

**280-RICR-20-70-30**

## **TITLE 280 – DEPARTMENT OF REVENUE**

### **CHAPTER 20 – DIVISION OF TAXATION**

#### **SUBCHAPTER 70 – SALES AND USE TAX**

PART 30 – Bottles, Containers, and Labels

#### **30.1 Purpose**

This regulation implements R.I. Gen. Laws Chapter 44-18.1. This regulation provides for the regulation of Bottles, Containers and Labels.

#### **30.2 Authority**

This regulation is promulgated pursuant to R.I. Gen. Laws Chapter 44-18.1 as amended, R.I. Gen. Laws §§ 44-1-4, 44-18.1-1 and 44-19-33. Additionally these regulations have been prepared in accordance with the requirements of R.I. Gen. Laws Chapter 42-35 - Rhode Island Administrative Procedures Act.

#### **30.3 Application**

The terms and provisions of these rules and regulations shall be liberally construed to permit the Department of Revenue to effectuate the purposes of R.I. Gen. Laws Chapter 44-18.1 and other applicable state laws and regulations.

#### **30.4 Severability**

If any provision of these rules and regulations, or the application thereof to any person or circumstances, is held invalid by a court of competent jurisdiction, the validity of the remainder of the rules and regulations shall not be affected thereby.

#### **30.5 Definitions**

- A. "Containers" means the articles in or on which tangible personal property is placed for shipment and delivery such as wrapping materials, bags, can, twines, gummed tapes, barrels, boxes, bottles, drums, carboys, cartons, sacks, pallets and materials from which such containers are manufactured.
- B. "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.

1. 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.

C. "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.

### **30.6 Bottles and Other Returnable Containers**

A. R.I. Gen. Laws § 44-18-30(4)(C) provides that returnable containers, when sold with the contents in connection with a retail sale of the contents, or when resold for refilling, are not subject to the tax.

1. Example: a beverage manufacturer sells products to a storekeeper at a fixed price per bottle or per case, and that price includes a charge for such bottles and cases, even though the beverage manufacturer does not reserve title thereto, the purchase of such bottles and cases by the beverage manufacturer from its bottle supplier is a taxable transaction. It is regarded as a retail sale made by the company which supplies the beverage manufacturer with bottles and cases, and is not regarded as a purchase for resale, even though the beverage manufacturer allows a credit or makes a cash refund for the empty bottles and cases when they are returned in good condition by the storekeeper, who in turn, had them returned to such storekeeper by the consumer.

2. It is to be noted that R.I. Gen. Laws § 44-18-30(4)(C) provides that the exemption shall apply to returnable containers when they are sold with the contents in connection with a retail sale.

3. It is clear that since the sale by the beverage manufacturer to the storekeeper is not a retail sale, then the exemption does not apply.

4. Accordingly, when the supplier of the bottles sells bottles to the beverage manufacturer, this does not constitute a "sale for resale" of a nature which is entitled to exemption.

B. Inasmuch as it is contemplated by the beverage manufacturer that when the storekeeper to whom the products are sold (including the returnable bottles)

returns these bottles to the beverage manufacturer, the manufacturer will allow the storekeeper a credit similar or equivalent to the credit or cash refund which, in turn, the storekeeper allows or makes to the consumer. Inasmuch as R.I. Gen. Laws § 44-18-30(4)(C) provides that the sales tax is not to be collected on the amount which represents the deposit paid by the consumer to the storekeeper, and because as the law further provides that such bottles will be exempt when "resold for refilling" by the storekeeper to the beverage manufacturer; it therefore becomes clear why the legislature restricted the exemption of the bottles to apply only to the sales transaction between the storekeeper and the consumer, and did not intend to exempt the sale of returnable bottles to the beverage manufacturer because such are purchased for storage, use, or other consumption in this state.

1. To arrive at a different conclusion would mean, in effect, that these bottles would be exempt all along the line. If this is so, then the reason for the legislature making a distinction between returnable and nonreturnable containers ceases to exist.
- C. When the consumer buys a product in a nonreturnable container, the consumer is deemed to be paying for the cost of such container, for it affects and adds to the price of the product sold.
1. On the other hand, where the law relieves such consumer from paying the tax on a deposit bottle or other returnable container, it is manifestly clear that the legislature was desirous of avoiding duplicate taxation which otherwise would result in increasing the ultimate sales price to the consumer.

### **30.7 Containers and Labels**

- A. Tax does not apply to sales of:
1. 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.
  2. Returnable containers when sold with the contents in connection with a retail sale of contents, or when resold for refilling.
  3. All containers when sold with the contents, if the sale of the contents is exempt.
  4. 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.

5. Deposits as defined herein are not taxable.
6. The purchase of returnable containers by a manufacturer or processor from a supplier is a taxable transaction.

B. Labels

1. Tax does not apply to sales of labels or nameplates if:
  - a. The purchaser affixes them to property to be sold and sells them along with and as a part of such property. (For example, sales of nameplates of manufacturers or producers which are permanently affixed to each unit of products sold, such as automobiles and machinery.)
  - b. The purchaser affixes them to nonreturnable containers of property to be sold, or to returnable containers of such property if a new label is affixed to the container each time it is refilled. Examples are sales of labels to be affixed to fruit boxes, cans, bottles and packing cases, to growers, packers, bottlers and others who place the contents in the containers.
2. Tax applies to sales of such items as price tags, shipping tags, and advertising matter used in connection with the sale of property or enclosed with the property sold.

C. Gift Wrapping

1. Tax applies to the entire charge for "gift wrapping" (i.e., furnishing the materials and labor required to wrap an item for a customer so as to be suitable for use as a gift), whether or not the person who does the gift wrapping is the seller of the contents, and whether or not a separate charge is made for the gift wrapping. The person who does the gift wrapping may purchase the materials free of tax for resale.

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