state.la.us/
MAINE	Jerome D. Gerard, Acting Executive Dir. Revenue Services 24 State House Station Augusta, ME 04333-0024	(207) 287-2076 www.maine.gov/revenue/
MARYLAND	William Donald Schaefer, Comptroller Goldstein Treasury Building 80 Calvert Street Annapolis, MD 21401	(410) 260-7980 www.comp.state.md.us/
MASSACHUSETTS	Alan L. LeBovidge, Comm'r of Revenue Department of Revenue 51 Sleeper Street, 8 th Floor Boston, MA 02205	(617) 626-2201 www.dor.state.ma.us
MICHIGAN	Jay B. Rising, State Treasurer Department of Treasury Treasury Building 430 W. Allegan Street Lansing, MI 48922	(517) 373-3223 www.michigan.gov/treasury

MINNESOTA	Dan Salomone, Commissioner Department of Revenue 600 North Robert Street St. Paul, MN 55146	(651) 296-3403 www.taxes.state.mn.us/
MISSISSIPPI	Edward H. Buelow, Jr., Chairman and Commissioner of Revenue State Tax Commission 1577 Springridge Road Raymond, MS 39154-9602	(601) 923-7000 www.mstc.state.ms.us/
MISSOURI	Trish Vincent, Director Department of Revenue 301 West High Street Jefferson City, MO 65105-0311	(573) 751-4450 www.dor.mo.gov/
MONTANA	Linda M. Francis, Director Department of Revenue 455 Sam W. Mitchell Building 125 N. Roberts P.O. Box 5805 Helena, MT 59604-5805	(406) 444-6900 http://mt.gov/revenue/
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